

IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF MISSOURI

In Re:) In Proceedings Under Chapter 11
)
8760 SERVICE GROUP, LLC and) Case No. 17-20454
PELHAM PROPERTY, LLC)
Debtors.) (Lead Case)

DEBTORS' MOTION TO APPROVE (A) AUCTION PROCEDURES; (B) ONE OR MORE POTENTIAL SALE(S) OF SUBSTANTIALLY ALL ASSETS FREE AND CLEAR OF ALL LIENS, INTERESTS, CLAIMS AND ENCUMBRANCES, AND (C) RELATED PROCEDURES/RELIEF PURSUANT TO 11 U.S.C. §§ 105 AND 363

COME NOW the Debtors, and submit this motion (the "Motion") for an order (the "Order"), pursuant to 11 U.S.C. §§ 105 and 363, and Fed. R. Bankr. P. 2002, and 6004 to approve one or more potential sales of substantially all of the debtors' assets free and clear of all liens, interests, claims and encumbrances, and related procedures and related relief, as follows:

JURISDICTION

1. This is a core proceeding pursuant to 28 U.S.C. § 157(2)(A), (M), (N), and (O). This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. Venue is proper in this Court pursuant to 28 U.S.C. § 1408.

BACKGROUND

2. On May 1, 2017 (the "Petition Date"), 8760 Service Group, LLC and Pelham Property, LLC (collectively, the "Debtors") filed separate voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Missouri.

3. By order of this Court entered on May 4, 2017, the Debtors' are jointly administered with *In re 8760 Service Group, LLC* designated as the lead case.

4. Each Debtor remains in possession of its assets and continues to operate as debtor-in-possession in accordance with 11 U.S.C. §§ 1107 and 1108.

5. Debtors propose to auction substantially all of their assets (the “Assets”) in an online auction, commencing on August 28, 2017 and finishing on September 20, 2017 (the “Auction”). Debtors have selected Mayo Auction and Realty (the “Auctioneer”) to conduct the Auction. In conjunction with the filing of this Motion, the Debtors have also filed an Application to Employ Mayo Auction and Realty.

RELIEF REQUESTED

6. Pursuant to Sections 105 and 363 of the Bankruptcy Code (the “Code”) and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Debtors request that the Court, *inter alia*:

- a. Find that notice of the Motion was accurate, appropriate, reasonable and legally sufficient under the circumstances and in accordance with applicable Bankruptcy Code provisions and Bankruptcy Rules;
- b. Approve the auction procedures (“Auction Procedures”) attached as Exhibit A to the proposed Order (“Auction Procedures Order”) attached hereto as **Exhibit 1**, approving the Auction Procedures;
- c. Approve the form and manner of notice of the Auction Procedures, the Sale Hearing (as defined below), the objection deadline, the respective dates, times and places for the Auction, substantially in the form attached hereto as **Exhibit 2** (the “Sale Notice”)
- d. Authorize and direct Debtors to execute and deliver all further documents, instruments and agreements and to take all actions necessary or desirable to complete the contemplated sale as set forth in the Auction Procedures;
- e. Authorize the sale of the Assets pursuant to 11 U.S.C. § 363, free and clear of any and all encumbrances, claims, pledges, charges, interests, leases and liens (whether consensual, judgment, tax or otherwise), successor transfer liability or other claims of any state or federal agency including, but not limited to, the state and federal environmental protection agencies of whatever type or description, including those kind specified § 502(g), (h) and (i) of the Bankruptcy Code, whether direct or indirect, absolute or contingent, matured or immatured, liquidated or unliquidated, of, by or against the Debtors or the Assets;

- f. Find that the Debtors and buyers have acted in good faith with respect to this matter and finding no evidence of improper conduct or motive by any party with respect to this transaction and that such buyers are a bona fide purchaser in good faith protected by 11 U.S.C. § 363(m);
- g. Find that neither the Trustee nor the potential buyers have colluded with any other person, firm or entity, or in any matter violated the provisions of 11 U.S.C. § 363(n);
- h. Establish procedures for objections to the Motion,
- i. Set a final hearing on the Sale Motion; and
- j. Find that the sale be effective immediately and that the stay period of Federal Rule of Bankruptcy Procedure 6004(h) not apply.

Summary of Key Deadlines

<u>Event</u>	<u>Date and Time (if applicable)</u>
Sale Notice	Within 1 day of the entry of the Auction Procedures Order
Personal Property Reserve Deadline	September 1, 2017
Credit Bid Submission Deadline	September 19, 2017 @ 4:00 CST
Auction	August 28 - September 20, 2017
Sale Objection Deadline	September __, 2017
Sale Hearing	September __, 2017

BASIS FOR RELIEF

A. Sales Under 363 Generally

7. Section 363(b)(1) of the Bankruptcy Code provides: "The Trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b). Section 105(a) of the Bankruptcy Code provides in relevant part: "The Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

8. A sale of assets of a debtor should be authorized pursuant to Section 363 of the Bankruptcy Code if a sound business purpose exists for doing so. See, e.g., Fulton State Bank v. Schipper (In re Schipper), 933 F. 2d 513, 515 (7th Cir. 1991); Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1993). The business judgment rule shields a debtor's management from judicial second-guessing. ("[T]he Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a Debtor's management decisions. ") In re Farmland Industries, Inc., 294 B.R. 903, 913 (Bankr. W.D. Mo. 2003) (quoting In re Johns-Manville Corp., 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986)). Once the Debtors articulate a valid business justification, "[t]he business judgment rule 'is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.'" In re Integrated Resources, Inc., 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985)).

9. Pursuant to Bankruptcy Rule 6004(f)(1), sales of property outside the ordinary course of business may be by private sale or auction. Good cause exists to expose the assets to auction. The Debtors believe that the Auction, conducted as set forth in the Auction Procedures will enable the Debtors to obtain the highest or best offer(s) for the Assets under the circumstances, thereby maximizing the value of the Debtors' estates. Maximization of asset value is a sound business purpose, warranting authorization of the sale.

B. Sale Free of Liens, Interests, Claims and Encumbrances Under 363(f)

10. Section 363(f) of the Bankruptcy Code provides:

The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if –

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11. Section 363(f) is drafted in the disjunctive. Thus, satisfaction of any of the requirements enumerated therein will suffice to warrant the debtors' sale of the Assets free and clear of all liens, claims, and encumbrances. Each lien, claim or encumbrance attached to the Assets satisfies at least one of the five conditions of section 363(f), and the Debtors submit that any such lien, claim or encumbrance will be adequately protected by attachment to the net proceeds of the proposed sale(s), subject to any claims and defenses the Debtors or any other party in interest may possess with respect thereto. Accordingly, the Debtors request that their assets be transferred to the successful bidders at the Auction free and clear of all liens, claim, interests and encumbrances, with such liens, claims, interests and encumbrances to attach to the proceeds of the sale of the assets.

C. Credit Bid Limitations

12. Section 363(k) of the Bankruptcy Code provides:

At a sale under subsection (b) of this section of property that is subject to a lien that secures an allowed claim, *unless the court for cause orders otherwise* the holder of such claim may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property.

11 U.S.C. §363(k) (emphasis added). Other courts have interpreted and applied the phrase "unless the court for cause orders otherwise" under Section 363(k). For example, In re RML Dev., Inc., 528 B.R. 150, 156 (Bankr. W.D. Tenn. 2014), where the amount of a secured creditor's claim was in dispute, the court required the creditor to provide a letter of credit payable to the debtor in the amount of any credit bid, it might make.

13. "A secured creditor's ability to credit bid is within the discretion of the court and is not absolute." In re Olde Prairie Block Owner, LLC, 464 B.R. 337, 347–48 (Bankr. N.D. Ill. 2011) (citing In re Theroux, 169 B.R. 498, 499 n. 3 (Bankr.D.R.I.1994) (holding that “there is no absolute entitlement to credit bid”)). "The term 'cause' is not defined in the Bankruptcy Code and is left to the courts to determine on a case-by-case basis." Olde Prairie Block Owner, LLC, 464 B.R. at 488. (citing In re River Road Hotel Partners, LLC, No. 09–30029(BWB), 2010 WL 6634603, at *1 (Bankr.N.D.Ill. Oct. 5, 2010) (holding that “[s]ection 363 gives courts the discretion to decide what constitutes ‘cause’ and the flexibility to fashion an appropriate remedy by conditioning [*37] credit bidding on a case-by-case basis.”), *aff’d* River Road Hotel Partners, LLC v. Amalgamated Bank, 651 F.3d 642 (7th Cir.2011)).

14. Courts have found “cause” under § 363(k) to bar a secured creditor from credit bidding when the creditor's lien is questioned or otherwise in dispute. Nat'l Bank of Commerce v. McMullan (In re McMullan), 196 B.R. 818, 835 (Bankr.W.D.Ark.1996) (holding that “at any such sale, [the secured creditor] shall not be entitled to offset any of its claimed liens or security interests under 11 U.S.C. § 363(k) because the validity of its liens and security interests are unresolved.”) *aff’d*, 162 F.3d 1164 (8th Cir.1998); *see also* In re Daufuskie Island Props., LLC, 441 B.R. 60, 64 (Bankr.D.S.C.2010) (holding that a creditor was not entitled to credit bid when its mortgage was in dispute); *accord* In re RML Dev., Inc., 528 B.R. 150, 156 (Bankr. W.D. Tenn. 2014) (bank allowed to credit bid conditioned upon the posting of an irrevocable letter of credit to protect the estate in the event the lien were later avoided).; In re Octagon Roofing, 123 B.R. 583, 592 (Bankr. N.D. Ill.1991) (same).

15. With the exception of the creditors specifically listed below, each of the Debtors' secured creditors holding undisputed senior secured claims, meaning that either the creditor is listed

on the debtors' schedules as having an undisputed secured claim or such creditor has filed a proof of claim listing a secured claim which has not been objected to, may credit bid at the auction.

16. However, the Debtors propose that the three creditors holding blanket liens on the Debtors' personal property: BancorpSouth Bank ("BancorpSouth"), Hudson Insurance ("Hudson"), and the United States Internal Revenue Service ("I.R.S.") will not be permitted to credit bid on personal property. Additionally, mechanics' lien holders will not be allowed to credit bid on the Assets. The status and priority of their blanket secured claims are in material dispute, making credit bidding on the Debtors' personal property (and in the case of mechanic's lien holders, real property) by these creditors impractical. For the avoidance of doubt, the Debtors are not seeking an order limiting the ability of BancorpSouth to credit bid on the real property at 5105 Pelham Drive (the "Real Property") and related fixtures/improvements because such liens are not subject to a dispute. BancorpSouth and Hudson have agreed not to pursue their credit bid rights on the condition that the Bidding Procedure Order is without prejudice to their liens and that their liens attach to the sale proceeds.

17. The I.R.S. asserts a lien in substantially all of the 8760 Service Group's personal property on account of a tax lien filed on March 24, 2017 (less than 90 days prior to the commencement of the debtors' cases) regarding tax debts in the amount of \$860,663.64. Given that this lien is subordinate to the liens of Hudson and possibly BancorpSouth and given that this lien is likely avoidable under section 547 of the Bankruptcy Code. Likewise, junior lien holders and mechanic's lien holders should be prohibited from credit bidding in light of the additional complications caused by allowing junior lien holders to credit bid. **The Debtors therefore ask that the Bankruptcy Court to "order otherwise" and deny the I.R.S.'s, junior lien holders', and mechanic's lien holders' credit bid rights on any personal property (and with respect to mechanic's lien holders, on any real property).**

D. Good Faith Purchaser Under 363(m)

18. Section 363 (m) of the Bankruptcy Code provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m). While the Bankruptcy Code does not define "good faith", the Seventh Circuit in In the Matter of Andy Frain Services, Inc., 798 F.2d 1113 (7th Cir. 1986) held that:

The requirement that a purchaser act in good faith . . . speaks to the integrity of his conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a purchaser's good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.

798 F.2d at 1125 (emphasis omitted) (quoting In re Rock Industries Machinery Corp., 572 F.2d 1195, 1198 (7th Cir. 1978) (interpreting Bankruptcy Rule 805, the precursor of section 363(m))).

The Debtors submit that the successful bidders at the auction will have engaged in an arm's-length transaction entitled to the protections of section 363 (m). See In re Trism, 328 F.3d 1003, 1006 (8th Cir. 2003).

Sale Hearings

19. Debtors request that an initial hearing on the Motion (the "Initial Hearing") be set on the week beginning August 21, 2017 to approve the Auction Procedures. Debtors also request that a final hearing on the Motion (the "Final Hearing") be set on or before September 22, 2017 to grant the remaining relief requested hereunder.

Objections and Related Procedures

20. Bankruptcy Rule 2002(a) provides, in relevant part, that all creditors must be given at least 21 days' notice by mail of a proposed use, sale or lease of property of the estate other than in the ordinary course of business unless the Bankruptcy Court for cause shortens the time or directs

another method of giving notice. Further, Bankruptcy Rule 2002(c) sets forth that the content of such notices must include the time and place of any sale, the terms and conditions of such sale, and the time fixed for filing objections. This Motion: (a) contains the type of information required under Bankruptcy Rule 2002 that is currently known to the debtors, (b) includes information concerning the auction, and (c) is reasonably calculated to provide due, adequate and timely notice to all interested parties of the auction and the deadline to object to this Sale Motion.

21. The Debtors are serving this Motion by (a) first class United States mail, postage prepaid on the parties identified on the Creditor Matrix filed in these Cases at the addresses set forth therein and (b) the Court's electronic filing system on those parties receiving electronic notice by such system. Service of the Motion as described herein is proper and sufficient notice of, among other things, the auction and this Motion. Accordingly, the Debtors request that this Court approve the form and content of this Motion and the debtors' service of it.

22. Debtors request that the following procedures be implemented with respect to the notices discussed herein and relief related thereto:

- a. The deadline to objection to the Motion shall be September 21, 2017.
- b. Any person failing to timely file an objection to the Motion shall be barred from objecting to the Motion, including the sale of the Assets free and clear of any and all liens, claims, encumbrances, and other interests, and will be deemed to consent to the Sale(s), including the sale of the Assets free and clear of any and all liens, claims, encumbrances, and other interests.

23. The above procedures are fair, reasonable and appropriate to provide a framework for the Court to consider the Motion and the relief requested thereunder. Debtor respectfully requests that the Court approve the foregoing notice and objection procedures.

E. Waiver of 14-Day Finality for Orders

24. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property...is stayed until the expiration of fourteen (14) days after entry of the order, unless the

court orders otherwise.” In light of the current circumstances and financial condition of Debtors and the ongoing costs of securing the property, Debtor believes that in order to maximize value, the sale of the Assets should be consummated as soon as practicable. Accordingly, Debtors request that the Sale Order be effective immediately upon entry of such order and that the 14-day stay under Bankruptcy Rules 6004(h) be waived.

WHEREFORE, the Debtors respectfully request the Court enter Order(s) granting the requested relief, and granting such other and further relief as is necessary and appropriate in the circumstances.

MERRICK, BAKER & STRAUSS, P.C.

By: /s/ victor f. weber

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ATTORNEYS FOR DEBTORS 8760 Service Group, LLC and PELHAM PROPERTY, LLC

CERTIFICATE OF SERVICE

The undersigned certifies that on August 16, 2017, a true and complete copy of the foregoing was sent via electronic mail to those parties registered to receive electronic notice via the Court’s CM/ECF system.

/s/Victor Weber

IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF MISSOURI

In Re:) In Proceedings Under Chapter 11
)
8760 SERVICE GROUP, LLC and) Case No. 17-20454
PELHAM PROPERTY, LLC)
Debtors.) (Lead Case)

**ORDER APPROVING AUCTION PROCEDURES RELATED TO THE SALE OF
SUBSTANTIALLY ALL OF DEBTOR'S ASSETS FREE AND CLEAR OF LIENS,
CLAIMS, ENCUMBRANCES AND INTERESTS AND RELATED RELIEF**

At a hearing on August __, 2017 (the "Initial Hearing"), this Court considered the Motion to Approve (A) Auction Procedures and (B) One or More Potential Sale(s) of the Sale of Substantially All Assets Free and Clear of All Liens, Interests, Claims and Encumbrances, and (C) Related Procedures/Relief Pursuant to 11 U.S.C. §§ 105 and 363 (the "Motion")¹ filed by the Debtors. Based on the arguments and evidence at the Initial Hearing, the Court hereby finds and determines that:

1. The Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, the consideration of the Motion and the relief requested therein is a core proceeding pursuant to 28 U.S.C. § 157(b), and venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. As reflected in the Certificate of Service [Doc. No. ____] filed with respect to the Initial Hearing, notice of the Motion and of the Initial Hearing was served on the creditor matrix and interested parties as required by Bankruptcy Rule 2002 (the "Notice"). The Notice is reasonable and sufficient in light of the circumstances and nature of the relief requested in the Motion, and no other or further notice of the Motion for the Initial Hearing is necessary. A

¹ Capitalized terms that are not defined herein shall have the meanings given to them in the Auction Procedures or the Motion.

reasonable and fair opportunity to object to the Motion (as it relates to the Auction Procedures) and the relief granted in this Order has been afforded under the circumstances.

3. Debtors have articulated good and sufficient reasons for this Court to grant the relief requested in the Motion as it relates to the Auction Procedures. Such good and sufficient reasons were set forth in the Motion and on the record at the Initial Hearing and are incorporated by reference and, among other things, form the basis for the findings of fact and conclusions of law set forth herein.

4. The Auction Procedures, attached hereto as **Exhibit A** and incorporated by reference, are fair, reasonable and appropriate and are designed to maximize the value of Debtors' estates.

5. The service of the Sale Notice is adequate and reasonably calculated to provide due, proper, and timely notice to all interested parties of, among other things, the entry of this Order, the Auction Procedures, the Auction, the Sale Hearing, the Motion, the sale of Debtor estates' right, title and interest in, to and under the assets free and clear of any and all liens, claims, encumbrances, and interests, and the procedure for objecting thereto. Except as otherwise set forth herein, no other or further notice is necessary.

6. The procedure for objecting to the sale(s) is fair, reasonable and appropriate.

7. 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, 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.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

- a. The Motion is **GRANTED** as set forth herein.
- b. All objections to the relief requested in the Motion as it relates to the Auction Procedures, if any, that have not been withdrawn, waived, or settled

as announced to the Court at the Initial Hearing are denied and overruled in their entirety on the merits.

- c. The Auction Procedures are fair, reasonable and appropriate and are designed to maximize the value of Debtors' estates.
- d. Debtors may proceed with the Auction in accordance with the Auction Procedures, which procedures are hereby approved in their entirety in the form attached as **Exhibit A**. However, the final approval of the sales of the assets shall remain subject to the entry of an Order granting the Motion.
- e. Potential Bidders must comply with all terms of the Auction Procedures in order to participate in the Auction.
- f. Debtor, in consultation with the Auctioneer, impacted secured creditors, and the United States Trustee, is authorized and directed to take any and all actions necessary or appropriate to implement the Auction Procedures.
- g. The following deadlines are hereby approved:

<u>Event</u>	<u>Date and Time (if applicable)</u>
Sale Notice	Within 1 day of the entry of the Auction Procedures Order
Personal Property Reserve Deadline	September 1, 2017
Credit Bid Submission Deadline	September 19, 2017 @ 4:00 CST
Auction	August 28 - September 20, 2017
Sale Objection Deadline	September 21, 2017
Sale Hearing	September __, 2017

- h. Any person desiring to purchase the assets must comply with the Auction Procedures.
- i. The Sale Hearing to consider the Motion shall be held September __, 2017 in the _____ before the Honorable Dennis Dow, United States Bankruptcy Judge, at the United States Bankruptcy Court, Western District of Missouri, _____, Missouri.
- j. Objections, if any, to the Motion shall be filed on the docket of the Bankruptcy Court on or before 11:59 p.m., prevailing Central time on September __, 2017 (the "Sale Objection Deadline").

- k. Any person failing to timely file an objection to the Motion shall be barred from objecting to the Motion, including the sale of the assets in accordance with the Auction Procedures, free and clear of any and all liens, claims, encumbrances and interests and will be deemed to consent to the Sale(s), including the sale of Debtors' assets in accordance with the Auction Procedures free and clear of any and all liens, claims, encumbrances and other interests.
- l. For cause shown, notwithstanding Bankruptcy Rules 6004, or otherwise, this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. To the extent applicable, the stay described in Bankruptcy Rules 6004(h) is waived.
- m. The terms of this Order shall control to the extent of any conflict with the Motion or the Auction Procedures.
- n. This Order is without prejudice to the rights and remedies granted to BancorpSouth and Hudson in the *Final Order (I) Authorizing Use of Cash Collateral, and (II) Granting Adequate Protection* (Doc. 48).
- o. This Order shall become effective immediately upon its entry.
- p. The Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Order.

Date: August _____, 2017

HONORABLE DENNIS DOW
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
 WESTERN DISTRICT OF MISSOURI

In Re:)	In Proceedings Under Chapter 11
)	
8760 SERVICE GROUP, LLC and)	Case No. 17-20454
PELHAM PROPERTY, LLC)	
Debtors.)	(Lead Case)

AUCTION PROCEDURES

On August 16, 2017, Debtors filed a *Motion to Approve (A) Auction Procedures and (B) One or More Potential Sale(s) of All Assets Free and Clear of all Liens, Interests, Claims and Encumbrances, and (C) Related Procedures/Relief Pursuant to 11 U.S.C. §§ 105 and 363* [Docket No. ____] (the “Sale Motion”) pursuant to which the Debtors requested authority to sell substantially all of the assets of the Debtors’ estates to the highest and best bidders subject to the process outlined herein. These Auction Procedures have been approved and authorized pursuant to the *Order Approving Auction Procedures* [Docket No. [____]] (the “Auction Procedures Order”) entered by the United States Bankruptcy Court for the Western District of Missouri (the “Bankruptcy Court”) on August [____], 2017.

AUCTION

1. **Time and Place of Auction; Assets to be Sold.** The auction shall consist of the real property of Pelham Property, LLC at 5105 Pelham Drive, Sedalia, Missouri (the “Real Property”) and substantially all the inventory, equipment, fixtures, and goods (but not including general intangibles, intellectual property, and accounts receivable) of 8760 Service Group, LLC, (the “Personal Property”, together with the Real Property, the “Assets”) in an online auction, commencing on August 23, 2017 and finishing on September 20th, 2017 (the “Auction”).
2. **Auctioneer.** Debtors have selected Mayo Auction and Realty (the “Auctioneer”) to conduct the Auction. The Auction will be conducted through the Auction Online Service, MarkNetAlliance.com. In addition to the Auction Procedures listed herein, the Auction shall be subject to the terms and conditions, attached hereto as **Exhibit A-1** (the “Terms and Conditions”). To the extent the Terms and Conditions conflict with the specific Auction Procedures set forth herein, the specific procedures will control over the Terms and Conditions.
3. **Bids.** With the exception of small items (items individually worth less than approximately \$200) and as otherwise set forth herein, the Assets will be sold by separate lot and each lot will be sold to the highest bidder subject to any reserve prices (as further described below). The Auctioneer, however, may take back-up bidders if the highest bidder fails to close and timely take possession of the purchased assets. All bids will be in dollar denominations. In the event there are technical difficulties related to the server, software or any other online auction-related technologies, Auctioneer will have the right to extend bidding, continue the bidding, or close the bidding. NEITHER THE COMPANY PROVIDING THE SOFTWARE NOR AUCTIONEER SHALL BE HELD RESPONSIBLE FOR A

MISSED BID OR THE FAILURE OF THE SOFTWARE TO FUNCTION PROPERLY FOR ANY REASON. Email notifications will be sent to registered bidders with updated information as deemed necessary by Auctioneer. BY PLACING A BID, A BIDDER SHALL BE DEEMED TO HAVE AGREED TO ALL OF THE AUCTION PROCEDURES AND WITH THE INDIVIDUAL TERMS AND CONDITIONS OF THE AUCTIONEER WHICH SHALL BE POSTED ON THE AUCTION WEBSITE.

4. **Court Approval.** Following the completion of the Auction, the Debtors will file and serve a report of the Auction (the "Auction Report"). The Auction Report shall include the price paid for each lot, the identity of each winning bidder and back-up bidder, and the amount of sale costs and expenses including, without limitation, the Auctioneer's commission and costs of conducting the sale and the costs of securing the assets prior to and immediately after the sale (the "Sale Expenses") to be allocated to each of the lots, and the proposed distribution of sale proceeds. Debtors will seek an Order from the Court at the Sale Hearing approving the various sales (the "Sales"), the Sale Expenses, and the distribution of the Sales proceeds to the Debtors' bankruptcy estates, secured creditors and other parties in interest (the "Final Sale Order"). Debtors shall request that the Final Sale Order contain a finding that the Sales were made in good faith and are final.

5. **Payment.**
 - a. **Personal Property.** Accepted forms of payment include Visa, MasterCard, Discover, American Express, local check (under \$500) & cash. Payment must be made to the Auctioneer prior to picking any items up. The Auctioneer's load out staff cannot accept any form of payment.

 - b. **Real Property.** Terms for this Auction are cash. Debtors are offering no other terms or contingencies. The winning bidder may NOT purchase the Real Property subject to loan approval. The winning bidder is required to bring a deposit of ten percent (10%) of the winning bid amount to the Auctioneer's office and execute a purchase agreement, the next business day following the conclusion of the Auction. The purchase agreement must be substantially in the form as attached as **Exhibit A-2** and be acceptable to the Debtors and BancorpSouth Bank ("BancorpSouth"). The deposit must be in the form of wire transfer, cashier's check, personal check with bank letter of guarantee or cash. The purchase agreement will offer no contingencies, including but not limited to financing; provided, however, it will be subject to Bankruptcy Court approval.

 - c. **Escrow and Disbursement of Sale Proceeds.** The Auctioneer shall hold the payments in escrow pending approval of the various sales by the Court. Upon approval of the Sales, all monies held by the Auctioneer shall be turned over as directed by the Final Sale Order. If a Sale is not approved, then the Auctioneer shall promptly refund the monies to the winning bidder.

6. **Buyers Premium (Personal Property).** A 10% buyer's premium will be added to the final bid on Personal Property and paid to the Auctioneer. Example: If buyer bids \$10,000.00, the total sale price will be \$11,000.00.

7. **Broker Participation (Real Property)**. There will be no buyer's premium on the Auction of the Real Property. Broker/Agent participation is encouraged with respect to the Real Property. In addition to the Auctioneer's 4% commission with respect to any sale of the Real Property, there will be a Buyer's Agent Commission of three percent (3%). To qualify for a three percent (3%) Buyer's Agent Commission, all brokers and agents must register their client with the Auctioneer 24 hours prior to the Auction unless otherwise agreed to by the Debtors and BancorpSouth.
8. **Closing and Pick-Up.**
 - a. **Staggered/Dynamic Closing.** The Auction will begin closing at 7:07 pm CDT on September 19, 2017, a process which will be complete sometime on September 20, 2017. The closing time of each lot will be automatically extended an additional 5 minutes whenever a bid is placed within the last 5 minutes of any lot.
 - b. **Personal Property. LOCAL PICKUP ONLY.** Winning Bidders may pick their items up at the locations and during the load out times specified by the Auctioneer (after consultation with the Debtors and the impacted secured creditors). Load Out will be take place subsequent to entry of order approving the sale only. Unless otherwise agreed to by the Debtors in advance, any items left after the specified load out date will be considered forfeited and the back-up bidder will be notified. The back-up bidder shall have seven (7) days from written notification to tender the purchase price. It will be the buyer's responsibility to dismantle & disconnect any and all equipment, and will be responsible for furnishing their own packing materials, labor, tools & moving equipment. Buyer shall bear the cost of transportation and removal of their purchased Assets and any damage caused by the same. Certain Personal Property will require, among other things, qualified expertise in its removal. The Auctioneer, in consultation with the Debtors and impacted secured creditors, may designate further parameters and requirements in the removal of Personal Property as the Auctioneer may determine in its business judgment. Potential Bidders may consult with the Auctioneer regarding any such parameters and requirements.
 - c. **Real Property.** Closing will take place no more than 30 days from day of the entry of the Sale Order unless otherwise agreed to by the Debtors and BancorpSouth. At closing, Debtors will convey good and marketable title. Buyer & Debtors will be responsible for customary closing costs issued by the title company. The sale of this property is subject to any and all easements of record. Real estate taxes shall be prorated to date of possession.
9. **Warranty and Condition of Items Sold.** All items are sold 'AS IS, WHERE IS', with NO WARRANTY expressed or implied. It is the responsibility of the buyer to determine the condition of the items and bid accordingly. Descriptions are believed to be accurate but not guaranteed.
10. **Venue & Jurisdiction of All Disputes.** Any and all disputes which may arise by virtue of the Auction or stemming from this Auction shall be resolved by the Bankruptcy Court.

11. **Choice of Law.** All disputes and other matters related to the Auction shall be governed by bankruptcy law applicable to the Western District of Missouri and, to the extent not controlled or preempted by applicable bankruptcy law, the laws of the State of Missouri without regard to its conflicts of law provisions.

CREDIT BID RIGHTS AND RESERVE PRICES

12. **Reserve Prices.**

a. **Personal Property.**

- i. The sale of Personal Property may be subject to a reserve price mutually agreed upon between the Debtors and each creditor holding a senior undisputed secured claim (meaning that such creditor is not the holder of a mechanic's lien or junior lien, Bancorp South, or Hudson¹ and either the creditor is listed on the debtors' schedules as having an undisputed secured claim or such creditor has filed a proof of claim listing a secured claim which has not been objected to) ("Senior Secured Creditor"). For purposes of these Auction Procedures, a party does not cease to be a Senior Secured Creditor to the extent there are senior property tax liens, or carve outs or surcharge rights associated with its collateral.
- ii. Any Senior Secured Creditor may contact counsel for the Debtors in a writing or electronic mail at the address above, and submit a proposed reserve price delivered on or before **5:00 pm CST on September 1, 2017**, and elect to set a reserve price for the property in which it has a lien. The reserve price must be in an amount less than or equal to the Senior Secured Creditor's undisputed secured claim. Additionally, in the case of creditors with a single debt secured by liens in more than one piece of property, a reserve may not be collectively set on a number of different pieces of property. Instead, a reserve price must be set separately for each individual piece of encumbered property. In such a case, the sum of the reserve prices cannot exceed the amount of the Senior Secured Creditor's undisputed secured claim. To the extent the reserve meets these criteria, it will be deemed accepted and confirmed by the Debtors prior to the commencement of the Auction. If no reserve price can be mutually agreed upon between the Debtors and a respective Senior Secured Creditor for a particular piece of personal property, then that property shall be sold without a reserve, but subject to the credit bid rights set forth below (the "Credit Bid Right"). If a reserve price is mutually agreed upon between the Debtors and a Senior Secured Creditor and the property does not obtain a bid higher than the reserve price, then the Senior Secured Creditor shall have the option to (a) lower the reserve price to match the highest bid or (b) exercise its Credit Bid

¹ The exclusion of Bancorp South and Hudson from the definition of Senior Secured Creditor does not and is not intended to impair, modify, describe, or characterize the liens and interests held by Bancorp South and Hudson in the Debtors' property.

Right. If the Senior Secured Creditor fails to timely exercise a Credit Bid Right, then the reserve shall be deemed reduced to match the highest bid.

iii. Additionally, BancorpSouth, Hudson, and the Debtors may jointly designate special reserve prices for certain high value pieces of Personal Property including fixtures (“**High Value Personal Property**”) in order to ensure that they do not sell for a small fraction of their market value. All three parties must consult with the auctioneer and mutually agree on such a special reserve price for the High Value Personal Property. Should the bidding not exceed the special reserve price on any particular piece of Personal Property, that Personal Property will not be sold at the Auction.

b. Real Property. Prior to the Auction, BancorpSouth shall designate a reserve price on the Real Property. If the Real Property does not obtain a bid higher than the reserve price, then the Real Property shall not be sold unless Bancorp South opts to lower the reserve price to match the highest bid.

13. **Credit Bid Right**.

a. Except as set forth herein, each Senior Secured Creditor may credit bid at the auction. BancorpSouth, Hudson Insurance, and the United States Internal Revenue Service will not be permitted to credit bid on Personal Property. For the avoidance of doubt, the ability of Bancorp South to credit bid on the Real Property and related improvements and fixtures is not restricted by these procedures. Mechanic’s lienholders shall not be allowed to credit bid on the Real Property and related improvements and fixtures.

b. Any Senior Secured Creditor who wishes to credit bid may do so by contacting the Debtors' counsel in writing or via electronic mail at:

Victor Weber
Merrick Baker & Strauss, P.C.
1044 Main, Ste. 500
Kansas City, Mo. 64105
victor@merrickbakerstrauss.com

with such writing received by counsel on or before 4:00 pm CST on September 19, 2017. Failure to timely provide a credit bid by 4:00 pm will result the loss of the Senior Secured Creditor’s credit bid rights.

c. Each Senior Secured Creditor who purchases property via a credit bid must as a condition of the purchase pay to the Debtors' estate in cash a pro rata share of the costs of the auction of personal property, including the Sale Expenses and bid premium. By pro rata share, each creditor making a credit bid will pay a proportion of the costs of the Auction equal to the proportion of the amount of the creditors’ successful credit bid to all the successful bids at the auction. For example, if the sum of successful bids is \$1,000,000, the auctioneers cost and fees \$200,000 and the successful credit bid \$100,000 - which is 10% of the successful bids at the auction -

then the credit bidder would have to pay the estate \$20,000 or 10% of the auctioneers costs and fees.

- d. If a Senior Secured Creditor ultimately is found to be a successful purchaser by credit bid and its claim or lien is ultimately determined by or adjudicated by the Bankruptcy Court to be invalid or is avoided, then such Senior Secured Creditor will be obligated to pay cash to make up the difference between its valid lien and claim and the amount of its credit bid. Such payment shall be made to the Debtors' bankruptcy estates or, to the extent that it becomes the senior lienholder in light of such invalidity or avoidance, a junior lienholder on the property in question.
 - e. If a Senior Secured Creditor ultimately is found to be a successful purchaser by credit bid and it is ultimately determined by or adjudicated by the Bankruptcy Court that a Senior Secured Creditor's lien is junior to another lien or security interest (that is not a property tax lien, or carve outs or surcharge right associated with its collateral), then the Senior Secured Creditor shall be required to pay to the holder of the senior lien or security interest, if one exists, an amount equal to the Senior Secured Creditor's credit bid or the amount of the other lienholder's secured claim, whichever is less.
14. **Liens attach to Proceeds.** Except with respect to the modification of credit bidding rights, these Auction Procedures and any action take pursuant thereto are without prejudice to a secured creditor's asserted lien, including the Adequate Protection Liens granted to BancorpSouth and Hudson in the *Final Order (I) Authorizing Use of Cash Collateral, and (II) Granting Adequate Protection* (Doc. 48). All liens shall attach to the sale proceeds of an Asset in the same priority and manner (and subject to the same claims and defenses, if any) as such lien existed in the Asset prior to the sale.

MODIFICATIONS

15. The Auctioneer, after consultation with the Debtors and the impacted secured creditors, shall have the right to adopt such other rules for the Auction that the Auctioneer believes in its business judgment will promote the goals of the Auction. Nothing herein shall prohibit an impacted secured creditor from seeking immediate Court intervention to the extent that after consultation with the Auctioneer, the secured creditor disagrees with the Auctioneer's proposed course of action. Notwithstanding anything to the contrary herein, the procedures related to the Reserve Prices and Credit Bid Rights may only be modified with the consent of the impacted Senior Secured Creditors (as to the Personal Property) and BancorpSouth (as to the Real Property and the improvements and fixtures thereto).

SALE HEARING AND OBJECTIONS

16. An evidentiary hearing to consider the Sale Motion and approval of the Successful Bid(s) (the "Sale Hearing"), will be held on **September __, 2017 at _____ prevailing Central time** (the "Sale Hearing"), in the courtroom of the Honorable Dennis Dow, United States Bankruptcy Judge, at the United States Bankruptcy Court, Western District of Missouri, 400 East 9th Street, 6th Floor, Kansas City, Missouri. The Sale Hearing may be adjourned or rescheduled as ordered by the Bankruptcy Court without further notice to creditors and

parties in interest other than by announcement by the Debtors of the adjourned date at the Sale Hearing.

17. The Debtors' presentation to the Bankruptcy Court for approval of the Successful Bid(s) does not constitute the Debtors' acceptance of the Bid(s). The Debtors and Auctioneer will be deemed to have accepted a Bid only when the Bid has been approved by Order of the Bankruptcy Court. Both the successful purchaser and the back-up bidder shall be deemed to have agreed to keep its final bid made at the Auction open through thirty (30) days after the entry of the Final Sale Order.
18. **Objections, if any, to the Sale Motion shall be filed with the Bankruptcy Court on or before 5:00 p.m., prevailing Central time on September __, 2017 (the "Objection Deadline").**

Terms and Conditions

1. ALL BIDS ARE SUBJECT TO ACCEPTANCE BY THE AUCTIONEER. NO BID SHALL BE DEEMED A VALID BID UNTIL ACCEPTED BY THE AUCTIONEER. ALL BIDS ARE ACCEPTED AT THE SOLE DISCRETION OF THE AUCTIONEER.
2. IF YOU ARE THE SUCCESSFUL BIDDER, YOU AGREE TO PAY THE AMOUNT OF YOUR BID PLUS ALL TAXES AND PREMIUMS IN ACCORDANCE WITH ALL WRITTEN OR ORAL TERMS AND CONDITIONS OF THE AUCTION.
3. NEITHER THE COMPANY PROVIDING THE SOFTWARE NOR THE AUCTION COMPANY SHALL BE HELD RESPONSIBLE FOR A MISSED BID OR THE FAILURE OF THE SOFTWARE TO FUNCTION PROPERLY FOR ANY REASON.
4. ALL BIDS SHALL BE DEEMED PENDING UNTIL DULY ACCEPTED BY THE AUCTIONEER.
5. THE AUCTIONEER HAS THE SOLE DISCRETION TO ADVANCE THE BIDDING AND MAY REJECT ANY AND ALL BIDS WHICH, IN THE AUCTIONEER'S SOLE DISCRETION, DO NOT ADVANCE AND/OR ARE INJURIOUS TO THE AUCTION, INCLUDING BUT NOT LIMITED TO NOMINAL, SUSPICIOUS AND/OR SUSPECT ADVANCES.
6. THE AUCTIONEER SHALL HAVE SOLE DISCRETION IN DECIDING THE SUCCESSFUL BIDDER IN THE EVENT OF A BIDDING DISPUTE. AUCTIONEER'S DETERMINATION OF THE SUCCESSFUL BIDDER SHALL BE THE FINAL DETERMINATION OF THE SUCCESSFUL BIDDER.
7. BY PLACING A BID, YOU AGREE TO ALL OF THE TERMS AND CONDITIONS WHICH MAY BE SET FORTH BY EACH INDIVIDUAL AUCTION COMPANY AND EXPRESSLY ACKNOWLEDGE AND AFFIRM THAT YOU HAVE READ AND ARE FAMILIAR WITH THE TERMS AND CONDITIONS OF EACH INDIVIDUAL AUCTION COMPANY INVOLVED AS WELL AS THESE TERMS AND CONDITIONS.
8. ALL SALES ARE FINAL UPON THE DETERMINATION OF THE SUCCESSFUL BIDDER BY THE AUCTIONEER.
9. BY PLACING A BID, YOU ACKNOWLEDGE THAT YOUR BID IS A LEGALLY BINDING OFFER TO PURCHASE THE ITEM OR PROPERTY BEING AUCTIONED.
10. TIME SHALL BE OF THE ESSENCE.
11. THE SUCCESSFUL PURCHASER AGREES TO PAY ANY AND ALL REASONABLE ATTORNEYS FEES AND COSTS INCURRED BY THE AUCTION COMPANY, THE SELLER AND/OR THEIR SERVANTS, AGENTS OR EMPLOYEES IN THE COMMENCEMENT OR DEFENSE OF ANY ACTIONS HEREUNDER AS WELL AS IN THE COLLECTION OF ANY OBLIGATIONS HEREUNDER.
12. THERE SHALL BE NO RETURNS OR EXCHANGES. ALL PROPERTY IS SOLD "AS-IS". IT IS THE BIDDER'S RESPONSIBILITY TO DETERMINE THE NATURE, CONDITION AND STATE OF TITLE OF EACH ITEM PURCHASED.
13. VENUE & JURISDICTION OF ALL DISPUTES. ANY AND ALL DISPUTES WHICH MAY ARISE BY VIRTUE OF THIS AUCTION SALE OR STEMMING FROM THIS AUCTION SALE SHALL BE IN THE STATE COURT OF COMMON PLEAS IN ANDERSON COUNTY, SOUTH CAROLINA.
14. CHOICE OF LAW: THE LAW OF THE STATE OF SOUTH CAROLINA SHALL GOVERN THE INTERPRETATION OF ANY AND ALL DISPUTES OR OTHER MATTERS RELATING TO THE SUBJECT SALE AND/OR STEMMING FROM THIS AUCTION SALE.
15. BIDDER ACKNOWLEDGES THAT NO RELATIONSHIP OF ANY NATURE OR TYPE, AGENT, EMPLOYEE, INDEPENDENT CONTRACTOR OR OTHERWISE, IS CREATED BETWEEN BIDDER AND AUCTIONEER, AFFILIATED AUCTION COMPANIES, AFFILIATED SOFTWARE COMPANIES AND/OR ANY SERVANT, AGENT OR EMPLOYEE OF THE SAME BY BIDDER'S PARTICIPATION IN THIS AUCTION.
16. BIDDER ACKNOWLEDGES AND AGREES THAT AUCTIONEER IS ACTING SOLELY AS THE AGENT FOR THE SELLER IN THIS AUCTION.
17. DISCLAIMER OF WARRANTIES: THERE ARE NO UNDERSTANDINGS, AGREEMENTS, REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED NOT SPECIFIED HEREIN, RESPECTING THIS CONTRACT OR THE ITEM OR PROPERTY SOLD HEREUNDER, INCLUDING BUT NOT LIMITED TO THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF MISSOURI

In Re:) In Proceedings Under Chapter 11
)
8760 SERVICE GROUP, LLC and) Case No. 17-20454
PELHAM PROPERTY, LLC)
Debtors.) (Lead Case)

**NOTICE OF THE SALE OF SUBSTANTIALLY ALL OF DEBTORS’
ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES,
AND INTERESTS AND RELATED RELIEF**

**TO ALL PERSONS RECEIVING THIS NOTICE, PLEASE TAKE NOTICE OF
THE FOLLOWING:**

1. On August 16, 2017, Debtors filed their Motion to Approve (A) Auction Procedures and (B) One or More Potential Sale(s) of the Sale of Substantially All Assets Free and Clear of All Liens, Interests, Claims and Encumbrances, and (C) Related Procedures/Relief Pursuant to 11 U.S.C. §§ 105 and 363 (the “Motion”). In the Motion, among other things, Debtor seeks an order of the Bankruptcy Court authorizing it to sell, pursuant to the Auction Procedures attached hereto as Exhibit A, outside the ordinary course of business and free and clear of all liens, claims, encumbrances and interests, all of Debtors’ right, title and interest in substantially all of the assets owned by Debtors (collectively, the “Assets”) via Auction and otherwise granting all necessary and appropriate related relief.

The Sale Process

2. The Auction Procedures Order sets forth the following dates in connection with the transactions contemplated in the Motion:

<u>Event</u>	<u>Date and Time (if applicable)</u>
Sale Notice	Within 1 day of the entry of the Auction Procedures Order
Personal Property Reserve Deadline	September 1, 2017
Credit Bid Submission Deadline	September 19, 2017 @ 4:00 CST
Auction	August 28 - September 20, 2017
Sale Objection Deadline	September __, 2017
Sale Hearing	September __, 2017

3. An initial hearing on the Motion, focusing on approval of the Auction Procedures, was held on August __, 2017. Thereafter, the Bankruptcy Court entered the Order Approving *Auction Procedures Related to the Sale of Substantially All of Its Assets Free and Clear of All Liens, Interests, Claims and Encumbrances, and Related Relief* (the "Auction Procedures Order").

4. Pursuant to the Auction Procedures Order, a four week online auction will be conducted from August 23, 2017 and finishing on September 20, 2017 (the "Auction"). Debtors have selected Mayo Auction and Realty (the "Auctioneer") to conduct the Auction.

5. The Final Hearing on the Sale Motion shall be held on September __, 2017, at _____ prevailing Central time, in _____ before the Honorable Dennis Dow, United States Bankruptcy Judge, at the United States Bankruptcy Court, Western District of Missouri, _____.

Additional Information Regarding Any Objection

6. Objections, if any, to the Motion shall be filed on the docket of the Bankruptcy Court on or before 11:59 p.m., prevailing Central time on September __, 2017 (the "Sale Objection Deadline").

7. Any person failing to timely file an objection to the Motion shall be barred from objecting to the Motion, including the sale of the Assets free and clear of any and all liens, claims, encumbrances, and interests and will be deemed to consent to the sale(s), including the sale of the Assets free and clear of any and all liens, claims, encumbrances, and interests.