

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

ARECONT VISION HOLDINGS, LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 18-11142 (CSS)  
(Jointly Administered)

Objection Deadline: June 1, 2018 at 4:00 p.m. (ET)

Hearing Date: June 8, 2018 at 2:00 p.m. (ET)

**NOTICE OF HEARING ON 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 DEBTORS' ASSETS, (B) APPROVING BID PROCEDURES FOR THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, (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 AND EXPENSE REIMBURSEMENT PROVISIONS; (II) AUTHORIZING AND APPROVING (A) THE SALE OF CERTAIN ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES, AND OTHER INTERESTS, AND (B) THE ASSUMPTION AND ASSIGNMENT OF CERTAIN CONTRACTS AND LEASES; AND (III) GRANTING RELATED RELIEF**

TO: (a) the Office of the United States Trustee; (b) the Debtors' top 30 unsecured creditors; (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, Claims and Encumbrances, and other interests with respect to the Assets, including, but not limited to, the Prepetition Lenders and DIP 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 Debtors' 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 Debtors' assets are located.

<sup>1</sup> The Debtors and the last four digits of their U.S. tax identification number are Arecont Vision Holdings, LLC (9187), Arecont Vision, LLC (1410), and Arecont Vision IC DISC (5376). The Debtors' noticing address in these chapter 11 cases is 425 Colorado Street, Suite 700, Glendale, CA 91205.

**PLEASE TAKE NOTICE** that on May 18, 2018, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the attached *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 Debtors’ Assets, (B) Approving Bid Procedures for the Sale of Substantially All of the Debtors’ Assets, (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 and Expense Reimbursement Provisions; (II) Authorizing and Approving (A) the Sale of Certain Assets Free and Clear of All Liens, Claims and Encumbrances, and Other Interests, and (B) the Assumption and Assignment of Certain Contracts and Leases; and (III) Granting Related Relief* (the “Motion”) with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801 (the “Bankruptcy Court”).

**PLEASE TAKE FURTHER NOTICE** that any response or objection to the Motion must be filed with the Bankruptcy Court on or before **June 1, 2018 at 4:00 p.m. prevailing Eastern Time.**

**PLEASE TAKE FURTHER NOTICE** that at the same time, you must also serve a copy of the response or objection upon: (i) the Debtors: Arecont Vision Holdings, LLC, 425 Colorado Street, Suite 700, Glendale, CA 91205; (ii) proposed counsel for the Debtors: Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Courier 19801), Attn: Ira D. Kharasch, Esq. (ikharasch@pszjlaw.com) and James E. O’Neill, Esq. (joneill@pszjlaw.com); (iii) counsel to the lender: (a) Baker Botts, L.L.P., 30 Rockefeller Plaza, New York, NY 10112, Attn: Emanuel C.

Grillo, Esq. (emanuel.grillo@bakerbotts.com); Luke A. Weedon, Esq. (luke.weedon@bakerbotts.com); and Christopher R. Newcomb (chris.newcomb@bakerbotts.com) and (b) Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, Wilmington, DE 19801, Attn: Robert J. Dehney, Esq. (rdehney@mnat.com) and Matthew B. Harvey, Esq. (mharvey@mnat.com); (iv) the Office of the United States Trustee for the District of Delaware: United States Trustee, 844 King Street, Suite 2207, Lockbox #35, Wilmington, DE 19801, (Fax: 302-573-6497), Attn: Benjamin A. Hackman, Esq. (benjamin.a.hackman@usdoj.gov); and (v) counsel to any official committee appointed in these cases.

**PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.**

**PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER APPROVAL OF THE MOTION WILL BE HELD ON JUNE 8, 2018 AT 2:00 P.M. PREVAILING EASTERN TIME BEFORE THE HONORABLE CHRISTOPHER S. SONTCHI, UNITED STATES BANKRUPTCY JUDGE, AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 5TH FLOOR, COURTROOM NO. 6, WILMINGTON, DELAWARE 19801.**

Dated: May 18, 2018

**PACHULSKI STANG ZIEHL & JONES LLP**

/s/ James E. O'Neill

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[Proposed] Counsel to the Debtors and Debtors in Possession

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: ) Chapter 11  
ARECONT VISION HOLDINGS, LLC, *et al.*,<sup>1</sup> ) Case No. 18-11142 (CSS)  
Debtors. ) (Jointly Administered)

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Arecont Vision Holdings, LLC, a Delaware limited liability company

("Holdings"), and its affiliated debtors and debtors-in-possession, Arecont Vision, LLC

("Arecont Vision") and Arecont Vision IC DISC ("Vision IC" and, together with Holdings and

Arecont Vision, the "Debtors" or the "Company"), file 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

<sup>1</sup> The Debtors and the last four digits of their U.S. tax identification number are Arecont Vision Holdings, LLC (9187), Arecont Vision, LLC (1410), and Arecont Vision IC DISC (5376). The Debtors' noticing address in these chapter 11 cases is 425 Colorado Street, Suite 700, Glendale, CA 91205.

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 Procedures Order (the “Bid Procedures”) in connection with the sale (the “Sale”) of the Debtors’ right, title and interest in substantially all of the assets and properties used in connection with the operation of the Debtors’ business, as set forth in the Purchase Agreement (defined below); (b) scheduling both an 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 **Exhibit 2**, **Exhibit 3** and **Exhibit 4** to the Bid Procedures Order; and (e) approving the proposed breakup fee and expense reimbursement 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) authorizing Arecont Vision’s entry into an *Asset Purchase Agreement* with Arecont Technologies LLC, an affiliate of Turnspire Capital Partners, LLC (the “Stalking Horse Purchaser”) substantially in the form attached as **Exhibit C** hereto (without schedules) (the “Purchase Agreement”) with the Stalking Horse Purchaser or with the successful bidder at the auction (if other than the Stalking Horse Purchaser); (b) authorizing the Sale of such assets free and clear of, liens, claims, encumbrances (“Liens, Claims and Encumbrances”), and other interests, except as provided in the Purchase Agreement; and (c) approving the assumption and

assignment of certain of the Debtors' executory contracts and unexpired leases related to the Sale; and (iii) granting relief related. In support of this Motion, the Debtors respectfully state 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 May 14, 2018 (the "Petition Date"), the Debtors filed with this Court voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. The factual background regarding the Debtors, including their historical business operations and the events precipitating the chapter 11 filings, is set forth in detail in the *Declaration of Scott Avila, Chief Restructuring Officer, in Support of First Day Motions* (the "First Day Declaration") filed on the Petition Date and fully incorporated herein by reference.<sup>2</sup>

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the First Day Declaration.

**The Debtors' Operations and Assets to Be Sold**

6. The Debtors are in the business of designing, manufacturing, distributing and selling IP-based megapixel cameras for use in video surveillance applications globally, serving a broad range of industries. The Debtors offer seven megapixel product families ranging from MegaVideo® single-sensor cameras from 1 to 10 megapixels and SurroundVideo® multi-sensor cameras from 8 to 40 megapixels at various price points. The Debtors differentiate themselves from their competitors with in-house technology development capabilities, with 18 issued patents. Due to a strong focus on innovation, the Debtors were the first to market with 2, 3, 5 and 10 megapixel IP cameras as well as the first H.264 megapixel cameras and multi-sensor 180 and 360 degree panoramic cameras.

7. Arecont Vision is the Debtors' principal operating entity. The company was founded in 2003 by Michael Kaplinsky, Ph.D. and Vladimir Berezin, Ph.D. who remain the current Chief Executive Officer and President, respectively, of Holdings. As part of the ongoing reorganization of the Debtors, Messrs. Kaplinsky and Berezin, among other things, resigned from their officer positions at Arecont Vision and Vision IC. Most of the day-to-day operations of Arecont Vision are now handled by Raul Calderon, as Chief Operating Officer and General Manager.

8. The Debtors are headquartered in Glendale, California, where they lease a 40,800 square foot facility. The Debtors' headquarters include administration, engineering, testing, quality assurance, development, sales and marketing, customer service, operations and logistics. As of the Petition Date, Arecont Vision has approximately 90 employees, most of whom are based in California. The Debtors are not party to any collective bargaining agreements and none of their employees are unionized. The Debtors assemble all products in



Glendale and use third parties for their manufacturing process, creating a scalable, flexible manufacturing platform where manufacturing labor comprises a modest proportion of production costs.

9. The Debtors are able to sell products to all industries including data centers, government, retail, financial, sports stadiums and healthcare. The Debtors' end-user customer base includes blue-chip customers such as Wells Fargo, Apple, Google, Facebook, Microsoft, Citibank, Hilton Hotels, Coca Cola, Starbucks, IKEA, CVS, and FedEx. The Debtors have relationships with over 100 distributors and over 1,000 systems integrators, which enables them to sell their products around the globe. Over twenty percent (20%) of the Debtors' revenues are generated outside the United States and Canada. Prior to an abrupt revenue decline in 2017 (described below), the Debtors had grown revenue and EBITDA at a compound annual growth rate of approximately 24% during 2007 through 2016. In 2016, the Debtors' annual revenue was approximately \$72.7 million. In 2017, the Debtors' annual revenue dropped to approximately \$41.7 million.

#### **The Debtors' Marketing Process**

10. The Debtors' sale efforts initially commenced in November 2015 with the hiring of Imperial Capital ("Imperial") as investment bankers. An extensive marketing process followed and ultimately culminated, on March 3, 2017, in the execution of a share purchase agreement for the interests in Arecont Vision with NetPosa Technologies, Ltd. ("NetPosa"), a publicly traded Chinese company. Following execution of the purchase agreement, a regulatory review process began with U.S. authorities. During such review process,

the Debtors' performance began to decline due to, among other factors described below, increased competition from Chinese competitors. This decline ultimately led to NetPosa terminating the purchase agreement in early September 2017, which it was not permitted to do under the terms of its agreement with the Debtors, thereby forcing the Debtors to urgently explore strategic alternatives and commence litigation against NetPosa.

11. Imperial continued to act as the Debtors' investment bankers to undertake the marketing process for the Debtors' assets and has continued in that capacity post-petition. Beginning on or about April 4, 2018, Imperial commenced a further marketing process by contacting a broad universe of potential strategic and financial buyers with a "teaser" describing the Debtors' business and assets and providing potential buyers with a non-disclosure agreement (an "NDA"). Imperial also created an electronic data room for prospective buyers containing information and documents relating to the Debtors. In total, Imperial contacted 41 potential strategic buyers (U.S.-based and foreign) and 70 potential financial buyers (predominantly U.S.-based private equity firms focused on middle market special situations/turnarounds). Of these 111 parties, 27 entities (four strategic and 23 financial) executed NDAs and received confidential information memoranda and data room access, and five (three strategic and two financial) held meetings and/or teleconferences with management to conduct further due diligence. In light of a target Petition Date of May 14, 2018, Imperial set a deadline of May 4, 2018, at 5:00 pm PDT for non-binding indications of interest ("IoIs"), with the intention of using the week of May 7, 2018, to select a single bidder to finalize diligence and

an asset purchase agreement to have a “stalking horse” in place by the Petition Date. By the May 4 deadline, Imperial received IoIs from five parties (three strategic and two financial).

12. Following multiple discussions among the Debtors, the Prepetition Lenders, and their respective professionals, and following the clarification by Imperial of certain questions regarding the IoIs, Turnspire Capital, LLC (“Turnspire”) submitted a Letter of Intent and was selected as the lead bidder, based upon the valuation and terms proposed in its Letter of Intent, the level of diligence and work that Turnspire had conducted in preparing its Letter of Intent, and Imperial’s assessment of the Turnspire’s ability to reach a fully negotiated asset purchase agreement.

13. Following the Petition Date, the Debtors entered into the Purchase Agreement with the Stalking Horse Purchaser, which is an affiliate of Turnspire. The Purchase Agreement contemplates the sale of substantially all of the Debtors’ assets in exchange for cash consideration in the amount of \$10,000,000, subject to a working capital adjustment plus the assumption of certain liabilities. The Debtors hereby seek Court approval to consummate the transaction, subject to overbid at an auction pursuant to certain proposed overbid procedures and protections. Following entry by the Court of the Bidding Procedures Order providing for the Break-Up Fee and the Expense Reimbursement for the Stalking Horse Purchaser, Imperial will continue its marketing efforts with potential bidders, which will include “blast” electronic communications informing potentially interested parties of the Debtors’ chapter 11 filing and their ongoing sales effort. The Debtors believe that this marketing and sale process will preserve going concern value and maximize recoveries for all stakeholders.

14. The Debtors now seek to sell their assets, which generally consist of their IP megapixel camera technology for video surveillance applications and substantially all of the Debtors' other business assets and property associated with that technology (the "Assets").

**The Purchase Agreement**

15. The following are the material terms of the proposed Purchase Agreement:<sup>3</sup>

Purchase Price	\$10,000,000 in cash, subject to a working capital adjustment as described in section 1.6 of the Purchase Agreement plus the assumption of the Assumed Liabilities, the cash portion of the Purchase Price shall be payable as follows: (a) the Stalking Horse Purchaser shall deposit into escrow within forty-eight (48) hours following the execution of the Purchase Agreement the sum of \$1,000,000; and (b) the balance to be paid by the Stalking Horse Purchaser at closing, as set forth in section 1.4 of the Purchase Agreement.
Purchased Assets	The Debtors' right, title and interest in substantially all of the assets heretofore used exclusively in connection with or arising out of the operation of the Debtors' business as further set forth in section 1.1 of the Purchase Agreement and schedules thereto, including certain personal property, intangible property, governmental permits and licenses to the extent transferrable, inventory, vendor related items and claims, including a certain promissory note dated May 2, 2014, executed by Raul Calderon, the Debtors' Chief Operating Officer, in favor of Holdings (which note was assigned to Arecont Vision) in the current principal amount of \$390,000.00, which note will be sold to the Stalking Horse Purchaser and then waived.
Excluded Assets	Avoidance actions (other than those relating to or enforceable against any existing customer or vendor of the Debtors as of the Closing Date), litigation styled as "Arecont Vision Holdings, LLC v. Wonder Vision Inc., et al.", cash deposits, tax refunds, accounts receivable, among other assets as further set forth in section 1.2 of the Purchase Agreement.

<sup>3</sup> The following 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 terms and provisions of the Purchase Agreement control.

Assumed Liabilities	Liabilities and cure costs under assumed contracts and various other specified obligations as further set forth in section 1.3 of the Purchase Agreement.
Breakup Fee and Expense Reimbursement	In the event Purchaser terminates the Purchase Agreement, (i) reimbursement of all reasonable out-of-pocket third party costs and expenses actually incurred in connection with and relating to the execution of the Purchase Agreement and consummation of the transactions contemplated thereby, including, without limitation, reasonable attorney's fees and expenses, in an aggregate amount not to exceed , including, without limitation, attorney's fees, diligence fees and costs and expenses incurred in connection with the capital structure of Purchaser, in an aggregate amount not to exceed \$400,000, and (ii) \$500,000 in cash as a breakup fee.
Closing Deadline	Closing shall be held upon the third (3 <sup>rd</sup> ) business day following satisfaction of the conditions set forth in sections 5 and 6 of the Purchase Agreement, and in any event no later than July 13, 2018, subject to the parties' mutual agreement to extend.  The deadline for entry of the Bid Procedures Order is June 8, 2018, and the deadline for the Sale Hearing to take place is July 6, 2018.
Representations and Warranties	Customary for transactions of this kind. Except as specifically set forth in the Purchase Agreement, the Stalking Horse Purchaser will accept the Property at the Closing "AS-IS," "WHERE-IS," and "WITH ALL FAULTS."
Termination Rights	Customary for transactions of this kind.

**Relief Requested**<sup>4</sup>

16. Pursuant to this Motion, the Debtors request 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 and Expense Reimbursement provisions, subject to the terms of the Purchase Agreement and Bid Procedures Order;

<sup>4</sup> In compliance with Local Rule 6004-1 and for the convenience of the reader, the salient terms of the Purchase Agreement have been summarized and are attached hereto as **Exhibit D**.

(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 approximately two days 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 Bidder or the highest or best bidder for the Assets determined 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 to the Bid Procedures Order as **Exhibit 3**, to be served on all known creditors of the Debtors (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 to the Bid Procedures Order as **Exhibit 4** (the “Cure Notice”).

17. The Debtors further request 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 and Encumbrances, and other interests, except as provided in the Purchase Agreement or competing purchase agreement (with all Liens, Claims and 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 Debtors to consummate the Sale and all documents, agreements, and contracts executed in conjunction therewith.

**Proposed Bid Procedures**<sup>5</sup>

18. The Bid Procedures are summarized as follows:

***Competing Agreement***

19. 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 of the Debtors, free and clear of any Liens, Claims and Encumbrances, and other interests. The transaction contemplated is subject to competitive bidding as set forth herein, and approval by the

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<sup>5</sup> The following is a summary of the Bid Procedures. In the event of any conflict between the procedures summarized in this Motion 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 shall have the meanings ascribed thereto in the Purchase Agreement.

Bankruptcy Court pursuant to Bankruptcy Code sections 363 and 365.

***Assets for Sale***

20. The Debtors are offering for sale the Assets, which generally consist of their IP megapixel camera technology for video surveillance applications and associated business, substantially all of the Debtors' other business assets and property associated with that technology. Except as otherwise provided in the Purchase Agreement, all of the Debtors' right, title and interest in and to the Assets subject thereto shall be sold free and clear of any Liens, Claims and Encumbrances, and other interests (other than Permitted Liens, Claims and Encumbrances and/or except as otherwise provided in the Competing Agreement) to the maximum extent permitted by section 363 of the Bankruptcy Code, with such Liens, Claims and Encumbrances, and other interests to attach to the net proceeds of the sale of the Assets with the same validity and priority as such Liens, Claims and Encumbrances, and other interests applied against the Assets.

***Participation Requirements***

21. In order to participate in the bidding process and to 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 Debtors and their counsel, not later than five (5) business days before the Bid Deadline (defined below), unless otherwise modified by the Debtors in their reasonable discretion (subject to the requirements of section 4.7(a) of the Purchase Agreement):



(a) Non-Disclosure Agreement. An executed non-disclosure agreement substantially in the form of the NDA included in Imperial's electronic data room;

(b) Identification of Potential Bidder. Concurrently with its Bid (as defined herein), 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 Debtors 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 Debtors, 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 Debtors; 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 Debtors demonstrating that such Potential Bidder has the ability to close the contemplated transaction.

***Designation as Qualified Bidder***

22. A “Qualified Bidder” is a Potential Bidder (or combination of Potential Bidders whose bids for the Assets of the Debtors 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 Debtors, in their discretion (in consultation with any Official Committee of Unsecured Creditors that may be appointed (the “Committee”) and AIG Investment Management (U.S.), LLC (“AIG”)), 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.

23. The Debtors, in their sole discretion and in consultation with the Committee and AIG, shall determine and notify the Potential Bidder with respect to whether such Potential Bidder is a Qualified Bidder.

24. The Stalking Horse Purchaser is hereby deemed to be a Qualified Bidder.

***Access to Due Diligence Materials***

25. Only Potential Bidders that execute and deliver a confidentiality agreement satisfactory to the Debtors, in their sole discretion, are eligible to receive due diligence access or access to additional non-public information. The Debtors shall not be required to provide confidential or proprietary information to a Potential Bidder if the Debtors believe that such disclosure would be detrimental to the interests of the Debtors. If the Debtors determine that a Potential Bidder that has satisfied all requirements to become a Qualified Bidder and yet does not constitute a Qualified Bidder, then such Potential Bidder’s right to receive due

diligence access or access to additional non-public information shall terminate. The Debtors will designate an employee or other representative to coordinate all reasonable requests for additional information and due diligence access from Qualified Bidders. The Debtors shall not be obligated to furnish any due diligence information after the Bid Deadline. The Debtors are 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***

26. 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 Debtors or their 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 Debtors 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 Debtors to determine that a bid made by a Qualified Bidder is not a Qualified Bid (as defined herein).

**Bidding Process**

27. The Debtors and their advisors, shall (in consultation with Committee and AIG): (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 Debtors (in consultation with the Committee and AIG) 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***

28. 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 Arecont Vision, LLC, 425 Colorado St., Suite 700, Glendale, CA, Attn: T. Scott Avila, and savila@armorystrategic.com, with copies to Imperial Capital, 277 Park Avenue, 48<sup>th</sup> Floor, New York, NY 10172, Attn: David E. Burns, and dburns@imperialcapital.com and counsel for the Debtors, Pachulski Stang Ziehl & Jones LLP, 919 N. Market St., 17th Floor, Wilmington, Delaware 19801, Attn: Ira D. Kharasch, Esq. and James E. O'Neill, Esq., not later than 4:00 p.m. (prevailing Eastern time) on June 29, 2018 (the "Bid Deadline"). The Debtors shall promptly provide copies of all Bids to counsel for the Committee and AIG.

29. A Bid received after the Bid Deadline shall not constitute a Qualified Bid.

***Bid Requirements***

30. To be eligible to participate in the Auction, each Bid and each Qualified Bidder submitting such a Bid must be determined by the Debtors (in consultation with the Committee and AIG) to satisfy each of the following, unless otherwise modified by the Debtors in their reasonable discretion (subject to the requirements of section 4.7(a) of the Purchase Agreement):

(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 Arecont Vision, LLC in an amount to be determined by the Debtors, but in any event no less than 10% of the Bidder's offer.

(2) Purchase Price. The consideration proposed by the Bid may include only cash and/or other consideration acceptable to the Debtors (in consultation with the Committee and AIG) (the cash component must be no less than an amount necessary to satisfy the Breakup Fee and Expense Reimbursement). The Bid must clearly set forth the purchase price and identify any non-cash components including, without limitation, which liabilities of the Debtors the bidder is agreeing to assume (the "Purchase Price"). The aggregate consideration must exceed the value of the consideration under the Purchase Agreement by an incremental amount that is not less than \$250,000 (*after* taking into account the Breakup Fee and Expense Reimbursement) (the "Initial Minimum Overbid").

(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 the "Termination Date"), *provided* that in the event that the Successful Bid is submitted by a party other than the Stalking Horse Purchaser, and the Stalking Horse Purchaser's Bid (or as amended by the Stalking Horse Purchaser at the Auction in response to competitive bidding) is declared to be the Back-Up Bid, then the Stalking Horse Purchaser's Bid must only be irrevocable for fifteen (15) calendar days from the conclusion of the Sale Hearing.

(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 against the Purchase Agreement 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 Debtors than the provisions contained in the 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 1.6 of the Purchase Agreement. A Bid should propose a contemplated transaction involving all or substantially all of the Assets, provided, however, that the Debtors in their sole discretion (in consultation with the Committee and AIG) may consider proposals for less than substantially all the Assets if such proposals or combination of proposals maximizes the value of the Debtors' estates.

(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 Debtors (in consultation with the Committee and AIG) 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 and Expense Reimbursement 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.

31. 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 Debtors believe, in their sole discretion (in consultation with the Committee and AIG), that such Bid would be consummated if selected as the Successful Bid. The Debtors shall have the right to reject any and all Bids that they believe, in their sole discretion (in consultation with the Committee and AIG), do not comply with the Bid Procedures. In the event that any Potential Bidder is determined by the Debtors not to be a Qualified Bidder, the Potential Bidder shall be refunded its Good Faith Deposit.

***Breakup Fee***

32. 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 Debtors are authorized (pursuant to the Bid Procedures Order) to provide the following bidding protections to the Stalking Horse Purchaser.

(a) The Debtors have agreed to pay the Stalking Horse Purchaser (i) a Breakup Fee in the amount of \$500,000 as a breakup fee and (ii) Expense Reimbursement of up to \$400,000, in each case pursuant to and 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 Expense Reimbursement and result in additional consideration to the Debtors' estates in the amount of at least \$250,000 (as compared to the Purchase Price offered by such Stalking Horse Purchaser), after payment of the Breakup Fee and Expense Reimbursement.

**Auction**

33. If the Debtors receive at least two Qualified Bids (inclusive of the Qualified Bid from the Stalking Horse Purchaser) prior to the Bid Deadline, then the Debtors shall notify the Stalking Horse Purchaser and each other Qualified Bidder that the Debtors intend 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 Debtors shall provide the Stalking Horse Purchaser, all Qualified Bidders and the Committee with copies of all Qualified Bids not less than forty-eight (48) hours 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 Debtors, the Debtors anticipate that the Auction will commence no later than July 5, 2018 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, or such other place determined by the Debtors and in no event later than July 5, 2018.

34. Not less than forty-eight (48) hours in advance of the Auction, the Debtors will notify all Qualified Bidders in writing of (i) the highest or otherwise best Qualified Bid, as determined by the Debtors in their discretion (the "Baseline Bid") and (ii) the time and place of the Auction.

35. If the Debtors do not receive at least two Qualified Bids from Qualified Bidders (inclusive of the Qualified Bid from 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.

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

**(a) Participation at the Auction**

37. 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 Debtors, the Committee, AIG, and the U.S. Trustee shall be permitted to attend the Auction.

38. Except as otherwise set forth herein, the Debtors (in consultation with the Committee and AIG) may conduct the Auction in the manner they determine will result in the highest or best offer for the Assets in accordance with the Bid Procedures.

39. In the Debtors' sole discretion, after the conclusion of the Auction, the Debtors 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 Debtors in their discretion.

**(b) The Debtors Shall Conduct the Auction**

40. The Debtors and their professionals shall direct and preside over the Auction. At the start of the Auction, the Debtors shall describe the terms of the Baseline Bid. The determination of which Qualified Bid constitutes the Baseline Bid shall be made by the Debtors in their discretion (in consultation with the Committee and AIG), and may take into

account any factors the Debtors reasonably deem relevant to the value of the Qualified Bid to the estates (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 Debtors reserve the right to conduct the Auction in the manner designed to maximize value based upon the nature and extent of the Qualified Bids received in a manner not inconsistent with the Bid Procedures. The Debtors 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**

41. An "Overbid" is any bid made at the Auction subsequent to the Debtors' 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**

42. 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 \$100,000 in cash or other consideration acceptable to the Debtors; *provided, however*, that any Overbid 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 \$100,000 Overbid less (3) \$900,000 (*i.e.*, the amount of the Breakup Fee and Expense Reimbursement).

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

**(e) Consideration of Overbids**

44. The Debtors reserve the right, in their reasonable business judgment, to make one or more adjournments in the Auction to, among other things: facilitate discussions between the Debtors and individual Qualified Bidders; allow individual Qualified Bidders to consider how they wish to proceed; and give Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their 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**

45. The Debtors may adopt rules for the Auction at or prior to the Auction that, in their reasonable discretion (in consultation with the Committee and AIG), 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.

46. The Debtors (in consultation with the Committee and AIG) 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 Debtors, their estates and their creditors.

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

47. 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**

48. Upon conclusion of the bidding, the Auction shall be closed, and the Debtors (in consultation with the Committee and AIG) 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" or the "Successful Bidder APA") 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 Debtors, 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 Debtors,

the Back-up Bidder selected by the Debtors 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.

49. As stated above, the Bids of the Successful Bidder and the Back-up Bidder must be irrevocable until the Termination Date, *provided* that in the event that the Successful Bid is submitted by a party other than the Stalking Horse Purchaser, and the Stalking Horse Purchaser's Bid (or as amended by the Stalking Horse Purchaser at the Auction in response to competitive bidding) is declared to be the Back-Up Bid, then the Stalking Horse Purchaser's Bid must only be irrevocable for fifteen (15) calendar days from the conclusion of the Sale Hearing.

**Acceptance of Successful Bid**

50. The Debtors shall sell the Assets to the Successful Bidder upon the approval of the Successful Bid by the Bankruptcy Court after the Sale Hearing. The Debtors' presentation of a particular Qualified Bid to the Bankruptcy Court for approval does not constitute the Debtors' acceptance of such Qualified Bid. The Debtors 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"**

51. 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 Debtors, their agents or their estates except to the extent set forth in the Successful Bidder APA. 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 Successful Bidder APA.

**Free of Any and All Interests**

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

**Sale Hearing**

53. The Debtors have requested that the Sale Hearing occur on or about July 6, 2018, or on such other date as may be established by the Bankruptcy Court.

54. If the Successful Bidder fails to consummate an approved sale in accordance with the applicable asset purchase agreement or such agreement is terminated, the Debtors shall be authorized, but not required, to deem the Back-up Bid, as disclosed at the Sale

Hearing, the Successful Bid, and the Debtors 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**

55. 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 Debtors 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 Debtors shall be entitled to retain the Successful Bidder's Good Faith Deposit as part of the Debtors' damages resulting from such Successful Bidder's breach or failure to perform.

**Notice of Sale Hearing**

56. As noted above, the Debtors request that the Court: (1) schedule the Sale Hearing on or about July 6, 2018; (2) fix on or about June 29, 2018, 4:00 p.m., prevailing Eastern Time as the Bid Deadline; and (2) fix no later than July 5, 2018, at 10:00 a.m. prevailing Eastern Time for the commencement of the Auction, if necessary. The Debtors propose that objections, if any, to the Sale be filed and properly served on the Sale and Bid Procedures Notice Parties (as

defined herein) by 4:00 p.m. prevailing Eastern Time on the date seven (7) days prior to the Sale Hearing.

57. The Debtors request 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 Debtors 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, AIG and the Prepetition Lenders;
- (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 Debtors' Assets are located;
- (h) state taxing authorities in the states in which the Debtors' assets are located; and the Internal Revenue Service;
- (i) environmental and other applicable authorities in the states or applicable jurisdictions in which the Debtors' Assets are located;
- (j) the Stalking Horse Purchaser and its counsel; and



(k) all other parties that have 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”).

58. Additionally, the Debtors propose to serve the Creditor Notice substantially in the form attached to the Bid Procedures Order as Exhibit 3 on all known creditors of the Debtors.

59. The Debtors propose 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: Ira D. Kharasch, Esq. and James E. O’Neill, Esq., [ikharasch@pszjlaw.com](mailto:ikharasch@pszjlaw.com) and [joneill@pszjlaw.com](mailto:joneill@pszjlaw.com).

60. The Debtors submit 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 Debtors’ 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 Debtors respectfully request that this Court approve these proposed notice procedures.

**Sale Hearing**

61. At the Sale Hearing, the Debtors 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, and other interests pursuant to section 363(f) of the Bankruptcy Code with all such Liens, Claims and Encumbrances, and other 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 Debtors and assignment to the Successful Bidder of the Assumed Executory Contracts pursuant to section 365 of the Bankruptcy Code. The Debtors 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 Debtors' estates 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**

62. The closing shall take place in accordance with the terms of the Successful Bidder APA, approved by the Bankruptcy Court at the Sale Hearing.

**Procedures for the Assumption and Assignment of Assumed Executory Contracts**

63. As noted above, the Debtors 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

64. The Assumed Executory Contracts will be those Contracts and Leases pursuant to which the Debtors serve a Cure Notice. However, the Stalking Horse Purchaser may choose to add or delete certain Assumed Executory Contracts. If the Stalking Horse Purchaser chooses to add or delete an Assumed Executory Contract, then notice of that addition or deletion shall be provided to the affected counterparty by the Debtors approximately five (5) days prior to the Auction or, if no Auction is required, five (5) days prior to the Sale Hearing. Only those Assumed Executory Contracts assumed as of the closing of the Sale will be required to be cured.

65. The Debtors will file with the Court and serve the form of the Cure Notice, 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 Debtors believe 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.

66. 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 Debtors and their estates 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.

67. 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 Debtors propose 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 Debtors 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.

68. 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 Debtors propose 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 Debtors and the other notice parties identified in the Cure Notice by no later than (i) 4:00 p.m. (prevailing Eastern Time) on the date that is seven days prior to the Sale Hearing; 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 Debtors will attempt to reconcile any differences in the Cure Amount or otherwise resolve the objection with the objecting Counterparty. In the event that the Debtors 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 Successful Bidder 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 from assumption and assignment to it pursuant to the Purchase Agreement.

69. 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 APA. The Debtors propose 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 the 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.

70. The Debtors and the Debtors' estates 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 Debtors' Business Judgment**

71. 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 Debtors have 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 Debtors' creditors. In particular, a 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 Debtors' creditors than would be provided by any other existing alternative.

72. 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).

73. 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.”).

74. Applying section 363 of the Bankruptcy Code, the proposed Sale of the Assets should be approved. As set forth above, the Debtors have determined that the best method of maximizing the recovery of the Debtors’ creditors would be through the Sale of the Assets. Further, the Debtors believe that the value their estates (and, thus, the value for the Debtors’ creditors) will receive from the Sale of the Assets exceeds any value the Debtors’ estates could obtain for the Assets if the Debtors are required to liquidate their 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.**

75. 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 Financial 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”).

76. 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).

77. The Debtors believe 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 Debtors' creditors will receive the greatest possible consideration for the Debtors' Assets because they will ensure a competitive and fair bidding process. They also allow the Debtors to undertake an auction in as expeditious and efficient manner as possible, which the Debtors believe is essential to maximizing the value of the Debtors' estates for their creditors.

78. The Debtors also believe 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 Debtors' Assets. In particular, the proposed Bid Procedures will allow the Debtors 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 Debtors with the opportunity to consider all Qualified Bids and to select, in their reasonable business judgment, and after consultation with its professionals and the Committee, the highest and best offer(s) for the Assets.

79. In sum, the Debtors believe 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 Debtors' sound business judgment.

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

80. The Debtors further submit that it is appropriate to sell the Assets free and clear of Liens, Claims and Encumbrances, and other interests pursuant to section 363(f) of the Bankruptcy Code, with any such Liens, Claims and Encumbrances, and other interests 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 and Encumbrances, and other interests 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, Claims and Encumbrances, and other interests 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).

81. 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).

82. 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 Assets “free and clear” of Liens, Claims and Encumbrances, and other 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).

83. The Debtors believe 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 Debtors believe 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, Claims and Encumbrances, and other interests 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, Claims and Encumbrances, and other interests, if any, in each instance against the Debtors or their estates, 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 Debtors may possess with respect thereto. Accordingly, Section 363(f) authorizes the transfer and conveyance of the Debtors’ Assets free and clear of any such claims, interests, liabilities, or Liens, Claims and Encumbrances, and other interests .

84. 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).

85. 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)).<sup>6</sup> 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 Debtors' pre-sale conduct. Under section 363(f) of the Bankruptcy Code, the purchaser is entitled to know that the Debtors' 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

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<sup>6</sup> 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).

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**

86. The Debtors believe that they will obtain the maximum recovery for creditors of the Debtors' estates if the Assets are sold through the proposed Bid Procedures. As explained in detail above, the Debtors have already taken significant steps to identify potential purchasers.

87. Under Bankruptcy Rules 2002(a) and (c), the Debtors are required to notify creditors of the proposed sale of the Debtors' 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 Debtors submit 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 Debtors' 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 and Expense Reimbursement are Appropriate Under the Circumstances**

88. The Debtors submit that the Breakup Fee and Expense Reimbursement are a normal and oftentimes necessary component of sales outside the ordinary course of business under Section 363 of the Bankruptcy Code. In particular, such protections encourage a potential purchaser to invest the requisite time, money, and effort to conduct due diligence and sale

negotiations with a debtor despite the inherent risks and uncertainties of the chapter 11 process. See, e.g., *In re 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).

89. A proposed bidding incentive, such as the Breakup Fee and Expense Reimbursement, 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).

90. 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 Debtors believe that approval of the Breakup Fee and Expense Reimbursement will create such a competitive bidding process.

91. The Debtors believe that the proposed Breakup Fee and Expense Reimbursement are fair and reasonably compensate the Stalking Horse Purchaser for taking actions that will benefit the Debtors' estates. The Breakup Fee and Expense Reimbursement compensate the Stalking Horse Purchaser for diligence and professional fees incurred in negotiating the terms of the Purchase Agreement on an expedited timeline.

92. The Debtors do not believe that the Breakup Fee and Expense Reimbursement 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.

93. Payment of the Breakup Fee and Expense Reimbursement, if any, shall be made in accordance with the terms of the Purchase Agreement. Section 7.2 of the Purchase Agreement provides that in the event that the Purchase Agreement is terminated by Purchaser in accordance with Section 7.1(b), (c), (e) or (f) of the Purchase Agreement, the Stalking Horse Purchaser shall be entitled to (i) reimbursement of all reasonable out-of-pocket third party costs and expenses actually incurred in connection with and relating to the execution of the Purchase Agreement and consummation of the transactions contemplated thereby, including, without limitation, reasonable attorney's fees and expenses, diligence fees and costs and expenses incurred in connection with the capital structure of Purchaser, in an aggregate amount not to exceed \$400,000 (the "Expense Reimbursement") and (ii) a break-up fee in consideration of the Stalking Horse Purchaser's time, effort and expenses incurred in conducting its due diligence and benefit to the Debtors' estates from the submission of the Purchase Agreement, in an amount equal to \$500,000 (the "Break-Up Fee"), and the Stalking Horse Purchaser shall be granted an allowed administrative claim in the amount of the Expense Reimbursement and Break-Up Fee in accordance with Section 503(b)(1) of the Bankruptcy Code without further act, notice, deed or court order. In the event of an occurrence of an Alternative Transaction (as defined in the Purchase Agreement) pursuant to clause (iii) or (iv) of the definition thereof, such Expense

Reimbursement and Break-Up Fee shall be paid to Purchaser at the closing of such Alternative Transaction from the proceeds thereof. The Breakup Fee and Expense Reimbursement shall, in no event, be paid from or out of the professional fee account established pursuant to any cash collateral order entered in the Debtors' chapter 11 cases. The conditions under which the Stalking Horse Purchaser is not entitled to the Breakup Fee and Expense Reimbursement are described in section 7.2 of the Purchase Agreement.

94. Furthermore, the Breakup Fee, in an amount of \$500,000 and Expense Reimbursement of up to \$400,000 are not inconsistent with termination fees approved by bankruptcy courts in chapter 11 cases. *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).

95. In sum, the Breakup Fee and Expense Reimbursement are reasonable under the circumstances and will enable the Debtors 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**

96. 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).

97. 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).

98. 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.”).

99. 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).

100. The Debtors 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.

101. In addition, the Debtors submit 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 APA. 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.

102. Accordingly, the Debtors submit 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**

103. 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”).

104. The selection of the Successful Bidder will be the product of arms’ length, good-faith negotiations in an anticipated competitive purchasing process. The Debtors intend 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**

105. 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 Debtors request that the Sale Order be effective immediately by providing that the 14-day stays under Bankruptcy Rules 6004(h) and 6006(d) are waived.

106. 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.*

107. The Debtors 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**

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

**Notice**

109. Concurrently with this filing, copies of this Motion will be provided to (a) the Office of the United States Trustee; (b) the Debtors' top 30 unsecured creditors; (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, Claims and Encumbrances, and other interests with respect to the Assets, including, but not limited to, the Prepetition Lenders and DIP 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 Debtors' 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 Debtors' assets are located. In addition, within two (2) business days following entry of the Bid Procedures Order, the Debtors will serve the Sale and Bid Procedures Notice and the Creditor Notice as provided herein. The Debtors respectfully submit that such notice is sufficient, and request that the Court find that no further notice of the relief requested herein is required.

**WHEREFORE**, the Debtors respectfully request 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 18, 2018

PACHULSKI STANG ZIEHL & JONES LLP

*/s/ James E. O'Neill*

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[Proposed] Counsel for Debtors and Debtors in Possession

**Exhibit A**

**Bid Procedures Order**

**Exhibit A**

**Bid Procedures Order**

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

In re:	)	Chapter 11
	)	
ARECONT VISION HOLDINGS, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 18-11142 (CSS)
	)	(Jointly Administered)
	)	
Debtors.	)	<b>Docket Ref. No.</b> _____

**ORDER (A) AUTHORIZING ENTRY INTO THE  
ASSET PURCHASE AGREEMENT WITH RESPECT TO THE SALE  
OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS; (B) APPROVING  
BID PROCEDURES FOR THE SALE OF SUBSTANTIALLY ALL OF THE ASSETS  
OF DEBTORS; (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 AND EXPENSE REIMBURSEMENT PROVISIONS; AND  
(F) GRANTING OTHER RELATED RELIEF**

Upon the motion (the "Motion")<sup>2</sup> of the above-captioned debtors and debtors-in-possession (the "Debtors") for, in part, entry of an order (a) authorizing Debtors to enter into the Purchase Agreement in the form attached as Exhibit C to the Motion (the "Purchase Agreement") with Arecont Technologies LLC, an affiliate of Turnspire Capital Partners, LLC (the "Stalking Horse Purchaser") or with the Successful Bidder at an Auction held by the Debtors; (b) approving certain bid procedures for the sale of substantially all of the Debtors' 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,

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<sup>1</sup> The Debtors and the last four digits of their U.S. tax identification number are Arecont Vision Holdings, LLC (9187), Arecont Vision, LLC (1410), and Arecont Vision IC DISC (5376). The Debtors' noticing address in these chapter 11 cases is 425 Colorado Street, Suite 700, Glendale, CA 91205.

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

including notice of proposed cure amounts; (e) approving breakup fee and expense reimbursement; and (f) granting other related relief, 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 Debtors' bankruptcy estates, their 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 these chapter 11 cases. The Debtors have articulated good and sufficient reasons for the Court to grant the relief requested in the Motion regarding the Bid Procedures. The Bid Procedures represent a fair and appropriate method for maximizing the realizable value of substantially all of the Debtors’ Assets. Therefore, the Debtors are authorized to take any and all actions necessary or appropriate to implement the Bid Procedures.

E. The Debtors’ selection of the Stalking Horse Purchaser and entry into the Purchase Agreement with the Stalking Horse Purchaser are in the best interests of the Debtors and the Debtors’ estates and creditors. The Purchase Agreement with the Stalking Horse Bidder will enable the Debtors to secure an adequate floor for the Auction and will provide a clear benefit to the Debtors’ estate.

F. The Stalking Horse Purchaser has expended considerable time, money and energy pursuing the proposed sale of the Assets, and the Debtors have engaged in arms’ length good faith negotiations with such Stalking Horse Purchaser. The Breakup Fee, Expense Reimbursement, and other bidding protections, as set forth in the Purchase Agreement and Bid Procedures, in favor of a Stalking Horse Purchaser are (i) an actual and necessary cost and expense of preserving the Debtors’ estates within the meaning of sections 503(b) and 507(a)(2) of the Bankruptcy Code, (ii) commensurate to the real and substantial benefit that will be conferred upon the Debtors’ estates by the Stalking Horse Purchaser, and (iii) are reasonable and appropriate, in light of the size and nature of the contemplated sale transaction and comparable

transactions, the commitments that will be made under the Purchase Agreement and the efforts that have been expended by the Stalking Horse Purchaser. The Breakup Fee and Expense Reimbursement are a material inducement for the Stalking Horse Purchaser's entry into its stalking horse bid. The Stalking Horse Purchaser will be 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 and Expense Reimbursement. The payment of such amounts to the Stalking Horse Purchaser is fair and reasonable in view of the fact that, if the Breakup Fee and Expense Reimbursement are triggered, then the Stalking Horse Purchaser's efforts will have increased the prospects that the Debtors 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 Debtors have demonstrated a sound business justification for authorizing the payment of the Breakup Fee and Expense Reimbursement 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 Debtors, 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 Bid Procedures Order is in the best interests of the Debtors, their estates, their 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 Debtors are 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 and Expense Reimbursement as set forth in the Bid Procedures are hereby approved. The Debtors are authorized without further Court action to pay any Breakup Fee and Expense Reimbursement 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 Bid Procedures 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, if any, or the Debtors' top 30 unsecured creditors; (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 Debtors' assets are located and the Internal Revenue Service; (i) environmental authorities and other regulatory authorities in the states or applicable jurisdictions in which the Debtors' 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 Bid Procedures Order, the Debtors shall serve the Creditor Notice on all known creditors of the Debtors. Except as set forth in this and the foregoing paragraph of this Bid Procedures Order, no other or further notice of the sale shall be required to be provided by the Debtors.

8. Within two (2) business days following the entry of this Bid Procedures Order, the Debtors shall file and serve the Cure Notice to the counterparties to the Assumed Executory Contracts. Counterparties to the Assumed Executory Contracts<sup>3</sup> (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 \_\_\_\_\_, **2018, at \_\_\_\_\_ p.m. (Eastern Time)**. However, the Stalking Horse Purchaser may choose to add or delete certain Assumed Executory Contracts. If the Stalking Horse Purchaser chooses to add or delete an Assumed Executory Contract, then notice of that addition or deletion shall be provided to the affected counterparty by the Debtors approximately five (5) days prior to the Auction or, if no Auction is required, five (5) days prior to the Sale Hearing. Only those Assumed Executory Contracts assumed as of the closing of the Sale will be required to be cured.

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 be forever barred from objecting to the Cure Amounts and from

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

asserting any additional cure or other amounts against the Debtors, their estates, and the Successful Bidder with respect to the Assumed Executory Contracts to which it is a Counterparty. Notwithstanding anything herein 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 \_\_\_\_\_, **2018, 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 Debtors and Debtors-in-Possession, Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17<sup>th</sup> Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Courier 19801), Attn: Ira D. Kharasch, Esq. and James E. O’Neill, Esq.; (ii) counsel to the Official Committee of Unsecured Creditors: \_\_\_\_\_; (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: Benjamin Hackman; and (iv) counsel to the Stalking Horse Purchaser: Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, DE 19801-1494, Attn. Stephen M. Miller, Esq. and Chapman and Cutler LLP, 1270 Avenue of the Americas, 30th Floor, New York, NY 10020-1708, Attn: Michael Friedman, Esq. 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, and other interests).

11. Compliance with the foregoing notice provisions shall constitute sufficient notice of the Debtors' proposed Sale of the Assets free and clear of all Liens, Claims and Encumbrances, and other interests, 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 **June 29, 2018, at 4:00 p.m. (Eastern Time)**.

13. The Debtors, after consultation with the Committee and AIG, 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. Debtors shall provide the Qualified Bids to counsel for the Stalking Horse Purchaser in the manner provided in the Purchase Agreement.

14. If the Debtors receive more than one Qualified Bid (as defined in the Bid Procedures), an auction (the "Auction") will be held no later than **July 5, 2018, at 10:00 a.m. (Eastern Time)**, at the offices of Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17<sup>th</sup> Floor, Wilmington, Delaware 19801, or at any such other location as the Debtors may hereafter designate. The Stalking Horse Purchaser is deemed a Qualified Bidder for all purposes, including for purposes of participating in the Auction, should it wish to do so.

15. Counsel to the Debtors 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 Debtors 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 **July 6, 2018, 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, and other interests 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: \_\_\_\_\_, 2018

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Honorable Christopher S. Sontchi  
United States Bankruptcy Judge

**Exhibit 1**

**Bid Procedures**



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

In re: ) Chapter 11  
 )  
ARECONT VISION HOLDINGS, LLC, *et al.*,<sup>1</sup> ) Case No. 18-11142 (CSS)  
 )  
Debtors. ) (Jointly Administered)

**BID PROCEDURES FOR SALE OF  
SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS**

The above-captioned debtors and debtors in possession (the “Debtors”) filed a motion dated May 18, 2018 (the “Motion”),<sup>2</sup> 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 Debtors (the “Assets”). On May \_\_\_, 2018, the Bankruptcy Court entered its order (the “Bid Procedures Order”), which, among other things, approved the Bid Procedures. Debtors will seek to enter into a Purchase Agreement with a stalking horse bidder (the “Stalking Horse Purchaser”) for the sale of the Assets, subject to higher and better bids that may be submitted in accordance with these Bid Procedures.

On July 6, 2018, at \_\_\_\_\_ (Eastern time), as further described below and in the Bid Procedures Order, the Bankruptcy Court shall conduct the “Sale Hearing” at which the Debtors 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 Debtors, in their sole discretion (in consultation with the Committee and AIG), 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 of the Debtors, free and clear of any Liens, Claims and Encumbrances, and other interests. 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.

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<sup>1</sup> The Debtors and the last four digits of their U.S. tax identification number are Arecont Vision Holdings, LLC (9187), Arecont Vision, LLC (1410), and Arecont Vision IC DISC (5376). The Debtors’ noticing address in these chapter 11 cases is 425 Colorado Street, Suite 700, Glendale, CA 91205.

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

### ***Assets for Sale***

The Debtors are offering for sale the Assets, which generally consist of their IP megapixel camera technology for video surveillance applications and associated business, substantially all of the Debtors' other business assets and property associated with that technology. Except as otherwise provided in the Purchase Agreement, all of the Debtors' right, title and interest in and to the Assets subject thereto shall be sold free and clear of any Liens, Claims and Encumbrances, and other interests (other than Permitted Liens, Claims and Encumbrances and other interests, and/or except as otherwise provided in the Competing Agreement) to the maximum extent permitted by section 363 of the Bankruptcy Code, with such Liens, Claims and Encumbrances, 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, Claims and Encumbrances applied against the Assets.

### ***Participation Requirements***

In order to participate in the bidding process 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 Debtors and their counsel, not later than five (5) business days before the Bid Deadline (defined below), unless otherwise modified by the Debtors in their reasonable discretion (subject to the requirements of section 4.7(a) of the Purchase Agreement):

- a) Confidentiality Agreement. An executed confidentiality agreement ("Confidentiality Agreement") in form and substance acceptable to the Debtors;
- 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 Debtors 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 Debtors, 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 Debtors; 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 Debtors 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 Debtors 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 Debtors, in their discretion (in consultation with any Official Committee of Unsecured Creditors that may be appointed (the "Committee") and AIG Investment Management (U.S.), LLC ("AIG")), determine 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 Debtors, in their sole discretion and in consultation with the Committee and AIG, 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 herein.

### ***Access to Due Diligence Materials***

Only Potential Bidders that execute and deliver a confidentiality agreement satisfactory to the Debtors, in their sole discretion, are eligible to receive due diligence access or access to additional non-public information. The Debtors shall not be required to provide confidential or proprietary information to a Potential Bidder if the Debtors believe that such disclosure would be detrimental to the interests of the Debtors. If the Debtors determine that a Potential Bidder that has satisfied all requirements to become a Qualified Bidder and yet does not constitute a Qualified Bidder, then such Potential Bidder's right to receive due diligence access or access to additional non-public information shall terminate. The Debtors will designate an employee or other representative to coordinate all reasonable requests for additional information and due diligence access from Qualified Bidders. The Debtors shall not be obligated to furnish any due diligence information after the Bid Deadline (as hereinafter defined). The Debtors are 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 Debtors 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 Debtors 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 Debtors to determine that a bid made by a Qualified Bidder is not a Qualified Bid.

### **Bidding Process**

The Debtors and their advisors, shall (in consultation with Committee and AIG): (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 Debtors (in consultation with the Committee and AIG) 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 Debtors, 425 Colorado St., Suite 700, Glendale, CA, Attn: T. Scott Avila, and savila@armorystrategic.com, with copies to Imperial Capital, 277 Park Avenue, 48<sup>th</sup> Floor, New York, NY 10172, Attn: David E. Burns, and dburns@imperialcapital.com, with a copy to counsel for the Debtors, Pachulski Stang Ziehl & Jones LLP, 919 N. Market St., 17th Floor, Wilmington, Delaware 19801, Attn: Ira D. Kharasch and James E. O'Neill, not later than 4:00 p.m. (prevailing Eastern time) on June 29, 2018 (the "Bid Deadline"). The Debtors shall promptly provide copies of all Bids to counsel for the Committee and AIG.

A Bid received after the Bid Deadline shall not constitute a Qualified Bid.

### ***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 Debtors (in consultation with the Committee and AIG) to satisfy each of the following conditions), unless otherwise modified by the Debtors in their reasonable discretion (subject to the requirements of section 4.7(a) of the Purchase Agreement):

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 Arecont Vision, LLC in an amount to be determined by the Debtors, but in any event no less than 10% of the Bidder's offer.
2. Purchase Price. The consideration proposed by the Bid may include only cash and/or other consideration acceptable to the Debtors (in consultation with the Committee and AIG) (the cash component must be no less than an amount necessary to satisfy the Breakup Fee and Expense Reimbursement, as defined below). The Bid must clearly set forth the purchase price and identify any non-cash components including, without limitation, which liabilities of the Debtors the bidder is agreeing to assume (the "Purchase Price").
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"), *provided* that in the event that the Successful Bid is submitted by a party other than the Stalking Horse Purchaser, and the Stalking Horse Purchaser's Bid (or as amended by the Stalking Horse Purchaser at the Auction in response to competitive bidding) is declared to be the Back-Up Bid, then the Stalking

Horse Purchaser's Bid must only be irrevocable for fifteen (15) calendar days from the conclusion of the Sale Hearing.

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 Debtors 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 7.1 of the Purchase Agreement. A Bid should propose a contemplated transaction involving all or substantially all of the Assets, provided, however, that the Debtors in their sole discretion (in consultation with the Committee and AIG) may consider proposals for less than substantially all the Assets if such proposals or combination of proposals maximizes the value of the Debtors' estates.
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 Debtors (in consultation with the Committee and AIG) 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 and Expense Reimbursement. A Bid must allow for the immediate payment of the Breakup Fee and Expense Reimbursement 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 Debtors believe, in their sole discretion (in consultation with the Committee and AIG), that such Bid would be consummated if selected as the Successful Bid. The Debtors shall have the right to reject any and all Bids that they believe, in their sole discretion (in consultation with the Committee and AIG), do not comply with the Bid Procedures. In the event that any Potential Bidder is determined by the Debtors not to be a Qualified Bidder, the Potential Bidder shall be refunded its Good Faith Deposit.

#### ***Breakup Fee and Expense Reimbursement***

Recognizing the Stalking Horse Purchaser will expend time, energy and resources, and that the Stalking Horse Purchaser provide a floor bid with respect to the Assets that it offers to purchase, the Debtors are authorized (pursuant to the Bid Procedures Order) to provide the following bidding protections to the Stalking Horse Purchaser.

1. The Debtors have agreed to pay the Stalking Horse Purchaser, upon the terms set forth in the Purchase Agreement, (a) an amount equal to \$500,000 as a breakup fee (the "Breakup Fee") and (b) reimbursement of expenses up to \$400,000 (the "Expense Reimbursement"), in each case 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 Expense Reimbursement and result in additional consideration to the Debtors' estates in the amount of at least \$250,000 (as compared to the Purchase Price offered by such Stalking Horse Purchaser), after payment of the Breakup Fee and Expense Reimbursement.

#### **Auction**

If the Debtors receive at least two (2) Qualified Bids from Qualified Bidders (inclusive of the Stalking Horse Purchaser Bid) prior to the Bid Deadline, then the Debtors shall notify the Stalking Horse Purchaser, if any, and each other Qualified Bidder that the Debtors intend 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. At least forty-eight (48) hours prior to the Auction, the Debtors shall provide the Stalking Horse Purchaser, all Qualified Bidders and the Committee and AIG 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 Debtors, the Auction shall commence at **10:00 a.m. (Eastern time) on a date no later than July 5, 2018**, at the offices of Pachulski Stang Ziehl & Jones LLP,

919 N. Market St., 17th Floor, Wilmington, DE 19899, or at such other place designated by the Debtors.

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

If the Debtors do not receive more than one (1) Qualified Bid from a Qualified Bidder (inclusive of the Stalking Horse Purchaser Bid, 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 Stalking Horse Purchaser, the Debtors, the Committee, AIG, and the U.S. Trustee shall be permitted to attend the Auction.

Except as otherwise set forth herein, the Debtors (in consultation with the Committee and AIG) may conduct the Auction in the manner they determine will result in the highest or best offer for the Assets in accordance with the Bid Procedures.

In the Debtors' sole discretion, after the conclusion of the Auction, the Debtors 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 Debtors in their discretion.

**2. The Debtors Shall Conduct the Auction**

The Debtors and their professionals shall direct and preside over the Auction. At the start of the Auction, the Debtors shall describe the terms of the Baseline Bid. The determination of which Qualified Bid constitutes the Baseline Bid shall be made by the Debtors in their discretion (in consultation with the Committee and AIG), and may take into account any factors the Debtors reasonably deem relevant to the value of the Qualified Bid to the estates (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 Debtors reserve the right to conduct the Auction in the manner designed to maximize value based upon the nature and extent of the Qualified Bids received in accordance with the Bid Procedures. The Debtors 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 Debtors’ 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 \$100,000 in cash or other consideration acceptable to the Debtors; *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 \$100,000 Overbid less (3) \$900,000 (*i.e.*, the amount of the Breakup Fee and Expense Reimbursement).

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

#### **(b) Consideration of Overbids**

The Debtors reserve the right, in their reasonable business judgment, to make one or more adjournments in the Auction to, among other things: facilitate discussions between the Debtors and individual Qualified Bidders; allow individual Qualified Bidders to consider how they wish to proceed; and give Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their 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 Debtors may adopt rules for the Auction at or prior to the Auction that, in their reasonable discretion (in consultation with the Committee and AIG), 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 Debtors (in consultation with the Committee and AIG) 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 Debtors, their estates and their creditors.



**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 Debtors (in consultation with the Committee and AIG) 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 Debtors, 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 Debtors, the Back-up Bidder selected by the Debtors 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, *provided* that in the event that the Successful Bid is submitted by a party other than the Stalking Horse Purchaser, and the Stalking Horse Purchaser's Bid (or as amended by the Stalking Horse Purchaser at the Auction in response to competitive bidding) is declared to be the Back-Up Bid, then the Stalking Horse Purchaser's Bid must only be irrevocable for fifteen (15) calendar days from the conclusion of the Sale Hearing.

**Acceptance of Successful Bid**

The Debtors shall sell the Assets to the Successful Bidder upon the approval of the Successful Bid by the Bankruptcy Court after the Sale Hearing. The Debtors' presentation of a particular Qualified Bid to the Bankruptcy Court for approval does not constitute the Debtors' acceptance of such Qualified Bid. The Debtors 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 Debtors, their agents or their estates except to the extent set forth in the Purchase Agreement or 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 Purchase Agreement or the Competing Agreement of the Successful Bidder.

**Free of Any and All Interests**

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

**Sale Hearing**

The Sale Hearing shall be conducted by the Bankruptcy Court on July 6, 2018, 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 Debtors shall be authorized, but not required, to deem the Back-up Bid, as disclosed at the Sale Hearing, the Successful Bid, and the Debtors 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 Debtors 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 Debtors shall be entitled to retain the Successful Bidder's Good Faith Deposit as part of the Debtors' 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  
ARECONT VISION HOLDINGS, LLC, *et al.*,<sup>1</sup> ) Case No. 18-11142 (CSS)  
Debtors. )

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 DEBTORS' ASSETS**

**PLEASE TAKE NOTICE** that on May 18, 2018, the above-captioned debtor and debtors in possession (the “Debtors”) 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 Debtors’ Assets; (B) Approving Bid Procedures for the Sale of Substantially All of the Assets of Debtors; (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 and Expense Reimbursement Provisions; (II) Authorizing and Approving (A) the Sale of Certain Assets Free and Clear of All Liens, Claims and Encumbrances, Claims, Encumbrances and Interests and (B) the Assumption and Assignment of Certain Contracts and Leases; And (III) Granting Related Relief* (the “Motion”).<sup>2</sup>

<sup>1</sup> The Debtors and the last four digits of their U.S. tax identification number are Arecont Vision Holdings, LLC (9187), Arecont Vision, LLC (1410), and Arecont Vision IC DISC (5376). The Debtors’ noticing address in these chapter 11 cases is 425 Colorado Street, Suite 700, Glendale, CA 91205.

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

On \_\_\_\_\_, 2018, 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 Debtors' assets (the "Assets"). Pursuant to the Motion, the Debtors seek, *inter alia*, the Bankruptcy Court's approval of the sale of substantially all of its assets (the "Assets") to Arecont Technologies LLC, an affiliate of Turnspire Capital Partners, LLC (the "Stalking Horse Purchaser"), or to the other successful purchaser(s) of the Assets at an auction (the "Auction"), free and clear of liens, claims, encumbrances and other interests.

#### **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 \_\_\_\_\_, 2018 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 Christopher

S. Sontchi, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 5th Floor, Courtroom No. 6, 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, 17<sup>th</sup> Floor, P.O. Box 8705, Wilmington, Delaware 19899-8705 (Courier 19801), Attn: Ira D. Kharasch, Esq. and James E. O'Neill, Esq., [ikharasch@pszjlaw.com](mailto:ikharasch@pszjlaw.com); [joneill@pszjlaw.com](mailto:joneill@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 Debtors and Debtors-in-Possession, Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17<sup>th</sup> Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Courier 19801), Attn: Ira D. Kharasch, Esq. and James E. O'Neill, Esq.; (ii) counsel to the Official Committee of Unsecured Creditors:

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\_\_\_\_\_;

(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: Benjamin Hackman, Esq.; and

(iv) counsel to the Stalking Horse Purchaser: Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, DE 19801-1494, Attn. Stephen M. Miller, Esq. and Chapman and Cutler LLP, 1270 Avenue of the Americas, 30th Floor, New York, NY 10020-1708, Attn: Michael Friedman, Esq., so as to be received by \_\_\_\_\_, **2018, 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: Ira D. Kharasch, Esq. and James E. O'Neill, Esq., ikharasch@pszjlaw.com; joneill@pszjlaw.com.

Dated: \_\_\_\_\_, 2018

PACHULSKI STANG ZIEHL & JONES LLP

Ira D. Kharasch (CA Bar No. 109084)  
Maxim B. Litvak (CA Bar No. 215852)  
James E. O'Neill (Bar No. 4042)  
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Email: ikharasch@pszjlaw.com  
mlitvak@pszjlaw.com  
jo'neill@pszjlaw.com

[Proposed] Counsel for Debtors and Debtors in Possession

**Exhibit 3**

**Form of Creditor Notice**



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: ) Chapter 11  
 )  
ARECONT VISION HOLDINGS, LLC, *et al.*,<sup>1</sup> ) Case No. 18-11142 (CSS)  
 )  
Debtors. )

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 DEBTORS' ASSETS**

PLEASE TAKE NOTICE that on May 18, 2018, 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 Debtors' Assets; (B) Approving Bid Procedures for the Sale of Substantially All of the Assets of Debtors; (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 and Expense Reimbursement Provisions; (II) Authorizing and Approving (A) the Sale of Certain Assets Free and Clear of All Liens, Claims and Encumbrances, Claims, Encumbrances and Interests and (B) the Assumption and Assignment of Certain Contracts and Leases; and (III) Granting Related Relief* (the "Motion").<sup>2</sup>

<sup>1</sup> The Debtors and the last four digits of their U.S. tax identification number are Arecont Vision Holdings, LLC (9187), Arecont Vision, LLC (1410), and Arecont Vision IC DISC (5376). The Debtors' noticing address in these chapter 11 cases is 425 Colorado Street, Suite 700, Glendale, CA 91205.

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

On \_\_\_\_\_, 2018, the Court entered an order (the "Bid 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"). Pursuant to the Motion, the Debtors seek, *inter alia*, the Bankruptcy Court's approval of the sale of substantially all of its assets (the "Assets") to Arecont Technologies LLC, an affiliate of Turnspire Capital Partners, LLC (the "Stalking Horse Purchaser"), or to the other successful purchaser(s) of the Assets at an auction (the "Auction"), free and clear of liens, claims, encumbrances and other interests. 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, 17<sup>th</sup> Floor, P.O. Box 8705, Wilmington, Delaware 19899-8705 (Courier 19801), Attn: Ira D. Kharasch, Esq. and James E. O'Neill, Esq.

### **The Sale Hearing**

**PLEASE TAKE FURTHER NOTICE** that the Bankruptcy Court has scheduled a hearing for \_\_\_\_\_, **2018 (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 Christopher S. Sontchi, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 5<sup>th</sup> Floor, Courtroom No. 6, 5<sup>th</sup> Floor, 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, 17<sup>th</sup> Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Courier 19801), Attn: Ira D. Kharasch, Esq. and James E. O'Neill, Esq.; (ii) counsel to the Official Committee of Unsecured Creditors: \_\_\_\_\_; (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: Benjamin Hackman, Esq.; and (iv) counsel to any Stalking Horse Purchaser: Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, DE 19801-1494, Attn. Stephen M. Miller, Esq. and Chapman and Cutler LLP, 1270 Avenue of the Americas, 30th Floor, New York, NY 10020-1708, Attn: Michael Friedman, Esq., so as to be received by \_\_\_\_\_, **2018, 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: Ira D. Kharasch, Esq. and James E. O'Neill, Esq., [ikharasch@pszjlaw.com](mailto:ikharasch@pszjlaw.com); [joneill@pszjlaw.com](mailto:joneill@pszjlaw.com).

Dated: \_\_\_\_\_, 2018

PACHULSKI STANG ZIEHL & JONES LLP

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[Proposed] Counsel for Debtors and Debtors in  
Possession

**Exhibit 4**

**Form of Cure Notice**

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

In re: ) Chapter 11  
 )  
ARECONT VISION HOLDINGS, LLC, *et al.*,<sup>1</sup> ) Case No. 18-11142 (CSS)  
 )  
Debtors. )

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 May 14, 2018 (the “Petition Date”), the above-captioned debtors and debtors in possession (the “Debtors”) filed voluntary petitions for relief under title 11 of the United States Code (the “Bankruptcy Code”).

**PLEASE TAKE FURTHER NOTICE** that on May 18, 2018, the above-captioned debtors and debtors in possession (the “Debtors”) 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 Debtors’ Assets; (B) Approving Bid Procedures for the Sale of Substantially All of the Assets of Debtors; (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 and Expense*

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<sup>1</sup> The Debtors and the last four digits of their U.S. tax identification number are Arecont Vision Holdings, LLC (9187), Arecont Vision, LLC (1410), and Arecont Vision IC DISC (5376). The Debtors’ noticing address in these chapter 11 cases is 425 Colorado Street, Suite 700, Glendale, CA 91205.

*Reimbursement Provisions; (II) Authorizing and Approving (A) the Sale of Certain Assets Free and Clear of All Liens, Claims and Encumbrances, Claims, Encumbrances and Interests and (B) the Assumption and Assignment of Certain Contracts and Leases; and (III) Granting Related Relief (the “Motion”).*<sup>2</sup> On \_\_\_\_\_, 2018, 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 Debtors’ assets described in the Motion (the “Assets”) pursuant to the asset purchase agreement annexed as Exhibit C to the Motion (the “Purchase Agreement”). Pursuant to the Motion, the Debtors seek, *inter alia*, the Bankruptcy Court’s approval of the sale of substantially all of its assets (the “Assets”) to Arecont Technologies LLC, an affiliate of Turnspire Capital Partners, LLC (the “Stalking Horse Purchaser”), or to the other successful purchaser(s) (the “Successful Bidder”) of the Assets at an auction, free and clear of liens, claims, encumbrances and other interests.

**PLEASE TAKE FURTHER NOTICE** that the hearing on the Motion has been set for \_\_\_\_\_, 2018, at \_\_\_\_\_ (**Eastern Time**) before the Honorable Christopher S. Sontchi, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 5th Floor, Courtroom No. 6, 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 Debtors and assignment to the Stalking Horse Purchaser, or alternatively, to the Successful Bidder (each an

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

“Assumed Executory Contract”). A list of the Assumed Executory Contracts is set forth on **Exhibit A** hereto, along with the amount that must be paid to cure any defaults existing under such executory contracts (the “Cure Amount”), based upon the Debtors’ books and records, which the Debtors asserts is owed to cure any defaults existing under the Assumed Executory Contract as of the Petition Date.<sup>3</sup>

**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 \_\_\_\_\_, **2018, at**

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



**(Eastern Time)**. In addition, any objection must set forth the specific default or defaults alleged, 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, 17<sup>th</sup> Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Courier 19801), Attn: Ira D. Kharasch, Esq. and James E. O'Neill, Esq.; (ii) counsel to the Official Committee of Unsecured Creditors: \_\_\_\_\_; (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: \_\_\_\_\_; and (iv) counsel to any Stalking Horse Purchaser, Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, DE 19801-1494, Attn. Stephen M. Miller, Esq. and Chapman and Cutler LLP, 1270 Avenue of the Americas, 30th Floor, New York, NY 10020-1708, Attn: Michael Friedman, Esq., so as to be received by \_\_\_\_\_, 2018, 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: \_\_\_\_\_, 2018

PACHULSKI STANG ZIEHL & JONES LLP

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Ira D. Kharasch (CA Bar No. 109084)  
Maxim B. Litvak (CA Bar No. 215852)  
James E. O'Neill (Bar No. 4042)  
919 North Market Street, 17<sup>th</sup> Floor  
P.O. Box 8705  
Wilmington, Delaware 19899-8705 (Courier 19801)  
Telephone: 302-652-4100  
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Email: ikharasch@pszjlaw.com  
mlitvak@pszjlaw.com  
jo'neill@pszjlaw.com

[Proposed] Counsel for Debtors and Debtors in Possession

**Exhibit B**

**Sale Order**

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

In re:	)	Chapter 11
	)	
ARECONT VISION HOLDINGS, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 18-11142 (CSS)
	)	
Debtors.	)	Docket Ref. No. _____

**ORDER (A) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS PURSUANT TO ASSET PURCHASE AGREEMENT(S) FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES, AND OTHER INTERESTS, 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")<sup>2</sup> of the above-captioned affiliated debtors and debtors in possession (the "Debtors") 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 the Assets free and clear of Liens, Claims and Encumbrances, and other interests, except as provided in the asset purchase agreement by and between the Debtors and \_\_\_\_\_ (the "Successful Bidder") and (b) approving the assumption and assignment of certain of the Debtors' executory contracts and

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<sup>1</sup> The Debtors and the last four digits of their U.S. tax identification number are Arecont Vision Holdings, LLC (9187), Arecont Vision, LLC (1410), and Arecont Vision IC DISC. (5376). The Debtors' noticing address in these chapter 11 cases is 425 Colorado Street, Suite 700, Glendale, CA 91205.

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

unexpired leases related thereto to the Successful Bidder; and (c) granting related relief; 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 Debtors, their estates and their 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 Debtors' 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 Debtors 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.

E. 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;

F. 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 Debtors are 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's 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 Debtors are authorized to consummate and perform all of their 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 and Encumbrances, and other interests, except as otherwise provided in the Successful Bidder's APA, with any and all such Liens, Claims and Encumbrances, and other interests to attach to proceeds of such sale with the same validity (or invalidity), priority, force, and effect such Liens, Claims and Encumbrances, and other interests had on the Assets immediately prior to the Sale and subject to the rights, claims, defenses, and objections, if any, of the Debtors and all interested parties with respect to any such asserted Liens, Claims and Encumbrances, and other interests.

6. The Successful Bidder is not a successor to Debtors or these bankruptcy estates by any reason or theory of law or equity, and the 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, Claims and Encumbrances, and other interests against the 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 Debtors, 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 Debtors' 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 Debtors 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 Debtors 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 Debtors, creditors of the Debtors, and all other parties in interest in this Bankruptcy Case, and any successors of the Debtors, including any trustee or examiner appointed any of these cases or upon a conversion of any of these cases 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 Debtors 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 Debtors' 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 Debtors' estates.

Dated: \_\_\_\_\_, 2018

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Honorable Christopher S. Sontchi  
United States Bankruptcy Judge

**Exhibit 1**

**Purchase Agreement**

**(to be provided)**

**Exhibit C**

**Stalking Horse Purchase Agreement**

**(Without Schedules)**

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ASSET PURCHASE AGREEMENT  
BY AND BETWEEN

ARECONT VISION, LLC,  
A DELAWARE LIMITED LIABILITY COMPANY,  
AS SELLER,

AND

ARECONT TECHNOLOGIES LLC,  
A DELAWARE LIMITED LIABILITY COMPANY,  
AS PURCHASER

DATED AS OF MAY 17, 2018

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ASSET PURCHASE AGREEMENT dated as of May 17, 2018 (the "Agreement"), by and among Arecont Vision, LLC, a Delaware limited liability company (the "Seller"), and Arecont Technologies LLC, a Delaware limited liability company (the "Purchaser" and, together with Seller, sometimes collectively referred to herein as the "Parties"). Capitalized terms used herein but not defined in the provisions in which they first appear shall have the meanings ascribed to them in Section 8.1(a) hereof.

WITNESSETH:

WHEREAS, Seller is in the business of designing, manufacturing, distributing and selling IP-based megapixel cameras for use in video surveillance applications (collectively, such business and operations are referred to as the "Business");

WHEREAS, Seller desires to sell, and Purchaser desires to purchase, substantially all of the assets of the Seller used or held for use by the Seller in conducting the Business and to assume certain liabilities of the Seller associated with the Business, and Seller desires to sell such assets to Purchaser and to assign such liabilities to Purchaser and have Purchaser assume the same, all on the terms and conditions set forth in this Agreement and in accordance with Sections 105, 363 and 365 of Title 11 of the United States Code (the "Bankruptcy Code") and other applicable provisions of the Bankruptcy Code (the "Acquisition");

WHEREAS, on May 14, 2018 (the "Petition Date"), Seller and certain Affiliates commenced a voluntary chapter 11 case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), which case was assigned Case No.18-11142 and will be jointly administered by the Bankruptcy Court (the "Bankruptcy Case"); and

WHEREAS, it is contemplated that the Assets will be sold to Purchaser free and clear of Encumbrances (other than any Lien for personal property taxes attributable to any of the Assets which is a Lien not yet due and payable of the Closing Date) and the Acquisition will include the assumption by the Purchaser of the Assumed Contracts and Purchaser's assumption of the Assumed Liabilities, all in accordance with the terms, provisions and conditions of this Agreement and the Sale Approval Order.

NOW, THEREFORE, in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties, and covenants herein contained, the Parties agree as follows:

1. Purchase and Sale.
- 1.1 Assets to Be Transferred.

On the terms and subject to the conditions set forth in this Agreement, at the Closing, Seller shall sell, assign, transfer, convey and deliver (or cause to be sold, assigned, transferred, conveyed and delivered) to the Purchaser, and Purchaser shall purchase and assume from Seller, all of Seller's right, title and interest in and to substantially all of the Seller's properties, assets, and rights, tangible and intangible

(including goodwill) owned, used or held by Seller exclusively in the ownership, operation, or conduct of the Business, wherever such properties, assets and rights are located, whether real, personal or mixed, whether accrued, fixed, contingent or otherwise, other than the Excluded Assets (collectively, other than the Excluded Assets, the "Assets"), free and clear of all Liens (other than any Lien for personal property taxes attributable to any of the Assets which is a Lien not yet due and payable as of the Closing Date). Subject in all events to Section 1.2 below, the Assets shall include all of Seller's right, title, and interest in and to the following, in each case to the extent owned, used or held by Seller exclusively in connection with Seller's conduct of the Business:

- (a) [reserved];
- (b) all (i) Contracts listed on Schedule 1.1(b), and (ii) any other Contract entered into by Seller in the ordinary course of the Business (as conducted by Seller on the Execution Date) between the Execution Date and the Closing Date (collectively, the "Assumed Contracts"), provided that Purchaser may identify additional contracts to Seller up to five (5) days prior to the Auction (as such term is defined in the Bid Procedures Order) or, if no Auction is required, up to five (5) days prior to the Sale Hearing (as such term is defined in the Bid Procedures Order), to be deemed Assumed Contracts hereunder or may remove contracts currently on Schedule 1.1(b) as Assumed Contracts up to five (5) days prior to the Auction;
- (c) all Intellectual Property and all income, royalties, damages and payments due or payable at the Closing or thereafter relating to the Intellectual Property (including, without limitation, damages and payments for past or future infringements or misappropriations thereof);
- (d) all Fixed Assets;
- (e) all Inventory;
- (f) all Accounts Receivable;
- (g) all Prepaid Expenses;
- (h) all Security Deposits;
- (i) to the extent transferable without violating any privacy rights of any Business Employee, all Books and Records;
- (j) all material licenses, franchises, permits, variances, exemptions, orders, approvals, and authorizations issued by Governmental Bodies in connection with Seller's conduct of the Business (collectively, "Permits"), in each case to the extent transferable without the consent of the applicable Governmental Body;
- (k) all Equipment;

- (l) all telephone numbers, addresses (including electronic mail addresses) used by the Seller in connection with the Business;
- (m) all goodwill to the extent relating to the Assets and/or the Business;
- (n) all rights to causes of action, lawsuits, judgments and Claims of any nature available to Seller (whether or not such cause of action, lawsuit, judgment or Claim is being pursued) to the extent relating to the ownership, use, function or value of any Asset, whether arising by way of counterclaim, set off, or rights of self-help or otherwise;
- (o) all advertising, marketing and promotional materials and all other printed or written materials;
- (p) to the extent relating to or enforceable against any existing customer or vendor of the Business as of the Closing Date, all of the rights and claims of Seller for preference or avoidance actions available to the Seller under the Bankruptcy Code, of whatever kind or nature, including, without limitation, those set forth in Sections 544 through 551 and any other applicable provisions of the Bankruptcy Code, and any related claims and actions arising under such sections by operation of law or otherwise, including any and all proceeds of the foregoing (collectively, "Ongoing Business Avoidance Claims");
- (q) the capital stock of or membership interest in any subsidiary acquired in connection with this transaction, which may be identified to the Seller up to five (5) days prior to the Auction or, if no Auction is needed, up to five (5) days prior to the Sale Hearing (the "Acquired Stock");
- (r) to the extent still in force and effect as of the Closing Date, that certain promissory note dated May 2, 2014, executed by Raul Calderon in favor of Seller in the original principal amount of \$975,000.00 (the "Note"), the outstanding balance of which is approximately \$390,000.00 as of the date hereof; and
- (s) all representations, warranties, guarantees, indemnities, and undertakings to the extent solely benefiting the Business.

## 1.2 Excluded Assets.

Notwithstanding anything to the contrary contained in Section 1.1 or any other provision of this Agreement, the Assets shall exclude the Seller's right, title and interest in and to the following assets, properties and rights of the Seller (collectively, the "Excluded Assets"), all of which Excluded Assets shall be retained by Seller:

- (a) any cash, bank deposits and cash equivalents (excluding Security Deposits);



- (b) any assets, rights, claims, and interests expressly excluded pursuant to the provisions of Section 1.1 above;
- (c) all Real Property Leases;
- (d) all (i) fixed assets and Books and Records to the extent specifically identifiable to the ownership, business or conduct of any Excluded Asset or any Real Property Leases, and (ii) Books and Records to the extent excluded pursuant to the qualification to Section 1.1(i);
- (e) all capital stock or membership interests held by Seller in other Persons (other than the Acquired Stock);
- (f) all Contracts not listed on Schedule 1.1(b) (collectively, the "Excluded Contracts");
- (g) all of the rights and claims of Seller for preference or avoidance actions available to the Seller under the Bankruptcy Code, of whatever kind or nature, including, without limitation, those set forth in Sections 544 through 551 and any other applicable provisions of the Bankruptcy Code, and any related claims and actions arising under such sections by operation of law or otherwise, including any and all proceeds of the foregoing, but in each of the foregoing cases excluding the Ongoing Business Avoidance Claims;
- (h) all rights, claims and causes of action of Seller against present and former officers, directors, employees, members, principals, agents, and representatives of such Seller;
- (i) Seller's rights under this Agreement and all cash and non-cash consideration payable or deliverable to the Seller pursuant to the terms and provisions hereof;
- (j) any letters of credit or similar financial accommodations issued to any third party(ies) for the account of Seller and all collateral or security of any kind posted with or held by any such third party in connection therewith;
- (k) all deposits and prepaid amounts of Seller held by or paid to third Parties in connection with any Excluded Asset (including, without limitation, any deposits made by Seller with a utility pursuant to Section 366 of the Bankruptcy Code);
- (l) any tangible or intangible personal property held by Seller pursuant to a lease, rental agreement, license or other Contract to the extent that the associated lease, license or other Contract is not among the Assumed Contracts;
- (m) all rights, claims, credits and rebates of or with respect to (i) income Taxes that were paid or will be paid by Seller (whether prior to or after the Closing), and (ii) any taxes, assessments or similar charges paid by or on behalf of Seller to the extent applicable to any period prior to the Closing;

(n) insurance proceeds, claims and causes of action with respect to or arising in connection with (A) any Excluded Contract, (B) any item of tangible or intangible property not acquired by Purchaser at the Closing, (C) any loss, damage or casualty to any item of tangible or intangible property to the extent the same is repaired, restored or replaced prior to the Closing, or (D) any claims or causes of action of third Parties where any associated liabilities are not included among the Assumed Liabilities (as defined below);

(o) any 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 counterparty thereto may not be overridden pursuant to Section 365 of the Bankruptcy Code);

(p) all securities, whether capital stock or debt, of the Seller;

(q) tax records, minute books, stock transfer books and corporate seals of Seller;

(r) any intercompany claims, obligations, and receivables between or among Seller and any of Seller's Affiliates (collectively, "Intercompany Obligations");

(s) all rights, Claims and interests of Seller in, to and under that certain litigation styled as "Arecont Vision Holdings, LLC v. Wonder Vision Inc., et al.," pending under Case No. 2017-0741-JRS in the Court of Chancery of the State of Delaware;

(t) any writing or other item that is protected from discovery by the attorney-client privilege, the attorney work product privilege, the litigation privilege, or any other recognized privilege or protection; and

(u) those other assets of Seller, if any, listed on Schedule 1.2 attached hereto and incorporated herein by this reference.

### 1.3 Assumed Liabilities.

Upon the terms and subject to the conditions hereof, at the Closing, the Purchaser shall assume from the Seller only those Liabilities (collectively, the "Assumed Liabilities") arising with respect to (i) the performance from and after the Closing Date of the Assumed Contracts, (ii) any accrued sick pay, vacation and other paid time off to which any Business Employee is entitled to that have not been paid to such Business Employee prior to the Closing Date, provided, however, to the extent that any Business Employees is entitled under applicable law to that have any such amounts paid to them at the Closing (rather than having them assumed by Purchaser), then Purchaser shall pay such amounts to such Business Employee at the Closing in addition to (and not as part of) the cash portion of the Purchase Price; (iii) all Cure Costs payable in connection with the Assumed Contracts, (iv) all product warranties, guaranties, indemnities and the like related to the Business (whether arising out of activities occurring prior to or following the Closing), and (v) accounts payable of Seller as of the Closing Date owing to third

parties (including, for purposes of this Section 1.3, any accrued but unpaid sales commissions as of the Closing, whether to Business Employees or independent contractors) and obligations to customers of Seller for refunds, rebates, returns, discounts and the like as of the Closing Date, in each case, to the extent incurred by Seller in the ordinary course of Seller's Business (as conducted by Seller as of the Execution Date as the same may thereafter be restricted or otherwise modified by Seller's status as a Chapter 11 debtor in possession) (but specifically excluding any obligation on Purchaser's part to assume any Intercompany Obligations). Purchaser shall not assume or undertake to perform, pay, satisfy or discharge any other Liabilities or obligations of the Seller. Except as otherwise provided above or elsewhere in this Agreement, Purchaser shall not assume and shall be deemed not to have assumed, and the Seller shall remain liable with respect to, any and all Liabilities of the Seller arising out of, relating to or otherwise in respect of the Business, the Business Employees or the Assets prior to the Closing Date, and all other Liabilities of any Seller, other than the Assumed Liabilities, including but not limited to any obligations or liabilities under the WARN Act (collectively, the "Excluded Liabilities").

#### 1.4 Non-Assignment of Assets.

Notwithstanding any other provision of this Agreement to the contrary, this Agreement shall not constitute an agreement to assign or transfer and shall not effectuate the assignment or transfer of any Asset if (i) an attempted assignment or transfer thereof, without the approval, authorization or consent of, or granting or issuance of any license or permit by, any third party thereto or a Governmental Body (each such action, a "Necessary Consent"), would constitute a breach, default or violation thereof or of any applicable law, rule, regulation, statute or order, or in any way adversely affect the rights of Purchaser thereunder and (ii) the Bankruptcy Court has not entered an order providing that such Necessary Consent is not required. In such event, such assignment or transfer is subject to such Necessary Consent being obtained, and the Seller shall use its commercially reasonable efforts (which shall not be interpreted to require Seller to pay any material fee or the like to any third party) to obtain the Necessary Consents with respect to any such Asset or any claim or right or any benefit arising thereunder for the assignment or transfer thereof to Purchaser as Purchaser may reasonably request. For the avoidance of doubt, any asset that would be an "Asset" but is not assigned in accordance with this Section 1.4 shall not be considered an "Asset" for purposes hereof unless and until such asset is assigned to Purchaser following the Closing Date upon receipt of the Necessary Consent and Bankruptcy Court approval. If such Necessary Consent is not obtained, or if an attempted assignment or transfer thereof would be ineffective or would adversely affect the rights of Purchaser to such Asset following the Closing, the Seller shall (provided that Purchaser promptly (and in no event later than fifteen (15) days following written demand therefor (accompanied by reasonable evidence of such costs), the out of pocket costs incurred by Seller to maintain such Asset or continue to make such Asset available for use during such period) cooperate with Purchaser in any commercially reasonable arrangement to provide for Purchaser to obtain the benefits and assume the obligations thereunder in accordance with this Agreement, including subcontracting, sub-licensing, or subleasing to Purchaser, or under which the Seller

would enforce for the benefit of Purchaser (and at Purchaser's cost and expense) all of their rights thereunder.

1.5 Purchase Price; Deposit; Allocation of Purchase Price.

(a) In consideration for the sale and purchase of the Assets and assumption of the Assumed Liabilities, the Purchase Price shall be paid as follows:

(i) Within forty-eight (48) hours of the mutual execution and delivery of this Agreement, Purchaser shall deposit into an escrow (the "Escrow") with Pachulski Stang Ziehl & Jones LLP (the "Escrow Holder") an amount equal to \$1,000,000.00 (the "Deposit") in immediately available, good funds of the United States of America (funds delivered in this manner are referred to herein as "Good Funds"), pursuant to escrow instructions reasonably satisfactory to the Parties (the "Escrow Agreement"). Upon receipt of the Deposit, the Escrow Holder shall immediately deposit such amount into a non interest-bearing trust account.

(ii) At the Closing, the Purchaser shall cause the Deposit to be disbursed to Seller and shall tender the balance of the Purchase Price (in Good Funds) to Seller. As used in this Agreement, the term "Purchase Price" shall mean and refer to an amount equal to Ten Million Dollars (\$10,000,000.00) plus the amount of the Assumed Liabilities, subject to the working capital adjustment set forth in Section 1.6 below.

(iii) In the event this Agreement is terminated pursuant to Section 7.1, the Deposit shall be disbursed in accordance with Section 7.2.

(b) The Purchaser shall prepare a proposed allocation of the Purchase Price (and all other capitalized costs) among the Assets for U.S. federal, state, local and foreign income and franchise Tax purposes, which allocation shall be subject to Seller's reasonable approval. No later than thirty (30) Business Days following the Closing Date, the Purchaser shall deliver such proposed allocation to Seller. Following their mutual written agreement thereto, Purchaser and Seller and their respective Affiliates shall report, act and file Tax Returns in all respects and for all purposes consistent with such allocation prepared by the Purchaser. Neither the Purchaser nor Seller shall take any tax position (whether in audits, Tax Returns or otherwise) with respect to the mutually approved allocation which is inconsistent with such allocation, unless (and then only to the extent) required by a "determination" within the meaning of Section 1313(a) of the Code.

1.6 Adjustment of Purchase Price.

(a) Not less than five (5) days prior to the Closing Date, Seller shall in good faith and in consultation with Purchaser prepare and deliver to Purchaser a good faith estimated calculation of the Net Working Capital as of the Closing Date (the "Estimated Closing Net Working Capital"). If the Purchaser in good faith reasonably

disputes the Estimated Closing Net Working Capital calculation provided by Seller by an amount greater than \$300,000.00, then the Seller and the Purchaser agree to submit the Seller's Estimated Closing Net Working Capital calculation and the Purchaser's Estimated Closing Net Working Capital calculation to CohnReznick LLP or such other party mutually acceptable to Purchaser and Seller, who shall by no later than three (3) Business Days of submission of the dispute to it determine, as between Seller's and Purchaser's Estimated Closing Net Working Capital calculations, which Closing Net Working Capital calculation shall be binding on Seller and Purchaser. Purchaser's calculation of the Estimated Closing Net Working Capital shall be made in accordance with the methodology, procedures, assumptions and adjustments as set forth in Schedule 1.6 (the "Target Closing Net Working Capital Calculation Statement"). If (i) the Estimated Closing Net Working Capital exceeds the Target Closing Net Working Capital, the Purchase Price to be paid by Purchaser at the Closing shall be increased by such excess (the "Estimated Closing Net Working Capital Excess Amount") or (ii) the Estimated Net Closing Working Capital is less than the Target Closing Net Working Capital, the Purchase Price to be paid by Purchaser at the Closing shall be decreased by such deficiency (the "Estimated Closing Net Working Capital Deficiency Amount"), provided, however, that (A) if the Estimated Closing Net Working Capital Excess Amount or the Estimated Closing Net Working Capital Deficiency Amount, as applicable, is \$300,000.00 (such amount is referred to herein as the "Band Amount") or less, there shall be no adjustment to the Purchase Price based on such deficiency, or (B) if the Estimated Closing Net Working Capital Excess Amount or the Estimated Closing Net Working Capital Deficiency Amount, as applicable, is more than the Band Amount, the adjustment to the Purchase Price shall be the full amount of such excess or deficiency, as applicable.

(b) As promptly as possible and in any event within sixty (60) days after the Closing Date, Purchaser shall in good faith and in consultation with Seller prepare and deliver to Seller a good faith calculation of the Net Working Capital of Seller as of the Closing Date (the "Closing Net Working Capital"). Seller will have reasonable access to all work papers and books and records of the Business used by Purchaser in its calculation of the Closing Net Working Capital.

(c) Purchaser's determination of the Closing Net Working Capital will be final, conclusive and binding on Purchaser and Seller unless Seller provides a written notice (a "Dispute Notice") to Purchaser no later than the thirtieth (30th) day after delivery of Purchaser's calculation of the Closing Net Working Capital setting forth in reasonable detail (i) any item of Purchaser's calculation of the Closing Net Working Capital which Seller believes has not been prepared in accordance with this Agreement or the Target Closing Net Working Capital Calculation Statement (an "Item of Dispute") and (ii) the correct amount of such Item of Dispute in accordance with this Agreement. Any item or amount to which no dispute is raised in a timely fashion under the Dispute Notice will be final, conclusive and binding on Purchaser and Seller.

(d) If any dispute remains unresolved for a period of fifteen (15) days after Purchaser's receipt of a Dispute Notice, Purchaser and Seller shall jointly retain submit the remaining dispute to CohnReznick LLP or other mutually agreeable accounting firm

(the “Independent Auditor”). Purchaser and Seller shall request that the Independent Auditor render a determination (which determination shall be solely based on whether the Item of Dispute was prepared in accordance with the terms of this Section 1.6 or whether a mathematical error was made) as to each unresolved Item of Dispute within thirty (30) days after its retention, and Purchaser and Seller shall cooperate fully with the Independent Auditor so as to enable it to make such determination as quickly and as accurately as practicable. The Independent Auditor's determination as to each Item of Dispute shall be (i) based solely on presentations by Purchaser and Seller which are in accordance with the guidelines and procedures set forth in this Agreement (i.e., not on the basis of an independent review), (ii) in writing and (iii) conclusive and binding upon Purchaser and Seller, and the Closing Net Working Capital shall be modified to the extent necessary to reflect such determination. The Independent Auditor shall consider only the remaining Items of Dispute and the Independent Auditor may not assign a value to any Item of Dispute greater than the greatest value assigned by Purchaser, on the one hand, or Seller, on the other hand, or less than the smallest value for such item assigned by Purchaser, on the one hand, or Seller, on the other hand. The costs and expenses of the Independent Auditor shall be borne by the Parties in proportion to the difference in value assigned to any Item of Dispute by Purchaser, on the one hand, or Seller, on the other hand, and the value determined by the Independent Auditor.

(e) The final Closing Net Working Capital as finally determined pursuant to Section 1.6(c), if there is no dispute, or Section 1.6(d), if there is a dispute, is referred to as the “Final Closing Net Working Capital.” If (i) the Final Closing Net Working Capital exceeds the Estimated Closing Net Working Capital (such an amount, the “Final Closing Net Working Capital Excess Amount”), then Purchaser shall within five (5) days of the determination of the Final Closing Net Working Capital pay to Seller the Final Closing Net Working Capital Excess Amount less the Estimated Closing Net Working Capital Excess Amount previously paid by Purchaser at the Closing or (ii) the Final Closing Net Working Capital is less than the Estimated Closing Net Working Capital (such an amount, the “Final Closing Net Working Capital Deficiency Amount”), then Seller shall within five (5) days of the determination of the Final Closing Net Working Capital pay to Purchaser the Final Closing Net Working Capital Deficiency Amount less the Estimated Closing Net Working Capital Deficiency Amount previously deducted from the Cash Consideration paid by Purchaser at the Closing, *provided, however*, that (A) if the Final Closing Net Working Capital Excess Amount or the Final Closing Net Working Capital Deficiency Amount, as applicable, is equal to or less than the Band Amount, there shall be no adjustment to the Purchase Price or (B) if the Final Net Working Capital Excess Amount or the Final Net Working Capital Deficiency Amount, as applicable, is more than the Band Amount, the adjustment to the Purchase Price shall be limited solely to the amount of such excess or deficiency, as applicable.

“Net Working Capital” shall mean, with respect to the Seller, the sum, as of the Closing Date, of the (i) Accounts Receivable, plus (ii) Inventory, less (iii) accounts payable of Seller as of the Closing Date owing to third party vendors and suppliers of the Business (“Accounts Payable”) which are attributable to the period prior to the commencement of the Bankruptcy Case, less (iv) Accounts Payable attributable to the period from the

commencement of the Bankruptcy Case through the Closing Date, less (v) any purchase orders, commitments or contracts entered into outside of the Seller's ordinary course of business or as a result of an initiation of a new product line, including without limitation, Contera inventory (but, as to Contera inventory, purchase orders shall only be so deducted to the extent such purchase order was placed after the Petition Date), in each case made without Purchaser's approval, determined (i) in accordance with generally accepted accounting principles applied in accordance with the methodology, procedures, assumptions and adjustments set forth in **Schedule 1.6**, subject only to such exceptions thereto as may be agreed to by Purchaser and Seller, and (ii) based upon a physical inventory to be conducted at Seller's and Purchaser's joint expense as of the Closing.

"Target Closing Net Working Capital" shall mean the Net Working Capital of the Business as of the Closing Date as set forth in the Target Closing Net Working Capital Calculation Statement, such amount being \$10,300,000.00.

1.7 Closing.

Subject to the terms and conditions of this Agreement and entry of the Sale Approval Order, the sale and purchase of the Assets and the assumption of the Assumed Liabilities contemplated by this Agreement shall take place at a closing (the "Closing") to be conducted virtually by the Parties via electronic exchange and delivery of their respective deliverables and wire transfer of Good funds in accordance with such written wire transfer instructions as Seller may provide to Purchaser, such Closing to take place on the third (3rd) Business Day following the satisfaction or waiver of all conditions to the obligations of the Parties set forth in Sections 5 and 6 hereof (other than those conditions which by their nature can only be satisfied at the Closing), or at such other time, on such other date or in such other manner as the Seller and the Purchaser may mutually agree upon in writing (the day on which the Closing takes place being the "Closing Date").

1.8 Closing Deliveries by Seller.

At the Closing, unless otherwise waived in writing by the Purchaser, the Seller shall deliver or cause to be delivered to the Purchaser:

- (a) a duly executed Bill of Sale to transfer the Assets to the Purchaser;
- (b) a duly executed counterpart of the Assignment and Assumption Agreement;
- (c) a duly executed counterpart of the Assignment and Assumption Intellectual Property;
- (d) a duly executed counterpart of the Assumption of Assumed Liabilities;

(e) evidence of transfer of ownership of the Acquired Stock, including share certificate or instrument of transfer, any amendment to shareholder registry or other corporate records reflecting such transfer;

(f) copies or originals of all acquired Books and Records;

(g) originals of the Assumed Contracts, and if unavailable, true, correct and complete copies thereof;

(h) a certified copy of the Sale Approval Order;

(i) a duly executed copy of the Transition Services Agreement;

(j) UCC termination statements as to the assets of any subsidiary acquired by Purchaser in recordable form, with the cost of recordation to be at Purchaser's sole cost;

(k) current list of Inventory; and

(l) such other documents, notices, items and certificates (in each case to the extent not inconsistent with the other terms, provisions and limitations set forth herein and which do not otherwise impose any monetary cost on Seller or materially increase the burdens of this transaction upon Seller) as the Purchaser may reasonably require in order to consummate the transactions contemplated hereunder.

1.9 Closing Deliveries by the Purchaser.

At the Closing, unless otherwise waived in writing by the Seller, the Purchaser shall deliver or cause to be delivered to the Seller:

(a) An amount equal to the Purchase Price, by wire transfer of immediately available funds to an account (or accounts) designated in writing by Seller at least two (2) Business Days prior to the Closing Date;

(b) A duly executed counterpart of the Assignment and Assumption Agreement;

(c) A duly executed counterpart of the Assignment and Assumption of Intellectual Property;

(d) A duly executed counterpart of the Assumption of Assumed Liabilities; and

(e) Such other documents, notices, items and certificates as the Seller may reasonably require (in each case to the extent not inconsistent with the other terms, provisions and limitations set forth herein and which do not otherwise impose any monetary cost on Purchaser or materially increase the burdens of this transaction upon Purchaser) in order to consummate the transactions contemplated hereunder.



1.10 Further Conveyances and Assumptions.

From time to time following the Closing, the Seller and Purchaser shall, and shall cause their respective Affiliates to, execute, acknowledge and deliver all such further conveyances, notices, assumptions, assignments, releases and other instruments (collectively, "Further Instruments"), and shall take such further actions, as may be reasonably necessary or appropriate to assure fully to Purchaser and its respective successors or assigns, all of the properties, rights, titles, interests, estates, remedies, powers and privileges intended to be conveyed to Purchaser under this Agreement and to assure fully to Seller and its Affiliates and their successors and assigns, the assumption of the liabilities and obligations intended to be assumed by Purchaser under this Agreement, and to otherwise make effective the transactions contemplated hereby; provided, that nothing in this Section 1.10 shall (i) require Purchaser or any of their respective Affiliates to assume any Liabilities other than the Assumed Liabilities, or (ii) require Seller or any of its Affiliates to execute any Further Instrument or take any action that would in any material respect expand the Liabilities or monetary or other obligations imposed upon Seller by the other provisions of this Agreement, or require Seller or any Affiliate to initiate or join in any action, litigation or other proceeding other than those specifically contemplated by this Agreement.

1.11 Assignment to Affiliates of Purchaser.

Prior to the Closing, Purchaser shall have the right to assign its rights to receive all or any part of the Assets and its obligations to assume all or any part of the Assumed Liabilities, in each case to one or more Affiliates of Purchaser (each, a "Designated Purchaser") by providing written notice to Seller and each such Designated Purchaser shall be deemed to be a "Purchaser" for all purposes under this Agreement and under the Ancillary Agreements, except that no such assignment shall relieve Purchaser of any of its obligations hereunder.

1.12 Disposition of the Note. Unless Seller has previously obtained Bankruptcy Court approval to waive, and has waived, the obligations under the Note prior to the Closing, then immediately following the Closing, Purchaser shall terminate and forgive the Note and deliver to the maker thereof the original of the Note endorsed "discharged in full." The maker of the Note is intended to be (and shall be) an intended third party beneficiary of the covenant set forth in this Section 1.12.

2. Representations and Warranties of the Seller.

Except as set forth in any disclosure schedules to this Agreement (the "Disclosure Schedules") mutually agreed upon by the Parties in connection with the satisfaction of the conditions set forth in Sections 5.6 and 6.5 hereof, Seller hereby represents and warrants to the Purchaser on the date the Parties mutually execute and deliver this Agreement (the "Execution Date"), that:

2.1 Due Incorporation and Authority.

Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Seller is licensed, registered, qualified or admitted to do business in each jurisdiction in which the ownership, use or leasing of any of its assets or properties or the conduct or nature of the Business makes such licensing, qualification, or admission necessary (except where the failure to be so licensed, registered, qualified or admitted could not, individually or in the aggregate, have a material adverse effect on the Business). Seller has all requisite entity power and authority to own, lease and operate its properties and to carry on its business as now being conducted. Subject to the entry of the Bid Procedures Order and the Sale Approval Order, (a) Seller has all requisite corporate power and authority to enter into this Agreement, the Ancillary Agreements and each other agreement, document or instrument contemplated hereby or thereby to which Seller is a party, to carry out its obligations hereunder and thereunder, and to consummate the transactions contemplated hereby and thereby and (b) the execution and delivery of this Agreement, the Ancillary Agreements and each other agreement, document or instrument contemplated hereby and thereby to which Seller is a party, the performance by Seller of its obligations hereunder and thereunder, and the consummation by Seller of the transactions contemplated hereby and thereby have been duly authorized by all requisite entity action on the part of Seller. This Agreement has been duly and validly executed and delivered by Seller and (assuming the due authorization, execution and delivery by the other parties hereto and the entry of the Bid Procedures Order and the Sale Approval Order) this Agreement, the Ancillary Agreements and each other agreement, document or instrument contemplated hereby and thereby to which Seller is a party constitutes legal, valid and binding obligations of Seller enforceable against Seller in accordance with its respective terms and provisions, subject to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

2.2 No Conflicts or Consents of Third Parties.

(a) The execution and delivery by the Seller of this Agreement, the Ancillary Agreements and each other agreement, document or instrument contemplated hereby or thereby to which Seller is a party, the consummation of the transactions contemplated hereby and thereby, and the performance by Seller of this Agreement, the Ancillary Agreements and each other agreement, document or instrument contemplated hereby or thereby to which Seller is a party in accordance with its terms will not (with or without notice or lapse of time or both) conflict with, or result in violation of or default, or give rise to a right of termination, cancellation or acceleration of any obligation, under any provision of:

(i) the articles of organization or by-laws (or comparable instruments) of Seller;

(ii) subject to the entry of the Bid Procedures Order and the Sale Approval Order, any Permit or Material Contract to which Seller is a party or by which any of the assets, Liabilities or properties of Seller are bound;

(iii) subject to the entry of the Bid Procedures Order and the Sale Approval Order, any law to which Seller or any of its assets, Liabilities or properties are subject.

(b) Subject to the entry of the Bid Procedures Order and the Sale Approval Order, no consent, waiver, approval, order, Permit, authorization or declaration or filing with, or notification to, any Person or Governmental Body is required on the part of Seller in connection with the execution and delivery of this Agreement, the Ancillary Documents and any other agreement, document or instrument contemplated hereby or thereby to which Seller is a party, the compliance by Seller with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby or the taking by the Seller of any other action contemplated hereby or thereby (with or without notice or lapse of time or both).

### 2.3 Litigation.

Except as set forth on Schedule 2.3 attached hereto, there are no claims pending or, to the knowledge of the Seller, threatened against Seller, before any Governmental Body that would prevent or materially delay the consummation by Seller of the transactions contemplated by this Agreement, the Ancillary Agreements or affect any of the Assets or the Business or that could reasonably be expected to have a Material Adverse Change with respect to Seller.

### 2.4 Taxes.

Except as set forth on Schedule 2.4 attached hereto, Seller has (i) paid or caused to be paid to the proper authorities when due all federal, state, provincial, and local Taxes required to be paid or withheld by Seller, (ii) filed all federal, provincial, state and local tax returns which, to Seller's knowledge, are required to be filed, and (iii) paid or caused to be paid to the respective taxing authorities all Taxes as shown on said returns or on any assessment received by Seller to the extent such Taxes have become due. No audit or other proceeding by any Governmental Body is pending or, to the knowledge of Seller, threatened with respect to any Taxes due from or with respect to the Seller or any of its subsidiaries or with respect to any of the Assets. No written notice has been received from any Governmental Body of any intention to assert any deficiency or claim for additional Taxes against Seller or any of its subsidiaries or with respect to any of the Assets.

### 2.5 Titles and Liens.

Seller has good and absolute title to all of the Assets. Except as set forth on Schedule 2.5, the Seller owns the Assets free and clear of all Liens and, subject to the entry of the Sale Approval Order, at the Closing, Purchaser shall be vested with

defensible title to such Assets, free and clear of all Liens, to the fullest extent permissible by applicable law, including section 363(f) of the Bankruptcy Code.

2.6 Intellectual Property Rights.

(a) Owned Intellectual Property. Schedule 2.6(a) attached hereto is a complete list of all intellectual property rights for which Seller is an owner of record as of the date of this Agreement (the "Owned Intellectual Property"). Except as disclosed on Schedule 2.6(a), (i) Seller owns its Owned Intellectual Property free and clear of all restrictions (including covenants not to sue a third party), court orders, injunctions, decrees, or writs, whether by written agreement or otherwise, (ii) no person other than Seller owns or, except under content sharing licenses granted in the ordinary course of business or as set forth on Schedule 2.6(a), has been granted any right in the Owned Intellectual Property, (iii) all material Owned Intellectual Property is valid, subsisting and enforceable, and (iv) Seller has taken all commercially reasonable action necessary to maintain and protect the Owned Intellectual Property.

(b) Intellectual Property Rights Licensed from Others. Schedule 2.6(b) is a complete list of all agreements under which Seller has licensed Intellectual Property Rights from another Person (the "Licensed Intellectual Property") as of the date of this Agreement other than content sharing licenses granted in the ordinary course of business and readily available, non-negotiated licenses of computer software and other intellectual property used solely for performing accounting, word processing and similar administrative tasks. Except as disclosed on Schedule 2.6(b), Seller's licenses to use the Licensed Intellectual Property are free and clear of all restrictions, court orders, injunctions, decrees, or writs, whether by written agreement or otherwise. Except as disclosed on Schedule 2.6(b), Seller is not obligated or under any liability whatsoever to make any payments of a material nature by way of royalties, fees or otherwise to any owner of, licensor of, or other claimant to, any intellectual property rights.

(c) Infringement. Except as disclosed on Schedule 2.6(c), Seller does not have knowledge of, or has received any written claim or notice alleging, any Infringement of another person's intellectual property rights (including any written claim that Seller must license or refrain from using the intellectual property rights of any third party) nor, to such Seller's knowledge, is there any such threatened claim.

(d) The Intellectual Property constituting "Assets" is sufficient for Purchaser to carry on the Business from and after the Closing Date as presently carried on by the Seller in the ordinary course, consistent with past practice.

2.7 Real Property.

Schedule 2.7 attached hereto sets forth each lease or sublease for real property to which Seller is a party (each a "Leased Real Property"). Except as described on Schedule 2.7 attached hereto, each lease or sublease for the Leased Real Property is valid and enforceable in accordance with its terms and is in full force and effect, other than as a result of the commencement of the Bankruptcy Case. Except as described on Schedule

2.7, to Seller's knowledge, no default by any party to any lease or sublease for the Leased Real Property exists other than as a result of the commencement of the Bankruptcy Case. There are no leases, subleases, licenses, concessions, options or rights of first refusal to purchase or lease, or other agreements, written or oral, granting to any party or parties the right of use or occupancy of any Leased Real Property or any portion thereof and there are no parties (other than the Seller) in possession of the Leased Real Property or any portion thereof. No Equipment, Inventory or other tangible personal property is located at any real estate location other than the Leased Real Property. Seller does not own any fee interest in real property.

2.8 [reserved]

2.9 Material Contracts.

Schedule 2.9 sets forth a true, correct and complete list of all Material Contracts. Other than arising as a result of the commencement of the Bankruptcy Case, each Material Contract (other than those that have expired at the end of their normal terms) (a) is in full force and effect and is binding upon and enforceable against Seller and, to Seller's knowledge, each other person that is a party thereto in accordance with its terms, (b) has not been otherwise amended or modified, and (c) is not in default in any material respect due to the action or inaction of Seller except any defaults based on unpaid prepetition obligations.

"Material Contract" means each contract or agreement to which Seller is a party involving aggregate consideration payable to or by Seller of \$50,000 or more.

2.10 Environmental Condition.

(a) Seller is in compliance in all material respects with all Environmental Laws and has not caused a Release of Hazardous Material at the location of the Real Property Lease or at any off-site location. In addition, (a) none of Seller's properties or assets have ever been used by Seller or, to the Seller's knowledge, by previous owners or operators in the disposal of, or to produce, store, handle, treat, release, or transport, any Hazardous Materials, where such disposal, production, storage, handling, treatment, release or transport was in violation, in any material respect, of any applicable Environmental Law, (b) to Seller's knowledge, none of Seller's properties or assets has ever been designated or identified in any manner pursuant to any environmental protection statute as a Hazardous Materials disposal site, (c) Seller has never received notice that a Lien arising under any Environmental Law has attached to any revenues or to any Real Property Lease operated by Seller, and (d) Seller nor any of its facilities or operations is subject to any outstanding written order, consent decree, or settlement agreement with any person relating to any Environmental Law or environmental liability that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change.

(b) There is no applicable order under which Seller or any Asset with respect to the Business currently has outstanding obligations, or any pending or, to the

Seller's knowledge, threatened and unresolved written notice (including a notice of investigation), claim, or complaint, with respect to a Release of Hazardous Materials or violation of an Environmental Law in connection with the operation of the Business or the Real Property Lease.

(c) Seller holds and is in compliance in all material respects with all material Permits required under Environmental Laws in connection with the operation of the Business and the use of the Real Property Lease ("Environmental Permits") and there are no regulatory proceedings pending or, to the Seller's knowledge, threatened to revoke, cancel or materially modify the terms of any such Environmental Permits. Seller has not expressly assumed by Contract or provided any contractual indemnity in any lease or real estate purchase or sales contract with respect to any material Liability of any other person under Environmental Laws.

2.11 Employee Benefits.

Neither Seller nor any Affiliate thereof maintains or contributes to any Benefit Plan.

2.12 Labor Matters.

(a) Schedule 2.12 sets forth a true, correct and complete list as of the date hereof of all Business Employees, including each Business Employee's (i) full name, (ii) job title or function, (iii) job location, (iv) salary or wage rate, (v) bonus opportunity, commission status or other incentive compensation paid or payable for 2017 and 2018, (vi) bonus, commission or incentive compensation paid in 2017 and 2018, (vii) the amount of accrued but unused vacation time, (viii) date of hire, (ix) visa type (if applicable) and (x) current status (as to leave or disability status, full-time or part-time, exempt or nonexempt and temporary or permanent status). Schedule 2.12 sets forth (i) a true, correct and complete list of all consultants or independent contractors (collectively, the "Service Providers") who has been performing services for the Seller and its subsidiaries and whose compensation has been in the most recent calendar year or for the current calendar year is anticipated to be in excess of \$50,000, including each such person's (A) full name, (B) function or services provided, (C) job location, and (D) current compensation structure. Except as set forth on Schedule 2.12, no Business Employee or Service Provider is located outside the jurisdiction of the United States.

(b) The Seller and its subsidiaries have complied in all material respects with all applicable Labor Laws for all Business Employees and Service Providers. A properly completed Form 1-9 is on file with respect to each Business Employee. Except as set forth in Schedule 2.12, there is no pending, nor, to the knowledge of Seller, is there any threatened, legal proceeding reasonably likely to give rise to a material Liability asserting that Seller or any of its subsidiaries has committed an unfair labor practice, act of discrimination, or other similar complaints with respect to any Employee or Service Provider.

(c) Neither Seller nor any of its subsidiaries is party to any labor, collective bargaining, union and similar agreement with respect to any Business Employee or Service Provider. No collective bargaining or any other labor-related contract with any labor union or labor organization is currently being negotiated with respect to any Business Employee or Service Provider. There is not pending or, to the knowledge of Seller, threatened, any organized effort or demand for recognition or certification or attempt to organize the Business Employees by any labor organization. There are no strikes, slow-downs, work stoppages, other labor disturbance or other concerted action by any union or other group of employees or other persons against or involving Seller presently occurring or, to the knowledge of Seller, threatened against or involving Seller.

(d) There has been no “mass layoff” or “plant closing” (as defined by the WARN Act) with respect to Seller or the Business within the past twelve months. Neither Seller or any subsidiary of Seller has incurred any Liability under the WARN Act that remains unpaid or unsatisfied.

(e) Since the Petition Date, Seller has not increased the compensation or benefits paid or payable to any Business Employee or Service Provider (including any such increase pursuant to any bonus, pension, profit sharing, severance or termination pay).

(f) Neither Seller nor any of its subsidiaries is party to any employment or similar agreement with respect to any Business Employee.

2.13 Compliance with Laws.

Seller (a) is not in violation of any applicable laws, rules, regulations, executive orders, or codes (including environmental laws) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change, and (b) is not subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change.

2.14 [reserved]

2.15 Ordinary Course of Business; No Undisclosed Liabilities.

(a) Except as ordered by the Bankruptcy Court and disclosed in the filings made by the Seller with the Bankruptcy Court in connection with the Bankruptcy Case on or before the Effective Date, since the Petition Date, Seller has conducted the Business and owned and operated the Assets in the ordinary course of business.

(b) There are no material Liabilities related to the Business that would be Assumed Liabilities except for Liabilities incurred in the ordinary course of business consistent with historical practice.

2.16 Broker; Financial Advisor.

No Person has acted, directly or indirectly, as a broker, agent, finder or financial advisor for the Seller in connection with the transactions contemplated by this Agreement and each agreement, document or instrument contemplated hereby, and no Person is entitled to any fee or commission or like payment in respect thereof, except for Imperial Capital, LLC, whose success fee in connection with the transaction contemplated by this Agreement shall be paid by Seller.

2.17 Accounts Receivable.

All accounts receivable of the Business have arisen in the ordinary course of business and represent valid assets of the Seller.

2.18 [reserved]

2.19 Insurance and Bonds.

Schedule 2.19 sets forth a true, correct and complete list of all insurance policies of the Seller which insure the Business or any of the Assets, and a true, correct and complete list of all letters of credit, surety bonds and performance bonds required to be obtained by the Seller in connection with the Business. All such insurance policies are in full force and effect, all premiums with respect thereto covering all periods up to and including the Closing have been paid, and other than has been disclosed on Schedule 2.19, no notice of cancellation or termination has been received with respect to any such insurance policy.

2.20 Affiliate Transactions.

Except as set forth on Schedule 2.20, no current or, to the knowledge of the Seller, no former director, officer, employee, Affiliate or representative of the Seller (nor any spouse or child of any of such Persons, or any trust, partnership or corporation in which any of such Persons has a material economic interest) (a) owns any property, assets, interests and rights, tangible or intangible, that is an Asset or that is material to the conduct of the Business, (b) has filed or otherwise has any legal proceeding against the Business, (c) is a controlling Affiliate of any customer or supplier of the Business, or (d) is a party to or the beneficiary of any Contract with the Business.

2.21 Seller as Debtor in Possession; No Trustee.

From the Petition Date through the Closing Date, the Seller has been at all times in its Bankruptcy Case a debtor-in-possession pursuant to section 1107 of the Bankruptcy Code, and no trustee or examiner has been appointed in the Bankruptcy Case.

3. Representations and Warranties of the Purchaser.

The Purchaser represents and warrants to the Seller on the Execution Date as follows:



3.1 Due Incorporation and Authority.

The Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Subject to the entry of the Bid Procedures Order and the Sale Approval Order, the Purchaser has all requisite entity power and authority to enter into this Agreement, the Ancillary Agreements and each other agreement, document or instrument contemplated hereby and thereby to which Purchaser is a party, to carry out its obligations hereunder, and to consummate the transactions contemplated hereby and thereby. The execution and delivery by the Purchaser of this Agreement, the Ancillary Agreements and each other agreement, document or instrument contemplated hereby or thereby to which Purchaser is a party, the performance by the Purchaser of its obligations hereunder and thereunder and the consummation by the Purchaser of the transactions contemplated hereby and thereby have been duly authorized by all requisite entity action on the part of the Purchaser. This Agreement has been duly executed and delivered by the Purchaser and (assuming the due authorization, execution and delivery by the other parties hereto and the entry of the Bid Procedures Order and the Sale Approval Order) this Agreement, the Ancillary Agreements and each other agreement, document or instrument contemplated hereby and thereby to which Purchaser is a party constitutes legal, valid and binding obligations of Purchaser enforceable against Purchaser in accordance with its respective terms and provisions, subject to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

3.2 No Conflicts.

The execution and delivery by Purchaser of this Agreement, the Ancillary Agreements and each other agreement, document or instrument contemplated hereby or thereby to which Purchaser is a party, the consummation of the transactions contemplated hereby and thereby, and the performance by Purchaser of this Agreement, the Ancillary Agreements and each other agreement, document or instrument contemplated hereby or thereby to which Seller is a party in accordance with its terms will not (with or without notice or lapse of time or both) conflict with, or result in violation of or default, or give rise to a right of termination, cancellation or acceleration of any obligation, under any provision of:

(a) the certificate of formation and operating agreement (or comparable instruments) of the Purchaser;

(b) subject to the entry of the Bid Procedures Order and the Sale Approval Order, require the Purchaser to obtain any material consents, approvals, authorizations or actions of, or make any filings with or give any notices to, any Governmental Bodies or any other Person, except for (i) the notification requirements of the HSR Act (and any foreign counterpart thereof) or (ii) consents, approvals or authorizations of, or declarations or filings with, the Bankruptcy Court;

(c) subject to the entry of the Bid Procedures Order and the Sale Approval Order, any material Contract to which the Purchaser is a Party or by or to which each of the Purchaser or any of its properties is or may be bound or subject; or

(d) violate any law to which the Purchaser is subject.

Subject to the entry of the Bid Procedures Order and the Sale Approval Order, no consent, waiver, approval, order, Permit, authorization of or declaration or filing with, or notification to, any Person or Governmental Body is required on the part of Purchaser in connection with the execution and delivery of this Agreement, the Ancillary Documents and any other agreement, document or instrument contemplated hereby or thereby to which Purchaser is a party, the compliance by Purchaser with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby or the taking by the Purchaser of any other action contemplated hereby or thereby (with or without notice or lapse of time or both).

### 3.3 Litigation.

There are no legal proceedings pending or, to the knowledge of the Purchaser, threatened against the Purchaser, before any Governmental Body, which if adversely determined, would reasonably be expected to have a material adverse change with respect to Purchaser.

### 3.4 Availability of Funds.

Purchaser has, and on the Closing Date will have, cash available and committed to the transactions contemplated herein that is sufficient to enable Purchaser to consummate such transactions and perform all of its obligations in accordance with the terms and provisions of this Agreement.

### 3.5 Broker or Financial Advisor.

No Person has acted, directly or indirectly, as a broker, agent, finder or financial advisor for Purchaser in connection with the transactions contemplated by this Agreement and each agreement, document or instrument contemplated hereby and no Person is entitled to any fee or commission or like payment in respect thereof.

### 3.6 "AS IS" Transaction.

Purchaser hereby acknowledges and agrees that, except as expressly provided in Section 2 of this Agreement, Seller makes no representations or warranties whatsoever, express or implied, with respect to any matter relating to the Assets that will survive or continue beyond the Closing (including, without limitation, income to be derived or expenses to be incurred in connection with the Assets, the physical condition of any personal property comprising a part of the Assets or which is the subject of any Assumed Contract to be assumed by Purchaser at the Closing, the condition or other matter relating to the physical condition of any real property or improvements, the value of the Assets (or any portion thereof), the transferability of Assets, the terms, amount, validity,

collectability or enforceability of any Assumed Liabilities or other Assumed Contract, the title of the Assets (or any portion thereof), the merchantability or fitness of the Fixed Assets or Equipment or other tangible personal property included among the Assets or any other portion of the Assets for any particular purpose, or any other matter or thing relating to the Assets or any portion thereof). 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 Assets. Purchaser further acknowledges that Purchaser has conducted an independent inspection and investigation of the physical condition of all portions the Assets and all such other matters relating to or affecting the Assets as Purchaser deemed necessary or appropriate and that in proceeding with its acquisition of the Assets, Purchaser is doing so based solely upon such independent inspections and investigations. Accordingly, Purchaser will accept the Assets at the Closing "**AS IS, "WHERE IS," and "WITH ALL FAULTS."**

4. Covenants and Agreements.

4.1 Conduct of Business.

Except (i) as expressly provided in this Agreement or on Schedule 4.1(b), or (ii) to the extent that the following is inconsistent with Seller's duties and obligations as a debtor in the Bankruptcy Case or with orders issued by the Bankruptcy Court, or (iii) as otherwise agreed to in writing by the Purchaser, Seller agrees that, from the date hereof until the earlier of the Closing and the date, if any, on which this Agreement is terminated pursuant to Section 7.1 hereof:

(a) Seller shall use commercially reasonable efforts to operate the Business in the ordinary course of business consistent with past practice during the period immediately preceding the Execution Date and to preserve intact the Business, keep available the service of its officers and employees and preserve its relationships with suppliers.

(b) Seller shall not, directly or indirectly:

(i) sell or convey any of the Assets or any interests therein, except in the ordinary course of business consistent with past practice during the period immediately prior to the Execution Date;

(ii) with respect to the Business, change its method of accounting or any accounting principle, method, estimate or practice, except in the ordinary course of business consistent with past practice or as may be required by GAAP or any other applicable law;

(iii) cancel, terminate or amend the Real Property Lease or any other Material Contract;

(iv) acquire or agree to acquire by merging or consolidating with, or by purchasing any equity interest in or a portion of the assets of, or by any other manner, any business or any Person or division thereof;

- (v) enter into any joint ventures, strategic partnerships or alliances;
- (vi) enter into any Contract the effect of which would be to grant to a third party any license to use any Intellectual Property for a period extending beyond the Closing Date;
- (vii) adopt a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or reorganization in the Bankruptcy Case;
- (viii) sell, lease, transfer, encumber, or otherwise dispose of any Intellectual Property; or
- (ix) agree in writing or otherwise to take any of the actions described in (i) through (viii) above.

Notwithstanding anything in this Agreement to the contrary, (i) all of the actions described in this Section 4.1 relate solely to the Business and the Assets and the Purchaser acknowledges that the Seller can take any actions, in its sole and absolute discretion, relating solely to the Excluded Assets and/or Excluded Liabilities, and (ii) nothing in this Section 4.1 or the other provisions of this Agreement shall be construed as precluding or restricting Seller from liquidating or otherwise disposing of “excess,” “discontinued” or “B stock” Inventory in such manner as Seller may deem appropriate pending the Closing.

#### 4.2 Expenses.

Except as otherwise specifically provided herein, the Purchaser and the Seller shall bear their respective expenses incurred in connection with the preparation, execution and performance of this Agreement, the Ancillary Agreements and the transactions contemplated hereby.

#### 4.3 Access to Information.

From the date hereof until the earlier of (x) the Closing and (y) any termination of this Agreement pursuant to Section 7.1, upon reasonable notice, Seller shall, and shall cause each of its officers, directors, employees, auditors and agents to, (i) afford the officers, employees and representatives of the Purchaser reasonable access, during normal business hours, to the offices, plants, warehouses, properties, books and records of Seller, and (ii) furnish to the officers, employees and representatives of the Purchaser such additional financial and operating data and other information regarding the operations of Seller and the Business as are then in existence and as the Purchaser may from time to time reasonably request; provided, however, that such investigation shall not unreasonably interfere with the operations of the Seller; and provided further, however, that (i) the auditors of the Seller shall not be obliged to make any work papers available to any Person except as otherwise provided herein, (ii) without Seller’s prior written consent (which consent Seller’s may grant or withhold in their sole discretion), in no

event shall Purchaser be entitled to conduct or cause to be conducted any Phase II environmental or other “invasive” testing of or at any of Seller’s plants, offices, warehouses, or properties, and (iii) nothing in this Section 4.3 shall be deemed to give rise to any condition or contingency to Purchaser’s obligation to consummate the transactions contemplated herein. Other than in the case of information that is publicly disclosed or filed in the Bankruptcy Court or further made available by Seller to prospective bidders, information provided pursuant to this Section 4.3 shall be governed by the terms of the confidentiality agreement in place between Seller and Purchaser.

#### 4.4 Further Assurances; Consents; Regulatory Filings.

(a) Each of the Parties shall cooperate and use its commercially reasonable efforts to (i) take, or cause to be taken, all appropriate action, and do, or cause to be done, all things necessary, proper or advisable under any law or otherwise to consummate and make effective the transactions contemplated by this Agreement and the Ancillary Agreements, (ii) obtain any consents, licenses, permits, waivers, approvals, authorizations or orders required to be obtained or made in connection with the authorization, execution and delivery of this Agreement and, to the extent that the need for the same is not obviated by the entry of the Sale Approval Order, the consummation of the transactions contemplated hereby, and (iii) within thirty (30) calendar days of the date hereof, make all filings and give any notice, and thereafter make any other submissions either required or reasonably deemed appropriate by each of the Parties, with respect to this Agreement and the transactions contemplated hereby required under any law, including applicable securities and antitrust laws, and the rules and regulations of any stock exchange on which the securities of any of the Parties are listed or traded. For the avoidance of doubt, commercially reasonable efforts shall not obligate Seller or Purchaser to make or offer to make any payments to obtain any consents, licenses, permits, waivers, approvals, authorizations or orders.

(b) The Parties shall cooperate and consult with each other in connection with the making of all such filings and notices, including by providing copies of all such documents to the non-filing Party and its advisors a reasonable period of time prior to filing or the giving of notice to the extent practicable. Neither Party to this Agreement shall consent to any voluntary extension of any statutory deadline or waiting period or to any voluntary delay of the consummation and the transactions contemplated in this Agreement at the behest of any Governmental Body without the consent and agreement of the other Party to this Agreement, which consent shall not be unreasonably withheld or delayed. Each Party shall promptly inform the others of any material communication from any Governmental Body regarding any of the transactions contemplated by this Agreement. To the extent practicable, no Party shall agree to participate in any meeting with any Governmental Body in respect of any filing with such body, investigation or other inquiry unless it consults with the other Party in advance and, to the extent permitted by such Governmental Body, gives the other Party the opportunity to attend and participate at such meeting.

(c) If after the Closing (i) Purchaser holds any Excluded Assets or Excluded Liabilities or (ii) Seller holds any Assets or Assumed Liabilities (including any

proceeds, accounts receivable, notes receivable, income, revenues, monies and other items attributable to the Assets), Purchaser, on the one hand, or the Seller on the other hand, shall promptly transfer (or cause to be transferred) such Assets or assume (or cause to be assumed) such Liabilities to or from (as the case may be) the other party. Prior to any such transfer, the party receiving or possessing any such Asset shall hold it in trust for such other party. The Seller hereby grants Purchaser an irrevocable power of attorney to endorse such checks, drafts and other instruments, and any check, draft or other instrument arising from and after the Closing that constitute Assets issued in the name of the Seller.

4.5 [reserved].

4.6 Employee Matters.

(a) From and after the date hereof, the Purchaser, in its sole and absolute discretion, may: (i) in consultation and cooperation with the Seller, communicate with any of the Business Employees about possible employment with the Purchaser after the Closing Date; and/or (ii) offer employment to any of the Business Employees as of the Closing Date. The Purchaser shall make offers of employment to not less than ninety percent (90%) of the Business Employees for compensation and otherwise on terms and conditions at least comparable to those applicable to their respective employment by Seller. Those of the Business Employees that accept the Purchaser's offer of employment shall be terminated by the Seller, and shall become employed by the Purchaser or one of its Affiliates (referred to in this Agreement as "Transferred Employees") as of the Closing Date. All employment offers are subject to the satisfactory completion by the Purchaser of its customary employment interview, background checks and drug testing procedures.

(b) To the extent that length of employment service is relevant for purposes of eligibility or vesting under any employee benefit plan, program or arrangement established or maintained by the Purchaser and provided to the Transferred Employees (excluding any equity-related plan, program or arrangement), the Purchaser shall credit the Transferred Employees under such plan, program or arrangement for service on or prior to the Closing with the Seller as service with the Purchaser to the extent Seller recognized such service under any comparable plan, program or arrangement of the Seller.

(c) The employment of each Transferred Employee with Purchaser or one of its Affiliates shall commence immediately upon the Closing and shall be deemed for all purposes, consistent with applicable law and except as otherwise expressly provided herein, to have occurred with no interruption or break in service and no termination of employment. The Seller shall cause to be terminated the employment of all Transferred Employees effective as of the Closing. Subject to, and effective as of, the Closing, the Seller hereby waives and releases each of the Transferred Employees from any and all contractual, common law or other restrictions enforceable by the Seller and their respective Affiliates on the employment, activities or other conduct of such individuals after their termination of employment with the Seller, except with respect to

obligations related to confidentiality and trade secrets which obligations shall remain in full force and effect and survive such employee's termination and the Closing. Notwithstanding the foregoing, the foregoing waiver and release shall not apply to any individual who is or was at any time an officer or director of Seller or any of Seller's Affiliates, other than any individual who is an officer or director as of the execution date of this Agreement who is being hired by Purchaser.

(d) Provided that Purchaser fully complies with its obligations pursuant to Section 4.6(a), Seller shall be responsible for any liabilities or obligations (i) arising under the WARN Act, if any, and (ii) resulting from or precipitated by layoffs, if any, in respect of employees of Seller whose employment was terminated on or prior to the Closing.

#### 4.7 Bankruptcy Court Approvals; Process.

(a) If Seller has not already done so, no later than the Business Day immediately following the date of the mutual execution and delivery of this Agreement, Seller shall file a motion (the "Sale Motion") with the Bankruptcy Court in the Bankruptcy Case seeking entry of that certain "Order (A) Authorizing Entry Into the Asset Purchase Agreement With Respect to the Sale of Substantially All of the Debtors' Assets; (B) Approving Bid Procedures for the Sale of Substantially All of the Assets of Debtors; (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; and (F) Granting Other Related Relief" to be entered in the Bankruptcy Case (the "Bid Procedures Order"), pursuant to which Seller will conduct its further marketing and sale of the Assets. On or before June 8, 2018, or by such later date as hereafter agreed to by Purchaser in its sole discretion (the "Bid Order Deadline"), Seller shall have obtained the entry in the Bankruptcy Case of the Bid Procedures Order in substantially the form and substance attached hereto as Exhibit A (or otherwise acceptable to counsel for Purchaser and Seller in their respective sole discretion). Pursuant to the Sale Motion, Seller shall request that following the Sale Hearing, the Bankruptcy Court enter an order in the form and content attached hereto as Exhibit B and incorporated herein by this reference (the "Sale Approval Order").

(i) The Bid Procedures Order shall provide for a Bid Deadline (as defined therein) of no later than June 29, 2018.

(ii) The Bid Procedures Order shall provide for an Auction to take place, if needed, no later than July 5, 2018.

(iii) The Bid Procedures Order shall provide for the Sale Hearing to take place no later than July 6, 2018.

(b) Following Seller's determination of the Successful Bidder at the Auction or, if no Auction is conducted, of the Qualified Bidder (as defined in the Bid

Procedures Order) to whom Seller has determined to sell the Assets pursuant to the Bid Procedures Order (as applicable, the "Ultimate Bidder"), Seller shall submit such Ultimate Bidder and such Ultimate Bidder's asset purchase agreement (the "Ultimate APA") to the Bankruptcy Court for approval at the Sale Hearing. Seller shall use commercially reasonable efforts to obtain entry of the Sale Approval Order and Purchaser shall cooperate in all reasonable respects with such efforts of Seller. In accordance with Section 365 of the Bankruptcy Code, Seller shall seek authority to assume and assign to the Ultimate Bidder the Assumed Contracts contemporaneously with the Closing Date. Without limiting the foregoing, Purchaser shall be solely responsible for demonstrating, to the Bankruptcy Court's satisfaction, adequate assurance of future performance under Section 365 of the Bankruptcy Code with respect to each Assumed Contract. On or before May 23, 2018 at 5:00 p.m. Eastern Standard Time, Purchaser shall provide to Seller evidence, in form and content reasonably satisfactory to Seller, that Purchaser has the financial wherewithal to consummate the transactions contemplated hereunder.

#### 4.8 Books and Records; Access to Personnel.

The Purchaser agrees that it shall preserve and keep all Books and Records in respect of the operations of the Business in the Purchaser's possession for a period of at least five (5) years from the Closing Date. During the pendency of the Bankruptcy Case, Purchaser shall also make available to Seller and its representatives (to the extent in Purchaser's or an Affiliate's employ and to the extent that the same does not unreasonably interfere with Purchase operation of the Business) access at reasonable times and free of charge to those individuals listed on Schedule 4.8 to this Agreement for reasonable consultation in connection with matters relating to administration and wind down of the Bankruptcy Case.

#### 4.9 Tax Matters.

(a) The Purchaser shall be responsible for any and all Transfer Taxes incurred in connection with the transactions contemplated by this Agreement that are incurred after the Closing. Purchaser will, at its own expense, (i) file all necessary Tax Returns and other documentation with respect to all Transfer Taxes, and, if required by applicable law, the Parties will, and will cause their Affiliates to, join in the execution of any such Tax Returns and other documentation, and (ii) pay all Transfer Taxes payable in connection with the transactions contemplated herein.

(b) Seller shall retain responsibility for, and shall bear and pay, all ad valorem, property, excise, severance, production or similar Taxes based upon operation or ownership of the Assets or the receipt of proceeds therefrom (but excluding, for the avoidance of doubt, income taxes, franchise taxes and Transfer Taxes) (collectively, the "Asset Taxes") assessed with respect to the Assets for (i) any period ending on or prior to the Closing Date and (ii) the portion of any Straddle Period ending on or prior to the Closing Date; provided, however, Seller shall not be obligated to pay any such Tax that is disputed in good faith by Seller for which adequate reserves have been recorded in Seller's books and records; and provided, further, that Seller shall place any such disputed amount into escrow pending resolution of such dispute, and if such dispute is



not resolved within one (1) year of the Closing Date, such funds shall be made available for the settlement of any such dispute. For purposes of allocation between the Parties of Asset Taxes assessed with respect to the Assets that are payable with respect to any tax periods beginning before and ending after the Closing Date (“Straddle Periods”), the portion of any such taxes that are attributable to the portion of the Straddle Period that ends on or prior to the Closing Date shall (1) in the case of such Asset Taxes that are based upon or related to income or receipts or imposed on a transactional basis such as severance or production taxes, be allocated based on revenues from sales occurring on or before the Closing Date or, in the case of an Asset Tax imposed on a transaction basis, whether the relevant transaction closed on or prior to the Closing Date (which shall be Seller’s responsibility) and from and after the Closing Date (which shall be Purchaser’s responsibility); and (2) in the case of other Asset Taxes, be allocated pro rata per day between the period on or prior to the Closing Date (which shall be Seller’s responsibility) and the period after the Closing Date (which shall be Purchaser’s responsibility). For purposes of clause (1) of the preceding sentence, any exemption, deduction, credit or other item that is calculated on an annual basis shall be allocated pro rata per day between the period ending on or prior to the Closing Date and the period beginning at the Closing Date. At the Closing, Asset Taxes with respect to each Asset for the applicable Straddle Period shall be prorated in accordance with the foregoing provisions based on the Asset Tax assessment for such Asset for such Straddle Period, if available, or if otherwise, based on the Asset Taxes paid with respect to such Asset during the preceding Tax period. With respect to any not yet delinquent Asset Taxes relating to a Tax year ending after the Closing Date, Purchaser will assume responsibility for the actual payment of all such Asset Taxes to the applicable Governmental Authority.

(c) Seller, on the one hand, or Purchaser, on the other hand, as the case may be (the “Reimbursing Party”), shall provide reimbursement for any Tax paid by the other Party (the “Paying Party”), all or a portion of which is the responsibility of the Reimbursing Party, or which represents an overpayment for Taxes by the Paying Party, in accordance with the terms of this Section 4.9 (which such reimbursement may apply as a Purchase Price adjustment). Within a reasonable time prior to the payment of any such Tax, the Paying Party shall give notice to the Reimbursing Party of the Tax payable and the Paying Party’s and Reimbursing Party’s respective Liability therefor, although failure to do so will not relieve the Reimbursing Party from its Liability hereunder except to the extent the Reimbursing Party is prejudiced thereby.

(d) The Parties shall cooperate with each other and with each other’s respective representatives, including accounting firms and legal counsel, in connection with the preparation or audit of any Tax Return(s) and any Tax claim or litigation in respect of the Assets and Assumed Liabilities that include whole or partial taxable periods, activities, operations or events on or prior to the Closing Date, which cooperation shall include, but not be limited to, making available employees, if any, for the purpose of providing testimony and advice, or original documents, or any of the foregoing.

4.10 Cure Costs.

(a) Schedule 4.10(a) sets forth each Executory Contract and the Seller's good faith estimate of the amount of the Cure Costs payable in respect of each such Executory Contract (and if no Cure Cost is estimated to be payable in respect of any particular Executory Contract, the amount of such Cure Cost designated for such Contract shall be "\$0.00").

(b) Five (5) days before the date Qualified Bids (as defined in the Bid Procedures Order) are due in accordance with the Bid Procedures Order, Purchaser will deliver a Schedule 4.10(b), which shall be a schedule of the Executory Contracts to be assumed and those to be rejected on the Closing Date. Any Executory Contracts that are not set forth on Schedule 4.10(b) for either assumption or rejection shall be deemed rejected. Seller shall provide sufficient notice under the Bankruptcy Rules and local rules of the Bankruptcy Court to all counterparties to the Contracts and the Real Property Leases of their assumption or rejection and, with respect to the Contracts and Real Property Leases to be assumed, also provide a schedule of Cure Amounts. To the extent that any objections are received from such counterparties in response to such notice, the Seller shall use its commercially reasonable efforts to resolve such disputes with the applicable counterparty, provided that the Seller shall not resolve any such disputes for an amount that would have the effect of increasing the Purchase Price without the prior written consent of the Purchaser, which consent shall not be unreasonably withheld or delayed.

(c) To the extent that any Executory Contract requires the payment of Cure Costs in order to be assigned to Purchaser and assumed pursuant to section 363 and 365 of the Bankruptcy Code, the Purchaser shall be exclusively responsible for the payment of, and shall pay prior to or at the Closing, all Cure Costs.

(d) Notwithstanding anything to the contrary herein, Purchaser may from time to time, up to five (5) days prior to the Auction or, if no Auction is needed, up to five (5) days prior to the Sale Hearing, in its sole discretion designate any Contract as an Excluded Contract or as an Assumed Contract, in each case by providing written notice thereof to Seller. Such newly designated Contract shall be removed from or added to Schedule 1.1(b), as applicable, and shall be deemed to be an "Excluded Contract" or an "Assumed Contract", as applicable, and for all purposes hereunder, in each case, without further action by the Parties. For the avoidance of doubt, Purchaser shall pay the Cure Costs in accordance with Section 4.10(c) on any Contract designated an "Assumed Contract" pursuant to this Section 4.10(d).

4.11 Casualty and Insurance.

(a) The Seller shall maintain until Closing all existing insurance policies relating to the Business or the Assets (the "Seller Policies"), at its sole cost and expense. If, between the date hereof and the Closing, any material Assets shall be damaged or destroyed by fire, theft, vandalism or other casualty event, or become subject to any condemnation or eminent domain proceeding, the Seller shall promptly notify

Purchaser in writing of such fact and Purchaser shall have the option to (a) acquire such Assets on an "as is" basis and take an assignment from the Seller of any and all insurance proceeds payable to the Seller in respect of such event, (b) elect to exclude such Asset from this Agreement without adjustment to or deduction from the Purchase Price, or (c) in the event such event would give rise to a Material Adverse Change with respect to Seller, terminate this Agreement and the transactions contemplated hereby.

(b) To the extent Seller can do so using commercially reasonable efforts and at no cost or expense to Seller (or if there is a cost or expense, at Purchaser's sole election, Purchaser may instruct Seller to add Purchaser, but it must reimburse Seller), Seller shall add Purchaser (or cause Purchaser to be added) as an additional insured or loss payee, as applicable, on each Seller Policy (other than directors' and officers' liability insurance terminable upon the Closing) for the duration of each Seller Policy as is in effect on the Execution Date, effective as of the Closing Date. Purchaser shall be entitled to insurance proceeds paid under such Seller Policies with respect to any claim relating to an Asset or an Assumed Liability or the Business generally from and after the Closing Date.

#### 4.12 Publicity.

No party hereto shall issue any press release or public disclosure concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of the other parties hereto, which approval shall not be unreasonably withheld, conditioned or delayed, unless such disclosure is required or contemplated by this Agreement, applicable law, or the Bankruptcy Court with respect to filings to be made with the Bankruptcy Court in connection with this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby; provided, however, that the party intending to make such release uses its commercially reasonable efforts consistent with such applicable law or Bankruptcy Court requirement to consult with the other party with respect to the contents thereof to the extent practicable; provided that such right of consultation shall not afford any right to consent to any such document or release.

#### 4.13 Notification of Certain Matters.

(a) From time to time prior to the Closing, the Seller shall promptly deliver written notice to Purchaser of (i) any event, change, effect, condition, state of facts, or occurrence that comes to the knowledge of Seller that (A) would reasonably be expected to (x) cause a breach of the Seller's covenants under this Agreement, (y) render the satisfaction of the conditions in Section 6 reasonably unlikely to be fulfilled, or (z) prevent, prohibit or delay the Closing, (B) would reasonably be expected to constitute a Material Adverse Change with respect to Seller; or (C) that, if occurring or arising or in existence before or on the date of this Agreement would have caused a representation or warranty of the Seller to be inaccurate or deficient; (ii) any notice or other written communication from any Person alleging that the consent of such Person is or may be required in connection with the consummation of the transactions contemplated by this Agreement; and (iii) the commencement of any legal proceedings relating to the Business

or the Assets. The delivery of any notice pursuant to this Section 4.13(a) shall not have any effect on the satisfaction of the condition to closing set forth in Section 6 or Purchaser's right to terminate the Agreement pursuant to Section 7 and shall not be deemed to amend or supplement any of the Disclosure Schedules, limit or otherwise affect any remedies available to Purchaser or prevent or cure any misrepresentations or breach of warranty.

(b) From time to time prior to the Closing, Purchaser shall promptly deliver written notice to the Seller of (i) any event, change, effect, condition, state of facts, or occurrence that comes to the knowledge of Purchaser that (A) would reasonably be expected to (x) cause a breach Purchaser's covenants under this Agreement, (y) render the satisfaction of the conditions in Section 5 reasonably unlikely to be fulfilled, or (z) prevent, prohibit or delay the Closing or (B) that, if occurring or arising or in existence before or on the date of this Agreement would have caused a representation or warranty of Purchaser to be inaccurate or deficient; and (ii) any notice or other written communication from any Person alleging that the consent of such Person is or may be required in connection with the consummation of the transactions contemplated by this Agreement. The delivery of any notice pursuant to this Section 4.13(b) shall not have any effect on the satisfaction of the condition to closing set forth in Section 5 or Seller's right to terminate the Agreement pursuant to Section 7 and shall not be deemed to limit or otherwise affect any remedies available to the Seller or prevent or cure any misrepresentations or breach of warranty.

#### 4.14 Use of Names.

Within thirty (30) days of the Closing, the Seller shall discontinue use of and, as applicable, remove from any buildings, signs, vehicles or other asset or property of Seller, any trademarks included in the Intellectual Property comprising the Assets and any variations thereof and, in connection therewith, the Seller and each Affiliate shall change their names for purposes of the administration of the Bankruptcy Case and shall seek court approval for such change.

#### 4.15 Confidentiality.

The Seller acknowledges and agrees that from and after the Closing, all non-public information relating to the Business, including the Assets and the Assumed Liabilities, shall be valuable and proprietary to Purchaser and its Affiliates. The Seller agrees that, from and after the Closing, Seller shall not disclose to any Person any information relating to Purchaser and its Affiliates, or the Business, including the Assets and the Assumed Liabilities, except as required by applicable law; provided, that the Seller shall give prompt notice to Purchaser prior to any such disclosure to the extent permitted by such applicable law. The Seller acknowledges and agrees that the remedies at law for any breach or threatened breach of this Section 4.15 by Seller may be inadequate to protect Purchaser and its respective Affiliates and that the damages resulting from any such breach may not be readily susceptible to measurement in monetary terms. Accordingly, without prejudice to any other rights or remedies otherwise available to Purchaser or its respective Affiliates, each party acknowledges and agrees

that upon any breach or threatened breach by Seller of the terms and conditions of this Section 4.15, Purchaser and its respective Affiliates, as applicable shall be entitled to seek immediate injunctive relief and to an order restraining any threatened or future breach from any court of competent jurisdiction without proof of actual damages or posting of any bond in connection with any such remedy. The provisions of this Section 4.15 shall survive the Closing.

5. Conditions Precedent to the Obligation of the Purchaser.

The obligation of the Purchaser to consummate the transactions contemplated by this Agreement is subject to the fulfillment on or prior to the Closing Date of each of the following conditions, any one or more of which (to the extent permitted by law) may be waived by the Purchaser:

5.1 Representations and Warranties; Covenants.

The representations and warranties of Seller set forth herein shall be true and correct on and as of Closing in all material respects, with the same force and effect as though made on as of said date, except as affected by the transactions contemplated hereby (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date). The Seller shall have performed in all material respects its obligations, covenants and agreements contained in this Agreement to be performed and complied with by the Seller at or before the Closing, including, without limitation, compliance in all material respects with all timing requirements contained in Section 4.7 hereof. The Purchaser shall have received a certificate of Seller to such effect signed by a duly authorized officer thereof.

5.2 No Material Adverse Change.

There shall have been no material and adverse change in (i) the Assets, or (ii) current vendors' or customers' willingness to continue doing business with the Seller as evidenced by written communication to Seller indicated they intend to terminate such existing business relationships with Seller; provided that in the case of vendors, such change shall not be deemed to have occurred unless (xx) current vendors representing thirty percent (30%) of Seller's purchases of parts, supplies or other materials over the twelve (12) month period immediately preceding the Closing have delivered such written communication to Seller, (yy) either Open Eye or Greenbase have delivered such written communication to Seller, or (zz) current customers representing thirty percent (30%) of Seller's revenue over the twelve (12) month period immediately preceding the Closing have delivered such written communication to Seller; in each of the foregoing cases to the extent occurring between the Execution Date until the Closing; *provided, however*, that in determining whether there has been a Material Adverse Change or whether a Material Adverse Change could or would occur, any change, event or occurrence principally attributable to, arising out of, or resulting from any of the following shall also be disregarded: (A) general economic, business, industry or general credit, financial or capital market conditions (whether in the United States or internationally), including conditions affecting generally the industry of which the Business forms a part; (B) the

taking of any action required or permitted by this Agreement; (C) the taking of any action with the written approval of Purchaser, (D) acts of war (whether declared or not declared), sabotage, terrorism, military actions or the escalation thereof; (E) any prospective changes in applicable laws, regulations or accounting rules, including GAAP or interpretations thereof, or any changes or prospective changes in the interpretation or enforcement of any of the foregoing, or any changes in general legal, regulatory or political conditions; (F) any existing event, occurrence or circumstance with respect to which Purchaser has knowledge as of the date hereof (including any matter set forth in any written disclosures delivered to Purchaser); and/or (G) to the extent any adverse change arises out of any default or breach by Seller, the same is cured before the expiration of any applicable grace, notice and/or cure period applicable thereto hereunder.

5.3 No Order.

No Governmental Body shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, injunction or other order (whether temporary, preliminary or permanent) which is in effect and has the effect of making the transactions contemplated by this Agreement illegal or otherwise restraining or prohibiting consummation of such transactions and which are not satisfied or resolved or preempted by the Sale Approval Order.

5.4 Bankruptcy Filing; Bid Procedures and Sale Order.

The Bankruptcy Case shall not have been dismissed or converted to Chapter 7 of the Bankruptcy Code and no trustee shall have been appointed and the Bankruptcy Court shall have entered the Bid Procedures Order, in substantially in the form and substance attached as **Exhibit A** hereto, and Sale Approval Order (in the form and content attached as **Exhibit B** to this Agreement or with such changes as are reasonably satisfactory to Purchaser) and neither the Bid Procedures Order nor the Sale Approval Order (as so entered) shall have been vacated, reversed or stayed.

5.5 Transition Services Agreement.

Seller and Purchaser shall have mutually executed and delivered, concurrently with the Closing, a transition services agreement (in the form and substance reasonably satisfactory to the Parties) providing for (i) an arrangement (the costs of which arrangement shall be borne entirely by Purchaser) to facilitate the transition of the employees of Seller's German affiliate to Purchaser or an Affiliate of Purchaser, (ii) an arrangement pursuant to which Purchaser will, subject to paying all of Seller's rent, insurance, utilities, and other carrying costs attributable to such premises and other customary terms and provisions of such arrangements, be entitled to utilize Seller's Glendale, California facility for a limited period of time following the Closing (not to exceed ninety (90) days), and (iii) any other arrangements or terms and provisions as Purchaser and Seller may, in their respective sole and absolute discretion, mutually agree upon (the "Transition Services Agreement").

5.6 Schedules and Certain Exhibits.

Purchaser and Seller shall have mutually agreed on the form and content of all Schedules (including, without limitation, the Disclosure Schedules) to this Agreement and **Exhibits C** through **F** hereto by not later than two (2) Business days following Seller's delivery of drafts thereof (which shall have been prepared and provided in good faith by Seller) to Purchaser.

5.7 Closing Documents.

The Seller shall have delivered the documents required to be delivered to Purchaser pursuant to Section 1.8, in each case, on the Closing Date.

Any waiver of a condition set forth in this Section 5 shall be effective only if such waiver is stated in writing and signed by the Purchaser; provided, however, that the consent of a Purchaser to the Closing shall constitute a waiver by Purchaser of any conditions to Closing not satisfied as of the Closing Date.

6. Conditions Precedent to the Obligation of the Seller to Close.

The obligation of the Seller to consummate the transactions contemplated by this Agreement is subject to the fulfillment on or prior to the Closing Date of each of the following conditions, any one or more of which (to the extent permitted by law) may be waived by the Seller:

6.1 Representations and Warranties; Covenants.

The representations and warranties of the Purchaser set forth herein shall be true and correct in all material respects on and as of the Closing, with the same force and effect as though made on and as of the said date, except as affected by the transactions contemplated hereby (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date). The Purchaser shall have performed, in all material respects, its

obligations, covenants and agreements contained in this Agreement to be performed and complied with by the Purchaser at or before the Closing. The Seller shall have received a certificate of the Purchaser to such effect signed by a duly authorized officer thereof.

6.2 No Order.

No Governmental Body shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, injunction or other order (whether temporary, preliminary or permanent) which is in effect and has the effect of making the transactions contemplated by this Agreement illegal or otherwise restraining or prohibiting consummation of such transactions and which are not satisfied or resolved or preempted by the Sale Approval Order.

6.3 Approval Orders.

The Bankruptcy Court shall have entered the Bid Procedures Order (in the form and substance attached as **Exhibit A** hereto or with such changes as are reasonably acceptable to Purchaser) and Sale Approval Order (in the form and content attached as **Exhibit B** to this Agreement or with such changes as are reasonably acceptable to Purchaser) and neither the Bid Procedures Order nor the Sale Approval Order (as so entered) shall have been vacated, reversed or stayed.

6.4 Transition Services Agreement.

Seller and Purchaser shall have mutually executed and delivered, concurrently with the Closing, the Transition Services Agreement.

6.5 Schedules and Certain Exhibits.

Purchaser and Seller shall have mutually agreed on the form and content of all Schedules (including, without limitation, the Disclosure Schedules) to this Agreement and **Exhibits C** through **F** by not later than two (2) Business Days following Seller's delivery of drafts thereof (which shall have been prepared and provided in good faith by Seller) to Purchaser.

6.6 Closing Documents.

The Purchaser shall have delivered the documents and payments required to be delivered by it to Seller on the Closing Date.

Any waiver of a condition set forth in this Section 6 shall be effective only if such waiver is stated in writing and signed by Seller; provided, however, that the consent of Seller to the Closing shall constitute Seller's waiver of any conditions to Closing not satisfied as of the Closing Date.



7. Termination of Agreement.

7.1 Termination Prior to Closing.

Notwithstanding anything herein to the contrary, this Agreement may be terminated, and the transactions contemplated by this Agreement abandoned, at any time before the Closing, upon notice by the terminating Party to the other Party:

(a) by the mutual written consent of the Seller and the Purchaser, in which case, this Agreement shall be null and void and of no legal effect whatsoever;

(b) by Purchaser, if (i) Seller shall have failed to comply with any of the deadlines set forth in Section 4.7(a) or (ii) the Closing shall not have occurred by July 13, 2018; provided, however, that the right to terminate this Agreement under this Section 7.1(b) shall not be available to Purchaser to the extent Purchaser shall have been the cause of, or Purchaser's acts or omissions shall have resulted in, the failure of the Closing to occur prior to such date;

(c) by Purchaser, if (x) any condition set forth in Section 5.1 relating to the representations and warranties of Seller contained in this Agreement shall fail to be true and correct to the extent required by Section 5.1, or (y) any condition set forth in Section 5 (other than Section 5.1 and Section 5.2) shall fail to be satisfied provided, however, that the right to terminate this Agreement under this Section 7.1(c)(y) shall not be available to Purchaser to the extent Purchaser shall have been the cause of, or Purchaser's acts or omissions shall have resulted in, the failure of such condition to be satisfied or (z) there shall be a material breach by Seller of its covenants or agreements in this Agreement that in either case (i) would result in the failure of a condition set forth in Section 5 and (ii) which is not curable or, if curable, is not cured within five (5) calendar days after written notice thereof is delivered by the Purchaser to the Seller; provided, that the Purchaser may not terminate this Agreement pursuant to this Section 7.1(c) if Purchaser is in material breach of this Agreement;

(d) by Seller, if (w) any condition set forth in Section 6.1 relating to the representations and warranties of Purchaser contained in this Agreement shall fail to be true and correct to the extent required by Section 6.1, or (x) any condition set forth in Section 6 (other than Section 6.1) shall fail to be satisfied provided, however, that the right to terminate this Agreement under this Section 7.1(d)(x) shall not be available to Seller to the extent Seller shall have been the cause of, or Seller's acts or omissions shall have resulted in, the failure of such condition to be satisfied or (y) there shall be a material breach by the Purchaser of its covenants or agreements in this Agreement that in either case (i) would result in the failure of a condition set forth in Section 6.1 and (ii) which is not curable or, if curable, is not cured within five (5) calendar days after written notice thereof is delivered by the Seller to the Purchaser; or (z) the Closing shall not have occurred by July 13, 2018; provided, that the Seller may not terminate this Agreement pursuant to this Section 7.1(d) if Seller is in material breach of this Agreement;

(e) by Purchaser or Seller, upon the occurrence of an Alternative Transaction; provided that Purchaser shall not have the right to terminate this Agreement pursuant to this Section 7.1(e) if Purchaser is in material breach of this Agreement;

(f) by Purchaser, if an order of the Bankruptcy Court is entered dismissing the Bankruptcy Case, converting the Bankruptcy Case to a Chapter 7 of the Bankruptcy Code or appointing a Chapter 11 or Chapter 7 trustee in the Bankruptcy Case, provided, that the Purchaser may not terminate this Agreement pursuant to this Section 7.1(f) if Purchaser is in material breach of this Agreement;

(g) by Purchaser if the Purchaser shall not be satisfied, in its sole discretion, by May 23, 2018 at 5:00 p.m. Eastern Standard Time, with the business, accounting and legal due diligence in respect of the Assets, the Assumed Liabilities and the Business, in which case, this Agreement shall be null and void and of no legal effect whatsoever. If Purchaser fails to deliver written notice to Seller advising Seller that it is not satisfied with such diligence by May 23, 2017 at 5:00 p.m. Eastern Standard Time, Purchaser shall conclusively be deemed to have approved such diligence and waived the termination right set forth in this Section 7.1(g); or

(h) by Purchaser, if the condition set forth in Section 5.2 is not satisfied.

## 7.2 Effect of Termination.

(a) In the event this Agreement is terminated by Seller and Purchaser in accordance with Section 7.1(a), or in the event that this Agreement is terminated by Seller in accordance with Section 7.1(d)(x) provided that Purchaser shall not have been the cause of, or Purchaser's acts or omissions shall not have resulted in, the failure of a condition to be satisfied giving rise to Seller's right to terminate under such Section 7.1(d)(x), the Parties shall jointly instruct the Escrow Holder to disburse the Deposit to Purchaser within three (3) Business Days after the date of such termination. Each of the Parties shall otherwise suffer their own losses, costs, expenses or damages arising out of, under or related to this Agreement.

(b) In the event this Agreement is terminated by Seller in accordance with Section 7.1(d)(y) or (z), or in the event that this Agreement is terminated by Seller in accordance with Section 7.1(d)(x) provided that Purchaser shall have been the cause of, or Purchaser's acts or omissions shall have resulted in, the failure of a condition to be satisfied giving rise to Seller's right to terminate under such Section 7.1(d)(x), Seller and Purchaser shall jointly instruct the Escrow Holder to disburse the Deposit to Seller within three (3) Business Days after the date of such termination. Each of the Parties shall otherwise suffer their own losses, costs, expenses or damages arising out of, under or related to this Agreement. In the event this Agreement is terminated by Seller in accordance with Section 7.1(d)(y) or (z), or in the event that this Agreement is terminated by Seller in accordance with Section 7.1(d)(x) provided that Purchaser shall have been the cause of, or Purchaser's acts or omissions shall have resulted in, the failure of a condition to be satisfied giving rise to Seller's right to terminate under such Section

7.1(d)(x), under no circumstances shall the liabilities of Purchaser to Seller exceed the amount of the Deposit.

(c) In the event this Agreement is terminated by Purchaser in accordance with Section 7.1(b), (c), (e), (f), (g) or (h), the Purchaser and Seller shall jointly instruct the Escrow Holder to disburse the Deposit to Purchaser within three (3) Business Days after the date of such termination. In addition, in the event that this Agreement is terminated pursuant to Section 7.1(b), (c), (e) or (f), Purchaser shall be entitled to (i) reimbursement of all reasonable out-of-pocket third party costs and expenses actually incurred in connection with and relating to the execution of the Purchase Agreement and consummation of the transactions contemplated thereby, including, without limitation, reasonable attorney's fees and expenses, diligence fees and costs and expenses incurred in connection with the capital structure of Purchaser, in an aggregate amount not to exceed \$400,000 (the "Expense Reimbursement") and (ii) a break-up fee in consideration of its time, effort and expenses incurred in conducting its due diligence and benefit to the Seller's estate from the submission of this Agreement, in an amount equal to \$500,000 (the "Break-Up Fee"), and Purchaser shall be granted an allowed administrative claim in the amount of the Expense Reimbursement and Break-Up Fee in accordance with Section 503(b)(1) of the Bankruptcy Code without further act, notice, deed or court order. In the event Purchaser is so entitled to the Breakup Fee and Expense Reimbursement, such amounts shall only be payable to Purchaser in the circumstances and from the sources set forth in Section 7.2(d).

(d) In the event this Agreement is terminated by Purchaser in accordance with Section 7.1(b), (c), (e) or (f), or in the event that this Agreement is terminated by Seller in accordance with Section 7.1(d)(x) provided that Purchaser shall not have been the cause of, or Purchaser's acts or omissions shall not have resulted in, the failure of a condition to be satisfied giving rise to Seller's right to terminate under such Section 7.1(d)(x) and Seller consummates an Alternative Transaction within six (6) months of the date hereof, such Expense Reimbursement and Break-Up Fee shall be paid to Purchaser, but only upon the closing or consummation of such Alternative Transaction and from and out of the proceeds thereof.

(e) If Purchaser is not in default hereunder and Seller fails to make the required deliveries at the Closing or materially defaults under this Agreement with no fault of Purchaser, then Purchaser shall have the right to pursue the remedy of specific performance of this Agreement in the Bankruptcy Court, in which case, if successful, Purchaser shall be entitled to offset from the Purchase Price paid at Closing all of its reasonable costs and expenses incurred in connection therewith (including, without limitation, reasonable attorneys' fees).

(f) In the event that this Agreement is terminated by Purchaser in accordance with Section 7.1(g) or (h) or Section 7.1(a) by Purchaser and Seller or Section 7.1(d)(w), (x) or (y) by Seller, the Purchaser shall not be entitled to either the Expense Reimbursement or Break-Up Fee or any other payment, but shall receive the Deposit in accordance with Section 7.1(b).

8. Miscellaneous.

8.1 Certain Definitions.

(a) As used in this Agreement, the following terms have the following meanings:

“Accounts Receivable” means accounts receivable and all trade receivables of the Seller to the extent relating to the Business, together with any unpaid interest accrued thereon from the respective obligors and any security or collateral therefor, including recoverable deposits.

“Affiliate” means, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such specified Person.

“Alternative Transaction” means, prior to the Closing, (i) Purchaser is the Back-Up Bidder (as defined in the Bid Procedures Order) and a third party is declared the Successful Bidder (as defined in the Bid Procedures Order) and a transaction with such Successful Bidder for substantially all the Assets closes, (ii) a third party other than Purchaser is declared the Successful Bidder and/or Back-Up Bidder, and either of such transaction to the extent involving substantially all the Assets closes or (iii) confirmation of a plan of reorganization in the Bankruptcy Case. For the avoidance of doubt, a piecemeal liquidation of Seller’s Assets in a Chapter 7 proceeding or Chapter 11 proceeding outside of a plan of reorganization shall not be deemed an Alternative Transaction for purposes of this Agreement.

“Ancillary Agreements” means the Assignment and Assumption Agreement, the Bill of Sale, the Assignment of Intellectual Property, the Assumption of Assumed Liabilities, the Bid Procedures Order and all other agreements, documents and instruments delivered pursuant to Sections 1.7 and 1.8.

“Asset Taxes” has the meaning ascribed to such term in Section 4.9(b) hereof.

“Assignment and Assumption Agreement” means the Assignment and Assumption Agreement substantially in the form of Exhibit C hereto to be executed by the Purchaser and the Seller on the Closing Date.

“Assignment of Intellectual Property” means an instrument substantially in the form of Exhibit D hereto to be executed by the Purchaser and the Seller on the Closing Date.

“Assumption of Assumed Liabilities” means the Assumption of Assumed Liabilities substantially in the form of Exhibit E hereto to be executed and delivered by Purchaser on the Closing Date.

“Benefit Plan” means (i) all "employee benefit plans", as defined in section 3(3) of ERISA (whether or not such plan is subject thereto), (ii) all employment, consulting or

other individual compensation Contracts, and (iii) all bonus or other incentive, equity or equity-based compensation, deferred or other compensation, profit sharing, pension, change-in-control, severance pay, separation, retention, sick leave, vacation pay, day or dependent care, salary continuation, disability, hospitalization, medical, life insurance, retiree healthcare, retiree life insurance, other retirement, scholarship, legal services, cafeteria, life, health, accident, disability, workers' compensation, paid time off, fringe benefit or other insurance or employee benefit programs, plans, policies or arrangements, whether written or oral, single employer, multiemployer or multiple employer, or whether for the benefit of a single individual or more than one individual, as to which any Seller or any of its ERISA Affiliates contributes, has an obligation to contribute, or has any Liability, contingent or otherwise, with respect to, or otherwise provides to, any current or former Business Employee or Service Provider.

“Bid Procedures Order” is defined in Section 4.7(a) hereof.

“Bill of Sale” means a Bill of Sale substantially in the form of Exhibit F hereto to be executed by the Seller on the Closing Date.

“Books and Records” means all files, documents, instruments, papers, books and records, including Tax books and records (whether stored or maintained in hard copy, digital or electronic format or otherwise) solely to the extent relating to the Business or the other Assets, including Contracts, customer lists, customer information and account records, computer files, data processing records, payroll, employment and personnel records, advertising and marketing data and records, credit records, records relating to suppliers and other data, but “Books and Records” shall not include any of the foregoing to the extent (i) the same are the subject of any attorney-client, work product or similar privilege with respect to work perform in anticipation of or in connection with the preparation or administration of Case, or (ii) the transfer of the same would violate any Person’s privacy rights.

“Business Day” means any day that is not a Saturday, Sunday or other day on which banks located in New York, New York are authorized or obligated to close.

“Business Employees” means the Seller’s current employees employed in connection with, or rendering services to, the Business, wherever located.

“Claim” means a suit, claim, action, proceeding, inquiry, investigation, litigation, demand, charge, complaint, grievance, arbitration, indictment, or grand jury subpoena.

“COBRA” means the Consolidated Omnibus Budget Reconciliation Act of 1985 as described in Section 4980B of the Code, sections 601 et seq. of ERISA, each as amended, and the regulations promulgated thereunder.

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

“Contract” means any written or oral agreement, arrangement, understanding, lease, license, sublicense, or instrument or other contractual or similar arrangement or commitment.

“Cure Costs” means the cure, compensation and restatement, costs and expenses of or relating to the assumption and assignment of the Assumed Contracts included in the Assets assumed and assigned to the Purchaser hereunder pursuant to Section 365 of the Bankruptcy Code.

“Encumbrances” means all Liens, claims, conditional sales agreements, rights of first refusal, rights of first offer or rights of first negotiation or options.

“Environmental Law” means any law, statute, regulation, rule, code, judgment, decree, ordinance, directive, policy or other requirement of a Governmental Body in effect at the relevant date or for the relevant period relating to the protection of health or the environment (including ambient air, indoor air, surface water, groundwater, land surfaces, sediment or subsurface strata) or natural resources, Releases of or exposure to Hazardous Material or the handling, generation, treatment, transportation, storage, use, arrangement for disposal or disposal, manufacture, distribution, formulation, packaging or labeling of Hazardous Materials, including the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§ 9601, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. App. §§ 1801, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901, et seq.), the Clean Water Act (33 U.S.C. §§ 1251, et seq.), the Clean Air Act (42 U.S.C. §§ 7401, et seq.) the Toxic Substances Control Act (15 U.S.C. §§ 2601, et seq.), the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. §§ 136, et seq.) and the regulations promulgated pursuant thereto and analogous State and local Laws.

“Environmental Liabilities and Obligations” means all Liabilities arising from any impairment or damage to the environment (including ambient air, indoor air, surface water, groundwater, land surfaces, sediment or subsurface strata) or natural resources, failure to comply with Environmental Laws, or the Release of or exposure to Hazardous Materials: (a) in connection with the prior or ongoing ownership or operation of the Business; or (b) on, in, under, to or from the real property currently or formerly owned, operated, occupied or leased in connection with the ongoing or prior ownership or operation of the Business, including Liabilities related to: (i) the handling, generation, treatment, transportation, storage, use, arrangement for disposal or disposal, manufacture, distribution, formulation, packaging or labeling of Hazardous Materials; (ii) the Release of or exposure to Hazardous Materials; (iii) any other pollution or contamination of the surface, substrata, soil, air, ground water, surface water or marine environments; and (iv) any other obligations imposed under Environmental Laws with respect to the Business or the real property currently or formerly owned, operated, occupied or leased in connection with the ongoing or prior ownership or operation of the Business; and (v) all other damages and losses arising under applicable Law as a result of any of the matters identified in clauses (i) - (iv) of this definition.

“Equipment” means all machinery, rolling stock, equipment, computer equipment, software, software systems, databases and database systems used at any premises which are the subject of the Assumed Lease assumed and assigned at the Closing.

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

“ERISA Affiliate” means any Affiliate of any Seller and any other entity that, together with the Seller, may be treated as a single employer under section 4001 of ERISA or section 414 of the Code.

“Executory Contracts” means any executory Contract related to the Business to which Seller is a party and that is set forth on Schedule 4.10(a), as such Schedule may be updated by Purchaser from time to time following the Execution Date (including pursuant to Section 4.10).

“Fixed Assets” means all furniture, furnishings, fixtures, trade fixtures, racks, pallets, displays and office equipment used exclusively in connection with the Business located in any premises that are held or operated pursuant to the Assumed Lease assumed and assigned at the Closing.

“GAAP” means United States generally accepted accounting principles, as applied by Seller on a consistent basis during the periods involved in accordance with Seller’s historical practices.

“Governmental Body” means a domestic or foreign national, federal, state, provincial, or local governmental, regulatory or administrative authority, department, agency, commission, court, tribunal, arbitral body or self-regulated entity.

“Hazardous Material” means any substance, material or waste which is regulated by any Governmental Body, including petroleum and its by-products, asbestos, and any material or substance which is defined as a “hazardous waste,” “hazardous substance,” “hazardous material,” “restricted hazardous waste,” “industrial waste,” “solid waste,” “contaminant,” “pollutant,” “toxic waste” or “toxic substance” or otherwise regulated under any provision of Environmental Law or for which Liability can be imposed under any Environmental Law.

“Intellectual Property” means, to the extent relating to or used exclusively in connection with the Business, whether owned or licensed, whether related to use in the United States or another country, (i) any and all patents (including design patents) and patent applications (including docketed patent disclosures awaiting filing, reissues, divisions, continuations, continuations-in-part and extensions), patent disclosures awaiting filing determination, inventions and improvements thereto, (ii) trademarks, service marks, certification marks, trade names, brand names, trade dress, logos, business and product names, slogans, and registrations and applications for registration thereof, (iii) copyrights (including software) and registrations thereof, (iv) inventions, processes, designs, formulae, trade secrets, know-how, industrial models, confidential and technical

information, manufacturing, engineering and technical drawings, product specifications, domain names, discoveries and confidential business information, (v) intellectual property rights similar to any of the foregoing, (vi) computer software, web site and domain names, and (vii) copies and tangible embodiments thereof (in whatever form or medium, including electronic media).

“Inventory” means all goods, products, and supplies sold or used in the sale of any goods or products and all other inventory owned and held by Seller, in each case to the extent used in connection with the Business, wherever located, and whether on hand, on order, or in transit to the Business.

“IRS” means the United States’ Internal Revenue Service.

“Liabilities” means any direct or indirect, primary or secondary, liability, indebtedness, obligation, penalty, cost or expense (including costs of investigation, collection and defense) of or by any Person of any type, whether accrued, absolute or contingent, liquidated or unliquidated, choate or inchoate matured or unmatured, or otherwise. Without limiting the foregoing in any manner, the term “Liabilities” includes and refers to all liabilities and obligations for or with respect to Taxes, including liabilities for Taxes of any Person under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local, or foreign law), as a transferee or successor, by contract, or otherwise.

“Lien” means any security interest, mortgage, pledge, lien, encumbrance, right, hypothecation, option, charge or claim of any nature whatsoever.

“Material Adverse Change” means, with respect to Seller, any of the following:

(a) a material adverse effect on the business, operations, results of operations, prospects, assets, liabilities or financial condition of Seller and the Business, taken as a whole;

(b) a material adverse effect on the ability of Seller to perform its obligations under this Agreement;

(c) any claim against Seller, not previously disclosed to Purchaser, with a reasonable likelihood of an adverse decision that would result in the occurrence of an event described in clauses (a) or (b) above.

“Paying Party” shall have the meaning ascribed to such term in Section 4.9(c) hereof.

“Person” means any individual, corporation, partnership, limited liability company, limited liability partnership, joint venture, joint-stock company, trust, Governmental Body or other entity.

“Prepaid Expenses” means all credits, prepaid expenses (including unamortized advertising expenses), deferred charges, advance payments, security deposits, and



prepaid items (including in respect of Taxes) of the Seller to the extent arising exclusively in connection with the Business, in each case which are paid or prepaid by Seller on or prior to the Closing Date and that correspond to, or are to be amortized during, a period after the Closing Date.

“Real Property Lease” means each lease, sublease or license of real property used or held for use by Seller in the conduct of the Business under which Seller is a tenant, as such lease, sublease or license may be amended, modified, extended or supplemented from time to time.

“Reimbursing Party” shall have the meaning ascribed to such term in Section 4.9(c) hereof.

“Release” means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, migration or leaching into or through the indoor or outdoor environment, or into or out of any property.

“Remedial Action” means all actions to (i) clean up, remove, treat or in any other way address any Hazardous Material; (ii) prevent the Release of any Hazardous Material so it does not endanger or threaten to endanger public health or welfare or the indoor or outdoor environment; (iii) perform pre-remedial studies and investigations or post-remedial monitoring and care; or (iv) to correct a condition of noncompliance with Environmental Laws.

“Representative” means, with respect to a particular Person, any director, officer, manager, partner, member, employee, agent, consultant, advisor or other representative of such Person, including legal counsel, accountants, and financial advisors.

“Sale Approval Order” is defined in Section 4.7(a) hereof.

“Security Deposits” means all security deposits (including cash) held by the landlord under the Assumed Lease or counterparties to any other Assumed Contract.

“Straddle Period” shall have the meaning ascribed to such term in Section 4.9(b) hereof.

“Tax” or “Taxes” means all taxes, charges, fees, imposts, levies or other assessments, including all net income, franchise, profits, gross receipts, capital, sales, use, ad valorem, value added, transfer, transfer gains, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation, real or personal property, and estimated taxes, customs duties, fees, assessments and charges of any kind whatsoever, together with any interest and any penalties, fines, additions to tax or additional amounts thereon, imposed by any taxing authority (federal, state, local or foreign) and shall include any successor or transferee liability in respect of Taxes.

“Transfer Taxes” means all documentary, stamp, transfer, motor vehicle registration, sales, use, excise and other similar non-income Taxes and all filing and

recording fees (and any penalties and interest associated with such Taxes and fees) arising from or relating to the consummation of the transactions contemplated by this Agreement.

“Tax Returns” means all returns, declarations, reports, forms, estimates, information returns and statements required to be filed in respect of any Taxes or to be supplied to a taxing authority in connection with any Taxes.

“WARN Act” means the Worker Adjustment and Retraining Notification Act (29 U.S.C. § 2101 et seq.) and any similar law.

8.2 Consent to Jurisdiction; Service of Process; Waiver of Jury Trial.

(a) The Purchaser and the Seller irrevocably and unconditionally consent to submit to the jurisdiction of the Bankruptcy Court for any litigation arising out of or relating to this Agreement and the transactions contemplated hereby (and agree not to commence any litigation relating hereto except in the Bankruptcy Court).

(b) Any and all service of process and any other notice in any such Claim shall be effective against any Party if given personally or by registered or certified mail, return receipt requested, or by any other means of mail that requires a signed receipt, postage prepaid, mailed to such Party as herein provided. Nothing herein contained shall be deemed to affect the right of any Party to serve process in any manner permitted by law or to commence legal proceedings or otherwise proceed against any other Party in any other jurisdiction.

8.3 Notices.

Any notice or other communication required or permitted hereunder shall be in writing and shall be deemed to have been duly given (a) on the day of delivery if delivered in person or by electronic mail, (b) on the first (1st) Business Day following the date of dispatch if delivered by a nationally recognized express courier service, or (c) on the fifth (5th) Business Day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid. All notices hereunder shall be delivered as set forth below, or pursuant to such other instructions as may be designated by notice given in accordance with this Section 8.3 by the Party to receive such notice:

(a) if to the Purchaser, to:

c/o Turnspire Capital Partners  
Attention: Ilya Koffman  
575 Madison Avenue, Suite 1006  
New York, New York 10022  
Email Address: ikoffman@turnspirecap.com

with a copy to:

Chapman and Cutler LLP  
1270 Avenue of the Americas, 30th Floor  
New York, New York 10020  
Attention: Larry Halperin and Michael Friedman  
Email Address: halperin@chapman.com; friedman@chapman.com

(b) if to the Seller, to:

Arecont Vision, LLC  
425 E. Colorado Street, 7<sup>th</sup> Floor  
Glendale, CA 91205  
Attention: Scott Avila  
Email Address: savila@armorystrategic.com

with a copy to:

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13<sup>th</sup> Floor  
Los Angeles, CA 90067  
Attention: Ira D. Kharasch, Esq.  
Email Address: ikharasch@pszjlaw.com

#### 8.4 Entire Agreement.

This Agreement (including any exhibits or schedules hereto), the Ancillary Agreements and any other collateral agreements executed in connection with the consummation of the transactions contemplated hereby, contain the entire agreement among the Parties with respect to the subject matter hereof and supersede all prior agreements, written or oral, with respect thereto. Any exception or disclosure made by Seller in the Disclosure Schedules to this Agreement with regard to a representation of the Seller shall be deemed made with respect to any other representation by such Party to which such exception or disclosure is reasonably apparent.

#### 8.5 Waivers and Amendments.

This Agreement may be amended, superseded, canceled, renewed or extended, and the terms hereof may be waived, only by a written instrument signed by the Purchaser and the Seller or, in the case of a waiver, by the Party waiving compliance. No delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any Party of any such right, power or privilege, nor any single or partial exercise of any such right, power or

privilege, preclude any further exercise thereof or the exercise of any other such right, power or privilege.

8.6 Governing Law.

This Agreement and all Claims with respect thereto shall be governed by and construed in accordance with federal bankruptcy law, to the extent applicable, and, where state law is implicated, the laws of the State of Delaware without regard to any conflict of laws rules thereof that might indicate the application of the laws of any other jurisdiction.

8.7 Binding Effect; Assignment.

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. This Agreement is not assignable by any Party without the prior written consent of the other Party; provided that the Purchaser may assign this Agreement to a Designated Purchaser or one or more of its Affiliates, provided, further that the Purchaser shall not be relieved of any of its obligations under this Agreement as a result of such assignment.

8.8 Usage.

All pronouns and any variations thereof refer to the masculine, feminine or neuter, singular or plural, as the context may require. All terms defined in this Agreement in their singular or plural forms have correlative meanings when used herein in their plural or singular forms, respectively. Unless otherwise expressly provided, the words “include,” “includes” and “including” do not limit the preceding words or terms and shall be deemed to be followed by the words “without limitation.”

8.9 Articles and Sections.

All references herein to Articles and Sections shall be deemed references to such parts of this Agreement, unless the context shall otherwise require. The Article and Section headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

8.10 Interpretation.

The Parties acknowledge and agree that (a) each Party and its counsel reviewed and negotiated the terms and provisions of this Agreement and have contributed to its revision, (b) the rule of construction to the effect that any ambiguities are resolved against the drafting Party shall not be employed in the interpretation of this Agreement, and (c) the terms and provisions of this Agreement shall be construed fairly as to each Party, regardless of which Party was generally responsible for the preparation of this Agreement.

8.11 Severability of Provisions.

If any provision or any portion of any provision of this Agreement shall be held invalid or unenforceable, the remaining portion of such provision and the remaining provisions of this Agreement shall not be affected thereby. If the application of any provision or any portion of any provision of this Agreement to any Person or circumstance shall be held invalid or unenforceable, the application of such provision or portion of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby.

8.12 Counterparts.

This Agreement may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts together shall constitute one and the same instrument. Each counterpart may consist of a number of copies hereof each signed by less than all, but together signed by all, of the Parties.

8.13 No Third Party Beneficiaries.

No provision of this Agreement is intended to, or shall, confer any third party beneficiary or other rights or remedies upon any Person other than the Parties. Without limiting the generality of the foregoing, no provision of this Agreement shall create any third party beneficiary rights in any employee or former employee of the Seller in respect of continued employment by the Seller.

8.14 Attorneys' Fees.

In the event that Seller or Purchaser bring an action or other proceeding to enforce or interpret the terms and provisions of this Agreement, the prevailing Party(ies) in that action or proceeding shall be entitled to have and recover from the non-prevailing Party(ies) all such fees, costs and expenses (including, without limitation, all court costs and reasonable attorneys' fees) as the prevailing Party(ies) may suffer or incur in the pursuit or defense of such action or proceeding.

8.15 [reserved].

8.16 Survival.

The respective representations and warranties of Seller and Purchaser herein, or in any certificates or other documents delivered prior to or at the Closing, shall automatically lapse and cease to be of any further force or effect whatsoever upon the Closing.

8.17 Non-Recourse

No past, present or future director, officer, employee, incorporator, member, partner or equity holder of the Parties to this Agreement will have any liability for any

obligations or liabilities of Seller or Purchaser, as applicable, under this Agreement, or any agreement entered into in connection herewith of or for any claim based on, in respect of, or by reason of, the transactions contemplated hereby and thereby. Any claim or cause of action based upon, arising out of, or related to this Agreement or any agreement, document or instrument contemplated hereby may only be brought against Persons that are expressly named as Parties hereto or thereto, and then only with respect to the specific obligations set forth herein or therein. Other than the Parties, no Person shall have any liability or obligation for any of the representations, warranties, covenants, agreements, obligations or liabilities of any Party under this Agreement or the agreements, documents or instruments contemplated hereby or of or for any action or proceeding based on, in respect of, or by reason of, the transactions contemplated hereby or thereby (including breach, termination or failure to consummate such transactions), in each case whether based on contract, tort, fraud, strict liability, other Laws or otherwise and whether by piercing the corporate veil, by a claim by or on behalf of a Party hereto or another Person or otherwise. In no event shall any Party be liable to another Party for any remote, speculative or punitive damages with respect to the transactions contemplated hereby.

#### 8.18 Exclusivity.

From the date of the Execution Date until the Exclusivity Termination Date (as defined below) (such period of time, the “Exclusivity Period”), the Seller and its shareholders will not, and will cause their Affiliates, officers, directors, employees, agents, advisors and other representatives, not to directly or indirectly solicit, entertain, discuss, negotiate, facilitate or encourage, or accept any offer, inquiry or proposal from, or enter into any agreement or discussions with, any party (other than the Purchaser and its Affiliates) concerning any sale, transfer, or other disposition of all or a material portion of the Seller’s assets (other than transactions in the ordinary course of business consistent with past practices) or for the purchase of any outstanding equity or debt securities of the Seller, the liquidation, dissolution or recapitalization of the Seller, or a merger, consolidation or similar transaction involving the Seller; provided, however, that nothing in this Section 8.18 shall be deemed to restrict Seller’s and its representatives’ and professionals’ right, during the Exclusivity Period, to respond to diligence requests from any third party who has executed or hereafter executes a non-disclosure agreement in favor of Seller; provided, further, however that such third party diligence does not unreasonably interfere with negotiations between the Seller and the Purchaser. The Seller shall, and shall cause each of its representatives to, immediately discontinue any ongoing discussions or negotiations (other than any ongoing discussions with the Purchaser and its representatives) relating to such other transaction. The Exclusivity Termination Date shall be defined as the earlier of (i) the date of entry of the Bid Procedures Order, or (ii) the date on which the Bankruptcy Court refuses or rejects Seller’s motion for approval and entry of the Bid Procedures Order.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the Seller has executed this Agreement as of the date first above written.

SELLER:

Arecont Vision, LLC, a Delaware limited liability company

By: 

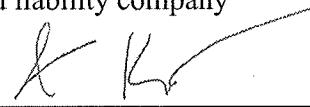
Name: T. Scott Avila

Title: Chief Restructuring Officer

IN WITNESS WHEREOF, Purchaser has executed this Agreement as of the date first above written.

PURCHASER:

Arecont Technologies LLC, a Delaware  
limited liability company

By:  \_\_\_\_\_

Name: Ilya Koffman

Title: Authorized Signatory



**SCHEDULES**

[TO BE COMPLETED AND ATTACHED AS AND WHEN PROVIDED IN THE  
ASSET PURCHASE AGREEMENT]

## Schedule 1.6

Schedule 1.6

Closing Net Working Capital Calculation Detail & Example

*Illustrative Calculation Based on Estimated Amounts; Not Intended for Bid Valuation Purposes*

	Note	Source Data	Calculation/Comment
Accounts Receivable, Net	(1)	AR aging export from QuickBooks	Total accounts receivable including credit memos, before Allowance for Doubtful Accounts
\$ 5,992,000			
Less:			
Over 90 Days Past Due		AR aging export from QuickBooks	Net balances by customer only, no top-level journal entries
(210,376)			
Stock Rotation Accrual		Trailing 12-month sales and stock rotation claims by customer, latest "Arecont Model 2017-2020" in data room	Calculate trailing 12-month actual rotation claims % by customer; apply rotation claims % by customer to projected % of forward 12 months' sales per business plan; sum resulting projected claims by customer
(750,000)			
Stock Rotation Claims Filed		Daily report of stock rotation claims	N/A
(454,000)			
Ship & Debit Claims Filed		Daily report of ship & debit claims	N/A
(396,000)			
<b>Adj. Accounts Receivable, Net</b>			
<b>\$ 4,181,624</b>			
<b>Inventory</b>	(1)	Fishbowl detail exports: "Type A", "Type B", "In Transit"	Apply 60% to Type B values to reflect G/L carrying value
\$ 8,678,000			
Less:			
Discontinued/EOL		Fishbowl detail exports: "Type A" parts with "DIS:" notation as of 5/8/18	Sum all values for parts/goods with "DIS:" notation in description as of 5/8/18
(969,693)			
B Stock		Inventory "Type B" detail export from Fishbowl	Apply 60% to reflect G/L carrying value
(542,932)			
Excess		Inventory Months-On-Hand analysis	Sum values in excess of 13 months on hand by part/good, based on monthly average usage over last six months; include parts/goods listed as "active" but not used over last six months, except new products
(1,235,280)			
<b>Adjusted Inventory</b>			
<b>\$ 5,930,095</b>			
<b>Accounts Payable</b>			
Pre-Petition		AP aging export from QuickBooks	Estimated balance as of 5/12/18
(1,400,000)			
Pre-Petition Accrued		Accrued Expenses-Inventory from QuickBooks, including any reconciling entries	Estimated balance as of 5/12/18
(550,000)			
Post-Petition		AP aging export from QuickBooks	Zero balance presumes COD/CIA terms with all vendors
-			
Post-Petition Accrued		Accrued Expenses-Inventory from QuickBooks, including any reconciling entries	Zero balance presumes COD/CIA terms with all vendors
-			
<b>Accounts Payable/Accrued</b>			
<b>\$ (1,950,000)</b>			
<b>Net Working Capital</b>			
<b>\$ 8,161,719</b>			

1) Estimated balances at projected closing date of 7/13/18

Schedule 1.6 (cont)

Closing Net Working Capital Calculation Detail Source Data

Data/outputs of files named as they are updated; ultimate calculation will be impacted by business activity between now and closing. See data room for Excel files.

	Source Data	File name(s)	Calculation/Comment
<b>Accounts Receivable, Net</b>			
Less:			
Over 90 Days Past Due	AR aging export from QuickBooks	A-R Aging 2018-04-28.xlsx	Total accounts receivable including credit memos, before Allowance for Doubtful Accounts
Stock Rotation Accrual	AR aging export from QuickBooks	A-R Aging 2018-04-28.xlsx	Net balances by customer only, no top-level journal entries
Stock Rotation Claims Filed	TTM sales and stock rotation claims by customer; latest "Arecont Model 2017-2020" in data room	2016 Report Arecont Stock Rotation Analysis.xlsx; Arecont Model 2017 - 2020 FCST 04.30.18 vExternal.xlsx	Figure used was an estimate presuming 30% of inventory in the field; actual calculation described in preceding table
Ship & Debit Claims Filed	Daily report of stock rotation claims	End-of-Day Report [in-dd-yyyy].xlsx	Figure used was from 5/3/18 report
<b>Inventory</b>	Daily report of ship & debit claims	End-of-Day Report [in-dd-yyyy].xlsx	Figure used was from 5/3/18 report, grossed up 20% to reflect growing sales through July
Less:			
Discontinued/EOL	Fishbowl detail exports: "Type A", "Type B", "In Transit"	Inventory Class 'A' - AGING REPORT LOCATION 400.xlsx; Inventory Class 'B' - REPORT B-STOCK.xlsx; manual tabulation of receivers in Fishbowl	Apply 60% to Type B values to reflect G/L carrying value
B Stock	Fishbowl detail exports: "Type A", as annotated by E Faust for discontinued/EOL as of 5/8/18	Inventory Class 'A' - AGING REPORT LOCATION 400.xlsx	Sum all values for parts/goods with "DIS:" notation in description as of 5/8/18
Excess	Inventory "Type B" detail export from Fishbowl	Inventory Class 'B' - REPORT B-STOCK.xlsx	Apply 60% to reflect G/L carrying value
<b>Accounts Payable</b>	Inventory Months-On-Hand analysis	CO400 INVENTORY 05-08-18 3M6M REPORT.xlsx; tcp excess calc.xlsx	Sum values in excess of 13 months on hand by part/good, based on monthly average usage over last six months; include parts/goods listed as "active" but not used over last six months, except new products
Pre-Petition	AP aging export from QuickBooks	A-P Aging [yyyy-mm-dd].xlsx	Figure used was an estimate
Pre-Petition Accrued	Accrued Expenses-Inventory from QuickBooks, including any reconciling entries	Accrued Expenses 3-31-18.xlsx	Figure used came from annotation by E Deravanessian
Post-Petition	AP aging export from QuickBooks	A-P Aging [yyyy-mm-dd].xlsx	Figure used was an estimate
Post-Petition Accrued	Accrued Expenses-Inventory from QuickBooks, including any reconciling entries	Accrued Expenses [mm-dd-yy].xlsx	Figure used was an estimate



**EXHIBITS A – F**

**[To Be Attached]**

**Exhibit D**

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

In accordance with Local Rule 6004-1,<sup>1</sup> 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 Debtors' knowledge, the Stalking Horse Purchaser has not entered into any agreements with management or key employees regarding compensation or future employment, except that the Stalking Horse Purchaser has agreed to purchase and then waive that certain promissory note dated May 2, 2014, executed by Raul Calderon, the Debtors' Chief Operating Officer, in favor of Holdings (which note was assigned to Arecont Vision) in the current principal amount of \$390,000.00.
- (3) **Releases:** The Purchase Agreement does not provide for any releases by and between the Stalking Horse Purchaser and the Debtors 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:** Sections 5 and 6 of the Purchase Agreement set forth the conditions and terms for the Closing of the Sale, and the Purchase Agreement provides an outside Closing date of July 13, 2018.
- (6) **Good Faith Deposit:** The Stalking Horse Purchaser will provide a good faith deposit in the amount of \$1,000,000. The proposed Bid Procedures provide 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 Debtors), certified check or such other form acceptable to the Debtors, payable to the order of the Debtors (or such other party as the Debtors may determine) in the amount of 10% of the competing bidder's offer.
- (7) **Interim Arrangements with Proposed Buyer:** Section 4.1 of the Purchase Agreement contains customary provisions regarding the Debtor's conduct of their business pending the Closing Date. Section 4.3 of the Purchase Agreement provides that the Debtors will permit the Stalking Horse Purchaser reasonable access during Debtors' regular business hours with respect to certain matters.
- (8) **Use of Proceeds:** Upon Closing, the net sale proceeds shall be, to the extent permitted and appropriate, distributed or reserved in accordance with applicable cash collateral and financing orders, or as otherwise permitted by the Bankruptcy Code and applicable Bankruptcy Court Order.

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<sup>1</sup> 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 4.8 of the Purchase Agreement provides for Debtors' access to books and records.
- (11) **Sale of Avoidance Actions**: The Debtors' avoidance actions relating to ordinary course trade vendors with respect to the Purchased Assets are being sold pursuant to the Purchase Agreement. Section 1.1(p) specifies that all of the rights and claims of the Debtors for preference or avoidance actions relating to ordinary course trade vendors with respect to the Debtors' business available to the Debtors under the Bankruptcy Code, of whatever kind or nature, including, without limitation, those set forth in Sections 544 through 551 and any other applicable provisions of the Bankruptcy Code, and any related claims and actions arising under such sections by operation of law or otherwise, including any and all proceeds of the foregoing, are Assets to be transferred pursuant to the Purchase Agreement.
- (12) **Requested Findings as to Successor Liability**: The proposed sale order provides that Successful Bidder is not a successor to Debtors or these bankruptcy estates 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, Claims and Encumbrances, and other interests against Successful Bidder or the Assets, except as relates to Assumed Liabilities.
- (13) **Sale Free and Clear of Unexpired Leases**: The Debtors are seeking to sell the Assets free and clear of all Liens, Claims and Encumbrances, and other interests, claims, encumbrances, and other interests pursuant to Section 363(f) of the Bankruptcy Code.
- (14) **Credit Bid**: The proposed Bid Procedures do not purport to limit or restrict credit bid rights under section 363(k) of the Bankruptcy Code.
- (15) **Relief from Bankruptcy Rule 6004(h)**: As noted in the Motion, the Debtors are requesting relief from the 14-day stay imposed by Rules 6004(h) and 6006(d).