

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re:

AEROGROUP INTERNATIONAL,  
INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 17-11962 (KJC)

(Jointly Administered)

Hearing Date: Nov. 28, 2017 at 1:00 p.m. (ET)

Obj. Deadline: Nov. 21, 2017 at 4:00 p.m. (ET)

**MOTION OF THE DEBTORS FOR ENTRY OF (I) AN ORDER (A) APPROVING BID PROCEDURES FOR THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, (B) APPROVING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS OR UNEXPIRED LEASES IN CONNECTION WITH THE SALE, (C) SCHEDULING A SALE HEARING, AND (D) GRANTING CERTAIN RELATED RELIEF; AND (II) AN ORDER (A) APPROVING THE SALE OF THE DEBTORS' ASSETS, (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (C) GRANTING CERTAIN RELATED RELIEF**

Aerogroup International, Inc. ("Aerogroup International") and certain of its affiliates, as debtors and debtors in possession in the above-captioned cases (each, a "Debtor" and collectively, the "Debtors" or the "Company") hereby move, pursuant to sections 105(a), 363, 365, 503 and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code"), Rules 2002, 6003, 6004, 6006, 9007, 9008 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 2002-1, 6004-1 and 9006-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), for the entry of (i) an order substantially in the form attached hereto as **Exhibit A** (the "Bid Procedures Order") (a) approving the bid procedures

<sup>1</sup> The Debtors in these chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are as follows: Aerogroup International, Inc. (6119), AGI Holdco, Inc. (7087), Aerogroup International LLC (4658), Aerogroup International Holdings LLC (4312), Aerogroup Retail Holdings, Inc. (4650), and Aerogroup Gift Card Company, Inc. (7551). The mailing address for the Debtors, solely for purposes of notices and communications, is: 201 Meadow Road, Edison, New Jersey 08817.

attached as **Exhibit 1** to the Bid Procedures Order (the “Bid Procedures”) in connection with a sale or sales (collectively, one or more such sales, the “Sale”) of all or substantially all of the Debtors’ Assets (as defined below); (b) approving certain notice procedures; (c) approving procedures (the “Contract Procedures”) for the assumption and assignment of the Executory Contracts (as defined below and including, without limitation, Commercial Leases (as defined below)); (d) scheduling a hearing to approve the Sale (the “Sale Hearing”); and (e) granting certain related relief; and (ii) an order (the “Sale Order”) (a) approving the Sale free and clear of all claims, liens, liabilities, interests and encumbrances, (b) approving the assumption and assignment of certain designated Executory Contracts, and (c) granting certain related relief. In support of this motion (the “Motion”), the Debtors respectfully state as follows:

### **JURISDICTION**

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. Pursuant to Local Rule 9013-(f), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

3. The statutory predicates for the relief requested are sections 105(a), 363, 365, 503 and 507 of the Bankruptcy Code and Bankruptcy Rules 2002, 6003, 6004, 6006 and 9014 and Local Rules 2002-1, 6004-1 and 9006-1.

### RELIEF REQUESTED

4. First, the Debtors seek entry of the Bid Procedures Order, substantially in the form attached hereto as **Exhibit A**, (i) approving the Bid Procedures, attached as **Exhibit 1** to the Bid Procedures Order, in connection with the Sale, (ii) approving certain notice procedures with respect to the Sale, (iii) establishing the Contract Procedures, and (iv) scheduling the Sale Hearing (collectively, the “**Bid Procedures Relief**”).

5. By this Motion, the Debtors also seek approval of the successful bid(s) after completion of the bidding and auction process. The Motion seeks the customary relief for sales of the Debtors’ assets free and clear of liens, claims and encumbrances (the “**Sale Relief**”).<sup>2</sup>

### BACKGROUND

6. On September 15, 2017 (the “**Petition Date**”), the Debtors commenced these bankruptcy cases (the “**Chapter 11 Cases**”) by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

7. On September 26, 2017, Region 3 of the Office of the United States Trustee (the “**U.S. Trustee**”) appointed a five-member Official Committee of Unsecured Creditors (the “**Committee**”). No trustee or examiner has been appointed.

8. The factual background regarding the Debtors, including their business operations, their capital and debt structure, and the events leading up to the filing of these Chapter 11 Cases, as well as the facts and the circumstances supporting the relief requested

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<sup>2</sup> Given the uncertainty of whether the Debtors will complete the Reorganization or the Liquidation Scenario, the Debtors request that Local Rule 6004-1(b) requiring the attachment of a proposed form of sale order be waived under these circumstances. The Debtors will file a form of sale order as soon as practicable prior to a Sale Hearing once they determine which path they will pursue.

herein is set forth in detail in the *Declaration of Mark Weinsten in Support of Chapter 11 Petitions and First Day Motions* [D.I 3] (the "First Day Declaration"), filed on the Petition Date.

### **BASIS FOR RELIEF**

9. Prior to and throughout these Chapter 11 Cases, the Debtors, with the assistance of their investment banking firm, Piper Jaffray & Co. ("Piper Jaffray"), have explored all possible options available to the Company, including potential partnerships and sources of capital funding, as well as a sale of the Company as a going concern or a sale of substantially all of the assets of the Company for liquidation purposes. Piper Jaffray has sought offers in various forms in response to the marketing process, including, among other variations, (a) offers to purchase some or all of the Debtors' e-commerce, wholesale and/or first cost business lines as going concerns, (b) offers to purchase all or a portion of the Debtors' assets for liquidation purposes, (c) offers to engage in strategic partnerships involving the licensing of the Debtors' intellectual property, and (d) offers to provide capital investments for a streamlined go-forward, reorganized business.

10. On October 24, 2017, the Debtors filed the *Debtors' Joint Plan of Reorganization* [D.I. 203] (the "Plan"). The Plan provides for either (a) the reorganization of the Debtors' business in connection with the completion of one or more licensing transactions and a sale of the Debtors' remaining assets (the "Non-IP Assets") not required in connection with the go-forward business (the "Reorganization") or (b) the sale of all or substantially all of the Debtors' assets through one or more sales under section 363 of the Bankruptcy Code and the appointment of a plan administrator for purposes of distributing all proceeds of such sale(s) (the "Liquidation Scenario").

11. This Motion proposes bid procedures for purposes of the sale of the Debtors' assets as a complement to the Reorganization (i.e., the sale of the Non-IP Assets) or as a means of implementing the Liquidation Scenario. The Bid Procedures are designed to generate the greatest level of interest and the highest or otherwise best offer for the assets, including, without limitation, the Debtors' inventory, accounts receivable, deposits, fixtures, furniture and equipment, customer lists, intellectual property, non-residential real property leasehold interests ("Commercial Leases"), interests in unexpired contracts and leases other than Commercial Leases ("Other Executory Contracts" and together with Commercial Leases, the "Executory Contracts") and any other available assets (collectively, the "Assets"). Consistent with the marketing process the Debtors and Piper Jaffray engaged in prior to and during these Chapter 11 Cases, the Bid Procedures intend to solicit (a) offers to purchase some or all of the Debtors' e-commerce, wholesale and/or first cost business lines as going concerns, (b) offers to purchase all or a portion of the Debtors' assets for liquidation purposes, and (c) offers for some combination of a going concern and liquidation sale, including offers to purchase the Non-IP Assets in connection with the Reorganization.

### **THE PROPOSED BID PROCEDURES**

12. The Debtors seek approval of the Bid Procedures, which they have designed to be flexible and open to all variations of bids and facilitate a robust sales process thereby generating the greatest value for the Assets.

13. The Debtors propose the following timeline for the solicitation of bids, the Auction (as defined below) and the Sale Hearing. The timeline for the Sale is driven by the calendar, market forces, and the significant marketing for the Debtors' Assets that has already occurred. For example, any buyer of the Debtors' inventory will likely demand that the sale

transaction close before the end of the holiday season. Accordingly, the Debtors' value will be higher if a buyer (or buyers) can avail themselves of at least part of the holiday season and values will, in all likelihood, drop substantially after the holiday season ends.

<u>Action</u>	<u>Deadline</u>
<b>Bid Procedures Objection Deadline</b>	November 21, 2017 at 4:00 p.m. (ET)
<b>Bid Procedures Hearing</b>	November 28, 2017 at 1:00 p.m. (ET)
<b>Sale and Other Executory Contract Cure Notice Service</b>	December 1, 2017
<b>Bid Deadline</b>	December 6, 2017 at 5:00 p.m. (ET)
<b>Sale/Cure Objection Deadline</b>	December 11, 2017 at 4:00 p.m. (ET)
<b>Auction</b>	December 12, 2017 at 10:00 a.m. (ET)
<b>Adequate Assurance Objection Deadline</b>	December 13, 2017 at 4:00 p.m. (ET)
<b>Sale Hearing<sup>3</sup></b>	December 14, 2017 at 10:00 a.m. (ET)

14. The Bid Procedures describe, among other things, the requirements and manner in which bidders and bids become "qualified," the coordination of diligence efforts, the receipt and negotiation of bids received, the conduct of any auction, and the selection and approval of any ultimately successful bidders.

- a) **Bidder Requirements**: A party must submit the following documents to the Debtor in order to be a "**Qualified Bidder**" and be allowed to participate in the bidding process and receive access to conduct due diligence:
- (1) An executed confidentiality agreement substantially in form and substance satisfactory to the Debtor; and
  - (2) Reasonable evidence demonstrating the party's financial capability to consummate a sale transaction for the Assets identified in such party's bid.

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<sup>3</sup> The Debtors reserve all rights to request that the Court postpone or adjourn the Sale Hearing to later date for any reason, including, without limitation, in the event the Debtors move forward with the Reorganization and wish to hold the Sale Hearing at the same time as the hearing to confirm the Plan (the "**Confirmation Hearing**").

*See* Bid Procedures, ¶ A.

- b) Bid Requirements: In order to be eligible to participate in the Auction, a Qualified Bidder must, on or before the Bid Deadline, deliver to the Debtor a written offer which provides, or otherwise complies with, the items noted below (any such offer, a “Qualified Bid”):
- (1) Identifies the Assets (or the portion thereof) to be purchased, including (x) whether the bid contemplates a liquidation or operating any or all of the Debtors' business lines as going concerns, and (y) any Executory Contracts that would be assumed and assigned in connection with the proposed transaction;
  - (2) Identifies, if applicable, the proposed form of adequate assurance of future performance with respect to any Executory Contracts that would be assumed and assigned in connection with the proposed transaction; provided, however, that any party submitting a bid solely with respect to a Commercial Lease(s) under which it is the landlord, need not provide such information;
  - (3) Constitutes a binding proposal regarding the assets sought to be acquired and the consideration to be paid; and
  - (4) Remains irrevocable until 48 hours after the Sale Hearing;
  - (5) Is not subject to any break up fee, transaction fee, termination fee, expense reimbursement or any similar type of payment or reimbursement; and
  - (6) Is accompanied by a good faith deposit in the amount of 10% of the proposed purchase price.<sup>4</sup>

*See* Bid Procedures, ¶ B.

- c) Due Diligence: The Bid Procedures permit all Qualified Bidders to participate in the diligence process. *See* Bid Procedures, ¶ C.
- d) Conduct of Auction: If more than one Qualified Bid is received with respect to the Sale, the Debtors will conduct an auction at the offices of Ropes & Gray LLP, 1211 Avenue of the Americas, New York, New York 10036 (the “Auction”). Bidding shall begin initially with the highest Qualified Bid and subsequently continue in minimum increments that will be announced by the Debtors after consultation with (i) Polk 33 Lending, LLC (the “DIP Lender”), (ii) THL Corporate Finance, Inc. (the “Prepetition Term Loan Agent”), and (iii) the official committee of unsecured creditors (the “Committee”). The Debtors may conduct the Auction in the manner they determine will result in the highest, best or

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<sup>4</sup> The Debtors may waive the deposit requirement for bidders that submit credit bids.

otherwise financially superior offer(s) for the Assets. The Auction shall be conducted openly and all creditors will be permitted to attend. *See Bid Procedures*, ¶ D.

- e) Evaluation of Qualified Bids: A Qualified Bid may be for all or some portion of the Assets and may contemplate a liquidation or the operating of any or all of the Debtors' business lines as going concerns. The Debtors reserve the right to determine the value of any Qualified Bid (either by itself or in connection with one or more other Qualified Bid), and which Qualified Bid constitutes the highest, best and otherwise financially superior offer. *See Bid Procedures*, ¶¶ B, E.
- f) Selection of Successful Bid(s): Upon the conclusion of the Auction, the Debtors and their advisors, in consultation with the DIP Lender, the Prepetition Term Loan Agent and the Committee, shall (i) identify the bid or bids that constitute the highest and best offer for the Assets (such bid, the “Successful Bid” and such person submitting such bid the “Successful Bidder”), and (ii) may identify, in their discretion, the bid or bids that constitutes the next highest or best offer for the Assets (such bid the “Backup Bid” and such person submitting such bid the “Backup Bidder”), and, in each case, so notify the Successful Bidder and Backup Bidder. *See Bid Procedures*, ¶ E.
- g) Credit Bidding: Qualified Bidders may credit bid some or all of their claims to the full extent permitted by section 363(k) of the Bankruptcy Code. *See Bid Procedures*, ¶ I.
- h) Sale Hearing: The Debtors request that the Sale Hearing take place at the omnibus hearing already scheduled for December 14, 2017, at 10:00 a.m. (ET). However, the Debtors reserve all rights to request that the Court postpone such Sale Hearing for any reason, including, without limitation, in the event the Debtors move forward with the Reorganization and wish to hold the Sale Hearing at the same time as the Confirmation Hearing. *See Bid Procedures*, ¶ J.

15. Other Highlighted Terms Under Local Rule 6004-1(b)(iv):

- i) Local Rule 6004-1(b)(iv)(A). To the extent a proposed purchaser is an insider (within the meaning of section 101(31) of the Bankruptcy Code), the Debtors will make the necessary disclosures to the Court and take measures to ensure the fairness of the sale process and the proposed transaction.
- j) Local Rule 6004-1(b)(iv)(B). The Debtors do not have any agreement between any interested bidder and the Debtors’ management or key employees.



- k) Local Rule 6004-1(b)(iv)(C). The Bid Procedures Relief does not include the granting of any release in favor of any entity.
- l) Local Rule 6004-1(b)(iv)(F). The Debtors are requiring Qualified Bids to include a 10% good faith deposit, unless waived by the Debtors for credit bidding parties.
- m) Local Rule 6004-1(b)(iv)(G). The Debtors do not currently have any interim management or other agreement with any party.
- n) Local Rule 6004-1(b)(iv)(H). The Debtors are not seeking to release any sale proceeds without further order of the Court.
- o) Local Rule 6004-1(b)(iv)(I). The Debtors are not seeking pursuant to this Motion to have the Sale declared exempt from taxes under section 1146(a) of the Bankruptcy Code.
- p) Local Rule 6004-1(b)(iv)(J). The Debtors will retain necessary books and records, or copies thereof, to enable them to administer their bankruptcy cases in any Sale.
- q) Local Rule 6004-1(b)(iv)(K). The Debtors are not seeking to sell avoidance actions.
- r) Local Rule 6004-1(b)(iv)(L). The Debtors are seeking to sell the Assets free and clear of successor liability claims.
- s) Local Rule 6004-1(b)(iv)(M). The Debtors are seeking to sell the Assets free and clear of all liens, claims and encumbrances to the fullest extent permitted by sections 363 and 365 of the Bankruptcy Code.
- t) Local Rule 6004-1(b)(iv)(N). Pursuant to the proposed Bid Procedures, Qualified Bidders may credit bid some or all of their claims to the full extent permitted by section 363(k) of the Bankruptcy Code
- u) Local Rule 6004-1(b)(iv)(O). The Debtors are seeking relief from the fourteen-day stay imposed by Bankruptcy Rule 6004(h) for any sale.

16. The Debtors may modify the Bid Deadline, the date of the Auction or the date of the Sale Hearing to the extent necessary to obtain the highest and best offer for the available Assets, including without limitation, as necessary for purposes of selling the Non-IP Assets in connection with completion of the Reorganization.

### **PROPOSED SALE NOTICE PROCEDURES**

17. Sale Notice. Within one (1) day after the entry of the Bid Procedures Order, or as soon thereafter as practicable (the “Mailing Date”), the Debtors (or their agents) shall serve a notice of the Auction and the Sale substantially in the form annexed hereto as **Exhibit B** (the “Sale Notice”) by e-mail (if known) and first-class mail, postage prepaid, upon (i) the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”); (ii) counsel to the Wells Fargo Bank, NA, as the ABL Agent, Choate, Hall, & Stewart LLP, Two International Place, Boston, Massachusetts 02110 (Attn: Kevin J. Simard), ksimard@choate.com; (iii) counsel to the THL Corporate Finance, Inc., as the Term Loan Agent, Paul Hastings LLP, 71 S. Wacker Drive, Forty-Fifth Floor, Chicago, Illinois 60606 (Attn: Matthew Murphy), mattmurphy@paulhastings.com; (iv) Palladin Consumer Retail Products, Attn: John Lawrence, John Hancock Tower, 200 Clarendon Street, 26th Floor, Boston, MA 02116; (v) counsel to the Prepetition Senior Noteholders and the Prepetition Subordinated Noteholders, Weil Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Jacqueline Marcus), jacqueline.marcus@weil.com; (vi) the Internal Revenue Service; (vii) the United States Attorney for the District of Delaware; (viii) proposed counsel to the Committee, Cooley LLP (Attn: Michael Klein and Sarah A. Carnes), mklein@cooley.com and scarnes@cooley.com; (ix) counsel to the DIP Lender, Arent Fox LLP, 1675 Broadway, New York, New York 10019 (Attn: Robert M. Hirsh, Esq.), Robert.Hirsh@arentfox.com; (x) any party known or reasonably believed to have asserted any lien, claim or encumbrance or other interest in the Debtors’ assets; (xi) any party known or reasonably believed to have expressed an interest in acquiring some or substantially all of the Debtors’ assets; and (xii) any parties that have requested notice in these

cases pursuant to Bankruptcy Rule 2002. Such notice shall be sufficient and proper notice of the sale with respect to known interested parties.

18. Publication Notice. The Debtors also propose that, pursuant to Fed. R. Bankr. P. 2002 and 6004, publication of the Sale Notice (as may be modified for publication purposes) as the Debtors deem appropriate on the Mailing Date or as soon as practicable thereafter, be deemed sufficient notice to any other interested parties whose identities are unknown to the Debtors.

19. The deadline for filing an objection to the Sale shall be **December 11, 2017 at 4:00 p.m. (ET)** (the "Sale Objection Deadline"). Objections, if any, shall be in writing, filed with the Court and served upon: (i) co-counsel to the Debtors: (a) Ropes & Gray LLP, 1211 Avenue of the Americas, New York, NY 10036-8704 (Attn: Gregg M. Galardi), gregg.galardi@ropesgray.com; and (b) Bayard, P.A., 600 N. King Street, Suite 400, Wilmington, DE 198013 (Attn: Scott D. Cousins and Erin R. Fay) scousins@bayardlaw.com, efay@bayardlaw.com; (ii) the U.S. Trustee; (iii) counsel to the Wells Fargo Bank, NA, as the ABL Agent, Choate, Hall, & Stewart LLP, Two International Place, Boston, Massachusetts 02110 (Attn: Kevin J. Simard), ksimard@choate.com; (iv) counsel to the THL Corporate Finance, Inc., as the Term Loan Agent, Paul Hastings LLP, 71 S. Wacker Drive, Forty-Fifth Floor, Chicago, Illinois 60606 (Attn: Matthew Murphy), mattmurphy@paulhastings.com; (v) Palladin Consumer Retail Products, Attn: John Lawrence, John Hancock Tower, 200 Clarendon Street, 26th Floor, Boston, MA 02116; (vi) counsel to the Prepetition Senior Noteholders and the Prepetition Subordinated Noteholders, Weil Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Jacqueline Marcus), jacqueline.marcus@weil.com; (vii) proposed counsel to the Committee, Cooley LLP (Attn:

Michael Klein and Sarah A. Carnes), mklein@cooley.com and scarnes@cooley.com; and (viii) counsel to the DIP Lender, Arent Fox LLP, 1675 Broadway, New York, New York 10019 (Attn: Robert M. Hirsh, Esq.), Robert.Hirsh@arentfox.com, so that it is actually received on or before the Sale Objection Deadline (collectively, the “Objection Notice Parties”).

20. Bidding Results. As soon as practicable after the Bid Deadline, but no later than one (1) day after such deadline, the Debtors shall provide electronic notice on the case docket as to whether more than one Qualified Bid has been received and whether the Debtor will proceed with the Auction. Such notice shall also contain a brief description of the Assets included in each Qualified Bid, specifically including a list of the Executory Contracts included in such bid.

21. Auction Results. As soon as practicable after the Auction, but no later than one (1) day after conclusion of the Auction, the Debtors shall provide electronic notice of the results thereof on the case docket.

#### **PROPOSED NOTICE OF ASSUMPTION AND ASSIGNMENT OF CONTRACTS**

22. As part of the Sale, the Debtors seek authority to potentially assume and assign certain of the Executory Contracts to the Successful Bidder(s).

23. With respect to the Commercial Leases, attached hereto as Exhibit C is a list (the “Commercial Lease Cure Table”) of the Debtors unexpired Commercial Leases and the cure amount (the “Commercial Lease Cure Amount”) that the Debtors believe is necessary to assume each such Commercial Lease pursuant to section 365 of the Bankruptcy Code.

24. With respect to the Other Executory Contracts, no later than December 1, 2017 the Debtors will file with the Court and serve on each party to an Other Executory Contract a notice substantially in the form attached hereto as Exhibit D (the “Other Executory Contract Cure Notice”) setting forth the amount of cure owed thereunder according to the Debtors’ books

and records. The Other Executory Contract Cure Notice shall state (i) the cure amount that the Debtors believe is necessary to assume such contract or lease pursuant to section 365 of the Bankruptcy Code (the “Other Executory Contract Cure Amount” and together with the Commercial Lease Cure Amount, the “Cure Amounts”), (ii) notify each party that such party’s lease or contract may be assumed and assigned to the Successful Bidder to be identified at the conclusion of the Auction, (iii) state the date of the Sale Hearing; and (iv) state the deadline by which the non-Debtor party shall file an objection to the Other Executory Contract Cure Amount.

25. The deadline for filing an objection (a “Cure Objection”) to the Commercial Lease Cure Amounts and the Other Executory Contract Cure Amounts shall be **December 11, 2017 at 4:00 p.m. (ET)** (the “Cure Objection Deadline”). Objections, if any, shall be in writing, filed with the Court and served upon the Objection Notice Parties, so that they are actually received on or before the Cure Objection Deadline. Any objection to a Cure Amount must state with specificity what cure the party to the Executory Contract believes is required with appropriate documentation in support thereof. If no objection is timely received, the Cure Amount set forth on the Commercial Lease Cure Table and in the Other Executory Contract Cure Notice shall be controlling notwithstanding anything to the contrary in any Executory Contract or other document as of the date hereof or the date of the Other Executory Contract Cure Notice, as applicable. Any objections not resolved by the Sale Hearing may be adjourned to a later hearing date as fixed by the Court.

26. Any non-Debtor counterparty to any Executory Contract who does not file a Cure Objection by the Cure Objection Deadline, shall be forever barred from objecting to the Cure Amount or asserting or claiming any Cure Amount (other than the Cure Amount listed on the

Commercial Lease Cure Table or the Other Executory Contract Cure Notice) against the Debtors or any Successful Bidder.

27. Landlords and other non-Debtor parties to the Executory Contracts may seek additional adequate assurance information by emailing their request (and explicitly agreeing in writing that they will keep any information they receive confidential) to counsel for the Debtors, Gregg M. Galardi, Esq. (Gregg.galardi@ropesgray.com), Alex McGee, Esq. (alex.mcgee@ropesgray.com), and Erin R. Fay, Esq. (efay@bayardlaw.com) at least one day prior to the Auction. Counsel for the Debtors will email adequate assurance packages to those parties as soon as practicable but no later than one day after the Auction.

28. The deadline for filing an objection (an “Adequate Assurance Objection”) to the assumption and assignment of an Executory Contract on the basis of a lack of adequate assurance of future performance shall be **December 13, 2017 at 4:00 p.m. (ET)** (the “Adequate Assurance Objection Deadline”). Objections, if any, shall be in writing, filed with the Court and served upon the Objection Notice Parties, so that they are actually received on or before the Adequate Assurance Objection Deadline. Any objections not resolved by the Sale Hearing may be adjourned to a later hearing date as fixed by the Court.

29. Any non-Debtor party to an Executory Contract who does not file a timely Cure Objection or Adequate Assurance Objection shall be deemed to have consented to the assumption and assignment of its Executory Contract to the Successful Bidder and will be forever barred from objecting to such assumption and assignment on account of the Cure Amount, lack of adequate assurance or any other grounds.

30. The hearing with respect to any Cure Objections and/or Adequate Assurance Objections may be held (i) at the Sale Hearing, or (ii) on such other date as the Bankruptcy Court

may designate. To the extent the Debtors and a non-Debtor counterparty to an Executory Contract are able to consensually resolve a Cure Objection or Adequate Assurance Objection prior to the Sale Hearing, the Debtors shall promptly provide notice to the Committee, the U.S. Trustee and the Successful Bidder, as applicable, of such resolution.

### **APPLICABLE AUTHORITY**

#### **I. THE BID PROCEDURES SHOULD BE APPROVED**

31. Pursuant to Bankruptcy Rule 6004(f)(1), sales of property outside the ordinary course of business may be by private sale or by public auction. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See In re Mushroom Transp. Co.*, 382 F.3d 325, 339 (3d Cir. 2004) (debtor in possession “had a fiduciary duty to protect and maximize the estate’s assets”).

32. Courts uniformly recognize that procedures to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and therefore are appropriate in the context of bankruptcy transactions. *See In re O’Brien Env’tl. Energy, Inc.*, 181 F. 3d 527, 537 (3d Cir. 1999); *see also Official Comm. of Subordinated Bondholders v. Integrated Res. Inc. (In re Integrated Res. Inc.)*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (Bid Procedures “encourage bidding and ... maximize the value of the debtor’s assets”).

33. The Debtors believe that the Bid Procedures will increase the likelihood that the Debtors will receive the greatest possible consideration for the Assets because such procedures will ensure a competitive and fair bidding process. The Debtors also believe that the Bid Procedures will promote active bidding from seriously interested parties and will generate the highest or otherwise best offer for the Assets. The Bid Procedures will allow the Debtors to conduct the Auction (if more than one Qualified Bid is received), in a controlled and fair manner

that will encourage participation by financially capable bidders that demonstrate the ability to close the Sale.

34. The Debtors believe that the Bid Procedures are consistent with the bankruptcy bidding and auction procedures approved routinely in this District and are most likely to maximize the realizable value of their assets for the benefit of the Debtors' estates, creditors, and other parties in interest. Indeed, this Court and other bankruptcy courts in this District have routinely approved similar bid procedures. *See, e.g., In re iGPS Co. LLC*, No. 13-11459 (KG) (Bankr. D. Del. July 31, 2013); *In re Centaur, LLC*, No. 10-10799 (KJC) (Bankr. D. Del. July 28, 2010); *In re RNI Winddown Corp.*, No. 06-10110 (CSS) (Bankr. D. Del. Feb. 24, 2006).<sup>5</sup> Accordingly, the Debtors believe the Court should approve the Bid Procedures.

35. The Debtors, with the assistance of their advisors, have been looking for strategic buyers, financial buyers, and capital providers for nearly six months. Throughout that process, the Debtors have exhaustively marketed themselves and their assets for sale, and multiple interested parties have conducted significant due diligence. Nonetheless, the Bid Procedures will allow any prospective bidders and other interested parties time before the Bid Deadline to conduct any due diligence required. If other interested parties are discovered, the Debtors will provide every possible opportunity to such parties to conduct the due diligence such parties need to submit the best possible Qualified Bid. The Debtors submit that a lengthier process is not likely to benefit any bidder, all of whom have had extensive time to engage in due diligence and will have yet more time to do so during this process.

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<sup>5</sup> The referenced orders are voluminous in nature and are not attached to this motion; however, in accordance with Local Rule 7007-2, as made applicable to main cases by the Court's General Chambers Procedures, undersigned counsel has copies of each order and will make them available to the Court or to any party that requests them.



## **II. THE SALE NOTICE PROCEDURES ARE REASONABLE AND APPROPRIATE**

36. Pursuant to Bankruptcy Rules 2002(a) and (c), the Debtors are required to notify creditors of the Sale, including a disclosure of the time and place of any auction, the terms and conditions of the Sale and the deadline for filing any objections thereto.

37. The Debtors submit that the notice procedures described above fully comply with Bankruptcy Rule 2002 and are reasonably calculated to provide timely and adequate notice of the Bid Procedures, the Auction and the Sale Hearing to the Debtors' creditors and other interested parties that are entitled to notice, as well as those parties that have expressed a bona fide interest in acquiring the Debtors' assets.

38. Accordingly, the Debtors request that the Court approve the notice procedures set forth herein, including the form and manner of service of the Sale Notice and that no other or further notice of the Bid Procedures, the Auction and the Sale Hearing is necessary or required.

## **III. THE SALE RELIEF**

39. By this Motion, the Debtors also request that the Court approve the Sale pursuant to sections 105, 363 and 365 of the Bankruptcy Code. This portion of the relief is requested to be entered after the Sale Hearing. The Debtors submit that the sale of substantially all of their assets to a Successful Bidder(s) is in the best interests of the Debtors, their estates and stakeholders and should be approved.

### **A. Sale Pursuant to Section 363(b)(1).**

40. Section 363(b)(1) of the Bankruptcy Code provides, "The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." Section 105(a) of the Bankruptcy Code provides in relevant part: "The Court may issue

any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”

41. A debtor should be authorized to sell assets out of the ordinary course of business pursuant to section 363 of the Bankruptcy Code and prior to obtaining a confirmed plan or reorganization if it demonstrates a sound business purpose for doing so. *See In re Delaware & Hudson Ry. Co.*, 124 B.R. 169 (D. Del. 1991) (sale of substantially all of debtor’s assets outside of reorganization plan is appropriate when a sound business reason justifies such a sale); *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *In re Mid-Am. Waste Sys.*, Case No. 97-104 (PJW) (Bankr. D. Del. Mar. 7, 1997).

42. Courts have applied the following four factors in determining whether a sound business justification exists: (a) whether a sound business reason exists for the proposed transaction; (b) whether fair and reasonable consideration is provided; (c) whether the transaction has been proposed and negotiated in good faith; and (d) whether adequate and reasonable notice is provided. *See Delaware & Hudson Ry.*, 124 B.R. at 175 (adopting *Lionel* factors to consider in determining whether sound business purpose exists for sale outside ordinary course of business in this District); *Lionel*, 722 F.2d at 1071 (setting forth the “sound business” purpose test); *In re Abbotts Dairies of Penn., Inc.*, 788 F.2d 143, 147-49 (3d Cir. 1986) (implicitly adopting the articulated business justification test of *Lionel* standard and adding the “good faith” requirement).

43. As explained above, the Debtors have determined that their best opportunity to maximize creditor recoveries is to sell the Assets as part of the Liquidation Scenario or sell the Non-IP Assets in connection with the Reorganization. Accordingly, it is a valid exercise of the Debtors’ business judgment to seek approval the transaction for the Sale of the Debtors’ Assets.

**B. Sale Free and Clear Pursuant to Section 363(f).**

44. Bankruptcy Code section 363(f) provides:

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

- (1) applicable 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).

45. The Debtors maintain that whether they pursue the Reorganization or the Liquidation Scenario, one of the five subsections of section 363(f) will be satisfied in connection with the Sale, and therefore, the Debtors may sell their assets free and clear of all liens, claims, and encumbrances. Specifically, the Debtors will consult with the Prepetition Term Loan Agent and the DIP Lender and seek to obtain their consent prior to seeking approval of the particular Sale Relief. Moreover, the Debtors submit that any such lien, claim, or encumbrance will be adequately protected by attachment to the net proceeds of the sale, subject to any claims and defenses the Debtors may possess with respect thereto. Accordingly, the Debtors request that the assets be transferred to the Successful Bidder(s) free and clear of all liens, claims, and encumbrances, with such liens, claims, and encumbrances attaching to the proceeds of the sale of the Assets.

**C. Authorization of Assumption and Assignment of Executory Contracts and Unexpired Leases.**

46. To enhance the value of the Debtors' Assets, the Debtors request approval under section 365 of the Bankruptcy Code of the Debtors' assumption and assignment of the Executory Contracts, as applicable, to the Successful Bidder(s). The Debtors further request that the Sale Order provide that such Executory Contracts will be transferred to, and remain in full force and effect for the benefit of, the Successful Bidder(s) notwithstanding any provisions in such Executory Contracts, including those described in Bankruptcy Code sections 365(b)(2) and (f)(1) and (3) that prohibit such assignment.

47. Bankruptcy Code section 365 (f) (2) provides, in pertinent part, that:

The trustee may assign an executory contract or unexpired lease of the debtor only if —

- (A) the trustee assumes such contract or lease in accordance with the provisions of this section; and
- (B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. § 365(f)(2).

48. Under section 365(a), 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(b)(1), in turn, codifies the requirements for assuming an unexpired lease or executory contract of a debtor, providing, in pertinent part that:

- (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) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

49. The meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case, but should be given a “practical, pragmatic construction.” *EBG Midtown S. Corp. v. McLaren/Hart Env. Eng’g Corp. (In re Sanshoe Worldwide Corp.)*, 139 B.R. 585, 593 (S.D.N.Y. 1992); *In re Rachels Indus., Inc.*, 109 B.R. 797, 803 (Bankr. W.D. Tenn. 1990); *see also In re Prime Motor Inns Inc.*, 166 B.R. 993, 997 (Bankr. S.D. Fla. 1994) (“[a]lthough no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance”).

50. Adequate assurance may be provided by demonstrating the assignee’s financial health and experience 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) (adequate assurance is present when prospective assignee of lease from debtor has financial resources and has expressed willingness to devote sufficient funding to business to give it strong likelihood of succeeding).

51. The Debtors intend to present facts at the Sale Hearing to show the financial credibility, willingness, and ability of the Successful Bidder(s) to perform under any Executory Contracts the Debtors intend to assume and assign to such Successful Bidder(s). The Sale Hearing thus will afford the Court and other interested parties the opportunity to evaluate the ability of the Successful Bidder(s) to provide adequate assurance of future performance under the such contracts, as required under Bankruptcy Code section 365(b)(1)(C). Further, as set forth

above, the Debtors will give notice to all parties to the Executory Contracts of their intention to assume the Executory Contracts and what the Debtors believe are the Cure Amounts. Accordingly, the Court should authorize the Debtors to assume and assign any or all Executory Contracts, as applicable, to the Successful Bidder(s).

**D. The Successful Bidder(s) (and Any Designee), Should be Afforded All Protections Under Section 363(m) of the Bankruptcy Code.**

52. Section 363(m) of the Bankruptcy Code protects a good faith purchaser's interest in property purchased from the debtor notwithstanding that authorization of the sale conducted under section 363(b) is later reversed or modified on appeal. Specifically, section 363(m) provides, in relevant part, as follows:

The reversal or modification on appeal of an authorization under [section 363(b)] ... does not affect the validity of a sale ... to an entity that purchased ... 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.

53. Section 363(m) "reflects the ... 'policy of not only affording finality to the judgment of the bankruptcy court, but particularly to give finality to those orders and judgments upon which third parties rely.'" *In re Abbotts Dairies of Penn., Inc.*, 788 F.2d 143, 147 (3d Cir. 1986) (quoting *Hoese Corp. v. Vetter Corp. (In re Vetter Corp.)*, 724 F.2d 52, 55 (7th Cir. 1983)). *See also United States v. Salerno*, 932 F.2d 117, 123 (2d Cir. 1991) (noting that section 363(m) furthers the policy of finality in bankruptcy sales and "assists bankruptcy courts in maximizing the price for assets sold in such proceedings"); *In re Stein & Day, Inc.*, 113 B.R. 157, 162 (Bankr. S.D.N.Y. 1990) (same).

54. As discussed above, the selection of the Successful Bidder(s) will be a product of arm's length and good faith negotiations. Based on the foregoing, the Debtors request that the

Court determine that the Successful Bidder(s) is a good faith purchaser entitled to protections of section 363(m) of the Bankruptcy Code.

### **RESERVATION OF RIGHTS**

55. The Debtors expressly reserve the right to amend, modify, and/or supplement the relief requested in this Motion in all respects prior to or at the applicable hearing (and the Bid Procedures prior to or during the Auction) and reserves the right to withdraw this Motion, in whole or in part, prior to or at the applicable hearing.

### **REQUEST FOR WAIVER OF LOCAL RULE 6004-1(b)**

56. Local Rule 6004-1(b) requires, among other things, that any motion to sell property of the estate pursuant to section 363 of the Bankruptcy Code attach “[a] copy of the proposed purchase agreement, or a form of such agreement substantially similar to the one the debtor reasonably believes it will execute in connection with the proposed sale [and a] copy of a proposed form of sale order.” Del. Bankr. L. R. 6004-1(b). As set forth above, the Debtor and its professionals have been and are continuing an aggressive marketing of the assets. Nevertheless, the terms of the sale of the assets, including, in particular, the potential distribution of assets among lots, potential bases to calculate the purchase price of such Assets, and the extent of assumed liabilities, are uncertain as of the date hereof. Any such forms the Debtor might submit at this time would be merely generic in nature, rather than based on any actual transaction or terms being proposed, and the ultimate transaction(s) and term(s) proposed could differ materially from any speculative forms presented at this time. Consequently, filing such forms would offer little benefit and may be confusing to the parties receiving notice of this Motion. Accordingly, the Debtor requests a waiver of the provisions of Local Rule 6004-1 to the extent applicable.

**REQUEST FOR WAIVER OF BANKRUPTCY RULE 6004(h)**

57. The Debtor requests that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” To maximize the value of the assets and to minimize unnecessary administrative expenses, it is critical that the Debtor consummate a sale on the timeline proposed. Accordingly, the Debtor requests that the automatic fourteen (14) day stay under Bankruptcy Rules 6004(h) and 6006(d) be waived.

**NOTICE**

58. Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel: (i) the U.S. Trustee; (ii) counsel to the Wells Fargo Bank, NA, as the ABL Agent, Choate, Hall, & Stewart LLP, Two International Place, Boston, Massachusetts 02110 (Attn: Kevin J. Simard), ksimard@choate.com; (iii) counsel to the THL Corporate Finance, Inc., as the Term Loan Agent, Paul Hastings LLP, 71 S. Wacker Drive, Forty-Fifth Floor, Chicago, Illinois 60606 (Attn: Matthew Murphy), mattmurphy@paulhastings.com; (iv) Palladin Consumer Retail Products, Attn: John Lawrence, John Hancock Tower, 200 Clarendon Street, 26th Floor, Boston, MA 02116; (v) counsel to the Prepetition Senior Noteholders and the Prepetition Subordinated Noteholders, Weil Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Jacqueline Marcus), jacqueline.marcus@weil.com; (vi) the Internal Revenue Service; (vii) the United States Attorney for the District of Delaware; (viii) proposed counsel to the Committee, Cooley LLP (Attn: Michael Klein and Sarah A. Carnes), mklein@cooley.com and scarnes@cooley.com; and (ix) counsel to the DIP Lender, Arent Fox LLP, 1675 Broadway, New York, New York 10019 (Attn: Robert M. Hirsh, Esq.), Robert.Hirsh@arentfox.com; (x) any



party known or reasonably believed to have asserted any lien, claim or encumbrance or other interest in the Debtors' assets; (xi) any party known or reasonably believed to have expressed an interest in acquiring some or substantially all of the Debtors' assets; (xii) the counterparties to the Commercial Leases, and their counsel, if known, at the address set forth in the notice provision of such Commercial Lease, or if none, the last known address available to the Debtors; and (xiii) any parties that have requested notice in these cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested in this Motion, the Debtors respectfully submit that no further notice is necessary.

**CONCLUSION**

WHEREFORE, the Debtors respectfully request that this Court enter the Bid Procedures Order, substantially in the form attached as **Exhibit A**, granting the relief requested herein and such other and further relief as is just and proper.

Dated: November 7, 2017  
Wilmington, Delaware

BAYARD, P.A.

/s/ Erin R. Fay  
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*Co-Counsel for the Debtors  
and Debtors in Possession*

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re:

AEROGROUP INTERNATIONAL,  
INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 17-11962 (KJC)  
(Jointly Administered)

Hearing Date: Nov. 28, 2017 at 1:00 p.m. (ET)  
Obj. Deadline: Nov. 21, 2017 at 4:00 p.m. (ET)

**NOTICE OF MOTION OF THE DEBTORS FOR ENTRY OF (I) AN ORDER  
(A) APPROVING BID PROCEDURES FOR THE SALE OF SUBSTANTIALLY  
ALL OF THE DEBTORS' ASSETS, (B) APPROVING PROCEDURES FOR THE  
ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS OR  
UNEXPIRED LEASES IN CONNECTION WITH THE SALE, (C) SCHEDULING  
A SALE HEARING, AND (D) GRANTING CERTAIN RELATED RELIEF; AND  
(II) AN ORDER (A) APPROVING THE SALE OF THE DEBTORS' ASSETS,  
(B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN  
EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND  
(C) GRANTING CERTAIN RELATED RELIEF**

PLEASE TAKE NOTICE that on November 7, 2017, the above-captioned debtors and debtors in possession (collectively, the "Debtors") filed with the United States Bankruptcy Court for the District of Delaware (the "Court") the *Motion of the Debtors for Entry of (I) An Order (A) Approving Bid Procedures for the Sale of Substantially All of the Debtors' Assets, (B) Approving Procedures for the Assumption and Assignment of Executory Contracts or Unexpired Leases in Connection with the Sale, (C) Scheduling a Sale Hearing, and (D) Granting Certain Related Relief; and (II) An Order (A) Approving the Sale of the Debtors' Assets, (B) Approving the Assumption and Assignment of Certain*

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<sup>1</sup> The Debtors in these chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are as follows: Aerogroup International, Inc. (6119), AGI Holdco, Inc. (7087), Aerogroup International LLC (4658), Aerogroup International Holdings LLC (4312), Aerogroup Retail Holdings, Inc. (4650), and Aerogroup Gift Card Company, Inc. (7551). The mailing address for the Debtors, solely for purposes of notices and communications, is: 201 Meadow Road, Edison, New Jersey 08817.

*Executory Contracts and Unexpired Leases, and (C) Granting Certain Relate Relief* (the “Motion”),<sup>2</sup> a copy of which is being served on you with this notice.

PLEASE TAKE FURTHER NOTICE that, if needed, a hearing on the Bid Procedures Relief requested in the Motion will be held on **November 28, 2017 at 1:00 p.m. (Eastern Time)** before the Honorable Kevin J. Carey, United States Bankruptcy Judge, at the Court, 824 Market Street, 5th Floor, Courtroom No. 5, Wilmington, Delaware 19801.

PLEASE TAKE FURTHER NOTICE that, objections, if any, to the Bid Procedures Relief requested in the Motion must be filed on or before **November 21, 2017 at 4:00 p.m. (Eastern Time)** (the “Objection Deadline”) with the Court, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801. At the same time, you must serve a copy of the response upon the undersigned counsel to the Debtors so as to be received on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO PROPERLY FILE AND SERVE A RESPONSE ON OR BEFORE THE OBJECTION DEADLINE, THE COURT MAY GRANT THE BID PROCEDURES RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

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<sup>2</sup> Undefined capitalized terms used herein shall have the meanings set forth in the Motion.

Dated: November 7, 2017  
Wilmington, Delaware

BAYARD, P.A.

/s/ Erin R. Fay

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Erin R. Fay (No. 5268)  
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*Co-Counsel for the Debtors and Debtors in  
Possession*

**Exhibit A**

Bid Procedures Order

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re:

AEROGROUP INTERNATIONAL,  
INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 17-11962 (KJC)

(Jointly Administered)

Sale Objection Deadline: December 11, 2017 at 4:00 p.m. (ET)

Sale Hearing: December 14, 2017 at 10:00 a.m. (ET)

**ORDER (A) APPROVING BID PROCEDURES FOR THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, (B) APPROVING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS OR UNEXPIRED LEASES IN CONNECTION WITH THE SALE, (C) SCHEDULING A SALE HEARING, AND (D) GRANTING CERTAIN RELATED RELIEF**

Upon the *Debtors' Motion for (I) an Order (A) Approving Bid Procedures For the Sale of Substantially All of the Debtors' Assets, (B) Approving Procedures For the Assumption and Assignment of Executory Contracts or Unexpired Leases in Connection with the Sale, (C) Scheduling a Sale Hearing and (D) Granting Certain Related Relief, and (II) an Order (A) Approving the Sale of the Debtors' Assets, (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (C) Granting Certain Related Relief* (the "Sale Motion")<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the "Debtors") seeking, among other things, the entry of an order approving the bid procedures attached hereto as **Exhibit 1** (the "Bid Procedures") in connection with the proposed sale of substantially all of the Debtors' Assets; it appearing that the relief requested is in the best

<sup>1</sup> The Debtors in these chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are as follows: Aerogroup International, Inc. (6119), AGI Holdco, Inc. (7087), Aerogroup International LLC (4658), Aerogroup International Holdings LLC (4312), Aerogroup Retail Holdings, Inc. (4650), and Aerogroup Gift Card Company, Inc. (7551). The mailing address for the Debtors, solely for purposes of notices and communications, is: 201 Meadow Road, Edison, New Jersey 08817.

<sup>2</sup> Unless otherwise stated, all capitalized terms not defined herein shall have the same meaning as set forth in the Sale Motion or the Bid Procedures, as applicable.

interests of the Debtors' estates, their creditors and other parties in interest; the Court having jurisdiction to consider the Bid Procedures Relief of the Sale Motion pursuant to 28 U.S.C. §§ 157 and 1334; consideration of the Bid Procedures Relief being a core proceeding pursuant to 28 U.S.C. § 157(b); venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; notice of the Sale Motion having been adequate and appropriate under the circumstances; a hearing on the Bid Procedures Relief having been held by this Court; and after due deliberation and sufficient cause appearing therefor:

**IT IS HEREBY ORDERED THAT:**

1. The Sale Motion is GRANTED as provided herein.
2. The Bid Procedures attached hereto as **Exhibit 1** are fair and reasonable and appropriate under the circumstances and designed to maximize recovery on, and realize value of the Debtors' Assets and are therefore approved. The Bid Procedures shall govern the submission, receipt and analysis of all bids relating to the Sale and any party desiring to submit a bid shall do so strictly in accordance with the terms of the Bid Procedures and this Order.
3. Sale Notice. The form of notice of the Auction and the Sale attached to the Sale Motion as **Exhibit B** (the "Sale Notice") is reasonably calculated to provide all interested parties with timely and proper notice of the proposed Sale and is therefore approved. Within one (1) day after the entry of this Order, or as soon thereafter as practicable (the "Mailing Date"), the Debtors (or their agents) shall serve the Sale Notice by e-mail (if known) and first-class mail, postage prepaid, upon (i) the U.S. Trustee; (ii) counsel to the Wells Fargo Bank, NA, as the ABL Agent, Choate, Hall, & Stewart LLP, Two International Place, Boston, Massachusetts 02110 (Attn: Kevin J. Simard), ksimard@choate.com; (iii) counsel to the THL Corporate Finance, Inc., as the Term Loan Agent, Paul Hastings LLP, 71 S. Wacker Drive, Forty-Fifth Floor, Chicago, Illinois 60606 (Attn: Matthew Murphy), mattmurphy@paulhastings.com; (iv) Palladin Consumer



Retail Products, Attn: John Lawrence, John Hancock Tower, 200 Clarendon Street, 26th Floor, Boston, MA 02116; (v) counsel to the Prepetition Senior Noteholders and the Prepetition Subordinated Noteholders, Weil Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Jacqueline Marcus), jacqueline.marcus@weil.com; (vi) the Internal Revenue Service; (vii) the United States Attorney for the District of Delaware; (viii) proposed counsel to the Committee; (ix) the DIP Secured Parties; (x) any party known or reasonably believed to have asserted any lien, claim or encumbrance or other interest in the Debtors' assets; (xi) any party known or reasonably believed to have expressed an interest in acquiring some or substantially all of the Debtors' assets; and (xii) any parties that have requested notice in these cases pursuant to Bankruptcy Rule 2002. Such notice shall be sufficient and proper notice of the Sale with respect to known interested parties and no other or further notice of the Auction or the Sale Hearing (as defined below) to such parties shall be required.

4. Publication Notice. Pursuant to Fed. R. Bankr. P. 2002 and 6004, publication of the Sale Notice (as may be modified for publication purposes) as the Debtors deem appropriate on the Mailing Date or as soon as practicable thereafter constitutes sufficient notice to any other interested parties whose identities are unknown to the Debtors and no other or further notice of the Auction or the Sale Hearing to such parties shall be required.

5. Sale Hearing. The hearing to approve the Sale of the Debtors' Assets (the "Sale Hearing") will be held on December 14, 2017 at 10:00 a.m. (ET) which may be adjourned for any reason, including without limitation, in the event the Debtors move forward with the Reorganization and wish to hold the Sale Hearing at the same time as the Confirmation Hearing. Any such adjournment shall be effective upon the filing of a notice of adjournment or the making

of an announcement at the Sale Hearing. No further notice of any such adjournment or continuance will be required to be provided to any party.

6. Sale Objection Deadline: The deadline for filing an objection to the Sale shall be **December 11, 2017 at 4:00 p.m. (ET)** (the "Sale Objection Deadline"). Objections, if any, shall be in writing, filed with the Court and served upon: (i) co-counsel to the Debtors: (a) Ropes & Gray LLP, 1211 Avenue of the Americas, New York, NY 10036-8704 (Attn: Gregg M. Galardi), gregg.galardi@ropesgray.com; and (b) Bayard, P.A., 600 N. King Street, Suite 400, Wilmington, DE 198013 (Attn: Scott D. Cousins and Erin R. Fay) scousins@bayardlaw.com, efay@bayardlaw.com; (ii) the U.S. Trustee; (iii) counsel to the Wells Fargo Bank, NA, as the ABL Agent, Choate, Hall, & Stewart LLP, Two International Place, Boston, Massachusetts 02110 (Attn: Kevin J. Simard), ksimard@choate.com; (iv) counsel to the THL Corporate Finance, Inc., as the Term Loan Agent, Paul Hastings LLP, 71 S. Wacker Drive, Forty-Fifth Floor, Chicago, Illinois 60606 (Attn: Matthew Murphy), mattmurphy@paulhastings.com; (v) Palladin Consumer Retail Products, Attn: John Lawrence, John Hancock Tower, 200 Clarendon Street, 26th Floor, Boston, MA 02116; (vi) counsel to the Prepetition Senior Noteholders and the Prepetition Subordinated Noteholders, Weil Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Jacqueline Marcus), jacqueline.marcus@weil.com; (vii) proposed counsel to the Committee, Cooley LLP (Attn: Michael Klein and Sarah A. Carnes), mklein@cooley.com and scarnes@cooley.com; and (viii) counsel to the DIP Lender, Arent Fox LLP, 1675 Broadway, New York, New York 10019 (Attn: Robert M. Hirsh, Esq.), Robert.Hirsh@arentfox.com, so that it is actually received on or before the Sale Objection Deadline (collectively, the "Objection Notice Parties").

7. Bidding Results. As soon as practicable after the Bid Deadline, but no later than one (1) day after such deadline, the Debtors shall provide electronic notice on the case docket as to whether more than one Qualified Bid has been received and whether the Debtors will proceed with the Auction. Such notice shall also contain a brief description of the Assets included in each Qualified Bid, specifically including a list of the Executory Contracts included in such bid.

8. Auction Results. As soon as practicable after the Auction, but no later than one (1) day after conclusion of the Auction, the Debtors shall provide electronic notice of the results thereof on the case docket.

9. Assumption and Assignment Procedures. With respect to the Commercial Leases, the table attached to the Sale Motion as Exhibit C (the “Commercial Lease Cure Table”) lists the cure amount (the “Commercial Lease Cure Amount”) that the Debtors believe is necessary to assume each such Commercial Lease pursuant to section 365 of the Bankruptcy Code. With respect to the Other Executory Contracts, no later than December 1, 2017 the Debtors will file with the Court and serve by first class mail on each party to an Other Executory Contract a notice setting forth the amount of cure owed thereunder according to the Debtors books and records (the “Other Executory Contract Cure Notice”). The Other Executory Contract Cure Notice shall state (i) the cure amount that the Debtors believe is necessary to assume such contract or lease pursuant to section 365 of the Bankruptcy Code (the “Other Executory Contract Cure Amount”) and together with the Commercial Lease Cure Amount, the “Cure Amounts”), (ii) notify each party that such party’s lease or contract may be assumed and assigned to the Successful Bidder to be identified at the conclusion of the Auction, (iii) state the date of the Sale Hearing; and (iv) state the deadline by which the non-Debtor party shall file an objection to the Cure Amount.

10. The notice of the Commercial Lease Cure Amount provided by the Commercial Lease Cure Table provides counterparties to the Commercial Leases with proper notice of the intended assumption and assignment of the Commercial Leases, any cure amounts relating thereto and procedures for objecting to assumption or assignment of the Commercial Leases.

11. The form of the Other Executory Contract Cure Notice attached to the Sale Motion as Exhibit D is reasonably calculated to provide counterparties to the Other Executory Contracts with proper notice of the intended assumption and assignment of the Other Executory Contracts, any cure amounts relating thereto and procedures for objecting to assumption or assignment of the Other Executory Contracts.

12. Cure Objection Deadline. The deadline for filing an objection (a “Cure Objection”) to the Commercial Lease Cure Amounts and the Other Executory Contract Cure Amounts shall be **December 11, 2017 at 4:00 p.m. (ET)** (the “Cure Objection Deadline”). Objections, if any, shall be in writing, filed with the Court and served upon the Objection Notice Parties, so that they are actually received on or before the Cure Objection Deadline. Any objection to a Cure Amount must state with specificity what cure the party to the Executory Contract believes is required with appropriate documentation in support thereof. If no objection is timely received, the Cure Amount set forth on the Commercial Lease Cure Table and on the Other Executory Contract Cure Notice shall be controlling notwithstanding anything to the contrary in any Executory Contract or other document as of the date of the Sale Motion or Other Executory Contract Cure Notice, as applicable. Any objections not resolved by the Sale Hearing may be adjourned to a later hearing date as fixed by the Court.

13. Any non-Debtor counterparty to any Executory Contract who does not file a Cure Objection by the Cure Objection Deadline, shall be forever barred from objecting to the Cure

Amount or asserting or claiming any Cure Amount (other than the Cure Amount listed on the Commercial Lease Cure Table or the Other Executory Contract Cure Notice) against the Debtors or any Successful Bidder.

14. Adequate Assurance Information. Landlords and other non-Debtor parties to the Executory Contracts may seek additional adequate assurance information by emailing their request (and explicitly agreeing in writing that they will keep any information they receive confidential) to counsel for the Debtors, Gregg M. Galardi, Esq. (Gregg.galardi@ropesgray.com), Alex McGee, Esq. (alex.mcgee@ropesgray.com), and Erin R. Fay, Esq. (efay@bayardlaw.com) at least one day prior to the Auction. Counsel for the Debtors will email adequate assurance packages to those parties as soon as practicable but no later than one day after the Auction.

15. Adequate Assurance Objection Deadline. The deadline for filing an objection (an “Adequate Assurance Objection”) to the assumption and assignment of an Executory Contract on the basis of a lack of adequate assurance of future performance shall be **December 13, 2017 at 4:00 p.m. (ET)** (the “Adequate Assurance Objection Deadline”). Objections, if any, shall be in writing, filed with the Court and served upon the Objection Notice Parties, so that they are actually received on or before the Adequate Assurance Objection Deadline. Any objections not resolved by the Sale Hearing may be adjourned to a later hearing date as fixed by the Court.

16. Any non-Debtor party to an Executory Contract who does not file a timely Cure Objection or Adequate Assurance Objection shall be deemed to have consented to the assumption and assignment of its Executory Contract to the Successful Bidder and will be forever barred from objecting to such assumption and assignment on account of the Cure Amount, lack of adequate assurance or any other grounds.

17. The hearing with respect to any Cure Objections and/or Adequate Assurance Objections may be held (i) at the Sale Hearing, or (ii) on such other date as the Bankruptcy Court may designate. To the extent the Debtors and non-Debtor counterparty to an Executory Contract are able to consensually resolve a Cure Objection or Adequate Assurance Objection prior to the Sale Hearing, the Debtors shall promptly provide notice to the Committee, the U.S. Trustee and the Successful Bidder, as applicable, of such resolution.

18. The requirements of Local Rule 6004-1(b) with respect to the filing of a copy of the proposed purchase agreement, or a form of such agreement substantially similar to the one the Debtors reasonably believe it will execute in connection with the proposed sale is hereby waived. The Debtors shall file a form of Sale Order as soon as practicable prior to a Sale Hearing.

19. The Debtors are authorized to execute and deliver all instruments and documents, and take such other action as may be necessary or appropriate to implement and effectuate the transactions contemplated by this order.

20. This Order shall be effective and enforceable immediately upon entry.

21. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: \_\_\_\_\_, 2017  
Wilmington, Delaware

\_\_\_\_\_  
THE HONORABLE KEVIN J. CAREY  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT 1**

Bid Procedures

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re:

AEROGROUP INTERNATIONAL,  
INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 17-11962 (KJC)

(Jointly Administered)

**BID PROCEDURES**

These Bid Procedures (the “Bid Procedures”) have been approved by an order of the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) entered on November [--], 2017 (the “Bid Procedures Order”) in the above-captioned jointly administered chapter 11 cases of Aerogroup International, Inc. and certain of its affiliates, as debtors and debtors in possession in the above-captioned cases (the “Debtors”). These Bid Procedures set forth the process by which the Debtors are authorized to conduct the auction (the “Auction”) for the sale of a portion or substantially all of the Debtors’ assets (the “Assets”) pursuant to section 363 of the Bankruptcy Code (the “Sale”).

**Copies of the Bid Procedures Order, and other documents related thereto are available free of charge on the website of the Debtors’ noticing and claims agent, Prime Clerk LLC (“Prime Clerk”) at <https://cases.primeclerk.com/Aerosoles/>, or upon request by contacting Prime Clerk, by telephone at (844) 858-8887.**

**A. Bidder Requirements.**

A party must submit the following documents in order to be a “Qualified Bidder” and be allowed to participate in the bidding process and receive access to conduct due diligence:

- i. an executed confidentiality agreement on terms reasonably acceptable to the Debtors (a “Confidentiality Agreement”);
- ii. proof by the bidder (the “Proposed Bidder”) of its financial capacity to close a proposed transaction, including payment of any cure amount with respect to any contract that may be assigned with respect to the Sale, which may include current unaudited or verified financial statements of, or verified financial commitments obtained by, the Proposed Bidder (or, if the Proposed Bidder is an entity formed for the purpose of acquiring the property to be sold, the party that will bear

<sup>1</sup> The Debtors in these chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are as follows: Aerogroup International, Inc. (6119), AGI Holdco, Inc. (7087), Aerogroup International LLC (4658), Aerogroup International Holdings LLC (4312), Aerogroup Retail Holdings, Inc. (4650), and Aerogroup Gift Card Company, Inc. (7551). The mailing address for the Debtors, solely for purposes of notices and communications, is: 201 Meadow Road, Edison, New Jersey 08817.



liability for a breach), the adequacy of which the Debtors and its advisors will determine in consultation with with (i) Polk 33 Lending, LLC (the “DIP Lender”), (ii) THL Corporate Finance, Inc. (the “Prepetition Term Loan Agent”), and (iii) the official committee of unsecured creditors (the “Committee” and, together with the DIP Lender and the Prepetition Term Loan Agent, the “Consultation Parties”);

**B. Bid Requirements.**

In order to be eligible to participate in the Auction, a Qualified Bidder must, on or before the December 6, 2017 at 5:00 p.m. (ET) (the “Bid Deadline”) deliver a written offer which provides, or otherwise complies with, the items noted below (any such offer, a “Qualified Bid” and the such offer with the corresponding documents submitted therewith, the “Bid Documents”):

- i. Identifies the Assets (or the portion thereof) to be purchased, including (x) whether the bid contemplates a liquidation or operating any or all of the Debtors' business lines as going concerns, and (y) any Executory Contracts that would be assumed and assigned in connection with the proposed transaction;
- ii. Identifies, if applicable, the proposed form of adequate assurance of future performance with respect to any Executory Contracts that would be assumed and assigned in connection with the proposed transaction; provided, however, that any party submitting a bid solely with respect to a Commercial Lease(s) under which it is the landlord, need not provide such information;
- iii. Constitutes a binding proposal regarding the assets sought to be acquired and the consideration to be paid;
- iv. Remains irrevocable until 48 hours after the Sale Hearing;
- v. Is not subject to any break up fee, transaction fee, termination fee, expense reimbursement or any similar type of payment or reimbursement; and
- vi. Is accompanied by a good faith deposit in the amount of 10% of the proposed purchase price.<sup>2</sup>

The Bid Documents shall be delivered to the following parties

- Ropes & Gray LLP  
Gregg M. Galardi  
Alex McGee  
1211 Avenue of the Americas  
New York, NY 10036  
gregg.galardi@ropesgray.com  
alex.mcgee@ropesgray.com

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<sup>2</sup> The Debtors may waive the deposit requirement for bidders that submit credit bids or landlords submitting bids with respect to their own Commercial Lease(s).

- Bayard, P.A.  
Scott D. Cousins  
Erin R. Fay  
600 N. King Street, Suite 400  
Wilmington, Delaware 19801  
SCousins@bayardlaw.com  
EFay@bayardlaw.com
- Berkeley Research Group, LLC  
Mark Weinsten  
David Bernstein  
75 State Street, 18<sup>th</sup> Floor  
Boston, MA 02109  
mweinsten@thinkbrg.com  
dbernstein@thingbrg.com
- Piper Jaffray & Co.  
Richard Shinder  
345 Park Avenue, Suite 1200  
New York, NY 10154  
Richard.j.shinder@pjc.com

The Debtors shall provide copies of all Qualified Bids to the Consultation Parties as soon as reasonably practicable after such bids have been received by the Debtors. The Debtors will be authorized to approve joint bids in the Debtors' exercise of their reasonable good faith business judgment.

Prior to the Auction, the Debtors shall determine, in consultation with their advisors and the Consultation Parties, and notify each Proposed Bidder whether such Proposed Bidder is deemed a "Qualified Bidder" and has submitted acceptable Bid Documents such that their bid is deemed a "Qualified Bid."

**C. Access to Due Diligence.**

Only Qualified Bidders shall be eligible to receive due diligence and access to additional non-public information. The Debtors along with their advisors shall coordinate all reasonable requests for additional information and due diligence access from Qualified Bidders; *provided, however*, the Debtors may decline to provide such information to Qualified Bidders who, in the Debtors' reasonable business judgment and following consultation with the Consultation Parties, have not established that such Qualified Bidders intend in good faith to, or have the capacity to, consummate a Qualified Bid.

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 Debtors' assets and liabilities that are the subject of the Auction prior to making any such bids; that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets in making its bid; and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or

otherwise regarding the Debtors' assets or liabilities, or the completeness of any information provided in connection therewith, except as expressly stated in these Bid Procedures. Neither the Debtors nor any of their employees, officers, directors, affiliates, subsidiaries, representatives, agents, advisors or professionals are responsible for, and shall bear no liability with respect to, any information obtained by Proposed Bidders in connection with the Sale.

**D. Auction.**

If only one Qualified Bid or no Qualified Bid is received by the Bid Deadline, then the Debtors may decide to not hold the Auction. If more than one Qualified Bid is received by the Bid Deadline, then the Debtors shall conduct the Auction. The Auction shall commence on December 12, 2017 at 10:00 a.m. (ET) at the offices of Ropes & Gray LLP, 1211 Avenue of the Americas, New York, New York 10036, or such later time (after consultation with the Consultation Parties) or other place as the Debtors shall timely notify the Qualified Bidders. The Debtors, in consultation with the Consultation Parties, may conduct the auction telephonically. Parties other than Qualified Bidders and the Consultation Parties that wish to attend the Auction must provide the Debtors' counsel with notice of such intent by December 8, 2017.

The Auction will be conducted in accordance with the following procedures (the "Auction Procedures")

- i. only the Qualified Bidders shall be entitled to bid at the Auction;
- ii. after consulting with the Consultation Parties, the Debtors will announce the starting bid at the commencement of the Auction;
- iii. the Debtors will announce what the bidding increments are at the Auction, after consultation with the Consultation Parties, which may be modified as necessary to the extent the Debtors deem appropriate;
- iv. each Qualified Bidder will be informed of the terms of the previous bids;
- v. the bidding may be transcribed or videotaped to ensure an accurate recording of the bidding at the Auction;
- vi. each Qualified Bidder will be required to confirm on the record of the Auction that it has not engaged in any collusion with respect to the bidding or the Sale; and
- vii. absent irregularities in the conduct of the Auction, the Bankruptcy Court will not consider bids made after the Auction is closed; and the Auction shall be governed by such other Auction Procedures as may be announced by the Debtors after consultation with its advisors and the Consultation Parties from time to time on the record at the Auction.

**E. Selection of the Successful Bid.**

Upon the conclusion of the Auction (if such Auction is conducted), the Debtors, in the exercise of their reasonable, good-faith business judgment, and in consultation with the

Consultation Parties, shall identify the highest or otherwise best Qualified Bid(s) that in the exercise of their fiduciary duties the Debtors in good faith believe is in the best interests of the Debtors' estates and stakeholders, which will be determined by considering, among other things:

- i. the total expected consideration to be received by the Debtors;
- ii. the likelihood of the Qualified Bidder's ability to close a transaction and the timing thereof; and
- iii. the expected net benefit to the estate.

The Qualified Bidder(s) having submitted a Successful Bid(s) will be deemed the "Successful Bidder(s)." The Debtors, in consultation with the Consultation Parties may also designate the Back-Up Bid (as defined below). The Successful Bidders and the Debtors shall, as soon as commercially reasonable and practicable, complete and sign all agreements, contracts, instruments or other documents evidencing and containing the terms upon which such Successful Bids were made.

As soon as reasonably practicable following the Auction and before the Sale Hearing, the Debtors will file a notice of Successful Bidder(s) with the Bankruptcy Court. The Debtors will present the results of the Auction to the Bankruptcy Court at the Sale Hearing, at which certain findings will be sought from the Bankruptcy Court regarding the Auction, including, among other things, that (a) the Auction was conducted, and the Successful Bidder(s) was selected, in accordance with these Bid Procedures, (b) the Auction was fair in substance and procedure, (c) the Successful Bid was a Qualified Bid as defined in these Bid Procedures, and (d) consummation of the Successful Bid will provide the highest or otherwise best value for the Debtors' assets and is in the best interests of the Debtors' estates.

#### **F. Sale Hearing.**

A hearing to consider approval of the Successful Bid(s) (the "Sale Hearing") is presently scheduled to take place on December 14, 2017 at 10:00 a.m. (ET), or as soon thereafter as counsel may be heard. The Sale Hearing may be adjourned to a later date by the Debtors for any reason, including without limitation, in the event the Debtors move forward with the Reorganization and wish to hold the Sale Hearing at the same time as the Confirmation Hearing. Any such adjournment shall be effective upon the filing of a notice of adjournment or the making of an announcement at the Sale Hearing. No further notice of any such adjournment or continuance will be required to be provided to any party.

#### **G. Designation of Back-Up Bidder.**

If for any reason the Successful Bidder fails to consummate the Successful Bid within the time permitted after the entry of the Sale Order approving the Sale to the Successful Bidder, then the Qualified Bidder with the second highest or otherwise best Bid (the "Back-Up Bidder"), as determined by the Debtors after consultation with their advisors, and in consultation with the Consultation Parties, at the conclusion of the Auction and announced at that time to all the Qualified Bidders participating therein, will automatically be deemed to have submitted the highest or otherwise best bid (the "Back-Up Bid").

The Debtors will be authorized, but not required, to consummate the transaction pursuant to the Back-Up Bid as soon as is commercially reasonable without further order of the Bankruptcy Court upon at least twenty-four (24) hours advance notice, which notice will be filed with the Bankruptcy Court. Upon designation of the Back-Up Bidder at the Auction, the Back-Up Bid shall remain open until the closing of the Successful Bid.

**H. Return of Good Faith Deposit.**

The Good Faith Deposit of the Successful Bidder shall, upon consummation of the Successful Bid, be credited to the purchase price paid for Debtors' Assets. If the Successful Bidder fails to consummate the Successful Bid, then the Good Faith Deposit shall be forfeited to, and retained irrevocably by, the Debtors.

The Good Faith Deposit of any unsuccessful Qualified Bidders will be returned within ten (10) days after consummation of the Sale.

**I. Reservation of Rights.**

The Debtors reserve their rights to modify these Bid Procedures, in consultation with the Consulting Parties, in any manner that will best promote the goals of the bidding process or impose, at or prior to the Auction, additional customary terms and conditions on the Sale.

Notwithstanding anything herein or in the Bid Procedures Order to the contrary, nothing will in any way impair or enhance, alter or otherwise affect any and all rights that any secured lender may have to "credit bid" pursuant to section 363(k) of the Bankruptcy Code or other applicable law.

**Exhibit B**

Sale Notice

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

In re:

AEROGROUP INTERNATIONAL,  
INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 17-11962 (KJC)

(Jointly Administered)

**NOTICE OF AUCTION AND SALE HEARING**

**PLEASE TAKE NOTICE** that on November 7, 2017, the above-captioned debtors and debtors in possession (the “Debtors”) filed the *Debtors’ Motion for (I) an Order (A) Approving Bid Procedures For the Sale of Substantially All of the Debtors’ Assets, (B) Approving Procedures For the Assumption and Assignment of Executory Contracts or Unexpired Leases in Connection with the Sale, (C) Scheduling a Sale Hearing and (D) Granting Certain Related Relief, and (II) an Order (A) Approving the Sale of the Debtors’ Assets, (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (C) Granting Certain Related Relief* (the “Sale Motion”).<sup>2</sup> The Debtors seek, among other things, to sell substantially all of their assets (collectively, the “Assets”) following an auction free and clear of all liens, claims, encumbrances and other interests pursuant to sections 363 and 365 of the Bankruptcy Code.

**PLEASE TAKE FURTHER NOTICE** that, on November [--], 2017, the Bankruptcy Court entered an order (the “Bid Procedures Order”) approving the bid procedures as set forth in the Sale Motion (the “Bid Procedures”), which set the key dates and times related to the sale of the Assets. All interested parties should carefully read the Bid Procedures Order and the Bid Procedures. To the extent that there are any inconsistencies between the Bid Procedures Order (including the Bid Procedures) and the summary description of its terms and conditions contained in this Notice of Auction and Sale Hearing, the terms of the Bid Procedures Order shall control.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the terms of the Bid Procedures, an auction (the “Auction”) to sell the Assets will be conducted on **December 12, 2017, starting at 10:00 a.m. (prevailing Eastern Time)** at the offices of Ropes & Gray, LLP, 1211 Avenue of the Americas, New York, New York 10036, or such other location as shall be

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<sup>1</sup> The Debtors in these chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are as follows: Aerogroup International, Inc. (6119), AGI Holdco, Inc. (7087), Aerogroup International LLC (4658), Aerogroup International Holdings LLC (4312), Aerogroup Retail Holdings, Inc. (4650), and Aerogroup Gift Card Company, Inc. (7551). The mailing address for the Debtors, solely for purposes of notices and communications, is: 201 Meadow Road, Edison, New Jersey 08817.

<sup>2</sup> Unless otherwise stated, all capitalized terms not defined herein shall have the same meaning as set forth in the Sale Motion or the Bid Procedures, as applicable.

timely communicated to all entities entitled to attend the Auction. The Debtors may adjourn or cancel the Auction pursuant to the Bid Procedures.

**PLEASE TAKE FURTHER NOTICE** that a hearing will be held to approve the sale(s) of the Assets to the Successful Bidder(s) (the “Sale Hearing”) before the Honorable Kevin J. Carey, United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801, 5th Floor, Courtroom #5, on December 14, 2017 at 10:00 a.m. (prevailing Eastern Time), or at such time thereafter as counsel may be heard or at such other time as the Bankruptcy Court may determine. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by filing a notice on the Court’s docket for these Chapter 11 cases or the making of an announcement at the Sale Hearing.

**PLEASE TAKE FURTHER NOTICE** that objections to the Sale(s) shall be filed and served so as to be received no later than **December 11, 2017 at 4:00 p.m. (prevailing Eastern Time)** by (i) co-counsel to the Debtors: (a) Ropes & Gray LLP, 1211 Avenue of the Americas, New York, NY 10036-8704 (Attn: Gregg M. Galardi), gregg.galardi@ropesgray.com; and (b) Bayard, P.A., 600 N. King Street, Suite 400, Wilmington, DE 198013 (Attn: Scott D. Cousins and Erin R. Fay) scousins@bayardlaw.com, efay@bayardlaw.com; (ii) the U.S. Trustee; (iii) counsel to the Wells Fargo Bank, NA, as the ABL Agent, Choate, Hall, & Stewart LLP, Two International Place, Boston, Massachusetts 02110 (Attn: Kevin J. Simard), ksimard@choate.com; (iv) counsel to the THL Corporate Finance, Inc., as the Term Loan Agent, Paul Hastings LLP, 71 S. Wacker Drive, Forty-Fifth Floor, Chicago, Illinois 60606 (Attn: Matthew Murphy), mattmurphy@paulhastings.com; (v) Palladin Consumer Retail Products, Attn: John Lawrence, John Hancock Tower, 200 Clarendon Street, 26th Floor, Boston, MA 02116; (vi) counsel to the Prepetition Senior Noteholders and the Prepetition Subordinated Noteholders, Weil Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Jacqueline Marcus), jacqueline.marcus@weil.com; (vii) proposed counsel to the Committee, Cooley LLP (Attn: Michael Klein and Sarah A. Carnes), mklein@cooley.com and scarnes@cooley.com; and (viii) counsel to the DIP Lender, Arent Fox LLP, 1675 Broadway, New York, New York 10019 (Attn: Robert M. Hirsh, Esq.), Robert.Hirsh@arentfox.com.

*[Remainder of this page intentionally left blank.]*



**PLEASE TAKE FURTHER NOTICE** that this Notice of Auction and Sale Hearing is subject to the full terms and conditions of the Sale Motion, Bid Procedures Order and Bid Procedures, which shall control in the event of any conflict. The Debtors encourage parties in interest to review such documents in their entirety. A copy of the Sale Motion, Bid Procedures and/or Bid Procedures Order may be obtained by calling the Debtors' claims and notice agent, Prime Clerk LLC at (844) 858-8887 or by visiting <https://cases.primeclerk.com/Aerosoles/>.

Dated: November [--], 2017  
Wilmington, Delaware

BAYARD, P.A.  
/s/  
Scott D. Cousins (No. 3079)  
Erin R. Fay (No. 5268)  
Gregory J. Flasser (No. 6154)  
600 N. King Street, Suite 400  
Wilmington, Delaware 19801  
Phone: (302) 655-5000  
Email: [scousins@bayardlaw.com](mailto:scousins@bayardlaw.com)  
[efay@bayardlaw.com](mailto:efay@bayardlaw.com)  
[gflasser@bayardlaw.com](mailto:gflasser@bayardlaw.com)

-and-

ROPES & GRAY LLP  
Gregg M. Galardi  
Mark R. Somerstein  
W. Alex McGee  
1211 Avenue of the Americas  
New York, NY 10036-8704  
Telephone: (212) 596-9000  
Facsimile: (212) 596-9090  
Email: [gregg.galardi@ropesgray.com](mailto:gregg.galardi@ropesgray.com)  
[mark.somerstein@ropesgray.com](mailto:mark.somerstein@ropesgray.com)  
[alex.mcgee@ropesgray.com](mailto:alex.mcgee@ropesgray.com)

*Co-Counsel for the Debtors  
and Debtors in Possession*

**Exhibit C**

The Commercial Lease Cure Table

	<b>Landlord</b>	<b>Landlord Address</b>	<b>Property Address</b>	<b>Cure Amount<sup>6</sup></b>
1	1700 Walnut Street Associates	1700 Walnut Associates c/o John J. Turchi, Jr. 1700 Walnut St. Philadelphia, PA 19103	Walnut Street 1700 Walnut Street Philadelphia, PA	\$0
2	A.Recknagel	A. Recknagel, Inc. c/o The Goldstein Group 28-23 Steinway St. Long Island City, NY 11103	Steinway St. 30-29 Steinway Street Long Island City, NY	\$4327.64
3	Bentall Capital	City Centre Associates c/o General Manager 1450 Fifth Avenue, Suite 450 Seattle, WA 98101	Downtown Seattle 1420 5th Avenue Seattle, WA	\$1256.5
4	BLDG Mgmt	ALGM Leasehold II LLC c/o Emmes Realty Services, Inc. 420 Lexington Ave. New York, NY Attn: Legal Department	34th Street 36 West 34th Street New York, NY	\$0
5	BLDG Mgmt	BLDG Management Co., Inc. 417 5th Ave., 4th Floor New York, NY 10016	Harlem 200 West 125th Street New York, NY	\$12323.53
6	Codding Enterprise	G. David Codding, Owner Montgomery Village, LP 911 Village Court Santa Rosa, CA 95405	Montgomery Village 723 Village Court Santa Rosa, CA	\$3035.48
7	Cord Meyer Development	Cord Meyer Development, LLC 111-15 Queens Blvd. Forest Hills, NY 11375	Bay Terrace Shopping Center 212-47 26th Avenue Bayside, NY	\$5534.82
8	Cord Meyer Development	Cord Meyer Development, LLC 111-15 Queens Blvd. Forest Hills, NY 11375	Forest Hills 107-22 Continental Avenue Queens, NY	\$0

<sup>6</sup> These amounts do not include stub rent, which the Debtors will pay in compliance with the budget approved in connection with the pursuant to the *Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing and Grant Security Interests and Superpriority Administrative Expense Status with Respect to the DIP Collateral; (II) Granting Adequate Protection to the Prepetition Secured Credit Parties; (III) Modifying the Automatic Stay; (IV) Authorizing the Debtors to Enter Into Agreements with Polk 33 Lending, LLC; (V) Authorizing Use of Cash Collateral; and (VI) Granting Related Relief* [D.I. 231].

	<b>Landlord</b>	<b>Landlord Address</b>	<b>Property Address</b>	<b>Cure Amount<sup>6</sup></b>
9	Cord Meyer Development	Vernon Hills Shopping Center, LLC 700 White Plains Road Scarsdale, NY 10583	Vernon Hills 688 White Plains Road Scarsdale, NY	\$4663.75
10	Denville Union Hill LLC	Denville Union Hill, LLC c/o RPAI US Management, LLC 2021 Spring Road, Suite 200 Oak Brook, IL 60523 Attn: President, Eastern Division	The Shoppes At Union Hill 3056 State Route 10 West Denville, NJ	\$2281.69
11	Deutsche Asset & Wealth Management	RREEF America REIT II Corp. HH c/o RREEF 200 Crescent Court, Suite 560 Dallas, TX 75201	City Place At The Promenade 68 the Promenade Edgewater, NJ	\$2090.43
12	Equity One LLC	Southbury 84 Associates Limited Partnership c/o Miller & Favazzo Properties, Inc 27 Congress St. Salem, MA 01970	Southbury Green Shopping Center 775 Main Street South Southbury, CT	\$2154.33
13	Federal Realty Investment Trust	Brook 35, LLC 225 108th Ave. N.E., Suite 520 Bellevue, WA 98004 425/990-1200	Brook 35 Plaza 2150 Highway 35 Sea Girt, NJ	\$2146.67
14	Federal Realty Investment Trust	Route 35 Shrewsbury, LP c/o The Grove at Schrewsbury 10500 N.E. 8th Street, Suite 850 Bellvue, WA 98004	The Grove At Shrewsbury 603 Route 35 Shrewsbury, NJ	\$3661.71
15	GGP Limited Partnership	Christiana Mall, LLC c/o Christiana Mall 110 North Wacker Drive Chicago, IL 60606 Attn: Law/Leasing Dept	Christiana Mall 132 Christiana Mall Newark, DE	\$2333.21
16	GGP Limited Partnership	Fashion Show Mall, LLC c/o Fashion Show 110 N. Wacker Dr. Chicago, IL. 60606 Attn: Law/Lease Department	Fashion Show Mall 3200 Las Vegas Blvd South Las Vegas, NV	\$5783.55
17	GGP Limited Partnership	GGP SI Mall, LLC c/o Staten Island Mall - Phase 1 110 North Wacker Drive Chicago, IL 60606 Attn: Law/Leasing Dept	Staten Island Mall 2655 Richmond Avenue Staten Island, NY	\$4277.78
18	GGP Limited Partnership	Southpoint Mall, LLC 110 N. Wacker Dr. Chicago, IL 60606 Attn: Law/Lease Administration Department	Streets At Southpoint 6910 Fayetteville Road Durham, NC	\$1629.47

	<b>Landlord</b>	<b>Landlord Address</b>	<b>Property Address</b>	<b>Cure Amount<sup>6</sup></b>
19	GGP Limited Partnership	Towson Town Center c/o Towson TC, LLC 110 North Wacker Drive Chicago, IL 60606 Attn: Law/Leasing Dept	Towson Town Center 825 Dulaney Valley Road Towson, MD	\$2290.85
20	Greystone Mgmt Solutions	Columbia University, Deputy Vice President, Institutional Real Estate 400 West 119th St. New York, NY 10027	Broadway + 113th 2913A Broadway New York, NY	\$4901.46
21	Howard Hughes	The Howard Hughes Corp One Galleria Tower, 22nd Floor 13355 Noel Road Dallas, TX 75240	Riverwalk Marketplace 500 Port of New Orleans Place New Orleans, LA	\$2106.6
22	Irvine Co. LLC	Attn: General Counsel, Retail Properties The Irvine Company, LLC 100 Innovation Irvine, CA 92617	Fashion Island 1075 Newport Center Drive Newport Beach, CA	\$7019.03
23	Lillian Walsdorf Trust	GWS 206 Main St. 770 New York Ave. Huntington, NY 11743	Huntington 086 260 Main Street Huntington, NY	\$2947.26
24	Macerich Company	Fashion Outlets of Chicago, LLC 5220 Fashion Outlets Way, Suite 230 Rosemont, IL 60018	Fashion Outlets Rosemont 5220 Fashion Outlet Way Rosemont, IL	\$3771.97
25	Macerich Company	Brooklyn Queens Plaza, LLC Management Office 5100 Kings Plaza Brooklyn, NY 11234 Attn: Property Manager	Kings Plaza Mall 5394 Kings Plaza Brooklyn, NY	\$4375.37
26	Macerich Company	Queens Center SPE, LLC 90-15 Queens Blvd Elmhurst NY 11373 Attn: Management Office	Queens Center 90-15 Queens Blvd Elmhurst, NY	\$10376.8
27	Madison Marquette	Bay St. Partners, LLC 7 West 7th St., 16th Floor Cincinnati, OH 45202	Bay Street 5643 Bay Street Emeryville, CA	\$3584.39
28	Miromar Development Phase III, LLC	Miromar Development Corp. 10801 Cork Screw Road, Suite 305 Estero, FL 33928	Miromar Outlets 10801 Corkscrew Road Estero, FL	\$4053.62

	<b>Landlord</b>	<b>Landlord Address</b>	<b>Property Address</b>	<b>Cure Amount<sup>6</sup></b>
29	MTA/Greystone Mgmt	Metropolitan Transportation Authority 2 Broadway, 4th Floor New York, NY 10004 Attn: Director, Real Estate	2 Broadway 2 Broadway New York, NY	\$5983.6
30	New England Development	Palm Beach Mall Holdings, LLC c/o New England Development 75 Park Plaza Boston, MA 02116 Attn: Diane MacMillan	Palm Beach Outlets 1781 Palm Beach Lakes Blvd West Palm Beach, FL	\$3111.11
31	Peterson Companies	Fairfax Corner Retail, LLC c/o The Peterson Companies 12500 Fair Lakes Circle, Suite 400 Fairfax, VA 22033 Attn: General Counsel, Retail	Fairfax Corner 11945 Grand Commons Avenue Fairfax, VA	\$1400
32	RCPI Landmark Properties	RCPI Landmark Properties, LLC c/o Tishman Speyer Properties, LP 30 Rockefeller Plaza New York, NY 10111 Attn: Property Manager - 30 Rockefeller Plaza	Rockefeller Center 1250 Ave. of the Americas New York, NY	\$0
33	Relide Realty Co.	Relide Realty Co. 15 Maiden Lane New York, NY 10038	John Street 18 John Street New York, NY	\$5099.39
34	Simon Property Group, Inc.	Arundel Mills c/o M.S. Management Associates Inc. 225 W. Washington St. Indianapolis, IN 46204-3438	Arundel Mills 7000 Arundel Mills Circle Hanover, MD	\$2658.11
35	Simon Property Group, Inc.	Carolina Premium Outlets c/o M.S. Management Associates Inc. 225 W. Washington St. Indianapolis, IN 46204-3438	Carolina Premium Outlets 1247 Outlet Center Drive Smithfield, NC	\$1391.06
36	Simon Property Group, Inc.	Chicago Premium Outlets c/o M.S. Management Associates Inc. 225 W. Washington St. Indianapolis, IN 46204-3438	Chicago Premium Outlets 1650 Premium Outlets Blvd Aurora, IL	\$6520.43
37	Simon Property Group, Inc.	Citadel Outlet c/o M.S. Management Associates Inc. 225 W. Washington St. Indianapolis, IN 46204-3438	Citadel Outlet 100 Citadel Drive Los Angeles, CA	\$4780.31
38	Simon Property Group, Inc.	Concord Mills c/o M.S. Management Associates Inc. 225 W. Washington St. Indianapolis, IN 46204-3438	Concord Mills 8111 Concord Mills Blvd Concord Place, NC	\$1512.91

	<b>Landlord</b>	<b>Landlord Address</b>	<b>Property Address</b>	<b>Cure Amount<sup>6</sup></b>
39	Simon Property Group, Inc.	Florida Mall Associates, LTD. c/o M.S. Management Associates Inc. 225 W. Washington St. Indianapolis, IN 46204-3438	Florida Mall 8001 S. Orange Blossom Trail Orlando, FL	\$6611.73
40	Simon Property Group, Inc.	Jackson Premium Outlets c/o M.S. Management Associates Inc. 225 W. Washington St. Indianapolis, IN 46204-3438	Jackson Premium Outlets 537 Monmouth Road Jackson, NJ	\$4241.4
41	Simon Property Group, Inc.	JG Elizabeth II, LLC c/o M.S. Management Associates Inc. 225 W. Washington St. Indianapolis, IN 46204-3438	Jersey Gardens 651 Kapkowski Road Elizabeth, NJ	\$3594.97
42	Simon Property Group, Inc.	Las Americas Premium Outlets c/o M.S. Management Associates Inc. 225 W. Washington St. Indianapolis, IN 46204-3438	Las Americas Premium Outlets 4155 Camino Del La Plaza San Ysidro, CA	\$1779.17
43	Simon Property Group, Inc.	Leesburg Corner Premium Outlets c/o M.S. Management Associates Inc. 225 W. Washington St. Indianapolis, IN 46204-3438	Leesburg Corner Premium Outlets 241 Fort Evans Road NE Leesburg, VA	\$4012.02
44	Simon Property Group, Inc.	Mall of Georgia, LLC c/o M.S. Management Associates Inc. 225 W. Washington St. Indianapolis, IN 46204-3438	Mall of Georgia 3333 Buford Drive Buford, GA	\$2132.49
45	Simon Property Group, Inc.	Shopping Center Associates c/o M.S. Management Associates Inc. 225 W. Washington St. Indianapolis, IN 46204-3438	Menlo Park Mall 100 Menlo Park Drive Edison, NJ	\$0
46	Simon Property Group, Inc.	Merrimack Outlet NH c/o M.S. Management Associates Inc. 225 W. Washington St. Indianapolis, IN 46204-3438	Merrimack Outlet NH 80 Premium Outlets Blvd Merrimack, NH	\$2901.58
47	Simon Property Group, Inc.	North Georgia Premium Outlets c/o M.S. Management Associates Inc. 225 W. Washington St. Indianapolis, IN 46204-3438	North Georgia Premium Outlets 800 Highway 400 South Dawsonville, GA	\$2632.56
48	Simon Property Group, Inc.	Orlando Premium Outlets c/o M.S. Management Associates Inc. 225 W. Washington St. Indianapolis, IN 46204-3438	Orlando Premium Outlets 8200 Vineland Avenue Orlando, FL	\$10383.55
49	Simon Property Group, Inc.	Philadelphia Premium Outlets c/o M.S. Management Associates Inc. 225 W. Washington St. Indianapolis, IN 46204-3438	Philadelphia Premium Outlets 18 West Lightcap Road Pottstown, PA	\$3962.89

	<b>Landlord</b>	<b>Landlord Address</b>	<b>Property Address</b>	<b>Cure Amount<sup>6</sup></b>
50	Simon Property Group, Inc.	South Vegas Outlet c/o M.S. Management Associates Inc. 225 W. Washington St. Indianapolis, IN 46204-3438	South Vegas Outlets 7400 S. Las Vegas Blvd Las Vegas, NV	\$4994.73
51	Simon Property Group, Inc.	Southpark Mall Limited Partnership c/o M.S. Management Associates Inc. 225 W. Washington St. Indianapolis, IN 46204-3438	Southpark Mall 4400 Sharon Road Charlotte, NC	\$3238.97
52	Simon Property Group, Inc.	St Augustine Outlet Center c/o M.S. Management Associates Inc. 225 W. Washington St. Indianapolis, IN 46204-3438	St. Augustine Outlet Center 2700 State Road 16 St. Augustine, FL	\$2539.29
53	Simon Property Group, Inc.	The Crossings Premium Outlets c/o M.S. Management Associates Inc. 225 W. Washington St. Indianapolis, IN 46204-3438	The Crossings Premium Outlets 1000 Premium Outlets Drive Tannersville, PA	\$4622.14
54	Simon Property Group, Inc.	Wrentham Village Premium Outlets c/o M.S. Management Associates Inc. 225 W. Washington St. Indianapolis, IN 46204-3438	Wrentham Village Premium Outlets Premium Outlet Blvd Wrentham, MA	\$4585.49
55	Starwood Retail Partners LLC	Starwood Retail Property Management, LLC 1 East Wacker Drive, Suite 3700 Chicago, IL 60601 Attn:Lease Coordinator	MacArthur Center 300 Monticello Avenue Norfolk, VA	\$0
56	Tanger Properties	Tanger Properties, LP 3200 Northline Ave., Suite 305 Greensboro, NC 27408 Attn: Legal Dept	Deer Park Outlets 152 The Arches Circle Deer Park, NY	\$2194.27
57	Tanger Properties	Tanger National Harbor, LLC Tanger Properties, LP 3200 Northline Ave., Suite 305 Greensboro, NC 27408 Attn: Legal Dept	National Harbor Outlets 6800 Oxon Hill Road National Harbor, MD	\$3217.08
58	Tanger Properties	Tanger Properties, LP 3200 Northline Ave., Suite 305 Greensboro, NC 27408 Attn: Legal Dept	Riverhead 1770 West Main Street Riverhead, NY	\$5507.64
59	Tanger Properties	Outlet Mall of Savannah, LLC c/o Tanger Outlet Center Tanger Properties, LP 3200 Northline Ave., Suite 305 Greensboro, NC 27408 Attn: Legal Dept	Savannah 200 Tanger Outlet Pooler, GA	\$2230.29

	<b>Landlord</b>	<b>Landlord Address</b>	<b>Property Address</b>	<b>Cure Amount<sup>6</sup></b>
60	Tanger Properties	Tanger Properties, LP 3200 Northline Ave., Suite 305 Greensboro, NC 27408 Attn: Legal Dept	Tanger Factory Outlet Center 10835 Kings Road Myrtle Beach, SC	\$2684.83
61	The Forbes Company	Forbes Taubman Orlando, LLC 100 Galleria Officentre, Suite 427 Southfield, MI 48034	The Mall at Millenia 4200 Conroy Road Orlando, FL	\$6805.55
62	The Taubman Company	Taubman 200 East Long Lake Road, Suite 300 Bloomfield, MI 48304-2324 Attn: Lease/Law Administration	Dolphin Mall 11401 NW 12th Street Miami, FL	\$4474.72
63	Thor Equities	Thor Palmer House Retail, LLC c/o Thor Equities 25 W. 39th Street, 16th Floor New York, NY 10018	Palmer House Hilton 109 South State Street Chicago, IL	\$8149.17
64	TS 405 Lexington Owner LLC	TS 405 Lexington Owner, LLC c/o Tishman Properties, LP 45 Rockefeller Plaza, 7th Floor New York, NY 10111 Attn: General Counsel	Chrysler Building 137 East 42nd Street New York, NY	\$0
65	Upper Pontalba Building Restoration Corp.	Upper Pontalba Building Restoration Corporation 1008 N. Peters St. New Orleans, LA 70116	French Quarter 510 St. Peter Street New Orleans, LA	\$1613.73
66	YTC Mall Owner, LLC	Yorktown Holdings, LLC c/o Long-Pehrson Associates, LLC 203 Yorktown Lombard, IL 60148	Yorktown Mall 203 Yorktown Road Lombard, IL	\$1841.78



**Exhibit D**

Other Executory Contract Cure Notice

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

In re:

AEROGROUP INTERNATIONAL,  
INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 17-11962 (KJC)

(Jointly Administered)

**NOTICE OF POTENTIAL ASSUMPTION AND ASSIGNMENT OF CONTRACTS**

**PLEASE TAKE NOTICE** that on November 7, 2017, the above-captioned debtors and debtors in possession (the “Debtors”) filed the *Debtors’ Motion for (I) an Order (A) Approving Bid Procedures For the Sale of Substantially All of the Debtors’ Assets, (B) Approving Procedures For the Assumption and Assignment of Executory Contracts or Unexpired Leases in Connection with the Sale, (C) Scheduling a Sale Hearing and (D) Granting Certain Related Relief, and (II) an Order (A) Approving the Sale of the Debtors’ Assets, (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (C) Granting Certain Related Relief* (the “Sale Motion”).<sup>2</sup> The Debtors seek, among other things, to sell substantially all of their assets (collectively, the “Assets”) following an auction free and clear of all liens, claims, encumbrances and other interests pursuant to sections 363 and 365 of the Bankruptcy Code.

**PLEASE TAKE FURTHER NOTICE** that, on November [--], 2017, the Bankruptcy Court entered an order (the “Bid Procedures Order”) approving the bid procedures as set forth in the Sale Motion (the “Bid Procedures”), which set the key dates and times related to the sale of the Assets. All interested parties should carefully read the Bid Procedures Order and the Bid Procedures. To the extent that there are any inconsistencies between the Bid Procedures Order (including the Bid Procedures) and the summary description of its terms and conditions contained in this Notice of Auction and Sale Hearing, the terms of the Bid Procedures Order shall control.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the terms of the Bid Procedures, an auction (the “Auction”) to sell the Assets will be conducted on **December 12, 2017, starting at 10:00 a.m. (prevailing Eastern Time)** at the offices of Ropes & Gray, LLP, 1211 Avenue of the Americas, New York, New York 10036, or such other location as shall be

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<sup>1</sup> The Debtors in these chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are as follows: Aerogroup International, Inc. (6119), AGI Holdco, Inc. (7087), Aerogroup International LLC (4658), Aerogroup International Holdings LLC (4312), Aerogroup Retail Holdings, Inc. (4650), and Aerogroup Gift Card Company, Inc. (7551). The mailing address for the Debtors, solely for purposes of notices and communications, is: 201 Meadow Road, Edison, New Jersey 08817.

<sup>2</sup> Unless otherwise stated, all capitalized terms not defined herein shall have the same meaning as set forth in the Sale Motion or the Bid Procedures, as applicable.

timely communicated to all entities entitled to attend the Auction. The Debtors may cancel the Auction pursuant to the Bid Procedures.

**PLEASE TAKE FURTHER NOTICE** that a hearing will be held to approve the sale(s) of the Assets to the Successful Bidder(s) (the “Sale Hearing”) before the Honorable Kevin J. Carey, United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801, 5th Floor, Courtroom #5, on **December 14, 2017 at 10:00 a.m. (prevailing Eastern Time)**, or at such time thereafter as counsel may be heard or at such other time as the Bankruptcy Court may determine. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by filing a notice on the Court’s docket for these Chapter 11 cases or the making of an announcement at the Sale Hearing.

**PLEASE TAKE FURTHER NOTICE** that attached as Exhibit C to the Sale Motion, the Debtors provided a table (the “Commercial Lease Cure Table”) indicating the unexpired leases of non-residential real property (the “Commercial Leases”) that the Debtors may assume and assign to the Successful Bidder(s), along with a cure amount for each Commercial Lease (the “Commercial Lease Cure Amount”) that the Debtors believe is necessary to assume such Commercial Lease.

**PLEASE TAKE FURTHER NOTICE** that the Debtors have indicated on Schedule 1 attached hereto a list of the Debtors’ executory contracts and unexpired leases, other than the Commercial Leases (the “Other Executory Contracts” and together with the Commercial Leases, the “Executory Contracts”), that the Debtors may assume and assign to the Successful Bidder along with the cure amounts that the Debtors believe must be paid to cure all prepetition defaults (in each instance, the “Other Executory Contract Cure Amount”). If you agree with the Other Executory Contract Cure Amount and do not otherwise object to the assumption and assignment of your Other Executory Contract or Commercial Lease listed on Schedule 1 or Exhibit C to the Sale Motion, you need not take any further action.

**PLEASE TAKE FURTHER NOTICE** that any party seeking to object to the validity of the Other Executory Contract Cure Amount or the Commercial Lease Cure Amount (a “Cure Objection”) provided by the Debtors on Schedule 1 or Exhibit C to the Sale Motion, as applicable, or otherwise assert that any other amounts, defaults, conditions or pecuniary losses must be cured or satisfied under any of the Executory Contracts in order to be assigned to the Successful Bidder(s) must file an objection, which must: (a) be in writing; (b) conform to the applicable provisions of the Bankruptcy Rules and the Local Bankruptcy Rules; (c) state with specificity what cure the party to the Executory Contract believes is required with appropriate documentation in support thereof; and (d) be filed with the Court and served so the objection is actually received no later than **December 11, 2017 at 4:00 p.m. (prevailing Eastern Time)** (the “Cure Objection Deadline”) by (i) co-counsel to the Debtors: (a) Ropes & Gray LLP, 1211 Avenue of the Americas, New York, NY 10036–8704 (Attn: Gregg M. Galardi), gregg.galardi@ropesgray.com; and (b) Bayard, P.A., 600 N. King Street, Suite 400, Wilmington, DE 198013 (Attn: Scott D. Cousins and Erin R. Fay) scousins@bayardlaw.com, efay@bayardlaw.com; (ii) the U.S. Trustee; (iii) counsel to the Wells Fargo Bank, NA, as the ABL Agent, Choate, Hall, & Stewart LLP, Two International Place, Boston, Massachusetts 02110 (Attn: Kevin J. Simard), ksimard@choate.com; (iv) counsel to the THL Corporate Finance, Inc., as the Term Loan Agent, Paul Hastings LLP, 71 S. Wacker Drive, 45th Floor,

Chicago, Illinois 60606 (Attn: Matthew Murphy), mattmurphy@paulhastings.com; (v) Palladin Consumer Retail Products, Attn: John Lawrence, John Hancock Tower, 200 Clarendon Street, 26th Floor, Boston, MA 02116; (vi) counsel to the Prepetition Senior Noteholders and the Prepetition Subordinated Noteholders, Weil Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Jacqueline Marcus), jacqueline.marcus@weil.com; (vii) proposed counsel to the Committee, Cooley LLP (Attn: Michael Klein and Sarah A. Carnes), mklein@cooley.com and scarnes@cooley.com; and (viii) counsel to the DIP Lender, Arent Fox LLP, 1675 Broadway, New York, New York 10019 (Attn: Robert M. Hirsh, Esq.), Robert.Hirsh@arentfox.com, (collectively, the “Objection Notice Parties”).

**PLEASE TAKE FURTHER NOTICE that any non-Debtor counterparty to any Executory Contract who does not file a Cure Objection by the Cure Objection Deadline, shall be forever barred from objecting to the Commercial Lease Cure Amount set forth on the Commercial Lease Cure Table and the Other Executory Contract Cure Amount set forth on Schedule 1 or asserting or claiming any cure amount (other than the Commercial Lease Cure Table and the Other Executory Contract Cure Amount) against the Debtors or any Successful Bidder(s).**

**PLEASE TAKE FURTHER NOTICE** that the deadline for filing an objection to the assumption and assignment of an Executory Contract on the basis of a lack of adequate assurance of future performance (an “Adequate Assurance Objection”) shall be **December 13, 2017 at 4:00 p.m.** (ET) (the “Adequate Assurance Objection Deadline”). Adequate Assurance Objections, if any, shall be in writing, filed with the Court and served upon the Objection Notice Parties.

**PLEASE TAKE FURTHER NOTICE that any non-Debtor party to an assumed Executory Contract who does not file a timely Cure Objection or Adequate Assurance Objection shall be deemed to have consented to the potential assumption and assignment of its Assumed Contract to the Successful Bidder(s) and will be forever barred from objecting to such assumption and assignment on account of the Cure Amount, lack of adequate assurance or any other grounds.**

**PLEASE TAKE FURTHER NOTICE** that the hearing with respect to any Cure Objections and/or Adequate Assurance Objections may be held (i) at the Sale Hearing, or (ii) on such other date as the Bankruptcy Court may designate. To the extent the Debtors and non-Debtor counterparty to an Executory Contract are able to consensually resolve the Cure Objection or the Adequate Assurance Objection prior to the Sale Hearing, the Debtors shall promptly provide notice to the Committee, the U.S. Trustee and the Successful Bidder(s) of such resolution.

*[Remainder of this page intentionally left blank.]*

**PLEASE TAKE FURTHER NOTICE** that this Notice of Auction and Sale Hearing is subject to the full terms and conditions of the Sale Motion, Bid Procedures Order and Bid Procedures, which shall control in the event of any conflict. The Debtors encourage parties in interest to review such documents in their entirety. A copy of the Sale Motion, Bid Procedures and/or Bid Procedures Order may be obtained by calling the Debtors' claims and notice agent, Prime Clerk LLC at (844) 858-8887 or by visiting <https://cases.primeclerk.com/Aerosoles/>.

Dated: November [--], 2017  
Wilmington, Delaware

BAYARD, P.A.  
/s/ DRAFT  
Scott D. Cousins (No. 3079)  
Erin R. Fay (No. 5268)  
Gregory J. Flasser (No. 6154)  
600 N. King Street, Suite 400  
Wilmington, Delaware 19801  
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[efay@bayardlaw.com](mailto:efay@bayardlaw.com)  
[gflasser@bayardlaw.com](mailto:gflasser@bayardlaw.com)

-and-

ROPES & GRAY LLP  
Gregg M. Galardi  
Mark R. Somerstein  
W. Alex McGee  
1211 Avenue of the Americas  
New York, NY 10036-8704  
Telephone: (212) 596-9000  
Facsimile: (212) 596-9090  
Email: [gregg.galardi@ropesgray.com](mailto:gregg.galardi@ropesgray.com)  
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[alex.mcgee@ropesgray.com](mailto:alex.mcgee@ropesgray.com)

*Co-Counsel for the Debtors  
and Debtors in Possession*

**SCHEDULE 1**

**Contracts**

<b>Counterparty</b>	<b>Counterparty Address</b>	<b>Title/Description of Contract</b>	<b>Cure Amount</b>