

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re: )  
) Chapter 11  
)  
LEARNING ENHANCEMENT )  
CORPORATION, ET AL. ) Case No. 16-35537  
) (Joint Administration Requested)  
)  
) Honorable Jack B. Schmetterer  
Debtors.<sup>1</sup> )  
\_\_\_\_\_ )

**NOTICE OF MOTION**

PLEASE TAKE NOTICE that **Monday, November 21, 2016 at 10:00 a.m.**, or as soon thereafter as counsel may be heard, we will appear before the Honorable Jack B. Schmetterer, or any judge sitting in his stead, in Room 682 of the Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, Illinois 60604, and then and there present the *Motion for Entry of an Order (A) (I) Approving Procedures for the Sale of Debtors' Tangible and Intangible Assets Free and Clear of all Liens, Claims, Encumbrances, and Other Interests; (II) Scheduling an Auction; (III) Approving Form and Manner of Notices Associated with the Auction; (IV) Setting a Final Sale Hearing; (B) Approving the Sale to the Buyer or the Highest or Best Offer at Auction; and (C) Granting Related Relief*, a copy of which is hereby served upon you.

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal taxpayer-identification number, are: (i) Learning Enhancement Corporation (8197) and (ii) The BrainWare Company (6181).

Dated: November 14, 2016

Respectfully submitted,

**LEARNING ENHANCEMENT  
CORPORATION, ET AL.**

By:     /s/ Matthew E. McClintock    

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*Proposed Counsel for the Debtors and  
Debtors in Possession*

**CERTIFICATE OF SERVICE**

I, Matthew E. McClintock, the undersigned attorney, hereby certify that on November 14, 2016, I caused a copy of the *Notice of Motion* and *Motion for Entry of an Order (A) (I) Approving Procedures for the Sale of Debtors' Tangible and Intangible Assets Free and Clear of all Liens, Claims, Encumbrances, and Other Interests; (II) Scheduling an Auction; (III) Approving Form and Manner of Notices Associated with the Auction; (IV) Setting a Final Sale Hearing; (B) Approving the Sale to the Buyer or the Highest or Best Offer at Auction; and (C) Granting Related Relief* to be filed via the Court's ECF system and served via first class U.S. Mail as indicated below.

/s/ Matthew E. McClintock

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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re: )  
) Chapter 11  
)  
LEARNING ENHANCEMENT )  
CORPORATION, ET AL. ) Case No. 16-35537  
) (Joint Administration Requested)  
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) Honorable Jack B. Schmetterer  
Debtors.<sup>1</sup> )  
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**MOTION FOR ENTRY OF AN ORDER (A) (I) APPROVING PROCEDURES FOR THE SALE OF DEBTORS’ TANGIBLE AND INTANGIBLE ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (II) SCHEDULING AN AUCTION; (III) APPROVING FORM AND MANNER OF NOTICES ASSOCIATED WITH THE AUCTION; (IV) SETTING A FINAL SALE HEARING; (B) APPROVING THE SALE TO THE BUYER OR THE HIGHEST OR BEST OFFER AT AUCTION; AND (C) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (the “*Debtors*”),<sup>2</sup> hereby move this Court (the “*Motion*”) pursuant to sections 363, 1107(a), and 1108 of title 11 of the United States Code (the “*Bankruptcy Code*”) and Rules 2002, 6004, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”) for entry of an order (the “*Procedures Order*”): (a) (i) approving procedures (the “*Bidding Procedures*”) for the sale (the “*Sale*”) of substantially all of Debtors’ tangible and intangible assets (the “*Assets*”) pursuant to section 363 of the Bankruptcy Code to JZA Holdings, Inc., or its designee or assignee (the “*Buyer*”) subject to higher and better offers; (ii) scheduling an auction (the “*Auction*”); (iii) approving the form

<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal taxpayer-identification number, are: (i) Learning Enhancement Corporation (8197) and (ii) The BrainWare Company (6181).

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Bidding Procedures (as defined below).

and manner of notices associated with the Sale and Auction; (iv) scheduling a final hearing (the “*Final Hearing*”) to consider approval of the Sale of the Assets; (b) approving the Sale to the Buyer or the highest or best offer at the Auction (the “*Sale Order*”); and (c) granting related relief. In support of this Motion, the Debtors respectfully state as follows:

**JURISDICTION AND VENUE**

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

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

**BACKGROUND**

3. On November 7, 2016 (the “*Petition Date*”), the Debtors filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the “*Chapter 11 Cases*”) with a request for joint administration.

4. The Debtors continue to operate their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. No trustee, examiner, creditors’ committee, or other official committee has been appointed in the Debtors’ Chapter 11 Case.

6. A detailed description of the Debtors and their businesses, and the facts and circumstances supporting this Motion and the Debtors’ chapter 11 cases, are set forth in greater detail in the *Declaration of Roger Stark in Support of First Day Motions and Applications* [Docket No. 9].

**A. Prepetition Debt**

7. Learning Enhancement Corporation (“*LEC*”), executed that certain secured promissory note (the “*Note*”), in favor of Fifth Third Bank (Chicago) (“*Fifth Third*”) in the

original principal amount of \$450,000.00 (the “*Fifth Third Loan*”). The Note is secured by, *inter alia*, liens on the Assets evidenced by that certain Security Agreement executed by LEC in favor of Fifth Third which provides a first priority lien and security interest in substantially all of the LEC’s assets (the “*Fifth Third Liens*”).

8. Prior to the Petition Date, the Buyer acquired Fifth Third’s rights and interest in the Fifth Third Loan and the Fifth Third Liens through the purchase of the Note from Fifth Third.

9. Concurrently with this Motion, the Debtors filed their *Motion for Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing; (II) Scheduling a Final Hearing; and (III) Approving Notice Procedures* (the “*DIP Motion*”). Pursuant to the DIP Motion and its exhibits, the Buyer intends to make a 23,000 secured debtor-in-possession loan (the “*DIP Loan*”) to the Debtors.

**B. Sale of the Assets**

10. The Debtors are filing their *Application for Order Authorizing Official Debtors of Unsecured Creditors to Retain and Employ The Skutch Arlow Group, LLC as Chief Restructuring Officer* concurrently with this Motion. In light of the relatively low valuation of the Assets as well as the limited market for the Assets, The Skutch Arlow Group, LLC (“*Skutch*”) has designed a marketing plan to maximize the exposure of the Assets to potential parties that may be interested in purchasing the Assets subject to the requirements of the Bidding Procedures (as defined herein). Pursuant to this marketing plan, and as allowed by the financial budget allotted to Skutch for marketing the Assets, Skutch will market the Assets through several different methods.

11. Subject to the approval of the Court, the Debtors will enter into a purchase agreement (the “*Purchase Agreement*”) with the Buyer for the purchase of the Assets. Certain



details of the Purchase Agreement are still being worked out, but will be filed as Exhibit A prior to the hearing on this Motion.

12. The primary terms of the Purchase Agreement are as follows:

<b>Buyer</b>	JZA Holdings, Inc., or its assigns or nominees.
<b>Seller</b>	Learning Enhancement Corporation and The BrainWare Company.
<b>Purchase Price</b>	\$630,000 (the “ <i>Stalking Horse Bid</i> ”); consisting of: \$542,000.00 Credit Bid of the Fifth Third Loan; \$23,000 credit bid of the DIP Loan; and \$65,000 cash.
<b>Deposit</b>	\$30,000 cash.
<b>Acquired Assets</b>	Substantially all tangible and intangible property of the Debtors.
<b>Assumed Liabilities</b>	None.
<b>Deposit</b>	None.
<b>Closing</b>	Within fourteen days of the entry of an order of the United States Bankruptcy Court for the Northern District of Illinois approving the Purchase Agreement (the “ <i>Closing Date</i> ”).
<b>Bid Protections</b>	As set forth in the Bidding Procedures and described herein, the Buyer’s bid for the Assets will be subject to higher and better bids, and if bids meeting certain criteria are received, the Auction will be held. If an alternative deal is approved and consummated, Buyer may be entitled to the Break-Up Fee (defined below) in the amount of \$15,750.00 (2.5% of the Stalking Horse Bid). The initial overbid for the Assets must be \$20,000.00 higher than the Stalking Horse Bid ( <i>i.e.</i> \$650,000.00 or higher). Following the initial overbid, the minimum bid increment will be \$10,000.00 or higher.

**RELIEF REQUESTED**

13. By this Motion, the Debtors respectfully request that this Court enter an order:

(a)(i) approving the Bidding Procedures for the Sale of the Assets pursuant to section 363 of the

Bankruptcy Code to the Buyer; (ii) scheduling the Auction; (iii) approving the form and manner of notices associated with the Sale and Auction; (iv) scheduling the Final Hearing to consider approval of the Sale of the Assets; (b) approving the Sale to the Buyer or the highest or best offer at the Auction; and (c) granting related relief.

**BASIS FOR RELIEF**

**A. Proposed Bidding Procedures for the Sale of the Assets**

14. In order to ensure that value is being maximized, the Debtors have provided that the Purchase Agreement be subject to higher and better offers (with the Auction occurring if a higher bid is received from a Qualified Bidder) submitted pursuant to the requirements in the Bidding Procedures for initial overbid, minimum bid increment, and the Break-Up Fee (the “*Bid Protections*”). The Bidding Procedures attached hereto and incorporated herein as Exhibit B are designed to govern this process.

15. The Bidding Procedures are designed to create a controlled, but also fair and open, bidding process that promotes interest in the Assets by financially capable, motivated bidders who are likely to close a transaction, while simultaneously discouraging non-serious offers and offers from entities whom the Debtors do not believe are sufficiently capable or likely to actually consummate a transaction. Moreover, the bidding protections, contained within the Bidding Procedures, are proper and necessary in order to ensure that overbids from alternative bidders beyond the Stalking Horse Bid are sufficient to cover the Break-Up Fee due to the Buyer if the Stalking Horse Bid is not the Successful Bid as well as to cover costs to the estate of the Debtors for running the auction to sell the Assets. The Debtors therefore respectfully request that the Court approve the Bidding Procedures at the initial hearing on the Motion.

16. Inherent in approving the Bidding Procedures is the approval of the Buyer as the stalking horse bidder and approving the \$15,000.00 (2.5% of the Stalking Horse Bid) break-up fee (the “*Break-Up Fee*”) contemplated in the Purchase Agreement.

17. Approval of the Break-Up Fee is governed by standards for determining the appropriateness of bidding incentives in the bankruptcy context established by the Third Circuit in *Calpine Corp. v. O’Brien Env’tl. Energy, Inc. (In re O’Brien Env’tl. Energy, Inc.)*, 181 F.3d 527 (3d Cir. 1999). In other words, the allowability of break-up fees “. . . depends upon the requesting party’s ability to show that the fees were actually necessary to preserve the value of the estate.” *In re O’Brien*, 181 F.3d at 535.

18. After considering the reasonableness of bidding incentives, courts have approved a range of break-up fees and/or expenses as a percentage of the purchase price as being appropriate under the facts and circumstances of the case. *See, e.g., In re Fairview Ministries, Inc.*, Case No. 11-04386 (SPS) (Bankr. N.D. Ill. Mar. 17, 2011) (approving a 2.9% break-up fee); *In re Brown’s Chicken & Pasta, Inc.*, Case No. 09-49094 (JPC) (Bankr. N.D. Ill. Oct. 20, 2010) (approving a 3.5% break-up fee); *In re SK Hand Tool Corp.*, Case No. 10-28882 (ERW) (Bankr. N.D. Ill. July 9, 2010) (approving break-up fee of up to 4.4%); *In re Hartmarx Corp.*, Case No. 09-02046 (BWB) (Bankr. N.D. Ill. June 2, 2009) (approving a 3.1% break-up fee). The Break-Up Fee proposed in this matter, 2.5% of the Stalking Horse Bid, is lower than the range of acceptable break-up fees in this district.

19. Further, the Break-Up Fee was negotiated at arms-length, is part of the inducement for the Buyer’s willingness to undertake the diligence necessary to act as a stalking horse bidder here, and approval of the Break-Up Fee is a condition to the Buyer’s obligations under the Purchase Agreement. Moreover, the only situation where the Break-Up Fee would be

paid is a situation where an alternative bidder closed on a transaction where it paid at least \$20,000.00 more than the Buyer is currently offering for the Assets in the Purchase Agreement, meaning that the excess proceeds would more than cover the Break-Up Fee. Thus, the Debtors respectfully submit that the Break-Up Fee is reasonable under the circumstances and should be approved.

**B. Scheduling Auction, Approving the Form and Manner of Notice, and Scheduling a Final Hearing**

20. The Debtors also respectfully request that the Court schedule the Auction, approve the notices associated with the Sale and Auction, and schedule the Final Hearing.

21. The Debtors thus request that the court set (i) an Auction date of January 5, 2017 and (ii) a Final Hearing on January 9, 2017 (to approve the Sale of the Assets to the Successful Bidder (as defined in the Bidding Procedures)) or as soon thereafter as possible.

22. No later than three days after entry of an initial order approving this Motion, the Debtors propose to cause an *Auction and Sale Notice* (substantially in the form attached hereto as Exhibit C) (the “*Auction Notice*”) to be sent by first-class mail, postage pre-paid, to all of the creditors listed in the Debtors creditor matrix, all entities known to have expressed an interest in purchasing the Assets (or that the Debtors reasonably believe might have an interest in purchasing the Assets), taxing authorities reasonably known to have an interest in the relief requested, the Office of the United States Trustee, and all parties who have requested notice of pleadings in the Debtors’ bankruptcy cases. The Debtors believe that the foregoing notice of the Auction and Bidding Procedures has the potential to drive up the price of the Assets, and requests that such notice be deemed sufficient notice of the Auction and Bidding Procedures.

**C. The Assets May be Sold Free and Clear Under Section 363(f) of the Bankruptcy Code.**

23. Section 363(f) of the Bankruptcy Code provides that a debtor in possession may sell property free and clear of any lien, claim, or interest in such property if, among other things, all holders of such interests consent to such sale. Here, Buyer is consenting to the Sale subject to the terms hereof.

**D. Assumption & Assignment of Assigned Contracts.**

24. The Sale of the Assets contemplates the assumption of a number of executory contracts (the “*Assigned Contracts*”), and the subsequent assignment of the Assigned Contracts to the Buyer.

25. Therefore, as part of the final order to be entered approving the Sale, the Debtors request approval, under 11 U.S.C. § 365, for the assumption and assignment of the Assigned Contracts to the Buyer. The Debtors will serve the Auction and Sale Notice upon each of the counterparties to the Assigned Contracts, along with the “cure amounts” the Debtors believe each counterparty is owed.

26. The Debtor further requests that the final sale order provide that the Assigned Contracts will be transferred to, and remain in full force and effect for the benefit of the Buyer, notwithstanding any provisions in the Assigned Contract, including those described in sections 365(b)(2), (c)(1)(A) and (c)(1)(B) of the Bankruptcy Code, that prohibit such assignments.

27. Section 365(f) of the Bankruptcy Code provides, in pertinent part, that:

The trustee may assign an executory contract or unexpired lease of the debtor only if –

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

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

11 U.S.C. § 365(f)(2). Under Section 365(a) of the Bankruptcy Code, a debtor “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.”

11 U.S.C. § 365(a). Section 365(b)(1) of the Bankruptcy Code, in turn, codifies the requirements for assuming an unexpired lease or executory contract of a debtor provided that:

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1). Although section 365 of the Bankruptcy Code does not set forth standards for courts to apply in determining whether to approve a debtor in possession’s decision to assume an executory contract, courts have consistently applied a “business judgment” test when reviewing such decision. *See e.g., Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pacific Railroad Co.*, 318 U.S. 523, 550 (1953); *Matter of Talco, Inc.*, 558 F.2d 1369, 1173 (10th Cir. 1977). A debtor satisfies the “business judgment” test when it determines, in good faith, that assumption of an executory contract will benefit the estate and the unsecured creditors. *In re FCX, Inc.*, 60 B.R. 405, 411 (Bankr. E.D.N.Y. 1986). The assumption and

assignment of the Assigned Contracts is a necessary part of the deal that the Debtors have struck with the Buyer.

28. The meaning of “adequate assurance of future performances” depends on the facts and circumstances of each case, but should be given “practical, pragmatic construction.” *See Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1989); *In re Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985). The Debtors believe that each counterparty is aware that the Buyer has sufficient financial strength, and if there was any challenge to the Buyer’s financial acumen, the Debtors anticipate being able to establish at the final hearing on this Motion that the Buyer is sufficiently capitalized and able to perform the obligations under the Assigned Contracts. Consequently, assumption and assignment of the Assigned Contracts is appropriate under the circumstances.

**E. The Sale is Supported by the Debtors’ Reasonable Business Judgment**

29. This Court’s power to authorize a sale under section 363(b) of the Bankruptcy Code is to be exercised at its discretion, utilizing a flexible, case by case approach. *In re Baldwin United Corp.*, 43 B.R. 905 (Bankr. S.D. Ohio 1984). The Court must find that a good business reason exists for the sale. *In re Schipper*, 933 F.2d 513 (7th Cir. 1991); *Stephens Industries, Inc. v. McClung*, 789 F.2d 386 (6th Cir. 1986). As noted in *In re Walter*, 83 B.R. 14, 19-20 (9th Cir. BAP 1988), citing *In re Lionel Corporation*, 722 F.2d 1063, 1070-71 (2d Cir. 1983):

[T]here must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business . . . Whether the proffered business justification is sufficient depends on the case. As the Second Circuit held in *Lionel*, the bankruptcy judge should consider all salient factors pertaining to the proceeding and, accordingly, act to further the diverse interests of the Debtor, creditors and equity holders alike. He might, for example, look to such relevant factors as the proportionate value of

the assets of the estate as a whole, the amount of elapsed time since the filing, the likelihood that a plan of reorganization will be proposed and confirmed in the near future, the effect of the proposed disposition on future plan of reorganization, the proceeds to be obtained from the disposition vis-a-vis any appraisals of the property, which of the alternatives of use, sale or lease the proposal envisions and, most importantly perhaps, whether the asset is increasing or decreasing in value. This list is not intended to be exclusive, but merely to provide guidance to the bankruptcy judge.

25. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See, e.g., Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 564-65 (8th Cir. 1997) (In bankruptcy sales, “a primary objective of the Code [is] to enhance the value of the estate at hand.”); *see also In re Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 793 (Bankr. N.D. Ill. 1985) (policy underlying the Code is to maximize “the value of the estate for the benefit of all creditors) (citations omitted).

26. Once a valid business justification is established, the business judgment rule “is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was taken in the best interests of the company.” *In re S.N.A. Nut Company*, 186 B.R. 98, 102 (Bankr. N.D. Ill. 1995) (citing *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)); *Integrated Resources*, 147 B.R. at 656. Therefore, the relief requested in this Motion should be granted if the Debtors demonstrate a sound business justification for the request. *See Schipper*, 933 F.2d at 515; *In re Lionel Corp.*, 722 F.2d at 1071.

27. Here, in order to maximize value for the estate, the Debtors believe that it is crucial to sell the Assets. Skutch Arlow Group, LLC, the Debtors’ CRO, will be contacting numerous parties that may have an interest in the Assets via: (a) publication in a trade magazine (likely the *Chronicle of Higher Education*), (b) eSchool newsletter, and (c) direct contact with



potentially interested parties, in order to achieve the highest possible price for the Assets under the circumstances. The Debtors thus believe that the Sale proposed herein, including the proposed Auction and Bidding Procedures, will provide the maximum possible recovery to the Debtors' estates.

28. Further, the proposed Sale to the Buyer is being made subject to higher and better offers. Therefore, if a third party is willing to pay significantly more for the Assets, the Bidding Procedures and Auction proposed herein should facilitate that transaction. Accordingly, the Debtors respectfully submit that the Sale-related relief proposed herein reflects a sound exercise of its business judgment and should be approved.

**NOTICE**

29. The Debtors have provided notice of this Motion to the following parties: (a) the Office of the United States Trustee for the Northern District of Illinois; (b) the Debtors' secured creditor; and (c) all of the Debtors' creditors. In light of the circumstances of this Motion, the Debtors respectfully submit that no other or further notice need be provided.

*[Remainder of Page Intentionally Left Blank]*

**WHEREFORE**, the Debtors respectfully request that the Court enter an order granting the Motion in its entirety and (a) (i) approve the Bidding Procedures for the Sale of the Assets pursuant to section 363 of the Bankruptcy Code to the Buyer subject to higher and better offers; (ii) schedule the Auction; (iii) approve the form and manner of notices associated with the Sale and Auction; (iv) schedule the Final Hearing to consider approval of the Sale of the Assets; (b) approve the Sale to the Buyer or the highest or best offer at the Auction; and (c) grant related relief.

Dated: November 14, 2016

Respectfully submitted,

**LEARNING ENHANCEMENT  
CORPORATION, ET AL.**

By:     /s/ Matthew E. McClintock    

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*Proposed Counsel for the Debtors and  
Debtors in Possession*

## **EXHIBIT A**

**To be filed prior to the hearing on this motion**

## **EXHIBIT B**

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re: )  
 ) Chapter 11  
 )  
LEARNING ENHANCEMENT )  
CORPORATION, ET AL. ) Case No. 16-35537  
 ) (Joint Administration Requested)  
 )  
 ) Honorable Jack B. Schmetterer  
Debtors.<sup>1</sup> )  
 )  
 )

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**BIDDING PROCEDURES**

Pursuant to the Order (A) Establishing Bidding Procedures in Connection With Sale of Debtors' Tangible and Intangible Assets, (B) Approving the Form And Manner Of Notices, (C) Setting a Final Hearing, (D) Granting Related Relief, dated November [\_\_\_], 2016 [Docket No. \_\_\_] (the "*Procedures Order*"),<sup>2</sup> the following bidding procedures (the "*Bidding Procedures*") shall govern the sale (the "*Sale*") and competitive bidding process applicable to the sale of the Assets (as defined herein) of Learning Enhancement Corporation and The BrainWare Company, debtors and debtors-in-possession (collectively, the "*Debtors*"):

1. Assets to be Sold. The Debtors are offering for sale, substantially all of Debtors' tangible and intangible assets (the "*Assets*"), as more specifically described in that certain Purchase Agreement (as defined herein).

2. Timing and Location of Auction. The Auction shall be conducted on **January 5, 2017** (the "*Auction Date*") at 10:00 a.m. The Auction will be held at the offices of Goldstein & McClintock LLLP, 208 South LaSalle Street, Suite 1750, Chicago, Illinois 60604. In the event of a change in time or place of the Auction, the Debtors shall use their reasonable best efforts to notify all Qualified Bidders (as defined below) who have timely submitted Qualified Bids (as defined below) on or before **January 3, 2017 at 4:00 p.m. CST** (the "*Bid Deadline*") provided, however, that the Bid Deadline can be extended by order of the Court or written agreement of the Debtors and the Buyer.

3. Initial Bid. JZA Holdings, Inc. ("*JZA*"), has submitted to the Debtors an initial stalking horse bid of \$630,000 (the "*Initial Bid*"), which will serve as the minimum bid at the

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal taxpayer-identification number, are: (i) Learning Enhancement Corporation (8197) and (ii) The BrainWare Company (6181).

<sup>2</sup> Capitalized terms not otherwise defined in these Bidding Procedures shall have the meanings ascribed to such terms in the Procedures Order.

Auction, which Initial Bid is reflected in the executed purchase agreement attached hereto as Exhibit A (the “*Purchase Agreement*”).

4. Required Submissions for Bidding. In order to participate in the bidding process, each person (each a “*Potential Bidder*”) must deliver to the Debtors’ counsel (via overnight mail to Matthew E. McClintock, Goldstein & McClintock LLLP, 208 South LaSalle Street, Suite 1750, Chicago, IL 60604, or via electronic mail to mattm@goldmclaw.com) the following, on or before the Bid Deadline:

- (i) an executed purchase agreement (a “*Purchase Agreement*”) for the Assets being bid upon substantially in the form attached hereto as Exhibit A;
- (ii) a deposit of \$32,500.00 (the “*Deposit*”), which is equal to 5% of the Minimum Bid (as defined herein), in the form of a certified check, cash, or otherwise immediately available funds payable to the Debtors, to be submitted along with the bid;
- (iii) an executed nondisclosure agreement in a form to be provided by counsel to the Debtors;
- (iv) written evidence satisfactory to the Debtors of the Potential Bidder’s chief executive officer or other appropriate senior executive’s approval of the contemplated transaction;
- (v) financial statements showing that the Potential Bidder has ample and present ability to close on the Assets by the Closing Date (as defined below);
- (vi) a signed statement acknowledging the prohibition against collusive bidding.

5. Impact of Bid Submission. A “Bid” is a Purchase Agreement from a Potential Bidder stating that:

- (i) the Potential Bidder offers to purchase the Assets upon the same or better terms and conditions than those set forth in the Purchase Agreement, with the Potential Bidder’s Purchase Agreement marked to show any and all amendments and modifications from the Purchase Agreement, including, but not limited to, purchase price and contact information of the purchaser;
- (ii) the Potential Bidder is willing to purchase the Assets for at least the Minimum Bid (as defined below);
- (iii) the Potential Bidder is prepared to enter into and consummate the transaction by the Closing Date;
- (iv) the Potential Bidder is not entitled to a break-up fee; and

- (v) the offer is irrevocable until the Auction has taken place and the Potential Bidder is not approved as the Successful Bidder (as defined below) or Back-up Bidder (as defined below); whether due to the Potential Bidder being not selected by the Debtors, the Potential Bidder not being approved by the Bankruptcy Court, or for any other reason whatsoever; in which case the Deposit will be refunded unless otherwise forfeited as a result of a breach. For the avoidance of doubt, if a Potential Bidder is chosen as the Back-Up Bidder, the Debtors will hold the Deposit until a transaction is consummated.

6. Deadline for Bid Submissions. Bids shall be due on or before **January 3, 2017 at 4:00 p.m. CST.** If the Debtors do not receive any Qualified Bids other than the Initial Bid of JZA by the Bid Deadline, the Debtors will report the same to the Bankruptcy Court as the Successful Bid and JZA shall be deemed the Successful Bidder without holding the Auction.

7. Determination of Qualified Bids. For a Bid to be deemed a “Qualified Bid,” it must comply with the requirements of and be accompanied by the additional information set forth in Paragraphs 4 & 5 above, as determined in the discretion of the Debtors (the Debtors also reserve the right to waive any and all such requirements and to deem a Bid to be a Qualified Bid in the absence of some or all such requirements, except that the amount of the Minimum Bid, as defined herein, may not be changed). A “Qualified Bidder” is a Potential Bidder that submits a Qualified Bid and, in the Debtors’ reasonable discretion is determined to demonstrate the financial capability to consummate the purchase of the Assets that are the subject of its Qualified Bid.

8. Impact of Bid Rejection. If the Debtors determine that a Potential Bidder is not a Qualified Bidder, the Debtors shall return the Deposit to the Potential Bidder promptly upon such determination. At the Auction, only Qualified Bidders who have submitted Qualified Bids for the Assets shall be ensured of being able to bid on the Assets.

9. Minimum Bid and Bid Increments. The initial overbid (the “*Minimum Bid*”) amount shall be \$20,000.00 over the Initial Bid (*i.e.*, \$650,000.00). Following the Minimum Bid, the auction shall continue in bid increments of \$10,000.00 or higher (the “*Minimum Bidding Increments*”).

10. Procedures for the Auction. The Auction shall be conducted in accordance with commercially reasonable procedures to be established by counsel to the Debtors, in the Debtors’ discretion, including, without limitation, relating to the Minimum Bidding Increments and other matters.

11. Determination of Successful Bid. Upon completion of the Auction, the Debtors, in the Debtors’ discretion, shall select the Bid that will maximize the value of the Assets and is in the best interest of the Debtors, their bankruptcy estates, and their creditors (the “*Successful Bid*”). The Debtors shall then submit the Successful Bid, along with any Back-Up Bid, for approval by the Bankruptcy Court at a final sale hearing/status hearing to be held on **January 9, 2017**, or as soon thereafter as reasonably practicable, and shall submit an order for entry by the Bankruptcy Court approving the sale free and clear of liens, claims, and encumbrances pursuant

to, and containing the protections set forth in, sections 363(f) & (k) of the Bankruptcy Code (the “*Final Sale Order*”). The Deposits of any Qualified Bidder shall be non-refundable until the Successful Bidder or a Back-Up Bidder consummates the purchase of the Assets. If any party submitting a Successful Bid fails to close the sale, such party’s Deposit shall be retained by the Debtors on account of damages suffered by them as a result of such failure to close, without prejudice to the Debtors’ ability to seek additional damages from such party.

12. Right to Select Back-Up Bidder(s). At the conclusion of the Auction, the Debtors may designate a “Back-Up Bidder” or multiple Back-Up Bidders if necessary, provided that the Back-Up Bidder is willing to purchase the Assets for at least the Minimum Bid. If, for any reason, the party that submits the Successful Bid fails to consummate the purchase of the Assets,

- (i) the Back-Up Bidder(s) shall be deemed to have submitted the highest and best bid, and shall be deemed the Successful Bid, and any party submitting such bid, the Successful Bidder; and
- (ii) the Debtors shall be authorized to effectuate the sale of the Assets to the Back-Up Bidder(s) as soon as is commercially reasonable without further order of the Bankruptcy Court. The Back-Up Bidder(s)’s deposit shall be held in escrow until the closing of the transaction with the Successful Bidder.

13. Break-Up Fee. If JZA is not the Successful Bidder at the Auction and an alternate transaction is approved by the Court and consummated, JZA shall become entitled to a break-up fee in the amount of \$15,750.00 (2.5% of the Initial Bid).

14. Acceptance of Bid/Sale Hearing. The Debtors’ sale of the Assets to the Successful Bidder shall be subject to the approval of the Successful Bid by the Bankruptcy Court (the “*Sale Hearing*”), which shall be conducted by the Bankruptcy Court on January 9, 2017 at 10:00 a.m. (Central Time) or at such other time as the Bankruptcy Court permits. The Debtors’ presentation of a particular Qualified Bid to the Bankruptcy Court for approval does not constitute the Debtors’ acceptance of such Qualified Bid. The Debtors will be deemed to have accepted a Qualified Bid only when the Qualified Bid has been approved by the Bankruptcy Court at the Sale Hearing.

15. Closing of Sale. Closing of the sale of the Assets to the Successful Bidder shall occur no later than fourteen (14) days following entry by the Court of the Final Sale Order (the “*Closing Date*”). The Closing Date may be extended by prior written agreement of the Debtors and the Successful Bidder.



## **EXHIBIT C**

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re: )  
 ) Chapter 11  
 )  
LEARNING ENHANCEMENT )  
CORPORATION, ET AL. ) Case No. 16-35537  
 ) (Joint Administration Requested)  
 )  
 ) Honorable Jack B. Schmetterer  
Debtors.<sup>1</sup> )  
 )  
 )

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**NOTICE OF (I) AUCTION, (II) BIDDING PROCEDURES, (III) DEBTORS' INTENT TO SELL DEBTORS' TANGIBLE AND INTANGIBLE ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, AND (IV) SALE HEARING**

**TO: ALL CREDITORS AND OTHER PARTIES IN INTEREST PLEASE TAKE NOTICE:**

On November 7, 2016, Learning Enhancement Corporation and The BrainWare Company (collectively, the "Debtors") filed a voluntary petition for reorganization (the "Chapter 11 Cases") under chapter 11 of title 11 of the United States Code in the United States Bankruptcy for the Northern District of Illinois. In connection with the Chapter 11 Cases, the Debtors are selling substantially all tangible and intangible property of the Debtors (the "Assets").

**Sale Hearing:** Pursuant to an Order of the Bankruptcy Court [Dkt. No. \_\_\_], a hearing (the "Final Hearing") will be held before The Honorable Jack B. Schmetterer, United States Bankruptcy Judge, on **January [ ], 2016 at [10:00 a.m.] (Central Time)** in the United States Bankruptcy Court for the Northern District of Illinois, 219 South Dearborn Street, Courtroom 682, Chicago, Illinois 60604, to consider the Debtor's motion for the sale of the Assets (the "Sale Motion"), dated November 10, 2016 [Docket No. \_\_\_], seeking, *inter alia*, entry of an order: (a) approving procedures (the "Bidding Procedures") for the sale (the "Sale") of the Assets pursuant to section 363 of the Bankruptcy Code; (b) scheduling an auction; (c) approving the form and manner of notices associated with the Sale and Auction; (d) scheduling a final hearing to consider approval of the Sale of the Assets; and (e) granting related relief.

**Sale of Assets:** The Debtors shall offer, via an auction as provided below (the "Auction"), substantially all of the Debtors' tangible and intangible assets, free and clear of existing liens and security interests to the extent provided for in section 363 of the Bankruptcy Code. Additional

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal taxpayer-identification number, are: (i) Learning Enhancement Corporation (8197) and (ii) The BrainWare Company (6181).

detail on the assets can be obtained by contacting the Debtors' chief restructuring officer at the address listed below.

**Initial Bid:** JZA Holdings, Inc. ("JZA"), has submitted to the Debtors an initial stalking horse bid of \$630,000 (the "*Initial Bid*"), which will serve as the minimum bid at the Auction.

**Submission of Offers:** All potential buyers desiring to bid at the Auction shall be required to comply with the terms of the Bidding Procedures attached to the Sale Motion as Exhibit B. Among other things, all bids (i) must meet the Minimum Bid (as defined in the Bidding Procedures) for the subject Assets; (ii) must be received by **January 3, 2017** at 4:00 p.m. CST as provided for in the Bidding Procedures; and (iii) potential bidders must demonstrate to the Debtors the financial ability to close the proposed transaction.

**Auction:** As set forth in the Bidding Procedures, the auction shall take place on **January 5, 2017** at 10:00 a.m. at the offices of the Debtors' counsel, Goldstein & McClintock LLLP, located at 208 South LaSalle Street, Suite 1750, Chicago, Illinois 60604.

WHILE SUCH SALE IS PROCEEDING UNDER THE BANKRUPTCY CODE, THE PROPERTY IS BEING SOLD ON AN "AS-IS, WHERE-IS" BASIS AND WITH NO EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS, STATEMENTS OR CONDITIONS OF ANY KIND INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

For further information concerning the Assets, please contact the chief restructuring officer for the Debtors:

Josh Arlow  
The Skutch Arlow Group, LLC  
10 South LaSalle Street, Ste. 3500  
Chicago, Illinois 60603  
Telephone: (312) 945-8718  
E-mail: josh@skutcharlow.com

Dated: November [ ], 2016

Respectfully submitted,

**LEARNING ENHANCEMENT  
CORPORATION, ET AL.**

By:  /s/ Matthew E. McClintock

Matthew E. McClintock, Esq.  
Sean P. Williams, Esq.  
**GOLDSTEIN & McCLINTOCK LLLP**  
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Telephone: (312) 337-7700  
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*Counsel for the Debtors and Debtors in  
Possession*