

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:

THOMPSON PUBLISHING HOLDING
CO., INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 10-13070 ()

(Joint Administration Requested)

DEBTORS' MOTION FOR ORDERS: (A)(I) APPROVING BID PROCEDURES IN CONNECTION WITH SALE OF SUBSTANTIALLY ALL OF THEIR ASSETS; (II) SCHEDULING HEARING TO CONSIDER SALE OF ASSETS; AND (III) APPROVING FORM AND MANNER OF NOTICE THEREOF; AND (B)(I) AUTHORIZING AND APPROVING SALE OF ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS; AND (II) APPROVING ASSUMPTION AND ASSIGNMENT OF DESIGNATED EXECUTORY CONTRACTS; AND (C) GRANTING RELATED RELIEF

Thompson Publishing Holding Co., Inc. ("Thompson Publishing") and its subsidiaries and affiliates, the above-captioned debtors and debtors in possession (collectively, the "Debtors"), by and through their undersigned counsel, hereby submit this motion (the "Motion"), pursuant to sections 105(a), 363, 365, 503 and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101 et se q. (the "Bankruptcy Code") and Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for entry of orders approving, among other things, the sale of the Debtors' assets, related bidding procedures, and

¹ The Debtors are the following entities (followed by the last four digits of their tax identification numbers): Thompson Publishing Holding Co. Inc. (5470), AHC Media LLC (2136), Alex eSolutions, Inc. (5725), Thompson Publishing Group, Inc. (2093), The Performance Institute, Inc. (8059), TPG AES Holding Co., Inc. (1658), and Thompson Publishing Development, LLC (2093).

certain protections for a potential purchaser of such assets (“Motion”). In support of this Motion, the Debtors respectfully represent:

JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of these cases and this Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are sections 105(a), 363, 365, 503 and 507 of the Bankruptcy Code, as supplemented by Bankruptcy Rules 2002, 6004, 6006 and 9014.

BACKGROUND

3. On September 21, 2010 (the “Petition Date”), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors are continuing in the possession of their respective properties and the management of their respective businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. The Debtors have requested that these chapter 11 cases be jointly administered. As of the date hereof, no official committee of unsecured creditors has been appointed.

4. The events leading up to the Petition Date and the facts and circumstances supporting the relief requested herein are set forth in the Declaration of James J. Loughlin, Jr. in Support of Chapter 11 Petition and First Day Motions (the “Loughlin Declaration”)² which was filed on the Petition Date.

² Capitalized terms used herein and not otherwise defined shall have the meaning ascribed thereto in the Loughlin Declaration or the Stalking Horse Purchase Agreement, as applicable.

PRELIMINARY STATEMENT

5. As set forth in the Loughlin Declaration, the Debtors owe in excess of \$160 million to their secured lenders. They are unable to service these obligations and have limited (and dwindling) cash reserves. Following extensive, but ultimately unsuccessful, negotiations with their secured lenders regarding the possibility of a consensual out-of-court restructuring, the Debtors commenced a sale process. The Debtors and their advisors conducted a robust sale process, which included solicitations of interest from strategic and financial buyers. The indications of interest received by the Debtors pursuant to such process reflected values lower than what the Debtors and First Lien Lenders believe to be the fair market value of the Debtors' business. Additionally, despite the fact that the Debtors and their advisors had made available ample information regarding the Debtors during the sale process, most of the potential buyers requested significant additional time to conduct more extensive diligence before submitting a binding bid.

6. In light of the results of the sale process, in addition to (a) the Debtors' need to obtain the First Lien Agent's consent to any sale of their assets, (b) the rapid depletion of the Debtors' cash resources, and (c) the Debtors' belief that their business cannot withstand a lengthy stay in Chapter 11, the Debtors decided to accept the First Lien Agent's Credit Bid as the Stalking Horse Bid.

7. The Debtors believe that the Credit Bid presents many benefits to their business and creditors. As described in greater detail below, the Stalking Horse Purchase Agreement provides that the Potential Purchaser will assume all of the Debtors' obligations to their subscribers and authors, offer employment to (for at least a period of ninety (90) days), and assume most obligations to, all or substantially all of the Debtors' Employees, fund the payment

of all Cure Costs, assume the Debtors' post-closing accounts payable, satisfy all of the Debtors' economic obligations under the DIP Credit Agreement, and fund the winding down of the Debtors' estates (pursuant to and in accordance with the agreed-upon Wind-Down Budget). In light of the foregoing, and the fact that the Potential Purchaser is in a position to consummate the Sale on a relatively short time frame, thereby offering much needed stability and certainty to the Debtors' customers, Employees and vendors, the Debtors determined that it was in their best interests and in the best interests of their estates to enter into the Stalking Horse Purchase Agreement and seek approval of the Sale.

THE DEBTORS' DECISION TO SELL THE PURCHASED ASSETS

8. Over the past several years, and in the midst of a global economic downturn that has proved particularly difficult for the publishing industry, the Debtors have experienced a significant decline in revenue and profitability. Further, as noted above, the Debtors owed more than \$160 million to their secured lenders.

9. Given the Debtors' need to reduce their debt load and interest expense, their increasing concerns about the potential deterioration of their business and concomitant degradation in value, and their inability to reach an agreement with their secured creditors on a consensual, out-of-court restructuring of their debt, the Debtors ultimately determined that their value would be maximized and best preserved through the sale of their operations.

10. Accordingly, on June 16, 2010, the Debtors retained SSG Capital Advisors, LLC ("SSG") to provide investment banking services to the Debtors and to commence a sale process with respect to the Debtors' business. Following their retention by the Debtors, SSG conducted extensive due diligence on the business, operations, underlying assets and obligations of the Debtors, met with and conducted numerous teleconferences with management and other

representatives of the Debtors, and prepared collateral materials, including a Confidential Information Memorandum (the "CIM"). SSG also worked with management to build a comprehensive electronic data room containing extensive information regarding the Debtors. Subsequently, SSG initiated an aggressive marketing process of the Debtors' business, on both a stand-alone and "break-up" basis.

11. SSG contacted 152 potential buyers, including strategic buyers, financial buyers with interest and/or experience in the publishing industry, and financial buyers with interest in distressed assets. Of the 152 potential buyers contacted, 64 negotiated and signed confidentiality agreements with the Debtors. Those parties received a copy of the CIM, as well as a letter that outlined the information to be addressed in any indication of interest (an "IOI"), including valuation, structure, financial wherewithal, and bid timing. Interested bidders were encouraged to conduct extensive due diligence and instructed to submit an IOI on or before August 6, 2010 (which date was later extended to August 13, 2010).

12. Of the 64 parties that received a CIM, 23 requested and received access to the on-line "data room" established by SSG. The data room included information concerning the Debtors' operations, assets, finances and obligations. SSG encouraged all parties who received access to the data room to conduct extensive initial due diligence. In addition, certain of those parties requested and received access to the Debtors' senior management to discuss the Debtors' businesses.

13. By mid-August, SSG had received seven (7) IOIs with respect to the Debtors, including five (5) bids to purchase the Debtors in their entirety, and two (2) bids to purchase certain of the Debtors' operating divisions. Generally, the values reflected in the IOIs were lower than what the Debtors and the First Lien Lenders believe constitutes fair value for the

Debtors' business. In addition, while most of the parties submitting IOIs had conducted extensive initial due diligence, all such parties indicated that they would need additional time to complete confirmatory financial, regulatory and legal due diligence, with timelines approximating 45 – 60 days.

14. After reviewing the IOIs and consulting with the First Lien Lenders, the First Lien Lenders decided to submit a “credit bid” for the Debtors’ business, which bid is described in greater detail below (the “Credit Bid”). In light of several factors, including, without limitation, the First Lien Agent’s first priority security interest on the Debtors’ assets, the Debtors’ inability to withstand a lengthy stay in chapter 11, and the ability of the First Lien Lenders to negotiate a binding asset purchase agreement and consummate a sale on a relatively short timetable, the Debtors determined that the Credit Bid presented the best opportunity to preserve the value of the Debtors’ businesses and assets and commenced these chapter 11 cases to implement the proposed transaction with the First Lien Lenders pursuant to section 363 of the Bankruptcy Code, subject to a competitive sale process and the solicitation of higher and/or otherwise better offers (a “Sale”).

15. The Debtors negotiated extensively with PNC Bank, National Association, as agent for and on behalf of the First Lien Lenders (together with its permitted successors and assigns, the “Potential Purchaser”), on the terms and conditions of the Asset Purchase Agreement (as the same may be amended from time to time, the “Stalking Horse Purchase Agreement”),³ which was executed on September 21, 2010. The Stalking Horse Purchase Agreement contemplates the sale of substantially all of the Debtors’ assets (as more specifically identified in

³ A copy of the Stalking Horse Purchase Agreement, in substantially final form but excluding schedules and exhibits, is annexed hereto as Exhibit A.

the Stalking Horse Purchase Agreement, the “Purchased Assets”) to the Potential Purchaser, free and clear of all liens, claims, encumbrances and other interests (as more particularly defined in the Sale Order, collectively, “Liens,”) other than those expressly assumed by the Potential Purchaser. Any such non-assumed Liens against or in the Purchased Assets will attach to the net proceeds of a Sale, in the order of priority and with the same validity, force and effect that such Liens may now have against such assets.

16. As set forth in greater detail below, the Stalking Horse Purchase Agreement contemplates that the consideration to be provided by the Potential Purchaser to the Debtors will include (a) a credit bid in the amount of \$42,000,000, (b) cash in an amount sufficient for (i) the repayment of all outstanding Obligations (as defined in the DIP Credit Agreement) under the DIP Facility, (ii) payment of the Cure Costs, and (iii) without duplication, payment of any Carve-Out and any additional amounts payable pursuant to and in accordance with the Wind-Down Budget, and (c) the assumption of certain of the Debtors’ liabilities, including performance and post-Closing payment obligations to their authors and subscribers. In addition, the Potential Purchaser has the option to assume certain of the Debtors’ accounts payable incurred in the ordinary course of business prior to the Petition Date by designating such accounts payable, if any, five (5) Business Days prior to the Auction or, if there is no Auction, a date that is seven (7) Business Days prior to the Sale Hearing.

17. To obtain the maximum value for the Purchased Assets, the Debtors propose to subject the sale of the Purchased Assets to an auction process with the Stalking Horse Purchase Agreement serving as a basis for any competing bids. If no other qualified bids are received for the Purchased Assets that are higher or otherwise better than the transaction set forth in the

Stalking Horse Purchase Agreement, the Debtors intend to sell the Purchased Assets to the Potential Purchaser pursuant to the terms of the Stalking Horse Purchase Agreement.

18. The Sale of the Purchased Assets is subject to this Court's approval and the auction process proposed herein. The Debtors believe that the Sale of the Purchased Assets will maximize the value of their estates for the benefit of their creditors and other interested parties.

SUMMARY OF RELIEF REQUESTED

19. The Debtors seek, pursuant to sections 105, 363, 365, 503 and 507 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, and 9014, the Court's approval of: (a) assumption of the Stalking Horse Purchase Agreement, and the Sale of the Purchased Assets pursuant thereto, free and clear of Liens, or the right to consummate a higher or otherwise better offer or transaction (a "Superior Transaction") with an alternative buyer (an "Alternative Buyer"); (b) the institution of certain bidding, auction and notice procedures for the solicitation and consideration of competing offers for the Purchased Assets (collectively, the "Bidding Procedures," annexed as Schedule 1 to the Bidding Procedures Order (defined below); and (c) the assumption, assignment and/or transfer of certain executory contracts and unexpired leases to the Potential Purchaser or, alternatively, to such other Successful Bidder (as defined in the Bidding Procedures).

20. More specifically, through this Motion, the Debtors request that the Court enter the following orders:

- (a) The Bidding Procedures Order: An order (the "Bidding Procedures Order," in substantially the form attached hereto as Exhibit B) approving: (i) the Bidding Procedures; (ii) the notice (the "Notice of Auction and Sale Hearing") setting forth the dates, times, and locations of the deadline to bid on the Purchased Assets, the auction of the Purchased Assets (the "Auction") and the hearing to consider the Sale of the Purchased Assets (the "Sale Hearing"), pursuant to the schedule proposed in the Bidding Procedures Order, subject to the Court's

availability; and (iii) the notice (the “Notice of Assumption and Assignment”) of the Debtors’ intent to assume, assign and/or transfer to the Potential Purchaser or, alternatively, to such other Successful Bidder, certain contracts, commitments, leases, licenses, permits, purchase orders, and any other executory contracts and unexpired leases, and the corresponding cure amounts required to be paid in connection with such assumption, assignment and/or transfer.

- (b) The Sale Order: Following the Auction (if any), an order (the “Sale Order”)⁴ for the approval of (i) the sale of the Purchased Assets free and clear of Liens, and (ii) the assumption, assignment, and/or transfer of the Designated Executory Contracts to the Potential Purchaser or, alternatively, to such other Successful Bidder.

21. The Debtors expressly reserve the right to modify the relief requested in this Motion, including the proposed Bidding Procedures, prior to or at the applicable hearing.

THE STALKING HORSE PURCHASE AGREEMENT

22. Following extensive discussions and negotiations, the Debtors and the Potential Purchaser agreed to the terms of the Stalking Horse Purchase Agreement for the purchase of the Purchased Assets. The significant terms of the Stalking Horse Purchase Agreement are:⁵

- (a) Purchased Assets: Pursuant to Section 1.1, Purchased Assets include all right, title and interest of the Debtors in, to or under all of the properties and assets of the

⁴ The Debtors will submit the proposed Sale Order prior to the hearing to consider the entry of the Bid Procedures Order.

⁵ Local Rule 6004-1 states that the Sale Motion "must highlight material terms, including but not limited to (a) whether the proposed form of sale order and/or the underlying purchase agreement constitutes a sale or contains certain highlighted provisions, (b) the location of any such provision in the proposed form of order or purchase agreement, and (c) the justification for the inclusion of any such provision." Local Rule 6004-1(b)(iv). In addition, "[a] debtor may file a Sale Procedures Motion seeking approval of an order . . . approving bidding and auction procedures either as part of the Sale Motion or by a separate motion filed in anticipation of an auction and a proposed sale." Local Rule 6004-1(c). Pursuant to Local Rule 6004-1(c)(i), the Sale Procedures Motion must highlight certain provisions contained in the Sale Procedures Order. Since the Debtors seek to have the Bidding Procedures approved as part of the Sale Motion, the Debtors have highlighted the relevant provisions of both the Stalking Horse Purchase Agreement and the Bidding Procedures below, in accordance with Local Rule 6004-1. In recognition of the non-exclusive nature of the lists provided in Local Rule 6004-1(b)(iv) and (c)(i), and although not explicitly referenced therein, the Debtors also highlight additional material terms of the Stalking Horse Purchase Agreement and the Bidding Procedures for the Court's convenience. The following is a summary of certain of the material terms set forth in the Stalking Horse Purchase Agreement annexed hereto as Exhibit A. Capitalized terms used but not defined in this section have the meanings given to them in the Stalking Horse Purchase Agreement. To the extent that this summary differs in any way from the terms set forth in the Stalking Horse Purchase Agreement, the terms of the Stalking Horse Purchase Agreement shall control.

Debtors of every kind and description, wherever located, real, personal or mixed, tangible or intangible, owned, leased, licensed, used or held for use in or relating to the Business, but in all cases excluding the Excluded Assets (described below). Although the Potential Purchaser will purchase all of the Debtors' cash and cash equivalents, the Potential Purchaser has agreed to leave behind cash in an amount sufficient to fund (a) any Carve-Out (as such term is defined in the Final DIP Order and which amount shall be subject to the final determination of the Carve-Out in accordance with the Final DIP Order), (b) Cure Costs, and (c) those additional amounts agreed to by the Debtors and the Potential Purchaser and set forth in the Wind-Down Budget (see Section 1.1(a)).

- (b) Excluded Assets: Pursuant to Section 1.2, notwithstanding anything to the contrary in the Stalking Horse Purchase Agreement, the Debtors will in no event be deemed to sell, transfer, assign or convey, and the Debtors shall retain all right, title and interest to, in and under the following Excluded Assets:
 - (i) all of the capital stock and other equity interests in each Debtor;
 - (ii) all current and prior insurance policies of any of Debtors, other than (i) rights to proceeds thereof or recoveries therefrom (but excluding proceeds and recoveries under the Tail Policies) or (ii) insurance policies described in Section 1.1(w) of the Stalking Horse Purchase Agreement;
 - (iii) any rights, claims or causes of action of the Debtors arising under the Stalking Horse Purchase Agreement or the Ancillary Agreements; and
 - (iv) all receivables, claims or causes of action related primarily to any Excluded Asset.
- (c) Consideration: Pursuant to Section 2.1 of the Stalking Horse Purchase Agreement, the aggregate consideration is (a) a credit bid in the aggregate amount of \$42,000,000 consisting of a portion of the Pre-Petition Obligations⁶, (b) an amount of cash sufficient for (i) the repayment of all outstanding Obligations (as defined in the DIP Credit Agreement) under the DIP Facility (as defined in the Final DIP Order), (ii) payment of the Cure Costs, (iii) without duplication, payment of any Carve-Out (as defined in the Final DIP Order) and any additional amounts payable pursuant to and in accordance with the Wind-Down Budget, and (c) the assumption of the Assumed Liabilities.
- (d) Assumed Liabilities: Pursuant to Section 1.3 of the Stalking Horse Purchase Agreement, upon the terms and subject to the conditions set forth in the Stalking Horse Purchase Agreement, on the Closing Date the Potential Purchaser shall assume and agree to thereafter discharge, when due (in accordance with their respective terms and subject to the respective conditions thereof),
 - (i) all liabilities and obligations of Debtors under the Designated Executory Contracts, and all cure costs ("Cure Costs") required to be paid and all defaults required to be cured pursuant to Section 365 of the Bankruptcy

⁶ The Potential Purchaser has specifically reserved the right to increase the amount of the Credit Bid.

Code in connection with the assumption and assignment of the Designated Executory Contracts, provided that, Debtors shall be responsible for the verification of all Cure Costs for each Designated Executory Contract, including all administrative responsibilities associated therewith, in the Bankruptcy Cases and otherwise, and shall use reasonable best efforts to establish the proper Cure Cost, if any, for each Designated Executory Contract (as soon as practicable), including taking all reasonable actions with respect to the filing and prosecution of any pleadings in the Bankruptcy Court and the service and delivery of any related notices or pleadings;

- (ii) liabilities under Section 6.2 of the Stalking Horse Purchase Agreement for Transfer Taxes payable in connection with the transactions contemplated under the Stalking Horse Purchase Agreement;
- (iii) (a) the accounts payable of the Business incurred in the ordinary course of business and all claims arising in connection therewith, in each case after the Petition Date; provided that the accounts payable are incurred pursuant to and in accordance with the Approved Budget (as defined in the Final DIP Order), and (b) certain accounts payable of the Business incurred in the ordinary course of business prior to the Petition Date (and all claims arising in connection therewith), as designated by Potential Purchaser and set forth on Schedule 1.3(d), which Potential Purchaser may amend by a date that is five (5) Business Days prior to the Auction or, if there is no Auction, a date that is seven (7) Business Days prior to the Sale Hearing;
- (iv) all performance obligations of Debtors arising before or after the Closing Date and all payment obligations after the Closing Date in each case arising under Debtors' outstanding agreements that are Acquired Assets: (i) relating to subscriptions for products, publications and services of the Business, (ii) with authors or other Persons contributing content to the products and publications of the Business and Persons providing services in connection with subscriptions, (iii) to provide audio conferences, live conferences, consulting, exhibiting and similar services, and (iv) with speakers, consultants and other service providers in connection with such services;
- (v) all other liabilities and obligations arising as a result of the operation of the Business after the Closing;
- (vi) all other liabilities and obligations arising out of an event or occurrence exclusively after the Closing Date solely to the extent such liabilities and obligations relate to or arise out of the Acquired Assets;
- (vii) all confidentiality, non-competition or non-disclosure agreements executed by Debtors in favor of customers, vendors, employees or suppliers of Debtors or other third parties, in each case as existing after the

Closing Date and relating to the Acquired Assets or the Assumed Liabilities;

- (viii) all liabilities and obligations of Debtors pursuant to the Key Employee Incentive Plan adopted by the Board of Directors of TPG on June 17, 2010 (the “Key Employee Incentive Plan”); and
 - (ix) all liabilities with respect to unused vacation days and other paid time off pursuant to Section 5.3(h) of the Stalking Horse Purchase Agreement (collectively the “Assumed Liabilities”).
- (e) Excluded Liabilities: Pursuant to Section 1.4 of the Stalking Horse Purchase Agreement, notwithstanding anything to the contrary in the Stalking Horse Purchase Agreement, Potential Purchaser shall not assume, and shall not be obligated to assume or be obliged to pay, perform or otherwise discharge any Liability of the Debtors, and the Debtors shall be solely and exclusively liable with respect to the following liabilities (collectively the “Excluded Liabilities”):
- (i) all liabilities and obligations of Debtors relating to the Seller Benefit Plans (other than accrued but unused vacation days and other paid time off of the Transferred Employees and liabilities and obligations with respect to the Key Employee Incentive Plan, each of which shall be assumed by the Potential Purchaser); provided, however, that Potential Purchaser shall have the opportunity to designate each Seller Benefit Plan as a Designated Executory Contract, and assume any liabilities or obligations relating thereto, by a date that is five (5) Business Days prior to the Auction or, if there is no Auction, a date that is seven (7) Business Days prior to the Sale Hearing;
 - (ii) except to the extent otherwise provided by applicable Law, all liabilities and obligations of Debtors arising on or prior to the Closing Date, with respect to any Environmental Law and relating to the Business or the Acquired Assets;
 - (iii) all Taxes with respect to the Business or the Acquired Assets that are attributable to or allocable to any Pre-Closing Tax Period, and, with respect to real and personal property Taxes for any Straddle Period, a percentage of such Taxes that relates to such period shall be provided and apportioned between Debtors and Potential Purchaser consistent with the proration provisions contained in Section 6.3 of the Stalking Horse Purchase Agreement; and
 - (iv) all liabilities and obligations of Debtors relating to legal services, accounting services, financial advisory services, investment banking services or any other professional service performed in connection with the Stalking Horse Purchase Agreement or any of the transactions contemplated thereby, and any Pre-Petition or Post-Petition claims for such services (to the extent not included in the Carve-Out (as such term is defined in the Final DIP Order)).

- (f) Employees and Employee Benefit Plans: Pursuant to Section 5.3 of the Stalking Horse Purchase Agreement:
- (i) As of the Closing Date, Potential Purchaser shall offer employment, conditioned on Closing, to all of the employees of the Business who are then actively working on matters of the Business (the “Business Employees”) on terms including (i) base salary as of the date of hire not less than the base salary in effect as of the day immediately preceding the Closing Date and (ii) medical and dental plans and a vacation policy, substantially similar to those afforded to the Business Employees immediately prior to the Closing Date. Potential Purchaser shall continue to employ the Transferred Employees for a period of at least 90 days after the Closing; provided, however, that nothing contained herein shall be construed to limit or restrict Potential Purchaser from terminating the employment of a Transferred Employee “for cause”. Within the 60-day period beginning on the Closing Date, Potential Purchaser will offer each eligible Transferred Employee participation in a plan intended to be qualified under Section 401(k) of the Code.
 - (ii) Debtors shall retain all liability, responsibility and obligation with respect to each Seller Benefit Plan on and after the Closing Date that Potential Purchaser does not designate as a Designated Executory Contract and for any workers compensation claims that relate to events occurring on or prior to the Closing Date. Potential Purchaser acknowledges, however, that Debtors expect to terminate the Seller Benefit Plans immediately or shortly after the Closing Date unless Potential Purchaser has designated such Seller Benefit Plans as Designated Executory Contracts prior to the Closing Date, and that by operation of Law, Potential Purchaser may be required, in connection with the termination of any Seller Benefit Plan which is a welfare plan, to offer certain persons the opportunity to purchase COBRA group health plan continuation coverage through Potential Purchaser’s group health plans, in accordance with the Stalking Horse Purchase Agreement.
 - (iii) Debtors shall have all responsibility and obligation to make COBRA continuation coverage available to all persons who are “M&A qualified beneficiaries” within the meaning of Treasury Regulation Section 54.4980B-9 Q&A 4 with respect to the transactions contemplated by the Stalking Horse Purchase Agreement; provided, however, that in the event Debtors cease to maintain a group health plan following the Closing Date, Potential Purchaser shall have sole responsibility to provide COBRA continuation coverage benefits under Potential Purchaser's group health plans to all such M&A qualified beneficiaries.
 - (iv) Potential Purchaser shall credit, as of the Closing Date, all Transferred Employees with Potential Purchaser with all of their time of service with the Business pursuant to Potential Purchaser’s medical and other welfare

benefit plans in computing the benefits available to such employees under such welfare benefit plans, and, as of the Closing Date, shall allow such employees to carry over all of their vacation time accrued and not taken (or cashed out) during their employment with the Business. With respect to each medical plan of Potential Purchaser in which Transferred Employees become participants as of the Closing Date, Potential Purchaser shall cause there to be waived any pre-existing condition exclusions, except to the extent such pre-existing condition exclusions actually applied as of the Closing Date to limit, restrict or deny coverage to a Transferred Employee under the Seller Benefit Plans which provided medical coverage to the Transferred Employee on the Closing Date.

- (g) Termination: Pursuant to Section 8.1 of the Stalking Horse Purchase Agreement, the Stalking Horse Purchase Agreement may be terminated at any time prior to the Closing Date by:
- (i) the mutual written consent of Potential Purchaser and the Debtors, see Section 8.1(a);
 - (ii) Debtors or by Potential Purchaser if the Closing Date has not occurred within 90 days after the date of execution of the Stalking Horse Purchase Agreement, subject, however, to extension by the mutual written consent of Debtors and Potential Purchaser; provided, however, that Debtors and Potential Purchaser shall only be permitted to terminate the Stalking Horse Purchase Agreement pursuant to Section 8.1(b) if each party is not then itself in material breach of any of its representations, warranties, covenants or agreements contained in the Stalking Horse Purchase Agreement and if the failure to close within 90 days of the execution of the Stalking Horse Purchase Agreement is not a result of such party's conduct, see Section 8.1(b);
 - (iii) Debtors (so long as Debtors are not then in material breach of the Stalking Horse Purchase Agreement) or Potential Purchaser (so long as Potential Purchaser is not then in material breach of the Stalking Horse Purchase Agreement) if a preliminary or permanent injunction or other Order by any Government that declares the Stalking Horse Purchase Agreement or any Ancillary Agreement invalid or unenforceable in any respect or enjoins, restrains, prohibits, or prevents the consummation of the transactions contemplated thereby, see Section 8.1(c);
 - (iv) Debtors in the event of any material breach by the Potential Purchaser of any of the Potential Purchaser's agreements, covenants, representations or warranties contained in the Stalking Horse Purchase Agreement, and such breach is not cured to the Debtors' satisfaction within ten (10) days; provided, however, that Debtors shall only be permitted to terminate the Stalking Horse Purchase Agreement pursuant to Section 8.1(d) of the Stalking Horse Purchase Agreement if Debtors are not themselves then in

material breach of the Stalking Horse Purchase Agreement, see Section 8.1(d);

- (v) Potential Purchaser in the event of any material breach by the Debtors of any of the Debtors' agreements, covenants, representations or warranties contained in the Stalking Horse Purchase Agreement, and such breach is not cured to the Potential Purchaser's satisfaction within ten (10) days; provided, however, that Potential Purchaser shall only be permitted to terminate the Stalking Horse Purchase Agreement pursuant to Section 8.1(e) of the Stalking Horse Purchase Agreement if Potential Purchaser is not itself then in material breach of the Stalking Horse Purchase Agreement, see Section 8.1(e);
 - (vi) Potential Purchaser, if prior to the Closing any Bankruptcy Case is converted from a case under Chapter 11 of the Bankruptcy Code to a case under Chapter 7 of the Bankruptcy Code without the prior written consent of Potential Purchaser; or
 - (vii) Potential Purchaser, by written notice to Debtors, if (i) following entry of the Bidding Procedures Order, such order is reversed, vacated or otherwise modified in any respect that is materially adverse to Potential Purchaser, (ii) the Bidding Procedures Order is stayed as of the date the Auction is scheduled to commence, (iii) the Bidding Procedures Order is not a Final Order prior to the date the Auction commences, or (iv) the Sale Order has not been entered in final form within five (5) Business Days after the Auction or, if no Auction, after the Sale Hearing or if such Sale Order is subject to a stay or injunction on such date.
 - (viii) Automatically, if Debtors consummate an Alternative Transaction.
- (h) Access to Records After Closing:
- Pursuant to Section 5.2(d) of the Stalking Horse Purchase Agreement, Potential Purchaser shall permit Debtors and their respective counsel, tax, financial and other advisors as may be retained from time to time, Affiliates and successors and assigns (collectively, the "Seller Parties"), reasonable access during normal business hours, upon reasonable prior notice and without any charge for entry or access to (i) the Records transferred to Potential Purchaser pursuant to the Stalking Horse Purchase Agreement, following the Closing Date and until the six-year anniversary of the date of the Stalking Horse Purchase Agreement and (ii) the continuing employees of the Business, for any purpose related to the administration, sale, operation, wind-down, liquidation or reorganization of the assets, liabilities and bankruptcy estates of Debtors, following the Closing Date and until the two-year anniversary of the date of the Stalking Horse Purchase Agreement.
- (i) Subject to Court Approval: The Stalking Horse Purchase Agreement is subject to Court approval, see Section 9.1.

BIDDING PROCEDURES AND RELEVANT NOTICES

A. Proposed Bidding Procedures

23. The Debtors believe the proposed Bidding Procedures, which are annexed as Schedule 1 to the Bidding Procedures Order, will maximize the realizable value of the Purchased Assets for the benefit of the Debtors' estates, creditors and other interested parties. The Bidding Procedures contemplate an auction process pursuant to which bids for the Purchased Assets will be subject to higher or otherwise better offers. The Debtors seek to implement a competitive bidding process designed to maximize recovery for the benefit of their estates. The Bidding Procedures primarily benefit the Debtors by creating a bidding process that ensures, among other things: (i) structure and logistical certainty to the process; (ii) the Debtors' ability to compare the relative values of competing offers, if any; (iii) that a potential Alternative Potential Purchaser has the financial wherewithal to timely consummate its purchase; and (iv) meaningful bidding increments.

24. As described below and more fully in the Bidding Procedures, only Qualified Bidders who timely submit Qualified Bids will be eligible to participate in the Auction. Specifically, the Bidding Procedures provide, in relevant part, as follows:⁷

- (a) Participation Requirements. In order to participate in the bidding process or otherwise be considered for any purpose hereunder, a person interested in the Purchased Assets (a "Potential Bidder") must first deliver the following materials to the Debtors, the Agent and each of their counsel:
 - (i) An executed confidentiality agreement in form and substance satisfactory to the Debtors and their counsel which, in the aggregate, is no less favorable to the Debtors than the form confidentiality agreement proposed

⁷ The following description of the Bidding Procedures is a summary of the terms set forth in the Bidding Procedures annexed to the Bidding Procedures Order as Schedule 1. Capitalized terms used but not defined in this section have the meanings ascribed to them in the Bidding Procedures. To the extent that this summary differs in any way from the terms set forth in the Bidding Procedures, the terms of the Bidding Procedures shall control.

by the Debtors in connection with the sale process leading up to the execution of the Stalking Horse Purchase Agreement;

- (ii) The most current audited and latest unaudited financial statements (collectively, the “Financials”) of the Potential Bidder, or, if the Potential Bidder is an entity formed for the purpose of a Sale transaction, (x) Financials of the equity holder(s) of the Potential Bidder or such other form of financial disclosure as is acceptable to the Debtors that demonstrates, in the Debtors’ discretion after consultation with the First Lien Agent, the Potential Bidder’s financial ability to consummate a competing Sale transaction and (y) a written statement acceptable to the Debtors and the First Lien Agent, and their counsel stating that the equity holder(s) of the Potential Bidder will be responsible for the Potential Bidder’s obligations, including an outline of the contemplated debt and equity capitalization, in connection with a Sale transaction (including being bound by the terms and conditions of these Bidding Procedures); provided that, if a Potential Bidder is unable to provide Financials, the Debtors may accept such other information sufficient to demonstrate to the Debtors’ satisfaction (as determined in the Debtors’ sole discretion after consultation with the First Lien Agent) that such Potential Bidder has the financial wherewithal to consummate a Sale transaction. The Potential Bidder also must establish to the Debtors’ satisfaction (as determined by the Debtors in their discretion after consultation with the First Lien Agent) that it has the financial ability to consummate its proposed transaction within the timeframe contemplated for consummation of the Stalking Horse Purchase Agreement. A person meeting the requirements set forth in this paragraph shall be considered a “Qualified Bidder.”
 - (iii) Following receipt by the Debtors of the information set forth in clauses (i) and (ii) above, the Debtors, after consultation with the First Lien Agent and the Official Committee of Unsecured Creditors (the “Committee”)⁸, will promptly advise the Potential Bidder in writing of the Debtors’ determination as to whether or not the Potential Bidder is a Qualified Bidder. For purposes of the Bidding Procedures, the Potential Purchaser is deemed a Qualified Bidder.
- (b) Qualified Bids. The Debtors, after consultation with the Agent, shall determine whether a bid qualifies as a “Qualified Bid.” To constitute a Qualified Bid, a bid (other than the Stalking Horse Purchase Agreement, which shall constitute a Qualified Bid) must be a written irrevocable offer from a Qualified Bidder and:
- (i) state that the Qualified Bidder offers to purchase substantially all of the Debtors’ assets and to consummate the Sale for cash pursuant to a legally binding agreement that is substantially similar to the Stalking Horse Purchase Agreement, and has been marked to show amendments and

⁸ All references to the Committee herein and in the Bidding Procedures will only be applicable if the Committee is formed and retains counsel.

modifications to the Stalking Horse Purchase Agreement, including price, assets to be purchased and terms that are being proposed by the Qualified Bidder, as applicable (the "Marked Purchase Agreement"). IF ANY BID IS CONDITIONED ON THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND/OR UNEXPIRED LEASES, THEN SUCH QUALIFIED BIDDER SHALL BE REQUIRED TO PROVIDE EVIDENCE OF ITS ABILITY TO PROVIDE ADEQUATE ASSURANCE OF FUTURE PERFORMANCE OF SUCH CONTRACTS OR LEASES ALONG WITH THE BID ("Adequate Assurance Package");

- (ii) exceed the consideration being paid by the Potential Purchaser pursuant to the Stalking Horse Purchase Agreement by \$250,000 (the "Minimum Overbid Amount");
- (iii) contain (a) a list of the Debtors' executory contracts and unexpired leases with respect to which the Qualified Bidder seeks assignment from the Debtors (which may include some or all of the contracts and leases included in the Stalking Horse Purchase Agreement and some or all of the excluded contracts and leases not included in the Stalking Horse Purchase Agreement), and (b) a statement confirming that the Qualified Bidder shall be solely responsible for paying all cure costs necessary for the assumption and assignment of such executory contracts and unexpired leases;
- (iv) confirm that the offer shall remain open and irrevocable as provided below;
- (v) enclose an executed copy of the proposed clean and Marked Purchase Agreement;
- (vi) provide written evidence that the Qualified Bidder has obtained authorization and approval from its board of directors (or comparable governing body) with respect to the submission of its bid and the execution of the Marked Purchase Agreement, or a representation that no such authorization or approval is required;
- (vii) be accompanied with a certified or bank check or wire transfer in an amount equal to 10% of the purchase price stated in such bid (the "Minimum Deposit"), which Minimum Deposit shall be used to fund a portion of the purchase price provided for in the bid, provided, that, nothing contained herein or in the Bidding Procedures shall be construed to require a Minimum Deposit with respect to the Potential Purchaser's bid;
- (viii) be on terms that are not materially more burdensome or conditional than the terms of the Stalking Horse Purchase Agreement;
- (ix) not be conditioned on obtaining financing or the outcome of any due diligence by the Qualified Bidder;

- (x) by its terms remain open and irrevocable until the earlier of: (a) closing of the Sale to the Successful Bidder or the Back-Up Bidder (each as defined below), as applicable; and (b) such date as the Debtors affirm in writing, with the consent of the First Lien Agent, that they do not intend to pursue a Sale transaction;
 - (xi) contain evidence satisfactory to the Debtors, after consultation with the First Lien Agent and the Committee, that the Qualified Bidder is reasonably likely to obtain prompt regulatory approval, if any is required, to purchase the Purchased Assets;
 - (xii) not request or entitle the Qualified Bidder to any break-up fee, expense reimbursement, or similar type of payment;
 - (xiii) fully disclose the identify of each entity participating in connection with such bid, and the complete terms of any such participation;
 - (xiv) be accompanied by a firm commitment letter for each component of debt or equity in support of such bid, or other evidence of its financial ability to perform, in each case acceptable to the Debtors in their sole discretion, after consultation with the First Lien Agent;
 - (xv) contain an acknowledgement and representation that the Qualified Bidder: has relied solely upon its own independent review, investigation and/or inspection of any documents in making its bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Purchased Assets or the completeness of any information provided in connection with the bidding process, in each case except as expressly stated in the Marked Purchase Agreement (as defined below);
 - (xvi) contain other information reasonably requested by the Debtors, after consultation with the First Lien Agent and the Committee; and
 - (xvii) be received by the deadline established by the Bidding Procedures Order for the submission of bids (the "Bid Deadline") by counsel to the Debtors and the Office of the United States Trustee. The First Lien Agent shall be provided copies of all bids received by the Debtors.
- (c) Qualified Partial Bids. The Debtors, with the consent of the First Lien Agent and after consultation with the Committee, shall determine whether a bid for less than substantially all of the Debtors' assets qualifies as a "Qualified Partial Bid." To constitute a Qualified Partial Bid, a bid must be a written irrevocable offer from a Qualified Bidder and:
- (i) state that the Qualified Bidder offers to purchase a portion of the Debtors' assets (which assets shall be described in detail) and to consummate the Sale for cash pursuant to a legally binding agreement that is substantially similar to the Stalking Horse Purchase Agreement. IF ANY BID IS

CONDITIONED ON THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND/OR UNEXPIRED LEASES, THEN SUCH QUALIFIED BIDDER SHALL BE REQUIRED TO PROVIDE AN ADEQUATE ASSURANCE PACKAGE;

- (ii) contain (a) a list of the Debtors' executory contracts and unexpired leases with respect to which the Qualified Bidder seeks assignment from the Debtors (which may include some or all of the contracts and leases included in the Stalking Horse Purchase Agreement and some or all of the excluded contracts and leases not included in the Stalking Horse Purchase Agreement), it any and (b) a statement confirming that the Qualified Bidder shall be solely responsible for paying all cure costs necessary for the assumption and assignment of such executory contracts and unexpired leases;
- (iii) confirm that the offer shall remain open and irrevocable as provided in clause (ix) below;
- (iv) enclose an executed copy of the proposed clean and Marked Purchase Agreement;
- (v) provide written evidence that the Qualified Bidder has obtained authorization and approval from its board of directors (or comparable governing body) with respect to the submission of its bid and the execution of the Marked Purchase Agreement, or a representation that no such authorization or approval is required;
- (vi) be accompanied with a certified or bank check or wire transfer in an amount equal to 20% of the purchase price stated in such bid as a Minimum Deposit, which Minimum Deposit shall be used to fund a portion of the purchase price provided for in the bid;
- (vii) be on terms that are not materially more burdensome or conditional than the terms of the Stalking Horse Purchase Agreement;
- (viii) not be conditioned on obtaining financing or the outcome of any due diligence by the Qualified Bidder;
- (ix) by its terms remain open and irrevocable until the earlier of: (a) closing of the Sale to the Successful Bidder(s) or the Back-Up Bidder(s) (each as defined below), as applicable; and (b) such date as the Debtors affirm in writing, with the consent of the First Lien Agent, that they do not intend to pursue a Sale transaction;
- (x) contain evidence satisfactory to the Debtors, after consultation with the First Lien Agent and the Committee, that the Qualified Bidder is reasonably likely to obtain prompt regulatory approval, if any is required, to purchase the Purchased Assets;
- (xi) not request or entitle the Qualified Bidder to any break-up fee, expense reimbursement, or similar type of payment;

- (xii) fully disclose the identify of each entity participating in connection with such bid, and the complete terms of any such participation;
 - (xiii) be accompanied by a firm commitment letter for each component of debt or equity in support of such bid, or other evidence of its financial ability to perform, in each case acceptable to the Debtors in their sole discretion, after consultation with the First Lien Agent;
 - (xiv) contain an acknowledgement and representation that the Qualified Bidder: has relied solely upon its own independent review, investigation and/or inspection of any documents in making its bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Purchased Assets or the completeness of any information provided in connection with the bidding process, in each case except as expressly stated in the Marked Purchase Agreement (as defined below);
 - (xv) contain other information reasonably requested by the Debtors, after consultation with the First Lien Agent; and
 - (xvi) be received by the Bid Deadline.
- (d) Starting Qualified Bid. After the Bid Deadline (defined below), the Debtors shall determine, with the consent of the First Lien Agent and after consultation with the Committee, which Qualified Bid or group of Qualified Partial Bids represents the then-highest or otherwise best bid (the "Starting Qualified Bid").
- (e) Auction Rules:
- (i) Only a Qualified Bidder (including the Potential Purchaser) and its authorized representatives who have submitted a Qualified Bid or a Qualified Partial Bid will be eligible to participate at the Auction. At the Auction, only the Potential Purchaser and other Qualified Bidders who have submitted a Qualified Bid will be permitted to increase their bids. The bidding at the Auction shall start at the purchase price stated in the Starting Qualified Bid, and then continue in minimum increments of \$250,000. In the event that a successive bid at the Auction is comprised of two or more Qualified Partial Bids, the aggregate consideration in such Qualified Partial Bids must exceed the Starting Qualified Bid by an amount equal to or greater than \$250,000. The Debtors reserve the right to determine, in their discretion, with the consent of the First Lien Agent and after consultation with the Committee, which group of Qualified Partial Bids has satisfied this requirement.
 - (ii) Unless otherwise agreed by the Debtors, in their sole discretion, after consultation with the First Lien Agent, and with respect of and in the best interests of the estates only, no Qualified Bidder will be permitted more than one-half hour to respond to the previous bid at the Auction and, at the

expiration of such time (if no new Qualified Bid or Qualified Partial Bids are received), the Auction shall conclude.

- (iii) From time to time during the course of the Auction, the Debtors shall inform each participant which Qualified Bid or group of Qualified Partial Bids reflects, in the Debtors' view, with the consent of the First Lien Agent and after consultation with the Committee, the highest or otherwise best offer. In determining which Qualified Bid or group of Qualified Partial Bids reflects the highest or otherwise best offer, the Debtors may consider the aggregate purchase price as well as all other terms of the proposed terms of the purchase, including, without limitation, the liabilities that a Qualified Bidder proposes to assume. To the extent that such bid has been determined to be the highest or otherwise best offer entirely or in part because of the addition, deletion or modification of a provision or provisions in the Stalking Horse Purchase Agreement, or related ancillary agreement or, if applicable, in the Qualified Bid or Qualified Partial Bids, other than an increase in the cash purchase price, the Debtors, with the consent of the First Lien Agent, shall provide notice to each participant of the value ascribed by the Debtors to any such added, deleted or modified provision or provisions.
 - (iv) The Auction may be adjourned as the Debtors, after consultation with the First Lien Agent and the Committee, deem appropriate. Reasonable notice of such adjournment and the time and place for the resumption of the Auction shall be given to Qualified Bidders that have submitted a Qualified Bid or Qualified Partial Bid and other invitees.
 - (v) No Qualified Bidder, having submitted a Qualified Partial Bid, may increase, decrease or otherwise modify at the Auction the assets of the Debtors that are subject to such Qualified Partial Bid, unless otherwise agreed by the Debtors acting in their discretion, with the consent of the First Lien Agent.
 - (vi) Qualified Bidders submitting Qualified Partial Bids may not combine their Qualified Partial Bids or otherwise bid together or as a group for all or any portion of the Purchased Assets.
 - (vii) Each Qualified Bidder participating at the Auction will be required to confirm that it has not engaged in any collusion with respect to the bidding or the Sale.
 - (viii) All bids submitted at the Auction will be deemed to indicate a commitment by the Qualified Bidder submitting such bid that such Qualified Bidder will serve as the Back-Up Bidder and such bid will serve as the Back-Up Bid (as such terms are defined below), if so selected.
 - (ix) Bidding at the Auction will be transcribed or videotaped.
- (f) Other Terms.

- (i) All Qualified Bids, Qualified Partial Bids, the Auction, and the Bidding Procedures are subject to such additional terms and conditions as are announced by the Debtors, with the consent of the First Lien Agent. At the conclusion of the Auction, with the consent of the First Lien Agent and after consultation with the Committee, the Debtors shall identify the Qualified Bid or group of Qualified Partial Bids made pursuant to the Bidding Procedures that represents, in the Debtors' discretion, (a) the highest or otherwise best offer (such Qualified Bid or group of Qualified Partial Bids, the "Successful Bid" and, the Qualified Bidder(s) who submitted the Successful Bid(s), the "Successful Bidder"), and (b) the next highest or otherwise best Qualified Bid or group of Qualified Partial Bids after the Successful Bid(s) (such Qualified Bid or group of Qualified Partial Bids, the "Back-Up Bid" and the Qualified Bidder(s) who submitted the Back-Up Bid, the "Back-Up Bidder"). If an Auction is held, the Debtors shall be deemed to have accepted a Qualified Bid or Qualified Partial Bids only when (i) such bid(s) is declared the Successful Bid at the Auction; (ii) definitive documentation has been executed in respect thereof; and (iii) the Court has entered an order approving such Successful Bid. In the event that the Successful Bid and/or the Back-Up Bid, if applicable, is comprised of more than one Qualified Bid, the Debtors reserve the right to require, with the consent of the First Lien Agent, that the Sales are consummated simultaneously.
- (ii) If an Auction is held, and immediately upon selection of the Successful Bid(s), if the Minimum Deposit(s) do or does not equal (a) in the case of a Qualified Bid, 10% of the purchase price in the Successful Bid and Back-Up Bid or (b) in the case of Qualified Partial Bid(s), 20% of the purchase price in the Successful Bid(s) and Back-Up Bids, then the Successful Bidder(s) and Back-Up Bidder(s) shall increase the amounts of such Minimum Deposit(s) within 24 hours, unless waived by the Debtors, with the consent of the First Lien Agent.
- (iii) Following the entry of the Sale Order, if the Successful Bidder (or one or more Successful Bidders, as applicable) fails to consummate the Sale in accordance with the terms of the purchase agreement executed by such Successful Bidder, the Back-Up Bidder (or, as applicable, the Back-Up Bidder that submitted a Back-Up Bid for the same assets as such Successful Bidder) will be deemed to have the new Successful Bid, and the Debtors, with the consent of the First Lien Agent, will be authorized, but not required, to consummate the Sale with the Back-Up Bidder without the need for an additional hearing or further order of the Court. If the original Stalking Horse Purchase Agreement is selected as the Back-Up Bid, Potential Purchaser shall be under no obligation to hold such Back-Up Bid open, and not revoke such Back-Up Bid, past the earlier of (i) the date of termination of the Stalking Horse Purchase Agreement in accordance with its terms, and (ii) the date that is thirty (30) days after the

conclusion of the Auction. If any other party is selected as the Back-Up Bidder, the Back-Up Bid shall remain open and irrevocable until the earlier of: (a) closing of the Sale to the Successful Bidder; and (b) such date as the Debtors affirm in writing, with the consent of the First Lien Agent, that they do not intend to pursue a Sale transaction.

25. The Debtors will present the results of the Auction to the Court at the Sale Hearing, at which time certain findings will be sought from the Court regarding the Auction, including, among other things, that: (i) the Auction was conducted and the Successful Bidder was selected in accordance with these Bidding Procedures; (ii) the Auction was fair in substance and procedure; and (iii) consummation of the Sale contemplated by the Successful Bid will provide the highest or otherwise best value for the Purchased Assets and is in the best interests of the Debtors, their estates and creditors.

26. The Debtors believe that the Bidding Procedures are fair and reasonable, and are not likely to dissuade any serious potential alternative purchaser from bidding for the Purchased Assets.

B. Notice of Auction and Sale Hearing

27. The Debtors further request that the objection deadline with respect to the Sale of the Purchased Assets be at least five (5) days prior to the Sale Hearing.

28. On or before five (5) Business days after entry of the Bidding Procedures Order, the Debtors will cause the notice attached as Schedule 2 to the Bidding Procedures Order (the "Notice of Auction and Sale Hearing") and the Bidding Procedures Order to be sent by first-class mail postage prepaid, to the following: (i) the Office of the United States Trustee; (ii) counsel for any statutory committee in these cases, if and when appointed; (iii) counsel to the First Lien Agent; (iv) all taxing authorities and other governmental agencies having jurisdiction over any of the Purchased Assets, including the Internal Revenue Service; (v) all parties that have requested

or that are required to receive special notice pursuant to Bankruptcy Rule 2002; (vi) all Persons known or reasonably believed to have asserted an Interest in any of the Purchased Assets; (vii) the non-Debtor parties to the Executory Contracts; (viii) all Persons known or reasonably believed to have expressed an interest in acquiring all or substantially all of the Purchased Assets within the last six months; and (ix) the Attorneys General in the State(s) where the Purchased Assets are located.⁹ In addition to the foregoing, (i) electronic notification of this Motion, the Bidding Procedures Order and the Notice of Auction and Sale Hearing also will be posted on the Court's website, www.deb.uscourts.gov; and (ii) on or before five (5) days after entry of the Bidding Procedures Order, the Debtors will: (a) serve the Notice of Auction and Sale Hearing on all known creditors of the Debtors; and (b) subject to applicable submission deadlines, publish the Notice of Auction and Sale Hearing once in one or more publications the Debtors deem appropriate, including but not limited to the *Wall Street Journal* (national edition).

29. In addition, to facilitate the Sale of the Purchased Assets and the assumption, assignment and/or transfer of the Designated Executory Contracts, the Debtors shall serve a notice of potential assumption, assignment and/or transfer of the Designated Executory Contracts (the "Notice of Assumption and Assignment"), attached as Schedule 3 to the Bidding Procedures Order, on all non-debtor parties to the Designated Executory Contracts, on or before five (5) days after the entry of the Bidding Procedures Order by first class mail or hand delivery. If the Debtors identify additional executory contracts or unexpired leases that might be assumed by the Debtors and assigned to Potential Purchaser not set forth in the original Notice of Assumption

⁹ The Notice of Auction and Sale Hearing will direct parties to contact Choate, Hall & Stewart LLP, proposed co-counsel to the Debtors, or SSG Capital Advisors, LLC, proposed investment banker for the Debtors, for more information and will provide that any party in interest that wishes to obtain a copy of any related document (including the Stalking Horse Purchase Agreement), subject to any necessary confidentiality agreement, may make a request in writing as specified in the Notice of Auction and Sale Hearing.

and Assignment, the Debtors will promptly send a supplemental notice (a “Supplemental Notice of Assumption and Assignment”) to the applicable counterparties to such additional executory contracts and unexpired leases.

30. In the Notice of Assumption and Assignment, the Debtors will identify whether the Executory Contract and Unexpired Lease is a Purchased Asset and the calculation of the undisputed cure amounts that the Debtors believe must be paid to cure all defaults under the Designated Executory Contracts, as of the date of such notice (the “Cure Amounts”). If no amount is listed on the Notice of Assumption and Assignment to be served, the Debtors believe that there is no Cure Amount, as of the date of such notice (the “Cure Date”). The Debtors request that unless the non-debtor party to an Executory Contract or Unexpired Lease files an objection (the “Cure Amount/Assignment Objection”) to (a) its scheduled Cure Amount and/or (b) to the proposed assumption, assignment and/or transfer of such Executory Contract or Unexpired Lease by the later of (i) 4:00 p.m. (prevailing Eastern time) on the date that is three (3) days prior to the Bid Deadline or (ii) ten (10) days after service of the Supplemental Notice of Assumption and Assignment (such later date, the “Cure/Assignment Objection Deadline”) and serves a copy of the Cure Amount/Assignment Objection so as to be received no later than the Cure/Assignment Objection Deadline on the same day to: (a) the Debtors; (b) Choate, Hall & Stewart LLP, proposed co-counsel to the Debtors; (c) Morris, Nichols, Arsht & Tunnell LLP, proposed co-counsel to the Debtors; (d) counsel to any statutory committee that may be appointed in these cases; (e) the Office of the United States Trustee; and (f) counsel to the First Lien Agent; then such non-debtor party will (i) be forever barred from objecting to the Cure Amount and from asserting any additional cure or other amounts with respect to such Executory Contract and Unexpired Lease and the Debtors shall be entitled to rely solely upon the Cure

Amount, and (ii) if the Executory Contract or Unexpired Lease was identified as a Purchased Asset and the Potential Purchaser is the Successful Bidder, be deemed to have consented to the assumption, assignment and/or transfer of such Executory Contract and Unexpired Lease as of the Cure Date, and shall be forever barred and estopped from asserting or claiming against the Debtors, the Potential Purchaser or such other Successful Bidder or any other assignee of the relevant Executory Contract or Unexpired Lease that any additional amounts are due or defaults exist, or conditions to assumption, assignment and/or transfer must be satisfied, under such Executory Contract or Unexpired Lease as of the Cure Date. All amounts due and owing under the Designated Executory Contracts after the Cure Date that are to be assumed and assigned shall be satisfied in the ordinary course.

31. The Debtors also request that if an objection challenges a Cure Amount, such objection must set forth the cure amount being claimed by the objecting party (the “Claimed Cure Amount”) with appropriate documentation in support thereof. Upon receipt of an objection to a Cure Amount, the Debtors may, in their sole discretion, hold an amount equal to the Claimed Cure Amount in reserve pending further order of the Court or agreement between the Debtors and the objecting party. So long as the Debtors hold the Claimed Cure Amount in reserve, the Debtors may seek authority to assume, assign and/or transfer the Executory Contract or Unexpired Lease that is the subject of an objection without further delay.

32. The Debtors, the Potential Purchaser or the other Qualified Bidder, as the case may be, may determine to exclude any Executory Contract or Unexpired Lease (an “Excluded Contract”) from the list of Purchased Assets no later than the fifth (5th) business day prior to the Auction (or, if there is no Auction, the seventh (7th) day before the Sale Hearing). The non-

debtor party or parties to any such Excluded Contract will be notified of such exclusion by written notice mailed within five (5) days of such determination.

33. In the event that the Potential Purchaser is not the Successful Bidder for the Purchased Assets and for those Designated Executory Contracts identified in the Notice of Assumption and Assignment, within two (2) days after the conclusion of the Auction for the Purchased Assets, the Debtors will serve a notice identifying the Successful Bidder to the non-Debtor parties to the Designated Executory Contracts that have been identified in such Successful Bid. The Debtors proposes that the non-Debtor parties to the Designated Executory Contracts have until 11:00 a.m. (prevailing Eastern Time) on the date that is two (2) days prior to the Sale Hearing (the “Adequate Assurance Objection Deadline”) to object to the assumption, assignment and/or transfer of such Designated Executory Contract solely on the issue of whether the Successful Bidder can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code.

AUTHORITY FOR REQUESTED RELIEF

A. The Sale of the Purchased Assets is Within the Sound Business Judgment of the Debtors and Should be Approved

34. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that a debtor in possession, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Section 363 of the Bankruptcy Code does not set forth a standard for determining when it is appropriate for a court to authorize the sale or disposition of a debtor’s assets prior to confirmation of a plan. However, courts in this Circuit and others have required that the decision to sell assets outside the ordinary course of business be based upon the sound business judgment of the debtors. See In re Abbotts Dairies of

Pennsylvania, Inc., 788 F.2d 143 (3d Cir. 1986); see also Myers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996); Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983); Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp., (In re Montgomery Ward Holding Corp.), 242 B.R. 147, 153 (D. Del. 1999); In re Delaware & Hudson Ry. Co., 124 B.R. 169, 176 (D. Del. 1991).

35. The “sound business judgment” test requires a debtor to establish four elements in order to justify the sale or lease of property outside the ordinary course of business, namely, (a) that a “sound business purpose” justifies the sale of assets outside the ordinary course of business, (b) that adequate and reasonable notice has been provided to interested persons, (c) that the debtors have obtained a fair and reasonable price, and (d) that the sale was negotiated in good faith. Abbotts Dairies, 788 F.2d 143; Titusville Country Club v. Pennbank (In re Titusville Country Club), 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); In re Sovereign Estates, Ltd., 104 B.R. 702, 704 (Bankr. E.D. Pa. 1989). In this case, as set forth more fully herein, the Debtors submit that the decision to proceed with a Sale of the Purchased Assets and the Bidding Procedures is based upon sound business judgment and should be approved. A debtor’s showing of a sound business purpose need not be unduly exhaustive but, rather, a debtor is “simply required to justify the proposed disposition with sound business reasons.” In re Baldwin United Corp., 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984). Whether or not there are sufficient business reasons to justify a transaction depends upon the facts and circumstances of each case. Lionel, 722 F.2d at 1071; Montgomery Ward, 242 B.R. at 155 (approving funding of employee incentive and severance program; business purpose requirement fulfilled because stabilizing turnover rate and increasing morale were necessary to successful reorganization).

36. Additionally, section 105(a) of the Bankruptcy Code provides a bankruptcy court with broad powers in the administration of a case under the Bankruptcy Code. Section 105(a) provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). Provided that a bankruptcy court does not employ its equitable powers to achieve a result not contemplated by the Bankruptcy Code, the exercise of its section 105(a) power is proper. In re Fesco Plastics Corp., 996 F.2d 152,154 (7th Cir. 1993); Pincus v. Graduate Loan Ctrs (In re Pincus), 280 B.R. 303, 312 (Bankr. S.D.N.Y. 2002). Pursuant to section 105(a), a court may fashion an order or decree that helps preserve or protect the value of a debtor’s assets. See, e.g., Chinichian v. Campolongo (In re Chinichian), 784 F.2d 1440, 1443 (9th Cir. 1986) (“Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code.”); In re Cooper Props. Liquidating Trust, Inc., 61 B.R. 531, 537 (Bankr. W.D. Tenn. 1986) (noting that bankruptcy court is “one of equity and as such it has a duty to protect whatever equities a debtor may have in property for the benefit of its creditors as long as that protection is implemented in a manner consistent with the bankruptcy laws.”).

37. The Debtors submit that more than ample business justification exists to sell the Purchased Assets to the Potential Purchaser (or other Successful Bidder) pursuant to the Bidding Procedures, thereby satisfying the first prong of Abbotts Dairies. The prompt Sale of the Purchased Assets presents the best opportunity to maximize the value of the Debtors’ estates in light of the need to manage and transition the Purchased Assets to a potential purchaser. In addition, the Debtors believe that the Bidding Procedures are the best method by which they can obtain the most value for the Purchased Assets and provide interested parties with accurate and reasonable notice of the Sale. The Bidding Procedures will allow the Debtors to conduct the

Auction in a controlled, fair and open fashion that will encourage participation by financially capable bidders who demonstrate the ability to close a transaction, thereby increasing the likelihood that the Debtors will receive the best possible consideration for the Purchased Assets by helping ensure a competitive and fair bidding process.

38. The Debtors believe the sale of its operations and assets must occur quickly in order to maximize the value of their estates, and that significant time spent in chapter 11 increases the real and palpable risk of business loss and value deterioration. The Debtors' liquidity is constrained and they have little ability to invest in their businesses. Absent a prompt Sale pursuant to the procedures and timelines proposed, the Debtors believe that the going concern value of the Purchased Assets will be significantly compromised. The Debtors believe that their business is not of the type that can survive a prolonged stay in chapter 11. The success of the Debtors' business relies in great part on its reputation as a reliable provider of timely information to their subscribers that simplifies and explains complex regulations. Many of the Debtors' customers are middle-market or small companies that may not be accustomed to dealing with vendors operating in chapter 11. Each day that the Debtors remain in chapter 11, customers may lose faith in the Debtors' ability to continue to provide high-value information to professionals. As a result, such customers will look to alternative suppliers of industry specific regulatory information, and the Debtors will lose valuable market share and revenue. Such erosion of the Debtors' customer base will make the Purchased Assets far less attractive to potential purchasers. Therefore, it is imperative that the Debtors effect a Sale as early on in this case as possible. The Debtors further believe that a targeted sale process is most likely to achieve the highest and best price for the Purchased Assets and will do so in an efficient and timely manner, enabling the Debtors' business to emerge successfully from this case. The

Debtors respectfully submit that the relief sought by this Motion is not only reasonable, but necessary, to maximize the value of their estates for the benefit of the Debtors and their stakeholders.

39. In addition, the notice described herein and in the Bidding Procedures Order is designed to provide adequate notice to all potentially interested parties, including those who have previously expressed an interest in purchasing the Purchased Assets in the past six months. Accordingly, the proposed sale of the Purchased Assets satisfies the second prong of the Abbotts Dairies standard.

40. The Bidding Procedures are also designed to maximize the value received for the Purchased Assets. The process proposed by the Debtors allows for a timely auction process while providing bidders ample time and information to submit a timely bid. Along with the Debtors' marketing process, the Bidding Procedures are designed to ensure that the Purchased Assets will be sold for the highest or otherwise best possible purchase price. The Debtors are subjecting the value of the Purchased Assets to market testing and permitting prospective purchasers to bid on the Purchased Assets, thereby subjecting the proposed Sale to a market check through the solicitation of competing bids in a court-supervised auction process. Accordingly, the Debtors and all parties in interest can be assured that the consideration received for the Purchased Assets will be fair and reasonable, and therefore the third prong of the Abbotts Dairies standard is satisfied. As discussed below, the "good faith" prong of the Abbotts Dairies standard is also satisfied here.

B. The Proposed Sale is Proposed in "Good Faith" Under Section 363(m) of the Bankruptcy Code

41. The Debtors request that the Court find that the Potential Purchaser (or other Successful Bidder) is entitled to the benefits and protections provided by section 363(m) of the Bankruptcy Code in connection with the sale of the Purchased Assets.

42. Section 363(m) of the Bankruptcy Code provides, in pertinent part:

The reversal or modification on appeal of an authorization under subsection (b) . . . of this section of a sale . . . of property does not affect the validity of a sale . . . under such authorization to an entity that purchased . . . such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale . . . were stayed pending appeal.

11 U.S.C. § 363(m).

43. Section 363(m) of the Bankruptcy Code thus protects the purchaser of assets sold pursuant to section 363 of the Bankruptcy Code from the risk that it will lose its interest in the purchased assets if the order allowing the Sale is reversed on appeal. By its terms, section 363(m) of the Bankruptcy Code applies to sales of interests in tangible assets. Additionally, the United States Court of Appeals for the Third Circuit (the “Third Circuit”) has indicated that section 363(m) of the Bankruptcy Code also protects the assignee of a debtor’s interest in executory contracts under Bankruptcy Code section 365. See Krebs Chrysler-Plymouth, Inc. v. Valley Motors, Inc., 141 F.3d 490, 497-98 (3d Cir. 1998). In Krebs, the Court considered “whether assignments of [certain automobile dealership] franchises under section 365 are also sales of estate property subject to section 363(m).” Id. at 497. Despite the absence of an explicit reference to assignments of executory contracts under section 365 of the Bankruptcy Code, the Court in Krebs concluded that section 363(m) of the Bankruptcy Code protected an assignment of a debtor’s interest in certain automobile franchise agreements pursuant to an auction sale. Like the franchise agreements protected in Krebs, the Designated Executory Contracts are contracts that may be assumed, assigned and/or transferred pursuant to section 365 of the

Bankruptcy Code. In light of Krebs, the Debtors respectfully submit that section 363(m) applies to protect the Potential Purchaser (or other Successful Bidder) with respect to both the Purchased Assets and the Designated Executory Contracts.

44. As required by section 363(m) of the Bankruptcy Code, the Bidding Procedures have been proposed in good faith and provide for both the Debtors and the potential purchaser to act in good faith in negotiating the Sale of the Purchased Assets and the assignment of the Designated Executory Contracts related thereto. Although the Bankruptcy Code does not define “good faith purchaser,” the Third Circuit, construing section 363(m) of the Bankruptcy Code, has stated that “the phrase encompasses one who purchases in ‘good faith’ and for ‘value’” Abbotts Dairies, 788 F.2d at 147. To constitute lack of good faith, a party’s conduct in connection with the sale must usually amount to “fraud, collusion between the purchaser and other bidders or the trustee or an attempt to take grossly unfair advantage of other bidders.” Id. (citing In re Rock Indus. Mach. Corp., 572 F.2d 1195, 1198 (7th Cir. 1978)). See also In re Bedford Springs Hotel, Inc., 99 B.R. 302, 305 (Bankr. W.D. Pa. 1989); In re Perona Bros., Inc., 186 B.R. 833, 839 (D.N.J. 1 995). Due to the absence of a bright-line test for good faith, the determination is based on the facts of each case, concentrating on the “integrity of [an actor’s] conduct in the course of the sale proceedings.” In re Pisces Leasing Corp., 66 B.R. 671, 673 (E.D.N.Y. 1986) (quoting Rock Indus. Mach. Corp., 572 F.2d at 1198).

45. Here, the sale of the Purchased Assets and the assignment and/or transfer of the Designated Executory Contracts, which have been designated by the Potential Purchaser in the Stalking Horse Purchase Agreement and/or will be designated by any Successful Bidder,¹⁰ is or

¹⁰ If the Debtors ultimately sells the Purchased Assets to an Alternative Buyer in a Superior Transaction, the Debtors believe that a finding of good faith within the meaning of section 363(m) of the Bankruptcy Code

will be in good faith. As discussed throughout this Motion, and as will be further demonstrated at the Sale Hearing, any sale agreement will be the culmination of a solicitation and negotiation process in which all parties will be represented by counsel. No known potential bidder for the Purchased Assets is an insider of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code, and all negotiations have been and will continue to be conducted on an arm's length, good faith basis. Moreover, there is no evidence of fraud or collusion in terms of the proposed Sale. With respect to the potential bidders, the Bidding Procedures are designed to ensure that no party is able to exert undue influence over the process. Under the circumstances, the Potential Purchaser or any Alternative Buyer should be afforded the protections that section 363(m) of the Bankruptcy Code provides to a good faith purchaser.

46. All parties in interest, as described in paragraph 23, will receive notice of the Sale proposed herein and will be provided with an opportunity to be heard. Additionally, all counterparties to Designated Executory Contracts will be provided notice of assumption, assignment and/or transfer and an opportunity to be heard. The Debtors submit that such notice is adequate for entry of the Sale Order and satisfies the requisite notice provisions required under sections 363(b) and 365 of the Bankruptcy Code.

C. The Proposed Sale Satisfies the Requirements of Section 363(f) of the Bankruptcy Code

47. Under section 363(f) of the Bankruptcy Code, a debtor in possession may sell all or any part of its property free and clear of any and all liens, claims, or interests in such property

would be appropriate for the Alternative Buyer as well. Pursuant to the Bidding Procedures, any Alternative Buyer will have had to present a proposal superior to that of the Potential Purchaser. Moreover, the Debtors will not choose any Alternative Buyer whose good faith under section 363(m) of the Bankruptcy Code can reasonably be doubted, and would be prepared to present the Court with sufficient evidence to allow the Court to find that the "good faith" standard of section 363(m) of the Bankruptcy Code has been satisfied.

if: (i) such a sale is permitted under applicable non-bankruptcy law; (ii) the party asserting such a lien, claim, or interest consents to such sale; (iii) the interest is a lien and the purchase price for the property is greater than the aggregate amount of all liens on the property; (iv) the interest is the subject of a bona fide dispute; or (v) the party asserting the lien, claim, or interest could be compelled, in a legal or equitable proceeding, to accept a money satisfaction for such interest. 11 U.S.C. § 363(f); Citicorp Homeowners Serv., Inc. v. Elliot (In re Elliot), 94 B.R. 343, 345 (E.D. Pa. 1988) (noting that section 363(f) of the Bankruptcy Code is written in the disjunctive; therefore, a court may approve a sale “free and clear” provided at least one of the subsections is met). Furthermore, courts have held that they have the equitable power to authorize sales free and clear of interests that are not specifically covered by section 363(f). See, e.g., In re Trans World Airlines, Inc., 2001 WL 1820325, at *3, 6 (Bankr. D. Del. Mar. 27, 2001); Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.), 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987). With respect to the Liens of the First Lien Agent, section 363(f) is satisfied because such lenders have consented to the Sale. Pursuant that certain Amended and Restated Intercreditor Agreement, dated as of July 17, 2007, by and among the First Lien Agent, the Second Lien Agent and the Borrowers, the Liens of the Second Lien Agent are automatically released upon the First Lien Agent’s release of its Liens. With respect to all other Liens, the Debtors expect that they will satisfy one or more of the requirements of section 363(f), as will be demonstrated at the Sale Hearing. Accordingly, approval of the Sale of the Purchased Assets free and clear of all Liens is warranted.

D. Assumption and Assignment of Designated Executory Contracts Should be Approved

48. To facilitate and effectuate the Sale of the Purchased Assets, the Debtors seek authority to assume, assign and/or transfer various Designated Executory Contracts to the

Potential Purchaser (or other Successful Bidder) to the extent required by such purchaser. Section 365 of the Bankruptcy Code authorizes a debtor to assume and/or assign its executory contracts and unexpired leases, subject to the approval of the Court, provided that the defaults under such contracts and leases are cured and adequate assurance of future performance is provided. A debtor's decision to assume or reject an executory contract or unexpired lease must only satisfy the "business judgment rule" and will not be subject to review unless such decision is clearly an unreasonable exercise of such judgment. Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pacific Ry. Co., 318 U.S. 523 (1943) (applying Bankr. Act section 77 subsection (b), predecessor to Bankruptcy Code Section 365, and rejecting test of whether executory contract was burdensome in favor of whether rejection is within debtor's business judgment); Lubrizol Enter., Inc. v. Richmond Metal Finishers, Inc., 756 F.2d 1043, 1046-47 (4th Cir. 1985).

49. The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction." See Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.), 103 B.R. 524, 538 (Bankr. D.N.J. 1989). Among other things, adequate assurance may be given by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. In re Bygaph, Inc., 56 B.R. 596, 605-6 (Bankr. S.D.N.Y. 1986) (finding adequate assurance of future performance present when the prospective assignee of a lease from the debtors has the financial resources and has expressed a willingness to devote sufficient funding to the business in order to give it a strong likelihood of succeeding; "chief determinant of adequate assurance of future performance is whether rent will be paid").

50. The Potential Purchaser (or other Successful Bidder) will desire to take assignment of certain executory contracts and unexpired leases related to the Purchased Assets. To the extent Designated Executory Contracts are identified for assumption, assignment and/or transfer, the Debtors believe that it can and will demonstrate that all requirements for assumption, assignment and/or transfer of the Designated Executory Contracts will be satisfied at the Sale Hearing. The Debtors, as required by the Bidding Procedures, will evaluate the financial wherewithal of all potential bidders before qualifying such bidders to bid for the Purchased Assets. Further, for the reasons stated throughout this Motion, the Debtors, in exercising their sound business judgment, believe that selling the Purchased Assets and assuming, assigning and/or transferring to the Potential Purchaser (or other Successful Bidder) the Designated Executory Contracts would be in the best interests of their estates. Moreover, the Debtors will provide all parties to the Designated Executory Contracts an opportunity to be heard.

51. Specifically, the Debtors will serve the Notice of Assumption and Assignment on or before five (5) days after entry of the Bidding Procedures Order on the non-debtor parties to the Designated Executory Contracts. The Notice of Assumption and Assignment will, among other things, identify whether the Designated Executory Contract is a Purchased Asset and respective Cure Amounts, if any. The Debtors request that unless the non-debtor party to an Executory Contract or Unexpired Lease files and serves a Cure Amount/Assignment Objection setting forth the Claimed Cure Amount or objecting to an assumption, assignment and/or transfer to the Potential Purchaser on or before the Cure Objection Deadline, such non-debtor party will (i) be forever barred from objecting to the Cure Amount and from asserting any additional cure or other amounts with respect to such Designated Executory Contract as of the Cure Date, and

the Debtors shall be entitled to rely solely upon the Cure Amount; and (ii) if the Designated Executory Contract was identified as a Purchased Asset and the Potential Purchaser is the Successful Bidder, be deemed to have consented to the assumption, assignment and/or transfer of such Designated Executory Contract and shall be forever barred and estopped from asserting or claiming against the Debtors, the Potential Purchaser or such other Successful Bidder or any other assignee of the relevant Designated Executory Contract that any additional amounts are due or defaults exist, or conditions to assumption, assignment and/or transfer must be satisfied, under such Executory Contract as of the Cure Date. The Debtors propose to satisfy all amounts due and owing under the Designated Executory Contracts after the Cure Date in the ordinary course.

52. In the event that the Potential Purchaser is not the Successful Bidder for the Purchased Assets and for those Designated Executory Contracts that are included in a Successful Bid, within two (2) days after the conclusion of the auction for the Purchased Assets, the Debtors will serve a notice identifying the Successful Bidder to the non-debtor parties to the Designated Executory Contracts that have been identified in such Successful Bid. The Debtors request that objections by a non-debtor party to the Designated Executory Contracts to the assumption, assignment and/or transfer of such Designated Executory Contract solely on the issue of whether the Successful Bidder can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code be filed and served on or before the Adequate Assurance Objection Deadline.

53. Thus, the Debtors request that the assumption, assignment and/or transfer of the Designated Executory Contracts should be approved.

F. Relief from the Ten-Day Waiting Periods Under Bankruptcy Rules 6004(h) and 6006(d) is Appropriate

54. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Similarly, Bankruptcy Rule 6006(d) provides that an “order authorizing the trustee to assign an executory contract or unexpired lease . . . is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.” The Debtors request that the Bidding Procedures Order and the Sale Order be effective immediately by providing that the fourteen (14) day stays under Bankruptcy Rules 6004(h) and 6006(d) are waived.

55. The purpose of Bankruptcy Rules 6004(h) and 6006(d) is to provide sufficient time for an objecting party to appeal before an order can be implemented. See Advisory Committee Notes to Fed. R. Banks. P. 6004(h) and 6006(d). Although Bankruptcy Rules 6004(h) and 6006(d) and the Advisory Committee Notes are silent as to when a court should “order otherwise” and eliminate or reduce the ten-day stay period, Collier on Bankruptcy suggests that the [fourteen (14)] day stay period should be eliminated to allow a sale or other transaction to close immediately “where there has been no objection to the procedure.” 10 COLLIER ON BANKRUPTCY ¶6064.09 (L. King, 15th rev. ed. 1988). Furthermore, Collier’s provides that if an objection is filed and overruled, and the objecting party informs the Court of its intent to appeal, the stay may be reduced to the amount of time actually necessary to file such appeal. Id.

56. Accordingly, the Debtors hereby request that the Court waive the ten-day stay period under Bankruptcy Rules 6004(h) and 6006(d).

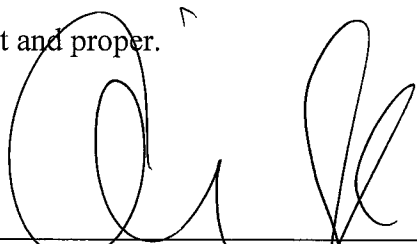
NOTICE

57. Notice of this Motion will be given to: (a) the United States Trustee for the District of Delaware; (b) counsel to the agent for the Debtors' prepetition secured lenders; (c) the Debtors' forty (40) largest unsecured creditors on a consolidated basis; (d) counsel to the Potential Purchaser; and (e) all parties known to hold a lien on the Debtors' assets. The Debtors submit that, under the circumstances, no other or further notice is required.

CONCLUSION

WHEREFORE, the Debtors respectfully request: (a) entry of the proposed Bidding Procedures Order, substantially in the form attached hereto as Exhibit B; (b) entry of the proposed Sale Order, substantially in the form to be submitted by the Debtors; and (c) such other and further relief as the Court deems just and proper.

Dated: September 21, 2010
Wilmington, Delaware



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