

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

In re:

TARONIS FUELS, INC., *et al.*,¹

Debtors.

)
) Chapter 11
)

) Case No. 22-11121 (BLS)
)

) (Jointly Administered)
)

) **Re: Docket No. 45**
)

**AMENDED ORDER (I) APPROVING BIDDING PROCEDURES FOR THE SALE
OF THE DEBTORS' TEXAS ASSETS, (II) AUTHORIZING THE DEBTORS TO
DESIGNATE A STALKING HORSE BIDDER AND TO SEEK APPROVAL OF BID
PROTECTIONS, (III) SCHEDULING AN AUCTION AND APPROVING THE FORM
AND MANNER OF NOTICE THEREOF, (IV) APPROVING ASSUMPTION AND
ASSIGNMENT PROCEDURES, (V) SCHEDULING A SALE HEARING AND
APPROVING THE FORM AND MANNER OF NOTICE THEREOF,
AND (VI) GRANTING RELATED RELIEF**

Upon consideration of the *Debtors' Motion for Entry of Orders (I)(A) Approving Bidding Procedures for the Sale of the Debtors' Texas Assets, (B) Authorizing the Debtors to Designate a Stalking Horse Bidder and to Seek Approval of Bid Protections, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures, (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof, and (F) Granting Related Relief; and (II)(A) Approving the Sale of the Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases, and (C) Granting Related Relief*

¹ The Debtors in these chapter 11 cases, along with the last four digits (if any) of each Debtor's federal tax identification number include: Taronis Fuels, Inc. (7454), MagneGas Welding Supply – West, LLC (6662), Taronis Sub III LLC (5826), MagneGas Welding Supply – South, LLC (8686), MagneGas Real Estate Holdings, LLC (7412), MagneGas IP, LLC (0988), MagneGas Production, LLC (7727), Taronis Sub I LLC (4205), Taronis-TAS, LLC (2356), Taronis-TAH, LLC (3542), and Taronis Sub II LLC (9673). The location of the Debtors' service address in these chapter 11 cases is 24980 N. 83rd Avenue, Suite 100, Peoria, Arizona 85383.

[Docket No.45] (the “Motion”)² filed by the debtors and debtors-in-possession (the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”); and the Court having reviewed the Motion, the First Day Declaration [Docket No. 15]; and the Court having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing before the Court on December 9, 2022 to consider certain of the relief requested in the Motion (the “Bidding Procedures Hearing”); and after due deliberation, 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 is in the best interests of the Debtors, their estates, and their creditors, and the Debtors having demonstrated good, sufficient, and sound business justifications for the relief granted herein;

IT IS HEREBY FOUND AND DETERMINED THAT:

A. 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. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). The predicates for the relief granted herein are sections 105, 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, and 6006.

B. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Notice of the Motion, the Bidding Procedures Hearing, and the proposed entry of this Bidding Procedures Order was sufficient under the circumstances of the Chapter 11 Cases, and such notice complied with all applicable requirements of the Bankruptcy Code, Bankruptcy Rules, and the Local Rules. Accordingly, no other or further notice of the Motion, the Bidding Procedures Hearing, or this Bidding Procedures Order need be provided.

² Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Motion or in the Bidding Procedures, as applicable.

D. The bidding procedures, substantially in the form attached hereto as **Exhibit 1** (the “Bidding Procedures”) and incorporated herein by reference as if fully set forth in this Bidding Procedures Order, are fair, reasonable, and appropriate and are designed to maximize the value of the proceeds of the sale of all, substantially all, or a portion of the Debtors’ assets (the “Assets”).

E. The Bidding Procedures comply with the requirements of Rule 6004-1(c) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

F. The procedures set forth herein regarding the Debtors’ assumption and assignment of executory contracts and unexpired leases (collectively, the “Contracts”) in connection with a sale of the Assets (the “Assumption and Assignment Procedures”) are fair, reasonable, and appropriate and comply with the provisions of section 365 of the Bankruptcy Code and Rule 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

G. The Debtors have articulated good and sufficient business reasons for the Court to approve the relief requested in the Motion, including, without limitation, the (i) the Bidding Procedures (including the Stalking Horse Designation Procedures); (ii) the form and manner of notice of the Bidding Procedures, the auction of the Assets (the “Auction”), and the final hearing to consider approval of a sale of the Assets (the “Sale Hearing”), substantially in the form attached hereto as **Exhibit 2** (the “Sale Notice”); (iii) the form and manner of notice to each relevant non-debtor counterparty to a Contract (each, a “Counterparty”) of (a) the Debtors’ calculation of the amount necessary to cure any defaults under an applicable Contract (the “Cure Costs”) and (b) certain other information regarding the potential assumption and assignment of Contracts in connection with the sale of the Assets, substantially in the form attached hereto as **Exhibit 3** (the “Assumption and Assignment Notice”); and (iv) the Assumption and Assignment Procedures.

Such good and sufficient business reasons, which was set forth in the Motion and on the record at the Bidding Procedures Hearing, including the First Day Declaration are incorporated herein by reference and, among other things, form the basis for the findings of fact and conclusions of law set forth herein.

H. The Bidding Procedures are reasonably designed to promote active bidding at and participation in the Auction to ensure that the highest or otherwise best value is generated for the Assets.

I. The Debtors are authorized, in consultation with the Consultation Parties, to select a Stalking Horse Bidder, to file a Stalking Horse Motion, and to seek entry of a Stalking Horse Order, approving among other things Bid Protections at the Stalking Horse Hearing.

J. 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.

J. The Sale Notice and the Assumption and Assignment Notice are appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Auction, the Sale Hearing, the Bidding Procedures, the Assumption and Assignment Procedures, the Debtors' proposed Cure Costs, any proposed assumption of a Contract in connection with a sale of the Assets, and all relevant and important dates and deadlines with respect to the foregoing, and no other or further notice of the Auction, the sale of the Assets, or the assumption and assignment of Contracts in connection therewith shall be required.

K. The findings of fact and conclusions of law herein constitute the Court's findings of fact and conclusions of law for the purposes of Bankruptcy Rule 7052, made applicable pursuant

to Bankruptcy Rule 9014. To the extent any findings of facts are conclusions of law, they are adopted as such. To the extent any conclusions of law are findings of fact, they are adopted as such.

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 in this Order that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby overruled, and denied on the merits with prejudice.

A. The Timeline for the Sale

3. The Debtors are authorized to proceed with the sale transaction in accordance with the Bidding Procedures and are authorized to take any and all actions reasonably necessary or appropriate to implement the Bidding Procedures in accordance with the following timeline:

<u>Deadline</u>	<u>Action</u>
Five business days after the entry of the Bidding Procedures Order	Deadline for Debtors to file and serve Sale Notice
Five business days after the entry of the Bidding Procedures Order	Deadline for Debtors to file and serve Assumption and Assignment Notice
January 6, 2023, at 4:00 p.m. (prevailing Eastern Time)	Deadline for Debtors to designate a Stalking Horse Bidder, if any, and enter into a Stalking Horse Agreement
January 13, 2023, at 4:00 p.m. (prevailing Eastern Time)	Sale Objection Deadline and Cure Objection Deadline
January 17, 2023, at 4:00 p.m. (prevailing Eastern Time)	Bid Deadline
January 20, 2023, at 10:00 a.m. (prevailing Eastern Time)	Auction
12 hours after the conclusion of the Auction	Deadline for Debtors to file and serve Notice of Auction Results
January 25, 2023, at 4:00 p.m. (prevailing Eastern Time)	Supplemental Sale Objection Deadline and Adequate Assurance Objection Deadline
January 27, 2023, at 4:00 p.m. (prevailing Eastern Time)	Debtors' Deadline to Reply to Sale Objections and Supplemental Sale Objections
January 30, 2023, at 10:00 a.m.	Sale Hearing

(prevailing Eastern Time)	
February 3, 2023	Deadline to consummate approved Sale

B. The Bidding Procedures

4. The Bidding Procedures attached hereto as **Exhibit 1** are hereby approved in their entirety and are incorporated by reference as if fully set forth herein. The Bidding Procedures shall govern the selection of the Stalking Horse Bidder, bids and proceedings related to the Auction and the sale of the Assets. The failure to specifically include or reference a particular provision of the Bidding Procedures in this Bidding Procedures Order shall not diminish or impair the effectiveness of such provision.

5. Subject to this Order and the Bidding Procedures, the Debtors, in the exercise of their reasonable business judgment and in a manner consistent with their fiduciary duties and applicable law, shall have the right to, following consultation with the Consultation Parties:

- (i) select a Stalking Horse Bidder and provide such Stalking Horse Bidder with Bid Protections;
- (ii) determine which bidders qualify as “Qualified Bidders,” and which bids qualify as “Qualified Bids;”
- (iii) make final determinations as to whether the Debtors will conduct an Auction;
- (iv) select the Baseline Bid for the Assets;
- (v) determine the amount of each Minimum Overbid;
- (vi) determine the Leading Bid for the Assets;
- (vii) determine which Qualified Bid is the highest or otherwise best bid for the Assets (such Qualified Bid, a “Successful Bid”) and which Qualified Bid is the next highest and next best bid after the Successful Bid for the Assets (such Qualified Bid, a “Backup Bid”);
- (viii) reject any bid that is (a) inadequate or insufficient; (b) not in conformity with the requirements of this Order or any other applicable order of the Court, the Bidding Procedures, the Bankruptcy Code, or other applicable law; or (c) contrary to the best interests of the Debtors and their estates;
- (ix) adjourn or cancel the Auction in accordance with the Bidding Procedures; and
- (x) adjourn the Sale Hearing in accordance with the Bidding Procedures.

6. In accordance with and subject to the Bidding Procedures, the Debtors, in the exercise of their reasonable business judgment and in a manner consistent with their fiduciary duties and applicable law, shall have the right, in consultation with the Consultation Parties, to modify the Bidding Procedures, including to (i) extend or waive deadlines or other terms and conditions set forth herein or therein; (ii) adopt new rules and procedures for conducting the bidding and Auction process so long as any such modifications are disclosed to all Prospective Bidders and Qualified Bidders; and (iii) otherwise modify the Bidding Procedures to further promote competitive bidding for and maximizing the value of the Assets.

7. Subject in all respects to the Bankruptcy Code, other applicable law, and the satisfaction in cash or assumption of claims secured by senior liens, if any, the Lender may credit bid all or any portion of its allowed secured claim pursuant to section 363(k) of the Bankruptcy Code or other applicable law and any such credit bid shall be a Qualified Bid; *provided, however*, that nothing herein or in the Bidding Procedures shall affect or in any way limit the right or ability of any party in interest, including any Committee, to object to the Lender's right to credit bid, including the nature, amount, or scope of such credit bid, subject to the (a) applicable provisions of the DIP Order, including paragraph 18 and the Challenge Period (as defined therein), as the same may be modified in accordance with its terms and (b) Sale Objection Deadline (as defined below).

8. Nothing contained in this Bidding Procedures Order or in the Bidding Procedures is intended to or shall be construed to alter, amend or modify the DIP Order, nor constrain, limit, or impair any right granted to the Lender.

B. Stalking Horse Agreement and Bid Protections

9. The Stalking Horse Designation Procedures are approved, and the Debtors are authorized to seek approval of a Stalking Horse Agreement with a Stalking Horse Bidder and provide Bid Protections, in accordance with the Stalking Horse Designation Procedures. Debtors may designate a Stalking Horse Bidder **no later than January 6, 2023, at 4:00 p.m. (prevailing Eastern Time)**, which deadline may be extended by the Debtors (after consultation with the Consultation Parties).

10. To the extent the Debtors file a Stalking Horse Motion on or before January 6, 2023, the Court shall hold a hearing to consider the Stalking Horse Motion (the “Stalking Horse Hearing”) on **January 12, 2023, at 10:00 a.m. (prevailing Eastern Time)**.

C. Bid Deadline and Auction

11. Any Prospective Bidder that intends to participate in the Auction must submit in writing to the Debtors’ Investment Banker (contact information in Sections I and III of the Bidding Procedures) a Qualified Bid on or before **January 17, 2023, at 4:00 p.m. (prevailing Eastern Time)** (the “Bid Deadline”). The Debtors shall promptly provide a copy of each bid to each of the Consultation Parties, but in no event later than the day after the date of the Bid Deadline.

12. If the Debtors receive more than one Qualified Bid for the Assets, the Debtors shall conduct an Auction for the Assets.

13. The Auction, if required, will be conducted on **January 20, 2023, at 10:00 a.m. (prevailing Eastern Time)**, either (i) at the offices of Potter Anderson & Corroon LLP, 1313 N. Market Street, 6th Floor, Wilmington, Delaware 19801 or (ii) virtually or at such other date, time or location as designated by the Debtors, after consulting with the Consultation Parties. If the Debtors conduct the Auction virtually, the Debtors will provide instructions setting forth how to

attend the Auction to the participants and other attendees via electronic mail. The Debtors will provide notice (via electronic mail or otherwise) of any change in the date, time, or location of the Auction to Qualified Bidders and the Consultation Parties and will cause publication of such change to occur on the Claims' Agent Website (as defined below). If held, the Auction proceedings shall be transcribed or video recorded.

14. If the Debtors determine not to hold an Auction, the Debtors shall file with the Court, serve on the Sale Notice Parties (as defined in Section X.B of the Bidding Procedures), and cause to be published on the website maintained by Donlin, Recano & Co., Inc., the Debtors' claims and noticing agent in these Chapter 11 Cases, located at <https://www.donlinrecano.com/Clients/tfi/Index> (the "Claims' Agent Website"), a notice containing the following information (as applicable): (i) a statement that the Auction has been canceled; (ii) the identity of the Successful Bidder; (iii) either include a copy of the Successful Bid or a summary of the material terms of such bid, or provide instructions for accessing the Successful Bid free of charge from the Claims' Agent Website; and (iv) the date, time, and location of the Sale Hearing.

15. Only a Qualified Bidder that has submitted a Qualified Bid shall be eligible to participate in the Auction, subject to any other limitations as the Debtors may reasonably impose in accordance with the Bidding Procedures. Qualified Bidders participating in the Auction must attend the Auction personally or through a duly authorized representative. The Debtors may establish a reasonable limit on the number of representatives and/or professional advisors that may appear on behalf of a Qualified Bidder or otherwise attend the Auction.

16. Each Qualified Bidder participating in the Auction shall confirm in writing on the record that (i) it has not engaged in any collusion with respect to the Auction or the submission of

any bid for any of the Assets; and (ii) the Qualified Bid that gained the Qualified Bidder admission to participate in the Auction and each Qualified Bid submitted by the Qualified Bidder at the Auction constitutes a binding, good-faith, and *bona fide* offer to purchase the Assets identified in such bids.

17. Within one business day after the conclusion of the Auction, the Debtors shall file with the Court, serve on the Sale Notice Parties, and cause to be published on the Claims' Agent Website, a notice setting forth the results of the Auction (the "Notice of Auction Results"). The Notice of Auction Results will (i) identify each Successful Bidder and each Backup Bidder; (ii) either include a copy of each Successful Bid and each Backup Bid or a summary of the material terms of such bid, or provide instructions for accessing each Successful Bid and each Backup Bid free of charge from the Claims' Agent Website; and (iii) set forth the date, time, and location of the Sale Hearing and any other relevant dates or other information necessary to reasonably apprise the Sale Notice Parties of the outcome of the Auction.

D. Sale Noticing and Objection Procedures

18. Except objections to the conduct of the Auction, the Successful Bidder or the Backup Bidder, all objections to the sale of the Assets (each, a "Sale Objection"), including (i) any objection to the sale of any Assets free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code to a Successful Bidder and/or a Backup Bidder (as applicable) and (ii) any objection to the entry of any Sale Order shall be (i) in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof; (ii) filed with the Court by **no later than January 13, 2023, at 4:00 p.m. (prevailing Eastern Time)** (the "Sale Objection Deadline"); and (iii) served on the Objection Notice Parties (as defined in Section X.D of the Bidding Procedures).

19. Following service of the Notice of Auction Results, parties may file an objection solely with respect to the conduct of the Auction, the Successful Bidder, the Backup Bidder, or the Sale to the Successful Bidder or the Backup Bidder (each such objection, a “Supplemental Sale Objection”). Any Supplemental Sale Objection shall be (i) in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof; (ii) filed with the Court by **no later than January 25, 2023, at 4:00 p.m. (prevailing Eastern Time)** (the “Supplemental Sale Objection Deadline”); and (iii) served on the Objection Notice Parties.

20. Any party who fails to file and serve a timely Sale Objection or Supplemental Sale Objection in accordance with the terms of this Order shall be forever barred from asserting, at the Sale Hearing or thereafter, any Sale Objection or Supplemental Sale Objection to the relief requested in the Motion, or to the consummation or performance of the sale of the Assets, including the transfer of Assets to the Successful Bidder free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code, and such parties who actually receive the Sale Notice shall be deemed to “consent” to such sale for purposes of section 363(f) of the Bankruptcy Code.

21. The Debtors shall file any reply to any Sale Objection or Supplemental Sale Objection, if any, by **no later than January 27, 2023, at 12:00 p.m. (prevailing Eastern Time)**.

22. Consummation of the sale of the Assets pursuant to a Successful Bid shall be subject to Court approval. The Sale Hearing to (a) approval a sale of all, substantially all, or a portion of the Assets to the Successful Bidder(s) and (b) authorize the assumption and assignment of certain executory contracts and unexpired leases shall be held before the Court on **January 30, 2023, at 10:00 a.m. (prevailing Eastern Time)**; *provided, that*, the Debtors may seek an

adjournment or rescheduling of the Sale Hearing without notice, consistent with the Bidding Procedures and this Order. At the Sale Hearing, the Debtors will seek Bankruptcy Court approval of the Successful Bid(s) and the Backup Bid(s) (if any). Unless the Bankruptcy Court orders otherwise, the Sale Hearing shall be an evidentiary hearing on matters relating to the sale transaction and there will be no further bidding at the Sale Hearing. If the Successful Bidder(s) cannot or refuses to consummate the Sale(s) because of the breach or failure on the part of such Successful Bidder, the Debtors may, in accordance with the Bidding Procedures, designate the Backup Bid to be the new Successful Bid and the Backup Bidder to be the new Successful Bidder, and the Debtors shall be authorized, but not required, to consummate the applicable transaction with the Backup Bidder without further order of the Bankruptcy Court.

23. The Sale Notice, substantially in the form attached hereto as **Exhibit 2**, is approved, and no other or further notice of the proposed sale of the Assets, the Auction, the Sale Hearing, the Sale Objection Deadline, or the Supplemental Sale Objection Deadline shall be required if the Debtors serve and publish the Sale Notice in the manner provided in the Bidding Procedures and this Order.

24. By no later than two business days after the entry of this Order, the Debtors shall file with the Court, serve on the Sale Notice Parties, and cause to be published on the Claims' Agent Website, the Sale Notice.

E. Assumption and Assignment Procedures

25. The Assumption and Assignment Notice, substantially in the form attached hereto as **Exhibit 3**, is approved, and no other or further notice of the Debtors' intention to assume or assign the Contracts or of the Debtors' proposed Cure Costs is necessary or required.

26. By no later than two business days after the entry of this Order, the Debtors shall file with the Court, serve on the applicable Counterparties (and counsel, if known), and cause to be published on the Claims' Agent Website, the Assumption and Assignment Notice.

27. Any objection to the Debtors' proposed Cure Costs (each such objection, a "Cure Objection") shall be (a) in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof; (b) filed with the Court by **no later than January 13, 2023, at 4:00 p.m. (prevailing Eastern Time)**; and (c) served on the Objection Notice Parties.

28. The Debtors, any Stalking Horse Bidder or, as applicable, the Successful Bidder, and the objecting Counterparty shall first confer in good faith to attempt to resolve the Cure Objection without Court intervention. If the parties are unable to consensually resolve the Cure Objection prior to the commencement of the Sale Hearing, the Court will make all necessary determinations relating to the applicable Cure Costs and Cure Objection at a hearing scheduled pursuant to this Order. If a Cure Objection is resolved in a manner that is not in the best interests of the Debtors and their estates, whether or not such resolution occurs prior to or after the closing of the sale of the Assets, the Debtors, any Stalking Horse Bidder or, as applicable, the Successful Bidder, may determine that any Contract subject to such resolved Cure Objection no longer will be assumed and assigned in connection with the sale of the Assets (subject to the terms of the applicable purchase agreement); *provided* that in the case of an unexpired lease of non-residential real property, such determination shall be prior to the expiration of the applicable deadline to assume or reject unexpired leases under section 365(d)(4) of the Bankruptcy Code. All other objections to the Debtors' proposed assumption and assignment of the Debtors' right, title, and interest in, to, and under a Contract shall be heard at the Sale Hearing.

29. If a timely Cure Objection cannot otherwise be resolved by the parties, the Cure Objection may be heard at the Sale Hearing or may be adjourned to a subsequent hearing, with notice to the party having filed the Cure Objection (each such Cure Objection, an “Adjourned Cure Objection”). An Adjourned Cure Objection may be resolved after the closing date of the sale of the Assets. Upon resolution of an Adjourned Cure Objection and the payment of the applicable cure amount, if any, the Contract that was the subject of such Adjourned Cure Objection shall, at the election of the Successful Bidder, and subject to the Debtors’ rights set forth in paragraph 27 of this Order, be deemed assumed and assigned to the Successful Bidder as of the closing date of the sale of the Assets.

30. If a Counterparty fails to file with the Court and serve on the Objection Notice Parties a timely Cure Objection, the Counterparty forever shall be barred from asserting any objection with regard to the cost to cure any defaults under the applicable Contract. The Cure Costs set forth in the applicable Assumption and Assignment Notice shall be controlling and will be the only amount necessary to cure outstanding defaults under the Contract and satisfy the requirements of section 365(b) of the Bankruptcy Code, and the Counterparty to the Contract shall be bound by and deemed to have consented to the Cure Costs.

31. In accordance with the Bidding Procedures, Qualified Bids shall be accompanied by Adequate Assurance Information (as defined in the Bidding Procedures). The Debtors shall promptly provide, upon a Counterparty’s request to the Debtors’ counsel, the Adequate Assurance Information to any Counterparty (and counsel, if known) to any Contract that may be assumed by the applicable Qualified Bidder.

32. Any objection to the proposed assumption and assignment of a Contract, the subject of which objection is a Successful Bidder’s (or any other relevant assignee’s) proposed form of

adequate assurance of future performance with respect to the Contract (each such objection, an “Adequate Assurance Objection”), shall be (a) in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof; (b) filed with the Court by **no later January 25, 2023, at 4:00 p.m. (prevailing Eastern Time)**; and (c) served on the Objection Notice Parties.

33. The Debtors, the Successful Bidder, and a Counterparty that has filed an Adequate Assurance Objection shall first confer in good faith to attempt to resolve the Adequate Assurance Objection without Court intervention. If the parties are unable to consensually resolve the Adequate Assurance Objection prior to the commencement of the Sale Hearing, the Adequate Assurance Objection and all issues of adequate assurance of future performance of the Successful Bidder (or any other relevant assignee) shall be determined by the Court at the Sale Hearing or may be adjourned to a subsequent hearing, with notice to the party having filed the Adequate Assurance Objection.

34. If a Counterparty fails to file with the Court and serve on the Objection Notice Parties a timely Adequate Assurance Objection, the Counterparty shall be forever barred from asserting any objection to the assumption and/or assignment of a Contract with regard to adequate assurance of future performance. The Successful Bidder (or any other relevant assignee) shall be deemed to have provided adequate assurance of future performance with respect to a Contract in accordance with Bankruptcy Code sections 365(b)(1)(C), 365(f)(2)(B), and, if applicable, Bankruptcy Code section 365(b)(3), notwithstanding anything to the contrary in the Contract or any other document.

35. As soon as reasonably practicable after the closing of the sale of the Assets, the Debtors shall file with the Court, serve on the applicable Counterparties, and cause to be published

on the Claims' Agent Website, a notice containing the list of Contracts that the Debtors assumed and assigned pursuant to any asset purchase agreement with a Successful Bidder.

36. The inclusion of a Contract or Cure Costs with respect to any Contract on any Assumption and Assignment Notice, shall not constitute or be deemed a determination or admission by the Debtors, any Stalking Horse Bidder, any Successful Bidder, or any other party that such Contract is an executory contract or an unexpired lease within the meaning of the Bankruptcy Code, and shall not be a guarantee that such Contract ultimately will be assumed or assigned. The Debtors reserve all of their rights, claims, and causes of action with respect to each Contract listed on any Assumption and Assignment Notice.

F. Other Related Relief

37. Notwithstanding anything herein or in the Bidding Procedures to the contrary, the Debtors shall not be permitted to modify the consultation rights of the Consultation Parties in the Bidding Procedures absent further order of this Court or the consent of any affected Consultation Parties.

38. Debtor Taronis Fuels, Inc. and Cigna Health and Life Insurance Company ("Cigna") are parties to an Administrative Services Contract (Level Funding) and a Stop Loss Policy, Account Number 00636145, effective 5/1/2022 (jointly, the "Cigna Employee Benefits Agreements") that facilitate the Debtors' self-insured employee healthcare benefits. Notwithstanding anything in this Order to the contrary, unless Cigna and the Debtors agree otherwise, the Debtors shall provide to Cigna, through its counsel of record, no later than two (2) business days prior to the Sale Hearing, written notice of Debtors' irrevocable (subject to closing of the proposed sale transaction) decision as to whether or not they propose to assume and assign

the Cigna Employee Benefits Agreements to the Successful Bidder as part of the proposed sale transaction.

39. All persons and entities that participate in the Auction or bid for the Assets during the Sale Process shall be deemed to have knowingly and voluntarily (i) consented to the core jurisdiction of the Court to enter any order related to the Bidding Procedures, the Auction, or any other relief requested in the Motion or granted in this Order; (ii) waived any right to a jury trial in connection with any disputes relating to the Bidding Procedures, the Auction, or any other relief requested in the Motion or granted in this Order; and (iii) consented to the entry of a final order or judgment in connection with any disputes relating to the Bidding Procedures, the Auction, or any other relief requested in the Motion or granted in this Order, if it is determined that the Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the relevant parties.

40. Nothing in this Order, or any of the Exhibits hereto, shall (i) prevent the Debtors from, in the exercise of their fiduciary duties, pursuing or otherwise consummating an alternative transaction or (ii) obligate the Debtors to pursue or consummate any transaction with any Qualified Bidder.

41. 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 to the contrary, the terms and provisions 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.

42. The Debtors are authorized to take all steps necessary or appropriate to implement the relief granted in this Order.

43. This Bidding Procedures Order shall be binding on and inure to the benefit of the Debtors, including any Chapter 7 or Chapter 11 trustee or other fiduciary appointed for the estates of the Debtors.

44. This Bidding Procedures Order shall constitute the findings of fact and conclusions of law and shall take immediate effect upon execution hereof.

45. To the extent any of the deadlines set forth in this Bidding Procedures Order do not comply with the Local Rules, such Local Rules are waived and the terms of this Bidding Procedures Order shall govern.

46. This Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

Dated: December 14th, 2022
Wilmington, Delaware


BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Bidding Procedures

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

In re:

TARONIS FUELS, INC., *et al.*,¹

Debtors.

)
) Chapter 11
)

) Case No. 22-11121 (BLS)
)

) (Jointly Administered)
)
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BIDDING PROCEDURES

The above-captioned debtors and debtors in possession (the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”) will use the procedures set forth herein (the “Bidding Procedures”) in connection with a sale or disposition of all, substantially all, or a portion of the Debtors’ assets related to their Texas retail business (the “Assets”).

On November 18, 2022, the Debtors filed with the United States Bankruptcy Court for the District of Delaware (the “Court”) the *Debtors’ Motion for Entry of Orders (I)(A) Approving Bidding Procedures for the Sale of the Debtors’ Texas Assets, (B) Authorizing the Debtors to Designate a Stalking Horse Bidder and to Seek Approval of Bid Protections, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures, (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof, and (F) Granting Related Relief; and (II)(A) Approving the Sale of the Debtors’ Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases, and (C) Granting Related Relief* [Docket No. __] (the “Motion”). By the Motion, the Debtors sought, among other things, entry of an order approving Bidding Procedures for soliciting bids for an auction (the “Auction”) of, and consummating a sale of, the Assets, as further described herein.

On [____], 2022, the Court entered an *Order (I) Approving Bidding Procedures for the Sale of the Debtors’ Texas Assets, (II) Authorizing the Debtors to Designate a Stalking Horse Bidder and to Seek Approval of Bid Protections, (III) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (IV) Approving Assumption and Assignment Procedures, (V) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof, and (VI) Granting Related Relief* [Docket No. __] (the “Bidding Procedures Order”).²

¹ The Debtors in these chapter 11 cases, along with the last four digits (if any) of each Debtor’s federal tax identification number include: Taronis Fuels, Inc. (7454), MagneGas Welding Supply – West, LLC (6662), Taronis Sub III LLC (5826), MagneGas Welding Supply – South, LLC (8686), MagneGas Real Estate Holdings, LLC (7412), MagneGas IP, LLC (0988), MagneGas Production, LLC (7727), Taronis Sub I LLC (4205), Taronis-TAS, LLC (2356), Taronis-TAH, LLC (3542), and Taronis Sub II LLC (9673). The location of the Debtors’ service address in these chapter 11 cases is 24980 N. 83rd Avenue, Suite 100, Peoria, Arizona 85383.

² Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms later in these Bidding Procedures or in the Motion and/or the Bidding Procedures Order, as applicable.

I. ASSETS FOR SALE

The Debtors intend to sell all, substantially all, or a portion of the Assets.

A Prospective Bidder (as defined in Section III below) may bid on the Assets, subject to the conditions set forth herein.

The ability to undertake and consummate a sale of the Texas Assets shall be subject to competitive bidding, as set forth herein, and approval by the Court. In addition to any Stalking Horse Bid (as defined in the Motion), and as set forth herein, the Debtors will consider bids for the Assets from other parties.

Any party interested in submitting a bid for any of the Debtors' Assets should contact the Debtors' investment banker:

Capstone Partners

176 Federal Street, 3rd Floor
Boston, MA 02110

Attn: Jamie Lisac, Justin O'Malley, and Jacob Lee
jlisac@capstonepartners.com | 312-925-6363
jomalley@capstonepartners.com | 214-207-4973
jlee@capstonepartners.com | 585-472-2553

II. KEY DATES AND DEADLINES

<u>Deadline</u>	<u>Action</u>
Five business days after the entry of the Bidding Procedures Order	Deadline for Debtors to file and serve Sale Notice
Five business days after the entry of the Bidding Procedures Order	Deadline for Debtors to file and serve Assumption and Assignment Notice
January 6, 2023, at 4:00 p.m. (prevailing Eastern Time)	Deadline for Debtors to designate a Stalking Horse Bidder, if any, and enter into a Stalking Horse Agreement
January 13, 2023, at 4:00 p.m. (prevailing Eastern Time)	Sale Objection Deadline and Cure Objection Deadline
January 17, 2023, at 4:00 p.m. (prevailing Eastern Time)	Bid Deadline
January 20, 2023, at 10:00 a.m. (prevailing Eastern Time)	Auction
12 hours after the conclusion of the Auction	Deadline for Debtors to file and serve Notice of Auction Results
January 25, 2023, at 4:00 p.m. (prevailing Eastern Time)	Supplemental Sale Objection Deadline and Adequate Assurance Objection Deadline
January 27, 2023, at 4:00 p.m. (prevailing Eastern Time)	Debtors' Deadline to Reply to Sale Objections and Supplemental Sale Objections
January 30, 2023, at 10:00 a.m. (prevailing Eastern Time)	Sale Hearing
February 3, 2023	Deadline to consummate approved Sale

III. DUE DILIGENCE

Each person or entity that desires to participate in the Auction process (each, a “Prospective Bidder”) must first deliver to the Debtors’ Investment Banker (contact information in Section I above and in this Section III) the following:

- documentation identifying the Prospective Bidder, its principals, and the representatives thereof who are authorized to appear and act on its behalf for all purposes regarding the contemplated Sale;
- an executed confidentiality agreement, in form and substance satisfactory to the Debtors;
- a statement and other factual support demonstrating to the Debtors and their advisors, in their sole judgment, that the Prospective Bidder has a *bona fide* interest in purchasing some or all of the Assets; and
- preliminary proof by the Prospective Bidder of its financial capacity to close a proposed sale transaction, which may include current unaudited or verified financial statements of, or verified financial commitments obtained by, the Prospective Bidder (or, if the Prospective Bidder is an entity formed for the purpose of acquiring the Assets to be sold, the party that will bear liability for a breach by the Prospective Bidder of an asset purchase agreement or other agreement entered into in respect of the sale transaction), the adequacy of which the Debtors and their advisors will determine in their sole judgment.

Without the need for any further action, any Stalking Horse Bidder is a Prospective Bidder and a Qualified Bidder (as defined in Section VI.C below).

Upon execution of a valid confidentiality agreement and subject to the other limitations and guidelines set forth herein, the Debtors may grant a Prospective Bidder that the Debtors identify as reasonably likely to become a Qualified Bidder with access to information allowing such Prospective Bidder to conduct due diligence with respect to the potential acquisition of some or all of the Assets. If any Prospective Bidder is (or is affiliated with) a competitor of the Debtors, the Debtors will not be required to disclose to such Prospective Bidder any trade secrets or proprietary information (as determined by the Debtors in their sole discretion), unless the confidentiality agreement executed by such Prospective Bidder is satisfactory to the Debtors and contains provisions sufficient to ensure that such Prospective Bidder will not use such trade secrets or proprietary information for an improper purpose or to gain an unfair competitive advantage.

If the Debtors determine, after consulting with the Consultation Parties, that a Prospective Bidder is unlikely to qualify as a Qualified Bidder or fails to become a Qualified Bidder, then such Prospective Bidder shall have no further right to access due diligence or any other non-public information. The Prospective Bidder shall return or destroy any non-public information the Debtors or their advisors provided to the Prospective Bidder in accordance with the terms of the confidentiality agreement executed by the Debtors and the Prospective Bidder.

The Debtors will try to accommodate all reasonable requests from Prospective Bidders for additional information and due diligence access. All due diligence requests shall be directed to the Debtors' investment banker:

Capstone Partners

176 Federal Street, 3rd Floor

Boston, MA 02110

Attn: Jamie Lisac, Justin O'Malley, and Jacob Lee

jlisac@capstonepartners.com | 312-925-6363

jomalley@capstonepartners.com | 214-207-4973

jlee@capstonepartners.com | 585-472-2553

IV. STALKING HORSE AGREEMENT

The procedures set forth in this section (the "Stalking Horse Designation Procedures") shall apply to the designation of any Stalking Horse Bidder, Stalking Horse Agreement and Bid Protections.

Subject to the provisions set forth herein, the Bidding Procedures Order, and in consultation with the Consultation Parties, Debtors may designate a Stalking Horse Bidder that submits a Qualified Bid (as defined below) acceptable to the Debtors and enter into a Stalking Horse Agreement, subject to higher or otherwise better offers at the Auction, **no later than January 6, 2023, at 4:00 p.m. (prevailing Eastern Time)**, which deadline may be extended by the Debtors (after consultation with the Consultation Parties).

The Debtors, in consultation with the Consultation Parties, may determine to select a Stalking Horse Bidder and seek approval of Bid Protections to the Stalking Horse Bidder of a break-up fees and reimbursement of expenses, if any, for documented, actual and necessary expenses incurred by any Stalking Horse Bidder in connection with the submitting its Qualified Bid (collectively, the "Bid Protections").

With such consent, the Debtors shall be authorized to file a motion (the "Stalking Horse Motion") seeking authority to allow Bid Protections. If the Debtors file the Stalking Horse Motion on or before January 6, 2023, the Court shall conduct a hearing (the "Stalking Horse Hearing") to consider the relief requested in the Stalking Horse Motion on **January 12, 2023 at 10:00 a.m. (prevailing Eastern Time)**. All parties-in-interest shall have the right at the Stalking Horse Hearing to object to the Debtors' entry into a Stalking Horse Agreement on any grounds, including to object to the Bid Protections and the form of proposed order (the "Stalking Horse Order"). The Debtors shall serve the Stalking Horse Motion on the Sale Notice Parties and any Prospective Bidders, and, if the Court enters a Stalking Horse Order, the Debtors shall serve the Stalking Horse Order on the Sale Notice Parties and any Prospective Bidders.

Any Stalking Horse Agreement executed by the Debtors and the transactions contemplated thereby will be deemed a Qualified Bid (as defined below) for all purposes, and any Stalking Horse Bidder party to a Stalking Horse Agreement executed by the Debtors will be deemed to be a Qualified Bidder (as defined below).

Other than as provided by order of the Court, no party submitting a Bid shall be entitled to a break-up fee or expense reimbursement except for the Bid Protections for any Stalking Horse Bidder. Any substantial contribution claims by any bidder are deemed waived.

V. BID DEADLINE

Any Prospective Bidder that intends to participate in the Auction must submit in writing to the Bid Notice Parties a Qualified Bid (as defined in Section VI.C below) on or before **January 17, 2023, at 4:00 p.m. (prevailing Eastern Time)** (the “Bid Deadline”). The Debtors shall promptly provide a copy of each bid to each of the Consultation Parties, but in no event later than the day after the date of the Bid Deadline.

VI. BID REQUIREMENTS

A. Qualified Bid Requirements

To qualify as a “Qualified Bid,” a bid must be in writing and satisfy the following requirements:

1. Identification of Bidder. A Qualified Bid must fully disclose the following: (a) the legal identity of each person or entity bidding for the Assets and/or otherwise sponsoring, financing (including through the issuance of debt in connection with such bid), or participating in (including through license or similar arrangement with respect to the Assets to be acquired in connection with such bid) the Auction in connection with such bid and the complete terms of any such participation; and (b) any past or present connections or agreements with the Debtors, any Stalking Horse Bidder, any other known Prospective Bidder or Qualified Bidder, the Lender, or any officer or director of any of the foregoing (including any current or former officer or director of the Debtors).
2. Purchased Assets. A Qualified Bid must identify the following:
 - a. the Assets to be purchased, including any executory contracts and unexpired leases (collectively, the “Contracts”) that, as of the submission of such bid, the Prospective Bidder proposes to be assumed and assigned by the Debtors in connection with the proposed sale; and
 - b. the liabilities, if any, to be assumed, including any debt to be assumed.
3. Form of Consideration.
 - a. Credit Bidding. The Lender may credit bid all or any portion of the outstanding Prepetition Obligations or the DIP Obligations (as defined in the DIP Order) (the “Credit Bid”), subject to the provisions of the DIP Order. Any Credit Bid shall be a Qualified Bid without the need to provide any Deposit, and Lender shall be a Qualified Bidder in connection with such Credit Bid. No other party may credit bid.

- b. Consideration. Each other bid must include a statement confirming that the bid is based on an all-cash offer, or if a bid includes forms of consideration other than cash, the bidder shall include an analysis or description of the value of such non-cash components, including any supporting documentation, to assist the Debtors and the Consultation Parties in evaluating the bid.
4. Minimum Bid for Assets. If a Stalking Horse Bidder has been designated, each bid that is not a Stalking Horse Bid must have a value to the Debtors, as determined by the Debtors, in consultation with the Consultation Parties, that is greater than or equal to the sum of the value offered under the Stalking Horse Agreement, plus (a) the amount of the Bid Protections and (b) \$250,000 (collectively, the “Minimum Bid Amount”).

If the value of a bid relative to any Stalking Horse Bid includes additional non-cash components (such as fewer contingencies than are in such Stalking Horse Agreement), the bidder should include an analysis or description of the value of any such additional non-cash components, including any supporting documentation, to assist the Debtors and the Consultation Parties in better evaluating the competing bid.

If a Stalking Horse Bidder is not designated pursuant to the Stalking Horse Designation Procedures, the Debtors, in consultation with the Consultation Parties, may set a minimum bid requirement, which shall be considered the Minimum Bid Amount for all purposes hereunder. In such case, the Debtors will file a notice on the docket identifying the Minimum Bid Amount **no later than January 12, 2023 at 4:00 p.m.** and shall serve such notice on any known potential bidder.

5. Proposed Asset Purchase Agreement. A Qualified Bid must constitute an irrevocable offer and be in the form of an asset purchase agreement reflecting the terms and conditions of the bid (each, a “Proposed Asset Purchase Agreement”). A Proposed Asset Purchase Agreement shall be (a) duly authorized and executed; (b) based on, and marked against, the form asset purchase agreement to be filed with the Court no later than December 12, 2022 (the “Form APA”) or, if a Stalking Horse Bidder has been designated, the Stalking Horse Agreement, to reflect the proposed sale transaction and to show any other proposed modifications to the Form APA or Stalking Horse Agreement, as applicable; (c) specify the proposed purchase price for the Assets in U.S. dollars; (d) include all exhibits and schedules contemplated thereby (other than exhibits and schedules that, by their nature, must be prepared by the Debtors); and (e) identify any Contracts that, as of the submission of such bid, the Prospective Bidder proposes to be assumed and assigned by the Debtors in connection with the proposed sale transaction.

6. Proposed Sale Order. A Qualified Bid must include a proposed sale order (each, a “Proposed Sale Order”), and be marked against the Proposed Sale Order, which the Debtors will file with the Court prior to the Bid Deadline.
7. Financial Information. A Qualified Bid must include the following:
 - a. a statement that the Prospective Bidder is financially capable of consummating the sale transaction contemplated by the Prospective Bidder’s Proposed Asset Purchase Agreement and Proposed Sale Order;
 - b. sufficient evidence, as determined by the Debtors in their sole discretion, to determine that the Prospective Bidder has, or will obtain, the financial wherewithal to consummate the sale transaction contemplated by the Prospective Bidder’s Proposed Asset Purchase Agreement and Proposed Sale Order; and
 - c. Adequate Assurance Information (as defined in Section VI.A.9 below) with respect to any Contracts included or that may be included in the Prospective Bidder’s bid, including the identity of any known proposed assignee of the applicable Contracts (if different from the Prospective Bidder), including contact information for such proposed assignee;
8. Good Faith Deposit. Each Qualified Bid must be accompanied by a good faith deposit (each, a “Good Faith Deposit”) in the form of cash in an amount equal to ten percent (10%) of the proposed purchase price for the Assets. The Good Faith Deposit shall be deposited **no later than January 17, 2023 at 3:00 pm (prevailing Eastern Time)** with an escrow agent selected by the Debtors (the “Escrow Agent”) and held in escrow until 10 business days after the conclusion of the Auction, except for the Good Faith Deposit of any bidder who is selected at the Auction as a Successful Bidder or as a Backup Bidder, and thereafter returned to the respective Qualified Bidders in accordance with Section VII.D of these Bidding Procedures.
9. Adequate Assurance. A Qualified Bid must include evidence of the Prospective Bidder’s (or any other relevant assignee’s) ability to comply with section 365 of the Bankruptcy Code (to the extent applicable), including providing adequate assurance of such Prospective Bidder’s (or any other relevant assignee’s) ability to perform future obligations arising under any Contracts included in its bid. The Debtors may require the following information in connection with demonstrating adequate assurance of future performance: (a) information evidencing the Prospective Bidder’s (or any other relevant assignee’s) financial wherewithal and willingness to perform under any Contracts included in the bid, which information may include (i) a corporate organizational chart or similar disclosure identifying corporate ownership and control, (ii) financial

statements, (iii) tax returns, and (iv) annual reports; and (b) the Prospective Bidder's (or any other relevant assignee's) proposed use of any leased premises or other property included in the bid (the information described in clauses (a) and (b) of this Section VI.A.9, the "Adequate Assurance Information").

All Adequate Assurance Information must be in a form that will permit its immediate dissemination to Contract counterparties ("Counterparties").

10. Representations and Warranties (As-Is, Where-Is). Each Qualified Bid must include a written acknowledgement and representation that (a) the Prospective Bidder has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its Qualified Bid, (b) the Prospective Bidder has relied solely upon its own or its advisors' independent review, investigation, and/or inspection of any documents and/or the Assets in making its Qualified Bid, (c) the Prospective Bidder 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, except as expressly stated in the Prospective Bidder's Proposed Asset Purchase Agreement; and (d) the Assets will be conveyed "as is, where is, with all faults," with limited representations and warranties, and no indemnification or guarantees by the Debtors.
11. Authorization. A Qualified Bid must (a) include evidence of authorization and approval from the Prospective Bidder's board of directors (or comparable governing body) with respect to the submission, execution, and delivery of any bid for the Assets, participation in the Auction, and closing of the sale transaction contemplated by the Prospective Bidder's Proposed Asset Purchase Agreement and Proposed Sale Order; or, (b) if the Prospective Bidder is an entity formed for the purpose of effecting the proposed sale transaction, a Qualified Bid must provide written evidence acceptable to the Debtors of authorization and the approval by the equity holder(s) of such Prospective Bidder.
12. Other Requirements. A Qualified Bid must:
 - a. state that the Prospective Bidder agrees to serve as a backup bidder (a "Backup Bidder") if such bidder's Qualified Bid is selected at the Auction as the next highest or next best bid after the Successful Bid (as defined in Section VII.C.1 below) for the Assets (each such bid, a "Backup Bid");
 - b. state that the bid represents a binding, good-faith, and *bona fide* offer to purchase the Assets and is not subject to or conditioned on any further due diligence, and is irrevocable (i) until the selection of the

Successful Bid in accordance with these Bidding Procedures; or (ii) if the bid is selected as a Successful Bid or as a Backup Bid, until the Backup Bid Expiration Date (as defined in Section VII.C.2 below);

- c. for any bidder other than the Stalking Horse Bidder, state and acknowledge that the Prospective Bidder shall not be entitled to any bidding protection or payment in connection with the submission of a bid for the Assets or otherwise participating in the Sale Process;
- d. state that the Prospective Bidder is committed to closing the sale transaction contemplated in its bid as soon as practicable (and in no event later than February 3, 2023);
- e. expressly waive any claim or right to assert any substantial contribution administrative expense claim under section 503(b) of the Bankruptcy Code in connection with bidding for any of the Assets and/or otherwise participating in the Auction or the Sale Process;
- f. not contain any financing contingencies of any kind;
- g. state whether the Prospective Bidder intends to offer future employment to any of the Debtors' employees and, if so, to whom;
- h. certify that the Prospective Bidder did not collude with any other bidders and is not otherwise a partnership, joint venture, or other entity in which more than one bidder (or any affiliates of a bidder) has a direct or indirect interest, unless consented to in writing by the Debtors;
- i. include a covenant to comply with the terms of these Bidding Procedures and the Bidding Procedures Order; and
- k. contain such other information as may be reasonably requested by the Debtors.

B. Bid Review Process

The Debtors will evaluate bids and, based upon their evaluation of the content of each bid, the Debtors may, as they deem appropriate in their reasonable business judgment and in a manner consistent with their fiduciary duties and applicable law, engage in negotiations with any Prospective Bidder for the purposes of (i) curing any deficiencies in a bid that prevents them from constituting a Qualified Bid, (ii) improving the terms of the Prospective Bidder's bid, or (iii) otherwise promoting a more competitive bidding and Auction process with the ultimate goal of maximizing the value of the Assets.

In evaluating a bid, the Debtors may take into consideration any and all factors that the Debtors deem reasonably pertinent, including (i) the amount of the proposed purchase price and proposed form of consideration; (ii) any Assets included in, or excluded from, the bid, including any Contracts to be assumed and assigned; (iii) the value to be provided to the Debtors under the bid, including the net economic effect on the Debtors' estates (taking into account any Stalking Horse Bidder's rights with respect to any Bid Protections); (iv) any benefits to the Debtors' estates from any assumption or waiver of liabilities contemplated by the bid; (v) the structure of the proposed sale transaction and any attendant execution risk, including conditions to, timing of, and certainty of closing; termination provisions; availability of financing and general financial wherewithal to meet all commitments; and any required governmental approvals; and (vi) the impact of the proposed sale transaction on the Debtors' employees, trade creditors, landlords, and any other parties-in-interest.

The Debtors will evaluate timely bids and will (i) after consultation with the Consultation Parties, determine which bids qualify as Qualified Bids and which Qualified Bid has been selected as the Baseline Bid and (ii) notify bidders whether they are Qualified Bidders as soon as commercially reasonable following the Bid Deadline. A Qualified Bidder shall not (without the consent of the Debtors), modify, amend, or withdraw its Qualified Bid, unless for the purposes of increasing the purchase price or otherwise improving the terms of the Qualified Bid, as determined by the Debtors in their reasonable business judgment.

C. Qualified Bidders

A bid received for the Assets that the Debtors determine satisfies the requirements set forth in Sections V and VI.A above will qualify as a "Qualified Bid," and any bidder that submits a Qualified Bid will qualify as a "Qualified Bidder."

The Debtors may, in their reasonable business judgment, in a manner consistent with their fiduciary duties and applicable law, amend or waive the conditions precedent to qualifying as a Qualified Bidder.

D. Bid Protections

Other than any Bid Protections approved by the Court in connection with a Stalking Horse Bid, if any, no bidder or any other party shall be entitled to any termination or "break-up" fee, expense reimbursement, or any other bidding protection in connection with the submission of a bid for the Assets or otherwise participating in the Auction or the Sale Process.

VII. THE AUCTION

If the Debtors receive more than one Qualified Bid (including a combination of bids that, when considered together, constitute a Qualified Bid) for the Assets, the Debtors will conduct an Auction for the Assets. If any Stalking Horse Bid is the only Qualified Bid received in respect of the Assets, the Debtors will not conduct an Auction for the Assets and will seek approval of such Stalking Horse Bid at the Sale Hearing. If the Debtors determine not to hold an Auction, the Debtors will file with the Court, serve on the Sale Notice Parties, and cause to be published on the Claims' Agent Website, a notice containing the following information, as applicable: (i) a statement that the Auction for the Assets has been canceled; (ii) the identity of the Successful Bidder; (iii) a copy of the Successful Bid or a summary of the material terms of such bid, including

any assumption and assignment of Contracts contemplated thereby, or provide instructions for accessing the Successful Bid free of charge from the Claims' Agent Website; and (iv) the date, time, and location of the Sale Hearing.

The Auction, if required, will be conducted on **January 20, 2023, at 10:00 a.m. (prevailing Eastern Time)**, either (i) at the offices of Potter Anderson & Corroon LLP, 1313 N. Market Street, 6th Floor, Wilmington, Delaware 19801, or (ii) virtually or at such other date, time or location as designated by the Debtors, after consulting with the Consultation Parties. If the Debtors conduct the Auction virtually, the Debtors will provide instructions setting forth how to attend the Auction to the participants and other attendees via electronic mail. The Debtors will provide notice (via electronic mail or otherwise) of any change in the date, time or location of the Auction to Qualified Bidders and the Consultation Parties, and will cause publication of such change to occur on the Claims' Agent Website.

If held, the Auction proceedings will be transcribed and/or video recorded.

A. Participants and Attendees

Only Qualified Bidders are eligible to participate in the Auction, subject to other limitations as may be reasonably imposed by the Debtors in accordance with these Bidding Procedures. Qualified Bidders participating in the Auction must attend the Auction personally or through a duly authorized representative. Subject to the Auction procedures set forth in Section VII.B, all Qualified Bidders and the Consultation Parties are permitted to attend the Auction; *provided* that the Debtors may, in their sole discretion, establish a reasonable limit on the number of representatives and/or professional advisors that may appear on behalf of a Qualified Bidder or otherwise attend the Auction. Other creditors, equity holders or representatives of the United States Trustee who wish to attend the auction must inform Debtors' counsel of their intent to attend the Auction no later than two business days prior to the Auction.

Each Qualified Bidder participating in the Auction will be required to confirm in writing and on the record at the Auction that (i) it has not engaged in any collusion with respect to the Auction or the submission of any bid for any of the Assets and (ii) its Qualified Bid that gained the Qualified Bidder admission to participate in the Auction and each Qualified Bid submitted by the Qualified Bidder at the Auction is a binding, good-faith, and *bona fide* offer to purchase the Assets identified in such bids.

All Prospective Bidders and Qualified Bidders (including any Stalking Horse Bidder, Successful Bidder, and Backup Bidder) shall be deemed to have (i) agreed that all proceedings in the Court related to these Bidding Procedures, the Auction, any other relief requested in the Motion or granted pursuant to the Bidding Procedures Order, or the construction or enforcement of any agreement or any other document directly relating to the sale transaction are core proceedings as described in 28 U.S.C. § 157; (ii) waived any right to a jury trial in connection with any disputes relating to these Bidding Procedures, the Auction, or the construction or enforcement of any agreement or any other document directly relating to the sale transaction; and (iii) consented to the entry of a final order or judgment by the Court in connection with any disputes relating to these Bidding Procedures, the Auction, or the construction or enforcement of any agreement or any other document relating directly to the sale transaction, if it is determined that the Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the relevant parties.

B. Auction Procedures

The Auction shall be governed by the following procedures, subject to the Debtors' right to modify such procedures in their reasonable business judgment (in a manner consistent with their fiduciary duties and in consultation with the Consultation Parties):

1. Baseline Bids. Prior to the commencement of the Auction, the Debtors will determine, in their reasonable business judgment (and in consultation with the Consultation Parties) the highest and/or best Qualified Bid submitted for the Assets (such Qualified Bid, a "Baseline Bid"). Bidding at the Auction shall commence at the amount of the Baseline Bid. **No later than January 19, 2023, at 5:00 p.m. (prevailing Eastern Time)**, the Debtors will provide all Qualified Bidders with (a) a notice identifying all the Qualified Bidders and which Qualified Bid is the Baseline Bid; and (b) a copy of the Baseline Bid.
2. Minimum Overbid. Bidding shall commence at the Baseline Bid. The first overbid at the Auction shall be in an amount not less than the amount of the Baseline Bid plus \$250,000 (the "Minimum Overbid"). At each round of bidding, Qualified Bidders may submit successive bids higher than the Leading Bid (as defined below) from the prior round. During the Auction, the Debtors may, in their reasonable discretion, announce increases or reductions to Minimum Overbids at any time.

Except as specifically set forth herein, for the purpose of evaluating the value of the consideration provided by any bid subsequent to the Baseline Bid, the Debtors will, at each round of bidding, consider and/or give effect to (a) any Bid Protections payable to any Stalking Horse Bidder under the Stalking Horse Agreement; (b) any additional liabilities to be assumed by a Qualified Bidder under the bid, including whether such liabilities are secured or unsecured; and (c) any additional costs that may be imposed on the Debtors.

3. Leading Bid. After the first round of bidding and between each subsequent round of bidding, the Debtors will announce the bid that they believe to be the highest or otherwise best offer for the Assets (such bid, a "Leading Bid") and describe the material terms thereof. Each round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a subsequent bid with full knowledge of the material terms of the Leading Bid.

The Auction will include open bidding in the presence of all other Qualified Bidders. Each Qualified Bidder shall have the right to be present for all rounds of bidding and to submit additional bids and make modifications to its Proposed Asset Purchase Agreement at the Auction to improve its bid. The Debtors may, in their reasonable business judgment, negotiate with any and all Qualified Bidders participating in the Auction.

The Debtors shall have the right to determine, in their reasonable business judgment after consultation with the Consultation Parties, which bid is the

highest or otherwise best bid with respect to the Assets and, after consultation with the Consultation Parties, reject, at any time, without liability, any bid that the Debtors deem to be inadequate or insufficient, not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, these Bidding Procedures, any order of the Court, or the best interests of the Debtors and their estates.

C. Auction Results

1. Successful Bids. Immediately prior to the conclusion of the Auction, the Debtors will (a) determine, consistent with these Bidding Procedures and in consultation with the Consultation Parties, which Qualified Bid constitutes the highest or otherwise best bid (such bid, a “Successful Bid”) and (b) notify all Qualified Bidders at the Auction of the identity of the bidder that submitted the Successful Bid (such bidder, a “Successful Bidder”) and the amount of the purchase price and other material terms of the Successful Bid.
2. Backup Bids. Immediately prior to the conclusion of the Auction, the Debtors will (a) determine, in a manner consistent with these Bidding Procedures and in consultation with the Consultation Parties, which Qualified Bid, other than any Credit Bid, is the Backup Bid; and (b) notify all Qualified Bidders at the Auction of the identity of the Backup Bidder and the amount of the purchase price and other material terms of the Backup Bid.

Except as may otherwise be provided in any Stalking Horse Agreement, a Backup Bid will remain binding on the applicable Backup Bidder until the earlier of (a) the first business day after the closing of the sale transaction with the Successful Bidder for the Assets and (b) 30 days after the Sale Hearing (such date, the “Backup Bid Expiration Date”). If the sale transaction with the Successful Bidder is terminated prior to the Backup Bid Expiration Date, the Backup Bidder shall be deemed the new Successful Bidder for the Assets and shall be obligated to consummate the Backup Bid as if it were the Successful Bid at the Auction; *provided* that the Debtors may, in their reasonable business judgment (after providing notice to the Sale Notice Parties and after consultation with the Consultation Parties), elect not to pursue the sale transaction contemplated by the Backup Bid.

3. Notice of Auction Results. Within one business day after the conclusion of the Auction, the Debtors will file with the Court, serve on the Sale Notice Parties, and cause to be published on the Claims’ Agent Website, a notice setting forth the results of the Auction (the “Notice of Auction Results”), which will (a) identify each Successful Bidder and the Backup Bidder; (b) include a copy of each Successful Bid and the Backup Bid or a summary of the material terms of such bids, or provide instructions for accessing each Successful Bid and the Backup Bid free of charge from the Claims’ Agent Website; and (c) set forth the Supplemental Sale Objection Deadline (as defined in Section X.D below), the date, time, and location of the Sale

Hearing and any other relevant dates or other information necessary to reasonably apprise the Sale Notice Parties of the outcome of the Auction.

D. Disposition of Good Faith Deposit

1. Prospective Bidders. Within five business days after the Debtors make final determinations as to which Prospective Bidders qualify as Qualified Bidders, the Escrow Agent shall return to each Prospective Bidder that did not qualify as a Qualified Bidder, as confirmed by the Debtors, such Prospective Bidder's Good Faith Deposit. Upon the authorized return of a Prospective Bidder's Good Faith Deposit in accordance with this Section VII.D, the bid of such Prospective Bidder shall be deemed terminated and no longer binding against the Prospective Bidder.
2. Qualified Bidders.
 - a. Forfeiture of Good Faith Deposit. The Good Faith Deposit of a Qualified Bidder may be forfeited if the Qualified Bidder attempts to withdraw its Qualified Bid, except as may be permitted by these Bidding Procedures, during the time the Qualified Bid remains binding and irrevocable under these Bidding Procedures. The Debtors and their estates shall be entitled to seek authority from the Court to retain the Qualified Bidder's Good Faith Deposit as partial compensation for the damages caused to the Debtors and their estates as a result of the Qualified Bidder's failure to adhere to the terms of these Bidding Procedures and/or the relevant Qualified Bid. If a Qualified Bidder's Good Faith Deposit is determined to be forfeited by order of the Court, the Escrow Agent shall release such Good Faith Deposit by wire transfer of immediately available funds to an account designated by the Debtors within two business days after the Escrow Agent receives a copy of an order from the Court that the applicable Qualified Bidder has breached or otherwise failed to satisfy its obligations in accordance with these Bidding Procedures and the applicable Qualified Bid and as a result, the Good Faith Deposit of such Qualified Bidder shall be forfeited and turned over to the Debtors.
 - b. Return of Good Faith Deposit. With the exception of the Good Faith Deposits of the Successful Bidder and the Backup Bidder or as otherwise set forth in subparagraph a above, the Escrow Agent shall return to any other Qualified Bidder the Qualified Bidder's Good Faith Deposit, within 10 business days after the conclusion of the Auction for the Assets.
 - c. Backup Bidder. Unless the Backup Bidder becomes the Successful Bidder, the Escrow Agent shall return the Backup Bidder's Good Faith deposit, within 10 business days after the occurrence of the applicable Backup Bid Expiration Date; *provided, however*, if the Backup Bidder becomes the Successful Bidder, its Good Faith Deposit shall be forfeited if it fails to consummate the sale

transaction because of a breach that entitles the Debtors to terminate the applicable asset purchase agreement with such Backup Bidder, and the Debtors and their estates shall be entitled to retain the Backup Bidder's Good Faith Deposit as partial compensation for the damages caused to the Debtors and their estates as a result of such breach. If a Backup Bidder's Good Faith Deposit is deemed forfeited, the Escrow Agent shall release such Good Faith Deposit by wire transfer of immediately available funds to an account designated by the Debtors within two business days after the Escrow Agent receives written notice by an authorized officer of the Debtors stating that the applicable Backup Bidder has breached or otherwise failed to satisfy its obligations in accordance with these Bidding Procedures and the applicable Backup Bidder.

- d. Successful Bidder. At the closing of the sale transaction, the Successful Bidder shall be entitled to a credit against the purchase price in the amount of the Successful Bidder's Good Faith Deposit. The Good Faith Deposit of a Successful Bidder shall be forfeited if the Successful Bidder fails to consummate the sale transaction because of a breach that entitles the Debtors to terminate the applicable asset purchase agreement with such Successful Bidder, and the Debtors and their estates shall be entitled to retain the Successful Bidder's Good Faith Deposit as partial compensation for the damages caused to the Debtors and their estates as a result of such breach. If a Successful Bidder's Good Faith Deposit is deemed forfeited, the Escrow Agent shall release such Good Faith Deposit by wire transfer of immediately available funds to an account designated by the Debtors within two business days after the Escrow Agent receives written notice by an authorized officer of the Debtors stating that the Successful Bidder has breached or otherwise failed to satisfy its obligations in accordance with these Bidding Procedures and the Successful Bid.

VIII. SALE HEARING

The Successful Bid (including any Backup Bid that is subsequently deemed a Successful Bid) will be subject to Court approval. The hearing to approve the sale transaction consummated in accordance with these Bidding Procedures (except in the case of the sale transaction contemplated by a Backup Bid that subsequently is deemed a Successful Bid) shall take place on **January 30, 2023, at 10:00 a.m. (prevailing Eastern Time)** (the "Sale Hearing") before the Honorable Brendan Linehan Shannon, United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, located at 824 N. Market Street, 6th Floor, Courtroom 1 Wilmington, Delaware 19801.

At the Sale Hearing, the Debtors will seek entry of an order (a "Sale Order") approving, among other things, the sale of the Assets to the Successful Bidder.

The Debtors may, in their reasonable business judgment (after consulting with the Consultation Parties and the Successful Bidder), adjourn or reschedule the Sale Hearing with

sufficient notice to the Sale Notice Parties, including by announcing such adjournment or rescheduling at the Auction or in Court on the date of the originally scheduled Sale Hearing.

The Debtors' presentation to the Court for approval of a selected Qualified Bid as a Successful Bid does not constitute the Debtors' acceptance of such bid. The Debtors will have accepted a Successful Bid only when such Successful Bid has been approved by the Court at the Sale Hearing.

IX. RESERVATION OF RIGHTS TO MODIFY BIDDING PROCEDURES

The Debtors reserve the right to, in their reasonable business judgment, after consultation with the Consultation Parties and in a manner consistent with their fiduciary duties and applicable law, (i) modify these Bidding Procedures, including to, among other things, extend or waive deadlines or other terms and conditions set forth herein; adopt new rules and procedures for conducting the bidding and Auction process so long as any such modifications are disclosed to all Prospective Bidders and Qualified Bidders, as applicable; or (ii) otherwise modify these Bidding Procedures to further promote competitive bidding for and maximizing the of value of the Assets, in each case, to the extent not materially inconsistent with these Bidding Procedures or the Bidding Procedures Order.

X. NOTICING

A. Bid Notice Parties

Qualified Bids must be submitted in writing to the following parties (collectively, the "Bid Notice Parties"):

- Counsel for the Debtors: Potter Anderson & Corroon LLP, 1313 North Market Street, 6th Floor, Wilmington, Delaware 19801 (Attn: Jeremy W. Ryan (jryan@potteranderson.com) and L. Katherine Good (kgood@potteranderson.com));
- the Debtors' investment banker: Capstone Partners, 176 Federal Street, 3rd Floor, Boston, Massachusetts 20110 (Attn: Jamie Lisac (jlisac@capstonepartners.com), Justin O'Malley (jomalley@capstonepartners.com); and Jacob Lee (jlee@capstonepartners.com));
- Counsel to the Lender: (i) Hemar, Rousso & Heald, LLP 15910 Ventura Blvd., 12th Floor, Encino, CA 91436 (Attn.: J. Alexandra Rhim (arhim@hrhlaw.com) and Jacqueline James (jjames@hrhlaw.com)), and (ii) Young, Conaway, Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington DE 19801 (Attn: Attn: Allison S. Mielke (amielke@ycst.com)); and
- Counsel for any official committee of unsecured creditors appointed in these Chapter 11 Cases (the "Creditors' Committee").

B. Sale Notice Parties

The "Sale Notice Parties" shall include the following persons and entities:

- the Consultation Parties (as applicable);

- counsel to any Stalking Horse Bidder;
- all persons and entities known by the Debtors to have asserted any lien, claim, interest, or encumbrance in the Assets (for whom identifying information and addresses are available to the Debtor);
- all relevant non-debtor parties (each, a “Counterparty”) to any Contract that may be assumed or rejected in connection with the sale transaction;
- all of the Debtors’ known creditors (for whom identifying information and addresses are available to the Debtors);
- any governmental authority known to have a claim against the Debtors in these Chapter 11 Cases;
- the office of the U.S. Trustee;
- all applicable federal, state, and local taxing authorities, including the Internal Revenue Service;
- the United States Securities and Exchange Commission;
- the United States Attorney’s Office for the District of Delaware;
- United States Attorney General’s Office for the District of Delaware;
- the Office of the Attorney General and the Secretary of State in each state in which the Debtors operate;
- the Antitrust Division of the United States Department of Justice;
- the Federal Trade Commission;
- counsel for any official committee of unsecured creditors appointed in these Chapter 11 Cases (the “Creditors’ Committee”);
- all of the parties entitled to notice pursuant to Bankruptcy Rule 2002; and
- all other parties as directed by the Court.

C. Sale Notice

Within two business days after the entry of the Bidding Procedures Order, the Debtors will file with the Court, serve on the Sale Notice Parties, and cause to be published on the Claims' Agent Website a notice (the "Sale Notice") setting forth (A) a description of the Assets available for sale in accordance with these Bidding Procedures; (B) the date, time, and location of the Auction and Sale Hearing; (C) the Sale Objection Deadline and Supplemental Sale Objection Deadline (each as defined in Section X.D below) and the procedures for filing such objections; and, (D) if applicable, a summary of the material terms of any Stalking Horse Agreement, including the terms and conditions of any Bid Protections to be provided thereunder, as of the date of the Sale Notice.

D. Sale Objections and Supplemental Sale Objections

Except objections to the conduct of the Auction, the Successful Bidder or the Backup Bidder, all objections to a sale of the Assets, including (i) any objection to a sale of the Assets free and clear of all liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code and (ii) entry of any Sale Order (each such objection, a "Sale Objection") shall, by no later than **January 13, 2023, at 4:00 p.m. (prevailing Eastern Time)** (the "Sale Objection Deadline"), be filed with Court and served on the following parties (collectively, the "Objection Notice Parties"):

- Counsel for the Debtors: Potter Anderson & Corroon LLP, 1313 North Market Street, 6th Floor, Wilmington, Delaware 19801 (Attn: L. Katherine Good (kgood@potteranderson.com));
- Counsel to the Lender: (Hemar, Rousso & Heald, LLP 15910 Ventura Blvd., 12th Floor, Encino, CA 91436 (Attn.: J. Alexandra Rhim (arhim@hrhlaw.com) and Jacqueline James(jjames@hrhlaw.com)) and (ii) Young, Conaway, Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington DE 19801 (Attn: Allison S. Mielke (amielke@ycst.com));
- counsel for any Creditors' Committee;
- if applicable, counsel for any Stalking Horse Bidder or relevant Successful Bidder; and
- if applicable, counsel for any relevant Backup Bidder(s).

Following service of the Notice of Auction Results, Sale Notice Parties may object solely with respect to the conduct of the Auction and/or the Successful Bidder or Backup Bidder (each such objection, a "Supplemental Sale Objection") by **January 25, 2023, at 4:00 p.m. (prevailing Eastern Time)** (the "Supplemental Sale Objection Deadline").

E. Notices Regarding Assumption and Assignment of Contracts

The Debtors will provide all notices regarding the proposed assumption and assignment of Contracts in accordance with the Assumption and Assignment Procedures set forth in the Bidding Procedures Order.

XI. CONSULTATION BY THE DEBTORS

Throughout the Sale Process, the Debtors and their advisors will consult with the following parties (collectively, the “Consultation Parties”), as provided in these Bidding Procedures, or as is otherwise necessary or appropriate, as determined in the Debtors’ business judgment: (i) the Lender and (ii) the Creditors’ Committee (if appointed).

The Debtors shall consult the Consultation Parties in good faith regarding the sale process, any diligence and other information requested by the Consultation Parties, and the Debtors will provide to the Consultation Parties reports concerning the sale process, including parties contacted, buyer feedback, copies of all letters of intent, drafts of definitive agreements and updates on proposals. For the avoidance of doubt, the Debtors shall consult with the Consultation Parties on the selection of the Baseline Bid, how the Auction is conducted, any additional Auction procedures, adjourning the Auction, and selecting the Successful Bidder and the Backup Bidder.

Notwithstanding the foregoing, the Debtors will not consult with or provide copies of any bids or other confidential information to any Consultation Party or any insider or affiliate of the Debtors if such party is a Prospective Bidder for the Assets at the applicable time. If a member of an official committee appointed in these Chapter 11 Cases submits a Qualified Bid for the Assets, the applicable committee will maintain its consultation rights as a Consultation Party, *provided* that such committee excludes the bidding committee member from any discussions or deliberations regarding a transaction involving the relevant Assets, and shall not provide any confidential information regarding the Assets or otherwise involving the Sale Process to such bidding committee member. The Lender must determine prior to the start of the Auction if it desire to participate in the Auction as a Qualified Bidder. If the Lender is participating in the Auction as a Qualified Bidder, it shall not be a Consultation Party unless and until it states on the record of the Auction that it is withdrawing from further participation as a Qualified Bidder in the Auction. Upon its withdrawal from the Auction as a Qualified Bidder, the Lender shall be a Consultation Party. Notwithstanding the foregoing, the Lender’s rights to object to the Sale on any grounds, including under section 363(f) are fully preserved.

For the avoidance of doubt, any consultation rights afforded to the Consultation Parties by these Bidding Procedures or the Bidding Procedures Order shall not in any way limit the Debtors’ discretion and shall not include the right to veto any decision made by the Debtors in the exercise of their reasonable business judgment.

Exhibit 2

Sale Notice

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

In re:	)	Chapter 11
TARONIS FUELS, INC., <i>et al.</i> , ¹	)	Case No. 22-11121 (BLS)
Debtors.	)	(Jointly Administered)
	)	Re: Docket No. ____

**NOTICE OF SALE, BIDDING PROCEDURES, AUCTION,
SALE HEARING AND OTHER DEADLINES RELATED THERETO**

PLEASE TAKE NOTICE OF THE FOLLOWING:

On November 18, 2022, the above-captioned debtors and debtors in possession (the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”) filed with the United States Bankruptcy Court for the District of Delaware (the “Court”) a motion [Docket No. ____] (the “Motion”) seeking entry of (a) an order (the “Bidding Procedures Order”) (i) approving bidding procedures (the “Bidding Procedures”)² to be used in connection with the sale (each, a “Sale”) of all, substantially all, or a portion of the Debtors’ assets (the “Assets”); (ii) authorizing the Debtors to designate a Stalking Horse Bidder and provide Bid Protections in accordance with the Stalking Horse Designation Procedures; (iii) scheduling (A) an auction of the Assets (the “Auction”) on and (B) a final hearing to consider approval of the proposed Sale (the “Sale Hearing”); (iv) approving the form and manner of notice of the Bidding Procedures, the Auction and the Sale Hearing; (v) approving procedures for the assumption and assignment of executory contracts and unexpired leases (collectively, the “Contracts”) in connection with the Sale; (vi) approving the form and manner of notice to each relevant non-debtor counterparty to a Contract of the Debtors’ calculation of the amount necessary to cure any defaults under an applicable Contract and certain other information regarding the potential assumption and assignment of Contracts in connection with a Sale; and (vii) granting related relief; and (b) an order (the “Sale Order”) (i) authorizing the sale of the Assets free and clear of all liens, claims, interests and encumbrances, except certain permitted encumbrances as determined by the Debtors and any Successful Bidder (as defined in

¹ The Debtors in these chapter 11 cases, along with the last four digits (if any) of each Debtor’s federal tax identification number include: Taronis Fuels, Inc. (7454), MagneGas Welding Supply – West, LLC (6662), Taronis Sub III LLC (5826), MagneGas Welding Supply – South, LLC (8686), MagneGas Real Estate Holdings, LLC (7412), MagneGas IP, LLC (0988), MagneGas Production, LLC (7727), Taronis Sub I LLC (4205), Taronis-TAS, LLC (2356), Taronis-TAH, LLC (3542), and Taronis Sub II LLC (9673). The location of the Debtors’ service address in these chapter 11 cases is 24980 N. 83rd Avenue, Suite 100, Peoria, Arizona 85383.

² Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Motion or the Bidding Procedures, as applicable. Any summary of the Bidding Procedures or the Bidding Procedures Order (or any provision thereof) contained herein is qualified in its entirety by the actual terms and conditions thereof. To the extent that there is any inconsistency between any summary in this Sale Notice and the terms and conditions of either of the Bidding Procedures or the Bidding Procedures Order, the actual terms and conditions in those documents shall control.

Section VII.C.1 of the Bidding Procedures), with liens to attach to the proceeds of the Sale; (ii) authorizing the assumption and assignment of certain Contracts in connection with approved Sale; and (iii) granting related relief.

On December [____], 2022, the Court entered the Bidding Procedures Order [Docket No. ____].

ASSETS FOR SALE

The Debtors intend to sell all, substantially all, or a portion of their Assets.

A Prospective Bidder (as defined in Section III of the Bidding Procedures) may bid on the Assets, subject to the conditions set forth herein.

The ability to undertake and consummate a sale of the Assets shall be subject to competitive bidding, as set forth herein, and approval by the Court. In addition to any Stalking Horse Bid (as defined in the Motion), and as set forth herein, the Debtors will consider bids for the Assets from other parties.

Any party interested in submitting a bid for any of the Debtors' Assets should contact the Debtors' investment banker:

Capstone Partners
176 Federal Street, 3rd Floor
Boston, MA 02110
Attn: Jamie Lisac, Justin O'Malley, and Jacob Lee
jllisac@capstonepartners.com | 312-925-6363
jomalley@capstonepartners.com | 214-207-4973
jlee@capstonepartners.com | 585-472-2553

KEY DATES AND DEADLINES

A. Bid Deadline

Any Prospective Bidder that intends to participate in the Auction must submit in writing to the Bid Notice Parties a Qualified Bid (as defined in Section VI.A of the Bidding Procedures) **on or before January 17, 2023, at 4:00 p.m. (prevailing Eastern Time)** (the "Bid Deadline").

The Qualified Bid requirements are set forth in Sections VI.A of the Bidding Procedures.

B. Auction

If the Debtors receive more than one Qualified Bid (including a combination of bids that, when considered together, constitute a Qualified Bid) for the Assets, the Debtors will conduct an Auction for the Assets. If any Stalking Horse Bid is the only Qualified Bid received in respect of the Assets subject to such Stalking Horse Bid, the Debtors will not conduct an Auction for such applicable Assets and will seek approval of such Stalking Horse Bid at the Sale Hearing.

The Auction, if required, will be conducted on **January 20, 2023, at 10:00 a.m. (prevailing Eastern Time)**, either (i) at the offices of Potter Anderson & Corroon LLP, 1313 N. Market Street, 6th Floor, Wilmington, Delaware 19801, or (ii) virtually or at such other date, time or location as designated by the Debtors. If the Debtors conduct the Auction virtually, the Debtors will provide instructions setting forth how to attend the Auction to the participants and other attendees via electronic mail. The Debtors will provide notice (via electronic mail or otherwise) of

any change in the date, time or location of the Auction to Qualified Bidders, and will cause publication of such change to occur on the website maintained by Donlin, Recano & Co., Inc., the Debtors' claims and noticing agent in these Chapter 11 Cases, located at <https://www.donlinrecano.com/Clients/tfi/Index> (the "Claims' Agent Website").

One day after the conclusion of the Auction, the Debtors will file with the Court, serve on the Sale Notice Parties (as defined in Section X.B of the Bidding Procedures) and cause to be published on the Claims' Agent Website, a notice of the results of the Auction, which will, among other things, (A) identify the Successful Bidder and Backup Bidder(s); (B) either include a copy of the Successful Bid and the Backup Bid or a summary of the material terms of such bids, including any assumption and assignment of Contracts contemplated thereby, or provide instructions for accessing the Successful Bid and the Backup Bid free of charge from the Claims' Agent Website; and (C) set forth the date, time, and location of the Sale Hearing and any other relevant dates or other information necessary to reasonably apprise the Sale Notice Parties of the outcome of the Auction.

If the Debtors determine not to hold an Auction for some or all of the Assets, the Debtors shall file with the Court, serve on the Sale Notice Parties, and cause to be published on the Claims' Agent Website, a notice containing the following information (as applicable): (a) a statement that the Auction for the relevant Assets has been canceled; (b) the identity of the Successful Bidder; (c) either include a copy of the Successful Bid or a summary of the material terms of such bid, including any assumption and assignment of Contracts contemplated thereby, or provide instructions for accessing the Successful Bid free of charge from the Claims' Agent Website; and (d) the date, time, and location of the Sale Hearing.

C. Objection Deadlines

1. Sale Objection Deadline. Except objections to the conduct of the Auction, the Successful Bidder or the Backup Bidder, all objections to a sale of the Assets, including (a) any objection to a sale of the Assets free and clear of all liens, claims, interests and encumbrances pursuant to section 363(f) of the Bankruptcy Code and (b) entry of any Sale Order must be (i) in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof; and (ii) filed with the Court by **no later than January 13, 2023, at 4:00 p.m. (prevailing Eastern Time)** and served on the Objection Notice Parties (as defined in Section X.D of the Bidding Procedures).
2. Supplemental Sale Objection Deadline. Following service of the Notice of Auction Results, parties may object solely with respect to the particular terms of a proposed Sale or the Successful Bid. Any Supplemental Sale Objection must be (a) in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof; and (b) filed with the Court by no later **January 25, 2023, at 4:00 p.m. (prevailing Eastern Time)** (the "Supplemental Sale Objection Deadline") and served on the Objection Notice Parties.

D. Sale Hearing

The Sale Hearing shall take place on **January 30, 2023, at 10:00 a.m. (prevailing Eastern Time)** before The Honorable Brendan Linehan Shannon, United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, located at 824 N. Market Street, 6th Floor, Courtroom No. 1, Wilmington, Delaware 19801.

RESERVATION OF RIGHTS TO MODIFY BIDDING PROCEDURES

The Debtors reserve the right to, in their reasonable business judgment and after consultation with the Consultation Parties in a manner consistent with their fiduciary duties and applicable law, modify the Bidding Procedures, including to, among other things, extend or waive deadlines or other terms and conditions set forth therein; adopt new rules and procedures for conducting the bidding and Auction process so long as any such modifications are disclosed to all Prospective Bidders and Qualified Bidders, as applicable; or otherwise modify these Bidding Procedures to further promote competitive bidding for and maximizing the of value of the Assets, in each case, to the extent not materially inconsistent with the Bidding Procedures or the Bidding Procedures Order.

ADDITIONAL INFORMATION

Copies of the Motion, the Bidding Procedures Order and the Bidding Procedures may be obtained free of charge by visiting the Claims' Agent Website located at <https://www.donlinrecano.com/Clients/tfi/Index>.

FAILURE TO ABIDE BY THE BIDDING PROCEDURES, THE BIDDING PROCEDURES ORDER OR ANY OTHER APPLICABLE ORDER OF THE COURT ENTERED IN THE CHAPTER 11 CASES MAY RESULT IN THE REJECTION OF YOUR BID AND YOUR DISQUALIFICATION FROM PARTICIPATING IN THE BIDDING FOR AND AUCTION OF ANY OF THE DEBTORS' ASSETS.

THE FAILURE OF ANY PERSON OR ENTITY TO FILE AND SERVE AN OBJECTION IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER, INCLUDING THE FAILURE TO FILE ANY SUCH OBJECTION BY THE APPLICABLE OBJECTION DEADLINE, SHALL FOREVER BAR SUCH PERSON OR ENTITY FROM ASSERTING, AT THE SALE HEARING OR THEREAFTER, ANY SUCH OBJECTION TO THE RELIEF REQUESTED IN THE MOTION, THE CONSUMMATION OF ANY APPLICABLE SALE, INCLUDING THE SALE OF ANY ASSETS TO A SUCCESSFUL BIDDER FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES PURSUANT TO SECTION 363(f) OF THE BANKRUPTCY CODE OR THE TERMS OF ANY STALKING HORSE AGREEMENT OR OTHER ASSET PURCHASE AGREEMENT EXECUTED BY THE DEBTORS.

Dated: December __, 2022
Wilmington, Delaware

POTTER ANDERSON & CORROON LLP

/s/

Jeremy W. Ryan (No. 4057)

L. Katherine Good (No. 5101)

R. Stephen McNeill (No. 5210)

Sameen Rizvi (No. 6902)

1313 North Market Street, 6th Floor

Wilmington, Delaware 19801

Tel: (302) 984-6000

Facsimile: (302) 658-1192

Email: jryan@potteranderson.com

kgood@potteranderson.com

rmcneill@potteranderson.com

srizvi@potteranderson.com

Proposed Counsel for Debtors and Debtors in Possession

Exhibit 3

Assumption and Assignment Notice

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

In re:	)	Chapter 11
TARONIS FUELS, INC., <i>et al.</i> , ⁷	)	Case No. 22-11121 (BLS)
Debtors.	)	(Jointly Administered)
	)	Re: Docket No. ____

**NOTICE OF CURE COSTS AND POTENTIAL ASSUMPTION
AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED
LEASES IN CONNECTION WITH SALE OF SUBSTANTIALLY ALL ASSETS**

PLEASE TAKE NOTICE OF THE FOLLOWING:

On [____], the above-captioned debtors and debtors in possession (the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”) filed with the United States Bankruptcy Court for the District of Delaware (the “Court”) a motion [Docket No. ____] (the “Motion”) seeking entry of (a) an order (the “Bidding Procedures Order”) (i) approving bidding procedures (the “Bidding Procedures”) ⁸ to be used in connection with a sale (the “Sale”) of all, substantially all, or a portion of the Debtors’ assets (the “Assets”); (ii) authorizing the Debtors to designate a Stalking Horse Bidder and provide Bid Protections in accordance with the Stalking Horse Designation Procedures; (iii) scheduling (A) an auction of the Assets (the “Auction”), and (B) a final hearing to consider approval of the proposed Sale (the “Sale Hearing”); (iv) approving the form and manner of notice of the Bidding Procedures, the Auction and the Sale Hearing; (v) approving procedures for the assumption and assignment of executory contracts and unexpired leases (collectively, the “Contracts”) in connection with any Sale; (vi) approving the form and manner of notice to each relevant non-debtor counterparty to a Contract of the Debtors’ calculation of the amount necessary to cure any defaults under an applicable Contract (the “Cure Cost”) and certain other information regarding the potential assumption and assignment of Contracts in connection with the Sale; and (vii) granting related relief; and (b) an order (the “Sale Order”) (i)

⁷ The Debtors in these chapter 11 cases, along with the last four digits (if any) of each Debtor’s federal tax identification number include: Taronis Fuels, Inc. (7454), MagneGas Welding Supply – West, LLC (6662), Taronis Sub III LLC (5826), MagneGas Welding Supply – South, LLC (8686), MagneGas Real Estate Holdings, LLC (7412), MagneGas IP, LLC (0988), MagneGas Production, LLC (7727), Taronis Sub I LLC (4205), Taronis-TAS, LLC (2356), Taronis-TAH, LLC (3542), and Taronis Sub II LLC (9673). The location of the Debtors’ service address in these chapter 11 cases is 24980 N. 83rd Avenue, Suite 100, Peoria, Arizona 85383.

⁸ Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Motion or the Bidding Procedures, as applicable. Any summary of the Bidding Procedures or the Bidding Procedures Order (or any provision thereof) contained herein is qualified in its entirety by the actual terms and conditions thereof. To the extent that there is any inconsistency between any summary in this Sale Notice and the terms and conditions of either of the Bidding Procedures or the Bidding Procedures Order, the actual terms and conditions in those documents shall control.

authorizing the sale of the Assets free and clear of all liens, claims, interests and encumbrances, except certain permitted encumbrances as determined by the Debtors and any Successful Bidder (as defined in the Bidding Procedures), with liens to attach to the proceeds of the Sale and disbursement of proceeds to Lender; (ii) authorizing the assumption and assignment of certain Contracts in connection with approved Sale; and (iii) granting related relief.

On December [____], 2022, the Court entered the Bidding Procedures Order [Docket No. ____].

You are receiving this Notice because you may be a Counterparty to a Contract of the Debtors that may be assumed and assigned to the Successful Bidder for the Debtors' Assets. You have the right to obtain adequate assurance information provided by Qualified Bidders on or after the designation of such qualified bidders on or after January 19, 2023 at 4:00 p.m. by contacting Debtors' counsel Katherine Good and Sameen Rizvi at kgood@potteranderson.com and srizvi@potteranderson.com.

KEY DATES AND DEADLINES

<u>Deadline</u>	<u>Action</u>
Five business days after the entry of the Bidding Procedures Order	Deadline for Debtors to file and serve Sale Notice
Five business days after the entry of the Bidding Procedures Order	Deadline for Debtors to file and serve Assumption and Assignment Notice
January 6, 2023, at 4:00 p.m. (prevailing Eastern Time)	Deadline for Debtors to designate a Stalking Horse Bidder, if any, and enter into a Stalking Horse Agreement
January 13, 2023, at 4:00 p.m. (prevailing Eastern Time)	Sale Objection Deadline and Cure Objection Deadline
January 17, 2023, at 4:00 p.m. (prevailing Eastern Time)	Bid Deadline
January 20, 2023, at 10:00 a.m. (prevailing Eastern Time)	Auction
12 hours after the conclusion of the Auction	Deadline for Debtors to file and serve Notice of Auction Results
January 25, 2023, at 4:00 p.m. (prevailing Eastern Time)	Supplemental Sale Objection Deadline and Adequate Assurance Objection Deadline
January 27, 2023, at 4:00 p.m. (prevailing Eastern Time)	Debtors' Deadline to Reply to Sale Objections and Supplemental Sale Objections
January 30, 2023, at 10:00 a.m. (prevailing Eastern Time)	Sale Hearing
February 3, 2023	Deadline to consummate approved Sale

CURE COSTS

In accordance with the Assumption and Assignment Procedures and the Bidding Procedures Order, the Debtors may, in connection with the Sale with the Successful Bidder at the Auction, seek to assume and assign to the Successful Bidder certain of their Contracts. Each of the

Contracts that potentially could be assumed and assigned in connection with the Sale, together with the Debtors' calculation of Cure Costs with respect to such Contracts, is set forth on Schedule 1 hereto. The inclusion of any Contract on Schedule 1 does not constitute an admission by the Debtors, any Stalking Horse Bidder, any Successful Bidder, or any other party that such Contract is an executory contract or an unexpired lease within the meaning of the Bankruptcy Code or require or guarantee that such Contract ultimately will be assumed or assigned. All rights of the Debtors with respect thereto are reserved.

In addition, to the extent that any of the Cure Costs set forth on Schedule 1 do not reflect (i) postpetition payments that have been made by the Debtors in respect of applicable Cure Costs or (ii) any payments that are made by the Debtors in respect of such Cure Costs after the filing of this Notice, the respective amounts required to be paid to cure any existing defaults under the applicable Contracts shall be reduced by any such corresponding postpetition payments, and the Debtors reserve their right to update the Cure Costs set forth on Schedule 1 accordingly, either by filing a supplemental notice with the Court or by written notice to the applicable Counterparty.

CURE OBJECTIONS

A. Cure Objection Deadline

Any Counterparty that wishes to object to the Debtors' proposed Cure Costs (each such objection, a "Cure Objection") must file with the Court by **no later than January 13, 2023, at 4:00 p.m. (prevailing Eastern Time)** and serve on the Objection Notice Parties (as defined in Section X.D of the Bidding Procedures) its Cure Objection, which must be in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof.

B. Resolution of Cure Objections

Pursuant to the Bidding Procedures Order, the Debtors, any Stalking Horse Bidder or Successful Bidder (if applicable) and the objecting Counterparty must first confer in good faith to attempt to resolve the Cure Objection without Court intervention. If the parties are unable to consensually resolve the Cure Objection prior to the commencement of the Sale Hearing, the Court shall make all necessary determinations relating to the applicable Cure Costs and Cure Objection at a hearing scheduled pursuant to the following paragraph. If a Cure Objection is resolved in a manner that is not in the best interests of the Debtors and their estates, whether or not such resolution occurs prior to or after the closing of the Sale, the Debtors and the Successful Bidder may determine that any Contract subject to such resolved Cure Objection no longer will be assumed and assigned; *provided, that*, in the case of an unexpired lease of non-residential real property, such determination shall be prior to the expiration of the applicable deadline to assume or reject unexpired leases under section 365(d)(4) of the Bankruptcy Code. All other objections to the Debtors' proposed assumption and assignment of the Debtors' right, title, and interest in, to, and under a Contract shall be heard at the Sale Hearing.

C. Adjourned Cure Objections

If a timely filed Cure Objection cannot otherwise be resolved by the parties, the Cure Objection may be heard at the Sale Hearing, or, at the option of the Debtors, in consultation with the Consultation Parties (as defined in Section XI of the Bidding Procedures) and the Successful Bidder, be adjourned to a subsequent hearing (each such Cure Objection, an "Adjourned Cure Objection"). Upon resolution of an Adjourned Cure Objection and the payment of the applicable

cure amount, if any, the applicable Contract that was the subject of such Adjourned Cure Objection shall, at the election of the Successful Bidder, and subject to the Debtors' rights set forth in paragraph 29 of the Bidding Procedures Order, be deemed assumed and assigned to the Successful Bidder as of the closing date of the Sale.

IF A COUNTERPARTY FAILS TO FILE WITH THE COURT AND SERVE ON THE OBJECTION NOTICE PARTIES A TIMELY CURE OBJECTION, THE COUNTERPARTY FOREVER SHALL BE BARRED FROM ASSERTING ANY OBJECTION WITH REGARD TO THE COST TO CURE ANY DEFAULTS UNDER THE APPLICABLE CONTRACT, AND THE CURE COSTS SET FORTH ON SCHEDULE 1 HERETO SHALL BE CONTROLLING AND WILL BE THE ONLY AMOUNT NECESSARY TO CURE OUTSTANDING DEFAULTS UNDER THE CONTRACT AND SATISFY THE REQUIREMENTS OF SECTION 365(b) OF THE BANKRUPTCY CODE, AND THE COUNTERPARTY TO THE CONTRACT SHALL BE DEEMED BOUND BY AND TO HAVE CONSENTED TO THE CURE COSTS.

NOTICE OF AUCTION RESULTS

The Auction, if required, will be conducted **on January 20, 2023, at 10:00 a.m. (prevailing Eastern Time)**, either (i) at the offices of Potter Anderson & Corroon LLP, 1313 N. Market Street, 6th Floor, Wilmington, Delaware 19801, or (ii) virtually or at such other date, time or location as designated by the Debtors. If the Debtors conduct the Auction virtually, the Debtors will provide instructions setting forth how to attend the Auction to the participants and other attendees via electronic mail. The Debtors will provide notice (via electronic mail or otherwise) of any change in the date, time or location of the Auction to Qualified Bidders, and will cause publication of such change to occur on the Claims' Agent Website.

Twelve hours after the conclusion of the Auction, the Debtors will file with the Court, serve on the Sale Notice Parties (as defined in Section X.B of the Bidding Procedures) and cause to be published on the website maintained by Donlin, Recano & Co., Inc. the Debtors' claims and noticing agent in these Chapter 11 Cases, located at <https://www.donlinrecano.com/Clients/tfi/Index> (the "Claims' Agent Website"), a notice of the results of the Auction, which will, among other things, (A) identify the Successful Bidder(s) and Backup Bidder(s); (B) either include a copy of each Successful Bid and each Backup Bid or a summary of the material terms of such bids, or provide instructions for accessing each Successful Bid and each Backup Bid free of charge from the Claims' Agent Website; and (C) set forth the date, time, and location of the Sale Hearing and any other relevant dates or other information necessary to reasonably apprise the Sale Notice Parties of the outcome of the Auction.

ADEQUATE ASSURANCE OBJECTIONS

A. Adequate Assurance Objection Deadline

Any Counterparty to a Contract that wishes to object to the proposed assumption and assignment of a Contract, the subject of which objection is the Successful Bidder's (or any other relevant assignee's) proposed form of adequate assurance of future performance with respect to the Contract (each such objection, an "Adequate Assurance Objection"), must file with the Court and serve on the Objection Notice Parties an Adequate Assurance Objection, which must state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof, by **January 25, 2023, at 4:00 p.m. (prevailing Eastern Time)**.

B. Resolution of Adequate Assurance Objections

Pursuant to the Bidding Procedures Order, the Debtors, the Successful Bidder and the objecting Counterparty must first confer in good faith to attempt to resolve the Adequate Assurance Objection without Court intervention. If the parties are unable to consensually resolve the Adequate Assurance Objection prior to the commencement of the Sale Hearing, the Adequate Assurance Objection and all issues of adequate assurance of future performance of the Successful Bidder (or any other relevant assignee) shall be determined by the Court at the Sale Hearing or, at the option of the Debtors and the Successful Bidder, be adjourned to a subsequent hearing, with notice to the party having filed the Adequate Assurance Objection.

IF A COUNTERPARTY FAILS TO FILE WITH THE COURT AND SERVE ON THE OBJECTION NOTICE PARTIES A TIMELY ADEQUATE ASSURANCE OBJECTION, THE COUNTERPARTY FOREVER SHALL BE BARRED FROM ASSERTING ANY OBJECTION TO THE ASSUMPTION AND/OR ASSIGNMENT OF THE APPLICABLE CONTRACT WITH REGARD TO ADEQUATE ASSURANCE OF FUTURE PERFORMANCE. THE APPLICABLE SUCCESSFUL BIDDER SHALL BE DEEMED TO HAVE PROVIDED ADEQUATE ASSURANCE OF FUTURE PERFORMANCE WITH RESPECT TO THE CONTRACT IN ACCORDANCE WITH BANKRUPTCY CODE SECTIONS 365(b)(1)(C), 365(f)(2)(B) AND, IF APPLICABLE, 365(b)(3), NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE CONTRACT OR ANY OTHER DOCUMENT.

SALE HEARING

The Sale Hearing shall take place on **January 13, 2023, at [] [].m. (prevailing Eastern Time)** before The Honorable Brendan Linehan Shannon, United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, located at 824 N. Market Street, 6th Floor, Courtroom 1, Wilmington, Delaware 19801.

ADDITIONAL INFORMATION

Copies of the Motion, the Bidding Procedures Order and the Bidding Procedures may be obtained free of charge by visiting the Claims' Agent Website.

Dated: December __, 2022
Wilmington, Delaware

POTTER ANDERSON & CORROON LLP

/s/

Jeremy W. Ryan (No. 4057)

L. Katherine Good (No. 5101)

R. Stephen McNeill (No. 5210)

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Proposed Counsel for Debtors and Debtors in Possession

Schedule 1