

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

SHORT BARK INDUSTRIES, INC., et al.,¹

Debtors.

Chapter 11

Case No. 17-11502 (KG)

Jointly Administered

Proposed Hearing Date: July 31, 2017 at 10:00 a.m. (ET)

Proposed Objection Deadline: July 27, 2017 at 4:00 p.m. (ET)

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

Short Bark Industries, Inc. (“SBI”) and EXO SBI, LLC (“EXO,” and together with SBI, the “**Debtors**”), hereby submit this motion (this “**Motion**”) for entry of orders (I)(A) approving bidding procedures and related auction and (B) scheduling a sale hearing and approving notice thereof (the “**Bidding Procedures Order**”); (II) authorizing the sale of substantially all of the Debtors’ assets free and clear of all liens, claims, encumbrances, and other interests; (III) authorizing the assumption and assignment of certain executory contracts and unexpired leases and establishing procedures to determine cure amounts and establishing deadlines for objections with respect thereto; and (IV) granting related relief (the “**Approval Order**”). In support of this Motion, the Debtors respectfully represent as follows:

Jurisdiction and Venue

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court

¹ The Debtors in these jointly administered cases are Short Bark Industries, Inc. (Tax ID: 66-0655657) and EXO SBI, LLC (Tax ID: 46-5210695)).

for the District of Delaware dated as of February 29, 2012. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b), and the Debtors confirm their consent pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”) to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. The statutory predicates for the relief requested herein are sections 105(a), 363, 364, 365, 503, 507 and 554 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”) and Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Local Rule 6004-1.

Background

2. On July 10, 2017 (the “**Petition Date**”), each of the Debtors filed a voluntary petition with the Court for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these chapter 11 cases. A Committee of Unsecured Creditors (the “**Committee**”) was appointed on July 18, 2018 [D.I. 41].

3. Concurrently herewith, the Debtors are filing their *Motion to Shorten Notice with Respect to Debtors’ Motion for Orders (I)(A) Approving Bidding Procedures and Auction and (B) Scheduling Sale Hearing and Approving Notice Thereof; (II) Authorizing the Sale of Substantially All of the Debtors’ Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests; (III) Authorizing the Assumption and Assignment of Certain*

Executory Contracts; and (IV) Granting Related Relief (the “**Motion to Shorten Notice**”) seeking to shorten the notice period for a hearing on this Motion.

Facts Specific to the Relief Requested

4. SBI provides high quality body armor, apparel, and accessories for military, government, and police force use. SBI is the leading company that offers concealed, patented, customized body protection. SBI’s primary customer is the United States Government (the “**Government**”). SBI manufactures apparel products such as combat shirts, combat jackets, and other combat uniforms and garments, as well as associated items such as modular lightweight load-carry equipment rucksacks and assault packs. SBI also manufactures uniforms for Superior Uniform Group, who ultimately provides uniforms to Walmart.

5. Prior to and on the Petition Date, the Debtors were exploring options to sell their business. The Debtors hired SSG Advisors, LLC (“**SSG**”) and Young America Capital, LLC (“**YAC**”) and collectively with SSG, the “**Advisors**”) as their investment bankers to market the Debtors’ assets and business with the hope that value-maximizing transaction could be achieved promptly.

6. As further background, prior to the Petition Date, the Debtors retained the Advisors in an effort to determine their financial possibilities. On December 12, 2016, SSG was retained to assist YAC in a marketing process for SBI’s assets, which began in March 2016. The Advisors worked together to determine a plan of action based upon the Debtors’ cash position and other factors.

7. From March 2016 through February 2017, the Advisors contacted over two hundred (200) parties, including lenders and strategic buyers, in an effort to market the Debtors as a ripe investment. From these contacts, approximately fifty (50) confidentiality

agreements were executed, and multiple offers were made to purchase LSQ's position on the Debtors' assets.

8. During this period, there were a number of potential transactions with certain parties to purchase either the assets of Debtor SBI, or would purchase the debt position of LSQ. For various reasons, those transactions were not consummated.

Procedural Status

9. The Debtors filed these chapter 11 cases to continue the operations of their business, to avoid any interruption in the manufacturing process, and to ensure a robust action process. Any interruption would very likely have destroyed the value of the businesses.

10. On July 13, 2017, the Court held hearings on the Debtors' first day motions (the "**First Day Hearings**"). At the First Day Hearings, it became clear that the Debtors and the debtor-in-possession financing source, LSQ Funding Group, LLC ("**LSQ**") all supported a potential sale to an interested purchaser. The Debtors believe that the best way of maximizing the value of the estates' assets is to conduct a sale and auction process as described more fully herein, attempt to maximize the potential recovery to the approximately fifty (50) general unsecured creditors, and allow the businesses to operate in the ordinary course until the sale occurs.

11. It is essential the Debtors consummate a value-maximizing sale of their assets expeditiously. Any delays will lead to unnecessary expense that will, in turn, frustrate the Debtors' attempt to maximize value. If there is a delay, and LSQ is no longer ready, willing, and/or able to finance the Debtors' operations, then the Debtors will be unable to meet payroll and other obligations, and it is highly likely that the Debtors' business will shut down, over 500 employees will be terminated and the Debtors' assets will be liquidated piecemeal. However,

approving the relief requested herein near the outset of these chapter 11 cases will maximize value for the Debtors' estates, minimize the administrative expenses incurred in the cases and save jobs.

Summary of Relief Requested

12. The Debtors believe that the solicitation of bids and a sale of substantially all of their assets on the timeline proposed herein allows the Debtors to maximize value for all stakeholders while minimizing administrative expenses. During this process, the Debtors will continue to engage with interested parties, and attempt to attract additional interested parties that will participate in a competitive auction process contemplated by the Bidding Procedures (defined below). The Debtors propose that the hearing to approve the Bidding Procedures be held on **July 31, 2017 at 10:00 a.m.** (the "**Bid Procedures Hearing**"), with objections to the Bidding Procedures, if any, to be filed on or before **July 27, 2017 at 4:00 p.m.** prevailing Eastern time (the "**Bid Procedures Objection Deadline**"). The Debtors propose that the bid deadline be set for **August 25, 2017 at 5:00 p.m.** prevailing Eastern time (the "**Bid Deadline**"), and that the auction of the Debtors' assets (the "**Auction**"), if required, be scheduled for **August 29, 2017 at 10:00 a.m.** prevailing Eastern time. The Debtors propose that the Court hold the hearing to approve the sale and enter the Approval Order (the "**Sale Hearing**") on **August 30, 2017 at []** prevailing Eastern time, with objections to the relief requested in the Approval Order (other than with respect to the conduct of the Auction), if any, to be filed on or before **August 25, 2017 at 4:00 p.m.** prevailing Eastern time and objections to the conduct of the Auction, if any, to be filed prior to the commencement of the Sale Hearing.

13. The Debtors seek authority to select, with the consent of LSQ, a stalking horse or lead bidder (a "**Stalking Horse Bidder**"), and to provide the Stalking Horse Bidder with

certain customary bid protections (the “**Bidding Protections**”) including a breakup fee and expense reimbursement.

14. To the extent the Debtors may identify a Stalking Horse Bidder prior to the Bid Procedures Hearing, the Debtors propose to supplement this Motion (the “**Supplement**”) and make the disclosures required by Local Rule 6004-1 related to the Stalking Horse Bidder and its bid for the assets, and seek authority to enter into the same. In addition, to the extent the Stalking Horse Bidder requests additional bidding protections, including a breakup fee and expense reimbursement, the Debtors will disclose those additional bidding protections in the Supplement and seek approval of same at the hearing on the Motion.

Relief Requested

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

(a) the Bidding Procedures Order substantially in the form attached hereto as Exhibit A, pursuant to sections 105(a) and 363 of the Bankruptcy Code and Bankruptcy Rule 6004, (i) approving the Bidding Procedures attached to the Bidding Procedures Order as Exhibit 1 (the “**Bidding Procedures**”), (ii) approving the notice attached to the Bidding Procedures Order as Exhibit 2 (the “**Notice of Auction and Sale Hearing**”) of the deadline to bid on the Debtors’ assets, (iii) setting the time, date and place of the Auction if one or more Qualified Bids (defined below) are presented in a manner that conforms to the Bidding Procedures, (iv) scheduling the Sale Hearing on August 30, 2017 at [] prevailing Eastern time to consider the entry of the Approval Order; and (v) approving the notice attached to the Bidding Procedures Order as Exhibit 3 (the “**Notice of Assumption and Assignment**”) of the Debtors’ intent to assume, assign, and/or transfer to the Successful Bidder or Back-Up Bidder, the contracts commitments, leases, licenses, permits, purchase orders and any other executory contracts and unexpired leases (collectively, the “**Executory Contracts and Unexpired Leases**”) and the corresponding cure amounts required to be paid in connection with such assumption, assignment and/or transfer.

(b) following the Sale Hearing, the Debtors request the entry of the Approval Order, a form of which shall be filed by the Debtors no later than 21 days prior to the Sale Hearing, pursuant to Sections 105(a) and 363(b), (f), and (m) of the Bankruptcy Code and Bankruptcy Rule 6004, (i) approving the sale of substantially all of the Debtors’ assets to the party holding the highest or otherwise best bid for the assets (the “**Successful Bidder**”) free and clear of all liens, claims, encumbrances, and other interests (other than certain specified assumed liabilities), (ii) authorizing the Debtors to

assume and assign to the Successful Bidder the Executory Contracts and Unexpired Leases; and (iii) granting related and ancillary relief.

16. The Debtors further request that the sale process occur in accordance with the following timeline:²

Action	Deadline (prevailing Eastern time)
Bid Procedures Objection Deadline	July 27, 2017 at 4:00 p.m.
Bid Procedures Hearing	July 31, 2017 at 10:00 a.m.
Sale Objection Deadline and Cure/Assignment Objection Deadline	August 25, 2017 at 4:00 p.m.
Bid Deadline	August 25, 2017 at 5:00 p.m.
Auction	August 29, 2017 at 4:00 p.m.
Sale Hearing	August 30, 2017 at []

I. THE PROPOSED BIDDING PROCEDURES AND AUCTION

17. Pre-petition, the Debtors began the process to sell substantially all of their assets. They have spent since approximately March 2016 attempting to locate a buyer. Given the hundreds of contacts already made, and the interest already expressed by certain potential interested purchasers, the Debtors submit that this shortened sale process is fair and reasonable under the circumstances.

18. Given the desire to sell the Debtors' business expeditiously and minimize administrative expenses, on the one hand, and their desire to ensure a fair and transparent opportunity for all potentially interested parties to participate in the sale process, on the other

² The Debtors, in the exercise of their business judgment, reserve the right to change these sale-related dates in order to maximize the value of the sale.

hand, the Debtors propose that the Bidding Procedures, and related notice and other procedures set forth herein be implemented in connection with the marketing and sale of their assets.

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

- (i) cause the Notice of Auction and Sale Hearing, attached as Exhibit 2 to the Bidding Procedures Order, and a copy of the Bidding Procedures Order to be served by first class mail upon: (a) the Office of the United States Trustee; (b) counsel to the LSQ Funding Group, LC; (c) counsel to the Committee of Unsecured Creditors; (d) all parties who are known to assert a security interest, lien, or claim in any of the Assets, if any; (e) all non-Debtor parties to the Executory Contracts and Unexpired Leases and any parties who are known to claim interests therein; (f) all applicable federal, state, and local taxing authorities; (g) all applicable county and state consumer protection agencies; (h) all applicable state attorneys general; (i) all other government agencies required to receive notice under the Bankruptcy Rules; (j) all known parties that have expressed interest in purchasing some or all of the Debtors' assets and (k) all parties that have requested or that are required to receive special notice pursuant to Bankruptcy Rule 2002 (collectively, the "**Sale Notice Parties**");
- (ii) subject to applicable submission deadlines, publish the Notice of Auction and Sale Hearing once in one or more publications as the Debtors deem appropriate;
- (iii) serve the Notice of Auction and Sale Hearing on any other party appearing on the Debtors' creditor matrix (to the extent not served as a Sale Notice Party); and
- (iv) provide electronic notification of this Motion, the Bidding Procedures Order and the Notice of Auction and Sale Hearing on the Court's electronic case filing (ECF) website, <http://ecf.deb.uscourts.gov>.

20. The Debtors believe the proposed Bidding Procedures, which are annexed as Exhibit 1 to the Bidding Procedures Order, will maximize value for the benefit of the Debtor's stakeholders. The Bidding Procedures contemplate an auction process pursuant to which bids will be subject to higher or otherwise better offers. The auction process contemplated in the

Bidding Procedures takes into account competing offers from bidders to enter into a sale transaction. The following is a summary of the significant terms of the Bidding Procedures:³

Provision	Description of Provision
<p>Participation Requirements</p> <p>See Bidding Procedures at 2</p> <p><i>Local Rule 6004-1(c)(i)(A)(3)</i></p>	<p>In order to participate in the bidding process or otherwise be considered for any purpose hereunder, a person interested in entering into a Sale for some or all of the Assets (a “Potential Bidder”) must first deliver an executed confidentiality agreement in form and substance satisfactory to the Debtors and their counsel.⁴</p>
<p>Bid Requirements</p> <p>See Bidding Procedures at 2-3</p> <p><i>Local Rule 6004-1(c)(i)(A)(1)</i></p>	<p>In order to participate in the bidding process and be deemed a “Qualified Bidder,” a Potential Bidder must submit a “Qualified Bid” by the Bid Deadline.</p> <p>To constitute a Qualified Bid, a bid must, among other things:</p> <ol style="list-style-type: none"> <li data-bbox="667 898 1443 1488">i. provide to the Debtors and their counsel the most current audited and latest unaudited financial statements (collectively, the “Financials”) of the Potential Bidder, or, if the Potential Bidder is an entity formed for the purpose of a transaction with the Debtors, (x) Financials of the equity holder(s) of the Potential Bidder or such other form of financial disclosure as is acceptable to the Debtors that demonstrates the Potential Bidder’s financial ability to consummate a transaction and (y) a written commitment acceptable to the Debtors of the equity holder(s) of the Potential Bidder to be responsible for the Potential Bidder’s obligations in connection with a sale transaction (including being bound by the terms and conditions of the Bidding Procedures); <u>provided</u> that if a Potential Bidder is unable to

³ This summary is provided in accordance with Rule 6004-1(c)(i) of the Local Rules and is qualified in its entirety by reference to the provisions of the Bidding Procedures. Each capitalized term used and not otherwise defined herein shall have the meaning assigned thereto in the Bidding Procedures. To the extent there exists any inconsistency between this summary and the provisions of the Bidding Procedures, the provisions of the Bidding Procedures shall control.

⁴ To the extent any party executed a confidentiality agreement prior to the entry of an order approving these Bidding Procedures, such party does not need to execute another confidentiality agreement to comply with the Bidding Procedures or become a Qualified Bidder.

	<p>provide Financials, the Debtors may accept such other information sufficient to demonstrate to the Debtors’ reasonable satisfaction that such Potential Bidder has the financial wherewithal to consummate a sale transaction. Potential Bidders shall not be allowed to review or obtain the Financials of other Potential Bidders;</p>
<p><i>Local Rule 6004-1(c)(i)(A)(1); Local Rule 6004-1(c)(i)(B)(2)</i></p> <p><i>Local Rule 6004-1(c)(i)(C)(3)</i></p> <p><i>Local Rule 6004-1(c)(i)(B)(3)</i></p>	<ul style="list-style-type: none"> ii. include a cover letter identifying whether the Potential Bidder is interested in purchasing some or all of the Assets; iii. state that the Potential Bidder offers to consummate the sale pursuant to a proposed form of purchase agreement (the “Purchase Agreement”) and enclose a clean signed copy of the proposed Purchase Agreement; iv. if any bid is conditioned on the assumption and assignment of executory contracts and/or unexpired leases, then such Potential Bidder shall be required to provide evidence of its ability to provide adequate assurance of future performance of such contracts or leases along with the bid; v. either (i) be an all-cash bid or (ii) be accompanied with verified financing; vi. to the extent the Court has authorized the Debtors to provide bid protections to any stalking horse bidder, the total consideration offered must exceed the consideration offered by the stalking horse bidder plus the value of the stalking horse bid protections approved by the Bankruptcy Court; vii. contain a list of the Debtors’ executory contracts and unexpired leases with respect to which the Potential Bidder seeks assignment from the Debtors; viii. confirm that the offer shall remain open and irrevocable; ix. be accompanied with a certified or bank check or wire transfer in an amount equal to five percent (5%) of the proposed purchase price set forth in the bid as a minimum good faith deposit (the “Minimum Deposit”), which Minimum Deposit shall be: (a) deposited into an escrow account pursuant to an executed escrow agreement; and (b) used to fund a portion of the purchase price provided for in the bid;

	<ul style="list-style-type: none"> x. indicate whether the Potential Bidder intends to operate the Assets as a going concern; xi. not be conditioned on obtaining financing or the outcome of any due diligence by the Potential Bidder; and xii. fully disclose the identity of each entity that will be bidding for the Assets or otherwise participating in connection with such bid, and the complete terms of any such participation.
<p>Bid Deadline</p> <p><i>See Bidding Procedures at 2</i></p> <p><i>Local Rule 6004-1(c)(i)(B)(1)</i></p>	<p>August 25, 2017 at 5:00 p.m. prevailing Eastern time</p>
<p>Bidding Increments</p> <p><i>See Bidding Procedures at 5-6</i></p> <p><i>Local Rule 6004-1(c)(i)(C)(3)</i></p>	<p>After the Bid Deadline, the Debtors, with the consent of LSQ shall determine which Qualified Bid or combination of Qualified Bids represent the then-highest or otherwise best bid for the Assets (the “Starting Qualified Bid”). Prior to the commencement of the Auction, the Debtors shall distribute copies of the Starting Qualified Bid to each Qualified Bidder. The Auction shall commence with the Starting Qualified Bid and then proceed in minimum increments to be announced at the Auction (the “Overbid Increment”). The Debtors shall not consider any subsequent bid in the Auction unless any bid after the Starting Qualified Bid exceeds the previous highest bid by at least the Overbid Increment; <u>provided, however</u>, that in the event the Debtors select a combination of Qualified Bids to serve as the Starting Qualified Bid, the Debtors, with the consent of LSQ, reserve the right to determine an appropriate Overbid Increment.</p>
<p>Modification of the Bidding Procedures</p> <p><i>See Bidding Procedures at 6-8</i></p> <p><i>Local Rule 6004-1(c)(i)(D)</i></p>	<p>All Qualified Bids, the Auction, and the Bidding Procedures are subject to modification and/or additional terms and conditions as are announced by the Debtors (with the consent of LSQ) and that are not inconsistent with the Bidding Procedures Order.</p> <p>The Debtors reserve the right to modify the Bidding Procedures as they may reasonably determine to be in the best interests of their estates, with the consent of LSQ.</p>

<p>Closing with Alternative Backup Bidders</p> <p><i>See Bidding Procedures at 6-7</i></p> <p><i>Local Rule 6004-1(c)(i)(E)</i></p>	<p>At the conclusion of the Auction, the Debtors shall announce the bid or combination of bids made pursuant to the Bidding Procedures Order that represents, in the Debtors' discretion (with the consent of the DIP Lender), the highest or otherwise best offer for the Assets (the "Successful Bid"). Prior to the entry of the Sale Order, the Debtors shall announce the identity of the Qualified Bidder or combination of Qualified Bidders who submitted the Successful Bid at the Auction (the "Successful Bidder").</p> <p>Following the entry of the Sale Order, if the Successful Bidder fails to consummate the transaction for any reason, the bid of the Qualified Bidder or combination of Qualified Bidders (the "Back-Up Bidder") that submits the next highest or otherwise best bid or combination of bids (the "Back-Up Bid") will be deemed the new Successful Bid, and the Debtors will be authorized, but not required, to consummate the transaction with the Back-Up Bidder without further order of the Court.</p>
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21. Any bidder that desires to make a bid will deliver written copies of its bid to (i) counsel for the Debtors, David M. Klauder, Esquire, Bielli & Klauder, LLC, 1204 N. King Street, Wilmington, DE 19801; (ii) counsel for the DIP Lender, Domenic E. Pacitti, Esquire, Klehr Harrison Harvey Branzburg LLP, 919 N. Market Street, Suite 1000, Wilmington, DE 19801; (iii) SSG Capital Advisors, LLC J. Scott Victor, Five Tower Bridge, Suite 420, West Conshohocken, PA 19428; (iv) the Debtors' CRO, Mark Iammartino, MorrisAnderson, 55 West Monroe Street #2530, Chicago, IL 60603, and (v) counsel for the Committee, Michael Busenkill, Esquire, Gellert Scali Busenkill & Brown, LLC, 1201 North Orange Street, 3rd Floor, Wilmington, DE 19801, and Mary E. Seymour, Esquire & Wojchich F. Jung, Esquire, Lowenstein Sandler LLP, One Lowenstein Drive, Roseland, NJ 07069 (collectively, the "**Bid and Objection Notice Parties**"), so as to be received not later than 5:00 p.m. prevailing Eastern time on August 25, 2017. As soon as immediately practicable after the Auction, but no later than

one (1) business day after conclusion of the Auction, the Debtors shall provide electronic notice of the results of the Auction on the Court's docket.

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

22. The Debtors request that the Court hold the Sale Hearing on August 30, 2017. The Debtors have also requested that the Court establish **August 25, 2017 at 4:00 p.m.** (prevailing Eastern time), or such other date that is five (5) days prior to the Sale Hearing (other than with respect to the conduct of the Auction, with objections to the conduct of the Auction to be filed prior to the commencement of the Sale Hearing), or such later date and time as the Debtors may agree, as the deadline for objections to the sale of the Debtors' assets or the relief requested in the Motion with respect to the entry of the Approval Order (the "**Sale Objection Deadline**"). Objections to the Motion and entry of the Approval Order must be in writing, conform to the Bankruptcy Rules and the Local Rules of the Bankruptcy Court, and be filed with the Bankruptcy Court and served upon the Bid and Objection Notice Parties by the Sale Objection Deadline.

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

supplemental notice (a “**Supplemental Notice of Assumption and Assignment**”) to the applicable counterparties to such additional executory contracts and unexpired leases.⁵

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

25. The Debtors request that unless the non-Debtor party to an Executory Contract or Unexpired Lease files an objection (the “**Cure Amount/Assignment Objection**”) to (a) its scheduled Cure Amount and/or (b) to the proposed assumption, assignment and/or transfer of such Executory Contract or Unexpired Lease by the later of (i) **August 25, 2017 at 5:00 p.m.** (prevailing Eastern time) (or such other date that is five (5) days prior to the Sale Hearing, or such later date and time as the Debtors may agree), or (ii) seven (7) days after service of the relevant Supplemental Notice of Assumption and Assignment (the “**Cure/Assignment Objection Deadline**”) and serves a copy of the Cure Amount/Assignment Objection so as to be received no later than the Cure/Assignment Objection Deadline by the Bid and Objection Notice Parties, then such non-Debtor party shall (i) be forever barred from objecting to the Cure

⁵ The inclusion of any contract or unexpired lease of nonresidential real property on any Notice of Assumption and Assignment or Supplemental Notice of Assumption and Assignment shall not be an admission by the Debtors or their estates that any such contract or unexpired lease of nonresidential real property so included is an executory contract. Nor shall the inclusion of any contract or unexpired lease of nonresidential real property on any Notice of Assumption and Assignment or Supplemental Notice of Assumption and Assignment constitute an admission of liability by the Debtors or their estates or effectuate the assumption or assignment of such contract or lease of nonresidential real property, absent entry of an order of the Court approving the assumption and/or assignment of such contract or lease of nonresidential real property in conjunction or as part of any Approval Order.

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

26. Any objection challenging a Cure Amount must set forth the cure amount being claimed by the objecting party (the “**Claimed Cure Amount**”) and include appropriate documentation in support thereof. Upon receipt of a Cure Amount/Assignment Objection, the Debtors request that it be granted the authority, but not direction, to resolve any Cure Amount/Assignment Objection by mutual agreement with the objecting counterparty to any Executory Contract or Unexpired Lease without further order of the Court. In the event that the Debtors and any objecting party are unable to consensually resolve any Cure Amount/Assignment Objection no later than three (3) business days prior to the Sale Hearing, the Debtors will request that the Court resolve such Cure Amount/Assignment Objection at (a) the Sale Hearing or (b) at such other date as the Court may designate, provided that if the

subject Executory Contract or Unexpired Lease is assumed and assigned prior to resolution of any Cure Objection, the Claimed Cure Amount asserted by the objecting party (or such lower amount as may be fixed by the Court) shall be deposited by Successful Bidder to be held in a segregated account maintained by the Debtors or such other person as the Court may direct pending further order of the Court or mutual agreement of the parties.

27. The Debtors, the Successful Bidder, or the Back-Up Bidder, as the case may be, may determine to exclude any Executory Contract or Unexpired Lease from the list of Executory Contracts and Unexpired Leases to be assumed and assigned under the Purchase Agreement no later than one (1) business day prior to the Sale Hearing, or, if the Court determines at any hearing on a Cure Amount/Assignment Objection that the applicable cure amount for such contract is greater than the Cure Amount proposed by the Debtors, no later than five (5) business days following the Court's determination. The non-Debtor party or parties to any such excluded contract or lease will be notified of such exclusion by written notice mailed within two (2) business days of such determination.

28. Within one (1) business day after the conclusion of the Auction, the Debtors will serve a notice identifying the Successful Bidder and Back-Up Bidder (the "**Notice**") to the non-Debtor parties to the Executory Contracts and Unexpired Leases that have been identified in such Successful Bid and Back-Up Bid. The Debtors propose that the non-Debtor parties to the Executory Contracts and Unexpired Leases have until 4:00 p.m. prevailing Eastern time on the date that is five (5) business days after Notice (the "**Adequate Assurance Objection Deadline**") to object to the assumption, assignment and/or transfer of such Executory Contract and Unexpired Lease solely on the issue of whether the Successful Bidder can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code. The

Successful Bidder or Back-Up Bidder, as the case may be, shall work with any objecting parties to resolve any disputes and/or concerns regarding the Successful Bidder or Back-Up Bidder's ability to provide adequate assurance of future performance. If, however, any disputes cannot be resolved within three (3) business days after the Adequate Assurance Objection Deadline, either party may seek a determination from this Court solely on the issue of whether the Successful Bidder can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code.

29. The Debtors may, at their sole discretion, provide a limited expense reimbursement to a Bidder, so long as (a) the Bidder is not the Successful Bidder; (b) the Bidder is not the Stalking Horse; and (c) all documentation for expenses is submitted in full to the Debtors' Chief Restructuring Officer within seven (7) days of the Auction.

Basis for Relief Requested

I. AUTHORIZING BIDDING PROCEDURES AND AUCTION

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

31. Under applicable case law, in this and other circuits, if a debtor's proposed use of its assets pursuant to section 363(b) of the Bankruptcy Code represents a reasonable business judgment on the part of the debtor, such use should be approved. *See, e.g., In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 147 (3d Cir. 1986); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 175-76 (D. Del. 1991) (holding that the following non-exclusive list of factors may be considered by a court in determining whether there is a sound business purpose for an asset sale:

“the proportionate value of the asset to the estate as a whole; the amount of elapsed time since the filing; the effect of the proposed disposition of [sic] the future plan of reorganization; the amount of proceeds to be obtained from the sale versus appraised values of the property; and whether the asset is decreasing or increasing in value”). *See also Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (citing *Fulton State Bank v. Schipper (In re Schipper)*, 933 F.2d 513, 515 (7th Cir. 1991)) (noting that the Court defers to the trustee’s judgment so long as there is a legitimate business justification); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983) (“The rule we adopt requires that a judge determining a § 363(b) application expressly find from the evidence presented before him at the hearing a good business reason to grant such an application.”); *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (“Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.”). Thus, if a debtor’s actions satisfy the business judgment rule, then the transaction in question should be approved under section 363(b)(1). Indeed, when applying the “business judgment” standard, courts show great deference to a debtor’s business decisions. *See Pitt v. First Wellington Canyon Assocs. (In re First Wellington Canyon Assocs.)*, No. 89 C 593, 1989 WL 106838, at *3 (N.D. Ill. Sept. 8, 1989) (“Under this test, the debtor’s business judgment . . . must be accorded deference unless shown that the bankrupt’s decision was taken in bad faith or in gross abuse of the bankrupt’s retained discretion.”).

32. The “sound business reason” test requires a trustee or debtor in possession to establish four elements: (1) that a sound business purpose justifies the sale of assets outside the ordinary course of business; (2) that accurate and reasonable notice has been provided to

interested persons; (3) that the trustee or the debtor in possession has obtained a fair and reasonable price; and (4) that the trustee or debtor in possession acted in good faith. *Abbotts Dairies*, 788 F.2d 143; *Del. & Hudson Ry.*, 124 B.R. at 176; *In re Titusville Country Club*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); *In re Sovereign Estates, Ltd.*, 104 B.R. 702, 704 (Bankr. E.D. Pa. 1989); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987); *see also Stephens Indus. Inc. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986); *Lionel*, 722 F.2d at 1071.

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

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

35. The Bidding Procedures are also designed to maximize the value received for the Debtors' assets. The Debtors respectfully submit that the relief sought by this Motion is reasonably calculated to maximize value for the benefit of the Debtors and all stakeholders. The process proposed by the Debtors allows for a timely Auction while providing bidders ample time and information to submit a bid. The Bidding Procedures are designed to ensure that the Debtors' assets will be sold for the highest or otherwise best possible price. The Debtors will (with leave of Court) permit prospective purchasers to bid on their assets, thereby subjecting the proposed sale to a market check through the solicitation of competing bids in a court-supervised auction process. Accordingly, the Debtors and all parties in interest can be assured that the consideration received for their assets will be fair and reasonable, and therefore the third prong of the *Abbotts Dairies* standard is satisfied. As discussed below, the "good faith" prong of the *Abbotts Dairies* standard is also satisfied here.

A. The Bidding Procedures Should be Approved

36. The Debtors believe that soliciting bids and conducting the Auction is critical to the integrity of their search process for a purchaser of the assets, and is the best way to maximize the value of the Debtors' estates. Based on the Auction results, the Debtors will consummate the Purchase Agreement with the Successful Bidder. Accordingly, the Debtors respectfully request that the Court approve the Bidding Procedures, as set forth in Exhibit 1 to the Bidding Procedures Order.

37. If a Stalking Horse Bidder is designated, the use of a Stalking Horse APA, upon which the initial bids, as well as bids at the Auction will be based, will enable the Debtors and other parties-in-interest to easily compare and contrast any differing terms of the Bids made by the Qualified Bidders at the Auction.

38. The Debtors submit, and will demonstrate at the Sale Hearing, that any Purchase Agreement entered into with the Successful Bidder will be the result of good faith arms'-length negotiations and the good faith extension of credit by the Successful Bidder as well as the other financial accommodations, as set forth in the Purchase Agreement, constitute the extension of credit in good faith under section 364(e) of the Bankruptcy Code. As such, the reversal or modification on appeal of the Court's authorization to consummate the transactions contemplated by the Purchase Agreement, and the security interest granted thereunder, should not affect the validity of such transactions unless such authorization has been stayed pending appeal.

39. The Debtors believe that the Bidding Procedures are fair and reasonable, are designed to maximize value, and are not likely to dissuade any serious potential bidder from bidding.

B. The Form and Manner of Notices Should be Approved

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

41. The Debtors submit that the form of Notice of Auction and Sale Hearing, substantially in the form attached as Exhibit 2 to the Bidding Procedures Order, is reasonably calculated to provide timely and adequate notice of the proposed Sale, the Bidding Procedures, the Auction, and the Sale Hearing. This will provide notice to the Debtors' creditors and all other parties-in-interest that are entitled to notice, as well as those parties that have expressed a

bona fide interest in acquiring the Debtors' assets. Accordingly, the Debtors request that the Court approve the notice procedures set forth in this Motion, including the form and manner of service of the Notice of Auction and Sale Hearing, and that no other or further notice of the Sale, the Bidding Procedures or the Auction is required.

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

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

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

43. At present, the Debtors possess significant assets, but most of those assets (primarily in the form of fulfillment procurement contracts with its creditors) are illiquid. However, the Debtors also have approximately \$7.1 million in general unsecured claims. Thus, the sooner the Debtors can consummate a sale of the assets, the sooner the Debtors can use liquid cash assets to satisfy creditors' claims. Moreover, delays in the sale process described herein may cause the Debtors to be unable to use their cash to operate going forward, which would result in immediate devaluation of their assets.

44. The Debtors believe that it is crucial that they consummate the Sale on their proposed timeline to maximize value for the Debtors' estates while minimizing administrative expenses. Though approximately a month would elapse between the hearing on this Motion and the hearing on a Sale, the Debtors have already spent over a year pre-petition

marketing substantially all assets, and have identified some likely Bidders. Thus, the Debtors respectfully request that the Court hold the Sale Hearing on August 30, 2017. The Debtors propose to consummate the Sale immediately following the Sale Hearing and thereby stem the losses resulting from the continued operation of the assets. The sale process described herein – albeit slightly expedited – provides the best chance for a recovery to the Debtors’ creditors. Thus, time is of the essence to preserve and maximize the value of the Debtors’ assets.

45. In evaluating proposed expedited sales under section 363 of the Bankruptcy Code, courts have considered debtors’ dwindling cash positions, whether an expedited sale is necessary to preserve value, and the number of likely potential buyers. *See In re Tempo Tech. Corp.*, 202 B.R. 363, 370 (D. Del. 1996) (upholding a bankruptcy court’s authorization of a debtor’s sale of assets on an expedited basis where “the expedited sale was necessary to preserve the value of the Debtor’s assets,” noting the debtor’s dwindling liquidity and that there was a single buyer willing to negotiate purchase terms). *See also In re Titusville Country Club*, 128 B.R. 396, 397 (Bankr. W.D. Pa. 1991) (allowing a sale of country club assets on an expedited basis where timing considerations were based on the seasonal nature of the debtor’s business).

46. The Debtors and their advisors have analyzed exhaustively the Debtors’ business and various strategic alternatives and determined that an immediate liquidation of the Debtors’ assets provides most likely path to maximize recoveries for the Debtors’ estates, their creditors and other parties-in-interest in the wind-down of the Debtors’ business. Moreover, a sale of the assets on the timeline set forth herein will maximize the possibility of a recovery for the Debtors’ creditors while minimize the administrative expenses of the estates by ensuring an appropriate post-petition marketing process to reengage prior interested parties (and attempt to

identify new interested parties). If the Debtors are required to delay consummation of a sale of the assets, the estates would suffer significant detriment from the resulting delay, added post-petition expenses, and would likely be forced to convert these cases to chapter 7 – eliminating any possibility for a value maximizing going-concern sale of the assets.

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

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

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

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

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

49. The Debtors do not believe any prepetition creditor has a superior secured position to LSQ in the assets. The Debtors believe that LSQ will consent to the sale. In addition, the Debtors are aware that certain other entities filed financing statements asserting purported secured interests in the Debtors' assets. The Debtors will serve this Motion, and other sale-related documents, on these entities. Furthermore, to the extent any entities do have a valid interest in the assets that have not already consented to the sale, such entity could be compelled to accept a money satisfaction of such interest. Specifically, the Debtors propose that to the extent that any liens, claims, encumbrances, and other interests could be asserted against the assets, those could attach to any proceeds realized from the sale of such assets, in the same order of priority and subject to the rights, claims, defenses and objections, if any, of all parties with respect thereto. As a result, the Debtors believe that they will satisfy section 363(f)(2) of the Bankruptcy Code.

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

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

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

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

11 U.S.C. § 363(m).

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

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

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

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

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

54. The Debtors respectfully submit that the Court should approve procedures relating to the assumption and assignment of Executory Contracts and Unexpired Leases. In

assuming and assigning the Executory Contracts and Unexpired Leases, the Debtors intend to comply with the provisions of Bankruptcy Code Section 365(f)(2). Section 365(f)(2) of the Bankruptcy Code provides, in pertinent part, that:

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

(A) the [debtor] assumes such contract or lease in accordance with the provisions of this section; and

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

11 U.S.C. § 365(f)(2).

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

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

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default . . . ;

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

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

11 U.S.C. § 365(b)(1).

56. Section 365(b) of the Bankruptcy Code requires the debtor to cure any defaults under the contract or provide adequate assurance that it will promptly cure such defaults.

If there has been a default, the debtor must also provide adequate assurance of future performance under the contract.

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

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

59. The Debtors will demonstrate facts at the Sale Hearing to show the financial wherewithal and the Successful Bidder’s willingness and ability to perform under the Executory Contracts and Unexpired Leases. The Sale Hearing will therefore provide the Court and the other interested parties the opportunity to evaluate and, if necessary, challenge the ability of the Successful Bidder to provide adequate assurance of future performance under the Executory Contracts and Unexpired Leases, as required under Bankruptcy Code section 365(b)(1)(C). The Court should therefore authorize the Debtors to assume and assign the Executory Contracts and Unexpired Leases as set forth herein.

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

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

III. FURTHER RELIEF

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

Notice

63. Notice of this Motion will be provided to: (a) the U.S. Trustee; (b) counsel for the Committee; (c) counsel to LSQ; (d) the Office of the United States Trustee; (d) any party that has previously asserted a secured interest in the Debtors’ assets; and (f) any party

that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors respectfully submit that in light of the nature of the relief requested, no other or further notice need be given.

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

BIELLI & KLAUDER, LLC

Dated: July 20, 2017
Wilmington, Delaware

/s/ David M. Klauder
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*Proposed Counsel to the Debtors
and Debtors-In-Possession*

Ex. A

Exhibit A

[Bidding Procedures Order]

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

SHORT BARK INDUSTRIES, INC., et al.,¹

Debtors.

Chapter 11

Case No. 17-11502 (KG)

Jointly Administered

Re: Docket No. _____

ORDER: (A) APPROVING BIDDING PROCEDURES IN CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL ASSETS OF THE DEBTORS (B) SCHEDULING AN AUCTION AND HEARING TO CONSIDER THE SALE OF ASSETS AND (C) APPROVING THE FORM AND MANNER OF NOTICE THEREOF

Upon the motion (the “**Motion**”)² of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”), pursuant to sections 105(a), 363, 365, 503, 506, 507 and 552 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and 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**”), for entry of an order (this “**Bidding Procedures Order**”): (i) approving bidding procedures in connection with the sale of substantially all assets of the Debtors, (ii) scheduling an auction and a hearing to consider the sale of assets, (iii) approving the form and manner of notice thereof and (iv) granting related relief; and the Court having considered

¹ The Debtors in these jointly administered cases are Short Bark Industries, Inc. (Tax ID: 66-0655657) and EXO SBI, LLC (Tax ID: 46-5210695).

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

the Motion and all exhibits, objections, and other papers filed in connection therewith; and the Court having determined that the relief provided herein is in the best interest of the Debtors, their estates, creditors and other parties in interest; and due and adequate notice of the Motion having been given under the circumstances; and upon the record of the hearing on the Motion, and the full record of these cases; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby:

FOUND AND DETERMINED THAT:³

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

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

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

D. The Debtors have articulated good and sufficient business reasons for this Court to approve the Bidding Procedures, including: (i) the scheduling of a bid deadline, auction

³ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when applicable. *See* Bankruptcy Rule 7052.

and sale hearing for the sale of the Debtors' assets; and (ii) the establishment of procedures to fix the Cure Amounts to be paid under section 365 of the Bankruptcy Code in connection with the assumption, assignment and/or transfer of the Executory Contracts and Unexpired Leases.

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

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

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

1. The Motion is granted as set forth herein.
2. All objections to the Motion or the relief provided herein that have not been withdrawn, waived or settled, and all reservations of rights included therein, hereby are overruled and denied on the merits.
3. The Bidding Procedures, in substantially the form attached hereto as **Exhibit 1**, are hereby incorporated herein and approved, and shall apply with respect to the sale of the Debtors' assets. The Debtors are authorized to take all actions necessary or appropriate to implement the Bidding Procedures.
4. As further described in the Bidding Procedures, the deadline for submitting Qualified Bids for the Debtors' assets is **August 25, 2017 at 5:00 p.m.** prevailing Eastern time (the "**Bid Deadline**"). No bid shall be deemed to be a Qualified Bid (as defined in the Bidding Procedures) or otherwise considered for any purposes unless such bid meets the requirements set forth in the Bidding Procedures, provided, however, that the Debtors may, with the consent of the DIP Lender, waive one or more defects and cause a bid to be deemed a Qualified Bid.

5. The Debtors may sell their assets by conducting an Auction in accordance with the Bidding Procedures. If Qualified Bids are timely received by the Debtor in accordance with the Bidding Procedures, the Auction shall take place on **August 29, 2017 at 10:00 a.m.** prevailing Eastern time at the offices of [_____], or at such other place and time as the Debtor shall notify all Qualified Bidders and other invitees. If, however, no such Qualified Bid is received by the Bid Deadline, then the Auction will not be held.

6. Each Qualified Bidder participating at the Auction will be required to confirm that it has not engaged in any collusion with respect to the bidding or the sale.

7. The Auction will be conducted openly.

8. Bidding at the Auction may be transcribed or videotaped.

9. The Sale Hearing shall be held before this Court on **August 30, 2017, at _____ .m. (prevailing Eastern Time)**, or as soon thereafter as counsel and interested parties may be heard.

10. On or before three (3) business days after entry of the Bidding Procedures Order, or as soon thereafter as such parties can be identified, the Debtor will cause a notice in substantially the form annexed hereto as **Exhibit 2** (the “**Notice of Auction and Sale Hearing**”), and a copy of the Bidding Procedures Order, to be sent, by first-class mail, postage prepaid, to the following: (a) the Office of the United States Trustee; (b) counsel to LSQ Funding Group, LLC; (c) counsel to the Committee of Unsecured Creditors; (d) all parties who are known to assert a security interest, lien, or claim in any of the Assets, if any; (e) all non-Debtor parties to the Executory Contracts and Unexpired Leases and any parties who are known to claim interests therein; (f) all other government agencies required to receive notice under the Bankruptcy Rules; and (g) all parties that have requested or that are required to receive special notice pursuant to

Bankruptcy Rule 2002.⁴ In addition to the foregoing, (a) electronic notification of this Motion, the Bidding Procedures Order and the Notice of Auction and Sale Hearing also will be posted on the Court's electronic case filing (ECF) website, <http://ecf.deb.uscourts.gov>.

11. On or before three (3) business days after entry of this Bidding Procedures Order, the Debtors will: (i) serve the Notice of Auction and Sale Hearing on all known creditors of the Debtors; and (ii) subject to applicable submission deadlines, publish the Notice of Auction and Sale Hearing once in one or more publications as the Debtors deem appropriate, including but not limited to [_____] (national edition).

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

⁴ The Notice of Auction and Sale Hearing will direct parties to contact the Debtors' counsel for more information and will provide that any party in interest that wishes to obtain a copy of any related document, subject to any necessary confidentiality agreement, may make a request in writing as specified in the Notice of Auction and Sale Hearing.

notice (a “**Supplemental Notice of Assumption and Assignment**”) to the applicable counterparties to such additional executory contracts and unexpired leases.⁵

13. Unless the non-Debtor party to an Executory Contract or Unexpired Lease files an objection (the “**Cure Amount/Assignment Objection**”) to (a) its scheduled Cure Amount and/or (b) to the proposed assumption, assignment and/or transfer of such Executory Contract or Unexpired Lease by the later of (i) **4:00 p.m. (prevailing Eastern Time) five (5) days prior to the Sale Hearing** or (ii) seven (7) days after service of the relevant Supplemental Notice of Assumption and Assignment (the “**Cure/Assignment Objection Deadline**”) and serves a copy of the Cure Amount/Assignment Objection so as to be received no later than the Cure/Assignment Objection Deadline by (i) counsel for the Debtor, David M. Klauder, Esquire, Bielli & Klauder, LLC, 1204 N. King Street, Wilmington, DE 19801; (ii) counsel for LSQ Funding Group, LLC, Dominic E. Pacitti, Esquire, Klehr Harrison Harvey Branzburg LLP, 919 N. Market Street, Suite 1000, Wilmington, DE 19801; and (iii) counsel for the Committee, Michael Busenkill, Esquire, Gellert Scali Busenkill & Brown, LLC, 1201 North Orange Street, 3rd Floor, Wilmington, DE 19801, and Mary E. Seymour, Esquire & Wojchich F. Jung, Esquire, Lowenstein Sandler LLP, One Lowenstein Drive, Roseland, NJ 07069 (collectively, the “**Bid and Objection Notice Parties**”), then such non-Debtor party should (i) be forever barred from objecting to the Cure

⁵ The inclusion of any contract or unexpired lease of nonresidential real property on any Notice of Assumption and Assignment or Supplemental Notice of Assumption and Assignment shall not be an admission by the Debtors or their estates that any such contract or unexpired lease of nonresidential real property so included is an executory contract. Nor shall the inclusion of any contract or unexpired lease of nonresidential real property on any Notice of Assumption and Assignment or Supplemental Notice of Assumption and Assignment constitute an admission of liability by the Debtors or their estates or effectuate the assumption or assignment of such contract or lease of nonresidential real property, absent entry of an order of the Court approving the assumption and/or assignment of such contract or lease of nonresidential real property in conjunction or as part of any Approval Order.

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

14. Cure Objections should set forth the cure amount being claimed by the objecting party (the “**Claimed Cure Amount**”), the specific types and dates of the alleged defaults, pecuniary losses and conditions to assignment, and the support therefor and for all other objections to assumption and assignment. Upon receipt of a Cure Amount/Assignment Objection, the Debtors may resolve any Cure Objection by mutual agreement with the objecting counterparty to any Executory Contract or Unexpired Lease without further order of the Court. In the event that the Debtors and any objecting party are unable to consensually resolve any Cure Objection no later than three (3) business days prior to the Sale Hearing, the Debtors shall request that the Court resolve such Cure Objection at (a) the Sale Hearing or (b) at such other date as the Court may designate, provided that if the subject Executory Contract or Unexpired Lease is assumed and assigned prior to resolution of any Cure Objection, the Claimed Cure Amount asserted by the

objecting party (or such lower amount as may be fixed by the Court) shall be deposited by Successful Bidder to be held in a segregated account maintained by the Debtors or such other person as the Court may direct pending further order of the Court or mutual agreement of the parties.

15. The Debtors, the Successful Bidder or the Back-Up Bidder, as the case may be, may determine to exclude any Executory Contract or Unexpired Lease from the list of Executory Contracts and Unexpired Leases to be assumed and assigned under the Purchase Agreement if the Court determines at any hearing on a Cure Amount/Assignment Objection that the applicable cure amount for such contract is greater than the Cure Amount proposed by the Debtors, no later than five (5) business days following the Court's determination. The non-Debtor party or parties to any such excluded contract or lease will be notified of such exclusion by written notice mailed within two (2) business days of such determination.

16. Within one (1) business day after the conclusion of the Auction, the Debtors will serve a notice identifying the Successful Bidder and Back-Up Bidder (the "**Notice**") to the non-Debtor parties to the Assigned Contracts that have been identified in such Successful Bid and Back-Up Bid. The non-Debtor parties to the Assigned Contracts may object to the assumption, assignment and/or transfer of such Assigned Contract on or before **4:00 p.m. (prevailing Eastern Time) on the date that is five (5) business days after Notice** (the "**Adequate Assurance Objection Deadline**"), and such objections shall be limited solely to the issue of whether the Successful Bidder can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code. The Successful Bidder or Back-Up Bidder, as the case may be, shall work with any objecting parties to resolve any disputes and/or concerns regarding the Successful Bidder or Back-Up Bidder's ability to provide adequate assurance of future performance. If,

however, any disputes cannot be resolved within five (5) business days after the Adequate Assurance Objection Deadline, either party may seek a determination from this Court solely on the issue of whether the Successful Bidder can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code.

17. Objections to the sale of the Debtors' assets or the relief requested in the Motion (other than with respect to the conduct of the Auction) must: (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Rules; (c) be filed with the clerk of the Bankruptcy Court for the District of Delaware, 824 N. Market St., Wilmington, DE 19801, on or before **4:00 p.m. (prevailing Eastern Time) five (5) days prior to the Sale Hearing**, or such later date and time as the Debtors may agree; and (d) be served so as to be received no later than 4:00 p.m. (prevailing Eastern Time) on the same day upon the Bid and Objection Notice Parties. Objections, if any, to the conduct of the Auction must be filed and served prior to the commencement of the Sale Hearing and must otherwise comply with the requirements above. All objections must state with specificity the nature of such objection and will be heard by the Court at the Sale Hearing.

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

19. The Sale Hearing may be adjourned, from time to time, without further notice to creditors or other parties in interest by announcement of said adjournment in open Court.

20. Except as otherwise provided in this Bidding Procedures Order, the Debtors further reserve the right (after consultation with LSQ Funding Group, LLC) as they may reasonably determine to be in the best interests of their estates, subject to conformity with the Bidding Procedures, to: (a) determine which bidders are Qualified Bidders; (b) determine which

bids are Qualified Bids; (c) determine which Qualified Bid or combination of Qualified Bids is the highest or otherwise best proposal and which is the next highest or otherwise best proposal; (d) reject any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code, or (iii) contrary to the best interests of the Debtors and their estates; (e) remove all or a portion of the Debtors' assets from the sale; (f) waive terms and conditions set forth herein with respect to all Potential Bidders; (g) impose additional terms and conditions with respect to all Potential Bidders; (h) extend the deadlines set forth herein; (i) adjourn or cancel the Auction and/or Sale Hearing in open court without further notice; (j) modify the Bidding Procedures as the Debtors may determine to be in the best interest of their estates after consultation with LSQ Funding Group, LLC; or (k) withdraw the Motion at any time prior to the Sale Hearing with or without prejudice.

21. The Debtors may, at their sole discretion, provide a limited expense reimbursement to a Bidder, so long as (a) the Bidder is not the Successful Bidder; (b) the Bidder is not the Stalking Horse; and (c) all documentation for expenses is submitted in full to the Debtors' Chief Restructuring Officer within seven (7) days of the Auction.

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

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

Date: _____, 2017
Wilmington, Delaware

The Honorable Kevin Gross
United States Bankruptcy Judge

Exhibit 1 (to Bidding Procedures Order)

[Bidding Procedures]

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

SHORT BARK INDUSTRIES, INC., et al.,¹

Debtors.

Chapter 11

Case No. 17-11502 (KG)

Jointly Administered

BIDDING PROCEDURES

By motion dated July 20, 2017 (the “**Motion**”),² the above-captioned debtors and debtors in possession (the “**Debtors**”) sought approval of, among other things, the procedures through which it will determine the highest or otherwise best price for (i) the sale of substantially all, or certain of the assets owned or leased by the Debtors and its direct and indirect subsidiaries (collectively, the “**Assets**”) in one or more lots to one or more successful bidders.

On [____], 2017, the United States Bankruptcy Court for the District of Delaware (the “**Court**”) entered an order (the “**Bidding Procedures Order**”), which, among other things, authorized the Debtors to determine the highest or otherwise best bid for the Assets through the process and procedures set forth below (the “**Bidding Procedures**”). As set forth below and in the Motion, the Debtors reserve the right to modify the Bidding Procedures.

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

Assets to be Sold

The Assets generally constitute all of the assets owned by the Debtors. The Debtors are offering bidders the opportunity to bid on all of Assets (the “**Sale**”).

Stalking Horse Bidder(s)

[TBD]

¹ The Debtors in these jointly administered cases are Short Bark Industries, Inc. (Tax ID: 66-0655657) and EXO SBI, LLC (Tax ID: 46-5210695)).

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

Participation Requirements

In order to participate in the bidding process or otherwise be considered for any purpose hereunder, a person interested in entering into a Sale for some or all of the Assets (a "**Potential Bidder**") must first deliver an executed confidentiality agreement in form and substance satisfactory to the Debtors and their counsel.³

Bid Requirements

In order to participate in the bidding process and be deemed a "**Qualified Bidder**," a Potential Bidder must submit a "**Qualified Bid**" by **August 25, 2017, at 5:00 p.m. (prevailing Eastern Time) (the "Bid Deadline")**. The Debtors, with the consent of LSQ Funding Group, LLC ("**LSQ**"), shall make a determination regarding whether a bid is a Qualified Bid and shall notify bidders whether their bids have been determined to be Qualified Bids by no later than **5:00 p.m. (prevailing Eastern time) on August [], 2017**. The Debtors reserve their right to contact bidders before or after the Bid Deadline to discuss or clarify the terms of their bid and to indicate any terms which may need to be modified in order to conform the bid to a Qualified Bid or otherwise evaluate the bid. If no timely, conforming Qualified Bids are submitted by the Bid Deadline, the Debtors shall not hold the Auction but expressly reserve the right to extend the Bid Deadline (with the consent of LSQ). To constitute a Qualified Bid, a bid must, among other things:

- (i) provide to the Debtors and their counsel the most current audited and latest unaudited financial statements (collectively, the "**Financials**") of the Potential Bidder, or, if the Potential Bidder is an entity formed for the purpose of a transaction with the Debtors, (x) Financials of the equity holder(s) of the Potential Bidder or such other form of financial disclosure as is acceptable to the Debtors that demonstrates the Potential Bidder's financial ability to consummate a transaction and (y) a written commitment acceptable to the Debtors of the equity holder(s) of the Potential Bidder to be responsible for the Potential Bidder's obligations in connection with a sale transaction (including being bound by the terms and conditions of the Bidding Procedures); provided that if a Potential Bidder is unable to provide Financials, the Debtors may accept such other information sufficient to demonstrate to the Debtors' reasonable satisfaction that such Potential Bidder has the financial wherewithal to consummate a sale transaction. Potential Bidders shall not be allowed to review or obtain the Financials of other Potential Bidders;
- (ii) include a cover letter identifying whether the Potential Bidder is interested in purchasing some or all of the Assets;

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

- (iii) state that the Potential Bidder offers to consummate the sale pursuant to a proposed form of purchase agreement (the “**Purchase Agreement**”) and enclose a clean signed copy of the proposed Purchase Agreement;
- (iv) if any bid is conditioned on the assumption and assignment of executory contracts and/or unexpired leases, then such Potential Bidder shall be required to provide evidence of its ability to provide adequate assurance of future performance of such contracts or leases along with the bid;
- (v) either (i) be an all-cash bid or (ii) be accompanied with verified financing;
- (vi) to the extent the Court has authorized the Debtors to provide bid protections to any stalking horse bidder, the total consideration offered must exceed the consideration offered by the stalking horse bidder plus the value of the stalking horse bid protections approved by the Bankruptcy Court;
- (vii) contain a list of the Debtors’ executory contracts and unexpired leases with respect to which the Potential Bidder seeks assignment from the Debtors;
- (viii) confirm that the offer shall remain open and irrevocable as provided below;
- (ix) be accompanied with a certified or bank check or wire transfer in an amount equal to five percent (5%) of the proposed purchase price set forth in the bid as a minimum good faith deposit (the “**Minimum Deposit**”), which Minimum Deposit shall be: (a) deposited into an escrow account pursuant to an executed escrow agreement; and (b) used to fund a portion of the purchase price provided for in the bid;
- (x) indicate whether the Potential Bidder intends to operate the Assets as a going concern;
- (xi) not be conditioned on obtaining financing or the outcome of any due diligence by the Potential Bidder; and
- (xii) fully disclose the identity of each entity that will be bidding for the Assets or otherwise participating in connection with such bid, and the complete terms of any such participation.

If a bid submitted on or prior to the Bid Deadline fails to meet all the requirements of a Qualified Bid, the Debtors are entitled to work with the bidder in an effort to cure any defects in the bid and to cause such bid to become a Qualified Bid prior to the commencement of the Auction. In addition, the Debtors may, with the consent of the LSQ, waive one or more defects and cause such bid to be a Qualified Bid prior to the commencement of or during the Auction. For the avoidance of doubt, LSQ shall be deemed a Qualified Bidder, and any bid, including a credit bid, for the Assets submitted by LSQ shall be deemed a Qualified Bid without the need to satisfy any of the other bid requirements set forth herein.

A bid received from a Potential Bidder that meets the requirements set forth above which is timely received will be considered a Qualified Bid if the Debtors believes that such bid would be consummated if selected as a Successful Bid (defined below).

After the Bid Deadline (defined below), the Debtors, with the consent of LSQ, shall determine which Qualified Bid or combination of Qualified Bids represents the Starting Qualified Bid (defined below). Prior to the commencement of the Auction, the Debtors shall distribute copies of the Starting Qualified Bid to each Qualified Bidder.

Bid Deadline

The Bid Deadline for submitting bids on the Assets by a Potential Bidder shall be August 25, 2017, at 5:00 p.m. (prevailing Eastern Time).

A Potential Bidder that desires to make a bid must deliver written and electronic copies of their bid so that they are actually received prior to the Bid Deadline by: (i) counsel for the Debtors, David M. Klauder, Esquire, Bielli & Klauder, LLC, 1204 N. King Street, Wilmington, DE 19801; (ii) counsel for LSQ, Dominic E. Pacitti, Esquire, Klehr Harrison Harvey Branzburg LLP, 919 N. Market Street, Suite 1000, Wilmington, DE 19801; (iii) SSG Capital Advisors, LLC, Attn: J. Scott Victor, Five Tower Bridge, Suite 420, West Conshohocken, PA 19428; (iv) the Debtors' CRO, Mark Iammartino, MorrisAnderson, 55 West Monroe Street #2530, Chicago, IL 60603, and (v) counsel for the Committee, Michael Busenkill, Esquire, Gellert Scali Busenkill & Brown, LLC, 1201 North Orange Street, 3rd Floor, Wilmington, DE 19801, and Mary E. Seymour, Esquire & Wojchich F. Jung, Esquire, Lowenstein Sandler LLP, One Lowenstein Drive, Roseland, NJ 07069

Obtaining Due Diligence Access

The Debtors shall afford each Potential Bidder reasonable due diligence information. Site access shall be provided upon reasonable request to the Debtors at the discretion of the Debtors within its reasonable business judgment. Potential Bidders cannot question the Debtors' employees without the Debtors' consent. The due diligence period will end on the Bid Deadline.

The Debtors shall not be obligated to furnish any information relating to the Debtors, the Assets and/or the Sale to any person except to a Potential Bidder. The Debtors shall give each Potential Bidder reasonable access to all written due diligence information provided to another Potential Bidder.

The Debtors shall coordinate all reasonable requests for additional information and due diligence access from Potential Bidders. No conditions relating to the completion of due diligence shall be permitted to exist after the Bid Deadline.

Due Diligence From Potential Bidders

Each Potential Bidder shall comply with all reasonable requests for additional information by the Debtors or their advisors regarding such Potential Bidder's financial wherewithal to consummate and perform obligations in connection with the Sale. Failure by the

Potential Bidder to comply with requests for additional information may be a basis for the Debtors to determine that a Potential Bidder is not a Qualified Bidder and that a bid made by a Potential Bidder or a Qualified Bidder is not a Qualified Bid.

“As Is, Where Is”

The Sale of the Assets shall be on an “as is, where is” basis and without representations or warranties of any kind, nature or description by the Debtors, their agents or estates, except to the extent set forth in the purchase agreement between the Debtors and the Successful Bidder. All of the Debtors’ right, title and interest in and to the Assets shall be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon (collectively, the “**Interests**”), if any, with such Interests to attach to the net proceeds of the Sale of the Assets, with the same validity and priority as existed immediately prior to such Sale.

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

The Auction

If more than one Qualified Bid by a Qualified Bidder is received by the Bid Deadline (or if a non-qualified bid received by the Bid Deadline is qualified prior to the commencement of the Auction), an Auction with respect to a sale of the Assets shall take place on **August 29, 2017, at 10:00 a.m. (prevailing Eastern Time)**, at the offices of [____], or at such other place and time as the Debtors shall notify all Qualified Bidders and other invitees. If, however, no such Qualified Bids are received by the Bid Deadline, or if a non-qualified bid received by the Bid Deadline is not qualified prior to the commencement of the Auction, then the Auction will not be held.

Auction Rules:

- (i) Only Qualified Bidders who have submitted a Qualified Bid for some or all of the Assets and their authorized representatives will be eligible to participate at the Auction and to increase their bids. Representatives of the LSQ and the Committee, if any, may attend the Auction. After the Bid Deadline, the Debtors, with the consent of LSQ, shall determine which Qualified Bid or combination of Qualified Bids represent the then-highest or otherwise best bid for the Assets (the “**Starting Qualified Bid**”). Prior to the commencement of the Auction, the Debtors shall distribute copies of the Starting Qualified Bid to each Qualified Bidder. The Auction shall commence with the Starting Qualified Bid and then proceed in minimum increments to be announced at the Auction (the “**Overbid Increment**”).

The Debtors shall not consider any subsequent bid in the Auction unless any bid after the Starting Qualified Bid exceeds the previous highest bid by at least the Overbid Increment; provided, however, that in the event the Debtors select a combination of Qualified Bids to serve as the Starting Qualified Bid, the Debtors, with the consent of LSQ, reserve the right to determine an appropriate Overbid Increment. During the course of the Auction, the Debtors shall inform each participant which Qualified Bid(s) reflects, in the Debtors' view, after consultation with LSQ and the Committee, if any, the highest or otherwise best offer or combination of offers.

- (ii) The Auction may be adjourned as the Debtors and LSQ deem appropriate. Reasonable notice of such adjournment and the time and place for the resumption of the Auction shall be given to all Qualified Bidders that have submitted a Qualified Bid and counsel for LSQ and Committee, if any.
- (iii) Each Qualified Bidder participating at the Auction will be required to confirm that it has not engaged in any collusion with respect to the bidding or Sale Transaction; provided, however, in order to obtain the highest and/or otherwise best bid, the Debtors may engage in discussions with one or more Qualified Bidders if it determines, with the consent of LSQ, that the combination of all or a portion of bids received from such Qualified Bidders would yield the highest and/or otherwise best offer at the Auction.
- (iv) Bidding at the Auction may be transcribed or videotaped.

Other Terms

All Qualified Bids, the Auction, and the Bidding Procedures are subject to modification and/or additional terms and conditions as are announced by the Debtors (with the consent of LSQ) and that are not inconsistent with the Bidding Procedures Order. At the conclusion of the Auction, the Debtors shall announce the bid or combination of bids made pursuant to the Bidding Procedures Order that represents, in the Debtors' discretion (with the consent of LSQ), the highest or otherwise best offer for the Assets (the "**Successful Bid**"). Prior to the entry of the Sale Order, the Debtors shall announce the identity of the Qualified Bidder or combination of Qualified Bidders who submitted the Successful Bid at the Auction (the "**Successful Bidder**"). If an Auction is held, the Debtors shall be deemed to have accepted a Qualified Bid only when (i) such bid is declared the Successful Bid at the Auction, (ii) definitive documentation has been executed in respect thereof and (iii) the Court has approved the Sale to the Successful Bidder. Such acceptance by the Debtors is conditioned upon approval by the Court of the Successful Bid and the entry of an order approving such Successful Bid.

Irrevocability of Certain Bids

The Successful Bid and the bid of the Qualified Bidder or combination of Qualified Bidders (the "**Back-Up Bidder**") that submits the next highest or otherwise best bid or combination of bids (the "**Back-Up Bid**") shall be irrevocable until the earlier of: (i) sixty (60)

days after entry of the Sale Order approving the Successful Bid; and, (ii) closing of the sale to the Successful Bidder or the Back-Up Bidder. Following the entry of the Sale Order, if the Successful Bidder fails to consummate the transaction for any reason, the Back-Up Bid will be deemed the new Successful Bid, and the Debtors will be authorized, but not required, to consummate the transaction with the Back-Up Bidder without further order of the Court. In such case, the defaulting Successful Bidder's Minimum Deposit shall be forfeited to the Debtors and the Debtors (and/or LSQ) shall have the right to seek any and all other remedies and damages from the defaulting Successful Bidder.

The Debtors will present the results of the Auction to the Bankruptcy Court at the Sale Hearing (as defined below) and the Debtors will request certain findings from the Bankruptcy Court regarding the Auction, including, among other things, that (i) the Auction was conducted and the Successful Bidder was selected in accordance with these Bidding Procedures, (ii) the Auction was fair in substance and procedure and (iii) consummation of the Sale contemplated by the Successful Bid will provide the highest or otherwise best value for the Assets and is in the best interests of the Debtors and their creditors.

Sale Hearing

A hearing to consider approval of the Sale of the Assets to the Successful Bidder will take place on **August 30, 2017, at [] []m. (prevailing Eastern Time)**, before the Honorable Kevin Gross in the United States Bankruptcy Court District of Delaware, 824 N. Market St., Wilmington, DE 19801 (the "**Sale Hearing**").

Return of Deposit

Except as otherwise provided in this paragraph with respect to any Successful Bid and any Back-Up Bid, the Minimum Deposits of all Qualified Bidders that submitted such a deposit under the Bidding Procedures shall be returned upon or within five (5) business days after the conclusion of the Sale Hearing. The Minimum Deposit of the Successful Bidder shall be held until the closing of the Sale of the Assets, as applicable, and applied in accordance with the Successful Bid. The Minimum Deposit of any Back-Up Bidder shall be returned upon or within the earlier of (i) sixty (60) days after entry of the Sale Order (the "**Outside Back-Up Date**") or (ii) the closing of the Sale of the Assets to the Successful Bidder.

Failure to Close

If the Successful Bidder fails to consummate the transaction in accordance with the terms of the applicable agreement executed by the Successful Bidder by the closing date contemplated in the purchase agreement agreed to by the parties for any reason, the Debtors shall: (i) retain the Successful Bidder's Minimum Deposit; (ii) maintain the right to pursue all available remedies, whether legal or equitable; and (iii) be free to consummate the proposed transaction with the Back-Up Bidder at the highest price bid by the Back-Up Bidder at the Auction, without the need for an additional hearing or Order of the Court. Notwithstanding the foregoing, nothing

herein shall prejudice the rights of LSQ to exercise whatever rights and remedies it may have pursuant to the DIP Orders.

Reservation of Rights

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

Expenses

The Debtors may, at their sole discretion, provide a limited expense reimbursement to a Bidder, so long as (a) the Bidder is not the Successful Bidder; (b) the Bidder is not the Stalking Horse; and (c) all documentation for expenses is submitted in full to the Debtors' Chief Restructuring Officer within seven (7) days of the Auction

LSQ's Consent/Consultation Rights

If LSQ exercises its right to bid, including credit bid, at any time during the Auction, the Debtors shall not be required to consult with or obtain the consent of LSQ as would otherwise be required under these Bidding Procedures during any round of bidding in which LSQ tenders a credit bid, provided, however, that upon LSQ either withdrawing its credit bid or informing the Debtors that it is no longer bidding, the Debtors shall resume consultation with LSQ during subsequent rounds of bidding. Further, the Debtors shall establish precautions necessary to safeguard against LSQ receiving information that other Potential Bidders and/or Qualified Bidders are not entitled to receive for so long as the LSQ exercises its right to bid.

Exhibit 2 (to Bidding Procedures Order)

[Notice of Auction and Sale Hearing]

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

SHORT BARK INDUSTRIES, INC., et al.,¹

Debtors.

Chapter 11

Case No. 17-11502 (KG)

Jointly Administered

NOTICE OF AUCTION AND SALE HEARING

PLEASE TAKE NOTICE THAT:

1. On July 20, 2017, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed a motion (the “Motion”)² [Docket No. ___] for entry of orders, among other things (i) approving bidding procedures (the “Bidding Procedures”) in connection with the sale (the “Sale”) of substantially all assets (collectively, the “Assets”) of the Debtors, (ii) scheduling an auction and a hearing (the “Sale Hearing”) to consider approval of the Debtors entering into a Sale, (iii) approving the form and manner of notice thereof and (iv) granting related relief. The Motion additionally requests entry of an order or orders (i) authorizing and approving a Sale free and clear of liens, claims, encumbrances and interests, (ii) approving the assumption and assignment of executory contracts and unexpired leases and (iii) granting related relief.

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

3. On [____], 2017, the United States Bankruptcy Court for the District of Delaware entered the Bidding Procedures Order. Pursuant to the Bidding Procedures Order, if the Debtors receive any Qualified Bids (as defined in the Bidding Procedures), the auction for the Assets shall take place on **August 29, at 10:00 a.m. (prevailing Eastern Time)**, at the offices of [____], or at such other place and time as the Debtors shall notify all Qualified Bidders and other invitees. Only parties that have submitted a Qualified Bid in accordance with the Bidding Procedures, attached to the Bidding Procedures Order as Schedule 1, by no later than **August 25, 2017, at 5:00 p.m. (prevailing Eastern Time)** (the “Bid Deadline”), may participate at the

¹ The Debtors in these jointly administered cases are Short Bark Industries, Inc. (Tax ID: 66-0655657) and EXO SBI, LLC (Tax ID: 46-5210695).

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

Auction. Any party that wishes to take part in this process and submit a bid for the Assets must submit its bid prior to the Bid Deadline and in accordance with the Bidding Procedures.

4. The Sale Hearing to consider approval of the Sale of the Assets to the Successful Bidder or Back-Up Bidder free and clear of all liens, claims and encumbrances will be held before the Honorable Kevin Gross in the United States Bankruptcy Court District of Delaware, 824 N. Market St., Wilmington, DE 19801 on **August 30, 2017, at [] [].m. (prevailing Eastern Time)**, or at such other time thereafter as counsel may be heard. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing.

5. Objections, if any, to the Sale, or the relief requested in the Motion (other than with respect to cure amounts and adequate assurance which are subject to a separate notice) must: (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Rules; (c) be filed with the Clerk of the Bankruptcy Court, 824 N. Market St., Wilmington, DE 19801, on or before **4:00 p.m. (prevailing Eastern Time) on August [], 2017**, or such later date and time as the Debtors may agree; and (d) be served so as to be received no later than 5:00 p.m. (prevailing Eastern Time) on the same day, upon (i) counsel for the Debtors, David M. Klauder, Esquire, Bielli & Klauder, LLC, 1204 N. King Street, Wilmington, DE 19801; (ii) counsel to LSQ Funding Group, LLC, Dominic E. Pacitti, Esquire, Klehr Harrison Harvey Branzburg LLP, 919 N. Market Street, Suite 1000, Wilmington, DE 19801; and (iii) counsel for the Committee, Michael Busenkill, Esquire, Gellert Scali Busenkill & Brown, LLC, 1201 North Orange Street, 3rd Floor, Wilmington, DE 19801, and Mary E. Seymour, Esquire & Wojchich F. Jung, Esquire, Lowenstein Sandler LLP, One Lowenstein Drive, Roseland, NJ 07069. **UNLESS AN OBJECTION IS TIMELY SERVED AND FILED IN ACCORDANCE WITH THIS NOTICE, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT AND THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER HEARING AND NOTICE.**

6. This Notice and the Sale Hearing is subject to the complete terms and conditions of the Motion, the Bidding Procedures Order, and the Bidding Procedures, which shall control in the event of any conflict and the Debtors encourage parties-in-interest to review such documents in their entirety. Parties interested in receiving more information regarding the sale of the Assets or in obtaining a copy of any related document, subject to any necessary confidentiality agreement, may make a written request to counsel for the Debtors, David M. Klauder, Esquire, Bielli & Klauder, LLC, 1204 N. King Street, Wilmington, DE 19801. In addition, copies of the Motion, the Bidding Procedures Order, and this Notice can be found: (a) on the Court's website, <http://ecf.deb.uscourts.gov> and (b) with the Clerk of the Bankruptcy Court, 824 N. Market St., Wilmington, DE 19801.

BIELLI & KLAUDER, LLC

Dated: July 20, 2017
Wilmington, Delaware

/s/ David M. Klauder
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*Proposed Counsel to the Debtors
and Debtors-In-Possession*

Exhibit 3 (to Bidding Procedures Order)

[Notice of Assumption and Assignment]

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

SHORT BARK INDUSTRIES, INC., et al.,¹

Debtors.

Chapter 11

Case No. 17-11502 (KG)

Jointly Administered

NOTICE OF ASSUMPTION AND ASSIGNMENT

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On [____], 2017, the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) entered an order (the “Bidding Procedures Order”),² pursuant to sections 105(a), 363, 365, 503, 506, 507 and 552 of title 11 of the United States Code (the “Bankruptcy Code”), rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure and Local Rule 6004-1, in the chapter 11 cases of the above-captioned debtors and debtors in possession (the “Debtors”) approving, among other things, the fixing of cure amounts (the “Cure Amounts”) related to the Debtors’ assumption, assignment and/or transfer of certain executory contracts, unexpired leases, and other agreements (the “Executory Contracts and Unexpired Leases”) listed on **Exhibit A** annexed hereto in connection with the sale (the “Sale”) of certain of the Debtors’ assets (the “Assets”). The Debtors will assume, assign, and/or transfer the Executory Contracts and Unexpired Leases to the Successful Bidder or Back-Up Bidder for the Assets under the bidding procedures (the “Bidding Procedures”) approved by the Bankruptcy Court and attached to the Bidding Procedures Order as **Exhibit 1**. A hearing to consider approval of the Sale of the Assets to the Successful Bidder or Back-Up Bidder free and clear of all liens, claims and encumbrances will be held before the Honorable Kevin Gross in the United States Bankruptcy Court District of Delaware, 824 N. Market St., Wilmington, DE 19801 on [____], 2017, at [__] [__].m. (prevailing Eastern Time), or at such other time thereafter as counsel may be heard (the “Sale Hearing”).

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

¹ The Debtors in these jointly administered cases are Short Bark Industries, Inc. (Tax ID: 66-0655657) and EXO SBI, LLC (Tax ID: 46-5210695).

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

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

4. To be considered a timely Cure Amount/Assignment Objection, the Cure Amount/Assignment Objection must be filed with the Bankruptcy Court and served upon counsel for the Debtors, David M. Klauder, Esquire, Bielli & Klauder, LLC, 1204 N. King Street, Wilmington, DE 19801; (ii) counsel for LSQ Funding Group, LC, Dominic E. Pacitti, Esquire, Klehr Harrison Harvey Branzburg LLP, 919 N. Market Street, Suite 1000, Wilmington, DE 19801; and (iii) counsel for the Unsecured Creditors’ Committee, Michael Busenkill, Esquire, Gellert Scali Busenkill & Brown, LLC, 1201 North Orange Street, 3rd Floor, Wilmington, DE 19801, and Mary E. Seymour, Esquire & Wojchich F. Jung, Esquire, Lowenstein Sandler LLP, One Lowenstein Drive, Roseland, NJ 07069, by the later of (i) [_____], **2017 at 4:00 p.m.** (prevailing Eastern time) (or such later date and time as the Debtors may agree); or (ii) seven (7) days after service of the relevant Supplemental Notice of Assumption and Assignment (the “Cure/Assignment Objection Deadline”).

5. If a Cure Amount/Assignment Objection is timely filed, the Debtors may, in their sole discretion, resolve any Cure Amount/Assignment Objection by mutual agreement with the objecting counterparty to any Executory Contract or Unexpired Lease without further order of the Court. In the event that the Debtors and any objecting party are unable to consensually resolve any Cure Amount/Assignment Objection no later than three (3) business days prior to the Sale Hearing, the Debtors will request that the Court resolve such Cure Amount/Assignment Objection at (a) the Sale Hearing or (b) at such other date as the Court may designate.

6. Unless the Cure Amount/Assignment Objection is timely filed and served, the assumption, assignment and/or transfer of the applicable Executory Contracts and Unexpired Leases will proceed without further notice at the Sale Hearing.

7. Parties that fail to file and serve timely Cure Amount/Assignment Objections shall be deemed to have waived and released any and all rights to assert against the Debtors, the Successful Bidder or Back-Up Bidder cure amounts different from the Cure Amounts listed on **Exhibit A** hereto and shall be forever barred and estopped from asserting or claiming against the Debtors, the Successful Bidder or Back-Up Bidder, or any assignee of any Executory Contract or Unexpired Lease that any additional amounts are due or defaults exist, or prohibitions or conditions to assignment exist or must be satisfied, under such Executory Contract or Unexpired Lease.

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

Contracts and Unexpired Leases to be assumed and assigned to the Successful Bidder no later than one (1) business day prior to the Sale Hearing, or, if the Court determines at any hearing on a Cure Amount/Assignment Objection that the applicable cure amount for such contract or lease is greater than the Cure Amount proposed by the Debtors, no later than five (5) business days following the Court's determination. The non-Debtor party or parties to any such excluded contract or lease will be notified of such exclusion by written notice mailed within two (2) business days of such determination.

9. Within one (1) business day after the conclusion of the Auction, the Debtors will serve a notice identifying the Successful Bidder and Back-Up Bidder (the "Notice") to the non-Debtor parties to the Executory Contracts and Unexpired Leases that have been identified in such Successful Bid and Back-Up Bid. The Debtors propose that the non-Debtor parties to the Executory Contracts and Unexpired Leases have until 4:00 p.m. on the date that is five (5) business days after Notice (the "Adequate Assurance Objection Deadline") to object to the assumption, assignment and/or transfer of such Executory Contract and Unexpired Lease solely on the issue of whether the Successful Bidder can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code. The Successful Bidder or Back-Up Bidder, as the case may be, shall work with any objecting parties to resolve any disputes and/or concerns regarding the Successful Bidder or Back-Up Bidder's ability to provide adequate assurance of future performance. If, however, any disputes cannot be resolved within three (3) business days after the Adequate Assurance Objection Deadline, either party may seek a determination from this Court solely on the issue of whether the Successful Bidder can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code.

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

11. Copies of the Bidding Procedures Order and other relevant documents can be found: (a) on the Court's website, <http://ecf.deb.uscourts.gov> and (b) with the Clerk of the Bankruptcy Court, 824 N. Market St., Wilmington, DE 19801.

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

BIELLI & KLAUDER, LLC

Dated: July 20, 2017
Wilmington, Delaware

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*Proposed Counsel to the Debtors
and Debtors-In-Possession*

Exhibit A (to Notice of Assumption and Assignment)

[Executory Contracts and Unexpired Leases]

[To be provided]