

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

In re: JOINTLY ADMINISTERED UNDER
BKY 17-42726

WYNIT Distribution, LLC,	BKY 17-42726
WD Navarre Distribution, LLC,	BKY 17-42728
WD Encore Software, LLC,	BKY 17-42729
WD Navarre Holdings, LLC,	BKY 17-32864
WD Navarre Digital Services, LLC,	BKY 17-32865
WYNIT Holdings, Inc.,	BKY 17-32866
WD Navarre Canada, ULC,	BKY 17-32867

Debtors.

NOTICE OF HEARING AND DEBTORS' MOTION FOR AN ORDER APPROVING BID PROCEDURES FOR THE SALE OF ASSETS FREE AND CLEAR OF ALL LIENS, INTERESTS, CLAIMS, AND ENCUMBRANCES PURSUANT TO 11 U.S.C. § 363, AND GRANTING OTHER RELATED RELIEF

TO: The parties-in-interest as defined in Local Rule 9013-3(a)(2).

1. The above-captioned debtors (the “**Debtors**”) file this motion (this “**Motion**”) requesting relief described below and give notice of hearing.

2. The Court will hold a hearing on the Motion at **2:00 PM on November 8, 2017** in Courtroom 8 West, United States Court House, 300 South Forth Street, Minneapolis, MN 55415.

3. The deadline to file a response to the Motion is **November 3, 2017**, which is five (5) days before the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. The Debtors submit this Motion for an order (the “**Bid Procedures Order**”), pursuant to 11 U.S.C. § 363, and Fed. R. Bankr. P. 2002 and 6004 to establish bid procedures for the sale of certain inventory free and clear of all liens, interests, claims, and encumbrances. The

Debtors have filed, contemporaneously with this Motion, a motion for an order approving the sale of such inventory free and clear free and clear of all liens, interests, claims, and encumbrances (the “**Sale Motion**”).

I. BACKGROUND

Procedural Posture

6. On September 8, 2017 (the “**Petition Date**”), Debtors filed separate voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Minnesota (the “**Bankruptcy Court**”). The Debtors’ bankruptcy cases are referred to collectively hereafter as, the “**Bankruptcy Cases**”).

7. By orders of this Court entered on September 13, 2017, the Bankruptcy Cases are jointly administered under the caption set forth above which is designated as the lead case.

8. Each Debtor remains in possession of its assets and continues to operate as debtor-in-possession in accordance with 11 U.S.C. §§ 1107 and 1108.

9. An Official Committee of Unsecured Creditors (the “**Committee**”) has been appointed in these Bankruptcy Cases.

10. This is a core proceeding pursuant to 28 U.S.C. § 157(2)(A), (M), (N), and (O).

11. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334.

12. Venue is proper in this Court pursuant to 28 U.S.C. § 1408.

13. The “**Assets**” to be sold pursuant to the Sale Motion are identified on Exhibit A to such Sale Motion and consist of inventory that was not sold pursuant to the First Sale

Motion (as defined below). The Assets do not include any assets of WD Encore Software, LLC. The Assets will be offered for sale in the aggregate and in lots.

14. Because the Assets to be sold have a limited “shelf life” driven by the rapid evolution of existing products and the rapid development of new products, it is critically important to sell the Assets as quickly as reasonably possible to maximize value for the Debtors’ creditors.

15. The Debtors’ history, operations, debt structure and corporate structure are fully described in the declaration of Peter A. Richichi dated September 8, 2017, [ECF No. 5.] and the declaration of relatedness also dated September 8, 2017, [ECF No. 2.]

Pre-petition Secured Debt

16. Each of the Debtors other than WYNIT Holdings, Inc. is a borrower under a Credit Agreement, dated November 29, 2016 (as amended, restated, supplemented or otherwise modified from time to time, the “**Wells Credit Agreement**”), under which Wells Fargo Bank, National Association, as administrative agent (the “**Prepetition Agent**”) for itself and other lenders party thereto (collectively, the “**Prepetition Lenders**”), has authority to act as secured lender. WYNIT Holdings, Inc. signed a guaranty of the other Debtors' obligations under the Wells Credit Agreement. Each of the Debtors. also executed the Guaranty and Security Agreements (as defined in the Wells Credit Agreement) each dated as of November 29, 2016 (collectively, as amended, restated, supplemented or otherwise modified from time to time, the “**Wells Security Agreements**”) in favor of the Prepetition Lenders to secure performance of terms and obligations arising under the Wells Credit Agreement and, under the Security Agreement, each signing Debtor granted the Prepetition Agent, for the benefit of itself and the Prepetition Senior Lenders, a first priority security interest in and continuing lien on substantially

all of each such Debtor's assets and property, and all proceeds, products, accessions, rents, and profits thereof, in each case whether then owned or existing or thereafter acquired or arising.

17. The Wells Credit Agreement provided the Debtors party thereto with a revolving, operating line of credit, subject to borrowing base restrictions and compliance with a host of other covenants, in an aggregate maximum principal amount of \$250,000,000.00. (the "**Wells Facility**"). As of the Petition Date, the outstanding principal balance of the Wells Facility was in excess of \$76,724,574.38.

18. In addition to the foregoing, on February 12, 2014, WYNIT Distribution, LLC, entered into an Inventory Financing Agreement with Wells Fargo Commercial Distribution Finance, LLC ("**WFCDF**"), that provided financing for the purchase of certain, specified inventory and, in exchange, WFCDF received, among other things, a first-priority, purchase money security interest in specific inventory purchased with the proceeds of its loan (such inventory, the "**WFCDF Inventory**"). As of August 29, 2017, the outstanding balance on WFCDF's line of credit was \$10,356,227. After careful analysis, WYNIT Distribution, LLC, in consultation with its third-party financial advisor, concluded that the value of the inventory subject to WFCDF's purchase money security interest was nearly identical to the amount owed to WFCDF. As a result, WYNIT Distribution, LLC, entered into a Voluntary Surrender Agreement with WFCDF, and surrendered relevant inventory to WFCDF on September 5, 2017. Pursuant to the *Order Granting Motion of Wells Fargo Commercial Distribution Financing, LLC for Relief from the Automatic Stay* [Docket No. 177] entered on October 5, 2017, WFCDF has received authority to exercise its rights and remedies with respect to the WFCDF Inventory, and the WFCDF Inventory is not included as part of the Assets to be sold pursuant to this Motion.

19. Within 90 days prior to the petition date, the Debtors also executed a security agreement dated June 12, 2017, that purports to provide FitBit, Inc. (“**Fitbit**”) with a subordinated lien on the Debtors’ assets. FitBit filed a related UCC financing statement on June 16, 2017. As a result, any asserted security interest may be avoidable, any claim is subject to an objection pursuant to 11 U.S.C. § 502(d), and all rights with respect to any asserted claim and lien are reserved under the Bankruptcy Code.

Material Developments After Filing of the Cases

20. After filing the Bankruptcy Cases, the Debtors have performed their duties under the Bankruptcy Code attentively and in good faith. Among other things to date:

A. The Debtors filed the *Motion for Interim and Final Orders (I) Granting an Expedited Hearing, (II) Authority to (A) Obtain Postpetition Facility, (B) Use Cash Collateral, and (C) Provide Certain Protections to Prepetition Senior Lenders, and (III) Related Relief* [ECF No. 6] on September 8, 2017 (“**DIP Financing Motion**”). Under the DIP Financing Motion, the Debtors sought Court approval for a senior secured postpetition revolving loan facility of up to \$15,000,000 (the “**Postpetition Facility**”) with Wells Fargo Bank, National Association as administrative agent (in such capacity, “**Postpetition Agent**”) for certain of the Prepetition Lenders with respect thereto (collectively, the “**Postpetition Lenders**”). The Court has entered two interim Orders granting the DIP Financing Motion and the Postpetition Facility (collectively, the “**DIP Financing Orders**”) pursuant to which up to \$8,000,000 of interim financing is being provided by the Postpetition Lenders to the Debtors.

B. On September 28, 2017, the Debtors filed their *Motion for an Order (I) Granting an Expedited Hearing, (II) Approving the Sale of Assets Free and Clear of All Liens, Interests, Claims, and Encumbrances, and Related Procedures and Bid Protections, Pursuant to 11 U.S.C. § 363, and (III) Granting Other Related Relief* [Docket No. 138] (the “**First Sale Motion**”) pursuant to which the Debtors sought approval of certain bidding procedures and the sale of certain of the Debtors’ accounts receivable, inventory, and other related assets (such assets, the “**First Sale Motion Assets**”). On October 12, 2017, the Court entered the *Order Granting an Expedited Hearing, Approving Bid Protections and Procedures for the Solicitation of Offers for the Sale of the Debtors’ Assets Free and Clear of Liens, Claims, Encumbrances, and Interests, and Granting Related Relief* [Docket No. 202] approving the bid procedures portion of the First Sale Motion. A hearing to approve the sale portion of the First Sale Motion was held on October 20, 2017.

C. The Court entered an order approving the First Sale Motion on October 23, 2017.

Debtors' Proposed Sale Timeline

21. The Debtors propose the following timeline for execution of the Bid Procedures (as defined below) and the related sale transaction(s):

<u>Event</u>	<u>Date</u>
Notice + NDAs + Data Room + Direct contact with buyers	Commenced Prepetition
Bid Procedures Approved	November 8, 2017
Bid Deadline	November 16, 2017
Final Auction, and Announce Results	November 20, 2017
Deadline for Objection to Sale	November 22, 2017
Sale Motion Approved	November 28, 2017
Closing re Asset Sale(s) (outside date)	November 30, 2017

III. RELIEF REQUESTED

Introduction

22. The Debtors request that this Court approve the Bid Procedures as set forth in this Motion.

23. The Debtors further request that the Court waive the stay required by Bankruptcy Rule 6004(h). In order to achieve the maximum value of the Debtors' estates, it is necessary for the Debtors to obtain prompt approval of the Bid Procedures as doing so will give potential bidders ample time to consider participating in the proposed auction. Given the exigencies described in this Motion, delaying the sale of the Assets will have a detrimental effect on the value of the Assets and diminish returns to the Debtors' creditors.

24. Pursuant to Bankruptcy Code §§ 105, 363, and Rules 2002, 6004, of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), the Debtors request that the Court:

(a) approve the bid procedures (“**Bid Procedures**”) described in proposed Order (“**Bid Procedures Order**”) filed contemporaneously with this Motion; and

(b) approve (i) the form and manner of notice of the Bid Procedures, (ii) the Objection Deadline, and (iii) the respective dates, times and places for an auction, if one is required under the Bid Procedures.

Summary of Key Provisions

25. Debtors note the following important aspects of the Sale Motion and Bid Procedures:

- a) Sale to Insider. At this time, none of the Assets are contemplated to be sold to an “insider” within the meaning of Bankruptcy Code §101(31).
- b) Sale Agent. Debtors are proposing that Conway MacKenzie act independently as the Sale Agent.
- c) Competitive Bidding. At this time, Debtors do not anticipate any private sale or elimination of competitive bidding.
- d) Deadlines that Effectively Limit Notice. At this time, Debtors anticipate that the deadlines may be shortened by the Court in order to maximize the potential value of the Assets such that they are sold prior to the holiday season. These limited notice circumstances are unavoidable under the circumstances, and mitigated by the general notice being provided to all parties in interest.
- e) Interim Arrangements with Proposed Buyer. At this time, Debtors do not anticipate any interim arrangements with any proposed buyer.
- f) Use of Proceeds. The Debtors propose to escrow the sale proceeds upon closing of any sale transactions with any liens, claims, interests and encumbrances against the Assets to attach to such sale proceeds with the same extent, validity and priority as of the Petition Date.
- g) Tax Exemption. At this time, Debtors are not requesting to have the sale declared exempt from taxes under 11 U.S.C. §1146(a). If that changes, then Debtors will provide supplemental notice to the relevant taxing authorities.
- h) Record Retention. At this time, Debtors do not anticipate selling their business records as part of the sale process.
- i) Sale of Avoidance Actions. At this time, Debtors do not propose to sell any avoidance actions under Chapter 5 of the Bankruptcy Code.

- j) Relief from Bankruptcy Rules 6004(h). By this Motion, Debtors do seek relief from the fourteen-day stay imposed by Fed. R. Bankr. P. 6004(h) for the reasons noted herein.

26. Pursuant to Bankruptcy Rule 6004(f)(1), sales of property outside the ordinary course of business may be by private sale or auction. Good cause exists to expose the assets to auction. Debtors and Conway MacKenzie believe that an auction conducted substantially in accordance with the Bid Procedures will enable the Debtors to obtain the highest or best offer(s) for the Assets under the circumstances, thereby maximizing the value of the Debtors' estates. The Debtors will accept offers for all or a portion of the Assets.

27. Pursuant to the Bid Procedures, a "**Potential Bidder**" must deliver the following to Conway MacKenzie, as the Sale Agent, prior to submitting any Bid (unless previously delivered in a form acceptable to the Debtors or waived by the Sale Agent after consultation with the Consultation Parties):

- a. An executed Confidentiality Agreement in a form acceptable to the Sale Agent; and
- b. Financial statements of, or other information relating to, the Potential Bidder or, if the Potential Bidder is an entity formed for the purpose of the sale transaction, financial statements of or other information relating to the equity holder(s) of the Potential Bidder, or such other form of financial disclosure or evidence of financial capability and performance and legal authority acceptable to the Sale Agent as requested by the Sale Agent (and, if requested by the Sale Agent, certified to by a duly authorized representative of the Potential Bidder (or equity holders thereof, as applicable)), demonstrating such Potential Bidder's financial capability and legal authority to close the proposed transaction in a timely manner.

28. A Potential Bidder that delivers the documents described in subparagraphs (a) and (b) above, and that the Sale Agent (in consultation with the Consultation Parties) determines in its business judgment is financially capable of consummating the transaction in a timely manner, will be permitted to further participate in the Bidding Process.

29. A Potential Bidder who desires to make a “**Bid**” must deliver a written copy of its Bid on or before the Bid Deadline to the Sale Agent. The Sale Agent may extend the Bid Deadline, after consultation with the Consultation Parties, but will promptly notify all Potential Bidders of any such extension.

30. A Bid received from a Potential Bidder by the Bid Deadline will constitute a “**Qualified Bid**” only if it meets all of the requirements specified in the Bid Procedures, all solely as determined by the Sale Agent, after consultation with the Consultation Parties, including but not limited to:

- (a) The Bid must be in writing and must specify the Assets to be purchased by the Potential Bidder, the purchase price and any other material terms of such purchase. The form of the Bid may be a letter or such other document as agreed to by the Sale Agent, after consultation with the Consultation Parties.
- (b) The Bid must be in cash unless otherwise consented to by the Sale Agent, after consultation with the Consultation Parties.
- (c) The Bid must be accompanied by satisfactory evidence of committed financing or other financial ability to consummate the sale transaction in a timely manner.
- (d) The Bid cannot be conditioned upon the Bankruptcy Court’s approval of any bid protections, such as a break-up fee, termination fee, expense reimbursement, working fee or similar type of payment.
- (e) The Bid must expressly acknowledge and represent that, with respect to the relevant transaction, the Potential Bidder: (i) has had an opportunity to conduct any and all due diligence regarding the assets and businesses of the Debtors and the transaction prior to making its Bid, (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and the assets and businesses of the Debtors in making its Bid, and (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the business or assets of the Debtors or the sale transaction, or the completeness of any information provided in connection therewith, and (iv) has authority to make the Bid, execute any documents to close on the transaction, and proceed to closing on the sale transaction.

- (f) The Bid must be received by the Bid Deadline.
- (g) The Bid must include a good faith deposit (the “**Good Faith Deposit**”) in the form of a wire transfer to the Debtors or a certified or bank check payable to the order of the Debtors (or other form acceptable to the Debtors with approval by the Postpetition Agent) in the amount of at least 10% of the purchase price or guaranteed amount for the Assets proposed to be purchased.

31. If more than one Qualified Bid is submitted for some or all of the Assets in accordance with the Bid Procedures, the Sale Agent will conduct an auction (the “**Auction**”) on November 20, 2017, 2017, at 11:00 a.m., prevailing Central time, or at such later time as determined by the Sale Agent, who will notify all Qualified Bidders who have submitted Qualified Bids (collectively, the “**Auction Participants**”). The Auction will be held at the offices of Debtors’ counsel.

32. Prior to the Auction, the Sale Agent (in consultation with the Consultation Parties) will evaluate the Qualified Bids and select one or more Qualified Bid(s) that the Sale Agent determines in its business judgment to be the highest or best Qualified Bid(s) for the Assets or for a specific subset of Assets (the “**Initial Highest Bid(s)**”). In making this determination, the Sale Agent may consider, among other things, the amount of cash to be paid or delivered, the conditions to closing, the Assets being purchased, and related matters. There may be more than one Initial Highest Bid for the Auction given that Bids will be accepted for all Assets or any subset of Assets.

33. The Sale Agent will give each of the Auction Participants notice of the Initial Highest Bid(s) and a copy of such Bid(s) prior to the scheduled start of the Auction.

34. At the commencement of the Auction, the Sale Agent will formally announce the Initial Highest Bid(s) and the Assets to which such Bid(s) relate. All Qualified Bids for such Assets at the Auction will be based on and increased therefrom, and thereafter made in minimum

increments higher than the previous Qualified Bid in an amount to be established by the Sale Agent, after consultation with the Consultation Parties.¹

35. The Sale Agent will have the right to adopt such other rules for the Auction which it believes in its business judgment will promote the goals of the Auction to obtain the highest and best price for the Assets, after consultation with the Consultation Parties.

36. The Sale Agent, in consultation with the Consultation Parties, may (a) determine which Qualified Bid(s), if any, is/are the highest or otherwise best offer(s); and (b) reject at any time before entry of an Order of the Bankruptcy Court approving the Successful Bid(s), any Bid that, in the discretion of the Sale Agent, after consultation with the Consultation Parties, is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code or the Bid Procedures, or (iii) contrary to the best interests of the Debtors' estates and their creditors.

37. The Bid Procedures provide an appropriate framework for obtaining offers for the purchase of the Assets and will enable the Sale Agent to review, analyze and compare all Bids received to determine which Bid (or Bids) is in the best interests of the Debtors' estates and their creditors. Therefore, the Debtors respectfully request that this Court approve the Bid Procedures and authorize the Debtors and Sale Agent to take any and all actions necessary or appropriate to implement the Bid Procedures.

Credit Bid(s)

38. Section 363(k) of the Bankruptcy Code states:

At a sale under subsection (b) of this section of property that is subject to a lien that secures an allowed claim, unless the court for cause orders otherwise the holder of such claim may bid at such sale, and, if the holder of such claim

¹ Minimum bid increments, other than a credit bid of a Lender, must consist solely of cash consideration unless otherwise authorized by the Sale Agent.

purchases such property, such holder may offset such claim against the purchase price of the property.

Each of the Postpetition Agent and the Prepetition Agent, on behalf of the Postpetition Lenders and the Prepetition Lenders, respectively, are deemed Qualified Bidders and have the right to credit bid for some or all of the Assets should they elect to do so. Either or both of the Postpetition Agent and the Prepetition Agent may credit bid for some or all of the Assets at the Auction, in their discretion, and they otherwise are not required to comply with the Bid Procedures. However, by this Sale Motion, Debtors are asking that the Bankruptcy Court deny credit bid rights to any other secured or allegedly secured party.

NO PRIOR REQUEST

39. Debtors previously filed a request to sell inventory, accounts receivable, and certain other assets in the First Sale Motion. An order as to the bid procedures portion of the First Sale Motion was entered on October 12, 2017 [ECF No. 202]. No relief has been requested as to the Assets that are the subject to this Sale Motion.

40. Pursuant to Local Rule 9013-2, this Motion is verified and is accompanied by a memorandum of law and proposed order.

41. Pursuant to Local Rule 9013-2, the Debtors give notice that they may, if necessary, call Gregory A. Charleston, of Conway Mackenzie, Inc., 1075 Peachtree Street, Ste. 3675, Atlanta Georgia 30309, to testify at the hearing on the Motion regarding the facts set forth herein.

WHEREFORE, the Debtors respectfully request the Court enter an Order granting the requested relief, and granting such other and further relief as is necessary and appropriate in the circumstances.

Dated: October 24, 2017

/e/ Edwin H. Caldie

Robert T. Kugler (#194116)

Edwin H. Caldie (#0388930)

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COUNSEL FOR THE DEBTORS

VERIFICATION

I, Pete Richichi, Chief Operating Officer of WYNIT Distribution, LLC, *et al.*, declare under penalty of perjury that the facts set forth in the preceding Motion are true and correct according to the best of my knowledge, information, and belief.

Dated: 10/23, 2017

Signed: _____


Pete Richichi, COO

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

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WD Navarre Digital Services, LLC,	BKY 17-32865
WYNIT Holdings, Inc.,	BKY 17-32866
WD Navarre Canada, ULC,	BKY 17-32867

Debtors.

**MEMORANDUM OF LAW IN SUPPORT OF DEBTORS' MOTION FOR AN ORDER
APPROVING BID PROCEDURES FOR THE SALE OF ASSETS FREE AND CLEAR OF
ALL LIENS, INTERESTS, CLAIMS AND ENCUMBRANCES PURSUANT TO 11 U.S.C. §
363, AND GRANTING OTHER RELATED RELIEF**

The above-captioned debtors (collectively the “**Debtors**”) submit this memorandum of law in support of their corresponding motion (the “**Motion**”), in accordance with Local Rule 9013-2(a).

I. BACKGROUND

The facts supporting this memorandum are set forth in the Motion, verified by Pete Richichi. All capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Motion.

**II. THE RELIEF SOUGHT IN THE MOTION IS IN THE BEST INTERESTS OF
THE DEBTORS' ESTATES AND SHOULD BE APPROVED**

Courts have found that a debtor’s business judgment is entitled to substantial deference with respect to the procedures to be used in selling an estate’s assets. *E.g., In re Schipper*, 933

F.2d 513, 515 (7th Cir. 1991) (“Under Section 363, the debtor in possession can sell property of the estate . . . if he has an ‘articulated business justification’”); *In re Martin*, 91 F.3d 389, 395 (3d Cir. 1996) (quoting *Schipper*); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (“In evaluating whether a sound business purpose justifies the use, sale or lease of property under Section 363(b), courts consider a variety of factors, which essentially represent a ‘business judgment test.’”); *In re Channel One Comm’ns., Inc.*, 117 B.R. 493, 496 (Bankr. E.D. Mo. 1990) (applying sound business purpose test under section 363); *see also In re Integrated Res., Inc.*, 147 B.R. 650, 656-57 (S.D.N.Y. 1992) (bidding procedures that have been negotiated by a trustee are to be reviewed according to the deferential “business judgment” standard, under which such procedures and arrangements are “presumptively valid”).

The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See In re Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997) (in bankruptcy sales, “a primary objective of the Code [is] to enhance the value of the estate at hand”); *In re Edwards*, 228 B.R. 552, 561 (Bankr. E.D. Pa. 1998) (“The purpose of procedural bidding orders is to facilitate an open and fair public sale designed to maximize value for the estate.”); *Integrated Res.*, 147 B.R. at 659 (“[I]t is a well-established principle of bankruptcy law that the objective of the bankruptcy rules and the trustee’s duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.”) (citations omitted).

To that end, courts uniformly recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and therefore are appropriate in the context of bankruptcy transactions. *E.g., Integrated Res.*, 147 B.R. at 659 (bidding procedures “are important tools to encourage bidding and to maximize the value of the

debtor's assets"); *In re Fin. News Network, Inc.*, 126 B.R. 152, 156 (Bankr. S.D.N.Y. 1991) (“court-imposed rules for the disposition of assets ... [should] provide an adequate basis for comparison of offers, and [should] provide for a fair and efficient resolution of bankrupt estates”).

The Debtors believe that the proposed Bid Procedures will promote active bidding from seriously interested parties and will elicit the highest or otherwise best offers available for the Assets. The proposed Bid Procedures will allow the Debtors to conduct the sale in a controlled, fair, and open fashion that will encourage participation by financially capable bidders who will offer the best package for the Assets and who can demonstrate the ability to close a transaction. The Bid Procedures contemplate an open auction process with minimum barriers to entry and provide potential bidding parties with sufficient time to perform due diligence and acquire the information necessary to submit a timely and well-informed bid.

At the same time, the Bid Procedures provide the Debtors with an opportunity to consider competing bids and select the highest or otherwise best offer for the completion of the sale. As such, creditors of the Debtors' estates can be assured that the consideration obtained will be fair and reasonable and at or above market.

The Debtors submit that the proposed Bid Procedures will encourage competitive bidding, are appropriate under the relevant standards governing auction proceedings and bidding incentives in bankruptcy proceedings, and are consistent with procedures that have recently been approved by other courts in this district and elsewhere. *E.g.*, *In re Dakota Plains Holdings, Inc.*, No. 16-43711 (MER) (Bankr. D. Minn. Dec. 12, 2016); *In re Quicksilver Res., Inc.*, No. 15-10585 (LSS) [ECF No. 681] (Bankr. D. Del. Oct. 6, 2015); *In re Source Home Entm't, LLC*, No.

14-11553 (KG) [ECF No. 160] (Bankr. D. Del. July 21, 2014); *In re Purified Renewable Energy, LLC*, No. 13-41446 (KAC) [ECF Nos. 112, 123, 126] (Bankr. D. Minn. May 31, 2013).

III. POTENTIAL CREDIT BID LIMITATIONS

Section 363(k) of the Bankruptcy Code provides:

At a sale under subsection (b) of this section of property that is subject to a lien that secures an allowed claim, *unless the court for cause orders otherwise* the holder of such claim may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property.

11 U.S.C. §363(k) (emphasis added). The United States Supreme Court recently issued a decision involving, Section 363(k), but the decision did not interpret or even discuss the phrase “unless the court for cause orders otherwise.” *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 132 S.Ct. 2065 (2012).

Other courts have interpreted and applied the phrase “unless the court for cause orders otherwise” under Section 363(k). For example, in *In re Fisker Automotive Holdings, Inc.*, Case No. 13-13087 (KG) (Bankr. D. Del. 2014), Judge Kevin Gross decided to cap the credit bid of Hybrid Tech Holdings, LLC (“Hybrid”), as holder of an asserted \$168.5 million secured claim, at \$25 million — the amount paid to purchase the claim approximately one month prior to filing. Judge Gross observed that failure to limit Hybrid’s bid would preclude any auction, since no party was willing to bid more than the value of Hybrid’s asserted secured claims, but that another specific interested bidder (“Wanxiang”) would otherwise be a motivated competing bidder in the right circumstances (notably, Wanxiang had recently purchased, through a separate bankruptcy auction, the lithium ion battery used in Fisker electric cars, which demonstrated Wanxiang’s vested interest in purchasing Fisker’s assets). Therefore, Judge Gross decided to limit Hybrid’s credit bid to \$25 million “for cause,” on

the basis that if he did not do so, bidding would not only be chilled, but frozen. After Hybrid's emergency appeals were denied, Wanxiang won the auction for Fisker's assets with a bid of approximately \$149.2 million — a significant increase in value over Hybrid's initial \$75 million credit bid.

And, in *In re The Free Lance-Star Pub. Co. of Fredericksburg, Va.*, Case No. 14-30315 (KRH) (Bankr. E.D. Va. 2014), after conducting a three-day evidentiary hearing in late March, Judge Kevin Huennekens concluded that: (i) a secured creditor ("DSP") asserting a right to submit a credit bid for up to \$39 million did not have a valid lien on certain radio towers and therefore could not credit bid on them; and (ii) DSP's inequitable conduct required the court to limit DSP's right to credit bid to \$13.9 million "*in order to foster a robust auction.*" Relying on Judge Gross's opinion in *Fisker*, Judge Huennekens held that DSP's conduct provided sufficient cause to limit DSP's credit bid. Not only did DSP conceal its UCC filings at the cash collateral hearing where it asked the court for replacement liens on the same assets, but DSP also tried to chill bidding by pressuring The Free Lance-Star to forego, or at least shorten, the marketing period and to include a conspicuous advertisement of DSP's credit bid rights in the sale materials. The court found that DSP created genuine confusion in the marketplace regarding the extent of DSP's secured interest and DSP's role in the auction process, which influenced many interested parties to wait for the outcome of the court's credit bid ruling before committing to conduct comprehensive due diligence.

Here, Wells Fargo, National Association, as the prepetition agent and postpetition agent (the "**Agent**"), is being given authority to credit bid a portion of their secured debt to acquire some or all of the Assets. The Agent's credit bid rights should not be limited "for cause." The

Agent has valid, properly perfected liens against the Assets. No party has challenged the Agent's secured claims or its credit bid rights.

IV. WAIVER OF 14-DAY FINALITY FOR ORDERS

Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property...is stayed until the expiration of fourteen (14) days after entry of the order, unless the court orders otherwise.” FED. R. BANKR. P. 6004(h). Bankruptcy Rule 6006(d) further provides that an “order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of fourteen (14) days after the entry of the order, unless the court orders otherwise.” FED. R. BANKR. P. 6006(d).

In light of the current circumstances and financial condition of the Debtors, the Debtors believe that in order to maximize value, the sale of the Assets should be consummated as soon as practicable given that the Assets have a limited “shelf life” and therefore limited value if not sold quickly. Accordingly, the Debtors request that the order granting the Motion be effective immediately upon entry of such order and that the fourteen (14) day stay under Bankruptcy Rules 6004(h) and 6006(d) be waived.

CONCLUSION

For the foregoing reasons, the Debtors respectfully request that the Court enter the proposed orders granting the relief requested in the Motion.

Dated: October 24, 2017

/e/ Edwin H. Caldie

Robert T. Kugler (#194116)

Edwin H. Caldie (#0388930)

Phillip J. Ashfield (#0388990)

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COUNSEL FOR THE DEBTORS

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

In re:	JOINTLY ADMINISTERED UNDER BKY 17-42726
WYNIT Distribution, LLC,	BKY 17-42726
WD Navarre Distribution, LLC,	BKY 17-42728
WD Encore Software, LLC,	BKY 17-42729
WD Navarre Holdings, LLC,	BKY 17-32864
WD Navarre Digital Services, LLC,	BKY 17-32865
WYNIT Holdings, Inc.,	BKY 17-32866
WD Navarre Canada, ULC,	BKY 17-32867

Debtors.

**ORDER GRANTING AND APPROVING THE DEBTORS' MOTION FOR AN ORDER
APPROVING BID PROCEDURES FOR THE SALE OF ASSETS FREE AND CLEAR
OF ALL LIENS, INTERESTS, CLAIMS AND ENCUMBRANCES PURSUANT TO 11
U.S.C. § 363, AND GRANTING OTHER RELATED RELIEF**

At a hearing on October __, 2017 (the "**Bid Procedures Hearing**"), this Court considered the *Motion for an Order Approving Bid Procedures for the Sale of Assets Free and Clear of All Liens, Interests, Claims and Encumbrances Pursuant to 11 U.S.C. § 363 and Granting Other Related Relief* [Doc. No. ____] (the "**Motion**") filed by the above captioned debtors and debtors-in-possession (collectively, the "**Debtors**"). Based on the arguments and evidence presented at the Bid Procedures Hearing, the Court hereby finds and determines that:

1. The Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, the consideration of the Motion and the relief requested therein is a core proceeding pursuant to 28 U.S.C. § 157(b), and venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. As reflected in the *Certificate of Service* [Doc No. ____] filed with respect to the Bid Procedures Hearing, notice of the Motion and notice of the Bid Procedures Hearing have been served on the parties identified on the service list maintained in these cases (who do not receive electronic notice) at the addresses set forth therein (the “**Notice**”).

3. The Notice is reasonable and sufficient in light of the circumstances and nature of the relief requested in the Motion, and no other or further notice of the Motion or the Bid Procedures Hearing is necessary. A reasonable and fair opportunity to object to the Motion and the relief granted in this Order (the “**Bid Procedures Order**”) has been afforded under the circumstances.

4. The Debtors have articulated good and sufficient reasons for this Court to grant the relief requested in the Motion. Such good and sufficient reasons were set forth in the Motion and on the record at the Bid Procedures Hearing and are incorporated by reference herein and, among other things, form the basis for the findings of fact and conclusions of law set forth herein.

5. The Bid Procedures, as set forth below, are fair, reasonable, and appropriate and are designed to maximize the value of the Debtors’ estates. The Credit Bid Rights (as defined below) are permissible under § 363(k) of the Bankruptcy Code and are fair and reasonable in light of the nature of these Bankruptcy Cases.

6. The Debtor has proposed the following procedures (the “**Bid Procedures**”) :

I. The Bidding Process

A. Subject to the conditions set forth therein, at any time on or before **November 16, 2017, at 12:00 p.m.** (prevailing Central Time) (the “**Bid Deadline**”), Conway MacKenzie, the sale agent for the Debtors (the “**Sale Agent**”) will (i) engage in discussions and negotiations regarding a sale transaction or transactions with any entity (a “**Potential Bidder**”) that has made inquiry with the Debtors or their counsel regarding the potential purchase of some or all of the inventory set forth on Exhibit A to the Motion (the “**Assets**”) that the Sale Agent reasonably believes could lead to a bona fide written offer for some or all of the Assets that would meet the

requirements of these Bid Procedures (the “**Proposal**”), (ii) furnish to such Potential Bidder and its Representatives,² and to any other party that has made a request therefor in connection with its consideration of making an offer or proposal relating to a purchase of some or all of the Assets (each a “**Bid**”), public and non-public information relating to such Assets pursuant to a confidentiality agreement between the Debtors and such Potential Bidder (the “**Confidentiality Agreement**”), and (iii) afford to any such Potential Bidder who has signed a Confidentiality Agreement reasonable access to any data site, properties, assets, books or records of the Debtors with respect to such Assets. Each Confidentiality Agreement entered into after the date of the entry of the Bid Procedures Order shall recognize that the Debtors are obligated to comply with the terms of these Bid Procedures. Each confidentiality agreement previously entered into between the Debtors and a Potential Bidder in effect on the date of the entry of the Bid Procedures Order shall be deemed to be a Confidentiality Agreement subject to the Bid Procedures Order. By participating in the Bidding Process (as defined below), each Potential Bidder shall be deemed to have agreed to any and all modifications to any previously executed confidentiality agreement as necessary to permit the Debtors and their Representatives to comply with the terms of these Bid Procedures.

B. The Sale Agent shall provide these Bid Procedures to each Potential Bidder.

C. Any Potential Bidder wishing to conduct due diligence concerning the purchase of some or all of the Assets shall be granted access, subject to execution of a Confidentiality Agreement, to all relevant business, financial and other information of the Debtors as may be reasonably necessary (to be determined at the Sale Agent's discretion) to enable such Potential Bidder to evaluate the Assets. The Debtors shall make such access available during normal business hours as soon as reasonably practicable. Potential Bidders interested in conducting due diligence should contact Michael Cavanaugh or Greg Charleston of the Sale Agent at mcavanaugh@conwaymackenzie.com or gcharleston@conwaymackenzie.com or by phone at (216) 278-0740. Notwithstanding the foregoing, the Sale Agent is not required to provide confidential or proprietary information to any person if the Sale Agent determines, after consultation with Wells Fargo Bank, National Association, as administrative agent for itself and other participating senior secured lenders in the postpetition debtor-in-possession facility (the “**Postpetition Agent**”), and the Official Committee of Unsecured Creditors (the “**Committee**,” collectively, with the Postpetition Agent, the “**Consultation Parties**”) that such disclosure could be detrimental to the interests of the Debtors’ estates.

D. Prior to the selection of a Bid as the highest or best offer for any individual Asset, portion of the Assets, or all of the Assets (the “**Successful Bid(s)**”), the Sale Agent may: (a) receive Bids from Potential Bidders, (b) request information from Potential Bidders and engage in discussions with Potential Bidders and take such other actions to determine whether any Bid constitutes or could lead to a superior Proposal, (c) evaluate any Bid made by a Potential Bidder, (d) engage in discussions and negotiations with any Potential Bidder with respect to any Bid submitted by a Potential Bidder, and (e) take any other actions contemplated under these Bid Procedures (collectively, the “**Bidding Process**”).

² “**Representatives**” means, with respect to any person or entity, the officers, directors, employees, members, managers, partners, investment bankers, attorneys, accountants, consultants or other advisors, agents or representatives of such person, when acting in such capacity on behalf of such person or entity.

II. Deliveries by Potential Bidders

A. In order to participate in the Bidding Process, each Potential Bidder must deliver the following to the Sale Agent prior to the Bid Deadline (unless previously delivered in a form acceptable to the Debtors or waived by the Sale Agent after consultation with the Consultation Parties):

- (a) An executed Confidentiality Agreement acceptable to the Sale Agent; and
- (b) Financial statements of, or other information relating to, the Potential Bidder or, if the Potential Bidder is an entity formed for the purpose of the sale transaction, financial statements of or other information relating to the equity holder(s) of the Potential Bidder, or such other form of financial disclosure or evidence of financial capability and performance and legal authority acceptable to the Sale Agent (and, if requested by the Sale Agent, certified to by a duly authorized representative of the Potential Bidder (or equity holders thereof, as applicable)), demonstrating such Potential Bidder's financial capability and legal authority to close the proposed sale transaction in a timely manner.

B. A Potential Bidder that delivers the documents described in subparagraphs (a) and (b) above, and that the Sale Agent determines, in its business judgment, after consultation with the Consultation Parties, is financially capable of consummating the sale transaction in a timely manner shall be permitted to further participate in the Bidding Process. The Sale Agent may require an update of such information and an affirmation of any Potential Bidder's financial capability to bid and consummate any sale transaction contemplated hereunder.

III. Due Diligence for Potential Bidders

A. To obtain due diligence access or additional information from the Debtors, a Potential Bidder must first advise the Sale Agent of the nature and extent of additional due diligence such Potential Bidder may wish to conduct. The Sale Agent shall coordinate all requests for additional information and due diligence access by such Potential Bidders with the Debtors. No conditions relating to the completion of due diligence will be permitted to exist after the Bid Deadline, except as otherwise agreed to by the Sale Agent in writing after consultation with the Consultation Parties.

IV. Submission by Bid Deadline

A. A Potential Bidder who desires to make a Bid must deliver a written copy of its Bid on or before the Bid Deadline to the Sale Agent. The Sale Agent may, after consultation with the Consultation Parties, extend the Bid Deadline, but shall promptly notify all Potential Bidders of any such extension.

V. Determination of "Qualified Bid" Status

A. A Bid received from a Potential Bidder by the Bid Deadline will constitute a "Qualified Bid" only if it includes all of the following documents (the compliance of which

shall be determined by the Sale Agent after consultation with the Consultation Parties) (collectively, the “**Required Bid Documents**”) and a Good Faith Deposit (as defined below):

- (a) Documentation in a form acceptable to the Sale Agent, after consultation with the Consultation Parties, which documentation:
 - i. specifically delineates which Assets a Potential Bidder proposes to purchase;
 - ii. does not contain any financing or due diligence contingencies to closing on the proposed sale transaction;
 - iii. does not contain any condition to closing of the sale transaction based on the receipt of any third party approvals (excluding required Bankruptcy Court approval and any required governmental and/or regulatory approvals, if any); and
 - iv. provides that the offer of the Potential Bidder is irrevocable through thirty (30) days after the conclusion of the hearing to approve the sale, subject to the backup bidder provisions herein.

- (b) A good faith deposit (the “**Good Faith Deposit**”) in the form of a wire transfer to the Debtors or a certified or bank check payable to the order of the Debtors (or other form acceptable to the Debtors with approval by the Postpetition Agent) in the amount of at least 10% of the purchase price for the Assets proposed to be purchased.

B. Each Potential Bidder that makes a Qualified Bid shall be referred to as a “**Qualified Bidder.**” Each of the Postpetition Agent and the Prepetition Agent are a Qualified Bidder.

VI. Bid Requirements

- A. All Bids must also satisfy all of the following requirements, all as determined solely by the Sale Agent after consultation with the Consultation Parties:
- (a) The Bid must set forth the purchase price for the Assets to be purchased.
 - (b) The Bid must be in cash unless otherwise consented to by the Sale Agent, after consultation with the Consultation Parties.
 - (c) The Bid must be accompanied by satisfactory evidence of committed financing or other financial ability to consummate the sale transaction in a timely manner.

- (d) The Bid cannot be conditioned upon the Bankruptcy Court's approval of any bid protections, such as a break-up fee, termination fee, expense reimbursement, work fee or similar type of payment.
- (e) The Bid must expressly acknowledge and represent that the Potential Bidder: (i) has had an opportunity to conduct any and all due diligence regarding the assets and businesses of the Debtors and the sale transaction prior to making its Bid, (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and the assets and businesses of the Debtors in making its Bid, and (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the business or assets of the Debtors or the sale transaction, or the completeness of any information provided in connection therewith, and (iv) has authority to make the Bid, execute any necessary documents to close on the sale transaction, and proceed to closing on the sale transaction.
- (f) The Bid must be received by the Bid Deadline.

VII. Auction

A. Prior to the Auction (as defined below), the Sale Agent (in consultation with the Consultation Parties) shall evaluate the Qualified Bids and select one or more Qualified Bid(s) that the Sale Agent determines in its business judgment to be the highest or best Qualified Bid(s) for some or all of the Assets (the "**Initial Highest Bid**"). In making this determination, the Sale Agent may consider, among other things, the amount of cash to be paid or delivered, and the other terms and conditions of the Qualified Bid(s). The Sale Agent shall provide copies of all Bids to the Consultation Parties promptly after the Bid Deadline, but in no event later than 2:00 P.M. prevailing Central time on **November 17, 2017**. There may be more than one Initial Highest Bid for purposes of the Auction given that Bids may be submitted for some or all of the Assets.

B. If more than one Qualified Bid has been submitted for the Assets or any portion of the Assets in accordance with these Bid Procedures, the Sale Agent will conduct an auction (the "**Auction**") with respect to such Qualified Bids in order to determine, in the business judgment of the Sale Agent, after consultation with the Consultation Parties, the Successful Bid(s).

C. The Auction, if required, will commence at 11:00 a.m. (prevailing Central Time) on **November 20, 2017** at the offices of Stinson Leonard Street LLP, 50 South Sixth Street, Suite 2600, Minneapolis, Minnesota 55402, or at such later time or other place as agreed by the Sale Agent after consultation with the Consultation Parties, or approved by Order of the Bankruptcy Court, and of which the Sale Agent will notify all Qualified Bidders who have submitted Qualified Bids (collectively, the "**Auction Participants**").

D. The Sale Agent shall give each of the Auction Participants notice of the Initial Highest Bid(s) and a copy of such Bid(s) prior to the scheduled start of the Auction.

E. Only the Debtors, the Sale Agent, the Auction Participants, potential financing sources of the Auction Participants, the Postpetition Agent, the Prepetition Agent, the Committee (including its members) and their respective Representatives will be entitled to attend, participate and be heard at the Auction.

F. At the commencement of the Auction, the Sale Agent shall formally announce the Initial Highest Bid(s) and the Assets to which they relate. All Qualified Bids at the Auction will be based on and increased therefrom, and thereafter made in minimum increments higher than the previous Qualified Bid in an amount to be established by the Sale Agent after consultation with the Consultation Parties.³

G. The Sale Agent after consultation with the Consultation Parties shall have the right to adopt such other rules for the Auction which the Sale Agent believes in its business judgment will promote the goals of the Auction, including, without limitation, that the Sale Agent can continue to take and negotiate bids in lot or in bulk until the Successful Bid(s) have been selected.

H. Each Auction Participant shall be deemed to have agreed to keep its final Qualified Bid made at or prior to the Auction open through thirty (30) days after the conclusion of the hearing to approve the sale, subject to the backup bidder provisions herein. Bidding at the Auction will continue until such time as the highest or otherwise best Qualified Bid(s) are determined in the business judgment of the Sale Agent after consultation with the Consultation Parties. To facilitate a deliberate and orderly consideration of competing Qualified Bids submitted at the Auction, the Sale Agent after consultation with the Consultation Parties may adjourn the Auction at any time and from time-to-time and may conduct multiple rounds of bidding. The Sale Agent may offer the Assets for sale in the aggregate or in lots. Prior to conclusion of the Auction, the Sale Agent after consultation with the Consultation Parties may permit one or more Auction Participants who have submitted bids for less than all Assets of the Debtors to join together as a single Qualified Bidder for the purpose of submitting a joint Qualified Bid to acquire some or all of the Assets, provided that such Auction Participants so join without improper collusion under the Bankruptcy Code or other applicable law. Upon conclusion of the Auction, the Sale Agent, in consultation with the Consultation Parties, will (a) review each Qualified Bid on the basis of financial and contractual terms and other factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the sale and (b) after consultation with the Consultation Parties, identify the Successful Bid(s). In making this determination, the Sale Agent, after consultation with the Consultation Parties, may consider, among other things, the amount of cash to be paid or delivered and the other terms or conditions of the Qualified Bid(s), and the determination by the Sale Agent, after consultation with the Consultation Parties, shall be final for the purposes of these Bid Procedures.

³ Minimum bid increments, other than a credit bid pursuant to a credit bid right permitted hereunder, must consist solely of cash consideration unless otherwise authorized by the Sale Agent after consultation with the Consultation Parties.

VIII. Credit Bid Rights

A. The right to credit bid under section 363(k) of the Bankruptcy Code is specifically preserved. The Postpetition Agent, on behalf of the Postpetition Lenders,⁴ and the Prepetition Agent, on behalf of the Prepetition Lenders,⁵ shall each be deemed a Qualified Bidder in all respects, and shall not be required to submit a Good Faith Deposit, purchase agreement, or any other deliverable or documentation to the Sale Agent, the Debtors, or their representatives or agents and may credit bid, in their respective discretion, at the Auction for some or all of the Assets. Further, each of the Postpetition Agent and the Prepetition Agent may submit a credit bid, in such party's respective sole and absolute discretion, at any time prior to announcement of the Successful Bid(s), regardless of whether such party participated in prior rounds of the Auction, on any individual asset, portion of the assets, or all assets constituting its respective collateral. ***Credit bidding by all junior lien holders will be prohibited***, but all rights, claims and objections will be reserved and can be asserted against the sale(s) proceeds, if any.

IX. Sale Hearing

A. An evidentiary hearing to consider the related sale motion [Doc No. ___] ("**Sale Motion**") and approval of the Successful Bid(s) (the "**Sale Hearing**"), will be held on **November 28, 2017 at 9:00 a.m. prevailing Central time** (the "**Sale Hearing**"), in the courtroom of the Honorable Kathleen H. Sanberg, United States Bankruptcy Judge, at the United States Bankruptcy Court, District of Minnesota, 300 South Fourth Street, Courtroom 8 West, Minneapolis, Minnesota 55415. The Sale Hearing may be adjourned or rescheduled as ordered by the Bankruptcy Court without further notice to creditors and parties in interest other than by announcement by the Debtors of the adjourned date at the Sale Hearing.

B. The Debtors' presentation to the Bankruptcy Court for approval of the Successful Bid(s) does not constitute the Debtors' acceptance of the Bid(s). The Debtors will be deemed to have accepted a Bid only when the Bid has been approved by order of the Bankruptcy Court.

X. Objections

A. Subject to paragraph (viii) herein, objections, if any, to the Sale Motion shall be filed on the docket of the Bankruptcy Court and served such that each objection is actually received by the following parties **on or before November 22, 2017 (the "Objection Deadline")**: (a) counsel for the Debtors at Stinson Leonard Street LLP, Attn: Robert Kugler, 50 South Sixth Street, Suite 2600, Minneapolis, Minnesota 55402 robert.kugler@stinson.com, (b) counsel to Wells Fargo Bank, N.A. at Greenberg Traurig, LLP, Attn: David Kurzweil, 3333 Piedmont Road NE, Ste. 2500, Atlanta, Georgia 30305 kurzweild@gtlaw.com, (c) the United States Trustee's Office, attn. Michael R. Fadlovich, 300 South Fourth Street, Suite 1015, Minneapolis, MN 55402 Michael.Fadlovich@usdoj.gov. and (d) counsel to the Official Committee of Unsecured

⁴ Under the DIP Financing Motion the Debtors sought Court approval for a senior secured postpetition revolving loan facility of up to \$15,000,000 with certain of their prepetition first-lien lenders (collectively, the "**Postpetition Lenders**").

⁵ Each of the Debtors, other than WYNIT Holdings, Inc., is a borrower under a Credit Agreement, dated November 29, 2016, with Wells Fargo Bank, National Association, as administrative agent for itself and other participating lenders (collectively, the "**Prepetition Lenders**").

Creditors, Lowenstein Sandler, Attn. Jeff Cohen and Eric Chafetz, 1251 Avenue of the Americas, New York, NY 10020 JCohen@lowenstein.com; echafetz@lowstein.com.

B. If any Auction Participant whose Qualified Bid is a Successful Bid (a “**Successful Bidder**”) fails to consummate the transaction because of a breach or failure to perform on the part of such Successful Bidder, or for any reason other than the failure of the Bankruptcy Court to approve the terms of the sale transaction, the Auction Participant that had submitted the next highest or otherwise best Qualified Bid for the same Assets at the Auction or prior to the Auction (the “**Back-Up Bidder**”) will be deemed to be the Successful Bidder, and the Debtors will be authorized to consummate the sale transaction with such Auction Participant without further order of the Bankruptcy Court, and such Qualified Bid shall thereupon be deemed the Successful Bid; provided that upon being notified that its Qualified Bid has become the Successful Bid, the Auction Participant submitting such Qualified Bid shall within three (3) business days after such notification provide a Good Faith Deposit (unless such Auction Participant previously shall have provided a Good Faith Deposit that shall not have been returned as described below). Upon providing such Good Faith Deposit, such Auction Participant shall be deemed the Successful Bidder. If any Auction Participant fails to consummate the sale transaction because of a breach or failure to perform on the part of such Auction Participant (including, without limitation, the failure to timely deposit the Good Faith Deposit), the process described above may continue with other Auction Participants in decreasing order of the Qualified Bids as determined by the Sale Agent after consultation with the Consultation Parties until an Auction Participant shall consummate the sale transaction.

XI. Disposition of Good Faith Deposit

A. The Good Faith Deposit of the Successful Bidder(s), or a Back-Up Bidder that consummates a transaction in place of a Successful Bidder as provided for herein, shall be retained by the Debtors and applied toward the payment of the Successful Bid(s) at the closing of the sale transaction. If any Successful or Back-Up Bidder does not close a sale transaction, its Good Faith Deposit shall be returned by the Debtors, unless such failure to close was due to a breach by the Successful or Back-Up Bidder. The Good Faith Deposit of all Qualified Bidders (other than the Successful Bidder(s), a Back-Up Bidder that consummates a sale transaction in place of a Successful Bidder as provided for herein, or a Successful Bidder or a Back-Up Bidder that forfeits its deposit as liquidated damages as provided for herein) will be returned, without interest, to each such Qualified Bidder within ten business days after the closing of all proposed sale transactions approved by the Bankruptcy Court at the Sale Hearing.

XII. Modifications

A. The Sale Agent, after consultation with the Consultation Parties, may (a) determine which Qualified Bid(s), if any, is the highest or otherwise best offer(s); and (b) reject at any time before entry of an Order of the Bankruptcy Court approving the Successful Bid(s), any bid that, in the discretion of the Sale Agent, after consultation with the Consultation Parties is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code or the Bid Procedures, or (iii) contrary to the best interests of the Debtors’ estates and their creditors. At or before the conclusion of the Auction, the Sale Agent, after consultation with the Consultation Parties, may impose such other terms and conditions upon

Qualified Bidders as the Sale Agent determines to be in the best interests of the Debtors' estates in these cases.

[End of Bid Procedures]

7. The service of the notice of the Bid Procedures, the Sale Hearing, the Objection Deadline, and the respective dates, times and places for an Auction, as required under the Bid Procedures, is adequate and reasonably calculated to provide due, proper, and timely notice to all interested parties of, among other things, the entry of this Bid Procedures Order, the Bid Procedures, the Auction (if required under the Bid Procedures), the Sale Hearing, the Motion, including the sale of the Debtors' estates' right, title and interest in, to and under the Debtors' Assets free and clear of any and all liens, claims, encumbrances, and interests, and the procedure for objecting thereto. Except as otherwise set forth herein, no other or further notice is necessary.

8. The findings of fact and conclusions of law herein constitute the Court's findings of fact and conclusions of law for the purposes of Bankruptcy Rule 7052, made applicable pursuant to Bankruptcy Rule 9014. To the extent any findings of facts are conclusions of law, they are adopted as such. To the extent any conclusions of law are findings of fact, they are adopted as such.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

The Motion is **GRANTED** as set forth herein.

- i. All objections to the Bid Procedures portion of this Motion that have not been withdrawn, waived or settled as announced in Court at the Bid Procedures Hearing are denied and overruled on their entirety on the merits.
- ii. The Debtors may proceed with a sale and auction process in accordance with the Bid Procedures, which Bid Procedures are hereby approved.

- iii. The approval of the sale of the Debtors' Assets remains subject to the entry of a further order approving such sale.
- iv. Potential bidders must comply with all terms of the Bid Procedures in order to participate in the bidding process. All bids must satisfy all of the requirements contained in the Bid Procedures. Notwithstanding the foregoing, the Postpetition Agent and the Prepetition Agent, on behalf of the Postpetition Lenders and the Prepetition Lenders, respectively, (a) shall be deemed Qualified Bidders entitled to participate in the Auction and credit bid at the Auction for some or all of the Assets and (b) shall not be required to comply with the Bid Procedures.
- v. Except as otherwise provided herein, the Debtors and Sale Agent are authorized and directed to take any and all actions necessary or appropriate to implement the Bid Procedures. The process for submitting Qualified Bids is fair, reasonable, and appropriate and is designed to maximize recoveries for the benefit of the Debtors' estates, their creditors and other parties in interest.
- vi. As further described below, the key dates for this Bid Procedures Order and the Bid Procedures are as follows, with each of such dates being subject to extension by the Debtors with the consent of the Consultation Parties:

<u>Event</u>	<u>Date and Time (if applicable)</u>
Notice	Within 1 day of entry of this Bid Procedures Order
Bid Deadline	November 16, 2017 at 12:00 p.m. prevailing Central Time
Auction	November 20, 2017 at 11:00 a.m. prevailing Central Time
Sale Hearing Objection Deadline	November 22, 2017
Sale Hearing	November 28, 2017 at 9:00 a.m. prevailing Central Time

Closing	By no later than November 30, 2017
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- vii. Any person desiring to submit a bid for the Debtors' assets must comply with the Bid Procedures and shall not be permitted to participate at the Auction unless such person is an Auction Participant or is otherwise permitted to participate at the Auction under the Bid Procedures; provided that, as set forth in Paragraph (iv) of this Bid Procedures Order, the Postpetition Agent and the Prepetition Agent shall be deemed Qualified Bidders entitled to participate at the Auction, including to credit bid for some or all of the Assets, and shall not be required to comply with the Bid Procedures.
- viii. If more than one bid has been submitted for some or all the Debtors' Assets in accordance with the Bid Procedures, the Sale Agent will conduct an auction as to such Assets (the "**Auction**") on November 20, 2017, at 11:00 a.m., prevailing Central time, at the offices of Stinson Leonard Street LLP, 50 South Sixth Street, Suite 2600, Minneapolis, Minnesota 55402. The Sale Agent will notify all Qualified Bidders who have submitted Qualified Bids of such Auction.
- ix. Notwithstanding the foregoing, the Debtors, after consultation with the Consultation Parties, may cancel the Auction or remove certain of the Assets from the Auction.
- x. For cause shown, notwithstanding Bankruptcy Rules 6004, or otherwise, this Bid Procedures Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. To the extent applicable, the stay described in Bankruptcy Rules 6004(h) is hereby waived.
- xi. This Bid Procedures Order shall become effective immediately upon its entry.
- xii. The Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Bid Procedures Order.

Dated: November ____, 2017

Kathleen H. Sanberg
Chief United States Bankruptcy Judge