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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	
	:	Chapter 11
ADVANCED CONTRACTING SOLUTIONS, LLC,	:	
	:	Case No. 17-13147 (SHL)
Debtor.	:	

MOTION FOR ORDERS PURSUANT TO SECTIONS 105(a), 363 AND 365 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 2002, 6004 AND 6006: (A)(i) ESTABLISHING BIDDING PROCEDURES AND BID PROTECTIONS IN CONNECTION WITH THE SALE OF CERTAIN OF THE ASSETS OF THE DEBTOR, (ii) APPROVING THE FORM AND MANNER OF NOTICES, (iii) APPROVING THE ASSET PURCHASE AGREEMENT SUBJECT TO HIGHER AND BETTER OFFERS AND (iv) SETTING A SALE HEARING DATE; AND (B)(i) APPROVING THE SALE OF CERTAIN ASSETS OF THE DEBTOR FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES, (ii) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN UNEXPIRED LEASES AND EXECUTORY CONTRACTS; AND (iii) GRANTING RELATED RELIEF

TO THE HONORABLE SEAN H. LANE,
UNITED STATES BANKRUPTCY JUDGE:

Advanced Contracting Solutions, LLC, the above-captioned debtor and debtor in possession ("ACS," or the "Debtor"), by its proposed attorneys, Klestadt Winters Jureller Southard & Stevens, LLP, hereby moves (the "Motion") for entry of orders:

a. Substantially in the form attached hereto as **Exhibit A** (the "Bidding Procedures Order") (a) establishing bidding procedures and bid

protections (the "Bidding Procedures"), (b) approving the form and manner of notices thereof (the "Bidding Procedures Notice"),

b. Substantially in the form attached hereto as **Exhibit B** (the "Sale Order") (a) approving the Asset Purchase Agreement, dated December 19, 2017 (the "Purchase Agreement"), substantially in the form attached hereto as **Exhibit C**, among the Debtor and Trident General Contracting LLC (the "Purchaser"), pursuant to which the Debtor proposes to sell certain of its assets to Purchaser free and clear of any and all liens, claims and encumbrances, subject to higher and better offers (the "Sale Transaction"), (b) approving certain procedures with respect to the Debtor's assumption and assignment of certain executory contracts and unexpired leases, and approving the form and manner of notice of assumption and assignment of executory contracts substantially in the form attached hereto as **Exhibit D**, (c) approving the sale of the Assets (as defined in the Purchase Agreement) free and clear of liens, claims and encumbrances, (d) setting a hearing on January 24, 2018 (the "Sale Hearing") to consider approval of the Sale Transaction, (e) approving the form and manner of notice of sale (the "Sale Notice"), substantially in the form attached hereto as **Exhibit E**, and (f) granting related relief.

In support of the Motion, the Debtor incorporates the statements contained in the Declaration of Jeffrey T. Varsalone pursuant to Local Bankruptcy Rule 1007 [Docket No. 2] (the "Varsalone Declaration") and respectfully represents and alleges as follows:

PRELIMINARY STATEMENT

ACS is a large open-shop concrete foundation and concrete super-structure contractor. On average, ACS employs approximately 450 persons and has annual revenues of in excess of $100 million. The Debtor was operating a successful and profitable business up until September 22, 2017, when the U.S. District Court for the Southern District of New York entered a judgment in the amount of $73.4 million (the "Union Judgment") against ACS, Navillus Tile, Inc. ("Navillus") and others in connection with a claim by various fringe benefit funds (collectively, the "Union Funds") that ACS was an alter-ego of Navillus, a union concrete contractor, and therefore liable to the Union Funds on account of its jobs staffed with non-union employees. ACS was forced to seek protection from this Court as a result of the Union Judgment in order to

maintain its operations and preserve the value of its assets and enterprise for the benefit of all stakeholders.

In the forty-five days since ACS filed for bankruptcy protection, it has faced numerous challenges. One significant challenge has been the realization that a significant amount of the funds ACS was projected to receive on account of its ongoing work was attributable to creditors which have valid trust fund rights to those funds pursuant to Article 3-A of the New York Lien Law ("Article 3A"). Given those rights, the Debtor could not and cannot collect and utilize funds subject to Article 3A rights for general purposes, or even for the continuation of work on other ongoing jobs. As a result, the Debtor was in a cash crisis from the case's inception. ACS has since been able to stabilize through a Court-approved $2.5 million debtor in possession lending facility with Liberty Mutual Insurance Company (the "DIP Facility"), and has continued operations post-petition in order to preserve the value of its enterprise for creditors.

Another significant challenge to ACS is the Union Funds' (through sponsor unions, collectively, the "Unions") assertion of administrative claims as a result of ACS's continued employment and use of non-union employees. Although ACS vehemently opposes the Unions' claims in this and nearly every other regard, ACS concedes that the costs and disruption caused by the continued litigation make ACS's continuation as a going concern untenable. Accordingly, shortly after the Unions announced their intention to assert the administrative claims, ACS adopted a strategy to sell its business, assets and contracts, in order to preserve the value that exists in its business, avoid liability on any bonds issued with respect to its construction contracts, ensure payment to its lenders, avoid significant damages for breach of ongoing work contracts, and severely limit the costs of continuing to litigate with the Unions and Union Funds both within and outside of this bankruptcy proceeding.

ACS has identified the Purchaser which is willing to expeditiously consummate the transaction set forth in the Purchase Agreement providing for the sale of substantially all of ACS's assets free and clear of all liens, claims and encumbrances, to the Purchaser for a purchase price of approximately $4 million in cash (less any amount paid to the estate for the right to cancel existing contracts), plus assumed liabilities of approximately $17.9 million, for a total purchase price of approximately $21.9 million. The Sale Transaction is subject to higher and better offers pursuant to the Bidding Procedures. The $4 million cash component of the purchase price will be used primarily, if not entirely, to retire prepetition secured debt and the DIP Facility. The Sale Transaction could leave as much as $2 million in unencumbered cash in the estate in order to fund a wind-down and distribution to creditors, as well as litigation claims against insiders, if any.

ACS believes that the timely consummation of the Sale Transaction is in the best interests of the estate and its creditors. If the Sale Transaction is not consummated by the end of January 2018, ACS believes that it will run out of cash and will have to liquidate. Also, if the Unions are right (and ACS maintains that they are not), each day that ACS remains in operation it incurs approximately $100k in liability to the Union Funds that it could never afford to pay.

For all of these reasons and those set forth below, ACS respectfully requests approval of the Motion and authority to consummate the Sale Transaction or a better transaction.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this case is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are sections 105, 363 and 365 of Title 11, United States Code (the "Bankruptcy Code") and rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

BACKGROUND

A. Organizational Structure of the Debtor

3. ACS was formed as a Delaware Limited Liability Company on July 16, 2013. Eoin Moriarty and William O'Donnell indirectly own 100% of ACS's membership interests. ACS's members are TMG Solutions, LLC ("TMG"), which is wholly owned by Moriarty, and WOD Solutions, LLC ("WOD"), which is wholly owned by O'Donnell. TMG and WOD each own 50% of ACS's membership interests.

4. Eoin Moriarty serves as ACS's co-President and Chief Executive Officer. William O'Donnell serves as co-President and General Superintendent. Jeffrey T. Varsalone is ACS's Chief Restructuring Officer. David McGrath serves as the Chief Estimator. John Kuefner is the Director of Operations and Sharon King is the Debtor's Chief Financial Officer.

B. Nature of the Debtor's Business

5. ACS was founded by Eoin Moriarty in July 2013 as an open-shop concrete foundation and concrete super-structure contractor. Since inception, ACS has completed over $250 million in work within the five boroughs of New York City. ACS's clients are some of the most prominent and reputable property developers in the area.

6. ACS was founded upon quality, experience, impeccable references, and best-of-class staffing and services. ACS's construction services are performed by a staff of team-oriented individuals who share the common goal of exceeding the expectations of ACS's clients. ACS uses leading-edge construction technology combined with hard work to realize its clients'

goals and expectations. ACS delivers value through meticulous planning and strong plan execution and maintains a commitment of excellence, client satisfaction, and high value.

7. The key to ACS's success is rooted in its project supervision, which has quickly earned an excellent reputation in the marketplace for quality and client satisfaction.

8. ACS has grown from a nascent idea in 2013 to a significant construction company that currently employs approximately four hundred fifty (450) employees and as many as seven hundred (700) people, during peak times.

9. ACS is currently engaged on fourteen (14) construction jobs across New York City. Estimated future revenue from the Debtor's ongoing jobs is approximately $75,000,000.[1]

C. Events Leading up to the Debtor's Bankruptcy Filing

10. On October 17, 2014, trustees of the Union Funds commenced an action in the United States District Court for the Southern District of New York (the "District Court") which was thereafter consolidated with a later-filed case brought by a separate fund. (*See* No. 1:14-cv-08326-CM-JLC, ECF Nos. 1, 204). The Union Funds claimed that three non-union construction companies - ACS, Time Square Construction, Inc. ("TSC"), and HDK Construction, LLC ("HDK") — were established by Navillus for the purpose of evading its obligations to contribute pension and welfare benefits under collective bargaining agreements. The Union Funds' theory was that, in establishing these entities, covered union work was performed by non-union labor. The Union Funds also alleged that Navillus breached its collective bargaining agreements and that Donal O'Sullivan, Navillus' CEO, should be individually liable. A seven-day bench trial was held in the District Court before the Honorable Colleen McMahon in August, 2017. About a month after closing arguments, the District Court issued its written decision and ruled that ACS

[1] Since the Petition Date, ACS lost a valuable contract with Gilbane Residential Construction, LLC ("Gilbane") for the project known as 42 Trinity Place with anticipated revenues of $25.95 million. Gilbane paid $275,000 for the cancellation right which will apply as a credit against the cash purchase price.

and TSC were alter egos of Navillus for purposes of calculating damages through June 2016, even though it acknowledged that neither company had been established or was operated to evade obligations.

11. On September 22, 2017, the District Court entered the Union Judgment in the amount of $73.4 million against ACS, Navillus and other co-defendants, holding ACS and Navillus jointly and severally liable for satisfaction of the $73.4 million (the Union Judgement also included other amounts for which ACS was not liable). ACS timely commenced an appeal from the Union Judgment, but was unable to post a supersedeas bond in order to stay enforcement of the Union Judgment.

12. On September 30, 2017, ACS moved before the United States Court of Appeals for the Second Circuit for a stay of enforcement of the Union Judgment. On October 5, 2017, the Second Circuit issued a temporary stay of the judgment pending determination of the motion by a three-judge panel. On October 31, 2017, the Second Circuit denied ACS's motion. A subsequent request for a stay on November 2, 2017 was also denied. As a result, the Union Funds had the ability to execute upon the Union Judgment prior to the Petition Date, and in fact restrained ACS's bank accounts the moment they were able.

13. The Union Funds' restraint of ACS's cash and receivables would have destroyed ACS's business if permitted to continue, and accordingly, ACS had no option but to commence this chapter 11 case (the "Chapter 11 Case") in order to afford itself the breathing spell necessary to properly wind-down its business and financial affairs. ACS's appellate brief with respect to the Union Judgment is due to be filed with the Second Circuit on or around January 5, 2018.

14. The entry of the Union Judgement, together with the ACS's bankruptcy filing, made it impossible for ACS to obtain new jobs. Accordingly, ACS has no choice but to liquidate in the manner that will best serve ACS, its creditors and its estate.

D. The Bankruptcy Case to Date

15. On November 6, 2017 (the "Petition Date"), the Debtor commenced this Chapter 11 Case by filing a voluntary petition for relief under chapter 11 of title 11 of the United States Code.

16. The Debtor continues in possession of its property and continues to operate and manage its business as a debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

17. On the Petition Date, ACS had an existing secured credit facility with Signature Bank (the "Prepetition Lender"). ACS filed a motion for authority to use the Prepetition Lender's cash collateral (the "Cash Collateral Motion") [Docket No. 3]. Leading up to and following an emergency hearing on the Cash Collateral Motion on November 8, 2017, ACS and the Prepetition Lender negotiated the terms of a consensual emergency Cash Collateral use order, which was entered by the Court on November 9, 2017 (the "Emergency Cash Collateral Order") [Docket No. 33].

18. Pursuant to the Emergency Cash Collateral Order, ACS was permitted to use Cash Collateral through November 22, 2017, on certain terms and conditions pursuant to an approved budget (the "Interim Budget") submitted by ACS in connection with the Cash Collateral Motion.

19. Shortly after the Emergency Hearing on the Cash Collateral Motion, owners of ACS' various projects held back a significant amount of the cash ACS expected to receive on the basis that vendors of ACS had a superior claim to those funds pursuant to Article 3A. Owners,

project managers and general contractors are concerned that ACS may not abide by the strictures of Article 3A which would leave the owners with liability to ACS's vendors if ACS's restructuring efforts fail leaving vendors' claims unsatisfied after the use of Article 3A trust funds.

20. On November 21, 2017, a second hearing was held before the Court on the Debtor's Cash Collateral Motion. At that time, ACS had received an oral commitment from Liberty Mutual Insurance Company ("Liberty") to make the DIP Facility available, subject to final approvals and documentation, and ACS was seeking authority to use $248,000 of the Prepetition Lender's Cash Collateral to pay payroll and related expenses on November 24, 2017 so that it could present the motion for approval of the DIP Facility to the Court the following week. The Prepetition Lender opposed the Debtor's continued use of Cash Collateral without receiving assurances from some third party that it could recover its $248,000 in Cash Collateral if it was used and the DIP Facility was never approved. Ultimately, Liberty agreed to backstop the $248,000, which agreement was set forth in a second order authorizing the limited continued use of cash collateral entered by the Court on November 22, 2017 [Docket No. 61].

21. Immediately thereafter, ACS entered into an agreement, dated November 29, 2017, providing for the $2.5 million DIP Facility from Liberty. Approval of the DIP Facility was opposed by the various Unions and Union Funds. The Court approved the DIP Facility and continued use of the Prepetition Lender's cash collateral on an interim basis over the objections by order dated November 30, 2017 [Docket No. 86], and scheduled a hearing to consider final approval of the DIP Facility on December 12, 2017. Upon interim approval, Liberty funded the first $1 million advance under the DIP Facility, which stabilized ACS's operations in the short term.

22. Prior to the final hearing on approval of the DIP Facility, on December 8, 2017, the United States Trustee appointed a three member Official Committee of Unsecured Creditors (the "Committee"). The Committee members are as follows: Cement Masons Local 780 Trust Funds; Metallic Lathers & Reinforcing Ironworkers, Local 46; and Construction Risk Partners, LLC. Two of the three members of the Committee consist of Unions or Union Funds, and ACS understands that other Unions or Union Funds have been granted *ex officio* membership on the Committee. The Committee is currently represented by Lowenstein Sandler LLP as legal counsel, and Zolfo Cooper as financial advisors.

23. On December 11, 2017, the newly-formed Committee requested an adjournment of the December 12th hearings so that it could come up to speed, which ACS agreed to. Upon the Committee's request, the hearing to consider final approval of the DIP Facility was adjourned to December 20, 2017. On December 19, 2017, the Committee filed a limited objection to approval of the DIP Facility. On December 20, 2017, the Court approved the DIP Facility on a final basis and all objections were either resolved or overruled by the Court. The Court entered an order approving the DIP Facility on a final basis on December 21, 2017 [Docket No. 121].

E. The Unions' Asserted Administrative Claim and Origin of the Sale Strategy

24. Shortly after the Petition Date, the Unions and Union Funds made clear that they believed that by virtue of the language contained in the District Court's decision supporting the Union Judgment, ACS is and always has been an alter ego of Navillus and therefore a party to Navillus' collective bargaining agreements with the Unions (the "Navillus CBAs"). Accordingly, the Unions assert that ACS has an ongoing administrative obligation to pay benefits to the Union Funds on account of ACS's continued use of non-union labor. On November 24, 2017, certain Unions filed a motion to modify the automatic stay (or determine that the stay does not apply) in order to assert those claims in arbitration pursuant to the terms of

the Navillus CBAs (the "Union Stay Motion") [Docket No. 66]. At the hearings on December 20, 2017, the Court granted the Union Stay Motion in part to permit the Unions to start the arbitration process but go no further.

25. In response to the Unions' asserted administrative claim, ACS determined upon consultation with its legal counsel and Chief Restructuring Officer, that a sale strategy, if possible, would be the best possible alternative for ACS and its stakeholders. A sale and cessation of ACS's business would stop any alleged accrual of a significant administrative obligation to the Unions (which ACS vehemently opposes). A sale would permit the orderly completion of ACS existing jobs and eliminate the massive liabilities that would be incurred if ACS were to liquidate precipitously. If ACS could locate an ideal buyer, it could further ensure a transition of employment for a majority of its employees as well.

26. Any sale presents significant challenges for ACS. The DIP Facility has stabilized ACS's operations, but is only expected to carry ACS until the end of January, 2018, at which time it will need to either complete a sale, stop most operations, or receive an additional injection of funds. Accordingly, any sale must be done on a short time line. The sale must also produce sufficient cash to repay the Prepetition Lender (estimated to be owed approximately $1 million by the end of January), Wells Fargo, which holds liens on various equipment of approximately $400k, and Liberty on the $2.5 million DIP Facility. Further, any buyer must have the necessary expertise and be able to acquire the proper permits and insurance to step into ACS's shoes. The universe of potential buyers is extraordinarily limited. Further, the buyer must be acceptable to ACS's numerous contract parties and to Liberty, who has issued performance and payment bonds on seven of ACS's open contracts.

F. The Purchase – Sale and Marketing Process

27. ACS, through its management and Chief Restructuring Officer, immediately made inquiries within the industry to locate a buyer for ACS's assets. ACS made it immediately known to its business partners that it was looking for a potential acquirer. ACS is constrained by the fact that the community of parties that could step in ACS's shoes is finite. The Chief Restructuring Officer reached out to each and every person that expressed any interest in potentially acquiring ACS's assets and has had contact with a total of fifteen (15) potential interested parties, including eight (8) known competitors of ACS. Only the Purchaser has responded thus far with a definitive proposal, and given ACS's time constraints, ACS determined that it was in the best interests of ACS and its stakeholders to move ahead with the Purchase Agreement.

28. The Purchaser was introduced to ACS by Liberty. ACS understands that the Purchaser was introduced to Liberty by Donal O'Sullivan, Navillus' owner and chief executive. ACS has determined that Donal O'Sullivan has no interest in the Purchaser whatsoever and the Purchaser is entirely independent of Navillus, ACS or any of their respective owners and management. ACS has absolutely no doubt that parties in this case will make a significant issue of the introduction and the extremely limited business relationship between Donal O'Sullivan and William Murphy, a principal of the Purchaser.[2] To that end, ACS strongly encourages such

[2] William Murphy is the manager of Blackfin Properties & Investments, LLLP ("Blackfin"), a Florida Limited liability partnership, which is a fifty (50%) percent owner of the Purchaser, the other half owned by Patrick Murphy, William's son. Blackfin has numerous real estate holdings including an 18.18% ownership interest in SBM Associates, LLC ("SBM"), a Florida limited liability company, formed in 2013 to purchase and develop property in Florida. SBM is also owned 20.455% by Donal O'Sullivan, 20.455% by South East Planation, LLC, an entity owned by Kevin O'Sullivan, Donal O'Sullivan's brother, 39.91% by Michael Brewster, and 1% by Padraig Naughton, a Navillus executive. In addition, Blackfin has an eighty (80%) percent interest in Blackwood Partners, LLC ("Blackwood"), a Florida limited liability company. Padraig Naughton, a Navillus executive, owns a five (5%) percent interest in Blackwood. Neither any member of the Murphy family nor Blackfin has any other connection or business relationship with Navillus, ACS, ACS's management, Donal O'Sullivan, Kevin O'Sullivan or Padraig Naughton.

parties to better focus their efforts on assisting ACS and its Chief Restructuring Officer in finding a higher or better alternative transaction. Liberty, the Committee and other parties have been requested and invited to introduce ACS to any and all parties that may have an interest in entering into a sale transaction with ACS. Liberty and the Committee, through their duly retained professionals, have been invited to participate in any diligence calls or meetings between ACS and prospective buyers.

29. The Purchaser is owed fifty (50%) percent by Blackfin, an entity owned by Murphy family members, and fifty (50%) percent by Patrick Murphy, William Murphy's son. William Murphy is an experienced Florida-based real estate developer, and former construction lending and real estate workouts officer for JPMorgan Chase Bank. Patrick Murphy is the President and Chief Executive of the Purchaser. Patrick Murphy is a 2006 graduate of the United States Naval Academy and former search and rescue sea combat helicopter pilot for the United States Navy. Patrick currently works for the Canadian Imperial Bank of Commerce in real estate finance and capital markets.

30. At present, ACS strongly believes that the proposed Sale Transaction presents the best possible outcome for ACS and its estate and creditors. The Sale Transaction will result in the satisfaction of the secured claims of the Prepetition Lender, Wells Fargo and Liberty on the DIP Facility. In addition, it will leave sufficient unencumbered cash in the estate to fund a liquidating plan and optimistically make some distribution to general unsecured creditors.

RELIEF REQUESTED

A. The Proposed Sale

31. The Purchase Agreement sets forth the terms of the sale of certain of the Debtor's assets and business and related transactions, subject to higher and better offers, free and clear of liens, claims, interests and encumbrances. The following is a summary of certain salient

provisions of the Purchase Agreement and is qualified entirely by reference to the Purchase Agreement itself.[3]

> (a) Purchase Price. The Purchaser must deliver an earnest money deposit in the amount of $400,000.00 (the "Deposit") to the Debtor's attorneys to be held in escrow pending the Closing by December 28, 2017. The cash purchase price of the Acquired Assets shall be $4,000,000.00 less the Deposit (the "Closing Payment"), less the $275,000 paid by Gilbane for the termination of the 42 Trinity project contract. The Closing Payment shall be payable at the Closing by wire transfer or other immediately available funds. As additional consideration, Purchaser shall assume the Assumed Liabilities in accordance with the terms of Section 1.5 of the Purchase Agreement in an amount estimated to be, but not to exceed, $17,900,000.00.
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> (b) Acquired Assets. Under the Purchase Agreement, the Seller will transfer all right, title and interest in certain of its assets (described with more particularity in the Purchase Agreement as Acquired Assets), including Acquired Assets: (i) all furniture, fixtures, and other personalty; (ii) the Acquired Contracts (as identified in Schedule 1.6 of the Purchase Agreement); (iii) all equipment maintained and used by the Seller in the conduct of its business; (iv) all inventory of goods and materials used by the Seller in the conduct of its business; (v) all intangible assets, goodwill, customer lists, manuals, sales and marketing materials, phone numbers, internet websites and domain names; (vi) all books and records relating to the foregoing in both hard copy and electronic form; (vii) all security deposits provided under real estate or equipment leases that are being assigned to and assumed by Purchaser; (viii) all Accounts Receivable; (ix) all Causes of Action, including without limitation, Avoidance Actions against any Person who is not an Insider and/or any Affiliate of an Insider; and (x) all claims for refunds with respect to taxes for all periods ended after the Closing Date.
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> Notwithstanding the above, the Acquired Assets shall not include the following (the "Excluded Assets"): (v) cash of

[3] The following summary of the Purchase Agreement is provided for the convenience of the Court and the parties in interest. A copy of the Purchase Agreement is attached hereto as **Exhibit C**. To the extent that there are any discrepancies between this summary and the Purchase Agreement, the terms and language of the Purchase Agreement shall govern. Unless defined herein, capitalized terms defined in the Purchase Agreement shall have the meanings ascribed to them therein.

Seller; (x) any contracts or agreements other than the Acquired Contracts; (y) the Excluded Contracts; and (z) any and all Causes of Action, inclusive of Avoidance Actions, against Insiders and/or any Affiliate of an Insider.

(c) Assumed Liabilities. Purchaser shall assume as of the Closing Date and shall subsequently observe, honor and pay in an amount estimated to be, but not to exceed $17,900,000.00, (i) certain post-petition accrued expenses and certain pre-petition accounts payable of Seller (excluding professional fees and other expenses not incurred in the Ordinary Course of Business) and cure costs under the Acquired Contracts or any leases expressly assumed by or assigned to Purchaser pursuant to Section 365, all as of the Closing Date, and (ii) any ongoing post-Closing performance obligations under the Acquired Contracts or any leases expressly assumed by or assigned to Purchaser pursuant to Section 365 (collectively, the "Assumed Liabilities"). The Assumed Liabilities are listed in Disclosure Schedule 1.5 of the Purchase Agreement.

(d) Representations and Warranties. The Debtor has represented and warranted that it is the title owner to the Acquired Assets, and, subject to approval by the Court, it has the requisite legal authority to sell and assign such assets and the Acquired Contracts, together with certain of its assets and business to Purchaser, and that all of the other representations and warranties provided under the Purchase Agreement are true and correct as detailed more fully in Article 2.1 of the Purchase Agreement. Purchaser has represented and warranted that it is a limited liability company duly formed under the laws of the State of New York and subject to satisfaction of the conditions and requirements under the Purchase Agreement, has the requisite power, authority, and financial capability to consummate the transactions contemplated hereunder, and that all of the other representations and warranties provided under the Purchase Agreement are true and correct as detailed more fully in Article 2.2 of the Purchase Agreement.

(e) Termination. The parties may terminate this Agreement as provided below (whether before or after the entry of the Bidding Procedures Order and/or the Sale Order): (i) Purchaser and Seller may terminate the Purchase Agreement by mutual written consent at any time prior to the Closing; (ii) Purchaser may terminate the Purchase Agreement by giving written notice to Seller at any time prior

to the Closing (a) in the event Seller has breached any representation, warranty, or covenant contained in the Purchase Agreement and such breach has caused or is reasonably likely to cause a Material Adverse Effect, or (b) if the Closing shall not have occurred on or before the Closing Date because any of the conditions precedent set forth in Section 5.1 hereof have not been satisfied in full; (iii) Seller may terminate the Purchase Agreement by giving written notice to Purchaser at any time prior to the Closing (a) in the event Purchaser has breached any representation, warranty, or covenant contained in the Purchase Agreement and such breach has caused or is reasonably likely to cause a Material Adverse Effect, or (b) if the Closing shall not have occurred on or before the Closing Date because any of the conditions precedent set forth in Section 5.2 hereof have not been satisfied in full; (iv) Purchaser may terminate the Purchase Agreement by giving written notice to Seller if the Closing shall not have occurred on or before 5:00 p.m. on the fifteenth day after the Sale Order has been entered; (v) Purchaser may terminate the Purchase Agreement by giving written notice to Seller if Seller has not filed a motion with the (a) the Bankruptcy Court has not entered the Bidding Procedures Order on or before January 5, 2018 or (b) the Bidding Procedures Order has been entered but is stayed, withdrawn, or rescinded as of such date; (vi) Purchaser may terminate the Purchase Agreement by giving written notice to Seller if the Bankruptcy Court has not entered the Sale Order on or before January 26, 2018; (vii) Purchaser may terminate the Purchase Agreement by giving written notice to Seller if an order has been entered dismissing the Bankruptcy Case, converting the Bankruptcy Case to a Chapter 7 case or if Seller files a motion or other pleading seeking the dismissal or conversion of the Bankruptcy Case under Section 1112 of the Bankruptcy Code or otherwise; (viii) Purchaser or Seller may terminate the Purchase Agreement in the event that any Law or order becomes effective restraining, enjoining, or otherwise prohibiting or making illegal the consummation of the transactions contemplated by the Purchase Agreement; (ix) Seller may terminate the Purchase Agreement at any time after the Bankruptcy Court approves an Alternate Transaction, or Purchaser may terminate the Purchase Agreement upon the closing of an Alternate Transaction; (x) Purchaser may terminate the Purchase Agreement at any time after the appointment of a Chapter 7 trustee or an examiner with expanded powers in the Bankruptcy Case; (xi) Purchaser may terminate the Purchase Agreement at any time in the event the

> Bankruptcy Court does not approve the Breakup Fee and Expense Reimbursement; (xii) Purchaser may terminate the Purchase Agreement in the event the Bankruptcy Court grants relief from the automatic stay to any party to permit foreclosure or the exercise of other remedies on any material Acquired Assets of Seller; (xiii) Purchaser may terminate the Purchase Agreement in the event that Seller modifies, alters or amends the Purchase Agreement without the consent of Purchaser, or in the event that Seller consents to any such modification, alteration or amendment; or (xiv) Purchaser may terminate the Purchase Agreement if an event of default under the DIP Financing Facility has occurred and has not been cured or waived in accordance with the terms of the DIP Financing Facility documents.

32. The Sale Transaction provides for the continuation of business operations, preservation of attendant jobs to the extent employees of ACS become employees of Purchaser, most of which are expected to be offered employment by the Purchaser, and maximization of value for the benefit of ACS, its creditors and the estate.

B. Extraordinary Provisions

33. In accordance with General Order M-383, In the Matter of: Adoption of Amended Guidelines for the Conduct of Asset Sales, dated November 18, 2009 ("General Order M-383"), ACS discloses the following Extraordinary Provisions provided for in the Purchase Agreement:

> (a) Deadlines that Effectively Limit Notice: The Purchase Agreement includes provisions requiring entry of the Bidding Procedures Order on or before January 5, 2018 and entry of the Sale order on or before January 26, 2018. The Purchase Agreement allows Purchaser to terminate the Purchase Agreement if either of the benchmarks are not met.
>
> (b) Record Retention: After the Closing Date, Purchaser shall provide Seller and its representatives reasonable access to the books and records of Seller included in the Acquired Assets during normal business hours and on reasonable prior notice, to enable Seller to prepare tax returns, deal with tax audits and administer claims in the Case. The Debtor believes these provisions are sufficient to allow the Debtor to administer its estate.

(c) Use of Proceeds: At the Closing, Seller shall be required to use the proceeds of the Closing Payment to satisfy in full (i) Seller's obligations under the DIP Facility, (ii) Seller's secured indebtedness owing to Signature Bank, and (iii) Seller's secured indebtedness to Wells Fargo Equipment Finance related to any Acquired Assets. All remaining portions of the Closing Payment must be retained by Seller pending production of the Final Statement and payment by the appropriate Party of the Reconciliation Amount

(d) Successor Liability: The proposed form of Sale Order contains findings and provisions limiting Purchaser's successor liability. The parties intend that the transfer of the Assets will not subject Purchaser to any liability other than any Assumed Liabilities. The proposed finding in the Sale Order authorizing the Sale to be made free and clear of successor liability claims complies with applicable principles of sales conducted pursuant to Section 363(f) of the Bankruptcy Code and applicable non-bankruptcy law.

(e) Relief from Bankruptcy Rule 6004(h): The proposed form of Sale Order contains a waiver of the stay imposed by Bankruptcy Rule 6004(h). The Debtor submits such relief is appropriate under the circumstances.

(f) Sale of Avoidance Actions: Included in the Acquired Assets are avoidance actions against Persons that do not qualify as Insiders or Affiliates of Insiders..

PROPOSED BIDDING PROCEDURES, AUCTION AND AUCTION PROCEDURES

34. Consistent with the Purchase Agreement, ACS is proposing the Bidding Procedures, which are designed to maximize the value of the Acquired Assets for ACS's estate, creditors and other interested parties. Specifically, as discussed in more detail below, the Sale Transaction is subject to higher and better offers. In that regard, Purchaser has expended considerable time, effort and resources conducting due diligence, negotiating the Purchase Agreement, and taking steps necessary to acquire necessary license, permits and insurance if it

becomes the successful purchaser of the Acquired Assets. Accordingly, the Purchaser required certain break-up fees and expenses reimbursements to the extent it is outbid.

35. The Debtor proposes that competing offers ("Competing Offers") for the Acquired Assets be governed by the following Bidding Procedures:[4]

> (a) Any entity that wishes to make a bid for Acquired Assets must provide the Debtor with sufficient and adequate information to demonstrate, to the absolute satisfaction of the Debtor, that such entity (i) has the financial wherewithal and ability to consummate the Sale Transaction including evidence of adequate financing, and including a financial guaranty, if appropriate, (ii) can provide all non-debtor contracting parties to the Acquired Contracts with adequate assurance of future performance as contemplated by section 365 of the Bankruptcy Code; (iii) will be on substantially the same terms and conditions as the Purchase Agreement except for price; (iv) will require the payment of a closing cash payment of not less than $4,100,000.00, less the $275,000.00 paid by Gilbane to terminate its contract, plus the Bidding Protections and the assumption of the Assumed Liabilities (the "Minimum Bid"); (v) will be accompanied by an earnest money deposit of 10% of the initial purchase price set forth in any Modified Purchase Agreement, plus the amount of the Bidding Protections. Any bid satisfying such criteria shall be designated as a "Qualified Bid." Except as provided for in the Purchase Agreement, the bid must not contain any contingencies of any kind, including, but not limited to (a) obtaining financing or shareholder, board of directors or other approval, or (b) the outcome or completion of due diligence. Each Potential Bidder must also affirmatively acknowledge that the Potential Bidder (x) had an opportunity to conduct due diligence regarding the Assets prior to making its offer and does not require further due diligence, (y) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Acquired Assets in making its bid, and (z) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether

[4] The summary description of the Bidding Procedures provided herein is provided for the convenience of the Court and parties in interest. To the extent that there are any discrepancies between this summary and the Bidding Procedures Order, the terms and language of the Bidding Procedures Order shall govern. Unless otherwise defined herein, capitalized terms defined in the Bidding Procedures shall have the meaning ascribed to them in the Bidding Procedures Order or the Purchase Agreement.

express or implied, by operation of law or otherwise, regarding the Acquired Assets, or the completeness of any information provided in connection therewith, except as expressly stated in these Bidding Procedures.

(b) Competing Offers must (a) be in writing and (b) be received by Fred Stevens of Klestadt Winters Jureller Southard & Stevens, LLP, 200 West 41st Street, 17th Floor, New York, New York 10036 so that such bid is received no later than January 22, 2018 at 5:00 p.m. (the "Competing Offer Deadline"). Parties who do not submit Competing Offers by the Competing Offer Deadline shall not be permitted to participate at the Auction.

(c) Competing Offers must be accompanied by a good faith deposit in the amount of 10% of the initial purchase price set forth in any Modified Purchase Agreement, plus the amount of the Bidding Protections, in the form of in the form of wire transfer or a certified check payable to Klestadt Winters Jureller Southard & Stevens, LLP, as attorneys. All such deposits shall be retained by the Debtor pending the hearing to consider the Sale Motion and shall be returned to a Potential Bidder (x) as soon as practicable if the Potential Bidder is not determined to be a Qualified Bidder or (y) no later than five (5) business days after entry of the Sale Order if the Potential Bidder is deemed to be a Qualified Bidder (who has not otherwise forfeited its Deposit), but is not the Successful Bidder or the Backup Bidder; provided, however, that in the event Purchaser is not the Successful Bidder, its Deposit shall be returned to it promptly upon termination of the Purchase Agreement, but in no event later than five (5) business days from the date of that termination. The Debtor will maintain any Deposit in a non-interest bearing account.

(d) Any Competing Offer by a Qualified Party conforming to the within requirements shall be considered at the auction to be held at the Offices of Klestadt Winters Jureller Southard & Stevens, LLP, 200 West 41st Street, 17th Floor, New York, New York 10036 on commencing on **January 23, 2018, at 12:00 p.m. (EST)**, or in such manner and at such alternative location as the Debtor may determine or the Court may direct (the "Auction").

(e) The Debtor shall, after the Competing Offer Deadline and prior to the Auction, evaluate all bids received, and determine which bid reflects the highest or best

offer for the Assets. The Debtor shall announce such determination at the commencement of the Auction and then the Debtor shall conduct the Auction among the parties submitting Competing Offers to determine if any higher or better offer might be obtained. Any further bids made at the Auction shall be in increments of at least $100,000 greater than the preceding bid.

(f) If there is a successful Competing Offer for the Assets, such successful bidder shall have such rights and responsibilities of Purchaser, as set forth in the Modified Purchase Agreement, or the Purchase Agreement, as applicable with appropriate modifications for (i) the identity of the successful bidder and (ii) the purchase price as the same shall have been increased at the Auction.

(g) In the event that the Court enters a Final Order approving an Alternative Transaction, then Purchaser shall be entitled to and Debtor shall pay to Purchaser at the consummation of an Alternate Transaction (or in the case of a plan of reorganization or liquidation that is an Alternate Transaction, upon confirmation of such plan or reorganization or liquidation), 3.0% of the Purchase Price (the "Breakup Fee"). The Breakup Fee is intended to cover opportunity costs incurred by Purchaser in pursuing and negotiating this Agreement and the transactions contemplated hereby, and is considered by the Parties to be reasonable for such purposes. The Breakup Fee shall be paid from the first sale proceeds of an Alternate Transaction. The claims of Purchaser to the Breakup Fee shall constitute an administrative expense against Seller's bankruptcy estate under the applicable provisions of the Bankruptcy Code.

(h) In addition to any Breakup Fee that may be payable pursuant to the Purchase Agreement, upon (i) any event in which the Breakup Fee is payable, or (ii) the Purchase Agreement is terminated by Purchaser pursuant to Section 6.1.1(b) or Section 6.1.1(i), the Debtor shall reimburse Purchaser the actual and necessary expenses, including reasonable attorney's fees, incurred in connection with negotiation and entry into the Transaction Documents, due diligence with respect to the transactions contemplated by the Transaction Documents, and obtaining Bankruptcy Court approval of the Transaction Documents, in an amount not to exceed $150,000 (the "Expense Reimbursement"). The claims of Purchaser to the Expense Reimbursement shall constitute an administrative expense against Seller's

bankruptcy estate under the applicable provisions of the Bankruptcy Code.

(i) In the event that a Competing Offer is the Successful Bidder and such Successful Bidder fails to consummate the proposed transaction by the Closing Date, such bidder's deposit shall be forfeited to the Debtor (but not as liquidated damages, the Debtor reserving the right to pursue all remedies that may be available to it) and the Debtor shall be free to consummate the proposed transaction with the next highest bidder at the final price bid by such bidder at the Auction (or, if that bidder is unable to consummate the transaction at that price, the Debtor may consummate the transaction with the next higher bidder, and so forth) without the need for an additional hearing or order of the Bankruptcy Court.

(j) All bids for the purchase of the Debtor's assets shall be subject to approval of the Bankruptcy Court.

(k) No bids shall be considered by the Debtor or the Bankruptcy Court unless a party submitted a Competing Offer in accordance with the Bidding Procedures and participated in the Auction. The Debtor, in its absolute discretion, may reject any Competing Offers not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules or the Local Bankruptcy Rules of the Court, or contrary to the best interests of the Debtor and parties of interest.

(l) All bids (other than those of the Successful Bidder and Backup Bidder) are irrevocable until the earlier of (A) ninety (90) days following entry of the Sale Order (defined below) and (B) closing with the Successful Bidder .

(m) All bids are subject to such other terms and conditions as are announced by the Debtor at the outset of the Auction.

BIDDING PROTECTIONS

36. The proposed Purchase Agreement contemplates the payment of certain protections, including a Breakup Fee and Expense Reimbursement (collectively, the "Bidding

Protections"), in certain circumstances. The Debtor requests the Court grant the proposed Bidding Protections administrative expense priority pursuant to Bankruptcy Code 503(b) and 507(b), which shall be payable solely from the first proceeds of an Alternate Transaction. The Purchase Agreement provides that if the proposed Bidding Protections are not approved by the Court, Purchaser shall have the right, but not the obligation, to not enter into the Purchase Agreement and none of the parties shall have any further obligations to the other.

37. The Debtor submits that (a) approval of the proposed Bidding Protections is an integral part of the Purchase Agreement, (b) in the absence of the Debtor's obligation to pay the Bidding Protections, Purchaser will not enter into the Purchase Agreement, (c) the entry into the Purchase Agreement is necessary for the preservation of the Debtor's estate and is beneficial to the Debtor, its estate, creditors and other parties in interest, and (d) the Bidding Protections are reasonable in relation to Purchaser's efforts and the amount of consideration contemplated by the Purchase Agreement.

38. The efforts of Purchaser have increased the chances that the Debtor will receive the highest or otherwise best offer for the Acquired Assets by establishing a minimum bid for other bidders, subjecting the Acquired Assets to an open auction and serving as a catalyst for other potential or actual bidders. Thus, the Bidding Protections benefit the Debtor, its estate, its creditors and all other parties in interest.

39. As stated above, Purchaser is unwilling to commit to hold open its offer to purchase the Acquired Assets under the terms of the Purchase Agreement unless the Bidding Protections are approved. Accordingly, the Debtor requests that the Court approve the Bidding Protections and authorize payment of the Breakup Fee and Expense Reimbursement pursuant to the terms and conditions of the Purchase Agreement.

ASSUMPTION AND ASSIGNMENT AND REJECTION OF EXECUTORY CONTRACTS AND LEASES

A. Acquired Contracts

40. In connection with the Sale Transaction, the Debtor seeks authority under section 365 of the Bankruptcy Code to (a) assume and assign the Acquired Contracts, and (b) execute and deliver to Purchaser (or the Successful Bidder, as the case may be) such documents or other instruments as may be necessary to assign and transfer the Acquired Contracts as of the date of the Closing on the Purchase Agreement (and expressly subject to Closing).

41. By and through this Motion, the Debtor is seeking authority to assume any and all Acquired Contracts (as defined in the Purchase Agreement) following and subject to the Closing, and to assign all such contracts to Purchaser. The Debtor seeks the authority to assume and assign to Purchaser any and all of the Acquired Contracts which Purchaser in its sole discretion elects to assume and gives notice of the same to the Debtor.

42. To effectuate the assumption/assignment process, the Debtor proposes to serve a notice on the non-debtor parties to the Acquired Contracts of the potential assumption and assignment of the Acquired Contracts (the "Assignment Notice"), substantially in the form annexed hereto as **Exhibit D**, advising each such party of the Debtor's interest to assume and assign such executory contract. The Assignment Notice shall be served no later than five (5) business days following the entry of the Bidding Procedures Order. The list of Acquired Contracts attached to the Assignment Notice, which comprises all of the Debtor's executory contracts, except for those specifically excluded from the Acquired Assets, and sets forth (a) the name and address of the counterparties to the executory contracts proposed to be assumed and assigned to Purchaser or its designee; (b) the nature of the executory contract; and (c) the amount

of any cure costs that the Debtor believes to be due and owing as reflected on its books and records.

43. Under the terms of the Purchase Agreement, Purchaser is responsible for paying cure costs, if any, under any Acquired Contracts that are ultimately assumed and assigned to Purchaser, provided those cure costs together with other Assumed Liabilities do not exceed the aggregate $17.9 million cap.

44. Any non-debtor party who objects to its Cure Amount set forth in its Cure Notices must file an objection to the Cure Amount with respect to such Acquired Contract, state with specificity the nature of the objection and the amount of the alleged Cure Amount and include appropriate supporting documentation demonstrating the calculation of the cure amounts as claimed not later than the Cure Objection Deadline as provided for below. Any such objections must be (a) filed with the Court and (b) served upon (i) the proposed attorneys for the Debtor, Klestadt Winters Jureller Southard & Stevens, LLP, 200 West 41st Street, 17th Floor, New York, New York 10036 (Attn: Fred Stevens), (ii) the attorneys for the Purchaser, Berger Singerman LLP, 350 East Las Olas Boulevard, Suite 1000, Fort Lauderdale, Florida 33301 (Attn: Robert W. Barron and Isaac M. Marcushamer), (iii) the Office of the United States Trustee for the Southern District of New York, U.S. Federal Office Building, 201 Varick Street, Room 1006, New York, New York 10014 (Attn: Richard Morrissey) and (iv) the attorneys for the Committee, Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, New York 10020 (Attn: Jeffrey Cohen and Eric S. Chafetz), so as to be actually received no later than 12:00 Noon (EST), five (5) days prior to the Sale Hearing (the "Cure Objection Deadline").

45. If no objection to the Cure Amounts is timely received in accordance with the preceding paragraph, or if a timely objection is received but is not in compliance with the

foregoing requirements, any non-debtor party to a Acquired Contract shall be barred and permanently enjoined from asserting any amounts in excess of the Cure Amount set forth in its Cure Notices. Any timely filed and serve objection to any Cure Amount shall be heard at the Sale Hearing.

46. In an effort to provide the most up-to-date information to non-debtor parties to the Acquired Contracts, in the event Purchaser is not the Successful Bidder at the Auction, the Debtor will use its reasonable best efforts to provide non-debtor parties to the Acquired Contracts with the identity of the Successful Bidder prior to the Sale Hearing. Otherwise, the non-debtor parties to the Acquired Contracts may wish to plan to attend the Sale Hearing.

47. Any non-debtor party to an Acquired Contract shall have the right to request adequate assurance of performance by Purchaser of such Acquired Contract either by contacting Purchaser through its attorneys, or filing, prior to the deadline for objecting to the proposed Sale Order, such request with the Court and serving (a) the attorneys for the Debtor, Klestadt Winters Jureller Southard & Stevens, LLP, 200 West 41st Street, 17th Floor, New York, New York 10036 (Attn: Fred Stevens), (b) the attorneys for the Purchaser, Berger Singerman LLP, 350 East Las Olas Boulevard, Suite 1000, Fort Lauderdale, Florida 33301 (Attn: Robert W. Barron and Isaac M. Marcushamer), (c) the Office of the United States Trustee for the Southern District of New York, U.S. Federal Office Building, 201 Varick Street, Room 1006, New York, New York 10014 (Attn: Richard Morrissey) and (d) the attorneys for the Committee, Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, New York 10020 (Attn: Jeffrey Cohen and Eric S. Chafetz), so as to be actually received no later than 12:00 Noon (EST), five (5) days prior to the Sale Hearing, indicating what adequate assurance it requires from Purchaser.

48. If no such requests for adequate assurance are timely made or filed, Purchaser shall be deemed to have provided adequate assurance as required by section 365(f)(2)(B) of the Bankruptcy Code. If any such requests are filed, the Court, at the Sale Hearing, shall determine whether Purchaser has provided adequate assurance as required by section 365(f)(2)(B) of the Bankruptcy Code.

49. The Debtor believes that those procedures and deadlines are fair and reasonable, and will provide sufficient notice to the non-debtor parties to the Acquired Contracts. These procedures are designed to provide certainty to the Debtor and the non-debtor parties to the Acquired Contracts regarding their obligations and rights in respect of the Cure Amounts. Accordingly, the Debtor requests that the Court approve the foregoing procedures and deadlines.

NOTICE OF SALE, AUCTION AND BIDDING PROCEDURES

50. The Debtor, no later than one (1) business day after entry of the Bidding Procedures Order, will serve a copy of this Motion, the Bidding Procedures Order, the proposed Sale Order and all exhibits to such orders upon the following persons by first-class mail, postage prepaid: (i) the Office of the United States Trustee; (ii) the attorneys for the Committee; (iii) the attorneys for Purchaser; (iv) all counterparties to the Acquired Contracts; (v) all parties who have made an expression of interest in acquiring the Assets or the Business within twelve (12) months prior to the date of the Motion; (v) all known persons holding a lien on any of the Acquired Assets and/or their attorneys; (vi) all taxing authorities that have jurisdiction over the Acquired Assets; and (vii) all parties who have requested notice in the Case (collectively, the "Bidding Procedures Parties").

51. In addition, no later than five (5) business days after entry of the Bidding Procedures Order, the Debtor shall cause the form of auction notice, a copy of which is annexed

hereto as **Exhibit E**, to be (i) served upon the Bidding Procedures Parties, and (ii) served upon all known creditors and all known parties in interest in this Chapter 11 Case (collectively, the "Auction Notice Parties").

52. The Debtor believes that the foregoing notice to the Auction Notice Parties is sufficient to provide effective notice of the Bidding Procedures, the Auction and the proposed Sale to potentially interested parties in a manner designed to maximize the chance of obtaining the broadest possible participation in the Auction while minimizing the costs to the estate. Accordingly, the Debtor requests that the Court find that notice in this manner is sufficient and that no further notice of the Auction, the Bidding Procedures or the proposed Sale is required.

BASIS FOR RELIEF REQUESTED

A. The Proposed Sale is Within the Debtor's Sound Business Judgment and Should Therefore Be Approved

53. The Debtor submits that ample authority exists for the approval of the Sale Transaction to Purchaser pursuant to the Purchase Agreement, or to such other purchaser submitting a higher and better offer for the Acquired Assets. Section 363(b) of the Bankruptcy Code permits a debtor to sell assets outside the ordinary course of its business. That section provides in pertinent part, "[t]he trustee,[5] 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). While Section 363(b) does not provide any standards to be applied to a debtor's request to sell assets, a wide body of case law has evolved containing the judicial standards governing sales of assets.

54. In In re Lionel Corp., 722 F.2d 1063 (2d Cir. 1983), one of the seminal and most widely followed cases dealing with asset sales, the Second Circuit determined that a sale of assets could be approved if the debtor could demonstrate an "articulated business justification"

[5] Pursuant to Section 1107(a) of the Bankruptcy Code, the debtor in possession has all of the powers of a trustee (except the power to investigate the debtor's own financial affairs).

for the sale. 722 F.2d at 1070. The Court further held that the factors to be considered in determining whether a sound business reason exists include the following:

> the proportionate value of the asset to the estate as a whole, the amount of elapsed time since the filing, the likelihood that a plan of reorganization will be proposed and confirmed in the near future, the effect of the proposed disposition on future plans of reorganization, the proceeds to be obtained from the disposition vis-à-vis any appraisals of the property, which of the alternatives of use, sale or lease the proposal envisions and, *most importantly perhaps, whether the asset is increasing or decreasing in value*.

Id. at 1071 (emphasis supplied).

55. The Lionel decision has been widely accepted and applied by numerous other courts facing a debtor's request to sell assets, including requests to approve a sale of certain of the assets of a debtor's estate. See, e.g., In re the Delaware & Hudson Ry. Co., 124 B.R. 169 (D. Del. 1991); In re Eng'g Prod. Co., 121 B.R. 246 (Bankr. E.D. Wis. 1990); In re Thomson McKinnon Sec., Inc., 120 B.R. 301 (Bankr. S.D.N.Y. 1990); In re Channel One Communications, Inc., 117 B.R. 493 (Bankr. E.D. Mo. 1990); In re Brethren Care, 98 B.R. 927 (Bankr. N.D. Ind. 1989). As will be demonstrated below, application of the above-listed factors demonstrates that approval of the Purchase Agreement is warranted at this time.

56. In addition to requiring sound business reasons to approve a sale pursuant to section 363(b) of the Bankruptcy Code, many courts have required a showing that the price to be obtained for assets be fair and reasonable; that the sale to the proposed purchaser was negotiated in good faith; and that it does not unfairly benefit insiders, the purchaser, or a certain creditor or class of creditors. See, e.g., In re Channel One Communications, 117 B.R. at 494-97; In re Indus. Valley Refrig. & Air Cond. Supplies, Inc., 77 B.R. 15 (Bankr. E.D. Pa. 1987).

57. The Debtor and Purchaser negotiated in good faith, at arms' length, and with a view towards maximizing the value of the Debtor's estate for all creditors, rather than to benefit insiders or a particular creditor.

58. The Debtor is confident that the Purchase Price is the best achievable under the present circumstances. Nonetheless, the Purchase Agreement is subject to higher and better offers, thereby ensuring that the best possible offer has been or will be received.

59. Many courts require that "fair and accurate notice" be given of the proposed sale under section 363(b) of the Bankruptcy Code. See, e.g., In re Delaware & Hudson Ry., 124 B.R. 169, 176 (D. Del. 1991); Channel One 117 B.R. at 496 (Bankr. E.D. Mo. 1990); Naron & Wagner, Chartered, 88 B.R. 85, 88 (Bankr. D.Md. 1988). Fair and accurate notice should inform all interested parties of the liquidation of the debtor's business; disclose accurately the terms of the sale; explain the effect of the sale upon the debtor's business; and explain why the sale is in the best interests of the debtor's estate. Delaware & Hudson, 124 B.R. at 180; see also, Naron & Wagner, 88 B.R. at 88.

60. The Debtor submits that the notice given here alerted parties in interest to the sale contemplated by the Purchase Agreement, described and explained all material terms thereof, and explained the effect of the sale on the Debtor's business.

B. The Purchaser is a Good Faith Purchaser and is Entitled to the Protections of Section 363(m) of the Bankruptcy Code

61. 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).

62. Although the Bankruptcy Code does not define "good faith," in In re Colony Hill Assocs., 111 F.3d 269 (2d Cir. 1997) the Second Circuit held that:

> The "good faith" component of the test under § 363(m) speaks to the equity of [the bidder's] 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.
>
> 111 F.3d at 276 (quoting In re Rock Industries Machinery Corp., 572 F.2d 1195, 1198 (7th Cir. 1978)) (internal quotations omitted).

63. As set forth above, Purchaser was selected by the Debtor after engaging numerous parties and determining that the terms of Purchaser's bid were the only viable option. The Purchase Agreement is a product of extensive arms-length negotiations and was not in any way tainted by fraud, collusion or bad faith. Accordingly, the Debtor requests that the Court make a finding that Purchaser is entitled to the protections of section 363(m) of the Bankruptcy Code.

C. The Sale Satisfies the Requirements of Section 363(f) of the Bankruptcy Code fora Sale Free and Clear of Liens, Claims, Encumbrances and Interests

64. The Debtor seeks authorization to sell the Acquired Assets to Purchaser free and clear of all liens, claims and encumbrances, except as expressly permitted by the Purchase Agreement. Nonetheless, the Acquired Assets may be sold free and clear of liens in accordance with section 363(f) of the Bankruptcy Code, which provides, in pertinent part:

> (f) 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 non-bankruptcy 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 U.S.C. § 363(f).

65. Because section 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any one of its five requirements will be sufficient to permit the Sale Transaction free and clear of liens, claims, encumbrances, pledges, mortgages, security interests, charges, options, and other interests. See In re Grubb & Ellis Co., Case No. 12-10685 (MG), 2012 Bankr. LEXIS 1279, at *31 (Bankr. S.D.N.Y. Mar. 27, 2012) (discussing Bankruptcy Code § 363(f)); In re Borders Group, Inc., 453 B.R. 477, 483–84 (Bankr. S.D.N.Y. 2011) (discussing Bankruptcy Code § 363(f)). The Debtor submits that, the Purchase Agreement provides that the proposed Purchase Price is greater than the aggregate value of all such liens. As such, the rights of secured creditors are preserved and in fact, will be satisfied at or around the time of Closing. Thus, the Acquired Assets may be sold free and clear of such liens pursuant to section 363(f)(3) of the Bankruptcy Code. In re General Bearing Corp., 136 B.R. 361 (Bankr. S.D.N.Y. 1992); In re Oneida Lake Development, Inc., 114 B.R. 352 (Bankr. N.D.N.Y. 1990).

D. The Court Should Waive or Reduce the Fourteen-Day Stay Periods Required by Rules 6004(g) and 6006(d) of the Federal Rules of Bankruptcy Procedure

66. Pursuant to Bankruptcy Rule 6004(g), unless the court orders otherwise, all orders authorizing the sale of property pursuant to section 363 of the Bankruptcy Code are automatically stayed for 14 days after entry of the order. Fed. R. Bankr. P. 6004(g). The purpose of Bankruptcy Rule 6004(g) is to provide sufficient time for an objecting party to appeal before the order can be implemented. See Advisory Committee Notes to Fed. R. Bankr. P. 6004(g).

67. Although Bankruptcy Rule 6004(g) and the Advisory Committee Notes are silent as to when a court should "order otherwise" and eliminate or reduce the 14-day stay period, Collier suggested that the 14-day stay period should be eliminated to allow a sale or other transaction to close immediately "where there has been no objection to the procedure." 10

Collier on Bankruptcy 15th Ed. Rev., 6004.09 (L. King, 15th rev. ed. 2005). Furthermore, Collier provides that if an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time actually necessary to file such appeal. Id.

68. Similarly, Bankruptcy Rule 6006(d) stays all orders authorizing a debtor to assign an executory contract or unexpired lease pursuant to section 365(f) of the Bankruptcy Code for 14 days, unless the court orders otherwise.

69. To preserve the value of the Acquired Assets and limit the costs of administering and preserving the Acquired Assets, it is critical that the Debtor close the Sale Transaction as soon as possible after all closing conditions have been met or waived. Accordingly, the Debtor hereby requests that the Court waive the 14-day stay periods under Bankruptcy Rules 6004(g) and 6006(d), or in the alternative, if an objection to the sale or to the assignment of a contract or lease is filed, reduce the stay period to the minimum amount of time needed by the objecting party to file its appeal to allow the sale to close as provided under the Purchase Agreement.

E. The Assumption and Assignment of Acquired Contracts Should be Authorized

70. Under section 365(a) of the Bankruptcy Code, a debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). Section 365(f) of the Bankruptcy Code provides that a debtor in possession may assign an executory contract or unexpired lease of the debtor only if (a) the debtor in possession assumes such contract or lease in accordance with the provisions of section 365, and (b) adequate assurance of future performance by the assignee of such contract or lease is provided. 11 U.S.C. § 365(f)(2).

71. Section 365(b)(1) of the Bankruptcy Code, in turn, codifies the requirements for assuming an unexpired lease or executory lease or executory contract of a debtor. This subsection provides:

> (b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee
>
> (A) cures or provides adequate assurance that the trustee will promptly cure, such default;
>
> (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
>
> (C) provide adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

72. The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction." EBG Midtown South Corp. v. McLaren/Hart Envtl. Eng'g Corp. (In re Sanshoe Worldwide Corp.), 139 B.R. 585, 592 (S.D.N.Y. 1992) (citations omitted), aff'd, 993 F.2d 300 (2d Cir.1993).

73. When an executory contract or lease is to be assumed and assigned, adequate assurance may be provided by, among other things, demonstrating the financial health of the assignee and its experience and ability in managing the type of enterprise or property assigned. See e.g., In re Bygaph, Inc., 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (stating that adequate assurance of future performance is present when a prospective assignee of a lease from debtor has financial resources and has expressed a willingness to devote sufficient funding to the business in order to give it a strong likelihood of success).

74. To the extent that any defaults exist under any Acquired Contracts, the Debtor will cure, or provide adequate assurance of cure of, such defaults within the meaning of section

365(b)(1)(A) and in accordance with the Purchase Agreement. Moreover, the Debtor will demonstrate facts at the Sale Hearing that show Purchaser's (or the Successful Bidder's, as the case may be) financial credibility, experience in the industry, and willingness and ability to perform under the Acquired Contracts. Therefore, the Sale Hearing will provide the Court and other interested parties with an opportunity to evaluate and, if necessary, challenge the ability of Purchaser (or the Successful Bidder, as the case may be) to provide adequate assurance of future performance under the Acquired Contracts. Accordingly, the Debtor submits that the assumption and assignment of the Acquired Contracts as set forth herein should be approved.

F. Conducting an Auction Pursuant to the Bidding Procedures is in the Best Interests of the Debtor's Estate and Its Creditors

75. In order to maximize the value of the Acquired Assets for the benefit of the Debtor, its creditors and its chapter 11 estate, the Debtor seeks to implement a competitive bidding process typical for transactions of this size and nature and designed to generate a maximum recovery. The Debtor believes that the Auction and proposed Bidding Procedures will encourage participation by financially capable bidders that demonstrate the ability to close a transaction. Furthermore, the Bidding Procedures are consistent with other procedures previously approved by this Court, and are appropriate under the relevant standards governing auction proceedings and bidding incentives in bankruptcy proceedings. See e.g., In re Kmart, Case No. 02-B02474 (SPS) (Bankr. N.D. Ill. May 10, 2002); In re Global Crossing, Case No. 02-40188 (S.D.N.Y. March 25, 2002) (REG); In re Randall's Island Family Golf Ctrs., Inc., 261 B.R. 96 (S.D.N.Y. 2001); In re Integrated Resources, Inc., 147 B.R. 650 (S.D.N.Y. 1992).

G. Bidding Protections Are Warranted

76. The Debtor proposes that if overbidding occurs at the Auction, Purchaser shall have the right, but not the obligation, to participate in the overbidding subject only to the

limitations provided by the Bidding Procedures. However, to compensate Purchaser for serving as a "stalking horse," thereby subjecting its bid to better or higher offers, the Debtor and Purchaser seek authority for the Debtor to pay Purchaser the Breakup Fee and Expense Reimbursement if an Alternative Transaction is approved or consummated or there is a material breach by the Debtor preventing a Closing as provided in the Purchase Agreement. The Debtor and Purchaser believe that the Bidding Protections are (a) fair and reasonable, given the benefits to the estate of having a definitive Purchase Agreement and the risk to Purchaser that a third-party offer may ultimately be accepted and (b) are necessary to preserve the value of the Debtor's estate.

77. Bidding incentives such as the Breakup Fee encourage a potential purchaser to invest the requisite time, money and effort to conduct due diligence and sale negotiations with a debtor despite the inherent risks and uncertainties of the chapter 11 process. See e.g., In re 995 Fifth Ave. Assocs., L.P., 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (finding bidding incentives may be "legitimately necessary to convince a 'white knight' to enter the bidding by providing some form of compensation for the risks it is undertaking") (citation omitted); In re Marrose Corp., 89 B 12171-12179 (CB), 1992 WL 33848, at *5 (Bankr. S.D.N.Y. 1992) (stating that "[a]greements to provide breakup fees or reimbursement of fees and expenses are meant to compensate the potential acquirer who serves as a catalyst or 'stalking horse' which attracts more favorable offers").

78. The Debtor submits that the Bidding Protections are a normal and necessary component of sales outside the ordinary course of business under section 363 of the Bankruptcy Code. See e.g., In re Kmart, Case No. 02 B02474 (SPS) (Bankr. N.D. Ill. May 10, 2002) (authorizing a termination fee and bid protections for potential bidders); In re Comdisco, Inc.,

Case No. 01 24795 (RB) (Bankr. N.D. Ill. Aug. 9, 2002) (approving a termination fee as, *inter alia*, an actual and necessary cost and expense of preserving the debtor's estate, of substantial benefit to the debtor's estate, and a necessary inducement for, and a condition to, the proposed purchaser's entry into the Asset Purchase Agreement); In re Integrated Resources, Inc., 147 B.R. at 660 (noting that break-up fees may be legitimately necessary to convince a "white knight" to offer an initial bid by providing some form of compensation for the expenses such bidder incurs, and the risks such bidder faces by having its offer held open, subject to higher and better offers); In re Crowthers McCall Pattern, Inc., 114 B.R. 877 (Bankr. S.D.N.Y. 1990) (approving an overbid requirement in an amount equal to the approved break up fee); In re Kupp Acquisition Corp., Case No. 96 1223 (PJW) (Bankr. D. Del. March 3, 1997).

79. Here, the proposed Breakup Fee is 3.0 percent of the Purchase Price. Thus, the Breakup Fee and Expense Reimbursement are within the range of fees typically paid in other significant sales transactions that have been consummated in a bankruptcy setting. See e.g., Consumer News & Bus. Channel P'ship v. Financial News Network, Inc. (In re Financial News Network, Inc.), 980 F.2d 165, 167 (2d Cir. 1992) (noting that transaction at issue provided for a $8.2 million breakup fee on a $149.3 million transaction (5.5%)); Doehring v. Crown Corp. (In re Crown Corp.), 679 F.2d 774 (9th Cir. 1982) (bid protection of 4.9% approved). Further, the amount of the Breakup Fee and Expense Reimbursement is reasonably calculated to compensate Purchaser (a) for committing the time to perform due diligence, (b) for lost opportunity in being bound to a transaction that could be topped in a competitive auction process and (c) for serving as a "stalking horse" to encourage the submission of other bids. Accordingly, the Debtor believes that the Bidding Protections should be approved.

NOTICE

80. Notice of this Motion will be given to (i) the Office of the United States Trustee; (ii) all known creditors, (iii) the Official Committee of Unsecured Creditors, and (iv) those parties that have requested notice in the Case. Additional notices will be provided in accordance with the notice provisions contained herein. The Debtor submits that such notice is sufficient and requests that this Court find that no other or further notice is necessary.

NO PRIOR REQUEST

81. No previous application for the relief requested herein has been made to this or any other court.

WHEREFORE, the Debtor respectfully requests that this Court enter orders, substantially in the form annexed hereto, granting the Motion and such other relief as may be just and proper.

Dated: New York, New York
December 26, 2017

KLESTADT WINTERS JURELLER SOUTHARD & STEVENS, LLP

By: */s/ Fred Stevens*

Fred Stevens
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Attorneys for Debtor and Debtor in possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	
	:	Chapter 11
ADVANCED CONTRACTING SOLUTIONS, LLC,	:	
	:	Case No. 17-13147 (SHL)
Debtor.	:	

ORDER (A) APPROVING BIDDING PROCEDURES FOR THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS, (B) SCHEDULING AN AUCTION AND A SALE HEARING RELATED THERETO, (C) APPROVING THE FORM AND MANNER OF NOTICE OF THE AUCTION AND THE SALE HEARING, AND (D) APPROVING BIDDING PROTECTIONS

Upon that portion of the motion (the "Motion"),[1] dated December 26, 2017 [Docket No. [__]], of Advanced Contracting Solutions, LLC, as debtor and debtor in possession of the above-captioned Chapter 11 case (the "Debtor"), seeking the entry of an Order, pursuant to sections 105, 363, 365, 503 and 507 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 2002-1, 6004-1, 6006-1 and 9006-1(b) of the Local Bankruptcy Rules for the Southern District of New York (the "Local Bankruptcy Rules"): (a) approving the proposed Bidding Procedures, substantially in the form of Schedule 1 attached hereto, to be used in connection with the proposed sale (the "Sale") of substantially all of the Debtor's assets (the "Acquired Assets") to Trident General Contracting LLC (the "Purchaser"), pursuant to an Asset Purchase Agreement between the Debtor and the Purchaser, dated as of December 19, 2017, or to any competing bidder (or competing bidders) (the "Successful Bidder") that submits (or collectively submits) higher or otherwise better offer (or offers) for the Acquired Assets; (b) scheduling an auction (the "Auction") and a hearing to approve the Sale (the "Sale Hearing"); (c)

[1] Capitalized terms used but not otherwise defined herein shall be ascribed the meanings provided to those terms in the Motion or the Purchase Agreement (defined below), as applicable.

approving the form and manner of the notice of the Auction and the Sale Hearing (the "Sale Notice"), substantially in the form of Schedule 2 attached hereto; and (d) approving the payment of the Breakup Fee and Expense Reimbursement (together, the "Bidding Protections") and certain overbid procedures (collectively, the "Bidding Procedures"); and this Court having held a hearing on January 4, 2018 to consider the Bidding Procedures (the "Bidding Procedures Hearing"); and upon the Motion and the record of the Bidding Procedures Hearing, it now appearing that the Bidding Procedures are in the best interest of the Debtor's estate, its creditors and other parties in interest; and after due deliberation thereon and good cause appearing therefor, it is hereby:

FOUND AND DETERMINED THAT:[2]

A. This Court has jurisdiction over the Motion and the Bidding Procedures pursuant to 28 U.S.C. §§ 157(b) and 1334. Consideration of the Bidding Procedures is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Good and sufficient notice of the Bidding Procedures sought in the Motion has been given and no additional or further notice is required. A reasonable opportunity to object or be heard regarding the Bidding Procedures requested in the Motion has been afforded to interested persons and entities, including: (i) counsel for the official committee of unsecured creditors (the "Committee"); (ii) each of the Debtor's secured creditors, or their counsel; (iii) the Office of the United States Trustee for the Southern District of New York (the "U.S. Trustee"); (iv) all parties in interest who requested notice pursuant to Bankruptcy Rule 2002; (v) all counterparties to the Acquired Contracts; (vi) counsel to the Purchaser; (vii) all parties who are

[2] Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, when appropriate. See Fed. R. Bankr. P. 7052.

known to assert a Lien on the Acquired Assets; (viii) all parties identified by the Debtor as potentially having an interest in acquiring some or all of the Acquired Assets (collectively, the "Notice Parties"); and (x) all creditors of the Debtor who are listed on the Debtor's Schedules of Assets and Liabilities [Docket No. 52], or who filed proofs of claim against the Debtor's estate (the "Scheduled and Filed Creditors").

C. The proposed Sale Notice constitutes good, appropriate, adequate and sufficient notice, and is reasonably calculated to provide all interested parties, including the Notice Parties and the Scheduled and Filed Creditors, with timely and proper notice of the Bidding Procedures, the Bidding Protections, the Auction, the assumption and assignment of the Acquired Contracts and Cure Amounts, and the Sale, as set forth herein and in the Motion, and no other or further notice is required.

D. The Debtor has articulated good and sufficient reasons for this Court to grant the relief requested in the Motion, including this Court's (i) approval of the Bidding Procedures, (ii) approval of payment of the Bidding Protections from the proceeds of any Alternate Transaction or as otherwise provided for under the terms of the Purchase Agreement, (iii) determination of final Cure Amounts, and (iv) approval of the form and manner of service of the Sale Notice.

E. The Debtor has articulated good and sufficient reasons for, and the best interests of the Debtor's estate will be served by, this Court scheduling the Sale Hearing to consider whether to grant the remainder of the relief requested in the Motion, including approval of the proposed Sale in accordance with either (i) the Purchase Agreement between the Debtor and the Purchaser, attached as Exhibit C to the Motion, or (ii) such other agreement or agreements by and between the Debtor and the Successful Bidder or Successful Bidders, free and clear of, among other things, any and all liens, claims, encumbrances and interests (collectively, "Liens")

(other than the Permitted Liens (as defined in the Purchase Agreement)), with the same to attach to the proceeds of the Sale pursuant to section 363 of the Bankruptcy Code.

F. The Bidding Protections to be paid in accordance with the terms set forth in the Purchase Agreement are (i) an actual and necessary cost and expense of preserving the Debtor's estate within the meaning of section 503(b) of the Bankruptcy Code, (ii) commensurate to the real and substantial benefit conferred upon the Debtor's estate by the Purchaser, (iii) reasonable and appropriate in light of the size and nature of the proposed Sale and comparable transactions, the commitments that have been made, and the efforts that have been and will be expended by the Purchaser, and (iv) necessary to induce Purchaser to continue to pursue the Sale and to continue to be bound by the terms of the proposed Purchase Agreement.

G. The Debtor's authorization to pay the Bidding Protections is an essential inducement and condition relating to the Purchaser's entry into, and continuing obligations under, the Purchase Agreement. The Debtor's commitment to pay the Bidding Protections, which has induced Purchaser to submit its bid that will serve as a minimum or floor bid for the Sale of the Acquired Assets on which the Debtor can rely, provides a material benefit to the Debtor's estate, its creditors and other parties in interest by increasing the likelihood that the best possible purchase price for the Acquired Assets will be received.

H. The Bidding Protections and the Bidding Procedures are reasonable and appropriate.

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

1. All objections to entry of this Order or to the Bidding Procedures requested in the Motion that have not been withdrawn, waived, resolved or settled are hereby denied and overruled in their entirety.

The Bidding Procedures

2. The Bidding Procedures, as set forth on Schedule 1 attached hereto and incorporated herein by reference, are hereby approved in all respects and shall govern all bids and bid proceedings relating to the Sale of the Acquired Assets. Notwithstanding the above, any party in interest may object at the Sale Hearing to the criteria used by the Debtor in ultimately selecting the highest or otherwise best offer for the Acquired Assets.

3. The deadline for submitting bids for the Acquired Assets (the "Bid Deadline") shall be **January 22, 2018, at 5:00 p.m. (EST)**.

4. Except as may be limited by the Purchase Agreement, the Debtor is authorized to extend the deadlines set forth in this Order and/or adjourn, continue or suspend the Auction and/or the Sale Hearing for any reason, in its sole discretion.

5. The Debtor is authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures.

The Auction

6. The **Auction shall commence at 12:00 p.m. (EST) on January 23, 2018** at Klestadt Winters Jureller Southard & Stevens, LLP, 200 West 41st Street, 17th floor, New York, New York 10036, or during such later time or at such other place as decided by the Debtor. The Debtor shall notify all Qualified Bidders of any such later time or different place; provided, however, that in the event that no Qualified Bids (other than that submitted by Purchaser, which is hereby deemed to be a Qualified Bid) are received by the Bid Deadline, or if the aggregate value of the highest Qualified Bids that have been submitted for all or a portion of the Acquired

Assets does not exceed the Minimum Bid (as defined in the Bidding Procedures), the Debtor shall not be required to conduct an Auction, and in such event the Debtor shall proceed with the approval of the Purchase Agreement.

The Bidding Protections

7. Sections 4.7 (Breakup Fee and Expense Reimbursement) and 4.11 (Bankruptcy Covenants) of the Purchase Agreement are approved and binding on the Debtor and its estate. The Debtor is authorized and directed to pay the Bidding Protections to the extent incurred and solely in the event of the consummation of an Alternate Transaction from the first proceeds of such transaction, or as otherwise set forth in the Purchase Agreement, without further order of the Court.

Sale Hearing

8. The Sale Hearing shall be held before the Honorable Sean H. Lane, United States Bankruptcy Judge, on **January 24, 2018 at 2:00 p.m. (EST)**, at the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004, Courtroom No. 701, at which time this Court shall consider: (i) approval of the Sale to Purchaser or any other Successful Bidder(s); (ii) the proposed assumption and assignment of the Acquired Contracts and related Cure Amounts in connection with the Sale; (iii) the entry of the proposed sale order, substantially in the form attached to the Motion as Exhibit B (the "Sale Order"); (iv) any issues or objections that are timely interposed by any parties; and (v) such other or further relief as this Court may deem just or proper.

9. Except as may be limited by the Purchase Agreement, the Sale Hearing may be adjourned by the Debtor without further order of this Court, by filing a notice with this Court and serving such notice on all Qualified Bidders.

Notice

10. The Sale Notice, substantially in the form attached hereto as Schedule 2, is hereby approved.

11. By no later than three business days after the entry of this Order, the Debtor shall cause a copy of the Bidding Procedures, the Sale Notice and this Order to be served upon the Notice Parties and the Scheduled and Filed Creditors via first class mail.

12. The notice set forth in the preceding paragraphs shall constitute good and sufficient notice of the Motion, the Auction, the Sale Hearing and the proposed Sale Order, and no other or further notice of the Motion, the Auction, the Sale Hearing and/or the proposed Sale Order shall be necessary or required.

Objections to Motion

13. Objections, if any, to the remaining relief sought in the Motion must (a) be made in writing, (b) state with particularity the reasons for the objection or response, (c) conform to the Bankruptcy Rules and the Local Bankruptcy Rules, (d) set forth the name of the objecting party, the nature and basis of the objection, and the specific grounds therefore, and (e) be filed with the Clerk of the Court (with a copy to be delivered to the Chambers of the Honorable Sean H. Lane, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004, and shall be served so as to be **actually received** no later than **4:00 p.m. (EST) on January 19, 2018** (the "Objection Deadline"), upon: (i) the proposed attorneys for the Debtor, Klestadt Winters Jureller Southard & Stevens, LLP, 200 West 41st Street, 17th Floor, New York, New York 10036 (Attn: Fred Stevens), (ii) the attorneys for the Purchaser, Berger Singerman LLP, 350 East Las Olas Boulevard, Suite 1000, Fort Lauderdale, Florida 33301 (Attn: Robert W. Barron and Isaac M. Marcushamer), (iii) the Office of the United States Trustee for the Southern District of New York, U.S. Federal Office Building, 201 Varick Street,

Room 1006, New York, New York 10014 (Attn: Richard Morrissey) and (iv) the attorneys for the Committee, Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, New York 10020 (Attn: Jeffrey Cohen and Eric S. Chafetz).

Acquired Contracts

14. The Debtor shall file a copy of the Schedule of Acquired Contracts (the "Assumption Schedule") with the Court no later than ten (10) days prior to the Objection Deadline and shall concurrently serve notice of such schedule upon all counterparties to the Acquired Contracts and the Notice Parties.

15. The Assumption Schedule shall identify the proposed Acquired Contracts and the corresponding Cure Amounts required under section 365 of the Bankruptcy Code, if any. The Debtor, with the consent of Purchaser or the Successful Bidder(s), as applicable, shall have the right until the fifth (5^{th}) day prior to the closing of the Sale to amend and remove executory contracts or unexpired leases from the Assumption Schedule. The Debtor shall file and serve notice of any such amendment (an "Amendment Notice") on all non-Debtor parties to the Acquired Contracts that are impacted by any amendment to the Assumption Schedule.

16. All non-Debtor parties to the Acquired Contracts shall have until the Objection Deadline to file an objection (an "Assumption Objection") to the assumption and assignment of the Acquired Contracts to which they are parties, or to the Cure Amounts listed for those Acquired Contracts. Any party filing an Assumption Objection shall state with specificity the basis of the objection and asserted Cure Amount, and shall include appropriate documentation in support thereof.

17. If an Assumption Objection is timely filed and not consensually resolved, this Court may hold a hearing with respect to the Assumption Objection either at the Sale Hearing or at such other date as this Court shall designate. If the Assumption Objection relates only to the

Cure Amount of an Assigned Contract, that Assigned Contract may be assumed by the Debtor and assigned to Purchaser or the Successful Bidder(s), as applicable; provided, however, that the amount asserted by the objecting party as the proper Cure Amount, or a different amount set by this Court, shall be held in escrow pending further order of this Court or mutual agreement of the parties as to the proper Cure Amount for that Assigned Contract. The Debtor and Purchaser or the Successful Bidder(s), as the case may be, are hereby authorized to settle, compromise or otherwise resolve any disputed Cure Amounts with the relevant non-Debtor party to any Assigned Contract without Court approval or notice to any party.

18. If no Assumption Objection is timely filed and served, then subject to entry of an Order by this Court upon the Sale Hearing approving the Sale and proposed assumption and assignment of the Acquired Contracts in connection therewith, the Cure Amounts set forth in the Assumption Schedule shall control notwithstanding any terms or conditions to the contrary in any Assigned Contract. The non-Debtor parties to the Acquired Contracts shall be barred from asserting against the Debtor or the Purchaser (or the Successful Bidder(s), as the case may be) any other claim arising from the Acquired Contracts.

19. The effective date of any assumption and assignment of the Acquired Contracts shall be the date on which the Sale closes. Any Cure Amounts to be paid under any of the Acquired Contracts shall be paid by the Purchaser (or Successful Bidder(s), as the case may be) either prior to, upon or promptly following the closing of the Sale, or as otherwise agreed to by the parties to the Acquired Contracts.

Additional Provisions

20. The Debtor is authorized and empowered to take all steps, and incur and pay all costs and expenses, as may be reasonably necessary to fulfill the requirements established by this Order.

21. Nothing contained in this Order precludes any party in interest from objecting to the Sale in accordance with the objection procedures set forth herein, and no party shall be deemed to have consented to the Sale by virtue of not having objected to the Bidding Procedures requested in the Motion.

22. The Debtor is hereby authorized to implement the Bidding Procedures and conduct the Auction without the necessity of complying with any state or local bulk transfers law, or requirement or any similar law of any state or other jurisdiction which may apply in any way to any of the transactions under the Purchase Agreement.

23. This Court shall retain jurisdiction over any and all matters or disputes arising from or relating to the implementation of this Order, including jurisdiction to allocate the consideration paid for some or all of the Acquired Assets in satisfaction of Liens that attach to the proceeds thereof.

24. Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), this Order shall not be stayed for fourteen (14) days after the entry hereof, and shall be effective and enforceable immediately upon entry hereof.

Dated: New York, New York
January ___, 2018

HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE

Schedule 1

Bidding Procedures

BIDDING PROCEDURES AND TERMS AND CONDITIONS OF SALE

Advanced Contracting Solutions, LLC (the "**Debtor**" or "**Seller**"), as debtor and debtor in possession in Bankruptcy Case No. 17-13147 (SHL) (the "**Chapter 11 Case**"), currently pending before the United States Bankruptcy Court for the Southern District of New York (the "**Court**"), has entered into an asset purchase agreement (the "**Purchase Agreement**") with Trident General Contracting LLC (the "**Purchaser**"), dated as of December 19, 2017, for the sale of substantially all of the Debtor's assets (collectively, the "Acquired **Assets**"), free and clear of any and all liens, claims, encumbrances and other interests (except as explicitly stated in the Purchase Agreement). The Debtor is currently soliciting higher or otherwise better bids for the sale of the Acquired Assets (the "**Sale**").[3]

A. Bidding Procedures

Set forth below are the bidding procedures (the "**Bidding Procedures**") with respect to the Sale of the Acquired Assets. On January [___], 2018, the Court entered the *Order Approving Bidding Procedures for the Sale of Substantially All of the Debtor's Assets, (B) Scheduling an Auction and a Sale Hearing Related Thereto, (C) Approving the Form and Manner of Notice of the Auction and the Sale Hearing, and (D) Approving Bidding Protections* [Docket No. [__]] (the "**Bidding Procedures Order**"), which, among other things, granted those portions of the Debtor's sale motion [Docket No. [___]] (the "**Sale Motion**") concerning approval of the Bidding Procedures and Bidding Protections to be employed in connection with the solicitation of higher or otherwise better bids and an auction (the "**Auction**") for the Sale of the Acquired Assets.

B. Relevant Dates

Objection Deadline:	January 19, 2018 (4:00 p.m. EST)
Bid Deadline:	January 22, 2018 (5:00 p.m. EST)
Auction:	January 23, 2018 (12:00 p.m. EST)
Sale Hearing:	January 24, 2018 (2:00 p.m. EST)

C. Acquired Assets to be Sold Free and Clear

The Debtor is offering to sell the Acquired Assets. Except as otherwise provided for in the Purchase Agreement, with respect to the Sale, all of the Seller's right, title and interest

[3] Capitalized terms used but not otherwise defined herein shall be ascribed the meanings provided to those terms in the Motion or the Purchase Agreement, as applicable.

in and to the Acquired Assets shall be sold free and clear of any and all liens, claims, encumbrances, security interests and other restrictions on transfer (collectively, the "**Liens**") to the extent permitted by section 363 of title 11 of the United States Code (the "**Bankruptcy Code**") and other applicable law (except as otherwise expressly provided for in the Purchase Agreement) with such Liens to attach to the proceeds of the Sale.

Except as expressly provided in the Purchase Agreement, the Sale of the Acquired Assets shall be on an **"as is, where is"** basis and without representations or warranties of any kind, nature or description by the Debtor or its agents.

D. Stalking Horse Bidder

The Purchaser shall act as the "stalking horse bidder" at the Auction for the Acquired Assets with the right to receive a break-up fee of [$_____] (or 3% of the Purchase Price) (the "**Breakup Fee**") and reimbursement of its actual and necessary expenses, including reasonable attorney's fees, incurred in connection with negotiation and entry into the Transaction Documents, due diligence with respect to the transactions contemplated by the Transaction Documents, and obtaining Bankruptcy Court approval of the Transaction Documents, in an amount not to exceed $150,000 (the "**Expense Reimbursement**" and, together with the Breakup Fee, the "**Bidding Protections**") under the terms set forth in the Purchase Agreement. The Bidding Protections shall be paid from the first proceeds of an Alternate Transaction, including the Sale, or as otherwise set forth in the Purchase Agreement.

THE DEBTOR RESERVES THE RIGHT, IN ITS DISCRETION, AND AFTER CONSULTATION WITH THE COMMITTEE, TO DETERMINE WHETHER ANY BID IS BETTER, IF NOT HIGHER, THAN ANOTHER BID SUBMITTED DURING THE AUCTION. THE DEBTOR MAY CONSIDER A VARIETY OF FACTORS IN MAKING THIS DECISION, INCLUDING, WITHOUT LIMITATION, ANY PROPOSED CONDITIONS TO CLOSING, TIMING OF CLOSING OF THE PROPOSED TRANSACTION AND THE LIKELIHOOD OF THE BIDDER TO OBTAIN REQUISITE APPROVALS.

E. Mailing the Sale Notice

The Debtor shall provide notice of the Auction and the Sale of the Acquired Assets (the "**Sale Notice**"), together with a copy of these Bidding Procedures, by first class mail, postage prepaid, to: (i) counsel for the Committee; (ii) the Debtor's secured creditors or their counsel; (iii) the Office of the United States Trustee for the Southern District of New York (the "**U.S. Trustee**"); (iv) all parties in interest who have requested notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"); (v) all counterparties to the Acquired Contracts; (vi) the following federal, state and local taxing and regulatory authorities: (a) the United States Attorney for the Southern District of New York, (b) the Attorney General of the State of New York, (c) the Internal Revenue Service, (d) New York State Department of Taxation and Finance, (e) New York City Department of Finance and (f) the Environmental Protection Agency; (vii) counsel to the Purchaser; (viii) all parties who are known to assert a lien on any portion of the Acquired Assets; (ix) all parties identified by the Debtor as potentially having an interest in acquiring some or all of the Acquired Assets (collectively, the "**Notice Parties**"); and (x) all creditors of the Debtor who are listed on the

Debtor's Schedules of Assets and Liabilities [Docket No. 52] or who have filed proofs of claim against the Debtor's estate (collectively, the "**Scheduled and Filed Creditors**").

Any other party in interest that wishes to receive a copy of the Bidding Procedures Order and/or the Sale Motion may make such request in writing to Fred Stevens, Klestadt Winters Jureller Southard & Stevens, LLP, 200 West 41st Street, 17th Floor, New York, New York 10036, by telephone: (212) 972-3000 or via email at fstevens@klestadt.com.

F. Confidentiality Agreement / Due Diligence

Any entity that wishes to conduct due diligence with respect to the Acquired Assets, other than Purchaser, must (i) deliver to the Debtor an executed confidentiality agreement in form and substance reasonably satisfactory to the Debtor and on terms no less favorable than the confidentiality agreement executed by the Purchaser, and (ii) deliver to the Debtor a written non-binding expression of interest to purchase the Acquired Assets, reasonably acceptable to the Debtor.

Interested parties that comply with the foregoing (each such entity referred to as a "**Potential Bidder**"), shall be permitted to conduct diligence with respect to the Acquired Assets; provided, however, that the Debtor shall not be obligated to furnish any due diligence information after the Bid Deadline (defined below).

G. Qualification of Bids and Bidders

To participate in the bidding process and have a bid considered by the Debtor (or Chapter 11 trustee in the event that one is appointed), each Potential Bidder must deliver a written, irrevocable offer to purchase some or all of the Acquired Assets that satisfies the following criteria.

A BID MAY BE MADE FOR ALL OR ONLY A PORTION OF THE ASSETS.

To become a "**Qualified Bidder**", a Potential Bidder must deliver a binding bid that, in the Debtor's discretion, satisfies the following (a "**Qualified Bid**"):

i. Bid Deadline. Each Bid Package (as defined below) must be delivered, in written form, to: (i) proposed counsel to the Debtor, Klestadt Winters Jureller Southard & Stevens, LLP, 200 West 41st Street, 17th Floor, New York, New York 10036, Attn: Fred Stevens; and (ii) proposed counsel to the Committee, Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, New York 10020 (Attn: Jeffrey Cohen and Eric S. Chafetz); in each case so as to be **actually received no later than 5:00 p.m. (prevailing Eastern Time) on January 22, 2018 (the "Bid Deadline")**.

ii. Bid Package. Each bid must include:

(a) a written and signed irrevocable offer (i) stating that the bidder seeks to consummate a sale transaction on terms and conditions no less

favorable than in the Purchase Agreement and in an amount at least equal to the Minimum Bid (defined below), (ii) confirming that the bid will remain irrevocable until the earlier of (A) ninety (90) days following entry of the Sale Order (defined below) and (B) closing with the Successful Bidder, and (iii) that the Potential Bidder had the opportunity to conduct due diligence prior to submitting its bid, does not require further due diligence, has relied solely upon its own independent review and investigation when submitting its bid, and did not rely on any written or oral representation of the Debtor in preparation for submission of its bid;

(b) an executed copy of the Purchase Agreement, as modified by the Potential Bidder in accordance with its bid (the "**Modified Purchase Agreement**"), as well as an electronic markup of the Purchase Agreement clearly identifying the revisions in the Modified Purchase Agreement (formatted as a Microsoft Word document or such other word processing format acceptable to the Debtor)

(collectively, the "**Bid Package**").

The Debtor, in consultation with the Creditors' Committee shall determine whether any Modified Purchase Agreement that modifies the Purchase Agreement in any respect beyond the identity of the purchaser and the purchase price constitutes a Qualified Bid.

iii. Minimum Bid. For a Bid Package submitted by a Potential Bidder to qualify as a Qualified Bid, the purchase price in that bid must provide for net cash in an amount not less than [$_____,] which represents the Purchase Price, the maximum amount of the Bidding Protections and a $100,000 minimum overbid (the "**Minimum Bid**").

iv. Financial Information. To constitute a Qualified Bid, the Bid Package must contain financial and other information of the Potential Bidder that will allow the Debtor to make a determination as to the Potential Bidder's financial wherewithal to consummate the transactions contemplated by any Modified Purchase Agreement, including (a) any proposed conditions to Closing and (b) adequate assurance of such Potential Bidder's ability to perform under any Acquired Contracts and to pay all cure amounts required to assume and assign any such Acquired Contracts. A Potential Bidder shall cooperate reasonably with any request by any creditor, the Debtor, the U.S. Trustee, the Committee or any other interested party (except the Purchaser or another Potential Bidder) for further due diligence that is reasonably necessary and customary to evaluate the viability and terms of the Potential Bidder's Qualified Bid. Any due diligence conducted of a Potential Bidder shall be completed no later than five (5) business days following the submission of the Potential Bidder's Bid Package.

v. Additional Bid Protections. The bid shall not request or entitle the Potential Bidder to any termination fee, transaction or break-up fee, expense reimbursement or similar type of payment.

vi. Identity of Bidders. Each Potential Bidder must fully disclose the identity of each entity that will be bidding for the Acquired Assets, as well as disclose the organizational form and business conducted by each entity, and what connections, if any, the Potential Bidder has with the Debtor. Potential Bidders shall be required to provide such additional information as the Debtor may require regarding a bidder's ability to satisfy the requirements of the transaction contemplated by any Modified Purchase Agreement.

vii. Due Diligence. Except as provided for in the Purchase Agreement, the bid must not contain any contingencies of any kind, including, but not limited to (a) obtaining financing or shareholder, board of directors or other approval, or (b) the outcome or completion of due diligence. Each Potential Bidder must also affirmatively acknowledge that the Potential Bidder (x) had an opportunity to conduct due diligence regarding the Acquired Assets prior to making its offer and does not require further due diligence, (y) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Acquired Assets in making its bid, and (z) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied, by operation of law or otherwise, regarding the Acquired Assets, or the completeness of any information provided in connection therewith, except as expressly stated in these Bidding Procedures.

viii. Consents. Each Potential Bidder must represent that it obtained all necessary organizational (not regulatory) approvals to make its competing bid and to enter into and perform any Modified Purchase Agreement.

ix. Deposit. A Potential Bidder must deposit 10% of the Closing Payment, as set forth in any Modified Purchase Agreement, plus the amount of the Bidding Protections, with the Debtor in the form of a certified check or wire transfer on or before the Bid Deadline (the "**Deposit**"). The Potential Bidder or the Backup Bidder (defined below) shall forfeit the Deposit if (a) the Potential Bidder or the Backup Bidder is determined to be a Qualified Bidder and withdraws or modifies its bid other than as provided herein, before the Court approves the Debtor's selection of the Successful Bidder (defined below), or (b) the bidder is a Successful Bidder and modifies or withdraws its bid without the Debtor's consent before the consummation of the sale contemplated by the bid, or breaches any of the terms of the relevant Modified Purchase Agreement.

The Deposit shall be returned to a Potential Bidder (x) as soon as practicable if the Potential Bidder is not determined to be a Qualified Bidder or (y) no later than five (5) business days after entry of the Sale Order if the Potential Bidder is deemed to be a Qualified Bidder (who has not otherwise forfeited its Deposit), but is not the Successful Bidder or the Backup Bidder; provided, however, that in the event the Purchaser is not the Successful Bidder, its Deposit shall be returned to it promptly upon termination of the Purchase Agreement, but in no event later than five (5) business days after the date of that termination. The Debtor will maintain any Deposit in a non-interest bearing account.

x. "As Is, Where Is". Any Modified Purchase Agreement must provide that the Sale will be on an "as is, where is" basis and without representations or warranties of any kind, except and solely to the extent expressly set forth in the Modified Purchase Agreement of the Successful Bidder. Each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Acquired Assets prior to making its bid and that it has relied solely upon its own independent review and investigation in making its bid.

xi. Debtor's Considerations. The Debtor, after consultation with the Committee, shall have the right to determine that a bid is not a Qualified Bid if the terms of the bid are materially more burdensome or conditional than the terms of the Purchase Agreement and are not offset by a material increase in purchase price, which determination may take into consideration: (1) whether the bid requires any indemnification of the Qualified Bidder; (2) whether the bid does not provide sufficient cash consideration to pay transfer taxes, cure costs or other cash costs of the transaction (including professionals' fees and the Bidding Protections); (3) whether the bid includes a non-cash instrument or similar consideration that is not freely marketable; or (4) any other factors that the Debtor, after consultation with the Committee, may deem relevant.

The Debtor is offering to sell the Acquired Assets. The Debtor, in consultation with the Committee, shall have the exclusive right to determine whether a bid is a Qualified Bid and shall notify Potential Bidders whether their respective bid(s) have been determined to be Qualified Bid(s) prior to the Auction. The Debtor may reject any bid that is on terms more burdensome or conditional than the Purchase Agreement or is otherwise contrary to the best interests of the Debtor's estate. In addition to the requirements above, the Debtor may request any additional information from any Potential Bidder to assist the Debtor in making a determination as to whether a bid is a Qualified Bid.

H. Sale to Purchaser

The Purchase Agreement shall be deemed a Qualified Bid and the Purchaser shall be deemed a Qualified Bidder. If no Qualified Bid other than Purchaser's is submitted by the

Bid Deadline, the Debtor shall not hold the Auction, but may proceed with the Sale Hearing and seek approval of the Purchase Agreement and the transactions contemplated thereby.

I. Auction

In the event that the Debtor timely receives at least one Qualified Bid (excluding the Purchaser's Qualified Bid) by the Bid Deadline for all or any portion of the Acquired Assets, the Debtor shall conduct the Auction with respect to the Acquired Assets. The Auction will take place at Klestadt Winters Jureller Southard & Stevens, LLP, 200 West 41st Street, 17th Floor New York, New York 10036 on **January 23, 2018, starting at 12:00 p.m. (EST)**, or at such other date, time or place as may be determined by the Debtor at or prior to the Auction. The Auction shall be governed by the following procedures:

i. Participation. Only Qualified Bidders that have submitted a Qualified Bid and provided Deposits will be eligible to participate in the Auction, and each Qualified Bidder shall appear in person at the Auction (and any attorney for a Qualified Bidder may appear at the Auction at the discretion of the Qualified Bidder). In the event that a Qualified Bidder does not attend the Auction, the relevant Qualified Bid shall nonetheless remain fully enforceable against that Qualified Bidder in accordance herewith.

The Debtor, in consultation with the Committee, shall evaluate all Qualified Bids received and will select the Qualified Bid that reflects the highest or otherwise best offer for all or any portion of the Acquired Assets, and otherwise complies with the bid requirements set forth herein (the "**Starting Auction Bid**"). The Debtor may consider a variety of factors to determine the Starting Auction Bid, including, but not limited to, modifications to the Purchase Agreement and the Qualified Bidder's ability to consummate the Sale. At the Auction, the Debtor shall announce the material terms of the Starting Auction Bid and the basis for calculating the total consideration offered in the Starting Auction Bid.

ii. Bidding. Bidding at the Auction shall commence at the amount of the Starting Auction Bid. Qualified Bidders may then submit successive bids in increments of no less than $100,000 (the "**Minimum Bid Increment**"); provided, however, that the Debtor, in consultation with the Committee, shall retain the right to modify the Minimum Bid Increment during the Auction. Any bid submitted after the conclusion of the Auction shall not be considered for any purpose.

iii. Higher or Otherwise Better. The Debtor reserves the right, in consultation with the Committee, to determine whether any bid is better, if not higher, than another bid submitted during the Auction. The Debtor may consider any other factor that it, in consultation with the Committee, deems relevant.

iv. Successful Bid. The Auction shall continue until there is only one collective offer or separate offers for the Acquired Assets that the Debtor, in consultation with the Committee, determines, subject to Court approval, is (or are) the highest or otherwise best offer(s) from among the Qualified Bids submitted at the Auction (the "**Successful Bid(s)**") and the Debtor announces that the Auction is closed. The Qualified Bidder(s) submitting such Successful Bid(s) shall become the "**Successful Bidder(s)**," and shall have such rights and responsibilities of the Purchaser, as set forth in the Modified Purchase Agreement, or the Purchase Agreement, as applicable.

Within one business day after the conclusion of the Auction (but in any event prior to the commencement of the Sale Hearing), the Successful Bidder(s) shall (a) complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid(s) was/were made, and (b) supplement the relevant Deposit by wire transfer or other immediately available funds so that, to the extent necessary, such Deposit equals 10% of the Successful Bid(s) plus the amount required for payment of the Bidding Protections.

v. Anti-Collusion. At the commencement of the Auction, each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with any other Qualified Bidder or Potential Bidder with respect to the bidding or the Sale.

vi. Conduct of Auction. The Auction may be conducted openly with the proceeding being transcribed and each Qualified Bidder being informed of the terms of the previous bid. The Debtor or its counsel may meet privately with any Qualified Bidder to negotiate the terms of its bid. The Debtor, in consultation with the Committee, may adopt other rules for the conduct of the Auction at the Auction, which, in its judgment, will better promote the goals of the Auction.

vii. Backup Bid. At the conclusion of the Auction, the Debtor will announce the second highest or otherwise best bid(s) from among the Qualified Bids submitted at the Auction (the "**Backup Bid(s)**"). The Qualified Bidder(s) submitting such Backup Bid(s) shall become the "**Backup Bidder(s)**," and subject to the rights of the Successful Bidder(s), shall have such rights and responsibilities of the Purchaser, as set forth in the Modified Purchase Agreement or the Purchase Agreement, as applicable.

The Backup Bid shall remain open and irrevocable until the earlier of (a) ninety (90) days following entry of the Sale Order and (b) Closing of the Sale; provided, however, that if the Purchaser's bid is deemed the Backup Bid, the Purchaser's rights and obligations with respect to such bid shall be subject to the terms of the Purchase Agreement. The Backup Bidder's Deposit will be returned by the Debtor upon consummation of

the Sale of the Acquired Assets to the Successful Bidder(s), or will be otherwise applied or forfeited as provided in Section G(ix) above if the Backup Bidder is determined to be the Successful Bidder, except with respect to the Purchaser, which shall be subject to the terms of the Purchase Agreement.

viii. Extensions/Adjournment. The Debtor reserves its rights, in the exercise of its reasonable business judgment, and in consultation with the Committee, to modify any non-material provisions of these Bidding Procedures at or prior to the Auction, including, without limitation, extending the deadlines set forth in the Auction procedures, modifying bidding increments, adjourning the Auction at the Auction and/or adjourning the Sale Hearing in open court without further notice consistent with the Purchase Agreement and Bidding Procedures Order.

J. Sale Hearing and Return of Deposits

The Successful Bid(s) and the Backup Bid(s) will be subject to approval by the Court after a hearing (the "**Sale Hearing**") and entry of an order (the "**Sale Order**"). The Sale Hearing will take place on **January 24, 2018 at 2:00 p.m. (EST)**. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court. Upon approval of the Backup Bid(s) by the Court, the Backup Bid(s), other than the Purchaser's bid which shall be subject to the terms of the Purchase Agreement, shall remain open and irrevocable until the earlier of ninety (90) days following entry of the Sale Order or the Closing of the Sale.

No offer shall be deemed accepted unless and until it is approved by the Court and the Sale Order is entered.

Objections, if any, to the Sale Motion and any filed supplements thereto, shall: (i) be in writing; (ii) specify, with particularity, the basis of the objection; and (iii) be filed with the Court and simultaneously served on: (a) proposed attorneys for the Debtor, Klestadt Winters Jureller Southard & Stevens, LLP, 200 West 41st Street, 17th Floor, New York, New York 10036 (Attn: Fred Stevens), (ii) the attorneys for the Purchaser, Berger Singerman LLP, 350 East Las Olas Boulevard, Suite 1000, Fort Lauderdale, Florida 33301 (Attn: Robert W. Barron and Isaac M. Marcushamer), (iii) the Office of the United States Trustee for the Southern District of New York, U.S. Federal Office Building, 201 Varick Street, Room 1006, New York, New York 10014 (Attn: Richard Morrissey) and (iv) the attorneys for the Committee, Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, New York 10020 (Attn: Jeffrey Cohen and Eric S. Chafetz), so as to **be actually received by 5:00 p.m. (EST) on January 19, 2018 (the "Objection Deadline")**.

K. Consummation of the Sale

Except as provided herein and in the Purchase Agreement, following the Sale Hearing, if for any reason the Successful Bidder fails to consummate the Sale of the Acquired Assets, then the Backup Bidder shall automatically be deemed to have submitted the highest or

otherwise best bid. The Debtor and the Backup Bidder are authorized to effectuate the Sale of the Acquired Assets to the Backup Bidder as soon as is commercially reasonable without further order of the Court. If the failure to consummate the Sale is the result of a breach by the Successful Bidder, its Deposit shall be forfeited to the Debtor. The Debtor specifically reserves the right to seek all available damages from the defaulting Successful Bidder.

L. Jurisdiction

The Court shall retain exclusive jurisdiction over any matter or dispute relating to the Sale of the Acquired Assets, the Bidding Procedures, the Sale Hearing, the Auction, the Successful Bid(s), the Backup Bid(s) and/or any other matter that in any way relates to the foregoing.

Schedule 2

Sale Notice

KLESTADT WINTERS JURELLER SOUTHARD & STEVENS, LLP
200 West 41st Street, 17th Floor
New York, NY 10036-7203
Telephone: (212) 972-3000
Facsimile: (212) 972-2245
Tracy L. Klestadt
Fred Stevens
Brendan M. Scott

Attorneys for the Debtor and Debtor in Possession

Hearing Date: January 24, 2018
Hearing Time: 2:00 p.m. (EST)

Objection Deadline: January 19, 2018 at 5:00 p.m. (EST)

Bidding Deadline: January 22, 2018 at 4:00 p.m. (EST)

Auction: January 23, 2018 at 12:00 p.m. (EST)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	
ADVANCED CONTRACTING SOLUTIONS, LLC,	Chapter 11
Debtor.	Case No. 17-13147 (SHL)

NOTICE OF AUCTION AND HEARING TO CONSIDER APPROVAL OF THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS

NOTICE IS HEREBY GIVEN, as follows:

On December 26, 2017, Advanced Contracting Solutions, LLC, the debtor and debtor in possession (the "**Debtor**") in the above-captioned chapter 11 case (this "**Chapter 11 Case**") filed a motion (the "**Motion**") [Docket No. [__]][1] which sought, among other things, entry of an order pursuant to sections 105, 363, 365, 503 and 507 of title 11 of the United States Code (the "**Bankruptcy Code**"), and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"): (a) approving the proposed Bidding Procedures to be used in connection with the proposed sale of substantially all of the Debtor's assets, free and clear of any

[1] Capitalized terms used but not otherwise defined herein shall be ascribed the meanings provided in the Motion.

and all liens, claims, encumbrances, security interests and other interests, to Trident General Contracting LLC (the "**Purchaser**"), or to any competing bidder or bidders (the "**Successful Bidder(s)**") that submits or collectively submit a higher or better offer or offers for the Acquired Assets; (b) scheduling the Auction and Sale Hearing to approve the Sale of the Acquired Assets; (c) approving the form and manner of notice of the Auction and Sale Hearing; and (d) approving the Bidding Protections and certain overbid procedures in connection therewith (the "**Bidding Procedures Order**"). The Bankruptcy Court conducted a hearing on January 4, 2018 to consider entry of the Bidding Procedures Order. On January [___], 2018, the Court entered the Bidding Procedures Order [Docket No. [__]].

The Motion, the Bidding Procedures, and the Bidding Procedures Order have been filed electronically with the Clerk of the United States Bankruptcy Court for the Southern District of New York, and may be reviewed by all registered users of the Court's website at http://ecf.nyeb.uscourts.gov. Copies of the Motion, the Bidding Procedures, and the Bidding Procedures Order can also be obtained by telephonic, written, or e-mail request to the undersigned counsel to the Debtor, Attn: Fred Stevens (Telephone: (212) 972-3000 or e-mail: fstevens@klestadt.com).

As set forth in the Bidding Procedures, the sale of the Acquired Assets remains subject to higher or better offers for all or a portion of the Acquired Assets and Bankruptcy Court approval. All interested parties are invited to make competing offers for all or a portion of the Acquired Assets in accordance with the terms of the Bidding Procedures and the Bidding Procedures Order. The deadline to submit a competing offer in accordance with the terms of the Bidding Procedures is **January 22, 2018 at 4:00 p.m. (ET)** (the "**Bid Deadline**"). Pursuant to the Bidding Procedures Order, if a Qualified Bid other than the Purchaser's bid is received by the

Bid Deadline, the Debtor may conduct an auction (the "**Auction**") for the sale of the Acquired Assets at Klestadt Winters Jureller Southard & Stevens, LLP, 200 West 41st Street, 17th Floor, New York, New York 10036, **beginning at 12:00 p.m. (ET) on January 23, 2018**.

The Bidding Procedures Order further provides that a Sale Hearing will be held on **January 24, 2018 at 2:00 p.m. (ET)** before the Honorable Sean H. Lane, United States Bankruptcy Judge, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004, Courtroom No. 701.

At the Sale Hearing, the Debtor will request that the Bankruptcy Court enter an order, among other things, approving the highest or otherwise best bid for the Acquired Assets (which will be determined in accordance with the terms of the Bidding Procedures). In addition, the Debtor shall request that the Bankruptcy Court provide that the transfer of the Acquired Assets be free and clear of any and all liens, claims, interests, encumbrances and security interests, including successor liability claims, except as expressly assumed by Purchaser or Successful Bidder(s).

At the Sale Hearing, the Bankruptcy Court may enter such orders as it deems appropriate under applicable law and as required by the circumstances and equities of this Chapter 11 case. Objections, if any, to the Motion must (a) be made in writing, (b) state with particularity the reasons for the objection or response, (c) conform to the Bankruptcy Rules and the Local Bankruptcy Rules for the Southern District of New York, (d) set forth the name of the objecting party, the nature and basis of the objection, and the specific grounds therefore, and (e) be filed with the Clerk of the Court (with a copy to be delivered to the Chambers of the Honorable Sean H. Lane, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004, and shall be served upon: (i) upon the proposed attorneys

for the Debtor, Klestadt Winters Jureller Southard & Stevens, LLP, 200 West 41st Street, 17th Floor, New York, New York 10036 (Attn: Fred Stevens), (ii) the attorneys for the Purchaser, Berger Singerman LLP, 350 East Las Olas Boulevard, Suite 1000, Fort Lauderdale, Florida 33301 (Attn: Robert W. Barron and Isaac M. Marcushamer), (iii) the Office of the United States Trustee for the Southern District of New York, U.S. Federal Office Building, 201 Varick Street, Room 1006, New York, New York 10014 (Attn: Richard Morrissey) and (iv) the attorneys for the Committee, Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, New York 10020 (Attn: Jeffrey Cohen and Eric S. Chafetz), so as to be **actually received** no later than **4:00 p.m. (EST) on January 19, 2018**.

Requests for information concerning the sale of the Acquired Assets should be directed by written or telephonic request to: Fred Stevens, Klestadt Winters Jureller Southard & Stevens, LLP, 200 West 41st Street, 17th Floor, New York, New York 10036, (212) 972-3000 or via email at fstevens@klestadt.com.

Dated: New York, New York
January ___, 2018

KLESTADT WINTERS JURELLER SOUTHARD & STEVENS, LLP

By: _____

Fred Stevens
Brendan M. Scott
200 West 41st Street, 17th Floor
New York, New York 10036-7203
Tel: (212) 972-3000
Fax: (212) 972-2245
Email: fstevens@klestadt.com
bscott@klestadt.com

Attorneys for Debtor and Debtor in possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	
	:	Chapter 11
ADVANCED CONTRACTING SOLUTIONS, LLC,	:	
	:	Case No. 17-13147 (SHL)
Debtor.	:	

ORDER AUTHORIZING AND APPROVING (I) THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS; (II) THE PROCEDURES GOVERNING THE ASSUMPTION AND ASSIGNMENT OF CONTRACTS; AND (III) RELATED RELIEF[1]

Upon the motion of the above-captioned debtor (the "Debtor"), pursuant to sections 105(a), 363 and 365 of title 11 of the United States Code (the "Bankruptcy Code") and Federal Rules of Bankruptcy Procedure 2002, 6004, 6006, 9007 and 9014 (the "Bankruptcy Rules"), for entry of an order authorizing and approving, among other things, the sale of substantially all of the Debtor's assets to Trident General Contracting LLC (the "Purchaser") free and clear of all liens, Claims and Encumbrances (as defined below), the assumption and assignment of the Acquired Contracts (as defined below), and related relief [Docket No. __] (as amended, the "Motion");[2] and the Order Approving Bid Procedures and Providing Certain Bid Protections to Purchaser and Granting Related Relief [Docket No. __] (the "Bid Procedures Order"); and it appearing that due and appropriate notice of the Motion, the Bid Procedures Order, the Bid Procedures, the Auction and the Sale Hearing having been given; and it appearing that no other notice of the relief granted by this Order need be given; and the Court having conducted a hearing on the Motion on January 24, 2018 (the "Sale Hearing") at which time all interested parties were offered an opportunity to be heard with respect to the Motion; and the Debtor

[1] Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact when appropriate. *See* FED. R. BANKR. P. 7052.

[2] Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion or the Purchase Agreement (as defined below). A copy of the Purchase Agreement is attached as Exhibit C to the Motion.

having conducted a marketing process in compliance with the Bid Procedures Order and determined that the Purchaser has submitted the highest and best bid for the assets of the Debtor that the Purchaser has offered to purchase as more specifically described in the Purchase Agreement between the Debtor and Purchaser, dated as of December 19, 2017 (the "Purchase Agreement") and (the "Acquired Assets"); and all parties in interest having been heard, or having had the opportunity to be heard, regarding entry of this Order and approval of the sale of substantially all of the Debtor's assets to the Purchaser and assumption and assignment of certain contracts (the "Sale Transaction") and Purchase Agreement; and this Court being fully advised; this Court, based upon the arguments, testimony and evidence presented to it, hereby makes the following findings of fact and conclusions of law:

A. This Court has jurisdiction to hear and determine the Motion and to grant the relief requested in the Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this case and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

B. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). To any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure as made applicable by Bankruptcy Rule 7054, this Court expressly finds that there is no just reason for delay in the implementation of this Order, and expressly directs entry of judgment as set forth herein.

C. This proceeding is a "core proceeding" within the meaning of 28 U.S.C. § 157(b)(2)(A), (N) and (O).

D. The statutory predicates for the Motion are sections 105, 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9007 and 9014.

E. As evidenced by the affidavits of service filed with the Court, and based upon the representations of counsel at the Sale Hearing, (i) proper, timely and adequate notice of the Motion, the Bid Procedures Order, the Sale Hearing, the Sale Transaction, the Auction and the Bid Deadline as approved herein has been provided in accordance with Bankruptcy Rules 2002, 6004, 9007 and 9014, (ii) such notice was good, sufficient and appropriate under the circumstances and (iii) no other or further notice of the Motion, the Bid Procedures Order, the Sale Hearing, the Sale Transaction, the Auction or the Bid Deadline as provided herein is necessary or shall be required.

F. A reasonable opportunity to object or be heard with respect to the Motion and the Sale Transaction has been afforded to all interested persons and entities, including, without limitation: (i) the U.S. Trustee, (ii) counsel for the Purchaser, (iii) counsel for the Committee, (iv) the Debtor's creditors, and (v) all other parties who filed requests for notice under Bankruptcy Rule 2002 in this case.

G. Notice, as specified in the preceding paragraph and as evidenced by the affidavits of service filed with the Court, has been provided in the form and manner specified in the Motion and required by the Bid Procedures Order, and such notice is reasonable and adequate.

H. The sale process for the Acquired Assets and the Auction were conducted in accordance with the Bid Procedures Order. At the conclusion of the Auction, the Purchaser was deemed the Successful Bidder with the highest and best offer for the Acquired Assets. The Auction was conducted in a non-collusive, fair and good faith manner and a reasonable opportunity has been given to any interested party to make a higher and better offer for the Acquired Assets.

I. The Purchaser is purchasing the Acquired Assets in good faith and is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code, and is therefore entitled to the protection of that provision.

J. The Purchase Agreement was negotiated, proposed and entered into by the Debtor and the Purchaser without collusion, in good faith and from arms' length bargaining positions. Neither the Debtor nor the Purchaser have engaged in any conduct that would cause or permit the Sale Transaction or any part of the transactions contemplated by the Purchase Agreement to be avoidable under section 363(n) of the Bankruptcy Code.

K. As demonstrated by the record established at the Sale Hearing, the Debtor afforded interested potential purchasers a full and fair opportunity to qualify as Qualified Bidders under the Bid Procedures and to submit an offer for the Acquired Assets.

L. The Purchaser is not an "insider" of the Debtor as that term is defined in section 101(31) of the Bankruptcy Code.

M. The consideration provided by the Purchaser for the Acquired Assets pursuant to the Purchase Agreement (i) is fair and reasonable, (ii) is the highest and best offer for the Acquired Assets, (iii) will provide a greater recovery for all of the Debtor's stakeholders than would be provided by any other practical available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, New York State Debtor Creditor Law and all other applicable laws.

N. The Debtor has demonstrated a sufficient basis and compelling circumstances requiring the Debtor to enter into the Purchase Agreement and sell the Acquired Assets under section 363 of the Bankruptcy Code, and such actions are appropriate exercises of the Debtor's business judgment and are in the best interests of the Debtor, the estate, and its creditors.

O. The marketing and bidding processes implemented by the Debtor and its advisors, as set forth in the Motion, were fair, proper, and reasonably calculated to result in the best value received for the Acquired Assets.

P. The Debtor has full authority and power to execute and deliver the Purchase Agreement and related agreements and all other documents contemplated by the Purchase Agreement, to perform its obligations therein and to consummate the Sale Transaction. Except as set forth in the Purchase Agreement, no additional consents or approvals are necessary or required for the Debtor to enter into the Purchase Agreement, perform its obligations therein and consummate the Sale Transaction.

Q. The Purchaser would not have entered into the Purchase Agreement and would not consummate the Sale Transaction, thus adversely affecting the Debtor, the estate, and its creditors, if the Acquired Assets were not sold to it free and clear of all Claims and Encumbrances or if the Purchaser would, or in the future could, be liable for any Claims and Encumbrances against the Acquired Assets.

R. Selling the Acquired Assets other than free and clear of any and all liens, claims (as defined in section 101(5) of the Bankruptcy Code), security interests, mortgages, encumbrances, obligations, including employee benefit obligations charges against or interests in property, adverse claims, claims of possession, rights of way, licenses, easements or restrictions of any kind, demands, guarantees, actions, suits, defenses, deposits, credits, allowances, options, rights, restrictions, limitations, contractual commitments, rights of first refusal, rights of setoff or recoupment, or interests of any kind or nature whether known or unknown, legal or equitable, matured or unmatured, contingent or noncontingent, liquidated or unliquidated, asserted or unasserted, whether arising prior to or subsequent to the commencement of this chapter 11 case,

whether imposed by agreement, understanding, law, equity or otherwise, subject to applicable law, including section 363 of the Bankruptcy Code (collectively, the "Claims and Encumbrances") would adversely impact the Debtor's estate, and the sale of the Acquired Assets other than as free and clear of all Claims and Encumbrances would be of substantially less value to the Debtor's estate.

S. The provisions of section 363(f) of the Bankruptcy Code have been satisfied. All holders of Claims and Encumbrances, if any, who did not object, or withdrew their objections to the Sale Transaction, are deemed to have consented to the Sale Transaction. Further, the proceeds of the Sale Transaction exceed the amount of any lien on the Assets.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, EFFECTIVE IMMEDIATELY, AS FOLLOWS:

1. The relief requested in the Motion is granted and approved in all respects, as set forth herein. The Debtor's entry into the Purchase Agreement and the Sale Transaction is hereby approved in all respects. Except as may be expressly provided herein, objections to the relief sought in the Motion that have not been previously resolved or withdrawn are hereby overruled on their merits.

2. The Debtor is authorized and directed to take any and all actions necessary or appropriate to (a) consummate the Sale Transaction in accordance with the Motion, the Purchase Agreement and this Order, and (b) perform, consummate, implement and close fully the Sale Transaction, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement including, without limitation, consenting to the assignment by the Purchaser of any of its rights under or relating to the Purchase Agreement.

3. Those holders of Claims and Encumbrances and other non-Debtor parties who did not object, or who withdrew their objections to entry of this Order, the Motion, the Bid Procedures Order, the Sale Hearing, the Sale Transaction and the Purchase Agreement are deemed to have consented to this Order, the Bid Procedures Order, the Sale Transaction and the Purchase Agreement pursuant to section 363(f)(2) of the Bankruptcy Code and are enjoined from taking any action against the Purchaser, its successors, its assigns, its representatives, its affiliates, its properties, or any agent of the foregoing to recover any claim which such person or entity has against the Debtor or any of its affiliates or any of the Debtor's property. Those holders of Claims and Encumbrances and other non-Debtor parties who did object, if any, fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are adequately protected by having their Claims and Encumbrances, if any, attach to the proceeds of the Sale Transaction ultimately attributable to the property against or in which they assert a Claim or Encumbrance and/or by having their Claims and Encumbrances satisfied from the proceeds of the Sale Transaction at Closing.

Sale and Transfer of the Acquired Assets

4. Upon Closing, the Acquired Assets transferred, sold and delivered to the Purchaser shall be free and clear of all Claims and Encumbrances of any person or entity. The transfer of the Acquired Assets to the Purchaser constitutes a legal, valid and effective transfer of the Acquired Assets and shall vest the Purchaser with all right, title and interest in and to the Acquired Assets.

5. Upon closing of the Sale Transaction, this Order shall be construed as, and shall constitute for any and all purposes, a full and complete general assignment, conveyance and transfer of the Acquired Assets pursuant to the terms of the Purchase Agreement.

6. Effective on the Closing, all entities, including, but not limited to, the Debtor, creditors, employees, former employees and shareholders, administrative agencies, tax and regulatory authorities, governmental departments, secretaries of state, federal, state and local officials, and their respective successors or assigns, including, but not limited to, persons asserting any Claims or Encumbrance against the Debtor's assets, shall be permanently and forever barred, restrained and enjoined from commencing or continuing in any manner any action or other proceeding of any kind against the Acquired Assets or the Purchaser (or its successors, assigns, agents or representatives) as alleged successor or otherwise with respect to any Claims and Encumbrances on or in respect of the Acquired Assets.

7. Each and every term and provision of the Purchase Agreement, together with the terms and provisions of this Order, shall be binding in all respects upon all entities, including, but not limited to the Debtor, the Purchaser, creditors, employees, former employees and shareholders, administrative agencies, governmental departments, secretaries of state, federal, state and local officials and their respective successors or assigns, including but not limited to persons asserting any Claim or Encumbrance against or interest in the Debtor's estate or the Debtor's assets, including any subsequent appointment of a trustee or other fiduciary under any section of the Bankruptcy Code.

8. Upon the Closing, all entities holding Claims and Encumbrances of any kind and nature against the Debtor's assets hereby are barred from asserting such Claims and Encumbrances against the Purchaser (or its successors, assigns, agents or representatives) and/or the Acquired Assets and, effective upon the transfer of the Acquired Assets to the Purchaser upon Closing, the Claims and Encumbrances shall attach to the proceeds of the Sale Transaction with the same force, validity, priority and effect, if any, as against the Debtor's assets.

9. This Order (a) is and shall be effective as a determination that, upon Closing, all Claims and Encumbrances existing as to the Debtor's assets conveyed to the Purchaser have been and hereby are adjudged to be unconditionally released, discharged and terminated, with all such Claims and Encumbrances attaching automatically the proceeds in the same manner and priority, and (b) shall be binding upon and govern the acts of all entities, including all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies or units, governmental departments or units, secretaries of state, federal, state and local officials and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Debtor's assets conveyed to the Purchaser. All Claims and Encumbrances of record as of the date of this Order shall be deemed to be removed and stricken as against the Acquired Assets in accordance with the foregoing. All entities are authorized and specifically directed to strike all such recorded Claims and Encumbrances against the Acquired Assets from their records, official or otherwise.

10. If any person or entity which has filed financing statements, mortgage, *lis pendens* or other documents or agreements evidencing Claims and Encumbrances on the Acquired Assets shall not have delivered to the Debtor prior to closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements and any other documents necessary for the purpose of documenting the release of all Claims and Encumbrances which the person or entity has or may assert with respect to the Acquired Assets, the Debtor is hereby authorized and directed upon closing, and the Purchaser is hereby authorized upon closing, to execute and file such statements, instruments, releases and

other documents on behalf of such person or entity with respect to the Acquired Assets. Upon closing of the Sale Transaction, each of the Debtor's creditors is authorized and directed to execute such documents and take all such actions as may be necessary to release their respective Claims and Encumbrances against the Acquired Assets.

11. Upon closing, the Purchaser (or its successors, assigns, agents or representatives) shall not be deemed to be (a) a successor to the Debtor, (b) *de facto* merged with the Debtor or (c) a mere continuation of the other Debtor. Without limiting the generality of the foregoing, and except as specifically provided in the Purchase Agreement, the Purchaser (or its successors, assigns, agents or representatives) shall not be liable for any claims against the Debtor or any of its predecessors or affiliates or assets, other than as expressly provided for in the Purchase Agreement and/or in this Order.

12. Promptly following the Closing, the Debtor is authorized and directed to satisfy the agreed amount of the Debtor's outstanding secured indebtedness to the following creditors: (i) Signature Bank; (ii) Liberty Mutual Insurance Company; and (iii) Wells Fargo, from the proceeds of Sale or otherwise, unless otherwise agreed.

13. Notwithstanding anything herein to the contrary, nothing herein shall be deemed to affect the right of any creditor of the Debtor strictly under Article 3-A of the New York Lien Law.

Assumption and Assignment of Contracts

14. Disclosure Schedule 1.6 to the Purchase Agreement identifies all Contracts the Purchaser wishes to be assumed by the Debtor and assigned by the Debtor to the Purchaser (the "Acquired Contracts"). All Contracts not identified in Disclosure Schedule 1.6 to the Purchase Agreement shall not be assumed by the Debtor and assigned to the Purchaser and shall be

referred to as "Excluded Contracts". The Debtor shall assume in the Bankruptcy Case and assign to the Purchaser, all of the Acquired Contracts, provided that the Purchaser shall pay all scheduled and disclosed cure amounts in connection with such assumption, and assign said Acquired Contracts to the Purchaser. The Debtor shall use best efforts to seek assumption and assignment of any Contracts designated prior to and after the Closing and obtain an order of the Court authorizing such assumptions and assignments.

Additional Provisions

15. The provisions of this Order and the Purchase Agreement and any actions taken pursuant hereto or thereto shall survive entry of any order which may be entered (a) confirming or consummating any plan of reorganization of the Debtor, (b) converting the Debtor's case from chapter 11 to chapter 7, (c) dismissing the Debtor's bankruptcy case or (d) appointing a chapter 11 trustee or examiner, and the terms and provisions of the Purchase Agreement as well as the rights and interests granted pursuant to this Order and the Purchase Agreement shall continue in this or any superseding case and shall be binding upon the Debtor, the Purchaser, and their respective successors and permitted assigns.

16. The Debtor shall assign to the Purchaser any claim and cause of action related to the Acquired Assets, including, without limitation, (i) those arising under chapter 5 of the Bankruptcy Code, and (ii) those related to any employee, independent contractor, or vendor with which the Purchaser will continue to perform business, or related to any Assigned Contract, excluding those claims relating to any Insider of the Debtor (as insider is defined under Section 101(31) of the Bankruptcy Code) or any Affiliate (as defined in the Purchase Agreement) of an Insider.

17. Each and every federal, state, and governmental agency or department and any other person or entity is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

18. Nothing contained in any order of any type or kind entered in this chapter 11 case or any related proceeding subsequent to entry of this Order, nor in any chapter 11 plan confirmed in this chapter 11 case, shall conflict with or derogate from the provisions of the Purchase Agreement or the terms of this Order. In any plan of reorganization or liquidation or otherwise, the Debtor shall not make any statement, take any position or take any act that supports an argument that the Purchaser assumed debt that is not expressly assumed under the Purchase Agreement.

19. To the extent, if any, anything contained in this Order conflicts with a provision in the Purchase Agreement, this Order shall govern and control.

20. The Purchaser is purchasing the Acquired Assets in good faith and is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code, and is therefore entitled to the protection of that provision. The consideration provided by the Purchaser for the Acquire Assets is fair and reasonable, and the Sale Transaction may not be avoided under section 363(n) of the Bankruptcy Code.

21. This Court retains jurisdiction, even after conversion of this chapter 11 case to a case under chapter 7, to (a) interpret, implement and enforce the terms and provisions of this Order (including any injunctive relief provided in this Order) and the terms of the Purchase Agreement, all amendments thereto and any waivers and consents thereunder and of each of the agreements executed in connection therewith; (b) protect the Purchaser (and its successors,

assigns, agents and representatives) and the Acquired Assets from and against any of the Claims and Encumbrances; (c) resolve any disputes arising under or related to the Purchase Agreement or the Sale Transaction; (d) adjudicate all issues concerning (alleged) pre-Closing Claims and Encumbrances and any other (alleged) interest(s) in and to the Debtor's assets, including the extent, validity, enforceability, priority and nature of all such (alleged) Claims and Encumbrances and any other (alleged) interest(s); and (e) adjudicate any and all issues and/or disputes relating to the Debtor's right, title or interest in the Debtor's assets, the Motion and/or the Purchase Agreement.

22. From and after the date hereof, the Debtor shall act in accordance with the terms of the Purchase Agreement and the Debtor, to the extent they have not already done so, shall execute the Purchase Agreement prior to Closing.

23. This Order and the Purchase Agreement shall be binding in all respects upon all creditors (whether known or unknown) of the Debtor, all successors and assigns of the Purchaser, the Debtor and its affiliates and subsidiaries, the Debtor's assets, and any subsequent trustees appointed in the Debtor's chapter 11 case or in any chapter 7 case or upon (a) a conversion of this chapter 11 case to a case under chapter 7 or (b) dismissal of the Debtor's bankruptcy case.

24. The failure specifically to include any particular provisions of the Purchase Agreement in this Order shall not diminish or impair the efficacy of such provisions, it being the intent of the Court that the Purchase Agreement and each and every provision, term and condition thereof be, and therefore is, authorized and approved in its entirety.

25. The provisions of this Order are non-severable and mutually dependent.

26. The automatic stay of section 362(a) of the Bankruptcy Code shall not apply to and otherwise shall not prevent the exercise or performance by any party of its rights or obligations under the Purchase Agreement, including, without limitation, with respect to any cash held in escrow pursuant to the provisions thereof.

27. This Sale Order shall take effect immediately and shall not be stayed pursuant to Bankruptcy Rules 6004(g), 6004(h), 6006(d), 7062, or otherwise.

Dated: New York, New York
January __, 2018

HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE

ASSET PURCHASE AGREEMENT

This **ASSET PURCHASE AGREEMENT** (this "Agreement") is made and entered into this 19th day of December, 2017 (the "Effective Date"), among Trident General Contracting LLC, a New York limited liability company (the "Purchaser") and Advanced Contracting Solutions, LLC, a Delaware limited liability company ("Debtor" or "Seller") (each of the Purchaser and Seller a "Party," collectively, the "Parties"). Certain capitalized terms which are used but not defined when used shall have the meaning set forth in Article VII of this Agreement.

WITNESSETH:

WHEREAS, Seller filed a voluntary bankruptcy petition under Chapter 11 of Title 11 of the United States Code, as amended (the "Bankruptcy Code") on November 6, 2017 in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), Case Number 17-13147 (SHL) (the "Bankruptcy Case");

WHEREAS, at the time of the filing of the Bankruptcy Case, Seller was engaged in business as a concrete foundation and concrete super-structure contractor in the New York metropolitan area (the "Business");

WHEREAS, Seller wishes to sell and transfer to Purchaser and Purchaser wishes to purchase from Seller all of the Acquired Assets (as hereinafter defined) and assume the Assumed Liabilities relating to Seller' Business in accordance with Sections 105(a), 363 and other applicable provisions of the Bankruptcy Code, upon the terms and conditions and for the consideration described below in this Agreement; and

WHEREAS, the transactions hereunder are subject to Bankruptcy Court approval and the Acquired Assets will be sold pursuant to a Sale Order (as hereinafter defined) in form and substance satisfactory to Seller and Purchaser.

NOW, THEREFORE, in consideration of the mutual promises, covenants, representations and warranties made herein and of the mutual benefits to be derived therefrom, the parties hereto agree as follows:

ARTICLE I

PURCHASE AND SALE OF ACQUIRED ASSETS

1.1 Sale of Acquired Assets. Subject to the terms and conditions hereof, at the Closing (as hereinafter defined) Seller shall sell, transfer, convey and deliver the Acquired Assets to Purchaser and Purchaser shall purchase all of the Acquired Assets from Seller free and clear of all Liens existing as of the Closing, regardless of whether any of such Liens existed before, on, or after the commencement of the Bankruptcy Case.

1.2 Purchase Price. On or before December 28, 2017, Purchaser shall deliver into escrow with Seller's counsel, by wire transfer or other immediately available funds, an earnest

money deposit in the amount of $400,000.00 (the "Deposit"). The cash purchase price of the Acquired Assets shall be $4,000,000.00 less the Deposit (the "Closing Payment"). The Closing Payment shall be payable at the Closing by wire transfer or other immediately available funds. As additional consideration, Purchaser shall assume the Assumed Liabilities in accordance with the terms of Section 1.5 hereof in an amount estimated to be $17,900,000.00 in the aggregate. The Closing Payment, as adjusted pursuant to the Section 1.3 hereof, and the Assumed Liabilities shall collectively be referred to as the "Purchase Price."

1.3 Adjustments to Closing Payment. The Closing Payment shall be adjusted in accordance with the following: (a) if the outstanding amount of the purchased Accounts Receivable as of the Adjustment Date is less than $24,400,000, then the Purchase Price shall be decreased dollar for dollar (and no Purchase Price adjustment shall occur if the Accounts Receivable exceed such amount, except as provided in Section 1.5 below); and (b) in the event any of the Acquired Contracts are terminated by a party other than Seller prior to the Closing Date, the Closing Payment will be decreased by any amount received by Seller from such party in connection with the termination of the Acquired Contract. Not later than thirty (30) days following the Closing Date, Purchaser and Seller shall prepare and agree in good faith a final statement (the "Final Statement") setting forth as of the Closing Date the actual amount of purchased Accounts Receivable determined in accordance with the Seller's books and records together with a calculation of any adjustment required to be made to the Closing Payment (the "Reconciliation Amount"). Within fifteen (15) days following the delivery of the Final Statement to Seller, Purchaser shall pay to the Seller, or Seller shall pay to the Purchaser, as applicable, the Reconciliation Amount, if any.

1.4 Allocation of Purchase Price. The parties agree to allocate the Closing Payment as determined by the Purchaser at the Closing. The parties shall each report the federal, state, local and other tax consequences of the purchase and sale of the Acquired Assets contemplated hereby in a manner consistent with such allocation. In that regard, Purchaser and Seller each hereby covenant and agree to deliver at Closing copies of Form 8594, Asset Acquisition Statement Under Section 1060 (which shall be filed by both Purchaser and Seller, in accordance with the Instructions therefor), and that neither Purchaser nor Seller will take a position on any income tax return or in any judicial proceeding that is in any way inconsistent with the Purchase Price allocation as determined in this Agreement.

1.5 Assumption of Liabilities; Purchaser Not Successor to Seller. Purchaser shall assume as of the Closing Date and shall subsequently observe, honor and pay in an amount not to exceed $17,900,000.00 in the aggregate, unless there is a commensurate dollar-for-dollar increase in Accounts Receivable as of the Adjustment Date over $24,400,00.00, with respect to (i) certain post-petition accrued expenses and certain pre-petition accounts payable of Seller (excluding professional fees and other expenses not incurred in the Ordinary Course of Business) and cure costs under the Acquired Contracts or any leases expressly assumed by or assigned to Purchaser pursuant to Section 365, all as of the Closing Date, and (ii) any ongoing post-Closing performance obligations under the Acquired Contracts or any leases expressly assumed by or assigned to the Purchaser pursuant to Section 365 (collectively, the "Assumed Liabilities"). The Assumed Liabilities are listed in Disclosure Schedule 1.5, which shall be updated prior to Closing as of the Adjustment Date. Purchaser shall not be deemed to be the successor to Seller and Seller

hereby acknowledges and agrees that, except for the Assumed Liabilities, Purchaser is not assuming any liabilities or obligations of Seller, whether known, unknown, contingent or otherwise.

1.6 Acquired Contracts. Subject to Bankruptcy Court approval, Seller shall assume and assign to Purchaser, and Purchaser shall assume the contracts listed on Disclosure Schedule 1.6 (the "Acquired Contracts").

1.7 Adjustment Date. As between Purchaser and Seller, all items of purchased Accounts Receivable and Assumed Liabilities shall be adjusted and apportioned so as to yield the same economic result, to the extent reasonably practical, as if the Closing Date were January 26, 2018 (the "Adjustment Date"). Seller agrees that the excess of (i) the aggregate amount of Accounts Receivable over (ii) the aggregate amount of the Assumed Liabilities, shall not be less than $6,500,000.00 on the Closing Date.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

2.1 Representations and Warranties of Seller. Seller represents and warrants to Purchaser as follows:

2.1.1 Ownership and Condition of Acquired Assets. Seller has good and marketable title to all the Acquired Assets, free and clear of any Liens, except for the Liens identified on Disclosure Schedule 2.1.1. Subject to the entry of and in accordance with the terms of the Sale Order, all Liens will be discharged in full on or prior to the Closing Date.

2.1.2 Authority for Agreements. Subject to Bankruptcy Court approval and entry of the Sale Order, Seller has the legal capacity to execute and deliver this Agreement as well as other agreements and instruments referenced in this Agreement (collectively, the "Transaction Documents"), and to perform its obligations under the Transaction Documents and to consummate the transactions contemplated by each such Agreement. Subject to Bankruptcy Court approval, the Transaction Documents constitute the valid and legally binding obligations of Seller and Purchaser. The execution and delivery of the Transaction Documents and the consummation of the transactions contemplated by the Transaction Documents will not conflict with or result in any violation of or default under any provision of (a) the operating agreement or certificate of formation of Seller, or (b) any mortgage, indenture, lease, agreement or other instrument, permit, concession, grant, franchise, license, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to Seller, or any of its properties. Upon entry of the Sale Order, except as set specified in Disclosure Schedule 2.1.2 and/or as set forth in Section 365 of the Bankruptcy Code, no consent, license, approval, order or authorization of, or registration, declaration or filing with, any Governmental Authority is required on the part of Seller in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby. Upon entry of the Sale Order, except as set specified in Disclosure Schedule 2.1.2, no consent of any third party is required to be obtained by Seller in connection with the execution, delivery and performance of this Agreement or the consummation

of the transactions contemplated hereby (including, without limitation, in connection with the assignment to Purchaser of the Contracts).

2.1.3 Company Status. Seller is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware, and subject to Bankruptcy Court approval, has full power and authority to carry on its business as now conducted and to own or lease and to operate its properties as and in the places where such business is now conducted and such properties are now owned, leased or operated. Seller is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the nature of Seller's business or the properties owned or leased by it makes such qualification necessary and where the failure to so qualify may give rise (individually or in the aggregate) to a Material Adverse Effect.

2.1.4 Capitalization. All of the membership interests in Seller are owned either directly or indirectly through those entities set forth in Section 2.1.4 of the Disclosure Schedule.

2.1.5 Undisclosed Liabilities; Secured Creditors. Except as disclosed in Seller's Schedules of Assets and Liabilities filed in the Bankruptcy Case, Seller does not have any known liabilities or obligations of any nature, whether absolute, accrued, contingent or otherwise, except as follows: (i) those certain disputed claims for contributions to various union fringe benefit funds arising after in or around June 2016; (ii) allowed professional fees of the Seller, Official Committee of Unsecured Creditors, lender or other professional fees properly charged to the Seller and its bankruptcy estate, that are incurred in the Bankruptcy Case; and (iii) liabilities incurred in the ordinary course of the Seller's business on and after the Petition Date. Seller has no secured creditors other than the creditors expressly listed in Section 3.2.6 of this Agreement.

2.1.6 Taxes. Except as provided in Disclosure Schedule 2.1.6, Seller has duly filed all federal, state and local Returns which are required to be filed by it prior to the Effective Date and have paid all Taxes which are shown thereon to be due and all other Taxes imposed by law upon them or any of their properties, the Acquired Assets, income, receipts, payrolls, transactions, capital, net worth or franchises which have become due and payable. Except as provided in Disclosure Schedule 2.1.6, no transfer, property or other Taxes are or will be payable (including, without limitation, as a result of an audit or other official inquiry before or after the Closing) by Purchaser or Seller in respect of the sale by Seller. Except as described in Disclosure Schedule 2.1.6, no tax liens have been filed and neither the Internal Revenue Service, the New York State Department of Taxation and Finance, nor any other taxing authority is now asserting or, to the Knowledge of Seller, threatening to assert against Seller any deficiency or claim for additional Taxes. Except as provided in Disclosure Schedule 2.1.6, no Return of Seller is currently under audit by the Internal Revenue Service, the New York State Department of Taxation and Finance, or by the taxing authorities of any other jurisdiction.

2.1.7 Material Contracts. Section 2.1.7 of the Disclosure Schedule contains a complete and correct list as of the Effective Date of all agreements, contracts and commitments of the following types, written or oral, to which Seller is currently a party or by which Seller or its properties are bound as of the Effective Date: (a) mortgages, indentures,

security agreements, letters of credit, loan agreements and other agreements, guarantees and instruments relating to the borrowing of money or extension of credit; (b) employment, consulting, sales representative, severance and agency agreements; (c) collective bargaining agreements; (d) bonus, profit-sharing, compensation, stock option, pension, retirement, deferred compensation or other plans, trusts or funds for the benefit of employees, officers, agents and directors (whether or not legally binding); (e) licenses of patent, copyright, trade names, trademark, transfer of technology or know how and other intellectual property rights; (f) brokerage or finder's agreements; (g) joint venture and partnership agreements; (h) construction contracts and contracts to provide concrete and concrete related services with respect to construction projects and (i) other agreements, contracts and commitments which in any case involve payments or receipts of more than $20,000. Seller has delivered to Purchaser complete and correct copies of all such written agreements, contracts and commitments, together with all amendments thereto.

2.1.8 Property.

(a) Seller owns no real property. The only real property is leased by Seller (the "Real Property") pursuant to the lease set forth on Disclosure Schedule 2.1.8 (the "Lease"). Seller has a valid leasehold interest in the Real Property, free and clear of all Liens. The Lease is in full force and effect, and a true, correct and complete copy thereof has been delivered to Purchaser. Except as set forth in Disclosure Schedule 2.1.8, no default exists under the Lease.

(b) All improvements located on the Real Property and all tangible personal property currently in use by Seller are in operating condition and repair, subject to ordinary wear and tear, and are performing the functions for which they were intended. The Real Property possesses all Certificates of Occupancy and permits required to allow the Business to be conducted.

2.1.9 Employees, Labor Matters, etc.

(a) Purchaser shall have no obligation to employ any of Seller's employees, provided however, Purchaser may make applications for employment with Purchaser available to Seller's employees.

(b) Except to the extent specifically provided in this Agreement and subject to the Bankruptcy Code and other applicable Laws, Seller shall be responsible and liable for all amounts owed to any of its employees or former employees, including, without limitation, accrued wages, salaries, sick pay, vacation, compensation, bonuses or other benefits or payments on account of termination, and any amounts determined to be due to the plaintiffs in that certain action commenced on October 17, 2014, by the trustees of four union funds in the United States District Court for the Southern District of New York which was thereafter consolidated with a later-filed case brought by a separate fund, or any other labor unions and related fringe benefit funds (collectively, the "Union Plaintiffs") (*See Moore v. Navillus Tile, Inc., et al.*, Case No. 1:14-cv-08326-CM-JLC (S.D.N.Y. 2014)). Purchaser shall not assume or accept any obligation or liability under any employee benefit plan or compensation arrangement of Seller.

(c) Seller shall be solely responsible for any and all liabilities, penalties, fines or other sanctions that may be assessed or otherwise due under the WARN Act and similar laws and regulations, if applicable, on account of the dismissal or termination of any of the employees of Seller by it on or prior to the Closing Date. No employee of the Seller has executed a non-competition agreement in favor of the Seller or an employment agreement with the Seller.

(d) Purchaser shall have the right, subject to applicable Laws, to review and inspect Seller's employee files and records, and, upon request, interview employees of Seller, in order for Purchaser to evaluate each and every employee for possible hiring and employment, in Purchaser's absolute and sole discretion. Purchaser intends to offer employment to Seller's employees to the extent deemed necessary to perform under the Acquired Contracts, in the Purchaser's discretion. To the extent that Purchaser offers employment to any employee of Seller and such employee accepts such employment, then, at the Closing or within ten (10) days thereafter, Seller shall pay to such employee or to Purchaser all amounts owing by Seller prior to the Closing with respect to such employees for accrued vacation time, sick pay time and other unpaid wages, salaries and other compensation.

(e) Purchaser acknowledges that any and all decisions regarding which of the employees may be offered employment by Purchaser are solely those of Purchaser.

(f) The obligations of Seller and of Purchaser hereunder relating to Seller's employees are for the sole benefit of either Seller or Purchaser, and no inference should be drawn that any employee is a beneficiary of any of the terms, provisions and obligations hereunder; and the ability to enforce the obligations of Seller and/or Purchaser hereunder with respect to such employees shall be the right of either Seller or Purchaser, as applicable, but not any employee.

2.1.10 Litigation. Except for the Bankruptcy Case and as set forth in Part 3 of Seller's Statement of Financial Affairs, dated November 20, 2017 as disclosed in Schedule 2.1.10, as filed in the Bankruptcy Case, there is no judicial or administrative action, suit, proceeding or investigation pending or, to the Knowledge of Seller, threatened which has or could have a Material Adverse Effect or result in any liability on the part of Seller, or which involves or could involve the validity of this Agreement or of any action taken or to be taken in connection herewith.

2.1.11 Brokers, Finders, etc. All negotiations relating to this Agreement and the transactions contemplated hereby have been carried on without the participation of any Person acting on behalf of Seller in such manner as to give rise to any valid claim against Seller or Purchaser for any brokerage or finder's commission, fee or similar compensation.

2.1.12 Intellectual Property. Disclosure Schedule 2.1.12 contains a complete and correct list and accurate summary description of all intellectual property relating to the Business now held by or owned by Seller (the "Intellectual Property"). The Intellectual Property includes all intellectual property that is used in the Business. Except as set forth in Disclosure Schedule 2.1.12, all Intellectual Property is registered to or owned by or licensed to Seller, and is valid and enforceable.

2.1.13 Insurance. Disclosure Schedule 2.1.13 contains a complete and correct list and accurate summary description of all insurance policies maintained by Seller. Seller has delivered to Purchaser complete and correct copies of all such policies together with all riders and amendments thereto. Such policies are in full force and effect, and all premiums due thereon have been paid. Seller has complied in all respects with the terms and provisions of such policies.

2.1.14 Permits. Disclosure Schedule 2.1.14 lists all material Permits required for Seller to conduct the business as currently conducted or for the ownership and use of the Acquired Assets have been obtained by Seller and are valid and in full force and effect, including the names of the Permits and their respective dates of issuance and expiration.

2.1.15 No Adverse Change. Other than in connection with the commencement and pendency of Seller's Chapter 11 proceeding, there has been no material adverse change in Seller's business, operations, financial condition, prospects, contracts, customers or vendors. For the avoidance of doubt, the issues involved in the motion of Gilbane Residential Construction, LLC pending before the Bankruptcy Court, for relief from the automatic stay in the Bankruptcy Case, and the proposed resolution thereof, have been disclosed to Purchaser.

2.1.16 Disclosure. The representations and warranties contained in this Section 2.1 do not contain any untrue statement of a fact or omit to state any fact which is either (a) necessary in order to make the statements and information contained in this Section 2.1 not misleading, or (b) which a prudent purchaser of the Acquired Assets would want to know.

2.1.17 No Other Representations and Warranties. Except for the representations and warranties contained in this Section 2.1 (including the related portions of the Disclosure Schedules), Seller has not made or does not make any other express or implied representation or warranty, either written or oral, on behalf of Seller, including any representation or warranty as to the future revenue, profitability or success of the Business.

2.2 Representations and Warranties of Purchaser. Purchaser represents and warrants to Seller as follows:

2.2.1 Corporate Status. Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York.

2.2.2 Authority for Agreements. Purchaser has the full company power and authority to execute and deliver the Transaction Documents to which it is a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated by such Transaction Documents. The execution and delivery of the Transaction Documents, and the consummation of the transactions contemplated hereunder have been duly authorized by Purchaser. This Agreement constitutes the valid and legally binding obligation of Purchaser. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereunder will not conflict with or result in any violation of or default under any provision of

Purchaser's certificate of formation or any mortgage, indenture, lease, agreement or other instrument, permit, concession, grant, franchise, license, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to Purchaser or any of its properties. No consent, approval, order or authorization of, or registration, declaration or filing with any Governmental Authority is required on the part of Purchaser in connection with the execution and delivery of this Agreement, or the consummation of the transactions contemplated hereby or by any Transaction Documents.

2.2.3 Brokers, Finders, etc. All negotiations relating to this Agreement and the transactions contemplated hereby have been carried on without the participation of any Person acting on behalf of Purchaser in such manner as to give rise to any valid claim against Seller for any brokerage or finder's commission, fee or similar compensation.

2.2.4 Sufficiency of Funds. Purchaser has sufficient cash on hand (or has made financial arrangements to have funds on hand for the Closing) to make payment of the Closing Payment and consummate the transactions contemplated hereby.

ARTICLE III

CLOSING AND CLOSING OBLIGATIONS

3.1 Closing. The closing (the "Closing") shall be held on the later of (i) the first business day following full satisfaction or due waiver of the last to occur of the closing conditions set forth in Article V hereof (other than those to be satisfied at the Closing) and (ii) the first Business Day following the date on which the Sale Order becomes a Final Order, or on such other date as is mutually acceptable to Purchaser and Seller. The Closing will take place remotely on such date. The date on which the Closing occurs is referred to herein as the "Closing Date."

3.2 Closing Deliveries. At the Closing the following agreements, instruments and documents shall be executed and delivered:

3.2.1 Sale of Acquired Assets and Assumption of Acquired Contracts. Seller and Purchaser shall execute and deliver a Bill of Sale, Assignment and Assumption Agreement in the form attached hereto as Exhibit A.

3.2.2 Assignment. Subject to Bankruptcy Court approval, if Purchaser assumes the Lease, Seller shall execute and deliver a Lease Assignment in a form mutually agreeable to Purchaser and Seller, whereby it assigns to Purchaser all of its right, title and interest in and to that certain Agreement of Lease, dated September 28, 2015, for the premises located at 1160 Commerce Avenue, Bronx, New York 10462.

3.2.3 Resolutions. Purchaser and Seller shall each deliver written resolutions of their respective members, managers, shareholders and/or board of directors (as applicable) authorizing the transactions contemplated herein.

3.2.4 Incumbency Certificate. Seller shall deliver a Incumbency Certificate naming all of its directors, officers, and/or members (as applicable), and containing certified copies of Seller's (a) certificate of formation (as applicable), (b) operating agreement, and (c) resolutions authorizing the transactions contemplated herein.

3.2.5 Closing Payment. Purchaser shall deliver to Seller the Closing Payment.

3.2.6 Required Use of Closing Payment. At the Closing, Seller shall be required to use the proceeds of the Closing Payment to satisfy in full (i) Seller's obligations under the DIP Financing Facility, (ii) Seller's secured indebtedness owing to Signature Bank, and (iii) Seller's secured indebtedness to Wells Fargo Bank, N.A. and Wells Fargo Vendor Financial Services, LLC (or its affiliate, if applicable) related to any Acquired Assets. All remaining portions of the Closing Payment must be retained by Seller pending production of the Final Statement and payment by the appropriate Party of the Reconciliation Amount.

3.3 Accounts Receivable; Accounts Payable. On the Closing Date, Seller shall provide Purchaser with a current list of all of its Accounts Receivable, the invoice dates thereof, the name of the obligor(s), and a listing of the moneys received in payment of Accounts Receivable from and after the Adjustment Date. On the Closing Date, Seller shall provide Purchaser with a list of all of its Accounts Payable and other obligations, excluding only those that are being paid at the Closing, subject to adjustment.

ARTICLE IV

COVENANTS

4.1 Due Diligence. During the term of this Agreement, Seller will afford Purchaser's authorized representatives all reasonable opportunity and access during normal business hours to its personnel, contracts, books and records and all other documents and data related to Seller, the Acquired Assets and the Business. Where practicable, Seller will mail such information and materials related to Seller, the Business and the Acquired Assets to Purchaser or Purchaser's accountants and counsel.

4.2 Conduct of Business until the Closing Date. From the Effective Date to the Closing Date, except as contemplated by this Agreement or otherwise consented to by Purchaser in writing (which consent shall not be unreasonably withheld or delayed), subject to orders of the Bankruptcy Court and otherwise to the requirements of the Bankruptcy Code, Seller shall use commercially reasonable efforts to:

4.2.1 carry on its business in, and only in, the Ordinary Course of Business, in substantially the same manner as has been conducted since the Petition Date, subject to orders of the Bankruptcy Court and otherwise to the requirements of the Bankruptcy Code, and use all reasonable efforts to preserve intact its present business organization, and preserve its relationship with contract parties and others having business dealings with it to the end that its

goodwill and going business concern value shall be in all material respects unimpaired following the Closing Date;

4.2.2 maintain all its material structures, equipment and other tangible personal property currently in use in good operating condition and repair, except for ordinary wear and tear;

4.2.3 keep in full force and effect insurance comparable in amount and scope of coverage to insurance now carried by it;

4.2.4 pay accounts payable and other obligations when they become due and payable in the Ordinary Course of Business;

4.2.5 perform in all material respects all of its obligations under agreements, contracts and instruments relating to or affecting its properties, the Acquired Assets and the Business;

4.2.6 maintain its books of account and records in the usual, regular and ordinary manner;

4.2.7 not amend its certificate of incorporation or bylaws;

4.2.8 not enter into or assume any agreement, contract or commitment of the character required to be disclosed in Section 2.1.7;

4.2.9 not merge or consolidate with, or agree to merge or consolidate with, or purchase substantially all of the Acquired Assets of, or otherwise acquire any business or any corporation, partnership, association or other business organization or division thereof;

4.2.10 not take any action the taking of which would result in a violation of any of the representations and warranties set forth in Section 2.1.; and

4.2.11 promptly advise Purchaser in writing of any change which, individually or in the aggregate, has or could have a Material Adverse Effect on the Business or breach this Section 4.2.

4.3 Public Announcements. Except as required by law, no party hereto shall make any public announcement in respect of the transactions contemplated hereby without the prior written consent of the other party hereto (which consent will not be unreasonably withheld or delayed).

4.4 Filings and Authorizations. Seller shall, as promptly as practicable, file or supply, or cause to be filed or supplied, all applications, notifications and information required to be filed or supplied by them pursuant to Applicable Law in connection with the sale and transfer of the Acquired Assets pursuant to this Agreement and the consummation of the transactions contemplated hereby. Seller, as promptly as practicable, (i) shall make, or cause to be made, all such other filings and submissions under laws, rules and regulations applicable to them and give

such reasonable undertakings, as may be required for them to consummate the transfer of the Acquired Assets and the other transactions contemplated hereby, (ii) shall use its commercially reasonable efforts to obtain, or cause to be obtained, all authorizations, approvals, Permits, consents and waivers from all Persons and Governmental Authorities necessary to be obtained by it in order for it to consummate such transfer and such transactions, including without limitation all third party consents required for the assignment of contracts, and (iii) shall use its reasonable efforts to take, or cause to be taken, all other actions necessary, proper or advisable in order for it to fulfill its obligations hereunder; and Seller shall coordinate and cooperate with Purchaser in exchanging such information and supplying such reasonable assistance as may be reasonably requested by Purchaser in connection herewith.

4.5 Access to Records. After the Closing Date, Purchaser shall provide Seller and its representatives reasonable access to the books and records of Seller included in the Acquired Assets during normal business hours and on reasonable prior notice, to enable Seller to prepare tax returns, deal with tax audits and administer claims in the Bankruptcy Case.

4.6 Further Assurances. From and after the Closing, Seller and Purchaser shall execute such further instruments and take such other actions reasonably necessary in order to fulfill their obligations under this Agreement and to effectuate the intent and purposes of this Agreement.

4.7 Breakup Fee and Expense Reimbursement.

4.7.1 Breakup Fee. In the event that the Bankruptcy Court enters a Final Order approving an Alternate Transaction, then Purchaser shall be entitled to and Seller shall pay to Purchaser at the consummation of an Alternate Transaction (or in the case of a plan of reorganization or liquidation that is an Alternate Transaction upon confirmation of such plan of reorganization or liquidation), 3.0% of the Purchase Price (the "Breakup Fee"). The Breakup Fee provided for by this Section is intended to cover opportunity costs incurred by Purchaser in pursuing and negotiating this Agreement and the transactions contemplated hereby, and is considered by the Parties to be reasonable for such purposes. The Breakup Fee shall be paid from the first sale proceeds of an Alternate Transaction. The claims of Purchaser to the Breakup Fee shall constitute an administrative expense against Seller's bankruptcy estate under the applicable provisions of the Bankruptcy Code.

(a) Expense Reimbursement. In addition to any Breakup Fee that may be payable pursuant to this Section 4.7, upon (i) any event in which the Breakup Fee is payable pursuant to this Section or (ii) termination of this Agreement by Purchaser pursuant to Section 6.1.1(b), Section 6.1.1(e) or Section 6.1.1(i), Seller shall reimburse the actual and necessary expenses, including reasonable attorney's fees, incurred in connection with negotiation and entry into the Transaction Documents, due diligence with respect to the transactions contemplated by the Transaction Documents, and obtaining Bankruptcy Court approval of the Transaction Documents, in an amount not to exceed $150,000 (the "Expense Reimbursement"). The claims of Purchaser to the Expense Reimbursement shall constitute an administrative expense against Seller's bankruptcy estate under the applicable provisions of the Bankruptcy Code. "Alternative Transaction" means (a) a merger, consolidation, restructuring, reorganization, plan of

reorganization in the Bankruptcy Case, joint venture, refinancing, funding of a plan of reorganization in the Bankruptcy Case, business combination, transaction or series of transactions involving the sale or other disposition (including, without limitation, by lease, foreclosure, transfer in lieu of foreclosure, or management agreement) of all or any part of Seller, the Business, the Acquired Assets pursuant to one or more transactions to a Person other than Purchaser; (b) the sale of outstanding or newly issued (or some combination of sold and newly issued) capital stock of Seller (including by way of a debt for equity swap, tender offer, foreclosure or plan of reorganization or liquidation) resulting in a transfer of voting control of Seller to a Person or group of Persons who, before the transaction or series of transactions, did not hold voting control of Seller; (c) the dismissal of the Bankruptcy Case, converting the Bankruptcy Case to a Chapter 7 case or if Seller files a motion or other pleading seeking the dismissal or conversion of the Bankruptcy Case under Section 1112 of the Bankruptcy Code or otherwise prior to the Closing, or (d) the appointment of a Chapter 7 trustee or an examiner with expanded powers in the Bankruptcy Case prior to the Closing.

4.7.2 Survival. The provisions of this Section 4.7 shall survive the closing or earlier termination of the transactions contemplated hereby.

4.8 Supplement to Disclosure Schedules. From time to time prior to the Closing, Seller or Purchaser shall supplement or amend the Disclosure Schedules hereto with respect to any matter hereafter arising or of which it becomes aware after the date hereof that causes a representation or warranty set forth in Section 2.1 (with respect to Seller) or in Section 2.2 (with respect to Purchaser) to be untrue in either case (each a "Schedule Supplement"). Each such Schedule Supplement shall be deemed to be incorporated into and to supplement and amend the Disclosure Schedules as of the Closing Date; provided, however, that if such event, development or occurrence which is the subject of the Schedule Supplement constitutes or relates to something that has had or is reasonably likely to cause a Material Adverse Effect, then (i) Purchaser shall have the right to terminate this Agreement pursuant to Section 6.1.1(b); provided, further, that Seller's provision of a Schedule Supplement and Purchaser's non-termination of this Agreement shall constitute a waiver of any of Purchaser's rights to terminate this Agreement for such breach unless such new disclosure has had or is reasonably likely to cause a Material Adverse Effect and (ii) Seller shall have the right to terminate this Agreement pursuant to Section 6.1.1(c); provided, further, that Purchaser's provision of a Schedule Supplement and Seller's non-termination of this Agreement shall constitute a waiver of any of Seller's rights to terminate this Agreement for such breach unless such new disclosure has had or is reasonably likely to cause a Material Adverse Effect.

4.9 Confidentiality. Seller and Purchaser acknowledge and agree that the Confidentiality Agreement dated as of December 19, 2017 remains in full force and effect and, in addition, covenant and agree to keep confidential, in accordance with the provisions of the Confidentiality Agreement, information provided to the parties hereto and their advisors pursuant to this Agreement. If this Agreement is, for any reason, terminated prior to the Closing, the Confidentiality Agreement and the provisions of this Section 4.9 shall nonetheless continue in full force and effect.

4.10 Sales Tax on Transfer. Unless waived by order of the Bankruptcy Court, all sales or use taxes payable with respect to and/or on account of the transfer of Seller's furniture and fixtures to Purchaser shall be paid by Purchaser to Seller at the Closing in the form of a certified check in the amount of the sales tax indicated on the notice provided by the Tax Department (or, if no such notice is received as of the Closing, the amount agreed upon by Seller and Purchaser based on the allocation of the Purchase Price and the applicable sales tax rate) made payable to the Tax Department. The allocated value of the furniture, fixtures and other personal property shall be determined at the Closing and shall be subject to the reasonable approval of the Purchaser. Seller shall promptly remit the same to the Tax Department following Closing.

4.11 Bankruptcy Covenants.

4.11.1 The Sale Motion seeking the entry of the Bidding Procedures Order shall be filed within three (3) business days after execution of this Agreement. The purchase and sale of the Acquired Assets shall be subject to the terms and conditions of the Bidding Procedures Order.

4.11.2 If this Agreement and the sale of the Acquired Assets to Purchaser on the terms and conditions hereof are determined to be the "highest or otherwise best offer" in accordance with the Bidding Procedures Order, Purchaser and Seller agree to use commercially reasonable best efforts to cause the Bankruptcy Court to enter the Sale Order, which shall include provisions authorizing and approving the transactions contemplated hereby, including, without limitation (i) the sale of the Acquired Assets to Purchaser free and clear of all encumbrances pursuant to the terms of this Agreement and Section 363(b) and (f) of the Bankruptcy Code; (ii) finding Purchaser to be in good faith and providing for the protection afforded under Section 363(m) of the Bankruptcy Code; (iii) waiving the stays set forth in Bankruptcy Rules 6004(h) and 6006(d); (iv) providing that Purchaser shall not be subject to any successor liability and shall have no liability or suffer any damages for any encumbrances existing prior to the Closing Date which may be asserted against Seller, the Acquired Assets, the Business or Seller's bankruptcy estate, or any claims against Purchaser as successor to the Acquired Assets; (v) approving the assumption and assignment to Purchaser pursuant to Section 365 of the Bankruptcy Code of all Acquired Contracts; (vi) providing for the retention of jurisdiction by the Bankruptcy Court to resolve any and all disputes that may arise under or relate to this Agreement or the Sale Order, whether between Seller and Purchaser or involving a Person in interest in the Bankruptcy Case; (vii) containing findings of fact and conclusions of law that include the following: (A) the transactions under this Agreement were negotiated and entered into in good faith and at arm's-length; (B) the marketing and sale process conducted by Seller pursuant to the Bidding Procedures are bona fide and adequate; (C) Seller gave due and proper notice and an opportunity to be heard to all interested parties of this Agreement and the transactions contemplated herein; (D) Purchaser is not holding itself out to the public as a continuation of Seller; (E) the consideration to be paid by Purchaser under this Agreement constitutes reasonably equivalent value (as that term is used in each of the Uniform Fraudulent Transfer Act and Section 548 of the Bankruptcy Code) and fair consideration for the Acquired Assets; and (F) neither Purchaser nor Seller are entering into the transactions contemplated by this Agreement fraudulently. Seller shall promptly provide Purchaser with copies of any objections to the Sale Order.

4.11.3 In the event an appeal is taken or a stay pending appeal is requested (or a petition for certiorari or motion for rehearing or reargument is filed), with respect to the Bidding Procedures Order, the Sale Order, or any other order of the Bankruptcy Court related to this Agreement, Seller shall take all steps as may be reasonable and appropriate to defend against such appeal, petition, or motion and Purchaser agrees to cooperate in such efforts. Each Party shall use its commercially reasonable best efforts to obtain an expedited resolution for such appeal.

4.11.4 From and after the date of this Agreement, except as may be provided in the Bidding Procedures Order, Seller shall not take any action or fail to take any action, which action or failure to act would reasonably be expected to prevent or impede the consummation of the transactions contemplated by this Agreement in accordance with the terms of this Agreement. Seller covenants and agrees that the terms of any plan of reorganization or liquidation or proposed order of the Bankruptcy Court that may be filed, proposed or submitted or supported by Seller after entry of the Sale Order or consummation of the transactions contemplated hereby shall not conflict with, supersede, abrogate, nullify, modify or restrict the terms of this Agreement, the Bidding Procedures Order or the Sale Order, or the rights of Purchaser hereunder or thereunder.

4.11.5 The Parties shall consult with each other regarding pleadings that any of them intends to file with the Bankruptcy Court in connection with, or which might reasonably affect the Bankruptcy Court's approval of, as applicable, the Bidding Procedures Order and the Sale Order. Each Party shall promptly provide the other Party and its counsel with copies of all notices, filings and orders of the Bankruptcy Court that such Party has in its possession (or receives) pertaining to the Sale Motion, or any other order related to any of the transactions contemplated by this Agreement, but only to the extent such papers are not publicly available on the docket of the Bankruptcy Court or otherwise made available to the other Parties and their counsel. Without limiting the foregoing, the form and substance of the Bidding Procedures Order and the Sale Order shall be in form and substance reasonably acceptable to Purchaser.

ARTICLE V

CONDITIONS PRECEDENT

5.1 Conditions to the Sellers' Obligations. The obligation of Seller to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, prior to or at the Closing, of each of the following conditions unless waived by Seller in writing:

5.1.1 Purchaser's Representations and Warranties. Each representation and warranty made by Purchaser in Article II hereto shall be true and correct in all material respects on and as of the Closing Date with the same effect as though each such representation or warranty had been made or given on and as of the Closing Date, other than representations and warranties made as of a specific date, which shall be true and correct as of such specific date.

5.1.2 Purchaser's Covenants. Purchaser shall have performed and complied, in all material respects, with all of the covenants set forth herein which are to be performed or complied with by it before or as of the Closing Date.

5.1.3 Purchaser's Deliveries. Purchaser shall have executed and delivered to Seller the Transaction Documents

5.1.4 No Proceedings. No action, suit or proceeding which has a reasonable likelihood of success is pending or threatened by or before any Governmental Entity to enjoin, restrain, prohibit or obtain substantial damages in respect of the transfer of the Acquired Assets as contemplated by this Agreement or the Transaction Documents, or which would be reasonably likely to prevent or make illegal the consummation of any transactions contemplated by this Agreement or the Transaction Documents.

5.1.5 Bankruptcy Court Approval. The Sale Order shall have been entered by the Bankruptcy Court.

5.2 Conditions to Purchaser's Obligations

The obligation of Purchaser to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, prior to or at the Closing, of each of the following conditions unless waived by Purchaser in writing:

5.2.1 Seller's Representations and Warranties. Each representation and warranty made by Seller in Article II hereof shall be true and correct in all respects on and as of the Closing Date with the same effect as though each such representation and warranty had been made or given on and as of the Closing Date other than representations and warranties made as of a specific date, which shall be true and correct as of such specific date.

5.2.2 Seller's Covenants. Seller shall have performed and complied in all material respects with all of the covenants set forth herein which are to be performed by or complied with by it before or as of the Closing Date.

5.2.3 Seller's Deliveries. Seller shall have executed and delivered to Purchaser the Transaction Documents.

5.2.4 No Proceedings. No action, suit or proceeding which has a reasonable likelihood of success is pending or threatened by or before any Governmental Entity to enjoin, restrain, prohibit or obtain substantial damages against Purchaser in respect of the transfer of the Acquired Assets as contemplated by this Agreement or the Transaction Documents, or which would be reasonably likely to prevent or make illegal the consummation of any transactions contemplated by this Agreement or the Transaction Documents.

5.2.5 Bankruptcy Court Approval. The Sale Order shall have been entered by the Bankruptcy Court by no later than 35 days following the Effective Date, or such later date as may be acceptable to the Purchaser, in its sole discretion and shall (a) be a Final

Order, (b) approve the sale of the Acquired Assets to Purchaser pursuant to Section 363 of the Bankruptcy Code, free and clear of any and all liens, claims, interests and encumbrances except those, if any, assumed by Purchaser, and (c) shall contain a waiver of the conditions set forth in Bankruptcy Rules 6004(h) and 6006(d).

5.2.6 Financial Statements. Prior to the Closing Seller shall deliver to Purchaser financial statements of Seller satisfactory to the Purchaser for the Company's last completed fiscal year and unaudited interim financial statements for the Company's last completed fiscal quarter.

5.2.7 Due Diligence. Purchaser shall be entitled to complete, to its satisfaction, a review and investigation of the business and operations of Seller, including a review of legal, financial, contractual, operational, environmental, product liability, intellectual property and employment matters of the Company.

5.2.8 Receipt of Approvals. Purchaser shall have received all Governmental Approvals and approvals of third parties required for lawful consummation of the transactions contemplated herein, if any. The parties shall use their commercially reasonable best efforts to obtain all such Governmental Approvals.

5.2.9 Cure of Defaults. Seller shall have cured any existing defaults or shall have made arrangements satisfactory to Purchaser to cure the Acquired Contracts and the Lease.

5.2.10 Form of Orders. The form and substance of the Bidding Procedures Order and the Sale Order shall be reasonably acceptable to Purchaser.

5.2.11 Estoppel Information – Assumed Liabilities. Purchaser shall have received written estoppel confirmation of the amount(s) owing by Seller from every creditor included in the Assumed Liabilities which is claiming more than $50,000 that is owed by Seller.

ARTICLE VI

TERMINATION

6.1 Termination.

6.1.1 Termination of Agreement. The parties may terminate this Agreement as provided below (whether before or after the entry of the Bidding Procedures Order and/or the Sale Order):

(b) Purchaser and Seller may terminate this Agreement by mutual written consent at any time prior to the Closing;

(c) Purchaser may terminate this Agreement by giving written notice to Seller at any time prior to the Closing (i) in the event Seller has breached any

representation, warranty, or covenant contained in this Agreement and such breach has caused or is reasonably likely to cause a Material Adverse Effect, or (ii) if the Closing shall not have occurred on or before the Closing Date because any of the conditions precedent set forth in Section 5.1 hereof have not been satisfied in full; provided that Seller shall have ten (10) days after written notice of termination by Purchaser to cure such breach (it being agreed that, subject to Section 4.8, a breach of a representation or warranty by Seller may be cured by Seller by disclosing such matter in writing to Purchaser within such 10-day time period);

(d) Seller may terminate this Agreement by giving written notice to Purchaser at any time prior to the Closing (i) in the event Purchaser has breached any representation, warranty, or covenant contained in this Agreement and such breach has caused or is reasonably likely to cause a Material Adverse Effect, or (ii) if the Closing shall not have occurred on or before the Closing Date because any of the conditions precedent set forth in Section 5.2 hereof have not been satisfied in full; provided that Purchaser shall have ten (10) days after written notice of termination by Seller to cure such breach (it being agreed that, subject to Section 4.8, a breach of a representation or warranty by Purchaser may be cured by Purchaser by disclosing such matter in writing to Seller within such 10-day time period).

(e) Purchaser may terminate this Agreement by giving written notice to Seller if the Closing shall not have occurred on or before 5:00 p.m. on the fifteenth day after the Sale Order has been entered;

(f) Purchaser may terminate this Agreement by giving written notice to Seller if Seller has not filed a motion with the Bankruptcy Court and (i) the Bankruptcy Court has not entered the Bidding Procedures Order on or before January 5, 2018 or (ii) the Bidding Procedures Order has been entered but is stayed, withdrawn, or rescinded as of such date;

(g) Purchaser may terminate this Agreement by giving written notice to Seller if the Bankruptcy Court has not entered the Sale Order on or before January 26, 2018;

(h) Purchaser may terminate this Agreement by giving written notice to Seller if an order has been entered dismissing the Bankruptcy Case, converting the Bankruptcy Case to a Chapter 7 case or if Seller files a motion or other pleading seeking the dismissal or conversion of the Bankruptcy Case under Section 1112 of the Bankruptcy Code or otherwise;

(i) Purchaser or Seller may terminate this Agreement in the event that any Law or order becomes effective restraining, enjoining, or otherwise prohibiting or making illegal the consummation of the transactions contemplated by this Agreement;

(j) Seller may terminate this Agreement at any time after the Bankruptcy Court approves an Alternate Transaction, or Purchaser may terminate this Agreement upon the closing of an Alternate Transaction;

(k) Purchaser may terminate this Agreement at any time after the appointment of a Chapter 7 trustee or an examiner with expanded powers in the Bankruptcy Case;

(l) Purchaser may terminate this Agreement at any time in the event the Bankruptcy Court does not approve the Breakup Fee and Expense Reimbursement;

(m) Purchaser may terminate this Agreement in the event the Bankruptcy Court grants relief from the automatic stay to any party to permit foreclosure or the exercise of other remedies on any material Acquired Assets of Seller;

(n) Purchaser may terminate this Agreement in the event that Seller modifies, alters or amends this Agreement without the consent of Purchaser, or in the event that Seller consents to any such modification, alteration or amendment; or

(o) Purchaser may terminate this Agreement if an event of default under the DIP Financing Facility has occurred and has not been cured or waived in accordance with the terms of the DIP Financing Facility documents.

6.2 Effect of Termination. In the event of the termination of this Agreement pursuant to the provisions of Section 6.1, this Agreement shall become void and have no effect, without any liability on the part of any party hereto, or any of its directors, officers, employees, agents, consultants, representatives or stockholders, to any other party to this Agreement in respect of this Agreement, except for (i) Purchaser's Deposit, which shall be refunded to Purchaser if Purchaser properly terminated this Agreement, (ii) Seller's obligation, if any, to pay to Purchaser the Breakup Fee and Expense Reimbursement and (iii) if Seller has properly terminated this Agreement pursuant to Section 6.1.1(d), Seller's right to retain the Deposit as Seller's sole and exclusive remedy against Purchaser under this Agreement or otherwise.

ARTICLE VII

DEFINITIONS; MISCELLANEOUS

7.1 Definition of Certain Terms. The following terms shall have the following meanings:

Accounts Payable: obligations to trade creditors on account of services rendered or goods provided in connection with the operation of the Business prior to the Closing Date.

Accounts Receivable: (i) all trade accounts receivable and other rights to payment from customers of Seller with respect to the Business, and the full benefit of all security for such accounts or rights to payment, (ii) all other accounts or notes receivable of Seller and the full benefit of all security for such accounts or notes, and (iii) any claim, remedy or other right related to any of the foregoing.

Acquired Assets: means the following assets owned by Seller and/or used in the Business:

(i) All furniture, fixtures, equipment, inventory and other personalty;

(ii) The Acquired Contracts;

(iii) All equipment, tools, and spare parts owned, maintained and/or used by the Seller in the conduct of its business;

(iv) All inventory of goods and materials used by the Seller in the conduct of its business;

(v) All computers, office equipment, computer software, computer programs and office supplies;

(vi) All intangible assets, goodwill, customer lists, manuals, sales and marketing materials, phone numbers, internet websites and domain names;

(vii) All books and records relating to the foregoing in both hard copy and electronic form;

(viii) All security deposits provided under real estate or equipment leases that are being assigned to and assumed by Purchaser;

(ix) All Accounts Receivable;

(x) All Causes of Action, including without limitation, Avoidance Actions against any Person who is not an Insider and/or any Affiliate of an Insider; and

(xi) All claims for refunds with respect to taxes for all periods ended after the Closing Date;

Notwithstanding the above, the Acquired Assets shall not include the following (the "Excluded Assets"): (v) cash of Seller; (x) any contracts or agreements other than the Acquired Contracts; (y) the Excluded Contracts; and (z) any and all Causes of Action, inclusive of Avoidance Actions, against Insiders and/or any Affiliate of an Insider.

Acquired Contracts: as defined in Section 1.6.

Affiliate: as to any Person, means any other Person who or which, directly or indirectly, alone or together with others, controls, is controlled by, or is under common control with such Person, or any officer or director of such Person or any member of the immediate family of any such natural Person.

Applicable Law: means all applicable provisions of all (i) constitutions, treaties, statutes, laws, rules, regulations, ordinances, orders or directives of any Governmental Authority, (ii) Governmental Approvals and (iii) orders, decisions, judgments, awards and decrees of any Governmental Authority.

Assumed Liabilities: as defined in Section 1.5.

Adjustment Date: as defined in Section 1.7.

Alternative Transaction: as defined in 4.7.2

Avoidance Actions: means all causes of action of Seller under Sections 544 through 553 of the Bankruptcy Code with respect to payments or transfers of property made prior to the filing of the Bankruptcy Case.

Bankruptcy Case: as defined in the first "Whereas" clause.

Bankruptcy Code: as defined in the first "Whereas" clause.

Bankruptcy Court: as defined in the first "Whereas" clause.

Bankruptcy Rules: means the Federal Rules of Bankruptcy Procedure, as amended, or any successor rules.

Bidding Procedures: means the procedures for the submission of competing bids for the acquisition of the Acquired Assets as approved by the Bidding Procedures Order.

Bidding Procedures Order: means the order to be entered by the Bankruptcy Court approving those portions of the Sale Motion that concern the notice of auction and sale hearing, Bidding Procedures, and bidding protections, including the Breakup Fee and Expense Reimbursement, in form and substance reasonably acceptable to Purchaser.

Breakup Fee: as defined in Section 4.7.1.

Business: as defined in the second "Whereas" clause.

Causes of Action: means all claims, causes of action, choses in action, rights of recovery, repayment obligations, rights of setoff and rights of recoupment that Seller has or may have against any Person.

Closing: as defined in Section 3.1.

Closing Date: as defined in Section 3.1.

Closing Payment: as defined in Section 1.2.

Code: the Internal Revenue Code of 1986, as amended.

Confidential Information: confidential or proprietary information about Purchaser, Seller and/or their respective clients or customers, including but not limited to, trade secrets, methods, models, passwords, access to computer files, financial information and records, computer software programs, agreements and/or contracts between Seller and its respective clients and customers, creative policies and ideas, educational and strategic marketing support products, methods of operation, financial or business projections of Seller or Purchaser and information about or received from Seller's or Purchaser's clients or customers and other companies with which Seller or Purchaser do business.

Deposit: as defined in Section 1.2.

DIP Financing Facility: means the debtor-in-possession financing facility entered into by and between the Seller and Liberty Mutual Insurance Company, as approved by the Bankruptcy Court.

Disclosure Schedules: the disclosure schedules, dated the date hereof, which have been delivered to Purchaser by Seller.

Effective Date: as defined in the first paragraph of this Agreement.

Excluded Contracts: all contracts other than the Acquired Contracts.

Expense Reimbursement: as defined in 4.7.2.

Final Order: means an order or judgment, the operation or effect of which is not stayed, and as to which order or judgment (or any revision, modification or amendment thereof), the time to appeal or seek review or rehearing has expired, and as to which no appeal or petition for review or motion for re-argument has been taken or been made and is pending for argument.

Governmental Approval: means an authorization, consent, approval, permit, license or exemption of, registration or filing with, or report or notice to, any Governmental Authority.

Governmental Authority: means any nation or government, any regional, state, local or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including, without limitation, any government authority, agency, department, board, commission or instrumentality of the United States, any State of the United States or any political subdivision thereof, and any tribunal or arbitrator(s) of competent jurisdiction.

Insider: as defined in Section 101(31) of the Bankruptcy Code.

Intellectual Property: as defined in Section 2.1.12.

Key Employees: as defined in Section 5.2.10.

Knowledge: actual or constructive knowledge after diligent inquiry.

Lease: as defined in Section 2.1.8

Lien: any mortgage, pledge, adverse claim, security interest, encumbrance, title defect, title retention agreement, voting trust agreement, interest, equity, option, lien or charge of any kind.

Material Adverse Effect: any material adverse change in the condition (financial or other) of the Seller's Business, assets, liabilities, business, operations or prospects, other than changes of a general economic or political nature, which do not affect Seller or the Business uniquely.

Ordinary Course of Business. an action taken by a Person will be deemed to have been taken in the "Ordinary Course of Business" only if such action is consistent with the past practices of such Person and is taken in the ordinary course of the normal day-to-day operations of such Person.

Permits means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.

Person: any natural person, firm, partnership, association, corporation, limited liability company, trust or Governmental Authority.

Petition Date: means November 6, 2017.

Purchase Price: as defined in Section 1.2.

Purchaser: as defined in the first paragraph of this Agreement.

Real Property: as defined in Section 2.1.8.

Returns: all reports, estimates, declarations, information statements and returns due under all foreign, federal, state or local laws or regulations, as appropriate, relating to Taxes.

Sale Motion: means the motion filed in the Bankruptcy Court on behalf of Seller, for among other things, approval of the notice of auction and sale hearing, Bidding Procedures and bidding protections, including the Breakup Fee and Expense Reimbursement, the sale of the Acquired Assets to Purchaser and the assignment by Seller, and assumption by Purchaser, of the Assigned Contracts.

Sale Order: means one or more orders of the Bankruptcy Court authorizing among other things, the sale of the Acquired Assets to Purchaser and the assignment by Seller and

assumption by Purchaser of the Acquired Contracts, in form and substance reasonably acceptable to Purchaser.

Schedule Supplement: as defined in Section 4.8.

Seller: as defined in the first paragraph of this Agreement.

Taxes: means all federal, state, local and foreign taxes, assessments and governmental charges, of any nature, kind or description (including, without limitation, all income taxes, franchise taxes, withholding taxes, estimated taxes, unemployment insurance, social security taxes, payroll taxes, sales and use taxes, excise taxes, occupancy taxes, real and personal property taxes, stamp taxes, transfer taxes, workers' compensation and withholding taxes) and all interest, additions to tax and penalties with respect thereto, whether such interest, additions or penalties arise before or after the Closing Date.

Transaction Documents: as defined in Section 2.1.2.

7.2 Representation by Counsel. Each party hereto has been represented by separate and independent counsel in connection with the negotiation, preparation and execution of this Agreement.

7.3 Expenses. Except as set forth herein, the Parties shall bear their respective expenses, costs and fees (including attorneys' and accountants' fees) in connection with the transactions contemplated hereby, including the preparation and execution of this Agreement and compliance herewith.

7.4 Payment of Taxes. Seller will be responsible for all income, sales or other taxes associated with the Business accrued or attributable to periods up to the Closing. Purchaser will be responsible for such taxes attributable to periods after the Closing. Purchaser shall not be responsible for Seller's taxes arising from the sale of the Acquired Assets.

7.5 Severability. If any provision of this Agreement is inoperative or unenforceable for any reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses, sections or subsections of this Agreement shall not affect the remaining portions of this Agreement.

7.6 Notices. All notices, requests, demands and other communications made in accordance with this Agreement shall be in writing and shall be (a) mailed by first-class, registered or certified mail, return receipt requested, postage prepaid, or (b) transmitted by hand delivery, or (c) nationally recognized overnight courier, addressed as follows:

To Seller:

Advanced Contracting Solutions, LLC

1600 Commerce Avenue
Bronx, New York 10462
Attn: Eoin Moriarty, CEO

-and-

Advanced Contracting Solutions, LLC
c/o CBIZ Corporate Recovery Services
1065 Avenue of Americas, 11th Floor
New York, New York 10018
Attn.: Jeffrey T. Varsalone, CRO

with copies to Seller's counsel:

Klestadt Winters Jureller Southard & Stevens, LLP
200 West 41st Street, 17th Floor
New York, NY 10036-7203
Attention: Fred Stevens, Esq.

To Purchaser:

Trident General Contracting LLC
1700 NW 66th Avenue
Suite 102
Plantation, Florida 3313
Attention: Patrick M. Murphy, Manager
William M. Murphy, Manager

with copies to Purchaser's counsel:

Berger Singerman LLP
350 East Las Olas Boulevard, Suite 1000
Fort Lauderdale, Florida 33301
Attn: Robert W. Barron, Esq.
Isaac M. Marcushamer, Esq.

By the methods set forth above, notices may be given on behalf of any party by its legal counsel directly to the legal counsel of the other party.

7.7 Miscellaneous.

7.7.1 No Survival. The representations and warranties of Seller contained in Article II shall not survive the Closing, and Seller shall not have any liability to Purchaser for any breach thereof (whether prior to or after the Closing) and the sole consequence (if any) of any breach thereof prior to the Closing shall be (i) Purchaser's ability to terminate this Agreement in accordance with Section 6.1.1(b), (ii) Purchaser's remedies under Section 4.7 and

Purchaser's right of specific performance under Section 7.7.11. The representations and warranties of Purchaser contained in Article II shall not survive the Closing, Purchaser shall have no liability to either Seller for any breach thereof (whether prior to or after the Closing) and the sole consequence (if any) of any breach thereof prior to the Closing shall be Seller's ability to terminate this Agreement in accordance with Section 6.1.1(c). None of the covenants of Purchaser or of either Seller contained in this Agreement (except for such items as are expressly required to be performed after the Closing) shall survive the Closing hereunder, and no party hereto shall be liable to any other party hereto after the Closing for any breach of such covenants.

7.7.2 Headings. The headings contained in this Agreement are for purposes of convenience only and shall not affect the meaning or interpretation of this Agreement.

7.7.3 Entire Agreement. This Agreement, together with the Schedules and Exhibits hereto, constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof.

7.7.4 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Counterpart signatures to this Agreement delivered and received by facsimile or "pdf" shall be acceptable and binding on the Party transmitting the same.

7.7.5 Governing Law; Consent to Jurisdiction. Except to the extent governed by federal bankruptcy law, this Agreement shall be governed in all respects, including as to validity, interpretation and effect, by the laws of the State of New York, excluding only New York's conflicts of laws. To the fullest extent permitted by applicable law, the parties hereby (a) agree that any claim, action or proceeding by such party seeking any relief whatsoever arising out of, or in connection with this Agreement or any Transaction Documents or the transactions contemplated hereby and thereby shall be brought only in (i) the Bankruptcy Court, if brought prior to the entry of a final decree closing the Bankruptcy Case, and (ii) in the federal courts in the Southern District of New York, and the state courts of the State of New York, New York County (the "New York Courts") if brought after entry of such final decree closing the Bankruptcy Case, and shall not be brought, in each case, in any other State or Federal court in the United States of America or any court in any other country, (b) agree to submit to the exclusive jurisdiction of the Bankruptcy Court or the New York Courts, as applicable, pursuant to the preceding clauses for purposes of all claims, actions or proceedings arising out of, or in connection with this Agreement or any Transaction Documents or the transactions contemplated by this Agreement, (c) waives and agrees not to assert any objection that it may now or hereafter have to the laying of the venue of any such claim, action or proceeding brought in such a court or any claim that any such claim, action or proceeding brought in such a court has been brought in an inconvenient forum, (d) agrees that the mailing of process or other papers in connection with any such claim, action or proceeding in the manner described in Section 8.6 hereto shall be valid and sufficient service thereof, and (e) agrees that a final judgment in any such claim, action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable law.

7.7.6 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ANY OF THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREIN OR THEREIN. EACH OF THE PARTIES HERETO CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER OF THE PARTIES HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE SUCH WAIVER, (ii) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVER, (iii) IT MAKES SUCH WAIVER VOLUNTARILY, AND (iv) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATION IN THIS SECTION.

7.7.7 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns.

7.7.8 Assignment. This Agreement shall not be assignable by any party hereto without the prior written consent of Purchaser and Seller; provided that Purchaser may assign this Agreement to a wholly owned subsidiary or commonly owned Affiliate.

7.7.9 No Third Party Beneficiaries. Nothing in this Agreement shall confer any rights upon any person or entity other than the parties hereto and their respective heirs, successors and permitted assigns.

7.7.10 Amendment; Waivers. No amendment, modification or discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by the party against whom enforcement of the amendment, modification, discharge or waiver is sought. Neither the waiver by any of the parties hereto of a breach of or a default under any of the provisions of this Agreement, nor the failure by any of the parties, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder, shall be construed as a waiver of any other breach or default of a similar nature, or as a waiver of any of such provisions, rights or privileges hereunder.

7.7.11 Right to Specific Performance. The Parties acknowledge that the unique nature of the transactions contemplated by this Agreement may render money damages an inadequate remedy for the breach by either Party of its obligations under this Agreement. Each Party agrees that in the event of such breach, (i) Purchaser shall, upon proper action instituted by it, be entitled to seek a decree of specific performance of this Agreement, and (ii) Seller may have the right to retain the Deposit as Seller's sole and exclusive remedy under this Agreement if this Agreement is properly terminated pursuant to Section 6.1.1(d).

7.7.12 Non-Recourse. No past, present or future director, officer, employee, incorporator, manager, member, partner, stockholder, Affiliate, agent, attorney or other representative of any party hereto or of any Affiliate of any party hereto, or any of their successors or permitted assigns, shall have any liability for any obligations or liabilities of any party hereto under this Agreement solely by reason of he or she serving or having served and a director, officer, employee, incorporator, manager, member, partner, stockholder, Affiliate, agent, attorney or other representative of such party.

7.7.13 Definition of Agreement. Unless the context clearly otherwise requires, as used herein, the term "Agreement" means this Agreement and the Schedules and Exhibits hereto. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Paragraph or other subdivision.

[signatures on following page]

IN WITNESS WHEREOF the parties have executed this Agreement as of the Effective Date.

SELLER:
ADVANCED CONTRACTING SOLUTIONS, LLC

By: _____
Name: Jeffrey T. Varsalone
Title: Chief Restructuring Officer

PURCHASER:
TRIDENT GENERAL CONTRACTING LLC

By: _____
Name: Patrick M. Murphy
Title: Manager

EXHIBIT A
TO ASSET PURCHASE AGREEMENT

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Agreement") is entered into as of this _____ day of _____, 2018 by and between Advanced Contracting Solutions, LLC, a Delaware limited liability company ("Assignor"), and Trident General Contracting LLC, a New York limited liability company, or its designee ("Assignee").

WITNESSETH:

WHEREAS, pursuant to that certain Asset Purchase Agreement dated as of December [___], 2017, by and between Assignor, and Assignee (the "Asset Purchase Agreement"), Assignor agreed to assign to Assignee all of Assignor's right, title, and interest in, to, and under the Acquired Assets, which included the Acquired Contracts, as such term is defined in the Asset Purchase Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Assignor does hereby sell, assign, transfer, and convey to Assignee all of Assignor's right, title, and interest in, to, and under and all obligations under the Acquired Contracts.

Assignee hereby assumes and agrees to perform all of the obligations of Assignor under the Acquired Contracts accruing from and after the date hereof and to indemnify and hold harmless Assignor from and against liabilities or obligations under the Acquired Contracts with respect to events occurring or liabilities accruing from and after the date hereof.

This Assignment and Assumption Agreement is subject in all respects to the terms of the Asset Purchase Agreement, and nothing contained in this Agreement shall be deemed to supersede, restrict, expand, modify, or alter in any respect any of the terms, conditions or provisions of the Asset Purchase Agreement.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Executed and Delivered the day and year first above written.

ASSIGNOR:

ADVANCED CONTRACTING SOLUTIONS, LLC

By:_____
Name:_____
Title:_____

ASSIGNEE:

TRIDENT GENERAL CONTRACTING LLC

By: _____
Name: _____
Title: _____

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS:

Advanced Contracting Solutions, LLC a Delaware limited liability company ("Assignor"), for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, does hereby sell, transfer, assign, and convey to Trident General Contracting LLC, a New York limited liability company, or its designee ("Assignee"), all of the Acquired Assets as defined in that certain Asset Purchase Agreement dated as of December __, 2017, by and between Assignor, and Assignee (the "Asset Purchase Agreement"), to have and to hold the same, unto the Assignee, its successors and assigns, forever.

This Bill of Sale is subject in all respects to the terms of the Asset Purchase Agreement, and nothing contained in this Bill of Sale shall be deemed to supersede, restrict, expand, modify, or alter in any respect any of the terms, conditions or provisions of the Asset Purchase Agreement.

EXECUTED AND DELIVERED as of this ___ day of _____, 2018.

SELLER/ASSIGNOR:

ADVANCED CONTRACTING SOLUTIONS, LLC

By:_____
Name:_____
Title:_____

PURCHASER/ASSIGNEE:

TRIDENT GENERAL CONTRACTING LLC

By: _____
Name: _____
Title: _____

DISCLOSURE SCHEDULES

TO

ASSET PURCHASE AGREEMENT

DATED AS OF DECEMBER ___, 2017

Introductory Note: Any information included in these Disclosure Schedules under any section or subsection thereof shall be deemed to be disclosed and incorporated by reference into any other section or subsection of the Disclosure Schedules to the extent that such disclosure would be responsive, whether or not a specific cross-reference to any other section or subsection is included.

Disclosure Schedule

Schedule 1.5 – Assumed Liabilities

Accounts Payable (Schedule to be Updated as of Adjustment Date)

Acquired Contracts Cure Amounts

Disclosure Schedule

Section 1.6 – Acquired Contracts

Disclosure Schedule

Section 2.1.1 - Liens

- **Signature Bank Lien**

Signature Bank holds a lien on all of Seller's assets, which secures Seller's indebtedness to Signature Bank in the amount of $1,_____ under a certain pre-petition line of credit agreement.

- **Liberty Mutual Insurance Company Lien**

Liberty Mutual Insurance Company holds a lien on all of Seller's assets, which secures Seller's indebtedness to Liberty Mutual Insurance Company in the amount of $1,000,000, which is anticipated to increase to $2,500,000 in principal indebtedness, on account of the DIP Financing Facility.

- **Wells Fargo Bank, N.A. Liens**

Wells Fargo Bank, N.A. holds a lien on the following equipment of Seller in the following amounts:

i. 2016 Manitou MRT2150P+S2 Forklift S/N 769820 - $[_____]

ii. 2017 KCP KB-28Z Concrete Pump Placing Boom S/N KB-24Z-014 - $[_____]

Disclosure Schedule

Section 2.1.2 – Required Consents

List all consents, licenses, approvals, orders or authorizations of, or registrations, declarations or filings with, any Governmental Authority that is required on the part of Seller in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby:

- None

List all consents of any third party required to be obtained by Seller in connection with the execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby (including, without limitation, in connection with the assignment to Purchaser of the Client Contracts):

- Liberty Mutual Insurance Company;
- Issuer of any performance and/or payment bonds on Seller's contracts; and
- Any secured lender that is not proposed to be paid in full at or before Closing.

Disclosure Schedule

Section 2.1.4 – Capitalization

50% of Seller's membership interests are owned by TMG Solutions, LLC, which is owned 100% by Eoin Moriarty.

50% of Seller's membership interests are owned by WOD Solutions, LLC, which is owned 100% by William O'Donnell.

Disclosure Schedule

Section 2.1.6 – Taxes

List all tax returns that have not been filed:

Federal

- None.

State and Local

- None

List all taxes due on such returns:

- None.

List all transfer, property or other taxes that are payable by Purchaser in respect of the sale by Seller:

- Unless waived by order of the Bankruptcy Court, all sales or use taxes payable with respect to and/or on account of the transfer of Seller's furniture and fixtures to Purchaser shall be paid by Purchaser to Seller at the Closing in the form of a certified check in the amount of the sales tax indicated on the notice provided by the Tax Department (or, if no such notice is received as of the Closing, the amount agreed upon by Seller and Purchaser based on the allocation of the Purchase Price and the applicable sales tax rate) made payable to the Tax Department.

List all tax liens:

- None.

List all tax returns of Seller that are under Audit:

- The New York Tax Department is conducting a sales and use tax audit covering the period from [_____] through [_____].

Disclosure Schedule

Section 2.1.7 – Material Contracts

- mortgages, indentures, security agreements, letters of credit, loan agreements and other agreements, guarantees and instruments relating to the borrowing of money or extension of credit;
    - Line of Credit Letter Agreement, dated April 7, 2017 by and between Seller and Signature Bank Relationship Ready Line of Credit
    - Continuing General Security Agreement, dated February 25, 2015, by and between Seller and Signature Bank
    - Debtor in Possession Lending Agreement, by and between Seller and Liberty Mutual Insurance Company
- employment, consulting, sales representative, severance and agency agreements;
    - See consulting agreements on Disclosure Schedule Section 1.6 and Disclosure Schedule Section 2.1.11
- collective bargaining agreements;
    - None (but note that Union Plaintiffs have alleged that the Seller is a deemed party to various collective bargaining agreements)
- bonus, profit-sharing, compensation, stock option, pension, retirement, deferred compensation or other plans, trusts or funds for the benefit of employees, officers, agents and directors (whether or not legally binding);
    - None
- licenses of patent, copyright, trade names, trademark, transfer of technology or know how and other intellectual property rights:
    - None
- agreements or commitments for capital expenditures in excess of $20,000 for any single project (it being warranted that all undisclosed agreements or commitments for capital projects do not exceed $50,000 in the aggregate for all projects)
    - None;
- brokerage or finder's agreements
    - None;

- joint venture and partnership agreements
    - None
- other agreements, contracts and commitments which in any case involve payments or receipts of more than $20,000
    - LIST

Disclosure Schedule

Section 2.1.8 – Real Property Leases

Agreement of Lease, dated September 28, 2015 by and between Seller and Three Boroughs L.L.C. Seller is in default with respect to payment of pre-petition rent for the month of November 2017.

Disclosure Schedule

Section 2.1.10 – Litigation

[TO BE ADDED]

Disclosure Schedule

Section 2.1.12 – Intellectual Property

List all "intellectual property" relating to the business now held by or owned by Seller:

- ACS logo

List all contracts and agreements (whether oral or written) between Seller and a third party which imparts or which imparted an obligation of noncompetition, secrecy, confidentiality or non-disclosure upon Seller or any employee, which obligation is currently in effect:

- None

Disclosure Schedule

Section 2.1.13 – Insurance

Type of Coverage[1]	Carrier	Agent	Policy No.	Period	Premium
Commercial Liability	Lloyds of London	Hugh Wood Inc. HW Wood Limited 55 Broadway, 24th Floor New York, NY 10006	B0595XN	8/1/17-7/31/18	$3,927,649
Excess Liability	Markel Insurance Co.	Hugh Wood Inc. HW Wood Limited 55 Broadway, 24th Floor New York, NY 10006	MKLM1EUL100075	8/1/17-7/31/18	$650,000
Excess Liability	Starr Surplus Lines Insurance Co.	Hugh Wood Inc. HW Wood Limited 55 Broadway, 24th Floor New York, NY 10006	1000023854	8/1/17-7/31/18	$1,349,000
Excess Liability	Argonaut Insurance Co.	Hugh Wood Inc. HW Wood Limited 55 Broadway, 24th Floor New York, NY 10006	AR3462025	8/1/17-7/31/18	$515,000
Pollution	Allied World Assurance Co.	Hugh Wood Inc. HW Wood Limited 55 Broadway, 24th Floor New York, NY 10006	51521887	8/1/17-7/31/18	$21,149.72
Property/Inland Marine	Travelers Property Casualty Co. of America	Hugh Wood Inc. HW Wood Limited 55 Broadway, 24th Floor New York, NY 10006	QT-660-2H934352-TIL-17	8/1/17-7/31/18	$18,397
Workers' Compensation	New York State Insurance Fund P.O. Box 5238 New York, NY 10008-5238		X2296964-6	9/3/17-9/3/18	$2,158,492
Automobile	Harleysville/Nationwide		BA81818Z	6/4/17-6/4/18	$142,546

[1] The Commercial Liability, Excess Policies, Pollution and Property/Inland Marine policies are financed by Triumph Premium Finance pursuant to the Premium Finance Agreement.

Disclosure Schedule

Section 2.1.14 – Permits

[TO BE ADDED]

KLESTADT WINTERS JURELLER SOUTHARD & STEVENS, LLP
200 West 41st Street, 17th Floor
New York, NY 10036-7203
Telephone: (212) 972-3000
Facsimile: (212) 972-2245
Tracy L. Klestadt
Fred Stevens
Brendan M. Scott

Attorneys for the Debtor and Debtor in Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	
	:	Chapter 11
ADVANCED CONTRACTING SOLUTIONS, LLC,	:	
	:	Case No. 17-13147 (SHL)
Debtor.	:	

NOTICE OF POTENTIAL ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND ESTABLISHMENT OF CURE CLAIMS BAR DATE FOR NON-DEBTOR COUNTERPARTIES TO EXECUTORY CONTRACTS AND UNEXPIRED LEASES

TO ALL NON-DEBTOR COUNTERPARTIES TO EXECUTORY CONTRACTS OR LEASES WITH THE DEBTOR:

PLEASE TAKE NOTICE that, on December 26, 2017, the above-captioned debtor and debtor-in-possession (the "**Debtor**") filed its Motion For Orders Pursuant to Sections 105(a), 363 and 365 of the Bankruptcy Code and Rules 2002, 6004 and 6006: (A)(i) Establishing Bidding Procedures and Bidding Protections in Connection with the Sale of Certain of the Assets of the Debtor, (ii) Approving the Form and Manner of Notices, (iii) Approving the Asset Purchase Agreement Subject to Higher and Better Offers and (iv) Settling a Sale Hearing Date; and (B)(i) Approving the Sale of Certain Assets of the Debtor Free and Clear of Liens, Claims and

Encumbrances, (ii) Authorizing the Assumption and Assignment of Certain Unexpired Leases and Executory Contracts; and (iii) Granting Related Relief (the "**Motion**").

PLEASE TAKE FURTHER NOTICE that in connection with the Sale[1], the Debtor has filed a schedule of all of the Debtor's executory contracts and unexpired leases that may potentially be assumed and assigned to the Purchaser in accordance with the Purchase Agreement, (the "**Assumption Schedule**"); further, the Debtor has filed (among other things) the cure costs associated with each executory contract and unexpired lease on the Assumption Schedule, calculated in accordance with the Debtor's books and records. The Assumption Schedule is attached hereto as **Exhibit A**.

PLEASE TAKE FURTHER NOTICE that the Bankruptcy Court has established **January 19, 2018 at 4:00 p.m.** (the "**Objection Deadline**") as the date by which all non-debtor counterparties parties to the executory contracts and unexpired leases must electronically file with the Clerk of the Bankruptcy Court a cure claim, setting forth all claims and arrearages against the Debtor due under such executory contract or unexpired lease (the "**Assumption Objection**"), and serve a copy of the Assumption Objection upon (i) the proposed attorneys for the Debtor, Klestadt Winters Jureller Southard & Stevens, LLP, 200 West 41st Street, 17th Floor, New York, New York 10036 (Attn: Fred Stevens), (ii) the attorneys for the Purchaser, Berger Singerman LLP, 350 East Las Olas Boulevard, Suite 1000, Fort Lauderdale, Florida 33301 (Attn: Robert W. Barron and Isaac M. Marcushamer), (iii) the Office of the United States Trustee for the Southern District of New York, U.S. Federal Office Building, 201 Varick Street, Room 1006, New York, New York 10014 (Attn: Richard Morrissey) and (iv) the

[1] Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

attorneys for the Committee, Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, New York 10020 (Attn: Jeffrey Cohen and Eric S. Chafetz).

PLEASE TAKE FURTHER NOTICE that any party that is required to file an Assumption Objection, but fails to do so, shall be bound by the cure amount as set forth on the Assumption Schedule, and shall be forever barred from asserting any other Assumption Objection against the Debtor, its estate, the Purchaser, or its designee, and/or any Successful Bidder arising under such executory contract.

Dated: New York, New York
January ___, 2018

KLESTADT WINTERS JURELLER SOUTHARD & STEVENS, LLP

By: _____

Fred Stevens
Brendan M. Scott
200 West 41st Street, 17th Floor
New York, New York 10036-7203
Tel: (212) 972-3000
Fax: (212) 972-2245
Email: fstevens@klestadt.com
bscott@klestadt.com

Attorneys for Debtor and Debtor in possession

Exhibit A
Assumption Schedule

Name of Counter Party	Executory Agreement	Cure Amount

KLESTADT WINTERS JURELLER SOUTHARD & STEVENS, LLP
200 West 41st Street, 17th Floor
New York, NY 10036-7203
Telephone: (212) 972-3000
Facsimile: (212) 972-2245
Tracy L. Klestadt
Fred Stevens
Brendan M. Scott

Attorneys for the Debtor and Debtor in Possession

Hearing Date: January 24, 2018
Hearing Time: 2:00 p.m. (EST)

Objection Deadline: January 19, 2018 at 5:00 p.m. (EST)

Bidding Deadline: January 22, 2018 at 4:00 p.m. (EST)

Auction: January 23, 2018 at 12:00 p.m. (EST)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	
	:	Chapter 11
ADVANCED CONTRACTING SOLUTIONS, LLC,	:	
	:	Case No. 17-13147 (SHL)
Debtor.	:	

NOTICE OF AUCTION AND HEARING TO CONSIDER APPROVAL OF THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS

NOTICE IS HEREBY GIVEN, as follows:

On December 26, 2017, Advanced Contracting Solutions, LLC, the debtor and debtor in possession (the "**Debtor**") in the above-captioned chapter 11 case (this "**Chapter 11 Case**") filed a motion (the "**Motion**") [Docket No. [__]][1] which sought, among other things, entry of an order pursuant to sections 105, 363, 365, 503 and 507 of title 11 of the United States Code (the "**Bankruptcy Code**"), and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"): (a) approving the proposed Bidding Procedures to be used in connection with the proposed sale of substantially all of the Debtor's assets, free and clear of any and all liens, claims, encumbrances, security interests and other interests, to Trident General

[1] Capitalized terms used but not otherwise defined herein shall be ascribed the meanings provided in the Motion.

Contracting LLC (the "**Purchaser**"), or to any competing bidder or bidders (the "**Successful Bidder(s)**") that submits or collectively submit a higher or better offer or offers for the Acquired Assets; (b) scheduling the Auction and Sale Hearing to approve the Sale of the Acquired Assets; (c) approving the form and manner of notice of the Auction and Sale Hearing; and (d) approving the Bidding Protections and certain overbid procedures in connection therewith (the "**Bidding Procedures Order**"). The Bankruptcy Court conducted a hearing on January 4, 2018 to consider entry of the Bidding Procedures Order. On January [___], 2018, the Court entered the Bidding Procedures Order [Docket No. [__]].

The Motion, the Bidding Procedures, and the Bidding Procedures Order have been filed electronically with the Clerk of the United States Bankruptcy Court for the Southern District of New York, and may be reviewed by all registered users of the Court's website at http://ecf.nyeb.uscourts.gov. Copies of the Motion, the Bidding Procedures, and the Bidding Procedures Order can also be obtained by telephonic, written, or e-mail request to the undersigned counsel to the Debtor, Attn: Fred Stevens (Telephone: (212) 972-3000 or e-mail: fstevens@klestadt.com).

As set forth in the Bidding Procedures, the sale of the Acquired Assets remains subject to higher or better offers for all or a portion of the Acquired Assets and Bankruptcy Court approval. All interested parties are invited to make competing offers for all or a portion of the Acquired Assets in accordance with the terms of the Bidding Procedures and the Bidding Procedures Order. The deadline to submit a competing offer in accordance with the terms of the Bidding Procedures is **January 22, 2018 at 4:00 p.m. (ET)** (the "**Bid Deadline**"). Pursuant to the Bidding Procedures Order, if a Qualified Bid other than the Purchaser's bid is received by the Bid Deadline, the Debtor may conduct an auction (the "**Auction**") for the sale of the Acquired

Assets at Klestadt Winters Jureller Southard & Stevens, LLP, 200 West 41st Street, 17th Floor, New York, New York 10036, **beginning at 12:00 p.m. (ET) on January 23, 2018**.

The Bidding Procedures Order further provides that a Sale Hearing will be held on **January 24, 2018 at 2:00 p.m. (ET)** before the Honorable Sean H. Lane, United States Bankruptcy Judge, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004, Courtroom No. 701.

At the Sale Hearing, the Debtor will request that the Bankruptcy Court enter an order, among other things, approving the highest or otherwise best bid for the Acquired Assets (which will be determined in accordance with the terms of the Bidding Procedures). In addition, the Debtor shall request that the Bankruptcy Court provide that the transfer of the Acquired Assets be free and clear of any and all liens, claims, interests, encumbrances and security interests, including successor liability claims, except as expressly assumed by Purchaser or Successful Bidder(s).

At the Sale Hearing, the Bankruptcy Court may enter such orders as it deems appropriate under applicable law and as required by the circumstances and equities of this Chapter 11 case. Objections, if any, to the Motion must (a) be made in writing, (b) state with particularity the reasons for the objection or response, (c) conform to the Bankruptcy Rules and the Local Bankruptcy Rules for the Southern District of New York, (d) set forth the name of the objecting party, the nature and basis of the objection, and the specific grounds therefore, and (e) be filed with the Clerk of the Court (with a copy to be delivered to the Chambers of the Honorable Sean H. Lane, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004, and shall be served upon: (i) upon the proposed attorneys for the Debtor, Klestadt Winters Jureller Southard & Stevens, LLP, 200 West 41st Street, 17th

Floor, New York, New York 10036 (Attn: Fred Stevens), (ii) the attorneys for the Purchaser, Berger Singerman LLP, 350 East Las Olas Boulevard, Suite 1000, Fort Lauderdale, Florida 33301 (Attn: Robert W. Barron and Isaac M. Marcushamer), (iii) the Office of the United States Trustee for the Southern District of New York, U.S. Federal Office Building, 201 Varick Street, Room 1006, New York, New York 10014 (Attn: Richard Morrissey) and (iv) the attorneys for the Committee, Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, New York 10020 (Attn: Jeffrey Cohen and Eric S. Chafetz), so as to be **actually received** no later than **4:00 p.m. (EST) on January 19, 2018**.

Requests for information concerning the sale of the Acquired Assets should be directed by written or telephonic request to: Fred Stevens, Klestadt Winters Jureller Southard & Stevens, LLP, 200 West 41st Street, 17th Floor, New York, New York 10036, (212) 972-3000 or via email at fstevens@klestadt.com.

Dated: New York, New York
January ___, 2018

KLESTADT WINTERS JURELLER SOUTHARD & STEVENS, LLP

By: _____

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