



No. S 233209

Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C - 36 AS AMENDED**

**AND IN THE MATTER OF SLP HOLDINGS LTD, STRUCTURLAM MASS TIMBER
CORPORATION, STRUCTURLAM MASS TIMBER U.S., INC., NATURAL OUTCOMES,
LLC**

**APPLICATION OF SLP HOLDINGS LTD. UNDER SECTION 46 OF THE *COMPANIES'*
CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

PETITIONER

NOTICE OF APPLICATION

Name of the applicant: SLP Holdings Ltd.

To: THE SERVICE LIST

TAKE NOTICE that an application will be made by the Applicant before Justice Fitzpatrick at the courthouse at 800 Smithe St., Vancouver, BC V6Z 2E1, on May 16, 2023 at 9:00AM (as arranged through trial scheduling) or as soon thereafter as counsel may be heard, for the order(s) set out in Part 1 below.

PART 1: ORDERS SOUGHT

1. SLP Holdings Ltd. ("SLP"), in its capacity as foreign representative (in such capacity, the "**Foreign Representative**") of SLP, Structurlam Mass Timber Corporation, Structurlam Mass Timber U.S., Inc. and Natural Outcomes, LLC (collectively, the "**Debtors**") seeks an order pursuant to section 49 of the *Companies' Creditors Arrangement Act*, R.S.C., c. C. 1985, as amended (the "**CCAA**") for the following relief from this Court:
 - a. an order abridging the time for service of this application and directing that it is properly returnable on the hearing date;
 - b. an order recognizing and giving full force and effect to the Bidding Procedures Order (the "**Bidding Procedures Order**") expected to be granted on May 8, 2023 by the United States Bankruptcy Court for the District of Delaware (the "**US Bankruptcy Court**");

- c. an order setting down a date for this Court to hear an application for an order recognizing and giving effect to the sale order pursuant to the Chapter 11 Proceedings (defined below) on or before May 29, 2023, or such date as counsel may request following entry by the US Bankruptcy Court of the Bidding Procedures Order;
- d. an order extending the Stay Period granted in these proceedings by the Honourable Justice S. Fitzpatrick on April 27, 2023 up to and including June 30, 2023 or such further and other date as determined by the Court; and
- e. such further and other Orders as this Honourable Court may deem appropriate.

PART 2: FACTUAL BASIS

- 2. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the motion for the Bidding Procedures Order, a copy of which is attached hereto as **Schedule “A”** (the **“Bidding Procedures Motion”**).
- 3. On April 21, 2023 the Debtors each commenced proceedings pursuant to Chapter 11 of Title 11 of the United States Code (the **“Chapter 11 Proceedings”**) in the US Bankruptcy Court.
- 4. On April 26, 2023 pursuant to certain “First Day Motions” filed by the Debtors, the US Bankruptcy Court granted certain interim and/or final orders, including an order authorizing SLP to act as the foreign representative for the purpose of these Canadian recognition proceedings.
- 5. On April 27, 2023, the Honourable Justice Fitzpatrick granted: (a) an initial recognition order (the **“Initial Recognition Order”**), among other things, recognizing SLP as the “foreign representative” and the Chapter 11 Proceedings of SLP and SMTC as “foreign non-main proceedings” and the Chapter 11 Proceedings of SMTU and NOLLC as “foreign main proceedings” each as defined in section 45 of the CCAA; and (b) a supplemental order (the **“Supplemental Recognition Order”**), among other things, (i) recognizing various orders of the US Bankruptcy Court, (ii) ordering a stay of proceedings in Canada in respect of the Debtors until June 1, 2023 (the **“Stay Period”**); and (iii) appointing Alvarez & Marsal Canada Inc. (**“A&M”**) as information officer in respect of these Canadian recognition proceedings (in such capacity, the **“Information Officer”**).

Marketing Efforts

6. On February 10, 2023, SMTC engaged Miller Buckfire & Co. LLC, a wholly owned subsidiary of Stifel, Nicolaus & Co., Inc., a U.S. broker-dealer and investment banking subsidiary of Stifel Financial Corp (the “**Sale Advisor**”) to assist with advancing a marketing process for the sale of all or substantially all of the Debtors’ assets (the “**Marketing Process**”). The purpose of the Marketing Process is to maximize the value of the Debtors’ property, for the benefit of all of its stakeholders.
7. The Sale Advisor launched the Marketing Process on February 10, 2023 beginning by identifying a broad group of potential strategic and financial sponsor parties to contact. Seventy-four prospective buyers were solicited of which thirty seven executed non-disclosure agreements and eighteen prospective investors were solicited of which seven executed non-disclosure agreements. The parties that executed non-disclosure agreements received access to the Company’s virtual data room and were offered management meetings and site visits. At that stage, four parties conducted site visits and four parties conducted meetings with Company management.
8. Five parties provided non-binding indications of interest by the milestone date of March 8, 2023. Of these five parties, four were selected to continue to the second round of the process and provided with access to additional diligence in the data room, continued access to Company management and site visits, and a draft asset purchase agreement. The Sale Advisor requested binding bids from these four parties by March 24, 2023. On March, 24, 2023, the Sale Advisor received two bids and provided them to the Company.

Stalking Horse APA and Bidding Procedures Order

9. Following the receipt of the two unexecuted bids, the Company and its advisors worked to evaluate, solidify, and improve the initial bids received. Following the Marketing Process, it was determined that the bid submitted by Mercer International Inc. (“**Mercer**”) was the highest or otherwise best initial offer and the Company engaged with Mercer to solidify the terms of an asset purchase agreement.
10. On April 21, 2023 the Debtors, as Sellers and Mercer as Buyer entered into an Asset Purchase Agreement (the “**Stalking Horse APA**”).
11. The Stalking Horse APA provides, among other things, for the purchase of the Debtors’ US and Canadian Assets, along with assumption of certain assumed liabilities, as set forth in the Stalking

Horse APA, for a purchase price of \$60 million (USD). The Stalking Horse APA is also subject to certain bid protections in favour of Mercer, subject to Court approval, consisting of a break-up fee of \$1.8 million (USD) and an expense reimbursement amount not to exceed \$600,000 (USD) (together, the “**Stalking Horse Protections**”).

12. For the purpose of maximizing the value of the Debtors’ estates, the Debtor simultaneously developed bidding and auction procedures (the “**Bidding Procedures**”) to facilitate a competitive marketing process for the Company’s assets in the Chapter 11 Proceedings. The Stalking Horse APA was designed to act as a floor in connection with the Bidding Procedures.
13. As described above, the Debtors have sought the entry of the Bidding Procedures Order from the US Bankruptcy Court. If entered by the US Bankruptcy Court and subsequently recognized by this Honourable Court, the Bidding Procedures Order will, among other things:
 - a. authorize and approve the Bidding Procedures;
 - b. approve the Stalking Horse Protections;
 - c. schedule an auction in connection with the Sale, a hearing date for the approval of the Sale subject to the US Bankruptcy Court’s availability, and the objection deadlines for the Sale Hearing;
 - d. approve the form and manner of notice of the Auction and Sale (the “**Auction Notice**”); and
 - e. approve procedures for the assumption and assignment of Assigned Contracts and approving the form and manner of notice thereof (the “**Assumption and Assignment Procedures**”).
14. The key milestones of the Bidding Procedures, as sought in the Bidding Procedures Motion, include, among other things:

Event	Proposed Date ¹
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¹On April 26, 2023 the US Bankruptcy Court ordered that the Hearing on Bidding Procedures and Entry into Stalking Horse APA would occur on May 8, 2023 rather than on May 1, 2023 as proposed in the Bidding Procedures Motion. All other originally proposed dates are subject to be varied by the Bidding Procedures Order.

Hearing on Bidding Procedures and Entry into Stalking Horse APA	May 1, 2023 at 3:30 p.m. (prevailing Eastern Time), subject to Court availability (see footnote).
Service of Cure Notices	Three (3) business days after entry of the Bidding Procedures Order.
Service of Auction and Sale Notice	Three (3) business days after entry of the Bidding Procedures Order
Sale Objection Deadline and Contract Objection Deadline (other than a Winning Bidder Adequate Assurance Objection)	May 18, 2023, at 4:00 p.m. (prevailing Eastern Time).
Bid Deadline	May 18, 2023, at 4:00 p.m. (prevailing Eastern Time).
Auction (if necessary)	May 19, 2023, at 10:00 a.m. (prevailing Eastern Time).
Notice of Winning Bidder and Assigned Contracts	The calendar day after the Auction is completed.
Winning Bidder Adequate Assurance Objection Deadline	May 24, 2023, at 4:00 p.m. (prevailing Eastern Time).
Reply Deadline	May 25, 2023, at 12:00 p.m. (prevailing Eastern Time).
US Sale Hearing	May 26, 2023, at 10:00 a.m. (prevailing Eastern Time), subject to Court availability.

15. The Bidding Procedures Order as sought further authorizes and approves a form of Auction Notice, a copy of which is attached as Exhibit 3 to the form of Bidding Procedures Order attached to the Bidding Procedures Motion as Exhibit A.
16. The Bidding Procedures Order as sought (a) approves the Assumption and Assignment Procedures to facilitate the assumption and assignment and rejection of certain contracts or leases and the related Assumption and Assignment Notice; and (b) provides that the Assumption and Assignment Procedures shall govern the assumption and assignment of all of the Debtors' contracts and leases to be assumed and assigned in connection with the Sale, subject to the payment of any Cure Costs (as defined in the form of Bidding Procedures Order) necessary to cure any defaults arising under any such contract or Lease.
17. The Assumption and Assignment Notice provides notice to applicable counterparties to contracts and leases that are proposed to be assumed and assigned to the Successful Bidder in connection with the Sale (each an "**Assigned Contract**") and will list the applicable Cure Cost in respect of such Assigned Contract as reflected in the Debtors' records.

18. The Assumption and Assignment Notice sets out the process that any counterparty must follow to object to the proposed Cure Cost, the assumption and assignment of an Assigned Contract, or the deemed amendment of any indemnity provisions in an Assigned Contract.

PART 3: LEGAL BASIS

This Honourable Court has Jurisdiction to Grant the Orders Sought

19. The Foreign Representative is seeking the granting of the orders sought pursuant to section 49 of the CCAA. In the Initial Recognition Order, this Honourable Court recognized that two of the Chapter 11 Proceedings were categorized as “foreign main proceedings” while two were categorized as “foreign non-main proceedings” pursuant to section 47 of the CCAA. When a foreign main proceeding or foreign non-main proceeding has been recognized under Part IV of the CCAA, subsection 49(1) empowers the court to make any order that it considers appropriate if the court is satisfied that it is necessary for the protection of the debtor company’s property or the interests of creditors.

CCAA, sections 47, 49(1)

20. Canadian Courts have noted that “[t]he purpose of Part IV of the CCAA is to effect cross-border insolvencies and create a system under which foreign insolvency proceedings can be recognized in Canada.” This statement corresponds with the stated purposes of Part IV of the CCAA set out in section 44 of the CCAA, which include the promotion of: (a) cooperation between the courts and other competent authorities in Canada with those of foreign jurisdictions; and (b) the fair and efficient administration of cross-border insolvencies that protects the interests of creditors and other interested persons, and those of debtor companies.

Zochem Inc. (Re), 2016 ONSC 958 at para 15

21. The principle of comity is central to achieving these objectives. Comity mandates that Canadian courts should recognize and enforce the judicial acts of other jurisdictions, provided that those other jurisdictions have assumed jurisdiction on a basis consistent with principles of order, predictability and fairness.

Hollander Sleep Products, LLC (Re), 2019 ONSC 3238, at para 41; Re Babcock & Wilcox Canada Ltd., 2000 CanLII 22482 (ONSC) at para 21

22. Where a cross-border insolvency proceeding is most closely connected to another jurisdiction, it is appropriate for the court in that jurisdiction to exercise principal control over the process given

the principles of comity and to avoid a multiplicity of proceedings. Section 52 of the CCAA provides that if a proceeding is recognized by a Canadian court under the CCAA as a foreign proceeding, “the court shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.”

Marciano (Séquestre de), 2012 QCCA 1881 at para 76 CanLII); leave to appeal refused 2013 CanLII 21748 (SCC) (CanLII)

23. Typically, a Canadian court will only refuse to recognize an order of another court in situations where subsection 61(2) of the CCAA is engaged. Subsection 61(2) of the CCAA provides that “Nothing in this Part [IV] prevents the court from refusing to do something that would be contrary to public policy.” Canadian courts have held that this exception to recognition should be interpreted narrowly.

CCAA, section 61(2)

Recognition of the Bidding Procedures Order is Appropriate

24. The Bidding Procedures approved by the US Bankruptcy Court will enable the Debtors to complete the undertaking of what has already been a comprehensive marketing and sale process, followed by an auction if necessary, to determine a successful bidder. The sale and marketing process will be conducted with the benefit of the Stalking Horse APA that provides a baseline transaction and certainty to stakeholders regarding the continued operation of the business, including the Canadian portion of the Debtors’ business. The Bidding Procedures are intended to maximize the value of the Debtors’ business and assets for the benefit of stakeholders. To this end, Canadian courts frequently recognize bidding procedures approved by U.S. bankruptcy courts in chapter 11 cases.

See Voyager Digital Ltd., Order (recognition of Foreign Orders) granted August 11, 2022, Court File No. CV-22-00683820-00CL (Ont. Sup. Ct. J. [Commercial List]), at para. 3(i); Knotel Canada Inc. Supplemental Order (Foreign Main Proceeding) granted March 12, 2021, Court File No. CV-21-00658434-00CL (Ont. Sup. Ct. J. [Commercial List]), at para 4

25. The recognition and approval of the Bidding Procedures Order is in line with Canadian public policy and consistent with relief granted in single jurisdiction CCAA proceedings. In considering whether to approve a sales process the Court will consider the “*Nortel Criteria*” which are as follows:

- a. is a sale transaction warranted at this time?;

- b. will the sale benefit the whole “economic community”;
- c. do any of the debtors’ creditors have a *bona fide* reason to object to a sale of the business;
and
- d. is there a better alternative?.

Re Nortel Networks Corp., 2009 ONSC 4467, at para. 49; Re Brainhunter Inc., 2009 ONSC 72333, at para 13

26. In considering whether to approve a sales process with an accompanying stalking horse bid in the CCAA context, this Court has noted that stalking horse agreements, including those with break fees and other compensations, have become common in CCAA proceedings and sales processes specifically.

Freshlocal Solutions Inc. (Re), 2022 BCSC 1616 (“*Freshlocal*”) at para 22.

27. The benefits of entering into a stalking horse bid as part of a sales process must be justified by the costs in doing so. In doing so, the cost/benefit analysis requires a rigorous review of the relevant circumstances, both with consideration to the historical facts and what the future might hold for the debtor company and its stakeholders, to answer the ultimate question: is a stalking horse offer appropriate at this time in these CCAA proceedings?

Freshlocal at paras 23-34, citing Boutique Euphoria Inc. (Re), 2007 QCCS 7129; Brainhunter Inc. (Re), [2009] O.J. No. 5578; CCM Master Qualified Fund, Ltd. v. Blutip Power Technologies Ltd., 2012 ONSC 1750; Danier Leather Inc. (Re), 2016 ONSC 1044 (among others).

28. It appropriate at this stage of the CCAA proceedings to approve the Bidding Procedures Order and the Stalking Horse APA for several reasons. First, Prior to the commencement of the Chapter 11 Proceedings and these recognition Proceedings, the Debtors, with the assistance of the Sale Advisor, conducted a comprehensive marketing process. Ultimately, it yielded an offer that provided for the “value price” of the Debtor’s assets, in the event that no higher offer is received. Therefore, the Stalking Horse APA provides a material baseline price to maximize value of the Debtors’ business for the benefit of its stakeholders.

See Freshlocal at para 41.

29. Second, the Debtors exercised their business judgment in developing the Bidding Procedures in consultation with the Sale Advisor and Mercer. These Bidding Procedures are intended to

determine if there is a higher and better offer as compared to the Stalking Horse APA for the sale of all or substantially all of the Debtors' assets while providing the stability of a stalking horse bid.

30. Third, upon completion of the Bidding Procedures, final acceptance of an offer will be subject to the approval of US Bankruptcy Court and this Honourable Court. Therefore, this Court will have another opportunity to consider and recognize any transaction that results from the Bidding Procedures.

Re Nortel Networks Corp., 2009 ONSC 4467, at para. 1; Re Brainhunter Inc., 2009 ONSC 72333, at para 19; see also Re Danier Leather Inc., 2016 ONSC 1044 at para. 20. See also Cannapiece Group Inc v. Carmela Marzili, 2022 ONSC 6379 at paras. 4 and 8.

31. Finally, the proposed Stalking Horse Protections are appropriate in the circumstances because it provides net benefit to the estate. The break-up fee and expense reimbursement represent only 3% and 1%, respectively, of the purchase price under the Stalking Horse APA, so it is reasonable in light of Mercer's time, resources and risk in the process, and is unlikely to have a "chilling effect" on the market. Further, the Stalking Horse Protections were agreed to as a result of arm's length negotiations between the Debtors and Mercer, and has not, to date, been opposed by any of the Debtor's major creditors.

See Quest University Canada (Re), 2020 BCSC 1845 at para 59.

32. The Foreign Representative submits that recognition of the Bidding Procedures Order by this Honourable Court is consistent with Part IV of the CCAA, the principles of comity, and the approval of sale processes commonly granted in Canadian restructuring proceedings. Recognition of the Bidding Procedures Order will enable the Debtors to proceed with the sale process to identify one or more transactions that maximize the value of their business and assets.

Extension of the Stay of Proceedings

33. When a foreign proceeding has been recognized under Part IV of the CCAA, subsection 49(1) empowers the court to make any order that it considers appropriate if the court is satisfied that it is necessary for the protection of the debtor company's property or the interests of creditors. This includes the power to order a stay of proceedings.

CCAA, sections 48(1), 49(1)

34. Although written within the context of a stay request made pursuant to CCAA section 11.02, Justice Fitzpatrick noted in *1057863 B.C. Ltd. (Re)*, 2022 BCSC 876 that, “a stay of proceedings is the central tool by which a court maintains the status quo for the debtor, which allows the debtor to continue its ongoing operations. This allows a debtor the necessary time, flexibility, and “breathing room” to carry out a supervised restructuring or organized sale process”.

1057863 B.C. Ltd. (Re), 2022 BCSC 876 at paras. 31, 35

35. Pursuant to the Supplemental Recognition Order, the Stay Period is set to expire on June 1, 2023. This is less than one week following the proposed date for the US Sale Hearing described above and in the Bidding Procedures.
36. Given the short timeframe between the proposed US Sale Hearing and the current expiration of the Stay Period, the Foreign Representative submits that granting a stay extension through to June 30, 2023 or a later date (the “**Stay Extension**”) would be appropriate *and* in the interest of creditors, because:
- a. it will provide the Company with sufficient time to fully undertake the Bidding Procedures, in the event those procedures are recognized by this Honourable Court, for the purpose of advancing the Debtors’ organized sale process, including closing a transaction with the successful bidder; and
 - b. it will increase administrative efficiencies in these proceedings by allowing any further stay extension, recognition hearing, or application for other relief to be heard together.
37. The Foreign Representative respectfully requests this Court grant the Stay Extension.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Shawn Turkington, sworn April 26, 2023, filed.
2. Affidavit in support of the within application to be sworn and filed after entry by the US Bankruptcy Court of the Bidding Procedures Order on May 8, 2023.
3. The pleadings and materials filed herein.
4. Such further and other material this Honourable Court may allow.

The applicant estimates that the application will take thirty (30) minutes.

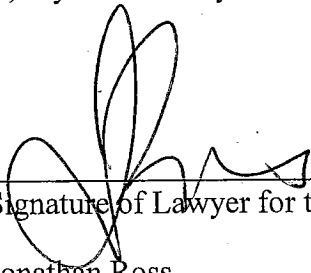
☐ This matter is within the jurisdiction of a master.

☒ This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: April 28, 2023



Signature of Lawyer for the Applicant
Jonathan Ross

To be completed by the court only:

Order made

[] in the terms requested in paragraphs _____ of Part 1 of this notice of application

[] with the following variations and additional terms:

Date: _____ Signature of ☐ Judge ☐ Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts
- ☒ other

SCHEDULE A

Bidding Procedures Motion

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	
)	Chapter 11
STRUCTURLAM MASS TIMBER U.S., INC., <i>et al.</i> , ¹)	Case No. 23-10497 (CTG)
)	
Debtors.)	(Joint Administration Requested)
)	

**DEBTORS' MOTION SEEKING ENTRY OF AN ORDER (A)(I) APPROVING
BIDDING PROCEDURES, (II) APPROVING STALKING HORSE PROTECTIONS
AND DEBTORS' ENTRY INTO STALKING HORSE PURCHASE AGREEMENT,
(III) SCHEDULING THE BID DEADLINES AND THE AUCTION,
(IV) SCHEDULING HEARINGS AND OBJECTION DEADLINES WITH
RESPECT TO THE SALE, (V) APPROVING THE FORM AND MANNER OF
THE NOTICE THEREOF, (VI) APPROVING CONTRACT ASSUMPTION
AND ASSIGNMENT PROCEDURES, AND (VII) GRANTING RELATED
RELIEF AND (B)(I) APPROVING THE SALE OF THE ASSETS FREE
AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES,
(II) APPROVING ASSUMPTION AND ASSIGNMENT OF EXECUTORY
CONTRACTS AND UNEXPIRED LEASES, AND (III) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) file this motion (this “Motion”), pursuant to sections 105(a), 363, and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), and rules 2002, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for entry of the following orders:

- (a) an order, substantially in the form attached hereto as Exhibit A (the “Bidding Procedures Order”):
 - (i) authorizing and approving the proposed bidding procedures (the “Bidding Procedures”) attached to the Bidding Procedures Order as Exhibit 1 in

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number or Canadian business number, as applicable, include: Structurlam Mass Timber U.S., Inc. (6287); Natural Outcomes, LLC (n/a); Structurlam Mass Timber Corporation (5050); and SLP Holdings Ltd. (3114). The location of the Debtors’ headquarters is: 2176 Government Street, Penticton, British Columbia, Canada V2A 8B5. The address of the registered agent for Structurlam Mass Timber U.S., Inc. is: 8 The Green, Suite A, Dover, Delaware 19901.



(iv) granting related relief.

In support of this Motion, the Debtors submit the *Declaration of Kevin Haggard in Support of Debtors' (A) Bidding Procedures Motion and (B) Motion to Shorten Notice Regarding Bidding Procedures Motion*, filed contemporaneously herewith (the "Haggard Declaration") and the *Declaration of Matthew Karmel, Interim Chief Executive Officer of the Debtors in Support of Debtors' Chapter 11 Petitions and First Day Motions*, filed contemporaneously herewith (the "First Day Declaration"),² each of which is incorporated herein by reference. In further support of this Motion, the Debtors respectfully state as follows:

Jurisdiction and Venue

1. The United States Bankruptcy Court for the District of Delaware (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. The Debtors confirm their consent, pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

² The First Day Declaration and other relevant case information are available on the following website maintained by the Debtors' proposed claims and noticing agent Kurtzman Carson Consultants LLC ("KCC"): <https://www.kccllc.net/Structurlam>. Capitalized terms used but not otherwise defined in this Motion shall have the meanings ascribed to them in the First Day Declaration, as applicable.

7. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the circumstances leading to the commencement of the Chapter 11 Cases, is set forth in greater detail in the First Day Declaration.

Prepetition Marketing Process

8. On February 10, 2023, the Debtors retained Miller Buckfire & Co. LLC, a wholly owned subsidiary of Stifel, Nicolaus & Co., Inc., a U.S. broker-dealer and investment banking subsidiary of Stifel Financial Corp. ("Miller Buckfire") to assist the Debtors in, among other things, a potential sale of all or substantially all of their assets and obtaining potential financing. Promptly thereafter, Miller Buckfire launched a process for the purpose of soliciting offers for the sale or recapitalization of the Company outside of a court process (the "Marketing Process"). Miller Buckfire began the Marketing Process by identifying and contacting a broad group of potential strategic and financial sponsor parties for both sale and financing options, which included all of the potential strategic buyers focused on or interested in expanding into the mass timber product industry, including glue laminated beams and cross laminated timber. Seventy-four prospective buyers were solicited of which thirty-six executed non-disclosure agreements and eighteen prospective investors were solicited of which seven executed non-disclosure agreements. The parties that executed non-disclosure agreements received access to the Company's virtual data room and were offered management meetings and site visits. At that stage, three parties conducted site visits and five parties conducted meetings with Company management.

9. By March 8, 2023, five parties provided non-binding indications of interest. These five parties were provided with access to additional diligence in the data room, continued access to Company management and site visits, and a draft asset purchase agreement. Miller Buckfire requested binding bids from these five parties by March 24, 2023 which was an extension from an earlier target date of March 22, 2023.

all Liens, claims, encumbrances, and interests (other than Permitted Encumbrances) and Excluded Liabilities (the “Transferred Assets”):

- (a) [Reserved];
- (b) Inventory;
- (c) Transferred Leased Property;
- (d) Transferred Owned Property;
- (e) Fixtures and Equipment, including, for greater certainty, all of those assets listed on Schedule 1.1(e) of the Seller Disclosure Schedule;
- (f) Transferred Intellectual Property and all the goodwill of the Business and/or associated with or related to such Transferred Intellectual Property;
- (g) each Seller Contract listed on Schedule 1.1(g) of the Seller Disclosure Schedule and each Transferred Lease with respect to which an Order has been entered by the U.S. Bankruptcy Court (which may be the U.S. Sale Order) or the Canadian Court (which may be the Canadian Sale Order) authorizing the assumption and assignment of such Contract (such Contracts collectively, the “Closing Assumed Contracts”);
- (h) each non-executory Seller Contract;
- (i) pursuant to Section 1.6(c), each Additional Assumed Contract with respect to which an Order has been entered by the U.S. Bankruptcy Court or the Canadian Court authorizing the assumption and assignment of such Contract;
- (j) the Books and Records, subject to Section 6.9;
- (k) to the extent their transfer is permitted by Law, all Permits that are held by Sellers and applications therefor or related thereto;
- (l) all rights under the Seller Plans and any trusts, funding vehicles and other assets related thereto, Unionized Employees or Continuing Employees as set forth in Schedule 1.1(l) of the Seller Disclosure Schedule (collectively, the “Transferred Seller Plans”);
- (m) all credits, prepaid expenses, deferred charges, advance payments, refunds, security deposits, prepaid items and duties to the extent related to a Transferred Asset, but excluding any refunds of

MATERIAL TERMS OF THE STALKING HORSE PURCHASE AGREEMENT⁴

(b) all trade credits or refunds of costs or expenses borne by any Seller, in each case, attributable to the Transferred Assets and attributable to any period of time prior to the Closing Date;

(c) any shares or other interests in any Person or any securities of any Person;

(d) the articles and notice of articles, corporate charter, seal, minute books, stock record books and other similar documents relating to the organization, maintenance and existence of any Seller or any Affiliate of any Seller;

(e) all invoices, shipping documents, purchase orders and other preprinted business forms that have any Trademark thereon other than those included in the Transferred Intellectual Property;

(f) all Intellectual Property owned by any Seller or any of their Affiliates, other than the Transferred Intellectual Property;

(g) all personnel records (including all human resources and other records) of any Seller or any of their Affiliates relating to employees of any Seller or any of their Affiliates, in either case, other than the personnel records of the Unionized Employees and Continuing Employees;

(h) any refund of any Taxes paid by or on behalf of any Seller, other than refunds of Asset Taxes allocable to Buyer pursuant to Section 6.4(b);

(i) all deposits, cash and cash equivalents, checks and funds, bank accounts and other similar cash items;

(j) all consideration received by any Seller or their Affiliates pursuant to, and all rights of any Seller and their Affiliates under, this Agreement or any Transaction Document, subject to the terms hereof and thereof;

(k) all of the following documents prepared or received by Sellers, their Affiliates or any of their respective Representatives, in each case, with respect to the Transferred Assets: (i) lists of prospective buyers; (ii) offers, bids or proposals submitted by any prospective buyer; (iii) analyses by Sellers of any offers, bids or proposals submitted by any prospective buyer; (iv) correspondence between or among Sellers, their Representatives and any prospective buyer; and (v) correspondence between Sellers, their Affiliates or any of their respective Representatives with respect to any offers, bids or

MATERIAL TERMS OF THE STALKING HORSE PURCHASE AGREEMENT⁴	
	Break-Up Fee and the Expense Reimbursement Amount (the "Purchase Price").
Provisions Providing Bid Protections to "Stalking Horse" or Initial Bidder Local Rule 6004-1(c)(i)(C)	<p><u>Break-Up Fee and Expense Reimbursement Amount.</u> In consideration of Buyer and its Affiliates having expended considerable time and expense in connection with this Agreement and the negotiation thereof, and the identification and quantification of assets to be included in the Transferred Assets, and to compensate Buyer as a stalking-horse bidder in connection with the Auction, should Seller enter into a written binding agreement with respect to a Competing Transaction, then in such event, Buyer shall be entitled to:</p> <p>(a) the Expense Reimbursement Amount, not to exceed US\$600,000; and</p> <p>(b) an amount equal to US\$1,800,000 (the "<u>Break-Up Fee</u>").</p> <p>No bidder other than Buyer shall be entitled to a Break-Up Fee or Expense Reimbursement Amount. For the avoidance of doubt, (x) the Break-Up Fee and Expense Reimbursement Amount shall be free of any Liens and shall be payable or credited to Buyer only upon closing of the sale of the Transferred Assets (or a material portion of them) and (y) notwithstanding anything contained herein to the contrary, (i) Buyer shall have the right, but not the obligation, to increase its bid for the Transferred Assets at the Auction, and (ii) the amount of the Break-Up Fee and Expense Reimbursement Amount, once triggered pursuant to the terms of this Agreement, shall act as a credit toward any Closing by the Buyer as the high bidder or as the Backup Bidder (as defined in the Bid Procedures). Notwithstanding anything to the contrary set forth in this Agreement, Buyer agrees that the amount of the Break-Up Fee and the Reimbursement Amount credited to Buyer against the Purchase Price at the Closing as set forth in <u>Section 2.1</u> (the "<u>Closing Credit Amount</u>") shall be reduced to the extent such credit would result in the Sellers receiving less than US\$60,000,000 in proceeds at the Closing, taking into consideration (i) any amount of the Deposit of the Winning Bidder (as such terms are defined in the Bidding Procedures) under a Competing Transaction that is payable to Sellers pursuant to the Bidding Procedures and is not disputed by the Winning Bidder, or if disputed (such amount, a "<u>Disputed Amount</u>"), such dispute has been resolved in favor of Sellers prior to the Closing and (ii) the purchase price paid by Buyer at the Closing (taking into account the Deposit Amount payable to Sellers by Buyer in accordance with <u>Section 2.2</u>); provided, that if any Disputed Amount is excluded from consideration under the foregoing subclause (i) because such amount</p>

MATERIAL TERMS OF THE STALKING HORSE PURCHASE AGREEMENT⁴	
Local Rule 6004-1(b)(iv)(G)	
Closing and Other Deadlines Local Rule 6004-1(b)(iv)(E)	The “ <u>Closing Date</u> ” means the third Business Day following the date on which the last of the conditions set forth in Article VII of the Stalking Horse Purchase Agreement (other than those conditions that by their nature are to be satisfied at the Closing but subject to the fulfillment or waiver of those conditions) has been satisfied or waived, or at such other date, time and place as the Parties may mutually agree.
Releases Local Rule 6004-1(b)(iv)(C)	None.
Good Faith Deposit Local Rule 6004-1(b)(iv)(F)	Buyer shall deliver to Citibank, N.A. (the “ <u>Escrow Agent</u> ”) a deposit in the sum of US\$6,000,000 (the “ <u>Deposit Amount</u> ”) on the terms contemplated herein.
Tax Exemption Local Rule 6004-1(b)(iv)(I)	None.
Record Retention Local Rule 6004-1(b)(iv)(J)	<u>Maintenance of Books and Records.</u> After the Closing Date, Buyer shall until the sixth anniversary of the Closing Date, preserve, maintain and retain all books, records, other documents and electronically stored information Related to the Business, including the Books and Records, in existence on the Closing Date and, subject to compliance with applicable Law, make the same available for inspection and copying by Sellers, any of Sellers’ successors or assigns or any trustee in bankruptcy and, in each case, any of their respective Representatives for any reasonable business purpose or compliance with any obligation under any applicable Law, during normal business hours of the Business upon reasonable request and upon reasonable notice.
Requested Findings as to Successor Liability Local Rule 6004-1(b)(iv)(L)	The Stalking Horse APA requires that Debtors file a sale motion seeking entry of an order that contains findings of fact and conclusions of law that the Buyer is a good faith purchaser entitled to the protections of section 363(m) of the Bankruptcy Code and is not a successor to Seller.
Credit Bidding	Any Qualified Bidder (defined below) who has a valid and perfected lien on any assets of the Debtors’ estates and the right under applicable non-bankruptcy law to credit bid claims secured by such liens shall have the right to credit bid any portion and up to the entire amount of

end of the range of bid protections often allowed in this District for sale processes under section 363 of the Bankruptcy Code. Further, the Stalking Horse Protections are reasonable in light of, among other things, the Stalking Horse Purchaser's considerable efforts in setting a floor for the auction of the Assets.

15. In addition, the Debtors' estates will not be impacted by the Stalking Horse Protections because the Bidding Procedures provide that any overbid must include an amount of cash consideration equal to or exceeding the sum of the Purchase Price (as defined in the Stalking Horse Purchase Agreement), *plus* the amount of the Stalking Horse Protections, *plus* \$500,000.

The Bidding Procedures⁵

A. Overview of Bidding Procedures

16. The Bidding Procedures are designed to promote a competitive, fair, and efficient Sale process that seeks to maximize the value of the Debtors' estates. If approved, the Bidding Procedures will allow the Debtors to solicit and identify bids from potential buyers that constitute the highest or otherwise best offer for the Assets on a schedule consistent with the milestones detailed in the DIP Motion and the Debtors' chapter 11 objectives.

17. As the Bidding Procedures are attached to the Bidding Procedures Order, they are not restated in their entirety herein. Pursuant to Local Rule 6004-1, certain of the key terms of the Bidding Procedures are highlighted in the chart below.

⁵ The summary of the Bidding Procedures provided herein is qualified in its entirety by reference to the provisions of the Bidding Procedures. In the event of any inconsistencies between the provisions of the Bidding Procedures and the summary set forth herein, the terms of the Bidding Procedures shall govern. Capitalized terms that are used but not defined in the following summary shall have the meanings ascribed to such terms in the Bidding Procedures or Bidding Procedures Order (as applicable).

MATERIAL TERMS OF THE BIDDING PROCEDURES	
	<p>a combination of Assets, other than for all or substantially all of the Assets, must: (x) provide a breakdown of the share of the Purchase Price allocable to each of the Assets included in the Bid; (y) state whether the Bid is conditioned upon the Bid being the Winning Bid (as defined below) for any of the other Assets included in the Bid (and, if so, which Assets); and (z) state whether the Bidder is willing to purchase any of the Assets included in the Bid individually, and if so, the price such Bidder would pay for each such Asset.</p> <p><i>Marked Agreement.</i></p> <p>Each Bid must be accompanied by clean and duly executed transaction documents including, at a minimum, a draft purchase agreement, the form of which shall be in a form substantially similar to the Stalking Horse APA, pursuant to which the Bidder proposes to effectuate the Sale, along with redlines of such agreement marked to reflect any amendments and modifications from the form purchase agreement provided, which amendments and modifications may not be materially more burdensome than the Stalking Horse APA or otherwise inconsistent with these Bidding Procedures. The Debtors, in their reasonable business judgment after consultation with Bank of Montreal, will determine whether any such amendments and modifications are materially more burdensome.</p> <p><i>Deposit.</i></p> <p>Each Bid, other than a credit bid, must be accompanied by a cash deposit in an amount equal to ten percent (10%) of the aggregate value of the cash and non-cash consideration of such Bid (the “<u>Deposit</u>”), to be submitted by wire transfer to an escrow account to be identified and established by the Debtors. The Deposit shall not bear interest and shall be conclusively deemed subject to the exclusive jurisdiction of the Bankruptcy Court upon receipt.</p> <p><i>Committed Financing.</i></p> <p>Each Bid must contain evidence of the Bidder’s ability to consummate a Sale by June 5, 2023. To the extent that a Bid is not accompanied by evidence of such party’s capacity to consummate the Sale set forth in its Bid with cash on hand, each Bid must include committed financing, documented to the Debtors’ satisfaction after consultation with Bank of Montreal, that demonstrates that such party has received sufficient debt and/or equity funding commitments to satisfy the Bid’s Purchase Price and other obligations thereunder. Such funding commitments or other financing must be unconditional</p>

MATERIAL TERMS OF THE BIDDING PROCEDURES

Each Bid must include a description of all governmental, licensing, regulatory, or other approvals or consents that are required to consummate the proposed Sale, together with evidence satisfactory to the Debtors of the ability to obtain such consents or approvals in a timely manner, as well as a description of any material contingencies or other conditions that will be imposed upon, or that will otherwise apply to, obtaining any such consents or approvals.

Government Approvals Timeframe.

Each Bid must set forth an estimated timeframe for obtaining any required governmental, licensing, regulatory, or other approvals or consents for consummating any proposed Sale.

As-Is, Where-Is.

Each Bid must include a written acknowledgement and representation that the Bidder (a) has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its offer, (b) has relied solely upon its own independent review, investigation, or inspection of any documents or the Assets in making its Bid, and (c) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, regarding the Assets or the completeness of any information provided in connection therewith or the Auction.

Honoring the Bid Procedures.

Each Bid must affirmatively state the Bidder's agreement, and by submitting its Bid, each Bidder is so agreeing, to abide by and honor the terms of these Bidding Procedures (including if such Bid is declared the Winning Bidder or Backup Bidder (as defined below)) and to refrain from submitting a Bid or seeking to reopen the Auction after conclusion of the Auction. The submission of a Bid shall constitute a binding and irrevocable offer to acquire the Assets reflected in such Bid.

Additional Diligence.

Each Bidder shall comply with all reasonable requests for additional information and due diligence access by the Debtors or their advisors and Bank of Montreal regarding the Bid.

Expenses.

MATERIAL TERMS OF THE BIDDING PROCEDURES	
Local Rule 6004-1(c)(i)(D)	that will best promote the goals of these Bidding Procedures, or impose, at or prior to the Auction, additional customary terms and conditions on a Sale, including, without limitation: (a) extending or modifying any of the dates and deadlines set forth in these Bidding Procedures; (b) adding procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction; (c) adjusting the applicable minimum Overbid increment, including by requesting that Qualified Bidders submit last or final bids on a “blind” basis; (d) adjourning or cancelling the Auction; and (e) rejecting any or all Bids or Qualified Bids.
Closing with Alternative Back-Up Bidders Local Rule 6004-1(c)(i)(E)	<p>Designation of Backup Bidder: The Qualified Bidder with the next-highest or otherwise second-best Qualified Bid for the Assets or any subset thereof, as applicable, as determined by the Debtors in the exercise of their reasonable business judgment after consultation with Bank of Montreal, shall be required to serve as a Backup Bidder until such time as the applicable Sale is consummated, and each Qualified Bidder shall agree and be deemed to agree to be the Backup Bidder if so designated by the Debtors.</p> <p>Identity of Backup Bidder: The identity of the Backup Bidder and the amount and material terms of the Qualified Bid of the Backup Bidder shall be announced by the Debtors at the conclusion of the Auction at the same time the Debtors announce the identity of the Winning Bidder. The Backup Bidder shall be required to keep its Qualified Bid (or if the Backup Bidder submits one or more Overbids at the Auction, its final Overbid) open and irrevocable until such time as the Sale is consummated.</p> <p>Consummating a Sale with Backup Bidder: If a Winning Bidder fails to consummate the Sale contemplated by its Winning Bid, then the Debtors may select the Backup Bidder as the Winning Bidder, and such Backup Bidder shall be deemed a Winning Bidder for all purposes. The Debtors will be authorized, but not required, to consummate all transactions contemplated by the Bid of such Backup Bidder without further order of the Court or notice to any party.</p>

(c) counsel to the Prepetition Lender; (d) counsel to the DIP Lender; (e) those persons who have formally appeared in these Chapter 11 Cases and requested service pursuant to Bankruptcy Rule 2002; (f) the Securities and Exchange Commission; (g) the Internal Revenue Service; (h) all other applicable government agencies to the extent required by the Bankruptcy Rules or the Local Rules; (i); all parties who have asserted a lien or security interest against any of the Assets; and (j) all state attorneys general in states where the Assets are located.

20. The Debtors will post the Auction and Sale Notice, the Cure Notice, and the Bidding Procedures Order on the website of the Debtors' claims and noticing agent.

21. The Debtors submit that notice of this Motion coupled with service of the Auction and Sale Notice, as provided for herein (together the "Notice"), constitutes good and adequate notice of the Auction and Sale and the proceedings with respect thereto in compliance with, and satisfaction of, the applicable requirements of Bankruptcy Rule 2002. The Debtors propose that no other or further notice of the Auction and Sale shall be required and submit that the Notice is reasonably calculated to provide all interested parties with timely and proper notice of the proposed Sale, including the date, time, and place of the Auction (if one is held), the Bidding Procedures, and the dates and deadlines related thereto. Accordingly, the Debtors request that the form and manner of the Auction and Sale Notice be approved and that the Court determine that no other or further notice of the Auction and Sale is required.

Assumption and Assignment Procedures

22. The Debtors propose the following Assumption and Assignment Procedures for notifying the counterparties (each, a "Counterparty" and, collectively, the "Counterparties") with

- e. The “Objection Notice Parties” are as follows: (i) counsel to the Debtors, Chipman Brown Cicero & Cole, LLP, Hercules Plaza, 1313 North Market Street, Suite 5400, Wilmington, Delaware 19801, Attn: William E. Chipman, Jr. (chipman@chipmanbrown.com); Robert A. Weber (weber@chipmanbrown.com); Mark L. Desgrosseilliers (desgross@chipmanbrown.com); and Mark Olivere (olivere@chipmanbrown.com); (ii) counsel to any Committee appointed in these Chapter 11 Cases; (iii) counsel to the Prepetition Lender and the DIP Lender, (a) Blake, Cassels & Graydon LLP, 855 - 2nd Street S.W., Suite 3500, Bankers Hall East Tower, Calgary, Alberta, T2P 4J8, Attn: Kelly Bourassa (kelly.bourassa@blakes.com), Christopher Keliher (christopher.keliher@blakes.com), Erik Fleming (erik.fleming@blakes.com), and Austin Beck (Austin.Beck@blakes.com) (b) Chapman and Cutler LLP, 320 South Canal Street, Chicago, Illinois 60606 (Attn: Stephen R. Tetro II and James P. Sullivan), email: stetro@chapman.com and jsulliva@chapman.com, and (c) Womble Bond Dickinson (US) LLP, 1313 North Market Street, Suite 1200, Wilmington, Delaware 19801 (Attn: Matthew P. Ward), email: matthew-ward@wbd-us.com; and (iv) the Office of the United States Trustee for the District of Delaware, 855 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Benjamin.A.Hackman (Benjamin.a.hackman@usdoj.gov).
- f. Within one (1) day after the cancellation or completion of the Auction, the Debtors shall file with the Court a notice identifying the Winning Bidder (a “Notice of Winning Bidder”), which shall set forth, among other things, (i) the Winning Bidder and Back-Up Bidder (if any) and the amount of each of the Winning Bid and the Back-Up Bid (if any), (ii) the Assigned Contracts (as defined herein), as determined at such time and subject to the provisions of subsection (i) of the Assumption and Assignment Procedures, and (iii) the proposed assignee(s) of such Assigned Contracts, and serve the Notice of Winning Bidder by overnight mail and, if available, electronic mail, upon each affected Counterparty and its counsel (if known).
- g. At the Sale Hearing, the Debtors will seek Court approval of the assumption and assignment to the Winning Bidder of only those Executory Contracts, that have been selected by the Winning Bidder to be assumed and assigned (each, an “Assigned Contract,” and collectively, the “Assigned Contracts”).
- h. If no Contract Objection or Winning Bidder Adequate Assurance Objection, as applicable, is timely received with respect to an Assigned Contract: (i) the Counterparty to such Assigned Contract shall be deemed to have consented to the assumption by the Debtors and assignment to the Winning Bidder of the Assigned Contract, and be forever barred from asserting any objection with regard to such assumption and assignment (including, without limitation, with respect to adequate assurance of future performance by the Winning Bidder); (ii) any and all defaults under the Assigned

information necessary to formulate a bid to purchase the Assets. Moreover, the proposed Sale timeline is the product of consensus between the Debtors and the Prepetition Lender, reached through arms' length, good faith negotiations. Given that the Debtors recently performed an extensive prepetition marketing process that targeted the universe of potential interested parties, the proposed timeline is more than sufficient to engage with and promote active bidding by interested parties, thereby completing a fair and open Sale process that will maximize the value received for the Assets.

24. In addition, the proposed sale timeline is informed, among other things, by the fact that the most likely bidders are (and were, as of the Petition Date) already well-aware that the Debtors' Assets are up for sale, and most likely have already been contacted or indicated their interest in the Debtors' businesses or Assets during the prepetition Marketing Process. In connection with the formal Marketing Process, as described herein and in the Haggard Declaration, the Debtors and Miller Buckfire undertook extensive efforts to identify and reach out to potential buyers interested in a Sale transaction with the Debtors. Given this outreach, it was well-known in the industry—among both potential strategic and financial buyers—that the Company was open to a potential Sale of the Debtors' Assets. These efforts continue following the Petition Date as well. Accordingly, the Debtors and Miller Buckfire, together, have interacted with third parties that are likely to have serious interest in acquiring the Debtors' Assets.

25. Moreover, maintaining the Sale timeline as currently proposed by the Bidding Procedures Motion is necessary to the success of the Sale process. Any extension of the Sale process that is not in accordance with the milestones set forth in the DIP Facility without the consent of the DIP Lender will result in the Debtors' breach of the DIP Facility. The DIP Facility was sized to balance the administrative and operational costs of maintaining the Debtors' business

Inc., 416 F.3d 229, 238 (3d Cir. 2005) (“Overcoming the presumptions of the business judgment rule on the merits is a near Herculean task.”).

28. The paramount goal in any sale of property of a debtor’s estate is to maximize the proceeds realized by the estate. See *In re Mushroom Transp. Co., Inc.*, 382 F.3d 325, 339 (3d Cir. 2004) (holding that debtor “had a fiduciary duty to protect and maximize the estate’s assets”); *Official Comm. of Unsecured Creditors of Cybergenics Corp., v. Chinery*, 330 F.3d 548, 573 (3d Cir. 2003) (same); *In re Adams Res. Expl. Corp.*, No. 17-10866 (KG), at 12 (Bankr. D. Del. 2017) (“The relief requested in the Sale Motion . . . is a necessary and appropriate step toward enabling the Debtor to maximize the value of its bankruptcy estate, and it is in the best interests of the Debtor, its estate, and its creditors.”); *Corp. Assets, Inc. v. Paloian*, 368 F.3d 761, 765 (7th Cir. 2004) (stating that in a bankruptcy sale, the “governing principle . . . is to secure the highest price for the benefit of the estate and creditors”). Accordingly, courts uniformly recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value realized by the estate and therefore are appropriate in the context of bankruptcy transactions. See, e.g., *Calpine Corp. v. O’Brien Envtl. Energy, Inc. (In re O’Brien Envtl. Energy, Inc.)*, 181 F.3d 527, 537 (3d Cir. 1999) (noting that bidding procedures that promote competitive bidding provide a benefit to a debtor’s estate); *In re Energy Future Holdings Corp.*, 593 B.R. 217, 246 (Bankr. D. Del. 2018) (recognizing the appropriateness of debtors’ bidding procedures where the “objective at all times was to maximize value for their estates, consistent with their fiduciary duties”); *In re Verasun Energy Corp.*, No. 08-12606 (BLS), 2009 WL 7215671, at *2 (Bankr. D. Del. Feb. 19, 2009); *In re Dura Auto. Sys., Inc.*, No. 06-11202 (KJC), 2007 WL 7728109, at *90 (Bankr. D. Del. Aug. 15, 2007); *In re Integrated Res., Inc.*, 147 B.R.

for the value of the Assets and attract other potential buyers to bid for such assets, thereby maximizing the realizable value of the Assets for the benefit of the Debtors' estates, their creditors, and all other parties in interest.

31. Approval of the Stalking Horse Protections is governed by standards for determining the appropriateness of bid protections in the bankruptcy context. Courts have identified at least two instances in which bid protections may benefit the estate. First, a break-up or expense reimbursement fee may be necessary to preserve the value of a debtor's estate if assurance of the fee "promote[s] more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited." *In re O'Brien Envtl. Energy, Inc.*, 181 F.3d at 533. Second, if the availability of a break-up fee or expense reimbursement was to induce a bidder to research the value of the debtor and convert the value to a dollar figure on which other bidders can rely, the bidder may have provided a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth. *See id.*; *see also In re Reliant Energy Channel View LP*, 594 F.3d 200, 206–08 (3d Cir. 2010) (reasoning that a break-up fee should be approved if it is necessary to entice a party to make the first bid or if it would induce a stalking horse purchaser to remain committed to a purchase).

32. In *O'Brien*, the Third Circuit reviewed the following nine factors set forth by the lower court as relevant in deciding whether to award a break-up fee or expense reimbursement:

- a. the presence of self-dealing or manipulation in negotiating the break-up fee;
- b. whether the fee harms, rather than encourages, bidding;
- c. the reasonableness of the break-up fee relative to the purchase price;
- d. whether the unsuccessful bidder placed the estate property in a "sale configuration mode" to attract other bidders to the auction;

Auction. Without the Stalking Horse Protections, the Debtors might lose the opportunity to obtain the highest or otherwise best offer for the Assets, may have lost the financing from the Prepetition Lender for these Chapter 11 Cases, and would certainly lose the downside protection that will be afforded by the existence of the Stalking Horse Purchaser. *See, e.g., In re Enjoy Technology, Inc.*, Case No. 22-10580 (Bankr. D. Del. July 26, 2022) [Docket No. 199] (approving break-up fee and expense reimbursement). Additionally, without the floor established by the Stalking Horse Purchaser, the bids received at Auction for the Assets could be substantially lower than the bid offered by the Stalking Horse Purchaser.

36. Pursuant to the Bidding Procedures, any bidder that wishes to participate in the Auction must submit an offer that is higher or otherwise better than the bid of the Stalking Horse Purchaser, which would be used to fund the Stalking Horse Protections. The bid of the Stalking Horse Purchaser attracts additional bidders because, among other things, additional bidders will be able to save considerable time and expense because they can use many of the documents that the Stalking Horse Purchaser heavily negotiated, including the Stalking Horse Purchase Agreement and the schedules thereto, in making their bid. In sum, if the Assets are sold to a Winning Bidder other than the Stalking Horse Purchaser, the Sale likely will be the result of the Stalking Horse Purchaser's crucial role as an initial bidder generating interest in the Assets and establishing a minimum acceptable price and offer against which other parties can bid.

37. Finally, the Debtors believe that the amount of the Stalking Horse Protections is appropriate when compared to bid protections approved in other cases in this District.⁷

⁷ *See, e.g., In re Am. Eagle Del. Holding Co., LLC*, No. 22-10028 (JKS) [D.I. 146] (approving a breakup fee of 3% of the cash consideration of the stalking horse bid plus expense reimbursements equal to a maximum of 1.25% of the cash consideration of the stalking horse bid capped at \$50,000); *In re Ector Cnty. Energy Ctr., LLC*, No. 22-10320 (JTD) (Bankr. D. Del. May 6, 2022) [D.I. 136] (approving breakup fee of 3% of cash consideration of the stalking horse bid plus expense reimbursements equal to a maximum of 0.5% of the cash consideration of the stalking horse bid); *In re BHCosmetics Holdings, LLC*, No. 22-10050 (CS) (Bankr. D. Del. Jan. 28, 2022) [D.I. 90] (approving breakup fee equal to 4% of the cash consideration of the stalking horse bid plus expense

provide the Counterparties with sufficient time to determine the accuracy of the proposed cure amount and whether the Debtors have provided adequate assurance of future performance.

41. The Debtors will demonstrate at the Sale Hearing that the requirements for assumption and assignment of the Assigned Contracts to the Winning Bidder will be satisfied. As required by the Bidding Procedures, the Debtors will evaluate the financial wherewithal of potential bidders before designating such party a Qualified Bidder or Winning Bidder. Further, the Assumption and Assignment Procedures provide the Court and other interested parties ample opportunity to evaluate and, if necessary, challenge the ability of the Winning Bidder to provide adequate assurance of future performance and object to the assumption of the Assigned Contracts or proposed cure amounts. The Court therefore will have a sufficient basis to authorize the Debtors to assume and assign or reject the Assigned Contracts.

42. Accordingly, the Debtors submit that the Assumption and Assignment Procedures should be approved as reasonable and necessary measures to adequately notify parties in interest and conduct the proposed sale process in a fair, efficient, and proper manner.

V. The Proposed Sale Satisfies the Requirements of Section 363(f) of the Bankruptcy Code.

43. The Debtors further submit that it is appropriate to sell the Assets free and clear of any liens, claims, or interests in such property pursuant to section 363(f) of the Bankruptcy Code, with any such liens attaching to the net sale proceeds of the Assets to the same extent and with the same priority as such liens held against the Assets immediately prior to the Sale. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of an entity's liens if: (i) such a sale is permitted under applicable non-bankruptcy law; (ii) the party asserting such a lien, claim, or interest consents to such sale; (iii) the interest is a lien and the purchase price for the property is greater than the aggregate amount of all liens on the property; (iv) the interest is the

re Mark Bell Furniture Warehouse, Inc., 992 F.2d 7, 8 (1st Cir. 1993); *In re Willemain v. Kivitz*, 764 F.2d 1019, 1023 (4th Cir. 1985); *In re Congoleum Corp.*, No. 03-51524, 2007 WL 1428477, *2 (Bankr. D. N.J. May 11, 2007); *Abbotts Dairies of Pa.*, 788 F.2d 143, 147 (3d Cir. 1986).

47. Any agreement consummating a Sale will be negotiated at arm's length by sophisticated parties, each represented by their own advisors. Accordingly, the Debtors request that the Sale Order include a provision that the Winning Bidder for the Assets is a "good faith" purchaser within the meaning of Bankruptcy Code section 363(m). The Debtors believe that providing any Winning Bidder with such protection will ensure that the maximum price will be received by the Debtors for the Assets and closing of the same will occur promptly.

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

48. Section 365(a) of the Bankruptcy Code provides that a debtor in possession "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." Courts employ the business judgment standard in determining whether to approve a debtor's decision to assume or reject an executory contract or unexpired lease. *See, e.g., In re HQ Glob. Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003) (finding that debtor's decision to assume or reject an executory contract is governed by a business judgment standard and may only be overturned if the decision is a product of bad faith, whim, or caprice); *In re Market Square Inn, Inc.*, 978 F.2d 116, 121 (3d Cir. 1992) (stating that assumption or rejection of lease "will be a matter of business judgment by the bankruptcy court").

49. The "business judgment" test in this context "requires only that the trustee [or debtor in possession] demonstrate that [assumption] or rejection of the contract will benefit the estate." *In re Wheeling-Pittsburgh Steel Corp.*, 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987); *see also Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 40 (3d Cir. 1989). Any further

Bidder to perform under the Executory Contracts that it wishes for the Debtors to assume and assign.

53. Accordingly, the Debtors request approval under section 365 of the Bankruptcy Code of the Debtors' assumption and assignment of the Assigned Contracts in connection with the Sale. The Debtors further request that the Sale Order provide that the Assigned Contracts will be transferred to, and remain in full force and effect for the benefit of, the Winning Bidder notwithstanding any provisions in the Assigned Contracts, including those described in sections 365(b)(2) and (f)(1) and (f)(3) of the Bankruptcy Code that prohibit such assignment.

Waiver of Bankruptcy Rules 6004(a) and 6004(h)

54. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

Notice

55. The Debtors will provide notice of this Motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) the United States Attorney's Office for the District of Delaware; (c) the state attorneys general for all states in which the Debtors conduct business; (d) the Internal Revenue Service; (e) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (f) counsel to the Prepetition Lender; (g) counsel to the DIP Lender; (h) the Insurance Carriers; (i) the Insurance Brokers; and (j) any party that has requested notice pursuant to Bankruptcy Rule 2002. Additionally, notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013 1(m). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

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EXHIBIT A

Bidding Procedures Order

accordance with the terms of the Stalking Horse Purchase Agreement; (iii) scheduling an auction in connection with the Sale (the “Auction”), a hearing date for the approval of the Sale subject to the Court’s availability (the “Sale Hearing”), and the objection deadlines for the Sale Hearing (collectively, the “Sale Schedule”); (iv) approving the form and manner of notice of the Auction and Sale, attached hereto as **Exhibit 3** (the “Auction and Sale Notice”); (v) approving procedures (the “Assumption and Assignment Procedures”) for the assumption and assignment of certain executory contracts and unexpired leases in connection with the Sale (collectively, the “Assigned Contracts”), and approving the form and manner of the Cure Notice; and (vi) granting related relief, and (b) an order (the “Sale Order”), the form of which will be filed by the Debtors prior to the Sale Hearing, (i) authorizing the Sale to the Stalking Horse Purchaser or, in the event the Stalking Horse Purchaser is not selected as the Winning Bidder in accordance with the Bidding Procedures, to the Winning Bidder free and clear of all liens, claims, interests, and encumbrances; (ii) authorizing the assumption and assignment of the Assigned Contracts; and (iii) granting related relief all as more fully set forth in the Motion; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were appropriate and no other notice need be provided; and this Court having reviewed the Motion

been tailored to provide an adequate opportunity for all Counterparties (as defined herein) to assert any Contract Objections (as defined herein).

E. The Debtors have articulated good and sufficient reasons and business justification for the Court to grant the relief requested in the Motion regarding the Stalking Horse Protections, consisting of the Expense Reimbursement and the Break-Up Fee. The Stalking Horse Protections, as approved by this Order, are fair and reasonable and provide a benefit to the Debtors' estates and stakeholders.

F. If triggered in accordance with the terms of the Stalking Horse Purchase Agreement, the payment of the Stalking Horse Protections under this Order and upon the conditions set forth in the Stalking Horse Purchase Agreement and the Bidding Procedures, is (i) an actual and necessary cost of preserving the Debtors' estates, within the meaning of sections 503(b) and 507(a) of the Bankruptcy Code, (ii) reasonably tailored to encourage, rather than hamper, bidding for the Assets, by providing a baseline of value, increasing the likelihood of competitive bidding at the Auction, and facilitating participation of other bidders in the Sale process, thereby increasing the likelihood that the Debtors will receive the best possible price and terms for the Assets, (iii) of substantial benefit to the Debtors' estates and stakeholders and all parties in interest herein because it encouraged the Stalking Horse Purchaser to submit the Stalking Horse Purchase Agreement and is a condition of the Stalking Horse Purchase Agreement, (iv) reasonable and appropriate, (v) a material inducement for, and conditions necessary to, ensure that the Stalking Horse Purchaser will continue to pursue its proposed agreement to purchase the Assets, and (vi) reasonable in relation to the Stalking Horse Purchaser's efforts and to the magnitude of the Sale and the Stalking Horse Purchaser's lost opportunities resulting from the time spent pursuing such transaction

documentation required under the Bidding Procedures for Qualified Bidders) must be submitted.

- (b) Sale Objection Deadline. May 18, 2023, at 4:00 p.m. (prevailing Eastern Time) is the deadline (the “Sale Objection Deadline”) by which all objections to the Sale, other than a Contract Objection or Winning Bidder Adequate Assurance Objection, must be filed with the Court. Replies to any such objections shall be filed with the Court by May 25, 2023, at 12:00 p.m. (prevailing Eastern Time).
- (c) Contract Objection Deadline. May 18, 2023, at 4:00 p.m. (prevailing Eastern Time) is the deadline (the “Contract Objection Deadline”) by which Counterparties to Executory Contracts must file with the Court and serve on the Objection Notice Parties an objection with respect to (i) the assumption and assignment of the Counterparty’s Executory Contract (including, without limitation, on the basis that the Stalking Horse Purchaser cannot provide adequate assurance of future performance) or (ii) the Cure Amount for any of its Executory Contracts.
- (d) Auction. May 19, 2023, at 10:00 a.m. (prevailing Eastern Time) is the date and time that the Auction, if any, will be held via videoconference, or such later date, time, and location, as selected by the Debtors.
- (e) Winning Bidder Adequate Assurance Objection Deadline. May 24, 2023, at 4:00 p.m. (prevailing Eastern Time) is the deadline (the “Winning Bidder Adequate Assurance Objection Deadline”) by which, in the event that the Stalking Horse Purchaser is not the Winning Bidder, Counterparties to Executory Contracts must file with the Court and serve on the Objection Notice Parties an objection with respect to the provision of adequate assurance of future performance by a Winning Bidder or Back-Up Bidder that is not the Stalking Horse Purchaser.
- (f) Sale Hearing. The hearing approving the Sale to the Winning Bidder shall take place before the Court on May 26, 2023, at 10:00 a.m. (prevailing Eastern Time).

II. The Bidding Procedures

4. The Bidding Procedures, substantially in the form attached hereto as Exhibit 1, are hereby approved in their entirety, and the Bidding Procedures shall govern the submission, receipt, and analysis of all bids relating to the proposed Sale of the Assets. Any party desiring to bid on one or more individual Assets or all or substantially all of the Assets shall comply with the Bidding

8. Any initial Overbid to the Stalking Horse Bid, which shall serve as the Baseline Bid, shall be no less than \$62,900,000, consisting of \$60,000,000 as the amount of the Stalking Horse Bid, *plus* \$2,400,000 as the amount of the Stalking Horse Protections, *plus* \$500,000.

9. Any subsequent Overbids shall be in increments of \$500,000.

10. The Auction shall continue until the Debtors select, in their reasonable business judgment, pursuant to the Bidding Procedures, the highest or otherwise best Qualified Bid(s) for the Assets or any combination thereof, as applicable. Such Qualified Bid shall be declared the Winning Bid, and such Qualified Bidder shall be declared the Winning Bidder, and upon such declaration of the Winning Bid and the Winning Bidder, the Auction will be closed.

11. The Debtors may reject any Bid (regardless of whether such Bid is a Qualified Bid) that, in the Debtors' business judgment, is (a) inadequate, insufficient, or not the highest or best Bid, (b) not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules, or the Bidding Procedures, or (c) contrary to, or otherwise not in the best interests of the Debtors' estates, affected stakeholders, or other parties in interest.

IV. Notice Procedures

12. The Auction and Sale Notice substantially in the form attached hereto as **Exhibit 3** is approved.

13. Within three (3) business days of the entry of the Bidding Procedures Order, the Debtors shall serve the Auction and Sale Notice upon: (a) the U.S. Trustee; (b) counsel to any official committee of unsecured creditors appointed in these Chapter 11 Cases (the "Committee"); (c) counsel to the Prepetition Lender; (d) counsel to the DIP Lender; (e) those persons who have formally appeared in these Chapter 11 Cases and requested service pursuant to Bankruptcy Rule 2002; (f) the Securities and Exchange Commission; (g) the Internal Revenue Service; (h) all other applicable government agencies to the extent required by the Bankruptcy Rules or the Local Rules;

filed in connection with the Sale, including, without limitation, any Sale Objection, Contract Objection, or Winning Bidder Adequate Assurance Objection.

V. The Assumption and Assignment Procedures

19. The following “Assumption and Assignment Procedures” are hereby approved:

- a. On or before the date that is three (3) business day after the entry of this Order, the Debtors shall file the Cure Notice with the Court and serve the Cure Notice on each Counterparty to an Executory Contract.
- b. The Cure Notice shall include, without limitation, the cure amount, if any, that the Debtors believe is required to be paid to the applicable Counterparty under section 365(b)(1)(A) and (B) of the Bankruptcy Code for each of the Executory Contracts in the event such Executory Contracts are assumed and assigned by the Debtors (the “Cure Amount”). If a Counterparty objects to (i) the assumption and assignment of the Counterparty’s Executory Contract (including, without limitation, on the basis that the Stalking Horse Purchaser cannot provide adequate assurance of future performance) or (ii) the Cure Amount for any of its Executory Contracts, the Counterparty must file with the Court and serve on the Objection Notice Parties (as defined herein) a written objection (a “Contract Objection”) on or before the applicable objection deadline set forth in these Assumption and Assignment Procedures.
- c. Any Contract Objection shall: (i) be in writing; (ii) comply with the Bankruptcy Rules and the Local Rules; (iii) be filed with the Clerk of the Court, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801 **on or before 4:00 p.m. (prevailing Eastern Time) on May 18, 2023** (the “Contract Objection Deadline”), and proof of service of such Contract Objection upon the Objection Notice Parties shall be filed with the Court as and when required by the Local Rules; (iv) be served upon the Objection Notice Parties; and (v) state with specificity the grounds for such objection, including, without limitation, the fully liquidated Cure Amount and the legal and factual bases for any unliquidated Cure Amount that the Counterparty believes is required to be paid under section 365(b)(1)(A) & (B) of the Bankruptcy Code for the Assigned Contract, along with the specific nature and dates of any alleged defaults, the pecuniary losses, if any, resulting therefrom, and the conditions giving rise thereto and any objection to the provision of adequate assurance of future performance by the Stalking Horse Purchaser.
- d. In the event that the Stalking Horse Purchaser is not the Winning Bidder, the deadline to object to the provision of adequate assurance of future performance by a Winning Bidder or Back-Up Bidder that is not the Stalking Horse Purchaser (a “Winning Bidder Adequate Assurance”

Bidder of the Assigned Contract, and be forever barred from asserting any objection with regard to such assumption and assignment (including, without limitation, with respect to adequate assurance of future performance by the Winning Bidder); (ii) any and all defaults under the Assigned Contract and any and all pecuniary losses related thereto shall be deemed cured and compensated pursuant to section 365(b)(1)(A) and (B) of the Bankruptcy Code; and (iii) the Cure Amount for such Selected Purchased Contract shall be controlling, notwithstanding anything to the contrary in such Assigned Contract, or any other related document, and the Counterparty shall be deemed to have consented to the Cure Amount and shall be forever barred from asserting any other claims related to such Assigned Contract against the Debtors and their estates or the Winning Bidder, or the property of any of them, that existed prior to the entry of the Sale Order.

- i. To the extent that the Debtors and a Counterparty are unable to consensually resolve any such Contract Objection or Winning Bidder Adequate Assurance Objection, as applicable, prior to the commencement of the Sale Hearing, such Contract Objection Winning Bidder Adequate Assurance Objection, as applicable, will be adjudicated at the Sale Hearing or at such other date and time as may be determined by the Debtors, in consultation with the Winning Bidder, or otherwise fixed by the Court. To the extent that (i) the Debtors settle a Contract Objection or Winning Bidder Adequate Assurance Objection or (ii) the Court enters an order resolving the Contract Objection or Winning Bidder Adequate Assurance Objection, and such settlement or order is not acceptable to the Winning Bidder, the Winning Bidder shall have the option to designate the relevant Executory Contract as no longer an Assigned Contract, in which case such Contract shall not be assumed by the Debtors or assigned to the Winning Bidder, and neither the Debtors nor the Winning Bidder shall be responsible for any Cure Amounts related to such Contract.
- j. Notwithstanding anything to the contrary herein, if, after the Sale Hearing or the entry of the Sale Order, additional executory contracts or unexpired leases of the Debtors are determined to be Assigned Contracts, as soon as practicable thereafter, the Debtors shall file with the Court and serve, by regular mail, on the Counterparties a Cure Notice, and such Counterparties shall file any Contract Objections (including, without limitation, with respect to adequate assurance of future performance of the Winning Bidder and the Cure Amount) not later than seven (7) days thereafter. If no Contract Objection is timely received, the Debtors shall be authorized to assume and assign such Assigned Contracts to the Winning Bidder, without further notice to creditors or other parties in interest and without the need for further order of the Court, and such assumption and assignment shall be subject to the terms of the Sale Order.

the Local Rules. The Cure Notice is: (a) reasonably calculated to (i) provide sufficient, effective notice to all Counterparties and any other affected parties of the Debtors' intent to assume and assign to the Winning Bidder some or all of the Assigned Contracts and (ii) afford the Counterparties the opportunity to exercise any rights affected by the Motion and the relief granted by this Order pursuant to Bankruptcy Rules 2002(a)(2), 6004 and 6006; and (b) hereby approved.

VI. Miscellaneous

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

27. Prior to mailing the Auction and Sale Notice or the Cure Notice, as applicable, the Debtors may fill in, or cause to be filled in, any missing dates and other information, correct any typographical errors, conform the provisions thereof to the provisions of this Order, and make such other, non-material changes as the Debtors deem necessary or appropriate.

28. The failure to include or reference a particular provision of the Bidding Procedures specifically in this Bidding Procedures Order shall not diminish or impair the effectiveness or enforceability of such provision.

29. In the event of any inconsistency between this Order, on the one hand, and the Motion or the Bidding Procedures, on the other hand, this Order shall govern in all respects.

30. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained in the Motion or this Bidding Procedures Order shall constitute, nor is it intended to constitute, an admission as to the validity or priority of any claim or lien against the Debtors, a waiver of the Debtors' rights to subsequently dispute such claim or lien, or the assumption or adoption of any agreement, contract, or lease under section 365 of the Bankruptcy Code.

31. The requirements of Bankruptcy Rules 6004(h) and 6006(d) are hereby waived.

32. The requirements of Local Rules 9006-1(c)(ii) are hereby waived.

EXHIBIT 1

BIDDING PROCEDURES

Submissions to the Debtors.

All submissions to the Debtors required to be made under these Bidding Procedures must be directed to each of the following persons unless otherwise provided (collectively, the “Notice Parties”):

1. **Debtors.** Structurlam Mass Timber U.S., Inc., 2176 Government Street, Penticton, British Columbia, Canada V2A 8B5, Attn: Matthew Karmel (mkarmel@structurlam.com).
2. **Debtor’s Counsel.** Chipman Brown Cicero & Cole, LLP, Hercules Plaza, 1313 North Market Street, Suite 5400, Wilmington, Delaware 19801, Attn: William E. Chipman, Jr. (chipman@chipmanbrown.com); Robert A. Weber (weber@chipmanbrown.com); Mark L. Desgrosseilliers (desgross@chipmanbrown.com); and Mark Olivere (olivere@chipmanbrown.com).
3. **Debtors’ Investment Banker.** Stifel, Nicolaus & Company, Incorporated and Miller Buckfire & Co., LLC, Attn: Kevin Haggard (kevin.haggard@millerbuckfire.com); and Michael Sicari (michael.sicari@millerbuckfire.com).
4. **Bank of Montreal.** Bank of Montreal, Attn: Sandy Hayer (sandy.hayer@bmo.com).
5. **Counsel to Bank of Montreal.** (a) Blake, Cassels & Graydon LLP, 855 - 2nd Street S.W., Suite 3500, Bankers Hall East Tower, Calgary, Alberta, T2P 4J8, Attn: Kelly Bourassa (kelly.bourassa@blakes.com), Christopher Keliher (christopher.keliher@blakes.com), Erik Fleming (erik.fleming@blakes.com), and Austin Beck (Austin.Beck@blakes.com) (b) Chapman and Cutler LLP, 320 South Canal Street, Chicago, Illinois 60606 (Attn: Stephen R. Tetro II and James P. Sullivan), email: stetro@chapman.com and jsulliva@chapman.com, and (c) Womble Bond Dickinson (US) LLP, 1313 North Market Street, Suite 1200, Wilmington, Delaware 19801 (Attn: Matthew P. Ward), email: matthew-ward@wbd-us.com.

Potential Bidders.

To participate in the bidding process or otherwise be considered for any purpose under these Bidding Procedures, a person or entity interested in consummating a Sale (a “Potential Bidder”) must deliver or have previously delivered, if determined to be necessary by the Debtor in its sole discretion after consultation with Bank of Montreal, the following documents:

1. an executed confidentiality agreement on terms acceptable to the Debtors (a “Confidentiality Agreement”), to the extent not already executed;

II. Bid Requirements.

All Bids must be submitted in writing and satisfy the following requirements (collectively, the “Bid Requirements”):

Purchase Price.

Each Bid must clearly set forth the purchase price to be paid, specifying (a) any cash and (b) any non-cash components, in sufficient detail satisfactory to the Debtors (the “Purchase Price”). Each Bid for a combination of Assets, other than for all or substantially all of the Assets, must: (x) provide a breakdown of the share of the Purchase Price allocable to each of the Assets included in the Bid; (y) state whether the Bid is conditioned upon the Bid being the Winning Bid (as defined below) for any of the other Assets included in the Bid (and, if so, which Assets); and (z) state whether the Bidder is willing to purchase any of the Assets included in the Bid individually, and if so, the price such Bidder would pay for each such Asset.

Marked Agreement.

Each Bid must be accompanied by clean and duly executed transaction documents including, at a minimum, a draft purchase agreement, the form of which shall be in a form substantially similar to the Stalking Horse Purchase Agreement, pursuant to which the Bidder proposes to effectuate the Sale, along with redlines of such agreement marked to reflect any amendments and modifications from the form purchase agreement provided, which amendments and modifications may not be materially more burdensome than the Stalking Horse Purchase Agreement or otherwise inconsistent with these Bidding Procedures. The Debtors, in their reasonable business judgment after consultation with Bank of Montreal, will determine whether any such amendments and modifications are materially more burdensome.

Deposit.

Each Bid, other than a credit bid, must be accompanied by a cash deposit in an amount equal to ten percent (10%) of the aggregate value of the cash and non-cash consideration of such Bid (the “Deposit”), to be submitted by wire transfer to the escrow account established by the Debtors. Please contact the Debtors ahead of the Bid Deadline to receive wire information. The Deposit shall not bear interest and shall be conclusively deemed subject to the exclusive jurisdiction of the Bankruptcy Court upon receipt.

Committed Financing.

Each Bid must contain evidence of the Bidder’s ability to consummate a Sale by June 5, 2023. To the extent that a Bid is not accompanied by evidence of such party’s capacity to consummate the Sale set forth in its Bid with cash on hand, each Bid must include committed financing, documented to the Debtors’ satisfaction after consultation with Bank of Montreal, that demonstrates that such party has received sufficient debt and/or equity funding commitments to satisfy the Bid’s Purchase Price and other obligations thereunder. Such funding commitments or other financing must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions acceptable to the Debtors after consultation with Bank of Montreal.

making its offer, (b) has relied solely upon its own independent review, investigation, or inspection of any documents or the Assets in making its Bid, and (c) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, regarding the Assets or the completeness of any information provided in connection therewith or the Auction.

Honoring the Bid Procedures.

Each Bid must affirmatively state the Bidder's agreement, and by submitting its Bid, each Bidder is so agreeing, to abide by and honor the terms of these Bidding Procedures (including if such Bid is declared the Winning Bidder or Backup Bidder (as defined below)) and to refrain from submitting a Bid or seeking to reopen the Auction after conclusion of the Auction. The submission of a Bid shall constitute a binding and irrevocable offer to acquire the Assets reflected in such Bid.

Additional Diligence.

Each Bidder shall comply with all reasonable requests for additional information and due diligence access by the Debtors or their advisors and Bank of Montreal regarding the Bid.

Expenses.

Except as otherwise approved by the Bidding Procedure Order, each Bid shall not contemplate or request (and no Bidder shall receive) any break-up fee, transaction fee, termination fee, expense reimbursement, or any similar type of payment or reimbursement, and by submitting its Bid, each Bidder is agreeing to refrain from and waive any assertion or request for reimbursement on any basis, including under section 503(b) of the Bankruptcy Code.

III. Designation of Qualified Bidders.

Qualified Bidder.

A Bid will be considered a "Qualified Bid," and each Bidder that submits a Qualified Bid will be considered a "Qualified Bidder," if the Debtors determine in their reasonable business judgment after consultation with Bank of Montreal that such Bid (a) satisfies the Bid Requirements, and (b) is reasonably likely (based on availability of financing, regulatory issues, experience, and other considerations) to be consummated, if selected as a Winning Bid, within a time frame reasonably acceptable to the Debtors after consultation with Bank of Montreal. In making the determination as to whether a Bid will be considered a Qualified Bid and a Bidder will be considered a Qualified Bidder, the Debtors may request that such Bidder provide supporting documentation or other information sufficient to demonstrate, in the Debtors' reasonable business judgment after consultation with Bank of Montreal, such Bidder's financial capacity and ability to close the proposed transaction.

Notwithstanding anything to the contrary herein, (i) the Stalking Horse Bid shall be considered a Qualified Bid, and the Stalking Horse Bidder shall be considered a Qualified Bidder and (ii) a credit bid submitted by Bank of Montreal on account of (a) the prepetition secured financing and/or (b) the debtor in possession financing provided by Bank of Montreal to the

Credit Bids.

Any Qualified Bidder who has a valid and perfected lien on any assets of the Debtors' estates and the right under applicable non-bankruptcy law to credit bid claims secured by such liens shall have the right to credit bid any portion and up to the entire amount of their outstanding secured claims pursuant to section 363(k) of the Bankruptcy Code, *provided* that any credit bid for a material portion of the Assets by or on behalf of any party, other than Bank of Montreal under the Debtors' prepetition and debtor-in-possession credit facilities, shall contain a cash component sufficient to pay the aggregate amount of the Debtor's accrued, unpaid administrative expenses and any other claims requiring payment in full in cash; *provided, further*, that any credit bid shall contain a cash component or make other provision sufficient to pay or otherwise satisfy any applicable cure costs for any executory contracts or unexpired leases to be assumed and assigned to the credit bidding party under the credit bid; *provided, further*, that any credit bid submitted by a party shall include a cash component sufficient to (a) pay the amount of the Stalking Horse Protections and (b) pay for any Assets that are unencumbered by first priority perfected liens in favor of the credit bidder. For the avoidance of doubt, a credit bid submitted by Bank of Montreal consistent with the foregoing clauses (a) and (b) shall be deemed a Qualified Bid.

For purposes of evaluating competing bids, every dollar of a credit bid shall be treated the same as a dollar from a cash bid, and a credit bid shall not be considered inferior to a comparable cash bid because it is a credit bid. The fact that a Bid is composed of a credit bid (whether in whole or in part) shall not be a factor considered by the Debtors in their determination of the highest or otherwise best Bid for such asset.

V. Auction Procedure.*Time and Place.*

If the Debtors receive two or more Qualified Bids with respect to all of the Assets or any specific Asset, as applicable, then the Debtors will conduct the Auction to determine the Winning Bidder(s) (as defined below) with respect to such Assets. The Auction shall take place at 10:00 a.m. (prevailing Eastern Time) on May 19, 2023, via videoconference (with instructions for participating in such videoconference to be provided by the Debtors in advance of the Auction), or such later date, time, and location, as selected by the Debtors after consultation with Bank of Montreal. If the Debtors do not receive any Qualified Bids that are greater than the Stalking Horse Bid, then the Debtors may select such Stalking Horse Bid as the Winning Bid.

Conducting the Auction.

The Debtors and their advisors shall direct and preside over the Auction. At the start of the Auction, the Debtors shall describe the terms of the Stalking Horse Bid as the Baseline Bid. Any Bids made at the Auction by a Qualified Bidder subsequent to the Debtors' announcement of the Baseline Bid shall be "Overbids" and must comply with the conditions set forth below and shall be made and received on an open basis, with all material terms of each Overbid fully disclosed to all other Qualified Bidders. The Debtors shall maintain a written transcript of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids, and the Winning Bid(s). The Debtors may (a) select, in their reasonable business judgment after consultation with Bank of

Permitted Attendance.

The Auction will be conducted openly and all creditors and counsel or other professional advisors may be permitted to attend, provided that the Debtors may, in their sole and exclusive discretion, establish a reasonable limit to the number of representatives and/or professional advisors that may appear on behalf of or accompany each Qualified Bidder or creditor at the Auction.

No Collusion; Good-Faith Bona Fide Offer.

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

Adjourning the Auction.

Notwithstanding anything else herein to the contrary, the Debtors reserve the right, in their reasonable business judgment after consultation with Bank of Montreal, to adjourn the Auction one or more times to, among other things, (a) facilitate discussions between the Debtors and Qualified Bidders; (b) allow Qualified Bidders to consider how they wish to proceed; (c) alter or combine Asset groups; and (d) provide Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their reasonable business judgment, may require, that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate the proposed Sale at the prevailing Overbid amount.

Closing the Auction.

The Auction shall continue until the Debtors select, in their reasonable business judgment after consultation with Bank of Montreal, pursuant to these Bidding Procedures, the highest or otherwise best Qualified Bid for the Assets or any subset thereof, as applicable. Such Qualified Bid shall be declared the "Winning Bid," and such Qualified Bidder shall be declared the "Winning Bidder," and upon the declaration of the Winning Bid and the Winning Bidder the Auction will be closed. The Debtors may also select, in their reasonable business judgment after consultation with Bank of Montreal, pursuant to these Bidding Procedures, the next-highest or otherwise second-best Qualified Bid for the Assets or any subset thereof, as applicable, to be the "Backup Bidder." As soon as reasonably practicable after closing the Auction, the Debtors shall finalize definitive documentation to implement the terms of the Winning Bid, and, as applicable, cause such definitive documentation to be filed with the Court. The acceptance by the Debtors of the Winning Bid is conditioned upon approval by the Court of the Winning Bid.

Backup Bidder.

1. Designation of Backup Bidder: The Qualified Bidder with the next-highest or otherwise second-best Qualified Bid for the Assets or any subset thereof, as applicable, as determined by the Debtors in the exercise of their reasonable business judgment after consultation with Bank of Montreal,

that Qualified Bidders submit last or final bids on a “blind” basis; (d) adjourning or cancelling the Auction; and (e) rejecting any or all Bids or Qualified Bids.

Fiduciary Out.

Notwithstanding anything to the contrary in these Bidding Procedures, nothing in these Bidding Procedures or the Bidding Procedures Order shall require a Debtor or the board of directors, board of managers, or similar governing body of a Debtor, to take any action or to refrain from taking any action to the extent taking or failing to take such action would be inconsistent with applicable law or its fiduciary obligations under applicable law.

Consent to Jurisdiction.

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

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EXHIBIT 2

STALKING HORSE PURCHASE AGREEMENT

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EXHIBITS AND SCHEDULES

EXHIBITS

Exhibit A	-	Defined Terms
Exhibit B	-	Form of Assignment and Assumption Agreement
Exhibit C	-	Form of IP Assignment Agreement
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Exhibit E	-	Form of Canadian Sale Order

SCHEDULES

U.S. Bankruptcy Court of the U.S. Sale Order and the issuance by the Canadian Court of the Canadian Sale Order;

WHEREAS, the Acquisition and the transactions contemplated by this Agreement and the agreements contemplated hereby are subject to the approval of the U.S. Bankruptcy Court and the Canadian Court and will be consummated only subject to the terms and conditions set forth herein and in accordance with the U.S. Orders and the Canadian Orders to be entered in the U.S. Bankruptcy Proceeding and the CCAA Proceedings, respectively; and

WHEREAS, Buyer shall deliver to Citibank, N.A. (the "Escrow Agent") a deposit in the sum of US\$6,000,000 (the "Deposit Amount") on the terms contemplated herein;

NOW, THEREFORE, in consideration of the foregoing, and of the representations, warranties, covenants and agreements contained herein, the Parties agree as follows:

ARTICLE I

PURCHASE AND SALE OF THE BUSINESS

Section 1.1 Purchase and Sale of Assets. On the terms and subject to the conditions set forth herein, subject to Section 1.8, at the Closing, Sellers shall Transfer to Buyer, and Buyer shall purchase and acquire from Sellers the entirety of Sellers' right, title and interest in and to all of the Sellers' assets, properties and rights of every kind and nature, whether real, personal or mixed, tangible or intangible (including goodwill), wherever located, in the physical possession of Sellers or another Person, including the following, in each case free and clear of all Liens, claims, encumbrances, and interests (other than Permitted Encumbrances) and Excluded Liabilities (the "Transferred Assets"):

- (a) [Reserved];
- (b) Inventory;
- (c) Transferred Leased Property;
- (d) Transferred Owned Property;
- (e) Fixtures and Equipment, including, for greater certainty, all of those assets listed on Schedule 1.1(e) of the Seller Disclosure Schedule;
- (f) Transferred Intellectual Property and all the goodwill of the Business and/or associated with or related to such Transferred Intellectual Property;
- (g) each Seller Contract listed on Schedule 1.1(g) of the Seller Disclosure Schedule and each Transferred Lease with respect to which an Order has been entered by the U.S. Bankruptcy Court (which may be the U.S. Sale Order) or the Canadian Court (which may be the Canadian Sale Order) authorizing the assumption and assignment of such Contract (such Contracts collectively, the "Closing Assumed Contracts");

- (b) all trade credits or refunds of costs or expenses borne by any Seller, in each case, attributable to the Transferred Assets and attributable to any period of time prior to the Closing Date;
- (c) any shares or other interests in any Person or any securities of any Person;
- (d) the articles and notice of articles, corporate charter, seal, minute books, stock record books and other similar documents relating to the organization, maintenance and existence of any Seller or any Affiliate of any Seller;
- (e) all invoices, shipping documents, purchase orders and other preprinted business forms that have any Trademark thereon other than those included in the Transferred Intellectual Property;
- (f) all Intellectual Property owned by any Seller or any of their Affiliates, other than the Transferred Intellectual Property;
- (g) all personnel records (including all human resources and other records) of any Seller or any of their Affiliates relating to employees of any Seller or any of their Affiliates, in either case, other than the personnel records of the Unionized Employees and Continuing Employees;
- (h) any refund of any Taxes paid by or on behalf of any Seller, other than refunds of Asset Taxes allocable to Buyer pursuant to Section 6.4(b);
- (i) all deposits, cash and cash equivalents, checks and funds, bank accounts and other similar cash items;
- (j) all consideration received by any Seller or their Affiliates pursuant to, and all rights of any Seller and their Affiliates under, this Agreement or any Transaction Document, subject to the terms hereof and thereof;
- (k) all of the following documents prepared or received by Sellers, their Affiliates or any of their respective Representatives, in each case, with respect to the Transferred Assets:
 - (i) lists of prospective buyers;
 - (ii) offers, bids or proposals submitted by any prospective buyer;
 - (iii) analyses by Sellers of any offers, bids or proposals submitted by any prospective buyer;
 - (iv) correspondence between or among Sellers, their Representatives and any prospective buyer;
 - and (v) correspondence between Sellers, their Affiliates or any of their respective Representatives with respect to any offers, bids or prospective buyers, the transactions contemplated hereby or otherwise contemplated by the Bid Procedures;
- (l) all Retained Accounts Receivable (which, for the avoidance of doubt, shall not include the Buyer Accounts Receivable, to which Sellers shall have no entitlement under this Agreement);
- (m) all Seller Contracts that are not Closing Assumed Contracts or Additional Assumed Contracts (the "Excluded Contracts");

Section 1.4 Excluded Liabilities. Notwithstanding anything to the contrary set forth in this Agreement or in any of the other Transaction Documents, the Parties expressly acknowledge and agree that, except as set forth in Section 1.3, Buyer will not assume, be obligated to pay, perform or otherwise discharge or in any other manner be liable or responsible for any Liabilities of Sellers (or any of them), including those arising from or in connection with the Transferred Assets or the Business, or for any Action against Sellers (or any of them) or relating to the Transferred Assets or the Business, whether existing on the Closing or arising thereafter as a result of any act, omission, event, thing or circumstances taking place or not taking place prior to the Closing, including the following (all such Liabilities that Buyer is not assuming being referred to collectively, as the "Excluded Liabilities"):

- (a) all Income Taxes of Sellers;
- (b) all Liabilities relating to or arising out of the Excluded Assets;
- (c) all Liabilities in respect of any pending or threatened Action arising out of, relating to or otherwise in respect of the Business or the Transferred Assets to the extent such Action relates to the Business or the Transferred Assets for any period on or prior to the Closing Date;
- (d) all product Liability or similar claim for injury to a Person or property which arises out of or is based upon any express or implied representation, warranty, agreement or guaranty made by any Seller or based on any tort claim, or by reason of the improper performance or malfunctioning of a product, improper design or manufacture, failure to adequately package, label or warn of hazards or other related product defects of any products at any time manufactured or sold or any service performed by Seller prior to the Closing Date;
- (e) all recall, design defect, improper installation, manufacturing defect or similar or related claims of any products manufactured or sold or any service performed by any Seller prior to the Closing Date;
- (f) all Liabilities arising under or in connection with any present or former employee benefit plan providing benefits to any present or former employee of any Seller, other than as set forth in Section 1.3(f), provided, that all such Liabilities with respect to the Continuing Employees shall only be Excluded Liabilities to the extent arising or related to any period prior to the Closing;
- (g) except as provided in Section 6.5, including the Liabilities assumed by Buyer in relation to the Continuing Employees and the Unionized Employees as set out in Section 6.5(l), all Liabilities with respect to any present or former employees, officers, directors, independent contractors or consultants of Seller, including for wages or other work-related benefits, bonuses, fees, accrued vacation, workers' compensation, employee deferred compensation including stock option plans, equity grants, other grants and agreements, severance, retention, termination or other payments;
- (h) all Accounts Payable;
- (i) all Liabilities of the Business relating or arising from unfulfilled commitments, quotations, purchase orders, customer orders or work orders that do not constitute part of the Transferred Assets or Assumed Liabilities;

to Section 365 of the Bankruptcy Code and the U.S. Sale Order, subject to provision by Buyer of adequate assurance as may be required under Section 365 of the Bankruptcy Code.

(b) From time to time following the date hereof (and not later than five days prior to the expected Closing Date (or such later date as may be approved by the U.S. Bankruptcy Court) (the "Designation Deadline")), Buyer may, in its sole discretion, (i) designate additional Identified Contracts or any other executory contracts or unexpired leases that Buyer wishes to assume in connection with the transactions contemplated hereby as "Additional Assumed Contracts" by providing written notice to Sellers in the form of an updated Additional Assumed Contracts Schedule and (ii) notify Sellers in writing of any Closing Assumed Contract or Additional Assumed Contract that it does not any longer wish to assume and any such previously considered Closing Assumed Contract or Additional Assumed Contract that Buyer no longer wishes to assume shall be automatically deemed removed from the Schedules related to Closing Assumed Contracts or Additional Assumed Contracts and shall be automatically deemed an Excluded Contract without any adjustment to the Purchase Price.

(c) Within three Business Days following the Designation Deadline, Sellers may file with the U.S. Bankruptcy Court a further assumption notice (a "Further Assignment Notice") by first-class mail in the form approved by the Bid and Contract Procedures Order on all non-Seller counterparties to all Additional Assumed Contracts not previously noticed by Sellers in accordance with Section 1.6(a), and provide a copy of the same to Buyer. Following filing of the Further Assignment Notice, Sellers shall assume and assign to Buyer the Additional Assumed Contracts on such date as specified in such Further Assignment Notice, in each case, pursuant to Section 365 of the Bankruptcy Code and an Order providing for the assumption by the applicable Seller party thereto, and the assignment to the extent legally capable of being assigned by such Seller to Buyer, of each of the Additional Assumed Contracts pursuant to Section 365 of the Bankruptcy Code on the terms and conditions set forth in this Section 1.6, subject to provision by Buyer of adequate assurance as may be required under Section 365 of the Bankruptcy Code. For the avoidance of doubt, (x) if Buyer has not provided Sellers an updated Additional Assumed Contract Schedule to assume any additional Identified Contracts or other executory contracts or unexpired leases in accordance with the foregoing, then such Identified Contract or other executory contract or unexpired lease shall be deemed to be an Excluded Contract and may be rejected by any Seller party thereto after the expiration of the Designation Deadline, (y) no prepetition Cure Cost shall be due or payable with respect to any executory contract or unexpired lease until the permanent assumption thereof and (z) each Identified Contract or other executory contract or unexpired lease that becomes an Additional Assumed Contract pursuant to this Section 1.6(c) shall concurrently be deemed to have become a Transferred Asset.

(d) With respect to any Identified Contracts that are not Closing Assumed Contracts, if following the Closing Date, Sellers incur any direct incremental administrative expenses allowed pursuant to section 503(b) of the Bankruptcy Code associated with its continuance of such Identified Contract during the period between the Closing Date and the earlier of (x) the date such Identified Contract is either assumed and assigned to Buyer or rejected and (y) the Designation Deadline, then Buyer shall, within 15 days following the Closing Date, reimburse Sellers for such incremental expenses (other than expenses caused as a result of the relevant Seller's breach of such executory contract or unexpired lease).

(i) Notwithstanding the foregoing, a Seller Contract shall not be a Closing Assumed Contract or Additional Assumed Contract hereunder and shall not be assigned to, or assumed by, Buyer to the extent that such Seller Contract is (i) deemed rejected under Section 365 of the Bankruptcy Code or (ii) the subject of an objection to assignment or assumption or requires a Necessary Consent of any Governmental Entity or other third party (other than, and in addition to, that of the U.S. Bankruptcy Court) in order to permit the assumption and assignment by the applicable Seller to Buyer of such Seller Contract pursuant to Section 365 of the Bankruptcy Code, and such objection has not been resolved or such Necessary Consent has not been obtained prior to the 60th day following the Closing (as such 60-day period may be extended by mutual agreement of Buyer and Sellers) or (iii) is terminated by any party thereto other than Sellers, or terminates or expires by its terms, on or prior to such time as it is to be assumed by Buyer as a Closing Assumed Contract or Additional Assumed Contract hereunder and is not continued or otherwise extended upon assumption. For the avoidance of doubt, in no event shall the failure to assign to Buyer any Seller Contract due to the termination of such Seller Contract in accordance with subsection (iii) above, (x) reduce the Purchase Price or the Deposit Amount payable to Sellers (if applicable) or (y) constitute a failure to satisfy the conditions to the obligations of Buyer under Section 7.2.

Section 1.7 U.S. Bankruptcy Proceedings Assumption and Assignment of Contracts.

(a) In the period between the execution of this Agreement and the hearing of the application for the U.S. Sale Order (the "Interim Period"), Sellers shall use reasonable commercial efforts to obtain any consents or approvals required in respect of the Acquisition including:

- (i) any consents of any non-Seller counterparties to any Identified Contracts for the transfer or assignment of Identified Contracts; and
- (ii) any consents or approvals required of applicable Governmental Entity for the transfer or assignment of Permits to Buyer or the reissuance of Permits in favor of Buyer;

and Buyer shall provide such assistance to Sellers as is reasonably required by Sellers in respect thereof.

(b) If a non-Seller counterparty to an Identified Contract is unwilling to consent to the assignment of an Identified Contract or is unwilling to consent on terms acceptable to Buyer, acting reasonably, and such consent is required in order to assign such Identified Contract, the application to the U.S. Bankruptcy Court or the Canadian Court for the U.S. Sale Order or Assignment Order, as applicable, shall include a request that the U.S. Bankruptcy Court order that such Identified Contract be assigned pursuant to and in accordance with the terms of the Bid and Contract Procedures Order or the CCAA.

Section 1.8 Non-Assignment of Assets. Notwithstanding any other provision of this Agreement to the contrary, this Agreement will not constitute an agreement to assign or Transfer and will not effect the assignment or Transfer of any Transferred Asset (including any Closing Assumed Contract or Additional Assumed Contract) if (i) (A) prohibited by applicable Law, (B) an attempted assignment or transfer thereof would be reasonably likely to subject Buyer, its Affiliates or any of its or their respective Representatives to civil or criminal Liability or (C) an attempted

(c) No additional consideration shall be payable by, and no additional amounts shall be owed by, Buyer or any of its Affiliates to Sellers or any of their Affiliates in connection with the transactions effected pursuant to this Section 1.10.

Section 1.11 Further Conveyances and Assurances. From time to time following the Closing, Sellers and Buyer will, and will cause their respective Affiliates to, execute, acknowledge and deliver all such further conveyances, notices, assumptions, assignments, releases and other instruments, and will take such further actions, as may be reasonably necessary or appropriate to assure to Buyer and its successors or assigns, all of the properties, rights, titles, interests, estates, remedies, powers and privileges intended to be conveyed to Buyer under this Agreement and to assure fully to each Seller and its respective Affiliates and their respective successors and assigns, the assumption of the Liabilities and obligations intended to be assumed by Buyer under this Agreement, and to otherwise make effective the transactions contemplated hereby.

ARTICLE II

CONSIDERATION; CLOSING

Section 2.1 Consideration. At the Closing, Buyer will pay to Sellers, by wire transfer in immediately available funds to the account or accounts designated by Sellers, an amount equal to US\$60,000,000, less the Deposit Amount and, if applicable in accordance with Section 8.3, the Break-Up Fee and the Expense Reimbursement Amount (the "Purchase Price").

Section 2.2 Purchase Price Deposit. Buyer shall deliver to Escrow Agent, within one (1) Business Day of the later of the date hereof and the execution of the Escrow Agreement, the Deposit Amount. Buyer's deposit of the Deposit Amount with the Escrow Agent will be either returned to Buyer or paid to Sellers as follows, in each case, in accordance with the Escrow Agreement: (a) if the Closing occurs, the Deposit Amount shall be paid to Sellers in accordance with Section 2.7, (b) if this Agreement is terminated by Sellers pursuant to Section 8.1(e), then the Deposit Amount shall be paid to Sellers (which will be deemed fully earned by Sellers as compensation and consideration for entering into this Agreement), and Sellers shall have no further recourse against Buyer, or (c) if this Agreement is terminated for any reason other than by Sellers pursuant to Section 8.1(e), then the Deposit Amount shall be returned to Buyer without any set-off or deduction within three Business Days after such termination and Buyer shall have no further recourse against Sellers other than as set forth in Section 8.3; provided that if the Deposit Amount is payable to Buyer upon termination due to the U.S. Bankruptcy Court approving a Competing Transaction, the Deposit Amount shall not be payable until three Business days after such Competing Transaction is consummated. The Deposit Amount shall only constitute property of Sellers in the event that the Deposit Amount is released to Sellers by the Escrow Agent in accordance with the terms of this Agreement and the Escrow Agreement. The Deposit Amount shall not be subject to any lien, attachment, trustee process, or any other judicial process of any creditor of any of Sellers or Buyer.

Section 2.3 Closing. The closing of the purchase and sale of the Acquisition (the "Closing") shall take place remotely, via electronic exchange of documents, at 10:00 a.m., prevailing Eastern time, on the third Business Day following the date on which the last of the conditions set forth in Article VII (other than those conditions that by their nature are to be satisfied

(g) a copy of the Canadian Sale Order as entered by the Canadian Court, vesting the Transferred Assets in Buyer free and clear of any Liens (other than Permitted Encumbrances);

(h) duly executed counterparts to the Assignment and Assumption Agreements;

(i) an instrument of assignment substantially in the form of Exhibit C attached hereto with respect to the transfer of the Transferred Intellectual Property (the "IP Assignment Agreement");

(j) a Joint Election;

(k) an instrument of conveyance (including a quit claim deed, real property transfers or similar documents as customary in the applicable jurisdiction and as may be necessary in accordance with the requirements of applicable Law) conveying to Buyer fee simple title to the Transferred Owned Property, subject to Permitted Encumbrances; and

(l) such other instruments of assumption and other instruments or documents, including bills of sale and/or assignment and assumption agreements, in form and substance reasonably acceptable to Buyer, as may be necessary to effect Buyer's assumption of the Assumed Liabilities and the effective assignment of any Transferred Assets in accordance with the requirements of applicable Law and this Agreement, in each case duly executed by the applicable Seller.

Section 2.6 [Reserved].

Section 2.7 Escrow Mechanics. At the Closing, SLP shall deliver a written instruction to the Escrow Agent, in accordance with the Escrow Agreement, instructing the Escrow Agent to disburse an amount equal to the Deposit Amount to SLP. Any disbursement of any amounts by the Escrow Agent pursuant to this Section 2.7 and the Escrow Agreement shall be made by wire transfer of immediately available funds to such account or accounts as may be designated in such joint written instruction by Sellers, pursuant to the terms and subject to the conditions set forth in this Agreement and the Escrow Agreement.

Section 2.8 Withholding. Buyer shall be entitled to deduct or withhold from consideration otherwise payable pursuant to this Agreement such amounts as it is required to deduct or withhold with respect to the making of such payment under any provision of Canadian or U.S. federal, state, provincial or local Law related to Taxes, provided, however that Buyer shall use commercially reasonable efforts to provide Sellers with at least ten Business Days' notice of the applicability of any such deduction or withholding prior to making such deduction or withholding, and shall afford Sellers a reasonable opportunity to provide any applicable certificates, forms or documentation that would reduce or eliminate the requirement to deduct or withhold Tax under applicable Law. To the extent that amounts are so deducted and withheld, such deducted and withheld amounts shall be timely paid by Buyer to the applicable Tax Governmental Entity and shall be treated for all purposes of this Agreement as having been paid to Sellers. The Parties shall reasonably cooperate to determine whether any such deduction or withholding applies to the payment, and, if so, shall further cooperate to minimize applicable withholding Taxes and to obtain any available refund or credit of withheld amounts.

given, filed or obtained by any Seller to or from any Governmental Entity in connection with the execution, delivery and performance by any Seller of this Agreement or the transactions contemplated hereby, except those that the failure to make or obtain would not, in the aggregate, have a Material Adverse Effect.

(b) Other than the filings, notices, reports, consents, registrations, approvals, permits and authorization set forth on Schedule 3.4(b) of the Seller Disclosure Schedule, the execution, delivery and performance by Sellers of this Agreement does not, and the consummation of the transactions contemplated hereby will not, conflict with, or result in any violation of or default (with or without notice, lapse of time or both) under, or give rise to a right of termination or acceleration of any obligation under, or result in the creation of any Lien upon any of the Transferred Assets (i) under any provision of the articles, by-laws or comparable governing documents of any Seller, (ii) subject to the U.S. Sale Order, the Canadian Sale Order, or any other Order required by the U.S. Bankruptcy Court or the Canadian Court in connection with the transactions contemplated hereby, any Law or Order to which any Seller, the Business and the Transferred Assets are subject, or (iii) subject to the U.S. Sale Order, Canadian Sale Order, or any other Order required by the U.S. Bankruptcy Court or the Canadian Court in connection with the transactions contemplated hereby, any Material Contract, except, in the case of clauses (ii) and (iii) above, for any such breach, violation, termination, default, creation or acceleration that would not, in the aggregate, have a Material Adverse Effect.

Section 3.5 Financial Statements. The financial statements set forth in Schedule 3.5 of the Seller Disclosure Schedule (the "Financial Statements") present fairly, in all material respects the consolidated financial position of SLP and its Subsidiaries in respect of the Business as of the dates thereof and the consolidated results of operations and cash flows for the periods then ended.

Section 3.6 Litigation. Except as set forth in Schedule 3.6 of the Seller Disclosure Schedule and except for the general pendency of the Bankruptcy Proceeding, the CCAA Proceedings, and Actions arising in the Ordinary Course and that would not have, in the aggregate, a Material Adverse Effect, as of the date hereof, there are no Actions pending or, to the Knowledge of Sellers, threatened against any Seller that are attributable to any of the Transferred Assets or the ownership or operation thereof or the Business.

Section 3.7 Transferred Owned Property. There are no pending, or, to the Knowledge of Sellers, threatened, appropriation, condemnation, eminent domain or like proceedings relating to any Transferred Owned Property.

Section 3.8 Material Contracts.

(a) Other than this Agreement, the other Transaction Documents and the DIP Financing, Schedule 3.8 of the Seller Disclosure Schedule sets forth a true and correct list of the following Seller Contracts relating to the Transferred Assets (together, the "Material Contracts"):

(i) any joint venture agreements, partnership agreements, purchase and sale agreements or similar agreements that are material to the Business;

(ii) any Seller Contract which is reasonably expected by Sellers as of the date hereof to either (i) involve any future aggregate receipts of revenues by any Seller or Sellers

noncompliance has not been cured as of the date hereof. Each Seller has obtained and is in material compliance with all Permits and Orders issued or granted by a Governmental Entity necessary to conduct its Business as presently conducted, except those the absence of which to have or be in compliance with would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Each of Sellers is in compliance with the Foreign Corrupt Practices Act of 1977, as amended (the “FCPA”), and any other U.S. or foreign Law concerning anti-corruption or anti-bribery applicable to the Business, and no Seller is, to Sellers’ Knowledge, being investigated by any Governmental Entity with respect to, or been given notice in writing by a Governmental Entity of, any violation by any of Sellers of the FCPA or any other U.S. or foreign Law concerning anti-corruption or anti-bribery applicable to the Business.

Section 3.10 Brokers and Finders. Except for fees and expenses payable to Stifel, Nicolaus & Company, Incorporated and Miller Buckfire & Co., LLC all of which shall be paid by, and be the responsibility of Sellers, there are no fees or expenses payable by any Seller to any investment banker, broker, finder or other intermediary that has been retained by or is authorized to act on behalf of Sellers in connection with the transactions contemplated hereby.

Section 3.11 Employees. Except for the Collective Agreement disclosed in Schedule 3.11 of the Seller Disclosure Schedules and the applicable certification and bargaining rights related thereto, no Seller is a party to any collective bargaining agreement or other agreement with a labor union or like organization covering any of the Scheduled Employees. As of the date hereof, there is no pending or, to the Knowledge of Sellers, threatened strike, lockout, slowdown or work stoppage involving the Scheduled Employees.

Section 3.12 Employee Benefit Plans. (a) each Seller Plan (including any related trusts) has been established, operated and administered in compliance with its terms and all applicable Laws in all material respects, including, without limitation and as applicable in the circumstances, ERISA, the Code and the ITA, (b) other than as set forth on Schedule 3.12 of the Seller Disclosure Schedule, all contributions or other amounts payable by Sellers with respect to each Seller Plan in respect of current or prior plan years have been paid or accrued in accordance with GAAP, (c) each Seller Plan that is subject to ERISA and that is intended to be qualified under Section 401(a) of the Code has been determined by the Internal Revenue Service (“IRS”), to be qualified under Section 401(a) of the Code and, to the Knowledge of Sellers, nothing has occurred that would adversely affect the qualification or tax exemption of any such Seller Plan, (d) with respect to any Seller Plan that is subject to ERISA, none of Sellers has engaged in a transaction in connection with which any of Sellers reasonably could be subject to either a civil penalty assessed pursuant to Section 409 or 502(i) of ERISA or a tax imposed pursuant to Section 4975 or 4976 of the Code, (e) no Seller maintains or contributes to (i) a plan that is subject to Section 412 of the Code or Section 302 or Title IV of ERISA or, in the case of Canadian Plans, provides benefits under a “Defined benefit provision” of a “pension plan” within the meaning of those terms as set out in the Pension Benefits Standards Act (British Columbia) (ii) any “multiemployer plans” within the meaning of Section 3(37) of ERISA, whether or not subject to ERISA and (f) as of the date hereof, there are no Actions pending or, to the Knowledge of Sellers, threatened against any Seller that involve or relate to any Seller Plan, other than routine claims for benefits in the Ordinary Course.

(c) there has been no waste generated by Seller or any of its Affiliates or any legally responsible predecessor corporation of Seller, that has given or could reasonably be expected to give rise to any Liability under any Environmental Law for which the Business would incur Liability; and

(d) Notwithstanding anything in this Agreement to the contrary, the representations and warranties made by Sellers in this Section 3.15 are the sole and exclusive representations and warranties made regarding environmental matters, including those related to Environmental Laws.

Section 3.16 Taxes. Other than as set forth in Schedule 3.16 of the Seller Disclosure Schedule:

(a) Sellers have filed all material Tax Returns with respect to the Transferred Assets required under applicable Law to be filed by Sellers with the appropriate Governmental Entities in all jurisdictions in which such Tax Returns are required to be filed prior to the Closing Date (taking into account any extension of time to file); and (ii) all material Taxes shown as due from Sellers on such Tax Returns with respect to such assets have been paid or arrangements for the payment thereof have been made, except to the extent nonpayment of which is permitted or required by the Bankruptcy Code or the CCAA.

(b) Each Seller has filed all material Tax Returns required under applicable Law to be filed by such Seller with the appropriate Governmental Entities in all jurisdictions in which such Tax Returns are required to be filed prior to the Closing Date (taking into account any extension of time to file); and (ii) all material Taxes shown as due on such Tax Returns have been paid or arrangements for the payment thereof have been made, except to the extent nonpayment of which is permitted or required by the Bankruptcy Code or the CCAA, and only to the extent that failure to file such Tax Return or to pay such Taxes would give rise to a Lien (other than a Permitted Encumbrance) on the Transferred Assets.

(c) No audit or other proceeding with respect to any Taxes or Tax Returns with respect to the Transferred Assets is currently in progress, or has been proposed or threatened in writing.

(d) No Seller has received written notice of any material outstanding, proposed or assessed Tax deficiency that has not been paid or accrued for and in accordance with applicable Law, nor has any Seller executed any waiver of any statute of limitations in respect of material Taxes nor agreed to any extension of time with respect to a material Tax assessment, collection or deficiency, which notice, waiver, or extension of time could give rise to a Lien (other than a Permitted Encumbrance) on the Transferred Assets.

(e) There are no liens for Taxes other than Permitted Encumbrances upon any of the Transferred Assets.

(f) There are not any outstanding ruling requests, and no rulings have been received, by any Seller relating to Taxes which ruling requests or rulings relate to Taxes which could be a Lien (other than a Permitted Encumbrance) on the Transferred Assets.

Section 3.17 Insurance. Schedule 3.17 of the Seller Disclosure Schedule sets forth a true and complete list of all insurance policies (the "Existing Insurance Policies") maintained by Sellers

Sellers or any of its Affiliates). Sellers make no representations or warranties to Buyer regarding the probable success or profitability of the Transferred Assets or the use thereof. The disclosure of any matter or item in any Schedule hereto will not be deemed to constitute an acknowledgment that any such matter is required to be disclosed or is material or that such matter could result in a Material Adverse Effect.

(b) Each Seller acknowledges and agrees that, except for the representations and warranties expressly set forth in Article IV, neither Buyer nor any other Person has made any express or implied representation or warranty with respect to the transactions contemplated hereby or with respect to the accuracy or completeness of any other information provided, or made available, to Sellers in connection with the transactions contemplated hereby and none of Sellers have relied on any representation or warranty other than those expressly set forth in Article IV.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Sellers as of the date hereof and as of the Closing as follows:

Section 4.1 Organization, Good Standing. Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the State of Washington. Buyer has all requisite corporate or similar power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted and is qualified to do business and, to the extent such concept applies, is in good standing as a foreign legal entity in each jurisdiction where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification, in each case, except where the failure to be so qualified or in good standing or to have such power or authority, would not, individually or in the aggregate, reasonably be likely to prevent, materially delay or materially impair the consummation of the transactions contemplated by this Agreement.

Section 4.2 Authority; Approval.

(a) Buyer has all right, power and authority to enter into and perform its obligations under this Agreement and the other Transaction Documents to which it is or will become a party and has all requisite corporate or similar power and authority and has taken all organizational action necessary in order to execute, deliver and perform its obligations under this Agreement and the other Transaction Documents to which it is or will become a party and to consummate the transactions contemplated hereby. No additional corporate or shareholder authorization or consent is required in connection with the execution, delivery and performance by Buyer of this Agreement or any of the Transaction Documents to which it is or will become party.

(b) This Agreement has been duly executed and delivered by Buyer and, when executed and delivered by Sellers, will constitute a valid and binding agreement of Buyer enforceable against Buyer in accordance with its terms, subject to the Equitable Exception.

in Section 3.21, except, in each case, for the representations and warranties expressly set forth in Article III of this Agreement.

Section 4.7 Brokers and Finders. Except for fees and expenses payable by Buyer, there are no fees or expenses payable to any investment banker, broker, finder or other intermediary that has been retained by or is authorized to act on behalf of Buyer in connection with the transactions contemplated hereby.

Section 4.8 No Other Representations or Warranties.

(a) Except for the representations and warranties contained in this Article IV, neither Buyer nor any other Person makes any other express or implied representation or warranty with respect to the transactions contemplated hereby, and Buyer disclaims any other representations or warranties, whether made by Buyer, any Affiliate of Buyer or any of Buyer's or its Affiliates' respective Representatives.

(b) Buyer acknowledges and agrees that, except for the representations and warranties expressly set forth in Article III, no Seller nor any other Person has made any express or implied representation or warranty with respect to the transactions contemplated hereby or with respect to the accuracy or completeness of any other information provided, or made available, to Buyer in connection with the transactions contemplated hereby and Buyer has not relied on any representation or warranty other than those expressly set forth in Article III.

(c) Buyer acknowledges and agrees that the enforceability of this Agreement against Sellers is subject to receipt of the U.S. Sale Order and the Canadian Sale Order.

Section 4.9 Due Diligence by Buyer. Buyer (on behalf of itself and each of its Affiliates) acknowledges and agrees that:

(a) the representations and warranties of Sellers set forth in Article III, any other Transaction Document or in any certificate delivered with respect to this Agreement (the "Covered Representations") are the only representations and warranties of any kind given by or on behalf of Sellers, and all other representations and warranties of any kind or nature expressed or implied (including, any relating to the future or historical financial condition, results of operations, revenues, expenses, assets, liabilities or other financial information included in the Business or the Transferred Assets or the quality, quantity or condition of the assets of the Business or the Transferred Assets) are specifically disclaimed by Sellers, and none of Sellers, their respective Affiliates or their respective Representatives make or provide any other warranty or representation, and Buyer hereby waives (on behalf of itself and each of its Affiliates) any other warranty or representation, in each case, express or implied, as to the quality, merchantability, fitness for a particular purpose or condition of the Business or the Transferred Assets or any part thereof;

(b) to the extent that Buyer has received any forecasts, estimates and projections, statements of intent or statements of opinion, including projected financial statements, cash flow items, other financial information, market intelligence and predictions and certain business plan information, including in any information memorandum, any management presentations or any other information, Buyer acknowledges and agrees that, except for the Covered Representations, (i) there are uncertainties inherent in attempting to make such projections and forecasts and,

part of the Transferred Assets (whether in combination with other assets of Sellers and the other Debtors or otherwise) and perform any and all other acts related thereto which are required or permitted under the Bankruptcy Code, the CCAA, the Bid and Contract Procedures Order, or other applicable Law, including supplying information relating to the Business and the assets of Sellers to prospective purchasers.

(b) If, upon completion of the Auction, Sellers have agreed to sell their assets under a Competing Transaction, Sellers may select Buyer as a Back-Up Bidder (as defined in the Bid Procedures) or may select another Back-Up Bidder as provided in the Bid Procedures on the terms and conditions contained herein (as revised in the Auction), or may select another Back-Up Bidder as provided in the Bid and Contract Procedures Order. Buyer hereby agrees and acknowledges that it shall serve as a Back-Up Bidder if so requested.

(c) Sellers agree that all pleadings with respect to the transactions contemplated hereby, including any reply in support thereof or any pleading relating to the assignment or assumption of Contracts, shall be provided to Buyer as soon as reasonably practicable prior to filing and shall be reasonably acceptable to Buyer. Buyer and Sellers understand and agree that such contemplated transactions are subject to approval by the U.S. Bankruptcy Court or the Canadian Court, as applicable.

Section 5.2 U.S. Bankruptcy Actions. As promptly as practicable after the date hereof and the commencement of the U.S. Bankruptcy Proceeding, Sellers shall file with the U.S. Bankruptcy Court an application seeking the Bid and Contract Procedures Order, which shall, among other things, (a) approve and authorize payment of the Break-Up Fee and the Expense Reimbursement Amount, and (b) establish procedures for the conduct of the Auction. Buyer agrees that it will reasonably cooperate with Sellers in obtaining granting of the Bid and Contract Procedures Order and the recognition of the Bid and Contract Procedures Order in the CCAA Proceedings. Sellers shall file such motions or pleadings as may be appropriate or necessary to assume and assign the Closing Assumed Contracts and to determine the amount of the Cure Costs.

Section 5.3 CCAA and Bankruptcy Court Filings.

(a) Buyer and Sellers shall take all actions as may be reasonably necessary to cause the Canadian Sale Order and U.S. Sale Order to be issued, entered and become Final Orders, including furnishing affidavits, declarations or other documents or information for filing with the Canadian Court and U.S. Bankruptcy Court. Buyer agrees that it will promptly take such actions as are reasonably requested by Sellers to assist in obtaining granting and entry of the Canadian Sale Order and the U.S. Sale Order including a finding of adequate assurance of future performance by Buyer, including furnishing affidavits or other documents or information for filing with the Canadian and U.S. Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Buyer under this Agreement and demonstrating that Buyer is a "good faith" Buyer under Section 363(m) of the Bankruptcy Code.

(b) Sellers shall use their commercially reasonable efforts, subject to U.S. Bankruptcy Court and Canadian Court availability and approval, to (i) hold the Auction, unless an Auction is not required to be held pursuant to the terms of the Bid Procedures, on or before May 19, 2023 and (ii) file and have entered the Canadian Sale Order and U.S. Sale Order on or before May 31, 2023.

or the disclosure of which would result in the disclosure of any trade secrets of third parties or violate any applicable Laws related to the exchange of information or any obligation of any Seller with respect to confidentiality; or (B) relating to other bids or potential bids for any of the Transferred Assets.

(b) All information received pursuant to this Section 6.1 shall be governed by the terms of the Confidentiality Agreement.

Section 6.2 Interim Operations of the Business. Except (a) (i) as required by applicable Law including any COVID-19 Measures, (ii) the DIP Financing or (iii) as authorized by any Order of the U.S. Bankruptcy Court or the Canadian Court, which Order is consistent with this Agreement, (b) as otherwise expressly contemplated by this Agreement or another Transaction Document, (c) with the prior written consent of Buyer (such consent not to be unreasonably withheld, conditioned or delayed), (d) as set forth on Schedule 6.2 of the Seller Disclosure Schedule, (e) as reasonably undertaken, consistent with actions taken by similarly situated industry participants and, except where not reasonably practicable in light of an imminent threat to health and safety, in prior consultation with Buyer, to respond to the actual or anticipated effects on the Business of COVID-19 or COVID-19 Measure, or (f) to the extent related to any Excluded Assets or Excluded Liabilities, during the period from the date hereof to and through the Closing Date, Sellers will use best efforts to conduct the Business in the Ordinary Course and maintain the Transferred Assets in their current condition, ordinary wear and tear excepted, including by making all payments in the respect of wages, benefits and pensions, due (or with respect to wages, accrued) to the Unionized Employees up to the Closing Date; provided that in the event that the Seller does not make all such payments (including in respect of accrued wages), then such aggregate amount shall be in good faith estimated by the Seller and the Buyer and deducted from the Purchase Price on Closing. For greater certainty, Seller will not sell, dispose or otherwise transfer howsoever the Specified Inventory. For clarity, in this Section 6.2, any reference to “wages” does not include vacation pay that is accrued but unused in the Ordinary Course as of the Closing Date.

Section 6.3 Cooperation; Status Updates; Regulatory Filings.

(a) Cooperation. Subject to the terms and conditions set forth in this Agreement, the Orders of the U.S. Bankruptcy Court and the Canadian Court, the Parties shall cooperate with each other and use their respective reasonable commercial efforts to: (i) take or cause to be taken all actions reasonably necessary, proper or advisable on their part under this Agreement or applicable Law to consummate the transactions contemplated hereby as promptly as reasonably practicable in accordance with the Bid Procedures; (ii) execute, acknowledge and deliver in proper form any further documents, certificates, agreements and other writings, and take such other action as such other Party may reasonably require, in order to effectively carry out the intent of the Transaction Documents; (iii) make or cause to be made all registrations, filings, notifications, submissions and applications with, to give all notices to and to obtain any consents, governmental transfers, approvals, Orders, qualifications and waivers from any Governmental Entity necessary for the consummation of the transactions contemplated hereby; (iv) not to take any action prior to the Closing that would reasonably be expected to prevent, materially impair or materially delay the consummation of the transactions contemplated hereby, except to the extent such action is otherwise expressly contemplated by this Agreement or the Bid Procedures; (v) provide the other

prohibit consummation of the transactions contemplated hereby, any and all steps (including the appeal thereof or the posting of a bond necessary to resist, vacate, modify, reverse, suspend, prevent, eliminate or remove such actual, anticipated or threatened Order) so as to permit such consummation on a schedule as close as possible to that contemplated by this Agreement.

Section 6.4 Tax Matters.

(a) Transfer Taxes. All documentary, stamp, transfer, including land transfer, registration charges, including motor vehicle registration, sales, including GST/HST, provincial sales, use, value added, excise, consumption, gross receipt, turnover, and other similar non-income Taxes and all filing and recording fees (and any penalties and interest associated with such Taxes and fees) arising from or relating to the consummation of the transactions contemplated hereby (collectively, "Transfer Taxes") will be borne by Buyer, regardless of the Party on whom liability is imposed under the provisions of the Laws relating to such Transfer Taxes, provided that all such Transfer Taxes with respect to the transfer of real property assets of Sellers located in the U.S. shall not exceed US\$200,000. Upon the reasonable request of any Seller, Buyer will furnish proof of the payment of those Transfer Taxes to the appropriate Governmental Entity, where permitted. Sellers and Buyer will consult and cooperate in timely preparing and making all filings, Tax Returns, reports and forms as may be required to comply with the provisions of the Laws relating to such Transfer Taxes, and will cooperate and otherwise take commercially reasonable efforts to obtain any available refunds for or exemptions from such Transfer Taxes, including preparing exemption certificates and other instruments as are applicable to claim available exemptions from the payment of Transfer Taxes under applicable Law and executing and delivering such affidavits and forms as are reasonably requested by the other Party. Without limiting the generality of the foregoing, the Parties will:

(i) complete and sign a joint election under subsection 167(1) of the ETA on or before the Closing Date to avoid the application of GST/HST to the purchase and sale of the Transferred Assets, to the extent applicable. Buyer will duly file the election with the appropriate Governmental Entity within the time permitted under the ETA (the "Joint Election"); and

(ii) to the extent any Seller has received any amount in respect of an obligation to deliver goods or services, and Buyer has agreed to assume that obligation under this Agreement, Transferred Assets having a fair market value equal to that amount are being transferred to Buyer under this Agreement as payment by such Seller for Buyer's agreement to assume that obligation, and the Parties will file an election pursuant to the provisions of subsections 20(24) and 20(25) of the ITA, and any corresponding provisions of any other applicable Tax Law, within the prescribed time period.

(b) Asset Taxes. Sellers shall be allocated and bear all Asset Taxes for any period or portion thereof ending prior to the Closing Date, and Buyer shall be allocated and bear all Asset Taxes for any period or portion thereof that begins at or after the Closing Date. For purposes of this Section 6.4(b), (i) Asset Taxes that are based upon or related to income or receipts or imposed on a transactional basis (other than such Asset Taxes described in clause (ii)), shall be allocated to the period in which the transaction giving rise to such Asset Taxes occurred, and (ii) Asset Taxes

(ii) Except to the extent otherwise required by a “determination” within the meaning of Section 1313(a) of the Code or by applicable Law, or as agreed to between the Parties as a result of any proposed assessment or reassessment by a relevant Tax authority, Sellers and Buyer and their respective Affiliates will report, act and file Tax Returns (including, but not limited to IRS Form 8594) in all respects and for all purposes consistent with the Final Allocation Statement and neither Sellers nor Buyer will take any position (whether in audits, Tax Returns, or otherwise) that is inconsistent with the Final Allocation Statement.

(d) Cooperation and Audits. Buyer and Sellers will cooperate fully with each other regarding Tax matters and will make available to the other as reasonably requested all information, records and documents relating to Taxes with regard to the Transferred Assets, Unionized Employees and Continuing Employees until the expiration of the applicable statute of limitations or extension thereof or the conclusion of all audits, appeals or litigation with respect to such Taxes. Notwithstanding anything in this Section 6.4(d) to the contrary, Sellers, Buyer and their respective Affiliates shall not be required to provide to Sellers and their Affiliates or Buyer and its Affiliates, as the case may be, any records, Tax Returns or any other information, in each case, which includes any information not solely related to the Transferred Assets, Unionized Employees or Continuing Employees.

Section 6.5 Employment Matters.

(a) Schedule 6.5(a) sets forth the names of all individuals who are Seller Employees as of the date hereof and (x) whose job responsibilities relate to the ownership, operation or use of the Transferred Assets or (y) whom Buyer and Sellers have otherwise designated as Scheduled Employees (the individuals set forth on Schedule 6.5(a), as such Schedule may be updated in accordance with this Section 6.5(a), the “Scheduled Employees”). Schedule 6.5(a) also sets forth, for each Scheduled Employee as applicable, the Scheduled Employee’s job title, date of hire, annual base salary and target bonus opportunity for 2023 (the “Scheduled Employees Schedule”). The Scheduled Employees Schedule shall be held in confidence and shall not be filed with the U.S. Bankruptcy Court or the Canadian Court (unless under seal). From time to time following the date hereof (and not later than 15 Business Days prior to the expected Closing Date), to the extent necessary, Sellers shall update the Scheduled Employees Schedule to reflect any changes thereto permitted by this Agreement. Sellers shall provide Buyer with any such updated Scheduled Employees Schedule at least 12 Business Days prior to the expected Closing Date. Buyer may add Seller Employees to Schedule 6.5(a) by providing written notice of such additions to Sellers not later than 15 Business Days prior to the expected Closing Date.

(b) At least ten Business Days prior to the expected Closing Date, Buyer shall provide Sellers with its list of Target Employees. For clarity, this list of Target Employees shall include (and may only include) all Unionized Employees.

(c) At least ten Business Days prior to the expected Closing Date, Buyer shall deliver to Sellers the form of written offer of employment that is to be provided to the Target Employees that are not Unionized Employees (if any) in accordance with the requirements set out in Section 6.5(d), and agrees to consider in good faith any comments provided by Sellers on such form.

determination of severance benefits) and eligibility to participate under each applicable benefit plan of Buyer or its Affiliates, as if such service had been performed with Buyer, except for benefit accrual under defined benefit pension plans, for purposes of qualifying for subsidized early retirement benefits or to the extent it would result in a duplication of benefits.

(k) [Reserved].

(l) Buyer will assume all Liabilities in respect of Unionized Employees (but not Continuing Employees who are not Unionized Employees) which may become payable to, receivable by, or accrued in favor of the Unionized Employees at any point prior to the Closing Date and Buyer will assume all Liabilities in respect of Continuing Employees and Unionized Employees that arise or are incurred or accrued following the Closing Date, including premiums for employment insurance, workers' compensation, any obligations under any Seller Plans, any obligations under the Collective Agreement, any Liabilities under workers' compensation or similar Laws, accrued statutory holiday pay, fees, wages, accumulated overtime, accumulated paid time off, salaries, commissions, bonuses, accumulated vacation with pay credits or entitlements and other employee benefits or claims.

(m) Nothing in this Agreement is intended to (i) be treated as an amendment of any particular Seller Plan, (ii) prevent Buyer or any of its Affiliates from amending or terminating any compensation or benefit plan of Buyer or its Affiliates (including any Transferred Seller Plan) on or after the Closing Date in accordance with their terms the Collective Agreement (where applicable) and applicable Law, or (iii) prevent Buyer or any of its Affiliates from terminating the employment of any Continuing Employee. No current or former employee of Sellers or any beneficiary or dependent thereof is entitled to any third party beneficiary or other rights under this Section 6.5 or under any other provisions of this Agreement with respect to the compensation, terms and conditions of employment and/or benefits that may be provided to any such employee or beneficiary or dependent by Sellers, Buyer or any of its Affiliates or under any benefit plan (including any Transferred Seller Plans) which Sellers, Buyer or any of its Affiliates may maintain, other than what is legally required in accordance with the Collective Agreement or applicable Laws.

Section 6.6 Confidentiality. Each Party acknowledges that the information being provided to it in connection with the transactions contemplated hereby is subject to the terms of the Confidentiality Agreement. The terms of the Confidentiality Agreement are incorporated into this Agreement by reference in their entirety (and the Confidentiality Agreement shall continue in full force and effect until the Closing, at which time all obligations under the Confidentiality Agreement shall terminate (other than those which expressly survive the termination thereof pursuant to its terms)). If, for any reason, the Closing does not occur, the Confidentiality Agreement shall continue in full force and effect in accordance with its terms. Buyer acknowledges and understands that this Agreement, before it becomes otherwise publicly available, may be publicly filed in the U.S. Bankruptcy Court or the Canadian Court and further made available by Sellers to prospective bidders and that, except as prohibited herein, such disclosure will not be deemed to violate any confidentiality obligations owing to Buyer, whether pursuant to this Agreement, the Confidentiality Agreement or otherwise. Sellers acknowledge that from and after the Closing, all non-public information relating to the Transferred Assets and the Assumed Liabilities, will be valuable and proprietary to Buyer and its Affiliates. Sellers agree

Section 6.10 Insurance Matters.

(a) Sellers shall, and shall cause their Affiliates to, assign, to the extent assignable, to Buyer any and all proceeds owing to Sellers under Sellers' or any of their Affiliates' third party insurance policies written prior to the Closing in connection with (i) the damage or destruction of any of the Transferred Assets from and after the date of this Agreement and prior to the Closing that is, or would have been but for such damage or destruction, included in the Transferred Assets or (ii) any Assumed Liability (other than, in the case of this clause (ii), where insurance proceeds are directly or indirectly funded by Sellers or any of their Affiliates through self-insurance or other similar arrangements); provided that, Sellers shall not be required to, or to cause their Affiliates to, assign to Buyer any Excluded Insurance Proceeds. If such proceeds are not assignable, Sellers agree to pay any such proceeds received by them or any of their Affiliates to Buyer promptly upon the receipt thereof.

(b) Except as set forth in Section 1.1(n), from and after the Closing, the Business, the Transferred Assets and the Assumed Liabilities shall cease to be insured by Sellers' or their Affiliates' insurance policies or by any of their self-insurance programs or other similar arrangements, and Buyer (i) agrees on or prior to Closing to arrange for its own insurance policies (including self-insurance or similar arrangements funded directly or indirectly by Buyer or any of its Affiliates) with respect to the Business, the Transferred Assets and the Assumed Liabilities covering all periods from and after the Closing and (ii) without prejudice to any right to indemnification under this Agreement or any other Transaction Document, agrees not to seek, through any means, to benefit from any of Sellers' or their Affiliates' insurance policies which may provide coverage for claims relating in any way to the Business.

Section 6.11 Wallis Lease Extension. From and after the signing of this Agreement, Sellers and Buyer shall work together in good faith to obtain an extension of the Wallis Lease on terms satisfactory to Buyer. Buyer shall be permitted to communicate directly with the Lessor to settle satisfactory terms for the extension. In the event that Buyer reaches a satisfactory extension of the Wallis Lease, Sellers will properly execute and sign the same as requested by Buyer.

Section 6.12 [Reserved].

Section 6.13 Environmental. Buyer acknowledges and agrees that Sellers shall not be obligated to provide a site disclosure statement under the Environmental Management Act (BC) and the regulations thereto with respect to any Transferred Leased Property located in the Province of British Columbia.

Section 6.14 Conduct of Sellers. Until the earlier of the termination of this Agreement under Section 8.1 or the Closing, except (a) (i) as required by applicable Law including any COVID-19 Measures, (ii) the DIP Financing, or (iii) as authorized by any Order of the U.S. Bankruptcy Court or the Canadian Court, which Order is consistent with this Agreement, (b) as otherwise expressly contemplated by this Agreement or another Transaction Document, (c) with the prior written consent of Buyer (such consent not to be unreasonably withheld, conditioned or delayed), (d) as set forth in Schedule 6.14, (e) as reasonably undertaken, consistent with actions taken by similarly situated industry participants and, except where not reasonably practicable in light of an imminent threat to health and safety, in prior consultation with Buyer, to respond to the

(a) Sellers will promptly notify Buyer of: (i) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement; (ii) any notice or other communication from any Governmental Entity related to or in connection with the transactions contemplated by this Agreement; (iii) promptly upon discovery thereof, any variances from, or the existence or occurrence of any event, fact or circumstance arising after the execution of this Agreement that would reasonably be expected to cause, any of the representations and warranties contained in Article III to be untrue or inaccurate such that the condition set forth in Section 7.2(a) will not be able to be satisfied. If the subject matter of any such notification required by the previous sentence requires any change in the Seller Disclosure Schedule, Sellers shall deliver to Buyer prior to the Closing a supplement to such Seller Disclosure Schedule (the "Updated Schedules") with such change; provided that in no event will any Updated Schedule serve to amend, supplement or modify the Schedules for purposes of Section 7.2(a) or limit the remedies available to Buyer under or with respect to this Agreement; provided, further that if the Closing occurs, the Updated Schedules will be considered and deemed to be part of the Seller Disclosure Schedule for all purposes under this Agreement, and each reference in this Agreement to a particular Seller Disclosure Schedule will mean such Seller Disclosure Schedule in, or as updated by, the Updated Schedules; and (iv) the occurrence of any fact or circumstance that could reasonably be expected to have a Material Adverse Effect.

(b) Buyer will promptly notify Sellers of any Actions relating to or involving or otherwise affecting Buyer or its Affiliates that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 4.4 or that relate to the transactions contemplated by this Agreement.

Section 6.16 Transfer of Permits.

(a) From and after the date hereof, Sellers, on the one hand, and Buyer, on the other hand, shall reasonably cooperate to transfer to Buyer as of the Closing Date all Permits included in the Transferred Assets.

(b) In addition, at any time prior to the Closing Date, Buyer may, at its sole discretion and at its sole expense, request for Sellers to maintain in effect any Permit for up to three months after the Closing for the purposes of passing through the benefits of such Permit to Buyer, and (i) provided Buyer timely pays any costs associated with such Permit, including any costs referred to in clause (iii) below and to the extent practicable and permitted by applicable Law, Sellers shall use commercially reasonable efforts to maintain in effect such Permit, (ii) Sellers and Buyer shall use commercially reasonable efforts to agree in writing on arrangements for the purposes of passing through the benefits of such Permit to Buyer, and (iii) any such arrangements described in the foregoing shall be at the sole expense of Buyer.

Section 6.17 Sellers' Obligations. Each of Sellers hereby acknowledges and agrees that their representations and warranties made hereunder are made jointly and severally, and their respective covenants and obligations under this Agreement are joint and several responsibilities. Each of Sellers agrees to be jointly and severally responsible for any damage, loss, cost and expense for which either of them may be responsible hereunder.

(d) the Conway Material Bond Agreements shall be redeemed or cancelled as contemplated by Section 6.3(b), in form and substance reasonably satisfactory to Buyer;

(e) Since the date of this Agreement there shall not have occurred any Material Adverse Effect;

(f) Seller shall have performed all actions required of Sellers pursuant to this Agreement to convey title to the Transferred Owned Property to Buyer, free and clear of all Liens pursuant to Section 363 of the Bankruptcy Code, subject only to the Permitted Encumbrances, and a licensed title company or companies reasonably satisfactory to Buyer (the "Title Company") shall be irrevocably committed to issue to Buyer a title policy, insuring Buyer's fee simple title to the Transferred Owned Property, subject only to the Permitted Encumbrances, which policy shall be reasonably in form and substance to Buyer (the "Title Policy"), subject to Buyer's payment of any required premiums and fees to the Title Company and delivery of such documentation by Buyer as required by the Title Company in order to issue to Buyer the Title Policy, provided that in the event Title Company shall be unable or unwilling to provide the Title Policy notwithstanding Seller's and Buyer's fulfillment of the foregoing requirements, Seller may select a replacement title insurer, which shall be a nationally recognized title insurance company reasonably acceptable to Buyer, to provide the Title Policy; and

(g) The form of U.S. Sale Order shall be in a form reasonably acceptable to Buyer.

Section 7.3 Conditions Precedent to Obligations of Sellers. The obligations of Sellers to consummate the transactions contemplated hereby are subject to the fulfillment, prior to or on the Closing Date, of each of the following conditions (any or all of which may be waived by Sellers in whole or in part to the extent permitted by applicable Law):

(a) the representations and warranties of Buyer contained in this Agreement shall be true and correct on and as of the Closing, except to the extent expressly made as of an earlier date, in which case such representations and warranties shall be true and correct as of such earlier date, except for any failure of any such representation and warranty to be so true and correct as would not, individually or in the aggregate, reasonably be expected to prevent the ability of Buyer to consummate the transactions contemplated hereby and deliver the Purchase Price pursuant to Section 2.1;

(b) Buyer shall have performed and complied in all material respects with all obligations and agreements required in this Agreement to be performed or complied with by Buyer prior to or on the Closing Date; and

(c) Sellers shall have received from Buyer a certificate signed by an authorized officer of Buyer on behalf of Buyer certifying that the conditions set forth in Section 7.3(a) and Section 7.3(b) have been satisfied.

Section 7.4 No Frustration of Closing Conditions. Neither Buyer nor Sellers may rely on the failure of any condition to their respective obligations to consummate the transactions contemplated hereby set forth in Section 7.1, Section 7.2 or Section 7.3, as the case may be, to be satisfied if such failure was caused by such Party's or its Affiliates' failure to use its reasonable best efforts (or such other applicable efforts standard expressly contemplated hereby) to satisfy the

(ii) if, following entry by the U.S. Bankruptcy Court or the Canadian Court of the U.S. Sale Order or the Canadian Sale Order, respectively, the U.S. Sale Order or the Canadian Sale Order (as applicable) is materially amended, modified or supplemented without Buyer's prior written consent or is voided, reversed or vacated; or

(iii) if (A) all of the conditions set forth in Section 7.1 and Section 7.3 have been satisfied or waived (other than those that, by their nature, are to be satisfied at the Closing, all of which are capable of being satisfied at the Closing), (B) Buyer has irrevocably confirmed by written notice to Sellers that (1) all conditions set forth in Section 7.2 have been satisfied (other than those that, by their nature, are to be satisfied at the Closing) or that it would be willing to waive any unsatisfied conditions in Section 7.2 if the Closing were to occur, and (2) they are ready, willing and able to consummate the Closing and (C) Sellers fail to consummate the Closing within two Business Days following the date the Closing should have occurred pursuant to Section 2.3; provided, however, that any purported termination by Sellers pursuant to Section 8.1(c)(i) shall be deemed to be a termination by Buyer pursuant to this Section 8.1(d)(iii) if Buyer is entitled to terminate this Agreement pursuant to this Section 8.1(d)(iii) at the time of such termination.

(e) by Sellers, upon written notice to Buyer:

(i) in the event of a breach by Buyer of any representation or warranty or any covenant or agreement contained in this Agreement, if (A) such breach would result in a failure of a condition set forth in Section 7.1 or Section 7.3 to be satisfied if such breach remained uncured as of the Closing and (B) such breach is incapable of being cured prior to the Termination Date or, if capable of being cured, such breach has not been cured within 30 days after the giving of written notice by Sellers to Buyer of such breach; provided that Sellers are not then in material breach of any representation, warranty, covenant or agreement contained in this Agreement; provided, further, that in the event that Sellers provide such written notice to Buyer within 30 days of the Termination Date, then the Termination Date shall be extended until the end of the 30-day cure period set forth in this Section 8.1(e); or

(ii) if (A) all of the conditions set forth in Section 7.1 and Section 7.2 have been satisfied or waived (other than those that, by their nature, are to be satisfied at the Closing, all of which are capable of being satisfied at the Closing), (B) Sellers have irrevocably confirmed by written notice to Buyer that (1) all conditions set forth in Section 7.3 have been satisfied (other than those that, by their nature, are to be satisfied at the Closing) or that it would be willing to waive any unsatisfied conditions in Section 7.3 if the Closing were to occur, and (2) they are ready, willing and able to consummate the Closing and (C) Buyer fails to consummate the Closing within two Business Days following the date the Closing should have occurred pursuant to Section 2.3; provided, however, that any purported termination by Buyer pursuant to Section 8.1(c)(i) shall be deemed to be a termination by Sellers pursuant to this Section 8.1(e)(ii) if Sellers are entitled to terminate this Agreement pursuant to this Section 8.1(e)(ii) at the time of such termination.

Section 8.2 Effect of Termination. In the event of termination of this Agreement pursuant to Section 8.1, this Agreement shall become void and of no effect; provided, however,

ARTICLE IX

MISCELLANEOUS

Section 9.1 Survival. The Parties agree that the representations, warranties, covenants or agreements contained in this Agreement (other than in respect to Section 3.21, Section 6.6 and this Article IX) will not survive the Closing hereunder, and none of the Parties will have any liability to each other after the Closing for any breach of such representations, warranties, covenants or agreements which may be made, or Action instituted, after the Closing. Notwithstanding the foregoing, the covenants and agreements that by their terms are to be satisfied after the Closing Date shall survive until satisfied in accordance with their terms.

Section 9.2 Notices. Unless otherwise set forth herein, all notices and other communications, including consents and waivers, to be given or made hereunder shall be in writing and shall be deemed to have been duly given or made on the date of delivery to the recipient thereof if received prior to 5:00 p.m. in the place of delivery and such day is a Business Day (or otherwise on the next succeeding Business Day) if (a) served by personal delivery or by recognized overnight courier service upon the Person for whom it is intended, (b) delivered by registered or certified mail, return receipt requested or (c) sent by email, as provided in this Section 9.2; provided that the email is confirmed orally or in writing by the recipient thereof (excluding out-of-office replies or other automatically generated responses):

To Buyer:

Mercer International Inc.
Suite 1120, 700 West Pender Street
Vancouver, B.C. V6C 1G8
Telephone: (604) 639-4610
Attn: Brian Merwin, Vice President Corporate Development
Email: brian.merwin@mercerint.com

With a copy to:

Sangra Moller LLP
1000 Cathedral Place
925 West Georgia Street
Vancouver, B.C. V6C 3L2
Telephone: (604) 692-3022
Attn: Harjit Sangra
Email: hsangra@sangramoller.com

and

Stearns Weaver Miller et al.
150 West Flagler Street
Suite 2200
Miami, Florida 33130
Attention: Drew M. Dillworth

Attn: Todd Schwartz
Email: toddschwartz@paulhastings.com

and

Gowling WLG (Canada) LLP
2300 – 550 Burrard Street
Vancouver, BC
Telephone: (604) 891-2778
Attn: Jonathan Ross
Email: jonathan.ross@gowlingwlg.com

or to such other Person or addressees as may be designated in writing by the Party to receive such notice as provided above; provided, however, that copies to outside counsel are for convenience only and the provision of a copy to outside counsel does not constitute notice or alter the effectiveness of any notice, request, instruction or other communication otherwise made or given in accordance with this Section 9.2.

Section 9.3 Entire Agreement; Amendments and Waivers. This Agreement together with the other agreements referred to herein, including the Transaction Documents, the Escrow Agreement and the Confidentiality Agreement represent the entire understanding and agreement between the Parties with respect to the subject matter hereof and supersede all prior discussions and agreements between the Parties with respect to the subject matter hereof. This Agreement can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed, in the case of an amendment, supplement or change, by the Parties, or in the case of a waiver, by the Party against whom enforcement of such waiver is sought. The waiver by any Party of a breach of any provision of this Agreement will not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder will operate as a waiver thereof, nor will any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by Law.

Section 9.4 Assignment. This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Nothing in this Agreement will create or be deemed to create any third party beneficiary rights in any Person or entity not a party to this Agreement. No assignment of this Agreement or of any rights or obligations hereunder may be made by either Sellers or Buyer (by operation of law or otherwise) without the prior written consent of the other Parties and any attempted assignment without the required consents will be void; provided, however, that (a) Buyer may assign some or all of its rights or delegate some or all of its obligations hereunder to one or more Affiliates, including to effect the purchase and transfer of the Canadian Assets and the U.S. Assets to different Affiliates and (b) Sellers may assign some or all of their rights or delegate some or all of their obligations hereunder to successor entities (including any liquidating trust) pursuant to a Chapter 11 plan confirmed by the U.S. Bankruptcy Court or as permitted by the CCAA, in the case of each of clause (a) and (b) above, without any other Party's consent. No assignment or delegation of any

each case, relating to the U.S. Bankruptcy Proceedings, the U.S. Bankruptcy Court or the Bankruptcy Code, and (ii) any and all proceedings related to the foregoing will be filed and maintained only in the U.S. Bankruptcy Court, and the Parties hereby consent to and attorn to the jurisdiction and venue of the U.S. Bankruptcy Court for such purposes and will receive notices at such locations as indicated in Section 9.2. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable Law, any objection which they may now or hereafter have to the laying of venue of any such Action brought in such courts or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

(b) Each of the Parties hereby consents to process being served by any other Party in any Action by delivery of a copy thereof in accordance with the provisions of Section 9.2; provided, however, that such service will not be effective until the actual receipt thereof by the Party being served.

(c) Each Party to this Agreement waives any right to trial by jury in any Action regarding this Agreement or any provision hereof.

Section 9.9 Interpretation; Construction.

(a) The Article and Section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the Parties and shall not in any way affect the meaning or interpretation of this Agreement.

(b) Unless otherwise specified in this Agreement or the context otherwise requires: (i) the words "hereof," "herein" and "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement; (ii) any reference to the masculine, feminine or neuter gender shall include all genders, the plural shall include the singular and the singular shall include the plural; (iii) all Preamble, Recital, Article, Section, clause, Schedule and Exhibit references used in this Agreement are to the preamble, recitals, articles, sections, clauses, schedules and exhibits to this Agreement; (iv) wherever the word "include," "includes" or "including" is used in this Agreement, it shall be deemed to be followed by the words "without limitation;" (v) the terms "date hereof" and "date of this Agreement" mean the date first written above; (vi) with respect to the determination of any period of time, the word "from" means "from and including" and the words "to" and "until" each means "to but excluding"; (vii) (A) any reference to "days" means calendar days unless Business Days are expressly specified and (B) any reference to "months" or "years" shall mean calendar months or calendar years, respectively, in each case unless otherwise expressly specified; (viii) the word "extent" in the phrase "to the extent" shall mean the degree to which a subject or other thing extends and such phrase shall not mean simply "if"; and (ix) each accounting term not otherwise defined in this Agreement has the meaning commonly applied to it in accordance with GAAP.

(c) Unless otherwise specified in this Agreement, any deadline or time period set forth in this Agreement that by its terms ends on a day that is not a Business Day shall be automatically extended to the next succeeding Business Day.

by any Party by electronic transmission shall be as effective as delivery of a manually executed copy of this Agreement by such Party.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed or caused this Agreement to be executed as of the date first written above.

SLP HOLDINGS LTD.

DocuSigned by:
By: Shawn Turkington
Name: Shawn Turkington
Title: Authorized Signatory

STRUCTURLAM MASS TIMBER CORPORATION

DocuSigned by:
By: Shawn Turkington
Name: Shawn Turkington
Title: Authorized Signatory

STRUCTURLAM MASS TIMBER U.S., INC.

DocuSigned by:
By: Shawn Turkington
Name: Shawn Turkington
Title: Authorized Signatory

NATURAL OUTCOMES, LLC

DocuSigned by:
By: Shawn Turkington
Name: Shawn Turkington
Title: Authorized Signatory

“Assumed Liabilities” has the meaning set forth in Section 1.3.

“Auction” means the auction to be conducted for the sale of the Transferred Assets under the Bid Procedures.

“Avoidance Action” means any avoidance claims, right or cause of action under Chapter 5 of the Bankruptcy Code or any analogous state law, the BIA, the CCAA, or Canadian provincial fraudulent conveyance or fraudulent preference legislation in each case, that relates to the Transferred Assets.

“Bankruptcy Code” means Title 11 of the United States Code, 11 U.S.C. § 101 *et seq.*

“Bankruptcy Proceeding” has the meaning set forth in the Recitals.

“BIA” means the Bankruptcy and Insolvency Act (Canada).

“Bid Procedures” has the meaning set forth in the Recitals.

“Bid and Contract Procedures Order” has the meaning set forth in the Recitals.

“Bond” or “Bonds” means any or all of the Conway Taxable Industrial Development Revenue Bond (Structurlam U.S. Project), Series 2019, in the aggregate principal amount of not to exceed \$75,000,000, issued pursuant to the Indenture and legally and beneficially owned by Natural Outcomes.

“Bond Purchase Agreement” means the bond purchase agreement dated December 27, 2019 between Conway as lessor, Natural Outcomes, and approved by Structurlam U.S., the lessee.

“Books and Records” means all books, ledgers, files, papers, reports, plans, records, manuals and other materials (in any form or medium) related to the Transferred Assets or the Business, including all advertising materials, client and customer lists, supplier and vendor lists, purchase orders, sales and purchase invoices, production and operations reports, technical manuals, information and records, photos, drawings and schematics, personnel and employment records, financial and accounting records and all written paper correspondence with or to any Governmental Entity including letters, minutes and official contact reports, but excluding any such items to the extent (a) they are included in or primarily related to any Excluded Assets or Excluded Liabilities, (b) any Law prohibits their transfer, (c) they are subject to legal privilege (other than title opinions) or (d) any transfer thereof otherwise would subject any Seller or any of its Affiliates to any material liability and is identified on the Seller Disclosure Schedule.

“Break-Up Fee” has the meaning set forth in Section 8.3(b).

“Business” has the meaning set forth in the Recitals.

“Business Day” means any day ending at 11:59 p.m., prevailing Eastern time, other than a Saturday, a Sunday, a day on which banks in New York, New York or British Columbia, Canada are authorized or required by Law, executive order or other governmental action to close, or a day on which their administrative offices are closed due to COVID-19 Measures or any other Order of a relevant Governmental Entity.

“Continuing Employee” has the meaning set forth in Section 6.5(f).

“Contract” means any contract, purchase order, service order, sales order, indenture, note, bond, lease, sublease, license or other agreement that is legally binding upon a Person or its property.

“Conway” means the City of Conway, Arkansas, a municipal corporation organized and existing under the Laws of the State of Arkansas.

“Conway Lease Agreement” means the lease agreement dated December 27, 2019 between Conway as lessor and StructurLam U.S. as lessee.

“Conway Lease Assets” means all of the assets leased by Conway to StructurLam U.S. pursuant to the terms of the Conway Lease Agreement (including real property).

“Conway Material Bond Agreements” mean, collectively, the Bond, the Indenture, the Conway Lease Agreement, the Bond Purchase Agreement, the Recognition of Prior Interests, Non-Disturbance and Attornment Agreement, the PILOT Agreement and such other agreements and documents set forth at paragraph 3 of Schedule 3.8 of the Seller Disclosure Schedule and not expressly set forth in this definition.

“Covered Representations” has the meaning set forth in Section 4.9(a).

“COVID-19 Measures” means any quarantine, “shelter in place”, “stay at home”, workforce reduction, social distancing, shutdown, closure, sequester or any other Law or Order or guideline or recommendation by any Governmental Entity in connection with or in response to COVID-19.

“Cure Costs” means (a) with respect to the Bankruptcy Proceeding, monetary amounts that must be paid and obligations that otherwise must be satisfied under Sections 365(b)(1)(A) and (B) of the Bankruptcy Code or in connection with the assumption and/or assignment of any Closing Assumed Contract, as agreed upon by the Parties or determined by the U.S. Bankruptcy Court pursuant to the procedures in the Bid and Contract Procedures Order or (b) with respect to the CCAA Proceedings, with respect to any Closing Assumed Contract for which a required consent to assignment has not been obtained and is to be assigned to Buyer in accordance with the terms of the Assignment Order, the amounts, if any, required to be paid to remedy all of Sellers’ monetary defaults existing as at the Closing Date under such Closing Assumed Contract (or such other amounts as may be agreed by Buyer and the counterparty to such Closing Assumed Contract), and with respect to any Closing Assumed Contract to be assigned on consent, where consent is required, the amount, if any, required to be paid to a counterparty to secure its consent to the assignment of the applicable Closing Assumed Contract by any of Sellers to Buyer (which amount shall be set out on the form of contractual consent agreed to by Buyer and the counterparty to such Closing Assumed Contract).

“D&O Insurance Claims” shall have the meaning set forth in Section 1.1(h).

“Debtors” means SLP, StructurLam Mass Timber Corporation, a British Columbia company, StructurLam U.S., and Natural Outcomes.

“Excluded Insurance Proceeds” has the meaning set forth in Section 1.2(a).

“Excluded Liabilities” has the meaning set forth in Section 1.4.

“Expense Reimbursement Amount” means the aggregate amount of all reasonable and documented out of pocket costs, expenses and fees incurred by Buyer in connection with evaluating, negotiating, documenting and performing the transactions contemplated by this Agreement and the Transaction Documents, including fees, costs and expenses of any professionals (including financial advisors, outside legal counsel, accountants, experts and consultants) retained by or on behalf of Buyer in connection with or related to the authorization, preparation, investigation, negotiation, execution and performance of this Agreement, the transactions contemplated hereby, including the Bankruptcy Proceeding, the CCAA Proceedings and other judicial and regulatory proceedings related to such transactions, which amount shall be payable as set forth in Section 8.3(a).

“FCPA” has the meaning set forth in Section 3.9(b).

“Final Allocation Statement” has the meaning set forth in Section 6.4(c)(i).

“Final Credit Amount” has the meaning set forth in Section 8.3.

“Final Order” means an Order (a) as to which no appeal, leave to appeal, notice of appeal, motion to amend or make additional findings of fact, motion to alter or amend judgment, motion for rehearing or motion for new trial has been timely filed (in cases in which there is a date by which such filing is required to occur, or, if any of the foregoing has been timely filed, it has been disposed of in a manner that upholds and affirms the subject Order in all material respects without the possibility for further appeal thereon), (b) in respect of which the time period for instituting or filing an appeal, leave to appeal, motion for rehearing or motion for new trial shall have expired (in cases in which such time period is capable of expiring), and (c) as to which no stay is in effect.

“Financial Statements” has the meaning set forth in Section 3.5.

“Fixtures and Equipment” means all furniture, furnishings, vehicles, equipment, machinery, tools, fixtures, rolling stock, construction materials, accessions and all other personal and mixed property, operational and nonoperational, wherever located that are Related to the Business or used in the Business including all trade fixtures, supplies, including maintenance and repair supplies and spares (including grease, oils, chemicals and containers in which any of them are stored), desks, chairs, tables, tools, all computer equipment, telephones, other office equipment, motor vehicles, replacement parts, and all other tangible personal property, including any of the foregoing purchased subject to any conditional sales or title retention agreement in favor of any other Person each of which that is Related to the Business.

“Further Assignment Notice” shall have the meaning set forth in Section 1.6(c).

“GAAP” means United States generally accepted accounting principles.

“Governmental Entity” means any domestic or foreign governmental or regulatory authority, agency, commission, body, court, council or other legislative, executive or judicial governmental authority, agency, commission, department, board or entity, or any political

or advances (cash or otherwise), debt or any other extensions of credit to the Business by and/or among Sellers or any of its Affiliates, whether current or non-current or due.

"Intracompany Receivables" means all account, note or loan receivables recorded on the books of Sellers or any of its Affiliates for goods or services sold or provided by the Business to Sellers or any of its Affiliates or advances (cash or otherwise) debt or any other extensions of credit (including the bond) made by the Business to Sellers or any of its Affiliates, whether current or non-current or due.

"Inventory" means all inventory Related to the Business, of the Business, produced in the Business or used in the Business, wherever located, and includes, for greater certainty, all Specified Inventory, and including all finished goods, raw materials, work in progress, packaging, supplies and parts whether held at any location or facility of Sellers or any of their Affiliates or in transit to Sellers or any of their Affiliates, in each case as of the Closing Date, other than in the case of the Specified Inventory, which shall be as observed by representatives of the Buyer on the Observation Date.

"IP Assignment Agreement" has the meaning set forth in Section 2.5(i).

"IRS" has the meaning set forth in Section 3.12.

"ITA" means the *Income Tax Act* (Canada) and all regulations thereunder, each as amended from time to time.

"Joint Election" has the meaning set forth in Section 6.4(a)(i).

"Knowledge" means, with respect to each Seller, the actual knowledge of the Persons set forth on Schedule 1.1(a) after reasonable inquiry into the relevant subject matter, and, with respect to Buyer, the actual knowledge of Dave Ure and Brian Merwin after reasonable inquiry into the relevant subject matter.

"Law" means any federal, state, provincial, local or municipal law, bylaw, statute or ordinance, common law, or any rule, regulation, standard, judgment, Order, criteria, protocols, codes of practices, writ, injunction, decree, arbitration award, agency requirement, license, Permit or other lawful requirements of any Governmental Entity now or hereafter in force.

"Lessor" means Eagle Home Ltd., in relation to the Wallis Lease.

"Liabilities" means any and all judgments, debts, liabilities, commitments, costs, expenses, adverse claim, duty, responsibility, commitment, loss, expenditure, charge, fee, penalty, fine, contribution, obligations of any kind, whether fixed, contingent or absolute, matured or unmatured, liquidated or unliquidated, accrued or not accrued, asserted or not asserted, known or unknown, determined, determinable or otherwise, whenever or however arising (including, whether arising out of any contract or tort based on negligence, strict liability or product liability).

"Lien" or "encumbrance" means any lien (as defined in section 101(37) of the Bankruptcy Code), encumbrance, claim (as defined in section 101(5) of the Bankruptcy Code), charge, mortgage, deed of trust, option, pledge, security interest or similar interests, title defects,

“Necessary Consent” has the meaning set forth in Section 1.8.

“Notice of Potential Assignment” has the meaning set forth in Section 1.6(a).

“Observation Date” means March 11, 2023.

“Order” means any administrative decision or award, decree, injunction, judgment, order, quasi-judicial decision or award, ruling or writ of any arbitrator, mediator or Governmental Entity.

“Ordinary Course” means the conduct of the Business, consistent with the normal day-to-day customs, practices and procedures of the Business, taking into account any changes to such practices as may have occurred since and as a result of the outbreak of COVID-19, including compliance with COVID-19 Measures.

“Party” and “Parties” have the meaning set forth in the Preamble.

“Permit” means any consent, license, permit, waiver, approval, authorization, certificate, certification (including those certifications set forth at Schedule 3.4(a) of the Sellers Disclosure Schedule), registration, variance, waiver, filing or similar right issued by, obtained from or made with a Governmental Entity.

“Permitted Encumbrance” means (a) any Liens that are expressly permitted by the U.S. Sale Order or Canadian Sale Order, as applicable, to remain attached to the Transferred Assets following the Closing, (b) any Lien on the Transferred Assets that will be expunged, released or discharged at the Closing by operation of the U.S. Sale Order or Canadian Sale Order, as applicable, (c) undetermined or inchoate liens, charges and privileges (including mechanics’, construction, carriers’, workers’, repairers’, storers’ or similar liens) which, individually or in the aggregate, are not material, arising or incurred in the Ordinary Course, (d) servitudes, easements, restrictions, encroachments, covenants, rights of way and other similar rights or restrictions in real property, or any interest therein, whether registered or unregistered, which, individually or in the aggregate, are not material to the Business, and (e) unregistered Liens for Taxes, assessments or similar charges incurred in the Ordinary Course that are not yet due and payable.

“Person” means any natural person, corporation, company, partnership (general or limited), limited liability company, trust or other entity.

“Personal Information” means, collectively, all relevant data or information constituting the personal information relating to any identifiable natural person, including employees, customers, and other individuals, that has been collected or otherwise obtained by Sellers in the conduct of the Business and that is in Sellers’ possession or custody.

“PILOT Agreement” means the agreement for payments in lieu of taxes dated December 27, 2019, by and between the Conway as lessor and Structurlam U.S. as lessee.

“Proposed Allocation Statement” has the meaning set forth in Section 6.4(c)(i).

“Purchase Price” has the meaning set forth in Section 2.1.

in relation to, campus buildings “six” and “eight” under construction or planned construction or constructed for, or on behalf of, Walmart Inc. and/or its Affiliates by the Sellers.

“Straddle Period” means any Tax period beginning before and ending on or after the Closing Date.

“StructurLam U.S.” has the meaning set forth in the Preamble.

“Subsidiary” means, with respect to any Person, any other Person of which at least a majority of the securities or ownership interests having by their terms ordinary voting power to elect a majority of the board of directors or other Persons performing similar functions is directly or indirectly owned or controlled by such Person and/or by one or more of its Subsidiaries.

“Target Employees” means the Scheduled Employees to whom the Buyer, in its sole discretion, agrees to make offers of employment or engagement, and includes all Unionized Employees.

“Tax Returns” means any return, report, declaration, election, claim for refund or information return or statement relating to Taxes, including any schedule or attachment thereto and any amendment thereof.

“Taxes” means any and all taxes, duties, fees, premiums, assessments, imposts, levies, rates, withholdings, dues, government contributions, and other charges of any kind imposed by any Governmental Entity, whether direct or indirect, together with all interest, penalties, fines, additions to tax or other additional amounts imposed in respect thereof, including, without limitation, all income, profits, environmental, stamp, gross receipts, premium, value added, severance, property, production, sales, harmonized sales, goods and services, use, duty, license, excise, franchise, payroll, unemployment, employment, disability, escheat and unclaimed property, transfer, registration, or mortgage tax.

“Termination Date” has the meaning set forth in Section 8.1(c)(i).

“Title Company” has the meaning set forth in Section 8.1(c)(i).

“Title Policy” has the meaning set forth in Section 8.1(c)(i).

“Trademarks” has the meaning set forth in the definition of “Intellectual Property.”

“Transaction Documents” means this Agreement and all other ancillary agreements to be entered into by, or documentation delivered by, any Party pursuant to this Agreement and includes, for greater clarity, the Assignment and Assumption Agreements and the IP Assignment Agreement.

“Transfer” means to sell, assign, transfer, convey and deliver.

“Transfer Taxes” has the meaning set forth in Section 6.4(a).

“Transferred Assets” has the meaning set forth in Section 1.1.

EXHIBIT 3

AUCTION AND SALE NOTICE

PLEASE TAKE FURTHER NOTICE that, to ensure that the Auction and Sale process maximizes value for the benefit of the Debtors' estates, the following key dates and deadlines have been established by the Debtors, pursuant to the Bidding Procedures Order:

- (a) Bid Deadline. May 18, 2023, at 4:00 p.m. (prevailing Eastern Time), is the deadline by which Bids for the Assets (as well as the deposit and all other documentation required under the Bidding Procedures for Qualified Bidders) must be submitted.
- (b) Sale Objection Deadline. May 18, 2023, at 4:00 p.m. (prevailing Eastern Time) is the deadline (the "Sale Objection Deadline") by which all objections to the Sale, other than a Contract Objection or Winning Bidder Adequate Assurance Objection, must be filed with the Court. Replies to any such objections shall be filed with the Court by May 25, 2023, at 12:00 p.m. (prevailing Eastern Time).
- (c) Contract Objection Deadline. May 18, 2023, at 4:00 p.m. (prevailing Eastern Time) is the deadline (the "Contract Objection Deadline") by which Counterparties to Executory Contracts must file with the Court and serve on the Objection Notice Parties an objection with respect to (i) the assumption and assignment of the Counterparty's Executory Contract (including, without limitation, on the basis that the Stalking Horse Purchaser cannot provide adequate assurance of future performance) or (ii) the Cure Amount for any of its Executory Contracts.
- (d) Auction. May 19, 2023, at 10:00 a.m. (prevailing Eastern Time) is the date and time that the Auction, if any, will be held via videoconference, or such later date, time, and location, as selected by the Debtors.
- (e) Winning Bidder Adequate Assurance Objection Deadline. May 24, 2023, at 4:00 p.m. (prevailing Eastern Time) is the deadline (the "Winning Bidder Adequate Assurance Objection Deadline") by which, in the event that the Stalking Horse Purchaser is not the Winning Bidder, Counterparties to Executory Contracts must file with the Court and serve on the Objection Notice Parties an objection with respect to the provision of adequate assurance of future performance by a Winning Bidder or Back-Up Bidder that is not the Stalking Horse Purchaser.
- (f) Sale Hearing. The hearing approving the Sale to the Winning Bidder shall take place before the Court on May 26, 2023, at 10:00 a.m. (prevailing Eastern Time).

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EXHIBIT I

BIDDING PROCEDURES ORDER

EXHIBIT 4

CURE NOTICE

connection with the Sale (collectively, the “Executory Contracts”). Pursuant to the Bidding Procedures Order, a final hearing to approve the Sale (the “Sale Hearing”) is scheduled to take place on May 26, 2023, at 10:00 a.m. (prevailing Eastern Time) before the Honorable [•], United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 6th Floor, Courtroom No. [•], Wilmington, Delaware 19801.

c. The Debtors hereby provide notice (the “Cure Notice”) that they may assume and assign the Executory Contracts listed on Exhibit III, attached hereto, to the Stalking Horse Purchaser or, if the Stalking Horse Purchaser is not selected as the Winning Bidder for the Debtors’ Assets in accordance with the Bidding Procedures, then the Winning Bidder. The Debtors’ records reflect that, other than the cure amounts listed on the Cure Notice (the “Cure Amount”), there are no defaults under such Executory Contracts. The Cure Notice also sets forth any proposed assurance of future performance (the “Adequate Assurance”) with respect to each Executory Contract.

d. To the extent that a Counterparty to an Executory Contract objects to a proposed assumption and assignment of such Executory Contract or the proposed Cure Amount or Adequate Assurance for such Executory Contract, such Counterparty must file and serve an objection (a “Contract Objection”). Any Contract Objection must (i) be in writing; (ii) comply with the Bankruptcy Rules and the Local Rules; (iii) be filed with the Clerk of the Court, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801 **on or before 4:00 p.m. (prevailing Eastern Time) on May 18, 2023** (the “Contract Objection Deadline”), and proof of service of such Contract Objection upon the Objection Notice Parties shall be filed with the Court as and when required by the Local Rules; (iv) be served upon the Objection Notice Parties; and (v) state with specificity the grounds for such objection, including, without limitation, the fully liquidated Cure Amount and the legal and factual bases for any unliquidated Cure Amount that the Counterparty believes is required to be paid under section 365(b)(1)(A) & (B) of the Bankruptcy Code for the Assigned Contract, along with the specific nature and dates of any alleged defaults, the pecuniary losses, if any, resulting therefrom, and the conditions giving rise thereto and any objection to the provision of Adequate Assurance by the Stalking Horse Purchaser.

e. In the event that the Stalking Horse Purchaser is not the Winning Bidder, the deadline to object to the provision of Adequate Assurance by a Winning Bidder or Back-Up Bidder that is not the Stalking Horse Purchaser (a “Winning Bidder Adequate Assurance Objection”) shall be **12:00 p.m. (prevailing Eastern Time) on May 24, 2023**, and any Winning Bidder Adequate Assurance Objections must be filed and served in the same manner as Contract Objections.

f. If any Contract Objection or Winning Bidder Adequate Assurance Objection is timely filed, and the parties are unable to consensually resolve the dispute, such objection will be resolved at the Sale Hearing.

g. If any Contract Objection or Winning Bidder Adequate Assurance Objection is not satisfactorily resolved, the Winning Bidder may determine that such Executory Contract should be rejected and not assigned, in which case the Winning Bidder will not be responsible for any Cure Amount or Adequate Protection with respect to such contract.

Dated: April 24, 2023
Wilmington, Delaware

CHIPMAN BROWN CICERO & COLE, LLP

/s/ Mark L. Desgrosseilliers

William E. Chipman, Jr. (No. 3818)

Robert A. Weber (No. 4013)

Mark L. Desgrosseilliers (No. 4083)

Mark D. Olivere (No. 4291)

Hercules Plaza

1313 North Market Street, Suite 5400

Wilmington, Delaware 19801

Telephone: (302) 295-0191

Email: chipman@chipmanbrown.com

weber@chipmanbrown.com

desgross@chipmanbrown.com

olivere@chipmanbrown.com

*Proposed Conflicts Counsel to Debtors and Debtors
in Possession*

EXHIBIT II

BIDDING PROCEDURES

EXHIBIT B

Sale Order

the “Debtors”)³ for entry of an order (this “Order”), among other things, (a) authorizing the sale (the “Sale”) of the Transferred Assets (as defined in the Purchase Agreement (as defined below)) to Mercer International Inc. (or any permitted assignee pursuant to the terms of the Purchase Agreement, the “Buyer”), pursuant to the Asset Purchase Agreement dated April [•], attached hereto as **Exhibit 1** and incorporated herein by reference as if set forth herein (together with all other documents contemplated thereby, as such agreement has been or may be amended, restated or supplemented, the “Purchase Agreement”), free and clear of all Liens, Claims, and Interests (each as defined below) with the exceptions of the Assumed Liabilities and Permitted Encumbrances (each as defined in the Purchase Agreement); (b) authorizing the assumption and assignment of certain executory contracts and unexpired leases to the Buyer; (c) authorizing the Debtors to pay the net proceeds from the Sale, up to the amount of the DIP Obligations and the Prepetition Obligations (each as defined below), to Bank of Montreal as lender under (i) the Debtors’ debtor-in-possession financing facility (in such capacity, the “DIP Lender,” such facility, the “DIP Facility,” and the obligations under such facility, the “DIP Obligations”) and (ii) the Debtors’ prepetition secured lending facility (in such capacity, the “Prepetition Lender,” such facility, the “Prepetition Facility,” and the obligations under such facility, the “Prepetition Obligations”); and (d) granting related relief, all as more fully set forth in the Motion; and the Court having entered the *Order (I) Approving Bidding Procedures, (II) Approving Stalking Horse Protections and Debtors’ Entry into Stalking Horse Purchase Agreement, (III) Scheduling the Bid Deadlines and the Auction, (IV) Scheduling Hearings and Objection Deadlines with Respect to the Sale, (V) Approving the Form and Manner of Notice Thereof, (VI) Approving Contract Assumption*

³ All references to the “Debtors” shall include the debtors and their estates.

Sale Hearing; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, **IT IS HEREBY FOUND AND DETERMINED THAT:**

Findings of Fact and Conclusions of Law

A. 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 to this proceeding 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.

Jurisdiction and Venue

B. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Without limiting the generality of the foregoing, this Court has exclusive *in rem* jurisdiction over the Transferred Assets pursuant to 28 U.S.C. § 1334(e), as such Transferred Assets are property of the Debtors' chapter 11 estates, and, as a result of such jurisdiction, this Court has all necessary power and authority to grant the relief contained herein. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (N). Venue in this district is proper under 28 U.S.C. §§ 1408 and 1409.

Statutory Predicates

C. The statutory and other legal bases for the relief requested in the Motion are sections 105(a), 363, and 365 of the Bankruptcy Code, as supplemented by Bankruptcy Rules 2002, 6004, 6006, 9007, 9008 and 9014. The consummation of the Transactions contemplated by the Purchase Agreement and this Order is legal, valid, and properly authorized under all applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and the Debtors and the Buyer and their affiliates have complied with all of the applicable requirements of such sections and rules in respect of the Transactions.

F. The notice described in the foregoing paragraphs is good, sufficient, and appropriate under the circumstances, and no other or further notice of the Motion, the Bidding Procedures, the Auction, the Sale (and the Transactions contemplated in connection therewith), the assumption and assignment to the Buyer of the Assigned Contracts, the Cure Costs, the Sale Hearing, and all deadlines related thereto is or shall be required.

Marketing and Sale Process

G. The Sale of the Transferred Assets to the Buyer pursuant to the Bidding Procedures is duly authorized pursuant to sections 363(b)(1) and 363(f) of the Bankruptcy Code and Bankruptcy Rule 6004(f). As demonstrated by (i) evidence proffered or adduced at the Sale Hearing and (ii) the representations of counsel made on the record at the Sale Hearing, the Debtors and their professionals, agents, and other representatives have marketed the Transferred Assets and conducted all aspects of the sale process, including the solicitation of bids for an Auction, in good faith and in compliance with the Bidding Procedures and the Bidding Procedures Order. The marketing process undertaken by the Debtors and their professionals, agents, and other representatives with respect to the Transferred Assets has been adequate and appropriate and reasonably calculated to maximize value for the benefit of all stakeholders. The Bidding Procedures and the Auction were duly noticed, were substantively and procedurally fair to all parties, including all Potential Bidders and including with respect to all provisions governing credit bidding, and were conducted in a diligent, non-collusive, fair, and good-faith manner.

H. [The auction contemplated in the Bidding Procedures Order was conducted in good faith, without collusion, and in accordance with the Bidding Procedures Order on [•]. At the conclusion of the Auction, the Debtors (in consultation with Bank of Montreal) selected the Buyer as the Winning Bidder for the Transferred Assets in accordance with the Bidding Procedures Order.]

P. Neither the Purchase Agreement nor the Transactions contemplated thereunder constitute a *sub rosa* chapter 11 plan. The Purchase Agreement does not specify the terms of, or any distributions under, any subsequent chapter 11 plan by the Debtors (other than provisions that are consistent with the sale of the Transferred Assets under the Purchase Agreement and the relief granted hereunder).

Q. Approval of the Motion and the Purchase Agreement, and the prompt consummation of the Transactions contemplated thereby, will maximize the value of the Debtors' estates and are in the best interests of the Debtors, their chapter 11 estates, their creditors, and other parties in interest.

R. The Debtors conducted a robust, sufficient marketing process, and (i) the Purchase Agreement and total consideration to be provided by the Buyer thereunder constitutes the highest or otherwise best offer received by the Debtors for the Transferred Assets, (ii) the bidding procedures utilized were designed to yield the highest or otherwise best bids for the Debtors' assets; (iii) the Purchase Agreement and the completion of the Transactions will present the best opportunity to realize the value of the Transferred Assets and avoid further decline and devaluation of the Transferred Assets; (iv) there is risk of deterioration of the value of the Transferred Assets if the Sale is not consummated promptly; and (v) the Purchase Agreement and the consummation of the Transactions will provide greater value to the Debtors' estates than would be provided by any other presently available alternative.

S. The total consideration to be provided by the Buyer under the Purchase Agreement constitutes (i) fair value, (ii) fair, full, and adequate consideration, (iii) reasonably equivalent value, and (iv) reasonable market value for the Transferred Assets for purposes of the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act, and any

to the Purchase Agreement at this time is in the best interests of the Debtors, their creditors, their estates, and all other parties in interest.

W. The offer of the Buyer, upon the terms and conditions set forth in the Purchase Agreement, including the total consideration to be realized by the Debtors thereunder, (i) is the highest and best offer received by the Debtors after extensive marketing, including through the Bidding Procedures, (ii) is in the best interests of the Debtors, their creditors, their estates and other parties in interest and (iii) constitutes full and adequate consideration, is fair and reasonable and constitutes reasonably equivalent value, fair consideration, and fair value for the Transferred Assets under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, and under the laws of the United States, any state, territory, possession, or the District of Columbia. Taking into consideration all relevant factors and circumstances, no other entity has offered to purchase the Transferred Assets for greater economic value to the Debtors or their estates.

X. There has been no showing that any of the Debtors or Buyer (i) has entered into the Purchase Agreement or proposes to consummate the Transactions for the purposes of hindering, delaying, or defrauding the Debtors' present or future creditors or (ii) is entering into the Purchase Agreement or proposing to consummate the Transactions fraudulently, for the purpose of statutory or common law fraudulent conveyance and fraudulent transfer claims, whether under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof or the District of Columbia or any other applicable jurisdiction with laws substantially similar to the foregoing.

Y. The sale of the Transferred Assets outside a chapter 11 plan pursuant to the Purchase Agreement neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates the terms of a chapter 11 plan of the Debtors.

nature whatsoever (with the exceptions of: (i) the Assumed Liabilities; (ii) any Permitted Encumbrances; or (iii) as more fully set forth in Paragraphs 9–11 of this Order), or if the Buyer would, or in the future could, be liable for any of the Excluded Liabilities except to the extent expressly provided in this Order. For the avoidance of doubt, subject to Paragraphs 9–11 of this Order, neither the Buyer nor any of its affiliates shall have any responsibility whatsoever with respect to the Excluded Liabilities, which shall remain the responsibility of the Debtors before, on, and after the Closing.

EE. As of the Closing, pursuant and subject to the terms of the Purchase Agreement and this Order, the transfer of the Transferred Assets and of the Assumed Liabilities and the Sale will effect a legal, valid, enforceable, and effective transfer of the Transferred Assets and will vest the Buyer with all of the Debtors' rights, title, and interests in the Transferred Assets free and clear of all Liens, Claims, and Interests of any kind or nature whatsoever (with the exceptions of the Assumed Liabilities and any Permitted Encumbrances).

Satisfaction of Section 363(f)

FF. The Debtors may sell the Transferred Assets free and clear of any and all Liens, Claims, and Interests of any kind or nature whatsoever (with the exception of any Permitted Encumbrances), including any rights or claims based on any putative successor or transferee liability, as set forth herein, because, in each case, one or more of the standards set forth in section 363(f)(1)–(5) of the Bankruptcy Code has been satisfied. All parties in interest, including, without limitation, any holders of Liens, Claims, and/or Interests, and any non-Debtor counterparties to the Assigned Contracts, that did not object, or who withdrew their objection, to the Sale, the Motion, the assumption and assignment of the applicable Assigned Contract, or the associated Cure Cost are deemed to have consented to the relief granted herein pursuant to section 363(f)(2) of the Bankruptcy Code.

Assigned Contracts being assigned to the Buyer within the meaning of sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code. The Cure Costs are hereby found to be the sole amounts necessary to cure any and all defaults under the Assigned Contracts under section 365(b) of the Bankruptcy Code.

Time Is of the Essence; Waiver of Stay

II. Time is of the essence in consummating the Sale. In order to maximize the value of the Transferred Assets, it is essential that the sale and assignment of the Transferred Assets occur within the time constraints set forth in the Purchase Agreement. Accordingly, there is cause to waive the stays contemplated by Bankruptcy Rules 6004 and 6006.

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

Motion is Granted

1. The relief requested by the Motion is granted as set forth herein.

Objections Overruled

2. All objections to the entry of this Order or to the relief granted herein, whether filed, stated on the record before this Court or otherwise, which have not been withdrawn, waived, or settled, and all reservations of rights included therein, are denied and overruled on the merits.

3. Notice of the Motion, the Bidding Procedures, the Sale (and the Transactions contemplated in connection therewith), the assumption and assignment to the Buyer of the Assigned Contracts, the Cure Costs, the Sale Hearing, and all deadlines related thereto was fair and equitable under the circumstances and complied in all respects with section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006.

Approval of the Purchase Agreement

4. The Purchase Agreement, including all of the terms and conditions thereof, is hereby approved. Pursuant to sections 105, 363, and 365 of the Bankruptcy Code, the Debtors are

on any putative successor or transferee liability) of any kind or nature whatsoever, all non-Debtor parties to the Assigned Contracts, the Buyer, the Debtors and their affiliates and subsidiaries, and any trustee or successor trustee appointed in the Debtors' Chapter 11 Cases or upon a conversion to cases under chapter 7 under the Bankruptcy Code.

Amendments to the Purchase Agreement

8. The Purchase Agreement and any related agreements, documents, or other instruments may be modified, amended, supplemented, or restated by the parties thereto in a writing signed by such parties and in accordance with the terms thereof, without further order of this Court, provided that any such modification, amendment, supplement, or restatement does not have a material adverse effect on the Debtors' estates or any other person or entity, including Bank of Montreal. The Purchase Agreement and this Order and the Debtors' and Buyer's obligations therein and herein shall not be altered, amended, rejected, discharged, or otherwise affected by any chapter 11 plan proposed or confirmed in these bankruptcy cases or any other relief sought from or granted by the Court without the prior written consent of the Buyer.

Transfer of the Transferred Assets Free and Clear

9. Subject to Paragraphs 9–11 hereof, the Buyer shall assume and be liable for only those liabilities expressly assumed pursuant to the Purchase Agreement. Except as expressly permitted or otherwise specifically provided for in the Purchase Agreement or this Order, pursuant to sections 105(a), 363(b), 363(f), and 365(b) of the Bankruptcy Code, upon the Closing, the Transferred Assets shall be transferred to the Buyer free and clear of any and all Liens, Claims, and Interests of any kind or nature whatsoever, with the exceptions of the Assumed Liabilities and any Permitted Encumbrances, with such Liens, Claims and Interests to attach to the proceeds of such transfer to the same extent and with the same priority as such Liens, Claims and Interests had

or relating to any putative successor or transferee liability, (iv) any rights related to intercompany loans and receivables between the Debtors and any non-Debtor subsidiary or affiliate, (v) any Excluded Liabilities, (vi) any and all claims or causes of action based upon or relating to any unexpired and executory contract or unexpired lease to which a Debtor is a party that is not an Assigned Contract that will be assumed and assigned pursuant to this Order and the Purchase Agreement, (vii) any and all claims or causes of action based upon or relating to any bulk sales or similar law, (viii) any and all claims or causes of action based upon or relating to any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended, and any taxes arising under or out of, in connection with, or in any way relating to the operation of the Transferred Assets prior to the Closing, including, without limitation, any ad valorem taxes assessed by any applicable taxing authority, and (ix) any and all other claims, causes of action, proceedings, warranties, guaranties, rights of recovery, setoff, recoupment, rights, remedies, obligations, liabilities, counterclaims, cross-claims, third party claims, demands, restrictions, responsibilities, or contribution, reimbursement, subrogation, or indemnification claims or liabilities based on or relating to any act or omission of any kind or nature whatsoever asserted against any of the Debtors or any of their respective affiliates, subsidiaries, directors, officers, agents, successors or assigns in connection with or relating to the Debtors, their operations, their business, their liabilities, the Debtors' marketing and bidding process with respect to the Transferred Assets, the Assigned Contracts, or the Transactions contemplated by the Purchase Agreement (collectively, "Claims"); and

- c. any and all equity or other interests of any kind or nature whatsoever in or with respect to (x) any of the Debtors or their respective affiliates, subsidiaries, successors or assigns, (y) the Transferred Assets, or (z) the Assigned Contracts (collectively, "Interests");

whether in law or in equity, known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, direct or indirect, and whether arising by agreement, understanding, law, equity or otherwise, and whether occurring or arising before, on or after the Petition Date, or occurring or arising prior to the Closing. On the Closing, the Buyer shall take title to and possession of the Transferred Assets, subject only to the Permitted Encumbrances and Assumed Liabilities, and Paragraphs 9–11 of this Order.

13. The Debtors are hereby authorized, in accordance with the Purchase Agreement, and in accordance with sections 105(a) and 365 of the Bankruptcy Code, to (i) assume and assign to the Buyer the Assigned Contracts, effective upon and subject to the occurrence of the Closing, free and clear of all Liens, Claims, and Interests of any kind or nature whatsoever (with the exceptions of the Assumed Liabilities and Permitted Encumbrances), which Assigned Contracts, by operation of this Order, shall be deemed assumed and assigned to the Buyer effective as of the Closing, and (ii) execute and deliver to the Buyer such documents or other instruments as the Buyer may deem necessary to assign and transfer the Assigned Contracts to the Buyer.

14. Subject to Paragraph 15 hereof:

- a. The Debtors are authorized to and shall assume all of the Assigned Contracts in accordance with section 365 of the Bankruptcy Code.
- b. The Debtors are authorized to and shall assign each Assigned Contract to the Buyer in accordance with sections 363 and 365 of the Bankruptcy Code, and any provisions in any Assigned Contract that prohibit or condition the assignment of such Assigned Contract to the Buyer on the consent of the counterparty thereto or allow the non-Debtor party to such Assigned Contract to terminate, recapture, impose any penalty, condition, renewal or extension, or modify any term or condition upon the assignment of such Assigned Contract, shall constitute unenforceable anti-assignment provisions which are expressly preempted under section 365 of the Bankruptcy Code.
- c. All requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption and assignment of the Assigned Contracts by the Debtors to the Buyer have been satisfied.
- d. Upon the Closing, the Assigned Contracts shall be transferred and assigned to, and remain in full force and effect for the benefit of, the Buyer in accordance with their respective terms, notwithstanding any provision in any such Assigned Contract (including those of the type described in sections 365(b)(2), 365(e)(1) and 365(f) of the Bankruptcy Code) that prohibits, restricts, limits, or conditions such assignment or transfer.
- e. After the Debtors' transfer and assignment of the Assigned Contracts to the Buyer, in accordance with sections 363 and 365 of the Bankruptcy Code, the Buyer shall be fully and irrevocably vested in all right, title, and interest of each Assigned Contract free and clear of Liens, Claims, and Interests

provided in the Purchase Agreement. For all Assigned Contracts for which a Notice of Assumption and Assignment was served, the Buyer is authorized and directed to pay the Cure Costs required to be paid by such parties in accordance with the Purchase Agreement upon the Closing. For any Assigned Contract that is designated by Buyer to be an Assigned Contract after the date of this Order in accordance with the Purchase Agreement, the Debtors shall file a Notice of Assumption and Assignment on the counterparties thereto that identifies the Cure Costs, and, to the extent no objection is received to such notice within seven (7) days of the date of mailing, such Assigned Contract shall be deemed assumed and assigned to Buyer as an Assigned Contract with the Cure Costs set forth in such notice and subject to all relief set forth herein that applies to Assigned Contracts effective as of the Closing. To the extent a timely objection to such notice is received and a is not resolved between the Debtors and such counterparty in accordance with the procedures governing the assumption and assignment of executory contracts and leases approved in the Bidding Procedures Order, such objection will be adjudicated by this Court.

16. Pursuant to section 365(k) of the Bankruptcy Code, the Debtors and their estates shall be relieved from any liability for any breach for any Assigned Contract that occurs after the effectiveness of such assumption and assignment to the Buyer.

17. Notwithstanding any provision in this Order, any and all agreements and obligations of Buyer shall be and are subject to Closing in accordance with the Purchase Agreement.

No Successorship or Transferee Liability

18. Neither the Buyer nor any of its affiliates is or shall be deemed, as a result of the consummation of the Transactions contemplated herein, to: (a) be legal successors to the Debtors or their estates by reason of any theory of law or equity, (b) have, *de facto* or otherwise, merged with or into the Debtors, or (c) be an alter ego or a mere continuation or substantial continuation

21. In the event that such termination statements, instruments of satisfaction, or releases of all Liens (excluding Permitted Encumbrances) are not filed in accordance with the foregoing paragraph, the Debtors and the Buyer are hereby authorized to file, register, or otherwise record a certified copy of this Order, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all Liens in the Transferred Assets of any kind or nature whatsoever (except any Permitted Encumbrances) except as expressly provided in this Order or the Purchase Agreement.

22. As of the Closing, the Buyer and its successors and assigns shall be designated and appointed as the Debtors' true and lawful attorney with full power of substitution in the Debtors' name and stead on behalf of and for the benefit of the Buyer, and its successors and assigns, for the following sole and limited purposes: to have the power to demand and receive any and all of the Transferred Assets and to give receipts and releases for and in respect of the Transferred Assets, or any part thereof, and from time to time to institute and prosecute against third parties for the benefit of the Buyer, its successors and assigns, proceedings at law, in equity or otherwise, which the Buyer, and its successors and assigns, may deem proper for the collection or reduction to possession of any of the Transferred Assets.

Payment of Net Proceeds

23. Within three (3) business days of the Closing, the Debtors will deliver the net proceeds from Sale, up to the amount of the DIP Obligations and the Prepetition Obligations, to the DIP Lender and the Prepetition Lender, respectively, for application to the DIP Obligations in accordance with the DIP Facility and the Prepetition Obligations in accordance with the Prepetition Facility.

for any claims against the Debtors or any of their predecessors or affiliates, and the Buyer and its affiliates shall have no successor or vicarious liabilities of any kind or character including, without limitation, any theory of antitrust, warranty, product liability, environmental, successor or transferee liability, labor law, ERISA, *de facto* merger, mere continuation, or substantial continuity, whether known or unknown as of the Closing, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtors or any obligations of the Debtors, including, without limitation, liabilities on account of any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of the Debtors' business prior to the Closing or any claims under the WARN Act or any claims related to wages, benefits, severance, or vacation pay owed to employees or former employees of the Debtors.

26. EFFECTIVE UPON THE CLOSING, WITH THE SOLE EXCEPTIONS OF ANY ENFORCEMENT OF RIGHTS RELATED TO THE ASSUMED LIABILITIES OR ANY PERMITTED ENCUMBRANCES, AND EXCEPT AS EXPRESSLY PROVIDED BY THIS ORDER, ALL PERSONS AND ENTITIES HAVING LIENS, CLAIMS, ENCUMBRANCES, CAUSES OF ACTION OR INTERESTS OF ANY KIND OR NATURE WHATSOEVER AGAINST OR IN THE DEBTORS OR THE TRANSFERRED ASSETS OR ASSIGNED CONTRACTS SHALL BE, AND HEREBY ARE, FOREVER BARRED AND ENJOINED FROM (A) TAKING ANY ACTION THAT WOULD ADVERSELY AFFECT OR INTERFERE WITH THE ABILITY OF THE DEBTORS TO TRANSFER THE TRANSFERRED ASSETS TO THE BUYER IN ACCORDANCE WITH THE TERMS OF THIS ORDER AND THE PURCHASE AGREEMENT OR BUYER'S RIGHTS, USE, AND ENJOYMENT OF THE TRANSFERRED ASSETS AND ASSIGNED CONTRACTS IN ACCORDANCE WITH THE TERMS OF AND AS AUTHORIZED BY THIS ORDER TO THE EXTENT SUCH ACTION

agreements executed in connection therewith in all respects, including, without limitation, retaining jurisdiction to: (a) compel delivery of the Transferred Assets or performance of other obligations owed to the Buyer; (b) compel performance of obligations owed to the Debtors; (c) resolve any disputes arising under or related to the Purchase Agreement; (d) interpret, implement, and enforce the provisions of this Order; (e) determine whether any lien or Encumbrance constitutes a Permitted Encumbrance, (f) determine any claim, cause, cause of action, or controversy brought by the Buyer relating to the Purchase Agreement or the Transferred Assets or that constitute Transferred Assets, and (g) protect the Buyer and its affiliates against (i) any Liens, Claims, and Interests in or against the Debtors or the Transferred Assets of any kind or nature whatsoever and (ii) any creditors or other parties in interest regarding the turnover of the Transferred Assets that may be in their possession.

No Stay of Order

29. Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. In the absence of any person or entity obtaining a stay pending appeal, the Debtors and the Buyer are free to close the Sale under the Purchase Agreement at any time pursuant to the terms thereof.

Good Faith Purchaser

30. The Sale contemplated by the Purchase Agreement is undertaken by the Buyer in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and Buyer has acted without collusion in undertaking and consummating the Sale and Transactions contemplated by the Purchase Agreement. Accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale to the Buyer (including the assumption and assignment by the Debtors of any of the Assigned Contracts), unless such authorization is duly stayed pending such appeal. The Buyer is a buyer in good faith of the

Exhibit 1

Purchase Agreement