

ORIGINAL

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

In re:

SCHOOL SPECIALTY, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 13-10125(KJC)

Jointly Administered

Re: Docket No. 18

PRELIMINARY

ORDER UNDER 11 U.S.C. §§ 105(A), 363 AND 365, AND FED. R. BANKR. P. 2002, 6004, 6006 AND 9014: (I) SCHEDULING HEARING ON APPROVAL OF ASSET SALE, ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS TO BAYSIDE SCHOOL SPECIALTY, LLC (OR ITS ASSIGNEE) AND ASSUMPTION OF CERTAIN LIABILITIES, AND (II) APPROVING BIDDING PROCEDURES, ASSUMPTION AND ASSIGNMENT PROCEDURES, EXPENSE REIMBURSEMENT, AND FORM AND MANNER OF NOTICE THEREOF

Upon the motion (the "Motion")² of School Specialty, Inc. and its affiliated debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors") for entry of (a) an order (i) scheduling a hearing (the "Sale Hearing") on approval of its asset sale and the assumption and assignment of executory contracts to Bayside School Specialty, LLC or its assignee (the "Proposed Purchaser") and assumption of certain liabilities; (ii) approving proposed bidding and sale procedures (the "Bidding Procedures") attached hereto as Exhibit 1, proposed assumption and assignment procedures (the "Assumption and Assignment Procedures"), the Breakup Fee³ and Expense Reimbursement, and form and manner of notice

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number and state of incorporation, are: School Specialty, Inc. (Wisc.; 1239), Bird-In-Hand Woodworks, Inc. (N.J.; 8811), Califone International, Inc. (Del.; 3578), Childcraft Education Corp. (N.Y.; 9818), ClassroomDirect.com, LLC (Del.; 2425), Delta Education, LLC (Del.; 8764), Frey Scientific, Inc. (Del.; 3771), Premier Agendas, Inc. (Wash.; 1380), Sax Arts & Crafts, Inc. (Del.; 6436), and Sportime, LLC (Del.; 6939). The address of the Debtors' corporate headquarters is W6316 Design Drive, Greenville, Wisconsin 54942.

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

³ The request for approval of the Breakup Fee has been withdrawn since the Motion was filed, as further set forth below.

thereof (the “Notice Procedures”); and (b) an order (the “Sale Order”) (i) approving an asset purchase agreement (the “Asset Purchase Agreement”) for the sale of the Acquired Assets to the Proposed Purchaser or to the Prevailing Bidder to be identified at the Auction, (ii) authorizing the sale of all or substantially all of the assets of the Debtors free and clear of all Liens, Claims, Interests or Encumbrances (other than Permitted Liens), (iii) authorizing the assumption and assignment of certain executory contracts and unexpired leases (the “Assigned Contracts”) to the Proposed Purchaser or the Prevailing Bidder, as applicable, and (iv) granting related relief; and the Court having reviewed the Motion; and the Court having determined 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 it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefore, it is hereby

FOUND AND DETERMINED THAT:⁴

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

B. Venue of this case and the Motion in this district is proper under 28 U.S.C. § 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

C. The statutory and legal predicates for the relief requested in the Motion are Bankruptcy Code sections 105, 363 and 365, and Bankruptcy Rules 2002, 6004, 6006, and 9014, and Local Bankruptcy Rules 6004-1 and 9013-1(m).

D. In the Motion and at the hearing on the Motion, the Debtors articulated and exercised good and sufficient notice of the relief granted by this Order has been given and no

⁴ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact to the fullest extent of the law. *See* Fed. R. Bankr. P. 7052.

further notice is required. A reasonable opportunity to object or be heard regarding the relief granted by this Order has been afforded to those parties entitled to notice pursuant to Local Bankruptcy Rule 2002-1(b).

E. The Debtors' proposed sale notice, substantially in the form attached to the Motion as Exhibit D (the "Sale Notice"), is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Bidding Procedures, the Auction (if necessary), the Sale Hearing, and any and all objection deadlines and no other or further notice is required.

F. The Bidding Procedures, substantially in the form attached hereto as Exhibit 1, are fair, reasonable, and appropriate and are designed to maximize recovery with respect to the sale of the Acquired Assets by the Debtors' estates.

G. The Expense Reimbursement shall be capped at \$1 million and shall cover the reasonable and out-of-pocket costs, fees and expenses incurred by the Proposed Purchaser or its Affiliates (other than the Seller) in connection with the negotiation, documentation and implementation of the Asset Purchase Agreement and the transactions contemplated thereby and all proceedings incident thereto. The Expense Reimbursement was: (i) negotiated by the Debtors and Bayside Finance, LLC (in its capacity as agent and lender under the Debtors' prepetition term loan credit agreement and as agent and lender under the Debtors' postpetition incremental term loan facility, "Bayside") on behalf of the Proposed Purchaser in good faith and at arm's-length; (ii) is reasonable and appropriate given, among other things, the size and nature of the transaction and the efforts that have been expended and will continue to be expended by Bayside and the Proposed Purchaser; and (iii) is a material inducement for, and a condition of, the Proposed Purchaser's entry into the Asset Purchase Agreement.

H. The Expense Reimbursement is commensurate with the real and substantial postpetition benefits conferred upon the Debtors' estates by the Proposed Purchaser and constitutes actual and necessary costs and expenses incurred by the Debtors in preserving the value of their estates within the meaning of Bankruptcy Code section 503(b). The Proposed Purchaser shall submit a copy of its invoice for those fees and expenses sought in connection with the Expense Reimbursement to the Seller, the Seller shall send copies of such invoice to the Creditors' Committee and the U.S. Trustee within two (2) business days of receipt, and the Creditors' Committee and the U.S. Trustee shall have ten (10) days from receipt thereof to object in writing to the reasonableness of such invoice. To the extent the Creditors' Committee or the U.S. Trustee so objects, the Debtors shall remit payment on account of the portion of such invoice to which there has been no objection, and payment of the allegedly unreasonable portion of such invoice will be subject to review by the Bankruptcy Court; *provided that*, if applicable, such invoice may be redacted to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product or any other confidential information, and the provision of such invoice shall not constitute any waiver of the attorney-client privilege or any benefits of the attorney work product doctrine; *provided further* that upon the request of the U.S. Trustee, a non-redacted copy of the invoice shall be provided to the U.S. Trustee, which copy shall be considered confidential and shall not be disclosed pursuant to 11 U.S.C. § 107(c)(3)(B).

I. Entry into the Asset Purchase Agreement with the Proposed Purchaser as a "stalking-horse" and approval of its terms, including the Expense Reimbursement, is in the best interests of the Debtors and their estates and creditors and, based on the information set forth in the Motion and presented to the Court, is an appropriate exercise of the Debtors' business

judgment. The Asset Purchase Agreement will enable the Debtors to secure an adequate floor for the Auction and will provide a clear benefit to the Debtors' estates, their creditors, interest holders and all other parties in interest.

J. The Assumption and Assignment Procedures, including the notice of the proposed Cure Costs substantially in the form attached as Exhibit E to the Motion (the "Assumption Notice"), are reasonable and appropriate and consistent with the provisions of Bankruptcy Code section 365 and Bankruptcy Rule 6006. The Assumption and Assignment Procedures have been tailored to provide adequate opportunity for all non-Debtor counterparties to the Assigned Contracts to raise any objections to the proposed assumption and assignment or to the Cure Costs.

K. Entry of this Order is in the best interests of the Debtors and their estates, creditors, and interest holders and all other parties in interest herein; and it is therefore

ORDERED, ADJUDGED AND DECREED THAT:

1. Those portions of the Motion seeking approval of the Debtors' entry into the Asset Purchase Agreement and all of its terms (including the Expense Reimbursement), the Assumption and Assignment Procedures, the Bidding Procedures and the Notice Procedures, setting the time, date and place of the Sale Hearing, and establishing the process for objecting, as *on a preliminary basis,* necessary, to each of the foregoing are GRANTED, as set forth herein. That portion of the Motion seeking authorization to pay the Breakup Fee has been withdrawn and is not approved by this Order.

2. The dates relevant to the Asset Sale, Auction and Sale Hearing are as follows:

Milestone	Date
Debtors to file Initial Designated Contracts Schedule (as defined below)	March 6, 2013

Milestone	Date
Deadline to Submit Qualified Bids	March 19, 2013
Deadline for objections to the Asset Sale & for contract counterparties to Object to assumption & assignments/Cure Costs ⁵ (the " <u>Sale Objection Deadline</u> ")	March 20, 2013 at 4:00 p.m. (ET) ⁶
Deadline for Debtors to notify Bidders as to whether their Bids are Qualified Bids	March 23, 2013
Deadline for Bidders whose bids did not constitute Qualified Bids to submit revised bids	March 24, 2013
Auction	March 25, 2013 at 10:00 a.m. (ET)
Sale Hearing	March 27, 2013 at 1:00 p.m. (ET)

3. The form of the Asset Purchase Agreement (which may be downloaded at <http://www.kccllc.net/schoolspecialty> or obtained from counsel to the Debtors upon written request to Lauren Shumejda at lshumejda@paulweiss.com), is hereby approved and is appropriate and reasonably calculated to enable the Debtors and other parties in interest to easily compare and contrast the differing terms of the bids presented at the Auction.

4. Except as expressly provided herein, nothing herein shall be construed as a determination of the rights of any party in interest, including, without limitation, the Debtors, Bayside and the Proposed Purchaser, in these chapter 11 cases.

⁵ Counterparties to executory contracts not included on the Initial Designated Contract Schedule will not be bound by the Sale Objection Deadline, but rather will be bound by the objection deadline(s) set forth in the Assumption and Assignment Procedures below.

⁶ In the event the Proposed Purchaser is not the Prevailing Bidder at the Auction, contract counterparties whose executory contract or unexpired lease is proposed to be assumed and assigned to the Prevailing Bidder pursuant to the Sale Order may object at any time before or at the Sale Hearing to the ability of the Prevailing Bidder to provide adequate assurance of future performance.

The Bidding Procedures

5. The Bidding Procedures attached hereto as Exhibit 1 are hereby APPROVED to the extent modified and provided herein. The failure to specifically include or reference any particular provision, section or article of the Bidding Procedures in this Order shall not diminish or impair the effectiveness of such procedure, it being the Court's intent that the Bidding Procedures be authorized and approved in their entirety to the extent modified and provided herein. The Debtors are hereby authorized to conduct a sale by auction of the Acquired Assets pursuant to the Bidding Procedures and the terms of this Order.

6. Pursuant to Bankruptcy Code section 363(k) and except as otherwise set forth in this paragraph 6, the Proposed Purchaser shall be entitled to credit bid all or a portion of the obligations then outstanding under (a) the DIP Credit Agreement (as defined in the Asset Purchase Agreement) and (b) the Pre-Petition Credit Agreement (as defined in the Asset Purchase Agreement), together with accrued interest, fees and any other claims in respect thereof; *provided, however*, that the Proposed Purchaser shall only be entitled to credit bid all or a portion of the Early Payment Fee (as defined in the Asset Purchase Agreement) if such Proposed Purchaser has either (x) obtained an order from the Bankruptcy Court allowing the Early Payment Fee in whole or in part (in which case the Proposed Purchaser shall be entitled to credit bid all or any portion of the allowed amount of the Early Payment Fee as set forth in any such order) or (y) provided cash collateral, a letter of credit or such other form of credit support in respect of the Early Payment Fee reasonably acceptable to the Debtors (in which case the Proposed Purchaser shall be entitled to credit bid all or a portion of the Early Payment Fee equal to the amount of such cash collateral, letter of credit or other credit support).

7. In the event the Proposed Purchaser is not the Prevailing Bidder at the Auction,
no later than April 11, 2013
the Prevailing Bidder must, ~~at the earlier of (i) the entry the Sale Order and (ii) within 48 hours~~
~~of the closing of the Auction,~~

- (a) (x) repay Bayside, by wire transfer of immediately available funds, the full amount of any obligations owed to Bayside under the Bayside DIP Facility, and (y) assume or arrange for a suitable third party to assume all of the rights and ongoing funding obligations (if any) of Bayside under the Bayside DIP Facility; and *and the Co-Collateral Agents (as defined in the Wells DIP Facility)*
- (b) unless otherwise agreed to by the Wells DIP Agent, ~~repay the Wells DIP Agent, by certified check drawn on a domestic bank or wire transfer of immediately available funds, all amounts outstanding under to the Wells DIP Agent under the Wells DIP Facility,~~ *an amount necessary to cause all*

to be paid in full in accordance with the Wells DIP Facility.
In the event the Proposed Purchaser is not the Prevailing Bidder at the Auction and the

requirements of this paragraph 7 are triggered, this Order shall act as a full and final release on behalf of the Debtors of any and all claims and causes of action that could have been asserted or raised under or in connection with the Bayside DIP Facility.

8. The Proposed Purchaser shall be deemed a Qualifying Bidder pursuant to the Bidding Procedures for all purposes.

9. The Bidding Procedures shall apply to the Qualifying Bidders and the conduct of the sale of the Acquired Assets and the Auction.

The Asset Purchase Agreement

10. In no event shall the Debtors be responsible or liable for any losses or liabilities under the Asset Purchase Agreement that are consequential, in the nature of lost profits, diminution in the value of property, special or punitive, or otherwise not actual damages.

11. Bayside Finance, LLC is not a party to the Asset Purchase Agreement and, other than with respect to the obligation in the Commitment Letter⁷ shall have no obligations to the Debtors thereunder, except to reduce the amount of the allowed secured claim of Bayside Finance, LLC in the event that the credit bid is used to consummate the purchase of the Acquired Assets.

The Assumption and Assignment Procedures

12. The Assumption and Assignment Procedures as set forth in the Motion (as modified by this Order) are hereby authorized, approved and made part of this Order, and are set forth in full below:

(a) No later than March 6, 2013 (the “Initial Designated Contract Deadline”), the Debtors shall (i) file with the Court a schedule (the “Initial Designated Contracts Schedule”) of the executory contracts and unexpired leases initially designated by the Proposed Purchaser for assumption by the Debtors and assignment to the Proposed Purchaser (the “Designated Contracts”) and (ii) serve each counterparty to such Designated Contracts with a notice of assumption, assignment and cure (the “Assumption Notice”) and the Sale Notice substantially in the forms attached as an exhibit to this Order. The Initial Designated Contracts Schedule and the Assumption Notice shall include the Debtors’ calculation of the cure cost for each such Designated Contract (the “Cure Costs”). **Any counterparty to a Designated Contract on the Initial Designated Contracts Schedule may file and serve any objections to (i) the proposed assumption and assignment set forth in the Assumption Notice and (ii) if applicable, the proposed Cure Cost, no later than March 20, 2013 at 4:00 p.m. (ET).**

(b) To the extent the schedule of Designated Contracts submitted by any other Qualified Bidder includes Designated Contracts other than those set forth on the Initial Designated Contracts Schedule (such Designated Contracts, the “Supplemental Designated Contracts”), within two (2) business days after receiving such Designated Contracts schedule from any other Qualified Bidder (and no later than six (6) days before

⁷ The “Commitment Letter” means that certain Commitment Letter by Bayside Finance, LLC in favor of the Proposed Purchaser to contribute to or for the benefit of the Proposed Purchaser, as of the Closing and subject to the satisfaction or waiver of the closing conditions in the Asset Purchase Agreement, the amount of indebtedness owed to Bayside Finance, LLC that is necessary to satisfy the Purchase Price set forth in the Asset Purchase Agreement under (a) the Credit Agreement dated as of May 22, 2012 (as amended, restated, supplemented or otherwise modified from time to time) among School Specialty, Inc., the borrowers and guarantors party thereto, the lenders party thereto and Bayside Finance, LLC, as administrative agent and (b) the Senior Secured Superpriority Debtor-in-Possession Credit Agreement, dated as of January 28, 2013 (as amended, restated, supplemented or otherwise modified from time to time) among School Specialty, Inc., the borrowers and guarantors party thereto, the lenders party thereto and Bayside Finance, LLC, as administrative agent.

the Sale Hearing, subject to adjustment as provided below), the Debtors shall file an amended schedule of Designated Contracts with the Court and serve by overnight courier service an Assumption Notice on each counterparty to any Supplemental Designated Contract. Such counterparties to any Supplemental Designated Contracts may assert any objection to (i) the proposed assumption and assignment set forth in the Assumption Notice and (ii) if applicable, the proposed Cure Cost at any time up until and at the Sale Hearing.

(c) At the Sale Hearing, only assumption and assignment of those Designated Contracts (and the corresponding Cure Costs) that have been selected to be assumed and assigned to the Prevailing Bidder at the Auction (the "Selected Contracts") shall be subject to approval by the Bankruptcy Court, and the Debtors shall reserve their rights for all other contracts. If no objections with respect to the Selected Contracts are timely received, (i) the counterparty to a Selected Contract shall be deemed to have consented to the assumption and assignment of the Selected Contract to the Prevailing Bidder and shall be forever barred from asserting any objection with regard to such assumption and assignment, and (ii) the Cure Cost set forth in the Assumption Notice shall be controlling, notwithstanding anything to the contrary in any Selected Contract, or any other document, and the counterparty to a Selected Contract shall be deemed to have consented to the Cure Cost and shall be forever barred from asserting any other claims related to such Selected Contract that arise prior to assumption and assignment thereof to the Prevailing Bidder against the Debtors or the Prevailing Bidder, or the property of any of them.

(d) At the direction of the Prevailing Bidder (and subject to approval by the Bankruptcy Court), the Debtors may supplement the Designated Contracts list at any time prior to the Designation Deadline, *provided that* the Debtors must serve an Assumption Notice on the counterparties to any supplemental Designated Contracts and provide such counterparties at least seven (7) days' notice to object to the assumption and assignment of the supplemental Designated Contracts.

13. The Debtors' decision to assume and assign the Assigned Contracts to the Prevailing Bidder is subject to Court approval and the consummation of a sale of the Acquired Assets. Accordingly, absent the closing of such sale(s), the Assigned Contracts shall not be deemed assumed or assigned, and shall in all respects be subject to further administration under the Bankruptcy Code.

14. The inclusion of a contract on an Assumption Notice, which shall be substantially in the form attached to the Motion as Exhibit E, shall not constitute or be deemed a determination or admission by the Debtors, Bayside, the Proposed Purchaser or any other party

in interest that such document is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code (all rights with respect thereto being expressly reserved).

15. The Assumption and Assignment Procedures are appropriate and fair to all non-Debtor counterparties and comply in all respects with the Bankruptcy Code.

Notice Procedures

16. The Sale Notice, in substantially the form annexed as an exhibit to this Order, the Auction, the Sale Hearing, and the Assumption and Assignment Procedures, and the associated objection periods are reasonably calculated to provide notice to any affected party and afford the affected party the opportunity to exercise any rights affected by the Motion as it relates to the Auction, Sale Hearing and the proposed assignment and assumption of the Assigned Contracts pursuant to Bankruptcy Rules 2002(a)(2), 6004 and 6006, and are hereby approved.

17. Immediately after entry of this Order (or as soon as reasonably practicable thereafter), the Debtors (or their agent) shall serve the Sale Notice, in substantially the form attached as Exhibit D to the Motion, by first-class mail, postage prepaid, upon (a) the U.S. Trustee; (b) counsel to the agent under the Prepetition ABL Agreement; (c) counsel to the agent under the Prepetition Term Loan Agreement; (d) counsel to the agent under the Bayside DIP Facility; (e) counsel to the agent under the Wells DIP Facility; (f) the indenture trustee for the Debtors' convertible debentures; (g) counsel for the official committee of unsecured creditors; (h) any entity known or reasonably believed to have asserted a security interest in or lien against any of the Acquired Assets; (i) any entity that has expressed a bona fide interest in acquiring the Acquired Assets; (j) the Internal Revenue Service; (k) the United States Department of Justice; (l) the Securities and Exchange Commission; (m) all relevant state taxing authorities; (n) the general service list established in these chapter 11 cases pursuant to Bankruptcy Rule 2002 and

Local Bankruptcy Rule 2002-1; and (o) such other entities as may be reasonably requested by the Proposed Purchaser.

18. The Debtors also shall publish the Sale Notice in the *Wall Street Journal* (National Edition) within five (5) days of entry of this Order or as soon as reasonably practicable thereafter. Such publication conforms to the requirements of Bankruptcy Rules 1005, 2002(l), 2002(n) and 9008, and is reasonably calculated to provide notice to any affected party, including any potential bidders for the Acquired Assets, and afford the affected party the opportunity to exercise any rights affected by the Motion.

19. The Debtors shall, as soon as reasonably practicable after conclusion of the Auction, but in no event later than twelve (12) hours after the conclusion of the Auction, (a) file a notice with the Bankruptcy Court announcing the Prevailing Bidder and (b) serve such notice via email or facsimile on the counterparties to those executory contracts and unexpired leases proposed to be assumed and assigned to the Prevailing Bidder.

20. The Assumption Notice is reasonably calculated to provide sufficient, effective notice to all non-Debtor counterparties to Assigned Contracts and any other affected parties of the Debtors' intent to assume and assign some or all of the Assigned Contracts and to afford the non-Debtor counterparty to each Assigned Contract the opportunity to exercise any rights affected by the Motion pursuant to Bankruptcy Rules 2002(a)(2), 6004(a) and 6006(c), and is hereby approved. Each Assumption Notice shall set forth the following information: (i) the name and address of the Counterparty, (ii) notice of the proposed effective date of the assignment (subject to the Debtors' and the Proposed Purchaser's right to withdraw such request for assumption and assignment pursuant to the Asset Purchase Agreement and the Bidding Procedures), (iii) identification of the Assigned Contract, (iv) the Cure Cost, (v) a description of

the Proposed Purchaser and a statement as to the Proposed Purchaser's ability to perform the Debtors' obligations under the Assigned Contracts, and (vi) the objection deadline.

21. The Debtors (or their agent) shall serve the Assumption Notice on each counterparty pursuant to the Assumption and Assignment Procedures set forth in the Motion. Additionally, from time to time as set forth in section 2.5 of the Asset Purchase Agreement, the Debtors (at the direction of the Proposed Purchaser) shall file with the Court notices of assignment of contracts that set forth: (i) the name and address of each Counterparty; (ii) notice of the proposed effective date of each assignment (subject to the Debtors' and the Proposed Purchaser's right to withdraw such request for assumption and assignment pursuant to the Asset Purchase Agreement); (iii) a description of each Assigned Contract; (iv) the Cure Cost, if any; and (vi) and the objection deadline.

22. In the event that the Proposed Purchaser is not the Prevailing Bidder at the Auction, the counterparties to those executory contracts or unexpired leases proposed to be assumed and assigned to the Prevailing Bidder may at any time prior to or at the Sale Hearing assert objections to the Prevailing Bidder's ability to provide adequate assurance of future performance under such executory contract or unexpired lease.

Objection Procedures

23. Any party that seeks to object to the relief requested in the Motion pertaining to approval of the sale of the Acquired Assets, including (without limitation) the sale, assumption and assignment of the Assigned Contracts, shall file a formal objection that complies with the objection procedures as set forth in the Motion on or before March 20, 2013. Each objection shall state the legal and factual basis of such objection. To the extent that any party to an Assigned Contract does not timely file an objection to the Motion pursuant to the procedures set forth therein, such party shall be (i) deemed to have stipulated that the Cure Cost(s) set forth in

the Assumption Notice as determined in good faith by the Debtors are correct, (ii) shall be forever barred, estopped and enjoined from asserting any additional Cure Cost under the Assigned Contract(s), and (iii) will be forever barred from objecting to the assignment of the Assigned Contracts to the Prevailing Bidder or to the Prevailing Bidder adequate assurance of future performance.

24. If a timely objection to the assumption and assignment of an Assigned Contract is received and such objection cannot be resolved by the parties, the Court will hear such objection at the Sale Hearing; *provided, however*, that the Debtors, in consultation with Proposed Purchaser and, if applicable, the Prevailing Bidder(s), may continue such hearing to a subsequent hearing date. To the extent such hearing is not continued, the objecting non-Debtor counterparty to the Assigned Contract(s) shall be prepared to present evidence to support its asserted Cure Cost at the Sale Hearing.

25. An objection solely to the Cure Cost related to the assumption and assignment of an Assigned Contract may not prevent or delay the Debtors' assumption and assignment of an Assigned Contract. If a party objects solely to a Cure Cost, the Debtors may, with the consent of the Proposed Purchaser, hold the amount of the Cure Cost asserted by the non-Debtor counterparty in reserve pending further order of the Court or mutual agreement of the parties. So long as the Debtors hold the claimed Cure Cost in reserve, and there are no other unresolved objections to assumption and assignment of the applicable Assigned Contracts, the Debtors can, without further delay, assume and assign the Assigned Contract that is the subject of the objection. Under such circumstances, the objecting non-Debtor counterparty's recourse is limited to the funds held in reserve.

26. Any and all written objections as contemplated by this Order (including, without limitation, any objection to the assumption and assignment of any Assigned Contract or the Cure Cost under any contract) must be: (i) in writing; (ii) signed by counsel or attested to by the objecting party; (iii) in conformity with the Bankruptcy Rules and the Local Bankruptcy Rules; (iv) filed with the Bankruptcy Court; and (v) served in accordance with the Local Bankruptcy Rules so as to be received on or before the appropriate deadline as set forth in the Motion upon:

- (a) School Specialty, Inc., Attn: Michael P. Lavelle, Chief Executive Officer (mike.lavelle@schoolspecialty.com), W6316 Design Drive, Greenville, WI 54942;
- (b) (i) Paul, Weiss, Rifkind, Wharton & Garrison LLP, Attn: Alan W. Kornberg, Jeffrey D. Saferstein & Tarun Stewart (akornberg@paulweiss.com, jsaferstein@paulweiss.com, tstewart@paulweiss.com), 1285 Avenue of the Americas, New York, NY 10019 and (ii) Young, Conaway, Stargatt & Taylor, LLP, Attn: Pauline K. Morgan and Joel Waite (pmorgan@ycst.com, jwaite@ycst.com), Rodney Square, 1000 North King Street, Wilmington, DE 19801, attorneys for the Sellers;
- (c) Perella Weinberg Partners, Attn: Derron Slonecker and Agnes Tang (dslonecker@pwpartners.com, atang@pwpartners.com), 767 Fifth Avenue, New York, NY 10153, financial advisors for the Sellers;
- (d) (i) Akin Gump Strauss Hauer & Feld, LLP, Attn: Michael Stamer, Stephen Kuhn & Meredith Lahaie (mstamer@akingump.com, skuhn@akingump.com, mlahae@akingump.com), One Bryant Park, New York, NY 10036 and (ii) Pepper Hamilton LLP, Attn: David Stratton & David Fournier (strattond@pepperlaw.com, fournierd@pepperlaw.com), Hercules Plaza, Suite 5100, 1313 N. Market Street, Wilmington, DE 19801, attorneys for the Proposed Purchaser;
- (e) (i) Goldberg Kohn, Attn: Randall Klein & Jeremy Downs (randall.klein@goldbergkohn.com, jeremy.downs@goldbergkohn.com), 55 East Monroe Street, Suite 3300, Chicago, IL 60603 and (ii) Richards, Layton and Finger, P.A., Attn: Paul Heath (heath@RLF.com), One Rodney Square, 920 North King Street, Wilmington, DE 19801, attorneys for the ABL Credit Parties (as defined in the Asset Purchase Agreement);
- (f) (i) Brown Rudnick LLP, Attn: Robert J. Stark (rstark@brownrudnick.com), 7 Times Square, New York, NY 10036, (ii) Brown Rudnick LLP, Attn: Steven D. Pohl (SPohl@brownrudnick.com), One Financial Center, Boston, MA 02111, and

(iii) Venable LLP, Attn: Jamie L. Edmonson (jledmonson@Venable.com), 750 Pratt Street, Suite 900, Baltimore, MD 21202, attorneys for the Committee; and

(g) the U.S. Trustee, Attn: Juliet M. Sarkessian (Juliet.M.Sarkessian@usdoj.gov), 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801.

27. Failure to object to the relief requested in the Motion shall be deemed to be “consent” for purposes of Bankruptcy Code section 363(f); *provided, however*, that the consent of the ABL Credit Parties (as defined in the Asset Purchase Agreement) is subject to payment in full of the Obligations under the ABL Credit Agreements (as defined in the Asset Purchase Agreement) as contemplated by Section 3.1 of the Asset Purchase Agreement.

28. All objections to the Motion or the relief requested therein (and all reservations of rights included therein), as they pertain to the entry of this Order, are overruled to the extent they have not been withdrawn, waived or otherwise resolved.

Other Relief Granted

29. Except as otherwise provided in the Asset Purchase Agreement, the Bidding Procedures or this Order, the Debtors reserve their rights, with the consent of the Proposed Purchaser and in consultation with the Creditors’ Committee, as required by the Bidding Procedures, to modify the Bidding Procedures at or prior to the Auction, with respect to extending the deadlines set forth therein, modifying bidding increments, waiving terms and conditions set forth therein with respect to any or all potential bidders, adjourning or cancelling the Auction at or prior to the Auction and/or adjourning the Sale Hearing in open court without further notice; *provided, however*, that any modification of the Bidding Procedures shall not be inconsistent with this Bid Procedures Order and shall be disclosed to each Qualified Bidder at the Auction.

30. Subject to the Debtors’ compliance with their obligations to deliver a copy of any Qualifying Bids to the Proposed Purchaser in accordance with the terms of section 7 of the Bid

Procedures, the Auction, if necessary, is scheduled for **10:00 a.m. (ET) on March 25, 2013** at the law offices of Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, NY 10019. If no Qualifying Bid other than the Qualifying Bid submitted by the Proposed Purchaser is received by the Bid Deadline, then the Auction will not be held and the Debtors shall promptly seek Bankruptcy Court approval of the Asset Purchase Agreement. In the event that no Auction is held, the Debtors shall file a Notice of Cancellation of the Auction with the Court, within one (1) business day of such decision.

31. Each Qualifying Bidder participating at the Auction will be required to confirm that it has not engaged in any collusion with respect to the bidding or the Sale.

32. The Auction will be conducted openly, but only the Debtors, the Proposed Purchaser, the Qualifying Bidders, the ABL Credit Parties, the official committee of unsecured creditors and advisors to each of these parties may attend the Auction; *provided that* any other creditor may be permitted to attend the Auction if such party so advises the Debtors and the Proposed Purchaser in writing by March 11, 2013; *provided further* that the Debtors may seek relief from the Bankruptcy Court in the event they object to any such creditor's attendance; *provided further, however*, that only Qualifying Bidders will be allowed to submit bids for the Acquired Assets at the Auction.

33. Bidding at the Auction shall be transcribed.

34. The Sale Hearing shall be held in this Court on **March 27, 2013 at 1:00 p.m. (ET)**, unless otherwise determined by the Court. The Sale Hearing may be adjourned or rescheduled by the Debtors, with the consent of the Proposed Purchaser, without further notice by an announcement of the adjourned date at the Sale Hearing or by the filing of a hearing agenda.

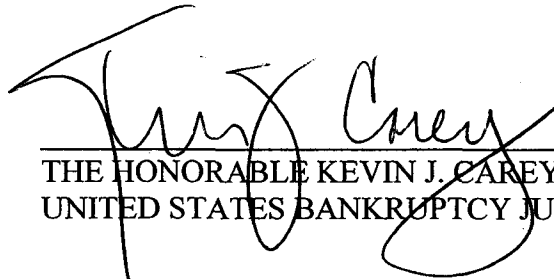
35. The Debtors are authorized to conduct the Asset Sale without the necessity of complying with any state or local bulk transfer laws or requirements.

36. In the event there is a conflict between this Order and the Motion or the Asset Purchase Agreement, this Order shall control and govern.

37. This Court shall retain jurisdiction with respect to all matters arising or related to the implementation or interpretation of this Order.

38. This Order shall be effective immediately upon entry, and any stay of orders provided for in Bankruptcy Rules 6004 or 6006 or any other provision of the Bankruptcy Code or Bankruptcy Rules is expressly lifted. The Debtors are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order, and may, in their discretion and without further delay, take any action and perform any act authorized under this Order.

Dated: Feb. 15, 2013
Wilmington, Delaware



THE HONORABLE KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

BIDDING PROCEDURES¹

Set forth below are the bid procedures (the “Bidding Procedures”) to be employed by School Specialty, Inc. (together with its affiliated debtors and debtors-in-possession, the “Debtors”) and all direct and indirect subsidiaries who are guarantors (collectively with the Debtors, the “Sellers”) in connection with that certain purchase agreement, dated January 28, 2013 between the Debtors and Bayside School Specialty, LLC, a Delaware limited liability company (the “Proposed Purchaser”), pursuant to which the Proposed Purchaser shall acquire all or substantially all of the Debtors’ assets all on the terms and conditions specified therein (the “Asset Purchase Agreement”), a copy of which is attached hereto as Exhibit 1.

ANY PARTY INTERESTED IN BIDDING ON ANY OF THE DEBTORS’ ASSETS SHOULD CONTACT THE DEBTORS’ ADVISORS, AS FOLLOWS:

Perella Weinberg Partners: Derron Slonecker (dslonecker@pwpartners.com, 212-287-3361) or Agnes Tang (atang@pwpartners.com, 212-287-3168), 767 Fifth Avenue New York, NY 10153

1. Assets to be Sold

The Debtors shall offer for sale all or substantially all of the property and assets of the Debtors’ businesses (the “Asset Sale”) as identified in further detail in the Asset Purchase Agreement (collectively the “Assets”); provided that the Debtors determine that the aggregate consideration offered by any Bid or combination of Bids for all or substantially all of the Debtors’ assets satisfies the requirements set forth in section 5(n) below. A list of the Assets will be posted in the virtual data room.

2. Participation Requirements

Any person that wishes to participate in the bidding process (each, a “Potential Bidder”) must become a “Qualifying Bidder.” As a prerequisite to becoming a Qualifying Bidder (and, thus, being able to conduct due diligence), a Potential Bidder:

- must deliver an executed confidentiality agreement substantially in the form of Exhibit 2 attached hereto; and
- must be able, by providing financial statements, bank or investment account statements or such other information as the Debtors deem satisfactory, in their reasonable discretion and in consultation with the official committee of unsecured creditors (the “Creditors’ Committee”),² to demonstrate the financial wherewithal to consummate a transaction if selected as the successful bidder for the Assets.

¹ On February 15, 2013, the United States Bankruptcy Court for the District of Delaware entered an order approving these bidding procedures [Docket No. 213].

² In the event that one or more members of the Creditors’ Committee submits a bid for the Assets, such member(s) will be excluded from participating in the consultation and information rights contemplated by these Bidding Procedures.

The Proposed Purchaser is deemed a Qualifying Bidder and the Asset Purchase Agreement constitutes a Qualifying Bid (as defined below) for all purposes. The Debtors shall provide to the Creditors' Committee, on a real time basis, a list of all Potential Bidders and Qualifying Bidders, copies of all executed confidentiality agreements and the documents any bidders provide to the Debtors to establish their financial wherewithal.

3. Form of Agreement

The Asset Purchase Agreement is an offer to purchase all of the Assets. Bidders should reference the Asset Purchase Agreement in connection with their bids. As set forth in section 5 below, Bidders who intend to submit bids must include with their bids (i) a clean asset purchase agreement that contains substantially the same or terms more favorable to the Debtors than those in the Asset Purchase Agreement (provided that, as set forth in section 5(e) of these Bidding Procedures, such asset purchase agreement may contemplate the acquisition of a portion of the Assets) and (ii) a marked modified asset purchase agreement reflecting any variations from the Asset Purchase Agreement executed by the Proposed Purchaser.

4. Due Diligence

The Debtors may afford reasonable due diligence access and the time and opportunity to conduct reasonable due diligence to any Qualifying Bidder. The due diligence period shall extend through and include the Bid Deadline (as defined below). The Debtors and their representatives may but shall not be obligated to furnish any due diligence information after the Bid Deadline.

For any Qualifying Bidder who is a competitor of the Debtors or is affiliated with any competitor of the Debtors, the Debtors reserve the right, in consultation with their advisors and the Creditors' Committee, to withhold or limit access to any due diligence information that the Debtors determine is business-sensitive or otherwise not appropriate for disclosure to such Qualifying Bidder.

Due diligence access may include such management presentations as may be scheduled by the Debtors, access to the virtual data room, and such other matters which a Qualifying Bidder may reasonably request and as to which the Debtors may agree. The Debtors will designate a representative of Perella Weinberg Partners to coordinate all reasonable requests for additional information and due diligence access from Qualifying Bidders. Qualifying Bidders are advised to exercise their own discretion before relying on any information regarding the Assets provided by anyone other than the Debtors or their representatives.

Each bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Assets prior to submitting its bid, that it has relied solely upon its own independent review, investigation and/or inspection of any documents in making its bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any information provided in connection with the bidding process outlined herein, except as expressly stated in the definitive purchase agreement, if any, between such bidder and the Debtors.

5. Bid Requirements

To be deemed a “Qualifying Bid,” a bid must be received from a Qualifying Bidder by a date no later than the Bid Deadline (as defined below) and satisfy each of the following requirements (each, a “Bid Requirement”):

- (a) be in writing;
- (b) set forth the purchase price to be paid by such bidder (or in the case of the Proposed Purchaser, the credit bid amount);
- (c) not propose payment in any form other than cash (or in the case of the Proposed Purchaser, a credit bid); *provided that* in the event the Debtors’ prepetition secured obligations are satisfied in full in cash, the Creditors’ Committee may consent to consideration other than cash;
- (d) state the liabilities proposed to be paid or assumed by such bidder;
- (e) state that such Qualifying Bidder offers to purchase all or any portion of the Assets upon the terms and conditions substantially as set forth in the Asset Purchase Agreement and be accompanied by a clean and duly executed purchase agreement (the “Modified Asset Purchase Agreement”) and a marked Modified Asset Purchase Agreement reflecting any variations from the Asset Purchase Agreement executed by the Proposed Purchaser;
- (f) state that such Qualifying Bidder’s offer is irrevocable until the closing of the Asset Sale if such Qualifying Bidder is the Prevailing Bidder (as defined below) or the Second-Highest Bidder (as defined below);
- (g) state that such Qualifying Bidder is financially capable of consummating the transactions contemplated by the Modified Asset Purchase Agreement and provides written evidence in support thereof;
- (h) contain such financial and other information to allow the Debtors to make a reasonable determination as to the Qualifying Bidder’s financial and other capabilities to consummate the transactions contemplated by the Modified Asset Purchase Agreement, including, without limitation, such financial and other information setting forth adequate assurance of future performance under contracts and leases to be assumed pursuant to section 365 of title 11 of the United States Code (the “Bankruptcy Code”) in a form requested by the Debtors to allow the Debtors to serve, within one (1) business day after such receipt, such information on counter-parties to any contracts or leases being assumed or assumed and assigned in connection with the proposed sale that have requested, in writing, such information;
- (i) identify with particularity each and every executory contract and unexpired lease, the assumption and, as applicable, assignment of which is a condition to closing;

- (j) commit to, no later than April 11, 2013, (x) repay Bayside Finance, LLC (or the applicable beneficial lender under the Bayside DIP Facility (as defined below)) (“Bayside”) by wire transfer of immediately available funds, the full amount of any obligations owed to Bayside under the superpriority debtor-in-possession financing facility made available by Bayside to the Sellers (the “Bayside DIP Facility”), and (y) assume or arrange for a suitable third party to assume all of the rights and ongoing funding obligations (if any) of Bayside under the Bayside DIP Facility;
- (k) unless otherwise agreed to by Wells DIP Agent (as defined below) and the Co-Collateral Agent (as defined in the Wells DIP Facility), commit to, no later than April 11, 2013, wire an amount necessary to cause all amounts outstanding under the super-priority revolving debtor-in-possession credit facility made available to certain of the Sellers in an aggregate principal amount of up to \$175,000,000 (the “Wells DIP Facility”) with Wells Fargo Capital Finance, LLC or an affiliate acting as administrative agent (in such capacity, the “Wells DIP Agent”) for itself and a syndicate of financial institutions to be paid in full in accordance with the Wells DIP Facility;
- (l) not request or entitle such Qualifying Bidder to any break-up fee, expense reimbursement (other than the expense reimbursement that only the Proposed Purchaser is entitled to receive) or similar type of payment;
- (m) fully disclose the identity of each entity that will be bidding in the Asset Sale or otherwise participating in connection with such bid, and the complete terms of any such participation;
- (n) result in a value to the Debtors’ estates that is more than the aggregate of the value of the sum of: (i) the credit bid amount set forth in the Asset Purchase Agreement; plus (ii) the assumed liabilities, as identified in the Asset Purchase Agreement; plus (iii) \$1,650,000 (the “Initial Overbid Amount”);
- (o) (i) does not contain any financing contingencies of any kind; (ii) provides for expiration of any due diligence contingency on or before the day that is one (1) day prior to the Auction Date (as defined below); and (iii) contains evidence that the Qualifying Bidder has received debt and/or equity funding commitments or has financial resources readily available sufficient in the aggregate to consummate the Asset Sale, which evidence is reasonably satisfactory to the Debtors in consultation with the Creditors’ Committee;
- (p) sets forth each regulatory and third-party approval required for the bidder to consummate its purchase, and the time period within which the bidder expects to receive such regulatory and third-party approvals (and in the case that receipt of any such regulatory or third-party approval is expected to take more than 15 days following execution and delivery of an asset purchase agreement, those actions the bidder will take to ensure receipt of such approval(s) as promptly as possible);

- (q) includes a commitment to close on or before April 11, 2013 (the “Projected Closing Date”) subject to any regulatory approvals;
- (r) provides for the Qualifying Bidder to serve as a backup bid (the “Second-Highest Bidder”) if it is the next highest and best bid after the Prevailing Bid (the “Second-Highest Bid”) in accordance with the terms of the Asset Purchase Agreement or Modified Asset Purchase Agreement, as applicable;
- (s) includes evidence of authorization and approval from the Qualifying Bidder’s board of directors (or comparable governing body) with respect to the submission, execution, and delivery of the Modified Asset Purchase Agreement;
- (t) provides for liquidated damages in the event of the bidder’s breach of contract under the Modified Asset Purchase Agreement equal to the deposit; and
- (u) provides a cash purchase deposit equal to ten percent (10%) of the purchase price contained in the Modified Asset Purchase Agreement; provided, however, that the Proposed Purchaser is not required to make a cash deposit.

A competing bid satisfying all the above requirements, as determined by the Debtors in their reasonable business judgment and in consultation with the Creditors’ Committee, shall constitute a Qualifying Bid. For the avoidance of doubt, no waiver of any Bid Requirement shall be permitted without the consent of the Proposed Purchaser. Each Potential Bidder submitting a bid shall be deemed to acknowledge and represent that it is bound by these Bidding Procedures.

6. Bid Deadline

A Qualifying Bidder that desires to make a bid shall deliver a written or electronic copy of its bid, in each case so as to be received by a date no later than March 19, 2013 (the “Bid Deadline”), to:

- (a) School Specialty, Inc., Attn: Michael P. Lavelle, Chief Executive Officer (mike.lavelle@schoolspecialty.com), W6316 Design Drive, Greenville, WI 54942;
- (b) Paul, Weiss, Rifkind, Wharton & Garrison LLP, Attn: Alan W. Kornberg, Jeffrey D. Saferstein & Tarun Stewart (akornberg@paulweiss.com, jsaferstein@paulweiss.com, tstewart@paulweiss.com), 1285 Avenue of the Americas, New York, NY 10019, attorneys for the Sellers;
- (c) Perella Weinberg Partners, Attn: Derron Slonecker and Agnes Tang (dslonecker@pwppartners.com, atang@pwppartners.com), 767 Fifth Avenue, New York, NY 10153, financial advisors for the Sellers;
- (d) Akin Gump Strauss Hauer & Feld, LLP, Attn: Michael Stamer, Stephen Kuhn & Meredith Lahaie (mstamer@akingump.com, skuhn@akingump.com, mlahaie@akingump.com), One Bryant Park, New York, NY 10036, attorneys for the Proposed Purchaser;

- (e) Goldberg Kohn, Attn: Randall Klein & Jeremy Downs (randall.klein@goldbergkohn.com, jeremy.downs@goldbergkohn.com), 55 East Monroe Street, Suite 3300, Chicago, IL 60603, attorneys for the ABL Credit Parties (as defined in the Asset Purchase Agreement); and
- (f) Brown Rudnick LLP, Attn: Robert Stark (rstark@brownrudnick.com), Seven Times Square, New York, NY 10036, proposed counsel for the official committee of unsecured creditors.

7. Evaluation of Qualifying Bids

The Debtors, in consultation with the Creditors' Committee, shall make a determination regarding whether a bid is a Qualifying Bid and shall notify bidders whether their bids have been determined to be qualified by a date no later than two (2) days prior to the Auction Date (as defined below). In the event a bid is determined not to be a Qualifying Bid, the bidder shall be notified by the Debtors and shall have one (1) day from the date of such notification to modify its bid to render it a Qualifying Bid. One (1) day prior to the Auction (as defined below), the Debtors shall determine, in their reasonable judgment and in consultation with the Creditors' Committee, which of the Qualifying Bids, at such time, is the highest or best for purposes of constituting the opening bid of the Auction.

8. No Qualifying Bids

If no timely, conforming Qualifying Bids other than the Qualifying Bid submitted by the Proposed Purchaser are submitted by the Bid Deadline, the Debtors shall not hold an Auction (as defined below) and instead shall request at the Sale Hearing (as defined below) that the Bankruptcy Court approve the Asset Purchase Agreement with the Proposed Purchaser.

9. Auction

In the event that the Debtors timely receive one or more Qualifying Bids other than the Asset Purchase Agreement, the Debtors shall conduct an auction (the "Auction") no later than March 25, 2013 (the "Auction Date"). Following the Auction, the Debtors will determine, in consultation with their advisors and the Creditors' Committee, which individual bid is in the best interests of the Debtors and their estates.

The Auction shall be governed by the following procedures:

- (a) The Auction shall be held at the law offices of Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, NY 10019 on March 25, 2013, beginning at 10:00 a.m.;
- (b) only the Proposed Purchaser and the other Qualifying Bidders shall be entitled to make any subsequent bids at the Auction;
- (c) each Qualifying Bidder shall confirm that it has not engaged in any collusion with respect to bidding or the Asset Sale;

- (d) the Proposed Purchaser and the other Qualifying Bidders shall appear in person at the Auction, or through a duly authorized representative;
- (e) only the Debtors, the Proposed Purchaser, the Qualifying Bidders, the ABL Credit Parties, the official committee of unsecured creditors and advisors to each of these parties may attend the Auction; *provided that* any other creditor may be permitted to attend the Auction if such party so advises the Debtors and the Proposed Purchaser in writing by March 11, 2013; *provided further* that the Debtors may seek relief from the Bankruptcy Court in the event they object to any such creditor's attendance;
- (f) the Debtors and their professional advisors shall direct and preside over the Auction and the Auction shall be transcribed;
- (g) bidding shall commence at the amount of the highest Qualifying Bid submitted by the Qualifying Bidders prior to the Auction;
- (h) Qualifying Bidders may submit successive bids in increments of at least \$500,000 higher than the previous bid; provided that (i) each such successive bid must be a Qualifying Bid and (ii) the Debtors shall retain the right to modify the bid increment requirements at the Auction;
- (i) the Auction may include individual negotiations with the Qualified Bidders and/or open bidding in the presence of all other Qualified Bidders;
- (j) all material terms of the bid that is deemed to be the highest and best bid for each round of bidding shall be fully disclosed to all other Qualifying Bidders and the Proposed Purchaser;
- (k) The Debtors, after consultation with the Creditors' Committee, may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances (e.g., the amount of time allotted to make subsequent bids) for conducting the Auction, *provided* that such rules are (i) not inconsistent with the order approving these Bidding Procedures (the "Bid Procedures Order"), the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for the District of Delaware, or any order of the Bankruptcy Court entered in connection with these chapter 11 cases, and (ii) disclosed to each Qualified Bidder.
- (l) all Qualifying Bidders, including the Proposed Purchaser, at the Auction shall be deemed to have consented and submitted to the core jurisdiction of the Bankruptcy Court and waive any right to a jury trial in connection with any disputes relating to the marketing process, the Auction and the construction and enforcement of the Qualifying Bidder's contemplated transaction documents, as applicable;
- (m) Pursuant to Bankruptcy Code section 363(k) and except as otherwise set forth in this subsection (m), the Proposed Purchaser shall be entitled to credit bid all or a

portion of the obligations then outstanding under (A) the DIP Credit Agreement (as defined in the Asset Purchase Agreement) and (B) the Pre-Petition Credit Agreement (as defined in the Asset Purchase Agreement), together with accrued interest, fees and any other claims in respect thereof; *provided, however*, that the Proposed Purchaser shall only be entitled to credit bid all or a portion of the Early Payment Fee (as defined in the Asset Purchase Agreement) if such Proposed Purchaser has either (i) obtained an order from the Bankruptcy Court allowing the Early Payment Fee in whole or in part (in which case the Proposed Purchaser shall be entitled to credit bid all or any portion of the allowed amount of the Early Payment Fee as set forth in any such order) or (ii) provided cash collateral, a letter of credit or such other form of credit support in respect of the Early Payment Fee reasonably acceptable to the Debtors (in which case the Proposed Purchaser shall be entitled to credit bid all or a portion of the Early Payment Fee equal to the amount of such cash collateral, letter of credit or other credit support);

- (n) all Qualifying Bidders, including the Proposed Purchaser, shall have the right to make additional modifications to the Asset Purchase Agreement or Modified Asset Purchase Agreement in conjunction with each Qualifying Bid submitted in each round of bidding during the Auction, *provided that* (i) any such modifications to the Asset Purchase Agreement or Modified Asset Purchase Agreement on an aggregate basis and viewed in whole, shall not, in the Debtors' business judgment after consultation with the Creditors' Committee, be less favorable to the Debtors than the terms of the Asset Purchase Agreement and (ii) each Qualifying Bid shall constitute an irrevocable offer and be binding on the Qualified Bidder submitting such bid until either such party shall have submitted a subsequent Qualifying Bid at the Auction or the Auction shall have concluded without such bid being selected as the Prevailing Bid or the Second-Highest Bid;
- (o) the Debtors shall have the right to request any additional financial information that will allow the Debtors to make a reasonable determination as to the Qualifying Bidder's financial and other capabilities to consummate the transactions contemplated by the Modified Asset Purchase Agreement, as further amended during the Auction, and any further information that the Debtors may believe is reasonably necessary to clarify and evaluate the Qualifying Bidder's bid;
- (p) the Auction shall continue until the Debtors determine, after consultation with the Creditors' Committee and subject to Bankruptcy Court approval, that the offer or offers for the Assets is or are the highest or best from among the Qualifying Bids submitted at the Auction (the "Prevailing Bid"). In making this decision, the Debtors shall consider, without limitation, the amount of the purchase price, the likelihood of the bidder's ability to close a transaction and the timing thereof, the number, type and nature of any changes to the Asset Purchase Agreement requested by each bidder, and the net benefit to the Debtors' estates. The bidder submitting such Prevailing Bid shall become the "Prevailing Bidder," and shall have such rights and responsibilities of the purchaser, as set forth in the applicable Asset Purchase Agreement or Modified Asset Purchase Agreement; provided that

the Debtors may, in their discretion after consultation with the Creditors' Committee, designate the Second-Highest Bid (and the corresponding Second-Highest Bidder) to purchase the Assets in the event the Prevailing Bidder does not close the Asset Sale; and

- (q) within one (1) business day after adjournment of the Auction, the Prevailing Bidder shall complete and execute all agreements, contracts, instruments and other documents evidencing and containing the terms and conditions upon which the Prevailing Bid was made.

EACH OF THE PREVAILING BID AND THE SECOND-HIGHEST BID SHALL CONSTITUTE AN IRREVOCABLE OFFER AND BE BINDING ON THE PREVAILING BIDDER AND THE SECOND-HIGHEST BIDDER, RESPECTIVELY, FROM THE TIME THE BID IS SUBMITTED UNTIL THE EARLIEST OF (A) TWO (2) BUSINESS DAYS AFTER THE SALE HAS CLOSED; OR (B) THIRTY (30) DAYS AFTER THE SALE ORDER IS ENTERED. EACH QUALIFIED BID (INCLUDING THE BID OF THE PROPOSED PURCHASER) THAT IS NOT THE PREVAILING BID OR THE SECOND-HIGHEST BID SHALL BE DEEMED WITHDRAWN AND TERMINATED AT THE CONCLUSION OF THE SALE HEARING.

10. Sale Hearing

The Prevailing Bid and the Second-Highest Bid (or the Asset Purchase Agreement if no Qualifying Bid other than that of the Proposed Purchaser is received) will be subject to approval by the Bankruptcy Court. The hearing to approve the Prevailing Bid and the Second-Highest Bid (or the Asset Purchase Agreement if no Qualifying Bid other than that of the Proposed Purchaser is received) (the "Sale Hearing") shall take place on March 27, 2013.

11. Return of Deposits

All deposits shall be returned to each bidder not selected by the Debtors as the Prevailing Bidder no later than five (5) business days following the substantial consummation of the sale to the Prevailing Bidder or the Second Highest Bidder (if such bidder is deemed the Prevailing Bidder).

12. Reservation of Rights

Notwithstanding any of the foregoing, the Debtors reserve their rights, with the consent of the Proposed Purchaser, to modify these Bidding Procedures at or prior to the Auction, with respect to extending the deadlines set forth herein, modifying bidding increments, waiving terms and conditions set forth herein with respect to any or all potential bidders, adjourning or cancelling the Auction at or prior to the Auction and/or adjourning the Sale Hearing in open court without further notice; *provided, however*, that any modification of the Bidding Procedures shall not be inconsistent with the Bid Procedures Order and shall be disclosed to each Qualified Bidder at the Auction.

13. Backup Bidder

- (a) Notwithstanding any of the foregoing, in the event that the Prevailing Bidder fails to consummate such sale prior to the Projected Closing Date (or such date as may be extended by the Debtors), the Second Highest Bidder will be deemed to be the back-up bidder at the price of its last bid. The Second-Highest Bidder will be deemed to be the Prevailing Bidder and the Debtors will be authorized, but not directed, to effectuate the Asset Sale to the Second-Highest Bidder subject to the terms of the Second-Highest Bid without further order of the Bankruptcy Court.
- (b) For the avoidance of doubt, in the event that there is a Prevailing Bidder other than the Proposed Purchaser and the Proposed Purchaser is the Second-Highest Bidder, the Proposed Purchaser will be deemed to be the back-up bidder at the price of its last credit bid and will be subject to the terms contained Section 13(a) herein.