M-2025-3052793

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	**Chapter 11**
	§	
EVERSTREAM SOLUTIONS LLC, *et al.*,	§	**Case No. 25-90144 (CML)**
	§	
	§	**(Jointly Administered)**
Debtors.[1]	§	

MOTION OF DEBTORS FOR ORDER (I) APPROVING (A) BIDDING PROCEDURES, (B) DESIGNATION OF STALKING HORSE BIDDER AND STALKING HORSE BID PROTECTIONS, (C) FORM AND MANNER OF NOTICE OF SALE, AUCTION, AND SALE HEARING, AND (D) ASSUMPTION AND ASSIGNMENT PROCEDURES, (II) SCHEDULING AUCTION AND SALE HEARING, AND (III) GRANTING RELATED RELIEF

IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE ELECTRONICALLY AT HTTPS://ECF.TXSB.USCOURTS.GOV/ WITHIN 21 DAYS FROM THE DATE THIS MOTION WAS FILED. IF YOU DO NOT HAVE ELECTRONIC FILING PRIVILEGES, YOU MUST FILE A WRITTEN OBJECTION THAT IS ACTUALLY RECEIVED BY THE CLERK WITHIN 21 DAYS FROM THE DATE THIS MOTION WAS FILED. OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

1 The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Midwest Fiber Holdings LP (3804); Midwest Fiber Acquisition Topco LLC (N/A); Midwest Fiber Acquisition Midco1 LLC (6061); Midwest Fiber Acquisition LLC (N/A); Everstream Solutions LLC (2361); Everstream Networks LLC (4542); Everstream GLC Holding Company LLC (4493); American Fiber Comm L.L.C. (2389); HRS Internet, LLC (5042); Lynx Network Group, Inc. (6261); 15955 State Street LLC (2731); Rocket Fiber LLC (7722); Lynx Fiber One, LLC (7151); and Lynx Fiber Two, LLC (3416). The Debtors' mailing address is 1228 Euclid Ave. Suite 250, Cleveland, OH 44115.

Everstream Solutions LLC and its debtor affiliates, as debtors and debtors in possession (collectively, the "**Debtors**") in the above-captioned chapter 11 cases, respectfully represent as follows:[2]

Relief Requested

1. By this motion (the "**Motion**"), pursuant to sections 105, 363, and 365 of title 11 of the United States Code (the "**Bankruptcy Code**"), Rules 2002, 6004, 6006, 9007, 9008, and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rules 2002-1 and 9013-1 of the Bankruptcy Local Rules for the United States Bankruptcy Court for the Southern District of Texas (the "**Bankruptcy Local Rules**"), the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the "**Bidding Procedures Order**"), granting the following relief on a final basis:

i. authorizing and approving the Bidding Procedures substantially in the form attached to the Bidding Procedures Order as **Exhibit 1**, in connection with the sale of all or substantially all of the Debtors' assets other than the IL Divested Business and the MO Divested Business (each, as defined in the Stalking Horse Agreement) (the "**Assets**");

ii. authorizing the Debtors to designate Bluebird MidWest, LLC, an indirect subsidiary of Bluebird Network, LLC ("**Bluebird**"), a regional internet and data service provider and data center operator, as the stalking horse bidder (the "**Stalking Horse Bidder**");

iii. approving the Stalking Horse Bid Protections (as defined herein) proposed to be granted in accordance with the terms and conditions of the Bidding Procedures and the Stalking Horse Agreement;

iv. authorizing and scheduling an auction (the "**Auction**") and scheduling a hearing (the "**Sale Hearing**") with respect to the approval of a proposed sale transaction to the Successful Bidder or the Back-Up Bidder (each, as

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2 Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration, the Bidding Procedures, the Bidding Procedures Order, or the Stalking Horse Agreement (each, as defined herein), as applicable.

defined in the Bidding Procedures) pursuant to section 363 of the Bankruptcy Code (the "**Sale Transaction**");[3]

v. authorizing and approving the form and manner of notice of the (a) Debtors' entry into that certain *Asset Purchase Agreement*, dated as of May 22, 2025 (together with the exhibits thereto, as may be amended, supplemented, or otherwise modified from time to time in accordance with the terms thereof, the "**Stalking Horse Agreement**"), attached to the Bidding Procedures Order as **Exhibit 2**, which provides for the sale of substantially all of the Assets other than those related to the PA Business (as defined in the Stalking Horse Agreement) (the "**Stalking Horse Assets**") to the Stalking Horse Bidder (the "**Stalking Horse Bid**"), (b) Auction, and (c) Sale Hearing, substantially in the form attached to the Bidding Procedures Order as **Exhibit 3** (the "**Sale Notice**");

vi. approving the procedures set forth in the Bidding Procedures Order (the "**Assumption and Assignment Procedures**") for the potential assumption and assignment of the Debtors' executory contracts and unexpired leases to the Successful Bidder and the determination of the amount necessary to cure any defaults thereunder (the "**Cure Costs**");

vii. authorizing and approving the form and manner of notice to each relevant non-Debtor counterparty to a Transferred Contract (as defined herein) (collectively, the "**Contract Counterparties**") regarding the Debtors' potential assumption and assignment of the Transferred Contracts to the Successful Bidder and of the Debtors' calculation of the Cure Costs, substantially in the form attached hereto as **Exhibit 4** (the "**Cure Notice**");

viii. authorizing and approving the form of notice substantially attached in the form attached to the Bidding Procedures Order as **Exhibit 5** (the "**Post-Auction Notice**"); and

ix. granting related relief.

2. In support of the Motion, the Debtors submit the declaration of James Henry, a Senior Managing Director at Bank Street Group LLC ("**Bank Street**"), filed contemporaneously herewith (the "**Henry Declaration**"), which is incorporated by reference herein.

[3] On or before July 21, 2025, subject to adjustment depending on when the Sale Hearing and related deadlines are set, the Debtors will file with this Court and serve by e-mail, mail, facsimile, or overnight delivery on the Sale Notice Parties (as defined herein) a proposed form of order authorizing and approving, among other things, the Sale Transaction in which all or some of the Assets of the Debtors or the Debtors' business will be sold to the applicable Successful Bidder or the Back-Up Bidder (the "**Sale Order**").

Preliminary Statement

3. The Debtors are pleased to report that, after considerable deliberation, extensive negotiations, and multiple rounds of revisions of terms, on May 22, 2025, the Debtors entered into the Stalking Horse Agreement with the Stalking Horse Bidder. The Stalking Horse Agreement is the result of the Debtors' extensive Prepetition Sale Process (as defined herein) and contemplates a value-maximizing sale of the Stalking Horse Assets for an aggregate purchase price of $285 million in cash (subject to purchase price adjustments) plus certain assumed liabilities. The Stalking Horse Agreement is attached to the Bidding Procedures Order as **Exhibit 2** and is subject to higher or otherwise better offers as described herein.

4. As set forth in greater detail in the Henry Declaration, the Debtors, Bank Street, the Debtors' proposed M&A advisor, and PJT Partners LP, the Debtors' proposed investment banker, conducted an extensive and robust prepetition marketing, solicitation, and sale process (the "**Prepetition Sale Process**"). With respect to the Stalking Horse Assets, the Debtors and Bank Street conducted the Prepetition Sale Process for over eight months, commencing in September 2024 and running through the commencement of these chapter 11 cases. With the prepetition marketing in mind, and in an effort to maximize value for all stakeholders, the Debtors and their advisors have developed postpetition marketing, bidding, and auction procedures (the "**Bidding Procedures**") for the orderly marketing and sale of the Assets. The Bidding Procedures are designed to promote a competitive and robust bidding process and are intended to generate the greatest level of interest in the Debtors' business—higher or otherwise better than the Stalking Horse Agreement—including for the Debtors' assets related to the PA Business.

5. The Bidding Procedures provide the Debtors with flexibility to solicit proposals, negotiate transactions, hold an auction, and proceed to consummate a Sale Transaction

of the Assets, all while protecting the due process rights of all interested parties and ensuring that there is a full and fair opportunity to review and consider proposed transactions. The Debtors propose to establish the following key dates and deadlines for the sale process:

Key Event	Proposed Date or Deadline[4]
Milestone for entry of Bidding Procedures Order	**June 27, 2025**
Deadline to submit Bids	**July 14, 2025 at 4:00 p.m. (prevailing Central Time)**
Qualified Bid Deadline: Debtors to notify bidders of status as Qualified Bidders and to file and publish (on Claims Agent Website) notice of Qualified Bids	**July 16, 2025 at 4:00 p.m. (prevailing Central Time)**
Auction to be held if the Debtors receive more than one Qualified Bid, to be conducted at (i) the offices of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 and/or (ii) virtually, pursuant to procedures to be announced to Qualified Bidders	**July 17, 2025 at 9:00 a.m. (prevailing Central Time)**
Deadline to file notice and identities of Successful Bid(s) and Back-Up Bid	**July 21, 2025 at 4:00 p.m. (prevailing Central Time)**
Deadline to file proposed form of Sale Order	**July 21, 2025 at 4:00 p.m. (prevailing Central Time)**
Deadline to file objections to Sale Transaction	**July 25, 2025 at 4:00 p.m. (prevailing Central Time)**
Deadline to file objections to cure costs and/or adequate assurance of future performance	**July 25, 2025 at 4:00 p.m. (prevailing Central Time)**
Proposed Sale Hearing	**August 1, 2025**

6. Given the exigencies of the Debtors' business operations and financial condition, it is vital that the Debtors quickly execute the going-concern sale of their business and then exit chapter 11 in an efficient manner. Accordingly, the Debtors request approval of a comprehensive set of procedures that will facilitate a potential Sale Transaction in a timely and efficient manner while maximizing the value of the Assets for the benefit of the Debtors' estates.

[4] All proposed dates and deadlines listed herein are subject to the Court's availability.

Background

7. On the date hereof (the "**Petition Date**"), the Debtors each commenced with the Court a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee has been appointed in these chapter 11 cases.

8. The Debtors' chapter 11 cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and Bankruptcy Local Rule 1015-1.

9. The Debtors, a leading U.S. builder, owner, and operator of business-only fiber optic networks, commenced these chapter 11 cases to continue their prepetition marketing efforts and ultimately seek consummation of one or more value-maximizing sale transactions for the benefit of all stakeholders. Prior to the Petition Date, the Debtors began a robust marketing and sale process that resulted in the Stalking Horse Agreement with the Stalking Horse Bidder, which contemplates the sale of the Stalking Horse Assets (*i.e.*, substantially all the Assets other than those related to the PA Business). During these chapter 11 cases, the Debtors plan to continue marketing the Stalking Horse Assets for potential transactions that, if representing higher or otherwise better value for the Debtors' stakeholders than the Stalking Horse Bid, will be pursued in lieu thereof. Contemporaneously herewith, the Debtors are seeking approval of debtor-in-possession financing in the aggregate principal amount of up to \$186 million, including new money commitments of \$55 million, to support the Debtors' operations throughout the pendency of these chapter 11 cases.

10. Additional information regarding the Debtors' business and capital structure and the circumstances leading to the commencement of these chapter 11 cases is set forth

in the *Declaration of Justin Schmaltz in Support of Debtors' Chapter 11 Petitions and First Day Relief* (the "**First Day Declaration**"), filed contemporaneously herewith and incorporated herein by reference.

Jurisdiction and Venue

11. The Court has jurisdiction and authority to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Prepetition Sale Process

12. As described in the Henry Declaration, in July 2024, the Debtors engaged Bank Street to serve as their M&A advisor to assist with selling all or substantially all of the Debtors' assets, excluding the MO Divested Business, the IL Divested Business, and the PA Business (as defined in the Stalking Horse Agreement). During the course of the prior year, and in some respects in parallel, the Debtors and PJT engaged in an extensive marketing and sale process for the MO Divested Business, the IL Divested Business, and the PA Business, which ultimately resulted in finding buyers for the MO Divested Business and the IL Divested Business, but not the PA Business.

13. After the Debtors retained Bank Street to assist in the sale of the Debtors' remaining assets, Bank Street, on behalf of the Debtors, contacted 86 potential investors, including 23 strategic and 63 financial buyers. During this process, 55 interested investors were provided with diligence. In addition, many of the interested parties submitted due diligence questions lists to and scheduled conference calls with Bank Street.

14. After several months of extensive negotiations, the Debtors received five indications of interest from investors seeking to acquire the Debtors' assets, but ultimately received

only two second-round bids. In December 2024, after an additional round of bids, the Debtors ultimately received three proposals: (i) an all-cash bid from a strategic buyer that was involved in the first and second round of the process; (ii) a bid comprised of cash and deferred consideration from a strategic buyer that was involved in the first and second round of the process; and (iii) an all-cash consideration bid from a strategic buyer that did not participate in either round of bidding. The Debtors determined to continue discussions with the two bidders that stayed involved throughout the bidding process. After an additional round of diligence and considerable deliberation, the Debtors selected the bid from the Stalking Horse Bidder and signed the Stalking Horse Agreement with the opportunity to pursue other higher or otherwise better offers.

Need for Timely Sale Process

15. The Debtors believe that the time periods set forth in the Bidding Procedures are reasonable and will provide parties with sufficient time and information to submit a bid for the Debtors' business. In formulating the Bidding Procedures and time periods set forth therein, the Debtors balanced the need to provide adequate and appropriate notice to parties in interest and potential bidders with the need to run the sale process quickly and efficiently to maximize value. To that end, the Bidding Procedures are designed to encourage all prospective bidders to submit bids at the outset of these chapter 11 cases to provide the highest or otherwise best available recoveries to the Debtors' stakeholders. In addition to the Stalking Horse Bidder, at least two strategic parties have indicated interest in participating in the postpetition sale and bidding process.

16. The Debtors' formulation of the Bidding Procedures was also informed by the Prepetition Sale Process. Potential Bidders (as defined in the Bidding Procedures) have had, and will, in accordance with the Bidding Procedures, continue to have access to comprehensive

information prepared by the Debtors and their advisors that is compiled in an electronic data room (the "**Data Room**"). In light of the foregoing, the Debtors have determined that pursuing the Bidding Procedures is in the best interests of the Debtors' estates, will establish whether and to what extent a market exists for the Debtors' business, and provides interested parties with sufficient opportunity to participate.

Bidding Procedures

A. Overview

17. The Bidding Procedures are designed to promote a competitive and robust sale process for the Debtors' business. If approved, the Bidding Procedures will allow the Debtors to solicit and identify bids from Potential Bidders that constitute the highest or otherwise best offers for the Debtors' business on a timeline that is consistent with the milestones in the debtor-in-possession financing and Stalking Horse Agreement. The Debtors believe that the time periods set forth in the Bidding Procedures are reasonable and appropriate. Under the proposed timeline, there will be approximately 47 days between the filing of this Motion and the Bid Deadline (as defined herein), and 58 days between the filing of this Motion and the Sale Objection Deadline (each, as defined in the Bidding Procedures). Potential Bidders who have not previously conducted diligence on the Debtors' business will have immediate access, subject to the execution of an appropriate confidentiality agreement, to a substantial body of information regarding the Assets, including information gathered based upon specific due diligence requests of various petition bidders who participated in the Prepetition Sale Process.

18. The Bidding Procedures are attached to the Bidding Procedures Order and therefore are not restated herein in their entirety. The Debtors will have the ability to alter the Bidding Procedures based upon the exigencies of a given situation if the Debtors determine, in their business judgment, in a manner consistent with their fiduciary duties and applicable law, and

in consultation with certain parties as provided in the Bidding Procedures. Certain of the key terms of the Bidding Procedures are highlighted in the chart below.[5]

MATERIAL TERMS OF BIDDING PROCEDURES	
Provisions Governing Qualification of Bidders and Qualified Bids	A. **Bid Deadline** – the Bid Deadline is **July 14 2025, at 4:00 p.m. (prevailing Central Time)**; provided that the Debtors, in consultation with the OpCo Agent, OpCo Lenders, DIP Agent, and DIP Lenders (each, as defined in the Bidding Procedures), may extend the Bid Deadline in their discretion without further order of the Bankruptcy Court subject to providing prior notice to all Potential Bidders, the Stalking Horse Bidder,[6] and the Consultation Parties.[7] **The submission of a Bid by the Bid Deadline shall constitute a binding and irrevocable offer to acquire the Assets as specified in such Bid.** Any party that does not submit a Bid by the Bid Deadline will not be allowed to (i) submit any offer after the Bid Deadline or (ii) participate in the Auction. B. **Potential Bidder Requirements** – To access the data room of the Debtors' material documents, a Potential Bidder must submit: 1. Confidentiality Agreement. An executed confidentiality agreement in form and substance satisfactory to the Debtors. 2. Financial Wherewithal. Sufficient information, as reasonably determined by the Debtors, in consultation with the OpCo Agent, OpCo Lenders, DIP Agent, and DIP Lenders, to allow the Debtors to determine that the interested party (i) has the financial wherewithal to consummate the applicable Sale Transaction and (ii) intends to access the Data Room for a purpose consistent with the Bidding Procedures. C. **Qualified Bid Requirements** – To constitute a Qualified Bid, a Bid must include, at a minimum, the following: 1. Identity of Bidder. A Qualified Bid must fully disclose, by their legal names, the identity of the Potential Bidder and each entity that will be participating in its Bid, and the complete terms of any such participation. 2. Acquired Assets. A Qualified Bid must clearly identify in writing the particular Assets the Potential Bidder seeks to acquire from the Debtors. For the avoidance of doubt, a Qualified Bid may include a bid for less than all or substantially all of

[5] To the extent that there is any inconsistency between the terms of the Bidding Procedures and the summary of such terms in this Motion, the terms of the Bidding Procedures shall control.

[6] For the avoidance of doubt, the Debtors' ability to extend deadlines as provided herein shall not alter the Stalking Horse Bidder's rights under the Stalking Horse Agreement.

[7] "**Consultation Parties**" means (i) Paul Hastings LLP and FTI Consulting, as advisors to the OpCo Agent, the OpCo Lenders, the DIP Agent, the DIP Lenders, and the HoldCo Lenders and (ii) the legal advisor to the Official Committee of Unsecured Creditors, if any. In the event that any Consultation Party or affiliate of the foregoing submits a Qualified Bid, such party shall no longer be a Consultation Party until such time as such party formally withdraws its Bid.

	the Assets.[8] To the extent a Bid includes some or all of the PA Business as part of the Assets to be purchased, the Bid must clearly state the portion of the Purchase Price (as defined herein) allocated to such assets. 3. Purchase Price. A Qualified Bid must specify the price (the "**Purchase Price**") proposed to be paid for the Assets, and must (a) propose a Purchase Price in cash or other aggregate consideration equal to or greater in value than the purchase price of the Stalking Horse Bid, taking into account Assumed Liabilities designated by the Potential Bidder, among other things, *plus* the Termination Payment (as defined herein), *plus* the amount of the Minimum Overbid Amount (as defined herein), and (b) include an amount in cash sufficient to satisfy the Termination Payment of up to $11,400,000. 4. Assumed Liabilities. A Qualified Bid must clearly identify the particular liabilities, if any, the Potential Bidder seeks to assume. 5. Form of Consideration. Each Qualified Bid must (a) indicate (x) whether it is an all-cash offer (including confirmation that the cash component of the Bid is based in U.S. Dollars) or consists of certain non-cash components, such as a credit bid and/or the assumption of liabilities, and (y) the allocation of the Purchase Price among the Assets to be acquired and the liabilities to be assumed, if applicable; and (b) provide sufficient cash consideration specifically designated for the Termination Payment payable to the Stalking Horse Bidder under the terms of the Stalking Horse Agreement. 6. Credit Bid. Persons or entities holding a perfected security interest in the Assets may, pursuant to section 363(k) of the Bankruptcy Code, seek to submit a "credit bid" on such Assets, to the extent permitted by applicable law, any Bankruptcy Court orders, and the documentation governing the Debtors' prepetition or postpetition secured credit facilities. a. Direction Letter. To the extent applicable, a credit bid must include a copy of the direction by the applicable lenders to the applicable agent to authorize the submission of such credit bid. b. Cash Requirements. A credit bid must include a commitment to provide cash consideration sufficient to pay in full all costs associated with winding down the Debtors' chapter 11 cases (including the Termination Payment payable to the Stalking Horse Bidder under the terms of the Stalking Horse Agreement). 7. Joint Bids. The Debtors, in consultation with the Consultation Parties, will be authorized to approve joint Bids, including joint credit bids, in their reasonable discretion on a case-by-case basis. 8. Deposit. A Qualified Bid must be accompanied by a good faith deposit in the form of cash in an amount equal to 10% of the Purchase Price (a "**Deposit**"). A deposit must be deposited prior to the Bid Deadline with an escrow agent selected by the Debtors (the "**Escrow Agent**") pursuant to an escrow agreement to be provided by the Debtors. a. A Deposit is not required for the credit bid portion of Qualified Bid. b. To the extent a Qualified Bidder increases the Purchase Price before, during, or after the Auction, such Qualified Bidder shall promptly, and in no event more than one business day thereafter, adjust its Deposit so that it equals 10% of the increased Purchase Price.

	c. The Successful Bidder's Deposit (if any) shall be applied against the portion of the Purchase Price of its Successful Bid (as defined in the Bidding Procedures) upon the consummation of the applicable Sale Transaction. d. The Deposit of any Qualified Bidder will be forfeited to the Debtors if (i) the Qualified Bidder attempts to modify, amend, or withdraw its Qualified Bid, except as permitted in the Bidding Procedures or with the Debtors' written consent, during the time the Qualified Bid remains binding and irrevocable or (ii) the Qualified Bidder is selected as a Successful Bidder and fails to enter into the required definitive documentation or to consummate the applicable Sale Transaction in accordance with the Bidding Procedures. e. The requirements set forth in the "Deposit" section do not apply to the Stalking Horse Bidder and shall be governed instead by the Stalking Horse Agreement. 9. Proposed Asset Purchase Agreement. A Qualified Bid must include, in both PDF and MS-WORD format, an executed purchase agreement (including the disclosure schedules and exhibits thereto) (the "**Proposed Purchase Agreement**"), together with a copy of the same that has been marked against the Stalking Horse Agreement, a copy of which is located in the Data Room. 10. Employee Obligations. A Qualified Bid must specify (i) whether or not the Potential Bidder intends to hire a portion or all of the Debtors' employees and (ii) expressly propose the treatment of the Debtors' prepetition compensation, incentive, retention, bonus or other compensatory arrangements, plans, or agreements, including, offer letters, employment agreements, consulting agreements, severance arrangements, retention bonus agreements, change in control arrangements, retiree benefits, and any other employment-related agreements. 11. Conditions to Closing. Each Bid must identify with particularity each condition to closing and state the expected date of Closing of the Sale Transaction. 12. Designation of Contracts and Leases. A Qualified Bid must identify with particularity each executory contract and unexpired lease to be assumed and assigned by Debtors to the Potential Bidder. Each Bid must also include information demonstrating adequate assurance of future performance under such contracts and leases in satisfaction of the requirements under section 365(f)(2)(B) of the Bankruptcy Code. 13. Financial Information. A Qualified Bid must include the following: a. A Qualified Bid must contain such financial and other information that allows the Debtors, in consultation with the Consultation Parties, to make a reasonable determination as to the Potential Bidder's financial and other capabilities to consummate the applicable Sale Transaction, including: (i) such financial and other information setting forth the Potential Bidder's willingness to perform under any contracts that are assumed and assigned to such party, (ii) current financial statements or similar financial information certified to be true and correct as of the date thereof, (iii) proof of financing commitments (if needed) to close the applicable Sale Transaction (not subject to, in the Debtors'

[8] The Debtors will consider a Qualified Bid for less than all or substantially all of the Assets, as long as the Debtors have an acceptable sale, restructuring, or other solution for the remaining Assets, as reasonably determined by the Debtors, in consultation with the OpCo Agent, OpCo Lenders, DIP Agent, and DIP Lenders.

	discretion, in consultation with the OpCo Agent, OpCo Lenders, DIP Agent, and DIP Lenders, any unreasonable conditions), (iv) contact information for verification of such information, including any financing sources, and (v) any other information reasonably requested by the Debtors, OpCo Agent, OpCo Lenders, DIP Agent, or DIP Lenders necessary to demonstrate that the Potential Bidder has the ability to close the applicable Sale Transaction in a timely manner. b. Any funding commitments or other financing must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants, conditions, term, and termination provisions acceptable to the Debtors. 14. Representations and Warranties. A Qualified Bid must include the following representations and warranties: a. Statement that Potential Bidder had opportunity to conduct any and all due diligence regarding the applicable Assets prior to submitting its bid, b. Statement that Potential Bidder relied solely upon its own due diligence in making its Bid and did not rely on any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express or implied, by operation of law or otherwise, regarding such Assets or liabilities or the completeness of any information provided in connection therewith, except as expressly stated in the representations and warranties contained in the Potential Bidder's Proposed Purchase Agreement, c. Statement that the Potential Bidder agrees to serve as the back-up bidder (the "**Back-Up Bidder**"), if its bid is selected as the second or best bid after the Successful Bid with respect to the applicable Assets, d. Statement that the Potential Bidder has not engaged in any collusion with respect to the submission of its bid, e. Statement that all proof of financial ability to consummate the applicable Sale Transaction in a timely manner and all information provided to support adequate assurance of future performance is true and correct, and f. Statement that the Potential Bidder agrees to be bound by the terms of the Bidding Procedures. 15. Required Approvals. A Qualified Bid must include the following: a. A statement or evidence that the Potential Bidder has made or will make in a timely manner all necessary filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, or other Antitrust Laws (as defined in the Stalking Horse Agreement), as applicable, and pay the fees associated with such filings. b. A statement or evidence identifying each governmental and regulatory third-party approval required for the Potential Bidder to consummate the Sale Transaction. c. A statement or evidence of Potential Bidder's plan, including a detailed timeline, and ability to obtain all requisite governmental, regulatory, or other third-party approvals and the proposed timing for the Potential Bidder to undertake the actions required to obtain such approvals. d. A statement or evidence that the Bid is reasonably likely (based on antitrust or other regulatory issues, experience, and other considerations) to be

consummated, if selected as the Successful Bid, within a time frame acceptable to the Debtors.

e. A statement or evidence that the Potential Bidder's legal counsel will discuss with and explain to the Debtors' legal counsel such Potential Bidder's regulatory analysis, strategy, and timeline for securing all such approvals as soon as reasonably practicable, and in no event later than the time period contemplated in the Stalking Horse Agreement.

16. Advisors. A Qualified Bid must state the identity and contact information of the external advisors (including financial, legal, accounting, tax, technical, commercial, and others), if any, that the Potential Bidder has engaged to assist in the Sale Transaction.

17. Corporate Authorization. A Qualified Bid must include evidence of corporate authorization and approval from the Potential Bidder's board of directors (or comparable governing body) with respect to the submission, execution, and delivery of a Bid, participation in the Auction, and closing of the transactions contemplated by the Potential Bidder's Proposed Purchase Agreement in accordance with the terms of the Bid and the Bidding Procedures.

18. Proposed Transition Services Agreement. Each Bid must include, in both PDF and MS-WORD format, an executed transition services agreement (including any schedules and exhibits thereto), together with a copy of the same that has been marked against the transition services agreement executed by the Stalking Horse Bidder, a copy of which is located in the Data Room.

19. Other Requirements. A Qualified Bid must:

a. Include a commitment that the Bid is formal, binding, and unconditional (except for those conditions expressly set forth in the Proposed Purchase Agreement), is not subject to any due diligence or financing contingency, and is irrevocable until the Debtors, in consultation with the Consultation Parties, notify such Potential Bidder that such bid has not been designated as a Successful Bid or a Back-Up Bid, or until the first business day after consummation of a Sale Transaction with a Successful Bidder; provided that the foregoing shall not apply to the Stalking Horse Bidder except as otherwise set forth in the Stalking Horse Agreement.

b. Include a statement that the Bid does not entitle the Potential Bidder to any break-up fee, termination fee, expense reimbursement or similar type of payment or reimbursement, and a waiver of any substantial contribution administrative expense claims under section 503(b) of the Bankruptcy Code related to the bidding process; provided that the foregoing shall not apply to the Stalking Horse Bidder.

c. Provide contact information of the specific person(s) whom the Debtors or their advisors should contact in the event that the Debtors have any questions or wish to discuss the Bid submitted by the Potential Bidder.

d. Include written evidence of available cash, a written, binding commitment for financing (not subject to any conditions other than those expressly set forth in the Proposed Purchase Agreement) and such other evidence of ability to consummate the transaction contemplated by the Proposed Purchase Agreement, the Bidding Procedures Order, and the Bidding Procedures, as acceptable in the Debtors' business judgment.

e. Provide the identity of each entity that will be participating in connection with such Bid and taking ownership of the Assets (including any equity owners or sponsors, if the Potential Bidder is an entity formed for the purpose of consummating the Sale Transaction) and a copy of a board resolution or

	similar document demonstrating the authority of the Potential Bidder to make a binding and irrevocable bid on the terms proposed and to consummate the transaction contemplated by the Proposed Purchase Agreement. f. Include a covenant to cooperate with the Debtors, OpCo Agent, OpCo Lenders, DIP Agent, and DIP Lenders to provide pertinent factual information regarding the Potential Bidder's operations reasonably required to analyze issues arising with respect to any applicable antitrust laws and other applicable regulatory requirements. g. Include a detailed analysis of the value of any non-cash component of the Bid, if any, and back-up documentation to support such value.
Provisions Providing Bid Protections to "Stalking Horse" or Initial Bidder	1. Termination Payment. The Stalking Horse Bidder shall be entitled to payment of (i) a break-up fee in an amount equal to $8,550,000 *plus* (as applicable) (ii) the reasonable, out-of-pocket, and documented expenses of the Stalking Horse Bidder incurred in connection with the Stalking Horse Agreement and the transactions contemplated thereunder, up to an aggregate amount of $2,850,000. 2. Bidding Increments. At the Auction, bidding for the Assets will start with the highest or otherwise best purchase price and/or terms received as determined by the Debtors in their sole discretion and will proceed thereafter in minimum bid increments of not less than $1,000,000 (a "**Minimum Overbid Amount**").
Modification of Bidding and Auction Procedures	1. The Debtors may extend the Bid Deadline in their discretion without further order of the Bankruptcy Court subject to providing prior notice to all Potential Bidders, the Stalking Horse Bidder, and the Consultation Parties. 2. The Debtors, in consultation with the Consultation Parties, reserve the right to work with any Potential Bidder in advance of the Auction to cure any deficiencies in a bid that is not initially deemed a Qualified Bid. 3. The Debtors reserve the right to and may increase or decrease the Minimum Overbid Amount at any time during the Auction. 4. The Debtors may, in consultation with the Consultation Parties, adopt rules for the Auction consistent with the Bidding Procedures and the Bidding Procedures Order that the Debtors, in consultation with the Consultation Parties, reasonably determine to be appropriate to promote a competitive auction. 5. The Sale Hearing may be adjourned or continued to a later date by the Debtors, after consultation with the Stalking Horse Bidder and counsel to the OpCo Lenders and DIP Lenders, by sending notice prior to or making an announcement at the Sale Hearing. 6. The Debtors reserve the right to extend the deadlines set forth in the Bidding Procedures.
Closing with Alternative Backup Bidders	1. The Debtors may, in consultation with the Consultation Parties and with the reasonable consent of the OpCo Agent (on behalf and at the direction of the Required OpCo Lenders (as defined in the Bidding Procedures)) and the DIP Agent (on behalf and at the direction of the Required DIP Lenders (as defined in the Bidding Procedures)), identify which Qualified Bid constitutes the second highest or otherwise best bid and deem such second highest or otherwise best bid as the back-up bid (the "**Back-Up Bid**").

	2. The Back-Up Bid shall remain open and irrevocable until the earliest to occur of: a. the consummation of the Sale Transaction with a Successful Bidder, and b. the release of such Back-Up Bid by the Debtors in writing (such date, the "**Back-Up Termination Date**"). 3. If a Sale Transaction with a Successful Bidder is terminated prior to the Back-Up Termination Date, the Back-Up Bidder shall be deemed a Successful Bidder and shall be obligated to consummate the Back-Up Bid as if it were a Successful Bid; <u>provided</u> that if the Stalking Horse Bid is deemed the Back-Up Bid, the Stalking Horse Bidder shall only be obligated to consummate the Back-Up Bid in accordance with the terms of the Stalking Horse Agreement.
Provisions Governing the Auction	If the Debtors do not receive any Qualified Bids (other than the Stalking Horse Bid) for any of the Assets on the same or better terms as provided in the Stalking Horse Bid by the Bid Deadline, the Debtors will not conduct the Auction and shall file a notice with the Bankruptcy Court by **July 16, 2025, at 4:00 p.m. (prevailing Central Time)**, or as soon as practicable thereafter, indicating that the Auction has been cancelled. The Debtors shall also publish such notice on the website of their claims and noticing agent, Stretto, Inc. If the Debtors, in consultation with the Consultation Parties, determine that they received no Qualified Bids other than the Stalking Horse Bid, the Stalking Horse Bidder shall be deemed the Successful Bidder and the Stalking Horse Bid shall be deemed a Successful Bid. If the Debtors, in consultation with the Consultation Parties, receive any Qualified Bids (other than the Stalking Horse Bid) with respect to the same or overlapping Assets or group of Assets, the Debtors will conduct the Auction on **July 17, 2025, at 9:00 a.m. (prevailing Central Time)**, at (i) the offices of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 and/or (ii) virtually, pursuant to procedures to be announced to bidders, or at such other date, time, and location as shall be timely communicated to all parties entitled to attend the Auction. **Participants and Attendees**: A. Only Qualified Bidders will be eligible to participate in Auction, subject to such limitations as the Debtors may impose in good faith. B. Professionals and/or other representatives of the Debtors and the Consultation Parties shall be permitted to attend and observe the Auction. C. Each Qualified Bidder shall be required to confirm, both before and after the Auction, that it has not engaged in any collusion with respect to the submission of any Bid, the bidding, or the Auction. **Auction Procedures**: A. <u>Open Auction</u>. The Auction will be conducted openly and shall be transcribed or recorded. B. <u>Baseline Bids</u>. Bidding for the Assets will start with the highest or otherwise best Purchase Price and/or terms received as determined by the Debtors in their sole discretion. C. <u>Minimum Overbid</u>. Bidding shall proceed in the amount of the Minimum Overbid Amount. The Debtors, in consultation with the Consultation Parties and with the reasonable consent of the OpCo Agent (on behalf and at the direction of the Required OpCo Lenders) and the DIP Agent (on behalf and at the direction of the Required DIP

	Lenders), reserve the right to increase or decrease the Minimum Overbid Amount at any time during the Auction.

B. Stalking Horse Bid and Stalking Horse Bid Protections

19. The Debtors request approval of (i) the designation of the Stalking Horse Bidder and Stalking Horse Bid on the terms provided in the Stalking Horse Agreement and (ii) standard stalking horse bid protections, in particular, the Termination Payment of (a) a break-up fee equal to $8,550,000, *plus* (as applicable) (b) the reasonable, out-of-pocket and documented expenses of the Stalking Horse Bidder incurred in connection with the Stalking Horse Agreement and transactions contemplated thereunder, up to an aggregate amount equal to $2,850,000 as an administrative expense. The Termination Payment is payable in the event that (a) the Debtors consummate one or more sale transactions for the Assets with one or more other bidders, (b) there is an uncured material breach by the Debtors under the Stalking Horse Agreement that prevents a condition to closing from being satisfied, or (c) the Debtors' governing bodies exercise a "fiduciary out" after December 31, 2025. In addition, the Stalking Horse Bidder is entitled to only the expense reimbursement portion of the Termination Payment if the Stalking Horse Agreement is terminated due to the dismissal or conversion to chapter 7 of the chapter 11 cases, the appointment of a trustee or examiner with expanded powers in the chapter 11 cases, the Court's denial of the Sale Order, or an event of default under the DIP Credit Agreement that causes all amounts due thereunder to accelerate. In any event, the Termination Payment is only payable in the absence of a material breach by the Stalking Horse Bidder, pursuant to which the Debtors would be entitled to terminate the Stalking Horse Agreement.

20. In the event the Stalking Horse Bidder is not the Successful Bidder at the Auction, as described in more detail below, the Stalking Horse Bidder agrees to serve as the Back-Up Bidder.

21. Given the Debtors' need to maximize value for creditors through a timely and efficient marketing and sale process, the ability to designate a Stalking Horse Bidder and offer such bidder Stalking Horse Bid Protections is justified, appropriate, and essential.

22. The chart below summarizes the significant terms of the Stalking Horse Agreement.

MATERIAL TERMS OF THE STALKING HORSE AGREEMENT[9]	
Purchase Price	The consideration is (a) (i) $285 million in cash (subject to certain purchase price adjustments) plus (ii) the amounts of any Deposits which are transferred to the Buyer (*i.e.*, the Stalking Horse Bidder) at Closing pursuant to Section 2.06 minus (iii) the Pro Rata Bonus Amount plus (iv) amounts paid to Buyer pursuant to the Expense Reimbursement Agreement minus (v) the Budgeted Capex Shortfall, minus (vi) [redacted] and (b) the assumption of the Assumed Liabilities. Stalking Horse Agreement § 3.01.
Transferred Assets	Subject to the exclusions set forth in Section 2.01(b) and Section 2.02 and subject to Section 6.10 of the Stalking Horse Agreement, at the Closing, Seller Parent shall, and shall cause each other Seller Party to, sell or otherwise transfer to Buyer all of such Seller Party's right, title, and interest in and to all of the assets, properties, and rights owned by such Seller Party[10] primarily related to the operation of the Business[11] (other than the Excluded Assets, as set forth in greater detail in the Stalking Horse Agreement) (collectively, the "**Transferred Assets**"). The Transferred Assets include: 1. all real property owned in fee by any Seller Party and related to the Business (including the real property set forth on Schedule 2.01(a)(i)) held by such Seller

[9] All references to sections or schedules in this summary refer to the Stalking Horse Agreement, unless otherwise specified.

[10] "**Seller Parties**" include (i) Midwest Fiber Holdings LP, a Delaware limited partnership ("**Seller Parent**"), and (ii) the persons set forth on Schedule A to the Stalking Horse Agreement.

[11] The "**Business**" means collectively, the business conducted by the Seller Parties of developing, marketing, and providing bandwidth infrastructure and managed services, operating underground and aerial fiber networks or selling bandwidth infrastructure and related products, including Ethernet transport, fiber-distributed cellular backhaul, wavelengths and dedicated internet access or voice and other voice managed services, in each case to business, carrier, government, and other non-residential customers, other than the Excluded Business. For the avoidance of doubt, Business shall include the Seller Parties' operations in Illinois except for the IL Divested Business.

Party, together with (to the extent of such Seller Party's interest therein) all buildings, structures, improvements, facilities, fixtures, and appurtenances thereto, and all rights in respect thereof, and all servitudes, easements, rights-of-way, and other surface use agreements and water use agreements, if any, related thereto (the "**Transferred Owned Real Property**"), in each case, other than as included in the Excluded Assets;

2. (A) subject to Section 2.04(d), the real property that is leased by any Seller Party, in each case, granting such Seller Party a valid leasehold or subleasehold estate or other right to use or occupy such real property which is related to the Business (including the real property set forth on Schedule 2.01(a)(ii)(A)) (the "**Transferred Leased Real Property**", together with the Transferred Owned Real Property, collectively, the "**Transferred Real Property**") and all rights in respect thereof (including, to the extent assignable or transferable, all options and rights of first refusal) and all tenements, hereditaments, appurtenances, and other property rights appertaining thereto (such leases, subleases, licenses, and other agreements pursuant to which any Seller Party holds any Transferred Leased Real Property, including the right to all security deposits and other amounts and instruments deposited by or on behalf of applicable Seller Party thereunder, the "**Transferred Leases**"), in each case, other than to the extent an Excluded Asset and (B) the easements, fiber optic networks, cabling, and other fixed network-related assets displayed on the KMZ Map, including without limitation the easements set forth on Schedule 2.01(a)(ii)(B), in each case, other than to the extent an Excluded Asset;

3. subject to Section 2.04(d), (A) all non-Executory Contracts set forth on Schedule 2.01(a)(iii)(A), (B) all the BTOP Grants, (C) all Separated Business Contracts, and (D) all Executory Contracts set forth on Schedule 2.01(a)(iii)(D), in each case excluding, as of and following the Cut-Off Date, (x) any Specified 2.02 Contracts and Specified 6.10 Contracts, in each case for which Buyer's consent has not been obtained, or any other Holdback Contracts or Non-Separated Contracts that have not otherwise been properly separated and/or assigned to Buyer, in accordance with Section 2.02 or Section 6.10, respectively, as of the Cut-Off Date and/or are Excluded Contracts hereunder and (y) Contracts that the Parties mutually determine would reasonably be expected (I) to cause the conditions set forth in Section 10.01(b) and/or Section 10.02(b) not to be satisfied, or (II) otherwise require additional approval from or filing with any Government Authority and/or reasonably be expected to implicate additional scrutiny therefrom (the Contracts in clauses (A), (B), (C), and (D), collectively with the Transferred Leases, the "**Transferred Contracts**");

4. to the maximum extent permitted by the Bankruptcy Code or other applicable Law, the IRUs related to the IRU Agreements that are set forth on Schedule 2.01(a)(iv);

5. to the maximum extent permitted by the Bankruptcy Code or other applicable Law, all Permits, including all Communications Permits and Environmental Permits, to the extent that such Permits are primarily related to the Business, including the ownership or operation thereof, in each case, other than as included in the Excluded Assets;

6. (A) all rights of such Seller Party under or pursuant to all warranties, representations, and guarantees made by suppliers, manufacturers, contractors for other third parties to the extent pertaining to any Transferred Assets or (B) all rights and defenses pertaining to any Assumed Liability;

7. (A) all Business Intellectual Property (including the Business Registered IP set forth on Schedule 2.01(a)(vii)), along with (1) all income, royalties, damages and

	payments due or payable to any Seller Party as of the Closing or thereafter, including damages and payments for past, present or future infringements or misappropriations thereof, (2) the right to sue and recover for past infringements or misappropriations thereof, (3) any and all corresponding rights that, now or hereafter, may be secured throughout the world, and (4) all copies and tangible embodiments of any such Business Intellectual Property in any Seller Party's possession or control, (B) Business Technology, and (C) Business Systems, in each case of clauses (A), (B) and (C), other than to the extent scheduled as Excluded Assets; 8. all Assumed Employee Plans and any and all assets, trusts, funding vehicles and administrative services or other contracts or property related thereto; 9. to the extent not included as a Transferred Contract, (A) all non-competition, non-solicitation and restrictive covenant agreements and arrangements that are primarily related to the Business and (B) all invention assignments and work made for hire provisions, in each case, arising by operation of Law or Contract with respect to the relationship between any Seller Party and any Covered Employee or Former Covered Employee and that are primarily related to the Business; 10. to the maximum extent permitted by the Bankruptcy Code or applicable Law (including Privacy Laws and the published privacy policies of the applicable Seller Party in effect as of the date of the Stalking Horse Agreement), the Transferred Books and Records; 11. all tangible personal property and interests therein owned by any Seller Party related to the Business, including furniture, furnishings, office equipment, communications equipment, vehicles, and other tangible personal property (including, rights, if any, in any of the foregoing purchased subject to any conditional sales or title retention agreement in favor of any other Person), in each case, other than to the extent scheduled as Excluded Assets; 12. all inventory used in connection with the Business, wherever located, including raw materials, works in progress, packaging, supplies, tooling and parts, whether held at any location or facility of any Seller Party or in transit to any Seller Party, in each case, as of the Closing Date, in each case, other than as included in the Excluded Assets; 13. the assets listed on Schedule 2.01(a)(xiii); 14. all goodwill of the Business; 15. (A) all Avoidance Actions (other than D&O Avoidance Actions) primarily related to the Transferred Assets and/or Assumed Liabilities, including actions against vendors and service providers that are counterparties to Transferred Contracts or related to Assumed Liabilities and (B) except for Retained Set-Off Rights, all rights, claims, Causes of Action, rights of recovery, rights of set-off, and rights of recoupment or other Action existing as of the Closing Date of any Seller Party against any Transferred Employee; 16. all Causes of Action (including counterclaims) and defenses, including those arising in connection with the Bankruptcy Cases; 17. all Deposits determined to be included as a Transferred Asset in accordance with Section 2.06; and

	18. to the extent not an Excluded Asset, for the avoidance of doubt, prepayments pursuant to Transferred Contracts or otherwise arising out of the Transferred Assets (as applicable). Stalking Horse Agreement § 2.01(a).
Assumed Liabilities	Upon the consummation of the Closing, Buyer shall, effective as of the Effective Time, assume and thereafter timely pay, discharge, and perform in accordance with their terms, only the following Liabilities, without duplication and only to the extent not paid prior to the Closing, and in each case excluding the Excluded Liabilities (the "**Assumed Liabilities**"). Subject to the exclusions set forth in Section 2.01(d), the Assumed Liabilities shall include the following Liabilities of the Seller Parties: 1. except as otherwise set forth in Section 2.01(c)(v) and Section 2.01(c)(vi), all Liabilities arising under any of the Transferred Contracts, in each case, solely to the extent arising from periods occurring on or after the Closing and relating (and only to the extent so relating) to facts, circumstances or occurrences first arising after the Closing and that do not arise from or relate to, and are not in connection with, any event, circumstance or condition occurring or existing at or prior to the Closing that, with or without notice or lapse of time, would constitute or result in a breach, violation or default under applicable Law or any such Transferred Contracts by any Seller Party or any of their Affiliates; 2. 50% of all Liabilities with respect to Transfer Taxes; 3. all Liabilities accruing after the Closing, under Environmental Laws, including those relating in any way to the environment or natural resources, human health and safety, or Hazardous Materials; 4. all Liabilities relating to Buyer's ownership or operation of the Transferred Assets, to the extent arising from events, facts, or circumstances that occur from and after the Effective Time, solely to the extent arising from periods occurring on or after the Closing and relating (and only to the extent so relating) to facts, circumstances or occurrences first arising after the Closing and that do not arise from or relate to, and are not in connection with, any event, circumstance or condition occurring or existing at or prior to the Closing that, with or without notice or lapse of time, would constitute or result in a breach, violation or default under applicable Law or any such Transferred Contracts by any Seller Party or any of their Affiliates; 5. all Liabilities arising under any finance lease that is a Transferred Contract (and excluding, for the avoidance of doubt, any Cure Costs related to any such finance lease that is a Transferred Contract); 6. amounts expressly required to be paid by Buyer pursuant to the terms of the Stalking Horse Agreement; 7. any Liability expressly assumed by Buyer pursuant to Section 6.08; and 8. the Liabilities listed on Schedule 2.01(c)(viii). Stalking Horse Agreement § 2.01(c).

Excluded Assets	Notwithstanding anything to the contrary herein, the following assets of or in the possession of the Seller Parties (the "**Excluded Assets**") shall be retained by the Seller Parties and their respective Affiliates: 1. subject to Section 2.04(d), all Contracts set forth on Schedule 2.01(b)(i) and those Contracts rejected in the Bankruptcy Cases prior to the Closing Date in accordance with the Stalking Horse Agreement ("**Excluded Contracts**"); 2. all accounts receivable owed to any Seller Party related to the Business prior to the Closing, including any Intercompany accounts receivable; provided that unbilled amounts with respect to DISH that, as of the Closing Date, relate to future periods following the Closing Date, shall not be Excluded Assets (and shall be Transferred Assets); 3. all Cash; 4. other than the Transferred Owned Real Property and Transferred Leased Real Property, all right, title, and interest in and to any other owned or leased real property, together with all improvements, facilities, fixtures, and appurtenances thereto, and all rights in respect thereof, and all servitudes, easements, rights-of-way, other surface use agreements, and water use agreements related thereto and, with respect to any such real property, all rights in respect thereof (including all options and rights of first refusal) and all tenements, hereditaments, appurtenances, and other property rights appertaining thereto; 5. all Intellectual Property, Technology, and Systems set forth on Schedule 2.01(b)(v); 6. all Personal Data that is nontransferable under the Bankruptcy Code or applicable Law (including Privacy Laws or under the privacy policies or notices of the applicable Seller Party in effect at the time of collection of such Personal Data); 7. all claims, rights, or interests of the Seller Parties or their respective Affiliates in or to any refund, rebate, abatement, or other recovery for Taxes and any other Tax assets (including any Tax attributes), together with any interest due thereon or penalty rebate arising therefrom, in each case (A) based on net income that is imposed on the Seller Parties or any of their respective Affiliates, (B) allocable to the Seller Parties pursuant to Section 9.02, or (C) attributable to the Excluded Assets; 8. all Tax Returns and other Tax records (including all related working papers) primarily related to (A) the Excluded Assets or (B) income Taxes of the Seller Parties or their respective Affiliates; 9. all Insurance Policies and all rights of any nature with respect to any such Insurance Policy, including any recoveries thereunder and any rights to assert claims seeking any such recoveries; 10. all nontransferable Permits (provided that the Permits set forth on Schedule 2.01(b)(xi) are those known as of the Agreement Date by Seller Parent to be nontransferable); 11. all rights and interests of any of the Seller Parties under the Transaction Agreements; 12. all Employee Plans that are not Assumed Employee Plans, and any and all assets, trusts, funding vehicles, insurance policies and administrative service or other contracts or property related thereto;

	13. (A) all minute books (and other similar corporate records) and stock records, (B) any books and records primarily related to the Excluded Assets, (C) any books and records or other materials of or in the possession of the Seller Parties that (I) any of the Seller Parties are required by Law or by Order of the Bankruptcy Court to retain or (II) any of the Seller Parties are prohibited by Law from delivering to Buyer, (D) any copies of any books and records that (I) any of the Seller Parties reasonably believes are necessary to enable the Seller Parties to prepare or file Tax Returns or (II) any Seller Party and its Affiliates retain pursuant to Section 7.01(a), and (E) any books, records, files, or papers that are not Transferred Books and Records; 14. (A) all records and reports prepared or received by any Seller Party or any of its Affiliates in connection with the sale of the Business or the Transactions or any other Transaction Agreement, including all analyses relating to the Business for purposes of the sale of the Business or the Transactions, or related to Buyer or any third-party bidder or potential purchaser, (B) all bids and expressions of interest received from third parties with respect to the Business, and (C) all privileged communications described in Section 12.21; 15. any warranties, representations, and guarantees primarily related to any Excluded Asset or rights and defenses primarily related to any Excluded Liability; 16. all right, title and interest in and to all equity interests of any Person owned by any Seller Party; 17. all assets or rights of every kind and description, in each case, to the extent used exclusively in connection with the PA Business, wherever located, whether real, personal, or mixed, tangible or intangible, that are owned by any Seller Party; 18. the IL Divested Business Assets and the MO Divested Business Assets; 19. all inventory listed on Schedule 2.01(b)(xix); 20. all (A) D&O Avoidance Actions, (B) Avoidance Actions other than those set forth in Section 2.01(a)(xv), and (C) setoff or clawback rights that are set forth on Schedule 2.01(b)(xx) or that arise from Avoidance Actions in relation to any Liability that is not an Assumed Liability (each, a "**Retained Set-Off Right**"); and 21. the assets listed on Schedule 2.01(b)(xxi). Stalking Horse Agreement § 2.01(b).
Excluded Liabilities	Notwithstanding any other provision of the Stalking Horse Agreement, Buyer is not assuming or agreeing to pay or discharge, and the Seller Parties shall be solely and exclusively liable with respect to Liabilities of the Seller Parties or otherwise with respect to the Business or Excluded Business that are not Assumed Liabilities (the "**Excluded Liabilities**"), which shall include the following: 1. except for Liabilities arising under finance leases that are Transferred Contracts or as otherwise set forth on Schedule 2.01(c)(ix), any Debt, including any Intercompany Debt; 2. any Liability to the extent related to or arising out of any Excluded Asset or the Excluded Business;

	3. any Liability for (A) income Taxes of any of the Seller Parties or their respective Affiliates, or any combined, unitary, or consolidated group of which any of the foregoing is or was a member, (B) Taxes attributable to the Transferred Assets allocable to any Tax period or portion of any Straddle Period ending on or prior to the Closing Date (determined, in the case of any Straddle Period, in accordance with Section 9.02), and (C) Taxes primarily related to the Excluded Assets; 4. any Liability expressly retained by the Seller Parties pursuant to Section 6.08 or the other express terms of the Stalking Horse Agreement; 5. all Liabilities for accounts payable or other accrued expenses or other accrued Liabilities of any kind owed by any Seller Party or any of their Affiliates as of or relating to prior to the Closing, including any Intercompany accounts payable; 6. the IL Divested Business Liabilities and the MO Divested Business Liabilities; 7. Liabilities relating to amounts to be paid by the Seller Parties pursuant to the Stalking Horse Agreement, including brokers fees; 8. any Liabilities relating to any existing Liens (other than Permitted Liens); 9. any regulatory fees, franchise fees, universal service contributions, and right-of-way fees, including any late fees, penalties and interest arising from the foregoing which have not been timely or fully paid related to the Business or the ownership, operation or use of the Transferred Assets for any period on or before the Closing Date; provided that the foregoing shall not include any filing fees that Buyer is expressly obligated to bear pursuant to Section 6.04(b) or Section 6.04(c); 10. all Liabilities accruing prior to the Closing under Environmental Laws, including those relating in any way to the environment or natural resources, human health and safety, or Hazardous Materials; 11. all Liabilities accruing, arising out of or relating to the ownership, conduct or operation of the Excluded Business or the ownership or use of the Excluded Assets (or any "successor-in-interest," "de facto merger" or other theories of liability related thereto); 12. all Seller Transaction Expenses; 13. all Cure Costs; 14. all Liabilities subject to administrative expense status under section 503(b)(9) of the Bankruptcy Code; 15. 50% of all Liabilities with respect to Transfer Taxes; 16. all Liabilities associated with (A) checks that need to be recut or re-issued to pay for prepetition Liabilities after the Petition Date or (B) written but uncashed checks, or initiated but incomplete wire or ACH transfers; 17. any Liability arising out of any investigation, inquiry, audit, enforcement action, or similar proceeding by a Government Authority primarily related to the operation of the Business, including in connection with the operation of the Transferred Assets, for any period before the Closing Date;

	18. all Liabilities for Non-Recurring Credits; and 19. all Liabilities set forth on Schedule 2.01(d)(xix). Stalking Horse Agreement § 2.01(d).
Agreements with Management or Key Employees	All Covered Employees[12] (including those on temporary furlough, leave of absence (including medical leave, military leave, or workers compensation leave) or short-term or long-term disability) may receive from Buyer or an Affiliate of Buyer, in Buyer's sole discretion (including, for the avoidance of doubt, on an employee-by-employee basis), a written offer of employment, to commence as of 12:01 a.m. local time on the Closing Date, and subject to the Closing, no earlier than four months following the designation of Buyer as the successful bidder following the auction, if any, and no later than fifteen Business Days prior to the Closing Date (and in any event no later than fifteen Business Days prior to the Closing Date) (or, for any Covered Employee hired by any Seller Party after written offers of employment are initially issued, as soon as reasonably practicable) and Buyer shall notify Seller Parent of each Covered Employee who is receiving an offer of employment as soon as reasonable but not later than the date of any such offer. Each offer of employment made by Buyer or an Affiliate of Buyer to a Covered Employee shall be subject to and conditioned upon the satisfaction of Buyer's or its applicable Affiliate's customary pre-employment screening process in accordance with Buyer's or its applicable Affiliate's past practice, and provide for: (i) an annual base salary or hourly wage rate, as applicable that is subject to Buyer's discretion and existing policies; (ii) retirement, health and welfare benefits (excluding nonqualified deferred compensation, equity or equity-based, incentive, commission, change in control, transaction, retention, defined benefit pension and post-employment or retiree health and welfare benefits (collectively, the "**Excluded Benefits**")) that are substantially comparable, in the aggregate, in Buyer's discretion, to (A) those provided to such Covered Employee immediately prior to the Closing under the Employee Plans listed on Schedule 4.13(a), (B) those provided to similarly situated employees of Buyer or its Subsidiaries, or (C) some combination of clause (A) and clause (B), in each case, excluding the Excluded Benefits; and (iii) severance payments and benefits that are no less favorable than either (A) those set forth on Schedule 6.08(a), as applicable to the respective Covered Employee or (B) the severance payments and benefits applicable to similarly situated employees of Buyer or its Affiliates, in each case for clause (A) and clause (B), as determined in the sole discretion of Buyer and its Affiliates. Stalking Horse Agreement § 6.08..
Releases	Each Party agrees that irreparable damage would occur, and the Parties would not have an adequate remedy at law if any provision of the Stalking Horse Agreement is not performed in accordance with its specific terms or is otherwise breached. Accordingly, each Party agrees that the other Party will be entitled to injunctive relief from time to time to prevent breaches of the provisions of the Stalking Horse Agreement and to enforce specifically the terms and provisions of the Stalking Horse Agreement and the Equity Commitment Letter, in each case (i) without the requirement of posting any bond or other indemnity and (ii) in addition to any other remedy to which it may be entitled, at law or in equity. Furthermore, each Party agrees not to raise any objections to the availability of the equitable remedy of injunctive relief or specific performance to prevent or restrain breaches of the Stalking Horse Agreement and the Equity Commitment Letter, and to specifically enforce the terms of the Stalking Horse Agreement and the Equity Commitment Letter to prevent breaches or threatened breaches of,

12 "**Covered Employee**" means the employees of Seller Party or any of its Subsidiaries who work for or provide services to the Business as set forth on Schedule 1.01(b) and any other individuals who are hired by Seller Party or one of its Subsidiaries to provide services to the Business in accordance with Section 6.01(b)(ix).

	or to enforce compliance with, the covenants and obligations of such Party under the Stalking Horse Agreement and the Equity Commitment Letter, in each case, subject to the terms, conditions and limitations herein and therein. Each Party expressly disclaims that it is owed any duty not expressly set forth in the Stalking Horse Agreement, and waives and releases all tort claims and tort causes of action that may be based upon, arise out of, or relate to the Stalking Horse Agreement, or the negotiation, execution, or performance of the Stalking Horse Agreement other than claims for (A) Willful Breach or Funding Willful Breach prior to the valid termination of the Stalking Horse Agreement in accordance with Article XI, in each case subject to Section 11.03 and Section 12.05, or (B) Fraud, as determined by the Bankruptcy Court. Stalking Horse Agreement § 12.17(b).
Private Sale/No Competitive Bidding	This Motion and the Stalking Horse Agreement contemplate an auction. Stalking Horse Agreement § 8.04.
Closing and Other Deadlines	The closing of the sale and purchase of the Transferred Assets and the assumption of the Assumed Liabilities (the "**Closing**") shall take place by telephone conference and electronic exchange of documents (or, because of recordation purposes originals are needed, then, the exchange of such original documents in recordable form), at 9:00 a.m. (New York City time) on the 15th Business Day following the date upon which all Closing Conditions are satisfied or waived in writing (to the extent permitted by applicable Law) in accordance with Article X (other than those Closing Conditions under the Stalking Horse Agreement that by their nature can only be satisfied at the Closing, but subject to the satisfaction or waiver of those Closing Conditions at such time), or on such other date or at such other time or place as the Parties may expressly agree in writing. For all purposes under the Stalking Horse Agreement and each other Transaction Agreement, (a) except as otherwise expressly provided in the Stalking Horse Agreement or such other Transaction Agreement, all matters at the Closing will be considered to take place simultaneously and (b) the Closing shall be deemed effective as of the Effective Time. Stalking Horse Agreement § 2.03.
Closing Payment Deposit; Letters of Credit	On or prior to the Agreement Date, (i) Buyer shall immediately deposit (or shall have deposited) with Citibank N.A., in its capacity as escrow agent (the "**Escrow Agent**") the sum of $2,850,000 by wire transfer of immediately available funds (the "**Deposit Escrowed Amount**") into an escrow account (the "**Deposit Escrow Account**"), to be released by the Escrow Agent and delivered to either Buyer or Seller Parent (or its designee) in accordance with the Stalking Horse Agreement and the provisions of the Escrow Agreement and (ii) has delivered to Seller Parent one or more Letters of Credit in an aggregate face amount equal to the Letter of Credit Amount (final drafts of which have been provided to Seller Parent at least two Business Days prior to the Agreement Date) and shall maintain such Letters of Credit for the benefit of Seller Parent until the earlier of (A) the Closing, (B) the termination of the Stalking Horse Agreement in accordance with Article XI (other than a Specified Termination) or (C) the payment in full of the Specified Reverse Termination Amount in accordance with the terms of the Stalking Horse Agreement and the Letters of Credit following a Specified Termination. The Letters of Credit shall provide that the issuer of such Letters of Credit shall honor Seller Parent's request to draw on the Letters of Credit, by Seller Parent upon delivery by Seller Parent to the issuer of the Letter of Credit of the certification signed by Seller Parent, substantially in the form agreed between the parties; provided that Seller Parent is so entitled to the Specified

	Reverse Termination Amount pursuant to Section 3.02(a), Section 3.02(b), and Section 11.03(b) (and solely if entitled thereunder). Stalking Horse Agreement § 3.02.
Closing Conditions	The obligations of Buyer to consummate the Transactions shall be subject to the satisfaction or written waiver by Buyer in its sole discretion, at or before the Closing, of each of the following conditions: 1. Representations and Warranties; Covenants. a. (A) all representations and warranties of Seller Parent contained in Article IV (other than the Seller Parent Fundamental Representations) shall be true and correct as of the Closing as if made on the Closing Date (other than representations and warranties that are made as of a specific date, which representations and warranties shall have been true and correct as of such date), except for breaches or inaccuracies, as the case may be, as to matters that, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect; provided that for purposes of determining the satisfaction of the condition in this clause (A), no effect shall be given to any qualifier of "material" or "Material Adverse Effect" in such representations and warranties (other than the word "Material" when used in the instances of the defined term "Material Contract") and (B) the Seller Parent Fundamental Representations shall be true and correct in all respects, other than for de minimis inaccuracies, in each case, as of the Closing as if made on the Closing Date (other than representations and warranties that are made as of a specific date, which representations and warranties shall have been true and correct as of such date); b. the covenants contained in the Stalking Horse Agreement required to be performed or complied with by Seller Parent at or before the Closing shall have been performed or complied with in all material respects; and c. Buyer shall have received a certificate signed by an authorized officer of Seller Parent, dated as of the Closing Date, certifying as to the satisfaction of matters set forth in the foregoing clauses (a) and (b). 2. Governmental Approvals. All applicable waiting periods under the HSR Act shall have expired or been terminated and all Government Approvals set forth on Schedule 6.04(a) shall have been made or obtained, or if applicable, shall have expired, have been waived by the applicable Government Authority (or other applicable Person), or have been terminated. 3. No Law. There shall be no Law or Order enacted or in effect that prohibits or makes illegal the sale of the Transferred Assets or the other Transactions. 4. Seller Closing Deliverables. The Seller Parties shall have executed and delivered, or caused to be executed and delivered, to Buyer all of the items set forth in Section 3.03(a). 5. Bankruptcy Court. The Bankruptcy Court shall have entered the Sale Order and no Order staying, amending, modifying, or reversing the Sale Order shall be in effect. 6. Material Adverse Effect. No Material Adverse Effect shall have occurred since the Agreement Date and then be continuing. 7. [redacted]

	[redacted] Stalking Horse Agreement § 10.02, Ex. L.
[redacted]	[redacted] Stalking Horse Agreement § 3.01(f), Ex. L.
Remedies; Limitation on Liability	Notwithstanding anything to the contrary herein (but subject to Section 12.05, the other applicable provisions of Section 11.03, and to the extent set forth in Section 11.03(d), Section 12.17), except with respect to claims for Fraud: 1. In each case, prior to the consummation of the Closing or after the termination of the Stalking Horse Agreement (*i.e.*, whether in the event of (x) Buyer's Funding Willful Breach, (y) Buyer's Willful Breach prior to the consummation of the Closing or after the termination of the Stalking Horse Agreement, or (z) any other breach of or failure to perform under the Stalking Horse Agreement by Buyer (or otherwise) prior to the consummation of the Closing or after the termination of the Stalking Horse Agreement), the Seller Parties' and their Non-Party Affiliate's sole and exclusive remedy (whether in contract or in tort, in Law or in equity or otherwise, or granted by statute or otherwise, whether by or through attempted piercing of the corporate, limited partnership, or limited liability company veil, or any other theory or doctrine, including alter ego or otherwise) against Buyer, Buyer Parent, and its and their respective Non-Party Affiliates for any breach, loss, Liability, or damage or failure to perform under the Transaction Agreements, the Transactions, or in respect of representations made or alleged to be made in connection herewith or in any other Transaction Agreement shall be (subject to the other terms of the Stalking Horse Agreement, including Section 12.05 as applicable): a. specific performance pursuant to, and on the terms and conditions set forth in, Section 12.17, (I) prior to the termination of the Stalking Horse Agreement or the Closing or (II) with respect to the Surviving Provisions following the termination of the Stalking Horse Agreement; b. the valid termination of the Stalking Horse Agreement pursuant to and in accordance with Section 11.01; c. following a valid Specified Termination pursuant to Section 11.01(j), (I) to receive (aa) the Specified Reverse Termination Amount (whether by way of payment by (or on behalf of) Buyer, Letter of Credit Funding, disbursement of the Deposit Escrowed Amount from the Deposit Escrow Account, or a combination thereof) in accordance with Section 11.03(b), (bb) Enforcement

	Expenses, and (cc) amounts payable or reimbursable under Section 6.12(a) *and (II) a claim for (and the right to pursue an Action for) (aa) the amounts* contemplated by the foregoing clause (I) to the extent payable and not timely *paid hereunder and (bb) monetary damages, not to exceed the Funding* Willful Breach Cap in the aggregate (but for the avoidance receipt of the *payments and amounts set forth in the foregoing* clause (I) *shall not count* towards the amount of the Funding Willful Breach Cap; d. following any other valid Specified Termination (other than pursuant to Section 11.01(j)), (I) to receive (aa) the Specified Reverse Termination Amount (whether by way of payment by (or on behalf of) Buyer, Letter of Credit Funding, disbursement of the Deposit Escrowed Amount from the Deposit Escrow Account, or a combination thereof) in accordance with Section 11.03(b), (bb) Enforcement Expenses, and (cc) amounts payable or reimbursable under Section 6.12(a) and (II) a claim for (and the right to pursue an Action for) the amounts contemplated by the foregoing clause (I) to the extent payable and not timely paid hereunder; or e. following any termination of the Stalking Horse Agreement that is not a Specified Termination, to the extent of a Willful Breach or other breach of Surviving Provisions, a claim for (and the right to pursue an Action for) monetary damages, not to exceed the Specified Reverse Termination Amount in the aggregate, and Enforcement Expenses. 2. In each case, prior to the consummation of the Closing or after the termination of the Stalking Horse Agreement (*i.e.*, whether in the event of (x) Buyer's Funding Willful Breach, (y) Buyer's Willful Breach prior to the consummation of the Closing or after the termination of the Stalking Horse Agreement, or (z) any other breach of or failure to perform under the Stalking Horse Agreement by Buyer (or otherwise) prior to the consummation of the Closing or after the termination of the Stalking Horse Agreement), no Seller Party nor any of their respective Affiliates or Non-Party Affiliates shall be entitled to bring, and shall in no event support, facilitate, encourage or take any action other than opposing the bringing of any action or other Action against Buyer, Buyer Parent or any of their respective Affiliates or Non-Party Affiliates (and neither Buyer, Buyer Parent nor any of their respective Affiliates or Non-Party Affiliates shall have any Liability) with respect to, arising out of, relating to or in connection with the Stalking Horse Agreement or the other Transaction Agreements and the Transactions and Buyer Transactions, in each case, other than pursuant to the remedies set forth in Section 11.03(d)(i) subject to the terms and limitations herein. In no event shall: (A) the Seller Parties be permitted or entitled to receive both (x) a grant of specific performance of the Stalking Horse Agreement resulting in the consummation of the Closing and (y) receipt of the aggregate amount of the Specified Reverse Termination Amount (whether by way of payment by (or on behalf of) Buyer, Letter of Credit Funding, disbursement of the Deposit Escrowed Amount from the Deposit Escrow Account, or a combination thereof) or any other monetary damages hereunder; (B) the payment of the aggregate amount of the Specified Reverse Termination Amount (whether by way of payment by (or on behalf of) Buyer, Letter of Credit Funding, disbursement of the Deposit Escrowed Amount from the Deposit Escrow Account, or a combination thereof) occur more than once; (C) the Letter of Credit Funding (including if Buyer pays (or causes to be paid) such Letter of Credit Amount) or the payment of the Deposit Escrowed Amounts (if applicable), in either case, occur on more than one occasion; or (D) the Seller Parties be permitted or entitled to receive both (x) monetary damages, on the one hand, and (y) the Letter of Credit Funding or other payment of the Letter of Credit Amount and/or payment of the Deposit Escrowed Amounts (if applicable) following

	the termination of the Stalking Horse Agreement, on the other hand, other than to the extent of Fraud or Funding Willful Breach. Nothing in Section 11.03 shall prohibit any Seller Party from pursuing its right to obtain specific performance pursuant to Section 12.17 prior to the termination of the Stalking Horse Agreement or Closing, or with respect to Surviving Provisions following the termination of the Stalking Horse Agreement or Surviving Covenants following the Closing. The Parties further acknowledge that Seller Parties may pursue both (i) a grant of specific performance in accordance with Section 12.17, on the one hand, and (ii) (x) the payment of the Specified Reverse Termination Amount (whether by way of payment by (or on behalf of) Buyer, Letter of Credit Funding, disbursement of the Deposit Escrowed Amount from the Deposit Escrow Account, or a combination thereof), or (y) solely in the event of a Funding Willful Breach, a claim for monetary damages not to exceed the Funding Willful Breach Cap, on the other hand, subject to the terms of Section 11.03. For the avoidance of doubt, the availability of Seller Parent's right to terminate the Stalking Horse Agreement pursuant to a Specified Termination shall in no way obligate any Seller Party to pursue the remedy provided in Section 11.03(a), and unless and until the Stalking Horse Agreement is terminated, the Seller Parties shall retain and reserve all rights to enforce specific performance of the Stalking Horse Agreement pursuant to Section 12.17, resulting in the consummation of the Closing, subject to the terms hereof. Stalking Horse Agreement § 11.03(d)–(f). Limitation on Liability. Notwithstanding anything in the Stalking Horse Agreement or in any other Transaction Agreement to the contrary, and except in the event of Fraud: (a) the maximum aggregate Liability of the Seller Parties under the Stalking Horse Agreement, whether in contract or in tort, in Law or in equity or otherwise, or granted by statute or otherwise, whether by or through attempted piercing of the corporate, limited partnership, or limited liability company veil, or any other theory or doctrine, including alter ego or otherwise, shall not exceed the amount of the Termination Payment; (b) in no event shall any Party have any Liability under the Stalking Horse Agreement (including under Article XII) for any punitive damages; and (c) the maximum aggregate Liability of Buyer, Buyer Parent and their respective Non-Party Affiliates under the Stalking Horse Agreement, collectively, whether in contract or in tort, in Law or in equity or otherwise, or granted by statute or otherwise, whether by or through attempted piercing of the corporate, limited partnership, or limited liability company veil, or any other theory or doctrine, including alter ego or otherwise, (taking into account all claims hereunder, all amounts funded under Letters of Credit and from the Deposit Escrow Account, which shall be deemed to have been paid and borne by Buyer hereunder), including in the case of Willful Breach, shall not exceed: (i) except in the case of Fraud or Funding Willful Breach, (A) the Specified Reverse Termination Amount, plus (B) Enforcement Expenses, plus (C) all amounts payable or reimbursable under Section 6.12(a); and (ii) in the case of Funding Willful Breach only, (A) the Specified Reverse Termination Amount then unpaid, and after accounting for amounts recovered by Seller Parent or any Seller Party in accordance with the Stalking Horse Agreement (including by way of payment by (or on behalf of) Buyer or Buyer Parent, Letter of Credit Funding, disbursement of the Deposit Escrowed Amount from the Deposit Escrow Account, or a combination thereof) plus (B) monetary damages determined by a court of competent jurisdiction, which shall not exceed the Funding Willful Breach Cap in the aggregate; for the avoidance of doubt, in no event shall such aggregate Liability (collectively considering all sources and/or means of recovery) in the event of Funding Willful Breach exceed $71,250,000 in the aggregate.Stalking Horse Agreement § 12.05.
Interim Arrangements with Stalking Horse Bidder	Notwithstanding any other provision of the Stalking Horse Agreement to the contrary, the Stalking Horse Agreement shall not constitute an agreement to assign or transfer any Transferred Contract or any claim or right or any benefit arising thereunder or resulting therefrom if an attempted assignment or transfer thereof, without the Consent of a third party (including any Government Authority), would constitute a breach or other contravention thereof or a violation of applicable Law or Order of the Bankruptcy Court and such breach,

	contravention or violation cannot be overridden by the Sale Order or other related Order of the Bankruptcy Court (and such Consent has not been obtained prior to the Closing Date). Without limitation of the foregoing, Seller Parent shall reasonably consult with (and in good faith consider the comments of) Buyer and its counsel regarding the form of, and in efforts to obtain, Consents pursuant to Section 2.02; provided that, notwithstanding the foregoing, any alteration, amendment, supplement or modification to any such Transferred Contract that would be adverse to Buyer or the Business shall be in form and substance reasonably acceptable to Buyer (any such contract for which such Consent is required, but is not yet obtained, a "**Specified 2.02 Contract**"). If, (x) solely with respect to real property leases under which a Seller Party is a lessee, on the earlier of (i) the Closing Date, (ii) two Business Days prior to the date of entry of an order confirming a chapter 11 plan in the Bankruptcy Cases (the "**Plan Confirmation Date**"), and (iii) two Business Days prior to the date that is 210 days after the Petition Date, and, (y) for Transferred Contracts that are not real property leases under which a Seller Party is a lessee, the earlier of (i) the Closing and (ii) two Business Days prior to the effective date of a chapter 11 plan in the Bankruptcy Cases (the "**Effective Date**"), any such Consent has not been obtained, or if an attempted transfer or assignment thereof would be ineffective or a violation of applicable Law or Order of the Bankruptcy Court then such Contract shall be an Excluded Contract (each, an "**Holdback Contract**") and shall not be transferred to Buyer at Closing and, Seller Parent shall, and cause the other Seller Parties to, and Buyer will, subject to Section 6.04, Section 6.05 and Section 6.10, use reasonable best efforts to enter into a mutually agreeable arrangement (an "**Interim Arrangement**") under which, until the earlier of: (I) the six-month anniversary following Closing or (II) solely with respect to real property leases under which the Seller Party is a lessee, the earlier of two Business Days prior to the date that is 210 days after the Petition Date and two Business Days prior to the Plan Confirmation Date and (III) with respect to Transferred Contracts that are not real property leases under which the Seller Party is a lessee, two Business Days prior to the Effective Date, (such earlier date of (I), (II), or (III), as applicable, the "**Cut-Off Date**"), (a) Buyer will, in compliance with applicable Law or Order of the Bankruptcy Court, obtain the benefits and assume the obligations and bear the economic burdens associated with such Holdback Contract, solely to the extent such obligations or burdens are Assumed Liabilities, in accordance with the Stalking Horse Agreement, including, for example (and without limitation of other similar arrangements being employed instead and in place thereof), by subcontracting, sublicensing, or subleasing such Holdback Contract to Buyer or (b) Seller Parent will enforce for the benefit (and at the expense) of Buyer any and all of such Seller Party's rights, claims, or benefits against a third party associated with such Holdback Contract and the Seller Parties would promptly pay to Buyer when received all monies or other economic benefit received by them under any such Holdback Contract, claim, right, or benefit (net of the Seller Parties' reasonable and documented expenses incurred in connection with any assignment or other performance contemplated by Section 2.02, not to exceed the amounts payable to Buyer with respect to the applicable Holdback Contract); provided that until the Parties enter into any Interim Arrangement, the applicable Seller Parties shall comply with the immediately preceding clause. Each Party shall bear their respective costs and expenses with respect to the negotiation of and entry into the Interim Arrangements. Notwithstanding the foregoing, Seller Parent shall, and shall cause the other Seller Parties to, use reasonable best efforts to obtain any such Consent affecting any such Holdback Contract prior to the Cut-Off Date, and if such Consent is obtained, such Holdback Contract shall be considered a Transferred Contract and transfer to the Buyer reasonably promptly thereafter. Any (x) amendment to or modification or waiver of any Contract or (y) any monetary consideration to any Person (other than Cure Costs or Excluded Liabilities) in connection with obtaining the Consents contemplated by Section 2.02 or any Holdback Contract shall require the prior written consent of Buyer. Stalking Horse Agreement § 2.02.

Shared Customer Contracts	With respect to any Shared Customer Contract: (i) on or prior to the Designation Deadline, Buyer may elect, by written notice to Seller Parent (a "**Shared Contract Designation Notice**"), each Shared Customer Contract Buyer wishes to be assigned to it at the Closing and (ii) from and after the Designation Deadline until the Closing, Seller Parent and Buyer shall, and shall cause their respective Affiliates to, each use their respective commercially reasonable efforts to, and reasonably cooperate with each other, and the applicable counterparty, to, separate or amend any such Shared Customer Contract (or take such other action as may be reasonably necessary) in order to provide for a mutually acceptable allocation of the rights and obligations under such Shared Customer Contract in line with the allocation of Transferred Assets, Excluded Assets, Assumed Liabilities, and Excluded Liabilities between the Parties (each such Shared Customer Contract that is so separated or amended to apply only to the Business to the exclusion of the Excluded Business, a "**Separated Business Contract**"), and Seller Parent shall reasonably consult with (and in good faith consider the comments of) Buyer and its counsel regarding such Separated Business Contract (including the negotiation and terms thereof); provided that no such separation or amendment (or other arrangement) shall become effective prior to the Closing unless otherwise agreed by the Parties (in their respective sole discretion); provided further, that solely with respect to Undisclosed Contracts that are also Shared Customer Contracts discovered following the Designation Deadline, Buyer shall be permitted to designate such Undisclosed Contracts as a Shared Customer Contract or Separated Business Contract until the date that is 14 days following the date of discovery by Buyer (or notice thereof by the Seller Parties) (and for such Undisclosed Contracts, the "Designation Deadline" shall be such extended date). Any amendment to, modification to or waiver of a Shared Customer Contract or a Separated Business Contract that adversely affects Buyer or the Business shall be in form and substance reasonably acceptable to Buyer (any such Contract where Buyer's consent is so required, but not yet obtained, a "**Specified 6.10 Contract**"). Neither Seller Parent, Buyer, nor any of their respective Affiliates shall be required to do any of the following: (A) separate, amend or modify or take any other action under Section 6.10 with respect to any Shared Customer Contract for which a Shared Contract Designation Notice has not been timely delivered, (B) adversely modify, relinquish, narrow, or forbear any material right that constitutes an Excluded Asset, Transferred Asset, Excluded Liability or Assumed Liability, as applicable, to any Party, or (C) other than Cure Costs or Non-Recurring Credits, pay any monetary consideration to any Person for the purpose of separating or amending any such Shared Customer Contract (and any such other monetary consideration, to the extent not an Excluded Liability, shall be subject to Buyer's prior written consent). With respect to any Shared Customer Contract that is separated or amended (and therefore becomes a Separated Business Contract) on or prior to the Closing: (i) all Cure Costs or Non-Recurring Credits (if any) that are agreed among the applicable parties with respect to such Contract shall be paid by Seller Parent on or before Closing; (ii) such Separated Business Contract shall be deemed effective as of immediately prior to the Effective Time; (iii) such Separated Business Contract shall be deemed a Transferred Contract for the purposes hereof and be automatically added to Schedule 2.01(a)(iii)(D); and (iv) such Separated Business Contract shall provide Buyer equivalent, in all material respects, contract rights and obligations under the Separated Business Contract to those contract rights and obligations under such Shared Customer Contracts utilized by the applicable Seller Party in the conduct of the Business (including as to any pricing metrics). If any Shared Customer Contract for which a Shared Contract Designation Notice was timely delivered is not so separated or amended at or prior to the Closing Date (such Contract, for so long as it has not been separated and thus continues to be a Shared Customer Contract, a "**Non-Separated Contract**"), then, after the Closing until the Cut-Off Date (or the date such Non-Separated Contract is separated or amended into a Separated Business Contract, if earlier), to the extent permissible by Law and under the terms of the applicable Shared Customer Contract, Seller Parent shall (and shall cause the applicable Seller Party or its Affiliates to) (i) solely if Buyer elects, in its sole and absolute discretion, to have such Non-Separated Contract assigned in full to Buyer (or its designee), assign, transfer and convey such Non-Separated Contract (to

	the extent so assigned, transferred and conveyed to Buyer hereunder, a "**Non-Separated Assumed Contract**"), which shall be deemed a Transferred Contract for the purposes hereof and be automatically added to Schedule 2.01(a)(iii)(D) upon such proper assignment, transfer and conveyance, and thereafter Buyer shall use reasonable best efforts to enter into an Interim Arrangement either with the applicable Seller Parties and/or with any third parties holding interests in the Excluded Business party to such Non-Separated Assumed Contract to, subject to applicable Law or Order of the Bankruptcy Court, provide such Seller Parties or third- parties the benefits and pass along the economic burdens associated with such Non-Separated Assumed Contract, solely to the extent such obligations or burdens are obligations of the Excluded Business or of such Seller Party or third party prior to the Closing Date or (ii) solely if Buyer does not elect, in its sole and absolute discretion, to have such Non-Separated Contract assigned in full to Buyer (or its designee) pursuant to Section 6.10(c)(i), (A) assume and perform the liabilities under such Shared Customer Contract, (B) hold in trust for the benefit of Buyer, and shall promptly forward to Buyer, all monies (net of applicable Taxes, if any, imposed by a Government Authority in connection with the receipt of such monies) and other benefits received pursuant to such Shared Customer Contract and (C) use commercially reasonable efforts to institute alternative arrangements intended to establish reasonable and lawful arrangements designed to provide the Buyer with all the rights, benefits and obligations under such Shared Customer Contract; provided that, notwithstanding the foregoing, (w) following the Cut-Off Date (or the date such Non-Separated Contract is separated or amended into a Separated Business Contract, if earlier), Seller Parent and the applicable Seller Parties shall not have any obligation to renew any Shared Customer Contract upon the expiration or termination thereof, (x) prior to the Cut-Off Date (or the date such Non-Separated Contract is separated or amended into a Separated Business Contract, if earlier), Seller Parent and the applicable Seller Party shall not extend the term or otherwise amend the terms of any Shared Customer Contract in a manner that would adversely affect Buyer, such Shared Customer Contract, the Transferred Assets or the Business upon obtaining a Separated Business Contract without Buyer's prior written consent, (y) prior to the Cut-Off Date (or the date such Non-Separated Contract is separated or amended into a Separated Business Contract, if earlier), to the extent any such Shared Customer Contract contains an "evergreen" provision that automatically renews such Shared Customer Contract, the applicable Seller Parties shall be prohibited from terminating or canceling such Shared Customer Contract as permitted pursuant to the terms thereof without Buyer's prior written consent and (z) other than Cure Costs or Non-Recurring Credits, neither Seller Parent nor the applicable Seller Parties shall have any obligation to make any material payments or offer or grant any concession or accommodation (financial or otherwise) or commence or participate in any Action in order to obtain any consents or approvals of third parties or effect the transfers or arrangements contemplated by Section 6.10(c). For the avoidance of doubt, Section 6.10 shall solely apply to Shared Customer Contracts, Separated Business Contracts, and Non-Separated Contracts. Stalking Horse Agreement § 6.10.
Tax Exemption	Notwithstanding anything to the contrary in the Stalking Horse Agreement, Buyer, on the one hand and Seller Parties, on the other hand, shall promptly pay and discharge 50% of any Transfer Tax imposed or arising with respect to the Transactions. The Party required by Law to file a Tax Return with respect to such Transfer Taxes shall, with the cooperation of the other Party, timely prepare and file such Tax Return; provided that Buyer shall bear and be responsible for the costs of preparing and filing such Tax Return. If the Seller Parties or any of their Affiliates are required to pay any Transfer Tax, Buyer shall within ten Business Days of receipt of evidence of payment reimburse the Seller Parties for any Transfer Taxes paid by the Seller Parties or such Affiliate in connection with the filing of the applicable Tax Return. Buyer and Seller Parent each agree to use commercially reasonable efforts to timely sign and deliver (or to cause their respective Affiliates to timely sign and deliver) such certificates or forms as

	may be necessary or appropriate and otherwise to cooperate to establish any available exemption from (or otherwise reduce) any Transfer Taxes. Stalking Horse Agreement § 9.01.
Record Retention	The books and records remaining with the Seller include: 1. all minute books (and other similar corporate records) and stock records; 2. any books and records primarily related to Excluded Assets; 3. any books and records or other materials of or in the possession of the Seller Parties that (I) any of the Seller Parties are required by Law or by Order of the Bankruptcy Court to retain or (II) any of the Seller Parties are prohibited by Law from delivering to Buyer; 4. any copies of any books and records that (I) any of the Seller Parties reasonably believes are necessary to enable the Seller Parties to prepare or file Tax Returns or (II) any Seller Party and its Affiliates retain pursuant to <u>Section 7.01(a)</u>; and 5. any books, records, files, or papers that are not Transferred Books and Records. Stalking Horse Agreement § 2.01(b)(xiii).
Sale of Avoidance Actions	All Causes of Action (including counterclaims) and defenses, including those arising in connection with the Bankruptcy Cases are transferred assets. Stalking Horse Agreement § 2.01(a)(xvi).
Provisions Providing Bid Protections to "Stalking Horse" or Initial Bidder	Seller Parent shall if, as, and when due in accordance with the terms hereof and the Bidding Procedures Order, (a) if, and only if, the Stalking Horse Agreement is validly terminated pursuant to <u>Section 11.01(c)</u>, <u>Section 11.01(f)</u> or <u>Section 11.01(k)</u>, pay (or cause to be paid) to Buyer a break-up fee in an amount equal to (i) $8,550,000 (the "**Break-Up Fee**") plus (as applicable) and (ii) the amount of the reasonable, out-of-pocket and documented expenses of Buyer incurred in connection with the Stalking Horse Agreement and the Transactions up to an aggregate amount of $2,850,000 (such amount an "**Expense Reimbursement**", and together with the Break-Up Fee (as applicable), the "**Termination Payment**"); or (b) if, and only if, the Stalking Horse Agreement is validly terminated pursuant to <u>Section 11.01(g)</u>, <u>Section 11.01(h)</u> or <u>Section 11.01(i)</u>, pay (or cause to be paid) the Expense Reimbursement. In either event, subject to the entry of the Bidding Procedures Order, the Termination Payment or the Expense Reimbursement, as applicable, shall be paid no later than the third Business Day following the date of consummation of an Alternative Transaction if, at or prior to such date, no material breach by Buyer of the Stalking Horse Agreement has occurred pursuant to which Seller Parent would be entitled to terminate the Stalking Horse Agreement pursuant to <u>Section 11.01(b)</u>. Stalking Horse Agreement § 8.01.
Parent Guarantee	Buyer Parent irrevocably and unconditionally guarantees the due and punctual performance Buyer's obligation hereunder to (i) pay expenses expressly required to be borne by Buyer when due and payable pursuant to and in accordance with the Stalking Horse Agreement or make any other payment obligations of Buyer under the Stalking Horse Agreement or otherwise arising out of or relating to the Transactions (for which Buyer is responsible hereunder), including <u>Section 2.02</u>, <u>Section 3.01(c)(iii)</u>, <u>Section 6.04</u>, <u>Section 6.13(b)</u> and <u>Section 12.02</u> and (ii) pay monetary damages when due and payable pursuant to <u>Section 11.03</u>, subject to the other terms hereof (including <u>Section 12.05</u>) (clause (i) and clause (ii) collectively, the "**Guaranteed**

	Obligations"). The Guaranteed Obligations provided in Section 12.10 are primary and original obligations of Buyer Parent. Seller Parent may enforce such Guaranteed Obligations directly against Buyer Parent without being required to first seek to enforce such Guaranteed Obligations against Buyer. Buyer Parent waives promptness, diligence, notice of acceptance of Section 12.10 and of the guarantee, presentment, demand for payment, notice of nonperformance, default, dishonor and protest, notice of the incurrence of any such Guaranteed Obligation and all other notices of any kind, all defenses which may be available by virtue of any stay or moratorium Law now or hereafter in effect, any right to require the marshaling of assets of Seller Parent or any other Person interested in the Transactions, and all suretyship defenses (in each case, other than payment in full of the such Guaranteed Obligation subject to the terms hereof). Stalking Horse Agreement § 12.10.
Equity Commitment[13]	Equity Commitment Letter confirms the irrevocable commitment of a parent fund of the Buyer, subject to certain terms and conditions, to make available or cause to be made available to the Buyer, at or immediately prior to the time Buyer is obligated under the Stalking Horse Agreement to effect the Closing, up to $35,000,000. Seller Parent has third party beneficiary rights to seek enforcement of certain provisions of the Equity Commitment Letter, to cause Buyer to draw down on the Equity Financing, subject to the terms and conditions of such Equity Commitment Letter. Stalking Horse Agreement § 5.05(a).
Financing Commitments[14]	Buyer's debt financing sources commit to provide $272,500,000 of incremental term loans under Buyer's credit facility, subject to the pro forma net leverage of the Buyer not to exceed

[13] The Stalking Horse Bidder and Bluebird are affiliates of Macquarie Group Limited. Additionally, certain OpCo Lenders, HoldCo Lenders, and DIP Lenders are managed or advised by an entity that is an affiliate of Macquarie Group Limited. More specifically (a) Bluebird is a portfolio company of a private equity fund managed by Macquarie Infrastructure Partners, Inc. (an SEC registered investment adviser) which is under the real assets business division of Macquarie Asset Management, (b) the Stalking Horse Bidder is an indirect subsidiary of Bluebird, and (c) certain OpCo Lenders, HoldCo Lenders, and DIP Lenders are clients of Macquarie Asset Management Credit Advisers US, LLC ("**MAMCA**") which is an entity under the private credit business division of Macquarie Asset Management. There is an information barrier in place between the private credit division and the real assets division of Macquarie Asset Management.

Certain OpCo Lenders, HoldCo Lenders, and DIP Lenders managed or advised by the private credit division of Macquarie Asset Management are members of the steering committee for the OpCo Lenders, HoldCo Lenders, and DIP Lenders and are represented by MAMCA at the steering committee, and Paul Hastings LLP has been retained as the external legal counsel to the administrative agent and the lender group in connection with the sale of the Debtors. In turn, the relevant entities within the real assets business division of Macquarie Asset Management are being advised by Kirkland & Ellis LLP in connection with the sale of the Debtors.

[14] The Stalking Horse Bidder's financial advisor, TD Securities (USA) LLC ("**TD Securities**") (or an affiliate or affiliates thereof), as well as certain potential lenders contacted by Macquarie in connection with a potential financing in support of the Stalking Horse Bid, are OpCo Lenders, DIP Lenders, and/or HoldCo Lenders (the "**Cross-Over Lenders**"). TD Securities and the Cross-Over Lenders each have separate internal teams that are managing their existing loans with the Company (the "**Existing Loans Teams**") and are advising the Stalking Horse Bidder or handling matters related to a potential financing related to the Stalking Horse Bid (the "**Advisor / Financing Teams**"). TD Securities and the Cross-Over Lenders established information barriers between the respective Existing Loans Teams and Advisor / Financing Teams.

	5.5x and the satisfaction of conditions usual and customary for financings of this type, including: 1. the absence of any Material Adverse Effects (as defined in the Stalking Horse Agreement); 2. Buyer's receipt of $25,000,000 of cash equity contributions from its investors; and 3. the absence of any payment or bankruptcy events of default under the Buyer's credit facility. Stalking Horse Agreement Ex. G.

Assumption and Assignment Procedures

23. The Assumption and Assignment Procedures set forth in the Bidding Procedures Order will, among other things, govern the Debtors' provision of notice to all Contract Counterparties of Cure Costs in the event the Successful Bidder elects for the Debtors to assume and assign the Transferred Contracts to it in connection with a Sale Transaction. The Debtors will file the Cure Notice with the Court and serve the Cure Notice on the Contract Counterparties on or before July 21, 2025, subject to adjustment depending on when the Sale Hearing and related deadlines are set.

24. Objections to the Cure Costs set forth on the Cure Notice (a "**Cure Objection**") and provision of adequate assurance of future performance (an "**Adequate Assurance Objection**") must: (i) be in writing, (ii) comply with the Bankruptcy Code, Bankruptcy Rules, and Bankruptcy Local Rules, (iii) state, with specificity, the legal and factual basis thereof, including what Cure Costs the objecting party believes are required, (iv) include any supporting documentation thereof, and (v) be filed with the Bankruptcy Court and served on the Objection Notice Parties (as defined in the Cure Notice) by the deadline provided in the applicable Cure Notice.

Notice Procedures

25. The Debtors request that the Court approve the form and manner of the service for the Sale Notice, the Cure Notice, and the Post-Auction Notice (collectively, the "**Notices**"), each attached to the proposed Bidding Procedures Order. The Debtors submit that the service of the Notices as set forth in the Bidding Procedures Order is proper and sufficient to provide notice of the Auction, the Sale Objection Deadline, the Cure Objection deadline, and the Sale Hearing to all known and unknown parties.

26. The Debtors propose that within three calendar days after the entry of the Bidding Procedures Order, the Debtors shall file on the docket and serve the Sale Notice, the Bidding Procedures Order, and the Bidding Procedures, by first-class mail, postage prepaid, provided that to the extent email addresses are available for any of the foregoing parties, such parties may be served by email, upon the following parties (collectively, the "**Sale Notice Parties**"):

(a) the Office of the United States Trustee for the Southern District of Texas (Attn: Jayson Ruff, Esq.);

(b) the holders of the 30 largest unsecured claims against the Debtors on a consolidated basis;

(c) the Internal Revenue Service;

(d) the United States Attorney's Office for the Southern District of Texas;

(e) Paul Hastings LLP, 200 Park Avenue, New York, New York 10166 (Attn: Jayme Goldstein, Esq., Jeremy Evans, Esq., and Charles Persons, Esq.) as counsel to the OpCo Agent, on behalf of the OpCo Lenders, the DIP Agent, and the HoldCo Lenders;

(f) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022 (Attn: Christopher Marcus, Esq., Emily Geier, Esq., and Aaron Metviner, Esq.), as counsel to the Sponsor (as defined in the First Day Declaration);

(g) Norton Rose Fulbright US LLP, 1301 Avenue of the Americas, New York, New York 10019-6022 (Attn: Michael Fingerhut, Esq.), as counsel to the HoldCo Agent;

(h) all persons known by the Debtors to have expressed an interest to the Debtors in a transaction with respect to the Assets in whole or in part during the past 12 months;

(i) all entities known by the Debtors to have asserted any lien, claim, encumbrance, or other interest in the Assets (for whom identifying information and addresses are available to the Debtors);

(j) any Governmental Unit (as defined in section 101(27) of the Bankruptcy Code) known to have a claim in these chapter 11 cases;

(k) the Office of the Attorney General in each state in which the Debtors operate;

(l) the Office of the Secretary of State in each state in which the Debtors are organized;

(m) the public utility commission in each state in which the Debtors have operations regulated by such public utility commission;

(n) the Federal Trade Commission;

(o) the Federal Communications Commission;

(p) the National Telecommunications and Information Administration;

(q) the United States Attorney General/Antitrust Division of the Department of Justice;

(r) the United States Environmental Protection Agency; and

(s) any party that has requested notice pursuant to Bankruptcy Rule 2002.

27. The Debtors further propose that within seven calendar days after the entry of the Bidding Procedures Order, the Debtors shall cause the Sale Notice to be published on the Claims Agent Website (as defined in the Bidding Procedures Order) and once in the national edition of the *New York Times*.

Requested Relief Should be Granted

A. Bidding Procedures Should be Approved

28. For the reasons set forth below, the Debtors believe the Bidding Procedures are reasonable and appropriate and should be approved as proposed. "When conducting an asset sale, the ultimate reasonability of the debtor, and the primary focus of the bankruptcy court, is the maximization of the value of the assets sold." John J. Jerome & Robert D. Drain, *Bankruptcy Court Is Newest Arena for M&A Action*, N.Y.L.J., June 3, 1991.

29. Here, the Debtors submit that the Bidding Procedures are fair and appropriate under the circumstances, consistent with procedures routinely approved by courts, and in the best interest of the Debtors' estates. The Debtors also submit that the Bidding Procedures demonstrate a sound exercise of the Debtors' business judgment, as such procedures are designed to maximize the value to be received by the Debtors' estates for the Assets.

30. The Bidding Procedures will provide the Debtors with an adequate opportunity to consider competing bids and select the highest and best offer for the Assets.

31. Moreover, an orderly and expeditious sale process is critical to preserve and realize the Debtors' going-concern value and maximize recoveries for the Debtors' stakeholders. In formulating the Bidding Procedures, the Debtors balanced the need to provide adequate and appropriate notice to parties in interest and potential bidders with the need to quickly and efficiently run a sale process in parallel with a solicitation process. The Bidding Procedures provide for the marketing of the Debtors' business and for the consummation of a Sale Transaction.

B. Stalking Horse Bid Protections are Reasonable and Appropriate

32. The Bidding Procedures allow the Debtors to provide Stalking Horse Bid Protections to the Stalking Horse Bidder, such as the Termination Payment and the protections attendant to the Minimum Overbid. Bidding incentives such as these Stalking Horse Bid

Protections have become commonplace in connection with sales in chapter 11 cases. Moreover, approval of break-up fees as administrative expense claims as a form of bidder protections in connection with a sale has become a recognized practice in chapter 11 cases because it enables a debtor to ensure a sale to a contractually committed buyer at a price the debtor believes is fair, while providing the debtor with the potential of obtaining an enhanced recovery through an auction process.

33. The Debtors believe that granting the Stalking Horse Bid Protections to the Stalking Horse Bidder is fair and reasonable under the circumstances. Courts have acknowledged that the approval of break-up fees and expenses in connection with substantial sales in bankruptcy is warranted to compensate an unsuccessful acquirer whose initial offer served as the basis and catalyst for higher or better offers. *See ASARCO, Inc. v. Elliott Mgmt. (In re ASARCO, L.L.C)*, 650 F.3d 593, 597–98, 601–03 & n.9 (5th Cir. 2011); *In re JW Res., Inc.*, 536 B.R. 193, 195–96 (Bankr. E.D. Ky. 2015); *In re Hupp Indus., Inc.*, 140 B.R. 191, 195 (Bankr. N.D. Ohio 1992). As listed in *Hupp Industries*, courts consider various factors in determining whether to authorize break-up fees, such as:

- whether the fee requested correlates with a maximization of value to the debtor's estate;
- whether the transaction in the negotiated agreement is an arm's-length transaction between the debtor's estate and the negotiating acquirer;
- whether the principal secured creditors are supportive of the concession;
- whether the subject break-up fee constitutes a fair and reasonable percentage of the proposed purchase price;
- the existence of available safeguards beneficial to the debtor's estate; and
- whether there exists a substantial adverse impact upon unsecured creditors, where such creditors are in opposition to the break-up fee.

In re Hupp Indus., 140 B.R. at 194–96.

34. To warrant court approval of such break-up fees and expenses, the Fifth Circuit in *ASARCO* required a showing that the requested fees and expenses must be supported by a sound business justification. *In re ASARCO*, 650 F.3d at 602–03 (favoring business judgment standard governing use of assets outside of the ordinary course of business, rather than the standard for administrative expenses, in assessing propriety of fees and expenses incurred by bidders).

35. Here, the Stalking Horse Bid Protections, if provided, will satisfy the foregoing tests because they will be: (i) actual and necessary costs and expenses of preserving the Debtors' estates within the meaning of sections 503(b) and 507(a)(2) of the Bankruptcy Code; (ii) commensurate to the real and substantial benefit conferred upon the Debtors' estates by the Stalking Horse Bidder; (iii) reasonable and appropriate, in light of the size and nature of the proposed Sale Transaction and comparable transactions, to the commitments that have been made and the efforts that have been, and will be expended, by the Stalking Horse Bidder;[15] (iv) necessary to induce the Stalking Horse Bidder to continue to pursue the Sale Transaction and to continue to be bound by the Stalking Horse Agreement; and (v) subject to all parties-in-interests' rights to object and be heard with respect to approval of such Stalking Horse Bid Protections. Indeed, the Stalking Horse Bid Protections will enable the Debtors to secure an adequate floor price for the Assets, thereby ensuring that competing bids will be materially higher or otherwise better than the

[15] The break-up fee and expense reimbursement provided for in Stalking Horse Bid Protections is well within a reasonable range of such protections previously approved by this Court. *See, e.g.*, *In re Steward Health Care System, LLC*, No. 24-90213 (CML) (Bankr. S.D. Tex. Aug. 22, 2024) (Docket No. 2141) (authorizing a break-up fee of approximately 3% of the purchase price, plus an expense reimbursement of up to approximately 1.5% of the purchase price); *In re Basic Energy Servs., Inc.*, No. 21-90002 (DRJ) (Bankr. S.D. Tex. Aug. 17, 2021) (Docket No. 179) (approving break-up fees between 2.5% and 3% of the purchase price plus expense reimbursements between 2% and 2.5% of the purchase price across multiple transactions); *In re Chesapeake Energy Corp.*, No. 20-33233 (DRJ) (Bankr. S.D. Tex. Oct. 6, 2020) (Docket No. 1305) (authorizing a break-up fee up to 2% of the proposed purchase price plus an expense reimbursement up to 1% of the proposed purchase price); *In re McDermott Int'l, Inc.*, No. 20-30336 (DRJ) (Bankr. S.D. Tex. Feb. 24, 2020) (Docket No. 476) (authorizing a break-up fee of approximately 3% of the purchase price plus an expense reimbursement of approximately 1% of the purchase price).

bids reflected in any Stalking Horse Agreement—a clear benefit to the Debtors' estates. Moreover, it is unlikely any Stalking Horse Bidder would be willing to agree to act as stalking horse bidder without being granted the Stalking Horse Bid Protections. Without such protections, the Debtors might lose the opportunity to obtain the highest and best offer for the Assets and would certainly lose the downside protection that will be afforded by the existence of the Stalking Horse Bidder.

36. The Stalking Horse Bidder has expended, and will continue to expend, considerable time, money, and energy in connection with the Sale Transaction. In particular, the Stalking Horse Agreement is the culmination of a marketing effort and part of a process undertaken by the Debtors and the Debtors' professionals to identify and negotiate a transaction that the Debtors believe to be the highest and best proposal for an acquisition of the Assets. The Debtors believe that granting the Stalking Horse Bid Protections requested herein will maximize the value realized for the benefit of the Debtors' estates, their creditors, and other parties-in-interest.

37. Finally, payment of the Stalking Horse Bid Protections in the context of a sale to another purchaser that outbids a Stalking Horse Bidder will not diminish the Debtors' estates to the extent they become payable, as the Bidding Procedures require that any competing bid must exceed a Stalking Horse Bid by an amount in excess of the break-up fee and expense reimbursement.

38. For the foregoing reasons, the Debtors submit that the Stalking Horse Bid Protections reflect a sound business purpose, are fair and appropriate under the circumstances, and should be approved.

C. Assumption and Assignment of Transferred Contracts Should be Approved

39. Section 365(a) of the Bankruptcy Code provides that a debtor in possession "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). Upon finding that a debtor has exercised its

sound business judgment in determining to assume an executory contract or unexpired lease, courts will approve the assumption under section 365(a) of the Bankruptcy Code. *Mirant Corp. v. Potomac Elec. Power Co. (In re Mirant Corp.)*, 378 F.3d 511, 524–25 & n.5 (5th Cir. 2004); *In re Gucci*, 193 B.R. 411 (S.D.N.Y. 1996); *In re Pisces Energy, LLC*, No. 09-36591H5-11, 2009 WL 7227880, *6 (Bankr. S.D. Tex. Dec. 21, 2009). Under the business judgment test, a court should approve a debtor's proposed assumption of executory contracts if such assumption will benefit the estate. *In re Pisces Energy*, 2009 WL 7227880, at *6; *In re Gunter Hotel Assocs.*, 96 B.R. 696, 698 (Bankr. W.D. Tex. 1998); *In re Food City, Inc.*, 94 B.R. 91, 93–94 (Bankr. W.D. Tex. 1988). Any more exacting scrutiny would slow the administration of a debtor's estates, increase costs, interfere with the Bankruptcy Code's provision for private control of administration of the estate, and threaten this Court's ability to control a case impartially. *See Richmond Leasing v. Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985). Moreover, pursuant to section 365(b)(1) of the Bankruptcy Code, for a debtor to assume an executory contract, it must "cure, or provide adequate assurance that the debtor will promptly cure," any default, including compensation for any "actual pecuniary loss" relating to such default. 11 U.S.C. § 365(b)(1).

40. The assumption of the Transferred Contracts in connection with a Sale Transaction is an exercise of the Debtors' sound business judgment because the Transferred Contracts are necessary to operate the Debtors' business and, as such, are essential to obtaining the highest or otherwise best offer for the Debtors' business. Moreover, the Transferred Contracts will be assumed and assigned in accordance with the Assumption and Assignment Procedures approved by the Court pursuant to the Bidding Procedures Order, which will be reviewed by the Debtors' key stakeholders. Accordingly, the Debtors' assumption of the Transferred Contracts is an exercise of sound business judgment and should be approved.

41. The consummation of a Sale Transaction, which will involve the assignment of the Transferred Contracts, will be contingent upon the Debtors' compliance with the applicable requirements of section 365 of the Bankruptcy Code. Section 365(b)(1) of the Bankruptcy Code requires that any outstanding defaults under the Transferred Contracts must be cured or that adequate assurance be provided that such defaults will be promptly cured. As set forth above, the Debtors propose to file with the Court and serve on each Contract Counterparty, the Cure Notice indicating the Debtors' calculation of the Cure Cost for each such contract. The Contract Counterparties will have the opportunity to file objections to the proposed assumption and assignment of the Transferred Contracts to the Successful Bidder, including the proposed Cure Costs.

42. Pursuant to section 365(f)(2) of the Bankruptcy Code, a debtor may assign an executory contract or unexpired lease of nonresidential real property if "adequate assurance of future performance by the assignee of such contract or lease is provided." 11 U.S.C. § 365(f)(2)(B). The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction . . . ." *In re PRK Enters., Inc.*, 235 B.R. 597, 603 (Bankr. E.D. Tex. 1999) (internal quotations omitted); *see also Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1988); *In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean absolute assurance that the debtor will thrive and pay rent). Among other things, adequate assurance may be given by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. *See In re PRK Enters.*, 235 B.R. at 603 ("The financial evidence presented by [assignee] demonstrates the likelihood that it has the financial capacity to perform its future obligations under

the lease agreements and that its principal officers are serious in their commitment to rehabilitate this corporation."); *In re Bygaph, Inc.*, 56 B.R. 596, 605–06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when prospective assignee of lease from the debtor has financial resources and has expressed willingness to devote sufficient funding to the business in order to give it strong likelihood of succeeding).

43. As set forth in the Bidding Procedures, for a bid to qualify as a "Qualified Bid," a Potential Bidder must provide a list of Transferred Contracts of which it requests assignment and information regarding its ability (and the ability of its designated assignee, if applicable) to perform under such Transferred Contracts (the "**Adequate Assurance Information**"). The Debtors will provide Adequate Assurance Information to all counterparties to the Transferred Contracts and counterparties will have an opportunity to file an Adequate Assurance Objection in advance of the Sale Hearing. Based on the foregoing, the Debtors' assumption and assignment of the Transferred Contracts satisfy the requirements under section 365 of the Bankruptcy Code and should be approved.

44. In addition, to facilitate the assumption and assignment of the Transferred Contracts, the Debtors further request that the Court find that all anti-assignment provisions in the Transferred Contracts, whether such provisions expressly prohibit or have the effect of restricting or limiting assignment of such contract or lease, to be unenforceable under section 365(f) of the Bankruptcy Code.[16]

[16] Section 365(f)(1) provides in part that, "notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease[.]" 11 U.S.C. § 365(f)(1). Section 365(f)(3) further provides that, "[n]otwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law that terminates or modifies, or permits a party other than the debtor to terminate or modify, such contract or lease or a right or obligation under such contract or lease on account of an assignment of such contract or lease, such contract, lease, right, or obligation may not be terminated or modified under such provision because of the assumption or assignment of such contract or lease by the trustee." 11 U.S.C. § 365(f)(3).

Notice

Notice of this Motion will be served on any party entitled to notice pursuant to Bankruptcy Rule 2002 and any other party entitled to notice pursuant to Bankruptcy Local Rule 9013-1(d).

No Previous Request

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

WHEREFORE the Debtors respectfully request entry of the Bidding Procedures Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: May 28, 2025
Houston, Texas

/s/ Clifford W. Carlson

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Proposed Attorneys for Debtors and Debtors in Possession

Certificate of Service

I hereby certify that on May 28, 2025, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Clifford W. Carlson
Clifford W. Carlson