

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

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In re: : Chapter 11  
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EHT US1, Inc., *et al.*, : Case No. 21-10036 (CSS)  
:  
: (Jointly Administered)  
:  
Debtors.<sup>1</sup> : **Re: Docket No. 334 & 495**  
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**AMENDED<sup>2</sup> ORDER (I) APPROVING (A) BIDDING PROCEDURES,  
(B DESIGNATION OF STALKING HORSE BIDDER AND STALKING  
HORSE BID PROTECTIONS, (C) SCHEDULING AUCTIONS AND SALE  
HEARING, (D) FORM AND MANNER OF NOTICE OF SALE, AUCTIONS,  
AND SALE HEARING, AND (E) ASSUMPTION AND ASSIGNMENT  
PROCEDURES (II) GRANTING RELATED RELIEF**

*Upon the Motion of Debtors for Entry of Orders (I) Approving (A) Bidding  
Procedures, (B) Designation of Stalking Horse Bidder and Stalking Horse Bidder Protections,  
(C) Form and Manner of Notice of Sale, Auctions, and Sale Hearing, and (D) Assumption and  
Assignment Procedures, (II) Scheduling Auctions and Sale Hearing, (III) Approving (A) Sale of  
Substantially All of Debtors' Assets Free and Clear of Liens, Claims, Interests, and*

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each debtor's tax identification number, as applicable, are as follows: EHT US1, Inc. (6703); 5151 Wiley Post Way, Salt Lake City, LLC (1455); ASAP Cayman Atlanta Hotel LLC (2088); ASAP Cayman Denver Tech LLC (7531); ASAP Cayman Salt Lake City Hotel LLC (7546); ASAP Salt Lake City Hotel, LLC (7146); Atlanta Hotel Holdings, LLC (6450); CI Hospitality Investment, LLC (7641); Eagle Hospitality Real Estate Investment Trust (7734); Eagle Hospitality Trust S1 Pte Ltd. (7669); Eagle Hospitality Trust S2 Pte Ltd. (7657); EHT Cayman Corp. Ltd. (7656); Sky Harbor Atlanta Northeast, LLC (6846); Sky Harbor Denver Holdco, LLC (6650); Sky Harbor Denver Tech Center, LLC (8303); UCCONT1, LLC (0463); UCF 1, LLC (6406); UCRDH, LLC (2279); UCHIDH, LLC (6497); Urban Commons 4th Street A, LLC (1768); Urban Commons Anaheim HI, LLC (3292); Urban Commons Bayshore A, LLC (2422); Urban Commons Cordova A, LLC (4152); Urban Commons Danbury A, LLC (4388); Urban Commons Highway 111 A, LLC (4497); Urban Commons Queensway, LLC (6882); Urban Commons Riverside Blvd., A, LLC (4661); and USHIL Holdco Member, LLC (4796). The Debtors' mailing address is 3 Times Square, 9th Floor New York, NY 10036 c/o Alan Tantleff (solely for purposes of notices and communications).

<sup>2</sup> This Order amends the Order entered at Docket No. 495 solely to include in ¶ 20 the start time of the Sale Hearing scheduled for May 28, 2021 at 10:00 a.m. (ET).

*Encumbrances, and (B) Assumption and Assignment of Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* (the “Motion”),<sup>3</sup> and the *Declaration of Larry Kwon in Support of the Motion* (the “Kwon Declaration”), each filed by EHT US1, Inc. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”), pursuant to sections 105(a), 363, 365, 503, and 507 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004, 6006, 9007, 9008, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Rules 2002-1, 6004-1, and 9006-1 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) for entry of an order (i) approving the bidding procedures, substantially in the form attached hereto as **Exhibit 1** (the “Bidding Procedures”) in connection with the sale of substantially all of the Debtors’ Assets (as defined in the Stalking Horse Agreement) (subject to certain exceptions);<sup>4</sup> (ii) authorizing the Debtors to designate Madison Phoenix LLC (the “Stalking Horse Bidder”) as the stalking horse bidder (iii) approving the Bid Protections (as defined in the Motion) proposed to be granted in accordance with the terms and conditions of the Bidding Procedures and the Stalking Horse Agreement (as defined herein); (iv) authorizing and scheduling auctions (the “Auctions”) and scheduling a hearing (the “Sale Hearing”) with respect to the approval of a proposed sale transaction (the “Sale Transaction”); (v) authorizing and approving the form and manner of notice of (a) Debtors’ entry into that certain *Agreement of Purchase and Sale*, dated March 7, 2021 (together with the exhibits thereto, as may be amended, modified, or supplemented from

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<sup>3</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion or Bidding Procedures (as defined herein), as applicable.

<sup>4</sup> For the purposes of this Order, “Assets” shall mean all Assets as defined in the form of Stalking Horse Agreement attached hereto as **Exhibit 4**, regardless of whether any such Assets are subsequently designated as an “Excluded Asset” pursuant to the Stalking Horse Agreement.

time to time in accordance with the terms thereof, including the *First Amendment to Agreement of Purchase and Sale*, dated March 22, 2021, the “Stalking Horse Agreement”) attached hereto as **Exhibit 4**, for the sale of substantially all of the Assets to the Stalking Horse Bidder (the “Stalking Horse Bid”); (b) Auctions, if any; and (c) Sale Hearing, substantially in the form attached hereto as **Exhibit 2** (the “Sale Notice”); (vi) approving the procedures set forth herein (the “Assumption and Assignment Procedures”) for the assumption and assignment of the Debtors’ executory contracts and unexpired leases (the “Designated Contracts and Designated Leases”) to the Stalking Horse Bidder or the Successful Bidder and the determination of the amount necessary to cure any defaults thereunder (the “Cure Costs”); (vii) authorizing and approving the form and manner of notice to each relevant non-Debtor counterparty to an executory contract or unexpired lease (collectively, the “Counterparties”) regarding the Debtors’ assumption and assignment of the Designated Contracts and Designated Leases to the Successful Bidder (as defined herein) and of the Debtors’ calculation of the Cure Costs, substantially in the form attached hereto as **Exhibit 3** (the “Cure Notice”); and (viii) granting related relief; all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 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 consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Sale Notice Parties (as defined in the Motion), and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and this Court having reviewed the Motion; and this Court having held a

hearing to consider the relief requested in the Motion; and upon the record of the hearing; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before this Court and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY FOUND AND DETERMINED THAT:<sup>5</sup>**

A. Jurisdiction. This Court has jurisdiction to hear and determine the Motion and to grant the relief requested herein pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Statutory and Legal Predicates. The statutory and legal predicates for the relief requested in the Motion are sections 105(a), 363, 365, 503, and 507 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9007, 9008, and 9014 and Local Rules 2002-1, 6004-1, and 9006-1.

C. Sale Process. The Debtors and their advisors, including Moelis & Company LLC (“Moelis”), engaged in a robust and extensive sale process prior to the execution of the Stalking Horse Agreement to solicit and develop the highest or best offer for the Assets.

D. Designation of Stalking Horse Bid. The Stalking Horse Bid as reflected in the Stalking Horse Agreement represents the highest and best offer the Debtors have received to

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<sup>5</sup> The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

date during their sale process to purchase the Assets in accordance with the Bidding Procedures. The Stalking Horse Agreement provides the Debtors with the opportunity to sell the Assets in a manner designed to preserve and maximize their value and provide a floor for a further marketing and auction process. Without the Stalking Horse Bid, the Debtors are at a significant risk of realizing a lower price for the Assets. As such, the contributions of the Stalking Horse Bidder to the process have indisputably provided a substantial benefit to the Debtors, their estates, and creditors in these chapter 11 cases. The Stalking Horse Bid will enable the Debtors to continue their operations, minimize disruption to the Debtors' business, and secure a fair and adequate baseline price for the Assets at the Auctions (if any), and, accordingly, will provide a clear benefit to the Debtors' estates, their creditors, and all other parties in interest. The Deposit to be made by the Stalking Horse Bidder under the terms of the Stalking Horse Agreement is reasonable given the complexity and size of the Sale Transaction, and the terms related to the Deposit, including without limitation, that the Deposit shall not constitute DIP Collateral for purposes of the DIP Facility or Final DIP Order (as defined in the Stalking Horse Agreement), are reasonable under the circumstances of the Sale Transaction.

E. Designation of Stalking Horse Bidder. The Stalking Horse Bidder shall act as the "stalking horse bidder" pursuant to the Stalking Horse Agreement and the Stalking Horse Bid shall be subject to higher or better offers in accordance with the Bidding Procedures. The Stalking Horse Bidder is not an "insider" or "affiliate" of any of the Debtors, as those terms are defined in section 101 of the Bankruptcy Code, and no common identity of incorporators, directors, or controlling stockholders exists between the Stalking Horse Bidder and the Debtors. Pursuit of the Stalking Horse Bidder as a "stalking-horse" bidder and its Stalking Horse Bid as a

“stalking-horse” purchase agreement is in the best interests of the Debtors and the Debtors’ estates and creditors, and it reflects a sound exercise of the Debtors’ business judgment.

F. Stalking Horse Bid Protections. The Bid Protections (as modified by the *First Amendment to Agreement of Purchase and Sale*, dated March 22, 2021) (i) have been negotiated by the Stalking Horse Bidder and the Debtors and their respective advisors at arm’s length and in good faith and (ii) are necessary to ensure that the Stalking Horse Bidder will continue to pursue its Stalking Horse Agreement and the Sale Transaction contemplated thereby. The Termination Payment (as defined in the Stalking Horse Agreement), to the extent payable under the Stalking Horse Agreement, (a)(x) is an actual and necessary cost and expense of preserving the Debtors’ estates within the meaning of section 503(b) of the Bankruptcy Code and (y) shall be treated as an allowed superpriority administrative expense claim against the Debtors’ estates pursuant to sections 105(a), 364, 503(b), and 507(a)(2) of the Bankruptcy Code, (b) is commensurate to the real and material benefits conferred upon the Debtors’ estates by the Stalking Horse Bidder, and (c) is fair, reasonable, and appropriate, including in light of the size and nature of the Sale Transaction and the efforts that have been and will be expended by the Stalking Horse Bidder. The Stalking Horse Bid Protections are a material inducement for, and condition of, the Stalking Horse Bidder’s execution of the Stalking Horse Agreement.

G. Bidding Procedures. The Debtors have articulated good and sufficient business reasons for the Court to approve the Bidding Procedures. The Bidding Procedures are fair, reasonable, and appropriate under the circumstances and designed to maximize the recovery on, and realizable value of, the Assets, as determined by the Debtors’ sound business judgment. The Bidding Procedures were negotiated in good faith and at arms’ length and are reasonably designed to promote a competitive and robust bidding process to generate the greatest level of

interest in all or part of the Debtors' Assets, resulting in the highest or otherwise best offer, while providing the Debtors significant flexibility in how to best effectuate the sale through section 363 of the Bankruptcy Code or a plan of reorganization and also permitting the Debtors to determine to forego the sale of the Assets altogether if the Debtors determine that doing so is in the best interests of their estates. The Bidding Procedures comply with the requirements of Local Rule 6004-1(c).

H. Assumption and Assignment Provisions. The Debtors have articulated good and sufficient business reasons for the Court to approve the Assumption and Assignment Procedures and the Assumption and Assignment Procedures, including the form of the Sale Notice attached hereto as **Exhibit 2** and the form of the Cure Notice attached hereto as **Exhibit 3**, are fair, reasonable, and appropriate. The Assumption and Assignment Procedures provide an adequate opportunity for all Counterparties to raise any objections to the proposed assumption and assignment or the proposed Cure Costs. The Assumption and Assignment Procedures comply with the provisions of section 365 of the Bankruptcy Code and Bankruptcy Rule 6006.

I. Cure Notice. The Cure Notice, the form of which is attached hereto as **Exhibit 3**, is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Assumption and Assignment Procedures, as well as any and all objection deadlines related thereto, and no other or further notice shall be required for the Motion and the procedures described therein, except as expressly required herein.

J. Sale Notice. The Sale Notice, the form of which is attached hereto as **Exhibit 2**, is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Bidding Procedures, the Assumption and Assignment Procedures, the

Auctions, the Sale Hearing, and the Sale Transaction (including the sale of the Assets as set forth under the Stalking Horse Bid) free and clear of any liens, claims, encumbrances, or interests pursuant to section 363(f) of the Bankruptcy Code (provided, however, that any such liens, claims, encumbrances, or interests shall attach to the proceeds of the sale of the applicable Assets), and any and all objection deadlines related thereto, and no other or further notice shall be required for the Sale Motion, the Sale Transaction, or the assumption and assignment of the Designated Contracts and Designated Leases except as expressly required herein.

K. Notice. Good and sufficient notice of the relief sought in the Motion has been provided under the circumstances, and no other or further notice is required, except as set forth in the Bidding Procedures and the Assumption and Assignment Procedures. A reasonable opportunity to object and be heard regarding the relief granted herein has been afforded to all parties in interest, including those persons and entities entitled to notice pursuant to Bankruptcy Rule 2002.

L. The Debtors have articulated good and sufficient business reasons for the Court to approve (i) the Bidding Procedures, (ii) the Assumption and Assignment Procedures, (iii) the Stalking Horse Bid Protections, and (iv) the form and manner of notice of the Auctions and the Sale Hearing for the Sale Transaction.

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is granted to the extent set forth herein.
2. All objections to the relief granted herein that have not been withdrawn with prejudice, waived, or settled, and all reservations of rights included in such objections, are hereby overruled and denied on the merits with prejudice.



3. The Bidding Procedures are hereby approved in their entirety, are incorporated herein by reference, and shall govern the bids and proceedings related to the sale of the Assets and the Auctions. The failure to specifically include or reference any particular provision of the Bidding Procedures in the Motion or this Order shall not diminish or otherwise impair the effectiveness of such procedures, it being the Court's intent that the Bidding Procedures are approved in their entirety, as if fully set forth in this Order. The Debtors are authorized to take all actions necessary or appropriate to implement the Bidding Procedures.

**Stalking Horse Bid Protections**

4. The Stalking Horse Bid shall be subject to higher or otherwise better Qualified Bids, in accordance with the terms and procedures of the Bidding Procedures.

5. The Bid Protections are approved in their entirety. The Termination Payment, and the components thereof as applicable, shall be payable in accordance with, and subject to the terms of, the Stalking Horse Agreement and the Bidding Procedures.

6. The Break-Up Fee and the Expense Reimbursement shall constitute allowed superpriority administrative expense claims pursuant to sections 105(a), 503(b), and 507(a)(2) of the Bankruptcy Code with priority over all other administrative expenses of the kind specified in section 503(b) of the Bankruptcy Code, other than, and subject and subordinate in all respects to, the Carve-Out (as defined in the Final DIP Order). Debtors are hereby authorized and directed to pay the Break-Up Fee and Expense Reimbursement, if and when due, in accordance with the terms of the Stalking Horse Agreement and this Order without further order of the Court. The Debtors' obligation to pay the Expense Reimbursement and Break-Up Fee shall be the joint and several obligations of the Debtors and shall survive termination of the Stalking Horse Agreement, dismissal or conversion of any of the Chapter 11 Cases, and confirmation of any plan of reorganization or liquidation.

7. No proceeds of DIP Loans or DIP Collateral (each as defined in the Final DIP Order) may be used directly or indirectly by any Debtor or any other person, party or entity in connection with the initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation against the Stalking Horse Bidder or any of its respective predecessors-in-interest, agents, affiliates, representatives, attorneys, or advisors, or any action purporting to do the foregoing in respect of this Order, the Bidding Procedures, the Stalking Horse Agreement, or the Sale Transaction.

### **Bidding Procedures**

8. The Bidding Procedures, attached hereto as **Exhibit 1**, are fully incorporated herein and approved, and shall apply with respect to any bids for, and the Auctions and sale of the Debtors' Assets, including the Assets set forth in the Stalking Horse Agreement. The procedures and requirements set forth in the Bidding Procedures, including those associated with submitting a "Qualified Bid" (as defined herein), are fair, reasonable and appropriate, and are designed to maximize recoveries for the benefit of the Debtors' estates, creditors, and other parties in interest. The Debtors are authorized to take all actions necessary or appropriate to implement the Bidding Procedures in accordance with the terms of this Order and the Bidding Procedures.

9. The deadline for submitting Bids (the "**Bid Deadline**") is **May 14, 2021 at 4:00 p.m. (prevailing Eastern Time)**; provided, that the Debtors shall have the right to extend the Bid Deadline, after consultation with advisors to the Committee and Bank of America, N.A., as administrative agent under the Debtors' prepetition credit facility (the "**Administrative Agent**") and, together with the Committee, the "**Consultation Parties**"), in their reasonable business judgment, for all or certain Potential Bidders, without further order of the Court, subject to providing prior notice to advisors to the Consultation Parties, the Stalking Horse Bidder, and all

Potential Bidders (as defined in Bidding Procedures). Any party that does not submit a Qualified Bid by the Bid Deadline in accordance with the Bidding Procedures will not be allowed to (a) submit any offer after the Bid Deadline or (b) participate in the Auctions.

10. The Stalking Horse Bidder is a Qualified Bidder and the bid reflected in the Stalking Horse Bid (including as it may be increased at the Auctions (if any)) is a Qualified Bid, as set forth in the Bidding Procedures. Subject to the terms of the Bidding Procedures, in the event of a competing Qualified Bid, the Stalking Horse Bidder will be entitled, but not obligated, to submit overbids and shall have the unqualified right to “credit bid” up to the full amount of the DIP Obligations (as defined in the DIP Credit Agreement) in any such overbids.

Notwithstanding anything to the contrary in this Order or the Bidding Procedures, every dollar of a credit bid shall be treated the same as a dollar from a cash bid, and a cash bid shall not be deemed higher or otherwise better solely for the reason that it is a cash bid and not a credit bid.

11. All Potential Bidders submitting bids determined by the Debtors, after consultation with advisors to the Consultation Parties, to be “Qualified Bids” in accordance with the Bidding Procedures are deemed to have submitted to the exclusive jurisdiction of this Court with respect to all matters related to the Auctions and the terms and conditions of the sale or transfer of the Assets.

12. To qualify as a Qualified Bid, each such bid must comply with all the applicable requirements set forth in the Bidding Procedures.

13. The Debtors shall have the right, in their reasonable business judgment, after consultation with advisors to the Consultation Parties, in a manner consistent with their fiduciary duties, and applicable law, to modify the Bidding Procedures, including to (a) waive terms and conditions set forth in the Bidding Procedures with respect to any Potential Bidder; (b)

extend the deadlines set forth in the Bidding Procedures; and (c) announce at the Auctions modified or additional procedures for conducting the Auctions, in each case, to the extent not materially inconsistent with the Bidding Procedures and this Order; provided, that any modification or other adjustment to the Bidding Procedures shall be materially consistent with the Stalking Horse Agreement and otherwise not disproportionately adversely affect the Stalking Horse Bidder. Nothing in the Bidding Procedures or this Order shall require the Debtors to take any action, or refrain from taking any action to the extent the Debtors determine, based on the advice of counsel, that taking such action, or refraining from taking such action, as applicable, is required to comply with applicable law or its fiduciary obligations under applicable law. Except as provided in the Stalking Horse Agreement, nothing in the Bidding Procedures or this Order shall obligate the Debtors to consummate or pursue any transaction with respect to any Asset with a Qualified Bidder.

14. The Debtors shall identify those bids that qualify as Qualified Bids (each bidder that submits such a Qualified Bid being a “Qualified Bidder”) by **May 18, 2021 at 4:00 p.m. (prevailing Eastern Time)**. If more than one Qualified Bid is timely received (in addition to the Stalking Horse Bid), the Auctions shall be conducted virtually pursuant to procedures to be timely filed on the Bankruptcy Court’s docket, on **May 20, 2021 at 10:00 a.m. (prevailing Eastern Time)** or at such other time and location as the Debtors, after consultation with advisors to the Consultation Parties, after providing notice to the Qualified Bidders, may determine in their reasonable business judgment.

15. Only Qualified Bidders will be eligible to participate in the Auctions, subject to such limitations as the Debtors may impose in good faith, after consultation with advisors to the Consultation Parties; provided, however, that all creditors may attend (but not

participate in) the Auctions if such creditor provides the Debtors with written notice of its intention to attend such Auctions on or before one (1) business day prior to the Auctions, which written notice shall be sent to proposed counsel for the Debtors via electronic mail at [lucdespins@paulhastings.com](mailto:lucdespins@paulhastings.com) and [alexbongartz@paulhastings.com](mailto:alexbongartz@paulhastings.com). The Debtors may, in their reasonable discretion, after consultation with the advisors to the Consultation Parties, also establish a reasonable limit on the number of representatives and/or professional advisors that may appear on behalf of or accompany the Qualified Bidders at the Auctions. The proceedings of the Auctions shall be transcribed or videotaped, at the Debtors' option.

16. Absent further order of the Court, no Qualified Bidder (other than the Stalking Horse Bidder solely as provided herein and in the Stalking Horse Agreement) shall be entitled to any expense reimbursement, break-up fee, termination fee, or other similar fee or payment in connection with any Sale Transaction, and by submitting a bid, such Qualified Bidder is deemed to have waived their right to request or to file with this Court any request for expense reimbursement or any fee of any nature, whether by virtue of section 503(b) of the Bankruptcy Code or otherwise.

17. If the Stalking Horse Bid, as reflected in the Stalking Horse Agreement is the only Qualified Bid in respect of the Assets that is received by the Debtors by the Bid Deadline, the Debtors shall not conduct Auctions for the Assets (other than any Excluded Assets), and the Stalking Horse Bidder shall be deemed the Successful Bidder and the Stalking Horse Bid shall be deemed the Successful Bid. In such circumstances, the Debtors shall notify the Court and publish such notice on the Claims Agent Website prior to the date on which the Auctions was scheduled to occur.

18. The Debtors may, in the exercise of their business judgment, and after consultation with advisors to the Consultation Parties, identify the highest or otherwise best Qualified Bid(s) as the successful bid(s) (a “Successful Bid” and, the bidder submitting such bid, a “Successful Bidder”). Subject to the Bidding Procedures, the Debtors, after consultation with advisors to the Consultation Parties, may also identify which Qualified Bid(s) constitute the second highest or otherwise best bid(s) and deem such second highest or otherwise best bid(s) a back-up bid (such bid(s) shall each be a “Back-Up Bid” and, the bidder submitting such bid, a “Back-Up Bidder”).

19. No later than **May 21, 2021 at 4:00 p.m. (prevailing Eastern Time)** the Debtors shall (i) file with the Bankruptcy Court and post on the Claims Agent Website a notice of the Successful Bid(s), Successful Bidder(s), Back-Up Bid(s), and Back-Up Bidder(s), and (ii) provide or cause to be provided to affected Counterparties information supporting the Successful Bidder’s ability to comply with the requirements to provide adequate assurance of future performance under Bankruptcy Code section 365(f)(2) and, if applicable, Bankruptcy Code section 365(b)(3), including, to the extent reasonably available and applicable, the Successful Bidder’s financial wherewithal and willingness to perform under applicable Designated Contracts and Designated Leases (each as defined in the Stalking Horse Agreement), as provided in such Successful Bidder’s bid. For the avoidance of doubt, nothing in this paragraph shall alter the requirement that, if the Debtors receive no Qualified Bids other than the Stalking Horse Bid, the Stalking Horse Bidder shall be deemed the Successful Bidder and the Stalking Horse Bid shall be deemed a Successful Bid.

#### **Sale Hearing and Sale Objection Deadline**

20. If the Debtors elect, after consultation with the Consultation Parties, to proceed with a Sale Transaction pursuant to a sale under section 363 of the Bankruptcy Code, the

Debtors will seek the entry of an order authorizing and approving, among other things, the Sale Transaction in which all or some of the assets of the Debtors or the Debtors' business will be sold to the applicable Successful Bidder at a hearing before the Court to be held on **May 28, 2021 at 10:00 a.m. (prevailing Eastern Time)** (the "Sale Hearing"). The Sale Hearing may be adjourned by this Court or the Debtors from time to time without further notice other than by announcement in open court or through the filing of a notice or other document on this Court's docket.

21. Objections to any Sale Transactions, including any objection to the sale of any Assets free and clear of liens, claims, encumbrances, and other interests (each, a "Sale Objection"), must: (i) be in writing; (ii) state the name and address of the objecting party and the amount and nature of the claim or interest of such party; (iii) state with particularity the basis and nature of any objection, and provide proposed language that, if accepted and incorporated by the Debtors, would obviate such objection; (iv) conform to the Bankruptcy Code, Bankruptcy Rules, and Local Rules; and (v) be filed with the Bankruptcy Court and be served on the Objection Notice Parties (as defined in the Sale Notice) by **May 14, 2021 at 4:00 p.m. (prevailing Eastern Time)** (the "Sale Objection Deadline"). All Sale Objections will be heard by this Court at the Sale Hearing.

22. Objections solely to the conduct of the Auctions (if held), the selection of the Successful Bidder (other than the Stalking Horse Bidder), or the approval of the Sale with the Successful Bidder (other than the Stalking Horse Bidder) (each, a "Supplemental Objection") must be (i) filed in accordance with the Bidding Procedures, (ii) filed with the Bankruptcy Court, and (iii) served on the Objection Notice Parties on or before **May 24, 2021 at 4:00 p.m. (prevailing Eastern Time)** (the "Supplemental Objection Deadline").

23. The failure of any objecting person or entity to timely file and serve a Sale Objection on the Objection Notice Parties shall be a bar to the assertion, at the Sale Hearing or thereafter, of any objection to the Motion, or to the consummation and performance of a Sale Transaction, including the transfer of the Assets to the Successful Bidder, free and clear of all liens, claims, encumbrances, and interests pursuant to section 363(f) of the Bankruptcy Code; provided, however, that any such liens, claims, encumbrances, or interests shall attach to the proceeds of the sale of the applicable Assets. Failure to object shall constitute consent for the purposes of sections 363(f), 1123 and 1141(c), as applicable, of the Bankruptcy Code.

24. Any party who fails to (i) file a Sale Objection with the Bankruptcy Court and serve it on the Objection Notice Parties by the Sale Objection Deadline or (ii) file a Supplemental Objection on the Objection Notice Parties by the Supplemental Objection Deadline will be forever barred from asserting, at the Sale Hearing or thereafter, any objection to the consummation of the applicable Sale Transaction, any Supplemental Objection, and any related relief requested by the Debtors.

#### **Notice of Sale Transaction**

25. The Sale Notice, substantially in the form attached hereto as **Exhibit 2**, is approved, and no other or further notice of the Assumption and Assignment Procedures, the Auctions, the Sale Hearing, the Sale Objection Deadline, the Supplemental Objection Deadline, and the Sale Transaction shall be required if the Debtors serve and publish such notice, in the manner provided in the Bidding Procedures and this Order. The Sale Notice contains the type of information required under Bankruptcy Rule 2002 and Local Rule 6004-1, and complies in all respects with applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules.

26. All parties in interest shall receive or be deemed to have received good and sufficient notice of: (a) the Motion; (b) the Assumption and Assignment Procedures,



including the proposed assumption and assignment of the Designated Contracts and Designated Leases to the Successful Bidder; (c) the Auctions; (d) the Sale Objection Deadline and Supplemental Objection Deadline; (e) the Sale Transaction, including the sale of the Assets (as set forth under the Stalking Horse Bid); (f) the effect of the Sale Transaction on liens, claims, encumbrances, and other interests; and (g) the Sale Hearing, and no further notice of the foregoing shall be required, if:

- (a) As soon as practicable, but no later than three (3) calendar days after entry of this Order, the Debtors cause the Sale Notice to be filed with this Court and served by email, mail, facsimile, or overnight delivery on: (1) counsel for the Stalking Horse Bidder; (2) advisors to the Consultation Parties; (3) all Persons known by the Debtors to have expressed an interest to the Debtors in a transaction with respect to the Assets in whole or in part during the past twelve (12) months; (4) all entities known by the Debtors to have asserted any lien, claim, encumbrance, or other interest in the Assets (for whom identifying information and addresses are available to the Debtors); (5) all non-Debtor parties to the Designated Contracts and Designated Leases (for whom identifying information and addresses are available to the Debtors); (6) any Governmental Unit (as defined in section 101(27) of the Bankruptcy Code) known to have a claim in these chapter 11 cases; (7) the United States Attorney for the District of Delaware; (8) the Office of the Attorney General in each state in which the Debtors operate; (9) the Office of the Secretary of State in each state in which the Debtors operate or are organized; (10) the Debtors' known creditors (for whom identifying information and addresses are available to the Debtors); and (11) all other Persons requesting notice under Bankruptcy Rule 2002 or as directed by this Court (for whom identifying information and addresses are available to the Debtors); and
- (b) As soon as practicable, but no later than five (5) business days after entry of this Order, the Debtors shall cause the Sale Notice to be published on the Claims Agent Website and once each in the national edition of *USA Today*, the *Los Angeles Times*, and the *Straits Times*. The Debtors shall also cause the Sale Notice to be published as required by the securities laws of Singapore.

**Assumption and Assignment Procedures**

27. The Assumption and Assignment Procedures are reasonable and appropriate under the circumstances, fair to all non-Debtor parties, comply in all respects with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, and are approved.

28. The Cure Notice, substantially in the form attached hereto as **Exhibit 3**, is reasonable, fair, and appropriate, contains the type of information required under Bankruptcy Rule 2002 and 6006, and complies in all respects with applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules, and is hereby approved. It is reasonably calculated to provide sufficient notice to the Counterparties of the Debtors' intent to assume and assign the Designated Contracts and Designated Leases the Stalking Horse Bidder (or as otherwise contemplated by the Stalking Horse Bid) or to a Successful Bidder other than the Stalking Horse Bidder, in connection with the Sale Transaction and constitutes adequate notice thereof.

29. The Debtors shall file the Cure Notice with this Court and serve the Cure Notice on the Counterparties no later than three (3) business days after entry of this Order. Service of the Cure Notice in accordance with this Order on all Counterparties is hereby deemed to be good and sufficient notice of the Cure Costs for, and the proposed assumption and assignment of, the Designated Contracts and Designated Leases to the Successful Bidder (or as otherwise contemplated by the Successful Bid). As soon as reasonably practicable after serving the Cure Notice, the Debtors shall post a copy of the Cure Notice on the Claims Agent Website.

30. Upon service of the Cure Notice, all Counterparties shall receive or be deemed to have received good and sufficient notice of the Cure Costs for, and the proposed assumption and assignment of, the Designated Contracts and Designated Leases to the Successful Bidder or as otherwise contemplated by the Successful Bid.

31. All objections to any proposed Cure Costs (each, a “Cure Objection”) and to the provision of adequate assurance of future performance (each, an “Adequate Assurance Objection”) must: (a) be in writing; (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules; (c) state, with specificity, the legal and factual basis thereof, including, with respect to a Cure Objection, what Cure Costs the objecting party believes are required; (d) include any appropriate documentation in support thereof; and (e) be filed with this Court and served on the Objection Notice Parties (as defined in the Cure Notice) by the deadline set forth in the applicable Cure Notice.

32. Any Cure Objection or Adequate Assurance Objection with respect to the Stalking Horse Bidder must be filed and served on or before the date that is fourteen (14) days after service of the Cure Notice. Any Adequate Assurance Objection with respect to any other Successful Bidder must be filed and served by the Supplemental Objection Deadline. If a timely Cure Objection or Adequate Assurance Objection is received and such objection cannot otherwise be resolved by the parties, such objection shall be heard at the Sale Hearing or such later date as the Debtors determine prior to the scheduled closing of the Sale Transaction.

33. To the extent the Debtors identify at any time after the Cure Notice is served, additional Designated Contracts and Designated Leases to be assumed and assigned to the Successful Bidder (or as otherwise contemplated by the Successful Bid), the Debtors shall file with this Court and serve by first class mail on the relevant Counterparty to such Designated Contract or Designated Lease a supplemental Cure Notice (each, a “Supplemental Cure Notice,” the form of which shall be substantially similar to the form of Cure Notice attached hereto as **Exhibit 3**). Any (x) Cure Objection with respect to Cure Costs set forth in a Supplemental Cure Notice and (y) Adequate Assurance Objection with respect to the assumption and assignment of

the Designated Contract or Designated Lease(s) set forth in such Supplemental Cure Notice must be filed within ten (10) calendar days of service of that Supplemental Cure Notice.

34. If no timely Cure Objection is filed and served in respect of a Designated Contract or Designated Lease, the Cure Cost identified on the Cure Notice or a Supplemental Cure Notice, as applicable, will be the only amount necessary under section 365(b) of the Bankruptcy Code to cure all defaults under such Designated Contract or Designated Lease. Any party failing to timely file a Cure Objection shall be forever barred from objecting to the Cure Costs and from asserting any additional cure or other amounts against the Debtors, their estates, or the Successful Bidder(s).

35. If no timely Adequate Assurance Objection is filed and served with respect to a Designated Contract or Designated Lease, the Successful Bidder (or any other entity contemplated by the Successful Bid) will be deemed to have provided adequate assurance of future performance for such Designated Contract or Designated Lease in accordance with section 365(f)(2)(B) of the Bankruptcy Code.

36. If no timely Cure Objection or Adequate Assurance Objection is filed and served with respect to a Designated Contract or Designated Lease, the relevant Counterparty shall be deemed to have consented to the assumption and assignment of the Designated Contract or Designated Lease to the Successful Bidder (or as otherwise contemplated by the Successful Bid).

37. The Debtors' assumption and assignment of the Designated Contracts and Designated Leases to the Successful Bidder (or as otherwise contemplated by the Successful Bid) is subject to approval of this Court at the Sale Hearing and the consummation of the Sale Transaction. Accordingly, absent the closing of such sale, the Designated Contracts and

Designated Leases shall not be deemed assumed or assigned, and shall in all respects be subject to further administration under the Bankruptcy Code.

38. The inclusion of a contract, lease, or other agreement on the Cure Notice or any Supplemental Cure Notice shall not constitute or be deemed a determination or admission by the Debtors or any other party in interest that such contract or other document is an executory contract or unexpired lease within the meaning of the Bankruptcy Code or that the stated Cure Cost is due (all rights with respect thereto being expressly reserved). The Debtors reserve all of their rights, claims, defenses, and causes of action with respect to each contract, lease, or other document listed on the Cure Notice or any Supplemental Cure Notice. The Debtors' inclusion of an executory contract or unexpired lease on the Cure Notice or any Supplemental Cure Notice shall not be a guarantee that such executory contract or unexpired lease ultimately will be assumed or assumed and assigned.

#### **General Provisions**

39. All persons or entities (whether or not Qualified Bidders) that participate in the bidding process, including submitting a bid for any of the Assets during the sale process and/or Auctions, shall be deemed to have knowingly and voluntarily (a) submitted to the exclusive jurisdiction of this Court with respect to all matters related to the terms and conditions of the transfer of Assets, the Auctions, and any Sale Transaction, (b) consented to the entry of a final order by this Court in connection with the Motion or this Order (including any disputes related to the bidding process, the Auctions, and/or any Sale Transaction) to the extent that it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution, and (c) waived any right to jury trial in connection with any disputes relating to the any of the foregoing matters.

40. Nothing in the Bid Procedures or this Order shall be determinative as to the allocation of value of the Assets and all parties' rights with respect thereto are expressly reserved.

41. For avoidance of doubt, the Court is not, in this Order, authorizing the assumption and/or assignment of any executory contract and unexpired lease and/or the sale of any other asset, including but not limited to intellectual property.

42. Notwithstanding anything in this Order or the Bidding Procedures to the contrary, the Administrative Agent shall not be a Consultation Party with respect to any Chapter 11 Plan Bid; *provided* that the Administrative Agent shall be provided with copies of all Chapter 11 Plan Bids. Notwithstanding the foregoing, the Debtors may, in their sole discretion, consult with the Administrative Agent regarding any Chapter 11 Plan Bids. In addition, in the event that the Administrative Agent believes that the Debtors have breached their obligation to consult with them under this Order or the Bidding Procedures, counsel to the Administrative Agent shall provide reasonable written notice (which may be by email) to counsel to the Debtors of such alleged breach before seeking any relief from this Court.

43. Notwithstanding the applicability of any of Bankruptcy Rules 6004(h), 6006(d), 7062, 9014, or any other provisions of the Bankruptcy Rules or the Local Rules stating the contrary, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry, and any applicable stay of the effectiveness and enforceability of this Order is hereby waived.

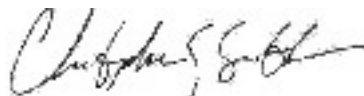
44. The Debtors are authorized to make non-substantive changes to the Bidding Procedures, the Assumption and Assignment Procedures, and any related documents

without further order of the Court, including, without limitation, changes to correct typographical and grammatical errors.

45. The Debtors are authorized to take all steps necessary or appropriate to carry out this Order.

46. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: March 24th, 2021  
Wilmington, Delaware



CHRISTOPHER S. SONTCHI  
UNITED STATES BANKRUPTCY JUDGE