

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

In re:

Aerospace Holdings, Inc., *et al.*,¹

Debtors.

Chapter 11

Case No. 17-10635 (KG)

(Joint Administration Requested)

**MOTION OF THE DEBTORS FOR ORDERS (I)(A) APPROVING BIDDING
PROCEDURES FOR THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS'
ASSETS, (B) SCHEDULING AN AUCTION AND HEARING TO CONSIDER SUCH
SALE OF ASSETS, (C) AUTHORIZING PAYMENT OF THE BREAK-UP FEE AND
EXPENSE REIMBURSEMENT, (D) APPROVING ASSUMPTION AND ASSIGNMENT
PROCEDURES RELATED TO SUCH SALE, AND (E) APPROVING THE FORM AND
MANNER OF RELATED NOTICE; AND (II)(A) AUTHORIZING THE SALE OF SUCH
ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND
INTERESTS, (B) AUTHORIZING AND APPROVING THE ASSUMPTION AND
ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN
CONNECTION WITH SUCH SALE AND (C) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “**Debtors**” or the “**Company**”), by and through their undersigned counsel, hereby move (this “**Bidding Procedures and Sale Motion**”) the Court, pursuant to sections 105, 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, 9006, 9007, 9008 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rules 2002-1, 6004-1, and 9006-1 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), for: (i) entry of an order, substantially in the form annexed hereto as **Exhibit A** (the “**Bidding Procedures Order**”): (a) approving the bid procedures in the form

¹ The Debtors in these Chapter 11 Cases, along with the business addresses and the last four (4) digits of each Debtor’s federal tax identification number are: Aerospace Holdings, Inc., 366 Madison Avenue, 9th Floor, New York, NY 10017 (4318); Valley Tool & Manufacturing, Inc., 22 Prindle Hill Rd., P.O. Box 564, Orange, CT 06477 (8614); NC Dynamics Incorporated, 6925 Downey Avenue, Long Beach, CA 90805 (3219); NCDI Mexico, Inc., 2771 Centerville Road, Suite 400, Wilmington, DE 19808 (5905); and GroupAero Seattle, Inc., 7020 S. 238th Street, Kent, WA 98032 (7033).

annexed as **Annex 1** to the Bidding Procedures Order (as amended or modified, the “**Bidding Procedures**”) to be implemented in connection with a sale (the “**Sale**”) of all or substantially all of the Debtors’ assets (the “**Acquired Assets**”), approving the proposed auction (the “**Auction**”) and the proposed bidder protections, including the Break-Up Fee (as defined herein) in connection with the Sale of the Acquired Assets to Harlow Aerostructures LLC (the “**Stalking Horse Buyer**” or “**Harlow**”) or to the qualified bidder with the highest or otherwise best bid at the Auction (including, possibly, the Stalking Horse Buyer, the “**Successful Bidder**”), (b) scheduling the Auction and a final sale hearing (the “**Sale Hearing**”) in connection with the Sale, (c) establishing procedures for the assumption and assignment of executory contracts and unexpired leases, including notice of proposed cure amounts (the “**Assumption and Assignment Procedures**”), and approving the form and manner of notice of the Assumption and Assignment Procedures substantially in the form of **Annex 3** to the Bidding Procedures Order (the “**Assumption and Assignment Notice**”), and (d) approving the form and manner of notice of the Auction and the Sale Hearing (the “**Sale Notice**”) substantially in the form of **Annex 2** to the Bidding Procedures Order; and (ii) entry of an order, substantially in the form annexed hereto as **Exhibit B** (the “**Sale Order**”): (a) approving the Sale to the Successful Bidder under that certain Asset Purchase Agreement dated as of the Petition Date (the “**Purchase Agreement**”)² between the Stalking Horse Buyer and the Debtors, a copy of which is attached hereto as **Exhibit C**, free and clear of all Encumbrances, including, without limitation, successor liability, other than Permitted Liens and Assumed Liabilities, (b) authorizing the assumption and assignment of the Assumed Contracts in connection with the Sale, (c) containing a finding of good faith under

² Unless otherwise defined herein, capitalized terms shall have the meanings assigned to them in the Purchase Agreement.

section 363(m) of the Bankruptcy Code and (d) granting related relief. In support of this Motion, the Debtors respectfully state as follows:

Status of the Case

1. On the date hereof (the “**Petition Date**”), the Debtors commenced these cases (the “**Chapter 11 Cases**”) by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

2. The Debtors have continued in possession of their properties and are operating and managing their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. No request has been made for the appointment of a trustee or examiner and a creditors’ committee has not yet been appointed in these Chapter 11 Cases.

Jurisdiction, Venue and Statutory Predicates

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue of these Chapter 11 Cases and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

5. The statutory and rule-based predicates for the relief requested herein are Bankruptcy Code sections 105(a), 363, and 365; Bankruptcy Rules 2002, 6003, 6004, 6006, 7004, 9006, 9007, and 9014; and Local Rules 2002-1 and 6004-1.

Background

A. General

6. The Debtors design and manufacture a wide variety of products, including machined parts, fabricated components, and tooling for the commercial aerospace and defense markets. Collectively, the Debtors encompass a full spectrum of precision manufacturing capabilities for any scale, from individual prototypes to large lot production.

7. Valley Tool & Manufacturing, Inc. (“**Valley**”) was formed in 2006 from the merger of Mauer Metalcraft, Inc. and New England Manufacturing Group, Inc., which allowed Valley to combine customer vendor codes and allowed Valley’s expansion of the products offered to the commercial aerospace and defense industry. Valley operates a facility in Orange, Connecticut and primarily focuses on the machining and fabrication of sheet metal parts, such as door frames, dash boards and hinges, as well as small machined components for military and commercial rotary wing aircrafts. Valley also possesses tube bending capabilities (up to 40 mm in diameter) that are used in the manufacturing of nozzles and tubing. Valley has developed a reputation as a “build to design” manufacturer and excels at developing the capability to adapt each product to fit a specific customer’s needs. Due to Valley’s flexibility and commitment to its products, Valley has engrained itself as a key supplier of parts to a number of high-priority military and commercial programs.

8. NC Dynamics Incorporated (“**NCDI**”) was founded in 1979 and engineers, manufactures and assembles sophisticated metallic machined structures for the commercial aerospace and defense industry. NCDI specializes in monolithic components and assemblies manufactured from “hard metals” such as titanium, stainless steel alloys and high strength aluminum. NCDI offers multi-axis machining along with precision component assembly. NCDI operates its business from a 118,000 square foot facility in Long Beach, California.

9. A more detailed factual background of the Debtors’ business and operations, as well as the events precipitating the commencement of these Chapter 11 Cases, is more fully set forth in the *Declaration of Matthew Sedigh in Support of the Debtors’ Chapter 11 Petitions and*

Requests for First Day Relief (the “**First Day Declaration**”), filed contemporaneously herewith and incorporated herein by reference.³

B. The Pre-Petition Credit Agreement and the DIP Credit Agreement

10. As described in more detail in the First Day Declaration, the Debtors’ secured debt obligations totaling approximately \$38 million (the “**Prepetition Obligations**”) were originally set to mature in June 2016; however, the maturity date was extended to July 29, 2016 pursuant to an amendment to the Prepetition Credit Agreement (as defined in the First Day Declaration). Due to the impending maturity of the Prepetition Credit Agreement and certain operational issues, caused in part by the impending maturity of the Debtors’ secured obligations, the Debtors retained G2 Capital Advisors, LLC (“**G2**”) in July 2016 to, among other things, review and analyze the Debtors’ business and financial projections and advise and assist the Debtors in evaluating potential financing or sale transactions. Despite the maturity of the Prepetition Credit Agreement, Comerica Bank continued to work with the Debtors and fund their operations through protective advances pursuant to amendments to the Prepetition Credit Agreement.

11. On or around February 24, 2017, the DIP Lender, a strategic competitor of the Debtors, purchased the senior secured debt from Comerica Bank to facilitate a transaction. After acquiring the Comerica Debt, the DIP Lender continued to fund the Debtors’ operations while the Debtors and Harlow negotiated the material terms of a transaction. Pursuant to the terms of the Purchase Agreement, the Stalking Horse Buyer intends to credit bid a portion of the Prepetition Obligations.

³ Capitalized terms used in the Notice section but not otherwise defined in this Motion to Shorten shall have the meanings ascribed to them in the First Day Declaration.

12. Simultaneously with the filing of this Motion, the Debtors have also filed a motion to obtain entry of an interim and final order approving debtor-in-possession financing to be provided by Harlow Aerostructures LLC, as lender and agent (in its capacity as lender and agent, the “**DIP Lender**”), under a debtor-in-possession financing agreement to be agreed to by and between the Debtors and the DIP Lender (the “**DIP Credit Agreement**”).

13. Pursuant to the terms of the DIP Credit Agreement and the proposed interim and final order approving the DIP Credit Agreement, the DIP Lender intends to credit bid the full amount of the outstanding DIP Obligations at the Auction.

C. The Extensive Pre-Petition Marketing Process

14. In July 2016, the Debtors retained G2 as their investment banker to, among other things review and analyze the Debtors’ business and financial projections, advise and assist the Debtors in evaluating potential financing or sale transactions, and begin the process of marketing the Acquired Assets for sale. G2 is an integrated multi-product, industry-focused investment bank focused on creating bespoke operational and financial advisory services to the middle market across a range of dynamic situations. G2’s professionals have successfully completed numerous investment banking assignments on behalf of clients facing challenging situations across North America.

15. Over the last eight (8) months, G2 has engaged in an extensive marketing process in an effort to either (i) find a refinancing solution to address the Debtors’ liquidity issues or (ii) to locate a strategic partner or potential buyer for the Acquired Assets. During those eight (8) months G2 worked diligently to identify potentially interested parties and discussed a plethora of potential transaction structures with a number of potentially interested parties. In the last three (3) months alone, G2 identified and contacted 57 potentially interested parties to gauge those parties’ interest in pursuing a transaction with the Debtors. Of those 57 parties, 31 executed non-

disclosure agreements and conducted due diligence on the Debtors business, including attending presentations with management. Following substantial due diligence efforts and extensive discussions, the Debtors ultimately received 11 indications of interest, and an offer from a group of incumbent investors (the “**Stakeholders**”) in the Debtor’s mezzanine debt and equity securities to purchase the Debtor’s Prepetition Obligations. Ultimately, the Stalking Horse Buyer offered to purchase the Debtor’s first lien indebtedness at a price that was higher than the other offers received and provided the highest recovery to the Debtor’s first lien lenders. The Debtors’ first lien lenders accepted the Stalking Horse Buyer’s offer and sold the Prepetition Obligations to the Stalking Horse Buyer.

16. As the Debtors and G2 engaged in a lengthy and extensive refinancing and sale process prior to the Petition Date, the Debtors believe that the limited post-petition marketing process and expeditious sale process is in the best interests of the Debtors. In fact, the Debtors are concerned that a further delay in the closing of a sale could adversely affect the sale process and the Stalking Horse Buyer’s interest in purchasing the Acquired Assets. The Purchase Agreement contemplates that the Sale to the Stalking Horse Buyer will close no later than forty-two (42) days after the Petition Date. In addition, the Debtors currently do not have the Prepetition Agent’s consent to use cash collateral beyond forty-two (42) days after the Petition Date and the DIP Credit Agreement matures on May 9, 2017. The value of the Debtors’ estates would be irrevocably impaired if the Debtors are forced to cease operations due to a lack of funding.

17. Accordingly, with a stalking horse bidding floor and the Purchase Agreement in place (the key terms of which have already been subject to a fulsome market test), the Debtors now seek to promptly effectuate the sale transaction to the Stalking Horse Buyer, subject to a

competitive bidding process that is consistent with both the timing of these Chapter 11 Cases and the Debtors' fiduciary duties to maximize value for their estates, stakeholders and parties in interest. Upon the Court's entry of the Bidding Procedures Order, the Debtors intend to provide notice of the Bidding Procedures, the Auction date, the deadline to object to the proposed Sale of the Debtors' assets, and the Sale Hearing to all potential purchasers of the Debtors' assets that have contacted, or been contacted by, G2 during the marketing process to date.

The Purchase Agreement and the Proposed Bid Protections

A. The Purchase Agreement

18. Pursuant to the Purchase Agreement, the Stalking Horse Buyer will purchase the Acquired Assets, which constitute substantially all of the Debtors' assets and which assets are defined as the "Acquired Assets" in the Purchase Agreement (all as more fully described in Section 2.1 of the Purchase Agreement). Under the Purchase Agreement, the Stalking Horse Buyer shall pay a purchase price that includes: (a) a \$16,000,000 credit bid; (b) the assumption of certain contracts (the "**Assumed Contracts**") pursuant to Section 2.5 of the Purchase Agreement and the payment of the Cure Costs; (c) the assumption of Assumed Liabilities in accordance with Section 2.3 of the Purchase Agreement, which the Debtors project exceed \$900,000; and (d) payment of \$50,000 in cash (the "**Cash Purchase Price**", together with subparagraphs (a), (b) and (c), the "**Purchase Price**"). Other than liabilities described under and specifically listed in Section 2.3 of the Purchase Agreement, the Stalking Horse Buyer is not assuming any of the Debtors' pre-closing liabilities.

19. In accordance with Local Rule 6004-1, the Debtors highlight the following with regard to the Sale:

Notable Provisions	Location in Motion, Order or Agreement	Justification for Provision
Sale to Insider	N/A	N/A

Agreements with Management	There is no separate agreement with Debtors' management. Buyer has agreed, however, to offer employment to substantially all of the Debtors' employees	To facilitate transition and thereby accentuate the value of the Debtors' assets while minimizing administrative claims
Private Sale/No Competitive Bidding	N/A	N/A
Good Faith Deposit	Paragraph 7(g) of the Bidding Procedures	N/A
Record Retention	Section 6.7 of the Purchase Agreement	N/A
Sale of Avoidance Actions	Section 2.1 of the Purchase Agreement provides for the sale of avoidance actions, but not against "insiders"	To accentuate the value of the Debtors' assets with regard to continuing business relationships and the assumed contracts
Use of Proceeds	N/A	N/A
Successor Liability Findings	The Sale Order will contain findings of fact and conclusions of law regarding successor liability issues	To accentuate the value of the Debtors' assets
Assumption and Assignment of Executory Contracts and Unexpired Leases	Paras. 56-62 of the Motion	To accentuate the value of the Debtors' assets
Relief From Rule 6004(h)	Para. 80 of the Motion	
Releases	N/A	
Tax Exemption	N/A	
Credit Bid	Purchase Agreement, definition of Bid Procedures Order; and Bid Procedures, Para. 4(e)	11 U.S.C. § 363(k)

20. The Stalking Horse Buyer is a third party, not comprised of insiders of the Debtors, with no affiliation to the Debtors. The Stalking Horse Buyer is also the holder of the Debtors' Prepetition Obligations aggregating approximately \$38 million that is secured by substantially all of the Debtors' assets and is a strategic, industry buyer, with a robust balance sheet and a proven track record of operating businesses not dissimilar to the Debtors' business.

The relief requested in this Bidding Procedures and Sale Motion will result in the preservation of the Debtors' business, continued service to their customers, continued business for suppliers, and the continued employment of substantially all of the Debtors' employees nationwide, will maximize the value of the Debtors' assets, and is thus in the best interests of the Debtors' creditors and all other parties in interest in these Chapter 11 Cases, and thus such relief should be granted.

B. Bid Protections in the Purchase Agreement

21. As part of the Bidding Procedures Order, the Debtors are requesting approval of the Purchase Agreement, including a Break-Up Fee in the amount of \$300,000 and an Expense Reimbursement for reasonable and documented out-of-pocket expenses in an amount up to \$150,000 (the "**Bid Protections**").

22. The Stalking Horse Buyer conditioned its willingness to serve as a Stalking Horse Buyer on the inclusion of the Bid Protections as set forth in Purchase Agreement. Under the Purchase Agreement, the Debtors are obligated to pay the Break-Fee and Expense Reimbursement from the proceeds of an Alternate Transaction if the Purchase Agreement is terminated either (a) upon approval of an Alternate Transaction if the Stalking Horse Buyer is not the Next Best Bidder (as defined in the Bidding Procedures) or (b) if an Alternate Transaction is consummated. The Debtors are obligated to pay only the Expense Reimbursement if the Purchase Agreement is terminated pursuant to Section 11.1(d).

23. Additionally, the Stalking Horse Buyer would be permitted to credit the amount of the Bid Protections towards any overbid at the Auction.

24. To compensate the Stalking Horse Buyer for its efforts and for setting the floor for the Acquired Assets, the Debtors seek approval of the Break-up Fee and Expense Reimbursement in accordance with the terms of the Purchase Agreement. The Debtors believe

that the amounts of the Break-up Fee and Expense Reimbursement are reasonable, given the benefits to the Debtors' estates of having a "stalking horse" bidder by virtue of the definitive Purchase Agreement and the risk to the Stalking Horse Buyer that a third-party offer may ultimately be accepted. The Debtors believe that their agreement to pay the Break-Up Fee and Expense Reimbursement is necessary to induce the Stalking Horse Buyer to enter into the transactions encompassed by the Purchase Agreement, are necessary to preserve and enhance the value of the Debtors' estates, will enable the Debtors to obtain the highest and best possible Purchase Price and will encourage competitive bidding.

25. The Debtors respectively request that the Court specifically approve in the Bidding Procedures Order Section 11.3 of the Purchase Agreement, which governs payment of the Break-Up Fee and the Expense Reimbursement.

Proposed Bidding Procedures

26. The Sale of the Acquired Assets pursuant to the Purchase Agreement is subject to higher and better offers. To ensure that the highest or otherwise best offer is received, the Debtors established the proposed Bidding Procedures to govern the submission of competing bids at an Auction. Accordingly, the Debtors seek the Court's approval of the Bidding Procedures set forth in **Annex 1** to the Bidding Procedures Order and incorporated herein in their entirety by this reference.

27. The Debtors' proposed timeline with respect to the Bidding Procedures, the Auction, the Sale Hearing, and the Sale is as follows⁴:

- Objections to the proposed Bidding Procedures on or prior to April 10, 2017;
- Entry of the Bidding Procedures Order on or prior to April 12, 2017;

⁴ The dates in this timeline are subject to the terms of the Bidding Procedures Order and the Bidding Procedures.

- Submission of additional bids by April 28, 2017 at 5:00 p.m. (Prevailing Eastern Time) (the “**Bid Deadline**”);
- Objection to the assumption of Contracts, including Cure Costs, April 25, 2017, as further addressed below;
- Objection to the Sale, on or prior to April 25, 2017 at 4:00 p.m.;
- Conduct the Auction, if necessary, on May 2, 2017 (the “**Auction Date**”);
- A sale hearing on or prior to May 4, 2017 (the “**Sale Hearing**”);⁵
- Entry of the Sale Order on or prior to May 5, 2017; and
- Closing of the Sale on or before May 9, 2017.

28. The following is a summary of the key terms of the Debtors’ proposed Bidding Procedures.⁶

Assets to Be Sold

29. The Debtors are selling substantially all of their assets; i.e., the Acquired Assets. A bidder may only offer to purchase all of the Acquired Assets and not a portion thereof.

Due Diligence

30. The Debtors and G2 have created an electronic data room (“**Data Room**”) into which substantial information about the Debtors and their businesses has been deposited in connection with the Debtors’ prepetition marketing efforts. The Debtors and G2 may supplement the Data Room with additional materials on an ongoing basis as part of the post-petition sale efforts.

⁵ Debtors’ propose that any objection to adequate assurance of future performance for a Successful Bidder besides the Stalking Horse Buyer, and with respect to the conduct of the Auction, if any, may be first raised at the Sale Hearing.

⁶ The summary describes each provision of the Bidding Procedures that Local Rule 6004-1 requires a debtor to highlight in a bidding procedures motion.

Participation Requirements

31. Access to the Data Room and to information about the Debtors and the Acquired Assets will be provided to any person or entity that is an “**Interested Party**.” Unless otherwise ordered by the Court, to become an Interested Party and participate in the bidding process, each person or entity will be required to deliver (unless previously delivered) the following materials to the “Consultation Parties”: (a) an executed confidentiality agreement in form and substance satisfactory to the Debtors; (b) a statement and other factual support demonstrating, to the Debtors’ satisfaction, a bona fide interest in purchasing all of the Acquired Assets; (c) sufficient information, as determined by the Debtors, to allow the Debtors to determine that the person or entity has the financial wherewithal, which may include financial statements (or such other form of financial disclosure acceptable to the Debtors in their discretion); and (d) the items comprising a bid, as prescribed by Section 7 of the Bidding Procedures.

32. As promptly as practicable after an Interested Party delivers the material required above and the Debtors determine that the Interested Party has a bona fide interest in purchasing all of the Acquired Assets, the Interested Party will be deemed a “**Potential Bidder**” (as defined in the Bidding Procedures) and shall be eligible to commence due diligence with respect to the Acquired Assets. Due diligence access may include access to the Data Room, on-site inspections, and such other matters which an Interested Party may reasonably request and as to which the Debtors in their sole discretion, may agree. G2 will coordinate all reasonable requests for additional information and due diligence access from Interested Parties. The Debtors may, in their discretion, coordinate diligence efforts such that multiple Interested Parties will have simultaneous access to due diligence materials or simultaneous attendance at site inspections. Neither the Debtors nor any of their representatives are obligated to furnish any information

relating to the Acquired Assets to any person other than Interested Parties. The Debtors reserve the right to refuse any Interested Party access to due diligence materials if such Interested Party's access is determined to be harmful to the Debtors' estates. Except as provided above with respect to access to the Data Room, neither the Debtors nor their representatives will be obligated to furnish any information of any kind whatsoever relating to the Acquired Assets to any party.

Required Bid Materials, Deposit and Minimum Overbid

33. Unless otherwise ordered by the Court, a "**Qualified Bid**" (and each person submitting a qualified bid being a "**Qualified Bidder**"), is a proposal that is, at a minimum:

- (a) submitted on or before the Bid Deadline;
- (b) in writing (email is acceptable);
- (c) received by the Debtors and any counsel and other professional advisors retained by any statutory committee of unsecured creditors appointed in the Debtors' chapter 11 cases (the "**Creditors' Committee**", together with the Debtors, the "**Consultation Parties**") so as to be received no later than the Bid Deadline;
- (d) a firm, unconditional bid to purchase all of the Acquired Assets, not subject to any contingencies as to the validity, effectiveness, and/or binding nature of the offer, including, without limitation, further due diligence review or financing;
- (e) a firm bid which provides (i) cash consideration of not less than \$100,000 above the Credit Bid Consideration *plus* the Cash Purchase Price *plus* the Break-Up Fee *plus* the Expense Reimbursement (collectively, the "**Cash Portion of the Minimum Overbid**"), plus payment of the Cure Costs and the Assumption of Assumed Liabilities (collectively, the "**Minimum Overbid**"). For the avoidance of doubt, the Cash Portion of the Minimum Overbid must total \$16,600,000 and the Minimum Overbid must also provide for the Qualified Bidder to pay the Cure Costs and assume the Assumed Liabilities;
- (f) accompanied by sufficient information to demonstrate that the Interested Party has the financial wherewithal and ability to timely consummate the acquisition of all of the Acquired Assets on terms and conditions substantially the same as in the Purchase Agreement, including evidence of adequate financing, if applicable;
- (g) accompanied by a signed contract substantially in the form of the Purchase Agreement, and marked to show any changes made therefrom, including with respect to any applicable disclosure schedules; and

(h) accompanied by a good faith cash deposit (“**Deposit**”) in the form of a wire transfer, certified check, or such other form acceptable to the Debtors, in an amount equal to ten percent (10%) of the amount of the Minimum Overbid of the Potential Bidder. The Deposit shall be deposited in a non-interest bearing segregated account and no interest will accrue on the Deposit.

34. A Potential Bidder must accompany its bid with or include in it, as applicable: (a) written evidence to provide adequate assurance of future performance of all obligations to be assumed, as the Debtors may reasonably request; (b) a copy of a board resolution or similar document demonstrating the authority of the Potential Bidder to make a binding and irrevocable bid on the terms proposed; (c) a covenant to cooperate with the Debtors to provide pertinent factual information regarding the Potential Bidder’s operations reasonably required to analyze issues arising with respect to any applicable antitrust laws and other applicable regulatory requirements; (d) if the Purchase Price includes non-cash consideration or contingencies that are different from the Purchase Agreement, an analysis in reasonable detail of the value of the non-cash consideration and sufficient back-up documentation that demonstrates that the bid is a higher and better offer; and (e) a signed statement that the Potential Bidder’s bid cannot be revoked until the earlier of May 9, 2017 and the first Business Day following the closing of the Sale Transaction.

35. **Modification of Bids.** Between the date that the Debtors notify a bidder that it is a Qualified Bidder and the Auction, the Debtors may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Without the written consent of the Debtors, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase the consideration contemplated by, or otherwise improve the terms of, the Qualified Bid; *provided* that any Qualified Bid may be improved at the Auction.

36. **Determination by the Debtors.** The Debtors, in consultation with the Consultation Parties, will (a) determine, with the assistance of their advisors, whether any person or entity is a

Qualified Bidder, (b) receive bids from Qualified Bidders, (c) evaluate and negotiate such bids, and (d) conduct the Auction. The Purchase Agreement is a Qualified Bid and the Stalking Horse Buyer is a Qualified Bidder for all purposes and requirements pursuant to the Bidding Procedures. Further information concerning the Debtors' determination of the highest and best bid is contained in the Bidding Procedures.

37. The Debtors will (after consultation with the Creditors' Committee) select what they determine to be the highest and best Qualified Bid for the Acquired Assets to serve as the starting point at the Auction taking into account all relevant considerations, including payment of any Bid Protections approved by the Bankruptcy Court, the financial condition of the applicable bidder and certainty of closing (the "**Baseline Bid**"). The Stalking Horse Buyer shall be consulted and given an opportunity to raise or otherwise change its bid so as to become the Baseline Bid at the Auction.

38. **Auction.** If at least one Qualified Bid, other than that of the Stalking Horse Buyer, is received by the Bid Deadline, the Debtors will conduct the Auction. The Auction will take place at the offices of Greenberg Traurig, LLP, 200 Park Avenue, New York, New York 10166 on the Auction Date, or such other time or place as the Debtors, in their sole discretion shall determine. Only a Qualified Bidder that has submitted a Qualified Bid will be eligible to participate at the Auction, subject to such limitations as the Debtors may impose in accordance with the Bidding Procedures. A reasonable number (as determined by the Debtors) of representatives of the Qualified Bidders will be permitted to attend and observe the Auction. At the Auction, participants will be permitted to increase their bids and improve their terms; provided that any such increased or improved bid must be a Qualified Bid (except that the Bid Deadline will not apply).

39. Bidding for the Acquired Assets will start at the purchase price and terms proposed in the applicable Baseline Bid and continue, in one or more rounds of bidding, so long as during each round a Qualified Bidder(s) submits at least one subsequent bid that is no less than \$200,000 above the immediately preceding highest or best bid (subject to modification by the Debtors after consultation with the Creditors' Committee).

40. **Modification of Bidding Procedures.** The Debtors reserve their rights, in the exercise of their fiduciary obligations, (a) to modify the Bidding Procedures or impose, at or prior to the Auction, different and/or additional terms and conditions on the Sale of the Acquired Assets and (b) to announce at the Auction additional procedural rules that are reasonable under the circumstances for conducting the Auction; provided that, in the case of both (a) and (b), such modifications or rules (i) are not inconsistent in any material respect with, and do not violate, the Bidding Procedures or the Purchase Agreement and (ii) do not impair or modify the Stalking Horse Buyer's rights and obligations hereunder or under the Purchase Agreement, including the applicable Sale Milestones (as defined in the Purchase Agreement) and any provision that would provide for the Closing Date to occur after the Termination Date (unless the Stalking Horse Buyer provides written consent to such modifications or rules); provided further, that neither the Creditors' Committee nor the Debtors may (x) waive any conditions to a bid being a Qualified Bid set forth in the Bidding Procedures (including, without limitation, that such Qualified Bid must be for all of the Acquired Assets) without the prior consent of the Stalking Horse Buyer, such consent as not to be unreasonably withheld, conditioned, or delayed or (y) waive the Stalking Horse Buyer's credit bid rights under section 363(k) of the Bankruptcy Code.

41. **Back-Up Bidder and No Collusion.** Each Qualified Bidder participating in the Auction will be required to confirm, in writing, that (a) it has not engaged in any collusion with

respect to the Bidding Process, and (b) its bid is a good faith bona fide offer that it intends to consummate if selected as the Successful Bidder (as defined below). Each Qualified Bidder shall also agree, to the extent that it is designated as the Next Best Bidder (as defined below) by the Debtors (after consultation with the Creditors' Committee), to remain ready, willing, and able to close the Sale Transaction under the terms of its last Qualified Bid submitted at the Auction as a Next Best Bidder until the close of the sale of the Acquired Assets.

42. The Debtors believe that the proposed Bidding Procedures provide an appropriate framework for selling the Acquired Assets and will enable the Debtors to fully review, analyze, and compare all Bids received to determine which Bid is in the best interests of the Debtors' estates.

Proposed Bid Protections and Bidding Procedures Should be Approved

43. Ultimately, the proposed Bidding Procedures and Bid Protections are fair and reasonable procedures reasonably intended to encourage competitive bidding. The Bidding Procedures and Bid Protections were negotiated in good faith and at arm's length, and represent the best method for maximizing the return to the estates.

44. Bidding incentives encourage a potential purchaser to invest the requisite time, money and effort to negotiate with the Debtors and perform the necessary due diligence attendant to the acquisition of the Debtors' assets, despite the inherent risks and uncertainties of the chapter 11 process. Historically, bankruptcy courts have approved bidding incentives similar to the Break-Up Fee and Expense Reimbursement under the "business judgment rule," which proscribes judicial second-guessing of the actions of a corporation's board of directors taken in good faith and in the exercise of honest judgment. *See, e.g., In re 995 Fifth Ave. Assocs., L.P.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (bidding incentives may "be legitimately necessary to

convince a white knight to enter the bidding by providing some form of compensation for the risks it is undertaking”) (internal quotation marks and citation omitted).

45. The Third Circuit has established standards for determining the appropriateness of bidding incentives in the bankruptcy context. *In Calpine Corp. v. O’Brien Env’tl. Energy, Inc.*, 181 F.3d 527 (3d Cir. 1999), the court held that even though bidding incentives are measured against a business judgment standard in non-bankruptcy transactions, the administrative expense provisions of Bankruptcy Code § 503(b) govern in the bankruptcy context. Accordingly, to be approved, bidding incentives must provide some benefit to the Debtors’ estate. *See id.* at 533.

46. The *O’Brien* court identified at least two instances in which bidding incentives may provide benefit to an estate. First, benefit may be found if “assurance of a break-up fee promoted more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited.” *Id.* at 537. Second, where the availability of bidding incentives induces a bidder to research the value of a debtor’s assets and submit a bid that serves as a minimum or floor bid on which other bidders can rely, “the bidder may have provided a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth.” *Id.*

47. Whether evaluated under the “business judgment rule” or the Third Circuit’s “administrative expense” standard, each of the Bid Protections passes muster. The Purchase Agreement and the Debtors’ agreement to pay the Bid Protections pursuant to the terms thereunder is the product of good faith, arm’s-length negotiations between the Debtors and the Stalking Horse Buyer. The Bid Protections are fair and reasonable in amount, and are reasonably intended to compensate for the risk of being used as a baseline bid for parties to bid against. Similarly, the Purchase Agreement provides a minimum bid on which other bidders can

rely, thereby “increasing the likelihood that the price at which the [Property will be] sold will reflect [its] true worth.” *Id.* The Break-up Fee will permit the Debtors to insist that competing bids, made in accordance with the Bidding Procedures, be materially higher or otherwise better than each Purchase Agreement (or competing agreement), which is a clear benefit to the Debtors’ estates.

48. Finally, the Bid Protections are within the spectrum of break-up and similar fees approved by bankruptcy courts in chapter 11 cases. *See, e.g., In re Hipcricket, Inc.*, Case No. 15-10104 (LSS) (Bankr. D. Del., Feb. 11, 2015) (Court approved break-up fee, which together with expense reimbursement, was 4.3% of the purchase price under stalking horse agreement); *In re Point Blank Solutions, Inc., et al.*, Case No. 10-11255 (PJW) (Bankr. D. Del., Oct. 5, 2011) (Court approved break-up and expense reimbursement of 3.75% or \$750,000 in connection with sale of debtor’s assets for purchase price of \$20,000,000); *In re Champion Enterprises, et al.*, Case No. 09-14019 (KG) (Bankr. D. Del., Feb. 8, 2010) (Court approved break-up fee of less than credit bid or \$3,000,000.00 in connection with sale of debtor’s assets for purchase price of approximately \$80,000,000); *In re Filene’s Basement, Inc., et al.*, Case No. 09-11525 (MFW) (Bankr. D. Del., May 15, 2009) (Court approved break-up fee and expense reimbursement of 3.68%, or \$810,000 in connection with sale of debtor’s assets for purchase price of \$22,000,000); *In re Western Nonwovens, Inc., et al.*, Case No. 08-11435 (PJW) (Bankr. D. Del., July 28, 2009) (Court approved break-up fee and expense reimbursement of \$250,000 in connection with sale of debtor’s assets for purchase price of \$4,000,000 to \$6,500,000 purchase price); *In re Global Motorsport Group, Inc., et al.*, (Case No. 08-10192 (KJC) (Bankr. D. Del., Feb. 14, 2008) (Court approved a break-up fee of approximately 4% in connection with sale); *In re Global Home Products*, Case No. 06-10340 (KG) (Bankr. D. Del., July 14, 2006) (Court

approved 3.3% break-up fee); *In re AmeriServe*, Case No. 00-0358 (PJW) (Bankr. D. Del., Sept. 27, 2000) (Court approved 3.64% break-up fee); *In re Medlab, Inc.*, Case No. 97-1893 (PJW) (Bankr. D. Del., Apr. 28, 1998) (Court approved termination fee of 3.12%, or \$250,000, in connection with \$8,000,000 sale transaction); *In re FoxMeyer Corp. et al.*, Case No. 96-1329 (HSB) through 96-1334 (HSB) (Bankr. D. Del., Oct. 9, 1996) (Court approved termination fee of 7.47%).

49. Approval of break-up fees and other forms of bid protections in connection with the sale of significant assets pursuant to section 363 of the Bankruptcy Code is an established practice in chapter 11 cases. In the Third Circuit, termination or break-up fees are considered administrative expenses and, therefore, the payment of such fees must provide a post-petition benefit to the bankruptcy estate. *Calpine Corp. v. O'Brien Env'tl. Energy, Inc. (In re O'Brien Env'tl. Energy, Inc.)*, 181 F.3d 527, 533 (3d Cir. 1999).

50. By conducting due diligence, participating in negotiations for a potential transaction, and entering into the Purchase Agreement, the Stalking Horse Buyers have established bid standards, including a price floor and the parameters of a sale, and initiated a legitimate sales process that should serve as a catalyst for other bidders. As a result, the Debtors are now in a favorable position to solicit competing bids that may be materially higher or otherwise more favorable than a Stalking Horse Buyer's bid. In short, the Stalking Horse Buyer should be compensated for the risk it is taking and the benefits it is providing to the Debtors' estates.

51. Within one (1) business day after entry of the Bidding Procedures Order, the Debtors will serve the Sale Notice by first-class mail, postage prepaid, upon the following parties: (a) the U.S. Trustee; (b) counsel to the Creditors' Committee; (c) counsel to the Stalking

Horse Buyer; (d) the attorneys general for each of the States in which the Debtors are known or reasonably believed by the Debtors to conduct operations; (e) all taxing authorities having jurisdiction over any of the Acquired Assets, including the Internal Revenue Service; (f) the United States Environmental Protection Agency and similar state agencies in states in which the Debtors are known or reasonably believed by the Debtors to conduct operations; (g) the Pension Benefit Guaranty Corporation; (h) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002(i); (i) all parties that are known or reasonably believed to have expressed an interest in acquiring any of the Acquired Assets; (j) all parties that are known or reasonably believed by the Debtors to have asserted any lien, Encumbrance, claim, or other interest in the Acquired Assets; (k) all governmental agencies that are known or reasonably believed by the Debtors to be an interested party with respect to the Sale and the related transactions; (l) all non-Debtor parties to the Assumed Contracts; and (m) all other known creditors of the Debtors. The Sale Notice shall indicate that copies of the Sale Motion and the Purchase Agreement are available upon request, or can be obtained, along with the Sale Notice, on the website of the Debtors' claims and noticing agent, BMC Group, Inc. at www.bmcgroup.com/aerospaceholdings.

52. The Sale Notice will include, among other things, the date, time, and place of the Auction and the Sale Hearing and the deadline for filing any objections to the relief requested in the Sale Motion once they are set by the Court, and, therefore, comply with Bankruptcy Rule 2002(c).

53. No later than five (5) business days after the entry of the Bidding Procedures Order, the Debtors also will publish a notice (the “**Publication Notice**”) in USA Today or such

other national publication acceptable to the Debtors after consultation with the Creditors' Committee and the Stalking Horse Buyer.

54. In addition, the Debtors respectfully request the establishment of an objection deadline prior to the Sale Hearing such that that any objections related to the proposed Sale be served upon (such as to be **received** by) the following parties (the “**Objection Notice Parties**”) **on or before 4:00 p.m. (Prevailing Eastern Time) on April 25, 2017** (the “**Sale Objection Deadline**”):

- (a) counsel to the Debtors, (i) Greenberg Traurig, LLP, 200 Park Avenue, New York, New York 10166 (Attn: Matthew L. Hinker) and (ii) Greenberg Traurig, LLP, The Nemours Building, 1007 North Orange Street, Suite 1200, Wilmington, Delaware 19801 (Attn: Dennis A. Meloro);
- (b) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (Attn: Benjamin Hackman);
- (c) counsel to the Stalking Horse Buyer, Loeb & Loeb LLP, 345 Park Avenue, New York, New York 10154 (Attn: Vadim J. Rubinstein);
- (d) counsel to the statutory committee appointed in the Chapter 11 Cases, if one is appointed; and
- (e) those parties who have formally filed requests for notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002.

55. The Debtors submit that the methods of notice described herein comply fully with Bankruptcy Rule 2002 and constitute good and adequate notice of the proposed sale of the Assets. Therefore, the Debtors respectfully request that this Court approve the notice procedures proposed above.

Proposed Assumption and Assignment Procedures

56. As part of the Sale the Debtors may assume and assign Assumed Contracts. By no later than two (2) business day after entry of the Bidding Procedures Order, the Debtors will

file a schedule of cure obligations (the “**Executory Contract List**”)⁷ for the Assumed Contracts. The Executory Contract List will include a description of each Assumed Contract potentially to be assumed and assigned by the Successful Bidder, if any, and the amount the Debtors believe is necessary to cure such agreements pursuant to section 365 of the Bankruptcy Code (the “**Cure Costs**”). A copy of the Executory Contract List, together with the Assumption and Assignment Notice, will be served on each of the non-debtor parties listed on the Executory Contract List electronically and by first class mail on the date that the Executory Contract List is filed with the Court.

57. The Debtors propose that any objections to the assumption and assignment of any executory contract or unexpired lease identified on the Executory Contract List, including, but not limited to, objections relating to adequate assurance of future performance or to the Cure Costs set forth on such schedule, must be in writing, filed with the Court, be served upon (such as to be **received** by) the Objection Notice Parties **on or before 4:00 p.m. (Prevailing Eastern Time) on April 25, 2017**. Any such objection shall set forth, among other things, a specific default in any Assumed Contract and claim a specific monetary amount that differs from the Cure Costs (if any) specified by the Debtors in the Executory Contract List.

58. As soon as practicable following the conclusion of the Auction, the Debtors shall file a notice identifying the Successful Bidder and the Next Best Bid, if any, with the Court and serve such notice upon each party identified in the Executory Contract Lists to the extent the Stalking Horse Buyer is not the Successful Bidder or to the extent there is a Next Best Bid. Such notice will be sent via email, fax, or overnight mail to the counterparties to assure proper notice. If the Successful Bidder is not the Stalking Horse Buyer, the deadline for objecting to the

⁷ The inclusion of an Assumed Contract on the Executory Contract List shall not constitute an admission by the Debtors that any such contract is in fact an executory contract capable of assumption or that such Assumed Contract is necessarily a binding and enforceable agreement.

assignment of the Assumed Contracts to such Successful Bidder on the basis of adequate assurance of future performance shall be the commencement of the Sale Hearing.

59. If no objections are received by the relevant deadline, then the Cure Costs set forth in the Executory Contract List will be binding upon the non-debtor parties to the Assumed Contracts for all purposes in these Chapter 11 Cases and will constitute a final determination of the total Cure Costs required to be paid by the Debtors in connection with the assumption and assignment of the Assumed Contracts. In addition, all counterparties to the Assumed Contracts will (a) be forever barred from objecting to the Cure Costs (if any) and from asserting any additional cure or other amounts with respect to its Assumed Contract, and the Debtors and the Successful Bidder shall be entitled to rely solely upon the Cure Costs set forth in the Executory Contract List; (b) be forever barred from asserting that any conditions to the assumption and assignment of any Assumed Contract must be satisfied under such Assumed Contract before such agreement may be assumed and assigned, or that any required consent to any such assignment has not been given, whether under Section 365(c) of the Bankruptcy Code or otherwise; (c) be deemed to have consented to the assumption and assignment; (d) be deemed to have agreed that all defaults under the applicable Assumed Contract arising or continuing prior to the effective date of the assignment have been cured; (e) be forever barred and estopped from asserting that the Successful Bidder has failed to provide adequate assurance of future performance; and (f) be forever barred, estopped, and permanently enjoined from asserting or claiming against the Debtors, the Successful Bidder, or their respective property that any additional amounts are due or other defaults exist, that conditions to assignment must be satisfied under such Assumed Contract or that there is any objection or defense to the assumption and assignment of such Assumed Contract.

60. In addition, the Cure Costs set forth in the Executory Contract List shall be binding upon the non-Debtor parties to the Assumed Contracts for all purposes in these Chapter 11 Cases and otherwise, and will constitute a final determination of the total Cure Costs required to be paid in connection with the assumption and assignment of the Assumed Contracts; provided, however, that the Cure Costs set forth in the Executory Contract List may be reduced by any amounts Debtors pay under an Assumed Contract on or after the Petition Date.

61. Where a non-debtor counterparty to an Assumed Contract files an objection asserting a cure amount higher than the proposed Cure Costs (the “**Disputed Cure Amount**”), then (a) to the extent that the parties are able to consensually resolve the Disputed Cure Amount prior to the Sale Hearing, and subject to the Successful Bidder’s consent to such consensual resolution, the Debtors shall promptly provide the Creditors’ Committee notice and opportunity to object to such proposed resolution or (b) to the extent the parties are unable to consensually resolve the dispute prior to the Sale Hearing, the amount to be paid under section 365 of the Bankruptcy Code with respect to such Disputed Cure Amount will be determined at the Sale Hearing or at such other date and time as may be fixed by this Court. All other objections to the proposed assumption and assignment of an Assumed Contract will be heard at the Sale Hearing. The Debtors intend to cooperate with counterparties to Assumed Contracts to attempt to reconcile any differences with respect to a particular cure amount.

62. The Debtors request that any party failing to object to the proposed transactions be deemed to consent to the treatment of its executory contract and/or unexpired lease under section 365 of the Bankruptcy Code. *See, Hargrave v. Twp. of Pemberton (In re Tabone, Inc.)*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (by not objecting to sale motion, creditor deemed to consent); *Pelican Homestead v. Wooten (In re Gabeel)*, 61 B.R. 661, 667 (Bankr. W.D. La.

1985) (same). Moreover, the Debtors request that each such party be deemed to consent to the assumption and assignment of its executory contract or unexpired lease notwithstanding any anti-alienation provision or other restriction on assignment. *See*, 11 U.S.C. §§ 365(c)(1)(B), (e)(2)(A)(ii), and (f).

Approval of the Sale Is Warranted Under Section 363 of the Bankruptcy Code

63. Section 363(b) of the Bankruptcy Code provides that a debtor “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b). A debtor must demonstrate a sound business justification for a sale or use of assets outside the ordinary course of business. *See, e.g., In re Martin*, 91 F.3d 389 (3d Cir. 1996) (citing *In re Schipper*, 933 F.2d 513 (7th Cir. 1991)); *In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992); *Stephens Indus., Inc. v. McClung*, 789 F.2d 386 (6th Cir. 1986); *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983).

64. Courts typically consider the following factors in determining whether a proposed sale meets this standard:

- (a) Whether a sound business justification exists for the sale;
- (b) Whether adequate and reasonable notice of the sale was given to interested parties;
- (c) Whether the sale will produce a fair and reasonable price for the property ; and
- (d) Whether the parties have acted in good faith.

In re Decora Indus., Inc., 2002 WL 32332749, at * 2 (D. Del. May 20, 2002) (citing *Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991)).

65. When a debtor demonstrates a valid business justification for a decision, a strong presumption arises “that in making [the] business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best

interests of the company.” *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1990) (holding that Delaware business judgment rule has “vitality by analogy” in chapter 11) (citations omitted).

66. In the instant case, a strong business justification exists for the Sale. Any extended delay in selling the Acquired Assets could have a severe detrimental effect on the Debtors’ ability to continue operations and preserve going concern value to the fullest extent possible. Furthermore, the proposed notice of the Sale is reasonable and adequate. The Debtors are providing direct notice of the Sale to all known creditors of the Debtors’ estates. Further, the Sale has been proposed in good faith. Finally, because the Sale is subject to bid procedures and an auction, the price ultimately received as a result of the successful bid should, based on the process alone, be deemed fair and reasonable.

The Stalking Horse Buyer is a Good Faith Purchaser

67. The Debtors request that the Stalking Horse Buyer or such other party that is the successful bidder at the Auction receive the protections set forth in section 363(m) of the Bankruptcy Code. Specifically, section 363(m) of the Bankruptcy Code provides:

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

11 U.S.C. § 363(m).

68. While the Bankruptcy Code does not define “good faith,” the United States Court of Appeals for the Third Circuit previously addressed the meaning of the term:

The requirement that a purchaser act in good faith . . . speaks to the integrity of his conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a purchaser’s good

faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.

In re Abbotts Dairies of Pa., Inc., 788 F.2d 143, 147 (3d Cir. 1986).

69. The Debtors and the Stalking Horse Buyer have entered into the Purchase Agreements without collusion, in good faith and from arm's-length bargaining positions. In this regard, the Stalking Horse Buyer has engaged separate counsel to represent it in its negotiation with the Debtors. To the Debtors' knowledge, no party has engaged in any conduct that would cause or permit the Purchase Agreements to be set aside under section 363(m) of the Bankruptcy Code. Similarly, the Debtors submit that any sale agreement it enters into with such other party that is the Successful Bidder at the Auction will also have been negotiated at arm's-length and in good faith. Accordingly, the Debtors seek a finding that the Stalking Horse Buyer or such other party that is the Successful Bidder at the Auction is a good faith purchaser under section 363(m) of the Bankruptcy Code.

70. Moreover, the Debtors and any Successful Bidder have not violated and will not violate section 363(n) of the Bankruptcy Code, and thus request that the Court determine that a Sale may not be set aside pursuant to section 363(n) of the Bankruptcy Code.

Approval of the Sale Free and Clear of Liens, Claims and Encumbrances

71. The Debtors request approval to sell the Acquired Assets free and clear of any and all liens, claims, interests, and encumbrances in accordance with section 363(f) of the Bankruptcy Code. Pursuant to section 363(f), a debtor in possession may sell estate property "free and clear of any interest in such property of an entity other than the estate" if any one of the following conditions is satisfied:

(a) applicable non-bankruptcy law permits sale of such property free and clear of such interest;

- (b) such entity consents;
- (c) 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;
- (d) such interest is in bona fide dispute; or
- (e) 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); *see, Citicorp Homeowners Serv., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (Bankr. E.D. Pa. 1988) (because section 363(f) is written in the disjunctive, a court may approve a “free and clear” sale even if only one of the subsections is met).

72. Furthermore, it is well established that a bankruptcy court has the power, pursuant to section 363(f) of the Bankruptcy Code, to approve the sale of a debtor’s assets free and clear of any claims against the debtor. *In re TWA Airlines, Inc.*, 322 F.3d 283, 288–90 (3d Cir. 2003) (holding that successor liability claims are “interests in property” within the meaning of §363(f)); *United Mine Workers of Am. Benefit Plan v. Leckie Smokeless Coal Co. (In re Leckie Smokeless Coal Co.)*, 99 F.3d 573 (4th Cir. 1996) (same).

73. The Debtors submit that the sale of the Acquired Assets free and clear of liens, claims, and encumbrances will satisfy the requirements of section 363(f) of the Bankruptcy Code, because among other things, the Prepetition Agent consents to the sale. The Debtors also believe that the service of the Sale Notice in accordance with the terms set forth in this Motion will afford creditors sufficient notice of the Sale and therefore provides additional justification for approval of the Sale free and clear of all liens, claims, and encumbrances.

Credit Bidding Should be Authorized Under Bankruptcy Code Section 363(k)

74. A secured creditor is allowed to “credit bid” the amount of its claim in a sale. Bankruptcy Code Section 363(k) provides, in relevant part, that unless the court, for cause, orders otherwise, the holder of a claim secured by property that is the subject of the sale “may

bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property.” 11 U.S.C. § 363(k). Even if a secured creditor is undersecured as determined in accordance with Bankruptcy Code Section 506(a), Section 363(k) allows such secured creditor to bid the total face value of its claim and does not limit the credit bid to the claim’s economic value.

75. Because the Stalking Horse Buyer is also the pre-petition lender and has also provided debtor-in-possession financing, it holds claims that are secured by the Acquired Assets. Indeed, it is a condition of the Stalking Horse Buyer’s requirement to close on the Sale that the Bidding Procedures Order permits the Stalking Horse Buyer to credit bid. The Debtors submit that the Stalking Horse Buyer should be allowed to credit bid up to the face value of its secured pre- and post-petition claims.

**Approval of the Assumption and Assignment
of Executory Contracts and Unexpired Leases**

76. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession “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). The standard governing bankruptcy court approval of a debtor’s decision to assume or reject an executory contract or unexpired lease is whether the debtor’s reasonable business judgment supports assumption or rejection. *See, e.g., In re HQ Global Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003) (finding that debtor’s decision to assume or reject executory contract is governed by business judgment standard and can only be overturned if decision was product of bad faith, whim, or caprice); *see also, In re Market Square Inn, Inc.*, 978 F.2d 116, 121 (3d Cir. 1992) (finding that assumption or rejection of lease “will be a matter of business judgment by the bankruptcy court”).

77. The business judgment test “requires only that the trustee [or debtor in possession] demonstrate that [assumption] or rejection of the contract will benefit the estate.” *Wheeling-Pittsburgh Steel Corp. v. West Penn Power Co., (In re Wheeling-Pittsburgh Steel Corp.)*, 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987). Any more exacting scrutiny would slow the administration of a debtor’s estate and increase costs, interfere with the Bankruptcy Code’s provision for private control of administration of the estate, and threaten a court’s ability to control a case impartially. *See, Richmond Leasing Co. v. Capital Bank*, 762 F.2d 1303, 1311 (5th Cir. 1985). Moreover, pursuant to section 365(b)(1) of the Bankruptcy Code, for a debtor to assume an executory contract, it must “cure, or provide adequate assurance that the debtor will promptly cure,” any default, including compensation for “actual pecuniary loss” relating to such default. 11 U.S.C. § 365(b)(1).

78. Under section 365(f) of the Bankruptcy Code, a debtor, after assuming a contract, may assign its rights under the contract to a third party. 11 U.S.C. § 365(f); *see also, In re Rickel Home Center, Inc.*, 209 F.3d 291, 299 (3d Cir. 2000) (“The Code generally favors free assignability as a means to maximize the value of the debtor’s estate.”); *see also, In re Headquarters Dodge, Inc.*, 13 F.3d 674, 682 (3d Cir. 1994) (noting that the purpose of section 365(f) is to assist the trustee in realizing the full value of the debtor’s assets). Section 365(f)(2)(B) requires, however, that adequate assurance of future performance by an assignee exist. 11 U.S.C. § 365(f)(2)(B). The purpose of the adequate assurance requirement is to protect the interests of the non-debtor party to an assigned contract, as section 365(k) of the Bankruptcy Code relieves a debtor from liability for any breach of a contract that may occur after an assignment. *Cinicola v. Scharffeberger*, 248 F.3d 110, 120 (3d Cir. 2001). Adequate assurance of future performance is not required for every term of an executory contract or unexpired lease,

but only such terms that are “material and economically” significant. *In re Fleming Cos., Inc.*, 499 F.3d 300, 305 (3d Cir. 2007). 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.” *In re DBSI, Inc.*, 405 B.R. 698, 708 (Bankr. D. Del. 2009); *see also, In re Decora Indus.*, 2002 U.S. Dist. LEXIS 27031, at *23 (D. Del. 2002) (“[A]dequate assurance falls short of an absolute guarantee of payment.”). 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) (finding that 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 success).

79. The Purchase Agreement is as an integral part of the Sale and requires the assumption and assignment of certain executory contracts and unexpired leases. It is thus an appropriate exercise of the business judgment for the Debtors to agree to assume and assign the Assumed Contracts as will be required by each Purchase Agreement. Additionally, the Debtors submit that the notice provisions, and the objection deadline for counterparties to raise objections to the assumption and assignment of contracts and leases, as proposed in this Motion, are adequate to protect the rights of counterparties to the Debtors’ contracts and leases. Furthermore, the Debtors will demonstrate adequate assurance of future performance at the Sale Hearing.

Waiver of Bankruptcy Rules 6004(a), 6004(h) and 6006(d)

80. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a). The Debtors also request that, upon entry of the

Sale Order, the Court waive the 14-day stay requirements of Bankruptcy Rules 6004(h) and 6006(d). The waiver of the 14-day stay imposed by Bankruptcy Rules 6004(h) and 6006(d) is a condition of Purchase Agreement. The Debtors and the Stalking Horse Buyer, if it is the Successful Bidder and all other conditions precedent have been satisfied or waived, intend to seek authorization to close the sale of the Acquired Assets as expeditiously as possible upon entry of the Sale Order if there are no substantive objections to this Motion. The Debtors submit that the procedures and noticing provisions provided herein protect all parties that may seek to object to the Sale. Consequently, the Debtors respectfully submit that the Court waive the 14-day stay requirements contained in Bankruptcy Rules 6004(h) and 6006(d).

Consent to Jurisdiction

81. Pursuant to Local Rule 9013-1(f), the Debtors hereby consent to the entry of a final judgment or order in connection with this motion if it is determined that this Court cannot – absent the consent of the parties – enter such final judgment or order consistent with Article III of the United States Constitution.

Notice

82. Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (a) the U.S. Trustee; (b) counsel to the Stalking Horse Buyer; (c) the attorneys general for each of the States in which the Debtors are known or reasonably believed by the Debtors to conduct operations; (d) all taxing authorities having jurisdiction over any of the Acquired Assets, including the Internal Revenue Service; (e) the United States Environmental Protection Agency and similar state agencies in states in which the Debtors are known or reasonably believed by the Debtors to conduct operations; (f) the Pension Benefit Guaranty Corporation; (g) all parties that are known or reasonably believed by the Debtors to have asserted any lien, Encumbrance, claim, or other interest in the Acquired Assets; (h) all governmental

agencies that are known or reasonably believed by the Debtors to be an interested party with respect to the Sale and the related transactions; (i) all non-Debtor parties to the Assumed Contracts; (j) all other known creditors of the Debtors; and (k) any other party entitled to notice pursuant to Local Rule 9013-1(m). In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

No Prior Request

83. No prior request for the relief sought herein has been made to this Court or any other Court.

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WHEREFORE, the Debtors respectfully request that the Court (i) enter the Bidding Procedures Order, in substantially the form attached hereto as **Exhibit A**, (ii) enter the Sale Order, in a form attached hereto as **Exhibit B** or such other order approving a sale to such other party that is the Successful Bidder at the Auction, and (iii) grant such other and further relief to the Debtors as the Court may deem proper.

Dated: March 28, 2017

GREENBERG TRAURIG, LLP

/s/ Dennis A. Meloro

Dennis A. Meloro (DE Bar No. 4435)
The Nemours Building
1007 North Orange Street, Suite 1200
Wilmington, Delaware 19801
Telephone: (302) 661-7000
Facsimile: (302) 661-7360
Email: melorod@gtlaw.com

-and-

Nancy A. Mitchell (*pro hac vice* pending)
Matthew L. Hinker (DE Bar No. 5348)
Sara A. Hoffman (*pro hac vice* pending)
Greenberg Traurig, LLP
The MetLife Building
200 Park Avenue
New York, NY 10166
Telephone: (212) 801-9200
Facsimile: (212) 801-6400
Email: mitchelln@gtlaw.com
hinkerm@gtlaw.com
hoffmans@gtlaw.com

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

EXHIBIT A

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

In re:

Aerospace Holdings, Inc., *et al.*,¹

Debtors.

Chapter 11

Case No. 17-10635 (KG)

(Joint Administration Requested)

**ORDER (I) APPROVING AND ESTABLISHING BIDDING AND SALE PROCEDURES;
(II) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES AND
(III) GRANTING RELATED RELIEF INCLUDING BREAK-UP FEE**

This matter coming before the Court on the motion (the “**Motion**”),² filed by the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”), seeking, pursuant to sections 105, 363, 365, 503, and 507 of Title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2002, 6004, 6006, 9007, 9008 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rules 2002-1, 6004-1, and 9006-1 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), an order (i) authorizing and approving the procedures (the “**Bidding Procedures**”) that are attached hereto as **Annex 1** for the sale of certain of the Debtors’ assets (the “**Sale**”), (ii) approving the Bid Protections (as defined below), (iii) scheduling an Auction and Sale Hearing in connection with the Sale, (iv) approving the form and manner of notice of the Auction and the Sale Hearing, and (v) other related relief; the Court having reviewed the Motion and conducted a hearing to consider the relief requested therein

¹ The Debtors in these Chapter 11 Cases, along with the business addresses and the last four (4) digits of each Debtor’s federal tax identification number are: Aerospace Holdings, Inc., 366 Madison Avenue, 9th Floor, New York, NY 10017 (4318); Valley Tool & Manufacturing, Inc., 22 Prindle Hill Rd., P.O. Box 564, Orange, CT 06477 (8614); NC Dynamics Incorporated, 6925 Downey Avenue, Long Beach, CA 90805 (3219); NCDI Mexico, Inc., 2771 Centerville Road, Suite 400, Wilmington, DE 19808 (5905); and GroupAero Seattle, Inc., 7020 S. 238th Street, Kent, WA 98032 (7033).

² Capitalized terms not otherwise defined in this Order shall have the meanings given to them in the Motion, the Bidding Procedures or the Purchase Agreement, as applicable.

regarding the Bidding Procedures and related matters (the “**Bidding Procedures Hearing**”); upon all of the proceedings had before the Court; and any objections to the relief requested in the Motion having been withdrawn or overruled on the merits; and the Court having considered the *Declaration of Matthew Sedigh in Support of the Debtors’ Chapter 11 Petitions and Requests for First Day Relief* and the statements of counsel and the evidence presented at the Bidding Procedures Hearing; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of these Chapter 11 Cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and after due deliberation and sufficient cause appearing therefor; and this Court having determined that the relief requested in the Motion with respect to the matters addressed herein is in the best interests of the Debtors, their estates, their creditors and other parties-in-interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor:

IT IS HEREBY FOUND AND DETERMINED THAT³:

A. The Court has jurisdiction over this matter and over the property of the Debtors and their respective bankruptcy estates pursuant to 28 U.S.C. §§ 157(a) and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M), (N), and (O). The statutory predicates for the relief sought herein are sections 105, 363, 365, 503, and 507 of the Bankruptcy

³ The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such. All findings of fact and conclusions of law announced by the Court at the Bidding Procedures Hearing are hereby incorporated herein to the extent not inconsistent herewith.

Code and Bankruptcy Rules 2002, 6004, 6006, 9007, 9008, and 9014; and Local Rules 2002-1, 6004-1 and 9006-1. Venue of these cases and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

B. The Debtors have offered good and sufficient reasons for, and the best interests of their estates will be served by, this Court granting the Motion to the extent provided in this Order, including approval of (i) the Bidding Procedures, attached hereto as **Annex 1**, (ii) the Bid Protections, (iii) the procedures described below for the determination of the amounts necessary to cure defaults under the Assumed Contracts so as to permit the assumption and assignment under section 365 of the Bankruptcy Code of the Assumed Contracts (the “**Assumption and Assignment Procedures**”), and (iv) the form and manner of notice of the Auction and Sale Hearing described in the Motion and this Order.

C. Good and sufficient notice of the Bid Procedures Hearing has been given under the circumstances, and no further notice with respect to the relief requested in the Motion is required except as set forth herein with respect to the Auction and the Sale Hearing. Subject to the immediately preceding sentence, a reasonable opportunity to object or to be heard regarding the relief requested in the Motion was afforded to all interested persons and entities.

D. The proposed form of notice of the Auction, and the Sale Hearing, attached hereto as **Annex 2** (the “**Sale Notice**”), is appropriate and sufficient, and is reasonably calculated to provide all interested parties with timely and proper notice of the Auction, the Sale Hearing, the Bidding Procedures, and all deadlines in connection therewith, and no other or further notice shall be required for the Sale.

E. The Bidding Procedures and the Purchase Agreement (defined below) were negotiated in good faith and at arm’s length.

F. The Bidding Procedures are reasonably designed to maximize the value to be achieved for the Acquired Assets.

G. The Bidding Procedures are fair, reasonable, and appropriate and are designed to maximize the recovery from the Sale.

H. The Break-Up Fee and Expense Reimbursement (collectively referred to herein as the “**Bid Protections**”): (i) shall, if triggered, be deemed an actual and necessary cost and expense of preserving the Debtors’ estates, within the meaning of sections 503(b) and 507(a)(2) of the Bankruptcy Code, (ii) are commensurate to the real and substantial benefit conferred upon the Debtors’ estates by the Stalking Horse Buyer notwithstanding that the proposed Sale is subject to higher and better offers for the Acquired Assets, (iii) are reasonable and appropriate including in light of the size and nature of the Sale and the efforts that have been or will be expended by the Stalking Horse Buyer notwithstanding that the Sale is subject to higher and better offers for the Acquired Assets; (iv) were negotiated by the parties at arm’s-length and in good faith; (v) were necessary to induce the Stalking Horse Buyer to pursue the Purchase Agreement; (vi) were a material inducement for, and an express condition of, the Stalking Horse Buyer’s willingness to enter into the Asset Purchase Agreement with the Debtors (as amended, the “**Purchase Agreement**”); and (vii) are necessary to ensure that the Stalking Horse Buyer will continue to pursue its proposed acquisition of the Acquired Assets. The Bid Protections are commensurate with the real and substantial post-petition benefits conferred upon the Debtors’ estates by the Stalking Horse Buyer and constitute actual and necessary costs and expenses incurred by the Debtors in preserving the value of their estates within the meaning of section 503(b) of the Bankruptcy Code.

I. The form of the Purchase Agreement is fair and reasonable and provides flexibility in the process to sell the Acquired Assets in a manner designed to maximize the value of the Acquired Assets.

J. The Assumption and Assignment Procedures provided for herein and the Assumption and Assignment Notice, attached hereto as **Annex 3**, are reasonable and appropriate, consistent with the provisions of Section 365 of the Bankruptcy Code and Bankruptcy Rule 6006, and are reasonably calculated to provide counterparties to the Assumed Contracts with proper notice of the intended assumption and assignment of their executory contracts or unexpired leases, any Cure Amounts relating thereto and the Assumption and Assignment Procedures. The Assumption and Assignment Procedures and the Assumption and Assignment Notice have been narrowly tailored to provide an adequate opportunity for all non-debtor counterparties to the Assumed Contracts to assert any objection.

K. Entry of this Order is in the best interests of the Debtors, their estates and creditors, and all other parties in interest.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED to the extent provided herein.

I. Bidding Procedures and Related Relief

2. All objections to the relief requested in the Motion that have not been withdrawn, waived, or settled, as announced to the Court at the Bidding Procedures Hearing or by stipulation filed with the Court, are overruled.

3. The Bidding Procedures are hereby approved, are incorporated herein by reference, and shall govern all bids and bid proceedings relating to the Acquired Assets. The

Debtors and their claims and noticing agent are authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures.

4. The deadline by which a Qualified Bid of a Potential Bidder must be actually received shall be April 28, 2017 at 5:00 p.m. prevailing Eastern Time (the “**Bid Deadline**”). The Debtors shall have the exclusive right to determine whether a bid is a Qualified Bid and whether a Potential Bidder is a Qualified Bidder and shall notify Potential Bidders whether their bids have been recognized as Qualified Bids as promptly as practicable after a Potential Bidder delivers all of the materials required by the Bidding Procedures.

5. In the event of a competing Qualified Bid, the Stalking Horse Buyer will be entitled, but not obligated, to submit overbids and will be entitled in any such overbids to credit bid the value of the Bid Protections.

6. The Purchase Agreement is a Qualified Bid and the Stalking Horse Buyer is a Qualified Bidder, for all purposes and requirements pursuant to the Bidding Procedures.

7. The Expense Reimbursement, as set forth in the Purchase Agreement, is approved; provided, however that the Expense Reimbursement shall equal the lesser of (a) \$150,000 and (b) the actual out of pocket expenses of the Stalking Horse Buyer. The Break-up Fee is approved in the amount of \$300,000 payable as provided for in the Purchase Agreement. The obligation of the Debtors to pay the Expense Reimbursement and Break-Up Fee: (i) shall be entitled to administrative expense claim status under Bankruptcy Code Sections 503(b)(1)(A) and 507(a)(2); (ii) shall not be subordinate to any other administrative expense claim against the Debtors; (iii) shall survive the termination of the Purchase Agreement; and (iv) is payable at the times set forth in the Purchase Agreement.

8. Notwithstanding anything to the contrary in this Order, the Stalking Horse Buyer, or its designee, may credit bid as the equivalent of cash on a dollar-for-dollar basis all or any portion of the pre-petition indebtedness under the Credit Agreement (as defined in the Purchase Agreement) or post-petition indebtedness under the DIP Loan Agreement (as defined in the Purchase Agreement) toward the purchase of its collateral in accordance with Bankruptcy Code section 363(k), at any Auction, or if an Auction is not convened or conducted for any reason, at any Sale Hearing, and such credit bid will constitute a Qualified Bid for all purposes. In the event the Stalking Horse Buyer exercises its absolute right to credit bid and is the Successful Bidder by virtue of such credit bid, then, unless otherwise agreed by the Stalking Horse Buyer, any recoveries in the event of a successful Challenge (as defined in the DIP Order) shall be restricted only to money damages.

9. No person or entity, other than the Stalking Horse Buyer, shall be entitled to any expense reimbursement, break-up fees, “topping,” termination, or other similar fee or payment, and by submitting a bid, such person or entity is deemed to have waived their right to request or file with this Court any request for expense reimbursement or any fee of any nature, whether by virtue of Bankruptcy Code section 503(b) or otherwise.

10. All Potential Bidders submitting a bid are deemed to have submitted to the exclusive jurisdiction of this Court with respect to all matters related to the Auction and the terms and conditions of the transfer of the Acquired Assets.

11. In the event the Stalking Horse Buyer’s bid is the only Qualified Bid received by the Debtors by the Bid Deadline in respect of the Acquired Assets, no Auction will be conducted for the Acquired Assets, and the Stalking Horse Buyer will be the Successful Bidder.

12. If at least one Qualified Bid in respect of the Acquired Assets, other than that of the Stalking Horse Buyer, is received by the Bid Deadline, the Debtors will conduct the Auction for such Acquired Assets. The Auction, if necessary, shall be held on May 2, 2017 at 10:00 a.m. (prevailing Eastern Time) at the offices of Greenberg Traurig, LLP, 200 Park Avenue, New York, New York 10166, or such other time or place as the Debtors, in their sole discretion shall determine. Only a Qualified Bidder that has submitted a Qualified Bid will be eligible to participate at the Auction, subject to such limitations as the Debtors may impose in accordance with the Bidding Procedures. A reasonable number (as determined by the Debtors) of representatives of the Qualified Bidders will be permitted to attend and observe the Auction.

13. Each bidder participating at the Auction will be required to confirm in writing, that (a) it has not engaged in any collusion with respect to the bidding process, and (b) its bid is a good faith *bona fide* offer that it intends to consummate if selected as the Successful Bidder. Each bidder shall be required to comply with the requirements of the Bidding Procedures.

14. The Auction will be conducted openly and may be transcribed or videotaped at the Debtors' option.

II. Dates and Deadlines for Sale Objections

15. **Sale Hearing:** The Court shall convene the Sale Hearing on May [4] at __: ___.m. (prevailing Eastern Time) or as soon thereafter as counsel and interested parties may be heard, at which time the Court will consider approval of the Sale to the Successful Bidder and the entry of a Sale Order. Any obligations of the Debtors set forth in the Purchase Agreement that are intended to be performed prior to the Sale Hearing and/or entry of a Sale Order pursuant to the Purchase Agreement are authorized as set forth herein and shall be fully enforceable as of the date of entry of this Order. The Debtors in their sole discretion may adjourn the Sale Hearing

from time to time without further notice to creditors or other parties in interest other than by announcement of said adjournment at the Sale Hearing; *provided, however*, that in the event of any such adjournment of the Sale Hearing, all of the Stalking Horse Buyer's rights under the Purchase Agreements are reserved and preserved.

16. **Sale Objection Deadline:** Except as set forth below, objections to approval of the Sale, including the sale of the Debtors' assets free and clear of liens, claims, encumbrances and interests pursuant to section 363(f) of the Bankruptcy Code, must be received on or before April 25, 2017 at 4:00 p.m. (prevailing Eastern Time) (the "**Objection Deadline**"). Objections, if any, **must:** (i) be in writing; (ii) conform to the applicable provisions of the Bankruptcy Rules and the Local Rules; (iii) state with particularity the legal and factual basis for the objection and the specific grounds therefor; and (iv) be filed with this Court and served as to be *actually received* no later than the Objection Deadline by (such parties, the "**Objection Notice Parties**"):

- (a) counsel to the Debtors, (i) Greenberg Traurig, LLP, 200 Park Avenue, New York, New York 10166 (Attn: Matthew L. Hinker) and (ii) Greenberg Traurig, LLP, The Nemours Building, 1007 North Orange Street, Suite 1200, Wilmington, Delaware 19801 (Attn: Dennis A. Meloro);
- (b) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (Attn: Benjamin Hackman);
- (c) counsel to the Stalking Horse Buyer, Loeb & Loeb LLP, 345 Park Avenue, New York, New York 10154 (Attn: Vadim J. Rubinstein);
- (d) counsel to the statutory committee appointed in the Chapter 11 Cases, if one is appointed; and
- (e) those parties who have formally filed requests for notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002.

17. Failure to timely file an objection in accordance with this Order shall forever bar the assertion of any objection to the Motion, entry of any Sale Order, or consummation of any Sale, and shall be deemed to constitute consent to entry of each Sale Order and consummation of

the Sale and all transactions related thereto including, without limitation, for purposes of section 363(f) of the Bankruptcy Code.

18. **Reply Deadline:** _____ (prevailing Eastern Time) is the deadline for the Debtors, the Stalking Horse Buyer and other parties in interest to file replies to any timely-filed objection to entry of the Sale Order with this Court; *provided*, that such deadline may be extended by an order of the Court.

III. Bid Protections

19. The Bid Protections are approved on the terms set forth in the Purchase Agreement. The Debtors are hereby authorized to pay any and all amounts owing to the Stalking Horse Buyer on account of the Bid Protections in accordance with the terms of the Purchase Agreement without further action or order by the Court.

20. The Bid Protections (if payable under the Purchase Agreement in accordance with its terms) shall be allowed superpriority administrative expense claims in the Debtors' Chapter 11 Cases pursuant to sections 503(b)(1) and 507(a)(2), senior to all other administrative expense claims including those obligations provided for in the DIP Orders.

IV. Assumption and Assignment Procedures

21. By no later than two (2) business days after entry of the Bidding Procedures Order, the Debtors will file a schedule of cure obligations (the "**Executory Contract List**")⁴ for the Assumed Contracts. The Executory Contract List will include a description of each Assumed Contract potentially to be assumed and assigned by Successful Bidder, if any, and the amount the Debtors believe is necessary to cure such agreements pursuant to section 365 of the Bankruptcy

⁴ The inclusion of an Assumed Contract on the Executory Contract List shall not constitute an admission by the Debtors that any such contract is in fact an executory contract capable of assumption or that such Assumed Contract is necessarily a binding and enforceable agreement.

Code (the “**Cure Costs**”). A copy of the Executory Contract List, together with the Assumption and Assignment Notice, will be served on each of the non-debtor parties listed on the Executory Contract List electronically and by first class mail on the date that the Executory Contract List is filed with the Court. For the avoidance of doubt, the presence of an Assumed Contract on the Executory Contract List (a) does not constitute an admission that such Assumed Contract is an executory contract or unexpired lease, and/or (b) shall not prevent the Debtors or the Successful Bidder from subsequently determining either (i) not to assume such Assumed Contract at any time before such Assumed Contract is actually assumed and assigned pursuant to an Order of the Court or (ii) to assume an agreement that was initially designated for rejection.

22. Objections to the Cure Costs set forth in the Executory Contract List must be in writing, state the basis of such objection with specificity, and be filed with the Court and actually received on or before **April 25, 2017 at 4:00 p.m. Prevailing Eastern Time** by the Objection Notice Parties.

23. Objections to the assumption and assignment of any executory contract or unexpired lease identified in the Executory Contract List, on any basis permitted under the Bankruptcy Code or any other applicable law, must be in writing, state the basis of such objection with specificity, and be filed with the Court and actually received on or before **April 25, 2017 at 4:00 p.m. prevailing Eastern Time** by the Objection Notice Parties.

24. As soon as practicable following the conclusion of the Auction, the Debtors shall file a notice identifying the Successful Bidder and the Next Best Bid, if any, with the Court and serve such notice upon each party identified in the Executory Contract List. Notice of the Successful Bidder will be sent via email, fax, or overnight mail to the non-Debtor counterparties to the Assumed Contracts to assure proper notice. If the Successful Bidder is not the Stalking

Horse Buyer, the deadline for objecting to the assumption and assignment of the Assumed Contracts to such Successful Bidder on the basis of adequate assurance of future performance shall be the commencement of the Sale Hearing.

25. The Stalking Horse Buyer and any other Qualified Bidder shall provide adequate assurance information to the non-Debtor counterparties to each Assumed Contract that may be assumed and assigned to it under the Purchase Agreement as soon as practicable. Each of the non-Debtor counterparties to the Assumed Contracts who receive adequate assurance information in the form of voluntary disclosures or discovery from the Debtors or a proposed assignee regarding a proposed assignment and/or assignee shall keep the adequate assurance information confidential and only use or disclose the information as may be necessary to conduct due diligence on the proposed assignee and/or object to a proposed assignment of the Assumed Contract.

26. Unless a non-Debtor counterparty to an Assumed Contract has timely and properly filed and served an objection to the assumption and assignment of its Assumed Contract, including with respect to the Cure Costs related thereto, such counterparty to that Assumed Contract shall: (a) be forever barred from objecting to the Cure Costs (if any) and from asserting any additional cure or other amounts with respect to its Assumed Contract, and the Debtors and the Successful Bidder shall be entitled to rely solely upon the Cure Costs set forth in the Executory Contract List; (b) be forever barred from asserting that any conditions to the assumption and assignment of any Assumed Contract must be (or cannot be) satisfied under such Assumed Contract before such agreement may be assumed and assigned, or that any required consent to any such assignment has not been given or must be provided, whether under Section 365(c) of the Bankruptcy Code or otherwise; (c) be deemed to have consented to the assumption

and assignment; (d) be deemed to have agreed that all defaults under the applicable Assumed Contract arising or continuing prior to the effective date of the assignment have been cured; (e) be forever barred and estopped from asserting that the Successful Bidder (including the Stalking Horse Buyer) failed to provide adequate assurance of future performance; (f) be forever barred from asserting that such Assumed Contract was not capable of being assigned, and (g) be forever barred, estopped, and permanently enjoined from asserting or claiming against the Debtors, the Successful Bidder, or their respective property that any additional amounts are due or other defaults exist, that conditions to assignment must be satisfied under such Assumed Contract or that there is any objection or defense to the assumption and assignment of such Assumed Contract. In addition, the Cure Costs set forth in the Executory Contract List shall be binding upon the non-Debtor counterparties to the Assumed Contracts for all purposes in these Chapter 11 Cases and otherwise, and will constitute a final determination of the total Cure Costs required to be paid by the Debtors in connection with the assumption and assignment of the Assumed Contracts; provided, however, that the Cure Costs set forth in the Executory Contract List may be reduced by any amounts the Debtors pay under an Assumed Contract on or after the Petition Date.

27. Where a non-Debtor counterparty to an Assumed Contract files a timely objection asserting a cure amount higher than the proposed Cure Costs (the “**Disputed Cure Amounts**”), then (a) to the extent that the parties are able to consensually resolve the Disputed Cure Amounts prior to the Sale Hearing, and subject in all respects to the Successful Bidder’s consent to such resolution, the Debtors shall promptly provide the Creditors’ Committee notice and an opportunity to object to such proposed resolution, or (b) to the extent the parties are unable to consensually resolve the dispute prior to the Sale Hearing, then such objection will be heard at

the Sale Hearing or, at the sole discretion of the Debtors (with the consent of the Successful Bidder), at such other date and time as may be fixed by this Court. All other objections to the proposed assumption and assignment of an Assumed Contract will be heard at the Sale Hearing.

V. Sale Hearing Notice and Related Relief

28. The form of the Sale Notice, substantially in the form attached hereto as Annex 2, and the Assumption and Assignment Notice, substantially in the form attached hereto as Annex 3, are hereby approved and appropriate and sufficient for all purposes and no other or further notice shall be required if the Debtors serve such notices in the manner provided in the Motion and this Order. No finding or ruling is made in this Order as to the merits of any motion for approval of the Sale. Within five (5) business days of the entry of this Order, the Debtors shall cause the Sale Notice to be (a) published in USA Today or such other national publication acceptable to the Debtors after consultation with the Creditors' Committee and the Stalking Horse Buyer, and within one (1) business day after entry of this Order the Debtors shall cause the Sale Notice to be (a) made available upon the Debtors' case information website of BMC Group, Inc. located at www.bmcgroup.com/aerospaceholdings, and (b) served upon the following parties: (a) the U.S. Trustee; (b) counsel to the Creditors' Committee; (c) counsel to the Stalking Horse Buyer; (d) the attorneys general for each of the States in which the Debtors are known or reasonably believed by the Debtors to conduct operations; (e) all taxing authorities having jurisdiction over any of the Acquired Assets, including the Internal Revenue Service; (f) the United States Environmental Protection Agency and similar state agencies in states in which the Debtors are known or reasonably believed by the Debtors to conduct operations; (g) the Pension Benefit Guaranty Corporation; (h) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002(i); (i) all parties that are known or reasonably believed

to have expressed an interest in acquiring any of the Acquired Assets; (j) all parties that are known or reasonably believed by the Debtors to have asserted any lien, Encumbrance, claim, or other interest in the Acquired Assets; (k) all governmental agencies that are known or reasonably believed by the Debtors to be an interested party with respect to the Sale and the related transactions; (l) all non-Debtor counterparties to the Assumed Contracts; and (m) all other known creditors of the Debtors.

29. Compliance with the foregoing notice provisions shall constitute sufficient notice to all parties in interest, including those whose identities are unknown to the Debtors, of the Sale of the Acquired Assets, the contemplated assumption and assignment of the Assumed Contracts and the Cure Costs, and no additional notice of such contemplated transactions need be given.

VI. Miscellaneous

30. All Interested Parties (whether or not Qualified Bidders) that participate in the Bidding Process shall be deemed to have knowingly and voluntarily (a) consented to the entry of a final order by this Court in connection with the Motion (including any disputes relating to the Bidding Process, the Auction, and/or the Sale) to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution, and (b) waived any right to jury trial in connection with any disputes relating to any of the foregoing matters.

31. The Debtors shall promptly file with the Court any agreements with the Stalking Horse Buyer that may affect bidders.

32. In the event of any inconsistencies between this Order, the Motion, and the Bidding Procedures, this Order shall govern in all respects.

33. The requirements set forth in Local Rules 6004-1 and 9013-1 are hereby satisfied or waived.

34. Notwithstanding any applicability of Bankruptcy Rules 6004(h), 6006(d), 7062, or 9014, this Order shall be immediately effective and enforceable upon its entry. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

35. The Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Order.

Dated: _____, 2017
Wilmington, Delaware

HONORABLE KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE

ANNEX 1

BIDDING PROCEDURES

BIDDING PROCEDURES

Aerospace Holdings, Inc. (“**Aerospace Holdings**”), Valley Tool & Manufacturing, Inc. (“**Valley Tool**”), NC Dynamics Incorporated (“**NC Dynamics**”), NCDI Mexico, Inc. (“**NCDIM**”) and GroupAero Seattle, Inc., (formerly Aerospace Multiaxis Machining, Inc.) (“**GroupAero**”, together with Aerospace Holdings, Valley Tool, NC Dynamics, and NCDIM, the “**Debtors**”) have entered into that certain Asset Purchase Agreement dated as March 28, 2017 (the “**Purchase Agreement**”) with Harlow Aerostructures, LLC (the “**Stalking Horse Buyer**”) outside of the ordinary course of business.

By motion dated March 28, 2017 (the “**Motion**”),¹ the Debtors sought, among other things, approval of the process and procedures for soliciting bids for and obtaining approval of the sale of the Acquired Assets.

The United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) has entered an order (the “**Bidding Procedures Order**”) that, among other things, authorizes the Debtors to solicit bids in respect of the Acquired Assets through the procedures described below (the “**Bidding Procedures**”), subject to the approval of the Successful Bid (as defined below) by the Bankruptcy Court following a hearing before the Bankruptcy Court scheduled for [_____] (prevailing Eastern Time) on [_____] before the Honorable Kevin Gross (the “**Sale Hearing**”).

1. Important Dates and Contact Information

The Debtors will:

- (a) assist Potential Bidders (as defined below) in conducting their respective due diligence investigations, and accept Qualified Bids (as defined below) until the deadline for receipt of Qualified Bids, which is 5:00 p.m. (prevailing Eastern Time) on April 28, 2017 (the “**Bid Deadline**”);
- (b) in consultation with any counsel and other professional advisors retained by any statutory committee of unsecured creditors appointed in the Debtors’ chapter 11 cases (the “**Creditors’ Committee**”) evaluate bids and negotiate with bidders in preparation for an auction (the “**Auction**”) to begin at 10:00 a.m. (prevailing Eastern Time) on May 2, 2017 (the “**Auction Date**”); and
- (c) in consultation with the Creditors’ Committee, select the Successful Bidder (as defined below) for the Acquired Assets at the conclusion of the Auction and seek approval of the Successful Bid (as defined below) for such Acquired Assets at the Sale Hearing.

Information that must be provided under these Bidding Procedures must be provided to: (a) counsel to the Debtors, Greenberg Traurig, LLP (the “**Debtors’ Counsel**”) and (b) counsel to the Creditors’ Committee, when appointed.

¹ Capitalized terms not otherwise defined herein have the meanings given to them in the Bidding Procedures Order or the Motion, as applicable.

2. The Sale Hearing

At the Sale Hearing, the Debtors will seek the entry of an order in substantially the form of the order attached as Exhibit B to the Motion (the “**Sale Order**”), *inter alia*, authorizing and approving the sale of the Acquired Assets (a) if no other Qualified Bid with respect to the Acquired Assets is received by the Debtors by the Bid Deadline, to the Stalking Horse Buyer pursuant to the terms and conditions set forth in the Purchase Agreement, or (b) if one or multiple Qualified Bids are received by the Debtors by the Bid Deadline, to the Successful Bidder pursuant to the terms and conditions set forth in the Successful Bid. The Sale Hearing may be adjourned or rescheduled (after consultation with the Creditors’ Committee) without notice or with limited and shortened notice to parties, including by (a) an announcement of such adjournment at the Sale Hearing or at the Auction, or (b) the filing of a notice of adjournment with the Bankruptcy Court prior to the commencement of the Sale Hearing; provided that the Stalking Horse Buyer reserves all of its rights under the Purchase Agreement in the event of such adjournment.

3. Determination by the Debtors

The Bidding Procedures as described herein are calculated to obtain the highest and best offer for the Acquired Assets. The Debtors will (a) determine, with the assistance of their advisors and in consultation with the Creditors’ Committee, whether any person or entity is a Potential Bidder and Qualified Bidder, (b) receive bids from Qualified Bidders, (c) evaluate and negotiate such bids, and (d) conduct the Auction (clauses (a) through (d) and Section 1 above, collectively, the “**Bidding Process**”). Neither the Debtors nor any of their representatives will be obligated to furnish any information of any kind whatsoever relating to the Acquired Assets to any person or entity who is not a Qualified Bidder and who does not comply with the requirements set forth herein.

4. Participation Requirements

Unless otherwise ordered by the Bankruptcy Court, to participate in the Bidding Process, each interested person or entity (each, an “**Interested Party**”) must deliver a bid to the Debtors so as to be received no later than the Bid Deadline. In order to be considered, a bid must include:

- (a) an executed confidentiality agreement in form and substance satisfactory to the Debtors and which complies with the requirements of the Purchase Agreement for the Acquired Assets;
- (b) sufficient information, as determined by the Debtors in consultation with the Creditors’ Committee, demonstrating that the Interested Party has a bona fide interest in purchasing the Acquired Assets;
- (c) sufficient information, as determined by the Debtors in consultation with the Creditors’ Committee, to allow the Debtors to determine (in consultation with the Creditors’ Committee) that the Interested Party has the financial wherewithal, and any required internal corporate, legal, or other authorizations to complete a transaction for the purchase of all of the Acquired Assets (a “**Sale Transaction**”),

including financial statements of the Interested Party (or such other form of financial disclosure acceptable to the Debtors in their discretion); and

- (d) the items comprising a bid, as prescribed by Section 7 below. If the Debtors, in consultation with the Creditors' Committee, determine that an Interested Party has a bona fide interest in purchasing all of the Acquired Assets, as promptly as practicable after the Debtors make that determination in accordance with items (a) - (c) above, such Interested Party will be deemed a "**Potential Bidder**" and the Debtors will deliver to such Potential Bidder access to the Debtors' confidential electronic data room concerning the Acquired Assets (the "**Data Room**"). The Debtors, in consultation with the Creditors' Committee, reserve the right to determine whether an Interested Party has satisfied the above participation requirements such that it is eligible to be a Potential Bidder. The Debtors will provide prompt notice to the Creditors' Committee in the event the Debtors determine (after receipt of the information identified in clauses (a) – (c) above and the Debtor's consultation with the Creditors' Committee) that any Interested Party does not qualify as a Potential Bidder.
- (e) **Credit Bid Right.** Notwithstanding anything to the contrary in these Bidding Procedures, the Stalking Horse Buyer, or its designee, (i) is and will be deemed to be a Qualified Bidder (as defined below) for all purposes hereunder and the Bidding Process and (ii) may credit bid as the equivalent of cash on a dollar-for-dollar basis all or any portion of the pre-petition indebtedness under the Credit Agreement (as defined in the Purchase Agreement) or post-petition indebtedness under the DIP Loan Agreement (as defined in the Purchase Agreement) toward the purchase of its collateral and the Credit Bid Consideration in accordance with Bankruptcy Code section 363(k), at any Auction, or if an Auction is not convened or conducted for any reason, at any Sale Hearing, and such credit bid will constitute a Qualified Bid for all purposes. In the event the Stalking Horse Buyer exercises its absolute right to credit bid and is the Successful Bidder by virtue of such credit bid, then, unless otherwise agreed by the Stalking Horse Buyer, any recoveries in the event of a successful Challenge (as defined in the DIP Order) shall be restricted only to money damages.

5. **Due Diligence**

Until the Bid Deadline, in addition to access to the Data Room, the Debtors will provide any Potential Bidder and the Creditors' Committee such due diligence access or additional information as the Debtors determine to be reasonable in the circumstances, subject to the restrictions set forth in this paragraph. The Debtors, with the assistance of G2 Capital Advisors, LLC, will coordinate all reasonable requests for additional information and due diligence access from Potential Bidders.

Unless otherwise determined by the Debtors, the availability of additional due diligence to a Potential Bidder will cease if: (a) the Potential Bidder does not seek to become or become a Qualified Bidder during the period commencing on the Bid Deadline and concluding on the Auction Date; (b) the Bidding Process is terminated; or (c) the Debtors determine such access is

deemed harmful to the Debtors' estates. Except as provided above with respect to access to the Data Room, neither the Debtors nor their representatives will be obligated to furnish any information of any kind whatsoever relating to the Acquired Assets to any party.

6. Bid Deadline

A Potential Bidder that desires to make a bid must deliver written and electronic copies of its bid (in accordance with Section 7) in both Portable Document Format (.pdf) and Microsoft Word (.doc/.docx) format to the Debtors so as to be received no later than the Bid Deadline.

7. Form and Content of a Qualified Bid

A Qualified Bid in respect of all of the Acquired Assets is a proposal from a Potential Bidder that is, at a minimum:

- (a) in writing (email is acceptable);
- (b) received by the Debtors and the Creditors' Committee no later than the Bid Deadline;
- (c) a firm, unconditional bid to purchase all of the Acquired Assets, not subject to any contingencies as to the validity, effectiveness, and/or binding nature of the offer, including, without limitation, further due diligence review, or financing;
- (d) a firm bid which provides (i) cash consideration of not less than \$100,000 above the Credit Bid Consideration *plus* the Cash Purchase Price *plus* the Break-Up Fee *plus* the Expense Reimbursement (collectively, the "**Cash Portion of the Minimum Overbid**"), plus payment of the Cure Costs and the Assumption of Assumed Liabilities (collectively, the "**Minimum Overbid**"). For the avoidance of doubt, the Cash Portion of the Minimum Overbid must total \$16,600,000 and the Minimum Overbid must also provide for the Qualified Bidder to pay the Cure Costs and assume the Assumed Liabilities;
- (e) accompanied by sufficient information to demonstrate that the Potential Bidder has the financial wherewithal and ability to timely consummate the acquisition of all of the Acquired Assets on terms and conditions substantially the same as in the Purchase Agreement, including evidence of adequate financing, if applicable;
- (f) accompanied by a signed contract substantially in the form of the Purchase Agreement and marked to show any changes from the Purchase Agreement, including with respect to any applicable disclosure schedules; and
- (g) accompanied by a good faith cash deposit in the form of a wire transfer, certified check, or such other form acceptable to the Debtors, in an amount equal to ten percent (10%) of the Cash Portion of the Minimum Overbid of the competing bid (*i.e.*, not less than \$1,660,000) (the "**Deposit**"), to be deposited with Seller on or before the Bid Deadline.

A Potential Bidder must accompany its bid with or include in it, as applicable: (a) written evidence to provide adequate assurance of future performance of all obligations to be assumed in

such Sale Transaction, as the Debtors may reasonably request; (b) a copy of a board resolution or similar document demonstrating the authority of the Potential Bidder to make a binding and irrevocable bid on the terms proposed; (c) a covenant to cooperate with the Debtors to provide pertinent factual information regarding the Potential Bidder's operations reasonably required to analyze issues arising with respect to any applicable antitrust laws and other applicable regulatory requirements; (d) if the purchase price includes non-cash consideration or contingencies that are different from the Purchase Agreement, an analysis in reasonable detail of the value of the non-cash consideration and sufficient back-up documentation that demonstrates that the bid is a higher and better offer than the transaction contemplated by the Purchase Agreement; and (e) a signed statement that such bid cannot be revoked until the earlier of May 9, 2017 and the first Business Day following the closing of the Sale Transaction.

If a bid is received and, in the Debtors' judgment (in consultation with the Creditors' Committee), it is not clear to the Debtors whether the bid is a Qualified Bid, the Debtors may consult with the Potential Bidder and seek additional information in an effort to establish whether or not a bid is a Qualified Bid.

A bid for the Acquired Assets that is determined by the Debtors, in consultation with the Creditors' Committee, to meet the above requirements will each be considered a "**Qualified Bid**," and each Potential Bidder that submits such a bid will be considered a "**Qualified Bidder**." For purposes hereof and notwithstanding anything to the contrary contained herein, the Stalking Horse Buyer is a Qualified Bidder, the Purchase Agreement executed by the Stalking Horse Buyer is a Qualified Bid and the Stalking Horse Buyer may bid at any Auction.

The Debtors (after consultation with the Creditors' Committee) reserve the right to impose additional terms and conditions with respect to Qualified Bidders (but not the Stalking Horse Buyer) not otherwise inconsistent with these Bidding Procedures. Between the date that the Debtors notify a bidder that it is a Qualified Bidder and the Auction, the Debtors may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Without the written consent of the Debtors, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase the consideration contemplated by, or otherwise improve the terms of, the Qualified Bid; *provided* that any Qualified Bid may be improved at the Auction.

8. Baseline Bid

Only Qualified Bidders who submitted a bid are eligible to participate in the Auction. The Debtors will (after consultation with the Creditors' Committee) select what they determine to be the highest and best Qualified Bid for the Acquired Assets to serve as the starting point at the Auction (the "**Baseline Bid**") taking into account all relevant considerations, including payment of any Bid Protections approved by the Bankruptcy Court, the financial condition of the applicable bidder and certainty of closing. The Stalking Horse Buyer shall be consulted and given an opportunity to raise or otherwise change its bid so as to become the Baseline Bid at the Auction.

If the bid of the Stalking Horse Buyer is not selected as the Baseline Bid, the Stalking Horse Buyer will nevertheless retain its Bid Protections. As soon as reasonably practicable, the

Debtors will disclose the Baseline Bid and provide the Qualified Bidders with copies of all applicable Qualified Bids, excluding sensitive or confidential information (with such distribution permissible by electronic means, including posting to the Data Room).

9. Auction

If at least one Qualified Bid in respect of all of the Acquired Assets, other than that of the Stalking Horse Buyer, is received by the Bid Deadline, the Debtors will conduct an Auction. The Auction will take place at the offices of Debtors' counsel, Greenberg Traurig, LLP, 200 Park Avenue, New York, New York 10166 (or such other location as the Debtors may select) on May 2, 2017, at 10:00 a.m. (prevailing Eastern Time). Only a Qualified Bidder invited by the Debtors to participate at the Auction will be eligible to participate at the Auction, subject to such limitations as the Debtors may impose in consultation with the Creditors' Committee. A reasonable number (as determined by the Debtors) of representatives of the Qualified Bidders and the Creditors' Committee will be permitted to attend and observe the Auction. The Debtors shall not consider a bid at the Auction unless the relevant bidder submitted a Qualified Bid by the Bid Deadline.

Each Qualified Bidder participating in the Auction will be required to confirm, in writing, that (a) it has not engaged in any collusion with respect to the Bidding Process, and (b) its bid is a good faith *bona fide* offer that it intends to consummate if selected as the Successful Bidder (as defined below). Each Qualified Bidder shall also agree, to the extent that it is designated as the Next Best Bidder (as defined below) by the Debtors (after consultation with the Creditors' Committee), to remain ready, willing, and able to close the Sale Transaction under the terms of its last Qualified Bid submitted at the Auction as a Next Best Bidder until the close of the sale of the Acquired Assets; *provided, however*, that if the Next Best Bidder is the Stalking Horse Buyer, the Stalking Horse Buyer may determine, in its sole discretion, not to serve as the Next Best Bidder and thus shall not be obligated to close.

At the Auction, participants will be permitted to increase their bids and improve their terms; provided that any such increased or improved bid or combination of bids must be a Qualified Bid (except that the Bid Deadline will not apply). Bidding for the Acquired Assets will start at the purchase price and terms proposed in the applicable Baseline Bid and continue, in one or more rounds of bidding, so long as during each round a Qualified Bidder(s) submits at least one subsequent bid that is no less than \$200,000 above the immediately preceding highest or best bid (subject to modification by the Debtors after consultation with the Creditors' Committee).

The Stalking Horse Buyer will be entitled to a "credit" in the amount of its approved Bid Protections to be counted towards its bid such that the Credit Bid Consideration (as may be raised during the Auction, in the Stalking Horse Buyer's discretion) and the Cash Purchase Price (as may be raised during the Auction, in the Stalking Horse Buyer's discretion) proposed by the Stalking Horse Buyer plus Bid Protections in the aggregate will constitute the Stalking Horse Buyer's overbid at the Auction.

The Debtors (after consultation with the Creditors' Committee) reserve the right to and may reject at any time before entry of a final Sale Order any bid that, in the Debtors' judgment,

is: (a) inadequate or insufficient; (b) not in conformity with the requirements of the Bankruptcy Code, these Bidding Procedures, or the terms and conditions of the Sale Transaction; or (c) contrary to the best interests of the Debtors and their estates, except that if the Stalking Horse Buyer's bid as reflected in its Purchase Agreement is the only Qualified Bid for the Acquired Assets, the foregoing provisions of this sentence shall be inoperative.

In evaluating bids, the Debtors may take into consideration, among other factors:

- (f) indemnification and other provisions;
- (g) the value to be provided to the Debtors under the Qualified Bid, including the net economic effect upon the Debtors' estates after payment of the Break-Up Fee and Expense Reimbursement (collectively referred to herein as the "**Bid Protections**"), to the extent they are approved by the Bankruptcy Court prior to the Auction;
- (h) whether the bid or bids includes a non-cash instrument or similar consideration that is not freely marketable;
- (i) any delay;
- (j) additional risks (including closing costs);
- (k) whether the Qualified Bidder (other than the credit bid of the Stalking Horse Buyer) provides for an amount sufficient to pay all of the obligations under the Credit Agreement and DIP Agreement in cash in full on the Closing Date;
- (l) the ability to obtain any and all necessary antitrust or other applicable regulatory approvals for the proposed transaction; and
- (m) any other factors the Debtors may deem relevant.

Prior to the conclusion of the Auction, the Debtors will, in consultation with the Creditors' Committee: (a) review and evaluate each bid made at the Auction on the basis of financial and contractual terms and other factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the Sale Transaction; (b) in the exercise of their good faith business judgment and consistent with the Bidding Procedures, identify the highest or otherwise best offer in respect of all of the Acquired Assets (the "**Successful Bid**"); and (c) notify all Qualified Bidders participating in the Auction, prior to its adjournment, of the successful bidder (the "**Successful Bidder**") and the amount and other material terms of the Successful Bid. Absent irregularities in the conduct of the Auction or reasonable and material confusion during the bidding, each as determined by the Bankruptcy Court, the Debtors will not consider bids made after the Auction has been closed. In the event the Stalking Horse Buyer's bid is the only Qualified Bid for the Acquired Assets received by the Debtors by the Bid Deadline, no Auction will be conducted for the applicable Acquired Assets, the Purchase Agreement will be the Successful Bid, and the Stalking Horse Buyer will be the Successful Bidder.

After determining the Successful Bid(s) for the Acquired Assets, the Debtors may determine, in their reasonable business judgment after consultation with the Creditors' Committee, which Qualified Bid is the next best bid for the Acquired Assets (the "**Next Best Bid**").

At the Sale Hearing, the Debtors will present the Successful Bid and the Next Best Bid of a Qualified Bidder (the "**Next Best Bidder**"), if any, to the Bankruptcy Court for approval. Following the entry of the Sale Order, the Debtors will proceed to close the Sale upon the satisfaction or waiver of all applicable conditions precedent to closing.

10. Acceptance of Successful Bid

The Debtors presently intend to consummate the Sale with the Successful Bidder; however, the Debtors' presentation of the Successful Bid to the Bankruptcy Court for approval does not constitute the Debtors' acceptance of such bid. The Debtors will be deemed to have accepted a Successful Bid only when a contract therefor has been executed in advance of the Sale Hearing, and such bid has been approved by the Sale Order.

If a failure to consummate the transaction is the result of a breach by a Successful Bidder of the Successful Bid contract (a "**Sale Default**"), the Debtors may retain the Deposit of such Successful Bidder, which shall be released from escrow without further order of the Court, and reserve the right to seek, in addition to the Deposit, specific performance as well as any and all available additional damages from such Successful Bidder; provided that, with respect to the Stalking Horse Buyer and its Purchase Agreement, the terms of such Purchase Agreement (as it may be consensually modified pursuant to the term thereof at the Auction) and not the terms of this paragraph will control.

If a Successful Bidder does not close the Sale contemplated by its Successful Bid then the Debtors will be authorized, to close with the party that submitted the applicable Next Best Bid, without further Court order, pursuant to the Sale Order and the relevant Next Best Bidder's asset purchase agreement.

In the event that the Debtors elect to close with the Next Best Bidder after a Sale Default, the Next Best Bidder shall not receive credit for any Deposit forfeited by an initial Successful Bidder and such Deposit shall serve as additional collateral for the DIP Loan. The closing on the Sale of the Acquired Assets by the Next Best Bidder shall occur no later than fifteen (15) days following receipt of written notice to the Next Best Bidder of Successful Bidder's Default (the "**New Successful Bidder's Closing**"), TIME BEING OF THE ESSENCE as to such Next Best Bidder, although such date may be extended solely by the Debtors with the prior written consent of the Agent and Lender under the DIP Credit Agreement.

11. Modification of Bidding Procedures

The Debtors reserve their rights, in the exercise of their fiduciary obligations, (a) to modify the Bidding Procedures or impose, at or prior to the Auction, different and/or additional terms and conditions on the Sale of the Acquired Assets and (b) to announce at the Auction additional procedural rules that are reasonable under the circumstances for conducting the Auction; *provided* that, in the case of both (a) and (b), such modifications or rules (i) are not

inconsistent in any material respect with, and do not violate, the Bidding Procedures or the Purchase Agreement and (ii) do not impair or modify the Stalking Horse Buyer's rights and obligations hereunder or under the Purchase Agreement, including the applicable Sale Milestones (as defined in the Purchase Agreement) and any provision that would provide for the Closing Date to occur after the Termination Date (unless the Stalking Horse Buyer provides written consent to such modifications or rules); *provided further*, that neither the Creditors' Committee nor the Debtors may (x) waive any conditions to a bid being a Qualified Bid set forth herein (including, without limitation, that such Qualified Bid must be for all of the Acquired Assets) without the prior consent of the Stalking Horse Buyer, such consent as not to be unreasonably withheld, conditioned, or delayed or (y) waive the Stalking Horse Buyer's credit bid rights under section 363(k) of the Bankruptcy Code.

12. Return of the Deposit

The Deposits of all Qualified Bidders (except that of the Stalking Horse Buyer, who is not providing a Deposit) will be held in escrow by counsel to the Debtors, and while held in escrow will not become property of the Debtors' bankruptcy estates. Debtors' Counsel or other applicable escrow agent will retain the Deposits of the Successful Bidder(s) and the Next Best Bidder until the Closing unless otherwise ordered by the Bankruptcy Court. The Deposits of other Qualified Bidders will be returned as soon as practicable after the Sale Hearing. At the closing of the transaction contemplated by the Successful Bid, the Successful Bidder will be entitled to credit for the amount of its Deposit. The Deposit of the Next Best Bidder will be returned three (3) business days after the Closing. No interest shall be paid on the Deposit.

ANNEX 2

SALE NOTICE

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

In re:

Aerospace Holdings, Inc., *et al.*,¹

Debtors.

Chapter 11

Case No. 17-10635 (KG)

(Joint Administration Requested)

NOTICE OF BID DEADLINE, AUCTION, AND SALE HEARING

PLEASE TAKE NOTICE that on March 28, 2017, Aerospace Holdings, Inc. and its debtor affiliates, as debtors and debtors in possession (collectively, the “**Debtors**”) each filed voluntary petitions for relief pursuant to chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”) with the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”).

PLEASE TAKE FURTHER NOTICE that on March 28, 2017, the Debtors filed a motion (the “**Sale and Bidding Procedures Motion**”)² seeking approval of, among other things: (1) auction (the “**Auction**”) and bidding procedures (the “**Bidding Procedures**”) in connection with the sale of substantially all of their assets (the “**Acquired Assets**”); (2) procedures to determine cure amounts and deadlines for objections to the assumption and assignment of certain contracts and leases by the Debtors; and (3) related relief. By order dated [April 12], 2017 [Docket No. ____] (the “**Bidding Procedures Order**”), the Bankruptcy Court: (a) granted, in part, the Sale and Bidding Procedures Motion; (b) approved the Bidding Procedures, which procedures are attached as **Annex 1** to the Bidding Procedures Order; and (c) approved procedures relating to the assumption and assignment of executory contracts and unexpired leases.

PLEASE TAKE FURTHER NOTICE that pursuant to the Bidding Procedures Order, the Debtors intend to conduct an Auction for the Sale of the Acquired Assets on **May 2, 2017 at 10:00 a.m. (Prevailing Eastern Time)** at the offices of Greenberg Traurig, LLP, 200 Park Avenue, New York, New York 10166, or at such other place and time as the Debtors shall notify all Qualified Bidders who have submitted Qualified Bids, if the Debtors receive at least one other Qualified Bid besides the Qualified Bid of the Stalking Horse Buyer.

¹ The Debtors in these Chapter 11 Cases, along with the business addresses and the last four (4) digits of each Debtor’s federal tax identification number are: Aerospace Holdings, Inc., 366 Madison Avenue, 9th Floor, New York, NY 10017 (4318); Valley Tool & Manufacturing, Inc., 22 Prindle Hill Rd., P.O. Box 564, Orange, CT 06477 (8614); NC Dynamics Incorporated, 6925 Downey Avenue, Long Beach, CA 90805 (3219); NCDI Mexico, Inc., 2771 Centerville Road, Suite 400, Wilmington, DE 19808 (5905); and GroupAero Seattle, Inc., 7020 S. 238th Street, Kent, WA 98032 (7033).

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Bidding Procedures Order.

PLEASE TAKE FURTHER NOTICE that all Qualified Bids must be submitted no later than **April 28, 2017 at 5:00 p.m. (Prevailing Eastern Time)** (the “**Bid Deadline**”) by delivery to (i) Greenberg Traurig, LLP, 200 Park Avenue, New York, New York 10166 (Attn: Matthew L. Hinker); (ii) Greenberg Traurig, LLP, The Nemours Building, 1007 North Orange Street, Suite 1200, Wilmington, Delaware 19801 (Attn: Dennis A. Meloro) and [(iii) Creditor Committee Counsel].

PLEASE TAKE FURTHER NOTICE that the Bankruptcy Court has scheduled a hearing on **May 4, 2017 at [] (Prevailing Eastern Time)** (the “**Sale Hearing**”), at which the Debtors intend to seek the Bankruptcy Court’s approval of the Sale of the Acquired Assets to the Successful Bidder. The Sale Hearing will be held before the Honorable [], at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, DE 19801-3024, Courtroom _____.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the Sale and Bidding Procedures Motion shall be in writing, shall conform to the Federal Rules of Bankruptcy Procedure, shall set forth the name of the objecting party, the nature and amount of any claims or interests held or asserted against the Debtors’ estates or properties, the basis for the objection, and the specific grounds therefor and shall be filed and served upon the following **so that they are actually received by no later than April 25, 2017 at 4:00 (Prevailing Eastern Time)** (the “**Objection Deadline**”):

- (a) counsel to the Debtors, (i) Greenberg Traurig, LLP, 200 Park Avenue, New York, New York 10166 (Attn: Matthew L. Hinker and (ii) Greenberg Traurig, LLP, The Nemours Building, 1007 North Orange Street, Suite 1200, Wilmington, Delaware 19801 (Attn: Dennis A. Meloro);
- (b) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (Attn: Benjamin Hackman);
- (c) counsel to the Stalking Horse Buyer, Loeb & Loeb LLP, 345 Park Avenue, New York, New York 10154 (Attn: Vadim J. Rubinstein);
- (d) counsel to the statutory committee appointed in the Chapter 11 Cases, if one is appointed; and
- (e) those parties who have formally filed requests for notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002.

PLEASE TAKE FURTHER NOTICE that this Notice is subject to the full terms and conditions of the Sale and Bidding Procedures Motion, the Bidding Procedures, and the Bidding Procedures Order, which shall control in the event of any conflict, and the Debtors encourage parties in interest to review such documents in their entirety. Any party desiring to obtain a copy of the Sale and Bidding Procedures Motion, the Purchase Agreement, the Bidding Procedures, and/or the Bidding Procedures Order, in addition to any related motions that may be filed, may do so by accessing (a) the website of the Debtors’ notice and claims agent, BMC Group, Inc. for

no charge at www.bmcgroup.com/aerospaceholdings, or (b) the Court's internet site: <https://ecf.deb.uscourts.gov>, for a fee, through an account obtained from the PACER website at <http://pacer.psc.uscourts.gov>. The documents may also be obtained by written request made to counsel to the Debtors, Greenberg Traurig, LLP, 200 Park Avenue, New York, New York 10166 (Attn: Sara Hoffman).

CONSEQUENCES OF FAILING TO TIMELY FILE AND SERVE AN OBJECTION

ANY PARTY OR ENTITY WHO FAILS TO TIMELY FILE AND SERVE AN OBJECTION TO THE SALE ON OR BEFORE THE OBJECTION DEADLINE IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER SHALL BE DEEMED TO CONSENT TO THE SALE OF THE ACQUIRED ASSETS TO THE SUCCESSFUL BIDDER OR THE NEXT BEST BIDDER AND THE OTHER RELIEF REQUESTED IN THE SALE AND BIDDING PROCEDURES MOTION, AND BE FOREVER BARRED FROM ASSERTING ANY OBJECTION TO THE SALE, INCLUDING WITH RESPECT TO THE TRANSFER OF THE ACQUIRED ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS AFFECTED THEREUNDER, THE AUCTION, OR THE DEBTORS' CONSUMMATION AND PERFORMANCE OF THE TERMS OF THE PURCHASE AGREEMENT ENTERED INTO WITH THE SUCCESSFUL BIDDER OR THE NEXT BEST BIDDER.

Dated: _____, 2017

ANNEX 3

ASSUMPTION AND ASSIGNMENT NOTICE

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

In re:

Aerospace Holdings, Inc., *et al.*,¹

Debtors.

Chapter 11

Case No. 17-10635 (KG)

(Joint Administration Requested)

**NOTICE OF (I) POTENTIAL ASSUMPTION AND ASSIGNMENT OF
EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND (II) CURE AMOUNTS**

You are receiving this notice because you may be a counterparty to a contract or lease with Aerospace Holdings, Inc., or one or more of its affiliated debtors. Please read this notice carefully as your rights may be affected by the transactions described herein.

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On March 28, 2017, Aerospace Holdings, Inc. and its debtor affiliates, as debtors and debtors in possession (collectively, the "**Debtors**") filed a motion seeking approval of bidding procedures for the sale of substantially all of the Debtors' assets (the "**Acquired Assets**") and approval of the sale of the Acquired Assets (the "**Bidding and Sale Motion**") to the highest or best qualified bidder (the "**Successful Bidder**"). The Bankruptcy Court entered an order approving the proposed bidding procedures and the form of this notice on [April 12], 2017, (the "**Bidding Procedures Order**") and scheduled the hearing to approve the sale of the Acquired Assets (the "Sale Hearing") for [May 4], 2017 in the United States Bankruptcy Court for the District of Delaware in Wilmington, Delaware (the "**Bankruptcy Court**"). The Bankruptcy Court will consider the sale of the Acquired Assets to any Successful Bidder and the assumption and assignment of executory contracts and unexpired leases at the Sale Hearing.

2. Pursuant to the Bidding and Sale Motion, the Debtors may potentially assume and assign to the Successful Bidder the executory contract and/or unexpired lease listed on **Exhibit A** annexed hereto (a "**Potentially Assumed and Assigned Agreement**"), pursuant to section 365 of the Bankruptcy Code. A list of all such Potentially Assumed and Assigned Agreements will be filed with the Bankruptcy Court, and will also be available for review at the case-specific website maintained by the Court-approved noticing agent, BMC Group, Inc. at www.bmcgroup.com/aerospaceholdings.

¹ The Debtors in these Chapter 11 Cases, along with the business addresses and the last four (4) digits of each Debtor's federal tax identification number are: Aerospace Holdings, Inc., 366 Madison Avenue, 9th Floor, New York, NY 10017 (4318); Valley Tool & Manufacturing, Inc., 22 Prindle Hill Rd., P.O. Box 564, Orange, CT 06477 (8614); NC Dynamics Incorporated, 6925 Downey Avenue, Long Beach, CA 90805 (3219); NCDI Mexico, Inc., 2771 Centerville Road, Suite 400, Wilmington, DE 19808 (5905); and GroupAero Seattle, Inc., 7020 S. 238th Street, Kent, WA 98032 (7033).

3. The Debtors have indicated on Exhibit A annexed hereto (the “**Cure Schedule**”) the cure amount(s) that the Debtors believe must be paid to cure all pre-petition defaults and pay all amounts accrued under the applicable Potentially Assumed and Assigned Agreement (the “**Cure Amount**”).

4. The presence or absence of a Potentially Assumed and Assigned Agreement on the Cure Schedule shall not prevent the Debtors, the Stalking Horse Buyer or the Successful Bidder (as defined in the Bidding and Sale Motion) from subsequently determining either (i) not to assume such Potentially Assumed and Assigned Agreement at any time before such Potentially Assumed and Assigned Agreement is actually assumed and assigned pursuant to an Order of the Bankruptcy Court or (ii) to assume an agreement that was not listed on Exhibit A.

5. Any non-debtor counterparty (a “**Contract Notice Party**”) seeking to (1) object to the validity of the Cure Amount as determined by the Debtors or otherwise assert that any other amounts, defaults, conditions or pecuniary losses must be cured or satisfied under any of the Potentially Assumed and Assigned Agreements in order for such contract or lease to be assumed and assigned or (2) object to the assumption and assignment of any Potentially Assumed and Assigned Agreement on any other basis (including, but not limited to, objections to adequate assurance of future performance), must file an objection (the “**Assumption/Assignment Objection**”) that (a) is in writing, (b) sets forth the specific monetary amount the objector asserts to be due, and the specific types of the alleged defaults, pecuniary losses, accrued amounts and conditions to assignment and the support therefor, (c) is filed with the Bankruptcy Court and (d) is served so as to be actually **received** by (i) *Debtors' counsel*, (y) Greenberg Traurig, LLP, 200 Park Avenue, New York, New York 10166 (Attn: Matthew L. Hinker) and (z) Greenberg Traurig, LLP, The Nemours Building, 1007 North Orange Street, Suite 1200, Wilmington, Delaware 19801 (Attn: Dennis A. Meloro); (ii) *the Stalking Horse Buyer's Counsel*, Loeb & Loeb LLP, 345 Park Avenue, New York, New York 10154 (Attn: Vadim J. Rubinstein); (iii) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Benjamin Hackman); and (v) once it is formed, counsel to the official committee of unsecured creditors (the “**Committee**” and, collectively, the “**Notice Parties**”), by April 25, 2017 at 4:00 p.m. (prevailing Eastern Time) (the “**Assumption/Assignment Objection Deadline**”).

6. In the event the Auction (as defined in the Bidding and Sale Motion) results in any Successful Bidder other than the Stalking Horse Buyer, the Debtors shall file a notice identifying such Successful Bidder and the Next Best Bid(s) with the Bankruptcy Court and serve such notice upon parties in interest, and the deadline for objecting to the assignment of the Potentially Assumed and Assigned Agreements to such Successful Bidder on the basis of adequate assurance of future performance shall be the commencement of the Sale Hearing.

7. Unless an Assumption/Assignment Objection is filed and served before the Assumption/Assignment Objection Deadline by a Contract Notice Party, such Contract Notice Party shall (a) be forever barred from objecting to the Cure Amount (if any) and from

asserting any additional cure or other amounts with respect to its Potentially Assumed and Assigned Agreement, and the Debtors and the Successful Bidder, who may be the Stalking Horse Buyer, shall be entitled to rely solely upon the Cure Amount set forth in the Cure Schedule; (b) be forever barred from asserting that any conditions to the assumption and assignment of any Potentially Assumed and Assigned Agreement must be satisfied before such Potentially Assumed and Assigned Agreement may be assumed and assigned, or that any required consent to any such assignment has not been given; (c) be deemed to have consented to the assumption and assignment; (d) be deemed to have agreed that all defaults under the applicable Potentially Assumed and Assigned Agreement arising or continuing prior to the effective date of the assignment have been cured; (e) be forever barred and estopped from asserting that the Successful Bidder (including the Stalking Horse Buyer) failed to provide adequate assurance of future performance; and (f) be forever barred, estopped, and permanently enjoined from asserting or claiming against the Debtors, the Successful Bidder, who may be the Stalking Horse Buyer, or their respective property that any additional amounts are due or other defaults exist, that conditions to assignment must be satisfied under such Potentially Assumed and Assigned Agreement or that there is any objection or defense to the assumption and assignment of such Potentially Assumed and Assigned Agreement. In addition, the Cure Amounts set forth in the Executory Contract List shall be binding upon the non-Debtor counterparties to the Assumed Contracts for all purposes in these Chapter 11 Cases and otherwise, and will constitute a final determination of the total Cure Amounts required to be paid by the Debtors in connection with the assumption and assignment of the Assumed Contracts; provided, however, that the Cure Amounts set forth on Exhibit A may be reduced by any amounts Debtors pay under a Potentially Assumed and Assigned Agreement on or after the Petition Date.

8. Any hearings with respect to the Assumption/Assignment Objections may be held (i) at the Sale Hearing, or (ii) at such other date as the Bankruptcy Court may designate upon motion by a Successful Bidder and the Debtors. Where a Contract Notice Party files an objection asserting a cure amount higher than the proposed Cure Amount, (the “**Disputed Cure Amount**”), then (i) to the extent that the parties are able to consensually resolve the Disputed Cure Amount prior to the Sale Hearing, the Debtors shall promptly provide the Committee and the other parties in interest notice and opportunity to object to such proposed resolution or (ii) to the extent the parties are unable to consensually resolve the dispute prior to the Sale Hearing, then the amount to be paid under section 365 of the Bankruptcy Code with respect to such Disputed Cure Amount will be determined at the Sale Hearing or at such other date and time as may be fixed by the Bankruptcy Court. All other objections to the proposed assumption and assignment of a Potentially Assumed and Assigned Agreement will be heard at the Sale Hearing.

9. An Assumption/Assignment Objection shall not constitute an objection to the relief generally requested in the Bidding and Sale Motion. Parties wishing to otherwise object to the relief requested in the Bidding and Sale Motion must file and serve a separate objection, stating with particularity such party's grounds for objection, so as to be received by each of the Notice Parties listed above no later than April 25, 2017 at 4:00 p.m. (prevailing Eastern Time).

10. If you agree with the Cure Amount indicated on **Exhibit A**, and otherwise do not object to the Debtors' assignment of your lease or contract, you need not take any further action.

11. The Debtors' decision to assume and assign the Potentially Assumed and Assigned Agreements is subject to Bankruptcy Court approval and consummation of the sale of the Acquired Assets. Accordingly, the Debtors shall be deemed to have assumed and assigned each of the Potentially Assumed and Assigned Agreements as of the date of, and effective only upon, the closing of the sale of the Acquired Assets, and absent such closing, each of the Potentially Assumed and Assigned Agreements shall neither be deemed assumed nor assigned and shall in all respects be subject to further administration under the Bankruptcy Code. **The inclusion of any Potentially Assumed and Assigned Contract on Exhibit A shall not constitute a determination or an admission by the Debtors or the Successful Bidder that any such Potentially Assumed and Assigned Contract is, in fact, an executory contract or unexpired lease capable of assumption or that such Potentially Assumed and Assigned Contract is necessarily a binding and enforceable agreement.**

Dated: _____, 2017

GREENBERG TRAURIG, LLP

/s/ DRAFT

Dennis A. Meloro (DE Bar No. 4435)
The Nemours Building
1007 North Orange Street, Suite 1200
Wilmington, Delaware 19801
Telephone: (302) 661-7000
Facsimile: (302) 661-7360
Email: melorod@gtlaw.com

-and-

Nancy A. Mitchell (*pro hac vice* pending)
Matthew L. Hinker (DE Bar No. 5348)
Sara A. Hoffman (*pro hac vice* pending)
Greenberg Traurig, LLP
The MetLife Building
200 Park Avenue
New York, NY 10166
Telephone: (212) 801-9200
Facsimile: (212) 801-6400
Email: mitchelln@gtlaw.com
hinkerm@gtlaw.com
hoffmans@gtlaw.com

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

EXHIBIT A

LEASES

Landlord Name / Address	Address of Subject Property	Cure Amount

EXECUTORY CONTRACTS

Counterparty Name / Address	Description of Contract	Cure Amount

EXHIBIT B

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

In re:

Aerospace Holdings, Inc., *et al.*,¹

Debtors.

Chapter 11

Case No. 17-10635 (KG)

(Joint Administration Requested)

Ref. Docket No. _____

**ORDER AUTHORIZING (I) SALE OF SUBSTANTIALLY ALL OF
THE DEBTORS' ASSETS TO HARLOW AEROSTRUCTURES LLC
FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS
AND ENCUMBRANCES AND (II) ASSUMPTION
AND ASSIGNMENT OF CERTAIN CONTRACTS**

Upon the motion, dated March 28, 2017 [Docket No. ____] (the “**Motion**”) of the above-captioned debtors and debtors in possession (the “**Debtors**” or “**Seller**”), seeking, among other things, entry of an order pursuant to sections 105, 363, and 365 of Title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) authorizing the Debtors to sell the Acquired Assets pursuant to the terms of an Asset Purchase Agreement, dated as of March 28, 2017 (the “**Agreement**”),² by and among the Debtors, as Seller, and Harlow Aerostructures LLC, as buyer (the “**Buyer**”); and the Court having entered an order (the “**Bidding Procedures Order**”), dated [____], 2017 [Docket No. ____] approving, among other things, the Bidding Procedures (the “**Bidding Procedures**”); based upon the evidence presented at the hearing held on [____],

¹ The Debtors in these Chapter 11 Cases, along with the business addresses and the last four (4) digits of each Debtor’s federal tax identification number are: Aerospace Holdings, Inc., 366 Madison Avenue, 9th Floor, New York, NY 10017 (4318); Valley Tool & Manufacturing, Inc., 22 Prindle Hill Rd., P.O. Box 564, Orange, CT 06477 (8614); NC Dynamics Incorporated, 6925 Downey Avenue, Long Beach, CA 90805 (3219); NCDI Mexico, Inc., 2771 Centerville Road, Suite 400, Wilmington, DE 19808 (5905); and GroupAero Seattle, Inc., 7020 S. 238th Street, Kent, WA 98032 (7033).

² Any capitalized term used but not otherwise defined herein shall have the meaning ascribed to such term in the Agreement.

2017 (the “**Bid Procedures Hearing**”); and the Auction (as defined in the Bidding Procedures Order) having been held in accordance with the Bidding Procedures Order on [____], 2017; and at the conclusion of the Auction, the Buyer’s bid having been chosen as the Successful Bid (as defined in the Bid Procedures); [and the [Alternate/Back-Up Bidder], if any having been chosen by the Debtors to be the [Next Best Bidder] (as defined in the Bid Procedures);] and the Court having conducted a hearing to consider the results of the Auction and the Debtors’ request to enter into and consummate the transactions contemplated by the Agreement on [____], 2017 (the “**Sale Hearing**”); and all parties in interest having been heard, or having had the opportunity to be heard, regarding the Agreement, a copy of which is attached hereto as **Exhibit A**, whereby Seller has agreed to sell, and Buyer has agreed to acquire, the Acquired Assets (the “**Sale**”), and Seller has agreed to transfer and Buyer has agreed to assume certain of the Debtors’ liabilities (collectively and as specifically set forth and defined in the Agreement, the “**Assumed Liabilities**”) (collectively, and including all actions taken or required to be taken in connection with the implementation and consummation of the Agreement, the “**Transactions**”); and the Court having reviewed and considered the Agreement, the Motion, the *Declaration of Matthew Sedigh in Support of the Debtors’ Chapter 11 Petitions and Requests for First Day Relief* [Docket No. 13], the Bidding Procedures Order, any objections and responses to the Transactions; and the Court having considered the arguments of counsel made, and the evidence adduced at the Bid Procedures Hearing and the Sale Hearing; and upon the record of the Bid Procedures Hearing and the Sale Hearing and these Chapter 11 Cases; and it appearing that due notice of the Motion, the Agreement, the Bidding Procedures Order and the Auction has been provided; and it appearing that the relief requested in the Motion with respect to the Transactions is in the best interests of the Debtors, their estates, their stakeholders and all other parties in

interest; and it appearing that the Court has jurisdiction over this matter; and it further appearing that the legal and factual bases set forth in the Motion and at the Sale Hearing establish just cause for the relief granted herein; and after due deliberation thereon, and good and sufficient cause appearing therefor, it is hereby FOUND AND DETERMINED THAT:³

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

B. The Court has jurisdiction over the Motion and the transactions contemplated by the Agreement pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (N). Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

C. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rules 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, the Court expressly finds that there is no just reason for delay in the implementation of this Order, and expressly directs entry of judgment as set forth herein.

D. The statutory predicates for the relief sought in the Motion are sections 105, 363, and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, and 9014, and Rules 6004-1 and 6004-2 of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**").

³ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. *See* Bankruptcy Rule 7052.

E. As evidenced by the affidavits of service and publication previously filed with the Court, and based on the representations of counsel at the Sale Hearing, (i) due, proper, timely, adequate, and sufficient notice of the Motion, the Sale Hearing, the Auction, the Sale, and the assumption and assignment of the Assumed Contracts has been provided in accordance with sections 102(1), 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, and 9014, applicable Local Rules and in compliance with the Bidding Procedures Order to each party entitled thereto, (ii) such notice was good and sufficient, and appropriate under the particular circumstances, and (iii) no other or further notice of the Motion, the Sale Hearing, the Auction, the Sale, the assumption and assignment of the Assumed Contracts or any other Transaction is or shall be required.

F. Pursuant to the Bidding Procedures Order, the Debtors have served an Assumption and Assignment Notice (as defined in the Bidding Procedures Order) notifying contract counterparties: (a) that Seller may seek to assume and assign certain contracts and leases on the Closing Date of the Sale or thereafter as provided in the Agreement and (b) of the proposed Cure Amounts. The service of the Assumption and Assignment Notices was good, sufficient and appropriate under the circumstances and no further notice need be given in respect of the assumption, assignment and establishing a cure amount for such contracts and leases. Each of the contract and lease counterparties has had an opportunity to object to the assumption, assignment and the Cure Amounts.

G. As demonstrated by (i) the testimony and other evidence proffered or adduced at the Sale Hearing, and (ii) the representations of counsel made on the record at the Sale Hearing, the Debtors (x) have adequately marketed the Acquired Assets, (y) have conducted the sale

process in compliance with the Bidding Procedures Order, and (z) duly and properly noticed the Auction, which was conducted in a non-collusive, fair and good faith manner.

H. As demonstrated by (i) the testimony and other evidence proffered or adduced at the Sale Hearing, and (ii) the representations of counsel made on the record at the Sale Hearing, under the circumstances, the consideration provided by Buyer under the Agreement constitutes or provides the highest or otherwise best offer obtained and provides fair and reasonable consideration to the Debtors for the sale of all Acquired Assets and the assumption of all Assumed Liabilities, and the performance of the other covenants set forth in the Agreement, and will provide a greater recovery for the Debtors' estates than would be provided by any other available alternative resulting from the Debtor's sale process. The Buyer is the Successful Bidder for the Acquired Assets in accordance with the Bidding Procedures Order. The Debtors' determination that the Agreement constitutes the highest and best offer for the Acquired Assets is a valid and sound exercise of the Debtors' business judgment. Approval of the Agreement and consummation of the Sale and the other Transactions at this time are in the best interests of the Debtors, their creditors, their estates, and other parties in interest.

I. Notice and a reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein has been afforded to all parties in interest in these chapter 11 cases, including: (a) the U.S. Trustee; (b) counsel to the Creditors' Committee; (c) counsel to the Stalking Horse Buyer; (d) the attorneys general for each of the States in which the Debtors are known or reasonably believed by the Debtors to conduct operations; (e) all taxing authorities having jurisdiction over any of the Acquired Assets, including the Internal Revenue Service; (f) the United States Environmental Protection Agency and similar state agencies in states in which the Debtors are known or reasonably believed by the Debtors to conduct operations; (g) the

Pension Benefit Guaranty Corporation; (h) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002(i); (i) all parties that are known or reasonably believed to have expressed an interest in acquiring the Acquired Assets; (j) all parties that are known or reasonably believed by the Debtors to have asserted any lien, Encumbrance, claim, or other interest in the Acquired Assets; (k) all governmental agencies that are known or reasonably believed by the Debtors to be an interested party with respect to the Sale and the related transactions; (l) all non-Debtor parties to the Assumed Contracts; and (m) all other known creditors of the Debtors.

J. The Debtors published notice of the time and place of the Auction, the time and place of the Sale Hearing and the time for filing an objection to the relief requested in the Motion relating to the Sale in _____ on _____, 2017.

K. Upon conclusion of the Auction, the Buyer submitted the highest and best offer for the Acquired Assets, as set forth in the Agreement, including the Purchase Price, as defined therein.

L. The Agreement was negotiated, proposed, and entered into Seller and the Buyer without collusion, in good faith, and from arm's-length bargaining positions. Neither the Debtors, nor the Buyer, nor any Affiliate of the Buyer, has engaged in any conduct that would cause or permit the Agreement to be avoided under section 363(n) of the Bankruptcy Code. Specifically, the Buyer has not acted in a collusive manner with any person, and the aggregate consideration provided by the Buyer for the Acquired Assets was not controlled by any agreement among any bidders.

M. The Buyer is a good faith purchaser under section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby. Specifically, (i) the Buyer

recognized that the Debtors were free to deal with any other party interested in acquiring the Acquired Assets; (ii) the Buyer complied with the provisions in the Bidding Procedures Order; (iii) the Buyer agreed to subject its bid to the competitive bidding procedures set forth in the Bidding Procedures Order; (iv) the Buyer in no way induced or caused the chapter 11 filings by the Debtors; and (v) the negotiation and execution of the Agreement was at arms' length and in good faith.

N. The consideration provided by Buyer for the Acquired Assets pursuant to the Agreement (i) is fair and reasonable, (ii) is the highest or otherwise best offer for the Acquired Assets, (iii) will provide a greater recovery for the Debtors' creditors than would be provided by any other practical available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, and the District of Columbia.

O. There has been no showing that Seller or Buyer (i) have entered into the Agreement or proposes to consummate the Transactions for the purpose of hindering, delaying or defrauding the Debtors' present or future creditors or (ii) are entering into the Agreement or proposing to consummate the Transactions fraudulently, for the purpose of statutory or common law fraudulent conveyance and fraudulent transfer claims, whether under the Bankruptcy Code or any other applicable law.

P. The Sale must be approved and consummated promptly in order to preserve the value of the Debtors' assets.

Q. The Seller's Board of Directors and the Buyer has authorized the execution and delivery of the Agreement, the sale of all Acquired Assets to Buyer and the assumption of all Assumed Liabilities by Buyer. The Seller and the Buyer (i) have full corporate power and

authority to execute and deliver the Agreement and all other documents contemplated thereby, as applicable, (ii) have all of the power and authority necessary to consummate the Transactions and (iii) have taken all action necessary to authorize and approve the Agreement and to consummate the Transactions, and no further consents or approvals are required for the Seller or the Buyer to consummate the Transactions contemplated by the Agreement, except as otherwise set forth in the Agreement.

R. Effective upon the Closing, the transfer and assignment of the Acquired Assets to the Buyer will be a legal, valid, enforceable, and effective transfer and assignment of the Acquired Assets and will vest the Buyer with all right, title, and interest of the Debtors in the Acquired Assets free and clear of all Liens, Claims, and Interests (as defined below). A sale of the Acquired Assets other than one free and clear of all Liens, Claims, and Interests would adversely impact the Debtors' estates, and would yield substantially less value for the Debtors' estates, with less certainty than the Sale. Therefore, the Sale contemplated by the Agreement is in the best interests of the Debtors, their estates and creditors, and all other parties in interest.

S. Other than the Assumed Liabilities, the Buyer shall have no obligations with respect to any Liability of the Seller or the Debtors or with respect to any Liens, Claims, and Interests against any of the Debtors or their property, including the liabilities of the Seller specifically excluded under the Agreement as Excluded Liabilities; provided, however, that this finding does not modify any obligation of the Buyer pursuant to or contemplated by the Agreement and this Order, which shall be and remain fully enforceable against the Buyer.

T. The consummation of the Sale and Transactions is legal, valid, properly authorized and complies with all applicable state and federal law.

U. The Acquired Assets constitute property of the Debtors' estates and title thereto is presently vested in the Debtors' estates within the meaning of section 541(a) of the Bankruptcy Code.

V. The Debtors may sell and/or assign the Acquired Assets free and clear of all Liens, Claims, and Interests of any kind or nature whatsoever because, in each case, one or more of the standards set forth in section 363(f)(1)–(5) of the Bankruptcy Code has been satisfied. Those (i) holders of Liens, Claims, and Interests, and (ii) counterparties to Assumed Contracts who did not object timely, or who withdrew their objections, to the Sale, the Transactions or the Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Those (i) holders of Liens, Claims, and Interests and (ii) counterparties to Assumed Contracts who did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are adequately protected by having their Liens, Claims, and Interests, if any, attach to the portion of the Purchase Price ultimately attributable to the property against or in which they claim an interest, in the order of their priority, with the same validity, force, and effect which they now have as against such property, subject to any claims and defenses the Debtors may possess with respect thereto.

W. Neither the Buyer nor any of its Affiliates, successors, or assignees is a successor to the Debtors or their bankruptcy estates by reason of any theory of law or equity, and neither the Buyer nor any of its Affiliates, successors, or assignees shall assume or in any way be responsible for any liability or obligation of the Debtors and/or their bankruptcy estates, except as otherwise expressly provided in the Agreement.

X. By virtue of the Transactions contemplated by the Agreement, (i) the Buyer is not a continuation of the Debtors or their respective estates, there is no continuity between the Buyer

and the Debtors, there is not substantial continuity between the Buyer and the Debtors, there is no common identity between the Debtors and the Buyer, there is no continuity of enterprise between the Debtors and Buyer, Buyer is not a mere continuation of the Debtors or their estates, and Buyer does not constitute a successor to the Debtors or their estates including a “successor employer” for the purposes of the Internal Revenue Code of 1986 or the Employee Retirement Income Security Act of 1974, (ii) the Buyer has not, *de facto* or otherwise, merged with or into the Debtors, (iii) Buyer is not holding itself out to the public as a continuation of the Debtors or their respective estates and (iv) the Transactions do not amount to a consolidation, merger or *de facto* merger of Buyer and the Debtors and/or the Debtors’ estates.

Y. The transfer of the Acquired Assets to the Buyer shall not subject the Buyer or any of its Affiliates to any liability, including successor or vicarious liabilities of any kind or character, by reason of such transfer (other than for Assumed Liabilities), including, without limitation, under (1) the laws of the United States, any state, territory or possession thereof, or the District of Columbia, based in whole or part on, directly or indirectly, including without limitation, any theory of antitrust, environmental, products liability, successor or transferee liability, labor law, *de facto* merger or substantial continuity whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtors or any obligations of the Debtors, including, but not limited to, liabilities on account of any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of the Debtors’ Business prior to the Closing Date; or (2) any employment contract, understanding or agreement, including, without limitation, collective bargaining agreements, employee pension plans or employee welfare or benefit plans.

Z. Buyer would not have entered into the Agreement and will not consummate the Transactions if (i) the sale of the Acquired Assets is not free and clear of all Liens, Claims, and Interests, including rights or claims based on any successor or transferee liability or (ii) if the Buyer would, or in the future could be liable for any such Liens, Claims, and Interests including any liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability (collectively, the “**Retained Liabilities**”), other than, in each case, the Assumed Liabilities. The Buyer will not consummate the Transaction unless this Court expressly orders that Buyer or the Acquired Assets will not have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or equity, or by payment, setoff, or otherwise, directly or indirectly, any liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability or Retained Liabilities, other than as expressly provided herein or in agreements made by the Debtors and/or the Buyer in the Agreement (which include the Assumed Liabilities).

AA. The Debtors have demonstrated that it is an exercise of their sound business judgment to assume and assign the Assumed Contracts to the Buyer in connection with the consummation of the Sale, and the assumption and assignment of the Assumed Contracts is in the best interests of the Debtors, their estates, and their creditors. The assumption and assignment of the Assumed Contracts pursuant to the terms of this Order, the Bidding Procedures Order and the Agreement are integral to the Agreement, are in the best interests of the Debtors and their respective estates, creditors and other parties in interest, and represent the reasonable exercise of sound and prudent business judgment by the Debtors. Accordingly, such assumption and assignment of Assumed Contracts and Assumed Liabilities are reasonable and enhance the value of the Debtors’ estates.

BB. The Debtors have timely served the Assumption and Assignment Notice and all other notices required by the Bidding Procedures Order to all parties to Assumed Contracts identified on the Assigned Contract List. Such Required Notices (as defined below) provided adequate and sufficient notice to Contract counterparties of the proposed assumption and assignment to the Buyer of any Contract, including without limitation the Assumed Contracts identified on the Executory Contract List or on the Assumption and Assignment Notice, and the Cure Amounts (if any) to be paid in connection therewith.

CC. For all such counterparties to Assumed Contracts that were served with an Assumption and Assignment Notice, the deadline to file an objection to the assumption and assignment to the Buyer of any Assumed Contract (a “**Contract Objection**”) has expired and to the extent any such party timely filed a Contract Objection, all such Contract Objections have been resolved, withdrawn, or overruled. To the extent that any such party did not timely file a Contract Objection by the applicable deadline set forth in the Bidding Procedures Order, such party shall be deemed to have consented to (i) the assumption and assignment of the Assumed Contract, and (ii) any “cure” amounts required to be paid pursuant to section 365 of the Bankruptcy Code and the Agreement (the “**Cure Amount**”) set forth on the Assumption and Assignment Notice.

DD. The Debtors have met all requirements of section 365(b) of the Bankruptcy Code for each of the Assumed Contracts. Effective upon the Closing and in accordance with the Agreement, the Buyer will have agreed to (i) cure, or provide adequate assurance of cure, of any default existing prior to the date hereof under any of the Assumed Contracts, within the meaning of section 365(b)(1)(A) of the Bankruptcy Code, and (ii) provide compensation or adequate assurance of compensation to any appropriate party for any actual pecuniary loss incurred by

such party resulting from a default prior to the date hereof under any of the Assumed Contracts, within the meaning of section 365(b)(1)(B) of the Bankruptcy Code. Further, the Buyer has provided adequate assurance of future performance of and under the Assumed Contracts, within the meaning of sections 365(b)(1) and 365(f)(2) of the Bankruptcy Code. Each of the Assumed Contracts is assigned free and clear of Liens, Claims and Interests against Buyer.

EE. Buyer has provided adequate assurance of its future performance under the relevant Assumed Contracts within the meaning of sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code. Pursuant to section 365(f) of the Bankruptcy Code, the Assumed Contracts to be assumed and assigned under the Agreement shall be assigned and transferred to, and remain in full force and effect for the benefit of, Buyer notwithstanding any provision in the contracts or other restrictions prohibiting their assignment or transfer.

FF. No default exists in the Debtors' performance under the Assumed Contracts as of the date of this Order other than the failure to pay Cure Amounts (if any) or defaults that are not required to be cured as contemplated in section 365(b)(1)(A) of the Bankruptcy Code.

GG. Approval of the Agreement, assumption and assignment of the Assumed Contracts, and consummation of the Sale of the Acquired Assets at this time are in the best interests of the Debtors, their creditors, their estates, and other parties in interest and represent an exercise of the Debtors' sound business judgment.

HH. The consummation of the Transactions outside a plan of reorganization pursuant to the Agreement neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates the terms of a chapter 11 plan for the Debtors.

II. Time is of the essence. To maximize the value of the Debtors' assets, it is critical that the Transactions close within the time constraints set forth in the Agreement. Accordingly, there is cause to waive the stay contemplated by Bankruptcy Rule 6004.

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

1. The Motion is granted, as further described herein. The Sale and the Transactions contemplated by the Agreement are approved.

2. All objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included therein, hereby are overruled on the merits with prejudice. All persons and entities given notice of the Motion that failed to timely object thereto are deemed to consent to the relief sought therein, including all non-Debtor parties to the Assumed Contracts.

3. Findings of fact and conclusions of law in the Bidding Procedures Order, including the record of the Bidding Procedures Hearing, are incorporated herein by reference.

Approval of the Agreement

4. The Agreement, and all of the terms and conditions thereof, and all Transactions contemplated therein, are hereby approved. The failure specifically to include any particular provision of the Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Agreement be authorized and approved in its entirety, with such amendments thereto as may be made by the parties in accordance with this Order.

5. Pursuant to sections 363(b) and 365 of the Bankruptcy Code, the Debtors are authorized, and to the extent not already done, directed to (a) perform their obligations under and

comply with the terms of the Agreement, and consummate, implement and fully close the Transaction, including the Sale, pursuant to and in accordance with the terms and conditions of the Agreement and this Order, and (b) to assume and assign any and all Assumed Contract(s) as and when provided in the Agreement. No consumer privacy ombudsman need be appointed under section 363(b)(1) of the Bankruptcy Code.

6. The Debtors are authorized, and to the extent not already done, directed to execute and deliver, and empowered to perform under, consummate, and implement, the Agreement, together with all additional instruments, documents, and agreements that may be reasonably necessary or desirable to implement the Agreement, and to take all further actions as may be requested by the Buyer for the purpose of assigning, transferring, granting, conveying, and conferring to the Buyer or reducing to possession, the Acquired Assets, or as may be necessary or appropriate to the performance of the obligations as contemplated by the Agreement, including effectuating amendments to the Agreement in furtherance thereof.

7. This Order and the Agreement shall be binding in all respects upon all creditors (whether known or unknown) of the Debtors, all non-Debtor parties to the Assumed Contracts, successors, and assigns of the Buyer, the Debtors and their affiliates and subsidiaries, and any subsequent trustees appointed in the Debtors' chapter 11 cases or appointed upon a conversion to chapter 7 under the Bankruptcy Code. Nothing contained in any chapter 11 plan confirmed in this bankruptcy case (the "**Plan**"), the order confirming the Plan (the "**Confirmation Order**") or any order dismissing or converting to chapter 7 of the Bankruptcy Code any of the Debtors' bankruptcy cases (the "**Other Orders**") shall conflict with, supersede, abrogate, nullify or restrict the terms of the Agreement, the Bidding Procedures Order or this Order, or in any way prevent or interfere with the consummation or performance of the Transactions contemplated by

the Agreement, including, without limitation, any transaction contemplated or approved pursuant to this Order or the Bidding Procedures Order. To the extent there is any inconsistency between this Order, the Agreement or the Bidding Procedures Order on the one hand, and the Plan, the Confirmation Order or the Other Orders on the other hand, this Order, the Agreement and the Bidding Procedures Order shall govern.

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

9. The Buyer shall have no obligation to proceed with the Closing until all conditions precedent in the Agreement to its obligation to do so have been met, satisfied, or waived in accordance with the terms of the Agreement.

Transfer of Assets

10. Pursuant to sections 105(a), 363(f), and 365 of the Bankruptcy Code, upon the Closing Date, the Acquired Assets shall be transferred to the Buyer in accordance with the Agreement and such transfer shall constitute a legal, valid, binding, and effective transfer of such Acquired Assets and shall vest the Buyer with title to the Acquired Assets, free and clear of all Encumbrances (as defined in the Agreement) and all mortgages, pledges, options, security interests, charges, rights of first refusal, hypothecations, encumbrances on real or personal property, easements, encroachments, rights of way, restrictive covenants on real or personal property, real or personal property licenses, leases, or conditional sale arrangements, debts, liabilities, obligations, judgments, mechanics liens, artisans liens, charging liens, suppliers' liens,

design professionals' liens, laborers' liens, construction liens, constitutional, statutory and other liens, and claims (as that term is defined in section 101(5) of the Bankruptcy Code), including rights or claims based upon successor or transferee liability, Environmental Laws, liability under the Federal and State WARN Acts or similar law, whether accrued or fixed, direct or indirect, liquidated or unliquidated, absolute or contingent, matured or unmatured, known or unknown, determined or undeterminable, including those arising under any law or action and those arising under any contract or otherwise, including any tax liability, and including any rights, claims, or causes of action based on any theories of transferee or successor liability (collectively, the **"Liens, Claims, and Interests"**). Liens, Claims, and Interests shall also include but are not limited to: (a) those that purport to give to any party a right terminate the Debtors' or the Buyer's interest in the Acquired Assets, or any similar rights; (b) those relating to taxes arising under or out of, in connection with, or in any way relating to the operation of the Acquired Assets prior to the Closing; and (c) all debts arising in any way in connection with any agreements, acts, or failures to act, of the Debtors or any of the Debtors' predecessors or affiliates, claims (as that term is defined in the Bankruptcy Code), obligations, liabilities, demands, guaranties, options, rights, contractual or other commitments, restrictions, interests, and matters of any kind and nature, whether known or unknown, contingent or otherwise, whether arising prior to or subsequent to the commencement of these chapter 11 cases, and whether imposed by agreement, understanding, law, equity, or otherwise, including but not limited to claims otherwise arising under doctrines of successor liability. All Liens, Claims, and Interests released, terminated, and discharged as to the Acquired Assets shall attach to the proceeds of the Sale (the **"Proceeds"**) with the same validity, force, and effect that they now have as against the Debtors, the estates, or the Acquired Assets, subject with respect to the Proceeds to any claims and defenses the Debtors

may possess with respect thereto. For the avoidance of doubt, upon the Closing Date the sole and exclusive right and remedy with respect to the Acquired Assets available to purported creditors, equity holder(s), including, without limitation, the equity holder(s) of the Debtors, and the holders of any other Liens, Claims, and Interests and parties in interest, shall be a right to assert Liens, Claims, and Interests against the Proceeds.

11. Except as set forth in the Agreement, all persons and entities, including, but not limited to, the Debtors, all debt security holders, all equity security holders, the Creditors' Committee, governmental, tax and regulatory authorities, employees, former employees and shareholders, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, counterparties to all Contracts, customers, lenders, trade and other creditors, and their respective successors or assigns and any trustees thereof holding Liens, Claims, and Interests of any kind or nature whatsoever against or in the Debtors or the Acquired Assets, the ownership, sale or operation of the Acquired Assets and the Business prior to the Closing or the transfer of Acquired Assets to Buyer, hereby are forever barred, estopped, and permanently enjoined from asserting against the Buyer, its successors, designees, or assigns, its property, or the Acquired Assets conveyed in accordance with the Agreement, such persons' or entities' Liens, Claims, and Interests.

12. The transfer of the Acquired Assets to the Buyer pursuant to the Agreement shall constitute a legal, valid, and effective transfer of such Acquired Assets on the Closing Date, and shall vest the Buyer on the Closing Date with all right, title, and interest of the Debtors in and to the Acquired Assets free and clear of all Liens, Claims, and Interests of any kind or nature whatsoever. As of the Closing, the Buyer shall have any and all rights, claims, defenses, and offsets held by Debtors and their estates with respect to all Assumed Liabilities.

13. Except for Assumed Liabilities as set forth in the Agreement, the transfer of the Acquired Assets pursuant to this Order shall not subject the Buyer to any liability with respect to any obligations incurred in connection with or in any way related to the Acquired Assets prior to the date of Closing or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, on any theory of law or equity, including, without limitation, any theory of equitable subordination or successor or transferee liability. Following the Closing, no holder of any Liens, Claims, and Interests shall interfere with Buyer's title to or use and enjoyment of the Acquired Assets based on or related to any such Liens, Claims, and Interests, or based on any action the Debtors may take in these chapter 11 cases.

14. The Buyer shall not be deemed, as a result of any action taken in connection with the Agreement, the consummation of the Transactions, or the transfer, operation or use of the Acquired Assets to (a) be a legal successor, or otherwise be deemed a successor to the Debtors; (b) have, *de facto* or otherwise, merged with or into the Debtors; or (c) be an alter ego or a mere continuation or substantial continuation of the Debtors, including within the meaning of any foreign, federal, state or local revenue, pension, ERISA, tax, labor, employment, environmental, or other law, rule or regulation (including filing requirements under any such laws, rules or regulations), or under any products liability law or doctrine with respect to the Debtors' liability under such law, rule or regulation or doctrine.

15. The Buyer shall not have any responsibility for (a) any liability or other obligation of the Debtors or related to the Acquired Assets other than as expressly set forth in the Agreement and this Order or (b) any Liens, Claims, and Interests against the Debtors or any of their predecessors or affiliates or their respective property. Except as expressly provided in the

Agreement with respect to Assumed Liabilities, Buyer shall have no liability whatsoever with respect to the Debtors' (or their predecessors or affiliates) respective businesses or operations or any of the Debtors' (or their predecessors' or affiliates') obligations (as described below, "**Successor or Transferee Liability**") based, in whole or part, directly or indirectly, on any theory of successor or vicarious liability of any kind or character, or based upon any theory of antitrust, environmental, successor or transferee liability, *de facto* merger or substantial continuity, labor and employment or products liability, whether known or unknown as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated, including liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Acquired Assets or the Business prior to the Closing. Except to the extent expressly included in the Assumed Liabilities or otherwise provided for in the Agreement, Buyer shall have no liability or obligation under the WARN Act (29 U.S.C. §§ 2101 et seq.) and its state law equivalents; the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. §§ 9601 et. seq.); the Employment Retirement Income Security Act of 1974, as amended (29 U.S.C. §§ 2101 et seq.) ("**ERISA**") or any foreign, federal, state or local labor, employment or environmental law whether of similar import or otherwise by virtue of Buyer's purchase of the Acquired Assets or assumption of the Assumed Liabilities by Buyer. Except as provided in paragraph 36 of this Order, the Buyer and its Affiliates shall have no liability or obligation with respect to any environmental conditions related to the Acquired Assets.

16. Nothing in this Order or the Agreement shall require the Buyer to (a) continue or maintain in effect, or assume any liability in respect of any employee, pension, welfare, fringe benefit or any other benefit plan, trust arrangement or other agreements to which the Debtors are

a party or have any responsibility therefor including medical, welfare and pension benefits payable after retirement or other termination of employment; or (b) assume any responsibility as a fiduciary, plan sponsor or otherwise, for making any contribution to, or in respect of the funding, investment or administration of any employee benefit plan, arrangement or agreement (including but not limited to pension plans) or the termination of any such plan, arrangement or agreement.

17. Effective upon the Closing, all persons and entities are forever prohibited and enjoined from commencing or continuing in any manner any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral or other proceeding against the Buyer, its Affiliates or their assets (including the Acquired Assets), with respect to any (a) Liens, Claims, and Interests or (b) Successor or Transferee Liability including the following actions with respect to clauses (a) and (b): (i) commencing or continuing any action or other proceeding pending or threatened; (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order; (iii) creating, perfecting or enforcing any Liens, Claims, and Interests; (iv) asserting any setoff, right of subrogation or recoupment of any kind; (v) commencing or continuing any action, in any manner or place, that does not comply with, or is inconsistent with, the provisions of this Order or other orders of this Court, or the agreements or actions contemplated or taken in respect hereof; or (vi) revoking, terminating or failing or refusing to renew any license, permit or authorization to operate any of the Acquired Assets or conduct any of the businesses operated with such assets.

Assumption and Assignment of Contracts

18. Pursuant to sections 105(a) and 365 of the Bankruptcy Code, and subject to and conditioned upon the Closing Date, the Debtors' assumption and assignment to the Buyer, and

the Buyer's assumption on the terms set forth in the Agreement of the Assumed Contracts are hereby approved, and the requirements of section 365(b)(1) of the Bankruptcy Code with respect thereto are hereby deemed satisfied.

19. The Debtors are hereby authorized in accordance with sections 105(a) and 365 of the Bankruptcy Code to (a) assume and assign to the Buyer, effective upon and subject to the occurrence of the Closing and the Closing Date, the Assumed Contracts free and clear of all Liens, Claims, and Interests of any kind or nature whatsoever, which Assumed Contracts by operation of this Order, shall be deemed assumed and assigned effective as of the Closing Date, and (b) execute and deliver to the Buyer such documents or other instruments as may be necessary to assign and transfer such Assumed Contracts and Assumed Liabilities to the Buyer.

20. The Assumed Contracts shall be transferred and assigned to, and following the Closing Date, remain in full force and effect for the benefit of, the Buyer in accordance with their respective terms, notwithstanding any provision in any such Assumed Contract (including those of the type described in sections 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer and, pursuant to section 365(k) of the Bankruptcy Code, the Debtors shall be relieved from any further liability with respect to the Assumed Contracts after such transfer and assignment to the Buyer. The Debtors may assume the Assumed Contracts in accordance with section 365 of the Bankruptcy Code. The Debtors may assign each Assumed Contract in accordance with sections 363 and 365 of the Bankruptcy Code, and any provisions in any Assumed Contract that prohibit or condition the assignment of such Assumed Contract or allow the non-debtor party to such Assumed Contract to terminate, recapture, impose any penalty, condition renewal or extension, or modify any term or condition upon the assignment of such Assumed Contract, shall constitute unenforceable anti-assignment

provisions that are void and of no force and effect. All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption and assignment by the Debtors to the Buyer of each Assumed Contract have been satisfied. Upon the Closing Date, in accordance with sections 363 and 365 of the Bankruptcy Code, the Buyer shall be fully and irrevocably vested in all right, title, and interest of each Assumed Contract.

21. The Debtors have timely served on all counterparties to all Assumed Contracts listed on the Executory Contract List (as may have been amended), the Assumption and Assignment Notice, and all other notices required by the Bidding Procedures Order (collectively, the “**Required Notices**”). The Required Notices include all of the information required by the Bidding Procedures Order, and no other or further notice is required with respect to the assumption of any Contract, including without limitation, the Assumed Contracts listed on the Required Notices. For all non-debtor counterparties to any Contract timely served with an Assumption and Assignment Notice who or which have been given notice that its Contract has, as of that date, been determined to be an Assumed Contract, to which no Contract Objection was timely filed, such Assumed Contract is hereby deemed assumed and assigned as of the Closing Date. For all non-debtor counterparties to an Assumed Contract served with the Assumption and Assignment Notice in less than the time required by the Bidding Procedures Order, if a timely filed Contract Objection is not received, the counterparty to such Assumed Contract shall be deemed to have consented to such assumption and assignment and Cure Amount, and the assignment will be deemed effective as of the Closing Date.

22. All defaults or other obligations of the Debtors under the Assumed Contracts arising or accruing prior to the Closing Date (without giving effect to any acceleration clauses or any default provisions of the kind specified in section 365(b)(2) of the Bankruptcy Code as to

which no objections were interposed), are deemed satisfied by the Cure Amounts with respect to each Assumed Contract in those amounts either (a) agreed to by the Buyer and non-debtor counterparties to the Assumed Contracts that have properly and timely filed a Contract Objection, (b) ordered by the Court, or (c) set forth in the Assumption and Assignment Notice, which was served in accordance with the Bidding Procedures Order, and which were satisfied, or shall be satisfied as soon as practicable, by the Buyer.

23. With the exception of the Cure Amounts set forth in the Assumption and Assignment Notice that remain unpaid, or as otherwise reflected in this Order, each non-debtor party to an Assumed Contract hereby is forever barred, estopped, and permanently enjoined from asserting against the Debtors, the Buyer, or the property of any of them, any default existing as of the Closing Date; or, against Buyer, any counterclaim, defense, setoff, or any other claim asserted or assertable against the Debtors. Except as provided in the Agreement or this Order, after the Closing Date, the Debtors and their estates shall have no further liabilities or obligations with respect to any Assumed Liabilities and all holders of such claims are forever barred and estopped from asserting such claims against the Debtors, their successors or assigns, their property, or their assets or estates. There shall be no rent accelerations, assignment fees, increases, or any other fees charged to the Buyer or the Debtors as a result of the assumption, assignment, and/or transfer of any Assumed Contract. The Buyer's agreement pursuant to the terms of the Agreement to pay the Cure Amounts and to perform the obligations under the Assumed Contracts after the Closing Date shall constitute adequate assurance of its future performance under the Assumed Contracts being assigned to it within the meanings of sections 365(b)(1)(C) and (f)(2)(B) of the Bankruptcy Code.

24. Notwithstanding anything to the contrary in this Order, no Contract will be assumed and assigned pursuant to this Order until the Closing Date.

25. The failure of the Debtors or the Buyer to enforce at any time one or more terms or conditions of any Assumed Contract shall not be a waiver of such terms or conditions, or of the Debtors', and after the Closing Date the Buyer's, rights to enforce every term and condition of the Assumed Contracts.

26. The Debtors have properly served the Assumption and Assignment Notice in accordance with the Bidding Procedures Order.

27. Unless authorized in writing by the Buyer, the Debtors shall not reject any Contract related to the Acquired Assets prior to the Closing.

Additional Provisions

28. The consideration provided by the Buyer for the Acquired Assets under the Agreement constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, and the District of Columbia.

29. The consideration provided by the Buyer for the Acquired Assets under the Agreement is fair and reasonable and the Sale may not be avoided under section 363(n) of the Bankruptcy Code. There has been no showing that the Debtors, the Buyer or any other party engaged in any action or inaction that would cause or permit the Transactions to be avoided or costs or damages to be imposed under section 363(n) of the Bankruptcy Code. The Buyer is entitled to all the protections and immunities of section 363(n) of the Bankruptcy Code.

30. The Transactions contemplated by the Agreement are undertaken by the Buyer in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and, accordingly, the

reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale to the Buyer, including the assignment to the Buyer of the Assumed Contracts. The Buyer is a purchaser in good faith of the Acquired Assets, and is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code.

31. On the Closing Date, each of the Debtors' creditors is authorized and directed to execute such documents and take all other actions as may be necessary to release its Liens, Claims, and Interests in the Acquired Assets, if any, as such Liens, Claims, and Interests may have been recorded or may otherwise exist.

32. This Order (a) shall be effective as a determination that, upon the Closing Date, all Liens, Claims, and Interests of any kind or nature whatsoever existing as to the Acquired Assets prior to the Closing Date have been unconditionally released, discharged, and terminated, and that the conveyances described herein and the Agreement have been effected, and (b) shall be binding upon and shall govern the acts of all entities, including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Acquired Assets. For the avoidance of doubt, all Liens, Claims, and Interests with respect to the Excluded Assets shall continue with the same validity, force, effect, and priority as they now have, subject to any claims and defenses the Debtors may possess with respect thereto.

33. If any person or entity that has filed financing statements, mortgages, mechanic's liens, *lis pendens*, or other documents or agreements evidencing Liens, Claims, and Interests in the Acquired Assets conveyed pursuant to the Agreement shall not have delivered to the Debtors prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of mortgages, and releases of all Liens, Claims, and Interests which the person or entity has with respect to such Acquired Assets or otherwise, then (a) the Debtors are hereby authorized to execute and file such statements, instruments, releases of mortgages, releases, and such other documents of any kind on behalf of the person or entity with respect to such Acquired Assets, and (b) the Buyer is hereby authorized to file, register, or otherwise record a certified copy of this Order, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all Liens, Claims, and Interests in such Acquired Assets of any kind or nature whatsoever. This Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, or local government agency, department or office.

34. Any amounts that become payable by the Debtors to the Buyer pursuant to the Agreement (and related agreements executed in connection therewith) (a) shall be, and hereby is, deemed an allowed administrative priority expense of the Debtors' estates under sections 503(b) and/or 507(a)(2) of the Bankruptcy Code, and (b) shall be payable by the Debtors in the time and manner provided for in the Agreement (and such related agreements) without further Court order.

35. All non-debtor entities that are presently, or on the Closing may be, in possession of some or all of the Acquired Assets are hereby directed to surrender possession of the Acquired Assets to the Buyer on the Closing Date.

36. Nothing in this Order or the Agreement releases, nullifies, precludes, or enjoins the enforcement of any environmental liability to a governmental unit (as defined in the Bankruptcy Code) under police and regulatory statutes or regulations arising as a result of an entity's status as the owner or operator of property after the date of entry of this Order. Notwithstanding the foregoing sentence, nothing in this Order or the Agreement shall (a) be interpreted to deem the Buyer to be the successor to the Debtors under any state or federal law successor liability doctrine with respect to any police or regulatory liability for penalties for days of violation prior to the Closing Date or (b) be interpreted or construed to create for any governmental unit any substantive rights that do not already exist under law.

37. Each and every federal, state, and local governmental agency or department is hereby authorized and directed to accept any and all documents and instruments necessary and appropriate to consummate the Transactions, including all agreements entered into in connection therewith, and this Order.

38. To the greatest extent available under applicable law, Buyer shall be authorized, as of the Closing Date, to operate under any license, Permit, registration and any other governmental authorization or approval of the Debtors with respect to the Acquired Assets and the Assumed Contracts, and all such licenses, permits, registrations and governmental authorizations and approvals are deemed to have been, and hereby are, directed to be transferred to Buyer as of the Closing Date. The Debtors shall cooperate with the Buyer and shall use commercially reasonable efforts to cause their representatives to cooperate with the Buyer's representatives, to provide an orderly transition of the Business and the Acquired Assets and to minimize the disruption to the Business resulting from the Transactions, including, but not limited to, with respect to the transfer of all licenses, Permits, registrations and to facilitate

obtaining all necessary governmental authorizations and approvals, all, however, to the extent included in the Acquired Assets.

39. Following the Closing Date, no holder of a Lien, Claim, or Interest in the Debtors or the Acquired Assets shall interfere with the Buyer's title to or use and enjoyment of the Acquired Assets based on or related to such Lien, Claim, or Interest, or any actions that the Debtors may take in their chapter 11 cases.

40. The provisions of this Order authorizing the sale and assignment of the Acquired Assets free and clear of all Liens, Claims and Interests shall be self-executing, and neither the Debtors nor Buyer shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate and implement the provisions of this Order.

41. Subject to the terms of the Agreement, the provisions of the Agreement and any related agreements may be waived, modified, amended, or supplemented by agreement of the Debtors and Buyer without further action or order of the Court; *provided, however*, that any such waiver, modification, amendment or supplement does not have a material adverse effect on the Debtors' estates. Any material modification, waiver, amendment or supplement to the Agreement must be approved by Order of the Court.

42. The automatic stay pursuant to section 362 of the Bankruptcy Code is hereby lifted with respect to the Debtors to the extent necessary, without further order of this Court, to allow Buyer to deliver any notice provided for in the Agreement and allow Buyer to take any and all actions permitted or required under the Agreement in accordance with the terms and conditions thereof. Buyer shall not be required to seek or obtain any further relief from the

automatic stay under section 362 of the Bankruptcy Code to enforce any of its remedies under the Agreement or any other sale-related document.

43. This Court retains jurisdiction to enforce and implement the terms and provisions of this Order and the Agreement, all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connection therewith in all respects, including, but not limited to, retaining jurisdiction to: (a) compel delivery of the Acquired Assets to the Buyer, (b) compel delivery of the Purchase Price or performance of other obligations owed to the Debtors, (c) resolve any disputes arising under or related to the Agreement, except as otherwise provided therein, (d) interpret, implement, and enforce the provisions of this Order, (e) protect the Buyer against any of the Excluded Liabilities or any Liens, Claims, and Interests in the Debtors or the Acquired Assets, of any kind or nature whatsoever.

44. The Debtors are not selling any “personally identifiable information” (as that term is defined in 11 U.S.C. § 101(41A)) to the Buyer. Accordingly, section 363(b)(1) of the Bankruptcy Code does not apply.

45. Notwithstanding Bankruptcy Rule 6004(h) and 6006(d), this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. In the absence of any entity obtaining a stay pending appeal, the Debtors and the Buyer are free to close under the Agreement at any time.

46. The terms and provisions of the Agreement and this Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors, their estates, and their creditors, the Buyer, and their respective affiliates, successors, and assigns, and any affected third parties including, but not limited to, all persons asserting Liens, Claims, and Interests in the Acquired Assets to be sold to the Buyer pursuant to the Agreement, notwithstanding any subsequent

appointment of any trustee(s) under any chapter of the Bankruptcy Code, as to which trustee(s) such terms and provisions likewise shall be binding.

47. The provisions of this Order are non-severable and mutually dependent without the written consent of the Buyer and the Debtors.

48. To the extent of any conflict between the Agreement and this Order, the terms and provisions of this Order shall govern.

49. The failure specifically to include any particular provision of the Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Agreement be authorized and approved in its entirety.

Dated: _____, 2017

Honorable Kevin Gross
United States Bankruptcy Judge

EXHIBIT C

ASSET PURCHASE AGREEMENT

By and between

VALLEY TOOL & MANUFACTURING, INC.

NC DYNAMICS INCORPORATED

NCDI MEXICO, INC.

GROUPE AERO SEATTLE, INC.

AEROSPACE HOLDINGS, INC.

as Seller

and

HARLOW AEROSTRUCTURES LLC,

as Buyer

Dated as of March 28, 2017

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Appendix A - Defined Terms

Exhibits

Exhibit A - Form of Assignment and Assumption Agreement

Exhibit B - Form of Bill of Sale

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Exhibit E – Form of Bid Procedures Order

Exhibit F – Allocation of Transaction Taxes

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (as amended or modified, the “**Agreement**”) is made and entered into as of March 28, 2017 (the “**Execution Date**”), by and between Valley Tool & Manufacturing, Inc., a Delaware corporation (“**Valley Tool**”), NC Dynamics Incorporated, a California corporation (“**NC Dynamics**”), NCDI Mexico, Inc., a Delaware corporation (“**NCDI Mexico**”), GroupAero Seattle, Inc., a Washington corporation (“**GroupAero Seattle**”) and Aerospace Holdings, Inc., a Delaware corporation (“**Aerospace Holdings**”, together with Valley Tool, NC Dynamics, GroupAero Seattle and NCDI Mexico, the “**Seller**”), and Harlow Aerostructures, LLC, a Kansas limited liability company (“**Buyer**” and, together with Seller, the “**Parties**”).

RECITALS

WHEREAS, Seller is in the business of producing complex components, assemblies and other parts primarily for the aerospace industry (as such business is conducted by Seller, the “**Business**”);

WHEREAS, on the date hereof (the “**Petition Date**”), Seller and certain of its Affiliates filed voluntary petitions for relief in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”), commencing voluntary proceedings (collectively, the “**Bankruptcy Cases**”) pursuant to chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the “**Bankruptcy Code**”), which Bankruptcy Cases are being jointly administered;

WHEREAS, Seller desires to sell, transfer and assign to Buyer, and Buyer desires to acquire and assume from Seller, pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, the Acquired Assets (as defined herein) and the Assumed Liabilities (as defined herein), as more specifically provided herein;

WHEREAS, the boards of directors of Seller have determined that it is advisable and in the best interests of each Seller’s estate and the beneficiaries of such estates to consummate the transactions provided for herein pursuant to the Bid Procedures Order and the Sale Order (each as defined herein) and has approved this Agreement;

WHEREAS, the transactions contemplated by this Agreement are subject to the approval of the Bankruptcy Court and will be consummated only pursuant to the Sale Order to be entered in the Bankruptcy Cases; and

WHEREAS, pursuant to the Bid Procedures Order, Seller shall conduct an Auction (as defined herein) to determine the highest and/or best offer(s) for the Acquired Assets.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Seller and Buyer hereby agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Certain Terms Defined. Capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings ascribed to such terms in **Appendix A** attached hereto and as set forth elsewhere herein.

1.2 Interpretation.

(a) When a reference is made in this Agreement to a section or article, such reference shall be to a section or article of this Agreement unless otherwise clearly indicated to the contrary.

(b) Whenever the words “include,” “includes” or “including” are used in this Agreement they shall be deemed to be followed by the words “without limitation.”

(c) The words “hereof,” “herein,” “hereunder” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement, and article, section, paragraph, exhibit and schedule references are to the articles, sections, paragraphs, exhibits and schedules of this Agreement unless otherwise specified.

(d) The meaning assigned to each term defined herein shall be equally applicable to both the singular and the plural forms of such term. Where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning.

(e) A reference to any Party to this Agreement or any other agreement or document shall include such Party’s permitted successors and assigns.

(f) A reference to any legislation or to any provision of any legislation shall include any amendment to, and any modification or reenactment thereof, any legislative provision substituted therefore and all regulations and statutory instruments issued thereunder or pursuant thereto.

(g) Any reference in this Agreement to \$ shall mean U.S. dollars.

(h) When calculating the period of time before which, within which, or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

(i) The Parties have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.

(j) All Exhibits and Schedules annexed hereto or referred to in this Agreement are hereby incorporated in and made a part of this Agreement as if set forth in full in this Agreement. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein will be defined as set forth in this Agreement.

(k) The division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and will not affect or be utilized in construing or interpreting this Agreement. All references in this Agreement to any "Section" are to the corresponding Section of this Agreement unless otherwise specified.

ARTICLE 2

PURCHASE AND SALE OF THE ACQUIRED ASSETS

2.1 Purchase and Sale of Assets. Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, upon the terms and subject to the conditions set forth in this Agreement, at the Closing, Buyer or one or more of its designated Affiliates shall purchase, acquire and accept from Seller, and Seller shall sell, transfer, assign, convey and deliver to Buyer or one or more of its designated Affiliates all of Seller's right, title and interest in, to and under all of Seller's tangible and intangible assets, properties, rights and claims, to the extent owned, leased, licensed, used or held for use in or relating to the Business, as the same shall exist as of the Closing Date, of whatever kind or nature and wherever situated or located and whether or not carried or reflected on the books and records of Seller, other than the Excluded Assets, free and clear of all Encumbrances (other than Permitted Liens). All of such assets, properties and rights (other than the Excluded Assets) are collectively referred to in this Agreement as the "**Acquired Assets**." Without limiting any of the foregoing, the Acquired Assets shall include Seller's right, title and interest in and to the following assets and properties as of the Closing Date, except to the extent that any of the following are enumerated in Section 2.2 as being Excluded Assets:

(i) all accounts receivable, notes receivable, negotiable instruments, chattel paper (including, completed work which has not yet been billed and all accrued but unpaid rental payments from customers) and other receivables (including, in respect of goods shipped, products sold, licenses granted, services rendered or otherwise and all amounts that may be returned or returnable with respect to letters of credit drawn down prior to the Closing) from third parties, together with any unpaid financing charges accrued thereon, and any other similar rights of Seller to payment from third parties, together with any and all claims, remedies or other rights relating to any of the foregoing (collectively "**Accounts Receivable**");

(ii) all Intellectual Property related to the Business, including all Intellectual Property set forth on Schedule 2.1(ii), together with all of Seller's documentation (in any form or medium) relating thereto, and all of Seller's physical embodiments thereof; provided that, to the extent that Seller's Intellectual Property rights cannot be transferred to Buyer, Seller shall be deemed to have granted to Buyer an exclusive (even as to Seller), royalty-free, perpetual worldwide right and license to use, commercialize, manufacture, market, sublicense and otherwise exploit such Intellectual Property from and after the Closing Date, to the fullest extent permitted by applicable

Law, including the right to sue and otherwise recover for past, present and future infringements, misappropriations, dilutions, and other violations thereof without needing to obtain the consent of Seller;

(iii) all PP&E;

(iv) all deposits (including, customer deposits and security deposits (whether maintained in escrow or otherwise) for rent, electricity, telephone or otherwise), advances, prepayments, rights in respect of promotional allowances, vendor rebates and other refunds, claims, causes of action, rights of recovery, rights under warranties and guaranties, rights of set-off and rights of recoupment of every kind and nature (whether or not known or unknown or contingent or non-contingent), and the right to receive and retain mail, Accounts Receivable payments and other communications of Seller, in each instance, to the extent relating to the Business and/or the Acquired Assets;

(v) all rights, title, and interest of Seller in and under Transferred Leased Real Property that is an Assumed Contract, in each case together with all of Seller's right, title, and interest in and to all Improvements and fixtures located thereon or attached thereto, and other appurtenances thereto, and rights in respect thereof;

(vi) all Assumed Contracts;

(vii) all rights and claims of Seller for any action under the Bankruptcy Code, including Bankruptcy Chapter 5 Claims against any parties of whatever kind or nature, but excluding Excluded Claims and Causes of Action;

(viii) all Documents (including books and records), copies of all Tax Returns and Tax records of Seller related to Taxes arising in connection with the Acquired Assets, and all books and records of Seller relating to any Acquired Asset or Assumed Liability;

(ix) all Permits to the extent transferable;

(x) except to the extent that such insurance policy is an Excluded Asset under Section 2.2(e) or Section 2.2(f) below, all rights and claims under or arising out of all insurance policies relating to the Acquired Assets (including, returns and refunds of any premiums paid, or other amounts due back to Seller, with respect to cancelled policies, all proceeds received after Closing, all proceeds received prior to Closing in connection with casualty events involving tangible Acquired Assets);

(xi) any Claim, right or interest in and to all (or the benefit of all to the extent not assignable) Tax refunds, rebates, abatement, credits and similar items of Seller, together with any interest due thereon or pending rebate arising therefrom, relating to any period ending on or before the Closing Date or any Tax Return, to the extent relating to the Business and/or the Acquired Assets;

(xii) all Inventory of Seller, wherever located;

(xiii) all rights under non-disclosure or confidentiality, non-compete, or non-solicitation agreements with employees and agents of Seller or with third parties (including, any non-disclosure or confidentiality, non-compete, or non-solicitation agreements entered into in connection with the Auction), to the extent relating to the Business and/or the Acquired Assets;

(xiv) all rights under or pursuant to all warranties, representations and guarantees made by vendors, suppliers, manufacturers, contractors and any other Person to the extent relating to products sold, or services provided, to Seller or to the extent affecting any Acquired Assets, other than any warranties, representations and guarantees pertaining to any Excluded Assets;

(xv) all sales and promotional materials, catalogues and advertising literature relating to the Business;

(xvi) all rights and claims of Seller in and to the corporate and trade names "NC Dynamics", "NCDF", "GroupAero", "Valley Tool & Manufacturing", "Aerospace Holdings", and any other corporate name currently or formerly used in connection with the Business;

(xvii) all telephone numbers, fax numbers, e-mail addresses, websites, URLs and internet domain names related to the Business and the Acquired Assets;

(xviii) all goodwill and other intangible assets relating to the Business, including correspondence with present or prospective customers and suppliers, advertising materials, software programs, telephone exchange numbers, and other similar intangible assets associated with the Business and the Acquired Assets (to the extent transferable), including customer and supplier lists provided that, to the extent such intangible assets cannot be transferred to Buyer, Seller shall be deemed to have granted to Buyer an exclusive, royalty-free right and license to use such intangible assets from and after the Closing Date, to the fullest extent permitted by applicable Law and the underlying agreements, as applicable; and

(xix) those additional assets listed on Schedule 2.1 as Acquired Assets, as applicable.

2.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, the Acquired Assets are the only properties, rights and assets transferred to, or otherwise acquired by, Buyer under this Agreement. Without limiting the generality of the foregoing, the Acquired Assets do not include (i) any right, title, or interest of any Person other than Seller in any property or asset or (ii) the properties and assets of Seller listed or described below in this Section 2.2 (all properties and assets not being acquired by Buyer are herein collectively referred to as the "**Excluded Assets**");

(a) any (i) confidential personnel and medical records pertaining to any employee of Seller not permitted to be transferred to Buyer under applicable Law; (ii) books and records that Seller is required by Law to retain or that relate exclusively to the

Excluded Assets or the Excluded Liabilities, including Tax Returns, financial statements, and corporate or other entity filings; provided, however, that Buyer shall have the right to make copies of any portions of such Tax Returns or retained books and records that relate to the Business or any of the Acquired Assets or Assumed Liabilities; and (iii) corporate charters, limited liability company agreements, qualifications to do business, taxpayer, and other identification numbers, corporate seals, minute books, stock or membership interest ledgers, stock or membership interest certificates, and any other documentation related to governance, organization, maintenance or existence of Seller; provided, that Buyer shall have the right to make copies of any portions of such documents and records;

(b) the rights of Seller under this Agreement, the Ancillary Agreements and all cash and non-cash consideration payable or deliverable to Seller under this Agreement;

(c) Permits that are not transferable;

(d) all shares of capital stock or other equity interests in Seller or any of Seller's Affiliates or any securities convertible into, exchangeable or exercisable for shares of capital stock or other equity interests in Seller or any of Seller's Affiliates;

(e) (i) all rights under or arising out of insurance policies not relating to the Acquired Assets, (ii) all insurance proceeds received or to become due in connection with such rights, and (iii) all business interruption insurance proceeds;

(f) all current and prior director and officer insurance policies of Seller and all rights of any nature with respect thereto, including all insurance recoveries thereunder and rights to assert claims with respect to any such insurance recoveries;

(g) subject to Section 2.5, all Contracts that are not Assumed Contracts and any deposits related thereto;

(h) any causes of action, claims and demands of whatever nature arising from or in connection with the Business and operation of the Acquired Assets, in each case relating to any period, or portion of any period, preceding the Closing Date, other than those Acquired Assets set forth in or relating to Section 2.1(iv), Section 2.1(vii), Section 2.1(xii) and Section 2.1(xiv);

(i) all Employee Benefit Plans and all trust funds and Contracts related thereto;

(j) all rights in or to assets leased or licensed by Seller (as lessee or licensee) except to the extent the liabilities and obligations under the associated lease or license are assumed by Seller and such lease or license is assigned to Buyer;

(k) documents prepared in connection with this Agreement or the transactions contemplated hereby or relating to the Bankruptcy Cases, and other Documents not related to the Business or the Acquired Assets;

(l) all rights or interests in and to any Tax refunds or credits that are not related to the Acquired Assets or the Business for any period or a portion thereof prior to or ending on the Closing Date;

(m) the Cash Purchase Price; provided, and for the avoidance of doubt, that all other cash of Seller is an Acquired Asset; and

(n) those additional assets listed on **Schedule 2.2** as Excluded Assets, as applicable.

2.3 **Assumption of Liabilities.** Upon the terms and subject to the conditions of this Agreement, Buyer shall, effective at the time of the Closing, assume and agree to discharge and perform when due, the Liabilities of Seller (and only those Liabilities of Seller) which are enumerated in this Section 2.3 (the “**Assumed Liabilities**”). The following Liabilities of Seller (and only the following Liabilities) shall constitute the Assumed Liabilities:

(a) all Cure Amounts due and owing under any Assumed Contracts;

(b) all of Seller’s Liabilities under the Assumed Contracts arising on and after the Closing Date;

(c) trade payables of Seller that were (i) incurred by Seller after the Petition Date in the Ordinary Course of Business in accordance with the Budget and (ii) not yet paid as of the Closing Date (other than those owing for professional services to retained professionals in the Bankruptcy Cases); provided that any cash advanced under the DIP Loan to pay such budgeted trade payable shall be an Acquired Asset;

(d) all Liabilities arising out of the operation or ownership of the Acquired Assets first arising during, and related to, any period following the Closing Date;

(e) any Administrative Claims pursuant to Section 503(b)(9) of the Bankruptcy Code, to the extent allowed by the Bankruptcy Court, related to the operation of the Business, provided that such amounts may be paid other than in a lump sum to the extent so agreed with the applicable claimants;

(f) those specific Liabilities of Seller (if any) identified on **Schedule 2.3(f)** attached hereto;

(g) all Tax liabilities relating to the Acquired Assets for a Tax period (or a portion thereof) beginning on or after the Petition Date to the extent such Tax liabilities are Administrative Claims;

(h) all Transaction Taxes;

(i) all employee related liabilities for salaries and wages that are post-petition Administrative Claims, including all Assumed WARN Obligations; provided, that Buyer shall not have a requirement to assume or fund any amounts for this category to the extent such items do not represent Administrative Claims (including severance amounts,

bonus amounts, or otherwise) or are not incurred in the Ordinary Course of Business in accordance with the Budget;

(j) those specific Liabilities of Seller identified on Schedule 2.3(j) related to retention payments owed to Transferred Employees on Schedule 2.3(j), which amounts total \$137,750 and shall be paid within thirty (30) days after the Closing Date to those Transferred Employees that remain employees of Buyer on the 30th day after the Closing Date; provided that Buyer shall be obligated to pay any Administrative Claim, to the extent allowed by the Bankruptcy Court, for retention payment obligations appearing on Schedule 2.3(j) that are incurred by the Debtors for any such Transferred Employee, if such Transferred Employee is terminated by Buyer without cause before the 30th day after the Closing Date;

(k) Claims for post-petition stub-rent under real property leases that are rejected or are otherwise not Assumed Contracts; and

(l) all Liabilities specifically assumed in Section 6.3, which Seller estimates will total approximately \$745,000 on the contemplated Closing Date.

2.4 Excluded Liabilities. Except for the Assumed Liabilities assumed by Buyer, Buyer shall not assume or be liable for or bound by any Liability of Seller, including any duties, responsibilities, liabilities, assessments, penalties or obligations of any kind or nature, whether known or unknown, whether asserted or unasserted, whether accrued or unaccrued, whether contingent or non-contingent, presently in existence or arising hereafter, disputed or undisputed, liquidated or unliquidated, at Law or in equity or otherwise, including any Liability based on successor liability theories (herein referred to as the “**Excluded Liabilities**”), including without limitation the following specific Liabilities to the extent they do not otherwise constitute Assumed Liabilities:

(a) any and all Liabilities for Taxes of Seller or any of its Affiliates or any shareholder or equity owner of Seller or Affiliate, or for which such Seller or Affiliate may be liable, but excluding those expressly enumerated in Section 2.3;

(b) any and all Liabilities arising out of or relating to the Indebtedness of Seller or any of its Affiliates;

(c) any and all Liabilities of Seller under any Contract of Seller that is not an Assumed Contract, whether accruing prior to, at, or after the Closing Date;

(d) any and all Liabilities arising under any Environmental Law or any other Law in connection with any environmental, health, or safety matters, including as a result of any action or inaction of Seller or of any third party relating to the storage, use, or operation of the Acquired Assets on or prior to the Closing Date;

(e) any pre-Closing litigation claim or assessment, equitable remedy, breach of Contract (excluding Buyer’s obligation to pay the Cure Amounts with respect to the Assumed Contracts and Assumed Liabilities), tort, infringement, violation of Law by

Seller or any of its Affiliates arising from any facts, events or circumstances arising on or prior to the Closing Date, in each case, of any kind or nature whatsoever and whether related to the Acquired Assets or the Business or otherwise and regardless of when commenced;

(f) any and all Liabilities (i) that are the subject of any dispute, litigation, arbitration, judgment, Order, decree or other proceeding as of the Closing Date, (ii) with respect to periods prior to the Closing Date and are or could be asserted as a claim in litigation or arbitration after the Closing Date, or (iii) arising as a result of actions or omissions with respect to services provided to customers prior to the Closing (including, all matters noticed or pending and any such liabilities or obligations that otherwise would be Assumed Liabilities), except to the extent that any of the foregoing relates to any of the liabilities or obligations expressly enumerated in Section 2.3;

(g) any Liabilities of Seller arising out of the ownership or operation of an Excluded Asset, including, for the avoidance of doubt, any Liability with respect to any Employee Benefit Plan, except to the extent that any of the foregoing relates to any of the liabilities or obligations expressly enumerated in Section 2.3;

(h) any Liability of Seller or any of its ERISA Affiliates under Title IV of ERISA;

(i) any Liability of Seller or any of its ERISA Affiliates under COBRA except as provided in Section 6.3(g) below;

(j) any pension or retirement Liability of Seller to its current or former employees which are accrued as of the Closing Date, whether or not under any Employee Benefit Plan;

(k) any and all Liabilities in any way attributable to (i) the employment or service of former employees, current or former officers or directors of Seller or any current or former subsidiary of Seller, regardless of whether such Liability is attributable to the period before, on or after the Closing Date, or (ii) the employment of employees to the extent attributable to the period at or before the Closing, except to the extent that any of the foregoing relates to any of the liabilities or obligations expressly enumerated in Section 2.3. For the avoidance of doubt, Seller is not assuming, and shall have no liability for, any change in control, severance, separation pay or other similar payments or benefits, including any key employee retention payments, to any current or former employee or any current or former officer and director, except those set forth on **Schedule 2.3(j)** and in Section 2.3(j) for Transferred Employees;

(l) any and all Liabilities for all current and prior director and officer insurance policies of Seller;

(m) except as set forth in the Budget (which obligations shall be paid in accordance with the DIP Order and the DIP Loan Agreement), any and all Liabilities for: (i) costs and expenses incurred by Seller or owed in connection with the administration of

the Bankruptcy Cases (including the U.S. Trustee fees, the fees and expenses of attorneys, accountants, financial advisors, consultants, and other professionals retained by Seller, and any official or unofficial creditors' committee); and (ii) all costs and expenses of Seller incurred in connection with the negotiation, execution, and consummation of the transactions contemplated under this Agreement;

(n) any and all Liabilities arising out of related to the Excluded Assets;

(o) any Liability not expressly included among the Assumed Liabilities and specifically so assumed; and

(p) all Liabilities (i) existing prior to the filing of the Bankruptcy Cases that are subject to compromise in the Bankruptcy Cases, other than the Cure Amounts and (ii) to the extent not otherwise expressly assumed herein, incurred subsequent to the filing of the Bankruptcy Cases and prior to the Closing.

2.5 Assignment and Assumption of Contracts.

(a) Assignment and Assumption at the Closing.

(i) **Schedule 2.5(a)(1)** sets forth a list of all executory Contracts to which Seller is a party together with estimated Cure Amounts and **Schedule 2.5(a)(2)** sets forth a list of all executory Contracts to which Seller is a party and which Buyer has designated to be included in the Acquired Assets (the "**Assumed Contracts**"), together with estimated Cure Amounts for each Assumed Contract and such other commercial information related to the Contracts listed thereon as shall be reasonably requested by Buyer (the "**Assigned Contracts List**"). Seller has also provided, together with **Schedule 2.5(a)(1)**, a list of any nonmonetary obligations that Seller believes must be otherwise satisfied, including pursuant to Section 365(b)(1)(A) and (B) of the Bankruptcy Code, in order for Buyer to take assignment of the Assumed Contracts pursuant to this Agreement.

(ii) As soon as practicable following the entry of the Bid Procedures Order, Seller shall serve a notice substantially in the form attached as an exhibit to the Bid Procedures Order (the "**Assumption and Assignment Notice**"), by first class mail, on all non-debtor counterparties to all of Seller's executory contracts and unexpired leases related to the Business, which executory contracts or leases include, without limitation, all Contracts listed on the Executory Contracts List. The Assumption and Assignment Notice shall include all information required by the Bid Procedures Order, including the relevant Cure Amount. In cases in which Seller is unable to establish that a default exists, the relevant Cure Amount shall be set at \$0.00.

(iii) No later than three days prior to the scheduled Auction, (i) Buyer will notify Seller of any additions or subtractions of Contracts to the Executory Contracts List and (ii) Seller will file and serve on each applicable Contract counterparty (x) notice that its Contract has, as of that date, been determined to be an Assumed Contract; or (y) notice that its Contract has, as of that date, been determined not to be an Assumed

Contract. No later than one day prior to the Sale Hearing, (i) Buyer will notify Seller of any subtractions of Contracts to the Assigned Contracts List and (ii) Seller will file and serve on each applicable Contract counterparty notice that the relevant Contract has, as of that date, been determined not to be an Assumed Contract. Service of notices pursuant to this provision shall be made via email to all email addresses available to Seller for the counterparty in its files, and via first class mail to all addresses available to Seller for the counterparty in its files. At the Closing, and subject to the approval of the Bankruptcy Court pursuant to the Sale Order or such other Order of the Bankruptcy Court, Seller shall assume and assign any and all Assumed Contracts to Buyer.

(iv) Notwithstanding the foregoing or anything to the contrary in the Bid Procedures Order, at any time prior to Closing, Buyer may remove any Contract from the Assigned Contracts List by delivering written notice to Seller, and any such Contract shall not be assumed by the Seller and assigned to the Buyer.

(v) The Bid Procedures Order shall provide that, if an objection is not timely and properly filed and served in accordance with the Bid Procedures Order, (i) Seller's proposed Cure Amount shall be controlling with respect to the Contract notwithstanding anything to the contrary in any Contract or any other document, (ii) such Contract shall be assigned to Buyer, (iii) the failure to object shall be deemed consent by the counterparty to the assumption and assignment for the purposes of Section 365(c) of the Bankruptcy Code or otherwise, (iv) the counterparty to the Contract shall be forever barred from asserting any other claim arising prior to the assignment, if applicable, against Seller and Buyer and (v) with respect to the Contract, Buyer's promise to perform under the Contract shall be deemed adequate assurance of future performance under the Contract.

(vi) At Buyer's request, Seller shall reasonably cooperate from the date hereof forward with Buyer as reasonably requested by Buyer (i) to allow Buyer to enter into an amendment of any Assumed Contract upon assumption of such Assumed Contract by Buyer (and Seller shall reasonably cooperate with Buyer to the extent reasonably requested by Buyer in negotiations with the counterparties thereof), or (ii) to otherwise amend any Assumed Contract to the extent such amendments would not adversely affect Seller; provided, however, that Seller shall not be required to enter into any such amendment if such amendment would result in an assumption by Seller of such Assumed Contract, unless such Assumed Contract will be assigned to Buyer at the time of such assumption; provided, further, that any amendment entered into pursuant to this Section 2.5 shall be effective only if the Closing occurs and only as of the Closing Date, unless otherwise agreed by Seller and Buyer.

(vii) Prior to the Closing Date, Seller shall not reject, terminate, amend, supplement, modify, waive any rights under, or create any Lien with respect to any Contract, or increase, or take any affirmative action not required by the terms thereof, any payments required to be paid thereunder by Seller or Buyer contingent upon any such Contract becoming an Assumed Contract, without the prior written consent of Buyer.

(b) Non-Assignment of Contracts and Permits. Notwithstanding anything contained in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign or transfer any Assumed Contract or any Permit, if, notwithstanding the provisions of Sections 363 and 365 of the Bankruptcy Code, an attempt at assignment or transfer thereof, without the consent or approval of, or granting or issuance of any license or permit by, any third party thereto (each such action, a “**Necessary Consent**”), would constitute a breach thereof or in any way adversely affect the rights of Buyer thereunder. In such event, Seller and Buyer will use their commercially reasonable efforts to obtain the Necessary Consents with respect to any such Assumed Contract or Permit or any claim or right or any benefit arising thereunder for the assignment thereof to Buyer as Buyer may reasonably request. If, notwithstanding the provisions of Sections 363 and 365 of the Bankruptcy Code such Necessary Consent is not obtained, neither Seller nor Buyer shall be in breach of this Agreement nor shall the Purchase Price be adjusted nor (but subject to Buyer’s termination right set forth in Section 11.1(c)) shall the Closing be delayed in respect of the Assumed Contracts or the Permits; provided, however, if the Closing occurs, then, from and after the Closing, Seller shall cooperate with Buyer to provide Buyer with all of the benefits of, or under, the applicable Assumed Contract or applicable Permit, including enforcement for the benefit of Buyer of any and all rights of Seller against any party to the applicable Assumed Contract or applicable Permit arising out of the breach or cancellation thereof by such party; provided, however, to the extent that any such arrangement has been made to provide Buyer with the benefits of, or under, the applicable Assumed Contract or applicable Permit, from and after Closing, Buyer shall be responsible for, and shall promptly pay, (x) all costs and expenses of Seller to establish, implement, monitor, maintain, execute on, or carry into effect any such arrangement (including any costs and expenses incurred in connection with enforcing rights under any such Assumed Contract or Permit), and (y) all payment and other obligations under such Assumed Contract or Permit (all of which shall constitute, and shall be deemed to be, Assumed Liabilities hereunder) to the same extent as if such Assumed Contract or Permit had been assigned or transferred at the Closing with respect to Assumed Contracts and Permits, and at such applicable later date specified in this Section 2.5 with respect to any additional Assumed Contracts. Anything in this Agreement to the contrary notwithstanding, the obligation of Seller to cooperate with Buyer set forth in this Section 2.5(b) shall terminate upon the dismissal of the Bankruptcy Cases, the conversion of the Bankruptcy Cases and/or the appointment of a Chapter 7 or 11 trustee. Any assignment to Buyer of any Assumed Contract or Permit that shall, notwithstanding the provisions of Sections 363 and 365 of the Bankruptcy Code, require the consent or approval of any Person for such assignment in accordance with Section 365(c) of the Bankruptcy Code shall be made subject to such consent or approval being obtained.

ARTICLE 3 **CONSIDERATION**

3.1 Purchase Price. The aggregate consideration for the Acquired Assets (the “**Purchase Price**”) will be:

(a) the discharge in full of all amounts outstanding and obligations under the DIP Loan, including the principal amount of Indebtedness and interest accrued as of the Closing Date, plus any penalty, pre-payment fees or other amounts owed under the DIP Loan;

(b) the discharge in full of all amounts outstanding and obligations under the Revolving Credit Loan, including the principal amount of indebtedness and interest accrued as of the Closing Date, plus any penalty, pre-payment fees or other amounts owed under the

(c) the discharge of a portion of the principal amount outstanding and obligations under the Term Loan and the Capex Loan, such that the aggregate amount of funds discharged under clauses (a), (b) and (c) of this Section 3.1 is equal to \$16,000,000 (such aggregate amount, the “**Credit Bid Consideration**”);

(d) an amount equal to the Cure Amounts;

(e) without duplication of the amounts set forth in (d), the assumption of the Assumed Liabilities; and

(f) \$50,000 (the “**Cash Purchase Price**”).

3.2 Payment of the Credit Bid Consideration. On the Closing Date, Buyer will satisfy the Credit Bid Consideration by:

(a) releasing Seller from the Indebtedness under the DIP Loan and any other documents or agreements entered into in connection therewith in an amount equal to all amounts outstanding thereunder;

(b) releasing Seller from the Indebtedness under the Revolving Credit Loan and any other documents or agreements entered into in connection therewith in an amount equal to all amounts outstanding thereunder; and

(c) releasing Seller from Indebtedness under Term Loan and the CapEx Loan and any other documents or agreements entered into in connection therewith in an amount equal to (i) the Credit Bid Consideration, minus (ii) the sum of (A) the amount of Indebtedness discharged pursuant to Section 3.2(a) and (B) the amount of Indebtedness discharged pursuant to Section 3.2(b), which amount shall be payable by means of a dollar-for-dollar credit against the principal face amount of such Indebtedness (such remaining Indebtedness, the “**Remaining Balance**”). The Remaining Balance shall be apportioned ratably between the Term Loan Indebtedness and the CapEx Loan Indebtedness.

3.3 Allocation of Purchase Price.

(a) Within forty-five (45) days after the Closing Date, Buyer shall deliver to Seller a statement (the “**Allocation Statement**”) allocating, solely for Tax purposes, the Purchase Price and any other items that are treated as additional purchase price for Tax purposes

among the Acquired Assets. The Allocation Statement shall be reasonable and prepared in accordance with Section 1060 of the Code and the Treasury Regulations promulgated thereunder.

(b) The Parties hereby agree to (i) be bound by the Allocation Statement for Tax purposes, (ii) act in accordance with the Allocation Statement in connection with the preparation, filing and audit of any Tax Return (including, in the filing of IRS Form 8594 and any other corresponding Tax forms), and (iii) take no position inconsistent with the Allocation Statement for any Tax purpose (including, in any audit, judicial or administrative proceeding) unless otherwise required by applicable law or pursuant to the good faith resolution of a tax contest.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the schedules delivered by Seller herewith (the “**Disclosure Schedules**”), which Disclosure Schedules shall be deemed a part hereof and shall qualify any representation made herein to the extent of the disclosure contained in the corresponding section of the Disclosure Schedules, Seller hereby represents and warrants to Buyer as follows:

4.1 Organization; Standing and Power. Except as set forth on **Schedule 4.1(a)**, Each Seller is an entity duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization and, subject to the limitations imposed on such Seller as a result of having filed a petition for relief under the Bankruptcy Code, has the requisite power and authority to own, lease and operate its properties and to carry on its business as now conducted. Subject to entry of the Bid Procedures Order and the Sale Order, each Seller has the power and authority to execute, deliver and perform this Agreement and all writings relating hereto. Except as a result of the commencement of the Bankruptcy Cases, Seller is qualified to do business and is in good standing in each jurisdictions where the character of the Business or nature of its owned or leased property operated in connection with the Business makes such qualification necessary, except for such failure to be so qualified or in good standing as would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the Business, taken as a whole.

4.2 Validity and Execution. The execution, delivery and performance of this Agreement by each Seller and the consummation by each Seller of the transactions contemplated herein have been duly and validly authorized by all required corporate action in respect thereof. This Agreement has been duly executed and delivered by each Seller and each other Ancillary Agreement to which a Seller is a party will be duly and validly executed and delivered by a Seller at the Closing and, subject to requisite Bankruptcy Court approval, will constitute the valid and binding obligations of a Seller enforceable against it in accordance with their respective terms, except as may be limited by any bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or other laws (whether statutory, regulatory or decisional), now or hereafter in effect, relating to or affecting the rights of creditors generally or by equitable principles (regardless of whether considered in a proceeding at law or in equity).

4.3 Conflicts; Consents of Third Parties.

(a) Except as set forth on **Schedule 4.3(a)**, which exceptions will be resolved if the Bidding Procedures Order and the Sale Order are entered, and subject in all respects to Section 365 (f) of the Bankruptcy Code, the execution and delivery by each Seller of this Agreement and each other agreement, document or instrument contemplated hereby or thereby to which it is a party, the consummation of the transactions contemplated hereby and thereby and compliance by such Seller with any of the provisions of this Agreement do not conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination or cancellation under any provision of (i) the certificate or articles of formation and operating agreement and by-laws or comparable organizational documents of any Seller; (ii) subject to entry of the Bidding Procedures Order and the Sale Order, any Contract or Permit to which any Seller is a party or by which any of the properties or assets of any Seller is bound; (iii) subject to entry of the Bidding Procedures Order and the Sale Order, any Order of any Governmental Authority applicable to such Seller or any of the properties or assets of any Seller as of the date of this Agreement; or (iv) subject to entry of the Bidding Procedures Order and the Sale Order, any applicable Law, other than, in the case of clauses (ii), (iii) and (iv), such conflicts, violations, defaults, terminations or cancellations that would not reasonably be expected to have, individually or in the aggregate, a material adverse effect.

(b) Except as set forth on **Schedule 4.3(b)**, which exceptions will be resolved if the Bidding Procedures Order and the Sale Order are entered, and subject in all respects to Section 365 (f) of the Bankruptcy Code, no consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Person or Governmental Authority is required on the part of any Seller in connection with the execution and delivery of this Agreement or any other agreement, document or instrument contemplated hereby or thereby to which it is a party, the compliance by any Sellers with any of the provisions hereof or thereof, the consummation of the transaction contemplated hereby or thereby or the taking by any Seller of any other action contemplated hereby or thereby, except for (i) compliance with the applicable requirements of the HSR Act, (ii) the entry of the Bidding Procedures Order and the Sale Order, and (iii) such other consents, waivers, approvals, Orders, Permits, authorizations, declarations, filings and notifications, the failure of which to obtain or make would not reasonably be expected to have, individually or in the aggregate, a material adverse effect.

4.4 No Subsidiaries. Except as set forth on **Schedule 4.4**, each Seller does not have any subsidiaries and does not, directly or indirectly, own any interest in any other corporation, partnership, limited liability company, limited partnership, joint venture or other business association or entity.

4.5 Title to and Use of Acquired Assets. Seller owns, leases or has the legal right to use all the Acquired Assets, and, upon delivery to Buyer on the Closing Date of the instruments of transfer contemplated in Section 10.2(b) and entry of the Sale Order, Buyer will (subject to Section 2.5(b)) be vested, to the maximum extent permitted by Sections 363 and 365 of the Bankruptcy Code, with good and valid title to the Acquired Assets free and clear of all Encumbrances, other than Assumed Liabilities and Permitted Liens, and subject to the limitation that certain transfers, assignments, licenses, leases and Permits, and any Claim or right or benefit

arising thereunder or resulting therefrom, may require the consent of a third party as reflected on **Schedule 4.3(a)** or Governmental Authority as reflected on **Schedule 4.3(b)**. The Acquired Assets transferred to Buyer at the Closing constitute all of the properties used in or held for use in the Business and will be sufficient for Buyer to conduct the Business after Closing in substantially the same manner as conducted by Seller on the Execution Date without interruption and in the Ordinary Course of Business as it has been conducted by Seller.

4.6 **No Brokers or Finders.** No agent, broker, finder or investment or commercial banker, or other Person or firm engaged by, or acting on behalf of, Seller in connection with the negotiation, execution or performance of this Agreement or the transactions contemplated by this Agreement is or will be entitled to any brokerage or finder's or similar fees or other commissions as a result of this Agreement or such transactions.

4.7 **Warranties Are Exclusive.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER SELLER NOR ANY OTHER PERSON HAS MADE OR MAKES ANY REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, IN RESPECT OF ANY MATTER RELATING TO ITS ASSETS (INCLUDING THE ACQUIRED ASSETS), LIABILITIES (INCLUDING THE ASSUMED LIABILITIES) OR OPERATIONS, INCLUDING, WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, OR NON-INFRINGEMENT, AND ANY SUCH OTHER REPRESENTATIONS OR WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED AND NONE SHALL BE IMPLIED AT LAW OR IN EQUITY. BUYER HEREBY ACKNOWLEDGES AND AGREES THAT BUYER IS PURCHASING THE ACQUIRED ASSETS ON AN "AS IS, WHERE IS" BASIS AFTER GIVING EFFECT TO THE TERMS CONTAINED HEREIN.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller as follows:

5.1 **Organization, Standing and Power.** Buyer is duly organized, validly existing and in good standing under the laws of the state of Kansas. Buyer has all requisite entity power and authority to own, lease and operate its properties, to carry on its business as now being conducted and to execute, deliver and perform this Agreement and all writings relating hereto. Buyer is qualified to do business and is in good standing in all jurisdictions where it owns or leases real property in connection with the operation of its business.

5.2 **Authorization and Validity.** The execution, delivery and performance of this Agreement by Buyer and the consummation by Buyer of the transactions contemplated herein have been duly and validly authorized by all required corporate action in respect thereof. This Agreement has been duly executed and delivered by Buyer and each other Ancillary Agreement to which Buyer is a party will be duly and validly executed and delivered by Buyer at the Closing. This Agreement and the other Ancillary Agreements to which Buyer is a party and will constitute the valid and binding obligations of Buyer enforceable against it in accordance with their respective terms, except as may be limited by any bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or other laws (whether statutory, regulatory or decisional), now

or hereafter in effect, relating to or affecting the rights of creditors generally or by equitable principles (regardless of whether considered in a proceeding at law or in equity).

5.3 No Conflicts. The consummation of the transactions herein contemplated, and the performance of, fulfillment of and compliance with the terms and conditions hereof by Buyer will not: (i) conflict with or result in a breach of the certificate of incorporation or bylaws of Buyer; (ii) violate any Law, or (iii) violate or conflict with or constitute a default under any Contract to which Buyer is a party or by which Buyer or its assets or properties may be bound.

5.4 Financial Ability. Buyer has (and will as of the Closing have) sufficient committed cash to enable Buyer to consummate the transaction contemplated by this Agreement, the Ancillary Agreements and all other agreements, documents or arrangements relating to the transaction contemplated by this Agreement.

5.5 No Brokers or Finders. No agent, broker, finder or investment or commercial banker, or other Person or firm engaged by, or acting on behalf of, Buyer in connection with the negotiation, execution or performance of this Agreement or the transactions contemplated by this Agreement is or will be entitled to any brokerage or finder's or similar fees or other commissions as a result of this Agreement or such transactions for which Seller will be responsible.

5.6 No Other Representations and Warranties. Except for the representations and warranties contained in this ARTICLE 5, neither Buyer nor any other Person authorized by Buyer makes any other express or implied representation or warranty on behalf of Buyer.

ARTICLE 6

COVENANTS AND OTHER AGREEMENTS

6.1 Pre-Closing Covenants of Seller. Seller covenants to Buyer that, during the period from and including the Execution Date through and including the Closing Date or the earlier termination of this Agreement in accordance with the provisions of ARTICLE 11:

(a) Cooperation. Seller shall take, or cause to be taken, all reasonable actions and do, or cause to be done, all things reasonably necessary or proper, consistent with applicable Law and the Orders of the Bankruptcy Court to consummate the transactions contemplated by this Agreement; provided, however, that nothing in this Section 6.1(a) shall be deemed to supersede the limitations on cooperation set forth in Section 2.5(a)(vi).

(b) Access to Records and Properties. Seller shall, at Buyer's sole cost and expense (i) provide Buyer and its designated Persons reasonable access during normal business hours upon reasonable notice to the facilities, offices and personnel of Seller and to the books and records of Seller, related to the Business or the Acquired Assets or otherwise reasonably requested by Buyer if reasonably necessary to comply with the terms of this Agreement or the Ancillary Agreements or any applicable Law, and providing all information reasonably requested by Buyer with respect to any Contract, (ii) permit Buyer to contact the vendors, manufacturers, suppliers, contractors, licensors, customers and others having business relations with the Business and, as reasonably

requested by Buyer from time to time, use reasonable efforts to facilitate such contacts by Buyer, (iii) furnish Buyer with such financial and operating data and other information with respect to the condition (financial or otherwise), businesses, assets, properties, prospects or operations of Seller as Buyer shall reasonably request, and (iv) permit Buyer to make such reasonable inspections and copies thereof as Buyer may require; provided, however, Buyer shall use reasonable efforts to prevent any such inspection from unreasonably interfering with the operation of the Business or the duties of any employee of Seller. Notwithstanding anything in this Agreement or in any Ancillary Agreement to the contrary, no such access, information or cooperation shall be permitted or required to the extent that it would require Seller to disclose information subject to attorney-client privilege or would be prohibited by Law.

(c) Conduct of Business Prior to Closing. Except as expressly contemplated by this Agreement or disclosed on Schedule 6.1(c), except to the extent of the filing of the Bankruptcy Cases and thereafter as expressly required under the Bankruptcy Code or other applicable Law or any ruling or Order of the Bankruptcy Court and/or except to the extent waived by Buyer's prior written consent (such consent not to be unreasonably withheld, conditioned, delayed or denied), Seller shall (i) conduct the Business in the Ordinary Course of Business and in a manner substantially similar to the manner in which Seller has operated, consistent with past practice (including with respect to the payment of accounts payable of Seller), taking into account Seller's status as a debtor-in-possession in the Bankruptcy Cases, (ii) not, directly or indirectly, sell or otherwise transfer or dispose, or offer, agree or commit (in writing or otherwise) to sell or otherwise transfer or dispose of any of the Acquired Assets, except in the Ordinary Course of Business, (iii) not, directly or indirectly, permit, offer, agree or commit to permit, any of the Acquired Assets to become subject, directly or indirectly, to any Lien, Claim, Interest or Encumbrance, except for Permitted Liens, (iv) preserve intact the Business, to keep available the services of its current employees and agents and to maintain its relations and goodwill with its vendors, suppliers, customers, distributors and any others with whom or with which it has business relations, and (v) not file any motion with the Bankruptcy Court to take any action inconsistent with this Agreement including, this Section 6.1(c). Without limiting any Party's rights or obligations under this Agreement, the Parties understand and agree that (A) nothing contained in this Agreement shall give Buyer, directly or indirectly, the power to control or direct the operations of Seller, or the Business prior to the Closing and (B) prior to the Closing, Seller shall exercise consistent with, and subject to the terms and conditions of this Agreement, complete control and supervision of its operations.

(d) Bankruptcy Schedules. Seller shall file true and correct Schedules of Assets and Liabilities that are required to be filed under the Bankruptcy Code on or before fourteen (14) days after the Petition Date, or as such later date as approved by the Bankruptcy Court.

6.2 Pre-Closing Covenants of Buyer. Buyer covenants to Seller that, during the period from the Execution Date through and including the Closing or the earlier termination of this Agreement in accordance with the provisions of ARTICLE 11:

(a) Cooperation. Buyer shall take, or cause to be taken, all reasonable actions and do, or cause to be done, all things reasonably necessary or proper, consistent with applicable Law, to consummate and make effective as soon as possible the transactions contemplated by this Agreement.

(b) Adequate Assurance Regarding Assumed Contracts and Required Orders. Buyer agrees that it will cooperate as reasonably requested by Seller to assist in establishing adequate assurance of future performance within the meaning of Section 365 of the Bankruptcy Code with regard to the Assumed Contracts. Buyer shall take such actions as may be reasonably requested by Seller to assist Seller in obtaining the Bankruptcy Court's entry of the Sale Order and any other Order of the Bankruptcy Court reasonably necessary to consummate the transactions contemplated by this Agreement.

6.3 Employment Covenants and Other Undertakings.

(a) Employees. Prior to the Closing, Buyer shall offer to employ, commencing immediately following the Closing, substantially all employees of Seller at their salaries or hourly wage, as the case may be, applicable to their employment by Seller immediately prior to the Closing, and on other terms and conditions as Buyer shall determine in its sole discretion. Seller shall, upon reasonable notice from Buyer, during reasonable business hours, permit Buyer access to any employee records that Buyer may reasonably request in order to facilitate Buyer's hiring of substantially all of Seller's employees, including, but not limited to, job descriptions, time records, and payroll data. At least one week prior to the anticipated Closing Date, Seller shall permit Buyer, during business hours in a manner not to unreasonably disturb Seller's business, to solicit employment applications from Seller's employees. Such employees who accept Buyer's offer to employ and commence employment with Buyer as of the Closing Date shall be collectively referred to as the "**Transferred Employees.**" Seller shall deliver to Buyer on or before the Closing Date all personnel files and employment records relating to the Transferred Employees to the extent permitted by Law (including completed I-9 forms and attachments with respect to all Transferred Employees, except for such employees as Seller certifies in writing are exempt from such requirement). Effective as of the Closing Date, Buyer shall assume all obligations relating to, and give full credit for, all unused vacation and paid time off, in the aggregate, of each Transferred Employee accrued as of the Closing Date.

(b) Buyer Benefit Plans. Each Transferred Employee shall receive full credit for purposes of eligibility to participate in the employee benefit plans and arrangements maintained by Buyer in which such Transferred Employee participates for such Transferred Employee's service with Seller, to the extent permitted by the applicable employee benefit plan of Buyer. With respect to any welfare benefit plans maintained by Buyer for the benefit of Transferred Employees on and after the Closing Date, Buyer shall, to the extent permitted by the applicable employee benefit plan of Buyer, cause there to be waived any eligibility requirements, evidence of insurability and pre-existing condition limitations, and (ii) give effect, in determining any co-pay, deductible and maximum out-of-pocket limitations, amounts paid by such Transferred Employees on or after January 1, 2017 with respect to benefit plans heretofore maintained by Seller. For

the avoidance of doubt, Buyer is not assuming any Employee Benefit Plan and Seller shall remain liable for all obligations in connection therewith. Furthermore, all Transferred Employees shall enroll in Buyer's employee benefit plans as newly-hired employees and be subject to the rules, policies and procedures of those employee benefit plans.

(c) Forms W-2 and W-4. Seller and Buyer shall adopt the "standard procedure" for preparing and filing IRS Forms W-2 (Wage and Tax Statements) and Forms W-4 (Employee's Withholding Allowance Certificate) regarding the Transferred Employees (the "**IRS Forms**"). Under this procedure, Seller shall keep on file all IRS Forms W-4 provided by the Transferred Employees for the period required by applicable Law concerning record retention and Buyer will obtain new IRS Forms W-4 with respect to each Transferred Employee. For the avoidance of doubt, Seller shall be responsible for preparing, filing and distribution of all IRS Forms for Seller's employees, including the Transferred Employees, with respect to calendar year 2016.

(d) Employee Communications. Seller shall use commercially reasonable efforts to provide Buyer with a copy of any intended written communication to employees and obtain Buyer's approval, which approval shall not be unreasonably withheld, to such intended written communication prior to making any such communications to the employees pertaining to compensation or benefit matters that are affected by the transactions contemplated by this Agreement.

(e) WARN Obligations. Except to the extent provided below, Seller shall comply with and be solely responsible for all obligations, if any, under the federal Worker Adjustment Retraining and Notification Act, and any similar state or local Laws (collectively, "**WARN**") with respect to any employment actions taken on or before the Closing Date, all of which shall constitute Excluded Liabilities. Seller may, in its sole discretion, issue appropriate WARN notices related to the transactions contemplated hereby to its employees at any time and from time to time. Seller shall, in accordance with all applicable laws, terminate and discharge effective on the Closing Date any employees engaged with respect to the Acquired Assets as directed by Buyer (the "**Terminated Employees**"), with written notice of termination to each such employee, and pay all costs and expenses associated with such terminations; provided, however, that Buyer agrees to assume and indemnify and hold Seller harmless from and against, any obligations arising under WARN as a result of Seller's termination of the employment of the Terminated Employees on or after the Closing Date (the "**WARN Liabilities**"), except and to the extent any such WARN Liabilities are avoided as a result of Buyer's offer of employment to any of the Terminated Employees as contemplated herein (the "**Assumed WARN Obligations**").

(f) No Third Party Beneficiaries. Without limiting the generality of Section 6.3(f), Seller and Buyer acknowledge and agree that all provisions contained in this Section 6.3 are included for the sole benefit of Seller and Buyer, and that nothing herein, whether express or implied, shall create any third party beneficiary or other rights (i) in any other Person, including, any current or former employees, directors, officers or

consultants of Seller, any participant in any Employee Benefit Plan, or any dependent or beneficiary thereof, or (ii) to continued employment with Buyer or any of its Affiliates.

(g) COBRA. Only to the extent required by applicable Law, Buyer shall provide group health plan continuation coverage, pursuant to the requirements of COBRA, to all Seller's employees, former employees of Seller receiving group health plan continuation coverage from Seller on the Closing Date, and former employees of Seller who are in a COBRA-election period on the Closing Date, each only to the extent that such persons: (i) properly request such coverage; (ii) will not be hired by Buyer; and (iii) timely pay for such coverage.

(h) Other Obligations. Except as otherwise required by Law, as specifically assumed by Buyer hereunder or as otherwise agreed in writing by Buyer and/or its Affiliates, neither Buyer nor any of its Affiliates shall be obligated to provide any severance, separation pay or other payments or benefits, including any key employee retention payments and any change in control payments, to any employee on account of any termination of such employee's employment, and all such severance, separation pay and other payments and benefits (if any) shall remain obligations of Seller. For the avoidance of doubt, notwithstanding anything contained herein, Seller shall be responsible for (and Buyer shall not be liable for) any wages or other remuneration, including, without limitation, with respect to paid time off or severance, due to any employee, whether with respect to their services as an employee through the Closing Date or otherwise.

6.4 Approvals.

(a) Each Party shall, as promptly as possible, use its reasonable efforts to obtain, or cause to be obtained, all consents, authorizations, Orders and approvals from all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement. Each Party shall cooperate fully with the other Party in promptly seeking to obtain all such consents, authorizations, Orders and approvals. The Parties shall not willfully take any action that has, or is reasonably likely to have, the effect of delaying, impairing or impeding the receipt of any such required consents, authorizations, Orders and approvals.

(b) All analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals made by or on behalf of any Party before any Governmental Authority or the staff or regulators of any Governmental Authority, in connection with the transactions contemplated by this Agreement (but, for the avoidance of doubt, not including any interactions between Seller and Governmental Authorities in the Ordinary Course of Business or any disclosure which is not permitted by Law or which would require disclosure by a Party of information subject to attorney-client privilege) shall be disclosed to the other Parties in advance of any filing, submission or attendance, it being the intent that the Parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, meetings, discussions, presentations, memoranda, briefs,

filings, arguments, and proposals. Each Party shall give notice to the other Party with respect to any meeting, discussion, appearance or contact with any Governmental Authority or the staff or regulators of any Governmental Authority, with such notice being sufficient to provide the other Party with the opportunity to attend and participate in such meeting, discussion, appearance or contact. Notwithstanding the foregoing, Buyer shall not be required to disclose to Seller any commercially sensitive materials pursuant to this Section 6.4 which, in Buyer's reasonable judgment, is confidential or proprietary to Buyer or its business.

6.5 Release of Liens. Seller shall use its commercially reasonable efforts to obtain entry of a Sale Order approving the transfer of the Acquired Assets free and clear of all Encumbrances, except Permitted Liens. Seller shall reasonably cooperate with Buyer (at no cost to the Seller) as reasonably necessary to enable Buyer to obtain termination statements and releases of liens and encumbrances.

6.6 Intellectual Property Registration. As promptly as possible following the Execution Date, Seller shall reasonably cooperate with Buyer (at no cost to the Seller) as reasonably necessary and take any and all actions necessary to ensure that Buyer is listed in the assignment records in the United States Patent and Trademark Office or the appropriate U.S. federal, state or non-U.S. authority as the sole owner for all applicable Intellectual Property of Seller.

6.7 Post-Closing Access. In order to facilitate Seller's efforts to administer and close the Bankruptcy Cases (including, the preparation of filings in the Bankruptcy Cases and state, local and federal Tax Returns and other filings, reconciliation of claims filed in the Case, removal of corporate and other records and information relating or belonging to entities other than Seller), for a period of one (1) year following the Closing, (a) Buyer shall permit Seller's counsel and other professionals and counsel for any successor to Seller and its respective professionals, and its employees (collectively, "**Permitted Access Parties**") reasonable access to the financial and other books and records relating to the Acquired Assets or the Business and the systems containing such information, books and records, which access shall include (i) the right of such Permitted Access Parties to copy, at such Permitted Access Parties' expense, such documents and records as they may request in furtherance of the purposes described above, and (ii) Buyer's copying and delivering to the relevant Permitted Access Parties such documents or records as they may request, but only to the extent such Permitted Access Parties furnish Buyer with reasonably detailed written descriptions of the materials to be so copied and the applicable Permitted Access Party reimburses Buyer for the reasonable costs and expenses thereof, and (b) Buyer shall provide the Permitted Access Parties (at no cost to the Permitted Access Parties) with reasonable access to those individuals with knowledge of how to access the relevant financial and books and records during regular business hours to assist Seller and the other Permitted Access Parties in their post-Closing activities (including, preparation of Tax Returns), provided, that such access does not unreasonably interfere with Buyer's business operations.

ARTICLE 7

TAXES

7.1 Taxes Related to Purchase of Acquired Assets.

(a) Buyer shall be responsible for and timely pay all transfer, sales, use, conveyance, recording and similar Taxes, including all such state and local Taxes, incurred in connection with the transfer of the Acquired Assets, and all recording and filing fees (collectively, “**Transaction Taxes**”), that are imposed solely as a result of the sale, transfer, assignment and delivery of the Acquired Assets. Buyer and Seller shall allocate the Purchase Price of the Acquired Assets for Transaction Taxes in the same manner referenced in Section 3.3 and as detailed in Exhibit F. Notwithstanding the time period in Section 3.3 relating to the Allocation Statement, Buyer and Seller shall cooperate to (i) determine the amount of Transaction Taxes payable in connection with the transactions contemplated under this Agreement, and (ii) prepare and file any and all required Tax Returns for or with respect to such Transaction Taxes with any and all appropriate taxing authorities. Buyer and Seller shall cooperate in providing each other with any appropriate certification and other similar documentation relating to any exemption from Transaction Taxes (including any appropriate resale exemption certifications), as provided under applicable Law.

(b) Subject to Sections 2.3(g), on or prior to the Closing Date, Seller shall pay all post-petition sales Taxes, use Taxes, payroll Taxes, and other Taxes which are then due and owing by Seller (and not any member or owner thereof) with respect to the Acquired Assets and the Business and attributable to Tax periods or portions thereof commencing on or after the Petition Date and ending on the Closing Date; provided, however, Seller shall not be obligated to pay any such Tax that is disputed in good faith by Seller, as long as appropriate reserves have been established in accordance with GAAP. All sales Taxes, use Taxes, payroll Taxes, real property Taxes, personal property Taxes and other ad valorem Taxes with respect to the Acquired Assets that accrue during, or attributable to, the period on or prior to the Closing Date and become due on or after the Closing Date shall be paid by Seller. All sales Taxes, use Taxes, payroll Taxes, real property Taxes, personal property Taxes and other ad valorem Taxes with respect to the Acquired Assets that both accrue and are due after the Closing Date shall be paid by Buyer. For purposes of this Agreement, whenever it is necessary to determine the liability for any such Taxes subject to this Section 7.1(b) for a taxable period that begins before the Closing Date and ends after the Closing Date (a “**Straddle Period**”), the Taxes for the portion of the Straddle Period ending on and including the date immediately prior to the Closing Date, which Seller shall pay, and for the portion of the Straddle Period beginning on the Closing Date, which Buyer shall pay, shall be deemed to be the amount of such Tax for the entire Straddle Period multiplied by a fraction the numerator of which is the number of calendar days during the Straddle Period before and including the date immediately prior to the Closing Date, or the number of calendar days during the Straddle Period beginning on the Closing Date, as applicable, and the denominator of which is the number of calendar days in the entire Straddle Period. Buyer and Seller shall

cooperate and prepare and file any and all required Tax Returns with respect to Taxes subject to this Section 7.1(b).

7.2 Waiver of Bulk Sales Laws. To the greatest extent permitted by applicable Law, Buyer and Seller hereby waive compliance with the terms of any bulk sales or similar Laws in any applicable jurisdiction in respect of the transactions contemplated by this Agreement.

ARTICLE 8

BANKRUPTCY COURT MATTERS

8.1 Motions. On the Petition Date, Seller shall file with the Bankruptcy Court, a motion or motions in form and substance reasonably acceptable to Buyer (a “**Sale Motion**”), seeking the Bankruptcy Court’s approval of (a) the Bid Procedures Order in a form reasonably satisfactory to the Buyer, (b) the Sale Order in a form reasonably satisfactory to the Buyer, and (c) the transactions contemplated in this Agreement (subject to higher and otherwise better offers). Seller shall affix a true and complete copy of this Agreement to such motion or motions (as the case may be) filed with the Bankruptcy Court. The Sale Motion shall request, among other things, (i) the scheduling of the date for the hearing on the Bid Procedures Order no later than fourteen (14) days after the Petition Date, (ii) the entry of the Bid Procedures Order no later than fifteen (15) days after the Petition Date, (iii) the Auction to be commenced no later than two (2) Business Day prior to the date of the Sale Hearing, (iv) the Sale Hearing no later than thirty-seven (37) days after the Petition Date, and (v) the entry of the Sale Order no later than thirty-eight (38) days after the Petition Date (collectively, the “**Sale Milestones**”).

8.2 Service of Motions; Contracts. Seller shall promptly serve true and correct copies of the Sale Motion and all related pleadings in accordance with the Bidding Procedures Order, the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules for the United States Bankruptcy Court for the District of Delaware and any other applicable Order of the Bankruptcy Court. As soon as practicable following the entry of the Bid Procedures Order, Seller shall serve the Assumption and Assignment Notice in accordance with Section 2.5(a)(ii) and the Bid Procedures Order.

8.3 Buyer Protections. Solely subject to the Bankruptcy Court’s approval of the Bid Procedures Order, Seller shall, if applicable, pay to Buyer the Break-Up Fee and Expense Reimbursement (together, the “**Buyer Protections**”) pursuant to the terms and conditions set forth in Section 11.3 hereof.

8.4 Consultation with Buyer. Except to the extent filings must be made on an emergency basis in the reasonable judgment of Seller, Seller shall provide Buyer a draft of any motions, orders or other pleadings that Seller proposes to file with the Bankruptcy Court seeking approval of this Agreement, including the motion or motions to approve the Sale Order and the Bidding Procedures Order, no later than two (2) Business Days prior to the filing thereof with the Bankruptcy Court. Seller shall reasonably cooperate with Buyer, and consider in good faith the views of Buyer, with respect to all such filings.

ARTICLE 9
CONDITIONS PRECEDENT TO PERFORMANCE BY THE PARTIES

9.1 Conditions Precedent to Performance by Seller. The obligations of Seller to consummate the transactions contemplated by this Agreement are subject to the fulfillment, at or before the Closing, of the following conditions, any one or more of which (other than the conditions contained in Section 9.1(c), Section 9.1(d) and Section 9.1(e) except as expressly provided therein) may be waived by Seller, in its sole and absolute discretion:

(a) Representations and Warranties of Buyer. The representations and warranties of Buyer contained in ARTICLE 5 that are not qualified by materiality shall be true and correct in all material respects on and as of the Closing, except to the extent expressly made as of an earlier date, in which case as of such earlier date, and the representations and warranties of Buyer contained in ARTICLE 5 that are qualified by materiality shall be true and correct in all respects on and as of the Closing, except to the extent expressly made as of an earlier date, in which case as of such earlier date.

(b) Performance of the Obligations of Buyer. Buyer shall have performed and complied in all material respects with all obligations required under this Agreement to be performed by Buyer on or before the Closing Date (except with respect to obligations which Buyer is to perform as of the Closing under this Agreement (including, the obligation to satisfy the Purchase Price)).

(c) Bankruptcy Court Approval. Each of the Bid Procedures Order and the Sale Order shall have been entered by the Bankruptcy Court and the Sale Order shall not be subject to a stay.

(d) No Violation of Orders. No preliminary or permanent injunction or other order of any court or Governmental Authority or Law that prevents the consummation of the transactions contemplated hereby shall be in effect.

(e) Governmental Approvals. To the extent that the HSR Act is applicable, any waiting period (and any extension thereof) under the HSR Act and the antitrust legislation of any other relevant jurisdiction applicable to the purchase of the Acquired Assets contemplated by this Agreement shall have expired or shall have been terminated.

(f) Buyer's Deliveries. Buyer shall have delivered, or caused to be delivered, to Seller all items set forth in Section 10.3.

For avoidance of doubt, there shall be no conditions precedent to Seller's obligation to consummate the transactions contemplated by this Agreement, except for those conditions precedent specifically set forth in this Section 9.1.

9.2 Conditions Precedent to the Performance by Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the fulfillment, at or before the Closing, of the following conditions, any one or more of which (other than the

conditions contained in Section 9.2(c), Section 9.2(d), and Section 9.2(e), except as expressly provided therein) may be waived by Buyer, in its sole and absolute discretion:

(a) Representations and Warranties of Seller. The representations and warranties of Seller contained in ARTICLE 4 shall be true and correct in all material respects on and as of the Closing, except to the extent expressly made as of an earlier date, in which case as of such earlier date, and the representations and warranties of Seller contained in ARTICLE 4 shall be true and correct in all respects on and as of the Closing, except to the extent expressly made as of an earlier date, in which case as of such earlier date.

(b) Performance of the Obligations of Seller. Seller shall have performed and complied in all material respects with all obligations and covenants required by Seller under this Agreement that are to be performed by Seller on or before the Closing Date (except with respect to obligations which Seller is to perform as of the Closing under this Agreement).

(c) Bankruptcy Court Approval. Each of the Bid Procedures Order and the Sale Order shall have been entered by the Bankruptcy Court and the Sale Order shall not be subject to a stay.

(d) Affidavits of Service. Seller shall have delivered to Buyer copies of all affidavits of service of the Sale Motion or notice of such motion filed by or on behalf of Seller (which service shall comply with Section 8.2)

(e) No Violation of Orders. No preliminary or permanent injunction or other order of any court or Governmental Authority or Law that prevents the consummation of the transactions contemplated hereby shall be in effect.

(f) Governmental Approvals. To the extent that the HSR Act is applicable, any waiting period (and any extension thereof) under the HSR Act and the antitrust legislation of any other relevant jurisdiction applicable to the purchase of the Acquired Assets contemplated by this Agreement shall have expired or shall have been terminated.

(g) Seller's Deliveries. Seller shall have delivered, or caused to be delivered, to Buyer all items set forth in Section 10.2.

For avoidance of doubt, there shall be no conditions precedent to Buyer's obligation to consummate the transactions contemplated by this Agreement, except for those conditions precedent specifically set forth in this Section 9.2.

ARTICLE 10

CLOSING AND DELIVERIES

10.1 Closing. Upon the terms and subject to the conditions of this Agreement, the sale and purchase of the Acquired Assets and the assumption of the Assumed Liabilities contemplated by this Agreement shall take place at a closing (the "**Closing**") to be held on a

Business Day mutually acceptable to the parties (but as promptly as practicable and in any event no later than the 42nd day after the Petition Date) after the date on which all conditions to the obligations of the Parties set forth in ARTICLE 9 to consummate the transactions contemplated hereby are first satisfied and/or waived (the date the Closing occurs being the “**Closing Date**”). The Closing shall occur on the Closing Date at 10:00 a.m., New York Time, in the offices of Greenberg Traurig, LLP, 200 Park Avenue, New York, New York 10166 or such other location as shall be mutually agreed to by the Parties. Upon consummation of the Closing, the purchase and sale of the Acquired Assets and the assumption of the Assumed Liabilities hereunder shall be deemed to have occurred as of 12:01 a.m. (New York Time) on the Closing Date.

10.2 Seller’s Deliveries. At the Closing:

- (a) Seller shall deliver possession of the Acquired Assets;
- (b) Seller shall have executed and delivered to Buyer (i) the Bill of Sale, (ii) the Assignment and Assumption Agreement, and (iii) such additional bills of sale, deeds, endorsements, certificates of title, assignments and other instruments of transfer and conveyance as may be reasonably requested by Buyer and required under applicable Law to convey valid, marketable title of the Acquired Assets to Buyer free and clear of all Encumbrances (other than Permitted Liens); and
- (c) Seller shall deliver an officer’s certificate, duly executed by a senior officer of Seller, certifying the matters set forth in Section 9.2(a) and Section 9.2(b), in form reasonably satisfactory to Buyer.
- (d) Seller shall deliver a true and correct certified copy of the Sale Order;
- (e) Seller shall deliver a list of Accounts Receivable as of one Business Day prior to the Closing; and
- (f) Seller shall deliver all other previously undelivered certificates, agreements and other documents required by this Agreement to be delivered by Seller at or prior to the Closing in connection with the transactions contemplated by this Agreement.

10.3 Buyer’s Deliveries. At the Closing:

- (a) Buyer shall deliver evidence, in form and substance reasonably acceptable to Seller, of cancellation of that portion of its Indebtedness calculated in accordance with Sections 3.1(a) through (c);
- (b) Buyer shall pay the Cash Purchase Price by wire transfer of immediately available funds to an account designated by Seller prior to the Closing;
- (c) Buyer shall have executed and delivered to Seller the Assignment and Assumption Agreement;

(d) Buyer shall deliver a certificate, duly executed by a senior officer of Buyer, certifying the matters set forth in Section 9.1(a) and Section 9.1(b) in form reasonably satisfactory to Seller; and

(e) Buyer shall deliver all other previously undelivered certificates, agreements and other documents required by this Agreement to be delivered by Seller at or prior to the Closing in connection with the transactions contemplated by this Agreement.

10.4 Possession. Right to possession of the Acquired Assets shall transfer to Buyer on the Closing Date. Seller shall transfer and deliver to Buyer on the Closing Date such keys, locks and safe combinations and other similar items as Buyer may reasonably require to obtain occupation and control of the Acquired Assets, and shall also make available to Buyer at their then existing locations the originals of all documents in Seller's actual possession that are required to be transferred to Buyer by this Agreement.

ARTICLE 11 **TERMINATION**

11.1 Termination. This Agreement may be terminated only in accordance with this Section 11.1. This Agreement may be, or, as applicable, shall be, terminated at any time before the Closing as follows:

(a) by mutual written consent of Seller and Buyer;

(b) automatically and without any action or notice by Seller to Buyer, or Buyer to Seller, immediately upon:

(i) the issuance of a Final Order by a Governmental Authority to permanently restrain, enjoin or otherwise prohibit the Closing;

(ii) approval by the Bankruptcy Court of an Alternate Transaction, unless Buyer determines to be the "Next Best Bidder" under the Sale Order in accordance with the Bidding Procedures Order; or

(iii) the consummation of such Alternate Transaction as described in Section 11.1(b)(ii) above.

(c) by Buyer if the Closing shall not have occurred by forty-two (42) days after the Petition Date (the "**Termination Date**"); provided, that the right to terminate this Agreement under this Section 11.1(c) shall not be available to Buyer if the failure to close by the Termination Date shall have been caused by the Buyer's Material Breach of this Agreement;

(d) by Buyer:

(i) in the event of a Material Breach by Seller;

(ii) if, prior to the Closing, the Bankruptcy Cases shall be converted into a case under Chapter 7 of the Bankruptcy Code or dismissed, or if a trustee or examiner with expanded powers shall be appointed in the Bankruptcy Cases;

(iii) if any of the Sale Milestones are not met;

(iv) if the Buyer Protections are not approved;

(v) if an “Event of Default” under and as defined in the DIP Loan Agreement has occurred and is continuing;

(vi) if the Closing does not occur on or before the 42nd day after the Petition Date;

(vii) if the Buyer Protections are not approved on or before the 15th day after the Petition Date;

(viii) if the Sale Order shall not have become a Final Order on or before the 52rd day after the Petition Date; or

(e) by Seller in the event of a Material Breach by Buyer.

11.2 Procedures Upon Termination and Effect of Termination. In the event this Agreement is validly terminated pursuant to Section 11.1, written notice thereof will forthwith be given to the other Party and this Agreement shall become null and void and have no effect. Except for the provisions ARTICLE 11 and ARTICLE 12, each of the Parties shall be relieved of its duties and obligations arising under this Agreement effective as of the date of such termination and such termination shall be without Liability to Buyer; for purposes of clarity, the provisions of ARTICLE 11 and ARTICLE 12 shall survive any such termination and shall be enforceable hereunder. In no event shall any termination of this Agreement relieve any Party hereto of any Liability for any willful breach of this Agreement by such Party including the buyer protections provided for in Section 11.3.

11.3 Buyer Protections.

(a) (i) If this Agreement shall be terminated pursuant to Sections 11.1(b)(ii) or 11.1(b)(iii) then, a break-up fee in an aggregate amount of \$300,000 (the “**Break-Up Fee**”) shall immediately become earned and due from Seller to Buyer upon the consummation of such Alternate Transaction. The Seller will also reimburse the Buyer for reasonable and documented out-of-pocket expenses in an amount up to \$150,000 (the “**Expense Reimbursement**”). If this Agreement shall be terminated pursuant to Section 11.1(d) then Seller will be obligated to pay the Expense Reimbursement. The Break-Up Fee and Expense Reimbursement shall be paid from the proceeds of an Alternate Transaction in the event the Agreement is terminated pursuant to Section 11.1(b)(ii) or 11.1(b)(iii), within three (3) days of closing on the Alternate Transaction.

(b) Seller acknowledges and agrees that (i) the payment of the Breakup-Fee and Expense Reimbursement is an integral part of the transactions contemplated by this Agreement, (ii) in the absence of Seller's obligations to make these payments, Buyer would not have entered into this Agreement, (iii) time is of the essence with respect to the payment of the Breakup-Fee and Expense Reimbursement and (iv) the Breakup Fee and Reimbursable Expenses shall be super-priority administrative expense priority obligations under Section 364(c)(1) of the Bankruptcy Code with priority over all expenses of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code. The payment of the Break-Up Fee and Expense Reimbursement as provided herein shall be free and clear of any Interest as defined herein that any other person or entity may have or assert in such Alternate Transaction proceeds or otherwise available cash.

(c) The Parties further acknowledge that the damages resulting from termination of this Agreement under circumstances where Buyer is entitled to the Breakup-Fee and Expense Reimbursement are uncertain and incapable of accurate calculation and that the delivery of the Breakup-Fee and Expense Reimbursement to Buyer is not a penalty but rather shall constitute liquidated damages in a reasonable amount that will compensate Buyer in the circumstances where Buyer is entitled to the Breakup-Fee and Expense Reimbursement for the efforts and resources expended and opportunities foregone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the transactions contemplated hereby, and that, without these agreements, Buyer would not enter into this Agreement.

(d) Seller hereby acknowledges that the obligation to pay the Break-Up Fee and Expense Reimbursement (to the extent due hereunder) shall survive the termination of this Agreement, and shall have administrative priority status against Seller and its estates.

ARTICLE 12

MISCELLANEOUS

12.1 Survival. No representations or warranties of Seller or Buyer made in this Agreement shall survive the Closing Date and other than in the event of fraud or intentional misrepresentation, no breach of any representation or warranty of Seller or Buyer shall give rise to a Claim by the non-breaching party against the breaching party. All covenants and agreements of Seller and Buyer contained herein shall survive the Closing in accordance with their terms.

12.2 Further Assurances. At the request and the sole expense of the requesting Party, Buyer or Seller, as applicable, shall execute and deliver, or cause to be executed and delivered, such documents as Buyer or Seller, as applicable, or their respective counsel may reasonably request to effectuate the purposes of this Agreement and the Ancillary Agreements. In that regard, within two (2) Business Days following the Closing, Seller shall file all necessary documents in their respective states of incorporation and in all states where they are qualified to do business, to change their names to other names that are not confusingly similar to their current corporate names. Seller shall also amend the captions and records in the Bankruptcy Cases to reflect such changed names.

12.3 Successors and Assigns. This Agreement and the various rights and obligations arising hereunder shall inure to the benefit of and shall be binding upon the Parties and their respective successors and permitted assigns and any trustee appointed in any of the Bankruptcy Cases or subsequent Chapter 7 cases and Seller, if the Bankruptcy Cases are dismissed. Neither this Agreement nor any of the rights, interests or obligations hereunder may be transferred or assigned (including by operation of Law in connection with a merger or sale of stock, or sale of substantially all the assets, of a Person) by any of the Parties without the prior written consent of the other Party (which consent may be granted, withheld, conditioned or delayed in such other Party's sole and absolute discretion), and any attempted assignment in contravention or breach of the foregoing shall be void and of no force or effect; provided, that no consent shall be required in connection with any assignment by Buyer of its rights under this Agreement to its Affiliates.

12.4 Governing Law; Jurisdiction. This Agreement shall be construed, performed and enforced in accordance with, and governed by, the Laws of the State of Delaware (without giving effect to the principles of conflicts of laws thereof), except to the extent that the Laws of such State are superseded by the Bankruptcy Code or other applicable federal Law. For so long as Seller is subject to the jurisdiction of the Bankruptcy Court, the Parties irrevocably elect, as the sole judicial forum for the adjudication of any matters arising under or in connection with this Agreement, and consent as to the foregoing to the exclusive jurisdiction of, the Bankruptcy Court. After Seller is no longer subject to the jurisdiction of the Bankruptcy Court, the Parties irrevocably elect, as the sole judicial forum for the adjudication of any matters arising under or in connection with this Agreement, and consent to the jurisdiction of, any state or federal court having competent jurisdiction in New York County, New York.

12.5 Expenses. Except as otherwise provided in this Agreement, each of the Parties shall pay its own expenses in connection with this Agreement and the transactions contemplated hereby, including any legal and accounting fees and commissions or finder's fees, whether or not the transactions contemplated hereby are consummated.

12.6 Severability. In the event that any part of this Agreement is declared by any court or other judicial or administrative body to be null, void or unenforceable, a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision, said provision shall survive to the extent it is not so declared, and all of the other provisions of this Agreement shall remain in full force and effect only if, after excluding the portion deemed to be unenforceable and the application of any provision so substituted, the remaining terms shall provide for the consummation of the transactions contemplated hereby in substantially the same manner as originally set forth at the later of (a) the Execution Date and (b) the date (if any) this Agreement was last amended.

12.7 Notices.

(a) All notices, requests, demands, consents, waivers and other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, if delivered personally; (ii) when sent, if sent by facsimile (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending

party); (iii) on the day of transmission, if sent via electronic transmission to the email address below (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); and (iv) if sent by overnight courier service, one (1) Business Day after deposit with an overnight courier service with next day delivery specified, in each case, properly addressed to the party to receive the same. The addresses and facsimile numbers for such communications shall be:

If to Seller:

Aerospace Holdings, Inc.
3401 E. 69th
Long Beach, CA 90805
Attention: Matthew D. Sedigh
Email: msedigh@conwaymackenzie.com

With a copy (which shall not constitute notice) to:

Greenberg Traurig, LLP
200 Park Ave
New York, NY 10166
Attention: Matthew L. Hinker
Email: hinkerm@gtlaw.com

If to Buyer:

Harlow Aerostructures LLC
1501 S. McLean Ave.
Wichita, KS 67213
Attention: Phillip Friedman
Email: phil@pcfconsultingllc.com

With a copy (which shall not constitute notice) to:

Loeb & Loeb LLP
10100 Santa Monica Blvd.,
Los Angeles, CA 90067
Attention: Kenneth Benbassat, Esq. and Lance N. Jurich, Esq.
Email: kbenbassat@loeb.com; ljurich@loeb.com

(b) Any Party may change its address, facsimile number or email address for the purpose of this Section 12.7 by giving the other Party written notice of its new address, facsimile number or email address in the manner set forth above. Written confirmation of receipt (i) given by the recipient of such notice, request, demand,

consent, waiver or other communication, (ii) mechanically or electronically generated by the sender's facsimile machine containing the time, date and recipient facsimile number or (iii) provided by an overnight courier service shall be rebuttable evidence of personal service, receipt by facsimile or receipt from an overnight courier service in accordance with clause (i), (ii) or (iii) above, respectively.

12.8 Amendments; Waivers. This Agreement may be amended or modified, and any of the terms, covenants, representations, warranties or conditions hereof may be waived, only by a written instrument executed by Buyer and Seller, or in the case of a waiver, by the Party waiving compliance. Any waiver by any Party of any condition, or of the breach of any provision, term, covenant, representation or warranty contained in this Agreement, in any one or more instances, shall not be deemed to be or construed as a furthering or continuing waiver of any such condition, or of the breach of any other provision, term, covenant, representation or warranty of this Agreement.

12.9 Entire Agreement. This Agreement, together with the Ancillary Agreements and the schedules and exhibits attached hereto and thereto and the instruments referenced herein and therein (all of which are hereby incorporated herein by reference), supersede all other prior oral or written agreements among the Parties solely with respect to the matters contained herein and therein, and this Agreement, together with the Ancillary Agreements and the schedules and exhibits attached hereto and thereto and the instruments referenced herein and therein, contain the entire understanding of the Parties solely with respect to the matters contained herein and therein. For clarification purposes, the Recitals are part of this Agreement.

12.10 Seller Disclosures. After notice to and consultation with Buyer, Seller shall be entitled to disclose, if required by applicable Law or by order of the Bankruptcy Court, this Agreement and all non-confidential information provided by Buyer in connection herewith to the Bankruptcy Court, the United States Trustee, parties in interest in the Bankruptcy Cases and other Persons bidding on assets of Seller. Other than statements made in the Bankruptcy Court (or in pleadings filed therein), Seller shall not issue (prior to, on or after the Closing) any press release or make any public statement or public communication without the prior written consent of Buyer, which shall not be unreasonably withheld or delayed; provided, however, Seller, without the prior consent of Buyer, may issue such press release or make such public statement as may, upon the advice of counsel, be required by applicable Law or any Governmental Authority with competent jurisdiction.

12.11 Headings. The article and section headings in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

12.12 Counterparts. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each Party and delivered to each other Party. In the event that any signature is delivered by facsimile transmission or by an e-mail which contains a portable document format (.pdf) file of an executed signature page, such signature page shall create a valid and binding obligation of the Party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature page were an original thereof.

12.13 Payments and Revenues. If after the Closing, either Party shall receive any payment, revenue or other amount that belongs to the other Party pursuant to this Agreement, such receiving Party shall promptly remit or cause to be remitted the same to the other Party.

12.14 Specific Performance. The Parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at Law or in equity.

12.15 Waiver of Jury Trial. **EACH PARTY HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON, RELATING TO OR ARISING OUT OF THIS AGREEMENT. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING, CONTRACT CLAIMS, TORT CLAIMS, ANTITRUST CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON-LAW OR STATUTORY CLAIMS. EACH PARTY ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH LEGAL COUNSEL OF ITS OWN CHOOSING, OR HAS HAD AN OPPORTUNITY TO DO SO, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS, HAVING HAD THE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS, OR MODIFICATIONS TO THIS AGREEMENT. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT WITHOUT A JURY.**

12.16 No Third Party Beneficiaries. This Agreement is intended for the benefit of the Parties and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

12.17 Time of the Essence. Time is of the essence in the performance of each of the obligations of the parties and with respect to all covenants and conditions to be satisfied by the parties in this Agreement and all documents, acknowledgments and instruments delivered in connection herewith.

[signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date first above written.

BUYER:

HARLOW AEROSTRUCTURES LLC

By: 

Name: Phillip Friedman


Title: Chief Executive Officer

[SELLER SIGNATURES ON NEXT PAGE]

[Signature Page to Asset Purchase Agreement]

SELLERS:

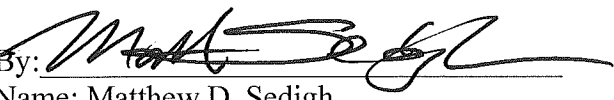
VALLEY TOOL & MANUFACTURING, INC.

By: 
Name: Matthew D. Sedigh
Title: Authorized Officer

NC DYNAMICS INCORPORATED

By: 
Name: Matthew D. Sedigh
Title: Authorized Officer


GROUPE AERO SEATTLE, INC.

By: 
Name: Matthew D. Sedigh
Title: Authorized Officer

AEROSPACE HOLDINGS, INC.

By: 
Name: Matthew D. Sedigh
Title: Authorized Officer

NCDI MEXICO, INC.

By: 
Name: Matthew D. Sedigh
Title: Authorized Officer

[Signature Page to Asset Purchase Agreement]

Appendix A

DEFINED TERMS

The following terms have the meanings set forth in the Preamble hereto or the Sections hereof set forth below:

<u>Definitions</u>	<u>Location</u>
“Accounts Receivable”	Section 2.1(a)(i)
“Acquired Assets”	Section 2.1
“Aerospace Holdings”	Preamble
“Agreement”	Preamble
“Allocation Statement”	Section 3.3(a)
“Assigned Contracts List”	Section 2.5(a)(i)
“Assumed Contracts”	Section 2.5(a)(i)
“Assumed Liabilities”	Section 2.3
“Assumed WARN Obligations”	Section 6.3(e)
“Assumption and Assignment Notice”	Section 2.5(a)(ii)
“Bankruptcy Cases”	Recitals
“Bankruptcy Code”	Recitals
“Bankruptcy Court”	Recitals
“Break-Up Fee”	Section 11.3(a)
“Business”	Recitals
“Buyer”	Preamble
“Buyer Protections”	Section 8.3
“Cash Purchase Price”	Section 3.1(g)
“Closing”	Section 10.1
“Closing Date”	Section 10.1
“Credit Bid Consideration”	Section 3.1(c)
“Disclosure Schedules”	Article IV
“Excluded Assets”	Section 2.2
“Excluded Liabilities”	Section 2.4
“Execution Date”	Preamble
“Expense Reimbursement”	Section 11.3(a)
“GroupAero Seattle”	Preamble
“IRS Forms”	Section 6.3(c)
“NCDI Mexico”	Preamble
“NC Dynamics”	Preamble
“Necessary Consent”	Section 2.5(b)
“Parties”	Preamble
“Permitted Access Parties”	Section 6.7
“Petition Date”	Recitals
“Purchase Price”	Section 3.1
“Remaining Balance”	Section 3.2(c)
“Sale Milestones”	Section 8.1

“Sale Motion”	Section 8.1
“Seller”	Preamble
“Straddle Period”	Section 7.1(b)
“Terminated Employees”	Section 6.3(e)
“Termination Date”	Section 11.1(c)
“Terminated Employees”	Section 6.3(e)
“Transaction Taxes”	Section 7.1(a)
“Transferred Employees”	Section 6.3(a)
“Valley Tool”	Preamble
“WARN”	Section 6.3(e)
“WARN Liabilities”	Section 6.3(e)

“**Action**” means any demand, Claim, action, suit or proceeding, arbitral action, litigation, inquiry, criminal prosecution or investigation by or before any Governmental Authority.

“**Administrative Claim**” means a Claim arising under sections 503(b), 507(a)(2), 507(b) or 1114(e)(2) of the Bankruptcy Code.

“**Adjustment Escrow Funds**” means the amount of cash to be maintained in account by counsel to Seller and administered and payable in accordance with Section 3.4.

“**Affiliate**” means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and the term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise.

“**Alternate Transaction**” means a transaction or series of related transactions pursuant to which Seller (a) accepts a Qualified Bid, other than that of Buyer, as the highest or best offer, or (b) sells, transfers, leases or otherwise disposes of, directly or indirectly, including through an asset sale, stock sale, merger, reorganization or other similar transaction (by Seller or otherwise), including pursuant to a stand-alone plan of reorganization or refinancing, all or substantially all of the Acquired Assets (or agrees to do any of the foregoing) in a transaction or series of transactions to a Person or Persons other than Buyer.

“**Ancillary Agreement**” means any of the Bill of Sale, the Assignment and Assumption Agreement, Trademark Assignment Agreement, the Patent Assignment Agreement or such other instruments of transfer and conveyance as may be required under applicable Law to convey valid title of the Acquired Assets to Buyer.

“**Assignment and Assumption Agreement**” means the Assignment and Assumption Agreement in substantially the form annexed hereto as **Exhibit A**.

“**Auction**” means the auction for the sale and assumption of the Acquired Assets and Assumed Liabilities conducted by Seller pursuant to the Bid Procedures Order.

“Bankruptcy Chapter 5 Claims” means collectively, any and all avoidance, recovery, subordination or other actions or remedies that may be brought on behalf of Seller under the Bankruptcy Code or applicable non-bankruptcy law, including actions or remedies under Sections 510, 542, 543, 544, 545, 547, 548, 549, 550, 551, 552, 553(b) and 724(a) of the Bankruptcy Code.

“Bid Procedures Motion” means a motion, in form and substance acceptable to Seller and Buyer, to approve the Bid Procedures Order.

“Bid Procedures Order” means the order entered by the Bankruptcy Court containing bid procedures and bid protections specified in Section 11.3 and permitting Buyer to credit bid the Credit Bid Consideration (including the Indebtedness under the Credit Agreement) pursuant to Section 363(k) of the Bankruptcy Code, in the form attached hereto as **Exhibit E**, with such changes as are acceptable to Buyer.

“Bill of Sale” means the Bill of Sale substantially in the form of **Exhibit B**.

“Budget” means the Budget that is appended to the DIP Order.

“Business Day” means any day other than Saturday, Sunday and any day that is a legal holiday or a day on which banking institutions in New York are authorized by Law or other governmental action to close.

“CapEx Loan” has the meaning ascribed to such term in the Credit Agreement.

“Claim” has the meaning ascribed by Bankruptcy Code Section 101(5), including all rights, claims, causes of action, defenses, debts, demands, damages, offset rights, setoff rights, recoupment rights, obligations, and liabilities of any kind or nature under contract, at Law or in equity, known or unknown, contingent or matured, liquidated or unliquidated, and all rights and remedies with respect thereto.

“Code” means the Internal Revenue Code of 1986, as amended, and the regulations issued thereunder.

“Contract” means any written agreement, contract, lease (including, any real or personal property leases), sublease, purchase order, arrangement, license, commitment, insurance policy or other written binding arrangement or written understanding, and any written amendments, modifications or supplements thereto.

“Credit Agreement” means that certain Second Amended and Restated Revolving Credit and Term Loan Agreement dated as of March 5, 2012 (as amended, restated, supplemented or otherwise modified from time to time) by and among Valley Tool & Manufacturing, Inc., NC Dynamics Incorporated, GroupAero Seattle, Inc. (formerly Aerospace Multiaxis Machining, Inc.) and Aerospace Holdings, Inc., the lenders party thereto from time to time and Harlow Aerostructures LLC, as Administrative Agent.

“Cure Amounts” means all amounts, costs and expenses required by the Bankruptcy Court to cure all defaults under the Assumed Contracts so that they may be sold and assigned to Buyer pursuant to Sections 363 and 365 of the Bankruptcy Code, as such amounts may be adjusted, if applicable, by agreement of Buyer and the other party or parties to such Assumed Contracts (other than Seller).

“DIP Accounts” means the bank account or accounts into which proceeds of the DIP Loan are to be deposited and maintained, including any account that is pledged in accordance with the DIP Order and the DIP Loan Agreement.

“DIP Loan Agreement” means that certain Loan and Security Agreement dated as of March 28, 2017 (as amended, restated, supplemented or otherwise modified from time to time) by and among Valley Tool & Manufacturing, Inc., NC Dynamics Incorporated, GroupAero Seattle, Inc. (formerly Aerospace Multiaxis Machining, Inc.), Aerospace Holdings, Inc. and NCDI Mexico, Inc., as Borrowers, and Harlow Aerostructures LLC, as Lender.

“DIP Loan” the obligations incurred by Seller in the Bankruptcy Cases pursuant to the DIP Loan Agreement.

“DIP Order” means that certain INTERIM and/or FINAL ORDER PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364 AND 507(A) AUTHORIZING POST-PETITION FINANCING, (B) AUTHORIZING USE OF CASH COLLATERAL, (C) GRANTING ADEQUATE PROTECTION AND (D) GRANTING RELATED RELIEF.

“Documents” means all files, documents, instruments, papers, books, reports, records, databases, tapes, microfilms, photographs, letters, budgets, forecasts, ledgers, journals, title policies, customer and supplier lists, databases and information, regulatory filings, operating data and plans, technical documentation (design specifications, functional requirements, operating instructions, logic manuals, flow charts, etc.), user documentation (installation guides, user manuals, training materials, release notes, working papers, etc.), marketing documentation (sales brochures, flyers, pamphlets, Web pages, etc.), cost of pricing information, business plans, quality control records and procedures, blueprints, accounting, legal and tax files (including all related memoranda and analyses therein), all files, customer and supplier files and documents (including credit information), personnel files and employment records relating to Transferred Employees (including, applicable completed I-9 forms), supplier lists, records, literature and correspondence, including materials relating to services, marketing, advertising, promotional materials, Intellectual Property, and other similar materials to the extent related to, used in, held for use in, the Business or the Acquired Assets in each case whether or not in electronic form, but excluding any materials exclusively related to any Excluded Assets, subject to a claim of attorney-client privilege, as well as any documents prepared by Seller in connection with this Agreement, any Ancillary Agreement, or the Bankruptcy Case.

“Employee Benefit Plans” means all (a) employee pension benefit plans as defined in Section 3(2) of ERISA, (b) employee welfare benefit plans as defined in Section 3(1) of ERISA, and (c) stock option, bonus, deferred compensation, retention, severance, or termination pay plans or policies or any other plans or policies providing for compensation or benefits (including

any employment, severance, change in control or similar agreement or any arrangement relating to a sale of the Business or the Acquired Assets), in each case, that is maintained, administered, or contributed to (or with respect to which any obligation to contribute has been undertaken) by Seller and that covers any current or former employee, director, manager, member, officer or consultant of Seller (or their dependents, spouses or beneficiaries), including any 401(k) plan.

“Employees” means all individuals employed by Seller in connection with the Business and the Acquired Assets as of the Closing Date.

“Encumbrances” means any Lien, encumbrance, Claim, Interest, right, demand, charge, mortgage, deed of trust, option, pledge, security interest or similar interest, title defect, hypothecation, easement, right of way, restrictive covenant, condition, restriction, encroachment, rights of first refusal, preemptive right, judgment, conditional sale or other title retention agreements and other imposition, imperfection or defect of title or restriction on transfer or use of any nature whatsoever, whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, recorded or unrecorded, contingent or non-contingent, material or non-material, known or unknown..

“Environmental Laws” means all Laws relating to pollution or protection of health, natural resources or the environment, or the generation, use, treatment, storage, handling, transportation or Release of, or exposure to, Hazardous Materials, including, without limitation, the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.), Safe Drinking Water Act (42 U.S.C. §3000(f) et seq.), Toxic Substances Control Act (15 U.S.C. §2601 et seq.), Clean Air Act (42 U.S.C. §7401 et seq.), Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.) and other similar U.S. or foreign federal, state, provincial and local statutes.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” means any trade or business (whether or not incorporated) which is treated as a single employer with Seller under Section 414(b), (c), (m) or (o) of the Code or Section 4001 of ERISA.

“Excluded Claims and Causes of Action” means collectively, (a) all Bankruptcy Chapter 5 Claims solely against any Person(s) constituting “Insiders” (as defined in the Bankruptcy Code) other than any such Insider that as of the Closing Date is an employee of the Buyer, (b) commercial tort claims against any Person(s) constituting “Insiders” (as defined in the Bankruptcy Code), and (c) commercial tort claims of Seller which do not relate directly to any Acquired Asset(s).

“Final Order” means an Order has not been (i) reversed, modified, vacated or stayed, (ii) the time to appeal such Order has expired, and (iii) no appeal, petition for certiorari, reargument, reconsideration or rehearing with respect thereto shall then be pending. The requirement that the Order become “Final” may be waived by written agreement by the Buyer.

“GAAP” means the United States’ generally accepted accounting principles in effect from time to time.

“Governmental Authority” means any foreign or United States federal, national, supernational, state, provincial, local court, tribunal, governmental department, agency, board or commission, regulatory or supervisory authority, or other administrative, governmental or quasi-governmental body, subdivision or instrumentality.

“Hazardous Materials” means petroleum and all derivatives thereof or synthetic substitutes therefor, asbestos and asbestos containing materials, and any and all materials, substance or waste now or hereafter defined, listed, designated or classified as, or otherwise determined to be, “hazardous wastes,” “hazardous substances,” “toxic substance,” “radioactive,” “solid wastes,” or “toxic” (or words of similar meaning) under or pursuant to or otherwise listed or regulated pursuant to any Environmental Law.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the regulations thereunder.

“Improvements” means buildings, structures, systems, facilities, easements, rights-of-way, privileges, improvements, licenses, hereditaments, appurtenances and all other rights and benefits belonging, or in any way related, to the Transferred Leased Real Property.

“Indebtedness” of any Person means, without duplication: (a) the principal of and premium (if any) in respect of (i) indebtedness of such Person for money borrowed and (ii) indebtedness evidenced by notes, bond, debentures, mortgage and other similar instruments (including obligations with respect to capital leases, other than obligations with respect to capitalized leases that are Assumed Contracts); for the payment of which such Person is responsible or liable; and (b) all obligations of the type referred to in clause (a) of any Persons for the payment of which such Person is responsible or liable, directly or indirectly, as obligor, guarantor, surety, or otherwise.

“Intellectual Property” means all intellectual property and proprietary rights of any kind, including, (a) patents, patent applications and patent disclosures, together with all reissuances, continuations, continuations in part, revisions, extensions, reexaminations, provisionals, divisions, renewals, revivals, and foreign counterparts thereof and all registrations and renewals in connection therewith, (b) trademarks, service marks, trade dress, logos, trade names and corporate names and other indicia of origin and corporate branding, together with all translations, adaptations, derivations and combinations thereof and all applications, registrations and renewals in connection therewith, (c) works of authorship, copyrightable works, copyrights and all applications, registrations and renewals in connection therewith, (d) mask works and all applications, registrations and renewals in connection therewith, (e) trade secrets, inventions and confidential business information (including ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information, business and marketing plans and proposals, assembly, test, installation, service and inspection instructions and procedures, technical, operating and service and maintenance manuals and data,

hardware reference manuals and engineering, programming, service and maintenance notes and logs), (f) Software, (g) internet addresses, uniform resource locaters, domain names, websites and web pages, (h) any and all other intellectual property and proprietary rights of Seller, (h) goodwill related to all of the foregoing, and (i) all rights to sue for past, present and future infringement, misappropriation, dilution or other violation of any of the foregoing and all remedies at law or equity associated therewith.

“Intellectual Property License” means (i) any Contract that contains any grant by Seller to any third Person of any right to use, publish, perform or exploit any of the Intellectual Property, and (ii) any Contract (other than a Contract concerning the licensing of generally commercially available software, including “shrink-wrap” and “click-wrap” licenses) that contains any grant by any third Person to Seller of any right to use, publish, perform or exploit any intellectual property of such third Person concerning or relating to the Intellectual Property.

“Interest” means “interest” as that term is used in Bankruptcy Code Section 363(f).

“Inventory” means all raw materials, work-in-process, finished goods, supplies, samples (including samples held by sales representatives), pre-paid parts, components, packaging materials, and other inventories to which Seller has title that are in the possession or custody of Seller or, solely with respect to inventories to which Seller has title, any third party to the extent used or held for use in connection with any of the Acquired Assets or the Business.

“Law” means any law, statute, ordinance, regulation, rule, code or rule of common law or otherwise of, or any order (including, the Bid Procedures Order and the Sale Order), judgment, injunction or decree issued, promulgated, enforced or entered by, any Governmental Authority.

“Liability” means any debt, loss, liability, Claim, damage, expense, fine, cost, penalty, duty, responsibility, obligation, commitment, assessment, charge, expenditure, premium, deficiency or obligation, of any nature, whether known or unknown, disclosed or undisclosed, matured or unmatured, determined or undeterminable, asserted or unasserted, on or off balance sheet, fixed, absolute, contingent, accrued or unaccrued, liquidated or unliquidated, direct or indirect, or otherwise and whether due or to become due, and whether in contract, tort, strict liability or otherwise, and whether or not resulting from third party claims, including all costs and expenses related thereto.

“Lien” has the meaning given to that term in Bankruptcy Code Section 101(38).

“Material Breach” means, with respect to a party to this Agreement, (a) any breach by such party of a representation or warranty contained in this Agreement, which breach is not capable of being cured or, if capable of being cured, is not cured within five (5) days after written notice of such breach is given by another party to this Agreement to such party or (b) any breach by such party of the covenants or agreements set forth in this Agreement, which breach is not capable of being cured or, if capable of being cured, is not cured within three (3) days after written notice of such breach is given by another party to such party.

“Order” means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award of a Governmental Authority.

“Ordinary Course of Business” means the conduct by Seller of the Business in substantially the same manner as conducted as of the Execution Date.

“Patent Assignment Agreement” means a Patent Assignment Agreement in substantially the form of Exhibit C.

“Permits” means all licenses, permits (including environmental, construction and operation permits), provider numbers, franchises, certificates, approvals, permits, consents, waivers, clearances, exemptions, classifications, certificates of occupancy or other certificates, concessions, authorizations, grants, easements, variances, exemptions, consents, orders, filings, authorizations and licenses registrations, orders and other similar documents and authorizations issued by any Governmental Authority and/or any self-regulatory body or organization to or for the benefit of Seller and used, or held for use, in connection with the operation of the Business or applicable to ownership of the Acquired Assets or assumption of the Assumed Liabilities.

“Permitted Liens” means:

- (a) with respect to any real property, to the extent that they do not materially interfere with the ownership, occupancy, use, or operation of the affected Transferred Real Property Leases in the manner and for the purposes heretofore used by Seller in connection with the Business, easements, restrictive covenants, and rights-of-way on, over, or in respect of any Transferred Real Property Lease;
- (b) all rights reserved to or vested in any Governmental Authority to control or regulate the Acquired Assets and all obligations and duties under all applicable Laws or under any permit issued by any Governmental Authority; provided that the foregoing does not relate to any Environmental Law that is an Excluded Liability;
- (c) statutory Liens for current Taxes with respect to the Acquired Assets not yet delinquent or the amount or validity of which is being contested in good faith;
- (d) mechanics’, carriers’, workmen’s, repairmen’s, or other like Liens arising or incurred in the Ordinary Course of Business that relate to Assumed Liabilities;
- (e) Liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the Ordinary Course of Business that relate to Assumed Contracts;
- (f) any Lien that pursuant to Section 363(f) of the Bankruptcy Code will be released from the Acquired Assets upon entry of the Sale Order; and
- (g) other Liens that will be released on or prior to Closing at no cost or expense to Buyer.

“Person” means any individual, corporation, partnership, limited liability company, firm, joint venture, association, joint-stock company, trust, unincorporated organization or Governmental Authority or other entity.

“PP&E” means all equipment, machinery, industrial and motor vehicles, tooling, castings, moldings, fixtures, furniture and other tangible property, including all such property that is damaged and all attachments, appliances, fittings, gas and oil burners, lighting fixtures, signs, doors, cabinets, partitions, mantels, motors, pumps, screens, plumbing, heating, air conditioning, refrigerators, freezers, refrigerating and cooling systems, waste disposal and storing, wiring, telephones, televisions, monitors, security systems, racks, ovens, stoves, carpets, floor coverings, wall coverings, office equipment, kitchen appliances, computers (including point-of-sale terminals and systems), registers and safes, trash containers, meters and scales, combinations, codes and keys, and any other furniture, fixtures, fixed assets, equipment and improvements.

“Professional Fee Account” has the meaning ascribed to such term in the DIP Order.

“Qualified Bid” means competing bids qualified for the Auction in accordance with the Bid Procedures Order.

“Related Person” means, with respect to any Person, all past, present and future directors, officers, members, managers, partners, limited partners, stockholders, employees, controlling persons, Affiliates, agents, professionals, attorneys, accountants, lenders, investment bankers or representatives of any such Person.

“Revolving Credit Loan” has the meaning ascribed to such term in the Credit Agreement.

“Sale Hearing” means the hearing to consider the entry of the Sale Order.

“Sale Order” means an order issued by the Bankruptcy Court approving this Agreement and the transactions contemplated hereby substantially in form and substance acceptable to Buyer. The Sale Order shall, among other things, (a) approve, pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, (i) the execution, delivery and performance by Seller of this Agreement, (ii) the sale of the Acquired Assets to Buyer on the terms set forth herein and free and clear of all Encumbrances (other than Encumbrances included in the Assumed Liabilities and Permitted Liens), and (iii) the performance by Seller of its obligations under this Agreement; (b) authorize and empower Seller to assume and assign to Buyer the Assumed Contracts; (c) find that Buyer is a “good faith” buyer within the meaning of Section 363(m) of the Bankruptcy Code and grant Buyer the protections of Section 363(m) of the Bankruptcy Code; (d) include an injunction against any holder of a Claim against Seller or the Acquired Assets from asserting, prosecuting or otherwise pursuing such Claim against Buyer (other than with respect to the Assumed Liabilities) or asserting any Encumbrance against any of the Acquired Assets (other than a Permitted Lien); (e) include a finding that, upon payment of Cure Costs, all Assumed Contracts that are subject to the provisions of Section 365 of the Bankruptcy Code or otherwise pursuant to applicable Law, remain in full force and effect with all parties to the Assumed

Contracts enjoined from asserting against Buyer any default, breach, acceleration, assignment fees, increases, or any other fees resulting from Seller's assumption and assignment of the Assumed Contracts to Buyer; and (f) include a finding that the sale does not and will not subject Buyer to any liability by reason of such sale pursuant to any bulk-transfer laws, successor liability, or similar theories to the maximum extent permitted by applicable Law, in all cases except as expressly provided in this Agreement.

“Software” means any computer program, operating system, application, system, firmware or software of any nature, point-of-entry system, peripherals, and data whether operational, active, under development or design, nonoperational or inactive, including all object code, source code, comment code, algorithms, processes, formulae, interfaces, navigational devices, menu structures or arrangements, icons, operational instructions, scripts, commands, syntax, screen designs, reports, designs, concepts, visual expressions, technical manuals, tests scripts, user manuals and other documentation therefor, whether in machine-readable form, virtual machine-readable form, programming language, modeling language or any other language or symbols, and whether stored, encoded, recorded or written on disk, tape, film, memory device, paper or other media of any nature, and all databases necessary or appropriate in connection with the operation or use of any such computer program, operating system, application, system, firmware or software.

“Tax” or **“Taxes”** means all taxes, however denominated, including any interest, penalties or additions to tax that may become payable in respect thereof, imposed by any Governmental Authority, whether payable by reason of Contract, assumption, transferee liability, operation of Law or Treasury Regulation Section 1.1502-6(a) (or any predecessor or successor thereof or any analogous or similar provision under Law), which taxes shall include all income taxes, payroll and employee withholding, unemployment insurance, social security (or similar), sales and use, excise, franchise, gross receipts, occupation, real and personal property, stamp, transfer, workers’ compensation, customs duties, registration, documentary, value-added, alternative or add-on minimum, estimated, environmental (including taxes under Section 59A of the Code) and other assessments or obligations of the same or a similar nature, whether arising before, on or after the Closing Date.

“Tax Return” means any report, return, information return, filing or other information, including any schedules, exhibits or attachments thereto, and any amendments to any of the foregoing required to be filed or maintained in connection with the calculation, determination, assessment or collection of any Taxes (including estimated Taxes).

“Term Loan” has the meaning ascribed to such term in the Credit Agreement.

“Trademark Assignment Agreement” means a Trademark Assignment Agreement in substantially the form of **Exhibit D**.

“Transferred Leased Real Property” means the real estate leases or other occupancy agreements entered into by Seller as a lessor, lessee, sub-lessee, sub-lessor, assignor or assignee.

“Treasury Regulation” means, with respect to any referenced provision, such provision of the regulations promulgated by the United States Department of the Treasury.

Exhibit A

Form of Assignment and Assumption Agreement

NY 246300622v2

NY 246433887v1

Exhibit B

Form of Bill of Sale

NY 246300622v2

NY 246433887v1

Exhibit C

Form of Patent Assignment Agreement

NY 246300622v2

NY 246433887v1

Exhibit D

Form of Trademark Assignment Agreement

NY 246300622v2

NY 246433887v1

Exhibit E

Form of Bid Procedures Order

NY 246300622v2

NY 246433887v1

Exhibit F

Allocation of Transaction Taxes

NY 246300622v2

NY 246433887v1