

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

Dynamic Aerostructures LLC, *et al.*,  
Debtors.<sup>1</sup>

Chapter 11

Case No. 25-10292 (LSS)

(Jointly Administered)

Re: D.I. 16

**NOTICE OF FILING OF PROPOSED ORDER (I) APPROVING AND AUTHORIZING  
THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND  
CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES, (II) APPROVING  
ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED  
LEASES, AND (III) GRANTING RELATED RELIEF**

**PLEASE TAKE NOTICE THAT** on February 26, 2025, the Debtors filed the *Debtors' Motion Pursuant To Sections 105, 363, and 365 of the Bankruptcy Code for Entry of Orders (A)(I) Approving Bidding Procedures for the Sale of Debtors Assets, (II) Scheduling Hearings and Objection Deadlines with Respect to the Sale, (III) Scheduling Bid Deadlines and an Auction, (IV) Approving the Form and Manner of Notice Thereof, (V) Approving Assumption and Assignment Procedures for Executory Contracts and Unexpired Leases, (VI) Authorizing and Approving the Debtors Entry Into the Stalking Horse APA, (VII) Authorizing and Approving Bid Protections, and (VIII) Granting Related Relief and (B)(I) Approving the Sale of Substantially All of the Debtors Assets Free and Clear Of Liens, Claims, Interests, and Encumbrances, (II) Approving Assumption and Assignment of Executory Contracts and Unexpired Leases and (III) Granting Related Relief* [Docket No. 16].

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: Dynamic Aerostructures LLC (3076); Dynamic Aerostructures Intermediate LLC (9800); and Forrest Machining LLC (3421). The Debtors' service address is 27756 Avenue Mentry, Valencia, California 91355.



**PLEASE TAKE FURTHER NOTICE THAT** attached hereto as **Exhibit A** is a proposed form of Order (I) Approving and Authorizing the Sale of Substantially All of the Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (II) Approving Assumption and Assignment of Executory Contracts and Unexpired Leases, and (III) Granting Related Relief.

Dated: March 14, 2025

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# **EXHIBIT A**

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

In re:

Dynamic Aerostructures LLC, *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 25-10292 (LSS)

(Jointly Administered)

Re: Docket Nos. 16 & \_\_\_\_

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

Upon the motion [Docket No. 16] (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Sale Order”): (a) authorizing and approving the Debtors’ entry into and performance under the Asset Purchase Agreement, dated as of February 25, 2025 (as amended, restated, supplemented, or otherwise modified from time to time and together with all schedules and exhibits thereto, the “APA”) by and among certain of the Debtors, as sellers, and FMI Holdco LLC, as purchaser (the “Purchaser”), a copy of which is attached hereto as **Exhibit 1**; (b) authorizing and approving the sale (the “Sale”) of the Purchased Assets (as defined in the APA), free and clear of all claims and Liens (other than Assumed Liabilities and Permitted Liens); (c) authorizing the assumption and assignment of certain executory contracts and unexpired leases in connection with the Sale; and (d) granting related relief; and the Court having entered the *Order Approving Bidding*

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: Dynamic Aerostructures LLC (3076); Dynamic Aerostructures Intermediate LLC (9800); and Forrest Machining LLC (3421). The Debtors’ service address is 27756 Avenue Mentry, Valencia, California 91355.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion, the Bidding Procedures, or the APA, as applicable.

*Procedures for the Sale of the Debtors' Assets, (II) Scheduling Hearings and Objection Deadlines with Respect to the Sale, (III) Scheduling Bid Deadlines and an Auction, (IV) Approving the Form and Manner of the Notice Thereof, (V) Approving Assumption and Assignment Procedures for Executory Contracts and Unexpired Leases, (VI) Authorizing and Approving the Debtors' Entry Into the Stalking Horse APA, (VII) Authorizing and Approving Bid Protections, and (VII) Granting Related Relief*, dated [●], 2025 [Docket No. [●]] (the "Bidding Procedures Order") approving, among other things, the Bidding Procedures, the Sale Notice, the Notice of Successful Bidder, the Assumption and Assignment Procedures, and authorizing and approving the Bid Protections and Debtors' entry into the Stalking Horse APA; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and the Court having found that it may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Debtors, in consultation with the Consultation Parties (as defined in the Bidding Procedures), having determined that the Purchaser has submitted the highest or otherwise best bid for the Purchased Assets and determined that the Purchaser is the Successful Bidder in accordance with the Bidding Procedures; and the Court having found that the relief requested in the Motion, as further explained in and supported by the *Declaration of Eric N. Ellis in Support of Debtors' Chapter 11 Petitions and First Day Motions* [Docket No. 2] (the "First Day Declaration") and the *Declaration of Rory Keenan in Support of the Debtors' Bidding Procedures Motion* [Docket No. 17] (the "Bidding Procedures Declaration"), is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and the Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate and no other

notice need be provided; and the Court having reviewed the Motion and having heard from all parties in interest who wished to be heard regarding statements in support of or objections to the relief requested therein at a hearing before the Court on [●], 2025 (the “Sale Hearing”) to consider approval of the Sale pursuant to the terms of the APA; and the Court having determined that the legal and factual bases set forth in the Motion and at the Sale Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:<sup>3</sup>

A. Jurisdiction and Venue. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and 1334, and venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

B. Bases for Relief. The statutory and other legal bases for the relief provided herein are sections 105(a), 363, 365, 503, and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), and Rules 2002, 6004, 6006, 9007, 9008, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2002-1, 6004-1, 9006-1, and 9013-1(m) of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Local Rules”). The consummation of the transactions contemplated by the APA and this Sale Order is legal, valid, and properly authorized under all applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Bankruptcy Local Rules, and the Debtors and the Purchaser have complied with all of the applicable requirements of such sections and rules in respect of such transactions.

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<sup>3</sup> The findings of fact and conclusions of law herein constitute the Court’s findings of fact and conclusions of law for the purposes of Bankruptcy Rule 7052, as made applicable pursuant to Bankruptcy Rule 9014. To the extent any findings of facts are conclusions of law, they are adopted as such. To the extent any conclusions of law are findings of fact, they are adopted as such.

C. Final Order. 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), the Court expressly finds that there is no just reason for delay in the implementation of this Sale Order, waives any stay, and expressly directs entry of judgment as set forth herein.

D. Notice of the Motion. As evidenced by the affidavits or certificates of service and publication notice filed with the Court, proper, timely, adequate, and sufficient notice of the Motion, the Bidding Procedures, the Auction, the Sale (and all transactions contemplated in connection therewith), the identity of the Purchaser, the terms of the APA, the assumption and assignment of the Assigned Contracts to the Purchaser pursuant to the APA, the Cure Costs,<sup>4</sup> the Sale Hearing, and all deadlines related thereto, has been provided to all interested parties, in accordance with sections 102(1), 363, and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9007, 9008, and 9014, Bankruptcy Local Rules 9013-1(m), and in compliance with the Bidding Procedures Order.

E. Specifically, the Debtors served the Bidding Procedures Order on the following parties or their respective counsel, as reflected in the certificate of service filed on [●], 2025 [Docket No. [●]]: (i) the Office of the United States Trustee for the District of Delaware (Attn: Rosa Sierra-Fox; email: rosa.sierra-fox@usdoj.gov) (the “U.S. Trustee”); (ii) counsel to any statutory committee of unsecured creditors appointed in these chapter 11 cases; (iii) the Debtors’ thirty (30) largest unsecured creditors on a consolidated basis; (iv) counsel to the administrative agents for the Debtors’ prepetition and postpetition credit facilities, (v) all parties who have expressed a written interest in some or all of the Debtors’ assets; (vi) all parties who are known or

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<sup>4</sup> Except as otherwise provided herein, “Cure Costs” shall have the meaning provided in the Bidding Procedures Order.

reasonably believed, after reasonable inquiry, to have asserted any lien, encumbrance, claim or other interest in the Debtors' assets; (vii) the Internal Revenue Service; (viii) all applicable state and local taxing authorities; (ix) the United States Attorney for the District of Delaware; (x) the Securities and Exchange Commission; (xi) the state attorneys general for states in which the Debtors conduct business; (xii) all non-Debtor parties to the Debtors' executory contracts and unexpired leases; (xiii) all environmental authorities having jurisdiction over any of the Assets, including the Environmental Protection Agency; (xiv) all of the Debtors' other known creditors; and (xv) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "Notice Parties").

F. The Sale Notice was filed [Docket No. [●]], published on the Debtors' case website, served on all parties required to receive such notice under the Bidding Procedures Order and applicable rules, and published in the *USA Today*, as reflected in the affidavit of publication filed on [●], 2025 [Docket No. [●]], in accordance with the Bidding Procedures Order and was sufficient and proper notice to any other interested parties, including those parties whose identities are unknown to the Debtors. Service of the Sale Notice was appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the proposed Sale and the Bidding Procedures and the dates and deadlines related thereto. With respect to any parties that may have claims against the Debtors, but whose identities are not reasonably ascertainable by the Debtors, the publication of the Sale and Auction Notice was sufficient and reasonably calculated under the circumstances to reach such parties.

G. The Potential Assignment Notice was filed [Docket No. [●]] and served on all parties required to receive such notice under the Bidding Procedures Order and applicable rules, in accordance with the Bidding Procedures Order (including the Counterparties), identifying,



among other things, the Counterparties, the Contracts and Leases, and any related Cure Costs. The service of the Potential Assignment Notice was good, sufficient, and appropriate under the circumstances and in full compliance with the Bidding Procedures Order, and no further notice need be provided in respect of the Debtors' assumption and assignment to the Purchaser of the Assigned Contracts, including with respect to adequate assurance of future performance or the Cure Costs. All Counterparties to the Contracts and Leases have had an adequate opportunity to object to the potential assumption and assignment of the Contracts and Leases and the Cure Costs (including objections related to the adequate assurance of future performance and objections based on whether applicable law excuses such Counterparty from accepting performance by, or rendering performance to, the Purchaser for purposes of section 365(c)(1) of the Bankruptcy Code).

H. The Debtors filed with the Court and published on the case website the Notice of Successful Bidder [Docket No. [●]] in accordance with the Bidding Procedures Order and applicable rules. Service of the Notice of Successful Bidder was appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the conclusion of the Auction, and the identities of the Successful Bidder and Back-Up Bidder, as applicable.

I. The notices described in the foregoing Paragraphs D–H are good, sufficient, and appropriate under the circumstances, and no other or further notice of the Bidding Procedures, the Auction, the Sale, the assumption and assignment of the Assigned Contracts to the Purchaser pursuant to the APA, the Cure Costs, the Sale Hearing, and all deadlines related thereto is or shall be required.

J. Marketing and Sale Process. The Sale of the Purchased Assets to the Purchaser pursuant to the Bidding Procedures is duly authorized under sections 363(b)(1) and 363(f) of the Bankruptcy Code, Bankruptcy Rule 6004(f), and Bankruptcy Local Rule 6004-1. As demonstrated

by (i) the testimony and other evidence proffered or adduced at the Sale Hearing and (ii) the representations of counsel made on the record at the Sale Hearing, the Debtors and their professionals, agents, and other representatives engaged in a robust marketing and sale process and have marketed the Purchased Assets and conducted all aspects of the sale process in good faith and in compliance with the Bidding Procedures and the Bidding Procedures Order. The marketing process undertaken by the Debtors and their professionals, agents, and other representatives with respect to the Purchased Assets has been adequate and appropriate and reasonably calculated to maximize value for the benefit of all stakeholders. The Bidding Procedures and the Auction were duly noticed, were substantively and procedurally fair to all parties, and were conducted in a diligent, non-collusive, fair and good-faith manner.

K. The Debtors conducted an Auction on [●], 2025, in accordance with the Bidding Procedures and Bidding Procedures Order. As established by the record of the Sale Hearing, the Bidding Procedures and the Bidding Procedures Order have been complied with in all material respects by the Debtors and the Purchaser. The Bidding Procedures, together with the substantial prepetition marketing efforts, afforded a full, fair, and reasonable opportunity for any entity or person to make a higher or otherwise better offer to purchase the Purchased Assets, and the APA constitutes the best or otherwise highest offer for the Purchased Assets.

L. Corporate Authority. The Debtors are the sole and lawful owners of the Purchased Assets. The Purchased Assets constitute property of the Debtors' estates and title thereto is vested in the Debtors' estates within the meaning of section 541 of the Bankruptcy Code. The Debtors (i) have full corporate or other organizational power and authority necessary to execute the APA and to consummate the Sale and all transactions contemplated by the APA, (ii) have taken all corporate or other organizational action necessary to authorize and approve the APA and to

consummate the Sale and all transactions contemplated by the APA, and (iii) require no consents or approvals, other than those expressly provided for in the APA, to consummate such transaction.

M. Highest or Otherwise Best Offer; Business Judgment. The Debtors have demonstrated sufficient basis to enter into the APA, sell the Purchased Assets on the terms outlined therein, and assume and assign the Assigned Contracts to the Purchaser under sections 363 and 365 of the Bankruptcy Code. All such actions are appropriate exercises of the Debtors' business judgment, maximize the value of the Purchased Assets, satisfy applicable fiduciary duties, and are in the best interests of the Debtors, their creditors, their estates, and other parties in interest. Approval of the Sale pursuant to the APA at this time is in the best interests of the Debtors, their creditors, their estates, and all other parties in interest.

N. The offer of the Purchaser, upon the terms and conditions set forth in the APA, including the total consideration to be realized by the Debtors thereunder: (i) is the highest or otherwise best offer received by the Debtors for the Purchased Assets after the prepetition and postpetition marketing efforts, including through the Bidding Procedures; (ii) is in the best interests of the Debtors, their creditors, their other stakeholders, their estates, and all other parties in interest; and (iii) constitutes full and adequate consideration, is fair and reasonable and constitutes reasonably equivalent value, fair consideration, and fair value for the Purchased Assets under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Voidable Transactions Act, and under the laws of the United States, any state, territory, possession, or the District of Columbia.

O. Neither the Debtors nor the Purchaser or any of their respective affiliates, members, or shareholders (i) have entered into the APA or proposes to consummate the Sale for the purpose of hindering, delaying, or defrauding the Debtors' present or future creditors or (ii) are entering into the APA or proposing to consummate the Sale fraudulently, for the purpose of statutory or

common law fraudulent conveyance and fraudulent transfer claims, whether under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof or the District of Columbia or any other applicable jurisdiction with laws substantially similar to the foregoing.

P. Good and sufficient reasons for approval of the APA have been articulated by the Debtors. The Debtors have demonstrated compelling circumstances for the Sale outside (i) the ordinary course of business, pursuant to section 363(b) of the Bankruptcy Code, and (ii) a plan of reorganization or liquidation (as the case may be), in that, among other things, the immediate consummation of the Sale to the Purchaser is necessary and appropriate to preserve and to maximize the value of the Debtors' estates. To maximize the value of the Purchased Assets, it is essential that the consummation of the Sale occurs promptly.

Q. The Sale of the Purchased Assets outside of a chapter 11 plan pursuant to the APA neither impermissibly restructures the rights of the Debtors' creditors or equity interest holders nor impermissibly dictates the terms of a chapter 11 plan of the Debtors. The APA and the Sale do not constitute a *sub rosa* chapter 11 plan.

R. On the terms and subject to the conditions contained in the APA, the Purchaser agreed to provide the Purchase Price as aggregate consideration for the Purchased Assets, at the Closing of the Sale. On or prior to the Closing, the Purchaser shall pay the Cure Costs in respect of the Assigned Contracts on the terms set forth under the APA and the Bidding Procedures Order.

S. Opportunity to Object. A reasonable opportunity to object or be heard with respect to the Motion, the Bidding Procedures, the Auction, the Sale (and all transactions contemplated in connection therewith), the identity of the Purchaser, the terms of the APA, the assumption and assignment of the Assigned Contracts to the Purchaser pursuant to the APA, and the Cure Costs has been afforded to all interested parties, including, without limitation, the Notice Parties.

T. Good Faith Purchasers; Arm's Length Sale. The Debtors and their respective officers, directors, employees, agents, advisors, attorneys, and other representatives actively participated in the marketing process, both prepetition and postpetition, and respectively acted in good faith. The APA was negotiated, proposed, and entered into by the Debtors and the Purchaser without collusion, in good faith, and from arm's length bargaining positions. Neither the Debtors, nor the Purchaser, nor any affiliates, members, or shareholders of the Purchaser have engaged in any conduct that would cause or permit the APA or the Sale to be avoided, or costs or damages to be imposed, under section 363(n) of the Bankruptcy Code.

U. The Purchaser is a good-faith purchaser under section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby. In particular: (i) the Purchaser recognizes that the Debtors were free to deal with any other party interested in purchasing the Purchased Assets; (ii) neither the Purchaser nor any of its affiliates, members, or shareholders in any way induced or caused the chapter 11 filing by the Debtors; (iii) neither the Purchaser nor any of its affiliates, members, or shareholders have violated section 363(n) of the Bankruptcy Code by any action or inaction; (iv) no common identity of directors, officers, or controlling stakeholders exists between any of the Purchaser, its affiliates, members, or shareholders and any of the Debtors; (v) the Purchaser agreed to subject its bid to the competitive bid procedures set forth in the Bidding Procedures Order; (vi) all payments to be made by the Purchaser and other agreements or arrangements entered into by the Purchaser in connection with the Sale have been disclosed; and (vii) neither the Purchaser nor any of its affiliates, members, or shareholders have acted in a collusive manner with any person and the Purchase Price was not controlled by any agreement among third parties.

V. Neither the Purchaser nor any affiliates, members, officers, directors, shareholders or any of its or their respective successors or assigns is an “insider” or “affiliate” of any of the Debtors, as those terms are defined in sections 101(31) and 101(2) of the Bankruptcy Code. The Purchaser’s advisors, agents, and other representatives have complied in all respects with the Bidding Procedures Order and all other applicable orders of the Court in negotiating and entering into the APA. The APA complies with the Bidding Procedures Order and all other applicable orders of the Court. The Purchaser is therefore entitled to all of the protections afforded under section 363(m) of the Bankruptcy Code.

W. Free and Clear Transfer Required by the Purchaser. The Purchaser would not have entered into the APA and would not have consummated the Sale, thus adversely affecting the Debtors, their estates, and their creditors, if the Sale (including all provisions in connection therewith, including the assumption and assignment of the Assigned Contracts to the Purchaser) were not free and clear of all (i) Liens, mortgages, deeds of trust, pledges, charges, security interests, option, rights of first offer or first refusal (or any other type of preferential arrangement), hypothecations, encumbrances, easements, servitudes, leases or subleases, licenses or sublicenses, rights-of-way, pre-emptive right, encroachments, restrictive covenants, restrictions on transferability or other similar restrictions, interests or rights under any operating agreement, rights of offset or recoupment, right of use or possession, or other liens (including mechanic’s, materialman’s, possessory and other consensual and non-consensual liens and statutory liens), judgments, penalties, charges of any kind or nature, including any restriction on use, sale, voting, disposition, transfer, receipt of income or other exercise of any attributes of ownership, or any rights that purport to give any party a right of first refusal or consent with respect to the Debtors’ interest in the Purchased Assets or any similar rights; (ii) all claims as defined in section 101(5) of

the Bankruptcy Code and jurisprudence interpreting the Bankruptcy Code, including, without limitation, all claims, counterclaims, cross-claims, third party claims, debt, rights, remedies, or causes of action (whether in law or in equity), proceedings, warranties, contractual rights, guarantees, indemnities, claims for recovery, reimbursement, subrogation, setoff, recoupment, indemnity or contribution, obligations, demands, expenses, commitments, restrictions, responsibilities, or liabilities of any kind or nature whatsoever arising in connection with or relating to the Debtors, their operations, their business, their liabilities, the Purchased Assets, the Debtors' marketing and bidding process with respect to the Purchased Assets, the Assigned Contracts, or the transactions contemplated by the APA; (iii) all claims, causes of action, or rights based on or related to successor or transferee liability, products liability, alter-ego liability, environmental liability, or tax liability, orders or decrees of any court or foreign or domestic governmental entity; (iv) any and all equity or other interests of any kind or nature whatsoever in or with respect to the Debtors, the Purchased Assets, or the Assigned Contracts; (v) any rights that purport to give any party a right or option to effect any forfeiture, modification, right of first offer or first refusal, or consents, or termination of the Debtors' or the Purchaser's interest in the Purchased Assets, or any similar rights; (vi) any labor, collective bargaining, pension, retiree, and employment claims and any claims, causes of action, or rights under labor, collective bargaining, retirement, or employment agreements; (vii) any claims, causes of action, or rights related to intercompany loans and receivables; (viii) any claims, causes of action, or rights under pension, multiemployer (as such term is defined in Section 3(37) or Section 4001(a)(3) of the Employee Retirement Income Security Act of 1974 (as amended, "ERISA")), health or welfare, compensation or other employee benefit plans, agreements, practices, and programs; (ix) any employee claims related to worker's compensation, occupational disease, or unemployment or temporary disability, including, without

limitation, claims that might otherwise arise under or pursuant to (a) ERISA, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the Federal Rehabilitation Act of 1973, (e) the National Labor Relations Act, (f) the Age Discrimination and Employment Act of 1967 and Age Discrimination in Employment Act, as amended, (g) the Americans with Disabilities Act of 1990, (h) the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, including, without limitation, the requirements of Part 6 of Subtitle B of Title I of ERISA and Section 4980B of the Internal Revenue Code and of any similar state law (collectively, “COBRA”), (i) state discrimination laws, (j) state unemployment compensation laws or any other similar state laws, (k) any other state or federal benefits or claims relating to any employment with the Debtors or any of their predecessors, or (l) the Workers Adjustment and Retraining Notification Act of 1988, as amended, 929 U.S.C. §§ 210 et seq. (“WARN Act”), or any similar foreign, state or local law; (x) any claims, causes of action, or rights under any bulk sales or similar law and any tax laws, statutes, regulations, or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended, and any taxes arising under or out of, in connection with, or in any way relating to the Purchased Assets prior to the Closing, including, without limitation, any *ad valorem* taxes assessed by any applicable taxing authority; (xi) any unexpired and executory contract or unexpired lease that is not an Assigned Contract; and (xii) any other Excluded Liabilities, in case of each of the foregoing (i) through (xii), whether disclosed or undisclosed, known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, accrued or unaccrued, asserted or unasserted, 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, direct or indirect, direct or derivative, and regardless of whether currently exercisable, whether arising prior to or



subsequent to the commencement of these chapter 11 cases, and whether imposed by agreement, understanding, law, equity or otherwise (all of the foregoing, the “Claims and Encumbrances”), except for Assumed Liabilities and Permitted Liens. For the avoidance of doubt, neither the Purchaser nor any of its affiliates, members, or shareholders shall have any responsibility whatsoever with respect to the Excluded Liabilities, which shall remain the responsibility of the Debtors before, on, and after Closing.

X. As of the Closing, pursuant and subject to the terms of the APA, the Sale of the Purchased Assets shall effect a legal, valid, enforceable, and effective transfer of the Purchased Assets and will vest the Purchaser with all of the Debtors’ rights, title, and interests in the Purchased Assets, free and clear of all Claims and Encumbrances, other than Assumed Liabilities and Permitted Liens.

Y. Satisfaction of Section 363(f). The Debtors may sell the Purchased Assets free and clear of any and all Claims and Encumbrances (other than the Assumed Liabilities and Permitted Liens), including any rights or claims based on any putative successor or transferee liability, as set forth herein, because, in each case, one or more of the standards set forth in sections 363(f)(1)–(5) of the Bankruptcy Code has or have been satisfied. All parties in interest, including, without limitation, any holders of Claims and Encumbrances and any Counterparty to the Assigned Contracts, who did not timely object, or who withdrew their objection, to the Sale, the assumption and assignment of the applicable Assigned Contract or the associated Cure Cost are deemed to have consented to the relief granted herein pursuant to section 363(f)(2) of the Bankruptcy Code. Such holders of Claims and Encumbrances are adequately protected by having their Claims and Encumbrances, if any, attach to the portion of the Purchase Price attributable to the Purchased Assets against or in which such holders hold an interest, in the same order of priority, and with the

same validity, force and effect, if any, which such holders now have against such Purchased Assets, subject to any claims and defenses the Debtors or their estates may possess with respect thereto.

Z. No Successorship; No Merger. By virtue of this Sale Order and the consummation of the transactions contemplated under the APA: (i) neither the Purchaser nor any of its affiliates, members, or shareholders are a continuation of any Debtor or its respective estate, there is not substantial continuity between any of the Purchaser or its affiliates, members, or shareholders and the Debtors, and there is no continuity of enterprise between the Debtors and the Purchaser or its affiliates, members, or shareholders; (ii) neither the Purchaser nor any of its affiliates, members, or shareholders are holding themselves out to the public as a continuation of the Debtors or their respective estates; (iii) the transactions do not amount to a consolidation, merger, or *de facto* merger of the Purchaser or its affiliates, members, or shareholders and the Debtors and/or the Debtors' estates; and (iv) neither the Purchaser nor any of its affiliates, members, or shareholders is a successor or assignee of the Debtors or their estates for any purpose including, but not limited to, under any federal, state or local statute or common law, or revenue, pension, ERISA, COBRA, tax, labor, employment, environmental, escheat or unclaimed property laws, or other law, rule or regulation (including, without limitation, filing requirements under any such laws, rules, or regulations), and neither the Purchaser nor any of its affiliates, members, or shareholders shall have any liability or obligation under the WARN Act or the Comprehensive Environmental Response Compensation and Liability Act and neither the Purchaser nor any of its affiliates, members, or shareholders shall be deemed to be a "successor employer" for purposes of the Internal Revenue Code of 1986, Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, the Americans with Disability Act, the Family Medical Leave Act, the National Labor Relations Act, the Labor Management Relations Act, the Older Workers

Benefit Protection Act, the Equal Pay Act, the Civil Rights Act of 1866 (42 U.S.C. 1981), COBRA, ERISA, the Multiemployer Pension Protection Act, the Pension Protection Act, and/or the Fair Labor Standards Act. Except for the Assumed Liabilities, (x) the transfer of the Purchased Assets to the Purchaser and (y) the assumption and assignment to the Purchaser of the Assigned Contracts do not and will not subject the Purchaser nor any of its affiliates, members, or shareholders to any liability whatsoever with respect to the operation of the Debtors' business before the Closing Date or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based on, in whole or in part, directly or indirectly, any theory of law or equity including, without limitation, any theory of antitrust or successor or transferee liability.

AA. Assigned Contracts. The Debtors have demonstrated (i) that it is an exercise of their sound business judgment to assume and assign the Assigned Contracts to the Purchaser in connection with the consummation of the Sale and (ii) that the assumption and assignment of the Assigned Contracts to the Purchaser is in the best interests of the Debtors, their estates and creditors, and all other parties in interest. The Assigned Contracts are an integral part of the Purchased Assets and, accordingly, such assumption, assignment, and cure of any defaults under the Assigned Contracts are reasonable, appropriate, and enhance the value of the Debtors' estates. Any Counterparty to an Assigned Contract that has not filed with the Court an objection to such assumption and assignment in accordance with the terms of the Bidding Procedures Order (including any objections related to Cure Costs or adequate assurance of future performance and objections based on whether applicable law excuses the counterparty from accepting performance by, or rendering performance to, the Purchaser for purposes of section 365(c)(1) of the Bankruptcy Code) is deemed to have consented to such assumption and assignment.

BB. Cure Costs and Adequate Assurance. The Debtors and the Purchaser, as applicable, have, including by way of entering into the APA and agreeing to the provisions relating to the Assigned Contracts therein, (i) cured, or provided adequate assurance of cure, of any default existing prior to the date hereof under any of the Assigned 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 Assigned Contracts within the meaning of section 365(b)(1)(B) of the Bankruptcy Code. The Purchaser has, based upon the record of these proceedings, provided adequate assurance of its future performance of and under the Assigned Contracts pursuant to sections 365(b)(1) and 365(f)(2) of the Bankruptcy Code. The Purchaser's covenants under the APA to perform the obligations under the Assigned Contracts after the Closing shall constitute adequate assurance of future performance under the Assigned Contracts being assigned to the Purchaser within the meaning of sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code. The Cure Costs are hereby deemed to be the sole amounts necessary to cure any and all defaults under the Assigned Contracts under section 365(b) of the Bankruptcy Code.

CC. Time Is of the Essence; Waiver of Stay. Time is of the essence in consummating the Sale. To maximize the value of the Purchased Assets, it is essential that the Sale of the Purchased Assets and assignment and assumption of the Assigned Contracts occur within the time constraints set forth in the APA. Accordingly, there is cause to waive the stays contemplated by Bankruptcy Rules 6004 and 6006.

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

**I. The Sale Is Approved**

1. The Sale of the Purchased Assets contemplated by the APA is hereby approved as set forth herein.

**II. Objections Overruled**

2. All objections or reservation of rights with respect to the entry of this Sale Order or to the relief granted herein, whether filed, stated on the record before the Court or otherwise, which have not been withdrawn, waived, or settled, are hereby denied and overruled on the merits. All objections to the entry of this Sale Order or to the relief granted herein that were not timely filed are hereby forever barred.

3. Notice of the Bidding Procedures, the Auction, the Sale, the APA, the assumption and assignment of the Assigned Contracts to the Purchaser pursuant to the APA, the Cure Costs, the Sale Hearing, and all deadlines related thereto was fair and equitable under the circumstances and complied in all respects with sections 102(1), 363, and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9007, 9008, and 9014, Bankruptcy Local Rules 9013-1(m), and the Bidding Procedures Order.

**III. Approval of the APA**

4. The Purchased Assets constitute property of the Debtors' estates and title thereto is vested in the Debtors' estates within the meaning of section 541 of the Bankruptcy Code. The Debtors (i) have full corporate or other organizational power and authority necessary to execute the APA and any related instruments, documents, and agreements, and to consummate the Sale and all transactions contemplated by the APA, (ii) have taken all corporate or other organizational action necessary to authorize and approve the APA and any related instruments, documents, and

agreements, and to consummate the Sale and all transactions contemplated by the APA, and (iii) require no consents or approvals, other than those expressly provided for in the APA, to consummate such transaction.

5. The APA and all other instruments, documents, and agreements related thereto or contemplated thereby, and all of the terms and conditions thereof, are hereby approved. Pursuant to sections 105, 363, and 365 of the Bankruptcy Code, the Debtors are authorized and directed to take any and all actions necessary to fulfill their obligations under, and comply with the terms of, the APA and to consummate the Sale pursuant to and in accordance with the terms and conditions of the APA and this Sale Order, without further leave of the Court. The Debtors are further authorized to pay, without further order of the Court, whether before, at, or after the Closing, any fees, expenses or costs that are required to be paid in order to consummate the transactions contemplated by the APA or perform their obligations under the APA.

6. The Debtors are authorized, in accordance with the APA, to execute and deliver, and empowered to perform under, consummate, and implement, the APA, together with all additional instruments, documents, and other agreements that may be reasonably necessary or desirable to implement the APA, and to take all further actions as may be reasonably requested by the Purchaser for the purpose of assigning, transferring, granting, conveying and conferring to the Purchaser or reducing to possession, the Purchased Assets, or as may be reasonably necessary or appropriate to the performance of the obligations as contemplated by the APA.

#### **IV. Binding Effect of Order**

7. This Sale Order and the APA shall be binding upon all creditors of, and equity interest holders in, the Debtors and any and all other parties in interest, including, without limitation, any and all holders of Claims and Encumbrances (including holders of any rights or

claims based on any putative successor or transferee liability) of any kind or nature whatsoever, all Counterparties to the Assigned Contracts, the Purchaser and its affiliates, members, or shareholders, all successors and assigns of the Purchaser and its affiliates, members, or shareholders, the Debtors and their affiliates and subsidiaries, and any trustee or successor trustee appointed in the Debtors' chapter 11 cases or upon a conversion to chapter 7 under the Bankruptcy Code. This Sale Order and the APA shall inure to the benefit of the Debtors, their estates and creditors, the Purchaser, their affiliates, members, and shareholders, and the respective successors and assigns of each of the foregoing.

**V. Amendments to the APA**

8. The APA and any related instruments, documents, and agreements, may be modified, amended, supplemented or restated by the parties thereto in a writing signed by such parties and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment, supplement or restatement does not have a material adverse effect on the Debtors' estates.

**VI. Transfer of the Purchased Assets Free and Clear**

9. The Purchaser shall assume and be liable for the Assumed Liabilities, and shall not be liable for any Excluded Liabilities. Except as expressly permitted or otherwise specifically provided for in the APA or this Sale Order, pursuant to sections 105(a), 363(b), 363(f), 365(b), and 365(f) of the Bankruptcy Code, upon the Closing, the Purchased Assets shall be transferred to the Purchaser, and the Purchaser shall take title to and possession of the Purchased Assets, free and clear of all Claims and Encumbrances (other than Assumed Liabilities and Permitted Liens). Any holders of Claims and Encumbrances are adequately protected by having their Claims and Encumbrances, if any, attach to the portion of the Purchase Price attributable to the Purchased

Assets against or in which such holders hold an interest, in the same order of priority, and with the same validity, force and effect, if any, which such holders now have against such Purchased Assets, subject to any claims and defenses the Debtors or their estates may possess with respect thereto.

**VII. Vesting of Assets in the Purchaser**

10. The transfer of the Purchased Assets to the Purchaser pursuant to the APA shall constitute a legal, valid, and effective transfer of the Purchased Assets on the Closing, and shall vest the Purchaser with all of the Debtors' rights, title, and interests in the Purchased Assets free and clear of all Claims and Encumbrances (other than Assumed Liabilities and Permitted Liens).

**VIII. Release of Liens**

11. Except for holders of Assumed Liabilities and Permitted Liens, each holder of any Claims and Encumbrances in the Purchased Assets (including, without limitation, CRG Financial, LLC (the "DIP Lender") and Prepetition Lender and Prepetition Agent (each as defined in the DIP Term Sheet)), shall, as of the Closing, be deemed to have waived and released such Claims and Encumbrances, without regard to whether such holder has executed or filed any applicable release, and such Claims and Encumbrances shall automatically, and with no further action by any party, attach to the portion of the Purchase Price attributable to the Purchased Assets against or in which such holders hold an interest, in the same order of priority, and with the same validity, force and effect, if any, which such holders now have against such Purchased Assets, subject to any claims and defenses the Debtors or their estates may possess with respect thereto. Each holder of any such Claim and Encumbrance (including, without limitation, the DIP Lender and Prepetition Lender and Prepetition Agent) is hereby authorized and directed to execute and deliver any waivers, termination statements, instruments of satisfaction, consents, or releases, as reasonably requested by the Debtors or the Purchaser, to effectuate the foregoing.



12. If any person or entity that has filed any financing statements, mortgages, mechanic's liens, *lis pendens*, or any other documents or agreements evidencing any Claim and Encumbrance on any of the Purchased Assets conveyed pursuant to the APA and this Sale Order shall not have delivered to the Debtors prior to the Closing, in proper form for filing and executed by the appropriate parties, any waivers, termination statements, instruments of satisfaction, consents, or releases of all Claims and Encumbrances which such person or entity has with respect to the Purchased Assets, then (a) the Debtors or the Purchaser are hereby authorized to execute and file such waivers, termination statements, instruments, consents, or releases on behalf of such person or entity with respect to the Purchased Assets, and (b) the Purchaser 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 Claims and Encumbrances in the Purchased Assets of any kind or nature whatsoever.

13. Upon repayment of the DIP Obligations as described in Paragraph 27 hereof (and as defined in the *Final Order (I) Authorizing the Debtors to Obtain Postpetition Senior Secured Financing, (II) Authorizing the Debtors to use Cash Collateral on a Limited Basis, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, and (V) Granting Related Relief* [Docket No. \_\_\_\_] (the "Final DIP Order")), DIP Lender and each of its respective current and former officers, directors, partners, stockholders, managers, controlling persons, employees, agents, administrators, representatives, advisors, attorneys, investors, parents, predecessors, subsidiaries, successors, assigns, and affiliates (each of the foregoing in their capacity as such, individually and collectively, the "DIP Lender Released Parties") shall be irrevocably and unconditionally released of any and all claims, actions, refunds, damages, causes of action, choses in action, suits or

proceedings, rights of recovery, rights of setoff (except for setoffs exercised prior to the Petition Date), rights of indemnity or contribution, and other similar rights (known and unknown, matured and unmatured, accrued or contingent or liquidated, whether direct or indirect, including direct claims for indemnification or contribution, regardless of whether such rights are currently exercisable), other than claims or causes of action arising from an act or omission that is judicially determined by a final order of a court of competent jurisdiction to have constituted actual fraud, for good and valuable consideration, that the Debtors, Purchaser, and/or any party that cast a Bid (as defined in the Bidding Procedures Motion [Docket No. 16]) ever had, now have, or may have against DIP Lender Released Parties in connection with any event, conduct, or circumstance, in each case arising from, connected with, or related to the Chapter 11 Cases and occurring prior to the repayment of the DIP Obligations.

#### **IX. Assumption and Assignment of Assigned Contracts**

14. Pursuant to sections 105(a) and 365 of the Bankruptcy Code, and subject to and conditioned upon the Closing, the Debtors' assumption and assignment to the Purchaser of the Assigned Contracts (subject to any agreed upon modifications and amendments to any Assigned Contract between the Purchaser and any Counterparty) is hereby approved, and the requirements of section 365(b)(1) of the Bankruptcy Code with respect thereto are hereby deemed satisfied.

15. The Debtors are hereby authorized, in accordance with the APA, and in accordance with sections 105(a) and 365 of the Bankruptcy Code, to (i) assume and assign to the Purchaser the Assigned Contracts, effective upon and subject to the occurrence of the Closing, free and clear of all Claims and Encumbrances (other than Assumed Liabilities and Permitted Liens), which Assigned Contracts, by operation of this Sale Order, shall be deemed assumed and assigned to the Purchaser effective as of the Closing, and (ii) execute and deliver to the Purchaser such

instruments, documents, and agreements as the Purchaser may deem necessary to assign and transfer the Assigned Contracts to the Purchaser.

16. The Debtors are authorized to and may assume all of the Assigned Contracts in accordance with section 365 of the Bankruptcy Code. The Debtors are authorized to and may assign each Assigned Contract to the Purchaser in accordance with sections 363 and 365 of the Bankruptcy Code, and any provisions in any Assigned Contract that prohibit, restrict or condition the assignment of such Assigned Contract on the consent of the counterparty thereto or allow the non-Debtor party to such Assigned Contract to terminate, recapture, impose any penalty, condition, renewal or extension, or modify any term or condition a change of control or upon the assignment of such Assigned Contract shall constitute unenforceable anti-assignment provisions which are expressly preempted under section 365 of the Bankruptcy Code and void and of no force and effect, notwithstanding the chapter 11 filing by the Debtors, the financial condition of the Debtors or any other similar circumstances. All requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption and assignment of the Assigned Contracts by the Debtors to the Purchaser have been satisfied. Upon the Closing, the Assigned Contracts shall be transferred and assigned to, and shall remain in full force and effect for the benefit of, the Purchaser in accordance with their respective terms, notwithstanding any provision in any such Assigned Contract (including those of the type described in sections 365(b)(2), 365(e)(1) and 365(f) of the Bankruptcy Code) that prohibits, restricts, limits, or conditions such assignment or transfer. After the Debtors' transfer and assignment of the Assigned Contracts to the Purchaser, in accordance with sections 363 and 365 of the Bankruptcy Code, the Purchaser shall be fully and irrevocably vested in all right, title, and interest of each Assigned Contract.

17. All defaults and other obligations of the Debtors under the Assigned Contracts occurring, arising, or accruing prior to the assignment thereof to the Purchaser at Closing (without giving effect to any acceleration clauses or any default provisions of the kind specified in section 365(b)(2) of the Bankruptcy Code) shall be deemed cured or satisfied by the payment of the proposed amount necessary, if any, to cure all monetary defaults, if any, under each Assigned Contract in the amounts set forth on the schedule of Cure Costs attached to the Potential Assignment Notice or any supplement thereto (or any other cure cost reached by agreement with a counterparty to an Assigned Contract), which was served in compliance with the Bidding Procedures Order, or in any order entered with respect to the *Debtors' Motion for Entry of an Order (I) Setting Cure Amounts for Certain Contracts and Leases, and (II) Granting Related Relief* [Docket No. 35] (the "Cure Motion"), and which Cure Costs were satisfied, or shall be satisfied as soon as practicable, by the Purchaser as provided in the APA. For all Assigned Contracts for which an Potential Assignment Notice was served and no objection has been timely and properly filed by the non-Debtor Counterparty, the Purchaser is authorized and directed to pay all Cure Costs required to be paid in accordance with the APA upon the Closing. For any Assigned Contracts for which an Assigned Contract Objection has been timely and properly filed to the assumption and assignment of such Assigned Contract or the Cure Costs relating thereto and such objection remains pending as of the date of this Sale Order, the procedures set forth in the Bidding Procedures with respect to the resolution of such Assigned Contract Objection shall apply.

18. Pursuant to section 365(k) of the Bankruptcy Code, the Debtors and their estates shall be relieved from any liability for any breach of or obligations under any Assigned Contract following the effective date of such assumption and assignment to the Purchaser, subject to the Purchaser's payment of the Cure Costs as provided in the APA and the Bidding Procedures Order.

19. All Counterparties to the Assigned Contracts shall cooperate and expeditiously execute and deliver, upon reasonable request of the Purchaser, and shall not charge the Debtors or the Purchaser for, any instruments, applications, consents, agreements, or other documents that may be required or requested by any public authority or other party or entity to effectuate the applicable transfers in connection with the Sale.

**X. Modification of the Automatic Stay; 11 U.S.C. § 525**

20. The automatic stay provisions of section 362 of the Bankruptcy Code are modified to the extent necessary to implement the terms and conditions of the APA and the provisions of this Sale Order. The Purchaser shall not be required to seek or obtain relief from the automatic stay under section 362 of the Bankruptcy Code to enforce any remedies under the APA or any other Sale-related documents.

21. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit (federal or state) may revoke or suspend any permit or license relating to the Purchased Assets sold, transferred, or conveyed to the Purchaser on account of (a) the filing or pendency of these chapter 11 cases or (b) the consummation of the Sale contemplated by the APA or the failure of the Debtors to pay any pre-petition claims of such governmental unit.

**XI. Collection of Purchased Assets**

22. All persons and entities that are in possession of any Purchased Assets on the Closing Date are directed to surrender possession of such Purchased Assets to the Purchaser in accordance with the APA on the Closing Date or at such time thereafter as the Purchaser may request. As of the Closing, the Purchaser and its successors and assigns shall be designated and appointed as the Debtors' true and lawful attorney, with full power of substitution, in the Debtors' name and stead on behalf of and for the benefit of the Purchaser, and its successors and assigns,

for the following sole and limited purposes: to have the power to demand and receive any and all of the Purchased Assets and to give receipts and releases for and in respect of the Purchased Assets, or any part thereof, and from time to time to institute and prosecute against third parties for the benefit of the Purchaser, its successors and assigns, proceedings at law, in equity or otherwise, which the Purchaser, and its successors and assigns, may deem proper for the collection or reduction to possession of any of the Purchased Assets.

## **XII. Effect of Recordation of Order**

23. This Sale Order, once filed, registered, or otherwise recorded: (a) shall be effective as a conclusive determination that, upon the Closing, all Claims and Encumbrances (other than Assumed Liabilities and Permitted Liens) in the Purchased Assets have been unconditionally released, discharged, and terminated and that the conveyances described herein have been effected; and (b) shall be binding upon and shall govern the acts of all persons and 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, local officials, notaries, protonotaries, 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, the Purchased Assets. Each and every federal, state, local or foreign government or governmental or regulatory authority, agency, board, bureau, commission, court, department, or other governmental entity is hereby authorized to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA, including, without limitation, recordation of this Sale Order.

**XIII. Good Faith of Purchaser**

24. The Sale contemplated by the APA is undertaken by the Purchaser 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, without limitation, the assumption and assignment of the Assigned Contracts), unless such authorization and consummation of such Sale are duly and properly stayed pending such appeal.

25. Neither the Debtors nor the Purchaser have engaged in any action or inaction that would cause or permit the Sale to be avoided or costs or damages to be imposed under section 363(n) of the Bankruptcy Code. The consideration provided by the Purchaser for the Purchased Assets under the APA is fair and reasonable and the Sale may not be avoided, and costs and damages may not be imposed, under section 363(n) of the Bankruptcy Code.

**XIV. Sale Proceeds; Payment of Certain Indebtedness**

26. Upon Closing of the Sale of the Purchased Assets, all liens and encumbrances securing claims held by DIP Lender, shall attach to the Sale proceeds with the same validity, extent, and priority as existed with respect to the DIP Collateral (as defined in the Final DIP Order) prior to the Closing.

27. Notwithstanding anything to the contrary set forth herein, within two business days after the Closing Date and the Debtors' receipt of the cash portion of the Purchase Price under the APA, the Debtors shall transfer, or cause to be transferred, proceeds generated from the Sale of the Purchased Assets to the DIP Lender for permanent application against the DIP Obligations (including, without limitation, all accrued and unpaid principal, interest, fees, costs, and expenses on the DIP Loans, including the DIP Fees (each as defined in the Final DIP Order)) in accordance

with the terms and conditions of the Final DIP Order and the DIP Documents (as defined in the Final DIP Order) until the DIP Obligations have been paid in full.

**XV. Release**

28. Effective upon, and subject to the occurrence of, the Closing Date, each of the Purchaser, on the one hand, and the Debtors, on the other hand, on behalf of themselves and each of their respective affiliates, subsidiaries, and successors, and all of their respective past, present and future shareholders, partners, members, board of directors and/or supervisors, managers, officers, employees, agents, representatives, attorneys, and advisors (collectively and solely in their capacities as such, their “Related Parties”) (each, a “Releasing Party”), shall irrevocably and unconditionally release, remise, and forever discharge each other and each of their respective Related Parties (each, a “Released Party”) from any and all suits, legal or administrative proceedings, Claims, demands, damages, losses, costs, liabilities, interest or causes of action whatsoever at law or in equity, known or unknown (collectively, “Losses”), which such Releasing Party might now or subsequently may have, based on, relating to, or arising out of the marketing process, the sale process, the negotiation and formulation of the Sale, the ownership or use of the Purchased Assets, including breaches of statutory or implied warranties, nuisance or other tort actions, rights to punitive damages, or common law rights of contribution; provided, however, that nothing herein shall release any Losses that any Releasing Party may have against any Released Party under the APA and any related instruments, documents, or agreements, the Bidding Procedures Order, this Sale Order, and any other order of the Court.

**XVI. Prohibition of Actions Against the Purchaser**

29. Except for Assumed Liabilities and Permitted Liens, neither the Purchaser nor any of its affiliates, members, or shareholders shall have any liability or responsibility for any liability



or other obligation of the Debtors or any of their predecessors and affiliates arising under or related to the Purchased Assets or otherwise or any other Claims and Encumbrances in or against the Debtors or the Purchased Assets, including, without limitation, successor or vicarious liability of any kind or character, based on any theory of antitrust, warranty, product liability, environmental, successor or transferee liability, labor law, ERISA, COBRA, de facto merger, mere continuation, or substantial continuity, whether known or unknown, now existing or hereafter arising, whether fixed or contingent, liquidated or unliquidated, including, without limitation, liabilities on account of any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of the Debtors' business prior to the Closing Date or, except as may otherwise be provided in the APA, any claims under the WARN Act or any claims related to wages, benefits, severance, or vacation pay owed to employees or former employees of the Debtors. Upon the Closing, all entities or persons are permanently and forever prohibited, barred, estopped, and enjoined from asserting against any of the Purchaser or its affiliates, members, or shareholders or any of their successors and assigns, or any of their assets, or the Purchased Assets, any Claims and Encumbrances (other than Assumed Liabilities and Permitted Liens), including, without limitation, under any theory of successor or vicarious liability of any kind or character, based on any theory of antitrust, warranty, product liability, environmental, successor or transferee liability, labor law, ERISA, COBRA, de facto merger, mere continuation, or substantial continuity, whether known or unknown, now existing or hereafter arising, whether fixed or contingent, liquidated or unliquidated.

30. To the greatest extent available under applicable law, Purchaser shall be authorized, as of the Closing Date, to operate under any license, permit, registration and governmental authorization or approval of the Debtors with respect to the Purchased Assets to the extent

transferred in the APA, and all such licenses, permits, registrations, and governmental authorizations and approvals are deemed to have been transferred to Purchaser as of the closing Date.

**XVII. No Interference**

31. Following the Closing, no holder of Claims and Encumbrances in or against the Debtors or the Purchased Assets shall interfere with the Purchaser's title to or use and enjoyment of the Purchased Assets based on or related to such Encumbrances or any actions that the Debtors may take in their bankruptcy cases or any successor cases.

**XVIII. Retention of Jurisdiction**

32. The Court retains jurisdiction to, among other things, interpret, enforce and implement the terms and provisions of this Sale Order and the APA, all amendments thereto, any waivers and consents thereunder, and each related instruments, documents, and agreements in all respects, including, but not limited to, retaining jurisdiction to: (a) compel delivery of the Purchased Assets or performance of other obligations owed to the Purchaser; (b) compel delivery of the Purchase Price or performance of other obligations owed to the Debtors; (c) resolve any disputes arising under or related to the APA, except as otherwise provided therein; (d) interpret, implement, and enforce the provisions of this Sale Order; and (e) protect the Purchaser and its affiliates, members, and shareholders against (1) any Claims and Encumbrances in or against the Debtors or the Purchased Assets of any kind or nature whatsoever and (2) any creditors or other parties in interest regarding the turnover of the Purchased Assets that may be in their possession.

**XIX. No Stay of Order**

33. Notwithstanding Bankruptcy Rules 6004(h), 6006(d) and 7062(g), this Sale Order shall be effective and enforceable immediately upon entry and its provisions shall be

self-executing. In the absence of any person or entity obtaining a stay pending appeal, the Debtors and the Purchaser are free to close the Sale under the APA at any time pursuant to the terms thereof.

**XX. Good Faith Purchaser**

34. The Debtors and their respective officers, directors, employees, agents, advisors, attorneys, and other representatives actively participated in the marketing process and respectively acted in good faith. The Sale contemplated by the APA is undertaken by the Purchaser in good faith, as such term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale of the Purchased Assets to the Purchaser (including the assumption and assignment of any Assigned Contract), unless such authorization is duly stayed pending such appeal. The Purchaser is a good faith purchaser of the Purchased Assets, and is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code.

**XXI. Inconsistencies with Prior Orders, Pleadings, or Agreements**

35. To the extent of any conflict between the APA and this Sale Order, the terms of this Sale Order shall govern. To the extent this Sale Order is inconsistent or conflicts with any prior order or pleading in these chapter 11 cases, the terms of this Sale Order shall govern and any prior orders shall be deemed amended or otherwise modified to the extent required to permit consummation of the Sale.

**XXII. Failure to Specify Provisions**

36. The failure to specifically reference any particular provisions of the APA or other related instruments, documents, and agreements, in this Sale Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the APA or other related instruments, documents, and agreements be authorized and approved in their entirety.

**Exhibit 1**

**APA**