

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

PROTERRA INC, *et al.*,<sup>1</sup>

Debtors.

)  
) Chapter 11  
)  
) Case No. 23-11120 (BLS)  
)  
) (Jointly Administered)  
)  
) **Re: Docket Nos. 36 & 218**  
)

**NOTICE OF FILING OF PROPOSED SALE ORDER**

**PLEASE TAKE NOTICE** that on August 8, 2023, the above-captioned debtors and debtors in possession (together, the “Debtors”) filed the *Debtors’ Motion for Entry of: (I) an Order (A) Approving Bidding Procedures to Govern the Sale of All or Substantially All of the Debtors’ Assets Pursuant to Section 363 of the Bankruptcy Code, (B) Approving Procedures Regarding Entry Into One or More Stalking Horse Agreements, (C) Establishing Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases, (D) Approving the Form and Manner of the Notice of Assumption and Assignment of Executory Contracts and Unexpired Leases, (E) Scheduling Auctions for the Sales of the Company Assets and Hearings to Consider Approval of the Sales and Approving the Form and Manner of the Notice Thereof, (F) Approving Certain Wind-Down Procedures, and (G) Granting Related Relief; and (II) an Order (A) Authorizing and Approving the Debtors’ Entry Into One or More Asset Purchase Agreements, (B) Authorizing the Sale of All or Substantially All of the Debtors’ Assets Free and Clear of Liens, (C) Approving the Assumption and Assignment of the Assumed Executory Contracts and Unexpired Leases, and (D) Granting Related Relief* [Docket No. 36] (the “Motion”).<sup>2</sup>

**PLEASE TAKE FURTHER NOTICE** that, on September 7, 2023, the Court entered an order approving the Motion [D.I. 218] (the “Bidding Procedures Order”).

**PLEASE TAKE FURTHER NOTICE** that, in accordance with the Bidding Procedures, attached to the Bidding Procedures Order as Exhibit 1, the Debtors hereby file a proposed order (the “Proposed Sale Order”), approving the sale of substantially all of the Debtors’ assets, a copy of which is attached hereto as **Exhibit A**. The Debtors will also file a form of proposed asset purchase agreement, which will be accessible at <https://www.kccllc.net/proterra>.

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Proterra Inc (9565); and Proterra Operating Company, Inc. (8459). The location of the Debtors’ service address is: 1815 Rollins Road, Burlingame, California 94010.

<sup>2</sup> All capitalized terms used but not otherwise defined herein shall be given the meanings ascribed to them in the Motion.



**PLEASE TAKE FURTHER NOTICE** that, the Proposed Sale Order attached hereto remains subject to further review and revision by the Debtors and other interested parties in all respects, and all rights are reserved in connection therewith.

Dated: September 25, 2023  
Wilmington, Delaware

Respectfully submitted,

**YOUNG CONAWAY STARGATT &  
TAYLOR, LLP**

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*Counsel to the Debtors and  
Debtors in Possession*

**EXHIBIT A**

**Proposed Sale Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:

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**[PROPOSED] ORDER (A) AUTHORIZING  
AND APPROVING THE DEBTORS' ENTRY  
INTO THE ASSET PURCHASE AGREEMENT,  
(B) AUTHORIZING THE SALE OF THE DEBTORS'  
ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS,  
INTERESTS, AND ENCUMBRANCES, (C) APPROVING THE  
ASSUMPTION AND ASSIGNMENT OF THE ASSUMED EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES, AND (D) GRANTING RELATED RELIEF**

Upon consideration of the motion [Docket No. 36] (the "Motion")<sup>2</sup> of the above-captioned debtors and debtors-in-possession (collectively, the "Debtors") for the entry of an order (this "Order") (a) authorizing and approving the Debtors' entry into the Asset Purchase Agreement, substantially in the form attached hereto as **Exhibit A** (the "APA") between the Debtors, as sellers, and [•], as buyer (the "Buyer"), (b) authorizing the sale (the "Sale") of the Debtors' assets set forth in the APA (the "Assets") pursuant to the APA, free and clear of all liens, claims, interests, and encumbrances, (c) approving the Debtors' assumption and assignment of the assumed executory contracts and unexpired leases to the Qualified Bidder with the highest or otherwise best Bid (as defined in the Bidding Procedures) at the Auction (the "Successful Bidder"), and (d) granting

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Protterra Inc (9565); and Protterra Operating Company, Inc. (8459). The location of the Debtors' service address is: 1815 Rollins Road, Burlingame, California 94010.

<sup>2</sup> Capitalized terms used but not otherwise defined herein are to be given the meanings ascribed to them in the Motion.

related relief; and this Court having entered the *Order (A) Approving Bidding Procedures to Govern the Sale of All Or Substantially All of the Debtors' Assets Pursuant to Section 363 of the Bankruptcy Code, (B) Approving Procedures Regarding Entry Into One or More Stalking Horse Agreements, (C) Establishing Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases, (D) Approving the Form and Manner of the Notice of Assumption and Assignment of Executory Contracts and Unexpired Leases, (E) Scheduling Auctions for the Sales of the Company Assets and Hearings to Consider Approval of the Sales and Approving the Form and Manner of the Notice Thereof, and (F) Granting Related Relief* [Docket No. 218] (the “Bidding Procedures Order”); and the Debtors having determined (after consultation with the Consultation Parties (as defined in the Bidding Procedures Order) and in accordance with the Bidding Procedures) that the highest or otherwise best offer for the Assets was made by the Buyer pursuant to the APA; and this Court having conducted a hearing on November [1/28], 2023 (the “Sale Hearing”), at which time all parties in interest were offered an opportunity to be heard with respect to the Sale and to consider the approval of the Sale pursuant to the terms and conditions of the APA, and this Court having considered: (i) the Motion and any objections thereto; (ii) the Sale; (iii) the arguments of counsel made at the Sale Hearing, and evidence adduced, related thereto; and (iv) the record of the Sale Hearing held before this Court; and all parties in interest having been heard, or having had the opportunity to be heard, regarding the approval of the APA, the Sale, and the other transactions contemplated by the APA; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and upon the Sale Declaration; and upon the declaration of John Kimm in support of the Sale [Docket No. [•]] (the “Kimm Declaration”) and the declaration of [Buyer Representative] [Docket No. [•]] (the “[•] Declaration”); and this Court having jurisdiction over

this matter pursuant to 28 U.S.C. §§ 157 and 1334(b) and the Amended Standing Order; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of these proceedings and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion and at the Sale Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor:

**IT IS HEREBY FOUND AND DETERMINED THAT:<sup>3</sup>**

**Statutory Predicates; Final Order**

A. The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to these chapter 11 cases pursuant to Bankruptcy Rule 9014.

B. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334(b), and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b) and this Court may enter a final order consistent with Article III of the United States

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<sup>3</sup> To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

Constitution. Venue of these chapter 11 cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. The statutory bases for the relief requested in the Motion are sections 105, 363, 365, 503, and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, and 6006 and Local Rules 2002-1 and 6004-1.

D. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h), 6006(d), and 7062, and to the extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, this Court expressly finds that there is no just reason for delay in the implementation of this Order and expressly directs entry of this Order as set forth herein which shall not be subject to any stay.

### **Notice**

E. This Court previously entered the Bidding Procedures Order approving, among other things, the Bidding Procedures and the Assumption and Assignment Procedures.

F. As evidenced by the affidavits or certificates of service and publication previously filed with this Court [Docket Nos. 83, 243, 254, 258, and [•]], demonstrated by the evidence presented at, and based on the representations of counsel at the Sale Hearing, due, proper, timely, adequate, and sufficient notice of the Motion, the Sale Hearing, the Auction, the Sale, the proposed form of this Order, and the Assumption and Assignment Procedures has been provided in accordance with sections 102(1), 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9007, and 9014 and in compliance with the Bidding Procedures Order, to each party entitled to such notice, including, as applicable: (a) all entities known to have expressed a *bona fide* interest in a transaction with respect to the Debtors' assets (the "Company Assets") or

any Business Line; (b) all entities known to have asserted any lien, claim, or encumbrance in or upon any assets comprising the Company Assets; (c) all federal, state, and local environmental, regulatory, or taxing authorities or recording offices which have a reasonably known interest in the relief requested by this Motion; (d) known counterparties to any unexpired leases or executory contracts that could potentially be assumed and assigned to a Successful Bidder; (e) all known creditors of the Debtors; (f) the Office of the United States Trustee for the District of Delaware; (g) all taxing authorities having jurisdiction over any of the Company Assets, including the Internal Revenue Service; (h) the Securities and Exchange Commission; (i) the Office of the United States Attorney for the District of Delaware; (j) counsel to the Official Committee of Unsecured Creditors appointed on August 24, 2023, and subsequently reconstituted on September 21, 2023 (the “Committee”); and (k) all persons and entities (both as defined in the Bankruptcy Code) that have filed a request for service of filings in these chapter 11 cases pursuant to Bankruptcy Rule 2002. With respect to persons or entities whose identities are not reasonably ascertained by the Debtors, publication of the Sale Notice in *The New York Times* on September 11, 2023, as evidenced by the affidavit of publication filed by the Debtors at Docket No. 243 in these chapter 11 cases, was, and is deemed, sufficient and reasonably calculated under the circumstances to reach such persons or entities. The notices described above, in the Motion, and Bidding Procedures Order were good, sufficient, and appropriate under the circumstances, and reasonably calculated to reach and apprise all known and unknown holders of liens, claims, and encumbrances, and no other or further notice of the Motion, the Auction, the Sale, the Sale Hearing, the potential assumption and assignment of the contracts and leases to the Successful Bidder is, or shall be, required.

G. The Sale Notice provided all interested parties with timely and proper notice of the Sale, Bid Deadline (as defined in the Bidding Procedures), Auction, and Sale Hearing. Further, a



reasonable opportunity to object to and to be heard regarding the relief granted by this Order has been afforded to parties entitled to notice pursuant to Bankruptcy Rule 6004(a).

H. In accordance with the Bidding Procedures Order, and as evidenced by the affidavits or declarations of service and publication previously filed with this Court [Docket No. [•]], on September 25, 2023, the Debtors filed and have served the *Notice of Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and Proposed Cure Amounts* [Docket No. [•]] (the “Cure Notice”) regarding the potential assumption and assignment of certain Contracts and of the amount necessary to cure any defaults pursuant to section 365(b) of the Bankruptcy Code (all such amounts in connection with any Contract, the “Cure Amounts”) upon the Non-Debtor Counterparties to the Contracts. The service and provision of the Cure Notice was good, sufficient, and appropriate under the circumstances and no further notice need be given in respect of assumption and assignment of certain contracts and leases designated by the Buyer pursuant to the APA attached hereto as **Exhibit B** (each an “Assumed Contract” and collectively, the “Assumed Contracts”), including with respect to adequate assurance of future performance or establishing a Cure Amount for the respective Contracts; *provided, however*, that the Debtors and the Buyer reserve their rights, in accordance with the terms of the APA and this Order, to add or remove Assumed Contracts from **Exhibit B** prior to the Closing. All Non-Debtor Counterparties to each Assumed Contract set forth in the Cure Notice have had an adequate opportunity to object to assumption and assignment of the applicable Assumed Contract and the Cure Amount set forth in the Cure Notice (including objections related to the adequate assurance of future performance and objections based on whether applicable law excuses the Non-Debtor Counterparty from accepting performance by, or rendering performance to, the Buyer for purposes of section 365(c)(1) of the Bankruptcy Code). To the extent that any

such party did not timely file a Cure/Assignment Objection by the Cure/Assignment Objection Deadline, such party shall be deemed to have consented to (i) the assumption and assignment of the Assumed Contracts and (ii) the amount set forth in the Cure Notice shall be deemed the Cure Amount necessary to “cure” all “defaults”, each within the meaning of section 365(b) of the Bankruptcy Code.

I. The Bidding Procedures established [October 16/November 6], 2023 @ 4:00 p.m. (ET) as the Bid Deadline for the submission of bids by Potential Bidders (as defined in the Bidding Procedures) for the Track [A/B] Assets and [October 19/November 9], 2023 @ 10:00 a.m. (ET) as the date on which an Auction shall take place if at least one Qualified Bid (as defined in the Bidding Procedures) is received with regard to the Assets. Prior to the Bid Deadline, the Debtors received [•] Qualified Bids, and the Auction occurred on [October 19/November 9], 2023 @ 10:00 a.m. (ET).

J. On October 20, 2023, the Debtors, in their reasonable business judgment and in consultation with the Consultation Parties, filed a notice designating the Buyer as the Successful Bidder and [•] as the Qualified Bidder with the next-highest or otherwise second-best Bid at the Auction (the “Backup Bidder”) [Docket No. [•]].

K. No further or other notice beyond that described in the foregoing Paragraphs E through J is or shall be required in connection with the relief granted in this Order.

**Highest or Otherwise Best Offer and Sound Business Purpose**

L. The Debtors conducted the sale process in accordance with, and have otherwise complied in all respects with, the Bidding Procedures Order including, but not limited to, consulting with the Consultation Parties when required. The Assets were adequately marketed by the Debtors and their advisors, and the sale process set forth in the Bidding Procedures Order

afforded a full, fair, and reasonable opportunity for any person or entity to make an offer to purchase the Assets. The Bidding Procedures annexed to the Bidding Procedures Order were non-collusive, proposed and executed in good faith as a result of arms'-length negotiations, and were substantively and procedurally fair to all parties.

M. The terms contained in the APA constitute the highest or otherwise best offer for the Assets and provide fair and reasonable consideration to the Debtors for the Assets and the assumption of the Assumed Liabilities (as defined in the APA), and the consideration provided by the Buyer under the APA constitutes reasonably equivalent value under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia. The Debtors' determination, in consultation with their advisors and the Consultation Parties, that the consideration provided by the Buyer under the APA constitutes the highest or otherwise best offer for the Assets constitutes a valid and sound exercise of the Debtors' business judgment.

N. Approval of the Motion and the APA, and the consummation of the Sale pursuant to the APA (the "Closing") contemplated thereby, are in the best interests of the Debtors, their creditors, their estates, and other parties-in-interest. The Debtors have demonstrated compelling circumstances and good, sufficient, and sound business reasons and justifications for entering into the APA and the performance of their obligations under the APA because, among other reasons: (a) the APA constitutes the highest or otherwise best offer for the Assets; (b) the APA and the closing thereon will present the best opportunity to realize the value of the Assets; and (c) any other transaction would not have yielded as favorable an economic result. [In addition, the releases set forth in Sections 11.5 and 12.16 of the APA are reasonable and appropriate and a valid exercise of the Debtors' business judgment, and the consideration provided for in the APA constitutes fair and appropriate consideration for such releases.]

O. Entry of this Order approving the APA and all of the provisions thereof is a condition precedent to the Buyer's and the Sellers' consummation of the Sale.

P. The Buyer is the Successful Bidder for the Assets in accordance with the Bidding Procedures Order. The Buyer has complied in all respects with the Bidding Procedures Order and any other applicable order of this Court in negotiating and entering into the APA, and the Sale and the APA likewise comply with the Bidding Procedures Order and any other applicable order of this Court.

Q. The Auction was properly conducted by the Debtors on [October 19/November 9], 2023 @ 10:00 a.m. (ET) in accordance with the Bidding Procedures Order and in a manner designed to result in the highest or otherwise best offer for the Assets. At the Auction, the Debtors determined in an exercise of their business judgment (after consultation with the Consultation Parties and in accordance with the Bidding Procedures) to enter into and consummate the APA.

**Sale and Transfer Free and Clear of Interests or Claims**

R. The conditions of section 363(f) of the Bankruptcy Code have been satisfied and, upon entry of this Order, other than Assumed Liabilities, Cure Amounts, and Permitted Encumbrances (as defined in the APA), the Debtors may transfer all of their right, title and interest to the Assets free and clear of (i) any and all liens, encumbrances, claims, mortgages, restrictions, hypothecations, charges, instruments, collective bargaining agreements, leases or subleases, licenses, options, deeds of trust, security interests, other interests, conditional sale or other title retention agreements, pledges, other liens (including mechanic's, materialman's, possessory and other consensual and non-consensual liens and statutory liens), judgments, demands, easements, servitudes, rights-of-way, encroachments, restrictive covenants, restrictions on transferability or other similar restrictions, rights of first refusal, offsets, contracts, rights of recovery, rights of use

or possession, and charges of any kind or nature, if any, including any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership, (ii) all claims as defined in Bankruptcy Code section 101(5), including all rights or causes of action (whether in law or equity), proceedings, warranties and warranty obligations, recall obligations, guarantees, indemnities, rights of recovery, setoff, obligations, demands, restrictions, or liabilities relating to any act or omission of the Debtors or any other person prior to the Closing, claims for reimbursement, contribution, indemnity, exoneration, products liability, labor liabilities, Employees Retirement Income Security Act of 1974 liabilities, liabilities related to the Worker Adjustment and Retraining Notification Act of 1988, certification, reporting, and recall requirements of the National Traffic and Motor Vehicle Safety Act, as amended and recodified, including by the Transportation Recall Enhancement, Accountability and Documentation Act, the Clean Air Act, the California Health and Safety Code, and similar laws (collectively, the “NTMVSA”), alter-ego, environmental, or tax, decrees of any court or foreign or domestic governmental entity, consent rights, options, contract rights, covenants, indentures, loan agreements, and interests of any kind or nature whatsoever (known or unknown, matured or unmatured, accrued, or contingent, and regardless of whether currently exercisable), whether arising prior to or subsequent to the commencement of the above-captioned cases, and whether imposed by agreement, understanding, law, equity, or otherwise, and (iii) all debts, liabilities, obligations, contractual rights and claims, labor, employment and pension claims, and debts arising in any way in connection with any agreements, acts, or failures to act, including any pension liabilities, retiree medical benefit liabilities, liabilities arising under or related to the Internal Revenue Code, of the Debtors or any of the Debtors’ predecessors or affiliates, claims, in each case, whether known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled,

noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, whether arising prior to or subsequent to the commencement of these chapter 11 cases, and whether imposed by agreement, understanding, law, equity or otherwise, including claims otherwise arising under doctrines of successor liability ((i), (ii), and (iii) collectively, the “Interests or Claims”). The Buyer would not have entered into the APA if the transfer of the Assets was not free and clear of all Interests or Claims as set forth in the APA and this Order, or if in the future the Buyer would or could be liable for any such Interests or Claims.

S. Upon entry of this Order, the Debtors are authorized to transfer all of their right, title and interest in and to the Assets free and clear of all Interests or Claims (except as otherwise assumed in, or permitted by, the APA) because one or more of the provisions set forth in section 363(f)(1)–(5) of the Bankruptcy Code has been satisfied, including that, except as otherwise expressly provided in the APA or this Order, such Interests or Claims shall attach to the proceeds of the Sale in the order of their priority, with the same validity, force, and effect which they now have against the Assets, subject to any claims and defenses the Debtors may possess with respect to such Interests or Claims. Each entity with an Interest or Claim (other than an Assumed Liability or a Permitted Encumbrance) that is attached to the Assets to be transferred on the Closing Date (as defined in the APA): (i) has, subject to the terms and conditions of this Order, consented to the Sale or is deemed to have consented to the Sale; (ii) could be compelled in a legal or equitable proceeding to accept money satisfaction of such encumbrance; or (iii) otherwise falls within the provisions of section 363(f) of the Bankruptcy Code. Those holders of Interests or Claims against the Assets who did not object or who withdrew their objections to approval of the APA or the

Motion are deemed to have consented to the transactions contemplated thereby pursuant to section 363(f)(2) of the Bankruptcy Code. For the avoidance of doubt, nothing in this Order establishes any rights or interests in the Assets (other than the Debtors' rights and interests in such Assets and the Buyer's rights and interests in the Assets from and after the Closing), and nothing herein shall be construed to govern or affect the distributions of the cash proceeds from the Sale of the Assets.

T. Notwithstanding anything else herein to the contrary, the Buyer acknowledges that it will be required to comply with the NTMVSA, as applicable to the business of the Buyer after the Closing, and with environmental laws applicable to the Assets after the Closing.

**Assumption and Assignment of the Assumed Contracts**

U. The Assumption and Assignment Procedures set forth in the Bidding Procedures Order are adequate, sufficient and appropriate under the circumstances.

V. The assumption and assignment of the Assumed Contracts pursuant to the Assumption and Assignment Procedures is in the best interests of the Debtors and their estates and represents the reasonable exercise of the Debtors' sound business judgment. The Assumed Contracts being assigned to the Buyer are an integral part of the Assets being purchased by the Buyer, and, accordingly, such assumption and assignment of the Assumed Contracts and the liabilities associated therewith are reasonable and enhance the value of the Debtors' estates.

W. The Debtors have met all requirements of section 365(b) of the Bankruptcy Code for each of the Contracts. The Debtors will have (i) cured or provided adequate assurance of cure of any default existing prior to the Closing under all of the Assumed Contracts, within the meaning of section 365(b)(1)(A) of the Bankruptcy Code and (ii) provided compensation or adequate assurance of compensation to any counterparty to an Assumed Contract for actual pecuniary loss to such entity resulting from a default prior to the Closing under any of the Assumed Contracts,

within the meaning of section 365(b)(1)(B) of the Bankruptcy Code. The proposed Cure Amounts set forth on the Cure Notices or any other cure amount reached by agreement after any Cure/Assignment Objection are deemed the amounts necessary to “cure” all “defaults,” each within the meaning of Bankruptcy Code section 365(b), under such Assumed Contracts. The assignment of each of the Assumed Contracts is free and clear of all Interests or Claims (other than Assumed Liabilities and Permitted Encumbrances). No section of any of the Assumed Contracts that would prohibit, restrict, or condition, whether directly or indirectly, the use, assumption, or assignment of any of the Assumed Contracts in connection with the Sale shall have any force or effect, except as expressly permitted in the APA and this Order.

X. The Buyer has demonstrated adequate assurance of future performance under the relevant Assumed Contracts within the meaning of sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code. The Buyer’s promise to perform the obligations under the Assumed Contracts arising after the Closing shall constitute adequate assurance of its future performance of and under the Assumed Contracts, within the meaning of Bankruptcy Code sections 365(b)(1) and 365(f)(2). Pursuant to section 365(f) of the Bankruptcy Code, the Assumed Contracts to be assumed and assigned under the APA shall be assigned and transferred to, and remain in full force and effect for the benefit of, the Buyer notwithstanding any provision in such contracts or other restrictions prohibiting their assignment or transfer.

Y. No defaults exist in the Debtors’ performance under the Assumed Contracts as of the date of this Order other than the failure to pay amounts equal to the Cure Amounts or defaults that are not required to be cured as contemplated in section 365(b)(1)(A) of the Bankruptcy Code. The filed objections of all counterparties to the Assumed Contracts that were heard at the Sale Hearing (to the extent not withdrawn), were considered by this Court, and are overruled on the



merits with prejudice. This Court finds that, with respect to all such Assumed Contracts, the payment of the proposed Cure Amounts in accordance with the terms of the APA is appropriate and is deemed to fully satisfy the Debtors' obligations under section 365(b) of the Bankruptcy Code. Accordingly, all of the requirements of section 365(b) of the Bankruptcy Code have been satisfied for the assumption and the assignment by the Debtors to the Buyer of each of the Assumed Contracts. To the extent any Assumed Contract is not an executory contract within the meaning of section 365 of the Bankruptcy Code, it shall be transferred to the Buyer in accordance with the terms of this Order that are applicable to the Assets.

#### **Good Faith Finding**

Z. [The Buyer is not an "insider" or "affiliate" of any of the Debtors as those terms are defined in section 101 of the Bankruptcy Code.]

AA. The APA was negotiated, proposed and entered into by the Debtors and the Buyer without collusion or fraud, in good faith and from arm's-length bargaining positions.

BB. The APA and the transactions contemplated thereby cannot be avoided under section 363(n) of the Bankruptcy Code. The Debtors and the Buyer and Buyer's agents, representatives and affiliates have not engaged in any conduct that would cause or permit the APA or the consummation of the transactions contemplated thereby to be avoided, or costs or damages to be imposed, under section 363(n) of the Bankruptcy Code. The Debtors and their professionals marketed the Assets and conducted the marketing and sale process in substantial compliance with the Bidding Procedures Order.

CC. The Buyer is a good-faith purchaser under section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby. In particular: (a) the Buyer recognized that the Debtors were free to deal with any other party interested in purchasing the

Assets; (b) the Buyer in no way induced or caused the chapter 11 filing by the Debtors; (c) the Buyer has not violated section 363(n) of the Bankruptcy Code by any action or inaction; (d) no common identity of directors, officers, or controlling stakeholders exists between the Buyer and any of the Debtors; (e) the Buyer complied in all respects with the Bidding Procedures and all provisions of the Bidding Procedures Order; (f) the Buyer agreed to subject its bid to the competitive bid procedures set forth in the Bidding Procedures Order; (g) all payments to be made by the Buyer and other agreements or arrangements entered into by the Buyer in connection with the Sale have been disclosed; and (h) as set forth in the [•] Declaration, the Buyer has not acted in a collusive manner with any person.

**No Fraudulent Transfer or Successor Liability**

DD. The aggregate consideration from the Buyer for the Assets as set forth in the APA: (a) as such consideration relates to the Assets, constitutes fair consideration and fair value under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act and other similar laws of the United States; and (b) as such consideration relates to the Assets, constitutes reasonably equivalent value and fair consideration (as those terms are defined in the Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, and section 548 of the Bankruptcy Code, as applicable).

EE. Neither the Debtors nor Buyer entered into or has agreed to enter into the APA with any fraudulent or otherwise improper purpose, including, without limitation, the purpose of hindering, delaying, or defrauding any creditors of the Debtors.

FF. The transfer of the Assets and the assumption of the Assumed Liabilities by the Buyer, except as otherwise set forth in the APA, does not, and will not, subject the Buyer to any liability whatsoever, with respect to the operation of the Debtors' business prior to the Closing or

by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, in any theory of law or equity including, without limitation, any laws affecting antitrust, successor, transferee, or vicarious liability. Pursuant to the APA, the Buyer is not purchasing all of the Debtors' assets in that the Buyer is not purchasing any of the Excluded Assets (as defined in the APA) or assuming the Excluded Liabilities (as defined in the APA), and the Buyer is not holding itself out to the public as a continuation of the Debtors. The Buyer is not a mere continuation of or successor to the Debtors or their estates in any respect. The APA does not amount to a consolidation, merger, or *de facto* merger of the Buyer and the Debtors, and there is no continuity of enterprise between the Debtors and the Buyer. The Buyer would not have entered into the APA if the transfer of the Assets was not made free and clear of any successor liability whatsoever to the Buyer. None of the transactions contemplated by the APA, including, without limitation, the assumption and assignment of the Assumed Contracts, is being undertaken for the purpose of escaping liability for any of the Debtors' debts or hindering, delaying, or defrauding creditors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession, or the District of Columbia.

#### **Validity of Transfer and Authorizations**

GG. The Assets constitute property of the Debtors' estates and title thereto is vested in the Debtors' estates within the meaning of section 541(a) of the Bankruptcy Code. The Debtors have all right, title, and interest in the Assets required to transfer and convey such Assets to the Buyer. The Debtors have full corporate power and authority to execute and deliver the APA, and all other documents contemplated thereby, and have all corporate authority necessary to consummate the transactions contemplated by the APA. No consents or approvals, other than

those expressly provided for in the APA, are required for the Debtors to consummate the transactions contemplated by the APA.

HH. The appointment of a consumer privacy ombudsman pursuant to section 363(b)(1) or section 332 of the Bankruptcy Code is not required with respect to the relief requested in the Motion.

**No Sub Rosa Plan**

II. The Sale neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates the terms of a plan of reorganization or liquidation of the Debtors. This Order does not dictate or direct the distribution of the cash proceeds of the Sale of the Assets. This Order, the APA, and the transactions contemplated therein do not constitute a *sub rosa* plan.

**Best Interest of Creditors**

JJ. Given all of the circumstances of these chapter 11 cases and the adequacy and fair value of the consideration provided by the Buyer under the APA, the Sale constitutes a reasonable and sound exercise of the Debtors' business judgment, is in the best interests of the Debtors, their bankruptcy estates, their creditors, and all other parties in interest in these chapter 11 cases, and should be approved.

KK. Time is of the essence in consummating the transactions contemplated by the APA. Cause has been shown as to why this Order should not be subject to any stay provided by Bankruptcy Rule 6004(h).

**IT IS HEREBY ORDERED THAT:**

1. The relief requested in the Motion is granted and approved as set forth herein.
2. Any and all objections and responses to the Motion that have not been withdrawn, waived, settled, or resolved, and all reservations of rights included therein, are hereby overruled

and denied on the merits. Notice of the Motion, the Auction, the Sale Hearing, and the Sale was fair and equitable under the circumstances, and complied in all respects with section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, and 6006.

**Approval of the APA**

3. The APA, including all other ancillary documents, and all of the terms and conditions thereof, and the Sale contemplated thereby, are hereby approved in all respects.

4. Pursuant to sections 105, 363, and 365 of the Bankruptcy Code, the Debtors are authorized to perform their obligations under and comply with the terms of the APA, pursuant to and in accordance with the terms and conditions of the APA and this Order.

5. The Debtors, as well as their affiliates, officers, employees, and agents, are authorized to execute and deliver, and empowered to perform under, consummate, and implement the APA, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the APA, and to take all further actions and execute such other documents as may be necessary or appropriate to the performance of the obligations contemplated by the APA, including, without limitation, making any federal, state, or local regulatory filings necessary or advisable in connection with such transfer, without further order of this Court.

6. This Order and the APA shall be binding in all respects upon, and shall inure to the benefit of, the Debtors, the Debtors' bankruptcy estates, their affiliates, all creditors, all holders of equity interests in the Debtors, all holders of any Interests or Claims (whether known or unknown) against the Debtors, any holders of Interests or Claims against or on all or any portion of the Assets, all counterparties to any executory contract or unexpired lease of the Debtors, Buyer and all agents, representatives, affiliates, and permitted successors and assigns of the Buyer, and any trustees, examiners, or other fiduciary under any section of the Bankruptcy Code, if any, subsequently

appointed in these chapter 11 cases or upon a conversion of these chapter 11 cases to chapter 7 under the Bankruptcy Code. The terms and provisions of the APA and this Order will inure to the benefit of the Debtors, their bankruptcy estates, and their creditors, the Buyer and all agents, representatives, affiliates, and permitted successors and assigns of the Buyer, and any other affected third parties, including all persons asserting any Interests or Claims in the Assets to be sold to the Buyer pursuant to the APA, notwithstanding any subsequent appointment of any trustee(s), party, entity, or other fiduciary under any section of any chapter of the Bankruptcy Code, as to which trustee(s), party, entity, or other fiduciary such terms and provisions likewise will be binding.

7. [The releases set forth in Sections 11.5 and 12.16 of the APA are hereby incorporated herein by reference and are approved in all respects. Effective as of the Closing Date, such releases shall be valid, binding, and enforceable.]

8. In the event that the Sale to the Buyer does not close as a result of the termination of the APA (“APA Termination Event”), the Debtors are authorized, without further order of the Court, to consummate the Sale to the Backup Bidder, pursuant to that certain Asset Purchase Agreement by and among the Debtors and the Backup Bidder (substantially in the form attached hereto as Exhibit C, the “Backup Bidder APA”). In the event of an APA Termination Event, (i) the Backup Bidder APA and the Sale to the Backup Bidder are approved and (ii) all of the findings of fact, conclusions of law, and all other provisions of this Order, including, without limitation, with respect to the adequacy of the consideration provided by the Buyer, the good faith of the Buyer, and the arm’s-length nature of the Sale, shall apply equally to the Backup Bidder and the Backup Bidder APA as if the Backup Bidder were the Buyer and the Backup Bidder APA were the APA.

### **Sale and Transfer of Assets**

9. Pursuant to sections 105(a), 363(b), 363(f), 365(b), and 365(f) of the Bankruptcy Code, upon the Closing and pursuant to and except as otherwise set forth in the APA, the Assets will be transferred to the Buyer free and clear of all Interests or Claims (other than Assumed Liabilities and Permitted Encumbrances) that existed prior to the Closing, including, without limitation, the Prepetition Liens and Adequate Protection Liens (each, as defined in the second interim order approving the use of the Debtors' cash collateral [Docket No. 142] (the "Cash Collateral Order")), of any person, including, without limitation, all such Interests or Claims specifically enumerated in this Order, whether arising by agreement, by statute, or otherwise and whether occurring or arising before, on, or after the Petition Date, whether known or unknown, occurring, or arising prior to such transfer, with all such Interests or Claims to attach to the cash proceeds of the Sale subject to the terms and conditions set forth in the Cash Collateral Order, in the order of their relative priority and with the same validity, force, and effect the holder of such Interest or Claim had against the Assets prior to the Closing (including, for the avoidance of doubt, as set forth in the Cash Collateral Order), subject to any claims and defenses that the Debtors and their bankruptcy estates may possess with respect thereto. For the avoidance of doubt, nothing in this Order establishes any rights or interests in the Assets (other than the Debtors' rights and interests in such Assets and the Buyer's rights and interests in the Assets from and after the Closing), and nothing herein shall be construed to govern or affect the distributions of the cash proceeds from the Sale of the Assets; *provided, however*, that such proceeds shall be utilized as provided in the Cash Collateral Order and the Prepetition First Lien Documents and Prepetition Second Lien Documents (each as defined in the Cash Collateral Order).

10. On the Closing Date, this Order will be construed and will constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of all of the Assets or a bill of sale transferring good and marketable title in such Assets to the Buyer free and clear of all Claims and Interests pursuant to the terms and conditions set forth in this Order and the APA. For the avoidance of doubt, the Excluded Assets set forth in the APA are not included in the Assets and the Buyer will not take title to such Excluded Assets.

11. Subject to the terms and conditions of this Order, the transfer of Assets to the Buyer pursuant to the APA and the consummation of the Sale and any related actions contemplated thereby do not require any consents other than as specifically provided for in this Order and the APA, constitute a legal, valid, and effective transfer of the Assets, and will vest the Buyer with all of the Debtors' right, title, and interest in and to the Assets as set forth in this Order and the APA, as applicable, free and clear of all Interests or Claims of any kind or nature whatsoever (except as otherwise assumed in, or permitted by, the APA).

12. Except to the extent included in the Assumed Liabilities, Cure Amounts, or Permitted Encumbrances or to enforce the APA, upon the Closing, all entities or persons are permanently and forever prohibited, barred, estopped, and permanently enjoined from asserting against the Buyer, and its permitted successors, designees, and assigns, or property, or the Assets conveyed in accordance with the APA, any Interest or Claim of any kind or nature whatsoever arising prior to Closing, including, without limitation, under any theory of successor or transferee liability, *de facto* merger, or continuity liability, whether known or unknown as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated, or unliquidated.



13. Nothing in this Order or the APA releases, nullifies, precludes, or enjoins the enforcement of any police or regulatory liability to a governmental unit that any entity would be subject to as the post-sale owner or operator of property after the date of entry of this Order.

14. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit as defined in 11 U.S.C. § 101(27) may deny, revoke, suspend, or refuse to renew any permit, license, or similar grant relating to the operation of the Assets sold, transferred, or conveyed to the Buyer on account of the filing or pendency of these chapter 11 cases or the consummation of the transactions contemplated by the APA and this Order.

**Good Faith of the Buyer**

15. As set forth in the [•] Declaration, the Buyer is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of section 363(m) of the Bankruptcy Code. The Sale contemplated by the APA is undertaken by the Buyer without collusion and in good faith, as that term is used in section 363(m) of the Bankruptcy Code and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale (including the assumption and assignment of the Assumed Contracts), unless such authorization and consummation of the Sale are duly and properly stayed pending such appeal.

16. As set forth in the Kimm Declaration and the [•] Declaration, neither the Debtors, the Buyer, nor any affiliate of either the Debtors or Buyer have engaged in any collusion with other bidders or other parties or have taken any other action or inaction that would cause or permit the Sale to be avoided or costs or damages to be imposed under section 363(n) of the Bankruptcy Code or otherwise. The consideration provided by the Buyer for the Assets under the APA is fair and

reasonable and is not less than the value of such assets, and the Sale may not be avoided under section 363(n) of the Bankruptcy Code.

17. [The Buyer is not an “insider” of any of the Debtors as that term is defined in section 101(31) of the Bankruptcy Code.]

**Assumption and Assignment of the Contracts**

18. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, and subject to and conditioned upon the occurrence of the Closing Date, the Debtors’ assumption and assignment to the Buyer, and the Buyer’s assumption, on the terms set forth in this Order and the APA, of the Assumed Contracts, is hereby approved in its entirety, and the requirements of section 365 of the Bankruptcy Code with respect thereto are hereby deemed satisfied.

19. The Debtors are hereby authorized, in accordance with sections 105(a), 363, and 365 of the Bankruptcy Code, to assume and assign to the Buyer, effective upon the Closing Date, the Assumed Contracts free and clear of all Interests or Claims of any kind or nature whatsoever (except as otherwise assumed in, or permitted by, the APA) and execute and deliver to the Buyer such documents or other instruments as may be necessary to assign and transfer the Assumed Contracts to the Buyer.

20. Upon the Closing, in accordance with sections 363 and 365 of the Bankruptcy Code, the Buyer will be fully and irrevocably vested in all right, title, and interest of each Assumed Contract.

21. The Assumed Contracts will be transferred and assigned to, and remain in full force and effect for the benefit of, the Buyer in accordance with their respective terms pursuant to the APA, notwithstanding any provision in any such Assumed Contract (including those of the type

described in sections 365(b)(2), (e)(1), and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer.

22. Pursuant to sections 365(b)(1)(A) and (B) of the Bankruptcy Code, at the Closing, the Buyer will pay to the respective counterparty the Cure Amounts relating to any Assumed Contract.

23. The payment of the applicable Cure Amounts (if any), or any other cure amount reached by agreement after any Cure/Assignment Objection, will effect a cure of all defaults and all other obligations or liabilities under any Assumed Contract existing, occurring, arising, or accruing prior to the date that such executory contracts or unexpired leases are assumed and compensate for any actual pecuniary loss to such Non-Debtor Counterparty resulting from such default.

24. Upon the Closing, the Buyer will assume the Assumed Contracts, and, pursuant to section 365(f) of the Bankruptcy Code, the assignment by the Debtors of such Assumed Contracts will not be a default thereunder. After the payment of the relevant Cure Amounts in accordance with the APA, neither the Debtors and their estates nor the Buyer will have any further liabilities to the Non-Debtor Counterparties to the Assumed Contracts with respect to such Assumed Contracts, other than Buyer's obligations under the Assumed Contracts that accrue or become due and payable on or after the date that such Assumed Contracts are assumed.

25. Except as otherwise agreed in writing between the Debtors and the Non-Debtor Counterparties to the Assumed Contracts, stated on the record of the Sale Hearing, set forth in this Order, or determined by Court order, the Cure Amounts for the Assumed Contracts are hereby fixed at the amounts set forth on **Exhibit B** attached hereto, and the Non-Debtor Counterparties to such Assumed Contracts are forever bound by such Cure Amounts and, upon payment of such

Cure Amounts, are hereby enjoined from taking any action against the Debtors and their bankruptcy estates, the Buyer, and all agents, representatives, affiliates, and permitted successors and assigns of the Buyer, or the Assets with respect to any claim for cure under any Assumed Contract.

26. The Debtors and the Buyer are hereby authorized, in accordance with the APA, to add or remove Assumed Contracts from **Exhibit B** prior to the Closing; *provided*, that if the Debtors add Assumed Contracts to **Exhibit B** prior to the Closing, the Debtors shall file such amended **Exhibit B** with the Court, and any Non-Debtor Counterparty (i) that filed a timely Cure/Assignment Objection that has not been resolved or (ii) that, no later than 4:00 p.m. (ET) on the day that is seven (7) calendar days after such filing, timely files an objection solely with respect to the specific identity of and adequate assurance of future performance provided by the Buyer (and/or the Backup Bidder, if any), shall not have such Assumed Contract assumed and assigned to the Buyer and/or Backup Bidder, as applicable, absent (x) agreement of the parties or (y) an order of the Court overruling such objection(s).

27. Nothing in this Order, the APA, or any document, agreement, or instrument contemplated by any of the foregoing shall: (i) be construed to authorize or permit (a) the assumption and/or assignment of any surety bond issued by (x) Philadelphia Indemnity Insurance Company or (y) Atlantic Specialty Insurance Company (collectively, the “Sureties” and, each individually, a “Surety”) on behalf of the Debtors (collectively, the “Surety Bonds” and, each individually, a “Surety Bond”), (b) the assumption and/or assignment of any indemnity agreements executed by one or more of the Debtors pursuant to which the Surety Bonds were issued (the “Indemnity Agreements” and, each individually, an “Indemnity Agreement”), or (c) obligate a Surety to replace any Surety Bond and/or issue any new surety bond on behalf of a Buyer; or (ii) be

deemed to provide a Surety's consent to the involuntary substitution of any principal under any Surety Bond and/or any Indemnity Agreement, including, for the avoidance of doubt, that the Buyer shall not be a substitute principal under any Surety Bond or any Indemnity Agreement absent a Surety's consent thereto or further order of the Court. The Debtors and the Buyer reserve the right to add to Exhibit B as an Assumed Contract any Indemnity Agreement, Surety Bond, or similar instrument (collectively, the "Surety Agreements"), and the inclusion of any of the Surety Agreements in Exhibit B shall not prejudice (I) the rights of the Sureties to object or respond to such proposed assumption and/or assignment of any Surety Agreement issued by the Surety, including, without limitation, the right to object to an involuntary substitution of principal under any Surety Bond or (II) the rights of the Debtors or any other party-in-interest's right to challenge any of the foregoing actions (or lack thereof).

28. Additionally, nothing in this Order, the APA, or any other document, agreement, or instrument contemplated by any of the foregoing shall be deemed to alter, limit, modify, release, waive, or prejudice any rights, remedies, and/or defenses that the Sureties have or may have under applicable bankruptcy and non-bankruptcy laws, under any of the their respective Surety Agreements, or related agreements, or any letters of credit, or other Surety collateral relating thereto.

29. The Debtors shall not sell, transfer or assign any (i) letters of credit (the "Pre-Petition Letters of Credit") issued or supported by Bank of America, N.A. ("Bank of America"), or (ii) any cash collateral or back-up letters of credit that collateralize or backstop the Pre-Petition Letters of Credit, without Bank of America's express written consent.

30. The failure of the Debtors or the Buyer to enforce at any time one or more terms or conditions of any Assumed Contract shall not be a waiver of such terms or conditions, or of the Debtors' and the Buyer's rights to enforce every term and condition of the Assumed Contracts.

31. Any provisions in any Assumed Contracts that prohibit or condition the assignment of such Assumed Contract or allow the party to such Assumed Contract to terminate, recapture, impose any penalty, condition on renewal or extension, or modify any term or condition upon the assignment of such Assumed Contract constitute unenforceable anti-assignment provisions that are void, and of no force and effect. All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to the Buyer of the Assumed Contracts have been satisfied.

32. Any party having the right to consent to the assumption or assignment of any Assumed Contract that failed to object to such assumption or assignment is deemed to have waived any objections and consented to such assumption and assignment as required by section 365(c) of the Bankruptcy Code.

33. Upon the Closing, the Buyer will be deemed to be substituted for the Debtors as a party to the applicable Assumed Contracts and the Debtors and their estates will be relieved, pursuant to section 365(k) of the Bankruptcy Code, from any further liability under the Assumed Contracts.

34. The Buyer has provided adequate assurance of future performance under the relevant Assumed Contracts within the meaning of sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code.

35. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, all counterparties to the Assumed Contracts are forever barred from raising or asserting against the

Debtors and their estates or the Buyer any assignment fee, default, breach, claim, pecuniary loss, or condition to assignment, arising under or related to the Assumed Contracts, existing as of the date that such Assumed Contracts are assumed or arising by reason of or in connection with the Closing.

36. Except as otherwise set forth in the APA, including the Assumed Liabilities and Cure Amounts that will be paid as provided in the APA, neither the Buyer, nor any of its successors or assigns, or any of their respective affiliates shall have any liability for any Claim or Interest that arose or occurred prior to the Closing, or otherwise is assertable against the Debtors or is related to the Assets prior to the Closing. The Buyer is not and shall not be deemed a “successor” to the Debtors or their estates, have, *de facto* or otherwise, merged with or into the Debtors, or be a mere continuation or substantial continuation of the Debtors or the enterprise of the Debtors under any theory of law or equity as a result of any action taken in connection with the APA or any of the transactions or documents ancillary thereto or contemplated thereby or in connection with the acquisition of the Assets.

#### **Additional Provisions**

37. In connection with the Closing, a certified copy of this Order evidencing the release, cancelation, and termination provided herein of any Interest or Claims of record on the Assets may be filed or recorded with the appropriate filing agents, filing officers, administrative agencies or units, governmental departments, secretaries of state, federal, state, and local officials, and all other persons, institutions, agencies, and entities which may require such filings by operation of law, the duties of their office, or contract.

38. Upon consummation of the Sale, if any person or entity that has filed financing statements, mortgages, mechanic’s liens, *lis pendens*, or other documents or agreements

evidencing Interests or Claims against or in the Assets shall not have delivered to the Debtors prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Interests or Claims that the person or entity has with respect to the Assets (unless otherwise assumed in, or permitted by, the APA), or otherwise, then: (i) the Debtors are hereby authorized to execute and file such statements, instruments, releases, and other documents on behalf of the person or entity with respect to the Assets; and (ii) the Buyer is hereby authorized to file, register, or otherwise record a certified copy of this Order, which, once filed, registered or otherwise recorded, will constitute conclusive evidence of the release of all Interests or Claims in the Assets of any kind or nature (except as otherwise assumed in, or permitted by, the APA); *provided that*, notwithstanding anything in this Order or the APA to the contrary, the provisions of this Order will be self-executing, and neither the Debtor nor Buyer will be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate, and implement the provisions of this Order. For the avoidance of doubt, upon consummation of the Sale, the Buyer is authorized to file termination statements, lien terminations, or other amendments in any required jurisdiction to remove and record, notice filings or financing statements recorded to attach, perfect, or otherwise notice any lien or encumbrance that is extinguished or otherwise released pursuant to this Order under section 363 of the Bankruptcy Code and the related provisions of the Bankruptcy Code. Each and every federal, state, and local governmental agency or department is hereby authorized to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA, including, without limitation, recordation of this Order. This Order shall be binding upon and shall govern the acts of all persons including without limitation, all filing agents, filing officers, title agents, title companies, recorders of



mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of such assets or other property interests.

39. All entities that are currently, or on the Closing may be, in possession of some or all of the Assets are hereby directed to surrender possession of the Assets to the Buyer on the Closing, unless the Buyer otherwise agrees.

40. This Order shall be effective as a determination that, upon the Closing, all liabilities of any kind or nature whatsoever existing as to the Assets prior to the Closing (other than the Assumed Liabilities) have been unconditionally released, discharged, and terminated and that the conveyances described herein have been effected as set forth in this Order.

41. At the Closing, (i) the Escrow Agent (as defined in the APA) is hereby authorized to release the Earnest Deposit (as defined in the APA) to the Debtors and (ii) the Buyer shall pay to the Debtors the Purchase Price (as defined in the APA) minus the Earnest Deposit.

42. If the Buyer does not close the transaction, the Escrow Agent shall be authorized, in accordance with, and as permitted under, the APA, to release the Earnest Deposit to the Debtors.

43. Except as otherwise provided in this Order and the APA, all rights of the respective Debtors' estates with respect to the allocation of consideration received from the Buyer in connection with the Sale are expressly reserved for later determination by this Court and, to the extent consideration is received by any Debtor that is determined to be allocable to another Debtor, such other Debtor shall have a claim against the recipient Debtor with the status of an expense of administration in the case of the recipient Debtor under Bankruptcy Code section 503(b).

44. The APA and any related agreements, documents, or other instruments may be modified, amended, or supplemented through a written document signed by the parties thereto in accordance with the terms thereof and this Order and in consultation with the Consultation Parties without further order of this Court. The Debtors are authorized to perform each of their covenants and undertakings as provided in the APA prior to or after the Closing without further order of this Court.

45. The APA shall be of full force and effect, regardless of any Debtors' lack of good standing in any jurisdiction in which such Debtor is formed or authorized to transact business.

46. To the extent applicable, the automatic stay pursuant to section 362 of the Bankruptcy Code is hereby lifted with respect to the Debtors to the extent necessary, without further order of the Court (a) to allow the Buyer to give the Debtors any notice provided for in the APA, and (b) to allow the Buyer to take any and all actions permitted by the APA.

47. No bulk sales law or any similar law of any state or other jurisdiction shall apply to the Debtors' conveyance of the Assets.

48. Nothing in this Order shall be deemed to waive, release, extinguish, or estop the Debtors or their estates from asserting or otherwise impair or diminish any right (including any right of recoupment), claim, cause of action, defense, offset, or counterclaim in respect of any asset that is not an Asset.

49. The failure specifically to include or make reference to any particular provisions of the APA in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the APA is authorized and approved in its entirety.

50. Absent a subsequent order of this Court to the contrary, this Order shall be binding in all respects upon any trustees, examiners, “responsible persons” or other fiduciaries appointed in these chapter 11 cases or upon a conversion to chapter 7 under the Bankruptcy Code.

51. Notwithstanding any provision in the Bankruptcy Rules to the contrary, this Order shall be effective immediately and enforceable upon its entry.

52. In the event of any conflict between this Order and the APA, this Order shall control in all respects.

53. The requirements set forth in Local Rules 6004-1, 9006-1, and 9013-1 are hereby satisfied or waived.

54. This Court shall retain exclusive jurisdiction to interpret, implement and enforce the terms and provisions of this Order, the Bidding Procedures Order, and the APA, including all amendments thereto and any waivers and consents thereunder and each of the other agreements executed in connection therewith, and decide any issues or disputes concerning this Order and the APA or the rights and duties of the parties hereunder or thereunder, including the interpretation of the terms, conditions and provisions hereof and thereof, the status, nature and extent of the Assets.

**Exhibit A**

APA

[To Be Filed]

**Exhibit B**

Assumed Contracts

**Exhibit C**

Backup Bidder APA