

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE
(CHATTANOOGA)

IN RE:

LECTRUS CORPORATION, et al.,
Debtors.

Jointly Administered Under
Case No. 1:17-bk-15588-NWW

Chapter 11

NOTICE OF HEARING

Notice is hereby given that:

A hearing will be held on the *Debtors' Motion for Order (A) Establishing Bid and Sale Procedures, and (B) Approving Sale of Assets Free and Clear of Liens, Claims and Encumbrances* on **Thursday, January 18, 2018**, at **10:30 a.m.** in **Courtroom A** located at the United States Bankruptcy Court, Historic U.S. Courthouse, 31 East 11th Street, Chattanooga, TN 37402-2722.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you do not want the court to grant the relief requested, you or your attorney must attend this hearing. If you do not attend the hearing, the court may decide that you do not oppose the relief sought in the *Debtors' Motion for Order (A) Establishing Bid and Sale Procedures, and (B) Approving Sale of Assets Free and Clear of Liens, Claims and Encumbrances* and may enter an order granting that relief.

**DEBTORS' MOTION FOR ORDER (A) ESTABLISHING BID AND SALE
PROCEDURES, AND (B) APPROVING SALE OF ASSETS FREE AND CLEAR OF
LIENS, CLAIMS AND ENCUMBRANCES**

The above-captioned debtors (collectively, the "Debtors"), pursuant to 11 U.S.C. §§ 105(a), 363, and 365, and Rules 2002, 6004, 6006, and 9007 of the Federal Rules of Bankruptcy Procedure, hereby moves (this "Sale Motion") the United States Bankruptcy Court for the Eastern District of Tennessee (this "Bankruptcy Court") for orders: (i) approving auction, bid and sale procedures (the "Bidding Procedures") for the sale of the Purchased Assets (as defined herein); and (ii) approving

the sale set forth herein to Lectrus Holdings LLC (the “Stalking Horse Bidder”) or to such other Successful Bidder(s) (as defined herein) that may submit a higher or better offer for the Purchased Assets, free and clear of all liens, claims, interests and encumbrances (the “Sale”). In support of this Sale Motion, the Debtors state:

Summary

1. The Debtors provide three (3) tiers of products and services to its customers with fully engineered, integrated, and installed modular structures: modular structure design and fabrication, integration, and field services. The modular structures operation is focused on fabricating custom enclosures for project sites, including steel skids, empty enclosures, and enclosures with simple utilities. The integration operation is comprised of engineers and electricians which collaborate with the customer to install electrical or mechanical systems within the custom enclosure. Finally, the field service team offers site installation, pre-scheduled equipment maintenance, structural maintenance, and corrective maintenance for modular structures. The Debtors were originally formed in 1968 in Chattanooga, Tennessee, and today have over 161 employees at their manufacturing facilities in Houston, Texas, and Chattanooga, Tennessee.

2. The factual background of the Debtors, including their business operations, capital and debt structures, and events leading to the filing of these chapter 11 cases, is set forth in the *Declaration of Shaun M. Martin in Support of First Day Motions*, at Docket No. 24.

3. The Debtors believe that, given the nature of the industry in which they operate, and the status of their current operations, it is imperative to seek a sale of substantially all of their assets. This timeline is also dictated by the “Milestones” as provided in the *Agreed Interim Order Authorizing Debtors to Obtain Post-Petition Financing and Use Cash Collateral, Granting*

Adequate Protection and Scheduling a Final Hearing (Docket No. 56) (the “Interim DIP Order”). In addition to rendering an “Event of Default” as provided in the Interim DIP Order, the failure to consummate a sale would lead to increased administrative expenses and a possible fire sale of the Debtors’ equipment and other assets (assuming their assets could be sold under such conditions) in order to fund continuing expenses.

4. The Debtors have received an Asset Purchase Agreement from the Stalking Horse Bidder (the “Stalking Horse Purchase Agreement”), a copy of which is attached hereto and incorporated herein as **Exhibit 1**. The Stalking Horse Purchase Agreement provides for, among other things, Lectrus Holdings LLC to serve as a stalking horse bidder for certain assets of the Debtors which are set forth in Section 2.01 of the Asset Purchase Agreement (the “Purchased Assets”). As consideration for the Purchased Assets, and as more fully described in the Stalking Horse Asset Purchase Agreement, Lectrus Holdings LLC will: (i) provide a credit bid pursuant to section 363(k) of the Bankruptcy Code and the Stalking Horse Purchase Agreement in the amount of \$6,000,000.00; *plus* (ii) the Cure Costs (as defined in the Stalking Horse Purchase Agreement); *plus* (iii) the assumption of certain liabilities of the Debtors (collectively, the “Stalking Horse Purchase Price”).

5. The Stalking Horse Asset Purchase Agreement is not conditioned on the Bankruptcy Court’s approval of any bid protections or contingencies, such as a break-up fee, termination fee, expense reimbursement or similar type of payment.

6. The Purchased Assets constitute substantially all of the Debtors’ assets, but do not include estate causes of actions (except Avoidance Actions and certain releases as defined and further set forth in the Stalking Horse Purchase Agreement).

7. In connection with maximizing the value of the Debtors' estates, the Debtors seek to establish reasonable bid and sales procedures in order to solicit higher and better cash offers for the Purchased Assets and to provide for an auction, if necessary. To that end, the Debtors request entry of an order establishing bidding procedures in substantially the form attached hereto as **Exhibit 2** (the "**Bidding Procedures Order**")¹ and an order authorizing the sale of the Purchased Assets to Lectrus Holdings LLC or such other party (or parties) that may submit a higher and better offer for the Purchased Assets (the "**Sale Order**"). A proposed form of the Sale Order is attached hereto as **Exhibit 3**.

8. Additionally, in connection with the Bidding Procedures, the Debtors seek this Court's approval of the form and manner of notices to be provided to counterparties to potentially assumed and assigned executory contracts or unexpired leases, which shall include the amounts that the Debtors believe are necessary to cure any defaults thereunder. The proposed form of notice to counterparties to executory contracts and unexpired leases is attached hereto as **Exhibit 4**.

9. The Debtors believe that the procedures proposed herein should be approved because they are reasonable under the circumstances, will help enhance any likelihood of generating higher bids for the Purchased Assets, and are thus in the best interests of the bankruptcy estates and their creditors. The proposed sale process provides an opportunity to maximize recovery for creditors and minimizes the exposure of the Debtors' estates to a myriad of issues that could arise if these cases were to stay in bankruptcy through a piecemeal liquidation effort.

¹ In the event of any inconsistency between the Bidding Procedures provided in this Sale Motion and the proposed Bidding Procedures Order, this Sale Motion shall govern.

Background

10. The Debtors commenced these cases by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) on December 7, 2017 (the “Petition Date”).

11. The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the date hereof, no trustee or examiner has been requested in these chapter 11 cases, and no committee of unsecured creditors (the “Committee”) has yet been appointed.

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

The Purchased Assets for Sale

13. By this Sale Motion, the Debtors seek a process to sell substantially all of the Debtors’ assets to the Stalking Horse Purchaser, or such other Successful Bidder(s) (as defined herein) as may submit a higher or better bid for the Purchased Assets. The assets subject to this motion are more fully described in Section 2.01 of the Stalking Horse Asset Purchase Agreement, and constitute substantially all of the Debtors’ assets. Upon the closing of the Sale of the Purchased Assets, the Debtors will have sold substantially all of their tangible assets, thereby significantly reducing the costs of administering the remaining estates.

Terms of the Stalking Horse Asset Purchase Agreement

14. The Stalking Horse Bidder has executed the Stalking Horse Asset Purchase Agreement attached as Exhibit 1 to this Sale Motion. The Stalking Horse Bidder proposes to purchase the Purchased Assets pursuant to the following terms and conditions, which are briefly described below but are more fully provided for in the Stalking Horse Asset Purchase Agreement:

- a. The Purchase Price for the Purchased Assets will be a credit bid, pursuant to 11 U.S.C. § 363(k), by the Stalking Horse Bidder in the amount of \$6,000,000.00, *plus* the Cure Costs, *plus* the assumption of certain liabilities of the Debtors; and
- b. The Sale will be free and clear of any and all liens, claims and encumbrances pursuant to 11 U.S.C. §363(f).

15. The Purchased Assets are fully described in Section 2.01 of the Stalking Horse Purchase Agreement but include, without limitation, all right, title and interest of the Seller in, to and under all of the assets and properties owned, held or used in the conduct of the business of the Seller, with the exception of the Excluded Assets, as those terms are defined and each more fully described in the Stalking Horse Asset Purchase Agreement.

16. In the event that the Stalking Horse Bidder is not a Successful Bidder(s), upon entry of the Sale Order, all proceeds from the Sale, net of fees to Livingstone Partners LLC that are approved by this Court, shall be remitted to Great American Life Insurance Company, Great American Insurance Company, HD Special Situations II, LP and HD Special Situations III, LP (collectively, the “Pre-Petition Secured Lenders”) and Great American Life Insurance Company, Great American Insurance Company, and HD Special Situations III, LP (collectively, the “DIP Lenders”) upon the Closing, without further order of this Court.

Proposed Bidding Procedures

17. The Debtors propose that the Sale be subject to interested parties submitting higher and better bids for the Purchased Assets pursuant to the Bidding Procedures, as set forth herein. For the convenience of the Bankruptcy Court and parties in interest, the Debtors have provided a table below summarizing the relevant dates as provided in the Bidding Procedures described in this Sale Motion:

<u>Event</u>	<u>Date</u>
Bid Deadline	March 2, 2018 at 5:00 p.m.
Auction	March 7, 2018 at 10:00 a.m.
Sale Hearing	March 8, 2018 at __:__ a.m./p.m. (subject to this Court's availability)
Outside Closing Date	March 31, 2018

18. In accordance with Bankruptcy Rule 6004(f)(1), sales of property outside the ordinary course of business may be by private sale or by auction. The Debtors believe that good cause exists to expose the Purchased Assets to sale at auction and to approve the procedures proposed herein. An auction conducted in accordance with the Bidding Procedures will enable the Debtors to obtain the highest and best offer for the Purchased Assets, thereby maximizing the value of the Debtors' estates.

19. The Debtors will permit existing interested parties and any new prospective purchasers to perform reasonable due diligence with respect to the Purchased Assets and will assist them with such efforts, including providing such potential purchasers with reasonable access to the Debtors' books and records. This process will culminate in an auction, if necessary. The Sale will be approved on a final basis pursuant to a separate sale hearing to be conducted by the Court on or before March 8, 2018 (the "Sale Hearing").

20. The Debtors the following procedures (the "Bidding Procedures"), as set forth in the proposed Bidding Procedures Order attached as Exhibit 2:

- (a) After the entry of the Bidding Procedures Order, the Debtors shall provide notice of the Sale Hearing to all parties that have previously expressed bona fide interest in the Purchased Assets, to any other prospective bidders or interested parties, and to all creditors of the Debtors as required by the Bankruptcy Code.
- (b) The Debtors, in consultation with the Pre-Petition Secured Lenders, the DIP Lenders, and any Committee formed in these cases, will: (i) determine whether any bidder is a Qualified Overbidder (as defined herein); (ii) coordinate the efforts of Qualified Overbidders in conducting their respective due diligence investigations regarding Purchased Assets; (iii) receive offers from Qualified

Overbidders, and (iv) negotiate any offer made to purchase the Purchased Assets (collectively, the “Bidding Process”). Any person who elects to participate in the Bidding Process must be a Qualified Overbidder.

- (c) A “Qualified Overbidder” is a bidder that, after consulting with the Pre-Petition Secured Lenders, the DIP Lenders, and any Committee formed in these cases, the Debtors determine, in their reasonable, good faith business judgment, is likely and financially able to consummate the purchase of the Purchased Assets. For clarity, the Stalking Horse Bidder shall in all instances be deemed a Qualified Overbidder for the Purchased Assets.
- (d) A Qualified Overbidder who desires to make a bid must deliver a good faith deposit via wire transfer (or other form acceptable to the Debtors) to the Debtors’ counsel in an amount not less than \$150,000.00 (the “Good Faith Deposit”) along with a copy of the Required Bid Documents (set forth herein) to be received no later than 5:00 p.m. (prevailing Eastern Time) on March 2, 2018 (the “Bid Deadline”).
- (e) A bid received from a Qualified Overbidder will constitute a “Qualified Overbid” only if it includes all of the Required Bid Documents (as defined herein) and meets all of the Bid Requirements (as defined herein). The transaction terms and conditions set forth in the Stalking Horse Asset Purchase Agreement shall be deemed a Qualified Overbid for all purposes in connection with the Bidding Process, the Auction and the Sale.
- (f) To participate in the Bidding Process, and in order to be considered a Qualified Overbidder, each bidder, other than the Stalking Horse Bidder, must deliver (unless previously delivered) to the Debtors, at the Debtors’ request, the following documents by the Bid Deadline (collectively, the “Required Bid Documents”):
 - 1. A bona fide written offer stating that: (A) the Qualified Overbidder offers to purchase all or substantially all of the Purchased Assets in cash; (B) the Qualified Overbidder is prepared and intends promptly to enter into a legally binding purchase and sale agreement for the acquisition of the Purchased Assets on terms and conditions no less favorable to the Debtors than those contained in this Sale Motion and the attached Stalking Horse Asset Purchase Agreement immediately following the conclusion of the Auction; and (C) the Qualified Overbidder’s offer is irrevocable until the consummation of a Sale; and
 - 2. Satisfactory proof of available cash funds in the amount of the Qualified Overbidder’s initial bid demonstrating such bidder’s ability to close the proposed transaction expeditiously.

(g) To be considered a Qualified Overbid, any bid by a Qualified Overbidder, other than a bid by the Stalking Horse Bidder, must satisfy the following requirements (collectively, the “Bid Requirements”):

1. The Debtors must determine, after consulting with the Pre-Petition Secured Lenders, the DIP Lenders, and any Committee formed in these cases, that the bid (A) is not materially more burdensome or conditional than the transaction with the Stalking Horse Bidder pursuant to the Stalking Horse Asset Purchase Agreement; and (B) has a cash value of not less than \$6,250,000.00;
2. The bid is on substantially the same or better terms and conditions than those set forth in the Stalking Horse Asset Purchase Agreement, and must be a cash bid;
3. The bid is not conditioned upon the Bankruptcy Court’s approval of any bid protections or contingencies, such as a break-up fee, termination fee, expense reimbursement or similar type of payment;
4. The bid is not conditioned upon the bidder’s financing requirements and is accompanied by reasonable evidence (in the form of current bank statements, funds availability letters from an acceptable financial institution, or other evidence of available funding) of the bidder’s financial ability to promptly consummate its Qualified Overbid;
5. The bid acknowledges and represents that the bidder: (A) has had a full opportunity to conduct all due diligence regarding the Purchased Assets prior to making its bona fide, written offer; (B) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Purchased Assets in making its bid; (C) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Purchased Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures or the Debtors’ representations and warranties in the Stalking Horse Asset Purchase Agreement; and (D) is not contingent upon any additional due diligence or approvals of any Governmental Authority; and
6. The bid is received by the Bid Deadline.

- (h) Upon receipt of any Required Bid Documents, counsel for the Debtors shall promptly serve copies of the Required Bid Documents upon all other Qualified Overbidders, the United States Trustee, and the Committee.
- (i) If one or more Qualified Overbids is received by the Bid Deadline, the Debtors will conduct an auction (the "Auction") with respect to the Purchased Assets, to occur on March 7, 2018 at 10:00 a.m. (prevailing Eastern Time). If no Qualified Overbid (other than that of the Stalking Horse Bidder) is received by the Bid Deadline, the Debtors shall report the same to the Bankruptcy Court, the Stalking Horse Bidder shall be deemed the Successful Bidder, and the Auction shall be cancelled. The Sale Hearing shall proceed to consider any objections to the Sale and other issues related to the Sale.
- (j) The Auction, if required, shall be conducted on March 7, 2018 at 10:00 a.m. at the offices of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, 633 Chestnut Street, Suite 1900, Chattanooga, Tennessee 37450, or such other location as may be determined by the Debtors and communicated to the Qualified Overbidders at least 48 hours prior to the Auction.
- (k) Only the Debtors and their advisors, the Stalking Horse Bidder and its advisors, Qualified Overbidders who have submitted Qualified Overbids, the United States Trustee, the Committee and its advisors, and the Pre-Petition Secured Lenders, the DIP Lenders, and their advisors will be entitled to participate and be heard at the Auction, and only the Stalking Horse Bidder and Qualified Overbidders will be entitled to make any subsequent Qualified Overbids at the Auction.
- (l) During the Auction, bidding will begin at the purchase price stated in the highest and best Qualified Overbid, and will subsequently continue in minimum increments of not less than \$50,000.00 (or figures which are wholly divisible by \$50,000.00), in cash, higher than the previous Qualified Overbid (the "Overbid Increment"). The Overbid Increment must be in cash with no contingencies.
- (m) Bidding at the Auction will continue until such time as the highest and best Qualified Overbid is determined. Upon conclusion of the Auction, the Debtors will review each Qualified Overbid and identify the highest and best offer for the Purchased Assets (the "Successful Bid") and the second highest and best offer for the purchase of the Purchased Assets (the "Back-up Bid").
- (n) The highest and best offer for the Purchased Assets (the "Successful Bidder") will be: (i) if no Qualified Overbid is received for the Purchased Assets, then the Stalking Horse Bidder will be deemed the Successful Bidder for the Purchased Assets on the terms and conditions established in the Stalking Horse Asset Purchase Agreement; (ii) if one or more Qualified Overbids are received for the Purchased Assets, then the Stalking Horse Bidder or the Qualified Overbidder shall be deemed the Successful Bidder, as determined by the Debtors; or (iii) to the extent of any default by the Successful Bidder, to the Qualified Overbidder

who submitted the Back-up Bid (including, as applicable, the Stalking Horse Bidder).

- (o) The Sale is subject to approval of the Bankruptcy Court and shall not become effective until such approval is evidenced by a final order of the Bankruptcy Court approving the Sale.
- (p) The Good Faith Deposits of all Qualified Overbidders shall be returned to the respective Overbidder within five (5) business days of the Closing of the Sale.
- (q) At the Auction and Sale Hearing, the Stalking Horse Bidder shall have standing to contest any Qualified Overbid or the determination as to which Qualified Overbid should be determined to be the Successful Bid and Back-Up Bid, or any matter related to the Bidding Procedures or the Sale.

21. The Debtors believe that the foregoing Bidding Procedures provide an appropriate framework for selling the Purchased Assets in a uniform fashion and will enable the Debtors to review, analyze and compare all bids received to determine which bid is, or bids are, in the best interests of the Debtors' estates and their creditors. Therefore, the Debtors respectfully request that this Court approve the Bidding Procedures and the Sale.

Assumption and Assignment of Executory Contracts and Unexpired Leases

22. To facilitate and affect the sale of assets, the Stalking Horse Bidder (or other Successful Bidder(s)) may request that the Debtors assume and assign certain executory contracts and unexpired leases (singularly a "Contract" and, collectively, the "Contracts").

23. One business day after the Bid Deadline, the Debtors shall cause notice(s) to be provided to all counterparties to executory contracts and unexpired leases informing them whether their respective Contract may be assumed and assigned (singularly an "Assumed Contract" and, collectively, the "Assumed Contracts"), substantially in the form attached hereto as **Exhibit 4** (the "Assumption Notice"). The Assumption Notice shall also provide the counterparties to the possible Assumed Contracts notice of the amount that the Debtors believe

must be cured upon the assumption and/or assignment as required by section 365 of the Bankruptcy Code (the “Cure Amount”).

24. Except as may otherwise be agreed to by the parties to an Assumed Contract (with the consent of the Successful Bidder(s)), at or prior to the Closing Date, the Successful Bidders shall pay all Cure Amounts. In the event of a dispute regarding the Cure Amount, any payments required, following entry of a final order by this Bankruptcy Court resolving such dispute, shall be made as soon as practicable thereafter.

25. Objections, if any, to the proposed assumption and assignment of the Assumed Contracts, including, but not limited to, objections relating to the Cure Amount and/or adequate assurances of future performance, must (a) be in writing; (b) state with specificity the nature of such objection and the alleged Cure Amount (with appropriate documentation in support thereof); (c) comply with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules of this Court; and (d) be filed with the Court and served upon (so as to be received by) the following parties (collectively, the “Notice Parties”) on or before **March 6, 2018 at 3 p.m.**: (a) counsel to the Debtors, Baker, Donelson, Bearman, Caldwell, & Kerkowitz, P.C., Attn: Justin Sveadas and Erno Lindner, 1800 Republic Center, 633 Chestnut Street, Chattanooga, Tennessee 37450; (b) counsel to the Stalking Horse Bidder, Frost Brown Todd LLC, Attn: Ronald E. Gold and A.J. Webb, 3300 Great American Tower, 301 East Fourth Street, Cincinnati, Ohio 45202 and Frost Brown Todd LLC, Attn: Lynda M. Hill, 105 3rd Avenue South, Suite 1900, Nashville, Tennessee 37201; (c) United States Trustee, Attn: David Holesinger, Trial Attorney, Office of the United States Trustee, 31 East 11th Street, 4th Floor, Chattanooga, Tennessee 37402; and (d) counsel to the Committee, if a Committee is formed in these cases.

26. Any party to an Assumed Contract failing to timely file an objection to the Cure Amounts as set forth in the Cure Notice, or to the proposed assumption and assignment of the Assumed Contracts, shall be forever barred from objecting to the assumption and assignment of the Assumed Contract or the Cure Amounts and from asserting any additional cure or other amounts against the Debtors, its estates, the Successful Bidder(s), or Back-Up Bidder with respect to such party's Assumed Contract and will be deemed to consent to the Sale and the proposed assumption and assignment of its Assumed Contract.

Basis for Relief

A. The Sale and the Bidding Procedures are a Proper Exercise of the Debtors' Business Judgment and will Maximize the Value of the Purchased Assets for the Benefit of the Debtors' Estates and Creditors.

27. Entry of the Sale Order approving the final Sale of the Purchased Assets at the conclusion of the Sale Hearing is authorized and appropriate under the Bankruptcy Code. Section 363(b) of the Bankruptcy Code provides that "the trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." Section 1107(a) of the Bankruptcy Code grants a debtor-in-possession the powers of a trustee in respect to various matters including sales under section 363(b) of the Bankruptcy Code.

28. Although section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, courts have found that a debtor's sale or use of assets outside the ordinary course of business should be approved if the debtor can demonstrate a sound business justification for the proposed transaction. *See, e.g., In re Eagle Picher Holdings, Inc.*, 2005 WL 4030132 (Bankr. S.D. Ohio 2005); *In re Martin*, 91 F.3d 389, 395 (3rd Cir. 1996); *In re Abbotts Dairies of Penn., Inc.*, 788 F.2d 143 (3rd Cir. 1986); *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2nd Cir. 1983).

29. The key consideration is the Court's finding that a good business reason exists for the sale. *Stephens Industries, Inc. v. McClung*, 789 F.2d 386 (6th Cir. 1986); *see also, Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996); *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp., (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (Bankr. D. Del. 1999).

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 plans 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.

In re Walter, 83 B.R. 14, 19-20 (9th Cir. Bankr. 1988), citing *In re Lionel Corporation*, 722 F.2d 1063, 1070-71 (2nd Cir. 1983).

30. Once the Debtors articulate a valid business justification, “[t]he 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 taken was in the best interests of the company.’” *In re S.N.A. Nut Co.*, 186 B.R. 98 (Bankr. N.D. Ill. 1995); *see also In re Integrated Res., Inc.*, 147 B.R. 650, 656 (Bankr. S.D.N.Y. 1992); *In re Johns-Manville Corp.*, 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) (“a presumption of reasonableness attaches to a debtor's management decisions”).

31. In light of circumstances that precipitated the commencement of these chapter 11 proceedings and in view of the Milestones as defined in the Interim DIP Order, the Debtors, in their business judgment, believe that a prompt sale of the Purchased Assets, pursuant to section 363(b) of the Bankruptcy Code, will maximize the value of the Purchased Assets for the benefit of the Debtors' creditors and bankruptcy estates. Several sound business reasons support the Debtors' position.

32. Based on the results of their analysis of the Debtors' ongoing and future business prospects, the Debtors' management and team of financial advisors have concluded that a Sale as a going concern in accordance with the process set forth in the Bidding Procedures may be the best method to maximize recoveries and ensure that the value of the Debtors' assets is maintained for the benefit of creditors and their estates. Maximization of asset value is a sound business purpose, warranting authorization of the Sale.

33. The Debtors have proposed a fair and open process for achieving the objective of obtaining the highest or best offer for the Purchased Assets. The Bidding Procedures provide potential bidders an opportunity to perform due diligence. Competing bidders will have the opportunity to bid at the Auction (if they become Qualified Overbidders, as defined in the Bidding Procedures), thus ensuring that the sale of the Purchased Assets will be effected through an arm's-length transaction. Accordingly, the proposed auction procedure will allow the highest and best bidder to purchase the Purchased Assets, thereby maximizing the return to the Debtors' estates.

34. The Debtors believe that the Bidding Procedures for the Auction are commercially reasonable and are in the best interest of the Debtors, their estates and creditors and will maximize the value obtained from the sale of the Purchased Assets. The Sale of the Purchased

Assets will be subject to competing bids, enhancing the Debtors' ability to receive the highest or otherwise best value for the Purchased Assets. An auction is sufficient to establish that one has paid "value" for assets of a bankruptcy estate, where the auction sale has itself been conducted in good faith. *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3rd Cir. 1986). Consequently, the fairness and reasonableness of the consideration to be received by the Debtors will ultimately be demonstrated by a "market check" through the auction process, which is the best means for establishing whether a fair and reasonable price is being paid.

35. In addition, all creditors and parties-in-interest will receive adequate notice of the Bidding Procedures and Sale Hearing as set forth herein. Such notice is reasonably calculated to provide timely and adequate notice to the Debtors' major creditor constituencies, those parties most interested in these chapter 11 cases, those parties potentially interested in bidding on the Purchased Assets, and others whose interests are potentially implicated by a proposed Sale. Accordingly, consummating the Sale as soon as possible is in the best interests of the Debtors and their creditors.

36. Finally, the timing of the Sale is critical. Pursuant to the Interim Financing Order, the Debtors will be in default of the Interim Financing Order and the DIP Facility described in the Interim Financing Order if the Debtors fail to consummate the Sale on or before April 6, 2018. The Debtors have insufficient cash flow to continue to the Debtors' operations without funding under the DIP Facility. Without financing to continue operations, the only alternative to a going concern sale is to liquidate the Debtors' assets. The Debtors believe that the proposed Sale will provide a greater return to the Debtors' estates and their creditors than the liquidation of the Debtors' assets. For each of the foregoing reasons, the Debtors, in their business judgment,

believe that a prompt sale of the Purchased Assets, pursuant to section 363(b) of the Bankruptcy Code, is in the best interest of the Debtors, their estates, creditors and other parties in interest.

B. This Court Should Approve the Sale Free and Clear of all Liens, Claims, and Encumbrances Pursuant to Section 363(f) of the Bankruptcy Code.

37. The Debtors also request that the Sale Order provide that the Sale of the Purchased Assets is free and clear of any interest held by any third party in any of the assets to be sold. Specifically, it is contemplated that upon the closing, the Stalking Horse Bidder (or such other Successful Bidder(s) as may be selected in accordance with the Bidding Procedures) will take title to and possession of the Purchased Assets, free and clear of all liens, claims, interests and encumbrances, except as otherwise provided in the Stalking Horse Asset Purchase Agreement.

38. Section 363(f) of the Bankruptcy Code authorizes the sale of property under section 363(b) of the Bankruptcy Code to be free and clear of interests in such property held by an entity if:

- a. Applicable non-bankruptcy law permits a sale of such property free and clear of such interests;
- b. Such entity consents;
- c. Such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- d. Such interest is in bona fide dispute; or
- e. Such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11. U.S.C. § 363(f).

39. The Pre-Petition Secured Lenders hold a first-priority lien upon substantially all of the Debtors' assets not otherwise subject to a validly perfected unavoidable lien of a third party other than the Pre-Petition Secured Lenders and the DIP Lenders have super-priority liens and claims under section 364(c)(1) of the Bankruptcy Code. These liens will attach to the sales proceeds with the same validity and priority as exist under state law pursuant to section 363(e) of the Bankruptcy Code.

40. The Sale of the Purchased Assets pursuant to the Bidding Procedures will satisfy section 363(f) of the Bankruptcy Code because any entities holding liens, claims, interests or encumbrances against the Purchased Assets will have received notice of the Sale. All parties in interest will be given sufficient opportunity to object to the relief requested herein and any such entity that does not object to the Sale of the Purchased Assets should be deemed to have consented. See *Futuresource LLC v. Reuters Ltd.*, 312 F.3d 281, 285-86 (7th Cir. 2002) ("It is true that the Bankruptcy Code limits the conditions under which an interest can be extinguished by a bankruptcy sale, but one of those conditions is the consent of the interest holder, and lack of objection (provided of course there is notice) counts as consent. It could not be otherwise; transaction costs would be prohibitive if everyone who might have an interest in the bankrupt's assets had to execute a formal consent before they could be sold.") (internal citations omitted); *Hargrave v. Township of Pemberton (In re Tabone, Inc.)*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (failure to object to sale free and clear of liens, claims and encumbrances satisfies section 363(f)(2)); *Citicorp Homeowners Serv., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (same); see also *In re Enron Corp.*, 2003 WL 21755006, at *2 (Bankr. S.D.N.Y. 2003) (order deeming all parties who did not object to proposed sale to have consented under section 363(f)(2)). As such, the Sale of the Purchased Assets may be free and clear of all liens, claims,

interests and encumbrances except any liabilities expressly assumed by the Stalking Horse Bidder (or other Successful Bidders)), thus satisfying section 363(f)(2) of the Bankruptcy Code.

41. Moreover, a sale of the Purchased Assets free and clear may proceed pursuant to section 363(f) of the Bankruptcy Code because creditors with an interest in the sale assets can be compelled to accept money satisfaction of their claims pursuant to section 363(f)(5) of the Bankruptcy Code. See *Scherer v. Fed. Nat'l Mortgage Assoc. (In re Terrace Chalet Apartments, Ltd.)*, 159 B.R. 821, 829 (N.D. Ill. 1993) (holding that pursuant to section 363(f)(5) of the Bankruptcy Code courts may authorize sales free and clear of a secured creditor's lien if such creditor's interest could be crammed down pursuant to section 1129(b)(2) of the Bankruptcy Code); *In re Healthco Int'l, Inc.*, 174 B.R. 174, 176 (Bankr. D. Mass. 1994) (same). Therefore, this Court may authorize the Sale pursuant to section 363(f)(5) of the Bankruptcy Code.

42. The Debtors also believe that other provisions of section 363(f) of the Bankruptcy Code may be applicable to and would permit the sale of the Purchased Assets. Thus, the sale of the Purchased Assets is appropriately free and clear of all liens, claims, interests or encumbrances pursuant to section 363(f) of the Bankruptcy Code.

C. The Stalking Horse Bidder (or such other Successful Bidder(s)) Should be Entitled to the Protections of 363(m) of the Bankruptcy Code.

43. The Debtors seek the protections afforded under section 363(m) of the Bankruptcy Code, which provide, in pertinent part:

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

11 U.S.C. 363(m).

44. The Debtors submit that the Sale of the Purchased Assets to the Stalking Horse Bidder (or such Successful Bidder(s) as may be selected in accordance with the Bidding Procedures) warrants a finding that the Purchased Assets were acquired in good faith within the meaning of section 363(m) of the Bankruptcy Code. The Debtors have and will continue to aggressively market the Sale of the Purchased Assets. Any parties who have expressed any meaningful interest in the acquiring the business and assets of will be given notice of the Sale. No subjectivity in evaluating bids will be at issue. The highest bidder will purchase the Purchased Assets, subject to the terms of the Bidding Procedures

45. Accordingly, the Sale Order will include a provision that the Stalking Horse Bidder (or such Successful Bidder(s) for the Purchased Assets) is a “good faith” purchaser within the meaning of section 363(m) of the Bankruptcy Code. The Debtors believe that providing such protection will ensure that the maximum price will be received by the Debtors for the Purchased Assets and closing of the Sale will occur promptly.

D. Assumption and Assignment of the Assumed Contracts is Warranted Under Section 365 of the Bankruptcy Code

46. Section 365(a) of the Bankruptcy Code provides as follows:

Except as provided in section 765 and 766 of this title and in subsections (b), (c) and (d) of this section, the trustee, 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).

47. Section 365 of the Bankruptcy Code authorizes the assumption or rejection of any executory contract or unexpired lease of a debtor except for open contracts of commodity brokers that are covered by Bankruptcy Code sections 765 and 766.

48. The Bankruptcy Code provides little guidance as to the standards to be applied by a court in approving an assumption or rejection. Drawing on pre-Code law, the predominant test

is described as the “business judgment” rule or business judgment test. *In re Kong*, 162 B.R. 86, 94 (Bankr. E.D.N.Y. 1993); *In re Minges*, 602 F.2d 38 (2nd Cir. 1979); *In re Child World*, 142 B.R. 87, 89 (Bankr. S.D.N.Y. 1992); *In re Stable Mews Assocs.*, 41 B.R. 594 (Bankr. S.D.N.Y. 1984). The business judgment test is the same test applied to judicial review of corporate decisions outside bankruptcy. *Johnson v. Fairco Corp.*, 61 B.R. 317 (N.D. Ill. 1986). This test analyzes the impact that continued performance under the executory contract or unexpired lease will have on the estate. Assumption or rejection of the contract or lease will be approved upon a mere showing that the action will benefit the estate. *In re Chestnut Ridge Plaza Assocs., L.P.*, 156 B.R. 477 (Bankr. W.D. Pa. 1993) (test is best interest of the estate); *Bezanson v. Metropolitan Ins. & Annuity Co.*, 952 F.2d 1 (1st Cir. 1991).

49. In addition to the business judgment test, section 365(b)(1) of the Bankruptcy Code further provides that the debtor may not assume an executory contract or unexpired lease unless, at the time of assumption, the debtor: (a) cures defaults; (b) compensates the non-debtor party to the lease or contract for any actual pecuniary loss resulting from defaults; and (c) provides adequate assurance of future performance. *See* 11 U.S.C § 365(b)(1).

50. In the present case, the Debtors may seek to assume the Assumed Contracts and assign the Assumed Contracts to the Stalking Horse Bidder (or such other Successful Bidder(s) as may be selected in accordance with the Bidding Procedures). Section 365(f) of the Bankruptcy Code addresses assumption and assignment of executory contracts and unexpired leases and provides, in pertinent part:

(1) Except as provided in subsections (b) and (c) of this section, notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease under paragraph (2) of this subsection

(2) 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 of this section; and

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

11 U.S.C. § 365(f)(1)-(2).

51. Section 365(f) of the Bankruptcy Code provides that the assignment of a properly assumed contract or lease is to be permitted by the Court only if the debtor has assumed the contract or lease in compliance with all of the terms of section 365 of the Bankruptcy Code and if the debtor provides the other party to the contract or lease with adequate assurance of future performance by the assignee of the contract or lease. 11 U.S.C. § 365(f)(2). The words “adequate assurance of future performance” must be given a “practical a pragmatic construction” in “light of the proposed assumption.” *In re Fleming Cos.*, 499 F.3d 300 (3d Cir. 2007) (quoting *Cinicola v. Scharffenberger*, 248 F.3d 110, 120, n.10 (3d Cir. 2001)). *See also Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1989) (same); *In re Nalco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean absolute assurance that debtor will thrive and pay rent); *In re Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985) (“Although no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance.”).

52. As part of this Motion, the Debtors seek authority to assume and assign the identified Assumed Contracts to the Stalking Horse Bidder (or such other Successful Bidder(s) as may be selected in accordance with the Bidding Procedures). Any assumption and assignment of the Assumed Contracts will be subject to any applicable provisions of the Bankruptcy Code.

The proposed terms and conditions set forth herein and in the Bidding Procedures are designed to ensure that the assignees, if any, are financially able and prepared to undertake all of the obligations of the Assumed Contracts. In addition, the availability of the Sale Hearing gives this Court and other parties in interest an appropriate opportunity to evaluate any assignment issues.

53. The Debtors assert that under the circumstances, the Assumed Contracts can be properly assumed in compliance with section 365 of the Bankruptcy Code. First, the assumption of the Assumed Contracts by the Debtors complies with the requirements of section 365 because assumption clearly satisfies the “business judgment test”. The Debtors’ satisfaction of the business judgment test is demonstrated by the benefit to the Debtors’ estates which will accrue as a result of the Debtors’ ability to close the Sale on the terms to be set forth in the Stalking Horse Purchase Agreement and from the savings realized as a result of: (a) the Stalking Horse Bidder’s assumption of the Debtors’ obligations under the Assumed Contracts, as provided in the Stalking Horse Purchase Agreement; and (b) the avoidance of a potential rejection damages claims and possible administrative expense claims.

54. Second, all monetary defaults under the Assumed Contracts will be cured by payment of the Cure Costs at the time of assumption.

55. Third, it is contemplated that the Stalking Horse Bidder (or such other Successful Bidder(s) as may be selected in accordance with the Bidding Procedures) will be capable of satisfying the adequate assurance conditions of sections 365(b)(i)(c) and 365(f) of the Bankruptcy Code with respect to the Assumed Contracts. Adequate assurance of future performance is to be determined on a case by case basis to ensure that the other party to the contact or lease obtains the benefit of the bargain for what was contracted. *Chera v. 991 Blvd. Realty Corp. (In re National Shoes, Inc.)*, 20 B.R. 55, 59 (Bankr. S.D.N.Y. 1982); *See also In re*

Bygaph, 56 B.R. 596, 605 (Bankr. S.D.N.Y. 1986) (“Congress intended that the words ‘adequate assurance’ be given a practical, pragmatic construction, and is to be determined under the facts of each particular case”). The Debtors submit, and will demonstrate at the Sale Hearing, that there are adequate business justifications for the assumption and assignment of the Assumed Contracts and that all requirements to assumption and assignment, including adequate assurance of future performance by the Stalking Horse Bidder or any Successful Bidder(s), have been met.

WHEREFORE, the Debtors respectfully request this Bankruptcy Court enter an order:

- (i) scheduling a hearing on this Sale Motion to consider the approval of the Bidding Procedures;
- (ii) holding a hearing for final approval of the proposed Sale of the Purchased Assets at the Sale Hearing;
- (iii) authorizing the Debtors to sell the Purchased Assets other than in the ordinary course, free and clear of liens, interests and other claims; and
- (iv) granting such other and further relief as this Court deems just and appropriate under the circumstances.

Dated: December 27, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of December, 2017, a copy of the foregoing electronically filed pleading was served on the parties listed on the attached creditor matrix and the office of the U.S. Trustee by first-class mail, postage prepaid, unless said party is a registered CM/ECF participant who has consented to electronic notice, and the Notice of Electronic Filing indicates that Notice was electronically mailed to said party. Notice is also being sent to the below parties by first-class mail, postage prepaid.

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Label Matrix for local noticing
0649-1

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P.O. Box 750518
Houston, TX 77275-0518

Mark Arms, VP Operations
1919 Polymer Dr.
Chattanooga, TN 37421-2204

Marlboro Manufacturing, Inc.
11750 Marlboro Avenue NE
Alliance, OH 44601-9798

Marvail, a Division of Airxcel, Inc.
P.O. Box 6407
Carol Stream, IL 60197-6407

Matheson TRI-GAS Inc.
P.O. Box 123028
Dept. 3028
Dallas, TX 75312-3028

Mayer Electric Supply Company, Inc.
P.O. Box 896537
Charlotte, NC 28289-6537

McCauley Lumber
626 Aldine Bender
Houston, TX 77060-4598

McMaster-Carr Supply Co.
P.O. Box 7690
Chicago, IL 60680-7690

Meitec
2800 Veterans Memorial Blvd.
Metairie, LA 70002-6178

Miller Electrical Contractors
613 Shallowford Road
Chattanooga, TN 37411-1404

Mobile Mini, Inc.
P.O. Box 7144
Pasadena, CA 91109-7144

Mobile Modular Management
P.O. Box 45043
San Francisco, CA 94145-0043

Mobile Modular Management Corporation
4445 East Sam Houston Pkwy. So.
Pasadena, TX 77505-3912

N.C.F.I.
P.O. Box 890616
Charlotte, NC 28289-0616

Nappco Fastener Company
7330 North Sam Houston Pkwy. West
Houston, TX 77064-3580

Net Star Internet
P.O. Box 301857
Dallas, TX 75303-1857

Nolan Power Group
P.O. Box 54986
New Orleans, LA 70154-4986

Northern Air Systems, Inc.
3605 Buffalo Road
Rochester, NY 14624-1120

Nova Healthcare TN, PLLC
P.O. Box 840138
Dallas, TX 75284-0138

O'Neal Steel, Inc. - Tennessee
P.O. Box 934243
Atlanta, GA 31193-4243

O'Neal Steel, Inc. - Texas
P.O. Box 934243
Atlanta, GA 31193-4243

Office Depot
P.O. Box 633301
Cincinnati, OH 45263-3301

Oglethorpe Power Corporation
2100 E. Exchange Place
Tucker, GA 30084-5336

Oil Service, Inc.
3498 Grand Avenue
Pittsburgh, PA 15225-1508

On Time Express, Inc.
733 W. 22nd St.
Tempe, AZ 85282-1905

PPG Industries, Inc.
19699 Progress Drive
Strongsville, OH 44149-3298

PPG Industries, Inc.
P.O. Box 534991
Atlanta, GA 30353-4991

Pacesetter
P.O. Box 684005
Houston, TX 77268-4005

Paul Bogard, VP Sales & Procurement
1919 Polymer Dr.
Chattanooga, TN 37421-2204

Peter E. Strenkowski
Winstead PC
600 Travis St., Ste. 1100
Houston, TX 77002-3030

Precision Products
P.O. Box 1119
Tunnel Hill, GA 30755-1119

Precision Scales, Inc.
5829 W. Sam Houston Pkwy. N, #205
Houston, TX 77041-5156

ProStar Services
P.O. Box 110209
Carrollton, TX 75011-0209

Product Identification, Inc.
P.O. Box 13157
Research Triangle Park, NC 27709-3157

Professional Plastics, Inc.
Dept. LA 23218
Pasadena, CA 91185-3218

Prominent Transport, LLC
Bibby Transportation Finance Inc.
P.O. Box 100920
Atlanta, GA 30384-0920

Providence Engineering &
Environmental Group, LLC
1201 Main Street
Baton Rouge, LA 70802-4658

RFE Management Corporation
c/o RFE Investment Partners
36 Grove St.
New Canaan, CT 06840-5329

RIS Insulation Supply
845 Greens Parkway, Suite 150
Houston, TX 77067-4460

RPM Expedite Inc.
100 Exchange Drive
Brampton, Ontario, Canada
L6S 0C8

RPM Expedite USA
100 Exchange Drive
Brampton, Ontario, Canada
L6S 0C8
Brampton, ON

Radiant Global Logistics
733 W. 22nd St.
Tempe, AZ 85282-1905

Ready Refresh
P.O. Box 856680
Louisville, KY 40285-6680

Reily/Wesco
ABA 043000096
P.O. Box 676780
Dallas, TX 75267-6780

Rhonda Beard, VP Human Resources
1919 Polymer Dr.
Chattanooga, TN 37421-2204

Roxtec Inc.
1806 Solutions Center
Chicago, IL 60677-1008

Royal Cabling Techsus LLC
1918 Ridgewood Street
Houston, TX 77006-1729

SHRED-IT USA
28883 Network Place
Chicago, IL 60673-1288

STORE Master Funding VI, LLC
8377 E. Hartford Dr., Suite 100
Scottsdale, AZ 85255-5686

Safety RX Services & Supply Corp.
2835 E. Sam Houston Pkwy. S
Pasadena, TX 77503-4015

Safety Shoe Distributors, LLP
9330 Lawndale
Houston, TX 77012-2705

Safety-Kleen Systems, Inc.
P.O. Box 650509
Dallas, TX 75265-0509

Safetywear
Sullivan-Brough, Inc.
24117 Network Place
Chicago, IL 60673-1117

Sales Force
123 Mission
San Francisco, CA 94105-1681

Sam's Club Direct
P.O. Box 530930
Atlanta, GA 30353-0930

Samuel, Son & Company, Inc.
24784 Network Place
Chicago, IL 60673-1247

Sandler Training of Chattanooga
1200 Market Street
Old Freight Depot
Chattanooga, TN 37402-2713

Schneider Electric USA, Inc.
1415 South Roselle Road
Palatine, IL 60067-7337

Schneider Electric USA, Inc.
152 Fairgrounds Road
West Kingston, RI 02892

Schneider Electric USA, Inc.
200 N. Martingale Road
Schaumburg, IL 60173-2026

Schneider Electric USA, Inc.
Tim Luksetich
3700 6th Street
Cedar Rapids, IA 52404-5403

(c)SCHWEITZER ENGR. LABORATORIES, INC. - TX
2440 NE HOPKINS CT
PULLMAN WA 99163-5616

Scott Machine Development Corporation
P.O. Box 88
Walton, NY 13856-0088

Service Partners
Main Document
c/o Accounts Receivable
841 Great Southwest Parkway
Arlington, TX 76011-5428

Sierra Pacific Engineering & Products
4041 Via Oro Avenue
Long Beach, CA 90810-1458

Skelton Business Equipment
901 W. Main
Tomball, TX 77375-5591

South Atlantic LLC
P.O. Box 890425
Charlotte, NC 28289-0425

Southway Crane & Rigging-Macon, LLC
222 New Dunbar Road
Byron, GA 31008-6337

Spray Pump
719 E. Pearce St.
Baytown, TX 77520-5250

Stanley Convergent Security Solutions
Dept Ch 10651
Palatine, IL 60055-0001

State of New Hampshire
State Fire Marshall's Office
33 Hazen Drive
Concord, NH 03305-0011

Steel & Pipe Supply Company Inc.
P.O. Box 731266
Dallas, TX 75373-1266

Steffner Family Partnership
1724 Central Avenue
Chattanooga, TN 37408-2219

Steffner Family Partnership, L.P.
c/o Jimmy Steffner
1724 Central Avenue
Chattanooga, TN 37408-2219

Stericycle
P.O. Box 6582
Carol Stream, IL 60197-6582

Sterling Fire Protection, LLC
P.O. Box 470
Pearland, TX 77588-0470

Sterling First Aid Safety Supply, Inc.
P.O. Box 2116
Pearland, TX 77588-2116

Steven Hudgins
Hudgins Law Firm
24 Greenway Plaza, Suite 2000
Houston, TX 77046-2444

Summit Electric Supply
P.O. Box 848345
Dallas, TX 75284-8345

Sun Coast Resources, Inc.
P.O. Box 202603
Dallas, TX 75320-2603

Sweetwater Valley Oil
1236 Hwy 68
Sweetwater, TN 37874-5154

T K Group, Inc.
Hearing Conservation Division
1781 S. Bell School Rd.
Cherry Valley, IL 61016-9338

T.R. Arnold & Associates, Inc.
4703 Chester Drive
Elkhart, IN 46516-9641

TB Philly, Inc.
400 Thomas Drive, Suite 411
Phoenixville, PA 19460-1199

TSI Energy Solutions
P.O. Box 705
Carmel, IN 46082-0705

(p)TXU ENERGY RETAIL COMPANY LP
CO BANKRUPTCY DEPARTMENT
PO BOX 650393
DALLAS TX 75265-0393

Tabco Business Forms, Inc.
1100 S. State Road 46
Terre Haute, IN 47803-9314

Tennessee American Water
P.O. Box 371880
Pittsburgh, PA 15250-7880

Tennessee Roofing and Construction, Inc.
8427 Hixson Pike
Hixson, TN 37343-1557

Tennessee Valley Authority
P.O. Box 1500
Knoxville, TN 37901

Texas Dept. of Licensing & Regulation
Licensing Division
P.O. Box 12157
Austin, TX 78711-2157

Texas Towel & Supply, Inc.
P.O. Box 15128
Houston, TX 77220-5128

Thermal Resource Sales, Inc.
P.O. Box 667
Kernersville, NC 27285-0667

Thyssen Krupp Steel Services
Woodstock, AL
P.O. Box 2625
Carol Stream, IL 60132-2625

Trumpf, Inc.
Dept. 135
P.O. Box 150473
Hartford, CT 06115-0473

Turtle & Hughes
1900 Lower Road
Linden, NJ 07036-6586

Twelco, Inc.
15411 Treichel Road
Tomball, TX 77377-6138

U.S. Postal Service
GMF Window Service
Chattanooga, TN 37422-2147

UPS
P.O. Box 577
Carol Stream, IL 60132-0577

Uline
P.O. Box 88741
Chicago, IL 60680-1741

Ultimate Software Group, Inc.
P.O. Box 930953
Atlanta, GA 31193-0953

Ultimate Software Group, Inc. (UltiPro)
2000 Ultimate Way
Weston, FL 33326-3643

United Enertech
3005 S. Hickory Street
Chattanooga, TN 37407-1425

United Power and Control Systems, LLC
P.O. Box 446
Spring, TX 77383-0446

United Rentals (North America)
P.O. Box 100711
Atlanta, GA 30384-0711

United States Trustee
Historic U.S. Courthouse
31 E. Eleventh Street
Fourth Floor
Chattanooga, TN 37402-4205

Valmont Structures
3575 25th Street SE
Salem, OR 97302-1123

VisionMark Nameplate Company, LLC
P.O. Box 280
New Knoxville, OH 45871-0280

Voltech Electrical, LLC
P.O. Box 2833
Spring, TX 77383-2833

W.J. O'Neil Company
P.O. Box 2006
Chattanooga, TN 37409-0006

WCA Waste Corporation
P.O. Box 553166
Detroit, MI 48255-3166

Walker Interiors LLC
2906 8th Avenue
Chattanooga, TN 37407-1543

Waste Corporation of America
Attn: Aaron Rud
8515 Highway 6 South
Houston, TX 77083-5710

Waste Services of Tennessee
P.O. Box 180600
Chattanooga, TN 37406-7600

Weiser Security
P.O. Box 51720
New Orleans, LA 70151-1720

Wells Fargo Vendor Fin. Services
P.O. Box 105710
Atlanta, GA 30348-5710

Wells Fargo Vendor Financial Svcs., LLC
1961 Hurst Drive
Moberly, MO 65270-3046

Wex Bank
P.O. Box 5727
Carol Stream, IL 60197-5727

Whitfield Oil Company
Attn: Credit Dept
222 Industrial Dr.
P.O. Box 155
Chickamauga, GA 30707-0155

Wholesale Electric Supply
Company of Houston
P.O. Box 732778
Dallas, TX 75373-2778

Willis Insurance Services of Georgia
29727 Network Place
Chicago, IL 60673-1297

Wood Alternator and Starter
680 Aldine Mail Route
Houston, TX 77037-1748

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

TXU Energy
P.O. Box 650638
Dallas, TX 75265-0638

Addresses marked (c) above for the following entity/entities were corrected as required by the USPS Locatable Address Conversion System (LACS).

Schweitzer Engr. Laboratories, Inc. - TX
2350 NE Hopkins Court
Pullman, WA 99163-5603

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Great American Insurance Company	(u)Great American Life Insurance Company	(u)HD Special Situations II, LP
(u)HD Special Situations III, LP	(d)Jason D. Kraus The Kraus Law Firm 5625 Cypress Creek Parkway, Ste. 308 Houston, TX 77069-4210	End of Label Matrix Mailable recipients 274 Bypassed recipients 5 Total 279

EXHIBIT 1

ASSET PURCHASE AGREEMENT

dated as of

[•]

between

LECTRUS HOLDINGS LLC

and

LECTRUS CORPORATION

ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT (this “**Agreement**”) dated as of [●] by and between **LECTRUS HOLDINGS LLC**, a Delaware limited liability company, or its designees (“**Buyer**”), and **LECTRUS CORPORATION**, a Tennessee corporation with a principal place of business at 1919 W. Polymer Drive, Chattanooga, TN 37421 (the “**Seller**”).

WITNESSETH:

WHEREAS, the Seller offers custom engineering, project management, integration, site installation and post-sale customer support services relating to the design and manufacture of custom metal enclosures and electrical and mechanical integration;

WHEREAS, on December 7, 2017 (the “**Petition Date**”), the Seller and Lectrus Holding Corp. filed voluntary petitions for relief commencing cases under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Tennessee (the “**Bankruptcy Court**”);

WHEREAS, Buyer desires to purchase certain assets and assume certain liabilities of the Seller, and the Seller desires to sell certain assets and transfer certain liabilities of the Seller to Buyer, upon the terms and subject to the conditions hereinafter set forth;

WHEREAS, the parties hereto intend to effectuate the transactions contemplated by this Agreement pursuant to section 363 of the Bankruptcy Code (as hereinafter defined) with respect to which this Agreement is intended to be a stalking horse bid;

WHEREAS, the execution and delivery of this Agreement and the Seller’s ability to consummate the transactions set forth in this Agreement are subject, among other things, to the entry of the Sale Order (as hereinafter defined); and

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.01. *Definitions.* As used herein, the following terms have the following meanings:

“**Action**” means any claim, action, cause of action, demand, lawsuit, arbitration, formal inquiry, audit, citation, summons, subpoena, notice of violation, proceeding or litigation, whether civil, criminal, administrative, regulatory, at law, in equity or otherwise.

“**Affiliate**” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such other Person. For purposes of this definition, “**control**” when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership

of voting securities, by Contract or otherwise, and the terms “**controlling**” and “**controlled**” have correlative meanings.

“**Auction**” means the auction undertaken pursuant to the Bidding Procedures Order.

“**Applicable Law**” means, with respect to any Person, any transnational, domestic or foreign federal, state or local law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, order, injunction, judgment, decree, ruling or other similar requirement enacted, adopted, promulgated or applied by a Governmental Authority that is binding upon or applicable to such Person, as amended unless expressly specified otherwise.

“**Avoidance Action**” means any avoidance, preference or recovery, claim, action or proceeding arising under chapter 5 of the Bankruptcy Code or under any similar state or federal law.

“**Bankruptcy Case**” means the cases, as jointly administered, commenced by the Seller and Lectrus Holding Corp. under chapter 11 of the Bankruptcy Code, styled In re: Lectrus Corporation, et al., Debtors, Case No. 1:17-bk-15588 and pending before the Bankruptcy Court.

“**Bankruptcy Code**” means title 11 of the United States Code, sections 101 *et. seq.*

“**Bankruptcy Rules**” means, collectively, the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms, as now in effect or hereafter amended.

“**Bidding Procedures**” means the bidding procedures approved by the Bidding Procedures Order, together with such changes thereon, if any, as shall have been made in accordance with the Bidding Procedures Order, all of which shall be in form and substance satisfactory to Pre-Petition Lenders and the DIP Lenders.

“**Bidding Procedures Order**” means an order of the Bankruptcy Court approving the Bidding Procedures, which shall be in form and substance satisfactory to Buyer.

“**Business**” means the business, operations (including custom engineering, project management, integration, site installation and post-sale customer support services relating to the design and manufacture of custom metal enclosures and electrical and mechanical integration) and ownership of the Seller related to the Purchased Assets.

“**Business Day**” means a day, other than Saturday, Sunday or other day on which commercial banks in Chattanooga, Tennessee are authorized or required by Applicable Law to close.

“**Closing Date**” means the date of the Closing.

“**Code**” means the Internal Revenue Code of 1986.

“**Contract**” means any note, bond, mortgage, indenture, agreement, lease, sublease, license, sublicense, contract, trust, instrument, arrangement, guarantee, purchase order or other commitment, obligation or understanding, whether oral or written, that is legally binding.

“Cure Notice” has the meaning ascribed to such term in the Bidding Procedures.

“DIP Lenders” means Great American Life Insurance Company, Great American Insurance Company and HD Special Situations III, LP and any whole or partial successor or assign thereof.

“Disclosure Schedule” means the disclosure schedule regarding this Agreement that has been provided by the Seller to Buyer in accordance with Section 10.02(m), as may be amended in accordance with the terms of this Agreement.

“Environmental Law” means any Applicable Law or any legally binding agreement with any Person relating to (i) the pollution, protection or reclamation of the environment, or (ii) any spill, emission, release or disposal into the environment of, or human exposure to, any pollutant, contaminant or chemical or any toxic, radioactive, ignitable, corrosive, reactive or otherwise hazardous substance, waste or material.

“ERISA” means the Employee Retirement Income Security Act of 1974.

“ERISA Affiliate” of any entity means any other entity which, together with such entity, would be treated as a single employer under Section 414 of the Code.

“Excluded Leases” means the Leases other than the Assumed Leases.

“Final DIP Order” means that certain Agreed Final Order (i) Authorizing Debtors to Obtain Post-Petition Financing and Use Cash Collateral Pursuant to 11 U.S.C. §§ 105, 361, 362, 364 and 507(b), and (ii) Granting Adequate Protection Pursuant to 11 U.S.C. §§ 361, 362, 363, 364, and 507(b), to be entered by the Bankruptcy Court.

“GAAP” means generally accepted accounting principles in the United States.

“Governmental Authority” means any transnational, domestic or foreign federal, state or local governmental, regulatory or administrative authority, department, court, agency or official, including any political subdivision thereof.

“Hazardous Material” means any pollutant, contaminant or any toxic, radioactive, ignitable, corrosive, reactive or otherwise hazardous substance, waste or material that in each case is regulated under any Environmental Law.

“Indebtedness” means, with respect to any Person, (i) all indebtedness for borrowed money, (ii) all indebtedness evidenced by notes, bonds, debentures or other similar instruments (other than performance, surety and appeal bonds arising in the ordinary course of business), (iii) all obligations for the deferred purchase price of property or services (including any earnout or bonus payments, but excluding trade payables incurred in the ordinary course of business), (iv) all obligations under capitalized leases, (v) all guarantees or other commitments by which such Person assures a creditor against loss (including contingent reimbursement obligations regarding letters of credit), (vi) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to acquired property, (vii) all obligations under commodity swap agreements, commodity cap agreements, interest rate cap agreements, interest rate swap

agreements, foreign currency exchange agreements and other similar agreements, (viii) all guaranties of any of the foregoing, and (ix) all outstanding prepayment premiums, if any, and accrued interest, fees and expenses related to any of the items set forth in clauses (i) through (viii).

“Intellectual Property” means all of the following and similar intangible property and related proprietary rights, interests and protections, however arising, pursuant to the laws of any jurisdiction throughout the world, including such property that is owned by the Seller (**“Company Intellectual Property”**) and that in which the Seller holds exclusive or non-exclusive rights or interests granted by license from other Persons (**“Licensed Intellectual Property”**):

(a) trademarks, service marks, trade names, brand names, logos, trade dress and other proprietary indicia of goods and services, whether registered or unregistered, and all registrations and applications for registration of such trademarks, including intent-to-use applications, all issuances, extensions and renewals of such registrations and applications and the goodwill connected with the use of and symbolized by any of the foregoing;

(b) internet domain names and universal resource locators (or URLs), whether or not trademarks, registered in any top-level domain by any authorized private registrar or Governmental Authority, and registrations and applications for registrations thereof;

(c) original works of authorship in any medium of expression, whether or not published, all copyrights (whether registered or unregistered), all registrations and applications for registration of such copyrights, and all issuances, extensions and renewals of such registrations and applications;

(d) confidential information, formulas, designs, devices, technology, know-how, research and development, inventions, methods, processes, compositions and other trade secrets, whether or not patentable;

(e) patented and patentable designs and inventions, all design, plant and utility patents, letters patent, utility models, pending patent applications and provisional applications and all issuances, divisions, continuations, continuations-in-part, reissues, extensions, reexaminations and renewals of such patents and applications;

(f) moral and economic rights of authors and inventors (however denominated); and

(g) computer software programs.

“Interim DIP Order” means that certain Agreed Interim Order (i) Authorizing Debtors to Obtain Post-Petition Financing and Use Cash Collateral Pursuant to 11 U.S.C. §§ 105, 361, 362, 364 and 507(b), (ii) Granting Adequate Protection Pursuant to 11 U.S.C. §§ 361, 362, 363, 364, and 507(b), and (iii) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(b) and (c).

“Knowledge” means (i) with respect to Buyer, the actual knowledge of the officers of Buyer listed on Schedule Section 1.01(a) and the knowledge that each such officer would have

reasonably obtained after making due and appropriate inquiry with respect to the particular matter in question, and (ii) with respect to the Seller, to the actual knowledge of the officers of the Seller listed on Schedule Section 1.01(b) and the knowledge that each such officer would have reasonably obtained after making due and appropriate inquiry with respect to the particular matter in question.

“Leased Real Property” means all real property and other rights leased or subleased by the Seller pursuant to the Leases.

“Leases” means the real property leases and subleases to which Seller is a party, together with any and all rights, rights of way, easements, fixtures and improvements set forth in such leases and subleases.

“Liabilities” means all existing or future liabilities, debts, obligations, duties or adverse claims of the Seller of every type and trade, whether matured or unmatured, fixed or contingent, absolute or contingent, known or unknown, accrued or unaccrued, liquidated or unliquidated, direct or indirect, or otherwise in respect of any and all matters or events, including those arising under Applicable Law, or imposed by any court or arbitrator of any kind, and those arising in connection with products sold, Contracts, Leases, commitments or undertakings, including all liabilities arising out of or related to the sponsorship of, the responsibility for, contributions to, or any liability in connection with any employee plan maintained or contributed to by the Seller. Without limiting the foregoing, Liabilities shall include any continuation coverage (including any penalties, excise Taxes or interest resulting from the failure to provide continuation coverage) required by Applicable Law due to qualifying events, including continuing coverage for any of the Seller’s employees terminated prior to the Closing Date or whose employment is terminated in connection with the transaction contemplated hereby, or who were not hired by Buyer in connection with the transaction contemplated hereby, whether or not said Liabilities are reflected on the books of the Seller.

“Lien” means, with respect to any property or asset, any title defect, mortgage, lien, pledge, charge, security interest, bailment (in the nature of a pledge or for purposes of security), deed of trust, grant of a power to confess judgment, conditional sales and title retention agreement (including any lease or license in the nature thereof), claim, easement, encroachment, right of way, charge, condition, option, right of first refusal or last negotiation, offer or refusal, equitable interest, restriction or encumbrance of any kind.

“Local Bankruptcy Rules” means the Local Rules of Bankruptcy Practice and Procedure of the Bankruptcy Court applicable to all cases in such district governed by the Bankruptcy Code.

“Loss(es)” means all losses, Liabilities, obligations, damages, deficiencies, expenses, Actions, suits, proceedings, demands, assessments, interest, awards, penalties, fines, Taxes, costs and expenses of whatever kind (including reasonable attorneys’ fees, court costs, expert witness fees, transcript costs and other expenses of litigation, costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers) and judgments (at law or in equity) of any nature.

“Material Adverse Effect” means any change, development, occurrence, circumstance or effect that, individually or in the aggregate, has had or would reasonably be expected to have, individually or in the aggregate with all other changes, developments, occurrences, circumstances or effects, a material adverse effect on the Purchased Assets, the Assumed Liabilities or the condition (financial or otherwise), assets, liabilities, business or results of operations of the Business, excluding any change, development, occurrence, circumstance or effect resulting from (A) changes in GAAP or changes in the regulatory accounting requirements applicable to any industry in which the Business operates, (B) changes in financial or securities markets or general economic or political conditions in the United States or any other country, (C) changes (including changes of Applicable Law) in general conditions in the industry in which the Business operates, (D) acts of war, sabotage or terrorism or natural disasters, (E) the announcement of the transactions contemplated by this Agreement or the Transaction Documents (provided that this clause (E) shall not apply to any representation or warranty that, by its terms, speaks specifically of the consequences arising out of the execution or performance of this Agreement or any of the Transaction Documents or the consummation of any of the transactions contemplated hereby or thereby), (F) any action taken (or omitted to be taken) at the written request of Buyer, (G) any failure by the Seller to meet any projections or forecasts for any period occurring on or after the date hereof (provided that this clause (G) shall not prevent a determination that any event, circumstance, effect or change underlying such failure to meet projections or forecasts has resulted in a Material Adverse Effect), (H) the filing of the Bankruptcy Case or (I) any action taken by the Seller that is expressly required pursuant to this Agreement, in each case of clauses (A), (B), (C) and (D), to the extent the Business is not materially disproportionately affected thereby as compared with other participants in the industry in which the Business operates.

“Person” means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a Governmental Authority.

“Personal Property” means all equipment, fixed assets and other tangible assets owned or used by the Seller (wherever situated), other than those constituting Excluded Assets, and all of the Seller’s rights under warranties, indemnities, licenses, and all similar rights against third parties with respect to the equipment, fixed assets and other tangible assets referenced in this definition (to the extent such rights are assignable at no cost, expense or penalty to the Seller, or at Buyer’s election if Buyer agrees to pay for such cost, expense or penalty).

“Pre-Closing Tax Period” means (i) any Tax period ending on or before the Closing Date and (ii) with respect to a Tax period that commences before but ends after the Closing Date, the portion of such period up to and including the Closing Date.

“Pre-Petition Lenders” means Great American Life Insurance Company, Great American Insurance Company, HD Special Situations II, LP, and HD Special Situations III, LP and any whole or partial successor or assign thereof.

“Pre-Petition Security Agreement” means that certain Security Agreement dated as of November 15, 2013, by and among the Seller and the Pre-Petition Lenders, as the same has been and may be amended, amended and restated, supplemented, waived and/or otherwise modified from time to time.

“Purchased Leased Real Property” means the Assumed Leases (including all prepaid rents thereunder) and the Leased Real Property subject thereto.

“Sale Order” means an order of the Bankruptcy Court pursuant to, *inter alia*, sections 105, 363 and 365 of the Bankruptcy Code (i) authorizing and approving, *inter alia*, the sale of the Purchased Assets to Buyer and the assumption of the Assumed Liabilities by Buyer on the terms and conditions set forth herein, (ii) finding that the Assumed Leases are valid and enforceable in accordance with their terms, and (iii) containing certain findings of facts, including a finding that Buyer is a good faith purchaser pursuant to Section 363(m) of the Bankruptcy Code, which Sale Order shall be satisfactory in form and substance to Buyer.

“Subsidiary” means, with respect to any Person at any time, any Person of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other Persons performing similar functions are at the time directly or indirectly owned or controlled by such Person.

“Tax” means (i) any and all taxes, charges, levies or other similar assessments or Liabilities in the nature of a tax, including income, gross receipts, ad valorem, premium, value-added, net worth, capital stock, capital gains, documentary, recapture, alternative or add-on minimum, disability, estimated, registration, recording, excise, real property, personal property, extraction, sales, use, license, lease, service, service use, transfer, withholding, employment, unemployment, insurance, social security, business license, business organization, environmental, workers compensation, payroll, profits, severance, stamp, occupation, windfall profits, customs, duties, franchise and other taxes of any kind whatsoever imposed by a Governmental Authority, and any interest, fines, penalties, assessments or additions to tax imposed with respect to such items or any contest or dispute thereof or (ii) liability for the payment of any amounts of the type described in (i) as a result of being party to any agreement or any express or implied obligation to indemnify any other Person.

“Tax Return” means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“Taxing Authority” means any Governmental Authority having or purporting to exercise jurisdiction with respect to any Tax.

“Transaction Documents” means the Assignment and Assumption Agreement and each other document, agreement or instrument executed and delivered in connection herewith (including, for the avoidance of doubt, all documents described in Section 2.08), each of which shall be prepared in accordance with Section 7.07.

“WARN Act” means the federal Worker Adjustment and Retraining Notification Act of 1988, and similar state, local and foreign laws related to plant closings, relocations, mass layoffs and employment losses.

“Workers’ Compensation Liabilities” means any Liabilities or benefit obligations related to workers’ compensation claims and benefits arising under Applicable Law.

(a) Each of the following terms is defined in the Section set forth opposite such term:

<u>Term</u>	<u>Section</u>
Accounts Receivable	2.01(o)
Agreement	Preamble
Allocation Statement	2.06(b)
Alternative Transaction	5.05(a)
Assignment and Assumption Agreement	2.08(a)
Assumed Contracts	2.01(d)
Assumed Leases	2.01(b)
Assumed Liabilities	2.03
Bankruptcy Court	Recitals
Bid Deadline	5.08(a)(v)
Business Employees	9.01(a)
Buyer	Preamble
Closing	2.08
COBRA	2.04(p)
Company Intellectual Property	Definition of “Intellectual Property”
Company Software	3.09(i)
Competing Bid	5.05(a)
Credit Release	2.06(a)
Cure Costs	2.05
e-mail	12.01
End Date	11.01(b)
Excluded Assets	2.02
Excluded Contracts	2.02(i)
Excluded Liabilities	2.04
Excluded Off-Site Environmental Liabilities	2.04(r)
Excluded Permits	2.02(j)
General Intangibles	2.01(p)
Hired Employee	9.02(a)
Initial Overbid	5.09(a)(ii)
Intellectual Property Registrations	3.09(a)
Inventory	2.01(p)
Licensed Intellectual Property	Definition of “Intellectual Property”
Permits	3.07(a)
Permitted Liens	3.10
Plans	9.01(e)
Purchase Price	2.06(a)
Purchased Assets	2.01
Removed Contract	2.05(c)
Seller	Preamble
Tennessee Courts	12.07
Top Customers	3.15
Top Suppliers	3.15

<u>Term</u>	<u>Section</u>
Transferred Permits	2.01(g)
Transfer Taxes	8.01(b)

Section 1.02. *Other Definitional and Interpretative Provisions.* The words “hereof”, “herein” and “hereunder” and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. References to Articles, Sections, Exhibits and Schedules are to Articles, Sections, Exhibits and Schedules of this Agreement unless otherwise specified. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein, shall have the meaning as defined in this Agreement. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Whenever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation”, whether or not they are in fact followed by those words or words of like import. “Writing”, “written” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder. References to any agreement or Contract are to that agreement or Contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively. References to “law”, “laws” or to a particular statute or law shall be deemed also to include any and all Applicable Law.

ARTICLE 2 PURCHASE AND SALE

Section 2.01. *Purchase and Sale.* Except as otherwise provided below, upon the terms and subject to the conditions of this Agreement, Buyer agrees to purchase from the Seller and the Seller agrees to sell, convey, transfer, assign and deliver to Buyer at the Closing, free and clear of all Liens except for Permitted Liens, under Bankruptcy Code Section 363 (b), (f) and (m), all right, title and interest of the Seller in, to and under all of the assets and properties owned, held or used in the conduct of the Business by the Seller (the “**Purchased Assets**”) except for the Excluded Assets, including the following:

- (a) the Leases (including all prepaid rents thereunder) set forth on Schedule Section 2.01(a) (as such schedule may be modified pursuant to Section 2.05, collectively, the “**Assumed Leases**”);
- (b) the Purchased Leased Real Property;
- (c) the Personal Property;

(d) all right, title and interest of the Seller, and the respective Affiliates of the Seller, now or hereafter existing in, to and under (i) the Contracts listed on Schedule Section 2.01(d) (as such schedule may be modified pursuant to Section 2.05, collectively, the “**Assumed Contracts**”) and (ii) such other Contracts entered into by the Seller or any Affiliate of the Seller in the ordinary course of business after the date hereof as permitted pursuant to Section 5.01 and Section 5.02 and added to Schedule Section 2.01(d) by Buyer pursuant to Section 2.05, in each case, as each such Contract may have been amended or otherwise modified prior to the date of (or as permitted in accordance with the terms of) this Agreement;

(e) all rights of the Seller to use utility easements and other rights of way and easements used or held for use in the operation of the Purchased Assets or the Business;

(f) all deposits (including security deposits for rent, telephone, other utilities or otherwise) and all prepaid or deferred charges and expenses, including *ad valorem* Taxes, leases and rentals, in each case to the extent directly provided or paid in connection with the Purchased Assets (but excluding any deposits or prepaid or deferred charges and expenses to the extent relating to any Excluded Asset or any Excluded Liability);

(g) the Permits other than the Excluded Permits (collectively, the “**Transferred Permits**”) and all cash and other collateral provided by, or on behalf of, the Seller with respect to any Transferred Permit, including each bond, surety bond, letter of credit and other financial assurance posted by the Seller in connection with the Transferred Permits and cash and cash equivalents securing the same;

(h) all of the Seller’s Intellectual Property (including all Intellectual Property Registrations);

(i) all books, records, files, personnel files (to the extent relating to Hired Employees and reasonably required by Buyer to comply with its obligations under Article 9), invoices, market research, customers, distributors and suppliers lists, promotional materials and other papers, whether in hard copy or computer format, in each case to the extent related to the Purchased Assets or the Business, including any information relating to any Tax imposed on the Purchased Assets or the Business (subject to Section 2.02(e));

(j) all insurance proceeds, reserves, benefits or claims of the Seller under any insurance policies to the extent relating to the Assumed Liabilities, the Purchased Assets or the Business;

(k) all goodwill associated with the Business;

(l) all claims, causes of action (other than Avoidance Actions against third parties other than Buyer and the Pre-Petition Lenders which shall be deemed Purchased Assets), choses in action and rights of recovery, off-set and subrogation against third Persons, to the extent directly related to the Purchased Assets;

(m) all demands, reimbursements and rights of whatever nature, to the extent related to the Purchased Assets or any Assumed Liability (including rights under and pursuant to all warranties, representations and guarantees made by suppliers of products, materials or equipment or components thereof, or arising from the breach by third parties of their obligations under the Assumed Contracts);

(n) the assets set forth on Schedule Section 2.01(n) (for the avoidance of doubt, the assets set forth on Schedule Section 2.01(n) shall be considered Purchased Assets);

(o) all accounts, accounts receivable, notes, notes receivable, rental agreements and other rights to collect rent, contract rights, drafts, acceptances, instruments, chattel paper, general intangibles, and other forms of obligation or rights to payment and receivables, whether or not yet earned by performance, including state and federal tax refunds (collectively, "**Accounts Receivable**");

(p) all inventory as such term is defined in Section 9.102(48) of the UCC, wherever located, now owned or hereafter acquired by the Seller, including all and related merchandise and other personal property now owned or hereafter acquired by the Seller that is held for sale or lease, or is furnished or to be furnished under a contract of service or are raw materials, work in process, or materials or supplies used or to be used, or consumed or to be consumed, in the Seller's business, and all shipping and packaging materials relating to any of the foregoing (collectively, the "**Inventory**");

(q) any and all general intangibles as such term is defined in Section 9.102(42) of the UCC, now owned or hereafter created or acquired by the Seller, including all inventions, designs, patents, patent applications, trademarks, trade names, trade secrets, goodwill, copyrights, registrations, business telephone numbers, licenses, franchises, rights to royalties, blueprints, drawings, confidential information, catalogs, sales literature, video tapes, customer lists, business records for each client including purchase history, tax refund claims, computer programs, all claims under guaranties, security interests or other security held by or granted to the Seller to secure payment of any of the Accounts Receivable, all rights to indemnification and all other intangible property of every kind and nature, other than the Excluded Assets as described below (collectively the "**General Intangibles**");

(r) all other assets of the Seller, except for assets that are specifically excluded in any of the foregoing clauses or in Section 2.02; and

(s) any and all Actions or counterclaims directly relating to any of the foregoing Purchased Assets or any Assumed Liabilities, including any Avoidance Actions against non-debtor contract parties to Assumed Leases and Assumed Contracts.

It is the intention of the parties that Buyer acquire, lease or sublease all assets, properties and rights of the Seller and its Affiliates necessary for the operation of the Business and the Purchased Assets, but excluding the Excluded Assets. Subject to Section 2.05(c), if, within twelve months after the Closing, it is discovered that any assets, properties or rights of the Seller and its Affiliates, including rights under Contracts, owned, leased or subleased by the Seller and

its Affiliates, other than the Excluded Assets, were not included in the Purchased Assets to be sold to Buyer, and such assets, properties or rights, individually or in the aggregate, are needed to be included as Purchased Assets in order to make the representation in Section 3.09(b) true in all respects, then the Seller shall, and shall cause its Affiliates to, assign, convey, lease or sublease, as applicable, such assets, properties or rights to Buyer, in each case upon the reasonable request of Buyer and to the extent permitted by Applicable Law; provided, however, this obligation shall not include the assignment, conveyance, lease or sublease of any Excluded Asset other than any Contracts which the parties may mutually agree were omitted from Schedule Section 2.01(e) in error and shall not require the payment by Seller or its Affiliates of any consent or related fee to the extent the consent of a third party is required for such assignment or conveyance.

Section 2.02. *Excluded Assets.* Notwithstanding anything herein to the contrary, Buyer expressly understands and agrees that the following assets and properties of the Seller (the “**Excluded Assets**”) shall be excluded from the Purchased Assets:

- (a) all of the Seller’s cash and cash equivalents on hand and in banks;
- (b) subject to Section 2.01(j), the insurance policies relating to the Business, and all claims, credits, causes of action or rights thereunder;
- (c) all books, records, files and papers, whether in hard copy or computer format, prepared in connection with this Agreement or the transactions contemplated hereby, and all personnel files (except as set forth in Section 2.01(i)) and minute books and corporate records of the Seller;
- (d) all rights of the Seller arising under this Agreement or the transactions contemplated hereby;
- (e) all refunds for Taxes incurred in a Pre-Closing Tax Period, including those relating to the Business or the Purchased Assets, and all Tax Returns of the Seller, together with all books and records (including working papers) related thereto;
- (f) all Tax assets (other than any prepaid Taxes) and net operating losses of the Seller;
- (g) all of the Seller’s Avoidance Actions (other than Avoidance Actions against Buyer and the Pre-Petition Lenders), and all proceeds thereof;
- (h) the Excluded Leases (including all prepaid rents thereunder), including the Lease listed on Schedule Section 2.02(h), and the Leased Real Property subject to the Excluded Leases;
- (i) all right, title and interest of the Seller now or hereafter existing, in, to and under all Contracts deleted from Schedule Section 2.01(d) in accordance with Section 2.05(d) (the “**Excluded Contracts**”); and
- (j) the Permits set forth on Schedule Section 2.02(j) (as such schedule may be modified pursuant to Section 2.05, collectively, the “**Excluded Permits**”).

Section 2.03. *Assumed Liabilities.* Except for the obligations and Liabilities specifically assumed by Buyer in this Section 2.03, Buyer shall not be deemed to have assumed or agreed to be responsible for the Seller's, or any of its Affiliates', Liabilities, whether or not arising out of the ownership and operation of the Purchased Assets. Upon the terms and subject to the conditions of this Agreement, effective at the time of the Closing, Buyer shall assume, become obligated for, and agree to pay and perform when due, only the following Liabilities (collectively, the "**Assumed Liabilities**"), and no other Liabilities:

- (a) all Liabilities of the Seller arising after the Closing Date under the Assumed Leases and the Assumed Contracts;
- (b) all Liabilities of any kind or character to the extent resulting from or arising out of or in connection with Buyer's use, operation, possession or ownership of or interest in the Purchased Assets, in each case, following the Closing; and
- (c) the trade Liabilities listed on Schedule Section 2.03(c).

Section 2.04. *Excluded Liabilities.* Notwithstanding any provision in this Agreement or any other writing to the contrary, Buyer is assuming only the Assumed Liabilities and is not assuming any other Liability of the Seller or any of its Affiliates of whatever nature, whether presently in existence or arising hereafter and whether or not related to the Purchased Assets or the Business. All such other Liabilities (all such Liabilities not being assumed being herein referred to as the "**Excluded Liabilities**") shall be retained by and remain Liabilities of the Seller. Notwithstanding any provision in this Agreement (including Section 2.03) or any other writing to the contrary, the Excluded Liabilities shall include the following:

- (a) all Liabilities for Taxes (i) of the Seller, its Affiliates or any of their stockholders (or members) for any Tax period (including any Liability of the Seller for the Taxes of any other Person under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or foreign law), as a transferee or successor, by Contract or otherwise) or (ii) arising from or attributable to the ownership of the Purchased Assets or the operation of the Business for any Tax period (or portion thereof) ending on or prior to the Closing Date;
- (b) any Liability of the Seller or its Affiliates under any Indebtedness, including Indebtedness owed by the Seller to any direct or indirect Affiliate of the Seller, and any obligations or Liability under debtor in possession financing incurred by the Seller or its Affiliates during the Bankruptcy Case;
- (c) all Workers' Compensation Liabilities and unemployment Liabilities of the Seller existing prior to the Closing that are related to the Purchased Assets, including to and with respect to current employees of the Seller and former employees who worked or who were employed at the Purchased Assets, including any such Workers' Compensation Liabilities and unemployment Liabilities of the Seller with respect to any of its predecessors;
- (d) any Liability with respect to the costs, fees, payments, charges, obligations and expenses of the Seller in connection with, relating to or arising out of the preparation,

negotiation, execution, delivery and performance of this Agreement and the Transaction Documents and the consummation of the transactions contemplated hereby or thereby, including all Taxes;

- (e) any Liability to the extent relating to or arising out of an Excluded Asset;
- (f) any Liabilities of the Seller or any of its Affiliates relating to or arising from unfulfilled commitments, quotations, purchase orders, customer orders or work orders prior to the Closing Date that (subject to the last sentence of Section 7.01(a)) are not validly and effectively assigned to Buyer pursuant to this Agreement;
- (g) any Liabilities arising out of, in respect of or in connection with the failure by the Seller or any of its Affiliates to comply with any Applicable Law or order by any Governmental Authority;
- (h) other than the Assumed Liabilities pursuant to Section 2.03(a), any Liability under the Assumed Contracts and the Assumed Leases arising out of or relating to events, breaches or defaults thereunder occurring on or prior to the Closing Date (including all Cure Costs);
- (i) any Liability with respect to any goods sold or any service provided by the Seller or its Affiliates, including any such Liability or obligation (i) pursuant to any express or implied representation, warranty, agreement, specification undertaking or guarantee made by the Seller or any Affiliate of the Seller, or alleged to have been made by the Seller or any Affiliate of the Seller, (ii) imposed or asserted to be imposed by operation of Applicable Law or (iii) pursuant to any doctrine of product liability;
- (j) any Liability with respect to any Action to the extent arising out of or relating to the operation of the Business or pertaining to the Purchased Assets, in each case prior to Closing;
- (k) any Liability (whether arising before, on or after Closing) with respect to any employee or former employee of the Seller or any Affiliate of the Seller (or any individual who applied for employment with the Seller);
- (l) all accrued operating expenses and other current liabilities of the Seller related to the Business, except for the trade liabilities listed on Schedule Section 2.03(c);
- (m) any Liability arising under, relating to or with respect to any employee benefit plan, policy, program, agreement or arrangement at any time maintained, sponsored or contributed to by the Seller or any ERISA Affiliate, or with respect to which the Seller or any ERISA Affiliate has any liability, including with respect to any underfunded pension liability to any employee benefit plan, the PBGC, IRS or Department of Labor or otherwise;
- (n) any Liability arising under, relating to or with respect to any multi-employer pension plan;

(o) any Liabilities to any current or former employee of the Seller or any of Affiliate or any beneficiary thereof, relating to any employee benefits or compensation arrangement, including any liability for continuation coverage under or pursuant to Parts 6 and 7 of Subtitle B of Title I of ERISA and Section 4980B of the Code (“**COBRA**”);

(p) any Liability under any employment, collective bargaining, severance, retention or termination agreement or arrangement with any employee, consultant or contractor (or its representatives) of the Seller or any of its Affiliates;

(q) any Liability under or pursuant to the WARN Act;

(r) any Liabilities pursuant to Environmental Law arising from or related to any use, transportation, release, treatment, storage or disposal of, or human exposure to, Hazardous Materials at any location not included in the Purchased Assets (the “**Excluded Off-Site Environmental Liabilities**”); and

(s) all obligations of the Seller to any broker, finder or agent for any investment banking or brokerage fees, finders’ fees or commission relating to the transactions contemplated by this Agreement or any Transaction Document and any other fees or expenses for which the Seller or its Affiliates are expressly responsible hereunder.

Section 2.05. Assignment of Assumed Contracts, Assumed Leases and Rights; Cure Amounts.

(a) The Seller shall transfer and assign or cause to be transferred and assigned all Assumed Contracts and Assumed Leases to Buyer, and Buyer shall assume all Assumed Contracts and Assumed Leases from the Seller, as of the Closing Date pursuant to Section 365 of the Bankruptcy Code and the Sale Order. Buyer shall use commercially reasonable efforts to comply with all requirements of Section 365 of the Bankruptcy Code necessary to permit such assignment and assumption. In connection with such assignment and assumption, Buyer shall cure all monetary defaults under such Assumed Contracts and Assumed Leases to the extent required by section 365(b) of the Bankruptcy Code (such amounts, the “**Cure Costs**”) at or prior to Closing; provided that any amount of Cure Costs that are disputed as of Closing, or are determined after Closing to be required, shall be paid by Buyer within a reasonable amount of time after such dispute or determination is finally resolved or made. To the extent any such Assumed Contract does not constitute an executory Contract subject to assumption and assignment under section 365 of the Bankruptcy Code, then the rights and obligations under such Assumed Contracts and Assumed Leases shall be transferred to Buyer as part of the sale of the Purchased Assets with such rights and obligations (excluding all Cure Costs) being expressly assumed by Buyer.

(b) The Sale Order shall provide, among other things, that, as of and conditioned on the occurrence of the Closing, the Seller shall assign or cause to be assigned to Buyer, free and clear of all Liens, the Assumed Contracts and Assumed Leases, each of which shall be identified by the name and date of the Assumed Contract or Assumed Lease, as applicable (if available), the other party to the Assumed Contract

or Assumed Lease, as applicable and the address of such party for notice purposes, all included on an exhibit attached to either the motion filed in connection with the Sale Order or a motion for authority to assume and assign such Assumed Contracts and Assumed Leases. Such exhibit shall also set forth the amounts necessary to cure any defaults under each of the Assumed Contracts and Assumed Leases as determined by the Seller based on the Seller's books and records or as otherwise determined by the Bankruptcy Court.

(c) Notwithstanding anything herein to the contrary, to the extent the assignment of any Assumed Contract, Assumed Lease or Transferred Permit is, after giving effect to Sections 363 and 365 of the Bankruptcy Code, not permitted by law or not permitted without the consent of another Person, and such restriction cannot be effectively overridden or canceled by the Sale Order or other related order of the Bankruptcy Court, then this Agreement shall not constitute an agreement to assign or an assignment or transfer of the same (each a "**Removed Contract**"), and (subject to Section 7.01) the Seller and Buyer shall use commercially reasonable efforts to obtain any such required consent(s) and, once obtained, such Removed Contract will be assigned and assumed as though it were one of the Assumed Leases, Assumed Contracts or Transferred Permits, as applicable. These commercially reasonable efforts shall not require any material payment or other material consideration from the Seller or Buyer (other than the Cure Costs, which shall be the responsibility of Buyer), and any such consent shall contain terms and conditions acceptable to the parties hereto. For the avoidance of doubt, the term "material" in the prior sentence means material in the context of the relevant Removed Contract. If any such consent shall not be obtained, or if any attempted assignment would be ineffective or would impair Buyer's rights under the Purchased Asset in question, the Seller and Buyer shall, subject to any approval of the Bankruptcy Court that may be required, use commercially reasonable efforts for a reasonable period of time following the Closing to obtain for Buyer the benefits and burdens thereunder; provided that in no event shall Buyer be obligated to accept any amendment to the terms of any Transferred Permit or any additional conditions with respect to any Transferred Permit. These commercially reasonable efforts shall not require any material payment or other material consideration from the Seller or Buyer (other than the Cure Costs, which shall be the responsibility of Buyer). For the avoidance of doubt, the term "material" in the prior sentence means material in the context of the relevant Removed Contract.

(d) Notwithstanding anything in this Agreement to the contrary, Buyer may, from time to time in its discretion, at any time prior to the earlier of (x) the date that is two (2) days prior to the Closing Date or (y) the date on which the Bankruptcy Code or the Bankruptcy Court would require a determination to assume or reject such Contract or Lease, amend or revise Schedule Section 2.01(a), Schedule Section 2.01(d), or Schedule Section 2.02(j) in order to (i) add any Lease, Permit or Contract, as applicable, to such Schedules; provided that such Lease, Permit, or Contract is owned, used or held for use by the Seller or its Affiliates primarily in connection with the Business or the Purchased Assets, or (ii) eliminate any Lease, Permit, or Contract, as applicable, from such Schedules. Automatically upon the addition of any Lease, Permit or Contract to Schedule Section 2.01(a), Schedule Section 2.01(d) or Schedule Section 2.02(j), as applicable, by

Buyer in accordance with the previous sentence, such Lease shall be an Assumed Lease, such Contract shall be an Assumed Contract, and such Permit shall be an Excluded Permit, as applicable, for all purposes of this Agreement. Automatically upon the deletion of any Permit, Lease or Contract from Schedule Section 2.01(a), Schedule Section 2.01(d) or Schedule Section 2.02(j) by Buyer in accordance with the first sentence of this Section 2.05(d), such Lease shall be an Excluded Lease, such Contract shall be an Excluded Contract, and such Permit shall be a Transferred Permit for all purposes of this Agreement. If any Lease becomes an Assumed Lease or any Contract becomes an Assumed Contract pursuant to this Section 2.05, then the Seller shall take such steps as are reasonably necessary to cause such Lease or such Contract, as the case may be, to be assumed and assigned to Buyer as promptly as possible at or following the Closing (subject to any required approvals of the Bankruptcy Court).

Section 2.06. Purchase Price; Allocation of Purchase Price.

(a) On the terms and subject to the conditions set forth in this Agreement, Buyer shall, on its own behalf and as agent for the lenders under the Pre-Petition Security Agreement, as consideration for the Purchased Assets, in addition to the assumption by Buyer of the Assumed Liabilities, release the Seller and its Affiliates that are borrowers or guarantors under the Pre-Petition Security Agreement in an aggregate amount equal to (i) Six Million Dollars (\$6,000,000.00) (the “**Credit Release**”) under Bankruptcy Code Section 363(k), as the same may be increased (including by releasing the Seller and its Affiliates that are borrowers or guarantors under the Pre-Petition Security Agreement from amounts due thereunder) by Buyer in its sole discretion at any time during the auction contemplated by the Bidding Procedures (or, if there is no such auction, prior to the Closing Date), plus (ii) the Cure Costs (collectively, the “**Purchase Price**”). The Credit Release shall be effected as provided in Section 2.08(b)(i). If the Seller consummates an Alternative Transaction, with the consent of Buyer, any funds advanced by Buyer under the Interim DIP Order will be repaid to Buyer in accordance with the Interim DIP Order at the closing of the Alternative Transaction. For the avoidance of doubt, under no circumstances shall Buyer be obligated to pay any cash in satisfaction of the Purchase Price, other than the Cure Costs.

(b) The Seller and Buyer agree that the Purchase Price (plus Assumed Liabilities, to the extent properly taken into account under Section 1060 of the Code) shall be allocated among the Purchased Assets for all purposes (including Tax and financial accounting) as shown on the allocation statement agreed upon between Buyer and Seller prior to the Closing (the “**Allocation Statement**”). Any adjustments to the Purchase Price shall be allocated in a manner consistent with the Allocation Statement.

(c) The Seller and Buyer agree to (i) be bound by the Allocation Statement and (ii) report, act and file Tax Returns in accordance with such allocation in the preparation, filing and audit of any Tax Return (including filing Form 8594 with their federal income Tax Returns for the taxable year that includes the date of the Closing); provided, however, that nothing contained herein shall prevent Buyer or the Seller from settling any proposed deficiency or adjustment by any Taxing Authority based upon or arising out of such allocation, and neither Buyer nor the Seller shall be required to litigate

before any court any proposed deficiency or adjustment by any Taxing Authority challenging such allocation.

(d) Not later than 30 days prior to the filing of their respective Forms 8594 relating to this transaction, each party shall deliver to the other party a copy of its Form 8594.

Section 2.07. *Payments by Buyer.* Notwithstanding anything in this Agreement to the contrary and except for the Cure Costs, in any circumstances where Buyer is required to make any payment to the Seller under either this Agreement or in respect of any claim relating to this Agreement or any of the transactions contemplated hereby, such payment may, in Buyer's sole discretion, be made in the form of a release by Buyer or its Affiliates in favor of the Seller and its Affiliates that are borrowers or guarantors under the Pre-Petition Security Agreement in an aggregate amount equal to the amount of such payment. In such a case, Buyer shall deliver to the Seller a payoff letter, release letter or other similar documents duly executed by Buyer and the other applicable parties evidencing such release.

Section 2.08. *Closing.* The closing (the "**Closing**") of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities hereunder shall take place at the offices of Frost Brown Todd LLC, 3300 Great American Tower, 301 East Fourth Street, Cincinnati, Ohio 45202, as soon as possible, but in no event later than three Business Days, after satisfaction or, to the extent permissible, waiver by the party or parties entitled to the benefit of the conditions set forth in Article 10 (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or, to the extent permissible, waiver of those conditions at the Closing), or at such other time or place as Buyer and the Seller may agree. At the Closing:

(a) The Seller and Buyer shall enter into an Assignment and Assumption Agreement substantially in the form attached hereto as Exhibit A (the "**Assignment and Assumption Agreement**"), and, subject to the provisions hereof, the Seller shall deliver to Buyer such deeds (it being understood that all such deeds shall be special warranty deeds), bills of sale, endorsements, title conveyances, consents, assignments and other good and sufficient instruments of conveyance and assignment as the parties and their respective counsel shall deem reasonably necessary to vest in Buyer all right, title and interest in, to and under the Purchased Assets, free and clear of all Liabilities and Liens, other than Assumed Liabilities and Permitted Liens, all of which shall be prepared in accordance with Section 7.07.

(b) Buyer shall deliver to the Seller:

(i) a payoff letter, release letter or other similar documents, duly executed by Buyer and the other applicable parties, effecting the Credit Release;

(ii) the Cure Costs subject to section 2.05 of this Agreement; and

(iii) to the extent not previously delivered, a duly executed counterpart to each Transaction Document to which Buyer is a party and all other documents or instruments

required to be delivered by it on or prior to the Closing Date pursuant to this Agreement or to consummate the transactions contemplated by this Agreement.

(c) The Seller shall deliver to Buyer:

(i) to the extent not previously delivered, a duly executed counterpart to each Transaction Document to which the Seller is a party and all other documents or instruments required to be delivered by them on or prior to the Closing Date pursuant to this Agreement or to consummate the transactions contemplated by this Agreement; and

(ii) the certificates contemplated by Section 8.01(d).

Section 2.09. *Withholding.* The Seller or Buyer, as applicable, shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement such amounts as the Seller or Buyer are required to deduct and withhold under the Code, or any Tax law, with respect to the making of such payment. To the extent that amounts are so deducted and withheld, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of whom such deduction and withholding was made. If the Seller or Buyer determine that any deduction or withholding is required in respect of any amount otherwise payable pursuant to this Agreement, then the Seller or Buyer, as applicable, shall provide written notice to the Person to receive such payment at least five (5) Business Days prior to the date on which such payment is to be made with a written explanation substantiating the requirement to deduct and withhold, and the Seller or Buyer, as applicable, shall provide such Person the opportunity within such five (5) Business Day period to review and comment on such written explanation and to provide forms or other evidence that would exempt such payment from deduction or withholding. After consultation with the Seller pursuant to the immediately preceding sentence, should Buyer be required by law to deduct or withhold any amount from the consideration otherwise payable pursuant to this Agreement, the Seller shall pay to Buyer a sum in cash equal to the amount so required to be deducted or withheld. In no circumstance shall the consultation requirement restrict the Seller or Buyer from deducting or withholding any amount as required by law.

Section 2.10. *Simultaneous Transactions.* All actions taken and transactions consummated at the Closing shall be deemed to have occurred simultaneously, and no such transaction shall be considered consummated unless all are consummated.

Section 2.11. *Supplemental Assignments.* As reasonably required by a party in order to effectuate the transactions contemplated by this Agreement, each party shall also execute and deliver at (and after) the Closing such other assignments, bills of sale, certificates of title and other documents, and shall take such other actions as are necessary or appropriate to transfer the Purchased Assets to Buyer and otherwise implement and make effective the transactions contemplated by this Agreement.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF THE SELLER

Except as set forth in the Disclosure Schedule and subject to Section 12.13, the Seller represents and warrants to Buyer that:

Section 3.01. *Corporate Existence and Power.* The Seller is a corporation duly incorporated, validly existing and in good standing under the laws of its jurisdiction of formation and has all corporate powers and all governmental licenses, authorizations, permits, consents and approvals required to carry on its business as now conducted, except for those licenses, authorizations, permits, consents and approvals the absence of which would not, individually or in the aggregate, reasonably be expected to be material to the Business or the Purchased Assets, or materially delay or impair any of the transactions contemplated hereby. The Seller does not have any Subsidiaries or otherwise own securities or other ownership interests in any other Person.

Section 3.02. *Corporate Authorization.* The execution, delivery and, subject to the entry of the Sale Order, performance by the Seller of this Agreement and each Transaction Document and the consummation of the transactions contemplated hereby and thereby are within the Seller's powers. Subject to the entry of the Sale Order, each of this Agreement and the Transaction Documents constitutes a valid and binding agreement of the Seller enforceable against the Seller in accordance with their terms.

Section 3.03. *Governmental Authorization.* The execution, delivery and performance by the Seller of this Agreement and the Transaction Documents and the consummation of the transactions contemplated hereby and thereby require no action by or in respect of, or filing with, any Governmental Authority other than (i) the Bankruptcy Court; (ii) the transfer or reissuance of the Transferred Permits; and (iii) any such action or filing as to which the failure to make or obtain would not, individually or in the aggregate, reasonably be expected to be material to the Business or the Purchased Assets, or materially delay or impair any of the transactions contemplated hereby.

Section 3.04. *Noncontravention.* After giving effect to the Sale Order, the execution, delivery and performance by the Seller of this Agreement and the consummation of the transactions contemplated hereby do not and will not (i) violate the organizational documents of the Seller, (ii) assuming compliance with the matters referred to in Section 3.03, violate any Applicable Law, (iii) require the consent or other action of any Person under or constitute a default under or give rise to any right of termination, cancellation or acceleration of any right or obligation under any Assumed Contract, Assumed Lease or any other Contract of the Seller or any of its Affiliates, or (iv) result in the creation or imposition of any Lien upon any of the Purchased Assets under any Contract to which the Seller, any of its Affiliates or its or their properties may be bound, with such exceptions, in the case of clauses (iii) and (iv), as would not, individually or in the aggregate, reasonably be expected to be material to the Business or the Purchased Assets, or materially delay or impair any of the transactions contemplated hereby.

Section 3.05. *Owned Real Property.* The Seller does not own any real property.

Section 3.06. *Leases and Leased Real Property.*

(a) Schedule Section 2.01(a) contains a true and complete list of (x) all the Assumed Leases and (y) recording information for the Assumed Leases that have been recorded, and the Assumed Leases have not been amended or modified, assigned or subleased except as set forth on Schedule Section 2.01(a). Schedule Section 3.06(a)(i) contains a true and complete list of all prepaid rents for each Assumed Lease as of January 15, 2018. The Seller has made available to Buyer a copy of each Assumed Lease in the Seller's possession, including all material amendments, schedules and exhibits thereto, and the Seller has no Knowledge that any of such information is incomplete or inaccurate. Each of the Assumed Leases is in full force and effect and constitutes a valid and binding obligation of the Seller and the other parties thereto. The leasehold estate created by each Assumed Lease is free and clear of all Liens created by, through or under the Seller. Except as disclosed in Schedule Section 3.06(a)(ii), there are no material defaults, breaches or uncured violations by the Seller under any of the Assumed Leases, and no event has occurred that (whether with or without notice, lapse of time or the happening or occurrence of any other event) would constitute a material default, breach or uncured violation by the Seller under any Assumed Lease, except for any such defaults or breaches that would be cured through payment of the Cure Costs or arose solely as a consequence of the Bankruptcy Case. Except as disclosed in Schedule Section 3.06(a)(ii), there are no material defaults, breaches or uncured violations by any other party, or any events, which with notice, the passage of time or both, would constitute such material defaults, breaches or violations by any other party under any of the Assumed Leases. There are no existing disputes between the Seller and any other party to any of the Assumed Leases or any party having rights under or with respect to the Assumed Leases that are expected to result in a claim of material default or breach or termination thereof, except for any such defaults or breaches that would be cured through payment of the Cure Costs or those arising solely as a consequence of the Bankruptcy Case. The Seller has paid all rent and other payments due and payable under each Assumed Lease, and has otherwise complied in all material respects with the Assumed Leases, and the Seller has not subleased, assigned or otherwise granted to any Person the right to use or occupy any such Purchased Leased Real Property or any portion thereof, except for any such non-payments that would be cured through payment of the Cure Costs. Since January 1, 2014, Seller has not received any written notice that there exists any default, breach, violation or condition which with the passage of time, the giving of notice or both would constitute a default, breach or violation on the part of the Seller under any Assumed Lease. Except as disclosed in Schedule Section 3.06(a)(ii) or in connection with the Cure Costs, the Seller has not received any notice in writing, and have no Knowledge, that any lessor or landlord will cancel, terminate, or fail to perform its obligations under the Assumed Leases.

(b) There are no outstanding options or rights of first refusal to purchase or sublease any of the Seller's interest in the Assumed Leases or any interest therein.

(c) The Seller has obtained all material easements and rights of way required to use and operate the Purchased Leased Real Property in all material respects in the manner in which the Purchased Leased Real Property is currently being used and operated. Except as set forth on Schedule Section 3.06(c), since January 1, 2014, the Seller has not

received written notice from any Governmental Authority stating an intention to cancel, suspend or modify any material approvals relating to the Purchased Leased Real Property, and no such notice has been received prior to such date that is not resolved in all material respects.

Section 3.07. Licenses and Permits.

(a) Schedule Section 3.07(a) (i) describes each license, franchise, permit, certificate, approval or other similar authorization held by the Seller, together with a true and complete list of all pending applications for additional permits, renewals of existing permits or amendments to existing permits, which have been submitted to any Governmental Authority or other entity by the Seller or any of its Affiliates (all such permits being herein referred to as the “**Permits**”), (ii) identifies the applicable bonds, letters of credit or other sources of collateral or financial assurance with respect to each Permit and the amount thereof with respect to each Permit, and (iii) indicates whether each Permit is a Transferred Permit or Excluded Permit.

(b) The Permits constitute all of the material governmental permits, consents, licenses, approvals, clearances and authorizations necessary for the operation of and the conduct of the Purchased Assets as presently operated and conducted by the Seller or currently contemplated to be operated and conducted by the Seller within the next six months, and all of the Permits are final, unappealed, valid, in good standing and in full force and effect, except where the failure to be final, unappealed, valid, in good standing and in full force and effect would not reasonably be expected to be material to the Purchased Assets or materially delay or impair any of the transactions contemplated hereby. The Seller and its Affiliates are in material compliance with the Permits. Except as set forth on Schedule Section 3.07(b), no suspension, revocation, cancellation, modification (including revision to effluent limits), or limitation of any of the Permits is threatened or contemplated, except with respect to regular periodic expirations and renewals thereof, which renewals neither the Seller nor any Affiliate of the Seller has reason to believe will not be granted. Neither the Seller nor any Affiliate of the Seller has had any Permits, or any applications therefor, appealed, denied, revoked, restricted or suspended and neither the Seller nor any Affiliate of the Seller is currently a party to any proceedings involving the possible appeal, denial, revocation, restriction or suspension of any Permits or any of the privileges granted thereunder. Except as set forth on Schedule Section 3.07(b), no non-governmental organization, citizens group or other third party has notified the Seller or any Governmental Authority that it intends to (i) sue the Seller or any Governmental Authority with respect to any existing or pending Permit or (ii) appeal any existing Permit or pending application for a Permit, in each case of clauses (i) and (ii), except for such suits or appeals that are fully resolved without any ongoing obligations or Liabilities or as would not reasonably be expected to be material to the Business or the Purchased Assets.

(c) Except as set forth on Schedule Section 3.07(c), there are no bonds, letters of credit or other sources of collateral or financial assurance that secure obligations relating to any Purchased Asset.

Section 3.08. *Environmental.*

(a) Except as set forth on Schedule Section 3.08(a) and as otherwise would not reasonably be expected to be material to the Purchased Assets or materially delay or impair any of the transactions contemplated hereby: (i) since January 1, 2014, no written notice, order, request for information, complaint or other communication or penalty has been received by the Seller or any of its Affiliates with respect to the compliance of the Purchased Assets with any Environmental Laws or Liability under any Environmental Laws, and there are no Actions (including any water audits) pending or threatened in writing, in each case, that allege a violation by or Liability of, whether assumed contractually or by operation of law, the Purchased Assets of or under any Environmental Law; and (ii) the Purchased Assets are and, since January 1, 2014, have been in compliance with all applicable Environmental Laws.

(b) Neither the Seller nor any of its Affiliates nor any other Person has released, stored, deposited, discharged, buried, dumped or disposed of Hazardous Materials on or beneath the Purchased Assets, or from the Purchased Assets into the environment, except for such quantities of Hazardous Materials released, stored, deposited, discharged, buried, dumped or disposed of in the ordinary course of business, in material compliance with Environmental Laws and so as would not reasonably be expected to require any material remediation, investigation or other response action pursuant to Environmental Law.

(c) Without in any way limiting the generality of the foregoing, (i) other than as may contain substances in quantities not regulated by Environmental Law, all underground storage tanks and the capacity and contents of such tanks, located on any Purchased Asset are specifically identified on Schedule Section 3.08(c), (ii) other than as contained substances in quantities not regulated by Environmental Law, all former underground storage tanks have been removed from or closed in place at the Purchased Assets in compliance with Applicable Law and those removed or closed in place since January 1, 2014, are listed on Schedule Section 3.08(c), (iii) all PCB or items containing PCBs in regulated amounts used or stored on any Purchased Assets are identified on Schedule Section 3.08(c), (iv) with respect to the Purchased Assets, there are no underground injection wells, radioactive materials or septic tanks or waste disposal pits in which any Hazardous Materials have been discharged or disposed, other than as have been used in the ordinary course of business, in compliance in all material respects with all Environmental Laws, and as would not reasonably be expected to require any material remediation or investigation pursuant to Environmental Law and (v) none of the Purchased Assets have any associated acid mine drainage or selenium discharges that constitutes a violation or could reasonably be expected to give rise to material Liability under Environmental Law.

(d) Neither the Seller nor any of its Affiliates nor any of the Purchased Assets is subject to, bound by or a party to any consent decrees, decisions, judgments, settlements, consent orders, stipulations, decrees or similar orders issued, entered or executed by a Governmental Authority pursuant to any Environmental Law.

Section 3.09. *Intellectual Property.*

(a) Schedule Section 3.09(a) lists all Company Intellectual Property that is either (i) subject to any issuance, registration, application or other filing by, to or with any Governmental Authority or authorized private registrar in any jurisdiction (collectively, “**Intellectual Property Registrations**”), including registered trademarks, domain names and copyrights, issued and reissued patents and pending applications for any of the foregoing; or (ii) used in or necessary for the Seller’s current or planned business or operations. All required filings and fees related to the Intellectual Property Registrations have been timely filed with and paid to the relevant Governmental Authorities and authorized registrars, and all Intellectual Property Registrations are otherwise in good standing. The Seller has provided Buyer with a true and complete list of all Intellectual Property Registrations.

(b) The Seller exclusively owns all right, title and interest in and to the Company Intellectual Property, free and clear of Liens. There are not any restrictions or limitations of the Seller’s ability to use the Seller’s Intellectual Property, including without limitation, as a result of an agreement with a third party or a settlement of a dispute. To the Seller’s Knowledge, no employee or independent contractor of the Seller is a party to a Contract that restricts or limits in any way the scope or type of work in which such employee or contractor may be engaged for the Seller or that requires such employee or contractor to transfer, assign or disclose information concerning his or her work to any Person other than the Seller. The Seller is in full compliance with all legal requirements applicable to the Company Intellectual Property and the Seller’s ownership and use thereof.

(c) Schedule Section 3.09(c) lists all licenses, sublicenses and other agreements whereby the Seller is granted rights, interests and authority, whether on an exclusive or non-exclusive basis, with respect to any Licensed Intellectual Property that is used in or necessary for the Seller’s current or planned business or operations. The Seller has provided Buyer with true and complete copies of all such agreements. All such agreements are valid, binding and enforceable between the Seller and the other parties thereto, and the Seller and such other parties are in full compliance with the terms and conditions of such agreements.

(d) The Company Intellectual Property and Licensed Intellectual Property are valid and enforceable and neither the validity nor the enforceability of the Company Intellectual Property or the Licensed Intellectual Property (i) has been questioned, (ii) is being questioned, or (iii) is the subject of any threatened or proposed Action. The Seller has not received any written notice from any third party challenging the Seller’s ownership of the Company Intellectual Property or rights to use the Licensed Intellectual Property. The Company Intellectual Property and Licensed Intellectual Property as currently or formerly owned, licensed or used by the Seller or proposed to be used, and the Seller’s conduct of its business as currently and formerly conducted and proposed to be conducted have not, do not and will not infringe, violate or misappropriate the Intellectual Property of any Person. The Seller has not received any communication, and no Action has been instituted, settled or, to the Seller’s Knowledge, threatened that alleges any such infringement, violation or misappropriation, and none of the Company Intellectual Property

are subject to any outstanding order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

(e) Schedule Section 3.09(e) lists all licenses, sublicenses and other agreements pursuant to which the Seller grants rights or authority to any Person with respect to any Company Intellectual Property or Licensed Intellectual Property. The Seller provided Buyer with true and complete copies of all such agreements. All such agreements are valid, binding and enforceable between the Seller and the other parties thereto, and the Seller and such other parties are in full compliance with the terms and conditions of such agreements. To the Seller's Knowledge, no Person has infringed, violated or misappropriated, or is infringing, violating or misappropriating, any Company Intellectual Property. Other than as set forth in Schedule Section 3.09(e) of the Disclosure Schedules, the Seller has not at any time assigned or otherwise transferred ownership of, or agreed to assign or otherwise transfer ownership of, any Intellectual Property.

(f) The Company Intellectual Property and Licensed Intellectual Property, together with all other assets of the Seller, are sufficient for the continued conduct of the Business after the Closing in substantially the same manner as conducted prior to the Closing and constitute all of the rights, property and assets necessary to conduct the business of the Seller as currently conducted.

(g) Except as set forth in Schedule Section 3.09(g), the transactions contemplated by this Agreement will not result in the loss of, impairment of, or creation of any Lien on, any of the Company Intellectual Property or the Licensed Intellectual Property.

(h) The Seller has taken precautions to protect the secrecy, confidentiality and value of the Seller's Intellectual Property used in the conduct of the Business.

(i) Except as set forth on Schedule Section 3.09(i), no source code for any software owned by the Seller ("**Company Software**") has been delivered, licensed, or made available to any escrow agent or other Person who is not, as of the date of this Agreement, an employee or consultant of the Seller. The Seller does not have any duty or obligation (whether present, contingent or otherwise) to deliver, license or make available the source code for any Company Software to any escrow agent or other Person who is not, as of the date of this Agreement, an employee or consultant of the Seller. No event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time) will, or could reasonably be expected to, result in the delivery, license or disclosure of any source code for any Company Software to any other Person who is not, as of the date of this Agreement, an employee or consultant of the Seller.

(j) None of the Seller's Intellectual Property is subject to any "copyleft" or other obligation or condition (including any obligation or condition under any "open source" license such as the GNU Public License, Lesser GNU Public License, or Mozilla Public License) that (i) could require, or could condition the use or distribution of such Intellectual Property on, the disclosure, licensing, or distribution of any source code for any portion of such Intellectual Property or (ii) could otherwise impose any limitation, restriction, or condition on the right or ability of the Seller to use or distribute any of the Seller's

Intellectual Property, other than any limitation, restriction, or condition generally applicable to ASP software or Microsoft .NET software.

(k) All Intellectual Property relating to the Business that was created or owned by any current or former employee, officer, director, direct or indirect owner or independent contractor of the Seller has been transferred to the Seller and is Company Intellectual Property, and such Persons have not retained any rights to any Intellectual Property.

(l) The Seller has all rights in and to all work instructions, drawings, specifications, tools, dies, molds, jigs, fixtures, special tools, special test equipment and the like possessed by any vendors or suppliers of the Seller. Such vendors and suppliers have rights in such items only to the extent they are using such items on behalf of the Seller, and have no rights to use such items for any other purpose, including for their own benefit or for the benefit of any third party.

(m) No vendor, supplier or other third party owns or possesses any proprietary rights or products currently used in the business of the Seller that the Buyer will be unable to use following the Closing.

Section 3.10. *Title to the Purchased Assets.* The Seller has, and subject to the terms of the Sale Order, upon consummation of the transactions contemplated hereby, including the transfer or reissuance of the Transferred Permits, Buyer will have acquired, good and marketable title in and to, or a valid leasehold interest in, each of the Purchased Assets, free and clear of all Liens except for the Liens set forth on Schedule Section 3.10 (the “**Permitted Liens**”). There are no material unrecorded Liens relating to the Purchased Leased Real Property.

Section 3.11. *Condition and Sufficiency of Purchased Assets.* Except as set forth in Schedule Section 3.11, the buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property included in the Purchased Assets are structurally sound, are in good operating condition and repair, and are adequate for the uses to which they are being put, and none of such buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost. The Purchased Assets are sufficient for the continued conduct of the Business after the Closing in substantially the same manner as conducted prior to the Closing and constitute all of the rights, property and assets necessary to conduct the Business as currently conducted. None of the Excluded Assets are material to the Business.

Section 3.12. *Assumed Contracts.* Schedule Section 2.01(d) sets forth a complete and accurate list of all Assumed Contracts. The Seller has provided Buyer with copies of each Assumed Contract, including all material amendments, schedules and exhibits thereto, in the Seller’s possession, and the Seller has no Knowledge that any of such information provided to Buyer is incomplete or inaccurate. Each Assumed Contract to which the Seller is a party is a valid and binding agreement of the Seller (and of the other party thereto) and is in full force and effect, and neither the Seller nor any other party thereto is in default or breach in any material respect under the terms of any such Assumed Contract, except for any such defaults or breaches that would be cured through payment of the Cure Costs or arose solely as a consequence of the

Bankruptcy Case. There are no events which with notice, the passage of time or both would constitute any such default or breach under any Assumed Contract, except for any such defaults or breaches that will be cured upon payment of the Cure Costs or arise solely as a consequence of the Bankruptcy Case. The Seller has not received any written notice that any of the other parties to the Assumed Contracts will cancel, terminate or fail to perform such party's obligations under any of the Assumed Contracts, except where such cancellation, termination or failure to perform would not reasonably be expected, individually or in the aggregate, to be material to the Business or the Purchased Assets.

Section 3.13. *Litigation, Investigations and Claims.* Schedule Section 3.13 sets forth a true, complete and correct list of all existing and pending litigation, arbitration, judgment, court order, decree, injunction, administrative order, claim, dispute, process or other actions against or related to the Purchased Assets. Except as set forth on Schedule Section 3.13, there is no formal investigation, cessation order or notice of violation or other Action pending or threatened against the Purchased Assets or that, in any case, would reasonably be expected, individually or in the aggregate, to be material to the Purchased Assets or prevent or materially delay or impair the consummation of the transactions contemplated by this Agreement or the Transaction Documents. The Seller is not in default with respect to any order, writ, injunction, decree or process of any arbitrator or Governmental Authority, which default would prevent or materially delay the consummation of the transactions contemplated by this Agreement or the Transaction Documents. Except as set forth on Schedule Section 3.13 and except for any order entered by the Bankruptcy Court, there are no facts or circumstances that would reasonably be expected to give rise to any litigation, arbitration, judgment, court order, decree, injunction, administrative order, claim, dispute, process or other actions that, individually or in the aggregate, would reasonably be expected to be material to the Purchased Assets or materially delay or impair any of the transactions contemplated hereby.

Section 3.14 *Warranty and Product Liability.* Schedule Section 3.14 sets forth a true, correct and complete list of (a) any and all material actual or, to the Knowledge of the Seller, potential claims currently or since December 7, 2015, outstanding, pending or, to the Knowledge of the Seller, threatened by a Governmental Authority or any private litigant involving a service provided or a product designed, manufactured, serviced, produced, modified, distributed or sold by or on behalf of the Seller relating to an alleged defect in design, manufacture, materials or workmanship, performance, or alleged failure to warn, or an alleged breach of any guarantee or warranties or representations, other than notices or claims that have been settled or resolved prior to the date of this Agreement or that are within normal warranty experience or those that would not reasonably be expected, individually or in the aggregate, to be material to the Seller and (b) to the Knowledge of the Seller, and as except set forth on Schedule Section 3.14, any and all material design defects with respect to any of the products developed, designed, manufactured, marketed or sold, in research or development, or supported by, the Seller, whether work in progress or in final form, other than those that would not reasonably be expected, individually or in the aggregate, to be material to the Seller.

Section 3.15 *Customers and Suppliers.* Schedule Section 3.15 contains a true, correct and complete list of (i) the customers accounting for the top 90% of revenue of the Seller in either or both of the 2016 and 2017 calendar years (the "**Top Customers**") and (ii) suppliers deemed to be "critical vendors" by the Seller pursuant to an order entered by the Bankruptcy

Court approving the Seller's Emergency Motion for Order Authorizing the Debtor to Pay Pre-Petition Obligations Due to Certain Critical Vendors filed in the Bankruptcy Case and those suppliers that were paid or are owed by Seller and/or its Affiliates an aggregate amount in excess of [●] during the 2016 or 2017 calendar year (collectively, the "**Top Suppliers**") (in each case, determined on a consolidated basis based on, in the case of customers, the amount of revenues recognized by the Seller). Schedule Section 3.15 contains a true, correct and complete list, to the Knowledge of the Seller, of any and all occurrences since January 1, 2016, where the Seller received any written or other indication that (a) any Top Customer or Top Supplier plans to stop or materially decrease the amount of business done with the Seller, (b) any Top Customer received a material decrease in the prices paid to the Seller that is inconsistent with the terms of its existing agreement or order with the Seller or (c) any Top Supplier received a material increase in the prices charged to the Seller that is inconsistent with the terms of its existing supply agreement with the Seller. In addition, except as set forth on Schedule Section 3.15, the Seller is not involved with any material claim or dispute greater than \$50,000.00 in aggregate for a twelve-month period with respect to any Top Customer or with any Top Supplier.

Section 3.16 *Accounts Receivable*. The accounts receivable reflected on the Seller's most recent balance sheet and the accounts receivable arising after the date thereof (a) have arisen from bona fide transactions entered into by the Seller involving the sale of goods or the rendering of services in the ordinary course of business consistent with past practice; (b) constitute only valid, undisputed claims of the Seller not subject to claims of set-off or other defenses or counterclaims other than normal cash discounts accrued in the ordinary course of business consistent with past practice; and (c) are collectible within 90 days after the billing date assuming that, after the Closing, Buyer continues in a manner consistent with past practices the Seller's performance of contractual obligations, collection efforts and customer relationship management.

Section 3.17 *Taxes*.

(a) *Tax Returns and Payment of Taxes*. The Seller has duly and timely filed or caused to be filed (taking into account any valid extensions) all material Tax Returns required to be filed by it. Such Tax Returns are true, complete, and correct in all material respects. The Seller is not currently the beneficiary of any extension of time within which to file any Tax Return other than extensions of time to file Tax Returns obtained in the ordinary course of business consistent with past practice. All material Taxes due and owing by the Seller (whether or not shown on any Tax Return) have been timely paid or, where payment is not yet due, the Seller has made an adequate provision for such Taxes in the Seller's financial statements (in accordance with GAAP). The Seller's most recent financial statements reflect an adequate reserve (in accordance with GAAP) for all material Taxes payable by the Seller through the date of such financial statements. The Seller has not incurred any material Liability for Taxes since the date of the Seller's most recent financial statements outside of the ordinary course of business or otherwise inconsistent with past practice.

(b) *Availability of Tax Returns*. The Seller has made available to Buyer complete and accurate copies of all federal, state, local, and foreign income, franchise, and other

material Tax Returns filed by or on behalf of the Seller for any Tax period ending after December 7, 2014.

(c) *Withholding.* The Seller has withheld and timely paid each material Tax required to have been withheld and paid in connection with amounts paid or owing to any Business Employee, former Business Employee, creditor, customer, shareholder, or other party, and materially complied with all information reporting and backup withholding provisions of Applicable Law.

(d) *Liens.* There are no Liens for material Taxes upon the assets of the Seller other than for current Taxes not yet due and payable or for Taxes that are being contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP has been made in the Seller's most recent financial statements.

(e) *Tax Deficiencies and Audits.* No deficiency for any material amount of Taxes which has been proposed, asserted, or assessed in writing by any taxing authority against the Seller remains unpaid. There are no waivers or extensions of any statute of limitations currently in effect with respect to Taxes of the Seller. There are no audits, suits, proceedings, investigations, claims, examinations, or other administrative or judicial proceedings ongoing or pending with respect to any material Taxes of the Seller.

(f) *Tax Jurisdictions.* No claim has ever been made in writing by any taxing authority in a jurisdiction where the Seller does not file Tax Returns that the Seller is or may be subject to Tax in that jurisdiction.

(g) *Tax Rulings.* The Seller has not requested and is not the subject of or bound by any private letter ruling, technical advice memorandum, or similar ruling or memorandum with any taxing authority with respect to any material Taxes, nor is any such request outstanding.

(h) *Consolidated Groups, Transferee Liability, and Tax Agreements.* The Seller: (i) has not been a member of a group filing Tax Returns on a consolidated, combined, unitary, or similar basis; (ii) has no material liability for Taxes of any Person (other than the Seller) under Treasury Regulation Section 1.1502-6 (or any comparable provision of local, state, or foreign law), as a transferee or successor, by Contract, or otherwise; and (iii) is not a party to, bound by or has any material liability under any Tax sharing, allocation, or indemnification agreement or arrangement.

(i) *Change in Accounting Method.* The Seller has not agreed to make, and is not required to make, any material adjustment under Section 481(a) of the Code or any comparable provision of state, local, or foreign Applicable Law by reason of a change in accounting method or otherwise.

(j) *Post-Closing Tax Items.* The Seller will not be required to include any material item of income in, or exclude any material item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any: (i) "closing agreement" as described in Section 7121 of the Code (or any corresponding or similar provision of Applicable Law) executed on or prior to the Closing Date; (ii)

installment sale or open transaction disposition made on or prior to the Closing Date; (iii) prepaid amount received on or prior to the Closing Date; or (iv) election under Section 108(i) of the Code.

(k) *Ownership Changes.* Without regard to this Agreement, the Seller has not undergone an “ownership change” within the meaning of Section 382 of the Code.

(l) *Section 355.* The Seller has not been a “distributing corporation” or a “controlled corporation” in connection with a distribution described in Section 355 of the Code.

(m) *Reportable Transactions.* The Seller has not been a party to, or a material advisor with respect to, a “reportable transaction” within the meaning of Section 6707A(c)(1) of the Code and Treasury Regulations Section 1.6011-4(b).

Section 3.18. *Laws and Regulations.* The Seller is in compliance in all material respects with all Applicable Laws relating to the Purchased Assets, except (i) as explicitly disclosed in Schedule Section 3.18 or (ii) for violations that have not had and would not reasonably be expected to have a materially adverse impact upon the Purchased Assets, taken as a whole, or to prevent, hinder or delay the consummation of the transactions contemplated by this Agreement or any of the Transaction Documents.

Section 3.19. *Finders’ Fees.* Except as set forth on Schedule Section 3.19, there is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of the Seller who might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement.

Section 3.20. *Full Disclosure.* No representation or warranty by the Seller in this Agreement and no statement contained in the Disclosure Schedule to this Agreement or any certificate or other document furnished or to be furnished to Buyer pursuant to this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF BUYER

Except as set forth in the Disclosure Schedule and subject to Section 12.13, Buyer represents and warrants to the Seller that:

Section 4.01. *Corporate Existence and Power.* Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of its jurisdiction of formation and has all limited liability company powers and all material governmental licenses, authorizations, permits, consents and approvals required to carry on its business as now conducted.

Section 4.02. *Limited Liability Company Authorization.* The execution, delivery and performance by Buyer of this Agreement and the Transaction Documents and the consummation

of the transactions contemplated hereby and thereby are within the limited liability company powers of Buyer and have been duly authorized by all necessary limited liability company action on the part of Buyer. Subject to the entry of the Sale Order, this Agreement constitutes, and the Transaction Documents to which Buyer is a party, when executed and delivered by Buyer will constitute, the valid and binding obligations of Buyer enforceable against Buyer in accordance with their terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting enforcement of creditors' rights and general principles of equity that restrict the availability of equitable remedies.

Section 4.03. *Governmental Authorization.* The execution, delivery and performance by Buyer of this Agreement and each of the Transaction Documents and the consummation of the transactions contemplated hereby and thereby require no material action by or in respect of, or material filing with, any Governmental Authority other than (i) the Bankruptcy Court and (ii) the transfer or reissuance of the Transferred Permits.

Section 4.04. *Noncontravention.* The execution, delivery and performance by Buyer of this Agreement and the consummation of the transactions contemplated hereby do not and will not (i) violate the organizational documents of Buyer, (ii) assuming compliance with the matters referred to in Section 4.03, violate any Applicable Law or (iii) require any consent or other action by any Person under, constitute a default under or give rise to any right of termination, cancellation or acceleration of any right or obligation or to a loss of any benefit to which Buyer is entitled under any provision of any agreement or other instrument binding upon Buyer, except, in the case of this clause (iii), as would not reasonably be expected to have a material adverse effect on Buyer's ability to consummate the transactions contemplated in this Agreement and, in each case, after giving effect to the Sale Order.

Section 4.05. *Adequate Assurances.* As of the Closing, Buyer will be capable of satisfying the conditions contained in sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code with respect to the Assumed Contracts and the Assumed Leases.

Section 4.06. *Financial Capability.* Buyer has, or will have prior to the Closing, the ability to effect the Credit Release as contemplated in this Agreement. Buyer has, or will have prior to the Closing, sufficient cash, available lines of credit or other sources of immediately available funds to enable it to consummate the transactions contemplated by this Agreement.

Section 4.07. *Litigation.* There is no action, suit, investigation or proceeding pending or, to the Knowledge of Buyer, threatened against or affecting Buyer before any arbitrator or any Governmental Authority which in any manner challenges or seeks to prevent, enjoin, alter or materially delay the transactions contemplated by this Agreement.

Section 4.08. *Finders' Fees.* Except as otherwise disclosed herein, there is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of Buyer who might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement.

ARTICLE 5
COVENANTS OF THE SELLER

The Seller agrees that:

Section 5.01. *Conduct of the Business.* Except as contemplated by this Agreement and to the extent not inconsistent with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, any orders entered by the Bankruptcy Court in the Bankruptcy Case (*provided* that the Seller shall (x) not, without the prior written consent of Buyer, seek any order of the Bankruptcy Court in the Bankruptcy Case requiring them to refrain from taking any actions described in this Section 5.01 and (y) use its commercially reasonable efforts to oppose any motion or other request seeking such an order of the Bankruptcy Court) or other Applicable Law, from the date hereof until the Closing Date, the Seller shall use its commercially reasonable efforts to:

- (a) conduct the Business in the ordinary course consistent with past practice;
- (b) maintain the Purchased Assets in as good working order and condition as at present, ordinary wear and tear excepted;
- (c) keep in full force its existing insurance policies or other substantially equivalent insurance coverage without being in default or failing to give any notice or present any claim thereunder;
- (d) keep available the services of the present employees of the Business (except as otherwise agreed to by Buyer and Seller); and
- (e) maintain and preserve intact the business organizations of the Business and maintain its relationships with third parties.

For the avoidance of doubt, the pendency of the Bankruptcy Case and the effects thereof shall in no way be deemed a breach of this Section 5.01.

Section 5.02. *No Changes in Business.* Without limiting the generality of Section 5.01, from the date of this Agreement through the Closing, except as expressly permitted by this Agreement or as consented to by Buyer in writing (which consent shall not be unreasonably withheld, conditioned or delayed) and to the extent not inconsistent with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, any orders entered by the Bankruptcy Court in the Bankruptcy Case (*provided* the Seller shall (x) not, without the prior written consent of Buyer, seek any order of the Bankruptcy Court compelling them to take any action described in this Section 5.02 and (y) use its commercially reasonable efforts to oppose any motion or other request seeking such an order of the Bankruptcy Court) or other Applicable Law, the Seller shall not, and shall not permit any of its Affiliates to, with respect to the Business:

- (a) reject, pursuant to Section 365 of the Bankruptcy Code, any Assumed Contract or Assumed Lease;
- (b) enter into any material Contract;

(c) amend or otherwise modify any Assumed Contract or incur or agree to incur any Liability except for non-material Contracts in the ordinary course of business (any Contract having a value of \$5,000 or less will be considered non-material);

(d) other than to the Pre-Petition Lenders, grant a security interest in, mortgage, pledge or otherwise encumber or subject to a Lien any Purchased Asset;

(e) incur any Indebtedness, except as provided in the Interim DIP Order as it may be amended from time to time, or assume, guarantee or endorse the obligations of any Person, in each case other than Indebtedness or assumptions, guarantees or endorsements of obligations of any Person that do not constitute Assumed Liabilities;

(f) waive, release, assign, settle or compromise any material rights, claims, litigations or arbitrations that constitute Purchased Assets;

(g) enter into any Contract which materially restricts the ability of the Business to engage in any business in any geographic area or channel of distribution;

(h) sell, assign, lease (including lease or sublease) or otherwise transfer or dispose of any of the Purchased Assets, without the consent of Buyer which shall not be unreasonably withheld;

(i) make loans or advances to, guarantees for the benefit of, or any investments in, any Person other than to the extent such loans, advances guarantees or investments do not constitute Purchased Assets or Assumed Liabilities, as the case may be;

(j) make, change or revoke any material Tax election, settle or compromise any material Liability for Taxes, file any materially amended Tax Return, or enter into any material agreement with respect to Taxes, in each case to the extent such action would adversely affect the Purchased Assets or the Business, or subject Buyer or any of its Affiliates to any Tax Liability, after the Closing Date;

(k) enter into or amend any Contract or commitment, or enter into any other transaction, directly or indirectly, with the Seller or any Affiliate that constitutes an Assumed Contract or gives rise to an Assumed Liability;

(l) enter or commit to enter into any collective bargaining agreement or other labor agreement with any union or other labor organization; or

(m) agree or commit to do any of the foregoing.

Section 5.03. *Access to Information.* (a) From the date hereof until the Closing Date, the Seller will (i) give Buyer, its counsel, financial advisors, auditors and other authorized representatives reasonable access to the offices, properties, books and records of the Seller relating to the Business and the Purchased Assets, (ii) furnish to Buyer, its counsel, financial advisors, auditors and other authorized representatives such financial and operating data and other information relating to the Business and the Purchased Assets as such Persons may reasonably request and (iii) instruct the employees, counsel and financial advisors of the Seller to

cooperate with Buyer in its investigation of the Business and the Purchased Assets. Any investigation by Buyer or its authorized representatives pursuant to this Section shall be conducted in accordance with Applicable Law and in such manner as not to interfere unreasonably with the conduct of the business of the Seller. Notwithstanding the foregoing, Buyer shall not (A) have access to personnel records of the Seller relating to medical histories or other information which in the Seller's good faith opinion is sensitive or the disclosure of which could subject the Seller to risk of Liability or (B) without the prior written consent of the Seller (not to be unreasonably withheld, conditioned or delayed), conduct or cause to be conducted any sampling, testing or otherwise invasive investigation of the air, soil, surface water, groundwater, building materials or other environmental media related to the Business or the Purchased Assets. Any access or investigation by Buyer or its authorized representatives pursuant to this Section shall be at Buyer's sole cost and expense.

Section 5.04. *Release; Acknowledgements.*

(a) Notwithstanding anything to the contrary contained herein, effective as of the Closing, (i) the Seller (individually and on behalf of its Affiliates) hereby releases and forever discharges the Pre-Petition Lenders, Buyer and its Affiliates and their respective successors and assigns and all officers, directors, partners, members, equity holders, shareholders, employees and agents of each of them (including, without limitation, any current or former lenders under the Pre-Petition Security Agreement) from any and all actual or potential claims, causes of action, proceedings, Liabilities, damages, expenses and/or Losses of whatever kind or nature (including attorneys' fees and costs), in law or equity, known or unknown, suspected or unsuspected, now existing or hereafter arising, whether contractual, in tort or otherwise, which such party had, has, or may have in the future to the extent relating to the Excluded Assets or the Excluded Liabilities and (ii) Buyer (individually and on behalf of its Affiliates) hereby releases and forever discharges the Seller and its Affiliates and their respective successors and assigns and all officers, directors, partners, members, shareholders, employees and agents of each of them from any and all actual or potential claims, causes of action, proceedings, Liabilities, damages, expenses and/or Losses of whatever kind or nature (including attorneys' fees and costs), in law or equity, known or unknown, suspected or unsuspected, now existing or hereafter arising, whether contractual, in tort or otherwise, which such party had, has or may have in the future to the extent relating to the Purchased Assets or the Assumed Liabilities; *provided* that nothing in this Agreement (including this Section 5.04) shall (x) constitute a release of any Person arising from conduct of such Person that is determined by a final order of a court of competent jurisdiction to have constituted fraud, willful breach, knowing and intentional misrepresentation or criminal act by such Person, (y) be construed to release any Person from any of its contractual obligations under this Agreement and the Transaction Documents, including its obligations in respect of the Purchased Assets, Assumed Liabilities, Excluded Assets and Excluded Liabilities, each of which shall remain fully effective and enforceable from and after the Closing Date and (z) constitute a release by Buyer or any of its Affiliates of any claims that Buyer or any of its Affiliates have in the Bankruptcy Case except for the Credit Release and any release that may occur pursuant to Section 2.07.

(b) Subject to Section 12.05, the Seller acknowledges that Buyer is the sole Person bound by, or liable with respect to, the Liabilities of Buyer under this Agreement, and that no Affiliate of Buyer or any current or former shareholder, partner, member, controlling Person, agent, officer, director, employee, counsel, accountant, advisor, agent, consultant, or other representative of Buyer shall be bound by, or liable with respect to, any aspect of this Agreement or any of the transactions contemplated hereby.

Section 5.05 Competing Bid.

(a) This Agreement is subject to approval by the Bankruptcy Court and the consideration by the Seller and the Bankruptcy Court of higher or better competing bids with respect to any transaction (or series of transactions) (an “**Alternative Transaction**”) involving the direct or indirect sale, lease, transfer or other disposition of any assets of the Seller to a purchaser or purchasers other than Buyer (whether consummated pursuant to a sale, merger, consolidation, tender offer, share exchange, consensual foreclosure, liquidation, credit bid, chapter 11 plan, or otherwise, a “**Competing Bid**”).

(b) Nothing contained herein shall be construed to prohibit the Seller and its representatives or Affiliates from soliciting, considering, negotiating, agreeing to, or otherwise taking action in furtherance of, any Competing Bid other than as set forth in the Bidding Procedures Order.

Section 5.06 Cooperation in Bankruptcy Court Matters.

(a) The Seller shall pursue diligently the entry of the Bidding Procedures Order and the Sale Order. The Seller shall use commercially reasonable efforts to comply with all requirements under the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules in connection with obtaining approval of the Bidding Procedures Order.

(b) Buyer agrees that it will promptly take such actions as are reasonably requested by the Seller to assist in obtaining entry of the Bidding Procedures Order. In the event the entry of the Bidding Procedures Order shall be appealed, the Seller and Buyer shall use their respective commercially reasonable efforts to defend such appeal.

Section 5.07 Sale Order.

(a) The Seller shall file with the Bankruptcy Court a proposed Sale Order providing for approval of this Agreement and the sale of the Purchased Assets to Buyer on the terms and conditions hereof on or before five (5) days after the date of this Agreement. The Seller shall deliver to Buyer prior to filing, and as early in advance as is practicable to permit adequate and reasonable time for Buyer and its counsel to review and comment, a draft of such proposed Sale Order, and no such proposed Sale Order shall be filed by the Seller with the Bankruptcy Court unless Buyer shall have determined that the same is reasonably acceptable to Buyer.

(b) The Sale Order shall contain, without limitation, the following provisions:

(i) finding that notice of the hearing on the Sale Motion and the Auction was proper and sufficient under the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules, that the Seller and Buyer entered into this Agreement in good faith, the Purchase Price and liabilities of the Seller under the Assumed Contracts constitute fair value in consideration for the Purchased Assets and determining that Buyer is a “good faith” purchaser entitled to the protections afforded by Section 363(m) of the Bankruptcy Code with respect to the Purchased Assets;

(ii) authorizing the Seller to transfer to Buyer all its rights, title, privileges and interests in and to the Purchased Assets, and ordering that such transfer is free and clear of any Liens, with all such Liens attaching to the net proceeds of sale, if any;

(iii) authorizing the Seller to assume and sell and assign the Assumed Contracts to Buyer pursuant to Sections 363 and 365 of the Bankruptcy Code;

(iv) finding that Buyer is not a successor to the Seller or its estate by reason of any theory of law or equity, whether with respect to any Liens and claims against the Seller, the Purchased Assets or otherwise and ruling that Buyer shall not be subject to successor liabilities for products sold prior to the Closing, all as set forth in more detail in the form of Sale Order attached hereto as Exhibit B; and

(v) Cure Costs shall otherwise be those determined by the Bankruptcy Court pursuant to Section 365 of the Bankruptcy Code with respect to the Assumed Contracts.

(c) Subject to any Competing Bid, (i) the Seller agrees that it will promptly take such actions as are reasonably necessary or appropriate to obtain prompt entry of the Sale Order, (ii) Buyer agrees that it will promptly take such actions as are reasonably requested by the Seller and are reasonably necessary or appropriate to assist the Seller in obtaining entry of the Sale Order and a finding of adequate assurance of future performance by Buyer, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court or live testimony for the purposes of, among other things, providing necessary assurances of future performance by Buyer under this Agreement and demonstrating that Buyer is a “good faith” purchaser under Section 363(m) of the Bankruptcy Code and that the Purchase Price was not controlled by an agreement in violation of Section 363(n) of the Bankruptcy Code; and (iii) if the entry of the Sale Order shall be appealed or collaterally attacked, the Seller and Buyer shall use their respective reasonable efforts to defend such appeal or collateral attack of the Sale Order after its entry; provided, that Buyer shall reimburse to the Seller the costs and expenses (including professional fees and expenses) of the Seller in any such appeal. After consultation with Buyer, in the Seller’s sole discretion, the Seller may respond to objections to the entry of the Sale Order, conduct discovery proceedings, schedule and attend hearings and oppose any actions taken by the parties objecting to, appealing, or seeking a stay of the consummation of the sale of the Purchased Assets provided by this Agreement. The Seller shall use commercially reasonable efforts to take all actions, including the defense of motions and actions filed by third parties required in the Bankruptcy Case reasonably required to retain possession and ownership of the Purchased Assets pending the Closing;

provided, however, the Seller's obligations in connection with any such efforts shall terminate upon the Closing.

(d) If the Sale Order or any other orders of the Bankruptcy Court relating to this Agreement shall be appealed or petition for certiorari or motion for rehearing or reargument shall be filed with respect thereto, the Seller agrees to take all action as may be commercially reasonable and appropriate to defend against such appeal, petition or motion and Buyer agrees to cooperate in such efforts.

Section 5.08 Bidding Procedures Order.

(a) The Bidding Procedures Order shall be in a form acceptable to Buyer and shall provide, inter alia, that:

(i) The Auction will conclude on or before March 7, 2018.

(ii) The initial bid over that submitted by Buyer in this Agreement (the "**Initial Overbid**") shall be in the amount of at least \$250,000.00.

(iii) Thereafter, bidding shall be in increments of at least \$50,000.00 or figures which are wholly divisible by \$50,000.00.

(iv) Only financially qualified parties will be eligible to participate in the Auction (with financially qualified parties to mean parties who have demonstrated that they have the financial means to consummate their purchase of the Purchased Assets without financing unless the financing to be used by them is already committed, meaning that any overbid may not contain any financing contingency). Any party who participates in the Auction will have completed their due diligence of the Seller and will have no due diligence contingency.

(v) In order to be eligible to participate in the Auction, prospective overbidders will be required on or before March 2, 2018 (the "**Bid Deadline**"), to (i) deliver a redlined version of this Agreement indicating any changes the prospective overbidder is requesting to this Agreement, and (ii) submit a cash deposit of \$150,000.00, which deposit will be non-refundable and forfeited by the prospective overbidder if the prospective overbidder is deemed by the Bankruptcy Court to be the winning bidder and fails to close its purchase of the Purchased Assets within 14 days following the entry of the Sale Order approving the Seller's sale of the Purchased Assets to the prospective overbidder regardless of whether an appeal has been filed of such Sale Order provided there is no entered stay pending appeal (i.e., no final order requirement).

(vi) Buyer will have the right, but not the obligation, to credit bid the outstanding balances under the Pre-Petition Security Agreement and the Interim DIP Order towards its purchase price and any overbid that Buyer elects to submit. Buyer shall have the right to participate in any Auction.

(vii) If any party other than Buyer is deemed by the Bankruptcy Court to be the winning bidder at the Auction, then concurrently with the closing of the Seller's sale of

the Purchased Assets to such winning bidder, Buyer will be paid directly out of the sale proceeds (i) the full amount owed under the Pre-Petition Security Agreement, plus (ii) the full amount owed under the Interim DIP Order.

(viii) The Seller will agree to proceed with a sale process, seeking to have the sale approval order entered no later than March 12, 2018.

(ix) The Seller's sale of the Purchased Assets to Buyer or a successful overbidder will be free and clear of all Liens, claims and interests in accordance with section 363(f) of the Bankruptcy Code.

(x) The Seller intends to market the Purchased Assets for overbid pending the Auction and will seek to employ, subject to Bankruptcy Court approval, Livingstone Partners LLC as investment banker to assist the Seller in this process. Livingstone Partners LLC shall be compensated in accordance with the terms of any order entered by the Bankruptcy Court authorizing the retention of Livingstone Partners LLC; provided, however, that Livingstone Partners LLC will not be entitled to any "success fee," "accomplishment fee," or any other similar type of fee if the Buyer acquires the Purchased Assets pursuant to the Credit Release. In the event of a Credit Release transaction, Livingstone Partners LLC will be paid monthly fees in accordance with the terms authorizing its retention.

(b) If the Seller consummates an Alternative Transaction, with the consent of Buyer, any funds advanced by Buyer under the Final DIP Order will be repaid to Buyer in accordance with the Final DIP Order at the closing of the Alternative Transaction.

(c) The Seller shall not modify or amend the Asset Schedule to the Bidding Procedures in a manner that would remove or otherwise affect any Purchased Asset without Buyer's prior written consent.

(d) Seller acknowledges and agrees that the entry into this Agreement provides value to the Seller's chapter 11 estate by, among other things, inducing other parties to submit higher or better offers for the Purchased Assets.

Section 5.09 Additional Bankruptcy Matters.

(a) From and after the date of this Agreement and until the Closing Date, to the extent reasonably practicable, the Seller shall deliver to Buyer drafts of any and all pleadings, motions, notices, statements, applications, schedules, reports, and other papers to be filed or submitted by the Seller in connection with or related to this Agreement for Buyer's prior review. The Seller shall make reasonable efforts to consult and cooperate with Buyer regarding (i) any such pleadings, motions, notices, statements, applications, schedules, reports, or other papers, any discovery taken in connection with seeking entry of the Sale Order (including any depositions) and (ii) any hearing relating to the Sale Order, including the submission of any evidence, including witnesses' testimony, in connection with such hearing.

(b) The Seller acknowledges and agrees, and the Sale Order shall provide that, on the Closing Date and concurrently with the Closing, all then existing or thereafter arising Liabilities and Liens of, against or created by the Seller or its bankruptcy estate, shall be fully released from and with respect to the Purchased Assets, which shall be transferred to Buyer free and clear of all Liabilities and Liens, except for Assumed Liabilities and Permitted Liens.

Section 5.10. *Payment of Cure Costs.* On the Closing, Buyer shall pay in full in cash to the applicable counterparty the undisputed Cure Costs with respect to each Assumed Contract and Assumed Lease, subject to Section 2.05 of this Agreement. In the event of a dispute over any Cure Cost, such disputed Cure Cost shall be placed into a segregated account for later determination by the Bankruptcy Court.

Section 5.11. *Insurance.* The Seller shall use commercially reasonable efforts, after the Closing, to (i) enable Buyer and its Affiliates to file, notice and otherwise continue to pursue (or, at the direction and expense of Buyer, shall file, notice and continue to pursue) any claims on behalf of the Business or the Purchased Assets under any third party insurance policy of the Seller covering the Business or any Purchased Asset for events occurring prior to the Closing, and (ii) enable Buyer and its Affiliates to recover proceeds under the terms thereof.

ARTICLE 6 COVENANTS OF BUYER

Buyer agrees that:

Section 6.01. *Access.* On and after the Closing Date, to the extent permitted by Applicable Law, Buyer will afford promptly to the Seller and its agents reasonable access to its properties, books, records, employees and auditors to the extent necessary in order to facilitate the resolution of any claims made against or incurred by the Seller relating to any period ending on or before the Closing Date; *provided* that any such access by the Seller shall not unreasonably interfere with the conduct of the business of Buyer; *provided further* that the scope of any such access shall be limited to the Purchased Assets.

Section 6.02. *Bankruptcy Actions.* Buyer acknowledges that it must provide adequate assurance of future performance under the Assumed Contracts and agrees that it shall, and shall cause its Affiliates to, cooperate with the Seller in connection with furnishing information or documents to the Seller to satisfy the requirements of section 365(f)(2)(B) of the Bankruptcy Code.

ARTICLE 7 COVENANTS OF BUYER AND THE SELLER

Buyer and the Seller agree that:

Section 7.01. *Further Assurance.*

(a) Except as otherwise provided herein and subject to the terms and conditions of this Agreement, the Bankruptcy Code and any orders of the Bankruptcy Court, the Seller

and Buyer shall use commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable under Applicable Law to consummate the transactions contemplated by this Agreement, including (i) preparing and filing as promptly as practicable with any Governmental Authority or other third party all documentation to effect all necessary filings, notices, petitions, statements, registrations, submissions of information, applications and other documents and (ii) obtaining and maintaining all approvals, consents, registrations, permits, authorizations and other confirmations required to be obtained from any Governmental Authority or other third party that are necessary, proper or advisable to consummate the transactions contemplated by this Agreement, in each case, after giving effect to the Sale Order. The Seller and Buyer agree to execute and deliver such other documents, certificates, agreements and other writings and to use commercially reasonable efforts to take such other actions as may be necessary or desirable in order to consummate or implement expeditiously the transactions contemplated by this Agreement, to vest in Buyer good title to the Purchased Assets and to assure and evidence the assumption by Buyer of the Assumed Liabilities.

(b) Neither party shall agree (or permit any of their respective Affiliates to agree) to participate in any meeting with any Governmental Authority in respect of any filings, investigation or other inquiry relating to the consummation of the transactions contemplated by this Agreement unless it consults with the other party in advance (to the extent reasonably practicable to do so) and, to the extent permitted by such Governmental Authority and any Applicable Law, gives the other party and its outside counsel the opportunity to attend and participate at such meeting.

(c) Notwithstanding anything in this Agreement to the contrary, “commercially reasonable efforts” for purposes of this Agreement shall in no event or circumstance require Buyer or any of its Affiliates, or permit the Seller or any of its Affiliates without Buyer’s consent, to (i) execute any settlements, undertakings, consent decrees, stipulations or other agreements, (ii) accept any material amendment to the terms of any Transferred Permit or any additional material conditions with respect to any Transferred Permit or (iii) subject to Section 7.01(d), make to any Person any material payment with respect to obtaining any approvals, consents, registrations, permits, authorizations and other confirmations.

(d) The fees and expenses for all filings or submissions to any Governmental Authority pursuant to this Section 7.01 shall be borne in full by Buyer.

Section 7.02. *Certain Filings.* The Seller and Buyer shall cooperate with one another (i) in determining whether any action by or in respect of, or filing with, any Governmental Authority is required, or any actions, consents, approvals or waivers are required to be obtained from parties to any material Contracts, in connection with the consummation of the transactions contemplated by this Agreement and (ii) in taking such actions or making any such filings, furnishing information required in connection therewith and seeking timely to obtain any such actions, consents, approvals or waivers.

Section 7.03. *Public Announcements.* Except as may be necessary in connection with the Bankruptcy Case, the parties agree to consult with each other before issuing any press release or making any public statement with respect to this Agreement or the transactions contemplated hereby and, except for any press releases and public statements the making of which may be required by Applicable Law or any listing agreement with any national securities exchange, will not issue any such press release or make any such public statement prior to such consultation.

Section 7.04. *Notification of Certain Events.* Each party shall promptly notify the other of any event, condition or circumstance of which such party becomes aware prior to the Closing Date that would cause, or would reasonably be expected to cause, a violation or breach of this Agreement (or a breach of any representation or warranty contained in this Agreement). During the period prior to the Closing Date, each party will promptly advise the other in writing of any written notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement. A party's receipt of information pursuant to this Section 7.04 shall not operate as a waiver or otherwise affect any representation, warranty or agreement given or made by the other parties in this Agreement and shall not be deemed to amend or supplement the Disclosure Schedule.

Section 7.05. *Bankruptcy Court Approval.* The Seller and Buyer acknowledge that this Agreement and the sale of the Purchased Assets are subject to Bankruptcy Court approval. As soon as reasonably practicable following the execution of this Agreement, the Seller will file a motion with the Bankruptcy Court seeking entry of the Sale Order. The Seller and Buyer shall cooperate with each other in seeking entry of the Sale Order. Buyer agrees that it will promptly take all actions that are reasonably requested by the Seller to assist in obtaining the Bankruptcy Court's entry of the Sale Order. Notwithstanding any provision in this Agreement or any other writing to the contrary, the Seller is permitted to respond to, and supply information regarding the Business and the Purchased Assets with respect to, any inquiry submitted by any potential counterparty to an Alternative Transaction. The Seller shall contemporaneously provide to Buyer any such information not previously provided to Buyer.

Section 7.06. *Consents and Approvals.* Subject to Section 7.01, the parties hereto shall use commercially reasonable efforts, as set forth in this Agreement, to secure all approvals, authorizations, consents, Transferred Permits, orders, licenses, assignments, releases, and/or waivers, if any, that are necessary to effect the transactions contemplated by this Agreement and the Transaction Documents. Without limiting Section 7.01(c), such commercially reasonable efforts shall not require any material payment or other consideration from the parties (other than (i) the Cure Costs and (ii) the Transfer Taxes, which shall be the responsibility of the Seller).

Section 7.07 *Transaction Documents.* The parties hereto shall negotiate in good faith, prior to Closing, the terms of the Transaction Documents, and in each case such terms shall be in a form (i) customary for transactions of the type contemplated by this Agreement, (ii) consistent with the terms attached as an exhibit to this Agreement (with respect to those Transaction Documents for which an exhibit has been attached hereto), and (iii) reasonably satisfactory to Buyer and the Seller in their respective discretion.

ARTICLE 8
TAX MATTERS

Section 8.01. *Tax Cooperation; Responsibility for Taxes; FIRPTA.*

(a) Buyer and the Seller agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating to the Business and the Purchased Assets and Assumed Liabilities (including access to books and records) as is reasonably necessary for the filing of all Tax Returns, the making of any election relating to Taxes, the preparation for any audit by any Taxing Authority, and the prosecution or defense of any claim, suit or proceeding relating to any Tax. Buyer shall retain all books and records with respect to Taxes pertaining to the Purchased Assets and the Assumed Liabilities for any Pre-Closing Tax Period for a period of at least six (6) years following the Closing Date. The Seller and Buyer shall cooperate with each other in the conduct of any audit or other proceeding relating to Taxes involving the Purchased Assets, the Assumed Liabilities or the Business. The Seller shall use commercially reasonable efforts to provide Buyer with such information that is in the Seller's possession and is reasonably requested by Buyer to identify the jurisdictions in which Tax Returns are required to be filed, or Taxes are required to be paid, and the types of Tax Returns required to be filed, in each case with respect to the Business or the Purchased Assets.

(b) All excise, sales, use, value added, registration, stamp, recording, documentary, conveyancing, franchise, property, transfer, gains and other similar non-income Taxes, levies, charges and fees incurred in connection with the transactions contemplated by this Agreement (collectively, "**Transfer Taxes**") shall be borne by Seller. Transfer Taxes shall be timely paid, and all applicable filings, reports and returns shall be filed, as provided by Applicable Law. Buyer and the Seller shall cooperate in reducing any such Transfer Taxes (and any other Tax cost) to the extent possible, including by providing each other with any appropriate resale exemption certifications and other similar documentation or by restructuring the form of all (or part) of the transactions contemplated by this Agreement and the Transaction Documents; provided that such restructuring is not reasonably expected to materially (i) delay, prevent or hinder the consummation of the transactions contemplated by this Agreement or (ii) increase the Seller's expenses incurred in connection with the transactions contemplated hereby.

(c) The party with the primary legal obligation for the reporting and payment of any Transfer Taxes shall file any Tax Returns and other documentation that must be filed in connection with such Transfer Taxes, and shall use its reasonable best efforts to provide such Tax Returns to the other party at least ten (10) Business Days prior to the date such Tax Returns are due to be filed. If required by Applicable Law, the parties will, and will cause their respective Affiliates to, join in the execution of any such Tax Returns or other documentation.

(d) On or before the Closing Date, the Seller shall deliver to Buyer a statement, signed under penalties of perjury and dated no more than 30 days prior to the Closing Date, that satisfies the requirements of Treasury Regulation Section 1.1445-2(b)(2) and confirms that the Seller is not a "foreign person" as defined in Section 1445 of the Code.

ARTICLE 9
EMPLOYEE MATTERS

Section 9.01. *Representations and Warranties.* Except as set forth in the Disclosure Schedule and subject to Section 12.13, the Seller represents and warrants to Buyer that:

(a) The Seller has delivered to Buyer a complete and accurate list of those employees of the Seller providing services to the Business as of January 15, 2018, including the work location and base wage rate or salary of such employees (the “**Business Employees**”). No collective bargaining agreement or other labor union contract is currently in effect with respect to the Business or any Business Employee and there is no collective bargaining agreement that could reasonably be expected to be relevant to the Business after Closing.

(b) Except as set forth on Schedule Section 9.01(b)(i), as of the date hereof, the Seller has no Knowledge of any union organizing activities or proceedings involving, or any pending petitions for recognition of, a labor union or association as the exclusive bargaining agent for, or where the purpose is to organize, any group or groups of Business Employees. Except as set forth on Schedule Section 9.01(b)(ii), as of the date hereof, the Seller has no Knowledge of any strikes, work stoppages, work slowdowns or lockouts nor of any threats thereof, by or with respect to the Business or any of the Business Employees.

(c) Except as set forth on Schedule Section 9.01(c), with respect to the Business, to the Knowledge of the Seller, there exists: (i) no charges or claims threatened or pending before a governmental administrative agency involving alleged violations of employment or labor-related laws, including but not limited to, any anti-discrimination law, wage payment law, labor relations laws or occupational safety and health law; and (ii) no threatened or pending litigation arising out of employment-related federal, state or local laws, including laws regarding discrimination, wage payments, labor relations or occupational safety and health.

(d) Except as set forth on Schedule Section 9.01(d), within the twelve (12) months prior to the date hereof, the Seller has not failed to comply with the requirements of the WARN Act in connection with any plant closing or mass layoff of individuals employed at or who primarily provided service to the Business. Except as set forth on Schedule Section 9.01(d), the Seller has not incurred any material liability under the WARN Act that remains unsatisfied as of the Closing Date. The Seller has heretofore made available to Buyer a true and complete list of layoffs, by location, implemented by the Seller in the 180-day period preceding the Closing Date at any location employing any individuals employed by the Business.

(e) Schedule Section 9.01(e) sets forth a complete list of all employee benefit plans, policies and practices (whether or not subject to ERISA) applicable to employees of the Seller, including, without limitation, plans, funds or programs providing medical, surgical or hospital care or benefits; benefits in the event of sickness, accident, disability, death or unemployment; vacation benefits; apprenticeship or other training programs; day care centers; scholarship funds; prepaid legal services; benefits described in Section 302(c)

of the Labor Management Relations Act; retirement income; income deferral for periods extending to the termination of covered employment or beyond; severance pay arrangements; and supplemental retirement income payments which take into account increases in the cost of living (referred to herein collectively as “**Plans**”). Each employee benefit plan, policy or practice which is funded through a policy of insurance is indicated by the word “insured” placed by the listing of the plan on Schedule Section 9.01(e). For purposes of this Section 9.01(e), the term “employee benefit plan(s)” shall have the meaning ascribed to it in Section 3(3) of ERISA, and the regulations promulgated thereunder, and the term “employee pension benefit plan(s)” shall have the meaning ascribed to it in Section 3(2) of ERISA.

(f) Each of the Seller’s Plans has been executed, managed and administered in material compliance with all Applicable Law, including the applicable provisions of ERISA, the Code, and the regulations promulgated thereunder. The Seller has no Knowledge of any fact which would adversely affect the qualified status of any of the Plans, or of any threatened or pending claim against any of the Plans or their fiduciaries by any participant, beneficiary or Governmental Authority.

(g) The Seller has fully complied with the notice and continuation requirements of Parts 6 and 7 of Subtitle B of Title I of ERISA and Section 4980B of the Code, and the regulations thereunder, whether proposed or final.

(h) The Seller does not maintain, has never maintained and has never contributed to or had an obligation to contribute to any employee pension benefit plans subject to Title IV of ERISA or multi-employer plan as defined in Sections 3(37) and/or 4001(a)(3)(A) of ERISA.

(i) No Plan provides medical, surgical, hospitalization, death or similar benefits (whether or not insured) for employees or former employees of the Seller for periods extending beyond their retirement, disability or other termination of service, other than coverage mandated by Applicable Law.

Section 9.02 *Employee Issues.*

(a) Upon the execution of this Agreement, Seller will provide to Buyer information about the Business Employees and an opportunity to interview the Business Employees. Buyer, as soon as reasonably practicable after the date hereof, but no later than twenty (20) Business Days prior to the Closing, shall provide the Seller with a list of those Business Employees to whom it desires to offer employment (whether through Buyer or one of its Affiliates) effective as of the Closing (such list may be updated from time to time by Buyer in consultation with and with the approval of the Seller, which approval shall not be unreasonably withheld, conditioned or delayed, until ten (10) Business Days prior to the Closing) (the Business Employees so listed, the “**Offered Employees**”). On the day prior to the Closing Date, the Seller shall terminate the employment of each Offered Employee and shall cooperate with, and use its commercially reasonable efforts to assist, Buyer with Buyer’s hiring of such Offered Employees. Those Offered Employees who accept Buyer’s offer of employment and commence working for Buyer on the Closing Date (or upon return

to work within 14 days after the Closing Date from approved vacation or within 180 days after the Closing Date from approved leave (including disability leave)) shall hereafter be referred to as “**Hired Employees.**” For the avoidance of doubt, the Seller shall retain all Liabilities, including severance or other termination costs, if any, including the offer of coverage under COBRA, relating to any employees of the Business or the Seller on or prior to the Closing Date.

(b) Buyer shall not assume any (i) “employee benefit plan” as defined in Section 3(3) of ERISA or (ii) other compensatory or health or welfare benefit Plan or agreement, in each case, that is sponsored, maintained or contributed to by the Seller for the benefit of any Business Employee, nor any liabilities associated with such Plans, including any obligations under COBRA for any employees or former employees of the Seller or its Affiliates.

(c) With respect to Hired Employees, Buyer and the Seller shall use the alternative procedure set forth in Revenue Procedure 2004-53, 2004-34 I.R.B. 320, for purposes of employment tax reporting.

(d) The Seller shall be solely responsible for all grievances, arbitrations, claims, demands, or charges of any nature whatsoever including, any such grievances, arbitrations, claims, demands, or charges whether now known or not yet made by any employees, bargaining agents, or governmental agencies, which result from or arise out of any event occurring prior to the Closing Date.

(e) The Seller shall be responsible for all Workers’ Compensation Liabilities arising out of any occupational injury to any Business Employee occurring on or prior to the Closing and Buyer shall be responsible for all Workers’ Compensation Liabilities arising out of any occupational injury to any Hired Employee occurring following the Closing.

(f) Nothing in this Section 9.02 is intended to require Buyer to continue employment for any period of time or on any specific terms or conditions of any Hired Employee after the Closing. Nothing contained in this Agreement shall be construed as an amendment or modification of any employee benefit plan of the Seller.

Section 9.03 *No Third Party Beneficiaries.* Without limiting the generality of Section 12.09, the provisions of this Article 9 are included for the sole benefit of the Seller and Buyer and nothing herein, whether express or implied, shall create any third party beneficiary or other rights in any other Person, including in any current or former employee, independent contractor or other service provider (including any beneficiary or dependent thereof) of the Seller in respect of continued employment (or resumed employment) with Buyer or any of its Affiliates or the Business and no provision of this Article 9 shall create any rights in any such Persons in respect of any benefits that may be provided, directly or indirectly, under any Plans, or any plan or arrangement that may be established by Buyer or any of its Affiliates. No provision of this Agreement shall constitute a limitation on rights to amend, modify or terminate after the Closing Date any such plans or arrangements of the Seller, Buyer or any of their respective Affiliates.

ARTICLE 10
CONDITIONS TO CLOSING

Section 10.01. *Conditions to Obligations of Buyer and the Seller.* The obligations of Buyer and the Seller to consummate the Closing are subject to the satisfaction of the following conditions:

(a) The Sale Order shall have been entered by March 12, 2018, by the Bankruptcy Court, shall not be subject to a stay pending appeal, shall not have been modified or amended without the written consent of the parties and shall not have been reversed or vacated; provided, that the foregoing condition as it applies to the absence of any appeal may be waived by Buyer without the consent of the Seller.

(b) No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any order, writ, judgment, injunction, decree stipulation, determination or award which is in effect and has the effect of making any of the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting consummation of the transactions contemplated by this Agreement or causing any of the transactions contemplated by this Agreement to be rescinded following completion thereof or delaying the consummation of the transactions contemplated by this Agreement beyond the End Date.

Section 10.02. *Conditions to Obligation of Buyer.* The obligation of Buyer to consummate the Closing is subject to the satisfaction of the following further conditions:

(a) The Seller and its Affiliates shall have performed or complied with, in each case, in all material respects all of their obligations hereunder required to be performed by them on or prior to the Closing Date.

(b) The representations and warranties of the Seller contained in this Agreement shall be true and correct in all material respects on the date hereof and at and as of the Closing Date, as if made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects).

(c) Since the date of the Agreement, there shall not have occurred any Material Adverse Effect (or any development that, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect).

(d) The objection deadline shall have passed for all counterparties to Assumed Contracts and Assumed Leases to object to the Cure Costs contained in their respective Cure Notice; provided that such objection deadline shall be no less than seven (7) days after such Cure Notice is served on each such counterparty.

(e) Arrangements satisfactory to Buyer shall be in place regarding the regulatory bonding and security arrangements required in connection with the transfer of Transferred Permits as contemplated herein.

(f) Buyer shall have completed and reasonably satisfied itself, in its sole discretion, with the final results of its due diligence review of the Purchased Assets not later than five (5) days prior to the Bid Deadline, and after that date this condition shall be deemed satisfied.

(g) At least 90% of those Business Employees of the Seller who are provided with offers of employment by Buyer pursuant to Section 9.02(a) (with compensation substantially similar to, or better than, such employees' compensation from the Seller) accept such offers of employment, contingent upon Buyer being the successful purchaser of the Purchased Assets upon entry of the Sale Order.

(h) The Business Employees listed on Schedule Section 10.02(h) have executed employment and non-competition agreements acceptable to Buyer in its sole discretion.

(i) Consents shall have been obtained from the customers set forth on Schedule Section 10.02(i).

(j) Consents shall have been obtained from the Intellectual Property licensors set forth on Schedule Section 10.02(j).

(k) On or prior to the Closing Date, the Lease listed on Schedule Section 2.02(h) shall have been rejected by the Seller in the Bankruptcy Case.

(l) Buyer shall have reached an agreement with CN Crag Lovett LLC regarding that certain Lease Agreement dated May 21, 2007, between CN Crag Lovett LLC, as landlord, and the Seller, as tenant and successor in interest to MSI Equipment Centers, Inc., as amended or otherwise modified from time to time, including by that certain First Amendment of Lease Agreement dated as of January 31, 2010, on the terms set forth on Schedule Section 10.02(l).

(m) The Seller shall have completed and delivered to Buyer (i) a complete draft of the Disclosure Schedule to this Agreement on or before January 31, 2018, and (ii) a final Disclosure Schedule satisfactory to Buyer in its sole and absolute discretion on or before February 15, 2018.

(n) The Seller and Buyer shall have agreed upon and attached final Exhibits to this Agreement on or before February 15, 2018.

The foregoing conditions of this Section 10.02 are for the sole benefit of Buyer and may be waived by Buyer (except with respect to Section 10.02(d)), in whole or in part, at any time and from time to time in the sole discretion of Buyer. The failure by Buyer at any time to exercise any of its rights hereunder shall not be deemed a waiver of any such right and each such right shall be deemed an ongoing right which may be asserted at any time and from time to time.

Section 10.03. *Conditions to Obligation of the Seller.* The obligation of the Seller to consummate the Closing is subject to the satisfaction of the following further conditions:

(a) Buyer shall have performed or complied with, in each case, in all material respects all of its obligations hereunder required to be performed by it at or prior to the Closing Date.

(b) The representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects on the date hereof and at and as of the Closing Date, as if made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects).

The foregoing conditions of this Section 10.03 are for the sole benefit of the Seller and may be waived by the Seller, in whole or in part, at any time and from time to time in the sole discretion of the Seller. The failure by the Seller at any time to exercise any of its rights hereunder shall not be deemed a waiver of any such right and each such right shall be deemed an ongoing right which may be asserted at any time and from time to time.

Section 10.04. *Frustration of Closing Conditions.* No party may rely on the failure of any condition set forth in this Article 10 to be satisfied to excuse such party's obligation to effect the Closing if such failure was caused by such party's breach of this Agreement.

ARTICLE 11 TERMINATION

Section 11.01. *Grounds for Termination.* This Agreement may be terminated at any time prior to the Closing:

- (a) by mutual written agreement of the Seller and Buyer;
- (b) by either the Seller or Buyer if the Closing shall not have been consummated on or before April 6, 2018 (the "**End Date**"); *provided*, however, that at the time of such termination, the party seeking to terminate shall not be in material breach of its obligations under, or any representation or warranty made in, this Agreement, such that any condition to Closing of the other party would not be satisfied, including such first party's obligation to consummate the Closing on the terms and subject to the conditions set forth herein;
- (c) by either the Seller or Buyer if consummation of the transactions contemplated hereby would violate any nonappealable final order, decree or judgment of any Governmental Authority having competent jurisdiction;
- (d) by Buyer if a material breach of (i) any representation or warranty of the Seller set forth in Section 3.05, Section 3.06, Section 3.07, Section 3.08, Section 3.10, Section 3.12, Section 3.13 or Section 3.20 of this Agreement shall have occurred, (ii) any other representation or warranty of the Seller set forth in this Agreement that would reasonably be expected to cause a Material Adverse Effect shall have occurred, or (iii) any covenant of the Seller set forth in this Agreement shall have occurred; *provided*, that at the time of such termination, Buyer shall not be in material breach of its obligations under this Agreement;

(e) by Buyer or the Seller if an order is entered by any Governmental Authority with jurisdiction over the subject matter holding that Buyer may not, pursuant to Section 363(k) of the Bankruptcy Code, credit bid in payment of the applicable portion of the Purchase Price or otherwise effect the Credit Release;

(f) by Buyer upon (i) Seller's failure to comply with the Sale and Bid Procedures milestones set forth in the Interim DIP Order, or (ii) any default under the Interim DIP Order that is not waived, cured or determined by the Bankruptcy Court not to be a default;

(g) by Buyer or the Seller upon the dismissal of the Bankruptcy Case;

(h) by Buyer or the Seller (i) if, at the end of the auction contemplated by the Bidding Procedures, Buyer's bid is not determined to be the Successful Bid (as defined in the Bidding Procedures) with respect to the Purchased Assets, or (ii) upon the consummation of any other Alternative Transaction effected by the Seller in a manner consistent with the Bidding Procedures;

(i) by Buyer, not later than five (5) days prior to the Bid Deadline, if Buyer shall not have completed and reasonably satisfied itself, in its sole discretion, with the final results of its due diligence review of the Purchased Assets by such date.

(j) by Buyer or the Seller if a court of competent jurisdiction or other Governmental Authority has issued an order or taken any other action permanently restraining, enjoining or otherwise prohibiting the consummation of the Closing and such order or action has become final and non-appealable.

The party desiring to terminate this Agreement pursuant to Section 11.01 shall give notice of such termination to the other party.

ARTICLE 12 MISCELLANEOUS

Section 12.01. *Notices.* All notices, requests and other communications to any party hereunder shall be in writing (including facsimile transmission and electronic mail ("**e-mail**") transmission) and shall be given,

if to Buyer, to:

Lectrus Holdings LLC
c/o Great American Life Insurance Company and Great American Insurance
Company
301 East Fourth Street
27th Floor
Cincinnati, Ohio 45202
Attn: Joseph A. Haverkamp
E-mail: jhaverkamp@amfin.com

and:

Lectrus Holdings LLC
c/o HD Special Situations II, LP and HD Special Situations III, LP
One Maritime Plaza, Suite 825
San Francisco CA 94111
Attn: Todd Blankfort
Email: todd@hdcorp.com

with a copy (which shall not constitute notice) to:

Frost Brown Todd LLC
3300 Great American Tower
301 East Fourth Street
Cincinnati, Ohio 45202
Attn: Ronald E. Gold
Facsimile No.: (513) 651-6981
E-mail: rgold@fbtlaw.com

if to the Seller, to:

Lectrus Corporation
1919 W. Polymer Drive
Chattanooga, TN 37421
Attn: Jim Beers
E-mail: jbeers@lectrus.com

with a copy (which shall not constitute notice) to:

Baker Donelson, P.C.
633 Chestnut Street, Suite 1900
Chattanooga, TN 37450
Attn: Justin M. Sveadas
Email: jsveades@bakerdonelson.com

or such other address or facsimile number as such party may hereafter specify for the purpose by notice to the other parties hereto. All notices and other communications given in accordance with the provisions of this Agreement shall be deemed to have been given and received when delivered by hand or transmitted by facsimile (with confirmation of transmission) or email, three Business Days after the same are sent by certified or registered mail, postage prepaid, return receipt requested or one Business Day after the same are sent by a reliable overnight courier service, with acknowledgement of receipt.

Section 12.02. *Survival.* All covenants and agreements contained herein which by their terms are to be performed in whole or in part, or which prohibit actions, subsequent to the Closing shall, solely to the extent such covenants and agreements are to be performed, or prohibit actions, subsequent to the Closing, survive the Closing in accordance with their terms until fully performed or satisfied. All other covenants and agreements contained herein, and all

representations and warranties contained herein or in any certificates delivered hereunder, shall not survive the Closing, except for the Closing and pre-Closing covenants and obligations with respect to (x) the obligations of the Seller to transfer, or to bring about the transfer, to Buyer of title to, and ownership of, the Purchased Assets and the obligation of Buyer to assume the Assumed Liabilities and (y) the Excluded Liabilities and Excluded Assets.

Section 12.03. *Amendments and Waivers.*

(a) Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each party to this Agreement or, in the case of a waiver, by the party against whom the waiver is to be effective; provided, however, that any waiver, consent or amendment that adversely affects the Seller or the Pre-Petition Lenders or Buyer or waives or modifies any of the conditions to the Seller's obligations to consummate the Closing set forth in Section 10.01 or Section 10.03 shall not be effective without the written consent of the Pre-Petition Lenders or Buyer.

(b) No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

Section 12.04. *Expenses.* Except as otherwise provided herein, all costs and expenses incurred in connection with this Agreement shall be paid by the party incurring such cost or expense.

Section 12.05. *Successors and Assigns.* The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; *provided* that no party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of each other party hereto. Notwithstanding the foregoing sentence Buyer shall have the right to assign to any one or more of its Affiliates any of its rights or obligations under this Agreement, the Transaction Documents or any other document or instrument, in whole or in part; provided that no assignment hereunder shall relieve Buyer of its obligations under this Agreement, the Transaction Documents or any other such document or instrument and Buyer shall cause such assignees to perform such obligations on behalf of Buyer in accordance with the terms of this Agreement, the Transaction Documents or such other document or instrument, as applicable.

Section 12.06. *Governing Law.* This Agreement, and all claims or causes of action based upon, arising out of, or related to this Agreement or the transactions contemplated hereby, shall be governed by and construed in accordance with the law of the State of Tennessee without regard to the conflicts of law rules of such state.

Section 12.07. *Jurisdiction.* To the fullest extent permitted by Applicable Law, the parties hereto (a) agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the Transaction

Documents or the transactions contemplated hereby or thereby shall be brought (i) in the Bankruptcy Court, if brought prior to the entry of a final decree closing the Bankruptcy Case and (ii) in either the Circuit Court of Hamilton County, Tennessee or the United States District Court for the Eastern District of Tennessee (the “**Tennessee Courts**”), if brought after entry of such final decree closing the Bankruptcy Case, and shall not be brought, in each case, in any other state or federal court in the United States, (b) agree to submit to the exclusive jurisdiction of the Bankruptcy Court or the Tennessee Courts, as applicable, pursuant to the preceding clauses (a)(i) and (a)(ii), for purposes of all suits, actions or proceedings arising out of, or in connection with this Agreement or the Transaction Documents or the transactions contemplated hereby or thereby, (c) waive and agree not to assert any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 12.01 shall be deemed effective service of process on such party.

Section 12.08. *WAIVER OF JURY TRIAL.* EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

Section 12.09. *Counterparts; Effectiveness; Third Party Beneficiaries.* This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Subject to entry of the Sale Order, this Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by the other party hereto. Until and unless each party has received a counterpart hereof signed by the other party hereto, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication). No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations, or liabilities hereunder upon any Person other than the parties hereto and their respective successors and assigns.

Section 12.10. *Entire Agreement.* This Agreement and the Transaction Documents constitute the entire agreement between the parties with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter of this Agreement and the Transaction Documents.

Section 12.11. *Bulk Sales Laws.* Buyer and the Seller each hereby waive compliance by the Seller with the provisions of the “bulk sales,” “bulk transfer” or similar laws of any state.

Section 12.12. *Severability.* If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other Governmental Authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby

is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

Section 12.13. *Disclosure Schedules.* The Seller and Buyer, as applicable, have set forth information on the Disclosure Schedule in a section thereof that corresponds to the section of this Agreement to which it relates. The parties acknowledge and agree that (i) the Schedules to this Agreement may include certain items and information solely for informational purposes for the convenience of Buyer or the Seller, as applicable, and (ii) the disclosure by the Seller or Buyer, as applicable, of any matter in the Schedules shall not be deemed to constitute an acknowledgment by the Seller or Buyer, as applicable, that the matter is required to be disclosed by the terms of this Agreement or that the matter is material.

Section 12.14. *Specific Performance.* The parties acknowledge and agree that irreparable damage for which monetary damages, even if available, would not be an adequate remedy, would occur if the parties do not perform any provision of this Agreement in accordance with the terms hereof, or otherwise breach any such provision, and that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement or to enforce specifically the performance of the terms and provisions hereof, in addition to any other remedy to which they are entitled at law or in equity. Each party agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief when expressly available pursuant to the terms of this Agreement on the basis that (i) there is adequate remedy at law or (ii) an award of specific performance is not an appropriate remedy for any reason at law or equity. Any party seeking an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement shall not be required to provide any bond or other security in connection with any such order or injunction.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

LECTRUS HOLDINGS LLC, Buyer

By: _____

Name: _____

Title: _____

DRAFT

LECTRUS CORPORATION, Seller

By: _____

Name: _____

Title: _____

DRAFT

EXHIBIT A

ASSIGNMENT AND ASSUMPTION AGREEMENT

ASSIGNMENT AND ASSUMPTION AGREEMENT, dated as of [●], between **LECTRUS HOLDINGS LLC**, a Delaware limited liability company, or its designees (“**Buyer**”), and **LECTRUS CORPORATION**, a Tennessee corporation (the “**Seller**”).

WITNESSETH:

WHEREAS, Buyer and the Seller have concurrently herewith consummated the purchase by Buyer of the Purchased Assets pursuant to the terms and conditions of the Asset Purchase Agreement dated as of [●] by and among Buyer and the Seller (the “**Asset Purchase Agreement**”; terms defined in the Asset Purchase Agreement and not otherwise defined herein being used herein as therein defined);

WHEREAS, pursuant to the Asset Purchase Agreement, Buyer has agreed to assume certain liabilities and obligations of the Seller with respect to the Purchased Assets and the Business;

NOW, THEREFORE, in consideration of the sale of the Purchased Assets and in accordance with the terms of the Asset Purchase Agreement, Buyer and Seller agree as follows:

1. (a) The Seller does hereby sell, transfer, assign and deliver to Buyer all of the right, title and interest of the Seller in, to and under the Purchased Assets; *provided* that no sale, transfer, assignment or delivery shall be made of any or any material portion of any Purchased Asset if an attempted sale, assignment, transfer or delivery, without the consent of a third party, would constitute a breach or other contravention thereof or in any way adversely affect the rights of Buyer or Seller thereunder (after giving effect to the Sale Order).

(b) Buyer does hereby accept all the right, title and interest of the Seller in, to and under all of the Purchased Assets (except as aforesaid) and Buyer assumes and agrees to pay, perform and discharge promptly and fully when due all of the Assumed Liabilities and to perform all of the obligations of the Seller to be performed under the Assumed Contracts except to the extent liabilities thereunder constitute Excluded Liabilities.

2. This Agreement shall be governed by and construed in accordance with the law of the State of Tennessee, without regard to the conflicts of law rules of such state.

3. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

4. If there is any conflict between this Agreement and the Asset Purchase Agreement, the Asset Purchase Agreement shall control.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

LECTRUS HOLDINGS LLC

By: _____

Name: _____

Title: _____

DRAFT

LECTRUS CORPORATION

By: _____

Name: _____

Title: _____

0131316.0651305 4849-3064-6871v10

DRAFT

EXHIBIT 2

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE
(CHATTANOOGA)**

IN RE:

**LECTRUS CORPORATION, et al.,
Debtors.**

**Jointly Administered Under
Case No. 1:17-bk-15588-NWW**

Chapter 11

ORDER ESTABLISHING BID AND SALE PROCEDURES

THIS MATTER came before the Court for a hearing on January 18, 2018 (the “Bid Procedures Hearing”) upon the *Motion for Order (A) Establishing Bid and Sale Procedures, and (B) Approving Sale of Assets Free and Clear of Liens, Claims and Encumbrances* (the “Sale Motion”).¹ The Court considered the Sale Motion, heard arguments of counsel, and is otherwise familiar with the papers and pleadings in this case. For the reasons stated in open Court, which shall constitute the decision of this Court, the Court finds that cause exists to establish bid and sales procedures for the sales of the Purchased Assets.

¹ Unless otherwise defined herein, capitalized terms shall have the meaning set forth in the Sale Motion.

NOW, THEREFORE, on the record before this Court, and good and sufficient cause appearing therefore,

IT IS HEREBY ORDERED that:

1. The Motion is **GRANTED** in the manner and to the extent provided below. Unless otherwise addressed herein, all objections to the Bidding Procedures considered at the Bid Procedures Hearing not withdrawn or agreed upon are **OVERRULED**.

2. The Debtors are authorized and directed to proceed with the Bidding Procedures and Sale process as set forth in the Sale Motion.

3. The hearing to authorize the Debtors to sell the Purchased Assets pursuant to 11 U.S.C. § 363 (the “Sale Hearing”) shall be held before this Court on **March 8, 2018 at __:__ a.m./p.m.** at the United States Bankruptcy Court for the Eastern District of Tennessee (Chattanooga), 31 East 11th Street, Chattanooga, Tennessee 37402.

4. Any objection to the Sale other than as to the Bidding Procedures authorized by this Order shall be fully preserved and considered at the Sale Hearing.

5. The Bidding Procedures set forth herein are hereby approved. The Sale of the Purchased Assets shall be subject to bidders submitting higher and better bids for the Purchased Assets on the terms set forth herein. The Debtors, in consultation with the Pre-Petition Secured Lenders, the DIP Lenders, and any Committee formed in these cases, will: (i) determine whether any bidder is a Qualified Overbidder; (ii) coordinate the efforts of Qualified Overbidders in conducting their respective due diligence investigations regarding Purchased Assets; (iii) receive offers from Qualified Overbidders; and (iv) negotiate any offer made to purchase the Purchased Assets (collectively, the “Bidding Process”). Any person who elects to participate in the Bidding Process must be a Qualified Overbidder. A “Qualified Overbidder” is a bidder that, after consulting with the Pre-Petition Secured Lenders, the DIP Lenders, and any Committee formed in

these cases, the Debtors determine, in their reasonable, good faith business judgment, is likely and financially able to consummate the purchase of the Purchased Assets. The Stalking Horse Bidder shall be deemed in all instances a Qualified Overbidder.

6. The Assumption Notice attached to the Sale Motion is approved in its entirety. Objections, if any, to the proposed assumption and assignment of the Assumed Contracts, including, but not limited to, objections relating to the Cure Amount and/or adequate assurances of future performance, must (a) be in writing; (b) state with specificity the nature of such objection and the alleged Cure Amount (with appropriate documentation in support thereof); (c) comply with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules of this Court; and (d) be filed with the Court and served upon (so as to be received by) the following parties (collectively, the “Notice Parties”) on or before **March 6, 2018 at 3 p.m.**: (a) counsel to the Debtors, Baker, Donelson, Bearman, Caldwell, & Kerkowitz, P.C., Attn: Justin Sveadas and Erno Lindner, 1800 Republic Center, 633 Chestnut Street, Chattanooga, Tennessee 37450; (b) counsel to the Stalking Horse Bidder, Frost Brown Todd LLC, Attn: Ronald E. Gold and A.J. Webb, 3300 Great American Tower, 301 East Fourth Street, Cincinnati, Ohio 45202 and Frost Brown Todd LLC, Attn: Lynda M. Hill, 105 3rd Avenue South, Suite 1900, Nashville, Tennessee 37201; (c) United States Trustee, Attn: David Holesinger, Trial Attorney, Office of the United States Trustee, 31 East 11th Street, 4th Floor, Chattanooga, Tennessee 37402; and (d) counsel to the Committee, if a Committee is formed in these cases.

7. At the Sale Hearing, the Court will consider the Sale Motion to sell the Purchased Assets to the Stalking Horse Bidder pursuant to the Stalking Horse Asset Purchase Agreement (and any objections properly submitted thereto) unless higher and better offers in the form of Qualifying Overbids are received by the Debtors on or before **March 2, 2018, at 5:00 p.m. (prevailing Eastern Time)** in accordance with the procedures approved below, provided

that no bid will be considered for approval unless it satisfies, at a minimum, each of the following conditions:

(a) A Qualified Overbidder who desires to make a bid must deliver a good faith deposit via wire transfer (or other form acceptable to the Debtors) to the Debtors' counsel at Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, in an amount not less than: (i) \$150,000.00 (the "Good Faith Deposit") along with a copy of the Required Bid Documents (set forth herein) to be received no later than **5:00 p.m. (prevailing Eastern Time) on March 2, 2018** (the "Bid Deadline"). Upon receipt of any Required Bid Documents, counsel for the Debtors shall promptly serve copies of the Required Bid Documents upon all other Qualified Overbidders, the United States Trustee, and the Committee.

(b) Determination of Qualified Overbid Status. A bid received from a Qualified Overbidder will constitute a "Qualified Overbid" only if it includes all of the Required Bid Documents, meets all of the Bid Requirements, and is determined to be a Qualified Overbid by the Debtors. The transaction terms and conditions set forth in the Stalking Horse Asset Purchase Agreement shall be deemed a Qualified Overbid, and the Stalking Horse Bidder a Qualified Overbidder, for all purposes in connection with the Bidding Process, the Auction, and the Sale.

(c) Required Bid Documents. To participate in the Bidding Process, each potential bidder, other than the Stalking Horse Bidder, must deliver to the Debtors the following documents (collectively, the "Required Bid Documents") by the Bid Deadline:

- i. A bona fide written offer stating that: (A) the Qualified Overbidder offers to purchase all or substantially all of the Purchased Assets in cash; (B) the Qualified Overbidder is prepared and intends

promptly to enter into a legally binding purchase and sale agreement for the acquisition of the Purchased Assets on terms and conditions no less favorable to the Debtors than those contained in the Motion, this Order, and the Stalking Horse Asset Purchase Agreement immediately following the conclusion of the Auction; and (C) the Qualified Overbidder's offer is irrevocable until the consummation of a Sale; and

ii. Satisfactory proof of available cash funds in the amount of the Qualified Overbidder's initial bid demonstrating such bidder's ability to close the proposed transaction expeditiously.

(d) Bid Requirements. All bids must satisfy the following requirements (collectively, the "Bid Requirements");

i. Satisfactory proof of available cash funds in the amount of the Qualified Overbidder's initial bid demonstrating such bidder's ability to close the proposed transaction expeditiously.

ii. The Debtors must determine, after consulting with the Pre-Petition Secured Lenders, the DIP Lenders, and any Committee formed in these cases, that the bid (A) is not materially more burdensome or conditional than the transaction with the Stalking Horse Bidder pursuant to the Stalking Horse Asset Purchase Agreement; and (B) has a cash value of not less than \$6,250,000.00;

iii. The bid is on substantially the same or better terms and conditions than those set forth in the Stalking Horse Asset Purchase Agreement, and must be a cash bid;

iv. The bid is not conditioned upon the Bankruptcy Court's approval of any bid protections or contingencies, such as a break-up fee, termination fee, expense reimbursement or similar type of payment;

v. The bid is not conditioned upon the bidder's financing requirements and is accompanied by reasonable evidence (in the form of current bank statements, funds availability letters from an acceptable financial institution, or other evidence of available funding) of the bidder's financial ability to promptly consummate its Qualified Overbid;

vi. The bid acknowledges and represents that the bidder: (A) has had a full opportunity to conduct all due diligence regarding the Purchased Assets prior to making its bona fide, written offer; (B) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Purchased Assets in making its bid; (C) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Purchased Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures or the Debtors' representations and warranties in the Stalking Horse Asset Purchase Agreement; and (D) is not contingent upon any additional due diligence or approvals of any Governmental Authority;

vii. The bid is received by the Bid Deadline.

8. Auction. The Auction Procedures set forth herein and in the Sale Motion are approved, and the Auction, if necessary, shall be conducted on **March 7, 2018 at 10:00 a.m.** at the offices of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, 633 Chestnut Street, Suite 1900, Chattanooga, Tennessee 37450, or such other location as may be determined by the Debtors and communicated to the Qualified Overbidders at least 48 hours prior to the Auction. A Qualified Overbidder may participate in the Auction by telephone with the consent of the Debtors. The Auction Procedures are as follows:

(a) If one or more Qualified Overbids is received by the Bid Deadline, the Debtors will conduct a/an auction on the date indicated above. If no Qualified Overbid (other than that of the Stalking Horse Bidder) is received by the Bid Deadline, the Debtors shall report the same to the Bankruptcy Court, the Stalking Horse Bidder shall be deemed the Successful Bidder for the Purchased Assets, and the Auction shall be cancelled. The Sale Hearing shall proceed to consider any objections to the Sale and other issues related to the Sale.

(b) Only the Debtors and their advisors, the Stalking Horse Bidder and its advisors, Qualified Overbidders who have submitted Qualified Overbids, the United States Trustee, the Committee and its advisors, and the Pre-Petition Secured Lenders, the DIP Lenders, and their advisors will be entitled to participate and be heard at the Auction, and only the Stalking Horse Bidder and Qualified Overbidders will be entitled to make any subsequent Qualified Overbids at the Auction.

(c) During the Auction, bidding will begin at the purchase price stated in the highest and best Qualified Overbid, and will subsequently continue in minimum increments of not less than \$50,000.00 (or figures which are wholly divisible by \$50,000.00), in cash,

higher than the previous Qualified Overbid (the “Overbid Increment”). The Overbid Increment must be in cash with no contingencies.

(d) Bidding at the Auction will continue until such time as the highest and best Qualified Overbid is determined. Upon conclusion of the Auction, the Debtors will review each Qualified Overbid and identify the highest and best offer for the Purchased Assets (the “Successful Bid”) and the second highest and best offer for the purchase of the Purchased Assets (the “Back-up Bid”).

9. Acceptance of Qualified Overbids. At the Sale Hearing, the Debtors will seek approval of the Sale as follows: (i) if no Qualified Overbid is received for the Purchased Assets, then the Stalking Horse Bidder will be deemed the Successful Bidder for the Purchased Assets on the terms and conditions established in the Stalking Horse Asset Purchase Agreement; (ii) if one or more Qualified Overbids are received for the Purchased Assets, then the Stalking Horse Bidder or the Qualified Overbidder shall be deemed the Successful Bidder, as determined by the Debtors; or (iii) to the extent of any default by the Successful Bidder, to the Qualified Overbidder who submitted the Back-up Bid (including, as applicable, the Stalking Horse Bidder).

10. Following the Sale Hearing and approval of the Sale to the Successful Bidder, if such Successful Bidder fails to consummate an approved Sale because of a breach or failure to perform on the part of such Successful Bidder, the Back-up Bid, as disclosed at the Sale Hearing, will be deemed to be the Successful Bid and the Debtors will be authorized, but not required, to consummate the Sale with the Back-up Bidder without further order of the Bankruptcy Court.

11. In the event that the Stalking Horse Bidder is not a Successful Bidder(s), upon entry of the Sale Order, all proceeds from the Sale, net of fees to Livingstone Partners LLC that are approved by this Court, shall be remitted to the Pre-Petition Lenders and the DIP Lenders upon the Closing, without further order of this Court.

12. Return of Purchaser's Deposit and Good Faith Deposit. Good Faith Deposits shall be returned to the respective Overbidder within five (5) business days of the Closing of the Sale.

13. This Bidding Procedures Order shall be effective immediately upon entry pursuant to and no stay of execution, pursuant to Rules 7062, 9014 or Rule 6004(g) of the Federal Rules of Bankruptcy Procedure shall apply with respect to this Bidding Procedures Order.

14. This Court shall retain jurisdiction to: (i) interpret, implement and enforce the terms and provisions of this Order; and (ii) adjudicate any and all issues and/or disputes relating to the Bidding Procedures, the Qualified Overbidders, and/or the Purchased Assets.

IT IS SO ORDERED.

###

PREPARED BY AND APPROVED FOR ENTRY BY:

**BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, PC**

/s/ Justin Sveadas
Justin Sveadas (TN #22305)
Erno Lindner (TN #29273)
1800 Republic Center
633 Chestnut Street
Chattanooga, Tennessee 37450
Telephone: (423) 756-2010
Facsimile: (423) 756-3447
E-mail: jsveadas@bakerdonelson.com
elindner@bakerdonelson.com

EXHIBIT 4

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE
(CHATTANOOGA)

IN RE:

LECTRUS CORPORATION, et al.,
Debtors.

Jointly Administered Under
Case No. 1:17-bk-15588-NWW

Chapter 11

**NOTICE OF (A) POTENTIAL ASSUMPTION AND ASSIGNMENT OF
EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND (B) CURE AMOUNTS**

You are receiving this notice because you may be a counterparty to an executory contract or unexpired lease with the above-captioned debtors (the “Debtors”). Please read this notice carefully as your rights may be affected by the transactions described herein.

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On December 27, 2017, the Debtors filed a *Motion for Order (A) Establishing Bid and Sale Procedures, and (B) Approving Sale of Assets Free and Clear of Liens, Claims and Encumbrances* (the “Sale Motion”) (Docket No. [REDACTED])¹ seeking, among other things, (a) approval of bidding procedures (the “Bidding Procedures”) for the sale of substantially all assets of the Debtors (the “Assets”) and (b) after implementing the bidding procedures, approval of the sale of the Debtors’ Assets to the highest or best qualified bidders (each a “Successful Bidder”).

2. By an order entered on January [REDACTED], 2018 (Docket No. [REDACTED]) (the “Bidding Procedures Order”), the United States Bankruptcy Court for the Eastern District of Tennessee (the “Bankruptcy Court”) among other things, (a) approved the proposed Bidding Procedures and the form of this Notice and (b) scheduled the hearing to approve the sale of the Assets (the “Sale Hearing”) for **March 8, 2018 at [REDACTED] :** [REDACTED] (prevailing Eastern Time). The Bankruptcy Court will consider the sale of the Assets to the Successful Bidder(s) and the assumption and assignment of any related executory contracts and unexpired leases at the Sale Hearing. The Sale Hearing may be adjourned from time to time, for some or all of the Purchased Assets, without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing or by the filing of a notice of adjournment with the Bankruptcy Court prior to the commencement of the Sale Hearing.

3. Pursuant to the Bidding Procedures Order, the Debtors may assume and/or assign to a Successful Bidder(s) one or more of the executory contracts and unexpired leases listed on Exhibit A annexed hereto (collectively, the “Potentially Assigned Agreements” and each a “Potentially Assigned Agreement”) pursuant to section 365 of the Bankruptcy Code. Listing an agreement on the attached Exhibit A does not mean that a Successful Bidder(s)

¹ Unless otherwise defined herein, capitalized terms shall have the meaning set forth in the Sale Motion.

ultimately will identify such agreement as an executory contract or unexpired lease to be assumed and/or assigned.²

4. The Debtors identified on the attached Exhibit A the amounts that the Debtors believe must be paid to cure all prepetition defaults and pay all amounts accrued under the Potentially Assigned Agreements as and to the extent required by sections 365(b)(1) and 365(f)(2)(A) of the Bankruptcy Code (in each instance, the “Cure Costs”) in the event that such agreements are assumed and assigned to a Successful Bidder(s).

5. Objections, if any, to the proposed assumption and assignment of the Assumed Contracts, including, but not limited to, objections relating to the Cure Amount and/or adequate assurances of future performance (an “Assumption and Cure Objection”), must (a) be in writing; (b) state with specificity the nature of such objection and the alleged Cure Amount (with appropriate documentation in support thereof); (c) comply with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules of this Court; and (d) be filed with the Court and served upon (so as to be **actually received** by) the following parties (collectively, the “Notice Parties”) on or before **March 6, 2018 at 3:00 p.m.** (prevailing Eastern Time) (the “Deadline”): (a) counsel to the Debtors, Baker, Donelson, Bearman, Caldwell, & Berkowitz, P.C., Attn: Justin Sveadas and Erno Lindner, 1800 Republic Center, 633 Chestnut Street, Chattanooga, Tennessee 37450; (b) counsel to the Stalking Horse Bidder, Frost Brown Todd LLC, Attn: Ronald E. Gold and A.J. Webb, 3300 Great American Tower, 301 East Fourth Street, Cincinnati, Ohio 45202 and Frost Brown Todd LLC, Attn: Lynda M. Hill, 105 3rd Avenue South, Suite 1900, Nashville, Tennessee 37201; (c) United States Trustee, Attn: David Holesinger, Trial Attorney, Office of the United States Trustee, 31 East 11th Street, 4th Floor, Chattanooga, Tennessee 37402; and (d) counsel to any Committee appointed in these cases.

6. Unless a non-debtor party to a Potentially Assigned Agreement has timely and properly filed and served an objection to the assumption and assignment of its Potentially Assigned Agreement or the Cure Costs, the Cure Costs set forth on Exhibit A shall be binding upon the non-debtor parties to the Potentially Assigned Agreements for all purposes in these cases and shall constitute a final determination of the total Cure Costs required to be paid in connection with the assumption and assignment of the Potentially Assigned Agreements as of the applicable Assumption and Cure Objection Deadline (unless a portion of such costs are paid or satisfied in any manner, in which case the Cure Costs shall be reduced). Unless an Assumption and Cure Objection is filed and served before the Assumption and Cure Objection Deadline, all parties shall (a) be forever barred from objecting to the Cure Costs and from asserting any additional cure amounts with respect to the Potentially Assigned Agreements, and the Debtors and each Successful Bidder(s) shall be entitled to rely solely upon the Cure Costs; and (b) be forever barred and estopped from asserting or claiming against the Debtors or the Successful Bidder(s) that any additional amounts are due or other defaults exist, that conditions to assignment must be satisfied under such Potentially Assigned Agreements or that there is any objection or defense to the assumption and assignment of such Potentially Assigned Agreements.

² The schedule of Potentially Assigned Agreements and related Cure Costs (as defined below) may be amended or supplemented by the Debtors from time to time.

7. Where a non-debtor counterparty to a Potentially Assigned Agreement files an objection asserting a cure amount higher than the proposed Cure Costs (the “Disputed Cure Amount”), then the amount to be paid under section 365 of the Bankruptcy Code with respect to such Disputed Cure Amount will be determined by the Closing or a reasonable time thereafter. All other objections to the proposed assumption and assignment of a Potentially Assigned Agreement will be heard at the Sale Hearing.

8. If you agree with the Cure Costs indicated on Exhibit A, and otherwise do not object to the Debtors’ assignment of your lease or executory contract, you need not take any further action.

9. The Debtors’ decision to assume and assign the Potentially Assigned Agreements is subject to Bankruptcy Court approval and consummation of the sale of the Assets. Accordingly, the Debtors shall be deemed to have assumed (if not previously assumed) and assigned each of the Potentially Assigned Agreements only as of the date of, and effective and conditioned upon, the closing of the sale of the Purchased Assets. Absent such closing, each of the Potentially Assigned Agreements shall neither be deemed assumed nor assigned and shall in all respects be subject to further administration under the Bankruptcy Code except to the extent that such agreements have been assumed or rejected pursuant to a separate order of the Bankruptcy Court.

10. Inclusion of any document on the list of Potentially Assigned Agreements shall not constitute or be deemed to be a determination or admission by the Debtors or any Successful Bidder that such document is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code, and all rights with respect thereto are being expressly reserved.

Dated: March __, 2017

Respectfully submitted,

BAKER, DONELSON, BEARMAN, CALDWELL
& BERKOWITZ, PC

By: /s/

Justin Sveadas (TN #22305)
Erno Lindner (TN #29273)
633 Chestnut Street, Suite 1900
Chattanooga, Tennessee 37450
Phone: 423.209.4184
Fax: 423.752.9633
Email: jsveadas@bakerdonelson.com
elindner@bakerdonelson.com

Proposed Counsel for the Debtors

Exhibit A

Counterparty Name / Address	Description of Potentially Assigned Agreement³	Debtor	Cure Amount⁴
			\$
			\$
			\$
			\$

³ Each Potentially Assigned Agreement shall include all modifications, amendments, supplements, restatements, subleases, or other agreements affecting the Potentially Assigned Agreement, unless otherwise provided.

⁴ The Cure Amount may include amounts owed to third parties under the respective executory contract or unexpired lease, including, without limitation, amounts owed directly to taxing authorities for unpaid taxes.

EXHIBIT 5

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE
(CHATTANOOGA)**

IN RE:

**LECTRUS CORPORATION, et al.,
Debtors.**

**Jointly Administered Under
Case No. 1:17-bk-15588-NWW**

Chapter 11

NOTICE OF AUCTION AND SALE HEARING

PLEASE TAKE NOTICE that on December 7, 2017, the above-captioned debtors (collectively, the “Debtors”) filed voluntary petitions for relief pursuant to chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).

PLEASE TAKE FURTHER NOTICE that on January [REDACTED], 2018, the United States Bankruptcy Court for the Eastern District of Tennessee (the “Bankruptcy Court”) entered the *Order Establishing Bid and Sale Procedures* (Docket No. [REDACTED]) (the “Bid Procedures Order”). The Bid Procedures Order established or authorized: (i) an auction date for the sale of all or substantially all of the Debtors assets; and (ii) a final hearing (the “Sale Hearing”) to approve the sale of those Purchased Assets to the Stalking Horse Bidder, or to any Qualified Overbidder that submits a higher and better offer for the Purchased Assets free and clear of all liens, claims, encumbrances, and other interests (the “Sale Transaction”), as more fully described in the *Motion for Order (A) Establishing Bid and Sale Procedures, and (B) Approving Sale of Assets Free and Clear of Liens, Claims and Encumbrances* (Docket No. [REDACTED]) (the “Sale Motion”).¹

PLEASE TAKE FURTHER NOTICE that, pursuant to the Bid Procedures Order, if the Debtors one or more timely and acceptable Qualified Overbids for the Purchased Assets, the Auction will take place on **March 7, 2018 at 10:00 a.m.** (prevailing Eastern Time) at the offices of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, 633 Chestnut Street, Suite 1900, Chattanooga, Tennessee 37450, or such other location as may be determined by the Debtors and communicated to the Qualified Overbidders at least 48 hours prior to the Auction. Only Qualified Overbidders who submit a Qualified Overbid by the Bid Deadline may bid at the Auction. The Bid Deadline is **March 2, 2018 at 5:00 p.m.** (prevailing Eastern Time).

PLEASE TAKE FURTHER NOTICE that the Sale Hearing to consider approval of the sale of the Purchased Assets to the Successful Bidder(s), free and clear of all liens, claims, encumbrances and other interests in accordance with Bankruptcy Code section 363(f), will be held before the Honorable Nicholas W. Wittenburg at the United States Bankruptcy Court for the Eastern District of Tennessee, Chattanooga, 31 East 11th Street, Chattanooga, Tennessee 37402 on **March 8, 2018 at [REDACTED]:[REDACTED]** (prevailing Eastern Time).

¹ Unless otherwise defined herein, capitalized terms shall have the meaning set forth in the Sale Motion.

PLEASE TAKE FURTHER NOTICE that any objections to the Sale Transaction, if any, must be filed and served so as to be actually received by the Clerk of the Court at 31 East 11th Street, Chattanooga, Tennessee 37402, and the Objection Recipients (as defined below) no later than [REDACTED], 2018 at [REDACTED] (prevailing Eastern Time).

PLEASE TAKE FURTHER NOTICE that the "Objection Recipients" are (a) counsel to the Debtors, Baker, Donelson, Bearman, Caldwell, & Kerkowitz, P.C., Attn: Justin Sveadas and Erno Lindner, 1800 Republic Center, 633 Chestnut Street, Chattanooga, Tennessee 37450; (b) counsel to the Stalking Horse Bidder, Frost Brown Todd LLC, Attn: Ronald E. Gold and A.J. Webb, 3300 Great American Tower, 301 East Fourth Street, Cincinnati, Ohio 45202 and Frost Brown Todd LLC, Attn: Lynda M. Hill, 105 3rd Avenue South, Suite 1900, Nashville, Tennessee 37201; (c) United States Trustee, Attn: David Holesinger, Trial Attorney, Office of the United States Trustee, 31 East 11th Street, 4th Floor, Chattanooga, Tennessee 37402; and (d) counsel to any Committee appointed in these cases.

PLEASE TAKE FURTHER NOTICE THAT UNLESS AN OBJECTION IS TIMELY SERVED AND FILED IN ACCORDANCE WITH THIS NOTICE, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT AND THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE SALE MOTION WITHOUT FURTHER HEARING AND NOTICE.

Dated: January __, 2017

Respectfully submitted,

BAKER, DONELSON, BEARMAN, CALDWELL
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