

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF OKLAHOMA

| | | |
|------------------------|---|-----------------------|
| In re: |) | Chapter 11 |
| |) | |
| EATERIES, INC., et al. |) | Case No. 17-11444-SAH |
| |) | |
| Debtors. |) | Jointly Administered |

**STALKING HORSE PURCHASER’S REPLY IN SUPPORT OF
INCLUSION OF INJUNCTIVE RELIEF IN ORDER APPROVING SALE**
(Relates to Docket ##141, 148)

Fresh Capital, LLC, Practical Investors, LLC and Fiesta Holdings, Inc. (collectively, “Stalking Horse Purchaser”) submit this reply supporting the inclusion of modified injunctive relief in the order approving the sale of the assets of Eateries, Inc. (“Eateries”) and GRP of Zanesville, LLC (“Zanesville”), debtors and debtors-in-possession in the above-captioned case (collectively, the “Debtor”):

1. Mindful of the Court’s expressed reluctance to enter an order containing injunctive relief, Stalking Horse Purchaser has attached hereto as Exhibit “1” a modification of the proposed order. The modifications appear in ¶ Q (defining “Interests” of which the sale is free and clear), ¶ R (setting forth the Stalking Horse Purchaser’s requirement that it not be exposed to any *in rem* or *in personam* liability), ¶ T (foreclosing *in personam* claims based on theories of successor liability to the fullest extent permitted by law), ¶ 4 (ordering the sale free and clear), and ¶ 8 (ordering injunctive relief, not as to unknown future claimants, but only as to “*persons holding Interests subject to the jurisdiction of this Court*”).

2. On August 2, 2017, the United States Trustee (“UST”) filed its response [Docket #148] (“UST’s Response”) to the Debtor’s motion for an order approving sale [Docket #141]. The UST objected to inclusion of injunctive relief in the order and stating, “A blanket injunction against any future unknown liability is an overly broad request for extraordinary relief for some unknown purpose.” The objection is well taken. Thus, the modifications to the order were crafted to dispel any notion that future unknown claims are the subject of the requested relief. The injunctive relief extends only to the limit of the Court’s jurisdiction, covering the same Interests which are subject to the free and clear provisions of the order, and no others.

3. Injunctive relief is well established and significant corollary relief to an order approving a sale free and clear of interests. *MacArthur Co. v. Johns–Manville Corp. (In re Johns-Manville Corp.)*, 837 F.2d 89, 93 (2nd Cir. 1988) (authority to issue injunction is corollary to the power to dispose of assets free and clear and to channel claims to the proceeds). Purchasers at sales under § 363(f) should possess not only a defense to future assertion of foreclosed interests, but should also be able to affirmatively assert that attempts to enforce such an interest are in contempt of an order of the Bankruptcy Court.

4. As modified, the order is harmonious with the UST’s Response. For their recovery, holders of Interests must look only to the estate and the proceeds of the sale under § 363(f). *In re Sunland, Inc.*, 2014 WL 7011747, at *5–6 (Bankr. D.N.M. Dec. 11, 2014) (“Courts have long recognized that inherent within the authority to sell estate property free and clear of liens is the power to enjoin creditors from pursuing the

purchaser of such property.”); *Campbell v. Motors Liquidation Co. (In re Motors Liquidation Co.)*, 428 B.R. 43 (S.D.N.Y. 2010) affirmed, 430 B.R. 65 (S.D.N.Y.2010), (jurisdiction and authority of bankruptcy courts to approve sales free and clear under § 363(f) includes the corollary authority to issue injunctive relief necessary to effectuate such sales); *Jamaica Shipping Co. v. Orient Shipping Rotterdam, B.V. (In re Millenium Seacarriers, Inc.)*, 458 F.3d 92, 95 (2nd Cir. 2006) (injunctive authority of bankruptcy courts is “core” when the rights sought to be enforced by injunction are based on provisions of the Bankruptcy Code, such as the “free and clear” authority of section 363(f)); *In re Dow Corning Corp.*, 198 B.R. 214, 245 (E.D. Mich. 1996) (“Courts have long recognized that inherent within the authority to sell estate property free and clear of liens is the power to enjoin creditors from pursuing the purchaser of such property.”).

5. The modified order has no application to unknown future claims. Instead, it applies only to known liability claims in this case just as in other cases where injunctive relief was granted.

6. The Debtor has scheduled over \$2.8 million of secured and unsecured claims. Without assurance that holders of these Interests are enjoined from asserting liability against it, the Stalking Horse Purchaser will be reluctant to consummate any transaction with the estate.

7. The channeling of known liability claims, whether arising in contract or tort, is a proper imposition of corollary injunctive relief. There is no meaningful difference between the channeling of claims to recovery from insurance proceeds or a settlement fund or, as in this case, the proceeds of a sale under § 363(f).

8. Injunctive relief as a corollary to a sale free and clear under § 363(f) is admittedly something of a belt and suspenders protection which, at first blush, might seem redundant and, thus, unnecessary. But the protections provided, though overlapping greatly, have meaningful distinctions. A plethora of litigation in which overly aggressive creditors have asserted *in personam* liability against purchasers at § 363(k) sales (as distinguished from making claims against the sale assets) have resulted in purchasers routinely demanding such relief. *In re Johns– Manville*, 837 F.2d 89, 93 (2nd Cir. 1988) (injunctions are relatively common with § 363(f) sale orders).

WHEREFORE, the Stalking Horse Purchaser prays that this Court enter an order approving the sale containing the injunctive relief as set forth in the modified proposed order which is Exhibit “1” hereto.

Respectfully submitted this 12th day of September 2017.

s/ Jared D. Giddens
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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF OKLAHOMA

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| In re: |) | Chapter 11 |
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| EATERIES, INC., <i>et al.</i> ¹ |) | Case No. 17-11444-SAH |
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ORDER (A) AUTHORIZING AND APPROVING (I) THE ASSET PURCHASE AGREEMENT; (II) THE SALE OF THE DEBTOR’S ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS; AND (III) THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (B) GRANTING RELATED RELIEF
[This Order Relates to the Motion at Docket No. 141]

Upon the motion (the “Motion”)² filed July 13, 2017 [Doc. 141] of Eateries, Inc. (“Eateries”) and GRP of Zanesville, LLC (“Zanesville”), debtors and debtors-in-possession in

¹ The affiliated Debtors are Eateries, Inc. and GRP of Zanesville, LLC, Case No. 17-11445-SAH. Although there are multiple Debtors in this case, for ease of reference the term “Debtor” used in this pleading shall refer to all of the affiliated Debtor entities.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Asset Purchase Agreement (as defined below) or, if not defined in the Asset Purchase Agreement, the Motion.

the above-captioned cases (collectively, “Debtor”) in the above-captioned case (“Debtor’s Chapter 11 Case”), requesting entry of an order (this “Sale Order”) (a) approving the Sale of the Purchased Assets (as defined in the APA) free and clear of all liens, claims, encumbrances and interests of any kind to the Winning Bidder and (b) authorizing the assumption and assignment of certain executory contracts and unexpired leases (the “Assigned Contracts”) of the Debtor that are to be assumed and assigned to the Winning Bidder in connection with the Sale; and the Court having entered an order approving, among other things, the Bidding Procedures (the “Bidding Procedures Order”) [Docket No. _____] and the Auction having been held in accordance with the Bidding Procedures Order; and at the conclusion of the Auction, _____ (the “Purchaser”) having been chosen as the Winning Bidder for the Purchased Assets; and upon the Purchaser and Debtor having entered into that certain Asset Purchase Agreement, dated _____, 2017 (together with all ancillary documents, as may be amended, modified or supplemented, the “APA”); and the Court having conducted the Sale Hearing on September 13, 2017; and all parties in interest having been heard or having had the opportunity to be heard regarding the APA; and it appearing that adequate and proper notice of the Motion has been given and that no other or further notice need be given; and the Sale Hearing having been held to consider the relief requested in the Motion; and upon the record of the Sale Hearing and all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtor, its estate, its creditors and all other parties in interest; and that the legal and factual bases set forth in the Motion, the Declarations of William Liedtke and David R. Payne, and the testimony adduced at the Sale Hearing establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:³

A. Jurisdiction. The Court has jurisdiction to hear and determine the Motion and to grant the relief requested in the Motion pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(b).

B. Venue. Venue of Debtor's Chapter 11 Case and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

C. Statutory Predicates. The statutory and legal predicates for the relief requested in the Motion are sections 105, 363 and 365 of title 11 of the United States Code, 11 U.S.C. §§101, et. seq. (the "Bankruptcy Code"), and Rules 2002, 6004, 6006, 9006, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

D. Notice. Notice of the Motion and the Sale Hearing has been provided to: (i) all parties that expressed interest in the possible purchase of any of the Purchased Assets; (ii) counsel for the Office of the United States Trustee for this district (the "United States Trustee"); (iii) counsel for the Stalking Horse Bidder; (iv) all entities known by the Debtors to have filed a notice of appearance or a request for receipt of Chapter 11 notices and pleadings filed in the Debtors' Chapter 11 Cases as of the date hereof; (v) all federal, state and local regulatory and taxing authorities and recording offices which have a known interest in the relief requested in the Motion; (vi) all other parties on the Debtor's Master Service List; (vii) any entity known or reasonably believed to have asserted a security interest in or lien against any of the Purchased Assets (and their counsel, if known); (x) all counterparties to any contract being assigned as set forth in the APA; and (xix) such other entities as may have been reasonably requested by the

³ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact to the fullest extent of the law. *See* Fed. R. Bankr. P. 7052.

Stalking Horse Bidder (collectively, the “Notice Parties”), all in accordance with and as provided by the Bidding Procedures Order.

E. Notice Sufficient. Based upon the Certificates of service previously filed with the Court and the evidence presented at the Sale Hearing, adequate and sufficient notice of the Motion, Auction, Sale Hearing, the Sale, and the transactions contemplated thereby, including without limitation, the assumption and assignment of any assigned contracts (the “Assigned Contracts”) to the Purchaser, has been provided in accordance with the Bidding Procedures Order, sections 105(a), 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006 and 9006. Such notice provided a reasonable opportunity to object and be heard with respect to the Sale, the Motion and the relief requested therein, including the assumption and assignment of the Assigned Contracts to the Purchaser and the amounts necessary under section 365(b) of the Bankruptcy Code to cure defaults thereunder, as such amounts have been transmitted pursuant to a written notice delivered to the applicable counterparty including the Notice Parties.

F. Assets Property of the Estate. The Purchased Assets sought to be transferred and/or assigned by the Debtor to the Purchaser pursuant to the APA are property of the Debtor’s estate and title thereto is vested in the Debtor’s estate.

G. Sufficiency of Marketing. The Debtor and its professionals marketed the Purchased Assets and conducted the marketing and sale process as set forth in and in accordance with the Motion and the Bidding Procedures. Based upon the record of these proceedings, all creditors and other parties in interest and all prospective purchasers have been afforded a reasonable and fair opportunity to bid for the Purchased Assets.

H. Stalking Horse APA. On _____, 2017, the Debtor entered into the Stalking Horse APA, subject to higher or better offers. In accordance with the Bidding Procedures Order, the transactions contemplated by the Stalking Horse APA were deemed a Qualifying Bid and the Stalking Horse Purchaser was eligible to, and did, participate in the Auction.

I. Bidding Procedures. The Bidding Procedures were substantively and procedurally fair to all parties and all potential bidders and afforded notice and a full, fair and reasonable opportunity for any person to make a higher or otherwise better offer to purchase the Purchased Assets. The Debtor conducted the sale process (including the Auction) without collusion and in accordance with the Bidding Procedures.

J. Auction. After the conclusion of the Auction held on September 11, 2017, the Debtor determined in a valid and sound exercise of its business judgment that (i) the highest and best Qualifying Bid in the amount of \$_____ (the “Winning Bid”) for the Purchased Assets was that of Purchaser who is approved as the Winning Bidder as such term is defined in the Bid Procedures, for the Purchased Assets on the terms set forth in the APA of the Winning Bidder that has been or will be filed on the dockets of the Debtor’s Chapter 11 Case; and (ii) that the second highest or best Qualified Bid in the amount of \$_____ (the “Next Highest Bid”) was that of _____ who is approved as the Next Highest Bidder as such term is defined in the Bid Procedures, for the Purchased Assets on the terms set forth in the Modified Agreement of the Next Highest Bidder.

K. Conduct of Auction. The Auction conducted by the Debtor, including the methodology for determination of the highest and best offers and the back-up bids, was

conducted in a manner that was reasonably calculated to achieve the highest and best offers for the Purchased Assets. The Auction was conducted in a non-collusive, fair and good faith manner and a reasonable opportunity has been given to any interested party to make a higher or otherwise better offer for the Purchased Assets.

L. Corporate Authority. Subject to the entry of this Sale Order, the Debtor: (i) has full power and authority to execute the APA and all other documents contemplated thereby; (ii) has all of the power and authority necessary to consummate the transactions contemplated by the APA (collectively, the “Transactions”), and (iii) has taken all company action necessary to authorize and approve the APA and the sale of the Purchased Assets, and any actions required to be performed by the Debtor in order to consummate the Transactions contemplated in the APA. No consents or approvals, other than those expressly provided for in the APA or this Sale Order, are required for the Debtor to consummate the Sale.

M. Arm’s-Length Sale and Purchaser’s Good Faith. The APA was negotiated and is undertaken by the Debtor and the Purchaser at arm’s length without collusion or fraud, and in good faith within the meaning of section 363(m) of the Bankruptcy Code. The Purchaser (i) recognized that the Debtor was free to deal with any other party interested in acquiring the Purchased Assets, (ii) complied with the Bidding Procedures Order and (iii) willingly subjected its bid to the competitive Bidding Procedures approved in the Bidding Procedures Order. All payments to be made by the Purchaser and other agreements or arrangements entered into by the Purchaser in connection with the Sale have been disclosed, the Purchaser has not violated section 363(n) of the Bankruptcy Code by any action or inaction, and no common identity of directors or controlling stockholders exists between the Purchaser and the Debtor. As a result of the foregoing, the Purchaser is a “good faith purchaser” within the meaning of section 363(m) of the

Bankruptcy Code, and as such, is entitled to all of the protections afforded thereby, including in the event this Sale Order or any portion thereof is reversed or modified on appeal, and otherwise has proceeded in good faith in all respects in connection with the Sale specifically and these Debtors' Chapter 11 Cases generally.

N. Sale Highest or Best Offer. The total consideration provided by the Purchaser for the Purchased Assets as reflected in the APA is the highest and best offer for the Purchased Assets. No other person or entity or group of persons or entities has offered to purchase the Purchased Assets for an amount that would provide greater value to the Debtor than the Purchaser. The Court's approval of the Motion, the APA, and the Transactions maximizes the Debtor's recovery for the Purchased Assets, and, thus, is in the best interests of the Debtor and its estate, creditors and all other parties in interest.

O. No Fraudulent Transfer. The Purchase Price constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act and any other applicable law, and may not be avoided under section 363(n) of the Bankruptcy Code. The APA was not entered into, and the Sale is not being consummated, for the purpose of hindering, delaying or defrauding creditors of the Debtor under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof, or the District of Columbia, or any other applicable law. Neither the Debtor nor the Purchaser has entered into the APA or is consummating the Sale with any fraudulent or otherwise improper purpose.

P. No Liability ~~u~~Under Section 363(n). Neither the Debtor nor the Purchaser engaged in any conduct that would cause or permit the APA or the consummation of the Sale to be voided, or costs or damages to be imposed, under section 363(n) of the Bankruptcy Code.

Q. Transfer of Purchased Assets Free and Clear. The Debtor is the sole and lawful owner of the Purchased Assets. Subject to section 363(f) of the Bankruptcy Code, and except as otherwise provided in the APA, the transfer of each of the Purchased Assets to the Purchaser will be, as of the Closing Date which shall occur on or prior to _____ (the “Closing Date”), a legal, valid, and effective transfer of the Purchased Assets, which transfer vests or will vest the Purchaser with all right, title, and interest of the Debtor to the Purchased Assets free and clear of, ~~among other things, (i) all~~ Interests accruing or arising any time prior to or on the Closing Date. As used in this Order, the term “Interests” shall have the broadest meaning permissible under the Bankruptcy Code and applicable law and shall include, without limitation:

- (i) all liens, ~~claims, and~~ encumbrances ~~and covering the Purchased Assets;~~
- (ii) all equity interests, ~~(ii) in the Purchased Assets and/or the Debtor;~~
- (iii) all “claims” as defined in § 101(5) of the Bankruptcy Code against the Purchased Assets and/or the Debtor and all debts arising under, relating to, or in connection with any act or omission of the Debtor and ~~all claims (as that term is defined in section 101(5) of the Bankruptcy Code),~~ liabilities, obligations, demands, guaranties, options, rights, contractual commitments, restrictions, interests and matters of any kind and nature, whether arising prior to or subsequent to the commencement of the Debtor’s Chapter 11 Case, and whether imposed by agreement, understanding, statute, law, equity or otherwise (including, without limitation, rights and remedies with respect to claims, liens, encumbrances, and interests (x) that purport to give to any party rights of setoff or recoupment, rights or options to effect any forfeiture, modification, or restriction, profit sharing interests, rights and options of first refusal, rights and options to purchase or repurchase or terminate the Debtor’s or the Purchaser’s interests in the Purchased Assets, or any similar rights, or (y) in respect of taxes and charges of any kind or nature, if any, including, without limitation, any restriction on use, transfer, receipt of income or other exercise of any attributes of ownership), including claims and debts relating to, ~~accruing or arising any time prior to or on~~ of the Closing Date (collectively with subsections (i) and (ii) above, the “Interests”)-following:

~~Free and Clear Findings Required by Purchaser. The Purchaser would not have entered into the APA and would not consummate the transactions contemplated thereby if the Sale of the Purchased Assets to the Purchaser were not free and clear from any and all Interests pursuant to section 363(f) of the Bankruptcy Code, or if the Purchaser or the Purchased Assets~~

would, or in the future could, be liable for any of such Interests. Effective upon the Closing Date, the Purchaser and the Purchased Assets shall not be responsible for any Interests, including in respect of the following: (i) ~~any~~ (a) labor or employment agreements; (ii) ~~all~~

(b) mortgages, deeds of trust, security interests and liens; (iii) ~~any~~

(c) intercompany loans and receivables between the Debtor and any non-Debtor affiliate; (iv) ~~any~~

(d) pension, welfare, compensation or other employee benefit plans, agreements, practices and programs, including, without limitation, any pension plan of any Debtor, any affiliate of any Debtor, or any member of the Debtor's "control group;" (v) ~~any other~~

(e) employee, worker's compensation, occupational disease or unemployment or temporary disability related claim, ~~including, without limitation, claims that might otherwise arise under or pursuant to (a) the Employee Retirement Income Security Act of 1974, as amended, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the Federal Rehabilitation Act of 1973, (e) the National Labor Relations Act, (f) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, (g) the Americans with Disabilities Act of 1990, (h) the Consolidated Omnibus Budget Reconciliation Act of 1985, (i) state discrimination laws, (j) state unemployment compensation laws or any other similar state laws, (k) the Worker Adjustment and Retraining Notification Act, 29 U.S.C §§ 2101 et. seq., or (l) any other state or federal benefits or claims relating to any employment with the Debtor or any of their predecessors; (vi) Interests arising under any Environmental, Health and Safety Laws that might otherwise arise under or pursuant to state, federal or other applicable law.~~

(f) environmental, health and safety laws with respect to any assets owned or operated by Debtor or any corporate predecessor at any time prior to the Closing Date and any liabilities of the Debtor; (vii) ~~any~~

(g) bulk sales or similar ~~law; (viii) any laws;~~

(h) tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended, and any taxes arising under or out of, in connection with, or in any way relating to the operation of the Purchased Assets prior to Closing, including; (ix) ~~any~~

(i) excise taxes or stamp taxes assessed by any applicable taxing authority; ~~and (x) any and all Interests arising out of~~

(j) violations, or other non-compliance with any law(s), regulation(s), standard(s), guideline(s), laws, regulations, standards, guidelines,

enforcement ~~order(s),orders,~~ or any other authority or requirement enforced by, or under the supervision of the Occupational Safety and Health Administration; and ~~(x)-~~

(k) any theories of successor liability or causes of action related thereto.

Q.R. Free and Clear Findings Required by Purchaser. The Purchaser would not have entered into the APA and would not consummate the transactions contemplated thereby if the Sale of the Purchased Assets to the Purchaser were not free and clear from any and all Interests pursuant to section 363(f) of the Bankruptcy Code, or if the Purchaser or the Purchased Assets would, or in the future could, have liability for any of such Interests. Effective upon the Closing Date, the Purchaser and the Purchased Assets shall have no liability, in rem or in personam, for any Interests. A sale of the Purchased Assets other than one free and clear of all Interests would yield substantially less value for the Debtor's estate, with less certainty, than the Sale as contemplated. Therefore, the Sale contemplated by the APA maximizes the Debtor's recovery on the Purchased Assets, and, thus, is in the best interests of the Debtor and its estate, creditors and all other parties in interest.

R.S. Satisfaction of Section 363(f) Standards. The Debtor may sell the Purchased Assets free and clear of all Interests because, with respect to each creditor or other person or entity asserting an Interest, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of Interests who did not object (or who ultimately withdrew their objections, if any) to the Sale or the Motion are deemed to have consented to the Motion and Sale pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Interests who did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code.

S.T. No Successor Liability. The conveyance of the Purchased Assets does not amount to a consolidation, merger or *de facto* merger of the Purchaser and the Debtor and/or

Debtor's estate, there is not substantial continuity between the Purchaser and the Debtor, there is no continuity of enterprise between the Debtor and the Purchaser, the Purchaser is not a mere continuation of the Debtor or its estate, and the Purchaser does not constitute a successor to the Debtor or its estate. ~~The~~As set forth above in ¶¶ Q and R and below in ¶ 4, the Purchaser's acquisition of the Purchased Assets shall be free and clear of any "Interest and the Purchaser shall have no *in personam* liability for any Interest under any theory of successor liability² claims of any nature whatsoever, ~~whether known or unknown and whether asserted or unasserted as of the Closing.~~ The Purchaser's operations shall not be deemed a continuation of the Debtor's business as a result of the acquisition of the Purchased Assets. The Purchaser would not have acquired the Purchased Assets but for the foregoing protections against potential claims based upon "successor liability" theories.

F.U. Assigned Contracts. Each and every provision of the Assigned Contracts or applicable non-bankruptcy law that purports to prohibit, restrict, or condition, or could be construed as prohibiting, restricting, or conditioning assignment of any Assigned Contract has been satisfied or is otherwise unenforceable under section 365 of the Bankruptcy Code. All counterparties of the Assigned Contracts who did not or do not timely file an objection to the assumption and assignment of the Assigned Contract(s) to which they are counterparty are deemed to consent to the assumption by the Debtor of their respective Assigned Contract(s) and the assignment thereof to the Purchaser, and the Purchaser shall enjoy all of the rights and benefits under each such Assigned Contract as of the applicable date of assumption and assignment without the necessity of obtaining such non-debtor party's written consent to the assumption or assignment thereof. Upon the assignment and sale to the Purchaser, the Assigned Contracts shall be deemed valid and binding, in full force and effect in accordance with their

terms, subject to the provisions of this Sale Order, and shall be assigned and transferred to the Purchaser, notwithstanding any provision in the Assigned Contracts prohibiting or otherwise restricting assignment or transfer. The Debtor has demonstrated that it is an exercise of its sound business judgment to assume and assign the Assigned Contracts to the Purchaser in connection with the consummation of the Sale of the Purchased Assets, and the assumption and assignment of the Assigned Contracts is in the best interests of the Debtor, its estate and creditors, and other parties in interest. The Assigned Contracts being assigned to the Purchaser are an integral part of the Sale of the Purchased Assets and, accordingly, their assumption and assignment are reasonable and an enhancement to the value of the Debtor's estate.

U.V. Cure/Adequate Assurance. Pursuant to the APA and the notices sent to the counterparties to the Assigned Contracts, the aggregate Cure Costs , The Purchaser has demonstrated adequate assurance of future performance of all Assigned Contracts within the meaning of section 365 of the Bankruptcy Code, including its promise to perform the Debtor's obligations under the Assigned Contracts for periods on and after the Closing. The Cure Costs are deemed the amounts necessary to "cure" (within the meaning of section 365(b)(1) of the Bankruptcy Code) all "defaults" (within the meaning of section 365(b) of the Bankruptcy Code) under such Assigned Contracts. Any objections to the Cure Costs, to the extent not otherwise resolved, are hereby overruled. To the extent that any counterparty failed to timely object to its Cure Cost or to raise any other alleged default or breach of contract, such counterparty is deemed to have consented to such Cure Cost and to the assignment of its respective Assigned Contract(s) to the Purchaser and to have waived any other defaults or breaches. The Court finds that with respect to all such Assigned Contracts, the payment of the Cure Costs as provided in the APA is appropriate and is deemed to fully satisfy the Debtor's obligations under sections 365(b) and

365(f) of the Bankruptcy Code. Accordingly, all of the requirements of sections 365(b) and 365(f) of the Bankruptcy Code have been satisfied for the assumption by the Debtor, and the assignment by the Debtor to the Purchaser, of each of the Assigned Contracts to be assumed and assigned to the Purchaser as of Closing. To the extent any Assigned Contract is not an executory contract within the meaning of section 365 of the Bankruptcy Code, it shall be transferred to the Purchaser in accordance with the terms of this Sale Order that are applicable to the Purchased Assets, and the Purchaser shall have no liability or obligation for any (a) defaults or breaches under such agreement that relate to acts or omissions that occurred in the period, or otherwise arose, prior to the date of the entry of this Sale Order, and (b) claims, counterclaims, offsets, or defenses (whether contractual or otherwise, including without limitation, any right of recoupment) with respect to such Assigned Contract, that relate to any acts or omissions that arose or occurred prior to the date of the entry of this Sale Order.

~~V.W.~~ Assets Assignable. Each and every provision of the documents governing the Purchased Assets or applicable non-bankruptcy law that purports to prohibit, restrict, or condition, or could be construed as prohibiting, restricting, or conditioning assignment of any of the Purchased Assets, if any, have been satisfied or are otherwise unenforceable under section 365 of the Bankruptcy Code.

~~W.X.~~ Sale as Exercise of Business Judgment. Entry into and consummation of the APA constitute the exercise by the Debtor of sound business judgments, and such acts are in the best interests of the Debtor, its estate and creditors, and all parties in interest. The Court finds that the Debtor has articulated good and sufficient business reasons justifying the Sale of the Purchased Assets to the Purchaser. Additionally: (i) the APA constitutes the highest and best offer for the Purchased Assets; (ii) the APA and the closing thereon presents the best opportunity to realize

the maximum value of the Purchased Assets and avoid a decline and devaluation of the Purchased Assets; (iii) there is risk of deterioration of the value of the Purchased Assets if the Sale is not consummated promptly; and (iv) the APA and the closing thereon will provide a greater recovery for the Debtor's creditors than would be provided by any other presently available alternative. The Debtor has demonstrated compelling circumstances and a good, sufficient and sound business purpose and justification for the Sale prior to, and outside of, a plan of reorganization. Because the entry into and consummation of the APA constitutes the exercise by the Debtor of sound business judgment, the Debtor, its respective members, officers, directors, employees, advisors, professionals or agents, shall have or incur no liability to the estate or any holder of a Claim or Equity Interest for any act or omission in connection with, related to, or arising out of the negotiations of the APA or the consummation of the transactions contemplated thereunder, other than liability arising out of or relating to any act or omission that constitutes a breach of the APA, willful misconduct, fraud or gross negligence, in each case as determined by a court of competent jurisdiction.

X.Y. Compelling Reasons for an Immediate Sale. Good and sufficient reasons for approval of the APA have been articulated by the Debtor. The Debtor has demonstrated compelling circumstances for the Sale outside: (a) the ordinary course of business, pursuant to section 363(b) of the Bankruptcy Code; and (b) a plan of reorganization, in that, among other things, the immediate consummation of the Sale to the Purchaser is necessary and appropriate to preserve and to maximize the value of the Debtor's estate. To maximize the value of the Purchased Assets and preserve the viability of the businesses to which the Purchased Assets relate, it is essential that the Sale occur promptly. Time is of the essence in consummating the Sale in order to preserve the value of the Purchased Assets.

~~Y-Z.~~ No Sub Rosa Plan. The Sale does not constitute a sub rosa Chapter 11 plan. The Sale neither impermissibly restructures the rights of the Debtor's creditors nor impermissibly dictates a liquidating plan of reorganization for the Debtor.

~~Z-AA.~~ Final Order. This Sale Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), the Court expressly finds that there is no just reason for delay in the implementation of this Sale Order and expressly directs entry of judgment as set forth herein.

~~AA-BB.~~ Title to Purchased Assets. The Debtor's rights, title, and interests in, to and under each of the Purchased Assets are not subject to cancellation or termination, and have not been adversely affected, as a result of any pre-Closing non-payment of royalties, working interest owners, taxes, or any other amounts.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. Motion Granted. The relief requested in the Motion is GRANTED and the Sale is approved, all as set forth in this Sale Order.
2. Objections Overruled. All objections, if any, with regard to the relief sought in the Motion that have not been withdrawn, waived, settled or otherwise dealt with as expressly provided herein or on the record at the Sale Hearing are hereby overruled on the merits, with prejudice.
3. Approval. Pursuant to sections 105, 363 and 365 of the Bankruptcy Code, the APA, the assumption and assignment of the Assigned Contracts to the Purchaser as of the Closing Date and the Sale of the Purchased Assets and the other Transactions are hereby approved and the Debtor is hereby authorized and directed to consummate, and shall be deemed for all purposes to have consummated, the Sale, including the sale, transfer and assignment of all

of the Debtor's right, title and interest in the Purchased Assets to the Purchaser free and clear of any and all Interests in accordance with the terms of the APA. Pursuant to sections 105, 363 and 365 of the Bankruptcy Code, the Debtor and the Purchaser are each hereby authorized and directed to take any and all actions necessary or appropriate to: (a) consummate the Sale of the Purchased Assets to the Purchaser and the Closing of the Sale, the APA and this Sale Order, (b) assume and assign the Assigned Contracts to be assumed and assigned to the Purchaser as of the Closing Date, and (c) perform, consummate, implement and close fully the APA together with any and all additional instruments and documents that may be reasonably necessary or desirable to implement the APA. The Debtor is hereby authorized and directed to perform each of its respective covenants and undertakings as provided in the APA prior to or after the Closing of the Sale without further order of the Court. The Purchaser and the Debtor shall have no obligation to close the Sale except as is contemplated and provided for in the APA. The Purchaser shall not be required to seek or obtain relief from the automatic stay under section 362 of the Bankruptcy Code to enforce any of its remedies under the APA or any other sale-related document. The automatic stay imposed by section 362 of the Bankruptcy Code is modified solely to the extent necessary to implement the provisions of this Sale Order.

4. Transfer Free and Clear. Pursuant to sections 105, 363 and 365 of the Bankruptcy Code, upon the Closing, ~~neither the transfer is free and clear of any Interest. Neither the Purchaser, its respective successors and assigns, nor the Purchased Assets shall have any liability for any Interest, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, whether as a successor, vicariously or otherwise, of any kind, nature or character whatsoever, including for any Interests arising under, without limitation: (i) any labor or employment agreements; (ii) all mortgages, deeds of trust, security~~

~~interests, or other liens; (iii) any pension, welfare, compensation or other employee benefit plans, agreements, practices and programs, including, without limitation, any pension plan of any Debtor, any affiliate of any Debtor, or any member of the Debtor's "control group;" (v) any other employee, worker's compensation, occupational disease or unemployment or temporary disability related claim, including, without limitation, claims that might otherwise arise under or pursuant to (a) the Employee Retirement Income Security Act of 1974, as amended, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the Federal Rehabilitation Act of 1973, (e) the National Labor Relations Act, (f) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, (g) the Americans with Disabilities Act of 1990, (h) the Consolidated Omnibus Budget Reconciliation Act of 1985, (i) state discrimination laws, (j) state unemployment compensation laws or any other similar state laws, (k) the Worker Adjustment and Retraining Notification Act, 29 U.S.C §§ 2101 et. seq., or (l) any other state or federal benefits or claims relating to any employment with the Debtor or any of their predecessors; (vi) Interests arising under any Environmental, Health and Safety Laws with respect to any assets owned or operated by Debtor or any corporate predecessor at any time prior to the Closing Date and any liabilities of the Debtor other than the Assumed Liabilities; (vii) any bulk sales or similar law; (viii) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended, and any taxes arising under or out of, in connection with, or in any way relating to the operation of the Purchased Assets prior to Closing, (ix) excise taxes, or stamp taxes assessed by any applicable taxing authority; and (x) any and all Interests arising out of violations, or other non-compliance with any law(s), regulation(s), standard(s), guideline(s), enforcement order(s), or any other authority or requirement enforced by, or under the supervision of the Occupational Safety and Health~~

~~Administration; and (x) any theories of successor liability or causes of action related thereto., in rem or in personam, for any Interest.~~

5. Surrender of Possession. Any and all Purchased Assets in the possession or control of any person or entity, including any vendor, supplier or employee of the Debtor shall be transferred to the Purchaser free and clear of all Interests and shall be delivered to the Purchaser and deemed delivered at the time of Closing (or such other time as provided in the APA).

6. Valid Transfer. Effective upon the Closing, the transfer to the Purchaser of the Debtor's right, title and interest in the Purchased Assets pursuant to the APA shall be, and hereby is deemed to be, a legal, valid and effective transfer of the Debtor's right, title and interest in the Purchased Assets, and vests with or will vest in the Purchaser all right, title and interest of the Debtor in the Purchased Assets, free and clear of all Interests.

7. Exculpation and Release. None of the Purchaser, or its affiliates, successors, assigns and advisors shall have or incur any liability to, or be subject to any action by the Debtor, its estate or any of their predecessors, successors or assigns, arising out of the negotiation, investigation, preparation, execution or delivery of the APA, and the entry into and consummation of the Sale. Because the entry into and consummation of the APA constitutes the exercise by the Debtor of sound business judgment, the Debtor, its respective members, officers, directors, employees, advisors, professionals or agents, shall have or incur no liability to the estate or any holder of a Claim or Equity Interest for any act or omission in connection with, related to, or arising out of the negotiations of the APA or the consummation of the transactions contemplated thereunder, other than liability arising out of or relating to any act or omission that constitutes a breach of the APA, willful misconduct, fraud or gross negligence, in each case as finally determined by a court of competent jurisdiction.

8. Injunction. Except as expressly provided in the APA or by this Sale Order, effective upon the Closing, all persons ~~and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, vendors, suppliers, employees, trade creditors, litigation claimants and other persons~~ holding Interests ~~against or in subject to~~ the ~~Debtor or the Debtor's interests in the Purchased Assets (whether known or unknown, legal or equitable, matured or unmatured, contingent or noncontingent, liquidated or unliquidated, asserted or unasserted, whether arising prior to or subsequent to the commencement)~~jurisdiction of this ~~Chapter 11 Case, whether imposed by agreement, understanding, statute, law, equity or otherwise)~~Court shall be and are hereby ~~are~~ forever barred, estopped and permanently enjoined from asserting, prosecuting or otherwise pursuing such Interests against the Purchaser, or its affiliates, agents, advisors, representatives, officers, successors and assigns, the Purchased Assets, or the interests of the Debtor or the Purchaser in such Purchased Assets, including, without limitation, taking any of the following actions with respect to any Interest: (a) commencing or continuing in any manner, any action or other proceeding against the Purchaser, or its affiliates, agents, advisors, representatives, officers, successors, assigns, assets or properties, including the Purchased Assets; (b) ~~enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against the Purchaser, or its affiliates, agents, advisors, representatives, officers, successors, assigns, assets or properties, including the Purchased Assets;~~ (c) ~~creating, perfecting or enforcing any liens, claims, encumbrances or other interests against the Purchaser, or its affiliates, agents, advisors, representatives, officers, successors, assigns, assets or properties, including the Purchased Assets;~~ (d) ~~asserting~~ a claiman Interest as a setoff, right of subrogation or recoupment of any kind against any obligation due the Purchaser or its affiliates, agents, advisors,

representatives, officers, successors or assigns; or (e) ~~commencing or continuing any action in any manner or place that does not comply, or is inconsistent, with the provisions of this Sale Order or the agreements or actions contemplated or taken in respect thereof. All persons are hereby enjoined from taking any action that would interfere with or adversely affect the ability of the Debtor to transfer the Purchased Assets in accordance with the terms of the APA and this Sale Order. Following the Closing, no holder of an Interest ~~(including as such term is used in section 363(f)) against the Debtor or the Purchased Assets~~ shall interfere with the Purchaser's title to or use and enjoyment of the Purchased Assets.~~

9. Good Faith Purchaser. The APA has been entered into by the Purchaser in good faith and the Purchaser is a good faith purchaser of the Purchased Assets as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein of the Sale shall neither affect the validity of this Sale nor the transfer of the Purchased Assets to Purchaser, free and clear of Interests, unless such authorization is duly stayed before the Closing pending such appeal. The Purchaser is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code.

10. No Bulk Sales. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the transactions contemplated by the APA, the Motion and this Sale Order.

11. Fair and Equivalent Value. The consideration provided by the Purchaser for the Purchased Assets under the APA shall be deemed for all purposes to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable law, and the Sale may not be avoided, or costs or damages imposed or awarded under section 363(n)

or any other provision of the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act or any other similar state laws.

12. Right to Transfer and Receive Marketable Title. Upon the Closing, this Sale Order shall be construed and shall constitute for any and all purposes approval for Debtor to transfer and for the Purchaser to receive a full and complete general assignment, conveyance, and/or bill of sale to transfer of all of the Debtor's marketable right, title and interest in the Purchased Assets to the Purchaser at the Closing pursuant to the terms of the APA, free and clear of all Interests.

13. No Successor Liability. The consummation of the Sale does not amount to a consolidation, merger or *de facto* merger of the Purchaser and the Debtor and/or its estate, there is not substantial continuity between the Purchaser and the Debtor, there is no continuity of enterprise between the Debtor and the Purchaser, the Purchaser is not a mere continuation of the Debtor or its estate, and the Purchaser does not constitute a successor to the Debtor or its estate. Upon the Closing, the Purchaser's acquisition of the Purchased Assets shall be free and clear of any "successor liability" claims of any nature whatsoever, whether known or unknown and whether asserted or unasserted as of the time of the Closing. The Purchaser's operations shall not be deemed a continuation of the Debtor's business as a result of the acquisition of the Purchased Assets purchased.

14. Authorization to Assign. Notwithstanding any provision of any contract governing the Purchased Assets or any Assigned Contract to be assumed and assigned to the Purchaser as of the Closing Date, pursuant to section 365(f) of the Bankruptcy Code or applicable non-bankruptcy law that prohibits, restricts, or conditions the assignment of the Purchased Assets or the Assigned Contracts, the Debtor is authorized to (a) assign the Purchased

Assets to the Purchaser and (b) assume and assign the Assigned Contracts to the Purchaser as of the Closing Date, in each case, which assignments shall take place on and be effective as of the Closing Date unless the Debtor and the Buyer shall mutually agree to an earlier date for the transaction to be made effective for accounting purposes so long as such date is after _____, 2017 and before _____, 2017 (the “Effective Date”), or as otherwise provided by a separate order of this Court.

a. There shall be no accelerations, assignment fees (other than general recording fees), increases, or any other fees charged to the Purchaser or the Debtor as a result of the assumption and assignment of the Purchased Assets and the Assigned Contracts.

b. The Debtor has met all of the requirements of section 365(b) of the Bankruptcy Code for each of the Assigned Contracts to be assumed and assigned to the Purchaser as of Closing. Notwithstanding the foregoing, unless required by the Purchaser under the APA, the Debtor shall not be required by the Court to assume and assign any Assigned Contracts, and, if no such assumption and assignment occurs, no Cure Costs shall be due and no adequate assurance of future performance shall be required.

c. The Debtor’s assumption of the Assigned Contracts is subject to the consummation of the Sale of the Purchased Assets to the Purchaser. To the extent that an objection by a counterparty to any Assigned Contract, including an objection related to the applicable Cure Cost, is not resolved prior to the Closing, the Purchaser, may, without any further approval of the Court or notice to any party, elect to (i) not have the Debtor assume and assign such Assigned Contract to it or (ii) have the Debtor postpone the assumption of such Assigned Contract until the resolution of such objection; provided

that the Debtor, the Purchaser, and the relevant non-debtor counterparty under each Assigned Contract shall have authority to compromise, settle or otherwise resolve any objections to proposed Cure Costs without further order of the Bankruptcy Court, with any such agreed upon Cure Costs being paid to the appropriate counterparty as a condition subsequent to such assumption and assignment of the relevant Assigned Contract.

15. Assigned Contracts. At the Closing, subject to the provisions of this Sale Order, the Purchaser shall succeed to the entirety of the Debtor's rights and obligations in the Assigned Contracts to be assumed and assigned to the Purchaser first arising and attributable to the time period occurring on or after the Effective Date and shall have all rights thereunder.

a. Upon Closing, (i) all pre-Effective Date defaults (monetary and non-monetary) under the Assigned Contracts shall be deemed cured and satisfied in full through the payment of the Cure Costs, (ii) no other amounts will be owed by the Debtor, its estate or the Purchaser with respect to amounts first arising or accruing during, or attributable or related to, the period prior to the Effective Date with respect to the Assigned Contracts and (iii) any and all persons or entities shall be forever barred and estopped from asserting a claim against the Debtor, its estate, or the Purchaser or the Purchased Assets that any additional amounts are due or defaults exist under the Assigned Contracts that arose or accrued, or relate to or are attributable to the period before the Effective Date. The obligations pursuant to the terms of the APA to pay the Cure Costs and Purchaser's promise to perform the Debtor's obligations under the Assigned Contracts for the period on or after the Effective Date shall constitute adequate assurance of its future performance under the Assigned Contracts being assigned to it at

the Closing within the meaning of sections 365(b)(1)(C) and (f)(2)(B) of the Bankruptcy Code.

b. Upon assumption of those Assigned Contracts to be assumed by the Debtor and assigned to the Purchaser as of Closing, such Assigned Contracts shall be deemed valid and binding, in full force and effect in accordance with their terms, subject to the provisions of this Sale Order, and shall be assigned and transferred to the Purchaser, notwithstanding any provision in such Assigned Contracts or other restrictions prohibiting assignment or transfer. To the extent any executory contract or unexpired lease is assumed and assigned to the Purchaser under this Sale Order, such assumption and assignment will not take effect until the Closing. Furthermore, other than Assigned Contracts, no other contract shall be deemed assumed by the Debtor and assigned to the Purchaser pursuant to section 365 of the Bankruptcy Code. The failure of the Debtor or the Purchaser to enforce at any time one or more terms or conditions of any Assigned Contract shall not be a waiver of such terms or conditions, or of the Debtor's and the Purchaser's rights to enforce every term and condition of such Assigned Contract.

c. All counterparties to the Assigned Contracts to be assumed and assigned to Purchaser at the Closing shall cooperate and expeditiously execute and deliver, upon the reasonable request of the Purchaser, and shall not charge the Debtor or the Purchaser for, any instruments, applications, consents, or other documents which may be required or requested by any public or quasi-public authority or other party or entity to effectuate the applicable transfers in connection with the Transactions.

d. Notwithstanding the foregoing, in accordance with and pursuant to the terms and conditions of Section 1(k) of the APA, the Debtor may, at the Purchaser's sole

discretion and direction, amend the list of Assigned Contracts to delete any such contract in which case such designated contract shall not be an Assigned Contract and shall be excluded from the Sale.

16. Governmental Authorization to Effectuate Sale and Assignments. Each and every federal, state and governmental agency or department, and any other person or entity, is hereby authorized to accept any and all documents and instruments in connection with or necessary to consummate the transactions contemplated by the APA. No governmental unit may revoke or suspend any lawful right, license, trademark or other permission relating to the use of the Purchased Assets sold, transferred or conveyed to the Purchaser on account of the filing or pendency of Debtor's Chapter 11 Case or the consummation of the Transactions. For the avoidance of doubt, the Sale of the Purchased Assets authorized herein shall be of full force and effect, regardless of whether the Debtor or any of their affiliates lack good standing in any jurisdiction in which such entity is formed or is authorized to transact business.

17. Inconsistencies with Prior Orders, Pleadings or Agreements. To the extent this Sale Order is materially inconsistent with any prior order or pleading with respect to the Motion in Debtor's Chapter 11 Case, the terms of this Order shall govern. To the extent there is material inconsistency between the terms of this Order and the terms of the APA (including all ancillary documents executed in connection therewith), the terms of this Sale Order shall govern.

18. Subsequent Orders and Plan Provisions. This Sale Order shall not be modified by any Chapter 11 plan confirmed in Debtor's Chapter 11 Case or any subsequent order(s) of this Court.

19. Binding Effect of Sale Order. This Sale Order and the APA shall be binding in all respects upon the Debtor, its estate, and all parties in interest to Debtor's Chapter 11 Case,

including, but not limited to, all creditors of, and holders of equity interests in, the Debtor, any holders of liens, claims, encumbrances or other Interests in, against or on all or any portion of the Purchased Assets (whether known or unknown), the Purchaser and all successors and assigns of the Purchaser, the Purchased Assets and any trustees, examiners, “responsible persons” or other fiduciaries appointed in Debtor’s Chapter 11 Case or upon a conversion to Chapter 7 under the Bankruptcy Code, and the APA shall not be subject to rejection or avoidance under any circumstances. If any order under section 1112 of the Bankruptcy Code is entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that this Sale Order, including the rights granted to the Purchaser hereunder, shall remain effective and, notwithstanding such dismissal, shall remain binding on parties in interest.

20. Failure to Specify Provisions. The failure specifically to include or make reference to any particular provisions of the APA or any related ancillary document in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the APA and all related ancillary documents are authorized and approved in their entirety.

21. Retention of Jurisdiction. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Sale Order, including, without limitation, the authority to: (i) interpret, implement and enforce the terms and provisions of this Sale Order (including the exculpation, release and injunctive provisions in this Sale Order) and the terms of the APA, all amendments thereto and any waivers and consents thereunder; (ii) protect the Purchaser, or the Purchased Assets, from and against any Interests; (iii) compel delivery of all Purchased Assets to the Purchaser; (iv) compel the Debtor and the Purchaser to

perform all of their respective obligations under the APA; and (v) resolve any disputes arising under or related to the APA or the Sale.

22. No Material Modifications. The APA and any related agreements, documents or other instruments may be modified, amended, or supplemented through a written document signed by the parties thereto in accordance with the terms thereof without further order of the Court; provided, however, that any such modification, amendment or supplement is neither material nor materially changes the economic substance of the transactions contemplated hereby.

23. Immediate Effect. This Sale Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding any provision in the Bankruptcy Rules to the contrary, the Court expressly finds there is no reason for delay in the implementation of this Sale Order and, accordingly: (i) the terms of this Sale Order shall be immediately effective and enforceable upon its entry; (ii) the Debtor are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Sale Order; and (iii) the Debtor may, in their discretion and without further delay, take any action and perform any act authorized under this Sale Order.

24. Provisions Non-Severable. The provisions of this Sale Order are non-severable and mutually dependent; provided, however the Purchaser may, in its sole discretion, waive any provision determined to be unenforceable in whole or in part.

25. Next Highest Bidder. _____ is hereby declared the Next Highest Bidder (as defined in the Bidding Procedures) for the Purchased Assets under the terms of the Modified Agreement. Subject to, and in accordance with, the terms of this Sale Order, the Debtor is authorized to consummate, complete and close the sale of the Purchased Assets and the assumption and assignment of the Assigned Contracts to the Next Highest Bidder in the event

that the sale to the Purchaser as contemplated by the APA does not close for any reason whatsoever, without further order of this Court.

26. The proceeds from the sale of the Purchased Assets (net only of those amounts set forth below) shall be paid indefeasibly into a segregated account of the Debtor (the “Sale Proceeds Account”) subject to further order of this Court and net only of the following amounts that the Debtors are authorized to pay at Closing:

a. To the DIP Lender, payment in full in cash of the DIP Facility including all DIP Obligations.

b. To holders of prior liens, if any, that are set forth and disclosed in the closing statements in the amount of the value of any prior liens in the Assets being sold that is agreed upon by the holder of the prior lien and the Debtor, subject to the written consent of the Lender, or, failing such agreement, such disputed amount shall be retained by the Debtors in the Sale Proceeds Accounts or escrow with the title company for determination by the Court of the extent, priority, validity, and/or value of such asserted prior lien; and

c. If the Stalking Horse Bidder is not the Winning Bidder, it shall be entitled to seek the allowance of an administrative claim upon the filing of a motion pursuant to 11 U.S.C. § 503(b).

27. Satisfaction of Conditions Precedent. Neither the Purchaser nor the Debtor shall have an obligation to close the Transactions until all conditions precedent in the APA to each of their respective obligations to close the Transactions have been met, satisfied, or waived in accordance with the terms of the APA.

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Approved for Entry:

CROWE & DUNLEVY

/s/

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