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AEQUITAS MANAGEMENT, LLC; AEQUITAS HOLDINGS, LLC; AEQUITAS COMMERCIAL FINANCE, LLC; AEQUITAS CAPITAL MANAGEMENT, INC.; AEQUITAS INVESTMENT MANAGEMENT, LLC

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

AEQUITAS MANAGEMENT, LLC;

No. 3:16-cv-00438-PK

RECEIVER'S MOTION FOR ORDERS: (1)
SCHEDULING HEARING TO APPROVE
SALE OF ASSETS; (2) APPROVING
SILVERMINE MEDIA HOLDINGS, LLC,
AS STALKING HORSE BIDDER; (3)
APPROVING BREAK-UP FEE; (4)



AEQUITAS HOLDINGS, LLC;
 AEQUITAS COMMERCIAL FINANCE,
 LLC; AEQUITAS CAPITAL
 MANAGEMENT, INC.; AEQUITAS
 INVESTMENT MANAGEMENT, LLC;
 ROBERT J. JESENIK, BRIAN A. OLIVER;
 and N. SCOTT GILLIS,

APPROVING BIDDING PROCEDURES;
 and (5) APPROVING THE SALE OF
 ASSETS FREE AND CLEAR OF ALL
 LIENS, CLAIMS, ENCUMBRANCES AND
 INTERESTS
 (Synchronex, LLC)

Defendants.

LR 7-1 CERTIFICATION

On April 10, 2018, the undersigned circulated to the approximately 70 counsel of record, via email, a version of this motion (and supporting declaration and proposed form of order) that is substantially the same as this filed version. The conferral requested that counsel respond by 12:00 noon (Pacific Time) on April 16, 2018, as to whether their clients object or consent to the motion. As of the time of filing this motion the undersigned had received no consents and no objections.

OVERVIEW AND MOTION

Ronald F. Greenspan, the duly appointed Receiver ("Receiver") on behalf of each of Aequitas Holdings, LLC ("AHL"), Aequitas Commercial Finance, LLC ("ACF"), Aequitas Management, LLC ("AML"), Aequitas Corporate Lending, LLC ("ACL"), and Aequitas Partner Fund, LLC ("APF") (AHL, AML, ACL and APF each a "Seller Entity," and collectively the "Seller Entities"), has entered a Purchase Agreement dated as of April 9, 2018, subject to approval of this Court, with Silvermine Media Holdings, LLC ("Stalking Horse Bidder" or "Purchaser"), which provides the terms for sale ("Sale") of the Seller Entities' (a) membership interests in Synchronex, LLC ("Company"), and (b) their lenders' interests in certain loans to Company (together, the "Assigned Interests", as defined in the Purchase Agreement). The Stalking Horse Bidder is prepared to close the Sale, subject to the terms of the Purchase Agreement, including this Court's approval of the Sale terms, the Bidding Procedures (defined below) and Break-Up Fee.

The Sale is an all cash offer in the amount of \$150,000.00, subject to a purchase price adjustment as set forth in the Purchase Agreement, a copy of which is attached as Exhibit 1 to the accompanying Declaration of Brad Foster (“Foster Decl.”).

The Receiver now moves (the “Motion”) the Court for an order 1) approving the Bidding Procedures, Stalking Horse Bidder, and Break-Up Fee, and 2) setting a Final Hearing for approval of the Sale to the Stalking Horse Bidder or a sale to a Successful Bidder after the conclusion of the auction, if any (the “Bid Procedures Order”).¹ At the Final Hearing the Receiver shall request entry of a final order approving the sale and all associated transactions and agreements (the “Final Sale Order”), after any bidding and auction process has been completed.

I. Bid Procedures Order and the Final Sale Order.

1. The Receiver moves the court for immediate entry of the Bid Procedures Order, which includes the following relief:

(a) Schedule a final hearing on June 5, 2018, or as soon thereafter as the Court can schedule the hearing to authorize and approve the sale of the Assigned Interests and all other transactions contemplated by the Purchase Agreement (the “Final Hearing”);

(b) Approval of (i) the Bidding Procedures, (ii) Purchaser as the Stalking Horse Bidder, and (iii) the Break-Up Fee, and payment thereof under the terms set forth in the Bid Procedures Order;

(c) Set a deadline and establish requirements and procedures for competing offerors to submit qualifying alternative bids, as set forth in the Bidding Procedures; and

(d) Set a deadline that is not less than three (3) business days prior to the date of the Final Hearing for filing objections to the Motion or entry of the Final Sale Order.

2. At the Final Hearing for approval of the Sale, the Receiver will ask the Court for

¹ Capitalized terms not otherwise defined in this Motion have the meanings ascribed to them in the Bid Procedures Order or the Purchase Agreement, as applicable.

entry of the Final Sale Order, which will authorize:

- (a) the sale of the Assigned Interests under the terms and conditions of an approved Purchase Agreement to the Stalking Horse Bidder, or another Successful Bidder, free and clear of all liens, claims, encumbrances and interests ("Liens"); and
 - (b) authorize any additional relief consistent with the foregoing and as necessary to allow the approved transaction to be consummated.
3. At the Final Hearing the Receiver will also request that the Court find that:
- (a) the proposed Sale to the Stalking Horse Bidder, or sale to another Successful Bidder, is in the best interests of the Seller Entities, the Receivership Entity, and its estate and creditors;
 - (b) the proposed Sale is being proposed and, if approved, will be consummated pursuant to the terms of the approved Purchase Agreement; and
 - (c) the Stalking Horse Bidder or the Successful Bidder, if any, is not an insider or affiliate of the Receiver or the Receivership Entity.
4. This Motion is based upon the records and files herein and the accompanying Declaration of Brad Foster.

II. Procedural and Fact Background.

A. Appointment of the Receiver and Description of the Assigned Interests.

5. On March 16, 2016, pursuant to the Stipulated Interim Order Appointing Receiver, Mr. Greenspan was appointed as Receiver for the five entity defendants and 43 related entities on an interim basis (the "Interim Receivership Order") [Dkt. 30]. On April 14, 2016, pursuant to the Order Appointing Receiver, Mr. Greenspan was appointed as Receiver of the five entity defendants and 43 related entities on a final basis (the "Final Receivership").

Order”) [Dkt. 156]. The five entity defendants and the 43 related entities are known as the Receivership Entity.² (Foster Decl., ¶ 2).

6. Membership Interests in the Company. Pursuant to the Interim Receivership Order and the Final Receivership Order the Receiver has, among other things, undertaken to determine the nature, location and value of all Receivership Property. Receivership Property includes APF’s ownership of 100% of the membership interests in the Company (the “Membership Interests”). (Foster Decl., ¶ 3).

7. Loans to the Company. Receivership Property also includes certain loans held by ACL and AHL. ACL holds the lenders’ interest in the following secured loans to the Company: (a) a loan or loans in the aggregate principal amount of \$2,926,198 (the “2009 Loan”) made pursuant to a Business Loan Agreement dated May 13, 2009 between the Company and Aequitas Hybrid Fund, LLC (as assigned, and together with any related documents and amendments thereto, the “2009 Loan Agreement”); and (b) a loan or loans in the aggregate principal amount of \$1,100,000 (the “2014 Loan”) made pursuant to a Business Loan Agreement dated January 14, 2014 between the Company and ACF (as assigned, together with any related documents and amendments thereto, the “2014 Loan Agreement”). The 2009 Loan, 2009 Loan Agreement, 2014 Loan, and 2014 Loan Agreement are referred to collectively as the “ACL Loans.” (Foster Decl., ¶ 4).

8. On January 31, 2017, AHL entered into a Revolving Secured Demand Note (the “2017 Loan Agreement”) with the Company pursuant to which the Company is entitled to borrow up to \$100,000 and pursuant to which \$75,000 is currently borrowed thereunder (the total amount payable under the 2017 Loan Agreement being referred to herein as the “2017 Loan”). The 2017 Loan and 2017 Loan Agreement are referred to collectively as the “AHL Loan.” (Foster Decl., ¶ 5).

² Final Receivership Order, ¶ 1.

9. Purchaser is a specialty investment partnership focused in the communications, technology, and alternative energy sectors. (Foster Decl., ¶ 7).

10. The Purchase Agreement is the result of extensive exposure of Synchronex to the market. Since March 2016 Synchronex has pursued potential acquirers. Over 20 companies were contacted, of which 13 had initial discussions and an executive overview. Of that group, 11 signed non-disclosure agreements and had further discussions. Eight (8) of those companies were provided financial information and vice proceeded with in-depth presentations. A deadline of April 14, 2017, was established for submission of indications of interest, and only one company, ePublishing, did so. The parties entered an exclusivity agreement, but that agreement expired in July 2017. Ultimately, the Receiver reached agreement with Purchaser on the terms set forth in the Purchase Agreement. (Foster Decl., ¶ 8).

11. The Receiver seeks also authority to implement bidding and auction procedures to ensure that the Receivership Entity will obtain the best return possible for the Assigned Interests. Therefore the Receiver requests that the Court enter a Bid Procedures Order approving the procedures (the “Bidding Procedures”) in connection with the Purchase Agreement and the proposed Sale to the Stalking Horse Bidder. The Bidding Procedures are detailed in the proposed Bid Procedures Order submitted herewith. (Foster Decl., ¶ 9).

B. Proposed Terms of Sale.

12. Pursuant to the Purchase Agreement the material terms of the Sale will include the following:

- (a) Property to be Sold: the Assigned Interests (as defined in the Purchase Agreement), including the Membership Interests, the ACL Loans, and the AHL Loan.
- (b) Owners of the Assigned Interests:

Receivership Entity	Assigned Interest
Aequitas Partner Fund, LLC	100% of the membership interests in Synchronex, LLC
Aequitas Corporate Lending LLC	2009 Loan
Aequitas Corporate Lending LLC	2014 Loan
Aequitas Holdings LLC	2017 Loan

- (c) Purchase Price: \$150,000, subject to a purchase price adjustment as set forth in Sections 2 and 8 of the Purchase Agreement
- (d) Principal Conditions to Purchaser's Obligation to Close: The conditions to the Purchaser's obligation to close the Sale are set forth in Section 5 of the Purchase Agreement, and include (a) the NewsCycle Agreement shall be in full force and effect, (b) the Purchaser shall have entered into agreements with Michael Pirello and Ronald Pirello amending their existing employment agreements, and (c) the Final Sale Order shall be entered, effective, and non-appealable.
- (e) Purchaser: Silvermine Media Holdings, LLC.
- (f) Buyer's Relation to Receivership Entity or Receiver: None.
- (g) Higher and Better Offers. The Purchase Agreement will be subject to the submission by third parties of higher or better offers as set forth in the Bid Procedures Order. In order for other bidders to submit a Qualified Alternative Bid the bid must, among other requirements, be an all cash offer that is not less than \$60,000 more than the Stalking Horse Bidder's offer, or \$210,000. The minimum overbid is \$10,000 more than the break-up fee of \$50,000 (the "Break-Up Fee"), and therefore will still yield not less than \$10,000 in additional net sale proceeds for the Receivership Entity.

- (h) Closing Deadline: June 15, 2018.
- (i) The Stalking Horse Bidder's offer is not subject to any finance or due diligence conditions.
- (j) Limited representations and warranties, with standard covenants, indemnities and closing conditions for the purchase of the Assigned Interests.

(Foster Decl., ¶ 10).

13. The Purchase Price represents fair value for the Assigned Interests. The proposed Sale delivers substantial value to the Receivership Entity, and its creditors and equity owners, including:

- (a) Estimated recovery of \$150,000 for the Receivership Entity and its stakeholders;
- (b) Substantial savings in not incurring the costs of an investment banker; and
- (c) The auction and overbid component of the proposed Sale ensure that the \$150,000 purchase price for the Assigned Interests is the market rate. If competitive bids are received, the benefit to the Receivership Entity and its creditors and investors will only increase.

(Foster Decl., ¶ 11).

14. The negotiations over the terms of the Sale were arm's-length and will be subject to the competitive process outlined below. The Receiver and his representatives participated personally in those negotiations. The Receiver believes that Purchaser has at all times acted in good faith in connection with the sales process. The Purchase Agreement was proposed and negotiated in good faith after arm's-length bargaining by the parties. The negotiation of the Purchase Agreement was extensive and protracted. All of the material terms of the proposed Sale are disclosed. No side agreements exist between or among any party to the transaction,

and there is no relationship between the Seller and Purchaser. (Foster Decl., ¶ 12).

15. If a Qualified Alternative Bid is received, then after the completion of the auction process the Receiver will, in the sole exercise of his business judgment, determine the highest and best bid for the Assigned Interests.

C. The Terms of the Bidding Procedures and Break-Up Fee.³

16. Purchaser will be designated as the “Stalking Horse” bidder for thirty (30) calendar days after the date of entry of the Bid Procedures Order (the Notice Period, defined below). (Foster Decl., ¶ 13).

17. During the Notice Period, the Purchase Agreement is subject to the submission by third parties of higher or better offers as set forth in the Bid Procedures Order. In order for an alternative bid to be a Qualified Alternative Bid, the bid must, among other things: (a) be made not later than 12:00 Noon Pacific Time on the last day of the Notice Period, (b) be in an amount that is not less than \$210,000, to be paid in cash (but which may be made subject to a purchase price adjustment), (c) provide for the purchase of all of the Assigned Interests on substantially the same or better terms (as determined in the Receiver’s sole discretion) as those set forth in the Purchase Agreement, and (d) include proof, reasonably satisfactory to the Receiver in his sole discretion, of the bidder’s ability to close. (Foster Decl., ¶ 14).

18. If (a) the Receiver accepts a Qualified Alternative Bid and the Qualified Alternative Bid transaction closes, or (b) the Purchaser terminates the Purchase Agreement as a result of a material breach by any Seller Entity of the Purchase Agreement, then Purchaser will be entitled to payment of \$50,000 in cash (the “Break-Up Fee”). The Break-Up Fee shall be due within five (5) days following the earlier to occur of the closing of the sale of the Assigned Interests to a third party bidder and the receipt by the Seller Entities of a written notice of breach

³ If there is any inconsistency or contradiction between the bidding procedures described in this Motion and the Bidding Procedures set forth in the Bid Procedures Order, the terms of the Bid Procedures Order shall control.

that entitles the Purchaser to payment of the Break-Up Fee that is not contested in good faith by the Receiver on behalf of any of the Seller Entities. (Foster Decl., ¶ 15).

19. The Receiver shall be entitled to solicit additional offers for the Assigned Interests from prospective bidders (each, an “Alternative Bid”) for 30 calendar days following the date of entry of the Bid Procedures Order (the “Notice Period”) and, subject to the receipt from the prospective bidders of appropriate confidentiality agreements, provide necessary and requested due diligence to such prospective bidders. The Receiver proposes the following terms and procedures to govern the submission of Alternative Bids for the Assigned Interests:

- (i) Alternative Bid Deadline. Each Alternative Bid must be provided to the Receiver not later than 12:00 Noon Pacific Time on the date that the Notice Period expires (the “Bid Deadline”).
- (ii) Qualified Alternative Bid. The Receiver will consider an Alternative Bid only if the Alternative Bid is a “Qualified Alternative Bid.” Without limiting or altering the terms of the Purchase Agreement, to be a Qualified Alternative Bid, an Alternative Bid must:
 - a. identify the proponent of the Alternative Bid and an officer or representative who is duly authorized in all respects to appear, act on behalf of, and legally bind such proponent (an “Authorized Representative”);
 - b. provide for the purchase of all of the Assigned Interests, and shall otherwise be on substantially the same or better terms as those set forth in the Purchase Agreement, in the Receiver’s sole discretion; provided, however, that an Alternative Bid shall not provide for the payment of a break-up fee or overbid protections because no bidders other than the Stalking Horse Bidder will be entitled to receive a break-up fee and/or any reimbursement of expenses or transaction costs;
 - c. be accompanied by an executed purchase and sale agreement in the form substantially the same as the Purchase Agreement, except that the structure may be changed so long as the cash delivered to the Seller Entities at closing is not less than \$210,000 (subject to any applicable purchase price adjustment), inclusive of the Break-Up Fee;

- d. be a firm offer and not contain any contingencies other than those contained in the Purchase Agreement, to the validity, effectiveness or binding nature of the offer, including without limitation, contingencies for financing, due diligence or inspection;
- e. be accompanied by a cash deposit of not less than \$50,000 and financial information for the prospective bidder, including but not limited to financial statements including the prospective bidder's balance sheet or such other information sufficient to enable the Receiver to determine such bidder's creditworthiness and ability to pay the purchase price and close a sale; provided, however, determination that the bidder has met this qualification shall be in the sole discretion of the Receiver;
- f. be open and irrevocable through the conclusion of hearing for entry of a Final Sale Order unless (i) extended by agreement of the parties or the terms of these Bidding Procedures, or (ii) the Qualified Alternative Bid is designated a Back-Up Bid, which shall then remain open until twenty (20) calendar days following the date that the Final Sale Order becomes a non-appealable order.

(Foster Decl., ¶ 16).

20. If the Receiver receives one or more Qualified Alternative Bids, the Receiver shall conduct an auction (the "Auction") at the offices of Schwabe, Williamson & Wyatt, 1211 SW Fifth Avenue, Suite 1900, Portland, OR 97204 at 10:00 a.m. (Pacific time) on the fifth (5th) business day following the expiration of the Notice Period, or such later time and date and/or such other place as the Receiver shall notify all bidders who have submitted Qualified Alternative Bids (together, "Qualified Alternative Bidders") and the Stalking Horse Bidder. The following procedures will apply to the Auction:

- (i) Only the following parties and their counsel shall be permitted to attend the Auction: the Stalking Horse Bidder, Qualified Alternative Bidders, and the Receiver. Only the Stalking Horse Bidder and Qualified Alternative Bidders, including through their counsel, shall be permitted to make any additional bids ("Subsequent Bids") at the Auction.
- (ii) All Qualified Alternative Bidders that desire to participate in the Auction shall have their Authorized Representatives physically present for all bidding, each with the understanding that the true identity of each Qualified Alternative Bidder shall be fully disclosed to all other Qualified

Alternative Bidders and that all material terms, including but not limited to the amount, of each bid will be fully disclosed to all other bidders throughout the entire Auction.

- (iii) The Receiver will give the Stalking Horse Bidder, all other Qualified Alternative Bidders, and their counsel a copy of the highest and best Qualified Alternative Bid received and copies of all other Qualified Alternative Bids prior to the start of the Auction. In addition, the Receiver will inform the Stalking Horse Bidder and each Qualified Alternative Bidder who has expressed its intent to participate in the Auction of the identity of all Qualified Alternative Bidders that may participate in the Auction.
- (iv) Prior to the start of the Auction the Authorized Representative of the Stalking Horse Bidder and each Qualified Alternative Bidder shall certify, in writing or on the record, as follows:
 - (a) Each bid it makes at the Auction shall, if accepted by the Receiver, constitute a binding and legally enforceable contract of the bidder to timely close a purchase of the Assigned Interests according to the terms of the bid in the event an order of the Court is entered approving a sale based upon such bid.
 - (b) No bids made by the Stalking Horse Bidder or a Qualified Alternative Bidder, whether before or during the Auction, shall be subject to any conditions or contingencies related to due diligence, financing, or any other further approval other than the Authorized Representative present at the Auction.
 - (c) The Authorized Representative present for the Stalking Horse Bidder or a Qualified Alternative Bidder at the Auction has the full power and authority to act on behalf of and to legally bind the Stalking Horse Bidder or such Qualified Alternative Bidder for any bids made, and any agreements entered into at or in connection with the Auction.
 - (d) The Stalking Horse Bidder and each Qualified Alternative Bidder that participates in the Auction shall authorize the Receiver to conditionally accept such bidder's second-highest bid at the Auction as a back—up to the Successful Bid, which shall become binding upon and enforceable against such bidder in the event that the Successful Bid is approved by the Court, but such Successful Bidder fails or otherwise refuses to close its purchase of the Assigned Interests for any reason other than a material failure of

performance by the Seller.

- (e) That the Stalking Horse Bidder and each Qualified Alternative Bidder has at all times proceeded in good faith in submitting its bids, and has not engaged in any collusion with any other person or bidder with respect to the Auction and related proceedings.

(Foster Decl., ¶ 17).

21. The Receiver shall have reasonable discretion with respect to the conduct of the Auction. Among other things, the Receiver may announce at the Auction additional procedural rules that he determines to be reasonable under the circumstances (e.g. the amount of time allotted to make subsequent alternative bids) for conducting the Auction so long as such additional rules are not materially inconsistent with the Bidding Procedures and the terms, deadlines, and intent of the Purchase Agreement.

- (i) At the Auction, bidding shall begin with the highest and best Qualified Alternative Bid (the “Initial Overbidder”). The Receiver will identify the Initial Overbidder at the beginning of the Auction. Any subsequent bids must be at least \$10,000 more than the immediately preceding bid and each such increment (including the initial increment over the Purchase Price) must be payable in cash (“Minimum Subsequent Overbid Amount”). In any of its subsequent bids, the Stalking Horse Bidder shall be entitled to credit bid up to the sum of the Break-Up Fee, provided that the Stalking Horse Bidder shall recover the sum of the Break-Up Fee directly from, and only from, the cash paid by the Successful Bidder in the event that the Court enters a sale order authorizing a sale of the Assigned Interests to a buyer other than the Stalking Horse Bidder.
- (ii) The Auction, at the discretion of the Receiver, shall be recorded by stenographer or other reliable means of preserving the record of the Auction proceedings, and shall continue in one or more rounds of “open cry,” or publically announced bidding and shall conclude after each participating bidder has had the opportunity, within any time period specified by the Receiver, to submit an additional Subsequent Bid with full knowledge of the then-existing highest bid.
- (iii) For the purpose of evaluating the value of the consideration provided by

each Subsequent Bid (including any Subsequent Bid by the Stalking Horse Bidder), the value shall be the net cash consideration payable to the Seller after giving effect to the Break-Up Fee that may be payable to the Stalking Horse Bidder under the Purchase Agreement and the Bid Procedures Order.

- (iv) At the conclusion of the bidding, the Receiver shall announce his determination (pursuant to the following paragraph) as to the bidder (the “Successful Bidder”) submitting the highest and best bid (the “Successful Bid”), which shall be submitted to the Court for approval at the Final Hearing. The Stalking Horse Bidder shall be deemed a party-in-interest with standing to appear and be heard in connection with any motions, objections, hearings, or other proceedings related to this Motion, the Purchase Agreement, the Auction, and any Qualified Alternative Bid, Subsequent Bid, or the Successful Bid.
- (v) In determining the Successful Bid to submit to the Court for approval, the Receiver, in his sole discretion and in consultation with his professionals, shall determine whether a Qualified Alternative Bid constitutes a higher and better offer than the bid of the Stalking Horse Bidder. In making that determination, the Receiver may consider any and all factors associated with all Qualified Alternative Bids and Qualified Alternative Bidders, including but not limited to factors such as the likelihood and ability of the proposed buyer(s) to immediately consummate and close the proposed transactions, other timing issues, employment issues, overall value of the Qualified Alternative Bids, and any other material factors.
- (vi) The Court shall set a deadline in the Bid Procedures Order for filing objections to the Motion or entry of the Final Sale Order (the “Objection Deadline”). Any objections to the Motion or entry of the Final Sale Order that are not filed with the Court by the Objection Deadline shall be deemed irrevocably waived and withdrawn.
- (vii) If the Receiver does not timely receive any Qualified Alternative Bids, the Receiver shall forthwith cancel the Auction and Final Hearing, and promptly present the Final Sale Order for entry by the Court.
- (viii) If, following the entry of the Final Sale Order approving a sale to the Successful Bidder, such Successful Bidder fails or otherwise refuses to consummate such sale, then the next highest or best bid shall be deemed as the back-up bid (the “Back-Up Bid” and, such bidder, the “Back-Up Bidder”) and the Seller will be obligated to effectuate a sale to the Back-Up Bidder subject to the terms of the Back-Up Bid without further order of the Court. The Back-Up Bid shall remain open until twenty (20)

calendar days following the date that the Final Sale Order becomes a non-appealable order. All Qualified Alternative Bids (other than the Successful Bid and the Back-Up Bid) shall be deemed rejected by the Receiver on and as of the date of entry of the Final Sale Order by the Court.

(Foster Decl., ¶ 18).

III. Points and Authorities.

22. Pursuant to the Final Receivership Order, the Receiver may sell assets “outside the ordinary course of business...only with Court approval after reasonable notice under the circumstances and an opportunity for interested parties to be heard.” (Final Receivership Order, ¶ 26). Here, sale of the Assigned Interests is outside of the ordinary course of the Receivership Entity’s business, so this Court’s approval is required.

23. Estate assets such as the Assigned Interests may be sold “free and clear of any liens, claims or encumbrances, with such liens, claims or encumbrances attaching to the proceeds” of sale. (*Id.*). Pursuant to the Final Receivership Order, the Sale of the Assigned Interests shall be free and clear of any and all Liens. In connection with the closing of the Sale and the satisfaction of the conditions contemplated therein, all Liens as of the date of the closing of the Sale shall be released as against the Assigned Interests, and shall attach to the proceeds of Sale to the same extent, validity, and priority as they attached to the Assigned Interests. (Foster Decl., ¶ 24).

24. To the best of the Receiver’s knowledge, after diligent investigation, there are no Liens against the Assigned Interests, other than the following: the security interest of Terrell Group Management LLC (“TGM”) in substantially all of the assets of ACL, including the ACL Loans. Following the Sale of the Assigned Interests, (a) TGM shall hold a replacement security interest in the proceeds of the ACL Loans (the “Loan Proceeds”) to the same extent, validity, perfection and priority that it holds a security interest in the ACL Loans, (b) the Receiver shall deposit Loan Proceeds in a segregated, non-interest bearing bank deposit account, and (c) the

Receiver shall not withdraw or use the Loan Proceeds for any purpose other than payment of TGM's claims without either TGM's consent or further order of this Court. (Foster Decl., ¶ 25).

25. The Receiver's proposed sale of the Assigned Interests free and clear of Liens is comparable to a bankruptcy trustee's sale of assets in a bankruptcy proceeding under Section 363 of the Bankruptcy Code. 11 USC § 363. That section authorizes a trustee, "after notice and a hearing, [to] use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 USC § 363(b)(1). This provision generally allows a debtor in possession to sell property of the estate outside the ordinary course of business where the proposed sale is within the sound exercise of the trustee's business judgment and when the sale is proposed in good faith and for fair value. *See In re Lionel Corp.*, 722 F2d 1063, 1070-71 (2nd Cir 1983). When a trustee or debtor articulates a reasonable basis for its business decisions, the "court will generally not entertain objections to the debtor's conduct." *In re Johns-Manville Corp.*, 60 BR 612, 616 (Bankr SDNY 1986).

26. The Sale is proposed in good faith. "Typically, the misconduct that would destroy a buyer's good faith status at a judicial sale involves fraud, collusion between the buyer and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders." *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F2d 143, 147 (3d Cir 1986) (quoting *In re Rock Indus. Mach. Corp.*, 572, F2d 1195, 1198 (7th Cir 1978)). Here, the Purchase Agreement was proposed and negotiated in good faith after arm's-length bargaining by the parties. The negotiation of the Purchase Agreement was extensive and protracted. All of the material terms of the proposed Sale are disclosed. No side agreements exist between or among any party to the transaction, and there is no relationship between the Seller and the Stalking Horse Bidder.

27. The proposed Sale is contractually subject to the Receiver's receipt of higher and better offers through a bidding and auction process. The Receiver seeks authority to implement procedures to ensure that the Receivership Entity will obtain the best return possible.

28. The proposed Bidding Procedures are in the best interest of the Receivership Entity, and its creditors and investors. The Bidding Procedures are designed to strike a balance between inviting competing bids and enabling the Receiver to close a sale with the Stalking Horse Bidder within a reasonable time frame. (Foster Decl., ¶ 19).

29. The Break-Up Fee is supported by the Stalking Horse Bidder incurring and paying the legal and business expenses associated with the significant negotiating and drafting efforts to reach the Purchase Agreement. Purchaser also communicated in the negotiation process that it was not willing to move forward with negotiations if a break-up fee was not part of the agreement. (Foster Decl., ¶ 20).

30. Here, the Break-Up Fee was an integral part of the Stalking Horse Bidder's offer. In fact, the Stalking Horse Bidder's offer to purchase the Assigned Interests was and remains conditioned on the Court's approval of the Break-Up Fee. The Receiver submits that the Stalking Horse Bidder should be reasonably reimbursed for its willingness to assume the role of the "stalking horse" as it is the only party ready and willing to serve in such role for all of the Assigned Interests. Accordingly, the Receiver respectfully submits that this Court should authorize and approve the Bidding Procedures, including the Break-Up Fee. (Foster Decl., ¶ 21).

31. The Bidding Procedures are fair, reasonable and necessary to promote the highest and best sale price, without imposing undue obstacles to the competitive bid process. Further, a receiver often employs bidding protections in order to encourage the making of an original offer subject to higher and/or better offers and ultimately to increase value. (Foster Decl., ¶ 22).

32. Purchaser has no known relation to the Receiver or the Receivership Entity. (Foster Decl., ¶ 23).

33. In short, the Sale is an arm's-length transaction, proposed in the sound exercise of the Receiver's business judgment, in good faith and for fair value. The Sale is in the best interests of the Receivership Entity, and its creditors and investors.

IV. Conclusion.

1. For the foregoing reasons, the Receiver respectfully requests that this Court immediately enter the Bid Procedures Order (substantially in the form submitted herewith):

- (a) Scheduling the Final Hearing on June 5, 2018, or as soon thereafter as the Court can schedule the Final Hearing;
- (b) Approving (i) the Bidding Procedures, (ii) Purchaser as the “stalking horse bidder”, and (iii) the Break-Up Fee and payment thereof under the terms set forth in the Bid Procedures Order;
- (c) Setting a deadline and establishing requirements and procedures for competing offerors to submit Qualified Alternative Bids, as set forth in the Bidding Procedures; and
- (d) Setting a deadline that is not less than three (3) business days prior to the Final Hearing date for filing objections to the Motion or entry of the Final Sale Order.

2. The Receiver further requests that the Court, at the Final Hearing, enter the Final Sale Order, which will request the following:

- (a) Authorize and approve the Purchase Agreement; and
- (b) Authorize the sale of the Assigned Interests under the terms and conditions of the Purchase Agreement to the Stalking Horse Bidder, or another Successful Bidder, free and clear of all Liens, and authorize any additional relief consistent with the foregoing and as necessary to allow the proposed transaction to be consummated.

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Dated this 16th day of April, 2018.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT, P.C.

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