UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

In re:	§	**Chapter 11**
	§	
	§	**Case No. 20-43597-399**
BRIGGS & STRATTON CORPORATION, *et al.*,	§	
	§	**(Jointly Administered)**
	§	
Debtors.	§	
	§	
	§	
	§	

SUPPLEMENTAL DECLARATION OF WILLIAM G. PELUCHIWSKI IN SUPPORT OF MOTION OF DEBTORS FOR ENTRY OF AN ORDER (I) APPROVING (A) BIDDING PROCEDURES, (B) DESIGNATION OF STALKING HORSE BIDDER AND STALKING HORSE BID PROTECTIONS, (C) SCHEDULING AUCTION AND SALE HEARING, (D) FORM AND MANNER OF NOTICE OF SALE, AUCTION, AND HEARING, AND (E) ASSUMPTION AND ASSIGNMENT PROCEDURES AND (II) GRANTING RELATED RELIEF

I, William G. Peluchiwski, pursuant to section 1746 of title 28 of the United States Code, hereby declare, under penalty of perjury, that the following is true to the best of my knowledge, information, and belief:

1. I am a Senior Managing Director and shareholder at Houlihan Lokey Capital, Inc. ("**Houlihan**"), a global investment bank with expertise in financial restructuring, capital markets, valuation, and strategic consulting.

2. I have more than 25 years of experience advising corporations and other constituents on strategic and financial matters, including advising clients in M&A domestic and cross-border transactions, financial restructurings, and financings. I have substantial experience advising on in-court sales processes and have provided testimony in connection therewith, including for, among others, Exide Technologies, Marvel Enterprises, TIE Communications, Weirton Steel, and National Steel.

3. I founded and currently serve as Co-Head of Houlihan's Industrials Group and also serve as Co-Head of Asia. The Industrial Group covers aerospace, automotive, building products, chemicals, capital goods, metals, industrial technology, packaging, and other related sectors. I have played a leading role in the development of Houlihan's global practice and I currently serve as a member of the firm's Corporate Finance Board of Directors and Corporate Finance New Business Committee.

4. Before joining Houlihan, I consulted on intellectual property and joint venture transactions. I received a B.S. in Finance and Accounting from the University of Illinois and an MBA in Finance and Marketing from the University of Chicago Booth School of Business. I am a Certified Public Accountant and hold the designation of Chartered Financial Analyst.

5. I submit this submit this supplemental declaration (the "**Supplemental Declaration**") in further support of the *Debtors' Motion for Entry of an Order (I) Approving (A) Bidding Procedures, (B) Designation of Stalking Horse Bidder and Stalking Horse Bid Protection, (C) Scheduling Auction and Sale Hearing, (D) Form and Manner of Notice of Sale, Auction, and Hearing, and (E) Assumption and Assignment Procedures and (II) Granting Related Relief.* (ECF No. 53) (the "**Motion**").[1] I adopt and incorporate, as if fully set forth herein, the declaration of Reid Snellenbarger in support of the Motion (ECF No. 53-1) (the "**Snellenbarger Declaration**"). I was, and remain, intimately familiar with the facts and processes set forth in the Snellenbarger Declaration as a senior member of the team tasked with both the Capital Raise Process and the M&A Process as well as overseeing the in-court sales process that is ongoing, and the subject of the Motion.

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

6. I have reviewed the objections, joinders, and limited objections to the Motion filed by the following parties: (1) The Ad Hoc Group of Senior Noteholders (ECF No. 300) (the "**Ad Hoc Group Objection**") (2) Generac Power Systems, Inc. (ECF No. 367) (the "**Generac Objection**") and (3) the United States Trustee (ECF No. 409), as well as the joinder of the Official Committee of Unsecured Creditors to the Ad Hoc Group Objection and Generac Objection (the "**UCC Joinder**") (ECF No. 401). I am authorized by the Debtors to submit this Declaration and, unless otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge, my experience, my review of relevant documents, information provided to me by Houlihan employees working on this engagement, or information provided to me by members of the Debtors' management or their advisors. If called upon to testify, I could and would testify to the facts and opinions set forth herein.

I. The Debtors Conducted a Robust Marketing Process That Continues To This Day

7. As set forth in the Motion and the Snellenbarger Declaration, the Debtors faced significant prepetition capital and liquidity issues. The Debtors had significant debt obligations that were maturing within six months and were experiencing (and continue to experience) significant cash burn as a result of the various headwinds referenced in the Snellenbarger Declaration as well as significant working capital requirements due to the seasonality of the business. *See* Snellenbarger Decl. ¶ 9.

8. Initially, the Debtors attempted to solve those issues by raising capital in the marketplace through the Capital Raise Process. As set forth in the Snellenbarger Declaration, this included reaching out to over 125 potential investors. However, it became clear that new financing was not forthcoming as investors were unwilling to provide the Company with sufficient capital without the Company solving its 2020 debt maturities and its overall debt leverage. The

only actionable proposals the Company received during the Capital Raise Process were for an in-court sale process (i.e., the Prepetition M&A Process). The Capital Raise Process transitioned to the Prepetition M&A Process in mid to late-May, after the Company shared its business plan with potential investors, who pivoted to evaluating the opportunity as a potential sale transaction rather than a financing transaction after reviewing the plan and the amount of capital required to fund the plan. The Stalking Horse Bidder also provided its first diligence request list to the Company in mid-May.

9. As part of the Prepetition M&A Process, and in addition to other potential buyers, my team and I reached out to the strategic buyers who could reasonably be expected to express interest in the Debtors' entire business given these buyers' own product mix and strategy.

10. The Debtors' Capital Raise Process and Prepetition M&A Process were no secret. The Debtors are a publicly traded company, and their financial situation was well-known in the marketplace. As noted by the Ad Hoc Group Objection and the Preliminary Declaration of Christopher Kearns in Support of the Objections of the Official Committee of Unsecured Creditors, the Company had been publicly contemplating a sale of a portion of the Company's assets since March 2020, as set forth in its March 6, 2020 Strategic Repositioning Plan. Additionally, the Capital Raise Process and Prepetition M&A Process were covered by the press.

11. After soliciting interest for a capital raise—whether in the form of financing or an asset sale—the Company was not presented with any actionable proposals that involved reorganizing and refinancing the entire business. The Company also was not presented with any solutions that involved selling parts of the Debtors while reorganizing (and refinancing) the remaining business. I am informed that prior to Houlihan's engagement by the Debtors to assist with their investment banking needs, the Debtors attempted to sell their Products business.

However, given the liquidity constraints of the Company and the additional capital requirements of the remaining business, any actionable deal of that type was prohibitive. The Company to date has not been presented with actionable proposals that contemplate (i) reorganizing the entire business through a chapter 11 plan or (ii) selling a piece of the business to generate adequate proceeds to satisfy or pay down the ABL and provide sufficient capital for the remaining reorganized business.

12. Nevertheless, the Debtors remain open to any and all value-maximizing transactions—including the Ad Hoc Group's suggestion of a partial sale of assets and a reorganization around the remaining assets—that present themselves. The Proposed Bidding Procedures do not foreclose interested parties from making such proposals (and, in fact, have been revised to make it even clearer that partial bids will be considered), and the Debtors would be obligated to consider such a proposal in the exercise of their fiduciary duties to maximize the value of the estates for the benefit of all creditors. Nor do the Bidding Procedures foreclose the Debtors' ability to waive the deposit requirement should a potential bid otherwise be a Qualified Bid and have a legitimate reason for not being able to submit the deposit timely.

13. It is worth noting, however, that the Ad Hoc Group is the most natural constituency to propose such a reorganization transaction, whether around a portion of or the whole of the business. As set forth in the Snellenbarger Declaration, the Debtors engaged with the Ad Hoc Group prepetition (including paying for sophisticated legal counsel and a financial advisor) on potential solutions for the Debtors' capital and liquidity challenges. *See* Snellenbarger Decl. ¶ 16. The Ad Hoc Group and its advisors had access to the data room and presented three proposed solutions, each of which contemplated a set of transactions occurring over several months, was subject to further diligence, and was not actionable, including because the Prepetition ABL

Lenders did not provide required consents. During these negotiations, the Ad Hoc Group never proposed that the Debtors sell some of their assets and reorganize around the remainder, nor did it propose a reorganization around the entire business in chapter 11. The members of the Ad Hoc Group were in discussions with the Debtors prepetition to provide a portion of the Debtors' DIP financing, but ultimately did not make a proposal to be a DIP Lender. The Ad Hoc Group hired new advisors postpetition and have continued to conduct diligence. Its new advisors (one of which was subsequently replaced with its old advisor) have been granted access to the data room and have had numerous calls with the Debtors' advisors and management. However, the Ad Hoc Group has yet to make a proposal of any kind postpetition, whether for a DIP, a sale, or a reorganization.

14. Based on the Debtors' preliminary review, which is subject to further review by potential buyers, and given the Company's significant share of certain markets, I am informed that transactions with certain strategic buyers may require a review period of as short as 4-6 months to as long as 9-12 months (or longer) by U.S. and foreign antitrust agencies. In this scenario, the minimum hurdle for a strategic buyer would consist of not only the Purchase Price and the Initial Overbid but also the estimated funding requirement for the business during the antitrust review period.

15. Given these hurdles, a sale of (substantially) all of the Debtors' assets was (and remains) the value-maximizing transaction, and indeed the only actionable transaction proposed to date, that solves for the Debtors' debt and liquidity issues. Such a sale, based on current assumptions, will allow the Debtors to satisfy the claims of their secured creditors and their administrative and priority creditors, as well as a significant amount of unsecured claims, and

provide an opportunity for remaining unsecured creditors to recover, particularly if the process yields additional Qualified Bids.

16. Every day that the Debtors remain in chapter 11 increases the significant cash crunch on the Company, diminishing the ultimate recovery for all creditors, and placing at risk the highest and best offer received by the Debtors to date: the $798 million transaction (inclusive of $531 million of cash; $238 million of assumed liabilities, which include priority, administrative and unsecured claims; and $29 million of excluded assets) that the Stalking Horse Bidder is committed to closing in short order. Notably, the Company's Adjusted EBITDA is estimated to be $6 million in FY20 and $35 million in FY21. Despite the assertions in the Ad Hoc Group Objection and the UCC's Joinder to the contrary, the Stalking Horse Purchase Agreement represents a premium offer for the Company's assets and based on operational performance. In addition, while COVID-19 affected the Company's operational performance in March and early April, it has not materially affected buyers' interest and ultimately the value of the Stalking Horse Purchase Agreement.

II. The Bidding Procedures Schedule Properly Balances the Debtors' Need to Limit Cash Burn and Exit Chapter 11 Quickly With the Need to Promote a Competitive Bidding Process

17. Given the Debtors' cash burn and need for capital to operate the business, the Proposed Bidding Procedures balance the need to limit the Debtors' time in chapter 11 while also maintaining flexibility to execute on higher and better offers/transactions. After the three-month Capital Raise Process and Prepetition M&A Process, the Stalking Horse Bidder submitted the highest and best comprehensive offer following significant diligence, including numerous site visits, diligence calls, and review of the data room. Following that diligence and significant transaction negotiations, the Debtors now have a committed buyer for their assets that sets a floor

for other bids and maximizes value. The Stalking Horse Bidder has agreed to keep open its offer/transaction in the event the Debtors find a better and/or higher one during the course of this Court-supervised sale process.

18. Neither the Stalking Horse Purchase Agreement nor the Bid Procedures prohibit Houlihan from continuing to solicit interest from potential buyers after the Petition Date. In fact, with the exception of the 18-day exclusivity period granted to the Stalking Horse Bidder in early July, Houlihan has been actively exploring financing and/or M&A alternatives for the Company since mid-April. As part of this process, the Debtors have also been engaging with the Ad Hoc Group and its advisors since mid-May (including during the exclusivity period, as permitted by the Stalking Horse Bidder).

19. Since the Petition Date, Houlihan and the Debtors have continued soliciting interest from potential buyers and providing information/diligence to those interested parties. The Debtors have maintained the data room that they set up in the course of the Capital Raise Process and Prepetition M&A Process and have since added additional information as requested. For the most part (i.e., subject to specific antitrust or competitive concerns), potential bidders/interested parties have access to the same documents/information that the Stalking Horse Bidder had in formulating its offer.

20. Specifically, we have solicited over 190 parties as part of the post-petition marketing process. We have populated approximately 6,800 documents to the data room.

21. Additionally, as set forth in the Snellenbarger Declaration, the DIP Facility includes certain sale-related milestones that must be met in order for the Debtors to enjoy continued access to the DIP Facility funds that are critical to funding their operations and these Chapter 11 Cases. As set forth below, the Debtors have not received any other actionable

indications of interest from parties other than JPMorgan Chase and the Stalking Horse Bidder to provide DIP financing to the Debtors. Therefore, if the Proposed Bidding Procedures (and related deadlines) are not approved by the Court, it is likely that the Debtors will be in breach of their DIP Facility Agreement. Without access to the DIP Facility, and with no additional sources of financing available, the Debtors would likely have to convert their Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, resulting in a value-destructive liquidation.

22. Further, if the Bidding Procedures are not approved, the Stalking Horse Bidder will be relieved from its binding, highest, and best-to-date offer. This will result in a multitude of issues. First, if that happens, there is no guarantee that the Stalking Horse Bidder will remain interested in purchasing the Debtors' assets, much less at the price currently contractually agreed-to. Second, if the Stalking Horse Bidder does make another bid in such event, I believe it would start the bidding lower, and it is possible that the new lower bid would be the best bid received for the assets. Such a result would be further value-destructive. Also, the Stalking Horse Bid provides an essential function in providing: (1) other bidders necessary information to proceed appropriately and efficiently, (2) the Debtors' estates a minimum bid on which to rely, which promotes more competitive bidding, and (3) comfort to the Debtors' contractual counterparties, preserving the Debtors' going-concern value. As such, without the Stalking Horse Bid, the bidding process is likely to be less competitive and result in a lower overall transaction value for the Debtors' estates.

23. Even putting aside the substantial prepetition marketing process, I believe the postpetition marketing process (including both (i) the period prior to the Bidding Procedures Hearing and (ii) the period between the Bidding Procedures Hearing and the Bid Deadline) is sufficient time for any and all potential bidders to perform diligence and put in a bid. I do not

believe that a longer process would lead to higher or better bids. Therefore, delay would cost the company money (potential loss of the Stalking Horse Bid and additional costs for every week that closing is delayed) without leading to any attendant benefit.

24. Specifically, while Generac suggests that 39 days for the post-petition marketing process (i.e., the time between the Petition Date and the Bid Deadline) is "unreasonably compressed" (Generac Obj. at 2), that timeframe is longer than the time between the Stalking Horse Bidder's submission of its initial indication of interest and the submission of its final proposal and marked stock and asset purchase agreement. Additionally, it is simply not the case that "the bid of the Stalking Horse [] took months of negotiations to finalize prior to the Petition Date." *Id*. As set forth in the Snellenbarger Declaration, negotiations with the Stalking Horse Bidder only began in earnest in June 2020, with the form purchase agreement not even being posted to the data room until June 20, 2020. Snellenbarger Decl. ¶ 18. The Stalking Horse Agreement was executed effective as of July 19, 2020, less than a month later. *Id* ¶ 20.

25. Additionally, approximately 6,000 additional documents have been posted to the data room since the submission of the Stalking Horse Bidder's initial indication of interest, so participants in the post-petition marketing process have the benefit of significantly more information, which should lessen the time required to submit a bid.

26. Given the Prepetition M&A Process, the robust and well-organized data room that has remained (and will remain) open to potential bidders, the Debtors' willingness to entertain any and all transactions that provide a comprehensive solution for the Debtors' capital and liquidity issues, and the Debtors' significant need for the DIP Facility, I believe the timelines/deadlines set forth in the Proposed Bidding Procedures provide the best process to achieve a value-maximizing transaction for the benefit of the Debtors' estates and their creditors.

III. Generac Has Had Timely Access to Due Diligence Information to Submit an Informed Bid

27. As noted in paragraph 9, as part of the Prepetition M&A Process, Houlihan reached out to the strategic buyers who could reasonably be expected to express interest in the Debtors' entire business; Generac did not fit this description. Also, despite the public announcements dating back to March 2020 that various assets of the Company were for sale, and unlike numerous other strategic buyers who proactively reached out to Houlihan during the Prepetition M&A Process, Generac did not reach out to Houlihan until after the Petition Date; as noted, other strategic bidders similarly stated that they would only be interested in exploring a purchase after the chapter 11 filing. Overall, the Debtors and Houlihan have encouraged and facilitated Generac's participation and are hopeful that Generac will submit a bid.

28. On July 21, 2020, representatives from Reinhart Boerner Van Deuren s.c. ("Reinhart"), Generac's counsel, reached out to Houlihan to express interest "on behalf of a client" and Houlihan followed-up to schedule a call the same day. The next day (July 22), Houlihan spoke to Reinhart, at which time it was revealed that the unnamed "client" was Generac. In order get Generac started on the bidding process while working on providing it access to the data room, Houlihan pointed Generac to certain relevant publicly-filed documents, including the public investor presentation. The next day, on July 23, Houlihan provided Generac with documents for its review, including a form non-disclosure agreement, a process letter, a summary term sheet, and an investor presentation.

29. Following the execution of an NDA and after Generac was granted access to the non-clean team data room, Generac access to the clean team data room the next day, July 28. When Generac emailed Houlihan on July 29, regarding its concerns on the level of information

and redactions in the data rooms, and Houlihan followed up the next day asking for a detailed request list of information that Generac needed so that Houlihan could work with the Company to gather that information.

30. On August 3, Generac provided Houlihan with its 16-item request list. Within two days, Houlihan provided files or answers in response to 12 of these requests and provided documents to address two additional questions shortly thereafter. Houlihan also held a call with Generac and its advisors on August 5 to review the responses provided as well as to detail the limitation on certain pieces of data Generac requested that the Company did not have readily available. In the interim, Houlihan continued to post additional documents to the data rooms over the next two days. On August 7, Houlihan held an hour-long call with Generac's banker Baird—primarily to discuss questions related to the Company's business. As of the filing date of the Generac Objection, two Generac requests that were not fulfilled by Houlihan were for: (1) a detailed employee census for the last three years, seeking sensitive employee data including their names and dates of birth, and (2) a detailed new product development roadmap for electric products. In an effort to satisfy the request for the detailed employee census, on August 5, Houlihan asked whether higher-level, aggregated employee information would be satisfactory. Eight days later, on August 13, and only after Houlihan reached out to Generac, Generac responded to specify certain employee data it was seeking; Houlihan posted a file to the data room the next day (August 14) to respond to the updated request. Regarding the product roadmap, which the Company has not made available to strategic buyers for competitive reasons, Houlihan has proposed a call to discuss.

31. As to the data room information Generac has had available to it, as set forth above, the full investor data room contains approximately 6,800 files. Because Generac is a

competitor to the Debtors in certain product segments/lines, there are certain competitive and antitrust concerns with sharing the entirety of the data room with Generac. However, at the time of the filing of its objection, Generac has had access to approximately 1,900 files in the non-clean team data room and an additional 1,000 in the clean team data room, totaling approximately 2,900 documents (and, as of the date hereof, totaling 4,400). Additionally, of the approximately 3,900 documents in the full investor data room that Generac initially did not have access to, approximately 1,500 relate to litigation. Approximately 1,000 of those litigation documents relate specifically to Exmark, which is an Excluded Asset under the Stalking Horse Agreement. As such, in order to guide potential bidders towards information that would be relevant to their bids (i.e., valuing the business), these documents were not initially included so that Generac would not have to sift through these documents that have (at best) a tenuous connection to valuation and a potential Generac bid. After receiving the Generac Objection, however, I directed my team to make these approximately 1,500 documents available to Generac in the data room. As such, the only documents to which Generac has not been provided access to relate specifically to competitive concerns (e.g., detailed information on customers, pricing, and product-level cost information) and employee sensitivity (e.g., employment agreements and employees' personal information).

32. Generac, like all potential bidders for which clean teams are necessary, cannot see the names of folders and files in the full investor data room. This is done to: (i) ensure potential bidders are credible, (ii) focus bidders on information that is relevant to their bids based on their individual needs, and (iii) prevent strategic buyers who only had access to the clean team or non-clean team data rooms from going on a "fishing expedition" unless needed for valuation in order to further protect Briggs' competitively-sensitive information. This is typical in my experience.

33. Regarding Generac's assertion that "[n]o business-level projections have been made available" (Generac Obj. at 3)—which I understand to be a request for product-level projections—the fact is that the Company does not prepare such projections. As such, product-level projections were not provided to *any* potential bidder, including the Stalking Horse Bidder. Houlihan did provide Generac the same driver-based P&L model that was provided to the Stalking Horse Bidder (with a minor edit in which certain data related to two product lines in which the Company competes directly with Generac were grouped to protect the information). Generac has been provided substantially the same projections that the Stalking Horse Bidder was provided, and used, in submitting its Stalking Horse Bid.

34. Generac has, and will have, more time to formulate any potential bid for the Debtors' assets—and to do so on more information—than the Stalking Horse Bidder had in coming forward with the highest and best bid to date. Houlihan will continue to work with Generac and its advisors in providing information, data, and documents to allow Generac to formulate its bid (if any) in order to maximize the value of the Debtors' estates for the benefit of its creditors.

IV. The Bid Protections for the Stalking Horse Bidder Are Market and Appropriate Under the Circumstances

35. As set forth in the Snellenbarger Declaration, Houlihan conducted a market analysis of the proposed Break-Up Fee and Expense Reimbursement to ensure that they were within market.

36. Some of the objecting parties have, however, questioned the need for a Break-Up Fee in this case because the Stalking Horse Bidder also is providing a portion of the DIP Facility. These concerns are unfounded. Unlike in the typical case in which a prepetition lender credit bids its existing debt or a party enters the picture solely as a DIP lender and then subsequently credit-bids for the debtors' assets later, here the Stalking Horse Bidder came to us

based on its interest in buying the Debtors' assets. In fact, the Debtors' initial preference was that the DIP financing be provided by parties other than the Stalking Horse Bidder. It was only after the ABL Agent (JPMorgan Chase) indicated that it was unwilling to provide the entire DIP Term Facility that the Debtors sought the Stalking Horse Bidder's participation as a DIP Term lender. Even then, the Debtors sought to limit the Stalking Horse Bidder to a minority position in the DIP Term Facility after JPMorgan Chase informed the Debtors that the Stalking Horse Bidder's participation would likely benefit the syndication efforts to investors. In other words, the Stalking Horse Bidder's interest in purchasing the Debtors' assets was wholly independent of its role as a DIP lender and, in effect, allowed these chapter 11 cases to remain administratively solvent as no other DIP offers were (or have since been) forthcoming. In effect, the DIP Facility provided by the Stalking Horse Bidder is an advance deposit on the Cash Purchase Price under the Stalking Horse Purchase Agreement.

37. Therefore, it is my opinion that the market Termination Fee remains appropriate in these circumstances to compensate the Stalking Horse Bidder for the significant, and expensive, diligence it conducted in the Prepetition M&A Process and the substantial value it provided the Debtors' estates by agreeing to the Stalking Horse Agreement to serve as a committed buyer, providing a floor of value that the Debtors can realize. Furthermore, the Stalking Horse Bidder communicated that without assurance of payment of the Termination Payment under the conditions set forth in the Stalking Horse Agreement and the Bidding Procedures, it would not agree to be bound by the bid set forth in the Stalking Horse Agreement. Thus, without the Bid Protections, the floor set by the Stalking Horse Agreement—which represents a bid that, under current assumptions, will pay all secured, administrative, and priority claims in full, fund the wind-

down of the estates, and provide an opportunity for at least some recovery for unsecured creditors—will likely be lost.

38. Accordingly, it is my opinion that the Bid Protections provided to the Stalking Horse Bidder, and the Stalking Horse Bidder's participation in the DIP Facility, are fair and reasonable under the circumstances and will not chill bidding.

V. The Other Terms Objected To Are Appropriate and Will Not Chill Bidding

39. Also unfounded is the statement that the 10% deposit will chill or deter bidding: the 10% deposit is reasonable, typical, and necessary to protect the Debtors from potential breaches by bidders, and in any event it may be waived in appropriate circumstances.

40. As to the 1% prepayment premium in the DIP Facility, I believe that such provision is appropriate under the circumstances and resulted from negotiations between the Debtors and the Stalking Horse Bidder. The 1% prepayment premium is just one element of the total fee package for the DIP Term Lenders. The overall fee package remains at or below market for a DIP financing of this type. While a prepayment premium in the event of a refinancing, but not any other prepayment (i.e, a "soft call") is most typical, the Stalking Horse Bidder proposed such a prepayment premium for any prepayment whatsoever (i.e., a "hard call"). Given the Debtors' liquidity constraints, the limited time remaining in the grace period to make the interest payment due under the Senior Notes, and the lack of market interest for participation in the DIP Term Facility—as evidenced by JPMorgan Chase's inability to syndicate the DIP Term Facility prepetition under the same terms that were ultimately agreed-to with the Stalking Horse Bidder—the Debtors exercised their business judgment to agree to such a prepayment premium. However, the Debtors did exact a concession from the Stalking Horse Bidder in that such prepayment premium would not be due in the event of a sale to the Stalking Horse Bidder. Critically, even

accounting for this 1% prepayment premium, the DIP Term Facility in which the Stalking Horse Bidder is participating is at or below market for such DIP facilities.

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Executed this 17th day of August, 2020

/s/ *William Peluchiwski*
Name: William G. Peluchiwski
Title: Senior Managing Director, Houlihan Lokey Capital, Inc.