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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

In re:

NEW ENGLAND MOTOR FREIGHT, INC.,
et al.,

Debtors.¹

Chapter 11

Case No. 19-12809 (JKS)

(Jointly Administered)

DEBTORS' MOTION FOR ORDERS (I)(A) APPROVING BIDDING PROCEDURES AND AUCTION AND (B) SCHEDULING SALE HEARING AND APPROVING NOTICE THEREOF; (II) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF DEBTORS' EASTERN FREIGHT WAYS, INC. AND CARRIER INDUSTRIES, INC.'S ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (III) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (IV) GRANTING RELATED RELIEF

The above-referenced debtors and debtors in possession (collectively, the “**Debtors**”), file this motion (this “**Motion**”) for entry of orders (I)(A) approving bidding procedures and related auction and (B) scheduling a sale hearing and approving notice thereof (the “**Bidding**”

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s taxpayer identification number are as follows: New England Motor Freight, Inc. (7697); Eastern Freight Ways, Inc. (3461); NEMF World Transport, Inc. (2777); Apex Logistics, Inc. (5347); Jans Leasing Corp. (9009); Carrier Industries, Inc. (9223); Myar, LLC (4357); MyJon, LLC (7305); Hollywood Avenue Solar, LLC (2206); United Express Solar, LLC (1126); and NEMF Logistics, LLC (4666).

Procedures Order”); (II) authorizing the sale of substantially all of Debtors’ Eastern Freight Ways, Inc. (“**Eastern**”) and Carrier Industries, Inc.’s (“**Carrier**”) assets (collectively, the “**Assets**”) free and clear of all liens, claims, encumbrances, and other interests; (III) authorizing the assumption and assignment of certain executory contracts and unexpired leases and establishing procedures to determine cure amounts and establishing deadlines for objections with respect thereto; and (IV) granting related relief (the “**Approval Order**”). In support of this Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of New Jersey, dated September 18, 2012. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b).

2. The statutory predicates for the relief requested herein are sections 105(a), 363, 364, 365, 503, 507 and 554 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (as amended, the “**Bankruptcy Code**”) and Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (as amended, the “**Bankruptcy Rules**”), and Rules 6004-1, 6004-2 and 6004-3 of the Local Rules of the United States Bankruptcy Court for the District of New Jersey (as amended, the “**Local Rules**”).

BACKGROUND

3. On February 11, 2019 (the “**Petition Date**”), each of the Debtors filed a voluntary petition with the Court for relief under chapter 11 of the Bankruptcy Code with the intent to commence an orderly wind-down and liquidation of their businesses and assets through the chapter 11 cases (the “**Chapter 11 Cases**”). The Debtors are in possession of their assets as

debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No party has requested the appointment of a trustee or examiner.

4. Factual background relating to the Debtors' businesses, capital structure, and the circumstances leading to the commencement of the Chapter 11 Cases is set forth in detail in the First Day Declaration of Vincent Colistra (the "**First Day Declaration**") which was filed on the Petition Date [Docket No. 22] and is incorporated herein by reference.

FACTS SPECIFIC TO THE RELIEF REQUESTED

5. As discussed in detail in the First Day Declaration, the Debtors commenced the Chapter 11 Cases with the goal of liquidating all of their assets and maximizing value for all constituents. Although the Debtors have commenced the liquidation process, both Eastern and Carrier continue to operate their respective businesses. The Debtors, in their business judgment, have determined that a going concern sale of Eastern and Carrier through an open bidding and auction process is the best way to maximize the value of the Assets.

6. Eastern is a truckload carrier, based in South Brunswick, New Jersey. Eastern was established in 1994 to provide premium truckload services to customers in the Northeast and Mid-Atlantic regions. The company has established a reputation for excellent response time, guaranteed equipment availability, and outstanding on-time performance. All of its vehicles are equipped with the latest satellite technology for enhanced communication, shipment, tracking and increased efficiency. Eastern operates principally within short-to-medium haul traffic lanes. The majority of Eastern's dispatches are for overnight or same-day delivery.

7. Carrier is a dedicated contract carriage services company, providing all aspects of supply chain management and logistical planning.

8. Although the Debtors have marketed the Assets of Eastern and Carrier in the past, given the circumstances leading to the filing of the Chapter 11 Cases, the Assets were not

formally marketed prior to the Petition Date. The Debtors are in the process of finalizing a confidential offering memorandum, setting up a data room and have already commenced the process of reaching out to potentially interested parties in order to move the sale process forward on an expedited timeline.

9. In sum, the Debtors believe that the Sale process set forth herein will allow the continued operations of Eastern and Carrier as a going concern under new ownership post-closing. Given the challenges facing the Debtors leading up to the commencement of the Chapter 11 Cases, the proposed process presents the best option for maximizing the value of these Debtors' estates and stakeholder recoveries.

SUMMARY OF RELIEF REQUESTED

10. The Debtors believe that the solicitation of bids and a sale of the Assets on the timeline proposed herein allow the Debtors to maximize value for all stakeholders while minimizing administrative expenses. During this process, the Debtors will engage with interested parties, and attempt to attract interested parties that will participate in a competitive auction process contemplated by the Bidding Procedures (defined below). The Debtors propose that the hearing to approve the Bidding Procedures be held on **April 8, 2019** (the "**Bid Procedures Hearing**"), with objections to the Bidding Procedures, if any, to be filed on or before **April 3, 2019 at 4:00 p.m.** prevailing Eastern time (the "**Bid Procedures Objection Deadline**"). The Debtors propose that the bid deadline be set for **May 9, 2019 at 4:00 p.m.** prevailing Eastern time (the "**Bid Deadline**"), and that the auction of the Debtors' Assets (the "**Auction**"), if required, be scheduled for **May 14, 2019 at 10:00 a.m.** prevailing Eastern time. The Debtors propose that the Court hold the hearing to approve the sale and enter the Approval Order (the "**Sale Hearing**") on **May 16, 2019** with objections to the relief requested in the Approval Order (other than with respect to the conduct of the Auction), if any, to be filed on or before **May 6,**

2019 at 4:00 p.m. prevailing Eastern time and objections to the conduct of the Auction, if any, to be filed prior to the commencement of the Sale Hearing.

11. In accordance with Local Rule 6004-1(a)(3), the material terms of the proposed sale pursuant to the Template Asset Purchase Agreement are as follows:²

- (1) **Sellers.** Eastern Freight Ways, Inc. and Carrier Industries, Inc.
- (2) **Property to be Sold.** See attached form Template Asset Purchase Agreement at Article 2.1.
- (3) **Date, Time and Place of Sale.** If the Debtors receive one or more Qualified Bids, the Debtors will conduct an Auction on **May 14, 2019 at 10:00 a.m.** prevailing Eastern time at the offices of Gibbons P.C., One Gateway Center, Newark, N.J. 07102, or at such other place and time as the Debtors shall notify all Qualified Bidders and other invitees. The Debtors propose that the Sale Hearing be scheduled for **May 16, 2019.**
- (4) **Purchase Price.** There is no minimum consideration for the Assets provided for in the Template Asset Purchase Agreement.
- (5) **Conditions of the Sale.** The closing of the transactions contemplated by the Template Asset Purchase Agreement are set forth in Article III.
- (6) **Deadline for Approval or Closing of Sale.** Closing must occur by May 31, 2019.
- (7) **Deposit and Forfeiture of Deposit.** The Debtors will require contemporaneously with the execution and submission of a Bid that such Bidder deposit ten (10)

² The following summary of the material terms of the proposed sale and “special provisions” of the Template Asset Purchase Agreement and Approval Order are provided in accordance with Local Rule 6004-1 and are qualified in their entirety by reference to the provisions of the Template Asset Purchase Agreement and Approval Order. In the event of any inconsistencies between these summaries and the actual provisions of the Template Asset Purchase Agreement and Approval Order, the terms of the Template Asset Purchase Agreement and Sale Order shall govern in all respects. Capitalized terms used, but not otherwise defined herein, shall have the meanings ascribed to them in either the Template Asset Purchase Agreement or Approval Order.

percent of the purchase price in an escrow account established by the Debtors. As set forth in Article 2.6 of the Template Asset Purchase Agreement, if the agreement is terminated for any reason, then the deposit shall be forfeited to Debtors or returned to Bidder as provided in Article VIII of the Template Asset Purchase Agreement and Bidding Procedures Order.

(8) **Request for Tax Determination Under Section 1146(b)**. The proposed Sale is not being effectuate pursuant to a plan. Thus, section 1146(b) of the Bankruptcy Code is not applicable.

(9) **Retention/Access to Books and Records**. See attached form Template Asset Purchase Agreement at Article 6.4.

(10) **Assumption and Assignment of Executory Contracts and Leases**. The Template Asset Purchase Agreement provides for bidders to designate executory contracts and unexpired leases that such bidders want assumed and assigned in connection with the Sale.

(11) **Credit Bidding**. The proposed Sale does not involve a credit bid.

In accordance with Local Rule 6004-1(b), the Template Asset Purchase Agreement and/or the Approval Order, as applicable, include the following “special provisions”:

Sale to Insider. The proposed Sale is not to an insider.

Agreements with Management or Key Employees. At the present time, there is no agreement with management or key employees.

Waiver, Release or Satisfaction of any Claim. The Template Asset Purchase Agreement does not include a waiver, release or satisfaction of any claim.

Agreement to Limit Marketing or Not Solicit Competing Offers. None.

Sale or Limitation of Right to Pursue Avoidance Actions. None.

Limitation on Successor Liability. The Approval Order provides that except as set forth in the Template Asset Purchase Agreement, there shall not be any form of successor liability.

Sale Free and Clear. The Sale is free and clear of all Liabilities and Liens.

Relief from Bankruptcy Rules 6004(h) and 6006(d). The Debtors seek a waiver of any applicable stay imposed by the Bankruptcy Rules.

RELIEF REQUESTED

12. By this Motion, the Debtors seek the entry of two orders:

(a) the Bidding Procedures Order substantially in the form attached hereto as Exhibit A, pursuant to sections 105(a) and 363 of the Bankruptcy Code and Bankruptcy Rule 6004, (i) approving the Bidding Procedures attached to the Bidding Procedures Order as Exhibit 1 (the “**Bidding Procedures**”), (ii) approving the notice attached to the Bidding Procedures Order as Exhibit 2 (the “**Notice of Auction and Sale Hearing**”) of the deadline to bid on the Debtors’ Assets, (iii) setting the time, date and place of the Auction if one or more Qualified Bids (defined below) are presented in a manner that conforms to the Bidding Procedures, (iv) scheduling the Sale Hearing on **May 16, 2019**, to consider the entry of the Approval Order; and (v) approving the notice attached to the Bidding Procedures Order as Exhibit 3 (the “**Notice of Assumption and Assignment**”) of the Debtors’ intent to assume, assign, and/or transfer to the Successful Bidder or Back-Up Bidder, the contracts commitments, leases, licenses, permits, purchase orders and any other executory contracts and unexpired leases (collectively, the “**Executory Contracts and Unexpired Leases**”) and the corresponding cure amounts required to be paid in connection with such assumption, assignment and/or transfer;

(b) following the Sale Hearing, the Debtors request the entry of the Approval Order pursuant to Sections 105(a) and 363(b), (f), and (m) of the Bankruptcy Code and Bankruptcy Rule 6004, (i) approving the sale of substantially all of the Debtors’ Assets to the party holding the highest or otherwise best bid for the Assets (the “**Successful Bidder**”) free and clear of all liens, claims, encumbrances, and other interests (other than certain specified assumed liabilities), (ii) authorizing the Debtors to assume and assign to the Successful Bidder the Executory Contracts and Unexpired Leases; and (iii) granting related and ancillary relief.

13. The Debtors further request that the sale process occur in accordance with the following timeline:³

Action	Proposed Deadline
Bid Procedures Objection Deadline	April 3, 2019
Bid Procedures Hearing	April 8, 2019
Sale Objection Deadline and Cure/Assignment Objection Deadline	May 6, 2019
Stalking Horse Bid Deadline/General Bid Deadline	April 12, 2019 for a Stalking Horse Bid May 9, 2019 for all other Bids
Auction	May 14, 2019
Sale Hearing	May 16, 2019
Sale Closing Date	May 31, 2019

I. THE PROPOSED BIDDING PROCEDURES AND AUCTION

14. Given the desire to sell the Assets expeditiously and minimize administrative expenses, on the one hand, and the Debtors desire to ensure a fair and transparent opportunity for all potentially interested parties to participate in the sale process, on the other hand, the Debtors propose that the Bidding Procedures, and related notice and other procedures set forth herein be implemented in connection with the marketing and sale of the Assets.

15. In addition, the Debtors seek the authority, subject to the terms of the Bidding Procedures Order, without the necessity of a further hearing or authorization of the Court in the Debtors’ discretion, to accept a stalking horse bid from a potential bidder (the “**Stalking Horse Bid**”) and enter into a purchase agreement (the “**Stalking Horse Purchase Agreement**”) with such potential bidder (the “**Stalking Horse Bidder**”) if the Debtors determine, in the Debtors’

³ The Debtors, in the exercise of their business judgment, reserve the right to change these sale-related dates in order to maximize the value of the sale of the Assets.

discretion, that entry into such a Stalking Horse Purchase Agreement on such terms and conditions that the Debtors, in the Debtors' discretion, reasonably determine are in the best interests of their estates.

16. As is customary, to enable the Debtors to enter into a Stalking Horse Purchase Agreement, the Debtors foresee that it may be necessary to afford a Stalking Horse Bidder certain bid protections such as a break-up fee and expense reimbursement. To that end, the Debtors seek authority, in their discretion, and without the necessity of a further hearing or authorization of the Court: (i) to agree to pay the Stalking Horse Bidder a break-up fee (the **"Break-Up Fee"**) of up to five percent (3%) of its Stalking Horse Bid as set forth in its Stalking Horse Purchase Agreement and reimbursement of its reasonable and documented out-of-pocket expenses and disbursements not to exceed \$75,000 (**"Expense Reimbursement"** and collectively with the Break-Up Fee, the **"Bid Protections"**), incurred in connection with its due diligence or Stalking Horse Bid if the Stalking Horse Bidder does not become the Successful Bidder at the Auction and (ii) to amend or modify the Bidding Procedures as is necessary to facilitate such Stalking Horse Bid. The Debtors further request that any such Bid Protections which are granted to a Stalking Horse Bidder within the parameters permitted by the Bidding Procedures Order be allowed as administrative expense claims in the Chapter 11 Cases under section 364(c)(1) of the Bankruptcy Code with priority over all expenses of the kind specified in Section 503(b) and 507(b) of the Bankruptcy Code and which shall be payable in cash to a Stalking Horse Bidder from the proceeds of a sale to a Successful Bidder (other than the Stalking Horse Bidder) within seven (7) days of the Debtors' receipt of such proceeds.

17. If the Debtors designate a Stalking Horse Bidder, the Debtors shall within two business (2) days thereof file a notice of such determination with the Court, which notice shall

(i) identify the Stalking Horse Bidder, (ii) set forth the amount of any Break-Up Fee and/or Expense Reimbursement granted to the Stalking Horse Bidder, (iii) include a copy of the Stalking Horse Asset Purchase Agreement, which competing Qualified Bidders (defined below) must then use as the basis to submit their Qualified Bids (defined below), and (iv) shall include modifications to the Bidding Procedures, if any, necessary to account for the Stalking Horse Bid.

18. The Debtors will select the highest or otherwise best Qualified Bid for substantially all of the Assets (which may be the Stalking Horse Bid) to be the starting bid at the Auction. In no event shall any Qualified Bidder, other than a Stalking Horse Purchaser be entitled to seek a break-up fee, expense reimbursement or any similar bidding protections.

19. Within three (3) business days after entry of the Bidding Procedures Order, the Debtors (or their agent) will:

- (i) cause the Notice of Auction and Sale Hearing, attached as Exhibit 2 to the Bidding Procedures Order, and a copy of the Bidding Procedures Order to be served by first class mail upon: (a) the Office of the United States Trustee for the District of New Jersey (the “**U.S. Trustee**”); (b) counsel to the Official Committee of Unsecured Creditors; (c) all parties who are known to assert a security interest, lien, or claim in any of the Assets, if any; (d) all non-Debtor parties to the Executory Contracts and Unexpired Leases and any parties who are known to claim interests therein; (e) all applicable federal, state, and local taxing authorities; (f) all applicable county and state consumer protection agencies; (g) all applicable state attorneys general; (h) all other government agencies required to receive notice under the Bankruptcy Rules; (i) the 30 largest unsecured creditors of the Debtors; (j) the Debtors’ insurance providers; (k) all known parties that have expressed interest to the Debtors’ Assets, within six (6) months prior to the Petition Date and/or since the Petition Date, in purchasing some or all of the Debtors’ Assets, and (l) all parties that have requested or that are required to receive special notice pursuant to Bankruptcy Rule 2002 collectively, the “**Sale Notice Parties**”);
- (ii) serve the Notice of Auction and Sale Hearing on any other party appearing on the Debtors’ creditor matrix (to the extent not served as a Sale Notice Party); and

- (iii) provide electronic notification of this Motion, the Bidding Procedures Order and the Notice of Auction and Sale Hearing via the Court’s electronic case filing (ECF) website.

20. The Debtors believe the proposed Bidding Procedures, which are annexed as Exhibit 1 to the Bidding Procedures Order, will maximize value for the benefit of the Debtors’ stakeholders. The Bidding Procedures contemplate an auction process pursuant to which bids will be subject to higher or otherwise better offers. The auction process contemplated in the Bidding Procedures takes into account competing offers from bidders to enter into a sale transaction. The following is a summary of the significant terms of the Bidding Procedures:⁴

Provision	Description of Provision
Participation Requirements	In order to participate in the bidding process or otherwise be considered for any purpose hereunder, a person interested in entering into a Sale for substantially all of the Assets (a “Potential Bidder”) must first deliver an executed confidentiality agreement in form and substance satisfactory to the Debtors and their counsel. ⁵ Further, in order to qualify to submit a Qualified Bid (as defined below) and participate in the Auction, each Potential Bidder must, if the Debtors so request: (i) deliver to the Debtors the most current audited (if available) and the latest unaudited financial statements and/or such other financial information evidencing the Potential Bidder’s ability to close the Sale within the time period prescribed in the Bidding Procedures Order and Template Asset Purchase Agreement. The Debtors, in their discretion, shall determine whether a Potential Bidder has complied with the foregoing

⁴ This summary is provided in accordance with Rule 6004-2(b) of the Local Rules and is qualified in its entirety by reference to the provisions of the Bidding Procedures. Each capitalized term used and not otherwise defined herein shall have the meaning assigned thereto in the Bidding Procedures. To the extent there exists any inconsistency between this summary and the provisions of the Bidding Procedures, the provisions of the Bidding Procedures shall control.

⁵ To the extent any party executed a confidentiality agreement prior to the entry of an order approving these Bidding Procedures, such party does not need to execute another confidentiality agreement in order to comply with the Bidding Procedures or become a Qualified Bidder.

Provision	Description of Provision
	<p>requirements and has qualified to submit a Qualified Bid and participate in the Auction, and the Debtors shall provide prompt notice of their determination to any such Potential Bidder and counsel for the Official Committee of Unsecured Creditors.</p>
<p>Bid Requirements</p>	<p>To constitute a Qualified Bid, a bid must, among other things:</p> <ul style="list-style-type: none"> A. Be made in writing; B. Be submitted prior to the Bid Deadline; C. Be a bid for all or substantially all of the Assets of both Eastern and Carrier; D. Designate a list of the executory contracts and unexpired leases with respect to which the Potential Bidder seeks assignment from the Debtors; E. Include a binding, definitive and fully executed asset purchase agreement which shall be in form and substance substantially similar to the Form Template Asset Purchase Agreement or Stalking Horse Asset Purchase Agreement, as applicable, and which shall be marked to reflect only those changes required as a condition of such Qualified Bidder's closing the Sale; <u>provided, however</u>, such asset purchase agreement shall not request or entitle such Potential Bidder to any break-up fee, expense reimbursement, or similar type of payment. An asset purchase

Provision	Description of Provision
	<p>agreement, together with its schedules and exhibits, submitted in accordance with these Bidding Procedures shall be referred to herein as a “Qualified Bidder Purchase Agreement”;</p> <p>F. Provide that the purchase price shall be paid in full in cash at the closing of the Sale;</p> <p>G. Provide a good faith cash deposit (the “Good Faith Deposit”) equal to 10% of the Bidder’s proposed purchase price. The Good Faith Deposit shall be paid to such Bidder’s counsel trust account and counsel for such Bidder shall represent in such Bidder’s cover letter or in an email sent to Debtors’ counsel that it is in receipt of the Good Faith Deposit and will hold same in accordance with the Bidding Procedures. The Debtors reserve the right to increase, decrease or waive the Good Faith Deposit for one or more Qualified Bidders in their discretion or to accept an alternative form of consideration in lieu of a Good Faith Deposit. At the conclusion of the Auction, the Good Faith Deposit of the Successful Bidder shall be transferred from counsel’s trust account to a trust account at Gibbons P.C. in accordance with directions to be provided to such Successful Bidder, together with any additional amount such that the final</p>

Provision	Description of Provision
	<p>Good Faith Deposit reflects ten (10%) percent of its final bid at Auction. With respect to the Back-Up Bidder, its Good Faith Deposit shall continue to be held by its counsel in a trust account until such time as the Debtors notify the Back-Up Bidder or its counsel that the Good Faith Deposit can be returned to the Back-Up Bidder. To the extent the Successful Bidder fails to close or otherwise breaches its agreement and the Debtors notify the Back-Up Bidder that they intend to proceed with the final Qualified Bid submitted at Auction by the Back-Up Bidder, the Good Faith Deposit of the Back-Up Bidder shall be transferred to a trust account at Gibbons P.C. in accordance with directions to be provided, together with any additional amounts such that the final Good Faith Deposit reflects ten (10) percent of the Back-Up Bidder's final bid at Auction. All other Qualified Bidders shall be entitled to request the return of their Good Faith Deposits from their counsel at the conclusion of the Auction;</p> <p>H. Provide that such bid shall be open and irrevocable until the earlier of: (a) such bid being determined by the Debtors not to be a Qualified Bid; (b) if such bid is not chosen by the Debtors at the Auction to be the Successful Bid or Back-Up Bid (as each such term is defined below), the date of</p>

Provision	Description of Provision
	<p>entry by the Bankruptcy Court of an order approving the Sale to another Qualified Bidder; (c) if such bid is chosen by the Debtors to be the Successful Bid, the date which is the earlier to occur of: (i) the closing of the Sale to such Successful Bidder, and (ii) five (5) Business Days following the date the order approving the Sale to the Successful Bidder shall have become a final, non-appealable, order (“Final Order”); (d) if such bid is chosen by the Debtors to be the Back-Up Bid, the date which is the earlier to occur of: (i) the date of closing on the Sale to the Successful Bidder, and (ii) twenty-five (25) Business Days following the date the order approving the Sale to the Successful Bidder shall have become a Final Order; <u>provided</u>, that if the Successful Bidder shall fail to close on its purchase of the Purchased Assets during the period set forth above, (x) the Back-Up Bid shall continue to remain open and irrevocable, (y) the Back-Up Bidder, at the Debtors’ discretion, shall be deemed to be the Successful Bidder, and (z) it shall close on the Sale within ten (10) Business Days of becoming the Successful Bidder;</p> <p>I. (i) Include an acknowledgement and representation that the Qualified Bidder has had an opportunity to conduct all due</p>

Provision	Description of Provision
	<p>diligence regarding the Assets prior to submitting its bid and that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or assets in making its bid, and (ii) confirms the Qualified Bidder's completion of all due diligence required by such Qualified Bidder in connection with the Sale and does not include any due diligence contingencies;</p> <p>J. Does not contain any financing contingencies or any other contingencies not set forth in the Stalking Horse Asset Purchase Agreement or Form Template Purchase Agreement, as applicable;</p> <p>K. Provide evidence of authorization and approval from such Qualified Bidder's board of directors (or comparable governing body) evidencing the authority of the Qualified Bidder to make a binding and irrevocable Qualified Bid and to consummate the Sale if such Qualified Bidder is the Successful Bidder or Back-Up Bidder, as such bid may be improved prior to or at the Auction;</p> <p>L. Confirm that the Sale will close no later than May 31, 2019;</p> <p>M. If the Qualified Bidder was formed in whole or part for the purpose of acquiring all or part of the Assets, provides</p>

Provision	Description of Provision
	<p>evidence which is reasonably satisfactory to the Debtors, in their discretion, regarding the major equity holder or sponsor of such Qualified Bidder demonstrating that such Qualified Bidder has, or will have access to, the financial resources needed to consummate the Sale if it becomes the Successful Bidder, and that the use of such resources to consummate the Sale has been authorized and approved by such entity's board of directors (or comparable governing body), provided, that the Debtors reserve the right to limit or waive this requirement for one or more Qualified Bidders in their discretion;</p> <p>N. Certifies that the Qualified Bidder has not, and is not, engaged in any collusion with respect to its bid or the Sale; except that the Debtors may facilitate a submission of a Qualified Bid by one or more unrelated Qualified Bidders or one or more entities may elect to jointly submit a Qualified Bid;</p> <p>O. Is not conditioned on the receipt of any third-party approvals or consents (excluding required Bankruptcy Court approval and required governmental, licensing or regulatory approval or consent, if any) other than third party approvals or consents that are deemed</p>

Provision	Description of Provision
	<p>reasonable, as determined by the Debtors, in their discretion;</p> <p>P. Sets forth the representatives that are authorized to appear and act on behalf of such Qualified Bidder in connection with the proposed transaction and the Auction.</p>
Bid Deadline	April, 12, 2019 for a Stalking Horse Bid or May 9, 2019 at 4:00 p.m. prevailing Eastern Time for all other Bids.
Bidding Increments	<p>After the Bid Deadline, the Debtors shall determine which Qualified Bid or combination of Qualified Bids represent the then-highest or otherwise best bid for the Assets (the “Starting Qualified Bid”). Prior to the commencement of the Auction, to the extent practicable, the Debtors shall distribute copies of the Starting Qualified Bid to each Qualified Bidder, which Starting Qualified Bid shall constitute the Baseline Bid. Bidding shall commence at the Baseline Bid. The first overbid at the Auction (the “Minimum Initial Overbid”) shall be the amount of the Baseline Bid <u>plus</u> (i) the amount of any of the Break-Up Fee and Expense Reimbursement which would be due to any Stalking Horse Bidder if it is not the Successful Bidder if one is so designated by the Debtors, plus (ii) \$100,000. Thereafter, a Qualified Bidder may increase its Qualified Bid in any amount as long as each subsequent bid (each, a “Subsequent Overbid”) exceeds the previous highest bid by at least \$100,000 of additional cash consideration</p>
Modification of the Bidding Procedures	<p>All Qualified Bids, the Auction, and the Bidding Procedures are subject to modification and/or additional terms and conditions as are announced by the Debtors and that are not inconsistent with the Bidding Procedures Order.</p>

Provision	Description of Provision
	<p>The Debtors reserve the right to modify the Bidding Procedures as they may reasonably determine to be in the best interests of their estates.</p>
<p>Closing with Alternative Backup Bidders</p>	<p>At the conclusion of the Auction, the Debtors shall announce the bid or combination of bids made pursuant to the Bidding Procedures Order that represents, in the Debtors’ discretion, the highest or otherwise best offer for the Assets (the “Successful Bid”). Prior to the entry of the Sale Order, the Debtors shall announce the identity of the Qualified Bidder or combination of Qualified Bidders who submitted the Successful Bid at the Auction (the “Successful Bidder”).</p> <p>Following the entry of the Sale Order, if the Successful Bidder fails to consummate the transaction for any reason, the bid of the Qualified Bidder or combination of Qualified Bidders (the “Back-Up Bidder”) that submits the next highest or otherwise best bid or combination of bids (the “Back-Up Bid”) will be deemed the new Successful Bid, and the Debtors will be authorized, but not required, to consummate the transaction with the Back-Up Bidder without further order of the Court.</p>
<p>Bid Protections</p>	<p>None, unless a Stalking Horse Bid is accepted and acceptable protections are agreed upon by the Debtors.</p>
<p>Good Faith Deposits</p>	<p>The Debtors shall return the Good Faith Deposits of all Qualified Bidders, other than the Successful Bidder and the Back-Up Bidder, within five (5) business days following entry by the Bankruptcy Court of an order authorizing the Sale to the Successful Bidder. Subject to <u>Article X</u>, the Good Faith Deposit of the Successful Bidder shall be applied to, and deducted from, the Successful Bidder’s obligations under the Successful Bid at the closing of the Sale. The Good Faith Deposit of the Back-Up Bidder shall be returned to the</p>

Provision	Description of Provision
	<p>Back-Up Bidder within five (5) business days or as soon as practicable thereafter following the date its bid is no longer required to be open and irrevocable as set forth in <u>Article V(I)</u>. If the Back-Up Bidder is subsequently designated by the Debtors as the Successful Bidder as a result of the failure of the Successful Bidder to close on the Sale within the time period set forth in <u>Article V(I)</u>, the Back-Up Bidder shall be deemed to be the Successful Bidder and the Debtors and the Back-Up Bidder shall close the Sale within ten (10) business days of the Back-Up Bidder becoming the Successful Bidder. Subject to <u>Article X</u>, the Good Faith Deposit of the Back-Up Bidder shall be held by the Debtors until such closing and applied to its obligations at the closing of the Sale. The Debtors reserve all of their rights regarding the return of all Good Faith Deposits, and the failure by the Debtors to timely return any deposit(s) shall not serve as a claim for breach of any bid(s) or create any default in favor of any bidder(s).</p>
<p>Stalking Horse</p>	<p>As set forth in the Bidding Procedures and Bidding Procedures Order, the Debtors, in the exercise of their discretion, has the option, but is not required to, designate a Stalking Horse Bidder and grant the Stalking Horse Purchaser the Bid Protections. If the Debtors designate a Stalking Horse Bidder, the Debtors shall within two (2) business days thereof file a notice of such determination with the Bankruptcy Court, which notice shall (i) identify the Stalking Horse Bidder, (ii) set forth the amount of any Break-Up Fee and/or Expense Reimbursement granted to the Stalking Horse Bidder, (iii) include a copy of the Stalking Horse Bidder's Asset Purchase Agreement, which competing Qualified Bidders must then use as the basis to submit their Qualified Bids, and (iv) shall include modifications to the bidding and auction procedures necessary to account for the</p>

Provision	Description of Provision
	Stalking Horse Bidder's Qualified Bid. Notwithstanding that it may contain terms and conditions which may be inconsistent with the above requirements for a Qualified Bid or other provisions of the Bidding Procedures, if the Debtors accept a Stalking Horse Bid, in the Debtors' discretion, such Stalking Horse Bid shall be deemed to constitute a Qualified Bid and such Stalking Horse Bidder shall be deemed to be a Qualified Bidder
Auction	If the Debtors receive only one (1) Bid that is a Qualified Bid, the Debtors, in their discretion, shall (i) notify all Potential Bidders and the Bankruptcy Court in writing that (a) the Auction is cancelled and (b) such Qualified Bid is the Successful Bid, and (ii) the Debtors shall seek authority at the Sale Hearing to consummate the Sale transactions with such Qualified Bidder contemplated by its Qualified Bidder Purchase Agreement. If the Debtors receive two (2) or more Qualified Bids, the Debtors will conduct an auction (the " Auction ").

21. Any bidder that desires to make a bid will deliver written copies of its bid to (a) counsel for the Debtors, Gibbons P.C., One Gateway Center, Newark, N.J. 07102 (Attn: Karen Giannelli, Esq. and Lawrence A Goldman, Esq. (kgiannelli@gibbonslaw.com, lgoldman@gibbonslaw.com) and (b) the Debtors, c/o Phoenix Capital Resources, 110 Commons Court, Chadds Ford, PA 19137 (Attn: Mark Karbiner (mkarbiner@phoenixcapitalresources.com) (collectively, the "**Bid Notice Parties**"), so as to be received not later than 4:00 p.m. prevailing Eastern time on May 9, 2019. As soon as immediately practicable after the Auction, but no later than two (2) business days after conclusion of the Auction, the Debtors shall provide electronic notice of the results of the Auction on the Court's docket.

II. NOTICE OF SALE HEARING AND NOTICE OF ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

22. The Debtors request that the Court hold the Sale Hearing on May 16, 2019. The Debtors have also requested that the Court establish **May 6, 2019 at 4:00 p.m.** (prevailing Eastern time) (other than with respect to the conduct of the Auction, with objections to the conduct of the Auction to be filed prior to the commencement of the Sale Hearing), as the deadline for objections to the sale of the Assets or the relief requested in the Motion with respect to the entry of the Approval Order (the “**Sale Objection Deadline**”). Objections to the Motion and entry of the Approval Order must be in writing, conform to the Bankruptcy Rules and the Local Rules of the Bankruptcy Court, and be filed with the Bankruptcy Court and served upon (i) counsel for the Debtors, Gibbons P.C., One Gateway Center, Newark, N.J. 07102 (Attn: Karen Giannelli, Esq. (kgiannelli@gibbonslaw.com)); and (ii) counsel for the Official Committee of Unsecured Creditors, Lowenstein Sandler LLP, One Lowenstein Drive, Roseland, NJ 07068 (Attn: Mary E. Seymour, Esq (mseymour@lowenstein.com) and Elliott Greenleaf, P.C. (Attn: Rafael X. Zahralddin-Aravena, Esq. (rxza@elliottgreenleaf.com) (collectively, the “**Objection Notice Parties**”) by the Sale Objection Deadline.

23. In order to facilitate the sale of the Assets and the assumption, assignment, and/or transfer of the Executory Contracts and Unexpired Leases to the Successful Bidder contemplated thereunder, within three (3) business days of entry of the Bidding Procedures Order, the Debtors will serve copies of the Bidding Procedures Order and the Notice of Assumption and Assignment substantially in the form attached to the Bidding Procedures Order as Exhibit 3 upon all non-Debtor parties to the Executory Contracts and Unexpired Leases. If the Debtors or Successful Bidder identifies additional executory contracts or unexpired leases that might be assumed by the Debtors and assigned to the Successful Bidder or that were not set forth in the original Notice of

Assumption and Assignment, the Debtors will promptly send a supplemental notice (a **“Supplemental Notice of Assumption and Assignment”**) to the applicable counterparties to such additional executory contracts and unexpired leases.

24. In the Notice of Assumption and Assignment, the Debtors will identify the calculation of the cure amounts that the Debtors believe must be paid to cure all defaults under the Executory Contracts and Unexpired Leases (the **“Cure Amounts”**). If no amount is listed on the Notice of Assumption and Assignment with respect to an Executory Contract or Unexpired Lease, the Debtors believe that there is no Cure Amount applicable to such Executory Contract or Unexpired Lease.

25. The Debtors request that unless the non-Debtor party to an Executory Contract or Unexpired Lease files an objection (the **“Cure Amount/Assignment Objection”**) to (a) its scheduled Cure Amount and/or (b) to the proposed assumption, assignment and/or transfer of such Executory Contract or Unexpired Lease by (i) **May 6, 2019 at 4:00 p.m.** (prevailing Eastern time) (or such later date and time as the Debtors may agree to in writing), or (ii) seven (7) days after service of the relevant Supplemental Notice of Assumption and Assignment only with respect to those non-Debtor parties set forth on the Supplemental Notice of Assumption and Assignment (the **“Cure/Assignment Objection Deadline”**) and serves a copy of the Cure Amount/Assignment Objection so as to be received no later than the Cure/Assignment Objection Deadline by the Objection Notice Parties, then such non-Debtor party shall (i) be forever barred from objecting to the Cure Amount and from asserting any additional cure or other amounts with respect to such Executory Contract or Unexpired Lease and the Debtors shall be entitled to rely solely upon the Cure Amount and (ii) be deemed to have consented to the assumption, assignment and/or transfer of such Executory Contract and Unexpired Lease to the Successful

Bidder or Back-Up Bidder and shall be forever barred and estopped from asserting or claiming against the Debtors, the Successful Bidder, or Back-Up Bidder or any other assignee of the relevant Executory Contract or Unexpired Lease that any additional amounts are due or defaults exist, or conditions to assumption, assignment and/or transfer must be satisfied, under such Executory Contract or Unexpired Lease. Notwithstanding the foregoing, as provided below, each non-Debtor party shall retain the right to object to the assumption, assignment or transfer of its Executory Contract and Unexpired Lease, based solely on the issue of whether the Successful Bidder or Back-Up Bidder can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code.

26. Any objection challenging a Cure Amount must set forth the cure amount being claimed by the objecting party (the **“Claimed Cure Amount”**) and include appropriate documentation in support thereof. Upon receipt of a Cure Amount/Assignment Objection, the Debtors request that it be granted the authority, but not direction, to resolve any Cure Amount/Assignment Objection by mutual agreement with the objecting counterparty to any Executory Contract or Unexpired Lease without further order of the Court. In the event that the Debtors and any objecting party are unable to consensually resolve any Cure Amount/Assignment Objection, the Debtors will request that the Court resolve such Cure Amount/Assignment Objection at (a) the Sale Hearing or (b) at such other date as the Court may designate, provided that if the subject Executory Contract or Unexpired Lease is assumed and assigned prior to resolution of any Cure Objection, the Claimed Cure Amount asserted by the objecting party (or such lower amount as may be fixed by the Court) shall be deposited by Successful Bidder to be held in an account maintained by the Debtors or such other person as the Court may direct pending further order of the Court or mutual agreement of the parties.

27. The Debtors, the Successful Bidder or the Back-Up Bidder, as the case may be, may determine to exclude any Executory Contract or Unexpired Lease from the list of Executory Contracts and Unexpired Leases to be assumed and assigned under the Purchase Agreement no later than one (1) business day prior to the Sale Hearing, or, if the Court determines at any hearing on a Cure Amount/Assignment Objection that the applicable cure amount for such contract is greater than the Cure Amount proposed by the Debtors, no later than five (5) business days following the Court's determination. The non-Debtor party or parties to any such excluded contract or lease will be notified of such exclusion by written notice mailed promptly after such a determination.

28. Promptly after the conclusion of the Auction, the Debtors will serve a notice identifying the Successful Bidder and Back-Up Bidder (the "**Notice**") to the non-Debtor parties to the Executory Contracts and Unexpired Leases that have been identified in such Successful Bid and Back-Up Bid. Objections of any Non-Debtor party to an Executory Contract or Unexpired Lease related solely to the identity of and adequate assurance of future performance by the Successful Bidder must (x) be in writing; (y) state with specificity the nature of such objection, and (z) be filed with the Court and properly served on the Objection Notice Parties so as to be received no later than 4:00 p.m. (prevailing Eastern Time) on May 15, 2019 (the "**Adequate Assurance Objection Deadline**"); provided, however, that in the event the Debtors obtain a Stalking Horse Bid and provide notice of the identity of the Stalking Horse Bidder prior to the Sale Objection Deadline, any objection of a Non-Debtor party to an Executory Contract or Unexpired Lease related to the Stalking Horse Bid (including, with respect to the identity of and adequate assurance of future performance provided by the Stalking Horse Bidder) must be filed as a Cure Amount/Assignment Objection by the Cure/Assignment Objection Deadline.

29. The Successful Bidder or Back-Up Bidder, as the case may be, shall work with any objecting parties to resolve any disputes and/or concerns regarding the Successful Bidder or Back-Up Bidder's ability to provide adequate assurance of future performance. If, however, any disputes cannot be resolved, either party may seek a determination from this Court at the Sale Hearing (or such later date as fixed by the Court) solely on the issue of whether the Successful Bidder can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code.

BASIS FOR RELIEF REQUESTED

I. AUTHORIZING BIDDING PROCEDURES AND AUCTION

30. Section 363(b)(1) of the Bankruptcy Code provides in relevant part that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Further, pursuant to section 105(a) of the Bankruptcy Code, the “court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

31. Under applicable case law, in this and other circuits, if a debtor's proposed use of its assets pursuant to section 363(b) of the Bankruptcy Code represents a reasonable business judgment on the part of the debtor, such use should be approved. *See, e.g., In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 147 (3d Cir. 1986); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 175-76 (D. Del. 1991) (holding that the following non-exclusive list of factors may be considered by a court in determining whether there is a sound business purpose for an asset sale: “the proportionate value of the asset to the estate as a whole; the amount of elapsed time since the filing; the effect of the proposed disposition of [sic] the future plan of reorganization; the amount of proceeds to be obtained from the sale versus appraised values of the property; and whether the asset is decreasing or increasing in value”). *See also Myers v. Martin (In re Martin)*, 91 F.3d 389,

395 (3d Cir. 1996) (citing *Fulton State Bank v. Schipper (In re Schipper)*, 933 F.2d 513, 515 (7th Cir. 1991)) (noting that the Court defers to the trustee’s judgment so long as there is a legitimate business justification); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983) (“The rule we adopt requires that a judge determining a § 363(b) application expressly find from the evidence presented before him at the hearing a good business reason to grant such an application.”); *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (“Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.”). Thus, if a debtor’s actions satisfy the business judgment rule, then the transaction in question should be approved under section 363(b)(1). Indeed, when applying the “business judgment” standard, courts show great deference to a debtor’s business decisions. *See Pitt v. First Wellington Canyon Assocs. (In re First Wellington Canyon Assocs.)*, No. 89 C 593, 1989 WL 106838, at *3 (N.D. Ill. Sept. 8, 1989) (“Under this test, the debtor’s business judgment . . . must be accorded deference unless shown that the bankrupt’s decision was taken in bad faith or in gross abuse of the bankrupt’s retained discretion.”).

32. The “sound business reason” test requires a trustee or debtor in possession to establish four elements: (1) that a sound business purpose justifies the sale of assets outside the ordinary course of business; (2) that accurate and reasonable notice has been provided to interested persons; (3) that the trustee or the debtor in possession has obtained a fair and reasonable price; and (4) that the trustee or debtor in possession acted in good faith. *Abbotts Dairies*, 788 F.2d 143; *Del. & Hudson Ry.*, 124 B.R. at 176; *In re Titusville Country Club*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); *In re Sovereign Estates, Ltd.*, 104 B.R. 702, 704 (Bankr.

E.D. Pa. 1989); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987); *see also Stephens Indus. Inc. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986); *Lionel*, 722 F.2d at 1071.

33. In this case, as set forth more fully herein, the Debtors submit that the decision to proceed with the marketing in accordance with the Bidding Procedures and entry into a sale transaction with respect to the Assets related thereto is based upon sound business judgment and should be approved. Ample business justification exists to support the decision to sell the Debtors' Assets pursuant to the Bidding Procedures, thereby satisfying the first prong of *Abbotts Dairies*. The sale of the Debtors' Assets presents the best opportunity to maximize value for their estates, and the process for marketing and selling the assets described in the Bidding Procedures presents the best method by which the Debtors can promote a competitive sale process as well as provide interested parties with accurate and reasonable notice of the sale. The Bidding Procedures allow the Debtors to conduct the Auction in a controlled, fair and open fashion that will encourage participation by financially capable bidders who demonstrate the ability to close a transaction, thereby increasing the likelihood that the Debtors will receive the best possible consideration for the Assets.

34. In addition, the notices described herein and in the Bidding Procedures Order are designed to provide adequate notice to all potentially interested parties. Accordingly, the proposed sale of the Debtors' Assets satisfies the second prong of the *Abbotts Dairies* standard.

35. The Bidding Procedures are also designed to maximize the value received for the Debtors' Assets. The Debtors respectfully submit that the relief sought by this Motion is reasonably calculated to maximize value for the benefit of the Debtors and their stakeholders. The process proposed by the Debtors allows for a timely Auction while providing bidders ample time and information to submit a bid. The Bidding Procedures are designed to ensure that the

Debtors' Assets will be sold for the highest or otherwise best possible price. The Debtors are permitting prospective purchasers to bid on the Assets, thereby subjecting the proposed sale to a market check through the solicitation of competing bids in a court-supervised auction process. Accordingly, the Debtors and all parties in interest can be assured that the consideration received for the Assets will be fair and reasonable, and therefore the third prong of the *Abbotts Dairies* standard is satisfied. As discussed below, the "good faith" prong of the *Abbotts Dairies* standard is also satisfied here.

A. The Bidding Procedures Should be Approved

36. As noted above, the paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. To that end, courts uniformly recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and therefore are appropriate in the context of bankruptcy sales.

37. The Debtors believe that the Bidding Procedures will establish the parameters under which the value of the Assets may be tested at an auction and through the ensuing Sale Hearing. Such procedures will increase the likelihood that the Debtors' creditors will receive the greatest possible consideration for the Assets because they will ensure a competitive and fair bidding process. They also allow the Debtors to undertake an auction in as expeditious and efficient manner as possible, which the Debtors believe is essential to maximizing the value of the Debtors' estates for their creditors.

38. The Debtors also believe that the proposed Bidding Procedures (including the proposed bid protections) will promote active bidding from seriously interested parties and will dispel any doubt as to the best and highest offer reasonably available for the Debtors' Assets. In particular, the proposed Bidding Procedures will allow the Debtors to conduct an auction in a controlled, fair, and open fashion that will encourage participation by financially capable bidders

who demonstrate the ability to close a transaction. Further, the Bidding Procedures provide the Debtors with the opportunity to consider all Qualified Bids and to select, in their reasonable business judgment, and after consultation with their professionals, the highest and best offer(s) for the Assets. Moreover, the Bidding Procedures provide the Debtors with the flexibility to modify the Bidding Procedures, if necessary, to maximize value for the Debtors' estates.

39. In sum, the Debtors believe that the Bidding Procedures will encourage bidding for the Assets and are consistent with the relevant standards governing auction proceedings and bidding incentives in bankruptcy proceedings. Accordingly, the proposed Bidding Procedures are reasonable, appropriate, and within the Debtors' sound business judgment.

B. The Form and Manner of Notices Should be Approved

40. Under Bankruptcy Rule 2002(a) and (c), the Debtors are required to notify their creditors of the Auction and the sale, including a disclosure of the date, time, and place of the Auction, the terms and conditions of the sale, the date, time, and place of the Sale Hearing, and the deadline for filing any objections to the relief requested herein. Within three (3) days of entry of the Bidding Procedures Order, the Debtors will serve the Notice of Auction and Sale Hearing by first class mail upon the Sale Notice Parties.

41. The Debtors submit that the form of Notice of Auction and Sale Hearing, substantially in the form attached as Exhibit 2 to the Bidding Procedures Order, is reasonably calculated to provide timely and adequate notice of the proposed Sale, the Bidding Procedures, the Auction, and the Sale Hearing to the Debtors' creditors and all other parties-in-interest that are entitled to notice, as well as those parties that have expressed a bona fide interest in acquiring the Debtors' Assets. Accordingly, the Debtors request that the Court approve the notice procedures set forth in this Motion, including the form and manner of service of the Notice of

Auction and Sale Hearing, and that no other or further notice of the Sale, the Bidding Procedures or the Auction is required.

II. APPROVAL OF THE SALE IS WARRANTED UNDER SECTION 363 OF THE BANKRUPTCY CODE

42. The Debtors, exercising their business judgment and in consultation with their advisors and key constituents, have determined that it is in the best interests of the Debtors, their estates, creditors, and other parties-in-interest to conduct a sale of the Assets. Based on applicable precedent, the Court should authorize the Debtors to do so as set forth herein in order to enable the estates to recover as much as possible the liquidation of the Assets as a going concern.

A. The Proposed Schedule for the Sale Hearing and Applicable Deadlines is Reasonable and Justified

43. The Debtors are currently liquidating all of their assets, including the Assets subject to this Motion. In order to facilitate distributions to creditors, the sooner the Debtors can consummate a sale of the Assets, the sooner the Debtors can finalize their liquidation process and distribute funds to creditors. Moreover, delays in the sale process described herein may cause the Debtors to convert to chapter 7 and cease operations – causing their assets to become virtually worthless.

44. The Debtors believe that it is crucial that they consummate the Sale on their proposed timeline to maximize value for the Debtors' estates while minimizing administrative expenses. Thus, the Debtors respectfully request that the Court hold the Sale Hearing on May 16, 2019. The Debtors propose to consummate the Sale immediately following the Sale Hearing. Thus, time is of the essence to preserve and maximize the value of the Debtors' Assets.

45. In evaluating proposed expedited sales under section 363 of the Bankruptcy Code, courts have considered debtors' dwindling cash positions, whether an expedited sale is necessary

to preserve value, and the number of likely potential buyers. *See In re Tempo Tech. Corp.*, 202 B.R. 363, 370 (D. Del. 1996) (upholding a bankruptcy court's authorization of a debtor's sale of assets on an expedited basis where "the expedited sale was necessary to preserve the value of the Debtor's assets," noting the debtor's dwindling liquidity and that there was a single buyer willing to negotiate purchase terms). *See also In re Titusville Country Club*, 128 B.R. 396, 397 (Bankr. W.D. Pa. 1991) (allowing a sale of country club assets on an expedited basis where timing considerations were based on the seasonal nature of the debtor's business).

46. As set forth in the First Day Declaration, ample business reasons exist for conducting the sale on the timeline set forth herein. As previously described to the Court, the Debtors and their advisors have analyzed exhaustively the Debtors' business and various strategic alternatives and determined that a sale of the Debtors' Assets provides the most likely path to maximize recoveries for the Debtors' estates, their creditors and other parties-in-interest. Moreover, a sale of the assets on the timeline set forth herein will maximize the possibility of a recovery for the Debtors' creditors while minimizing the administrative expenses of the estates by ensuring an appropriate post-petition marketing process to reengage prior interested parties (and attempt to identify new interested parties). If the Debtors are required to delay consummation of a sale of the Assets, the estates would suffer significant detriment from the resulting delay, added post-petition expenses, and would likely be forced to convert these cases to chapter 7 – eliminating any possibility for a value maximizing going-concern sale of the Assets.

B. Sale of Assets Should Be Free and Clear of Liens, Claims and Encumbrances

47. The Debtors request authority to sell the Assets free and clear of all liens, claims, encumbrances (other than certain assumed liabilities) and other interests in accordance with section 363(f) of the Bankruptcy Code, with any such liens, claims, encumbrances, and other interests on or in the assets attaching to the consideration received in the same order or priority and with the same force, validity and effect as such liens, claims, encumbrances, and other interests had with respect to such Assets prior to the sale.

48. Section 363(f) of the Bankruptcy Code allows a debtor to sell property “free and clear of any interest in such property of an entity other than the estate” if one of the following conditions is met:

- (a) applicable nonbankruptcy law permits the sale of such property free and clear of such interest;
- (b) the party asserting the lien, claim or interest consents to the sale;
- (c) the interest is a lien and the purchase price for the property is greater than the aggregate amount of all liens on the property;
- (d) the interest is the subject of a bona fide dispute; or
- (e) such entity could be compelled to accept a money satisfaction of such claim.

11 U.S.C. § 363(f); *see also In re Elliott*, 94 B.R. 343, 345 (E.D. Pa 1988) (noting that section 363(f) is written in the disjunctive, thereby allowing sales “free and clear” if any one of the subsections is met).

49. As noted above, the Debtors do not believe any prepetition creditor other than one or more lenders who have a security interest in certain rolling stock, has a security interest in the Assets. The Debtors believe that the proposed Sale will generate more than sufficient proceeds to satisfy the claims of the Debtors’ existing lenders who are determined to possess valid liens on

the Assets and that they will otherwise agree to the Sale. In addition, all parties known to have asserted a lien or other encumbrance on the Assets will receive notice of the Sale. To the extent they have not objected by the Sale Objection Deadline, they will be deemed to have consented to the Sale free and clear of all Liens, Claims and other Liabilities (except as otherwise provided in the Stalking Horse Asset Purchase Agreement or other definitive purchase agreement) pursuant to section 363(f)(2). Further, where consent is not obtained, a sale free and clear can proceed pursuant to either sections 363(f)(3) and 363(f)(5) of the Bankruptcy Code because the relevant lien or other encumbrances will attach to the proceeds of the Sale with the same validity, priority, and force and effect as such lien or encumbrance had immediately prior to the closing of the Sale, and/or the Debtors will establish at the Sale Hearing that the relevant creditors can be compelled to accept a monetary satisfaction of their respective claims. Accordingly, section 363(f) authorizes the Sale of the Assets free and clear of all Liens, Claims and other Liabilities (except as otherwise provided in the Stalking Horse Asset Purchase Agreement or other definitive purchase agreement).⁶

50. The Debtors further submit that it is appropriate to sell the Assets free and clear of successor liability relating to the purchased Assets. Such limitations on successor liability will ensure that the Successful Bidder is protected from any claims or lawsuits premised on the theory that the Successful Bidder is a successor in interest to one or more of the Debtors. If such relief is not granted, the purpose of a “free and clear” sale of assets under section 363 of the Bankruptcy Code could be frustrated by the potential for claimants to thereafter use the transfer of assets as a basis to assert claims against the Successful Bidder arising from the Debtors’ pre-sale conduct. Moreover, without such assurances, the Debtors would run the risk that potential

⁶ The Debtors reserve all rights to argue at a hearing on the Motion that they can satisfy any one of the provisions set forth in section 363(f) of the Bankruptcy Code in connection with the Sale.

bidders may not enter the Auction or, if they did, would do so with reduced bid amounts. Under section 363(f) of the Bankruptcy Code, potential purchasers are entitled to know that the Debtors' Assets are not infected with latent claims that will be asserted against the purchaser after the proposed transaction is completed.

51. Section 363(f) of the Bankruptcy Code provides for the sale of assets "free and clear of any interests." Although the term "any interests" is not defined in the Bankruptcy Code, *Folger Adam Security v. DeMatteis/MacGregor JV*, 209 F.3d 252, 257 (3d Cir. 2000), the Third Circuit specifically addressed the scope of that term in *In re Trans World Airlines, Inc.*, 322 F.3d 283, 288-89 (3d Cir. 2003). The Third Circuit observed that while some courts have "narrowly interpreted interests in property to mean only *in rem* interests in property," the trend in modern cases is toward "a more expansive reading of 'interests in property' which 'encompasses other obligations that may flow from ownership of the property.'" *Id.* at 289 (citing 3 *Collier on Bankruptcy* 15th Ed. Rev., ¶ 363.06[1] (L. King, 15th rev. ed. 1988)). As determined by the Fourth Circuit in *In re Leckie Smokeless Coal Co.*, 99 F.3d 573, 581-582 (4th Cir. 1996), a case cited with approval and extensively by the Third Circuit in *Folger, supra*, the scope of section 363(f) is not limited to *in rem* interests. Thus, the Third Circuit in *Folger* stated that *Leckie* held that the debtors "could sell their assets under § 363(f) free and clear of successor liability that otherwise would have arisen under federal statute." *Folger*, 209 F.3d at 258.

52. Courts have consistently held that a buyer of a debtor's assets pursuant to a section 363 sale takes such assets free and clear from successor liability relating to the debtor's business. *See, e.g., In Matter of Motors Liquidation Co.*, No. 15-2844-BK(L), 2016 WL 3766237 (2d Cir. July 13, 2016), *12, *13 ("We agree that successor liability claims can be 'interests' when they flow from a debtor's ownership of transferred assets" and holding that "a bankruptcy

court may approve a § 363 sale ‘free and clear’ of successor liability claims if those claims flow from the debtor’s ownership of the sold assets. Such a claim must arise from a (1) right to payment (2) that arose before the filing of the petition or resulted from pre-petition conduct fairly giving rise to the claim”); *In re Chrysler LLC*, 405 B.R. 84, 111 (Bankr. S.D.N.Y. 2009) (“[I]n *personam* claims, including any potential state successor or transferee liability claims against New Chrysler, as well as in rem interests, are encompassed by section 363(f) and are therefore extinguished by the Sale.”); *The Ninth Avenue Remedial Group v. Allis-Chalmers Corp.*, 195 B.R. 716, 732 (Bankr. N.D. Ind. 1996) (stating that a bankruptcy court has the power to sell assets free and clear of any interest that could be brought against the bankruptcy estate during the bankruptcy).

53. For these reasons, the Successful Bidder should not be liable under any theory of successor liability relating to the purchased Assets, but instead, should hold the purchased Assets free and clear of all Liens, Claims and other Liabilities (except as otherwise provided in the Stalking Horse Asset Purchase Agreement or other definitive purchase agreement), including successor liability claims.

C. The Successful Bidder Should be Granted the Protections of Section 363(m) of the Bankruptcy Code

54. As will be set forth in further detail at the Sale Hearing, the Debtors also maintain that the Successful Bidder arising from the Auction, is or would be entitled to the protections afforded by section 363(m) of the Bankruptcy Code.

55. Specifically, section 363(m) of the Bankruptcy Code provides that:

[t]he reversal or modification on appeal of an authorization under subsection (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).

56. While the Bankruptcy Code does not define “good faith,” the Third Circuit in *Abbotts Dairies* held that:

[t]he requirement that a purchaser act in good faith . . . speaks to the integrity of his conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a purchaser’s good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders

788 F.2d at 147 (citations omitted); *see generally Marin v. Coated Sales, Inc. (In re Coated Sales, Inc.)*, No. 89-3704 (KMW), 1990 WL 212899, at * 2 (S.D.N.Y. Dec. 13, 1990) (holding that a party, to show lack of good faith, must demonstrate “fraud, collusion . . . or an attempt to take grossly unfair advantage of other bidders”); *see also In re Sasson Jeans, Inc.*, 90 B.R. 608, 610 (S.D.N.Y. 1988) (*quoting In re Bel Air Assocs., Ltd.*, 706 F.2d 301, 305 (10th Cir. 1983)); *In re Pisces Leasing Corp.*, 66 B.R. 671, 673 (E.D.N.Y. 1986) (examining facts of each case, concentrating on “integrity of [an actor’s] conduct during the sale proceedings” (*quoting In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978))).

57. In addition, as will be set forth in further detail at the Sale Hearing, the Debtors will negotiate with the Successful Bidder without collusion, in good faith, and from arm’s-length bargaining positions, with give and take on both sides. Further, neither the Debtors nor the Successful Bidder will engage in any conduct that would cause or permit the purchase agreement to be avoided. Under the circumstances, this Court will have a sufficient factual and legal basis to find that the Successful Bidder is entitled to all of the protections of section 363(m) of the Bankruptcy Code.

D. The Court Should Approve Procedures Relating to the Assumption and Assignment of Executory Contracts and Unexpired Leases

58. The Debtors respectfully submit that the Court should approve procedures relating to the assumption and assignment of Executory Contracts and Unexpired Leases. In assuming and assigning the Executory Contracts and Unexpired Leases, the Debtors intend to comply with the provisions of Bankruptcy Code Section 365(f)(2). Section 365(f)(2) of the Bankruptcy Code provides, in pertinent part, that:

The [debtor] may assign an executory contract or unexpired lease of the debtor only if -

- (A) the [debtor] assumes such contract or lease in accordance with the provisions of this section; and
- (B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. § 365(f)(2).

59. Under Bankruptcy Code section 365(a), a debtor, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor. 11 U.S.C. § 365(a). Bankruptcy Code section 365(b)(1), in turn, codifies the requirements for assuming an unexpired lease or executory contract of a debtor. This subsection provides:

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

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

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

11 U.S.C. § 365(b)(1).

60. Section 365(b) of the Bankruptcy Code requires the debtor to cure any defaults under the contract or provide adequate assurance that it will promptly cure such defaults. If there has been a default, the debtor must also provide adequate assurance of future performance under the contract.

61. With respect to adequate assurance of future performance, the meaning of adequate assurance of future performance depends on the facts and circumstances of each case, but should be given practical, pragmatic construction. *See In re Dura Auto. Sys.*, No. 06-11202 (KJC), 2007 Bankr. LEXIS 2764, at *274 (U.S. Bankr. D. Del. Aug. 15, 2007) (“[t]he meaning of adequate assurance of future performance depends on the facts and circumstances of each case, but should be given practical, pragmatic construction”) (internal quotations omitted).

62. Among other things, adequate assurance may be provided by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. *See, e.g., Dura Auto. Sys.*, No. 06-11202 (KJC), 2007 Bankr. LEXIS at *274; *In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (finding adequate assurance where a debtor’s proposed assignee’s “financial resources” and experience as a successful restaurateur “indicate “that the Landlord is adequately assured that the rent will be paid”).

63. The Debtors will demonstrate facts at the Sale Hearing to show the financial wherewithal and the Successful Bidder’s willingness and ability to perform under the Executory Contracts and Unexpired Leases. The Sale Hearing will therefore provide the Court and the other interested parties the opportunity to evaluate and, if necessary, challenge the ability of the Successful Bidder to provide adequate assurance of future performance under the Executory

Contracts and Unexpired Leases, as required under Bankruptcy Code section 365(b)(1)(C). The Court should therefore authorize the Debtors to assume and assign the Executory Contracts and Unexpired Leases as set forth herein.

64. The Debtors also request that the Court include in the Approval Order provisions barring non-Debtor parties to Executory Contracts and Unexpired Leases assumed and assigned under such order, from: (i) asserting any default, loss, or liability against the assignee of such contract based on any event or circumstance arising prior to the date of assignment; or (ii) objecting to the assumption and assignment of its Executory Contract or Unexpired Lease, unless the non-Debtor party timely objects to this Motion.

65. The Debtors believe that the foregoing procedures provide counterparties to affected contracts notice and a reasonable opportunity to protect their individual interests and should be approved.

III. REQUEST FOR IMMEDIATE RELIEF AND WAIVER OF STAY

66. The Debtors request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” As set forth above and in the First Day Declaration, time is of the essence and it is imperative that the Debtors be able to consummate a sale on the timeline proposed. In order to maximize the value of the Assets and minimize the estates’ unnecessary administrative expenses, the Debtors believe a waiver of the 14-day stay imposed by Bankruptcy Rules 6004(h) and 6006(d), to the extent that they apply, is in the best interest of the Debtors’ estates and stakeholders.

IV. WAIVER OF MEMORANDUM OF LAW

67. The Debtors respectfully request that the Court waive the requirement to file a separate memorandum of law pursuant to D.N.J. LBR 9013-1(a)(3) because the legal basis upon which the Debtors rely is incorporated herein and this Motion does not raise any novel issues of law.

V. NO PRIOR REQUEST

68. No prior request for the relief sought herein has been made to this Court or to any other court.

NOTICE

69. Notice of this Motion will be provided to: (a) the U.S. Trustee; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the Official Committee of Unsecured Creditors; (d) all known holders of liens upon the Debtors' assets; (e) all known parties that have expressed an interest in purchasing the Debtors' assets; (f) the Internal Revenue Service; (g) the United States Department of Justice; (h) the Securities and Exchange Commission; (i) the New Jersey Division of Taxation Compliance and Enforcement - Bankruptcy Unit; (j) the Office of the Attorney General of the State of New Jersey, Division of Law; (k) the United States Attorney's Office for the District of New Jersey; and (l) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors respectfully submit that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtors respectfully request that the Court enter the Bidding Procedures Order and Approval Order, granting the relief requested in this Motion and such other and further relief as may be just and proper.

Dated: March 25, 2019

Respectfully submitted,

GIBBONS P.C.

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and Debtors-in-Possession*

EXHIBIT A

UNITED STATES BANKRUPTCY COURT FOR
THE DISTRICT OF NEW JERSEY
Caption in compliance with D.N.J. LBR 9004-1

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and Debtors-in-Possession*

In re:

NEW ENGLAND MOTOR FREIGHT, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 19-12809 (JKS)

(Jointly Administered)

ORDER (I) APPROVING BIDDING PROCEDURES IN CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL ASSETS OF DEBTORS' EASTERN FREIGHT WAYS, INC. AND CARRIER INDUSTRIES, INC.; (II) SCHEDULING AN AUCTION AND HEARING TO CONSIDER THE SALE OF ASSETS; AND (III) APPROVING THE FORM AND MANNER OF NOTICE THEREOF

The relief set forth on the following pages, numbered two (2) through and including fifteen (15), is hereby **ORDERED**.

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor's taxpayer identification number are as follows: New England Motor Freight, Inc. (7697); Eastern Freight Ways, Inc. (3461); NEMF World Transport, Inc. (2777); Apex Logistics, Inc. (5347); Jans Leasing Corp. (9009); Carrier Industries, Inc. (9223); Myar, LLC (4357); MyJon, LLC (7305); Hollywood Avenue Solar, LLC (2206); United Express Solar, LLC (1126); and NEMF Logistics, LLC (4666).

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Debtors: New England Motor Freight, Inc., *et al.*

Case No.: 19-12809 (JKS)

Caption: Order (I) Approving Bidding Procedures in Connection with the Sale of Substantially All Assets of Debtors' Eastern Freight Ways, Inc. and Carrier Industries, Inc.; (II) Scheduling an Auction and Hearing to Consider the Sale of Assets; and (III) Approving Form and Manner of Notice Thereof

Upon the motion (the “**Motion**”)² of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”), pursuant to sections 105(a), 363, 365, 503, 506, 507 and 552 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rules 6004-1, 6004-2 and 6004-3 of the Local Rules of the United States Bankruptcy Court for the District of New Jersey (the “**Local Rules**”), for entry of an order (this “**Bidding Procedures Order**”): (i) approving bidding procedures in connection with the sale of substantially all Assets of Debtors' Eastern Freight Ways, Inc. and Carrier Industries, Inc.; (ii) scheduling an auction and a hearing to consider the sale of Assets, (iii) approving the form and manner of notice thereof; and (iv) granting related relief; and the Court having considered the Motion and all exhibits, objections, and other papers filed in connection therewith; and the Court having determined that the relief provided herein is in the best interest of the Debtors, their estates, creditors and other parties in interest; and due and adequate notice of the Motion having been given under the circumstances; and upon the record of the hearing on the Motion, and the full record of these cases; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby:

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Motion.

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FOUND AND DETERMINED THAT:³

A. This Court has jurisdiction over the Motion and the transactions contemplated therein pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M) and (O). Venue in this district is proper under 28 U.S.C. §§ 1408 and 1409.

B. Good and sufficient notice of the Motion and the relief sought therein has been given under the circumstances, and no other or further notice is required except as set forth herein with respect to the Auction and Sale Hearing. A reasonable opportunity to object or be heard regarding the relief provided herein has been afforded to parties in interest.

C. The Debtors' proposed notice of the Bidding Procedures is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Auction, the sale of the Debtors' Assets, and the Bidding Procedures to be employed in connection therewith.

D. The Debtors have articulated good and sufficient business reasons for this Court to approve the Bidding Procedures, including: (i) the scheduling of a Bid Deadline, Auction, and Sale Hearing for the sale of the Debtors' Assets; and (ii) the establishment of procedures to fix the Cure Amounts to be paid under section 365 of the Bankruptcy Code in connection with the assumption, assignment and/or transfer of the Executory Contracts and Unexpired Leases.

³ Pursuant to Bankruptcy Rule 7052, findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when applicable.

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Case No.: 19-12809 (JKS)

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E. The Debtors have demonstrated a compelling and sound justification for authorizing the sale of the Assets and the Debtors' option to accept a Stalking Horse Bid and grant the Stalking Horse Bidder the Break-Up Fee and/or Expense Reimbursement (as such terms are defined herein) are reasonably calculated to enable the Debtors to maximize the value of the Assets by setting the floor for bids and contributing to a robust auction process, for the benefit of the Debtors' estates, creditors, and other parties in interest.

F. The Bidding Procedures are reasonably designed to maximize the value to be achieved for the Debtors' assets.

G. The entry of this Bidding Procedures Order is in the best interests of the Debtors, their estates, creditors, and other parties in interest.

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

1. The Motion is **GRANTED** as set forth herein.
2. All objections to the Motion or the relief provided herein that have not been withdrawn, waived or settled, and all reservations of rights included therein, hereby are overruled and denied on the merits.
3. The Bidding Procedures, which are attached hereto as **Exhibit 1** and incorporated herein by reference, are hereby approved in all respects and except as provided herein in respect to a potential Stalking Horse Bid, shall govern all bidders and bids, including those that may be submitted by Qualified Bidders at the Auction.

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4. Qualified Bidders seeking to submit bids for the purchased Assets must do so in accordance with the terms of the Bidding Procedures and this Bidding Procedures Order.

5. Notwithstanding anything to the contrary in the Motion, Bidding Procedures, any other orders entered by the Court in the Chapter 11 Cases, or otherwise, the Debtors, without the necessity of a further hearing or authorization of the Court, in their discretion, shall be authorized (but not required) to accept a stalking horse bid (the “**Stalking Horse Bid**”) and enter into a purchase agreement (the “**Stalking Horse Purchase Agreement**”) with such bidder (the “**Stalking Horse Bidder**”) if the Debtors determine, in their discretion, that entry into such a Stalking Horse Purchase Agreement on such terms and conditions that the Debtors, in the Debtors' discretion, reasonably determine are in the best interests of their estates; provided, however, that the deadline for reaching agreement on the terms of any such Stalking Horse Purchase Agreement is April 12, 2019 (subject to the Debtors' right to extend such deadline for a reasonable period thereafter without further order of the Court).

6. The Debtors are authorized (but not required), in the Debtors' discretion, without the necessity of a further hearing or authorization of the Court: (i) to agree to pay the Stalking Horse Bidder a break-up fee (the “**Break-Up Fee**”) of up to three percent (3%) of its Stalking Horse Bid set forth in its Stalking Horse Purchase Agreement and reimbursement of its reasonable and/or documented out-of-pocket expenses and disbursements not to exceed \$75,000 (“**Expense Reimbursement**” and, together with the Break-Up Fee, the “**Bid Protections**”), incurred in connection with in its due diligence or Stalking Horse Bid if the Stalking Horse Bidder

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does not become the Successful Bidder at the Auction and (ii) to amend or modify these Bidding Procedures as it deems necessary to facilitate such Stalking Horse Bid. Any such Bid Protections which are granted to a Stalking Horse Bidder within the parameters permitted by this Bidding Procedures Order shall be allowed as administrative expense claims in the Chapter 11 Cases under section 364(c)(1) of the Bankruptcy Code with priority over all expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code and shall be paid to the Stalking Horse Bidder in cash from the proceeds of a Successful Bid (other than from the Stalking Horse Bidder) promptly after the date when the Debtors receive such proceeds.

7. If the Debtors designate a Stalking Horse Bidder, the Debtors shall within two (2) business days thereof file a notice of such determination with the Bankruptcy Court, which notice shall (i) identify the Stalking Horse Bidder, (ii) set forth the amount of any Break-Up Fee and/or Expense Reimbursement granted to the Stalking Horse Bidder, (iii) include a copy of the Stalking Horse Bidder's Qualified Bidder Purchase Agreement, which competing Qualified Bidders must then use as the basis to submit their Qualified Bids, and (iv) shall include modifications to the Bidding Procedures and Auction procedures, if necessary, to account for the Stalking Horse Bid.

8. The sale process shall generally occur in accordance with the following timeline:

Action	Deadline
Sale Objection Deadline and Cure/Assignment Objection Deadline	May 6, 2019 at 4:00 p.m. (prevailing

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	Eastern Time)
Bid Deadline	May 9, 2019 at 4:00 p.m. (prevailing Eastern Time)
Auction Date	May 14, 2019 at 10:00 a.m. (prevailing Eastern Time) at the law offices of Gibbons P.C.
Sale Hearing	May 16, 2019 at ____:____ __.m. (prevailing Eastern Time)
Sale Closing Date	May 31, 2019

9. No bid shall be deemed to be a Qualified Bid (as defined in the Bidding Procedures) or otherwise considered for any purposes unless such bid meets the requirements set forth in the Bidding Procedures, provided, however, that the Debtors may waive one or more defects and cause a bid to be deemed a Qualified Bid.

10. The Debtors may sell the Assets by conducting an Auction in accordance with the Bidding Procedures. If Qualified Bids are timely received by the Debtors in accordance with the Bidding Procedures, the Auction shall take place on **May 14, 2019 at 10:00 a.m.** prevailing Eastern time at the offices of Gibbons P.C., One Gateway Center, Newark, N.J. 07102, or at such other place and time as the Debtors shall notify all Qualified Bidders and other invitees. If, however, no such Qualified Bid is received by the Bid Deadline, then the Auction will not be held.

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11. Each Qualified Bidder participating at the Auction will be required to confirm on the record of the Auction that it has not engaged in any collusion with respect to the bidding or the sale. The Auction will be conducted openly. Bidding at the Auction shall be transcribed or videotaped.

12. The Sale Hearing shall be held before this Court on **May 16, 2019, at ____:____ __.m. (prevailing Eastern time)**, or as soon thereafter as counsel and interested parties may be heard.

13. On or before three (3) business days after entry of the Bidding Procedures Order, or as soon thereafter as such parties can be identified, the Debtors will cause a notice in substantially the form annexed hereto as **Exhibit 2** (the "**Notice of Auction and Sale Hearing**"), and a copy of this Bidding Procedures Order, to be sent, by first-class mail, postage prepaid, to the following: (i) the Office of the United States Trustee; (ii) counsel to the Official Committee of Unsecured Creditors; (iii) all parties who are known to assert a security interest, lien, or claim in any of the Assets, if any; (iv) all non-Debtor parties to the Executory Contracts and Unexpired Leases and any parties who are known to claim interests therein; (v) all applicable federal, state, and local taxing authorities; (vi) all applicable county and state consumer protection agencies; (vii) all applicable state attorneys general; (viii) all other government agencies required to receive notice under the Bankruptcy Rules (including all permitting agencies); (ix) the Debtors' 30 largest unsecured creditors on a consolidated basis; (x) the Debtors' insurance providers; (xi) all known parties that have expressed interest to the Debtors, within six (6) months prior to the

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Petition Date and/or since the Petition Date, in purchasing some or all of the Debtors' assets; and (xii) all parties that have requested or that are required to receive special notice pursuant to Bankruptcy Rule 2002. In addition to the foregoing, electronic notification of this Motion, the Bidding Procedures Order and the Notice of Auction and Sale Hearing also will be posted on the Court's electronic case filing (ECF) website.

14. On or before three (3) business days after entry of this Bidding Procedures Order, the Debtors will (i) serve the Notice of Auction and Sale Hearing on all creditors appearing on the Debtors' creditor matrix (to the extent not already served pursuant to paragraph 13); and (ii) subject to applicable submission deadlines and cost considerations.

15. On or before three (3) business days after entry of this Bidding Procedures Order, the Debtors will serve, by first class mail or hand delivery on all non-Debtor parties to the Executory Contracts and Unexpired Leases, a notice of potential assumption, assignment and/or transfer of the Executory Contracts and Unexpired Leases in substantially the form annexed hereto as **Exhibit 3** (the "**Notice of Assumption and Assignment**"). The Notice of Assumption and Assignment shall identify the calculation of the cure amounts that the Debtors believe must be paid to cure all defaults under the Assigned Contracts (the "**Cure Amounts**"). If the Debtors, the Successful Bidder, or the Back Up Bidder, as the case may be, identify additional executory contracts or unexpired leases that might be assumed by the Debtors and assigned to the Successful Bidder or that were not set forth in the original Notice of Assumption and Assignment, the Debtors will promptly send a supplemental notice (a "**Supplemental Notice of**

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Assumption and Assignment") to the applicable counterparties to such additional executory contracts and unexpired leases.⁴

16. Unless the non-Debtor party to an Executory Contract or Unexpired Lease files an objection (the "**Cure Amount/Assignment Objection**") to its scheduled Cure Amount and/or (ii) the proposed assumption, assignment and/or transfer of such Executory Contract or Unexpired Lease by **May 6, 2019 at 4:00 p.m. (prevailing Eastern Time)** (the "**Cure/Assignment Objection Deadline**") and serves a copy of the Cure Amount/Assignment Objection so as to be received no later than the Cure/Assignment Objection Deadline on (i) counsel for the Debtors, Gibbons P.C., One Gateway Center, Newark, N.J. 07102 (Attn: Karen Giannelli, Esq. (kgiannelli@gibbonslaw.com)); and (ii) counsel for the Official Committee of Unsecured Creditors, Lowenstein Sandler LLP, One Lowenstein Drive, Roseland, NJ 07068 (Attn: Mary E. Seymour, Esq (mseymour@lowenstein.com) and Elliott Greenleaf, P.C. (Attn: Rafael X. Zahralddin-Aravena, Esq. (rxza@elliottgreenleaf.com) (collectively, the "**Objection Notice Parties**"), then such non-Debtor party shall (i) be forever barred from objecting to the Cure Amount and from asserting any additional cure or other amounts with respect to such Executory Contract or Unexpired Lease and the Debtors shall be entitled to rely solely upon the

⁴ The inclusion of any contract or unexpired lease of nonresidential real property on any Notice of Assumption and Assignment or Supplemental Notice of Assumption and Assignment shall not be an admission by the Debtors or their estates that any such contract or unexpired lease so included is an executory contract. Nor shall the inclusion of any contract or unexpired lease on any Notice of Assumption and Assignment or Supplemental Notice of Assumption and Assignment constitute an admission of liability by the Debtors or their estates or effectuate the assumption or assignment of such contract or lease, absent entry of an order of the Court approving the assumption and/or assignment of such contract or lease of nonresidential real property in conjunction or as part of the Approval Order.

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Cure Amount and (ii) subject to the procedures for objecting to adequate assurance of future performance as set forth below, be deemed to have consented to the assumption, assignment and/or transfer of such Executory Contract or Unexpired Lease to the Successful Bidder or Back-Up Bidder and shall be forever barred and estopped from asserting or claiming against the Debtors, the Successful Bidder or Back-Up Bidder or any other assignee of the relevant Executory Contract or Unexpired Lease that any additional amounts are due or defaults exist, or additional conditions to assumption, assignment and/or transfer must be satisfied, under such Executory Contract or Unexpired Lease.

17. Cure Objections shall set forth the cure amount being claimed by the objecting party (the “**Claimed Cure Amount**”), the specific types and dates of the alleged defaults, pecuniary losses and conditions to assignment, and the support therefor and for all other objections to assumption and assignment. Upon receipt of a Cure Amount/Assignment Objection, the Debtors, with the approval of the Successful Bidder, may resolve any Cure Objection by mutual agreement with the objecting counterparty to any Executory Contract or Unexpired Lease without further order of the Court. In the event that the Debtors, the Successful Bidder or the Back-Up Bidder (as applicable), and any objecting party are unable to consensually resolve any Cure Objection prior to the Sale Hearing, the Debtors shall request that the Court resolve such Cure Objection at the Sale Hearing or at such later date as is set by the Court.

18. The Successful Bidder or the Back-Up Bidder, as the case may be, may determine to add or exclude any Executory Contract or Unexpired Lease from the list of

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Caption: Order (I) Approving Bidding Procedures in Connection with the Sale of Substantially All Assets of Debtors' Eastern Freight Ways, Inc. and Carrier Industries, Inc.; (II) Scheduling an Auction and Hearing to Consider the Sale of Assets; and (III) Approving Form and Manner of Notice Thereof

Executory Contracts and Unexpired Leases to be assumed and assigned under the Purchase Agreement or Stalking Horse Purchase Agreement no later than one (1) business day prior to the Sale Hearing, or, if the Court determines at any hearing on a Cure Amount/Assignment Objection that the applicable cure amount for such contract is greater than the Cure Amount proposed by the Debtors, no later than five (5) business days following the Court's determination.

19. Promptly after the conclusion of the Auction, the Debtors will serve a notice identifying the Successful Bidder and Back-Up Bidder (the "**Notice**") to the non-Debtor parties to the Executory Contracts and Unexpired Leases that have been identified in such Successful Bid and Back-Up Bid. Objections of any Non-Debtor party to an Executory Contract or Unexpired Lease related solely to the identity of and adequate assurance of future performance by the Successful Bidder must (x) be in writing; (y) state with specificity the nature of such objection, and (z) be filed with the Court and properly served on the Objection Notice Parties so as to be received by **May 15, 2019** (the "**Adequate Assurance Objection Deadline**"); provided, however, that in the event the Debtors obtain a Stalking Horse Bid and provide notice of the identity of the Stalking Horse Bidder prior to the Sale Objection Deadline, any objection of a Non-Debtor party to an Executory Contract or Unexpired Lease related to the Stalking Horse Bid (including, with respect to the identity of and adequate assurance of future performance provided by the Stalking Horse Bidder) must be filed as a Cure Amount/Assignment Objection by the Cure/Assignment Objection Deadline.

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Debtors: New England Motor Freight, Inc., *et al.*

Case No.: 19-12809 (JKS)

Caption: Order (I) Approving Bidding Procedures in Connection with the Sale of Substantially All Assets of Debtors' Eastern Freight Ways, Inc. and Carrier Industries, Inc.; (II) Scheduling an Auction and Hearing to Consider the Sale of Assets; and (III) Approving Form and Manner of Notice Thereof

20. Objections to the sale of the Debtors' Assets, adequate assurance of future performance by the Stalking Horse Bidder or the relief requested in the Motion (other than with respect to the conduct of the Auction or adequate assurance of future performance by the Successful Bidder if the Successful Bidder is not the Stalking Horse Bidder) must: (i) be in writing; (ii) comply with the Bankruptcy Rules and the Local Rules; (iii) be filed with the clerk of the Bankruptcy Court for the District of New Jersey, on or before **May 6, 2019 at 4:00 p.m. (prevailing Eastern time)** (the "**Sale Objection Deadline**"), or such later date and time as the Debtors may agree; and (iv) be served so as to be received no later than 4:00 p.m. (prevailing Eastern time) on the same day upon the Objection Notice Parties. Objections, if any, to the conduct of the Auction, must be filed and served at least one day prior to the commencement of the Sale Hearing and must otherwise comply with the requirements above. All objections must state with specificity the nature of such objection and will be heard by the Court at the Sale Hearing.

21. No Qualified Bidder or any other person or entity, other than the Stalking Horse Bidder, if any, shall be entitled to any expense reimbursement, break-up fee, termination or other similar fee or payment in connection with the Sale or any other form of bid protections.

22. The Notice of Auction and Sale Hearing and the Notice of Assumption, and Assignment to be issued in connection with the proposed sales of the Assets, substantially in the forms annexed hereto as **Exhibit 2** and **Exhibit 3**, respectively, are approved.

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Debtors: New England Motor Freight, Inc., *et al.*

Case No.: 19-12809 (JKS)

Caption: Order (I) Approving Bidding Procedures in Connection with the Sale of Substantially All Assets of Debtors' Eastern Freight Ways, Inc. and Carrier Industries, Inc.; (II) Scheduling an Auction and Hearing to Consider the Sale of Assets; and (III) Approving Form and Manner of Notice Thereof

23. The Sale Hearing may be adjourned, from time to time, provided, however, the Debtors shall timely file a notice of such adjournment on the Court's docket.

24. Except as otherwise provided in this Bidding Procedures Order or the Bidding Procedures, the Debtors further reserve the right as they may reasonably determine to be in the best interests of their estates, subject to conformity with the Bidding Procedures, to: (i) determine which bidders are Qualified Bidders; (ii) determine which bids are Qualified Bids; (iii) determine which Qualified Bid or combination of Qualified Bids is the highest or otherwise best proposal and which is the next highest or otherwise best proposal; (iv) reject any bid that is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code, or (c) contrary to the best interests of the Debtors and their estates; (v) remove all or a portion of the Assets from the sale; (vi) waive terms and conditions set forth herein with respect to all Potential Bidders; (vii) impose additional terms and conditions with respect to all Potential Bidders; (viii) extend the deadlines set forth herein; (ix) upon prior notice to the Stalking Horse Bidder to the extent practicable under the circumstances, adjourn or cancel the Auction and/or Sale Hearing in open court without further notice; (x) modify the Bidding Procedures as the Debtors may determine to be in the best interest of their estates; or (xi) withdraw the Motion at any time prior to the Sale Hearing with or without prejudice.

25. Notwithstanding anything to the contrary in this Order or the Motion, any payment, obligations, or other relief authorized by this Order shall be subject to the terms,

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Debtors: New England Motor Freight, Inc., *et al.*

Case No.: 19-12809 (JKS)

Caption: Order (I) Approving Bidding Procedures in Connection with the Sale of Substantially All Assets of Debtors' Eastern Freight Ways, Inc. and Carrier Industries, Inc.; (II) Scheduling an Auction and Hearing to Consider the Sale of Assets; and (III) Approving Form and Manner of Notice Thereof

conditions, and limitations of the order of this Court approving any debtor in possession financing and cash collateral use, including any budget in connection therewith.

26. The stays provided for in Bankruptcy Rules 6004(h) and 6006(d) are waived and Bidding Procedures Order shall be effective immediately upon its entry.

27. This Court shall retain jurisdiction over any matters related to or arising from the implementation of this Order.

EXHIBIT 1

GIBBONS P.C.

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Counsel to the Debtors
and Debtors-in-Possession

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

In re:

NEW ENGLAND MOTOR FREIGHT, INC.,
et al.,

Debtors.¹

Chapter 11

Case No. 19-12809 (JKS)

(Jointly Administered)

BIDDING PROCEDURES

By motion dated March __, 2019 (the “**Motion**”) filed by the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) in the above-captioned cases (the “**Cases**”) [Docket No. __],² the Debtors sought approval of, among other things, the procedures through which they will determine the highest or otherwise best price for the sale of substantially all the assets owned by Debtors’ Eastern Freight Ways, Inc. (“**Eastern**”) and Carrier Industries, Inc.’s (“**Carrier**”) (collectively, the “**Assets**”) to one or more successful bidders.

On April __, 2019, the United States Bankruptcy Court for the District of New Jersey (the “**Court**”) entered an order (the “**Bidding Procedures Order**”) which, among other things, (i) authorized the Debtors to determine and select the highest or otherwise best bid for the

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s taxpayer identification number are as follows: New England Motor Freight, Inc. (7697); Eastern Freight Ways, Inc. (3461); NEMF World Transport, Inc. (2777); Apex Logistics, Inc. (5347); Jans Leasing Corp. (9009); Carrier Industries, Inc. (9223); Myar, LLC (4357); MyJon, LLC (7305); Hollywood Avenue Solar, LLC (2206); United Express Solar, LLC (1126); and NEMF Logistics, LLC (4666).

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

Assets (the “**Successful Bid**”) through the competitive bidding and auction process set forth below (the “**Bidding Procedures**”); and (ii) scheduled **May 16, 2019 at ___:___ .m. (Prevailing Eastern time)**, as the date and time that a hearing before the Court to consider the Debtors’ request for approval of the Successful Bid will be held (the “**Sale Hearing**”). As set forth below and in the Motion, the Debtors reserve the right to modify the Bidding Procedures in accordance with the Bidding Procedures Order.

The sale will be subject to competitive bidding as set forth herein, and approval of the Court pursuant to sections 105, 363 and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”).

Additional information regarding the Assets can be obtained by contacting Mark Karbiner, Senior Director, Phoenix Capital Resources, 110 Commons Court, Chadds Ford, PA 19317 (mkarbiner@phoenixcapitalresources.com).

I. Assets to be Sold Free and Clear

The Assets generally constitute substantially all of the assets owned by Debtors, Eastern and Carrier. The Debtors are offering bidders the opportunity to bid on substantially all of the Assets (the “**Sale**”). All of the rights, title and interest of the Debtors in and to the Assets to be acquired will be sold free and clear of all pledges, liens, security interest, encumbrances, claims, charges, options, and interests thereon and there against (collectively, “**Claims and Interests**”) to the extent permitted by sections 363 and 365 of the Bankruptcy Code, and other applicable law, such Claims and Interests to attach to the net proceeds of the Sale of such Assets, with the same validity and priority as existed immediately prior to the Sale.

The Sale of the Assets shall be on an “as is, where is” basis and without representations or warranties of any kind, nature or description by the Debtors, their agents or estates, except to the extent set forth in the purchase agreement between the Debtors and the Successful Bidder.

Each bidder shall be deemed to acknowledge and represent that it has had an opportunity to inspect and examine the Assets prior to making its offer, that it has relied solely upon its own independent review, investigation and/or inspection of any documents in making its bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets or the completeness of any information provided in connection with the bidding process, in each case except as expressly stated in the marked purchase agreement.

II. Due Diligence

The Debtors will afford interested parties that deliver an executed confidentiality agreement in form and substance reasonably acceptable to the Debtors and, at the Debtor’s request, financial information that demonstrates such party’s ability to submit a bid that complies with the requirements herein and the Bidding Procedures Order (each, a “**Potential Bidder**”), the opportunity to conduct reasonable due diligence, subject to parameters and

restrictions that the Debtors may establish in their discretion. The due diligence period shall extend through and include the Bid Deadline (as defined below).

Neither the Debtors nor its advisors shall be obligated to furnish any information of any kind whatsoever relating to the Assets, assumed liabilities, the Debtors' contracts, or the Debtors to any person or entity (i) that is not a Potential Bidder or Qualified Bidder (as defined below), (ii) that is not in compliance with the requirements set forth herein and in the Bidding Procedures Order or (iii) after the Bid Deadline (as defined below).³

III. Bid Deadline

All Potential Bidders must deliver bids for the Assets (each a "**Bid**"), so as to be received on or before 4:00 p.m. (prevailing Eastern Time), on May 9, 2019 (the "**Bid Deadline**"), unless otherwise extended by the Debtors, to counsel for the Debtors, Gibbons P.C., One Gateway Center, Newark, N.J. 07102 (Attn: Karen Giannelli, Esq. and Lawrence A. Goldman, Esq. (kgiannelli@gibbonslaw.com, lgoldman@gibbonslaw.com) and (b) the Debtors, c/o Phoenix Capital Resources, 110 Commons Court, Chadds Ford, PA 19137 (Attn: Mark Karbiner (mkarbiner@phoenixcapitalresources.com) (collectively, the "**Notice Parties**"). The Debtors will timely provide counsel to the Official Committee of Unsecured Creditors, copies of all Bids received prior to the Bid Deadline.

IV. Qualified Bidder Requirement

Notwithstanding that it may contain terms and conditions which may be inconsistent with those set forth herein, in the event the Debtors, in the Debtors' discretion elect to accept a Stalking Horse Bid, for purposes of these Bidding Procedures, any Stalking Horse Bid shall be deemed to constitute a Qualified Bid and any Stalking Horse Bidder shall be deemed to be a Qualified Bidder.

In order to qualify to submit a Qualified Bid (as defined below) and participate in the Auction, each Potential Bidder must: (i) deliver to the Notice Parties financial information evidencing the Potential Bidder's ability to perform under its proposed transaction to the sole satisfaction of the Debtors' professionals, including the ability to (a) close the Sale within the time period prescribed in the Bidding Procedures Order and Template Form Purchase Agreement and (b) provide adequate assurance of future performance to counterparties to Executory Contracts and Unexpired Leases to be assumed and assigned to the Potential Bidder. In addition, if the Potential Bidder is an entity formed in whole or part for the purpose of acquiring all or part of the Assets, the Potential Bidder must deliver to the Notice Parties relevant financial information as may be requested by the Debtors, in the Debtors' Discretion, regarding the major equity holders or financial sponsors of such entity evidencing, to the reasonable satisfaction of the Debtors after consultation with the Committee, the Potential Bidder's ability to (x) close the Sale within the time period prescribed in the Bidding

³ To the extent any party executed a confidentiality agreement prior to the entry of an order approving these Bidding Procedures, such party does not need to execute another confidentiality agreement in order to comply with the Bidding Procedures or to become a Qualified Bidder.

Procedures Order and Template Form Purchase Agreement and (y) provide adequate assurance of future performance to counterparties to Executory Contracts and Unexpired Leases to be assumed and assigned to the Potential Bidder.

The Debtors, in their discretion, shall determine whether a Potential Bidder has complied with the foregoing requirements and has qualified to submit a Qualified Bid and participate in the Auction (each such Potential Bidder, a “**Qualified Bidder**”), and the Debtors shall provide prompt written notice of their determination to any such Potential Bidder, with copies to counsel to the Committee.

The Debtors, in their discretion, may request additional information from a Potential Bidder or Qualified Bidder at any time prior to the Auction Date in order to evaluate such bidder’s ability to bid at the Auction over and above its initial offer in its Qualified Bid, consummate the Sale, and fulfill its obligations in connection therewith. Each Potential Bidder or Qualified Bidder shall be obligated to provide such additional information within two (2) business days of receiving such requests as a condition to participating further in the Auction and Sale processes; provided, however, that additional information requests made by the Debtors during the Auction in connection with a Qualified Bidder’s ability to continue to bid at the Auction over and above its initial offer in its Qualified Bid shall, in the Debtors’ discretion, be satisfied prior to such Qualified Bidder submitting any further bids at the Auction.

V. Requirements of a Qualified Bid

To constitute a Qualified Bid, a bid must, among other things:

- A. Be made in writing;
- B. Be submitted prior to the Bid Deadline;
- C. Be a bid for all or substantially all of the Assets of both Eastern and Carrier;
- D. Designate a list of the executory contracts and unexpired leases with respect to which the Potential Bidder seeks assignment from the Debtors;
- E. Include a binding, definitive and fully executed asset purchase agreement which shall be in form and substance substantially similar to the Form Template Asset Purchase Agreement or Stalking Horse Asset Purchase Agreement, as applicable, and which shall be marked to reflect only those changes required as a condition of such Qualified Bidder’s closing the Sale; provided, however, such asset purchase agreement shall not request or entitle such Potential Bidder to any break-up fee, expense reimbursement, or similar type of payment. An asset purchase agreement, together with its schedules and exhibits, submitted in accordance with these Bidding Procedures shall be referred to herein as a “**Qualified Bidder Purchase Agreement**”;
- F. Provide that the purchase price shall be paid in full in cash at the closing of the Sale;

- G. Provide a good faith cash deposit (the “**Good Faith Deposit**”) equal to 10% of the Bidder’s proposed purchase price. The Good Faith Deposit shall be paid to such Bidder’s counsel trust account and counsel for such Bidder shall represent in such Bidder’s cover letter or in an email sent to Debtors’ counsel that it is in receipt of the Good Faith Deposit and will hold same in accordance with the Bidding Procedures. The Debtors reserve the right to increase, decrease or waive the Good Faith Deposit for one or more Qualified Bidders in their discretion or to accept an alternative form of consideration in lieu of a Good Faith Deposit. At the conclusion of the Auction, the Good Faith Deposit of the Successful Bidder shall be transferred from counsel’s trust account to a trust account at Gibbons P.C. in accordance with directions to be provided to such Successful Bidder, together with any additional amount such that the final Good Faith Deposit reflects ten (10%) percent of its final bid at Auction. With respect to the Back-Up Bidder, its Good Faith Deposit shall continue to be held by its counsel in a trust account until such time as the Debtors notify the Back-Up Bidder or its counsel that the Good Faith Deposit can be returned to the Back-Up Bidder. To the extent the Successful Bidder fails to close or otherwise breaches its agreement and the Debtors notify the Back-Up Bidder that they intend to proceed with the final Qualified Bid submitted at Auction by the Back-Up Bidder, the Good Faith Deposit of the Back-Up Bidder shall be transferred to a trust account at Gibbons P.C. in accordance with directions to be provided, together with any additional amounts such that the final Good Faith Deposit reflects ten (10) percent of the Back-Up Bidder’s final bid at Auction. All other Qualified Bidders shall be entitled to request the return of their Good Faith Deposits from their counsel at the conclusion of the Auction;
- H. Provide that such bid shall be open and irrevocable until the earlier of: (a) such bid being determined by the Debtors not to be a Qualified Bid; (b) if such bid is not chosen by the Debtors at the Auction to be the Successful Bid or Back-Up Bid (as each such term is defined below), the date of entry by the Bankruptcy Court of an order approving the Sale to another Qualified Bidder; (c) if such bid is chosen by the Debtors to be the Successful Bid, the date which is the earlier to occur of: (i) the closing of the Sale to such Successful Bidder, and (ii) five (5) Business Days following the date the order approving the Sale to the Successful Bidder shall have become a final, non-appealable, order (“**Final Order**”); (d) if such bid is chosen by the Debtors to be the Back-Up Bid, the date which is the earlier to occur of: (i) the date of closing on the Sale to the Successful Bidder, and (ii) twenty-five (25) Business Days following the date the order approving the Sale to the Successful Bidder shall have become a Final Order; provided, that if the Successful Bidder shall fail to close on its purchase of the Purchased Assets during the period set forth above, (x) the Back-Up Bid shall continue to remain open and irrevocable, (y) the Back-Up Bidder, at the Debtors’ discretion, shall be deemed to be the Successful Bidder, and (z) it shall close on the Sale within ten (10) Business Days of becoming the Successful Bidder;
- I. (i) Include an acknowledgement and representation that the Qualified Bidder has had an opportunity to conduct all due diligence regarding the Assets prior to

submitting its bid and that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or assets in making its bid, and (ii) confirms the Qualified Bidder's completion of all due diligence required by such Qualified Bidder in connection with the Sale and does not include any due diligence contingencies;

- J. Does not contain any financing contingencies or any other contingencies not set forth in the Stalking Horse Asset Purchase Agreement or Form Template Purchase Agreement, as applicable;
- K. Provide evidence of authorization and approval from such Qualified Bidder's board of directors (or comparable governing body) evidencing the authority of the Qualified Bidder to make a binding and irrevocable Qualified Bid and to consummate the Sale if such Qualified Bidder is the Successful Bidder or Back-Up Bidder, as such bid may be improved prior to or at the Auction;
- L. Confirm that the Sale will close no later than May 31, 2019;
- M. If the Qualified Bidder was formed in whole or part for the purpose of acquiring all or part of the Assets, provides evidence which is reasonably satisfactory to the Debtors, in their discretion, regarding the major equity holder or sponsor of such Qualified Bidder demonstrating that such Qualified Bidder has, or will have access to, the financial resources needed to consummate the Sale if it becomes the Successful Bidder, and that the use of such resources to consummate the Sale has been authorized and approved by such entity's board of directors (or comparable governing body), provided, that the Debtors reserve the right to limit or waive this requirement for one or more Qualified Bidders in their discretion;
- N. Certifies that the Qualified Bidder has not, and is not, engaged in any collusion with respect to its bid or the Sale; except that the Debtors may facilitate a submission of a Qualified Bid by one or more unrelated Qualified Bidders or one or more entities may elect to jointly submit a Qualified Bid;
- O. Is not conditioned on the receipt of any third-party approvals or consents (excluding required Bankruptcy Court approval and required governmental, licensing or regulatory approval or consent, if any) other than third party approvals or consents that are deemed reasonable, as determined by the Debtors, in their discretion; and
- P. Sets forth the representatives that are authorized to appear and act on behalf of such Qualified Bidder in connection with the proposed transaction and the Auction.

All Qualified Bids will be considered by the Debtors; bids other than Qualified Bids will not be considered, although the Debtors reserve the right to work with non-conforming bids received by the Bid Deadline in order to resolve open issues until the commencement of

the Auction. The Debtors may, in their discretion, evaluate bids on numerous grounds, including, but not limited to, any delay, additional risks (including closing risks) and added costs to the Debtors. For the avoidance of doubt, the presence of any governmental, licensing, regulatory or other approvals or consents in a bid or other contingencies, and the anticipated timing or likelihood of obtaining such approvals or consents or resolving such contingencies, may be grounds for the Debtors, in their discretion, to determine that such bid is not higher or otherwise better than any other Qualified Bid.

VI. Receipt of Qualified Bids

If the Debtors receive a bid prior to the Bid Deadline that is not a Qualified Bid, the Debtors may, in their discretion, provide a Qualified Bidder with the opportunity to remedy any deficiencies following the Bid Deadline but not later than the commencement of the Auction.

If the Debtors receive only one (1) Bid that is a Qualified Bid, the Debtors, in their discretion, shall (i) notify all Potential Bidders and the Bankruptcy Court in writing that (a) the Auction is cancelled and (b) such Qualified Bid is the Successful Bid, and (ii) the Debtors shall seek authority at the Sale Hearing to consummate the Sale transactions with such Qualified Bidder contemplated by its Qualified Bidder Purchase Agreement.

If the Debtors receive two (2) or more Qualified Bids, the Debtors will conduct an auction (the "**Auction**"). If the Debtors designate a Stalking Horse Bidder, the Debtors shall within two (2) days thereof file a notice of such determination with the Bankruptcy Court, which notice shall (i) identify the Stalking Horse Bidder, (ii) set forth the amount of any Break-Up Fee and/or Expense Reimbursement granted to the Stalking Horse Bidder, (iii) include a copy of the Stalking Horse Bidder's Qualified Bidder Purchase Agreement, which competing Qualified Bidders must then use as the basis to submit their Qualified Bids, and (iv) shall include modifications to the bidding and auction procedures necessary to account for the Stalking Horse Bidder's Qualified Bid.

VII. Auction Process

The Auction, if any, will take place at the offices of Gibbons P.C., One Gateway Center, Newark, N.J. 07102, or at such other place and time as the Debtors shall notify all Qualified Bidders and other invitees, on May 14, 2019, commencing at 10:00 a.m. (prevailing Eastern Time).

If the Debtors proceed with the Auction, the following rules and procedures shall apply (subject to Article XII hereof):

- A. Prior to the Auction, the Debtors will select the highest Qualified Bid they have received to serve as the opening bid at the Auction (the "**Baseline Bid**");
- B. Prior to the commencement of the Auction, the Debtors will provide all Qualified Bidders (including by email or facsimile) with a written notice identifying all of the Qualified Bidders and which Qualified Bid has been chosen as the Baseline Bid;

- C. Only a Qualified Bidder, and its representatives and advisors, who has submitted a Qualified Bid shall be eligible to attend and make any subsequent bids at the Auction. Each Qualified Bidder must appear in person or through a duly authorized representative who has the legal authority to bind the Qualified Bidder at the Auction (and who must provide the Debtors with written evidence of such authority prior to the Auction which is reasonably satisfactory to the Debtors), or they shall not be entitled to attend or participate at the Auction;
- D. All Qualified Bids shall be placed on the record at the Auction, which shall be transcribed, videotaped or audiotaped in the discretion of the Debtors;
- E. Each Qualified Bidder will have the right to make additional modifications or improvements to its Qualified Bidder Purchase Agreement any time, prior to, or during, the Auction which are consistent with these Bidding Procedures and the Bidding Procedures Order;
- F. Bidding shall commence at the Baseline Bid. The first overbid at the Auction (the “**Minimum Initial Overbid**”) shall be the amount of the Baseline Bid plus (i) the amount of any of the Break-Up Fee and Expense Reimbursement which would be due to any Stalking Horse Bidder if it is not the Successful Bidder if one is so designated by the Debtors, plus (ii) \$100,000. Thereafter, a Qualified Bidder may increase its Qualified Bid in any amount as long as each subsequent bid (each, a “**Subsequent Overbid**”) exceeds the previous highest bid by at least \$100,000 of additional cash consideration;
- G. Each bid made by a Qualified Bidder at the Auction must continue to meet, satisfy or comply with the requirements of a Qualified Bid, other than those applicable to the submission of an initial Qualified Bid;
- H. The Auction will continue with each Qualified Bidder submitting additional Subsequent Overbids in each round of bidding, after being advised of the terms of the then highest bid and the identity of the Qualified Bidder who made such bid, in each round of bidding. Each Qualified Bidder must bid in each round or it shall be disqualified from further bidding at the Auction;
- I. The Auction will conclude when the Debtors, in their discretion, determine that they have received the highest or otherwise best offer from a Qualified Bidder (the “**Successful Bid**”). The next highest or otherwise best Qualified Bid submitted at the Auction, as determined by the Debtors, in their discretion, shall be the “**Back-Up Bid**”. The Qualified Bidder submitting the Successful Bid shall be the “**Successful Bidder**” and the Qualified Bidder submitting the Back-Up Bid shall be the “**Back-Up Bidder**”. In making these decisions, the Debtors, in their discretion, will consider, without limitation, (i) the amount of the purchase price offered, (ii) the form of consideration offered, (iii) the Qualified Bidder’s ability to close the Sale at the amount of its last bid made at the Auction and the timing thereof, (iv) evidence of good faith on the part of the Qualified Bidder, (v) the terms and conditions of the Qualified Bidder Purchase

Agreement, (vi) the requirements as to the assumption and assignment of executory contracts, (vii) the ability to provide adequate assurance of future performance to the counterparties to executory contracts being assumed and assigned, (viii) the amount of any obligations the Debtors may have to a Stalking Horse Bidder for a Break-Up Fee or Expense Reimbursement and (ix) the net benefit to the Debtors' estates;

- J. Prior to the conclusion of the Auction or as soon as practicable thereafter, the Debtors and the Successful Bidder shall enter into a definitive agreement based upon the Successful Bidder's Qualified Bidder Purchase Agreement previously submitted by the Successful Bidder and will make all related revisions to the proposed order approving the Sale to the Successful Bidder, in each case to reflect the results of the Auction;
- K. All Qualified Bids shall remain open and irrevocable for the time periods set forth in Article V(I) above;
- L. If, after an order is entered by the Bankruptcy Court at the Sale Hearing approving the Successful Bid, the Successful Bidder shall fail to close the Sale because of a breach on the part of the Successful Bidder (after giving effect to any applicable cure periods or waivers), (x) the Back-Up Bidder shall automatically, and without the need for any action by the Debtors or the Bankruptcy Court, be deemed to be the Successful Bidder, (y) the Back-Up Bid shall be deemed to be the Successful Bid, and (z) the Debtors and Back-Up Bidder shall close the Sale within ten (10) Business Days following the date the Back-Up Bidder becomes the Successful Bidder, without the necessity of obtaining any further order of the Bankruptcy Court; and
- M. The Debtors, in their discretion, reserve the right, in their business judgment, to make one or more adjournments to the Auction or these Bidding Procedures to, among other things: (i) facilitate discussions between the Debtors, on the one hand, and one or more Qualified Bidders, on the other hand, (ii) allow the Debtors and/or Qualified Bidders to consider how they wish to proceed, (iii) give Qualified Bidders the opportunity to provide the Debtors with such additional documentation or information as the Debtors in their business judgment may require to determine such Qualified Bidder's ability to close the Sale, or (iv) facilitate higher or better bids.

VIII. Sale Hearing

A hearing to consider approval of the Sale of the Assets to the Successful Bidder will take place on **May 16, 2019, at __:00 __.m. (prevailing Eastern time)**, before the Honorable Jack Sherwood in the United States Bankruptcy Court District of New Jersey. Following the conclusion of the Auction, with the consent of the Successful Bidder, or as otherwise directed by the Bankruptcy Court, the Sale Hearing may be adjourned or rescheduled without notice by an announcement of the adjourned date at the Sale Hearing or

by filing a notice on the docket. At the Sale Hearing, the Debtor shall present the Successful Bid to the Bankruptcy Court for approval and seek entry of an order authorizing and approving the Sale (the "**Sale Order**").

IX. Certain Additional Matters Concerning Good Faith Deposits

Subject to Article X, the Good Faith Deposit of the Successful Bidder shall be applied to, and deducted from, the Successful Bidder's obligations under the Successful Bid at the closing of the Sale. The Good Faith Deposit of the Back-Up Bidder shall be returned to the Back-Up Bidder as set forth in Article V(I). If the Back-Up Bidder is subsequently designated by the Debtors as the Successful Bidder as a result of the failure of the Successful Bidder to close on the Sale, the Back-Up Bidder shall be deemed to be the Successful Bidder and it shall comply with the terms of Article VI. The Debtors and the Back-Up Bidder shall close the Sale within ten (10) business days of the Back-Up Bidder becoming the Successful Bidder. Subject to Article X, the Good Faith Deposit of the Back-Up Bidder shall be held by the Debtors until such closing and applied to its obligations at the closing of the Sale. The Debtors reserve all of their rights regarding the return of all Good Faith Deposits, and the failure by the Debtors to timely return any deposit(s) shall not serve as a claim for breach of any bid(s) or create any default in favor of any bidder(s).

X. Failure to Close

If the Successful Bidder fails to consummate the transaction in accordance with the terms of the applicable agreement executed by the Successful Bidder by the closing date contemplated in the purchase agreement agreed to by the parties for any reason, the Successful Bidder shall forfeit its Good Faith Deposit to the Debtors and the Debtors shall maintain the right to pursue all additional available remedies, whether legal or equitable and be free to consummate the proposed transaction with the Back-Up Bidder at the highest price bid by the Back-Up Bidder at the Auction, without the need for an additional hearing or Order of the Bankruptcy Court. To the extent the Back-Up Bidder is deemed the Successful Bidder and fails to consummate the transaction in accordance with the terms of the applicable agreement executed by the Back-Up Bidder by the closing date contemplated in the purchase agreement agreed to by the parties for any reason, the Back-Up Bidder shall forfeit its Good Faith Deposit to the Debtors (and its counsel shall immediately turnover such Good Faith Deposit to the Debtors) and the Debtors shall maintain the right to pursue all additional available remedies, whether legal or equitable.

XI. Expenses

Except to the extent provided for in the Stalking Horse Agreement and the Bidding Procedures Order, any Potential Bidders presenting bids shall bear their own expenses in connection with the proposed Sale, whether or not such Sale is ultimately approved.

XII. Reservation of Rights

Except as otherwise provided in the Bidding Procedures Order or these Bidding Procedures, the Debtors reserve the right as they may reasonably determine to be in the best interests of their estates to: (i) determine which bidders are Qualified Bidders; (ii) determine which bids are Qualified Bids; (iii) determine which Qualified Bid or combination of Qualified Bids is the highest or otherwise best proposal and which is the next highest or otherwise best proposal; (iv) reject any bid that is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code, or (c) contrary to the best interests of the Debtors and their estates; (v) remove the Assets from the Sale; (vi) waive terms and conditions set forth herein with respect to all Potential Bidders; (vii) impose additional terms and conditions with respect to all Potential Bidders; (viii) extend the deadlines set forth herein; (ix) on prior notice to the extent practicable under the circumstances, adjourn or cancel the Auction and/or Sale Hearing in open court without further notice; (x) modify the Bidding Procedures, as the Debtors may, in their sole discretion, determine to be in the best interests of their estates; or (xi) withdraw the Motion at any time prior to the Sale Hearing with or without prejudice.

EXHIBIT 2

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

In re:

NEW ENGLAND MOTOR FREIGHT, INC.,
et al.,

Debtors.¹

Chapter 11

Case No. 19-12809 (JKS)

(Jointly Administered)

NOTICE OF AUCTION AND SALE HEARING

PLEASE TAKE NOTICE THAT:

1. On March __, 2019, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed a motion (the “Motion”)² [Docket No. __] for entry of orders, among other things (i) approving bidding procedures (the “Bidding Procedures”) in connection with the sale (the “Sale”) of substantially all assets of Debtors’ Eastern Freight Ways, Inc. (“Eastern”) and Carrier Industries, Inc. (“Carrier”) (collectively, the “Assets”), (ii) scheduling an auction and a hearing (the “Sale Hearing”) to consider approval of the Debtors entering into a Sale, (iii) approving the form and manner of notice thereof and (iv) granting related relief. The Motion additionally requests entry of an order or orders (i) authorizing and approving a Sale free

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s taxpayer identification number are as follows: New England Motor Freight, Inc. (7697); Eastern Freight Ways, Inc. (3461); NEMF World Transport, Inc. (2777); Apex Logistics, Inc. (5347); Jans Leasing Corp. (9009); Carrier Industries, Inc. (9223); Myar, LLC (4357); MyJon, LLC (7305); Hollywood Avenue Solar, LLC (2206); United Express Solar, LLC (1126); and NEMF Logistics, LLC (4666).

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

and clear of liens, claims, encumbrances and interests, (ii) approving the assumption and assignment of executory contracts and unexpired leases and (iii) granting related relief.

2. The Debtors are seeking to sell the Assets to the Successful Bidder or Back-Up Bidder. Approval of the sale of Assets to either the Successful Bidder or Back-Up Bidder may result in, among other things, the assumption, assignment and/or transfer by the Debtors of certain executory contracts and unexpired leases. If you are a party to an executory contract or lease with one or more of the Debtors, you will receive a separate notice that contains relevant dates and other information that may impact you as a party to an executory contract or lease.

3. Notwithstanding anything to the contrary in the Sale Motion, Bidding Procedures, any other orders entered by the Court, or otherwise, without the necessity of a further hearing or authorization of the Court, the Debtors, in their discretion, shall be authorized (but not required) to accept a stalking horse bid from a Qualified Bidder (the "Stalking Horse Bid") and enter into a purchase agreement (the "Stalking Horse Purchase Agreement") with such Qualified Bidder (the "Stalking Horse Bidder") if the Debtors determine, in their discretion, that entry into such a Stalking Horse Purchase Agreement on such terms and conditions that the Debtors, in the Debtors' discretion, reasonably determines are in the best interests of the estates. If the Debtors designate a Stalking Horse Bidder, the Debtors shall within two (2) days thereof file a notice of such determination with the Bankruptcy Court, which notice shall (i) identify the Stalking Horse Bidder, (ii) set forth the amount of any Break-Up Fee and/or Expense Reimbursement granted to the Stalking Horse Bidder, (iii) include a copy of the Stalking Horse Bidder's Qualified Bidder Purchase Agreement, which competing Qualified Bidders must then use as the basis to submit their Qualified Bids, and (iv) shall include modifications to the Bidding Procedures and Auction procedures necessary to account for the Stalking Horse Bid.

4. On _____, 2019, the United States Bankruptcy Court for the District of New Jersey entered the Bidding Procedures Order. Pursuant to the Bidding Procedures Order, if the Debtors receive more than one Qualified Bids (as defined in the Bidding Procedures), the auction for the Assets shall take place on **May 14, 2019, at 10:00 a.m. (prevailing Eastern time)**, at the offices of Gibbons P.C., One Gateway Center, Newark, New Jersey 07102, or at such other place and time as the Debtors shall notify all Qualified Bidders and other invitees. Only parties that have submitted a Qualified Bid in accordance with the Bidding Procedures, attached to the Bidding Procedures Order as Exhibit 1, by no later than **May 9, 2019, at 4:00 p.m. (prevailing Eastern time)** (the "Bid Deadline"), may participate at the Auction. Any party that wishes to take part in this process and submit a bid for the Assets must submit its bid prior to the Bid Deadline and in accordance with the Bidding Procedures. Failure to abide by the Bidding Procedures may result in a bid being rejected.

5. The Sale Hearing to consider approval of the Sale of the Assets to the Successful Bidder or Back-Up Bidder free and clear of all liens, claims and encumbrances will be held before the Honorable Jack Sherwood in the United States Bankruptcy Court District of New Jersey on **May 16, 2019, at __: __ .m. (prevailing Eastern time)**, or at such other time thereafter as counsel may be heard. The Sale Hearing may be adjourned from time to time and notice of such adjournment will be filed on the Court's docket.

6. Objections, if any, to the Sale, or the relief requested in the Motion (other than with respect to cure amounts and adequate assurance which are subject to a separate notice) must: (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Rules; (c) be filed with the Clerk of the Bankruptcy Court, on or before **May 6, 2019 at 4:00 p.m. (prevailing Eastern time)**; and (d) be served so as to be received no later than 4:00 p.m. (prevailing Eastern time) on the same day, upon (i) counsel for the Debtors, Gibbons P.C., One Gateway Center, Newark, N.J. 07102 (Attn: Karen Giannelli, Esq. (kgiannelli@gibbonslaw.com)); and (ii) counsel for the Official Committee of Unsecured Creditors, Lowenstein Sandler LLP, One Lowenstein Drive, Roseland, NJ 07068 (Attn: Mary E. Seymour, Esq (mseymour@lowenstein.com) and Elliott Greenleaf, P.C. (Attn: Rafael X. Zahralddin-Aravena, Esq. (rxza@elliottgreenleaf.com)) (collectively, the “Bid and Objection Notice Parties”).

7. 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 MOTION WITHOUT FURTHER HEARING AND NOTICE.

This Notice and the Sale Hearing is subject to the complete terms and conditions of the Motion, the Bidding Procedures Order, and the Bidding Procedures, which shall control in the event of any conflict and the Debtors encourage parties-in-interest to review such documents in their entirety. Parties interested in receiving more information regarding the sale of the Assets or in obtaining a copy of any related document, subject to any necessary confidentiality agreement, should contact Mark Karbiner, Senior Director, Phoenix Capital Resources, 110 Commons Court, Chadds Ford, PA 19317 (mkarbiner@phoenixcapitalresources.com). In addition, copies of the Motion, the Bidding Procedures Order, and this Notice can be found: (a) on the Court’s website and (b) with the Clerk of the Bankruptcy Court In addition, copies of the documents may be viewed on the internet free of charge on the Debtors’ Claims Agent’s website for the chapter 11 cases (<https://www.donlinrecano.com/Clients/nemf/index>).

Dated: April ____, 2019

GIBBONS P.C.

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Exhibit 3 (to Bidding Procedures Order)

[Notice of Assumption and Assignment]

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

In re:

NEW ENGLAND MOTOR FREIGHT, INC.,
et al.,

Debtors.¹

Chapter 11

Case No. 19-12809 (JKS)

(Jointly Administered)

NOTICE OF POTENTIAL ASSUMPTION AND ASSIGNMENT

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On April ____, 2019, the United States Bankruptcy Court for the District of New Jersey (the “Bankruptcy Court”) entered an order (the “Bidding Procedures Order”),² pursuant to sections 105(a), 363, 365, 503, 506, 507 and 552 of title 11 of the United States Code (the “Bankruptcy Code”), rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure and Local Rule 6004-1, in the chapter 11 cases of the above-captioned debtors and debtors in possession (the “Debtors”) approving, among other things, the fixing of cure amounts (the “Cure Amounts”) related to the Debtors’ assumption, assignment and/or transfer of certain

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s taxpayer identification number are as follows: New England Motor Freight, Inc. (7697); Eastern Freight Ways, Inc. (3461); NEMF World Transport, Inc. (2777); Apex Logistics, Inc. (5347); Jans Leasing Corp. (9009); Carrier Industries, Inc. (9223); Myar, LLC (4357); MyJon, LLC (7305); Hollywood Avenue Solar, LLC (2206); United Express Solar, LLC (1126); and NEMF Logistics, LLC (4666).

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Bidding Procedures Order.

executory contracts, unexpired leases, and other agreements (the “Executory Contracts and Unexpired Leases”) listed on **Exhibit A** annexed hereto in connection with the sale (the “Sale”) of certain of Debtors’ Eastern Freight Ways, Inc. (“Eastern”) and Carrier Industries, Inc. (“Carrier”) assets (collectively, the “Assets”). The Debtors will assume, assign, and/or transfer the Executory Contracts and Unexpired Leases to the Successful Bidder or Back-Up Bidder for the Assets under the bidding procedures (the “Bidding Procedures”) approved by the Bankruptcy Court and attached to the Bidding Procedures Order as Exhibit 1. A hearing to consider approval of the Sale of the Assets to the Successful Bidder or Back-Up Bidder free and clear of all liens, claims and encumbrances will be held before the Honorable Jack Sherwood in the United States Bankruptcy Court District of New Jersey on **May 16, 2019, at ___:___ .m. (prevailing Eastern time)**, or at such other time thereafter as counsel may be heard (the “Sale Hearing”).

2. The Debtors believe that any and all defaults (other than the filing of the Chapter 11 Cases) and actual pecuniary losses under the Executory Contracts and Unexpired Leases can be cured by the payment of the Cure Amounts listed on **Exhibit A** annexed hereto. If no amount is listed on the Notice of Assumption and Assignment with respect to an Executory Contract or Unexpired Lease, the Debtors believe that there is no Cure Amount applicable to such Executory Contract or Unexpired Lease.

3. Any objections to (i) the assumption, assignment and/or transfer of an Executory Contract or Unexpired Lease, or (ii) the amount asserted as the Cure Amount (each, a “Cure Amount/Assignment Objection”), must be in writing and set forth with specificity the nature of the objection and the cure amount that the objecting party believes should be paid in connection with the assumption of the Executory Contract or Unexpired Lease (the “Claimed Cure Amount”). In addition, if the Debtors or the Successful Bidder identify additional executory contracts or unexpired leases that might be assumed by the Debtors and assigned to the Successful Bidder or Back-Up Bidder not set forth in this original Notice of Assumption and Assignment, the Debtors shall promptly send a supplemental notice (a “Supplemental Notice of Assumption and Assignment”) to the applicable counterparties to such additional executory contracts and unexpired leases.

4. Unless the non-Debtor party to an Executory Contract or Unexpired Lease files an objection (the “Cure Amount/Assignment Objection”) to its scheduled Cure Amount and/or (ii) the proposed assumption, assignment and/or transfer of such Executory Contract or Unexpired Lease by **May 6, 2019 at 4:00 p.m. (prevailing Eastern Time)** (the “Cure/Assignment Objection Deadline”) and serves a copy of the Cure Amount/Assignment Objection so as to be received no later than the Cure/Assignment Objection Deadline on (i) counsel for the Debtors, Gibbons P.C., One Gateway Center, Newark, N.J. 07102 (Attn: Karen Giannelli, Esq. (kgiannelli@gibbonslaw.com); and (ii) counsel for the Official Committee of Unsecured Creditors, Lowenstein Sandler LLP, One Lowenstein Drive, Roseland, NJ 07068 (Attn: Mary E. Seymour, Esq (mseymour@lowenstein.com) and Elliott Greenleaf, P.C. (Attn: Rafael X. Zahralddin-Aravena, Esq. (rxza@elliottgreenleaf.com) (collectively, the “Objection Notice Parties”), then such non-Debtor party shall (i) be forever barred from objecting to the Cure Amount and from asserting any additional cure or other amounts with respect to such Executory Contract or Unexpired Lease and the Debtors shall be entitled to rely solely upon the Cure Amount and (ii) subject to the procedures for objecting to adequate assurance of future performance as set forth below, be deemed to have consented to the assumption, assignment

and/or transfer of such Executory Contract or Unexpired Lease to the Successful Bidder or Back-Up Bidder and shall be forever barred and estopped from asserting or claiming against the Debtors, the Successful Bidder or Back-Up Bidder or any other assignee of the relevant Executory Contract or Unexpired Lease that any additional amounts are due or defaults exist, or additional conditions to assumption, assignment and/or transfer must be satisfied, under such Executory Contract or Unexpired Lease.

5. Cure Objections shall set forth the cure amount being claimed by the objecting party (the “Claimed Cure Amount”), the specific types and dates of the alleged defaults, pecuniary losses and conditions to assignment, and the support therefor and for all other objections to assumption and assignment. Upon receipt of a Cure Amount/Assignment Objection, the Debtors, with the approval of the Successful Bidder, may resolve any Cure Objection by mutual agreement with the objecting counterparty to any Executory Contract or Unexpired Lease without further order of the Court. In the event that the Debtors, the Successful Bidder or the Back-Up Bidder (as applicable), and any objecting party are unable to consensually resolve any Cure Objection prior to the Sale Hearing, the Debtors shall request that the Court resolve such Cure Objection at the Sale Hearing or at such later date as is set by the Court.

6. Promptly after the conclusion of the Auction, the Debtors will serve a notice identifying the Successful Bidder and Back-Up Bidder (the “Notice”) to the non-Debtor parties to the Executory Contracts and Unexpired Leases that have been identified in such Successful Bid and Back-Up Bid. Objections of any Non-Debtor party to an Executory Contract or Unexpired Lease related solely to the identity of and adequate assurance of future performance by the Successful Bidder must (x) be in writing; (y) state with specificity the nature of such objection, and (z) be filed with the Court and properly served on the Objection Notice Parties so as to be received prior to **4:00 p.m. (prevailing Eastern Time) on May 15, 2019** (the “Adequate Assurance Objection Deadline”); provided, however, that in the event the Debtors obtain a Stalking Horse Bid and provide notice of the identity of the Stalking Horse Bidder prior to the Sale Objection Deadline, any objection of a Non-Debtor party to an Executory Contract or Unexpired Lease related to the Stalking Horse Bid (including, with respect to the identity of and adequate assurance of future performance provided by the Stalking Horse Bidder) must be filed as a Cure Amount/Assignment Objection by the Cure/Assignment Objection Deadline.

7. The Successful Bidder or the Back-Up Bidder, as the case may be, may determine to add or exclude any Executory Contract or Unexpired Lease from the list of Executory Contracts and Unexpired Leases to be assumed and assigned under the Purchase Agreement or Stalking Horse Purchase Agreement no later than one (1) business day prior to the Sale Hearing, or, if the Court determines at any hearing on a Cure Amount/Assignment Objection that the applicable cure amount for such contract is greater than the Cure Amount proposed by the Debtors, no later than five (5) business days following the Court’s determination.

8. If no Cure Amounts are due under an Executory Contract or Unexpired Lease, or if the non-Debtor Party agrees to the Cure Amounts listed on Exhibit A hereto, and the non-Debtor party to the Executory Contract or Unexpired Lease does not otherwise object to the Debtors’ assumption, assignment and/or transfer of the Executory Contract or Unexpired Lease, no further action needs to be taken on the part of that non-Debtor party.

9. Copies of the Bidding Procedures Order and other relevant documents can be found: (a) on the Court's website and (b) with the Clerk of the Bankruptcy Court. In addition, copies of the documents may be viewed on the internet free of charge on the Debtors' Claims Agent's website for the chapter 11 cases (<https://www.donlinrecano.com/Clients/nemf/index>).

10. The Debtors' decision to sell, assign and/or transfer to the Successful Bidder or Back-Up Bidder the Executory Contracts and Unexpired Leases is subject to Court approval and the Sale closing. Accordingly, absent such Sale closing, the Executory Contracts and Unexpired Leases shall not be deemed to be sold, assigned and/or transferred, and shall in all respects be subject to further administration under the Bankruptcy Code. The inclusion of any document on the list of Executory Contracts and Unexpired Leases shall not constitute or be deemed to be a determination or admission that such document is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code (all rights with respect thereto being expressly reserved). Nor shall the inclusion of any document constitute an admission of liability by the Debtors or their estates.

Dated: _____, 2019

GIBBONS P.C.

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Exhibit A (to Notice of Assumption and Assignment)

[Executory Contracts and Unexpired Leases]

[To be provided]

ASSET PURCHASE AGREEMENT

BY AND BETWEEN

**EASTERN FREIGHT WAYS, INC.
CARRIER INDUSTRIES, INC.,
Debtors in Possession**

as Sellers

AND

[•]

as Purchaser

[•], 2019

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EXHIBITS

[Exhibit A Lease for North Brunswick Property]

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “Agreement”) is made and entered into this [●] day of [●], 2019, by and between Eastern Freight Ways, Inc., debtor in possession, a New Jersey corporation (“Eastern”) and Carrier Industries, Inc., debtor in possession, a New Jersey corporation (“Carrier”) and, collectively with Eastern, “Sellers”), and [PURCHASER], a [●] (“Purchaser”).

WHEREAS, Eastern is in the business of providing trucking services in the Northeast and Mid-Atlantic regions of the United States and Carrier is in the business of providing third party logistic services (in the aggregate, the “Business”);

WHEREAS, on February 28, 2019 (the “Petition Date”), each Seller filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §101, *et seq.* (the “Bankruptcy Code”), in the United States Bankruptcy Court for the District of New Jersey (the “Bankruptcy Court”), consolidated as Case 19-12809 (JKS) (the “Chapter 11 Case”);

WHEREAS, each Seller continues in the possession and control of its assets and properties in accordance with §§1107 and 1108 of the Bankruptcy Code; and

WHEREAS, Sellers desire to sell to Purchaser substantially all of their assets that are used in connection with the conduct of the Business pursuant to the terms and conditions of this Agreement, and Purchaser desires to so purchase and acquire such assets from Sellers (the “Acquisition”), in accordance with §§363 and 365 of the Bankruptcy Code.

NOW, THEREFORE, in consideration of the foregoing premises, the representations, warranties, covenants and agreements contained herein, and certain other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

1.1 **Definitions.** As used herein, the following terms shall have the following meanings:

“Accounts Receivable” shall mean all accounts receivable of Sellers and other receivables of Sellers in existence as of the Closing Date (whether or not billed).

“Acquired Assets” has the meaning assigned to that term in Section 2.1.

“Acquisition” has the meaning assigned to that term in the Preamble.

“Agreement” has the meaning assigned to that term in the Preamble.

“Ancillary Agreements” means any certificate, agreement, document or other instrument to be executed and delivered in connection with this Agreement.

“Approval Order” has the meaning assigned to that term in Section 6.3(a).

“Assigned Contracts” has the meaning assigned to that term in Section 2.1(f).

“Assumed Liabilities” has the meaning assigned to that term in Section 2.3.

“Assumed Trade Payables” means bona fide trade payables of Sellers arising after the date of the Bankruptcy Petition and incurred in the ordinary course of business consistent with past practices through the Closing in respect of goods received or to be received after the date of the Bankruptcy Petition, and services rendered or to be rendered after the date of the Bankruptcy Petition.

“Avoidance Actions” means all avoidance claims or causes of action under the Bankruptcy Code or applicable Law (including, without limitation, any preference or fraudulent conveyance).

“Back-up Bidder” has the meaning assigned to that term in Section 8.3.

“Bankruptcy Code” has the meaning assigned to that term in the Preamble.

“Bankruptcy Court” has the meaning assigned to that term in the Preamble.

“Bankruptcy Petition” means a voluntary bankruptcy petition filed by a Seller with the Bankruptcy Court on the Petition Date.

“Bidding Procedures Order” means the Order to be entered in the Chapter 11 Case setting forth the bidding procedures with respect to the sale of the Business of Sellers.

“Business” has the meaning assigned to that term in the Preamble.

“Business Day” means any day on which commercial banking institutions are open for business in New Jersey.

“Carrier” has the meaning assigned to that term in the Preamble.

“Causes of Action” shall mean any and all causes of action, defenses, and counterclaims accruing to a Debtor or that is property of the Estate, based upon facts, circumstances and transactions that occurred prior to the Closing Date, and shall include, without limitation, (i) Causes of Action against past and present vendors or customers of a Seller, and (ii) Causes of Action against the directors, officers or other insiders of a Seller, (iii) Avoidance Actions, and (iv) Causes of Action against any administrative or other agent, lender or secured party related to any credit facility existing at any time whether prior to or after the filing of the Bankruptcy Petition.

“Chapter 11 Case” has the meaning assigned to that term in the Preamble.

“Closing” has the meaning assigned to that term in Section 3.1.

“Closing Date” has the meaning assigned to that term in Section 3.1.

“COBRA Continuation Coverage” has the meaning assigned to that term in Section 7.2.

“Commercial Tort Claims” has the meaning given to it in Section 9-102(13) of the Uniform Commercial Code as in effect in the State of New Jersey.

“Confidentiality Agreement” has the meaning assigned to that term in Section 9.16.

“Contracts” means all agreements, contracts, leases, consensual obligations, promises or undertakings, other than Employee Benefit Plans.

“Cure Amounts” means all amounts, costs and expenses required by the Bankruptcy Court to cure all defaults under the Assigned Contracts so that they may be assumed and assigned to Purchaser pursuant to §§363 and 365 of the Bankruptcy Code.

“Debtor” shall mean a Seller.

“Deposit” has the meaning assigned to that term in Section 2.6.

“Eastern” has the meaning assigned to that term in the Preamble.

“Employee” means an individual who, as of the applicable date, is employed by, or engaged to provide services to, any Seller in connection with the Business.

“Employee Benefit Plans” shall mean (i) all “employee benefit plans” (as defined in §3(3) of ERISA), including any employee pension benefit plans; (ii) all employment, consulting, non-competition, employee non-solicitation, employee loan or other compensation agreements, and (iii) all bonus or other incentive compensation, equity or equity-based compensation, stock purchase, deferred compensation, change in control, severance, leave of absence, vacation, salary continuation, medical, life insurance or other death benefit, educational assistance, training, service award, dependent care, pension, welfare benefit or other material employee or fringe benefit plans, policies, agreements or arrangements, whether written or unwritten, qualified or unqualified, funded or unfunded and all underlying insurance policies, trusts and other funding vehicles, in each case currently maintained by or as to which a Seller has or could reasonably be expected to have any obligation or liability, contingent or otherwise, thereunder for current or former employees, directors or individual consultants of such Seller.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and regulations and formal guidance issued thereunder.

“Escrow Agent” has the meaning assigned to that term in Section 2.6.

“Escrow Agreement” has the meaning assigned to that term in Section 2.6.

“Estate” shall mean the estate of a Debtor created by §541 of the Bankruptcy Code upon the filing of the Bankruptcy Petition.

“Excluded Assets” has the meaning assigned to that term in Section 2.2.

“Executory Contracts and Unexpired Leases” has the meaning assigned to that term in Section 2.1(f).

“Final Order” means an order of the Bankruptcy Court that has not been appealed, reversed, modified, amended or stayed and the time to appeal from or to seek review or rehearing of such order has expired.

“Governmental Authorization” means any consent, franchise, license, registration, permit, order or approval issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Law, including, as the context may require, any declarations or filings with, or expiration of waiting periods imposed by, any such Governmental Body.

“Governmental Body” means any (i) nation, state, county, city, town, borough, village, district or other jurisdiction, (ii) federal, state, local, municipal, foreign or other government, (iii) governmental or quasi-governmental body of any nature (including any agency, branch, department, board, commission, court, tribunal or other entity exercising governmental or quasi-governmental powers), (iv) multinational organization or body, (v) body exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, or (vi) official of any of the foregoing.

“Intellectual Property” means all trademarks, trade names, corporate names, company names, business names, product or brand names, service marks, patents, copyrights (including but not limited to moral rights), and any applications for or registrations of any of the foregoing, works of authorship, know-how, logos, proprietary information, protocols, schematics, specifications, software, software code (in any form, including source code and executable or object code), subroutines, techniques, user interfaces, URLs, domain names, web sites, works of authorship and other forms of technology (whether or not embodied in any tangible form and including all tangible embodiments of the foregoing, such as instruction manuals, laboratory notebooks, prototypes, samples, studies and summaries) inventions, trade secrets and any other intellectual property or intangible property that are used in the Business as presently conducted and any rights relating to any of the foregoing.

[“Inventory” means all supplies, goods, materials, work in process, inventory and stock in trade owned by a Seller exclusively for use or sale in the ordinary course of Business, but specifically excluding (1) goods which belong to sublessees, licensees or concessionaires of such Seller, and (2) goods held by such Seller on memo, on consignment, or as bailee.]

“Law” means any applicable federal, state, local, municipal, foreign, international, multinational or other constitution, law, ordinance, principle of common law, code, regulation, statute or treaty.

“Liability” means any and all obligations, liabilities, debts and commitments, whether known or unknown, asserted or unasserted, fixed, absolute or contingent, matured or unmatured, accrued or unaccrued, liquidated or unliquidated, due or to become due, whenever or however arising (including, without limitation, whether arising out of any contract or tort based on negligence, strict liability, or otherwise) and whether or not the same would be required by GAAP to be reflected as a liability in financial statements or disclosed in the notes thereto.

“Lien” means any mortgage, deed of trust, lien, pledge, charge, title defect, security interest, pledge, leasehold interest or other legal or equitable encumbrance of any kind.

“Material Adverse Change” means only such change, circumstance, or effect as shall have arisen after the date on which this Agreement shall have been executed by Sellers and prior to the Closing that has a materially adverse effect on (i) the operations, assets or properties of Sellers, taken as a whole, or (ii) the ability of any of the parties hereto to consummate the transactions contemplated by this Agreement; provided, however, that any change, circumstance, or effect that arises out of, results from or relates to the commencement or conduct of the Chapter 11 Case shall not be considered in determining whether a Material Adverse Change has occurred and, in addition, no change, event, effect, condition, circumstance or occurrence related to any of the following shall be deemed to constitute, and none of the following shall be taken into account in determining whether there has been, a Material Adverse Change: (i) national or international business, economic, political or social conditions, including the engagement by the United States of America in hostilities, affecting (directly or indirectly) the industry in which the Sellers operate, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon the United States of America, except to the extent that such change has a disproportionate adverse effect on the Sellers relative to the adverse effect that such changes have on other companies in the industry in which the Sellers operate; (ii) financial, banking or securities markets (including any disruption thereof or any decline in the price of securities generally or any market or index), except to the extent that such change has a disproportionate adverse effect on the Sellers relative to the adverse effect that such changes have on other companies in the industry in which the Sellers operate; (iii) any change in GAAP or Law, except to the extent that such change has a disproportionate adverse effect on the Sellers relative to the adverse effect that such changes have on other companies in the industry in which the Sellers operate; (iv) compliance with this Agreement or any related agreement, including the taking of any action required hereby or thereby or the failure to take any action that is not permitted hereby or thereby; (v) any change directly attributable to the announcement of this Agreement, including by reason of the identity of Purchaser or any of its Affiliates or any communication by Purchaser or any of its Affiliates of their plans or intentions regarding the operation of the Business; (vi) any force majeure event, except to the extent that such change has a disproportionate adverse effect on the Sellers relative to the adverse effect that such changes have on other companies in the industry in which the Sellers operate; or (vii) in the case of Sellers, any failure to meet or exceed any projection or forecast provided to or reviewed by the Purchaser.

“North Brunswick Property” has the meaning assigned to that term in Section 2.1(a).

“Outside Back-up Date” has the meaning assigned to that term in Section 8.3.

“Permitted Liens” means (i) Liens for Taxes, assessments and other governmental levies, fees or charges that are not yet due and payable, (ii) pledges or deposits in connection with workers’ compensation, unemployment insurance and other social security legislation, (iii) Liens which constitute mechanics’, carriers’, workmens’, repairmens’, agricultural or other like Liens arising or incurred in the ordinary course of business for which amounts are not delinquent, (iv) Liens arising out of operating leases with third parties, (v) with respect to real property, encumbrances reflected on policies of title insurance related to such real property and all recorded encumbrances, covenants and restrictions with respect to such real property, (vi) Liens created by

Purchaser, (vii) any Lien that constitutes an Assumed Liability, and (viii) those Liens set forth on **Schedule 1.1.**

“Person” means any individual, corporation, partnership, joint venture, trust, association, limited liability company, unincorporated organization, other entity, or governmental body or subdivision, agency, commission or authority thereof.

“Personal Property” has the meaning assigned to that term in Section 2.1(b).

“Petition Date” has the meaning assigned to that term in the Preamble.

“Prevailing Bidder” has the meaning assigned to that term in Section 8.3.

“Purchase Price” has the meaning assigned to that term in Section 2.5.

“Purchaser” has the meaning assigned to that term in the Preamble.

“Rights in Transaction-Related Privileges” has the meaning assigned to such term in Section 2.2(l).

“Sellers” has the meaning assigned to that term in the Preamble.

“Tax” or “Taxes” means any federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, custom duties, capital stock, franchise, profits, withholding, social security (or similar excises), unemployment, disability, ad valorem, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not, by any governmental authority responsible for imposition of any such tax (domestic or foreign).

“Transaction-Related Documents” has the meaning assigned to such term in Section 2.2(l).

“Transactions” has the meaning assigned to that term in Section 2.4.

“Transferred Employee” has the meaning assigned to that term in Section 7.1.

“Trustee” means any trustee or fiduciary appointed to act on behalf of a Debtor or as successor to a Debtor.

“WARN Act” means each of the Worker Adjustment and Retraining Notification Act of 1988, 29 U.S.C. §2101 *et seq.* or the Millville Dallas Airmotive Plant Job Loss Notification Act (New Jersey WARN Act) and any applicable similar state or local law which imposes obligations in circumstances of mass termination of employment.

ARTICLE II SALE AND PURCHASE OF ASSETS

2.1 **Sale and Purchase of Assets.** On the terms and subject to the conditions set forth in this Agreement, on the Closing Date, Purchaser shall purchase from each Seller, and each Seller

shall sell, assign, transfer, convey and deliver to Purchaser, all of such Seller's right, title and interest in and to all assets, properties, rights, interests, benefits and privileges of whatever kind or nature, both tangible and intangible, real and personal, wherever located, whether owned or leased, that are used by such Seller in connection with the operation of the Business (except for the Excluded Assets), to the extent transferable under applicable Law, the Bankruptcy Code or otherwise, as those assets, properties, rights, interests, benefits and privileges exist on the Closing Date, free and clear of any Lien other than Permitted Liens. Without limiting the foregoing, the assets, properties, rights, interests, benefits and privileges sold, assigned, transferred, conveyed and delivered by each Seller hereunder (collectively, the "Acquired Assets") shall include all of such Seller's right, title and interest in and to the following except to the extent any of the following are included within Excluded Assets:

(a) all of such Seller's interests as a tenant in the real property commonly known as 212 Black Horse Lane, North Brunswick, NJ 08852, together with all buildings, structures, fixtures and improvements of all kinds situated thereon (the "North Brunswick Property");]

(b) all of such Seller's forklifts, trucks, trailers and other rolling stock identified on *Schedule 2.1(b)*;

(c) all of such Seller's supplies, materials, machinery, non-rolling stock equipment (including equipment that is subject to a capital lease, but only to the extent that Purchaser assumes such capital lease as an Assigned Contract), spare parts, tools, furniture, fixtures, furnishings, leasehold improvements, goods, and other tangible personal property owned by such Seller, including, but not limited to, any owned computer hardware and software (collectively, "Personal Property");

(d) [all of such Seller's Inventory;]

(e) all of such Seller's books and records relating to the Acquired Assets, property records, mailing lists, and customer and vendor lists, provided that such Seller may obtain and retain, at its own expense, copies of any or all such books and records before their transfer to Purchaser;

(f) all of such Seller's rights in Intellectual Property, to the extent assignable;

(g) all of such Seller's Contracts, agreements, licenses, leases, warranties, commitments, and purchase and sale orders with respect to Personal Property, Intellectual Property, [real property]¹ or otherwise ("Executory Contracts and Unexpired Leases"), solely to the extent that such Executory Contracts and Unexpired Leases are designated by Purchaser to be assumed and assigned on the Closing Date in accordance with the Bidding Procedures Order and provided further that Purchaser shall have provided adequate assurance of future performance under §365(b)(1)(C) of the Bankruptcy Code with respect to any designated contract (collectively,

¹ Are there any real property leases or licenses other than North Brunswick?

“Assigned Contracts”), together with the right to receive income in respect of such Assigned Contracts on and after the Closing Date;

(h) all of such Seller’s Governmental Authorizations and all of such Seller’s pending applications therefor or renewals thereof, in each case to the extent transferable to Purchaser and excluding Governmental Authorizations or pending applications therefor required for the continued operation of an Excluded Asset;

(i) all of such Seller’s Accounts Receivable; and

(j) all of such Seller’s assets, properties and rights identified on Schedule 2.1(j).

2.2 **Excluded Assets.** Notwithstanding the provisions of Section 2.1 or any other provision of this Agreement, the Acquired Assets do not include, and no Seller shall transfer to Purchaser, any of the following assets, properties, rights, interests, benefits and privileges (collectively, the “Excluded Assets”):

(a) all cash, bank deposits, securities and cash equivalents, including for this purpose (i) all cash and cash equivalents if credited to a Seller’s bank account(s) prior to the Closing Date, and (ii) all deposits and other prepaid amounts arising outside of the ordinary course of a Seller’s business, including without limitation all such amounts held by a Seller’s landlords, utility providers, vendors, attorneys, accountants, investment bankers, restructuring advisors, notice and claims agents, public relations advisors, and other professional advisors;

(b) all of such Seller’s prepaid expenses, advances and deposits, including (i) prepaid expenses, advances and deposits allocable to Executory Contracts and Unexpired Leases that relate to the period prior to the Closing Date, and (ii) any deposits, security retainers paid to professionals or other prepaid amounts referred to in Section 2.2(a) or Section 2.2(g) below;

(c) all of such Seller’s rights with respect to Employee Benefit Plans and all Contracts, agreements, licenses, leases, warranties, commitments, and purchase and sale orders with respect to Personal Property, Intellectual Property, real property or otherwise and the rights associated therewith other than the Executory Contracts and Unexpired Leases assumed as provided in Section 2.1(g);

(d) except as set forth in Section 2.1(j), all shares of capital stock or other equity interests in any Person held by any Seller, [all of the rights of a member, financial and otherwise, in Myar, LLC, and the assets of Myar, LLC]² and all corporate minute books and records of internal corporate proceedings, stock transfer ledgers, blank stock certificates, corporate seals, tax and accounting records, work papers and other records relating to the organization or maintenance of the legal existence of a Seller;

² Need details re Myar, LLC.

- (e) any accounting records, tax records, financial records and any books, records or other information related solely and exclusively to the other Excluded Assets;
- (f) all records that a Seller is required by law to retain;
- (g) all refunds, credits or deposits of Taxes with respect to the period prior to the Closing Date, including without limitation any refunds, credits or deposits of Taxes arising as a result of Seller's operation of the Business or ownership, operation, utilization or maintenance of the Acquired Assets prior to the Closing Date;
- (h) all Causes of Action;
- (i) all rights to receive mail and other communications addressed to a Seller that do not relate to the Acquired Assets or the Assumed Liabilities;
- (j) the corporate franchise of any Seller and any and all prepaid expenses and deposits in respect of franchise Taxes and the like;
- (k) all property, rights and assets relating to an Excluded Asset or arising from and relating to the defense, release, compromise, discharge or satisfaction of any of the Liabilities which are not Assumed Liabilities;
- (l) all documents, emails and other communications relating to the transactions contemplated hereby or any preparations or planning with respect thereto, including without limitation all such materials consisting of this Agreement, the Ancillary Agreements, memoranda, research, analysis, planning, due diligence reports, quality of earnings reports, agreements with financial advisors, investment bankers, accountants or legal counsel, whether or not subject to any attorney-client privilege, work product privilege, or any other privilege (the "Transaction-Related Documents"), and any Seller's right to exercise or waive any attorney-client privilege, work product privilege or other privilege with respect to the transactions contemplated hereby or any of the Transaction-Related Documents (the "Rights in Transaction-Related Privileges");
- (m) all rights of Sellers arising under this Agreement, the Ancillary Agreements, and under any other agreement between Sellers and Purchaser entered into in connection with this Agreement;
- (n) all good faith or other bid deposits submitted by any third party under the terms of the Bidding Procedures Order;
- (o) all insurance policies of any of the Sellers and/or their subsidiaries for directors', managers', and officers' liability and all rights of any nature with respect thereto, including all insurance recoveries, prepaid premiums, and unearned premiums thereunder and rights to assert claims with respect to any such insurance recoveries;
- (p) all Commercial Tort Claims of the Sellers; and
- (q) all assets, properties and rights identified on Schedule 2.2(q).

2.3 **Assumed Liabilities.** Upon the terms and subject to the conditions set forth herein, at the Closing, Purchaser shall assume and shall timely perform and discharge in accordance with their respective terms (a) all Liabilities and Cure Amounts with respect to the Assigned Contracts, (b) all Liabilities (including for any Tax) that arise on or after the Closing Date with respect to Purchaser's ownership or operation of the Acquired Assets on and after the Closing, (c) all Liabilities with respect to Assumed Trade Payables, and (d) such other Liabilities of a Seller set forth on **Schedule 2.3** (collectively "**Assumed Liabilities**").

2.4 **Excluded Liabilities.** Purchaser, by its execution and delivery of this Agreement and the Ancillary Agreements and its performance of the transactions contemplated by this Agreement and the Ancillary Agreements (the "**Transactions**"), shall not assume or otherwise be responsible for any Liability other than the Assumed Liabilities.

2.5 **Purchase Price.** The aggregate consideration payable to Sellers for the sale and transfer of the Acquired Assets shall be (a) [●] Dollars (\$[●]) (the "**Purchase Price**"), and (b) the assumption by Purchaser of the Assumed Liabilities. At the Closing, Purchaser shall deliver the Purchase Price (less the Deposit) to Sellers, by wire transfer of immediately available funds to one or more accounts designated in writing by Sellers.

2.6 **Deposit.** Contemporaneously with the execution of this Agreement by Purchaser, Purchaser shall deposit, in accordance with the good faith deposit provisions of the Bidding Procedures Order, [●] Dollars (\$[●])³ (the "**Deposit**") by cashier's check or wire transfer. The Deposit shall be credited against the Purchase Price at the Closing if Purchaser is the successful bidder for the Acquired Assets. If this Agreement is terminated for any reason, then the Deposit shall be forfeited to Sellers or returned to Purchaser as provided in Article VIII and the Bidding Procedures Order.

ARTICLE III CLOSING; CONDITIONS TO CLOSING

3.1 **Closing.** Subject to the terms and conditions of this Agreement, the closing (the "**Closing**") of the sale and purchase of the Acquired Assets and the assumption of the Assumed Liabilities shall take place on or before [●] at a location to be specified by the Sellers. The time and date upon which the Closing occurs is referred to herein as the "**Closing Date**". Transactions at the Closing shall be deemed to take place simultaneously and none shall be deemed to have taken place until all shall have taken place.

3.2 **Court Approval Required.** Purchaser and Sellers acknowledge and agree that the Bankruptcy Court's entry of the Approval Order shall be required in order to consummate the Transactions, and that the requirement that the Approval Order be entered is a condition that cannot be waived by any party.

3.3 **Conditions to Obligations of Purchaser.** The obligation of Purchaser to consummate the transactions contemplated by this Agreement is subject to the satisfaction, at or

³ The Deposit amount will be ten percent (10%) of the Purchase Price.

before the Closing, of each of the following conditions, any of which conditions may, except for the condition set forth in Section 3.2, be waived by Purchaser in its sole discretion:

(a) Representations and Warranties. The representations and warranties of Sellers set forth in Article IV of this Agreement, taken as a whole, shall be true and correct in all material respects (except for those representations and warranties qualified by materiality, which shall be true and correct in all respects) on the date hereof and on and as of the Closing Date, as though made on and as of the Closing Date (except for representations and warranties made as of a specified date, which shall be true and correct only as of the specified date).

(b) Agreements and Covenants. Sellers shall have performed and complied with each agreement, covenant and obligation required to be performed or complied with by them under this Agreement at or before the Closing in all material respects.

(c) Deliveries at Closing. Sellers shall have used commercially reasonable efforts to cause Purchaser to receive duly executed assignments, patent assignments, general trademark assignments, bills of sale or certificates of title, dated as of the Closing Date, in form and substance reasonably satisfactory to Purchaser, for the transfer to Purchaser of all of such Seller's right, title and interest in and to the material Acquired Assets free and clear of any Lien other than Permitted Liens, provided however that Sellers shall not have any duty to make any payment or incur any material expense in connection therewith.

(d) Assumption and Assignment of Assigned Contracts. Each Seller shall have assigned to Purchaser the Assigned Contracts to which it is a party by virtue of the Approval Order.

(e) [Lease for North Brunswick Property. Purchaser and the owner of the North Brunswick Property shall have entered a lease in the form of Exhibit A hereto.]⁴

(f) Consents. All consents, authorizations, or approvals required to be obtained from any Governmental Authority set forth on Schedule 4.3 shall have been obtained and be in full force.

3.4 Conditions to Obligations of Sellers. The obligation of each Seller to consummate the transactions contemplated by this Agreement is subject to the satisfaction, at or before the Closing, of each of the following conditions, any of which conditions may, except for the condition set forth in Section 3.2, be waived by any Seller in its sole discretion:

(a) Representations and Warranties. The representations and warranties of Purchaser set forth in Article V of this Agreement shall be true and correct in all material respects (except for those representations and warranties qualified by materiality, which shall be true and correct in all respects) on the date hereof and on and as of the Closing Date, as though made on and as of the Closing Date (except for representations and warranties made as of a specified date, which shall be true and correct only as of the specified date).

⁴ To be determined by Purchaser.

(b) Agreements and Covenants. Purchaser shall have performed and complied with each agreement, covenant and obligation required to be performed or complied with by it under this Agreement at or before the Closing in all material respects.

(c) Receipt of Purchase Price. Sellers, shall have received (i) the Purchase Price (less the Deposit) from Purchaser, and (ii) the Deposit from the Escrow Agent.

(d) Orders. The Bankruptcy Court shall have entered the Approval Order and the Bidding Procedures Order, and such orders shall have become Final Orders.

(e) Deliveries at Closing. Sellers shall have received from Purchaser all fully executed instruments or documents as any Seller may reasonably request to fully effect the transfer of the Acquired Assets and assumption of the Assumed Liabilities and to otherwise consummate the Transactions.

(f) Consents. All consents, authorizations, or approvals required to be obtained from any Governmental Authority set forth on Schedule 4.3 shall have been obtained and be in full force.

3.5 Delivery of Possession of Assets. Right to possession of all Acquired Assets shall transfer to Purchaser at the Closing. Purchaser shall bear all risk of loss with respect to the Acquired Assets from and after the Closing.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLERS

Each Seller represents and warrants to Purchaser, with respect to itself only, severally and not jointly, that the statements contained in this Article IV are true and correct as of the date hereof and will be true and correct in all material respects on the Closing Date (except for those representations and warranties qualified by materiality, which shall be true and correct in all respects).

4.1 Organization, Good Standing and Power. Such Seller is legally formed and in good standing under the laws of the State of its incorporation. Subject to the applicable provisions of the Bankruptcy Code, such Seller has the power to own its properties and carry on its business as now being conducted and is qualified to do business and is in good standing in each jurisdiction in which the failure to be so qualified and in good standing would result in a Material Adverse Change.

4.2 Authority Relative to this Agreement; Execution and Binding Effect. Such Seller has full power and authority to execute and deliver this Agreement and the Ancillary Agreements and, subject to receipt of any necessary Bankruptcy Court approval in accordance with the Bankruptcy Code, to consummate the Transactions applicable to such Seller. The execution and delivery of this Agreement and the Ancillary Agreements and the consummation of the Transactions have been duly and validly approved and adopted by the board of directors of such Seller, and, except for Bankruptcy Court approval or as set forth on Schedule 4.3, no other proceedings or approvals on the part of such Seller are necessary to approve this Agreement and the Ancillary Agreements and to consummate the Transactions. This Agreement has been duly

and validly executed and delivered by such Seller. Assuming due authorization, execution and delivery by Purchaser, this Agreement constitutes, and each of the Ancillary Agreements at the Closing will constitute, the valid and binding obligation of such Seller, enforceable against such Seller in accordance with their terms, except as such enforcement may be limited by (a) the effect of bankruptcy, insolvency, reorganization, receivership, conservatorship, arrangement, moratorium or other laws affecting or relating to the rights of creditors generally, or (b) the rules governing the availability of specific performance, injunctive relief or other equitable remedies and general principles of equity, regardless of whether considered in a proceeding in equity or at law.

4.3 **Governmental and Other Consents.** Except for the receipt of any necessary Bankruptcy Court approval in accordance with the Bankruptcy Code or as set forth on **Schedule 4.3**, no consent, notice, authorization or approval of, or exemption by, or filing with or notifications to any Governmental Authority or any other Person, whether pursuant to contract or otherwise, is required in connection with the execution and delivery by such Seller of this Agreement and the Ancillary Agreements and the consummation of the Transactions.

4.4 **No Brokers.** No Seller has incurred or will incur, directly or indirectly, as a result of any action taken or permitted to be taken by or on behalf of such Seller, any Liability for brokerage or finders' fees or agents' commissions or similar charges in connection with the execution and delivery by such Seller of this Agreement and the Ancillary Agreements and the consummation of the Transactions.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to Sellers that the statements contained in this Article V are true and correct as of the date hereof and will be true and correct in all material respects on the Closing Date (except for those representations and warranties qualified by materiality, which shall be true and correct in all respects).

5.1 **Organization, Good Standing and Power.** Purchaser is legally formed and in good standing under the laws of the state of its formation. Purchaser has the power to own its properties and carry on its business as now being conducted and is qualified to do business and is in good standing in each jurisdiction in which the failure to be so qualified and in good standing would result in a Material Adverse Change.

5.2 **Authority Relative to this Agreement; Execution and Binding Effect.** Purchaser has full power and authority to execute and deliver this Agreement and the Ancillary Agreements and to consummate the Transactions. The execution and delivery of this Agreement and the Ancillary Agreements and the consummation of the Transactions have been duly and validly approved and adopted by all necessary action of Purchaser and no other proceedings or approvals (shareholder, member or otherwise) on the part of Purchaser are necessary to approve this Agreement and the Ancillary Agreements and to consummate the Transactions. This Agreement has been duly and validly executed and delivered by Purchaser. Assuming due authorization, execution and delivery by each Seller, this Agreement constitutes, and each of the Ancillary Agreements at the Closing will constitute, the valid and binding obligation of Purchaser,

enforceable against Purchaser in accordance with their terms, except as such enforcement may be limited by (a) the effect of bankruptcy, insolvency, reorganization, receivership, conservatorship, arrangement, moratorium or other laws affecting or relating to the rights of creditors generally, or (b) the rules governing the availability of specific performance, injunctive relief or other equitable remedies and general principles of equity, regardless of whether considered in a proceeding in equity or at law.

5.3 **No Defaults.** The execution and delivery by Purchaser of this Agreement and the Ancillary Agreements and the consummation of the Transactions do not and will not (a) with or without the giving of notice or the lapse of time, or both, conflict with, or result in the breach of or constitute a default under, or result in the modification, cancellation, lapse or termination of, or limitation, or curtailment under, or violate any (i) provision of Law, or (ii) agreement (including without limitation any loan or financing agreement), Contract, lease, power of attorney, commitment, instrument, insurance policy, arrangement, undertaking, order, decree, ruling or injunction to which Purchaser is subject or a party or by which it is bound (or with respect to which its properties or assets are subject or bound), except for any breach, default, modification, cancellation, lapse, termination, limitation, curtailment or violation that would not result in a Material Adverse Change; or (b) violate the certificate of incorporation, bylaws or any comparable instruments of Purchaser.

5.4 **Governmental and Other Consents.** Except for the receipt of any necessary Bankruptcy Court approval in accordance with the Bankruptcy Code, no consent, notice, authorization or approval of, or exemption by, or filing with or notifications to any Governmental Authority or any other Person, whether pursuant to contract or otherwise, is required in connection with the execution and delivery by Purchaser of this Agreement and the Ancillary Agreements and the consummation of the Transactions.

5.5 **Financial Ability.** Purchaser has cash available that is sufficient to enable it to pay the Deposit and the Purchase, as well as all other amounts (including Cure Amounts) otherwise payable to consummate the Transactions pursuant to and in accordance with this Agreement.

5.6 **No Brokers.** Purchaser has not incurred and will not incur, directly or indirectly, as a result of any action taken or permitted to be taken by or on behalf of Purchaser, any Liability for brokerage or finders' fees or agents' commissions or similar charges in connection with the execution and delivery by Purchaser of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby.

ARTICLE VI COVENANTS

6.1 **Operation of Business.** Subject to the requirements of, and the obligations imposed upon, each Seller as debtor-in-possession and pursuant to the Bankruptcy Code and except as otherwise contemplated by this Agreement or the Bidding Procedures Order or as required to comply with debtor-in-possession financing obtained by such Seller, from the date hereof and until the Transactions shall have been consummated or abandoned as contemplated herein, each Seller shall operate the Business in the ordinary course (relative to that in effect immediately prior to the execution of the Agreement) and, consistent with such operation and the

budget set forth in Seller's debtor-in-possession credit agreement, and consistent with acting as a debtor-in-possession in a Chapter 11 bankruptcy case, shall use commercially reasonable efforts to maintain the goodwill associated with the Business **and the relationships with the employees, customers and suppliers of the Business.** [DISCUSS]

6.2 **Bidding Procedures Order.** The purchase and sale of the Acquired Assets will be subject to competitive bidding in accordance with (and only in accordance with) the terms of an order of the Bankruptcy Court approving the Bidding Procedures Order.

6.3 **Approval Order.**

(a) Prior to the Closing, and subject to the provisions of this Agreement, Purchaser and Sellers shall use their commercially reasonable efforts to obtain entry of an order or orders by the Bankruptcy Court pursuant to §§363 and 365 of the Bankruptcy Code (the "Approval Order"), which shall approve of this Agreement and the transactions described herein, and which shall contain the following provisions in terms reasonably acceptable to the parties (it being understood that certain of such provisions may be contained in either the findings of fact or conclusions of law to be made by the Bankruptcy Court as part of the Approval Order):

(i) that each Seller may sell, transfer and assign the applicable Acquired Assets and assume and assign the applicable Assigned Contracts to Purchaser pursuant to this Agreement and Bankruptcy Code §§105, 363 and 365, as applicable, and that any Executory Contract or Unexpired Lease not assigned to Purchaser is rejected;

(ii) the transfers of the Acquired Assets by each Seller to Purchaser (A) vest or will vest Purchaser with all right, title and interest of such Seller in and to the Acquired Assets, free and clear of all Liens other than Permitted Liens, and (B) constitute transfers for reasonably equivalent value and fair consideration under the Bankruptcy Code and the laws of the State of New Jersey;

(iii) the transactions contemplated by this Agreement are undertaken by Purchaser and Sellers at arm's length, without collusion and in good faith within the meaning of section 363(m) of the Bankruptcy Code, and such parties are entitled to the protections of section 363(m) of the Bankruptcy Code;

(iv) a determination that selling the Acquired Assets free and clear of all Liens other than Permitted Liens is in the best interest of each Seller's Estate; and

(v) that Purchaser shall not assume any of the Excluded Liabilities.

(b) If the Approval Order or any other orders of the Bankruptcy Court relating to this Agreement shall be appealed by any person (or a petition for certiorari or motion for rehearing or reargument shall be filed with respect thereto), each party hereto agrees to use commercially reasonable efforts to obtain an expedited resolution of such appeal; provided, however, that nothing herein shall preclude the parties hereto from consummating the Transactions if the Approval Order shall have been entered and has not been stayed in which event Purchaser shall be able to assert the benefits of §363(m) of the Bankruptcy Code.

6.4 **Access to Facilities, Personnel, and Information.**

(a) Prior to the Closing, each Seller shall permit representatives of Purchaser to have reasonable access during regular business hours and upon reasonable notice, and in a manner so as not to interfere with the normal business operations of such Seller, to all premises, property, books, records (excluding Tax records), Contracts, and documents of or pertaining to the Business which are under such Seller's control (provided that any representatives of Purchaser shall be subject to the confidentiality obligations under the Confidentiality Agreement or otherwise agree in writing to be bound by the terms of such Confidentiality Agreement applicable to Purchaser thereunder).

(b) From the Closing Date through and including the second anniversary of the Closing Date, Purchaser shall grant each Seller, each Trustee, and their respective representatives reasonable access to the books and records transferred to Purchaser pursuant to this Agreement during regular business hours and upon reasonable notice for the purpose of allowing such Seller or its successor, such Trustee, or their respective representatives to perform the duties necessary for the liquidation of each Debtor's Estate. To the extent reasonably required by any Seller, Purchaser shall make one or more of the Transferred Employees available to such Seller to assist in such Seller's wind-down of its Estate provided that such access does not unreasonably interfere with the conduct of the Business by Purchaser.

6.5 **Further Assurances.** Purchaser and each Seller agree to take such further actions and execute such other documents as may be reasonably required to fulfill the conditions to Closing and, after Closing, to fully effect the transactions contemplated by this Agreement and the Ancillary Agreements and further secure to each party the rights intended to be conferred hereby and thereby.

6.6 **Tax Matters.**

(a) All sales, use, transfer, stamp, conveyance, value added or other similar Taxes, duties, excises or governmental charges imposed by any Tax authority, domestic or foreign, and all recording or filing fees, notarial fees and other similar costs of Closing will be borne by Purchaser.

(b) Purchaser and Sellers shall negotiate in good faith, on or prior to the Closing Date, an allocation of the Purchase Price among the Acquired Assets. Purchaser and Sellers shall each file all Tax returns (and IRS Form 8594, if applicable) on the basis of such agreed upon allocation, as it may be amended, and no party shall thereafter take a Tax return position inconsistent with such allocation unless such inconsistent position shall arise out of or through an audit or other inquiry or examination by the Internal Revenue Service or other Governmental Body responsible for Taxes.

6.7 **Transaction-Related Documents.** In light of the fact that all Transaction-Related Documents are excluded assets, and notwithstanding any other provision hereof, each Seller and its designated representative shall have the right to cause the removal of any and all Transaction-Related Documents which may exist in any of the files of such Seller or on any of its computer systems. The parties hereto acknowledge that notwithstanding the foregoing, certain Transaction-

Related Documents may inadvertently be or remain resident in the files or computer systems of a Seller following the Closing. Accordingly, Purchaser covenants and agrees that it shall not seek to access, review or copy any of such Transaction-Related Documents which may remain in any of the files of a Seller or on any of its computer systems, including without limitation its back-up, business continuity or archive systems, at any time, and shall promptly delete or destroy any of such Transaction-Related Documents of which it may become aware. In addition, at the written request of any Seller from time to time for so long as the Chapter 11 Case shall not have been discharged, Purchaser shall permit any Seller and its designated representatives reasonable access to Purchaser's facilities and systems, including without limitation its back-up, business continuity or archive systems, upon reasonable notice and during business hours, as necessary to access Transaction-Related Documents or other Acquired Assets for the limited purpose of removing or destroying any such Transaction-Related Documents or otherwise taking action necessary or appropriate in connection with the Chapter 11 Case, and shall cooperate with any Seller in connection therewith, and each Seller agrees to exercise such right in a manner reasonably designed to protect the confidentiality of Purchaser's information and to minimize interference with the operation of its business.

ARTICLE VII EMPLOYEES

7.1 **Employee Matters.** Purchaser may offer employment to the Employees of Sellers, as selected by Purchaser (as applicable, "Transferred Employees"), on such terms and conditions as may be acceptable to the Employees and Purchaser in its sole discretion and need not bear any relationship to terms and provisions applicable to their employment by Sellers; provided, however, Purchaser shall (i) make a sufficient number of employment offers on such terms and conditions as necessary to ensure that the termination by Sellers of Sellers' Employees as of the Closing Date will not trigger obligations, if any, under the WARN Act or (ii) pay all obligations and expenses pursuant to the WARN Act, if any.

7.2 **COBRA and Benefits Coverage.** Effective on the Closing Date, the group health plans maintained by New England Motor Freight, Inc., debtor in possession, in which the Employees of Sellers are participants will be terminated. Purchaser will be responsible for providing continued medical coverage pursuant to its group health plans under Part 6, Title I of ERISA and Section 4980B of the Code ("COBRA Continuation Coverage"), for each Employee of Sellers not hired by Purchaser and for each "M&A qualified beneficiary" (within the meaning of Treasury Regulation §54.4980B-9 Q&A-4) applicable to the Acquired Assets. As soon as practicable prior to the Closing, Sellers will provide to Purchaser a list of all M&A qualified beneficiaries who are receiving or eligible to elect COBRA Continuation Coverage on the Closing Date, and Purchaser will issue to them all COBRA Continuation Coverage notices.⁵

7.3 **No Third-Party Beneficiaries.** Sellers and Purchaser acknowledge and agree that all provisions contained in this Article VII, with respect to current or former Employees are included for the sole benefit of Sellers and Purchaser, and that nothing herein, whether express or implied, shall create any third-party beneficiary or other rights (i) in any other Person, including,

⁵ This Section is subject to discussion and revision based upon the projected termination of the NEMF plans.

without limitation, any current or former employees, directors, officers or consultants of Sellers, any participant in any Employee Benefit Plan, or any dependent or beneficiary thereof, or (ii) to continued employment with Purchaser.

ARTICLE VIII TERMINATION; EFFECT OF TERMINATION

8.1 **Termination**. This Agreement may, by notice given prior to or at the Closing, be terminated:

- (a) by mutual consent of Purchaser and Sellers;
- (b) by Sellers in the event the Closing has not occurred (other than through failure of any party seeking to terminate this Agreement to comply fully with its obligations under this Agreement) on or before [●];
- (c) by Sellers if, incident to the Bid Procedures Order, Sellers accept and closes on a competing bid for the purchase of all or part of the Acquired Assets;
- (d) by Purchaser if (i) any Seller shall file a motion to sell all or part of the Acquired Assets to a third party other than Purchaser and shall thereafter consummate such sale, or (ii) any Seller's Chapter 11 Case is converted to one under Chapter 7 of the Bankruptcy Code; or
- (e) by the non-breaching party upon a material breach of any provision of this Agreement, provided that such breach has not been waived by the non-breaching party and has continued after notice to the breaching party by the non-breaching party without cure for a period of five (5) Business Days (provided that the non-breaching party shall have an immediate right to terminate if the breaching party has willfully breached any provision of this Agreement which breach is not cured).

8.2 **Effect of Termination**. If this Agreement is terminated pursuant to Section 8.1(a), by Sellers pursuant to Section 8.1(c) or Section 8.3, or by Purchaser pursuant to Section 8.1(d) or (e), Purchaser shall have no Liability or obligations under this Agreement and the Deposit shall be returned to Purchaser. If this Agreement is terminated by Sellers pursuant to Section 8.1(b) or (e), Purchaser shall forfeit the Deposit, and, in addition, Sellers may exercise whatever remedies may be available to them in equity or at law. In no event shall any termination of this Agreement relieve any party hereto of any Liability for any willful breach of this Agreement by such party.

8.3 **Back-up Bidder**. If an Auction (as defined in the Bidding Procedures Order) is conducted in accordance with the Bidding Procedures Order and Purchaser is not the prevailing party at the conclusion of such Auction (such prevailing party, the "Prevailing Bidder"), subject to the terms of the Bidding Procedures Order, Purchaser may at its sole discretion agree to serve as a back-up bidder (the "Back-up Bidder") and keep Purchaser's bid to consummate the transactions contemplated by this Agreement on the terms and conditions set forth in this Agreement (as the same may be improved upon in the Auction) open and irrevocable until 11:59 p.m. (prevailing Eastern time) on the date that is thirty (30) days after the date of the entry of the Sale Order (the "Outside Back-up Date"). Subject to the terms of the Bidding Procedures

Order, if the Prevailing Bidder fails to consummate its transaction for the purchase of the Business as a result of a breach or failure to perform on the part of such Prevailing Bidder, the Back-up Bidder (if the Back-up Bidder is the next highest bidder at the Auction) will be deemed to have the new prevailing bid, and Sellers will be authorized, but not required, without further Order of the Bankruptcy Court or any action on the part of the Back-up Bidder, to consummate the transactions contemplated by this Agreement on the terms and conditions set forth in this Agreement (as the same may be improved upon in the Auction) with the Back-up Bidder pursuant to the procedures set forth in the Bidding Procedures Order. If Sellers do not close with Purchaser as Back-up Bidder by the Outside Back-up Date, the Deposit shall be returned to Purchaser.

ARTICLE IX GENERAL PROVISIONS

9.1 **“As Is”, “Where Is”, and “With all Faults” Transaction.** PURCHASER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY PROVIDED IN ARTICLE IV, SELLERS MAKE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER RELATING TO THE ACQUIRED ASSETS, INCLUDING (A) FINANCIAL PROJECTIONS, REVENUES, PROFITS OR INCOME TO BE DERIVED OR COSTS OR EXPENSES TO BE INCURRED IN CONNECTION WITH THE ACQUIRED ASSETS, (B) THE PHYSICAL CONDITION OF ANY ACQUIRED ASSETS, (C) THE ENVIRONMENTAL CONDITION OR OTHER MATTERS RELATING TO THE PHYSICAL CONDITION OF THE REAL PROPERTY OCCUPIED BY SELLERS, (D) THE ZONING OF THE REAL PROPERTY OCCUPIED BY SELLERS, (E) THE VALUE OF THE ACQUIRED ASSETS OR ANY PORTION THEREOF, (F) THE TRANSFERABILITY OF THE ACQUIRED ASSETS, (G) THE TERMS, AMOUNT, VALIDITY OR ENFORCEABILITY OF ANY ASSUMED LIABILITIES, (H) TITLE TO ANY OF THE ACQUIRED ASSETS OR ANY PORTION THEREOF, (I) THE MERCHANTABILITY OR FITNESS OF THE ACQUIRED ASSETS OR ANY PORTION THEREOF FOR ANY PARTICULAR PURPOSE, OR (J) ANY OTHER MATTER OR THING RELATING TO THE ACQUIRED ASSETS OR ANY PORTION THEREOF. PURCHASER ACKNOWLEDGES THAT PURCHASER HAS CONDUCTED AN INDEPENDENT INSPECTION AND INVESTIGATION OF THE PHYSICAL CONDITION OF ALL ACQUIRED ASSETS AND ALL SUCH OTHER MATTERS RELATING TO OR AFFECTING THE ACQUIRED ASSETS AS PURCHASER DEEMS NECESSARY OR APPROPRIATE AND THAT IN PROCEEDING WITH ITS ACQUISITION OF THE ACQUIRED ASSETS, EXCEPT FOR ANY REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN SECTION IV, PURCHASER IS DOING SO BASED SOLELY UPON SUCH INDEPENDENT INSPECTIONS AND INVESTIGATIONS. ACCORDINGLY, PURCHASER WILL ACCEPT THE ACQUIRED ASSETS AT THE CLOSING “AS IS,” “WHERE IS,” AND “WITH ALL FAULTS.”

9.2 **Transaction Expenses.** Except as expressly provided for herein, each party shall pay all fees, costs and expenses incurred by it with respect to this Agreement, whether or not the transactions contemplated by this Agreement are consummated.

9.3 **Certain Interpretive Matters and Definitions.** Unless the context requires, (a) references to the plural include the singular and references to the singular include the plural,

(b) references to any gender includes the other gender, (c) the words “include,” “includes” and “including” do not limit the preceding terms or words and shall be deemed to be followed by the words “without limitation”, (d) the terms “hereof”, “herein”, “hereunder”, “hereto” and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement, and (e) all references to Sections, Articles, or Schedules are to Sections, Articles, Exhibits or Schedules of or to this Agreement.

9.4 **Termination of Representations and Warranties.** The representations and warranties of the parties set forth in this Agreement shall terminate and be of no further force or effect after the Closing.

9.5 **Amendment.** This Agreement may be amended or modified in whole or in part at any time by an agreement in writing among the parties.

9.6 **Waiver.** The waiver by a party of a breach of any covenant, agreement, condition or undertaking contained herein shall be made only by a written waiver in each case. No waiver of any breach of any covenant, agreement, condition or undertaking contained herein shall operate as a waiver of any prior or subsequent breach of the same covenant, agreement, condition or undertaking or as a waiver of any breach of any other covenant, agreement, condition or undertaking.

9.7 **Notices.** All notices, requests and other communications hereunder will be deemed to have been duly given if delivered personally, by an established overnight delivery company, or by certified or registered mail, postage prepaid, return receipt requested, as follows:

(a) If to any Seller:

with a copy to: Gibbons P.C
One Gateway Center
Newark, New Jersey 07102
Attn: Lawrence A. Goldman, Esq.

(b) If to Purchaser: [●]

with a copy to: [●]

or to such other address as may hereafter be designated by a party by the giving of notice in accordance with this Section 9.7. All notices, requests or other communications shall be deemed given when actually delivered if delivered personally or by an established overnight delivery company or upon actual receipt if delivered by certified or registered mail, postage prepaid, return receipt requested.

9.8 **Jurisdiction.** The parties agree that the Bankruptcy Court shall retain exclusive jurisdiction to resolve any controversy or claim arising out of or relating to this Agreement or the implementation or breach hereof.

9.9 **Governing Law.** To the extent not governed by the Bankruptcy Code, this Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey, without giving effect to rules governing the conflict of laws.

9.10 **Damages.** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, NO PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, SPECIAL, INDIRECT OR PUNITIVE DAMAGES (INCLUDING LOST PROFITS, LOSS OF PRODUCTION OR OTHER DAMAGES ATTRIBUTABLE TO BUSINESS INTERRUPTION) ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

9.11 **Time is of the Essence.** Time is of the essence in this Agreement, and all of the terms, covenants and conditions hereof.

9.12 **Severability.** If any provision of this Agreement shall be held invalid, illegal or unenforceable, in whole or in part, the validity, legality, and enforceability of the remaining part of such provision, and the validity, legality and enforceability of all other provisions hereof or thereof, shall not be affected thereby.

9.13 **Titles and Headings.** Titles and headings of sections of this Agreement are for convenience of reference only and shall not affect the construction of any provision of this Agreement.

9.14 **Assignment; Successors and Assigns.** This Agreement and the rights, duties and obligations hereunder may not be assigned by any party without the prior written consent of the other party, and any attempted assignment without consent shall be void. Subject to this Section 9.14, this Agreement and the provisions hereof shall be binding upon each of the parties, their successors and permitted assigns.

9.15 **No Third-Party Rights.** The parties do not intend to confer any benefit hereunder on any Person other than the parties hereto.

9.16 **Confidentiality Agreement.** The parties acknowledge that the Confidentiality Agreement dated as of [●], between Purchaser and Sellers (the "Confidentiality Agreement") shall remain in full force and effect during the term specified therein.

9.17 **Entire Agreement.** This Agreement, the Ancillary Agreements and the Confidentiality Agreement constitute the entire agreement between the parties regarding the subject matter hereof and no extrinsic evidence whatsoever may be introduced in any proceeding involving this Agreement, the Ancillary Agreements or the Confidentiality Agreement.

9.18 **Execution of this Agreement.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by electronic transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by electronic transmission shall be deemed to be their original signatures for all purposes.

(Signatures appear on following page)

IN WITNESS WHEREOF, the parties have caused their duly authorized officers to execute this Agreement as of the day and year first written above.

SELLERS:

EASTERN FREIGHT WAYS, INC.,
Debtor in Possession, a New Jersey corporation

By: _____
Name: Vincent J. Collistra
Title: Chief Restructuring Officer

CARRIER INDUSTRIES, INC.,
Debtor in Possession, a New Jersey corporation

By: _____
Name: Vincent J. Collistra
Title: Chief Restructuring Officer

PURCHASER:

[●]
a [●]

By: _____
Name: _____
Title: _____

SCHEDULE 1.1

Permitted Liens

SCHEDULE 2.1(j)

Other Acquired Assets

SCHEDULE 2.2(q)

Other Excluded Assets

SCHEDULE 2.3

Other Assumed Liabilities

SCHEDULE 4.3

Governmental and Other Consents

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEW JERSEY Caption in compliance with D.N.J. LBR 9004-1	
GIBBONS P.C. Karen A. Giannelli, Esq. Mark B. Conlan, Esq. Brett S. Theisen, Esq. One Gateway Center Newark, New Jersey 07102 Telephone: (973) 596-4500 Facsimile: (973) 596-0545 E-mail: kgiannelli@gibbonslaw.com mconlan@gibbonslaw.com btheisen@gibbonslaw.com <i>Proposed Counsel to the Debtors and Debtors-in-Possession</i>	
In re:	Chapter 11
NEW ENGLAND MOTOR FREIGHT, INC., <i>et al.</i> ,	Case No. 19-12809 (JKS)
Debtors. ¹	(Jointly Administered)

**ORDER (A) AUTHORIZING AND APPROVING (1) THE SALE OF
SUBSTANTIALLY ALL OF DEBTORS' EASTERN FREIGHT WAYS, INC. AND
CARRIER INDUSTRIES, INC.'S ASSETS
FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES
AND OTHER INTERESTS; AND (2) THE ASSUMPTION AND
ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED
LEASES IN CONNECTION THEREWITH; AND (B) GRANTING RELATED RELIEF**

The relief set forth on the following pages, numbered two (2) through and including thirty-six (36), is hereby **ORDERED**.

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor's taxpayer identification number are as follows: New England Motor Freight, Inc. (7697); Eastern Freight Ways, Inc. (3461); NEMF World Transport, Inc. (2777); Apex Logistics, Inc. (5347); Jans Leasing Corp. (9009); Carrier Industries, Inc. (9223); Myar, LLC (4357); MyJon, LLC (7305); Hollywood Avenue Solar, LLC (2206); United Express Solar, LLC (1126); and NEMF Logistics, LLC (4666).

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Debtors: New England Motor Freight, Inc., *et al.*

Case No.: 19-12809 (JKS)

Caption: Order (A) Authorizing and Approving (1) The Sale of Substantially all of Debtors' Eastern Freight Ways, Inc. and Carrier Industries, Inc.'s Assets Free and Clear of all Liens, Claims, Encumbrances and Other Interests; and (2) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith; and (B) Granting Related Relief

Upon the motion (the "Motion"), of New England Motor Freight, Inc. and its affiliated debtors, as debtors and debtors in possession (the "Debtors" or the "Sellers") in the above-captioned chapter 11 cases (the "Chapter 11 Cases"), pursuant to sections 105(a), 363, 365, and 503 of title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for (i) entry of an order (the "Bidding Procedures Order") (a) establishing bidding and auction procedures (the "Bidding Procedures") related to the sale of Debtors' Eastern Freight Ways, Inc. and Carrier Industries, Inc.'s assets (the "Sale"); (b) scheduling an auction (the "Auction") and a hearing for such Sale; (c) establishing certain notice procedures for determining cure costs for executory contracts and unexpired leases to be assumed and assigned in connection with such Sale (the "Assumption and Assignment Procedures"); and (d) granting certain related relief; and (ii) entry of an order (this "Sale Order") (a) approving the Sale of the Debtors' Eastern Freight Ways, Inc. and Carrier Industries, Inc.'s assets, free and clear of all Interests (as defined below); (b) authorizing the assumption and assignment of certain executory contracts and unexpired leases; and (c) granting certain related relief; after holding a hearing on May ____, 2019 (the "Bidding Procedures Hearing"), this Court entered the Bidding Procedures Order on April ____, 2019 [D.I. 115]; and the Auction having been held on May ____, 2019 for the consideration of Qualified Bids and the selection of the Successful Bidder (each as defined in the Bidding Procedures Order); and _____ (the "Purchaser") or its designee (the "Purchaser Designee") having been selected as the Successful Bidder; and upon the Purchaser and the Debtors having entered into

Page: 3

Debtors: New England Motor Freight, Inc., *et al.*

Case No.: 19-12809 (JKS)

Caption: Order (A) Authorizing and Approving (1) The Sale of Substantially all of Debtors' Eastern Freight Ways, Inc. and Carrier Industries, Inc.'s Assets Free and Clear of all Liens, Claims, Encumbrances and Other Interests; and (2) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith; and (B) Granting Related Relief

that certain Asset Purchase Agreement, dated as of _____, 2019 (attached hereto as Exhibit A, and as it may be amended, modified, or supplemented in accordance with the terms hereof and thereof, the "Asset Purchase Agreement");² and this Court having conducted a hearing on the Motion (the "Sale Hearing"); and all parties in interest having been heard, or having had the opportunity to be heard, regarding the Motion, the Asset Purchase Agreement, and this Sale Order; and this Court having reviewed and considered the Motion and all objections thereto, and the arguments of counsel made, and the evidence adduced, at the Bidding Procedures Hearing and the Sale Hearing; and upon the entire record of the Bidding Procedures Hearing and the Sale Hearing, and after due deliberation thereon, and good cause appearing therefor:

THE COURT HEREBY FINDS THAT:³

Jurisdiction, Final Order and Statutory Predicates

A. On February 11, 2019 (the "Petition Date"), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of New Jersey (the "Court").

² Capitalized terms used, but not otherwise defined, herein shall have the meaning ascribed to such terms in the Asset Purchase Agreement or the Motion, as applicable.

³ The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

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Debtors: New England Motor Freight, Inc., *et al.*

Case No.: 19-12809 (JKS)

Caption: Order (A) Authorizing and Approving (1) The Sale of Substantially all of Debtors' Eastern Freight Ways, Inc. and Carrier Industries, Inc.'s Assets Free and Clear of all Liens, Claims, Encumbrances and Other Interests; and (2) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith; and (B) Granting Related Relief

B. This Court has core jurisdiction to hear and determine the Motion under 28 U.S.C. §§ 157(b) and 1334. Venue of the Chapter 11 Cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

C. This Sale Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, this Court expressly finds that there is no just reason for delay in the implementation of this Sale Order, and expressly directs entry of judgment as set forth herein.

D. The statutory predicates for the relief sought in the Motion are sections 105(a), 363, 365 and 503 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9014, and the applicable Local Rules of the United States Bankruptcy Court for the District of New Jersey (the "Local Rules").

Notice of the Sale, Auction and the Cure Costs

E. Actual written notice of the Sale Hearing, the Auction, the Motion, the Sale, and the assumption, assignment and/or transfer of the Assigned Contracts, and a reasonable opportunity to object or be heard with respect thereto and to the entry of this Sale Order has been afforded to all known interested Persons and entities entitled to receive such notice, including, but not limited to, the following parties: (i) counsel to the Committee; (ii) counsel to the Sellers; (iii) those entities or individuals included on the Debtors' list of 30 largest unsecured creditors on

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Debtors: New England Motor Freight, Inc., *et al.*

Case No.: 19-12809 (JKS)

Caption: Order (A) Authorizing and Approving (1) The Sale of Substantially all of Debtors' Eastern Freight Ways, Inc. and Carrier Industries, Inc.'s Assets Free and Clear of all Liens, Claims, Encumbrances and Other Interests; and (2) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith; and (B) Granting Related Relief

a consolidated basis; (iv) the United States Trustee for the District of New Jersey (the "United States Trustee"); (v) all entities (or counsel therefore) known to have asserted any lien, charge, claim or encumbrance on the Acquired Assets; (vi) all federal, state and local regulatory or taxing authorities that are reasonably ascertainable by the Debtors to have a known interest in the Acquired Assets; (vii) known non-debtor counterparties to any unexpired leases or executory contracts that could potentially be assumed and assigned to the Successful Bidder; (viii) those parties who expressed a bona fide interest in acquiring the assets in the six (6) months preceding the date of the Motion; and (ix) those parties who have requested notice pursuant to Bankruptcy Rule 2002.

F. The Debtors published notice of the Sale, the Bidding Procedures, the Asset Purchase Agreement, the time and place of the proposed Auction, the time and place of the Sale Hearing and the time for filing an objection to the Motion on the website maintained by the Debtors' Claims and Noticing Agent appointed in these Chapter 11 cases.

G. In accordance with the provisions of the Bidding Procedures Order, the Debtors have served notice (the "Assumption and Assignment Notice") of the Executory Contract List upon all of the counterparties to the Assigned Contracts setting forth: (i) the contract(s) and/or lease(s) that may be assumed by the Debtors and assigned to the Purchaser; (ii) the name and address of the non-Debtor counterparty thereto; (iii) notice of the proposed effective date of the assignment (subject to the right of the Debtors and/or the Purchaser to withdraw such request for assumption and assignment of the Assigned Contract(s) prior to the Closing); (iv) the amount, if

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Debtors: New England Motor Freight, Inc., *et al.*

Case No.: 19-12809 (JKS)

Caption: Order (A) Authorizing and Approving (1) The Sale of Substantially all of Debtors' Eastern Freight Ways, Inc. and Carrier Industries, Inc.'s Assets Free and Clear of all Liens, Claims, Encumbrances and Other Interests; and (2) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith; and (B) Granting Related Relief

any, determined by the Debtors to be necessary to be paid to cure and compensate for any existing default in accordance with sections 365(b) and 365(f)(2) of the Bankruptcy Code (the "Cure Costs"); (v) a list of any nonmonetary obligations that the Debtors believe must be satisfied; and (vi) the deadlines by which any such counterparty must file an objection to the proposed assumption and assignment of any Assigned Contract.

H. The service of such Assumption and Assignment Notice (i) was good, sufficient and appropriate under the circumstances of the Chapter 11 Cases, (ii) provided such counterparties with a full and fair opportunity to object to such assumption, assignment, or transfer and to the proposed Cure Costs set forth in the Assumption and Assignment Notice; and (iii) was in compliance with the Bidding Procedures Order and applicable provisions of the Bankruptcy Rules and Local Rules. Accordingly, no other or further notice need be given in connection with such assumption, assignment, or transfer or with respect to the amount of Cure Costs.

I. As evidenced by the affidavits of service previously filed with this Court and as approved under the Bidding Procedures Order: (i) due, proper, timely, adequate and sufficient notice of the Motion, the Auction, the Sale Hearing, the assumption and assignment of the Assigned Contracts, and the Sale has been provided to all parties-in-interest; (ii) such notice was, and is, good, sufficient and appropriate under the circumstances of the Chapter 11 Cases, provided a fair and reasonable opportunity for parties-in-interest to object, and to be heard, with respect thereto, and was provided in accordance with sections 102(1), 363 and 365 of the

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Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9006, 9007 and 9014, and the applicable Local Rules; and (iii) no other or further notice with respect to such matters is necessary or shall be required.

Business Judgment

J. The Debtors have demonstrated good, sufficient and sound business purposes and justifications for, and compelling circumstances to promptly consummate, the Sale and other transactions contemplated by the Asset Purchase Agreement and the Ancillary Agreements, including, without limitation, the assumption, assignment, and/or transfer of the Assigned Contracts, (collectively, the "Transactions") pursuant to sections 363 and 365 of the Bankruptcy Code, prior to and outside of a plan of reorganization, and such action is an appropriate exercise of the Debtors' business judgment and in the best interests of the Debtors, their estates, and their creditors. Such business reasons include, but are not limited to, the facts that: (i) there is substantial risk of diminution of the value of the Acquired Assets if the Sale is not consummated promptly; (ii) the Asset Purchase Agreement constitutes the highest or otherwise best offer for the Acquired Assets; (iii) the Asset Purchase Agreement and the Closing will present the best opportunity to realize the value of the Debtors and avoid decline and devaluation of the Debtors' businesses; and (iv) unless the Sale is concluded expeditiously as provided for in this Sale Order and pursuant to the Asset Purchase Agreement, potential creditor recoveries may be substantially diminished.

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Good Faith of the Purchaser; No Collusion

K. The Debtors have exercised their respective fiduciary duties in evaluating the Transactions and have independently determined that the Transactions are in the best interests of the Debtors, their estates, and their creditors. None of the Purchaser, the Purchaser Designee, nor any of their respective Representatives or Affiliates have exercised control over the Debtors, or the manner in which the Transactions were approved and authorized by the Debtors.

L. The Purchaser and the Purchaser Designee, as applicable, are purchasing the Acquired Assets in good faith, and each is a good faith purchaser, within the meaning of section 363(m) of the Bankruptcy Code, and each is therefore entitled to, and granted pursuant to paragraph 29 below, the full rights, benefits, privileges, and protections of that provision, and each has otherwise proceeded in good faith in all respects in connection with the Transactions in that, *inter alia*: (i) the Purchaser recognized that the Debtors were free to deal with any other party interested in acquiring some or all of the Acquired Assets; (ii) the Purchaser complied with the provisions in the Bidding Procedures Order; (iii) the Purchaser agreed to subject its bid to the competitive bidding procedures set forth in the Bidding Procedures Order; (iv) all payments to be made by the Purchaser and other agreements or arrangements entered into by the Purchaser in connection with the Sale have been disclosed; (v) neither the Purchaser nor the Purchaser Designee has violated section 363(n) of the Bankruptcy Code by any action or inaction; and (vi) the negotiation and execution of the Asset Purchase Agreement and Ancillary Agreements were at arms' length and in good faith.

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M. None of the Debtors, the Purchaser, or the Purchaser Designee, or any of their respective Representatives, has engaged in any conduct that would cause or permit the Asset Purchase Agreement or any of the Ancillary Agreements, or the consummation of the Transactions, to be avoidable or avoided, or for costs or damages to be imposed, under section 363(n) of the Bankruptcy Code, or has acted in bad faith or in any improper or collusive manner with any Person in connection therewith.

Highest and Best Offer

N. The Debtors conducted an auction process in accordance with, and have otherwise complied in all material respects with, the Bidding Procedures Order. The Debtors and their professionals have, under the circumstances, adequately and appropriately marketed the Acquired Assets in compliance with the Bidding Procedures and the Bidding Procedures Order. The auction process set forth in the Bidding Procedures Order afforded a full, fair and reasonable opportunity for any Person or entity to make a higher or otherwise better offer to purchase the Acquired Assets. The Auction was duly noticed and conducted in a non-collusive, fair and good faith manner and a reasonable opportunity has been given to any interested party to make a higher or otherwise better offer for the Acquired Assets.

O. The Asset Purchase Agreement constitutes the highest and best offer for the Acquired Assets, and will provide a greater recovery for the Debtors' estates than would be provided by any other available alternative. The Debtors' determination that the Asset Purchase

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Agreement constitutes the highest and best offer for the Acquired Assets constitutes a valid and sound exercise of the Debtors' business judgment.

P. The Asset Purchase Agreement represents a fair and reasonable offer to purchase the Acquired Assets under the circumstances of the Chapter 11 Cases. No other Person or entity or group of entities has offered to purchase the Acquired Assets for greater economic value to the Debtors' estates than the Purchaser.

Q. Approval of the Motion and the Asset Purchase Agreement, and the prompt consummation of the Transactions contemplated thereby, is in the best interests of the Debtors, their creditors, their estates and other parties-in-interest.

R. At the Auction, _____ submitted the next highest or otherwise best bid (the "Back-Up Bid") and was designated to be the Back-Up Bidder (as defined in the Bidding Procedures Order) in accordance with the Bidding Procedures Order. The Back-Up Bid is irrevocable in accordance with the terms of the Bidding Procedures.

No Fraudulent Transfer; Not a Successor

S. The Asset Purchase Agreement and Ancillary Agreements were not entered into, and the Transactions are not being consummated, for the purpose of hindering, delaying or defrauding creditors of the Debtors under applicable Law, and none of the Parties to the Asset Purchase Agreement or any of the Ancillary Agreements are consummating the Transactions with any fraudulent or otherwise improper purpose. The Purchase Price for the Acquired Assets constitutes (i) reasonably equivalent value under the Bankruptcy Code and the Uniform

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Fraudulent Transfer Act, (ii) fair consideration under the Uniform Fraudulent Conveyance Act and (iii) reasonably equivalent value, fair consideration, and fair value under any other applicable Laws of the United States, any state, territory or possession or the District of Columbia.

T. Except as expressly set forth in the Asset Purchase Agreement with respect to the Assumed Liabilities, the Purchaser and the Purchaser Designee shall have no liability, responsibility, or obligations of any kind or nature whatsoever for any Interest (as defined below) of or against the Debtors, or otherwise related to the Acquired Assets, by reason of the transfer of the Acquired Assets to the Purchaser or such Purchaser Designee. The Purchaser and the Purchaser Designee shall not be deemed, as a result of any action taken in connection with the Transactions, to: (1) be a successor (or other such similarly situated party) to any of the Debtors (other than with respect to the Assumed Liabilities as expressly stated in the Asset Purchase Agreement); or (2) have, *de facto* or otherwise, merged or consolidated with or into any of the Debtors. The Purchaser and the Purchaser Designee are not acquiring or assuming any Interest, except as expressly set forth in the Asset Purchase Agreement with respect to the Assumed Liabilities.

Validity of Transfer

U. Subject to the entry of this Sale Order, the Debtors have full corporate power and authority to (i) perform all of their obligations under the Asset Purchase Agreement and the Ancillary Agreements, and the Debtors' prior execution and delivery thereof and performance

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thereunder is hereby ratified in full, and (ii) consummate the Transactions. The Asset Purchase Agreement and Ancillary Agreements, and the Transactions contemplated thereby, have been duly and validly authorized by all necessary corporate action. No further consents or approvals are required for the Debtors to consummate the Transactions or otherwise perform their respective obligations under the Asset Purchase Agreement or the Ancillary Agreements, except in each case as otherwise expressly set forth in the Asset Purchase Agreement or applicable Ancillary Agreements.

V. As of the closing date, the transfer of the Acquired Assets to the Purchaser or the Purchaser Designee, including, without limitation, the assumption, assignment and transfer of the Assigned Contracts, will be a legal, valid, and effective transfer thereof, and vests the Purchaser and the Purchaser Designee, as applicable, with all right, title, and interest of the Debtors in and to the Acquired Assets, free and clear of all Interests accruing or arising any time prior to the Closing Date, except as expressly set forth in the Asset Purchase Agreement.

Section 363(f) Is Satisfied

W. The Purchaser and the Purchaser Designee would not have entered into the Asset Purchase Agreement and would not consummate the Transactions contemplated thereby if the sale of the Acquired Assets, including the assumption, assignment and transfer of the Assigned Contracts, to the Purchaser or the Purchaser Designee, as applicable, were not free and clear of all Interests of any kind or nature whatsoever (except as expressly set forth in the Asset Purchase Agreement), or if the Purchaser or the Purchaser Designee, any of their respective Subsidiaries or

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Affiliates, or any of their respective Representatives, would, or in the future could, be liable for any of such Interests.

X. The Debtors may sell or otherwise transfer the Acquired Assets free and clear of all Interests because, in each case, one or more of the standards set forth in section 363(f)(1)–(5) of the Bankruptcy Code has been satisfied. Those holders of Interests against the Debtors, their estates or any of the Acquired Assets who did not object, or who withdrew their objections, to the Sale or the Motion are deemed to have consented thereto pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of such Interests who did object fall within one or more of the other subsections of section 363(f) and are adequately protected by having their Interests, if any, attach to the proceeds of the Sale ultimately attributable to the Acquired Assets in which such creditor alleges or asserts an Interest, in the same order of priority, with the same validity, force and effect, that such creditor had immediately prior to consummation of the Sale, subject to any claims and defenses the Debtors and their estates may possess with respect thereto.

Y. As used in this Sale Order, the term “Interest” includes, in addition to the types of claims described below, all of the following, in each case to the extent against or with respect to any of the Debtors or in, on, or against or with respect to any of the Acquired Assets: liens (as defined in section 101(37) of the Bankruptcy Code, and whether consensual, statutory, possessory, judicial or otherwise), claims (as defined in section 101(5) of the Bankruptcy Code), debts (as defined in section 101(12) of the Bankruptcy Code), reclamation claims, Encumbrances, obligations, Liabilities (including Liabilities arising under any Environmental

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Laws), demands, guarantees, actions, suits, defenses, deposits, credits, allowances, options, rights, restrictions, limitations, contractual commitments, rights of first refusal, rights of setoff or recoupment, or interests of any kind or nature whatsoever, whether known or unknown, legal or equitable, matured or unmatured, contingent or noncontingent, liquidated or unliquidated, asserted or unasserted, whether arising prior to or subsequent to the commencement of the Chapter 11 Cases, whether imposed by agreement, understanding, Law, equity or otherwise, including, but not limited to, (i) Interests that purport to give to any Person a right or option to effect a setoff against or any forfeiture, modification or termination of the Debtors' interests in the Acquired Assets, or any similar rights; (ii) Interests arising under all mortgages, deeds of trust, security interests, conditional sale or other title retention agreements, pledges, liens, judgments, demands, encumbrances, rights of first refusal or charges of any kind or nature, (iii) Interests that are or constitute, or that arise in connection with or with respect to, any Excluded Liability; (iv) Interests that arise from or in connection with any bulk sales or similar law, and (v) Interests arising under or in connection with any acts, or failures to act, of any of the Debtors or any of the Debtors' predecessors, Affiliates, or Subsidiaries, or any of their respective Representatives, including, but not limited to, Interests arising under any doctrines of successor, transferee, or vicarious liability, violation of the Securities Act of 1933, the Securities Exchange Act of 1934, or other applicable securities laws or regulations, breach of fiduciary duty, or aiding or abetting breach of fiduciary duty, or any similar theories under applicable Law or otherwise.

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Z. To the greatest extent permitted by applicable law, except as expressly set forth in the Asset Purchase Agreement, the transfer of the Acquired Assets, including the assumption, assignment and/or transfer of the Assigned Contracts, to the Purchaser or the Purchaser Designee, as applicable, shall not subject the Purchaser or the Purchaser Designee, or their respective Subsidiaries or Affiliates (other than the Debtors), or any of their respective Representatives to, or subject any Acquired Asset to or provide recourse for, any Liability or Encumbrance whatsoever with respect to the operation or condition of the business or any of the Acquired Assets prior to the closing or with respect to any facts, acts, actions, omissions, circumstances or conditions existing, occurring or accruing with respect thereto prior to the closing date, including, without limitation, any Liability or Encumbrance arising from any of the following: (i) any employment or labor agreements, consulting agreements, severance arrangements, change in control agreements or other similar agreements to which any Debtor is or was a party, (ii) any pension, welfare, compensation or other employee benefit plans, agreements, practices, and programs, including without limitation, any pension plan of the Debtors, (iii) the cessation of the Debtors' operations, dismissal of employees, or termination of employment or labor agreements or pension, welfare, compensation or other employee benefit plans, agreements, practices and programs and any obligations with respect thereto that arise from the Employee Retirement Income Security Act of 1974, the Fair Labor Standard Act, Title VII of the Civil Rights Act of 1964, the Age Discrimination and Employment Act of 1967, the Americans with Disabilities Act of 1990, the Federal Rehabilitation Act of 1973, the National

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Labor Relations Act, the Consolidated Omnibus Budget Reconciliation Act of 1985 or the Worker Adjustment and Retraining Notification Act, (iv) workmen's compensation, occupational disease or unemployment or temporary disability insurance claims, (v) environment liabilities, debts, claims or obligations which may be asserted on any basis, including, without limitation, under the Comprehensive Environmental Response, Compensation and Liability Act or any Environmental Laws, (vi) products liability or warranties, (vii) any bulk sales or similar law, (viii) any litigation by or against the Debtors and (ix) the Laws of the United States, any state, territory or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, in any theory of law or equity, including, without limitation, any theory of antitrust, products liability, or successor, vicarious or transferee liability. For the avoidance of doubt, the Liabilities and Encumbrances set forth in this paragraph are included in the defined term "Interests" for all purposes of this Sale Order.

Assumption, Assignment and/or Transfer of the Assigned Contracts

AA. The assumption, assignment and/or transfer of the Assigned Contracts to the Purchaser and the Purchaser Designee, as applicable, pursuant to the terms of this Sale Order is integral to the Asset Purchase Agreement and is in the best interests of the Debtors and their estates, creditors and other parties in interest, and represents the reasonable exercise of sound and prudent business judgment by the Debtors.

BB. To the extent necessary or required by applicable Law, the Debtors or Purchaser have or will have as of the closing date: (i) cured, or provided adequate assurance of cure, of any

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default existing prior to the closing date with respect to the Assigned Contracts, within the meaning of sections 365(b)(1)(A) and 365(f)(2)(A) of the Bankruptcy Code, and (ii) provided compensation, or adequate assurance of compensation, to any party for any actual pecuniary loss to such party resulting from such default, within the meaning of section 365(b)(1)(B) of the Bankruptcy Code. The respective amounts set forth in the Executory Contract List attached to the Debtors' Assumption and Assignment Notice (or any Supplemental Notice of Assumption and Assignment served in accordance with the Assumption and Assignment Procedures) are the sole amounts necessary under sections 365(b)(1)(A) and 365(f)(2)(A) of the Bankruptcy Code to cure all such monetary defaults and pay all actual pecuniary losses under the Assigned Contracts.

CC. The promise of the Purchaser or the Purchaser Designee, as applicable, to perform the obligations first arising under the Assigned Contracts after their assumption and assignment to the Purchaser or the Purchaser Designee, as applicable, constitutes adequate assurance of future performance within the meaning of sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code to the extent that any such assurance is required and not waived by the counterparties to such Assigned Contracts. Any objections to the foregoing, the determination of any Cure Costs, or otherwise related to or in connection with the assumption, assignment or transfer of any of the Assigned Contracts to the Purchaser or the Purchaser Designee are hereby overruled on the merits or otherwise treated as set forth below. Those non-Debtor parties to Assigned Contracts who did not object to the assumption, assignment or transfer of their

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applicable Assigned Contract, or to their applicable Cure Costs, are deemed to have consented thereto for all purposes of this Sale Order.

Compelling Circumstances for an Immediate Sale

DD. To maximize the value of the Acquired Assets and preserve the viability of the business to which the Acquired Assets relate, it is essential that the Sale of the Acquired Assets occur within the time constraints set forth in the Asset Purchase Agreement. Time is of the essence in consummating the Sale. The Sale must be approved and consummated promptly in order to preserve the value of the Acquired Assets. Accordingly, there is cause to lift the stay contemplated by Bankruptcy Rules 6004 and 6006 with regard to the Transactions contemplated by this Sale Order, the Asset Purchase Agreement and the Ancillary Agreements.

EE. Given all of the circumstances of the Chapter 11 Cases and the adequacy and fair value of the Purchase Price under the Asset Purchase Agreement, the proposed transfer of the Acquired Assets to the Purchaser or Purchaser Designee, as applicable, constitutes a reasonable and sound exercise of the Debtors' business judgment, is in the best interests of the Debtors, their estates, and their creditors, and should be approved.

FF. The consummation of the Transactions is legal, valid and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, sections 105, 363 and 365 of the Bankruptcy Code, and all of the applicable requirements of such sections have been complied with in respect of the Transactions.

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GG. The Sale does not constitute a *de facto* plan of reorganization or liquidation or an element of such a plan for any of the Debtors, as it does not and does not propose to: (i) impair or restructure existing debt of, or equity interests in, the Debtors; (ii) impair or circumvent voting rights with respect to any future plan proposed by the Debtors; (iii) circumvent chapter 11 plan safeguards, such as those set forth in sections 1125 and 1129 of the Bankruptcy Code; or (iv) classify claims or equity interests, compromise controversies or extend debt maturities.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED

THAT:

General Provisions

1. The Motion and the relief requested therein are granted and approved, and the Transactions contemplated thereby and by the Asset Purchase Agreement and Ancillary Agreements are approved, in each case as set forth in this Sale Order.

2. This Court's findings of fact and conclusions of law set forth in the Bidding Procedures Order are incorporated herein by reference.

3. All objections to the Motion or the relief requested therein that have not been withdrawn, waived, resolved, or otherwise settled as announced to this Court at the Sale Hearing or by stipulation filed with this Court, and all reservations of rights included therein, are hereby denied and overruled on the merits.

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Approval of Asset Purchase Agreement; Binding Nature

4. The Asset Purchase Agreement and the Ancillary Agreements, and all of the terms and conditions thereof, are hereby approved.

5. The offer for the Acquired Assets, as embodied in the Asset Purchase Agreement, was deemed a Qualified Bid (as defined in the Bidding Procedures Order) and is the highest and best offer for the Acquired Assets (thereby providing a greater recovery for the Debtors' estates than would be provided by any other available alternative), and the Asset Purchase Agreement and the Ancillary Agreements and all of the terms and conditions thereof, and the Transactions contemplated thereby, are hereby approved in all respects.

6. The consideration provided by the Purchaser for the Acquired Assets under the Asset Purchase Agreement is fair and reasonable and shall be deemed for all purposes to constitute reasonably equivalent value, fair value, and fair consideration under the Bankruptcy Code and any other applicable Law, and the Transactions may not be avoided, or costs or damages imposed or awarded, under section 363(n) or any other provision of the Bankruptcy Code.

7. Pursuant to sections 363 and 365 of the Bankruptcy Code, the Debtors are authorized and empowered to, and shall, take any and all actions necessary or appropriate to (a) consummate the Sale and the other Transactions pursuant to and in accordance with the terms and conditions of the Asset Purchase Agreement and the Ancillary Agreements, and (b) execute and deliver, perform under, consummate, implement, and take any and all other acts or actions as

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may be reasonably necessary or appropriate to the performance of their respective obligations as contemplated by the Asset Purchase Agreement and the Ancillary Agreements, in each case without further notice to or order of this Court. The Transactions authorized herein shall be of full force and effect, regardless of any Debtor's lack or purported lack of good standing in any jurisdiction in which such Debtor is formed or authorized to transact business.

8. This Sale Order shall be binding in all respects upon the Debtors, their estates, all creditors, all holders of equity interests in any Debtor, all holders of any Claim(s) (whether known or unknown) against any Debtor, any holders of Interests against, in or on all or any portion of the Acquired Assets, all non-Debtor parties to the Assigned Contracts, the Purchaser, the Purchaser Designee and all successors and assigns of the foregoing, including, without limitation, any trustee, if any, subsequently appointed in the Chapter 11 Cases or upon a conversion to chapter 7 under the Bankruptcy Code of any of the Chapter 11 Cases.

Transfer of Acquired Assets Free and Clear of Interests; Injunction

9. Pursuant to sections 105(a), 363(b), 363(f), 365(b) and 365(f) of the Bankruptcy Code, the Debtors are authorized and directed to transfer the Acquired Assets, including but not limited to the Assigned Contracts, to the Purchaser or the Purchaser Designee, as applicable, on the closing date in accordance with the Asset Purchase Agreement and the Ancillary Agreements. Upon and as of the closing date, such transfer shall constitute a legal, valid, binding and effective transfer of such Acquired Assets and the Purchaser or the Purchaser

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Designee, as applicable, shall take title to and possession of such Acquired Assets free and clear of all Interests (except as expressly set forth in the Asset Purchase Agreement).

10. All such Interests shall attach solely to the proceeds of the Sale with the same validity, priority, force and effect that they now have as against the Acquired Assets, subject to any claims and defenses the Debtors and their estates may possess with respect thereto. This Sale Order shall be effective as a determination that, on and as of the closing, all Interests of any kind or nature whatsoever (except as expressly set forth in the Asset Purchase Agreement) have been unconditionally released, discharged and terminated in, on or against the Acquired Assets. The provisions of this Sale Order authorizing and approving the transfer of the Acquired Assets free and clear of Interests shall be self-executing, and neither the Debtors nor the Purchaser (or the Purchaser Designee) shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate and implement the provisions of this Sale Order.

11. Upon the closing, the liens on the Assets of the Debtors granted under any prepetition credit documents to secure the prepetition credit agreement indebtedness shall be deemed released solely with respect to the Acquired Assets, as applicable, and the Debtors shall take all actions required under the Asset Purchase Agreement to confirm the removal of any such liens. For the avoidance of doubt, the liens granted under any prepetition credit documents shall attach to the proceeds of the Sale (including, without limitation, any claims arising from or related to the Asset Purchase Agreement and any proceeds thereof, and any other damages or

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Debtors: New England Motor Freight, Inc., *et al.*

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other amounts recovered by the Debtors in connection with the enforcement of the Sale, this Sale Order, or the Bidding Procedures Order) with the same validity, priority, force and effect that they now have against the Acquired Assets. The purchase price shall be allocated to the Purchased Assets in the manner set forth in the Asset Purchase Agreement.

12. Except as expressly permitted by the Asset Purchase Agreement or this Sale Order, all Persons and entities holding Interests (other than the Permitted Encumbrances and Assumed Liabilities) are hereby forever barred, estopped and permanently enjoined from asserting their respective Interests against the Purchaser and the Purchaser Designee, any of their respective Subsidiaries and Affiliates, and any of their respective Representatives, and each of their respective property and assets, including, without limitation, the Acquired Assets. On and after the closing date, the Purchaser or the Purchaser Designee, as applicable, shall be authorized to execute and file such documents, and to take all other actions as may be necessary, on behalf of each holder of an Interest to release, discharge and terminate such Interests in, on and against the Acquired Assets as provided for herein, as such Interests may have been recorded or may otherwise exist. On and after the closing date, and without limiting the foregoing, the Purchaser or the Purchaser Designee, as applicable, shall be authorized to file termination statements or lien terminations in any required jurisdiction to remove any record, notice filing, or financing statement recorded to attach, perfect or otherwise notice any Interest that is extinguished or otherwise released pursuant to this Sale Order. This Sale Order constitutes authorization under all applicable jurisdictions and versions of the Uniform Commercial Code for the Purchaser or

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the Purchaser Designee to file UCC termination statements with respect to all security interests in or liens on the Acquired Assets.

13. On and after the Closing, the Persons holding an Interest shall execute such documents and take all other actions as may be reasonably necessary to release their respective Interests in the Acquired Assets, as such Interests may have been recorded or otherwise filed. The Purchaser or the Purchaser Designee, as applicable, may, but shall not be required to, file a certified copy of this Sale Order in any filing or recording office in any federal, state, county or other jurisdiction in which any Debtor is incorporated or has real or personal property, or with any other appropriate clerk or recorded with any other appropriate recorder, and such filing or recording shall be accepted and shall be sufficient to release, discharge and terminate any of the Interests as set forth in this Sale Order as of the closing date. All persons and entities that are in possession of any portion of the Acquired Assets on the closing date shall promptly surrender possession thereof to the Purchaser or the Purchaser Designee at the closing.

14. The transfer of the Acquired Assets to the Purchaser or the Purchaser Designee pursuant to the Asset Purchase Agreement and Ancillary Agreements does not require any consents other than specifically provided for in the Asset Purchase Agreement.

15. This Sale Order is and shall be binding upon and govern the acts of all Persons and entities (including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, and secretaries of state, federal and local officials) who

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may be required by operation of law, the duties of their office, or contract to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease. Each of the foregoing Persons and entities shall accept for filing any and all of the documents and instruments necessary and appropriate to release, discharge and terminate any of the Interests or to otherwise consummate the Transactions contemplated by this Sale Order, the Asset Purchase Agreement or any Ancillary Agreement.

Assigned Contracts; Cure Costs

16. Pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code, and subject to and conditioned upon the closing date, the Debtors' assumption, and assignment and transfer to the Purchaser or Purchaser Designee, of the Assigned Contracts is hereby authorized and approved in full subject to the terms set forth below. The Debtors or Purchaser shall, on or prior to the Closing, pay the Cure Costs (or reserve the Undisputed Cure Costs as set forth below) and cure any and all other defaults and breaches under the Assigned Contracts so that such Contracts may be assumed by the Debtors and assigned to Purchaser or Purchaser Designee on the closing date in accordance with this Sale Order, the Asset Purchase Agreement and the Ancillary Agreements. To the extent any Debtor is responsible for any Cure Costs pursuant to the terms of the Asset Purchase Agreement or Ancillary Agreements, the Purchaser may, upon prior written notice to the Debtors and in its sole discretion, (i) pay such amount(s) on behalf of the Debtors, in which case the Debtors shall have no further responsibility therefor, and (ii) offset such

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amount(s) against any amount(s) Purchaser may owe the Debtors (including by deducting such amounts, at the closing, from the purchase price).

17. Upon and as of the closing, the Debtors are authorized and empowered to, and shall, assume, assign and/or transfer each of the Assigned Contracts to the Purchaser or the Purchaser Designee, as applicable, free and clear of all Interests (except as expressly set forth in the Asset Purchase Agreement). The payment of the applicable Cure Costs (if any), or the reservation by the Debtors of an amount of cash that is equal to the lesser of (i) the amount of any cure or other compensation asserted by the applicable non-Debtor counterparty as required under section 365 of the Bankruptcy Code or (ii) the amount approved by order of this Court to reserve for such payment (such lesser amount, the "Alleged Cure Claim") shall, pursuant to section 365 of the Bankruptcy Code and other applicable Law, (a) effect a cure, or provide adequate assurance of cure, of all defaults existing thereunder as of the closing date and (b) compensate, or provide adequate assurance of compensation, for any actual pecuniary loss to such non-Debtor party resulting from such default. Accordingly, on and as of the closing date, other than such payment or reservation, none of the Debtors, the Purchaser or the Purchaser Designee shall have any further liabilities or obligations to the non-Debtor parties to the Assigned Contracts with respect to, and the non-Debtor parties to the Assigned Contracts shall be forever enjoined and barred from seeking, any additional amounts or claims (as defined in section 101(5) of the Bankruptcy Code) that arose, accrued or were incurred at any time on or prior to the closing date on account of the Debtors' cure or compensation obligations arising

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under section 365 of the Bankruptcy Code. The Purchaser or the Purchaser Designee, as applicable, has provided adequate assurance of future performance under the relevant Assigned Contracts within the meaning of section 365(f) of the Bankruptcy Code.

18. To the extent any provision in any Assigned Contract assumed or assumed and assigned (as applicable) pursuant to this Sale Order (including, without limitation, any "change of control" provision) (a) prohibits, restricts or conditions, or purports to prohibit, restrict or condition, such assumption or assignment, or (b) is modified, breached or terminated, or deemed modified, breached or terminated by any of the following: (i) the commencement of the Chapter 11 Cases, (ii) the insolvency or financial condition of any Debtor at any time before the closing of the Chapter 11 Cases, (iii) any Debtor's assumption or assumption and assignment (as applicable) of such Assigned Contract, or (iv) the consummation of the Transactions, then such provision shall be deemed modified so as to not entitle the non-Debtor party thereto to prohibit, restrict or condition such assumption or assignment, to modify or terminate such Assigned Contract, or to exercise any other default-related rights or remedies with respect thereto, including, without limitation, any such provision that purports to allow the non-Debtor party thereto to recapture such Assigned Contracts, impose any penalty thereunder, condition any renewal or extension thereof, impose any rent acceleration or assignment fee, or increase or otherwise impose any other fees or other charges in connection therewith. All such provisions constitute unenforceable anti-assignment provisions that are void and of no force and effect pursuant to sections 365(b), 365(e) and 365(f) of the Bankruptcy Code.

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19. All requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to the Purchaser or the Purchaser Designee, as applicable, of the Assigned Contracts have been satisfied. Upon the closing, in accordance with sections 363 and 365 of the Bankruptcy Code, the Purchaser or the Purchaser Designee, as applicable, shall be fully and irrevocably vested with all right, title and interest of the Debtors in and under the Assigned Contracts, and each Assigned Contract shall be fully enforceable by the Purchaser or the Purchaser Designee, as applicable, in accordance with its respective terms and conditions, except as limited or modified by the provisions of this Sale Order. Upon and as of the closing, the Purchaser or the Purchaser Designee, as applicable, shall be deemed to be substituted for the Debtors as a party to the applicable Assigned Contracts and, accordingly, the Debtors shall be relieved, pursuant to section 365(k) of the Bankruptcy Code, from any further liability under the Assigned Contracts.

20. Upon the payment of the applicable Cure Costs or reservation of the Alleged Cure Claim, if any, the Assigned Contracts will remain in full force and effect, and no default shall exist, or be deemed to exist, under the Assigned Contracts as of the closing date nor shall there exist, or be deemed to exist, any event or condition which, with the passage of time or giving of notice, or both, would constitute such a default.

21. The rights of the Purchaser to modify the list of the Assigned Contracts, after the date of this Sale Order and up to the Closing Date as set forth in the Asset Purchase Agreement are hereby approved.

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22. All non-Debtor counterparties to the Assigned Contracts shall be deemed to have consented to such assumption and assignment under section 365(c)(1)(B) of the Bankruptcy Code and the Purchaser or Purchaser Designee shall enjoy all of the Debtors' rights, benefits and privileges under each such Assigned Contract as of the applicable date of assumption and assignment without the necessity to obtain any non-Debtor parties' written consent to the assumption or assignment thereof.

23. Nothing in this Sale Order, the Motion, or in any notice or any other document is or shall be deemed an admission by the Debtors that any Assigned Contract is an executory contract or unexpired lease under section 365 of the Bankruptcy Code.

24. The failure of the Debtors, the Purchaser or the Purchaser Designee, as applicable, to enforce at any time one or more terms or conditions of any Assigned Contract shall not be a waiver of such terms or conditions, or of its respective rights to enforce every term and condition of the Assigned Contracts.

Additional Injunction; No Successor Liability

25. Effective upon the closing date and except as expressly set forth in the Asset Purchase Agreement, all Persons and entities are forever prohibited and permanently enjoined from (i) commencing or continuing in any manner any action or other proceeding, the employment of process, or any act (whether in law or equity, in any judicial, administrative, arbitral or other proceeding), to collect, recover or offset any Interest; (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order with respect to an

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Interest, (iii) creating, perfecting or enforcing any Interest, or (iv) asserting any setoff, right of subrogation or recoupment of any kind with respect to an Interest, in each case as against the Purchaser or the Purchaser Designee, any of their respective Subsidiaries or Affiliates, or any of their respective Representatives, or any of their respective property or assets, including the Acquired Assets.

26. To the greatest extent permitted by applicable law, the Transactions contemplated by the Asset Purchase Agreement and the Ancillary Agreements do not cause there to be, and there is not (i) a consolidation, merger, or *de facto* merger of the Purchaser or any Purchaser Designee, on the one hand, with or into the Debtors or the Debtors' estates, on the other hand, or vice versa; (ii) a substantial continuity between the Purchaser or any Purchaser Designee, on the one hand, and the Debtors or the Debtors' estates, on the other hand, (iii) a common identity between the Purchaser or any Purchaser Designee, on the one hand, and the Debtors or the Debtors' estates, on the other hand, or (iv) a mere continuation of the Debtors or their estates, on the one hand, with the Purchaser or any Purchaser Designee, on the other hand.

27. To the greatest extent permitted by applicable law, except as expressly set forth in the Asset Purchase Agreement, the transfer of the Acquired Assets, including, without limitation, the assumption, assignment and transfer of any Assigned Contract, to the Purchaser or any Purchaser Designee shall not cause or result in, or be deemed to cause or result in, the Purchaser or the Purchaser Designee, any of their respective Subsidiaries or Affiliates (other than the Debtors), or any of their respective Representatives, having any liability, obligation, or

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responsibility for, or any Acquired Assets being subject to or being recourse for, any Interest whatsoever, whether arising under any doctrines of successor, transferee or vicarious liability, breach of fiduciary duty, aiding or abetting breach of fiduciary duty or otherwise, whether at Law or in equity, directly or indirectly, and whether by payment, setoff, recoupment, or otherwise.

28. For the avoidance of doubt, notwithstanding the consummation of the Transactions and the employment by the Purchaser or Purchaser Designee of certain Persons previously employed by the Debtors, (i) the Purchaser and Purchaser Designees shall not have any obligations or liabilities to any employee of the Debtors or in respect of any employee benefits owing to any employee of the Debtors by the Debtors or by any plan or program administered by the Debtors or for the benefit of the Debtors' employees, and (ii) any obligations of the Purchaser and Purchaser Designees to any such Person shall be expressly limited to (i) those obligations expressly agreed upon by the Purchaser or Purchaser Designee (if any) with such Person, and (ii) those obligations explicitly assumed by the Purchaser or Purchaser Designee (if any) under the Asset Purchase Agreement.

Good Faith

29. The Transactions contemplated by this Sale Order, the Asset Purchase Agreement and the Ancillary Agreements are undertaken by the Purchaser and the Purchaser Designee without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided

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herein to consummate the Sale and other Transactions shall not alter, affect, limit, or otherwise impair the validity of the Sale or such other Transactions (including the assumption, assignment and/or transfer of the Assigned Contracts), unless such authorization and consummation are duly stayed pending such appeal. Each of the Purchaser and Purchaser Designee is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to, and hereby granted, the full rights, benefits, privileges and protections of section 363(m) of the Bankruptcy Code.

Other Provisions

30. The Purchaser is hereby authorized, in its discretion, in connection with consummation of the Transactions to allocate the Acquired Assets, Assumed Liabilities, and Assigned Contracts among its Affiliates, Subsidiaries, designees, assignees, and/or successors in a manner as it, in its discretion, deems appropriate and such Person shall be entitled to all of the rights, benefits, privileges and protections of the Purchaser as are accorded to the Purchaser under this Sale Order, and the Debtors shall, to the extent set forth in the Asset Purchase Agreement and the Ancillary Agreements, cooperate with and take all actions reasonably requested by Purchaser to effectuate any of the foregoing. In the event that the Purchaser designates any Purchaser Designee to acquire any Acquired Assets, including, without limitation, any Assigned Contracts, then any reference to the "Purchaser" in this Sale Order shall be deemed to be a reference to "the Purchaser and/or such applicable Purchaser Designee," unless the context requires otherwise.

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31. Nothing contained in any plan of reorganization or liquidation, or order of any type or kind entered in (a) the Chapter 11 Cases, (b) any subsequent chapter 7 case into which any such chapter 11 case may be converted, or (c) any related proceeding subsequent to entry of this Sale Order, shall conflict with or derogate from the provisions of the Asset Purchase Agreement or the terms of this Sale Order. To the extent of any such conflict or derogation, the terms of this Sale Order shall govern.

32. Pursuant to Bankruptcy Rules 6004(h), 6006(d), 7062, and 9014, this Sale Order shall not be stayed after the entry hereof, but shall be effective and enforceable immediately upon entry, and the stays provided in Bankruptcy Rules 6004(h) and 6006(d) are hereby expressly waived and shall not apply. Accordingly, the Debtors are authorized and empowered to close the Sale and other Transactions immediately upon entry of this Sale Order.

33. Nothing in this Sale Order shall modify or waive any closing conditions or termination rights in the Asset Purchase Agreement, and all such conditions and rights shall remain in full force and effect in accordance with their terms.

34. No bulk sales law or any similar law of any state or other jurisdiction applies in any way to the Transactions.

35. All payment or reimbursement obligations of the Debtors owed to the Purchaser or any Purchaser Designee pursuant to the Asset Purchase Agreement or the Ancillary Agreements shall be paid in the manner provided therein, without further notice to or order of this Court. All such obligations shall constitute allowed administrative claims against each of

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the Debtors on a joint and several basis, with first priority administrative expense status under sections 503(b) and 507(a)(2) of the Bankruptcy Code. Until satisfied in full in cash, all such obligations shall continue to have the protections provided in this Sale Order, and shall not be discharged, modified or otherwise affected by any reorganization plan for the Debtors.

36. The failure specifically to include any particular provision of the Asset Purchase Agreement in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the Asset Purchase Agreement be authorized and approved in its entirety.

37. The Asset Purchase Agreement and Ancillary Agreements may be modified, amended or supplemented in a writing signed by the parties thereto and in accordance with the terms thereof, without further notice to or order of this Court; provided that any such modification, amendment or supplement shall not have a material adverse effect on the Purchaser, the Purchaser Designee, or the Debtors' estates unless approved by order of this Court.

38. This Court retains jurisdiction, pursuant to its statutory powers under 28 U.S.C. § 157(b), to, among other things, (i) interpret, implement, and enforce the terms and provisions of this Sale Order, the Asset Purchase Agreement, the Ancillary Agreements, and any amendments thereto and any waivers and consents given thereunder, (ii) compel delivery of the Acquired Assets to the Purchaser or Purchaser Designee; (iii) enforce the injunctions and

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limitations of liability set forth in this Sale Order, and (iv) enter any orders under sections 363 and 365 of the Bankruptcy Code with respect to the Assigned Contracts.

39. Nothing in this Sale Order or the Asset Purchase Agreement releases, nullifies, precludes, or enjoins the enforcement of any police or regulatory liability to a governmental unit that any entity would be subject to as the post-sale owner or operator of property after the date of entry of this Sale Order. Nothing in this Sale Order or the Asset Purchase Agreement authorizes the transfer or assignment of any governmental (a) license, (b) permit, (c) registration, (d) authorization or (e) approval, or the discontinuation of any obligation thereunder, without compliance with all applicable legal requirements and approvals under police or regulatory law. Nothing in this Sale Order divests any tribunal of any jurisdiction it may have under police or regulatory law to interpret this Sale Order or to adjudicate any defense asserted under this Sale Order.

40. All time periods set forth in this Sale Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

41. The automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to implement the provisions of this Sale Order and the terms and conditions of the Asset Purchase Agreement and the Ancillary Agreements.

42. To the extent that this Sale Order is inconsistent with any prior order or pleading with respect to the Motion, the terms of this Sale Order shall govern. To the extent there are any inconsistencies between the terms of this Sale Order, on the one hand, and the Asset Purchase

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Agreement or any Ancillary Agreement, on the other hand, the terms of this Sale Order shall govern.

EXHIBIT A

Asset Purchase Agreement