



Dated: 11/30/2017

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

IN RE:)
)
PHOENIX OF TENNESSEE, INC.,) Case No. 3:17-bk-06102
) Chapter 11
) Judge Marian F. Harrison
Debtor.)

**ORDER (I) APPROVING AGENCY AGREEMENT; (II) AUTHORIZING DEBTOR'S
SALE OF ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES;
AND (III) GRANTING RELATED RELIEF**

This matter is before the Court on the Expedited Motion of Phoenix of Tennessee, Inc. (the “**Debtor**”) for an order pursuant to sections 105, 363 and 365 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**”) seeking approval of, among other things, the sale of certain of the Debtor’s assets free and clear of liens, claims and encumbrances (the “**Motion**”); and it appearing that the relief requested is in the best interests of the Debtor’s estates, its creditors, and other parties in interest; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that consideration of the Motion and the relief requested therein is a core proceeding pursuant to 28 U.S.C. § 157; and adequate notice of the Motion having been given and it appearing that no other notice need be given; and the Debtor, on the one hand, and Gordon Brothers Commercial & Industrial, LLC (“**GBCI**”) and Ritchie Bros. Auctioneers (American) Inc. (collectively with GBCI, the “**Agent**”), on the other hand, having agreed upon terms and conditions for the Agent to act as the Debtor’s exclusive agent to conduct sales (the “**Sale**”) of certain of the Debtor’s assets, including, without limitation, certain motor vehicles and related equipment (“**Assets**”), which terms and conditions are set forth in that

certain Agency Agreement, dated November 2, 2017, by and between the Agent and the Debtor, a copy of which is attached hereto as **Exhibit A** (the “**Agency Agreement**”); and the transaction represented by the Agency Agreement having been determined to be the highest and best offer for the Assets; and a hearing having been held on November 14, 2017 (the “**Bid Procedures Hearing**”), whereupon the Court entered an Order approving bidding procedures and the Debtor’s designation of the Agency Agreement as a stalking horse bid (the “**Bidding Procedures Order**”); and a hearing having been held on November 29, 2017 (the “**Sale Hearing**”) to consider the remaining relief requested in the Motion and approval of the Agency Agreement; and appearances of all interested parties having been noted on the record of the Bid Procedures Hearing and the Sale Hearing; and upon all of the proceedings had and testimony presented before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtor, its estate, its creditors, and all parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor;

THE COURT HEREBY FINDS AND CONCLUDES THAT:¹

A. **Jurisdiction:** This Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1134. Approval of the Debtor’s entry into the Agency Agreement, and the transactions contemplated thereby is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A), (D), (N) and (O).

B. **Venue:** Venue of these cases in this district is proper pursuant to 28 U.S.C. § 1409(a).

¹ The findings of fact and the conclusions of law stated herein shall constitute the 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 any finding of fact shall be determined to be a conclusion of law, it shall be so deemed, and to the extent any conclusion of law shall be determined to be a finding of fact, it shall be so deemed.

C. **Statutory predicates:** The statutory predicates for the approval of the Agency Agreement and transactions contemplated therein are sections 105, 363, 364 and 554 of the Bankruptcy Code and Rules 2002, 4001, 6004 and 9014 of the Bankruptcy Rules.

D. **Notice:** Proper, timely, adequate and sufficient notice of the Motion and entry into the Agency Agreement, the Bid Procedures Hearing, and the Sale Hearing have been provided in accordance with sections 102(1), 105(a), and 363 of the Bankruptcy Code, Bankruptcy Rules 2002 and 6004, and in compliance with the Bidding Procedures Order. No other or further notice is required.

E. **Opportunity to be Heard:** A reasonable opportunity to object or be heard regarding the relief requested in the Motion, the Agency Agreement, and the transactions pursuant thereto has been afforded to all interested persons and entities, including, without limitation, the following: (i) the Office of the United States Trustee, (ii) counsel to Pinnacle Bank (the “**Secured Lender**”), (iii) all parties who are known to assert a security interest, lien, or claim in any of the Assets, (iv) all applicable federal, state, and local taxing authorities (collectively, the “**Taxing Authorities**”); (v) all unsecured creditors; (vi) all parties which had previously expressed interest in acquiring or serving as Debtor’s agent with respect to selling the Assets; (viii) all other applicable parties in interest (collectively, the “**Notice Parties**”). Objections, if any, to the Motion have been overruled, withdrawn or resolved.

F. **Marketing Process:** As demonstrated by: (i) the testimony and other evidence proffered or adduced at the Bid Procedures Hearing and the Sale Hearing and (ii) the representations of counsel made on the record at the Bid Procedures Hearing and the Sale Hearing, the Debtor has thoroughly marketed the Assets and has conducted the bidding solicitation fairly, with adequate opportunity for parties that either expressed an interest in acquiring or liquidating

Assets, or who the Debtor believed may have an interest in acquiring or liquidating the Assets, to submit competing bids. The Debtor and the Agent have respectively negotiated and undertaken their roles leading to the Sale and entry into the Agency Agreement in a diligent, noncollusive, fair and good faith manner.

G. **Guaranteed Amount:** The Debtor's solicitation of bids for the Assets in connection with the Bid Procedures Order entered by this Court resulted in the Guaranteed Amount set forth in the Agency Agreement to be increased to \$432,625.

H. **Highest and Best Offer:** For the reasons set forth on the record at the hearing in this Court on November 29, 2017, the Agency Agreement attached hereto as **Exhibit A**, including the form and total consideration to be realized by the Debtor pursuant to the Agency Agreement as modified in the bid solicitation and auction process, as announced in open court, to increase the Guaranteed Amount to \$432,625, (i) is the highest and best offer received by the Debtor for the Assets, notwithstanding any nominally higher offer received in connection with the Debtor's solicitation of bids, (ii) is fair and reasonable, and (iii) is in the best interests of the Debtor, its estate, its creditors and all other parties in interest. There is no legal or equitable reason to delay entry into the Agency Agreement, and the transactions contemplated therein, including, without limitation, the Sale.

I. **Business Judgment:** The Debtor's decision to (i) enter into the Agency Agreement, and (ii) perform under and make payments required by the Agency Agreement, is a reasonable exercise of the Debtor's sound business judgment consistent with its fiduciary duties and is in the best interests of the Debtor, its estate, its creditors, and all other parties in interest.

J. **Personally Identifiable Information:** The transactions contemplated by the Agency Agreement do not include the sale or lease of personally identifiable information, as

defined in section 101(41A) of the Bankruptcy Code (or assets containing personally identifiable information).

K. **Time of the Essence:** Time is of the essence in effectuating the Agency Agreement and proceeding with the Sale contemplated therein without interruption. Based on the record of the Bid Procedures Hearing and the Sale Hearing, and for the reasons stated on the record at the Bid Procedures Hearing and the Sale Hearing, the Sale under the Agency Agreement must be commenced on or before December 1, 2017 to maximize the value that the Agent may realize from the Sale, and the value that the Debtor may realize from entering into the Agency Agreement. Accordingly, cause exists to lift the stay to the extent necessary, as contemplated by Bankruptcy Rule 6004(h) and permit the immediate effectiveness of this Order.

L. **Sale Free and Clear:** A sale of the Assets other than one free and clear of interests, liens, claims and encumbrances and without the protections of this Order would hinder the Debtor's ability to obtain the consideration provided for in the Agency Agreement and, thus, would impact materially and adversely the value that the Debtor's estate would be able to obtain for the sale of such Assets. But for the protections afforded to the Agent under the Bankruptcy Code and this Order, the Agent would not have offered to pay the consideration contemplated in the Agency Agreement. In addition, each entity with a Lien upon the Assets, (i) has consented to the Sale or is deemed to have consented to the Sale, (ii) could be compelled in a legal or equitable proceeding to accept money satisfaction of such interest, or (iii) otherwise falls within the provisions of section 363(f) of the Bankruptcy Code, and therefore, 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 Encumbrances who did not object, or who withdrew their objections, to the Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Therefore,

approval of the Agency Agreement and the consummation of the Sale free and clear of Encumbrances is appropriate pursuant to section 363(f) of the Bankruptcy Code and is in the best interests of the Debtor's estate, its creditors and other parties in interest.

M. **Arms' length Sale:** The consideration to be paid by the Agent under the Agency Agreement was negotiated at arms' length and constitutes reasonably equivalent value and fair and adequate consideration for the Assets under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act and the laws of the United States, any state, territory, possession thereof or the District of Columbia. The terms and conditions set forth in the Agency Agreement are fair and reasonable under these circumstances and were not entered into for the purpose of, nor do they have the effect of, hindering, delaying or defrauding the Debtor or its creditors under any applicable laws.

N. **Good Faith:** The Debtor, its management and its professionals, and the Agent, its members and its officers, directors, employees, agents and representatives, actively participated in the bidding process and acted in good faith. The Agency Agreement between the Agent and the Debtor was negotiated and entered into based upon arm's length bargaining, without collusion or fraud, and in good faith as that term is used in sections 363(m) and 364(e) of the Bankruptcy Code. The Agent shall be protected by sections 363(m) and 364(e) of the Bankruptcy Code in the event that this Order is reversed or modified on appeal. The Debtor was free to deal with any other party interested in buying or selling on behalf of the Debtor's estate some or all of the Assets. Neither the Debtor nor the Agent has engaged in any conduct that would cause or permit the Sale, the Agency Agreement, or any related action or the transactions contemplated thereby to be avoided under section 363(n) of the Bankruptcy Code, or that would prevent the application of sections 363(m) or 364(e) of the Bankruptcy Code. The Agent has not violated

section 363(n) of the Bankruptcy Code by any action or inaction. Specifically, the Agent has not acted in a collusive manner with any person and was not controlled by any agreement among bidders. The Agent's prospective performance and payment of amounts owing under the Agency Agreement are in good faith and for valid business purposes and uses.

O. **Insider Status:** The Agent is not an "insider" as that term is defined in section 101(31) of the Bankruptcy Code. No common identity of directors or controlling stockholders exists between the Agent and the Debtor.

P. **Security Interests:** The liens provided for in the Agency Agreement and this Order to secure the Debtor's obligations under the Agency Agreement to the Agent are necessary to induce the Agent to agree to terms for the Agency Agreement that maximize value for the Debtor's estate. The absence of such protections would impact materially and adversely the value available to the Debtor in the liquidation of its Assets in partnership with a liquidation agent. But for the protections afforded to the Agent under the Bankruptcy Code, this Order, and the Agency Agreement, the Agent would not have agreed to pay the Debtor the compensation provided for under the Agency Agreement. In addition, the Secured Lender, which holds a security interest in the property to which the Agent's security interests attach, has consented to the security interests provided for in the Agency Agreement, subject to the satisfaction of the conditions set forth in the Agency Agreement.

Q. **Corporate Authority:** The Debtor has all corporate right, power and authority to (i) execute and deliver this Agreement and each other document and agreement contemplated hereby (collectively, together with the Agency Agreement, the "**Agency Documents**") to which it is a party, (ii) engage the Agent thereunder, (iii) make the representations, warranties, covenants and agreements made under the Agency Documents to which it is a party,

(iv) sell the Assets, and convey good and marketable title to the Assets on its own behalf, to purchasers of the Assets in sales arranged (whether at auction or through orderly liquidation sales) by the Agent, in all cases free and clear of all Encumbrances, and (v) to perform fully its obligations under the Agency Documents to which it is a party. No consents or approvals, other than those expressly provided for herein or in the Agency Documents, are required for the Debtor to consummate such transactions.

R. **No Successor Liability:** No sale, transfer or other disposition of the Assets pursuant to the Agency Agreement or entry into the Agency Agreement will subject the Agent to any liability for claims, obligations or Encumbrances asserted against the Debtor or the Debtor's interests in such Assets by reason of such transfer under any laws, including, without limitation, any bulk-transfer laws or any theory of successor or transferee liability, antitrust, environmental, product line, de facto merger or substantial continuity or similar theories. The Agent is not a successor to the Debtor or its estate.

S. **No Sub Rosa Plan:** Entry into the Agency Agreement and the transactions contemplated thereby neither impermissibly restructure the rights of the Debtor's creditors, nor impermissibly dictates the terms of a liquidating plan of reorganization for the Debtor. Entry into the Agency Agreement does not constitute a *sub rosa* chapter 11 plan.

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

A. Motion Granted, Objections Overruled

1. The relief requested in the Motion is granted as set forth herein.
2. Any remaining objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included in such objections are overruled in all respects and denied.

B. Agency Agreement Approved and Authorized

3. The Agency Agreement is approved pursuant to section 363 of the Bankruptcy Code. The Debtor is hereby authorized and empowered to enter into and perform under the Agency Agreement, and the Agency Agreement (and each of the transactions contemplated therein) is hereby approved in its entirety and is incorporated herein by reference. The failure to include specifically any particular provision of the Agency Agreement in this Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the Agency Agreement and all of its provisions, payments and transactions, be authorized and approved in their entirety. Likewise, all of the provisions of this Order are nonseverable and mutually dependent.

4. All amounts payable to the Agent under the Agency Agreement shall be payable to the Agent without the need for any application of the Agent therefor or any further order of the Court.

5. Subject to the provisions of this Order, the Debtor and the Agent are hereby authorized, pursuant to sections 105(a) and 363(b)(1) of the Bankruptcy Code, to conduct the Sale in accordance with the Agency Agreement.

6. Pursuant to section 363(b) of the Bankruptcy Code, the Debtor, the Agent and each of their respective officers, employees and agents are hereby authorized and directed to execute such documents and to do such acts as are necessary or desirable to carry out the Sale and effectuate the Agency Agreement and each of the transactions and related actions contemplated or set forth therein.

C. Order Binding

7. This Order shall be binding upon and shall govern the acts of all 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, secretaries of state, federal, state and local officials, and all other persons and entities who 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 the Assets.

8. This Order and the terms and provisions of the Agency Agreement shall be binding on all of the Debtor's creditors (whether known or unknown), the Debtor, the Agent, and their respective affiliates, successors and assigns, and any affected third parties including, but not limited to, all persons asserting an interest in the Assets, notwithstanding any subsequent appointment of any trustee, party, entity or other fiduciary under any section of the Bankruptcy Code with respect to the forgoing parties, and as to such trustee, party, entity or other fiduciary, such terms and provisions likewise shall be binding. The provisions of this Order and the terms and provisions of the Agency Agreement, and any actions taken pursuant hereto or thereto shall survive the entry of any order which may be entered confirming or consummating any plan of the Debtor or converting the Debtor's cases from chapter 11 to chapter 7, and the terms and provisions of the Agency Agreement, as well as the rights and interests granted pursuant to this Order and the Agency Agreement, shall continue in these or any superseding cases and shall be binding upon the Debtor, the Agent and their respective successors and permitted assigns, including any trustee or other fiduciary hereafter appointed as a legal representative of the Debtor under chapter 7 or chapter 11 of the Bankruptcy Code. Any trustee appointed in this case shall be and hereby is authorized to operate the business of the Debtor to the fullest extent necessary to permit compliance with the terms of this Order and the Agency Agreement, and the Agent and the trustee

shall be and hereby are authorized to perform under the Agency Agreement upon the appointment of the trustee without the need for further order of this Court.

D. Good Faith

9. Entry into the Agency Agreement is undertaken by the parties thereto in good faith, as that term is used in sections 363(m) and 364(e) of the Bankruptcy Code, and the Agent shall be protected by sections 363(m) and 364(e) of the Bankruptcy Code in the event that this Order is reversed or modified on appeal. The reversal or modification on appeal of the authorization provided herein to enter into the Agency Agreement and consummate the transactions contemplated thereby shall not affect the validity of such transactions, unless such authorization is duly stayed pending such appeal. The Agent is entitled to all of the benefits and protections afforded by sections 363(m) and 364(e) of the Bankruptcy Code. The transactions contemplated by the Agency Agreement are not subject to avoidance pursuant to section 363(n) of the Bankruptcy Code.

E. Conduct of the Sale

10. Except as otherwise provided in the Agency Agreement, pursuant to section 363(f) of the Bankruptcy Code, the Agent shall be authorized to sell all the Assets free and clear of any and all Encumbrances, including, without limitation, the liens and security interests, as the same may have been amended from time to time, of the Secured Lender whether arising by agreement, any statute or otherwise and whether arising before, on or after the date on which this chapter 11 case was commenced, with any presently existing liens encumbering all or any portion of the Assets or the Proceeds thereof attaching only to the Guaranteed Amount with the same validity, force and effect as the same had with respect to the assets at issue, subject to any and all defenses, claims and/or counterclaims or setoffs that may exist.

11. If any person or entity that has filed financing statements, mortgages, construction or mechanic's liens, *lis pendens* or other documents or agreement evidencing liens on or interests in the Assets shall not have delivered to the Debtor, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, or releases of any Encumbrances which the person or entity has with respect to the Assets, each such person or entity is hereby directed to deliver all such statements, instruments and releases and the Debtor and the Agent are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity asserting the same, and the Agent is authorized to file a copy of this Order which, upon filing, shall be conclusive evidence of the release and termination of such interest. Each and every federal, state and local governmental unit (each, a "**Governmental Unit**") is hereby directed to accept any and all documents and instruments necessary or appropriate to give effect to the Sale and related transactions.

12. All entities that are presently in possession of some or all of the Assets or other property in which the Debtor holds an interest that are or may be subject to the Agency Agreement hereby are directed to deliver such Assets or other property to the Agent.

13. Any third party holding documents of title to any of the Assets shall (a) immediately relinquish such title documents to the Debtor, in no event later than three (3) Business Days after the Debtor's request for such title, and shall otherwise cooperate with the Debtor to deliver such title documents to the Debtor free and clear of such third party's liens, or (b) in the event any such title documents have been lost or cannot be delivered to the Debtor within the timeframe set forth in the proceeding clause (a), cooperate with the Debtor in good faith to (i) assist the Debtor in obtaining replacement title documents in an expeditious manner and (ii) take such other steps such that the Debtor can transfer the titled assets, including, without limitation, providing a release of

lien letter with detailed information about the vehicle and the title stating that such party releases its liens and completing any necessary forms. In addition, any third party who holds title documents to any of the Assets shall promptly take such other steps reasonably requested by the Debtor to enable the Debtor to facilitate the timely sale of the titled Assets. Any third party who holds title documents to any of the assets or has a lien on any titled Asset hereby appoints the Agent as such party's true and lawful proxy and attorney in connection with the release of any such lien and the sale or transfer of such Assets, with full power of substitution, to execute and deliver lien releases and other transfer documents (including, without limitation, title documents) in connection with the sale and/or transfer of any of the Assets on behalf of the Debtor pursuant to the Agency Agreement. The proxies and powers granted by each third party pursuant to this paragraph are couple with an interest.

14. Unless otherwise ordered by the Court, all newspapers and other advertising media in which the Sale may be advertised and all parties are directed to accept this Order as binding authority so as to authorize the Debtor and the Agent to consummate the Agency Agreement and to consummate the transactions contemplated therein, including, without limitation, to conduct and advertise the Sale in the manner contemplated by the Agency Agreement.

15. Nothing in this Order or the Agency Agreement releases, nullifies, or enjoins the enforcement of any liability to a Governmental Unit under environmental laws or regulations (or any associated liabilities for penalties, damages, cost recovery, or injunctive relief) that any entity would be subject to as the owner, lessor, lessee, or operator of the property after the date of entry of this Order. Nothing contained in this Order or in the Agency Agreement shall in any way (i) diminish the obligation of any entity to comply with environmental laws, or (ii) diminish the obligations of the Debtor to comply with environmental laws consistent with its rights and

obligations as a debtor-in-possession under the Bankruptcy Code. Nothing herein shall be construed to be a determination that the Agent is an operator with respect to any environmental law or regulation. Moreover, the Sale shall not be exempt from, and the Agent shall be required to comply with, laws of general applicability, including, without limitation, public health and safety, criminal, tax, labor, employment, environmental, antitrust, fair competition, traffic and consumer protection laws, including consumer laws regulating deceptive practices and false advertising (collectively, “**General Laws**”). Nothing in this Order shall alter or affect the Debtor’s and Agent’s obligations to comply with all applicable federal safety laws and regulations. Nothing in this Order shall be deemed to bar any Governmental Unit (as defined in Bankruptcy Code section 101(27)) from enforcing General Laws in the applicable non-bankruptcy forum, subject to the Debtor’s or the Agent’s right to assert in that forum or before this Court that any such laws are not in fact General Laws or that such enforcement is impermissible under the Bankruptcy Code, this Order, or otherwise. Notwithstanding any other provision in this Order, no party waives any rights to argue any position with respect to whether the conduct was in compliance with this Order and/or any applicable law, or that enforcement of such applicable law is preempted by the Bankruptcy Code. Nothing in this Order shall be deemed to have made any rulings on any such issues.

16. Except to the extent of the reserved rights of Governmental Units expressly granted elsewhere in this Order, the Debtor and Agent are hereby authorized to take such actions as may be necessary and appropriate to implement the Agency Agreement and to conduct the Sale without necessity of further order of this Court as provided in the Agency Agreement.

17. Except as expressly provided for herein, and except to the extent of the reserved rights of Governmental Units expressly granted elsewhere in this Order, no person or entity,

including but not limited to any landlord, licensor, or creditor, shall take any action to directly or indirectly prevent, interfere with, or otherwise hinder consummation of the Sale, or the advertising and promotion of such Sale, and all such parties and persons of every nature and description, including landlords, licensors and creditors, and all those acting for or on behalf of such parties, are prohibited and enjoined from (i) interfering in any way with, or otherwise impeding, the conduct of the Sale and/or (ii) instituting any action or proceeding in any court or administrative body seeking an order or judgment against, among others, the Debtor or the Agent that might in any way directly or indirectly obstruct or otherwise interfere with or adversely affect the conduct of the Sale.

18. Pursuant to section 554(a) of the Bankruptcy Code, the Debtor and the Agent, as applicable, are permitted to abandon property of the Debtor's estate in accordance with the terms and provisions of the Agency Agreement without incurring liability to any person or entity.

19. The Agent shall sell the Assets on an "AS IS, WHERE IS" and "WITH ALL FAULTS" basis, based solely on such buyer's own investigation of the Asset, without any representation or warranty other than those specifically made by the Debtor in Section 12.1(g) of the Agency Agreement.

20. During the Sale Term, the Agent shall be granted a limited license and right to use the trade names, logos and customer lists relating to and used in connection with the operation of the Assets, solely for the purpose of advertising the Sale in accordance with the terms of the Agency Agreement.

21. Except as expressly provided for in the Agency Agreement, nothing in this Order or the Agency Agreement, and none of the Agent's actions taken in respect of the Sale shall be deemed to constitute an assumption by Agent of any of the Debtor's obligations relating to any of

the Debtor's employees. Moreover, the Agent shall not become liable under any collective bargaining or employment agreement or be deemed a joint or successor employer with respect to such employees.

22. The Agent shall not be liable for sales taxes, transfer tax or other federal, state or local taxes fees or charges and the payment of any and all of the foregoing is the responsibility of the Debtor. The Debtor is directed to remit all taxes arising from the Sale to the applicable Taxing Authorities as and when due, provided that in the case of a bona fide dispute the Debtor is only directed to pay such taxes upon the resolution of the dispute, if and to the extent that the dispute is decided in favor of the Taxing Authority. For the avoidance of doubt, sales taxes collected and held in trust by the Debtor shall not be used to pay any creditor other than the Taxing Authority for which the sales taxes are collected. This Order does not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law, and does not constitute a declaratory judgment with respect to any party's liability for taxes under State law.

F. Liens Granted To Agent

23. In consideration of Agent's payment of the Guaranteed Amount effective as of the Sale Commencement Date, the Agent is hereby granted a valid and perfected first priority, senior security interest in and lien upon (i) the Assets and (ii) the Proceeds, to secure the payment of the Guaranteed Amount and all Proceeds thereof, as well as, all obligations of the Debtor to the Agent under the Agency Agreement. Upon the payment of the Guaranteed Amount, the security interest and lien granted to the Agent herein and in the Agency Agreement shall be deemed properly perfected without the need for any filing under the Uniform Commercial Code being noted on any certificate of title or otherwise, which lien shall be granted the status of superpriority claims in this chapter 11 case pursuant to section 364(c) of the Bankruptcy Code senior to all other superpriority claims, and which lien shall be free of any potential rights of the Debtor or any chapter 7 or chapter

11 trustee to surcharge against the Assets and the Proceeds pursuant to section 506(c) of the Bankruptcy Code; *provided that*, (i) shall not be junior or subordinate to or pari passu with the Encumbrances or claims of any Person, whether under section 364(d) of the Bankruptcy Code or otherwise, including without limitation any lien that is avoided or preserved for the benefit of the Debtor's estates under section 551 of the Bankruptcy Code and (ii) the Agent's lien, which shall be senior to all other persons, cannot be primed without the prior written consent of the Agent, which may be granted or withheld in the sole discretion of the Agent, shall be granted or allowed while any obligations to the Agent remain outstanding.

G. Other Provisions

24. The Agent shall not be liable for any claims (other than intentional fraud) against the Debtor, and the Debtor shall not be liable for any claims (other than intentional fraud) against the Agent, in each case, other than as expressly provided for in the Agency Agreement. The Agent shall have no successor liability whatsoever.

25. The Agent is a party in interest and shall have the ability to appear and be heard on all issues related to or otherwise connected to this Order, the various procedures contemplated herein, any issues related to or otherwise connected to the Sale, and the Agency Agreement.

26. Nothing contained in any plan confirmed in the Debtor's chapter 11 cases or any order of this Court confirming such plan or in any other order in this chapter 11 cases (including any order entered after any conversion of this case to a case under chapter 7 of the Bankruptcy Code) shall alter, conflict with, or derogate from, the provisions of the Agency Agreement or the terms of this Order.

27. The Agency Agreement and related documents may be modified, amended or supplemented by the Debtor and the Agent in accordance with the terms thereof. No further notice

or further order of this Court shall be required with respect to any such modification, amendment or supplement that is not material and adverse to the Debtor.

28. Except to the extent of the reserved rights of Governmental Units expressly granted elsewhere in this Order, and except as otherwise provided for in the Agency Agreement, this Court shall retain exclusive jurisdiction with regard to all issues or disputes relating to this Order or the Agency Agreement. No party or person shall take any action against the Debtor, the Agent or the Sale until this Court has resolved such dispute. This Court shall hear the request of such parties or persons with respect to any such disputes on an expedited basis, as may be appropriate under the circumstances.

29. Notwithstanding Bankruptcy Rules 4001 and 6004, or any other law that would serve to stay or limit the immediate effect of this Order, this Order shall be effective and enforceable immediately upon entry, and its provisions shall be self-executing. In the absence of any person or entity obtaining a stay pending appeal, the Debtor and the Agent are free to perform under the Agency Agreement at any time, subject to the terms of the Agency Agreement.

30. To the extent that anything contained in this Order explicitly conflicts with a provision in the Agency Agreement, this Order shall govern and control.

IT IS SO ORDERED.

THIS ORDER WAS SIGNED AND ENTERED
ELECTRONICALLY AS INDICATED AT THE TOP OF THIS PAGE.

APPROVED FOR ENTRY:

/s/ R. Alex Payne

Griffin S. Dunham

R. Alex Payne

DUNHAM HILDEBRAND, PLLC

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Nashville, Tennessee 37203

629.777.6529

alex@dhnashville.com

Counsel for the Debtor

AGENCY AGREEMENT

This Agency Agreement (this “Agreement”) is made as of this 2nd day of November, 2017 by and among Gordon Brothers Commercial & Industrial, LLC, a Delaware limited liability company with a principal place of business at 800 Boylston Street, 27th Floor, Boston, MA 02199 (“GBCI”), Ritchie Bros. Auctioneers (America) Inc., a Washington corporation with a principal place of business at 4000 Pine Lake Road, Lincoln, NE 68516 (“RB”, and collectively with GBCI, the “Agent”), Phoenix of Tennessee, Inc., a Tennessee corporation (the “Seller”).

RECITALS

WHEREAS, on September 7, 2017, the Seller filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Middle District of Tennessee (the “Bankruptcy Court”). The Seller’s chapter 11 case (the “Chapter 11 Case”) is pending in the Bankruptcy Court under Case No. 3:17-bk-6102.

WHEREAS, the Seller desires that the Agent act as the Seller’s exclusive sales agent in connection with the sale (as referenced below, the “Sale”) of the assets described on Exhibit A attached hereto (the “Assets”), which Assets shall include the motor vehicles and certain equipment, together with manuals (to the extent available), certificates of title, machinery history documentation (including all usage, maintenance and repair records to the extent available), manufacturer and other warranties (to the extent legally permissible) and spare parts associated with or related to motor vehicles and equipment, owned by the Seller, as the same shall exist on the date the Approval Order is entered by the Bankruptcy Court (other than for the avoidance of doubt any assets described on Exhibit B hereto (the “Excluded Assets”)) wherever located.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Agent and Seller hereby agree as follows:

Section 1. Defined Terms. The terms set forth below are defined in the Sections referenced of this Agreement:

<u>Defined Term</u>	<u>Section Reference</u>
Agency Documents	Section 12.1(b)
Agent	Preamble
Agent Claim	Section 13.3
Agent Indemnified Parties	Section 14.2
Agreement	Preamble
Approval Motion	Section 2.2
Approval Order	Section 2.1
Assets	Recitals
Agent Group	Section 18.11
Asset Impairment Notice	Section 6.1

<u>Defined Term</u>	<u>Section Reference</u>
Asset Impairment Value	Section 6.1
Auction	Section 17.1
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Section 2. Appointment of Agent.

2.1 Subject to entry of a Final Order authorizing the Seller to enter into this Agreement and authorizing Agent to conduct the Sale in accordance with the terms of this Agreement (such Final Order, the “Approval Order”), Seller hereby irrevocably appoints the Agent, and the Agent hereby agrees to serve, as the Seller’s exclusive agent for the limited purpose of conducting the Sale in accordance with the terms and conditions of this Agreement. For purposes of this Agreement, “Final Order” means an order or judgment of the Bankruptcy Court or any other court of competent jurisdiction entered by the Clerk of the Bankruptcy Court or such other court on the docket in the Seller’s Chapter 11 Case or the docket of such other court, which has not been modified, amended, reversed, vacated, stayed or subject to a motion for a stay pending appeal.

2.2 Within one (1) Business Day of the execution of this Agreement, the Seller shall file a motion or motions (the “Approval Motion”) with the Bankruptcy Court for entry of an order, *inter alia*, seeking (i) the entry of an order approving the bidding procedures (the “Bidding Procedures Order”) and (ii) entry of the Approval Order. “Business Day” means any day of the year on which banking institutions in Boston, Massachusetts are open to the public to conduct banking business and are not required or otherwise authorized by law to close.

2.3 The Bidding Procedures Order shall be entered on or before November 22, 2017 and shall provide, in a form reasonably satisfactory to both the Seller and the Agent, among other things, that:

(a) The Breakup Fee, Storage Fee and Expense Reimbursement are approved.

(b) The claim of the Agent in respect of the Breakup Fee, Storage Fee and Expense Reimbursement shall constitute a super-priority administrative expense claim, senior to all other administrative expense claims of the Seller, as administrative expenses under Sections 503 and 507(b) of the Bankruptcy Code in the Chapter 11 Cases. The Breakup Fee, Storage Fee and Expense Reimbursement shall be paid directly to the Agent by wire transfer from the successful bidder out of the first proceeds of the alternative transaction pursued by the Seller in lieu of closing hereunder with the Agent.

(c) The Auction, if any, and a hearing (the “Sale Hearing”) to consider the Approval Order shall be held on or before December 1, 2017.

(d) The bidding increments at the Auction shall be \$25,000 and the other bidding procedures shall be those set forth in the Bidding Procedures Order. The Seller shall take into account the Breakup Fee, Storage Fee and Expense Reimbursement in each round of bidding at the Auction.

2.4 The Approval Order shall provide, in a form reasonably satisfactory to both the Seller and the Agent, among other things, that:

(a) the terms of this Agreement (and each of the transactions contemplated hereby) are approved and the Agreement shall be binding upon and shall inure to

the benefit of the parties hereto and their respective legal representatives, heirs, successor and assigns, including, but not limited to any Chapter 7 or Chapter 11 trustee or any Chapter 11 liquidating agent appointed by the Bankruptcy Court;

(b) the Seller and the Agent shall be authorized to continue to take any and all actions as may be necessary or desirable to implement this Agreement and each of the transactions contemplated hereby;

(c) the Agent shall be entitled to sell all of the Assets hereunder free and clear of all liens, claims and encumbrances thereon (collectively, "Liens"), with any presently existing Liens encumbering all or any portion of the Assets or the Proceeds attaching only to the Guaranteed Amount;

(d) Agent shall be granted a limited license and right to use until the Sale Termination Date the Seller's trade names, logos and customer lists relating to and used in connection with the operation of the Assets, solely for the purpose of advertising the Sale in accordance with the terms of this Agreement;

(e) all newspapers and other advertising media in which the Sale is advertised shall be directed to accept the Approval Order as binding and to allow the Seller and the Agent to consummate the transactions provided for in this Agreement, including, without limitation, the conducting and advertising of the Sale in the manner contemplated by this Agreement;

(f) to the extent permitted by applicable law, all utilities, landlords, creditors and all persons acting for or on their behalf shall not interfere with or otherwise impede the conduct of the Sale, institute any action in any court (other than in the Bankruptcy Court) or before any administrative body which in any way directly or indirectly interferes with or obstructs or impedes the conduct of the Sale;

(g) the Bankruptcy Court shall retain jurisdiction over the parties to enforce this Agreement;

(h) the Agent shall not be liable for any claims (other than intentional fraud) against any Seller other than as expressly provided for in this Agreement, and Agent shall have no successor liabilities whatsoever;

(i) upon the payment of the Guaranteed Amount, the Agent shall have a first priority, valid duly perfected lien and security interest in such Assets and any Proceeds which is senior to all persons, including all creditors of the Seller without the need for any filing under the UCC being noted on any certificate of title or otherwise, which lien shall be granted the status of superpriority claims in the Seller's Chapter 11 Cases pursuant to section 364(c) of the Bankruptcy Code senior to all other superpriority claims, and which lien shall be free of any potential rights of the Seller or any Chapter 7 or Chapter 11 trustee to surcharge against the Assets and the Proceeds pursuant to section 506(c) of the Bankruptcy Code; *provided* that, (i) shall not be junior or subordinate to or *pari passu* with the Liens or claims of any Person, whether under section 354(d) of the Bankruptcy Code or otherwise, including without limitation any Lien that is avoided or preserved for the benefit of the Seller's estates under section 551 of

the Bankruptcy Code and (ii) the Agent's lien, which shall be senior to all other persons, cannot be primed without the prior written consent of the Agent, which may be granted or withheld in the sole discretion of the Agent, shall be granted or allowed while any obligations to the Agent remain outstanding.

(j) a finding that Seller's decision to enter into this Agreement and perform under this Agreement (including, but not limited to, making payments provided for in the Agreement) is a reasonable exercise of Seller's sound business judgment consistent with its fiduciary duties and is in the best interests of Seller, its estates, its creditors, and other parties in interest;

(k) a finding that this Agreement was negotiated in good faith and at arms' length between the Seller and the Agent and that the Agent is entitled to the protection of section 363(m) of the Bankruptcy Code;

(l) a finding that the Agent's performance under this Agreement will be, and payment of the Guaranteed Amounts under this Agreement will be made, in good faith and for valid business purposes and uses, as a consequence of which Agent is entitled to the protection and benefits of sections 363(m) and 364(e) of the Bankruptcy Code; and

(m) a finding that in the event any of the provisions of the Approval Order are modified, amended or vacated by a subsequent order of the Bankruptcy Court or any other court, the Agent shall be entitled to the protections provided in Bankruptcy Code sections 363(m) and 364(e), no such appeal, modification, amendment or vacatur shall affect the validity and enforceability of the sale or the liens or priority authorized or created under this Agreement or the Approval Order.

Section 3. Sale Term. The Sale shall commence on the first calendar day following the satisfaction of the conditions precedent set forth in Section 11 (the "Sale Commencement Date"), and shall terminate at any time in Agent's sole discretion (the "Sale Termination Date") (subject to Sections 10 and 12.1(i)); the period from the Sale Commencement Date to the Sale Termination Date being the "Sale Term"). The Agent may, in its discretion, terminate the Sale upon prior written notice to Seller (a "Sale Termination Notice"). The parties acknowledge and agree that in the event the Agent delivers to the Seller a Sale Termination Notice, the Agent shall be deemed to have abandoned all rights to any Assets referred to in the Sale Termination Notice as of the date the Sale Termination Notice is delivered to the Seller and the Seller shall have no obligation or liability under this Agreement or otherwise to the Agent with respect to such Assets. For the avoidance of doubt, Agent shall be not responsible for any costs, expenses or liabilities associated with any such abandoned assets.

Section 4. Conduct of Sale.

4.1 Except as may otherwise be provided for in the Approval Order, the Agent shall set all policies and procedures for the Sale of the Assets, and the Agent shall have the right to determine the prices, the method of sale (including without limitation commercial sales, arms' length transactions, public auctions, and cleanup auctions as needed), and the terms and conditions to be accepted for the Assets in the Sale. The Agent shall conduct the Sale in the

name of and on behalf of the Seller. The Agent shall be permitted to establish and implement advertising, signage and promotion programs in connection with the Sales.

4.2 All purchasers of Assets shall be required to pay applicable sales or transfer taxes, if any, arising solely in connection with the sale of the Assets pursuant to this Agreement. Seller shall be responsible for any personal property tax assessed or payable with respect to the Assets as assets of any Seller. In no event shall the Agent be responsible for any such sales, transfer or personal property tax.

4.3 All purchasers of Assets, unless otherwise agreed by the Agent in its sole discretion, shall be required to pay the Agent for the Assets by cash, wire transfer of immediately available funds, or by certified or bank check.

4.4 All Sales of Assets shall be made by the Agent as agent in fact for the Seller. Title to the Assets shall remain with the Seller throughout the Sale Term, unless and until paid for by, and transferred to, a purchaser through a Sale.

4.5 During the Sale Term the Agent shall be the sole party authorized to sell the Assets. The Assets shall be sold in such lots as the Agent may determine.

4.6 The Assets shall be sold and any buyer thereof shall acknowledge that the Assets are being purchased on an "AS IS, WHERE IS" and "WITH ALL FAULTS" basis, based solely on such buyer's own investigation of the Asset, without any representation or warranty other than those specifically made by the Seller in Section 12.1(g) of this Agreement. Any buyer of the Assets shall further acknowledge that the consideration for the Assets shall have been agreed upon by the Agent on behalf of the Seller and the buyer after good-faith arms-length negotiation in light of the buyer's agreement to purchase the Assets "AS IS" and "WITH ALL FAULTS." The Seller acknowledge that the Agent is acting solely in its capacity as an agent for the Seller and has no knowledge with respect to the fitness or usability of any of the Assets. Agent will, to the extent legally permissible, pass on all manufacturers' warranties of the Assets to purchasers of such Assets.

4.7 Seller hereby appoints the Agent as the Seller's true and lawful proxy and attorney in connection with the sale or transfer of any of the Assets, with full power of substitution, to execute and deliver bills of sale (substantially in the form attached hereto as Exhibit D) and other transfer documents (including, without limitation, title documents and certificates of title) in connection with the sale and/or transfer of any of the Assets on behalf of the Seller pursuant to the terms of this Agreement. The proxies and powers granted by the Seller pursuant to this Section 4.7 are coupled with an interest and are given to secure the performance of Seller's duties under this Agreement. Such proxies are irrevocable and will survive the merger, consolidation, liquidation or dissolution of Seller. Upon the request of the Agent, the Seller shall execute and deliver bills of sale and other transfer documents, including certificate of titles, in connection with the sale and/or transfer of any of the Assets on behalf of Seller pursuant to the terms of this Agreement.

4.8 For the avoidance of doubt, the Agent shall have the right to abandon any Asset at any time.

4.9 On or before November 10, 2017, the Seller shall, at its sole cost and expense, cause any Assets to be delivered to RB's facilities located in Nashville Tennessee, Phoenix Arizona, Fort Worth Texas, and Davenport Florida (the "RB Facilities").

4.10 Prior to the Sale Commencement Date, the Seller shall obtain, at its expense, any and all necessary or required permits, licenses and consents required of such Party to conduct the Sale as contemplated hereby.

4.11 The Seller acknowledges and agrees that the Guaranteed Amount is predicated upon the assumption that the Assets are available for sale as contemplated herein.

Section 5. Guaranteed Amount and Other Payments.

5.1 Guaranteed Amount. Subject to Section 6 hereof, as a guaranty of the Agent's performance hereunder and subject to the satisfaction of the conditions precedent set forth in Section 11, on the Sale Commencement Date the Agent shall pay to the Seller \$365,000 by wire transfer of immediately available funds (the "Guaranteed Amount"). For the avoidance of any doubt, in no event will the Agent pay to the Seller more than the Guaranteed Amount in connection with this Agreement or the Sale.

5.2 Termination. If the conditions precedent to the Agent's obligations to perform hereunder set forth in Section 11 are not fulfilled (or waived by the Agent) on or before December 1, 2017, then Seller and the Agent shall have a right to terminate this Agreement on such date and the Agent shall have no further duties or obligations under this Agreement.

5.3 Proceeds of the Sale. All Proceeds of the Sale shall be paid to the Agent as consideration for its actions under this Agreement. The Seller shall not have any rights to such Proceeds.

Section 6. Adjustments to the Guaranteed Amount.

6.1 If at any time after the date hereof and prior to the Sale Termination Date, the Agent determines that the Assets set forth on Exhibit A hereto are not available for sale as contemplated herein, including, but not limited to, because such Assets have not been moved to the RB Facilities as required by Section 4.9, the Seller is not able to sell the Assets free and clear of all Liens or there is a defect in the title of such Assets or such Assets are recalled or otherwise do not meet the requirements set forth in this Agreement (including the representations, warranties and covenants set forth in Section 12), the Agent shall deliver a written notice ("Asset Impairment Notice") to the Seller that includes (i) a list of each Asset that does not conform to the standards set forth above, (ii) a statement as to the basis of the Agent's objection to each such Asset and (iii) a good faith estimate of (x) the impairment to the fair market value of each such Asset and/or (y) in the case of a missing Asset, the fair market value of such missing Asset (the "Asset Impairment Value").

6.2 If within three (3) Business Days following delivery of the Asset Impairment Notice, Seller has not given the Agent notice of its objection to the Asset Impairment Value included in the Asset Impairment Notice (such notice must contain a reasonably detailed statement of the basis of each of Seller's objections), then the Seller shall be deemed to have

accepted as final the Asset Impairment Values set forth in the Asset Impairment Notice. If Seller gives a notice of objection to any of such items included in the Asset Impairment Notice, then the Seller and the Agent shall, for a period of three (3) Business Days thereafter (the “Resolution Period”), attempt in good faith to resolve the disputed items or amounts contained therein in order to determine the Asset Impairment Value, and any written resolution, signed by the Seller and the Agent, as to any such item or amount shall be final, binding, conclusive and non-appealable for all purposes hereunder, except in the case of fraud.

6.3 If any dispute related to the Asset Impairment Value or the Asset Impairment Notice is not resolved within the Resolution Period, then (i) if the Sale Hearing has not occurred such dispute shall be submitted to the Bankruptcy Court for determination at the Sale Hearing; and (ii) if the Sale Hearing has been entered then such dispute shall be promptly (and in no event later than the third (3rd) Business Day following the request by either a Seller or the Agent) be submitted to the Bankruptcy Court for resolution.

6.4 Upon final determination of the Asset Impairment Value contained in any Asset Impairment Notice, the aggregate Asset Impairment Value shall reduce the Guaranteed Amount on a dollar for dollar basis and to the extent the determination occurs after the Sale Commencement Date the Seller shall immediately pay to the Agent the amount of such Asset Impairment Value by wire transfer of immediately available funds.

Section 7. Expenses.

7.1 Reserved.

7.2 Expenses of the Agent. The Agent or purchasers at the Sale shall be responsible for all out-of-pocket costs and expenses of the Sale, other than any costs, fees and expenses owed by any of the Seller to RB pursuant to the Equipment Storage agreement dated October 30, 2017 among RB and Seller (the “Equipment Storage Agreement”) or any costs or expenses otherwise set forth in this Agreement which the Seller have agreed to pay.

Section 8. Proceeds. For purposes of this Agreement, “Proceeds” shall mean the aggregate of (a) the total amount (in dollars) of all sales of Assets made by the Agent under this Agreement (including any buyer’s premiums); and (b) all proceeds of Seller’s insurance for loss or damage to Assets or loss of cash arising from events occurring during the Sale Term.

Section 9. Sales Taxes.

9.1 During the Sale Term, all sales, excise, gross receipts and other taxes attributable to sales of Assets payable to any taxing authority having jurisdiction (collectively, “Sales Taxes”) shall be payable by and be the responsibility of the Seller. The Seller shall be responsible for the preparation of any reports or tax returns required to be filed with any governmental authority in connection with any Sales Tax. The Seller shall sign such tax returns and promptly file the same with the appropriate governmental authority. The Seller shall promptly pay all such Sales Taxes to the appropriate governmental authority.

9.2 Without limiting the generality of Section 9.1 hereof, it is hereby agreed that as the Agent is conducting the Sale solely as agent for the Seller, various payments that this

Agreement contemplates that one party may make to the other party (including the payment by Agent of the Guaranteed Amount) do not represent the sale of tangible personal property and, accordingly, shall not be subject to Sales Taxes.

Section 10. Force Majeure. If any casualty or act of God or act of terrorism prevents or substantially inhibits the Sale or the conduct of business in the ordinary course at any RB Facility, the remaining Assets located at such RB Facility, in the sole discretion of Agent, may be transferred to other facilities owned or leased by Agent and the cost of such transfer shall be borne by the Agent, and the Sale Termination Date shall be extended by the number of days during which the Sale or conduct of the business in the ordinary course at any RB Facility was substantially inhibited.

Section 11. Conditions Precedent. The willingness of the Agent and the Seller to enter into the transactions contemplated under this Agreement and the occurrence of the Sale Commencement Date are directly conditioned upon the satisfaction of the following conditions at the times indicated, unless specifically waived in writing by the applicable party:

(a) all representations and warranties of Seller and Agent hereunder shall be true and correct as of the date hereof, as of the Sale Commencement Date, and as of issuance of the Approval Order by the Bankruptcy Court;

(b) the Seller having obtained all consents and approvals Seller is required to obtain in order to perform its obligations hereunder, which consents and approvals shall not be subject to the satisfaction of any condition that has not been satisfied or waived and shall be in full force and effect, except to the extent that the requirement for a particular consent or approval is rendered inapplicable by the Approval Order or other order of the Bankruptcy Court, if applicable;

(c) the Seller shall have provided Agent evidence satisfactory to the Agent that the Seller has good and marketable title to the Assets without defect in title and that the Seller is able to sell the Assets free and clear of all Liens;

(d) the Agent shall have conducted an inspection of the Assets on or prior to the Sale Commencement Date (including but not limited to an inspection of the condition of the Assets and verification that the Assets have been delivered to the required RB Facilities), the results of which are satisfactory to the Agent;

(e) all original documents of title relating to any Asset (duly endorsed and in a form suitable for transfer) shall have been delivered to Agent together with (i) all powers of attorney necessary to convey title to such Assets executed in favor of Agent and all other documentation necessary to convey title to such Assets, (ii) lien releases for any Liens on such Assets, (iii) all machinery history documentation (including but not limited to all usage, maintenance and repair records to the extent available) related to the Assets, (iv) all manufacturer and other warranties related to the Assets, (v) all licenses, permits, authorizations, franchises and certifications of governmental and non-governmental authorities related to the Assets, (vi) the keys to such Asset, and (vii) all other manuals, instructions and other materials related to the Assets (to the extent available); and

(f) entry by the Bankruptcy Court of the Approval Order approving this Agreement and the transactions contemplated herein on or before December 1, 2017 and such Approval Order having become a Final Order; provided, that the Agent may (but shall not be required to) elect, in its sole and absolute discretion, to commence the Sale prior to the Approval Order becoming a Final Order.

Section 12. Representations, Warranties, Covenants, and Agreements.

12.1 Seller's Representations, Warranties, Covenants, and Agreements. Seller hereby, jointly and severally, represents, warrants, covenants, and agrees in favor of the Agent as follows:

(a) Seller: (i) is a corporation duly organized, validly existing and in good standing under the laws of the state of its organization stated above; (ii) has all requisite power and authority to own, lease and operate its assets and properties and to carry on its business as presently conducted; and (iii) is and during the Sale Term shall continue to be duly authorized and qualified as a foreign company to do business and in good standing in each jurisdiction where the nature of its business or properties requires such qualification, including the jurisdiction in which the Facilities are located.

(b) Subject to the entry by the Bankruptcy Court of the Bidding Procedures Order or Approval Order, as applicable, Seller has all corporate right, power and authority to (i) execute and deliver this Agreement and each other document and agreement contemplated hereby (collectively, together with this Agreement, the "Agency Documents") to which it is a party, (ii) engage the Agent hereunder, (iii) make the representations, warranties, covenants and agreements made herein and under the other Agency Documents to which it is a party, (iv) to sell the Assets, and convey good and marketable title to the Assets on its own behalf, to purchasers of the Assets in sales arranged (whether at auction or through orderly liquidation sales) by the Agent, in all cases free and clear of all Liens, and (v) to perform fully its obligations hereunder and under the other Agency Documents to which it is a party.

(c) Seller has taken all necessary actions required to authorize the execution, delivery and performance of the Agency Documents to which it is a party, and no further action, consent or approval is required on the part of Seller for Seller to enter into and deliver the Agency Documents to which it is a party, to perform its obligations hereunder and thereunder, and to consummate the Sale. Each of the Agency Documents to which it is a party has been duly executed and delivered by Seller and constitutes the legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as enforcement hereof may be limited by a subsequent bankruptcy, insolvency, reorganization, priority or other laws relating to or affecting generally the availability of equitable remedies. No court order or decree of any federal, state or local governmental authority or regulatory body is in effect that would prevent or impair, or is required for Seller's consummation of, the transactions contemplated by this Agreement or any other Agency Document to which it is a party, and no consent of any third party which has not been obtained is required therefor.

(d) The execution, delivery and consummation of this Agreement by Seller (i) is not contrary to organizational documents of Seller or any prior resolution of Seller's

Board of Directors or vote of its shareholders, (ii) will not violate any order, law, rule or regulation applicable to Seller or to the Assets, and (iii) does not now constitute, and will not, with the passage of time, the giving of notice or otherwise, result in, a violation or breach of, or a default under, any term or provision of any contract, agreement, order, judgment, decree, rule, regulation or law to which the Seller or any of the Assets is subject or bound.

(e) Neither the execution of this Agreement, nor the consummation of the transactions contemplated hereunder or under any other Agency Document to which it is a party will result in the creation of any Lien on any of the Assets, other than the Liens created hereunder in favor of the Agent.

(f) Subject to approval of the Bankruptcy Court, Seller has, and throughout the Sale Term shall have, all consents and approvals, required by contract or otherwise, necessary to consummate and perform the transactions contemplated by any Agency Document to which it is a party.

(g) The Seller owns, and shall own at all times during the Sale Term, good and marketable title to all of the Assets. No Seller shall sell, transfer, assign, encumber, grant a Lien upon or otherwise affect marketable title to the Assets, or challenge, dispute or otherwise contest Agent's right to proceed with the Sale. Upon the consummation of any Sale, pursuant to the Approval Order the purchaser of the Assets shall acquire good and marketable title to such Assets free and clear of any Lien.

(h) All Assets are subject to the representations and warranties set forth herein.

(i) During the Sale Term, the Agent shall be able to consummate and conduct the Sale in Agent's discretion. Agent shall be granted a license and right to use until the Sale Termination Date the Seller's trade names and logos and customer list relating to and used in connection with the operation of the Assets, solely for the purpose of advertising the Sale in accordance with the terms of this Agreement.

(j) Except any amounts owing as a result of the commencement of the Bankruptcy Case, and absent a bona fide dispute, throughout the Sale Term, Seller shall remain current on all expenses and payables necessary for the conduct of the Sale, subject to any restrictions that may be imposed under the Bankruptcy Code.

(k) The Seller is not subject to any judgment, decree, ruling, injunction, assessment, attachment, award, charge, writ, executive order or administrative order and to Seller's knowledge, none have been threatened, which in either case would reasonably be expected to have an adverse effect upon (A) Seller's ability to perform its obligations under this Agreement or any other Agency Document to which it is a party or (B) the conduct of the Sale or the value of the Assets.

(l) Seller has not engaged any broker as a broker in connection with the sale or transfer of the Assets contemplated by this Agreement or any other Agency Document to which it is a party or otherwise is required to pay a fee to any broker in connection with the same. No Seller has any liability or obligation to pay any fees or commissions to any broker,

finder, or agent with respect to the transactions contemplated by this Agreement or any other Agency Document to which it is a party or for which the Agent could become liable or obligated.

(m) All Assets are in compliance in all material respects with all applicable federal, state and local laws, rules, regulations and standards. The condition and status of each of the Assets is unchanged (subject to normal wear and tear) from how such assets appeared during the inspection conducted on the Agent's behalf after delivery of the Assets to the RB Facilities in accordance with Section 4.9 hereof, which inspection shall take place within ten (10) days of the delivery of all of the Assets to the RB Facilities (the "Inspection"). The hour meter reading and the mileage reading set forth on Schedule 12.1(m) hereto for each of the Assets and the machinery history documentation for each of the Assets are each true, correct and complete in all material respects and between the date hereof and the Sale Commencement Date there will be no usage of the Assets outside the ordinary course of business.

(n) Seller has paid and shall continue to pay throughout the Sale Term, all casualty, liability and other insurance premiums.

(o) Seller's relationship with Agent is solely that of agent and principal, not that of joint venturers or partners.

(p) Seller has not, nor shall Seller during the term of this Agreement, take any actions with the intended result being to increase the cost of operating the Sale.

(q) From and after the date hereof, the Seller shall cooperate with the Agent to obtain, collect, review and organize the documents of title and take all reasonable steps and actions to prepare for the transfer of such documents of title in connection with the commencement of the Sale. Without limiting the generality of the foregoing, the Seller shall use their best efforts to provide copies of the documents of title to the Agent for review and inspection and allow the Agent to review and inspect and have access to the files and books of records of the Seller in connection therewith and discuss matters relating thereto with any interested parties in the Chapter 11 Cases.

(r) Immediately following the entry of the Approval Order, the Seller shall provide Agent with all documentation and information related to any party that: (i) was solicited by the Seller; or (ii) contacted Seller (including, but not limited to, by submitting a bid, regardless of whether such bid was a qualified bid or not) with respect to consummating a transaction with respect to any or all of the Seller's assets.

12.2 Agent's Representations and Warranties. Agent hereby represents, warrants, covenants and agrees in favor of Seller as follows:

(a) Agent (i) is a limited liability company or corporation, as applicable, duly organized, validly existing and in good standing under the laws of the State of Delaware; (ii) has all requisite power and authority to consummate the transactions contemplated hereunder and under the other Agency Documents to which it is a party; and (iii) is and during the Sale Term shall continue to be, duly authorized and qualified to do business and in good standing in each jurisdiction where the nature of its business or properties requires such qualification.

(b) Agent has the right, power and authority to (i) execute and deliver this Agreement and the other Agency Documents to which it is a party, (ii) make the representations, warranties, covenants and agreements made herein and under the other Agency Documents to which it is a party and (iii) perform fully its obligations hereunder and under the other Agency Documents to which it is a party.

(c) Agent has taken all necessary actions required to authorize the execution, delivery, and performance of the Agency Documents to which it is a party, and no further action, consent or approval is required on the part of the Agent for the Agent to enter into and deliver the Agent Document to which it is a party and to perform its obligations hereunder and thereunder. Each of the Agency Documents to which it is a party has been duly executed and delivered by Agent and constitutes the legal, valid and binding obligation of Agent, enforceable in accordance with its terms, except as enforcement hereof may be limited by bankruptcy, insolvency, reorganization, priority or other laws relating to or affecting generally the availability of equitable remedies. No court order or decree of any federal, state or local governmental authority or regulatory body is in effect that would prevent or impair, or is required for any of Agent's consummation of, the transactions contemplated by this Agreement or any other Agency Documents to which it is a party, and no consent of any third party which has not been obtained is required therefor.

(d) The execution, delivery and consummation of this Agreement by the Agent (i) is not contrary to the organizational documents of the Agent or any prior resolution of the Agent's managers or directors, as applicable, or vote of its members or stockholders, as applicable, (ii) will not violate any order, law, rule or regulation applicable to the Agent, and (iii) does not now constitute, and will not, with the passage of time, the giving of notice or otherwise, result in, a violation or breach of, or a default under, any term or provision of any material contract, agreement, order, judgment, decree, rule, regulation or law to which the Agent is subject or bound.

(e) No action, arbitration, suit, notice, or legal administrative or other proceeding before any court or governmental body has been instituted by or against Agent, or has been settled or resolved, or to Agent's knowledge, has been threatened against or affects the Agent, (i) that questions the validity of this Agreement or any other Agency Documents to which it is a party or any action taken or to be taken by Agent in connection with this Agreement or any other Agency Document to which it is a party, or (ii) that, if adversely determined, would have a material adverse effect upon Agent's ability to perform its obligations under this Agreement or the other Agency Documents to which it is a party.

(f) The Sale shall be conducted in compliance in all material respects with all applicable state and local laws, rules and regulations, except as provided for in the Approval Order

Section 13. Insurance.

13.1 Seller's Liability Insurance. Seller shall continue at its cost and expense until the Sale Termination Date, in such amounts as it currently has in effect, all of its liability insurance policies including, as applicable, commercial general liability insurance, products

liability, comprehensive public liability, auto liability and umbrella liability insurance, and shall cause Agent to be named an additional named insured with respect to all such policies. Prior to the Sale Commencement Date, Seller shall deliver to Agent certificates evidencing such insurance setting forth the duration thereof and naming Agent as an additional named insured, in form reasonably satisfactory to Agent. During the Sale Term, such policies shall require at least thirty (30) days' prior notice to Agent prior to the cancellation, nonrenewal or material change of any such policy. In the event of a claim under any such policies, Seller shall be responsible for the payment of all deductibles, retentions or self-insured amounts thereunder, except to the extent that it is finally determined that such liability arose by reason of the gross negligence or willful misconduct of the Agent, or the Agent's employees, independent contractors or agents (other than Seller's employees) in which cases the Agent shall indemnify the Seller for all such amounts. No Seller shall make any change in the amount of any deductibles or self-insurance amounts prior to the Sale Termination Date without Agent's prior written consent.

13.2 Seller's Casualty Insurance. Seller shall provide throughout the Sale Term, at Seller's expense, fire, flood, theft and extended coverage casualty insurance covering the Assets in a total amount equal to no less than the Guaranteed Amount. From and after the date of this Agreement until the Sale Termination Date, all such policies shall also name Agent as loss payee (as its interest may appear), unless otherwise provided in the Approval Order. In the event of a loss to the Assets on or after the date of this Agreement, the proceeds of such insurance attributable to the Assets plus any self-insurance amounts and the amount of any deductible or any self-insured retention (which amounts shall be paid by the Seller), shall constitute Proceeds hereunder and shall be paid to the Agent. Prior to the Sale Commencement Date, Seller shall deliver to Agent certificates evidencing such insurance setting forth the duration thereof and naming the Agent as loss payee (as its interest may appear), in form and substance reasonably satisfactory to Agent. During the Sale Term, all such policies shall require at least thirty (30) days' notice to Agent prior to the cancellation, non-renewal or material change of any such insurance policy. In the event of a claim under any such policies Seller shall be responsible for the payment of all deductibles, retentions or self-insured amounts thereunder, except to the extent that it is finally determined that such liability arose by reason of the gross negligence or willful misconduct of the Agent, or the Agent's employees, independent contractors or agents (other than Seller's employees) in which cases the Agent shall indemnify the Seller for all such amounts. No Seller shall make any change in the amount of any deductibles or self-insurance amounts prior to the Sale Termination Date without Agent's prior written consent.

13.3 Risk of Loss. Without limiting any other provision of this Agreement, Seller acknowledges that the Agent is conducting the Sale on behalf of Seller solely in the capacity of an agent, and that in such capacity (i) the Agent shall not be deemed to be in possession or control of the Assets, or of Seller's employees, and (ii) except as expressly provided in this Agreement, the Agent does not assume any of any Seller's obligations or liabilities with respect to any of the foregoing. Seller and the Agent agree that Seller shall bear all responsibility for liability claims of Seller's customers, employees and other persons relating to the Assets during and after the Sale Term, except to the extent any such claim arises directly from the acts or omissions of the Agent (an "Agent Claim"). In the event of any such liability claim other than an Agent Claim, the Seller shall administer such claim and shall present such claim to each Seller's liability insurance carrier in accordance with Seller's historic policies and

procedures, and shall provide a copy of the initial documentation relating to such claim to the Agent. To the extent that the Seller and the Agent agree that a claim constitutes an Agent Claim, the Agent shall administer such claim and shall present such claim to its liability insurance carrier, and shall provide a copy of the initial documentation relating to such claim to the Seller. In the event that the Seller and the Agent cannot agree whether a claim constitutes an Agent Claim, each party shall present the claim to its own liability insurance carrier, and a copy of the initial claim documentation shall be delivered to the other party.

Section 14. Indemnification.

14.1 Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Sale Term and shall remain in full force and effect until the date that is ninety (90) days after the Sale Termination Date. All covenants and agreements of the parties contained herein shall survive the Sale Term until the date that is ninety (90) days after the Sale Termination Date or for the period explicitly specified therein. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching party to the breaching party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant representation or warranty and such claims shall survive until finally resolved.

14.2 Seller Indemnification. Seller, on behalf of itself and its successors and assigns, shall, jointly and severally, defend, indemnify and hold Agent, its affiliates, and their officers, directors, members, managers, employees, agents, representatives and independent contractors (collectively, "Agent Indemnified Parties") harmless from and against, and agree to pay or cause to be paid to the Agent, all claims, demands, penalties, losses, deficiencies, actions, judgments, interest, awards, fines, costs, expenses, proceedings, liabilities or damages of whatever kind, including, without limitation, reasonable attorneys', accountants', consultants' and engineering fees and expenses and the cost of enforcing a right to indemnification hereunder and the cost of pursuing any insurance providers ("Damages"), whether directly or indirectly asserted against, resulting from, in connection with, arising from, or related to:

(a) a breach of or any inaccuracy in any of the Seller's representations or warranties contained in any Agency Document to which it is a party, other than items with respect to which the Agent is entitled to seek and obtain an adjustment pursuant to Section 6.4;

(b) a breach of or failure to comply with any of the Seller's agreements or covenants contained in any Agency Document to which it is a party, other than items with respect to which the Agent is entitled to seek and obtain an adjustment pursuant to Section 6.4;

(c) any failure of any Seller to pay to its employees any wages, salaries or benefits determined by the Bankruptcy Court to be due to such employees during the Sale Term;

(d) any consumer warranty or products liability claims relating to Assets;

(e) any taxes payable by any Seller, including those arising out of the transactions contemplated by this Agreement;

(f) any Damages, liability or other claims asserted by customers, any of any Seller's employees, or any other person against any Agent Indemnified Party (including, without limitation, claims by employees arising under worker's compensation) arising out of, relating to or otherwise in connection with, the Sale and the transactions contemplated hereby, other than Damages required to be indemnified by Agent pursuant to Section 14.3 hereof;

(g) any environmental and/or hazardous materials claims relating to the Assets, any Facility and/or the Sale; and

(h) the negligence, unlawful conduct or willful misconduct of any Seller or any of its officers, directors, employees, agents or representatives.

14.3 Agent Indemnification. Agent shall indemnify and hold Seller, its affiliates, and their officers, directors, members, managers, employees, agents, representatives and independent contractors from and against all Damages, whether directly or indirectly asserted against, resulting from, in connection with, arising from, or related to a breach of, failure to comply with, or any inaccuracy in, any of Agent's agreements, covenants, representations or warranties contained in any Agency Document to which it is a party.

14.4 Limitation of Indemnification. Notwithstanding the foregoing or any other provision of this Agreement, the Agent shall have no liability to any Seller, and shall have no indemnification obligations hereunder, to the extent relating to or arising out of (i) environmental and/or hazardous materials claims, (ii) any product liability claims by purchasers, subsequent purchasers or users of any Assets sold in the Sale, (iii) any taxes payable by any Seller, including personal property taxes and taxes arising out of the transactions contemplated by this Agreement, or (iv) prior liabilities and proceedings relating to the Assets or any Facility. No party shall be entitled to recover more than once for any Damages indemnified pursuant to this Section 14 (including, without limitation, if recovery of such Damages is otherwise provided for in any other provision of this Agreement).

14.5 Costs and Expenses. In the event that any party institutes legal proceedings to enforce any obligations hereunder, then all attorneys' fees and costs actually and reasonably incurred in connection with the prosecution and/or defense of such legal proceedings shall be awarded and paid to the prevailing party in such legal proceeding by the party who does not so prevail. These fees and costs shall be in addition to any fees and costs recoverable under applicable law or statute. The "prevailing party" is that party whose position is substantially upheld in the ultimate adjudication of the dispute, including any appeals.

14.6 Reserved.

14.7 Procedure for Indemnification for Third Party Claims.

(a) If the Seller or the Agent believe that it or they may be entitled to indemnification under this Section 14 (the "Indemnified Party"), then the Indemnified Party shall promptly give to the other party providing the indemnification (the "Indemnifying Party")

written notice of any claim, suit, proceeding, or matter for which indemnity may be sought; provided, however, that failure by the Indemnified Party to give such notice shall not relieve the Indemnifying Party from any liability it may have pursuant to this Agreement except to the extent materially prejudiced thereby. Such notice shall set forth in reasonable detail (i) the basis of and facts relating to such claim, (ii) the Sections of this Agreement pursuant to which the claim is made, and (iii) the dollar amount of such claim (to the extent it can be determined). The Indemnifying Party shall have a period of thirty (30) days to respond thereto. If the Indemnifying Party does not respond within such thirty (30) day period it shall be deemed to have accepted responsibility for such indemnity and shall reimburse the Indemnified Party accordingly.

(b) Each party shall have the right, at its own option, to be represented by counsel of its choice and to assume the defense or otherwise control the handling of any third party claim, suit, proceeding or matter for which indemnity is sought, as set forth in the notice sent by the Indemnified Party by notifying the Indemnified Party in writing to such effect within thirty (30) days after receipt of such notice. If the Indemnifying Party does not give timely notice in accordance with the preceding sentence, then the Indemnifying Party shall be deemed to have elected not to assume the defense of such claim, suit, proceeding or matter. If the Indemnifying Party assumes the defense or otherwise controls the handling of any claim, suit, proceeding or matter for which indemnity is sought, the Indemnifying Party shall have the right to appeal any decision rendered on such claim, proceeding or matter; *provided, however*, that if the Indemnified Party determines in good faith that there is a reasonable probability that a claim, suit, proceeding or matter may adversely affect it or its affiliates other than as a result of monetary damages for which it would be entitled to indemnification under this Agreement, then the Indemnified Party may, by notice to the Indemnifying Party, assume the exclusive right to defend, compromise, or settle such claim, suit, proceeding or matter, all at the expense (including costs of investigation and defense and reasonable attorneys' fees) of the Indemnifying Party, but the Indemnifying Party will not be bound by any determination of a claim, suit, proceeding or matter so defended or any compromise or settlement effected without its consent (which may not be unreasonably withheld). In the event that Indemnifying Party does not assume the defense or otherwise control the handling of such claim, suit, proceeding or matter, the Indemnified Party may retain counsel to defend such claim, suit, proceeding or matter, and the reasonable attorneys' fees, costs and disbursements, including any other reasonable and customary fees, incurred by the Indemnified Party shall be subject to reimbursement in accordance with the indemnities in this Section 14.

(c) Each party shall cooperate in the defense of any such claim or litigation (and the Indemnifying Party shall discuss its strategies with the Indemnified Party and shall provide drafts of all litigation documents to the Indemnified Party a reasonable period of time prior to the service and/or filing thereof to the extent practicable) and each party shall make available to the other all books and records which are relevant in connection with such claim or litigation. The Indemnifying Party will not consent to the entry of any judgment or enter into any settlement with respect to any matter which does not include a provision whereby the plaintiff or claimant in the matter releases the Indemnified Party from all liability with respect thereto without the written consent of the Indemnified Party.

14.8 Effect of Investigation. The representations, warranties and covenants of the Indemnifying Party, and the Indemnified Party's right to indemnification with respect thereto,

shall not be affected or deemed waived by reason of any investigation made by or on behalf of the Indemnified Party (including by any of its representatives) or by reason of the fact that the Indemnified Party or any of its representatives knew or should have known that any such representation or warranty is, was or might be inaccurate.

Section 15. Defaults. In the event of Seller's or the Agent's failure to perform any of their respective material obligations hereunder, which failure shall continue uncured (if possible of being cured) five (5) Business Days after receipt of written notice thereof to the defaulting party, the non-defaulting party may, in its discretion, elect to terminate this Agreement upon five (5) Business Days' written notice to the other party, provided that upon such termination the Seller shall return the Guaranteed Amount to Agent minus any Proceeds received by Agent from the Sale.

Section 16. Further Assurances. From time to time, the Agent and Seller shall, and shall cause their respective affiliates to, (a) execute, acknowledge and deliver all such further conveyances, notices, and such other instruments, and shall take such further commercially reasonable actions, as may be necessary or appropriate to fully and effectively transfer, assign and convey unto a purchaser each Asset and (b)(i) to furnish upon request to each other such further information, (ii) to execute and deliver to each other such other documents, and (iii) to do such other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of this Agreement and the documents referred to in this Agreement.

Section 17. Bidding and Auction; Exclusivity; Breakup Fee and Expense Reimbursement.

17.1 The Seller and the Agent acknowledge that this Agreement and the Sale of the Assets are subject to higher and better bids and Bankruptcy Court approval. The Agent and Seller acknowledge that Seller must take reasonable steps to demonstrate that they have sought to obtain the highest or otherwise best price for the Assets, including giving notice thereof to the creditors of Seller and other interested parties, providing information about Seller's business to prospective bidders, entertaining higher and better offers from such prospective bidders and, in the event that additional qualified prospective bidders desire to bid for the Assets, conducting an auction (the "Auction"). Unless Agent otherwise agrees in writing, it shall not be deemed a back-up bidder at the Auction.

17.2 From the date of this Agreement until the entry by the Bankruptcy Court of the Bidding Procedures Order (the "Exclusivity Period"), the Seller will not (and will instruct their representatives, investment bankers and any other person acting on their behalf, not to), directly or indirectly (i) solicit or initiate submission of any proposals or offers from any corporation, partnership, person or group relating to any acquisition, liquidation, sale, purchase or option to purchase, directly or indirectly, in one transaction or a series of related transactions, including any merger, consolidation, stock acquisition, asset acquisition, binding share exchange, business combination, recapitalization, liquidation, dissolution, joint venture or similar transaction, any of the Assets or any capital stock or other equity interests of Seller (a "Competitive Transaction"), (ii) engage in any negotiations or discussions with respect to any such Competitive Transaction or (iii) furnish any information with respect to a Competitive Transaction to any person or entity. The Seller agrees that any discussions or negotiations with

respect to any Competitive Transaction that are in effect on the date of this Agreement shall cease during the Exclusivity Period by Seller indicating that they are subject to an exclusivity agreement and are unable to entertain any proposals or engage in negotiations or discussions during the Exclusivity Period. Notwithstanding the foregoing, a Competitive Transaction shall not be deemed to include any discussion by Seller involving property not considered as an Asset under this agreement.

17.3 In the event that this Agreement shall not be consummated because the Seller elects, as a consequence of the Auction, to pursue an alternative higher or better transaction (whether with another party serving as liquidating agent, as a going concern buyer, or otherwise), the Seller shall pay to the Agent from the first proceeds of such alternative transaction the sum of (i) \$25,000 (“Breakup Fee”), (ii) all amounts due to RB pursuant to the Equipment Storage Agreement (“Storage Fee”), and (iii) the Agent’s reasonable and documented out-of-pocket expenses (including expenses of outside counsel, accountants and financial advisors) incurred by Agent in connection with the transactions contemplated hereby, including, without limitation, in connection with the negotiation of this Agreement and the other Agency Documents and the Agent’s due diligence of the Assets, up to a maximum amount of \$25,000 (“Expense Reimbursement”). The Seller shall take into account the Breakup Fee, Storage Fee and Expense Reimbursement in each round of bidding at the Auction.

17.4 The Seller and the Agent acknowledge and agree, and the motion to approve the Bidding Procedures Order shall reflect the fact that, (i) the Breakup Fee, Storage Fee and Expense Reimbursement are not a penalty, but rather are liquidated damages in a reasonable amount that will compensate the Agent in the circumstances in which such amounts are payable for the efforts and resources expended and opportunities foregone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the transactions contemplated hereby, which amount would otherwise be impossible to calculate with precision and (ii) the provisions of this Agreement, including this Section 17, are reasonable, were a material inducement to the Agent to enter into this Agreement, are necessary to preserve the Agent’s bid in the event of an Auction and are designed to achieve the highest and best priced for the Assets.

Section 18. Miscellaneous.

18.1 Notices. All notices and communications provided for pursuant to this Agreement shall be in writing, and sent by hand, by email, facsimile, or a recognized overnight delivery service, as follows:

If to the Agent: Gordon Brothers Commercial & Industrial, LLC
800 Boylston Street, 27th Floor
Boston, MA 02199
Attention: James Burke
Email: jburke@gordonbrothers.com

With copies to Choate Hall & Stewart LLP
Two International Place
Boston, MA 02110
Attention: Kevin Simard
Fax: (617) 248-4000
Email: ksimard@choate.com

If to Seller: Ashesh Pansuria
Tortola Advisors
500 Church Street, Suite 600
Nashville, TN 37219
apansuria@tortolaadvisors.com

With copies to: R. Alex Payne
Dunham Hildebrand, PLLC
1704 Charlotte Avenue, Suite 105
Nashville, Tennessee 37203
alex@dhnashville.com

Notices, demands and requests which shall be served in the manner aforesaid shall, except as otherwise provided herein, be deemed to be sufficiently delivered or given for all purposes hereunder (i) in the case of personal delivery or email, upon such delivery, (ii) in case of overnight express delivery, one (1) day after delivery to such delivery service, and (iii) in the case of facsimile, upon sender's receipt of confirmation of proper transmission. By notice complying with the foregoing provisions of this Section 18.1, either party may from time to time change its address for notice purposes, except that any such notice shall not be deemed delivered until actually received. Any notice received on a non-Business Day or after 5:00 p.m. New York time shall be deemed delivered on the following Business Day.

18.2 Governing Law; Venue.

(a) This Agreement shall be governed and construed in accordance with the laws of the State of New York without regard to conflicts of laws principles thereof except where governed by the Bankruptcy Code.

(b) Any action, claim, suit or legal proceeding arising out of, based upon or relating to this Agreement or the transactions contemplated hereby shall be brought solely in the Bankruptcy Court (or any court exercising appellate jurisdiction over the Bankruptcy Court). Each party hereby irrevocably submits to the exclusive jurisdiction of the Bankruptcy Court (or any court exercising appellate jurisdiction, over the Bankruptcy Court) in respect of any action, claim, suit or legal proceeding arising out of, based upon or relating to this Agreement or any of the rights and obligations arising hereunder, and agrees that it will not bring any action arising out of, based upon or related thereto in any other court; *provided, however*, that if the Bankruptcy Case is dismissed, any action, claim, suit or legal proceeding arising out of, based upon or relating to this Agreement or the transactions contemplated hereby shall be heard and determined solely in state or federal courts of the City and County of New York and any state appellate court herefrom within the State of New York. Each party hereby irrevocably

waives, and agrees not to assert as a defense, counterclaim or otherwise, in any such action, claim, suit or legal proceeding, (a) any claim that it is not personally subject to the jurisdiction of the above named courts for any reason other than the failure to serve process in accordance with Section 18.1, (b) any claim that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (c) to the fullest extent permitted by applicable law, any claim that (i) the suit, action or legal proceeding in such court is brought in an inconvenient forum, (ii) the venue of such suit, action or legal proceeding is improper or (iii) this Agreement or any other agreement or instrument contemplated hereby or entered into in connection herewith, or the subject matter hereof or thereof, may not be enforced in or by such courts. Each party agrees that notice or the service of process in any action, claim, suit or legal proceeding arising out of, based upon or relating to this Agreement or any of the rights and obligations arising hereunder or thereunder, shall be properly served or delivered if delivered in the manner contemplated by this Section 18.1 (*provided* that nothing herein shall affect the right to effect service of process in any other manner permitted by New York law).

(c) EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY AND ALL RIGHT SUCH PARTY MAY HAVE TO TRIAL BY JURY IN ANY ACTION, CLAIM, SUIT OR LEGAL PROCEEDING BETWEEN THE PARTIES HERETO ARISING OUT OF, BASED UPON OR RELATING TO THIS AGREEMENT OR THE NEGOTIATION, EXECUTION OR PERFORMANCE HEREOF.

18.3 Entire Agreement. This Agreement and the exhibits and schedules hereto contain the entire agreement between the parties hereto with respect to the transactions contemplated hereby and supersedes and cancels all prior agreements, including, but not limited to, all proposals, letters of intent or representations, written or oral, with respect thereto.

18.4 Amendments. This Agreement may not be modified except in a written instrument executed by the Seller and the Agent.

18.5 No Waiver. No consent or waiver by any party, express or implied, to or of any breach or default by the other in the performance of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligation of such party. Failure on the part of any party to complain of any act or failure to act by the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

18.6 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon Agent and Seller, and their respective successors and assigns, including any liquidation agent appointed by the Bankruptcy Court, provided that this Agreement may not be assigned by any party hereto without the prior written consent of the other parties hereto except that this Agreement may be assigned by the Agent to any of its affiliates.

18.7 Execution in Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute but one agreement. This Agreement may be executed by facsimile, and such facsimile signature shall be treated as an original signature hereunder.

18.8 Section Headings. The headings of sections of this Agreement are inserted for convenience only and shall not be considered for the purpose of determining the meaning or legal effect of any provisions hereof.

18.9 Survival. All representations, warranties, covenants and agreements made by the parties hereto shall be continuing, shall be considered to have been relied upon by the parties and shall survive the execution, delivery and performance of this Agreement.

18.10 Specific Performance. The parties hereto agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

18.11 Agent Affiliates. The Seller acknowledges that certain of the affiliates of the Agent (together, the Agent Group) are engaged in a wide range of financial services and business (including private equity, debt financing, commercial and industrial, retail, and valuation and other advisory services). Members of the Agent Group and businesses within the Agent Group generally act independently of each other. Accordingly, there may be situations where parts of the Agent Group have had and continue to have business relationships with the Seller, including the provision of lending, advisory and other services. The Seller agrees that these relationships do not represent a conflict of interest with regard to the transactions contemplated by this Agreement.

Section 19. Security Interest. In consideration of Agent's payment of the Guaranteed Amount effective as of the Sale Commencement Date, Company hereby grants to Agent a valid and perfected first priority, senior security interest in and lien upon:(i) the Assets, and (ii); the Proceeds, to secure the payment of the Guaranteed Amount and all Proceeds thereof, as well as, all obligations of Company to Agent hereunder. Upon the entry of the Approval Order and upon payment of the Guaranteed Amount the security interest and lien granted to the Agent hereunder shall be deemed properly perfected without the necessity of filing financing statements, notification on any certificate of title or the taking of any other action or other documentation.

Section 20. Bidding. At the Auction: (i) the Company shall not offer any other bidder any breakup fee, bid fee or other consideration for making a bid; (ii) any overbids shall not be in increments of less than \$25,000; (iii) all competing bids shall be on the same terms and conditions as this Agreement other than as to the increased by the minimum overbid; (iv) any bid by any person other than the Agent must exceed the amount of the Agent's last bid plus the sum of the minimum bid increment, Breakup Fee, Storage Fee and Expense Reimbursement and the Agent's may credit bit the sum of the Breakup Fee, Storage Fee and Expense Reimbursement and (v) to the extent the Agency Agreement or any overbid made by the Agent is not deemed to be the highest and otherwise best bid the Agent shall not be required to remain as a backup bidder.

EXECUTION VERSION

IN WITNESS WHEREOF, Agent and the Seller hereby execute this Agreement by their duly authorized representatives as of the day and year first written above.

AGENT:

GORDON BROTHERS
COMMERCIAL & INDUSTRIAL, LLC

By: 

Name: James Burke
Title: Director

RITCHIE BROS. AUCTIONEERS (AMERICA)
INC.

By: Zac Dalton

Name: Zac Dalton
Title: Director

SELLER:

PHOENIX OF TENNESSEE, INC.

By: 

Name: Kyle Waites
Title: Owner

EXHIBIT A

Assets

Exhibit A

Phoenix of TN, Inc.: Assets

Asset #	Year	Color	Make	Model	VIN	Tag	Mileage
4253	2014	white	Ram	3500	3C63R3GL4EG304253	CJ19117	62,000
7803	2014	White	Ram	3500	3C63R3GL7EG187803	FBJ9239	98,103
1331	2014		Ram	3500	3C63R3GL5EG161331	CJ07588	83,305
6874	2014	white	Ram	1500	1C6RR7ST7E5196874	18565H2	66,398
5286	2014	white	Ram	1500	1C6RR7ST2E5275286	441(H1)59	88,438
7802	2014	White	Ram	3500	3C63R3GL5EG187802	18582(H2)	98,042
7804	2014	White	Ram	3500	3C63R3GL9EG187804	31248(H2)	101,869
1753	2013	White	Ram	3500	3C63R3GL6DG561753	13863H2	77,578
7724	2013	White	Ford	F150	1FTFW1ET8DKG17724	315(H1)26	76,843
8803	2013	white	Ram	3500	3C63R3GL7DG548803	13874(H2)	62,886
6699	2013	white	Ram	3500	3C63R3GL5DG526699	13653(H2)	77,968
7533	2013	White	Ford	F150	1FTFW1ET1DKG17533	294(H1)87	127,602
0054	2013	white	ford	F350	1FT8W3BT4DEB40054	(H2)80383	94,710
2590	2013	WHITE	Ford	F350	1FT8W3BT5DEA72590	11632(H2)	100,616
5747	2013	WHITE	Ford	f350	1FT8W3BTXDEA65747	11707(H2)	89,100
0197	2013	WHITE	Ford	F150	1FTFW1ET5DFA20197	191(H1)36	89,072
2310	2013	White	Ford	F150	1FTFW1ET2DFA32310	188(H1)30	98,969
5957	2012	white	Ford	F450	1FD0W4HTXCEC15957	(H3)28478	36,590
2287	2013	white	ford	F150	1FTFW1ET9DFB72287	188H125	98,025
3642	2012	white	Ford	F350	1FT8W3DT2CEC93642	04569(H2)	156,009
0196	2010	white	Ford	E150	1FTNE1EW8ADA10196	164(H1)38	131,000
4042	2006		Ford	E150 splicing	1FTRE14W96HA34042	919H158	90,776
9910	2012	white	Ford	F450	1FD0W4HT0CED19910	(H3)16989	67,760
9909	2012		Ford	F450	1FD0W4HT4CED19909	(H3)16985	106,000
1607	2012	white	Ford	F350	1FD8W3HT5CEB31607	11504(H2)	71,104
9798	2013	White	Ford	F150	1FTFW1ET9DFA09798	111(H1)60	109,300
7455	2012	white	Ford	E150	1FTNE1EW6CDB27455	112H115	15,479
4756	2013	white	Ford	F150	1FTFW1ET3DFA44756	084(H1)13	144,033
5258	2012		Ford	F350	1FT8W3BT1CEB05258	(H2)00811	136,684
9686	2012	white	Ford	F150	1FTFW1ET3CFB39686	92(H1)864	145,015
2486	2012	white	Ford	F250	1FT7W2BT0CED12486	09364H2	106,680
8534	2011	White	Toyota	Tacoma	3TMLU4ENXBMM058534	45(H1)203	170,925
3441	2011	White	Ford	F350	1FT8W3DT2BEA93441	(H2)94975	160,153
2683	2011	white	Ford	F350-Flatbed	1FD8W3HT1BEA72683	00512(H2)	147,024
5172	2011	Gray	Ford	f250	1FT7W2BT7BEA35172	AW68007	110,811
7411	2011	black	Ford	F250	1FT7W2BT4BEB17411	(H2)92354	227,297
2579	2011	pearl	GMC	Yukon XL	1GKS2MEF8BR302579	60(H1)211	17,700
5899	2011	blue	Ford	F150	1FTFW1CT2BFC85899	73H1871	160,000
1107	2010	white	Toyota	Tacoma	5TELU4EN2AZ731107	37(H1)307	191,765
4163	2010	white	Chevy	3500 express	1GB3G2BG3A1164163	(H2)96706	84,497
8987	2006	White	Ford	F250	1FTSW21P76ED78987	(H3)08754	232,413
4229	2003	Black	Ford	Ranger	1FTZR45E83TA34229	399(H1)09	239,086
9478	2007		Ford	F750 Dump	3FRXF75N17V509478		24,924
0309	2016	Black	EGIL	UT-gooseneck	5JTG2N2525GA020309	U765797	
9772	2016	Black	TLC	Utility	1T9BU2025GL799772	Applied	
8855	2016	Black	Lamar	Dump	5RVDC1421GP038855	Applied	
3169	2015	Black	Sure-trac	Utility carhauler	5JW1U2021F1103169	U539618	
7213	2014	Black	PJ trailer	carhauler	4P5T6222E1207213	T319135	
3028	2013	White	Lark	trailer	5RTBE1825DD033028	U516141	
8440	2014	White	Homesteader	trailer	5HABE1622EN028440	U515019	
2949	2013	White	homesteader	trailer	5HABE1621DN022949	U446209	
9714	2013	Black	TLC	trailer	1T9BU2527DL799714	U568487	
8981	2013	White	homesteader	trailer	5HABE1222DN018981	U426844	
0527	2013	White	Homesteader	trailer	5HABE1629DN020527	U391562	
1226	2013	White	Homesteader	trailer	5HABE1427DN021226	U391534	
8651	2013	Black	Homesteader	trailer	5HABE1427DN018651	U391535	
5371	2012	White	Homesteader	trailer	5HABE1623CN015371	U348231	
7264	2012	White	Homesteader	trailer	5HABE1215CN017264	U372129	
7152	2012	White	Homesteader	trailer	5HABE1428CN017152	U391524	
1223	2013	White	Homesteader	trailer	5HABE1228DN021223	U391527	
9714	2011	Black	TLC	GOOSENECK	1T9GU2523BL799714	U200544	
9740	2011	Black	TLC	GOOSENECK	1T9GU2524BL799740	U246324	
0337	2010	Black	Anderson	Flatbed	4YNBN1825AC060337	U200576	
787	2010	Black	TLC	GOOSENECK	1T9GU25XAL799787	U200584	
5969	2010	White	Carry-On	Cargo	4YML0817AG095969	U200543	
9028	2008		Albright	Flatbed	1A9FB20268L429028	t989463	
9015	2008		ATM		1A9FB182X8L429015	T989449	
9211	2008		ATM	Flatbed	1A9FB16268L429211	U038257	
5300	2007	White	Homestead		5HABE20217N005300	T989419	
9114	2007	Black	Albright	Flatbed	1A9FB18237L429114	T860233	
9055	2006	Black	ATM	Utility	1A9FB18246L429055	T984029	
4259	2005	White	HAUL	CT	16HPB21215H134259	U307154	
			Marathon Generator	Generator & trailer	81120778		
			New Holland		LMU023167		
			Takeuchi		TB135		
			Yale	GLC030AFNUAE082	A809N10056X		
			Hyster	S40XL	E187V02446L		
			Yale	GLC040AENUAE083	N548291		
			CAT	C3000	AT81F01314		
			Vermeer	Water Mix System	1VR6120P7GF003775		
			Kennametal	I240SS			

EXHIBIT B

Excluded Assets

As used in this Agreement the term "Excluded Assets" means any right, title or interest of the Seller in any of the following:

(a) Seller's rights under this Agreement (including the right to receive the payments to the Seller hereunder delivered to the Seller pursuant to this Agreement);

(b) all cash and cash equivalents, including checks, commercial paper, treasury bills, certificates of deposit and other bank deposits, securities, securities entitlements, instruments and other investments of the Seller and all bank accounts and securities accounts, including any cash collateral that is collateralizing any letters of credit;

(c) all documents relating to the Bankruptcy Case, all minute books, corporate records (such as stock registers) and organizational documents of the Seller, and Tax Returns, and other Tax work papers;

(d) any claims, rights, defenses, or other causes of action arising under Chapter 5 of the Bankruptcy Code, including, without limitation, under Bankruptcy Code Sections 502, 510, 541, 542, 543, 544, 545, 547, 548, 549, 550, 551 or 553, or under similar or related state or federal statutes and common law, including state fraudulent transfer laws, whether or not prosecution of such actions has commenced, and whether or not standing to bring such claims is held by any representatives of the Seller, any party-in-interest, or any other entity or person or similar proceedings;

(e) any security deposits or pre-paid expenses whether or not associated with the Assets;

(f) all insurance policies and binders, all claims, refunds and credits from insurance policies or binders due or to become due with respect to such policies or binders and all rights to proceeds thereof, except as set forth in Section 13;

(g) all shares of capital stock or other equity interests of any Seller or securities convertible into or exchangeable or exercisable for shares of capital stock or other equity interests of any Seller;

(h) all Accounts Receivable;

(i) all Real Property;

(j) all intercompany loans and any interest thereon; and

(k) all Inventory.

EXHIBIT C

Facilities

EXHIBIT D

Form of Bill of Sale

For the sum of _____ (\$ _____) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Phoenix of Tennessee, Inc. (the "Seller") by and through its agent and attorney in fact Gordon Brothers Commercial & Industrial, LLC and Ritchie Bros. Auctioneers (America) Inc. (collectively, the "Agent"), hereby sells, assigns, and transfers to [_____] having an address of _____ (the "Buyer"), the personal property listed on Exhibit "A", annexed hereto and incorporated herein by reference (the "Equipment").

Seller hereby grants, conveys, sells, assigns, transfers and delivers to Buyer, its successors and assigns, all of Seller's right, title, interest and benefit, of whatever kind and nature, tangible and intangible, in and to all of the Equipment, free and clear of any liability, charge, lien, claim or encumbrance of any kind and disclaims any representations and warranties. By way of further explanation and not limitation, the Equipment is being conveyed to Buyer on an "AS IS" and "WHERE IS" without any representation or warranty either expressed, implied or imposed by law.

Buyer hereby acknowledges and agrees that (i) it has made its own independent investigation with respect to the Equipment; and (ii) no warranties or representations, either express, implied or imposed by law, are being made by Seller or the Agent with respect to the Equipment, including, without limitation, the maintenance, repair, condition, design, marketability, accuracy or completeness of the equipment. Seller and Agent hereby disclaim, and Buyer hereby acknowledges not receiving, (i) any implied or express warranty of merchantability, and (ii) any implied or express warranty of fitness for a particular purpose, or (iii) any implied or express warranty of conforming to models or samples with respect to any of the foregoing.

Upon delivery of this Bill of Sale, all risk of loss with respect to the Equipment shall transfer to the Buyer. The Buyer further acknowledges and agrees that by accepting this Bill of Sale, the Buyer has received the Equipment that the Seller and Agent have performed all of their obligations to the Buyer in connection with this transaction.

The terms and provisions of this Bill of Sale will be binding upon and inure to the benefit of Seller and Buyer and their respective successors and assigns. This Bill of Sale may only be amended or modified by a written agreement executed by Agent and Buyer. This Bill of Sale may be executed in one or more counterparts, each of which when taken together shall constitute an original of this Bill of Sale. This Bill of Sale shall be governed by, and construed under, the laws of the State of New York, without regard to any conflict of laws principles.

IN WITNESS WHEREOF, Seller by and through the Agent has duly executed this Bill of Sale on the date first above written.

Phoenix of Tennessee, Inc.

By: _____
Name:
Title:

ACKNOWLEDGED AND AGREED

[Insert Name of Buyer]

By: _____
Name:
Title:

This Order has been electronically signed. The Judge's signature and Court's seal appear at the top of the first page.
United States Bankruptcy Court.