

## **BIDDING PROCEDURES**

Set forth below are the bidding procedures (the “Bidding Procedures”) to be employed in connection with the sale of the assets (the “Purchased Assets”) in connection with the chapter 11 cases of The Paper Store, LLC and TPS Holdings, LLC (the “Debtors”), pending in the United States Bankruptcy Court for the District of Massachusetts (Central Division) (the “Bankruptcy Court”), jointly administered as case number 20-40743 (CJP), in the form to be approved by the Bankruptcy Court, by Order dated July 24, 2020 (the “Bidding Procedures Order”).

The form of asset purchase agreement for the Sale is posted in the Debtors’ on-line data room (the “Form APA”). The Debtors are soliciting bids (“Bids”) for the proposed acquisition of the Purchased Assets in accordance with the procedures below, which require, among other things, that prospective bidders submit an executed asset purchase agreement using as a baseline the Form APA marked to show changes to the Form APA. The Debtors will consider all Bids which comply with the terms of these Bidding Procedures; provided, that, Bids will be evaluated primarily based upon the cash consideration provided by such offer. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the *Expedited Motion Of Debtors For The Entry Of An Order (A) Authorizing And Approving The Sale Of Substantially All Of The Assets Of The Debtors Free And Clear Of All Liens, Claims And Encumbrances; (B) Approving Auction Sale Timing And Format, Bidding Procedures, And Certain Bid Protections In The Event A Stalking Horse Bidder Is Designated By The Debtors; (C) Approving Form Of Notice To Be Provided To Interested Parties; And (D) Approving Procedures Related To The Assumption And Assignment Of Certain Executory Contracts And Unexpired Leases* (the “Sale Motion”) or in the Bidding Procedures Order, as applicable.

### **I. ASSETS TO BE SOLD**

The Debtors seek to complete a sale of substantially all assets of The Paper Store (the “Sale”). For purposes of a Sale, the “Purchased Assets” consist of any or all tangible and intangible real and personal property assets of the Debtors as defined and set forth in the Form APA.

### **II. THE BIDDING PROCEDURES**

In order to ensure that the Debtors receive the maximum value for the Purchased Assets, they intend to hold a sale process for the Purchased Assets pursuant to the procedures and on the timeline proposed herein.

#### **A. Provisions Governing Qualifications of Bidders**

Unless otherwise ordered by the Bankruptcy Court or as set forth in these procedures, in order to participate in the bidding process, each person who wishes to participate in the bidding process must deliver the following to the Debtors:

- a) a written disclosure of the identity of each entity, and disclosure of any connections it or its principals may have with the Debtors, their affiliates or any of their principals, that will be bidding for the Purchased Assets or otherwise participating in connection with such bid; and

- b) an executed confidentiality agreement (to be delivered prior to the distribution of any confidential information by the Debtors) in form and substance satisfactory to the Debtors and which shall inure to the benefit of any purchaser of the Purchased Assets; without limiting the foregoing, each such confidentiality agreement shall contain standard non-solicitation provisions.

A bidder that delivers the documents and information described above and that the Debtors determine, after consultation with (i) their advisors, (ii) Kayne Senior Credit II GP, LLC and City National Bank (the “Lenders”), and (iii) any official statutory committee that may be appointed to serve in these cases, and, (iv) if no such committee is appointed, the United States Trustee (together, the “Consultation Parties”) in their reasonable business judgment, is likely (based on availability of financing, experience, and other considerations) to be able to consummate the sale, will be deemed a potential bidder (“Potential Bidder”).

## **B. Due Diligence**

The Debtors will afford any Potential Bidder such due diligence access or additional information as the Debtors, in consultation with their advisors, deem appropriate, in their reasonable discretion. The due diligence period shall extend through and including the Bid Deadline; provided, however, that any bid submitted under these procedures shall be irrevocable until at least the selection of the Successful Bidder(s) (defined herein) and any Back-Up Bidder(s) (defined herein).

## **C. Bid Deadline**

Potential Bidders must submit their Bids so that such Bids are actually received by the Debtors **no later than 5:00 p.m. (EDT) on August 24, 2020** unless extended as provided herein (the “Bid Deadline”). Potential Bidders must submit their bids to the Debtors and their advisors, as follows: (i) the Debtors, 20 Main Street, Acton, MA 01720, Attn: Don Van der Wiel (DVanderwiel@g2cap.com); (ii) proposed counsel for the Debtors: Mintz Levin Cohn Ferris Glovsky and Popeo, P.C., One Financial Center, Boston, MA 02111, Attn: Paul J. Ricotta, Esq. (pjrpicotta@mintz.com), Kevin J. Walsh, Esq. (kwalsh@mintz.com) and Timothy J. McKeon, Esq. (tjmckeon@mintz.com) and Chrysler Center, 666 Third Avenue, New York, NY 10017, Attn: Kaitlin R. Walsh, Esq. (krwalsh@mintz.com); and (iii) the Debtors’ Investment Banker: SSG Capital Advisors, LLC, 300 Barr Harbor Drive, West Conshohocken, PA 19428, Attn: J. Scott Victor (jsvictor@ssgca.com), Teresa C. Kohl (tkohl@ssgca.com), Craig D. Warznak, (cwarznak@ssgca.com, and Matthew R. DiTosto (mditosto@ssgca.com).

Potential Bidders must e-mail their bids to the e-mail addresses listed above so that they are actually received by the Bid Deadline. The Debtors shall have no obligation to consider any other delivery format, such as fax, as being acceptable. The Debtors shall provide the Consultation Parties with the identity of any Potential Bidders and inform the Consultation Parties of any request by a Potential Bidder for an extension of the Bid Deadline. The Debtors may, in their sole discretion after consultation with the Consultation Parties, extend the Bid Deadline until the commencement of the Auction for one or more Potential Bidders without prior notice to any party, but shall have no obligation to do so under any circumstances. For good cause shown, any party in interest may request that the Court extend the Bid Deadline.

Any Consultation Party that submits a Bid and thereby becomes a Potential Bidder or a Credit Bidder shall, upon the submission of such Bid, cease to be a Consultation Party and shall, from the time of submission of such Bid, no longer have any notice, consultation or consent rights under these Bidding Procedures different from those of any other Potential Bidder or Credit Bidder.

**D. Provisions Governing Qualified Bids**

A bid submitted by a Potential Bidder will be considered a Qualified Bid (each, a “Qualified Bid,” and each such Potential Bidder thereafter a “Qualified Bidder”) only if the bid complies with the following requirements, unless waived by the Debtors with the consent of the Consultation Parties:

- a) it states that the applicable Qualified Bidder offers to purchase, in cash, some or all of the Purchased Assets;
- b) it identifies with particularity the portion of the Purchased Assets the Qualified Bidder is offering to purchase;
- c) it includes a signed writing that the Qualified Bidder’s offer is irrevocable until the selection of the Successful Bidder and the Back-Up Bidder, provided that if such bidder is selected as the Successful Bidder or the Back-Up Bidder then the offer shall remain irrevocable until the earliest of (i) the closing of the transaction with the Successful Bidder, (ii) in the case of the Successful Bidder, a termination of the Qualified Bid pursuant to the terms of the Successful Bidder’s Purchase Agreement (defined herein) and (iii) with respect to the Back-Up Bidder, the time specified in Section II (K) below;
- d) it includes confirmation that there are no conditions precedent to the Qualified Bidder’s ability to enter into a definitive agreement and that all necessary internal governance and shareholder approvals have been obtained prior to the bid;
- e) it sets forth each third-party, regulatory and governmental approval, if any, required for the Qualified Bidder to consummate the transaction and the time period within which the Qualified Bidder expects to receive such approvals and establishes a substantial likelihood that the Qualified Bidder will obtain such approvals by the stated time period;
- f) it includes a duly authorized and executed copy of a purchase or acquisition agreement using as a baseline the Form APA (a “Purchase Agreement”), including the purchase price for some or all of the Purchased Assets expressed in U.S. Dollars, together with all exhibits and schedules thereto, together with copies marked to show the changes made to the Form APA (“Marked Agreement”);
- g) it is not subject to any financing contingency and includes written evidence of a firm ability to have the funding necessary to consummate the proposed transaction,

that will allow the Debtors to make a reasonable determination, in consultation with the Consultation Parties, as to the Qualified Bidder's financial and other capabilities to consummate the transaction contemplated by the Purchase Agreement;

- h) [intentionally omitted];
- i) it identifies with particularity which (i) executory contracts and unexpired leases the Qualified Bidder wishes the Debtors to assume and assign to it, and (ii) Purchased Assets subject to purchase money liens or the like, the Qualified Bidder wishes to acquire and therefore pay the associated purchase money financing;
- j) it contains sufficient information concerning the Qualified Bidder's ability to provide adequate assurance of future performance with respect to executory contracts and unexpired leases the Qualified Bidder wishes the Debtors to assume and assign to it ("Adequate Assurance Information"); provided that, absent further order of the Court, at any evidentiary hearing concerning adequate assurance of future performance, the Qualified Bidder's evidence in support of its position shall be limited to the Adequate Assurance Information provided by the Bid Deadline and any additional information supplied at the request of any counterparty to executory contracts and unexpired leases; examples of Adequate Assurance Information may include (i) copies of three (3) years' of recent tax returns or financial statements, (ii) information concerning any credit support or guaranties that will be offered by the Qualified Bidder, (iii) financial projections of the sales that the Qualified Bidder expects to achieve at the leased premises, (iv) information concerning the number of retail stores operated by the Qualified Bidder or its experience in operating retail stores, and/or (v) any other or different information that the Qualified Bidder believes will be sufficient to prove adequate assurance of future performance with respect to the executory contracts and unexpired leases that the Qualified Bidder wishes the Debtors to assume and assign to it;
- k) it includes an acknowledgement and representation that the Qualified Bidder: (A) has had an opportunity to conduct any and all required due diligence regarding the Purchased Assets prior to making its offer and that the offer is not subject to any further due diligence or the need to raise capital/financing to consummate the proposed transaction; (B) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Purchased Assets in making its bid; (C) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Purchased Assets or the completeness of any information provided in connection therewith or with the Auction (defined below), except as expressly stated in the Purchase Agreement; and (D) is not entitled to any expense reimbursement, break-up fee, or similar type of payment in connection with its bid;
- l) unless it is a Credit Bid (as defined below), it is accompanied by (i) a good faith deposit in the form of a wire transfer (to a bank account specified by the Debtors), certified check or such other form of cash or cash equivalent acceptable to the

Debtors, payable to the order of the Debtors (or such other party as the Debtors may determine) in an amount equal to 10% of purchase price (the “Good Faith Deposit”), which Good Faith Deposit shall be forfeited if such bidder is the Successful Bidder and breaches its obligation to close; and (ii) if the Qualified Bid is a bid made by a secured creditor of the Debtors (a “Credit Bidder”) who intends to make a credit bid (each, a “Credit Bid”), evidence of (a) the basis for and property covered by such Credit bidder’s secured claim, (b) the amount of such Credit bidder’s claim that is secured by the property in question, and (c) the Credit bidder’s authority to make the Credit Bid and its lien or distributions priority, including copies of any intercreditor agreement or agreement among lenders demonstrating such Credit bidder’s authority and lien or distribution priority;

- m) it identifies the person(s) and their title(s) who will attend the Auction, and confirms that such person(s) have authority to make binding Overbids (defined below) at such Auction;
- n) it contains such other information reasonably requested by the Debtors; and
- o) it is received by the Debtors and their advisors prior to the Bid Deadline.

The Debtors, in consultation with the Consultation Parties, may qualify any bid that meets the foregoing requirements as a Qualified Bid. Notwithstanding the foregoing, any designated Stalking Horse Bidder shall be deemed a Qualified Bidder and its Stalking Horse APA shall be deemed a Qualified Bid, for all purposes in connection with the Bidding Process, the Auction, and the Sale.

The Debtors shall notify the Consultation Parties, any Stalking Horse Bidder, and all Qualified Bidders in writing as to whether or not any bids constitute Qualified Bids (and with respect to each Qualified Bidder that submitted a bid as to whether such Qualified Bidder’s bid constitutes a Qualified Bid) and provide copies of the Purchase Agreements relating to any such Qualified Bid solely to the Consultation Parties. Within one (1) business day of their receipt, the Debtors shall provide to the Consultation Parties copies of (i) all bids, whether or not the bids constitute Qualified Bids, and (ii) any confidentially agreement executed by a Potential Bidder.

#### **E. Discretionary Determination of Stalking Horse Bidder**

The Debtors, in their sole discretion, after consultation with the Consultation Parties, may agree that a Qualified Bidder that is not comprised, in whole or in part, directly or indirectly, of any “insider” of a Debtor shall be afforded stalking horse status and protections (the “Stalking Horse Bidder”), consisting of a break-up fee and expense reimbursement in an amount not to exceed in the aggregate 2.5% of the proposed Purchase Price under such Qualified Bidder’s Qualified APA (the “Break-Up Fee”). Any Break-Up Fee, to the extent payable, shall only be paid from the cash proceeds received by the Debtors at the closing of a Sale with a Qualified Bidder other than the Stalking Horse Bidder. Upon designation of a Stalking Horse Bid, the Debtors shall file a notice with the Court, including a copy of the Purchase Agreement. The designation of a Stalking Horse Bidder may occur without further notice or order of the Bankruptcy Court. In the event that the Debtors intend to designate a Qualified Bidder that is comprised, in whole or in part,

directly or indirectly, of any “insider” of a Debtor, the Debtors shall file a motion with the Court, with notice to the Consultation Parties, seeking authority to make such stalking horse designation and setting forth any proposed stalking horse bid protections.

**F. Credit Bidding**

Any party with a valid, properly perfected security interest in any of the Purchased Assets may credit bid (“Credit Bid”) for such Purchased Assets in connection with the Sale in accordance with and pursuant to section 363(k) of the Bankruptcy Code, except as otherwise limited by the Debtors for cause; provided, however, that any party seeking to credit bid (“Credit Bidder”) may not Credit Bid unless such bid provides that all secured creditors with security interests on such Purchased Assets that are senior to such junior security interest are to be paid in cash in connection with such junior creditor’s bid. Any party seeking to Credit Bid shall be required to provide proof of its authority to Credit Bid and proof of its lien priority or distribution priority pursuant to any applicable intercreditor agreement or agreement among lenders. Any Credit Bids made by secured creditors shall not impair or otherwise affect any Stalking Horse Bidder’s entitlement to the benefits of the Bidding Procedures and related protections granted under the Bidding Procedures Order. Kayne Senior Credit II GP LLC, as administrative agent for the Debtors prepetition secured credit facility, is entitled to Credit Bid in accordance with the terms hereof and any orders entered by the Court with respect to the Debtors’ use of cash collateral.

**G. Evaluation of Competing Bids**

A Qualified Bid will be valued based upon several factors including, without limitation: (i) the amount of such bid; (ii) the risks and timing associated with consummating such bid; (iii) any proposed revisions to the form of Form APA; and (iv) any other factors deemed relevant by the Debtors in their reasonable discretion, in consultation with the Consultation Parties, including the amount of cash included in the bid.

**H. Auction Process**

If the Debtors receive one or more Qualified Bids, the Debtors will conduct an auction of the Purchased Assets (the “Auction”) on **August 26, 2020** (the “Auction Date”), **at 10:00 a.m.** (prevailing eastern U.S. time), at a virtual meeting by electronic means at the offices of Mintz Levin Cohn Ferris Glovsky and Popeo, P.C., One Financial Center, Boston, MA 02111, or at such other location or by such other means as shall be timely communicated to all entities entitled to attend the Auction.

The Auction shall be conducted in accordance with the following procedures:

- a) only the Debtors, any designated Stalking Horse Bidder, Qualified Bidders who have timely submitted a Qualified Bid, the U.S. Trustee, and the Consultation Parties, and their respective advisors may attend the Auction;
- b) only any designated Stalking Horse Bidder and the Qualified Bidders who have timely submitted Qualified Bids will be entitled to make subsequent bids at the Auction;

- c) each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the Sale and is not in violation of section 363(n);
- d) the actual identity of each Qualified Bidder will be disclosed on the record at the Auction; provided that all Qualified Bidders wishing to attend the Auction must have at least one individual representative with authority to bind such Qualified Bidder attending the Auction as a live participant;
- e) the Debtors, after consultation with the Consultation Parties, may employ and announce at the Auction additional procedural rules that are (i) reasonable under the circumstances for conducting the Auction, (ii) in the best interest of the Debtors' estates; provided, however, that any such rules (i) are disclosed to each Qualified Bidder participating in the Auction, and (ii) are not inconsistent with the Bid Protections, the Bankruptcy Code, or any order of the Court entered in connection herewith;
- f) prior to the commencement of the Auction, representatives of the Debtors and/or the Consultation Parties may have discussions with each Qualified Bidder with respect to the terms and conditions of such Qualified Bids, and the Debtors will have selected, in consultation with the Consultation Parties, a Qualified Bid to become the opening bid at the Auction (the bid submitted by such Qualified Bidder shall be referred to as the "Opening Bid") and the Qualified Bidder shall be referred to as the "Opening Bidder");
- g) bidding shall commence at the amount of the Opening Bid. The Opening Bid shall be announced by the Debtors at or before the commencement of the Auction, and the Purchase Agreement applicable to the Opening Bid shall be disseminated to all other Qualified Bidders. The Auction will continue in bidding increments established by the Debtors in consultation with the Consultation Parties, which increments may be modified at the beginning of each round of bidding at the discretion of the Debtors, in consultation with the Consultation Parties (each bid in such bidding increment, an "Overbid"), and all material terms of each Overbid, shall be fully disclosed to all other Qualified Bidders who submitted Qualified Bids and are in attendance at the Auction;
- h) Additional consideration in excess of the amount set forth in the Opening Bid must include: (i) cash and/or (ii) in the case of a Qualified Bidder that is a Credit Bidder that has a valid and perfected lien on any of the Purchased Assets, a Credit Bid of up to the full amount of such Credit Bidder's allowed perfected lien, subject to section 363(k) of the Bankruptcy Code and any other restrictions set forth herein;
- i) To the extent any Stalking Horse Bidder submits higher bids, such Stalking Horse Bidder shall have the right (but not the obligation) to increase its Stalking Horse Bid by using, as a credit, the amount of the Break-Up Fee when determining whether such Stalking Horse Bidder has topped the previous bid by the required amount;

- j) Qualified Bidders shall have the right to submit additional bids that include modifications to their Purchase Agreement at the Auction, consistent herewith, provided that any such modifications to the Purchase Agreement, on an aggregate basis and viewed in whole, shall not be less favorable to the Debtors than any prior bid by such party (as determined by the Debtors, following consultation with the Consultation Parties). The Debtors, in consultation with the Consultation Parties, reserve the right to separately negotiate the terms of any Qualified Bids at the Auction, provided the terms are fully disclosed at the time such Qualified Bid is formally submitted;
- k) the bidding will be transcribed by a certified court reporter employed by the Debtors to ensure an accurate recording of the bidding at the Auction, and, to the extent practicable, if the Auction is conducted by virtual meeting, the Debtors will arrange for the Auction to be recorded using features available through the virtual meeting platform; and
- l) absent irregularities in the conduct of the Auction, the Debtors will not consider any Potential Bids made after the Auction is closed.

**I. Selection of Successful Bid**

Prior to the conclusion of the Auction, the Debtors, in consultation with the Consultation Parties, will review and evaluate each Qualified Bid in accordance with the procedures set forth herein and determine which offer or offers are the highest or otherwise best from among the Qualified Bids submitted at the Auction (one or more such bids, collectively the “Successful Bid” and the bidder(s) making such bid, collectively, the “Successful Bidder”), and communicate to the Qualified Bidders the identity of the Successful Bidder by filing the Qualified Bid on the docket of the Debtors’ bankruptcy cases as soon as practical after the Successful Bidder is determined, but, in any event, by no later than twenty-four (24) hours prior to the deadline established for parties to object to the conduct of the Auction. The determination of the Successful Bid by the Debtors at the conclusion of the Auction shall be subject to approval by the Court.

If selected as the Successful Bidder or the Back-Up Bidder (as defined herein) at the conclusion of the Auction, each of the Successful Bidder and the Back-Up Bidder shall, within forty-eight (48) hours, increase its Good Faith Deposit to the sum of ten percent (10%) of the Successful Bid or Back-Up Bid, as applicable. If the Successful Bidder fails to increase the Good Faith Deposit within forty-eight (48) hours of the conclusion of the Auction, then (1) the Successful Bidder forfeits its Good Faith Deposit, and (2) the Successful Bid is nullified (*i.e.*, the Back-Up Bidder becomes the Successful Bidder in the amount of its last bid).

Unless otherwise agreed to by the Debtors and the Successful Bidder, within one (1) business day after the conclusion of the Auction, the Successful Bidder shall complete and execute all agreements, contracts, instruments, and other documents evidencing and containing the terms and conditions upon which the Successful Bid was made, and the Debtors shall file copies of such agreements and documents on the docket of the Debtors’ bankruptcy cases as soon as practical after they are fully executed. As soon as practical following the conclusion of the Auction, the



Debtors shall file a notice identifying the Successful Bidder(s) and Back-Up Bidders with the Court and shall serve such notice by fax, email, or if neither is available, by overnight mail to all counterparties whose contracts are to be assumed and assigned.

The Debtors will sell the Purchased Assets to the Successful Bidder pursuant to the terms of the Successful Bid upon the approval of such Successful Bid by the Court at the Sale Hearing and satisfaction of any other closing conditions set forth in the Successful Bidder's Purchase Agreement.

**J. Return of Deposits**

All deposits shall be returned to each bidder not selected by the Debtors as the Successful Bidder or the Back-Up Bidder (defined herein) no later than five (5) business days following the conclusion of the Auction.

**K. Back-Up Bidder**

If an Auction is conducted, the Qualified Bidder with the next highest or otherwise best Qualified Bid, as determined by the Debtors in the exercise of their business judgment, in consultation with the Consultation Parties, shall be required to serve as a back-up bidder (the "Back-Up Bidder") and keep such bid open and irrevocable until the earlier of (i) thirty (30) days after the entry of the Sale Order, and (ii) the closing of the sale to the Successful Bidder (the "Back-Up Period"). If during the Back-Up Period, the Successful Bidder fails to consummate the approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Back-Up Bidder will be deemed to be the new Successful Bidder, and the Debtors will be authorized, but not required, to consummate the sale with the Back-Up Bidder without further order of the Court; provided that if the Back-Up Bidder is the Stalking Horse Bidder, the Debtors will be authorized and required to consummate the sale to the Stalking Horse Bidder.

**L. Payment of Break-Up Fee**

If any Stalking Horse Bidder is not the Successful Bidder, the Debtors shall pay the Break-Up Fee to such Stalking Horse Bidder as set forth in the agreement between the Debtors and the Stalking Horse Bidder providing for such Break-Up Fee, but in no event shall payment be made any earlier than the time of the consummation of the sale of the Purchased Assets or transfer thereof in the context of an Alternative Transaction, and shall only be paid from the cash proceeds of such sale or upon the transfer of such Purchased Assets. Notwithstanding the foregoing, a Break-Up Fee will only be payable if the Debtors have previously determined pursuant to Paragraph E of these Bidding Procedures that a bid merits stalking horse designation.

**M. Delivery of Adequate Assurance Information.**

As soon as practical after determining the Successful Bidder, *i.e.*, after the Bid Deadline if there is only one Qualified Bidder, or after the conclusion of the Auction if there is more than one Qualified Bidder, the Debtors will deliver the Adequate Assurance Information of the Successful Bidder (and of any Back-Up Bidder if there is an Auction) to each counterparty to an executory contract and unexpired lease which the Successful Bidder intends to assume. Such delivery shall

be made to each such counterparty by email, if a counterparty has provided its email address to the Debtors, or otherwise by overnight delivery to the address of such counterparty listed on such executory contract or unexpired lease. All Adequate Assurance Information shall be treated by each counterparty as confidential, shall not be disseminated to any other person or entity, and shall be used by each counterparty solely in connection with determining whether the Successful Bidder has provided adequate assurance of future performance as required by 11 U.S.C. § 365.

### **III. SALE HEARING**

The Debtors will seek entry of the Sale Order, at the Sale Hearing on **August 31, 2020, at 10:30 a.m. (EDT)** (or at another date and time convenient to the Court), to approve and authorize the sale transaction to the Successful Bidder(s) on terms and conditions determined in accordance with the Bidding Procedures. The Debtors may submit and present such additional evidence, as they may deem necessary, at the Sale Hearing demonstrating that the Sale is fair, reasonable, and in the best interest of the Debtors' estates and all interested parties, and satisfies the standards necessary to approve a sale of the Purchased Assets.

### **IV. SALE ORDER**

The Sale Order will provide Court approval of (i) the Sale to the Successful Bidder, free and clear of all liens, claims, interests, and encumbrances, pursuant to 11 U.S.C. § 363 with all liens, claims, interests, and encumbrances to attach to the sale proceeds with the same validity and in the same order of priority as they attached to the Purchased Assets prior to the Sale, and the assumption by the Debtors and assignment to the Successful Bidder of the all assumed executory contracts and unexpired leases pursuant to 11 U.S.C. § 365 (the "Assumed Contracts").

### **V. RESERVATION OF RIGHTS**

The Debtors reserve the right, as they may determine in their discretion and in accordance with their business judgment to be in the best interest of their estates, in consultation with their professionals and the Consultation Parties to: (i) modify these Bidding Procedures to discontinue incremental bidding and then require that any and all bidders or potential purchasers submit their sealed, highest and best offer for the Purchased Assets; (ii) determine which Qualified Bid is the highest or otherwise best bid and which is the next highest or otherwise best bid; (iii) waive terms and conditions set forth herein with respect to all Potential Bidders; (iv) impose additional terms and conditions with respect to all Potential Bidders; (v) extend the deadlines set forth herein; (vi) continue or cancel the Auction and/or Sale Hearing in open court without further notice; and (vii) implement additional procedural rules that the Debtors determine, in their reasonable business judgment and in consultation with the Consultation Parties will better promote the goals of the bidding process; provided that such modifications are disclosed to each Qualified Bidder participating in the Auction.

The Consultation Parties may file a motion with the Court in order to challenge any decision made by the Debtors with respect to effectuating these Bidding Procedures. The Debtors may file a motion with the Court to challenge the Consultation Parties' exercise of consent rights under these Bidding Procedures.