

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

BEAVEX HOLDING CORPORATION, *et al.*,¹

Debtors.

Chapter 11

Case No. 19-10316 (___)

Joint Administration Requested

DEBTORS' MOTION, PURSUANT TO SECTIONS 105(a), 363 AND 365 OF THE BANKRUPTCY CODE FOR ENTRY OF: (I) AN ORDER (A) APPROVING AND AUTHORIZING BIDDING PROCEDURES IN CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL THE DEBTORS' ASSETS, (B) APPROVING AND AUTHORIZING THE BID PROTECTIONS, (C) SCHEDULING THE RELATED AUCTION AND HEARING TO CONSIDER APPROVAL OF THE SALE, (D) APPROVING PROCEDURES RELATED TO THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (E) APPROVING THE FORM AND MANNER OF NOTICE THEREOF AND (F) GRANTING RELATED RELIEF; AND (II) AN ORDER (A) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, (B) AUTHORIZING AND APPROVING THE DEBTORS' PERFORMANCE UNDER THE ASSET PURCHASE AGREEMENT, (C) APPROVING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN OF THE DEBTORS' EXECUTORY CONTRACTS AND UNEXPIRED LEASES RELATED THERETO AND (D) GRANTING RELATED RELIEF

The above-captioned debtors and debtors in possession (collectively, the "Debtors") hereby submit this motion (the "Motion")² for the entry of (i) an order, substantially in the form attached hereto as Exhibit A (the "Bidding Procedures Order"), (a) approving and authorizing certain bidding procedures substantially in the form attached to the Bidding Procedures Order as Exhibit 1 (the "Bidding Procedures,") in connection with the sale (the "Sale") of substantially all of the Debtors' assets (the "Assets") (or any combination of subset(s) thereof), pursuant to that

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: BeavEx Holding Corporation (7740); BeavEx Acquisition, Inc. (5497); BeavEx Incorporated (7355); JNJW Enterprises, Inc. (4963); and USXP, LLC (2997). The headquarters for the above-captioned Debtors is located at 2120 Powers Ferry Road SE, Suite 300, Atlanta, GA 30339.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

certain Asset Purchase Agreement, by and among the Debtors and TForce Final Mile, LLC, TForce Final Mile West, LLC and TForce Logistics, LLC (collectively, “TForce” or the “Lead Bidder”), substantially in the form attached hereto as Exhibit B (the “Lead Agreement” or “APA”), subject to the outcome of an auction (the “Auction”), (b) approving and authorizing the Debtors to pay the Lead Bidder a fee of \$180,000 (the “Break-Up Fee”) and an expense reimbursement of no more than \$150,000 (the “Expense Reimbursement,” and, together with the Break-Up Fee, the “Bid Protections”) when and if payable pursuant to the terms of the APA, (c) scheduling the Auction and hearing to consider approval of the Sale, (d) approving procedures related to the assumption and assignment of certain of the Debtors’ executory contracts and unexpired leases (the “Assumption and Assignment Procedures”), (e) approving the form and manner of notice thereof and (f) granting related relief; and (ii) an order, substantially in the form attached hereto as Exhibit C (the “Sale Order”), (a) authorizing the sale of the Assets (or any combination of subset(s) thereof) free and clear of liens, claims, encumbrances, and other interests, except as provided by the APA or a Modified APA (as defined herein), (b) authorizing and approving the Debtors’ performance under the APA or a Modified APA, (c) approving the assumption and assignment of certain of the Debtors’ executory contracts and unexpired leases related thereto, and (d) granting related relief. The facts and circumstances supporting this Motion are set forth in the concurrently filed *Declaration of Donald Van der Wiel In Support of Debtors’ Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”). In further support of this Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated February 29, 2012 (the “Amended Standing Order”). This is a core

proceeding pursuant to 28 U.S.C. § 157(b), and pursuant to Rule 9013-1(f) of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory and legal predicates for the relief sought herein are sections 105(a), 363 and 365 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Rules 2002-1 and 6004-1.

BACKGROUND

3. On the date hereof, (the “Petition Date”), each of the Debtors commenced a voluntary case under the Bankruptcy Code (collectively, the “Chapter 11 Cases”). The Debtors are authorized to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No official committees have been appointed in the Chapter 11 Cases and no request has been made for the appointment of a trustee or examiner.

4. Additional information regarding the Debtors’ business, capital structure, and the circumstances leading to the filing of the Chapter 11 Cases is set forth in the First Day Declaration.

RELIEF REQUESTED

5. By this Motion, the Debtors request that the Court enter (i) the Bidding Procedures Order (a) approving and authorizing the Bidding Procedures, (b) approving and authorizing the payment of the Bid Protections, (c) scheduling the Auction and hearing to consider

approval of the Sale, (d) approving the Assumption and Assignment Procedures, (e) approving the form and manner of notice thereof, and (f) granting related relief; and (ii) the Sale Order (a) approving the Sale free and clear of all liens, claims, encumbrances, and other interests to the party or parties submitting the highest or otherwise best bid(s) for the Assets (or any combination of subset(s) thereof), (b) approving the assumption, assignment and sale of certain executory contracts and unexpired leases (and related cure amounts), (c) authorizing and approving the Debtors' performance under the APA or a Modified APA, and (d) granting related relief.

EVENTS LEADING TO THE SALE

6. The Debtors' business consists of two business operations: namely, their transportation, warehousing and courier services (the "Core BeavEx Business") and their medical logistics support services (the "Medical Logistics Business"), which is operated by the BeavEx Incorporated's Guardian Medical Logistics Division ("GML Division").

7. Through their operating entities, the Debtors have become a leading provider of ground and air transportation, warehousing and courier services, providing "last mile" delivery services, often consisting of controlled substances or otherwise highly sensitive materials to over 800 customers nationwide. To that end, the Debtors contract with approximately 2,200 non-employee independent contract couriers (the "Contract Couriers"), many of whom require certain security clearance or certifications, to transport their packages to and from their customers and/or the Debtors' terminals to the end-users. As a result of the Debtors' vast network of warehouses, Contract Couriers, dedicated full and part-time employees and temporary employees, the Debtors are able to provide their customers with time-critical, same day transportation (including air transportation). Through their vast operations, the Debtors are able to provide this same-day delivery service to more than 77% of the U.S. population and next-day service to approximately 97% of the U.S. population.

8. In addition to the Debtors' ground and air transportation services that are part of the Core BeavEx Business, the GML Division also provides medical logistics services related to: (i) on-site drug and alcohol testing that includes random, pre-employment and post-incident blood/alcohol testing; (ii) on-site phlebotomy services; (iii) biometric and phlebotomy venipuncture draws related to company wellness programs and (iv) policy development and assessment of alcohol and drug testing programs (the "GML Services"). To that end, the Debtors contract with approximately 900 non-employee third-party service providers (the "Third-Party Service Providers") who provide the GML Services to the Debtors' customers nationwide. As a result of network of Third-Party Service Providers, the Debtors have become the nation's largest provider of medical logistics services dedicated solely to the medical industry.

9. In September 2018, the Debtors, in consultation with their legal and financial advisors, began exploring several potential transactions through which to sell all or substantial parts of their business. To that end, the Debtors engaged G2 Capital Advisors ("G2") to conduct an extensive and comprehensive marketing process. The Debtors, through G2, conducted a targeted solicitation by reaching out to approximately fifty-seven (57) potential acquiring parties, distributing an executive summary to twenty-four (24) of those parties who expressed an interest in acquiring all or a portion of the Debtors' assets.

10. As part of this marketing process, the Debtors and their advisors set up an electronic data room with confidential business information, and potential bidders were granted access in order to perform the necessary diligence. As a result of the marketing efforts, the Debtors received nine (9) indications of interest. The Debtors determined that seven (7) of those indications of interests fairly reflected the Debtors' valuation and should be advanced to the next stage of the marketing process which included on-site meetings with the Debtors. The Debtors

ultimately received four (4) written letters of interest (“LOIs”) for the purchase of some or substantially all of their assets, one of which included the LOI from the Lead Bidder.

11. After evaluating the LOI’s, the Debtors, in consultation with their legal and financial advisors, determined that a sale of all or substantially all of their assets, was the best way to maximize the value of their estates for their creditors and other parties in interest. On February 14, 2019, BeavEx Incorporated, JNJW Enterprises, Inc. and USXP, LLC (the “Seller”) entered into the APA with the Lead Bidder for the sale of the Assets. The APA evidences a value-maximizing bid of cash in the approximate amount of \$7.2 million, plus assumption of certain liabilities. The APA preserves the Debtors’ business as a going concern. Moreover, it will also provide for substantial number of the Debtors’ employees to keep their jobs on substantially the same terms and conditions under which they are currently employed and for the assumption of a substantial number of service agreements with the Contract Couriers and Third-Party Service Providers. The APA is not conditioned on financing or the completion of due diligence.

THE ASSET PURCHASE AGREEMENT

12. The Debtors are seeking approval of the APA, which will also serve as the form asset purchase agreement to be provided to all prospective bidders (each, a “Potential Bidder”) that wish to participate in the Bidding Process (as defined herein). Among other requirements, each Potential Bidder will be required to submit an executed copy of a modified APA (each, a “Modified APA”) to the Debtors reflecting the terms upon which the Potential Bidder would agree to purchase the Acquired Assets (or any combination of subset(s) of the Assets and assume certain liabilities. The Debtors propose that the deadline for submitting a Modified APA shall be twenty-five (25) days following entry of the Bidding Procedures Order (the “Bid Deadline”).

13. Key terms of the APA are highlighted below, including terms to be highlighted in accordance with Local Rule 6004-1(b):³

- i. **Purchase Price**. The purchase price (the “Purchase Price”) for the purchase, sale, assignment, and conveyance of Seller’s right, title, and interest in, to, and under the Acquired Assets shall consist of:
 - a. cash in an amount equal to Seven Million Two Hundred Four Thousand Nine Hundred Eighty-Seven Dollars (\$7,204,987) (the “Cash Purchase Price”); plus;
 - b. assumption of the Assumed Liabilities; and
 - c. any other consideration provided under the APA.

APA, § 3.1.

- ii. **Agreements with Management**. Prior to the Closing, Buyer shall provide (or cause one of its Affiliates to provide) to substantially all Business Employees on the Transferred Employee List an offer (the “Employment Offer”) of employment, each on terms (with respects to wage level and benefits) which are substantially similar to the terms such Business Employee was subject to prior to the date hereof. Each Business Employee who accepts Buyer’s offer of employment and who becomes an employee of Buyer or of one of its Affiliates shall be a “Transferred Employee.” Seller shall cooperate with Buyer in effecting the Transferred Employees’ transfer of employment from Seller to Buyer or a Buyer Subsidiary as contemplated hereby. APA, § 7.4(b).
- iii. **No Solicitation**. Buyer agrees and acknowledges that (i) Seller and its Affiliates shall be permitted, and shall be permitted to cause their Representatives, to initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, respond to any unsolicited inquiries, proposals or offers submitted by, and enter into any discussions or negotiations regarding any of the foregoing with, any Person (in addition to Buyer and its Affiliates, agents and Representatives) in accordance with the terms of the Sale Procedures Order; and (ii) the Sale Procedures approved by the Sale Procedures Order may be supplemented by other customary procedures not inconsistent with the matters otherwise set forth therein and the terms of the Agreement. APA, § 7.3(g).
- iv. **Closing and Other Deadlines**. The Closing of the sale of the Acquired Assets and the assumption of the Assumed Liabilities contemplated thereby

³ Capitalized terms used in this paragraph, but not otherwise defined herein shall have the meaning ascribed to them in APA. To the extent there are any ambiguities or inconsistencies between this summary and the APA, the APA shall govern in all respects.

shall take place electronically, no later than the first Business Day following the date on which the conditions set forth in Article IX and Article X of the APA have been satisfied or (if permissible) waived (other than the conditions which by their nature are to be satisfied by actions taken at the Closing, but subject to the satisfaction or (if permissible) waiver of such conditions), or at such other place or time as Buyer and Seller may mutually agree. The date and time at which the Closing actually occurs is referred to as the “Closing Date. APA, § 4.1. The Agreement may be terminated at any time prior to the Closing Date, if by mutual consent of the parties. APA, § 11.1(c).

The Agreement may be terminated by the Buyer in the event of any breach by Seller of any of its agreements, covenants, representations, or warranties contained herein (provided such breach would result in the failure of a condition set forth in Section 9.1 or Section 9.2 to be satisfied), and the failure of Seller to cure such breach by the earlier of (A) the first Business Day before the Outside Date and (B) the date that is ten (10) Business Days after the date of receipt of the Buyer Termination Notice; provided, however, that (1) Buyer is not in material breach of any of its representations, warranties, covenants or agreements contained herein, (2) Buyer notifies Seller in writing (the “Buyer Termination Notice”) of its intention to exercise its rights under Section 11.1(c)(i) as a result of the breach, and (3) Buyer specifies in the Buyer Termination Notice the representations, warranties, covenants, and agreements contained herein of which Seller is allegedly in breach. APA, § 11.1(c).

The Agreement may be terminated by the Seller in the event of any material breach by Buyer of any of its agreements, covenants, representations or warranties contained herein (provided such breach would result in the failure of a condition set forth in Section 10.1 or Section 10.2 to be satisfied), and the failure of Buyer to cure such breach by the earlier of (A) the first Business Day before the Outside Date and (B) the date that is ten (10) Business Days after the date of receipt of the Seller Termination Notice; provided, however, that Seller (1) is not in material breach of any of its representations, warranties, covenants or agreements contained herein, (2) notifies Buyer in writing (the “Seller Termination Notice”) of its intention to exercise its rights under Section 11.1(d)(i) as a result of the breach, and (3) specifies in Seller Termination Notice the representations, warranties, covenants, or agreements contained herein of which Buyer is allegedly in breach. APA, § 11.1(d).

The Seller’s and Buyer’s obligations to consummate the Closing are subject to the satisfaction or waiver on or prior to the Closing Date of certain conditions, including, but not limited to, the following:

- a. Accuracy of Representations. Each of the representations and warranties of Seller contained in the Agreement shall be true and correct

in accordance with its terms as of the signing of the Agreement. At and as of the Closing, each of the representations and warranties of Seller contained in the Agreement shall be true and correct in all material respects, except for those representations and warranties which are qualified by “materiality” or “Material Adverse Effect” requirements, which shall be true in all respects. Seller shall have delivered to Buyer a certificate, dated as of the Closing Date, executed on behalf of Seller by an authorized executive officer thereof, certifying that the conditions specified above have been fulfilled. APA, § 9.1.

- b. Seller’s Performance. Seller shall have performed and complied with in all material respects the covenants and agreements that Seller is required to perform or comply with pursuant to the Agreement at or prior to the Closing and, since the Execution Date, there shall not have occurred any Material Adverse Effect, and Buyer shall have received a certificate of Seller to such effect signed by a duly authorized officer thereof. APA, § 9.2.
- c. No Closing Legal Impediment. No Governmental Authority shall have enacted, issued, promulgated or entered any Order which is in effect and has the effect of making illegal or otherwise prohibiting the consummation of the transactions contemplated by the Agreement (a “Closing Legal Impediment”). APA, § 9.3.
- d. Seller’s Deliveries. Each of the deliveries required to be made to Buyer pursuant to Section 4.3 shall have been so delivered. APA, § 9.4.
- e. Effective Date and Sale Order. The Effective Date shall have occurred, the Bankruptcy Court shall have entered the Sale Order in a form reasonably acceptable to Buyer and reasonably acceptable to Seller, and the Sale Procedures Order and Sale Order shall be Final Orders. APA, § 9.5.
- f. Break-Up Fee and Expense Reimbursement. The Bankruptcy Court shall have approved the Break-Up Fee and the Expense Reimbursement Amount in the Sale Procedures Order. APA, § 9.6.
- g. Acquired Assets, Assumed Contracts and Assumed Leases, Cure Claims. All Acquired Assets shall be delivered and/or assigned to Buyer. The Bankruptcy Court shall have approved and authorized the assumption and assignment of each Assumed Liability, Assumed Contract and Assumed Lease, unless Buyer waives this requirement with respect to any Assumed Contract or Assumed Lease. APA, § 9.7.
- h. Government Consents. All filings, notices, licenses, permits and other consents of, to or with, any Governmental Authority or any Person that are required: (i) to permit Seller to perform the transactions

contemplated by the Agreement; or (ii) in order to prevent a material breach of or material default under or a right of termination or material modification of any Assumed Contract or Assumed Lease, in each case as set forth in Schedule 9.8, shall have been duly made or obtained and, in the case of Governmental Authorities, shall no longer be subject to administrative or judicial appeal, review or reconsideration, if any. No consent to the assumption, assignment, or sale of any Assumed Contract or Assumed Lease shall be required if the Sale Order expressly provides that Seller has the power to assume, assign, or sell such Assumed Contract under Section 365 of the Bankruptcy Code without such consent. APA, § 9.8.

- v. **Cash Deposit.** On the Execution Date, Buyer will deliver to the Escrow Agent, pursuant to the terms of the Escrow Agreement, an amount equal to Seven Hundred Twenty Thousand Four Hundred Ninety-Eight and 77/100 Dollars (\$720,498.70), representing ten percent (10%) of the Cash Purchase Price. Any fees or costs payable to the Escrow Agent or in connection with the Escrow Agreement shall be divided evenly and payable one-half by Buyer and one-half by Seller. The amount held in escrow by the Escrow Agent pursuant to the Escrow Agreement (the “Cash Deposit”) shall be held by the Escrow Agent pursuant to the terms of the APA. APA, § 3.2.
- vi. **Record Retention.** Documents, attorney-client privileged communications, work product of Seller’s attorneys regarding any Excluded Assets or prepared in connection with the Agreement, or the transactions contemplated hereby or relating to the Chapter 11 Cases, any interim or Final Orders, and any Documents that Seller is required by Law to retain, and corporate or other entity filings, but not including any Documents (including without limitation, any attorney-client privileged communications and work product of attorney) included as Acquired Assets pursuant to Section 2.1(j); provided, however, that Buyer shall have the right, to the extent permitted by applicable Law, to make copies of any portions of such retained books, records, and documents that relate to the Acquired Assets. APA, § 2.2(c).
- vii. **Sale of Avoidance Actions.** The Acquired Assets include the claims under chapter 5 of the Bankruptcy Code or under state fraudulent conveyance, fraudulent transfer, or similar laws. APA, § 1.1; § 2.1.
- viii. **Limitations on Successor Liability.** By virtue of the consummation of the Sale, (i) the Buyer is not a continuation of the Seller or their respective estates, there is no continuity between the Buyer and the Debtors, there is no common identity between the Seller and the Buyer, there is no continuity of enterprise between the Seller and the Buyer, and the Buyer is not a mere continuation of the Seller or their estates, (ii) the Buyer is not holding itself out to the public as a continuation of the Seller or their respective estates and (iii) the Sale does not amount to a consolidation or *de facto* merger of

the Buyer and the Seller and/or the Seller's estates. Accordingly, the Buyer is not and will not be deemed a successor to the Seller as a result of the consummation of the Sale contemplated by the APA. Proposed Sale Order, § V.B.

- ix. **Sale Free and Clear of Unexpired Leases.** Seller shall assume and assign or sell all Assumed Contracts and Assumed Leases to Buyer, and Buyer shall assume or purchase all Assumed Contracts and Assumed Leases from Seller, as of the Closing Date, pursuant to the Sale Order. In connection with such assignment, assumption, or sale, Buyer shall assume on the Closing Date, any Assumed Liabilities. In the case of Assumed Leases, Assumed Contracts and other assets included in the Acquired Assets (a) that cannot be sold or assigned effectively without the consent of third parties, which consent has not been obtained prior to the Closing (after giving effect to the Sale Order and the Bankruptcy Code), Seller shall, subject to any approval of the Bankruptcy Court that may be required, cooperate with Buyer in all reasonable respects to obtain such consent, or (b) that are otherwise not capable of sale or assignment (after giving effect to the Sale Order and the Bankruptcy Code), Seller shall, subject to any approval of the Bankruptcy Court that may be required, reasonably cooperate with Buyer to provide to Buyer the benefits thereof in some other reasonable manner (including the exercise of the rights of Seller thereunder); provided, however, that Seller's obligations pursuant to this sentence shall be at no cost to Seller and shall not extend for a period beyond the earliest of (x) the expiration of the term of the applicable Assumed Lease, Assumed Contract, or other asset; and (y) the first anniversary of the Closing. APA, § 2.5.
- x. **Bid Protections.** If, following the Effective Date, the Agreement is terminated pursuant to Section 11.1(b)(iv) or Section 11.1(e), then Seller shall pay in cash to Buyer, subject to the consummation of the Alternative Transaction and not later than fifteen (15) days following the closing of such Alternative Transaction, a break-up fee in an amount equal to \$180,000 (the "Break-Up Fee") payable from the proceeds of such Alternative Transaction by wire transfer of immediately available funds to the account specified by Buyer to Seller in writing. APA, § 11.3.
- xi. **Relief from Bankruptcy Rule 6004(h).** Time is of the essence in consummating the Sale. Notwithstanding the applicability of Bankruptcy Rule 6004, the terms and conditions of both the Bidding Procedures Order and Sale Order shall be immediately effective and enforceable. Bidding Procedures Order § 25; Sale Order § 29.

THE BIDDING PROCEDURES

14. By this Motion, the Debtors request entry of the Bidding Procedures Order, which will, among other things, establish the following timeline:⁴

Proposed Sale Timeline	
Deadline to Serve Sale Notice and Cure Notice	Within two (2) Business Days ⁵ after entry of the Bidding Procedures Order
Cure Objection Deadline and Assignment Objection Deadline	Within ten (10) days after service of Cure Notice
Bid Deadline	Twenty-five (25) days after entry of Bidding Procedures Order
Sale Objection Deadline	Twenty-Five (25) days after entry of the Bidding Procedures Order
Deadline to Notify Qualified Bidders	One (1) Business Day after Bid Deadline
Auction (if required)	Two (2) Business Days after Bid Deadline
Notice of Successful Bidder	One (1) Business Day after Auction
Sale Reply Deadline	Two (2) days prior to the Sale Hearing
Sale Hearing	No later than five (5) Business Days after the Bid Deadline

15. The Bidding Procedures are designed to maximize value for the Debtors' estates while ensuring an orderly sale process. The Bidding Procedures describe, among other things, the procedures for parties to access due diligence, the manner in which Potential Bidders and bids become "qualified," the procedures for receipt and negotiation of bids received, the conduct of any auction, the selection and approval of any ultimately successful bidders, and related

⁴ Capitalized terms used in this paragraph, but not otherwise defined shall have the meaning ascribed to them in the Bidding Procedures. To the extent there are any ambiguities or inconsistencies between this summary and the Bidding Procedures, the terms of the Bidding Procedures shall govern in all respects.

⁵ As used herein, "Business Day" means any day other than Saturday, Sunday or legal holiday.

deadlines (collectively, the “Bidding Process”). The Bidding Process affords the Debtors a sufficient opportunity to pursue a robust sale process that will maximize the value of their Assets for the benefit of their estates, their creditors and other parties in interest.

16. Certain of the key terms of the Bidding Procedures are highlighted below, in accordance with Local Rule 6004-1(c):⁶]

- i. **Diligence**: The Debtors will afford any Qualified Bidder such due diligence access or additional information as the Debtors, in consultation with their advisors, the prepetition secured lender and proposed postpetition secured lender and any statutorily appointed committee (if any), deem appropriate, in their reasonable discretion, subject to contractual obligations to limit access to certain proprietary information; provided, however, the Debtors will, in their reasonable discretion, make reasonable commercial efforts to provide Qualified Bidders with the same information provided to the Lead Bidder.

The due diligence period shall end on the Bid Deadline, and the Debtors shall not furnish any due diligence information to any Qualified Bidder (other than the Successful Bidder) after the Bid Deadline. For the avoidance of doubt, neither the Debtors nor any of their respective representatives shall be obligated to furnish any due diligence information to any person other than a Qualified Bidder.

- ii. **Bid Deadline**: A Qualified Bidder that desires to make a bid will deliver written copies of its bid to the following parties (collectively, the “Notice Parties”): (i) the Debtors, 2120 Powers Ferry Road SE, Suite 300, Atlanta, GA 30339 (Attn. Donald Van der Wiel (dvanderwiel@beavex.com)), (ii) counsel to the Debtors: Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801 (Attn: Joseph M. Barry, Esq. (jbarry@ycst.com), Matthew B. Lunn, Esq. (mlunn@ycst.com), and Donald J. Bowman, Jr., Esq. (dbowman@ycst.com)), (iii) counsel to DIP Lender, Winston Strawn, LLP, 200 Park Avenue, New York, NY 10166 (Attn. Carey D. Schreiber, Esq. (cschreiber@winston.com)), (iv) co-counsel to postpetition lenders, Ashby & Geddes, P.A. (Attn. Gregory Taylor, Esq. (gtaylor@ashbygeddes.com)), (v) counsel to the Lead Bidder: Baker Botts L.L.P., 30 Rockefeller Plaza, New York, NY 10112 (Attn. Emanuel Grillo, Esq. (emanuel.grillo@bakerbotts.com)), and (vi) counsel to any statutorily appointed committee in the Chapter 11 Cases (collectively, the “Notice Parties”), so as to be received by the Notice Parties not later

⁶ Capitalized terms used in this paragraph, but not otherwise defined shall have the meaning ascribed to them in the Bidding Procedures. To the extent there are any ambiguities or inconsistencies between this summary and the Bidding Procedures, the terms of the Bidding Procedures shall govern in all respects.

than 4:00 p.m. (prevailing Eastern Time) on [___], 2019 (the “Bid Deadline”).

- iii. **Qualified Bidder**: A bid submitted will be considered a Qualified Bid only if the bid is submitted by a Qualified Bidder and complies with all of the following (a “Qualified Bid”):
- a. it fully discloses the identity of the Qualified Bidder;
 - b. it states that the applicable Qualified Bidder offers to purchase, in cash or other consideration, the Assets (or any combination of subset(s) thereof) upon terms and conditions that the Debtors reasonably determine, after consultation with the Consultation Parties, are at least as favorable to the Debtors as those set forth in the APA, and it provides a description of any anticipated regulatory or governmental approvals necessary to consummate the bid;
 - c. it includes a signed writing that the Qualified Bidder’s offer is irrevocable until the selection of the Successful Bidder(s), provided that if such bidder is selected as a Successful Bidder(s) its offer shall remain irrevocable until the earlier of (a) the closing of the sale to the Successful Bidder, and (b) sixty (60) days after entry of the Sale Order. Such writing shall guaranty performance of the Qualified Bidder by its parent entities, if any, or provide such other guaranty of performance acceptable to Debtors in their reasonable discretion;
 - d. confirmation that all necessary internal and shareholder approvals have been obtained prior to the bid;
 - e. it includes a duly authorized and executed copy of an asset purchase agreement, including the purchase price for the Assets expressed in U.S. Dollars, together with all exhibits and schedules thereto, together with copies marked to show any amendments and modifications to the APA (the “Proposed Asset Purchase Agreement”) and the proposed form of sale approval order to approve the sale by the Bankruptcy Court, together with a copy marked to show amendments and modifications to the proposed form of sale approval order attached to the Approval Motion; provided however, that such Proposed Asset Purchase Agreement shall not include any financing or diligence conditions;
 - f. it includes written evidence of sufficient cash on hand to fund the purchase price or sources of immediately available funds that are not conditioned on third party approvals or commitments, that will allow the Debtors to make a reasonable determination as to the Qualified Bidder’s financial and other capabilities to consummate the transaction contemplated by the Proposed Asset Purchase

Agreement; such written evidence shall include the most current audited and the most current unaudited financial statements, or such other financial information as may be acceptable to the Debtors in their reasonable discretion after consultation with the Consultation Parties (collectively, the “Financials”) of the Qualified Bidder, or, if the Qualified Bidder is an entity formed for the purpose of acquiring the Assets, the Financials of the Qualified Bidder’s equity holder(s) or other financial backer(s) that are guaranteeing the Qualified Bidder’s performance;

- g. if such bid is for the same assets, and on the substantially same terms set forth in the Lead Bid, it provides for a Purchase Price that includes cash and/or other consideration that exceeds the aggregate cash consideration to be paid to or for the benefit of the Debtors’ estates set forth in the Lead Bid by at least \$430,000, which represents the sum of (A) the amount of the Break-Up Fee of \$180,000, plus (B) the Expense Reimbursement (not to exceed \$150,000), plus (C) \$100,000 and otherwise has a value to the Debtors, in the Debtors’ exercise of their reasonable business judgment, after consultation with their advisors, that is greater or otherwise better than the value offered under the APA including impact of the liabilities assumed in the APA;
- h. it identifies the Assets (or subset(s) thereof) that are included in the bid;
- i. it identifies with particularity which executory contracts and unexpired leases the Qualified Bidder wishes to reject and provides details of the Qualified Bidder’s proposal for the treatment of related cure costs;
- j. it provides information concerning the Qualified Bidder’s ability to satisfy adequate assurance of performance with respect to executory contracts and unexpired leases to be assumed and assigned;
- k. it includes an acknowledgement and representation that the Qualified Bidder: (A) has had an opportunity to conduct any and all required due diligence regarding the Assets prior to making its offer; (B) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid; (C) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Assets or the completeness of any information provided in connection therewith or with the Auction (defined below), except as expressly stated in the Proposed Asset Purchase Agreement; and (D) is not

entitled to any expense reimbursement, break-up fee, or similar type of payment in connection with its bid;

- l. it includes evidence, in form and substance reasonably satisfactory to the Debtors, of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Proposed Asset Purchase Agreement;
- m. it contains a detailed description of how the Qualified Bidder intends to treat the Debtors' current employees, independent contract couriers, or third-party service providers;
- n. it states that the Qualified Bidder consents to the jurisdiction of the Bankruptcy Court;
- o. it contains such other information reasonably requested by the Debtors and the prepetition secured lenders and proposed postpetition secured lender;
- p. it provides a good faith cash deposit to be held by the Debtors equal to at least 10% of the Qualified Bidders' Bid (the "Good Faith Deposit"). The Good Faith Deposit shall be made by wire transfer to a non-interest bearing account specified by the Debtors pursuant to the instructions to be provided by the Debtors. The Good Faith Deposit of any Qualified Bidder (except for the Successful Bidder(s) or Back-Up Bidder(s)) shall be returned to the Qualified Bidder, with any interests earned thereon, within five (5) Business days from the Sale closing. The Good Faith Deposit of the Successful Bidder shall be applied against the purchase price for the assets purchased by the Successful Bidder
- q. it contains a statement that the Qualified Bidder has not engaged in any collusion with respect to the bidding or Sale; and
- r. it is received on or prior to the Bid Deadline.

Notwithstanding anything in these Bidding Procedures to the contrary, and for the avoidance of doubt, for all purposes under these Bidding Procedures, Auction and Sale, the Lead Bid and the Lead Bidder shall be deemed a Qualified Bid and Qualified Bidder, respectively. The Lead Bidder shall not be required to take any further action in order to participate in the Auction (if any) or, if the Lead Bidder is the Successful Bidder, to be named the Successful Bidder at the Sale Hearing (as defined below). Additionally, any bids submitted by a combination of Potential Bidders whose bids for the Assets (or any combination of subset(s) thereof) do not overlap and who agree to have their bids combined for the purposes of determination of whether such Potential Bidders (as combined) shall constitute a Qualified Bid, shall be deemed one Qualified Bid and the bidders as Qualified

Bidders, to the extent the bid (or combined bids) satisfies the provisions of the Bidding Procedures Order.

- iv. **Notification to Qualified Bidders:** No later than one (1) business day following the expiration of the Bid Deadline, the Debtors shall notify the Lead Bidder, all other Qualified Bidders, and the Notice Parties in writing as to whether or not any bids (or combination of bids) constitute Qualified Bids (and, with respect to each Qualified Bidder that submitted a bid other than the Lead Bidder, whether such Qualified Bidder's bid constitutes a Qualified Bid).

- v. **Auction, Auction Procedures, and Overbids:** If the Debtors receive one or more Qualified Bids in addition to the APA, the Debtors will conduct an auction (the "Auction") of the Assets, which shall be transcribed commencing at 10:00 a.m. (prevailing Eastern Time) two (2) business days after the Bid Deadline at the offices of Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, or such other location as shall be timely communicated by the Debtors to the Notice Parties, any Qualified Bidders that have submitted Qualified Bids, and/or other party as the Debtors may determine to include in their reasonable discretion, in each case along with their representatives and advisors. The Auction shall be conducted in accordance with the following procedures:
 - a. Only the Notice Parties, any other Qualified Bidders that have submitted Qualified Bids, and/or other party as the Debtors may determine to include in their reasonable discretion, in each case along with their representatives and advisors, shall be entitled to attend the Auction (such attendance to be in person); if a party that is a creditor of the Debtors, other than those listed above, would like to attend the Auction, such party shall make a request to attend the Auction in writing (which writing may be in the form of an electronic mail) and serve such request on the Notice Parties no later than 12:00 p.m. (prevailing Eastern Time) two (2) business days prior to the date of the Auction;

 - b. only the Lead Bidder and such other Qualified Bidders that have submitted Qualified Bids on or prior to the Bid Deadline will be entitled to make any subsequent bids at the Auction; provided that all such Qualified Bidders wishing to attend the Auction must have at least one individual representative with authority to bind such Qualified Bidder attending the Auction in person;

 - c. each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the sale;

- d. at least one (1) business day prior to the Auction, each Qualified Bidder who has timely submitted a Qualified Bid must inform the Debtors whether it intends to attend the Auction; provided that in the event a Qualified Bidder elects not to attend the Auction, such Qualified Bidder's Qualified Bid shall nevertheless remain fully enforceable against such Qualified Bidder until (a) the date of the selection of either the Successful Bidder and/or Back-up Bidder at the conclusion of the Auction, or (b) if selected as either the Successful Bidder or Back-up Bidder, until the Outside Date (as defined below). Prior to the start of the Auction, the Debtors will provide copies of the Qualified Bid which the Debtors believe, in their reasonable discretion, and following consultation with the Consultation Parties, is the highest or otherwise best offer (the "Starting Bid") to the Lead Bidder and all other Qualified Bidders;
- e. all Qualified Bidders who have timely submitted Qualified Bids will be entitled to be present for all Subsequent Bids (as defined below) at the Auction and the actual identity of each Qualified Bidder will be disclosed on the record at the Auction;
- f. the Debtors, after consultation with their advisors, may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances for conducting the Auction, provided that such rules are (i) not inconsistent with these Bidding Procedures, the Bankruptcy Code, or any order of the Court entered in connection herewith, and (ii) provide that bids be made and received on an open basis, with all material terms of each bid to be fully disclosed to all other Qualified Bidders at the Auction and (iii) are disclosed to each Qualified Bidder at the Auction; and
- g. bidding at the Auction will begin with the Starting Bid and continue in bidding increments (each a "Subsequent Bid") providing a net value to the estate of at least an additional \$100,000 above the prior bid. After the first round of bidding and between each subsequent round of bidding, the Debtors, after consultation with the Consultation Parties, shall announce the bid (including the identity of that bidder and the value of such bid) that it believes to be the highest or otherwise best offer (the "Highest Bid"). A round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the Highest Bid. Each Qualified Bidder shall either elect to provide a higher bid or withdraw from the Auction. Except as specifically set forth herein, for the purpose of evaluating the value of the consideration provided by Subsequent Bids (including any Subsequent Bid by the Lead Bidder), the Debtors will give effect to the Break-Up Fee and Expense Reimbursement payable to the Lead Bidder under the APA as well as any additional liabilities to be

assumed by a Qualified Bidder and any additional costs which may be imposed on the Debtors. If the Lead Bidder bids at the Auction, the Lead Bidder will be entitled to a “credit” for the Break-Up Fee and Expense Reimbursement. To the extent a Subsequent Bid has been accepted entirely or in part because of the addition, deletion or modification of a provision or provisions in the applicable Proposed Asset Purchase Agreement or the APA, the Debtors will identify such added, deleted or modified provision or provisions.

- vi. **Selection of Successful Bidder and Back-up Bidder.** Prior to the conclusion of the Auction, the Debtors, in consultation with their advisors and the Consultation Parties, will review and evaluate each Qualified Bid in accordance with the procedures set forth herein and determine which offer is the highest or otherwise best offer from among the Qualified Bidders (including the Lead Bidder) submitted at or prior to the Auction (such bid, the “Successful Bid” and the bidder or bidders making such bid, the “Successful Bidder(s)”) and communicate to the Lead Bidder and the other Qualified Bidders the identity of the Successful Bidder(s) and the details of the Successful Bid. The determination of the Successful Bid by the Debtors at the conclusion of the Auction shall be final, subject only to approval by the Bankruptcy Court. Upon determining the Successful Bidder(s), at the conclusion of the Auction, the Debtors shall also identify the next highest or otherwise best Qualified Bid (if any) (the “Back-Up Bid”) and the Qualified Bidder(s) who submitted such bid (the “Back-Up Bidder(s)”). Within one (1) business day after adjournment of the Auction, the Debtors shall file a notice identifying the Successful Bidder(s) and Back-up Bidder(s) with the Bankruptcy Court. Each Qualified Bidder shall be required to keep its bid open and irrevocable until the earlier of (i) 5:00 p.m. (prevailing Eastern Time) on the date that is thirty (30) days following entry of the Sale Order or (ii) the closing of the Sale with the Successful Bidder (the “Outside Date”). The Good Faith Deposit of the Back-Up Bidder shall be held by the Debtors until the earlier of two (2) business days after (i) the closing of the Sale with the Successful Bidder or (ii) the Outside Date.

Within two (2) business days after adjournment of the Auction, the Successful Bidder(s) shall complete and execute all agreements, contracts, instruments and other documents evidencing and containing the terms and conditions upon which the Successful Bid was made.

The Debtors will sell the substantially all of their Assets to the Successful Bidder(s) pursuant to the terms of the Successful Bid upon the approval of such Successful Bid by the Bankruptcy Court at the Sale Hearing. The Successful Bidder(s) shall be required to consummate the Sale by [____], subject to extensions by the Debtors, in their sole discretion. If the Successful Bidder(s) fails to timely consummate the Sale of the Assets, or any subset(s) thereof, the Debtors shall consummate the Sale of the Assets,

or any subset(s) thereof, to the Back-up Bidders pursuant to the terms of the Back-up Bid as soon as commercially reasonable.

- vii. **Alteration of Procedures:** The Debtors, after consultation with the Consultation Parties, may modify the rules, procedures and deadlines set forth herein, or adopt new rules, procedures and deadlines that, in their reasonable discretion, will better promote the goals of these procedures, namely, to maximize value for the estates; provided that all modifications and additional rules, procedures and deadlines will be non-material, may in no event extend the dates specified in Bidding Procedures Order, including permitting the submission of Qualified Bids after the close of the Auction and otherwise not conflict with these Bidding Procedures or the Bidding Procedures Order. All such modifications and additional rules will be communicated to each of the Notice Parties, Potential Bidders and Qualified Bidders.

SALE NOTICE PROCEDURES

17. Within two (2) business days after entry of the Bidding Procedures Order, the Debtors shall provide notice (substantially in the form of the notice attached to hereto as Exhibit D (the “Sale Notice”)) of the Bidding Procedures Order, the Auction, the Objection Deadlines and the sale hearing (the “Sale Hearing”) by first-class mail upon (i) the Office of the United States Trustee for the District of Delaware, (the “U.S. Trustee”), (ii) the Office of the United States Attorney for the District of Delaware (the “U.S. Attorney”), (iii) counsel to any statutory committee appointed in the Chapter 11 Cases, (iv) the Internal Revenue Service, (v) the Debtors’ thirty (30) largest unsecured creditors or an counsel to any statutorily appointed committee, (vi) counsel to the Debtors’ prepetition and postpetition secured lenders, (vii) counsel to the Lead Bidder, (viii) all persons known by the Debtors to have expressed an interest to the Debtors in a transaction with respect to the Assets during the previous six months, (ix) all entities known by the Debtors that may have a lien, claim, encumbrance or other interest in the Assets (for which identifying information and addresses are available to the Debtors), (x) all non-Debtor counterparties to the Executory Contracts and Unexpired Leases, (xi) all of the Debtors’ known creditors, (xii) any governmental unit known to the Debtors to have a claim in the Chapter 11

Cases, (xiii) the Office of the Attorney General in each state in which the Debtors operate, (xiv) the Office of the Delaware Secretary of State and (xv) all parties that have requested notice in the Chapter 11 Cases under Bankruptcy Rule 2002 (collectively, the “Sale Notice Parties”).

18. The Debtors submit that the proposed Sale Notice, and providing notice of this Motion, the Auction and the Sale Hearing as described herein, complies fully with Bankruptcy Rule 2002 and Local Rule 2002-1 and constitutes good and adequate notice of the Sale and the proceedings with respect thereto. Therefore, the Debtors respectfully request that this Court approve the form of the Sale Notice and the notice procedures proposed above.

19. Any and all objections, if any, to any Sale, including objections to the Auction and the selection of any Successful Bidder or Successful Bidders, must be filed no later than twenty-five (25) days after entry of the Bidding Procedures Order (the “Sale Objection Deadline”) and be served on (i) counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801 (Attn: Joseph M. Barry, Esq. (jbarry@ycst.com), Matthew B. Lunn, Esq. (mlunn@ycst.com) and Donald J. Bowman, Jr., Esq. (dbowman@ycst.com)), (ii) counsel to the Lead Bidder, Baker Botts L.L.P., 30 Rockefeller Plaza, New York, NY 10112 (Attn. Emanuel Grillo, Esq. (emanuel.grillo@bakerbotts.com)), (iii) counsel to any statutory committee appointed in the Chapter 11 Cases and (iv) the U.S. Trustee (collectively, the “Objection Recipients”). All replies to such objections must be filed no later than two (2) days prior to the Sale Hearing.

20. Any party failing to timely file an objection to any Sale shall be forever barred from objecting and shall be deemed to have consented to any Sale, including the transfer of the Debtors’ right, title, and interest in, to and under the Debtors’ Assets free and clear of any and

all liens, claims, encumbrances, and other interests in accordance with a definitive agreement for a Sale.

ASSUMPTION AND ASSIGNMENT PROCEDURES

21. The Debtors believe that their executory contracts represent valuable rights necessary to the continued operation of their business. To that end, the Debtors seek to establish the following procedures permitting them to assume and assign these contracts to the Successful Bidder and to notify counterparties to executory contracts and unexpired leases of potential cure amounts:

- i. **Cure Notice:** The Debtors shall, within two (2) business days after the entry of the Bidding Procedures Order, serve the Cure Notice, substantially in the form attached hereto as Exhibit E, upon each non-Debtor counterparty to each Executory Contract and Unexpired Lease and their counsel (if known). The Cure Notice shall state the date, time and place of the Sale Hearing, whether such Executory Contract or Unexpired Lease is designated to be assumed and assigned to the Lead Bidder, as well as the date by which any objection to the assumption and assignment of such Executory Contract or Unexpired Lease must be filed and served. The Cure Notice also will identify the amounts, if any, that the Debtors believe are owed to each counterparty to an Executory Contract or Unexpired Lease in order to cure any defaults that exist under such contract or lease (the “Cure Amounts”) pursuant to section 365 of the Bankruptcy Code. The Cure Notice does not constitute an admission that an Executory Contract or Unexpired Lease is in fact an executory contract or unexpired lease, and the Debtors reserve any and all rights with respect to the Executory Contracts and Unexpired Leases.
- ii. **Cure Objections:** If any counterparty to an Executory Contract or Unexpired Lease objects for any reason to the Cure Amounts set forth in the Cure Notice, such counterparty must file with the Court a written objection (a “Cure Amount Objection”) and serve such Cure Amount Objection so as to be received by the Notice Parties by no later than ten (10) days after service of the Cure Notice (the “Cure Objection Deadline,” and, together with the Assignment Objection Deadline and the Sale Objection Deadline (each as defined herein), the “Objection Deadlines”). Each Cure Amount Objection must set forth with specificity each and every asserted default in any Executory Contract or Unexpired Lease and the monetary cure amount asserted by such counterparty to the extent it differs from the amount, if any, specified by the Debtors in the Cure Notice.

- iii. **Supplemental Contracts:** Although the Debtors have made a good faith effort to identify all Executory Contracts and Unexpired Leases to be assumed and assigned in connection with the Sale, they may discover additional Executory Contracts and Unexpired Leases that the Debtors desire to assume and assign in connection therewith. Accordingly, if at any time after the entry of the Bidding Procedures Order, the Debtors or any Qualified Bidder identify additional executory contracts or unexpired leases to be assumed and assigned as Assumed Contracts (whether before or after the closing of the Sale), as applicable, the Debtors shall serve a supplemental Cure Notice (the “Supplemental Cure Notice”) by facsimile, electronic transmission, hand delivery or overnight mail on the applicable non-debtor counterparty and its counsel (if known) no later than ten (10) days before the proposed effective date of the assignment. Each Supplemental Cure Notice shall (i) state the date, time and place of the Sale Hearing, (ii) state the date by which any objection to the assumption and assignment of such Assumed Contract must be filed and served, and (iii) identify the Cure Amount.
- iv. **Supplemental Objections:** Unless the non-debtor counterparty properly files and serves an objection to the Supplemental Cure Notice (the “Supplemental Cure Objection”) on or before the earlier of ten (10) days of the date of the Supplemental Cure Notice (the “Supplemental Cure Objection Deadline”), the Debtors shall be authorized to assume and assign the Executory Contract or Unexpired Lease, subject to the occurrence of the Closing without further notice or order of the Court.
- v. **No Obligation to Assume:** The inclusion of an Executory Contract or Unexpired Lease on the Cure Notice or Supplemental Cure shall not obligate the Successful Bidder to take assignment of such Executory Contract or Unexpired Lease. Only those contracts that constitute Assumed Contracts pursuant to the APA or any Successful Bidder’s Modified APA will be assumed, assigned and sold to the Successful Bidder.
- vi. **Disputed Cure Amounts:** In the event that the Debtors and the non-debtor party cannot resolve the Cure Amount Objection or Supplemental Cure Objection, disputed Cure Amounts (“Disputed Cure Amounts”) shall not be paid until the resolution of any such disputes by the Court or mutual agreement of the Debtors, the Successful Bidder and the objecting party. Cure Amount Objections may be resolved by the Court at the Sale Hearing, or at a separate hearing either before or after the Sale Hearing. Any counterparty to an Executory Contract or Unexpired Lease that fails to timely file and serve a Cure Amount Objection shall be forever barred from asserting that a Cure Amount is owed in an amount in excess of that set forth in the Cure Notice. If no timely Cure Objection is filed and served with respect to an Assumed Contract, the Cure Amount identified in the Cure Notice with respect to the Executory Contracts and Unexpired Lease will be the only amounts necessary under section 365(b) of the Bankruptcy

Code to cure all monetary defaults under such Executory Contracts and Unexpired Lease if the Lead Bidder (or other Successful Bidder) ultimately decides to have the applicable Assumed Contract assumed and assigned to it. Any party failing to timely file a Cure Amount Objection shall be forever barred from objecting to the Cure Amounts and from asserting any additional cure or other amounts against the Debtors, their estates or the Successful Bidder.

- vii. **Assignment Objections:** If any counterparty to an Executory Contract or Unexpired Lease objects for any reason to the assumption and assignment of such Executory Contract or Unexpired Lease with respect to the Lead Bidder (other than a Cure Amount Objection, an “Assignment Objection”), such counterparty must file and serve such Assignment Objection so as to be received by the Notice Parties by no later than (i) ten (10) days after service of the Cure Notice; or (ii) the date otherwise specified in the Cure Notice (or, alternatively, the date set forth in the motion to assume such Assumed Contract if such contract is to be assumed and assigned after the Sale Hearing (the “Assignment Objection Deadline”); provided that, if the Successful Bidder is not the Lead Bidder the Assignment Objection Deadline shall be one (1) day prior to the Sale Hearing. The Court shall make any and all determinations concerning adequate assurance of future performance under the Assumed Contracts pursuant to sections 365(b) and (f)(2) of the Bankruptcy Code at the Sale Hearing.
- viii. **Adequate Assurance.** Any request for adequate assurance information regarding the Lead Bidder (a “Request for Adequate Assurance Regarding Lead Bidder”) must be sent to (i) counsel for the Lead Bidder and (ii) counsel to the Debtors on or before the Cure Objection Deadline. The Lead Bidder shall have five (5) business days after the Request for Adequate Assurance Regarding Lead Bidder (the “Adequate Assurance Response Deadline”) to provide the requesting party with any and all non-confidential information reasonably related to Request for Adequate Assurance Regarding the Lead Bidder. Any objections to any Successful Bidder’s proposed form of adequate assurance of future performance must be raised at the Sale Hearing and will be resolved at the Sale Hearing.
- ix. **Deemed Consent:** If no objection is timely filed and served, the counterparty to an Executory Contract or Unexpired Lease shall be deemed to have consented to the assumption, assignment and sale of the Executory Contract or Unexpired Lease to any Successful Bidder if such Executory Contract or Unexpired Lease is elected by any Successful Bidder as an Assumed Contract and will be forever barred from asserting any objection with regard to such assumption, assignment and sale, except with respect to the adequate assurance of future performance by any Successful Bidder. The Cure Costs set forth in the Cure Notice and Supplemental Cure Notice shall be controlling, notwithstanding anything to the contrary in any Executory Contract or Unexpired Lease, or any other document, and the

counterparty to the Executory Contract or Unexpired Lease shall be deemed to have consented to the Cure Costs and shall be forever barred from asserting any other claims related to such Executory Contract or Unexpired Lease against the Debtors or the Successful Bidder, or the property of any of them.

LEGAL BASIS FOR RELIEF REQUESTED

A. Approval of the Sale and Bidding Procedures is Warranted Under Section 363 of the Bankruptcy Code

22. Section 363 of the Bankruptcy Code provides, in relevant part, that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Section 363 does not provide a standard establishing the appropriate circumstances for bankruptcy courts to authorize the sale of a debtor’s assets. This Court, however, has held that such a sale may be authorized under section 363 of the Bankruptcy Code if the Court finds a “sound business purpose” for the Sale. *See Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147 (Bankr. D. Del. 1999) (citing *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983)). In Delaware, the business judgment rule creates a “presumption that directors making a business decision, not involving self-interest, act on an informed basis, in good faith and in the honest belief that their actions are in the corporation’s best interest.” *Stanizale v. Nachtomi (In re Tower Air, Inc.)*, 416 F.3d 229, 234 (3d Cir. 2005) (citations omitted); *see also Official Comm. of Sub. Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1990) (holding that Delaware’s business judgment rule principles have “vitality by analogy” in chapter 11).

23. Once a court is satisfied that there is a sound business reason justifying the sale, the court must also determine that adequate and reasonable notice has been provided to interested parties, that the sale price is fair and reasonable, and that the purchaser is proceeding in

good faith. *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991) (citing *In re Indus. Valley Refrigeration and Air Conditioning Supplies, Inc.*, 77 B.R. 15, 20 (Bankr. E.D. Pa. 1987)).

24. A valid business justification exists to sell the Assets. In the Debtors' judgment, a sale of the Assets in chapter 11 is the best path to maximizing value and recoveries for their estates, creditors, and other parties in interest. The Debtors believe that the Sale must be completed in accordance with the timeframe proposed in this Motion to avoid a significant interruption in their business operations and thus impair the value of the assets.

25. The Auction process and the time periods set forth in the Bidding Procedures are reasonable under the circumstances and provide parties with sufficient time and information necessary to formulate a bid to purchase the Assets. The Bidding Procedures balance the need for adequate and appropriate notice to parties in interest and to potential purchasers with the need to sell the Assets while they have realizable value and can be maintained as a going concern. The Debtors undertook an extensive marketing process prior to the Petition Date and will, in accordance with the Bidding Procedures, continue to give Potential Bidders the opportunity to perform diligence and submit bids.

26. Completion of the Sale process in a timely manner will maximize the value of Assets. The time periods set forth in the Bidding Procedures were negotiated by the Lead Bidder, and completing the Sale process in an expedited manner is the best means of maximizing the value of the Assets and the only means of maintaining the business as a going concern, which could enable the Debtors' employees to retain their jobs and will reduce claims against the Debtors estates.

27. Moreover, as stated herein, the Debtors will provide notice of the Sale to all parties in interest as required by the Bankruptcy Rules and the Local Rules. The Debtors believe that the proposed notice procedures are reasonable and adequate under the circumstances.

28. At the Sale Hearing, the Debtors will provide evidence that the sale price for the Assets is fair and reasonable by showing that the Successful Bidder offered the highest or best purchase offer for the Assets. The Bidding Procedures and the APA are designed to encourage as many bidders as possible to put forth their best offers, thus increasing the likelihood that the Assets will be sold for the highest or best purchase price possible. In addition, the Debtors will present evidence at the Sale Hearing that the Sale was a fairly negotiated, arm's length transaction in which the Successful Bidder acted in good faith, and, therefore, that the protections of section 363(m) of the Bankruptcy Code should apply.

29. Accordingly, the Debtors request that the Court approve the proposed Sale set forth herein.

B. Granting the Debtors Authority to Enter into a APA is Appropriate

30. In connection with the Sale, the Debtors are seeking authorization to pay the Bid Protections (if necessary) to the Lead Bidder in accordance with the APA.

31. Approval of bid protections like the Break-Up Fee and Expense Reimbursement in connection with sales pursuant to section 363 of the Bankruptcy Code has become an established practice in chapter 11 cases. Although bidding incentives are measured against a business judgment standard in non-bankruptcy transactions, the administrative expense provisions of section 503(b) of the Bankruptcy Code govern in the bankruptcy context. *See Calpine Corp. v. O'Brien Env'tl. Energy, Inc. (In re O'Brien Env'tl. Energy, Inc.)*, 181 F.3d 527, 533 (3d Cir. 1999). Accordingly, bidding incentives must provide some postpetition benefit to a debtor's estate to be approved. *Id.*

32. The Third Circuit has recognized the benefits and potential necessity of bidding protections. First, such protections may be necessary to preserve the value of the estate if they “promote[] more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited.” *In re O’Brien*, 181 F.3d at 537. Second, if a bid protection induces a bidder to research the value of the debtor and convert the value to a dollar figure on which other bidders can rely, the bidder may have provided a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth. *In re Reliant Energy*, 594 F.3d 200, 206-07 (3d Cir. 2010).

33. In *In re O’Brien*, the court reviewed nine factors set forth by the lower court as relevant in deciding whether to award a breakup fee:

- i. the presence of self-dealing or manipulation in negotiating the breakup fee;
- ii. whether the fee harms, rather than encourages, bidding;
- iii. the reasonableness of the breakup fee relative to the purchase price;
- iv. whether the unsuccessful bidder placed the estate property in a “sales configuration mode” to attract other bidders to the auction;
- v. the ability of the request for a breakup fee to serve to attract or retain a potentially successful bid, establish a bid standard or minimum for other bidders, or attract additional bidders;
- vi. the correlation of the fee to a maximum of value of the debtor’s estate;
- vii. the support of the principal secured creditors and creditors’ committees of the breakup fee;
- viii. the benefits of the safeguards to the debtor’s estate; and
- ix. the substantial adverse impact of the breakup fee on unsecured creditors, where such creditors oppose the breakup fee.

See *In re O’Brien*, 181 F.3d at 536.

34. The Bid Protections provide the type of benefits to the Debtors’ estates identified by the Third Circuit in *O’Brien* and do not implicate any of the negative factors

discussed therein. The Bid Protections were negotiated in good faith and are fair and reasonable in amount, particularly in light of the due diligence the Lead Bidder must perform on the value of the Assets, the time and expense the Lead Bidder has invested in negotiating the APA with the Debtors, and the lack of other offers for the Assets at the price offered by the Lead Bidder. The Bid Protections also enable the Debtors to set an adequate floor for an Auction and ensure that any competing bid will be higher and otherwise better than the APA. In this manner, providing the Bid Protections to the Lead Bidder facilitates competition in the Bidding Process and assists the Debtors in maximizing the value of their estates. Accordingly, the Debtors request authorization to offer the Bid Protections to the Lead Bidder pursuant to the terms of the Bidding Procedures Order. Finally, authorization to pay the Bid Protections will not diminish the value of the Debtors' estates, as the Debtors intend to consummate the transactions contemplated by the APA unless they receive a higher and otherwise better bid.

C. The Proposed Sale Satisfies the Requirements of Section 363(f) of the Bankruptcy Code for a Free and Clear Sale

35. In the interest of attracting the best offers, the Debtors request authorization to sell the Assets free and clear of any and all liens, claims, encumbrances and other interests in accordance with section 363(f) of the Bankruptcy Code, with any such liens, claims, encumbrances and other interests attaching to the proceeds of the sale of the Assets and distributed as provided for in a further order of the Court.

36. Under section 363(f) of the Bankruptcy Code, a debtor may sell estate property free and clear of liens, claims, encumbrances, and other interests if one of the following conditions is satisfied:

- (i) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (ii) such entity consents;

- (iii) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (iv) such interest is in bona fide dispute; or
- (v) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). Because section 363(f) of the Bankruptcy Code is written in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the Assets “free and clear” of liens, claims, encumbrances, and other interests. *See, e.g., In re Dura Automotive Sys., Inc.*, 2007 WL 7728109 n.32 (Bankr. D. Del. Aug. 15, 2007).

37. Furthermore, section 105(a) of the Bankruptcy Code grants the Court broad discretionary powers, providing that “[t]he Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions” of the Bankruptcy Code. 11 U.S.C. § 105(a). This equitable power may be utilized to effectuate the provisions of section 363(f). *See, e.g., In re Trans World Airlines, Inc.*, 2001 WL 1820325 (highlighting bankruptcy courts’ equitable authority to authorize sale of estate assets free and clear).

38. The Debtors will present evidence at the Sale Hearing that the Sale satisfies the requirements of section 363(f). Accordingly, the Debtors request authorization to sell the Assets free and clear of all liens, claims, encumbrances, and other interests (including any claims premised on a theory of successor liability).

D. The Successful Bidder Should Be Entitled to the Protections of Section 363(m) of the Bankruptcy Code

39. Pursuant to Bankruptcy Code section 363(m) of the Bankruptcy Code, a good faith purchaser is one who purchases assets for value, in good faith, and without notice of adverse claims. *Mark Bell Furniture Warehouse, Inc. v. D. M. Reid Assocs., Ltd. (In re Mark Bell Furniture Warehouse, Inc.)*, 992 F.2d 7, 8 (1st Cir. 1993); *In re Willemain v. Kivitz*, 764 F.2d

1019, 1023 (4th Cir. 1985); *In re Congoleum Corp.*, No. 03-51524, 2007 WL 1428477, *2 (Bankr. D. N.J. May 11, 2007); *In re Abbotts Dairies of Pa.*, 788 F.2d 143, 147 (3d Cir. 1986).

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

E. Assumption, Assignment, and Sale of Executory Contracts and Unexpired Leases Should be Authorized

41. Under section 365(a) of the Bankruptcy Code, a debtor in possession may, subject to the court's approval, assume or reject any executory contract or unexpired lease of a debtor. 11 U.S.C. § 365(a). The standard governing the court's approval of a debtor's decision to assume or reject an executory contract or unexpired lease is whether the debtor's business judgment supports assumption or rejection. *See, e.g., In re Stable Mews Assocs.*, 41 B.R. 594, 596 (Bankr. S.D.N.Y. 1984). In this context, the business judgment test "requires only that the trustee [or debtor-in-possession] demonstrate that [assumption or] rejection of the contract will benefit the estate." *Wheeling-Pittsburgh Steel Corp. v. West Penn Power Co. (In re Wheeling Pittsburgh Steel Corp.)*, 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987) (quoting *In re Stable Mews Assocs.*, 41 B.R. at 596). Any more exacting scrutiny would slow the administration of a debtor's estate and increase costs, interfere with the Bankruptcy Code's provision for private control of administration of the estate, and threaten the court's ability to control a case impartially. *See Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985). Moreover, pursuant to section 365(b) of

the Bankruptcy Code, for a debtor to assume an executory contract, it must “cure, or provide adequate assurance that the debtor will promptly cure,” any default, including compensation for “actual pecuniary loss” relating to such default. 11 U.S.C. 365(b)(1).

42. Once an executory contract is assumed, the debtor may elect to assign such contract. *See In re Rickel Home Center, Inc.*, 209 F.3d 291, 299 (3d Cir. 2000) (“The Code generally favors free assignability as a means to maximize the value of the debtor’s estate.”); *see also In re Headquarters Dodge, Inc.*, 13 F.3d 674, 682 (3d Cir. 1994) (noting that the purpose of section 365(f) is to assist the trustee in realizing the full value of the debtor’s assets). Section 365(f) of the Bankruptcy Code provides that the “trustee may assign an executory contract . . . only if the trustee assumes such contract . . . and adequate assurance of future performance is provided.” 11 U.S.C. § 365(f)(2). The meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case, but should be given a “practical, pragmatic construction.” *In re DBSI, Inc.*, 405 B.R. 698, 708 (Bankr. D. Del. 2009); *see also In re Decora Indus.*, 2002 U.S. Dist. LEXIS 27031, at *23 (D. Del. 2002) (“[A]dequate assurance falls short of an absolute guarantee of payment.”). Adequate assurance may be provided by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. *See, e.g., In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (finding that adequate assurance is present when prospective assignee of lease from debtor has financial resources and has expressed willingness to devote sufficient funding to business to give it strong likelihood of success).

43. To facilitate and effectuate the Sale, the Debtors request approval under section 365 of the Bankruptcy Code of the Debtors’ assumption, assignment, and sale of the Executory Contracts and Unexpired Leases to the Successful Bidder. The Debtors further request

that the Sale Order provide that the Executory Contracts and Unexpired Leases be transferred to, and remain in full force and effect for the benefit of, the Successful Bidder, notwithstanding any provisions in the Executory Contracts and Unexpired Leases, including those described in Bankruptcy Code sections 365(b)(2) and (f)(1) and (3) that prohibit such assignment.

44. The meaning of “adequate assurance of future performance” for the purpose of the assumption of executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code depends on the facts and circumstances of each case, but should be given “practical, pragmatic construction.” *See Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1989); *see also In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean an absolute assurance that debtor will thrive and pay rent). Any and all Successful Bidders are responsible for providing evidence of adequate assurance of future performance to the extent required in connection with the assumption and assignment of any Executory Contracts and Unexpired Leases. Any objections to any Successful Bidder’s proposed form of adequate assurance of future performance must be raised at the Sale Hearing and will be resolved at the Sale Hearing.

45. The counterparties to the Executory Contracts and Unexpired Leases will have sufficient opportunity to file an objection to the proposed Cure Costs. To the extent no objection is filed with regard to particular Cure Costs, such Cure Costs shall be binding on the applicable contract or lease counterparty. The payment of the Cure Costs will be in full and final satisfaction of all obligations to cure defaults and compensate the counterparties for any pecuniary losses under such contracts or leases pursuant to section 365(b)(1) of the Bankruptcy Code, unless the Debtors determine that a particular contract is not truly executory and does not need to be cured to transfer the Assets to the Successful Bidder.

46. Cure Costs disputed by any counterparties, with respect to any Executory Contracts and Unexpired Leases to be assumed and assigned to the Successful Bidder at the Closing (as defined in the Bidding Procedures), will be resolved by the Court at the Sale Hearing.

47. Accordingly, the Debtors request authority to assume, assign, and sell executory contracts and unexpired leases under section 365 of the Bankruptcy Code.

F. Relief from Bankruptcy Rules 6004(h) and 6006(d) is Appropriate

48. Under Bankruptcy Rule 6004(h), unless the court orders otherwise, all orders authorizing the sale of property pursuant to section 363 of the Bankruptcy Code are automatically stayed for fourteen days after entry of the order. Fed. R. Bankr. P. 6004(h). The purpose of Bankruptcy Rule 6004(h) is to provide sufficient time for an objecting party to appeal before the order is implemented. *See* Advisory Committee Notes to Fed. R. Bankr. P. 6004(h). Similarly, Bankruptcy Rule 6006(d) stays all orders authorizing a debtor to assign an executory contract or unexpired lease pursuant to section 365(f) of the Bankruptcy Code for fourteen days, unless the court orders otherwise.

49. To preserve the value of the Debtors' estates and limit the costs of administering and preserving the Assets, it is critical that the Debtors close the sale of the Assets as soon as possible after all closing conditions have been met or waived. Accordingly, the Debtors hereby request that the Court waive the fourteen-day stay periods under Bankruptcy Rules 6004(h) and 6006(d).

NOTICE

50. Notice of this Motion shall be given to (i) the U.S. Trustee, (ii) the U.S. Attorney, (iii) the Internal Revenue Service, (iv) the Debtors' thirty (30) largest unsecured creditors on a consolidated basis, (v) counsel to any statutory committee appointed in the Chapter 11 Cases, (vi) counsel to the Debtors' pre- and proposed post-petition secured lenders, (vii)

counsel to the Lead Bidder, and (viii) any party that has filed a notice of appearance and request for service of papers as of the date hereof. The Debtors respectfully submit that no further notice of this Motion is required.

NO PREVIOUS REQUEST

51. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as it deems just and proper.

Dated: February 18, 2019
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Donald J. Bowman, Jr.

Joseph M. Barry (No. 4221)
Matthew B. Lunn (No. 4119)
Donald J. Bowman, Jr. (No. 4383)
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Facsimile: (302) 571-1253

*Proposed Co-Counsel to the Debtors and
Debtors in Possession*

Exhibit A

Bidding Procedures Order

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

In re:

BEAVEX HOLDING CORPORATION, *et al.*,¹

Debtors.

Chapter 11

Case No. 19-10316 (___)

Jointly Administered

Ref. Docket No.: _____

ORDER (A) APPROVING AND AUTHORIZING BIDDING PROCEDURES IN CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL THE DEBTORS' ASSETS (B) APPROVING AND AUTHORIZING THE BID PROTECTIONS, (C) SCHEDULING THE RELATED AUCTION AND HEARING TO CONSIDER APPROVAL OF THE SALE, (D) APPROVING PROCEDURES RELATED TO THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (E) APPROVING THE FORM AND MANNER OF NOTICE THEREOF, AND (F) GRANTING RELATED RELIEF

Upon consideration of the motion (the "Motion")² of the above-captioned debtors and debtors in possession (each a "Debtor", and collectively, the "Debtors") for the entry of an order pursuant to sections 105(a), 363 and 365 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004, 6006, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended from time to time, the "Bankruptcy Rules"), and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedures of the Bankruptcy Court for the District of Delaware (the "Local Rules"), among other things, (a) approving and authorizing certain bidding procedures in connection with the sale of substantially all of the Debtors' assets (the "Assets") (as attached hereto as Exhibit 1, the "Bidding Procedures"), (b) approving and authorizing the Break-Up Fee

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: BeavEx Holding Corporation (7740); BeavEx Acquisition, Inc. (5497); BeavEx Incorporated (7355); JNJW Enterprises, Inc. (4963); and USXP, LLC (2997). The headquarters for the above-captioned Debtors is located at 2120 Powers Ferry Road SE, Suite 300, Atlanta, GA 30339.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion or APA, as applicable.

and Expense Reimbursement, (c) scheduling the related auction and hearing to consider approval of sale, (d) approving procedures related to the assumption and assignment of certain of the Debtors' Executory Contracts and Unexpired Leases, (e) approving the form and manner of notice thereof and (f) granting related relief (collectively, the "Bidding Procedures Relief"); and the Court having reviewed the Motion and the Court having found that (i) the Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Order, (ii) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (iv) notice of the Motion was sufficient under the circumstances and complied with all applicable requirements of the Bankruptcy Code, Bankruptcy Rules, and Local Rules; and a hearing having been held to consider the Bidding Procedures Relief; and after due deliberation the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates and their creditors; and good and sufficient cause having been shown;

THE COURT HEREBY FURTHER FINDS AND DETERMINES THAT:

A. The Debtors have demonstrated good and sufficient reasons for, and the best interests of their estates, creditors, and other parties in interest will be served by, this Court granting, to the extent provided herein, the relief requested in the Motion relating to the Bidding Procedures Relief, including approval of (i) the Bidding Procedures, (ii) the Break-Up Fee and the Expense Reimbursement (together, the "Bid Protections") provided for in the Asset Purchase Agreement, by and between the Debtors and TForce Final Mile, LLC, TForce Final Mile West, LLC and TForce Logistics, LLC (collectively, "TForce" or the "Lead Bidder") (including all exhibits, schedules and ancillary agreements related thereto, and as may be amended, supplemented or modified pursuant to its terms (the "APA"), which contemplates a sale (the

“Sale”) of the Acquired Assets, subject to the Bidding Procedures, (iii) the procedures described below for the determination of the amounts necessary to cure defaults under the Executory Contract or Unexpired Lease that may be assumed and assigned pursuant to the Sale (an “Assumed Contract” and collectively, the “Assumed Contracts”) so as to permit the assumption and assignment under section 365 of the Bankruptcy Code of the Assumed Contracts, and (iv) the forms of the Sale Notice and Cure Notice attached to the Motion as Exhibit D and Exhibit E, respectively.

B. The Debtors have demonstrated good and sufficient reasons for, and the best interests of their estates and their creditors will be served by, this Court scheduling a Sale Hearing to consider granting the other relief requested in the Motion, including approval of the Sale and the transfer of the Assets to the Successful Bidder (as defined in the Bidding Procedures) free and clear of all liens, claims, encumbrances and other interests pursuant to section 363(f) of the Bankruptcy Code.

C. The Bid Protections as set forth in the APA required to be paid under the circumstances described therein to the Lead Bidder are (i) an actual and necessary cost of preserving the Debtors’ estates within the meaning of sections 503(b) and 507(a) of the Bankruptcy Code, (ii) commensurate to the real and substantial benefits conferred upon the Debtors’ estates by the Lead Bidder, (iii) reasonable and appropriate in light of the size and nature of the Sale and comparable transactions, the commitments that have been made, the condition of the Assets, and the efforts that have been and will be expended by the Lead Bidder, and (iv) a condition to and necessary to induce the Lead Bidder to continue to pursue the Sale and to continue to be bound by the APA.

D. Unless it is assured that the Bid Protections will be available, the Lead Bidder is unwilling to remain obligated to consummate the Sale or otherwise be bound under the APA (including the obligations to maintain its committed offer while such offer is subject to higher or otherwise better offers as contemplated by the Bidding Procedures). The Bid Protections induced the Lead Bidder to submit a bid that will serve as a minimum or floor bid for the Assets on which the Debtors, their creditors and other bidders can rely, and which encourages and facilitates the Auction process. The Lead Bidder has thus provided a material benefit to the Debtors and their creditors by increasing the likelihood that the best possible purchase price for the Assets will be realized. Accordingly, the Bid Protections are reasonable and appropriate and represent the best method for maximizing value for the benefit of the Debtors' estates.

E. The Bidding Procedures are fair, reasonable, and appropriate and are designed to maximize the recovery from the Sale of the Assets.

F. The process for submitting Qualified Bids is fair, reasonable, and appropriate and is designed to maximize recoveries for the benefit of the Debtors' estates and creditors.

G. The Sale Notice and Cure Notice (each as defined below) are appropriate and reasonably calculated to provide all interested parties with timely and proper notice of this Order, the Bidding Procedures, the Sale, the Sale Hearing, and any and all objection deadlines related thereto, including with respect to cure amounts and the assumption and assignment of Executory Contracts and Unexpired Leases, and no other or further notice is required of the foregoing.

H. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

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

THAT:

1. The Bidding Procedures Relief is granted, to the extent set forth herein.
2. All objections to the relief requested with respect to the Bidding Procedures that have not been withdrawal, waived or settled are otherwise overruled.
3. The Bidding Procedures attached hereto as Exhibit I are approved and shall govern all bids and bid proceedings relating to the Sale of the Assets.
4. The Debtors are authorized to proceed with the Sale in accordance with the Bidding Procedures and are authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures in accordance with the following timeline:

Proposed Sale Timeline	
Deadline to Serve Sale Notice and Cure Notice	Within two (2) Business Days ³ after entry of the Bidding Procedures Order
Cure Objection Deadline and Assignment Objection Deadline	Within ten (10) days after service of Cure Notice
Bid Deadline	Twenty-five (25) days after entry of Bidding Procedures Order
Sale Objection Deadline	Twenty-Five (25) days after entry of the Bidding Procedures Order
Deadline to Notify Qualified Bidders	One (1) Business Day after Bid Deadline
Auction (if required)	Two (2) Business Days after Bid Deadline
Notice of Successful Bidder	One (1) Business Day after Auction
Sale Reply Deadline	Two (2) days prior to the Sale Hearing
Sale Hearing	No later than five (5) Business Days after the Bid Deadline

5. The Bid Protections are approved and the Debtors are authorized to pay amounts due in connection with the Bid Protections when and as set forth in the APA as administrative claims of the estate. Any amounts due in connection with the Bid Protections payable pursuant

³ As used herein, "Business Day" means any day other than Saturday, Sunday or legal holiday.

to the terms of the APA shall be payable without any further order of the Bankruptcy Court following the closing of a successful overbid.

6. The Debtors shall have the exclusive right, in consultation with the prepetition secured lender and proposed postpetition secured lender and any statutorily appointed committee (if any) (together, the “Consultation Parties”), to determine whether a bid is a Qualified Bid and shall notify Potential Bidders, the Lead Bidder and the Notice Parties whether their bids have been recognized as such within one (1) Business Day after the Bid Deadline; provided, however, that the Lead Bidder is hereby deemed a Qualified Bidder, and the APA submitted to the Debtors by the Lead Bidder and appended to the Motion as Exhibit B, is deemed a Qualified Bid, for all purposes in connection with the Bidding Process, the Auction, and the Sale. The Lead Bidder shall not be required to take any further action in order to participate in the Auction (if any) or, if the Lead Bidder is the Successful Bidder, to be named the Successful Bidder at the Sale Hearing.

7. Any disputes as to the selection of a Qualified Bid shall be resolved by this Court.

8. The Debtors are authorized to conduct an Auction if they receive one or more Qualified Bids in addition to the APA. The Auction, if necessary, shall be held at 10:00 a.m. (prevailing Eastern Time) on _____, 2019, at the offices of Young Conaway Stargatt & Taylor, LLP, 1000 N. King Street, Wilmington, Delaware 19801, or such other location as shall be timely communicated to all Qualified Bidders. If no other Qualifying Bid is received, no Auction shall be necessary and the Debtors are authorized to cancel the Auction, provided, that the Debtors shall file a notice of cancellation of the Auction.

9. The Debtors shall arrange for the bidding at the Auction to be transcribed by a court reporter. Each Qualified Bidder shall be required to confirm its bid on the record at the

Auction and confirm that it has not engaged in any collusion with respect to the bidding or the Sale.

10. Upon the conclusion of the Auction, the Debtors, in consultation with the Consultation Parties, shall review each Qualified Bid on the basis of financial and contractual terms and the factors relevant to the sale process, including, but not limited to, the Assets such bidder is proposing to purchase and those factors affecting the speed and certainty of consummating the sale with respect to the Assets, and shall identify the Successful Bidder(s) and may identify one or more Back-Up Bidder(s). The Debtors shall file a notice of the Successful Bidder(s) and Back-up Bidder(s) (if any) on or before one (1) business day after the conclusion of the Auction. Each Qualified Bidder shall be required to keep its bid open and irrevocable until the earlier of (i) 5:00 p.m. (prevailing Eastern Time) on the date that is thirty (30) days following entry of the Sale Order or (ii) the closing of the Sale with the Successful Bidder (the "Outside Date"). The Good Faith Deposit(s) of the Back-up Bidder shall be held by the Debtors until the earlier of two (2) business days after (i) the closing of the Sale with the Successful Bidder(s) or (ii) the Outside Date.

11. The Sale Hearing shall be held on _____, 2019 at ____ before this Court, the U.S. Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, Delaware 19801, Court Room _____. Any objections to the Sale must (a) be in writing, (b) state the basis of such objection with specificity, (c) conform to the Bankruptcy Rules and the Local Rules, and (d) be filed with this Court and served in accordance with the rules of the Court upon (i) the Debtors, 2120 Powers Ferry Road SE, Suite 300, Atlanta, GA 30339 (Attn. Donald Van der Wiel (dvanderwiel@beavex.com)), (ii) counsel to the Debtors: Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington,

DE 19801 (Attn: Joseph M. Barry, Esq. (jbarry@ycst.com), Matthew B. Lunn, Esq. (mlunn@ycst.com) and Donald J. Bowman, Jr., Esq. (dbowman@ycst.com)), (iii) counsel to the prepetition secured lenders and proposed postpetition secured lenders, Winston Strawn, LLP, 200 Park Avenue, New York, NY 10166 (Attn. Carey D. Schreiber, Esq. (cschreiber@winston.com)) and Ashby & Geddes, P.A. (Attn. Gregory Taylor, Esq. (gtaylor@ashbygeddes.com)), (iv) counsel to the Lead Bidder: Baker Botts L.L.P., 30 Rockefeller Plaza, New York, NY 10112 (Attn. Emanuel Grillo, Esq. (emanuel.grillo@bakerbotts.com)), (v) counsel to any statutorily appointed committee in the Chapter 11 Cases, and (vi) the U.S. Trustee ((i)-(vi), collectively, the “Notice Parties”), so as to be received not later than 4:00 p.m. EST on _____, 2019.

12. The following forms of notice are approved: (i) Notice of Bid Procedures, Auction Date, and Sale Hearing, in the form substantially similar to that attached to the Motion as Exhibit D (the “Sale Notice”) and (ii) the Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtors That May Be Assumed and Assigned (the “Cure Notice”), in the form substantially similar to that attached to the Motion as Exhibit E.

13. On or before _____, 2019, the Debtors shall serve a copy of the Sale Notice and this Order by first class mail, postage prepaid on (i) the Office of the United States Trustee for Region III, (ii) the Office of the United States Attorney for the District of Delaware, (iii) counsel to any statutory committee appointed in the Chapter 11 Cases, (iv) the Internal Revenue Service, (v) the Debtors’ thirty (30) largest unsecured creditors or counsel to any statutorily appointed committee in these chapter 11 cases, (vi) counsel to the prepetition secured lenders and proposed postpetition secured lenders, (vii) counsel to the Lead Bidder, (viii) all persons known by the Debtors to have expressed an interest to the Debtors in a transaction with

respect to the Assets during the previous six months, (ix) all entities known by the Debtors that may have a lien, claim, encumbrance or other interest in the Assets (for which identifying information and addresses are available to the Debtors), (x) all non-Debtor counterparties to the Executory Contracts and Unexpired Leases, (xi) all of the Debtors' known creditors, (xii) any governmental unit known to the Debtors to have a claim in the Chapter 11 Cases, (xiii) the Office of the Attorney General in each state in which the Debtors operate, (xiv) the Office of the Delaware Secretary of State and (xv) all parties that have requested notice in the Chapter 11 Cases under Bankruptcy Rule 2002 (collectively, the "Sale Notice Parties").

14. On or before _____, 2019, the Debtors shall serve the Cure Notice upon each counterparty to each Executory Contract and Unexpired Lease. The Cure Notice shall state the date, time and place of the Sale Hearing, whether or not such Executory Contract or Unexpired Lease is designated to be assumed and assigned to the Lead Bidder, as well as the date by which any objection to the assumption and assignment of such Executory Contract or Unexpired Lease to the Lead Bidder or an alternate Successful Bidder must be filed and served. The Cure Notice will also identify the amounts, if any, that the Debtors believe are owed to each counterparty to an Executory Contract or Unexpired Lease in order to cure any and all defaults that exist under such contract or lease (the "Cure Amounts") pursuant to section 365 of the Bankruptcy Code. The Cure Notice does not constitute an admission that an Executory Contract or Unexpired Lease is in fact an executory contract or unexpired lease, and the Debtors' rights with respect to the Executory Contracts and Unexpired Leases are fully reserved.

15. If any counterparty to an Executory Contract or Unexpired Lease objects for any reason to the Cure Amounts set forth in the Cure Notice, such counterparty must file with the Court a written objection (a "Cure Amount Objection") and serve such Cure Amount Objection

on the Notice Parties so as to be received by the Notice Parties by no later than _____, 2019 at 4:00 p.m. (prevailing Eastern Time) (the “Cure Objection Deadline”). Each Cure Amount Objection must set forth with specificity each and every asserted default in any Executory Contract or Unexpired Lease and the monetary cure amount asserted by such counterparty to the extent it differs from the amount, if any, specified by the Debtors in the Cure Notice. If a counterparty to an Executory Contract or Unexpired Lease does not file an objection to the Cure Notice by the Cure Objection Deadline, then the counterparty shall be deemed to consent to the assumption and assignment of its Executory Contract or Unexpired Lease, and the Debtors shall be authorized to assume and assign the Executory Contract or Unexpired Lease, subject to the occurrence of the Closing without further notice or order of the Court. If a counterparty to an Executory Contract or Unexpired Lease does not file an objection to the Cure Notice by the Cure Objection Deadline, then the counterparty shall be deemed to consent to the assumption and assignment of its Executory Contract or Unexpired Lease.

16. If at any time after the entry of this Order, the Debtors or any Qualified Bidder identify additional executory contracts or unexpired leases to be assumed and assigned as Assumed Contracts (whether before or after the closing of the sale), as applicable, the Debtors shall serve a supplemental Cure Notice (the “Supplemental Cure Notice”) by facsimile, electronic transmission, hand delivery or overnight mail on the applicable non-debtor counterparty and its counsel (if known) no later than ten (10) days before the proposed effective date of the assignment. Each Supplemental Cure Notice shall (i) state the date, time and place of the Sale Hearing, (ii) state the date by which any objection to the assumption and assignment of such Assumed Contract must be filed and served and (iii) identify the Cure Amount. The Supplemental Cure Notice does not constitute an admission that an Executory Contract or

Unexpired Lease is in fact an executory contract or unexpired lease, and the Debtors' rights with respect to the Executory Contracts and Unexpired Leases are fully reserved.

17. If any counterparty to an Executory Contract or Unexpired Lease objects for any reason to the Cure Amounts set forth in the Supplemental Cure Notice, such counterparty must file and serve a written objection (the "Supplemental Cure Amount Objection") on the Notice Parties so as to be received by the Notice Parties on or before ten (10) days after the date of service of the Supplemental Cure Notice (the "Supplemental Cure Objection Deadline"). Each Supplemental Cure Amount Objection must set forth with specificity each and every asserted default in any Executory Contract or Unexpired Lease and the monetary cure amount asserted by such counterparty to the extent it differs from the amount, if any, specified by the Debtors in the Supplemental Cure Notice. If a counterparty to an Executory Contract or Unexpired Lease does not file an objection to the Supplemental Cure Notice by the Supplemental Cure Objection Deadline, then the counterparty shall be deemed to consent to the assumption and assignment of its Executory Contract or Unexpired Lease, and the Debtors shall be authorized to assume and assign the Executory Contract or Unexpired Lease, subject to the occurrence of the Closing without further notice or order of the Court. If a counterparty to an Executory Contract or Unexpired Lease does not file an objection to the Supplement Cure Notice by the Supplemental Cure Objection Deadline, then the counterparty shall be deemed to consent to the assumption and assignment of its Executory Contract or Unexpired Lease.

18. In the event that the Debtors and the counterparty cannot resolve the Cure Amount Objection or Supplemental Cure Amount Objection, disputed Cure Amounts ("Disputed Cure Amounts") shall not be paid until the resolution of any such disputes by the Court or mutual agreement of the Debtors (following consultation with the Consultation Parties), the

Successful Bidder and the objecting party. Cure Amount Objections and Supplemental Cure Amount Objections may be resolved by the Court at the Sale Hearing, or at a separate hearing either before or after the Sale Hearing. Any counterparty to an Executory Contract or Unexpired Lease that fails to timely file and serve a Cure Amount Objection or Supplemental Cure Amount Objection shall be forever barred from objecting to the Cure Amounts and from asserting any additional cure or other amounts against the Debtors, their estates or the Successful Bidder other than that set forth in the Cure Notice or Supplemental Cure Notice. If no timely Cure Amount Objection or Supplemental Cure Amount Objection is filed and served with respect to an Assumed Contract, the Cure Amount identified in the Cure Notice or Supplemental Cure Notice with respect to such Assumed Contract will be the only amounts necessary under section 365(b) of the Bankruptcy Code to cure all monetary defaults under such Assumed Contract if the Lead Bidder (or other Successful Bidder) ultimately decides to have the applicable Assumed Contract assumed and assigned to it.

19. If an Executory Contract or Unexpired Lease is assumed and assigned pursuant to an order of this Court, then except for any such Assumed Contract that is subject to Disputed Cure Amounts, the Assumed Contract counterparty shall be paid the Cure Amount, if any, as set forth in the Cure Notice or Supplemental Cure Notice, as applicable, with payment to be made pursuant to the terms of the Successful Bidder's asset purchase agreement.

20. Any request for adequate assurance information regarding the Lead Bidder (a "Request for Adequate Assurance Regarding Lead Bidder") must be served upon (i) counsel for the Lead Bidder, (ii) counsel to the Debtors and (iii) counsel to the prepetition secured lenders and proposed postpetition secured lenders so as to be received on or before the Cure Objection Deadline. The Lead Bidder shall have five (5) business days after the Request for Adequate

Assurance Regarding Lead Bidder (the “Adequate Assurance Response Deadline”) to provide the requesting party with any and all non-confidential information reasonably related to Request for Adequate Assurance Regarding the Lead Bidder (the “Adequate Assurance Information”).

21. If any counterparty to an Executory Contract or Unexpired Lease objects for any reason to the assumption and assignment of such Executory Contract or Unexpired Lease with respect to the Lead Bidder (other than a Cure Amount Objection, an “Assignment Objection”), such counterparty must file and serve such Assignment Objection so as to be received by the Notice Parties by the later of either the Cure Objection Deadline or the Supplemental Cure Objection Deadline (as applicable) or (ii) the date set forth in any motion filed by the Debtors with the Bankruptcy Court to assume such Assumed Contract if such contract is to be assumed and assigned after the Sale Hearing); provided, however, if the Successful Bidder is not the Lead Bidder the Assignment Objection Deadline shall be one (1) day prior to the Sale Hearing. The Court shall make any and all determinations concerning adequate assurance of future performance under the Assumed Contracts pursuant to sections 365(b) and (f)(2) of the Bankruptcy Code at the Sale Hearing.

22. Except to the extent otherwise provided in the Successful Bidder’s asset purchase agreement, from and after the Closings, the Debtors and the Debtors’ estates shall be relieved of any and all liability accruing or arising under the Assumed Contracts pursuant to section 365(k) of the Bankruptcy Code irrespective of where such liability arose or accrued.

23. Subject to the terms of the APA and the Bidding Procedures, the Debtors are authorized to take such actions as may be necessary or appropriate to implement and affect the terms and requirements of this Order, including, but not limited to, expending such funds or taking such action as may be necessary or appropriate to comply with the Bidding Procedures.

24. To the extent the provisions of this Order are expressly inconsistent with the provisions of any Exhibit referenced herein, including the Bidding Procedures, or with the Motion, the provisions of this Order shall control.

25. Notwithstanding the possible applicability of Bankruptcy Rules 6004, 6006, 7062, 9014 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable.

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

Dated: _____, 2019
Wilmington, Delaware

United States Bankruptcy Judge

Exhibit 1

Bidding Procedures

BIDDING PROCEDURES

Set forth below are the bidding procedures (the “Bidding Procedures”) for the proposed sale of all or substantially all of the assets (the “Assets”) or any combination of subset(s) thereof and assumption of certain liabilities of BeavEx Holding Corporation, BeavEx Acquisition, Inc., BeavEx Incorporated, JNJW Enterprises, Inc., and USXP, LLC (collectively, the “Debtors”), in connection with the jointly administered chapter 11 cases pending in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), lead case number 19-10316 (___).

BeavEx Incorporated, JNJW Enterprises, Inc., and USXP, LLC (the “Sellers”) entered into that certain asset purchase agreement with TForce Final Mile, LLC, TForce Final Mile West, LLC and TForce Logistics, LLC (“TForce” or the “Lead Bidder”), pursuant to which the Lead Bidder has agreed to acquire the Acquired Assets and has agreed to assume certain specified liabilities on the terms and conditions specified therein (together with the schedules and related documents thereto, and as may be amended, supplemented or otherwise modified, the “APA”).

The Lead Bidder has submitted a Qualified Bid (as defined below) consisting of (a) the purchase of the Acquired Assets (as defined in the APA), (b) the assumption of the Assumed Liabilities (as defined in the APA) and (c) a cash purchase price equal to the \$7,204,987 (the “Lead Bid”).

The sale, pursuant to the APA, is subject to competitive bidding as set forth herein. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Motion for the approval of the Bidding Procedures (the “Approval Motion”) [Docket No. ___].

A. ASSETS TO BE SOLD

The Debtors seek to complete a sale of the Assets (or any combination of subset(s) thereof) and the assumption of certain of their liabilities, provided, however, that the Debtors determine that the aggregate consideration offered by any bid or combination of bids for the Assets satisfies the requirements set forth in these Bidding Procedures. More specifically, the Debtors will entertain and pursue proposals for the Assets or any combination of subset(s) the Assets via multiple Qualified Bids. Except as otherwise provided in the APA or such other approved purchase agreement of a Successful Bidder(s) (as defined below), all of the Debtors’ rights, title and interest in and to each of the Assets shall be sold free and clear of all liens, claims, interests, charges, restrictions and encumbrances of any kind or nature thereon and there against (collectively, the “Liens”), such Liens, including the Liens of the prepetition secured lenders and proposed postpetition secured lenders, to attach solely to the net proceeds of the sale of such Assets.

B. THE BID PROCEDURES

To ensure that the Debtors receive the maximum value for the Acquired Assets, the APA is subject to higher or otherwise better offers, and, as such, the APA will serve as the lead bid for

the Acquired Assets.

1. Provisions Governing Qualifications of Bidders

In order to participate in the bidding process, prior to the Bid Deadline (defined below), each person who wishes to participate in the bidding process (a “Potential Bidder”), other than the Lead Bidder, must deliver the following to the Notice Parties (as defined below):

- a. a written disclosure of the identity of each entity including all affiliates, equity sources or other parties that will be or is associated with bidding for the Assets or otherwise participating in connection with such bid and the complete terms of any such participation; and
- b. an executed confidentiality agreement (to be delivered prior to the distribution of any confidential information by the Debtors to a Potential Bidder) in form and substance satisfactory to the Debtors, in substantially the same form as signed by the Lead Bidder and which shall inure to the benefit of any purchaser of the Assets; without limiting the foregoing, each confidentiality agreement executed by a Potential Bidder shall contain standard non-solicitation provisions.

Because the Debtors will consider offers for a portion of their Assets, a Potential Bidder is not required to submit an offer for all or substantially all of the Assets in order to be a Qualified Bidder. To that end, a Potential Bidder or combination of Potential Bidders that delivers the documents and information described above and that the Debtors, in consultation with the prepetition secured lenders and proposed postpetition secured lenders and any statutorily appointed committee (if any) (together, the “Consultation Parties”) determine in their reasonable business judgment, is likely (based on among other things, (i) the terms of the Proposed Asset Purchase Agreement (as defined below), (ii) the total consideration to be received by the Debtors, (iii) the availability of committed capital, (iv) the transaction structure and execution risk to the Debtors, (v) the net benefit to the Debtors, (vi) experience and (vii) other considerations) to submit a bona fide offer and be able to consummate the transaction, including without limitation obtaining all required regulatory or government agency approvals, will be deemed a “Qualified Bidder.” The Debtors will limit access to due diligence to those parties they believe, in the exercise of their reasonable judgment, are pursuing the transaction in good faith.

As promptly as practicable after a Potential Bidder(s) delivers all of the materials required above (and in any event no later than one (1) business day thereafter), the Debtors will determine, after consultation with the Consultation Parties, if such Potential Bidder is a Qualified Bidder and will notify the Potential Bidder, the Lead Bidder and the Notice Parties on their determination.

2. Due Diligence

The Debtors will afford any Qualified Bidder such due diligence access or additional information as the Debtors, in consultation with their advisors, the prepetition secured lender and proposed postpetition secured lender and any statutorily appointed committee (if any), deem

appropriate, in their reasonable discretion, subject to contractual obligations to limit access to certain proprietary information; provided, however, the Debtors will, in their reasonable discretion, make reasonable commercial efforts to provide Qualified Bidders with the same information provided to the Lead Bidder.

The due diligence period shall end on the Bid Deadline, and the Debtors shall not furnish any due diligence information to any Qualified Bidder (other than the Successful Bidder) after the Bid Deadline. For the avoidance of doubt, neither the Debtors nor any of their respective representatives shall be obligated to furnish any due diligence information to any person other than a Qualified Bidder.

3. Provisions Governing Qualified Bids

A bid submitted will be considered a Qualified Bid only if the bid is submitted by a Qualified Bidder and complies with all of the following (a “Qualified Bid”):

- a. it fully discloses the identity of the Qualified Bidder;
- b. it states that the applicable Qualified Bidder offers to purchase, in cash or other consideration, the Assets (or any combination of subset(s) thereof) upon terms and conditions that the Debtors reasonably determine, after consultation with the Consultation Parties, are at least as favorable to the Debtors as those set forth in the APA, and it provides a description of any anticipated regulatory or governmental approvals necessary to consummate the bid;
- c. it includes a signed writing that the Qualified Bidder’s offer is irrevocable until the selection of the Successful Bidder(s), provided that if such bidder is selected as a Successful Bidder(s) its offer shall remain irrevocable until the earlier of (a) the closing of the sale to the Successful Bidder, and (b) sixty (60) days after entry of the Sale Order. Such writing shall guaranty performance of the Qualified Bidder by its parent entities, if any, or provide such other guaranty of performance acceptable to Debtors in their reasonable discretion;
- d. confirmation that all necessary internal and shareholder approvals have been obtained prior to the bid;
- e. it includes a duly authorized and executed copy of an asset purchase agreement, including the purchase price for the Assets expressed in U.S. Dollars, together with all exhibits and schedules thereto, together with copies marked to show any amendments and modifications to the APA (the “Proposed Asset Purchase Agreement”) and the proposed form of sale approval order to approve the sale by the Bankruptcy Court, together with a copy marked to show amendments and modifications to the proposed form of sale approval order attached to the Approval Motion; provided however, that such Proposed Asset Purchase Agreement shall not include any financing or diligence conditions;
- f. it includes written evidence of sufficient cash on hand to fund the purchase price or sources of immediately available funds that are not conditioned

on third party approvals or commitments, that will allow the Debtors to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the transaction contemplated by the Proposed Asset Purchase Agreement; such written evidence shall include the most current audited and the most current unaudited financial statements, or such other financial information as may be acceptable to the Debtors in their reasonable discretion after consultation with the Consultation Parties (collectively, the "Financials") of the Qualified Bidder, or, if the Qualified Bidder is an entity formed for the purpose of acquiring the Assets, the Financials of the Qualified Bidder's equity holder(s) or other financial backer(s) that are guaranteeing the Qualified Bidder's performance;

g. if such bid is for the same assets, and on substantially the same terms set forth in the Lead Bid, it provides for a Purchase Price that includes cash and/or other consideration that exceeds the aggregate cash consideration to be paid to or for the benefit of the Debtors' estates set forth in the Lead Bid by at least \$430,000, which represents the sum of (A) the amount of the Break-Up Fee of \$180,000, plus (B) the Expense Reimbursement (not to exceed \$150,000), plus (C) \$100,000 and otherwise has a value to the Debtors, in the Debtors' exercise of their reasonable business judgment, after consultation with their advisors, that is greater or otherwise better than the value offered under the APA including impact of the liabilities assumed in the APA;

h. it identifies the Assets (or subset(s) thereof) that are included in the bid;

i. it identifies with particularity which executory contracts and unexpired leases the Qualified Bidder wishes to reject and provides details of the Qualified Bidder's proposal for the treatment of related cure costs;

j. it provides information concerning the Qualified Bidder's ability to satisfy adequate assurance of performance with respect to executory contracts and unexpired leases to be assumed and assigned;

k. it includes an acknowledgement and representation that the Qualified Bidder: (A) has had an opportunity to conduct any and all required due diligence regarding the Assets prior to making its offer; (B) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid; (C) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Assets or the completeness of any information provided in connection therewith or with the Auction (defined below), except as expressly stated in the Proposed Asset Purchase Agreement; and (D) is not entitled to any expense reimbursement, break-up fee, or similar type of payment in connection with its bid;

l. it includes evidence, in form and substance reasonably satisfactory to the Debtors, of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Proposed Asset Purchase Agreement;

m. it contains a detailed description of how the Qualified Bidder intends to treat the Debtors' current employees, independent contract couriers, or third-party service providers;

n. it states that the Qualified Bidder consents to the jurisdiction of the Bankruptcy Court;

o. it contains such other information reasonably requested by the Debtors and the prepetition secured lenders and proposed postpetition secured lender;

p. it provides a good faith cash deposit to be held by the Debtors equal to at least 10% of the Qualified Bidders' Bid (the "Good Faith Deposit"). The Good Faith Deposit shall be made by wire transfer to a non-interest bearing account specified by the Debtors pursuant to the instructions to be provided by the Debtors. The Good Faith Deposit of any Qualified Bidder (except for the Successful Bidder(s) or Back-Up Bidder(s)) shall be returned to the Qualified Bidder, with any interests earned thereon, within five (5) Business days from the Sale closing. The Good Faith Deposit of the Successful Bidder shall be applied against the purchase price for the assets purchased by the Successful Bidder

q. it contains a statement that the Qualified Bidder has not engaged in any collusion with respect to the bidding or Sale; and

r. it is received on or prior to the Bid Deadline.

Notwithstanding anything in these Bidding Procedures to the contrary, and for the avoidance of doubt, for all purposes under these Bidding Procedures, Auction and Sale, the Lead Bid and the Lead Bidder shall be deemed a Qualified Bid and Qualified Bidder, respectively. The Lead Bidder shall not be required to take any further action in order to participate in the Auction (if any) or, if the Lead Bidder is the Successful Bidder, to be named the Successful Bidder at the Sale Hearing (as defined below). Additionally, any bids submitted by a combination of Potential Bidders whose bids for the Assets (or any combination of subset(s) thereof) do not overlap and who agree to have their bids combined for the purposes of determination of whether such Potential Bidders (as combined) shall constitute a Qualified Bid, shall be deemed one Qualified Bid and the bidders as Qualified Bidders, to the extent the bid (or combined bids) satisfies the provisions of this Section 3.

No later than one (1) business day following the expiration of the Bid Deadline, the Debtors shall notify the Lead Bidder, all other Qualified Bidders, and the Notice Parties in writing as to whether or not any bids (or combination of bids) constitute Qualified Bids (and, with respect to each Qualified Bidder that submitted a bid other than the Lead Bidder, whether such Qualified Bidder's bid constitutes a Qualified Bid).

4. Bid Deadline

A Qualified Bidder that desires to make a bid will deliver written copies of its bid to the following parties (collectively, the “Notice Parties”): (i) the Debtors, 2120 Powers Ferry Road SE, Suite 300, Atlanta, GA 30339 (Attn. Donald Van der Wiel (dvanderwiel@beavex.com)), (ii) counsel to the Debtors: Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801 (Attn: Joseph M. Barry, Esq. (jbarry@ycst.com), Matthew B. Lunn, Esq. (mlunn@ycst.com), and Donald J. Bowman, Jr., Esq. (dbowman@ycst.com)), (iii) counsel to DIP Lender, Winston Strawn, LLP, 200 Park Avenue, New York, NY 10166 (Attn. Carey D. Schreiber, Esq. (cschreiber@winston.com)), (iv) co-counsel to postpetition lenders, Ashby & Geddes, P.A. (Attn. Gregory Taylor, Esq. (gtaylor@ashbygeddes.com)), (v) counsel to the Lead Bidder: Baker Botts L.L.P., 30 Rockefeller Plaza, New York, NY 10112 (Attn. Emanuel Grillo, Esq. (emanuel.grillo@bakerbotts.com)), and (vi) counsel to any statutorily appointed committee in the Chapter 11 Cases (collectively, the “Notice Parties”), so as to be received by the Notice Parties not later than 4:00 p.m. (prevailing Eastern Time) on _____, 2019 (the “Bid Deadline”).

5. Evaluation of Competing Bids

A Qualified Bid (as may be combined) will be valued based upon several factors including, without limitation, (i) the amount of such bid, (including value provided by the assumption of liabilities), (ii) the risks and timing associated with consummating such bid, (iii) any proposed revisions to the APA (including any additional conditions to closing), and (iv) any other factors deemed relevant by the Debtors and the prepetition secured lenders and proposed postpetition secured lender, in their reasonable discretion.

6. No Qualified Bids

If the Debtors do not receive any Qualified Bids, other than the Lead Bid, the Debtors will not hold an auction and the Lead Bidder will be named the Successful Bidder.

7. Auction Process.

If the Debtors receive one or more Qualified Bids in addition to the Lead Bid, the Debtors will conduct an auction (the “Auction”) of the Assets, which shall be transcribed, at _____ a.m./p.m. (prevailing Eastern Time) on _____, 2019 at the offices of Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, or such other location as shall be timely communicated by the Debtors. The Auction shall be conducted in accordance with the following procedures:

- a. Only the Notice Parties, any other Qualified Bidders that have submitted Qualified Bids, and/or other party as the Debtors may determine to include in their reasonable discretion, in each case along with their representatives and advisors, shall be entitled to attend the Auction (such attendance to be in person); if a party that is a creditor of the Debtors, other than those listed above, would like to attend the Auction, such party shall make a request to attend the Auction in writing (which writing may be in the form of an electronic mail) and

serve such request on the Notice Parties no later than 12:00 p.m. (prevailing Eastern Time) two (2) business days prior to the date of the Auction;

b. only the Lead Bidder and such other Qualified Bidders that have submitted Qualified Bids on or prior to the Bid Deadline will be entitled to make any subsequent bids at the Auction; provided that all such Qualified Bidders wishing to attend the Auction must have at least one individual representative with authority to bind such Qualified Bidder attending the Auction in person;

c. each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the sale;

d. at least one (1) business day prior to the Auction, each Qualified Bidder who has timely submitted a Qualified Bid must inform the Debtors whether it intends to attend the Auction; provided that in the event a Qualified Bidder elects not to attend the Auction, such Qualified Bidder's Qualified Bid shall nevertheless remain fully enforceable against such Qualified Bidder until (a) the date of the selection of either the Successful Bidder and/or Back-up Bidder at the conclusion of the Auction, or (b) if selected as either the Successful Bidder or Back-up Bidder, until the Outside Date (as defined below). Prior to the start of the Auction, the Debtors will provide copies of the Qualified Bid which the Debtors believe, in their reasonable discretion, and following consultation with the Consultation Parties, is the highest or otherwise best offer (the "Starting Bid") to the Lead Bidder and all other Qualified Bidders;

e. all Qualified Bidders who have timely submitted Qualified Bids will be entitled to be present for all Subsequent Bids (as defined below) at the Auction and the actual identity of each Qualified Bidder will be disclosed on the record at the Auction;

f. the Debtors, after consultation with their advisors, may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances for conducting the Auction, provided that such rules are (i) not inconsistent with these Bidding Procedures, the Bankruptcy Code, or any order of the Court entered in connection herewith, and (ii) provide that bids be made and received on an open basis, with all material terms of each bid to be fully disclosed to all other Qualified Bidders at the Auction and (iii) are disclosed to each Qualified Bidder at the Auction; and

g. bidding at the Auction will begin with the Starting Bid and continue in bidding increments (each a "Subsequent Bid") providing a net value to the estate of at least an additional \$100,000 above the prior bid. After the first round of bidding and between each subsequent round of bidding, the Debtors, after consultation with the Consultation Parties, shall announce the bid (including the identity of that bidder and the value of such bid) that it believes to be the highest or otherwise best offer (the "Highest Bid"). A round of bidding will conclude after each participating Qualified Bidder has had the opportunity to

submit a Subsequent Bid with full knowledge of the Highest Bid. Each Qualified Bidder shall either elect to provide a higher bid or withdraw from the Auction. Except as specifically set forth herein, for the purpose of evaluating the value of the consideration provided by Subsequent Bids (including any Subsequent Bid by the Lead Bidder), the Debtors will give effect to the Break-Up Fee and Expense Reimbursement payable to the Lead Bidder under the APA as well as any additional liabilities to be assumed by a Qualified Bidder and any additional costs which may be imposed on the Debtors. If the Lead Bidder bids at the Auction, the Lead Bidder will be entitled to a “credit” for the Break-Up Fee and Expense Reimbursement. To the extent a Subsequent Bid has been accepted entirely or in part because of the addition, deletion or modification of a provision or provisions in the applicable Proposed Asset Purchase Agreement or the APA, the Debtors will identify such added, deleted or modified provision or provisions.

8. Selection of Successful Bidder and Back-Up Bidder

Prior to the conclusion of the Auction, the Debtors, in consultation with their advisors and the Consultation Parties, will review and evaluate each Qualified Bid in accordance with the procedures set forth herein and determine which offer is the highest or otherwise best offer from among the Qualified Bidders (including the Lead Bidder) submitted at or prior to the Auction (such bid, the “Successful Bid” and the bidder or bidders making such bid, the “Successful Bidder(s)”) and communicate to the Lead Bidder and the other Qualified Bidders the identity of the Successful Bidder(s) and the details of the Successful Bid. The determination of the Successful Bid by the Debtors at the conclusion of the Auction shall be final, subject only to approval by the Bankruptcy Court. Upon determining the Successful Bidder(s), at the conclusion of the Auction, the Debtors shall also identify the next highest or otherwise best Qualified Bid (if any) (the “Back-Up Bid”) and the Qualified Bidder(s) who submitted such bid (the “Back-Up Bidder(s)”). Within one (1) business day after adjournment of the Auction, the Debtors shall file a notice identifying the Successful Bidder(s) and Back-up Bidder(s) with the Bankruptcy Court. Each Qualified Bidder shall be required to keep its bid open and irrevocable until the earlier of (i) 5:00 p.m. (prevailing Eastern Time) on the date that is thirty (30) days following entry of the Sale Order or (ii) the closing of the Sale with the Successful Bidder (the “Outside Date”). The Good Faith Deposit of the Back-Up Bidder shall be held by the Debtors until the earlier of two (2) business days after (i) the closing of the Sale with the Successful Bidder or (ii) the Outside Date.

Within two (2) business days after adjournment of the Auction, the Successful Bidder(s) shall complete and execute all agreements, contracts, instruments and other documents evidencing and containing the terms and conditions upon which the Successful Bid was made.

The Debtors will sell the substantially all of their Assets to the Successful Bidder(s) pursuant to the terms of the Successful Bid upon the approval of such Successful Bid by the Bankruptcy Court at the Sale Hearing. The Successful Bidder(s) shall be required to consummate the Sale by _____, subject to extensions by the Debtors, in their sole discretion. If the Successful Bidder(s) fails to timely consummate the Sale of the Assets, or any subset(s) thereof, the Debtors shall consummate the Sale of the Assets, or any subset(s) thereof, to the Back-up Bidders pursuant to the terms of the Back-up Bid as soon as commercially reasonable.

C. SALE HEARING

The Debtors will seek entry of an order from the Bankruptcy Court at a hearing (the “Sale Hearing”) to begin at _____ (prevailing Eastern Time) on _____, 2019, to approve and authorize the sale transaction to the Successful Bidder on terms and conditions determined in accordance with the Bidding Procedures.

D. MISCELLANEOUS

The Auction and the Bidding Procedures are solely for the benefit of the Debtors and their estates, and nothing contained in the Bid Procedures Order or the APA or the Bidding Procedures shall create any rights in any other person or bidder (including without limitation rights as third party beneficiaries or otherwise) other than the rights expressly granted to the Consultation Parties or a Successful Bidder under the Bid Procedures Order.

The Debtors, after consultation with the Consultation Parties, may modify the rules, procedures and deadlines set forth herein, or adopt new rules, procedures and deadlines that, in their reasonable discretion, will better promote the goals of these procedures, namely, to maximize value for the estates; provided that all modifications and additional rules, procedures and deadlines will be non-material, may in no event extend the dates specified in Bidding Procedures Order, including permitting the submission of Qualified Bids after the close of the Auction and otherwise not conflict with these Bidding Procedures or the Bidding Procedures Order. All such modifications and additional rules will be communicated to each of the Notice Parties, Potential Bidders and Qualified Bidders.

The Bankruptcy Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of the Bid Procedures Order.

Exhibit B

APA

ASSET PURCHASE AGREEMENT

by and among

TFORCE FINAL MILE, LLC

TFORCE FINAL MILE WEST, LLC

TFORCE LOGISTICS, LLC,

Collectively, as Buyer,

and

BEAVEX INCORPORATED,

JNJW ENTERPRISES, INC., &

USXP, LLC,

Collectively, as Seller

Dated as of February 14, 2019

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ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT (this “**Agreement**”), by and among BeavEx Incorporated, a Connecticut corporation, JNJW Enterprises, Inc., a California corporation, and USXP, LLC, a Delaware limited liability company (collectively, “**Seller**”) and TForce Final Mile, LLC (“**TForce**”), a Delaware limited liability company, TForce Final Mile West, LLC (“**West**”), a Delaware limited liability company and TForce Logistics, LLC (“**Logistics**”), and a Delaware limited liability company (collectively, the “**Buyer**”), dated as of February 14, 2019 (the “**Execution Date**”). Unless otherwise defined herein, capitalized terms used in this Agreement shall have the meanings set forth in Article I hereto.

RECITALS

WHEREAS, Seller is engaged in the business of providing transportation, warehousing, courier, and related services; providing medical and laboratory support services; and leasing certain real properties in connection therewith (collectively, such business, as conducted as of the date hereof, the “**Business**”);

WHEREAS, Seller and certain of its affiliates (collectively, the “**Debtors**”) intend to file voluntary petitions for relief and commence cases (the “**Chapter 11 Cases**”) under chapter 11 of Title 11 of the United States Bankruptcy Code (as amended, the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”);

WHEREAS, the Debtors believe, following consultation with their financial advisors and consideration of available alternatives, that, in light of the current circumstances, a sale of certain of Seller’s assets as provided herein is necessary to preserve and maximize value, and is in the best interest of the Debtors, their creditors, and equity holders;

WHEREAS, Seller desires to sell to Buyer the Acquired Assets and transfer to Buyer the Assumed Liabilities and Buyer desires to purchase from Seller the Acquired Assets and assume the Assumed Liabilities, upon the terms and conditions hereinafter set forth;

WHEREAS, upon the terms and subject to the conditions set forth herein, following the filing of the Chapter 11 Cases, Seller intends to request that the Bankruptcy Court authorize and approve the transactions contemplated by this Agreement pursuant to Sections 105, 363 and 365 of the Bankruptcy Code;

WHEREAS, Seller’s ability to consummate the transactions set forth in this Agreement are subject to, among other things, the entry of the Sale Order under, *inter alia*, Sections 363 and 365 of the Bankruptcy Code; and

WHEREAS, the Parties desire to consummate the proposed transaction as promptly as practicable after the Bankruptcy Court enters the Sale Order.

NOW, THEREFORE, in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties and covenants herein contained,

and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE I DEFINITIONS

Section 1.1 Definitions. For purposes of this Agreement, the following terms have the meanings specified or referenced below.

“Accounts Receivable” means all of Seller’s trade accounts receivable and other rights to payment from customers, licensees, or other third parties to the extent arising out of the operation of the Business.

“Acquired Accounts Receivable” shall have the meaning set forth in Section 2.1(a).

“Acquired Assets” shall have the meaning set forth in Section 2.1.

“Acquired Deposits” shall have the meaning set forth in Section 2.1(n).

“Acquired Equipment” shall have the meaning set forth in Section 2.1(b).

“Acquired Instruments” shall have the meaning set forth in Section 2.1(p).

“Acquired Intellectual Property” shall have the meaning set forth in Section 2.1(f).

“Acquired IT Systems” shall have the meaning set forth in Section 2.1(k).

“Acquired Marketing Materials” shall have the meaning set forth in Section 2.1(o).

“Acquired Permits” shall have the meaning set forth in Section 2.1(e).

“Acquired Pre-Paid Expenses” shall have the meaning set forth in Section 2.1(g).

“Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such other Person. For purposes of this definition, “control” when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms “controlling” and “controlled” have correlative meanings.

“Agreement” shall have the meaning set forth in the Preamble.

“Alternative Transaction” means the sale, transfer or other disposition of a material portion of Seller’s assets, directly or indirectly, including through an asset sale, share sale, merger, amalgamation, or other business combination, a recapitalization or refinancing, a debt for equity swap or conversion, whether pursuant to a liquidation or other similar transaction, including a chapter 11 plan approved by the Bankruptcy Court, or resulting from the Auction, in a transaction or series of transactions with one or more Persons other than Buyer; provided,

however, that an Alternative Transaction shall not include any transaction regarding only Excluded Assets.

“Assignment of Domain Names” shall have the meaning set forth in Section 4.3(b).

“Assignment of Trademarks” shall have the meaning set forth in Section 4.3(b).

“Assumed Contracts” shall have the meaning set forth in Section 2.1(c).

“Assumed Leases” shall have the meaning set forth in Section 2.1(d).

“Assumed Liabilities” shall have the meaning set forth in Section 2.3.

“Assumption Agreement” means the Assignment and Assumption Agreement substantially in the form of Exhibit 1.

“Auction” shall have the meaning set forth in the Sale Procedures.

“Avoidance Actions” means any and all claims for relief of Seller under chapter 5 of the Bankruptcy Code or under state fraudulent conveyance, fraudulent transfer, or similar laws.

“Bankruptcy Code” shall have the meaning set forth in the Recitals.

“Bankruptcy Court” shall have the meaning set forth in the Recitals.

“Benefit Plan” means any “employee benefit plan” (including “plans” as defined in ERISA § 3(3)); any employment, consulting, severance, termination pay, change in control or other similar contract, arrangement or policy; and plan, arrangement, program, policy, agreement or commitment providing for insurance coverage (including any self-insured arrangements), workers’ compensation, disability or accident benefits, supplemental unemployment benefits, profit sharing, deferred compensation, bonus, stock option, stock purchase or other equity plan, cash or other incentive, vacation pay, holiday pay, pension, retirement plans, life, medical and any other form of compensation or benefit plan, program or arrangement of any kind regardless of whether any such plan is written or oral, whether formal or informal, legally binding or not, under which any Business Employee (or any of their dependents) has any present or future right to compensation or benefits or Seller sponsors or maintains for Business Employees, is making contributions to or has had or has any present or future liability or obligation (contingent or otherwise) or with respect to which it is otherwise bound with respect to Business Employees.

“Bid Deadline” shall have the meaning set forth in the Sale Procedures Order as entered by the Bankruptcy Court.

“Bills of Sale” shall have the meaning set forth in Section 4.3(e).

“Break-Up Fee” shall have the meaning set forth in Section 11.3(a).

“Business” shall have the meaning set forth in the Recitals.

“**Business Day**” means any day of the year on which national banking institutions in Wilmington, Delaware are open to the public for conducting business and are not required by Law to close.

“**Business Employee**” means all individuals employed by Seller immediately prior to the Closing Date, including: (A) those listed on Schedule 5.13(a); (B) those on military leave and family and medical leave; (C) those on approved leaves of absence, but only to the extent they have reemployment rights guaranteed under federal or state Law, under any applicable collective bargaining agreement or under any leave of absence policy of Seller; and (D) those on short-term disability under Seller’s short-term disability program, in each case whose duties relate exclusively to the Business regardless of the company payroll on which such individuals are listed; provided, however, that any individual who has executed an owner/operator or similar agreement (including without limitation any such contracts or agreements included within Schedule 2.1(c)) with Seller is an independent contractor and not a Business Employee (“**Service Contractor**”).

“**Buyer**” shall have the meaning set forth in the Preamble.

“**Buyer Termination Notice**” shall have the meaning set forth in Section 11.1(c)(i).

“**Cash and Cash Equivalents**” means all cash and cash equivalents, including checks, commercial paper, treasury bills, certificates of deposit and other bank deposits, securities, securities entitlements, instruments, and other investments of Seller, and all bank accounts and securities accounts, including any cash collateral that is collateralizing any letters of credit.

“**Cash Deposit**” shall have the meaning set forth in Section 3.2(a)(ii).

“**Cash Purchase Price**” shall have the meaning set forth in Section 3.1(a).

“**Chapter 11 Cases**” shall have the meaning set forth in the Recitals.

“**Claims**” shall have the meaning ascribed to it in Section 101(5) of the Bankruptcy Code, and shall include all claims, causes of action, choses in action, rights of recovery, Avoidance Actions, and rights of set-off and recoupment of whatever kind or description against any Person that a Person may have or acquire, including any of the foregoing based on theories of transferee or successor liability, and any liabilities or obligations related to or arising out of (i) any employment or labor agreements, including any collective bargaining agreements; (ii) any employee pension or benefit plan claims, including any multiemployer benefit plan claims; (iii) any employee, workers’ compensation, occupational disease, unemployment, or temporary disability claims, including claims that might arise under state and federal employment and anti-discrimination laws; (iv) any retiree healthcare or life insurance claims; (v) any pension, welfare, compensation or other employee benefit plans, agreements, practices, and programs; (vi) any transferee or successor liability claims, rights, or causes of action; and (vii) any litigation involving Seller.

“**Closing**” shall have the meaning set forth in Section 4.1.

“**Closing Date**” shall have the meaning set forth in Section 4.1.

“**Closing Legal Impediment**” shall have the meaning set forth in Section 9.3.

“**COBRA**” shall have the meaning set forth in Section 7.4(e)(iii).

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Confidentiality Agreement**” means the confidentiality agreement entered into by the Debtors and Buyer, dated October 8, 2018.

“**Contract**” means any contract, agreement, insurance policy, capitalized lease, license, sublicense, sales order, purchase order, instrument, or other commitment, whether written or oral, that is binding on any Person or any part of its property under applicable Law, including any contract with any Service Contractor.

“**Copyrights**” means: (a) the copyright registrations and applications for registration identified in Schedule 1.1(a); (b) works of authorship whether or not copyrightable; and (c) any other copyrights and works, together with all common law rights, and any applications and registrations therefor, owned by Seller or which Seller has the legal right to use (including any license or other rights of Seller, whether as a licensor, a licensee or otherwise, relating to any of the foregoing).

“**Cure Claims**” means amounts that must be paid and obligations that otherwise must be satisfied, pursuant to Sections 365(b)(1)(A) and (B) of the Bankruptcy Code, in connection with the assumption, assignment, or sale of the Assumed Contracts and Assumed Leases, as determined pursuant to the process set forth in the Sale Procedures Order.

“**Deposits**” means any deposits (including security deposits for rent, electricity, telephone or otherwise), but excluding any Pre-Paid Expenses.

“**DIP Facility**” means a credit facility provided by Eos Partners, L.P. and ECP Helios Partners IV, L.P. in accordance with the terms in that certain Debtor-In-Possession Delayed Draw Term Loan Promissory Note to be entered into by Eos Partners, L.P. and ECP Helios Partners IV, L.P. and the Debtors, and as the same may be amended from time to time in accordance with the terms thereof.

“**Documents**” means, with respect to the Business, all (a) books, records, Tax Returns, manuals, files, invoices, inventory records, product specifications, customer lists, cost and pricing information, supplier lists, business plans, catalogs, customer literature, quality control records and customer records, (b) research, design and development files and records, and (c) Marketing Materials, in each case including all data and other information stored on discs, tapes or other media, but specifically excluding (i) any books, records, files, data or other information related to (A) Excluded Assets or (B) Excluded Liabilities and (ii) Seller’s corporate or other entity organizational documents, minutes, stockholder registers and similar records.

“**Domain Names**” means any domain names and uniform resource locators owned or licensed by Seller and used by Seller in connection with the Business a list of which is annexed as Schedule 1.1(b).

“**Effective Date**” means that date, if ever, on which the Bankruptcy Court shall have entered the Sale Procedures Order.

“**Employment Offer**” shall have the meaning set forth in Section 7.4(b).

“**Encumbrance**” means any charge, lien, interest, security interest, Claim, mortgage, lease, sublease, hypothecation, deed of trust, pledge, option, right of use or possession, right of first offer or first refusal, easement, servitude, restrictive covenant, encroachment, encumbrance, transfer restriction or other similar restriction of any kind.

“**Equipment**” means all personal property to which Seller holds title and currently used or held for use in the operation of the Business, including all machinery, equipment, replacement and component parts, spare parts, furniture, fixtures (including any fixtures at any Leased Premises), office and other supplies, data processing equipment and peripheral equipment, vehicles, rolling stock, training materials, and videos and other similar personal property.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.

“**Escrow Agent**” shall have the meaning set forth in Section 3.2(a)(i).

“**Escrow Agreement**” shall have the meaning set forth in Section 3.2(a)(i).

“**Excluded Assets**” shall have the meaning set forth in Section 2.2.

“**Excluded Liabilities**” shall have the meaning set forth in Section 2.4.

“**Execution Date**” shall have the meaning set forth in the Preamble.

“**Expense Reimbursement Amount**” shall have the meaning set forth in Section 11.3(b).

“**Final DIP Order**” means a Final Order of the Bankruptcy Court approving the DIP Facility and the use of cash collateral on a final basis.

“**Final Order**” means an order of the Bankruptcy Court or any other court of competent jurisdiction (a) as to which the time to appeal shall have expired and as to which no appeal shall then be pending or (b) if a timely appeal shall have been filed or sought, either (i) no stay of the such order shall be in effect or (ii) no motion or application for a stay of such order shall have been filed and then be pending or such motion or application shall have been denied or (iii) if such a stay shall have been granted, then (A) the stay shall have been dissolved or (B) a Final Order of the district court or circuit court having jurisdiction to hear such appeal shall have affirmed such order and the time allowed to appeal from such affirmance or to seek review or rehearing (other than a motion pursuant to Rule 60(b) of the Federal Rules of Civil Procedure) thereof shall have expired and the taking or granting of any further hearing, appeal or petition for certiorari shall not be permissible, and if a timely appeal of such district court or circuit court order or timely motion to seek review or rehearing of such order shall have been made, any appellate court having jurisdiction to hear such appeal or motion (or any subsequent appeal or motion to seek review or rehearing) shall have affirmed the district court’s (or lower appellate court’s) order upholding such order of the Bankruptcy Court and the time allowed to appeal from

such affirmance or to seek review or rehearing thereof shall have expired and the taking or granting of any further hearing, appeal or petition for certiorari shall not be permissible.

“**GAAP**” means United States generally accepted accounting principles.

“**GML**” means the division of BeavEx International, Inc. doing business as Guardian Medical Logistics.

“**Governmental Authority**” means any United States federal, provincial, state, municipal or local or any foreign government, governmental agency or authority, or regulatory or administrative authority, or any court, tribunal or judicial body having jurisdiction, including the Bankruptcy Court.

“**Group Health Plan**” shall have the meaning set forth in Section 7.4(e)(iii).

“**Inbound License Agreements**” shall have the meaning set forth in Section 5.8(b).

“**Indebtedness**” shall mean all indebtedness for borrowed money, whether current or funded, secured or unsecured.

“**Intellectual Property**” means, collectively, (a) all Copyrights, (b) all Patent Rights, (c) all Trademarks, (d) all Know-How, (e) all Domain Names, and (f) all other intellectual property, as such term is defined in Section 101(35A) of the Bankruptcy Code, owned by Seller or which Seller has the legal right to use, and in each case, used by Seller in the conduct of the Business.

“**Interim DIP Order**” means an Order of the Bankruptcy Court approving the DIP Facility and the use of cash collateral on an interim basis.

“**IRS**” means the Internal Revenue Service.

“**IT Systems**” means the information technology systems and components thereof (including personal computers, computer servers, scanning devices, printers, communications equipment and technology, firmware and software) owned by Seller and used, or held for use, in the Business and, in each case, all Intellectual Property rights and contract rights in all of the foregoing.

“**Know-How**” means all of Seller’s know-how, trade secrets, technology and technical information and data related to the Business.

“**Knowledge**” means, with respect to any matter in question, in the case of Seller, the knowledge of such matter of Donald Van der Wiel, Scott McDade, and Renada Flynt, without any duty of inquiry or investigation.

“**Law**” means any foreign or domestic law, statute, code, ordinance, rule, regulation, order, judgment, writ, stipulation, award, injunction or decree by any Governmental Authority as in effect from time to time.

“**Lease**” means a lease, ground lease, sublease, license, or other use or occupancy agreement with respect to the real property to which Seller is a party as lessee, sublessee, tenant, subtenant or in a similar capacity and is used in connection with the operation of the Business.

“**Leased Premises**” means any real property that is the subject property of an Assumed Lease.

“**Liability**” or “**Liabilities**” means any debt, loss, claim, damage, demand, fine, judgment, penalty, liability or obligation (whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due).

“**License**” means all covenants not to sue, licenses, sublicenses, registrations, consents, approvals, certificates, authorizations, agreements and instruments, including any of the foregoing involving any Intellectual Property used in or necessary for the conduct of the Business, including (a) all outbound licenses of any Intellectual Property by Seller to any Person, and (b) all inbound licenses of any Intellectual Property from any other Person to Seller.

“**Logistics**” shall have the meaning set forth in the Preamble.

“**Marketing Materials**” means all marketing materials, marketing research data, customer and sales information, product literature, promotional materials and data, advertising and display materials (including all underlying designs, samples, charts, diagrams, photos and electronic files related to the foregoing) and all training materials, in each case in whatever form or medium (e.g., audio, visual, digital or print) owned or used by Seller and primarily related to any Acquired Asset.

“**Material Adverse Effect**” means any event, change, circumstance, effect or other matter that has a material adverse change or effect on (a) the financial condition or results of operations of the Acquired Assets, taken as a whole, or (b) the timely closing of the transactions contemplated by this Agreement; provided, however, that none of the following, either alone or in combination, will constitute, or be considered in determining whether there has been, a material adverse change: any event, change, circumstance, effect or other matter resulting from or related to (i) the filing or prosecution of the Bankruptcy Case (other than an appeal of any Sale Order which is not stayed); (ii) any outbreak or escalation of war or major hostilities or any act of terrorism affecting the Acquired Assets; (iii) changes in applicable material laws, GAAP or enforcement or interpretation thereof; (iv) changes that generally affect the industries and markets in which the Seller operates; (v) changes in financial markets, general economic conditions (including prevailing interest rates, exchange rates, commodity prices and fuel costs) or political conditions; (vi) any failure, in and of itself, of the Seller to meet any internally prepared daily flash reports or weekly budgets or any budgets, reports or projections prepared in connection with the Chapter 11 Cases; (vii) any action taken or failed to be taken pursuant to or in accordance with this Agreement or at the request of Buyer; (viii) the execution or delivery of this Agreement or the consummation of the transactions contemplated by this Agreement; or (ix) any changes in Seller’s Business Employees not initiated by Seller.

“**Next Highest Bidder**” has the meaning set forth in the Sale Procedures.

“**Order**” means any award, writ, injunction, judgment, order or decree entered, issued, made, or rendered by any Governmental Authority, including an Order entered by the Bankruptcy Court or any other court of competent jurisdiction.

“**Ordinary Course of Business**” means the operation of the Business in the ordinary and usual course consistent with past practices and customs of Seller, including taking any action in accordance with any Contract to which Seller is a party.

“**Outside Date**” shall have the meaning set forth in Section 11.1(b)(ii).

“**Overbid**” has the meaning set forth in the Sale Procedures.

“**Party**” or “**Parties**” means, individually or collectively, Buyer and/or Seller.

“**Patent Rights**” means (a) any United States patent owned by Seller, (b) the patents and patent applications identified in Schedule 1.1(d), (c) any other United States patents and patent applications owned by Seller or licensed from a Third Party to Seller and (d) any continuation, continuation-in-part and divisional United States patent applications based on any of the foregoing and any patents issuing therefrom.

“**Permits**” means all permits, grants, licenses, easements, variances, exceptions, certificates, authorizations, approvals, entitlements, accreditations, certifications, franchises, consents, clearances, Orders and registrations of all Governmental Authorities.

“**Permitted Encumbrances**” means (a) Encumbrances for utilities and Taxes (i) not yet due and payable for which adequate reserves have been established in accordance with GAAP or (ii) that are being contested by appropriate proceedings in good faith and for which adequate reserves have been established in accordance with GAAP; (b) statutory Encumbrances which secure payments not yet due that arise, and are customarily discharged, in the Ordinary Course of Business; (c) mechanic’s, materialman’s, carrier’s, repairer’s and other similar Encumbrances arising or incurred in the Ordinary Course of Business or that are not yet due and payable or are being contested in good faith; (d) Encumbrances against any Acquired Assets to the extent such Encumbrances will be released or unenforceable following the Closing pursuant to terms of the Sale Order; (e) Encumbrances which secure purchase money debt obligations or obligations under personal property leases arising or incurred in the Ordinary Course of Business; and (f) Encumbrances listed in Schedule 5.10(a) and Schedule 5.10(c)

“**Person**” means any individual, corporation (including any non-profit corporation), partnership, limited liability company, joint venture, estate, trust, association, organization or other entity, or Governmental Authority.

“**Petition Date**” means the date on which the Chapter 11 Cases are commenced in the Bankruptcy Court by the Debtors.

“**Post-Closing Tax Period**” shall have the meaning set forth in Section 8.1(a).

“**Pre-Closing Tax Period**” shall have the meaning set forth in Section 8.1(a).

“Preliminary Financial Statements” shall have the meaning set forth in Section 5.5.

“Pre-Paid Expenses” means all deposits and prepaid charges and expenses of Seller as of the Closing Date to the extent related to any Assumed Contract or Assumed Lease and after applying any such deposits, prepaid charges and expenses against any Cure Claims payable to the Third Party to whom such deposits, prepaid charges and expenses were paid.

“Proceeding” means any action, arbitration, audit, examination, hearing, investigation, litigation, or suit (whether civil, criminal, administrative, or investigative) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Authority.

“Purchase Price” shall have the meaning set forth in Section 3.1.

“Qualified Bid” shall have the meaning set forth in the Sale Procedures.

“Representative” means, with respect to a particular Person, any director, officer, manager, employee, agent, consultant, advisor, or other representative of such Person, including legal counsel, accountants and financial advisors.

“Sale Hearing” means the hearing conducted by the Bankruptcy Court to approve the transactions contemplated by this Agreement.

“Sale Motion” means a motion reasonably acceptable to Buyer filed with the Bankruptcy Court by Seller seeking approval of the Sale Procedures and entry of the Sale Procedures Order and the Sale Order.

“Sale Order” means an Order of the Bankruptcy Court, entered pursuant to Sections 105, 363, and 365 of the Bankruptcy Code, approving this Agreement and the transactions contemplated hereby, in such form as shall be reasonably acceptable to Seller and reasonably acceptable to Buyer (i) approving the sale and transfer of the Acquired Assets to Buyer free and clear of all liens, claims and interests, other than Permitted Encumbrances, pursuant to section 363(f) of the Bankruptcy Code, (iii) approving the assumption and assignment to Buyer of the Assumed Contracts and establishing the Cure Claims; (iv) finding that Buyer is a good-faith purchaser entitled to the protections of section 363(m) of the Bankruptcy Code; (v) finding that due and adequate notice of the approval of the Sale Order and an opportunity to be heard were provided to all Persons entitled thereto, including but not limited to federal, state and local taxing and regulatory authorities; (vi) confirming that Buyer is acquiring the Acquired Assets free and clear of all Liabilities, other than the Assumed Liabilities; and (vii) providing that the provisions of Federal Rules of Bankruptcy Procedure 6004(h) and 6006(d) are waived and there will be no stay of execution of the Sale Order under Rule 62(a) of the Federal Rules of Civil Procedure.

“Sale Procedures” means the bidding procedures set forth in the Sale Procedures Order, to be entered by the Bankruptcy Court.

“Sale Procedures Order” means an Order of the Bankruptcy Court approving the Sale Procedures contemplated hereby, in such form as shall be reasonably acceptable to both Seller and Buyer which for avoidance of doubt shall (i) schedule the hearing to approve the Sale Order for no later than sixty-five (65) days following the Petition Date; (ii) provide that the sale process

be conducted consistent with the Sales Procedures Order; and (iii) be consistent with the terms of this Agreement, including without limitation Articles 10 and 11 of this Agreement.

“**Schedules**” means the disclosure schedules dated as of the Execution Date relating to this Agreement that have been provided by Seller to Buyer.

“**Seller**” shall have the meaning set forth in the Preamble.

“**Seller Financial Statements**” shall have the meaning set forth in Section 5.5.

“**Seller Termination Notice**” shall have the meaning set forth in Section 11.1(d)(i).

“**Service Contractor**” shall have the meaning set forth in the definition of “Business Employee”.

“**Straddle Period**” shall have the meaning set forth in Section 8.1(a).

“**Subsidiary**” means any entity with respect to which a specified Person (or a Subsidiary thereof) has the power, through the ownership of securities or otherwise, to elect a majority of the board of directors or similar managing body.

“**Successful Bidder**” shall have the meaning set forth in the Sale Procedures.

“**Tax**” or “**Taxes**” means (i) all federal, state, local, foreign and other net income, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, registration, license, lease, service, service use, value added, withholding, payroll, employment, social security, disability, excise, severance, stamp, capital stock, production, business and occupation, registration, premium, property, windfall profits, escheat, realty transfer, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever (including any amounts resulting from the failure to file any Tax Return), together with any interest and any penalties, additions to tax or additional amounts with respect thereto; (ii) any liability for payment of amounts described in clause (i) whether as a result of transferee liability, of being a member of an affiliated, consolidated, combined or unitary group for any period or otherwise through operation of law; (iii) any liability for the payment of amounts described in clauses (i) or (ii) as a result of any tax sharing, tax indemnity or tax allocation agreement or any other express or implied agreement; and (iv) any liability or loss in connection with the determination, settlement or litigation of any of the foregoing.

“**Tax Return**” means a report, return, form (including elections, declarations, amendments, claims for refund, schedules, information returns or attachments thereto) or other information supplied or filed or required to be supplied to or filed with a Governmental Authority with respect to Taxes.

“**TForce**” shall have the meaning set forth in the Preamble.

“**Third Party**” means a Person who or which is neither a Party hereto nor an Affiliate of a Party hereto.

“**Trademarks**” means all trade names, business names, logos, slogans, designs, common law trademarks and service marks, trademark and service mark registrations and applications therefor, in each case owned by Seller and related to the Business or the Acquired Assets, and all goodwill appurtenant to any or all of the foregoing, including all of the marks and names identified in Schedule 1.1(e) attached hereto.

“**Transaction Documents**” means this Agreement and any other agreements, instruments or documents entered into pursuant to this Agreement.

“**Transfer Consent**” shall have the meaning set forth in Section 5.4.

“**Transfer Taxes**” shall have the meaning set forth in Section 8.1(b).

“**Transferred Employee**” shall have the meaning set forth in Section 7.4(b).

“**Transferred Employee List**” shall have the meaning set forth in Section 7.4(a).

“**Treasury Regulations**” means the regulations promulgated by the United States Treasury Department pursuant to the Code.

“**West**” shall have the meaning set forth in the Preamble.

“**Yearly Financial Statements**” shall have the meaning set forth in Section 5.5.

Section 1.2 Other Definitions and Interpretive Matters.

(a) Unless otherwise indicated to the contrary in this Agreement by the context or use thereof:

(i) When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a day other than a Business Day, the period in question shall end on the next succeeding Business Day.

(ii) Any reference in this Agreement to \$ means United States dollars.

(iii) Unless the context otherwise requires, all capitalized terms used in the Exhibits and Schedules shall have the respective meanings assigned in this Agreement. No disclosure in the Exhibits and Schedules relating to any possible breach or violation of any agreement, Law or regulation shall be construed as an admission or indication that any such breach or violation exists or has actually occurred. Any information, item, or other disclosure set forth in any Schedule shall be deemed to have been set forth in all other applicable Schedules if the relevance of such disclosure to such other Schedule is reasonably apparent from the facts specified in such disclosure. All Exhibits and Schedules attached or annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein.

(iv) Any reference in this Agreement to gender includes all genders, and words importing the singular number also include the plural and vice versa.

(v) References herein to any contract or agreement (including this Agreement) mean such contract or agreement as amended, supplemented, or modified from time to time in accordance with the terms thereof unless a date of limitation is expressly indicated.

(vi) The provision of a table of contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in the construction or interpretation of this Agreement. All references in this Agreement to any “**Section**” or “**Article**” are to the corresponding Section or Article of this Agreement unless otherwise specified.

(vii) Words such as “**herein**,” “**hereof**,” and “**hereunder**” refer to this Agreement as a whole and not merely to a subdivision in which such words appear, unless the context otherwise requires.

(viii) The word “**including**” or any variation thereof means “including, without limitation,” and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(b) No Strict Construction. Buyer, on the one hand, and Seller, on the other hand, participated jointly in the negotiation and drafting of this Agreement, and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by Buyer, on the one hand, and Seller, on the other hand, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement. Without limitation as to the foregoing, no rule of strict construction construing ambiguities against the draftsman shall be applied against any Person with respect to this Agreement.

ARTICLE II PURCHASE AND SALE

Section 2.1 Purchase and Sale of the Acquired Assets. Upon the terms and subject to the conditions of this Agreement, on the Closing Date, Seller shall sell, transfer, assign, convey and deliver, or cause to be sold, transferred, assigned, conveyed and delivered, to Buyer, and Buyer shall purchase, assume and accept conveyance, transfer, and delivery of, all right, title and interest of Seller in, to, or under all of the following properties and assets of Seller, as the same shall exist on the Closing Date (but excluding in each case, for the avoidance of doubt, any Excluded Assets) (collectively, the “**Acquired Assets**”):

(a) all Accounts Receivable in connection with the accounts set forth on Schedule 2.1(a) (the “**Acquired Accounts Receivable**”);

(b) all Equipment associated with the other Acquired Assets and set forth on Schedule 2.1(b) (the “**Acquired Equipment**”);

(c) (i) all Contracts (other than Leases) and (ii) all Licenses in each case set forth in Schedule 2.1(c) (collectively, the “**Assumed Contracts**”);

(d) the Leases set forth in Schedule 2.1(d) (collectively, the “**Assumed Leases**”);

(e) Permits and pending applications therefor associated with the other Acquired Assets and set forth on Schedule 2.1(e) (the “**Acquired Permits**”), in each case to the extent assignable;

(f) Other than as arising from or in connection with a License that is not an Assumed Contract, (i) all rights of Seller in Intellectual Property, (ii) all documentation and media constituting, describing or relating to Intellectual Property, including memoranda, manuals, technical specifications and other records wherever created and regardless of form, and (3) the right to sue for past, present, or future infringement, misappropriation or violation thereof, and to collect and retain all damages and profits related to the foregoing, in each case associated with the other Acquired Assets and set forth in Schedule 2.1(f) (the “**Acquired Intellectual Property**”);

(g) Pre-Paid Expenses associated with the other Acquired Assets and set forth in Schedule 2.1(g) (the “**Acquired Pre-Paid Expenses**”);

(h) all refunds of Taxes (other than those described in Section 2.2(g));

(i) all goodwill and general intangibles associated with the other Acquired Assets;

(j) Documents, including all of Seller’s attorney-client privileged communications and work product, associated with any other Acquired Assets, except as excluded in Section 2.2(c), to the extent available and permitted to be transferred by applicable Law; provided, however, that Seller shall have the right, to the extent permitted by applicable Law, to make copies of any portions of such retained books, records, and documents that relate to the Excluded Assets.

(k) all IT Systems associated with the other Acquired Assets and listed on Schedule 2.1(k) (“**Acquired IT Systems**”);

(l) with regard to any Acquired Asset, all Claims and Proceedings (including, for the avoidance of doubt, all claims for past infringement or misappropriation of Intellectual Property) of Seller as of the Closing, Seller’s rights of indemnity, warranty rights (including, without limitation, rights under vendors’ and manufacturers’ warranties or guarantees), rights of contribution, rights to refunds, rights of reimbursement and other rights of recovery, including insurance proceeds (regardless of whether such rights are currently exercisable), including all of Seller’s attorney-client privileged communications and work product associated with such Claims and Proceedings;

(m) all assignable rights under non-disclosure or confidentiality, non-compete, or non-solicitation agreements relating to any Acquired Asset (or any portion thereof);

(n) all Deposits related to any other Acquired Asset and listed on Schedule 2.1(n) (the “**Acquired Deposits**”);

(o) all Marketing Materials related to any other Acquired Assets and listed on Schedule 2.1(o) (the “**Acquired Marketing Materials**”); and

(p) all chattel paper, notes receivable and negotiable instruments owned or held by Seller in connection with the other Acquired Assets and listed on Schedule 2.1(p) (the “**Acquired Instruments**”).

For the avoidance of doubt, Buyer shall have the right to remove any asset from the Acquired Assets (other than Assumed Contracts and Assumed Leases) at any time up to the Closing; provided, however, that any such removal shall not modify the Purchase Price.

Section 2.2 Excluded Assets. Notwithstanding anything herein to the contrary, the Acquired Assets shall not include any of the following (collectively, the “**Excluded Assets**”); provided, however, that Buyer may designate additional assets as Excluded Assets in accordance with Section 2.1:

(a) all Cash and Cash Equivalents;

(b) Seller’s rights under this Agreement (including the right to receive the Purchase Price delivered to Seller pursuant to this Agreement) and the Purchase Price;

(c) Documents, attorney-client privileged communications, work product of Seller’s attorneys regarding any Excluded Assets or prepared in connection with this Agreement, or the transactions contemplated hereby or relating to the Chapter 11 Cases, any interim or Final Orders, and any Documents that Seller is required by Law to retain, and corporate or other entity filings, but not including any Documents (including without limitation, any attorney-client privileged communications and work product of attorney) included as Acquired Assets pursuant to Section 2.1(j); provided, however, that Buyer shall have the right, to the extent permitted by applicable Law, to make copies of any portions of such retained books, records, and documents that relate to the Acquired Assets;

(d) any Contracts (except those set forth in Schedule 2.1(c));

(e) any Leases (except those set forth in Schedule 2.1(d));

(f) all Claims and Proceedings of Seller (except those set forth in Section 2.1(l));

(g) refunds of Taxes paid by Seller with respect to any periods prior to the Closing;

(h) shares of capital stock or other equity interests of the Debtors or securities convertible into or exchangeable or exercisable for shares of capital stock or other equity interests of the Debtors;

- (i) all rights under any Benefit Plan;
- (j) all insurance policies and binders; and
- (k) any Accounts Receivable that aren't Acquired Accounts Receivable;
- (l) any Equipment (except those set forth in Schedule 2.1(b));
- (m) any Permits (except those set forth in Schedule 2.1(e));
- (n) any Intellectual Property (except those set forth in Schedule 2.1(f));
- (o) any Pre-Paid Expenses (except those set forth in Schedule 2.1(g));
- (p) any IT Systems (except those set forth in Schedule 2.1(k));
- (q) any Deposits (except those set forth in Schedule 2.1(n));
- (r) any Marketing Materials (except those set forth in Schedule 2.1(o));
- (s) any Intellectual Property (except those set forth in Schedule 2.1(f));
- (t) all chattel paper, notes receivable and negotiable instruments owned or held by Seller (except those set forth in Schedule 2.1(p)); and
- (u) all other assets, properties, rights, interests, and claims that are set forth in Schedule 2.2(u).

Section 2.3 Assumed Liabilities. Upon the terms and subject to the conditions of this Agreement, on the Closing Date, Buyer shall assume and agree to perform and discharge, when due (in accordance with their respective terms and subject to the respective conditions thereof) only the following Liabilities of Seller and no others (collectively, the “**Assumed Liabilities**”):

- (a) the trade payables of Seller set forth on Schedule 2.3(a);
- (b) the accrued expenses of Seller set forth on Schedule 2.3(b);
- (c) those Liabilities relating to the Acquired Assets (including, without limitation, the Assumed Contracts and Assumed Leases) due or arising on and after the Closing Date (which for avoidance of doubt shall not include Cure Claims, other than those that are also Assumed Liabilities under Section 2.3(a) or (b) that are set forth on Schedule 2.3(a) or (b)); and
- (d) those Liabilities related to the Transferred Employees set forth in Section 7.4 or arising on or after Closing.

Section 2.4 Excluded Liabilities. Notwithstanding any provision in this Agreement to the contrary, Buyer shall not assume and shall not be obligated to assume or be obliged to pay, perform, or otherwise discharge any Liability of Seller that is not an Assumed Liability, and Seller shall be solely and exclusively liable with respect to any Liability of Seller that is not an

Assumed Liability, including (a) Liability for Cure Claims, other than those that are also Assumed Liabilities under Section 2.3(a) or (b) that are set forth on Schedule 2.3(a) or (b); (b) any Liabilities or obligations under this Agreement; (c) Seller's Liabilities or obligations for any fees and expenses incident to or arising out of the consummation of the transactions contemplated hereby (including all transaction related bonuses or benefits payable to any officer, director, manager, employee, shareholder, member or Affiliate of Seller); (d) any Liability or obligation of Seller for Taxes for any taxable period or year up to the Closing Date, subject to, for the avoidance of doubt, the apportionment required pursuant to Section 8.1(a) of this Agreement; (e) Seller's Liabilities or obligations with respect to any existing Indebtedness; (f) Liabilities or obligations of Seller arising by reason of any violation or alleged violation of any Law; (g) Seller's Liabilities or obligations arising out of or related to any breach or alleged breach by Seller of any Contract, in each case, regardless of when any such liability or obligation is asserted; (h) Seller's Liabilities or obligations for tort claims, known or unknown, and any related claims and litigation solely with respect to Seller's operation of the Business prior to the Closing Date; (i) any Liabilities, obligations or responsibilities relating to or arising under any Benefit Plan, any "employee benefit plan" (as defined ERISA) or any other employee benefit plan, program or arrangement at any time maintained or contributed to by Seller or any ERISA Affiliate, or with respect to which Seller or any ERISA Affiliate has any liability or potential liability; (j) any Liabilities or obligations with respect to any of the Excluded Assets; (k) any Liability of Seller to any Affiliate of Seller (including any shareholder of such Affiliate); (l) any Liability to indemnify, reimburse or advance amounts to any officer, director, manager, employee or agent of Seller; (m) any Liability to distribute to any of member or other securityholder of Seller or otherwise apply all or any part of the consideration received hereunder, including any liability of Seller arising as a result of the exercise by any of its shareholders or members of such Person's right (if any) to dissent from the transactions contemplated hereby and seek appraisal rights; and (n) any Liability under any Contract arising and due prior to the Closing Date, including any Liability arising out of or relating to any employment or similar Contract to which Seller is a party or otherwise bound, other than such Liabilities that are Assumed Liabilities pursuant to Section 2.3(a) (all of the foregoing Liabilities, collectively, the "**Excluded Liabilities**").

Section 2.5 Assignments of Contracts and Leases. Seller shall assume and assign or sell all Assumed Contracts and Assumed Leases to Buyer, and Buyer shall assume or purchase all Assumed Contracts and Assumed Leases from Seller, as of the Closing Date, pursuant to the Sale Order. In connection with such assignment, assumption, or sale, Buyer shall assume on the Closing Date, any Assumed Liabilities. In the case of Assumed Leases, Assumed Contracts and other assets included in the Acquired Assets (a) that cannot be sold or assigned effectively without the consent of third parties, which consent has not been obtained prior to the Closing (after giving effect to the Sale Order and the Bankruptcy Code), Seller shall, subject to any approval of the Bankruptcy Court that may be required, cooperate with Buyer in all reasonable respects to obtain such consent, or (b) that are otherwise not capable of sale or assignment (after giving effect to the Sale Order and the Bankruptcy Code), Seller shall, subject to any approval of the Bankruptcy Court that may be required, reasonably cooperate with Buyer to provide to Buyer the benefits thereof in some other reasonable manner (including the exercise of the rights of Seller thereunder); provided, however, that Seller's obligations pursuant to this sentence shall be at no cost to Seller and shall not extend for a period beyond the earliest of (x) the expiration of

the term of the applicable Assumed Lease, Assumed Contract, or other asset; and (y) the first anniversary of the Closing.

ARTICLE III PURCHASE PRICE

Section 3.1 Purchase Price. The purchase price (the “**Purchase Price**”) for the purchase, sale, assignment, and conveyance of Seller’s right, title, and interest in, to, and under the Acquired Assets shall consist of:

- (a) cash in an amount equal to Seven Million Two Hundred Four Thousand Nine Hundred Eighty-Seven Dollars (\$7,204,987) (the “**Cash Purchase Price**”); plus
- (b) assumption of the Assumed Liabilities.

Section 3.2 Payment of the Cash Purchase Price. The Cash Purchase Price shall be paid as set forth in this Section 3.2.

- (a) Cash Deposit.

- (i) On the Execution Date, Buyer and Seller will execute an escrow agreement, substantially in the form attached hereto as Exhibit 5 (the “**Escrow Agreement**”), with Seller’s counsel acting as escrow agent (“**Escrow Agent**”).

- (ii) On the Execution Date, Buyer will deliver to the Escrow Agent, pursuant to the terms of the Escrow Agreement, an amount equal to Seven Hundred Twenty Thousand Four Hundred Ninety-Eight and 77/100 Dollars (\$720,498.70), representing ten percent (10%) of the Cash Purchase Price. Any fees or costs payable to the Escrow Agent or in connection with the Escrow Agreement shall be divided evenly and payable one-half by Buyer and one-half by Seller. The amount held in escrow by the Escrow Agent pursuant to the Escrow Agreement (the “**Cash Deposit**”) shall be held by the Escrow Agent and released only as follows:

- (A) If the Closing shall occur, Seller and Buyer shall jointly instruct the Escrow Agent to, on the Closing Date, deliver the Cash Deposit, together with all accrued investment income thereon, by wire transfer of immediately available funds to Seller (or Seller’s designee) as partial payment of the Cash Purchase Price.

- (B) If this Agreement is terminated by Buyer or Seller for any reason, Seller and Buyer shall jointly instruct the Escrow Agent to deliver the Cash Deposit, together with any accrued investment income thereon, to the party or parties in the amounts set forth in such joint instruction or as ordered by the Bankruptcy Court; provided, however, if the Agreement is terminated by Seller pursuant to Section 11.1(d), Buyer shall be obligated to execute joint instructions to the Escrow Agent directing delivery of the Cash Deposit to Seller in accordance with Section 11.2(c).

(b) Closing Cash Payment. At the Closing, Buyer shall pay to the Seller, by wire transfer of immediately available funds to an account designated in writing by the Seller to Buyer no later than two (2) Business Days prior to the Closing Date, an amount equal to (x) the Cash Purchase Price minus (y) the sum of the Cash Deposit.

Section 3.3 Reserved.

Section 3.4 Discharge of Assumed Liabilities after Closing. From and after the Closing, Buyer shall pay, perform, or satisfy the Assumed Liabilities in accordance with their respective terms, and shall indemnify, defend, and hold Seller and its Affiliates harmless for any Assumed Liabilities but only to the extent that Buyer has failed to pay, perform, or satisfy, or has not caused to be satisfied, such Assumed Liabilities.

Section 3.5 Allocation. The allocation of the Purchase Price shall be set forth on Schedule 3.5.

ARTICLE IV CLOSING

Section 4.1 Closing Date. Upon the terms and subject to the conditions hereof, the closing of the sale of the Acquired Assets and the assumption of the Assumed Liabilities contemplated hereby (the “**Closing**”) shall take place electronically, no later than the first Business Day following the date on which the conditions set forth in Article IX and Article X have been satisfied or (if permissible) waived (other than the conditions which by their nature are to be satisfied by actions taken at the Closing, but subject to the satisfaction or (if permissible) waiver of such conditions), or at such other place or time as Buyer and Seller may mutually agree. The date and time at which the Closing actually occurs is referred to as the “**Closing Date**.”

Section 4.2 Buyer’s Deliveries. At the Closing, Buyer shall deliver, or have delivered, to Seller:

- (a) the Cash Purchase Price;
- (b) the Assumption Agreement, duly executed by Buyer;
- (c) each other Transaction Document to which Buyer is a party, duly executed by Buyer; and
- (d) the certificates of Buyer to be received by Seller pursuant to Section 10.1 and Section 10.2.

Section 4.3 Seller’s Deliveries. At the Closing, Seller shall deliver to Buyer:

- (a) the Assumption Agreement and each other Transaction Document to which Seller is a party, duly executed by Seller;

(b) instruments of assignment of the Trademarks (the “**Assignment of Trademarks**”) and Domain Names (the “**Assignment of Domain Names**”) that are included in the Acquired Assets, if any, duly executed by Seller substantially in the form of Exhibit 3, Exhibit 4, respectively;

(c) a copy of the Sale Order entered by the Bankruptcy Court;

(d) the certificates of Seller to be received by Buyer pursuant to Section 9.1 and Section 9.2;

(e) one or more bills of sale duly executed by Seller, in substantially the form[s] attached hereto as Exhibit 3 (the “**Bills of Sale**”); and

(f) copies of any waivers, consents and approvals obtained by Seller pursuant to Section 5.2 and Section 9.8 and any Transfer Consents obtained by Seller prior to the Closing.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the corresponding sections or subsections of the Schedules attached hereto, Seller hereby represents and warrants to Buyer as of the Execution Date and the Closing Date (or such other date, to the extent expressly specified) that the statements contained in this Article V are true and correct:

Section 5.1 Organization and Good Standing. Seller is an entity duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization, except where any such failure to be in good standing would not reasonably be expected to have a Material Adverse Effect. Seller has the requisite corporate or entity power and authority and all material licenses, permits, and authorizations to own or lease and to operate and use its properties and to carry on the Business as now conducted. Seller is duly qualified or licensed to do business and in good standing in each jurisdiction where the character of its business or the nature of its properties makes such qualification or licensing necessary, except for such failures to be so qualified or licensed or in good standing as would not have a Material Adverse Effect.

Section 5.2 Authority; Validity; Consents. Seller has, subject to requisite Bankruptcy Court approval, the requisite corporate or entity power and authority necessary to enter into and perform its obligations under this Agreement and the other Transaction Documents to which Seller is a party, and to consummate the transactions contemplated hereby and thereby. This Agreement has been duly and validly executed and delivered by Seller, and each other Transaction Document required to be executed and delivered by Seller at the Closing will be duly and validly executed and delivered by Seller at the Closing. Subject to requisite Bankruptcy Court approval, this Agreement and the other Transaction Documents constitute, with respect to Seller, the legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms. Except (a) for entry of the Sale Order, (b) for notices, filings and consents required in connection with the Chapter 11 Cases or Interim or Final DIP Order, (c) such notices, filings and consents, the failure of which to provide, make or obtain, would not have a Material Adverse Effect, (d) the consent of third parties, if any, required for the assignment and/or sale of any Assumed Contract or Assumed Lease, and (e) any notice, filings

and consents set forth on Schedule 5.2, Seller is not required to give any notice to, make any filing with or obtain any consent from any Person (including any Governmental Authority) in connection with the execution and delivery of this Agreement and the other Transaction Documents or the consummation or performance of any of the transactions contemplated hereby and thereby.

Section 5.3 No Conflict. When the consents and other actions described in Section 5.2 have been obtained and taken, the execution and delivery of this Agreement and the other Transaction Documents and the consummation of the transactions provided for herein and therein will not result in the breach of any of the terms and provisions of, or constitute a default under, or conflict with, or require consent or the giving of notice under, or cause any acceleration of any obligation of Seller under (a) any Order or (b) any Law, other than any breach, default, consent, notice, or acceleration that would not reasonably be expected to have a Material Adverse Effect. When the consents and other actions described in Section 5.2 have been obtained and taken, the execution, delivery, and performance by Seller of the Transaction Documents, the consummation of the transactions contemplated hereby and thereby, and the compliance by Seller with the provisions hereof and thereof (i) do not and will not violate any provision of the certificate of incorporation or bylaws of Seller and (ii) except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, do not and will not (A) result in a violation or breach of, conflict with, constitute a default (with or without notice or lapse of time, or both) under, accelerate any obligation under, result in the loss of any benefit or right under, or give rise to a right of termination or cancellation of, any Assumed Contract or Contract by which any of the Acquired Assets are bound or affected, or (B) result in the creation or imposition of any Encumbrance (other than a Permitted Encumbrance) on any of the Acquired Assets.

Section 5.4 Title to Acquired Assets. Seller owns and holds good and valid title, leasehold title or license to, as the case may be, all Acquired Assets, free and clear of any Encumbrances, subject only to Permitted Encumbrances and Assumed Liabilities. Upon delivery to Buyer on the Closing Date of the instruments of transfer contemplated by Section 4.3, and subject to the terms of the Sale Order, Seller will thereby transfer to Buyer, all of Seller's right, title and interest in and to the Acquired Assets free and clear of all Encumbrances, except for Permitted Encumbrances and Assumed Liabilities, subject to the limitation that certain transfers, assignments, licenses, sublicenses, leases and subleases, as the case may be, of Acquired Assets, Assumed Contracts, Assumed Leases, and Acquired Permits, and any claim or right or benefit arising thereunder or resulting therefrom, may require the consent of a Third Party or Governmental Authority (each such consent, a "**Transfer Consent**"), which has not been obtained.

Section 5.5 Financial Statements. Schedule 5.5 sets forth the (i) financial statements of Seller as of and for the years ended December 31, 2016 and December 31, 2017 (the "**Yearly Financial Statements**") and (ii) preliminary financial statements of Seller as of and for the period ended December 31, 2018 (the "**Preliminary Financial Statements**"), including in each of clauses (i) and (ii) a balance sheet and statement of income (the Yearly Financial Statements and the Preliminary Financial Statements, collectively, the "**Seller Financial Statements**").

Section 5.6 Legal Proceedings. As of the date hereof, except for the Chapter 11 Cases, the Interim and Final DIP Orders, as applicable, the Sale Procedures Order, the Sale Order, any other Order entered in the Chapter 11 Cases, and the Proceedings set forth on Schedule 5.6, there is no Proceeding or Order pending, outstanding or, to Seller's Knowledge, threatened against Seller that (a) seeks to restrain or prohibit or otherwise challenge the consummation, legality or validity of the transactions contemplated hereby or (b) would reasonably be expected to have a Material Adverse Effect or material effect on the ability of Buyer to operate the Acquired Assets.

Section 5.7 Compliance with Acquired Permits. Seller, to Seller's Knowledge, is in compliance with the terms of all material Acquired Permits in all material respects.

Section 5.8 Intellectual Property.

(a) Seller owns or holds valid licenses to all material Acquired Intellectual Property and such Acquired Intellectual Property is free and clear of any Encumbrances (other than (x) Encumbrances that will be removed at or prior to the Closing; (y) restrictions or limitations pursuant to written nonexclusive license agreements entered into in the Ordinary Course of Business; (z) Permitted Encumbrances; and (aa) Assumed Liabilities), except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Schedule 5.8(b) lists each written contract, license, permission or other agreement pursuant to which Seller or any of its Affiliates is granted any license or other right to use any Acquired Intellectual Property the loss of which would have a Material Adverse Effect (the "**Inbound License Agreements**").

Section 5.9 Assumed Contracts and Assumed Leases.

(a) Except as set forth on Schedule 5.9(a), each Assumed Contract listed in Schedule 2.1(c) and each Assumed Lease listed in Schedule 2.1(d) is in full force and effect and is a valid and binding obligation of Seller except as a result of the Chapter 11 Cases, and, to Seller's Knowledge, the other parties thereto, in accordance with its terms and conditions, in each case except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, or similar Laws now or hereafter in effect relating to creditors' rights generally or general principles of equity, or as would not reasonably be expected to have a Material Adverse Effect.

(b) Upon entry of the Sale Order, payment of the Cure Claims, as applicable, and receipt of Transfer Consents (if any), (i) Seller (to the extent party thereto) has performed all material obligations required to be performed by it under the Assumed Contracts and Assumed Leases, (ii) to Seller's Knowledge, Seller will not be in material breach or default of its obligations under any such Assumed Contract or Assumed Lease, except as a result of the Chapter 11 Cases, (iii) to Seller's Knowledge, no condition exists that with notice or lapse of time or both would constitute a material default by Seller under any such Assumed Contract or Assumed Lease, (iv) to Seller's Knowledge, no other party to any such Assumed Contract or Assumed Lease is in material breach or default thereunder, and (v) to Seller's Knowledge each such Assumed Contract or Assumed Lease may be enforced by Buyer against the other party thereto in accordance with its terms.

(c) Except for this Agreement and the other Transaction Agreements, Seller has not assigned, delegated or otherwise transferred, or entered into any agreement to so assign, delegate or otherwise transfer, any of its rights or obligations with respect to any Assumed Contract or Assumed Lease.

(d) Except for the Cure Claims and as set forth in Schedule 5.9(d), to Seller's Knowledge, there are no other outstanding obligations arising out of or in connection with the Assumed Contracts and the Assumed Leases as of the Petition Date other than obligations to perform under such Assumed Contracts after the Petition Date.

Section 5.10 Leased Premises.

(a) Except as set forth in Schedule 5.10(a), Seller has a valid and binding leasehold interest in each of the Leased Premises free and clear of any Encumbrances other than Permitted Encumbrances, Assumed Liabilities, and Encumbrances that may exist against the fee interest owned by the landlord thereunder the existence of which, and which if violated or defaulted would not reasonably be expected to have the effect of terminating or canceling or otherwise adversely affecting the rights of the tenant under any Assumed Lease.

(b) To Seller's Knowledge, the Assumed Leases are valid agreements in full force and effect which constitute valid and binding obligations of the respective parties thereto and which are legally enforceable in accordance with their respective terms, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting enforcement of creditors' rights and (ii) the availability of injunctive relief and other equitable remedies.

(c) Except as disclosed in Schedule 5.10(c), there are no leases, subleases, licenses, concessions, or other agreements, written or oral, to which Seller is a party granting to any third party or parties the right of use or occupancy of any portion of the Leased Premises.

Section 5.11 Brokers or Finders. Seller has not incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement, the other Transaction Documents, or the transactions contemplated hereby or thereby for which Buyer is or will become liable.

Section 5.12 Employee Matters.

(a) Schedule 5.12(a) sets forth a complete and accurate list of each Business Employee.

Section 5.13 No Other Representations and Warranties. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS ARTICLE V (AS QUALIFIED BY THE SCHEDULES), SELLER, ITS AFFILIATES, AND ANY OF THEIR REPRESENTATIVES DO NOT MAKE ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WITH RESPECT TO THE SELLER, THE BUSINESS, THE ACQUIRED ASSETS, THE ASSUMED LIABILITIES, OR THE TRANSACTIONS CONTEMPLATED HEREIN, AND SELLER DISCLAIMS ANY OTHER REPRESENTATIONS OR WARRANTIES, WHETHER MADE BY SELLER, ITS

AFFILIATES, OR ANY OF THEIR REPRESENTATIVES. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS ARTICLE V (AS QUALIFIED BY THE SCHEDULES), SELLER DISCLAIMS ALL LIABILITY AND RESPONSIBILITY FOR ANY REPRESENTATION, WARRANTY, PROJECTION, FORECAST, STATEMENT, OR INFORMATION MADE, COMMUNICATED, OR FURNISHED (ORALLY OR IN WRITING) TO BUYER, ITS AFFILIATES, OR ANY OF THEIR REPRESENTATIVES (INCLUDING ANY OPINION OR ADVICE THAT MAY HAVE BEEN OR MAY BE PROVIDED TO BUYER BY SELLER, ITS AFFILIATES, OR ANY OF THEIR REPRESENTATIVES). SELLER DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES TO BUYER REGARDING THE PROBABLE SUCCESS OR PROFITABILITY OF THE BUSINESS OR THE ACQUIRED ASSETS.

ARTICLE VI REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller that the statements contained in this Article VI are true and correct:

Section 6.1 Organization and Good Standing. Each of the Buyer is a limited liability company duly formed, validly existing and in good standing under the Laws of Delaware.

Section 6.2 Authority; Validity; Consents. Each of Buyer has the requisite power and authority necessary to enter into and perform its obligations under this Agreement and the other Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement by each of Buyer, and the consummation by each of Buyer of the transactions contemplated herein, have been duly and validly authorized by all requisite actions in respect thereof. This Agreement has been duly and validly executed and delivered by each of Buyer and each other Transaction Document to which each of Buyer is a party will be duly and validly executed and delivered by each of Buyer at the Closing. This Agreement and the other Transaction Documents to which each of Buyer is a party constitute the legal, valid, and binding obligations of each of Buyer, enforceable against each of Buyer in accordance with their respective terms, except as such enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws now or hereafter in effect relating to creditors' rights generally or general principles of equity. Except as required by the Sale Order, each of Buyer is not and will not be required to give any notice to or obtain any consent from any Person in connection with the execution and delivery of this Agreement and the other Transaction Documents to which it is a party or the consummation or performance of any of the transactions contemplated hereby or thereby.

Section 6.3 No Conflict. The execution and delivery of this Agreement and the other Transaction Documents and the consummation of the transactions provided for herein and therein will not result in the breach of any of the terms and provisions of, or constitute a default under, or conflict with, or cause any acceleration of any material obligation of each of Buyer under (a) any material agreement, indenture, or other instrument to which it is bound, (b) the organizational documents of each of Buyer, (c) any Order, or (d) any Law.

Section 6.4 Financing.

(a) Buyer has and on the Closing Date will have sufficient funds or legally binding commitments for sufficient funds, in each case in form and substance reasonably satisfactory to Seller, to consummate the transactions contemplated by this Agreement.

(b) Buyer acknowledges and agrees that notwithstanding anything to the contrary in this Agreement, the consummation of any financing shall not be a condition to the obligation of Buyer to consummate the transactions contemplated hereby.

Section 6.5 Brokers or Finders. Neither Buyer nor any Person acting on behalf of Buyer has paid or become obligated to pay any fee or commission to any broker, finder, investment banker, agent or intermediary for or on account of the transactions contemplated by this Agreement for which Seller is or will become liable, and Buyer shall hold harmless and indemnify Seller from any claims with respect to any such fees or commissions.

Section 6.6 No Other Representations and Warranties. NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY, BUYER REPRESENTS, WARRANTS, ACKNOWLEDGES, AND AGREES THAT SELLER, ITS AFFILIATES, AND ANY OF THEIR REPRESENTATIVES ARE NOT MAKING ANY REPRESENTATIONS, WARRANTIES, OR GUARANTEES, EXPRESS, IMPLIED, OR STATUTORY, WRITTEN OR ORAL, OF ANY KIND, NATURE, OR DESCRIPTION, BEYOND THOSE EXPRESSLY GIVEN BY SELLER IN ARTICLE V OF THIS AGREEMENT (AS QUALIFIED BY THE SCHEDULES), AND BUYER REPRESENTS WARRANTS, ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN ARTICLE V (AS QUALIFIED BY THE SCHEDULES), THE ACQUIRED ASSETS ARE BEING TRANSFERRED ON AN "AS IS", "WITH ALL FAULTS" BASIS AND WITHOUT REPRESENTATIONS, WARRANTIES, OR GUARANTEES, EXPRESS, IMPLIED, OR STATUTORY, WRITTEN OR ORAL, OF ANY KIND, NATURE, OR DESCRIPTION, BY SELLER, ITS AFFILIATES OR ANY OF THEIR REPRESENTATIVES. BUYER FURTHER REPRESENTS, WARRANTS, ACKNOWLEDGES AND AGREES THAT SELLER, ITS AFFILIATES, AND ANY OF THEIR REPRESENTATIVES HAVE NOT MADE ANY REPRESENTATIONS, WARRANTIES, OR GUARANTEES, EXPRESS, IMPLIED, OR STATUTORY, WRITTEN OR ORAL, OF ANY KIND, NATURE, OR DESCRIPTION, AS TO THE ACCURACY OR COMPLETENESS OF ANY INFORMATION REGARDING SELLER, THE BUSINESS, THE ACQUIRED ASSETS, OR THE ASSUMED LIABILITIES NOT EXPRESSLY SET FORTH IN THIS AGREEMENT, AND SELLER, ITS AFFILIATES AND ANY OF THEIR REPRESENTATIVES ARE NOT AND WILL NOT HAVE OR BE SUBJECT TO ANY LIABILITY TO BUYER, ITS AFFILIATES, OR ANY OF THEIR REPRESENTATIVES RESULTING FROM THE DISTRIBUTION TO BUYER, ITS AFFILIATES, OR ANY OF THEIR REPRESENTATIVES, OR BUYER'S, ITS AFFILIATES', OR ANY OF THEIR REPRESENTATIVES' USE OF, ANY SUCH INFORMATION, INCLUDING ANY CONFIDENTIAL MEMORANDA DISTRIBUTED ON BEHALF OF SELLER RELATING TO THE BUSINESS OR THE ACQUIRED ASSETS OR OTHER PUBLICATIONS OR DATA ROOM INFORMATION PROVIDED TO BUYER, ITS AFFILIATES, OR ANY OF THEIR REPRESENTATIVES IN CONNECTION WITH THE SALE OF THE ACQUIRED ASSETS.

BUYER REPRESENTS, WARRANTS, ACKNOWLEDGES AND AGREES THAT IT HAS CONDUCTED TO ITS SATISFACTION ITS OWN INDEPENDENT INVESTIGATION OF THE BUSINESS, THE ACQUIRED ASSETS, AND THE ASSUMED LIABILITIES AND, IN MAKING THE DETERMINATION TO PROCEED WITH THE TRANSACTIONS CONTEMPLATED HEREUNDER, BUYER HAS RELIED ON THE RESULTS OF ITS OWN INDEPENDENT INVESTIGATION.

**ARTICLE VII
ACTIONS PRIOR TO THE CLOSING DATE**

Section 7.1 Operations Prior to the Closing Date. Seller covenants and agrees that, except (i) as expressly contemplated by this Agreement, (ii) as disclosed in Schedule 7.1, (iii) with the prior written consent of Buyer (which consent shall not be unreasonably withheld, conditioned, or delayed), (iv) as required by, arising out of, relating to, or resulting from the Chapter 11 Cases, and (v) as otherwise required by Law, after the Execution Date and prior to the Closing Date or the earlier termination of this Agreement:

(a) Seller shall carry on its Business in the Ordinary Course of Business solely to the extent necessary to maintain and preserve the Acquired Assets in their present condition, reasonable wear and tear excepted, and keep intact the business relationships relating to the Acquired Assets; and, without limiting the generality of the forgoing,

(b) Seller shall not:

(i) other than pursuant to the Interim or Final DIP Order, or in the Ordinary Course of Business, sell, lease (as lessor), transfer or otherwise dispose of, or mortgage or pledge, or voluntarily impose or suffer to be imposed, any Encumbrance (other than Assumed Liabilities and Permitted Encumbrances) on any Acquired Asset;

(ii) issue, deliver or sell or authorize the issuance, delivery or sale of, any shares of capital stock or membership or other equity interests of Seller;

(iii) fail to pay any maintenance or similar fees in connection with the prosecution and maintenance of Acquired Intellectual Property, or otherwise fail to protect and maintain Acquired Intellectual Property consistent with past practice in any material respect;

(iv) amend any of the Assumed Contracts or Assumed Leases other than non-material amendments made in the Ordinary Course of Business;

(v) except in the Ordinary Course of Business, cancel, assign or compromise any Claim or Proceeding, or waive or release any right, in each case, that comprises an Acquired Asset or is a Claim, Proceeding, or right related to an Acquired Asset;

(vi) make any change in any method of accounting, practice or policy for Tax purposes, make, revoke or modify any Tax election, settle or compromise

any Tax liability, file any Tax Return relating to the Business or the Acquired Assets other than on a basis consistent with past practice; or

(vii) enter into any agreement or commitment to take any action prohibited by this Section 7.1.

Without in any way limiting any Party's rights or obligations under this Agreement, the Parties understand and agree that (i) nothing contained in this Agreement shall give Buyer, directly or indirectly, the right to control or direct the operations of Seller, or the Business, prior to the Closing, and (ii) prior to the Closing, Seller shall exercise, consistent with, and subject to, the terms and conditions of this Agreement, complete control and supervision over the Business and its operations. Seller hereby covenants and agrees to provide prompt notice in writing of the occurrence of a Material Adverse Effect.

Section 7.2 Efforts to Support Transactions. Seller, on the one hand, and Buyer, on the other hand, shall, in a commercially reasonable manner, take, or cause to be taken, all actions, and do, or cause to be done, and to assist and cooperate with the other in doing, all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated hereby, including the following: (i) the taking of all acts necessary to cause the conditions precedent set forth in Article IX and Article X to be satisfied, (ii) the obtaining of all necessary consents and approvals of any Governmental Authority and the making of all necessary registrations, declarations and filings (including registrations, declarations and filings with Governmental Authorities, if any) and the taking of all steps as may be necessary to avoid any Proceeding by any Governmental Authority, (iii) the defending of any Proceedings challenging this Agreement or the consummation of the transaction contemplated hereby, including seeking to have any stay or temporary restraining order entered by any court or other Governmental Authority vacated or reversed, and (iv) the execution or delivery of any additional instruments necessary to consummate the transactions contemplated hereby and to fully carry out the intents and purposes of this Agreement.

(b) Seller, on the one hand, and Buyer, on the other hand, (i) shall promptly inform each other of any communication from any Governmental Authority concerning this Agreement, the transactions contemplated hereby, and any filing, notification or request for approval and (ii) shall permit the other to review in advance any proposed written or material oral communication or information submitted to any such Governmental Authority in response thereto and shall discuss and attempt to reasonably account for any comments or suggestions of the other Party. In addition, none of Parties shall agree to participate in any meeting with any Governmental Authority in respect of any filings, investigation or other inquiry with respect to this Agreement or the transactions contemplated hereby, unless such Party consults with the other Parties in advance and, to the extent not prohibited by any such Governmental Authority, gives the other Parties the opportunity to attend and participate thereat, in each case to the maximum extent practicable. Subject to any restrictions under applicable Laws, rules or regulations, Buyer, on the one hand, and Seller, on the other hand, shall furnish the other with copies of all correspondence, filings and communications (and memoranda setting forth the substance thereof) between it and its Affiliates and their respective Representatives on the one hand, and the Governmental Authority or members of its staff on the other hand, with respect to this Agreement, the transactions contemplated hereby (excluding documents and

communications which are subject to preexisting confidentiality agreements or to the attorney-client privilege or work product doctrine) or any such filing, notification or request for approval. In carrying out their obligations under this Section 7.2, subject to applicable Law, each of the Parties shall not submit or otherwise provide any information to such Governmental Authority without first having provided a reasonable opportunity to the other Party and its counsel to comment upon such information. Each Party shall also furnish the other Party with such necessary information and assistance as such other Party and its Affiliates may reasonably request in connection with its preparation of necessary filings, registration or submissions of information to the Governmental Authority in connection with this Agreement, the transactions contemplated hereby and any such filing, notification or request for approval. Any Party may, as it deems advisable and necessary, reasonably designate any sensitive material provided to the other Party under this Section 7.2, or otherwise pursuant to this Agreement, as “outside counsel only.” Such materials and the information contained therein shall be given only to the outside legal counsel of the recipient and will not be disclosed by such outside counsel to the directors, officers or employees of the recipient, unless express written permission is obtained in advance from the source of the materials. Notwithstanding foregoing or anything to the contrary in this Agreement, in no event shall Seller be required to disclose any documents or information that would result in the waiver of protections afforded by attorney client-privilege or attorney work product.

(c) Neither Buyer nor Seller shall, after the entry of the Sale Order, enter into any agreement that would have the effect of delaying the consummation of any action contemplated by this Agreement without the written consent of the other Party.

Section 7.3 Bankruptcy Court Filings and Approval.

(a) Seller shall file the Sale Motion with the Bankruptcy Court as soon as reasonably practicable after the Petition Date but not later than three (3) Business Days after the Petition Date.

(b) Seller shall use commercially reasonable efforts to cause the Bankruptcy Court to enter (i) the Sale Procedures Order no later than twenty-five (25) days following the Petition Date; provided, however, if entry of the Sale Procedures Order is delayed due to the Bankruptcy Court’s unavailability, the next Business Day on which the Bankruptcy Court is available, and (ii) the Sale Order no later than sixty-five (65) days following the Petition Date; provided, however, if entry of the Sale Order is delayed due to the Bankruptcy Court’s unavailability, the next Business Day on which the Bankruptcy Court is available, which Sale Order shall approve a sale to the Successful Bidder at any Auction conducted under the Sale Procedures Order or to Buyer if there are no other qualified bidders.

(c) Buyer agrees that it will use its best efforts to ensure that the sale Procedures Order shall provide for the Break-Up Fee and Expense Reimbursement.

(d) Buyer agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining entry of the Sale Procedures Order and the Sale Order and, consistent with Section 8.3, a finding by the Bankruptcy Court of adequate assurance of future performance by Buyer.

(e) Seller and Buyer acknowledge that this Agreement and the sale of the Acquired Assets and the assumption, assignment, and sale of the Assumed Contracts and Assumed Leases are subject to Bankruptcy Court approval. Seller and Buyer acknowledge that (i) to obtain such approval, Seller must demonstrate that it has taken reasonable steps to obtain the highest or otherwise best offer for the Acquired Assets subject to the other terms set forth in this Agreement including clause (b) above and (ii) Buyer must provide adequate assurance of future performance under the Assumed Contracts and Assumed Leases to be assigned by Seller.

(f) Seller shall serve on all counterparties to all of the Assumed Contracts and Assumed Leases, in accordance with the Sale Procedures Order, a notice specifically stating that Seller is seeking the assumption and assignment of the Assumed Contracts and Assumed Leases and shall notify such counterparties of (i) the proposed Cure Claims, if any, in respect of the Assumed Contracts and Assumed Leases and (ii) the deadline for objecting to the assumption and assignment of the Assumed Contracts and Assumed Leases (including, but not limited to, the proposed amount of Cure Claims), which deadline shall be the date established by Order of the Bankruptcy Court. Through the Closing Date, Seller shall use commercially reasonable efforts to promptly obtain all necessary consents and approvals for the assignment and assumption of all Assumed Contracts and Assumed Leases. For the avoidance of doubt, Seller shall not be required to obtain any consents or approvals for the assignment and assumption of any Assumed Contracts and Assumed Leases the assignment of which is authorized by the Sale Order without further consent or approval.

(g) Buyer agrees and acknowledges that (i) Seller and its Affiliates shall be permitted, and shall be permitted to cause their Representatives, to initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, respond to any unsolicited inquiries, proposals or offers submitted by, and enter into any discussions or negotiations regarding any of the foregoing with, any Person (in addition to Buyer and its Affiliates, agents and Representatives) in accordance with the terms of the Sale Procedures Order; and (ii) the Sale Procedures approved by the Sale Procedures Order may be supplemented by other customary procedures not inconsistent with the matters otherwise set forth therein and the terms of this Agreement.

(h) Seller shall give such notice of all motions, orders, hearings, and other proceedings relating to this Agreement and the transactions contemplated herein as ordered by the Bankruptcy Court or as Buyer may reasonably request.

(i) After entry of the Sale Order, to the extent Buyer is the Successful Bidder at the Auction, Seller shall not take any action which is intended to, or fail to take any action the intent of which failure to act is to, result in the reversal, voiding, modification or staying of the Sale Order.

Section 7.4 Employee Matters.

(a) Attached hereto as Schedule 7.4(a) is a list of those Business Employees who will be offered employment by Buyer or a Subsidiary of Buyer effective as of the Closing Date (the “**Transferred Employee List**”). Seller shall not preclude Buyer from offering

employment to any Business Employee or solicit any such Business Employee to refuse such offer of employment.

(b) Prior to the Closing, Buyer shall provide (or cause one of its Affiliates to provide) to substantially all Business Employees on the Transferred Employee List an offer (the “**Employment Offer**”) of employment, each on terms (with respects to wage level and benefits) which are substantially similar to the terms such Business Employee was subject to prior to the date hereof. Each Business Employee who accepts Buyer’s offer of employment and who becomes an employee of Buyer or of one of its Affiliates shall be a “**Transferred Employee.**” Seller shall cooperate with Buyer in effecting the Transferred Employees’ transfer of employment from Seller to Buyer or a Buyer Subsidiary as contemplated hereby.

(c) Unless prohibited by Law or otherwise provided for in an Employment Offer, all unused vacation and paid time off of the Transferred Employees accrued as of the Closing Date shall, effective as of the Closing Date or, if later, the date on which such Transferred Employee becomes an employee of Buyer, be transferred to and assumed by Buyer.

(d) As to any Transferred Employee to whom a bonus is payable with respect to any period prior to the Closing Date, the obligation to pay such bonuses shall be transferred to and assumed by Buyer.

(e) In addition, the Parties hereto agree as follows:

(i) Buyer shall not adopt, become a sponsoring employer of, or have any obligations under or with respect to any Benefit Plan;

(ii) Seller shall be solely responsible for any and all liabilities, obligations, costs, expenses, claims and demands arising out of or relating to:

(A) the employment (and/or the termination of employment) of Business Employees (or any other current or former employee, director or independent contractor of Seller) who do not become Transferred Employees, whether such liabilities arise before, on or after the Closing Date;

(B) the employment (and/or the termination of employment) of, or accruing with respect to, any Transferred Employee before the date such employee actually commences work with Buyer;

(C) severance payments or change in control payments made or owing to employees or independent contractors of Seller, in each case, which arise as a result of an act of Seller, as a result of the employment with Seller being terminated or as a result of the occurrence of the transactions contemplated by this Agreement;

(D) other than as contemplated by Section 7.4(d), any salary or compensation, and accrued bonus or commission payments made or owing to employees or independent contractors of Seller;

(E) any and all liabilities, obligations, costs, expenses, claims and demands arising out of or relating to the employment (and/or the termination of employment) of any employee or former employee of Seller whose employment (and/or associated liabilities) transfers to Buyer under operation of law but who are not identified on the Transferred Employee List; provided, however, that this Section shall not apply with respect to the continuing liabilities, obligations, costs, expenses, claims and demands of employing any individual described in this subsection if Buyer decides to employ such individual in the Business on an ongoing basis;

(iii) Seller shall comply with the provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (“**COBRA**”), as set forth in Section 4980B of the Code and Part 6 of Title I of ERISA, with respect to any employee, former employee or beneficiary of any such employee or former employee who is covered under any group health plan, as defined in Section 5000(b)(1) of the Code (a “**Group Health Plan**”), maintained by Seller as of the Closing Date or whose “qualifying event” within the meaning of Section 4980B(f) of the Code occurs on or prior to the Closing Date, whether pursuant to the provisions of COBRA or otherwise;

(iv) For purposes of Section 7.4(e), claims under any medical, dental, vision, or prescription drug plan generally will be deemed to be incurred on the date that the service giving rise to such claim is performed and not when such claim is made; provided, however, that with respect to claims relating to hospitalization, the claim will be deemed to be incurred on the first day of such hospitalization and not on the date that such services are performed. Claims for disability under any long or short term disability plan will be incurred on the date the individual is first absent from work because of the condition giving rise to such disability and not when the individual is determined to be eligible for benefits under the applicable Benefit Plan.

(f) Without limitation of Section 12.10, nothing in this Section 7.4 shall (a) be treated as an amendment of, or undertaking to amend, any Benefit Plan, (b) obligate Buyer, Seller, or any of its respective Affiliates to retain the employment of any particular employee, or (c) confer any rights or benefits on any Person, including any Transferred Employee, other than the Parties to this Agreement.

ARTICLE VIII ADDITIONAL AGREEMENTS

Section 8.1 Taxes.

(a) All property taxes and similar ad valorem obligations levied with respect to the Acquired Assets owned and not leased by Seller for a taxable period that includes (but does not end on) the Closing Date (“**Straddle Period**”) shall be apportioned between Seller and Buyer as of the Closing Date based on the number of days of such taxable period included in the

period through and including the Closing Date (the “**Pre-Closing Tax Period**”) and the number of days of such taxable period included in the period commencing on the day after the Closing Date (“**Post-Closing Tax Period**”). Seller shall be liable for the proportionate amount of such Taxes that is attributable to the Pre-Closing Tax Period, and Buyer shall be liable for the proportionate amount of such Taxes that is attributable to the Post-Closing Tax Period. Within a reasonable period, Seller and Buyer shall present a statement to the other setting forth the amount of reimbursement to which each is entitled under this Section 8.1, together with such supporting evidence as is reasonably necessary to calculate the proration amount. The proration amount shall be paid by the Party owing it to the other Party within ten (10) days after delivery of such statement. Any payment required under this Section 8.1 and not made within ten (10) days after delivery of the statement shall bear interest at the rate per annum determined, from time to time, under the provisions of Section 6621(a)(2) of the Code for each day until paid.

(b) Any sales, use, property transfer or gains, documentary, stamp, registration, recording or similar Tax (including, for certainty, goods and services Tax, harmonized sales Tax and land transfer Tax) payable solely as a result of the sale or transfer of the Acquired Assets pursuant to this Agreement (“**Transfer Taxes**”) shall (to the extent not subject to an exemption under the Bankruptcy Code) be borne by Buyer. Seller and Buyer shall use commercially reasonable efforts and cooperate in good faith to exempt the sale and transfer of the Acquired Assets from any such Transfer Taxes. Buyer shall prepare and file all necessary Tax Returns or other documents with respect to all such Transfer Taxes. In the event any such Tax Return requires execution by Seller, Buyer shall prepare and deliver to Seller a copy of such Tax Return at least ten (10) Business Days before the due date thereof, Seller shall promptly execute such Tax Return and deliver it to Buyer, which shall cause it to be filed.

(c) Buyer and Seller agree to furnish or cause to be furnished to each other, upon reasonable request, as promptly as practicable, such information and assistance relating to the Business and the Acquired Assets as is reasonably necessary for the filing of all Tax Returns, the making of any election relating to Taxes, the preparation for any audit by any Governmental Authority and the prosecution or defense of any claims, suit or proceeding relating to any Tax. Any expenses incurred in furnishing such information or assistance pursuant to this Section 8.1(c) shall be borne by the Party requesting it.

(d) Notwithstanding any other provisions in this Agreement, Buyer and Seller hereby waive compliance with all “bulk sales,” “bulk transfer,” and similar Laws that may be applicable with respect to the sale and transfer of any or all of the Acquired Assets to Buyer.

(e) Buyer and Seller agree to use the “alternate procedure” described in Section 5 of IRS Revenue Procedure 2004-53 with respect to Seller’s Tax filing and payment obligations relating to the Business (unless Buyer does not have the information necessary to comply with such filings or obligations and Buyer provides written notice to Seller of this fact within a reasonable time prior to the due date of any such filings or obligations). Except as provided in the preceding sentence, the Parties agree to comply with their respective obligations as set forth in such section of such revenue procedure.

Section 8.2 Payments Received. Seller, on the one hand, and Buyer, on the other hand, each agree that, after the Closing, each will hold and will promptly transfer and deliver to

the other, from time to time as and when received by them, any cash, checks with appropriate endorsements (using their best efforts not to convert such checks into cash) or other property that they may receive on or after the Closing which properly belongs to the other and will account to the other for all such receipts.

Section 8.3 Assumed Contracts and Assumed Leases; Adequate Assurance of Future Performance.

(a) Buyer and Seller agree that they will promptly take all actions reasonably required to provide the evidence required to establish that Buyer can provide adequate assurance of future performance under the Assumed Contracts and Assumed Leases, including such affidavits, non-confidential financial information and other documents or information as may be necessary or desirable for filing with the Bankruptcy Court and making Buyer's and Seller's Representatives available to testify before the Bankruptcy Court.

(b) Subject to the other terms and conditions of this Agreement, Buyer shall, from and after the Closing Date, (i) assume all Assumed Liabilities, including, without limitation, Liabilities of Seller under the Assumed Contracts and Assumed Leases and all Cure Claims, and (ii) satisfy and perform all Liabilities under the Assumed Liabilities when the same are due thereunder.

Section 8.4 Confidentiality. The terms of the Confidentiality Agreement shall continue in full force and effect until the Closing, at which time Buyer's obligations under any such Confidentiality Agreement shall terminate only in respect of that portion of the items in the Confidentiality Agreement relating to the Acquired Assets. Except as set forth in the foregoing sentence, the provisions of any Confidentiality Agreement shall continue in full force and effect after the Closing and will survive any termination of this Agreement. Notwithstanding anything herein to the contrary, Seller may furnish information concerning Seller, the Acquired Assets and the Assumed Liabilities to any Person in connection with a potential Alternative Transaction, and negotiate, enter into and consummate an Alternative Transaction.

Section 8.5 Assets Acquired on "AS IS" Basis. SUBJECT SOLELY TO SELLER'S REPRESENTATIONS AND WARRANTIES SET FORTH IN ARTICLE V (AS QUALIFIED BY THE SCHEDULES), SELLER IS SELLING, AND BUYER IS PURCHASING, THE ACQUIRED ASSETS ON AN "AS IS" AND "WITH ALL FAULTS" BASIS. Buyer acknowledges and agrees that the consideration for the Acquired Assets specified in this Agreement has been agreed upon by Seller and Buyer after good-faith arms' length negotiation in light of Buyer's agreement to purchase the Acquired Assets "AS IS" and "WITH ALL FAULTS". Nonsurvival of Representations and Warranties. None of the representations and warranties in any Transaction Document or in any certificate or other instrument delivered pursuant to any Transaction Document shall survive the Closing. None of the covenants or agreements set forth in any Transaction Agreement that contemplates performance prior to the Closing shall survive the Closing. The terms of Articles I and II, as well as the covenants and other agreements set forth in Articles VIII, XI, and XII that by their terms apply, or that are to be performed, after the Closing, shall survive the consummation of the transactions contemplated hereby but only for the period as specifically provided herein or to the extent necessary to allow for performance of covenants and other agreements set forth in Articles VIII, XI, and XII. Post-

Closing Access. After the Closing, Buyer and its Affiliates shall use commercially reasonable efforts to provide assistance to Seller with respect to any Excluded Assets, Claims related to the Business and other matters necessary or appropriate to the wind-down of Seller, and to make available to Seller, upon written request and reasonable advance notice:

(a) (i) such employees who have expertise or knowledge with respect to the Business or matters involved in any such Claims, for the purpose of consultation and/or as a witness; and (ii) its directors, officers, other employees and agents, as witnesses, in each case to the extent that Seller believes any such person may reasonably be useful or required in connection with any such Claim in which Seller may from time to time be involved; and

(b) access to make copies of any of the Documents.

Buyer shall maintain such Documents and provide the access described above for a period which is the longer of (x) five years, (y) the pendency of any Claim, and (z) the pendency of any Tax audit or investigation by any Governmental Authority commenced during the first six (6) years after the Closing.

Section 8.8 Collection and Transfer of Accounts Receivable.

(a) As of the Closing Date, Seller hereby (i) authorizes Buyer to open any and all mail addressed to Seller relating to the Acquired Assets and delivered to the Leased Premises or otherwise to Buyer if received on or after the Closing Date and (ii) appoints Buyer or its attorney-in-fact to endorse, cash and deposit any monies, checks or negotiable instruments received by Buyer after the Closing Date with respect to Acquired Accounts Receivable made payable or endorsed to Seller or Seller's order, for Buyer's own account.

(b) As of the Closing Date, Seller agrees that any monies, checks or negotiable instruments received by Seller after the Closing Date relating to Acquired Accounts Receivable do not constitute property of the Seller's bankruptcy estate and shall be held in trust by Seller for Buyer's benefit and account, and upon receipt by Seller of any such payment, Seller shall promptly pay over to Buyer the amount of such payments without any right of set off or reimbursement.

(c) As of the Closing Date, Buyer agrees that any monies, checks or negotiable instruments received by Buyer after the Closing Date relating to Accounts Receivable that are not Acquired Accounts Receivable do not constitute property of Buyer and shall be held in trust by such Buyer for Seller's benefit and account, and upon receipt by Buyer of any such payment, Buyer shall promptly pay over to Seller the amount of such payments without any right of set off or reimbursement.

(d) As of the Closing Date, Buyer shall have the sole authority to bill and collect Acquired Accounts Receivable and Seller shall not instigate or threaten to instigate any Claims, Proceedings, or litigation in connection with such collection efforts.

(e) As of the Closing Date, Seller shall have the sole authority to bill and collect Accounts Receivable that are not Acquired Accounts Receivable and Buyer shall not

instigate or threaten to instigate any Claims, Proceedings, or litigation in connection with such collection efforts.

Section 8.9 Additional Bankruptcy Matters

(a) From and after the date of this Agreement and until the Closing Date (or any earlier date from and after the Bid Deadline when this Agreement shall be determined not to be the “highest or otherwise best offer” in accordance with the Sale Procedures Order), to the extent reasonably practicable, subject to and in accordance with Section 7.3(h), Seller shall make reasonable efforts to deliver to Buyer drafts of any and all material pleadings, motions, notices, statements, applications, schedules, reports and other papers to be filed or submitted by Seller in connection with this Agreement for Buyer’s prior review. Seller shall make reasonable efforts to consult and cooperate with Buyer regarding (i) any such pleadings, motions, notices, statements, applications, schedules, reports or other papers, (ii) any discovery taken in connection with the motions seeking approval of the Sale Procedures Order or the Sale Order (including, without limitation, any depositions) and (iii) any hearing relating to the Sale Procedures Order or Sale Order, including, without limitation, the submission of any evidence, including witnesses testimony, in connection with such hearing.

(b) Seller acknowledges and agrees, and the Sale Order shall provide that, on the Closing Date and concurrently with the Closing, all then existing or thereafter arising obligations, liabilities and Encumbrances of, against or created by Seller or its bankruptcy estate, shall be fully released from and with respect to the Acquired Assets, which shall be transferred to Buyer free and clear of all obligations, liabilities and Encumbrances except for Assumed Liabilities and Permitted Encumbrances.

(c) As soon as reasonably practicable following the Closing, Seller shall discontinue the use of the name “Guardian Medical Logistics,” “GML,” or any combination thereof and shall not subsequently change its name to or otherwise use or employ any name which includes the words “Guardian Medical Logistics,” “GML,” or any combination thereof without the prior consent of Buyer. From and after the Closing, Seller covenants and agrees not to use or otherwise employ any of the trade names, corporate names, “d/b/a” names or any mark that is confusingly similar to the Acquired Intellectual Property.

**ARTICLE IX
CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER TO CLOSE**

The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the satisfaction or waiver, at or prior to the Closing, of each of the following conditions:

Section 9.1 Accuracy of Representations. Each of the representations and warranties of Seller contained in this Agreement shall be true and correct in accordance with its terms as of the signing of this Agreement. At and as of the Closing, each of the representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects, except for those representations and warranties which are qualified by “materiality” or “Material Adverse Effect” requirements, which shall be true in all respects. Seller shall have delivered to

Buyer a certificate, dated as of the Closing Date, executed on behalf of Seller by an authorized executive officer thereof, certifying that the conditions specified above have been fulfilled.

Section 9.2 Seller's Performance. Seller shall have performed and complied with in all material respects the covenants and agreements that Seller is required to perform or comply with pursuant to this Agreement at or prior to the Closing, and, since the Execution Date, there shall not have occurred any Material Adverse Effect, and Buyer shall have received a certificate of Seller to such effect signed by a duly authorized officer thereof.

Section 9.3 No Closing Legal Impediment. No Governmental Authority shall have enacted, issued, promulgated or entered any Order which is in effect and has the effect of making illegal or otherwise prohibiting the consummation of the transactions contemplated by this Agreement (a "**Closing Legal Impediment**").

Section 9.4 Seller's Deliveries. Each of the deliveries required to be made to Buyer pursuant to Section 4.3 shall have been so delivered.

Section 9.5 Effective Date and Sale Order. The Effective Date shall have occurred, the Bankruptcy Court shall have entered the Sale Order in a form reasonably acceptable to Buyer and reasonably acceptable to Seller, and the Sale Procedures Order and Sale Order shall be Final Orders.

Section 9.6 Break-Up Fee and Expense Reimbursement. The Bankruptcy Court shall have approved the Break-Up Fee and the Expense Reimbursement Amount in the Sale Procedures Order.

Section 9.7 Acquired Assets; Assumed Contracts and Assumed Leases. All Acquired Assets shall be delivered and/or assigned to Buyer. The Bankruptcy Court shall have approved and authorized the assumption and assignment of each Assumed Liability, Assumed Contract and Assumed Lease, unless Buyer waives this requirement with respect to any Assumed Contract or Assumed Lease.

Section 9.8 Government Consents. All filings, notices, licenses, permits and other consents of, to or with, any Governmental Authority or any Person that are required: (i) to permit Seller to perform the transactions contemplated by this Agreement; or (ii) in order to prevent a material breach of or material default under or a right of termination or material modification of any Assumed Contract or Assumed Lease, in each case as set forth in Schedule 9.8, shall have been duly made or obtained and, in the case of Governmental Authorities, shall no longer be subject to administrative or judicial appeal, review or reconsideration, if any. No consent to the assumption, assignment, or sale of any Assumed Contract or Assumed Lease shall be required if the Sale Order expressly provides that Seller has the power to assume, assign, or sell such Assumed Contract under Section 365 of the Bankruptcy Code without such consent.

ARTICLE X
CONDITIONS PRECEDENT TO THE OBLIGATION OF SELLER TO CLOSE

Seller's obligation to consummate the transactions contemplated by this Agreement is subject to the satisfaction or waiver, at or prior to the Closing, of each of the following conditions:

Section 10.1 Accuracy of Representations. Each of the representations and warranties of Buyer contained in this Agreement shall be true and correct (disregarding any materiality qualifiers therein) at the signing of this Agreement and at and as of the Closing as though made at and as of such time, other than representations and warranties that speak as of another specified date or time (which need only be true and correct as of such date and time), in each case, with only such exceptions that have not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Buyer's ability to consummate the transactions contemplated hereby. Buyer shall have delivered to Seller a certificate, dated as of the Closing Date, executed by an authorized executive officer of Buyer, certifying that the conditions specified above have been fulfilled.

Section 10.2 Buyer's Performance. Buyer shall have performed and complied with the covenants and agreements that Buyer is required to perform or comply with pursuant to this Agreement at or prior to the Closing, and Seller shall have received a certificate of Buyer to such effect signed by a duly authorized officer thereof.

Section 10.3 Effective Date and Sale Order. The Effective Date shall have occurred, the Bankruptcy Court shall have entered the Sale Order, and the Sale Procedures Order and the Sale Order shall be Final Orders.

Section 10.4 No Closing Legal Impediment. No Closing Legal Impediment shall be in effect.

Section 10.5 Buyer's Deliveries. Each of the deliveries required to be made to Seller pursuant to Section 4.2 shall have been so delivered.

ARTICLE XI
TERMINATION

Section 11.1 Termination Events. Anything contained in this Agreement to the contrary notwithstanding, this Agreement may be terminated at any time prior to the Closing Date:

- (a) by mutual written consent of Seller and Buyer;
- (b) by either Seller or Buyer:
 - (i) if a Governmental Authority issues a final, non-appealable ruling or Order permanently prohibiting the transactions contemplated hereby, provided, however, that the right to terminate this Agreement pursuant to this Section 11.1(b)(i) shall not be available to any Party whose breach of any of its

representations, warranties, covenants or agreements contained herein results in such ruling or Order;

(ii) if the Closing shall not have occurred by the close of business no later than thirty (30) days following the entry of the Sale Order (the “**Outside Date**”); provided, however, that (A) Buyer shall be permitted to terminate this Agreement pursuant to this Section 11.1(b)(ii) only if (x) Buyer is not in material breach of any of its representations, warranties, covenants, or agreements contained herein, (y) Buyer has provided written notice to Seller of its intention to exercise its rights under this Section 11.1(b)(ii), and (z) Seller has not closed the transactions contemplated by this Agreement on or before the date that is ten (10) Business Days after the date of receipt of such notice from Buyer, and (B) Seller shall be permitted to terminate this Agreement pursuant to this Section 11.1(b)(ii) only if (1) Seller is not in material breach of any of its representations, warranties, covenants or agreements contained herein, (2) Seller has provided written notice to Buyer of its intention to exercise its rights under this Section 11.1(b)(ii), and (3) Buyer has not closed the transactions contemplated by this Agreement on or before the date that is ten (10) Business Days after the date of receipt of such notice from Seller;

(iii) if either the Sale Procedures Order or the Sale Order is vacated or stayed; or

(iv) if Seller enters into a definitive agreement with respect to an Alternative Transaction because Buyer is not the Successful Bidder at the Auction; provided, however, that if Buyer is the Next Highest Bidder, then Buyer may not terminate this Agreement or withdraw its irrevocable offer unless and until the closing of such Alternative Transaction;

(c) by Buyer:

(i) if the Bankruptcy Court does not approve the Breakup Fee and Expense Reimbursement in an Order from the Bankruptcy Court in the Sale Procedures Order;

(ii) in the event of any breach by Seller of any of its agreements, covenants, representations, or warranties contained herein (provided such breach would result in the failure of a condition set forth in Section 9.1 or Section 9.2 to be satisfied), and the failure of Seller to cure such breach by the earlier of (A) the first Business Day before the Outside Date and (B) the date that is ten (10) Business Days after the date of receipt of the Buyer Termination Notice; provided, however, that (1) Buyer is not in material breach of any of its representations, warranties, covenants or agreements contained herein, (2) Buyer notifies Seller in writing (the “**Buyer Termination Notice**”) of its intention to exercise its rights under this Section 11.1(c)(i) as a result of the breach, and (3) Buyer specifies in the Buyer Termination Notice the representations,

warranties, covenants, and agreements contained herein of which Seller is allegedly in breach;

(iii) if the Chapter 11 Cases are dismissed or converted to cases under chapter 7 of the Bankruptcy Code, , if a trustee or an examiner with expanded powers is appointed in any such Chapter 11 Cases, or if a motion for relief from the automatic stay is granted with respect to a material portion of the Acquired Assets;

(iv) if there is a Material Adverse Effect;

(d) by Seller:

(i) in the event of any material breach by Buyer of any of its agreements, covenants, representations or warranties contained herein (provided such breach would result in the failure of a condition set forth in Section 10.1 or Section 10.2 to be satisfied), and the failure of Buyer to cure such breach by the earlier of (A) the first Business Day before the Outside Date and (B) the date that is ten (10) Business Days after the date of receipt of the Seller Termination Notice; provided, however, that Seller (1) is not in material breach of any of its representations, warranties, covenants or agreements contained herein, (2) notifies Buyer in writing (the “**Seller Termination Notice**”) of its intention to exercise its rights under this Section 11.1(d)(i) as a result of the breach, and (3) specifies in Seller Termination Notice the representations, warranties, covenants, or agreements contained herein of which Buyer is allegedly in breach; or

(ii) if the Sale Order with respect to the transactions contemplated by this Agreement has been entered and is not subject to any stay on enforcement and (A) Seller has provided Buyer with written notice that it is prepared to consummate the transactions contemplated by this Agreement, (B) the conditions to the Closing in Article IX have been satisfied (or waived by Buyer), other than those conditions that by their nature can only be satisfied at Closing, and (C) the Closing Date does not occur within three Business Days of Seller providing Buyer with such notice; or

(e) automatically, upon the closing without contingency of an Alternative Transaction.

The Party desiring to terminate this Agreement pursuant to Section 11.1(b), Section 11.1(c) or Section 11.1(d) shall give written notice of such termination to the other Party. The Sale Procedures Order shall provide that Buyer may give notice of termination to Seller pursuant to this Section 11.1 without the need for further approval of or notice to the Bankruptcy Court, and that delivery of such notice shall not constitute a violation of the automatic stay arising under Section 362 of the Bankruptcy Code.

For the avoidance of doubt, the Parties acknowledge and agree, that in the event that Seller determines, in its reasonable discretion, that the last Overbid submitted by Buyer is better than all other Qualified Bids as such Qualified Bids may be amended by an Overbid submitted at the

Auction, then Seller and Buyer shall enter into an amendment to this Agreement to reflect Buyer's last Overbid; it being acknowledged and agreed that this Agreement shall not be deemed to have terminated by virtue of Buyer having submitted the winning bid at the Auction.

Section 11.2 Effect of Termination.

(a) If this Agreement is terminated pursuant to Section 11.1, then this Agreement shall forthwith become void and there shall be no liability on the part of any Party except (i) for the provisions of Section 5.12 and Section 6.5 relating to broker and finder fees, Section 12.1 relating to public announcements, Section 12.2 relating to notices, Section 12.7 relating to expenses, Section 12.8 relating to governing law and consent to jurisdiction, Section 12.10 relating to third party beneficiaries, Section 12.14 relating to joint and several liability of TForce, West, and Logistics, and this Article XI, and (ii) that nothing herein shall relieve any Party from liability for any willful and material breach of this Agreement or any agreement made as of the date hereof or subsequent thereto pursuant to this Agreement.

(b) If, following the Effective Date, this Agreement is terminated in the circumstances set forth in Section 11.1(b)(iv) or Section 11.1(e), then Seller shall pay to Buyer the Break-Up Fee and the Expense Reimbursement Amount, subject to and in accordance with Section 11.3(a) and Section 11.3(b), respectively, and Buyer's right to enforce payment thereof shall survive the termination of this Agreement.

(c) If this Agreement is terminated pursuant to Section 11.1, Buyer and Seller shall delivery mutual written instructions to the Escrow Agent regarding the distribution of the Cash Deposit and accrued amounts thereto; provided, however, that, to the extent the Parties cannot agree upon such mutual written instructions within 10 Business Days of such termination, the Escrow Agent shall distribute the Cash Deposit and accrued amounts thereto as ordered by the Bankruptcy Court. Buyer understands and acknowledges that if this Agreement is terminated by Seller pursuant to Section 11.1(d), Seller will suffer material damages. The parties agree that such damages are difficult to quantify and thus Seller's retention of the Cash Deposit is a reasonable approximation of such damages. Accordingly, if this Agreement is terminated by the Seller pursuant to Section 11.1(d), following entry of an Order by the Bankruptcy Court authorizing such payment, Seller shall be entitled to retain the Cash Deposit as liquidated damages and not as a penalty, and Buyer shall be obligated to execute joint instructions to the Escrow Agent directing delivery of the Cash Deposit to Seller.

Section 11.3 Break-Up Fee; Expense Reimbursement Amount.

(a) If, following the Effective Date, this Agreement is terminated pursuant to Section 11.1(b)(iv) or Section 11.1(e), then Seller shall pay in cash to Buyer, subject to the consummation of the Alternative Transaction and not later than fifteen (15) days following the closing of such Alternative Transaction, a break-up fee in an amount equal to \$180,000 (the "**Break-Up Fee**") payable from the proceeds of such Alternative Transaction by wire transfer of immediately available funds to the account specified by Buyer to Seller in writing.

(b) If, following the Effective Date, this Agreement is terminated pursuant to Section 11.1(b)(iv) or Section 11.1(e), then Seller shall pay in cash to Buyer, subject to the

closing of the Alternative Transaction and not later than the later of (i) fifteen (15) days following the closing of the Alternative Transaction and (ii) fifteen (15) days following receipt of all documentation supporting the request for reimbursement of out-of-pocket costs, fees and expenses, an amount equal to the reasonable, documented, out-of-pocket costs, fees and expenses actually incurred and paid by Buyer and its Affiliates (including fees and expenses of outside legal, outside accounting and outside financial advisors) in connection with this Agreement and the transactions contemplated hereby in an amount not to exceed \$150,000 (the “**Expense Reimbursement Amount**”), in each case by wire transfer of immediately available funds to an account specified by Buyer to Seller in writing. In the event Seller disputes the reasonableness of the requested reimbursement within the applicable two-Business Day period, such dispute shall be submitted to the Bankruptcy Court for resolution.

(c) Buyer and Seller acknowledge and agree that Seller’s obligations to pay the Break-Up Fee and the Expense Reimbursement Amount shall each have administrative expense priority pursuant to Sections 503(b)(1) and 507(a)(2) of the Bankruptcy Code, and the Sale Procedures Order shall so provide.

(d) Seller agrees and acknowledges that Buyer’s due diligence, efforts, negotiation, and execution of this Agreement have involved substantial investment of management time and have required significant commitment of financial, legal, and other resources by Buyer and its Affiliates, and that such due diligence, efforts, negotiation, and execution have provided value to Seller. The provision of the Break-Up Fee and the Expense Reimbursement Amount is an integral part of this Agreement, without which Buyer would not have entered into this Agreement. Seller’s obligation to pay the Break-Up Fee and the Expense Reimbursement Amount shall survive the termination of this Agreement.

ARTICLE XII GENERAL PROVISIONS

Section 12.1 Public Announcements. The initial press release relating to this Agreement shall be a joint press release, the text of which shall be agreed to by Buyer, on the one hand, and Seller, on the other hand. Buyer, on the one hand, and Seller, on the other hand, shall consult with each other before issuing any other press release or otherwise making any public statement with respect to this Agreement, the transactions contemplated hereby or the activities and operations of the other and shall not issue any such release or make any such statement without the prior written consent of the other (such consent not to be unreasonably withheld or delayed).

Section 12.2 Notices. All notices, consents, waivers and other communications under this Agreement must be in writing and shall be deemed to have been duly given when (a) delivered by hand (with written confirmation of receipt), (b) sent by facsimile (with written confirmation of receipt) or e-mail, (c) received by the addressee, if sent by a delivery service (prepaid, receipt requested), or (d) received by the addressee, if sent by registered or certified mail (postage prepaid, return receipt requested), in each case to the appropriate addresses, Representatives (if applicable) and facsimile numbers set forth below (or to such other addresses, Representatives and facsimile numbers as a Party may designate by notice to the other Parties):

(a) If to Seller:

BeavEx Incorporated
2120 Powers Ferry Road SE
Suite 300
Atlanta, GA 30339
Attn: Don Van der Wiel
Email: dvanderwiel@beavex.com
Fax: (404) 260-0962

with copies (which shall not constitute notice) to:

Young Conaway Stargatt & Taylor, LLP
Rodney Square
1000 North King Street
Wilmington, DE 19801
Attn: Joseph M. Barry, Esq.
Email: jbarry@ycst.com
Fax: (302) 576-3280

(b) If to Buyer:

TFI International, Inc.
8801 Trans-Canada Highway
Suite 500
Saint-Laurent, Quebec, Canada
H4S 1Z6
Attn: David Saperstein, CFO
Email: dsaperstein@tfintl.com
Fax: (514) 337-4200

with copies (which shall not constitute notice) to:

Baker Botts L.L.P.
30 Rockefeller Plaza
New York, NY 10112
Attn: Emanuel Grillo, Esq.
Email: Emanuel.grillo@bakerbotts.com
Fax: (212) 259-2519

Section 12.3 Waiver. Neither the failure nor any delay by any Party in exercising any right, power, or privilege under this Agreement or the documents referred to in this Agreement shall operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power, or privilege shall preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by applicable Law, (a) no waiver that may be given by a Party shall be applicable except in the specific instance for which it is given, and (b) no notice to or demand on

one Party shall be deemed to be a waiver of any right of the Party giving such notice or demand to take further action without notice or demand.

Section 12.4 Entire Agreement; Amendment. This Agreement (including the Schedules and the Exhibits) and the other Transaction Documents supersede all prior agreements between Buyer, on the one hand, and Seller, on the other hand, with respect to its subject matter and constitute a complete and exclusive statement of the terms of the agreements between Buyer, on the one hand, and Seller, on the other hand, with respect to their subject matter. This Agreement may not be amended except by a written agreement executed by all of the Parties.

Section 12.5 Assignment; Successors. Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned or delegated, in whole or in part, by operation of law or otherwise, by Seller without the prior written consent of Buyer, and by Buyer without the prior written consent of Seller, and any such assignment without such prior written consent shall be null and void; provided, however, that no assignment shall limit the assignor's obligations hereunder. Notwithstanding the foregoing, Buyer may assign any of its rights and/or obligations under this Agreement to any of its Affiliates, subject to Buyer providing evidence reasonably satisfactory to Seller that any such assignee has the ability to fully discharge perform and discharge the applicable obligations of the assignor hereunder; and provided further that no such assignment shall relieve Buyer from its obligations hereunder. Subject to the preceding sentences, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the Parties and their respective successors and assigns.

Section 12.6 Further Actions and Assurances. At the Closing, Seller shall execute and deliver to Buyer such other instruments of transfer as shall be reasonably necessary or appropriate to vest in Buyer good and indefeasible title to the Acquired Assets, free and clear of all Encumbrances (except Permitted Encumbrances and Assumed Liabilities), and to comply with the purposes and intent of this Agreement and such other instruments as shall be reasonably necessary or appropriate to evidence the assignment and/or sale by Seller, and the assumption by Buyer, of the Assumed Liabilities (including the Assumed Contracts and Assumed Leases). Seller shall and shall cause its Affiliates to, as applicable, execute, acknowledge and deliver all such further assurances, deeds, assignments, consequences, powers of attorney and other instruments and paper as may be required to sell, transfer, convey, assign and deliver to Buyer all right, title and interest in, to and under the Acquired Assets. Seller, on the one hand, and Buyer, on the other hand, shall use their respective reasonable best efforts to take, or cause to be taken, all appropriate actions, do or cause to be done all things necessary, proper, or advisable under applicable Law, and execute and deliver such documents and other papers, as may be required to consummate the transactions contemplated by this Agreement at or after the Closing, including, subject to Section 2.5, assistance by Seller with the transfer of the Acquired Permits, Documents that are Acquired Assets, and Acquired Intellectual Property (including with respect to making all appropriate filings and submissions with the United States Patent and Trademark Office promptly after Closing, and in any event within 30 days of Closing). In furtherance and not in limitation of the foregoing, in the event that any of the Acquired Assets shall not have been conveyed at Closing, Seller shall use commercially reasonable efforts to convey such Acquired Assets to Buyer as promptly as practicable after the Closing, and pending such conveyance shall provide the applicable benefits thereof to Buyer in a manner consistent in all material respects with past practice. In all instances after Closing, if Seller will incur any out-of-pocket costs in

complying with its obligations under this Section 12.6, such out-of-pocket costs shall be borne by, or reimbursed to Seller by, Buyer. Prior to the Closing, the Parties shall cooperate in good faith to identify any assets, properties, rights, titles, or interests that may not be able to be conveyed at Closing. If any party to this Agreement shall, following the Closing, have in its possession any asset or right (including with respect to any Acquired Intellectual Property) which under this Agreement should have been delivered to any other party, such party shall promptly deliver such asset or right to such other party.

Section 12.7 Expenses. Whether or not the transactions contemplated by this Agreement are consummated, the Parties shall bear their own respective expenses (including all compensation and expenses of counsel, financial advisors, consultants, actuaries and independent accountants) incurred in connection with this Agreement and the transactions contemplated hereby (except as otherwise specified herein including with respect to the Break-up Fee and the Expense Reimbursement).

Section 12.8 Governing Law; Consent to Jurisdiction and Venue; Jury Trial Waiver.

(a) Except to the extent of the mandatory provisions of the Bankruptcy Code, this Agreement shall be governed by, and construed in accordance with, the Laws of the State of Delaware applicable to such agreements made and to be performed entirely in such state without regard to principles of conflicts or choice of laws or any other Law that would make the Laws of any other jurisdiction other than the State of Delaware applicable hereto.

(b) Without limitation of any Party's right to appeal any Order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby and (ii) any and all claims relating to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent and submit to the exclusive jurisdiction and venue of the Bankruptcy Court and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Proceeding; provided, however, that, if the Chapter 11 Cases are closed, all Proceedings arising out of or relating to this Agreement shall be heard and determined in a Delaware state court or a federal court sitting in the District of Delaware, and the Parties hereby irrevocably submit to the exclusive jurisdiction and venue of such courts in any such Proceeding and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Proceeding. The Parties consent to service of process by mail (in accordance with Section 12.2) or any other manner permitted by Law.

(c) THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF SELLER OR BUYER OR THEIR RESPECTIVE REPRESENTATIVES IN THE NEGOTIATION OR PERFORMANCE HEREOF.

Section 12.9 Counterparts. This Agreement and any amendment hereto may be executed in one or more counterparts, each of which shall be deemed to be an original of this Agreement or such amendment and all of which, when taken together, shall be deemed to

constitute one and the same instrument. Notwithstanding anything to the contrary in Section 12.2, delivery of an executed counterpart of a signature page to this Agreement or any amendment hereto by facsimile or email attachment shall be effective as delivery of a manually executed counterpart of this Agreement or such amendment, as applicable.

Section 12.10 Parties in Interest; Third Party Beneficiaries. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable benefit, claim, cause of action, remedy or right of any kind.

Section 12.11 Non-Recourse. No past, present or future director, manager, officer, employee, incorporator, member, unitholder, partner or equityholder of any Party hereto shall have any liability for any obligations or liabilities of the Parties under this Agreement or any other Transaction Document, for any claim based on, in respect of, or by reason of the transactions contemplated hereby and thereby, and each Party hereby covenants, on behalf of itself and its Affiliates, not to sue any past, present or future director, manager, officer, employee, incorporator, member, unitholder, partner or equityholder of any other Party for any such claim.

Section 12.12 Schedules; Materiality. The inclusion of any matter in any Schedule shall be deemed to be an inclusion for all purposes of this Agreement, but inclusion therein shall not be deemed to constitute an admission, or otherwise imply, that any such matter is material or creates a measure for materiality for purposes of this Agreement. The disclosure of any particular fact or item in any Schedule shall not be deemed an admission as to whether the fact or item is “material” or would constitute a “Material Adverse Effect.”

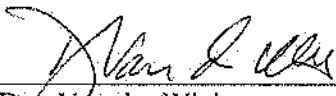
Section 12.13 Specific Performance. The Parties acknowledge and agree that (a) irreparable injury, for which monetary damages, even if available, would not be an adequate remedy, will occur in the event that any of the provisions of this Agreement are not performed in accordance with the specific terms hereof or are otherwise breached, and (b) the non-breaching Party or Parties shall therefore be entitled, in addition to any other remedies that may be available, to obtain (without the posting of any bond) specific performance of the terms of this Agreement. If any Proceeding is brought by the non-breaching Party or Parties to enforce this Agreement, the Party in breach shall waive the defense that there is an adequate remedy at law.

Section 12.14 Joint and Several Liability. Notwithstanding anything herein to the contrary, TForce, West, and Logistics shall be jointly and severally liable for each obligation of Buyer under this Agreement and the Transaction Documents.

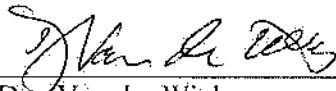
[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their duly authorized representatives, all as of the Execution Date.

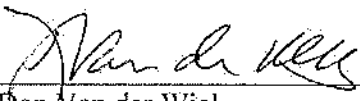
BEAVEX INCORPORATED,
as Seller

By: 
Name: Don Van der Wiel
Title: Chief Restructuring Officer

JNJW ENTERPRISES, INC.,
as Seller

By: 
Name: Don Van der Wiel
Title: Chief Restructuring Officer

USXP, LLC,
as Seller

By: 
Name: Don Van der Wiel
Title: Chief Restructuring Officer

TFORCE FINAL MILE, LLC
TFORCE FINAL MILE WEST, LLC
TFORCE LOGISTICS, LLC

collectively, as Buyer

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their duly authorized representatives, all as of the Execution Date.

**BEAVEX INCORPORATED,
as Seller**

By: _____
Name: Don Van der Wiel
Title: Chief Restructuring Officer

**JNJW ENTERPRISES, INC.,
as Seller**

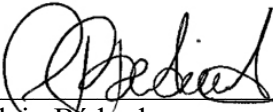
By: _____
Name: Don Van der Wiel
Title: Chief Restructuring Officer

**USXP, LLC,
as Seller**

By: _____
Name: Don Van der Wiel
Title: Chief Restructuring Officer

**TFORCE FINAL MILE, LLC
TFORCE FINAL MILE WEST, LLC
TFORCE LOGISTICS, LLC**

collectively, as Buyer

By:  _____
Name: Alain Bédard
Title: Director & Chairman of the Board

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Schedule 1.1(a)

Copyrights: None

Schedule 1.1(b)

Domain Names:

www.beavex.com

www.beavexpedite.com

www.guardianml.com

www.conejocourier.com

www.courierconnectinc.com

www.usexpressusa.com

Schedule 1.1(d)

Patent Rights: None

Schedule 1.1(e)

Trademarks:

WHEN NEXT DAY ISN'T GOOD
ENOUGH

Word Mark WHEN NEXT DAY ISN'T GOOD ENOUGH
Goods and Services IC 039. US 100 105. G & S: Providing pick up and delivery of goods, parcels and documents by automobile, truck and air; and warehouse storage and providing pick up and delivery of goods, parcels and documents from such facilities by automobile, truck and air. FIRST USE: 20040600. FIRST USE IN COMMERCE: 20040600
Standard Characters Claimed
Mark
Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 85224225
Filing Date January 24, 2011
Current Basis 1A
Original Filing Basis 1A
Published for June 21, 2011
Opposition
Registration Number 4022160
Registration Date September 6, 2011
Owner (REGISTRANT) BeavEx Incorporated CORPORATION CONNECTICUT 2120 Powers Ferry Road, Suite 300 2120 Powers Ferry Road Atlanta GEORGIA 30339
Assignment Recorded ASSIGNMENT RECORDED

<http://tmsearch.uspto.gov/bin/showfield?f=doc&state=4807:aqoorj.5.2>

1/2

2/8/2019 Trademark Electronic Search System (TESS)

Type of Mark SERVICE MARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
Live/Dead Indicator LIVE

TESS



Word Mark GUARDIAN MEDICAL LOGISTICS

Goods and Services IC 039. US 100 105. G & S: providing pick up and delivery of goods, parcels, medical specimens and documents by automobile, truck, air and rail, and warehouse storage and providing pick up and delivery of goods, parcels, medical specimens and documents from such facilities by automobile, truck, air and rail. FIRST USE: 20050101. FIRST USE IN COMMERCE: 20050101

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code
 02.01.33 - Grottesque men formed by letters, numbers, punctuation or geometric shapes; Stick figures
 02.09.06 - Carrying items, humans; Humans, including men, women and children, depicted toting items, such as buckets or bags; Toting items, humans
 04.07.03 - Geometric figures or combinations of geometric figures representing a person; Geometric figures representing a person; Geometric shapes forming a person; Person formed by geometric shapes
 26.05.25 - Triangles with one or more curved sides
 26.07.21 - Diamonds that are completely or partially shaded
 26.13.21 - Quadrilaterals that are completely or partially shaded
 26.17.01 - Bands, straight; Bars, straight; Lines, straight; Straight line(s), band(s) or bar(s)
 26.17.05 - Bands, horizontal; Bars, horizontal; Horizontal line(s), band(s) or bar(s); Lines, horizontal
 26.17.09 - Bands, curved; Bars, curved; Curved line(s), band(s) or bar(s); Lines, curved
 26.19.04 - Cubes (geometric)

Serial Number 85941998

Filing Date May 24, 2013

Current Basis 1A

Original Filing Basis 1A

Published for July 30, 2013

<http://tmsearch.uspto.gov/bin/showfield?f=doc&state=4807:qqooj;5.3>

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2/8/2019

Trademark Electronic Search System (TESS)

Opposition Registration Number 4416736

Registration Date October 15, 2013

Owner (REGISTRANT) BeavEx Incorporated CORPORATION CONNECTICUT 3715 Northside Pkwy., Bld. 200, St. 300 Atlanta GEORGIA 30327

Attorney of Record Bruce G. Temkin

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "MEDICAL LOGISTICS" APART FROM THE MARK AS SHOWN

Description of Mark The color(s) red, gold, black and white is/are claimed as a feature of the mark. The mark consists of a black background with a red inverted trapezoid above a larger inverted red triangle with black outlines and a slightly separated diamond as the bottom point, all suggesting a stylized person holding a three sided square shaped gold colored box with black edging. Three gold stripes in descending widths and lengths are located to the right and left of the symbol. To the left of the symbol is the wording "GUARDIAN MEDICAL LOGISTICS" in white.

Type of Mark SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE



Word Mark BEAVEXPEDITE DON'T LET DISTANCE DELAY YOUR BUSINESS
Goods and Services IC 039, US 100 105, G & S: Shipping and delivery services, namely, pickup, transportation, and delivery of packages and letters by various modes of transportation. FIRST USE: 20111201, FIRST USE IN COMMERCE: 20121201
Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code 03.09.02 - Badgers; Beavers; Chipmunks; Ferrets; Groundhogs; Minks; Mongoose; Opossums; Otters; Possums; Raccoons; Sables; Skunks; Squirrels; Squirrels, chipmunks, skunks, raccoons, badgers, woodchucks, beavers, sables, minks and the like; Weasels; Wolverines; Woodchuck
 03.09.26 - Costumed small mammals, rodents, kangaroos, wallabies
 03.17.01 - Wings, birds'
 09.03.08 - Ascots; Bandannas; Neckerchiefs; Scarves
 09.05.25 - Batting helmets; Caps, nurses; Caps, swimming; Dunce caps; Football helmets; Helmets, athletic; Helmets, construction; Helmets, military; Helmets, protective; Safety helmets
 16.03.07 - Eyeglasses; Frames, eyeglass; Glasses, eye; Glasses, safety; Goggles; Safety goggles; Spectacles; Sunglasses
 26.05.21 - Triangles that are completely or partially shaded
 29.01.07 - Inconspicuous designs functioning as punctuation or parts of letters; Small, inconspicuous design elements functioning as punctuation or parts of letters
Serial Number 85867605
Filing Date March 5, 2013
Current Basis 1A
Original Filing Basis 1A
Published for Opposition August 13, 2013

<http://tmsearch.uspto.gov/bin/showfield?f=doc&state=4807:aq00j;5.4>

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2/8/2019

Trademark Electronic Search System (TESS)

Registration Number 4424988
Registration Date October 29, 2013
Owner (REGISTRANT) BeavEx Incorporated CORPORATION CONNECTICUT 3715 Northside Pky. Bld. 200, St. 300 Atlanta GEORGIA 30327
Attorney of Record Bruce Temkin
Prior Registrations 3039560;3044205;3044206
Description of Mark The color(s) red, brown, light blue, black and white is/are claimed as a feature of the mark. The mark consists of the right side profile of a brown colored beaver head with black and white eyes, nose and teeth, wearing black goggles and a brown helmet, with a red scarf with white fringes flowing away from the beaver's head and the right side profile of a white wing attached to the beaver, with light blue shading. The wording "BeavExpedite" is located above the beaver head, with a slash over the letter "t" and the letters "Beav" capitalized and in black bold font and the letters "Ex" in red colored font and the letters "B" and "E" are one font size larger than all other letters which are in black, and the capitalized wording "DON'T LET DISTANCE DELAY YOUR BUSINESS" in black runs underneath the word "BeavExpedite".
Type of Mark SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE



Word Mark BEAVEX

Goods and Services IC 039. US 100 105. G & S: PROVIDING PICK UP AND DELIVERY OF GOODS, PARCELS AND DOCUMENTS BY AUTOMOBILE, TRUCK, AIR AND RAIL, AND WAREHOUSE STORAGE AND PROVIDING PICK UP AND DELIVERY OF GOODS, PARCELS AND DOCUMENTS FROM SUCH FACILITIES BY AUTOMOBILE, TRUCK, AIR AND RAIL. FIRST USE: 20040301. FIRST USE IN COMMERCE: 20040301

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 03.09.02 - Badgers; Beavers; Chipmunks; Ferrets; Groundhogs; Minks; Mongoose; Opossums; Otters; Possums; Raccoons; Sables; Skunks; Squirrels; Squirrels, chipmunks, skunks, raccoons, badgers, woodchucks, beavers, sables, minks and the like; Weasels; Wolverines; Woodchuck
 03.09.26 - Costumed small mammals, rodents, kangaroos, wallabies
 09.03.08 - Ascots; Bandannas; Neckerchiefs; Scarves
 24.15.25 - Other arrows
 26.03.21 - Ovals that are completely or partially shaded
 27.03.05 - Objects forming letters or numerals

Serial Number 76639804

Filing Date June 1, 2005

Current Basis 1A

Original Filing Basis 1A

Published for Opposition October 25, 2005

Registration Number 3044206

Registration Date January 17, 2006

<http://tmssearch.uspto.gov/bin/showfield?f=doc&state=4807:ooqorj.5.5>

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2/8/2019

Trademark Electronic Search System (TESS)

Owner (REGISTRANT) BEAVEX INCORPORATED CORPORATION CONNECTICUT 2120 Powers Ferry Road SE, Suite 300 Atlanta GEORGIA 30339

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record Bruce Temkin

Prior Registrations 2417417

Description of Mark Color is not claimed as a feature of the mark.

Type of Mark SERVICE MARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20160318.

Renewal 1ST RENEWAL 20160318

Live/Dead Indicator LIVE



Word Mark BEAVEX

Goods and Services IC 039. US 100 105. G & S: PROVIDING PICK UP AND DELIVERY OF GOODS, PARCELS AND DOCUMENTS BY AUTOMOBILE, TRUCK, AIR AND RAIL, AND WAREHOUSE STORAGE AND PROVIDING PICK UP AND DELIVERY OF GOODS, PARCELS AND DOCUMENTS FROM SUCH FACILITIES BY AUTOMOBILE, TRUCK, AIR AND RAIL. FIRST USE: 20040301. FIRST USE IN COMMERCE: 20040301

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 03.09.02 - Badgers; Beavers; Chipmunks; Ferrets; Groundhogs; Minks; Mongoose; Opossums; Otters; Possums; Raccoons; Sables; Skunks; Squirrels; Squirrels, chipmunks, skunks, raccoons, badgers, woodchucks, beavers, sables, minks and the like; Weasels; Wolverines; Woodchuck
03.09.24 - Stylized small mammals, rodents, kangaroos, wallabies
24.15.25 - Other arrows
26.03.21 - Ovals that are completely or partially shaded
27.03.05 - Objects forming letters or numerals

Serial Number 76639803

Filing Date June 1, 2005

Current Basis 1A

Original Filing Basis 1A

Published for Opposition October 25, 2005

Registration Number 3044205

Registration Date January 17, 2006

<http://tmsearch.uspto.gov/bin/showfield?f=doc&state=4807:aqooej;5.6>

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2/8/2019

Trademark Electronic Search System (TESS)

Owner (REGISTRANT) BEAVEX INCORPORATED CORPORATION CONNECTICUT 3715 Northside Pkwy., Bld. 200, St. 300 Atlanta GEORGIA 30327

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record Bruce Temkin

Prior Registrations 2417417

Description of Mark Color is not claimed as a feature of the mark.

Type of Mark SERVICE MARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20160318.

Renewal 1ST RENEWAL 20160318

Live/Dead Indicator LIVE

Schedule 2.1(a)

Intentionally Omitted

Schedule 2.1(b)

Acquired Equipment:

Acquired Equipment shall be all of the Equipment utilized by GML, all Equipment associated with the Assumed Leases set forth in Schedule 2.1(d), and all desktop and laptop computers utilized by the Transferred Employees set forth in Schedule 7.4(a).

Schedule 2.1(c)

Intentionally Omitted, in Part

2. The applicable Contracts regarding the following vendors:

CXT Software

3. The applicable Contracts for each Service Contractor, agent or other person or entity providing services to the above listed customers on behalf of the Seller.

Schedule 2.1(d)

Intentionally Omitted

Schedule 2.1(e)

Acquired Permits: None

Schedule 2.1(f)

Acquired Intellectual Property:Domain Name: www.guardianml.com

Trademarks:



Word Mark GUARDIAN MEDICAL LOGISTICS
Goods and Services IC 039. US 100 105. G & S: providing pick up and delivery of goods, parcels, medical specimens and documents by automobile, truck, air and rail, and warehouse storage and providing pick up and delivery of goods, parcels, medical specimens and documents from such facilities by automobile, truck, air and rail. FIRST USE: 20050101. FIRST USE IN COMMERCE: 20050101

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code
 02.01.33 - Grottesque men formed by letters, numbers, punctuation or geometric shapes; Stick figures
 02.09.06 - Carrying items, humans; Humans, including men, women and children, depicted toting items, such as buckets or bags; Toting items, humans
 04.07.03 - Geometric figures or combinations of geometric figures representing a person; Geometric figures representing a person; Geometric shapes forming a person; Person formed by geometric shapes
 26.05.25 - Triangles with one or more curved sides
 26.07.21 - Diamonds that are completely or partially shaded
 26.13.21 - Quadrilaterals that are completely or partially shaded
 26.17.01 - Bands, straight; Bars, straight; Lines, straight; Straight line(s), band(s) or bar(s)
 26.17.05 - Bands, horizontal; Bars, horizontal; Horizontal line(s), band(s) or bar(s); Lines, horizontal
 26.17.09 - Bands, curved; Bars, curved; Curved line(s), band(s) or bar(s); Lines, curved
 26.19.04 - Cubes (geometric)

Serial Number 85941998
Filing Date May 24, 2013
Current Basis 1A
Original Filing Basis 1A
Published for July 30, 2013

<http://tmsearch.uspto.gov/bin/showfield?f=doc&state=4807:qqoqj;5.3>

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2/8/2019

Trademark Electronic Search System (TESS)

Opposition

Registration Number 4418736

Registration Date October 15, 2013

Owner (REGISTRANT) BeavEx Incorporated CORPORATION CONNECTICUT 3715 Northside Pkwy., Bld. 200, St. 300 Atlanta GEORGIA 30327

Attorney of Record Bruce G. Temkin

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "MEDICAL LOGISTICS" APART FROM THE MARK AS SHOWN

Description of Mark The color(s) red, gold, black and white is/are claimed as a feature of the mark. The mark consists of a black background with a red inverted trapezoid above a larger inverted red triangle with black outlines and a slightly separated diamond as the bottom point, all suggesting a stylized person holding a three sided square shaped gold colored box with black edging. Three gold stripes in descending widths and lengths are located to the right and left of the symbol. To the left of the symbol is the wording "GUARDIAN MEDICAL LOGISTICS" in white.

Type of Mark SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE

Schedule 2.1(g)

Acquired Pre-Paid Expenses: None

Schedule 2.1(k)

Acquired IT Systems:

All IT Systems utilized by GML, in addition to any IT Systems referenced on Schedule 2.1(b) (Acquired Equipment).

Schedule 2.1(n)

Intentionally Omitted

Schedule 2.1(o)

Acquired Marketing Material: None

Schedule 2.1(p)

Acquired Instruments: None

Schedule 2.2(v)

Certain Excluded Assets: None

Schedule 2.3(a)

Assumed Trade Payables:

The following trade payables shall be Assumed Liabilities of Buyer:

All trade payables set forth in Seller's books and records for account 21000-4004 Accounts Payable-Kansas City – Guardian, as kept in the Ordinary Course of Business.

Any trade payables specified below set forth in Seller's books and records for account 21000-9900 Accounts Payable-Corporate, as kept in the Ordinary Course of Business:

All trade payables for Vendor Category C-BVXP (BeavExpedite Agents)

All trade payables for Vendor "CXT Software" in Vendor Category C-IT

All trade payables associated with the Assumed Leases set forth in Schedule 2.1(d)

All trade payables for any Service Contractor, agent, or other party or entity providing services in connection with any Acquired Accounts Receivable set forth in Schedule 2.1(a)

Schedule 2.3(b)

Assumed Accrued Expenses:

The following accrued expenses shall be Assumed Liabilities of Buyer:

All accrued expenses set forth in Seller's books and records for Guardian accounts XXXXX-4004, including without limitation accounts 23050-4004 Accrued Expenses-Kansas City - Guardian, 21050-4004 Credit Card Payable-Kansas City - Guardian, and 22160-4004 Accrued Bonus-Kansas City – Guardian, as kept in the Ordinary Course of Business.

All accrued expenses set forth in Seller's books and records for accounts 22050-9900 EE Expense Reimbursement-Corporate, 22170-9900 Accrued Commissions-Corporate and 22140-9900 Accrued PTO/PR-Corporate relating to all Transferred Employees set forth on Schedule 7.4(a), as kept in the Ordinary Course of Business.

All accrued expenses set forth in Seller's books and records for account 22100-9900 Wages Payable-Corporate, relating to all Transferred Employees set forth on Schedule 7.4(a), other than any accrual for prior-period deferred wages, as kept in the Ordinary Course of Business.

Any accrued expenses specified below set forth in Seller's books and records for account 23050-9900 Accrued Expenses-Corporate, as kept in the Ordinary Course of Business:

All accrued expenses for Vendor Category C-BVXP (BeavExpedite Agents)

All accrued expenses for Vendor "CXT Software" in Vendor Category C-IT

All accrued expenses associated with the Assumed Leases set forth in Schedule 2.1(d)

All trade payables accruals for any Service Contractor, agent, or other party or entity providing services in connection with any Acquired Accounts Receivable set forth in Schedule 2.1(a).

All accrued expense for any Service Contractor, agent, or other person or entity providing service in connection with any Acquired Accounts Receivable set forth in Schedule 2.1(a) in Seller's books and records for account 22300-9900 I/C Payable-Corporate, as kept in the Ordinary Course of Business.

Schedule 3.5 Allocation – To Be Attached

Schedule 5.2 Notices and Consents

Notice to and consent of ECP Helios IV, L.P. and Eos Partners, L.P. in accordance with the Company's prepetition senior and junior secured debt facilities with such entities.

Schedule 5.5

Seller Financial Statements:

Income Statement	12/31/2016	12/31/2017	Preliminary 12/31/2018
Total Revenues	241,509,751	217,208,844	198,205,913
Total Cost of Goods Sold	210,197,336	186,105,582	173,612,464
Gross Profit	31,312,415	31,103,263	24,593,449
Total SG&A	41,818,335	40,136,280	34,529,582
Net Income	(10,505,920)	(9,032,446)	(9,936,133)
Depreciation & Amortization	4,678,416	4,251,431	2,577,904
Interest Expense	2,272,437	1,955,711	878,922
Income Taxes	288,071	(572)	481

BEAVEX, INC
Balance Sheet

	12/31/2016	12/31/2017	Preliminary 12/31/2018
Assets			
Current Assets			
Cash and cash equivalents	\$1,157.45	\$780,078.47	\$866,930.96
Accounts receivable, net	19,756,845.12	17,012,392.76	15,258,938.83
Current maturities of notes receivable			
Prepaid expenses and other current assets	1,175,744.78	218,006.88	159,973.89
Deferred tax assets, current			
Total Current Assets	20,933,747.35	18,010,478.11	16,285,843.68
Property and equipment, net	1,970,296.01	711,226.08	365,814.98
Other Assets			
Goodwill			
Intangibles assets, net	22,191,368.82	19,441,607.26	17,385,307.42
Deposits & other assets	878,198.37	947,410.69	1,138,538.49
Notes receivable, net of current maturities			
Noncurrent deferred tax assets, net			
Total Other Assets	23,069,567.19	20,389,017.95	18,523,845.91

Total Assets	45,973,610.55	39,110,722.14	35,175,504.57
Liabilities and Stockholders' Equity			
Current Liabilities			
Accounts payable and accrued expenses	20,173,802.85	18,575,469.84	18,018,459.51
Bank line of credit	17,945,000.00		
Current Maturities of:			
Long-term debt	4,000,008.00		
ST Capital lease obligations	222,802.43		
Contingent liability for accrued earn-out			
ST acquisition consideration	1,470,515.69	2,870,508.29	2,748,461.16
Income tax payable	830,122.91	736,429.39	766,785.06
Deferred Tax - Current			
Total Current Liabilities	44,642,251.88	22,182,407.52	21,533,705.73
Long Term Liabilities, Net of Current Maturities			
Long-term debt	4,345,157.65	30,436,060.02	37,086,008.53
LT Capital lease obligations			
Contingent liability for accrued earn-out			
LT acquisition consideration	1,857,520.49		
Deferred Tax - LT	1,207,241.00	1,207,241.00	1,207,241.00
Non-Current Tax Liability	88,875.00	88,875.00	88,875.00
Total Long-term Liabilities	7,498,794.14	31,732,176.02	38,382,124.53
Total Liabilities	52,141,046.02	53,914,583.54	59,915,830.26
Stockholder's Equity			
Common stock	(150.00)	(150.00)	
Preferred stock	69,032,000.00	69,782,000.00	69,782,000.00
Additional paid-in-capital	1,513,746.00	1,513,746.00	1,513,746.00
Accumulated deficit	(65,989,696.48)	(76,720,613.07)	(86,099,457.40)
Current Year Gain(Loss)	(10,723,334.99)	(9,378,844.33)	(9,936,614.29)
Total Stockholders' Equity	(6,167,435.47)	(14,803,861.40)	(24,740,325.68)
Total Liabilities and Stockholders' Equity	45,973,610.55	39,110,722.14	35,175,504.57

Schedule 5.6

Legal Proceedings

Case Name / Case#	Court	Plaintiffs	Brief Description
Alan Ellis v. BeavEx Incorporated	Dept. of Industrial Relations, California	Alan Ellis	Former employee alleges penalties of \$28,269.30 for untimely payment of salary/commissions
Krivolavek & Pech & Gutierrez v. BeavEx Incorporated; Case No.: 18CECG03430	Superior Court of California (Fresno County)	William Krivolavek; Kosal Pech; Patricia Gutierrez	FLSA action filed on September 13, 2018. Plaintiffs are asserting a damage amount as follows: Krivolavek \$180K Pech \$205K Gutierrez \$128K
Commercial Collections of America, LLC v. BeavEx Incorporated; Case No.: VC0667395	Superior Court of California (County of Los Angeles)	Commercial Collections of America, LLC	Collection action in the approximate amount of \$81K, filed on August 29, 2018.
Ibarra v. JNJW Enterprises, Inc., BeavEx Incorporated & Parrish; Case No.: 187573	Superior Court of California (Shasta County)	Agustin Ibarra	Wrongful termination action filed in June 27, 2017. Plaintiff is asserting \$157K in damages.
Kaler <i>et al.</i> v. JNJW Enterprises, Inc., <i>et al.</i> ; Case No.: 18CECG00833	Superior Court of California (Fresno County)	Kulwant Kaler	Wrongful death action, defendant was struck by a vehicle on 8/25/2016 - operated by independent contractor driver. Plaintiffs are seeking \$10MM in General Damages and \$12MM in Special Damages.
Walker v. BeavEx Incorporated & Cisneros; Case No.: 2018C102427	224 th Judicial District Court of Bexar County, TX	Mashauni Walker	Personal injury action filed on March 19, 2018, where plaintiff struck by vehicle on 12/10/2016 operated by independent contractor driver. Plaintiff is asserting damages in excess of \$1MM.

Condos v. Campbell & BeavEx Incorporated; Case No.: A-17-09-1159 CV	70 th Judicial District Court of Ector County, TX	Jana Condos and Gary Condos	Personal injury action filed on September 26, 2017, where plaintiff was struck by a vehicle on 10/22/15 operated by independent contractor driver. Plaintiffs are asserting a damage amount between \$200K and \$1MM.
Level 3 Communications, LLC & Level 3 Telecom Holdings, LLC v. BeavEx Incorporated; Case No.: 17-cv-02392 MSK-KLM	Dist. Court of Dist. Colo.	Level 3	Plaintiff alleges damages in amount of \$1.36MM for breach of contract.
Secretary of Labor v. BeavEx Incorporated; OSHRC Docket No. 18-0928	OSHA Review Commission (Dallas, TX)	Secretary of Labor	OSHA alleges certain provisions of the Occupational Safety and Health Act were violated concerning an incident involving a forklift operator in our Dallas, TX terminal. There were 3 violations issued which total \$27K in proposed penalties.
Estate of Sara Correa-Ojeda v. BeavEx Inc., S.S.A. Delivery Services, Inc., Sadjck Arauz, Uriel Arauz, Jose Bonilla Valladares, et al	Superior Court of State of California, County of Alameda	Estate of Sara Correa-Ojeda	Plaintiff alleges damages in excess of \$150,000 from automobile accident

Schedule 5.8(b)

Inbound License Agreements: None

Schedule 5.9(a)

Binding Obligations:

Notwithstanding anything to the contrary in any contract with Wells Fargo, Wells Fargo has indicated to Seller that its yearly volume with Seller will decrease by \$5 million per year effective May of 2018.

Notwithstanding anything to the contrary in any contract with M&T Bank, M&T Bank has indicated to Seller that it will terminate its business with Seller on or about June of 2019.

Notwithstanding anything to the contrary in any contract with Fifth Third Bank, Fifth Third Bank has indicated to Seller that it will terminate its business with Seller on or about March of 2019.

Schedule 5.9(d)

Other Obligations:

Notwithstanding anything to the contrary in any contract with Wells Fargo, Wells Fargo has indicated to Seller that its yearly volume with Seller will decrease by \$5 million per year effective May of 2018.

Notwithstanding anything to the contrary in any contract with M&T Bank, M&T Bank has indicated to Seller that it will terminate its business with Seller on or about June of 2019.

Notwithstanding anything to the contrary in any contract with Fifth Third Bank, Fifth Third Bank has indicated to Seller that it will terminate its business with Seller on or about March of 2019.

Schedule 5.10(a)

Encumbered Leased Premises: None

Schedule 5.10(c)

Third-Party Rights in Leased Premises: None

Schedule 5.13(a)

Intentionally Omitted

Schedule 7.1

Operations Prior to the Closing Date: None

Schedule 7.4(a)

Intentionally Omitted

Schedule 9.8 Consents

Notice to and consent of ECP Helios IV, L.P. and Eos Partners, L.P. in accordance with the Company's pre-petition senior and junior secured debt facilities with such entities.

Exhibit 1

Form of Assignment and Assumption Agreement

To be Attached

Exhibit 2

Form of Bill of Sale

To be Attached

Exhibit 3

Form of Assignment of Trademarks

To be Attached

Exhibit 4

Form of Assignment of Domain Names

To be Attached

Exhibit 5

Escrow Agreement

To be Attached

Exhibit C

Sale Order

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

In re:

BEAVEX HOLDING CORPORATION, *et al.*,¹

Debtors.

Chapter 11

Case No. 19-10316 (___)

Jointly Administered

Ref. Docket No.: ___

ORDER: (A) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, (B) AUTHORIZING AND APPROVING THE DEBTORS' PERFORMANCE UNDER THE ASSET PURCHASE AGREEMENT, (C) APPROVING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN OF THE DEBTORS' EXECUTORY CONTRACTS AND UNEXPIRED LEASES RELATED THERETO AND (D) GRANTING RELATED RELIEF

Upon consideration of the motion (the "Motion")² of the above-captioned debtors and debtors in possession (the "Debtors") for the entry of an order pursuant to sections 105(a), 363 and 365 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004, 6006, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), among other things, authorizing the sale (the "Sale") of certain of the Debtors' assets (the "Assets") free and clear of liens, claims, encumbrances, and other interests, except as provided by that Asset Purchase Agreement by and between the _____ (the "Purchaser") and Debtors (as may be amended, supplemented or otherwise modified, together with all exhibits and annexes thereto, the

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: BeavEx Holding Corporation (7740); BeavEx Acquisition, Inc. (5497); BeavEx Incorporated (7355); JNJW Enterprises, Inc. (4963); and USXP, LLC (2997). The headquarters for the above-captioned Debtors is located at 2120 Powers Ferry Road SE, Suite 300, Atlanta, GA 30339.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in either the Motion or the APA (as defined herein), as applicable.

“APA”),³) [Docket No. ____] (the “APA”); (b) authorizing the Debtors’ performance under the APA, (c) approving the assumption and assignment of certain of the Debtors’ Executory Contracts and Unexpired Leases related thereto (any such Executory Contract or Unexpired Lease designated to be assumed and assigned pursuant to the Sale) and (d) granting related relief; the Court having entered an order approving the Bidding Procedures and granting certain related relief on _____, 2019 [Docket No ____] (the “Bidding Procedures Order”); and [an/no] auction (the “Auction”) having been held [on _____] because no additional Qualified Bids (as defined in the Bidding Procedures Order) were received by the Debtors other than the APA; and the Purchaser having been deemed the Successful Bidder(s) (as defined in the Bidding Procedures) by the Debtors pursuant to the Bidding Procedures Order; [and the Debtors having filed a notice of cancellation of the Auction and intent to seek approval / or provision for Successful and Back-Up Bidders of the Sale to the Purchaser on _____, 2019 [Docket No. ____]] and the Court having conducted a hearing on the Motion on _____, 2019 (the “Sale Hearing”) at which time all interested parties were offered an opportunity to be heard with respect to the Motion; and the Court having reviewed and considered the Motion, the *Declaration of Bradley E. Scher in Support of Entry of Order (A) Authorizing the Sale of Substantially All of the Debtors’ Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests, (B) Authorizing and Approving the Debtors’ Performance Under the Asset Purchase Agreement, (C) Approving the Assumption and Assignment of Certain of the Debtors’ Executory Contracts and Unexpired Leases Related Thereto, and (D) Granting Related Relief* [Docket No. ____] (the “Scher Declaration”), the *Declaration of _____ in Support of Entry of Order (A) Authorizing the Sale of Substantially All of the Debtors’ Assets Free and Clear of Liens, Claims, Encumbrances, and*

³ A copy of the APA is attached hereto as Exhibit 1.

Other Interests, (B) Authorizing and Approving the Debtors' Performance Under the Asset Purchase Agreement,; (C) Approving the Assumption and Assignment of Certain of the Debtors' Executory Contracts and Unexpired Leases Related Thereto, and (D) Granting Related Relief [Docket No. _____] (the "_____ Declaration"); the *Declaration of Travis Vandell in Support of Entry of Order (A) Authorizing the Sale of Substantially All of the Debtors' Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests, (B) Authorizing and Approving the Debtors' Performance Under the Asset Purchase Agreement, (C) Approving the Assumption and Assignment of Certain of the Debtors' Executory Contracts and Unexpired Leases Related Thereto, and (D) Granting Related Relief* [Docket No. _____] (the "Vandell Declaration"), and other evidence submitted in support thereof of the APA; the Bidding Procedures Order, and the record of the Bidding Procedures Hearing, [Auction] and Sale Hearing; and having heard statements of counsel and the evidence presented in support of the relief requested in the Motion at the Sale Hearing; and due notice of the Motion, the APA, the Bidding Procedures Hearing, Bidding Procedures Order and the cancellation of the Auction [Auction] having been provided; and having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their stakeholders and all other parties in interest; and the Court having jurisdiction over this matter; and the legal and factual bases set forth in the Motion and at the Sale Hearing establishing just cause for the relief granted herein; and after due deliberation thereon,

THE COURT HEREBY FURTHER FINDS AND DETERMINES THAT:

I. Jurisdiction, Final Order and Statutory Predicates

A. The Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(a) and the Amended Standing Order. This is a core proceeding

pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue is proper in this District and in the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. This order (this “Sale Order”) constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, the Court expressly finds that there is no just reason for delay in the implementation of this Sale Order, and expressly directs entry of judgment as set forth herein.

C. The statutory predicates for the relief requested in the Motion are sections 105(a), 363(b), (f), and (m), and 365 of the Bankruptcy Code and Bankruptcy Rules 2002(a)(2), 6004(a), (b), (c), (e), (f) and (h), 6006(a), (c) and (d), 9007 and 9014.

D. The findings of fact and conclusions of law set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

E. To the extent any of the following findings of fact constitute conclusions of law, they are hereby adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are hereby adopted as such. Any findings of fact or conclusions of law stated by the Court on the record at the Sale Hearing are hereby incorporated, to the extent they are not inconsistent herewith.

II. Notice of the Sale, Auction and the Cure Amounts

A. Actual written notice of the Bidding Procedures Hearing, Sale Hearing, Auction, the Motion, the Sale, the assumption, assignment and sale of the Executory Contracts and Unexpired Leases to be assigned to the Purchaser pursuant to the APA (which are identified on Exhibit 2 hereto; such executory contracts and such unexpired leases (the “Assumed

Contracts’)) provided a fair and reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein has been afforded to all known interested persons and entities, including, but not limited to the following parties (the “Notice Parties”): (i) the Office of the United States Trustee for Region III, (ii) the Office of the United States Attorney for the District of Delaware, (iii) counsel to any statutory committee appointed in the Chapter 11 Cases, (iv) the Internal Revenue Service, (v) the Debtors’ thirty (30) largest unsecured creditors or any statutorily appointed committee in these chapter 11 cases, (vi) counsel to the prepetition secured lenders and proposed postpetition secured lenders, (vii) counsel to the Lead Bidder, (viii) all persons known by the Debtors to have expressed an interest to the Debtors in a transaction with respect to the Assets during the previous six months, (ix) all entities known by the Debtors that may have a lien, claim, encumbrance or other interest in the Assets (for which identifying information and addresses are available to the Debtors), (x) all non-Debtor counterparties to the Executory Contracts and Unexpired Leases, (xi) all of the Debtors’ known creditors, (xii) any governmental unit known to the Debtors to have a claim in these Chapter 11 Cases, (xiii) the Office of the Attorney General in each state in which the Debtors operate, (xiv) the Office of the Delaware Secretary of State and (xv) all parties that have requested notice in the Chapter 11 Cases under Bankruptcy Rule 2002.

B. In accordance with the provisions of the Bidding Procedures Order, and as set forth in the Vandell Declaration, the Debtors have served the Cure Notice (as defined in the Bidding Procedures Order) and, in compliance with the requirements of due process and the Bankruptcy Code, an amended Cure Notice upon the Purchaser and the non-Debtor counterparties to the Executory Contracts or Unexpired Leases (the “Contract Counterparties”), identifying such parties: (i) that the Debtors seek to assume and assign the Assumed Contracts on

the Closing Date; and (ii) of the relevant Cure Amounts. Pursuant to Bankruptcy Rule 6006(c), the Court finds that the service of such Cure Notice was good, sufficient and appropriate under the circumstances and no further notice need be given in respect of establishing a Cure Amount for the Assumed Contracts. The Purchaser and the Contract Counterparties have had an opportunity to object to the cure amounts set forth in the Cure Notice.

C. In accordance with the Bidding Procedures Order, the Contract Counterparties listed in the supplemental cure schedule (the “Supplemental Cure Notice”) (Exhibit 3) shall be served a cure notice and be given ten (10) days from the time of notice to object. If the Contract Counterparties in the Supplemental Cure Notice do not object to the assumption or the cure amount in accordance with the procedures set forth therein, then the listed agreements will be deemed assumed/assigned as part of the Sale. If a Contract Counterparty listed on the Supplemental Cure Notice objects, then the matter will be heard before the Court on the earliest mutually agreed upon date.

D. The Debtors’ Sale Notice (as defined in the Bidding Procedures Order) provided all interested parties with timely and proper notice of the Sale, the Sale Hearing and the Auction.

E. The Cure Notice and Supplemental Cure Notice provided the Purchaser and the Contract Counterparties with proper notice of the potential assumption and assignment of the Assumed Contracts and any Cure Amount relating thereto, and the procedures set forth in the Bidding Procedures Order with regard to objecting to any such Cure Amount satisfy the provisions of section 365 of the Bankruptcy Code and Bankruptcy Rule 6006.

F. As evidenced by the affidavits of service previously filed with the Court, proper, timely, adequate, and sufficient notice of the Motion, Bidding Procedures, Auction,

[cancellation of Auction], Sale Hearing, the Sale has been provided in accordance with sections 102(1), 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006 and 9014. The Debtors also have complied with all obligations to provide notice of the Auction [cancellation of Auction], Sale Hearing, and Sale required by the Bidding Procedures Order. The notices described in this Section II were good, sufficient and appropriate under the circumstances, and no other or further notice of the Motion, Auction [cancellation of the Auction], Sale Hearing, Sale, or assumption, assignment and sale of the Assumed Contracts is required.

G. The disclosures made by the Debtors concerning the Motion, Bidding Procedures, APA, Auction [cancellation of the Auction], Sale, and Sale Hearing, including but not limited to the _____ Declaration, the _____ Declaration, and the _____ Declaration, were good, complete and adequate.

III. Good Faith of the Purchaser

A. The Purchaser is not an “insider” of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code.

B. The Purchaser is purchasing the Acquired Assets in good faith and is a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code, and is therefore entitled to the full protection of that provision.

IV. Highest and Best Offer

A. As described in the [_____] Declaration, prior to selecting the Purchaser as the Lead Bidder, the Debtors engaged in an extensive and wide ranging marketing and sale efforts, resulting in a highly competitive bidding process prior to filing the Chapter 11 Cases. In addition to such solicitations, the Debtors also implemented the Bidding Procedures and conducted an Auction [provided cancellation of the Auction] in accordance with the provisions

of the Bidding Procedures Order, and the Debtors have otherwise complied with the Bidding Procedures Order in all respects. The Bidding Procedures [and Auction] were conducted pursuant to the Bidding Procedures Order afforded a full, fair and reasonable opportunity for any person or entity to make a higher or otherwise better offer to purchase the Acquired Assets. Such process was duly noticed and conducted in a noncollusive, fair and good faith manner, and a reasonable opportunity has been given to any interested party to make a higher and better offer for the Acquired Assets.

B. The consideration provided by the Purchaser under the APA, including the assumption of the Assumed Liabilities, constitutes the highest and best offer for the Acquired Assets and will provide a greater recovery for the Debtors' estate than would be provided by any other available alternative. The Debtors' determination that the APA constitutes the highest and best offer for the Acquired Assets constitutes a valid and sound exercise of the Debtors' business judgment consistent with their fiduciary duties.

C. The APA represents a fair and reasonable offer to purchase the Acquired Assets under the circumstances of the Chapter 11 Cases. No other person or entity or group of entities has offered to purchase the Acquired Assets for greater economic value to the Debtors' estates than the Purchaser.

D. Approval of the Motion and the APA and the consummation of the transactions contemplated thereby is in the best interests of the Debtors, their creditors, their estates and other parties in interest.

E. The Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the Sale prior to, and outside of, a plan of reorganization.

V. No Fraudulent Transfer; Successor Liability Matters

A. The APA was not entered into for the purpose of hindering, delaying or defrauding creditors under either the Bankruptcy Code or the laws of the United States, any state, territory, possession or the District of Columbia (including, without limitation, the Uniform Fraudulent Conveyance Act and the Uniform Fraudulent Transfer Act). The consideration provided by the Purchaser pursuant to the APA is fair and adequate and constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession or the District of Columbia (including, without limitation, the Uniform Fraudulent Conveyance Act and the Uniform Fraudulent Transfer Act).

B. By virtue of the consummation of the Sale, (i) the Purchaser is not a continuation of the Debtors or their respective estates, there is no continuity between the Purchaser and the Debtors, there is no common identity between the Debtors and the Purchaser, there is no continuity of enterprise between the Debtors and the Purchaser, and the Purchaser is not a mere continuation of the Debtors or their estates, (ii) the Purchaser is not holding itself out to the public as a continuation of the Debtors or their respective estates and (iii) the Sale does not amount to a consolidation, merger or de facto consolidation or merger of the Purchaser and the Debtors and/or the Debtors' estates. Accordingly, the Purchaser is not and shall not be deemed a successor to the Debtors as a result of the consummation of the Sale contemplated by the APA.

VI. Validity of Transfer

A. The Debtors and the Purchaser have full corporate power and authority to execute and deliver the APA and all other documents contemplated thereby, and no further consents or approvals are required for the Debtors or the Purchaser to consummate the transactions contemplated by the APA, except as otherwise set forth in the APA.

B. The transfer of each of the Acquired Assets to the Purchaser will be as of the Closing Date and shall be a legal, valid, and effective transfer of such assets that shall vest the Purchaser with all right, title, and interest of the Debtors to the Acquired Assets free and clear of all charges, liens, interests, security interests, claims, mortgages, leases, subleases, hypothecations, deeds of trust, pledges, options, rights of use or possession, rights of first offer or first refusal, easements, servitudes, restrictive covenants, encroachments, encumbrances, transfer restrictions or other similar restrictions of any kind (collectively, “Adverse Interests”), except for any Permitted Encumbrances and Assumed Liabilities.

VII. Section 363(f) Is Satisfied

A. The Purchaser would not have entered into the APA and would not consummate the transactions contemplated thereby if the Sale of the Acquired Assets to the Purchaser and the assumption, assignment and sale of the Assumed Contracts to the Purchaser were not, except as otherwise provided in the APA with respect to the Permitted Encumbrances and Assumed Liabilities, free and clear of all Adverse Interests of any kind or nature whatsoever, or if the Purchaser would, or in the future could (except and only to the extent expressly provided in the APA and with respect to the Permitted Encumbrances and Assumed Liabilities), be liable for any of such Adverse Interests, including, but not limited to, Adverse Interests in respect of the following: (i) all mortgages, deeds of trust and security interests; (ii) any pension, welfare, compensation or other employee benefit plans, agreements, practices and programs, including, without limitation, any pension plan of any Debtor; and (iii) any other employee, worker’s compensation, occupational disease or unemployment or temporary disability related claim, including, without limitation, claims that might otherwise arise under or pursuant to (a) the Employee Retirement Income Security Act of 1974, as amended, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the Federal Rehabilitation Act of 1973,

(e) the National Labor Relations Act, (f) the Worker Adjustment and Retraining Notification Act of 1988, (g) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, (h) the Americans with Disabilities Act of 1990, (i) the Consolidated Omnibus Budget Reconciliation Act of 1985, (j) state discrimination laws, (k) state unemployment compensation laws or any other similar state laws or (l) any other state or federal benefits or claims relating to any employment with any of the Debtors or any of their respective predecessors; (iv) any bulk sales or similar law; (v) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended; (vi) any Environmental Law(s); and (vii) any theories of successor or transferee liability.

B. The Debtors may sell the Acquired Assets free and clear of all Adverse Interests against the Debtors, their estates or any of the Acquired Assets (except for any Assumed Liabilities and Permitted Encumbrances under the APA) 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. Those holders of Adverse Interests against or in the Debtors, their estates or any of the Acquired Assets who did not object or who withdrew their objections to the Sale or the Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of such Adverse Interests 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 Adverse Interests, if any, in each instance against the Debtors, their estates or any of the Acquired Assets, attach to the net cash proceeds of the Sale ultimately attributable to the Acquired Assets in which such creditor or interest holder alleges an interest, in the same order of priority, with the same validity, force and effect that such creditor or interest holder had prior to the Sale, subject to any claims and defenses the Debtors and their estates may possess with respect thereto.

VIII. Assumption and Assignment of the Assumed Contracts

A. The assumption and assignment of the Assumed Contracts pursuant to the terms of this Sale Order is integral to the APA and is in the best interests of the Debtors and their estates, creditors, interest holders and other parties in interest and represents the reasonable exercise of sound and prudent business judgment by the Debtors.

B. The amounts set forth on Exhibit 2 annexed hereto are the sole amounts necessary under sections 365(b)(1)(A) and (B) and 365(f)(2)(A) of the Bankruptcy Code to cure all monetary defaults and pay all actual pecuniary losses under the Assumed Contracts (the “Cure Amounts”).

C. Pursuant to the terms of the APA, the Purchaser and/or the Debtors have:

(i) cured and/or provided adequate assurance of cure of any defaults existing prior to the Closing Date 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 actual pecuniary loss to such party resulting from a default prior to the Closing Date under any of the Assumed Contracts, within the meaning of section 365(b)(1)(B) of the Bankruptcy Code. After the payment of the relevant Cure Amounts by the Purchaser and as required by the APA, the Debtors shall not have any further liabilities to the Contract Counterparties on or after the Closing Date. The Purchaser provided adequate assurance of its future performance under the relevant Assumed Contracts within the meaning of sections 365(b)(1)(C), 365(b)(3) (to the extent applicable) and 365(f)(2)(B) of the Bankruptcy Code. Any non-Debtor counterparty to an Assumed Contract who did not timely file an objection to the assumption of its Assumed Contract shall be deemed to have consented to its assumption and assignment to the Purchaser pursuant to section 365 of the Bankruptcy Code.

D. No default exists in the Debtors' performance under the Assumed Contracts as of the Closing Date other than the failure to pay Cure Amounts or defaults that are not required to be cured as contemplated in section 365(b)(1)(A) of the Bankruptcy Code.

IX. Compelling Circumstances for an Immediate Sale

A. To maximize the value of the Debtors' assets, it is essential that the Sale of the Acquired Assets occur within the time constraints set forth in the APA. The consummation of the Sale 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.

B. The consummation of the transaction is legal, valid and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, sections 105(a), 363(b), 363(f), 363(m), 365(b) and 365(f), and all of the applicable requirements of such sections have been complied with in respect of the transaction.

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

General Provisions

1. The relief requested in the Motion is granted and the Sale contemplated thereby, including the APA is approved, to the extent set forth herein.
2. This Court's findings of fact and conclusions of law set forth in the Bidding Procedures Order are incorporated herein by reference.
3. All objections to the Motion or the relief requested therein that have not been withdrawn, waived or settled as announced to the Court at the Sale Hearing or by stipulation filed with the Court, and all reservations of rights included therein, are hereby overruled on the

merits or the interests of such objections have been otherwise satisfied or adequately provided for by this Sale Order.

Approval of the APA

4. The APA and all other ancillary documents, and all of the terms and conditions thereof, are hereby approved as set forth herein.

5. Pursuant to section 363(b) of the Bankruptcy Code, the Debtors are authorized to take any and all actions necessary or appropriate to (i) consummate the Sale of the Acquired Assets to the Purchaser pursuant to and in accordance with the terms and conditions of the APA and this Sale Order, (ii) close the Sale as contemplated in the APA and this Sale Order, and (iii) execute and deliver, perform under, consummate, implement 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, including the Escrow Agreement and any other ancillary documents, or as may be reasonably necessary or appropriate to the performance of the obligations as contemplated by the APA and such other ancillary documents.

6. This Sale Order shall be binding in all respects upon the Debtors, including the Debtors' estates, all holders of equity interests in any Debtor, all holders of any Claim(s) (whether known or unknown) against any Debtor, any holders of Adverse Interests against or on all or any portion of the Acquired Assets, all Contract Counterparties, the Purchaser and all successors and assigns of the Purchaser, the Acquired Assets and any trustees, if any, subsequently appointed in any of the Chapter 11 Cases or upon a conversion to chapter 7 under the Bankruptcy Code of any of the Chapter 11 Cases. 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.

7. The Purchaser shall perform any and all obligations under the APA and deliver all consideration contemplated under same, including, but not limited to performance under the Note.

Transfer of the Acquired Assets

8. Pursuant to sections 105(a), 363(b), 363(f), 365(b) and 365(f) of the Bankruptcy Code, the Debtors are authorized to transfer the Acquired Assets on the Closing Date. Such Acquired Assets shall be transferred to the Purchaser upon and as of the Closing Date, and such transfer shall constitute a legal, valid, binding and effective transfer of such Acquired Assets and shall be free and clear of all Adverse Interests, except Assumed Liabilities and Permitted Encumbrances under the APA. Upon the Closing, the Purchaser shall take title to and possession of the Acquired Assets subject only to the Assumed Liabilities and Permitted Encumbrances. Pursuant to section 363(f) of the Bankruptcy Code, the transfer of title to the Acquired Assets and the Assumed Contracts shall be free and clear of all Adverse Interests except for Assumed Liabilities and Permitted Encumbrances, all including, without limitation, any and all claims pursuant to any successor or successor-in-interest liability theory. Adverse Interests shall attach solely to the net cash proceeds of the Sale with the same validity, priority, force and effect that they now have as against the Acquired Assets, subject to any claims and defenses the Debtors and their estates may possess with respect thereto.

9. Except as expressly provided by the APA with respect to Assumed Liabilities and Permitted Encumbrances, all persons and entities holding Adverse Interests in all or any portion of the Acquired Assets arising under or out of, in connection with or in any way relating to the Debtors, the Acquired Assets, the operation of the Debtors' business prior to the Closing Date or the transfer of the Acquired Assets to the Purchaser, are hereby forever barred, estopped and permanently enjoined from asserting against the Purchaser or its successors or assigns, their

property or the Acquired Assets, such persons' or entities' Adverse Interests in and to the Acquired Assets. On the Closing Date, each creditor is authorized to execute such documents and take all other actions as may be deemed by the Purchaser to be necessary or desirable to release liens or claims on the Acquired Assets, if any, as provided for herein, as such liens or claim may have been recorded or may otherwise exist.

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

11. A certified copy of this Sale Order may be filed with the appropriate clerk and/or recorded with the recorder to act to cancel any of the Adverse Interests and other encumbrances of record.

12. If any person or entity that has filed statements or other documents or agreements evidencing Adverse Interests in all or any portion of the Acquired Assets and has not delivered to the Debtors prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements and any other documents necessary or desirable to the Purchaser for the purpose of documenting the release of all Adverse Interests (other than Assumed Liabilities or Permitted Encumbrances), which the person or entity has or may assert with respect to all or any portion of the Acquired Assets, then the Purchaser and the Debtors are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of such person or entity with respect to the Acquired Assets.

13. This Sale Order is and shall be binding upon and govern the acts of all persons and 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 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 any lease; and each of the foregoing persons and entities is hereby authorized to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA.

Payment of DIP Facility Obligations; Continuing Lien on Proceeds

14. Notwithstanding anything to the contrary herein, on the Closing Date the Debtors shall pay the DIP Lender from the net proceeds of the Sale, including Cash or other consideration, an amount sufficient to pay and satisfy in full and in immediately available funds, without deduction or setoff, any and all DIP Facility Obligations (as defined in the Final DIP Order, [Docket No. ____]) and all other amounts due the DIP Lender under the DIP Note (as defined in the Final DIP Order) in accordance with the terms of the Final DIP Order, which payment shall be indefeasible once made, and not subject to recovery, diminution, reduction or reversal on any basis. After indefeasible payment in full in cash and other consideration of the DIP Facility Obligations, (i) on the Closing Date, subject to retaining amounts set forth in the DIP Budget as agreed to by the DIP Lender and Prepetition Secured Parties (each as defined in the Final DIP Order), and (ii) on the date after the Closing Date that funds are released from any escrow established in connection with the sale, in each case (i) and (ii) above), the Debtors shall pay directly to the Prepetition Secured Parties from the remaining net proceeds of the Sale and available Cash Collateral any and all cash in immediately available funds and other

consideration, without deduction or setoff, to satisfy obligations due the Prepetition Secured Parties under the Prepetition Financing Documents, which payment shall be indefeasible once made, and not subject to recovery, diminution, reduction or reversal on any basis.

Notwithstanding anything to the contrary contained in this Order or otherwise, the liens and claims of the Prepetition Secured Parties and DIP Lender pursuant to the Final DIP Order and DIP Note shall attach to the remaining net cash proceeds of the Sale with the same priority, validity, extent, force and effect as they now have in the Acquired Assets to secure the obligations owed the Prepetition Secured Parties or the DIP Lender that arose before the Closing Date, as well as such obligations owed to the DIP Lender, if any, that arise on or after the Closing Date.

Assumed Contracts

15. Upon the Closing of the Sale, the Debtors are authorized and directed to assume and assign the Assumed Contracts to the Purchaser free and clear of all Adverse Interests, subject to the terms of this Sale Order. The payment of the applicable Cure Amounts (if any) by the Purchaser as required by the APA shall (a) effect a cure of all defaults existing thereunder as of the Closing Date, (b) compensate for any actual pecuniary loss to such non-Debtor party resulting from such default, and (c) together with the assignment by the Debtors to and the assumption of the Assumed Contracts by the Purchaser, constitute adequate assurance of future performance thereof. The Debtors shall then have assumed the Assumed Contracts and shall have assigned the Assumed Contracts to the Purchaser. Pursuant to section 365(f) of the Bankruptcy Code, the assignment by the Debtors of the Assumed Contracts shall not be a default thereunder. After the payment of the relevant Cure Amounts by the Purchaser or Debtors, as applicable and as required by the APA, the Debtors shall have any further liabilities to the

Contract Counterparties, and the counterparties shall be estopped from asserting any and all claims, whether known or unknown, against the Debtors on account of the Assumed Contract.

16. Any provisions in any Assumed Contract that prohibits or conditions the assignment of such Assumed Contract or allows the 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, constitute unenforceable anti-assignment provisions that are void and of no force and effect. All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to the Purchaser of the Assumed Contracts have been satisfied. Upon the Closing, in accordance with sections 363 and 365 of the Bankruptcy Code, the Purchaser shall be fully and irrevocably vested with all right, title and interest of the Debtors under the Assumed Contracts.

17. Any Contract Counterparty who did not timely file an objection to the assumption of its Assumed Contract shall be deemed to have consented to its assumption and assignment to the Purchaser pursuant to section 365 of the Bankruptcy Code.

18. Upon the Closing and the payment of the relevant Cure Amounts, if any, the Purchaser shall be deemed to be substituted for the Debtors as a party to the applicable Assumed Contracts and the Debtors shall be relieved, pursuant to section 365(k) of the Bankruptcy Code, from any further liability under the Assumed Contracts.

19. Upon the payment of the applicable Cure Amount, if any, the Assumed Contracts will remain in full force and effect, and no default shall exist under the Assumed Contracts nor shall there exist any event or condition which, with the passage of time or giving of notice, or both, would constitute such a default.

20. There shall be no rent accelerations, assignment fees, increases (including advertising rates) or any other fees charged to the Purchaser or the Debtors as a result of the assumption and assignment of the Assumed Contracts.

21. Pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code, all Contract Counterparties are forever barred and permanently enjoined from raising or asserting against either the Debtors or the Purchaser any assignment fee, default, breach or claim or pecuniary loss, or condition to assignment, arising under or related to the Assumed Contracts existing as of the Closing Date or arising by reason of the Closing.

Other Provisions

22. The Debtors, in accordance with the provisions of the Bidding Procedures and Bidding Procedures Order, determine that the Purchaser was the Successful Bidder(s) and _____ was the Back-Up Bidder(s) and filed notice of same with this Court [Docket No. ____]. The Purchaser shall be required to consummate the Sale by [____], subject to extensions by the Debtors, in their sole discretion, in consultation with the Consultation Parties. If the Purchaser fails to timely consummate the Sale of the Acquired Assets, or any part thereof, the Debtors shall be required, to consummate the Sale of the Acquired Assets to the Back-up Bidder pursuant to the terms of the Back-Up Bidder(s) as soon as commercially reasonable.

23. Effective upon the Closing Date except as set forth in the APA with respect to Permitted Encumbrances and Assumed Liabilities, all persons and entities are forever prohibited and permanently enjoined from commencing or continuing in any manner any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral or other proceeding against the Purchaser, its successors and assigns or the Acquired Assets, with respect to any (i) Adverse Interests arising under, out of, in connection with or in any way relating to the Debtors, the Purchaser, the Acquired Assets, or the operation of the Acquired Assets prior to the

Closing of the Sale or (ii) successor liability, including, without limitation, the following actions:

(a) commencing or continuing in any manner any action or other proceeding against the Purchaser, its successors or assigns, assets or properties, (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against the Purchaser, its successors or assigns, assets or properties, (c) creating, perfecting or enforcing any Adverse Interests against the Purchaser, its successors or assigns, assets or properties, (d) asserting any setoff, right of subrogation or recoupment of any kind against any obligation due the Purchaser or its successors or assigns, (e) commencing or continuing any action, in any manner or place, that does not comply or is inconsistent with the provisions of this Sale Order or other orders of the Court, or the agreements or actions contemplated or taken in respect thereof or (f) revoking, terminating or failing or refusing to renew any license, permit or authorization to operate any of the Acquired Assets or conduct any of the businesses operated with the Acquired Assets.

24. Except for the Assumed Liabilities, Permitted Encumbrances or as otherwise expressly set forth in the APA, the Purchaser shall not have any liability or other obligation of the Debtors arising under or related to any of the Acquired Assets or the APA or the transactions related thereto. Without limiting the generality of the foregoing, and except for the Assumed Liabilities or Permitted Encumbrances provided in the APA, the Purchaser shall not be liable for any Claims or any other Adverse Interests against the Debtors or any of its predecessors or affiliates, and the Purchaser shall have no successor or vicarious liabilities of any kind or character, including, but not limited to, any theory of antitrust, environmental, successor or transferee liability, labor law, *de facto* merger or substantial continuity, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtors or any obligations of the Debtors arising prior to the Closing Date,

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 any of the Acquired Assets prior to the Closing. The Purchaser has given substantial consideration under the APA for the benefit of the holders of any Adverse Interests. The consideration given by the Purchaser shall constitute valid and valuable consideration for the releases of any potential claims of successor liability of the Purchaser, which releases shall be deemed to have been given in favor of the Purchaser by all holders of Adverse Interests against or interests in the Debtors or any of the Acquired Assets.

25. The transactions contemplated by the APA are undertaken by the Purchaser without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale (including the assumption and assignment of the Assumed Contracts), unless such authorization and such Sale are duly stayed pending such appeal. The Purchaser is a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of section 363(m) of the Bankruptcy Code.

26. No bulk sales law or any similar law of any state or other jurisdiction applies in any way to the Sale.

27. The failure specifically to include any particular provision of the APA in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the APA be authorized and approved in its entirety.

28. The APA and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto and in accordance with the terms thereof, without further order of the Court.

29. Notwithstanding the possible applicability of Bankruptcy Rules 6004, 6006, 7062, 9014 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable.

30. All time periods set forth in this Sale Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

31. The Court shall retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Sale Order and the APA, all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith to which the Debtors are a party and adjudicate, if necessary, any and all disputes concerning or relating in any way to the Sale.

Dated: _____, 2019
Wilmington, Delaware

United States Bankruptcy Judge

EXHIBIT 1

APA

EXHIBIT 2

Cure Amounts

To Be Provided

EXHIBIT 3

Supplemental Cure Schedule

To Be Provided

Exhibit D

Sale Notice

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

In re:

BEAVEX HOLDING CORPORATION, *et al.*,¹

Debtors.

Chapter 11

Case No. 19-10316 (___)

Joint Administration Requested

**NOTICE OF BID PROCEDURES, AUCTION DATE,
OBJECTION DEADLINE AND SALE HEARING WITH RESPECT TO
SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS**

PLEASE TAKE NOTICE that, on February 18, 2019, the above-captioned debtors and debtors in possession (collectively, the “Debtors”)² filed the Debtors’ motion (the “Motion”) for the entry of (i) an order (a) approving and authorizing certain bidding procedures, (b) approving and authorizing the bid protections, (c) scheduling a related auction and hearing to consider approval of the sale of substantially all of the Debtors’ assets (the “Assets”) (or any combination of subset(s) thereof), (d) approving procedures related to the assumption and assignment of certain executory contracts and unexpired leases, (e) approving the form and manner of notice and (f) granting related relief; and (ii) an order (a) authorizing the sale of substantially all of the Assets (or any combination of subset(s) thereof) free and clear of liens, claims encumbrances, and other interest, (b) authorizing and approving the Debtors’ performance under the asset purchase agreement, (c) approving the assumption and assignment of certain of the Debtors’ executory contracts and unexpired leases related thereto and (d) granting related relief. The Debtors seek, among other things, to sell the Assets free and clear of all liens, claims, encumbrances and other interests, pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code, to the bidder submitting the highest or otherwise best offer for the Assets at an auction (such bidder, the “Successful Bidder(s)”).

PLEASE TAKE FURTHER NOTICE that, on _____, the Bankruptcy Court entered an order (the “Bidding Procedures Order”) approving the bidding procedures (the “Bidding Procedures”) that set key dates and times related to the Sale of the Assets. All interested bidders should carefully read the Bidding Procedures Order and the Bidding Procedures. To the extent that there are any inconsistencies between the Bidding Procedures Order (including the Bidding Procedures) and the summary description of its terms and conditions contained in this Notice, the terms of the Bidding Procedures Order shall control.

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: BeavEx Holding Corporation (7740); BeavEx Acquisition, Inc. (5497); BeavEx Incorporated (7355); JNJW Enterprises, Inc. (4963); and USXP, LLC (2997). The headquarters for the above-captioned Debtors is located at 2120 Powers Ferry Road SE, Suite 300, Atlanta, GA 30339.

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Bidding Procedures, the deadline to submit a Qualified Bid, as such term is defined in the Bidding Procedures, will be _____.

PLEASE TAKE FURTHER NOTICE that, pursuant to terms of the Bidding Procedures, the Debtors are authorized to conduct an auction (the "Auction") to sell the Assets if they receive one or more Qualified Bids. The Auction, if conducted, will be conducted on _____ at the offices of Young Conaway Stargatt & Taylor, LLP, 1000 N. King Street, Wilmington, Delaware 19801, or at such other location as shall be timely communicated to all Qualified Bidders.

PLEASE TAKE FURTHER NOTICE that a hearing will be held to approve the Sale to the Successful Bidder(s) (the "Sale Hearing") before the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, Wilmington, Delaware 19801, ___ floor, Courtroom ___, on _____, or at such time thereafter as counsel may be heard or at such other time as the Bankruptcy Court may determine. Objections to the Sale must be filed and served so as to be received no later than 4:00 p.m. _____ on _____ by (i) the Debtors, 2120 Powers Ferry Road SE, Suite 300, Atlanta, GA 30339 (Attn: Bradley E. Scher (bscher@ocenanridgecapital.com)), (ii) counsel to the Debtors: Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801 (Attn: Joseph M. Barry, Esq. (jbarry@ycst.com), Matthew B. Lunn, Esq. (mlunn@ycst.com) and Donald J. Bowman, Jr., Esq. (dbowman@ycst.com)), (iii) Debtors' Chief Restructuring Officer: G2 Capital Advisors, 353 Sacramento Street, Suite 1813, San Francisco, CA 94111 (Attn: Donald Van der Wiel (dvanderwiel@beavex.com) and Ben Wright (bwright@g2cap.com)), (iv) counsel to prepetition and postpetition secured lenders], Winston Strawn, LLP, 200 Park Avenue, New York, NY 10166 (Attn: Carey D. Schreiber, Esq. (cschreiber@winston.com)) and Ashby & Geddes, P.A. (Attn: Gregory Taylor, Esq. (gtaylor@ashbygeddes.com)), (v) counsel to the Lead Bidder: Baker Botts L.L.P., 30 Rockefeller Plaza, New York, NY 10112 (Attn: Emanuel Grillo, Esq. (emanuel.grillo@bakerbotts.com)), (vi) counsel to any statutorily appointed committee in the Chapter 11 Cases, and (vii) the U.S. Trustee (collectively, the "Notice Parties").

PLEASE TAKE FURTHER NOTICE that this Notice is subject to the full terms and conditions of the Bidding Procedures Order and Bidding Procedures, which Bidding Procedures Order shall control in the event of any conflict. The Debtors encourage parties in interests to review such documents in their entirety. Any party that has not received a copy of either the Motion, Bidding Procedures Order or Bidding Procedures that wishes to obtain a copy of either or all, including all exhibits thereto, may (i) make such request in writing to the Debtors' court approved claims agent, Bankruptcy Management Solutions (dba Stretto) ("Stretto"), at either 826 E. 23rd Avenue, Suite 275, Denver, CO 80238 or email: teambeavex@stretto.com or (ii) examine them on Stretto's website free of charge at <https://cases-cr.stretto.com/beavex> or on the Bankruptcy Court's electronic docket for the Debtors' chapter 11 cases, which is posted on the Internet at www.deb.uscourts.gov (a PACER login and password are required and can be obtained through the PACER SERVICE Center at www.pacer.psc.uscourts.gov).

Dated: _____, 2019
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/

Joseph M. Barry (No.4221)
Matthew B. Lunn (No. 4119)
Donald J. Bowman, Jr. (No. 4383)
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253

*Proposed Counsel to the Debtors and
Debtors in Possession*

Exhibit E

Cure Notice

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

<p>In re:</p> <p>BEAVEX HOLDING CORPORATION, <i>et al.</i>,¹</p> <p style="text-align: center;">Debtors.</p>	<p>Chapter 11</p> <p>Case No. 19-10316 (___)</p> <p>Joint Administration Requested</p>
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**NOTICE TO COUNTERPARTIES TO EXECUTORY CONTRACTS AND UNEXPIRED LEASES
OF THE DEBTORS OF ASSUMPTION, ASSIGNMENT, AND SALE WITH RESPECT TO
SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS**

PLEASE TAKE NOTICE that, on February 18, 2019, the above-captioned debtors and debtors in possession (collectively, the “Debtors”)² filed the Debtors’ motion (the “Motion”) for the entry of (i) an order (a) approving and authorizing certain bidding procedures, (b) approving and authorizing the bid protections, (c) scheduling a related auction and hearing to consider approval of the sale of substantially all of the Debtors’ assets (the “Assets”) (or any combination of subset(s) thereof), (d) approving procedures related to the assumption and assignment of certain executory contracts and unexpired leases, (e) approving the form and manner of notice and (f) granting related relief; and (ii) an order (a) authorizing the sale of substantially all of the Assets (or any combination of subset(s) thereof) free and clear of liens, claims encumbrances, and other interest, (b) authorizing and approving the Debtors’ performance under the asset purchase agreement, (c) approving the assumption and assignment of certain of the Debtors’ executory contracts and unexpired leases related thereto and (d) granting related relief. The Debtors seek, among other things, to sell the Assets free and clear of all liens, claims, encumbrances and other interests, pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code, to the bidder submitting the highest or otherwise best offer for the Assets at an auction (such bidder, the “Successful Bidder(s)”).

PLEASE TAKE FURTHER NOTICE that, on _____, the Bankruptcy Court entered an order (the “Bidding Procedures Order”) approving the bidding procedures (the “Bidding Procedures”), that set key dates and times related to the Sale of the Assets. All interested bidders should carefully read the Bidding Procedures Order and the Bidding Procedures.

PLEASE TAKE FURTHER NOTICE that, (i) certain of the Debtors entered into an agreement for the sale of Assets with TForce Final Mile, LLC, TForce Final Mile West, LLC and TForce Logistics, LLC (collectively, the “Lead Bidder”) and (ii) certain executory contracts or unexpired leases may be assumed and assigned to the Lead Bidder under the APA or to the Successful Bidder following the Auction, if necessary.

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: BeavEx Holding Corporation (7740); BeavEx Acquisition, Inc. (5497); BeavEx Incorporated (7355); JNJW Enterprises, Inc. (4963); and USXP, LLC (2997). The headquarters for the above-captioned Debtors is located at 2120 Powers Ferry Road SE, Suite 300, Atlanta, GA 30339.

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

YOU ARE RECEIVING THIS NOTICE BECAUSE EITHER YOU OR ONE OF YOUR AFFILIATES IS A COUNTERPARTY TO AN EXECUTORY CONTRACT OR UNEXPIRED LEASE IDENTIFIED BELOW WITH ONE OR MORE OF THE DEBTORS:

[Counterparty] [Contract/Lease Description] [Cure Amount]

PLEASE TAKE FURTHER NOTICE that the Motion seeks Bankruptcy Court approval of the Sale free and clear of all liens, claims, interests and encumbrances, pursuant to sections 105(a) and 363 of the Bankruptcy Code, to the Successful Bidder(s), including the assumption by the Debtors and assignment to the buyer of certain executory contracts and unexpired leases, pursuant to section 365 of the Bankruptcy Code (the “Assumed Contracts”). The Bidding Procedures Order establishes the procedure by which executory contracts (the “Executory Contracts”) and unexpired leases (the “Unexpired Leases”) shall be assumed and assigned. Within one (1) business day after the conclusion of the Auction (if any) the Debtors shall file a notice with the Bankruptcy Court identifying the Successful Bidder.

PLEASE TAKE FURTHER NOTICE that a hearing Bidder (the “Sale Hearing”) will be held to approve the Sale to the Successful before the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, Wilmington, Delaware 19801, ___floor, Courtroom ___, on _____, or at such time thereafter as counsel may be heard or at such other time as the Bankruptcy Court may determine. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date schedule for the Sale Hearing.

PLEASE TAKE FURTHER NOTICE that, consistent with the Bidding Procedures Order, the Debtors may seek to assume an Executory Contract or Unexpired Lease identified above and to which you or your affiliates are a counterpart. The amount shown identified above as the “Cure Amount” is the amount, if any, based upon the Debtors’ books and records, that the Debtors assert is owed to cure any defaults existing under the Assumed Contract.

PLEASE TAKE FURTHER NOTICE that, if at any time after the entry of the Bidding Procedures Order, the Debtors identify additional Executory Contracts and/or Unexpired Leases to be assumed and assigned to the Successful Bidder, the Debtors shall serve a supplemental notice (the “Supplemental Cure Notice”) by facsimile, electronic transmission, hand delivery or overnight mail to you (and your attorney, if known) if you are a party to a supplement Executory Contract or Unexpired Lease at the last known address available to the Debtors by no later than ten (10) days before the proposed effective date of the assignment.

PLEASE TAKE FURTHER NOTICE that inclusion of an Executory Contract or Unexpired Lease on the Cure Notice shall not constitute an admission that such Executory Contract or Unexpired Lease is an executory contract or unexpired lease and shall not obligate the Successful Bidder(s) to take assignment of such Executory Contract or Unexpired Lease. Only those Executory Contracts and Unexpired Leases that constitute Assumed Contracts pursuant to the Lead Agreement or any Successful Bidder’s Modified APA will be assumed, assigned and sold to the Successful Bidder.

PLEASE TAKE FURTHER NOTICE that any objection (each, a “Cure Objection”) must be filed to (i) the proposed assumption, assignment and sale of the Executory Contracts and Unexpired Leases (and must state in its objection, with specificity, the legal and factual basis thereof) and (ii) if applicable, the proposed Cure Amounts (and must state in its objection, with specificity, what Cure Costs are required with appropriate documentation in support thereof) no later than _____. If you file a timely Cure Objection and the parties are unable to consensually resolve the dispute prior to the Sale Hearing, the amount to be paid or reserves with respect to such objection will be determined at the Sale Hearing.

PLEASE TAKE FURTHER NOTICE that, if no objection is timely filed and served, you will be deemed to have consented to the assumption, assignment and sale of the Executory Contract or Unexpired Lease to any Successful Bidder(s) if such Executory Contract or Unexpired Lease is elected by any Successful Bidder as an Assumed Contract and will be forever barred from asserting any objection with regard to such assumption, assignment and sale, except with respect to the adequate assurance of future performance by any Successful Bidder. The Cure Amounts set forth in Exhibit 1 shall be controlling, notwithstanding anything to the contrary in any Executory Contract or Unexpired Lease, or any other document, and you shall be deemed to have consented to the Cure Costs and shall be forever barred from asserting any other claims related to such Executory Contract or Unexpired Lease against the Debtors or the Successful Bidder, or property of any of them.

PLEASE TAKE FURTHER NOTICE that any Cure Objection you may file must be served on (i) the Debtors, 2120 Powers Ferry Road SE, Suite 300, Atlanta, GA 30339 (Attn: Bradley E. Scher (bscher@ocenanridgecapital.com)), (ii) counsel to the Debtors: Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801 (Attn: Joseph M. Barry, Esq. (jbarry@ycst.com), Matthew B. Lunn, Esq. (mlunn@ycst.com) and Donald J. Bowman, Jr., Esq. (dbowman@ycst.com)), (iii) Debtors' Chief Restructuring Officer: G2 Capital Advisors, 353 Sacramento Street, Suite 1813, San Francisco, CA 94111 (Attn. Donald Van der Wiel (dvanderwiel@beavex.com) and Ben Wright (bwright@g2cap.com)), (iv) counsel to prepetition and postpetition secured lenders], Winston Strawn, LLP, 200 Park Avenue, New York, NY 10166 (Attn. Carey D. Schreiber, Esq. (cschreiber@winston.com)) and Ashby & Geddes, P.A. (Attn. Gregory Taylor, Esq. (gtaylor@ashbygeddes.com)), (v) counsel to the Lead Bidder: Baker Botts L.L.P., 30 Rockefeller Plaza, New York, NY 10112 (Attn. Emanuel Grillo, Esq. (emanuel.grillo@bakerbotts.com)), (vi) counsel to any statutorily appointed committee in the Chapter 11 Cases, and (vii) the U.S. Trustee (collectively, the "Notice Parties"), so as to be received no later than 4:00 p.m. _____ on _____.

PLEASE TAKE FURTHER NOTICE that the Successful Bidder(s) shall be responsible for satisfying any requirements regarding adequate assurance of future performance that may be imposed under sections 365(b) and (f) of the Bankruptcy Code in connection with the proposed assignment of any Assumed Contract. Any objections to any Successful Bidder's proposed form of adequate assurance of future performance must be raised at the Sale Hearing and will be resolved at the Sale Hearing.

PLEASE TAKE FURTHER NOTICE that nothing contained herein shall obligate the Debtors to assume any Assumed Contract or to pay any Cure Amount.

PLEASE TAKE FURTHER NOTICE that (i) the assumption and assignment of Executory Contracts and Unexpired Leases and (ii) the Cure Amounts, and any objections associated with such amounts, are subject to the Bidding Procedures Order. In the case of any conflict arising out of the assumption and assignment of Executory Contracts and Unexpired Leases or the Cure Amounts, the Bidding Procedures Order shall govern in such conflict. Recipients of this Cure Notice are encouraged to read the Bidding Procedures Order.

PLEASE TAKE FURTHER NOTICE THAT IF YOU DO NOT TIMELY FILE AND SERVE AN OBJECTION AS STATED ABOVE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITH NO FURTHER NOTICE.

Dated: _____, 2019
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ _____
Joseph M. Barry (No. 4221)
Matthew B. Lunn (No. 4119)
Donald J. Bowman, Jr. (No. 4383)
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253

*Proposed Counsel to the Debtors and
Debtors in Possession*