

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

In re:

BEAVEX HOLDING CORPORATION, *et al.*,¹

Debtors.

Chapter 11

Case No. 19-10316 (LSS)

Jointly Administered

Ref. Docket No.: 16

ORDER (A) APPROVING AND AUTHORIZING BIDDING PROCEDURES IN CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL THE DEBTORS' ASSETS (B) APPROVING AND AUTHORIZING THE BID PROTECTIONS, (C) SCHEDULING THE RELATED AUCTION AND HEARING TO CONSIDER APPROVAL OF THE SALE, (D) APPROVING PROCEDURES RELATED TO THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (E) APPROVING THE FORM AND MANNER OF NOTICE THEREOF, AND (F) GRANTING RELATED RELIEF

Upon consideration of the motion (the "Motion")² of the above-captioned debtors and debtors in possession (each a "Debtor", and collectively, the "Debtors") for the entry of an order pursuant to sections 105(a), 363 and 365 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"), among other things, (a) approving and authorizing certain bidding procedures in connection with the sale of substantially all of the Debtors' assets (the "Assets") (as attached hereto as Exhibit 1, the "Bidding Procedures"), (b) approving and authorizing the Break-Up Fee

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: BeavEx Holding Corporation (7740); BeavEx Acquisition, Inc. (5497); BeavEx Incorporated (7355); JNJW Enterprises, Inc. (4963); and USXP, LLC (2997). The headquarters for the above-captioned Debtors is located at 2120 Powers Ferry Road SE, Suite 300, Atlanta, GA 30339.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion or APA, as applicable.

and Expense Reimbursement, (c) scheduling the related auction and hearing to consider approval of sale, (d) approving procedures related to the assumption and assignment of certain of the Debtors' Executory Contracts and Unexpired Leases, (e) approving the form and manner of notice thereof and (f) granting related relief (collectively, the "Bidding Procedures 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 and the Amended Order, (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 complied with all applicable requirements of the Bankruptcy Code, Bankruptcy Rules, and Local Rules; and a hearing having been held to consider the Bidding Procedures Relief; 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;

THE COURT HEREBY FURTHER FINDS AND DETERMINES THAT:

A. The Debtors have demonstrated good and sufficient reasons for, and the best interests of their estates, creditors, and other parties in interest will be served by, this Court granting, to the extent provided herein, the relief requested in the Motion relating to the Bidding Procedures Relief, including approval of (i) the Bidding Procedures, (ii) the Break-Up Fee and the Expense Reimbursement (together, the "Bid Protections") provided for in the Asset Purchase Agreement, by and between the Debtors and TForce Final Mile, LLC, TForce Final Mile West, LLC and TForce Logistics, LLC (collectively, "TForce" or the "Lead Bidder") (including all exhibits, schedules and ancillary agreements related thereto, and as may be amended, supplemented or modified pursuant to its terms (the "APA"), which contemplates a sale (the

“Sale”) of the Acquired Assets, subject to the Bidding Procedures, (iii) the procedures described below for the determination of the amounts necessary to cure defaults under the Executory Contract or Unexpired Lease that may be assumed and assigned pursuant to the Sale (an “Assumed Contract” and collectively, the “Assumed Contracts”) so as to permit the assumption and assignment under section 365 of the Bankruptcy Code of the Assumed Contracts, and (iv) the forms of the Sale Notice and Cure Notice attached to the Motion as Exhibit D and Exhibit E, respectively.

B. The Debtors have demonstrated good and sufficient reasons for, and the best interests of their estates and their creditors will be served by, this Court scheduling a Sale Hearing to consider granting the other relief requested in the Motion, including approval of the Sale and the transfer of the Assets to the Successful Bidder (as defined in the Bidding Procedures) free and clear of all liens, claims, encumbrances and other interests pursuant to section 363(f) of the Bankruptcy Code.

C. The Bid Protections as set forth in the APA required to be paid under the circumstances described therein to the Lead Bidder are (i) an actual and necessary cost of preserving the Debtors’ estates within the meaning of sections 503(b) and 507(a) of the Bankruptcy Code, (ii) commensurate to the real and substantial benefits conferred upon the Debtors’ estates by the Lead Bidder, (iii) reasonable and appropriate in light of the size and nature of the Sale and comparable transactions, the commitments that have been made, the condition of the Assets, and the efforts that have been and will be expended by the Lead Bidder, and (iv) a condition to and necessary to induce the Lead Bidder to continue to pursue the Sale and to continue to be bound by the APA.

D. Unless it is assured that the Bid Protections will be available, the Lead Bidder is unwilling to remain obligated to consummate the Sale or otherwise be bound under the APA (including the obligations to maintain its committed offer while such offer is subject to higher or otherwise better offers as contemplated by the Bidding Procedures). The Bid Protections induced the Lead Bidder to submit a bid that will serve as a minimum or floor bid for the Assets on which the Debtors, their creditors and other bidders can rely, and which encourages and facilitates the Auction process. The Lead Bidder has thus provided a material benefit to the Debtors and their creditors by increasing the likelihood that the best possible purchase price for the Assets will be realized. Accordingly, the Bid Protections are reasonable and appropriate and represent the best method for maximizing value for the benefit of the Debtors' estates.

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

F. The process for submitting Qualified Bids is fair, reasonable, and appropriate and is designed to maximize recoveries for the benefit of the Debtors' estates and creditors.

G. The Sale Notice and Cure Notice (each as defined below) are appropriate and reasonably calculated to provide all interested parties with timely and proper notice of this Order, the Bidding Procedures, the Sale, the Sale Hearing, and any and all objection deadlines related thereto, including with respect to cure amounts and the assumption and assignment of Executory Contracts and Unexpired Leases, and no other or further notice is required of the foregoing.

H. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

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

1. The Bidding Procedures Relief is granted, to the extent set forth herein.
2. All objections to the relief requested with respect to the Bidding Procedures that have not been withdrawal, waived or settled are otherwise overruled.
3. The Bidding Procedures attached hereto as Exhibit I are approved and shall govern all bids and bid proceedings relating to the Sale of the Assets.
4. The Debtors are authorized to proceed with the Sale in accordance with the Bidding Procedures and are authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures in accordance with the following timeline:

Sale Timeline	
Deadline to Serve Sale Notice and Cure Notice	March 15, 2019
Cure Objection Deadline and Assignment Objection Deadline	March 29, 2019, at 4:00 p.m. (ET)
Letter of Intent Deadline (submission of a Letter of Intent is optional for Potential Bidders)	March 28, 2019, at 4:00 p.m. (ET)
Bid Deadline	April 8, 2019, at 4:00 p.m. (ET)
Sale Objection Deadline	April 9, 2019, at 4:00 p.m. (ET)
Deadline to Notify Qualified Bidders	April 9, 2019, at 4:00 p.m. (ET)
Auction (if required)	April 10, 2019, at 10:00 a.m. (ET)
Notice of Successful Bidder	April 11, 2019, at 4:00 p.m. (ET)
Sale Reply Deadline	April 12, 2019, at 12:00 p.m. (ET)
Sale Hearing	April 16, 2019, at 10:00 a.m. (ET)

5. The Bid Protections, comprised of (i) a \$180,000 Break-Up Fee and (ii) an Expense Reimbursement in an amount no greater than \$150,000 (which Expense Reimbursement shall be supported by reasonable documentation), are approved and the Debtors are authorized to

pay amounts due in connection with the Bid Protections when and as set forth in the APA as administrative claims of the estate. Any amounts due in connection with the Bid Protections payable pursuant to the terms of the APA shall be payable without any further order of the Bankruptcy Court following the closing of a successful overbid.

6. The Debtors shall have the exclusive right, in consultation with the prepetition secured lender and postpetition secured lender and any statutorily appointed committee (if any) (together, the “Consultation Parties”), to determine whether a bid is a Qualified Bid and shall notify Potential Bidders, the Lead Bidder and the Notice Parties whether their bids have been recognized as such within one (1) Business Day after the Bid Deadline; provided, however, that if the prepetition secured lender or postpetition secured lender submits a bid for any Assets, it shall not be a Consultation Party under this Order or the Bidding Procedures; provider further, however, that the Lead Bidder is hereby deemed a Qualified Bidder, and the APA submitted to the Debtors by the Lead Bidder and appended to the Motion as Exhibit B, is deemed a Qualified Bid, for all purposes in connection with the Bidding Process, the Auction, and the Sale. The Lead Bidder shall not be required to take any further action in order to participate in the Auction (if any) or, if the Lead Bidder is the Successful Bidder, to be named the Successful Bidder at the Sale Hearing.

7. Any disputes as to the selection of a Qualified Bid shall be resolved by this Court.

8. The Debtors are authorized to conduct an Auction if they receive one or more Qualified Bids in addition to the APA. The Auction, if necessary, shall be held at 10:00 a.m. (prevailing Eastern Time) on April 10, 2019, at the offices of Young Conaway Stargatt & Taylor, LLP, 1000 N. King Street, Wilmington, Delaware 19801, or such other location as shall be timely communicated to all Qualified Bidders. If no other Qualifying Bid is received, no

Auction shall be necessary and the Debtors are authorized to cancel the Auction, provided, that the Debtors shall file a notice of cancellation of the Auction.

9. The Debtors shall arrange for the bidding at the Auction to be transcribed by a court reporter. Each Qualified Bidder shall be required to confirm its bid on the record at the Auction and confirm that it has not engaged in any collusion with respect to the bidding or the Sale.

10. Upon the conclusion of the Auction, the Debtors, in consultation with the Consultation Parties, shall review each Qualified Bid on the basis of financial and contractual terms and the factors relevant to the sale process, including, but not limited to, the Assets such bidder is proposing to purchase and those factors affecting the speed and certainty of consummating the sale with respect to the Assets, and shall identify the Successful Bidder(s) and may identify one or more Back-Up Bidder(s). The Debtors shall file a notice of the Successful Bidder(s) and Back-up Bidder(s) (if any) on or before one (1) business day after the conclusion of the Auction. Each Qualified Bidder shall be required to keep its bid open and irrevocable until the earlier of (i) 5:00 p.m. (prevailing Eastern Time) on the date that is forty-five (45) days following entry of the Sale Order or (ii) the closing of the Sale with the Successful Bidder (the "Outside Date"). The Good Faith Deposit(s) of the Back-up Bidder shall be held by the Debtors until the earlier of two (2) business days after (i) the closing of the Sale with the Successful Bidder(s) or (ii) the Outside Date.

11. The Sale Hearing shall be held on April 16, 2019 at 10:00 a.m. (ET) before this Court, the U.S. Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, Delaware 19801, Court Room #2. Any objections to the Sale must (a) be in writing, (b) state the basis of such objection with specificity, (c) conform to the Bankruptcy

Rules and the Local Rules, and (d) be filed with this Court and served in accordance with the rules of the Court upon (i) the Debtors, 2120 Powers Ferry Road SE, Suite 300, Atlanta, GA 30339 (Attn. Donald Van der Wiel (dvanderwiel@beavex.com)), (ii) counsel to the Debtors: Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801 (Attn: Joseph M. Barry, Esq. (jbarry@ycst.com), Matthew B. Lunn, Esq. (mlunn@ycst.com) and Donald J. Bowman, Jr., Esq. (dbowman@ycst.com)), (iii) counsel to the prepetition secured lenders and postpetition secured lenders, Winston Strawn, LLP, 200 Park Avenue, New York, NY 10166 (Attn. Carey D. Schreiber, Esq. (cschreiber@winston.com)) and Ashby & Geddes, P.A. (Attn. Gregory Taylor, Esq. (gtaylor@ashbygeddes.com)), (iv) counsel to the Lead Bidder: Baker Botts L.L.P., 30 Rockefeller Plaza, New York, NY 10112 (Attn. Emanuel Grillo, Esq. (emanuel.grillo@bakerbotts.com)), (v) proposed co-counsel to the Official Committee of Unsecured Creditors: Brown Rudnick LLP, 7 Times Square, New York, NY 10036 (Attn. Bennett S. Silverberg, Esq. (bsilverberg@brownrudnick.com)) and Saul Ewing Arnstein & Lehr LLP, P.O. Box 1266, Wilmington, DE 19899-1266 (Attn. Mark Minuti, Esq. (mark.minuti@saul.com)), and (vi) the U.S. Trustee, 844 King Street, Room 2207, Wilmington, DE 19801, Attn: Jaclyn Weissgerber (Jaclyn.weissgerber@usdoj.gov)), ((i)-(vi), collectively, the “Notice Parties”), so as to be received not later than 4:00 p.m. EST on April 9, 2019.

12. The following forms of notice are approved: (i) Notice of Bid Procedures, Auction Date, and Sale Hearing, in the form substantially similar to that attached to the Motion as Exhibit D (the “Sale Notice”) and (ii) the Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtors That May Be Assumed and Assigned (the “Cure Notice”), in the form substantially similar to that attached to the Motion as Exhibit E.

13. On or before March 15, 2019, the Debtors shall serve a copy of the Sale Notice and this Order by first class mail, postage prepaid on (i) the Office of the United States Trustee for Region III, (ii) the Office of the United States Attorney for the District of Delaware, (iii) counsel to any statutory committee appointed in the Chapter 11 Cases, (iv) the Internal Revenue Service, (v) the Debtors' thirty (30) largest unsecured creditors or counsel to any statutorily appointed committee in these chapter 11 cases, (vi) counsel to the prepetition secured lenders and postpetition secured lenders, (vii) counsel to the Lead Bidder, (viii) all persons known by the Debtors to have expressed an interest to the Debtors in a transaction with respect to the Assets during the previous six months, (ix) all entities known by the Debtors that may have a lien, claim, encumbrance or other interest in the Assets (for which identifying information and addresses are available to the Debtors), (x) all non-Debtor counterparties to the Executory Contracts and Unexpired Leases, (xi) all of the Debtors' known creditors, (xii) any governmental unit known to the Debtors to have a claim in the Chapter 11 Cases, (xiii) the Office of the Attorney General in each state in which the Debtors operate, (xiv) the Office of the Delaware Secretary of State and (xv) all parties that have requested notice in the Chapter 11 Cases under Bankruptcy Rule 2002 (collectively, the "Sale Notice Parties").

14. On or before March 15, 2019, the Debtors shall serve the Cure Notice upon each counterparty to each Executory Contract and Unexpired Lease by first class mail (postage prepaid), facsimile, electronic transmission, hand delivery or overnight mail. The Cure Notice shall state the date, time and place of the Sale Hearing, whether or not such Executory Contract or Unexpired Lease is designated to be assumed and assigned to the Lead Bidder, as well as the date by which any objection to the assumption and assignment of such Executory Contract or Unexpired Lease to the Lead Bidder or an alternate Successful Bidder must be filed and served.

The Cure Notice will also identify the amounts, if any, that the Debtors believe are owed to each counterparty to an Executory Contract or Unexpired Lease in order to cure any and all defaults that exist under such contract or lease (the “Cure Amounts”) pursuant to section 365 of the Bankruptcy Code. The Cure Notice does not constitute an admission that an Executory Contract or Unexpired Lease is in fact an executory contract or unexpired lease, and the Debtors’ rights with respect to the Executory Contracts and Unexpired Leases are fully reserved.

15. If any counterparty to an Executory Contract or Unexpired Lease objects for any reason to the Cure Amounts set forth in the Cure Notice, such counterparty must file with the Court a written objection (a “Cure Amount Objection”) and serve such Cure Amount Objection on the Notice Parties so as to be received by the Notice Parties by no later than March 29, 2019 at 4:00 p.m. (prevailing Eastern Time) (the “Cure Objection Deadline”). Each Cure Amount Objection must set forth with specificity each and every asserted default in any Executory Contract or Unexpired Lease and the monetary cure amount asserted by such counterparty to the extent it differs from the amount, if any, specified by the Debtors in the Cure Notice. If a counterparty to an Executory Contract or Unexpired Lease does not file an objection to the Cure Notice by the Cure Objection Deadline, then the counterparty shall be deemed to consent to the assumption and assignment of its Executory Contract or Unexpired Lease, and the Debtors shall be authorized to assume and assign the Executory Contract or Unexpired Lease, subject to the occurrence of the Closing without further notice or order of the Court.

16. If at any time after the entry of this Order, the Debtors or any Qualified Bidder identify additional executory contracts or unexpired leases to be assumed and assigned as Assumed Contracts (whether before or after the closing of the sale), as applicable, the Debtors shall serve a supplemental Cure Notice (the “Supplemental Cure Notice”) by facsimile,

electronic transmission, hand delivery or overnight mail on the applicable non-debtor counterparty and its counsel (if known) no later than fourteen (14) days before the proposed effective date of the assignment. Each Supplemental Cure Notice shall (i) state the date, time and place of the Sale Hearing, (ii) state the date by which any objection to the assumption and assignment of such Assumed Contract must be filed and served (which deadline shall be no earlier than fourteen (14) days from the date of service of such Supplemental Cure Notice), and (iii) identify the Cure Amount. The Supplemental Cure Notice does not constitute an admission that an Executory Contract or Unexpired Lease is in fact an executory contract or unexpired lease, and the Debtors' rights with respect to the Executory Contracts and Unexpired Leases are fully reserved.

17. If any counterparty to an Executory Contract or Unexpired Lease objects for any reason to the Cure Amounts set forth in the Supplemental Cure Notice, such counterparty must file and serve a written objection (the "Supplemental Cure Amount Objection") on the Notice Parties so as to be received by the Notice Parties on or before fourteen (14) days after the date of service of the Supplemental Cure Notice (the "Supplemental Cure Objection Deadline"). Each Supplemental Cure Amount Objection must set forth with specificity each and every asserted default in any Executory Contract or Unexpired Lease and the monetary cure amount asserted by such counterparty to the extent it differs from the amount, if any, specified by the Debtors in the Supplemental Cure Notice. If a counterparty to an Executory Contract or Unexpired Lease does not file an objection to the Supplemental Cure Notice by the Supplemental Cure Objection Deadline, then the counterparty shall be deemed to consent to the assumption and assignment of its Executory Contract or Unexpired Lease, and the Debtors shall be authorized to assume and assign the Executory Contract or Unexpired Lease, subject to the occurrence of the Closing

without further notice or order of the Court. For the avoidance of doubt, notwithstanding any provision of the APA or any Sale Order, no Executory Contract or Unexpired Lease that is identified on a Supplemental Cure Notice shall be assumed and assigned unless and until either (i) the counterparty to such Executory Contract or Unexpired Lease does not file an objection to such Supplemental Cure Notice within fourteen (14) days of service or (ii) such counterparty timely files an objection to the Supplemental Cure Notice and such objection is resolved by the Court or mutual agreement of the Debtors (following consultation with the Consultation Parties), the Successful Bidder and the objecting party.

18. In the event that the Debtors and the counterparty cannot resolve the Cure Amount Objection or Supplemental Cure Amount Objection, disputed Cure Amounts (“Disputed Cure Amounts”) shall not be paid until the resolution of any such disputes by the Court or mutual agreement of the Debtors (following consultation with the Consultation Parties), the Successful Bidder and the objecting party. Cure Amount Objections and Supplemental Cure Amount Objections may be resolved by the Court at the Sale Hearing, or at a separate hearing either before or after the Sale Hearing. Any counterparty to an Executory Contract or Unexpired Lease that fails to timely file and serve a Cure Amount Objection or Supplemental Cure Amount Objection shall be forever barred from objecting to the Cure Amounts and from asserting any additional cure or other amounts against the Debtors, their estates or the Successful Bidder other than that set forth in the Cure Notice or Supplemental Cure Notice. If no timely Cure Amount Objection or Supplemental Cure Amount Objection is filed and served with respect to an Assumed Contract, the Cure Amount identified in the Cure Notice or Supplemental Cure Notice with respect to such Assumed Contract will be the only amounts necessary under section 365(b) of the Bankruptcy Code to cure all monetary defaults under such Assumed Contract if the Lead

Bidder (or other Successful Bidder) ultimately decides to have the applicable Assumed Contract assumed and assigned to it.

19. If an Executory Contract or Unexpired Lease is assumed and assigned pursuant to an order of this Court, then except for any such Assumed Contract that is subject to Disputed Cure Amounts, the Assumed Contract counterparty shall be paid the Cure Amount, if any, as set forth in the Cure Notice or Supplemental Cure Notice, as applicable, with payment to be made pursuant to the terms of the Successful Bidder's asset purchase agreement.

20. Upon a request by the Debtors, at any time (including prior to an Auction), (an "Adequate Assurance Request") any party designated as a Qualified Bidder shall provide the Debtors with any and all information requested by the Debtors, or otherwise reasonably related to the Qualified Bidder's adequate assurance of future performance under its Qualified Bid should such Qualified Bidder be designated a Successful Bidder, including, but not limited to, adequate assurance of future performance of Executory Contracts and Unexpired Leases proposed to be assumed and assigned to Qualified Bidder under such Qualified Bid (the "Adequate Assurance Information"). Qualified Bidders shall have until the earlier of (i) 48 hours from the time the Qualified Bidder receives an Adequate Assurance Request, and (ii) 24 hours after the close of the Auction to provide the Debtors with the Adequate Assurance Information.

21. Any request for adequate assurance information regarding the Lead Bidder (a "Request for Adequate Assurance Regarding Lead Bidder") must be served upon (i) counsel for the Lead Bidder, (ii) counsel to the Debtors and (iii) counsel to the prepetition secured lenders and postpetition secured lenders so as to be received on or before the Cure Objection Deadline. The Lead Bidder shall have two (2) business days after the Request for Adequate Assurance

Regarding Lead Bidder (the “Adequate Assurance Response Deadline”) to provide the requesting party with any and all Adequate Assurance Information reasonably related to a Request for Adequate Assurance Regarding the Lead Bidder.

22. Any party deemed to be a Successful Bidder or Back-Up Bidder at the Auction shall timely, but in no event later than 24 hours following the close of the Auction, provide the Debtors with their Adequate Assurance Information to the extent not previously provided. Upon receipt thereof, or as reasonably promptly thereafter (but in no event later than 24 hours following their receipt thereof), the Debtors shall provide such Adequate Assurance Information to any party that made a Request for Adequate Assurance Regarding Lead Bidder (provided that the requesting party’s Executory Contract or Unexpired Lease is subject to such Successful Bidder’s or Back-Up Bidder’s bid). Any other request for adequate assurance information regarding the Successful Bidder(s) or Back-Up Bidder(s) must be served upon (i) counsel to the Successful Bidder(s) or Back-Up Bidder(s), (ii) counsel to the Debtors and (iii) counsel to the prepetition secured lenders and postpetition secured lenders on or prior to April 12, 2019 at 4:00 p.m. (ET). The Debtors shall provide the requested Adequate Insurance Information to the requesting party on or before 24 hours following the receipt of such request. All adequate assurance objections related to the Successful Bidder(s) or Back-Up Bidder(s) must be filed and served upon (i) counsel to the Successful Bidder(s) or Back-Up Bidder(s), (ii) counsel to the Debtors and (iii) counsel to the prepetition secured lenders and postpetition secured lenders on or prior to 4:00 p.m. (ET) the day prior to the Sale Hearing, without prejudice to parties’ rights to seek additional time to evaluate the Adequate Assurance Information.

23. If any counterparty to an Executory Contract or Unexpired Lease objects for any reason to the assumption and assignment of such Executory Contract or Unexpired Lease with

respect to the Lead Bidder (other than a Cure Amount Objection, an “Assignment Objection”), such counterparty must file and serve such Assignment Objection so as to be received by the Notice Parties by the later of either the Cure Objection Deadline or the Supplemental Cure Objection Deadline (as applicable) or (ii) the date set forth in any motion filed by the Debtors with the Bankruptcy Court to assume such Assumed Contract if such contract is to be assumed and assigned after the Sale Hearing); provided, however, if the Successful Bidder is not the Lead Bidder the Assignment Objection Deadline shall be one (1) day prior to the Sale Hearing. The Court shall make any and all determinations concerning adequate assurance of future performance under the Assumed Contracts pursuant to sections 365(b) and (f)(2) of the Bankruptcy Code at the Sale Hearing.

24. Except to the extent otherwise provided in the Successful Bidder’s asset purchase agreement, from and after the Closings, the Debtors and the Debtors’ estates shall be relieved of any and all liability accruing or arising under the Assumed Contracts pursuant to section 365(k) of the Bankruptcy Code irrespective of where such liability arose or accrued.

25. Subject to the terms of the APA and the Bidding Procedures, the Debtors are authorized to take such actions as may be necessary or appropriate to implement and affect the terms and requirements of this Order, including, but not limited to, expending such funds or taking such action as may be necessary or appropriate to comply with the Bidding Procedures

26. Notwithstanding anything set forth herein or in the Bidding Procedures to the contrary, nothing in this Order or the Bidding Procedures shall prejudice or impair the rights, or, in any way be deemed a waiver of any rights, of the Committee to (a) request from the Debtors and the pre- and post-petition secured parties a reasonable extension of any deadline or rescheduling of any event scheduled herein or in the Bidding Procedures, or (b) seek such an

extension of any deadline or rescheduling of any event scheduled herein or in the Bidding Procedures from the Court, for cause, which request may be on shortened notice.

27. To the extent the provisions of this Order are expressly inconsistent with the provisions of any Exhibit referenced herein, including the Bidding Procedures, or with the Motion, the provisions of this Order shall control.

28. Notwithstanding the possible applicability of Bankruptcy Rules 6004, 6006, 7062, 9014 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable.

29. The Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this Order.



LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Bidding Procedures

BIDDING PROCEDURES

Set forth below are the bidding procedures (the “Bidding Procedures”) for the proposed sale of all or substantially all of the assets (the “Assets”) or any combination of subset(s) thereof and assumption of certain liabilities of BeavEx Holding Corporation, BeavEx Acquisition, Inc., BeavEx Incorporated, JNJW Enterprises, Inc., and USXP, LLC (collectively, the “Debtors”), in connection with the jointly administered chapter 11 cases pending in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), lead case number 19-10316 (LSS).

BeavEx Incorporated, JNJW Enterprises, Inc., and USXP, LLC (the “Sellers”) entered into that certain asset purchase agreement with TForce Final Mile, LLC, TForce Final Mile West, LLC and TForce Logistics, LLC (“TForce” or the “Lead Bidder”), pursuant to which the Lead Bidder has agreed to acquire the Acquired Assets and has agreed to assume certain specified liabilities on the terms and conditions specified therein (together with the schedules and related documents thereto, and as may be amended, supplemented or otherwise modified, the “APA”).

The Lead Bidder has submitted a Qualified Bid (as defined below) consisting of (a) the purchase of the Acquired Assets (as defined in the APA), (b) the assumption of the Assumed Liabilities (as defined in the APA) and (c) a cash purchase price equal to the \$7,204,987 (the “Lead Bid”).

The sale, pursuant to the APA, is subject to competitive bidding as set forth herein. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Motion for the approval of the Bidding Procedures (the “Approval Motion”) [Docket No.16].

A. ASSETS TO BE SOLD

The Debtors seek to complete a sale of the Assets (or any combination of subset(s) thereof) and the assumption of certain of their liabilities, provided, however, that the Debtors determine that the aggregate consideration offered by any bid or combination of bids for the Assets satisfies the requirements set forth in these Bidding Procedures. More specifically, the Debtors will entertain and pursue proposals for the Assets or any combination of subset(s) of the Assets via multiple Qualified Bids. Except as otherwise provided in the APA or such other approved purchase agreement of a Successful Bidder(s) (as defined below), all of the Debtors’ rights, title and interest in and to each of the Assets shall be sold free and clear of all liens, claims, interests, charges, restrictions and encumbrances of any kind or nature thereon and there against (collectively, the “Liens”), such Liens, including the Liens of the prepetition secured lenders and postpetition secured lenders, to attach solely to the net proceeds of the sale of such Assets.

B. THE BID PROCEDURES

To ensure that the Debtors receive the maximum value for the Acquired Assets, the APA is subject to higher or otherwise better offers, and, as such, the APA will serve as the lead bid for the Acquired Assets.

1. Provisions Governing Qualifications of Bidders

In order to participate in the bidding process, prior to the Bid Deadline (defined below), each person who wishes to participate in the bidding process (a “Potential Bidder”), other than the Lead Bidder, must deliver the following to the Notice Parties (as defined below):

- a. a written disclosure of the identity of each entity including all affiliates, equity sources or other parties that will be or is associated with bidding for the Assets or otherwise participating in connection with such bid and the complete terms of any such participation; and
- b. an executed confidentiality agreement (to be delivered prior to the distribution of any confidential information by the Debtors to a Potential Bidder) in form and substance satisfactory to the Debtors, in substantially the same form as signed by the Lead Bidder and which shall inure to the benefit of any purchaser of the Assets; without limiting the foregoing, each confidentiality agreement executed by a Potential Bidder shall contain standard non-solicitation provisions.

Additionally, prior to the Letter of Intent Deadline (defined below), each Potential Bidder, other than the Lead Bidder, may deliver a non-binding letter (a “Letter of Intent”) stating such Potential Bidder’s interest in purchasing all or a portion of the Debtors’ Assets, and proposing the principal terms of purchase and sale as well as such Potential Bidder’s requirements for completion of diligence. **POTENTIAL BIDDERS ARE ENCOURAGED BUT ARE NOT REQUIRED TO SUBMIT A LETTER OF INTENT PRIOR TO THE LETTER OF INTENT DEADLINE. BIDS OF ALL POTENTIAL BIDDERS WILL BE CONSIDERED PROVIDED THEY ARE SUBMITTED PRIOR TO THE BID DEADLINE.** Letters of Intent should be submitted to the following parties (collectively, the “Notice Parties”): (i) the Debtors, 2120 Powers Ferry Road SE, Suite 300, Atlanta, GA 30339 (Attn. Donald Van der Wiel (dvanderwiel@beavex.com)), (ii) counsel to the Debtors: Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801 (Attn: Joseph M. Barry, Esq. (jbarry@ycst.com), Matthew B. Lunn, Esq. (mlunn@ycst.com), and Donald J. Bowman, Jr., Esq. (dbowman@ycst.com)), (iii) counsel to DIP Lender, Winston Strawn, LLP, 200 Park Avenue, New York, NY 10166 (Attn. Carey D. Schreiber, Esq. (cschreiber@winston.com)), (iv) co-counsel to postpetition lenders, Ashby & Geddes, P.A. (Attn. Gregory Taylor, Esq. (gtaylor@ashbygeddes.com)), (v) counsel to the Lead Bidder: Baker Botts L.L.P., 30 Rockefeller Plaza, New York, NY 10112 (Attn. Emanuel Grillo, Esq. (emanuel.grillo@bakerbotts.com)), and (vi) counsel to the Committee: Brown Rudnick LLP, 7 Times Square, New York, NY 10036 (Attn. Bennett S. Silverberg, Esq. (bsilverberg@brownrudnick.com)) and Saul Ewing Arnstein & Lehr LLP, P.O. Box 1266, Wilmington, DE 19899-1266 (Attn. Mark Minuti, Esq. (mark.minuti@saul.com)) (collectively,

the “Notice Parties”), so as to be received by the Notice Parties not later than 4:00 p.m. (prevailing Eastern Time) on March 28, 2019 (the “Letter of Intent Deadline”).

Because the Debtors will consider offers for a portion of their Assets, a Potential Bidder is not required to submit an offer for all or substantially all of the Assets in order to be a Qualified Bidder. To that end, a Potential Bidder or combination of Potential Bidders that delivers the documents and information described above and that the Debtors, in consultation with the prepetition secured lenders and postpetition secured lenders and the Official Committee of Unsecured Creditors (the “Committee,” together with the foregoing, the “Consultation Parties”)³ determine in their reasonable business judgment, is likely (based on among other things, (i) the terms of the Proposed Asset Purchase Agreement (as defined below), (ii) the total consideration to be received by the Debtors, (iii) the availability of committed capital, (iv) the transaction structure and execution risk to the Debtors, (v) the net benefit to the Debtors, (vi) experience and (vii) other considerations) to submit a bona fide offer and be able to consummate the transaction, including without limitation obtaining all required regulatory or government agency approvals, will be deemed a “Qualified Bidder.” The Debtors will limit access to due diligence to those parties they believe, in the exercise of their reasonable judgment, are pursuing the transaction in good faith. The Debtors will inform the Consultation Parties of any parties so excluded from access.

As promptly as practicable after a Potential Bidder(s) delivers all of the materials required above (and in any event no later than one (1) business day thereafter), the Debtors will determine, after consultation with the Consultation Parties, if such Potential Bidder is a Qualified Bidder and will notify the Potential Bidder, the Lead Bidder and the Notice Parties on their determination.

2. Due Diligence

The Debtors will afford any Qualified Bidder such due diligence access or additional information as the Debtors, in consultation with their advisors, the prepetition secured lender and postpetition secured lender and the Committee, deem appropriate, in their reasonable discretion, subject to contractual obligations to limit access to certain proprietary information; provided, however, the Debtors will, in their reasonable discretion, make reasonable commercial efforts to provide Qualified Bidders with the same information provided to the Lead Bidder.

The due diligence period shall end on the Bid Deadline, and the Debtors will not be obligated to furnish any due diligence information to any Qualified Bidder after the Bid Deadline. For the avoidance of doubt, neither the Debtors nor any of their respective representatives shall be obligated to furnish any due diligence information to any person other than a Qualified Bidder.

³ If the prepetition secured lender and postpetition secured lender submits a bid for any Assets, it shall not be a Consultation Party under these Bidding Procedures

3. Provisions Governing Qualified Bids

A bid submitted will be considered a Qualified Bid only if the bid is submitted by a Qualified Bidder and complies with all of the following (a “Qualified Bid”):

- a. it fully discloses the identity of the Qualified Bidder;
- b. it states that the applicable Qualified Bidder offers to purchase, in cash or other consideration, the Assets (or any combination of subset(s) thereof) upon terms and conditions that the Debtors reasonably determine, after consultation with the Consultation Parties, are at least as favorable to the Debtors as those set forth in the APA, and it provides a description of any anticipated regulatory or governmental approvals necessary to consummate the bid;
- c. it includes a signed writing that the Qualified Bidder’s offer is irrevocable until the selection of the Successful Bidder(s), provided that if such bidder is selected as a Successful Bidder(s) its offer shall remain irrevocable until the earlier of (a) the closing of the sale to the Successful Bidder, and (b) sixty (60) days after entry of the Sale Order. Such writing shall guaranty performance of the Qualified Bidder by its parent entities, if any, or provide such other guaranty of performance acceptable to Debtors in their reasonable discretion;
- d. confirmation that all necessary internal and shareholder approvals have been obtained prior to the bid;
- e. it includes a duly authorized and executed copy of an asset purchase agreement, including the purchase price for the Assets expressed in U.S. Dollars, together with all exhibits and schedules thereto, together with copies marked to show any amendments and modifications to the APA (the “Proposed Asset Purchase Agreement”) and the proposed form of sale approval order to approve the sale by the Bankruptcy Court, together with a copy marked to show amendments and modifications to the proposed form of sale approval order attached to the Approval Motion; provided however, that such Proposed Asset Purchase Agreement shall not include any financing or diligence conditions;
- f. it includes written evidence of sufficient cash on hand to fund the purchase price (including all non-cash consideration and payment of all costs contemplated to be incurred by the Qualified Bidder, including but not limited to satisfaction of all cure amounts to be paid by the Qualified Bidder, retention of all Transferred Employees, and performance on Assumed Contracts) or sources of immediately available funds that are not conditioned on third party approvals or commitments, that will allow the Debtors to make a reasonable determination as to the Qualified Bidder’s financial and other capabilities to consummate the transaction contemplated by the Proposed Asset Purchase Agreement; such written evidence shall include the most current audited and the most current unaudited financial statements, or such other financial information as may be acceptable to the Debtors in their reasonable discretion after consultation with the

Consultation Parties (collectively, the “Financials”) of the Qualified Bidder, or, if the Qualified Bidder is an entity formed for the purpose of acquiring the Assets, the Financials of the Qualified Bidder’s equity holder(s) or other financial backer(s) that are guaranteeing the Qualified Bidder’s performance;

g. if such bid is for the same assets, and on substantially the same terms set forth in the Lead Bid, it provides for a Purchase Price that includes cash and/or other consideration that exceeds the aggregate cash consideration to be paid to or for the benefit of the Debtors’ estates set forth in the Lead Bid by at least \$430,000, which represents the sum of (A) the amount of the Break-Up Fee of \$180,000, plus (B) the Expense Reimbursement (not to exceed \$150,000), plus (C) \$100,000 and otherwise has a value to the Debtors, in the Debtors’ exercise of their reasonable business judgment, after consultation with their advisors and the Consultation Parties, that is greater or otherwise better than the value offered under the APA including impact of the liabilities assumed in the APA;

h. it identifies the Assets (or subset(s) thereof) that are included in the bid;

i. it identifies with particularity which executory contracts and unexpired leases the Qualified Bidder wishes to reject and provides details of the Qualified Bidder’s proposal for the treatment of related cure costs;

j. it provides information concerning the Qualified Bidder’s ability to satisfy adequate assurance of performance with respect to executory contracts and unexpired leases to be assumed and assigned;

k. it includes an acknowledgement and representation that the Qualified Bidder: (A) has had an opportunity to conduct any and all required due diligence regarding the Assets prior to making its offer; (B) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid; (C) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Assets or the completeness of any information provided in connection therewith or with the Auction (defined below), except as expressly stated in the Proposed Asset Purchase Agreement; and (D) is not entitled to any expense reimbursement, break-up fee, or similar type of payment in connection with its bid;

l. it includes evidence, in form and substance reasonably satisfactory to the Debtors, of authorization and approval from the Qualified Bidder’s board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Proposed Asset Purchase Agreement;

m. it contains a detailed description of how the Qualified Bidder intends to treat the Debtors’ current employees, independent contract couriers, or third-party service providers;

n. it states that the Qualified Bidder consents to the jurisdiction of the Bankruptcy Court;

o. it contains such other information reasonably requested by the Debtors and the prepetition secured lenders and postpetition secured lender;

p. it provides a good faith cash deposit to be held by the Debtors equal to at least 10% of the cash component of the Qualified Bidders' Bid (the "Good Faith Deposit"). The Good Faith Deposit shall be made by wire transfer to a non-interest bearing account specified by the Debtors pursuant to the instructions to be provided by the Debtors. The Good Faith Deposit of any Qualified Bidder (except for the Successful Bidder(s) or Back-Up Bidder(s)) shall be returned to the Qualified Bidder, with any interests earned thereon, within five (5) Business days from the Sale closing. The Good Faith Deposit of the Successful Bidder shall be applied against the purchase price for the assets purchased by the Successful Bidder

q. it contains a statement that the Qualified Bidder has not engaged in any collusion with respect to the bidding or Sale;

r. to the extent such bid is submitted in combination with any other bid(s) as described in the paragraph below, it identifies all other bid(s) that should be considered in tandem therewith and all submitting bidders of such bid(s); and

s. it is received on or prior to the Bid Deadline.

Notwithstanding anything in these Bidding Procedures to the contrary, and for the avoidance of doubt, for all purposes under these Bidding Procedures, Auction and Sale, the Lead Bid and the Lead Bidder shall be deemed a Qualified Bid and Qualified Bidder, respectively. The Lead Bidder shall not be required to take any further action in order to participate in the Auction (if any) or, if the Lead Bidder is the Successful Bidder, to be named the Successful Bidder at the Sale Hearing (as defined below). Additionally, any bids submitted by a combination of Potential Bidders whose bids for the Assets (or any combination of subset(s) thereof) do not overlap and who agree to have their bids combined for the purposes of determination of whether such Potential Bidders (as combined) shall constitute a Qualified Bid, shall be deemed one Qualified Bid and the bidders as Qualified Bidders, to the extent the bid (or combined bids) satisfies the provisions of this Section 3.

No later than one (1) business day following the expiration of the Bid Deadline, the Debtors shall notify the Lead Bidder, all other Qualified Bidders, and the Notice Parties in writing as to whether or not any bids (or combination of bids) constitute Qualified Bids (and, with respect to each Qualified Bidder that submitted a bid other than the Lead Bidder, whether such Qualified Bidder's bid constitutes a Qualified Bid).

Upon a request by the Debtors, at any time (including prior to an Auction), (an "Adequate Assurance Request") any party designated as a Qualified Bidder shall provide the Debtors with any and all information requested by the Debtors, or otherwise reasonably related to the Qualified Bidder's adequate assurance of future performance under its Qualified Bid

should such Qualified Bidder be designated a Successful Bidder, including, but not limited to, adequate assurance of future performance of Executory Contracts and Unexpired Leases proposed to be assumed and assigned to Qualified Bidder under such Qualified Bid (the “Adequate Assurance Information”). Qualified Bidders shall have until the earlier of (i) 48 hours from the time the Qualified Bidder receives an Adequate Assurance Request, and (ii) 24 hours after the close of the Auction to provide the Debtors with the Adequate Assurance Information.

4. Letter of Intent Deadline and Bid Deadline

a. Bid Deadline

A Qualified Bidder that desires to make a bid will deliver written copies of its bid to the Notice Parties, so as to be received by the Notice Parties not later than 4:00 p.m. (prevailing Eastern Time) on April 8, 2019 (the “Bid Deadline”).

5. Evaluation of Competing Bids

A Qualified Bid (as may be combined) will be valued based upon several factors including, without limitation, (i) the amount of such bid, (including value provided by the assumption of liabilities), (ii) the risks and timing associated with consummating such bid, (iii) any proposed revisions to the APA (including any additional conditions to closing), and (iv) any other factors deemed relevant by the Debtors and the Consultation Parties, in their reasonable discretion.

6. No Qualified Bids

If the Debtors do not receive any Qualified Bids, other than the Lead Bid, the Debtors will not hold an auction and the Lead Bidder will be named the Successful Bidder.

7. Auction Process.

If the Debtors receive one or more Qualified Bids in addition to the Lead Bid, the Debtors will conduct an auction (the “Auction”) of the Assets, which shall be transcribed, at 10:00 a.m. (prevailing Eastern Time) on April 10, 2019 at the offices of Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, or such other location as shall be timely communicated by the Debtors. The Auction shall be conducted in accordance with the following procedures:

- a. Only the Notice Parties, any member of the Committee, any other Qualified Bidders that have submitted Qualified Bids, and/or other party as the Debtors may determine to include in their reasonable discretion, in each case along with their representatives and advisors, shall be entitled to attend the Auction (such attendance to be in person); if a party that is a creditor of the Debtors, other than those listed above, would like to attend the Auction, such party shall make a request to attend the Auction in writing (which writing may be in the form of an electronic mail) and serve such request on the Notice Parties no

later than 12:00 p.m. (prevailing Eastern Time) two (2) business days prior to the date of the Auction;

b. only the Lead Bidder and such other Qualified Bidders that have submitted Qualified Bids on or prior to the Bid Deadline will be entitled to make any subsequent bids at the Auction; provided that all such Qualified Bidders wishing to attend the Auction must have at least one individual representative with authority to bind such Qualified Bidder attending the Auction in person;

c. each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the sale;

d. at least one (1) business day prior to the Auction, each Qualified Bidder who has timely submitted a Qualified Bid must inform the Debtors whether it intends to attend the Auction; provided that in the event a Qualified Bidder elects not to attend the Auction, such Qualified Bidder's Qualified Bid shall nevertheless remain fully enforceable against such Qualified Bidder until (a) the date of the selection of either the Successful Bidder and/or Back-up Bidder at the conclusion of the Auction, or (b) if selected as either the Successful Bidder or Back-up Bidder, until the Outside Date (as defined below). Prior to the start of the Auction, the Debtors will provide copies of the Qualified Bid which the Debtors believe, in their reasonable discretion, and following consultation with the Consultation Parties, is the highest or otherwise best offer (the "Starting Bid") to the Lead Bidder and all other Qualified Bidders;

e. all Qualified Bidders who have timely submitted Qualified Bids will be entitled to be present for all Subsequent Bids (as defined below) at the Auction and the actual identity of each Qualified Bidder will be disclosed on the record at the Auction;

f. the Debtors, after consultation with their advisors and the Consultation Parties, may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances for conducting the Auction, provided that such rules are (i) not inconsistent with these Bidding Procedures, the Bankruptcy Code, or any order of the Court entered in connection herewith, and (ii) provide that bids be made and received on an open basis, with all material terms of each bid to be fully disclosed to all other Qualified Bidders at the Auction and (iii) are disclosed to each Qualified Bidder at the Auction; and

g. bidding at the Auction will begin with the Starting Bid and continue in bidding increments (each a "Subsequent Bid") providing a net value to the estate of at least an additional \$100,000 above the prior bid. After the first round of bidding and between each subsequent round of bidding, the Debtors, after consultation with the Consultation Parties, shall announce the bid (including the identity of that bidder and the value of such bid) that it believes to be the highest or otherwise best offer (the "Highest Bid"). A round of bidding will conclude after each participating Qualified Bidder has had the opportunity to

submit a Subsequent Bid with full knowledge of the Highest Bid. Each Qualified Bidder shall either elect to provide a higher bid or withdraw from the Auction. Except as specifically set forth herein, for the purpose of evaluating the value of the consideration provided by Subsequent Bids (including any Subsequent Bid by the Lead Bidder), the Debtors will give effect to the Break-Up Fee and Expense Reimbursement payable to the Lead Bidder under the APA as well as any additional liabilities to be assumed by a Qualified Bidder and any additional costs which may be imposed on the Debtors. If the Lead Bidder bids at the Auction, the Lead Bidder will be entitled to a “credit” for the Break-Up Fee and Expense Reimbursement. To the extent a Subsequent Bid has been accepted entirely or in part because of the addition, deletion or modification of a provision or provisions in the applicable Proposed Asset Purchase Agreement or the APA, the Debtors will identify such added, deleted or modified provision or provisions.

8. Selection of Successful Bidder and Back-Up Bidder

Prior to the conclusion of the Auction, the Debtors, in consultation with their advisors and the Consultation Parties, will review and evaluate each Qualified Bid in accordance with the procedures set forth herein and determine which offer is the highest or otherwise best offer from among the Qualified Bidders (including the Lead Bidder) submitted at or prior to the Auction (such bid, the “Successful Bid” and the bidder or bidders making such bid, the “Successful Bidder(s)”) and communicate to the Lead Bidder and the other Qualified Bidders the identity of the Successful Bidder(s) and the details of the Successful Bid. The determination of the Successful Bid by the Debtors at the conclusion of the Auction shall be final, subject only to approval by the Bankruptcy Court. Upon determining the Successful Bidder(s), at the conclusion of the Auction, the Debtors shall also identify the next highest or otherwise best Qualified Bid (if any) (the “Back-Up Bid”) and the Qualified Bidder(s) who submitted such bid (the “Back-Up Bidder(s)”). Within one (1) business day after adjournment of the Auction, the Debtors shall file a notice identifying the Successful Bidder(s) and Back-up Bidder(s) with the Bankruptcy Court. Each Qualified Bidder shall be required to keep its bid open and irrevocable until the earlier of (i) 5:00 p.m. (prevailing Eastern Time) on the date that is thirty (30) days following entry of the Sale Order or (ii) the closing of the Sale with the Successful Bidder (the “Outside Date”). The Good Faith Deposit of the Back-Up Bidder shall be held by the Debtors until the earlier of two (2) business days after (i) the closing of the Sale with the Successful Bidder or (ii) the Outside Date.

Within two (2) business days after adjournment of the Auction, the Successful Bidder(s) shall complete and execute all agreements, contracts, instruments and other documents evidencing and containing the terms and conditions upon which the Successful Bid was made.

The Debtors will sell the substantially all of their Assets to the Successful Bidder(s) pursuant to the terms of the Successful Bid upon the approval of such Successful Bid by the Bankruptcy Court at the Sale Hearing. The Successful Bidder(s) shall be required to consummate the Sale no later than thirty (30) days following entry of an order approving the Sale, subject to extensions by the Debtors following consultation with the Consultation Parties. If the Successful Bidder(s) fails to timely consummate the Sale of the Assets, or any subset(s)

thereof, the Debtors shall consummate the Sale of the Assets, or any subset(s) thereof, to the Back-up Bidders pursuant to the terms of the Back-up Bid as soon as commercially reasonable.

C. SALE HEARING

The Debtors intend to seek entry of an order from the Bankruptcy Court at a hearing (the “Sale Hearing”) to begin at 10:00 a.m. (prevailing Eastern Time) on April 16, 2019, to approve and authorize the sale transaction to the Successful Bidder on terms and conditions determined in accordance with the Bidding Procedures.

D. MISCELLANEOUS

The Auction and the Bidding Procedures are solely for the benefit of the Debtors and their estates, and nothing contained in the Bid Procedures Order or the APA or the Bidding Procedures shall create any rights in any other person or bidder (including without limitation rights as third party beneficiaries or otherwise) other than the rights expressly granted to the Consultation Parties or a Successful Bidder under the Bid Procedures Order.

The Debtors, after consultation with the Consultation Parties, may modify the rules, procedures and deadlines set forth herein, or adopt new rules, procedures and deadlines that, in their reasonable discretion, will better promote the goals of these procedures, namely, to maximize value for the estates; provided that all modifications and additional rules, procedures and deadlines will be non-material, may in no event extend the dates specified in Bidding Procedures Order, including permitting the submission of Qualified Bids after the close of the Auction and otherwise not conflict with these Bidding Procedures or the Bidding Procedures Order. All such modifications and additional rules will be communicated to each of the Notice Parties, Potential Bidders and Qualified Bidders.

Nothing in these Bidding Procedures shall require the Debtors’ board of directors to take any action, or to refrain from taking any action, with respect to these Bidding Procedures, to the extent that the Debtors’ board of directors determines, or based on the advice of counsel, that taking such action, or refraining from taking such action, as applicable, is required to comply with applicable law or its fiduciary duties under applicable law.

The Bankruptcy Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of the Bid Procedures Order.