

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

IN RE:)
)
SAM MEYERS, INC.) CHAPTER 11
)
Debtor.) CASE NO. 18-31559-acs
_____)

**MOTION FOR AN ORDER (I) APPROVING (A) THE SALE OF SUBSTANTIALLY
ALL OF THE DEBTOR’S ASSETS, AND (B) BIDDING PROCEDURES IN
CONNECTION WITH THE SALE, (II) AUTHORIZING SALE OF ASSETS FREE AND
CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS, (III)
AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN
EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (IV) GRANTING
RELATED RELIEF**

* * * * *

Comes now the Debtor, Sam Meyers, Inc. (“Sam Meyers” or “Debtor” or “Seller”), by counsel, and moves the Court to approve the bidding and sale procedure for Debtor’s assets, subject to final confirmation of the sale and in support hereof respectfully shows the Court as follows:

I. FACTUAL BACKGROUND

1. On May 17, 2018 (the “Petition Date”), the Debtor filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code, the Debtor continues to operate its business and manage its property as a debtor in possession.

2. No trustee, examiner or creditors committee has yet been appointed in this case.

3. The court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

4. The statutory predicates for relief are sections 105, 363, 1107, and 1108 of the Bankruptcy Code.

5. The Debtor was started in Louisville by tailor Sam Meyers in 1905. After its start in the tailoring business, Debtor branched out into formal wear on a wholesale and regional basis. In the 1950s, Sam Meyers' son-in-law, James Corbett, joined the business. As Debtor continued its growth, Mr. Corbett's sons, Sam and Pat, joined the business in the 1970s. Eventually Debtor expanded into dry cleaning and industrial uniform rentals and sales. Today, Debtor continues to run its dry cleaning, garment restoration, and wholesale formalwear business, including a formalwear retail shop, out of its headquarters located at 3400 Bashford Ave Ct. ("Corporate Office").

6. In addition to the Corporate Office, Debtor also runs a formalwear shop at The Mall St. Matthews ("Mall Shop") and runs two dry cleaning routes ("Dry Cleaners"). The Corporate Office, Mall Shop, and Dry Cleaners employ all of Debtor's employees.

7. Debtor's shares are owned as follows: James P. Corbett: 43.72%, Samuel C. Corbett: 43.71%, Mark L. Corbett: 4.19%, Lee E. Corbett: 4.19%, Carolyn L. Kendrick: 4.19%. Debtor's Board of Directors are: James "Pat" Corbett, Chair, Mark L. Corbett, Director, Mary L. Corbett, Director, Carolyn C. Kendrick, Director, Samuel C. Corbett, Director, and Lee E. Corbett, Director.

8. The Debtor currently employs approximately 20 employees.

9. The Debtor anticipates 2018 gross revenues of approximately \$1.2 million on an annualized basis.

10. Approximately ten years ago, Sam Meyers was the main supplier of rented formalwear for Goody's, LLC across the country. In 2008, Goody's filed a petition for relief under

Chapter 11 while owing Debtor approximately \$570,000.00 in pre-petition debt for the rented formalwear relationship. Further complicating matters, Debtor had just purchased approximately \$1 million in inventory to continue servicing the Goody's relationship. After the petition filing, Goody's liquidated most of its stores and ceased its rented formalwear relationship with Debtor leaving Debtor with excess inventory and significant debt.

11. More recently, Debtor expanded its operations to include menswear. This expansion required a larger space and significantly higher rent. With the influx of national retailers like Men's Wearhouse into the regional market, Debtor's menswear business was unable to be competitive and had to shut down. This combined with the Goody's bankruptcy marked the beginning of a sharp downturn in Debtor's business.

12. In addition to the precipitous decline in its market, Debtor also encountered the maturity of its line of credit Citizens Union Bank of Shelbyville, Inc. ("CUB"). The company has worked to reorganize outside of bankruptcy and closed its dry-cleaning retail locations.

13. On June 22, 2018, this Court entered its Order approving the sale of Debtor's Corporate Office to Louisville Sterling, LLC ("Louisville Sterling") for \$1.2 million. The Debtor is leasing a much smaller space from Louisville Sterling to utilize as its corporate office going forward.

14. Debtor has identified a purchaser for its remaining assets. The purchaser will operate the Mall Shop and Dry Cleaners as well as work out of the Corporate Office.

15. The Debtor's assets are comprised primarily of the Debtor's equipment, fixtures, inventory, tangible and intangible property. Debtor desires to conduct an asset sale ("Asset Sale") with the goal of keeping the business in operation.

16. The Debtor has selected a stalking horse bidder ("Purchaser") for the purchase of Debtor's assets for the purpose of establishing a minimum acceptable bid with which to begin bidding at the auction. A copy of the Asset Purchase Agreement (the "APA") tendered by the Purchaser is attached hereto as Exhibit "A."

17. The Purchaser is JPC Holdings, LLC, a Kentucky limited liability company with its principal place of business located in Louisville, Kentucky ("JPC"). JPC is owned by one of the five current shareholders of Debtor, James P. Corbett, and his spouse. The source of funds for the purchase will not come from Debtor.

18. Debtor believes that an auction ("Auction") utilizing the APA from JPC as the stalking horse bid for a sale ("Asset Sale") of Debtor is in the best interest of its estate and creditors. Debtor also believes the sale is in the best interest of the local community.

II. RELIEF REQUESTED

19. By this Motion, Debtor requests that the Court enter an Order (the "Procedures Order") approving the (i) bidding procedures ("Bidding Procedures") for the Auction, (ii) the setting of a hearing to authorize and approve the Asset Sale (the "Sale Hearing"), and (iii) the form of notice of the Auction and Sale Hearing (the "Notice of Auction and Sale Hearing"). The Debtor requests an expedited hearing on the Bidding Procedures Order (the "Bidding Procedures Hearing").

20. Debtor further requests that at the Sale Hearing, the court enter an order (the "Sale Order") authorizing Debtor to (i) sell substantially all of the Assets, free and clear of all liens, claims, and interests (other than certain specified assumed liabilities), on substantially the terms set forth in the APA; (ii) assume certain of the executory contracts and unexpired leases associated with Debtor's business (the "Assumed Contracts"); (iii) assign the Assumed Contracts to JPC or

the Successful Bidder; and (iv) allow JPC or the Successful Bidder to pay the amounts, if any, necessary to cure existing defaults or arrearages under the Assumed Contracts.

III. BASIS FOR RELIEF

A. Background

21. The APA contemplates a sale of substantially all of the Assets to JPC or its designee. Debtor believes the Asset Sale is the best way to preserve the value of Debtor's business and is in the best interest of Debtor's estate and creditors, including its employees, customers, vendors, and subcontractors. Accordingly, Debtor seeks approval of the Procedures Order and the subsequent approval of the APA at the Sale Hearing.

B. The Asset Purchase Agreement

22. Pursuant to the APA, Debtor will (i) sell substantially all of the Assets used in its operations, free and clear of all liens, claims, interests, and encumbrances and (ii) assume and assign to JPC the Assumed Contracts.

23. The APA was negotiated in good faith by Debtor and JPC, after meeting with Debtor's largest Prepetition Lender, following thorough consideration of Debtor's possible restructuring alternatives. The Debtor and JPC were represented by separate counsel during this negotiation. Debtor believes the consideration to be received from the Asset Sale as set forth in the APA, subject to the ability of interested parties to submit competing proposals for the Assets, will result in the highest and best value for Debtor's estates, creditors, and interest holders.

24. The executed APA generally provides the following:

- a) Purchase Price. On the Closing Date, JPC will (i) pay to Debtor \$324,313.48 upon closing of the sale and (ii) assume certain liabilities of Debtor.

- b) Assets. The proposed sale will include the Assets (as more specifically defined in the APA), which comprise substantially all of the value of Debtor.
- c) Sale Free and Clear. The Assets are to be transferred free and clear of all Encumbrances (as defined in the APA) other than the Assumed Liabilities pursuant to section 363(f) of the Bankruptcy Code.
- d) Assumption of Executory Contracts and Leases. Seller shall assume and assign to the Buyer all of Seller's rights under, title to, and interest in the Assumed Contracts. JPC may on any business day up to seven (7) calendar days prior to the Bid Deadline (as defined in the Bidding Procedures), provide written notice to Debtor of any Designated Contract JPC desires to be an Assumed Contract. JPC shall cure any past defaults under the Assumed Contracts to facilitate Debtor's assumption and assignment of same to JPC.
- e) Conditions to Closing. Conditions to consummation of the Asset Sale will include, among other things (i) entry of the Procedures Order, (ii) approval by this court of the Asset Sale; (iii) any and all consents, assignments, or approvals from any third party has been obtained.

This summary of the APA is intended to be for convenience only. To the extent the summary differs from the actual terms of the APA, the terms of the APA shall be controlling.

25. Other than JPC, no purchaser willing to execute a definitive purchase agreement has emerged during the course of the bankruptcy case. Debtor has determined the proposed structure for the Bidding Procedures is the one most likely to maximize the realizable value of the Assets for the benefit of Debtor's estate and creditors and other interested parties. In addition, the

APA requires Debtor to obtain the Procedures Order as a means of implementing the Asset Sale to JPC. Accordingly, Debtor seeks approval of the Bidding Procedures set forth below.

26. Under the Bidding Procedures, only a qualified bidder (“Qualified Bidder”) may submit bids for the Assets or otherwise participate in the Auction. A Qualified Bidder is a person who (i) has delivered to Debtor an executed confidentiality agreement, (ii) has delivered to Debtor a Qualified Bid (as defined below)(including an indication of the Assets sought to be acquired and a purchase price) that Debtor’s board of directors determines, in good faith, would result in a transaction more favorable to Debtor than the Asset Sale to JPC, and (iii) is reasonably likely (based on availability of financing, experience, and other considerations) to be able to consummate a transaction based on the Competing Proposal if it is selected as the Successful Bidder.

27. Any Qualified Bidder who desires to make a competing offer for all or some of the Assets must submit a written copy of its bid to the undersigned counsel, who shall then distribute copies of the bid(s) to (i) counsel for JPC and (ii) Debtor. A qualified competing bid (a “Qualified Bid”) is a competing proposal (a) the value of which must be greater than \$334,313.48 (that is, \$10,000.00 more than JPC’s bid); (b) that has substantially the same terms and conditions as the APA and proposes to purchase substantially all of the Assets; and (c) is accompanied by satisfactory evidence of committed financing or other ability to perform.

28. If Debtor receives a Qualified Bid, Debtor will conduct the Auction at the offices of Kaplan Johnson Abate & Bird, LLP, 710 W. Main Street, 4th Floor, Louisville, Kentucky 40202, on the date determined by the Court at the Bidding Procedure Hearing. Bidding at the Auction will commence with the highest Qualified Bid and continue in increments of not less than \$5,000.00 until each bidding party makes its final offer. At the conclusion of the bidding, Debtor will announce its determination as to the person or entity (the “Successful Bidder”) submitting highest

or best bid for the Assets (the “Successful Bid”). In making that determination, Debtor will consider, among other things, the total consideration to be received by its estate.

29. If Debtor does not receive any Qualified Bids, Debtor will report same to the Court at the Sale Hearing and proceed with the Asset Sale with JPC under the APA. If, however, Debtor receives one or more Qualified Bids and the Auction is conducted, Debtor will notify the Court of the results of the Auction and proceed with the sale of the Assets with the Successful Bidder.

30. Debtor will be deemed to have accepted a Qualified Bid only when the Court has approved such Bid at the Sale Hearing. Upon failure to consummate the Asset Sale because of a breach or failure on the part of the Successful Bidder, Debtor may select, in its business judgment, the next highest or otherwise best Qualified Bid to be the Successful Bid without further order of the Court. By making a Bid, a qualified Bidder shall be deemed to have agreed to keep its offer open until the consummation of the Asset Sale.

31. Debtor may: (a) determine, in its business judgment, which Qualified Bid is the highest or otherwise best offer; and (b) reject at any time before entry of an order of the Court approving a Qualified Bid, any Bid that, in Debtor’s sole discretion, is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of the APA, or (iii) contrary to the best interests of Debtor, its estate, and/or its creditors.

D. Bidding Procedures

32. Debtor is requesting certain Bidding Procedures for an orderly sale of the Debtor’s assets. Specifically, the Bidding Procedures requested are: (i) establish a date by which initial Qualified Bids must be submitted, (ii) establish the Sale Hearing procedures for an auction at which only Qualified Bidders who have previously submitted a Qualified Bid may bid, (iii) set the

minimum incremental bid amount at the Auction at \$5,000.00, (iv) require Debtor to promptly provide a copy of any Qualified Bid to JPC and to any Qualified Bidder who has submitted a Qualified Bid and (v) provide that notwithstanding the definition of “Qualified Bidder” the Prepetition Lender may not credit bid the secured debt of Debtor held by such lender.

33. Debtor believes the bidding procedures are fair and reasonable having increased the chances Debtor will receive the highest and best offer for the Assets, to the benefit of the Debtor, its estate, its creditors, and all other parties in interest.

34. Debtor thus requests that the Court authorize the Bidding Protections.

35. As set forth more fully below, Debtor believes that the Bidding Procedures are fair and reasonable and, will work to maximize the value realized by Debtor’s estate.

E. Notice of Sale Hearing

36. Debtor will serve a copy of this Motion upon Debtor’s secured creditors, the twenty-largest unsecured creditors, and all creditors having requested notice, and all governmental units that are creditors of the Debtor.

F. Assumption and Assignment of Contracts

37. As part of the Motion, Debtor also seeks authority to assume and assign the Assumed Contracts to JPC or the Successful Bidder.

38. With respect to the Assumed Contracts, Debtor will file with the Court and serve on each party to an Assumed Contract notice of Debtor’s intention to assume and assign that party’s contract to JPC or the Successful Bidder (the “Assignment Notice”). Debtor will mail the Assignment Notice and the Motion within ten days after the date upon which JPC designates an agreement or contract as an Assumed Contract, but in no event less than 7 days prior to the Sale Hearing. The Assignment Notice will set forth the monetary amount Debtor believes to be

necessary to cure any and all monetary defaults with respect to the Assumed Contract pursuant to section 365 of the Bankruptcy Code (the “Cure Amount”) and provide the contracting parties with an opportunity to object to (i) the assumption and assignment, (ii) the Cure Amount, or (iii) both. If no objection is filed with the Court within twenty-one (21) days subsequent to the Sale Hearing, the Cure Amount set forth in the Assignment Notice will be controlling notwithstanding anything to the contrary in any Assumed Contract or other document, and the non-debtor party to the Assumed Contract will be forever barred from asserting any other claim arising prior to the assignment against Debtor or JPC or the Successful Bidder as to such Assumed Contract. If an objection to the assumption and assignment is made, such objection will be heard at the Sale Hearing. If an objection by the non-debtor contracting party is made only with respect to the Cure Amount, a hearing to fix the Cure Amount will be set for the first hearing date available from the Court after the Sale Hearing and materially agreeable to the parties after the Sale Hearing; provided, however, that Debtor reserves its right to reject any executory contract until such time as the Cure Amount is fixed and accepted.

39. The effective date of any assumption and assignment of any Assumed Contract shall be the date on which the Asset Sale closes. Accordingly, any Cure Amounts to be paid under any Assumed Contract will also be paid upon the closing of the Asset Sale or as soon thereafter as the Cure Amount is fixed and accepted by JPC.

IV. APPLICABLE AUTHORITY

A. The Asset Sale is Within Debtor’s Sound Business Judgment.

40. Bankruptcy Code section 363(b)(1) provides, in relevant part: “The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate...” Bankruptcy Code section 105(a) provides in relevant part: “The court may issue

any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”

41. A sale of a debtor’s assets should be authorized pursuant to Bankruptcy Code section 363 if a sound business purpose exists for doing so. See, *Comm. of Equity Sec. Holders. V Lionel Corp.* (In re Lionel Corp.), 722 F.2d 1063 (2nd Cir. 1983); *Myers v. Martin* (In re Martin), 91 F.3d 389 (3rd Cir. 1996).

42. Courts have applied four factors in determining whether a sound business justification exists: (i) whether a sound business reason exists for the proposed transaction; (ii) whether fair and reasonable consideration is provided; (iii) whether the transaction has been proposed and negotiated in good faith; and (iv) adequate and reasonable notice is provided. See, *Comm. of Equity Sec. Holders v. Lionel Corp.* (In re Lionel Corp.), 722 F.2d 1063, 1071 (2nd Cir. 1983) (setting forth the “sound business purpose” test); *In re Abbotts Dairies of Pa. Inc.*, 788 F.2d 143, 145-147 (3rd Cir. 1986) (adding “good faith” requirement to *Lionel*’s test).

43. Debtor believes the Asset Sale is the best way to preserve the enterprise value of the Assets and maximize the value of Debtor’s estate for the benefit of Debtor’s creditors and other parties in interest.

i.) The Sale of the Assets Satisfies the Sounds Business Purpose Test.

44. There is more than adequate business justification to sell the Assets to JPC or the Successful Bidder. As set forth above, Debtor believes the proposed Asset Sale in accordance with the procedures set forth in the Bidding Procedures maximizes recovery to the estate. See, *In re Tempo Technology Corp.*, 202 B.R. 363 (D. Del. 1996), *aff’d*, 141 F.3d 1155 (3rd Cir. 1998) (sale of substantially all of a chapter 11 debtor’s assets pursuant to a section 363(b) motion where the debtor “faced a severe cash shortfall and had no readily available source of investment capital or

loans,” and would shortly have run out of cash absent the debtor-in-possession financing provided by the prospective purchaser); See Also, *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 177 (D.Del. 1991) (affirming bankruptcy court’s approval of sale of substantially all assets where debtor would have been “in liquidation mode if required to delay a sale until after filing a disclosure statement and obtaining approval for a reorganization plan”); *Titusville Country Club v. Pennbank* (In re Titusville Country Club), 128 B.R. 396 (Bankr. W.D. Pa. 1991) (bankruptcy court granted expedited hearing on 363(b) motion based on “deterioration” of debtor’s assets); *Coastal Indus., Inc. v. IRS* (In re Coastal Indus., Inc.), 63 B.R. 361, 366-69 (Bankr. N.D. Ohio 1986) (approving expedited 363(b) sale five weeks postpetition to buyer with “the name recognition required by [the debtor’s] customers” where debtor was suffering operating losses and lacked financing to continue its operations).

45. Based upon an analysis of Debtor’s ongoing and future business prospects, Debtor’s management have concluded that, the best way to maximize the value of Debtor’s estate is to sell immediately its assets as a going business concern, thereby preserving the substantial goodwill of the business.

46. JPC has offered substantial value for the assets and is willing to close within sixty (60) days, and thereby enable Debtor to reduce the risk that the Debtor’s value will further deteriorate. Moreover, by selling the Assets now, Debtor will relieve itself of certain ongoing costs and expenses, thereby minimizing administrative expenses and maximizing creditor recoveries. Accordingly, well-articulated business reasons exist for approving the Asset Sale, such that the “business purpose” test under Bankruptcy Code section 363 is met. See, *Lionel*, 722 F.2d at 1071 (“[M]ost important [] perhaps, [is] whether the asset is increasing or decreasing in value.”).

ii) The Consideration Offered by JPC is Fair and Reasonable.

47. Debtor submits that a sale of the Assets pursuant to the APA will provide fair and reasonable consideration to Debtor's estate. The APA requires JPC to pay a minimum of \$324,313.48 for the Assets as well as to assume certain liabilities. Debtor respectfully submits that such consideration in exchange for the Assets is both fair and reasonable.

48. Moreover, to dispel any doubt, the Asset Sale is subject to the solicitation of competing bids, thereby ensuring Debtor will receive the highest and best value for the Assets. Consequently, the fairness and reasonableness of the consideration to be received by Debtor will ultimately be demonstrated by a "market check" and auction process – the best means for establishing whether a fair and reasonable price is being paid. Accordingly, the consideration to be paid for the Assets will be both fair and reasonable and should be deemed to have satisfied the strictures of Bankruptcy Code section 363(n).

iii) The APA was Negotiated in Good Faith.

49. The APA is the product of negotiations between JPC and Debtor, represented by separate counsel.

50. Moreover, the Bidding Procedures ensure a prospective purchaser will not be able to exert any undue influence over Debtor. Under the circumstances, this Court should therefore find that: (i) the sale of the Assets is the result of good faith negotiations, and (ii) JPC or the Successful Bidder is entitled to all of the protections of Bankruptcy Code section 363(m) & (n).

iv) Adequate Notice of the Asset Sale is Being Provided.

51. The final element for approval of a sale under Bankruptcy Code section 363 is the requirement that interested parties receive adequate notice. Debtor intends to serve this Motion or notice of this Motion on all secured creditors, all governmental units that are creditors, the top 20

largest unsecured creditors, all creditors having requested notice, and any other interested party not otherwise included in the bankruptcy case which has expressed an interest in purchasing the Debtor's Assets.

B. The Sale Satisfies the Requirements of Bankruptcy Code Section 363(f) for a Sale Free and clear of Liens, Encumbrances, and Interests.

52. Under Bankruptcy Code section 363(f), a debtor in possession may sell property of the estate free and clear of any lien or interest of an entity in such property if, among other things:

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

53. Because Bankruptcy Code section 363(f) is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice as justification to approve the sale of the Assets free and clear of liens and other interests (collectively, the "Interests"). *See* 11 U.S.C. § 363(f); *Mich. Employment Sec. Comm'n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (section 363(f) written in disjunctive; court may approve sale "free and clear" provided at least one of the subsections is met); *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343 (E.D. Pa. 1988) (same).

54. Debtor believes that the only entities holding a lien on the Assets are: Citizens Union Bank of Shelbyville, Inc. ("CUB"). The APA would provide for partial payment to the secured lender only upon consent of the secured lender, thereby satisfying Bankruptcy Code section 363(f)(2). Moreover, to the extent there exist other possible holders of Interests, Debtor

submits that one of the subsections of Bankruptcy Code section 363(f) applies, and that any such Interest will be adequately protected by having it attach to the net proceeds of the sale, subject to any claims and defenses Debtor or Successful Bidder may possess with respect thereto.

55. Accordingly, the sale should be approved under Bankruptcy Code section 363(f).

C. The Assumption and Assignment of Executory Contracts and Unexpired Leases Should Be Authorized.

56. Section 365(f)(2) of the Bankruptcy Code provides, in pertinent part, that:

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

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

11 U.S.C. § 365(f)(2).

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

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

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default other than a default that is a breach of a provision relating to the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption, except that if such default arises from a failure to

operate in accordance with a nonresidential real property lease, then such default shall be cured by performance at and after the time of assumption in accordance with such lease, and pecuniary losses resulting from such default shall be compensated in accordance with the provisions of this paragraph;

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

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

11 U.S.C. § 365(b)(1).

58. The meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case, and should be given practical, pragmatic construction. *EBG Midtown S. Corp. v. McLaren/Hart Envtl. Eng’g. Corp.* (In re Sanshoe Worldwide Corp.), 139 B.R. 585, 593 (S.D.N.Y. 1992); See *In re Prime Motor Inns, Inc.*, 166 B.R. 993, 997 (Bankr. S.D. Fla. 1994); *Carlisle Homes, Inc. v. Azzari* (In re Carlisle Homes, Inc.), 103 B.R. 524, 538 (Bankr. D.N.J. 1988).

59. Among other things, adequate assurance may be provided by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. See *In re Bygaph, Inc.*, 56 B.R. 596, 605–06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when prospective assignee of lease from debtor has financial resources and has expressed willingness to devote sufficient funding to business in order to give it strong likelihood of succeeding).

60. As set forth in the APA, to the extent any defaults exist under any executory contract or unexpired lease that is assumed and assigned, JPC or the Successful Bidder will cure any such default in connection with the assumption and assignment.

61. Moreover, Debtor will adduce facts at the Sale Hearing to show the financial wherewithal of either JPC or the Successful Bidder, experience in the industry, and willingness and ability to perform under the contracts to be assumed and assigned to it.

62. The Sale Hearing will therefore provide the Court and other interested parties the opportunity to evaluate and, if necessary, challenge the ability of JPC or the Successful Bidder to provide adequate assurance of future performance under the contracts to be assumed, as required under Bankruptcy Code section 365(b)(1)(C). The Court should therefore authorize Estate Representative to assume and assign contracts as set forth herein.

V. CONCLUSION

WHEREFORE, Debtor respectfully requests that this Court enter an order approving (a) the Bidding Procedures; and (b) the form of the Notice of Auction and Sale Hearing. In addition, Debtor respectfully requests that this Court, at the Sale Hearing, enter an order (a) approving the APA; (b) authorizing Debtor to (i) sell the Assets free and clear of all Interests; and (ii) assume and assign the Assumed Contracts; and (c) granting such other and further relief as is just and proper.

A proposed Order is tendered herewith.

Respectfully submitted,

/s/Charity S. Bird
CHARITY S. BIRD
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CERTIFICATE

It is hereby certified that on October 25, 2018 a true and correct copy of the foregoing was (a) mailed electronically through the U.S. Bankruptcy Court's ECF system at the electronic addresses as set forth in the ECF system to the U.S. Trustee and all other persons receiving electronic notifications in this case, and (b) mailed, first-class, postage prepaid, to those persons, if any, identified in the Court's Notice of Electronic Filing who do not receive electronic notice but are entitled to be served.

/s/ Charity S. Bird

CHARITY S. BIRD

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ASSET PURCHASE AGREEMENT
BETWEEN
JPC HOLDINGS, LLC AND SAM MEYERS, INC.

This Purchase Agreement ("Agreement") is made and entered into this 23 day of October, 2018, by and between Sam Meyers, Inc., a Kentucky corporation having principle office located 3400 Bashford Avenue Court Louisville, KY 40218 (hereinafter "Seller") and JPC Holdings, LLC, a Kentucky limited liability company having principal office located at 3400 Bashford Avenue Court Louisville KY 40218 (hereinafter "Buyer").

WITNESSETH:

WHEREAS, Seller has agreed to sell and assign to Buyer, and Buyer desires to purchase from Seller, all of the assets of Seller (unless specifically excepted herein) associated with Seller's tuxedo rental and drying cleaning businesses located at 3400 Bashford Avenue Court Louisville KY 40218 ("Business") on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the purchase price, and the mutual covenants and agreements of the parties as set forth herein, and subject to the terms and conditions thereof, Seller and Buyer hereby covenant and agree as follows:

1. The Assets. Seller hereby agrees to sell, grant, assign, transfer, convey and deliver to Buyer as of the date of closing as set forth herein, all of Seller's right, title and interest in and to the following described assets of the Business, free and clear of any secured interest, mortgage, lien, charge, pledge, option, restriction on transfer, claim, or other encumbrance whatsoever:
 - A. All of the equipment, signage, computers, software, rolling stock, work in process, finished products, furniture, fixtures, all telephone, fax and telephone numbers and email addresses, URL and built-out or developed websites, or other asset used by, for and in connection with the Business;
 - B. Any customer and client lists or book of business and existing phone numbers;
 - C. Unless specifically excluded, all unexpired leases of real and personal property and executory contracts;
 - D. Name of Business "Sam Meyers" and any other registered and unregistered DBA's regularly used in the Business, whether such registration is with the Kentucky Secretary of State or otherwise;
 - E. Any and all of the cash accounts receivable and all deposits from third parties and advance payments for services not yet performed,
 - F. All of each Business operations, employee and financial records, books, ledgers, files, correspondence, documents, lists, studies and reports, including, without limitation, financial and other records required by any third party to be maintained by Seller under sales, advertising, advertising collateral, promotional and marketing information, plans and materials,

customer (including prospective customers) lists and data, and equipment, repair, maintenance, service, personnel, payroll, employee benefit, quality control and insurance records, whether written, electronically stored or otherwise recorded, provided, however, Seller shall have the right to retain copies of the foregoing in order to fulfill any compliance requirements related to the foregoing; and

- G. Any other item or facet of the Business, not otherwise excluded by Section 2 hereunder.

2. Retained Assets and Accounts Payable. The following assets and accounts payable of the Seller shall be retained by the Seller and shall not be sold or assigned to Buyer:

- A. All accounts payable and all claims against, and liabilities of, the Seller; and
- B. Any known or unknown liabilities of Seller, not otherwise assumed in Section 3 hereof

3. Assumed Liabilities. Buyer agrees to assume and pay the following liabilities of Seller:

- A. Seller shall pay any and all sales or use taxes on the equipment or personal property sold herein, where such taxes arise on the date of closing due solely to actions on or after the date of closing, for which taxes the Buyer shall reimburse the Seller; and
- B. Any amounts due to cure an unexpired lease or executory contract assigned to the Buyer, as well as any amount due following the assumption of the contract or lease by the Seller and assignment of the same to the Buyer.

4. No Assumption of Liability. Except as may be otherwise specifically provided for in Section 3 herein, Buyer shall not assume or be responsible for any liabilities or obligations of Seller or the operation of Seller's business prior to the date of closing. Specifically excluded liabilities in this purchase of the Business include that Buyer assumes no liability with respect to the following:

- A. Any known or unknown liability arising under any franchise agreement, lease, sublease, or contract, which is not otherwise specifically identified herein and assumed by Buyer in Section 3 hereof.
- B. Any wages, payroll, payroll debts, unused vacation compensation, or any workers' compensation claims or worker's compensation insurance liability of any sort, or any liabilities to current, former or retired employees of Seller as of the date of closing.
- C. All liabilities and obligations of Seller for unemployment insurance, or to any state unemployment fund, income taxes and all accrued property, sales, use, local and payroll taxes, whether local, state or federal, incurred prior to date of closing.

- D. Any, lien or other encumbrance placed on the Business, or other asset or operation of the Seller, prior to date of closing.
 - E. All liabilities arising under any warranty obligations or liabilities, or liabilities for unpaid charges for services rendered by third parties prior to date of closing.
 - F. Any known or unknown liabilities to any federal, state, or local government or regulatory office or agency relating to this sale.
 - G. Any other known or unknown debts, obligations, liabilities, expenses, taxes, contracts, employee obligations of any kind, or commitments of the Seller, whether accrued or unaccrued, absolute or contingent, mature or unmature or otherwise, arising under any cause, matter or any way related to Seller's operations of the Business, which is not otherwise specifically identified herein and assumed by Buyer in Section 3 hereof.
5. Purchase Price. In addition to other consideration in the form of the Buyer's assumption of the Assumed Liabilities, the total purchase price for the assets shall be \$324,313.48 (the "Purchase Price"). The Purchase Price shall be paid as follows:
- A. \$324,313.48 in immediately available funds upon transfer of asset confirmation by the bankruptcy court for the Western District of Kentucky.
6. Allocation of Purchase Price. Each party hereto agrees (a) that the Purchase Price for the acquired assets will be allocated for all federal and state tax purposes (including but not limited to, income, excise, sales, use, personal property and transfer taxes, and otherwise) among the acquired assets as will be agreed in a separate writing.
7. Date of Closing. The closing and payment under Section 5.B. shall take place within five (5) days of receipt of bankruptcy court confirmation. Seller and Buyer shall mutually agree.
8. Representations and Warranties of Seller. The following representations and warranties of Seller shall survive the closing:
- A. Seller shall provide to Buyer all financial statements, information, records or data pertaining to the Seller and the Store requested by Buyer upon the execution of this Agreement, and said information shall be complete and accurate.
 - B. Seller will provide all franchise agreements, real property leases or licenses, and equipment or personal property leases to Buyer, and will assist the Buyer in obtaining all requested or required consents, assumptions, or changes to said agreements, licenses, leases or subleases.
 - C. Seller is the owner of good, marketable and insurable fee title to the assets being purchased by Buyer, free and clear of all liens, restrictions on transfer, and encumbrances or other claims, all of which shall be paid and released prior to, or at the time of, closing.
 - D. The execution of this Agreement and the sale of the assets to the Buyer will not violate any judgment or order of any court affecting Seller, nor

- constitute a default under any contract, agreement or obligation to which Seller is bound.
- E. All licenses and permits required to operate the business are current and shall remain in force before and after the closing. Sellers shall cooperate in transferring any such items to Buyer.
9. Indemnification. From and after the date and time of closing, Seller shall indemnify, defend and hold harmless Buyer, its successors and assigns, against, and in respect of, any and all damages, claims, losses, deficiencies, liabilities, including attorneys' fees, incurred by Buyer or any of its successors and assigns which may arise out of:
- A. Any inaccuracy or breach of the Representations and Warranties of Seller as set forth in this Agreement, or for any breach of the terms of this Agreement, including the losses or liability imposed for a liability of Seller or the Store not specifically assumed by Buyer herein;
 - B. Any liability to employees or third parties for personal injury or death or damage to the assets occurring or arising out of or in connection with an event that occurred prior to closing;
 - C. Any and all claims made by former or current employees of Seller arising from the employment or employment policies or practices of Seller prior to closing; and
 - D. Any claim by a landlord, taxing authority, governmental agency or creditor for any act or omission or claim of liability arising prior to closing;
 - E. any and all liabilities, debts and obligations of the Seller of any nature whatsoever, whether arising before or after the closing date, other than the Section 3 assumed liabilities of this Agreement;
 - F. any claim or cause of action of any third party to the extent arising out of any action, inaction, event, condition, liability or obligation of the Seller, other than the Section 3 assumed liabilities of this Agreement;
 - G. any claim or cause of action of any third party arising from or in connection with any bodily injury, death, disability, personal injury, property damage or other damage of or to such third party relating to or arising from the operation of the business of the Seller prior to the closing contemplated in this Agreement; and
 - H. any liability for unpaid Federal, state or local taxes of the Seller.
10. Conditions to Performance. Buyer's obligation to pay the Purchase Price and otherwise consummate the transaction contemplated herein shall be subject to the satisfaction of the following conditions:
- A. All representations and warranties of Seller contained in this Agreement shall have been true when made and shall be true in all respects as of the date of closing, and Seller shall have performed and complied in all material respects with all covenants, agreements and conditions required by this Agreement.
 - B. Any and all consents, assignments or approvals necessary from any court, lender or vendors, has been successfully obtained to the satisfaction of the Buyer, and all licenses and permits necessary to operate the business have been transferred or assigned to Buyer.

- C. **Consents; Bankruptcy Court Approval.** Buyer shall have received from any and all Persons, or any public or governmental authorities, bodies or agencies or judicial authority having jurisdiction over the transactions contemplated by this Agreement and the other Transaction Documents, or any part hereof, such consents, authorizations, and approvals as are necessary for the consummation thereof, and all notices required to be given to government authorities shall have been given and all applicable waiting periods shall have expired. Without limiting the generality of the foregoing, the Bankruptcy Court shall have entered (A) the Bid Procedures Order (as hereinafter defined) no later than October 31, 2018 and (B) the Approval Order (as hereinafter defined) no later than November 30, 2018 and each of the Bid Procedures Order and the Approval Order shall be in full force and effect, and shall not be appealed, stayed, modified, vacated or reversed, and any applicable appeal(s) period(s) shall have expired.

The term “***Bid Procedures Order***” means an order, in form and substance satisfactory to Purchaser, approving certain bid protections and procedures for the sale of any material portion of the Transferred Assets and/or the assumption by Purchaser of certain liabilities under the Assumption Agreement, including: an initial overbid amount of not less than \$10,000.00; and (iv) a deadline for the submission of competitive bids.

The term “***Approval Order***” means an order, in form and substance satisfactory to Purchaser, approving the consummation by Seller of the transactions set forth herein, including the sale to Purchaser of the Transferred Assets free and clear of all of the Liens, except for any Permitted Liens, the assumption of any liabilities effected by the Assumption Agreement, the execution and delivery of this Agreement and the Transaction Documents, a finding that Purchaser is a good faith purchaser under Section 363 of the Bankruptcy Code and all other actions by Seller that are reasonable or necessary to effectuate the transactions contemplated hereby.

11. **Seller's Closing Documents.** At the closing, Seller shall deliver, in addition to the assets being purchased, the following documents duly executed and, where appropriate, acknowledged by Seller and in a proper form for recording if necessary:
- A. a bill of sale and such other assignments, certificates and other appropriate documents of transfer, including assignments related to the real property leases and the contracts, transferring the acquired assets to the Buyer in form and substance reasonably satisfactory to the Buyer and the Seller;
 - B. a copy of the articles of incorporation of the Seller, and the by-laws of each Company, certified by an officer of such Company;
 - C. a copy of a certificate of good standing or other similar evidence with respect to Seller, as of a recent date; and

- D. an affidavit from Seller that any and all liens against the assets to be purchased have been or will be released other than as identified in this Agreement'
- E. any such other documents as the Buyer may reasonably request and that are reasonably necessary to effectuate the transaction contemplated under this Agreement.

12. Equitable Dealings between the Parties

A. Modification of Covenant. If a final judgment of a court or tribunal of competent jurisdiction determines that any term or provision contained in this Section is invalid or unenforceable, then the parties agree that the court or tribunal will have the power to reduce the scope, duration or geographic area of the term or provision, to delete specific words or phrases or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision. This Section will be enforceable as so modified after the expiration of the time within which the judgment may be appealed. This Section is reasonable and necessary to protect and preserve Buyer's legitimate business interests and the value of the Business and Acquired Assets and to prevent any unfair advantage conferred on Seller.

13. Customer and Other Business Relationships. After the Closing, Seller will cooperate with Buyer in its efforts to continue and maintain for the benefit of Buyer those business relationships of Seller existing prior to the Closing and relating to the Business to be operated by Buyer after the Closing, including personal introduction and fostering of relationships with lessors, retailers, employees, regulatory authorities, licensors, suppliers and others.

14. Books and Records. During the period from the date of this agreement to the date of the closing of this sale, the Buyer and its representatives shall be permitted access to the business premises of the Seller and access to all books, records, files, and documents relating to the conduct of the business of the Seller. In addition, the Buyer shall be permitted to contact and discuss with the Seller's officers, employees, attorneys, accountants, suppliers, and other persons who are furnishing, or have furnished, services to the Seller in connection with the business of the Seller all aspects of the conduct of such business, and the Seller shall furnish authorization, in such form as may be requested by one or more of such persons, for any such person to engage in such discussion. The Buyer shall not disclose any information obtained by the examination or discussion provided in this paragraph to any person except agents and employees of the Buyer and other persons furnishing advice to the Buyer in connection with the purchase under this agreement. The inspection and discussion under the provisions of this paragraph, or the opportunity for such inspection and discussion, shall not be deemed a waiver or modification of any representation or warranty of the Seller, except as otherwise specifically provided in this agreement.

15. Remedies. Upon a breach by Buyer of this Agreement, which breach is unrelated to any breach by the Seller, and Buyer fails to purchase the assets of Seller as

provided herein, Seller shall be entitled to all rights and remedies as permitted at law or equity, including specific performance.

16. Damages. In the event of litigation involving any term, covenant, warranty, representation or provision of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney fees and costs from the non-prevailing party.
17. Commissions. No broker's fees of any type shall be paid as a result of this Closing.
18. Termination. This Agreement may be terminated by any party hereto by delivery of specific and reasonably detailed written notice setting forth the basis for the termination, including, as applicable, details of the conditions which have not been satisfied, to all other parties at any time prior to the applicable date set forth below as follows:
 - A. by the mutual written consent of the parties hereto at any time; or
 - B. by the Buyer on or before closing if the closing has not occurred on or before December 31, 2018.
19. Choice of law. This Agreement and any disputes arising there under shall be construed in accordance with the laws of the Commonwealth of Kentucky and the parties hereto consent to the jurisdiction and venue of the United States Bankruptcy Court for the Western District of Kentucky.
20. Binding Effect. This Agreement shall be binding upon the parties hereto and their respective legal representatives, heirs, successors and assigns.
21. Risk of Loss. Seller shall bear the risk of loss or damage to the assets prior to closing and thereafter Buyer shall bear such risks.
22. Entire Agreement. This Agreement, together with the exhibits hereto, constitutes the entire agreement of the parties regarding the subject matter of this Agreement and all prior or contemporaneous agreements, understandings, representations and statements, whether oral or written, are hereby merged herein.
23. Amendment. This Agreement may not be modified, amended, altered or supplemented except by written agreement between the parties.
24. No Waiver. The failure of any party hereto to enforce at any time any of the provisions of this Agreement shall not be construed as a waiver of any such provision, or the right of any party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach.
25. Counterparts. This Agreement may be executed in any number of counterparts, and any party hereto may execute any such counterpart, each of which, when executed and delivered will be deemed to be an original, and all of which counterparts taken together shall be deemed to be one and the same instrument.
26. Acknowledgment. Each party to this Agreement acknowledges it had the opportunity to seek advice or counsel from accountants or attorneys with regard to

the transaction contemplated in this Agreement and the consequences thereof, and each party shall bear their own respective expenses in connection with this transaction.

27. **Severability.** Every term or provision of this Agreement is intended to be severable. If any term or provision of this Agreement is illegal or invalid for any reason whatsoever, the illegality or invalidity shall not affect the remainder of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their duly authorized officer, member, or representative as of the date noted below.

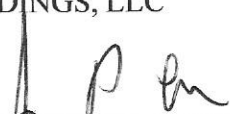
SELLER:
SAM MEYERS, INC.

DATE: 10-23-18

BY: 
James Patrick Corbett
TITLE: PRESIDENT

PURCHASER:
JPC HOLDINGS, LLC

DATE: 10-23-18

BY: 
James Patrick Corbett
TITLE: MEMBER

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

IN RE:)	
)	
SAM MEYERS, INC.)	CHAPTER 11
)	
Debtor.)	CASE NO. 18-31559-acS
_____)	

**ORDER (A) APPROVING BIDDING PROCEDURES
IN CONNECTION WITH ASSET SALE AND
(B) APPROVING FORM AND MANNER
OF NOTICE OF AUCTION AND SALE HEARING**

This matter having come before the Court on the motion filed by Sam Meyers, Inc., (the “**Sale Motion**”) of the above-captioned debtor (the “**Debtor**”), for, *inter alia*, entry of an order (the “**Procedures Order**”): (a) approving the form and manner of notice of the Auction and the hearing on the sale of the Assets (the “**Asset Sale**”) to a purchaser to be determined through the Asset Sale process (“**Buyer**”) at the Auction (as defined in the Sale Motion); and (b) approving the proposed bidding procedures (the “**Bidding Procedures**”) for the Auction; and it appearing notice of the Sale Motion was good and sufficient under the particular circumstances, and that no other or further notice need be given; and the Court having considered the arguments of counsel at the hearing held on the Sale Motion (the “**Hearing**”); and it appearing that the relief requested in the Sale Motion is in the best interests of Debtor, its estate, its creditors and other parties in interest; and upon the record of the Hearing; and after due deliberation thereon; and good cause appearing therefor, it is hereby

FOUND AND DETERMINED THAT:

- A. The Court has jurisdiction over the Sale Motion pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (N). Venue

of this case and the Sale Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

- B. The statutory predicates for the relief sought in the Sale Motion are sections 105(a); 363(b), (f), (m), and (n); and 365 of the United States Bankruptcy Code, 11 U.S.C. §§ 101–1532, as amended (the “**Bankruptcy Code**”), and Fed. R. Bankr. P. 2002, 6004, 6006, and 9014.
- C. Debtor has articulated good and sufficient reasons for approving: (i) the form and manner of notice of the Sale Motion, the Auction and Sale Hearing and the assumption and assignment of the Assumed Contracts; and (ii) the Bidding Procedures.
- D. The Bidding Procedures are reasonable and appropriate and represent the best methods for maximizing the return for the Assets.

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

1. The Sale Hearing shall be held on October __, 2018, at _____ (Eastern time) at 601 West Broadway, Fifth Floor, Courtroom #1, Louisville, Kentucky 40202, at which time the Court shall consider the Sale Motion and confirm the results of the Auction (as defined in the Sale Motion), if any. Objections to the Sale Motion shall be filed and served no later than one (1) day prior to the Sale Hearing (the “**Objection Deadline**”), provided however that a party in interest may raise an oral objection at the Sale Hearing in the event the Auction concludes on the day of the Objection Deadline and disclosed the substance of such objection to Debtor.
2. The failure of any objecting person or entity to file its objection to the Sale Motion, the Asset Sale, or Debtor’s consummation and performance of the Asset Sale on or before the Objection Deadline shall be a bar to the assertion, at the Sale Hearing or thereafter, of

any objection to the Sale Motion, the Asset Sale, or Debtor's consummation and performance of the Asset Sale, if authorized by the Court.

3. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court or on the Court's calendar on the date scheduled for the Sale Hearing or any adjourned date.

NOTICE

4. Notice of: (a) the Sale Motion; (b) the Auction and Sale Hearing; and (c) the proposed assumption and assignment of the Assumed Contracts to the Successful Bidder, shall be good and sufficient, and no other or further notice shall be required, if given as follows:

- a. Notice of Sale Hearing. As soon as practicable after the Court's approval of the Bidding Procedures, Debtor (or its agents) shall serve the Sale Motion and all exhibits thereto, including this Procedures Order, on (i) all secured creditors, all governmental units that are creditors, the top 20 largest unsecured creditors, all creditors having requested notice; and (ii) all entities known to have expressed a bonafide interest in a transaction with respect to the Assets during the past four months.
- b. Assumption Notice. No later than fourteen days subsequent to the Sale Hearing, Debtor shall serve on all non-Debtor parties to the Assumed Contracts, by electronic mail or first class mail, postage prepaid, a notice of (i) Debtor's intent to assume and assign that party's Assumed Contract; and (ii) the cure amount (the "Cure") necessary to assume the Assumed Contract. Not later than twenty-one (21) days subsequent to the Sale Hearing, any objection to the assumption and assignment of the Assumed Contract or Cure must be filed and served so as to be

received by counsel to Debtor, counsel to the Successful Bidder, and the United States Trustee. The objection must state with specificity what Cure is required (with appropriate documentation in support thereof). If no objection is timely received, the Assumed Contract shall be deemed assumed and assigned to the Successful Bidder on the closing date of the Asset Sale and the Cure set forth in Debtor's notice of assumption shall be controlling, notwithstanding anything to the contrary in any Assumed Contract or any other document, and the non-Debtor party to the Assumed Contract shall be forever barred from asserting any other claims against Debtor, the Successful Bidder, or the property of either of them, as to the Cure with respect to such Assumed Contract.

BIDDING PROCEDURES

5. The Bidding Procedures, as more fully described in the Sale Motion, are hereby approved and shall govern all proceedings relating to the Asset Sale and any subsequent bids for the Assets in these cases.
6. If Debtor timely receives a Qualified Bid (as defined below), Debtor will conduct the Auction for the Assets. Such Auction shall be noticed by the Debtor to Qualified Bidders and the Purchaser and take place at the offices of Kaplan Johnson Abate & Bird, LLP, 710 West Main Street, Fourth Floor, Louisville KY 40202. Creditors and parties-in-interest may attend.
7. Only Qualified Bids submitted by Qualified Bidders within 30 days of the entry of this Order (the "**Bid Deadline**") will be considered in connection with the Auction.
8. For purposes of the Auction, a Qualified Bidder is a person who (i) has delivered to Debtor an executed confidentiality agreement in form and substance substantially the

same as the one executed by JPC Holdings, LLC (“JPC”) and Debtor, (ii) has delivered to Debtor a Qualified Bid (as defined below) (including an indication of the Assets sought to be acquired and a purchase price) that Debtor’s board of directors determines, in good faith, would result in a transaction more favorable to Debtor than the Asset Sale to PM, and (iii) is reasonably likely (based on availability of financing, experience, and other considerations) to be able to consummate a transaction based on the Competing Proposal if it is selected as the Successful Bidder.

9. A “Qualified Bid” is a competing proposal (a) the value of which must be equal to or greater than \$334,313.48; (b) that has substantially the same terms and conditions as the APA and proposes to purchase substantially all of the Assets; and (c) is accompanied by satisfactory evidence of committed financing or other ability to perform.
10. Debtor may: (a) determine, in its business judgment, which Qualified Bid is the highest or otherwise best offer; and (b) reject at any time before entry of an order of the Court approving a Qualified Bid, any bid that, in Debtor’s sole discretion, is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code or the Bidding Procedures, or (iii) contrary to the best interests of Debtor, its estate, and/or its creditors.

CHARITY S. BIRD
JAMES E. MCGHEE III
Kaplan Johnson Abate & Bird, LLP
710 West Main Street
Fourth Floor
Louisville KY 40202
Telephone: 502-540-8285
Facsimile: 502-540-8282

UNITED STATES BANKRUPTCY COURT

Western District of Kentucky

IN RE:

Sam Meyers, Inc.

Debtor(s)

Case No.:18-31559-acsc

Chapter: 11

Judge: Alan C. Stout

NOTICE

TO THE DEBTOR(S) AND ALL PARTIES IN INTEREST:

Please be advised that the following matter has been Entered by the Court on this date:

Motion to Sell Substantially All of the Debtor's Assets Free and Clear of Liens Fee Amount \$181. Filed by Debtor Sam Meyers, Inc.. Objections due by 11/15/2018. Any objection must be typewritten and in proper pleading form as required by Federal and Local Rules. (Attachments: # 1 Exhibit A – Asset Purchase Agreement # 2 Proposed Order) (Bird, Charity)

Dated: 10/26/18

By:

Deputy Clerk

FOR THE COURT

Elizabeth H. Parks

Clerk, U.S. Bankruptcy Court