

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

SOURCE HOME ENTERTAINMENT, LLC,  
*et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 14-11553 (KG)

(Jointly Administered)

**Objection Deadline: Extended for Committee to  
July 17, 2014 at 1:00 p.m. (ET)**

**Hearing Date: July 21, 2014 at 2:00 p.m. (ET)**

Related Docket No. 77

**OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO  
THE DEBTORS' MOTION FOR ENTRY OF (I) AN ORDER (A) APPROVING  
BIDDING PROCEDURES AND BID PROTECTIONS IN CONNECTION WITH THE  
SALE OF CERTAIN OF THE DEBTORS' ASSETS, (B) APPROVING THE FORM AND  
MANNER OF NOTICE, (C) SCHEDULING AN AUCTION AND A SALE HEARING,  
(D) APPROVING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF  
CONTRACTS, AND (E) GRANTING RELATED RELIEF AND (II) AN ORDER (A)  
APPROVING THE ASSET PURCHASE AGREEMENT BETWEEN THE DEBTORS  
AND THE PURCHASER, (B) AUTHORIZING THE SALE OF CERTAIN OF THE  
DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES,  
AND INTERESTS, (C) AUTHORIZING THE ASSUMPTION AND  
ASSIGNMENT OF CONTRACTS, AND (D) GRANTING RELATED RELIEF**

The Official Committee of Unsecured Creditors (the "Committee") appointed in the cases of the above-captioned debtors and debtors-in-possession (the "Debtors"), by and through its undersigned proposed counsel, submits this objection (the "Objection") to the Bidding Procedures, which the Debtors seek to implement pursuant to the *Debtors' Motion for Entry of (I) an Order (a) Approving Bidding Procedures and Bid Protections in Connection With the Sale of Certain of the Debtors' Assets, (b) Approving the Form and Manner of Notice, (c) Scheduling an Auction and a Sale Hearing, (d) Approving Procedures for the Assumption and Assignment of*

<sup>1</sup> The Debtors, together with the last four digits of each Debtor's federal tax identification number are: Source Home Entertainment, LLC (8517); Directtou, Inc. (4741); RDS Logistics, LLC (0305); Retail Vision, LLC (2023); Source Interlink Distribution, LLC (3387); Source Interlink International, Inc. (1428); Source Interlink Manufacturing, LLC (7123); and Source Interlink Retail Services, LLC (6967). The location of the Debtors' corporate headquarters and the service address for all Debtors is 27500 Riverview Center Boulevard, Suite 400, Bonita Springs, Florida 34134.



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*Contracts, and (e) Granting Related Relief and (II) an Order (a) Approving the Asset Purchase Agreement Between the Debtors and the Purchaser, (b) Authorizing the Sale of Certain of the Debtors' Assets Free and Clear of Liens, Claims, Encumbrances, and Interests, (c) Authorizing the Assumption and Assignment of Contracts and (d) Granting Related Relief (the "Motion")*<sup>2</sup> [Docket No. 77]. In support of this Objection, the Committee respectfully represents as follows:

### **PRELIMINARY STATEMENT**

1. The Debtors propose a sale of substantially all of the assets (the "Manufacturing Assets") of the retail display manufacturing and installation business (the "Retail Display Business") owned by Debtor Source Interlink Manufacturing, LLC subject to certain bidding and sale procedures set forth in, and attached to the proposed Bidding Procedures Order (collectively, the "Bidding Procedures") to Cortland Capital Market Services LLC ("Cortland") and as the agent on behalf of the lenders under the Debtors' pre-petition term loan credit facility, the "Purchaser") for a credit bid of \$24 million, or to the entity that submits the highest and best offer in accordance with the proposed Bidding Procedures Order. Cortland is the administrative and collateral agent under the Debtors' pre-petition term loan facility (the "Term Loan"). Approximately 80% of the debt issued under the Term Loan is held by certain funds related to Golden Tree Asset Management, LP ("Golden Tree" together with Cortland, the "Term Lenders"). Golden Tree also holds approximately 80% of the equity interests in the Debtors, and has nomination rights for 5 out of 7 of the members of Source Home Entertainment, LLC, the parent Debtor that directly or indirectly owns 100% of and controls each Debtor. Presumably, the proposed stalking horse purchase agreement (the "Stalking Horse Agreement") and Bidding Procedures were negotiated between and among Term Lenders Cortland and Golden Tree, and the Debtors (who are controlled by Cortland and Golden Tree). Thus, the proposed asset sale is to a controlling insider.

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

2. The Debtors have proposed a sale process lasting only about eight (8) weeks from the Petition Date to the Bid Deadline (proposed to be August 22, 2014), but have failed to explain why such an unusually brief schedule is necessary or beneficial to the Debtors' estates. What is the emergency? The Debtors do not characterize the assets as the proverbial "melting ice cube." Rather, the Retail Display Business is allegedly operating profitably. *See Declaration of Stephen Dubé in Support of First Day Motions* ("Dubé Decl.") [Docket No. 2], ¶ 9.

3. Most crucially, the Debtors did not conduct any pre-petition marketing campaign of the Retail Display Business thus highlighting the need for an adequate post-petition marketing process with realistic deadlines. *See Motion*, ¶ 8. The Debtors have stated that they ceased operating their magazine distribution business on or about May 30, 2014 (*See Dubé Decl.*, ¶ 8), indicating that they had plenty of time to conduct a pre-petition marketing process for the Retail Display Business. Indeed, the Debtors' proposed financial advisor FTI Consulting, Inc. ("FTI"), whose proposed duties include "managing the marketing and sale of the Debtors' assets, including seeking additional bidders for the retail display business assets," was originally retained by the Debtors in October 2013.<sup>3</sup> However, all they have proposed is a credit bid deal with the insider Term Lenders.

4. The Motion asserts that FTI compiled a list of approximately fifty (50) potential purchasers, and that FTI has just begun delivering teaser materials (the "Public Teaser")<sup>4</sup> and non-disclosure agreements to such potential purchasers. *Motion*, ¶ 8. However, it is now over three (3) weeks into the eight (8) week process and the Debtors have no Confidential Information Memorandum ("CIM"), as is customary in this type of transaction to send to prospective purchasers, and no functioning on-line or electronic "data room" for potential

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<sup>3</sup> *See Debtors' Motion for Entry of an Order (i) Authorizing the Debtors to (a) Retain FTI Consulting, Inc. to Provide the Debtors a Chief Restructuring Officer, Chief Financial Officer, and Certain Additional Personnel and (b) Designate Stephen Dubé as Chief Restructuring Officer and Joshua Korsower as Chief Financial Officer for the Debtors, Nunc Pro Tunc to the Petition Date and (ii) Granting Related Relief* (the "FTI Retention Application") [Docket No. 66], ¶ 14(c); Exhibit 1, p. 8.

<sup>4</sup> A copy of the Public Teaser is attached hereto as Exhibit A.

purchasers to conduct due diligence. When, on July 14, 2014, the Committee inquired as to when the CIM would be available, the Debtors advised that such materials would be ready “shortly.” When on July 12, 2014 the Committee requested access to the asset sale data room, the Debtors indicated that the data room was not yet functional. Further, the proposed Stalking Horse Agreement filed with the Court contains none of the required thirty (30) plus schedules except one (1) schedule. The Committee has been advised the schedules to the Stalking Horse Agreement will not be available until, at the earliest, July 18, 2014. These factors mandate that the sale process must be extended to allow interested parties adequate time to conduct due diligence, formulate bids and obtain any necessary financing. The only plausible explanation for the Debtors’ lackluster marketing effort is that the insider Term Lenders—who clearly control both sides of the process—are very interested in owning the Retail Display Business, particularly if it can be obtained “on the cheap” with a below market credit bid. The Debtors’ proposed sale process will benefit no one but insider Term Lenders and, therefore, should not be approved by the Court.

5. The Bidding Procedures, to the extent that the Court approves of any bidding procedures, must be modified. The following is a brief summary of the Committee’s objections that will be further described in this Objection:

- The Debtors’ proposed deadlines for the marketing process, bid submission, Auction and Sale Hearing are unnecessarily aggressive. The Debtors have not articulated exigent circumstances or established any legal or equitable basis for conducting the sale process on such short time and notice. Without a careful and thorough marketing process that allows sufficient time for reaching all potential purchasers (both strategic and financial) and completing requisite due diligence, the chances of obtaining the highest and best offer that the market will produce are non-existent. The entire sale process and all associated dates should be extended for 45 days to allow for an adequate marketing process and to permit potential purchasers to engage in due diligence.
- The Term Lenders should not be entitled to any Expense Reimbursement (\$600,000 is proposed) given that the Term Lenders and undoubtedly conducted significant diligence in connection with their investment, as well as the Term Loan and the October 2013 out-of-court restructuring. Further, the Stalking Horse Bid is a credit bid that includes no cash component, rather, as proposed, the Stalking Horse Bid

takes cash from the Debtors' estates. To the extent the Court approves the Expense Reimbursement, it must be vastly reduced and only for actual documented expenses with any such payments being made at closing of an alternative transaction to another buyer, not upon termination of the Stalking Horse Agreement.

- The Stalking Horse Bid is a credit bid under Bankruptcy Code Section 363(k). At a minimum, the Bidding Procedures Order must preserve all rights of the Committee to object to any credit bid at a later date if it determines there is a legitimate challenge to the liens and/or security interests of the Term Lenders or other potential claims or causes of action. Further, the Bidding Procedures Order must make clear that the Term Lenders' alleged liens and security interests are not *ipso facto* found valid by the entry of such order.
- The Debtors have not yet filed their Schedules of Assets and Liabilities and Statements of Financial Affairs as required under the Bankruptcy Code. Further, the filed Stalking Horse Agreement includes only one (1) of the nearly thirty (30) referenced schedules. These documents do not adequately describe the Manufacturing Assets, there is no operational diligence data room and no CIM is currently available. Consequently, potential purchasers will be discouraged from bidding at the Auction because they have no idea what assets the Manufacturing Assets include. Additionally, the Bidding Procedures are not clear about the ultimate treatment of Avoidance Actions included in the Manufacturing Assets, and the Manufacturing Assets appear to include approximately \$4.5 million in cash—an asset usually excluded from this type of transaction. Accordingly, the Bidding Procedures should not be approved until such time as the Debtors can accurately describe the Manufacturing Assets.
- There are numerous provisions included in the Bidding Procedures in which the Debtors must be required to consult with or obtain consent from the Committee, and proposed counsel for the Committee should be included on all notices. At a minimum, the Bidding Procedures and Bidding Procedures Order should include, without limitation, the revisions embodied in the “marked to show changes” version of the Bidding Procedures Order and Bidding Procedures annexed hereto as Exhibit B that would be acceptable to the Committee, assuming the Court authorizes the Debtors to go forward.

6. For all these reasons, the Committee respectfully requests that the Court deny the Debtors' request for approval of the proposed Bidding Procedures or, alternatively, modify the Bidding Procedures as set forth in this Objection.

**JURISDICTION AND VENUE**

7. This Court has jurisdiction to consider the Motion and Objection pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

**BACKGROUND**

8. On June 23, 2014 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”) in the United States Bankruptcy Court for the District of Delaware (the “Court”). The Chapter 11 Cases have been consolidated for procedural purposes only, and are jointly administered pursuant to Bankruptcy Rule 1015(b). No trustee or examiner has been appointed in the Chapter 11 Cases.

9. On July 10, 2014, the Office of the United States Trustee for Region 3 appointed the Committee pursuant to section 1102 of the Bankruptcy Code. The Committee is currently comprised of the following members: (i) Time Inc. Retail f/k/a Time Warner Retail Sales & Marketing, Inc., (ii) the BGI Creditors’ Liquidating Trust, (iii) Kable Distribution Services, Inc., (iv) Heinrich Bauer USA, LLC, (v) Teamsters Health & Welfare & Pension Funds of Phila. & Vic., (vi) United Wire, Metal & Machine Pension Fund, and (vii) Walgreen Co. *See* Docket Entry No. 107.

10. On July 10, 2014, the Committee selected Lowenstein Sandler LLP to serve as its counsel in these Chapter 11 Cases and Duane Morris LLP to serve as its Delaware co-counsel. On July 11, 2014, the Committee selected PricewaterhouseCoopers LLP to serve as its financial advisor in the Chapter 11 Cases.

**OBJECTION**<sup>5</sup>

11. It is axiomatic that the paramount goal of any proposed auction process is to maximize the proceeds received by the estate. See *In re Cybergenics Corp.*, 330 F.3d 548, 573 (3d Cir. 2003) (*en banc*); *In re Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997). Approval of reasonable bidding procedures is appropriate only in circumstances in which the procedures and fees are (a) necessary to preserve and benefit the estate, (b) reasonable, (c) in the best interests of these estates, and (d) designed in a fashion to promote, enhance and encourage bidding. See *In re Reliant Energy Channelview LP*, 594 F. 3d 200, 206 (3d Cir. 2010); *In re O'Brien*, 181 F.3d 527, 535-36 (3d Cir. 1999); see also *In re S.N.A. Nut Co.*, 186 B.R. 98, 104 (Bankr. N.D. Ill. 1995); *In re America West Airlines, Inc.*, 166 B.R. 908, 913 (Bankr. D. Ariz. 1994); *In re Integrated Resources, Inc.*, 147 B.R. 650, 663 (S.D.N.Y. 1992), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993); *In re Hupp Industries, Inc.*, 140 B.R. 191, 196 (Bankr. N.D. Ohio 1992).

12. The purpose of procedural bidding orders is to facilitate an open and fair public sale designed to maximize value for the estate. See *In re Edwards*, 228 B.R. 552, 561 (Bankr. E.D. Pa. 1998). To accomplish that goal, bankruptcy courts are necessarily given discretion and latitude in conducting a sale. See *id.*; see also *In re Wintz Co.*, 219 F.3d 807, 812 (8th Cir. 2000) (stating that in structuring the sale of assets, bankruptcy courts “have ample latitude to strike a satisfactory balance between the relevant factors of fairness, finality, integrity, and maximization of assets”). Here, the proposed Bidding Procedures and Bidding Procedures Order fail to establish an open and fair bidding process and are not designed to maximize the value of the assets being sold. Rather, the Bidding Procedures appear calculated solely to benefit the Term Lenders by facilitating their purchase of the Manufacturing Assets and preservation of

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<sup>5</sup> Pursuant to the Motion, the immediate relief sought by the Debtors at this time is limited to entry of an order approving the proposed Bidding Procedures and Bid Protections, the form and manner of notices, the procedures relating to the assumption and assignment of executory contracts and unexpired leases and scheduling an Auction and a Sale Hearing. This Objection addresses only those matters concerning this immediate relief sought in the Motion. Also included in the Motion, but scheduled for hearing on a later date (the “Sale Hearing”), is certain relief related to approval of the sale of the Debtors’ assets. The Committee expressly reserves its right to address and/or object to the proposed sale of the assets and other relief sought in the Motion scheduled to be heard at the Sale Hearing at a later date.

their 80% equity interest to the detriment of other constituencies, to discourage potential buyers from meaningful participation in the Auction. As proposed, the Bidding Procedures will chill competitive bidding.

**A. The Bidding Procedures Benefit Only the Term Lenders.**

13. Courts require a debtor to show that a sound business purpose justifies the use, sale or lease of property of the estate outside of the ordinary course of business. *See In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983). *Lionel* held that while there need not be a showing of an emergency situation for selling substantially all of the debtor's assets:

There must be some articulated justification, other than appeasement of major creditors, for using, selling, or leasing property out of the ordinary course of business before the bankruptcy judge may order such disposition under §363(b).

*Id.* at 1070; *see also, In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143, 147-48 (3d Cir. 1986).

14. Even at the bidding procedures stage, a sale process that fails to articulate a business justification must fail. As explained by the *Encore Healthcare* bankruptcy court:

While I recognize that at this junction the Debtor has only requested that I approve the sale procedures and not the sale which would be conducted pursuant to those procedures, since I will not approve a sale under any procedures, it would be improper to authorize this first step.

*In re Encore Healthcare Associates*, 312 B.R. 52, 57 (Bankr. E.D. Pa 2004).

15. In this case, there is no business justification for the Bidding Procedures as currently proposed, aside from obvious appeasement of and benefit to the Term Lenders. The Motion fails to articulate any business reason for the compressed asset sale milestones including a Bid Deadline of August 22, 2014, other than that the Term Lenders have required such a timeline.



**B. The Debtors' Proposed Asset Sale Process Time Frame Is Unnecessarily Expedited.**

16. The Debtors' proposed deadlines for the marketing process, bid submission, Auction and Sale Hearing are unnecessarily aggressive, particularly considering that the Debtors conducted no pre-Petition Date sales marketing effort in connection with the Retail Display Business and are not yet prepared to properly market the Retail Display Business at this time.

17. The Debtors do not have a comprehensive list of assets for sale, a CIM, a functioning on-line data room, the completed schedules to the Stalking Horse Agreement, a management presentation or any other materials typically utilized in a focused, well-conceived marketing campaign. Indeed, when the Committee's professionals asked on July 12, 2014 for access to the asset sale data room, they were told that the Debtors were still "finalizing population of the data room." Considering the lack of materials and direction, it is not surprising that the Debtors' pre-petition illusory marketing efforts yielded nothing more than a low-ball credit bid from the Term Lender. Without a careful and thorough marketing process that allows sufficient time for reaching all potential purchasers and permitting them to engage in requisite due diligence, the chances of obtaining the highest and best offer that the market will produce are non-existent.

18. Thus, the entire sale process and all associated dates should be extended for 45 days to allow for an adequate marketing process and required due diligence. Extending all proposed dates in the Bidding Procedures will not diminish the value of the Manufacturing Assets. On the contrary, the additional time will facilitate adequate due diligence, encourage more potential bidders to participate in the sale process and assure that the sale process will result in the highest and best offer that the market will bear.

19. The Committee anticipates that the Debtors and the Term Lenders will assert that the currently proposed sale timeline provides sufficient time to properly market and sell the Retail Display Business. However, as described herein, this position is not supported by the facts. The Debtors' team has squandered nearly half of the initial proposed eight (8) week

period between the Petition Date and the Bid Deadline by their failure to produce a CIM, set up an operating electronic data room and conduct an appropriate marketing process. This deficiency is further highlighted by the fact that the Committee has recently provided FTI with a list of over sixty (60) potential purchasers that any aggressive marketing campaign for the Retail Display Business must include. The Committee submits that a Bid Deadline of August 22, 2014 will not allow enough time for adequate marketing designed to produce the highest and best offer for the Retail Display Business.

20. The Committee further anticipates that the Debtors and Term Lenders will argue that any extension of the sale deadlines will generate unnecessary and unjustifiable costs and expenses for the Debtors' estates. Again, this position is inconsistent with the facts present. Assuming, arguendo, that the Term Lenders are fully secured (which the Committee does not concede at this time), any working capital adjustment included in the Stalking Horse Agreement will amount to the Term Lenders taking money out of one pocket and putting it into another—it will have no effect on the Debtors' estates. More importantly, the potential for a robust and fulsome auction process that will produce the highest and best offer entirely justifies any potential additional costs. Notably, FTI has been unable to produce adequate financial data for the Committee to assess the extent of the alleged additional costs that may be generated as a result of extending the asset sale timeline set forth in the Bidding Procedures. The Committee submits that a robust and fulsome marketing, auction and sale process is well worth additional costs, particularly in light of the fact that the Debtors' asset sale efforts thus far have been unacceptable. Accordingly, considering the proposed Stalking Horse Bidder is an insider, requiring heightened scrutiny of such transaction, and the Debtors' anemic marketing efforts, an extension of all sale-related deadlines by 45 days is warranted and appropriate.

**C. The Expense Reimbursement is Excessive and Unnecessary as a “Bid Protection.”**

21. The Motion seeks approval of expense reimbursement of up to \$600,000 (the “Expense Reimbursement”) as a so-called “bid protection.” The Third Circuit Court of Appeals has held that bid protections may be necessary to preserve the value of a debtor's estate,

and thus are permissible as administrative expenses under circumstances in which such bid protections are required to induce an initial bid. *See In re Reliant Energy Channelview LP*, 594 F.3d 200, 206 (3d Cir. 2010); *In re O'Brien Energy Systems, Inc.*, 181 F.3d 527, 535 (3d Cir. 1999). However, when the bidder in question would have bid anyway, the bid protections are not a necessary expense of preserving the estate and are therefore impermissible under § 503(b) of the Bankruptcy Code. *Reliant Energy*, 594 F.3d at 206 (“[A] break-up fee is not ‘necessary to preserve the value of the estate’ when the bidder would have bid even without the break-up fee.”) (*citing O'Brien*, 181 F.3d at 535).

22. In *Reliant Energy*, the stalking-horse bidder made its bid prior to Bankruptcy Court approval of any break-up fee or expense reimbursement, and its proposed sale agreement expressly recognized that the payments were not guaranteed, but instead were subject to court approval. *See Reliant Energy*, 594 F.3d at 206. The court observed that the first bidder in a sale under § 363 of the Bankruptcy Code always takes a risk by investing the time, money, and energy necessary to prepare its bid, but stated:

Nevertheless, while we understand that the first bidder may be motivated in part to submit its bid by the possibility that it will receive a break-up fee, it does not follow from that motivation that the bidder will withdraw its bid, pass up on the opportunity to acquire the asset to be sold, and nullify its work in preparing its bid if a court, when ordering that there be an auction of assets, declines to authorize a break-up fee to be paid to the initial bidder. Surely O'Brien makes that clear because even though Calpine had made its bid contingent on the award of a break-up fee, it competed at the auction after the Bankruptcy Court rejected the request for a break-up fee.

*Reliant Energy*, 594 F. 3d at 207. Here, there has been no factual showing that the Expense Reimbursement was necessary to induce Cortland to submit its bid.

23. The proposed Bidding Procedures Order includes a conclusory finding of fact that the Expense Reimbursement is an actual and necessary expense of preserving the Debtors' estates (Proposed Bidding Procedures Order, ¶ F) and a paragraph approving and directing payment of the Expense Reimbursement (Proposed Bidding Procedures Order, ¶ 16).

The Motion argues that the Expense Reimbursement was “a critical component of the Stalking Horse Bidder’s commitment.” (Motion, ¶ 33). However, the facts demonstrate otherwise.

24. The argument that Cortland would not have bid without the Expense Reimbursement is logically impossible because the payment of any Expense Reimbursement is conditioned on approval by the Court. As in *Reliant Energy*, “there is no escape from the fact that [Cortland] did make its bid without the assurance of [Expense Reimbursement], and this fact destroys [the] argument that the fee was needed to induce it to bid.” *Reliant Energy*, 594 F. 3d at 207.

25. Additionally, this so-called “bid protection” is unwarranted, unnecessary and unacceptable because the Stalking Horse Bidder is a Term Lender and 80% equity holder who has provided debt and equity financing to the Debtors and accordingly, has intimate, in-depth knowledge of the Debtors’ assets and businesses. Thereafter, the Term Lenders participated in negotiating and consummating the Debtors’ October 2013 out-of-court restructuring. Further, the Stalking Horse Bid is a credit bid with no cash component. Rather, as currently proposed, the Stalking Horse Agreement includes acquiring \$4,000,000 of cash as a purchased asset. See Stalking Horse Agreement, section 2.1(a)(i). The payment of bid protections in a bankruptcy case is appropriate only if the fee is among the actual, necessary costs and expenses of preserving the value of the debtor’s estate. See *Reliant Energy*, 594 F. 3d at 206; *O’Brien*, 181 F.3d at 535. The *O’Brien* court concluded that the determination of whether bid protections are allowable under §503(b) depends upon the requesting parties’ ability to show that the fees were actually necessary to preserve the value of the estate. See *id.* at 535.

26. The Debtors have not established that the Expense Reimbursement is actually necessary to preserve the value of the estate or actual, necessary costs or that it induced the Term Lenders to submit their bid. The Court is not required to defer to the judgment of debtors-in-possession when analyzing the propriety of a break-up fee or expense reimbursement in a bankruptcy context. See *O’Brien*, 181 F.3d at 535. Break-up fees (or expense reimbursement) would be necessary, the Third Circuit observed, if “assurance of a break-up fee

promoted more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited.” *Id.* at 537. However, in many instances a break-up fee is not necessary to induce bidding. *Id.* at 535. The *O’Brien* court noted that potential buyers will bid whether or not break-up fees are offered whenever they determine that the cost of acquiring the debtor, including the cost of making the bid, is less than the value the buyer can expect to gain from the acquisition. In such cases, the award of a break-up fee cannot be characterized as necessary to preserve the value of the estate. *See id.*

27. The *O’Brien* court also rejected the buyer’s claim that its bid promoted competitive bidding by serving as a minimum or floor bid. *See id.* at 536. A mere showing that later bids exceeded the buyer’s initial one was insufficient. *Id.* Rather, the Court required some showing that the buyer’s bid served as a catalyst to higher bids. *Id.* at 537. The Third Circuit did concede that an estate would arguably benefit from a break-up fee if that fee induced research that in turn led to a value that better reflected the estate’s “true worth.” *Id.* However, the *O’Brien* Court rejected the buyer’s claims that it performed this research function and that the fee and expenses were necessary to induce it to do so because much of the information the bidders needed to evaluate the property was gathered by the debtor itself at its own expense. *Id.*

28. Here, the Term Lenders, as insiders, secured lenders and equity holders, had no need to conduct due diligence—they already possessed complete knowledge and understanding of the Debtors’ assets, liabilities, business model, etc. as part of the diligence completed in connection with the Term Loan and the subsequent restructuring that occurred in October 2013.

29. Thus, the Expense Reimbursement is wholly inappropriate and must not be approved. The Debtors cannot demonstrate that such a “bid protection” is necessary to preserve the value of the estate, especially considering the fact that the Stalking Horse Bidder is a controlling insider and that the Stalking Horse Bid does not include any cash. To the extent the Court approves the Expense Reimbursement, it must be vastly reduced and only for actual

documented expenses with any such payments being made at closing of an alternative transaction to another buyer, not upon termination of the Stalking Horse Agreement as proposed.

**D. The Committee's Rights to Challenge the Credit Bid Must Be Expressly Preserved**

30. The Bidding Procedures Order must make clear that the Term Lenders' alleged liens and security interests are not *ipso facto* found valid by the entry of such order. As the court in *In re Radnor Holdings Corp.*, 353 B.R. 820 (Bankr. D. Del. 2006), held, unless this Court expressly reserves the Committee's rights, the entry of an order permitting a credit bid is tantamount to an order approving the nature, extent and validity of the lien claim and may prevent any litigation against the lender for avoidance, reduction, re-characterization, disallowance, disgorgement, counterclaim, surcharge, subordination, marshalling or other litigation claims. *Id.* at 846. Thus, the Committee's right to challenge the credit bid must be expressly reserved in the Bidding Procedures Order.

31. Pursuant to the proposed final cash collateral order (currently scheduled for hearing on July 21, 2014), the Debtors and Term Lenders seek to limit the period within which the Committee may investigate the liens of the Term Lenders and any potential claims and/or causes of action to sixty (60) days from the date of its formation. The Committee objects that the proposed review period is too short, prejudicial to unsecured creditors and should be extended to 120 days.<sup>6</sup> In either event, until such time that any review period determined by the Court expires, the Committee should not be bound by any order purporting to legally allow any pre-petition claims based upon the Term Lenders' alleged liens and security interests.

32. The Bidding Procedures Order must expressly reserve all rights of the Committee to object to any credit bid portion of the Stalking Horse Bid at a later date if it determines there is a legitimate challenge to the liens and/or security interests of the Term Lenders.<sup>7</sup>

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<sup>6</sup> See the Committee's objection to the Debtors' motion regarding the proposed use of cash collateral filed contemporaneously herewith.

<sup>7</sup> The Committee expressly reserves all rights with respect to credit bidding including the right to seek an order limiting credit bidding.

**E. The Insider Nature of the Asset Sale Transaction Requires Heightened Scrutiny.**

33. Because the proposed sale is to an insider, i.e. the Term Lenders, and because the Debtors did nothing to market the Retail Display Business pre-petition, the proposed sale requires heightened scrutiny. The Debtors and Term Lenders must be required to comply with the Committee's request for production of documents and other discovery requests in short order to enable the Committee to determine whether the proposed asset sale and Auction are the product of a marketing process calculated to generate the highest and best offer for the Debtors' assets.

34. The Debtors bear the burden of proving that they have satisfied the requirements of § 363 including the good faith requirement under § 363(m), and other findings involving heightened scrutiny required for insider transactions. *See In re Univ. Heights Ass'n*, 2007 Bankr. LEXIS 2000, at \*13 (Bankr. N.D.N.Y. January 22, 2007) (recognizing the insider nature of a transaction requires heightened scrutiny); *In re Medical Software Solutions*, 286 B.R. 431, 455 (Bankr. D. Utah 2002) (“[W]hen a pre-confirmation [Section] 363(b) sale is of all, or substantially all, of the Debtor's property, and is proposed during the beginning stages of the case, the sale transaction should be ‘closely scrutinized, and the proponent bears a heightened burden of proving the elements necessary for authorization.’”).

35. The Debtors did nothing pre-petition to market the Retail Display Business. FTI prepared an attractive Public Teaser post-petition extolling the virtues of the “largest producer in the United States of front-end wire fixture, point of purchase, and mainline retail displays” yet gave it to very few potential purchasers, and seem perfectly content with letting insider Cortland submit a low-ball credit bid for the Retail Display Business. The Committee submits that the proposed asset sale including the related Bidding Procedures are subject to heightened scrutiny by the Court.

**F. Clarification and Exclusion of Certain Manufacturing Assets**

36. Before entry of the Bidding Procedures Order, the Debtors must clarify which particular assets comprise the Manufacturing Assets to be transferred and articulate the treatment of the Avoidance Actions under the Stalking Horse Agreement.

37. The Debtors have not yet filed their Schedules of Assets and Liabilities and Statements of Financial Affairs as (the “Schedules and Statements”) required under the Bankruptcy Code. Additionally, the filed Stalking Horse Agreement includes only one (1) of the nearly thirty (30) referenced schedules. These documents do not adequately describe the Manufacturing Assets and no CIM is currently available. Consequently, potential purchasers will be discouraged from bidding at the Auction because they have no idea what assets the Retail Display Business consists of.

38. Further, the Committee specifically objects to the inclusion of any of the Debtors’ cash in the proposed transaction—an asset usually excluded from this type of transaction.

39. Additionally, the Bidding Procedures are not clear about the ultimate treatment of certain Avoidance Actions included in the Manufacturing Assets. To the extent that any of the Debtors’ Avoidance Actions are included in the proposed sale of the Retail Display Business, the Bidding Procedures and Bidding Procedures Order must make clear exactly which Avoidance Actions are included assets and which Avoidance Actions are excluded assets. Because the Debtors have not yet filed their Schedules and Statements, there is no way to know what the Avoidance Actions consist of and what value there may be. Further, the Bidding Procedures and Bidding Procedures Order must provide that the ultimate purchaser—whether the Stalking Horse Bidder or other entity—will not pursue or prosecute the transferred Avoidance Actions. In sum, the Motion should not be approved until such time as the Debtors can accurately describe the Manufacturing Assets for sale and appropriately modify the Bidding Procedures and proposed Bidding Procedures Order.



**G. Modification of the Proposed Bidding Procedures.**

40. It is critical that the Committee be involved and have the ability to object to the Debtors' actions and/or challenge the Debtors' decisions regarding the proposed sale, if necessary, particularly given the expedited sale process to an insider and lack of marketing. Accordingly, in all sections where the Bidding Procedures and the Bidding Procedures Order provide for the Debtors' exercise of "discretion", "reasonable determination" or "business judgment" (including, but not limited to, determination whether a bid is a "Qualified Bid" and which "Qualified Bid" is likely to result in the highest or best value to the Debtors), the proposed Bidding Procedures Order and the Bidding Procedures must be revised to reflect that the Debtors must consult with the Committee. In addition, representatives of the Committee and the Committee's professionals must be allowed to attend the Auction.

41. Further, the Debtors must include the Committee as a party to receive all bids, including financial information, directly from the bidders and permit the Committee to seek expedited relief from the Court in the event that the Committee objects to actions taken by the Debtors in connection with the sale process. For instance, in the event that the Debtors refuse to deem a bidder a Qualified Bidder and the Committee disagrees with that determination, the Committee should have expedited access to the Court.

42. It is necessary for the Committee to also receive copies of the financial information from potential bidders so it will be able to determine whether a bidder has the financial and other capabilities to consummate the proposed Sale. Likewise, the Committee should receive copies of the "evidence" that a bidder obtained a debt or equity funding commitment or has financial resources readily available to purchase the Debtors' assets. Further, counsel to the Committee should be included on all notices related to the sale process.

43. In addition, the Bidding Procedures must allow for the possibility of "lot bids" for certain portions of the Manufacturing Assets that comprise less than all of the Manufacturing Assets.

44. Attached hereto as Exhibit B is a “marked to show changes” version of the Committee’s proposed revisions to the Debtors’ Bidding Procedures Order and attached Bidding Procedures. The Court should not approve the Motion unless and until the Bidding Procedures Order and Bidding Procedures are modified to incorporate the revisions set forth in Exhibit B.

**RESERVATION OF RIGHTS**

45. The Committee reserves the right to raise further and other objections to the Motion prior to or at the hearing thereon in the event the Committee’s objections raised herein are not resolved prior to the hearing.

**CONCLUSION**

WHEREFORE, the Committee respectfully requests that the Court (i) deny the Motion unless the Bidding Procedures and proposed Bid Procedures Order are revised to address the objections set forth above, and (ii) grant the Committee such other and further relief as the Court deems just and appropriate.

Dated: July 17, 2014  
Wilmington, Delaware

DUANE MORRIS LLP

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- and-

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*Proposed Counsel to the Official  
Committee of Unsecured Creditors*

**EXHIBIT A**

July 2014

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## Executive Summary

On June 23, 2014, Source Home Entertainment LLC, Source Interlink Distribution LLC and certain of their debtor affiliates (“SHE” or the “Debtor”) filed voluntary petitions for relief under Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware.

FTI Consulting, Inc. has been engaged by the Debtor to oversee the Section 363 sale for its most profitable operating division, **Source Interlink Manufacturing LLC** (“SIM” or the “Company”). Based in Rockford, Illinois, SIM is primarily engaged in the planning, manufacturing and installation of front-end and mainline wire fixtures for many of the largest grocery and drug store retailers in the United States. As a subsidiary of the Debtor, SIM generated revenue and EBITDA of \$19.1 million and \$6.6 million\*, respectively, for its fiscal year ending January 31, 2014.

## Business Overview

SIM is the largest producer in the United States of front-end wire fixture, point of purchase, and mainline retail displays. The Company manufactures approximately 50,000 custom fixtures per year and maintains significant front-end and mainline market share for grocery and drug store chains nationwide.

As a provider of turn-key solutions, SIM maintains significant relationships with market-leading confectioners, magazine publishers and other CPG companies providing additional leverage in the sourcing and maintenance of retailer relationships.

SIM’s fully integrated approach allows for management of entire fixture programs from design to install. The Company does not act as a 3<sup>rd</sup> party representative, thus allowing for improved quality control and cost management.

The Company maintains a full-time staff of approximately 95 employees with expertise in:

- Design/engineering
- Procurement and logistics
- Precision manufacturing and production
- Fast and reliable freight and delivery
- Installation/removal of old retail display racks
- Billing services

Additionally, the Company manages the initial placement offering (IPO) for front-end products and is a collection agent for cost sharing programs between publishers and other front end CPG providers.



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\* Historical period EBITDA excludes certain go-forward SG&A costs necessary for SIM to operate on a standalone basis.

July 2014

## New “Bright Ideas” LED Rack

SIM has recently completed the prototype and market testing phases of a new LED-lit rack which is now being actively marketed under the name “Bright Ideas”. The concept was developed in partnership with several major confectioners.

Retailer adoption and enthusiasm has been strong, with several in-process rack programs now including sizeable orders of the Bright Ideas racks. Tangible benefits to retail customers include:

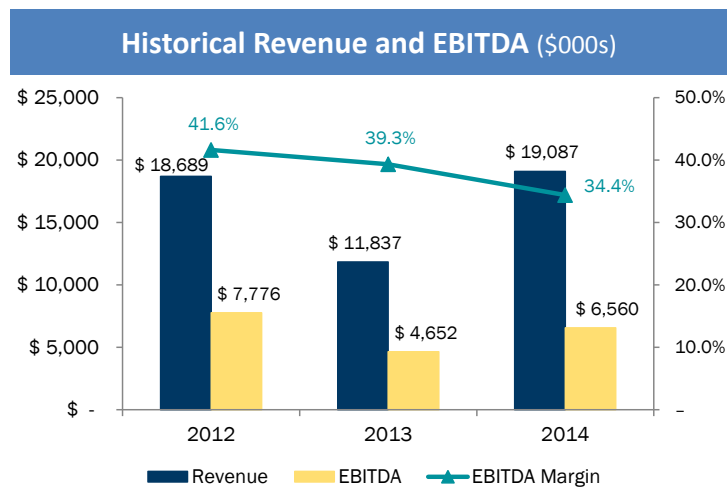
- LED lighting is energy efficient and incremental operating costs are minimal
- Lighting is visually impactful and has proven to be a powerful combatant to mobile technology “blindners” which have driven front end sales downward in recent years
- Independent market testing reflected double-digit gains in unit and dollar sales across multiple CPG categories, versus test stores in a similar market



## Key Financial Metrics

The replacement cycle for front-end fixtures is typically 3-4 years and is dependent upon retailer capital spending. After a down cycle of retailer capex in fiscal years 2012-2013 (calendar years 2011-2012), SIM revenue and EBITDA increased 61% and 41%, respectively in fiscal year 2014. The Company anticipates continued growth over the intermediate term due to a burst of replacement demand, the pull-forward of previously delayed retailer investment, and SIM’s fiscal year 2015 rollout of the Bright Ideas rack.

Now 5 months into its current fiscal year (FY 2015), SIM remains on track to generate substantial year over year revenue growth, driven by a robust pipeline of sold rack programs. Thereafter, management believes the pipeline for new and follow-on programs is substantial.



\*Fiscal Year Ending 1/31

\*\* Historical period EBITDA excludes certain go-forward SG&A costs necessary to operate on a standalone basis

July 2014

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## Investment Highlights

- Turnkey Option - industry's only one stop shop for retail display fixtures
- Active and growing retail customer base, bolstered by deep support from front-end product companies
- Potential to expand into the convenience store market, a sizeable opportunity which has to-date been largely untapped
- Industry is entering into an anticipated 3-4 year high-growth replenishment cycle
- Opportunity for future consolidation, as industry is largely comprised of small privately held companies
- New Bright Ideas LED rack has generated market excitement and strong support from CPG companies
- Positive cash flow operation with significant upside upon implementation of process improvements and achievement of scale

## Transaction Rationale

Having faced significant financial and operational challenges in recent years, the Debtor was unable to provide meaningful strategic or economic support to SIM. With its separation from the Debtor, SIM will now benefit from a dedicated management and sales focus going forward. The Company seeks to continue growth in its existing footprint and fund the expansion of new products and retailer relationships.

- Expand client base with highly reputable companies
- Improve efficiency and throughput, based on implementation of lean manufacturing practices
- Develop new and improved front-end prototypes

## For More Information

**Carlyn Taylor, Sr. Managing Director**

[carlyn.taylor@fticonsulting.com](mailto:carlyn.taylor@fticonsulting.com)

+1-303-689-8858

**Chris Post, Managing Director**

[chris.post@fticonsulting.com](mailto:chris.post@fticonsulting.com)

+1-214-934-3128

**Claims & Noticing Agent:** Kurtzman Carson Consultants: <http://www.kccllc.net/source>

**Case Number:** 14-11553

**EXHIBIT B**



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

*Committee  
Comments*

*7/14/14*

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In re:	)	Chapter 11
	)	
SOURCE HOME ENTERTAINMENT, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 14-11553 (KG)
	)	
Debtors.	)	(Jointly Administered)
	)	

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**ORDER (A) APPROVING BIDDING PROCEDURES AND BID PROTECTIONS IN CONNECTION WITH THE SALE OF CERTAIN OF THE DEBTORS’ ASSETS, (B) APPROVING THE FORM AND MANNER OF NOTICE, (C) SCHEDULING AN AUCTION AND A SALE HEARING, (D) APPROVING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF CONTRACTS, AND (E) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”) of the above captioned debtors and debtors in possession (the “Debtors”) for the entry of an order (this “Order”): (a) authorizing and approving the bidding procedures attached hereto as Exhibit 1 (the “Bidding Procedures”) and approving the Bid Protections in connection with the Sale of certain of the Debtors’ assets (the “Assets”); (b) approving the form and manner of notice of the Auction and the Sale Hearing with respect to the Debtors’ Assets; (c) scheduling an Auction and a Sale Hearing; (d) approving procedures for the assumption and assignment of the Contracts (as defined herein); and (e) granting related relief; it appearing that the relief requested is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); venue

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<sup>1</sup> The Debtors, together with the last four digits of each Debtor’s federal tax identification number, are: Source Home Entertainment, LLC (8517); Directou, Inc. (4741); RDS Logistics, LLC (0305); Retail Vision, LLC (2023); Source Interlink Distribution, LLC (3387); Source Interlink International, Inc. (1428); Source Interlink Manufacturing, LLC (7123); and Source Interlink Retail Services, LLC (6967). The location of the Debtors’ corporate headquarters and the service address for all Debtors is: 27500 Riverview Center Boulevard, Suite 400, Bonita Springs, Florida 34134.

being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; notice of the Motion having been adequate and appropriate under the circumstances; and after due deliberation and sufficient cause appearing therefor:

**THE COURT HEREBY FINDS THAT:**

A. The findings and conclusions set forth herein 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 that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this district and in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. The statutory bases for the relief requested in the Motion are: (i) sections 105, 363, 365, 503, and 507 of the Bankruptcy Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"); (ii) Rules 2002(a)(2), 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"); and (iii) Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules").

D. Notice of the Motion has been given to: (i) the U.S. Trustee; (ii) the holders of the 35 largest unsecured claims against the Debtors (on a consolidated basis); (iii) counsel to Cortland Capital Market Services LLC (the "Stalking Horse Bidder"); (iv) all parties who have expressed a written interest in some or all of the Debtors' Assets; (vi) all parties who are known or reasonably believed, after reasonable inquiry, to have asserted any lien, encumbrance, claim,

or other interest in the Debtors' Assets; (vii) the Internal Revenue Service; (viii) all applicable state and local taxing authorities; (ix) each governmental agency that is an interested party with respect to the Sale and transactions proposed thereunder; and (x) all parties who have requested or who are required to receive notice pursuant to Bankruptcy Rule 2002.

E. The Debtors have articulated good and sufficient reasons for this Court to: (i) approve the Bidding Procedures; (ii) schedule the Auction and Sale Hearing and approve the manner of notice of the Auction and Sale Hearing; (iii) approve the procedures for the assumption and assignment of the Contracts, including notice of proposed cure amounts; and (iv) grant certain Bid Protections as provided in the Stalking Horse APA and in this Order.

F. The Expense Reimbursement (referred to herein as the "Bid Protections") (i) shall, if triggered, be deemed an actual and necessary cost and expense of preserving the Debtors' estates, within the meaning of sections 503(b) and 507(a)(2) of the Bankruptcy Code; (ii) are commensurate to the real and substantial benefit conferred upon the Debtors' estates by the Stalking Horse Bidder; (iii) are reasonable and appropriate, including in light of the size and nature of the proposed Sale and comparable transactions, the commitments that have been made, and the efforts that have been and will be expended by the Stalking Horse Bidder, notwithstanding that the proposed Sale is subject to better and higher offers; and (iv) were necessary to induce the Stalking Horse Bidder to pursue the Sale and to be bound by the Stalking Horse APA.

G. The Bid Protections were a material inducement to, and express condition of, the Stalking Horse Bidder's willingness to submit a bid through execution of the Stalking Horse APA that will serve as a minimum or floor bid on which the Debtors, their creditors, suppliers, vendors, and other bidders may rely. The Stalking Horse Bidder has provided a material benefit

to the Debtors and their creditors by increasing the likelihood that, given the circumstances, the best possible price for the Assets will be received. Accordingly, the Bidding Procedures and the Bid Protections are reasonable and appropriate and represent the best method for maximizing value for the benefit of the Debtors' estates.

H. The Bidding Procedures and the Stalking Horse APA were negotiated by the parties at arms' length and in good faith by the Debtors and the Stalking Horse Bidder.

I. **Assumption and Assignment Procedures.** The Motion, this Order, and the assumption and assignment procedures set forth herein are reasonably calculated to provide counterparties to any Contracts to be assumed by the Debtors and assigned to the Successful Bidder with proper notice of the intended assumption and assignment of their Contracts, the procedures in connection therewith, and any cure amounts relating thereto.

J. **Sale Notice.** The sale notice, substantially in the form attached hereto as **Exhibit 2** (the "**Sale Notice**"), is reasonably calculated to provide interested parties with timely and proper notice of the proposed sale, including, without limitation: (i) the date, time, and place of the Auction (if one is held); (ii) the Bidding Procedures; (iii) the deadline for filing objections to the Sale and entry of the Sale Order, and the date, time, and place of the Sale Hearing; (iv) reasonably specific identification of the Assets to be sold; (v) instructions for promptly obtaining copies of the Stalking Horse APA; (vi) a description of the Sale as being free and clear of liens, claims, encumbrances, and other interests (except as set forth in the applicable APA), with all such liens, claims, encumbrances, and other interests attaching with the same validity and priority to the Sale proceeds; (vii) notice of the proposed assumption and assignment of Contracts to the Stalking Horse Bidder pursuant to the Stalking Horse APA (or to another

Successful Bidder arising from the Auction, if any), and no other or further notice of the sale shall be required.

**IT IS HEREBY ORDERED THAT:**

1. The Motion is granted as provided herein. All capitalized terms used but otherwise not defined herein shall have the meanings set forth in the Motion or the Bidding Procedures, as applicable.

2. All objections to the relief requested in the Motion that have not been withdrawn, waived, or settled as announced to the Court at the hearing on the Motion or by stipulation filed with the Court, are overruled.

**I. Important Dates and Deadlines**

3. **Sale Hearing.** The Sale Hearing shall commence on September 11, 2014, at 10:00 a.m. (prevailing Eastern Time) before the Honorable Kevin Gross, at the Court, 824 North Market Street, 6th Floor, Courtroom No. 3, Wilmington, Delaware 19801. Upon entry of this Order, the Debtors are authorized to perform any obligations of the Debtors set forth in the Stalking Horse APA or other applicable APA that are intended to be performed prior to the Sale Hearing or entry of the Sale Order. The Sale Hearing may be adjourned without further notice other than by announcement in open Court or on the Court's calendar.

4. **Sale Objection Deadline.** Objections, if any, to the Sale must be made by September 4, 2014, at 4:00 p.m. (prevailing Eastern Time) (the "**Sale Objection Deadline**"). Objections must: (a) be in writing; (b) conform to the applicable provisions of the Bankruptcy Rules and the Local Rules; (c) state with particularity the legal and factual basis for the objection and the specific grounds therefor; and (d) be filed with the Court and served so as to be **actually received** no later than the Sale Objection Deadline by the following parties (the "**Notice Parties**"):

Counsel to the Debtors	Counsel to the Stalking Horse Bidder
<p>Kirkland &amp; Ellis LLP 300 North LaSalle Chicago, Illinois 60654 Attn.: David L. Eaton and Michael W. Weitz</p> <p>– and –</p> <p>Young Conaway Stargatt &amp; Taylor, LLP Rodney Square 1000 North King Street Wilmington, Delaware 19801 Attn.: Robert S. Brady, Pauline K. Morgan, and Edmon L. Morton</p>	<p>Ropes &amp; Gray LLP 800 Boylston Street Boston, MA 02199 Attn.: Alyson Allen and Mark Bane</p>
<b>The United States Trustee</b>	
<p style="text-align: center;">Office of the United States Trustee for the District of Delaware 844 King Street Suite 2207, Lockbox 35 Wilmington, Delaware 19801 Attn.: Mark Kenney</p>	

*add Lowenstein  
Sandler and Dvare  
Morris or  
Committee  
Counsel*

5. A party’s failure to timely file or make an objection in accordance with this Order shall forever bar the assertion of any objection to the Motion, entry of the Sale Order, and/or consummation of the Sale with the Successful Bidder pursuant to the applicable APA, including the assumption and assignment of the Contracts to the Successful Bidder pursuant to the applicable APA, and shall be deemed to constitute any such party’s consent to entry of the Sale Order and consummation of the Sale and all transactions related thereto, including, without limitation, such assumption and assignment.

6. **Bid Deadline.** August 22, 2014, at 5:00 p.m. (prevailing Eastern Time), is the deadline by which all Bids for the Debtors’ Assets must be **actually received** by the parties specified in the Bidding Procedures (the “**Bid Deadline**”).

7. **Auction.** September 8, 2014, at 10:00 a.m. (prevailing Eastern Time), is the date and time the Auction, if one is needed, will be held at the offices of counsel to the Debtors: Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022-4611, or such later time on such day or other place as the Debtors shall notify all Qualified Bidders who have

submitted Qualified Bids. As set forth more fully in the Bidding Procedures, only Qualified Bidders shall be permitted to participate at the Auction.

## **II. Auction, Bidding Procedures, and Related Relief**

8. The Bidding Procedures, substantially in the form attached hereto as Exhibit 1, are hereby approved in their entirety, and the Bidding Procedures shall govern the submission, receipt, and analysis of all Bids relating to the proposed sale of the Assets. Any party desiring to bid on the Assets shall comply with the Bidding Procedures and this Order. The Debtors are authorized to take any and all actions necessary to implement the Bidding Procedures.

9. The Stalking Horse Bidder is deemed a Qualified Bidder, and the Stalking Horse Bid as set forth in the Stalking Horse APA is deemed a Qualified Bid.

10. If the Debtors do not receive any Qualified Bids (other than the Stalking Horse Bid): (a) the Debtors will not hold the Auction; (b) the Stalking Horse Bidder will be deemed the Successful Bidder for the Assets; and (c) the Debtors shall be authorized to seek approval of the Stalking Horse APA at the Sale Hearing.

11. If the Debtors receive one or more Qualified Bids from Qualified Bidders (other than the Stalking Horse Bidder), the Debtors shall conduct the Auction in accordance with the Bidding Procedures.

12. Pursuant to Local Rule 6004-1(c)(ii): (a) each bidder participating at the Auction shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the Sale; (b) the Auction shall be conducted openly; and (c) the Auction shall be transcribed or videotaped.

13. In the event of a competing Qualified Bid, the Stalking Horse Bidder will be entitled, but not obligated, to submit overbids and will be entitled in any such overbids to credit

*after consultation with the Committee*

bid: (a) all or a portion of the value of the secured portion of its claims within the meaning of section 363(k) of the Bankruptcy Code; and (b) the value of the Bid Protections.

14. At the Auction, the Debtors may: (a) select, in their business judgment, pursuant to the Bidding Procedures, the highest or otherwise best Bid and the Successful Bidder or Backup Bidder; and (b) reject any Bid (regardless of whether such Bid is a Qualified Bid) that, in the Debtors' business judgment, is (i) inadequate, insufficient, or not the highest or best Bid, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules, or the Bidding Procedures, or (iii) contrary to, or otherwise not in the best interests of the Debtors' estates, affected stakeholders, or other parties in interest.

15. No person or entity, other than the Stalking Horse Bidder, shall be entitled to any expense reimbursement, break-up fees, "topping," termination, or other similar fee or payment, and by submitting a bid, such person or entity is deemed to have waived their right to request or to file with this court any request for expense reimbursement or any fee of any nature, whether by virtue of Bankruptcy Code section 503(b) or otherwise.

**III. Bid Protections.**

16. The Bid Protections are approved on the terms set forth in the Stalking Horse APA. The Debtors are hereby authorized to pay any and all amounts owing to the Stalking Horse Bidder on account of the Bid Protections in accordance with the terms of the Stalking Horse APA without further action or order by the Court.

17. The Bid Protections (if payable under the Stalking Horse APA in accordance with its terms) shall be an allowed administrative expense claim in the Debtors' chapter 11 cases pursuant to sections 503(b)(1) and 507(a)(2) senior to all other administrative expense claims; *provided, that*, the Bid Protections shall be junior to any obligations (collectively, the "Senior Obligations") pursuant to the *Order (A) Authorizing Postpetition Use Of Cash Collateral*,



*(B) Granting Adequate Protection To The Secured Parties, And (C) Granting Related Relief* [Docket No. 45, as may be amended in final form], which Senior Obligations shall be senior in priority to the Debtors' obligation to pay the Bid Protections.

**IV. Assumption and Assignment Procedures.**

18. The following procedures regarding the assumption and assignment of the Contracts in connection with the Sale are hereby approved to the extent set forth herein, and shall govern the assumption and assignment of all Contracts proposed to be assumed by the Debtors pursuant to Section 365(b) of the Bankruptcy Code and assigned to the Stalking Horse Bidder (or other Successful Bidder following the Auction, if any) pursuant to section 365(f) of the Bankruptcy Code under the Stalking Horse APA or other applicable APA.

19. **Notices for Contracts.** As soon as practicable, the Debtors shall serve on all non-Debtor counterparties to any Contract (the "Contract Notice Parties") that may be assumed by the Debtors and assigned to the Successful Bidder a "Contract Notice," substantially in the form attached hereto as **Exhibit 3**, that identifies, to the extent applicable: (i) the Contract that may be assumed and assigned; (ii) the name of the non-Debtor counterparty to such Contract; (iii) the Debtors' asserted cure amount for such Contract if it becomes assumed and assigned; and (iv) the deadlines by which any such Contract counterparty must file an objection to the proposed cure amount, assumption and assignment, or adequate assurance (each, a "Contract Objection"); *provided, that* the presence of a Contract on a Contract Notice does not constitute an admission that such Contract is an executory contract or unexpired lease; *provided, further, that* the presence of a Contract on the Contract Notice or Assumption Notice shall not prevent the Debtors from subsequently withdrawing such assumption or rejecting such Contract at any time before such Contract is actually assumed and assigned pursuant to an Order of the Court. Such Contract Notice shall be without prejudice to the Stalking Horse Bidder's

rights under Section 2.6 of the Stalking Horse APA to subsequently exclude such items from assumption and assignment. As soon as practicable after the conclusion of the Auction, the Debtors shall file with the Court and serve on the Contract Notice Parties who are parties to a Contract identified by the Successful Bidder to be assumed and assigned a further notice substantially in the form attached hereto as **Exhibit 4** (the "Assumption Notice") identifying the Successful Bidder, stating which Contracts will be assumed and assigned, and providing such parties with the Successful Bidder's assurance of future performance. To the extent the Debtors subsequently identify prior to the Sale Hearing any additional Contracts to be assumed by the Debtors and assigned to the Successful Bidder, the Debtors shall serve on any counterparty to such Contract the Contract Notice and/or Assumption Notice, as applicable, along with the Successful Bidder's assurance of future performance, as soon as practicable. Such counterparty shall have seven (7) days from service of the Contract Notice and/or Assumption Notice, as applicable, to file an objection to the proposed cure amount or assumption and assignment of its Contract in accordance with the procedures set forth herein.

20. **Objections to Assumption of Contracts.** Any non-Debtor counterparty to a Contract who objects to the cure or assignment of their Contracts (the "Objecting Party") shall file Contract Objections pursuant to the following procedures:

- **Cure Objection.** All Contract Objections to cure amounts listed in the Contract Notice shall be filed with the Court by 4:00 p.m. (prevailing Eastern Time) on the later of (a) August 8, 2014, or (b) seven days from service of the Contract Notice.
- **Assignment Objection.** All Contract Objections to assignment or adequate assurance of future performance of Contracts shall be filed with the Court by 4:00 p.m. (prevailing Eastern Time) on the later of (a) September 15, 2014, or (b) seven days from service of the Assumption Notice.
- **No Objection.** If no Objection is received in accordance with the deadlines set forth above, such counterparty: (i) shall be deemed to have consented to the cure amounts and assumption and assignment of its Contract to the Successful

Bidder; (ii) shall be forever barred, estopped, and enjoined from asserting any additional cure amount under the Contracts; and (iii) shall be forever barred from objecting to the assignment of the Contracts to the Successful Bidder or the adequacy of the Successful Bidder's assurance of future performance.

- Resolution Period. If any timely filed Contract Objection cannot be resolved by the Successful Bidder and the Objecting Party, the Court shall resolve such Contract Objection prior to assumption and assignment of such designated Contract, and upon entry of an order by the Court resolving such Contract Objection, the assignment, if approved by the Court, shall be deemed effective as of the date such Objecting Party receives the Assumption Notice. To the extent that any Contract Objection cannot be resolved by the parties, such Contract shall be assumed and assigned only upon satisfactory resolution of the Contract Objection, to be determined in the Stalking Horse Bidder's or other Successful Bidder's reasonable discretion, and until such time as the Contract Objection can be resolved, the Contract shall be conditionally assumed and assigned pending a resolution of the Contract Objection after notice and a hearing.
- Form of Objections. Contract Objections must: (a) be in writing; (b) state with specificity the nature of such objection and alleged cure amount, including applicable and appropriate documentation in support of such alleged cure amount; and (c) comply with the Bankruptcy Rules and the Local Rules.

**V. Sale Hearing Notice.**

21. The Sale Notice is hereby approved. On or within three (3) business days following entry of this Order, the Debtors shall cause the Sale Notice to be served on: (a) the U.S. Trustee; (b) counsel to the Committee, ~~or, if no Committee has been appointed, the holders of the 35 largest unsecured claims against the Debtors (on a consolidated basis)~~; (c) counsel to the Stalking Horse Bidder; (d) the Contract Counterparties; (e) all parties who have expressed a written interest in some or all of the Debtors' Assets; (f) all parties who are known or reasonably believed, after reasonable inquiry, to have asserted any lien, encumbrance, claim, or other interest in the Debtors' Assets; (g) the Internal Revenue Service; (h) all applicable state and local taxing authorities; (i) each governmental agency that is an interested party with respect to the Sale and transactions proposed thereunder; and (j) all parties who have requested or who are required to receive notice pursuant to Bankruptcy Rule 2002.

22. The Debtors shall also publish an abbreviated version of the Sale Notice in USA Today and Chicago Tribune at least ten (10) days prior to the Auction.

**VI. Miscellaneous.**

23. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

24. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

25. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Date: \_\_\_\_\_, 2014  
Wilmington, Delaware

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The Honorable Kevin Gross  
Chief United States Bankruptcy Judge

**Exhibit 1**

**Bidding Procedures**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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In re:	)	Chapter 11
	)	
SOURCE HOME ENTERTAINMENT, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 14-11553 (KG)
	)	
Debtors.	)	(Jointly Administered)
	)	

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BIDDING PROCEDURES FOR THE SALE OF CERTAIN  
OF THE DEBTORS' ASSETS

On June 22, 2014, the Debtors entered into an asset purchase agreement (the "Stalking Horse APA") with Cortland Capital Market Services LLC (the "Stalking Horse Bidder") pursuant to which the Stalking Horse Bidder proposes to purchase, acquire, and take assignment and delivery of, free and clear of all liens, claims, encumbrances, and other interests (except as otherwise provided in the Stalking Horse APA), certain assets of the Debtors (collectively, the "Assets"). On [\_\_\_\_], the United States Bankruptcy Court for the District of Delaware (the "Court") entered the *Order (A) Approving Bidding Procedures and the Bidding Protections in Connection With the Sale of Certain of the Debtors' Assets, (B) Approving the Form and Manner of Notice, (C) Scheduling an Auction and a Sale Hearing, (D) Approving Procedures for the Assumption and Assignment of Contracts, and (E) Granting Related Relief* [Docket No. \_\_\_\_] (the "Bidding Procedures Order"),<sup>2</sup> by which the Court approved the following procedures (the "Bidding Procedures").

These Bidding Procedures set forth the process by which the Debtors are authorized to conduct an auction (the "Auction") for the sale (the "Sale") of the Assets.

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<sup>1</sup> The Debtors, together with the last four digits of each Debtor's federal tax identification number, are: Source Home Entertainment, LLC (8517); Directou, Inc. (4741); RDS Logistics, LLC (0305); Retail Vision, LLC (2023); Source Interlink Distribution, LLC (3387); Source Interlink International, Inc. (1428); Source Interlink Manufacturing, LLC (7123); and Source Interlink Retail Services, LLC (6967). The location of the Debtors' corporate headquarters and the service address for all Debtors is: 27500 Riverview Center Boulevard, Suite 400, Bonita Springs, Florida 34134.

<sup>2</sup> All capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Bidding Procedures Order.

**1. Participation Requirements**

**(a) Potential Bidders.**

To participate in the bidding process or otherwise be considered for any purpose hereunder, a person interested in the Assets (other than the Stalking Horse Bidder) (a "Potential Bidder") must, on or before August 15, 2014 (the "Acceptable Bid Deadline"), deliver to each of: (i) proposed counsel to the Debtors, Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn.: David L. Eaton (david.eaton@kirkland.com) and Michael W. Weitz (michael.weitz@kirkland.com); and (ii) Stephen Dubé, the Debtors' Chief Restructuring Officer, c/o FTI Consulting, Inc., 2001 Ross Avenue, Suite 400, Dallas, Texas 75201, Attn.: Stephen Dubé (Stephen.Dube@fticonsulting.com) and Christopher Post (Chris.Post@fticonsulting.com), the following documents (collectively, the "Preliminary Bid Documents"): *(bbuechler@lowenstein.com)*

*with a copy to To Counsel For The Committee, Lowenstein Sandler LLP, 65 Livingston Ave., Roseland, N.J. 07068, Attn. Bruce Buechler*

- (i) an executed confidentiality agreement on terms acceptable to the Debtors (a "Confidentiality Agreement"), to the extent not already executed; and
- (ii) preliminary proof by the Potential Bidder of its financial capacity to close a proposed transaction, which may include financial statements of, or verified financial commitments obtained by, the Potential Bidder (or, if the Potential Bidder is an entity formed for the purpose of acquiring the Assets, the party that will bear liability for a breach), the adequacy of which will be assessed by the Debtors and their advisors in their sole discretion.

**(b) Notice of Acceptable Bidder.**

Within two business days after a Potential Bidder delivers the Preliminary Bid Documents, the Debtors will determine and notify the Potential Bidder and the Stalking Horse Bidder whether such Potential Bidder has submitted acceptable Preliminary Bid Documents so that the Potential Bidder may conduct due diligence with respect to the Assets. Only those Potential Bidders that have submitted acceptable Preliminary Bid Documents, as determined in the Debtors' sole discretion (each, an "Acceptable Bidder"), may submit Bids. Notwithstanding anything herein to the contrary, the Debtors reserve the right to work with Potential Bidders to aggregate partial Bids into a consolidated Acceptable Bid prior to the Acceptable Bid Deadline. The Stalking Horse Bidder shall be deemed an Acceptable Bidder at all times.

**2. Due Diligence**

*and provide Committee Counsel with a copy of any such notices.*

Only Acceptable Bidders shall be eligible to receive due diligence information and access to the Debtors' electronic data room and to additional non-public information regarding the Debtors. The Debtors will provide to each Acceptable Bidder reasonable due diligence information, as requested by such Acceptable Bidder in writing, as soon as reasonably practicable after such request, and the Debtors shall post substantially all written due diligence provided to any Acceptable Bidder to the Debtors' electronic data room. The due diligence period will end on the Bid Deadline (as defined herein) and subsequent to the Bid Deadline the Debtors shall have no obligation to furnish any due diligence information.

In connection with the provision of due diligence information to Acceptable Bidders, the Debtors shall not furnish any confidential information relating to the Assets, liabilities of the Debtors, or the Sale to any person except to an Acceptable Bidder or to such Acceptable Bidder's duly authorized representatives to the extent provided in the applicable Confidentiality Agreement.

The Debtors and their advisors shall coordinate all reasonable requests from Acceptable Bidders for additional information and due diligence access; *provided that* the Debtors may decline to provide such information to Acceptable Bidders who, at such time and in the Debtors' reasonable business judgment, have not established, or who have raised doubt, that such Acceptable Bidder intends in good faith to, or has the capacity to, consummate the Sale. Except as set forth in the Stalking Horse APA with respect to the Stalking Horse Bidder, no conditions relating to the completion of due diligence shall be permitted to exist after the Bid Deadline.

### 3. "As Is, Where Is"

The proposed transfer of the Assets will be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Debtors or their estates, except to the extent expressly set forth in the Stalking Horse APA or as specifically accepted or agreed to by the Debtors. Except as otherwise provided in the Stalking Horse APA or, with respect to other Qualified Bids (as defined herein), as specifically accepted or agreed to by the Debtors, all of the Debtors' right, title, and interest in and to the respective Assets will be transferred free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests in accordance with section 363(f) of the Bankruptcy Code.

By submitting a Bid, each Acceptable Bidder for the Assets will be deemed to acknowledge and represent that it (a) has had an opportunity to conduct adequate due diligence regarding the Assets prior to making its Bid, (b) has relied solely on its own independent review, investigation, and inspection of any document including, without limitation, executory contracts and unexpired leases, in making its Bid, and (c) did not rely on or receive from any party any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, with respect to the Assets or the completeness of any information provided in connection with the Sale or the Auction.

### 4. Bid Requirements

Any proposal, solicitation, or offer (each, a "Bid") by an Acceptable Bidder must be submitted in writing and determined by the Debtors, in their reasonable business judgment, to have satisfied the following requirements (collectively, the "Bid Requirements"):

- (a) Assets: Each Bid must be a bulk bid to purchase all or substantially all of the Assets, and must clearly state which liabilities of the Debtors the Acceptable Bidder is agreeing to assume.
- (b) Purchase Price: Each Bid must clearly set forth the purchase price to be paid, including and identifying separately any cash and non-cash components (the "Purchase Price").

why only bulk bids? why not for an individual asset or combination of assets?



- (c) Deposit: Each Bid, other than the Bid of the Stalking Horse Bidder (the "Stalking Horse Bid"), must be accompanied by a cash deposit in the amount equal to 10% of the aggregate cash and non-cash purchase price of the Bid to be held in an interest-bearing escrow account to be identified and established by the Debtors (the "Deposit").
- (d) Initial Minimum Overbid: The aggregate consideration proposed by each Bid must equal or exceed the sum of (collectively, the "Initial Minimum Overbid"):
- (i) Cash in an amount equal to \$24,000,000; *plus*
  - (ii) cash equal to the Expense Reimbursement (as defined in the Stalking Horse APA); *plus*
  - (iii) \$250,000 in cash.

Notwithstanding the foregoing, a Bidder may decrease the amount of its Initial Minimum Overbid dollar-for-dollar by the amount of cash such Bidder is not seeking to acquire as part of its Bid, as compared to the Stalking Horse Bid.

- (e) Assumption of Obligations: Each Bid must expressly assume all of the Assumed Obligations on terms no less favorable to the Debtors than the Stalking Horse APA, as determined in the Debtors' sole business judgment.

- (f) The Same or Better Terms: Except as otherwise provided herein, each Bid must be, in the Debtors' business judgment, on the same or better terms than the terms of the Stalking Horse APA. Each Bid must include duly executed, non-contingent transaction documents necessary to effectuate the transactions contemplated in the Bid (the "Bid Documents"). The Bid Documents shall include a schedule of Assumed Contracts (as defined in the Stalking Horse APA) to the extent applicable to the Bid, and a copy of the Stalking Horse APA clearly marked to show all changes requested by the Acceptable Bidder (including those related to the Purchase Price and Assets to be acquired by such Acceptable Bidder), as well as all other material documents integral to such Bid.

- (g) Committed Financing: To the extent that a Bid is not accompanied by evidence of the Acceptable Bidder's capacity to consummate the sale set forth in its Bid with cash on hand, each Bid must include committed financing documented to the Debtors' satisfaction that demonstrates that the Acceptable Bidder has: (i) received sufficient debt and/or equity funding commitments to satisfy the Acceptable Bidder's Purchase Price and other obligations under its Bid; and (ii) adequate working capital financing or resources to finance going concern operations for the Debtors' Assets and the proposed transactions. Such funding commitments or other financing must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions acceptable to the Debtors.

after  
consultation with  
the Committee )

after consultation<sup>4</sup> with the Committee

- (h) Contingencies: No Financing or Diligence Outs: A Bid shall not be conditioned on the obtaining or the sufficiency of financing or any internal approval, or on the outcome or review of due diligence, but may be subject to the accuracy at the closing of specified representations and warranties or the satisfaction at the closing of specified conditions, which shall not be more burdensome, in the Debtors' business judgment, than those set forth in the Stalking Horse APA.
- (i) Identity: Each Bid must fully disclose the identity of each entity that will be bidding or otherwise participating in connection with such Bid (including each equity holder or other financial backer of the Acceptable Bidder if such Acceptable Bidder is an entity formed for the purpose of consummating the proposed transaction contemplated by such Bid), and the complete terms of any such participation. Under no circumstances shall any undisclosed principals, equity holders, or financial backers be associated with any Bid. Each Bid must also include contact information for the specific person(s) and counsel whom FTI Consulting, Inc. and Kirkland & Ellis LLP should contact regarding such Bid.
- (j) Demonstrated Financial Capacity: An Acceptable Bidder must have, in the Debtors' business judgment, the necessary financial capacity to consummate the proposed transactions required by its Bid and provide adequate assurance of future performance under all contracts proposed to be Assumed Contracts by such Bid.
- (k) Time Frame for Closing: A Bid by an Acceptable Bidder must be reasonably likely (based on availability of financing, antitrust, or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Successful Bid, within a time frame acceptable to the Debtors.
- (l) Irrevocable: Subject to Section 13 of these Bidding Procedure, an Acceptable Bidder's Bid shall be irrevocable unless and until the Debtors accept a higher Qualified Bid and such Acceptable Bidder is not selected as the Backup Bidder (as defined herein).
- (m) Expenses: Each Acceptable Bidder (other than the Stalking Horse Bidder) presenting a Bid or Bids shall bear its own costs and expenses (including legal fees) in connection with the proposed transaction, and by submitting its Bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis, including under section 503(b) of the Bankruptcy Code.
- (n) Authorization: Each Bid must contain evidence that the Acceptable Bidder has obtained authorization or approval from its Board of Directors (or a comparable governing body acceptable to the Debtors) with respect to the submission of its Bid and the consummation of the transactions contemplated in such Bid.
- (o) As-Is, Where-Is: Each Bid must include a written acknowledgement and representation that the Acceptable Bidder: (i) has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its offer; (ii) has

relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Assets in making its Bid; and (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, regarding the Assets or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Bidder's proposed purchase agreement for the Assets (each, an "APA").

- (p) Disclaimer of Fees: Each Bid (other than the Stalking Horse Bid) must disclaim any right to receive a fee analogous to a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation. For the avoidance of doubt, no Qualified Bidder (as defined herein) (other than the Stalking Horse Bidder) will be permitted to request, nor be granted by the Debtors, at any time, whether as part of the Auction or otherwise, a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation, and by submitting its Bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis, including under section 503(b) of the Bankruptcy Code.
- (q) Adherence to Bid Procedures: By submitting its Bid, each Bidder is agreeing to abide by and honor the terms of these Bidding Procedures and agrees to refrain from submitting a Bid or seeking to reopen the Auction after conclusion of the Auction.
- (r) Bid Deadline: Each Bid must be transmitted via email (in .pdf or similar format) so as to be actually received on or before August 22, 2014 at 5:00 p.m. (prevailing Eastern Time) (the "Bid Deadline") by:
- (i) FTI Consulting, Inc., 2001 Ross Avenue, Suite 400, Dallas, Texas 75201, Attn.: Stephen Dubé (Stephen.Dube@fticonsulting.com) and Christopher Post (Chris.Post@fticonsulting.com);
  - (ii) Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn.: David L. Eaton (david.eaton@kirkland.com) and Michael W. Weitz (michael.weitz@kirkland.com);
  - (iii) Cortland Capital Market Services LLC, 225 West Washington Street, Suite 2100, Chicago, Illinois 60606, Attn.: Joanna Anderson, Chris Capezuti, and Emily Ergang;
  - (iv) Ropes & Gray LLP, Prudential Tower, 800 Boylston Street, Boston, Massachusetts 02199, Attn.: Alyson Allen (alyson.allen@ropesgray.com) and Mark Bane (mark.bane@ropesgray.com);
  - (v) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801  
Attn.: Robert S. Brady, Pauline K. Morgan, and Edmon L. Morton; and

(vi) Counsel to the Committee, if any.

*fill in Lawrence Scudder  
and Duane Morris.*

## 5. Qualified Bidders

- (a) A Bid that satisfies each of the Bid Requirements, as determined in the Debtors' business judgment, shall constitute a "Qualified Bid," and such Acceptable Bidder shall be a "Qualified Bidder." Within two business days after the Bid Deadline, the Debtors will notify each Qualified Bidder and the Stalking Horse Bidder whether such party is a Qualified Bidder and shall provide to the Stalking Horse Bidder a copy of each Qualified Bid. For the avoidance of doubt, the Stalking Horse Bidder is deemed a Qualified Bidder and the Stalking Horse APA negotiated with the Stalking Horse Bidder shall constitute a Qualified Bid by the Stalking Horse Bidder.
- (b) If any Bid is determined by the Debtors not to be a Qualified Bid, the Debtors will refund such Acceptable Bidder's Deposit and all accumulated interest thereon on or within three business days after the Bid Deadline.
- (c) Between the date that the Debtors notify an Acceptable Bidder that it is a Qualified Bidder and the Auction, the Debtors may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Except as otherwise set forth in the Stalking Horse APA, without the written consent of the Debtors, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase their consideration contemplated by, or otherwise improve the terms of, the Qualified Bid, during the period that such Qualified Bid remains binding as specified in these Bidding Procedures; *provided that* any Qualified Bid may be improved at the Auction as set forth herein. Any improved Qualified Bid must continue to comply with the requirements for Qualified Bids set forth in these Bidding Procedures.

## 6. Right to Credit Bid

At the Auction, any Qualified Bidder who has a valid and perfected lien on any Assets of the Debtors' estates (a "Secured Creditor") shall have the right to credit bid all or a portion of the value of such Secured Creditor's claims within the meaning of section 363(k) of the Bankruptcy Code; *provided that* a Secured Creditor shall have the right to credit bid its claim only with respect to the collateral by which such Secured Creditor is secured; *provided further that* for purposes of such Secured Creditor's Qualified Bid, the Secured Creditor's claim shall be deemed to have the value it possesses on the date of the Auction. Notwithstanding anything herein to the contrary, the Stalking Horse Bidder shall (a) have the right (including as part of any Overbid) to credit bid all or a portion of the value of the secured portion of its claims for the Assets pursuant to section 363(k) of the Bankruptcy Code, including any secured claims on account of its adequate protection liens, and (b) have the right to credit bid the value of the Expense Reimbursement.

*The Committee expressly preserves its right  
to object to any credit bid.*

*after consultation with the Committee,*

7. Auction

If the Debtors receive a Qualified Bid, other than the Stalking Horse Bid, the Debtors will conduct the Auction to determine the Successful Bidder with respect to the Debtors' Assets. If the Debtors do not receive a Qualified Bid (other than the Stalking Horse Bid), the Debtors will not conduct the Auction and shall designate the Stalking Horse Bidder's Qualified Bid as the Successful Bid.

No later than September 5, 2014 at 12:00 p.m. (prevailing Eastern Time), the Debtors will notify all Qualified Bidders of the highest or otherwise best Qualified Bid, as determined in the Debtors' reasonable business judgment (the "Baseline Bid"), and provide copies of the Bid Documents supporting the Baseline Bid to all Qualified Bidders. The determination of which Qualified Bid constitutes the Baseline Bid and which Qualified Bid constitutes the Successful Bid shall take into account any factors the Debtors reasonably deem relevant to the value of the Qualified Bid to the Debtors' estates, including, among other things: (a) the number, type, and nature of any changes to the Stalking Horse APA requested by the Qualified Bidder, including the type and amount of Assets sought and Assumed Obligations to be assumed in the Bid; (b) the amount and nature of the total consideration; (c) the likelihood of the Bidder's ability to close a transaction and the timing thereof; (d) the net economic effect of any changes to the value to be received by the Debtors' estates from the transaction contemplated by the Bid Documents; and (e) the tax consequences of such Qualified Bid (collectively, the "Bid Assessment Criteria").

The Auction shall take place at 10:00 a.m. (prevailing Eastern Time) on September 8, 2014, at the offices of Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022-4611, or such later date and time as selected by the Debtors. The Auction shall be conducted in a timely fashion according to the following procedures:

(a) The Debtors Shall Conduct the Auction.

The Debtors and their professionals shall direct and preside over the Auction. At the start of the Auction, the Debtors shall describe the terms of the Baseline Bid. All incremental Bids made thereafter shall be Overbids (as defined herein) and shall be made and received on an open basis, and all material terms of each Overbid shall be fully disclosed to all other Qualified Bidders. The Debtors shall maintain a written transcript of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids, and the Successful Bid.

Only Qualified Bidders and their legal and financial advisors shall be entitled to attend the Auction, and the Qualified Bidders shall appear at the Auction in person and may speak or bid themselves or through duly authorized representatives. Only Qualified Bidders shall be entitled to bid at the Auction.

(b) Terms of Overbids.

*and the Committee and*

"Overbid" means any bid made at the Auction by a Qualified Bidder subsequent to the Debtors' announcement of the Baseline Bid. Each Overbid must comply with the following conditions:

*its legal and financial advisors*

*after consultation with the Committee.*

- (i) Minimum Overbid Increment. Any Overbid following the Initial Minimum Overbid or following any subsequent Prevailing Highest Bid (as defined below) shall be in increments of \$250,000.
- (ii) Conclusion of Each Overbid Round. Upon the solicitation of each round of Overbids, the Debtors may announce a deadline (as the Debtors may, in their business judgment, extend from time to time, the "Overbid Round Deadline") by which time any Overbids must be submitted to the Debtors.
- (iii) Overbid Alterations. An Overbid may contain alterations, modifications, additions, or deletions of any terms of the Bid no less favorable to the Debtors' estates than any prior Qualified Bid or Overbid, as determined in the Debtors' reasonable business judgment, but shall otherwise comply with the terms of these Bidding Procedures.
- (iv) Announcing Highest Bid. Subsequent to each Overbid Round Deadline, the Debtors shall announce whether the Debtors have identified an Overbid as being higher or otherwise better than the Initial Minimum Overbid, in the initial Overbid round, or, in subsequent rounds, the Overbid previously designated by the Debtors as the prevailing highest or otherwise best Bid (the "Prevailing Highest Bid"). The Debtors shall describe to all Qualified Bidders the material terms of any new Overbid designated by the Debtors as the Prevailing Highest Bid as well as the value attributable by the Debtors to such Prevailing Highest Bid based on, among other things, the Bid Assessment Criteria.

(c) Consideration of Overbids.

The Debtors reserve the right, *and the Committee* in their reasonable business judgment, and in consultation with the Stalking Horse Bidder, to adjourn the Auction one or more times to, among other things (i) facilitate discussions between the Debtors and Qualified Bidders, (ii) allow Qualified Bidders to consider how they wish to proceed, and (iii) provide Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their reasonable business judgment, may require, that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate the proposed transaction at the prevailing Overbid amount.

(d) Closing the Auction.

- (i) The Auction shall continue until there is only one Qualified Bid that the Debtors determine, in their reasonable business judgment, to be the highest or otherwise best Qualified Bid for the Assets. Such Qualified Bid shall be declared the "Successful Bid," and such Qualified Bidder, the "Successful Bidder" and at which point the Auction will be closed. The Auction shall not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an Overbid at the Auction to the then Prevailing Highest Bid. Such acceptance by the Debtors of the

Successful Bid is conditioned upon approval by the Court of the Successful Bid.

- (ii) For the avoidance of doubt, nothing in these Bidding Procedures shall prevent the Debtors from exercising their respective fiduciary duties under applicable law.
  - (iii) The Debtors shall not consider any Bids or Overbids submitted after the conclusion of the Auction, and any such Bids or Overbids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.
  - (iv) As soon as reasonably practicable after closing the Auction, the Debtors shall cause the Bid Documents for the Successful Bid and Backup Bid to be filed with the Court.
- (e) No Collusion; Good-Faith *Bona Fide* Offer.

Each Qualified Bidder participating at the Auction will be required to confirm on the record at the Auction that (i) it has not engaged in any collusion with respect to the bidding, and (ii) its Qualified Bid is a good-faith *bona fide* offer and it intends to consummate the proposed transaction if selected as the Successful Bidder.

## 8. Backup Bidder

- (a) Notwithstanding anything in these Bidding Procedures to the contrary, if an Auction is conducted, the Qualified Bidder with the next-highest or otherwise second-best Qualified Bid at the Auction for the Assets, as determined by the Debtors in the exercise of their reasonable business judgment, shall be required to serve as a backup bidder (the "Backup Bidder"), and each Qualified Bidder shall agree and be deemed to agree to be the Backup Bidder if so designated by the Debtors
- (b) The identity of the Backup Bidder and the amount and material terms of the Qualified Bid of the Backup Bidder shall be announced by the Debtors at the conclusion of the Auction at the same time the Debtors announce the identity of the Successful Bidder. The Backup Bidder shall be required to keep its Qualified Bid (or if the Backup Bidder submits one or more Overbids at the Auction, its final Overbid) open and irrevocable until the closing of the transaction with the Successful Bidder. The Backup Bidder's Deposit shall be held in escrow until the closing of the transaction with the Successful Bidder.
- (c) If a Successful Bidder fails to consummate the approved transactions contemplated by its Successful Bid, the Debtors may select the Backup Bidder as the Successful Bidder, and such Backup Bidder shall be deemed a Successful Bidder for all purposes. The Debtors will be authorized, but not required, to consummate all transactions contemplated by the Bid of such Backup Bidder without further order of the Court or notice to any party. In such case, the defaulting Successful Bidder's Deposit shall be forfeited to the Debtors, and the

Debtors specifically reserve the right to seek all available remedies against the defaulting Successful Bidder, including with respect to specific performance.

**9. Highest or Otherwise Best Bid**

*, after consultation with the Committee,*

When determining the highest or otherwise best Qualified Bid, as compared to other Qualified Bids, the Debtors may, ~~in their sole discretion~~, consider the following factors in addition to any other factors that the Debtors deem appropriate: (a) the number, type, and nature of any changes to the Stalking Horse APA requested by the Qualified Bidder, including the type and amount of Assets sought and obligations to be assumed in the Bid; (b) the amount and nature of the total consideration; (c) the likelihood of the Bidder's ability to close a transaction and the timing thereof; (d) the net economic effect of any changes to the value to be received by the Debtors' estates from the transaction contemplated by the Bid Documents; and (e) the tax consequences of such Qualified Bid; *provided*, in each case, that the fact the Stalking Horse Bid is comprised of a credit bid shall not be a factor considered by the Debtors in their determination of the highest or otherwise best Qualified Bid.

**10. Reservation of Rights**

*and the Committee*

Except with regard to the Bid Requirements set forth above in subparagraphs 4(d), 4(h), and 4(q), which may not be altered, the Debtors reserve their rights to modify these Bidding Procedures (after consultation with the Stalking Horse Bidder) in their reasonable business judgment in any manner that will best promote the goals of the bidding process, or impose, at or prior to the Auction, additional customary terms and conditions on the sale of the Assets, including, without limitation: (a) extending the deadlines set forth in these Bidding Procedures; (b) adjourning the Auction at the Auction and/or adjourning the Sale Hearing (as defined below) in open court without further notice; (c) adding procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction; (d) canceling the Auction; and (e) rejecting any or all Bids or Qualified Bids.

Notwithstanding the foregoing and subject in all respects to the Stalking Horse APA, the Debtors may not impair or modify the Stalking Horse Bidder's rights and obligations under the Stalking Horse APA or the Stalking Horse Bidder's right to credit its secured claim and the Bidding Protections as part of any Bid at the Auction or otherwise.

**11. Consent to Jurisdiction**

All Qualified Bidders at the Auction shall be deemed to have consented to the jurisdiction of the Court and waived any right to a jury trial in connection with any disputes relating to the Auction, the construction and enforcement of these Bidding Procedures, and/or the Bid Documents, as applicable.

**12. Sale Hearing**

A hearing to consider approval of the Sale of all or substantially all of the Debtors' Assets to the Successful Bidder (or to approve the Stalking Horse APA if no Auction is held) (the "Sale Hearing") is currently scheduled to take place on September 11, 2014 at 10:00 a.m.



(prevailing Eastern Time), before the Honorable Kevin Gross, at the Court, 824 North Market Street, 6th Floor, Courtroom No. 3, Wilmington, Delaware 19801.

**The Sale Hearing may be continued to a later date by the Debtors by sending notice prior to, or making an announcement at, the Sale Hearing. No further notice of any such continuance will be required to be provided to any party (including the Stalking Horse Bidder).**

At the Sale Hearing, the Debtors shall present the Successful Bid to the Court for approval.

### **13. Stalking Horse APA**

Notwithstanding anything in these Bidding Procedures to the contrary, the Stalking Horse APA and related transaction documents shall remain in full force and effect until such agreements have terminated in accordance with their respective terms and regardless of whether the Stalking Horse Bidder is designated the Successful Bidder or the Backup Bidder.

### **14. Return of Deposit**

The Deposit of the Successful Bidder shall be applied to the purchase price of such transaction at closing. The Deposits for each Qualified Bidder shall be held in one or more interest-bearing escrow accounts on terms acceptable to the Debtors in their sole discretion and shall be returned (other than with respect to the Stalking Horse Bidder, the Successful Bidder, and the Backup Bidder) on or within three business days after the Auction. Upon the return of the Deposits, their respective owners shall receive any and all interest that will have accrued thereon.

If a Successful Bidder fails to consummate a proposed transaction because of a breach by such Successful Bidder, the Debtors will not have any obligation to return the Deposit deposited by such Successful Bidder, which may be retained by the Debtors as liquidated damages, in addition to any and all rights, remedies, or causes of action that may be available to the Debtors, and the Debtors shall be free to consummate the proposed transaction with the applicable Backup Bidder without the need for an additional hearing or order of the Court.

### **15. No Modification of Bidding Procedures**

Except as provided by Section 10 hereof, these Bidding Procedures may not be modified except with the Debtors' express written consent.

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Wilmington, Delaware  
Dated: [\_\_\_\_], 2014

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