

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
)
AQUION ENERGY, INC.,¹) Case No. 17-10500 (KJC)
)
Debtor.)

MOTION FOR ENTRY OF AN ORDER (I) (A) AUTHORIZING ENTRY INTO THE ASSET PURCHASE AGREEMENT WITH RESPECT TO THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR’S ASSETS, (B) APPROVING BID PROCEDURES FOR THE SALE OF SUBSTANTIALLY ALL OF THE ASSETS OF DEBTOR, (C) SCHEDULING AN AUCTION AND HEARING TO CONSIDER THE SALE AND APPROVE THE FORM AND MANNER OF NOTICES RELATED THERETO, (D) ESTABLISHING PROCEDURES RELATING TO THE ASSUMPTION AND ASSIGNMENT OF CERTAIN CONTRACTS AND LEASES, INCLUDING NOTICE OF PROPOSED CURE AMOUNTS, (E) APPROVING CERTAIN BREAKUP FEE PROVISIONS; (II) AUTHORIZING AND APPROVING (A) THE SALE OF CERTAIN ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS AND (B) THE ASSUMPTION AND ASSIGNMENT OF CERTAIN CONTRACTS AND LEASES; AND (III) GRANTING RELATED RELIEF

The above-captioned debtor and debtor in possession (the “Debtor” or “Aquion”) files this motion (the “Motion”) for the entry of an order pursuant to sections 105(a), 363, 365 and 503 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2002-1 and 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) for: (i) an order substantially in the proposed form attached hereto as Exhibit A (the “Bid Procedures Order”): (a) approving certain sale and bid procedures attached as Exhibit 1 to the Bid

¹ The Debtor in this chapter 11 case and the last four digits of the Debtor’s U.S. tax identification number is Aquion Energy, Inc. (1370). The Debtor’s headquarters is located at 32 39th Street, Pittsburgh, PA, 15201.



Procedures Order (the “Bid Procedures”) in connection with the sale (the “Sale”) of the Debtor’s right, title and interest in substantially all of the assets and properties used in the connection with the operation of the Debtor’s business, as set forth in the Purchase Agreement (defined below); (b) scheduling both the auction and hearing to consider approval of such Sale; (c) approving procedures related to the assumption and assignment of certain executory contracts and unexpired leases related to the Sale; (d) approving the form and manner of the notices of the Bid Procedures attached as Exhibits 2, 3 and 4 of the Bid Procedures Order; and (e) approving the proposed breakup fee in favor of the Stalking Horse Purchaser (defined below); and (ii) an order, substantially in the proposed form attached hereto as Exhibit B (the “Sale Order”) (a) approving the Debtor’s entry into that certain *Asset Purchase Agreement* dated as of May 23, 2017, attached as Exhibit C hereto, without schedules, (the “Purchase Agreement”), by and among the Debtor and Bluesky Energy US, Inc. (by and through its parent BlueSky Energy Entwicklungs- und Produktions GmbH, a limited liability company (*Gesellschaft mit beschränkter Haftung*) under the laws of Austria) (or its assignees and assigns to the extent permitted under the Purchase Agreement, the “Stalking Horse Purchaser”); (b) authorizing the Sale of such assets free and clear of liens, claims, encumbrances, and other interests, except as provided in the Purchase Agreement and (b) approving the assumption and assignment of certain of the Debtor’s executory contracts and unexpired leases related to the Sale; and (iii) granting relief related. In support of this Motion, the Debtor respectfully states the following:

Jurisdiction and Venue

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief sought herein are sections 105, 363, 365, 503, 1107 and 1108 of chapter 11 of the Bankruptcy Code, Bankruptcy Rules 2002(a)(2), 6004, 6006 and 9014 and Local Rules 2002-1(b), 6004-1 and 9006-1.

Background

4. On March 8, 2017 (the “Petition Date”), the Debtor filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor is operating its business and managing its properties as a debtor and debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On March 31, 2017, the Office of the United States Trustee appointed a committee of unsecured creditors (the “Committee”) in this case.

5. The factual background regarding the Debtor, including its current and historical business operations and the events precipitating the chapter 11 filing, is set forth in detail in the *Declaration of Suzanne Roski, Chief Restructuring Officer, in Support of First Day Motions* (the “First Day Declaration”) fully incorporated herein by reference.²

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the First Day Declaration.

Debtor's Operations and the Assets to Be Sold

6. The Debtor manufactures saltwater batteries with a proprietary, environmentally-friendly electrochemical design. Based in Pittsburgh, the Debtor was founded in 2008 and had its first commercial product launch in 2014. Designed for stationary energy storage in pristine environments, island locations, homes, and businesses, the Debtor's batteries have been Cradle to Cradle Certified™, an environmental sustainability certification that has never previously been given to a battery producer. The Debtor's battery technology has won multiple prestigious awards including *Popular Science Best of What's New Innovation of the Year* (2014), *MIT Technology Review 50 Smartest Companies* (2015), *Global Cleantech 100 North American Company of the Year* (2017), among others. The Debtor's batteries contain no heavy metals or toxic chemicals and are non-flammable and non-explosive. The Debtor's products include battery stacks, modules and monitoring systems. More than 55 global dealers and distributors sell the Debtor's products directly to end users and other customers that incorporate the batteries into third party systems and equipment such as inverters, controls, solar/wind generators, gensets, racking, and enclosures.

7. The Debtor seeks to sell its manufacturing operations, and substantially all of their other business assets and property associated with its battery technology (the "Assets").

Financing and Liens Affecting the Assets

8. In May 2014, the Debtor entered into a secured loan agreement with Trinity Capital Fund II, L.P. as lender or any successor or assignee thereof in such capacity ("Trinity") to provide term loans totaling up to \$20.0 million. The obligations that certain

Master Loan and Security Agreement, dated as of May 1, 2014, as amended, supplemented or otherwise modified from time to time prior to the date hereof (the “Trinity Loan Agreement”), mature on the last day of the forty-second (42nd) month following the date of the initial term note.

9. All of the obligations owing to Trinity under the Trinity Loan Agreement are asserted to be secured by liens (the “Prepetition Liens”) on substantially all of the Debtor’s assets (the “Prepetition Collateral”), including cash collateral as defined in section 363(a) of the Bankruptcy Code (“Cash Collateral”). The Prepetition Liens are subject to certain “Permitted Liens” (as defined in the Trinity Loan Agreement), which include, among other items: (a) purchase money security interests or liens in connection with operating or capital leases for equipment and loans for equipment not exceeding \$12,000,000 in principal amount outstanding at any time; (b) liens on accounts receivables or inventory securing working capital debt facilities not to exceed \$5,000,000 in principal amount outstanding at any time; and (c) liens securing certain permitted scheduled debt.

10. As of the Petition Date, the Debtor’s obligations under the Trinity Loan Agreement totaled no more than \$4,409,538 in principal obligations, plus an “End of Term Payment” (as defined in the Trinity Loan Agreement), in the amount of \$750,000 or 5% of the original balance of term notes (total advances were originally \$15.0 million).

11. Pursuant to the *Interim Order (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Modifying the Automatic Stay, and (D) Scheduling a Final Hearing* [Docket No. 33] (the “Interim Cash Collateral Order”) entered by the Bankruptcy

Court on March 10, 2017, Trinity is provided a continuing security interest in and lien on all collateral of the Debtor of the same type and nature that exists as of the Petition Date with the same validity (or invalidity) and priority as exists as of the Petition Date, including the proceeds thereof (the “Replacement Lien”) and, solely to the extent of any diminution in value of its collateral, an additional and replacement security interest in and lien on all property and assets of the Debtor’s estate. *See* Interim Cash Collateral Order, ¶ 7(i) and (ii). Certain creditors have also asserted liens on certain of the Debtor’s equipment and as set forth below will be provided notice of this Motion and related relief sought herein.

The Marketing Process

12. In October 2016, the Debtor engaged Citi Global Markets, Inc. (“Citi”) as investment bankers to undertake a marketing process for the Debtor, its assets or to raise additional capital. During Citi’s engagement, the Debtor attracted several interested parties, but Citi was unsuccessful in attracting a buyer or obtaining a capital raise. The Debtor’s management, however, continued its marketing efforts through and subsequent to the Petition Date, as detailed below.

13. Shortly after filing its chapter 11 petition, the Debtor reached out to twenty-two parties Citi had contacted during the earlier marketing process. The Debtor provided, via electronic mail, notification that it had filed its chapter 11 petition, a “teaser” document with key details about the Debtor, and a nondisclosure agreement (“NDA”). None of those parties had participated in the Debtor’s sale process to date. The Debtor also contacted, on an individual basis, approximately six other parties it assessed as likely to participate in a

potential sale effectuated under section 363 of the Bankruptcy Code. These six parties generally had not been interested in purchasing the Debtor's assets outside of chapter 11 and included one existing Aquion investor that had already performed diligence on the Debtor and five large U.S. based and international firms. Two of these parties are still engaged in the sale process.

14. Beginning on the Petition Date, additional parties began contacting the Debtor expressing interest in acquiring all or substantially all of the Debtor's assets. To date, thirty-nine such parties have made expressions of interest with thirty-three executing the Debtor's NDA. Interested parties include certain of Aquion's distributors or licensed resellers, battery manufacturers, energy/petrochemical companies, private equity firms, renewable energy companies, and other parties in interest. There is wide geographic dispersion among interested parties with more parties based outside than within the United States and includes parties in Asia and the South Pacific, Australia, and Eastern and Western Europe.

15. In addition, the Debtor vetted with the Committee the list of parties it had approached or that had expressed an interest in acquiring the Debtor's assets. The Committee did not have any additional names to provide.

16. The Debtor established, and continues to update, an electronic data room to facilitate the diligence efforts of interested parties. Approximately fifty users have accessed the Debtor's electronic data room. Data room users have initiated nearly 11,000 file views. In addition to making information available in the data room, the Debtor has engaged in written and in-person discussions to address diligence requests and questions. As of the date of this Motion, nine parties have made site visits to the Debtor's facilities. Additionally, the Debtor has engaged

in multiple telephonic information sessions to advance those parties' diligence efforts. Finally, the Debtor continues to engage in regular contact with interested parties to address potential buyer's diligence requests and to apprise interested parties of the status of the sale process.

The Purchase Agreement³

17. In April 2017, the Stalking Horse Purchaser submitted a letter of intent to buy the Debtor's business. Shortly thereafter, the Debtor negotiated and, at arms' length, entered into the Purchase Agreement with the Stalking Horse Purchaser, pursuant to which it will acquire the Assets on the terms and conditions specified in the Purchase Agreement. In connection with the Purchase Agreement, the Stalking Horse Purchaser has submitted a deposit in the amount of \$280,000, which deposit shall be nonrefundable upon termination of the Purchase Agreement by reason of the Stalking Horse Purchaser's default of its material obligations under the Purchase Agreement and, conversely, refundable as provided for in the Purchase Agreement. A Word version of the Purchase Agreement will be placed in the data room set up by the Debtor for prospective bidders no later than two (2) days before the hearing to consider entry of the Bid Procedures Order (the "Bid Procedures Hearing").⁴ The sale transaction pursuant to the Purchase Agreement is subject to competitive bidding as set forth herein and in the Bid Procedures, and the Bid Procedures Order.

³ The foregoing is only a summary of certain of the terms and provisions of the Purchase Agreement. In the event of any conflict between the summary set forth in this Motion and the Purchase Agreement, the Purchase Agreement controls.

⁴ Concurrently herewith, the Debtor has filed a motion for an order shortening time with respect to the Motion to schedule the Bid Procedures Hearing for June 6, 2017.

18. Pursuant to the terms of the Purchase Agreement, the Stalking Horse Purchaser has agreed to purchase the Assets for \$2,800,000, in addition to the assumption of certain liabilities set forth in the Purchase Agreement and subject to certain adjustments (the “Purchase Price”). The Stalking Horse Purchaser entered into the Purchase Agreement in contemplation of the Court’s approval of a breakup fee in the amount of \$126,000 (the “Breakup Fee”) to compensate the Stalking Horse Purchaser for its time and effort in examining the Debtor’s business, conducting due diligence, and the loss of opportunity that such time and effort has caused should another bidder be the Successful Bidder (as defined below) rather than the Stalking Horse Purchaser. The Breakup Fee represents the Stalking Horse Purchaser’s sole compensation in such event. The Debtor, in the exercise of its business judgment and in return for the value provided by the Stalking Horse Purchaser’s offer, especially given the time exigencies underlying this transaction, believes that the Breakup Fee is a necessary inducement for the stalking horse bid, and thus, necessary to establish a “floor” for the sale of the Assets and ultimately encourage competitive bidding and promote the realization of the highest value for the Assets.

19. The Debtor believes that the Bid Procedures proposed hereby will enable the efficient consummation of the sale of the Assets at an auction to the highest or best bidder. The Debtor will continue to market the Assets pending the outcome of the auction. In light of the extensive marketing process already undertaken and described above, as well as the additional efforts that will be made during the proposed sale process, the timing of the sale proposed herein is reasonable under the circumstances to effectuate a Sale of the Assets.

20. The Debtor believes that such marketing of the Assets over the period contemplated by the Bid Procedures, in addition to the marketing activities that have taken place to date, will result in the highest or best price for the Assets and maximize value for all of the Debtor's constituents.

Relief Requested⁵

21. Pursuant to this Motion, the Debtor requests that the Court enter the proposed Bid Procedures Order:

(a) approving the proposed Bid Procedures annexed as **Exhibit 1** to the proposed Bid Procedures Order, including the overbid provisions, Breakup Fee provisions, and granting the Debtor authority to designate Bluesky Energy US, Inc. as the Stalking Horse Purchaser, subject to the terms of the Purchase Agreement and Bid Procedures Order;

(b) approving the procedures set forth herein (the "Cure Procedures") for the assumption and assignment of certain executory contracts and unexpired leases in connection with the Sale (the "Assumed Executory Contracts");

(c) establishing a date for holding the auction (the "Auction") to occur one day prior to Sale Hearing and approving certain procedures in connection therewith;

(d) scheduling the hearing (the "Sale Hearing") to approve any sale transaction(s) to either the Stalking Horse or the highest or best bidder for the Assets determined

⁵ In compliance with Local Rule 6004-1 and for the convenience of the reader, the salient terms of the transaction as currently set forth in the Stalking Horse APA have been summarized and are attached hereto as **Exhibit D**.

at the Auction (the “Successful Bidder”) and establishing deadlines for objections and responses to the relief requested in the Motion with respect to the proposed Sale and Sale Hearing; and

(e) approving the form and manner of notice to be served upon certain parties, including: (i) the form of notice, substantially in the form attached to the Bid Procedures Order as Exhibit 2 (the “Sale and Bid Procedures Notice”), to be served on the Bid Procedures Notice Parties (as defined below); (ii) the form of notice, substantially in the form attached the Bid Procedures Order as Exhibit 3, to be served on all known creditors of the Debtor (the “Creditor Notice”); and (iii) the form of notice to parties holding Assumed Executory Contracts in conjunction with the proposed sale, in substantially the form attached the Bid Procedures Order as Exhibit 4 (the “Cure Notice”).

22. The Debtor further requests that the Court enter the Sale Order:

(a) approving the Sale of the Assets to the Stalking Horse Purchaser or other Successful Bidder, free and clear of all liens, claims, encumbrances, and other interests, except as provided in the Purchase Agreement or competing purchase agreement (with all liens, claims, encumbrances and other interests to attach to the Sale proceeds with the same validity and in the same order of priority as they attached to the Assets prior to the Sale);

(b) authorizing the assumption and assignment to the Stalking Horse Purchaser or other Successful Bidder of the Assumed Executory Contracts; and

(c) authorizing the Debtor to consummate the Sale and all documents, agreements, and contracts executed in conjunction therewith.

Proposed Bid Procedures⁶

23. The Bid Procedures are summarized as follows:

Agreement

24. Prospective bidders should submit a proposed asset purchase agreement (a “Competing Agreement”), similar in form and substance, as modified, to the Purchase Agreement. Subject to the approval of the Court, the highest or best bidder at the auction will purchase the Assets, and assume certain executory contracts and unexpired leases, free and clear of any liens, claims or encumbrances. The transaction contemplated is subject to competitive bidding as set forth herein, and approval by the Bankruptcy Court pursuant to Bankruptcy Code sections 363 and 365.

Assets for Sale

25. The Debtor is offering for sale the Assets, which generally consist of the manufacturing operations, substantially all of the Debtor’s other business assets and property associated with its battery technology. Except as otherwise provided in the Purchase Agreement, all of the Debtor’s right, title and interest in and to the Assets subject thereto shall be sold free and clear of any Liens, Claims, interests and encumbrances (other than Permitted Liens and/or except as otherwise provided in the Competing Agreement) (collectively, the “Liens, Claims and Encumbrances”) to the maximum extent permitted by section 363 of the Bankruptcy Code, with such Liens, Claims and Encumbrances to attach to the net proceeds of the sale of the Assets with

⁶ The foregoing is a summary of the Bid Procedures. In the event of any conflict between the procedures summarized in this Motion below and the Bid Procedures attached as Exhibit 1 to the Bid Procedures Order, the latter shall control. Unless otherwise noted, capitalized terms used in this section describing the proposed Bid Procedures have the meanings ascribed in the Purchase Agreement.

the same validity and priority as such Liens, Claims and Encumbrances applied against the Assets.

Participation Requirements

26. In order to participate in the bidding process and to or otherwise be considered for any purpose hereunder, a person interested in all or portions of the Assets (a “Potential Bidder”) must first deliver (unless previously delivered) to the Debtor and its counsel, not later than five (5) business days before the Bid Deadline (defined below), unless otherwise waived by the Debtor in its sole discretion in consultation with the Official Committee of Unsecured Creditors (the “Committee”), the following:

(a) Confidentiality Agreement. An executed confidentiality agreement (“Confidentiality Agreement”) in form and substance acceptable to the Debtor;

(b) Identification of Potential Bidder. Concurrently with its Bid, identification of the Potential Bidder, its principals, and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction;

(c) Corporate Authority. Concurrently with its Bid, written evidence satisfactory to Debtor of the Potential Bidder’s chief executive officer or other appropriate senior executive’s approval of the contemplated transaction;

(d) Disclosure. Written disclosure of any connections or agreements with the Debtor, the Stalking Horse Purchaser, any other known Potential Bidder or Qualified Bidder (as defined below), and/or any officer, director or direct or indirect equity security holder of the Debtor; and

(e) Proof of Financial Ability to Perform. Prior to or at the time of presentation of a Bid, written evidence that demonstrates the Potential Bidder has the necessary financial ability to close the contemplated transaction and provide adequate assurance of future performance under all contracts to be assumed in such contemplated transaction. Such information should include, *inter alia*, the following:

- (1) the Potential Bidder's current financial statements (audited if they exist);
- (2) contact names and numbers for verification of financing sources;
- (3) evidence of the Potential Bidder's internal resources and proof of any debt or equity funding commitments that are needed to close the contemplated transaction; and
- (4) any such other form of financial disclosure of credit-quality support information or enhancement acceptable to the Debtor demonstrating that such Potential Bidder has the ability to close the contemplated transaction.

Designation as Qualified Bidder

27. A "Qualified Bidder" is a Potential Bidder (or combination of Potential Bidders whose bids for the Assets of the Debtor do not overlap and who shall also be referred to herein as a single Qualified Bidder) that delivers the documents described above and otherwise satisfies the requirements of the Bid Procedures Order and the procedures set forth herein, and that the Debtor, in its discretion (in consultation with the Committee), determines is reasonably likely to submit a *bona fide* offer for the Assets and to be able to consummate a sale if selected as a Successful Bidder.

28. The Debtor, in its sole discretion and in consultation with the Committee, shall determine and notify the Potential Bidder with respect to whether such Potential Bidder is a Qualified Bidder.

29. The Stalking Horse Purchaser is a Qualified Bidder and is deemed to satisfy all Bid requirements as set forth below.

Access to Due Diligence Materials

30. Only Potential Bidders that execute and deliver a confidentiality agreement satisfactory to the Debtor, in its sole discretion, are eligible to receive due diligence access or additional non-public information. The Debtor shall not be required to provide confidential or proprietary information to a Potential Bidder if the Debtor believes that such disclosure would be detrimental to the interests of the Debtor. If the Debtor determines that a Potential Bidder that has satisfied the Participation Requirements does not constitute a Qualified Bidder, then such Potential Bidder's right to receive due diligence access or additional non-public information shall terminate. The Debtor will designate an employee or other representative to coordinate all reasonable requests for additional information and due diligence access from such Qualified Bidders. The Debtor shall not be obligated to furnish any due diligence information after the Bid Deadline. The Debtor is not responsible for, and will bear no liability with respect to, any information obtained by Qualified Bidders in connection with the sale of the Assets.

Due Diligence From Bidders

31. Each Potential Bidder and Qualified Bidder (each, a "Bidder") (and, collectively, "Bidders") shall comply with all requests for additional information and due diligence access by the Debtor or its advisors regarding such Bidder and its contemplated transaction. Failure by a Potential Bidder to comply with requests for additional information and due diligence access will be a basis for the Debtor to determine that the Potential Bidder is not a Qualified Bidder. Failure by a Qualified Bidder to comply with such requests for additional

information and due diligence access will be a basis for the Debtor to determine that a bid made by a Qualified Bidder is not a Qualified Bid.

Bidding Process

32. The Debtor and its advisors, shall (in consultation with Committee): (i) determine whether a Potential Bidder is a Qualified Bidder; (ii) coordinate the efforts of Bidders in conducting their due diligence investigations, as permitted by the provisions hereof; (iii) receive offers from Qualified Bidders; and (iv) negotiate any offers made to purchase the Assets. The Debtor (in consultation with the Committee) shall have the right to adopt such other rules for the bidding process that are not inconsistent with the Bid Procedures Order that will better promote the goals of such process.

Bid Deadline

33. On or before the Bid Deadline, a Qualified Bidder that desires to make an offer, solicitation or proposal (a "Bid") shall deliver written and electronic copies of its Bid to the Debtor, Aquion Energy, Inc., 32 39th Street, Pittsburgh, PA, 15201, Attn: Suzanne B. Roski, and Suzanne.roski@aquion-energy.com, with a copy to counsel for the Debtor, Pachulski Stang Ziehl & Jones LLP, 919 N. Market St., 17th Floor, Wilmington, Delaware 19801, Attn: Laura Davis Jones, not later than 4:00 p.m. (prevailing Eastern time), which the Debtor proposes to be June 16, 2017 by noon prevailing Eastern Time (the "Bid Deadline"). The Debtor shall promptly provide copies of all Bids to counsel for the Committee.

34. A Bid received after the Bid Deadline shall not constitute a Qualified Bid, unless otherwise allowed by the Debtor in its sole discretion (in consultation with the Committee).

Bid Requirements

35. To be eligible to participate in the Auction, each Bid and each Qualified Bidder submitting such a Bid must be determined by the Debtor (in consultation with the Committee) to satisfy each of the following conditions unless waived or modified by the Debtor in its sole discretion (in consultation with the Committee):

(1) Good Faith Deposit. Each Bid must be accompanied by a deposit (the “Good Faith Deposit”) in the form of a certified check or cash payable to the order of the Debtor in an amount to be determined by the Debtor, but in any event no less than 10% of the Bidder’s offer. The Debtor reserves the right to modify the amount of the Good Faith Deposit in its discretion (in consultation with the Committee).

(2) Minimum Bid. The consideration proposed by the Bid may include only cash and/or other consideration acceptable to the Debtor (in consultation with the Committee) in an amount of (1) no less than \$3,026,000, which is the sum of: (a) the purchase price offered by the Stalking Horse Purchaser in the amount of \$2,800,000; (b) \$100,000 in cash as an initial overbid amount; and (c) \$126,000, which is the dollar value of the Breakup Fee (as defined below), if any, in cash; and (2) the assumption of either all Assumed Liabilities that would be assumed by the Stalking Horse Purchaser under the Purchase Agreement or additional cash or other consideration of an equivalent value as determined by the Debtor in its business judgment. The amounts in (1)-(2) of this paragraph is referred to as a “Minimum Bid.”

(3) Irrevocable. The Bids of the Successful Bidder and the Back-up Bidder (defined below) must be irrevocable until the earlier of (a) the closing of the transaction with the Successful Bidder, or (b) the date the Sale Order has become final and non-appealable (the earliest of these dates being “Termination Date”).

(4) Principal Terms. A Bid must include an executed agreement pursuant to which the Qualified Bidder proposes to effectuate the contemplated transaction (the "Contemplated Transaction Documents") and a black-lined copy of the Competing Agreement marked to show all changes requested by the Qualified Bidder, including specification of the proposed purchase price and any changes to any exhibits or schedules to the Competing Agreement. The terms and conditions of the Contemplated Transaction Documents must be, in the aggregate, not materially more burdensome to Debtor than the provisions contained in the Stalking Horse Purchase Agreement. A Bid must identify with particularity each and every condition to closing and all executory contracts and unexpired leases to be assumed and assigned pursuant to the Contemplated Transaction Documents. The Contemplated Transaction Documents must include a commitment to close by no later than the closing date set forth in section 2 of the Purchase Agreement. A Bid should propose a contemplated transaction involving all or substantially all of the Assets, provided, however, that the Debtor in its sole discretion (in consultation with the Committee) may consider proposals for less than substantially all the Assets if such proposals or combination of proposals maximizes the value of the Debtor's estate.

(5) Contingencies. A Bid may not be conditioned on obtaining financing or any internal approval or on the outcome or review of due diligence, but may be subject to the accuracy in all material respects at the closing of specified representations and warranties at or before closing or the satisfaction in all material respects at the closing of specified conditions. A Bid must disclose any governmental approvals identified by the Qualified Bidder other than as set forth in the Competing Agreement that may impact the evaluation of such Bid.

(6) Authorization to Bid and Identity of Bidder. A Bid must include evidence of authorization and approval from such Qualified Bidder's board of directors (or comparable governing body, or a statement as to why such approval is unnecessary) with respect to the submission, execution, delivery and closing of the Contemplated Transaction Documents. A Bid must also fully disclose the identity of such entity that is submitting the Bid, including the identity of each equity holder or other financial backer of the bidder if such bidder is formed for the purpose of submitting the bid.

(7) Financing Sources. A Bid must contain written evidence of a commitment for financing or other evidence of the ability to consummate the sale satisfactory to the Debtor (in consultation with the Committee) with appropriate contact information for such financing sources.

(8) No Fees Payable to Qualified Bidder. A Bid may not request or entitle the Qualified Bidder to any breakup fee, termination fee, expense reimbursement or similar type of payment. Moreover, by submitting a Bid, a Bidder shall be deemed to waive the right to pursue a substantial contribution claim under Bankruptcy Code § 503 related in any way to the submission of its Bid or the Bid Procedures.

(9) Immediate Payment of the Breakup Fee. A Bid must allow for the immediate payment of the Breakup Fee to the Stalking Horse Purchaser from the first proceeds of the cash portion of the purchase price of such Bid.

(10) Non-Reliance. A Bid must include an acknowledgement and representation of the Qualified Bidder that it has had an opportunity to conduct any and all due diligence regarding the Assets and Assumed Liabilities prior to making its bid, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid, and that it did not rely upon any written or oral statements, representations, warranties, or guaranties, express, implied, statutory or otherwise, regarding the Assets, the financial performance of the Assets or the physical condition of the Assets, the Assumed Liabilities, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Contemplated Transaction Documents.

36. A Bid received from a Qualified Bidder before the Bid Deadline that meets the above requirements and that satisfies the Bid Deadline requirement above shall constitute a "Qualified Bid," if the Debtor believes, in its sole discretion (in consultation with the Committee), that such Bid would be consummated if selected as the Successful Bid. The Debtor shall have the right to reject any and all bids that they believe, in its sole discretion (in consultation with the Committee), do not comply with the Bid Procedures. In the event that any Potential Bidder is determined by the Debtor not to be a Qualified Bidder, the Potential Bidder shall be refunded its Good Faith Deposit.

Breakup Fee

37. Recognizing the Stalking Horse Purchaser's expenditure of time, energy

and resources, and that the Stalking Horse Purchaser provides a floor bid with respect to the Assets that it offers to purchase, the Debtor is authorized (pursuant to the Bid Procedures Order) to provide the following bidding protections to the Stalking Horse Purchaser.

(a) The Debtor has agreed to pay the Stalking Horse Purchaser a Breakup Fee in an amount equal to \$126,000 as a breakup fee pursuant to an in accordance with terms of the Purchase Agreement and Bid Procedures Order.

(b) Any Bid submitted on the Bid Deadline by a party or parties other than the Stalking Horse Purchaser must be in an amount that is sufficient to pay the Breakup Fee and result in additional consideration to the Debtor's estate in the amount of at least \$100,000 (as compared to the Purchase Price offered by such Stalking Horse Purchaser), after payment of the Breakup Fee.

Auction

38. If the Debtor receives at least one (1) Qualified Bid from a Qualified Bidder other than the Stalking Horse Purchaser prior to the Bid Deadline (unless such deadline is extended, as provided below), then the Debtor shall notify the Stalking Horse Purchaser and each other Qualified Bidder that the Debtor intends to conduct an auction (the "Auction") to consider all Qualified Bids and to determine the highest or otherwise best bid with respect to the Assets. The Debtor shall provide the Stalking Horse Purchaser, all Qualified Bidders and the Committee with copies of all Qualified Bids in advance of the Auction, but may exclude any confidential financial information, as reasonably designated by the applicable Qualified Bidder. Unless otherwise designated by the Debtor, the Debtor requests that the Auction commence one business day prior to the Sale Hearing at 10:00 a.m (prevailing Eastern Time) at the offices of Pachulski Stang Ziehl & Jones LLP, 919 N. Market St., 17th Floor, Wilmington, DE 19899.

39. In advance of the Auction, the Debtor will notify all Qualified Bidders in

writing of (i) the highest or otherwise best Qualified Bid, as determined by the Debtor in its discretion (the "Baseline Bid") and (ii) the time and place of the Auction.

40. If the Debtor does not receive at least one (1) Qualified Bid from a Qualified Bidder other than the Stalking Horse Purchaser, then no Auction shall be scheduled or conducted, and the Court at the Sale Hearing shall proceed to solely consider the approval of the proposed sale to the Stalking Horse Purchaser as set forth in the Purchase Agreement and shall not consider any competing or alternative offers or proposals to purchase the Assets.

41. If the Auction is necessary, such Auction shall be conducted according to the following procedures:

(a) **Participation at the Auction**

42. Only the Stalking Horse Purchaser and Qualified Bidders that have submitted Qualified Bids are eligible to participate at the Auction. Only the authorized representatives and professional advisors of each of the Qualified Bidders, the Debtor, the Committee, and the U.S. Trustee shall be permitted to attend the Auction.

43. Except as otherwise set forth herein, the Debtor (in consultation with the Committee) may conduct the Auction in the manner it determines will result in the highest or best offer for the Assets.

44. In the Debtor's sole discretion, after the conclusion of the Auction, the Debtor may resume an auction for the sale of discrete assets and/or discrete groups of assets, if any, which are not included in the Successful Bid, on such bidding procedures as may be implemented by the Debtor in its discretion.

(b) The Debtor Shall Conduct the Auction

45. The Debtor and its professionals shall direct and preside over the Auction. At the start of the Auction, the Debtor shall describe the terms of the Baseline Bid. The determination of which Qualified Bid constitutes the Baseline Bid shall be made by the Debtor in its discretion (in consultation with the Committee), and may take into account any factors the Debtor reasonably deems relevant to the value of the Qualified Bid to the estate (the "Bid Assessment Criteria"). All Bids made thereafter shall be Overbids (as defined below) and shall be made and received on an open basis, and all material terms of each Bid shall be fully disclosed to all other Qualified Bidders. The Debtor reserves the right to conduct the Auction in the manner designed to maximize value based upon the nature and extent of the Qualified Bids received. The Debtor shall maintain a transcript of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids and the Successful Bid. Pursuant to Local Rule 6004-1, each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the Bid Procedures, the Auction or the proposed transaction.

(c) Terms of Overbids

46. An "Overbid" is any bid made at the Auction subsequent to the Debtor's announcement of the Baseline Bid. To submit an Overbid for purposes of this Auction, a Qualified Bidder must comply with the following conditions:

(d) Minimum Overbid Increment

47. During the Auction, bidding shall begin initially with the Baseline Bid. Any Overbid after the Baseline Bid shall be made in increments of at least \$50,000 in cash or

other consideration acceptable to the Debtor; *provided, however*, that any overbids by the Stalking Horse Purchaser thereafter shall only be required to be equal to the sum of (1) the then existing lead Bid plus (2) the \$50,000 Overbid less (3) \$126,000 (i.e. the amount of the Breakup Fee).

48. Any Overbid made by a Qualified Bidder must remain open and binding on the Qualified Bidder until and unless the Debtor (in consultation with the Committee) accepts a higher Qualified Bid as an Overbid.

(e) **Consideration of Overbids**

49. The Debtor reserves the right, in its reasonable business judgment, to make one or more adjournments in the Auction to, among other things: facilitate discussions between the Debtor and individual Qualified Bidders; allow individual Qualified Bidders to consider how they wish to proceed; and give Qualified Bidders the opportunity to provide the Debtor with such additional evidence as the Debtor, in its reasonable business judgment, may require, that the Qualified Bidder has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount.

(f) **Additional Procedures**

50. The Debtor may adopt rules for the Auction at or prior to the Auction that, in its reasonable discretion (in consultation with the Committee), will better promote the goals of the Auction and that are not inconsistent with any of the provisions of the Bid Procedures Order or the Bankruptcy Code. All such rules will provide that all Bids shall be made and received in

one room, on an open basis, and all other Qualified Bidders shall be entitled to be present for all bidding with the understanding that the true identity of each Qualified Bidder (*i.e.*, the principals submitting the Bid) shall be fully disclosed to all other Qualified Bidders and that all material terms of each Qualified Bid will be fully disclosed to all other Qualified Bidders throughout the entire Auction.

51. The Debtor (in consultation with the Committee) may (a) determine which Qualified Bid, if any, is the highest and best offer and (b) reject at any time before entry of an order of the Bankruptcy Court approving the sale of the Assets pursuant to a Qualified Bid, any Bid that is (i) inadequate or insufficient; (ii) not in conformity with the requirements of the Bankruptcy Code or these Bid Procedures; or (iii) contrary to the best interest of the Debtor, its estate and its creditors.

52. The Debtor may, in its sole discretion (in consultation with the Committee), extend the Bid Deadline or the Auction Date, as determined, beyond the dates provided herein. In the event of such an extension, the Debtor shall provide notice to the Notice Parties and any Qualified Bidders of such extension, any related time and location details with respect to same, and any consequent continuance of the Sale Hearing.

(g) **Consent to Jurisdiction as Condition to Bidding**

53. All Qualified Bidders at the Auction shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court and waived any right to a jury trial in connection with any disputes relating to the Auction, and the construction and enforcement of each Qualified Bidder's Contemplated Transaction Documents, as applicable.

(h) Closing the Auction

54. Upon conclusion of the bidding, the Auction shall be closed, and the Debtor (in consultation with the Committee) shall immediately identify the highest or best offer for the Assets (which may be an aggregate of bids for less than all of the Assets) (the "Successful Bid") and the entity submitting such Successful Bid (the "Successful Bidder"), which highest or best offer will provide the greatest amount of net value to the Debtor, and the next highest or best offers after the Successful Bid (the "Back-up Bid") and the entity or entities submitting the Back-up Bid (the "Back-up Bidder"), and advise the Qualified Bidders of such determination. Upon three (3) days' prior notice by the Debtor, the Back-up Bidder selected by the Debtor must immediately proceed with the closing of the transaction contemplated under the Back-up Bid in the event that the transaction with the Successful Bidder is not consummated for any reason.

55. As stated above, The Bids of the Successful Bidder and the Back-up Bidder must be irrevocable until the Termination Date.

Acceptance of Successful Bid

56. The Debtor shall sell the Assets to the Successful Bidder upon the approval of the Successful Bid by the Bankruptcy Court after the Sale Hearing. The Debtor's presentation of a particular Qualified Bid to the Bankruptcy Court for approval does not constitute the Debtor's acceptance of such Qualified Bid. The Debtor will be deemed to have accepted a Qualified Bid only when the Qualified Bid has been approved by the Bankruptcy Court at the Sale Hearing.

“As Is, Where Is”

57. The sale of the Assets shall be on an “as is, where is” basis and without representations or warranties of any kind, nature, or description by the Debtor, its agents or its estate except to the extent set forth in the Competing Agreement of the Successful Bidder. Each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its offer, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bid Procedures or the Competing Agreement of the Successful Bidder.

Free of Any and All Interests

58. Except as otherwise provided in the Successful Bidder’s Competing Agreement and subject to the approval of the Bankruptcy Court, all of Debtor’s right, title and interest in and to the Assets subject thereto shall be sold free and clear of any Liens, Claims, and Encumbrances to the maximum extent permitted by section 363 of the Bankruptcy Code, with such Liens, Claims and Encumbrances to attach to the net proceeds of the sale of the Assets with the same validity and priority as such Liens, Claims and Encumbrances applied against the Assets.

Sale Hearing

59. The Debtor has requested that the Sale Hearing occur on June 21, 2017 at 2:00 (prevailing Eastern time), or on such other date as may be established by the Bankruptcy Court.

60. If the Successful Bidder fails to consummate an approved sale in accordance with the applicable asset purchase agreement or such agreement is terminated, the Debtor shall be authorized, but not required, to deem the Back-up Bid, as disclosed at the Sale Hearing, the Successful Bids, and the Debtor shall be authorized, but not required, to consummate the sale with the Qualified Bidder submitting the next highest such Bid without further order of the Bankruptcy Court.

Return of Good Faith Deposit

61. The Good Faith Deposit of the Successful Bidder (or the Back-up Bidder that becomes a Successful Bidder) shall be applied to the purchase price of such transaction at Closing. The Debtor will hold the Good Faith Deposits of the Successful Bidder and the next highest Qualified Bidder in a segregated account until the closing of the sale with the Successful Bidder; good Faith Deposits of all other Qualified Bidders shall be held in a segregated account, and thereafter returned to the respective bidders following the conclusion of the Auction. If a Successful Bidder (including any Back-up Bidder that has become the Successful Bidder) fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Debtor shall be entitled to retain the Successful Bidder's Good Faith

Deposit as part of the Debtor's damages resulting from such Successful Bidder's breach or failure to perform.

Notice of Sale Hearing

62. As noted above, the Debtor requests that the Court: (1) schedule the Sale Hearing for June 21, 2017, at 2:00 p.m. prevailing Eastern Time, which is a previously set omnibus hearing date and that the Court; (2) fix June 16, 2017, noon, prevailing Eastern Time as the Bid Deadline; and (2) fix June 20, 2017, at 10:00 prevailing Eastern Time for the commencement of any Auction. The Debtor proposes that objections, if any, to the Sale be filed and properly served on the notice parties on or before June 16, 2017, by 4:00 p.m. prevailing Eastern Time.

63. The Debtor requests that the Court approve the manner of notice of this Motion, the Bid Procedures, the Auction, and the Sale Hearing, substantially in the form attached to the Sale and Bid Procedures Notice, which the Debtor will serve on the following parties:

- (a) the U.S. Trustee;
- (b) counsel to the Committee;
- (c) all parties known to assert a lien, claim or encumbrance on any of the Assets, including, but not limited to, Trinity;
- (d) all known counterparties to the Assumed Executory Contracts;
- (e) all entities known to have expressed an interest in bidding on the Assets;
- (f) the United States Attorney's office;

(g) all state attorney generals in states in which the Debtor's Assets are located;

(h) state taxing authorities in the states in which the Debtor's assets are located; and the Internal Revenue Service;

(i) environmental and other applicable authorities in the states or applicable jurisdictions in which the Debtor's Assets are located;

(j) the Stalking Horse Purchaser and its counsel; and

(k) all other parties that had filed a notice of appearance and demand for service of papers in these bankruptcy cases under Bankruptcy Rule 9010(b) as of the date of entry of the Bid Procedures Order (the parties listed in (a)-(k) above are collectively referred to as the "Sale and Bid Procedures Notice Parties").

64. Additionally, the Debtor proposes to serve the Creditor Notice substantially in the form attached to the Bid Procedures Order as Exhibit 3 on all known creditors of the Debtor.

65. The Debtor proposes to serve the Sale and Bid Procedures Notice and the Creditor Notice within two (2) business days from the date of entry of the Bid Procedures Order, by first-class mail, postage prepaid, on the appropriate parties as described above. Both the Sale and Bid Procedures Notice and the Creditor Notice will provide that any party that has not received a copy of the Bid Procedures Order that wishes to obtain a copy of such document may make such a request, in writing, to Pachulski Stang Ziehl & Jones LLP, 919 North Market Street,

17th Floor, P.O. Box, 8705, Wilmington, Delaware, 19899-8705 (Courier 19801) (Attn: Laura Davis Jones, Esquire), ljones@pszjlaw.com.

66. The Debtor submits that the foregoing notices comply fully with Bankruptcy Rule 2002 and are reasonably calculated to provide timely and adequate notice of the Bid Procedures, Auction, and Sale Hearing to the Debtor's creditors and other parties in interest as well as to those who have expressed an interest or are likely to express an interest in bidding on the Assets. Based on the foregoing, the Debtor respectfully requests that this Court approve these proposed notice procedures.

Sale Hearing

67. At the Sale Hearing, the Debtor will seek Bankruptcy Court approval of the sale of the Assets to the Stalking Horse Purchaser or other Successful Bidder, free and clear of all liens, claims and encumbrances pursuant to section 363(f) of the Bankruptcy Code with all such liens, claims and interests to attach to the proceeds of the sale, except as otherwise provided with the same validity and in the same order of priority as they attached to the Assets prior to the sale, including the assumption by the Debtor and assignment to the Successful Bidder of the Assumed Executory Contracts pursuant to section 365 of the Bankruptcy Code. The Debtor will submit and present additional evidence, as necessary, at the Sale Hearing demonstrating that the Sale is fair, reasonable, and in the best interest of the Debtor's estate and all interested parties, and satisfies the standards necessary to approve a sale of substantially all of a debtor's assets articulated by the Court of Appeals for the Third Circuit in *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3d Cir. 1986).

Closing

68. The closing shall take place in accordance with terms of the Purchase Agreement or the asset purchase agreement of the Successful Bidder, approved by the Bankruptcy Court at the Sale Hearing.

Procedures for the Assumption and Assignment of Assumed Executory Contracts

69. As noted above, the Debtor will seek to assume and assign the Assumed Executory Contracts to be identified on schedules to the Purchase Agreement, or alternatively, identified pursuant the Successful Bidder's asset purchase agreement

70. The Assumed Executory Contracts will be those Contracts and Leases pursuant to which the Debtor serves a Cure Notice. However, a Successful Bidder may choose to delete certain of the Assumed Executory Contracts previously designated by the Stalking Horse Purchaser for assumption and assignment. If the Successful Bidder chooses to delete an Assumed Executory Contract, then notice of that deletion shall be provided to the affected counterparty by Debtor. Only those Assumed Executory Contracts assumed as of the closing of the Sale will be required to be cured.

71. The Debtor will file with the Court and serve the form of the Cure Notice to, substantially in the form of Exhibit 4 to the Bid Procedures Order, (along with a copy of this Motion) upon each Counterparty to the Assumed Executory Contracts by no later than two business days after the entry of the Bid Procedures Order. The Cure Notice will state the date, time and place of the Sale Hearing as well as the date by which any objection to the assumption and assignment of Assumed Executory Contracts (including the Cure Amount (defined below))

must be filed and served. The Cure Notice also will identify the amounts, if any, that the Debtor believes are owed to each Counterparty to an Assumed Executory Contract in order to cure any defaults that exist under such contract (the "Cure Amounts"). This Motion constitutes a separate motion to assume and assign the Assumed Executory Contracts pursuant to section 365 of the Bankruptcy Code.

72. The inclusion of a contract, lease, or other agreement on the Cure Notice shall not constitute or be deemed a determination or admission by the Debtor and its estate or any other party in interest that such contract, lease, or other agreement is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code, and any and all rights with respect thereto are hereby reserved.

73. If an Assumed Executory Contract is assumed and assigned pursuant to Court Order, then unless the applicable counterparties to the Assumed Executory Contract (each a "Counterparty" and collectively, the "Counterparties") properly files and serves an objection to the Cure Amount contained in the Cure Notice by the Assumption Objection Deadline (defined below), subject to the assumption and assignment of its contract at the Closing, the Counterparty will receive, at the time of the closing of the Sale (or as soon as reasonably practicable thereafter), the Cure Amount as set forth in the Cure Notice, if any. If an objection is filed by a Counterparty to an Assumed Executory Contract, the Debtor proposes that such objection must set forth a specific default in the executory contract or unexpired lease, claim a specific monetary amount that differs from the Cure Amount, if any, specified by the Debtor in the Cure Notice, along with such documentation supporting this amount, and set forth any reason why the

Counterparty believes the executory contract or unexpired lease cannot be assumed and assigned to the Successful Bidder.

74. If any Counterparty objects for any reason to the assumption and assignment of an Assumed Executory Contract (including an objection to a proposed Cure Amount) (an "Assumption Objection"), the Debtor proposes that the Counterparty must file the objection and serve it so as to be actually received on or before the Assumption Objection Deadline (defined below), upon the Debtor and the other notice parties identified in the Cure Notice by no later than (i) 4:00 p.m. (prevailing Eastern Time) on June 16, 2017; or (ii) the date otherwise specified in the Cure Notice (or, alternatively, the date set forth in the motion to assume such Assumed Executory Contract if such contract is to be assumed and assigned after the Auction) (the "Assumption Objection Deadline"), provided, however, as to any Successful Bidder who is not the Stalking Horse Purchaser, any Counterparty may raise at the Sale Hearing an objection to the assumption and assignment of the Assumed Executory Contract solely with respect to the Successful Bidder's ability to provide adequate assurance of future performance under the Assumed Executory Contract. After receipt of an Assumption Objection, the Debtor will attempt to reconcile any differences in the Cure Amount or otherwise resolve the objection with the objecting Counterparty. In the event that the Debtor and the Counterparty cannot resolve an Assumption Objection, and the Court does not otherwise make a determination at the Sale Hearing regarding an Assumption Objection related to a Cure Amount, the Stalking Horse Purchaser must either (i) fund the amount in escrow or similar arrangement to pay any disputed Cure Amounts pending the resolution of any such Cure Amount disputes by the Court or mutual

agreement of the parties, (ii) remove the Assumed Executory Contract form assumption and assignment to it pursuant to the Purchase Agreement. Nothing herein shall modify or limit the parties' rights and obligations, if any, with respect to the conditions set forth in section 4.2.6 of the Purchase Agreement.

75. The Successful Bidder(s) shall be responsible for satisfying any requirements regarding adequate assurance of future performance that may be imposed under section 365(b) of the Bankruptcy Code in connection with the proposed assignment of any Assumed Executory Contract, and the failure to provide adequate assurance of future performance to any Counterparty to any Assumed Executory Contracts shall not excuse the Successful Bidder(s) from performance of any and all of its obligations pursuant to the Successful Bidder's Competing Agreement. The Debtor proposes that the Court make its determinations concerning adequate assurance of future performance under the Assumed Executory Contracts pursuant to section 365(b) of the Bankruptcy Code at the Sale Hearing if the Successful Bidder is the Stalking Horse Purchaser or, at such time as ordered by the Court if the Successful Bidder is a party other than Stalking Horse Purchaser. Disputed Cure Amounts will be resolved by the Court at the Sale Hearing or such later date as may be agreed to or ordered by the Court.

76. The Debtor and the Debtor's estate shall be relieved of all liability accruing or arising after the assumption and assignment of the Assumed Executory Contracts, pursuant to Section 365(k) of the Bankruptcy Code.

Basis for Relief Requested

A. The Sale of the Assets is Authorized by Section 363 as a Sound Exercise of the Debtor's Business Judgment

77. In accordance with Bankruptcy Rule 6004, sales of property rights outside the ordinary course of business may be by private sale or public auction. The Debtor has determined that the Sale of the Assets by public auction will enable them to obtain the highest and best offer for these Assets (thereby maximizing the value of the estate) and is in the best interests of the Debtor's creditors. In particular, the Purchase Agreement is the result of comprehensive arms' length negotiations for the Sale of the Assets and the Sale pursuant to the terms of the Purchase Agreement, subject to higher or otherwise better offers at the Auction, will provide a greater recovery for the Debtor's creditors than would be provided by any other existing alternative.

78. Section 363 of the Bankruptcy Code provides that a trustee, "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b). Although section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, a sale of a debtor's assets should be authorized if a sound business purpose exists for doing so. *See, e.g., Meyers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996); *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (2d Cir. 1986); *In re Titusville Country Club*, 128 B.R. 396 (W.D. Pa. 1991); *In re Delaware & Hudson Ry. Co.*, 124 BR. 169, 176 D. Del. 1991); *see also Official Committee of Unsecured Creditors v. The LTV Corp. (In re*

Chateaugay Corp.), 973 F.2d 141, 143 (2d Cir. 1992); *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *Committee of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986).

79. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See, e.g., In re Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997) (in bankruptcy sales, “a primary objective of the Code [is] to enhance the value of the estate at hand”); *Integrated Resources*, 147 B.R. at 659 (“It is a well-established principle of bankruptcy law that the . . . [trustee’s] duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.”) (quoting *In re Atlanta Packaging Prods., Inc.*, 99 BR. 124, 130 (Bankr. N.D. Ga. 1988)). As long as the sale appears to enhance a debtor’s estate, court approval of a trustee’s decision to sell should only be withheld if the trustee’s judgment is clearly erroneous, too speculative, or contrary to the provisions of the Bankruptcy Code. *GBL Holding Co., Inc. v. Blackburn/Travis/Cole, Ltd.*, 331 B.R. 251, 255 (N.D. Tex. 2005); *In re Lajijani*, 325 B.R. 282, 289 (9th Cir. B.A.P. 2005); *In re WPRV-TV, Inc.*, 143 B.R. 315, 319 (D.P.R. 1991) (“The trustee has ample discretion to administer the estate, including authority to conduct public or private sales of estate property. Courts have much discretion on whether to approve proposed sales, but the trustee’s business judgment is subject to great judicial deference.”).

80. Applying section 363 of the Bankruptcy Code, the proposed Sale of the Assets should be approved. As set forth above, the Debtor has determined that the best method

of maximizing the recovery of the Debtor's creditors would be through the Sale of the Assets. Further, the Debtor believes that the value its estate (and, thus, the value for the Debtor's creditors) will receive from the Sale of the Assets exceeds any value the Debtor's estate could obtain for the Assets if the Debtor is required to liquidate its assets piecemeal. As assurance of value, bids will be tested through the Auction consistent with the requirements of the Bankruptcy Code, the Bankruptcy Rules, and pursuant to the Bid Procedures approved by the Court. Consequently, the fairness and reasonableness of the consideration to be paid by the Successful Bidder ultimately will be demonstrated by adequate "market exposure" and an open and fair auction process—the best means, under the circumstances, for establishing whether a fair and reasonable price is being paid.

B. The Bid Procedures Are Appropriate and Will Maximize the Value Received for the Assets.

81. As noted above, the paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. To that end, courts uniformly recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and therefore are appropriate in the context of bankruptcy sales. *See, e.g., In re Fin'l News Network, Inc.*, 126 B.R. 152, 156 (Bankr. S.D.N.Y. 1991) ("court-imposed rules for the disposition of assets . . . [should] provide an adequate basis for comparison of offers, and [should] provide for a fair and efficient resolution of bankrupt estates").

82. Procedures to dispose of assets, similar to the proposed Bid Procedures, have been approved in other bankruptcy cases. *See, e.g., In re IMRIS, Inc.*, Case No. 15-11133 (CSS) (Bankr. D. Del. June 16, 2015); *In re Velti Inc.*, Case No. 13-12878(PJW) (Bankr. D. Del. Nov. 20, 2013); *In re Orchard Supply Hardware Stores Corp.*, Case No. 13-11565 (CSS) (Bankr. D. Del. Jul. 8, 2013); *In re Conex Holdings LLC*, Case No. 11-10501(CSS) (Bankr. D. Del. Sept. 14, 2011); *In re Barnes Bay Dev. Ltd.*, Case No. 11-10792 (PJW) (Bankr. D. Del. May 19, 2011); *In re East West Resort Dev. V, L.P., L.L.L.P.*, Case No. 10-10452 (BLS) (Bankr. D. Del. March 31, 2010); *In re Dana Corp.*, Case No. 06-10354 (Bankr. S.D.N.Y. Oct. 19, 2006); *In re Delphi Corp.*, Case No. 05-44481 (Bankr. S.D.N.Y. June 22, 2006); *In re Oxford Automotive, Inc.*, Case No. 04-74377 (Bankr. E.D. Mich. Jan. 24, 2005); *see also In re Calpine Corp.*, Case No. 05-60200 (Bankr. S.D.N.Y. Dec. 6, 2006).

83. The Debtor believes that the Bid Procedures will establish the parameters under which the value of the Assets may be tested at an auction and through the ensuing Sale Hearing. Such procedures will increase the likelihood that the Debtor's creditors will receive the greatest possible consideration for the Debtor's Assets because they will ensure a competitive and fair bidding process. They also allow the Debtor to undertake an auction in as expeditious and efficient manner as possible, which the Debtor believes is essential to maximizing the value of the Debtor's estate for its creditors.

84. The Debtor also believes that the proposed Bid Procedures will promote active bidding from seriously interested parties and will dispel any doubt as to the best and highest offer reasonably available for the Debtor's Assets. In particular, the proposed Bid

Procedures will allow the Debtor to conduct an auction in a controlled, fair, and open fashion that will encourage participation by financially capable bidders who demonstrate the ability to close a transaction. Further, the Bid Procedures provide the Debtor with the opportunity to consider all Qualified Bids and to select, in its reasonable business judgment, and after consultation with its professionals and the Committee, the highest and best offer(s) for the Assets.

85. In sum, the Debtor believes that the Bid Procedures will encourage bidding for the Assets and are consistent with the relevant standards governing auction proceedings and bidding incentives in bankruptcy proceedings. Accordingly, the proposed Bid Procedures are reasonable, appropriate, and within the Debtor's sound business judgment.

C. The Sale of the Assets Free and Clear of Liens and Other Interests is Authorized by Section 363(f) of the Bankruptcy Code

86. The Debtor further submits that it is appropriate to sell the Assets free and clear of liens pursuant to section 363(f) of the Bankruptcy Code, with any such liens attaching to the Sale Proceeds of the Assets to the extent applicable. Section 363(f) of the Bankruptcy Code authorizes a trustee to sell assets free and clear of liens, claims, interests and encumbrances if:

- (1) applicable nonbankruptcy law permits the sale of such property free and clear of such interests;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest. 11 U.S.C. § 363(f).

87. This provision is supplemented by Section 105(a) of the Bankruptcy Code, which provides that “[t]he Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a).

88. Because Section 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the O Assets “free and clear” of liens and interests. *In re Dundee Equity Corp.*, 1992 Bankr. LEXIS 436, at *12 (Bankr. S.D.N.Y. March 6, 1992) (“Section 363(f) is in the disjunctive, such that the sale free of the interest concerned may occur if any one of the conditions of § 363(f) have been met.”); *In re Bygaph, Inc.*, 56 B.R. 596, 606 n.8 (Bankr. S.D.N.Y. 1986) (same); *Michigan Employment Sec. Comm’n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (stating that Bankruptcy Code section 363(f) is written in the disjunctive; holding that the court may approve the sale “free and clear” provided at least one of the subsections of Bankruptcy Code section 363(f) is met).

89. The Debtor believes that at least one of the tests of Section 363(f) is satisfied with respect to the transfer of the Assets pursuant to the Purchase Agreement. In particular, the Debtor believes that at least section 363(f)(2) will be met in connection with the transactions proposed under the Purchase Agreement because each of the parties holding liens on the Assets will consent or, absent any objection to this Motion, will be deemed to have consented to the Sale. Any lienholder also will be adequately protected by having their liens, if any, in each instance against the Debtor or its estate, attach to the Sale proceeds ultimately attributable to the Assets in which such creditor alleges an interest, in the same order of priority, with the

same validity, force and effect that such creditor had prior to the Sale, subject to any claims and defenses the Debtor may possess with respect thereto. Accordingly, Section 363(f) authorizes the transfer and conveyance of the Debtor's Assets free and clear of any such claims, interests, liabilities, or liens.

90. Although Section 363(f) of the Bankruptcy Code provides for the sale of assets "free and clear of any interests," the term "any interest" is not defined anywhere in the Bankruptcy Code. *Folger Adam Security v. DeMatteis/MacGregor JV*, 209 F.3d 252, 257 (3d Cir. 2000). In the case of *In re Trans World Airlines, Inc.*, 322 F.3d 283, 288-89 (3d Cir. 2003), the Third Circuit specifically addressed the scope of the term "any interest." The Third Circuit observed that while some courts have "narrowly interpreted that phrase to mean only in rem interests in property," the trend in modern cases is towards "a more expansive reading of 'interests in property' which 'encompasses other obligations that may flow from ownership of the property.'" *Id.* at 289 (citing 3 *Collier on Bankruptcy* 15th Ed. Rev., ¶ 363.06[1] (L. King, 15th rev. ed. 1988)). As determined by the Fourth Circuit in *In re Leckie Smokeless Coal Co.*, 99 F.3d 573, 581-582 (4th Cir. 1996), a case cited with approval and extensively by the Third Circuit in *Folger, supra*, the scope of Section 363(f) is not limited to in rem interests. Thus, the Third Circuit in *Folger* stated that *Leckie* held that the debtor "could sell their assets under § 363(f) free and clear of successor liability that otherwise would have arisen under federal statute." *Folger*, 209 F.3d at 258 (citing *Leckie*, 99 F.3d at 582).

91. Courts have consistently held that a buyer of a debtor's assets pursuant to section 363 of the Bankruptcy Code takes such assets free from successor liability resulting from

pre-existing claims. See *The Ninth Avenue Remedial Group v. Allis-Chalmers Corp.*, 195 B.R. 716, 732 (Bankr. N.D. Ind. 1996) (stating that a bankruptcy court has the power to sell assets free and clear of any interest that could be brought against the bankruptcy estate during the bankruptcy); *MacArthur Company v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 837 F.2d 89, 93-94 (2d Cir. 1988) (channeling of claims to proceeds consistent with intent of sale free and clear under section 363(f) of the Bankruptcy Code); *In re New England Fish Co.*, 19 B.R. 323, 329 (Bankr. W.D. Wash. 1982) (transfer of property in free and clear sale included free and clear of Title VII employment discrimination and civil rights claims of debtor's employees); *In re Hoffman*, 53 B.R. 874, 876 (Bankr. D.R.I. 1985) (transfer of liquor license free and clear of any interest permissible even though the estate had unpaid taxes); *American Living Systems v. Bonapfel (In re All Am. of Ashburn, Inc.)*, 56 B.R. 186, 190 (Bankr. N.D. Ga. 1986) (product liability claims based on successor doctrine precluded after sale of assets free and clear); *WBO P'ship v. Virginia Dept. of Medical Assistance Servs. (In re WBO P'ship)*, 189 B.R. 97, 104-05 (Bankr. E.D. Va. 1995) (Commonwealth of Virginia's right to recapture depreciation is an "interest" as used in section 363(f)).⁷ The purpose of an order purporting to authorize the transfer of assets free and clear of all "interests" would be frustrated if claimants could thereafter use the transfer as a basis to assert claims against the purchaser arising from the Debtor's pre-sale conduct. Under section 363(f) of the Bankruptcy Code, the purchaser is entitled to know

⁷ Some courts, concluding that Section 363(f) of the Bankruptcy Code does not empower them to convey assets free and clear of claims, have nevertheless found that Section 105(a) of the Bankruptcy Code provides such authority. See, e.g., *Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) (stating that the absence of specific authority to sell assets free and clear of claims poses no impediment to such a sale, as such authority is implicit in the court's equitable powers when necessary to carry out the provisions of title 11).

that the Debtor's assets are not infected with latent claims that will be asserted against the purchaser after the proposed transaction is completed. Accordingly, consistent with the above-cited case law, the order approving the Sale should state that the Successful Bidder is not liable as a successor under any theory of successor liability, for claims that encumber or relate to the Assets.

D. The Proposed Notice of Bid Procedures, Auction, and Sale Is Appropriate

92. The Debtor believes that it will obtain the maximum recovery for creditors of the Debtor's estate if the Assets are sold through the proposed Bid Procedures. As explained in detail above, the Debtor has already taken significant steps to identify potential purchasers.

93. Under Bankruptcy Rules 2002(a) and (c), the Debtor is required to notify creditors of the proposed sale of the Debtor's Assets, including a disclosure of the time and place of an auction, the terms and conditions of a sale, and the deadline for filing any objections. The Debtor submits that the notice procedures herein comply fully with Bankruptcy Rule 2002 and are reasonably calculated to provide timely and adequate notice of the sale by auction to the Debtor's creditors and other interested parties, as well as to those parties who have expressed an interest, or may express an interest, in bidding on the Assets. The proposed time frame between the filing of this Motion, the commencement of the bidding process and the Auction will provide interested purchasers sufficient time to participate in the Auction.

E. The Breakup Fee is Appropriate Under the Circumstances

94. The Debtor submits that the Breakup Fee is a normal and oftentimes necessary component of sales outside the ordinary course of business under Section 363 of the

Bankruptcy Code. In particular, such a protection encourages a potential purchaser to invest the requisite time, money, and effort to conduct due diligence and sale negotiations with a debtor despite the inherent risks and uncertainties of the chapter 11 process. *See, e.g., In re Comdisco, Inc.*, Case No. 01 24795 (RB) (Bankr. N.D. Ill. Aug. 9, 2002) (approving a termination fee as, inter alia, an actual and necessary cost and expense of preserving the debtor's estate, of substantial benefit to the debtor's estate and a necessary inducement for, and a condition to, the proposed purchaser's entry into the purchase agreement); *Integrated Resources*, 147 B.R. at 660 (noting that fees may be legitimately necessary to convince a "white knight" to offer an initial bid by providing some form of compensation for the expenses such bidder incurs and the risks such bidder faces by having its offer held open, subject to higher and better offers); *In re Hupp Indus.*, 140 B.R. 191, 194 (Bankr. N.D. Ohio 1997) (without any reimbursement, "bidders would be reluctant to make an initial bid for fear that their first bid will be shopped around for a higher bid from another bidder who would capitalize on the initial bidder's . . . due diligence"); *In re Marrose Corp.*, 1992 WL 33848, at *5 (Bankr. S.D.N.Y. 1992) (stating that "agreements to provide reimbursement of fees and expenses are meant to compensate the potential acquirer who serves as a catalyst or 'stalking horse' which attracts more favorable offers"); *In re 995 Fifth Ave. Assocs.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (finding that 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") (citations omitted).

95. A proposed bidding incentive, such as the Breakup Fee should be approved when it is in the best interests of the estate. *See In re S.N.A. Nut Co.*, 186 B.R. 98, 104

(Bankr. N.D. Ill. 1995); *see also In re America West Airlines, Inc.*, 166 B.R. 908 (Bankr. D. Ariz. 1994); *In re Hupp Indus., Inc.*, 140 B.R. 191 (Bankr. N.D. Ohio 1992). Typically, this requires that the bidding incentive provide some benefit to the debtor's estate. *Calpine Corp. v. O'Brien Envtl. Energy, Inc. (In re O'Brien Envtl. Energy, Inc.)*, 181 F.3d 527, 533 (3d Cir. 1999) (holding even though bidding incentives are measured against a business judgment standard in non-bankruptcy transactions the administrative expense provisions of Bankruptcy Code section 503(b) govern in the bankruptcy context).

96. In *O'Brien Environmental Energy*, the Third Circuit found that whether breakup fees and expenses could be paid to Calpine Corp. as a "stalking horse" depended on whether such fees were necessary to preserve the value of the estate. *See* 181 F.3d at 536. The court determined that Calpine's right to break up fees and expenses depended on whether it provided a benefit to the debtor's estate by promoting competitive bidding or researching the value of the assets at issue to increase the likelihood that the selling price reflected the true value of the company. *Id.* at 537. The Debtor believes that approval of the Breakup Fee will create such a competitive bidding process.

97. The Debtor believes that the proposed Breakup Fee is fair and reasonably compensates the Stalking Horse Purchaser for taking actions that will benefit the Debtor's estate. The Breakup Fee compensates the Stalking Horse Purchaser for diligence and professional fees incurred in negotiating the terms of the Purchase Agreement on an expedited timeline.

98. The Debtor does not believe that the Breakup Fee will have a chilling effect on the sale process. Rather, the Stalking Horse Purchaser will increase the likelihood that

the best possible price for the Assets will be received, by permitting other qualified bidders to rely on the diligence performed by the Stalking Horse Purchaser, and moreover, by allowing qualified bidders to utilize the Purchase Agreement as a platform for negotiations and modifications in the context of a competitive bidding process.

99. Payment of the Breakup Fee, if any, shall be made in accordance with the terms of the Purchase Agreement. Section 8.2 of the Purchase Agreement provides that the Stalking Horse Purchaser will be entitled to receive from the Debtor's estate, payment of the Breakup Fee in cash or other immediately available good funds in the event the Stalking Horse Purchaser is not approved by the Court as the purchaser of the Assets and substantially all of the Assets are (a) sold to a Successful Bidder by and through the sale process envisioned by this Motion; or (b) within six (6) months following the Sale Hearing either (i) sold or (ii) an agreement is entered into sell such Assets that is ultimately consummated with any third party, which Breakup Fee payment shall be made to the Stalking Horse Purchaser concurrently with, and solely from the proceeds of, the consummation of such third party sale unless the third party sale is to a secured lender of Debtor submitting a credit bid. In such an event, the Breakup Fee shall be allowed as a super-priority administrative expense claim under Sections 503(b) and 507 of the Bankruptcy Code, shall not be subordinated to any other administrative claim and shall be paid to the Stalking Horse Purchaser immediately upon closing. The Breakup Fee shall, in no event, be paid from or out of the professional fee account established pursuant to the cash collateral order entered in the Debtor's chapter 11 case. The conditions under which the Stalking

Horse Purchase is not entitled to the Breakup Fee are described in section 8.2 of the Purchase Agreement.

100. Furthermore, the Breakup Fee, in the amount of \$126,000, is approximately 4.5% of the Purchase Price, not including the Purchaser's assumption of the assumed liabilities provided under the Purchase Agreement, and is not inconsistent with termination fees approved by bankruptcy courts in chapter 11 cases. Moreover, the Stalking Horse Purchaser is not requesting any expense reimbursement in addition to the Breakup Fee. *See, e.g., 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%, or \$6,500,000, in connection with \$87,000,000 sale of substantially all of debtors' assets); *In re Global Motorsport Group, Inc., et al.*, (Case No. 08-10192 (KJC) (Bankr. D. Del. February 14, 2008) (Court approved a breakup fee of approximately 4%, or \$500,000 in connection with sale); *In re Global Home Products*, Case No. 06-10340 (KG) (Bankr. D. Del. July 14, 2006) (Court approved a breakup fee of 3.3%, or \$700,000, in connection with sale); *In re Ameriserve*, Case No. 00-0358 (PJW) (Bankr. D. Del., September 27, 2000) (Court approved a breakup fee of 3.64%, or \$4,000,000, in connection with \$110,000,000 sale); *In re Montgomery Ward Holding Corp., et al.*, Case No. 97-1409 (PJW) (Bankr. D. Del., June 15, 1998) (Court approved termination fee of 2.7%, or \$3,000,000, in connection with \$110,000,000 sale of real estate assets); *In re Medlab, Inc.*, Case No. 97-1893 (PJW) (Bankr. D. Del. April 28, 1998) (Court approved termination fee of 3.12%, or \$250,000, in connection with \$8,000,000 sale transaction); *In re Edison Bros. Stores, Inc., et al.*, Case No. 95-1354 (PJW) (Bankr. D. Del., Dec. 29, 1995) (Court approved termination fee of

3.5%, or \$600,000, in connection with \$17,000,000 sale of debtors' entertainment division); *In re NetEffect, Inc.*, Case No. 08-12008 (KJC) (Bankr. D. Del., Sept. 11, 2008) (Court approved breakup fee of 3%, or \$240,000.00 in connection with sale of debtor's assets for purchase price of \$8,000,000); *In re Champion Enterprises, et al.*, Case No. 09-14019 (KG) (Bankr. D. Del., Feb. 8, 2010) (Court approved breakup 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 breakup 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 breakup 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); and *In re Point Blank Solutions, Inc., et al.*, Case No. 10-11255 (PJW) (Bankr. D. Del., Oct. 5, 2011) (Court approved breakup and expense reimbursement of 3.75% or \$750,000 in connection with sale of debtor's assets for purchase price of \$20,000,000).

101. In sum, the Breakup Fee is reasonable under the circumstances and will enable the Debtor to maximize the value for the Assets while limiting any chilling effect in the sale process.

F. Assumption and Assignment of Certain Executory Contracts and Unexpired Leases

102. Section 365(a) of the Bankruptcy Code provides that, subject to the court's approval, a trustee "may assume or reject any executory contracts or unexpired leases of the

debtor.” 11 U.S.C. § 365(a). Upon finding that a trustee has exercised its sound business judgment in determining to assume an executory contract or unexpired lease, courts will approve the assumption under section 365(a) of the Bankruptcy Code. *See Nostas Assocs. v. Costich (In re Klein Sleep Prods., Inc.)*, 78 F.3d 18, 25 (2d Cir. 1996); *see also Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1099 (2d Cir. 1993).

103. Pursuant to section 365(f)(2) of the Bankruptcy Code, a trustee may assign an executory contract or unexpired lease of nonresidential real property if:

(A) the trustee assumes such contract or lease in accordance with the provisions of this section; and

(B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. § 365(f)(2).

104. The meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case, but should be given “practical, pragmatic construction.” *See Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1989); *see also In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean absolute assurance that debtor will thrive and pay rent); *In re Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985) (“Although no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance.”).

105. Among other things, adequate assurance may be given by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. *In re Bygaph, Inc.*, 56 B.R. 596, 605-6 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when prospective assignee of lease has financial resources and expressed willingness to devote sufficient funding to business to give it strong likelihood of succeeding; chief determinant of adequate assurance is whether rent will be paid).

106. The Debtor and the Successful Bidder(s) will present evidence at the Sale Hearing to prove the financial credibility, willingness, and ability of the Successful Bidder(s) to perform under the Assumed Executory Contracts. The Court and other interested parties therefore will have the opportunity to evaluate the ability of any Successful Bidder(s) to provide adequate assurance of future performance under the Assumed Executory Contracts, as required by section 365(b)(1)(C) of the Bankruptcy Code.

107. In addition, the Debtor submits that the cure procedures set forth herein are appropriate, reasonably calculated to provide notice to any affected party, and afford the affected party to opportunity to exercise any rights affected by the Motion, and consistent with Section 365 of the Bankruptcy Code. To the extent that any defaults exist under any Assumed Executory Contracts, any such defaults will be cured pursuant to the Purchase Agreement or the Successful Bidder's Competing Agreement. Except as otherwise limited by Section 365 of the Bankruptcy Code, any provision in the Assumed Executory Contracts that would restrict, condition, or prohibit an assignment of such contracts will be deemed unenforceable pursuant to Section 365(f)(1) of the Bankruptcy Code.

108. Accordingly, the Debtor submits that the cure procedures for effectuating the assumption and assignment of the Assumed Executory Contracts as set forth herein are appropriate and should be approved.

G. The Successful Bidder Should be Afforded All Protections Under Section 363(m) as A Good Faith Purchaser

109. Section 363(m) of the Bankruptcy Code protects a good-faith purchaser's interest in property purchased from the debtor's estate notwithstanding that the sale conducted under section 363(b) is later reversed or modified on appeal. Specifically, Section 363(m) states that:

The reversal or modification on appeal of an authorization under [section 363(b)] . . . does not affect the validity of a sale . . . to an entity that purchased . . . such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale were stayed pending appeal.

11 U.S.C. § 363(m). Section 363(m) “fosters the ‘policy of not only affording finality to the judgment of the bankruptcy court, but particularly to give finality to those orders and judgments upon which third parties rely.’” *In re Chateaugay Corp.*, 1993 U.S. Dist. Lexis 6130, *9 (S.D.N.Y. 1993) (quoting *In re Abbotts Dairies of Penn., Inc.*, 788 F.2d 143, 147 (3d Cir. 1986)); see *Allstate Ins. Co. v. Hughes*, 174 BR. 884, 888 (S.D.N.Y. 1994) (“Section 363(m) . . . provides that good faith transfers of property will not be affected by the reversal or modification on appeal of an unstayed order, whether or not the transferee knew of the pendency of the appeal”); *In re Stein & Day, Inc.*, 113 B.R. 157, 162 (Bankr. S.D.N.Y. 1990) (“pursuant to

11 U.S.C. § 363(m), good faith purchasers are protected from the reversal of a sale on appeal unless there is a stay pending appeal”).

110. The selection of the Successful Bidder will be the product of arms’ length, good-faith negotiations in an anticipated competitive purchasing process. The Debtor intends to request at the Sale Hearing a finding that the Successful Bidder is a good faith purchaser entitled to the protections of section 363(m) of the Bankruptcy Code.

H. Relief from the 14-Day Waiting Period Under Bankruptcy Rules 6004(h) and 6006(d) is Appropriate

111. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Similarly, Bankruptcy Rule 6006(d) provides that an “order authorizing the trustee to assign an executory contract or unexpired lease . . . is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.” The Debtor requests that the Sale Order be effective immediately by providing that the 14-day stays under Bankruptcy Rules 6004(h) and 6006(d) are waived.

112. The purpose of Bankruptcy Rules 6004(h) and 6006(d) is to provide sufficient time for an objecting party to appeal before an order can be implemented. *See* Advisory Committee Notes to Fed. R. Bankr. P. 6004(h) and 6006(d). Although Bankruptcy Rules 6004(h) and 6006(d) and the Advisory Committee Notes are silent as to when a court should “order otherwise” and eliminate or reduce the 14-day stay period, *Collier* suggests that the 14-day stay period should be eliminated to allow a sale or other transaction to close

immediately “where there has been no objection to the procedure.” *Collier on Bankruptcy* P 6004.11 (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Furthermore, *Collier* provides that if an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time actually necessary to file such appeal. *Id.*

113. The Debtor hereby requests that the Court waive the 14-day stay periods under Bankruptcy Rules 6004(h) and 6006(d) or, in the alternative, if an objection to the Sale is filed, reduce the stay period to the minimum amount of time needed by the objecting party to file its appeal.

No Prior Request

114. No prior request for the relief sought in this Motion has been made to this or any other court.

Notice

115. Concurrently with this filing, copies of this Motion will be provided to (a) the Office of the United States Trustee; (b) counsel to the Committee; (c) all parties who have timely filed requests for notice under Rule 2002 of the Federal Rules of Bankruptcy Procedure; (d) all parties who assert liens with respect to the Assets, including, but not limited to, the prepetition lenders; (e) all entities known to have expressed an interest in bidding on the Assets, including the Stalking Horse Purchaser; (f) all known counterparties to the Debtor’s executory contracts and unexpired leases; (g) the United States Attorney’s office; (h) all state attorneys general in states in which the Assets are located; (i) the Internal Revenue Service; (j) for each state in which the Assets are located, the applicable taxing authorities; and (k) environmental and

certain other regulatory authorities in the states or applicable jurisdictions in which the Debtor's assets are located. In addition, within two (2) business days following entry of the Bid Procedures Order, the Debtor will serve the Sale and Bid Procedures Notice and the Creditor Notice as provided herein. The Debtor respectfully submits that such notice is sufficient, and request that the Court find that no further notice of the relief requested herein is required.

WHEREFORE, the Debtor respectfully requests that the Court enter orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, granting the relief requested herein and such other and further relief as this Court deems appropriate.

Dated: May 24, 2017

PACHULSKI STANG ZIEHL & JONES LLP

/s/ Laura Davis Jones

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Counsel for Debtor and Debtor in Possession

Exhibit A

Bid Procedures Order

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

In re:	)	Chapter 11
)	
AQUION ENERGY, INC., ¹	)	Case No. 17-10500 (KJC)
)	
Debtor.	)	Docket Ref. No. _____

**ORDER (A) AUTHORIZING ENTRY INTO THE
ASSET PURCHASE AGREEMENT WITH RESPECT TO THE SALE
OF SUBSTANTIALLY ALL OF THE DEBTOR’S ASSETS; (B) APPROVING
BID PROCEDURES FOR THE SALE OF SUBSTANTIALLY ALL OF THE ASSETS
OF DEBTOR; (C) SCHEDULING AN AUCTION AND HEARING TO CONSIDER
THE SALE AND APPROVE THE FORM AND MANNER OF NOTICE RELATED
THERE TO; (D) ESTABLISHING PROCEDURES RELATING TO THE ASSUMPTION
AND ASSIGNMENT OF CERTAIN CONTRACTS AND LEASES, INCLUDING
NOTICE OF PROPOSED CURE AMOUNTS; (E) APPROVING CERTAIN
BREAKUP FEE PROVISIONS; AND (F) GRANTING OTHER RELATED RELIEF**

Upon the motion (the “Motion”) of the above-captioned debtor and debtor-in-possession (the “Debtor”) for, in part, entry of an order (a) approving the Debtor’s entry into that certain Asset Purchase Agreement dated as of May 23, 2017, (attached as Exhibit B to the Motion, the “Purchase Agreement”), by and among the Debtor and Bluesky Energy US, Inc. (the “Stalking Horse Purchaser”) (the “Stalking Horse Purchaser”); (b) approving certain bid procedures for the sale of substantially all of the Debtor’s assets; (c) scheduling an auction and hearing to consider the sale and approve the form and manner of notice related thereto; (d) establishing procedures relating to the assumption and assignment of certain contracts, including notice of proposed cure amounts; (e) approving breakup fee; and (f) granting other related relief,²

¹ The Debtor in this chapter 11 case and the last four digits of the Debtor’s U.S. tax identification number is Aquion Energy, Inc. (1370). The Debtor’s headquarters is located at 32 39th Street, Pittsburgh, PA, 15201.

² Capitalized terms not otherwise defined herein shall have the meanings set forth in the Motion.

and it appearing that the Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(a); the Court having considered the Motion; and it appearing that the relief requested in the Motion, is in the best interests of the Debtor's bankruptcy estate, its creditors and other parties-in-interest; and after due deliberation and sufficient cause appearing therefor;

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS:

- A. This Court has jurisdiction over this Motion and the transactions contemplated therein pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
- B. Notice of the Motion was adequate and sufficient under the circumstances of this chapter 11 case, and such notice complied with all applicable requirements of title 11 of the United States Code (the "Bankruptcy Code"), the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and the Local Bankruptcy Rules.
- C. All objections to the relief requested in the Motion that have not been withdrawn, waived or settled as announced to the Court at the hearing on the Motion or by stipulation filed with the Court, are overruled except as otherwise set forth herein. A reasonable opportunity to object or otherwise be heard was afforded to all parties in interest entitled to notice.
- D. The bid procedures attached hereto as Exhibit 1 (the "Bid Procedures") are reasonable and appropriate under the circumstances of this chapter 11 case. The Debtor has articulated good and sufficient reasons for the Court to grant the relief requested in the Motion

regarding the Bid Procedures. The Bid Procedures were negotiated in good faith and at arms' length by the Debtor and the Stalking Horse Purchaser, and they represent a fair and appropriate method for maximizing the realizable value of substantially all of the Debtor's assets. Therefore, the Debtor is authorized to take any and all actions necessary or appropriate to implement the Bid Procedures. The Debtor is authorized to take any and all actions necessary or appropriate to implement the Bid Procedures.

E. Entry into the Purchase Agreement is in the best interest of the Debtor and the Debtor's estate and creditors. The Purchase Agreement enabled the Debtor to secure an adequate floor for the Auction and will provide a clear benefit to the Debtor's estate.

F. The Stalking Horse Purchaser has expended, and likely will continue to expend, considerable time, money and energy pursuing the proposed sale of the Assets and has engaged in extended arms' length good faith negotiations with the Debtor. The Breakup Fee, and other bidding protections, as set forth in the Bid Procedures, in favor of the Stalking Horse Purchaser are (i) an actual and necessary cost and expense of preserving the Debtor's estate within the meaning of sections 503(b) and 507(a)(2) of the Bankruptcy Code, (ii) commensurate to the real and substantial benefit conferred upon the Debtor's estate by the Stalking Horse Purchaser, (iii) have been negotiated by the parties and their respective advisors at arms' length; and (iv) are reasonable and appropriate, in light of the size and nature of the contemplated sale transaction and comparable transactions, the commitments that have been made and the efforts that have been and will be expended by the Stalking Horse Purchaser. The Breakup Fee is a material inducement for, and conditions of, the Stalking Horse Purchaser's entry into its stalking

horse bid. The Stalking Horse Purchaser is unwilling to commit to purchase the Assets under the terms of the Purchase Agreement unless the Stalking Horse Purchaser is assured the protection provided by the Breakup Fee. The payment of such amounts to the Stalking Horse Purchaser is fair and reasonable in view of the fact that, if the Breakup Fee is triggered, then the Stalking Horse Purchaser's efforts will have increased the prospects that the Debtor will receive the highest or otherwise best offer for the Assets.

G. The form of the Purchase Agreement is fair and reasonable and provides flexibility in the process to sell the Assets in a manner designed to maximize the value of the Assets. The Debtor has demonstrated a sound business justification for authorizing the payment of the Breakup Fee to the Stalking Horse Purchaser in the amounts and under the circumstances set forth in the Purchase Agreement.

H. The Notice of Bid Procedures, Auction date and Sale Hearing, substantially in the form attached hereto as Exhibit 2 (the "Sale and Bid Procedures Notice"), the Notice of Auction and Sale Hearing, substantially in the form attached hereto as Exhibit 3 (the "Creditor Notice"), and the notice substantially in the form attached hereto as Exhibit 4 to be served on counterparties to the Assumed Executory Contracts ("Cure Notice") each is calculated to provide adequate notice concerning the proposed sale of the Assets and the proposed assumption and assignment of the Assumed Executory Contracts that are the property of the Debtor, and is intended to provide due and adequate notice of the relief that will be sought by the Motion.

I. The procedures for the assumption and assignment of the Assumed Executory Contracts provided for herein and the Cure Notice are reasonable and appropriate and

consistent with the provisions of Section 365 of the Bankruptcy Code and Bankruptcy Rule 6006. The procedures for the assumption and assignment of the Assumed Executory Contracts have been narrowly tailored to provide an adequate opportunity for all non-debtor counterparties to the Assumed Executory Contracts to assert any objection.

J. The entry of this Order is in the best interests of the Debtor, its estate, creditors and other parties in interest.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The relief requested in the Motion is granted as set forth in this Bid Procedures Order.

2. The Bid Procedures attached hereto as Exhibit 1 are approved in their entirety, and are incorporated into this Bid Procedures Order and shall apply to the proposed sale of the Assets. The Debtor is authorized to take any and all actions necessary or appropriate to implement the Bid Procedures, provided such action is not inconsistent with the Stalking Horse Purchase Agreement.

3. The proposed sale of the Assets, the proposed assumption and assignment of the Assumed Executory Contracts, and the Auction shall be conducted in accordance with the provisions of this Bid Procedures Order and the Bid Procedures.

4. The Breakup Fee as set forth in the Bid Procedures are hereby approved. The Debtor is authorized without further Court action to pay any Breakup Fee solely to the extent such amounts become due and payable to the Stalking Horse Purchaser, pursuant to the Purchase Agreement and this Bid Procedures Order.

5. The Sale and Bid Procedures Notice attached hereto as Exhibit 2, the Creditor Notice attached hereto as Exhibit 3, and the Cure Notice attached hereto as Exhibit 4 provide proper notice to all parties in interest and are approved.

6. Within two (2) business days following entry of this Order, the Debtor shall serve by first class mail the Sale and Bid Procedures Notice on the following parties: (a) the U.S. Trustee; (b) the Committee; (c) all parties known to assert a lien, encumbrance or claim on any of the Assets; (d) all known counterparties to the Debtor's unexpired leases and executory contracts; (e) all entities known to have expressed an interest in bidding on the Assets; (f) the United States Attorney's office; (g) all state attorney generals in states in which the Debtor's assets are located; (h) state taxing authorities in the states in which the Debtor's assets are located and the Internal Revenue Service; (i) environmental authorities and other regulatory authorities in the states or applicable jurisdictions in which the Debtor's assets are located; (j); the Stalking Horse Purchaser and its counsel; and (k) all other parties that had filed a notice of appearance and demand for service of papers in these bankruptcy cases under Bankruptcy Rule 9010(b) as of the date of entry of this Bid Procedures Order.

7. Within two (2) business days following entry of this Order, the Debtor shall serve the Creditor Notice on all known creditors of the Debtor. Except as set forth in this and the foregoing paragraph of this Order, no other or further notice of the sale shall be required to be provided by the Debtor.

8. Within two (2) business days following the entry of this Order, the Debtor shall file and serve the Cure Notice to the counterparties to the Assumed Executory Contracts.

Counterparties to the Assumed Executory Contracts³ (each a “Counterparty,” and together, the “Counterparties”) must file and serve on the applicable notice parties any objection to the assumption and assignment of any Assumed Executory Contract, including objections to any Cure Amount, by _____, 2017, at _____ p.m. (Eastern Time).

9. Any Counterparty failing to timely file an objection to the Cure Amount set forth in the Cure Notice shall be deemed to consent to the assumption and assignment of the Assumed Executory Contract and forever barred from objecting to the Cure Amounts and from asserting any additional cure or other amounts against the Debtor, its estate, and the Successful Bidder with respect to the Assumed Executory Contracts to which it is a Counterparty. Notwithstanding anything to the contrary, no executory contract or unexpired lease will be assumed unless and until the occurrence of the closing of the Sale to the Successful Bidder.

10. Any other objection to any of the relief to be requested at the Sale Hearing must be in writing, state the basis of such objections with specificity and shall be filed with the Court (with a courtesy copy to Chambers) on or before _____, 2017, at _____ p.m. (Eastern Time) (the “Objection Deadline”), and such objection must be served and otherwise undertaken in accordance with the Sale and Bid Procedures Notice so as to be received by such date and time by: (i) counsel to the Debtor and Debtor-in-Possession, Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Courier 19801), Attn: Laura Davis Jones, Esq.; (ii) counsel to the Official Committee of

³ The inclusion of any agreement as an Assumed Executory Contract does not constitute an admission by the Debtor that such agreement actually constitutes an executory contract or unexpired lease under section 365 of the Bankruptcy Code, and the Debtor expressly reserve the right to challenge the status of any agreement included as an Assumed Executory Contract.

Unsecured Creditors: (a) Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, New York 10020, Attn: Jeffrey Cohen, Esq. and Barry Z. Bazian, Esq.; (b) Lowenstein Sandler LLP, 65 Livingston Avenue, Roseland, NJ 07068, Attn: Andrew David Behlmann, Esq.; (c) Klehr Harrison Harvey Branzburg LLP, 919 Market Street, Suite 1000, Wilmington, Delaware 19801, Attn: Richard M. Beck, Esq. and Sally E. Veghte, Esq.; (iii) the Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 N. King Street, Suite 2207, Lock Box 35, Wilmington, DE 19801, Attn: Hannah McCollum, Esq.; and (iv) counsel to any Stalking Horse Purchaser. The failure of any objecting person or entity to file its objections by the Objection Deadline and in accordance with the Sale and Bid Procedures Notice will be a bar to the assertion, at the Sale Hearing or thereafter, of any objection (including the sale of Assets and assumption and assignment of Assumed Executory Contracts free and clear of all liens, claims and encumbrances).

11. Compliance with the foregoing notice provisions shall constitute sufficient notice of the Debtor's proposed Sale of the Assets free and clear of all liens, claims, interests and encumbrances, the contemplated assumption and assignment of each Assumed Executory Contract and the proposed amount of Cure Amounts with respect to each such Assumed Executory Contract, and no additional notice of such contemplated transactions need be given.

12. The Bid Deadline shall be _____, 2017, at _____ p.m. (Eastern Time).

13. The Debtor, after consultation with the Committee, shall have the exclusive right to determine whether a bid is a Qualified Bid and shall notify Qualified Bidders whether

their bids have been recognized as such as promptly as practicable after a Qualified Bidder delivers all of the materials required by the Bid Procedures. Debtor shall provide the Qualified Bids to counsel for the Stalking Horse Purchaser in the manner provided in the Purchase Agreement.

14. If the Debtor receive more than one Qualified Bid (as defined in the Bid Procedures), an auction (the "Auction") will be held on _____, **2017, at _____ p.m. (Eastern Time)**, at the offices of Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, Delaware 19801, or at any such other location as the Debtor may hereafter designate. The Stalking Horse Purchaser is deemed a Qualified Bidder for purposes of participating in the Auction, should it wish to do so.

15. Counsel to the Debtor is authorized to hold and conduct the Auction in accordance with the Bid Procedures. At such Auction, each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the sale, and the Auction shall be conducted openly and transcribed. Within twenty-four (24) hours following the conclusion of the Auction, the Debtor shall file a notice identifying the Successful Bidder with the Court and shall serve such notice by fax, email, or if neither is available, by overnight mail to all counterparties whose contracts are to be assumed and assigned.

16. The Sale Hearing shall be conducted on _____, **2017, at _____ p.m. (Eastern Time)**, and may be adjourned from time to time without further notice other than an announcement in open court at the Sale Hearing.

17. Notwithstanding anything herein or in the Bid Procedures to the contrary, no sale free and clear of liens, claims and encumbrances shall be approved unless it complies with section 363(f) of the Bankruptcy Code.

18. Notwithstanding the possible applicability of Bankruptcy Rule 6004(h) and 7062 or otherwise, the terms and conditions of this Bid Procedures Order shall be immediately effective and enforceable upon its entry, and no automatic stay of execution shall apply to this Bid Procedures Order.

19. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Bid Procedures Order.

Dated: _____, 2017

Honorable Kevin J. Carey
United States Bankruptcy Judge

Exhibit 1

Bid Procedures

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

In re:	)	Chapter 11
)	
AQUION ENERGY, INC., ¹	)	Case No. 17-10500 (KJC)
)	
Debtor.)	

**BID PROCEDURES FOR SALE OF
SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS**

The above-captioned debtor and debtor in possession (the “Debtor”) filed a motion dated May __, 2017 (the “Motion”),² seeking, among other things, approval of the process and procedures set forth below (the “Bid Procedures”) through which they will determine the highest and best offer for the sale of substantially all of the business assets of the Debtor (the “Assets”). On May __, 2017, the Bankruptcy Court entered its order (the “Bid Procedures Order”), which, among other things, approved the Bid Procedures. Pursuant to the Bid Procedures Order, Bluesky Energy US, Inc. (the “Stalking Horse Purchaser”) is the Stalking Horse Purchaser for the assets, subject to higher and better bids that may be submitted in accordance with these Bid Procedures.

On _____, 2017, at _____ (Eastern time), as further described below and in the Bid Procedures Order, the Bankruptcy Court shall conduct the “Sale Hearing” at which the Debtor shall seek entry of the Sale Order authorizing and approving the sale of the Assets to the Stalking Horse Purchaser or to one or more other Qualified Bidders (defined below) that the Debtor, in its sole discretion (in consultation with the Committee), determine to have made the highest and best offer.

Agreement

Prospective bidders should submit a proposed asset purchase agreement (a “Competing Agreement”), similar in form and substance, as modified, to the asset purchase agreement attached to the Motion as **Exhibit C** (the “Purchase Agreement”). Subject to the approval of the Court, the highest or best bidder at the auction will purchase the Assets, and assume certain executory contracts and unexpired leases, free and clear of any liens, claims or encumbrances. The transaction contemplated is subject to competitive bidding as set forth herein, and approval by the Bankruptcy Court pursuant to Bankruptcy Code §§ 363 and 365.

¹ The Debtor in this chapter 11 case and the last four digits of the Debtor’s U.S. tax identification number is Aquion Energy, Inc. (1370). The Debtor’s headquarters is located at 32 39th Street, Pittsburgh, PA, 15201.

² Capitalized terms not otherwise defined herein shall have the meanings set forth in the Motion or Purchase Agreement, as applicable.

Assets for Sale

The Debtor is offering for sale the Assets, which generally consist of the manufacturing operations, substantially all of the other business assets and property associated with its battery technology. Except as otherwise provided in the Purchase Agreement, all of the Debtor's right, title and interest in and to the Assets subject thereto shall be sold free and clear of any Liens, Claims, interests and encumbrances (other than Permitted Liens and/or except as otherwise provided in the Competing Agreement) (collectively, the "Liens, Claims and Encumbrances") to the maximum extent permitted by section 363 of the Bankruptcy Code, with such Liens, Claims and Encumbrances to attach to the net proceeds of the sale of the Assets with the same validity and priority as such Liens, Claims and Encumbrances applied against the Assets.

Participation Requirements

In order to participate in the bidding process and to or otherwise be considered for any purpose hereunder, a person interested in all or portions of the Assets (a "Potential Bidder") must first deliver (unless previously delivered) to the Debtor and its counsel, not later than five (5) business days before the Bid Deadline (defined below), unless otherwise waived by the Debtor in its sole discretion in consultation with the Official Committee of Unsecured Creditors (the "Committee"), the following:

- a) Confidentiality Agreement. An executed confidentiality agreement ("Confidentiality Agreement") in form and substance acceptable to the Debtor;
- b) Identification of Potential Bidder. Concurrently with its Bid, identification of the Potential Bidder, its principals, and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction;
- c) Corporate Authority. Concurrently with its Bid, written evidence satisfactory to Debtor of the Potential Bidder's chief executive officer or other appropriate senior executive's approval of the contemplated transaction;
- d) Disclosure. Written disclosure of any connections or agreements with the Debtor, the Stalking Horse Purchaser, any other known Potential Bidder or Qualified Bidder (as defined below), and/or any officer, director or direct or indirect equity security holder of the Debtor; and
- e) Proof of Financial Ability to Perform. Prior to or at the time of presentation of a Bid, written evidence that demonstrates the Potential Bidder has the necessary financial ability to close the contemplated transaction and provide adequate assurance of future performance under all contracts to be assumed in such contemplated transaction. Such information should include, *inter alia*, the following:
 - (1) the Potential Bidder's current financial statements (audited if they exist);
 - (2) contact names and numbers for verification of financing sources;
 - (3) evidence of the Potential Bidder's internal resources and proof of any debt or equity funding commitments that are needed to close the contemplated transaction; and

- (4) any such other form of financial disclosure of credit-quality support information or enhancement acceptable to the Debtor demonstrating that such Potential Bidder has the ability to close the contemplated transaction.

Designation as Qualified Bidder

A "Qualified Bidder" is a Potential Bidder (or combination of Potential Bidders whose bids for the Assets of the Debtor do not overlap and who shall also be referred to herein as a single Qualified Bidder) that delivers the documents described above and otherwise satisfies the requirements of the Bid Procedures Order and the procedures set forth herein, and that the Debtor, in its discretion (in consultation with the Committee), determines is reasonably likely to submit a *bona fide* offer for the Assets and to be able to consummate a sale if selected as a Successful Bidder.

The Debtor, in its sole discretion and in consultation with the Committee, shall determine and notify the Potential Bidder with respect to whether such Potential Bidder is a Qualified Bidder.

The Stalking Horse Purchaser is a Qualified Bidder and is deemed to satisfy all Bid requirements as set forth below.

Access to Due Diligence Materials

Only Potential Bidders that execute and deliver a confidentiality agreement satisfactory to the Debtor, in its sole discretion, are eligible to receive due diligence access or additional non-public information. The Debtor shall not be required to provide confidential or proprietary information to a Potential Bidder if the Debtor believes that such disclosure would be detrimental to the interests of the Debtor. If the Debtor determines that a Potential Bidder that has satisfied the Participation Requirements does not constitute a Qualified Bidder, then such Potential Bidder's right to receive due diligence access or additional non-public information shall terminate. The Debtor will designate an employee or other representative to coordinate all reasonable requests for additional information and due diligence access from such Qualified Bidders. The Debtor shall not be obligated to furnish any due diligence information after the Bid Deadline (as hereinafter defined). The Debtor is not responsible for, and will bear no liability with respect to, any information obtained by Qualified Bidders in connection with the sale of the Assets.

Due Diligence From Bidders

Each Potential Bidder and Qualified Bidder (each, a "Bidder") (and, collectively, "Bidders") shall comply with all requests for additional information and due diligence access by the Debtor or its advisors regarding such Bidder and its contemplated transaction. Failure by a Potential Bidder to comply with requests for additional information and due diligence access will be a basis for the Debtor to determine that the Potential Bidder is not a Qualified Bidder. Failure by a Qualified Bidder to comply with such requests for additional information and due diligence access will be a basis for the Debtor to determine that a bid made by a Qualified Bidder is not a Qualified Bid.

Bidding Process

The Debtor and its advisors, shall (in consultation with Committee): (i) determine whether a Potential Bidder is a Qualified Bidder; (ii) coordinate the efforts of Bidders in

conducting their due diligence investigations, as permitted by the provisions hereof; (iii) receive offers from Qualified Bidders; and (iv) negotiate any offers made to purchase the Assets. The Debtor (in consultation with the Committee) shall have the right to adopt such other rules for the bidding process that are not inconsistent with the Bid Procedures Order that will better promote the goals of such process.

Bid Deadline

On or before the Bid Deadline, a Qualified Bidder that desires to make an offer, solicitation or proposal (a "Bid") shall deliver written and electronic copies of its Bid to the Debtor, Aquion Energy, Inc., 32 39th Street, Pittsburgh, PA, 15201, Attn: Suzanne B. Roski, and Suzanne.roski@aquion-energy.com, with a copy to counsel for the Debtor, Pachulski Stang Ziehl & Jones LLP, 919 N. Market St., 17th Floor, Wilmington, Delaware 19801, Attn: Laura Davis Jones, not later than 4:00 p.m. (prevailing Eastern time) on June ____, 2017, by ____ p.m. prevailing Eastern Time (the "Bid Deadline"). The Debtor shall promptly provide copies of all Bids to counsel for the Committee.

A Bid received after the Bid Deadline shall not constitute a Qualified Bid, unless otherwise allowed by the Debtor in its sole discretion (in consultation with the Committee).

Bid Requirements

To be eligible to participate in the Auction, each Bid and each Qualified Bidder submitting such a Bid must be determined by the Debtor (in consultation with the Committee) to satisfy each of the following conditions unless waived or modified by the Debtor in its sole discretion (in consultation with the Committee):

1. Good Faith Deposit. Each Bid must be accompanied by a deposit (the "Good Faith Deposit") in the form of a certified check or cash payable to the order of the Debtor in an amount to be determined by the Debtor, but in any event no less than 10% of the Bidder's offer. The Debtor reserves the right to modify the amount of the Good Faith Deposit in its discretion (in consultation with the Committee).
2. Minimum Bid. The consideration proposed by the Bid may include only cash and/or other consideration acceptable to the Debtor (in consultation with the Committee) in an amount of (1) no less than \$3,026,000, which is the sum of: (a) the purchase price offered by the Stalking Horse Purchaser in the amount of \$2,800,000; (b) \$100,000 in cash as an initial overbid amount; and (c) \$126,000, which is the dollar value of the Breakup Fee (as defined below), if any, in cash; and (2) the assumption of either all Assumed Liabilities that would be assumed by the Stalking Horse Purchaser under the Purchase Agreement or additional cash or other consideration of an equivalent value as determined by the Debtor in its business judgment. The amounts in (1)-(2) of this paragraph is referred to as a "Minimum Bid".
3. Irrevocable. The Bids of the Successful Bidder and the Back-up Bidder must be irrevocable until the earlier of (a) the closing of the transaction with the Successful Bidder, or (b) the date the Sale Order has become final and non-appealable (the earliest of the dates being the "Termination Date").
4. Principal Terms. A Bid must include an executed agreement pursuant to which the Qualified Bidder proposes to effectuate the contemplated transaction (the "Contemplated Transaction Documents") and a black-lined copy of the Competing Agreement marked to show all changes requested by the Qualified Bidder, including specification of the

proposed purchase price and any changes to any exhibits or schedules to the Competing Agreement. The terms and conditions of the Contemplated Transaction Documents must be, in the aggregate, not materially more burdensome to Debtor than the provisions contained in the Stalking Horse Purchaser's Purchase Agreement. A Bid must identify with particularity each and every condition to closing and all executory contracts and unexpired leases to be assumed and assigned pursuant to the Contemplated Transaction Documents. The Contemplated Transaction Documents must include a commitment to close by no later than the closing date set forth in section 2 of the Purchase Agreement. A Bid should propose a contemplated transaction involving all or substantially all of the Assets, provided, however, that the Debtor in its sole discretion (in consultation with the Committee) may consider proposals for less than substantially all the Assets if such proposals or combination of proposals maximizes the value of the Debtor's estate.

5. Contingencies. A Bid may not be conditioned on obtaining financing or any internal approval or on the outcome or review of due diligence, but may be subject to the accuracy in all material respects at the closing of specified representations and warranties at or before closing or the satisfaction in all material respects at the closing of specified conditions. A Bid must disclose any governmental approvals identified by the Qualified Bidder other than as set forth in the Competing Agreement that may impact the evaluation of such Bid.
6. Authorization to Bid and Identity of Bidder. A Bid must include evidence of authorization and approval from such Qualified Bidder's board of directors (or comparable governing body, or a statement as to why such approval is unnecessary) with respect to the submission, execution, delivery and closing of the Contemplated Transaction Documents. A Bid must also fully disclose the identity of such entity that is submitting the Bid, including the identity of each equity holder or other financial backer of the bidder if such bidder is formed for the purpose of submitting the bid.
7. Financing Sources. A Bid must contain written evidence of a commitment for financing or other evidence of the ability to consummate the sale satisfactory to the Debtor (in consultation with the Committee) with appropriate contact information for such financing sources.
8. No Fees Payable to Qualified Bidder. A Bid may not request or entitle the Qualified Bidder to any breakup fee, termination fee, expense reimbursement or similar type of payment. Moreover, by submitting a Bid, a Bidder shall be deemed to waive the right to pursue a substantial contribution claim under Bankruptcy Code § 503 related in any way to the submission of its Bid or the Bid Procedures.
9. Immediate Payment of the Breakup Fee. A Bid must allow for the immediate payment of the Breakup Fee to the Stalking Horse Purchaser from the first proceeds of the cash portion of the purchase price of such Bid.
10. Non-Reliance. A Bid must include an acknowledgement and representation of the Qualified Bidder that it has had an opportunity to conduct any and all due diligence regarding the Assets and Assumed Liabilities prior to making its bid, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid, and that it did not rely upon any written or oral statements, representations, warranties, or guaranties, express, implied, statutory or otherwise, regarding the Assets, the financial performance of the Assets or the physical condition of the Assets, the Assumed Liabilities, or the completeness of any information

provided in connection therewith or the Auction, except as expressly stated in the Contemplated Transaction Documents.

A Bid received from a Qualified Bidder before the Bid Deadline that meets the above requirements and that satisfies the Bid Deadline requirement above shall constitute a "Qualified Bid," if the Debtor believes, in its sole discretion (in consultation with the Committee), that such Bid would be consummated if selected as the Successful Bid. The Debtor shall have the right to reject any and all bids that they believe, in its sole discretion (in consultation with the Committee), do not comply with the Bid Procedures. In the event that any Potential Bidder is determined by the Debtor not to be a Qualified Bidder, the Potential Bidder shall be refunded its Good Faith Deposit.

Breakup Fee

Recognizing the Stalking Horse Purchaser's expenditure of time, energy and resources, and that the Stalking Horse Purchaser provides a floor bid with respect to the Assets that it offers to purchase, the Debtor is authorized (pursuant to the Bid Procedures Order) to provide the following bidding protections to the Stalking Horse Purchaser.

1. The Debtor has agreed to pay the Stalking Horse Purchaser, upon the terms set forth in the Purchase Agreement, (a) an amount equal to \$126,000 as a breakup fee (the "Breakup Fee") pursuant to an in accordance with terms of the Purchase Agreement and Bid Procedures Order.
2. Any Bid submitted on the Bid Deadline by a party or parties other than the Stalking Horse Purchaser must be in an amount that is sufficient to pay the Breakup Fee and result in additional consideration to the Debtor's estate in the amount of at least \$100,000 (as compared to the Purchase Price offered by such Stalking Horse Purchaser), after payment of the Breakup Fee.

Auction

If the Debtor receives at least one (1) Qualified Bid from a Qualified Bidder other than the Stalking Horse Purchaser prior to the Bid Deadline (unless such deadline is extended, as provided below), then the Debtor shall notify the Stalking Horse Purchaser and each other Qualified Bidder that the Debtor intends to conduct an auction (the "Auction") to consider all Qualified Bids and to determine the highest or otherwise best bid with respect to the Assets. The Debtor shall provide the Stalking Horse Purchaser, all Qualified Bidders and the Committee with copies of all Qualified Bids in advance of the Auction, but may exclude any confidential financial information, as reasonably designated by the applicable Qualified Bidder. Unless otherwise designated by the Debtor, the Auction shall commence at **10:00 a.m. (Eastern time)** on **2017**, at the offices of Pachulski Stang Ziehl & Jones LLP, 919 N. Market St., 17th Floor, Wilmington, DE 19899.

In advance of the Auction, the Debtor will notify all Qualified Bidders in writing of (i) the highest or otherwise best Qualified Bid, as determined by the Debtor in its discretion (the "Baseline Bid") and (ii) the time and place of the Auction.

If the Debtor does not receive at least one (1) Qualified Bid from a Qualified Bidder other than the Stalking Horse Purchaser, then no Auction shall be scheduled or conducted, and the Court at the Sale Hearing shall proceed to solely consider the approval of the proposed sale to the Stalking Horse Purchaser as set forth in the Purchase Agreement and shall not consider any competing or alternative offers or proposals to purchase the Assets.

If the Auction is necessary, such Auction shall be conducted according to the following procedures:

1. Participation at the Auction

Only the Stalking Horse Purchaser and Qualified Bidders that have submitted Qualified Bids are eligible to participate at the Auction. Only the authorized representatives and professional advisors of each of the Qualified Bidders, the Debtor, the Committee, and the U.S. Trustee shall be permitted to attend the Auction.

Except as otherwise set forth herein, the Debtor (in consultation with the Committee) may conduct the Auction in the manner it determines will result in the highest or best offer for the Assets.

In the Debtor's sole discretion, after the conclusion of the Auction, the Debtor may resume an auction for the sale of discrete assets and/or discrete groups of assets, if any, which are not included in the Successful Bid, on such bidding procedures as may be implemented by the Debtor in its discretion.

2. The Debtor Shall Conduct the Auction

The Debtor and its professionals shall direct and preside over the Auction. At the start of the Auction, the Debtor shall describe the terms of the Baseline Bid. The determination of which Qualified Bid constitutes the Baseline Bid shall be made by the Debtor in its discretion (in consultation with the Committee), and may take into account any factors the Debtor reasonably deems relevant to the value of the Qualified Bid to the estate (the "Bid Assessment Criteria"). All Bids made thereafter shall be Overbids (as defined below) and shall be made and received on an open basis, and all material terms of each Bid shall be fully disclosed to all other Qualified Bidders. The Debtor reserves the right to conduct the Auction in the manner designed to maximize value based upon the nature and extent of the Qualified Bids received. The Debtor shall maintain a transcript of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids and the Successful Bid. Pursuant to Local Rule 6004-1, each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the Bid Procedures, the Auction or the proposed transaction.

3. Terms of Overbids

An "Overbid" is any bid made at the Auction subsequent to the Debtor's announcement of the Baseline Bid. To submit an Overbid for purposes of this Auction, a Qualified Bidder must comply with the following conditions:

(a) Minimum Overbid Increment

During the Auction, bidding shall begin initially with the Baseline Bid. Any Overbid after the Baseline Bid shall be made in increments of at least \$50,000 in cash or other consideration acceptable to the Debtor; *provided, however*, that any overbids by the Stalking Horse Purchaser thereafter shall only be required to be equal to the sum of (1) the then existing lead Bid plus (2) the \$50,000 Overbid less (3) \$126,000 (i.e. the amount of the Breakup Fee).

Any Overbid made by a Qualified Bidder must remain open and binding on the Qualified Bidder until and unless the Debtor (in consultation with the Committee) accepts a higher Qualified Bid as an Overbid.

(b) Consideration of Overbids

The Debtor reserves the right, in its reasonable business judgment, to make one or more adjournments in the Auction to, among other things: facilitate discussions between the Debtor and individual Qualified Bidders; allow individual Qualified Bidders to consider how they wish to proceed; and give Qualified Bidders the opportunity to provide the Debtor with such additional evidence as the Debtor, in its reasonable business judgment, may require, that the Qualified Bidder has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount.

4. Additional Procedures

The Debtor may adopt rules for the Auction at or prior to the Auction that, in its reasonable discretion (in consultation with the Committee), will better promote the goals of the Auction and that are not inconsistent with any of the provisions of the Bid Procedures Order or the Bankruptcy Code. All such rules will provide that all Bids shall be made and received in one room, on an open basis, and all other Qualified Bidders shall be entitled to be present for all bidding with the understanding that the true identity of each Qualified Bidder (*i.e.*, the principals submitting the Bid) shall be fully disclosed to all other Qualified Bidders and that all material terms of each Qualified Bid will be fully disclosed to all other Qualified Bidders throughout the entire Auction.

The Debtor (in consultation with the Committee) may (a) determine which Qualified Bid, if any, is the highest and best offer and (b) reject at any time before entry of an order of the Bankruptcy Court approving the sale of the Assets pursuant to a Qualified Bid, any Bid that is (i) inadequate or insufficient; (ii) not in conformity with the requirements of the Bankruptcy Code or these Bid Procedures; or (iii) contrary to the best interest of the Debtor, its estate and its creditors.

The Debtor may, in its sole discretion (in consultation with the Committee), extend the Bid Deadline or the Auction Date, as determined, beyond the dates provided herein. In the event of such an extension, the Debtor shall provide notice to the Notice Parties and any Qualified Bidders of such extension, any related time and location details with respect to same, and any consequent continuance of the Sale Hearing.

5. Consent to Jurisdiction as Condition to Bidding

All Qualified Bidders at the Auction shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court and waived any right to a jury trial in connection with any disputes relating to the Auction, and the construction and enforcement of each Qualified Bidder's Contemplated Transaction Documents, as applicable.

6. Closing the Auction

Upon conclusion of the bidding, the Auction shall be closed, and the Debtor (in consultation with the Committee) shall immediately identify the highest or best offer for the Assets (which may be an aggregate of bids for less than all of the Assets) (the "Successful Bid") and the entity submitting such Successful Bid (the "Successful Bidder"), which highest or best offer will provide the greatest amount of net value to the Debtor, and the next highest or best

offers after the Successful Bid (the "Back-up Bid") and the entity or entities submitting the Back-up Bid (the "Back-up Bidder"), and advise the Qualified Bidders of such determination. Upon three (3) days' prior notice by the Debtor, the Back-up Bidder selected by the Debtor must immediately proceed with the closing of the transaction contemplated under the Back-up Bid in the event that the transaction with the Successful Bidder is not consummated for any reason.

As stated above, The Bids of the Successful Bidder and the Back-up Bidder must be irrevocable until the Termination Date.

Acceptance of Successful Bid

The Debtor shall sell the Assets to the Successful Bidder upon the approval of the Successful Bid by the Bankruptcy Court after the Sale Hearing. The Debtor's presentation of a particular Qualified Bid to the Bankruptcy Court for approval does not constitute the Debtor's acceptance of such Qualified Bid. The Debtor will be deemed to have accepted a Qualified Bid only when the Qualified Bid has been approved by the Bankruptcy Court at the Sale Hearing.

"As Is, Where Is"

The sale of the Assets shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Debtor, its agents or its estate except to the extent set forth in the Competing Agreement of the Successful Bidder. Each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its offer, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bid Procedures or the Competing Agreement of the Successful Bidder.

Free of Any and All Interests

Except as otherwise provided in the Successful Bidder's Competing Agreement and subject to the approval of the Bankruptcy Court, all of Debtor's right, title and interest in and to the Assets subject thereto shall be sold free and clear of any Liens, Claims, and Encumbrances to the maximum extent permitted by section 363 of the Bankruptcy Code, with such Liens, Claims and Encumbrances to attach to the net proceeds of the sale of the Assets with the same validity and priority as such Liens, Claims and Encumbrances applied against the Assets.

Sale Hearing

The Sale Hearing shall be conducted by the Bankruptcy Court on _____, 2017, at _____ (Eastern time), or on such other date as may be established by the Bankruptcy Court.

If the Successful Bidder fails to consummate an approved sale in accordance with the applicable asset purchase agreement or such agreement is terminated, the Debtor shall be authorized, but not required, to deem the Back-up Bid, as disclosed at the Sale Hearing, the Successful Bids, and the Debtor shall be authorized, but not required, to consummate the sale with the Qualified Bidder submitting the next highest such Bid without further order of the Bankruptcy Court.

Return of Good Faith Deposit

The Good Faith Deposit of the Successful Bidder (or the Back-up Bidder that becomes a Successful Bidder) shall be applied to the purchase price of such transaction at Closing. The Debtor will hold the Good Faith Deposits of the Successful Bidder and the next highest Qualified Bidder in a segregated account until the closing of the sale with the Successful Bidder; good Faith Deposits of all other Qualified Bidders shall be held in a segregated account, and thereafter returned to the respective bidders following the conclusion of the Auction. If a Successful Bidder (including any Back-up Bidder that has become the Successful Bidder) fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Debtor shall be entitled to retain the Successful Bidder's Good Faith Deposit as part of the Debtor's damages resulting from such Successful Bidder's breach or failure to perform.

Exhibit 2

Form of Sale and Bid Procedures Notice

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

In re:	)	Chapter 11
)	
AQUION ENERGY, INC., ¹	)	Case No. 17-10500 (KJC)
)	
Debtor.)	

Deadline for Submitting Bids: [To be determined] (Eastern time)
Deadline for Objections to Sale: [To be determined] (Eastern time)
Auction Date: [To be determined] (Eastern time)
Sale Hearing Date: [To be determined] (Eastern time)

**NOTICE OF SALE PROCEDURES, AUCTION DATE
AND SALE HEARING FOR SUBSTANTIALLY ALL OF DEBTOR'S ASSETS**

PLEASE TAKE NOTICE that on May __, 2017, the above-captioned debtor and debtor in possession (the "Debtor") filed the *Motion for Entry of an Order (I)(A) Authorizing Entry into the Asset Purchase Agreement with Respect to the Sale of Substantially all of the Debtor's Assets; (B) Approving Bid Procedures for the Sale of Substantially All of the Assets of Debtor; (C) Scheduling an Auction and Hearing to Consider the Sale and Approve the Form and Manner of Notice Related Thereto; (D) Establishing Procedures Relating to the Assumption and Assignment of Certain Contracts and Leases, Including Notice of Proposed Cure Amounts; (E) Approving Certain Breakup Fee Provisions; (II) Authorizing and Approving (A) the Sale of Certain Assets Free and Clear of All Liens, Claims, Encumbrances and Interests and (B) the Assumption and Assignment of Certain Contracts and Leases; And (III) Granting Related Relief* (the "Motion").² On _____, 2017, the Court entered an order (the "Bid

¹ The Debtor in this chapter 11 case and the last four digits of the Debtor's U.S. tax identification number is Aquion Energy, Inc. (1370). The Debtor's headquarters is located at 32 39th Street, Pittsburgh, PA, 15201.

² Capitalized terms not otherwise defined herein shall have the meanings set forth in the Motion.

Procedures Order”) granting the Motion in part and approving the bid procedures annexed hereto (the “Bid Procedures”) to be used in connection with the auction (the “Auction”) of the Debtor’s assets (the “Assets”). The Assets are being sold free and clear of all liens, claims, encumbrances and interests, provided that section 363(f) of the Bankruptcy Code has been satisfied. The Debtor has identified Bluesky Energy US, Inc. as the “stalking horse” bidder for the Assets (the “Stalking Horse Purchaser”).

Bid Procedures and Auction

PLEASE TAKE FURTHER NOTICE that the Bid Procedures approved by the Bid Procedures Order, a copy of which are attached hereto as **Exhibit 1**, describe, *inter alia*, the terms of the bidding process, the requirements and deadlines for participation therein, required terms of any bids, and the time, location and conduct of the Auction. In the event of any inconsistency or conflict between this Notice, the Bid Procedures and the Bid Procedures Order, the Bid Procedures Order shall control.

The Sale Hearing

PLEASE TAKE FURTHER NOTICE that the Bankruptcy Court has scheduled a hearing for _____, 2017 at _____ (**Eastern Time**) (the “Sale Hearing”) to consider approval of the winning bid(s) and confirm the results at the Auction for the Assets, pursuant to the Motion. The Sale Hearing may, however, be adjourned in open court from time to time, without further notice. The Sale Hearing will be held before the Honorable Kevin J. Carey, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 5th Floor, Courtroom No. 5, Wilmington, Delaware 19801.

PLEASE TAKE FURTHER NOTICE that the Bid Procedures annexed hereto shall govern the bidding process and the Auction of the Assets. Any person that wishes to receive a copy of the Bid Procedures Order shall make such request in writing to Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, P.O. Box 8705, Wilmington, Delaware 19899-8705 (Courier 19801), Attn: Laura Davis Jones, ljones@pszjlaw.com.

Objections

PLEASE TAKE FURTHER NOTICE that any objection to any of the relief to be requested at the Sale Hearing must be in writing, state the basis of such objection with specificity, and shall be filed with the Court, with a courtesy copy to Chambers, and shall be served on: (i) counsel to the Debtor and Debtor-in-Possession, Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Courier 19801), Attn: Laura Davis Jones, Esq.; (ii) counsel to the Official Committee of Unsecured Creditors: (a) Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, New York 10020, Attn: Jeffrey Cohen, Esq. and Barry Z. Bazian, Esq.; (b) Lowenstein Sandler LLP, 65 Livingston Avenue, Roseland, NJ 07068, Attn: Andrew David Behlmann, Esq.; (c) Klehr Harrison Harvey Branzburg LLP, 919 Market Street, Suite 1000, Wilmington, Delaware 19801, Attn: Richard M. Beck, Esq. and Sally E. Veghte, Esq.; (iii) the Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 N. King Street, Suite 2207, Lock Box 35, Wilmington, DE 19801, Attn: Hannah McCollum, Esq.; and (iv) counsel to the Stalking Horse Purchaser: Barnes & Thornburg LLP, One North Wacker Drive, Suite 4400, Chicago, IL 60606, Attn: Kevin C. Driscoll, Jr., Esq., so as to be received by _____, 2017, at _____

p.m. (Eastern Time).

PLEASE TAKE FURTHER NOTICE that all requests for information concerning the Assets and all requests for information concerning the Bid Procedures, should be directed in writing to Pachulski Stang Ziehl & Jones LLP, 919 N. Market St., 17th Floor, Wilmington, Delaware 19801, Attn: Laura Davis Jones, ljones@pszjlaw.com.

Dated: June ____, 2017

PACHULSKI STANG ZIEHL & JONES LLP

Laura Davis Jones (Bar No. 2436)
David M. Bertenthal (CA Bar No. 167624)
Joseph M. Mulvihill (Bar No. 6061)
919 North Market Street, 17th Floor
P.O. Box 8705
Wilmington, Delaware 19899-8705 (Courier 19801)
Telephone: 302-652-4100
Facsimile: 302-652-4400
email: ljones@pszjlaw.com
dbertenthal@pszjlaw.com
jmulvihill@pszjlaw.com

Counsel for Debtor and Debtor in Possession

Exhibit 3

Form of Creditor Notice

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

In re:	)	Chapter 11
)	
AQUION ENERGY, INC., ¹	)	Case No. 17-10500 (KJC)
)	
Debtor.)	

Deadline for Submitting Bids: [To be determined] (Eastern time)
Deadline for Objections to Sale: [To be determined] (Eastern time)
Auction Date: [To be determined] (Eastern time)
Sale Hearing Date: [To be determined] (Eastern time)

NOTICE OF AUCTION AND SALE HEARING FOR DEBTOR’S ASSETS

PLEASE TAKE NOTICE that on May __, 2017, the above-captioned debtor and debtor in possession (the “Debtor”) filed the *Motion for Entry of an Order (I)(A) Authorizing Entry into the Asset Purchase Agreement with Respect to the Sale of Substantially all of the Debtor’s Assets; (B) Approving Bid Procedures for the Sale of Substantially All of the Assets of Debtor; (C) Scheduling an Auction and Hearing to Consider the Sale and Approve the Form and Manner of Notice Related Thereto; (D) Establishing Procedures Relating to the Assumption and Assignment of Certain Contracts and Leases, Including Notice of Proposed Cure Amounts; (E) Approving Certain Breakup Fee Provisions; (II) Authorizing and Approving (A) the Sale of Certain Assets Free and Clear of All Liens, Claims, Encumbrances and Interests and (B) the Assumption and Assignment of Certain Contracts and Leases; and (III) Granting Related Relief* (the “Motion”).² On _____, 2017, the Court entered an order (the “Bid”

¹ The Debtor in this chapter 11 case and the last four digits of the Debtor’s U.S. tax identification number is Aquion Energy, Inc. (1370). The Debtor’s headquarters is located at 32 39th Street, Pittsburgh, PA, 15201.

² Capitalized terms not otherwise defined herein shall have the meanings set forth in the Motion.

Procedures Order”) granting the Motion in part and approving certain bid procedures (the “Bid Procedures”) to be used in connection with the auction (the “Auction”) of the Debtor’s assets described in the Motion (the “Assets”). The Assets are being sold free and clear of all liens, claims, encumbrances and interests. The Debtor has identified Bluesky Energy US, Inc. as the “stalking horse” bidder for the Assets (the “Stalking Horse Purchaser”). The Bid Procedures shall govern the bidding process and the Auction of the Assets. Any person that wishes to receive a copy of the Bid Procedures or the Bid Procedures Order shall make such request in writing to Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, P.O. Box 8705, Wilmington, Delaware 19899-8705 (Courier 19801), Attn: Laura Davis Jones.

The Sale Hearing

PLEASE TAKE FURTHER NOTICE that the Bankruptcy Court has scheduled a hearing for _____ **(Eastern Time)** (the “Sale Hearing”) to consider approval of the winning bid(s) and confirm the results at the Auction for the Assets, pursuant to the Motion. The Sale Hearing may, however, be adjourned in open court from time to time, without further notice. The Sale Hearing will be held before the Honorable Kevin J. Carey, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 5th Floor, Courtroom No. 5, Wilmington, Delaware 19801.

Objections

PLEASE TAKE FURTHER NOTICE that any objection to any of the relief to be requested at the Sale Hearing must be in writing, state the basis of such objection with specificity, and shall be filed with the Court, with a courtesy copy to Chambers, and shall be

served on: (i) counsel to the Debtor and Debtor-in-Possession, Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Courier 19801), Attn: Laura Davis Jones, Esq.; (ii) counsel to the Official Committee of Unsecured Creditors: (a) Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, New York 10020, Attn: Jeffrey Cohen, Esq. and Barry Z. Bazian, Esq.; (b) Lowenstein Sandler LLP, 65 Livingston Avenue, Roseland, NJ 07068, Attn: Andrew David Behlmann, Esq.; (c) Klehr Harrison Harvey Branzburg LLP, 919 Market Street, Suite 1000, Wilmington, Delaware 19801, Attn: Richard M. Beck, Esq. and Sally E. Veghte, Esq.; (iii) the Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 N. King Street, Suite 2207, Lock Box 35, Wilmington, DE 19801, Attn: Hannah McCollum, Esq.; and (iv) counsel to the Stalking Horse Purchaser: Barnes & Thornburg LLP, One North Wacker Drive, Suite 4400, Chicago, IL 60606, Attn: Kevin C. Driscoll, Jr., Esq., so as to be received by _____, **2017, at**
p.m. (Eastern Time).

PLEASE TAKE FURTHER NOTICE that all requests for information concerning the Assets and all requests for information concerning the Bid Procedures, should be directed in writing to Pachulski Stang Ziehl & Jones LLP, 919 N. Market St., 17th Floor, Wilmington, Delaware 19801, Attn: Laura Davis Jones, ljones@pszjlaw.com.

Dated: May __, 2017

PACHULSKI STANG ZIEHL & JONES LLP

Laura Davis Jones (Bar No. 2436)
David M. Bertenthal (CA Bar No. 167624)
Joseph M. Mulvihill (Bar No. 6061)
919 North Market Street, 17th Floor
P.O. Box 8705
Wilmington, Delaware 19899-8705 (Courier 19801)
Telephone: 302-652-4100
Facsimile: 302-652-4400
email: ljones@pszjlaw.com
dbertenthal@pszjlaw.com
jmulvihill@pszjlaw.com

Counsel for Debtor and Debtor in Possession

Exhibit 4

Form of Cure Notice

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

In re:	)	Chapter 11
)	
AQUION ENERGY, INC., ¹	)	Case No. 17-10500 (KJC)
)	
Debtor.)	

Deadline for Submitting Bids: [To be determined] (Eastern time)
Deadline for Objections to Sale: [To be determined] (Eastern time)
Auction Date: [To be determined] (Eastern time)
Sale Hearing Date: [To be determined] (Eastern time)

**NOTICE TO COUNTERPARTIES TO EXECUTORY CONTRACTS AND
UNEXPIRED LEASES THAT MAY BE ASSUMED AND ASSIGNED**

PLEASE TAKE NOTICE that on March 8, 2017 (the “Petition Date”), the above-captioned debtor and debtor in possession (the “Debtor”) filed a voluntary petition for relief under title 11 of the United States Code (the “Bankruptcy Code”).

PLEASE TAKE FURTHER NOTICE that on May __, 2017, the above-captioned debtor and debtor in possession (the “Debtor”) filed the *Motion for Entry of an Order (I)(A) Authorizing Entry into the Asset Purchase Agreement with Respect to the Sale of Substantially all of the Debtor’s Assets; (B) Approving Bid Procedures for the Sale of Substantially All of the Assets of Debtor; (C) Scheduling an Auction and Hearing to Consider the Sale and Approve the Form and Manner of Notice Related Thereto; (D) Establishing Procedures Relating to the Assumption and Assignment of Certain Contracts and Leases, Including Notice of Proposed Cure Amounts; (E) Approving Certain Breakup Fee Provisions; (II) Authorizing and*

¹ The Debtor in this chapter 11 case and the last four digits of the Debtor’s U.S. tax identification number is Aquion Energy, Inc. (1370). The Debtor’s headquarters is located at 32 39th Street, Pittsburgh, PA, 15201.

*Approving (A) the Sale of Certain Assets Free and Clear of All Liens, Claims, Encumbrances and Interests and (B) the Assumption and Assignment of Certain Contracts and Leases; And (III) Granting Related Relief (the “Motion”).*² On _____, 2017, the Court entered an order (the “Bid Procedures Order”) granting the Motion in part and approving the bid procedures annexed hereto (the “Bid Procedures”) to be used in connection with the auction (the “Auction”) of the Debtor’s assets described in the Motion (the “Assets”) pursuant to the asset purchase agreement annexed as Exhibit C to the Motion (the “Purchase Agreement”) by and between the Debtor and the Stalking Horse Purchase (defined below). The Assets are being sold free and clear of all liens, claims, encumbrances and interests. The Debtor has proposed to sell the Assets to either Bluesky Energy US, Inc., who is the “stalking horse” bidder for the sale of the Assets (the “Stalking Horse Purchaser”) or, alternatively, to any successful bidder for the Assets following the Auction (a “Successful Bidder”).

PLEASE TAKE FURTHER NOTICE that the hearing on the Motion has been set for _____, 2017, at _____ (**Eastern Time**) before the Honorable Kevin J. Carey, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 5th Floor, Courtroom No. 5, Wilmington, Delaware 19801.

PLEASE TAKE FURTHER NOTICE that you are a party to an executory contract(s) or unexpired lease(s) that has been designated for assumption by the Debtor and assignment to the Stalking Horse Purchaser, or alternatively, to the Successful Bidder (each an “Assumed Executory Contract”) amount shown on **Exhibit A** attached to this Notice as the

² Capitalized terms not otherwise defined herein shall have the meanings set forth in the Motion.

“Cure Amount” for the Assumed Executory Contract listed on **Exhibit A** to which you are a party is the amount, based upon the Debtor’s books and records, which the Debtor asserts is owed to cure any defaults existing under the Assumed Executory Contract as of the Petition Date.³

PLEASE TAKE FURTHER NOTICE that a Successful Bidder, as applicable, may subsequently elect to exclude any agreement or agreements from the list of Assumed Executory Contracts at any time prior to the closing of the sale of the Assets, including the potential exclusion of the Assumed Executory Contract listed on **Exhibit A** hereto. Cure Amounts, if any, shall only be paid with respect to Assumed Executory Contracts that are actually assumed pursuant to the closing of the sale of the assets in accordance with the Purchase Agreement, or the purchase agreement of the Successful Bidder. In the event that a Successful Bidder elects to exclude any Assumed Executory Contracts, the affected counterparties will be separately notified of any such election.

PLEASE TAKE FURTHER NOTICE that if you disagree with the Cure Amount shown for the Assumed Executory Contract on **Exhibit A**, or if you object to the assumption and assignment of your Assumed Executory Contract on any grounds, you must file an objection in writing with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801, on or before _____, 2017, at _____ **(Eastern Time)**. In addition, any objection must set forth the specific default or defaults alleged,

³ Your receipt of this notice does not constitute an admission by the Debtor that your agreement actually constitutes an executory contract or unexpired lease under section 365 of the Bankruptcy Code, and the Debtor expressly reserves the right to challenge the status of any agreement.

set forth any such other ground for objection, and set forth any Cure Amount as alleged by you, including such documentation and records as supports your asserted cure amount.

PLEASE TAKE FURTHER NOTICE that any objection to any of the relief to be requested at the Sale Hearing must be in writing, state the basis of such objection with specificity, and shall be filed with the Court, with a courtesy copy to Chambers, and shall be served on: (i) counsel to the Debtor and Debtor-in-Possession, Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Courier 19801), Attn: Laura Davis Jones, Esq.; (ii) counsel to the Official Committee of Unsecured Creditors: (a) Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, New York 10020, Attn: Jeffrey Cohen, Esq. and Barry Z. Bazian, Esq.; (b) Lowenstein Sandler LLP, 65 Livingston Avenue, Roseland, NJ 07068, Attn: Andrew David Behlmann, Esq.; (c) Klehr Harrison Harvey Branzburg LLP, 919 Market Street, Suite 1000, Wilmington, Delaware 19801, Attn: Richard M. Beck, Esq. and Sally E. Veghte, Esq.; (iii) the Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 N. King Street, Suite 2207, Lock Box 35, Wilmington, DE 19801, Attn: Hannah McCollum, Esq.; and (iv) counsel to the Stalking Horse Purchaser: Barnes & Thornburg LLP, One North Wacker Drive, Suite 4400, Chicago, IL 60606, Attn: Kevin C. Driscoll, Jr., Esq., so as to be received by _____, **2017, at**
p.m. (Eastern Time).

PLEASE TAKE FURTHER NOTICE THAT IF YOU DO NOT TIMELY FILE AND SERVE AN OBJECTION OR OBJECTIONS AS STATED ABOVE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT

FURTHER NOTICE. ANY NON-DEBTOR PARTY TO ANY ASSUMED EXECUTORY CONTRACT WHO DOES NOT FILE A TIMELY OBJECTION TO THE CURE AMOUNTS FOR SUCH ASSUMED EXECUTORY CONTRACT IS DEEMED TO HAVE CONSENTED TO SUCH CURE AMOUNTS, AND ANY NON-DEBTOR PARTY TO ANY ASSUMED CONTRACT WHO DOES NOT FILE A TIMELY OBJECTION ON OTHER GROUNDS IS DEEMED TO HAVE CONSENTED TO SUCH ASSIGNMENT AND ASSUMPTION.

Dated: _____, 2017

PACHULSKI STANG ZIEHL & JONES LLP

Laura Davis Jones (Bar No. 2436)
David M. Bertenthal (CA Bar No. 167624)
Joseph M. Mulvihill (Bar No. 6061)
919 North Market Street, 17th Floor
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dbertenthal@pszjlaw.com
jmulvihill@pszjlaw.com

Counsel for Debtor and Debtor in Possession

Exhibit B

Sale Order

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

In re:	)	Chapter 11
)	
AQUION ENERGY, INC., ¹	)	Case No. 17-10500 (KJC)
)	
Debtor.	)	Docket Ref. No. _____

**ORDER (A) AUTHORIZING THE SALE OF SUBSTANTIALLY
ALL OF THE DEBTOR’S ASSETS PURSUANT TO ASSET PURCHASE
AGREEMENT(S) FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES,
AND OTHER INTERESTS; (B) APPROVING THE ASSUMPTION AND
ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED
LEASES RELATED THERETO; AND (C) GRANTING RELATED RELIEF**

This matter coming before the Court on the motion (the “Motion”)² of the above-captioned affiliated debtor and debtor in possession (the “Debtor”) for the entry of an order pursuant to sections 105(a), 363, 365 and 503 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (as amended from time to time, the “Bankruptcy Rules”), and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedures of the Bankruptcy Court for the District of Delaware (the “Local Rules”) (a) authorizing the sale of such assets free and clear of liens, claims, encumbrances, and other interests, except as provided in the asset purchase agreement by and between the Debtor and _____ (the “Successful Bidder”) and (b) approving the assumption and assignment of certain of the Debtor’s executory contracts and unexpired

¹ The Debtor in this chapter 11 case and the last four digits of the Debtor’s U.S. tax identification number is Aquion Energy, Inc. (1370). The Debtor’s headquarters is located at 32 39th Street, Pittsburgh, PA, 15201.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

leases related thereto to the Successful Bidder; and (c) granting relief related; and the Court having reviewed the Motion and the Court having found that (i) the Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; (ii) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b); (iv) notice of the Motion was sufficient under the circumstances; and after due deliberation the Court having determined that the relief requested in the Motion is in the best interests of the Debtor, its estate and its creditors; and good and sufficient cause having been shown;

AND IT IS FURTHER FOUND AND DETERMINED THAT:

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 Debtor's notice of the Bid Procedures, the Cure Amounts, the Auction and the hearing to approve any sale of the Assets (the "Sale Hearing") was appropriate and reasonably calculated to provide all interested parties with timely and proper notice, and no other or further notice is required.

C. The Successful Bidder is not a successor to Debtor or this bankruptcy estate by any reason or theory of law or equity, and that Successful Bidder shall not be subject to successor liability for any products sold prior to Closing.

D. The Purchase Price was negotiated at arms' length and constitutes fair consideration for the Assets. The Successful Bidder is a good faith purchaser of the Assets pursuant to section 363(m) of the Bankruptcy Code and that the provisions of Section 363(n) of

the Bankruptcy Code have not been violated.

D. Notice of the hearing on the Motion of the Sale and any related auction was proper under the Bankruptcy Code, Bankruptcy Rules and Local Rules;

E. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such.

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED** as set forth herein. The sale of the Assets to the Successful Bidder on the terms and conditions set forth in the Successful Bidder APA (defined below) are approved. The Debtor is authorized to consummate the transactions under the Successful Bidder APA in accordance with this Order.

2. All objections and responses to the Motion that have not been overruled, withdrawn, waived, settled or resolved, and all reservations of rights included therein, are hereby overruled and denied.

3. The Successful Bidder's offer for the Assets, as embodied in the Successful Bidder's asset purchase agreement (the "Successful Bidder APA"), is the highest and best offer for the correlative portion of the Assets and is hereby approved.

4. The Successful Bidder's APA annexed hereto as **Exhibit 1** is hereby approved pursuant to section 363(b) of the Bankruptcy Code, and the Debtor is authorized to consummate and perform all of its obligations under the Successful Bidder's APA and to execute such other documents and take such other actions as are necessary or appropriate to effectuate the Successful Bidder's APA.

5. Pursuant to section 363(f) of the Bankruptcy Code, the Assets may be sold and transferred free and clear of all liens, claims, interests and encumbrances (collectively,

“Liens”), except as otherwise provided in the Successful Bidder’s APA, with any and all such Liens to attach to proceeds of such sale with the same validity (or invalidity), priority, force, and effect such Liens had on the Assets immediately prior to the Sale and subject to the rights, claims, defenses, and objections, if any, of the Debtor and all interested parties with respect to any such asserted Liens.

6. The Successful Bidder is not a successor to Debtor or this bankruptcy estate by any reason or theory of law or equity, and that Successful Bidder shall not be subject to successor liability for any products sold prior to Closing. All creditors or other persons are hereby barred from bringing any claim or asserting any liens against Successful Bidder or the Assets, except as relates to Assumed Liabilities.

7. Pursuant to section 365 of the Bankruptcy Code, the assignment and assumption of the Assumed Executory Contracts of the Debtor, as identified in the Successful Bidder’s APA, by the Successful Bidder, is hereby authorized and approved in all respects. The Successful Bidder shall pay, concurrently with the Closing and as a condition to Debtor’s assumption and assignment thereof, all cure amounts owing to the counterparties to the Assumed Executory Contracts that are assumed at the Closing. Any provision in an Assumed Executory Contract that purport to prohibit the assignment of such Assumed Executory Contract, or that purports to allow the counterparty to terminate, recapture, or impose penalties upon assignment constitute unenforceable anti-assignment provisions and are void and of no force or effect. Upon closing, in accordance with Sections 363 and 365 of the Bankruptcy Code, the Successful Bidder shall be fully and irrevocably vested with all right, title and interest of the Debtor under the Assumed Executory Contracts and the Assumed Executory Contracts shall remain in full force and effect for the benefit of the Successful Bidder. The Successful Bidder has provided adequate

assurance of future performance under the Assumed Executory Contracts within the meaning of Section 365 of the Bankruptcy Code.

8. Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code, the Sale by the Debtor to the Successful Bidder of the Assets and transactions related thereto, upon the closing under any Successful Bidder's APA, are authorized and approved in all respects.

9. The stays provided for in Bankruptcy Rules 6004(h) and 6006(d) are hereby waived and this Order shall be effective immediately upon its entry.

10. The terms of this Order shall be binding on the Successful Bidder and its successors, the Debtor, creditors of the Debtor, and all other parties in interest in this Bankruptcy Case, and any successors of the Debtor, including any trustee or examiner appointed in this case or upon a conversion of this case to Chapter 7 of the Bankruptcy Code.

11. The Successful Bidder is a good faith purchaser entitled to the benefits, protections and immunities afforded by section 363(m) of the Bankruptcy Code and the provisions of section 363(n) of the Bankruptcy Code have not been violated. No reversal or modification of this Order on appeal will affect the validity of the Successful Bidder's APA or the transaction contemplated thereby. The Successful Bidder is not an "insider" as defined by Section 101 of the Bankruptcy Code. Neither the Debtor nor the Successful Bidder is or will be entering into the Successful Bidder's APA fraudulently, or for the purposes of hindering, delaying or defrauding any of the Debtor's creditors, and the purchase price constitutes reasonably equivalent and fair value (as those terms or their equivalents are defined by the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act and Section 548 of the Bankruptcy Code) for the purchased assets.

12. With respect to the transactions consummated pursuant to this Order, this Order shall be sole and sufficient evidence of the transfer of title to any particular purchaser, and the sale transaction consummated pursuant to this Order shall be binding upon and shall govern the acts of all 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 property sold pursuant to this Order, including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, administrative agencies, governmental departments, secretaries of state, and federal, state, and local officials, and each of such persons and entities is hereby directed to accept this Order as sole and sufficient evidence of such transfer of title and shall rely upon this Order in consummating the transactions contemplated hereby.

13. This Court retains jurisdiction to interpret, implement and enforce the provisions of, and resolve any disputes arising under or related to, this Order and the Successful Bidder's APA, all amendments thereto, any waivers and consents thereunder and each of the agreements executed in connection therewith.

14. The failure specifically to include any particular provision of the Successful Bidder's APA or any of the documents, agreements, or instruments executed in connection therewith in this Order shall not diminish or impair the force of such provision, document, agreement, or instrument, it being the intent of the Court that the Successful Bidder's APA and each document, agreement, or instrument be authorized and approved in its entirety.

15. The Successful Bidder's APA and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto 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 Debtor's estate.

Dated: _____, 2017

Honorable Kevin J. Carey
United States Bankruptcy Judge

Exhibit 1

Purchase Agreement

(to be provided)

Exhibit C

Stalking Horse Purchaser's Purchase Agreement

(Without Schedules)

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the “**Agreement**”) is made and entered into as of this 23rd day of May, 2017, by and between BlueSky Energy US, Inc., a Delaware Corporation (the “**Buyer**”), on the one hand, Aquion Energy, Inc., a Delaware corporation (the “**Seller**” and, together with Buyer, the “**Parties**”), and solely for Section 12 and Section 13, BlueSky Energy Entwicklungs- und Produktions GmbH, a limited liability company (*Gesellschaft mit beschränkter Haftung*) under the laws of Austria (the “**Parent**”), Seller being a Debtor and Debtor in Possession under Case No. 17-10500-KJC (the “**Case**”) in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”).

RECITALS

A. Seller was previously in the business of designing, manufacturing and selling for commercial, industrial and residential uses (both through dealers and distributors and to end users) saltwater batteries with a proprietary, environmentally-friendly electrochemical design (the “**Business**”).

B. Seller wishes to sell to Buyer, pursuant to Sections 363 of Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”), substantially all of the assets of Seller heretofore used in connection with or arising out of the operation of the Business, free and clear to the extent provided in the Approval Order (as defined in Section 8.1 below) from all liens and encumbrances, except as permitted herein, all at the price and on the other terms and conditions specified in detail below and Buyer wishes to so purchase and acquire such assets from Seller.

C. The transaction contemplated by this Agreement is subject to approval of the Bankruptcy Court and will be consummated pursuant to certain bid procedures and the Approval Order (as defined in Section 8.1 below) to be entered in the Case.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Transfer of Assets.

1.1. Purchase and Sale of Assets. On the Closing Date, as hereinafter defined, in consideration of the covenants, representations and obligations of Buyer hereunder, and subject to the conditions hereinafter set forth, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from Seller, all of the Seller’s right, title and interest in and to those assets and properties used in connection with the operation of the Business, free and clear to the extent provided in the Approval Order (as defined in Section 8.1 below) of any liens or encumbrances, other than those liens or encumbrances permitted herein, including, without limitation, the following (collectively, excluding the Excluded Assets (as defined in Section 1.2 below), the “**Property**”):

1.1.1. Assumed Leases and Contracts. Seller's right, title and interest in and to, (i) the lessee's interest under those equipment, personal property and intangible property leases, rental agreements, contracts, agreements and similar arrangements, if any, described on **Schedule 1.1.1-(i)** attached to this Agreement and incorporated herein by this reference (collectively, the "**Leases**"), and (ii) the contracts, leases, orders, purchase orders, licenses, contracts, agreements and similar arrangements described on **Schedule 1.1.1-(ii)** attached to this Agreement and incorporated herein by this reference (and together with the Leases, the "**Assumed Leases and Contracts**").

1.1.2. Personal Property. All of those items of equipment and tangible personal property owned by Seller and heretofore used in connection with the Business, including, without limitation, all such furniture, vehicles, machinery, equipment, tools, spare parts, computers, fixtures and furnishings and other items of tangible personal property listed or described in **Schedule 1.1.2** attached to this Agreement and incorporated herein by this reference (collectively, the "**Personal Property**"). As used herein, the Personal Property does not include the Inventory (as defined below). The Personal Property shall also expressly exclude any equipment or other tangible property held by Seller pursuant to a lease, rental agreement, contract, license or similar arrangement (a "**Contract**") where Buyer does not wish to assume the underlying Contract relating to such personal property at the Closing.

1.1.3. Intangible Property. All intangible personal property owned or held by Seller to the extent heretofore used in connection with the Business, but in all cases only to the extent of Seller's interest and only to the extent transferable, together with all books, records and like items pertaining to the Business, the goodwill of the Business, patents, processes, trademarks, trade names, service marks, catalogues, customer lists and other customer data bases, correspondence with present or prospective customers and suppliers, advertising materials, software programs, and telephone exchange numbers identified with the Business and any right, title and interest of Seller in and to those items described on **Schedule 1.1.3** attached hereto and incorporated herein by this reference (collectively, the "**Intangible Property**"). As used in this Agreement, Intangible Property shall in all events exclude (i) any materials containing privileged communications or information about employees, disclosure of which would violate an employee's reasonable expectation of privacy and any other materials which are subject to attorney-client or any other privilege under applicable law, and (ii) any software or other item of intangible property held by Seller pursuant to a license or other Contract where Buyer does not actually assume the underlying Contract relating to such intangible personal property at the Closing.

1.1.4. Governmental Permits. To the extent transferable and assignable, Seller's interest in all licenses, certificates of occupancy, permits, registrations, certificates of public convenience and necessity, approvals, licenses, easements, authorizations and operating rights issued or granted by any governmental or similar authority having jurisdiction over the Business to the extent relating to the operation of the Business, including, without limitation, those described on **Schedule 1.1.4** attached hereto and incorporated herein by this reference.

1.1.5. Inventory. All supplies, goods, materials, work in process, inventory and stock in trade owned and held by Seller for use in connection with the operation of the Business as of the Closing (as defined below) including the items listed or described in **Schedule 1.1.5** attached to this Agreement and incorporated herein by this reference (collectively, the “**Inventory**”).

1.1.6. Vendor Items. All promotional allowances and vendor rebates and similar items relating to the operation of the Business.

1.1.7. Claims, Etc. All claims, prepayments, warranties, guarantees, refunds, reimbursements, causes of action, rights of recovery, rights of set-off and rights of recoupment of every kind and nature relating to or arising in connection with the operation of the Business, other than any of the foregoing comprising part of or relating to Excluded Assets.

The items and assets described in Sections 1.1.2 and 1.1.4 through 1.1.7 are sometimes collectively referred to herein as the “**Assignment Property**.”

1.2. Excluded Assets. Notwithstanding anything to the contrary in this Agreement, the Property shall be limited to the items identified or described in Section 1.1 above and shall in any event exclude all of the following (collectively, the “**Excluded Assets**”): (i) those items excluded pursuant to the provisions of Section 1.1 above; (ii) Seller’s rights under this Agreement and all cash and non-cash consideration payable or deliverable to Seller pursuant to the terms and provisions hereof; (iii) all cash deposits held by Seller or in Seller’s control; (iv) all cash and cash equivalents (including checking account balances, certificates of deposit and other time deposits and petty cash) and marketable and other securities held by Seller or in Seller’s control, (v) all tax refunds, rebates, credits and similar items relating to or arising out of the operation of the Business and to any period, or portion of any period, on or prior to the Closing Date; (vi) all accounts and notes receivable (whether current or non-current) and all causes of action specifically pertaining to the collection of the foregoing, in each case to the extent arising out of the operation of the Business (collectively, the “**Accounts Receivable**”); (vii) insurance proceeds, claims and causes of action with respect to or arising in connection with (A) any Contract which is not assigned to Buyer at the Closing, or (B) any item of tangible or intangible property not acquired by Buyer at the Closing, or (C) subject to Section 13.1, any incident or casualty occurring prior to the mutual execution and delivery of this Agreement, (viii) any real property lease, other lease, or other contract to which Seller is a party which is not listed or described on **Schedule 1.1.1-(i)**, and **Schedule 1.1.1-(ii)** and any Lease, or Other Contract which is not assumable and assignable as a matter of applicable law (including, without limitation, any with respect to which any consent requirement in favor of the counter-party thereto may not be overridden pursuant to Section 365 of the Bankruptcy Code), (ix) all securities, whether capital stock or debt, of Seller or any other entity; (x) all tax records, minute books, stock transfer books and corporate seal of Seller; (xi) any letters of credit or similar financial accommodations issued to any third party(ies) for the account of Seller and any collateral therefor and other collateral deposits and prepaid items associated with

the Property; (xii) all rights, claims and causes of action of Seller against current and former officers, directors, employees, members, principals, agents, and representatives of Seller; (xiii) all preference or avoidance claims and actions of the Seller, including, without limitation, any such claims and actions arising under Sections 544, 547, 548, 549, and 550 of the Bankruptcy Code; (xiv) all rights and interests of Seller in and to all employee pension and other benefit plans maintained by Seller or to which Seller contributes or is a party (including, without limitation, all rights and interests of Seller in and to the assets held by any such plans), (xv) all rights, claims and causes of action of Seller (or of which Seller may be a beneficiary) asserted or which may hereafter be asserted in any of the litigation proceedings described on **Schedule 1.2(xv)** attached hereto and incorporated herein by this reference; (xvi) any Inventory (excluding the WIP and raw materials inventory) and other assets (excluding the WIP and raw materials inventory) of Seller sold by Seller to third parties between execution and delivery of this Agreement and the Closing (A) pursuant to the authority granted in and in accordance with the provisions of that certain Order Approving Procedures for the Sale, Transfer, and Abandonment of De Minimis Assets entered in the Case on April 10, 2017 (the “**De Minimis Asset Sale Order**”), (B) pursuant to any order issued by the Bankruptcy Court in the Case approving that certain Debtor’s Motion For Order Under Sections 105, 363, 1107 and 1108 of the Bankruptcy Code (I) Approving Private Sale of Certain Assets Free and Clear of Liens, Claims and Interests Thereunder, And (II) Granting Related Relief and filed in the Case on May 10, 2017, (C) consisting of finished goods inventory (but not WIP or raw materials inventory) disposed of by Seller in the ordinary course of business (including any such transaction(s) with Buyer), and/or (D) in accordance with Section 9.1(i), (ii) or (iv) hereof; and (xvii) those additional assets, if any, listed on **Schedule 1.2(xvii)** attached hereto and incorporated herein by this reference.

1.3. Instruments of Transfer. The sale, assignment, transfer, conveyance and delivery of the Property to Buyer shall be made by deeds, assignments, bill of sale, and other instruments of assignment, transfer and conveyance provided for in Section 3 below and such other instruments as may reasonably be requested by Buyer to transfer, convey, assign and deliver the Property to Buyer.

2. Consideration and Liquidated Damages.

2.1. Purchase Price.

2.1.1. The cash consideration to be paid by Buyer to Seller for the Property (the “**Purchase Price**”) shall be an amount equal to Two Million Eight Hundred Thousand Dollars (\$2,800,000) less the amount, if any, by which the value as determined in accordance with Section 2.1.2(b) of the work in progress (“**WIP**”) and raw materials inventory listed on **Schedule 1.1.5** transferred to Buyer as of the Closing is less than \$1,246,000.

2.1.2. The Purchase Price shall be paid as follows:

(a) Concurrently with the mutual execution and delivery of this Agreement (the date of such mutual execution and delivery is sometimes referred to herein as the "**Execution Date**"), Buyer shall deposit into an escrow with an escrow agent (the "**Escrow Holder**") reasonably designated by Seller (which may include Seller's counsel) an amount equal to Two Hundred Eighty Thousand Dollars (\$280,000) (the "**Deposit**") in immediately available, good funds (funds delivered in this manner are referred to herein as "**Good Funds**"), pursuant to joint escrow instructions to be delivered to the Escrow Holder on or before the Execution Date. In turn, the Escrow Holder shall immediately deposit the Deposit into an interest-bearing account (unless Seller's counsel is the Escrow Holder, in which event the Deposit will not bear interest). The Deposit shall become nonrefundable upon the termination of the transaction contemplated by this Agreement (including, without limitation any automatic termination pursuant to Section 8.1 or Section 8.2 hereof) by reason of Buyer's default of any material obligation hereunder or the failure of a condition that results from Buyer's material default hereunder (a "**Buyer Default Termination**"), it being agreed that no Buyer Default Termination shall occur unless Buyer has failed to cure the applicable default within ten (10) business days following its receipt of written notice thereof from Seller (provided that Buyer shall not be entitled to such notice or any opportunity to cure if Buyer defaults by failing to close when all of the conditions to Closing (other than any that are not satisfied by reason of Buyer's default or failure to perform) have been satisfied or waived prior to the Outside Date for at least 2 business days). At the Closing, the Deposit (and any interest accrued thereon) shall be credited and applied toward payment of the Purchase Price. In the event the Deposit becomes nonrefundable by reason of a Buyer Default Termination, Escrow Holder shall immediately disburse the Deposit and any interest accrued thereon to Seller to be retained by Seller for its own account as liquidated damages, which shall be Seller's sole and exclusive remedy for all claims, damages and losses relating thereto. If the transactions contemplated herein terminate by reason of (A) Seller's material default under this Agreement, it being agreed that Buyer shall not have the right to so terminate this Agreement unless Seller has failed to cure the applicable default within ten (10) business days following their receipt of written notice thereof from Buyer, or (B) the failure of a condition to Buyer's obligations hereunder (where such failure is not caused by Buyer's material default hereunder), the Escrow Holder shall return to Buyer the Deposit (together with any interest accrued thereon), but less Buyer's one-half share of the Escrow Holder's escrow fees and charges, if any. At the Closing, Buyer shall cause the Escrow Holder to deliver the Deposit to Seller and pay the balance of the Purchase Price, less only any Disputed Amounts (as defined in Section 2.1.2(b)), by wire transfer, which account or accounts shall be designated by Seller to Buyer at least three (3) business days before the Closing Date.

(b) Buyer may conduct, in its sole discretion, a physical count of the WIP and raw materials inventory listed on Schedule 1.1.5 hereto and shall deliver to Seller Buyer's determination of the value of the actual WIP and raw materials inventory as of the date of such physical count based on the Valuation Methods (as defined below)

as reasonably and in good faith applied by Buyer and reflecting any such Inventory as may be missing or that is physically damaged or destroyed such that it is unusable (the **"Proposed Value Determination"**); it being agreed that Buyer shall accept the determination of the value reflect in Schedule 1.1.5 for any inventory located at a facility where Buyer elects not to conduct a physical count in the event that Buyer conducts a physical count of fewer than the 3 locations identified to Buyer as holding Inventory. In the event Buyer elects to conduct a physical count of Inventory, Buyer shall give Seller reasonable prior written notice of such count and the right to have representatives of Seller present during such count. The period during which Buyer performs such physical count (the **"Count Period"**) shall commence on the date reasonably requested by Buyer and end no later than the end of the fourth (4th) business day following Buyer's being approved as successful bidder at the Bankruptcy Court hearing on the Sale Motion. During the Count Period, Seller shall (a) provide Buyer and its representatives access, as reasonably requested by Buyer in order to allow Buyer to timely prepare the Proposed Value Determination, to: (i) the inventory items, (ii) Seller's then remaining personnel (if any), and (iii) Seller's books and records, and (b) furnish to Buyer all information in Seller's possession or control or which is reasonably available to Seller; provided that Buyer and its representatives shall at all times during its conduct of the physical inventory count use commercially reasonable efforts to minimize any interference with Seller's other activities at the location(s) where the count is taking place. If Seller complies with the preceding sentence and Buyer has not conducted a physical count of some or all of the Inventory during the Count Period, the Purchase Price shall remain \$2,800,000 and there shall be no adjustment to the Purchase Price pursuant to this Section 2.1.2(b).

The Proposed Value Determination, and the Purchase Price, shall be final and binding on the Parties unless Seller shall, within two (2) business days following the delivery of the Proposed Value Determination, deliver a written notice of any reasonable and good faith objection thereto (the **"Objection Notice"**) with respect to all or any portion of the Proposed Value Determination, provided that Seller shall be required to apply the Valuation Method in any such objection and dispute. The Objection Notice shall specify in reasonable detail the proposed adjustment amounts arising from disputed items and describe in reasonable detail the basis for the dispute. The Parties shall be deemed to have agreed with all items and amounts contained in the Proposed Value Determination, to the extent not identified in a timely submitted Objection Notice.

If an Objection Notice is timely delivered, the Parties shall (i) cause any amounts then in dispute between them which could result in an adjustment of the Purchase Price in accordance with Section 2.1.1, and only such amounts (collectively, the **"Disputed Amounts"**) to be escrowed with the Escrow Holder or another person as reasonably requested by Buyer (the **"Disputed Amounts Escrow Agent"**), and (ii) the Parties shall proceed to Closing, except that the Disputed Amounts will be held by the Disputed Amounts Escrow Agent pending the first to occur (each a **"Payment Trigger"**) of (A) mutual written instruction by the Parties to the Disputed Amounts Escrow Agent concerning the disposition thereof (a **"Mutual Agreement"**), (B) the Bankruptcy Court's

final determination of the Parties' respective rights to the Disputed Amounts (a "**Bankruptcy Determination**"), or (C) the lapse of 45 days following delivery of the Objection Notice if neither of the Parties has, prior to such date, made application to the Bankruptcy Court (it being acknowledged and agreed that either Buyer or Seller, acting alone, may make such application) to determine the Parties' respective rights to the Disputed Amounts ("**Default Release**"). Not later than two (2) business days following the Payment Trigger, the Disputed Amounts Escrow Agent shall disburse the Disputed Amounts (x) to the Parties in the respective amounts required by the Mutual Agreement or Bankruptcy Determination, or (y) to the Buyer following a Default Release, as applicable, and the Parties shall cooperate in good faith in providing whatever additional instructions the Disputed Amounts Escrow Agent may request in connection with the distribution of such amounts.

"**Valuation Method**" means Seller's Quarter 1 2017 standard costing methods as consistently applied by Seller in the preparation of Schedule 1.1.5.

2.2. Assumed Liabilities. Effective as of the Closing Date, Buyer shall assume all the following liabilities and obligations of Seller: (i) all obligations of Seller under the Assumed Leases and Contracts unless those Assumed Leases and Contracts are not assumable and assignable as a matter of applicable law (including, without limitation, any with respect to which any consent requirement in favor of the counter-party thereto may not be overridden pursuant to Section 365 of the Bankruptcy Code), (ii) with respect to trade payables of the Business, in each case to the extent incurred in the ordinary course from and after the commencement of the Case limited to \$25,000 (iii) with respect to current payroll costs (accrued but not yet due and payable) related to Transferred Employees (as defined in Section 10.1) as of the Closing; (iv) all vacation and holiday entitlements accrued of Transferred Employees which remain unpaid as of the Closing Date, (v) all cure obligations required to be paid pursuant to the Approval Order as a condition to Seller's assumption and assignment of the Assumed Leases and Contracts, and (vi) with respect to any such additional liabilities and obligations as may be set forth or described on **Schedule 2.2** hereto (collectively and Excluding the Excluded Liabilities, the "**Assumed Liabilities**").

2.3. Excluded Liabilities. Except to the extent any of the following are materially inconsistent with the provisions of Section 2.2 above or Section 10 below (in which event, the terms and provisions of Section 2.2 or Section 10, as applicable, shall govern and control as to Buyer's obligations) under no circumstance shall Buyer assume or be obligated to pay, and none of the Purchased Assets shall be or become liable for or subject to, any liabilities or obligations of Seller or the Business, including the following liabilities and obligations (collectively, "**Excluded Liabilities**"), which shall be and remain liabilities of Seller:

- (a) liabilities accrued on any financial statements of Seller, to the extent the liability therefor is not an expressly Assumed Liability;
- (b) liabilities or obligations associated with any Excluded Assets;

(c) without in any way limiting Buyer's Removal Expense payment obligation under Section 3.7.1 hereof, liabilities or obligations associated with the real property leases described on Schedule 2.3(c);

(d) liabilities or obligations under those Assumed Leases and Contracts which are not assumable and assignable as a matter of applicable law (including, without limitation, any with respect to which any consent requirement in favor of the counter-party thereto may not be overridden pursuant to Section 365 of the Bankruptcy Code);

(e) liabilities or obligations associated with any and all indebtedness of Seller for borrowed money to the extent the liability therefor is not an expressly Assumed Liability;

(f) liabilities or obligations arising under any Contracts that are not Assumed Leases and Contracts;

(g) liabilities or obligations arising out of or in connection with claims, litigation and proceedings (whether instituted prior to or after Closing) for acts or omissions by Seller that occurred, or arise from events that occurred, prior to the Closing Date;

(h) liabilities retained by Seller and all other liabilities or obligations prior to the Closing to current, former or prospective employees (including any employees who do not become Transferred Employees) of Seller and other individual service providers or their respective dependents or beneficiaries, other than liabilities or obligations with respect to any Transferred Employees on or after the Closing;

(i) except as otherwise provided in Section 3.6 hereof, liabilities of Seller to the Internal Revenue Service or any other governmental authority;

(j) penalties, fines, settlements, interest, costs and expenses arising out of or incurred as a result of Seller's violation or alleged violation of any environmental law;

(k) liabilities of Seller to any person arising out of any act or omission under any legal requirement, including any environmental law; and

(l) liabilities or obligations under the WARN Act, if any, arising out of or resulting from (i) layoffs or termination of employees by Seller and/or (ii) the consummation of the transaction contemplated hereby.

2.4. Purchase Price Allocation. Within sixty (60) days of the Closing, Buyer shall prepare and deliver to Seller for its review and consideration a schedule (the "**Allocation Schedule**") allocating the Purchase Price among the various assets comprising the Property in accordance with Treasury Regulation 1.1060-1 (or any

comparable provisions of state or local tax law) or any successor provision. If, within fifteen (15) days after Buyer delivers the Allocation Schedule to the Seller, the Seller does not notify Buyer of any objections to the Allocation Schedule, Seller shall be deemed to have accepted the Allocation Schedule and the Allocation Schedule shall be deemed to be final and binding upon the Parties. If Seller disagrees with or raises objections to the Allocation Schedule (which shall not be unreasonably raised), Buyer and Seller will negotiate in good faith to resolve such objections as promptly as practicable. Once the Allocation Schedule is final, Buyer and Seller shall report and file all tax returns (including any amended tax returns and claims for refund) consistent with such final Purchase Price allocation, and shall take no position contrary thereto or inconsistent therewith (including in any audits or examinations by any taxing authority or any other proceedings). Buyer and Seller shall file or cause to be filed any and all forms (including U.S. Internal Revenue Service Form 8594), statements and schedules with respect to such allocation, including any required amendments to such forms. If, on the other hand, no Allocation Schedule becomes final and the Parties are otherwise unable mutually to agree upon the manner in which the Purchase Price should be allocated, Buyer and Seller shall be free to make their own respective allocations of the Purchase Price for tax purposes.

3. Closing Transactions.

3.1. Closing Conference. The Closing of the transactions provided for herein (the “**Closing**”) shall take place at such place or places as the Parties may mutually agree upon.

3.2. Closing Date. The Closing shall be held upon the earlier to occur of (i) the second (2nd) business day following the satisfaction of the last of the conditions set forth in Sections 4.1 and 4.2 below, and (ii) June 30, 2017 (the “**Outside Date**”); provided, however, in the event the conditions to Closing have not been satisfied or waived by the Outside Date, then any Party who is not in default hereunder may terminate this Agreement and the Deposit shall be returned to Buyer as set forth in Section 2.1.2(a); provided that Buyer shall not be entitled the return of the Deposit in the event of a Buyer Default Termination. Alternatively, the Parties may mutually agree to an extended Closing Date. Until this Agreement is either terminated or the Parties have agreed upon an extended Closing Date, the Parties shall diligently continue to work to satisfy all conditions to Closing and the transaction contemplated herein shall close as soon as such conditions are satisfied or waived.

3.3. Seller’s Deliveries to Buyer at Closing. On the Closing Date, Seller shall make the following deliveries to Buyer:

3.3.1. An Assignment and Assumption of all Assumed Leases and Contracts substantially in the form and content attached as **Exhibit “A”** hereto, duly executed by Seller pursuant to which Seller shall assign to Buyer such Seller’s respective interest, if any, in the Assumed Leases and Contracts (the “**Assignment of Leases**”) and originals or copies of all Assumed Leases and Contracts to the extent such are in the

possession or control of Seller and have not previously been delivered or made available to Buyer.

3.3.2. A Bill of Sale and Assignment, duly executed by Seller in the form and on the terms of the bill of sale attached hereto as **Exhibit "B,"** pursuant to which Seller transfers and assigns to Buyer such Seller's right, title and interest in and to the Personal Property and the Assignment Property (the "**Bill of Sale**").

3.3.3. A counterpart Assignment of Intangible Property, duly executed by Seller in the form and content of the assignment of intangible property attached as **Exhibit "C"** hereto, pursuant to which Seller assigns to Buyer such Seller's interest, if any, in and to the Intangible Property (the "**Assignment of Intangible Property**").

3.3.4. An instrument of assignment, duly executed by Seller in the form and content reasonably requested by Buyer for each item of Property that is owned of record with the US Patent and Trademark Office.

3.3.5. A copy of the Bankruptcy Court's entered Approval Order.

3.3.6. A certificate dated the Closing Date and signed by the Seller stating that each of the conditions set forth in Section 4.2.1 and Section 4.2.2 have been satisfied.

3.3.7. Any such other documents, funds or other things reasonably contemplated by this Agreement to be delivered by Seller to Buyer at the Closing.

3.4. Buyer's Deliveries to Seller at Closing. On the Closing Date, Buyer shall make or cause the following deliveries to Seller:

3.4.1. Payment of the Purchase Price.

3.4.2. A counterpart of the Assignment of Leases, duly executed by Buyer.

3.4.3. An Assumption of Liabilities with respect to the Assumed Liabilities, in the form and content attached as **Exhibit "D"** hereto and incorporated herein by this reference, duly executed by Buyer (the "**Assumption of Liabilities**").

3.4.4. A certificate dated as of the Closing Date and signed by the Buyer stating that each of the conditions set forth in Section 4.1.1 and Section 4.1.6 have been satisfied.

3.4.5. Any such other documents, funds or other things reasonably contemplated by this Agreement to be delivered by Buyer to Seller at the Closing.

3.5. Prorations. Rent, current taxes, prepaid advertising, utilities and other items of expense (including, without limitation, any prepaid insurance, maintenance, tax

or common area or like payments under the Assumed Leases and Contracts, or any of them, and any current payroll costs (accrued but not yet due and payable) related to Transferred Employees) relating to or attributable to the Business assumed by Buyer and/or the Property shall be prorated between Seller and Buyer as of the Closing Date. All liabilities and obligations due in respect of periods prior to or as of the Closing Date shall be paid in full or otherwise satisfied by Seller and all liabilities and obligations due in respect of periods after the Closing Date shall be paid in full or otherwise satisfied by Buyer; provided, however, the provisions of this Section 3.5 are subject to Buyer's obligations to assume liabilities and obligations pursuant to Section 2.2, above. Rent shall be prorated on the basis of a thirty (30) day month.

3.6. Sales, Use and Other Taxes. Any sales, purchase, transfer, stamp, documentary stamp, use or similar taxes under the laws of the states in which any portion of the Property is located, or any subdivision of any such state, or under any federal law or the laws or regulations of any federal agency or authority, which may be payable by reason of the sale or transfer of the Property under this Agreement or the transactions contemplated herein shall be borne and paid by Buyer.

3.7. Possession.

3.7.1. Right to possession of the Property 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 Property, 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. Seller will ensure to provide Buyer and its representatives, at Buyer's cost not to exceed an amount of \$190,000 (the "**Removal Expense**"), access to Seller's facilities in Mount Pleasant, Pennsylvania, Belle Vernon, Pennsylvania, and Pittsburgh, Pennsylvania (collectively, the "**Property Removal Facilities**"), for thirty (30) days following the Closing Date unless otherwise agreed between the Parties (the "**Removal Period**") for the sole and exclusive purpose of allowing Buyer and its representatives to conduct the Proposed Value Determination and to remove Property from the Property Removal Facilities in accordance with the provisions of Section 3.7.2 below. For the avoidance of doubt, Buyer hereby acknowledges that Seller intends to reject the real property leases pursuant to which Seller occupies and has the right of possession of the Property Removal Facilities and that Seller shall have no obligation to provide Buyer, and Buyer will have no right whatsoever to, access to any of the Property Removal Facilities for any period whatsoever beyond the Removal Period.

3.7.2. Not later than the Removal Period, Buyer shall remove, or cause to be removed from the Property Removal Facilities, at Buyer's sole cost and expense, all portions of the Property located there. Buyer shall use commercially reasonable efforts to cause such removal to be accomplished in such manner as will minimize any damage to the Property Removal Facilities or any other assets of Seller or any other party having an interest in any of the Property Removal Facilities and shall cooperate in all reasonable

respects (i) with Seller's plans of vacation of the Property Removal Facilities and Seller's removal of the Excluded Assets during the Removal Period and (ii) in the coordination of Seller's and Buyer's activities at the Property Removal Facilities during the Removal Period. Buyer shall, at Buyer's sole cost and expense, promptly (and in no event later than the timeframe allowed for completion of such repairs under the real property lease pursuant to which Seller occupies the applicable Property Removal Facility) cause any damage to the Property Removal Facilities or any other assets resulting from Buyer's removal, handling, shipping, disposition or other activities in connection with the Property to be fully and completely repaired or restored; provided, however, that Buyer's obligation shall in no event exceed Seller's obligation under the real property leases pursuant to which Seller occupies and has the right of possession of the Property Removal Facilities. As a condition to Buyer's right to enter upon the Property Removal Facilities to remove or cause the removal of the Property, however, Buyer shall provide to Seller a certificate of insurance which evidences a general public liability insurance policy (issued by an insurer, in an amount and otherwise in form and content satisfactory to Seller) which covers Seller and such other additional insureds against any loss, damage or liability as Seller or such other additional insureds may suffer or incur in connection with Buyer's removal of the Property as contemplated by this Section 3.7.2; provided, however, Buyer expressly agrees that the coverage amounts under such insurance policy shall not be deemed to limit Buyer's obligations to Seller or the other indemnitees identified in the indemnification provision set forth below in this Section 3.7.2. Buyer shall indemnify, defend (with counsel satisfactory to Seller) and protect and hold Seller, Seller's bankruptcy estate, and Seller's affiliates harmless of, from and against any and all direct claims, demands, losses, damages, liabilities, obligations, actions, causes of action and costs and expenses (including, without limitation, all court costs and all attorneys' fees, costs and charges) as Seller or such other indemnitees may suffer or incur in connection Buyer's or Buyer's representatives', employees', agents', contractors', shippers' removal or handling of the Property at or from the Property Removal Facilities. It is expressly understood that Buyer shall bear any and all costs and expenses of packing, shipping and handling the Property following its removal from the Property Removal Facilities. IN NO EVENT SHALL BUYER BE LIABLE TO SELLER, SELLER'S BANKRUPTCY ESTATE, SELLER'S AFFILIATES, OR ANY OTHER PERSON FOR ANY INDIRECT DAMAGES, INCLUDING CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, OR PUNITIVE DAMAGES, OR LOST PROFITS.

4. Conditions Precedent to Closing.

4.1. Conditions to Seller's Obligations. Seller's obligation to make the deliveries required of Seller at the Closing Date and otherwise consummate the transaction contemplated herein shall be subject to the satisfaction or waiver by Seller of each of the following conditions:

4.1.1. All of the representations and warranties of Buyer contained herein shall continue to be true and correct at the Closing in all material respects.

4.1.2. Buyer shall have executed and delivered to Seller the Assignment of Leases and the Assumption of Liabilities.

4.1.3. Buyer shall have delivered, or shall be prepared to deliver to Seller at the Closing, all cash and other documents required of Buyer to be delivered at the Closing.

4.1.4. Buyer shall have delivered to Seller appropriate evidence of all necessary entity action by Buyer in connection with the transactions contemplated hereby, including, without limitation: (i) certified copies of resolutions duly adopted by Buyer's board of directors approving the transactions contemplated by this Agreement and authorizing the execution, delivery, and performance by Buyer of this Agreement; and (ii) a certificate as to the incumbency of those officers of Buyer executing this Agreement and any instrument or other document delivered in connection with the transactions contemplated by this Agreement.

4.1.5. No action, suit or other proceedings shall be pending before any court, tribunal or governmental authority seeking or threatening to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or seeking to obtain substantial damages in respect thereof, or involving a claim that consummation thereof would result in the violation of any law, decree or regulation of any governmental authority having appropriate jurisdiction.

4.1.6. Buyer shall have performed or tendered performance of each and every material covenant on Buyer's part to be performed which, by its terms, is required to be performed at or before the Closing.

4.1.7. The Bankruptcy Court shall have entered the Approval Order and Procedures Order in accordance with Sections 8.1 and 8.2 below and the Approval Order shall not have been stayed as of the Closing Date.

4.2. Conditions to Buyer's Obligations. Buyer's obligation to make the deliveries required of Buyer at the Closing and otherwise consummate the transaction contemplated herein shall be subject to the satisfaction or waiver by Buyer of each of the following conditions:

4.2.1. Seller shall have performed or tendered performance of each and every covenant on Seller's part to be performed which, by its terms, is required to be performed or capable of performance at or before the Closing.

4.2.2. All of the representations and warranties of Seller contained herein shall continue to be true and correct at the Closing in all material respects.

4.2.3. Seller shall have delivered, or shall be prepared to deliver to Buyer at the Closing, all documents required of Seller to be delivered at the Closing.

4.2.4. No action, suit or other proceedings shall be pending before any court, tribunal or governmental authority seeking or threatening to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or seeking to obtain substantial damages in respect thereof, or involving a claim that consummation thereof would result in the violation of any law, decree or regulation of any governmental authority having appropriate jurisdiction.

4.2.5. The Bankruptcy Court shall have entered the Approval Order and Procedures Order in accordance with Sections 8.1 and 8.2 below and the Approval Order shall not have been stayed as of the Closing Date.

4.2.6. The Assumed Leases and Contracts assigned to Buyer at the Closing (whether by virtue of the effect of the Approval Order rendering consent to assignment unnecessary or by virtue of written consents to assignment obtained from the applicable counterparties) shall include all of the Leases and Contracts described on **Schedule 4.2.6** attached hereto and incorporated herein by this reference).

Any waiver of a condition shall be effective only if such waiver is stated in writing and signed by the waiving Party; provided, however, that the consent of a Party to the Closing shall constitute a waiver by such Party of any conditions to Closing not satisfied as of the Closing Date.

5. Seller's Representations and Warranties. Seller hereby makes the following representations and warranties to Buyer:

5.1. Organization, Standing and Power. Seller is a corporation, duly organized, validly existing and in good standing under the laws of the state of Delaware. Seller has all requisite entity power and authority to own, lease and, subject to the provisions of the Bankruptcy Code applicable to debtors in possession, operate its properties, to carry on Seller's business as now being conducted. Subject to entry of the Approval Order, Seller has the power and authority to execute, deliver and perform this Agreement and all writings relating hereto.

5.2. Validity and Execution. This Agreement has been duly executed and delivered by Seller and, upon entry of the Approval Order, will constitute the valid and binding obligation of Seller enforceable against it in accordance with its 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 Conflict. Subject to the entry of the Approval Order, the consummation of the transactions herein contemplated, and the performance of, fulfillment of and compliance with the terms and conditions hereof by Seller do not and will not: (i) conflict with or result in a breach of the articles of incorporation, by-laws or operating agreement, as applicable, of Seller; (ii) violate any statute, law, rule or

regulation, or any order, writ, injunction or decree of any court or governmental authority, or (iii) violate or conflict with or constitute a default under any agreement, instrument or writing of any nature to which Seller is a Party or by which Buyer or its assets or properties may be bound.

5.4. Title. At Closing, Seller will convey to Buyer good and valid title to the Property, free and clear of all mortgages, liens, restrictions, agreements, claims, easements, encroachments, rights of way, building use, exceptions, variances, reservations, pledges, security interests, conditional sales agreements, rights of first refusal, options, obligations, restrictions, liabilities, charges or limitations of any nature to the fullest extent provided in the Approval Order. Except for the Excluded Assets and any assets hereafter disposed of by Seller in accordance with the terms and provisions of this Agreement, the tangible and intangible assets comprising the Property represent materially all of the tangible and intangible assets used by Seller when Seller operated the Business.

6. Buyer's Warranties and Representations. In addition to the representations and warranties contained elsewhere in this Agreement, Buyer hereby makes the following representations and warranties to Seller:

6.1. Organization, Standing and Power. Buyer is a corporation duly organized, validly existing and in good standing under the laws of Delaware. 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.

6.2. No Conflict. The execution, delivery and performance of this Agreement and all writings relating hereto by Buyer have been duly and validly authorized. The execution and delivery of this Agreement, the consummation of the transactions herein contemplated, and the performance of, fulfillment of and compliance with the terms and conditions hereof by Buyer do not and will not: (i) conflict with or result in a breach of the articles of incorporation or by-laws of Buyer or, if applicable, other organizational documents or agreements of Buyer; (ii) violate any statute, law, rule or regulation, or any order, writ, injunction or decree of any court or governmental authority; or (iii) violate or conflict with or constitute a default under any material agreement, instrument or writing of any nature to which Buyer is a Party or by which Buyer or its assets or properties may be bound.

7. "AS IS" Transaction. Buyer hereby acknowledges and agrees that, except only as provided in Section 5 above, Seller makes no representations or warranties whatsoever, express or implied, with respect to any matter relating to the Property (including, without limitation, income to be derived or expenses to be incurred in connection with the Property, the physical condition of the Personal Property or Inventory the value of the Property (or any portion thereof), the transferability of the Property or any portion thereof, the terms, amount, validity, collectability or enforceability of the Accounts Receivable or any Assumed Liabilities or Assumed Lease or Contract, the

merchantability or fitness of the Personal Property, the Inventory or any other portion of the Property for any particular purpose, whether the assignment of any Assumed Lease or Contract without the consent of the counterparties thereto or any Lease or Contract would constitute a breach or default under such Assumed Lease or Contract). Without in any way limiting the foregoing, Seller hereby disclaims any warranty (express or implied) of merchantability or fitness for any particular purpose as to any portion of the Property. Accordingly and subject to the exceptions provided herein, Buyer will accept the Property at the Closing **“AS IS, “WHERE IS,” and “WITH ALL FAULTS.”**

8. Bankruptcy Court Approvals.

8.1. Promptly following the Execution Date (and in no event later than five (5) days thereafter), Seller will make a motion (the **“Sale Motion”**) for an order (the **“Approval Order”**) from the Bankruptcy Court which (i) approves the sale of the Property to Buyer on the terms and conditions set forth in this Agreement and authorizes the Seller to proceed with this transaction, (ii) includes a specific finding that the Purchase Price was negotiated at arm’s length, constitutes fair consideration for the Property and that Buyer is a good faith Buyer of the Property and protected pursuant to Section 363(m) of the Bankruptcy Code and that the provisions of Section 363(n) of the Bankruptcy Code have not been violated, (iii) orders Buyer to pay, concurrently with the Closing and as a condition to Seller’s assumption and assignment thereof, all cure amounts owing to the counterparties to the Assumed Leases and Contracts, (iv) includes a specific finding that notice of the hearing on the Sale Motion and any related auction was proper under the Bankruptcy Code, bankruptcy rules and local rules; (v) includes a specific finding that Buyer is not a successor to Seller or this bankruptcy estate by any reason or theory of law or equity, and that Buyer shall not be subject to successor liability for any products sold prior to Closing; (vi) bars any creditor or other person from bringing any claim or asserting any liens against Buyer or the Property, except as relates to Assumed Liabilities; and (vii) states that the sale of the Property to Buyer shall be free and clear of all liens, claims, interests and encumbrances whatsoever (other than the lien of current taxes not yet payable with respect to any Property, and those other liens, claims, interests and encumbrances, if any, listed on **Schedule 8.1(vii)** attached hereto and incorporated herein by this reference) with all such encumbrances attaching the net sale proceeds, if any. If requested by Seller or ordered by the Bankruptcy Court, Buyer shall use reasonable efforts to provide adequate assurance of future performance (satisfactory to the Bankruptcy Court) to the counterparties to the Assumed Leases and Contracts. Following the filing of the Sale Motion, Seller shall use reasonable efforts to obtain the Approval Order. Both Buyer’s and Seller’s obligations to consummate the transactions contemplated in this Agreement which the Buyer and Seller may hereafter enter into shall be conditioned upon the Bankruptcy Court’s entry of the Approval Order and related Procedures Order, Bidding Procedures, and Break-Up Fee referenced in Section 8.2. If (i) the Bankruptcy Court refuses to issue the Approval Order at the hearing on the Sale Motion, or (ii) the Approval Order is for any reason whatsoever not entered by the Bankruptcy Court on or before June 23, 2017, or (iii) the Closing does not occur by the Outside Date, then this transaction shall automatically terminate (unless the

Parties' mutually agree in writing to extend the Outside Date) with the Deposit being returned to Buyer as set forth in Section 2.1.2(a) above; provided that Buyer shall not be entitled the return of the Deposit in the event of a Buyer Default Termination; and further provided that any such termination shall be without prejudice to any remedy a Party may be entitled to in the event that such termination resulted from the other Party's breach or default hereunder. Upon entry of the Approval Order in accordance with the provisions of this Section 8.1, the condition set forth in this Section 8.1 shall conclusively be deemed satisfied.

8.2. As part of the Sale Motion (or pursuant to a separate motion in the Seller's discretion), Seller shall also request and use reasonable good faith efforts to obtain from the Bankruptcy Court an order (the "**Procedures Order**") which approves the following bidding procedures and breakup fee and expense reimbursements (the "**Bidding Procedures**"): (i) in consideration of Buyer having expended considerable time and expense in connection with this Agreement, Buyer will be entitled to receive from Seller's estate (unless Buyer breaches its obligations hereunder, Buyer is the successful bidder for the Property and the Bankruptcy Court refuses to issue the Approval Order approving consummation of the sale of the Property to Buyer, or the Property is sold in a piecemeal liquidation) a payment in the aggregate amount of \$126,000 (the "**Break-Up Fee**") in cash or other immediately available good funds in the event that Buyer is not approved by the Bankruptcy Court as the Buyer of the Property and the Property (or substantially all thereof) is, within six (6) months following the Bankruptcy Court hearing on the Sale Motion sold (or an agreement is entered into sell the Property (or substantially all thereof) which is ultimately consummated) to any third party, which payment shall be made to the Buyer concurrently with, and solely from the proceeds of, the consummation of such third party sale unless the third party sale is to a secured lender of Seller submitting a credit bid in which case the Break-Up Fee shall be allowed as a super-priority administrative expense claim under Sections 503(b) and 507 of the Bankruptcy Code, shall not be subordinated to any other administrative claim and shall be paid to Buyer immediately upon closing, but the Break-Up Fee shall in no event be paid from or out of the segregated account for professional fees and U.S. Trustee costs established pursuant to any cash collateral orders entered in the Case; (ii) Seller may require that all third party offers to be considered at the hearing on the Sale Motion shall be in writing and delivered to the Seller, in which event, Seller shall provide Buyer's counsel with a copy of all such offers as Seller determines to be "qualified bids" no later than forty-eight (48) hours prior to such hearing, together with reasonably satisfactory evidence of such third party's financial ability to perform its obligations under such offer (provided that in no event will Seller be obligated to provide to Buyer's counsel any confidential information furnished to Seller by such bidder); (iii) Seller may determine that no prospective buyer will be permitted to bid at the sale auction unless such party has been deemed "financially qualified" by the Seller; (iv) Seller may determine that no prospective buyer shall have financing or due diligence conditions; (v) the identity of the prospective bidder must be disclosed, including each equity holder or other financial backer of the potential bidder if such potential bidder is formed for the purpose of purchasing the Property; (iv) no prospective buyer who bids for the Property at the

hearing on Buyer's acquisition of the Property shall be entitled to purchase the Property unless such prospective Buyer offers to purchase the Property for consideration of at least \$3,026,000 (representing the Purchase Price of \$ 2,800,000, plus Break-Up Fee, plus an initial increment of \$100,000.00), delivers earnest money of 10% of the overbid price, and otherwise offers to purchase the Property on terms at least as favorable to the Seller's estate as those set forth in this Agreement (excluding any rights to break-up fees or similar expenses which shall not be allowed for a prospective buyer), and after any initial overbid, all further overbids (which, if Seller so allows, may consist of a cumulation of one or more separate bids) must be in increments of at least \$50,000. For the avoidance of doubt, nothing in this Article 8 or anything else in this Agreement shall be deemed to limit or restrict Seller's right, in the exercise of its business judgment, to waive or modify any particular procedural requirements described or otherwise determine what bid or bids are the highest and best from the perspective of Seller's bankruptcy estate. Should overbidding take place, the Buyer shall have the right, but not the obligation, to participate in the overbidding and to be approved as the overbidder at the hearing on the Sale Motion based upon any such overbid. This Agreement shall terminate if the Procedures Order is for any reason whatsoever not entered by the Bankruptcy Court on or before June 9, 2017 (unless the Parties' mutually agree in writing to extend such date); with the Deposit being returned to Buyer as set forth in Section 2.1.2(a) above; provided that Buyer shall not be entitled the return of the Deposit in the event of a Buyer Default Termination; and further provided that any such termination shall be without prejudice to any remedy a Party may be entitled to in the event that such termination resulted from the other party's breach or default hereunder. Upon entry of the Procedures Order in accordance with the provisions of this Section 8.2, and payment of the Break-Up Fee, if applicable, the conditions set forth in this Section 8.2 shall conclusively be deemed satisfied.

9. Operations Pending Closing; Buyer's Pre-Closing Access.

9.1. Except (i) as otherwise expressly contemplated by this Agreement, (ii) with the prior written consent of Buyer, (iii) as prohibited or restricted by the Bankruptcy Code or orders of the Bankruptcy Court, or (iv) as described on **Schedule "9"** attached hereto and incorporated herein by this reference, from the date hereof until the Closing Date, the Seller shall: (A) conduct the Business in a manner substantially similar to the manner in which the Seller is currently conducting the Business, (B) not sell, assign, transfer, convey or otherwise dispose of any WIP or raw materials inventory, or any right, title or interest therein or thereto or incur, agree to or, to the extent the same can be removed by the effect of the Sale Order, permit to remain any lien or encumbrance thereon, and (C) not take any action inconsistent with this Agreement or with the consummation of the Closing, including, without limitation, purchase, sell, lease, mortgage, pledge or otherwise acquire or, without limitation to Section 13.1 hereof, dispose of any assets that would otherwise constitute Property; provided, however nothing in this Section 9.1 shall be deemed to limit Seller's right to dispose of assets to the extent such dispositions are made in the manner expressly contemplated by Section 1.2(xvi) hereof.

9.2. Without limitation to Seller's obligation under Section 2.1.2(b), from the date hereof until the Closing, Seller shall permit Buyer reasonable access during Seller's regular business hours to the books, records, facilities and employees of Seller; provided, that Buyer and its Representatives shall not unreasonably disrupt the Business as a result of such access. For the avoidance of all doubt, such access shall not include the right to conduct or cause any "invasive testing" whatsoever at any of Seller's facilities and Buyer's satisfaction with the results of any further review or investigations it may wish to conduct during this period shall not, unless otherwise expressly provided herein, be a condition or contingency to Buyer's obligation to close the transaction contemplated herein.

10. Employee Matters.

10.1. Prior to the Closing, Buyer shall offer to employ, commencing immediately following the Closing, not less than two (2) of the employees of Seller at their respective salaries, compensation levels and terms and conditions of employment applicable to their employment by Seller immediately prior to the Closing. Such employees who become employees of Buyer shall be collectively referred to as the "Transferred Employees."

10.2. Buyer shall give Transferred Employees full credit for purposes of eligibility and vesting and benefit accrual (other than benefit accrual under a defined benefit pension plan) under the employee benefit plans or arrangements maintained by the Buyer in which such Transferred Employees may participate for such Transferred Employees' service with the Seller.

10.3. Buyer shall be responsible for honoring all liabilities for vacation time, sick leave, personal leave and other compensated time off accrued by the Transferred Employees as of the Closing Date.

10.4. Buyer and Seller each represent and warrant to that other that it is not an employee pension benefit plan subject to the provisions of Title IV of ERISA or subject to the minimum funding standards under Part 3, Subtitle B, Title I of ERISA or Section 412 of the Code or Section 302 of ERISA, and none of Buyer's assets constitutes assets of any such employee benefit plan subject to Part 4, Subtitle B, Title I of ERISA.

11. Regulatory Approvals Post Closing. Seller shall, during the 120 days period immediately following the Closing, use its commercially reasonable efforts to assist Buyer to obtain the CFIUS Approval following Closing, if Buyer elects to apply for such approval in its sole discretion. Such commercially reasonable efforts shall include promptly after Buyer's written request making any draft and final filings (including joint voluntary filings) necessary to obtain CFIUS Approval in accordance with the DPA, and, to the extent in Seller's possession or control or which is reasonably available to Seller, providing any information requested by CFIUS or any other agency or branch of the U.S. government in connection with the CFIUS review or investigation of the transactions contemplated by this Agreement within the timeframes required by the DPA, unless CFIUS agrees in writing to an

extension of such timeframe, provided, however, that in no event will Buyer be required to agree to any term or take any action whatsoever in connection with the satisfaction of the CFIUS Approval that could in Buyer's sole judgment materially and adversely affect the Buyer, or the value to Buyer of the transaction contemplated by this Agreement. "**CFIUS Approval**" means (i) a written notice issued by the Committee on Foreign Investment in the United States, or any member agency thereof acting in its capacity as a CFIUS member agency ("**CFIUS**") that the transactions contemplated by this Agreement are not covered transactions and not subject to review under applicable law and regulations, (ii) a written notice issued by CFIUS indicating that there are no unresolved national security concerns with respect to the transactions contemplated by this Agreement and that CFIUS has concluded its review or investigation of the notification voluntarily provided pursuant to Section 721 of the Defense Production Act of 1950, including the implementing regulations thereof codified at 31 C.F.R. Part 800 (the "**DPA**"), with respect to the transactions contemplated by this Agreement, or (iii) if CFIUS has sent a report to the President of the United States requesting the President's decision, then (A) the President has announced a decision not to take any action to suspend or prohibit the transactions contemplated by this Agreement or (B) having received a report from CFIUS requesting the President's decision, the President has not taken any action after fifteen (15) days from the date the President received such report from CFIUS. For the avoidance of all doubt, if Buyer elects to pursue CFIUS Approval as contemplated by this Section 11, (i) Seller will be doing so with the express understanding that obtaining CFIUS Approval is not a condition subsequent to the transactions contemplated herein, and (ii) Seller will not be required to incur any material cost or expenses in connection with such process, unless reimbursed by Buyer.

12. Parent Guarantee. Parent hereby guarantees to Seller the payment and other performance by Buyer, a wholly-owned subsidiary of Parent, and agrees to cause Buyer to perform, all of its obligations under this Agreement to consummate the transactions contemplated hereby. The obligations of Parent under this Section 12 shall be absolute and unconditional.

13. Miscellaneous.

13.1. Risk of Loss, Damage and Destruction; Condemnation. Seller shall promptly notify Buyer of the occurrence of any material damage to or destruction of the Personal Property that occurs prior to the Closing Date. Subject to the provision of Section 2.1 hereof relating to a possible Purchase Price Adjustment, in the event of any uninsured damage to or destruction of the Personal Property prior to the Closing Date the cost of which to repair would total \$10,000 or less, then such damage or destruction shall have no effect whatsoever on the Purchase Price or Buyer's or Seller's obligation to close. Should any uninsured damage or destruction to the Personal Property occur prior to the Closing Date the cost of which to repair would total more than \$10,000 but less than \$52,000, then unless Seller causes the same to be repaired and restored in all material respects prior to the Closing Date (in which case the Purchase Price shall be unaffected and the parties shall proceed with the Closing as though such damage, destruction or proceedings had never occurred or been initiated), Buyer's sole remedy shall be to receive a dollar-for-dollar reduction in the Purchase Price in an amount equal

to the sum of (i) the cost of such repairs, less (ii) the amount of any insurance proceeds with respect thereto assigned to Buyer at the Closing, and consummate the transaction contemplated herein. If any uninsured damage or destruction to the Personal Property occurs prior to the Closing Date the cost of which to repair would total \$52,000 or more, then irrespective of whether the same can be repaired and/or restored prior to the Closing Date, Buyer shall have the right and option to either (A) terminate the transaction contemplated herein, or (B) elect to receive, as its sole and exclusive remedy by reason of such damage, destruction, a Purchase Price reduction in an amount of equal to the amount of such uninsured damage or destruction (i.e. net of any insurance proceeds with respect thereto assigned to Buyer at Closing) and consummate the transaction contemplated herein as though the damage or destruction had never occurred or been initiated. In all events, all entitlement to all other insurance or condemnation proceeds arising out of such damage or destruction or proceedings and not collected prior to the Closing Date shall be assigned to Buyer at the Closing. Notwithstanding anything to the contrary in this Agreement, the risk of loss or damage to the Personal Property shall unconditionally shift to the Buyer on the Closing Date. For avoidance of doubt, (i) Buyer and Seller intend that the provisions of this Section 13.1 shall control over any right or remedy to which the Buyer may otherwise be entitled under this Agreement by reason of the occurrence of any event which is the subject of this Section 13.1, and (ii) in no event shall Buyer be compensated for any loss or damage pursuant to both this Section 13.1 and Section 2.1 hereof.

13.2. Attorneys' Fees. In the event that either Party hereto brings an action or other proceeding to enforce or interpret the terms and provisions of this Agreement, the Party prevailing in the preponderance of its claims in that action or proceeding shall be entitled to have and recover from the non-prevailing Party all such fees, costs and expenses (including, without limitation, all court costs and reasonable attorneys' fees) as the prevailing Party may suffer or incur in the pursuit or defense of such action or proceeding.

13.3. Reasonable Access to Records and Certain Personnel. Solely to enable Seller to administer and close the Case (including, without limitation, the preparation of filings in the Case and state, local and federal tax returns and other filings, reconciliation of claims filed in the Case) (the "**Permitted Use**") for a period of three (3) years following the Closing, (i) the Buyer shall permit Seller's counsel and other professionals and counsel for any successor to Seller's bankruptcy estate and such successor's respective professionals (collectively, "**Permitted Access Parties**") reasonable access to the financial and other books and records relating to the Property or the Business prior to the Closing (the "**Books and Records**"), which access shall include (xx) the right of such Permitted Access Parties to copy, at such Permitted Access Parties' expense, such Books and Records as they may reasonably request solely for the Permitted Use, and (yy) Buyer's copying and delivering to the relevant Permitted Access Parties such Books and Records as they may reasonably require solely for the Permitted Use, 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 the Buyer for the reasonable costs and expenses thereof, and (ii) Buyer shall provide the Permitted Access Parties (at no cost to the Permitted Access Parties) with reasonable access to (to the extent the following individuals become Transferred Employees) Thomas Crane, Jesse Serena, and Liam Cooney during regular business hours to assist Seller and the other Permitted Access Parties in their post-Closing activities relating to the Permitted Use (including, without limitation, preparation of tax returns), provided that such access does not unreasonably interfere with the Buyer's business operations and will not interfere with Transferred Employees' obligations and duties including, without limitation, the obligation of confidentiality.

13.4. Notices. Unless otherwise provided herein, any notice, tender, or delivery to be given hereunder by any Party to the other may be effected by personal delivery in writing, or by registered or certified mail, overnight courier, return receipt requested or by facsimile, or email and shall be deemed communicated as of the date of mailing or facsimile transmission (with answer back confirmation of such transmission). Mailed notices shall be addressed as set forth below, but each Party may change his address by written notice in accordance with this Section 13.4.

To Seller: c/o Suzanne B. Roski
Chief Restructuring Officer
1051 East Cary Street, Suite 602
Richmond, VA 23219
Facsimile : (804) 644-7055
Email : suzanne.roski@protiviti.com

With a copy to: Laura Davis Jones, Esq.
Pachulski Stang Ziehl & Jones LLP
919 North Market Street, 17th Floor
Wilmington, DE 19899-8705 (courier 19801)
Fax: 302.652.4400
Email: ljones@pszjlaw.com

To Buyer: BlueSky Energy US, Inc.

c/o BlueSky Energy Entwicklungs- und Produktions GmbH
Fornacher Straße 12
4870 Vöcklamarkt . Austria
Attn: Mr. Thomas Krausse
Facsimile: +43 720 010188 50
Email: T.Krausse@bluesky-energy.eu

With a copy to: Barnes & Thornburg LLP
One North Wacker Drive, Suite 4400,
Chicago, IL 60606-2833

Fax: (312) 759-5646
Email: kevin.driscoll@btlaw.com

To Parent: BlueSky Energy Entwicklungs- und Produktions GmbH
Fornacher Straße 12
4870 Vöcklamarkt . Austria
Attn: Mr. Thomas Krausse
Facsimile: +43 720 010188 50
Email: T.Krausse@bluesky-energy.eu

With a copy to: Barnes & Thornburg LLP
One North Wacker Drive, Suite 4400,
Chicago, IL 60606-2833
Fax: (312) 759-5646
Email: kevin.driscoll@btlaw.com

13.5. Entire Agreement. This Agreement, any confidentiality agreement between Seller and Buyer, and the documents to be executed pursuant hereto contain the entire agreement between the Parties and Parent relating to the sale of the Property. Any oral representations or modifications concerning this Agreement or any such other document shall be of no force and effect excepting a subsequent modification in writing, signed by the Party or Parent to be charged.

13.6. Modification. This Agreement may be modified, amended or supplemented only by a written instrument duly executed by all the Parties hereto and Parent.

13.7. Closing Date. All actions to be taken on the Closing pursuant to this Agreement shall be deemed to have occurred simultaneously, and no act, document or transaction shall be deemed to have been taken, delivered or effected until all such actions, documents and transactions have been taken, delivered or effected.

13.8. Severability. Should any term, provision or paragraph of this Agreement be determined to be illegal or void or of no force and effect, the balance of the Agreement shall survive.

13.9. Captions. All captions and headings contained in this Agreement are for convenience of reference only and shall not be construed to limit or extend the terms or conditions of this Agreement.

13.10. Further Assurances. Each Party hereto will execute, acknowledge and deliver any further assurance, documents and instruments reasonably requested by the other Party for the purpose of giving effect to the transactions contemplated herein or the intentions of the Parties with respect thereto; provided that nothing herein shall be deemed to require any Party to execute or deliver any such further assurance, document

or instrument to the extent that the same could in any material way increase the burdens, obligations or liabilities otherwise imposed upon such Party by this Agreement.

13.11. Waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.

13.12. Brokerage Obligations. Seller and Buyer each represent and warrant to the other that such Party has incurred no liability to any broker or agent with respect to the payment of any commission or other compensation regarding the consummation of the transaction contemplated hereby. It is agreed that if any claims for commissions, fees or other compensation, including, without limitation, brokerage fees, finder's fees, or commissions are ever asserted against Buyer or Seller in connection with this transaction by any party, all such claims shall be handled and paid by the Party whose actions form the basis of such claim and such Party shall indemnify, defend (with counsel reasonably satisfactory to the Party entitled to indemnification), protect and save and hold the other harmless from and against any and all such claims or demands asserted by any person, firm or corporation in connection with the transaction contemplated hereby.

13.13. Payment of Fees and Expenses. Except as provided in Section 13.2 above, each Party to this Agreement and Parent shall be responsible for, and shall pay, all of its own fees and expenses, including those of its counsel, incurred in the negotiation, preparation and consummation of the Agreement and the transaction described herein.

13.14. Survival. The respective representations and warranties of Buyer and Seller and the obligations of Parent under this Agreement shall lapse and cease to be of any further force or effect effective upon the Closing. Except as provided in the immediately preceding sentence, the covenants and agreements of Seller and Buyer herein, or in any certificates or other documents delivered prior to or at the Closing, shall not be deemed waived or otherwise affected by the Closing.

13.15. Assignments. This Agreement shall not be assigned by any Party hereto without the prior written consent of the other Party hereto, which consent the Parties may grant or withhold in their sole and absolute discretion.

13.16. Binding Effect. Subject to the provisions of Section 13.15, above, this Agreement shall bind and inure to the benefit of the respective heirs, personal representatives, successors, and assigns of the Parties hereto and Parent.

13.17. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware.

13.18. Good Faith. All Parties hereto agree to do all acts and execute all documents required to carry out the terms of this Agreement and to act in good faith with respect to the terms and conditions contained herein before and after Closing.

13.19. Construction. In the interpretation and construction of this Agreement, the Parties and Parent acknowledge that the terms hereof reflect extensive negotiations between the Parties and Parent and that this Agreement shall not be deemed, for the purpose of construction and interpretation, drafted by either Party hereto or Parent.

13.20. Counterparts. This Agreement may be signed in counterparts. The Parties and Parent further agree that this Agreement may be executed by the exchange of facsimile signature pages provided that by doing so the Parties and Parent agree to undertake to provide original signatures as soon thereafter as reasonable in the circumstances.

13.21. Time is of the Essence. Time is of the essence in this Agreement, and all of the terms, covenants and conditions hereof.

13.22. Interpretation and Rules of Construction. In this Agreement, except to the extent that the context otherwise requires:

13.22.1. when a reference is made in this Agreement to an Article, Section, Exhibit or Schedule, such reference is to an Article or Section of, or an Exhibit or a Schedule to, this Agreement unless otherwise indicated;

13.22.2. the headings and captions used in this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement;

13.22.3. whenever the words "include," "includes" or "including" are used in this Agreement, they are deemed to be followed by the words "without limitation";

13.22.4. the words "hereof," "herein" and "hereunder" and works of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement;

13.22.5. all terms defined in this Agreement have the defined meanings when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein;

13.22.6. the definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms;

13.22.7. any law defined or referred to herein or in any agreement or instrument that is referred to herein means such law or statute as from time to time amended, modified or supplemented, including by succession of comparable successor laws;

13.22.8. references to a person are also to its permitted successors and assigns; and

13.22.9. the use of “or” is not intended to be exclusive unless expressly indicated otherwise.

[SIGNATURE PAGE FOLLOWS IMMEDIATELY]

In Witness Whereof, Buyer, Seller, and Parent have executed this Asset Purchase Agreement as of the day and year first above written.

BUYER:

BlueSky Energy US, Inc., a Delaware corporation

By: 

Name: Dr. Thomas Krausse
Its: President

SELLER:

Aquilon Energy, Inc., a Delaware Corporation
and Debtor and Debtor in Possession

By: 

Name: Suzanne B. Roski
Its: Chief Restructuring Officer

Solely for the purposes of agreeing to Sections 12
and 13 of the Agreement, PARENT:

BlueSky Energy Entwicklungs- und Produktions
GmbH, a limited liability company (*Gesellschaft mit
beschränkter Haftung*) under the laws of Austria

By: 

Name: Thomas Krausse
Its: CEO

MAY 23RD
2017

Asset Purchase Agreement Schedules

Exhibit D

(Highlighted Provisions Pursuant to Del. Bankr. L.R. 6004-1)

In accordance with Local Rule 6004-1,¹ the Debtor respectfully represents the following:

- (1) **Sale to an Insider**: The Stalking Horse Purchaser is not an insider of the Debtor.
- (2) **Agreements with Management**: To the Debtor's knowledge, the Stalking Horse Purchaser has not entered into any agreements with management or key employees regarding compensation or future employment.
- (3) **Releases**: The Purchase Agreement does not provide for any releases by and between the Stalking Horse Purchaser and the Debtor of any claims or causes of action.
- (4) **Private Sale/No Competitive Bidding**: The Sale is being conducted pursuant to the competitive bidding process detailed in the Motion.
- (5) **Closing and Other Deadlines**: Section 3.2 of the Purchase Agreement sets forth the conditions and terms for the Closing of the Sale, and provides an outside Closing date of June 30, 2017.
- (6) **Good Faith Deposit**: The Stalking Horse Purchaser has either provided a good faith deposit in the amount of \$280,000, or has provided satisfactory confirmation that such deposit is being delivered. The proposed Bid Procedures provides that all bidders will be required to post a good faith deposit in the form of a wire transfer (to a bank account specified by the Debtor), certified check or such other form acceptable to the Debtor, payable to the order of the Debtor (or such other party as the Debtor may determine) in the amount of 10% of the competing bidder's offer.
- (7) **Interim Arrangements with Proposed Buyer**: Section 9.1 of the Purchase Agreement contains customary provisions regarding the Debtor's conduct of their business pending the Closing Date. Section 9.2 of the Purchase Agreement provides that the Debtor will permit the Stalking Horse Purchaser reasonable access during Debtor's regular business hours with respect to certain matters. Section 11 provides that the Debtor will, during the 120-day period immediately following the Closing, use commercially reasonable efforts to assist the Stalking Horse Purchaser to obtain approval described in the Purchase Agreement with respect to the Committee on Foreign Investment in the United States
- (8) **Use of Proceeds**: Upon Closing, the net sale proceeds shall be, to the extent permitted and appropriate, in accordance with the Cash Collateral Order, or as otherwise permitted by the Bankruptcy Code and applicable Bankruptcy Court Order.

¹ The foregoing is intended to summarize certain of the provisions of the Purchase Agreement (the "LR 6004-1 Summary"). In the event of any inconsistency between this summary and the Purchase Agreement, the Purchase Agreement controls. Unless otherwise noted, defined terms used in this LR 6004-1 Summary have the meanings ascribed in the Purchase Agreement.

- (9) **Tax Exemption**: No tax exemptions under section 1146(a) of the Bankruptcy Code are contemplated in connection with the Sale.
- (10) **Record Retention**: Section 13.3 of the Purchase Agreement provides for Debtor's access to the Books and Records for a period of 3 years after the Closing
- (11) **Sale of Avoidance Actions**: the Debtor's avoidance actions are not being sold pursuant to the Purchase Agreement. Section 1.2(xiii) specifies that all preference or avoidance claims and actions of the Seller, including, without limitation, any such claims and actions arising under Sections 544, 547, 548, 549, and 550 of the Bankruptcy Code are Excluded Assets.
- (12) **Requested Findings as to Successor Liability**: The proposed sale order provides that Successful Bidder is not a successor to Debtor or this bankruptcy estate by any reason or theory of law or equity, and that Successful Bidder shall not be subject to successor liability for any products sold prior to Closing. All creditors or other persons are hereby barred from bringing any claim or asserting any liens against Successful Bidder or the Assets, except as relates to Assumed Liabilities.
- (13) **Sale Free and Clear of Unexpired Leases**: The Debtor is seeking to sell the Assets free and clear of all liens, claims, encumbrances, and other interests pursuant to Section 363(f) of the Bankruptcy Code.
- (14) **Credit Bid**: The proposed Bid Procedures to not purport to limit or restrict Trinity credit bid rights under section 363(k) of the Bankruptcy Code.
- (15) **Relief from Bankruptcy Rule 6004(h)**: As noted in the Motion, the Debtor is requesting relief from the 14-day stay imposed by Rules 6004(h) and 6006(d).