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**COUNSEL TO THE DEBTORS
AND DEBTORS IN POSSESSION**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	
	§	Chapter 11
FRESH ACQUISITIONS, LLC, <i>et al.</i> , ¹	§	
	§	Case No. 21-30721 (SGJ)
Debtors.	§	
	§	(Jointly Administered)
	§	

**NOTICE OF PROPOSED ORDER
(A) APPROVING THE SALE OF SUBSTANTIALLY
ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF LIENS
AND LIABILITIES, (B) AUTHORIZING THE DEBTORS TO ASSUME
AND ASSIGN EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN
CONNECTION WITH THE SALE, AND (C) GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE that on September 21, 2021, the Court entered its *Order*
(A) Approving Bidding Procedures and Certain Bid Protections, (B) Scheduling Bid Deadline,

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor's taxpayer identification number are as follows: Alamo Fresh Payroll, LLC (1590); Fresh Acquisitions, LLC (2795); Alamo Ovation, LLC (9002); Buffets LLC (2294); Hometown Buffet, Inc. (3002); Tahoe Joe's Inc. (7129); OCB Restaurant Company, LLC (7607); OCB Purchasing, Co. (7610); Ryan's Restaurant Group, LLC (7895); Fire Mountain Restaurants, LLC (8003); Food Management Partners, Inc. (7374); FMP SA Management Group, LLC (3031); FMP-Fresh Payroll, LLC (8962); FMP-Ovation Payroll, LLC (1728); and Alamo Buffets Payroll, LLC (0998). The Debtors' principal offices are located at 2338 N. Loop 1604 W., Suite 350, San Antonio, TX 78248, United States.

Auction Date, and Sale Hearing and Approving Form and Manner of Notice Thereof, and (C) Approving Cure Procedures and the Form and Manner of Notice Thereof [Docket No. 436] (the “Bidding Procedures Order”).

PLEASE TAKE FURTHER NOTICE that, pursuant to Paragraph 7 of the Bidding Procedures Order, the Debtors attach hereto as **Exhibit A** the Initial Proposed Sale Order (as defined therein).

Respectfully submitted this 23rd day of September, 2021.

GRAY REED

By: /s/ Jason S. Brookner
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**COUNSEL TO THE DEBTORS
AND DEBTORS IN POSSESSION**

CERTIFICATE OF SERVICE

I certify that on September 23rd, 2021, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas.

/s/ Jason S. Brookner
Jason S. Brookner

Exhibit A

Proposed Initial Sale Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

FRESH ACQUISITIONS, LLC, *et al.*,¹

Debtors.

§
§
§
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§
§

Chapter 11

Case No. 21-30721 (SGJ)

(Jointly Administered)

Re: Docket No. ____

**ORDER (A) APPROVING THE SALE OF SUBSTANTIALLY
ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF LIENS
AND LIABILITIES, (B) AUTHORIZING THE DEBTORS TO ASSUME
AND ASSIGN EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN
CONNECTION WITH THE SALE, AND (C) GRANTING RELATED RELIEF**

*Upon the Debtors' Emergency Motion for (I) an Order (A) Approving Bidding Procedures
and Certain Bid Protections, (B) Scheduling Bid Deadline, Auction Date, and Sale Hearing and*

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor's taxpayer identification number are as follows: Alamo Fresh Payroll, LLC (1590); Fresh Acquisitions, LLC (2795); Alamo Ovation, LLC (9002); Buffets LLC (2294); Hometown Buffet, Inc. (3002); Tahoe Joe's Inc. (7129); OCB Restaurant Company, LLC (7607); OCB Purchasing, Co. (7610); Ryan's Restaurant Group, LLC (7895); Fire Mountain Restaurants, LLC (8003); Food Management Partners, Inc. (7374); FMP SA Management Group, LLC (3031); FMP-Fresh Payroll, LLC (8962); FMP-Ovation Payroll, LLC (1728); and Alamo Buffets Payroll, LLC (0998). The Debtors' principal offices are located at 2338 N. Loop 1604 W., Suite 350, San Antonio, TX 78248, United States.

Approving the Form and Manner of Notice Thereof, and (C) Approving the Form and Manner of Notice to Contract Counterparties; and (II) an Order Approving the Sale of Substantially All of the Debtors' Assets Free and Clear of Liens, Claims, and Interests [Docket No. 424] (the "Sale Motion"), filed by the above captioned debtors and debtors in possession (the "Debtors"), seeking entry of this order (this "Sale Order") for, among other things, approval of: (a) the sale of certain of the Debtors' assets pursuant to the APA (as defined below) free and clear of liens, claims, and interests, and (b) the assumption and assignment of executory contracts and unexpired leases of the Debtors as may be requested by the Purchaser (as defined below) and the proposed cure amounts with respect thereto (the "Cure Cost"), all as more fully set forth in the Sale Motion; the Court having entered the *Order (A) Approving Bidding Procedures and Certain Bid Protections, (B) Scheduling Bid Deadline, Auction Date, and Sale Hearing and Approving Form and Manner of Notice Thereof, and (C) Approving Cure Procedures and the Form and Manner of Notice Thereof* [Docket No. 436] (the "Bidding Procedures Order"); and the Court being satisfied that the relief requested in the Sale Motion is necessary and in the best interests of the Debtors and their estates; and it appearing that sufficient notice of the Sale Motion has been given, and that no other or further notice is required; and this Court having reviewed the Sale Motion and having considered the evidence and arguments presented at a hearing on October 7, 2021 (the "Sale Hearing"); this Court having determined that the legal and factual bases set forth in the Sale Motion and at the Sale Hearing establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, the Court hereby finds as follows:²

² 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.

A. **Jurisdiction and Venue.** The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N), and (O).

B. **Notice.** As evidenced by the certificates of service filed with the Court, proper, timely, adequate, and sufficient notice of (a) the Sale Motion, (b) the sale of the Purchased Assets (as defined below) to the Purchaser (as defined below) pursuant to the APA (as defined below) and the transactions contemplated in connection therewith (the “Sale”), (c) the assumption and assignment to the Purchaser of certain executory contracts and unexpired leases as described and identified more fully in the APA or as designated for assumption in accordance with the terms of the APA (collectively, the “Assumed Contracts”), (d) the Cure Costs, (e) the Auction, (f) the Successful Bidder, and (g) the Sale Hearing has been provided by the Debtors to each party entitled thereto in accordance with the Bidding Procedures Order. A reasonable opportunity to object or be heard regarding the relief requested in the Sale Motion has been afforded to all interested persons and entities.

C. All non-Debtor counterparties to the Assumed Contracts have had an adequate opportunity to object to the assumption and assignment of the Assumed Contracts, including the Cure Costs.

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

E. **APA.** The assets being sold to the Purchaser (the “Purchased Assets,” as defined in the APA as the “Assets”), as more fully described in that certain Asset Purchase Agreement

dated as of September 20, 2021 (attached hereto as **Exhibit 1**, the “APA”)³ between Tahoe Joe’s Inc. (“TJJ”), Alamo Buffets Payroll, LLC (“Alamo Buffets”), Alamo Fresh Payroll, LLC (“Alamo Fresh”), Alamo Ovation, LLC (“Alamo Ovation”), Buffets, LLC (“Buffets”), Fire Mountain Restaurants, LLC (“Fire Mountain”), FMP-Fresh Payroll, LLC (“FMP-Fresh”), FMP-Ovation Payroll, LLC (“FMP-Ovation”), FMP SA Management Group, LLC (“FMP SA”), Food Management Partners, Inc. (“FMP”), Fresh Acquisitions, LLC (“FA”), HomeTown Buffet, Inc. (“HTB”), OCB Purchasing Co. (“OCB Purchasing”), OCB Restaurant Company, LLC (“OCB Restaurant”) and Ryan’s Restaurant Group, LLC (“Ryan’s,” and collectively, the “Sellers”) and TJ Acquisitions, LLC, including its designees (the “Purchaser”), pursuant to which the Sellers have agreed to sell the Purchased Assets to the Purchaser, constitute property of the Sellers’ bankruptcy estates and title thereto is vested in the Sellers’ estates, within the meaning of section 541 of the Bankruptcy Code.

F. **The Sale Process.** The Sale is duly authorized pursuant to sections 363(b)(1) and 363(f) of the Bankruptcy Code and rule 6004(f) of the Federal Rules of Bankruptcy Procedures (the “Bankruptcy Rules”). As demonstrated by (i) the testimony and other evidence adduced at the Sale Hearing, (ii) the representations of counsel made on the record at the Sale Hearing and (iii) the docket of this case, the Debtors have marketed the Purchased Assets since the Court’s entry of a prior order approving bidding procedures on May 27, 2021,⁴ and conducted all aspects of the Sale process at arms’-length, in good faith, and in compliance with the procedures (the “Bidding Procedures”) approved by the Bidding Procedures Order and earlier Orders of this Court. The marketing process undertaken by the Debtors and their professionals, agents, and other

³ All capitalized terms used but not defined in this Sale Order shall have the meaning ascribed to them in the APA.

⁴ See Docket No. 203.

representatives with respect to the Purchased Assets has been adequate and appropriate and reasonably calculated to maximize value for the benefit of all stakeholders. The Bidding Procedures were duly noticed, were substantively and procedurally fair to all parties, and, through marketing efforts and a competitive sale process conducted in accordance with the Bidding Procedures Order, the Debtors: (a) afforded interested potential purchasers a full, fair, and reasonable opportunity to qualify as Bidders and submit their highest or otherwise best offer to purchase the Purchased Assets; (b) provided potential purchasers, upon request, sufficient due diligence information to enable them to make an informed judgment on whether to bid on the Acquired Assets and to submit the materials required under the Bidding Procedures Order by the Bid Deadline; (c) considered any Qualified Bids submitted on or before the Bid Deadline and (d) conducted the sale process in a diligent, non-collusive, fair, and good faith manner.

G. **Business Justification.** The Debtors have articulated good and sufficient business reasons for the Court to: (i) approve the APA, and, subject to the terms of this Sale Order, authorize the Debtors' consummation of the Sale, including the sale of the Purchased Assets to the Purchaser, including its permitted assigns pursuant to the terms of the APA; (ii) authorize and approve the assumption or assumption and assignment of the Assumed Contracts as set forth herein and in the APA on the Closing Date (defined below); and (iii) authorize and approve the assumption of the Assumed Liabilities as set forth in the APA. Entry into the APA and consummation of the Sale are sound exercises of the Debtors' business judgment, and such acts are in the best interests of the Debtors, their estates and creditors, and all parties in interest.

H. The Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose for: (i) the sale of the Purchased Assets outside of the ordinary course of business pursuant to Bankruptcy Code section 363(b) prior to and outside of a plan of

reorganization because of the Debtors' current financial position; (ii) a restriction on the Debtors pursuing, considering, or accepting any further offers for the Purchased Assets from and after the entry of this Sale Order through the earlier of the consummation of the Sale or termination of the APA in accordance with its terms; and (iii) the immediate consummation of the APA. Such circumstances and purposes include: (a) the Debtors conducted a robust marketing process to sell the Purchased Assets and the APA constitutes the highest and best offer for the Purchased Assets; (ii) the APA and the closing of the Sale present the best opportunity to realize the highest value for the Purchased Assets; (iii) there is risk of deterioration of the value of the Purchased Assets if the Sale is not consummated in accordance with the terms of the APA and this Sale Order; (iv) the APA and the sale of the Purchased Assets to the Purchaser provide greater value to the Debtors' estates than would be provided by any other presently available alternative; (v) the Bidding Procedures utilized were designed to yield the highest or otherwise best bids for the Purchased Assets; and (vi) the Purchaser would not agree to purchase the Purchased Assets pursuant to the terms of the APA and this Sale Order if the Purchased Assets remained subject to higher or better offers after the entry of this Sale Order. To maximize the value of the Purchased Assets and preserve the viability of the operations to which the Purchased Assets relate, it is essential that the Sale occur within the time constraints set forth in the APA and this Sale Order and that the Purchaser be protected against any further offers for the Purchased Assets.

I. **Good Faith.** The APA was negotiated, proposed, and is undertaken by the Debtors and the Purchaser at arms'-length, without collusion or fraud, and in good faith within the meaning of Bankruptcy Code section 363(m). The Purchaser recognized that the Debtors were free to deal with any other party interested in acquiring the Purchased Assets, and agreed to, and did, subject its bid to the competitive Bidding Procedures. As established by the record of the Sale Hearing,

the Debtors and the Purchaser have complied with the Bidding Procedures Order in all material respects. The Bidding Procedures afforded a full, fair, and reasonable opportunity for any entity or person to make a higher or otherwise better offer to purchase the Purchased Assets. Neither the Debtors, nor the Purchaser, nor any affiliate of the Purchaser has engaged in any conduct that would cause or permit the APA to be avoided under section 363(n) of the Bankruptcy Code. As a result of all of the foregoing, the Purchaser is entitled to the protections of Bankruptcy Code section 363(m), including in the event this Sale Order or any portion thereof is reversed or modified on appeal, and otherwise has proceeded in good faith in all respects in connection with these cases. The APA was not entered into for the purpose of hindering, delaying, or defrauding creditors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession or the District of Columbia.

J. The Purchaser is not an “insider” or “affiliate” of the Debtors, as those terms are defined in section 101 of the Bankruptcy Code. The Debtors have dealt with Purchaser at arms’-length through its independent officers and directors.

K. **Authority.** The Debtors, through their Chief Restructuring Officer, (i) have full corporate power and authority to execute the APA, and the Sale by the Debtors to the Purchaser has been duly and validly authorized by all necessary corporate action, (ii) have all of the corporate power and authority necessary to consummate the Sale and all transactions contemplated by the APA, (iii) have taken all corporate action necessary to authorize and approve the APA and the immediate assumption thereof, and the consummation by the Debtors of the Sale and all transactions contemplated thereby, and (iv) require no consents or approvals that have not been obtained, other than the Court’s entry of this Sale Order and those expressly provided for in the APA, to consummate such transactions.

L. **Highest and Otherwise Best Offer.** The total consideration provided by the Purchaser for the Purchased Assets represents the highest and best offer received by the Debtors, and the amount of aggregate consideration provided by the Purchaser to the Debtors pursuant to the APA constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, applicable state laws, including, without limitation, the Uniform Voidable Transactions Act, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act and any other such applicable laws, and may not be avoided under Bankruptcy Code section 363(n) or any provision of chapter 5 of the Bankruptcy Code or under any other law of the United States, any state, territory, possession thereof, or the District of Columbia, or any other applicable law. No other person or entity or group of persons or entities has offered to purchase the Purchased Assets for an amount of aggregate consideration that would provide greater value to the Debtors' estates than the Purchaser. The Debtors' determination that the APA constitutes the highest and best offer for the Purchased Assets constitutes a valid and sound exercise of the Debtors' business judgment. The Court's approval of the Sale Motion, the Sale, and the APA, and the immediate consummation thereof, is in the best interests of the Debtors, their estates and creditors, and all other parties in interest.

M. **Valid Transfer.** As of the Closing, pursuant and subject to the terms of the APA, the transfer of the Purchased Assets and the Sale will effect a legal, valid, enforceable, and effective transfer of the Purchased Assets and will vest the Purchaser with all of the Debtors' right, title, and interest in the Purchased Assets, free and clear of all Liens (except for Permitted Liens) and Liabilities (other than Assumed Liabilities).

N. **Free and Clear.** The Purchaser would not have entered into the APA and would not have consummated the Sale, thus adversely affecting the Debtors, their estates, and their

creditors, unless both (i) the Sale and (ii) the assumption and assignment of the Assumed Contracts to the Purchaser were free and clear of all Liens (except for Permitted Liens) and Liabilities (other than Assumed Liabilities).

O. **Satisfaction of 363(f) Standards.** The Debtors may sell the Purchased Assets free and clear of all Liens (except for Permitted Liens) and Liabilities (other than Assumed Liabilities), because, in each case, one or more of the standards set forth in section 363(f)(1)–(5) of the Bankruptcy Code has been satisfied. All parties in interest, including, without limitation, any holders of Liens, claims (as defined in the Bankruptcy Code), encumbrances, and other interests and any non-Debtor counterparties to the Assumed Contracts, that did not object, or who withdrew their objection, to the Sale, the Sale Motion, the assumption and assignment of the applicable Assumed Contract, including the associated Cure Cost, have consented to the relief granted herein pursuant to section 363(f)(2) of the Bankruptcy Code. Those (x) holders of Liens and (y) non-Debtor parties to Assumed Contracts who did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are adequately protected by having their Liens, if any, attach to the portion of the net Sale proceeds ultimately attributable to the property against or in which they assert an interest, in the order of their priority, with the same validity, force, and effect that they now have as against such property, subject to any claims and defenses the Debtors may possess with respect thereto.

P. **No Successor Liability.** Neither the Purchaser nor any of its affiliates are successors to the Debtors or their estates by reason of any theory of law or equity, and neither the Purchaser nor any of its affiliates shall assume or in any way be responsible for any Liability or obligation of any of the Debtors and/or their estates, except as otherwise expressly provided in the APA.

Q. **Assumed Contracts and Cure Costs.** The Debtors have demonstrated that the assumption and assignment of the Assumed Contracts to the Purchaser in connection with the consummation of the Sale is an exercise of the Debtors' sound business judgment and is in the best interests of the Debtors, their estates and creditors, and other parties in interest. The Assumed Contracts being assigned to the Purchaser are an integral part of the APA and the Sale and, accordingly, the assumption and assignment of the Assumed Contracts is reasonable and enhances the value of the Debtors' estates. Any non-Debtor counterparty to an Assumed Contract that has not actually filed with the Court an objection to such assumption and assignment in accordance with the terms of the Bidding Procedures Order is deemed to have consented to such assumption and assignment on the terms set forth in this Sale Order and the APA.

R. The Debtors and the Purchaser (including any designees), as applicable under the APA, have, including by way of entering into the APA, and agreeing to the provisions relating to the Assumed Contracts therein, (i) cured, or provided adequate assurance of cure, of any default existing prior to the date hereof under any of the Assumed Contracts, within the meaning of section 365(b)(1)(A) of the Bankruptcy Code, and (ii) provided compensation or adequate assurance of compensation to any party for any actual pecuniary loss to such party resulting from a default prior to the date hereof under any of the Assumed Contracts, within the meaning of section 365(b)(1)(B) of the Bankruptcy Code, and the Purchaser (including any designees) has, based upon the record of these proceedings, provided adequate assurance of future performance of and under the Assumed Contracts, within the meaning of sections 365(b)(1) and 365(f)(2) of the Bankruptcy Code. No default exists in the Debtors' performance under the Assumed Contracts as of the Closing Date other than the failure to pay Cure Costs or defaults that are not required to be cured as contemplated in section 365(b)(1)(A) of the Bankruptcy Code. The Purchaser's promise under

the APA to perform the obligations under the Assumed Contracts after the Closing shall constitute sufficient adequate assurance of future performance under the Assumed Contracts being assigned to the Purchaser within the meanings of sections 365(b)(1)(C) and (f)(2)(B) of the Bankruptcy Code. The Cure Costs are hereby found to be the sole amounts necessary to cure any and all defaults under the Assumed Contracts under section 365(b) of the Bankruptcy Code.

S. **No Sub Rosa plan.** The Sale does not constitute a *sub rosa* chapter 11 plan. The Sale neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates a chapter 11 plan for any of the Debtors.

T. **Opportunity to Object.** A fair and reasonable opportunity to object or be heard with respect to the Sale Motion and the relief requested therein has been afforded to all interested persons and entities.

U. **Sale of Purchased Actions.** As is more specifically described in the APA and this Sale Order, the Purchaser has requested, and the Debtors have agreed, to assign all Purchased Actions (as defined in the APA). The Sale Motion describes, and the APA contemplates, an assignment of the Purchased Actions, which is supported by valuable consideration through the APA, as demonstrated from the record.

V. **Fair and Equitable/Best Interest.** Approval of the Sale and assignment of the Purchased Actions under the APA and this Sale Order is (i) fair and equitable, (ii) in the best interests of the Debtors' bankruptcy estates, and (iii) falls within the reasonable range of litigation possibilities.

W. **Final Order.** This Sale Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), the Court expressly finds that there is no just reason for delay in the implementation of this Sale Order, and, sufficient

cause having been shown, waives any such stay, and expressly directs entry of judgment as set forth herein. The Debtors have demonstrated compelling circumstances and a good, sufficient and sound business purpose and justification for the immediate approval and consummation of the Sale contemplated by the APA. The Purchaser, being a good faith purchaser under section 363(m) of the Bankruptcy Code, may consummate the Sale subject to the terms of this Sale Order.

X. **Time is of the Essence.** Time is of the essence in consummating the Sale. The consummation of the Sale as soon as practicable is necessary both to preserve and maximize the value of the Debtors' assets for the benefit of the Debtors, their estates, their creditors, interest holders and all other parties in interest in the Chapter 11 Cases, and to provide the means for the Debtors to maximize creditor and interest holder recoveries. Accordingly, there is cause to waive the stays contemplated by Bankruptcy Rules 6004 and 6006.

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

1. The Sale Motion is granted as set forth herein, and the Sale contemplated thereby and by the APA is approved as set forth in this Sale Order, with the APA being incorporated in this Sale Order as if fully set forth herein.

2. All objections to the Sale Motion or the relief granted herein that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby overruled on the merits with prejudice.

Approval of the APA

3. The APA, and all other ancillary documents, including all of the terms and conditions thereof, are hereby approved and shall be deemed assumed immediately upon entry of this Sale Order without the need for further action by any party or the Court.

4. The "Closing Date" shall occur on or before October 8, 2021, unless this Sale Order is stayed. Notwithstanding the foregoing, the Purchaser may extend the Closing Date

through no later than October 18, 2021, by stating on the record at the Sale Hearing that it intends to extend the Closing Date. In the event the Purchaser elects to extend the Closing Date, it shall pay the Debtors additional amounts, not to exceed \$280,000, without a reduction of the Purchase Price, as necessary to fund payroll of the Debtors' Business for the period between October 8, 2021, and the extended Closing Date, provided that such Closing Date must occur no later than October 18, 2021 (unless this Sale Order has been stayed). Purchaser shall give the Debtors not less than two (2) Business Days' written notice of its intent to close in the event the Closing does not occur on or before October 8, 2021.

5. Pursuant to section 363(b) of the Bankruptcy Code, the Debtors are authorized and directed to execute and deliver, perform under, consummate, implement, comply with, and close fully the APA, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the APA and the Sale, and consummate the Sale pursuant to and in accordance with the terms and conditions of the APA and this Sale Order. The Debtors are further authorized to pay, without further order of this Court, whether before, at, or after the Closing, any expenses or costs that are required to be paid in order to consummate the transactions contemplated by the APA or perform their obligations under the APA.

6. The Debtors are authorized and directed to execute and deliver, and empowered to perform under, consummate, and implement, the APA, together with all additional instruments, documents, and other agreements that may be reasonably necessary or desirable to implement the APA, and to take all further actions as may be reasonably requested by the Purchaser for the purpose of assigning, transferring, granting, conveying and conferring to the Purchaser or reducing to possession, the Purchased Assets, or as may be reasonably necessary or appropriate to the performance of the obligations as contemplated by the APA.

7. This Sale Order and the APA shall be binding in all respects upon the Debtors and their estates, successors, and assigns, all creditors of and equity holders in any Debtor, and any and all other parties in interest, including, without limitation, any and all holders of Liens (except for Permitted Liens) and Liabilities (other than Assumed Liabilities), including holders of any rights or claims based on any putative successor or transferee liability, of any kind or nature whatsoever in the Purchased Assets, all non-Debtor parties to the Assumed Contracts, and any trustee or successor trustee or administrator appointed in these chapter 11 cases, including (but not limited to) a trustee or administrator appointed under a chapter 11 plan, or upon a conversion to chapter 7 under the Bankruptcy Code. The APA and the Sale are not subject to rejection or avoidance (whether through any avoidance or recovery, claim, action, or proceeding arising under chapter 5 of the Bankruptcy Code or under any similar state or federal law or any other cause of action) by the Debtors, any chapter 7 or chapter 11 trustee of the Debtors' bankruptcy estates, or any other person or entity. The APA, this Sale Order, and the Debtors' obligations therein and herein shall not be altered, impaired, amended, rejected, discharged, or otherwise affected by any chapter 11 plan proposed or confirmed in these bankruptcy cases, any order confirming any chapter 11 plan, or any subsequent order of this Court without the prior written consent of the Purchaser. In furtherance of the foregoing, any estate representative, including a trustee or administrator appointed in this case under any chapter 11 plan confirmed in these chapter 11 cases or upon a conversion to chapter 7 under the Bankruptcy Code, shall be obligated to comply with the preservation and production obligations of the Debtors set forth in the APA. Nothing contained in any chapter 11 plan confirmed in these chapter 11 cases or the confirmation order confirming any such chapter 11 plan shall conflict with or derogate from the provisions of the APA or this Sale

Order. This Sale Order and the APA shall inure to the benefit of the Debtors, their estates, their creditors, the Purchaser, and their respective successors and assigns.

8. The APA and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto in a writing signed by all parties, after consultation with the Committee with respect to material modifications, and in accordance with the terms thereof, without further order of this Court, provided that any such modification, amendment, or supplement does not have a material adverse effect on the Debtors' estates.

Transfer of the Purchased Assets

9. Except as expressly permitted or otherwise specifically provided for in the APA or this Sale Order, pursuant to sections 105(a), 363(b), 363(f), 365(b), 365(f) of the Bankruptcy Code or any other applicable section of the Bankruptcy Code, upon the Closing, the Purchased Assets shall be transferred to the Purchaser, and such transfer shall constitute a legal, valid, binding, and effective transfer of the Purchased Assets free and clear of all Liens (except for Permitted Liens) and Liabilities (other than Assumed Liabilities), pursuant to section 363(f) of the Bankruptcy Code. Upon the Closing, the Purchaser shall take title to and possession of the Purchased Assets subject only to the Assumed Liabilities and Permitted Liens.

10. Except as expressly permitted or otherwise specifically provided by the APA or this Sale Order, all persons and entities (as defined in section 101(15) of the Bankruptcy Code), including, but not limited to, all lenders, debt security holders, equity security holders, committees (statutory or otherwise), governmental, tax, and regulatory authorities, parties to executory contracts and unexpired leases, creditors holding Liens or Liabilities of any kind or nature whatsoever against or in the Debtors or any of the Purchased Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated) arising under or out of, in connection with, or in any way relating to, the Debtors,

the Purchased Assets, the operation of the Debtors' businesses prior to the Closing, or the transfer of the Purchased Assets to the Purchaser, hereby are forever barred, estopped, and permanently enjoined from asserting any Liens (except for Permitted Liens) or Liabilities (other than Assumed Liabilities), against the Purchaser and its successors, designees, assigns, or property, or the Purchased Assets conveyed in accordance with the APA. On or before the Closing Date, each of the Debtors' creditors is authorized to execute such documents and take all other actions as may be deemed by the Purchaser to be reasonably necessary or desirable to release Liens (except for Permitted Liens) and Liabilities (other than Assumed Liabilities) on the Purchased Assets, if any, as provided for herein, as such Liens or Liabilities may have been recorded or may otherwise exist.

11. The transfer of the Purchased Assets to the Purchaser pursuant to the APA shall constitute a legal, valid, and effective transfer of the Purchased Assets on the Closing Date, and shall vest the Purchaser with all of the Debtors' rights, title, and interests in the Purchased Assets free and clear of all Liens (except for Permitted Liens) and Liabilities (other than Assumed Liabilities), whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, whether derivatively, vicariously, as transferee or successor or otherwise, of any kind, nature, or character whatsoever, including, but not limited to, those Liens (except for Permitted Liens) and Liabilities (other than Assumed Liabilities) arising out of or on account of: (a) any employment, collective bargaining, or other labor agreements or the termination thereof; (b) any defined benefit, multiemployer, defined contribution, retirement, medical benefit, or any other employee pension, welfare, compensation, or other employee benefit plans, agreements, practices, or programs, including, without limitation, any pension plan of or related to any of the Debtors or any of Debtors' affiliates or predecessors or any current or future employees of any of the foregoing, or the termination of any of the foregoing; (c) the Debtors'

business operations or the cessation thereof; (d) any litigation involving one or more of the Debtors; (e) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and any other federal or state environmental health and safety laws and regulations; (f) any employee, benefit, worker's compensation, occupational disease, or unemployment or temporary disability related Liability, including, without limitation, Liabilities that might otherwise arise under or pursuant to (i) the Employee Retirement Income Security Act of 1974, as amended, (ii) the Fair Labor Standards Act, (iii) Title VII of the Civil Rights Act of 1964, (iv) the Federal Rehabilitation Act of 1973, (v) the National Labor Relations Act, (vi) the Worker Adjustment and Retraining Act of 1988, (vii) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, (viii) the Americans with Disabilities Act of 1990, (ix) the Consolidated Omnibus Budget Reconciliation Act of 1985, (x) the Multiemployer Pension Plan Amendments Act of 1980, (xi) state discrimination laws, (xii) state unemployment compensation laws or any other similar state and local laws, (xiii) state workers' compensation laws, or (xiv) any other state, local, or federal employee benefits laws, regulations, or rules, or other state, local, or federal laws, regulations, or rules relating to any employment with any of the Debtors or any of their respective predecessors; (g) any antitrust laws; (h) any product liability or similar laws, whether state or federal or otherwise; (i) any bulk sales or similar laws; (j) any federal state, or local tax statutes, regulations, or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended; and (k) any common law doctrine of *de facto* merger or successor or transferee liability, successor-in-interest liability theory, or any other theory of or related to successor liability; and the Debtors hereby waive and release the Buyer from any such Liens and Liabilities.

12. All persons and entities that are in possession of some or all of the Purchased Assets on the Closing Date are directed to immediately surrender possession of such Purchased Assets to the Purchaser or its assignee.

13. If any person or entity that has filed financing statements, mortgages, mechanic's liens, *lis pendens*, or other documents or agreements evidencing Liens in the Purchased Assets conveyed pursuant to the APA and this Sale Order has not delivered to the Debtors, prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Liens which the person or entity has with respect to the Purchased Assets or otherwise, then (a) the Debtors are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Purchased Assets, and (b) the Purchaser is hereby authorized to file, register, or otherwise record a certified copy of this Sale Order, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all Liens in the Purchased Assets of any kind or nature whatsoever. For the avoidance of doubt, to the extent necessary, upon consummation of the transactions set forth in the APA, the Purchaser is authorized to file termination statements, lien terminations, or other amendments in any required jurisdiction to remove and record, notice filings, or financing statements recorded to attach, perfect, or otherwise notice any Lien that is extinguished or otherwise released pursuant to this Sale Order under section 363 of the Bankruptcy Code.

14. All Liens on the Purchased Assets shall attach to the net proceeds of the Sale in the same order of priority as existed prior to the Sale. The Debtors shall hold and retain the net sale proceeds pending either (a) confirmation of a chapter 11 plan or (b) further order of the Court upon motion. The rights of all secured parties in the net proceeds of Sale are preserved and shall remain

subject to the terms of this Court's *Final Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief* [Docket No. 157] (the "Final DIP Order"), until the Debtors have paid all DIP Obligations in full pursuant to a separate order of this Court.

Ad Valorem Taxes

15. The Sale of the Purchased Assets approved herein shall vest the Purchaser with all of the Debtors' right, title, and interest in the Purchased Assets free and clear of ad valorem, property, and similar tax liens for any tax years, which ad valorem, property, and similar tax liens shall attach to the portion of the Sale proceeds ultimately attributable to the property against which they assert a lien, in the order of their priority, with the same validity, force, and effect that they now have as against such Purchased Assets, subject to any claims and defenses the Debtors and Debtors' estates may possess with respect thereto.

Assumption and Assignment of Assumed Contracts and Assumed Liabilities

16. The Debtors are hereby authorized to and shall, in accordance with sections 105(a) and 365 of the Bankruptcy Code, (a) assume the Assumed Contracts, (b) assign the Assumed Contracts to the Purchaser, effective upon and subject to the occurrence of the Closing, free and clear of all Liens (except for Permitted Liens) and Liabilities (other than Assumed Liabilities), which Assumed Contracts by operation of this Sale Order shall be deemed assumed and assigned effective as of the Closing, and (c) execute and deliver to the Purchaser such documents or other instruments as may be necessary to assign and transfer the Assumed Contracts to the Purchaser. The Purchaser's assumption of the Assumed Contracts on the terms set forth in the APA is hereby approved, and all requirements and conditions under sections 363 and 365 of the Bankruptcy Code

for the assumption and assignment of the Assumed Contracts by the Debtors to the Purchaser have been satisfied.

17. Any provisions in any Assumed Contract that prohibit or condition the assignment of such Assumed Contract on the consent of the non-Debtor counterparty thereto or allow the non-Debtor party to such Assumed Contract to terminate, recapture, impose any penalty, condition on renewal or extension, or modify any term or condition upon the assignment of such Assumed Contract, shall constitute unenforceable anti-assignment provisions that are void and of no force and effect.

18. Upon assignment to the Purchaser, (a) the Assumed Contracts shall remain in full force and effect for the benefit of the Purchaser in accordance with their respective terms, notwithstanding any provision in any such Assumed Contract (including those of the type described in sections 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts, limits, or conditions such assignment or transfer; and (b) in accordance with sections 363 and 365 of the Bankruptcy Code, the Purchaser shall be fully and irrevocably vested in all right, title, and interest of the Debtors in each Assumed Contract free and clear of Liens (except for Permitted Liens) and Liabilities (other than Assumed Liabilities).

19. The Purchaser is hereby substituted for all purposes as a party to all Assumed Contracts in the place of any applicable Debtor or Debtors party to any such Assumed Contracts, and the Purchaser shall have any and all rights and benefits of the respective Debtor or Debtors under all such Assumed Contracts without interruption or termination of any kind, and all terms applicable to such Debtor or Debtors shall apply to the Purchaser as if such Assumed Contracts were amended to replace such Debtor or Debtors with the Purchaser.

20. All defaults or other obligations of the Debtors under the Assumed Contracts arising prior to the Closing (without giving effect to any acceleration clauses or any default provisions of the kind specified in section 365(b)(2) of the Bankruptcy Code) as to which no objections were interposed and remain pending as of the date of this Sale Order are deemed satisfied by the payment of the proposed amount necessary, if any, to cure all monetary defaults, if any, under such Assumed Contract in those amounts set forth in Schedule 2.6(a) of the APA and in the Cure Notice, which was served in compliance with the Bidding Procedures Order, and which were satisfied, or shall be satisfied as soon as practicable, as provided in the APA.

21. For all Assumed Contracts for which a Cure Notice was served, the Debtors or the Purchaser, as applicable under the APA, are authorized and directed to pay all Cure Costs listed in the Cure Notice, or in an amount agreed to with a Counterparty, upon the later of (a) the Closing, (b) the time agreed to with a Counterparty, or (c) for any Assumed Contract for which a timely filed and served objection (an “Assumption Objection”) has been filed to the assumption and assignment of such agreement or the Cure Costs relating thereto and such objection remains pending as of the date of this Sale Order, the resolution of such Assumption Objection by settlement or order of this Court. If no out-of-court resolution can be reached, either party may request a hearing on no less than 14 days’ notice to the other party.

22. In accordance with the APA, the Purchaser may remove or add any executory contract or unexpired lease to or from the Assumed Contract and Leases Schedule at any time up to the Closing Date. The Counterparty to any such added or removed contract or unexpired lease will be notified by written notice via electronic mail, if possible, or first class U.S. mail, postage prepaid, where electronic delivery is unavailable, no later than five (5) business days following such determination.

23. Each Counterparty to an Assumed Contract is hereby forever barred, estopped, and permanently enjoined from asserting against the Debtors, the Purchaser, or any of their affiliates (including any designees), or the property of any of them, any default, breach, claims of pecuniary losses existing as of the Closing or by reason of Closing, action, liability, or other cause of action existing as of the date of the Sale Hearing whether asserted or not, or, against the Purchaser or any of its affiliates (including any designees), any counterclaim, defense, setoff, or any other claim asserted or assertable against the Debtors. Each non-Debtor party to an Assumed Contract is hereby forever barred, estopped, and permanently enjoined from asserting any objection to the assumption and assignment of such non-Debtor party's Assumed Contract including, without limitation, that its consent is necessary for such assumption and assignment.

24. Subject to the qualifications enumerated this Court's finding in Paragraph P above and the limitations specified in Section 2.3 of the APA, Purchaser shall further be responsible for paying or otherwise satisfying all Assumed Liabilities contemplated under Sections 2.3 and 2.6 of the APA. The Debtors, or any successor in interest, reserve the right to seek reimbursement from the Purchaser for any and all Assumed Liabilities contemplated in Sections 2.3 and 2.6 of the APA and summarized in Schedule 2.6(a) to the APA which remain unpaid or are otherwise asserted against the Debtors or their bankruptcy estates.

Additional Provisions

25. The Purchaser shall be authorized, as of the Closing Date and subject to the Management Agreement, to: (a) operate any property or any other business transacted with respect to the Purchased Assets under all licenses, permits, registrations, and governmental authorizations and approvals; and (b) obtain and pay any and all fees associated with any lawful license or permit, until such time that the Purchaser is able to cause said licenses, permits, registrations, or

governmental authorizations or approvals to be transferred to the Purchaser or until such time that the Purchaser is able to obtain replacement licenses and permits.

26. The Debtors shall: (a) be authorized as of the Closing Date to perform under the Management Agreement; (b) cooperate in the transfer of all licenses and permits to the Purchaser; (c) execute and deliver such documentation and certificates as are necessary or required to operate, transfer, or cancel the licenses and permits; and (d) not engage in any acts that would interfere with the Purchaser's operation, transfer, or cancellation of licenses or permits. All such licenses, permits, registrations, and governmental authorizations and approvals are deemed to have been transferred to the Purchaser.

27. The Purchaser shall not be deemed to be a joint employer, single employer, co-employer, or successor employer with the Debtors for any purpose or under the laws of the United States, any state, territory, or possession thereof, and the Purchaser shall not have any obligation to pay any past wages, benefits, or severance pay or extend or make any benefits or benefit programs, including, without limitation, the Consolidated Omnibus Budget Reconciliation Act of 1985 or any similar laws or regulations, to any of the Debtors' employees or former employees, including, without limitation, any such employees who may become employees of the Purchaser.

28. Notwithstanding anything to the contrary in this Sale Order or the APA, the rights of insured persons and entities, if any, to access any insurance policies or the proceeds thereof (collectively, the "Policies") in their respective capacities as insureds thereunder, including those under which the Debtors are insured, shall not be affected or diminished by this Sale Order, and the rights, defenses and claims of the Debtors, their Estates, any representative of the Estates, and insurers are reserved with respect thereto; *provided* that nothing in the Sale Motion, APA, or this

Sale Order alters or amends the terms and conditions of the Policies, enjoins insurers or relieves the Debtors or any insurers of any of their obligations thereunder.

29. This Sale Order (a) shall be effective as a determination that, upon the Closing, all Liens (except for Permitted Liens) and Liabilities (other than Assumed Liabilities) existing as to the Purchased Assets, including the Purchased Actions, prior to the Closing have been unconditionally released, discharged, and terminated and that the conveyances described herein have been effected, and (b) shall be binding upon and shall govern the acts of all entities including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, foreign, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to, the Purchased Assets, including the Purchased Actions.

30. Each and every federal, state, and governmental agency or department, and any other person or entity, is hereby authorized to accept any and all documents and instruments in connection with or necessary to consummate the Sale transaction contemplated by the APA.

31. No governmental unit may revoke or suspend any right, license, copyright, patent, trademark or other permission relating to the use of the Purchased Assets sold, transferred, or conveyed to the Purchaser on account of the filing or pendency of the chapter 11 case or the consummation of the sale of the Purchased Assets.

32. At any time prior to the Closing, the Purchaser may assign the APA or its rights thereunder to one or more of its affiliates, which shall be entitled to assume and accede to the APA

and to purchase and acquire any or some of the Purchased Assets in lieu of the Purchaser, and such affiliate(s) designee(s) shall be deemed to be the Purchaser for all purposes under this Sale Order.

33. Neither the Purchaser nor any of its affiliates are or shall be deemed, as a result of the consummation of the Sale contemplated herein, to: (a) be legal successors to the Debtors or their estates by reason of any theory of law or equity; (b) be an affiliate of any of the Debtors; (c) have, de facto or otherwise, merged with or into the Debtors; (d) be an alter ego or a mere continuation or substantial continuation or successor of the Debtors in any respect; or (e) be a joint employer or co-employer with, or successor employer, of the Debtors. Except as expressly permitted or otherwise specifically provided for in the APA or this Sale Order, neither the Purchaser nor any of its affiliates shall (y) assume or in any way be responsible for any Liability or obligation of any of the Debtors and/or their estates or (z) have any liability or responsibility for any Liability or other obligation of the Debtors' arising under or related to the Purchased Assets or otherwise. Without limiting the generality of the foregoing, and except as otherwise specifically provided herein and in the APA, the Purchaser and its affiliates shall not be liable for any claims against the Debtors or any of their predecessors or affiliates, and the Purchaser and its affiliates shall have no successor or vicarious liabilities of any kind or character, including, but not limited to, any theory of warranty, product liability, environmental, successor or transferee liability, labor law, de facto merger, or substantial continuity, whether known or unknown as of the Closing, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtors or any obligations of the Debtors, including, but not limited to, liabilities on account of any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of the Debtors' businesses prior to the Closing.

34. Following the Closing, no holder of a Lien (except for Permitted Liens) or a Liability (other than Assumed Liabilities) in the Purchased Assets (including the Purchased Actions) shall interfere with the Purchaser's title to or use and enjoyment of the Purchased Assets based on or related to such Lien, Liability, or any actions that the Debtors may take in these chapter 11 cases or any successor cases.

35. The Purchaser is a good faith purchaser and is hereby granted and is entitled to all of the benefits and protections afforded by section 363(m) of the Bankruptcy Code to a good faith buyer, including, without limitation, with respect to the transfer of the Assumed Contracts as part of the Sale of the Purchased Assets pursuant to section 365 of the Bankruptcy Code and this Sale Order.

36. Pursuant to section 363(m) of the Bankruptcy Code, if any or all of the provisions of this Sale Order are hereafter reversed, modified, or vacated by a subsequent order of the Court or any other court, such reversal, modification, or vacatur shall not affect the validity and enforceability of any transfer under the APA or obligation or right granted pursuant to the terms of this Sale Order (unless stayed pending appeal), and, notwithstanding any reversal, modification, or vacatur, the validity and enforceability of any transfer under the APA or obligation or right granted pursuant to the terms of this Sale Order shall be governed in all respects by the original provisions of this Sale Order and the APA, as applicable.

37. This Court retains jurisdiction to enforce and implement the terms and provisions of the APA, all amendments thereto, any waivers and consents thereunder, and each of the agreements executed in connection therewith in all respects, including, but not limited to, retaining jurisdiction to: (a) compel delivery of the Purchased Assets or performance of other obligations owed to the Purchaser; (b) resolve any disputes arising under or related to the APA, except as

otherwise provided therein; (c) interpret, implement, and enforce the provisions of this Sale Order; and (d) protect the Purchaser and its affiliates against (i) any Liens in or Liabilities of the Debtors or the Purchased Assets of any kind or nature whatsoever and (ii) any creditors or other parties in interest regarding the turnover of the Purchased Assets (including the Purchased Actions) that may be in their possession.

38. The so-called “bulk sale” laws or any similar law of any applicable state or other jurisdiction are waived or inapplicable to the Sale.

39. Except as otherwise expressly provided in the APA, the Purchaser shall have no liability to pay wages, bonuses, severance pay, benefits (including, without limitation, contributions or payments on account of any under-funding with respect to any and all pension plans), or any other payment with respect to employees or former employees of the Debtors. Except as otherwise expressly provided in the APA, the Purchaser shall have no liability with respect to any collective bargaining agreement, employee pension plan, employee welfare or retention, benefit, and/or incentive plan to which any Debtor is a party and relating to the Purchased Assets (including, without limitation, arising from or related to the rejection or other termination of any such agreement), and the Purchaser shall in no way be deemed a party to or assignee of any such agreement, and no employee of the Purchaser shall be deemed in any way covered by or a party to any such agreement, and except as otherwise expressly provided in the APA, all parties to any such agreement are hereby enjoined from asserting against the Purchaser any and all Claims arising from or relating to the APA.

40. The failure to specifically include any particular provision of the APA or other related documents in this Sale Order shall not diminish or impair the effectiveness of such

provisions, it being the intent of the Court that the APA and other related documents be authorized and approved in their entirety.

41. The failure to include specifically any particular provisions of the APA or any of the documents, agreements, or instruments executed in connection therewith in this Sale Order shall not diminish or impair the force of such provision, document, agreement, or instrument, it being the intent of the Court, the Debtors, and the Purchaser, that the APA and each provision, document, agreement, and instrument be authorized and approved in its entirety with such amendments thereto as may be made in conformity with this Sale Order prior to the Closing Date.

42. To the extent of any conflict between the APA and this Sale Order, the terms and provisions of the APA shall govern.

43. Nothing contained in any chapter 11 plan confirmed in the Debtors' Chapter 11 Cases, the order confirming any chapter 11 plan, or any order in the Chapter 11 Cases (including, without limitation, any order approving a wind-down or dismissal of the Chapter 11 Cases or any order entered as part of or after any conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code) shall alter, conflict with, or derogate from the provisions of the APA or this Sale Order, and to the extent of any conflict or derogation between this Sale Order or the APA and such future chapter 11 plan or order, the terms of this Sale Order and the APA shall control.

44. The Court shall retain exclusive jurisdiction to enforce the terms and provisions of the APA, this Sale Order, and the Bidding Procedures Order in all respects and to decide any disputes concerning this Sale Order and the APA, or the rights and duties all Persons hereunder or thereunder, as applicable, or any issues relating to this Sale Order or the APA, including, without limitation, the interpretation of the terms, conditions, and provisions hereof and thereof, the status, nature, and extent of the Purchased Assets and any Assumed Contracts, and all issues and disputes

existing in connection with the relief authorized herein, inclusive of those concerning the transfer of the Purchased Assets free and clear of all Liens and Liabilities.

45. Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), this Sale Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. In the absence of any entity obtaining a stay pending appeal, the Debtors and the Purchaser are free to close the Sale under the APA in accordance with its terms at any time.

46. The Court shall retain jurisdiction over the interpretation or implementation of any and all provisions of this Sale Order.

END OF ORDER

Submitted by:

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**COUNSEL TO THE DEBTORS
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Exhibit 1

APA