

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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: Chapter 11
In re :
: Case No. 21-10636 (JTD)
AEROCENTURY CORP., et al., :
: (Jointly Administered)
Debtors.¹ :
: Re: Docket Nos. 12 and 87
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**NOTICE OF FILING OF PROPOSED ORDER
APPROVING THE SALE OF THE DEBTORS' ASSETS**

PLEASE TAKE NOTICE that, on March 29, 2021, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Debtors’ Motion for Entry of: (A) an Order (I) Approving Bidding Procedures in Connection With the Sale of Substantially All of the Debtors’ Assets, (II) Authorizing the Debtors to Enter Into the Stalking Horse Purchase Agreement, (III) Scheduling an Auction for and Hearing to Approve the Sale, (IV) Approving Notice of Respective Date, Time and Place for Auction and for Hearing on Approval of Sale, (V) Approving Procedures for the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (VI) Approving Form and Manner of Notice Thereof, and (VII) Granting Related Relief; and (B) An Order Authorizing and Approving (I) the Sale Free and Clear of Liens, Claims, Rights, Encumbrances, and Other Interests, and (II) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and (III) Related Relief* [Docket No. 12] with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

PLEASE TAKE FURTHER NOTICE that, on April 22, 2021, the Bankruptcy Court entered that certain *Order (I) Approving Bidding Procedures in Connection With the Sale of Substantially All of the Debtors' Assets; (II) Authorizing the Debtors to Enter Into the Stalking Horse Purchase Agreement, (III) Scheduling an Auction for and Hearing to Approve the Sale; (IV) Approving Notice of Respective Date, Time and Place for Auction and for Hearing on Approval of Sale; (V) Approving Procedures for the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (VI) Approving Form and Manner of Notice Thereof; and (VII) Granting Related Relief* [Docket No. 87] (the “Bidding Procedures Order”).

PLEASE TAKE FURTHER NOTICE that, in accordance with the Bidding Procedures Order, the Debtors hereby file a proposed order (the “Proposed Sale Order”) approving the sale of the Debtors’ assets, a copy of which is attached hereto as **Exhibit A**. The Proposed Sale Order remains subject to further review and comment by the Debtors and other interested parties, and all rights are reserved in connection therewith.

¹ The Debtors in these chapter 11 cases, along with the last four digits of their federal employer identification number, are: AeroCentury Corp. (3974); JetFleet Holding Corp. (5342); and JetFleet Management Corp. (0929). The Debtors’ mailing address is 1440 Chapin Avenue, Suite 310, Burlingame, CA 94010.



PLEASE TAKE FURTHER NOTICE that the Debtors intend to seek entry of the Proposed Sale Order at the hearing (the “Sale Hearing”) scheduled before the Honorable John T. Dorsey, United States Bankruptcy Judge, on May 25, 2021, at 2:00 p.m. prevailing Eastern Time. The Debtors reserve all rights to further revise or modify the Proposed Sale Order at or prior to the Sale Hearing.

Dated: May 11, 2021
Wilmington, Delaware

/s/ Joseph M. Mulvihill

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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 : Chapter 11

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AEROCENTURY CORP., *et al.*, : Case No. 21-10636 (JTD)

:

Debtors.¹ : (Jointly Administered)

:

: **Re: Docket Nos. [12, 87]²**

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**ORDER (I) APPROVING AND AUTHORIZING THE SALE OF
[CERTAIN OF THE DEBTORS’ ASSETS] FREE AND CLEAR OF
ALL LIENS, CLAIMS, AND ENCUMBRANCES, (II) AUTHORIZING THE
ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND
UNEXPIRED LEASES, AND (III) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “Motion”)³ of the above-captioned debtors and debtors in possession (the “Debtors”), pursuant to sections 105(a), 363, 365, and 503 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), Rules 2002, 6004, 6006, 9006 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2002-1 and 6004-1 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), for the entry of an order (this “Sale Order”) authorizing and approving (a) the sale (the “Sale”) pursuant to that certain Asset Purchase Agreement, dated as of [*], 2021, attached hereto as **Exhibit 1** (the “APA”),

¹ The Debtors in these chapter 11 cases, along with the last four digits of their federal employer identification number, are: AeroCentury Corp. (3974); JetFleet Holding Corp. (5342); and JetFleet Management Corp. (0929). The Debtors’ mailing address is 1440 Chapin Avenue, Suite 310, Burlingame, CA 94010.

² Certain terms in this proposed form of order are bracketed as they may be subject to revision based on the final transaction or transactions resulting from the ongoing Court-approved marketing and sale process.

³ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the APA (as defined below), or to the extent not defined therein, the Bidding Procedures Order (as defined below).

between the Debtors and [*] (“Buyer”) free and clear of all liens claims, interests, and Encumbrances⁴, (b) approving the assumption and assignment of certain executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code in connection with the Sale, and (c) granting related relief; and the Court having entered on April 22, 2021, that certain *Order (I) Approving Bidding Procedures in Connection with the Sale of Substantially All of the Debtors' Assets; (II) Authorizing the Debtors to Enter Into the Stalking Horse Purchase Agreement, (III) Scheduling an Auction for and Hearing to Approve the Sale; (IV) Approving Notice of Respective Date, Time and Place for Auction and for Hearing on Approval of Sale; (V) Approving Procedures for the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (VI) Approving Form and Manner of Notice Thereof; and (VII) Granting Related Relief; and (V) Granting Related Relief* [Docket No. 87] (the “Bidding Procedures Order”); and the Debtors, after an extensive marketing and sale process, and acting in accordance with the bidding procedures approved pursuant to the Bidding Procedures Order, having determined that the highest or otherwise best offer for [those certain assets to be purchased in the APA] (the “Purchased Assets”) was made by the Buyer pursuant to the APA [following the auction held on May 20, 2021 (the “Auction”)]; and the Court having conducted a hearing on May 25, 2021 (the “Sale Hearing”), at which time all parties in interest were offered an opportunity to be heard with respect to the Sale, to consider the approval of the Sale pursuant to the terms and conditions of the APA, and the Court having considered (i) the Motion and any objections thereto, (ii) the Sale, (iii) the arguments of counsel made, and evidence adduced, related thereto, and (iv) the full record in the chapter 11 cases, including the record related to the entry of the Bidding Procedures Order and the Sale Hearing held before the Court; and all parties in interest having been heard, or having had the opportunity to be heard, regarding

⁴ The defined term “Encumbrances” as used herein shall have the meaning ascribed in paragraph 7 of this Order.

the approval of the APA, the Sale and the transactions contemplated by the APA; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their bankruptcy estates, creditors, and other parties in interest in the chapter 11 cases; it is hereby **FOUND, CONCLUDED, AND DETERMINED THAT:**⁵

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 the chapter 11 cases pursuant to Bankruptcy Rule 9014. The Court's findings also shall include any oral findings of fact and conclusions of law made by the Court during or at the conclusion of the Sale Hearing.

B. 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.

C. This Court has jurisdiction over the Motion and over the property of the Debtor, including the Purchased Assets to be sold, transferred, and conveyed pursuant to the APA, pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of the chapter 11 cases and the Motion in this District and Court is proper under 28 U.S.C. §§ 1408 and 1409.

D. This Sale Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any 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 finds that there is no just reason for delay in the

⁵ All findings of fact and conclusions of law announced by the Court at the Sale Hearing in relation to the Motion, if any, are hereby incorporated herein.

implementation of this Sale Order, and directs entry of judgment as set forth herein. No appeal, motion to reconsider, or similar pleading has been filed with respect to the Bidding Procedures Order, and the Bidding Procedures Order is a final order of the Court, has not been vacated, withdrawn, rescinded, or amended and remains in full force and effect.

E. The Purchased Assets constitute property of the Debtors' bankruptcy estates and title thereto is vested in the Debtors' bankruptcy estate within the meaning of section 541(a) of the Bankruptcy Code.

F. The statutory bases for the relief requested in the Motion and provided for herein are sections 105, 363, 365, and 503 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9006 and 9014, and Local Rules 2002-1 and 6004-1.

G. On March 29, 2021 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtors have continued to maintain their business and manage their property as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

H. This Court previously entered the Bidding Procedures Order, among other things: (i) establishing certain bidding and auction procedures; (ii) scheduling the Auction (if necessary) and the Sale Hearing to consider the sale of the Purchased Assets; (iii) establishing certain procedures for noticing and determining cure amounts related to the Debtors' executory contracts and unexpired leases; (iv) approving the form and manner of notice of certain procedures, dates and deadlines in connection with the Bidding Procedures and the Sale; and (v) granting certain related relief.

I. A fair and reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein has been afforded to all interested persons and entities. As

evidenced by the affidavits of service and publication previously filed with the Court [Docket Nos. 50, 101, 110 & ___], 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, and the assumption and assignment of the executory contracts and unexpired leases to be assumed and assigned to the Buyer at closing pursuant to this Sale Order and the APA (collectively, the “Assumed Contracts”) has been provided in accordance with sections 102(1), 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 9007, and 9014, and in compliance with the Bidding Procedures Order, to each party entitled to such notice, including, as applicable: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to the Prepetition Lender; (c) all persons known or reasonably believed to have asserted an interest in the Purchased Assets; (d) the Attorneys General in the State(s) where the Purchased Assets are located; (e) all state and local taxing authorities in the State(s) where the Purchased Assets are located; (f) the Internal Revenue Service; (g) all parties that have asserted liens against the Purchased Assets; (h) all of the Debtors’ known creditors and known equity holders, and (i) all parties that have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. With respect to entities whose identities are not reasonably ascertained by the Debtors, publication of the Sale Notice once in the national edition of *The New York Times* on April 27, 2021, as evidenced by the affidavit of service filed by the Debtors at Docket No. 101 in the chapter 11 cases, was, and is deemed, sufficient, and reasonably calculated under the circumstances to reach such entities. The notices described above were good, sufficient, and appropriate under the circumstances, and no other or further notice of the Motion, the Auction, the Sale, and the Sale Hearing is, or shall be, required.

J. The Debtors have articulated good and sufficient reasons for this Court to grant the relief requested in the Motion as it pertains to the Sale and provided for herein.

K. The Sale Notice provided all interested parties with timely and proper notice of the Sale, the Sale Hearing, and the Auction.

L. The disclosures made by the Debtors in the Motion, the Sale Notice, and related documents filed with the Court concerning the APA, the Auction, the Sale and the Sale Hearing were good, complete and adequate.

M. The Bidding Procedures were substantively and procedurally fair to all parties. The Bidding Procedures set forth in the Bidding Procedures Order are non-collusive, proposed and executed in good faith as a result of arms'-length negotiations, designed to maximize the value of the Purchased Assets, and substantively and procedurally fair to all parties.

N. The Debtors conducted the process with respect to the Sale in accordance with, and has otherwise complied in all respects with, the Bidding Procedures Order. The sale process set forth in the Bidding Procedures Order afforded a full, fair, and reasonable opportunity for any entity to make a higher or otherwise better offer to purchase the Purchased Assets. The Auction was duly noticed and conducted in a non-collusive, fair and good faith manner. A reasonable opportunity has been given to any interested party to make a higher or otherwise better offer for the Purchased Assets.

O. The terms contained in the APA constitute the highest or otherwise best offer for the Purchased Assets, and will provide a greater recovery for the Debtors' bankruptcy estates for the Purchased Assets than would be provided by any other available alternative. The Debtors' determination that the APA constitutes the highest or otherwise best offer for the Purchased Assets constitutes a valid and sound exercise of the Debtors' business judgment.

P. The APA and the Sale contemplated thereby represent a fair and reasonable offer to purchase the Purchased Assets. No other entity or group of entities has presented a higher or otherwise better offer to the Debtors to purchase the Purchased Assets for greater economic value to the Debtors' bankruptcy estates than the Buyer.

Q. Approval of the Motion and the APA and the consummation of the Sale contemplated thereby is in the best interests of the Debtors, their bankruptcy estates, their creditors and other parties in interest in the chapter 11 cases.

R. The Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the Sale of the Purchased Assets because, among other reasons, (i) the APA constitutes the highest or otherwise best offer for the Purchased Assets, (ii) the APA and the closing thereon will present the best opportunity to realize the value of the Purchased Assets, and (iii) any other available transaction would not have yielded as favorable an economic result.

S. The Buyer is purchasing the Purchased Assets in good faith, is a good-faith buyer within the meaning of section 363(m) of the Bankruptcy Code, and is not an "insider" (as defined under section 101(31) of the Bankruptcy Code) of the Debtors and no common identity of incorporators, directors or stockholders exists between the Buyer and the Debtors, and therefore is entitled to the full benefits and protections of section 363(m) of the Bankruptcy Code, and otherwise has proceeded in good faith in all respects in connection with the Sale in that: (i) the Buyer recognized that the Debtors were free to deal with any other party interested in acquiring the Assets; (ii) the Buyer complied with the Bidding Procedures Order; (iii) the Buyer agreed to subject its bid to the competitive bidding procedures set forth in the Bidding Procedures Order; (iv) 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; (v) the Buyer has not violated section 363(n) of the Bankruptcy Code by any action or inaction; and (vi) the negotiation and execution of the APA, including the Sale contemplated thereby, were negotiated, proposed and entered into by the Debtors and the Buyer at arms'-length without collusion and in good faith.

T. The APA and the transactions contemplated thereby cannot be avoided under section 363(n) of the Bankruptcy Code. The Debtors, the Buyer and their respective 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.

U. The consideration provided by the Buyer pursuant to the APA: (i) is fair and adequate, and constitutes reasonably equivalent value and fair consideration and value, under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia (including the Uniform Fraudulent Transfer Act); and (ii) will provide a greater recovery for the Debtors' bankruptcy estates and creditors than would be provided by any other reasonably practicable available alternative.

V. By consummating the Sale, the Buyer is not a mere continuation of the Debtors or their bankruptcy estates, and there is no continuity, no common identity, and no continuity of enterprise between the Debtors and the Buyer. Pursuant to the APA, the Buyer is not purchasing all of the Debtors' assets because the Buyer is not purchasing any of the Excluded Equipment, and the Buyer is not holding itself out to the public as a continuation of the Debtors. The Buyer is not a successor to the Debtors or their bankruptcy estates by reason of any theory of law or equity, and the Sale does not amount to a consolidation, merger, or de facto merger of the Buyer and the Debtors. Neither the Buyer nor any of its agents, representatives or affiliates shall

assume or in any way be responsible for any obligation or liability of the Debtors and their bankruptcy estates except as expressly provided in this Sale Order or the APA. By consummating the Sale and the transactions contemplated by the APA, neither the Buyer nor any of the Purchased Assets will be subject to any claim, liability or obligation arising out of, or relating to, any Excluded Equipment or any Excluded Liabilities, including, without limitation, under the Bankruptcy Code, any environmental law, or any other laws of the United States, any state, territory, possession or the District of Columbia. None of the transactions contemplated by the APA, including, without limitation, the Sale or the assumption and assignment of any Assumed Contracts, is being undertaken for the purpose of hindering, delaying, or defrauding any creditors under the Bankruptcy Code, under the laws of the United States, or under the laws of any state, territory, possession, or the District of Columbia.

W. The Sale neither impermissibly restructures the rights of the Debtors' creditors, nor impermissibly dictates the terms of a plan of reorganization of the Debtors. The Sale does not constitute a *sub rosa* plan.

X. The Debtors, acting by and through their agents, representatives, and officers, (i) have full corporate power and authority to execute the APA and all other documents contemplated thereby, and the Sale of the Purchased Assets by the Debtors has been duly and validly authorized by all necessary corporate action of the Debtors, (ii) have all of the corporate power and authority necessary to consummate the transactions contemplated by the APA, (iii) have taken all corporate action necessary to authorize and approve the APA and the consummation by the Debtors of the transactions contemplated thereby, and (iv) no consents or approvals, other than those expressly provided for in the APA or this Sale Order, are required for the Debtors to consummate such transactions.

Y. The transfer of each of the Purchased Assets to the Buyer will, as of the Closing Date (or applicable Delivery Date as set forth in the APA), be a legal, valid, and effective transfer of such assets, and vests or will vest the Buyer with all right, title, and interest to the Purchased Assets free and clear of all Encumbrances, unless otherwise assumed in, or permitted by, the APA.

Z. The Debtors may sell the Purchased Assets free and clear of all Encumbrances against the Debtors, their bankruptcy estates, or any of the Purchased Assets (unless otherwise assumed in, or permitted by, the APA) because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of Encumbrances against the Debtors, their bankruptcy estates, or any of the Purchased Assets who did not object, or who withdrew their objections, to the Sale or the Motion are deemed to have consented thereto pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of such Encumbrances who did object fall within one or more of the other subsections of section 363(f) and are adequately protected by having their Encumbrances, if any, in each instance against the Debtors, their bankruptcy estates, or any of the Purchased Assets, attach to the cash proceeds of the Sale ultimately attributable to the Purchased Assets in which such creditor alleges an Encumbrance, in the same order of priority, with the same validity, force, and effect that such creditor had prior to the Sale, subject to any claims and defenses that the Debtors and their bankruptcy estates may possess with respect thereto. All other holders of Encumbrances could be compelled in a legal or equitable proceeding to accept money satisfaction of such claim or interest, or otherwise fall within section 363(f) of the Bankruptcy Code.

AA. [The Prepetition Lender has consented to the sale of the Purchased Assets to the Buyer pursuant to the APA free and clear of any Encumbrances of the Prepetition Lender

against the Purchased Assets, provided that cash proceeds generated from the Sale shall be indefeasibly paid to the Prepetition Lender upon the closing of the Sale in full satisfaction of all of the Debtors' outstanding Prepetition Obligations (as defined in the *Final Order (I) Authorizing (A) Continued Use of Cash Management System; (B) Maintenance of Existing Bank Accounts; and (C) Continued Use of Existing Business Forms; and (II) Granting Related Relief* [Docket No. 79] (the "Final Cash Collateral Order").]

BB. [The Buyer is an acquisition vehicle formed by the Prepetition Lender, holding valid claims against the Debtors, the estates and property of the estates. The Prepetition Lender holds an allowed secured claim, as of the Petition Date, in the principal amount of not less than \$83,164,109, plus additional interest, fees and costs (the "Allowed Claim"), and pursuant to the Bidding Procedures Order was authorized to credit bid any or all of such Allowed Claim. The Buyer credit bid [\$83,164,109], which credit bid was a valid and proper offer pursuant to the Bidding Procedures Order and Bankruptcy Code sections 363(b) and 363(k) (the "Credit Bid"). The terms contained in the APA constitute the highest and best offer for the Purchased Assets, and will provide a greater recovery for the Debtors' bankruptcy estates for the Purchased Assets than would be provided by any other available alternative. The Debtors' determination that the APA constitutes the highest and best offer for the Purchased Assets constitutes a valid and sound exercise of the Debtors' business judgment.]

CC. [As set forth more fully in the Final Cash Collateral Order and the Bidding Procedures Order, and subject to any applicable Challenge (as defined in the Final Cash Collateral Order), the Prepetition Obligations: (i) constitute legal, valid, binding, enforceable, unavoidable obligations of the Debtors; (ii) are secured by valid, binding, enforceable, unavoidable and properly perfected first priority Prepetition Liens (as defined in the Final Cash Collateral Order)

on the Purchased Assets; (iii) constitute allowed secured claims under section 502(a) of the Bankruptcy Code; and (iv) are authorized to be credit bid on the Purchased Assets pursuant to section 363(k) of the Bankruptcy Code. The Prepetition Lender having delegated the authority to credit bid the Prepetition Obligations to the Buyer, the Buyer is authorized to assert the Credit Bid in connection with the Sale transaction contemplated under the APA. Pursuant to applicable law, including section 363(k) of the Bankruptcy Code and in accordance with the Final Cash Collateral Order, the Buyer is authorized to credit bid for the Purchased Assets the amount of the Prepetition Obligations as contemplated under the APA, and the Credit Bid is valid and proper consideration pursuant to sections 363(b) and 363(k) of the Bankruptcy Code, the Final Cash Collateral Order, and the Bidding Procedures Order.]

DD. If the Sale were not free and clear of all Encumbrances (except as otherwise assumed in, or permitted by, the APA), or if the Buyer would, or in the future could, be liable for any Encumbrances (except as otherwise assumed in, or permitted by, the APA), the Buyer would not have entered into the APA and would not consummate the Sale, thus adversely affecting the Debtors, their bankruptcy estates and their creditors.

EE. The Debtors have demonstrated that it is an exercise of their sound business judgment to assume and assign the Assumed Contracts to the Buyer pursuant to the terms of this Sale Order and the APA, in each case in connection with the consummation of the Sale, and the assumption and assignment of the Assumed Contracts is in the best interests of the Debtors, their bankruptcy estates and creditors and other parties in interest. The Assumed Contracts being assigned to the Buyer under the APA are an integral part of the APA and the Sale, and accordingly such assumptions and assignments are reasonable and enhance the value of the Debtors' bankruptcy estates. Any non-Debtor counterparty to any Assumed Contract that has not actually

filed with the Court an objection to such assumption as of the date hereof is deemed to have consented to such assumption and assignment.

FF. The Debtors and the Buyer have, to the extent necessary, satisfied the requirements of section 365 of the Bankruptcy Code, including sections 365(b)(1)(A), 365(b)(1)(B), and 365(f) of the Bankruptcy Code, in connection with the sale and assumption and assignment of the Assumed Contracts to the extent provided under this Sale Order and the APA and have: (i) cured any default existing prior to the date hereof under any 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 party for any actual pecuniary loss to such party resulting from a default prior to the date hereof under any of the Assumed Contracts, within the meaning of section 365(b)(1)(B) of the Bankruptcy Code, and the Buyer has provided adequate assurance of future performance with respect to the Assumed Contracts, within the meaning of sections 365(b)(1) and 365(f)(2) of the Bankruptcy Code. The Assumed Contracts are assignable notwithstanding any provisions contained therein to the contrary.

GG. Subject to footnote [6], the terms of the APA, including any amendments, supplements, and modifications thereto, are fair and reasonable in all respects, and the terms of this Sale Order shall not modify the terms of the APA.⁶

HH. The APA and Sale must be approved and the closing must occur promptly to preserve the value of the Purchased Assets and the Debtors' bankruptcy estates.

II. Given 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

⁶ In the event of a conflict between this Sale Order and the APA, this Sale Order shall govern.

judgment, is in the best interests of the Debtors, their bankruptcy estates and their creditors and other parties in interest in the chapter 11 cases, and should be approved.

JJ. The consummation of the Sale is legal, valid, and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, sections 105(a), 363(b), 363(f), 363(m), 365(b), and 365(f), and all of the applicable requirements of such sections have been complied with in respect of the Sale.

KK. Time is of the essence in effectuating the APA and proceeding with the transactions contemplated therein without interruption. Accordingly, cause exists to waive the stay to the extent necessary, as contemplated by Bankruptcy Rules 4001(a), 6004(h), and 6006(d) to permit the immediate effectiveness of this Sale Order.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The relief requested in the Motion is granted 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.
3. Notice of the Motion, the Auction, the Sale Hearing, the Sale and the assumption and assignment of the Assumed Contracts was fair and equitable under the circumstances, and complied in all respects with the Bidding Procedures Order, section 102(1) of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, and 6006, and the Local Rules.

Approval of the Sale of the Purchased Assets

4. The APA, substantially in the form attached hereto as **Exhibit 1**, including all other ancillary documents, and all of the terms and conditions thereof, [the Credit Bid], and the Sale of the Purchased Assets to the Buyer as provided in the APA, are hereby approved in all respects.

5. Pursuant to section 363(b) of the Bankruptcy Code, the Debtors, acting by and through their agents, representatives and officers, are authorized and empowered to take any and all actions necessary or appropriate to: (a) consummate and close the Sale pursuant to and in accordance with the terms and conditions of this Sale Order and the APA; (b) transfer and assign all right, title, and interest to all property, licenses, and rights to be conveyed in accordance with the terms and conditions of this Sale Order and the APA; and (c) execute and deliver, perform under, consummate, and implement this Sale Order and the APA and all additional instruments and documents that may be reasonably necessary or desirable to implement this Sale Order, the APA and the Sale, including any other ancillary documents, or as may be reasonably necessary or appropriate to the performance of the obligations as contemplated by this Sale Order, the APA and any such other ancillary documents.

6. This Sale Order shall be binding in all respects upon the Debtors, their bankruptcy estates, all creditors, all holders of equity interests in the Debtors, all holders of any Encumbrances against the Debtors, any holders of Encumbrances against or on all or any portion of the Purchased Assets, all counterparties to any executory contract or unexpired lease of the Debtors, the 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 the chapter 11 cases or upon a conversion to chapter 7 under the Bankruptcy Code of the Debtors' chapter 11 cases. The terms and provisions of the APA and this Sale Order shall inure to the benefit of the Debtors, their bankruptcy estates, 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 Encumbrances in the Purchased 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 shall be binding.

Sale and Transfer of Purchased Assets

7. Pursuant to sections 105(a), 363(b), 363(f), 365(b) and 365(f) of the Bankruptcy Code, upon the Closing Date (or applicable Delivery Date as set forth in the APA), and pursuant to and except as otherwise set forth in the APA, the Purchased Assets shall be transferred to the Buyer free and clear of all encumbrances, claims, interests, and liens accruing, arising or relating thereto any time prior to the Closing Date, including the Excluded Liabilities, mortgages, restrictions, hypothecations, charges, indentures, loan agreements, instruments, collective bargaining agreements, leases, licenses, options, deeds of trust, security interests, other interests, conditional sale or other title retention agreements, pledges, and other liens (including mechanics', materialman's, and other consensual and non-consensual liens and statutory liens), judgments, demands, encumbrances, rights of first refusal, offsets, contracts, recoupment, rights of recovery, claims for reimbursement, contribution, indemnity, exoneration, products liability, alter-ego, environmental, or tax, decrees of any court or foreign or domestic governmental entity, or 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, debts arising in any way in connection with any agreements, acts, or failures to act, including any pension liabilities, retiree medical benefit liabilities, liabilities related to the Employee Retirement Income Security Act of 1974, as amended, the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, the Federal Rehabilitation Act of 1973, the National Labor Relations Act, the Worker Adjustment and Retraining Act of 1988, the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, the Americans with Disabilities Act of 1990, the

Consolidated Omnibus Budget Reconciliation Act of 1985, state discrimination laws, state unemployment compensation laws or any other similar state laws, or any other state or federal benefits or claims relating to any employment with the Debtor or any of its affiliates or predecessors, any bulk sales or similar law, any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended, any theories of successor liability, or any other liability relating to Debtors' current and former employees, including any withdrawal liabilities or liabilities under any collective bargaining agreement or labor practice agreement, of the Debtors or any of the Debtors' predecessors or affiliates, claims, 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 the chapter 11 cases, and whether imposed by agreement, understanding, law, equity or otherwise, including claims otherwise arising under doctrines of successor liability (other than Assumed Liabilities and Permitted Encumbrances) (collectively, the "Encumbrances"), with all such Encumbrances to attach to the cash proceeds of the Sale in the order of their priority, with the same validity, force, and effect that they now have as against the Purchased Assets, subject to any claims and defenses the Debtors and their bankruptcy estates may possess with respect thereto. Additionally, for the avoidance of doubt, Buyer shall have no liability, obligation, or responsibility whatsoever to the Debtors, any governmental authority or any other person with respect to, or in connection with, any Excluded Equipment or any Excluded Liabilities of any kind or character, whether known or unknown, as of the Closing Date, whether fixed or contingent, including, without limitation, any

liability or other obligation arising under the Bankruptcy Code, any environmental laws, or any other laws of the United States, any state, territory, possession or the District of Columbia.

8. Except as otherwise specifically provided in the APA: (a) the Buyer shall not be liable for any claims against the Debtors or any of their predecessors or affiliates or any other third party whatsoever, and (b) the Buyer shall have no successor or vicarious liabilities of any kind or character (including, without limitation, any claims with respect to any Purchased Assets), whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtors or its business or any obligations of, or claims against, the Debtors or any of their respective predecessors or affiliates or any other third party whatsoever arising at any time, including, but not limited to, liabilities on account of any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the Purchased Assets prior to the Closing Date.

9. On the Closing Date, this Sale Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of all of the Purchased Assets or a bill of sale transferring good and marketable title in such Purchased Assets to the Buyer pursuant to the terms set forth in this Sale Order and the APA. For the avoidance of doubt, the Excluded Equipment set forth in the APA are not included in the Purchased Assets, and the Excluded Liabilities set forth in the APA are not Assumed Liabilities.

10. Subject to the terms and conditions of this Sale Order, the transfer of the Purchased 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 Sale Order and the APA, constitute a legal, valid, and effective transfer of the Purchased Assets, and shall vest the Buyer with right, title, and interest in and to the Purchased

Assets as set forth in this Sale Order and the APA, as applicable, free and clear of all Encumbrances (except as otherwise assumed in, or permitted by, the APA).

11. [Upon closing of the Sale, the cash proceeds of the Sale shall be used to pay the Prepetition Lender until all outstanding Prepetition Obligations have been indefeasibly paid in full in cash. All remaining proceeds of the Sale shall be property of the estates. *provided, however,* that to the extent (A) any timely Challenge (as defined in the Final Cash Collateral Order) is brought regarding the note, including as to the validity, priority, perfection, extent or enforceability of the note or the liens securing the note, or (B) any other claims are asserted against the Prepetition Lender, the Prepetition Lender's rights to assert claims for reimbursement of related expenses, including, without limitation, attorney's fees and expenses, under the Prepetition Loan Documents (as defined in the Final Cash Collateral Order) are preserved, and the liens of the Prepetition Lender remain on such remaining proceeds to the extent of any such claims.]

12. [Upon the Limited Recourse Date (as defined in the APA), the Buyer shall offset the full amount of all outstanding Prepetition Obligations against the Purchase Price pursuant to section 363(k) of the Bankruptcy Code, resulting in the full satisfaction and cancellation by the Buyer of the Prepetition Obligations. The Prepetition Obligations shall be deemed satisfied and canceled, in part, on each of the applicable Delivery Dates to the extent of the amounts allocated on the respective Equipment and related Lease Documents as set forth in Part 3 of Schedule 2 of the APA. Pursuant to Section 8.5 of the APA, upon the Limited Recourse Date, the Buyer's sole and exclusive recourse on account of the Prepetition Obligations shall be limited to the Equipment and the Assumed Leases, and no other assets of the Debtors and, subject to the Buyer's rights under Section 12.4 of the APA, from the Limited Recourse Date the Buyer unconditionally and irrevocably waives any other rights to assert any Claims or Encumbrances

against the Debtors, their affiliates or subsidiaries, or the bankruptcy estates (other than to enforce the Debtors' obligations under the APA).]

13. The Buyer, to the extent provided by this Sale Order or the APA, shall be authorized, as of the Closing Date, to operate under any license, permit, registration, and governmental authorization or approval of the Debtors constituting Purchased Assets, and all such licenses, permits, registrations, and governmental authorizations and approvals are deemed to have been, and hereby are, directed to be transferred to the Buyer as of the Closing Date as provided by this Sale Order and the APA. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any grant, permit, or license relating to the operation of the Purchased Assets sold, transferred, assigned, or conveyed to the Buyer on account of the filing or pendency of the chapter 11 cases or the consummation of the Sale. 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 Sale.

14. Other than such Purchased Assets that are subject to Assumed Leases, all entities that are presently, or as of the Closing Date may be, in possession of some or all of the Purchased Assets to be sold, transferred, or conveyed (wherever located) to the Buyer pursuant to this Sale Order and the APA are hereby directed to surrender possession of the Purchased Assets to the Buyer on the Closing Date.

15. 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 Encumbrances 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 satisfactions, releases of all Encumbrances that the person or entity has

with respect to the Purchased Assets (unless otherwise assumed in, or permitted by, the APA), or otherwise, then (a) 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 Purchased Assets, and (b) the Buyer is hereby authorized to file, register, or otherwise record a certified copy of this Sale Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Encumbrances against or in the Purchased Assets of any kind or nature (except as otherwise assumed in, or permitted by, the APA); provided that, notwithstanding anything in this Sale Order or the APA to the contrary, the provisions of this Sale Order shall be self-executing, and neither the Debtors nor the Buyer shall 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 Sale 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 Encumbrances that is extinguished or otherwise released pursuant to this Sale Order under section 363 of the Bankruptcy Code and the related provisions of the Bankruptcy Code.

16. Except to the extent included in Assumed Liabilities or Permitted Encumbrances, or to enforce the APA, all entities, including all lenders, debt security holders, equity security holders, governmental, tax, and regulatory authorities, parties to contracts and leases, customers, employees and former employees, dealers and sale representatives, and trade or other creditors holding Encumbrances against or in the Debtors and their bankruptcy estates or the Purchased Assets arising under or out of, in connection with, or in any way relating to, the transfer of the Purchased Assets to the Buyer, or any entities or individuals asserting any interests in the

Purchased Assets, hereby are forever barred, estopped, and permanently enjoined from asserting any Encumbrances against the Buyer, the permitted successors and assigns of the Buyer, the property of the Buyer or its permitted successors and assigns, or the Purchased Assets conveyed in accordance with the APA.

17. As of and after the Closing Date: (a) each of the Debtors' creditors are hereby authorized and directed to execute such documents and take all other actions as may be necessary to release their Encumbrances in the Purchased Assets (if any) as such Encumbrances may have been recorded or may otherwise exist; and (b) any Purchased Asset that may be subject to a statutory lien, mechanic's lien or the like shall be turned over and such liens shall attach to the proceeds of the Sale in the same priority they currently enjoy with respect to the Purchased Assets.

Contracts to be Assumed and Assigned

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 Sale 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 Encumbrances (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. As of the Closing Date, in accordance with sections 363 and 365 of the Bankruptcy Code, the Buyer shall be fully and irrevocably vested in all right, title, and interest in and of each Assumed Contract.

21. The Assumed Contracts shall be transferred to, and remain in full force and effect for the benefit of, the Buyer in accordance with their respective terms, notwithstanding any provision in any such Assumed Contract (including those of the type described in sections 365(b)(2) 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 and the terms of the APA, the Buyer shall pay to the respective counterparty the Cure Amounts relating to any Assumed Contract.

23. Except as may be otherwise agreed in writing between the Debtors and the non-Debtor parties to the Assumed Contracts or stated on the record of the Sale Hearing, the Cure Amounts [and the Maintenance Reserve Obligations (as defined in the APA)] to be paid by the Buyer for the Assumed Contracts are hereby fixed at the amounts set forth on **Exhibit 2** attached to this Sale Order, and the non-Debtor parties 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.

24. The payment of the applicable Cure Amounts (if any) shall effect a cure of all defaults existing as of the date that such executory contracts or unexpired leases are assumed and compensate for any actual pecuniary loss to such non-Debtor party resulting from such default. Except as set forth on Exhibit 2 with respect to the Cure Amount of an Assumed Contract, the Buyer shall have no liability or obligation to cure any Assumed Contract default accruing prior to the Closing Date (or applicable Delivery Date under the APA).

25. The Buyer shall have assumed the Assumed Contracts, and pursuant to section 365(f) of the Bankruptcy Code, the assignment by the Debtors of such Assumed Contracts shall not be a default thereunder. After the payment of the relevant Cure Amounts, neither the Debtors and their bankruptcy estates nor the Buyer shall have any further liabilities to the non-Debtor counterparties to the Assumed Contracts, other than the Buyer's obligations under the Assumed Contracts that accrue after the date that such Assumed Contracts are assumed.

26. 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.

27. 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 consented to such assumption and assignment as required by section 365(c) of the Bankruptcy Code.

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

29. The Buyer has provided adequate assurance of future performance under the Assumed Contracts within the meaning of sections 365(b)(1)(C), 365(b)(3) (to the extent applicable) and 365(f)(2)(B) of the Bankruptcy Code.

30. There shall be no assignment fees, increases, rent-acceleration, or any other fees charged to the Buyer or the Debtors and their bankruptcy estates as a result of the assumption and assignment of the Assumed Contracts.

31. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, all counterparties to the Assumed Contracts are forever barred, estopped and permanently enjoined from raising or asserting against the Debtors and their bankruptcy 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 the closing.

32. Neither the Buyer nor any permitted successor or assign of the Buyer shall be responsible for or have any Encumbrances or obligations arising out of any of the contracts, agreements, or understandings that are not Assumed Contracts after the Closing Date (except as specifically provided by the APA).

Additional Provisions

33. The consideration provided by the Buyer for the Purchased Assets under the APA shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia, and the Sale and the transactions consummated in connection therewith are not, and shall not be, avoidable under the Bankruptcy Code or any such laws.

34. The Debtors and the Buyer hereby waive, and shall be deemed to waive, any requirement of compliance with, and any claims related to non-compliance with, the provisions of any bulk sales, bulk transfer, or similar law of any jurisdiction that may be applicable.

35. Following the closing of the Sale, no holder of an Encumbrance in or against the Debtors and their bankruptcy estates or the Purchased Assets shall interfere with the Buyer's title to or use and enjoyment of the Purchased Assets based on or related to such Encumbrance or any actions that the Debtors and their bankruptcy estates may take in the chapter 11 cases or any successor bankruptcy cases.

36. The Buyer shall have no liability or responsibility for any liability or other obligation of the Debtors or any third party whatsoever arising under or related to Excluded Equipment, Excluded Liabilities or the Purchased Assets other than for the Assumed Liabilities and the Assumed Contracts to the extent provided under the APA. Without limiting the generality of the foregoing, and except as otherwise specifically provided in the APA, the Buyer shall not be liable for any claims against the Debtors or any of its predecessors or affiliates or any third party whatsoever, and the Buyer shall have no successor liabilities of any kind or character whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtors or any obligations of the Debtors arising prior to the Closing Date, including, but not limited to, liabilities on account of any taxes arising, accruing, or payable under, out of, or in connection with, or in any way relating to the operation of the Debtors' business prior to the Closing Date, and all parties are hereby forever barred, estopped and permanently enjoined from asserting any such claims against the Buyer, its successors and assigns or against the Purchased Assets.

37. This Order shall be binding upon and shall govern the acts of all entities, 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 and entities 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 the Purchased Assets. Each and every federal, state and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA. The Buyer and the Debtor shall take such further steps and execute such further documents, assignments, instruments and papers as shall be reasonably requested by the other to implement and effectuate the transactions contemplated in this paragraph.

38. The Debtors, including their respective officers, employees and agents, are hereby authorized to execute such documents and do such acts as are necessary or desirable to carry out the transactions contemplated by the terms and conditions of the APA and this Sale Order. The Debtors shall be, and hereby are, authorized to take all such actions as may be necessary to effectuate the terms of this Sale Order and the relief granted pursuant to this Sale Order, and the Debtors shall cooperate with the Buyer and the Buyer will cooperate with the Debtors, to ensure that the transactions contemplated by the APA are consummated. The Debtors and each other person having duties or responsibilities under the APA or this Sale Order, and their respective agents, representatives, and attorneys, are authorized and empowered to carry out all of the provisions of the APA, to issue, execute, deliver, file and record, as appropriate, the APA, and any related agreements, and to take any action contemplated by the APA or this Sale Order, and

to issue, execute, deliver, file and record, as appropriate, such other contracts, instruments, releases, deeds, bills of sale, assignments, or other agreements, and to perform such other acts as are consistent with, and necessary or appropriate to, implement, effectuate and consummate the APA and this Sale Order and the transactions contemplated thereby and hereby, all without further application to, or order of, the Court. Without limiting the generality of the foregoing, this Sale Order shall constitute all approvals and consents, if any, required by any applicable business corporation, trust and other laws of applicable governmental units with respect to the implementation and consummation of the APA and this Sale Order and the transactions contemplated thereby and hereby.

39. The Sale is undertaken by the Buyer without collusion and in good faith, as that term is defined 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 by the Buyer, if any, and the sale free and clear of all Encumbrances (unless otherwise assumed in, or permitted by, the APA)), unless such authorization and consummation of such Sale are duly stayed pending such appeal, *provided, however*, that the Debtors reserve the right to take such actions as may be necessary to enforce the Buyer's obligations under the APA. 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 benefits and protections afforded by such section.

40. As a good-faith purchaser of the Purchased Assets, the Buyer has not colluded with any of the other bidders, potential bidders, or any other parties interested in the Purchased Assets, and therefore neither the Debtors nor any successor in interest to the Debtors'

estates shall be entitled to bring an action against the Buyer, and the Sale of the Purchased Assets may not be avoided pursuant to section 363(n) of the Bankruptcy Code.

41. Nothing contained in any plan of reorganization or liquidation, or order of any type or kind entered in the chapter 11 cases, any subsequent chapter 7 or chapter 11 cases of the Debtors, or any related proceeding subsequent to entry of this Sale Order, shall conflict with or derogate from the terms of this Sale Order or the APA.

42. The failure specifically to include any particular provisions of the APA including any of the documents, agreements, or instruments executed in connection therewith in this Sale Order shall not diminish or impair the efficacy of such provision, document, agreement, or instrument, it being the intent of this Court that the APA and each document, agreement or instrument be authorized and approved in its entirety.

43. All time periods set forth in this Sale Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

44. To the extent that this Sale Order is inconsistent with any prior order or pleading with respect to the Motion in the chapter 11 cases, the terms of this Sale Order shall govern.

45. To the extent there are any inconsistencies between the terms of this Sale Order and the APA (including all ancillary documents executed in connection therewith), the terms of this Sale Order shall govern.

46. The APA and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto in accordance with the terms thereof without further order of this Court.

47. The provisions of this Sale Order are nonseverable and mutually dependent.

48. Notwithstanding the provisions of Bankruptcy Rules 6004(h), 6006(d) or 7062 or any applicable provisions of the Local Rules, this Sale Order shall not be stayed after the entry hereof, but shall be effective and enforceable immediately upon entry, and the fourteen (14) day stay provided in Bankruptcy Rules 6004(h) and 6006(d) is hereby expressly waived and shall not apply.

49. This Court shall retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Sale Order and the APA, all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith to which the Debtors are a party or which has been assigned by the Debtors to the Buyer, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Sale, including, but not limited to, (a) compel transfer of title to and delivery of the Purchased Assets to the Buyer free and clear of Encumbrances (other than Permitted Encumbrances), or compel the performance of other obligations owed by the Debtors or the Buyer, (b) resolve any disputes arising under or related to the APA, except as otherwise provided therein, (c) protect the Buyer against (i) claims made related to any of the Excluded Liabilities, (ii) any claims of successor liability related to the Purchased Assets or Assumed Contracts, or any of the Excluded Equipment, or (iii) any claims of Encumbrances (other than Permitted Encumbrances) asserted in the Purchased Assets, of any kind or nature whatsoever.

EXHIBIT 1

APA

EXHIBIT 2

Cure Amounts