

Exhibit E

located in Crawford County, Pennsylvania. Certain parcels of the Real Property are unnecessary for the operation of the Park or for the Debtor to realize the charitable purposes for which the Real Property was put into trust (each such parcel is referred to as a “*Noncore Parcel*” and collectively, the “*Noncore Parcels*”).

5. On September 6, 2016 this Court entered a final order approving the Disclosure Statement and confirming the Debtor’s Joint Amended Plan of Reorganization (the “*Plan*”) dated July 28, 2016 finding that the Plan is in the best interests of the Debtor’s estate, its creditors, and all other parties in interest and that it complies with all applicable provisions of the Bankruptcy Code, Section 1129(a) and (b) with respect to all Classes of Claims and Interests under the Plan, and as required by Bankruptcy Rule 3016(a). *See* Doc no. 442. (“*Confirmation Order*”).

6. Since entry of the Confirmation Order through March 2020, the Debtor has made all quarterly payments due under the Plan and has sold several Noncore Parcels, distributing the payments in full satisfaction of, *inter alia*, the tax liens against the Real Property. The Debtor has been open to the possibility of selling Hotel Conneaut as a means of funding the balloon payment due in 2024 to pay the outstanding balance owed to holders of Allowed Non-Tax Secured Claims. While some offers have been made for the Hotel, the purchase price offered has been insufficient to satisfy the Allowed Non-Tax Secured Claims.

7. With the onset of COVID-19, the Debtor made the hard decision not to open the Park for the 2020 operating season. The Debtor lacks sufficient capital to make the improvements necessary to comply with applicable regulations and guidelines to safely reopen and operate the Park during the pandemic. This lack of operating revenue from 2020 Park operations has been devastating for the Debtor. It has defaulted on its quarterly payments due under the Plan.

8. With the pandemic continuing through 2021, it is not feasible for the Debtor to reopen and operate the Park for the 2021 season or to cure the present defaults under its Plan without a sale of substantially all of its assets.

9. Based upon the foregoing, the Debtor considered its alternatives and how best to preserve the Park and the charitable purpose of its property for the benefit of its creditors and the public. The alternatives to selling substantially all of the Debtor’s assets to a buyer willing to accept them subject with the public use restriction are a foreclosure by the holders of the remaining Allowed Non-Tax Secured Claims or proceeding under a Chapter 7 case. The Debtor anticipates that far less value is likely to be generated for creditors under the alternative scenarios and the public access to the assets is less likely to continue.

10. On January 21, 2021, to set parameters for a fair, orderly and productive sale process, the Debtor filed its *Expedited Motion Of Debtor For An Order (A) Designating A Stalking Horse Bidder For The Purchase Of All Of The Debtor’s Assets; (B) Approving Bid Protections In Connection With Such Designation; (C) Approving The Bid Procedures For The Sale Of Substantially All Of The Debtor’s Assets; (D) Scheduling A Hearing For Auction And Approval Of The Sale Of The Assets Free And Clear Of Liens To The Successful Bidder; (E) Approving Certain Deadlines And The Form, Manner, And Sufficiency Of Notices, And (F) Granting Related Relief* (the “*Bid Procedures Motion*”) (Document No. 648).¹

11. By Order of Court dated January 26, 2021, and entered at Document No. 653 (the “*Bid Procedures Order*”), the Court granted the relief requested in the Bid Procedures Motion.

¹ Capitalized terms not otherwise defined in this Sale Motion shall have the meaning given to them in the Bid Procedures Motion or the Debtor’s confirmed Joint Chapter 11 Plan of Reorganization Dated July 28, 2016 at Document No. 427, as applicable.

12. The Bid Procedures Motion contemplates the filing of this Sale Motion on or before February 1, 2021 pursuant to which the Debtor would seek an Order of Court authorizing the sale of the Debtor's Assets to the Successful Bidder free and clear of all claims and interests, but subject to the applicable charitable use restriction. The Debtor's Assets include, but are not limited to, the following categories: the Debtor's Real Property, Water System, Amusement Park, Water Park, Hotel Conneaut Property, Boat Dock System, Camperland, Contracts, Permits and Assignments, Intangible Assets and post-closing receivables.

13. The following above-captioned Respondents to this Motion have asserted liens against or interests in the Debtor's Assets, that have yet to be satisfied or divested:

- a. Conneaut Lake Joint Municipal Authority,
- b. Donald G. Kaltenbaugh,
- c. Joseph J. Prischak And Isabel J. Prischak,
- d. Mercer County State Bank,
- e. Quinn, Buseck, Lernhuis, Toohey & Kroto,
- f. U.S. Foodservice,
- g. Economic Progress Alliance Of Crawford County,
- h. Northwest Pennsylvania Regional Planning And Development Commission, and
- i. The Commonwealth Of Pennsylvania

III. THE SALE PROCESS

A. The Stalking Horse Bidder

14. Pursuant to the Bid Procedures Order, the Debtor designated Kaldon Holdings, LLC as the stalking horse bidder for the Debtor's Assets (the "*Stalking Horse Bidder*") in connection

with the Purchase and Sale Agreement entered into by and between the Debtor and the Stalking Horse Bidder dated December 17, 2020 (the "*PSA*"). A true and correct copy of the *PSA* is attached hereto, incorporated herein and labeled Exhibit A.

15. Pursuant to the *PSA*, the parties, among other things, agreed to sell the Debtor's Assets to the Stalking Horse Bidder in exchange for \$1,200,000 in cash at closing (the "*Stalking Horse Bid*"), subject to higher or better bids. The Stalking Horse Bidder provided an initial, earnest money deposit equal to \$50,000.00 (the "*Earnest Deposit*") prior to executing the *PSA*, as well as a good faith additional deposit of \$450,000.00 (the "*Additional Deposit*") to be paid at least three (3) business days prior to the Auction.

B. Marketing Process

16. As the decision was made to sell substantially all of the Debtor's Assets towards the end of calendar year 2020, the Debtor has reached out to a number of parties who may be interested in purchasing some or all of the Debtor's Assets. Individuals or entities expressing an interest in the Debtor's Assets have been provided with an initial due diligence package via email. To the extent such individuals or entities continue to be of interest and have complied with executing a nondisclosure agreement and provided evidence of financial wherewithal, such potential bidders are provided access to or copies of the Debtor's material agreements and contracts and information for purposes of evaluating the Debtor's Assets, operations and financial performance.

17. Moreover, given the public interest in the Debtor's Assets, a number of news articles concerning the proposed sale of the Park have been published since January 21, 2021.

18. To assist the Court, and for an orderly process at the Auction, on or before February 22, 2021, the Debtor will file a notice identifying the Qualified Bidders and Qualified Bids timely

received. The Debtor will also identify the terms of the Baseline Bid that will be used to start the Auction.

19. The Auction and the Sale Hearing on March 2, 2021 at which time the Court will accept Qualified Bids for some or substantially all of the Debtor's Assets. If no Qualified Bids (other than the Stalking Horse Bid) are received timely, then there will be no Auction. The Sale Hearing, however, will move forward and the Debtor will request that the Court approve the sale of the Debtor's Assets to the Stalking Horse Bidder pursuant to the terms of the Stalking Horse PSA.

C. The Sale

20. The sale of substantially all of the Debtor's Assets, approval of which is sought by this Motion, shall be either to (a) the Stalking Horse Bidder pursuant to the PSA or (b) the highest and best bidder at the Auction. A successful bidder (i.e., the party or parties to whom the Debtor will seek Court approval to sell the Debtor's Assets) – whether the Stalking Horse Bidder or the highest and best bidder at the Auction (which may also be the Stalking Horse Bidder) – is referred to herein as a “*Successful Bidder*.” The Sale of the Debtor's Assets is on an AS IS, WHERE IS, basis. See Exhibit A, PSA, § 8(a).

D. Distribution of Proceeds

21. The Debtor estimates the costs of the Sale (the “*Costs of Sale*”) to be approximately \$100,000 to cover the transactional fees and costs incurred by the Debtor in preparing, filing and serving its Bid Procedures Motion, various Notices of Sale, the costs of Advertising, as well as bringing this Sale to Auction and then consummating the Sale to the Successful Bidder. The Costs of Sale will also include payment of the U.S. Trustee's fees. There is no commission to be paid as

part of the Sale. In the event the \$20,000.00 expense reimbursement to the Stalking Horse Bidder (the “*Breakup Fee*”) becomes payable consistent with the approved Bid Procedures, then the Costs of Sale automatically increase by \$20,000.00.

22. The Debtor is requesting payment of the Costs of Sale as a surcharge for professional fees incurred by the Debtor in connection with the sale of substantially all of the Debtor's Assets. The right of the Debtor to surcharge the Debtor's Assets for the necessary and reasonable fees and costs incurred by the Debtor in connection with the sales, including its retained professionals' fees and costs.

23. The Costs of Sale represent a fraction of the total amount due and owing to the Debtor's professionals and management. Since confirmation, the Debtor has incurred legal fees covering, among other things, the four sale proceedings brought before the Court, as well as the litany of post-confirmation litigation that played out through resolution of three (3) adversary actions, including appeals, that finally concluded in May of 2020. The Debtor submits that these services preserved the value of the Debtor's Assets for the benefit of the secured creditors by enabling the Debtor to remain an operating entity since Plan confirmation.²

24. With the present cash offer of \$1,200,000 for the sale of the Debtor's Assets, and assuming payment of \$100,000 to cover the Costs of Sale, the Sale Proceeds are insufficient to pay all secured and post confirmation claims in full. Attached hereto as **Exhibit B** is the Debtor's proposal for distribution (“*Proposed Distribution*”) of the sale proceeds (the “*Sale Proceeds*”).

² The Debtor's request to surcharge the Sale Proceeds for the Costs of Sale does not operate as a waiver of any rights or claims to further surcharge the Sale Proceeds for additional amounts, as appropriate, pursuant to a separate Motion. All such rights and claims are expressly reserved.

25. The Proposed Distribution identifies each holder of a Secured Non-Tax Claim and the Class to which such holder belongs, along with the current principal payoff amount due to each holder without interest. The Classes are organized numerically in order of lien priority such that Class 1 has first priority and Class 18 has last priority. The Proposed Distribution also identifies the holders of post-confirmation unsecured claims and the amount of their respective claims.

26. The Debtor's Proposed Distribution provides for approximately 60% recovery to holders of such claims. In the event there is competitive bidding at the Auction, the dividend payable to creditors would increase.

27. The Debtor submits that the Proposed Distribution is fair and equitable and recognizes that the value obtained for the benefit of the secured creditors was made possible because of the willingness of the Debtor's professionals to represent the Debtor through its post-confirmation litigation and the Debtor's management (a) to back-stop funding needs during the Debtor's bankruptcy case; (b) make loan advances on a post-confirmation basis; and (c) oversee the Debtor's post-confirmation operations that demonstrated double-digit growth.

28. Although the Debtor's Plan contemplated the partial liquidation of assets, as needed, with additional payments to be made out of future operations, nothing in the Plan precluded the Debtor from proposing a sale of substantially all of its assets. Given the impact of COVID 19, following this Sale, there will be no assets or operations remaining from which the Debtor can make any further distributions to creditors. Consequently, the Debtor submits that the Proposed Distribution represents an equitable sharing of the Sale Proceeds.

29. The Debtor understands that consent from certain holders of the Secured Non-Tax Claims may be required in order to make the Proposed Distribution on a pro rata basis. The Debtor

has been in discussions with the appointed representative of the holders of Secured Non-Tax Claims, as well as with counsel for the holders of the Secured Non-Tax Claims who would otherwise be paid in full under if the sale proceeds were distributed in accordance with lien priority. As of the filing of this Sale Motion, the Debtor has not obtained that consent and the parties are still in discussions.

30. Regardless of how the Sale Proceeds are ultimately distributed, the Debtor recognizes that the Sale should move forward and requests that the Court conduct the Auction and enter an Order approving the sale to the Successful Bidder, leaving the Sale Proceeds in escrow to be distributed pursuant to a subsequent Order of Court.

IV. RELIEF REQUESTED

31. The Debtor seeks entry of an Order approving and authorizing the Sale of the Subject Property free and clear of all interests.

V. BASIS FOR RELIEF

A. Sale of Assets Outside the Ordinary Course of Business

32. Bankruptcy Code Section 363(b) provides that a "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).

33. Courts have authorized debtors to sell their assets where a "sound business purpose" exists for the sale. See e.g. *In re Montgomery Ward Holdings Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991); *In re Martin*, 91 F.3d 389, 395 (3d Cir. 1996); *In re Abbott's Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3d Cir. 1986); see also *In re Lionel Corp.*, 722 F.2d 1063, 1069 (2d Cir. 1983) ("Section 363(b) of the Code seems

on its face to confer upon the bankruptcy judge virtually unfettered discretion to authorize the use, sale, or lease, other than in the ordinary course of business, of property of the estate.”); *In re Frezzo*, 217 B.R. 985, 989 (Bankr. E.D. Pa. 1998) (“In determining whether to approve a proposed sale under section 363, courts generally apply standards that, although stated various ways, represent essentially a business judgment test.”).

34. Once a debtor articulates a valid business justification for a sale outside of the ordinary course of business, the business rules dictate that the Court should not second-guess the debtor’s business judgment. The business judgment rule “is a presumption that in making a business decision the directors ... acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the corporation.” *Brehm v. Eisner*, 746 A.2d 244, 264, n. 66 (Del. 2000) (quoting *Aronson v. Lewis*, 473 A.2d 805, 821 (Del. 1984); *In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005); *HOLDERS of Tectonic Network, Inc. v. Wolford*, 554 F. Supp.2d 538, 555 n.111 (D. Del. 2008); *Continuing Creditors’ Comm. Of Star Telecomm., Inc. v. Edgcomb*, 385 F.Supp.2d 449, 462 (D. Del. 2004); see also *In re Johns-Manville Corp.*, 60 B.R. 612, 615-16 (Bankr. S.D. N.Y. 1986) (“a presumption of reasonableness attaches to a debtor’s management decisions.”).

35. Here, there is sound business justification for selling the Debtor’s Assets. The Debtor lacks the financial capacity to make the immediate investment necessary to comply with applicable CDC guidelines and open the Park for the 2021 operating season. Given the loss of operating revenues in 2020, the Debtor has already defaulted on its Plan obligations and the inability to reopen the Park for 2021 leaves the Debtor with little choice but to sell the Assets as proposed herein or otherwise liquidate and dispose of the Assets. The proposed Sale represents the

best offer received to date for the purchase of the Debtor’s Assets. Additionally, regardless of how the Sale Proceeds are ultimately distributed, the Sale maximizes the value of the Debtor’s Assets for benefit of the Debtor’s creditors. Finally, this sale is pursuant to the Debtor’s Plan and the Confirmation Order, and as such, will be exempt from all realty transfer taxes pursuant to § 1146(a).

36. The Sale of the Debtor’s Assets will be subject to better and higher offers at the Sale Hearing. Consequently, the purchase price for the Debtor’s Assets will constitute fair and reasonable consideration received by the Debtor as established by the market and auction process. Finally, notice of the Bid Procedures, Auction Date and Sale Hearing consistent with the Bid Procedures Order has already been provided.

B. Sale Free and Clear of All Interests

37. Section 363(f) of the Bankruptcy Code permits a Debtor to sell assets free and clear of all liens, claims, interests, charges and encumbrances (with any such liens, claims, interests, charges, and encumbrances attaching to the net proceeds of the sale with the same rights and priorities therein as held in the asset). Specifically, section 363(f) states:

The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if –

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) 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 the property;
- (4) such interest is in bona fide dispute; or
- (5) 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).

38. Section 363(f) is stated in the disjunctive. Accordingly, it is only necessary to satisfy one of the five basis to sell property of the estate free and clear of all interests under Section 363(f). *In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002); *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988).

39. Here the Debtor relies upon Sections 363(f)(1), (2) and (5) as the bases upon which the Debtor may sell the Debtor's Assets free and clear of all interests and utilize the proceeds in the manner set forth herein.

40. While Section 363(f)(1) permits the Debtor to surcharge collateral, the Debtor understands that consent from the holders of the Secured Non-Tax Claims may be required in order to make the Proposed Distribution on a *pro rata* basis. The Debtor has been in discussions with the appointed representative of the holders of Secured Non-Tax Claims. As of the filing of this Sale Motion, the Debtor has not obtained that consent and the parties are still in discussions. To the extent consent is not obtained prior to the Sale Hearing, the Debtor proposes that any bona fide allowed Interests shall attach to the Sale proceeds with the same force, validity, effect, priority and enforceability as such Interests had in the Debtor's Assets prior to the Sale.

41. Section 363(f)(5) does not require actual payment in satisfaction of the interest; rather, it requires that "the interest in question be subject to final satisfaction on a hypothetical basis ..." *In re Healthco Int'l, Inc.*, 174 B.R. 174, 176 (Bankr. D. Mass 1994) (approving sale where lien could be subject to cramdown under Section 1129(b)(2)(A); *see also In re Trans World Airlines, Inc.*, 322 F.3d 283, 290-91 (3d Cir. 2003) (affirming sale under Section 363(f)(5) on the basis that claim holders would receive liquidation value of their claims if the case converted to Chapter 7); *see also In re Jolan, Inc.*, 403 B.R. 866, 870 (Bankr. W.D. Wash. 2009) (approving

sale pursuant to 363(f)(5) where monetary satisfaction could be compelled in a receivership or foreclosure proceeding, among others); *see also In re Grand Slam U.S.A., Inc.*, 178 B.R. 460, 464 (E.D. Mich. 1995) (stating a sale pursuant to 363(f)(5) can be approved by operation of Sections 1129(b)(2) or 724(b)(2)).

42. To the extent necessary, the proposed distribution of the proceeds from the Sale would comport with applicable priority scheme in the Bankruptcy Code in either a hypothetical Chapter 7 liquidation or Chapter 11 cramdown. The balance of the Sale Proceeds following all applicable Costs of Sale, including any authorized fees and expenses chargeable to the Debtor's Assets pursuant to 11 U.S.C. § 506(c), would be remitted to the holder of the highest lien priority and secured claim in the Subject Property. No other holder of an Interest would receive a distribution under the proposed Sale unless and until the holder of the senior Secured Non-Tax Claim is paid in full or has agreed to accept less than payment in full.

43. Based upon the foregoing, in the event the holders of certain Secured Non-Tax Claims will not consent to the Proposed Distribution, an alternative, waterfall distribution of the Sale Proceeds in accordance with applicable nonbankruptcy law lien priority allows the Court to approve the Sale of the Debtor's Assets free and clear of all liens and interests because holders of the Secured Non-Tax Claims would receive what they would be entitled to receive in a state court liquidation or receivership of the Debtor's Assets.

44. The Debtor accordingly requests authority to convey the Debtor's Assets to the Successful Bidder, free and clear of all liens, claims and interests under the express terms of a Successful Bidder's purchase and sale agreement, with such liens, claims and interests to attach to the Sale Proceeds, with the same validity, extent, priority, and perfection as existed immediately

prior to the Sale, subject to (a) the terms of the Successful Bidder's purchase and sale agreement; (b) the proposed Sale Order; (c) the charitable use restriction; and (d) the right of the Debtor to surcharge the Debtor's Assets for the necessary and reasonable fees and costs incurred by the Debtor in connection with the sales, including its retained professionals' fees and costs, and the preservation of the Debtor's Assets. See 11 U.S.C. § 506(c);³ see also *In re Mall at One Assocs., L.P.*, 185 B.R. 981, 992 (Bankr. E.D. Pa. 1995) (stating that professional fees incurred in the marketing, sale and auction of a debtor's assets "have been recognized as a classic example of expenses generally recoverable pursuant to Section 506(c)"); see also *In re Visual Industries, Inc.*, 57 F.3d, 321, 325 (3d Cir. 1995).

45. Finally, the Debtor submits that the sales should not expose the Successful Bidder to any liability as a successor of the Debtor or its estate. Courts have also consistently held that a buyer of a debtor's assets pursuant to a Bankruptcy Code section 363 sale takes free and clear from successor liability relating to the debtor's business. See, e.g., *In re Trans World Airlines, Inc.*, 322 F.3d 283, 288-90 (3d Cir. 2003) (sale of assets pursuant to section 363(f) barred successor liability claims for employment discrimination and rights under travel voucher program); *In re Leckie Smokeless Coal Co.*, 99 F.3d at 585 (affirming the sale of debtors' assets free and clear of certain taxes); *In re Insilco Techs., Inc.*, 351 B.R. 313, 322 (Bankr. D. Del. 2006) (stating that a 363 sale permits a buyer to take ownership of property without concern that a creditor will file suit based

³ 11 U.S.C. § 506(c) provides:

The trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holders of such claim, including the payment of all ad valorem property taxes with respect to the property.

11 U.S.C. § 506(c) (emphasis added).

on a successor liability theory). see also *In re Chrysler LLC*, 405 B.R. 84, 111 (Bankr. S.D.N.Y. 2009) ("[I]n personam claims, including any potential state successor or transferee liability claims against New Chrysler, as well as in rem interests, are encompassed by section 363(f) and are therefore extinguished by the Sale Transaction.").

46. Accordingly, the Court should approve the sale of the Assets to the Successful Bidder free and clear of Interests under section 363(f) of the Bankruptcy Code, and all potential claimants should be compelled to look exclusively to the Sale Proceeds for satisfaction of their claims. Nothing in this Motion or the Sale, however, seeks to divest the charitable use restriction as it exists and applies to the Debtor's Assets.

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

47. Pursuant to section 363(m) of the Bankruptcy Code, "a 'good faith purchaser' is generally one who purchases assets for value, in good faith, and without knowledge of adverse claims." *In re Abbott's Dairies of Pennsylvania, Inc.*, 788 F.2d at 147; *In re Youngstown Steel Tank Co.*, 27 B.R. 596, 598 (W.D. Pa. 1983). Judicial inquiry regarding "good faith" in the context of section 363(m) of the Bankruptcy Code focuses on the integrity of the purchaser's conduct during the course of the sale proceedings. *Id.* at 147.

48. Here, the Stalking Horse PSA was negotiated at arms' length, the deposit due under the Sale Agreement has been tendered, and the Sale is subject to higher and better offers at the Sale Hearing. Accordingly, the Order approving the Sale contains a finding that the Purchaser is a "good faith" purchaser within the meaning of 11 U.S.C. § 363(m).

Waiver of Rules 6004 and 6006

49. Bankruptcy Rule 6004(f) provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” FED. R. BANKR. P. 6004(f). Similarly, Bankruptcy Rule 6006(d) provides that “[a]n order authorizing the [debtor] to assign an executory contract or unexpired . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” FED. R. BANKR. P. 6006(d).

50. Notwithstanding the possible applicability of Bankruptcy Rules 6004 and 6006 or otherwise, the Debtor requests the relief sought by this Motion be immediately effective and enforceable upon entry of the order requested hereby. In order to allow the immediate realization of value for the Debtor’s Assets and to enhance the ability of the Successful Bidder to open Commeau Lake Park for the 2021 season, the Debtor requests that any order granting this Motion be effective immediately and not subject to the 14-day stay imposed by Bankruptcy Rules 6004(f) and 6006(d).

Notice

51. Notice of this Motion has been served on the following parties or, in lieu thereof, on their counsel, if known: (a) the United States Trustee for the Western District of Pennsylvania; (b) all parties known to be asserting a lien on any of the Debtor’s Assets; (c) The Office of the Attorney General for the Commonwealth of Pennsylvania, Charitable Trusts and Organizations Section (Attn: Eugene Herme, Esquire); (d) all known counterparties to contracts and leases that may be assigned; (e) all entities known to have expressed an interest in bidding on the Debtor’s assets; and (f) all other parties that filed a notice of appearance and request for service of papers in

the Debtor’s bankruptcy case under Bankruptcy Rule 9010(b). In light of the nature of the relief requested herein, the Debtor submits that no other or further notice need be given.

No Prior Request

52. No prior request for the relief sought herein has been made to this Court or any other court.

WHEREFORE, the Debtor requests that the Court enter an order: (i) authorizing the sale of the Debtor’s Assets to the Successful Bidder pursuant to the terms of the purchase and sale agreement entered into between the Debtor and the Successful Bidder, free and clear of all interest; and (ii) granting such other and further relief as is just and proper.

Date: February 1, 2021

STONECIPHER LAW FIRM

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Exhibit A
Stalking Horse Purchase & Sale Agreement

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made and entered into as of the Effective Date by and between the Trustees of **Conneaut Lake, Inc.**, a Pennsylvania Nonprofit Corporation ("**Seller**"), and **Keldon Holdings, LLC**, a Pennsylvania Limited Liability Company ("**Purchaser**"). Each of Purchaser and Seller is sometimes hereinafter referred to individually as a "**Party**" and together as the "**Parties**."

BACKGROUND

Seller is the owner of certain real Property located in Sadsbury and Summit Townships in Crawford County, Pennsylvania, as depicted in the drawing attached as Exhibit "A" attached hereto and incorporated herein and as more particularly described in a deed dated September 15, 1997 and filed in the Crawford County Recorder's Office at Instrument No. 9700010144 and a deed dated August 1, 1997 and filed in the Crawford County Recorder's Office at Record Book 355, Page 911 (collectively, the "**Deed**"), less any out sales (the "**Property**"). Seller owns and operates on the Property a vintage amusement park, a water park, a camper rental area, a boat marina, and a water supply company (collectively, the "**Business**"). In addition, the Seller owns the Hotel Conneaut (the "**Hotel**") which is operated by a third party pursuant to the Hotel Conneaut Lease Agreement dated January 1, 2016 and its extensions (the "**Hotel Lease**") as attached hereto as Exhibit "B". In the operation of the Business, the Seller utilizes certain tangible property, intangible property, agreements and permits as further defined herein (collectively, the "**Business Assets**").

Pursuant to the terms and conditions set forth herein, the Seller desires to sell to Purchaser and Purchaser desires to purchase from Seller, the Property, the Business Assets, the Hotel, and its rights to the Hotel Lease.

NOW, THEREFORE, in consideration of the covenants, agreements, and promises herein contained, and in consideration of the payment of the Earnest Money, the parties hereto do hereby covenant and agree as follows:

- 1. Purchase and Sale.** Seller agrees to sell, transfer, assign and convey to Purchaser, and Purchaser agrees to purchase, accept and assume, subject to the terms and conditions stated herein, all of Seller's right, title and interest in and to the Property, the Business Assets, the Hotel, and the rights to the Hotel Lease.
- 2. Purchase Price and Earnest Money.** The "Purchase Price" of the Property, the Business Assets, the Hotel, and the rights to the Hotel Lease shall be One Million Two Hundred Thousand Dollars (\$1,200,000.00), to be paid to Seller at Closing, subject to adjustment as set forth herein. No later than three (3) Business Days following the Effective Date, Purchaser shall deposit with Shafer Law Firm, P.C. ("**Escrow Agent**"), the sum of FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) via certified funds or wire transfer (the "**Earnest Money**"), which Earnest Money shall be credited to the Purchase Price at Closing or otherwise distributed pursuant to this Agreement and any escrow agreement required by Escrow Agent and reasonably satisfactory to Seller.

In addition, Purchaser shall deposit with the Escrow Agent, on or before three (3) business days prior to the hearing for the approval of this transaction with the U.S. Bankruptcy Court for the Western District of Pennsylvania (as more particularly described in Paragraph 4(d) below) the sum of FOUR HUNDRED AND FIFTY THOUSAND AND NO/100 DOLLARS (\$450,000.00) via certified funds or wire transfer (the "Additional Earnest Money") to the Escrow Agent's account, which Additional Earnest Money shall be credited to the Purchase Price at Closing or otherwise distributed pursuant to this Agreement and any escrow agreement required by Escrow Agent and reasonably satisfactory to Seller.

3. Condition of Title/Confidentiality.

(a) Condition of Title. Title to the Property shall be conveyed by Seller to Purchaser by special warranty deed (the "Deed"), subject only to real estate taxes and assessments, both general and special, which are a lien but not yet due and payable as of the Closing Date and to such additional exceptions noted in the Title Commitment, if any, that do not constitute "Unpermitted Encumbrances" within the meaning of Section 4(b) (collectively, the "Permitted Encumbrances"); provided, however, that current real estate taxes and assessments that are a lien but not yet due and payable, and any matters that are the direct result of actions of Purchaser or its agents, representatives or assigns, or any matters approved in writing by Purchaser, shall be Permitted Encumbrances.

(b) Title Insurance Commitment and Survey. For a period of thirty (30) days after the Effective Date (the "Title Review Period"), Purchaser shall have the right, but not the obligation, to review the condition of title to the Property. Purchaser, at its sole cost and expense, may obtain a commitment (the "Title Commitment") for an Owner's Policy of Title Insurance to be issued for the Property by a title agent selected by Purchaser and satisfactory to Seller in its reasonable discretion. Purchaser also may obtain a survey of the Property (the "Survey") at its sole cost and expense. In the event the Title Commitment discloses exceptions to title, other than standard or general exceptions, to which Purchaser objects, Purchaser shall so notify Seller and shall deliver to Seller legible copies of all documents cited, raised as exceptions or noted in the Title Commitment (collectively, the "Title Documents"). Purchaser shall have until the end of the Title Review Period to notify Seller in writing of any such exceptions that Purchaser finds objectionable (the "Unpermitted Encumbrances"). Upon receipt of a notice of Unpermitted Encumbrances with respect to the Property from Purchaser, Seller shall have twenty (20) days to have the Unpermitted Encumbrances corrected, removed from the Title Commitment, or, if Purchaser so agrees, to have the title insurer commit to insure against loss or damage occasioned thereby. If Seller fails to have said Unpermitted Encumbrances so removed or insured over (with Purchaser's approval which shall not be unreasonably withheld or delayed) within the period allowed to Seller set forth above, then Purchaser, at Purchaser's option, may, within five (5) days thereafter, elect any one (1) of the following: (i) terminate this Agreement, in which event neither Party shall have any further liability hereunder other than for those provisions which expressly survive the termination of this Agreement; (ii) consummate the transaction contemplated herein, and take title to the Property; or (iii) extend the time period allowed to Seller to have said exceptions removed or insured over as set forth above (and to extend the scheduled Closing Date, if necessary) for a period of thirty (30) days (in which case the elections set forth in clauses (i) and (ii) above shall apply at the expiration of such five (5) day period). If Purchaser does not elect clause (i), (ii), or (iii) above within the requisite five (5) day period, Purchaser shall be deemed to

have elected clause (ii) above. A copy of the permitted title exceptions are referenced in Exhibit "C" attached hereto and incorporated herein.

(c) Confidentiality. Purchaser shall keep confidential the Confidential Information (as defined herein), whether furnished to, or obtained by, Purchaser before or after the date of this Agreement. The term "Confidential Information" includes, without limitation, all notes, analyses, compilations, studies or other documents concerning the Property, including without limitation reports, sampling data and other documents resulting from environmental assessments, whether gathered or prepared by Purchaser or others ("Due Diligence Materials"). The term "Confidential Information" does not include information that is or becomes generally available to the public other than as a result of a disclosure by Purchaser, or its affiliates, successors, employees, agents, representatives, or lenders (collectively, "Representatives") or which becomes available to Purchaser or its Representatives on a non-confidential basis from a source other than Seller, provided that the source is not violating an express or implied confidentiality agreement. The Confidential Information shall be used solely to assist Purchaser in its review of the Due Diligence Materials. Purchaser agrees not to disclose the Confidential Information to any person or entity, or to use the Confidential Information other than in connection with the review of Due Diligence Materials, without the prior written consent of Seller, which may be withheld in Seller's sole discretion. Purchaser may, however, disclose the Confidential Information to Purchaser's Representatives who require such Confidential Information on a need to know basis in connection with the review of Due Diligence Materials provided that such Representatives are required as a term of their employment to keep the Confidential Information confidential in accordance with the terms of this Section. Notwithstanding anything herein to the contrary, Purchaser shall in all instances be responsible for any breach of this Section by such Representatives. In the event that Purchaser is requested or required by any court or government authority of competent jurisdiction to disclose any Confidential Information, Purchaser shall provide prompt notice to Seller of such request so that Seller may seek an appropriate protective order or waive Purchaser's compliance with this Section. If, in the absence of a protective order or the receipt of a waiver hereunder, Purchaser is nonetheless, in the reasonable opinion of its counsel, compelled to disclose such Confidential Information or else stand liable for contempt or suffer censure or penalty, Purchaser agrees to furnish, after first giving notice to Seller, only that portion of the Confidential Information which is legally required. In the event that the underlying prospective transaction between Seller and Purchaser is terminated for any reason, Purchaser shall promptly deliver to Seller all written Confidential Information provided to, or obtained by, Purchaser and Purchaser shall not retain any copies, extracts or other reproductions in whole or part of such written Confidential Information. In that event, all documents, memoranda, notes, and other writing whatsoever prepared by Purchaser based on the Confidential Information shall be destroyed. The provisions of this Section shall survive the Closing.

(d) Notwithstanding anything to the contrary, the Purchaser acknowledges that the Property is subject to a "public use" provision as set forth in the Deed that states as follows:

In Trust, Nevertheless, for the use of the general public forever, subject, however, to the rules and regulation for the use of said land to be known as "Commeaut Lake Park", as may be made from time-to-time by the Trustees of Commeaut Lake Park, Inc., and their successors; And Further specifically, in part for use as a public

amusement park and the like, and in part for use as a public park with open parkland and the like, and in part for use of public buildings and the like, forever; And Further, in addition specifically, in part for public access to and use of Conant Lake and the lake shore, for swimming and boating and the like, forever; And Further, for other like and similar and related public purposes, all forever.

4. Closing.

(a) Time and Place. Subject to the Bankruptcy Court approval as set forth herein, the consummation of the transaction contemplated hereby (the "Closing") shall be held during normal business hours on the date that is on or before sixty (60) days after the Effective Date (the "Closing Date") or on such earlier date agreed upon by the Parties, at a location mutually agreeable to the Parties. The Parties agree that the conveyance of the Property and the tendering of the Deed as described below and the conveyance of the Business Assets shall be subject to Purchaser paying the balance of the Purchase Price due in cash or other immediately available funds at the Closing, subject to any credits and/or prorrations under this Agreement.

(b) Closing Costs. Purchaser and Seller shall split evenly the Pennsylvania and local transfer tax. Buyer shall pay all recording fees with respect to the Deed. Seller shall pay any recording fees required for remedy of the Unpermitted Encumbrances. Buyer shall pay for an owner's title insurance policy with any desired endorsements. Each party shall pay its own attorney's fees. Seller and Purchaser further agree that any closing costs not otherwise provided for herein shall be paid according to the prevailing customs for commercial property transactions in the county and the state where the Property are located.

(c) Closing Prorrations. At Closing, all items customarily prorated (with the exception of ad valorem taxes and assessments) shall be prorated between Seller and Purchaser as of 12:01 a.m. on the date of Closing based upon the actual number of days in each month and year applicable to such calculation. Neither party shall be entitled to additional funds based upon re-prorrations or adjustments after Closing. All ad valorem taxes and assessments for the year 2020 shall be paid by Purchaser.

(d) Bankruptcy Court Approval. The obligation of the Seller to convey the Property, the Business Assets, and the Hotel as set forth herein and the obligation of the Purchaser to acquire the same, is contingent upon the this transaction receiving approval from the U.S. Bankruptcy Court for the Western District of Pennsylvania in the Seller's Bankruptcy case filed at Case No. 14-11277. The Purchaser is aware that a motion to approve this sale (the "Stalking Horse Motion") will be submitted to the Bankruptcy Court and said motion will be subject to a public hearing for its approval wherein third parties are permitted to bid subject to Court approved Stalking Horse Motion bidding instructions and Overbid Protection.

5. Closing Deliveries.

(a) At Closing, Seller shall deliver or cause to be delivered the following:

- (i) A special warranty deed (the "Deed");

(ii) an affidavit or certificate in compliance with Section 1445 of the Internal Revenue Code of 1986, as amended (the "Code"), and any regulations promulgated thereunder, stating under penalty of perjury Seller's United States identification number and that Seller is not a "foreign person" as that term is defined in Section 1445;

(iii) a settlement statement;

(iv) the amount, if any, due from Seller to Purchaser in respect of prorrations, as provided in Section 4(c) hereof;

(v) Good Standing certificate for Seller from Pennsylvania;

(vi) No lien certificate from Pennsylvania;

(vii) Resolution authorizing sale and execution of Deed;

(viii) such other items reasonably necessary for consummating the transaction contemplated hereby;

(ix) An Order from the U.S. Bankruptcy Court for the Western District of Pennsylvania approving this transaction;

(x) Bill of Sale to the Business Assets as set forth in paragraph 16;

(xi) Assignment of Permits, Contracts and Agreements set forth in Schedule 16(g); and

(xii) Assignment of Hotel Lease.

(b) At Closing, Purchaser shall deliver the following:

(i) the Purchase Price, as adjusted by prorrations and costs as provided in this Agreement;

(ii) a settlement statement; and

(iii) such other items reasonably necessary for consummating the transaction contemplated hereby.

(c) All documents listed in Section 5(a) and Section 5(b) above must be duly and properly executed by the respective parties thereto. Unless otherwise agreed by the parties, counsel for Purchaser will draft the closing documents.

6. Representations and Warranties of Seller. Seller, in order to induce Purchaser to enter into this Agreement and to complete Closing, makes the following representations and warranties to Buyer.

(a) Seller has the full and lawful unrestricted right and power to execute, deliver, and perform its obligations under this Agreement and to complete all transactions contemplated hereunder. On the Closing Date, Seller will have obtained all consents, approvals,

and authorizations from all persons, entities, and governmental authorities required to enter into this Agreement and to consummate the transactions contemplated hereby.

(b) No proceedings or actions are pending or, to Seller's Knowledge, threatened, which do or might limit or impair any of the powers, rights, or privileges of Seller necessary to enter into and be bound by this Agreement and to consummate the transactions contemplated hereby. To Seller's Knowledge, there is no action, proceeding, or investigation pending or threatened, which questions the validity or enforceability of this Agreement, nor any document or agreement affecting Seller. "Seller's Knowledge" shall mean the actual knowledge of Seller.

(c) This Agreement is the legal, valid, and binding obligation of Seller, and is enforceable against Seller in accordance with its terms, except to the extent such enforcement may be affected by general principles of equity, or by bankruptcy and other laws affecting the rights of creditors generally; the execution and delivery of this Agreement and compliance with the terms and conditions of this Agreement by Seller, will not breach or conflict with any of the terms, conditions, or provisions of any agreement or instrument to which Seller is a party or by which Seller is bound, or constitute a default thereunder; and the authorization, execution, and delivery of this Agreement and the consummation of the transactions contemplated hereby, will not, with or without the giving of notice; Violate, conflict with, or result in the breach of any terms or provisions of, or require any notice, filing, or consent under (I) any statutes, laws, rules, or regulations of any governmental body applicable to Seller or the Business Assets; or (II) any judgment, decree, writ, injunction, order, or award of any arbitrator, court, or governmental authority binding upon Seller or the Business Assets; or (III) the organizational documents of Seller; or Conflict with, result in the breach of any terms or provisions of, require any notice or consent under, give rise to a right of termination of, or constitute a default under, any agreement or instrument or instrument of any kind to which Seller is a party or by which Seller is bound.

(d) Seller has paid all relevant taxes when due relating to it or the Business Assets.

(e) Each of the representations and warranties of Seller set forth herein shall be deemed to be made as of the Closing Date and shall survive the Closing for a period of one (1) year thereafter.

(f) Seller shall inform Purchaser of any facts, transactions, or occurrences of which it becomes aware after the date hereof that would render any of the representations and warranties contained in this Section untrue in any material respect.

(g) Non-Foreign Entity. Seller is not a "foreign person" or "foreign corporation" as those terms are defined in the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

(h) No Other Representations or Warranties. Except as expressly set forth in this Section, Seller makes no representation or warranty, express or implied, in respect of any of the Property or the liabilities or operations of Seller, or the Business Assets, or the Hotel including, without limitation, with respect to merchantability or fitness for any particular purpose, and any such other representations or warranties are hereby expressly disclaimed.

7. **Representations and Warranties of Purchaser.** Purchaser, in order to induce Seller to enter into this Agreement and to complete Closing, makes the following representations and warranties to Seller:

(a) Purchaser has the full and lawful unrestricted right and power to execute, deliver, and perform its obligations under this Agreement and to complete all transactions contemplated hereunder. On the Closing Date, Purchaser will have obtained all consents, approvals, and authorizations from all persons, entities, and governmental authorities required to enter into this Agreement and to consummate the transactions contemplated hereby.

(b) This Agreement is the legal, valid, and binding obligation of Purchaser, and is enforceable against Purchaser in accordance with its terms, except to the extent such enforcement may be affected by general principles of equity, or by bankruptcy and other laws affecting the rights of creditors generally; the execution and delivery of this Agreement and compliance with the terms and conditions of this Agreement by Purchaser, will not breach or conflict with any of the terms, conditions, or provisions of any agreement or instrument to which Purchaser is a party or by which Purchaser is bound, or constitute a default thereunder; and the authorization, execution, and delivery of this Agreement and the consummation of the transactions contemplated hereby, will not, with or without the giving of notice.

(c) Each of the representations and warranties of Purchaser set forth herein shall be deemed to be made as of the Closing Date and shall survive the Closing for a period of one (1) year thereafter.

(d) Purchaser shall inform Seller of any facts, transactions, or occurrences of which it becomes aware after the date hereof that would render any of the representations and warranties contained in this Section untrue in any material respect.

(e) Non-Contravention. The execution and delivery of this Agreement by Purchaser and the consummation by Purchaser of the transactions contemplated hereby will not (i) violate any judgment, order, injunction, decree, regulation or ruling of any court or Governmental Entity or (ii) conflict with, result in a breach of, or constitute a default under the organic documents of Purchaser, any note or other evidence of indebtedness, any mortgage, deed of trust or indenture, or any lease or other material agreement or instrument to which Purchaser is a party or by which it is bound.

(f) Consents. No consent, waiver, approval or authorization is required from any person or entity (that has not already been obtained) in connection with the execution and delivery of this Agreement by Purchaser or the performance by Purchaser of the transactions contemplated hereby.

8. Disclaimer of Warranties; Release.

(a) Except as otherwise expressly set forth in this Agreement, Seller specifically disclaims any warranty (whether oral or written) concerning (i) the nature and condition of the Property, the Business Assets, and the Hotel and the suitability thereof for any and all activities and uses that Purchaser may elect to conduct thereon, (ii) the compliance of the Property, the Business, the Business Assets, and the Hotel or their operation with any laws, rules, ordinances or regulations of any government or other body and (iii) any other matter whatsoever, in each such case, except as expressly set forth in this Agreement. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SALE OF THE PROPERTY, BUSINESS ASSETS, AND HOTEL PURSUANT TO THIS AGREEMENT IS MADE ON A STRICTLY "AS IS," "WHERE IS" BASIS AS OF THE CLOSING DATE, AND SELLER MAKES NO WARRANTY OR REPRESENTATION, WHETHER EXPRESS, IMPLIED OR ARISING BY OPERATION OF LAW, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF QUANTITY, QUALITY, CONDITION, HABITABILITY,

MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, THE BUSINESS ASSETS, AND THE HOTEL INCLUDING, WITHOUT LIMITATION, ANY SOIL CONDITIONS RELATED TO THE PROPERTY.

(b) PURCHASER SPECIFICALLY ACKNOWLEDGES THAT PURCHASER IS NOT RELYING ON (AND SELLER HEREBY DISCLAIMS AND RENOUNCES) ANY REPRESENTATIONS OR WARRANTIES MADE BY OR ON BEHALF OF SELLER OF ANY KIND OR NATURE WHATSOEVER, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT. PURCHASER, FOR ITSELF AND ITS SUCCESSORS AND ASSIGNS, RELEASES SELLER FROM, AND WAIVES, ANY AND ALL CLAIMS AND LIABILITIES AGAINST SELLER FOR, RELATED TO OR IN CONNECTION WITH ANY ENVIRONMENTAL OR PHYSICAL CONDITION AT THE PROPERTY OR BUSINESS OR BUSINESS ASSETS OR THE HOTEL (OR THE PRESENCE OF ANY MATTER OR SUBSTANCE RELATING TO THE ENVIRONMENTAL CONDITION OF THE PROPERTY), INCLUDING, WITHOUT LIMITATION, CLAIMS OR LIABILITIES RELATING TO (IN ANY MANNER WHATSOEVER) ANY HAZARDOUS, TOXIC OR DANGEROUS MATERIALS OR SUBSTANCES LOCATED IN, AT, ABOUT OR UNDER THE PROPERTY, OR FOR ANY AND ALL CLAIMS OR CAUSES OF ACTION (WHETHER ACTUAL OR THREATENED) BASED UPON, IN CONNECTION WITH OR ARISING OUT OF ANY LAWS RELATED TO ENVIRONMENTAL MATTERS OR LIABILITY WITH RESPECT TO OR AFFECTING THE PROPERTY. PURCHASER REPRESENTS TO SELLER THAT PURCHASER HAS CONDUCTED, OR WILL CONDUCT PRIOR TO CLOSING, SUCH INVESTIGATIONS OF THE PROPERTY AND WITH THE BUSINESS ASSETS, INCLUDING, WITHOUT LIMITATION, THE ENVIRONMENTAL CONDITIONS THEREOF, AS PURCHASER DEEMS NECESSARY TO SATISFY ITSELF AS TO THE CONDITION OF THE PROPERTY AND BUSINESS ASSETS AND THE HOTEL AND THE EXISTENCE OR NON-EXISTENCE OF, OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO, ANY HAZARDOUS OR TOXIC SUBSTANCES ON OR DISCHARGED FROM THE PROPERTY AND WILL RELY SOLELY UPON SUCH INVESTIGATIONS AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF SELLER OR ITS AGENTS OR REPRESENTATIVES WITH RESPECT THERETO. UPON CLOSING, PURCHASER SHALL (i) ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, WITHOUT LIMITATION, ADVERSE ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY PURCHASER'S INVESTIGATIONS AND (ii) BE DEEMED TO HAVE WAIVED, RELINQUISHED AND RELEASED SELLER FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING, WITHOUT LIMITATION, EXPENSES (INCLUDING, WITHOUT LIMITATION, DAMAGES, LIABILITIES, COSTS AND COSTS) OF ANY AND EVERY KIND OR CHARACTER, WHETHER KNOWN OR UNKNOWN, WHICH PURCHASER MIGHT HAVE ASSERTED OR ALLEGED AGAINST SELLER AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT CONSTRUCTION DEFECTS OR PHYSICAL CONDITIONS OR VIOLATIONS OF ANY APPLICABLE LAWS (INCLUDING, WITHOUT LIMITATION, ANY LAWS RELATED TO ENVIRONMENTAL MATTERS).

(c) PURCHASER ACKNOWLEDGES AND AGREES THAT THE WAIVERS, RELEASES AND OTHER PROVISIONS SET FORTH IN THIS SECTION 8 WERE A MATERIAL FACTOR IN SELLER'S ACCEPTANCE OF THE PURCHASE PRICE AND THAT SELLER WAS UNWILLING TO SELL THE PROPERTY AND BUSINESS ASSETS AND THE HOTEL TO PURCHASER UNLESS SELLER WAS RELEASED AS EXPRESSLY SET FORTH IN THIS SECTION 8. PURCHASER, WITH PURCHASER'S COUNSEL, HAS FULLY REVIEWED THE DISCLAIMERS, RELEASES, AND WAIVERS SET FORTH IN THIS AGREEMENT AND UNDERSTANDS THE SIGNIFICANCE AND EFFECT THEREOF.

(d) THIS SECTION 8 HEREOF SHALL EXPRESSLY SURVIVE THE CLOSING, SHALL NOT MERGE WITH THE PROVISIONS OF ANY CLOSING DOCUMENTS AND SHALL BE CONSIDERED INCORPORATED INTO THE DEED

9. **Approval of Overbid Protection.** The Stalking Horse Motion shall provide for an overbid protection in the amount of One Hundred Thousand Dollars (\$100,000.00) over and above the Purchase Price.

10. **Risk of Loss, Casualty and Condemnation.** The risk of loss shall remain on the Seller until Closing. Seller agrees to give Purchaser prompt notice of any fire or other casualty affecting the Property or any portion thereof (a "Casualty") or of any actual or threatened (to the extent that Seller has current actual knowledge thereof) taking, condemnation or other like proceeding of the Property or any portion thereof (a "Condemnation"). If prior to the Closing, all or a substantial portion of the Property or Business Assets or the Hotel are affected by a Casualty or a Condemnation, Purchaser shall elect within fifteen (15) days from and after notice of such event from Seller, by written notice to Seller, either: (i) not to close the transaction contemplated hereby, in which event the Earnest Money shall be refunded to Purchaser and, except for those provisions which survive termination of this Agreement, this Agreement shall be void and of no further force and effect; or (ii) to close the transaction contemplated hereby in accordance with its terms but subject to such Casualty or Condemnation, in which event: the Purchase Price shall not be reduced and Seller shall assign to Purchaser all of Seller's rights in any insurance proceeds or condemnation awards. If Purchaser does not make such election within the aforesaid fifteen (15) day period, then Purchaser shall be deemed to have elected to close the transaction contemplated hereby in accordance with clause (ii) of this section. For purposes of this Section 10, a "substantial portion" of the Property/Business Assets/Hotel shall be deemed to be a portion valued at twenty percent (20%) or more of the assessed value of the each. If any Casualty or Condemnation affects less than a substantial portion of the Property/Business Assets/Hotel, then Purchaser shall be obligated to proceed with Closing and Seller shall assign to Purchaser all of Seller's rights in any insurance proceeds or condemnation awards. In no event shall the occurrence of a Casualty or a Condemnation give rise to a claim by Purchaser against Seller for default under this Agreement.

11. **Purchaser's Contingencies.** The obligations of the Purchaser are not contingent upon any condition except as follows:

(a) Review of all leases, permits, surveys, and historical registries affecting the Property with confirmation;

(b) Inspection of all Business Assets as set forth in Paragraph 16; and

(c) Review the PUC water supply tariff, DEP License Agreement (DEP file No. E20-584) permitting the boat docks, and Hotel Lease and confirmation of the assignment of each.

12. Sewer. The Property is serviced by public sewer.

13. Default Remedies. In the event of either party's default hereunder, the non-defaulting party agrees to provide the defaulting party with written notice of such default specifying the nature of such default. The defaulting party shall have a five (5) day period after the date of receipt of said notice in which to cure said default. In the event Seller does not cure any default of which it has received notice within said five (5) day period and Purchaser is ready, willing and able to perform all obligations imposed upon Purchaser hereby, Purchaser shall be entitled to terminate this Agreement and receive an immediate refund of all Earnest Money paid hereunder (and the parties shall have no further rights or obligations hereunder except for those that expressly survive a termination of this Agreement) or to pursue an action for specific performance of this Agreement within thirty (30) days after the expiration of the five (5) day period within which Seller has not cured a default for which it has received notice. In no event shall Purchaser be entitled to pursue a claim for damages against Seller. In the event Purchaser does not cure any default of which it has received notice within said five (5) day period and the transaction contemplated hereby is not closed by reason of Purchaser's default (and Seller has performed all of its obligations hereunder) then the Earnest Money shall be paid to Seller as full liquidated damages, this Agreement shall be null and void, and none of the Parties hereto shall have any further rights or obligations hereunder, except for such rights or obligations that survive a termination of this Agreement.

14. Broker. The parties acknowledge that neither has any agreement or obligation to any broker, realtor, or any other person for any commission on this sale.

15. Notices. Except as may otherwise be provided for in this Agreement, all notices required or permitted to be given hereunder shall be in writing and shall be sufficient if delivered to the party being given such notice at the respective address set forth below by one of the following methods: (a) in person, (b) by overnight delivery service prepaid, (c) by U.S. Postal Service, postage prepaid, registered or certified, return receipt requested, or (d) email transmission with a copy sent no later than the next Business Day by method (a), (b) or (c).

As to Purchaser:
Todd Joseph
713 Broad Acres Rd.
Penn Valley/Narberth, Pa
Email: josephproperties@hotmail.com

with a copy to:

As to Seller:
Trustees of Conneaut Lake Park, Inc
c/o Economic Progress Alliance of Crawford County
789 Bessemer St.
Meadville, Pa 16335
Attn: James J. Becker

with a copy to:

Such notices shall be deemed to have been given as of the date and time actually received by the receiving party. Any party may change said address by giving the other parties hereto notice of such change of address.

16. Business Assets. In addition to the Property and Hotel, the Seller agrees to convey, free and clear of all liens, encumbrances, and title defects, to the Purchaser all right, title, and interest in the Business Assets as more particularly set forth below:

(a) Water System --the water delivery system including: water holding tank, conveyance system, purification system, rights to servicing customers, PUC water supply tariff filed at Docket A-210096, and all other assets utilized in the water system as set forth on Schedule 16(a);

(b) Amusement Park --all amusement rides, equipment, booths, kiosks, picnic tables, and any other personal property utilized in the operation of the Amusement Park as set forth on Schedule 16(b);

(c) Water Park --the water park, structure and all equipment, materials, and water supply system for the operation of the water park as set forth on Schedule 16(c);

(d) Hotel Personal Property-- Subject to the existing Hotel Lease and the claims of the Tenant of the Hotel Lease, and all personal property located in and around the Hotel, as set forth on Schedule 16(d);

(e) Boat Dock System --a 30-slip docking system, the DEP License Agreement (DEP file No. E20-584) permitting the boat docks, and the Seller's interest in all leases for the boat slips;

(f) Camperland --the facilities utilized in the operation of the 50-pad camper park and all related equipment and the Seller's interest in all Leases for the camper pads as set forth on Schedule 16(f);

(g) Contract, Permits, and Agreements -- all contracts, permits, and agreements including, but not limited to, the Hotel Lease, as set forth on Schedule 16(g);

(h) Intangible Assets -- all websites, telephone numbers, social media sites, trademarks, logos, email addresses, domain names, catalogs, sales and promotional materials, the name "Conneaut Lake Park" and its derivations, and all other intellectual property and intangible assets as set forth on Schedule 16(h);

(i) All mailing lists, customer lists, vendor lists, manuals, and business procedures; and

(j) All other tangible and intangible personal property utilized in the Business.

17. **Accounts Receivable.** The parties acknowledge that the Seller has collected, and will continue to collect, fees paid pursuant to dock slip rental agreements and Cauperland pad rentals. The parties agree to prorate the collected accounts receivable between the parties as set forth on Schedule 17 which is to be updated as of Closing Date.

18. **Liabilities.** Except as expressly set forth in this Agreement, it is expressly agreed by the parties that Purchaser shall not assume, take title to, or in any way be liable or responsible for any debts, liabilities or obligations of Seller including, but not limited to, the following:

- (a) liabilities or obligations of Seller which may arise by reason of this Agreement;
- (b) liabilities or obligations for Federal, state, local or other taxes;
- (c) liabilities and obligations which may arise by reason of, or with respect to, the dissolution or liquidation of Seller;
- (d) liabilities or obligations incurred by Seller after the Closing Date;
- (e) any liabilities or obligations of Seller associated with Seller's operation of the Business prior to the Closing Date;
- (f) any liability or obligation of Seller relating to or arising out of defects in design, materials or workmanship of any product sold and/or serviced by Seller prior to the Closing Date;
- (g) any liability or obligation of Seller relating to or arising out of any warranty, product liability or other obligations of Seller with respect to products or goods manufactured, sold, designed and/or serviced by Seller prior to the Closing Date; and
- (h) Except as otherwise expressly provided herein, Seller shall not represent to any third party, or lead any third party to believe, that Purchaser will assume or has assumed responsibility for any liability or obligation of Seller.

Except for those obligations specifically set forth here, the Purchaser shall not assume or become obligated for any liability, obligation, or commitment of the Seller.

19. **Conduct Pending Closing.** From the date hereof to the Closing Date, Seller will conduct the Business in a prudent, businesslike manner and will cooperate fully to arrange for the transfer of the Business Assets to Purchaser. In particular, from the date hereof to the Closing Date, Seller agrees that:

- (a) Seller's operation of the Business shall be conducted only in the ordinary course;
- (b) No material change shall be made in the operation of the Business;
- (c) Seller shall take any and all necessary actions to preserve the Business Assets and the goodwill and operation of the Business, and shall not remove any of the Business Assets located in, on or at business premises without the prior written consent of Buyer;
- (d) Any public disclosure prior to the Closing Date of this Agreement shall only be upon filing of the Stalking Horse Motion with the U.S. Bankruptcy Court and the terms and conditions set forth therein and the related competitive bidding motion as approved by the U.S. Bankruptcy Court;
- (e) Seller shall allow Purchaser and its agents unrestricted access to the Assets;
- (f) Seller shall preserve intact and shall not jeopardize Seller's relationships with customers, suppliers, distributors and with any other individual or entity who has a business or professional relationship with the Business;

(g) Seller shall keep and maintain the Business Assets in good condition, repair and working order;

(h) Seller shall not sell, transfer, assign, lease, or otherwise dispose of any of the Business Assets other than in the ordinary course of the Business consistent with past practice, and shall not subject any of the Business Assets to a lien, security interest or other encumbrance; and

(f) Seller shall not terminate or materially modify any material lease, contract, governmental license, permit or other authorization or agreement affecting the Business.

20. **Insurance.** Seller will maintain in full force and effect all current insurance policies, will comply in all material respects with all laws or regulations affecting operation of the Business and will advise Buyer of any event or circumstances affecting the Business Assets which Seller deems unusual.

21. **Indemnification by Seller.** Seller agrees to indemnify Purchaser against and in respect of the following:

(a) A breach of any of the representations or warranties or covenants of Seller set forth in this Agreement.

(b) Any and all of the following debts, liabilities, and obligations of Seller, either direct or indirect, accrued, absolute, contingent, or otherwise, and whether known or unknown, or due or payable, fixed or unfixed, choate or inchoate, liquidated or unliquidated, or secured or unsecured.

(i) Those existing prior to, and at, the Closing Date but not arising thereafter;

(ii) Those arising from any contract or commitment entered into or made, or any liabilities, acts, transactions, agreements, understandings, or obligations incurred, by Seller (including without limitation obligations incurred prior to closing as the result of any circumstance or state of facts that occurred or existed prior to closing, such as a personal injury or property damage that is claimed to have occurred prior to closing) on or before the Closing Date; and

(iii) Any and all debts, liabilities, and obligations of Seller for United States, state, or local taxes, assessments, or similar charges, including interest and penalties with respect thereto (without regard to the time such taxes may accrue or be determined or assessed), which are attributable or related to, or covering any period prior to or during which the closing occurs, for the portion thereof that ends on or before the close of business on the Closing Date.

(c) Seller also agrees to indemnify Purchaser against and in respect of any and all actions, suits, claims, proceedings, investigations, audits, demands, assessments, fines, judgments, settlements, costs, and other expenses (including, without limitation, attorneys' fees and expenses, including those incurred in connection with appellate proceedings, and costs of investigation incurred in defending against or settling any of the foregoing or any amounts paid in settlement thereof) incident to any of the matters indemnified herein.

22. **Indemnification by Purchaser.** Purchaser agrees to indemnify Seller against and in respect of the following:

(a) A breach of any of the representations or warranties or covenants of Purchaser set forth in this Agreement.

(b) Any and all of the debts, liabilities, and obligations of Purchaser, either direct or indirect, accrued, absolute, contingent, or otherwise, and whether known or unknown, or due or

payable, fixed or unfixed, choate or inchoate, liquidated or unliquidated, or secured or unsecured arising after the Closing Date.

(c) Purchaser also agrees to indemnify Seller against and in respect of any and all actions, suits, claims, proceedings, investigations, audits, demands, assessments, fines, judgments, settlements, costs, and other expenses (including, without limitation, attorneys' fees and expenses, including those incurred in connection with appellate proceedings, and costs of investigation incurred in defending against or settling any of the foregoing or any amounts paid in settlement thereof) incident to any of the matters indemnified herein.

23.

Miscellaneous.

(a) Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns (to the extent assignment is permitted hereunder).

(b) Governing Law. This Agreement shall be deemed to be made in, and in all respects shall be interpreted, construed, and governed by and in accordance with the laws of the Commonwealth of Pennsylvania. In the event that any dispute hereunder results in the filing of legal action, the parties agree that such action will be maintained only in a court of competent jurisdiction in Crawford County, Pennsylvania.

(c) Headings; References. The section and paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Wherever the context requires, the gender of all words herein shall include the masculine, feminine, and neuter, and the number of all words shall include the singular and the plural.

(d) Counterparts. This Agreement may be executed in two or more counterparts and by facsimile or emailed PDF, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

(e) Entire Agreement; Amendment. This Agreement is intended by the parties hereto to be the final expression of their agreement with respect to the subject matter hereof and is the complete and exclusive statement of the terms thereof notwithstanding any representations, statements or agreements to the contrary heretofore made. This Agreement may be modified only by a written instrument signed by each of the parties hereto.

(f) Time. Time is of the essence of this Agreement. Notwithstanding anything herein to the contrary, if the final date of any period, any date of performance or any deadline that is set forth in this Agreement falls on a day that is not a Business Day, then such date shall be automatically extended to the next Business Day. For purposes of this Agreement, a "Business Day" is any day that is not a Saturday, Sunday or federal legal holiday.

(g) Possession. Possession of the Property and Business Assets shall be delivered to Purchaser at Closing.

(h) Survival; Representations and Warranties. Except as expressly provided herein, the representations, warranties and agreements of the parties contained herein, if any, shall

merge into the Deed and shall not survive Closing. No representation, promise, or inducement not included in this Agreement shall be binding upon any party hereto.

(i) Drafting of Agreement; Severability. The parties each acknowledge and agree that none of the terms or provisions of this Agreement shall be construed against any of the parties merely because of who may have drafted such term or provision and that, if any of the terms or provisions of this Agreement are or should be void or unenforceable, all of the remaining terms and provisions of this Agreement are and shall be applicable to the fullest extent permitted by law.

(j) Prevailing Party. In any litigation, arbitration or other legal proceeding that may arise between the parties hereto, the prevailing party shall be entitled to recover its costs, including costs of arbitration, and reasonable attorneys' fees in addition to any other relief to which such party may be entitled.

(k) Waiver of Jury Trial. In any civil action, counterclaim, or proceeding, whether at law or in equity, that arises out of, concerns, or relates to this Agreement, any and all transactions contemplated by this Agreement, the performance of this Agreement or the relationship created by this Agreement, whether sounding in contract, tort, strict liability, or otherwise, trial shall be to a court of competent jurisdiction and not to a jury. Each party hereby irrevocably waives any right it may have to a trial by jury. Any party may file an original counterpart or a copy of this Agreement with any court, as written evidence of the consent of the parties to this Agreement of the waiver of their right to trial by jury. Neither party has made or relied upon any oral representations to or by any other party regarding the enforceability of this provision. By execution of this Agreement, each party acknowledges that it has read and understands the effect of this jury waiver provision. Each party acknowledges that it has been advised by its own counsel with respect to the transaction governed by this Agreement and specifically with respect to the terms of this Section, or has waived such advice of counsel.

(l) Effective Date. The "Effective Date" of this Agreement shall be the date upon which the last of Seller or Purchaser has executed this Agreement; with any changes thereto having been initiated by all parties.

[Signatures begin on following page]

IN WITNESS WHEREOF, each party hereto has executed this Agreement on the day and
year indicated below.

PURCHASER:
Keldon Holdings, LLC

By: Tom Isom
Name: _____
Title: owner
Date of Execution: 12/8/20

[signatures continue on following page]

SELLER:

Trustees of Connetquot Lake Park, Inc.

By: [Signature]
Name: James J. Becker
Title: Executive Director
Date of Execution: 25 Nov 2020

**Exhibit B
 Proposed Distribution**

ALL ASSET SALE
 PROPOSED DISTRIBUTION

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 Exhibit B - Proposed Distribution Page 2 of 3

STALKING HORSE APA GROSS SALE	\$1,200,000.00
PROCEEDS	\$1,200,000.00
(Less Costs of Sale)	\$100,000.00
NET PROCEEDS FOR DISTRIBUTION	\$1,100,000.00
Creditor Dividend	60.93%

Trustees of Conneaut Lake Park, Inc. - Sale Proceeds Distribution Worksheet			
Creditor Name & Address	Class	Balance Owed (w/o Interest) as of 1/05/2021	Net Sale Proceeds Pro Rata Distributions
First Capital Finance, Inc.	2	-	NA
Berkheimer Associates	3	-	NA
Joseph J. & Isabel J. Pischak	5	317,632.72	\$193,540.57
Conneaut Lake Joint Municipal Authority	6	267,350.63	\$162,902.59
Mercer County State Bank	7	58,924.28	\$35,903.85
Conneaut Lake Joint Municipal Authority	8	103,810.77	\$63,254.18
Conneaut Lake Joint Municipal Authority	9	18,297.50	\$11,149.07
Conneaut Lake Joint Municipal Authority	10	15,172.83	\$9,245.14
Joseph J. & Isabel J. Pischak	11	315,826.85	\$192,440.22
Donald G. Kaltenbaugh	12	51,590.97	\$31,435.51

(“*Auction*”), if any, and having held a hearing (the “*Sale Hearing*”) on March 2, 2021 to consider the Sale Motion; and the Court having found that (i) the Court has jurisdiction to consider the Sale Motion in accordance with 28 U.S.C. §§ 157 and 1334; (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); and the Court having considered the Sale Motion, its supporting materials, and all responses thereto; and after due deliberation thereon; and it appearing that the entry of this Order and granting the relief set forth herein are in the best interests of the Debtor and its creditors; and good and sufficient cause having been shown;

IT IS FURTHER FOUND AND DETERMINED THAT:

A. The statutory and rule-based predicates for the relief sought in the Sale Motion are sections 105, 363, and 506(c) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “*Bankruptcy Code*”), Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”), and Rule 6004-1 of the Local Rules of the United States Bankruptcy Court for the Western District of Pennsylvania (the “*Local Rules*”).

B. This 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), the Court expressly finds that there is no just reason for delay in the implementation of this Order and expressly directs entry of judgment as set forth herein.

C. As evidenced by certificates filed with the Court, proper, timely, adequate, and sufficient notice of, and a reasonable opportunity to object or otherwise to be heard regarding: (i) the entry of the Bid Procedures Order and the dates and deadlines set forth therein, including the procedures required for the submission of Qualified Bids for the Debtor’s Assets and for participation by Qualified Bidders at the Auction; (ii) the Sale Motion; (iii) the Sale Hearing; (iv)

the transactions contemplated under the Purchase and Sale Agreement (the “*PSA*”) of _____ (the “*Successful Bidder*”), including the sale of the Debtor’s Assets (the “*Sale*”) has been provided as required by the Bid Procedures Order, and the same constitutes good and sufficient notice of, and a reasonable opportunity to object or be heard regarding the Sale Motion, the Auction, the Sale Hearing, and the entry of this Order, under sections 102(1), and 363 of the Bankruptcy Code, Bankruptcy Rules 2002, 6006 and 9014, the Local Rules, and the Procedures Orders. No other or further notice of, opportunity to object to, or other opportunity to be heard regarding, the Sale Motion, the Sale Hearing, or the entry of this Order need be given to any entity.

D. As demonstrated by the representations of counsel made on the record at the Sale Hearing, the Debtor and its professionals and other representatives have complied in all respects and in good faith with the Bid Procedures Order, including by affording entities that expressed an interest in submitting a Qualified Bid a full, fair, and reasonable opportunity to obtain necessary due diligence information and to submit the materials required under the Procedures Orders by the Bid Deadline.

E. The Auction, to the extent conducted, (i) was held as provided in the Bid Procedures Order on March 2, 2021; (ii) was conducted pursuant to procedures established in good faith and in compliance with the Bid Procedures Orders, and (iii) afforded a full, fair, and reasonable opportunity for any party that submitted a timely Qualified Bid to make a higher or otherwise better offer for the Debtor’s Assets than that of the Successful Bidder. At the conclusion of the Auction, the Court determined that the Successful Bidder’s bid for the Debtor’s Assets, as described in the applicable PSA, was the highest and otherwise best bid. Pursuant to the terms of the Bid Procedures Order, the Court designated [_____] as

the Reserve Bidder.

F. The Debtor is the sole and lawful owner of, and has clear and marketable title to, the Debtor's Assets to be sold, including all items of personal property owned by the Debtor as identified in the PSA.

G. The Successful Bidder has offered to purchase the Debtor's Assets free and clear of all Liens and Claims (defined below), subject to any expressly assumed liabilities, the charitable use restriction, and any other permitted exceptions as provided in PSA, to the full extent authorized under section 363(f) of the Bankruptcy Code, with the same to attach to the Sale Proceeds, if any, with the same validity and priority and to the same extent as existed before the Sale. The Successful Bidder would not enter into its PSA to purchase the Debtor's Assets other than through a sale of such Debtor's Assets free and clear of all Liens and Claims.

H. The offer to purchase the Debtor's Assets made by the Successful Bidder, under the terms and conditions set forth in its PSA: (i) represents the highest or otherwise best offer obtained for the Debtor's Assets; (ii) is for fair, adequate, and sufficient consideration that constitutes reasonably equivalent value for the Debtor's Assets being conveyed to the Successful Bidder; and (iii) would not have been made by the Successful Bidder absent the protections afforded to the Successful Bidder by the Bid Procedures Order, their PSA, the Bankruptcy Code, and this Order.

I. The Debtor's determination to designate the Stalking Horse Bidder and bring the Debtor's Assets to Auction and Sale, each constitutes a reasonable exercise of the Debtor's business judgment and each is in the best interests of the Debtor and its creditors. The Debtor has articulated sound business reasons for consummating the PSA and for selling the Debtor's Assets pursuant to its Chapter 11 Plan.

J. Each entity with a Lien (as defined below) in any of the Debtor's Assets to be transferred on the closing date of the Sale has (i) consented to, or is deemed to have consented to, the Sale free and clear of such Lien, (ii) could be compelled in a legal or equitable proceeding to accept money in satisfaction of such Lien, or (iii) otherwise falls within the provisions of section 363(f) of the Bankruptcy Code and has been satisfied as to all such Liens and Claims. Those holders of Liens and Claims who did not object, or who withdrew their objections, to the Sale or the Sale Motion are deemed to have consented to entry of this Order pursuant to section 363(f)(2) of the Bankruptcy Code. Each holder of a Lien that did not so object is adequately protected by having its Lien, if any, attach to the net cash proceeds of the Sale ultimately attributable to the property against or in which it asserts a Lien, with the same validity and priority, and to the same extent, as existed before the Sale, and subject to: (i) the terms of the instruments that created such Lien and to any claims; (ii) defenses the Debtor and its bankruptcy estate may possess with respect thereto; and (iii) the Debtor's right to surcharge the Debtor's Assets pursuant to Section 506(c) of the Bankruptcy Code for necessary and reasonable professional fees and expenses incurred in connection with the Sale and the preservation of the Debtor's Assets (collectively, the "Surcharges"). Therefore, approval of the PSA and consummation of the Sale free and clear of Liens and Claims is appropriate pursuant to section 363(f) of the Bankruptcy Code.

K. The Successful Bidder is not holding itself out to the public as a continuation of the Debtor and no common identity of directors, stockholders, members, or other equity holders exists between the Successful Bidder and the Debtor. The transactions contemplated by the PSA do not amount to a consolidation, merger, or *de facto* merger of the Successful Bidder and the Debtor; there is neither substantial continuity of enterprise between the Debtor and Successful

Bidder, nor is any Successful Bidder a mere continuation of the Debtor. The Successful Bidder does not constitute a successor to the Debtor.

L. To the fullest extent authorized by section 363(f) of the Bankruptcy Code, the Successful Bidder's acquisition of the Debtor's Assets shall be free and clear of any claims and successor liability claims of any nature whatsoever, whether known or unknown and whether asserted or unasserted as of the closing on the Sale.

M. The transfer of the Debtor's Assets to the Successful Bidder is or will be a legal, valid, and effective transfer of the Debtor's Assets, and will vest the Successful Bidder on the Closing Date (as defined in the PSA) with all right, title, and interest in and to the Debtor's Assets described in the respective PSA, free and clear of the Liens and Claims, except those explicitly and expressly excluded by the Successful Bidder in the PSA or this Order, including the applicable charitable use restriction referenced in the PSA.

N. The PSA and the transactions contemplated thereunder were negotiated at arms' length, without collusion, and in good faith within the meaning of section 363(m) of the Bankruptcy Code.

O. The Debtor and the Successful Bidder did not engage in any conduct that would allow the PSA to be set aside pursuant to section 363(n) of the Bankruptcy Code.

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

Q. To the extent any of the 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.

IT IS HEREBY ORDERED THAT:

1. The Sale Motion is GRANTED as set forth herein.
2. All objections and responses to the Sale Motion that have not been overruled, withdrawn, waived, settled, or resolved, and all reservations of rights included therein, are hereby overruled and denied; provided however, that the distribution of the Sale Proceeds net of Costs of Sale (including any applicable Breakup Fee) shall be held in escrow pending further Order of Court.
3. The Debtor, in transferring the Debtor's Assets pursuant to this Order and section 363 of the Bankruptcy Code, are deemed, under section 1107(a) of the Bankruptcy Code, to have all rights and powers to perform all the functions and duties of a trustee serving in a case under chapter 11, and will transfer the property pursuant to this Order.

4. The Sale of the Debtor's Assets to the Successful Bidder under the PSA constitutes a transfer for reasonably equivalent value and fair consideration. The Sale of the Debtor's Assets to the Successful Bidder is a legal, valid, and effective transfer of the Debtor's Assets notwithstanding any requirement for approval or consent of any entity. The Sale of the Debtor's Assets to the Successful Bidder is on an AS IS, WHERE IS basis consistent with the terms of the PSA.

5. In the event the Successful Bidder does not close on the Sale within three (3) calendar days following entry of this Order, unless otherwise extended by mutual agreement of the Debtor and the Successful Bidder for a period of no longer than 2 calendar days, the Debtor is authorized to close on the Sale with the Reserve Bidder without further Order of Court or notice to any party. In the event the Debtor closes on the Sale with the Reserve Bidder, then all references to the Successful Bidder contained in this Order shall be deemed to mean the Reserve

Bidder identified herein.

6. To the fullest extent permitted by applicable law, neither the Successful Bidder nor its affiliates, successors or assigns shall, as a result of the consummation of the transactions set forth in the PSA: (i) be a successor to the Debtor or the Debtor's bankruptcy estate; (ii) have, *de facto* or otherwise, merged consolidated with or into the Debtor or the Debtor's bankruptcy estate; (iii) be a continuation or substantial continuation of the Debtor or any enterprise of the Debtor; or (iv) be a joint employer or co-employer with, or successor employer of the Debtor. The Successful Bidder shall not assume, nor be deemed to assume or in any way be responsible for any prepetition or postpetition liability or obligation of the Debtor and/or its bankruptcy estate, except as expressly provided for in the PSA.

7. Pursuant to sections 105 and 363(b) and (f) of the Bankruptcy Code, title to the Debtor's Assets shall pass to the Successful Bidder on the Closing Date, free and clear of any and all liens (including mechanic's, materialmen's, and other consensual and nonconsensual liens and statutory liens), security interests, encumbrances and claims (including, but not limited to, any "claim" as defined in section 101(5) of the Bankruptcy Code), reclamation claims, mortgages, deeds of trust, pledges, any liabilities or obligations under any State or Federal WARN Act or similar law, any liabilities or obligations under COBRA, covenants, restrictions, hypothecations, charges, indentures, loan agreements, instruments, contracts, leases, licenses, options, rights of first refusal, rights of offset, recoupment, rights of recovery, judgments, orders and decrees of any court of foreign or domestic governmental entity, claims for reimbursement, contribution, indemnity or exoneration, assignment, debts, charges, suits, rights of recovery, interests, products liability, alter-ego, environmental, successor liability, tax and other liabilities (including without limitation real estate taxes and any federal, state or local taxes of any kind), causes of action and

claims, to the fullest extent of the law, in each case whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or noncontingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, or know or unknown, whether arising prior to, on, or subsequent to the Petition Date, whether imposed by agreement, understanding, law, equity or otherwise (collectively, the "*Liens and Claims*"), with all such Liens and Claims upon the Debtor's Assets to be unconditionally released, discharged, and terminated as against either the Debtor's Assets or the Successful Bidder; provided, however that any assumed liabilities as set forth in the PSA shall be excluded from the definition of Liens and Claims and the charitable use restriction affecting the Debtor's Assets shall continue.

8. Any such Liens and Claims shall attach to the proceeds of the sale of the Debtor's Assets with the same priority, validity, force, and effect (if any) as existed with respect to the Debtor's Assets as of the Petition Date and shall be paid from the Sale Proceeds of the Debtor's Assets net of the Costs of Sale (including any Breakup Fee) and any applicable Surcharges pursuant to Section 506(c) of the Bankruptcy Code.

9. To the extent one or more third parties have possession or control of any of the Debtor's Assets, such third parties are hereby directed to turnover and deliver such assets to the Successful Bidder and any Liens and Claims shall attach to the Sale Proceeds in accordance with this Order.

10. The provisions of this Order authorizing the Sale of the Debtor's Assets free and clear of Liens and Claims shall be self-executing, and neither the Debtor nor the Successful Bidder shall be required to execute or file releases, termination statements, assignments, consents,

or other instruments in order to effectuate, consummate, and implement the foregoing provisions of this Order; provided, however, that this paragraph shall not excuse such parties from performing any and all of their respective obligations under this Order or the PSA. All persons and entities (a) holding Liens and Claims on the Debtor's Assets, (b) that have filed financing statements, mortgages, or other documents or instruments evidencing claims against the Debtor's Assets, or (c) otherwise asserting claims against the Debtor's Assets shall, and hereby are directed to, execute and deliver to the Successful Bidder such releases or termination statements to effectuate the Sale of the Debtor's Assets to the Successful Bidder free and clear of any and all Liens and Claims.

11. The Successful Bidder's offer for the Debtor's Assets, as embodied in the PSA, is the highest and best offer for the Debtor's Assets and is hereby approved.

12. The PSA, substantially in the form attached hereto as Exhibit L, is hereby approved pursuant to section 363(b) of the Bankruptcy Code and the Debtor is authorized to consummate and perform all of its obligations under the PSA and to execute such other documents and take such other actions as are necessary or appropriate to effectuate the PSA. For the avoidance of doubt, the Debtor and the Successful Bidder may make non-material changes to the PSA up to the closing of the Sale.

13. Pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, the Sale by the Debtor to the Successful Bidder for the Debtor's Assets and transactions related thereto, upon the closing under the PSA, are authorized and approved in all respects.

14. The terms of this Order shall be binding on the Successful Bidder and its successors and assigns, the Debtor, creditors of the Debtor, and on all other parties in interest in the Debtor's chapter 11 case, and any successors of the Debtor.

15. The Successful Bidder is a good faith purchaser entitled to the benefits and protections afforded by section 363(m) of the Bankruptcy Code.

16. With respect to the transactions consummated pursuant to this Order, this Order shall be the sole and sufficient evidence of the transfer of title to the Successful Bidder, and the sale transaction consummated pursuant to this Order shall be binding upon and shall govern the acts of all 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 of the property sold pursuant to this Order, including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, administrative agencies, governmental departments, secretaries of state, and federal, state, and local officials, and each of such persons and entities is hereby directed to accept this Order as sole and sufficient evidence of such transfer of title and shall rely upon this Order in consummating the transactions contemplated hereby.

17. Pursuant to section 105 of the Bankruptcy Code, creditors of the Debtor are prohibited from taking any actions against the Successful Bidder or the Debtor's Assets; provided, however, that nothing in this paragraph shall prevent any party from seeking to enforce against the Successful Bidder any applicable rights or obligations under the respective PSA.

18. Except as otherwise provided for herein and in the PSA, the transfer of the Debtor's Assets and the assignment of contracts and leases set forth therein (collectively, the "Assigned Contracts") does not and will not subject the Successful Bidder and/or its affiliates, designees, assignees, successors, or any of their properties, assets, officers, directors, members, employees, or equity holders (together with Successful Bidder, the "Successful Bidder Entities")

to any liability by reason of such transfers and assignments under the laws of the United States, any state, territory, or possession thereof, in whole or in part, directly or indirectly, on any theory of law or equity, including, without limitation, any theory of successor or transferee liability, persons and entities hereby are forever barred, estopped, and permanently enjoined from asserting such persons' or entities' Liens and Claims against the Successful Bidder Entities.

19. Effective on the Closing Date, all parties and/or entities asserting Liens and Claims and contract rights against the Debtor and/or any of the Debtor's Assets are hereby permanently enjoined and precluded from, with respect to such Liens and Claims: (i) asserting, commencing, or continuing in any manner any action against the Successful Bidder Entities (each a "*Protected Party*," and all such entities collectively, the "*Protected Parties*"), or against any Protected Party's assets or properties, including without limitation against the Debtor's Assets; (ii) the enforcement, attachment, collection, or recovery, by any manner or means, of any judgment, award, decree, or order against the Protected Parties or any properties or Debtor's Assets of the Protected Parties; (iii) creating, perfecting, or enforcing any encumbrance of any kind against the Protected Parties or any properties or Debtor's Assets of the Protected Parties, including without limitation the Debtor's Assets; (iv) asserting any setoff, right of subrogation, or recoupment of any kind against any obligation due the Protected Parties; and (v) taking any action, in any manner, in any place whatsoever, that does not conform to or comply with the provisions of this Order or the PSA. Neither the Successful Bidder nor the Debtor are required to comply with any "bulk sale" or similar laws relating to the transfer of the Debtor's Assets.

20. The Debtor and the Debtor's estate, on the one hand, and the Successful Bidder Entities, on the other hand, hereby release each other from any and all claims except for such claims that arise from the PSA and this Order.

21. The Court retains jurisdiction to interpret, implement, and enforce the provisions of, and resolve any disputes arising under or related to, this Order and the PSA, all amendments thereto, any waivers and consents thereunder, and each of the agreements executed in connection therewith.

22. The failure specifically to include any particular provisions of the PSA or any of the documents, agreements, or instruments executed in connection therewith in this Order shall not diminish or impair the force of such provision, document, agreement, or instrument, it being the intent of the Court that the PSA and each document, agreement, or instrument be authorized and approved in its entirety.

23. Pursuant to the PSA and section 365(k) of the Bankruptcy Code, the Debtor shall have no liabilities for any claims arising or relating to or accruing post-Closing under any of the Assigned Contracts.

24. Except as provided in the PSA and this Order, the Debtor shall be responsible for all obligations that arise between prior to the Closing Date relating to all Assigned Contracts unless otherwise agreed to by and between the Debtor, Successful Bidder and the counterparty to the Assigned Contract.

25. The Successful Bidder shall not be deemed to be a joint employer, single employer, co-employer, or successor employer with the Debtor for any purpose or under the laws of the United States, any state, territory, or possession thereof and, except as specifically set forth in the PSA, the Successful Bidder shall not have any obligation to pay any past wages, benefits, or severance pay or extend or make any benefits or benefit programs, including COBRA or any similar laws or regulations, to any of Debtor's employees or former employees, including any such employees who may become employees of the Successful Bidder.

26. The Debtor is hereby authorized to (a) take all other and further actions as may be reasonably necessary consummate and implement the Sale; (b) perform all obligations under the PSA, and (c) execute all other documents and instruments related to and connected with the Sale and the consummation thereof, all without any further corporate action or order of the Court.
27. To the extent there are any inconsistencies between the terms of this Order, the PSA, and any prior order or pleading with respect to the Sale Motion in the Debtor's chapter 11 case, the terms of this Order shall govern.
28. Notwithstanding the provisions of Rules 6004(h) and 6006(d) of the Bankruptcy Rules, this Order shall not be stayed for 14 days after entry and shall be effective immediately upon entry, and the Debtor and the Successful Bidder are authorized to close the Sale immediately upon entry of this Order.
29. Nothing in this Order shall modify or waive any closing conditions or termination rights in the PSA, and all such conditions and rights shall remain in full force and effect in accordance with their terms.
30. This Sale is made pursuant to the Debtor's Chapter 11 Plan of Reorganization confirmed by this Court by Order entered September 6, 2016. Therefore, in accordance with 11 U.S.C. § 1146(a), the Sale may not be subject to taxation under any laws imposing a stamp tax, state or local transfer tax, or similar tax.

Date _____ **JEFFERY A. DELLER**
United States Bankruptcy Judge