

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. 55 & 94

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 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

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.

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

³ 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.

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 **September 15, 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, in consultation with the DIP Lender and the Official Committee of Unsecured Creditors (the "**Committee**"), 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 and the Committee in accordance with the Bidding Procedures, the Auction shall take place on

September 18, 2017 at 10:00 a.m. prevailing Eastern time at the offices of Klehr Harrison Harvey Branzburg LLP, 1835 Market Street, Suite 1400, Philadelphia, PA 19103, 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 **September 19, 2017, at 1:30 p.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 Debtors will cause a notice in substantially the form annexed hereto as **Exhibit 2** (the “**Notice of Auction and Sale Hearing**”), and a copy of 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, L.L.C. (“**LSQ**”); (c) counsel to the Committee; (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; (g) all parties that have previously expressed an interest in purchasing or otherwise investing in the Debtors’ assets; and (h) 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 the later of three (3) business days after entry of this Bidding Procedures Order or three business (3) days after entry of an Order approving an asset purchase agreement with a Stalking Horse Bidder, 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.

12. On or before the later three (3) business days after entry of this Bidding Procedures Order or three business (3) days after entry of an Order approving an asset purchase agreement with a Stalking Horse Bidder, 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 notice (a "**Supplemental Notice**

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.

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) **September 12, 2017 at 4:00 p.m. (prevailing Eastern Time)** 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, Domenic E. Pacitti, Esquire, Klehr Harrison Harvey Branzburg LLP, 919 N. Market Street, Suite 1000, Wilmington, DE 19801; and (iii) counsel for the Committee, Michael Busenkell, Esquire, Gellert Scali Busenkell & Brown, LLC, 1201 North Orange Street, 3rd Floor, Wilmington, DE 19801, and Mary E. Seymour, Esquire & Wojciech 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 Amount and from asserting any additional cure or other amounts with respect to such Executory

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.

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 issues 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, and/or whether such non-Debtor party to an Executory Contract can object, under non-bankruptcy law, to such assignment based on the identity of the Successful Bidder.

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. After the conclusion of the Auction, the Debtors will file and 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 **the date of the Sale Hearing** (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 by the Adequate Assurance Objection Deadline, either party may seek a determination from this Court solely on the issues of whether the Successful Bidder can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code, and/or whether such non-Debtor party to an Executory Contract can object, under non-bankruptcy law, to such assignment based on the identity of the Successful Bidder.

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 **September 12, 2017 at 4:00 p.m. (prevailing Eastern Time)**; and (d) be served so as to be received no later than 4:00 p.m. (prevailing Eastern Time) on the same day upon 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 and the Committee) 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 and the Committee; or (k) withdraw the Motion at any time prior to the Sale Hearing with or without prejudice.

21. The Debtors reserve the right, in consultation with the Committee and LSQ, to enter into an asset purchase agreement with a Stalking Horse Bidder, and seek Court approval of the form of such asset purchase agreement any bidding protections requested by the Stalking Horse Bidder upon motion filed with the Court.

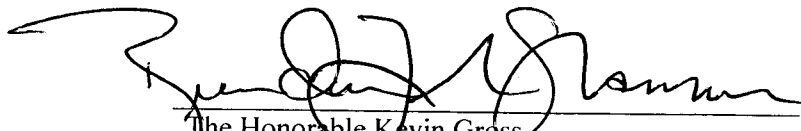
22. The failure of the Committee to object to a credit bid of any prepetition debt held by LSQ or any other party asserting a lien on or security interest in the Debtors' assets, or the Court's approval of any such credit bid, shall not (a) prejudice or impair the rights of the

Committee to challenge the nature, extent, validity, priority, perfection or amount of the underlying liens, security interests and claims, or (b) free LSQ or any other party asserting a lien on or security interest in the Debtors' assets from any causes of action which can be brought by or on behalf of the Debtors' estates, subject to any challenge period set forth in any debtor in possession financing order or other order entered by the Court.

23. 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.

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

Date: Aug 2, 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:	Chapter 11
SHORT BARK INDUSTRIES, INC., <u>et al.</u> , ¹	Case No. 17-11502 (KG)
Debtors.	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]

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

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.

“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 **September 15, 2017, at 5:00 p.m. (prevailing Eastern Time) (the “Bid Deadline”)**. The Debtors, in consultation with LSQ Funding Group, L.L.C. (**“LSQ”**) and in consultation with the Official Committee of Unsecured Creditors (**the “Committee”**), 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 **12:00 p.m. (prevailing Eastern time) on September 16, 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 (in consultation with LSQ and the Committee). 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;
- (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;

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.

- (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, in consultation with LSQ and with the Committee, waive one or more defects and cause such bid to be a Qualified Bid prior to the commencement of or during the Auction.

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, after consulting with the Committee, the Debtors believe that such bid would be consummated if selected as a Successful Bid (defined below).

After the Bid Deadline (defined below), the Debtors, in consultation with LSQ and the Committee, 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 September 15, 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, dklauder@bk-legal.com; (ii) counsel for LSQ, Domenic E. Pacitti, Esquire, Klehr Harrison Harvey Branzburg LLP, 919 N. Market Street, Suite 1000, Wilmington, DE 19801, dpacitti@klehr.com; (iii) SSG Capital Advisors, LLC, Attn: J. Scott Victor, Five Tower Bridge, Suite 420, West Conshohocken, PA 19428, jsvictor@ssgca.com; (iv) the Debtors' CRO, Mark Iammartino, MorrisAnderson, 55 West Monroe Street #2530, Chicago, IL 60603, miammartino@morrisanderson.com; and (v) counsel for the Committee, Michael Busenkell, Esquire, Gellert Scali Busenkell & Brown, LLC, 1201 North Orange Street, 3rd Floor, Wilmington, DE 19801, mbusenkell@gsbblaw.com, and Mary E. Seymour, Esquire & Wojciech F. Jung, Esquire, Lowenstein Sandler LLP, One Lowenstein Drive, Roseland, NJ 07069, mseymour@lowenstein.com and wjung@lowenstein.com.

Obtaining Due Diligence Access

The Debtors shall afford a Potential Bidder reasonable due diligence information that the Debtors determine in their reasonable business judgment can be provided to a Potential Bidder. 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 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 **September 18, 2017, at 10:00 a.m. (prevailing Eastern Time)**, at the offices of Klehr Harrison Harvey Branzburg LLP, 1835 Market Street, Suite 1400, Philadelphia, PA 19103, 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 LSQ and the Committee may attend the Auction. After the Bid Deadline, the Debtors, in consultation with LSQ and the Committee, 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 (in consultation with LSQ and the Committee) 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 (in consultation with LSQ and the Committee), 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 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 **September 19, 2017, at 1:30 p.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, in consultation with LSQ and the Committee, 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.

Stalking Horse Bidder

The Debtors reserve the right, in consultation with the Committee and LSQ, to enter into an asset purchase agreement with a Stalking Horse Bidder, and seek Court approval of the form of such asset purchase agreement any bidding protections requested by the Stalking Horse Bidder upon motion filed with the Court.

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. 55] 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 **September 18, 2017, at 10:00 a.m. (prevailing Eastern Time)**, at the offices of Klehr Harrison Harvey Branzburg LLP, 1835 Market Street, Suite 1400, Philadelphia, PA 19103, 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 **September 15, 2017, at 5:00 p.m. (prevailing Eastern Time)** (the “Bid Deadline”), may

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.

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

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 **September 19, 2017, at 1:30 p.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 September 12, 2017**; 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, Domenic E. Pacitti, Esquire, Klehr Harrison Harvey Branzburg LLP, 919 N. Market Street, Suite 1000, Wilmington, DE 19801; and (iii) counsel for the Committee, Michael Busenkell, Esquire, Gellert Scali Busenkell & Brown, LLC, 1201 North Orange Street, 3rd Floor, Wilmington, DE 19801, and Mary E. Seymour, Esquire & Wojciech 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: August 1, 2017
Wilmington, Delaware

/s/ David M. Klauder
David M. Klauder (No. 5769)
Nella M. Bloom (No. 5430)
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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 **September 19, 2017, at 1:30 p.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, other than objections relating to the identity of the proposed assignee, 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, Domenic 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 Busenkell, Esquire, Gellert Scali Busenkell & Brown, LLC, 1201 North Orange Street, 3rd Floor, Wilmington, DE 19801, and Mary E. Seymour, Esquire & Wojciech F. Jung, Esquire, Lowenstein Sandler LLP, One Lowenstein Drive, Roseland, NJ 07069, by the later of (i) **September 12, 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, other than objections relating to the identity of the proposed assignee.

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. After the conclusion of the Auction, the Debtors will file and 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 the Sale Hearing (the "Adequate Assurance Objection Deadline") to object to the assumption, assignment and/or transfer of such Executory Contract and Unexpired Lease solely on the issues of whether the Successful Bidder can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code, and/or whether such non-Debtor party to an Executory Contract can object, under non-bankruptcy law, to such assignment based on the identity of the Successful Bidder. 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, and any other objection raised pursuant to this provision. If, however, any disputes cannot be resolved by 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.

Dated: August 1, 2017
Wilmington, Delaware

BIELLI & KLAUDER, LLC

/s/ David M. Klauder

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Nella M. Bloom (No. 5430)

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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]