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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:)	
)	CASE NO. 16-13944
ESS AUTOMOTIVE, INC.)	
)	CHAPTER 11
Debtor)	
)	JUDGE HARRIS

MOTION FOR ORDERS AUTHORIZING AND APPROVING (I) THE SALE OF THE DEBTOR’S ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND INTERESTS, (II) THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (III) THE FORM AND MANNER OF SALE NOTICES, AND (IV) CERTAIN SALE PROCEDURES, INCLUDING AN EXPENSE REIMBURSEMENT

ESS Automotive, Inc. (“ESS” or “Debtor”), the above captioned Debtor and Debtor in possession, hereby moves this Court for the entry of orders, pursuant to sections 105(a), 363 and 365 of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), authorizing and approving (i) the sale (the “Sale”) of all or substantially all of the Debtor’s assets (the “Transferred Assets”) to CEETUS, LTD (the “Proposed Purchaser”) pursuant to that certain Asset Purchase Agreement¹ (the “Agreement”) dated July, 22, 2016 by and between ESS and the Proposed Purchaser and as attached hereto as Exhibit A, or to such party that makes a higher and better offer that is accepted by the Debtor and approved by the

¹ Unless otherwise defined herein, all capitalized terms shall have the meaning ascribed to them in the Agreement, to the extent defined therein.

Court (the "Successful Bidder"), (ii) the form and manner of notice of the proposed sale (the "Notice Procedures"), and (iii) certain sale procedures (the "Sale Procedures"), including the payment, under certain circumstances, an expense reimbursement (the "Expense Reimbursement") described herein. In support of this Motion, the Debtor respectfully represents as follows:

I. INTRODUCTION

1. On July 20, 2016 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtor continues to operate its business and manage its affairs as a Debtor-in-possession.

2. An official committee of unsecured creditors (the "Unsecured Creditors' Committee") has not yet been appointed in this case.

3. The Court has jurisdiction over the Motion under 28 U.S.C. § 1334. This is a core proceeding within the meaning of 28 U.S.C. §§ 157(b)(2) (A) and (O). Venue of these chapter 11 cases in this district is proper under 28 U.S.C. §§ 1408 and 1409.

4. The statutory predicates for the relief requested herein are sections 105(a), 363(b) and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, and 9014.

5. The Debtor has incurred and continues to incur significant losses and is unable to generate sufficient positive cash flow to sustain its ongoing operations. In light of these circumstances, the Debtor is unable to refinance its outstanding secured and tax debt and has determined that its only viable option is to sell its assets as a going concern pursuant to section 363 of the Bankruptcy Code.

6. The Debtor therefore respectfully requests, at an initial hearing (the “Procedures Hearing”), entry of an order (the “Procedures Order”) in the form attached hereto as Exhibit B authorizing and approving the Sale Procedures, including the Expense Reimbursement, and the form and notice of (i) the Sale, (ii) the Sale Procedures (as more fully described herein) and (iii) the assumption and assignment of the Acquired Contracts.

7. The Debtor further requests that, at the Procedures Hearing, the Court schedule a subsequent hearing (the “Sale Hearing”) at which time the Debtor will seek entry of an order (the “Sale Order”) authorizing: (i) the Debtor to sell the Transferred Assets, to the Proposed Purchaser or the Successful Bidder (as hereinafter defined), as the case may be.

II. BACKGROUND

8. Founded in 2003, the Debtor is an automotive service and repair business and a retail seller of tires. Debtor is located in Mentor, OH.

9. Debtor provides its customers with automotive service, automotive supplies, and tires.

10. The Debtor currently employs approximately five (5) individuals.

11. For the period ending December 30, 2015, the Debtor had on an unaudited basis, combined net sales of approximately \$663,000.00.

12. As of the Petition Date, the Debtor was obligated on approximately \$300,000 in tax debt.

13. The Debtor's current unsecured debt is approximately \$230,000.

14. The Debtor has been in the process of attempting to restructure and refinance its operations to restore the business to profitability for the past twenty-four (24) months. The

restructuring of operations has included, but was not limited to, a reduction in employees, changes in compensation programs for all employees, reduction in inventory, and reducing secured debt.

15. Despite the aforementioned steps taken, the sustained downturn in the economy has brought Debtor to the breaking point. At this point, the Debtor has exhausted any financing available to fund its ongoing operating losses and tax obligations.

16. In sum, the measures taken by the Debtor to address its financial and operational problems have not been sufficient to restore the company to profitability. The Debtor continues to incur significant losses and is unable to generate sufficient positive cash flow to sustain its on-going operations. A refinancing of the outstanding tax debt is not a viable alternative, and the Debtor believes that a going-concern sale of substantially all of its assets while operating under the protection of Chapter 11 is its only viable option. Moreover, the Debtor believes that such a sale is in the best interests of the estate and all affected constituents, including tax who creditors, unsecured creditors, and the Debtor's employees. Absent a prompt sale of its assets as a going-concern, the Debtor will be forced to cease operations and liquidate its assets.

III. PROPOSED SALE OF ASSETS

A. Factors Leading to Sale and the Marketing Efforts Leading to the Agreement

17. As noted above, prior to the commencement of the Debtor's current chapter 11 case, the Debtor undertook a number of measures to address the financial difficulties that it was experiencing. Among those measures was the marketing of substantially all of its assets for sale as a going concern. In light of declining operating performance, the Debtor determined during 2014 and 2015 that pursuing a going concern sale of the company's operations was the most prudent means to maximize value.

18. The Debtor believes that a sale of its assets as a going concern is in the best interests of its estate. Pursuant to this Motion, authority is sought for the sale of substantially all of the assets of Debtor to the Proposed Purchaser, subject to the receipt of higher or better offers.

19. Based on the Debtor's efforts to sell the assets and the expressions of interest that the Debtor received with respect to such a potential sale on an expedited basis, the Debtor believes that completing a sale outside of a plan of reorganization will lead to greater value than completing a sale pursuant to a plan which, in the Debtor's estimation, would lengthen the process and, as a result, lead to further erosion of the value of the Debtor's business to the detriment of all parties in interest.

B. The Agreement

20. Pursuant to the Agreement, upon the approval by this Court and the satisfaction of conditions precedent set forth in the Agreement, ESS will (i) sell the Transferred Assets free and clear of all liens, security interests, claims, encumbrances or other interests (collectively, the "Interests") and (ii) assume and assign the Acquired Contracts to the Proposed Purchaser.

The significant terms² of the Agreement are as follows:

GENERAL TERMS: The Proposed Purchaser will purchase substantially all of the assets of the Debtors relating to the Debtor's operations, consisting of certain tangible and intangible assets as more specifically provided for in the Agreement, and subject and pursuant to the terms and conditions of the Agreement.

PURCHASE PRICE: In consideration for the transfer of the Assets to the Proposed Purchaser, the Proposed Purchaser will pay to the Debtor approximately Forty Thousand Dollars (\$40,000.00).

² To the extent this summary differs in any way with the terms of the Agreement, the provisions of the Agreement will control.

AS IS SALE: The Sale is “AS IS”, “WHERE IS” and “WITH ALL FAULTS”, subject to those representations and warranties as are specifically provided for in the Agreement.

EMPLOYMENT: The Agreement provides that the Proposed Purchaser shall not assume any of the Debtor’s employment responsibilities or liabilities with respect to any of the Employees, other than the Employee Vacation Liability, and the Debtor shall otherwise be responsible for making all payments or accruals of benefits as may be appropriate for liabilities for such Employees. Without limitation, the Proposed Purchaser shall have no liability, obligation or responsibility for any unpaid or accrued salary, wages, other compensation, vacation, sick time, severance compensation or any other benefits to which any of the Employees are entitled as a consequence of their employment by the Debtor prior to the Closing Date or their termination; provided that Buyer shall assume the Employee Vacation Liability.

BANKRUPTCY COURT APPROVAL: The provisions of the Agreement relating to the payment of Expense Reimbursement to the Proposed Purchaser shall not be binding unless the Bankruptcy Court approves such provisions in the Procedures Order.

21. The Proposed Purchaser is not an “insider” of the Debtor, as that term is defined in 11 U.S.C. §101.

C. Sale Procedures

22. The agreement provides that the sale is subject to Bankruptcy Court approval. Therefore the Agreement may be terminated if a higher or better offer is received pursuant to the Sale Procedures. Accordingly, at the Procedures Hearing, the Debtor shall seek approval of the Sale Procedures. The Debtor believes that implementation of the Sale Procedures is most likely to maximize value of the Transferred Assets for the benefit of the Debtor’s estate, creditors, and other interested parties.

23. The proposed Sale Procedures are attached hereto as Exhibit 1 to the Procedures Order, Exhibit B attached hereto. Those procedures provide, in relevant part, as follows:

a. Participation Requirements. Unless otherwise ordered by the Bankruptcy Court, each person (a “Potential Bidder”) interested in participating in the Bidding Process must deliver (unless previously delivered) to the Debtor on or before the fifth (5th) Business Day before the Bid Deadline (as hereinafter defined):

(i) An executed confidentiality agreement, customary for transactions of this type, in form and substance satisfactory to the Debtor; and

(ii) Current audited financial statements of the Potential Bidder, or if the Potential Bidder is an entity formed for the purpose of acquiring the Transferred Assets, current audited financial statements of the equity holder(s) of the Potential Bidder, or such other form of financial disclosure acceptable to the Debtor and its advisors, demonstrating such Potential Bidder’s ability to close a proposed transaction.

A Qualified Bidder is a Potential Bidder that delivers the documents described in subparagraphs (i) and (ii) above, whose financial disclosure demonstrates the financial capability of the Potential Bidder to consummate the Sale, and that the Debtor determines is reasonably likely based on information submitted by the Potential Bidder, the availability of financing, experience and other considerations deemed relevant by the Debtor, to submit a bona fide offer and to be able to consummate the Sale if selected as a Successful Bidder (as hereinafter defined).

No later than two (2) Business Days after a Potential Bidder delivers all of the materials required by subparagraphs (i) and (ii) above, the Debtor shall determine, and shall notify the Potential Bidder, if such Potential Bidder is a Qualified Bidder. The Proposed Purchaser has already been determined to be a Qualified Bidder for all purposes.

b. Due Diligence. The Debtor will afford any Qualified Bidder thirty (30) days to conduct reasonable due diligence; provided, however, that such Qualified Bidders shall be required to use commercially reasonable efforts to minimize disruption to the Debtor and its business. The Debtor will designate an employee or other representative to coordinate all reasonable requests for additional information and due diligence access from such Qualified Bidders. If any Qualified Bidder receives any information related to the Sale from the Debtor not previously given to the Proposed Purchaser, the Debtor shall immediately provide the Proposed Purchaser with such information. The Debtor shall not be obligated to furnish any due diligence information after the Bid Deadline (as hereinafter defined). Neither the Debtor nor any of its respective representatives are obligated to furnish any information to any person other than a Qualified Bidder. The Debtor is not responsible for, and will bear no liability

with respect to, any information obtained by Bidders in connection with the sale of the Transferred Assets.

c. Bid Deadline. A Qualified Bidder who desires to make a bid shall deliver a written copy of its bid to Debtor's counsel, Glenn E. Forbes, Esq., 166 Main Street, Painesville, OH 44077 – (440) 357-6211 (tel), (440) 357-1634 (fax) not later than 12:00 p.m. (prevailing Eastern time) on the day that is three (3) Business Days prior to the Auction (as defined below) (the “Bid Deadline”). Debtor's counsel shall immediately distribute copies of the bids to counsel for (i) the Creditors' Committee, if any, and (v) Proposed Purchaser. The Debtor shall announce to all Qualified Bidders the terms of the highest or best Qualified Bid(s) received by the Bid Deadline no later than 5:00 p.m. (prevailing Eastern time) on the second (2nd) Business Day after the Bid Deadline.

d. Bid Requirements. In order to be eligible to participate in the Auction (as defined below) all bids must include the following documents (the “*Required Bid Documents*”):

(i) A letter stating that the Qualified Bidder is prepared to enter into and consummate the Sale within not more than fifteen (15) days after entry by the Bankruptcy Court of an order approving such Qualified Bidder's offer, which offer is irrevocable until the Closing of the sale of the Transferred Assets.

(ii) An executed copy of an asset purchase agreement, together with all Exhibits and Schedules thereto, containing substantially the same or better terms and conditions than those set forth in the Agreement, and marked to show modifications to the Agreement that the Qualified Bidder proposes (the “*Marked Agreement*”), which may not be subject to a financing contingency, additional due diligence, or further board or other corporate approval, and which must propose an overall value of consideration to the Debtor which is in excess of, at least \$10,000 over the sum of the overall value of the transactions contemplated by the Agreement (which includes the expenses of \$2500 described below) (the “*Required Bid Value*”).

(iii) A good faith deposit (the “*Good Faith Deposit*”) in the form of immediately available funds or a letter of credit in form acceptable to the Debtor in its sole discretion payable to the order of the Debtor (or such other party as the Debtor may determine) in an amount equal to 10% of the aggregate purchase price proposed in such Qualified Bidder's Bid.

(iv) Written evidence of a commitment for financing without contingencies, with appropriate contact information for such financing sources, or other evidence of the Qualified Bidder's financial ability to consummate the Sale satisfactory to the Debtor.

The Debtor will disregard bids that are conditioned on obtaining financing or on the outcome of unperformed due diligence by the bidder, or on the receipt of board, shareholder, or other corporate approval. A bid received from a Qualified Bidder that includes all of the Required Bid Documents and meets all of the above requirements is a "Qualified Bid."

There is no requirement that a Qualified Bid include more or less Transferred Assets than the Transferred Assets covered by the Agreement. The Debtor reserves the right to determine (i) the value of any Qualified Bid, (ii) whether any Qualified Bid (either by itself or in connection with another Qualified Bid(s) provides overall value to Seller that is equal to, or in excess of, the Required Bid Value or any other Qualified Bid and (iii) which Qualified Bid(s) constitutes the highest or best offer. The Debtor's determination in this regard may include an analysis of the value (whether positive or negative) of any Transferred Assets that are included in or excluded from any Qualified Bid, the existence or absence of any escrow or indemnity and consideration of the Break-up Fee, if applicable.

e. Auction. If one or more Qualified Bids (other than that of the Proposed Purchaser) are received, the Debtor shall conduct an auction (the "*Auction*") with respect to the Transferred Assets. The Auction shall commence on the date that is three (3) Business Days prior to the Sale Hearing (as defined below) at the offices of Forbes Law, LLC, 166 Main Street, Painesville, OH 44077. The Debtor shall notify all Qualified Bidders who have submitted Qualified Bids of the time and place of the Auction. If there is no timely Qualified Bid (other than that of the Proposed Purchaser), the Proposed Purchaser shall be deemed to be the Successful Bidder, no Auction shall be held, and the Debtor shall seek Bankruptcy Court approval of the Proposed Purchaser's Bid.

Only a Qualified Bidder who has submitted a Qualified Bid is eligible to participate at the Auction. Qualified Bidders must attend the Auction in person or through an authorized representative or agent with actual authority to participate in the Auction and bind such qualified Bidder. During the Auction, bidding shall begin initially with the highest Qualified Bid and subsequently continue in minimum increments of at least \$5,000 ("Additional Bids"). Bidding shall continue at the Auction for one or more rounds in accordance with the overbid requirements set forth above, and shall not conclude until each participant has had the opportunity to submit an Additional Bid with full knowledge and written confirmation of the then existing highest Bid. Other than as disclosed herein, the Debtor may conduct the Auction in the manner it determines will result in the highest or best offer(s) for the Transferred Assets.

Upon conclusion of the bidding, the Auction shall be closed. The Debtor shall (i) immediately review each Qualified Bid or Bids on the basis of the financial and contractual terms and the factors relevant to the sale process, including, but not limited to (a) the number, type and nature of any changes to the Agreement requested by each Qualified Bidder; (b) the extent to which such modifications are likely to delay closing

of the Sale contemplated in the Agreement to such Qualified Bidder and the cost to the Debtor of such modifications or delay; (c) the total consideration to be received by the Debtor; and (d) the certainty of such Qualified Bidder's ability to close a transaction and the timing thereof; and (ii) as promptly as possible, but in no event more than 24 hours after the conclusion of the Auction, identify the highest or best offer(s) for the Transferred Assets (the "Successful Bid" and the entity or entities submitting such Successful Bid, the "Successful Bidder"), which highest or best offer(s) will provide the greatest amount of net value to the Debtor after payment of, among other things, the Break-up Fee, if required, and advise the Bidders of such determination.

f. Sale Hearing. The Debtor shall seek approval of the Successful Bid from the Court at the Sale Hearing.

24. Following the Sale Hearing approving the sale of the Transferred Assets to the Successful Bidder, if such Successful Bidder fails to consummate an approved sale, the next highest or otherwise best Qualified Bid, as disclosed at the Sale Hearing, shall be deemed to be the Successful Bid and the Debtor shall be authorized, but not required, to consummate the sale with the Qualified Bidder submitting such bid without further order of the Bankruptcy Court and such Qualified Bidder shall be required to consummate the sale on the terms of such Qualified Bid.

25. Good Faith Deposits of all Qualified Bidders (except for the Successful Bidder) shall be held in an escrow account until the earlier of the Closing of the sale of the Transferred Assets or October 15, 2016. If a Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Debtor shall be entitled to retain the Good Faith Deposit as part of its damages resulting from the breach or failure to perform by the Successful Bidder. The Prospective Purchaser has made its Good Faith Deposit, as contemplated in Section 1.4(a) of the Agreement.

D. Request for Exemption of Transfer Taxes

26. The Debtor further requests that, in the Sale Order, the Court rule that (i) the sale of the Transferred Assets to the Proposed Purchaser (or the Successful Bidder, as the case may be) is necessary to the Debtor's ability to confirm and consummate a liquidating plan in this case, and (ii) the sale of the Transferred Assets is a sale in contemplation of a plan and, accordingly, a transfer pursuant to 11 U.S.C. §1146(a), which shall not be taxed under any law imposing a stamp tax or similar tax.

E. Notice of Sale

27. Within five (5) days after the entry of the Procedures Order (the "Mailing Date"), the Debtor (or its agents) shall serve the Motion, the Agreement, the proposed Sale Order, a Notice of the Sale substantially in the form of Exhibit 2 to the Procedures Order attached hereto as Exhibit B, and a copy of the Procedures Order by first-class mail, postage prepaid, upon (i) all entities known to have asserted any Interest in or upon the Transferred Assets, including, without limitation, any lien, security interest, claim, encumbrance or other interest; and (ii) all parties to the Acquired Contracts; and (iii) all entities listed on the Debtor's Master Service List as of the Mailing Date. In addition, the Debtor will also serve all entities that have expressed interest in purchasing the assets.

28. Any creditors or parties in interest objecting to the Sale of the Transferred Assets or the Sale Order shall file their objection and serve it on counsel to Debtor, the Prospective Purchaser, any Official Committee of Unsecured Creditors and to other parties entitled to notice on the fifth (5th) business day before the Sale Hearing.

WHEREFORE, based on the foregoing, the Debtor requests that the court enter an order

- (i) approving the Sale Procedures, including the Break-Up Fee and Expense Reimbursement,
- (ii) approving the form and manner of notices of the Sale and assumption and assignment of contracts, and (iii) setting a hearing for the approval of the Sale.

Dated: 7/27/16

/s/ Glenn E. Forbes, Esq.
Glenn E. Forbes, Esq., Reg# 0005513
Forbes LAW, LLC
Attorney for Debtor
166 Main Street
Painesville, OH 44077
(440) 357-6211
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CERTIFICATE OF SERVICE

A copy of Debtor's motion for sale of property under section 363 and exhibits was served via U.S. Mail or the Court's Electronic noticing system on July 27, 2016 to all creditors and parties of interest.

/s/ Glenn E. Forbes, Esq.
Glenn E. Forbes, Esq.
FORBES LAW, LLC
Attorney for Debtor

EXHIBIT 1

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:)	
)	CASE NO. 16-13944
ESS AUTOMOTIVE, INC)	
)	CHAPTER 11
Debtor)	
)	JUDGE HARRIS

**PROCEDURES FOR SALE OF ASSETS OF DEBTOR ESS AUTOMOTIVE TO
CEETUS, LTD**

Set forth below are the bidding and sale procedures (the “*Bidding Procedures*”) to be employed with respect to the asset purchase agreement (the “*Agreement*”) by and between ESS Automotive, Inc., the above captioned debtor and debtor in possession (the “*Debtor*” or the “*Seller*”) and CEETUS, LTD. (the “*Proposed Purchaser*”) concerning the prospective sale of the Assets (as that term is defined in the Agreement). The Seller will seek entry of an order from the Bankruptcy Court authorizing and approving the Sale (as hereinafter defined) to one or more Qualified Bidders (as hereinafter defined) which the Seller may determine to have made the highest, best or otherwise financially superior offer (the “*Successful Bidder*”).

ASSETS TO BE SOLD

The Seller is offering for sale in one or more transactions (the “*Sale*”) all or substantially all of the assets of the Seller (the “*Assets*”). The Proposed Purchaser has offered to purchase the Assets which are described in the Agreement and which include substantially all of the operating assets of the Seller. The Proposed Purchaser also proposes to assume the Acquired Contracts of the Seller listed in the Agreement.

THE BIDDING PROCESS

The Seller and its advisors shall (i) determine whether any person is a Qualified Bidder (hereinafter defined), (ii) coordinate the efforts of Qualified Bidders in conducting their due diligence investigations, (iii) receive offers from Qualified Bidders, and (iv) negotiate any offers made to purchase the Assets (collectively, the “*Bidding Process*”). Any person who wishes to participate in the Bidding Process must be a Qualified Bidder and must make a Qualified Bid. Neither the Seller nor its representatives shall be obligated to furnish any information of any kind whatsoever to any person who is not determined to be a Qualified

Bidder. The Seller shall have the right to adopt such other rules for the Bidding Process (including rules that may depart in a non-material manner from those set forth herein) as may better promote the goals of the Bidding Process and which are not inconsistent with any Bankruptcy Court order.

PARTICIPATION REQUIREMENTS

Unless otherwise ordered by the Bankruptcy Court, each person (a “*Potential Bidder*”) interested in participating in the Bidding Process must deliver (unless previously delivered) to the Seller on or before the fifth (5th) Business Day before the Bid Deadline (as hereinafter defined):

- (i) An executed confidentiality agreement, customary for transactions of this type, in form and substance satisfactory to the Seller; and
- (ii) Current audited financial statements of the Potential Bidder, or if the Potential Bidder is an entity formed for the purpose of acquiring the Assets, current audited financial statements of the equity holder(s) of the Potential Bidder, or such other form of financial disclosure acceptable to the Seller and its advisors, demonstrating such Potential Bidder’s ability to close a proposed transaction.

A Qualified Bidder is a Potential Bidder that delivers the documents described in subparagraphs (i) and (ii) above, whose financial disclosure demonstrates the financial capability of the Potential Bidder to consummate the Sale, and that the Seller determines is reasonably likely based on information submitted by the Potential Bidder, the availability of financing, experience and other considerations deemed relevant by the Seller, to submit a bona fide offer and to be able to consummate the Sale if selected as a Successful Bidder.

No later than two (2) Business Days after a Potential Bidder delivers all of the materials required by subparagraphs (i) and (ii) above, the Seller shall determine, and shall notify the Potential Bidder, if such Potential Bidder is a Qualified Bidder. The Proposed Purchaser has already been determined to be a Qualified Bidder for all purposes.

DUE DILIGENCE

The Seller will afford any Qualified Bidder the time and opportunity to conduct reasonable due diligence; provided, however, that such Qualified Bidders shall be required to use commercially reasonable efforts to minimize disruption to the Seller and its business. The Seller will designate an employee or other representative to coordinate all reasonable requests for additional information and due diligence access from such Qualified Bidders. If any Qualified Bidder receives any information related to the Sale from the Seller not previously given to the Proposed Purchaser, the Seller shall immediately provide the Proposed Purchaser with such information. The Seller shall not be obligated to furnish any due diligence information after the Bid Deadline (as hereinafter defined). Neither the Seller nor any of its respective representatives are obligated to furnish any information to any person other than a

Qualified Bidder. The Seller is not responsible for, and will bear no liability with respect to, any information obtained by Bidders in connection with the sale of the Assets.

BID DEADLINE

A Qualified Bidder who desires to make a bid shall deliver a written copy of its bid to Debtor's counsel, Glenn E. Forbes, Esq., 166 Main Street, Painesville, OH 44077 (440) 357-6211 (tel), (440) 357-1634 (fax) not later than 12:00 p.m. (prevailing Eastern time) on the day that is three (3) Business Days prior to the Auction (as defined below) (the "*Bid Deadline*"). Debtor's counsel shall immediately distribute copies of the bids to counsel for (i) the Unsecured Creditors' Committee, if any, (ii) The Internal Revenue Service, (iii) the Debtor's DIP Lender, if any, and (iv) the Proposed Purchaser. The Seller shall announce to all Qualified Bidders the terms of the highest or best Qualified Bid(s) received by the Bid Deadline no later than 5:00 p.m. (prevailing Eastern time) on the second (2nd) Business Day after the Bid Deadline.

BID REQUIREMENTS

In order to be eligible to participate in the Auction (as defined below) all bids must include the following documents (the "*Required Bid Documents*"):

(i)

A letter stating that the Qualified Bidder is prepared to enter into and consummate the Sale within not more than fifteen (15) days after entry by the Bankruptcy Court of an order approving such Qualified Bidder's offer, which offer is irrevocable until the earlier of (x) the Closing of the sale of the Assets, or (y) October 15, 2016.

(ii)

An executed copy of an asset purchase agreement, together with all Exhibits and Schedules thereto, containing substantially the same or better terms and conditions than those set forth in the Agreement, and marked to show modifications to the Agreement that the Qualified Bidder proposes (the "*Marked Agreement*"), which may not be subject to a financing contingency, additional due diligence, or further board, shareholder, or other corporate approval, and which must propose an overall value of consideration to the Seller which is equal to, or in excess of, at least \$10,000 over the sum of the overall value of the transactions contemplated by the Agreement.

(iii) A good faith deposit (the "*Good Faith Deposit*") in the form of immediately available funds or a letter of credit in form acceptable to the Seller in its sole discretion payable to the order of the Seller (or such other party as the Seller may determine) in an amount equal to 10% of the aggregate purchase price proposed in such Qualified Bidder's Bid.

(iv) Written evidence of a commitment for financing without contingencies, with appropriate contact information for such financing sources, or other evidence of the Qualified Bidder's financial ability to consummate the Sale satisfactory to the Seller.

The Seller will disregard bids that are conditioned on obtaining financing or on the outcome of unperformed due diligence by the bidder, or on the receipt of board, shareholder, or other corporate approval. A bid received from a Qualified Bidder that includes all of the Required Bid Documents and meets all of the above requirements is a "*Qualified Bid*."

There is no requirement that a Qualified Bid include more or less Assets than the Assets covered by the Agreement. The Seller reserves the right to determine (i) the value of any Qualified Bid, (ii) whether any Qualified Bid (either by itself or in connection with another Qualified Bid(s) provides overall value to Seller that is equal to, or in excess of, the Required Bid Value or any other Qualified Bid and (iii) which Qualified Bid(s) constitutes the highest or best offer. The Seller's determination in this regard may include an analysis of the value (whether positive or negative) of any Assets that are included in or excluded from any Qualified Bid, the existence or absence of any escrow or indemnity and consideration of the Break-up Fee, if applicable.

BID PROTECTION

Recognizing the Proposed Purchaser's expenditure of time, energy and resources, the Seller has agreed to provide certain bidding protections to the Proposed Purchaser.

Specifically, because the Agreement executed by the Proposed Purchaser sets a floor which all other Potential Bids must exceed and, therefore, serves as a "*Stalking Horse Bid*," the Seller has agreed, to pay Ceetus, Ltd., its expenses, in the amount of \$2500 should it not be the successful bidder herein. The Expense Reimbursement shall have the priority set forth under Section 364(c)(1) of the Bankruptcy Code and shall constitute a surcharge under Section 506(c) of the Bankruptcy Code on the Assets and the proceeds thereof which are subject to any liens, security interests, claims and encumbrances.

"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 Seller, its agents or its estate except to the extent set forth in the applicable agreement of the Successful Bidder as accepted by Seller. Except as otherwise provided in the applicable agreement, all of the Seller's right, title and interest in and to the Assets subject thereto shall be sold free and clear of all pledges, liens, security interests, encumbrances, claims and other interests of any type whatsoever (collectively, the "*Interests*") in accordance with Sections 363 and 365 of the Bankruptcy Code, with such interests to attach to the net proceeds of the sale of the Assets.

AUCTION

If one or more Qualified Bids (other than that of the Proposed Purchaser) are received, the Seller shall conduct an auction (the "*Auction*") with respect to the Assets. The Auction shall commence on the date that is three (3) Business Days prior to the Sale Hearing (as defined below) at the offices of Cooper & Forbes, 166 Main St., Painesville, OH 44077. The Seller shall notify all Qualified Bidders who have submitted Qualified Bids of the time and place of the Auction. If there is no timely Qualified Bid (other than that of the Proposed Purchaser), the Proposed Purchaser shall be deemed to be the Successful Bidder, no Auction shall be held, and the Seller shall seek Bankruptcy Court approval of the Proposed Purchaser's Bid.

Only a Qualified Bidder who has submitted a Qualified Bid is eligible to participate at the Auction. Qualified Bidders must attend the Auction in person or through an authorized representative or agent with actual authority to participate in the Auction and bind such Qualified Bidder. During the Auction, bidding shall begin initially with the highest Qualified Bid and subsequently continue in minimum increments of at least \$10,000 ("Additional Bids"). Bidding shall continue at the Auction for one or more rounds in accordance with the overbid

requirements set forth above, and shall not conclude until each participant has had the opportunity to submit an Additional Bid with full knowledge and written confirmation of the then existing highest Bid. Other than as disclosed herein, the Seller may conduct the Auction in the manner it determines will result in the highest or best offer(s) for the Assets.

Upon conclusion of the bidding, the Auction shall be closed. The Seller shall

(i) immediately review each Qualified Bid or Bids on the basis of the financial and contractual terms and the factors relevant to the sale process, including, but not limited to (a) the number, type and nature of any changes to the Agreement requested by each Qualified Bidder; (b) the extent to which such modifications are likely to delay closing of the Sale contemplated in the Agreement to such Qualified Bidder and the cost to the Seller of such modifications or delay; (c) the total consideration to be received by the Seller; and (d) the certainty of such Qualified Bidder's ability to close a transaction and the timing thereof; and (ii) as promptly as possible, but in no event more than 24 hours after the conclusion of the Auction, identify the highest or best offer(s) for the Assets (the "*Successful Bid*" and the entity or entities submitting such Successful Bid, the "*Successful Bidder*"), which highest or best offer(s) will provide the greatest amount of net value to the Seller after payment of, among other things, the Break-up Fee, if required, and advise the Bidders of such determination.

ACCEPTANCE OF QUALIFIED BIDS

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

SALE HEARING

The Sale Hearing will be held before the Honorable Arthur I. Harris on September 13, 2016 at 11:00am (prevailing Eastern time) at the United States Bankruptcy Court for the Northern District of Ohio, Courtroom 1B, Howard M. Metzenbaum U.S. Courthouse, 201 Superior Avenue, Cleveland, Ohio 44114-1235, but may be adjourned or rescheduled without further notice by an announcement of the adjourned date at the Sale Hearing.

Following the Sale Hearing approving the sale of the Assets to the Successful Bidder, if such Successful Bidder fails to consummate an approved sale, the next highest or otherwise best Qualified Bid, as disclosed at the Sale Hearing, shall be deemed to be the Successful Bid and the Seller shall be authorized, but not required, to consummate the sale with the Qualified Bidder submitting such bid without further order of the Bankruptcy Court and such Qualified Bidder shall be required to consummate the sale on the terms of such Qualified Bid.

RETURN OF GOOD FAITH DEPOSIT

Good Faith Deposits of all Qualified Bidders (except for the Successful Bidder), whose Good Faith Deposit shall be applied against the purchase price to be paid by such Bidder at the Closing of the sale of the Assets) shall be held in an interest-bearing escrow account until the earlier of (x) the Closing of the sale of the Assets, or (y) October 16, 2016. If a Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Seller shall be entitled to retain the Good Faith Deposit as its liquidated damages resulting from the breach or failure to perform by the Successful Bidder.

MODIFICATIONS

The Seller may (a) determine, which Qualified Bid(s), if any, is the highest or best offer; and (b) reject at any time before entry of an order of the Bankruptcy Court approving a Qualified Bid(s), any Bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of sale, or (iii) contrary to the best interests of the Seller, its estate and creditors. Subject to the limitations set forth herein, at or before the Sale Hearing, the Seller may impose such other terms and conditions as the Seller may determine to be in the best interests of the Seller's estate, its creditors and other parties in interest; provided however, that such additional terms and conditions shall not be inconsistent with the express terms of the Bidding Procedures Order.

FURTHER INFORMATION

For further information on the Sale, please contact Glenn E. Forbes at 440-357-6211.

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