

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

In re:

ORCHIDS PAPER PRODUCTS
COMPANY, *et al.*,¹

Debtors.

Chapter 11

Case No. 19-10729 (MFW)

(Joint Administration Pending)

**MOTION OF DEBTORS FOR ENTRY OF
(I) AN ORDER (A) APPROVING BID PROCEDURES IN CONNECTION WITH THE
POTENTIAL SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, (B)
SCHEDULING AN AUCTION AND A SALE HEARING, (C) APPROVING THE FORM
AND MANNER OF NOTICE THEREOF, (D) AUTHORIZING THE DEBTORS TO
ENTER INTO THE OPTION AGREEMENT AND THE STALKING HORSE
AGREEMENT, (E) APPROVING BID PROTECTIONS, (F) APPROVING
PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF CONTRACTS AND
LEASES, AND (G) GRANTING RELATED RELIEF; AND (II) AN ORDER (A)
APPROVING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS
FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS,
(B) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CONTRACTS AND
LEASES, AND (C) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (the “**Debtors**”) hereby move this Court (this “**Motion**”), pursuant to sections 105(a), 363, and 365 of title 11 of the United States Code (the “**Bankruptcy Code**”); Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (as amended from time to time, the “**Bankruptcy Rules**”); and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedures of the Bankruptcy Court for the District of Delaware (the “**Local Rules**”), for the entry of (i) an order, substantially in the form attached hereto as Exhibit C (the “**Bid Procedures Order**”), (a) approving procedures in

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Orchids Paper Products Company, a Delaware corporation (6944), Orchids Paper Products Company of South Carolina, a Delaware corporation (7198), and Orchids Lessor SC, LLC, a South Carolina limited liability company (7298). The location of the Debtors’ mailing address is 201 Summit View Drive, Suite 110, Brentwood, Tennessee 37027.

connection with the potential sale of substantially all of the Debtors' assets, (b) scheduling the related auction and hearing to consider approval of the Sale (as defined below), (c) approving the form and manner of notice thereof, (d) authorizing the Debtors to enter into the Option Agreement and the Stalking Horse Agreement (each as defined below), (e) approving certain bid protections for the Stalking Horse Bidder (as defined below), (f) approving procedures related to the assumption and assignment of certain of the Debtors' executory contracts and unexpired leases, and (g) granting related relief; and (ii) an order, substantially in the form attached hereto as Exhibit D (the "**Sale Order**"), (a) approving the Sale of the Assets (as defined below) free and clear of liens, claims, encumbrances, and other interests, (b) approving the assumption and assignment of certain of the Debtors' executory contracts and unexpired leases related thereto, and (c) granting related relief. In support of this Motion, the Debtors rely upon the *Declaration of Richard S. Infantino, Chief Strategy Officer of Orchids Paper Products Company in Support of Chapter 11 Petitions and First Day Pleadings*, filed with the Court concurrently herewith (the "**First Day Declaration**"). In further support of this Motion, the Debtors, by and through their undersigned counsel, respectfully represent:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b). Under Local Rule 9013-1(f), the Debtors consent to entry of a final order under Article III of the United States Constitution. Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested in this Motion are Bankruptcy Code sections 105, 363, 365, 503, and 507, Bankruptcy Rules 2002, 6004, 6006, 9007, 9014 and Local Rules 2002-1, 6004-1, and 9013-1(m).

BACKGROUND

A. The Debtors' Chapter 11 Cases

3. On the date hereof (the "**Petition Date**"), each of the Debtors filed a voluntary petition in this Court commencing a case for relief under chapter 11 of the Bankruptcy Code (the "**Chapter 11 Cases**"). The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of the Chapter 11 Cases, is set forth in detail in the First Day Declaration and fully incorporated herein by reference.²

4. Concurrently with the filing of this Motion, the Debtors have requested procedural consolidation and joint administration of the Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b). The Debtors continue to manage and operate their business as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108. No trustee or examiner has been requested in the Chapter 11 Cases and no committees have yet been appointed.

5. Subject to their right to determine an alternative course of action is preferable,³ the Debtors intend to sell the Assets in the Chapter 11 Cases and the DIP Lender and the Prepetition Secured Parties have, subject to certain conditions, agreed to provide financing and to allow their cash collateral to be used to fund the Chapter 11 Cases and the potential sale.

² Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to such terms in the First Day Declaration.

³ The Debtors do not intend to make a final decision whether to proceed with a sale transaction until after the proposed Bid Deadline, and reserve the right to withdraw this Motion at any point in time at or prior to the Sale Hearing.

However, given the Debtors' lack of liquidity, the Debtors need to complete the sale process as expeditiously as possible.

RELIEF REQUESTED

6. By this Motion, *first* the Debtors seek entry of the Bid Procedures Order in substantially the form attached hereto as Exhibit C:

- (a) authorizing and approving the Bid Procedures attached to the Bid Procedures Order as Exhibit 1 in connection with the sale (the "**Sale**") of substantially all of the Debtors' assets (the "**Assets**");
- (b) scheduling an auction (the "**Auction**") and sale hearing (the "**Sale Hearing**") with respect to the Sale of the Assets;
- (c) approving the form and manner of notice of the Auction and the Sale Hearing, a copy of which is attached to the Bid Procedures Order as Exhibit 2 (the "**Sale Notice**");
- (d) authorizing the Debtors to enter into (i) that certain Asset Purchase Agreement with Orchids Investments LLC (the "**Stalking Horse Bidder**"), a copy of which is attached hereto as Exhibit A (the "**Stalking Horse Agreement**"), pursuant to which the Stalking Horse Bidder seeks to purchase the Acquired Assets (as defined in the Stalking Horse Agreement) from the Debtors pursuant to a credit bid and other consideration as set forth therein and (ii) that certain Option Agreement with the Stalking Horse Bidder, a copy of which is attached hereto as Exhibit B (the "**Option Agreement**"), pursuant to which the Stalking Horse Bidder granted the Debtors the option, but not the obligation, to enter into the Stalking Horse Agreement in exchange for certain bid protections;
- (e) approving certain bid protections as set forth in the Option Agreement, consisting of:
 - (i) a break-up fee equal to three percent (3%) of the Purchase Price (as defined therein) of \$5,250,000 (the "**Break-Up Fee**");
 - (iii) reimbursement of the Stalking Horse Bidder's out of pocket costs, expenses, and fees incurred in connection with evaluating, negotiating, documenting and performing the transactions contemplated by the Option Agreement and the Stalking Horse Agreement in an amount equal to the lesser of (i) \$2,000,000, and (ii) the aggregate amount of all reasonable and documented out of pocket costs, expenses and fees incurred by the Stalking Horse

Bidder or those of the Stalking Horse Bidder's subsidiaries that will receive title to any Acquired Assets pursuant to the transactions contemplated by the Stalking Horse Agreement (the "**Expense Reimbursement**"); and

(iii) an initial overbid of up to \$7,750,000 (the "**Initial Overbid**" and, together with the Break-Up Fee and the Expense Reimbursement, the "**Bid Protections**"), consisting of the sum of the Break-Up Fee, the Expense Reimbursement and \$500,000.

(f) approving procedures for the assumption and assignment (as set forth in the Bid Procedures Order, the "**Assumption Procedures**") of certain executory contracts and unexpired leases in connection with the Sale (collectively, the "**Contracts**"); and

(g) granting related relief.

7. **Second**, the Debtors may seek entry of the Sale Order at the conclusion of the Sale Hearing in substantially the form attached hereto as Exhibit D:

(a) authorizing and approving the Sale of the Assets to the Successful Bidder (as defined in the Bid Procedures) on the terms substantially set forth in the Successful Bid free and clear of liens, claims, encumbrances, and other interests other than Permitted Encumbrances and Assumed Liabilities (as such terms are defined in the Stalking Horse Agreement);

(b) authorizing the assumption and assignment of the Contracts; and

(c) granting any related relief.

8. The Debtors reserve the right to file and serve any supplemental pleading or declaration that the Debtors deem appropriate or necessary in their reasonable business judgment, including any pleading summarizing the competitive bidding and sale process and the results thereof, in support of their request for entry of the Sale Order before the Sale Hearing.

PREPETITION MARKETING AND SALE PROCESS

9. As set forth in detail in the First Day Declaration, starting in April 2018, the Debtors, through their original investment banker, engaged in an extensive prepetition marketing process. Approximately four months before the Petition Date, the Debtors retained Houlihan

Lokey to continue and complete the sale process and to serve, subject to court approval, as their investment bankers in these Chapter 11 Cases.

10. As part of the proposed postpetition sale process, the Debtors, through Houlihan Lokey and their other professionals, will continue to engage in the robust marketing effort for the Debtors’ assets, which started well before the Petition Date, continuing to contact both financial and strategic investors regarding a potential sale, including all parties contacted prior to the commencement of the Chapter 11 Cases. All interested parties have been or, upon entry of the Bid Procedures Order, will be given an opportunity to execute a confidentiality agreement (a “**Confidentiality Agreement**”) and be given access to the data room maintained by the Debtors. Those parties that execute a Confidentiality Agreement will be provided with substantial due diligence information concerning, and access to, the Debtors, including, without limitation, presentations by the Debtors and their advisors, and access to financial, operational, and other detailed information.

STALKING HORSE AGREEMENT

11. The key terms of the proposed transaction can be found in the Stalking Horse Agreement attached hereto as Exhibit A. The material terms of the Stalking Horse Agreement, including those provisions required to be highlighted pursuant to Local Rule 6004-1(b)(iv), are as follows:

MATERIAL TERMS OF STALKING HORSE AGREEMENT⁴	
Purchase Price	(a) Subject to the terms and conditions of this Agreement, in consideration of the sale of the Acquired Assets pursuant to the terms

⁴ All capitalized terms that are used in this summary but not otherwise defined herein shall have the meanings set forth in the Stalking Horse Agreement. To the extent there are any discrepancies between the Stalking Horse Agreement and this summary, the terms of the Stalking Horse Agreement shall prevail.

hereof, Purchaser shall (i) credit the amount of principal due under the Loans (as defined in clause (a) of the definition of Prepetition Credit Agreements) due under the Prepetition Credit Agreements, pursuant to a credit bid in the amount of one hundred and seventy five million Dollars (\$175,000,000) by Purchaser, in its capacity as Prepetition Secured Lender and (ii) credit an amount up to the amount outstanding under the DIP Facility at Closing, pursuant to a credit bid by Purchaser in its capacity as DIP Lender; provided, that the portion of the Loans that is not credit bid as part of the Purchase Price shall remain a Claim in the Chapter 11 Cases, (iii) assume from Sellers and become obligated to pay, perform and discharge, when due, the Assumed Liabilities, (iv) pay to Sellers an amount of cash equal to the amount outstanding under the DIP Facility at Closing (after taking into account any credit bid) (the "Cash Component") (such Cash Component to be decreased dollar for dollar to the extent any amount of the DIP Facility is credit bid) and (v) a cash payment to Orchids of five hundred thousand Dollars (\$500,000) at the Closing (the "Wind-Down Payment"), which shall be deposited into a segregated Orchids bank account (the "Wind-Down Account") for distribution therefrom solely in accordance with Section 6.20, ((i), (ii), (iii), (iv), and (v) collectively, the "Purchase Price").

(b) To the extent any of the Cash Component of the Purchase Price will be paid to a Prepetition Secured Lender under the Prepetition Credit Agreements or a DIP Lender under the DIP Credit Agreement, Purchaser may deduct from the Cash Component of the Purchase Price and be deemed as having paid to Sellers such amount as otherwise would have been distributed in cash to the Prepetition Secured Lender(s) and/or under the DIP Lender(s), and the respective Loans and Claims held by the Prepetition Secured Lender(s) and the DIP Lender(s) shall be reduced dollar-for-dollar on account of the Cash Component each such lender is deemed to have received. In the event of a dispute over the obligations owed to a Prepetition Secured Lender under the Prepetition Credit Agreements or a DIP Lender under the DIP Credit Agreement, Purchaser shall have no obligation to otherwise fund the Cash Component of the Purchase Price with cash relating to such amount that would be paid on account thereof until final resolution of any and all disputes over such obligations owed to such lender under the Prepetition Credit Agreements or the DIP Credit Agreement, as applicable.

(c) Any Cash Component of the Purchase Price or other payment required to be made pursuant to any other provision hereof shall be made in cash by wire transfer of immediately available funds to such bank account as shall be designated in writing by the applicable Party at least two (2) Business Days prior to the date such payment is to be made.

	See Stalking Horse Agreement § 3.1.
Acquired Assets	<p>Subject to the terms and conditions set forth in this Agreement and, subject to approval of the Bankruptcy Court, pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, at the Closing, Sellers shall sell, assign, transfer and deliver to Purchaser, and Purchaser shall purchase, acquire and take assignment and delivery of, the following assets owned by Sellers on the Closing Date (wherever located), and all of Sellers' right, title and interest therein and thereto on the Closing Date, free and clear of all Liens, Claims and Encumbrances of whatever kind or nature (other than Priming Permitted Encumbrances), but not including those assets specifically excluded in <u>Section 2.2</u> hereof (all of the assets to be sold, assigned, transferred and delivered to Purchaser hereunder shall be deemed included in the term "<u>Acquired Assets</u>" as used herein):</p> <p>(a) all of the equity interests that any Seller owns in the Subsidiaries set forth on Schedule 2.1(a) (collectively, the "<u>Acquired Subsidiaries</u>"); <u>provided, however</u>, if Purchaser elects to exclude the entities listed in Items 1 and 2 on Schedule 2.1(a) as Acquired Subsidiaries, (i) Purchaser shall have the right to designate such entities as Sellers, (ii) such entities shall execute this document by signing a joinder hereto and be designated as Sellers hereunder and (iii) OPP Acquisition Mexico, S. de R.L. de C.V. may be designated by Purchaser an Acquired Subsidiary hereunder.</p> <p>(b) subject to <u>Section 2.6</u>, to the extent assignable pursuant to Section 365 of the Bankruptcy Code or as otherwise provided in the Bid Procedures Order, all of the Contracts set forth on Schedule 2.16 (the "<u>Assigned Contracts</u>") and all rights thereunder;</p> <p>(c) all trade and non-trade accounts receivable, notes receivable and negotiable instruments of Sellers (the "<u>Accounts Receivable</u>"), including all intercompany receivables, notes, rights and claims from any Acquired Subsidiary and payable or in favor of a Seller;</p> <p>(d) all of Sellers' Cash and Cash Equivalents (except to the extent of the Cash Component and the Wind-Down Payment);</p> <p>(e) the Owned Real Property listed on Schedule 2.1(e) (the "<u>Acquired Owned Real Property</u>") and all fixtures, improvements and appurtenances thereto;</p> <p>(f) the Leased Real Property listed on Schedule 2.1(f) (the "<u>Assumed Leased Real Property</u>"), including any security deposits or other deposits delivered in connection therewith;</p>

(g) all cash deposits of clients or customers held by Sellers as security for receivables or obligations;

(h) all deposits of Sellers as security for rent, electricity, telephone, bonds or other sureties or otherwise (except for retainers held by any professional in the Chapter 11 Cases), and prepaid charges and expenses, including all prepaid rent and all prepaid charges, expenses and rent under any personal property leases;

(i) all tangible assets of Sellers, wherever located, and any Excluded Assets, including the tangible assets of Sellers located at any Assumed Leased Real Property or at the locations listed on **Schedule 2.1(i)**;

(j) all personnel files for Transferred Employees except as prohibited by Law; provided, however, that Sellers have the right to retain copies at Sellers' expense to the extent required by Law;

(k) any chattel paper owned or held by Sellers relating to the Business, the Assumed Liabilities or the Acquired Assets;

(l) any lock boxes to which account debtors of any Seller remit payment relating to the Business, the Assumed Liabilities or the Acquired Assets;

(m) all other or additional assets, properties, privileges, rights (including prepaid expenses) and interests of Sellers relating to the Business, the Assumed Liabilities or the Acquired Assets (other than any Excluded Assets) of every kind and description and wherever located, whether known or unknown, fixed or unfixed, accrued, absolute, contingent or otherwise, and whether or not specifically referred to in this Agreement;

(n) all Permits and all pending applications therefor, including those set forth on **Schedule 2.1(n)**, in each case, to the extent such Permits and pending applications therefore are transferrable;

(o) all demands, allowances, prepaid expenses, deposits and refunds, express or implied guarantees, warranties, representations, covenants, indemnities, rights, claims, counterclaims, defenses, credits, causes of action or rights of set off against third parties relating to the Acquired Assets (including, for the avoidance of doubt, those arising under, or otherwise relating to the Assigned Contracts), the Assumed Liabilities or the Business, including rights under vendors' and manufacturers' warranties, indemnities, guaranties and avoidance claims and causes of action under the Bankruptcy Code or applicable Law that are possessed by any Seller;

(p) the Intellectual Property owned or purported to be owned by Sellers, including without limitation, the Purchased Intellectual Property;

(q) all goodwill, payment intangibles and general intangible assets and rights of Sellers to the extent associated with the Business, the Assumed Liabilities or the Acquired Assets;

(r) all Inventory, including raw materials, works in process, parts, subassemblies and finished goods, wherever located and whether or not obsolete or carried on Sellers' books of account, in each case, with any transferable warranty and service rights of Sellers related thereto;

(s) to the extent permitted by Law, Sellers' Documents and, without limiting the foregoing, each of the following: financial accounting and other books and records, Tax Returns filed by Sellers relating to the Business, checkbooks and canceled checks, correspondence, and all customer sales, marketing, advertising, packaging and promotional materials, files, data, software (whether written, recorded or stored on disk, film, tape or other media, and including all computerized data), drawings, engineering and manufacturing data and other technical information and data, and all other business and other records, in each case, arising under or relating to the Acquired Assets, the Assumed Liabilities or the Business provided, however, that Sellers have the right to retain copies of all of the foregoing at Sellers' expense to the extent required by Law or as is necessary to wind-down Sellers;

(t) to the extent transferable, all rights and obligations under or arising out of all insurance policies relating to the Business or any of the Acquired Assets or Assumed Liabilities (including returns and refunds of any premiums paid, or other amounts due back to any Seller, with respect to cancelled policies);

(u) all rights and obligations under non-disclosure, confidentiality, non-competition, non-solicitation and similar arrangements with (or for the benefit of) former or current employees and agents of Sellers or with third parties (including any non-disclosure, confidentiality agreements or similar arrangements entered into in connection with or in contemplation of the filing of the Chapter 11 Cases and the Auction contemplated by the Bid Procedures Order);

(v) all Assumed Plans, together with any funding arrangements relating thereto (including but not limited to all assets, trusts, insurance policies and administration service contracts related

	<p>thereto) and all rights and obligations thereunder;</p> <p>(w) all fixed assets and other personal property and interests related to the Business, the Assumed Liabilities or Acquired Assets, wherever located, including all vehicles, tools, parts and supplies, fuel, machinery, equipment, furniture, furnishing, appliances, fixtures, office equipment and supplies, owned and licensed computer hardware and related documentation, stored data, communication equipment, trade fixtures and leasehold improvements, in each case, with any freely transferable warranty and service rights of any Seller related thereto;</p> <p>(x) telephone, fax numbers and email addresses, as well as the right to receive mail and other communications addressed to Sellers;</p> <p>(y) all avoidance claims or causes of action under Chapter 5 of the Bankruptcy Code or applicable Law (including, without limitation, any preference or fraudulent conveyance) and all other claims or causes of action under any other provision of the Bankruptcy Code or applicable Law (“<u>Avoidance Actions</u>”) relating to the Business, the Acquired Assets and/or Assumed Liabilities, including Actions relating to vendors and service providers used in the Business that are counterparties to Assigned Contracts, relating to Assumed Liabilities or relating to any claim or cause of action against the Purchaser, Black Diamond Commercial Finance, L.L.C. or Ankura Trust Company (as successor to U.S. Bank National Association) (“<u>Acquired Avoidance Actions</u>”);</p> <p>(z) any claim, right or interest of Sellers in or to any refund, rebate, credit, abatement or recovery for Taxes together with any interest due thereon or penalty rebate arising therefrom;</p> <p>(aa) to the extent transferable, all prepaid Taxes and Tax credits of Sellers;</p> <p>(bb) the Fund Loan Agreement, dated as of December 29, 2015, by and between USBCDC Investment Fund 158, LLC and Orchids; and</p> <p>(cc) all of Sellers’ bank accounts.</p> <p><i>See Stalking Horse Agreement § 2.1.</i></p>
Assumed Liabilities	<p>At the Closing, except as provided in <u>Section 2.2</u> and/or in <u>Section 2.4</u> hereof, Purchaser shall assume, and agree to pay, perform, fulfill and discharge only the following Liabilities of Sellers (and only the</p>

following Liabilities) (collectively, the “Assumed Liabilities”):

(a) all Liabilities arising from the ownership and operation of the Acquired Assets by Purchaser after the Closing Date;

(b) all Liabilities and obligations of any Seller under the Assigned Contracts, including, without limitation, (i) all pre-petition cure costs required to be paid pursuant to Section 365 of the Bankruptcy Code (or as otherwise provided in the Bid Procedures Order) in connection with the assumption and assignment of the Assigned Contracts including the cost of obtaining consents in respect of the Assigned Contracts (such pre-petition cure costs are, collectively, the “Cure Amount”); and (ii) any post-Closing liabilities thereunder (other than Liabilities related to or arising out of a breach, default, violation or non-compliance by any Seller or any Affiliate thereof prior to the Closing);

(c) all (i) trade payables arising on or after the Petition Date, (ii) all amounts outstanding pursuant to open purchase orders as set forth on **Schedule 2.3(c)** and (iii) claims arising under Section 503(b)(9) of the Bankruptcy Code allowed by agreement of Purchaser and the claimant thereunder or by Final Order of the Bankruptcy Court (collectively, the “Accounts Payable”);

(d) the Liabilities with respect to Transferred Employees under the terms of Assumed Plans to the extent arising following the Closing;

(e) all payroll liabilities arising in the Ordinary Course of Business and otherwise in accordance with Section 6.1 during the payroll period which includes the Closing Date (the “Straddle Payroll”);

(f) the amount of Transfer Taxes required to be paid by Purchaser in consummating this Agreement, as set forth in Section 12.12(a).

(g) so long as consent is obtained as contemplated by Section 8.9 below, all obligations of Orchids under clause (c) of the NMTC Arrangements and Orchids SC under clauses (a) and (b) of the NMTC Arrangements; and

(h) The payment obligation of the “Transaction Fee” described in that certain Engagement Agreement by and between Orchids and Houlihan Lokey Capital, Inc., dated November 13, 2018, as amended March 13, 2019.

The assumption by Purchaser of the Assumed Liabilities shall not, in

	<p>any way, enlarge the rights of any third parties relating thereto.</p> <p><i>See Stalking Horse Agreement § 2.3.</i></p>
<p>Sale to Insider Local Rule 6004-1(b)(iv)(A)</p>	Not applicable.
<p>Agreements with Management Local Rule 6004-1(b)(iv)(B)</p>	As contemplated by Section 7.1(g) to the Stalking Horse Agreement, the Stalking Horse Purchaser or one of its Affiliates intends to offer certain employees change of control, retention and/or consulting arrangements, including members of management. Such arrangements have had no bearing on the terms of the Stalking Horse Agreement.
<p>Releases Local Rule 6004-1(b)(iv)(C)</p>	Not applicable.
<p>Private Sale/No Competitive Bidding Local Rule 6004-1(b)(iv)(D)</p>	Not applicable.
<p>Closing and Other Deadlines Local Rule 6004-1(b)(iv)(E)</p>	On or prior to April 1, 2019, the Sellers shall file the Sale and Bid Procedures Motion and the DIP Motion with the Bankruptcy Court; the Sellers shall use their reasonable best efforts to cause the Bankruptcy Court to enter (i) the interim DIP Order on or prior to April 4, 2019, (ii) the final DIP Order on or prior to May 8, 2019, (iii) the Bid Procedures Order on or prior to May 5, 2019, and (iv) the Sale Order on or prior to June 14, 2019; the Bid Deadline shall occur on or prior to June 6, 2019; the Sellers shall conduct the Auction for the Acquired Assets on or prior to June 10, 2019; the Sale Hearing has not commenced on or prior to June 12, 2019; and the Sellers shall serve notices of assumption of the Assigned Contracts and Assumed Leased Real Property, including the designation of Cure Amounts, on all necessary parties on or prior to May 14, 2019. <i>See Stalking Horse Agreement §§ 6.17, 11.1(c).</i> The Parties shall use their commercially reasonable efforts to effect the Closing on or prior to August 16, 2019; <u>provided, further</u> , that the Purchaser shall not be required to consummate the Closing prior to 21 days after the Sale Order is entered. <i>See Stalking Horse Agreement § 10.1.</i>
<p>Good Faith Deposit Local Rule 6004-1(b)(iv)(F)</p>	Not applicable.

<p>Interim Arrangements with Proposed Buyer Local Rule 6004-1(b)(iv)(G)</p>	<p>Not applicable.</p>
<p>Use of Proceeds Local Rule 6004-1(b)(iv)(H)</p>	<p>To the extent any of the Cash Component of the Purchase Price will be paid to a Prepetition Secured Lender under the Prepetition Credit Agreements or a DIP Lender under the DIP Credit Agreement, Purchaser may deduct from the Cash Component of the Purchase Price and be deemed as having paid to Sellers such amount as otherwise would have been distributed in cash to the Prepetition Secured Lender(s) and/or under the DIP Lender(s), and the respective Loans and Claims held by the Prepetition Secured Lender(s) and the DIP Lender(s) shall be reduced dollar-for-dollar on account of the Cash Component each such lender is deemed to have received. In the event of a dispute over the obligations owed to a Prepetition Secured Lender under the Prepetition Credit Agreements or a DIP Lender under the DIP Credit Agreement, Purchaser shall have no obligation to otherwise fund the Cash Component of the Purchase Price with cash relating to such amount that would be paid on account thereof until final resolution of any and all disputes over such obligations owed to such lender under the Prepetition Credit Agreements or the DIP Credit Agreement, as applicable. <i>See</i> Stalking Horse Agreement § 3.1(b).</p> <p>From and after the Closing, the Wind-Down Payment deposited into the Wind-Down Account shall be held in trust by Orchids, free and clear of any and all Encumbrances, for the benefit of Persons entitled to be paid priority claims, administrative expenses and other costs relating to the post-Closing administration and wind-down of Sellers' estates, including, without limitation, confirmation of a liquidating plan for the Sellers, in accordance with the Wind-Down Budget and the provisions of the Agreement. <i>See</i> Stalking Horse Agreement § 6.20. The "<u>Wind-Down Budget</u>" means an amount equal to \$500,000, as set forth in a budget setting forth priority claims, administrative expenses, and other costs incurred from and after the Closing Date to be paid from the Wind-Down Account for the post-Closing administration and wind-down of Sellers' estates, including, without limitation, the confirmation of a liquidating plan for the Sellers, as prepared by Sellers and delivered to Purchaser in writing via email on the Initial Date. <i>See</i> Stalking Horse Agreement § 1.1.</p>
<p>Tax Exemption Local Rule 6004-1(b)(iv)(I)</p>	<p>Not applicable.</p>
<p>Record Retention Local Rule 6004-</p>	<p>Following the Closing of the Sale, the Debtors shall have, and the Purchaser shall provide, reasonable access to their books and records, to</p>

1(b)(iv)(J)	<p>the extent they are included in the Acquired Assets transferred to the Purchaser as part of the Sale as set forth in the Agreement. <i>See</i> Proposed Sale Order, ¶ 29. Following consummation of the Closing, so long as such access does not unreasonably interfere with Purchaser’s business operations, Purchaser shall permit Sellers’ employees, agents, counsel and other professionals employed in the Chapter 11 Cases, or otherwise retained by Sellers, reasonable access to the financial and other books and records relating to the Acquired Assets or the Business (whether in documentary or data form) for the purposes of facilitating the continuing administration of the Chapter 11 Cases, preparing Tax Returns or responding to Tax related inquiries, and other such administrative activities, which access shall include the right of such professionals to copy, at Sellers’ expense, such documents and records as it may request in furtherance of the purposes described above, subject in all respects to the provisions of <u>Section 6.5</u> hereof. Purchaser may, in its sole discretion, move any or all of the books and records relating to the Acquired Assets and/or the Business to a location of its designation; <u>provided, however</u>, if Purchaser moves any such documents or records from their present location, Sellers have the right to require Purchaser to copy and deliver to Sellers or their professionals such documents and records as they may request, but only to the extent Sellers or any such professional (a) furnishes Purchaser with reasonably detailed written descriptions of the materials to be so copied and (b) Sellers advance to Purchaser the costs and expenses thereof. The Parties acknowledge that Sellers shall have the right to retain any documents and records provided to it by Purchaser, subject in all respects to the provisions of <u>Section 6.5</u> hereof. Following the Closing, Purchaser shall provide Sellers and such of Sellers’ professionals as Sellers shall have from time to time designated, with reasonable access to former management of the Business during regular business hours to assist Sellers as set forth in this <u>Section 7.2</u>, provided again that such access does not unreasonably interfere with Purchaser’s business operations. Purchaser shall not dispose of any such documents and records except as shall be consistent with applicable Law; <u>provided, further</u>, Purchaser shall provide Sellers with reasonable advance written notice prior to the disposal of any such documents or records, together with the opportunity for Sellers to preserve such documents or records at Sellers’ cost. <i>See</i> Stalking Horse Agreement § 7.2.</p>
<p>Sale of Avoidance Actions Local Rule 6004-1(b)(iv)(K)</p>	<p>The Acquired Assets shall include, <i>inter alia</i>, all avoidance claims or causes of action under Chapter 5 of the Bankruptcy Code or applicable Law (including, without limitation, any preference or fraudulent conveyance) and all other claims or causes of action under any other provision of the Bankruptcy Code or applicable Law (“<u>Avoidance Actions</u>”) relating to the Business, the Acquired Assets and/or Assumed Liabilities, including Actions relating to vendors and service providers</p>

	used in the Business that are counterparties to Assigned Contracts, relating to Assumed Liabilities or relating to any claim or cause of action against the Purchaser, Black Diamond Commercial Finance, L.L.C. or Ankura Trust Company (as successor to U.S. Bank National Association) (“ <u>Acquired Avoidance Actions</u> ”). See Stalking Horse Agreement § 2.1(y).
Requested Findings as to Successor Liability Local Rule 6004-1(b)(iv)(L)	The Parties intend that, to the fullest extent permitted by Law (including under Section 363 of the Bankruptcy Code), upon the Closing, Purchaser shall not be deemed to: (a) be the successor of any Seller, (b) have, <i>de facto</i> , or otherwise, merged with or into any Seller, (c) be a mere continuation or substantial continuation of any Seller or its enterprise(s) or (d) be liable for any acts or omissions of any Seller in the conduct of the Business or arising under or related to the Acquired Assets other than as set forth in this Agreement. Without limiting the generality of the foregoing, and except as otherwise provided in this Agreement, the Parties intend that Purchaser shall not be liable for any Encumbrance (other than Assumed Liabilities and Priming Permitted Encumbrances) against any Seller or any of any Seller’s predecessors or Affiliates, and Purchaser shall have no successor or vicarious liability of any kind or character whether known or unknown as of the Closing Date, whether now existing or hereafter arising, or whether fixed or contingent, with respect to the Business, the Acquired Assets or any Liabilities of Sellers arising prior to the Closing Date. The Parties agree that the provisions substantially in the form of this <u>Section 6.13</u> shall be reflected in the Sale Order. See Stalking Horse Agreement § 6.13.
Sale Free and Clear of Unexpired Leases Local Rule 6004-1(b)(iv)(M)	Not applicable.
Credit Bid Local Rule 6004-1(b)(iv)(N)	Subject to the terms and conditions of this Agreement, in consideration of the sale of the Acquired Assets pursuant to the terms hereof, Purchaser shall (i) credit the amount of principal due under the Loans (as defined in clause (a) of the definition of Prepetition Credit Agreements) due under the Prepetition Credit Agreements, pursuant to a credit bid in the amount of one hundred and seventy five million Dollars (\$175,000,000) by Purchaser, in its capacity as Prepetition Secured Lender and (ii) credit an amount up to the amount outstanding under the DIP Facility at Closing, pursuant to a credit bid by Purchaser in its capacity as DIP Lender; <u>provided</u> , that the portion of the Loans that is not credit bid as part of the Purchase Price shall remain a Claim in the Chapter 11 Cases... See Stalking Horse Agreement § 3.1(a)(i). The Stalking Horse Bidder, in its capacity as the DIP Lender and Prepetition Secured Lender, shall be deemed to be a Qualified Bidder

	and is not required to make any Good Faith Deposit. To the fullest extent permissible under Bankruptcy Code section 363(k), the Stalking Horse Bidder, in its capacity as the DIP Lender and Prepetition Secured Lender, may credit bid, as a Qualified Bid or subsequent Bid, in its sole and absolute discretion, any portion and up to the entire amount of Obligations owing under the DIP Loan Documents and the Prepetition Loan Documents (as defined in the DIP Order) in conjunction with the Sale of the Acquired Assets pursuant to the terms of the Stalking Horse Agreement (the “ Credit Bid ”). In the event the amount of the Credit Bid exceeds the total amount of the highest bids for the Assets subject to the Credit Bid, such Credit Bid will be deemed the highest and best bid and such Credit Bid may be accepted by the Debtors and be presented for approval to the Court. <i>See</i> Bid Procedures § (C)(4).
Relief from Bankruptcy Rule 6004(h) Local Rule 6004-1(b)(iv)(O)	The Sale Order (i) shall have been entered by the Bankruptcy Court, and (ii) shall not have been appealed or be subject to any pending appeal as of the Closing Date, and no stay with respect thereto (including any stay under Bankruptcy Rule 6004(h)) shall be in effect as of the Closing Date. <i>See</i> Proposed Sale Order, ¶ (F); <i>see also</i> Stalking Horse Agreement § 8.7.

THE PROPOSED SALE

12. The Debtors believe a prompt sale of the Assets may represent the best option available to maximize value for all stakeholders in these Chapter 11 Cases. Moreover, it is critical for the Debtors to execute on any sale transaction as expeditiously as possible, as the Debtors are utilizing the DIP Lender’s and the Prepetition Secured Lender’s cash collateral and additional financing in order to explore this sale process. Therefore, time is of the essence.

13. By this Motion, the Debtors request the Court approve the following general timeline, with the assumption the Bankruptcy Court will enter an order granting this motion on shortened notice. These dates are subject to change in the event the Bankruptcy Court does not enter an order at that hearing:

- (a) ***Contract Cure Objection Deadline***: Objections to the potential assumption and assignment of any Contract, including proposed cure amounts, will be filed and served no later than **May 31, 2019 at 4:00 p.m. (prevailing Eastern Time)** (the “**Cure or Assignment Objection**”).

- (b) ***Bid Deadline:*** Bids for the Assets, including a marked-up form of the Stalking Horse Agreement, as well as the deposit and the other requirements for a bid to be considered a Qualified Bid (as defined in the Bid Procedures) must be received by no later than **June 6, 2019 at 4:00 p.m. (prevailing Eastern Time)** or such later date as may be agreed to by the Debtors (the “**Bid Deadline**”).
- (c) ***Auction:*** The Auction, if necessary, will be held at the offices of Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801 on **June 10, 2019 at 10:00 a.m. (prevailing Eastern Time)**, or such other location as identified by the Debtors after notice to all Qualified Bidders.
- (d) ***Sale Objection Deadline:*** Objections to the Sale will be filed and served no later than **4:00 p.m. (prevailing Eastern Time) on June 5, 2019.**
- (e) ***Sale Hearing:*** Consistent with the Court’s availability and schedule, the Sale Hearing will commence on or before **June 12, 2019.**

14. The Debtors believe this timeline maximizes the prospect of receiving the highest and best offer without unduly prejudicing their estates. Given the Debtors’ extensive prepetition marketing efforts, the proposed timeline is more than sufficient to complete a fair and open sale process that will maximize the value received for the Assets. To further ensure the Debtors’ proposed Auction and Sale process maximizes value for the benefit of the Debtors’ estates, the Debtors and their professionals will use the time following the Petition Date to continue to actively market the Assets in an attempt to solicit the highest or otherwise best bids available. The Debtors believe the relief requested by this Motion is in the best interests of their creditors, their other stakeholders, and all other parties in interest, and should be approved.

15. As part of its bid, the Stalking Horse Bidder negotiated for the timeline requested herein. The Debtors believe an expedited sale process will minimize any further deterioration of the Assets and is in the best interests of all stakeholders. Thus, the Debtors have determined that pursuing the potential Sale in the manner and within the time periods prescribed in the Bid Procedures is in the best interest of the Debtors’ estates and will provide interested parties with sufficient opportunity to participate.

THE BID PROCEDURES ORDER

A. The Bid Procedures

16. To optimally and expeditiously solicit, receive, and evaluate bids in a fair and accessible manner, the Debtors have developed and proposed the Bid Procedures, attached as Exhibit 1 to the Bid Procedures Order. The Bid Procedures were developed to permit an expedited sale process, to promote participation and active bidding, and to ensure the Debtors receive the highest or otherwise best offer for the Assets. As such, the Debtors believe the timeline for consummating the sale process established pursuant to the Bid Procedures is in the best interest of their estates and all parties in interest.

17. The Bid Procedures describe, among other things, the requirements for prospective purchasers to participate in the bidding process, the availability and conduct of due diligence, the deadline for submitting a competing bid, the method and factors for determining qualifying bids, and the criteria for selecting a successful bidder.

18. The following summary describes the salient points of the Bid Procedures and discloses certain information required pursuant to Local Rule 6004-1(c)(i):⁵

<p>Provisions Governing Qualifications of Bidders (Local Bankr. R. 6004-1(c)(i)(A))</p>	<p>To be eligible to participate in the Auction, each offer, solicitation, or proposal (each, a “Bid”), and each party submitting such a Bid (each, a “Bidder”), must be determined by the Debtors, in consultation with the Creditors’ Committee, to satisfy each of the following conditions:</p> <p>(i) Corporate Authority. Written evidence reasonably acceptable to the Debtors demonstrating appropriate corporate authorization to consummate the proposed transaction; provided, however, if the Bidder is an entity specially formed for the purpose of effectuating the transaction, then the Bidder must furnish written evidence reasonably acceptable to the Debtors of the approval of the</p>
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⁵ This summary of the Bid Procedures is qualified in its entirety by the Bid Procedures attached as Exhibit 1 to the Bid Procedures Order. All capitalized terms that are used in this summary but not otherwise defined herein shall have the meanings set forth in the Bid Procedures. To the extent there are any conflicts between this summary and the Bid Procedures, the terms of the Bid Procedures shall govern.

	<p>transaction by the equity holder(s) of such Bidder. <i>See</i> Bid Procedures § (B)(3)(8).</p> <p>(ii) Proof of Financial Ability to Perform. Written evidence that the Debtors reasonably conclude demonstrates the Bidder has the necessary financial ability to close the Sale and provide adequate assurance of future performance under all contracts to be assumed and assigned in such transaction. Such information should include, <i>inter alia</i>, the following:</p> <ul style="list-style-type: none"> • contact names and telephone numbers for verification of financing sources; • written evidence of the Bidder’s internal resources and proof of any debt or equity funding commitments that are needed to close the transaction; • the Bidder’s current financial statements (audited if they exist); • a description of the Bidder’s pro forma capital structure; and • any such other form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors demonstrating such Bidder has the ability to close the transaction; <i>provided, however</i>, the Debtors shall determine in their reasonable discretion, in consultation with the Creditors’ Committee, whether the written evidence of such financial wherewithal is reasonably acceptable, and shall not unreasonably withhold acceptance of a Bidder’s financial qualifications. <p><i>See</i> Bid Procedures § (B)(3)(10).</p> <p>To participate in the bidding process and to receive access to any materials relating to the Assets (the “Diligence Materials”), a party must submit to the Debtors an executed Confidentiality Agreement. The executed Confidentiality Agreement must be signed and transmitted by the person or entity wishing to have access to the Debtors’ data room (the “Data Room”) and any other Diligence Materials. <i>See</i> Bid Procedures § (B)(2).</p>
<p>Provisions Governing Qualified Bids (Local Bankr. R. 6004-1(c)(i)(B))</p>	<p>Each Bid must be determined by the Debtors, in consultation with the Creditors’ Committee, to satisfy each of the following conditions:</p> <p>(i) Good Faith Deposit. Each Bid (other than the Bid made by the Stalking Horse Bidder) must be accompanied by a deposit in the amount of seven percent (7%) of the Bid’s proposed cash purchase</p>

price to an interest bearing escrow account to be identified and established by the Debtors (the “Good Faith Deposit”). *See* Bid Procedures § (B)(3)(2).

(ii) **Terms.** A Bid must be on terms that are substantially the same or better than the terms of the Stalking Horse Agreement, as determined by the Debtors in consultation with the Creditors’ Committee, and the Bid must identify which Acquired Assets the Bidder intends to purchase and include executed transaction documents (the “**Transaction Documents**”). A Bid shall include (i) an executed asset purchase agreement and (ii) a copy of such asset purchase agreement marked to show all changes requested by the Bidder as compared to the Stalking Horse Agreement. A Bid will not be considered qualified for the Auction if (i) such Bid contains additional material representations and warranties, covenants, closing conditions, termination rights other than as may be included in the Stalking Horse Agreement (it being agreed and understood such Bid shall modify the Stalking Horse Agreement as needed to comply in all respects with the Bid Procedures Order and will remove provisions that apply only to the Stalking Horse Bidder such as the provisions relating to the Bid Protections); (ii) such Bid is not received by the Debtors in writing on or prior to the Bid Deadline, and (iii) such Bid does not contain evidence the Person submitting it has received unconditional debt and/or equity funding commitments (or has unrestricted and fully available cash) sufficient in the aggregate to finance the purchase contemplated thereby, including proof the Good Faith Deposit has been made. The Transaction Documents shall also identify any executory contracts and unexpired leases of the Debtors the Bidder wishes to have assumed and assigned to it pursuant to the Sale (collectively, the “**Assigned Contracts**”). *See* Bid Procedures § (B)(3)(3), (4).

(iii) **Contingencies.** Except as provided in the Stalking Horse Agreement, a Bid may not be conditioned on obtaining financing or any internal approval, or on the outcome or review of due diligence, but may be subject to the accuracy at the closing of specified representations and warranties in the manner set forth in the Stalking Horse Agreement. *See* Bid Procedures § (B)(3)(13).

(iv) **Irrevocable.** A Bid (other than the Bid of the Stalking Horse Bidder) must be irrevocable until two (2) business days after the closing of the Sale. Each Bidder (other than the Stalking Horse Bidder) further agrees that its Bid, if not chosen as the Successful Bidder, shall serve, without modification, as a Backup Bidder (as defined below) as may be designated by the Debtors at the Sale Hearing, in the event the Successful Bidder fails to close as

	<p>provided in the Successful Bidder’s purchase agreement, as modified, if at all, and the Sale Order. The Stalking Horse Bidder shall have the right, but not the obligation, to serve as a Backup Bidder if the Stalking Horse Bidder is not the Successful Bidder. <i>See Bid Procedures</i> § (B)(3)(14).</p> <p>(v) Disclaimer of Fees. Each Bid (other than the Stalking Horse Agreement) must disclaim any right to receive a fee analogous to a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation. For the avoidance of doubt, no Qualified Bidder (other than the Stalking Horse Bidder) will be permitted to request, nor be granted by the Debtors, at any time, whether as part of the Auction or otherwise, a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation. By submitting its Bid, each Bidder (other than the Stalking Horse Bidder) is agreeing to refrain from and waive any assertion or request for reimbursement on any basis, including pursuant to section 503(b) of the Bankruptcy Code. <i>See Bid Procedures</i> § (B)(3)(17).</p> <p>(vi) Bid Deadline. The Debtors must receive a Bid in writing, on or before the Bid Deadline, June 6, 2019 at 4:00 p.m. (prevailing Eastern Time) or such later date as may be agreed to by the Debtors (the “Bid Deadline”). <i>See Bid Procedures</i> § (B)(3)(18).</p> <p>(vii) Cancellation of Auction. If no Qualified Bids other than the Stalking Horse Bid are received prior to the Bid Deadline, then the Auction will not occur, the Stalking Horse Agreement will be deemed the Successful Bid, and, subject to the termination rights under the Stalking Horse Agreement, the Debtors will pursue entry of an order by the Bankruptcy Court authorizing the Sale to the Stalking Horse Bidder as soon as practicable. <i>See Bid Procedures</i> § (C).</p>
<p>Stalking Horse Bid Protections Local Rule 6004-1(c)(i)(C)</p>	<p>(1) Break-Up/Topping Fees and Expense Reimbursement. The Stalking Horse Bidder is entitled to a break-up fee equal to three percent (3%) of the Purchase Price of \$5,250,000 (the “Break-Up Fee”); and reimbursement of the Stalking Horse Bidder’s out of pocket costs, expenses, and fees in connection with evaluating, negotiating, documenting and performing the transactions contemplated by the Option Agreement and the Stalking Horse Agreement in an amount equal to the lesser of (i) \$2,000,000, and (ii) the aggregate amount of all reasonable and documented out of pocket costs, expenses and fees incurred by the Stalking Horse Bidder or those of the Stalking Horse Bidder’s subsidiaries that will receive title to any Acquired Assets pursuant to the transactions contemplated by the Stalking Horse Agreement (the “Expense Reimbursement”). <i>See Stalking Horse</i></p>

	<p>Agreement, §§ 1.1, 11.5; Bid Procedures § 9.</p> <p>(2) Bidding Increments. Each Bid or combination of Bids must be for all of the Assets and shall clearly show the amount of the purchase price. In addition, a Bid or combination of Bids (a) must propose a purchase price equal to or greater than the sum of (i) the value of the Stalking Horse Agreement, as determined by the Debtors in consultation with the Creditors' Committee; and (ii) an initial overbid of up to \$7,750,000 (the "Initial Overbid"), consisting of the sum of the Break-Up Fee, the Expense Reimbursement and \$500,000, and (b) must obligate the Bidder(s) to pay, to the extent provided in the Agreement, all amounts which the Stalking Horse Bidder under the Agreement has agreed to pay, including any assumed liabilities (as set forth in the Stalking Horse Agreement). <i>See</i> Bid Procedures § (B)(3)(7).</p> <p>Any Overbid after the Starting Bid (as defined in the Bid Procedures) shall be made in increments of at least \$500,000 (the "Minimum Overbid Increment"). Additional consideration in excess of the amount set forth in the Starting Bid may include cash and/or non-cash consideration; <i>provided, however</i> that the value for such non-cash consideration shall be determined by the Debtors in their reasonable business judgment and in consultation with the Creditors' Committee. <i>See</i> Bid Procedures § (C)(2)(1).</p> <p>(3) Treatment of Break-Up and Topping Fees and Expense Reimbursement at Auction. To the extent payable in accordance with the Option Agreement, the Break-Up Fee and Expense Reimbursement shall be paid as provided in the Option Agreement and the Stalking Horse Agreement and shall constitute an allowed superpriority administrative expense claim against the Debtors' bankruptcy estates pursuant to Bankruptcy Code sections 363, 364(c)(1), 503(b), 507(a)(2), and 507(b). <i>See</i> Bid Procedures § (C)(9).</p>
<p>Modifications of Bidding and Auction Procedures Local Rule 6004-1(c)(i)(D)</p>	<p>The Debtors reserve their rights to modify these Bid Procedures in their reasonable business judgment in any manner that will best promote the goals of the bidding process or impose, at or prior to the Auction, additional customary terms and conditions on the sale of the Assets, including, without limitation: (a) adjourning the Auction at the Auction and/or adjourning the Sale Hearing in open court without further notice; (b) reopening the Auction to consider further Bids or Overbids; (c) adding procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction (<i>e.g.</i>, the amount of time to make subsequent overbids, whether a non-conforming Bid constitutes a Qualified Bid); (d) canceling the Auction; and (e) rejecting any or all Bids or Qualified Bids (including the Stalking Horse Agreement), in all cases, subject to the Stalking Horse Agreement, the Bid Procedures, and the Bid Procedures Order. <i>See</i> Bid Procedures § (G).</p>
<p>Closing with</p>	<p>Notwithstanding anything in the Bid Procedures to the contrary, if an</p>

<p>Alternative Backup Bidders Local Rule 6004-1(c)(i)(E)</p>	<p>Auction is conducted, the party(ies) with the next highest or otherwise best Qualified Bid (or combination of Qualified Bids) at the Auction, as determined by the Debtors in consultation with the Creditors' Committee, in the exercise of their business judgment, shall be required to serve as backup bidder (the "Backup Bidder"). The Backup Bidder shall be required to keep its initial Bid(s) (or if the Backup Bidder submitted one or more Overbids at the Auction, its final Overbid) (the "Backup Bid") open and irrevocable until the earlier of 4:00 p.m. (prevailing Eastern Time) on the date that is twenty five (25) days after the date of the Sale Hearing (the "Outside Backup Date") or the closing of the transaction with the Successful Bidder. Following entry of the Sale Order, if the Successful Bidder fails to consummate an approved transaction because of a breach or failure to perform on the part of such Successful Bidder, the Debtors may designate the Backup Bidder to be the new Successful Bidder, and the Debtors will be authorized, but not required, to consummate the transaction with the Backup Bidder without further order of the Bankruptcy Court. In such case, the defaulting Successful Bidder's deposit, if any, shall be forfeited to the Debtors' estates, and the Debtors specifically reserve the right to seek all available damages from the defaulting Successful Bidder. The closing date to consummate the transaction with the Backup Bidder shall be no later than the later of twenty five (25) days after the date the Debtors provide notice to the Backup Bidder that the Successful Bidder failed to consummate a sale and the Debtors desire to consummate the transaction with the Backup Bidder or five (5) days after necessary regulatory approvals are completed by the Backup Bidder and/or the Debtors. The deposit, if any, of the Backup Bidder shall be held by the Debtors until the earlier of two (2) business days after (a) the closing of the Sale with the Successful Bidder and (b) the Outside Backup Date; <i>provided, however</i>, in the event the Successful Bidder does not consummate the transaction as described above and the Debtors provide notice to the Backup Bidder, the Backup Bidder's deposit shall be held until the closing of the transaction with the Backup Bidder. In the event the Debtors fail to consummate a transaction with the Backup Bidder as described above, the Backup Bidder's deposit shall be forfeited to the Debtors' estates, and the Debtors specifically reserve the right to seek all available damages from the defaulting Backup Bidder. Notwithstanding anything to the contrary herein, the Stalking Horse Bidder shall have the right, but not the obligation, to serve as a Backup Bidder in the event that the Stalking Horse Bidder is not selected as the Successful Bidder. <i>See</i> Bid Procedures § (C)(4).</p>
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19. Importantly, the Bid Procedures recognize the Debtors' fiduciary obligations to maximize the value of their assets and, as such, do not impair the Debtors' ability to consider all qualified bid proposals. Additionally, as noted above, the Bid Procedures preserve the Debtors'

rights to modify the Bid Procedures as necessary or appropriate to maximize value of the Debtors' estates.

B. The Auction and Sale

20. If one or more Qualified Bids are received by the Bid Deadline (other than the Stalking Horse Agreement), the Debtors will conduct an Auction to determine the highest and best Qualified Bid. This determination shall take into account any factors the Debtors reasonably deem relevant to the value of the Qualified Bid to the Debtors' estates, including, without limitation, the following: (i) the amount and nature of the consideration, (ii) the proposed assumption of any liabilities and/or executory contracts or unexpired leases, if any, and the excluded assets and/or executory contracts or unexpired leases, if any, (iii) the ability of the Qualified Bidder to close the proposed transaction and the conditions related thereto, and the timing thereof, (iv) whether the bid is a bulk bid or a partial bid for only some of the Debtors' assets, (v) the proposed closing date and the likelihood, extent and impact of any potential delays in closing, including delays owing to regulatory uncertainty, (vi) any purchase price adjustments, (vii) the impact of the transaction on any actual or potential litigation, (viii) the net after-tax consideration to be received by the Debtors' estates, and (ix) the tax consequences of such bid (collectively, the "**Bid Assessment Criteria**"). If no Qualified Bid (other than the Stalking Horse Agreement) is received by the Bid Deadline, the Debtors may determine not to conduct the Auction, exercise their rights under the Option Agreement and deem the Stalking Horse Agreement to be the Successful Bid without conducting the Auction. The Debtors seek authority from the Court to schedule the Auction on a date as further described in the Bid Procedures.

C. Form and Manner of Sale Notice

21. On or within two (2) business days after entry of the Bid Procedures Order, the Debtors will cause the Sale Notice to be served on (a) the Office of the United States Trustee for

the District of Delaware (the “**U.S. Trustee**”); (b) the holders of the twenty (20) largest unsecured claims against the Debtors; (c) counsel to the DIP Lender and the Prepetition Secured Lender; (d) counsel to the Stalking Horse Bidder; (e) all other parties who have expressed a written interest in the Assets; (f) the United States Attorney’s Office for the District of Delaware; (g) the Internal Revenue Service; (h) all state and local taxing authorities with an interest in the Assets; (i) the Attorney General for the State of Delaware; (j) the Securities and Exchange Commission; (k) all other governmental agencies with an interest in the Sale and transactions proposed thereunder; (l) all parties known or reasonably believed to have asserted an Interest in the Assets; (m) the counterparties to the Contracts (the “**Contract Counterparties**”); (n) the Debtors’ insurance carriers; (o) all parties entitled to notice pursuant to Local Rule 9013-1(m); and (p) any party that has requested notice pursuant to Bankruptcy Rule 2002.

22. In addition, the Debtors propose to publish the notice attached hereto as Exhibit E (the “**Bid Procedures Notice**”) once in *The New York Times (National Edition)* as soon as practicable after entry of the Bid Procedures Order. Finally, the Debtors will post a copy of the Sale Notice at the website of their claims and noticing agent, Prime Clerk LLC, located at <http://cases.primeclerk.com/OrchidsPaper>.

D. Summary of the Assumption Procedures

23. The Debtors are also seeking approval of certain procedures to facilitate the fair and orderly assumption and assignment of the Contracts in connection with the Sale (the “**Assumption Procedures**”). Pursuant to the Bid Procedures Order, notice of the proposed assumption and assignment of the Contracts to the Successful Bidder, the proposed cure amounts related thereto, and the right, procedures, and deadlines for objecting thereto, will be provided in separate notices, attached to the Bid Procedures Order as Exhibit 3 (the “**Cure and Possible Assumption and Assignment Notice**”) and Exhibit 4 (the “**Assumption Notice**”) to be sent to

the applicable Contract Counterparties. Because the Bid Procedures Order sets forth the Assumption Procedures in detail, they are not restated herein. Generally, however, the Assumption Procedures: (i) outline the process by which the Debtors will serve notice to all Contract Counterparties regarding the proposed assumption and assignment and related cure amounts, if any, informing such parties of their right, and the procedures, to object thereto, and (ii) establish objection and other relevant deadlines and the manner for resolving disputes relating to the assumption and assignment of the Contracts to the extent necessary.

BASIS FOR RELIEF

A. The Relief Sought in the Bid Procedures Order Is in the Best Interests of the Debtors' Estates and Should Be Approved

1. The Proposed Notice of the Bid Procedures and the Sale Process Is Appropriate

24. The Debtors seek authority to sell the Assets through an Auction and related sale process, subject to the Debtors' right to seek an alternative course of action to maximize the value of their estates. The Debtors and their advisors have conducted and will conduct an extensive marketing process. The Debtors have developed a list of "Contact Parties" who will receive a copy of the "Information Package" (both as defined in the Bid Procedures). The list of Contact Parties will encompass those parties whom the Debtors believe may be potentially interested in pursuing a Sale and whom the Debtors reasonably believe may have the financial resources to consummate such a transaction. The Bid Procedures are designed to elicit bids from one or more parties and to encourage a robust auction of the Assets, thus maximizing the value of the Debtors' estates for the benefit of their creditors and other stakeholders.

25. Under Bankruptcy Rule 2002(a) and (c), the Debtors are required to notify creditors of the proposed sale of the Assets, including a disclosure of the time and place of any auction, the terms and conditions of a sale, and the deadline for filing any objections.

26. The Debtors respectfully submit the Sale Notice is reasonably calculated to provide all interested parties with timely and proper notice of the proposed Sale, including: (i) the date, time, and place of the Auction (if one will be held), (ii) the Bid Procedures, (iii) the deadline for filing objections to the Sale and entry of the Sale Order, and the date, time, and place of the Sale Hearing, (iv) a reasonably specific identification of the Assets, (v) a description of the Sale as being free and clear of liens, claims, encumbrances, and other interests other than Permitted Encumbrances and Assumed Liabilities (as such terms are defined in the Stalking Horse Agreement), with all such liens, claims, encumbrances, and other interests attaching with the same validity and priority to the Sale proceeds, and (vi) notice of the proposed assumption and assignment of the Contracts to the Successful Bidder.

27. The Debtors further submit that notice of this Motion and the related hearing to consider entry of the Bid Procedures Order, coupled with service of the Sale Notice, the Cure and Possible Assumption and Assignment Notice, and the Assumption Notice, and publication of the Bid Procedures Notice, as provided for herein, constitutes good and adequate notice of the Sale and the proceedings with respect thereto in compliance with, and satisfaction of, the applicable requirements of Bankruptcy Rule 2002. The Debtors further submit the proposed notice procedures are designed to maximize the chance of obtaining the broadest possible participation in the Debtors' marketing process, while minimizing costs to the estates. Accordingly, the Debtors respectfully request the Court find the proposed notice procedures set forth in this Motion are sufficient, and no other or further notice of the Bid Procedures, Auction, Sale, or Sale Hearing is required.

2. The Bid Procedures Are Appropriate and Will Maximize Value

28. Bid procedures should be approved when they provide a benefit to the debtor's estate by maximizing the value of the debtor's assets. *See In re Edwards*, 228 B.R. 552, 361

(Bankr. E.D. Pa. 1998) (“The purpose of procedural bidding orders is to facilitate an open and fair public sale designed to maximize value for the estate.”). Courts have made clear that a debtor’s business judgment is entitled to substantial deference with respect to the procedures to be used in selling an estate’s assets. *See, e.g., In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991) (“Under Section 363, the debtor in possession can sell property of the estate . . . if he has an ‘articulated business justification’”) (internal citations omitted); *In re Martin*, 91 F.3d 389, 395 (3d Cir. 1996) (quoting *Schipper*); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (same); *see also In re Integrated Resources, Inc.*, 147 B.R. 650, 656-57 (S.D.N.Y. 1992) (noting that bid procedures that have been negotiated by a trustee are to be reviewed in accordance with the deferential “business judgment” standard, under which such procedures and arrangements are “presumptively valid”).

29. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See Mushroom Transp. Co., Inc.*, 382 F.3d 325, 339 (3d Cir. 2004); *Official Comm. of Unsecured Creditors of Cybergenics, Corp. v. Chinery*, 330 F.3d 548, 573 (3d Cir. 2003); *see also In re Food Barn Stores, Inc.*, 101 F.3d 558, 564-65 (8th Cir. 1997) (in bankruptcy sales, “a primary objective of the Code [is] to enhance the value of the estate at hand”); *Integrated Resources*, 147 B.R. at 659 (“[I]t is a well-established principle of bankruptcy law that the objective of the bankruptcy rules and the trustee’s duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.”) (internal citations omitted); *Edwards*, 228 B.R. at 561.

30. To that end, courts uniformly recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and therefore appropriate in the context of bankruptcy transactions. *See, e.g., In re O’Brien*

Envtl. Energy, Inc., 181 F.3d 527, 537 (3d Cir. 1999); *Integrated Resources*, 147 B.R. at 659 (bid procedures “are important tools to encourage bidding and to maximize the value of the debtor’s assets”); *In re Fin. News Network, Inc.*, 126 B.R. 152, 156 (Bankr. S.D.N.Y.1991) (“court-imposed rules for the disposition of assets . . . [should] provide an adequate basis for comparison of offers, and [should] provide for a fair and efficient resolution of bankrupt estates”).

31. The Debtors believe the proposed Bid Procedures will establish the parameters under which the value of the Sale may be tested at the Auction. The Bid Procedures will increase the likelihood the Debtors will receive the greatest possible consideration because they will ensure a competitive and fair bidding process.

32. The Debtors believe the proposed Bid Procedures will promote active bidding from seriously interested parties and will elicit the highest or otherwise best offers available for the Assets. The proposed Bid Procedures will enable the Debtors to conduct the Sale in a controlled, fair, and open fashion that will encourage participation by financially capable bidders who will offer the best package for the Assets and who can demonstrate the ability to close the transaction.

33. Specifically, the proposed Bid Procedures contemplate an open auction process with minimum barriers to entry and provide potential bidding parties with sufficient time to perform due diligence and acquire the information necessary to submit a timely and well-informed bid.

34. At the same time, the proposed Bid Procedures provide the Debtors with a robust opportunity to consider competing bids and select the highest or otherwise best offer for the completion of the Sale. Additionally, entering into the Option Agreement with the Stalking Horse Bidder ensures the Debtors obtain fair market value by making a minimum purchase price

for the Assets available to the Debtors that will be tested in the marketplace. As such, creditors of the Debtors' estates can be assured the consideration obtained will be fair and reasonable and at or above the market.

35. The Debtors submit the proposed Bid Procedures will encourage competitive bidding, are appropriate under the relevant standards governing auction proceedings and bidding incentives in bankruptcy proceedings, and are consistent with other procedures previously approved in this District. *See, e.g., In re Emerald Oil, Inc.*, No. 16-10704 (KG) (Bankr. D. Del. July 28, 2016); *In re Quicksilver Res. Inc.*, No. 15-10585 (LSS) (Bankr. D. Del. Oct. 6, 2015); *In re Source Home Entm't LLC*, No. 14-11553 (KG) (Bankr. D. Del. July 21, 2014); *In re Palm Harbor Homes, Inc.*, No. 10-13850 (Bank. D. Del. Jan. 6, 2011); *In re Ultimate Escapes Hldgs, LLC*, No. 10-12915 (Bankr. D. Del. Oct. 8, 2010); *In re PTC Alliance Corp.*, No. 09-13395 (Bankr. D. Del. Nov. 6, 2009); *In re Hayes Lemmerz Int'l, Inc.*, No. 09-11655 (Bankr. D. Del. Sept. 22, 2009); *In re VeraSun Energy Corp.*, No. 08-12606 (Bankr. D. Del. Feb. 19, 2009); *see also In re Dura Auto. Sys., Inc.*, Case No. 06-11202 (KJC) (Bankr. D. Del. July 14, 2007); *In re New Century TRS Holdings, Inc.*, Case No. 07-10416 (KJC) (Bankr D. Del. Apr. 20, 2007); *In re Three A's Holdings, L.L.C.*, Case No. 06-10886 (BLS) (Bankr. D. Del. Sept. 7, 2006).⁶

36. Thus, the Bid Procedures are reasonable, appropriate, and within the Debtors' sound business judgment under the circumstances because the Bid Procedures are designed to maximize the value to be received by the Debtors' estates.

3. The Minimum Overbid Increment Is Appropriate

⁶ Because the number of orders cited is voluminous, individual orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

37. One important component of the proposed Bid Procedures is the “Overbid” provision. Once the Debtors determine the Starting Bid, which shall equal or exceed the value of the Stalking Horse Agreement, as determined by the Debtors in consultation with the Creditors’ Committee, plus the Initial Overbid, and hold the Auction, bidding on the Assets must be in Minimum Overbid Increments of at least \$500,000.

38. The Debtors believe such Minimum Overbid Increment is reasonable under the circumstances, and will enable the Debtors to maximize the value received for the Assets while limiting any chilling effect in the marketing process. The Minimum Overbid Increment is also well within the increment level previously approved by courts in this District. *See In re Emerald Oil, Inc.*, No. 16-10704 (KG) (Bankr. D. Del. July 28, 2016) (approving \$500,000 bid increment); *In re Dura Auto. Sys., Inc.*, Case No. 06-11202 (KJC) (Bankr. D. Del. July 24, 2007) (approving \$750,000 increment); *In re New Century TRS Holdings, Inc.*, Case No. 07-10416 (KJC) (Bankr D. Del. Apr. 20, 2007) (approving \$500,000 increment); *In re Three A’s Holdings, L.L.C.*, Case No. 06-10886 (BLS) (Bankr D. Del. Sept. 7, 2006) (approving \$500,000 increment).

4. Entering into the Option Agreement with Bid Protections and, if the Debtors so elect, the Stalking Horse Agreement, Has a Sound Business Purpose and Should Be Approved

39. Pursuant to the Motion, the Debtors are seeking the approval of this Court of the Stalking Horse Bidder and to offer the Bid Protections. The Debtors believe that, in this case, such relief is warranted to ensure the Debtors’ ability to take advantage of a potentially value-maximizing bid. The ability of the Debtors to offer the Stalking Horse Bidder the Bid Protections is beneficial to the Debtors’ estates and creditors in that, by providing these incentives, the Debtors will have an opportunity to induce a Potential Bidder to submit or increase its bid prior to the Auction.

40. Specifically, bid protections “may be legitimately necessary to convince a ‘white knight’ bidder to enter the bidding by providing some form of compensation for the risks it is undertaking.” *995 Fifth Ave.*, 96 B.R. at 28 (quotation omitted); *see also Integrated Resources*, 147 B.R. at 660-61 (bid protections can prompt bidders to commence negotiations and “ensure that a bidder does not retract its bid”); *In re Hupp Int’l Indus., Inc.*, 140 B.R. 191, 194 (Bankr. N.D. Ohio 1992) (“[W]ithout such fees, bidders would be reluctant to make an initial bid for fear that their first bid will be shopped around for a higher bid from another bidder who would capitalize on the initial bidder’s . . . due diligence.”).

41. As a result, courts routinely approve bid protections similar to the Bid Protections in connection with proposed bankruptcy sales where a proposed fee or reimbursement provides a benefit to the estate. *See In re O’Brien Env’tl. Energy, Inc.*, 181 F.3d 527 (3d Cir. 1999). The Debtors believe the allowance of the Bid Protections is in the best interests of the Debtors’ estates and their creditors, as these protections will only be employed where a stalking horse bid will establish a floor for further bidding that may increase the consideration given in exchange for the Assets for the benefit of the Debtors’ estates.

42. The Stalking Horse Bidder has expended, and will continue to expend, time and resources negotiating, drafting, and performing due diligence activities necessitated by the Sale transactions, and its bid will be subject not only to Court approval, but also to overbidding by third parties. The Bid Protections granted to the Stalking Horse Bidder were negotiated in good faith and at arm’s length, with significant give-and-take with respect to those Bid Protections. The Debtors agreed to the Bid Protections in the Option Agreement because they ensure the Debtors will have the benefit of the option to accept the transaction with the Stalking Horse

Bidder offered through the Stalking Horse Agreement, without sacrificing the potential for interested parties to submit overbids at the Auction.

43. Furthermore, the proposed Break-Up Fee of three percent (3%) of the Purchase Price of \$5,250,000 and the Expense Reimbursement capped at the lesser of (a) \$2,000,000, and (b) the aggregate amount of all reasonable and documented out of pocket costs, expenses, and fees incurred by the Stalking Horse Bidder or those of the Stalking Horse Bidder's subsidiaries that will receive title to any Acquired Assets pursuant to the transactions contemplated by the Stalking Horse Agreement are well within the range of similar fees approved by courts in this District. *See, e.g., In re Global Motorsport Group, Inc., et al.*, (Case No. 08-10192 (KJC) (Bankr. D. Del. Feb. 14, 2008) (approving a break-up fee of approximately 4%, or \$500,000 in connection with sale); *In re Global Home Products*, Case No. 06-10340 (KG) (Bankr. D. Del. July 14, 2006) (approving a break-up fee of 3.3%, or \$700,000, in connection with sale); *In re Ameriserve*, Case No. 00-0358 (PJW) (Bankr. D. Del., Sept. 27, 2000) (approving a break-up fee of 3.64%, or \$4,000,000, in connection with \$110,000,000 sale); *In re Montgomery Ward Holding Corp., et al.*, Case No. 97-1409 (PJW) (Bankr. D. Del., June 15, 1998) (approving termination fee of 2.7%, or \$3,000,000, in connection with \$110,000,000 sale of real estate assets); *In re Medlab, Inc.*, Case No. 97-1893 (PJW) (Bankr. D. Del. April 28, 1998) (approving termination fee of 3.12%, or \$250,000, in connection with \$8,000,000 sale transaction); *In re FoxMeyer Corp. et al.*, Case No. 96-1329 (HSB) through 96-1334 (HSB) (Bankr. D. Del., Oct. 9, 1996) (approving termination fee of 7.47%, or \$6,500,000, in connection with \$87,000,000 sale of substantially all of debtors' assets); *In re Edison Bros. Stores, Inc., et al.*, Case No. 95-1354 (PJW) (Bankr. D. Del., Dec. 29, 1995) (approving termination fee of 3.5%, or \$600,000, in connection with \$17,000,000 sale of debtors' entertainment division); *In re NetEffect, Inc.*, Case

No. 08-12008 (KJC) (Bankr. D. Del., Sept. 11, 2008) (approving break-up fee of 3%, or \$240,000.00 in connection with sale of debtor's assets for purchase price of \$8,000,000); *In re Champion Enterprises, et al.*, Case No. 09-14019 (KG) (Bankr. D. Del., Feb. 8, 2010) (approving break-up fee of less than credit bid or \$3,000,000.00 in connection with sale of debtor's assets for purchase price of approximately \$80,000,000); *In re Filene's Basement, Inc., et al.*, Case No. 09-11525 (MFW) (Bankr. D. Del., May 15, 2009) (approving break-up fee and expense reimbursement of 3.68%, or \$810,000 in connection with sale of debtor's assets for purchase price of \$22,000,000); *In re Western Nonwovens, Inc., et al.*, Case No. 08-11435 (PJW) (Bankr. D. Del., July 28, 2009) (approving break-up fee and expense reimbursement of \$250,000 in connection with sale of debtor's assets for purchase price of \$4,000,000 to \$6,500,000); and *In re Point Blank Solutions, Inc., et al.*, Case No. 10-11255 (PJW) (Bankr. D. Del. Oct. 5, 2011) (approving break-up and expense reimbursement of 3.75% or \$750,000 in connection with sale of debtor's assets for purchase price of \$20,000,000).⁷

5. The Proposed Notice Procedures for the Assigned Contracts and the Identification of Related Cure Amounts Are Appropriate

44. As set forth above, the Sale contemplates the potential assumption and assignment of the Contracts to the Successful Bidder arising from the Auction, if any. In connection with this process, the Debtors believe it is necessary to establish a process by which: (i) the Debtors and the Contract Counterparties can reconcile cure obligations, if any, in accordance with Bankruptcy Code sections 105(a) and 365, and (ii) such counterparties can object to the potential assumption and assignment of the Contracts and/or related cure amounts (the “**Assumption Procedures**”).

⁷ Because the number of orders cited is voluminous, individual orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

45. The Bid Procedures specify the process by which the Debtors will serve Cure and Possible Assumption and Assignment Notices and the procedures and deadline for Contract Counterparties to Assigned Contracts to file and serve Cure or Assignment Objections.

46. Except as may otherwise be agreed to in the Successful Bid or by the parties to an Assigned Contract, at the closing of the Sale, the Successful Bidder shall cure those defaults under the Assigned Contracts that need to be cured in accordance with Bankruptcy Code section 365(b), by (i) payment of the undisputed cure amount (the “**Cure Amount**”) and/or (ii) reserving amounts with respect to any disputed cure amounts.

47. As set forth in the Bid Procedures Order, the Debtors also request any party that fails to object to the proposed assumption and assignment of any Contract be deemed to consent to the assumption and assignment of the applicable Contract pursuant to Bankruptcy Code section 365 on the terms set forth in the Sale Order, along with the Cure Amounts identified in the Cure and Possible Assumption and Assignment Notice. *See, e.g., In re Tabone, Inc.*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (by not objecting to the Motion, a creditor is deemed to consent); *Pelican Homestead v. Wooten (In re Gabel)*, 61 B.R. 661, 667 (Bankr. W.D. La. 1985) (same).

48. The Debtors believe the Assumption Procedures are fair and reasonable, provide sufficient notice to the Contract Counterparties of the potential assumption and assignment of its Contracts, and provide certainty to all parties in interest regarding their obligations and rights with respect thereof. Accordingly, the Debtors request the Court approve the Assumption Procedures set forth in the Bid Procedures Order.

B. Approval of the Proposed Sale Is Appropriate and in the Best Interests of the Estates

1. The Sale of the Acquired Assets Should Be Authorized Pursuant to Bankruptcy Code Section 363 as a Sound Exercise of the Debtors' Business Judgment

49. Bankruptcy Code section 363(b)(1) provides a debtor, “after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). A sale of the debtor’s assets should be authorized pursuant to Bankruptcy Code section 363 if a sound business purpose exists for the proposed transaction. *See, e.g., Meyers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (“Under Section 363, the debtor-in-possession can sell property of the estate . . . if he has an ‘articulated business justification’”); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (Bankr. D. Del. 1999); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 174 (Bankr. D. Del. 1991); *see also In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *In re Telesphere Commc’ns, Inc.*, 179 B.R. 544, 552 (Bankr. N.D. Ill. 1999).

50. Courts typically consider the following factors in determining whether a proposed sale satisfies this standard: (i) whether a sound business justification exists for the sale, (ii) whether adequate and reasonable notice of the sale was given to interested parties, (iii) whether the sale will produce a fair and reasonable price for the property, and (iv) whether the parties have acted in good faith. *See Del. & Hudson*, 124 B.R. at 176; *In re Phoenix Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987).

51. A sound business purpose for the sale of a debtor’s assets outside the ordinary course of business may be found where such a sale is necessary to preserve the value of assets

for the estates, creditors, or interest holders. *See, e.g., In re Abbotts Dairies of Pa, Inc.*, 788 F.2d 143 (3d Cir. 1986); *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983).

52. “Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). There is a presumption that “in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.” *In re Integrated Res.*, 147 B.R. at 656 (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)); *see also In re S.N.A. Nut Co.*, 186 B.R. 98, 102 (Bankr. N.D. Ill. 1995) (“The business judgment rule ‘is a presumption that in making the business decision the directors of a corporation acted on an informed basis, in good faith, and in the honest belief that the action was in the best interests of the company.’”) (citations omitted); *In re Filene’s Basement, LLC*, No. 11-13511 (KJC), 2014 WL 1713416, at *12 (Bankr. D. Del. Apr. 29, 2014) (“If a valid business justification exists, then a strong presumption follows that the agreement at issue was negotiated in good faith and is in the best interests of the estate.”) (citations omitted). Thus, if a debtor’s actions satisfy the business judgment rule, then the transaction in question should be approved under Bankruptcy Code section 363(b)(1). Indeed, when applying the business judgment standard, courts show great deference to a debtor’s business decisions. *See Pitt v. First Wellington Canyon Assocs. (In re First Wellington Canyon Assocs.)*, 1989 WL 106838, at *3 (N.D. Ill. 1989) (“Under this test, the debtor’s business judgment . . . must be accorded deference unless shown that the bankrupt’s decision was taken in bad faith or in gross abuse of the bankrupt’s retained discretion.”).

53. As set forth above, and in the First Day Declaration, the Debtors have a sound business justification for selling the Assets. *First*, the Debtors believe the Sale will maximize the Assets' going-concern value by allowing a party to bid on business assets that would have substantially less value on a stand-alone or liquidation basis. Moreover, to the extent the Successful Bidder assumes certain of the Contracts, it will result in payment in full for a number of the Debtors' creditors.

54. *Second*, the sale of the Assets will be subject to competing bids, enhancing the Debtors' ability to receive the highest or otherwise best value for the Assets. The value of the Assets will be tested through the Auction conducted pursuant to and according to the Bid Procedures. Ultimately, the Successful Bid, after being subject to a "market check" in the form of the Auction and accepted by the Debtors in the exercise of their reasonable business judgment, will constitute the highest or otherwise best offer for the Assets and at this time the Debtors believe will provide a greater recovery for their estates than any known or practically available alternative. *See, e.g., In re Trans World Airlines, Inc.*, No. 01-00056, 2001 WL 1820326, at *4 (Bankr. D. Del. 2001) (while a "section 363(b) sale transaction does not require an auction procedure . . . the auction procedure has developed over the years as an effective means for producing an arm's-length fair value transaction"). Consequently, the fairness and reasonableness of the consideration to be paid by the Successful Bidder ultimately will be demonstrated by adequate "market exposure" and an open and fair auction process — the best means for establishing whether a fair and reasonable price is being paid.

55. Thus, absent a change in circumstances that causes the Debtors to abandon the sale process, the Debtors submit the Successful Bidder's purchase agreement will constitute the highest or otherwise best offer for the Assets and will provide a greater recovery for the Debtors'

estates than would be provided by any other available alternative. As such, the Debtors' determination to explore selling the Assets through an Auction process and subsequently to enter into the asset purchase agreement with the Successful Bidder (to the extent the Successful Bidder is someone other than the Stalking Horse Bidder) will be a valid and sound exercise of the Debtors' business judgment. The Debtors will submit evidence at the Sale Hearing to support these conclusions. Therefore, the Debtors request the Court make a finding the proposed sale of the Assets is a proper exercise of the Debtors' business judgment and is rightly authorized.

2. Sale Provisions Highlighted Pursuant to Local Rule 6004-1(b)(iv)⁸

56. Pursuant to Local Rule 6004(b)(iv)(C), a sale motion must highlight any provisions pursuant to which an entity is being released or claims against any entity are being waived or otherwise satisfied. The Sale Order provides certain claims against the Debtors and/or the Purchaser are barred or otherwise waived. *See* Sale Order, ¶¶ 20, 22, 24, and 25.

57. Pursuant to Local Rule 6004(b)(iv)(E), a sale motion must highlight any deadlines for the closing of the proposed sale or deadlines that are conditions to closing the proposed transaction. As set forth above, the Debtors are subject to certain deadlines, including (a) the Bid Procedures Order must be entered on or prior to May 5, 2019; (b) the Sale Order must be entered on or prior to June 14, 2019; and (c) the Sale must close on or prior to August 16, 2019.

58. Pursuant to Local Rule 6004(1)(b)(iv)(J), a sale motion must highlight whether, if the debtor proposes to sell substantially all of its assets, the debtor will retain or have reasonable access to its books and records to enable it to administer its bankruptcy case. The proposed Sale

⁸ If a provision of Local Rule 6004-1(b)(iv) is not discussed in this section, it means that the provisions governing the sale of the Acquired Assets do not contain a provision that triggers disclosure under that rule.

Order provides the Debtors shall have reasonable access to their books and records. *See* Sale Order, ¶ 29.

59. Pursuant to Local Rule 6004-1(b)(iv)(L), a sale motion should highlight any provision limiting the proposed purchaser's successor liability. The proposed Sale Order provides the Purchaser shall not have any successor liability related to the Debtors or the Acquired Assets. *See* Sale Order ¶¶ FF, LL, 24, and 25.

60. Pursuant to Local Rule 6004-1(b)(iv)(N), a sale motion must highlight any provision by which the debtor seeks to allow credit bidding pursuant to Bankruptcy Code section 363(k). The Bid Procedures allow the Stalking Horse Bidder, in its capacity as the Prepetition Secured Lender and DIP Lender, to credit bid its obligations under the Prepetition Loan Documents and DIP Loan Documents, respectively, as set forth in the Option Agreement, the Stalking Horse Agreement and in connection with each round of bidding at the Auction. *See* Bid Procedures § (C)(4).

61. Pursuant to Local Rule 6004-1(b)(iv)(O), a sale motion must highlight any provision whereby the debtor seeks relief from the 14-day stay imposed by Bankruptcy Rule 6004(h). As explained in further detail below, to maximize the value received for the Assets, the Debtors seek to close the transaction as soon as possible after the Sale Hearing. Accordingly, the Debtors have requested the Court waive the 14-day stay period under Bankruptcy Rules 6004(h) and 6006(d). *See* Bid Procedures Order ¶ 36; Sale Order ¶ 28.

3. Adequate and Reasonable Notice of the Sale Will Be Provided

62. As described above, the Sale Notice will: (i) be served in a manner that provides at least 21-days' notice of the date, time, and location of the Sale Hearing, (ii) inform parties in interest of the deadlines for objecting to the Sale or the assumption and assignment of the Contract, and (iii) otherwise include all information relevant to parties interested in or affected

by the Sale. Significantly, the form and manner of the Sale Notice will have been approved by this Court pursuant to the Bid Procedures Order, after notice and a hearing, before it is served on parties in interest.

4. The Sale and Purchase Price Will Reflect a Fair-Value Transaction

63. It is well-settled that, where there is a court-approved auction process, a full and fair price is presumed to have been obtained for the assets sold, as the best way to determine value is exposure to the market. *See Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 457 (1999). The Debtors will continue to market the Assets and solicit offers consistent with the Bid Procedures, including, without limitation, by providing acceptable Bidders with access to the Data Room and requested information. In this way, the number of Bidders that are eligible to participate in the competitive Auction process will be maximized. On the other hand, if the Debtors enter into the Stalking Horse Agreement and no Auction is held because no Auction is necessary, the Stalking Horse Agreement's purchase price conclusively will have been demonstrated to be fair value.

5. The Sale of the Acquired Assets Should Be Free and Clear of Interests Pursuant to Bankruptcy Code Section 363(f)

64. The Debtors further submit it is appropriate to sell the Acquired Assets free and clear of all liens, claims, encumbrances, and other interests (collectively, the "**Interests**") other than Permitted Encumbrances and Assumed Liabilities (as such terms are defined in the Stalking Horse Agreement) pursuant to section Bankruptcy Code 363(f), with any such Claims and Interests attaching to the net sale proceeds of the Acquired Assets, as and to the extent applicable.

65. Bankruptcy Code section 363(f) permits a debtor to sell property free and clear of another party's interest in the property if (i) applicable nonbankruptcy law permits such a free

and clear sale, (ii) the holder of the interest consents, (iii) the interest is a lien and the sale price of the property exceeds the value of all liens on the property, (iv) the interest is the subject of a *bona fide* dispute, (v) the holder of the interest could be compelled in a legal or equitable proceeding to accept a monetary satisfaction of its interest. *See* 11 U.S.C. § 363(f).

66. Section 363(f) is drafted in the disjunctive. Thus, satisfaction of any of the requirements enumerated therein will suffice to permit the Debtors' sale of the Acquired Assets free and clear of all interests (*i.e.*, all liens, claims, rights, interests, charges, or encumbrances), except with respect to any interests that may be assumed liabilities under the applicable purchase agreement. *See In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002) (“[I]f any of five conditions are met, the debtor has the authority to conduct the sale free and clear of all liens.”); *see also In re Dundee Equity Corp.*, 1992 Bankr. LEXIS 436, at *12 (Bankr. S.D.N.Y. March 6, 1992) (“[s]ection 363(f) is in the disjunctive, such that the sale free of the interest concerned may occur if any one of the conditions of § 363(f) have been met.”); *Citicorp Homeowners Servs., Inc. v. Eliot (In re Eliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (same); *Michigan Employment Sec. Comm’n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (stating section 363(f) of the Bankruptcy Code is written in the disjunctive; holding the court may approve the sale “free and clear” provided at least one of the subsections of Bankruptcy Code section 363(f) has been satisfied).

67. The Debtors submit, excluding assumed agreements, if any, the Acquired Assets may be sold free and clear of liens, claims, encumbrances, and other interests—all in accordance with at least one of the five conditions of Bankruptcy Code section 363(f). Consistent with Bankruptcy Code section 363(f)(2), each of the parties holding liens on the Acquired Assets, if any, will consent, or absent any objection to this Motion, will be deemed to have consented to,

the Sale and transfer of the Acquired Assets. Furthermore, any party holding a valid lien against the Acquired Assets will be adequately protected by having its liens, if any, attach to the sale proceeds received by the Debtors from the sale of the Acquired Assets to the Successful Bidder, in the same order of priority, with the same validity, force, and effect such creditor had prior to such sale, subject to any claims and defenses the Debtors and their estates may possess with respect thereto. Accordingly, Bankruptcy Code section 363(f) authorizes the sale and transfer of the Acquired Assets free and clear of any such Interests.

6. The Acquired Assets and the Assigned Contracts Should Be Sold Free and Clear of Successor Liability.

68. The Sale Order provides the Purchaser shall not have any successor liability related to Seller or the Acquired Assets to the maximum extent permitted by law. *See* Sale Order, ¶ 24. Extensive case law establishes that claims against a winning bidder may be directed to the proceeds of a free and clear sale of property, and may not subsequently be asserted against that buyer.

69. Although Bankruptcy Code section 363(f) provides for the sale of assets “free and clear of any interests,” the term “any interest” is not defined anywhere in the Bankruptcy Code. *Folger Adam Security v. DeMatteis/MacGregor JV*, 209 F.3d 252, 257 (3d Cir. 2000). In the case of *In re Trans World Airlines. Inc.*, 322 F.3d 283, 288-89 (3d Cir. 2003), the Third Circuit specifically addressed the scope of the term “any interest.” The Third Circuit observed that while some courts have “narrowly interpreted that phrase to mean only in rem interests in property,” the trend in modern cases is towards “a more expansive reading of ‘interests in property’ which ‘encompasses other obligations that may flow from ownership of the property.’” *Id.* at 289 (citing 3 Collier on Bankruptcy 363.06[1]). As determined by the Fourth Circuit in *In re Leckie Smokeless Coal Co.*, 99 F.3d 573, 581-82 (4th Cir. 1996), a case cited approvingly and

extensively by the Third Circuit in *Folger*, the scope of section 363(f) is not limited to *in rem* interests. Thus, the Third Circuit in *Folger* cited *Leckie* for the proposition that the debtors “could sell their assets under § 363(f) free and clear of successor liability that otherwise would have arisen under federal statute.” *Folger*, 209 F.3d at 258.

70. Courts have consistently held a buyer of a debtor’s assets pursuant to a section 363 sale takes free from successor liability resulting from pre-existing claims. See *The Ninth Avenue Remedial Group v. Allis-Chalmers Corp.*, 195 B.R. 716, 732 (Bankr. N.D. Ind. 1996) (stating a bankruptcy court has the power to sell assets free and clear of any interest that could be brought against the bankruptcy estate during the bankruptcy); *MacArthur Co. v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 837 F.2d 89, 93-94 (2d Cir. 1988) (channeling of claims to proceeds consistent with intent of sale free and clear under Bankruptcy Code section 363(f)); *In re New England Fish Co.*, 19 B.R. 323, 329 (Bankr. W.D. Wash. 1982) (transfer of property in free and clear sale was free and clear of Title VII employment discrimination and civil rights claims of debtor’s employees); *In re Hoffman*, 53 B.R. 874, 876 (Bankr. D.R.I. 1985) (transfer of liquor license free and clear of any interest permissible even though the estate had unpaid taxes); *American Living Systems v. Bonapfel (In re All Am. of Ashburn, Inc.)*, 56 B.R. 186, 190 (Bankr. N.D. Ga. 1986) (product liability claims precluded from being asserted against his successor in a sale of assets free and clear); *WBQ P’ship v. Virginia Dept. of Medical Assistance Services (In re WBQ P’ship)*, 189 B.R. 97, 104-05 (Bankr E D. Va. 1995) (Commonwealth of Virginia’s right to recapture depreciation is an “interest” as used in section 363(f)).

71. The purpose and value of an order authorizing the transfer of the Assets would be frustrated if claimants thereafter could use the transfer as a basis to assert claims against the Purchaser. Under Bankruptcy Code section 363(f), the Purchaser is entitled to know the Assets

are not tainted by latent claims that could be asserted against the Purchaser after the proposed transaction is completed. Absent that ruling, the value of the Assets could be severely compromised.

72. Accordingly, consistent with the above-cited case law, the order approving the sale of the Assets should state the Purchaser is not liable as a successor under any theory of successor liability, for Interests that encumber or relate to the Assets.

7. The Sale Has Been Proposed in Good Faith and Without Collusion, and the Successful Bidder Will Be a “Good-Faith Purchaser” Entitled to the Full Protection of Bankruptcy Code Section 363(m); and the Sale of the Acquired Assets Does Not Violate Bankruptcy Code Section 363(n)

73. The Debtors request the Court find the Successful Bidder is entitled to the benefits and protections provided by Bankruptcy Code section 363(m) in connection with the sale of the Acquired Assets.

74. Bankruptcy Code section 363(m) provides, in pertinent part:

[t]he reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m).

75. Bankruptcy Code section 363(m) thus protects the purchaser of assets sold pursuant to Bankruptcy Code section 363 from the risk it will lose its interest in the purchased assets if the order allowing the sale is reversed on appeal, as long as such purchaser purchased or leased the assets in “good faith.” While the Bankruptcy Code does not define “good faith,” courts have held a purchaser shows its good faith through the integrity of its conduct during the course of the sale proceedings, finding that, where there is a lack of such integrity, a good-faith finding may not be made. *See, e.g., Abbotts Dairies of Pa.*, 788 F.2d at 147 (“Typically, the

misconduct that would destroy a [buyer's] good faith status at a judicial sale involves fraud, collusion between the [proposed buyer] and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.”); *In the Matter of Andy Frain Servs., Inc.*, 798 F.2d 1113 (7th Cir. 1986) (same); *In re Sasson Jeans, Inc.*, 90 B.R. 608, 610 (S.D.N.Y. 1988) (same).

76. The Debtors submit the Stalking Horse Bidder, or any other Successful Bidder arising from the Auction, would be a “good faith purchaser” within the meaning of Bankruptcy Code section 363(m), and the resulting purchase agreement would be a good-faith agreement on arm’s-length terms entitled to the protections of Bankruptcy Code section 363(m).⁹ **First**, as set forth in more detail above, the consideration to be received by the Debtors pursuant to the Sale will be subject to a market process by virtue of Debtors’ marketing efforts and the Auction and will be substantial, fair, and reasonable. **Second**, the asset purchase agreement entered into by the Debtors and the Successful Bidder (to the extent the Successful Bidder is someone other than the Stalking Horse Bidder) will be the result of extensive arm’s-length negotiations, during which all parties will have the opportunity to be, and the Debtors will be, represented by competent counsel, and any purchase agreement with a Successful Bidder will be the culmination of the Debtors’ competitive market process and, if necessary, the Auction, in which all negotiations will be conducted on an arm’s-length, good-faith basis. **Third**, where—as the Debtors anticipate will be the case here—there is no indication of any “fraud or collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders”

⁹ The Debtors believe a finding of good faith within the meaning of Bankruptcy Code section 363(m) will be appropriate for the Successful Bidder arising from the Auction and the Bid Procedures. Pursuant to the Bid Procedures, any Successful Bidder will have had to present a proposal in accordance with the Bid Procedures. In addition, the Debtors will not choose as the Successful Bidder or the Backup Bidder any entity whose good faith under Bankruptcy Code section 363(m) can reasonably be doubted, and will be prepared to present the Court with sufficient evidence to allow the Court to find that the “good faith” standard of Bankruptcy Code section 363(m) has been satisfied.

or similar conduct, there is no cause that would permit the Sale to be avoided pursuant to Bankruptcy Code section 363(n). Moreover, with respect to potential bidders, the Bid Procedures are designed to ensure no party is able to exert undue influence over the process. *Finally*, the Successful Bidder's offer will be evaluated and approved by the Debtors in consultation with their advisors. Accordingly, the Debtors believe the Successful Bidder and the resulting purchase agreement should be entitled to the full protections of Bankruptcy Code section 363(m).

77. Moreover, because there will be absolutely no fraud or improper insider dealing of any kind, the Sale does not constitute an avoidable transaction pursuant to Bankruptcy Code section 363(n), and, as a result, the Purchaser should receive the protections afforded good faith purchasers by Bankruptcy Code section 363(m). Accordingly, the Debtors request the Court make a finding at the Sale Hearing that the agreement reached with the Successful Bidder was at arm's length and is entitled to the full protections of Bankruptcy Code section 363(m). The Debtors will submit evidence at the Sale Hearing to support these conclusions.

8. Credit Bidding Should Be Authorized Pursuant to Bankruptcy Code Section 363(k)

78. A secured creditor is allowed to "credit bid" the amount of its claims in a sale of assets in which it has a security interest. Bankruptcy Code section 363(k) provides, in relevant part, that unless the court for cause orders otherwise, the holder of a claim secured by property that is the subject of the sale "may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property." 11 U.S.C. § 363(k). Even if a secured creditor is undersecured as determined in accordance with Bankruptcy Code section 506(a), section 363(k) allows such secured creditor to bid the total face value of its claim and does not limit the credit bid to the creditor's economic value. *See In re*

Submicron Sys. Corp., 432 F.3d 448, 459-60 (3d Cir. 2006) (explaining “[i]t is well settled . . . that creditors can bid the full face value of their secured claims under section 363(k)”).

79. In this District, absent cause for restriction on credit bidding, courts have consistently ruled in favor of reserving a secured creditor’s right to credit bid its claim. *See In re Source Home Entm’t, LLC*, No. 14-115533 (KG) (Bankr. D. Del. July 21, 2014) (order approving Bid Procedures which authorized parties with secured claims to credit bid); *In re Fisker Auto. Hldgs, Inc.*, No. 13-13087 (KG) (Bankr. D. Del. Jan. 23, 2014) (order authorizing secured creditors to exercise right under Bankruptcy Code section 363(k) to make a credit bid); *In re PTC Alliance Corp.*, No. 09-13395 (Bankr. D. Del. Nov. 6, 2009) (order authorizing, but not directing, the administrative agent to credit bid); *In re Hayes Lemmerz Int’l, Inc.*, No. 09-11655 (Bankr. D. Del. Sept. 22, 2009) (order authorizing interested party to exercise its right under Bankruptcy Code section 363(k) to make a credit bid); *In re Foamex Int’l Inc.*, 09-10560, (Bankr. D. Del. May 27, 2009) (order authorizing the sale of substantially all of the debtor’s assets in a \$155 million credit bid over a \$151.5 million all-cash bid); *see also Cohen v. KB Mezzanine Fund II, LP (In re SubMicron Sys. Corp.)*, 432 F.3d 448, 459-60 (3d Cir. 2006) (citations omitted).

80. Thus, subject to the Bid Procedures, the Stalking Horse Bidder, in its capacity as the Prepetition Secured Lender and DIP Lender, should be allowed to submit a Credit Bid as set forth in the Option Agreement, the Stalking Horse Agreement at the Auction.

C. The Assumption and Assignment of the Contracts Should Be Approved

1. The Assumption and Assignment of the Contracts Reflects the Debtors' Reasonable Business Judgment

81. To facilitate and effectuate the sale of the Acquired Assets, the Debtors are seeking authority to assign the Assigned Contracts to the Successful Bidder to the extent required by such Successful Bidder.

82. Bankruptcy Code section 365 authorizes a debtor to assume and/or assign its executory contracts and unexpired leases, subject to the approval of the court, provided the defaults under such contracts and leases are cured and adequate assurance of future performance is provided. *See* 11 U.S.C. § 365(b)(1).

83. The standard applied by the Third Circuit in determining whether an executory contract or unexpired lease should be assumed is the “business judgment” test, which requires a debtor to determine that the requested assumption or rejection would be beneficial to its estate. *See Sharon Steel Corp. v. Nat’l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 40 (3d Cir. 1989); *see also NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984) (describing business judgment test as “traditional”) (superseded in part by 11 U.S.C. § 1113).

84. Courts generally will not second-guess a debtor’s business judgment concerning the assumption of an executory contract. *See In re Decora Indus., Inc.*, 2002 WL 32332749, at *8 (D. Del. 2002); *Official Comm. for Unsecured Creditors v. Aust (In re Network Access Solutions, Corp)*, 330 B.R. 67, 75 (Bankr. D. Del. 2005) (“The standard for approving the assumption of an executory contract is the business judgment rule”); *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006) (“The propriety of a decision to reject an executory contract is governed by the business judgment standard”); *see also Phar Mor, Inc. v. Strouss Bldg. Assocs.*, 204 B.R. 948, 952 (N.D. Ohio 1997) (“Courts should generally defer to a debtor’s

decision whether to reject an executory contract.”) (citation omitted). A debtor’s decision to assume or reject an executory contract or expired lease will not be subject to review unless such decision is clearly an unreasonable exercise of such judgment. *See, e.g., Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pac. Ry. Co.*, 318 U.S. 523 (1943) (applying Bankruptcy Act section 77(b), predecessor to Bankruptcy Code section 365, and rejecting a test of whether an executory contract was burdensome in favor of determining whether rejection is within the debtor’s business judgment); *see also Sharon Steel*, 872 F.2d at 40 (describing deference to a debtor’s business judgment as “breathing space afforded [to] the debtor to consider whether to reject or assume executory contracts under the Code”); *Network Access Solutions*, 330 B.R. at 75; *Exide Techs.*, 340 B.R. at 239.

85. Here, the Court should approve the decision to assume and assign the Assigned Contracts in connection with the Sale as a sound exercise of the Debtors’ business judgment. **First**, the Assigned Contracts are necessary to operate the Acquired Assets and, as such, they are essential to inducing the best offer for the Acquired Assets. **Second**, it is unlikely any purchaser would want to acquire the Acquired Assets unless a significant number of the contracts and leases needed to manage the day-to-day operations were included in the transaction. **Third**, the Assigned Contracts will be assumed and assigned as part of a process approved by the Court pursuant to the Bid Procedures Order and, thus, will be reviewed by key constituents in these Chapter 11 Cases. Accordingly, the Debtors submit the assumption and assignment of the Assigned Contracts, if required by the Successful Bidder, should be approved as a sound exercise of the Debtors’ business judgment.

86. A debtor in possession may assign an executory contract or an unexpired lease of the debtor if it assumes the agreement in accordance with Bankruptcy Code section 365(a), and

provides adequate assurance of future performance by the assignee, whether or not there has been a default under the agreement. *See* 11 U.S.C. § 365(f)(2). Significantly, among other things, adequate assurance may be provided by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. *See, e.g., In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (stating adequate assurance of future performance is present when the prospective assignee of a lease from the debtor has financial resources and has expressed willingness to devote sufficient funding to the business in order to give it a strong likelihood of succeeding).

87. The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction." *EBG Midtown South Corp. v. McLaren/Hart Env'tl. Eng' g Corp. (In re Sanshoe Worldwide Corp.)*, 139 B.R. 585, 592 (S.D.N.Y. 1992) (citations omitted), *aff'd*, 993 F.2d 300 (2d Cir. 1993); *Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1988).

88. Counterparties to Assigned Contracts will have the opportunity to object to adequate assurance of future performance by any of the Bidders. Accordingly, the Debtors submit the assumption and assignment of the Assigned Contracts as set forth herein should be approved.

89. To assist in the assumption, assignment, and sale of the Assigned Contracts, the Debtors also request the Sale Order approving the sale of the Acquired Assets provide that anti-assignment provisions in the Assigned Contracts shall not restrict, limit, or prohibit the assumption, assignment, and sale of the Assigned Contracts and are deemed and found to be

unenforceable anti-assignment provisions within the meaning of Bankruptcy Code section 365(f).

90. Bankruptcy Code section 365(f)(1) permits a debtor to assign unexpired leases and contracts free from such anti-assignment restrictions, providing, in pertinent part, that:

[N]otwithstanding 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 under paragraph (2) of this subsection

11 U.S.C. § 365(f)(1).

91. Bankruptcy Code section 365(f)(1), by operation of law, invalidates provisions that prohibit, restrict, or condition assignment of an executory contract or unexpired lease. *See, e.g., Coleman Oil Co., Inc. v. The Circle K Corp. (In re The Circle K Corp.)*, 127 F. 3d 904, 910-11 (9th Cir. 1997) (“no principle of bankruptcy or contract law precludes us from permitting the Debtors here to extend their leases in a manner contrary to the leases’ terms, when to do so will effectuate the purposes of section 365”), *cert. denied*, 522 U.S. 1148 (1998). Bankruptcy Code section 365(f)(3) goes beyond the scope of Bankruptcy Code section 365(f)(1) by prohibiting enforcement of any clause creating a right to modify or terminate the contract or lease upon a proposed assumption or assignment thereof. *See, e.g., In re Jamesway Corp.*, 201 B.R. 73 (Bankr. S.D.N.Y. 1996) (Bankruptcy Code section 365(f)(3) prohibits enforcement of any lease clause creating right to terminate lease because it is being assumed or assigned, thereby indirectly barring assignment by debtor; all lease provisions, not merely those entitled anti-assignment clauses, are subject to court’s scrutiny regarding anti-assignment effect).

92. Other courts have recognized provisions that have the effect of restricting assignments cannot be enforced. *See In re Rickel Home Ctrs., Inc.*, 240 B.R. 826, 831 (D. Del. 1998) (“In interpreting Section 365(f) [*sic*], courts and commentators alike have construed the

terms to not only render unenforceable lease provisions which prohibit assignment outright, but also lease provisions that are so restrictive that they constitute de facto anti-assignment provisions.”). Similarly, in *In re Mr. Grocer., Inc.*, the court noted that:

[the] case law interpreting § 365(f)(1) of the Bankruptcy Code establishes that the court does retain some discretion in determining that lease provisions, which are not themselves ipso facto anti-assignment clauses, may still be refused enforcement in a bankruptcy context in which there is no substantial economic detriment to the landlord shown, and in which enforcement would preclude the bankruptcy estate from realizing the intrinsic value of its assets.

77 B.R. 349, 354 (Bankr. D.N.H. 1987). Thus, the Debtors request any anti-assignment provisions be deemed not to restrict, limit, or prohibit the assumption, assignment, and sale of the Assigned Contracts, and be deemed and found to be unenforceable anti-assignment provisions within the meaning of Bankruptcy Code section 365(f).

93. Orders granting motions to sell property and for the assumption and assignment of executory contracts frequently contain language explicitly stating the counterparty to the assumed contracts are barred from asserting against the debtor any default by reason of the closing, including any breach or right of termination relating to a change in control of the debtor. *See, e.g., In re Irish Bank Resolution Corp. Ltd.*, No. 13-12159 (CSS), 2014 WL 1759609, at *8 (Bankr. D. Del. Feb. 14, 2014) (“[n]o sections or provisions of the Contracts that purport to....declare a breach or default as a result of a change in control in respect of the Debtor...shall have any force and effect, and such provisions constitute unenforceable anti-assignment provisions under 11 U.S.C. § 365(f) and/or are otherwise unenforceable under 11 U.S.C. § 365(e.)”); *see also In re McPhillips Motors, Inc.*, No. 6:09-BK-37488-RN, 2010 WL 3157062, at *7 (Bankr. C.D. Cal. Feb. 9, 2010) (“any breach related to or arising out of change-in-control or other assignment in such Assumed Contracts, or any purported written or oral modification to the Assumed Contracts” was unenforceable); *In re Bethel Healthcare, Inc.*, No.

1:13-BK-12220-GM, 2014 WL 12758523, at *4 (Bankr. C.D. Cal. May 1, 2014) (“[a]ny provision in the Lease that purports to declare a breach or default as a result of a change in control of the Debtor’s business or requires the consent of a non-seller party is hereby determined unenforceable under section 365(f) of the Bankruptcy Code...”).

D. Relief Pursuant to Bankruptcy Rules 6004(h) and 6006(d) Is Appropriate

94. Bankruptcy Rule 6004(h) provides an “order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.” Additionally, Bankruptcy Rule 6006(d) provides an “order authorizing the trustee to assign an executory contract or unexpired lease . . . is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.” The Debtors request the Sale Order be effective immediately upon its entry by providing the 14-day stay under Bankruptcy Rules 6004(h) and 6006(d) be waived.

95. The purpose of Bankruptcy Rules 6004(h) and 6006(d) is to provide sufficient time for objecting party to appeal before an order can be implemented. *See* Advisory Committee Notes to Fed. R. Bankr. P. 6004(h) and 6006(d). Although Bankruptcy Rules 6004(h) and 6006(d) and the Advisory Committee Notes are silent as to when a court should “order otherwise” and eliminate or reduce the 14-day stay periods, the leading treatise on bankruptcy suggests the 14-day stay periods should be eliminated to allow a sale or other transaction to close immediately “where there has been no objection to procedure.” 10 *Collier on Bankruptcy* ¶ 6004.10 (15th rev. ed. 2006). Furthermore, if an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time actually necessary to file such appeal. *Id.*

96. To maximize the value received from the Acquired Assets, and to ensure they are in compliance with the requirements of the Cash Collateral Order, the Debtors seek to close the Sale as soon as possible after the Sale Hearing. Accordingly, the Debtors hereby request the Court waive the 14-day stay periods under Bankruptcy Rules 6004(h) and 6006(d).

CONSENT TO JURISDICTION

97. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined the Court would lack Article III jurisdiction to enter such final order or judgment absent consent of the parties.

NOTICE

98. Notice of this Motion will be given to: (a) the U.S. Trustee; (b) the holders of the twenty (20) largest unsecured claims against the Debtors; (c) counsel to the DIP Lender and the Prepetition Secured Lender; (d) counsel to the Stalking Horse Bidder; (e) the United States Attorney's Office for the District of Delaware; (f) the Internal Revenue Service; (g) all state and local taxing authorities with an interest in the Assets; (h) the Attorney General for the State of Delaware; (i) the Securities and Exchange Commission; (j) all other governmental agencies with an interest in the Sale and transactions proposed thereunder; (k) all parties known or reasonably believed to have asserted an Interest in the Assets; (l) the Contract Counterparties; (m) the Debtors' insurance carriers; (n) the Unions; (o) all parties entitled to notice pursuant to Local Rule 9013-1(m); and (p) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, under the circumstances, no other or further notice is required.

99. In addition, copies of the Sale Notice, the Bid Procedures, and the Bid Procedures Order will be served on the applicable parties no later than two (2) business days after entry of the Bid Procedures Order by this Court. In light of the nature of the relief requested herein, the

Debtors submit no other or further notice is required. A copy of the Motion also is available on the website of the Debtors' notice and claims agent, Prime Clerk LLC, <http://cases.primeclerk.com/OrchidsPaper>.

NO PRIOR REQUEST

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

[The remainder of this page intentionally left blank]

WHEREFORE, the Debtors respectfully request this Court: (i) enter the Bid Procedures Order, the form of which is attached as Exhibit C hereto, (ii) enter the Sale Order, the form of which is attached as Exhibit D hereto, and (iii) grant such other and further relief as is just and proper.

Dated: April 1, 2019
Wilmington, Delaware

Respectfully submitted,

POLSINELLI PC

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*Proposed Counsel to the Debtors and
Debtors in Possession*

Exhibit A to Motion

Stalking Horse Agreement

ASSET PURCHASE AGREEMENT

BY AND AMONG

ORCHIDS INVESTMENT LLC

and

ORCHIDS PAPER PRODUCTS COMPANY,

ORCHIDS PAPER PRODUCTS COMPANY OF SOUTH CAROLINA

and

ORCHIDS LESSOR SC, LLC

Dated as of [•], 2019

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is dated as of [●], 2019 (the "Effective Date"), by and among Orchids Investment LLC, a Delaware limited liability company ("Purchaser"), Orchids Paper Products Company, a Delaware corporation ("Orchids"), Orchids Paper Products Company of South Carolina, a Delaware corporation ("Orchids South Carolina") and Orchids Lessor SC, LLC, a South Carolina limited liability company and a wholly owned subsidiary of Orchids ("Orchids SC", and collectively with Orchids and Orchids South Carolina the "Sellers"). Purchaser and Sellers are collectively referred to herein as the "Parties" and individually as a "Party". Capitalized terms used herein and not otherwise defined have the respective meanings set forth in ARTICLE I.

WHEREAS, Sellers are engaged in the business of, directly or indirectly, producing bulk tissue paper and converting and manufacturing such bulk tissue paper into consumer tissue products for sale and distribution (the "Business");

WHEREAS, Sellers filed voluntary petitions for relief commencing the cases (collectively, the "Chapter 11 Cases") under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") on or about April 1, 2019 (the date on which such voluntary petitions are filed, the "Petition Date");

WHEREAS, Purchaser desires to purchase and accept, and Sellers desire to sell, convey, assign, transfer and deliver, or cause to be sold, conveyed, assigned, transferred and delivered, to Purchaser, all of the Acquired Assets, and Purchaser is willing to assume, and Sellers desire to assign and delegate to the Purchaser, all of the Assumed Liabilities, all in the manner and subject to the terms and conditions set forth herein and in accordance with Sections 105, 363, and 365 of the Bankruptcy Code, subject to Purchaser's right to assign its rights and obligations hereunder to one or more of its Designated Purchasers (such sale and purchase of the Acquired Assets and such assignment and assumption of the Assumed Liabilities, the "Acquisition");

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

WHEREAS, the Parties acknowledge and agree that the purchase by Purchaser of the Acquired Assets, and the assumption by Purchaser of the Assumed Liabilities, are being made at arm's length and in good faith and without intent to hinder, delay, or defraud creditors of Sellers or their Affiliates;

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

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

NOW, THEREFORE, in consideration of the foregoing and the respective representations, covenants, agreements and warranties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I

CERTAIN DEFINITIONS

1.1 **Specific Definitions.** Unless otherwise defined herein, terms used herein shall have the meanings set forth below:

"Accounts Payable" shall have the meaning ascribed thereto in Section 2.3(c) hereof

"Accounts Payable Cap" shall have the meaning ascribed thereto in Section 8.15 hereof.

"Accounts Receivable" shall have the meaning ascribed thereto in Section 2.1(c) hereof.

"Acquired Assets" shall have the meaning ascribed thereto in Section 2.1 hereof.

"Acquired Avoidance Actions" shall have the meaning ascribed thereto in Section 2.1(y) hereof.

"Acquired Owned Real Property" shall have the meaning ascribed thereto in Section 2.1(e) hereof.

"Acquired Subsidiaries" shall have the meaning ascribed thereto in Section 2.1(a) hereof.

"Acquisition" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"Action" means any litigation (in Law or in equity), arbitration, mediation, action, lawsuit, proceeding, written complaint, written charge, written claim, written demand, hearing, investigation or like matter (whether public or private) commenced, brought, conducted, or heard before or otherwise involving any Governmental Body, whether administrative, judicial or arbitral in nature.

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by Contract or otherwise.

"Agreement" means this Asset Purchase Agreement, including all Exhibits and Schedules hereto, as it may be further amended from time to time in accordance with its terms.

"Allocation" shall have the meaning ascribed thereto in Section 12.12(e) hereof.

"Alternative Transaction" means any merger, amalgamation, reorganization, restructuring, plan of reorganization, liquidation or refinancing, or any other extraordinary corporate transaction directly or indirectly involving the Sellers or a material portion of the Sellers' Liabilities.

"Ancillary Documents" means any certificate, agreement, document or other instrument (other than this Agreement) to be executed and delivered by a Party in connection with the consummation of the transactions contemplated by this Agreement.

"Arbitrating Accountant" means (a) a nationally recognized certified public accounting firm jointly selected by Purchaser and Sellers that is not then engaged to perform accounting, tax or auditing services for Sellers or Purchaser or (b) if Sellers and Purchaser are unable to agree on an accountant, then a nationally recognized certified public accounting firm jointly selected by Sellers' accounting firm and Purchaser's accounting firm.

"Assigned Contracts" shall have the meaning ascribed thereto in Section 2.1(b).

"Assignment and Assumption Agreement" shall have the meaning ascribed thereto in Section 10.2(b) hereof.

"Assignment and Assumption of Leases" shall have the meaning ascribed thereto in Section 10.2(h).

"Assumed Leased Real Property" shall have the meaning ascribed thereto in Section 2.1(f).

"Assumed Liabilities" shall have the meaning ascribed thereto in Section 2.3 hereof.

"Assumed Plans" shall have the meaning ascribed thereto in Section 7.1(f).

"Auction" shall have the meaning ascribed to such term by the Bid Procedures Order.

"Avoidance Actions" shall have the meaning ascribed thereto in Section 2.1(y).

"Bankruptcy Code" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"Bankruptcy Court" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"Benefit Plan" means (a) all "employee benefit plans" (as defined in Section 3(3) of ERISA), whether or not subject to ERISA and (b) any other employee benefit plans, program or arrangement, including all employee benefit plans which are "pension plans" (including, without limitation, as defined in Section 3(2) of ERISA), payroll practices, severance, vacation pay, company awards, salary continuation for disability, sick leave, death benefit, hospitalization, welfare benefit, group or individual health, dental, medical, life, insurance, fringe benefit,

deferred compensation, profit sharing, retirement, retiree medical, supplemental retirement, bonus or other incentive compensation, stock purchase, equity-based, stock option, stock appreciation rights, restricted stock and phantom stock arrangements or policies, employment, termination, bonus, retention, severance, change in control, collective bargaining or other similar plans, programs, policies, contracts, or arrangements (whether written or unwritten), in each case, adopted, sponsored, entered into, maintained, contributed to, or required to be contributed to by any Seller or any ERISA Affiliate for the benefit of any current or former employee, director, officer or independent contractor of any Seller, or under or with respect to which any Seller or ERISA Affiliate has any Liability.

"Bid Procedures" shall mean the bidding procedures governing the sale of the Acquired Assets by Sellers substantially in the form attached as Exhibit 1 to the Bid Procedures Order with such changes as Purchaser and Sellers each finds reasonably acceptable, to be approved by the Bankruptcy Court pursuant to the Bid Procedures Order.

"Bid Procedures Order" shall mean the Order of the Bankruptcy Court, pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code, that has not been stayed, vacated or stayed pending appeal: (a) authorizing and scheduling the Auction, (b) approving procedures for the submission of Qualified Bids; (c) in the case of any subsequent Qualified Bids, approving the initial Overbid equal to the sum of the Break-Up Fee, the Expense Reimbursement Amount and \$500,000, (d) approving the Break-Up Fee and the Expense Reimbursement Amount, (e) scheduling a hearing to consider approval of such sale, and (f) approving the form and manner of notice of the Auction procedures and Sale Hearing, which order shall be in the form attached hereto as Exhibit E, with such changes as Purchaser and Sellers each find reasonably acceptable.

"Break-Up Fee" shall have the meaning ascribed thereto in Section 11.5(a) hereof.

"Business" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"Business Day" shall mean any day other than a Saturday, a Sunday, or a day on which banks in New York City, New York are authorized or obligated by Law or executive order to close.

"Cash and Cash Equivalents" means all of Sellers' cash (including petty cash and checks received prior to the close of business on the Closing Date), checking account balances, marketable securities, certificates of deposits, time deposits, bankers' acceptances, commercial paper, security entitlements, securities accounts, commodity Contracts, commodity accounts, government securities and any other cash equivalents, whether on hand, in transit, in banks or other financial institutions, or otherwise held, and any security, collateral or other deposits.

"Cash Component" shall have the meaning ascribed thereto in Section 3.1(a) hereof.

"Chapter 11 Cases" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"Claims" means any and all claims, charges, lawsuits, demands, suits, inquires made, hearings, investigations, notices of violation, litigation, proceedings, arbitration, or other

disputes, whether civil, criminal, administrative or otherwise, excluding causes of action arising exclusively under the Bankruptcy Code.

"Closing" shall have the meaning ascribed thereto in Section 10.1 hereof.

"Closing Date" means the date on which the Closing shall occur.

"COBRA" means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

"Code" means the United States Internal Revenue Code of 1986, as amended.

"Confidentiality Agreement" shall have the meaning ascribed thereto in Section 6.5 hereof.

"Contract" means any written or oral contract, purchase order, service order, sales order, indenture, note, bond, lease, sublease, license, understanding, instrument or other agreement, arrangement or commitment, whether express or implied.

"Conveyance Documents" means any and all (a) deeds with respect to the Acquired Owned Real Property, (b) Bill(s) of Sale, (c) Assignment and Assumption Agreement(s), (d) IP Assignment and Assumption Agreement(s) and (e) Assignment and Assumption(s) of Leases, in each case, executed in connection herewith.

"Cure Amount" shall have the meaning ascribed thereto in Section 2.3(b) hereof.

"Cure Amount Cap" shall have the meaning ascribed thereto in Section 8.18 hereof.

"Designated Purchaser" shall have the meaning ascribed thereto in Section 12.10 hereof.

"DIP Credit Agreement" means that certain Senior Secured Superpriority Debtor-in-Possession Credit Agreement between the DIP Lender(s) and Sellers evidencing the DIP Facility to be provided by the DIP Lender(s) to Sellers, as the same may be amended, modified or supplemented from time to time.

"DIP Facility" means Sellers' debtor-in-possession financing facility in the original principal amount of \$11,000,000, entered into in connection with the Chapter 11 Cases, as the same may be amended, restated or supplemented from time to time.

"DIP Lender" means Orchids Investment LLC, as lender under the DIP Credit Agreement and DIP Facility and any assignee thereof.

"DIP Motion" means the motion to be filed by Sellers in the Chapter 11 Cases seeking interim and final approval of the DIP Credit Agreement.

"DIP Order" means, collectively, the interim and final orders to be entered by the Bankruptcy Court approving the DIP Credit Agreement, which orders shall be substantially in

the form attached hereto as Exhibit G, with such changes as Purchaser and Sellers each finds reasonably acceptable.

"Documents" means all of Sellers' files, documents, instruments, papers, books, reports, records, tapes, microfilms, photographs, letters, budgets, forecasts, plans, operating records, safety and environmental plans and reports, data, Permits and Permit applications, studies and documents, Tax Returns, ledgers, journals, title policies, customer lists, regulatory filings, operating data and plans, research material, technical documentation (design specifications, engineering information, test results, maintenance schedules, functional requirements, operating instructions, logic manuals, processes, flow charts, etc.), user documentation (installation guides, user manuals, training materials, release notes, working papers, etc.), marketing documentation (sales brochures, flyers, pamphlets, web pages, etc.), and other similar materials, in each case, whether in electronic, paper or other form, but excluding Sellers' corporate charter, minute and stock record books, and corporate seal.

"Dollars" means the currency of the United States, and all references to monetary amounts herein shall be in Dollars unless otherwise specified herein.

"Effective Date" shall have the meaning ascribed thereto in the Preamble hereof.

"Employee" means an individual who, as of the applicable date, is employed by Sellers in connection with the Business.

"Employee Census" shall have the meaning ascribed thereto in Section 4.14(a) hereof.

"Encumbrance" means any lien (including a "lien" as defined in Section 101(37) of the Bankruptcy Code), encumbrance, Claim, right, demand, charge, mortgage, deed of trust, lease, option, pledge, security interest or similar interest, title defect, hypothecation, easement, right of way, restrictive covenant, encroachment, right of first refusal, preemptive right, proxy, voting trust or agreement, transfer restriction under any shareholder agreement or similar agreement, judgment, conditional sale or other title retention agreement or other imposition, imperfection or defect of title or restriction on transfer or use of any nature whatsoever.

"Environmental Law" means any Regulation which is related to or otherwise imposes liability or standards of conduct concerning discharges, releases or threatened releases of Hazardous Materials into ambient air, water or land, or otherwise relating to the manufacture, processing, generation, distribution, use, treatment, storage, disposal, cleanup, transport or handling of Hazardous Materials.

"Environmental Liabilities and Obligations" means all Liabilities arising from any impairment, impact or damage to the environment, health or safety, arising under any, or arising from any failure to comply with Environmental Law, including Liabilities related to: (a) the handling, generation, treatment, recycling, transportation, storage, use, arrangement for disposal or disposal of, or exposure to, Hazardous Materials; (b) the Release of Hazardous Materials, including migration onto or from the Acquired Owned Real Property and Assumed Leased Real Property; (c) any other pollution or contamination of the surface, substrata, soil, air, ground water, surface water or marine environments; (d) any other obligations imposed under Environmental Law including pursuant to any applicable Permits issued pursuant to under any

Environmental Law; (e) Orders, notices to comply, notices of violation, alleged non-compliance and inspection reports with respect to any Liabilities pursuant to Environmental Law; and (f) all obligations with respect to personal injury, property damage, wrongful death and other damages and losses arising under applicable Environmental Law but only as a result of any of the matters identified in clauses (a)-(e) of this definition.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

"ERISA Affiliate" means any entity which is a member of (a) a controlled group of corporations (as defined in Section 414(b) of the Code), (b) a group of trades or businesses under common control (as defined in Section 414(c) of the Code), (c) an affiliated service group (as defined under Section 414(m) of the Code) or (d) any group specified in Treasury Regulations promulgated under Section 414(o) of the Code, any of which includes or included any Seller.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Excluded Assets" shall have the meaning ascribed thereto in Section 2.2 hereof.

"Excluded Liabilities" shall have the meaning ascribed thereto in Section 2.4 hereof.

"Expense Reimbursement Amount" means the dollar amount equal to the lesser of (a) \$2,000,000 and (b) the aggregate amount of all reasonable and documented out of pocket costs, expenses and fees incurred by Purchaser or those of Purchaser's Subsidiaries that will receive title to any Acquired Assets pursuant to the transactions contemplated hereby, in connection with evaluating, negotiating, documenting and performing the transactions contemplated by this Agreement and the Ancillary Documents, including fees, costs and expenses of any professionals (including financial advisors, outside legal counsel, accountants, experts and consultants) retained by Purchaser or its Subsidiaries in connection with or related to the authorization, preparation, investigation, negotiation, execution and performance of this Agreement, the transactions contemplated hereby, including the Chapter 11 Cases and other judicial and regulatory proceedings related to such transactions, which amount shall, subject to Bankruptcy Court approval, constitute an administrative expense priority claim under Section 503(b)(1)(A) and Section 507(a)(2) of the Bankruptcy Code against each of the debtors and shall be payable as set forth in Section 11.5.

"Final Order" means an order of the Bankruptcy Court or any other court of competent jurisdiction, in a form reasonably acceptable to Purchaser: (a) as to which the time to appeal shall have expired and as to which no appeal shall then be pending or (b) if a timely appeal shall have been filed or sought, either (i) no stay of the Order shall be in effect, (ii) no motion or application for a stay of the Order shall be filed or pending or such motion or application shall have been denied, or (iii) if such a stay shall have been granted, then (A) the stay shall have been dissolved or (B) a final order of the district court or circuit court having jurisdiction to hear such appeal shall have affirmed the Order and the time allowed to appeal from such affirmance or to seek review or rehearing (other than a motion pursuant to Rule 60(b) of the Federal Rules of Civil Procedure) thereof shall have expired and the taking or granting of any further hearing, appeal or

petition for certiorari shall not be permissible, and if a timely appeal of such district court or circuit court Order or timely motion to seek review or rehearing of such Order shall have been made, any appellate court having jurisdiction to hear such appeal or motion shall have affirmed the lower court's order upholding the Order of the Bankruptcy Court and the time allowed to appeal from such affirmance or to seek review or rehearing thereof shall have expired and the taking or granting of any further hearing, appeal or petition for certiorari shall not be permissible; provided, however, that Purchaser and Sellers, each in their reasonable discretion, may treat any Order for which a motion or application for a stay is filed or pending as a Final Order by affirmatively agreeing to such treatment in a writing signed by Purchaser.

"Financial Statements" shall have the meaning ascribed thereto in Section 4.17 hereof.

"GAAP" means United States generally accepted accounting principles as in effect from time to time.

"Governmental Body" means any government, quasi-governmental entity, or other governmental or regulatory body, agency or political subdivision thereof of any nature, whether national, international, multi-national, supra-national, foreign, federal, state or local, or any agency, branch, department, official, entity, instrumentality or authority thereof, or any court or arbitrator (public or private) of applicable jurisdiction.

"Guarantee" means any guarantee or other contingent liability, direct or indirect, with respect to any Indebtedness or obligations of another Person, through a Contract or otherwise.

"Hazardous Material" means any substance, material or waste which is regulated by any Governmental Body, including petroleum and its by-products, asbestos, polychlorinated biphenyls and any material, waste or substance which is defined or identified as a "hazardous waste," "hazardous substance," "hazardous material," "restricted hazardous waste," "industrial waste," "solid waste," "contaminant," "pollutant," "toxic waste" or "toxic substance" or words or similar import or otherwise regulated under or subject to any provision of Environmental Law.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the regulations promulgated thereunder.

"Indebtedness" with respect to any Person means any obligation of such Person for borrowed money, and in any event shall include (i) any obligation incurred for all or any part of the purchase price of property or other assets or for the cost of property or other assets constructed or of improvements thereto, other than accounts payable included in current liabilities and incurred in respect of property purchased in the Ordinary Course of Business, (ii) the face amount of all letters of credit issued for the account of such Person, (iii) obligations (whether or not such Person has assumed or become liable for the payment of such obligation) secured by Liens, (iv) capitalized lease obligations, (v) all Guarantees of such Person, (vi) all accrued interest, fees and charges in respect of any Indebtedness, (vii) all prepayment premiums and penalties, and any other fees, expenses, indemnities and other amounts payable as a result of the prepayment and/or discharge of any Indebtedness, (viii) any obligations with respect to Transferred Employees, as of the Closing, with respect to any cash retention, transaction or other similar compensatory payments that become payable to such Transferred Employees, including

the employer portion of any Taxes in respect of such obligations, (viii) severance and other termination costs with respect to Employees terminated prior to the Closing Date, to the extent such costs become obligations of Purchaser or any of its Affiliates, including the employer portion of any Taxes in respect of any such obligations and (ix) earned and unpaid deferred compensation obligations payable to any Transferred Employee which relates to periods of service prior to the Closing, including the employer portion of any Taxes in respect of any such obligations.

"Initial Allocation" shall have the meaning ascribed thereto in Section 12.12(e) hereof.

"Initial Date" means April 1, 2019.

"Intellectual Property" means all intellectual property and proprietary rights of any kind, including the following: (a) trademarks, service marks, trade names, slogans, logos, designs, symbols, trade dress, internet domain names, uniform resource identifiers, rights in design, brand names, any fictitious names, d/b/a's or similar filings related thereto, or any variant of any of them, and other similar designations of source or origin, together with all goodwill, registrations and applications related to the foregoing; (b) copyrights and copyrightable subject matter (including any registration and applications for any of the foregoing); (c) trade secrets and other confidential or proprietary business information (including manufacturing and production processes and techniques, research and development information, technology, intangibles, drawings, specifications, designs, plans, proposals, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans, customer and supplier lists and information), know how, proprietary processes, formulae, algorithms, models, industrial property rights, and methodologies; (d) computer software, computer programs, and databases (whether in source code, object code or other form); and (e) all rights to sue for past, present and future infringement, misappropriation, dilution or other violation of any of the foregoing and all remedies at law or equity associated therewith.

"Inventory" means all inventory (including finished goods, supplies, raw materials, work in progress and spare, replacement and component parts) related to the Business owned, maintained or held by, stored by or on behalf of, or in transit to or from, any Seller.

"IP Assignment and Assumption Agreement" shall have the meaning ascribed thereto in Section 10.2(i).

"IRS" means the United States Internal Revenue Service.

"Knowledge of Sellers" or "Sellers' Knowledge" means, with respect to any matter, the actual knowledge, after due inquiry, of each of the individuals set forth on **Schedule 1.1(a)**.

"Latest Balance Sheet" shall have the meaning ascribed thereto in Section 4.17 hereof.

"Law" means any federal, state, local, municipal, foreign or international, multinational or other law, treaty, statute, constitution, principle of common law, resolution, ordinance, code, edict, decree, rule, regulation, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Body.

"Lease" shall have the meaning ascribed thereto in Section 4.6(a) hereof.

"Lease Deposits" means any security deposits held or required under any Assigned Contract concerning any Assumed Leased Real Property.

"Leased Real Property" means all of the real property leased, subleased, used or occupied by Sellers, together with all buildings, structures, fixtures and improvements erected thereon, and any and all rights privileges, easements, licenses, hereditaments and other appurtenances relating thereto, and used, or held for use, in connection with the operation of the Business.

"Leave Employee" shall have the meaning ascribed thereto in Section 7.1(a) hereof.

"Liability" means, as to any Person, any debt, Claim, liability (including any liability that results from, relates to or arises out of tort or any other product liability claim), duty, responsibility, obligation, commitment, assessment, cost, expense, loss, expenditure, charge, fee, penalty, fine, contribution or premium of any kind or nature whatsoever, whether known or unknown, asserted or unasserted, absolute or contingent, direct or indirect, accrued or unaccrued, liquidated or unliquidated, or due or to become due, and regardless of when sustained, incurred or asserted or when the relevant events occurred or circumstances existed.

"Lien" means any security interest, lien, charge, mortgage, deed, assignment, pledge, hypothecation, encumbrance, easement, restriction or interest of another Person of any kind or nature.

"Manufacturers" shall have the meaning ascribed thereto in Section 4.14(n) hereof.

"Material Adverse Effect" means any event, occurrence, fact, condition, or change that is, or would reasonably be expected to become, individually or in the aggregate, materially adverse to: (a) the Business, results of operations, condition (financial or otherwise), Acquired Assets or Assumed Liabilities of Sellers and their respective Subsidiaries, taken as a whole; or (b) the ability of Sellers to consummate the transactions contemplated hereby on a timely basis; provided, however, that, for the purposes of clause (a), a Material Adverse Effect shall not be deemed to include events, occurrences, facts, conditions or changes arising out of, relating to or resulting from: (i) changes generally affecting the economy or credit, financial, or securities markets; (ii) any outbreak or escalation of war or any act of terrorism; (iii) changes in applicable Law; (iv) changes in GAAP; (v) Sellers' failure to meet internal or published projections, forecasts, or revenue or earnings predictions for any period (but, for the avoidance of doubt, not the underlying cause(s) of any such failure to the extent such underlying cause is not otherwise excluded from the definition of Material Adverse Effect); (vi) changes in the price or trading volume of Orchids' common stock; (vii) changes in political conditions; (viii) general conditions in the industry in which Sellers and their respective Subsidiaries operate; (ix) the announcement of the transactions contemplated by this Agreement; or (x) the commencement or pendency of the Chapter 11 Cases; provided further, however, that any event, change, and effect referred to in clauses (i), (ii), (iii), (iv), (vii) and (viii) immediately above shall be taken into account in determining whether a Material Adverse Effect has occurred or would reasonably be expected to occur to the extent that such event, change, or effect has a disproportionate effect on Sellers and

their respective Subsidiaries, taken as a whole, compared to other participants in the industries in which Sellers and their respective Subsidiaries conduct their businesses.

"Material Contract" shall have the meaning ascribed thereto in Section 4.12(a) hereof.

"Material Customer" shall have the meaning ascribed thereto in Section 4.26(a) hereof.

"Material Supplier" shall have the meaning ascribed thereto in Section 4.26(b) hereof.

"Mexican Antitrust Act" means the Mexican Federal Law on Economic Competition of 2014, published on May 23, 2014 and effective on July 7, 2014.

"Mexican Antitrust Approval" means any antitrust approval required under the Mexican Antitrust Act, to the extent applicable.

"NMTC Arrangements" means (a) the Credit Agreement, dated as of December 29, 2015, by and among Orchids SC, RDP 27 LLC and USBCDE SUB-CDE 146, LLC, (b) the Fund Loan Agreement, dated as of December 29, 2015, by and between USBCDC Investment Fund 158, LLC and Orchids and (c) the Loan Agreement, dated as of December 29, 2015, between Orchids and U.S. Bank National Association, in each case, together with amendments, assignments, and other documents, instruments and agreements related thereto.

"Objection Notice" shall have the meaning ascribed thereto in Section 12.12(e) hereof.

"Offer Employees" shall have the meaning ascribed thereto in Section 7.1(a) hereof.

"Orchids" shall have the meaning ascribed thereto in the Preamble hereof.

"Orchids Holdings" shall have the meaning ascribed thereto in the Preamble hereof.

"Orchids SC" shall have the meaning ascribed thereto in the Preamble hereof.

"Orchids SEC Documents" shall have the meaning ascribed thereto in Section 4.22.

"Orchids South Carolina" shall have the meaning ascribed thereto in the Preamble hereof.

"Order" means any decree, order, injunction, rule, judgment, consent, ruling, writ, assessment or arbitration award of or by any court or Governmental Body.

"Ordinary Course of Business" means, with respect to any Person, actions that (i) are taken in the ordinary and usual course of normal day to day operations of the Business consistent with past practice in effect prior to filing of the Chapter 11 Cases, (ii) are taken in accordance with all applicable Laws and (iii) do not result from or arise out of and were not caused by, any breach of Contract, breach of warranty, tort, infringement or violation of Law by such Person or any Affiliate of such Person.

"Organizational Documents" means, with respect to a particular entity Person, (a) if a corporation, the articles or certificate of incorporation and bylaws, (b) if a general partnership,

the partnership agreement and any statement of partnership, (c) if a limited partnership, the limited partnership agreement and certificate of limited partnership, (d) if a limited liability company, the articles or certificate of organization or formation and any limited liability company or operating agreement, (e) if another type of Person, all other charter and similar documents adopted or filed in connection with the creation, formation or organization of the Person, and (f) all amendments or supplements to any of the foregoing.

"Overbid" shall have the meaning ascribed thereto in the Bid Procedures Order.

"Owned Real Property" shall have the meaning ascribed thereto in Section 4.6(b) hereof.

"Party" shall have the meaning ascribed thereto in the Preamble hereof.

"Pension Plan" shall have the meaning ascribed thereto in Section 4.14(f).

"Permits" means all notifications, licenses, permits (including environmental, construction and operation permits), franchises, certificates, approvals, consents, waivers, clearances, exemptions, classifications, registrations, variances, orders, tariffs, rate schedules and other similar documents and authorizations issued by any Governmental Body.

"Permitted Encumbrances" means (a) Encumbrances for current Taxes not yet due and payable or being contested in good faith and for which adequate reserves have been established in accordance with GAAP, (b) easements, rights of way, restrictive covenants, encroachments and similar non-monetary encumbrances against any of the Acquired Assets which do not, individually or in the aggregate, adversely affect the operation of the Business and, in the case of the Owned Real Property and Leased Real Property, which do not, individually or in the aggregate, adversely affect the use or occupancy of such Owned Real Property or Leased Real Property as it relates to the operation of the Business in the ordinary course or materially detract from the value of the Owned Real Property or Leased Real Property, (c) applicable zoning Laws, building codes, land use restrictions and other similar restrictions imposed by Law which are not violated by the current use and occupancy of the Owned Real Property or Leased Real Property, (d) materialmans', mechanics', artisans', shippers', warehousemans' or other similar common law or statutory liens incurred in the Ordinary Course of Business with respect to amounts that are not yet due and payable or being contested in good faith and for which adequate reserves have been established in accordance with GAAP, (e) solely with respect to Orchids SC, Liens or Encumbrances under the Security Agreement, dated as of December 29, 2015, by and among Orchids SC, RDP 27 LLC and USBCDE SUB-CDE 146, LLC and (f) such other Encumbrances or title exceptions as Purchaser may approve in writing in its sole discretion.

"Person" means any corporation, partnership, joint venture, limited liability company, organization, entity, authority or natural person.

"Personal Property Leases" shall have the meaning ascribed thereto in Section 4.7 hereof.

"Petition Date" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"Post-Closing Plans" shall have the meaning ascribed thereto in Section 7.1(b) hereof.

"Pre-Closing Period" means the period commencing on the Effective Date and ending on the earlier of the date upon which this Agreement is validly terminated pursuant to ARTICLE XI or the Closing Date.

"Pre-Closing Tax Period" means any taxable period (or portion thereof) ending on or before the Closing Date and any portion of any Straddle Period ending on the Closing Date.

"Prepetition Administrative Agent" means Ankura Trust Company, LLC.

"Prepetition Credit Agreements" means, collectively, (a) that certain Second Amended and Restated Credit Agreement, dated as of June 25, 2015, among Orchids, the lenders party thereto and U.S. Bank National Association, as LC issuer, Swing Line Lender (as defined therein) and Prepetition Administrative Agent, together with amendments and other documents, instruments, and agreements related thereto and (b) the Loan Agreement, dated as of December 29, 2015, between Orchids and U.S. Bank National Association, together with amendments, assignments, and other documents, instruments and agreements related thereto.

"Prepetition Secured Lender" means Orchids Investment LLC, as assignee of the Prepetition Credit Agreements, and any assignee thereof.

"Previously Omitted Contract" shall have the meaning ascribed thereto in Section 2.6(b)(i) hereof.

"Previously Omitted Contract Designation" shall have the meaning ascribed thereto in Section 2.6(b)(i) hereof.

"Previously Omitted Contract Notice" shall have the meaning ascribed thereto in Section 2.6(b)(ii) hereof.

"Priming Permitted Encumbrances" means liens and encumbrances under clause (e) of the definition of Permitted Encumbrances and any lien or encumbrance under clauses (d) or (f) of the definition of Permitted Encumbrances to the extent any such lien or encumbrance would create a priority claim senior to the Liens of, or for the benefit of, the Purchaser under the Prepetition Credit Agreement.

"Purchase Price" shall have the meaning ascribed thereto in Section 3.1(a) hereof.

"Purchased Intellectual Property" shall have the meaning ascribed thereto in Section 4.8 hereof.

"Purchaser" means Orchids Investment LLC, or any permitted designee thereof as permitted under this Agreement.

"Qualified Bids" shall have the meaning ascribed thereto in the Bid Procedures Order.

"Real Property" shall have the meaning ascribed thereto in Section 4.6(b) hereof.

"Regulation" means any Law, statute, regulation, ruling, rule or Order of, administered or enforced by or on behalf of any Governmental Body.

"Rejected Contracts" shall have the meaning ascribed thereto in Section 2.6(a)(i) hereof.

"Release" means any release, spill, emission, leaking, pumping, disposal, discharge, dispersal or migration into the indoor or outdoor environment or into or out of any property or assets (including the Acquired Assets) owned or leased by any Seller as at the Closing Date, including the movement of Hazardous Materials through or in the air, soil, surface water, groundwater or property.

"Remedial Action" means all actions to (1) clean up, remove, treat or in any other way address Hazardous Materials in the environment; (2) prevent the Release or threat of Release or minimize the further Release of Hazardous Materials so they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment; (3) perform pre-remedial studies and investigations and post-remedial monitoring and care; or (4) otherwise address or respond to a Release of Hazardous Materials.

"Representatives" means the officers, employees, legal counsel, accountants and other authorized representatives, agents and contractors of any Person.

"Sale and Bid Procedures Motion" means the motion in form and substance satisfactory to Purchaser and Sellers each in its reasonable discretion, to be filed by Sellers with the Bankruptcy Court seeking the following relief from the Bankruptcy Court: (a) authorization of the sale of the Acquired Assets to the Successful Bidder (including the assignment of the Assigned Contracts), as applicable, free and clear of all Encumbrances and other interests, other than Priming Permitted Encumbrances, (b) subject to the Bid Procedures, approval of the proposed purchase agreement between Sellers and the Successful Bidder, (c) authorization of Sellers to cause the Closing to occur as soon as practicable after the entry of the Sale Order, (d) because Purchaser and its Affiliates have expended considerable time and expense in connection with this Agreement and the negotiation thereof, and the identification and quantification of assets to be included in the Acquired Assets, approval of the Break-Up Fee and Expense Reimbursement Amount as an administrative priority expense under Sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code, (e) a finding that the provisions of this Agreement, including Section 11.5, were a material inducement to Purchaser to enter into this Agreement and are designed to achieve the highest or otherwise best offer for the Acquired Assets, (f) approval of the Bid Procedures and entry of the Bid Procedures Order no later than May 5, 2019; (g) scheduling the bid deadline to take place on June 6, 2019 or June 7, 2019, and the Auction to take place between June 6, 2019 and June 10, 2019; and (h) scheduling the Sale Hearing to take place no later than June 12, 2019.

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

"Sale Order" means one or more orders, including the order in substantially the form of Exhibit F hereto (with such changes as may be agreed by Purchaser in its sole discretion and the

Sellers in their reasonable discretion) entered by the Bankruptcy Court, as described in Section 8.7 of this Agreement.

"Schedules" means, collectively, the various disclosure schedules hereto.

"SEC" means the Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Sellers" shall have the meaning ascribed thereto in the Preamble hereof.

"Sellers Benefit Plans" shall have the meaning ascribed thereto in Section 7.1(b) hereof.

"Straddle Payroll" shall have the meaning ascribed thereto in Section 2.3(e).

"Straddle Period" shall have the meaning ascribed thereto in Section 12.12(b).

"Subsidiary" means, with respect to any Person, any corporation, limited liability company, joint venture or partnership of which such Person (a) beneficially owns, either directly or indirectly, more than fifty percent (50%) of (i) the total combined voting power of all classes of voting securities of such entity, (ii) the total combined equity interests, or (iii) the capital or profit interests, in the case of a partnership; or (b) otherwise has the power to vote or to direct the voting of sufficient securities to elect a majority of the board of directors or similar governing body.

"Successful Bidder" shall mean the successful bidder at the Auction.

"Tax Return" means any report, return or other information required to be supplied to a taxing authority in connection with Taxes.

"Taxes" means all taxes, charges, fees, duties, levies or other assessments, including, without limitation, income, gross receipts, net proceeds, ad valorem, turnover, real and personal property (tangible and intangible), sales, use, franchise, excise, value added, capital, license, payroll, unemployment, environmental, customs duties, capital stock, disability, stamp, leasing, lease, user, transfer, fuel, excess profits, occupational and interest equalization, windfall profits, severance and employees' income withholding and Social Security taxes imposed by the United States or any other country or by any state, municipality, subdivision or instrumentality of the United States or of any other country or by any other tax authority, and unemployment insurance contributions, including all applicable penalties and interest, and such term shall include any interest, penalties or additions to tax attributable to such Taxes.

A "third party" means any Person other than any Seller, Purchaser or any of their respective Affiliates.

"Title Policies" shall have the meaning ascribed thereto in Section 8.12 hereof.

"Transfer Taxes" shall have the meaning ascribed thereto in Section 12.12(a) hereof.

"Transferred Employees" shall have the meaning ascribed thereto in Section 7.1(a) hereof.

"Treasury Regulations" means the regulations promulgated under the Code by the United States Department of the Treasury (whether in final, proposed or temporary form), as the same may be amended from time to time.

"WARN Act" means the Worker Adjustment and Retraining Notification Act of 1988, and the rules and regulations promulgated thereunder, or similar Laws.

"Wind-Down Account" shall have the meaning ascribed thereto in Section 3.1(a) hereof.

"Wind-Down Budget" means an amount equal to \$500,000, as set forth in a budget setting forth priority claims, administrative expenses, and other costs incurred from and after the Closing Date to be paid from the Wind-Down Account for the post-Closing administration and wind-down of Sellers' estates, including, without limitation, the confirmation of a liquidating plan for the Sellers, as prepared by Sellers and delivered to Purchaser in writing via email on the Initial Date.

"Wind-Down Payment" shall have the meaning ascribed thereto in Section 3.1(a) hereof.

1.2 Other Terms. Other terms may be defined elsewhere in the text of this Agreement and, unless otherwise indicated, shall have such meaning through this Agreement.

1.3 Other Definitional Provisions.

(a) The words "hereof," "herein," and "hereunder" and words of similar import, when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(b) The terms defined in the singular shall have a comparable meaning when used in the plural, and vice versa.

(c) References herein to a specific Section, Subsection, Exhibit or Schedule shall refer, respectively, to Sections, Subsections, Exhibits or Schedules of this Agreement, unless the express context otherwise requires.

(d) Accounting terms which are not otherwise defined in this Agreement have the meanings given to them under GAAP consistently applied. To the extent that the definition of an accounting term defined in this Agreement is inconsistent with the meaning of such term under GAAP, the definition set forth in this Agreement will control.

(e) Any reference to any agreement or contract will be a reference to such agreement or contract, as amended, modified, supplemented or waived.

(f) Wherever the word "include," or "includes," or "including" is used in this Agreement, it shall be deemed to be followed by the words "without limitation."

ARTICLE II

PURCHASE AND SALE; ASSUMPTION OF CERTAIN LIABILITIES

2.1 Acquired Assets. Subject to the terms and conditions set forth in this Agreement and, subject to approval of the Bankruptcy Court, pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, at the Closing, Sellers shall sell, assign, transfer and deliver to Purchaser, and Purchaser shall purchase, acquire and take assignment and delivery of, the following assets owned by Sellers on the Closing Date (wherever located), and all of Sellers' right, title and interest therein and thereto on the Closing Date, free and clear of all Liens, Claims and Encumbrances of whatever kind or nature (other than Priming Permitted Encumbrances), but not including those assets specifically excluded in Section 2.2 hereof (all of the assets to be sold, assigned, transferred and delivered to Purchaser hereunder shall be deemed included in the term "Acquired Assets" as used herein):

(a) all of the equity interests that any Seller owns in the Subsidiaries set forth on **Schedule 2.1(a)** (collectively, the "Acquired Subsidiaries"); provided, however, if Purchaser elects to exclude the entities listed in Items 1 and 2 on **Schedule 2.1(a)** as Acquired Subsidiaries, (i) Purchaser shall have the right to designate such entities as Sellers, (ii) such entities shall execute this document by signing a joinder hereto and be designated as Sellers hereunder and (iii) OPP Acquisition Mexico, S. de R.L. de C.V. may be designated by Purchaser an Acquired Subsidiary hereunder.

(b) subject to Section 2.6, to the extent assignable pursuant to Section 365 of the Bankruptcy Code or as otherwise provided in the Bid Procedures Order, all of the Contracts set forth on **Schedule 2.6(a)** (the "Assigned Contracts") and all rights thereunder;

(c) all trade and non-trade accounts receivable, notes receivable and negotiable instruments of Sellers (the "Accounts Receivable"), including all intercompany receivables, notes, rights and claims from any Acquired Subsidiary and payable or in favor of a Seller;

(d) all of Sellers' Cash and Cash Equivalents (except to the extent of the Cash Component and the Wind-Down Payment);

(e) the Owned Real Property listed on **Schedule 2.1(e)** (the "Acquired Owned Real Property") and all fixtures, improvements and appurtenances thereto;

(f) the Leased Real Property listed on **Schedule 2.1(f)** (the "Assumed Leased Real Property"), including any security deposits or other deposits delivered in connection therewith;

(g) all cash deposits of clients or customers held by Sellers as security for receivables or obligations;

(h) all deposits of Sellers as security for rent, electricity, telephone, bonds or other sureties or otherwise (except for retainers held by any professional in the Chapter 11

Cases), and prepaid charges and expenses, including all prepaid rent and all prepaid charges, expenses and rent under any personal property leases;

(i) all tangible assets of Sellers, wherever located, and any Excluded Assets, including the tangible assets of Sellers located at any Assumed Leased Real Property or at the locations listed on **Schedule 2.1(i)**;

(j) all personnel files for Transferred Employees except as prohibited by Law; provided, however, that Sellers have the right to retain copies at Sellers' expense to the extent required by Law;

(k) any chattel paper owned or held by Sellers relating to the Business, the Assumed Liabilities or the Acquired Assets;

(l) any lock boxes to which account debtors of any Seller remit payment relating to the Business, the Assumed Liabilities or the Acquired Assets;

(m) all other or additional assets, properties, privileges, rights (including prepaid expenses) and interests of Sellers relating to the Business, the Assumed Liabilities or the Acquired Assets (other than any Excluded Assets) of every kind and description and wherever located, whether known or unknown, fixed or unfixed, accrued, absolute, contingent or otherwise, and whether or not specifically referred to in this Agreement;

(n) all Permits and all pending applications therefor, including those set forth on **Schedule 2.1(n)**, in each case, to the extent such Permits and pending applications therefore are transferrable;

(o) all demands, allowances, prepaid expenses, deposits and refunds, express or implied guarantees, warranties, representations, covenants, indemnities, rights, claims, counterclaims, defenses, credits, causes of action or rights of set off against third parties relating to the Acquired Assets (including, for the avoidance of doubt, those arising under, or otherwise relating to the Assigned Contracts), the Assumed Liabilities or the Business, including rights under vendors' and manufacturers' warranties, indemnities, guaranties and avoidance claims and causes of action under the Bankruptcy Code or applicable Law that are possessed by any Seller;

(p) the Intellectual Property owned or purported to be owned by Sellers, including without limitation, the Purchased Intellectual Property;

(q) all goodwill, payment intangibles and general intangible assets and rights of Sellers to the extent associated with the Business, the Assumed Liabilities or the Acquired Assets;

(r) all Inventory, including raw materials, works in process, parts, subassemblies and finished goods, wherever located and whether or not obsolete or carried on Sellers' books of account, in each case, with any transferable warranty and service rights of Sellers related thereto;

(s) to the extent permitted by Law, Sellers' Documents and, without limiting the foregoing, each of the following: financial accounting and other books and records, Tax Returns filed by Sellers relating to the Business, checkbooks and canceled checks, correspondence, and all customer sales, marketing, advertising, packaging and promotional materials, files, data, software (whether written, recorded or stored on disk, film, tape or other media, and including all computerized data), drawings, engineering and manufacturing data and other technical information and data, and all other business and other records, in each case, arising under or relating to the Acquired Assets, the Assumed Liabilities or the Business provided, however, that Sellers have the right to retain copies of all of the foregoing at Sellers' expense to the extent required by Law or as is necessary to wind-down Sellers;

(t) to the extent transferable, all rights and obligations under or arising out of all insurance policies relating to the Business or any of the Acquired Assets or Assumed Liabilities (including returns and refunds of any premiums paid, or other amounts due back to any Seller, with respect to cancelled policies);

(u) all rights and obligations under non-disclosure, confidentiality, non-competition, non-solicitation and similar arrangements with (or for the benefit of) former or current employees and agents of Sellers or with third parties (including any non-disclosure, confidentiality agreements or similar arrangements entered into in connection with or in contemplation of the filing of the Chapter 11 Cases and the Auction contemplated by the Bid Procedures Order);

(v) all Assumed Plans, together with any funding arrangements relating thereto (including but not limited to all assets, trusts, insurance policies and administration service contracts related thereto) and all rights and obligations thereunder;

(w) all fixed assets and other personal property and interests related to the Business, the Assumed Liabilities or Acquired Assets, wherever located, including all vehicles, tools, parts and supplies, fuel, machinery, equipment, furniture, furnishing, appliances, fixtures, office equipment and supplies, owned and licensed computer hardware and related documentation, stored data, communication equipment, trade fixtures and leasehold improvements, in each case, with any freely transferable warranty and service rights of any Seller related thereto;

(x) telephone, fax numbers and email addresses, as well as the right to receive mail and other communications addressed to Sellers;

(y) all avoidance claims or causes of action under Chapter 5 of the Bankruptcy Code or applicable Law (including, without limitation, any preference or fraudulent conveyance) and all other claims or causes of action under any other provision of the Bankruptcy Code or applicable Law ("Avoidance Actions") relating to the Business, the Acquired Assets and/or Assumed Liabilities, including Actions relating to vendors and service providers used in the Business that are counterparties to Assigned Contracts, relating to Assumed Liabilities or relating to any claim or cause of action against the Purchaser, Black Diamond Commercial Finance, L.L.C. or Ankura Trust Company (as successor to U.S. Bank National Association) ("Acquired Avoidance Actions");

(z) any claim, right or interest of Sellers in or to any refund, rebate, credit, abatement or recovery for Taxes together with any interest due thereon or penalty rebate arising therefrom;

(aa) to the extent transferable, all prepaid Taxes and Tax credits of Sellers;

(bb) the Fund Loan Agreement, dated as of December 29, 2015, by and between USBCDC Investment Fund 158, LLC and Orchids; and

(cc) all of Sellers' bank accounts.

2.2 Excluded Assets. Notwithstanding anything in this Agreement to the contrary, the Acquired Assets shall not include any of the following (collectively, the "Excluded Assets");

(a) all Rejected Contracts;

(b) all shares of capital stock or other equity interests issued by any Seller or securities convertible into, exchangeable or exercisable for any such shares of capital stock or other equity interests, other than equity interests in the Acquired Subsidiaries;

(c) all Avoidance Actions that are not Acquired Avoidance Actions;

(d) all Claims that any Seller may have against any Person solely with respect to any Excluded Assets or any Excluded Liabilities;

(e) Sellers' rights under this Agreement, the Purchase Price hereunder, any agreement, certificate, instrument or other document executed and delivered by Purchaser to Sellers in connection with the transactions contemplated hereby;

(f) all current and prior director and officer insurance policies of Sellers and all rights of any nature with respect thereto running in favor of any Seller, including all insurance recoveries thereunder and rights to assert claims with respect to any such insurance recoveries, in each case, as the same may run in favor of any Seller and arising out of actions taking place prior to the Closing Date;

(g) the properties and assets set forth on **Schedule 2.2(g)**;

(h) all Benefit Plans, together with all funding arrangements relating thereto (including but not limited to all assets, trusts, insurance policies and administration service contracts related thereto), except for the Assumed Plans and any funding arrangements relating thereto (including but not limited to all assets, trusts, insurance policies and administration service contracts related thereto) and all rights and obligations thereunder;

(i) all Pension Plans;

(j) all assets that are removed from the Acquired Assets pursuant to Section 6.9(b);

(k) Sellers' Organizational Documents, corporate charter, minute and stock record books, income tax returns and corporate seal; provided that Purchaser shall have the right to reasonably request, and Sellers shall reasonably cooperate to provide, copies of any portions of such documents solely as they relate to the Acquired Assets;

(l) any and all claims, deposits, prepayments, refunds, rebates, causes of action, rights of recovery, rights of set-off and rights of recoupment relating solely to or solely in respect of an Excluded Asset; and

(m) all of Sellers' privileges, protections, and immunities for communications, documents, or materials, including without limitation, any attorney-client privilege, work product doctrine, common interest, or joint defense privilege, and electronic and tangible documents reflecting such communications and materials relating to the Sellers (but not the Acquired Assets).

2.3 Assumed Liabilities. At the Closing, except as provided in Section 2.2 and/or in Section 2.4 hereof, Purchaser shall assume, and agree to pay, perform, fulfill and discharge only the following Liabilities of Sellers (and only the following Liabilities) (collectively, the "Assumed Liabilities"):

(a) all Liabilities arising from the ownership and operation of the Acquired Assets by Purchaser after the Closing Date;

(b) all Liabilities and obligations of any Seller under the Assigned Contracts, including, without limitation, (i) all pre-petition cure costs required to be paid pursuant to Section 365 of the Bankruptcy Code (or as otherwise provided in the Bid Procedures Order) in connection with the assumption and assignment of the Assigned Contracts including the cost of obtaining consents in respect of the Assigned Contracts (such pre-petition cure costs are, collectively, the "Cure Amount"); and (ii) any post-Closing liabilities thereunder (other than Liabilities related to or arising out of a breach, default, violation or non-compliance by any Seller or any Affiliate thereof prior to the Closing);

(c) all (i) trade payables arising on or after the Petition Date, (ii) all amounts outstanding pursuant to open purchase orders as set forth on **Schedule 2.3(c)** and (iii) claims arising under Section 503(b)(9) of the Bankruptcy Code allowed by agreement of Purchaser and the claimant thereunder or by Final Order of the Bankruptcy Court (collectively, the "Accounts Payable");

(d) the Liabilities with respect to Transferred Employees under the terms of Assumed Plans to the extent arising following the Closing;

(e) all payroll liabilities arising in the Ordinary Course of Business and otherwise in accordance with Section 6.1 during the payroll period which includes the Closing Date (the "Straddle Payroll");

(f) the amount of Transfer Taxes required to be paid by Purchaser in consummating this Agreement, as set forth in Section 12.12(a).

(g) so long as consent is obtained as contemplated by Section 8.9 below, all obligations of Orchids under clause (c) of the NMTC Arrangements and Orchids SC under clauses (a) and (b) of the NMTC Arrangements; and

(h) The payment obligation of the "Transaction Fee" described in that certain Engagement Agreement by and between Orchids and Houlihan Lokey Capital, Inc., dated November 13, 2018, as amended March 13, 2019.

The assumption by Purchaser of the Assumed Liabilities shall not, in any way, enlarge the rights of any third parties relating thereto.

2.4 Excluded Liabilities. Notwithstanding anything in this Agreement to the contrary, the Purchaser is not assuming, and shall not be obligated to pay, perform or otherwise discharge in any manner or have any Liability in respect of, any Liability that is not an Assumed Liability (collectively, the "Excluded Liabilities"), including the following:

(a) any and all Liabilities arising out of, relating to or otherwise in respect of the Acquired Assets and/or Business arising prior to the Closing, other than the Assumed Liabilities;

(b) any and all Liabilities of any Seller relating to or otherwise arising, whether before, on or after the Closing, out of, or in connection with, any of the Excluded Assets;

(c) any and all Liabilities of any Seller for Indebtedness, including (i) all intercompany Indebtedness among any Seller and its Subsidiaries and (ii) all Guarantees;

(d) except as set forth in Section 2.3(f), any and all (i) Liabilities of any Seller for any Taxes (including, without limitation, Taxes payable by reason of contract, assumption, transferee or successor Liability, operation of Law, pursuant to Treasury Regulation Section 1502-6 (or any similar provision of any state or local Law) or otherwise and any Taxes owed by any Seller and arising in connection with the consummation of the transactions contemplated by this Agreement) arising or related to any period(s) on or prior to the Closing Date, and (ii) Taxes arising from or in connection with an Excluded Asset;

(e) any and all Liabilities of any Seller in respect of the Rejected Contracts and any other Contracts to which such Seller is party or is otherwise bound that are not Assigned Contracts;

(f) except for the Straddle Payroll and as provided in Sections 2.3(d), any and all Liabilities with respect to employment or other provision of services, compensation, severance, benefits or payments of any nature owed to any job applicant, current or former employee, officer, director, member, partner or independent contractor of any Seller or any ERISA Affiliate (or any beneficiary or dependent of any such individual), whether or not employed by Purchaser or any of its Affiliates after the Closing, that (i) arises out of or relates to the employment, service provider or other relationship between any Seller or any ERISA Affiliate and any such individual, including but not limited to the termination of such relationship, (ii) arises out of or relates to any Benefit Plan, (iii) arises out of or relates to events

or conditions occurring on or before the Closing Date, or (iv) that are expressly retained by Sellers pursuant to Sections 6.7 and 7.2;

(g) drafts or checks outstanding at the Closing;

(h) any and all Liabilities under any futures contracts, options on futures, swap agreements or forward sale agreements;

(i) any and all Liabilities related to the WARN Act, to the extent applicable, for any action resulting from Employees' separation of employment prior to or on the Closing Date;

(j) any and all Liabilities of any Seller to its equity holders respecting dividends, distributions in liquidation, redemptions of interests, option payments or otherwise, and any and all Liability of any Seller pursuant to any agreement with an Affiliate of such Seller;

(k) any and all Liabilities arising out of or relating to any business or property formerly owned or operated by any Seller, any Affiliate or predecessor thereof, but not presently owned and operated by such Seller;

(l) any and all Liabilities relating to claims, Actions, suits, arbitrations, litigation matters, proceedings, investigations or other Actions (in each case, whether involving private parties, Governmental Bodies, or otherwise) involving, against, or affecting any Acquired Asset, the Business, any Seller, or any assets or properties of any Seller, whether commenced, filed, initiated, or threatened before or after the Closing and whether relating to facts, events, or circumstances arising or occurring before or after the Closing;

(m) any and all Liabilities of any Seller arising and to be performed prior to the Closing Date;

(n) any and all Environmental Liabilities and Obligations;

(o) any and all Liabilities of any Seller or its predecessors arising out of any contract, agreement, Permit, franchise or claim that is not transferred to Purchaser as part of the Acquired Assets or, is not transferred to Purchaser because of any failure to obtain any third party or governmental consent required for such transfer;

(p) any and all Liability for: (i) costs and expenses incurred by Sellers or owed in connection with the administration of the Chapter 11 Cases (including the U.S. Trustee fees, the fees and expenses of attorneys, accountants, financial advisors, consultants and other professionals retained by Sellers, and any official or unofficial creditors' or equity holders' committee and the fees and expenses of the post-petition lenders or the pre-petition lenders incurred or owed in connection with the administration of the Chapter 11 Cases); (ii) all costs and expenses of Sellers incurred in connection with the negotiation, execution and consummation of the transactions contemplated under this Agreement; and (iii) all costs and expenses arising out of or related to any third party claims against Sellers, pending or threatened, including any warranty or product claims; provided, however, that nothing in this subsection (p)

shall alter or modify the obligations of the Prepetition Secured Lender(s) under the Prepetition Credit Agreements or of the DIP Lender(s) under the DIP Credit Agreement;

- (q) any and all Liabilities set forth on **Schedule 2.4(q)**;
- (r) any and all Liabilities with respect to change or control or similar arrangements with any officer, employee or contractor of any Seller;
- (s) any and all Liabilities arising out of, relating to or otherwise in respect of any violation of Law by, or any Action against, any Seller or any breach, default or violation by any Seller of or under any Assigned Contracts occurring prior to the Closing, other than the Cure Amount;
- (t) any Liabilities of Sellers not in the Ordinary Course of Business arising in the Chapter 11 Cases;
- (u) any and all Liabilities of Sellers under this Agreement;
- (v) any and all Liabilities of Sellers resulting from the failure to comply with any applicable "bulk sales," "bulk transfer" or similar Law;
- (w) except as set forth on **Schedule 2.4(w)**, any and all Liabilities to any broker, finder or financial advisor for Sellers in connection with the transactions contemplated by this Agreement;
- (x) any and all Liabilities for any Tax or Taxes arising out of or relating to the operation of the Business (as currently or formerly conducted) or the ownership of the Acquired Assets for any Pre-Closing Tax Period, including any and all property Taxes with respect to any Pre-Closing Tax Period;
- (y) any Liability for any Tax or Taxes of Sellers or their Affiliates for any taxable period;
- (z) any Liability for any withholding Tax or Taxes imposed as a result of the transactions contemplated by this Agreement; and
- (aa) any and all Liabilities arising under Section 6.9(b).

2.5 Post-Closing Liabilities. Except as provided in Section 2.4, Purchaser acknowledges that Purchaser shall be responsible for all Liabilities and obligations relating to Purchaser's ownership or use of, or right to use, the Acquired Assets and the Assumed Liabilities after the Closing Date, including all Taxes arising out of or related to the Acquired Assets or the operation or conduct of the Business acquired pursuant to this Agreement for all Tax periods beginning on the day after the Closing Date.

2.6 Assumption/Rejection of Certain Contracts.

- (a) Assignment and Assumption at Closing.

(i) **Schedule 2.6(a)** sets forth a list of all executory Contracts (including all Leases) to which any Seller is party as of the Initial Date. **Schedule 2.6(a)** shall set forth with respect to each Contract listed therein Sellers' good-faith estimate of the Cure Amount as of the Initial Date. Until two (2) Business Days prior to Closing, Sellers shall make such deletions to **Schedule 2.6(a)** as Purchaser shall, in its sole discretion, request in writing. Any such deleted Contract shall be deemed to no longer be an Assigned Contract. All Contracts of Sellers that are not listed on **Schedule 2.6(a)** as of the Closing Date shall not be considered an Assigned Contract or Acquired Asset and shall be deemed "Rejected Contracts."

(ii) Sellers shall take all actions required to assume and assign the Assigned Contracts to Purchaser (other than payment of the Cure Amount, which Cure Amount constitutes an Assumed Liability), including taking all actions required to facilitate any negotiations with the counterparties to such Assigned Contracts and to obtain an Order containing a finding that the proposed assumption and assignment of the Assigned Contracts to Purchaser satisfies all applicable requirements of Section 365 of the Bankruptcy Code. Prior to the Sale Hearing, Sellers shall commence appropriate proceedings before the Bankruptcy Court and otherwise take all reasonably necessary actions in order to determine the Cure Amount with respect to any Assigned Contract entered into prior to the Petition Date, including the right to negotiate in good faith and litigate, if necessary, with any Contract counterparty the Cure Amount needed to cure all monetary defaults under such Assigned Contract.

(iii) At Closing, (x) Sellers shall, pursuant to the Sale Order and the Assignment and Assumption Agreement or the Assignment and Assumption of Leases, as applicable, assume and assign to Purchaser (the consideration for which is included in the Purchase Price) each of the Assigned Contracts that is capable of being assumed and assigned, and (y) Purchaser shall pay promptly the Cure Amount (if any), in connection with such assumption and assignment (as agreed to among the various counterparties, Purchaser and Sellers, or as determined by the Bankruptcy Court) and assume and perform and discharge the Assumed Liabilities (if any) under the Assigned Contracts, pursuant to the Assignment and Assumption Agreement or the Assignment and Assumption of Leases, as applicable.

(iv) Purchaser may request, in its reasonable business judgment, certain modifications and amendments to any Contract as a condition to such Contract becoming an Assigned Contract, and Sellers shall use commercially reasonable efforts to obtain such modifications or amendments. If Sellers are unable to obtain such modifications or amendments, Purchaser may, in its sole discretion, designate the Contract as a Rejected Contract.

(b) Previously Omitted Contracts.

(i) If prior to Closing, (A) it is discovered that a Contract should have been listed on **Schedule 2.6(a)** but was not listed on **Schedule 2.6(a)**, (B) a Contract is entered into after the Initial Date that would have been listed on **Schedule 2.6(a)** if any Seller had entered into such Contract on or before the Initial Date or (C) if Purchaser

desires in its sole discretion to acquire any Contract to which any Seller is party (including any Rejected Contract prior to the entry by the Bankruptcy Court of an order with respect thereto) (any such Contract, a "Previously Omitted Contract"), Sellers shall, promptly following the discovery thereof or receipt of notice from Purchaser of its desire to acquire any such Contract (but in no event later than two (2) Business Days following the discovery thereof or receipt of such notice), notify Purchaser in writing of such Previously Omitted Contract and any Cure Amount for such Previously Omitted Contract. Purchaser shall thereafter deliver written notice to Sellers, no later than five (5) Business Days following notification of such Previously Omitted Contract from Sellers, designating such Previously Omitted Contract as "Assumed" or "Rejected" (a "Previously Omitted Contract Designation"). A Previously Omitted Contract designated in accordance with this Section 2.6(b)(i) as "Rejected," or with respect to which Purchaser fails to timely deliver a Previously Omitted Contract Designation, shall be a Rejected Contract.

(ii) If Purchaser designates a Previously Omitted Contract as "Assumed" in accordance with Section 2.6(b)(i), (i) **Schedule 2.6(a)** shall be amended to include such Previously Omitted Contract and (ii) Sellers shall serve a notice (the "Previously Omitted Contract Notice") on the counterparties to such Previously Omitted Contract notifying such counterparties of the Cure Amount with respect to such Previously Omitted Contract and Sellers' intention to assume and assign such Previously Omitted Contract in accordance with this Section 2.6. The Previously Omitted Contract Notice shall provide the counterparties to such Previously Omitted Contract with seven (7) days to object, in writing to Sellers and Purchaser, to the Cure Amount or the assumption of its Contract. If the counterparties, Sellers and Purchaser are unable to reach a consensual resolution with respect to the objection, Sellers will seek an expedited hearing before Bankruptcy Court to determine the Cure Amount required to be paid (to the extent disputed) and approve the assumption. If no objection is timely served on Sellers and Purchaser, Sellers shall obtain an order of the Bankruptcy Court fixing the Cure Amount at the amount set forth in the Previously Omitted Contract Notice and approving the assumption of the Previously Omitted Contract.

(c) Post-Petition Contracts. **Schedule 2.6(c)** sets forth a list of all Contracts to which to Sellers' Knowledge, any Seller is party and which were entered into following the Petition Date. Such Contracts shall be subject to assignment in accordance with the procedures set forth in this Section 2.6.

2.7 Disclaimer. PURCHASER HEREBY ACKNOWLEDGES AND AGREES THAT, EXCEPT AS PROVIDED IN THIS AGREEMENT OR ANY CERTIFICATE DELIVERED HEREUNDER, SELLERS MAKE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER RELATING TO THE ACQUIRED ASSETS. WITHOUT LIMITING THE FOREGOING, PURCHASER AND SELLERS HEREBY DISCLAIM ANY WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AS TO ANY PORTION OF THE ACQUIRED ASSETS. PURCHASER FURTHER ACKNOWLEDGES THAT PURCHASER HAS CONDUCTED AN INDEPENDENT INVESTIGATION OF THE CONDITION OF THE ACQUIRED

ASSETS AND ALL SUCH OTHER MATTERS RELATING TO OR AFFECTING THE ACQUIRED ASSETS AS PURCHASER DEEMED NECESSARY OR APPROPRIATE AND THAT IN PROCEEDING WITH ITS ACQUISITION OF THE ACQUIRED ASSETS, EXCEPT FOR ANY REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT OR ANY CERTIFICATE DELIVERED HEREUNDER, PURCHASER IS DOING SO BASED SOLELY UPON SUCH INDEPENDENT INSPECTIONS AND INVESTIGATIONS.

ARTICLE III

PURCHASE PRICE AND PAYMENT

3.1 Purchase Price.

(a) Subject to the terms and conditions of this Agreement, in consideration of the sale of the Acquired Assets pursuant to the terms hereof, Purchaser shall (i) credit the amount of principal due under the Loans (as defined in clause (a) of the definition of Prepetition Credit Agreements) due under the Prepetition Credit Agreements, pursuant to a credit bid in the amount of one hundred and seventy five million Dollars (\$175,000,000) by Purchaser, in its capacity as Prepetition Secured Lender and (ii) credit an amount up to the amount outstanding under the DIP Facility at Closing, pursuant to a credit bid by Purchaser in its capacity as DIP Lender; provided, that the portion of the Loans that is not credit bid as part of the Purchase Price shall remain a Claim in the Chapter 11 Cases, (iii) assume from Sellers and become obligated to pay, perform and discharge, when due, the Assumed Liabilities, (iv) pay to Sellers an amount of cash equal to the amount outstanding under the DIP Facility at Closing (after taking into account any credit bid) (the "Cash Component") (such Cash Component to be decreased dollar for dollar to the extent any amount of the DIP Facility is credit bid) and (v) a cash payment to Orchids of five hundred thousand Dollars (\$500,000) at the Closing (the "Wind-Down Payment"), which shall be deposited into a segregated Orchids bank account (the "Wind-Down Account") for distribution therefrom solely in accordance with Section 6.20, ((i), (ii), (iii), (iv), and (v) collectively, the "Purchase Price").

(b) To the extent any of the Cash Component of the Purchase Price will be paid to a Prepetition Secured Lender under the Prepetition Credit Agreements or a DIP Lender under the DIP Credit Agreement, Purchaser may deduct from the Cash Component of the Purchase Price and be deemed as having paid to Sellers such amount as otherwise would have been distributed in cash to the Prepetition Secured Lender(s) and/or under the DIP Lender(s), and the respective Loans and Claims held by the Prepetition Secured Lender(s) and the DIP Lender(s) shall be reduced dollar-for-dollar on account of the Cash Component each such lender is deemed to have received. In the event of a dispute over the obligations owed to a Prepetition Secured Lender under the Prepetition Credit Agreements or a DIP Lender under the DIP Credit Agreement, Purchaser shall have no obligation to otherwise fund the Cash Component of the Purchase Price with cash relating to such amount that would be paid on account thereof until final resolution of any and all disputes over such obligations owed to such lender under the Prepetition Credit Agreements or the DIP Credit Agreement, as applicable.

(c) Any Cash Component of the Purchase Price or other payment required to be made pursuant to any other provision hereof shall be made in cash by wire transfer of immediately available funds to such bank account as shall be designated in writing by the applicable Party at least two (2) Business Days prior to the date such payment is to be made.

3.2 Further Assurances. From time to time after the Closing and without further consideration, (a) Sellers, upon the request of Purchaser and at Sellers' expense, shall execute and deliver such documents and instruments of conveyance and transfer as Purchaser may reasonably request in order to consummate more effectively the purchase and sale of the Acquired Assets as contemplated hereby and to vest in Purchaser title to the Acquired Assets transferred hereunder, provided that (i) Sellers shall not be required to execute or deliver any document or instrument pursuant to this Section 3.2 which includes any provision(s) which impose(s) obligations upon Sellers which are greater than those imposed upon Sellers under the other provisions of this Agreement or the documents executed pursuant hereto and (ii) in no event shall Sellers be required to incur any material cost or expense in the performance of its obligations under this Section 3.2 (it being understood that Purchaser shall in any event be entitled to require Sellers to take such action as Sellers would otherwise be required to take pursuant to this Section 3.2 but for the cost thereof by providing to Sellers the amount Sellers reasonably anticipate incurring in excess of immaterial costs and expenses of taking such action), and (b) Purchaser, upon the request of Sellers and at Purchaser's expense, shall execute and deliver such documents and instruments of assumption as Sellers may reasonably request in order to confirm Purchaser's liability for the obligations under the Assumed Liabilities or otherwise more fully consummate the transactions contemplated by this Agreement; provided that (i) Purchaser shall not be required to execute or deliver any document or instrument pursuant to this Section 3.2 which includes any provision(s) which impose(s) obligations upon Purchaser which are greater than those imposed upon Purchaser under the other provisions of this Agreement or the documents executed pursuant hereto, and (ii) in no event shall Purchaser be required to incur any material cost or expense in the performance of its obligations under this Section 3.2 (it being understood that notwithstanding the foregoing, Sellers shall in any event be entitled to require Purchaser to take such action as Purchaser would otherwise be required to take pursuant to this Section 3.2 but for the cost thereof by providing to Purchaser the amounts Purchaser reasonably anticipates incurring in excess of immaterial costs and expenses in taking the action).

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF SELLERS

Sellers represent and warrant to Purchaser as of the Initial Date and the Closing Date, as follows:

4.1 Due Incorporation; Good Standing. Each Seller is a corporation or limited liability company duly incorporated under the laws of the State of Delaware, and is in good standing thereunder as of the Initial Date and the Closing. Subject to the Bankruptcy Code, each Seller has full power and authority to own, use and lease its properties and to conduct its Business as such properties are owned, used or leased and as such Business is currently conducted. Each Seller has previously delivered to Purchaser true, complete and correct copies of its Organizational

Documents, as amended and in effect on the Initial Date. Each Seller is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction where the character of the Business or the nature of its properties makes such qualification or licensing necessary, except for such failures to be so qualified or licensed or in good standing as would not, individually or in the aggregate, be material to the conduct of the Business.

4.2 Authority; No Violation. Subject to the entry of the Bid Procedures Order and Sale Order, each Seller has all requisite corporate or limited liability company power and authority, as applicable, to enter into this Agreement and to carry out the transactions contemplated hereby, and the execution, delivery and performance of this Agreement by each Seller shall be duly and validly authorized and approved by all necessary corporate or limited liability company action, as applicable. Subject to the approval and entry of the Sale Order by the Bankruptcy Court (and assuming the due authorization, execution and delivery by the other Parties hereto), this Agreement shall constitute the legal and binding obligation of each Seller, enforceable against each Seller in accordance with its terms, except that the enforceability hereof may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar Laws now or hereafter in effect relating to creditors' rights generally and that the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding may be brought. Subject to the approval and entry of the Sale Order by the Bankruptcy Court, the entering into of this Agreement, and the consummation by Sellers of the transactions contemplated hereby, will not (a) violate the provisions of any applicable federal, state or local Laws or (b) violate any provision of Sellers' Organizational Documents violate any provision of, or result in a default or acceleration of any obligation under, or result in any change in the rights or obligations of any Seller under, any Lien, contract, agreement, license, lease, instrument, indenture, order, arbitration award, judgment, or decree to which any Seller is a party or by which it is bound, or to which any property of any Seller is subject that will not otherwise be stayed or discharged upon entry of the Sale Order by the Bankruptcy Court or otherwise pursuant to the Chapter 11 Cases.

4.3 Consents.

(a) Except as set forth on **Schedule 4.3(a)**, the execution, delivery and performance by Sellers of this Agreement or any Ancillary Document to which it is a party, the compliance by Sellers with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby and the taking by Sellers of any other action contemplated hereby or thereby, do not and will not (with or without notice or the passage of time): (i) contravene, violate or conflict with any term or provision of Sellers' Organizational Documents; (ii) violate any material Law applicable to Sellers or any of their Subsidiaries or by which any property or asset of Sellers or any of their Subsidiaries is bound; or (iii) result in any breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a default) under, create in any party thereto the right to terminate or cancel, or require any consent under, or result in the creation or imposition of any Encumbrance (other than a Permitted Encumbrance) on any property or asset of Sellers or any of its Subsidiaries under any Permit, Lease or Material Contract, except in each case described in this clause (iii) to the extent that any such breach, default, right or requirement would be cured and the applicable Permit,

Lease or Material Contract would be assignable upon payment of the applicable cure amount hereunder.

(b) Except (i) for the entry of the Bid Procedures Order and Sale Order, (ii) for compliance as may be required with the HSR Act or the Mexican Antitrust Act, and (iii) as set forth on **Schedule 4.3(b)**, no filing with, notice to or consent from any Person is required in connection with the execution, delivery and performance by Sellers of this Agreement or the Ancillary Documents to which it is a party, the compliance by Sellers with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby, or the taking by any Seller of any other action contemplated hereby or thereby, other than such filings, notices or consents, the failure of which to make or obtain would not, individually or in the aggregate, reasonably be expected to be material to the Acquired Assets, the Assumed Liabilities or the Business.

4.4 Brokers and Finders. Except as set forth on **Schedule 4.4**, no Person has acted, directly or indirectly, as a broker, finder or financial advisor for Sellers in connection with the transactions contemplated by this Agreement and Purchaser is not and will not become obligated to pay any fee or commission or like payment to any broker, finder or financial advisor as a result of the consummation of the transactions contemplated by this Agreement based upon any arrangement made by or on behalf of Sellers.

4.5 Title to Acquired Assets. Subject to Permitted Encumbrances, Sellers have good and valid title to (or with respect to the Leased Real Property and the personal property subject to the Personal Property Leases, valid leasehold interests in) the Acquired Assets and, at the Closing, Purchaser, pursuant to the Sale Order, shall acquire good and marketable title to, and under all of such Acquired Assets, in each case, free and clear of all Encumbrances. The Acquired Assets include all of the properties and assets required to operate the Business in the Ordinary Course of Business. For the sake of clarity, the right to use any assets included in the Acquired Assets in which Sellers have leasehold or non-ownership rights to use shall be assigned to Purchaser through the assumption and assignment of the Assigned Contracts (or assignment and assumption of Assumed Leased Real Property) in accordance with and subject to this Agreement.

4.6 Real Property.

(a) **Schedule 4.6(a)** contains a list and brief description of all Leased Real Property and of all leases, subleases or similar use or occupancy agreements with respect to such Leased Real Property, together with all amendments thereto and all related guaranties (individually, a "Lease" and collectively, the "Leases"). Sellers have made available to Purchaser true and complete copies of each of the Leases. Other than as set forth on **Schedule 4.6(a)**, Sellers are not, and to Sellers' Knowledge no other party to a Lease is, in breach of any material term or in "default" under any Lease and no party to any Lease has given Sellers written notice of or made a claim with respect to any breach or default thereunder. There are no conditions that currently exist or, with the giving of notice or passage of time, will (i) result in a default or breach of any material term by any Sellers, or to Sellers' Knowledge, any other party, under a Lease or (ii) give rise to the right of the lessor under any Lease to accelerate the obligations thereunder or modify the terms thereof. Other than as noted on **Schedule 4.6(a)**, none of the

Leased Real Property is subject to any sublease or grant to any Person by Sellers of any right to the use, occupancy or enjoyment of the Leased Real Property or any portion thereof. To Sellers' Knowledge, the Leased Real Property is not subject to any Encumbrances other than Permitted Encumbrances. To Sellers' Knowledge, the Leased Real Property is not subject to any use restrictions, exceptions, reservations or limitations which in any material respect interfere with or impair the present and continued use thereof in the Ordinary Course of Business. To Sellers' Knowledge, there are no pending or threatened condemnation proceedings or other Actions relating to any of the Leased Real Property. The Leases with respect to the Assumed Leased Real Property are, and after Closing will continue to be, legal, valid, binding, and enforceable on Sellers and in full force and effect on the same material terms as immediately prior to the consummation of the transactions contemplated hereby.

(b) **Schedule 4.6(b)** sets forth a true, correct and complete list of all real property owned by any Seller which is related to, used, useful or held for use in the conduct of the Business (the "Owned Real Property" and together with the Leased Real Property, the "Real Property"), specifying the street address, the current owner and the current use of each parcel of Owned Real Property. Sellers have good and marketable title to the Owned Real Property, subject only to Permitted Encumbrances. Other than as noted on **Schedule 4.6(b)**, none of the Owned Real Property is subject to any lease or grant to any Person of any right to the use, purchase, occupancy or enjoyment of such Owned Real Property or any portion thereof. Except for Permitted Encumbrances, the Owned Real Property is not subject to any Encumbrances or to any use restrictions, exceptions, reservations or limitations, which in any material respect interfere with or impair the present and continued use thereof in the Ordinary Course of Business and in the same manner after the Closing as conducted by Sellers prior to Closing. Except as set forth on **Schedule 4.6(b)**, there are no pending or, to Sellers' Knowledge, threatened (i) condemnation proceedings or other Actions relating to any of the Owned Real Property, (ii) Actions to change the zoning classification of any portion of the Real Property or (iii) impositions by any Governmental Body of any special assessments affecting the Real Property. Except as set forth on **Schedule 4.6(b)**, the present uses of the Real Property by Sellers are in compliance, in all material respects, with all building, zoning, land use, public health, public safety, sewage, water, sanitation or other comparable Laws.

(c) The Real Property is all of the real property that required to operate the Business in the Ordinary Course of Business.

4.7 Tangible Personal Property. **Schedule 4.7** sets forth all leases of personal property ("Personal Property Leases") relating to personal property used by Sellers or to which any Seller is a party or by which the properties or assets of any Seller are bound, in each case, relating to the Business. Sellers have a good and valid title to, or a valid and enforceable leasehold interest in (under each such Personal Property Lease under which it is a lessee), all personal property used by Sellers relating to the Business, in each case, free and clear of all Encumbrances other than Permitted Encumbrances.

4.8 Intellectual Property. **Schedule 4.8(a)** sets forth an accurate and complete list of all registered and applied-for Intellectual Property owned by Sellers and used or held for use in the Business (the "Purchased Intellectual Property"). Sellers own all right, title and interest to the Purchased Intellectual Property, and, at Closing, will convey the Purchased Intellectual Property

to Purchaser free and clear of Encumbrances pursuant to the Sale Order. To Sellers' Knowledge, (i) no Person is engaging in any activity that infringes, dilutes, misappropriates or violates any Purchased Intellectual Property and (ii) no claim has been asserted to any Seller that the use of any Purchased Intellectual Property or the operation of the Business infringes, dilutes, misappropriates or violates the Intellectual Property of any third party. The Purchased Intellectual Property and the rights under the Assigned Contracts include the rights to use all Intellectual Property required to operate the Business as currently conducted.

4.9 Litigation. Except as set forth on **Schedule 4.9** and other than in connection with the Chapter 11 Cases, there is no Action, including appeals and applications for review, in progress, pending or, to Sellers' Knowledge, threatened against or relating to any Seller, the Acquired Assets, the Assumed Liabilities or the Business or judgment, decree, injunction, deficiency, rule or order of any court, governmental department, commission, agency, instrumentality or arbitrator which, in any case, might adversely affect the ability of any Seller to enter into this Agreement or to consummate the transactions contemplated hereby or otherwise would, individually or in the aggregate, reasonably be expected to be material to the Acquired Assets, the Assumed Liabilities or the Business, and, to Sellers' Knowledge, there is no existing ground on which any such Action may be commenced with any reasonable likelihood of success.

4.10 Permits; Compliance with Laws.

(a) Except as set forth on **Schedule 4.10(a)**, Sellers and their Subsidiaries are, and have been during the past three (3) years, in compliance in all material respects with the terms of, and, to the extent applicable, have filed timely applications to renew, all material Permits used by Sellers in the Business (including all Permits that are necessary in connection with Sellers' occupancy, ownership or leasing of the Real Property), all of which are set forth on **Schedule 2.1(n)**, and all such Permits are valid and in full force and effect, and no Action is pending or, to Sellers' Knowledge, threatened, which seeks to revoke, limit or otherwise affect any such Permit.

(b) Except as set forth on **Schedule 4.10(b)**, to Sellers' Knowledge, Sellers and their Subsidiaries are, and have been during the past three (3) years, in compliance, in all material respects, with all applicable Laws and during the past three (3) years neither Sellers nor any of their Subsidiaries has received any written notice of any Action against it alleging any failure to comply in any material respect with any such Laws. No investigation by any Governmental Body with respect to Sellers or any of its Subsidiaries is pending or, to Sellers' Knowledge, threatened, and during the past three (3) years neither Sellers nor any of their Subsidiaries has received any written notice of any such investigation, except, in each case, for any such investigation that would not reasonably be expected to be material to the Acquired Assets, the Assumed Liabilities or the Business.

4.11 Inventory.

(a) No Inventory is materially damaged in any significant way, except for any such damage which would not, individually or in the aggregate, reasonably be expected to be material to the Acquired Assets, the Assumed Liabilities or the Business.

- (b) The Inventory is not part of a current or past recall.
- (c) Sellers do not hold any Inventory on consignment.

(d) The consolidated inventory of Sellers set forth in the Financial Statements was stated therein in accordance with GAAP applied on a consistent basis throughout the periods indicated therein (except as may be indicated in the notes thereto) and presents fairly, in all material respects, the consolidated inventory as of the respective dates thereof.

4.12 Contracts.

(a) **Schedule 4.12(a)** sets forth each of the following Contracts to which any Seller or their Subsidiaries is party or is otherwise bound (each, a "Material Contract" and, collectively, the "Material Contracts") and except as set forth on **Schedule 4.12(a)**, the Assigned Contracts include all of the Contracts material to the ownership and/or operation of the Business:

- (i) collective bargaining agreement or Contract with any labor union;
- (ii) Contract for the employment of any officer, individual employee or other person on a full-time or consulting basis providing for base compensation in excess of \$80,000 per annum that is not terminable by a Seller or such Subsidiary upon notice of sixty (60) days or less for a cost of \$20,000 or less;
- (iii) Contract under which Sellers or any of their Subsidiaries is party to a capitalized lease, has borrowed any money or issued any note, indenture or other evidence of similar Indebtedness or guaranteed such indebtedness of others, in each case, having an outstanding principal amount in excess of \$100,000;
- (iv) capitalized lease, operating lease or other lease or Contract under which Sellers or any of their Subsidiaries is lessee of, or holds or operates any personal property owned by any third party, for which the annual rental exceeds \$100,000 that is not terminable by Sellers or such Subsidiary upon notice of sixty (60) days or less for a cost of \$100,000 or less;
- (v) lease or other Contract under which Sellers or any of their Subsidiaries is lessor of or permits any third party to hold or operate any property, real or personal, for which the annual rental exceeds \$200,000 that is not terminable by Sellers or such Subsidiary upon notice of sixty (60) days or less for a cost of \$200,000 or less;
- (vi) Contract or group of related Contracts with the same party for the purchase of products or services, in either case, under which the aggregate undelivered balance of such products and services has a selling price in excess of \$200,000 and which is not terminable by Sellers or such Subsidiary upon notice of sixty (60) days or less for a cost of \$200,000 or less;
- (vii) Contract that materially prohibits or restricts Sellers or any of their Subsidiaries from freely engaging in business anywhere in the world;

(viii) Contract relating to any acquisition or disposition by Sellers of any business (whether by asset or stock purchase or otherwise) or any merger, consolidation or similar business combination transaction;

(ix) Contract that involves any take-or-pay or requirements arrangement;

(x) Contract relating to any joint venture, partnership or strategic alliance;

(xi) Contract that provides for the indemnification of any Person or the assumption of any Tax, environmental or other Liability of any Person;

(xii) Contract with any Governmental Body;

(xiii) Contract that can be terminated or modified based on a change of control provision or any similar provision as a result of the consummation of the transactions contemplated by this Agreement;

(xiv) Contract with any Material Customer or Material Supplier;

(xv) power of attorney with respect to the Business or any Acquired Asset; or

(xvi) Contract in writing to enter into any of the foregoing.

(b) Each Material Contract is a valid and binding obligation of Sellers or their Subsidiaries and, to Sellers' Knowledge, the other parties thereto, enforceable against each of them in accordance with its terms, except, in each case, as such enforceability may be limited by applicable bankruptcy, insolvency or other similar Laws affecting or relating to enforcement of credit rights generally or general principles of equity. Sellers and their Subsidiaries have not, and, to Sellers' Knowledge, no other party to any Material Contract has, commenced any Action against any of the parties to any Material Contract or given or received any written notice of any default or violation under any Material Contract that has not been withdrawn or dismissed except to the extent any such default or violation will be cured or dismissed as a result of the entry of the Sale Order and the payment of the applicable Cure Amount.

4.13 Tax Returns; Taxes. Sellers and each Subsidiary of any Seller have filed all Tax Returns that they were required to file. All such Tax Returns were, when filed, correct and complete in all material respects. All Taxes due and payable by Sellers currently have been paid (whether or not shown on any Tax Return). No claim has been made by an authority in a jurisdiction where Sellers or any Subsidiary of any Seller do not file Tax Returns that any Seller or any Subsidiary of any Seller is or may be subject to the imposition of any Tax by that jurisdiction. Sellers and each Subsidiary of Sellers have withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, consultant, independent contractor, creditor, shareholder, or other third party. There are no disputes or Claims concerning any liability for Taxes to Sellers' Knowledge. Sellers and each

Subsidiary of Sellers have not waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a tax assessment or deficiency.

4.14 Employees; Sellers Benefit Plans. Except as set forth on **Schedule 4.14**,

(a) Sellers have provided Purchaser with a true, complete and correct list of the Employees as of the Initial Date and as of the Effective Date, specifying for each his or her employing entity, location, job title/position, salary or wage rate, exempt or non-exempt status, full-time or part-time status, active or inactive status, temporary or permanent status and date of hire (the "Employee Census"). For any Employee who requires a visa to work in the United States, the list further specifies the visa category, visa expiration date, work authorization expiration date and total duration of time in the visa category.

(b) Sellers are in compliance in all material respects with all Laws respecting employment and employment practices including, without limitation, all Laws respecting terms and conditions of employment, health and safety, wages and hours, classification, termination of employment, child labor, immigration, employment discrimination, disability rights or benefits, equal opportunity, plant closures and layoffs, affirmative action, workers' compensation, labor relations, employee leave issues and unemployment insurance.

(c) there are no material Claims pending or, to Sellers' Knowledge, threatened, against Sellers by, with respect to or relating to any Employee or any former employee, contingent worker, current or former service provider or job applicant of Sellers.

(d) Set forth on **Schedule 4.14(d)** is a true, correct and complete list of each Benefit Plan. As applicable with respect to each Benefit Plan (including each non-U.S. Benefit Plan), Sellers have delivered to Purchaser true and complete copies of (i) the most recent plan document, including all amendments thereto, and in the case of an unwritten plan, a written description thereof, (ii) all current trust documents, investment management contracts, custodial agreements and insurance contracts and other funding vehicles relating thereto, (iii) the current summary plan description and each summary of material modifications thereto, (iv) the most recently filed annual report (Form 5500 and all schedules thereto), (v) the most recent IRS determination or opinion letter (vi) the most recent summary annual report, actuarial report, financial statement and trustee report and (vii) any material correspondence with a Governmental Body.

(e) each Benefit Plan has been maintained, operated and administered in compliance in all material respects with its terms and any related documents or agreements and the applicable provisions of ERISA, the Code and all other Laws.

(f) each Benefit Plan which is an "employee pension benefit plan" within the meaning of Section 3(2) of ERISA (each, a "Pension Plan") and which is intended to meet the qualification requirements of Section 401(a) of the Code has received a favorable determination letter or is the subject of a favorable opinion letter from the IRS to the effect that such Benefit Plan is qualified and exempt from federal income taxes under Sections 401(a) and 501(a) of the Code, respectively, and there are no facts or circumstances that would reasonably be expected to adversely affect the qualification of such Benefit Plan.

(g) during the previous six (6) years, none of Sellers or any of their respective ERISA Affiliates has adopted, maintained, sponsored, contributed to (or has been required to adopt, maintain sponsor or contribute to), or has any Liability with respect to any (i) "multiemployer plan" (within the meaning of Section 3(37) of ERISA); (ii) employee benefit plan or arrangement subject to Title IV or Section 302 of ERISA, (iii) "multiple employer plan" (within the meaning of Section 210 of ERISA or Section 413(c) of the Code) or (iv) "defined benefit plan" (within the meaning of Section 3(35) of ERISA).

(h) no Benefit Plan provides any health or other welfare benefits to any current or former employee of Sellers other than health continuation coverage required to be provided under COBRA.

(i) there are no pending audits or investigations by any Governmental Body involving any Benefit Plan, and no pending or, to Sellers' Knowledge, threatened claims (except for individual claims for benefits payable in the normal operation of the Benefit Plans (including any Benefit Plans primarily covering current and former employees located outside of the United States)), Actions involving any Benefit Plan, any fiduciary thereof or service provider thereto, nor to Sellers' Knowledge is there any reasonable basis for any such Action.

(j) each Benefit Plan that constitutes a "non-qualified deferred compensation plan" within the meaning of Section 409A of the Code, complies in both form and operation with the requirements of Section 409A of the Code so that no amounts paid pursuant to any such Benefit Plan is subject to Tax under Section 409A of the Code.

(k) neither the execution nor delivery of this Agreement nor the consummation of the transactions contemplated under this Agreement (either alone or in combination with another event) will (i) entitle any current Employee to any material payment or benefit, (ii) increase the amount or value of any compensation, benefit or other obligation payable or required to be provided to any Employee, (iii) accelerate the time of payment or vesting of amounts due any such Employee or accelerate the time of any funding (whether to a trust or otherwise) of compensation or benefits under any Benefit Plan, or (iv) result in the payment of any amounts that would not be deductible for federal income tax purposes by reason of Code Section 280G or would be subject to excise tax under Code Section 4999. No Benefit Plan provides for the reimbursement of any penalty or excise tax under Section 409A or 4999 of the Code.

(l) the employment of each Employee of Sellers is at will. **Schedule 4.14** sets forth a true, complete and correct list of all material written (and includes a summary of all legally binding oral) employment and consulting agreements to which any Seller is a party or by which it is bound. True, complete and correct copies of the agreements or arrangements listed and summarized on **Schedule 4.14** have been provided or made available to Purchaser, together with all amendments thereto.

(m) Sellers are not and have not been: (i) a "contractor" or "subcontractor" (as defined by Executive Order 11246), (ii) required to comply with Executive Order 11246 or any other applicable Law requiring affirmative action or other employment related actions for

government contractors or subcontractors, or (iii) otherwise required to maintain an affirmative action plan.

(n) To Sellers' Knowledge, the manufacturers, contractors and subcontractors engaged in the manufacturing of products for the Business ("Manufacturers") are in material compliance with all applicable Laws respecting employment and employment practices. To Sellers' Knowledge, no Manufacturer has engaged in the utilization of forced labor, prison labor, convict labor, indentured labor, child labor, corporal punishment or other forms of mental or physical coercion in connection with the manufacture of the products for the Business.

(o) Each individual who is currently providing services to any Seller through a third party service provider, or who during the previous three (3) years provided services to any Seller through a third party service provider, is not or was not an employee of any Seller. No Seller has a single employer, joint employer, alter ego or similar relationship with any other company except for the other Sellers and their respective Subsidiaries.

(p) Sellers are not party to any settlement agreement with a current or former officer, employee or independent contractor of Sellers that involves allegations relating to sexual harassment by any officer or employee of any Sellers. In the last five (5) years, no allegations of sexual harassment have been made against any officer or employee of any Seller.

4.15 Labor Matters.

(a) Other than as set forth on **Schedule 4.15(a)**, (i) Sellers are not a party to or bound by any labor agreement, collective bargaining agreement or any other labor-related agreement or arrangement with any labor union or organization with respect to the Employees, (ii) no Employee is represented by any labor union or organization with respect to his or her employment with any Seller, (iii) no labor union, labor organization or group of Employees has made a pending demand for recognition or request for certification and there have not been any such demands or requests in the last three (3) years, (iv) there are no representation or certification proceedings or petitions seeking a representation election presently pending or, to Sellers' Knowledge, threatened to be brought or filed, with the National Labor Relations Board and there have not been any such proceedings in the last three (3) years, and (v) to Sellers' Knowledge there have been no labor union organizing activities with respect to any Employee.

(b) Except as set forth on **Schedule 4.15(b)**, from January 1, 2017, there has been no actual or, to Sellers' Knowledge, threatened unfair labor practice charges, material grievances, material arbitrations, strikes, lockouts, work stoppages, slowdowns, picketing, hand billing or other labor disputes against or affecting any Seller.

(c) The execution of this Agreement and the consummation of the transactions contemplated by this Agreement will not result in any breach or other violation of any labor agreement, collective bargaining agreement or any other labor-related agreement or arrangement with any labor union or organization with respect to the Employees and to which any Seller is a party to or bound by.

4.16 Bank Accounts. **Schedule 4.16** sets forth a complete list of all bank accounts (including any deposit accounts, securities accounts and any sub-accounts) of Sellers.

4.17 Financial Statements; Undisclosed Liabilities. Sellers have delivered to Purchaser true, correct and complete copies of: (i) the audited consolidated balance sheet of Sellers and their respective Subsidiaries as of, and consolidated statements of comprehensive income (loss), cash flows, redeemable common stock, accumulated deficit and accumulated other comprehensive income for the fiscal year ended December 31, 2017; and (ii) the unaudited consolidated balance sheet of Sellers and their respective Subsidiaries as of, and consolidated statements of comprehensive income (loss), cash flows, redeemable common stock, accumulated deficit and accumulated other comprehensive income for, the nine (9) month periods ended on September 30, 2018 and September 30, 2017 (the September 30, 2018 unaudited consolidated balance sheet, the "Latest Balance Sheet" and, collectively with the other financial statements set forth in this Section 4.17, the "Financial Statements"). The Financial Statements have been prepared in accordance GAAP consistently applied in accordance with Sellers' past practice throughout the periods indicated and present fairly, in all material respects, the consolidated financial position of Sellers as of the respective dates thereof and for the periods indicated therein (subject to normal and recurring year-end adjustments and the absence of footnotes). Sellers and their Subsidiaries have no Liabilities with respect to the Business that would be required to be set forth in audited financial statements (including the notes thereto) prepared in accordance with GAAP, except (i) those which are adequately reflected or reserved against in the Financial Statements as of the date thereof, and (ii) those which have been incurred in the Ordinary Course of Business since the date of the Latest Balance Sheet and which are not, individually or in the aggregate, material in amount.

4.18 WARN Act. Sellers (a) are and have been in compliance with all notice and other requirements under the WARN Act and (b) have not, within the ninety (90) days immediately prior to the Closing Date, in whole or in part, taken any action or actions which would, independently of the transaction contemplated hereby, result in a plant closing or mass layoff, temporary or otherwise, within the meaning of the WARN Act.

4.19 Environmental Matters. **Schedule 2.1(n)** sets forth an accurate and complete list of all Permits required or issued under Environmental Law to operate the Business and the Acquired Assets. Except as set forth on **Schedule 4.19**, (a) with respect to the Business and the Acquired Assets, there is no pending or, to Sellers' Knowledge, threatened suit, verbal or written notice, investigation, claim, litigation, proceeding or other Action by any Governmental Body or any other Person that could reasonably be expected to result in any material Environmental Liabilities and Obligations, and Sellers are not subject to, or in default of, any Order applicable to the Business or the Acquired Assets and issued under or pursuant to any Environmental Law, (b) there has been no Release of Hazardous Materials in connection with the Business, or at, from, on or under the Acquired Owned Real Property or the Assumed Leased Real Property (including, in each case, all buildings, structures, fixtures and improvements erected thereon) that could reasonably be expected to result in any material Environmental Liabilities and Obligations, or require any material Remedial Action pursuant to any Environmental Law, (c) Sellers have obtained and are in material compliance with and, to the extent applicable, have filed timely applications to renew, all Permits that are required pursuant to any Environmental Law for the operation of the Acquired Assets and all such Permits are valid and in full force and effect, and no Action is pending or, to Sellers' Knowledge, threatened, which seeks to revoke, limit or otherwise affect any such Permit; (d) Sellers have no material financial assurance, escrow, bonding or similar obligation under or pursuant to any Environmental Law, and (e) Sellers have

delivered or made available to Purchaser copies of the following non-privileged records in Sellers' or their respective representatives' possession, custody or control: (i) all material Permits issued pursuant to any Environmental Law for the Business or the operation of the Acquired Assets and any pending applications for such Permits; (ii) all material documents with respect to any pending or threatened material claim, litigation, proceeding or other Action relating to or bearing on the Business or the Acquired Assets and arising under or relating to any Environmental Law, or with respect to any Environmental Liabilities and Obligations; and (iii) all material written environmental reports, audits and assessments (including Phase I environmental site assessment reports) for the Business, the Acquired Assets, Acquired Owned Real Property and Assumed Leased Real Property (including, in each case, all buildings, structures, fixtures and improvements erected thereon).

4.20 Absence of Changes. Except as set forth on **Schedule 4.20** or as reasonably necessary as a result of or in connection with the Chapter 11 Cases, since July 1, 2018, (a) there has not been or occurred any Material Adverse Effect and (b) Sellers have not taken any action that, if taken following the Initial Date, would have violated Section 6.1.

4.21 Compliance with Bankruptcy Laws. Subject to the entry of the Bid Procedures Order and Sale Order, Sellers have complied in all material respects with all requirements of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure in connection with obtaining approval of the sale of the Acquired Assets (including the assumption and assignment to the Purchaser of any Assigned Contracts) to the Purchaser pursuant to this Agreement.

4.22 Orchids SEC Documents. Orchids has filed with the SEC all material reports, schedules, forms, statements and other documents required to be filed by Orchids with the SEC pursuant to the Securities Act or the Exchange Act (together with any documents or information furnished by Orchids to the SEC on a voluntary basis on Current Reports on Form 8-K and any reports, schedules, forms, registration statements and other documents filed with the SEC subsequent to the Initial Date and prior to the Closing Date, collectively, the "Orchids SEC Documents"). As of their respective effective dates (in the case of Orchids SEC Documents that are registration statements filed pursuant to the requirements of the Securities Act) and as of their respective SEC filing dates (in the case of all other Orchids SEC Documents), the Orchids SEC Documents complied as to form in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, applicable to such Orchids SEC Documents. Each of the Orchids SEC Documents, as amended prior to the date of this Agreement, complied in all material respects with, to the extent in effect at the time of filing or furnishing, the requirements of the Securities Act and the Exchange Act applicable to such Orchids SEC Documents, and none of the Orchids SEC Documents when filed or furnished or, if amended prior to the date of this Agreement, as of the date of such amendment, contained any untrue statement of a material fact, omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, other than with respect to registration statements, in light of the circumstances under which they were made, not misleading. As of the Initial Date, there are no outstanding written comments from the SEC with respect to the Orchids SEC Documents.

4.23 Internal Controls. Orchids maintains a system of internal control over financial reporting (within the meaning of Rules 13a-15(f) and 15d-15(f) of the Exchange Act) sufficient to provide reasonable assurances regarding the reliability of financial reporting and the

preparation of financial statements for external purposes in accordance with GAAP. Orchids (i) maintains disclosure controls and procedures (within the meaning of Rules 13a-15(e) and 15d-15(e) of the Exchange Act) reasonably designed to ensure that all material information required to be disclosed by Orchids in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, including that information required to be disclosed by Orchids in the reports that it files and submits under the Exchange Act is accumulated and communicated to management of Orchids, as appropriate, to allow timely decisions regarding required disclosure, and (ii) has disclosed, based upon the most recent (prior to the date of this Agreement) evaluation by the chief executive officer and chief financial officer of Orchids of Orchids' internal control over financial reporting, to its auditors and the audit committee of Orchids' Board of Directors (A) all significant deficiencies and material weaknesses in the design or operation of Orchids' internal control over financial reporting which are reasonably likely to adversely affect in any material respect its ability to record, process, summarize and report financial information and data and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in Orchids' internal control over financial reporting.

4.24 Affiliate Transactions. Except as set forth in the Orchids SEC Documents filed in the last 18 months, no Affiliate of Sellers (other than any Seller or any of their Subsidiaries), or any officer or director of Sellers or any of its Subsidiaries (a) is a party to any Contract or transaction with Sellers or its Subsidiaries having a potential or actual value or a contingent or actual liability exceeding \$120,000, other than (i) loans and other extensions of credit to directors and officers of Sellers and their Subsidiaries for travel, business or relocation expenses or other employment-related purposes in the Ordinary Course of Business, (ii) employment arrangements in the Ordinary Course of Business and (iii) Sellers Benefit Plans, (b) has any interest in any Acquired Asset or (c) owns, directly or indirectly, any material interest in any Person that is, or is engaged in business as, a material supplier or customer of Sellers or any of their Subsidiaries.

4.25 Accounts Receivable. The Accounts Receivable reflected on the Latest Balance Sheet and the Accounts Receivable arising after the date thereof (a) have arisen from bona fide transactions entered into by Sellers and their Subsidiaries involving the sale of goods or the rendering of services in the Ordinary Course of Business; and (b) constitute only valid, undisputed claims of Sellers and their Subsidiaries not subject to claims of set-off or other defenses or counterclaims other than normal cash discounts accrued in the Ordinary Course of Business.

4.26 Customers and Suppliers.

(a) **Schedule 4.26(a)** sets forth with respect to the Business (i) the top twenty (20) customers by amount of aggregate consideration paid to Sellers for goods or services rendered for each of the two most recent fiscal years (collectively, the "Material Customers"); and (ii) the amount of consideration paid by each Material Customer during such periods. Except as set forth on **Schedule 4.26(a)**, Sellers have not received any written notice, or to Sellers' Knowledge, oral notice, and have no reason to believe, that any of the Material Customers has ceased, or intends to cease after the Closing, to use the goods or services of the Business or to otherwise terminate or materially reduce its relationship with the Business.

(b) **Schedule 4.26(b)** sets forth with respect to the Business (i) the top twenty (20) suppliers, contractors and/or vendors by amount of aggregate consideration Sellers have paid for goods or services rendered for each of the two most recent fiscal years (collectively, the "Material Suppliers"); and (ii) the amount of purchases from each Material Supplier during such periods. Except as set forth on **Schedule 4.26(b)**, Sellers have not received any written notice, or to Sellers' Knowledge, oral notice, and have no reason to believe, that any of the Material Suppliers has ceased, or intends to cease, to supply goods or services to the Business or to otherwise terminate or materially reduce its relationship with the Business.

4.27 Insurance. **Schedule 4.27** lists, as of the Initial Date, each material insurance policy, including each title insurance policy or commitment, maintained by or in the possession or control of Sellers and their Subsidiaries on their properties, assets, products, business or personnel and Sellers have delivered true, correct and complete copies of each policy to Purchaser. Each policy is legal, valid, binding, enforceable on Sellers or their Subsidiaries, as applicable, and in full force and effect, and all premiums with respect thereto covering all periods up to and including the Initial Date and the Closing Date have been paid, and no notice of cancellation, termination or denial of coverage for any claim has been received with respect to any such insurance policy, and none of Sellers or their Subsidiaries has received a notice of non-renewal from any of its insurers.

4.28 Equity Interests of Acquired Subsidiaries. The authorized and outstanding capital stock or other equity interests of each of the Acquired Subsidiaries are as set forth on **Schedule 4.28**. All of the outstanding capital stock or other equity interests of the Acquired Subsidiaries have been validly issued and have not been issued in violation of preemptive or similar rights. There are no outstanding options, warrants, convertible or exchangeable securities, "phantom" stock rights, stock appreciation rights, stock-based performance units, rights to subscribe to, purchase rights, calls or commitments made by the Acquired Subsidiaries relating to the issuance, purchase, sale or repurchase of any capital stock or other equity interests issued by the Acquired Subsidiaries containing any equity features, or contracts, commitments, understandings or arrangements by which any of the Acquired Subsidiaries is bound to redeem, issue, deliver or sell, or cause to be redeemed, issued, delivered or sold, capital stock or other equity interests, or options, warrants, rights to subscribe to, purchase rights, calls or commitments made by the Acquired Subsidiaries relating to any capital stock or other equity interests of the Acquired Subsidiaries. Sellers own all of the outstanding capital stock or other equity interests of the Acquired Subsidiaries free and clear of all Encumbrances other than Encumbrances arising by reason of federal or state securities or "blue sky" Laws. No Seller has any Subsidiaries other than, or otherwise holds an equity interest or right to acquire any equity interest in any Person other than, the other Sellers and the Subsidiaries set forth on **Schedule 4.28**.

4.29 Holdcos. Other than equity interests of OPP Acquisition Mexico, S. de R.L. de C.V., neither Orchids Mexico DE Holdings, LLC nor Orchids Mexico DE Member, LLC own any assets. Other than (a) the aforementioned ownership of equity interests of OPP Acquisition Mexico, S. de R.L. de C.V. and (b) under clause (a) of the definition of Prepetition Credit Agreements, neither Orchids Mexico DE Holdings, LLC nor Orchids Mexico DE Member, LLC has incurred any Liability, engaged in any business or activity of any type or kind whatsoever nor entered into any agreement or arrangement with any Person.

4.30 No Other Representations or Warranties. Except for the representations, warranties and covenants of Sellers expressly contained herein or any certificate delivered hereunder, neither Sellers nor any of their respective representatives, nor any other Person, makes any other express or implied warranty (including, without limitation, any implied warranty of merchantability or fitness for a particular purpose) on behalf of Sellers, including, without limitation, as to (a) the probable success or profitability of ownership, use or operation of the Acquired Assets by Purchaser after the Closing, (b) the probable success or results in connection with the Bankruptcy Court and the Sale Order, or (c) the value, use or condition of the Acquired Assets, which are being conveyed hereby on an "As-Is", "Where-Is" condition at the Closing Date, without any warranty whatsoever (including, without limitation, any implied warranty of merchantability or fitness for a particular purpose).

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to Sellers as of the Initial Date as follows:

5.1 Purchaser's Organization; Good Standing. Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, with full power and authority to own, use or lease its properties and to conduct its business as such properties are owned, used or leased and as such business is currently conducted.

5.2 Purchaser's Authority; No Violation. Purchaser has all requisite limited liability company power and authority to enter into this Agreement and to carry out the transactions contemplated hereby, and the execution, delivery and performance of this Agreement by Purchaser shall be duly and validly authorized and approved by all necessary limited liability company action. This Agreement shall constitute the legal and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except that the enforceability hereof may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar Laws now or hereafter in effect relating to creditors' rights generally and that the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding may be brought. Subject to the approval and entry of the Sale Order by the Bankruptcy Court and subject to compliance with the applicable requirements of the HSR Act and the Mexican Antitrust Act, the entering into of this Agreement, and the consummation by Purchaser of the transactions contemplated hereby will not (a) violate the provisions of any applicable federal, state or local Laws or (b) violate any provision of Purchaser's Organizational Documents, violate any provision of, or result in a default or acceleration of any obligation under, or result in any change in the rights or obligations of Purchaser under, any Lien, contract, agreement, license, lease, instrument, indenture, order, arbitration award, judgment, or decree to which Purchaser is a party or by which it is bound, or to which any property of Purchaser is subject that will not otherwise be stayed or discharged upon entry of the Sale Order by the Bankruptcy Court or otherwise pursuant to the Chapter 11 Cases.

5.3 Consents, Approvals or Authorizations. Except (a) for compliance as may be required with the HSR Act or (b) for compliance as may be required with the Mexican Antitrust

Act, no consent, waiver, approval, order or authorization of, or registration, qualification, designation or filing with any Person or Governmental Body is required in connection with the execution, delivery and performance by Purchaser of this Agreement or the Ancillary Documents to which it is a party, the compliance by Purchaser with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby, the assumption and performance of the Assumed Liabilities or the taking by Purchaser of any other action contemplated hereby or thereby, other than such filings, notices or consents, the failure of which to make or obtain would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on Purchaser's ability to perform its obligations under this Agreement and the Ancillary Documents to which it is a party, or to consummate the transactions contemplated hereby or thereby, including the assumption of the Assumed Liabilities.

5.4 Brokers. No Person has acted, directly or indirectly, as a broker, finder or financial advisor for Purchaser in connection with the transactions contemplated by this Agreement and Sellers are not and will not become obligated to pay any fee or commission or like payment to any broker, finder or financial advisor as a result of the consummation of the transactions contemplated by this Agreement based upon any arrangement made by or on behalf of Purchaser

5.5 Litigation. To Purchaser's knowledge, there are no material Actions, suits, claims, investigations, hearings, or proceedings of any type pending (or, to the knowledge of Purchaser, threatened) instituted against Purchaser challenging the legality of the transactions contemplated in this Agreement (other than with respect to any objection, adversary proceeding or other contested matter which may be filed or otherwise arise in connection with the Chapter 11 Cases).

5.6 Due Diligence.

(a) EXCEPT AS OTHERWISE PROVIDED IN ARTICLE IV OR THIS ARTICLE V, IT IS UNDERSTOOD AND AGREED THAT, UNLESS EXPRESSLY STATED HEREIN, SELLERS ARE NOT MAKING AND HAVE NOT AT ANY TIME MADE AND PURCHASER EXPRESSLY DISCLAIMS ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE ACQUIRED ASSETS, INCLUDING BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(b) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, PURCHASER ACKNOWLEDGES AND AGREES THAT, UPON THE CLOSING, SELLER SHALL SELL AND CONVEY TO PURCHASER, AND PURCHASER SHALL ACCEPT, THE ACQUIRED ASSETS PURSUANT TO THE SALE ORDER. PURCHASER HAS NOT RELIED AND WILL NOT RELY ON, AND SELLERS ARE NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTEES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE ACQUIRED ASSETS OR RELATING THERETO MADE OR FURNISHED BY SELLERS OR THEIR RESPECTIVE REPRESENTATIVES, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, EXCEPT AS EXPRESSLY STATED HEREIN. PURCHASER ALSO ACKNOWLEDGES THAT THE

TOTAL PURCHASE PRICE REFLECTS AND TAKES INTO ACCOUNT THAT THE ACQUIRED ASSETS ARE BEING SOLD "AS-IS, WHERE-IS, WITH ALL FAULTS."

ARTICLE VI

COVENANTS OF SELLERS AND/OR PURCHASER

6.1 Conduct of Business of Sellers. During the Pre-Closing Period, (a) Sellers shall use reasonable best efforts, except as required, authorized or restricted pursuant to this Agreement, the Bankruptcy Code or an Order of the Bankruptcy Court, (i) to operate the Business in the Ordinary Course of Business and (ii) to (A) preserve intact its business organizations, (B) maintain the Business and the Acquired Assets (normal wear and tear excepted), (C) keep available the services of its officers and Employees, (D) maintain satisfactory relationships with licensors, licensees, suppliers, contractors, distributors, consultants, customers, vendors and others having business relationships with Sellers in connection with the operation of the Business (other than payment of pre-petition claims), (E) pay all post-petition obligations in the Ordinary Course of Business, (F) continue to operate the Business and Acquired Assets in all material respects in compliance with all Laws applicable to the Business and Sellers, (G) comply in all material respects with the budget and other obligations set forth by the DIP Facility, in each case, taking into account Sellers' status as debtors in possession, and (H) pay all applicable Taxes that Sellers are required to pay, and (b) except (i) as required by Law, (ii) as expressly contemplated by this Agreement or (iii) as consented to in writing by Purchaser (such consent not to be unreasonably withheld, delayed or conditioned), Sellers shall not do any of the following: (A) sell, lease, exchange, transfer or otherwise dispose of, or agree to sell, lease, exchange, transfer or otherwise dispose of, any Acquired Assets other than Inventory in the Ordinary Course of Business; (B) settle or compromise any litigation or claims relating to the Business or the Acquired Assets; (C) permit, allow or suffer any assets that would be Acquired Assets to be subjected to any Encumbrance other than Permitted Encumbrances; (D) enter into any Material Contract or terminate, amend, restate, supplement, extend or waive (partially or completely) any rights under any Material Contract; (E) cancel or compromise any material debt or claim that would be included in the Acquired Assets or waive or release any material right of Sellers that would be included in the Acquired Assets; (F) recognize any labor organization as a collective bargaining representative of any Persons employed by Sellers or their Subsidiaries, or enter into a collective bargaining agreement with any labor organization affecting any such Persons; (G) grant any increase in the compensation or benefits of any employee, including the grant, increase or acceleration in any severance, change in control, termination or similar compensation or benefits payable to any employee; (H) take any action that would reasonably be expected to prevent or significantly impede or materially delay the completion of the transactions contemplated hereunder; (I) make, revoke or change any election relating to Taxes, file any amended Tax Return, request, enter into or obtain any Tax ruling with or from a Governmental Body, or execute or file, or agree to execute or file, with any Governmental Body any agreement or other document extending, or having the effect of extending, the period of assessment or collection of any Taxes, in each case, that could reasonably be expected to have any adverse effect on the Purchaser or any of their Affiliates, for any taxable period, or portion thereof, beginning after the Closing Date; or (J) agree in writing to do any of the foregoing.

6.2 Consents and Approvals. Sellers and Purchaser shall each use their reasonable best efforts (i) to obtain all consents and approvals, as reasonably requested by Purchaser and Sellers, to more effectively consummate the purchase and sale of the Acquired Assets and the assumption and assignment of the Assigned Contracts and Assumed Liabilities, as applicable, together with any other necessary consents and approvals to consummate the transactions contemplated hereby (including, for the avoidance of doubt, as required to convey the NMTC Arrangements on the same economic terms as currently contemplated and to transfer the Acquired Assets of Orchids Lessor SC to Purchaser or a Designated Purchaser), (ii) to make, as reasonably requested by Purchaser and Sellers, all filings, applications, statements and reports to all authorities which are required to be made prior to the Closing Date by or on behalf of Purchaser and/or Sellers or any of their respective affiliates pursuant to any applicable Regulation in connection with this Agreement and the transactions contemplated hereby and (iii) to obtain, as reasonably requested by Purchaser and Sellers, all required consents and approvals (if any) to assign and transfer the Permits to Purchaser at Closing and, to the extent that one or more of the Permits are not transferable, to obtain replacements therefor; provided that Sellers shall not be required to make any filing in connection with the transfer of a Permit or take any other action required by this sentence unless Purchaser advances any and all fees and other charges imposed by any applicable authority or other Person in connection with such filing, transfer or other requested action. Subject to the provisions of Section 3.2 and this Section 6.2, in the event that certain Permits are not transferable or replacements therefor are not obtainable on or before the Closing, but such Permits are transferable or replacements therefor are obtainable after the Closing, Purchaser and Sellers shall continue to use such reasonable efforts in cooperation with the other after the Closing as may be required to obtain all required consents and approvals to transfer, or obtain replacements for, such Permits after Closing and shall do all things reasonably necessary to give Purchaser the benefits which would be obtained under such Permits.

6.3 Assignability of Certain Contracts.

(a) In connection with and without limiting the foregoing, Sellers shall give any notices to third parties required under the Assigned Contracts, and each of Sellers shall use reasonable best efforts to obtain third party consents to any Assigned Contracts that are set forth on **Schedule 2.6(a)** or otherwise necessary to consummate the Acquisition.

(b) If, (i) notwithstanding the applicable provisions of Sections 363 and 365 of the Bankruptcy Code and the Sale Order and the reasonable best efforts of Sellers, any consent is not obtained prior to Closing and as a result thereof the Purchaser shall be prevented by a third party from receiving the rights and benefits with respect to an Acquired Asset intended to be transferred hereunder, (ii) any attempted assignment of an Acquired Asset would adversely affect the rights of Sellers thereunder so that the Purchaser would not in fact receive all of the rights and benefits contemplated or (iii) any Acquired Asset is not otherwise capable of sale and/or assignment (after giving effect to the Sale Order and the Bankruptcy Code), then, in each case, Sellers shall, subject to any approval of the Bankruptcy Court that may be required, at the request of the Purchaser cooperate with Purchaser in any lawful and commercially reasonable arrangement under which the Purchaser would, to the extent practicable, obtain the economic claims, rights and benefits under such asset and assume the economic burdens and obligations with respect thereto in accordance with this Agreement, including by subcontracting,

sublicensing or subleasing to the Purchaser; provided, however, that the Parties will use their commercially reasonable efforts, before the Closing, to obtain all necessary consents.

6.4 Rejected Contracts. Sellers shall not reject or seek to reject any Assigned Contract in any bankruptcy proceeding following the Initial Date and prior to any termination of this Agreement without the prior written consent of Purchaser, which Purchaser may withhold, condition or delay, in its sole discretion.

6.5 Confidentiality. Purchaser and the Sellers acknowledge that the confidential information provided to them in connection with this Agreement, including under Section 6.8, and the consummation of the transactions contemplated hereby, is subject to the Confidentiality Agreement, dated December 7, 2018, between Black Diamond Capital Management, L.L.C. and Orchids (the "Confidentiality Agreement"). Sellers agree that except as may otherwise be required by Law, they will treat any confidential information provided to or retained by them in accordance with this Agreement as if they were the receiving party under the Confidentiality Agreement and Sellers agree that for purposes of Sellers' confidentiality obligation hereunder, the term contained in Section 10 of the Confidentiality Agreement shall be deemed to be 10 years from the Closing Date. The Parties agree that the provisions regarding confidentiality contained in the Confidentiality Agreement shall survive the termination of this Agreement and the Confidentiality Agreement in accordance with the terms set forth therein but shall terminate upon the Closing as to Black Diamond Capital Management, L.L.C. and its Representative (as defined therein).

6.6 Change of Name. Promptly following the Closing, Sellers shall, and shall cause their respective direct and indirect Subsidiaries to, discontinue the use of the "Orchids Paper Products" and "Orchids" name (and any other trade names or "d/b/a" names currently utilized by Sellers or their respective direct or indirect Subsidiaries) and shall not subsequently change its name to or otherwise use or employ any name which includes the words Orchids, Orchids Supreme, Clean Scents, Tackle, Colortex, My Size, Velvet, and Big Mopper, Virtue, Truly Green, Golden Gate Paper, Big Quality or any other similar name or mark confusingly similar thereto without the prior written consent of Purchaser, and Sellers shall cause the name of Sellers in the caption of the Chapter 11 Cases to be changed to the new name of Sellers as provided in the last sentence of this Section 6.6; provided, however, that Sellers and their respective Subsidiaries may continue to use their current names (and any other names or DBAs currently utilized by Sellers or their respective Subsidiaries) included on any business cards, stationery and other similar materials following the Closing for a period of up to seventy-five (75) days solely for purposes of winding down the affairs of Sellers; provided that when utilizing such materials, other than in incidental respects, Sellers and each of their respective direct and indirect Subsidiaries shall use commercially reasonable efforts to indicate its new name and reference its current name (and any other trade names or "d/b/a" names currently utilized by each). The new names of the Sellers shall be OPP Liquidating Company, Inc., OPP Liquidating Company of South Carolina, Inc., and OLSC Liquidating Company, LLC, or such other names as Purchaser and Sellers each may agree in its reasonable discretion.

6.7 Sellers' Employees.

(a) Sellers shall update the Employee Census as of thirty (30) days prior to the Closing Date and again immediately prior to the Closing Date.

(b) Sellers shall provide reasonable assistance to facilitate Purchaser's hire of Sellers' Employees, subject to Purchaser's standard hiring practices and policies, at or prior to the Closing, including, without limitation, providing Purchaser access to such Employees personnel records and such other information regarding the Employees as Purchaser may reasonably request, consistent with Section 7.1 hereof.

(c) Notwithstanding the foregoing, Sellers shall not (i) enter into, establish, adopt, materially amend or terminate any Benefit Plan (or any plan or arrangement that would be a Benefit Plan if in existence on the date of this Agreement), other than as required by Law, (ii) increase the compensation and benefits payable or to become payable to Employees, (iii) grant any extraordinary bonuses, benefits or other forms of directors' or consultants' compensation, (iv) promote, hire or terminate the employment of (other than for cause) any Employee or (v) transfer the employment of any individual such that such individual becomes an Employee or transfer the employment of any Employee such that such individual no longer qualifies as an Employee; provided, however that nothing in this Agreement shall prohibit or otherwise limit Sellers' ability to implement any remedial steps, including issuing offers of reinstatement, in relation to the matter set forth on **Schedule 6.7(c)** that Sellers determine, with the assistance of counsel, to be in Sellers' best interests (subject to Sellers' obtaining the consent of Purchaser, such consent not to be unreasonably withheld, delayed or conditioned).

(d) During the Pre-Closing Period, (i) Sellers shall not enter into, adopt, extend, renew, terminate or materially amend any labor agreement, collective bargaining agreement or any other labor-related agreement or arrangement with any labor union or organization with respect to the Employees, except as required by applicable Law, and (ii) Sellers shall satisfy all pre-Closing legal or contractual requirements to provide notice to, or to enter into any consultation procedure with, any labor union or organization, which is representing any Employee, in connection with the transactions contemplated by this Agreement.

(e) Through and after the Closing Date, Sellers shall comply with their COBRA and WARN Act obligations, if any. On or before the Closing Date, Sellers shall provide a true, complete and correct list, by site of employment, of any and all employees of any Seller who, within ninety (90) days prior to the Closing Date, have experienced, or will experience, any employment loss or layoff as defined by the WARN Act. Sellers shall update this list up to and including the Closing Date.

(f) Contemporaneously with the Closing, Sellers shall terminate the employment of all Employees who have been offered employment with Purchaser or its Affiliate. Except for the obligations with respect to the Transferred Employees expressly assumed by Purchaser under Section 2.3, Sellers shall be solely liable for all termination payments and obligations to such Transferred Employees, including, without limitation, any severance and other costs and expenses incurred or to be incurred in connection with such termination, and any accrued or contingent salary, bonus, benefits, vacation time, phantom stock payments or other amounts.

6.8 Purchaser's Access to Sellers' Records. From and after Sellers' execution and delivery of this Agreement, Sellers shall continue to provide Purchaser (or its designated representatives) reasonable access, upon reasonable advance notice to Sellers, to Sellers' Employees, books and records, corporate offices and other facilities for the purpose of conducting such additional due diligence as Purchaser deems appropriate or necessary in order to facilitate Purchaser's efforts to consummate the transaction provided for herein. Sellers hereby covenant and agree to reasonably cooperate with Purchaser in this regard.

6.9 Notification of Certain Matters.

(a) As promptly as reasonably practicable, Sellers shall give notice to Purchaser, and Purchaser shall give prompt notice to Sellers, of (i) any notice or other communication from any Person alleging that the consent of such Person, which is or may be required in connection with the transactions contemplated by this Agreement or the Ancillary Documents, is not likely to be obtained prior to Closing, (ii) any written objection or proceeding that challenges the transactions contemplated hereby or the entry of the approval of the Bankruptcy Court and (iii) the status of matters relating to the completion of the transactions contemplated hereby, including promptly furnishing the other with copies of notices or other communications received by Sellers or Purchaser or by any of their respective Affiliates (as the case may be), from any third party and/or any Governmental Body with respect to the transactions contemplated by this Agreement.

(b) Notwithstanding anything to the contrary contained herein, Purchaser shall be entitled to remove and leave behind with Sellers, in its sole discretion, any asset of the Business that would constitute an Acquired Asset (and associated Liabilities therewith), and no reduction in Purchase Price shall be made as a result of any such removal. Purchaser shall deliver notice to Sellers of any such removal at least two (2) Business Days prior to the Closing Date. Notwithstanding any other provision hereof, the Liabilities of Sellers arising under or in connection with, or otherwise or related to, any assets removed from the Acquired Assets pursuant to this Section 6.9(b) shall constitute Excluded Liabilities. In addition, and without limiting Purchaser's rights to remove assets from the Acquired Assets or Contracts from the Assigned Contracts, Purchaser and Sellers shall have the right to modify the Schedules attached hereto by their mutual written agreement until two (2) Business Days prior to the Closing Date or such later date as provided in this Agreement or to which the Parties may otherwise agree.

(c) Each Party hereto shall, within two (2) Business Days after the Effective Date, notify the other party in writing of any fact, change, condition, circumstance or occurrence or nonoccurrence of any event of which it is aware that causes any of the representations and warranties of such party to be inaccurate as of the Effective Date, provided that no such notice shall be deemed to amend or modify the representations and warranties made hereunder or any Schedules hereto for purposes of Section 8.1, Section 9.1 or otherwise, or limit the remedies available to any Party hereunder.

6.10 Preservation of Records. Sellers (or any subsequently appointed bankruptcy estate representative, including, but not limited to, a trustee, a creditor trustee or a plan administrator) and Purchaser agree that each of them shall preserve and keep the books and records held by it relating to the pre-Closing Business for a period commencing on the Initial Date and ending at

such date on which an orderly wind-down of Sellers' operations has occurred in the reasonable judgment of Purchaser and Sellers and shall make such books and records available to the other Parties (and permit such other Party to make extracts and copies of such books and records at its own expense) as may be reasonably required by such Party in connection with, among other things, any insurance claims by, legal proceedings or Tax audits against or governmental investigations of Sellers or Purchaser or in order to enable Sellers or Purchaser to comply with their respective obligations under this Agreement and each other agreement, document or instrument contemplated hereby or thereby. In the event that Sellers, on the one hand, or Purchaser, on the other hand, wish to destroy such records during the foregoing period, such Party shall first give twenty (20) days' prior written notice to the other and such other Party shall have the right at its option and expense, upon prior written notice given to such Party within that twenty (20) day period, to take possession of the records within thirty (30) days after the date of such notice.

6.11 Publicity. Neither Sellers nor Purchaser shall issue any press release or public announcement concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of the other Party hereto, which approval will not be unreasonably withheld or delayed, unless, in the reasonable judgment of Purchaser or Sellers, disclosure is otherwise required by such party by applicable Law or by the Bankruptcy Court with respect to filings to be made with the Bankruptcy Court in connection with this Agreement or by the applicable rules of any stock exchange on which Sellers or Purchaser list securities; provided that the Party intending to make such release shall use its reasonable best efforts consistent with such applicable Law or Bankruptcy Court requirement to consult with the other Party with respect to the text thereof; provided, further, after the Closing, the Purchaser shall no longer be bound by the foregoing.

6.12 Material Adverse Effect. Sellers shall promptly inform Purchaser in writing of the occurrence of any event that has had, or is reasonably expected to have, a Material Adverse Effect or otherwise cause the failure of any of Purchaser's conditions to Closing set forth in ARTICLE VIII.

6.13 No Successor Liability. The Parties intend that, to the fullest extent permitted by Law (including under Section 363 of the Bankruptcy Code), upon the Closing, Purchaser shall not be deemed to: (a) be the successor of any Seller, (b) have, *de facto*, or otherwise, merged with or into any Seller, (c) be a mere continuation or substantial continuation of any Seller or its enterprise(s) or (d) be liable for any acts or omissions of any Seller in the conduct of the Business or arising under or related to the Acquired Assets other than as set forth in this Agreement. Without limiting the generality of the foregoing, and except as otherwise provided in this Agreement, the Parties intend that Purchaser shall not be liable for any Encumbrance (other than Assumed Liabilities and Priming Permitted Encumbrances) against any Seller or any of any Seller's predecessors or Affiliates, and Purchaser shall have no successor or vicarious liability of any kind or character whether known or unknown as of the Closing Date, whether now existing or hereafter arising, or whether fixed or contingent, with respect to the Business, the Acquired Assets or any Liabilities of Sellers arising prior to the Closing Date. The Parties agree that the provisions substantially in the form of this Section 6.13 shall be reflected in the Sale Order.

6.14 Casualty Loss. Notwithstanding any provision of this Agreement to the contrary, if, before the Closing, all or any portion of the Acquired Assets is (a) condemned or taken by eminent domain, or (b) is damaged or destroyed by fire, flood or other casualty, Sellers shall promptly notify Purchaser promptly in writing of such fact, (i) in the case of condemnation or taking, Sellers shall promptly assign or pay, as the case may be, any proceeds thereof to Purchaser at the Closing, and (ii) in the case of fire, flood or other casualty, Sellers shall promptly assign the insurance proceeds therefrom to Purchaser at Closing. Notwithstanding the foregoing, the provisions of this Section 6.14 shall not in any way modify Purchaser's other rights under this Agreement, including any applicable right to terminate the Agreement if any condemnation, taking, damage or other destruction resulted in a Material Adverse Effect or otherwise cause the failure of any of Purchaser's conditions to Closing set forth in ARTICLE VIII.

6.15 Debtors-in-Possession. From the commencement of the Chapter 11 Cases through the Closing, Sellers shall continue to operate their business as debtors-in-possession pursuant to the Bankruptcy Code. Sellers shall not convert or seek to convert the Chapter 11 Cases into a liquidation proceeding under Chapter 7 of the Bankruptcy Code.

6.16 Bankruptcy Court Filings.

(a) On or prior to April 1, 2019, each of Sellers shall file voluntary petitions for relief commencing cases under chapter 11 of the Bankruptcy Code in the Bankruptcy Court.

(b) On or prior to April 1, 2019, Sellers shall file the Sale and Bid Procedures Motion and the DIP Motion with the Bankruptcy Court, in form and substance reasonably acceptable to the Purchaser and Sellers.

(c) Sellers shall use their reasonable best efforts to cause the Bankruptcy Court to enter (i) the interim DIP Order on or prior to April 4, 2019, (ii) the final DIP Order on or prior to May 8, 2019, (iii) the Bid Procedures Order on or prior to May 5, 2019, and (iv) the Sale Order on or prior to June 14, 2019, which Sale Order shall approve a sale to the Purchaser.

(d) Sellers shall conduct the Auction for the Acquired Assets between June 6, 2019 and June 10, 2019.

(e) Sellers shall serve notices of assumption of the Assigned Contracts and Assumed Leased Real Property, including the designation of Cure Amounts, on all necessary parties by the 5th day following entry of the Bid Procedures Order.

(f) Sellers shall use their reasonable best efforts to provide Purchaser for review reasonably in advance of filing drafts of such material motions, pleadings or other filings relating to the process of consummating the transactions contemplated by this Agreement and the operation of Sellers to be submitted to the Bankruptcy Court, including the DIP Motion and the Sale and Bid Procedures Motion.

(g) In the event an appeal is taken or a stay pending appeal is requested from the Sale Order, Sellers shall promptly notify Purchaser of such appeal or stay request and shall provide Purchaser promptly a copy of the related notice of appeal or order of stay. Sellers shall

also provide Purchaser with written notice of any motion or application filed in connection with any appeal from such orders. Sellers agree to take all action as may be reasonable and appropriate to defend against such appeal or stay request and Sellers and Purchaser agree to use their reasonable best efforts to obtain an expedited resolution of such appeal or stay request, provided that nothing herein shall preclude the parties hereto from consummating the transactions contemplated hereby, if the Sale Order shall have been entered and has not been stayed and the Purchaser, in its sole and absolute discretion, waives in writing the condition that the Sale Order be a Final Order.

(h) Sellers and the Purchaser acknowledge that this Agreement and the sale of the Acquired Assets and the assumption of the Assumed Liabilities are subject to Bankruptcy Court approval.

(i) After entry of the Sale Order, to the extent the Purchaser is the Successful Bidder at the Auction, neither the Purchaser nor Sellers shall take any action which is intended to, or fail to take any action the intent of which failure to act is to, result in the reversal, voiding, modification or staying of the Sale Order.

6.17 Not a Required Back-Up Bidder. The Bid Procedures shall provide the Purchaser with the option but not any obligation to act as Back-Up Bidder (as defined in the Bid Procedures Order) following the Auction (if any) in the event that the Purchaser is not selected as the Successful Bidder.

6.18 Sale Free and Clear. Sellers acknowledge and agree, and the Sale Order shall be drafted to provide, without limitation, that (a) on the Closing Date and concurrently with the Closing, all then-existing or thereafter arising obligations, Liabilities and Encumbrances, against or created by Sellers, any of their Affiliates, or the bankruptcy estate, to the fullest extent permitted by Section 363 of the Bankruptcy Code, shall be fully released from and with respect to the Acquired Assets and (b) the Purchaser is not the successor to any Seller or the bankruptcy estate by reason of any theory of law or equity, and the Purchaser shall not assume or in any way be responsible for any Liability of Sellers, any of their Affiliates and/or the bankruptcy estate, except as expressly provided in this Agreement. On the Closing Date, the Acquired Assets shall be transferred to the Purchaser free and clear of all obligations, Liabilities and Encumbrances (other than Priming Permitted Encumbrances) to the fullest extent permitted by Section 363 of the Bankruptcy Code.

6.19 Financing Cooperation. Sellers shall use commercially reasonable efforts to provide, and shall use commercially reasonable best efforts to cause their respective Representatives to provide, on a timely basis, such cooperation as is reasonably required and customary in connection with the arrangement of the Purchaser's financing arrangements, which cooperation may include using commercially reasonable efforts to: (a) upon reasonable advance notice, participate in a reasonable number of due diligence or other sessions with prospective financing sources and their Representatives, and provide reasonable access to documents and other information in connection with customary due diligence investigations; (b) reasonably assisting (including participating in drafting sessions) with the preparation of materials; (c) furnishing the Purchaser with information required and reasonably requested in writing by the parties acting as lead arrangers for, or lenders under, any debt financing at least ten (10) Business

Days prior to the Closing Date under applicable "know your customer" and anti-money laundering rules and regulations; (d) assisting the Purchaser in obtaining accountants' comfort letters, including customary "negative assurance" comfort from Sellers' independent accountants on customary terms; (e) cooperating with the Purchaser and the Purchaser's efforts to obtain customary corporate, facilities and securities ratings; (f) providing and, if applicable, executing customary documents relating to the repayment of Indebtedness and the release of related encumbrances, including customary payoff letters and evidence that notice of such repayment has been timely delivered to the holders of such Indebtedness; (g) satisfying the conditions precedent set forth in any commitment letters or any definitive documentation relating to any debt financing to the extent the satisfaction of such conditions requires the cooperation of or is within the control of Sellers or their respective Affiliates, including causing officers of Sellers and their respective Affiliates to execute agreements, documents or certificates reasonably requested by the Purchaser that facilitate the creation, perfection or enforcement of encumbrances securing debt financing (including original copies of all certificated securities (with transfer powers executed in blank), control agreements, perfection certificates, landlord consents and access letters) as are requested by the Purchaser, its Affiliates or their debt financing sources (provided that no obligation under any such agreement, document or certificate shall be effective until the Closing); and (h) cooperating with the debt financing sources' due diligence investigation to the extent reasonable and not unreasonably interfering with the Business.

6.20 Wind-Down Account. From and after the Closing, the Wind-Down Payment deposited into the Wind-Down Account shall be held in trust by Orchids, free and clear of any and all Encumbrances, for the benefit of Persons entitled to be paid priority claims, administrative expenses and other costs relating to the post-Closing administration and wind-down of Sellers' estates, including, without limitation, confirmation of a liquidating plan for the Sellers, in accordance with the Wind-Down Budget and the following provisions:

(a) All priority claims, administrative expenses or other costs to be paid from the Wind-Down Account pursuant to the Wind-Down Budget must be submitted by the claimant that earned or incurred such priority claims, administrative expenses or other costs to Orchids and Purchaser in writing.

(b) Upon the submission of any such priority claims, administrative expenses or other costs to be paid from the Wind-Down Account, Purchaser and Orchids each shall have ten (10) days to object in writing to any such priority claims, administrative expenses or other costs on the basis that it: (i) is not consistent in kind or amount with the Wind-Down Budget or (ii) is not reasonably necessary for administering and winding-down of Sellers' estates.

(c) In the event a timely written objection is made by Purchaser or Orchids and an agreement thereafter cannot be reached among the claimant, Orchids and Purchaser resolving such objection, the allowance and payment of the priority claims, administrative expenses or other costs still in dispute shall be determined by Order of the Bankruptcy Court upon application by the claimant, Orchids, or Purchaser.

(d) Notwithstanding the foregoing, if the priority claims, administrative expenses or other costs sought to be paid from the Wind-Down Budget consist of fees and/or

expenses of estate professionals or similar Persons earned or incurred during the pendency of the Chapter 11 Cases, the allowance of such fees and expenses shall be governed by Sections 327, 328, 330, 331 and/or 363 of the Bankruptcy Code, Fed. R. Bankr. P. 2016, the Local Rules of the Bankruptcy Court, and Orders of the Bankruptcy Court entered in the Chapter 11 Cases and the amount contained in the Wind-Down Budget.

(e) If and to the extent that the amount of any such priority claims, administrative expenses or other costs (or portion thereof) has been allowed by (i) a lack of a timely objection by Orchids and Purchaser, (ii) an agreement among the claimant, Orchids and Purchaser, or (iii) entry of an Order by the Bankruptcy Court, as set forth above, Orchids shall promptly pay to the claimant the allowed amount of such priority claims, administrative expenses or other costs (or portion thereof) from the Wind-Down Account.

(f) Subsequent to Closing, Orchids shall reduce the amount of the Wind-Down Account as and to the extent that Orchids may agree, or the Bankruptcy Court determines by entry of an Order, that the Wind-Down Account, or portions thereof, are no longer required to fund the administration and wind-down expenses and costs of Sellers' estates by distributing to Purchaser the amount of such reductions.

(g) Pursuant to the Sale Order, all right, title and interest in and to any amounts in the Wind-Down Account that are not used to pay costs associated with administering and winding-down Sellers' estates shall vest absolutely in Purchaser as of the Closing Date and shall promptly (but in any event within 180 days) be distributed to Purchaser in accordance with this Section 6.20.

6.21 Customers and Suppliers. Upon Purchaser's request, Sellers shall cooperate with Purchaser in facilitating communications between Purchaser and any Material Customer or Material Supplier prior to Closing. Sellers shall promptly inform Purchaser in writing of the occurrence of any event that has had, or is reasonably expected to cause, the failure of any condition set forth in Section 8.13 or Section 8.16.

ARTICLE VII

COVENANTS OF PURCHASER

7.1 Employee Matters.

(a) Purchaser shall, or shall cause its designated Affiliate or Affiliates to, extend offers of employment to each Employee who has not been terminated or otherwise left the employ of Sellers prior to the Closing Date (or, with respect to each Leave Employee, at such other time as described below in this Section 7.1(a)); provided that, Purchaser may, in its sole discretion, exclude any Employees from the group of Employees to whom Purchaser is required to extend an offer of employment by notice to Orchids no later than five (5) Business Days prior to Closing (the Employees to whom Seller extends an offer of employment, the "Offer Employees"). Purchaser may provide in each offer of employment to an Offer Employee that such offer of employment is subject to such Offer Employee's compliance with and completion of Purchaser's standard hiring practices and policies. All such individuals who accept such offers

of employment by the Closing Date, and commence such employment immediately after the Closing, with Purchaser or its Affiliates are hereinafter referred to as the "Transferred Employees". With respect to each Offer Employee who is not actively at work on the Closing Date due to a leave of absence (other than a leave expected to last for less than two (2) weeks) approved by any Seller (each a "Leave Employee"), Purchaser may, or may cause its Affiliate to, provide such Offer Employee an offer of employment if, and at such time that, such Offer Employee is willing and able to return to active employment if within six (6) months following the Closing Date, or such longer period of time required by applicable Law, and upon commencing employment with Purchaser or its Affiliate, any such Offer Employee shall be treated as a Transferred Employee. After the Closing, Purchaser intends to adopt an incentive plan applicable to certain employees with respect to the time period from and after the Closing to the end of 2019 and to be based upon achieving certain performance objectives and other factors.

(b) Subject to Purchaser's right to terminate any Transferred Employees, Purchaser shall provide, or shall cause one of its Affiliates to provide, for a period of one (1) year from and after the Closing Date, each Transferred Employee with a base salary or wage rate, as applicable, that is equal to the base salary or wage rate provided to such Transferred Employees as of the Initial Date. For purposes of eligibility, vesting, and participation (excluding with respect to benefit accrual, retiree welfare benefits and defined benefit pension benefits) under any Purchaser plans and programs providing employee benefits to Transferred Employees after the Closing Date (the "Post-Closing Plans"), Purchaser shall use reasonable best efforts to credit each Transferred Employee with his or her years of service with Sellers before the Closing Date to the same extent as such Transferred Employee was entitled, before the Closing Date, to credit for such service under the comparable Benefit Plans in which such Transferred Employees participated immediately prior to the Closing (such Seller plans, the "Sellers Benefit Plans"), except to the extent such credit would result in a duplication of benefits. Notwithstanding the foregoing, Purchaser, or its applicable Affiliate, may permit or require the Transferred Employees to continue to participate in the Assumed Plans. To the extent a Transferred Employee is covered by a collective bargaining agreement following the Closing Date, Purchaser shall provide the benefits contemplated under this Section 7.1(b) in accordance with the applicable collective bargaining agreement.

(c) For purposes of each Post-Closing Plan providing medical, dental, hospital, pharmaceutical or vision benefits to any Transferred Employee, Purchaser shall use commercially reasonable efforts to cause to be waived all pre-existing condition exclusions and actively-at-work requirements of such Post-Closing Plan for such Transferred Employee and his or her covered dependents (unless such exclusions or requirements were applicable under Sellers Benefit Plans). In addition, Purchaser shall use reasonable efforts to cause any co-payments, deductible and other eligible expenses incurred by such Transferred Employee and/or his or her covered dependents under any Sellers Benefit Plan providing, medical, dental, hospital, pharmaceutical or vision benefits during the plan year ending on the Closing Date to be credited for purposes of satisfying all deductible, coinsurance and maximum out-of-pocket requirements applicable to such Transferred Employee and his or her covered dependents for the applicable plan year of each comparable Post-Closing Plan in which he or she participates.

(d) Purchaser shall assume and honor all vacation days, sick leave and other paid-time-off accrued or earned, but not yet taken, by each Transferred Employee as of the Closing Date.

(e) Sellers shall be responsible for the payment of any severance payment or benefits that become due to any current or former employee, officer, director, member, partner or independent contractor as a result of the termination of such individual by any Seller or any ERISA Affiliate thereof. Sellers shall be responsible for all legally mandated health care continuation coverage for its, and its Affiliates', current and former employees (and their qualified beneficiaries) who had or have a loss of coverage due to a "qualifying event" (within the meaning of Section 603 of ERISA) which occurred or occurs on or prior to the Closing Date, including, without limitation, any loss of coverage that results directly or indirectly from the transactions contemplated by this Agreement. Purchaser and its Affiliates shall assume and be responsible for any severance benefits for any Transferred Employee who terminates employment with Purchaser or such Affiliate after the Closing Date, to the extent such Transferred Employee is entitled to severance benefits under a Post-Closing Plan or Assumed Plan.

(f) Purchaser shall assume the Benefit Plans, as the case may be, identified by Purchaser and listed on **Schedule 7.1(f)** (collectively, the "Assumed Plans"); provided, that Purchaser may elect to treat any such Assumed Plan as an Excluded Asset and/or Excluded Liability upon notice to Orchids no later than two (2) Business Days prior to Closing. Purchaser, on the one hand, and Sellers, on the other, shall take such actions as are necessary and reasonably requested by the other Party to cause Purchaser to assume sponsorship of the Assumed Plans as of the Closing and to effect the transfer of all assets and benefit liabilities of the Assumed Plans together with all related trust, insurance policies and administrative services agreements, effective as soon as practicable following the Closing.

(g) On or before the Closing Date, Purchaser or one of its Affiliates shall have offered employment and/or retention arrangements to each of the Employees listed on **Schedule 7.1(g)** on the terms set forth on such schedule.

(h) Notwithstanding any provision to the contrary herein, on and following the Closing Date, Purchaser may provide benefits (including any 401(k) plans) to the Transferred Employees acceptable to the Purchaser in its sole discretion.

(i) On and following the Initial Date, Sellers and Purchaser shall reasonably cooperate in all matters reasonably necessary to effect the transactions contemplated by this Section 7.1, including exchanging information and data relating to workers' compensation, employee benefits and employee benefit plan coverage, and in obtaining any governmental approvals required hereunder, except as would result in the violation of any applicable Law, including without limitation, any Law relating to the safeguarding of data privacy.

(j) The provisions of this Section 7.1 are for the sole benefit of the Parties to this Agreement only and shall not be construed to grant any rights, as a third party beneficiary or otherwise, to any person who is not a Party to this Agreement, nor shall any provision of this Agreement be deemed to be the adoption of, or an amendment to, any employee benefit plan, as

that term is defined in Section 3(3) of ERISA, or otherwise to limit the right of Purchaser or Sellers to amend, modify or terminate any such employee benefit plan. In addition, nothing contained herein shall be construed to (i) prohibit any amendments to or termination of any employee benefit plans or (ii) prohibit the termination or change in terms of employment of any employee (including any Transferred Employee) as permitted under applicable Law. Nothing herein, expressed or implied, shall confer upon any employee (including any Transferred Employee) any rights or remedies (including, without limitation, any right to employment or continued employment for any specified period) of any nature or kind whatsoever, under or by reason of any provision of this Agreement.

7.2 Reasonable Access to Records and Certain Personnel. Following consummation of the Closing, so long as such access does not unreasonably interfere with Purchaser's business operations, Purchaser shall permit Sellers' employees, agents, counsel and other professionals employed in the Chapter 11 Cases, or otherwise retained by Sellers, reasonable access to the financial and other books and records relating to the Acquired Assets or the Business (whether in documentary or data form) for the purposes of facilitating the continuing administration of the Chapter 11 Cases, preparing Tax Returns or responding to Tax related inquiries, and other such administrative activities, which access shall include the right of such professionals to copy, at Sellers' expense, such documents and records as it may request in furtherance of the purposes described above, subject in all respects to the provisions of Section 6.5 hereof. Purchaser may, in its sole discretion, move any or all of the books and records relating to the Acquired Assets and/or the Business to a location of its designation; provided, however, if Purchaser moves any such documents or records from their present location, Sellers have the right to require Purchaser to copy and deliver to Sellers or their professionals such documents and records as they may request, but only to the extent Sellers or any such professional (a) furnishes Purchaser with reasonably detailed written descriptions of the materials to be so copied and (b) Sellers advance to Purchaser the costs and expenses thereof. The Parties acknowledge that Sellers shall have the right to retain any documents and records provided to it by Purchaser, subject in all respects to the provisions of Section 6.5 hereof. Following the Closing, Purchaser shall provide Sellers and such of Sellers' professionals as Sellers shall have from time to time designated, with reasonable access to former management of the Business during regular business hours to assist Sellers as set forth in this Section 7.2, provided again that such access does not unreasonably interfere with Purchaser's business operations. Purchaser shall not dispose of any such documents and records except as shall be consistent with applicable Law; provided, further, Purchaser shall provide Sellers with reasonable advance written notice prior to the disposal of any such documents or records, together with the opportunity for Sellers to preserve such documents or records at Sellers' cost.

ARTICLE VIII

CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER

The obligations of Purchaser to consummate the Closing are subject to satisfaction (or, to the extent permitted by applicable Law, waiver by Purchaser) of the following conditions precedent on or before the Closing Date.

8.1 Representations and Warranties True as of Both Initial Date and Closing Date. Each of the representations and warranties of Sellers (a) contained herein (other than as set forth in clause (c) below) that are not qualified by "materiality" or "Material Adverse Effect" shall be true and correct in all respects on and as of the Initial Date other than as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect (except for such representations and warranties that specifically relate to an earlier date, which shall be true and correct in all material respects as of such earlier date) and on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date, (b) contained herein (other than as set forth in clause (c) below) that are qualified by "materiality" or "Material Adverse Effect" shall be true and correct in all respects on and as of the Initial Date (except for such representations and warranties that specifically relate to an earlier date, which shall be true and correct in all respects as of such earlier date) and on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date, and (c) contained in Section 4.1 (first sentence only), Section 4.2 and Section 4.5 shall be true and correct in all respects on and as of the Initial Date (except for such representations and warranties that specifically relate to an earlier date, which shall be true and correct in all respects as of such earlier date) and on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date. Sellers shall also have performed or complied in all material respects with all of their covenants and obligations hereunder which are required to be performed or complied with at or prior to Closing.

8.2 HSR Act. Any applicable waiting period (and any extension thereof) under the HSR Act shall have expired or early termination thereof shall have been granted.

8.3 No Court Orders. No court or other Governmental Body shall have issued, enacted, entered, promulgated or enforced any Law or Order (that is final and non-appealable and that has not been vacated, withdrawn or overturned) restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement.

8.4 No Material Adverse Effect. Since the Initial Date, there shall not have been a Material Adverse Effect.

8.5 Ordinary Course Operations. From and after the Initial Date, Sellers shall have continued to operate the Business in the Ordinary Course of Business in accordance with the terms of this Agreement.

8.6 Delivery of Acquired Assets. Each of the deliveries required to be made to Purchaser pursuant to Section 10.2 shall have been so delivered and at Closing, Sellers shall deliver possession of all Acquired Assets to Purchaser.

8.7 Bankruptcy Court Approval. The Sale Order (a) shall have been entered by the Bankruptcy Court and (b) shall not have been appealed or be subject to any pending appeal as of the Closing Date, and no stay with respect thereto (including any stay under Bankruptcy Rule 6004(h)) shall be in effect as of the Closing Date.

8.8 Lease/Contract Assumption and Assignment. The Sale Order shall approve and authorize the assumption and assignment of the Assigned Contracts over which the Bankruptcy

Court has jurisdiction. The Sale Order shall also provide that, and if and to the extent necessary the Assigned Contracts shall be deemed modified to provide that (a) all the Assigned Contracts are in full force and effect, (b) the assumption and assignment shall be free and clear of any claims of defaults, (c) Sellers shall be responsible for curing any and all defaults which may exist at the time of assignment and restoring any deficiencies in Lease Deposits under any Assigned Contract regarding any Assumed Leased Real Property, (d) the Assigned Contracts regarding any Assumed Leased Real Property shall be transferred free and clear of all Liens, Claims and Encumbrances, (e) all references in any Assigned Contract regarding any Assumed Leased Real Property to such tradenames or "Tenant" or "Lessee" shall thereafter mean and refer to Purchaser, (f) Purchaser may change its signs and perform alterations and remodeling to the extent permitted in the applicable lease or as may be consistent with Purchaser's method of conduct of business under its tradenames and (g) the assumption and assignment contemplated hereunder are otherwise permitted.

8.9 Consents; Permits. To the extent not otherwise deemed consented to, approved, licensed, permitted, ordered or authorized by entry of the Sale Order or otherwise as a result of the Chapter 11 Cases, Sellers shall have received (and there shall be in full force and effect), in each case in form and substance satisfactory to Purchaser, the material consents, approvals, licenses, orders and other authorizations of, and shall have made (and there shall be in full force and effect), to the extent required by Law, the filings, registrations, qualifications and declarations with, any Person pursuant to any applicable Law or pursuant to any agreement, order or decree to which any Seller is a party or to which it is subject, required in connection with the transactions contemplated by this Agreement and the sale of the Acquired Assets, including, without limitation, assignment of the Assigned Contracts regarding any Assumed Leased Real Property and all third-party consents required for the sale, assignment, assumption and/or delivery of the Acquired Assets or Assumed Liabilities of Orchids SC and delivery of Orchids' Fund Loan Agreement, dated as of December 29, 2015, by and between USBCDC Investment Fund 158, LLC and Orchids, to Purchaser (or the applicable Designated Purchaser in the case of the Acquired Assets and Assumed Liabilities of Orchids SC) hereunder, in all cases on the same economic terms as exist per the terms of such agreements on the Initial Date (including, for the avoidance of doubt, the consent of RDP 27 LLC, USBCDC SUB-CDE 146, LLC, USBCDC Investment Fund 158, LLC and U.S. Bank National Association). Purchaser (or the applicable Designated Purchaser) shall have received (and there shall be in full force and effect), in each case in form and substance satisfactory to Purchaser, either by transfer or re-issuance, all Permits required to operate the Business and Acquired Assets consistent in all respects with historical operations, including all those set forth on **Schedule 2.1(n)**.

8.10 Corporate Documents. Sellers shall have delivered to Purchaser copies of the resolutions of Sellers' board of directors or similar governing body, as applicable, evidencing the approval of this Agreement, the Chapter 11 Cases and the transactions contemplated hereby.

8.11 Release of Liens. Purchaser shall have received such documents or instruments as may be required, in Purchaser's reasonable discretion, to demonstrate that, effective as of the Closing Date, the Acquired Assets are released from any and all Liens.

8.12 Title Policy. Purchaser shall have received policies of title insurance in form and substance, and issued by a title company, reasonably satisfactory to Purchaser insuring the title

of Purchaser to the Acquired Owned Real Property, subject only to Permitted Encumbrances (the "Title Policies").

8.13 Continuity of Supply. Neither Purchaser nor the Sellers have received any information or notice (written or oral) or otherwise have reason to believe that any of the goods, products, and materials currently supplied by Dixie Pulp and Paper, Inc., Itochu Pulp and Paper Corp., Cmpc Usa, Inc., Resolute FP US, Inc. and Fabrica de Papel San Francisco, S.A. de C.V. will not be available to Purchaser on contractual terms satisfactory to Purchaser post-Closing whether under Assigned Contracts or otherwise, other than any such information or notice of which Purchaser has been informed in writing via email by Sellers on the Initial Date.

8.14 Continuity of Employees. Each employee set forth on **Schedule 7.1(g)** (which schedule may be amended by Purchaser in its sole discretion upon written notice to Sellers (email being sufficient) no later than two (2) Business Days prior to Closing) shall have agreed in writing to be employed by Purchaser, effective as of the Closing, on terms set forth on **Schedule 7.1(g)**.

8.15 Accounts Payable. The amount of Accounts Payable to be assumed by Purchaser under clauses (i) and (iii) of Section 2.3(c) shall not exceed \$2,500,000 in the aggregate (the "Accounts Payable Cap").

8.16 Continuity of Customers. Neither Purchaser nor the Sellers have received any information or notice (written or oral) or otherwise have reason to believe that any of Dollar General, Walmart (including Sam's Club), Family Dollar (including its parent, Dollar Tree) and Target will not continue as customers of the Business on contractual terms satisfactory to Purchaser post-Closing whether under Assigned Contracts or otherwise, other than any such information or notice of which Purchaser has been informed in writing via email by Sellers on the Initial Date.

8.17 Cash Flow Compliance. Immediately prior to the Closing, Sellers shall be in compliance with the Approved Budget (as defined in the DIP Credit Agreement) then in effect under the DIP Credit Agreement.

8.18 Cure Amount Cap. Purchaser's liability for the Cure Amount shall not exceed \$1,000,000 in the aggregate (the "Cure Amount Cap").

8.19 Rejection of Employment and Retention Agreements. No later than one day prior to the Closing, all employment agreements and retention agreements to which any Seller is a party, including, for the avoidance of doubt, all the items listed on **Schedule 8.19**, shall have been rejected pursuant to the Chapter 11 Cases.

8.20 Mexican Antitrust Approval. Receipt of Mexican Antitrust Approval shall have been obtained, if required.

ARTICLE IX

CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLERS

The obligations of Sellers to consummate the Closing are subject to satisfaction (or, to the extent permitted by applicable Law, waiver by Sellers) of the following conditions precedent on or before the Closing Date:

9.1 Representations and Warranties True as of Both Initial Date and Closing Date. The representations and warranties of Purchaser (a) contained herein that are not qualified by "materiality" or "material adverse effect" shall be true and correct in all material respects on and as of the Initial Date, and shall also be true in all material respects on and as of the Closing Date (except for representations and warranties which specifically relate to an earlier date, which shall be true and correct in all material respects as of such earlier date) with the same force and effect as though made by Purchaser on and as of the Closing Date, and (b) contained herein that are qualified by "materiality" or "material adverse effect" shall be true and correct in all respects on and as of the Initial Date, and on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date (except for representations and warranties which specifically relate to an earlier date, which shall be true and correct in all material respects as of such earlier date), in each case, except where the failure of such representations and warranties to be so true and correct has not had, and would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on Purchaser's ability to consummate the transactions contemplated by this Agreement. Purchaser shall also have performed or complied in all material respects with all of its covenants and obligations hereunder which are to be completed or complied with at or prior to Closing.

9.2 HSR Act. Any applicable waiting period (and any extension thereof) under the HSR Act shall have expired or early termination thereof shall have been granted.

9.3 No Court Orders. No court or other Governmental Body shall have issued, enacted, entered, promulgated or enforced any Law or Order (that is final and non-appealable and that has not been vacated, withdrawn or overturned) restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement.

9.4 Bankruptcy Condition. The Sale Order shall have been entered by the Bankruptcy Court and no stay with respect thereto (including any stay under Bankruptcy Rule 6004(h)) shall be in effect as of the Closing Date.

9.5 Corporate Documents. Purchaser shall have delivered to Sellers copies of the resolutions of Purchaser's board of managers evidencing the approval of this Agreement and the transactions contemplated hereby.

9.6 Mexican Antitrust Approval. Receipt of Mexican Antitrust Approval shall have been obtained, if required.

ARTICLE X

CLOSING

10.1 Closing. Unless otherwise mutually agreed by the Parties, the closing of the purchase and sale of the Acquired Assets, the payment of the Purchase Price, the assumption of the Assumed Liabilities and the consummation of the other transactions contemplated by this Agreement (the "Closing") shall take place on the second (2nd) Business Day following full satisfaction or due waiver (by the Party entitled to the benefit of such condition) of the closing conditions set forth in ARTICLE VIII and ARTICLE IX (other than conditions that by their terms or nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of those conditions at the Closing), or at such other place and time as the Parties may agree, provided that the Purchaser shall not be required to consummate the Closing prior to 21 days after the Sale Order is entered.

10.2 Deliveries by Sellers. At or prior to the Closing, Sellers will deliver, in addition to the other documents contemplated by this Agreement, the following to Purchaser:

- (a) a bill of sale in the form of **Exhibit A** duly executed by Sellers;
- (b) an assignment and assumption agreement in the form of **Exhibit B** (the "Assignment and Assumption Agreement") duly executed by Sellers;
- (c) a certified copy of the Sale Order;
- (d) copies of all instruments, certificates, documents and other filings (if applicable) necessary to release the Acquired Assets from all Encumbrances, including any applicable UCC termination statements and releases of mortgages, all in form and substance reasonably satisfactory to Purchaser;
- (e) copies of the waivers, consents and approvals for the Assigned Contracts, where such waivers, consents and approvals are required to operate the Business in the ordinary course, all in form and substance reasonably satisfactory to Purchaser;
- (f) an officer's certificate, dated as of the Closing Date, executed by a duly authorized officer of each Seller certifying that the conditions set forth in Section 8.1 have been satisfied;
- (g) a copy of the resolutions adopted by the board of directors (or similar governing body) of each Seller evidencing the authorization of the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, certified by an authorized officer of each Seller;
- (h) an instrument of assumption and assignment of the Assigned Contracts regarding Assumed Leased Real Property substantially in the form of **Exhibit C** (the "Assignment and Assumption of Leases"), duly executed by each Seller, in form for recordation with the appropriate public land records to the extent the underlying Lease is of record;

(i) an Intellectual Property Assignment and Assumption Agreement substantially in the form of **Exhibit D** (the "IP Assignment and Assumption Agreement"), duly executed by each Seller;

(j) possession of each Owned Real Property, together with duly executed and acknowledged special warranty (or jurisdictional equivalent) deeds for each Owned Real Property conveying the Owned Real Property subject only to Permitted Encumbrances, and any existing surveys, legal descriptions and title policies that are in the possession of Sellers;

(k) possession of the Acquired Assets and the Business;

(l) stock powers or similar instruments of transfer, duly executed by the applicable Seller, transferring all of the capital stock or other equity interests of the Acquired Subsidiaries to Purchaser (it being understood that such instruments shall address the requirements under applicable Law local to the jurisdiction of organization of each such Acquired Subsidiary necessary to effect and make enforceable the transfer to Purchaser of the legal and beneficial title to such capital stock or other equity interests);

(m) a certificate duly executed by each Seller, in the form prescribed under Treasury Regulation Section 1.1445-2(b)(2)(iv);

(n) such other bills of sale, deeds, endorsements, assignments and other good and sufficient instruments of conveyance and transfer, in form and substance reasonably satisfactory to Purchaser, as Purchaser may reasonably request to vest in Purchaser all of Sellers' right, title and interest of Sellers in, to or under any or all the Acquired Assets, including all Owned Real Property;

(o) such ordinary and customary documents (including any factually accurate affidavits) as may be required by any title company or title insurance underwriter to enable Purchaser to obtain the Title Policies;

(p) the most recent final Phase I environmental site assessment reports and any Phase II environmental site assessments (or similar reports) for the Acquired Owned Real Property and Assumed Leased Real Property, to the extent in existence, and any other documents identified in clause (e) of Section 4.19; and

(q) such other documents as Purchaser may reasonably request that are not inconsistent with the terms of this Agreement and customary for a transaction of this nature and necessary to evidence or consummate the transactions contemplated by this Agreement.

10.3 Deliveries by Purchaser. At the Closing, Purchaser will deliver the following:

(a) the Purchase Price payable pursuant to and in accordance with Section 3.1;

(b) the Assignment and Assumption Agreement duly executed by Purchaser;

(c) the Assignment and Assumption of Leases duly executed by Purchaser;

- (d) the IP Assignment and Assumption Agreement, executed by Purchaser;
- (e) satisfactory evidence of payment of the Cure Amount in accordance with Section 2.3(b);
- (f) an officer's certificate, dated as of the Closing Date, executed by a duly authorized officer of Purchaser certifying that the conditions set forth in Section 9.1 have been satisfied; and
- (g) such other documents as Sellers may reasonably request that are not inconsistent with the terms of this Agreement and customary for a transaction of this nature and necessary to evidence or consummate the transactions contemplated by this Agreement.

ARTICLE XI

TERMINATION

11.1 Termination of Agreement. This Agreement and the transactions contemplated hereby may (at the option of the Party having the right to do so or by operation of this Agreement) be terminated at any time on or prior to the Closing Date:

- (a) Mutual Consent. By mutual written consent of Purchaser and Sellers.
- (b) Termination by Purchaser or Sellers.
 - (i) By Purchaser or Sellers, if the Bankruptcy Court or other court of competent jurisdiction or a governmental, quasi-governmental, regulatory or administrative department, agency, commission or authority shall have issued an order, decree or ruling or taken any other Action (which order, decree, ruling or Action, Sellers, upon request by the Purchaser, shall use reasonable best efforts to lift or dissolve), in each case restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated by this Agreement or attempting to do the same; provided, however, that the right to terminate this Agreement pursuant to this Section 11.1(b)(i) shall not be available to Purchaser or Sellers if the Purchaser or Sellers, respectively, breach of any of their respective representations, warranties, covenants or agreements contained herein and such breach results in such ruling or Order;
 - (ii) by Purchaser or Sellers, if the transactions contemplated hereby shall not have been consummated on or prior to August 16, 2019 (which may be extended by 60 days by the Purchaser in order to satisfy the conditions set forth in Section 8.2 and/or Section 8.9); provided, however, that such right to terminate this Agreement shall not be available to any Party whose failure to fulfill any of its covenants or obligations under this Agreement has been the cause of, or resulted in, the failure of the transactions contemplated hereby to be consummated on or before such date;
 - (iii) by Purchaser or Sellers, if the Auction has occurred and the Purchaser is not the Successful Bidder; or

(iv) by Purchaser or Sellers, prior to the entry of the Sale Order if the Bankruptcy Court enters an Order approving an Alternative Transaction.

(c) Termination by Purchaser.

(i) By Purchaser, if a breach of any representation, warranty, covenant or agreement on the part of Sellers set forth in this Agreement shall have occurred that would cause any of the conditions set forth in ARTICLE VIII not to be satisfied, and such breach is incapable of being cured or, if capable of being cured, Sellers have failed to cure such breach within ten (10) days of receipt of written notification thereof or which by its nature or timing cannot be cured within such time period;

(ii) by Purchaser, if Sellers shall fail to file the Chapter 11 Cases on or prior to April 1, 2019;

(iii) by Purchaser, if Sellers shall fail to file any of the DIP Motion or the Sale and Bid Procedures Motion with the Bankruptcy Court on or prior to April 1, 2019;

(iv) by Purchaser, if (A) the Bid Procedures Order, including approval of the Break-Up Fee and Expense Reimbursement Amount, shall not have been entered by the Bankruptcy Court on or prior to May 5, 2019 or if such Bid Procedures Order has been entered by such date but has been amended, supplemented or otherwise modified in any manner adverse to the Purchaser, (B) the Bankruptcy Court issues an order granting leave to any Person to commence an appeal of the Bid Procedures Order, or (C) following its entry, the Bid Procedures Order shall fail to be in full force and effect or shall have been stayed, reversed, modified or amended in any respect without the prior written consent of the Purchaser;

(v) by Purchaser, if (A) the final DIP Order shall not have been entered by the Bankruptcy Court on or prior to May 8, 2019 and such failure results in an unwaived and uncured event of default under the DIP Facility, (B) the Bankruptcy Court issues an order granting leave to any Person to commence an appeal of the final DIP Order, or (C) following its entry, the final DIP Order shall fail to be in full force and effect or shall have been stayed, reversed, modified or amended in any respect without the prior written consent of the Purchaser;

(vi) by Purchaser, if the Chapter 11 Cases are dismissed or converted to a liquidation proceeding under Chapter 7 of the Bankruptcy Code;

(vii) by Purchaser, if the Bankruptcy Court enters any Order inconsistent with the Bid Procedures Order, the Sale Order or the Acquisition;

(viii) by Purchaser, if any creditor of any Seller obtains a final and unstayed Order of the Bankruptcy Court granting relief from the stay to foreclose on any portion of the Acquired Assets in excess of \$100,000, in the aggregate;

(ix) by Purchaser if the bid deadline does not occur on June 6, 2019 or June 7, 2019, or if the Auction (if any) is not held by June 10, 2019;

(x) by Purchaser, if Purchaser is the Successful Bidder and the Sale Hearing has not commenced on or prior to June 12, 2019; provided that the failure of the Sale Hearing to commence on or prior to such time is not caused by Purchaser's material breach of this Agreement or the Bankruptcy Court's calendar;

(xi) by Purchaser, if the Bankruptcy Court has not entered the Sale Order approving the Acquisition by Purchaser on or prior to June 14, 2019, or if such Sale Order has been entered by such date but is stayed or stayed pending appeal or has been reversed or vacated, or if such Sale Order has been entered by such date but has been amended, supplemented or otherwise modified in a manner adverse to Purchaser and without the prior written consent of Purchaser, or if such Sale Order has been entered by such date but any Seller or any other Person takes any Action seeking to void or modify such Sale Order;

(xii) by Purchaser, if the Closing shall not have occurred on or prior to August 16, 2019;

(xiii) by Purchaser, if notices of assumption of the Assigned Contracts, including designation of the Cure Amount, are not served on all material parties by May 14, 2019;

(xiv) by Purchaser, at any time prior to the end of the Auction (or if no Auction occurs, the Closing Date), if Purchaser determines in its good faith judgment that there is a reasonable possibility of losing continuous access to supply under, and delivery to Sellers (prior to the Closing) or to Purchaser (after the Closing Date) of the goods and services purchased under, the Contracts set forth on **Schedule 2.6(a)**;

(xv) by Purchaser, if a Material Adverse Effect occurs; or

(xvi) by Purchaser, if, for any reason (including, without limitation, an Order of the Bankruptcy Court), the Purchaser is unable, pursuant to Section 363(k) of the Bankruptcy Code, to credit bid up to the full amount of the Liabilities under the Prepetition Credit Agreements and the DIP Credit Agreement in satisfaction of all or any portion of the Purchase Price.

For the avoidance of doubt, the Parties acknowledge and agree that in the event Sellers determine, in their reasonable discretion, that the last Overbid submitted by Purchaser is better than all other Qualified Bids as such Qualified Bids may be amended by an Overbid submitted at the Auction, then within two (2) Business Days following the conclusion of the Auction, Sellers and Purchaser shall enter into an amendment to this Agreement to reflect Purchaser's last Overbid.

(d) Termination by Sellers. By Sellers, if a breach of any representation, warranty, covenant or agreement on the part of Purchaser set forth in this Agreement shall have occurred that would cause any of the conditions set forth in ARTICLE IX not to be satisfied, and

such breach is incapable of being cured or, if capable of being cured, Purchaser has failed to cure such breach within ten (10) days of receipt of written notification thereof or which by its nature or timing cannot be cured within such time period.

11.2 Procedure and Effect of Termination. If this Agreement is terminated pursuant to Section 11.1, written notice thereof shall forthwith be given to the other Parties to this Agreement and all further obligations of the Parties under this Agreement shall terminate; provided, however, that the Parties shall, in all events, remain bound by and continue to be subject to the provisions set forth in this ARTICLE XI.

11.3 Breach by Sellers. If termination of this Agreement is due solely to a material breach by Sellers pursuant to Section 11.1(c)(i) hereof, Purchaser shall thereupon, as its sole and exclusive remedy, immediately be entitled to payment of the Expense Reimbursement Amount, which amount shall be paid to Purchaser within three (3) days following its delivery to Sellers of its documented costs, fees and expenses; provided, however, that nothing herein shall relieve Sellers from liability for any willful and material breach of this Agreement or any agreement made as of the Initial Date or subsequent thereto pursuant to this Agreement. Sellers' obligation to pay the Expense Reimbursement Amount pursuant to this Section 11.3 shall survive termination of this Agreement and shall constitute an administrative expense of Sellers under Section 364(c)(1) of the Bankruptcy Code with priority over any and all administrative expenses of the kind specified in Section 503(b) or 507(b) of the Bankruptcy Code.

11.4 Breach by Purchaser. If termination of this Agreement is due solely to a material breach by Purchaser pursuant to Section 11.1(d) hereof, Sellers, as their sole remedy, shall be entitled to liquidated damages in the amount of \$1,000,000, which shall be payable by Purchaser by the forgiveness of Prepetition Credit Agreement Indebtedness. The Parties hereby agree that the foregoing dollar amount is a fair and reasonable estimate of the total detriment that Sellers would suffer in the event of Purchaser's default and failure to complete the transaction hereunder.

11.5 Break-Up Fee and Expense Reimbursement Amount.

(a) In consideration of Purchaser and its Affiliates having expended considerable time and expense in connection with this Agreement and the negotiation thereof, and the identification and quantification of assets to be included in the Acquired Assets, and to compensate the Purchaser as a stalking-horse bidder, Sellers, jointly and severally, shall pay in cash to Purchaser, by wire transfer of immediately available funds to the account specified by Purchaser to Sellers in writing, an amount equal to \$5,250,000, which is three percent (3%) of the Purchase Price (the "Break-Up Fee"), (x) in the event that this Agreement is terminated pursuant to Section 11.1(b)(iii) or Section 11.1(b)(iv) or (y) in the event that (1) this Agreement is otherwise terminated pursuant to Section 11.1(b)(ii) or for any of Section 11.1(c)(ii) through Section 11.1(c)(xii) (other than a termination pursuant to Section 11.1(c)(vi) resulting from a conversion of the Chapter 11 Cases to chapter 7 pursuant to a motion brought by a party in interest other than Sellers and (2) a Seller enters into any agreement or process with respect to an Alternative Transaction within nine (9) months after such termination of this Agreement which results in an Alternative Transaction being consummated; (A) such Break-Up Fee shall be due and payable simultaneously with any termination of this Agreement, in the case of the foregoing clause (x) and (B) fifty percent (50%) of such Break-Up Fee shall be due and payable

simultaneously with the consummation of the Alternative Transaction in the case of the foregoing clause (y). Sellers' obligation to pay the Break-Up Fee pursuant to this Section 11.5(a) shall survive termination of this Agreement and shall constitute an administrative expense of Sellers under Section 364(c)(1) of the Bankruptcy Code with priority over any and all administrative expenses of the kind specified in Section 503(b) or 507(b) of the Bankruptcy Code.

(b) In consideration of Purchaser and its Affiliates having expended considerable time and expense in connection with this Agreement and the negotiation thereof, and the identification and quantification of assets to be included in the Acquired Assets, if this Agreement is terminated in accordance with the terms set forth in Section 11.1 hereof (other than any termination by Section 11.1(a), Section 11.1(b)(i), Section 11.1(c)(xiv), Section 11.1(c)(xvi) or Section 11.1(d)), then Sellers, jointly and severally, shall pay to Purchaser in cash not later than (i) in the case of a termination pursuant to Section 11.1(b)(iv), the closing of an Alternative Transaction and (ii) two (2) Business Days following receipt of documentation supporting the request for reimbursement of costs, fees and expenses, the Expense Reimbursement Amount, in each case by wire transfer of immediately available funds to an account specified by the Purchaser to Sellers in writing. Sellers' obligation to pay the Expense Reimbursement Amount pursuant to this Section 11.5(b) shall survive termination of this Agreement and shall constitute an administrative expense of Sellers under Section 364(c)(1) of the Bankruptcy Code with priority over any and all administrative expenses of the kind specified in Section 503(b) or 507(b) of the Bankruptcy Code.

(c) Sellers agree and acknowledge that the Purchaser's due diligence, efforts, negotiation, and execution of this Agreement have involved substantial investment of management time and have required significant commitment of financial, legal, and other resources by Purchaser and its Affiliates, and that such due diligence, efforts, negotiation, and execution have provided value to Sellers and, in Sellers' reasonable business judgment, is necessary for the preservation of the value of Sellers' estate. Sellers further agree and acknowledge that the Break-Up Fee and Expense Reimbursement Amount are reasonable in relation to Purchaser's efforts, Purchaser's lost opportunities from pursuing this transaction, and the magnitude of the transactions contemplated hereby. The provision of the Break-Up Fee and the Expense Reimbursement Amount is an integral part of this Agreement, without which Purchaser would not have entered into this Agreement. Sellers' obligation to pay the Break-Up Fee and Expense Reimbursement Amount shall be joint and several among Sellers.

(d) If Sellers fail to take any action necessary to cause the delivery of the Break-Up Fee and/or the Expense Reimbursement Amount under circumstances where Purchaser is entitled to the Break-Up Fee and/or the Expense Reimbursement Amount and, in order to obtain such Break-Up Fee and/or the Expense Reimbursement Amount, Purchaser commences a suit which results in a judgment in favor of Purchaser, Sellers shall pay to Purchaser, in addition to the Break-Up Fee and/or the Expense Reimbursement Amount, an amount of cash equal to the costs and expenses (including attorneys' fees) incurred by Purchaser in connection with such suit.

ARTICLE XII

MISCELLANEOUS

12.1 Expenses. Except as otherwise provided herein (including without limitation Section 11.5(d)), each Party hereto shall bear its own expenses with respect to the transactions contemplated hereby.

12.2 Survival of Representations and Warranties; Survival of Confidentiality. The Parties agree that the representations and warranties contained in this Agreement shall expire upon the Closing Date. Except as otherwise provided herein, the Parties agree that the covenants contained in this Agreement to be performed at or after the Closing shall survive in accordance with the terms of the particular covenant or until fully performed.

12.3 Amendment; Waiver. This Agreement may be amended, supplemented or changed, and any provision hereof may be waived, only by written instrument making specific reference to this Agreement signed by the Party against whom enforcement of any such amendment, supplement, modification or waiver is sought; provided that, notwithstanding the foregoing, the Acquired Assets, Assigned Contracts and the Schedules hereto may be amended in accordance with Section 2.6 and Section 6.9(b). No action taken pursuant to this Agreement, including any investigation by or on behalf of any Party, shall be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, condition, covenant or agreement contained herein. The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by applicable Law.

12.4 Notices. Any notice, request, instruction or other document to be given hereunder by a Party hereto shall be in writing and shall be deemed to have been given (i) when received if given in person, (ii) on the date of transmission if sent by telecopy or by electronic mail, (iii) one (1) Business Day after being delivered to a nationally known commercial courier service providing next day delivery service (such as FedEx), or (iv) three (3) Business Days after being deposited in the U.S. mail, certified or registered mail, postage prepaid:

(A) If to Sellers, addressed as follows:

Orchids Paper Products Company
201 Summit View Dr.
Suite 110
Brentwood, TN 37027
Attention: Jeffrey S. Schoen
Email: jsschoen@orchidpaper.com

With a copy (which shall not constitute notice) to:

Polsinelli PC
150 N. Riverside Plaza
Suite 3000
Chicago, IL 60606
Attention: Donald E. Figliulo
Attention: Jerry L. Switzer
Email: dfigliulo@polsinelli.com
Email: jswitzer@polsinelli.com

(B) If to Purchaser, addressed as follows:

Orchids Investment LLC
c/o BD White Birch Investment LLC
80 Field Point Road
Greenwich, CT 06830
Attention: Christopher Brant
Email: ChrisBrant@WhiteBirchPaper.com

and

Orchids Investment LLC
c/o Black Diamond Capital Management, L.L.C.
100 Field Drive, Suite 170
Lake Forest, IL 60045
Attention: Leslie A. Meier
Email: les@bdc.com

With a copy (which shall not constitute notice) to:
Skadden, Arps, Slate, Meagher & Flom LLP
155 N. Wacker Drive
Chicago, Illinois 60606
Attention: Kimberly A. deBeers
Email: kimberly.debeers@skadden.com

and

Winston and Strawn LLP
35 West Wacker Drive
Chicago, IL 60606
Attention: Daniel McGuire
Attention: Timothy Dable
Email: dm McGuire@winston.com
Email: tdable@winston.com

or to such other individual or address as a Party hereto may designate for itself by notice given as herein provided.

12.5 Effect of Investigations. Any due diligence review, audit or other investigation or inquiry undertaken or performed by or on behalf of Purchaser shall not limit, qualify, modify or amend the representations, warranties and covenants of, and indemnities by, Sellers made or undertaken pursuant to this Agreement, irrespective of the knowledge and information received (or which should have been received) therefrom by Purchaser.

12.6 Counterparts; Electronic Signatures.

(a) This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(b) The exchange of copies of this Agreement and of signature pages by facsimile transmission (whether directly from one facsimile device to another by means of a dial-up connection or whether mediated by the worldwide web), by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by combination of such means, shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted electronically shall be deemed to be their original signatures for all purposes.

12.7 Headings. The headings preceding the text of Articles and Sections of this Agreement and the Schedules thereto are for convenience only and shall not be deemed part of this Agreement.

12.8 Applicable Law and Jurisdiction. SUBJECT TO ANY PROVISION IN THIS AGREEMENT AND ANY ANCILLARY DOCUMENT TO THE CONTRARY, THIS AGREEMENT (AND ALL DOCUMENTS, INSTRUMENTS, AND AGREEMENTS EXECUTED AND DELIVERED PURSUANT TO THE TERMS AND PROVISIONS HEREOF) SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED WHOLLY WITHIN SUCH JURISDICTION. PURCHASER AND SELLERS FURTHER AGREE THAT THE BANKRUPTCY COURT SHALL HAVE JURISDICTION OVER ALL DISPUTES AND OTHER MATTERS RELATING TO (a) THE INTERPRETATION AND ENFORCEMENT OF THIS AGREEMENT OR ANY ANCILLARY DOCUMENT AND/OR (b) THE ACQUIRED ASSETS AND/OR ASSUMED LIABILITIES AND PURCHASER EXPRESSLY CONSENTS TO AND AGREES NOT TO CONTEST SUCH JURISDICTION.

12.9 Binding Nature; Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interest or obligations hereunder shall be assigned by any of the Parties hereto without prior written consent of the other Parties, provided that, Purchaser may grant a security interest in its rights and interests hereunder to its third party lender(s).

Nothing contained herein, express or implied, is intended to confer on any Person other than the Parties hereto or their successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

12.10 Designated Purchasers. In connection with the Closing, notwithstanding Section 12.9 or anything to the contrary contained herein, Purchaser shall be entitled to designate, in accordance with the terms of this paragraph, one or more Subsidiaries or Affiliates of Purchaser to (a) purchase specified Acquired Assets (including specified Assigned Contracts) and pay the corresponding Purchase Price amount and Cure Amount, (b) assume specified Assumed Liabilities, (c) employ specified Transferred Employees on and after the Closing Date, (d) perform any of the other covenants and agreements hereunder to be performed by Purchaser and (e) be entitled to the rights and benefits afforded to Purchaser hereunder (any such Subsidiary or Affiliate of Purchaser that shall be designated in accordance with this clause, a "Designated Purchaser"). Upon any such designation of a Designated Purchaser, such Designated Purchaser shall be solely responsible with respect to the payment of the corresponding Purchase Price, Cure Amount, the specified Assumed Liabilities and employment of the specified Transferred Employees and, from and after such designation, Purchaser shall have no Liability or responsibility therefor. Any reference to Purchaser made in this Agreement in respect of any right, obligation, purchase, assumption or employment referred to in this paragraph shall be deemed a reference to the appropriate Designated Purchaser, if any, with respect to the applicable obligation or right. All obligations of Purchaser and any Designated Purchaser shall be several and not joint and, notwithstanding anything to the contrary contained herein, neither Purchaser nor any other Designated Purchaser shall have any obligation for any Assumed Liabilities assumed by a particular Designated Purchaser at the Closing and any prior obligations of the Purchaser are novated and released. For the avoidance of doubt, no designation of a Designated Purchaser hereunder shall expand or otherwise affect the Accounts Payable Cap, the Cure Amount Cap, or any other limitation on Purchaser's obligations hereunder, it being understood that such limitations shall apply to the aggregate Liabilities of Purchaser and any Designated Purchaser(s) hereunder. The above designations shall be made by Purchaser by way of a written notice to be delivered to Sellers in no event later than two (2) Business Days prior to Closing. In addition, the Parties agree to modify any Closing deliverables in accordance with the foregoing designation. Any Designated Purchasers are intended third party beneficiaries of this Agreement, and this Agreement may be enforced by such Designated Purchasers.

12.11 No Third Party Beneficiaries. This Agreement is solely for the benefit of the Parties hereto and their respective affiliates and no provision of this Agreement shall be deemed to confer upon third parties any remedy, claim, liability, reimbursement, claim of Action or other right.

12.12 Tax Matters.

(a) Any sales, use, purchase, transfer, franchise, deed, fixed asset, stamp, documentary stamp, use or similar fees or other Taxes, governmental charges and recording charges (including any interest and penalty thereon) which may be payable by reason of the sale of the Acquired Assets or the assumption of the Assumed Liabilities under this Agreement or the transactions contemplated hereby (the "Transfer Taxes") shall be borne by Purchaser to the extent not exempt under the Bankruptcy Code, as applicable to the transfer of the Acquired

Assets pursuant to this Agreement. Purchaser shall properly file on a timely basis all necessary Tax Returns and other documentation with respect to any Transfer Tax and provide to Sellers evidence of payment of all Transfer Taxes.

(b) In the case of any taxable period that begins before, and ends after, the Closing Date (a "Straddle Period"), (i) Taxes imposed on the Acquired Assets that are based upon or related to income or receipts or imposed on a transaction basis (including all related items of income, gain, deduction or credit) will be deemed equal to the amount that would be payable if the Tax year or period ended on the Closing Date, and (ii) any real property, personal property, ad valorem and similar Taxes allocable to the portion of such Straddle Period ending with the end of the day on the Closing Date shall be equal to the amount of such Taxes for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of days during the Straddle Period that is in the Pre-Closing Tax Period and the denominator of which is the number of days in the entire Straddle Period, in each of (i) and (ii) such amounts shall be the responsibility of Sellers (and, for the avoidance of doubt, such amounts shall be an Excluded Liability for purposes of clause (ii) of Section 2.4(d)).

(c) Purchaser shall prepare and file (or cause to be prepared and filed) all Tax Returns in respect of the Acquired Assets required to be filed after the Closing Date. Prior to filing any such Tax Returns, Purchaser shall provide a draft thereof to Sellers for Sellers' review, comment and approval (such approval not to be unreasonably withheld or delayed) at least fifteen (15) days before the due date of such Tax Returns, unless otherwise required by applicable Law. Purchaser shall consider in good faith any comments provided by Sellers to such Tax Returns, and Purchaser shall make any revisions to such Tax Returns as are reasonably requested by Sellers. To the extent any Taxes reflected on any such Tax Return are an Excluded Liability, Sellers shall pay to Purchaser the amount of such liability within ten (10) days of receiving notice from Purchaser that such Tax Return has been filed or that Purchaser has paid such liability, except to the extent such Taxes were paid by Sellers to the applicable Governmental Body prior to the filing of such Tax Return.

(d) Cooperation on Tax Matters. Purchaser shall make available to Sellers, and Sellers shall make available to Purchaser, (i) such records, personnel and advisors as any such Party may require for the preparation of any Tax Returns required to be filed by Sellers or Purchaser, as the case may be, and (ii) such records, personnel and advisors as Sellers or Purchaser may require for the defense of any audit, examination, administrative appeal, or litigation of any Tax Return in which Sellers or Purchaser was included. Sellers shall cooperate with Purchaser, and shall make available to Purchaser such records, personnel and advisors as is reasonably necessary for Purchaser, in determining the Tax attributes of Sellers and their Subsidiaries and whether to consummate the Closing as a transaction treated as a reorganization under Section 368 of the code or a taxable sale under Section 1001 of the Code for U.S. federal income tax purposes.

(e) Allocation of Purchase Price. As soon as reasonably practicable and in no event later than sixty (60) days after the Closing Date, Purchaser shall provide Sellers with a draft allocation of the Purchase Price for federal income tax purposes, including any liabilities properly included therein among the Acquired Assets and the agreements provided for herein, for federal, state and local income tax purposes (the "Initial Allocation"). Within forty-five (45) days

of the receipt of the Initial Allocation, Sellers shall deliver a written notice (the "Objection Notice") to Purchaser, setting forth in reasonable detail those items in the Initial Allocation that Sellers disputes. Sellers may make reasonable inquiries of Purchaser and its accountants and employees relating to the Initial Allocation, and Purchaser shall use reasonable efforts to cause any such accountants and employees to cooperate with, and provide such requested information to, Sellers in a timely manner. If prior to the conclusion of such forty-five (45)-day period, Sellers notify Purchaser in writing that they will not provide any Objection Notice or if Sellers do not deliver an Objection Notice within such forty-five (45)-day period, then Purchaser's proposed Initial Allocation shall be deemed final, conclusive and binding upon each of the Parties hereto. Within thirty (30) days of Sellers' delivery of the Objection Notice, Sellers and Purchaser shall attempt to resolve in good faith any disputed items, and failing such resolution, the unresolved disputed items shall be referred for final binding resolution to an Arbitrating Accountant. The fees and expenses of the Arbitrating Accountant shall be paid 50% by Purchaser and 50% by Sellers. Such determination by the Arbitrating Accountant shall be (i) in writing, (ii) furnished to Purchaser and Sellers as soon as practicable (and in no event later than thirty (30) days after the items in dispute have been referred to the Arbitrating Accountant), (iii) made in accordance with the principles set forth in this Section 12.12(e), and (iv) non-appealable and incontestable by Purchaser and Sellers. As used herein, the "Allocation" means the allocation of the Purchase Price, the Assumed Liabilities and other related items among the Acquired Assets and the agreements provided for herein as finally agreed between Purchaser and Sellers or ultimately determined by the Arbitrating Accountant, as applicable, in accordance with this Section 12.12(e). The Allocation shall be prepared in accordance with Section 1060 of the Code and the Treasury Regulations thereunder (and any similar provision of state, local or foreign Law, as appropriate). Purchaser and Sellers shall each report the federal, state and local income and other Tax consequences of the transactions contemplated hereby in a manner consistent with the Allocation, including, if applicable, the preparation and filing of Forms 8594 under Section 1060 of the Code (or any successor form or successor provision of any future Tax Law) with their respective federal income Tax Returns for the taxable year which includes the Closing Date, and neither will take any position inconsistent with the Allocation unless otherwise required under applicable Law. Sellers shall provide Purchaser and Purchaser shall provide Sellers with a copy of any information required to be furnished to the Secretary of the Treasury under Code Section 1060.

(f) Withholding. Purchaser, and any Person acting on its behalf, shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to any Seller or any other Person such amounts as Purchaser is required to deduct and withhold under the Code, or any Tax law, with respect to the making of such payment; provided that Purchaser shall consult with the affected Sellers or other Persons in good faith prior to making such withholding or deduction and the Parties hereto shall reasonably cooperate to reduce or eliminate any such amounts. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to Sellers or the Person in respect of whom such deductions and withholding was made, as the case may be.

12.13 Construction.

(a) The information contained in the Schedules is disclosed solely for the purposes of this Agreement and may include items or information not required to be disclosed

under this Agreement, and no information contained in any Schedule shall be deemed to be an admission by any Party hereto to any third Person of any matter whatsoever, including an admission of any violation of any Laws or breach of any agreement. No information contained in any Schedule shall be deemed to be material (whether individually or in the aggregate) to the Business, assets, liabilities, financial position, operations, or results of operations of Sellers nor shall it be deemed to give rise to circumstances which may result in a Material Adverse Effect, in each case solely by reason of it being disclosed. Information contained in a Section, subsection or individual Schedule (or expressly incorporated therein) shall qualify the representations and warranties made in the identically numbered Section or, if applicable, subsection of this Agreement and all other representations and warranties made in any other Section, subsection or Schedule to the extent its applicability to such Section, subsection or Schedule is reasonably apparent on its face. References to agreements in the Schedules are not intended to be a full description of such agreements, and all such disclosed agreements should be read in their entirety, and nothing disclosed in any Schedule is intended to broaden any representation or warranty contained in ARTICLE IV or ARTICLE V.

(b) References in ARTICLE IV or ARTICLE V to documents or other materials "provided" or "made available" to Purchaser or similar phrases mean that such documents or other materials were present (and available for viewing by Purchaser and its Representatives) in the online data room hosted at www.datasiteone.merrillcorp.com on behalf of Sellers for purposes of the transactions contemplated by this Agreement at least three (3) Business Days prior to the Initial Date.

12.14 Entire Understanding. This Agreement, together with the Ancillary Documents and the Prepetition Credit Agreements, set forth the entire agreement and understanding of the Parties hereto in respect to the transactions contemplated hereby, and this Agreement and the Ancillary Documents hereto supersede all prior agreements, arrangements and understandings relating to the subject matter hereof. There have been no representations or statements, oral or written, that have been relied on by any Party hereto, except those expressly set forth in this Agreement or in any Ancillary Document hereto.

12.15 Bulk Sales Laws. Each Party hereby waives compliance by the Parties with the "bulk sales," "bulk transfers" or similar Laws and all other similar Laws in all applicable jurisdictions in respect of the transactions contemplated by this Agreement or any Ancillary Document.

12.16 No Presumption Against Drafting Party. Each of the Purchaser and Sellers acknowledge that each Party to this Agreement has been represented by legal counsel in connection with this Agreement and the transactions contemplated by this Agreement. Accordingly, any rule or law or any legal decision that would require interpretation of any claimed ambiguities in this Agreement against the drafting Party has no application and is expressly waived.

12.17 No Punitive Damages The Parties hereto expressly acknowledge and agree that no Party hereto shall have any liability under any provision of this Agreement for any punitive damages relating to the breach or alleged breach of this Agreement.

12.18 Time of Essence. Time is of the essence with regard to all dates and time periods set forth or referred to in this Agreement. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

12.19 Severability. Whenever possible, each provision or portion of any provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision or portion of any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable Law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or portion of any provision in such jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision or portion of any provision had never been contained herein.

[SIGNATURE PAGES FOLLOW.]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and delivered on the date first above written

PURCHASER:

Orchids Investment LLC

By: Leslie A. Meier
Its: President

SELLERS:

Orchids Paper Products Company

By: Jeffrey S. Schoen
Its: President and Chief Executive Officer

**Orchids Paper Products Company of
South Carolina**

By: Jeffrey S. Schoen
Its: President

Orchids Lessor SC, LLC

By: Jeffrey S. Schoen
Its: President

EXHIBIT A
BILL OF SALE

FORM OF BILL OF SALE

This BILL OF SALE (this “Bill of Sale”) is executed as of [●], 2019 and is by Orchids Paper Products Company, a Delaware corporation, Orchids Paper Products Company of South Carolina, a Delaware corporation and Orchids Lessor SC, LLC, a South Carolina limited liability company (collectively, the “Sellers”) in favor of [Orchids Investment LLC, a Delaware limited liability company]¹ (“Purchaser”).

This Bill of Sale is being delivered in connection with the Closing under the Asset Purchase Agreement dated as of [●], 2019, by and among the Sellers, certain affiliates of the Sellers and Purchaser (as amended, the “Asset Purchase Agreement”). Capitalized terms used but not defined in this Bill of Sale have the meanings given such terms in the Asset Purchase Agreement. [It is acknowledged and agreed that Purchaser is a “Designated Purchaser” as defined in, and pursuant to, Section 12.10 of the Asset Purchase Agreement.]²

I.

BILL OF SALE

In accordance with and subject to the terms of the Asset Purchase Agreement and the Sale Order, and for the consideration set forth in the Asset Purchase Agreement, the receipt and sufficiency of which Sellers and Purchaser hereby acknowledge, Sellers do hereby sell, transfer, assign, convey and deliver to Purchaser, effective as of the Closing, all of Sellers’ rights, titles and interests in, to and under the Acquired Assets (other than such Acquired Assets transferred pursuant to any other Conveyance Document), free and clear of all Encumbrances other than Priming Permitted Encumbrances (as defined in the Asset Purchase Agreement relating to the conveyance of Acquired Assets), as provided in Section 2.1 of the Asset Purchase Agreement.

II.

MISCELLANEOUS

2.1. Asset Purchase Agreement. This Bill of Sale is expressly made subject to the terms of the Asset Purchase Agreement. The delivery of this Bill of Sale shall not amend, affect, enlarge, diminish, supersede, modify, replace, rescind, waive or otherwise impair any of the representations, warranties, covenants, terms or provisions of the Asset Purchase Agreement or any of the rights, remedies or obligations of Sellers or Purchaser provided for therein or arising therefrom in any way, all of which shall remain in full force and effect in accordance with their terms. The representations, warranties, covenants, terms and provisions contained in the Asset Purchase Agreement shall not be merged with or into this Bill of Sale but shall survive the execution and delivery of this Bill of Sale to the extent, and in the manner, set forth in the Asset Purchase Agreement. In the event of any conflict or inconsistency between the terms of the Asset Purchase Agreement and the terms of this Bill of Sale, the terms of the Asset Purchase Agreement shall control.

2.2. Further Assurances.

(a) From time to time after the Closing, as and when requested by any Seller or

¹ Note to Draft: A separate bill of sale will be needed for each Designated Purchaser. Appropriate changes (e.g. the applicable Seller(s) and Purchaser) to be made to this form.

² Note to Draft: To be included as applicable.

Purchaser and at such requesting party's expense, any other such party will, and will cause its respective Affiliates to, execute and deliver, or cause to be executed and delivered, all such documents and instruments and will take, or cause to be taken, all such further or other actions as such requesting party may reasonably deem necessary or desirable to evidence and effectuate the transactions contemplated by this Bill of Sale.

(b) Each Seller hereby irrevocably designates, makes, constitutes and appoints Purchaser, its successors and permitted assigns, as Seller's true and lawful attorney (and agent-in-fact), with full power of substitution, in Seller's name and stead, on behalf of and for the benefit of Purchaser, its successors and permitted assigns, to: (i) demand and receive any and all of the Acquired Assets and to give receipts and releases for and in respect of the Acquired Assets, or any part thereof, (ii) from time to time to institute and prosecute in Seller's name, at the sole expense and for the benefit of Purchaser, its successors and assigns, any and all proceedings at law, in equity or otherwise, which Purchaser, its successors and assigns, may deem proper in order to collect, assert or enforce any claim, right or title of any kind in or to any item of the Acquired Assets, to defend or compromise any and all actions, suits or proceedings in respect of any item of the Acquired Asset, and to do all such acts and things in relation thereto as Purchaser shall deem advisable, including, without limitation, for the collection or reduction to possession of any of the Acquired Assets, (iii) endorse Seller's name on any payment, instrument, notice or other similar document or agreement relating to the Acquired Assets for the period commencing with the date hereof that may come in to the possession of Purchaser or under Purchaser's control with respect to the Acquired Assets and (iv) to collect the moneys which become due and payable at any time on or after the date hereof under every Acquired Assets. Seller acknowledges that the foregoing powers are coupled with an interest and shall be irrevocable by Seller.

2.3. Incorporation By Reference. The terms set forth in Section 12.3 (Amendment; Waiver), Section 12.4 (Notices), Section 12.6 (Counterpart; Electronic Signatures), Section 12.8 (Applicable Law and Jurisdiction), Section 12.9 (Binding Nature; Assignment), Section 12.11 (No Third Party Beneficiaries), Section 12.13 (Construction) and Section 12.19 (Severability) of the Asset Purchase Agreement are incorporated by reference herein, except that, as applicable, any and all references to "this Agreement" shall mean and refer to this Bill of Sale.

[Signature Page Follows]

IN WITNESS WHEREOF, Sellers have executed this Bill of Sale to be effective as of the Closing.

SELLERS:

[•]

[Signature Page to Bill of Sale]

EXHIBIT B
ASSIGNMENT AND ASSUMPTION AGREEMENT

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this “Agreement”) is executed as of [●], 2019 by and among Orchids Paper Products Company, a Delaware corporation, Orchids Paper Products Company of South Carolina, a Delaware corporation, Orchids Lessor SC, LLC, a South Carolina limited liability company (collectively, the “Assignors”) and [Orchids Investment LLC, a Delaware limited liability company]¹ (“Assignee”). Assignors and Assignee may be referred to herein, individually, as a “Party” and, collectively, as the “Parties.”

This Agreement is being delivered in connection with the Closing under the Asset Purchase Agreement dated as of [●], 2019, by and among the Assignors, certain affiliates of the Assignors and Assignee (as amended, the “Asset Purchase Agreement”). Capitalized terms used but not defined in this Agreement have the meanings given such terms in the Asset Purchase Agreement. [It is acknowledged and agreed that Purchaser is a “Designated Purchaser” as defined in, and pursuant to, Section 12.10 of the Asset Purchase Agreement.]²

I.

ASSIGNMENT AND ASSUMPTION

1.1. Acquired Assets. In accordance with and subject to the terms of the Asset Purchase Agreement and the Sale Order, and for the consideration set forth in the Asset Purchase Agreement, the receipt and sufficiency of which Assignors and Assignee hereby acknowledge, Assignors do hereby sell, transfer, assign, convey and deliver to Assignee, effective as of the Closing, all of Assignors’ rights, titles and interests in, to and under (a) all equity interests that any Assignor owns in the Acquired Subsidiaries, (b) the Assigned Contracts and (c) the Permits, in each case free and clear of all Encumbrances other than Priming Permitted Encumbrances, as provided, respectively, in Section 2.1(a), Section 2.1(b) and Section 2.1(n) of the Asset Purchase Agreement (other than such Acquired Assets transferred pursuant to any other Conveyance Document).

1.2. Excluded Assets. Assignors do not, and in no event shall Assignors be deemed to, sell, transfer, assign, convey or deliver, and Assignors do hereby retain, all right, title and interest to, in and under only the Excluded Assets, as provided in Section 2.2 of the Asset Purchase Agreement.

1.3. Assumed Liabilities. In accordance with and subject to the terms of the Asset Purchase Agreement and the Sale Order, effective as of the Closing, Assignee does hereby assume from Assignors (and from and after the Closing agrees to pay, perform, discharge or otherwise satisfy in accordance with their respective terms or as may otherwise be agreed between Assignee and the relevant obligee), and Assignors do hereby irrevocably convey, transfer and assign to Assignee, the Assumed Liabilities of Assignors only, as provided in Section 2.3 of the Asset Purchase Agreement and other than the Assumed Liabilities that are conveyed, transferred and assigned pursuant to another Conveyance Document.

1.4. Excluded Liabilities. The Parties expressly acknowledge and agree that Assignee is not a successor to any Assignor and does not assume, and shall not be deemed to have assumed or be liable or obligated to pay, perform or otherwise discharge or in any other manner be liable or responsible for the Excluded Liabilities, as provided in Section 2.4 of the Asset Purchase Agreement.

¹ Note to Draft: A separate A&A will be needed for each Designated Purchaser. Appropriate changes (e.g. the applicable Assignee and Assignor(s)) to be made to this form.

² Note to Draft: To be included as applicable.

II.

MISCELLANEOUS

2.1. Asset Purchase Agreement. This Agreement is expressly made subject to the terms of the Asset Purchase Agreement. The delivery of this Agreement shall not amend, affect, enlarge, diminish, supersede, modify, replace, rescind, waive or otherwise impair any of the representations, warranties, covenants, terms or provisions of the Asset Purchase Agreement or any of the rights, remedies or obligations of Assignors or Assignee provided for therein or arising therefrom in any way, all of which shall remain in full force and effect in accordance with their terms. The representations, warranties, covenants, terms and provisions contained in the Asset Purchase Agreement shall not be merged with or into this Agreement but shall survive the execution and delivery of this Agreement to the extent, and in the manner, set forth in the Asset Purchase Agreement. In the event of any conflict or inconsistency between the terms of the Asset Purchase Agreement and the terms of this Agreement, the terms of the Asset Purchase Agreement shall control.

2.2. Further Assurances.

(a) From time to time after the Closing, as and when requested by any Party and at such requesting Party's expense, any other Party will, and will cause its respective Affiliates to, execute and deliver, or cause to be executed and delivered, all such documents and instruments and will take, or cause to be taken, all such further or other actions as such requesting party may reasonably deem necessary or desirable to evidence and effectuate the transactions contemplated by this Agreement.

(b) Each Assignor hereby irrevocably designates, makes, constitutes and appoints Assignee, its successors and permitted assigns, as Assignor's true and lawful attorney (and agent-in-fact), with full power of substitution, in Assignor's name and stead, on behalf of and for the benefit of Assignee, its successors and permitted assigns, to: (i) demand and receive any and all of the Acquired Assets and Assumed Liabilities and to give receipts and releases for and in respect of the Acquired Assets and Assumed Liabilities, or any part thereof, (ii) from time to time to institute and prosecute in Assignor's name, at the sole expense and for the benefit of Assignee, its successors and assigns, any and all proceedings at law, in equity or otherwise, which Assignee, its successors and assigns, may deem proper in order to collect, assert or enforce any claim, right or title of any kind in or to any item of the Acquired Assets and Assumed Liabilities, to defend or compromise any and all actions, suits or proceedings in respect of any item of the Acquired Assets and Assumed Liabilities, and to do all such acts and things in relation thereto as Assignee shall deem advisable, including, without limitation, for the collection or reduction to possession of any of the Acquired Assets and Assumed Liabilities, (iii) endorse Assignor's name on any payment, instrument, notice or other similar document or agreement relating to the Acquired Assets and Assumed Liabilities for the period commencing with the date hereof that may come in to the possession of Assignee or under Assignee's control with respect to the Acquired Assets and Assumed Liabilities and (iv) to collect the moneys which become due and payable at any time on or after the date hereof under each of the Acquired Assets and Assumed Liabilities. Assignor acknowledges that the foregoing powers are coupled with an interest and shall be irrevocable by Assignor.

2.3. Incorporation By Reference. The terms set forth in Section 12.3 (Amendment; Waiver), Section 12.4 (Notices), Section 12.6 (Counterpart; Electronic Signatures), Section 12.8 (Applicable Law and Jurisdiction), Section 12.9 (Binding Nature; Assignment), Section 12.11 (No Third Party Beneficiaries), Section 12.13 (Construction) and Section 12.19 (Severability) of the Asset Purchase Agreement are incorporated by reference herein, except that, as applicable, any and all references to "this Agreement" shall mean and refer to this Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, Assignors and Assignee have executed this Assignment and Assumption Agreement to be effective as of the Closing.

ASSIGNORS:

[•]

[Signature Page to Assignment and Assumption Agreement]

ASSIGNEE:

ORCHIDS INVESTMENT LLC

By: _____
Name: Leslie A. Meier
Title: President

EXHIBIT C
ASSIGNMENT AND ASSUMPTION OF LEASES

FORM OF ASSIGNMENT AND ASSUMPTION OF LEASES

This ASSIGNMENT AND ASSUMPTION OF LEASES (this “Agreement”) is executed as of [•], 2019 by and between Orchids Paper Products Company, a Delaware corporation (“Assignor”) and [Orchids Investment LLC, a Delaware limited liability company]¹ (“Assignee”). Assignor and Assignee may be referred to herein, individually, as a “Party” and, collectively, as the “Parties.”

This Agreement is being delivered in connection with the Closing under the Asset Purchase Agreement dated as of [•], 2019, by and among the Assignor and certain Affiliates of Assignor, as Sellers, and Assignee, as Purchaser (as amended, the “Asset Purchase Agreement”). Capitalized terms used but not defined in this Agreement have the meanings given such terms in the Asset Purchase Agreement. [It is acknowledged and agreed that Assignee is a “Designated Purchaser” as defined in, and pursuant to, Section 12.10 of the Asset Purchase Agreement.]²

I.

ASSIGNMENT AND ASSUMPTION

1.1. Acquired Assets. In accordance with and subject to the terms of the Asset Purchase Agreement and the Sale Order, and for the consideration set forth in the Asset Purchase Agreement, the receipt and sufficiency of which Assignor and Assignee hereby acknowledge, Assignor does hereby sell, transfer, assign, convey and deliver to Assignee, effective as of the Closing, all of Assignor’s right, title and interest in, to and under the Leases set forth on Schedule 1 attached hereto (as amended, the “Assumed Leases”) and all security deposits and other deposits delivered in connection with the Assumed Leases (collectively, the “Assumed Property”), free and clear of all Encumbrances other than Priming Permitted Encumbrances (as defined in the Asset Purchase Agreement).

1.2. Assumed Liabilities. In accordance with and subject to the terms of the Asset Purchase Agreement and the Sale Order, effective as of the Closing, Assignee does hereby assume from Assignor (and from and after the Closing agrees to pay, perform, discharge or otherwise satisfy in accordance with their respective terms or as may otherwise be agreed between Assignee and the relevant obligee), and Assignor does hereby irrevocably convey, transfer and assign to Assignee, the Assumed Liabilities of Assignor with respect to the Assumed Leases, as provided in Section 2.3 of the Asset Purchase Agreement.

1.3. Excluded Liabilities. The Parties expressly acknowledge and agree that Assignee is not a successor to Assignor and does not assume, and shall not be deemed to have assumed or be liable or obligated to pay, perform or otherwise discharge or in any other manner be liable or responsible for the Excluded Liabilities, as provided in Section 2.4 of the Asset Purchase Agreement.

II.

MISCELLANEOUS

2.1. Asset Purchase Agreement. This Agreement is expressly made subject to the terms of the Asset Purchase Agreement. The delivery of this Agreement shall not amend, affect, enlarge, diminish, supersede, modify, replace, rescind, waive or otherwise impair any of the representations, warranties, covenants, terms or provisions of the Asset Purchase Agreement or any of the rights, remedies or

¹ Note to Draft: To be revised if Purchaser designates an Assignee.

² Note to Draft: To be included as applicable.

obligations of Assignor or Assignee provided for therein or arising therefrom in any way, all of which shall remain in full force and effect in accordance with their terms. The representations, warranties, covenants, terms and provisions contained in the Asset Purchase Agreement shall not be merged with or into this Agreement but shall survive the execution and delivery of this Agreement to the extent, and in the manner, set forth in the Asset Purchase Agreement. In the event of any conflict or inconsistency between the terms of the Asset Purchase Agreement and the terms of this Agreement, the terms of the Asset Purchase Agreement shall control.

2.2. Further Assurances.

(a) From time to time after the Closing, as and when requested by any Party and at such requesting Party's expense, any other Party will, and will cause its respective Affiliates to, execute and deliver, or cause to be executed and delivered, all such documents and instruments and will take, or cause to be taken, all such further or other actions as such requesting party may reasonably deem necessary or desirable to evidence and effectuate the transactions contemplated by this Agreement.

(b) Assignor hereby irrevocably designates, makes, constitutes and appoints Assignee, its successors and permitted assigns, as Assignor's true and lawful attorney (and agent-in-fact), with full power of substitution, in Assignor's name and stead, on behalf of and for the benefit of Assignee, its successors and permitted assigns, to: (i) demand and receive any and all of the Assumed Property and Assumed Liabilities and to give receipts and releases for and in respect of the Assumed Property and Assumed Liabilities, or any part thereof, (ii) from time to time to institute and prosecute in Assignor's name, at the sole expense and for the benefit of Assignee, its successors and assigns, any and all proceedings at law, in equity or otherwise, which Assignee, its successors and assigns, may deem proper in order to collect, assert or enforce any claim, right or title of any kind in or to any item of the Assumed Property and Assumed Liabilities, to defend or compromise any and all actions, suits or proceedings in respect of any Assumed Property and Assumed Liabilities, and to do all such acts and things in relation thereto as Assignee shall deem advisable, including, without limitation, for the collection or reduction to possession of any of the Assumed Property and Assumed Liabilities, (iii) endorse Assignor's name on any payment, instrument, notice or other similar document or agreement relating to the Assumed Property and Assumed Liabilities for the period commencing with the date hereof that may come in to the possession of Assignee or under Assignee's control with respect to the Assumed Property and Assumed Liabilities and (iv) to collect the moneys which become due and payable at any time on or after the date hereof under each of the Assumed Property and Assumed Liabilities. Assignor acknowledges that the foregoing powers are coupled with an interest and shall be irrevocable by Assignor.

2.3. Incorporation By Reference. The terms set forth in Section 12.3 (Amendment; Waiver), Section 12.4 (Notices), Section 12.6 (Counterpart; Electronic Signatures), Section 12.8 (Applicable Law and Jurisdiction), Section 12.9 (Binding Nature; Assignment), Section 12.11 (No Third Party Beneficiaries), Section 12.13 (Construction) and Section 12.19 (Severability) of the Asset Purchase Agreement are incorporated by reference herein, except that, as applicable, any and all references to "this Agreement" shall mean and refer to this Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment and Assumption Agreement to be effective as of the Closing.

ASSIGNOR:

[•]

[Signature Page to Assignment and Assumption Agreement]

ASSIGNEE:

ORCHIDS INVESTMENT LLC

By: _____

Name: Leslie A. Meier

Title: President

[Signature Page to Assignment and Assumption Agreement]

Schedule 1

[Signature Page to Assignment and Assumption Agreement]

EXHIBIT D

IP ASSIGNMENT AND ASSUMPTION AGREEMENT

INTELLECTUAL PROPERTY ASSIGNMENT AND ASSUMPTION AGREEMENT

This INTELLECTUAL PROPERTY ASSIGNMENT AND ASSUMPTION AGREEMENT (this “Agreement”) is executed as of [•], 2019 by and among Orchids Paper Products Company, a Delaware corporation, Orchids Paper Products Company of South Carolina, a Delaware corporation, Orchids Lessor SC, LLC, a South Carolina limited liability company (collectively, the “Assignors”) and [Orchids Investment LLC, a Delaware limited liability company]¹ (“Assignee”). Assignors and Assignee may be referred to herein, individually, as a “Party” and, collectively, as the “Parties.” Capitalized terms used but not defined in this Agreement have the meanings given such terms in the Asset Purchase Agreement. [It is acknowledged and agreed that Purchaser is a “Designated Purchaser” as defined in, and pursuant to, Section 12.10 of the Asset Purchase Agreement.]²

WHEREAS, Assignors, certain affiliates of Assignors and Assignee have entered into the Asset Purchase Agreement dated as of [•], 2019 (as amended, the “Asset Purchase Agreement”), which sets forth, among other things, the terms of the sale, conveyance, assignment, transfer and delivery from Assignors to Assignee of the Acquired Assets, and assignment and delegation from Assignors to Assignee of all of the Assumed Liabilities;

WHEREAS, the Acquired Assets includes all of the Intellectual Property owned or purported to be owned by Assignors, including without limitation, the Purchased Intellectual Property (the “Acquired Intellectual Property”); and

WHEREAS, in connection with the transactions contemplated by the Asset Purchase Agreement, Assignors have agreed to sell, assign, transfer and convey to Assignee all of Assignors’ right, title, and interest in and to all the Acquired Intellectual Property.

NOW, THEREFORE, in consideration of the premises and the covenants and agreements herein contained, and intending to be legally bound, the Parties hereby agree as follows:

I.

ASSIGNMENT AND ASSUMPTION

1.1. **Conveyance.** In accordance with and subject to the terms of the Asset Purchase Agreement and the Sale Order, and for the consideration set forth in the Asset Purchase Agreement, the receipt and sufficiency of which Assignors and Assignee hereby acknowledge, Assignors do hereby sell, transfer, assign, convey and deliver to Assignee, effective as of the Closing, all of Assignors’ rights, titles and interests in, to and under the Acquired Intellectual Property, free and clear of all Encumbrances other than Priming Permitted Encumbrances (as defined in the Asset Purchase Agreement relating to the conveyance of Acquired Assets), as provided in Section 2.1(p) of the Asset Purchase Agreement.

1.2. **Assumption.** In accordance with and subject to the provisions of the Asset Purchase Agreement and this Agreement, Assignee hereby accepts the sale, assignment, transfer, conveyance and delivery of the right, title and interest in, to and under the Acquired Intellectual Property.

1.3. **Recordation.** The Parties agree to reasonably cooperate with each other with respect to preparing instruments to record Assignee as the owner of the Acquired Intellectual Property in the United

¹ **Note to Draft:** A separate A&A will be needed for each Designated Purchaser. Appropriate changes (e.g. the applicable Assignee and Assignor(s)) to be made to this form.

² **Note to Draft:** To be included as applicable.

States Patent and Trademark Office and any other applicable foreign Governmental Body or registrar, in each case in form and substance reasonably acceptable to the Parties and in accordance with the applicable Laws of the jurisdiction to which such instrument pertains.

1.4. Excluded Assets. Assignors do not, and in no event shall Assignors be deemed to, sell, transfer, assign, convey or deliver, and Assignors do hereby retain, all right, title and interest to, in and under only the Excluded Assets, as provided in Section 2.2 of the Asset Purchase Agreement.

1.5. Further Assurances. At any time or from time to time after the Effective Date, the Assignors shall, at the request of the Assignee, and without further expense to the Assignee: (i) execute and deliver any further instruments or documents of conveyance and transfer (including powers of attorney) as the Assignee may reasonably request in order to evidence or perfect the consummation of the transactions contemplated by this Agreement and (ii) commit efforts to consummate the sale, conveyance, assignment and transfer of the Acquired Intellectual Property to the Assignee, including, without limitation, securing any necessary consents from third parties required for the transfer contemplated by this Agreement.

1.6. Incorporation By Reference. The terms set forth in Section 12.3 (Amendment; Waiver), Section 12.4 (Notices), Section 12.6 (Counterpart; Electronic Signatures), Section 12.8 (Applicable Law and Jurisdiction), Section 12.9 (Binding Nature; Assignment), Section 12.11 (No Third Party Beneficiaries), Section 12.13 (Construction) and Section 12.19 (Severability) of the Asset Purchase Agreement are incorporated by reference herein, except that, as applicable, any and all references to “this Agreement” shall mean and refer to this Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, Assignors and Assignee have executed this Intellectual Property Assignment and Assumption Agreement to be effective as of the Closing.

ASSIGNORS:

[•]

[Signature Page to Assignment and Assumption Agreement]

ASSIGNEE:

ORCHIDS INVESTMENT LLC

By: _____

Name: Leslie A. Meier

Title: President

[Signature Page to Assignment and Assumption Agreement]

EXHIBIT E

FORM OF BID PROCEDURES ORDER

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

In re:

ORCHIDS PAPER PRODUCTS
COMPANY, *et al.*,¹

Debtors.

Chapter 11

Case No. 19-10729 (MFW)

Jointly Administered

Re: Docket No. ____

**ORDER (I) APPROVING BID PROCEDURES IN CONNECTION WITH THE
POTENTIAL SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, (II)
SCHEDULING AN AUCTION AND A SALE HEARING, (III) APPROVING THE FORM
AND MANNER OF NOTICE THEREOF, (IV) AUTHORIZING THE DEBTORS TO
ENTER INTO THE OPTION AGREEMENT AND THE STALKING HORSE
AGREEMENT, (V) APPROVING BID PROTECTIONS, (VI) APPROVING
PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF CONTRACTS AND
LEASES, AND (VII) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)² of the above-captioned debtors and debtors in possession (the “**Debtors**”) for entry of an order (this “**Order**”) (i) authorizing and approving the Bid Procedures attached hereto as Exhibit 1 (the “**Bid Procedures**”) in connection with the sale (the “**Sale**”) of substantially all of the Debtors’ assets (the “**Assets**”), (ii) scheduling an auction and hearing to consider the Sale of the Assets, (iii) approving the form and manner of notice thereof, (iv) authorizing the Debtors to enter into the Option Agreement and the Stalking Horse Agreement (each as defined below), (v) approving the Bid Protections (as defined below) in connection therewith, (vi) approving procedures for the assumption and assignment of executory

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Orchids Paper Products Company, a Delaware corporation (6944), Orchids Paper Products Company of South Carolina, a Delaware corporation (7198), and Orchids Lessor SC, LLC, a South Carolina limited liability company (7298). The location of the Debtors’ mailing address is 201 Summit View Drive, Suite 110, Brentwood, Tennessee 37027.

² Capitalized terms used as defined terms herein but not otherwise defined shall have the meanings ascribed to them in the Motion or the Bid Procedures, as applicable. In the event there is a conflict between this Order and the Motion, this Order shall control and govern.

contracts and unexpired leases in connection with the Sale (collectively, the “**Contracts**”), and (vii) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration and other testimony and evidence submitted by the Debtors in support of the Motion; this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the “**Hearing**”); this Court having determined the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor:

THE COURT FINDS THAT:

A. The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012.

C. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). The Debtors have confirmed their consent, pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), to the entry of a final order by this Court in connection with the

Motion, to the extent it is later determined this Court, absent the consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

D. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

E. The bases for the relief requested in the Motion are sections 105, 363, 365, 503, and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), Bankruptcy Rules 2002, 6004, 6006, 9007, and 9014, and Local Rules 2002-1, 6004-1, and 9013-1(m).

F. Notice of the Motion has been given to: (a) the U.S. Trustee; (b) the holders of the twenty (20) largest unsecured claims against the Debtors; (c) counsel to the DIP Lender and the Prepetition Secured Lender; (d) counsel to the Stalking Horse Bidder; (e) the United States Attorney’s Office for the District of Delaware; (f) the Internal Revenue Service; (g) all state and local taxing authorities with an interest in the Assets; (h) the Attorney General for the State of Delaware; (i) the Securities and Exchange Commission; (j) all other governmental agencies with an interest in the Sale and transactions proposed thereunder; (k) all parties known or reasonably believed to have asserted an interest in the Assets; (l) the Contract Counterparties; (m) the Debtors’ insurance carriers; (n) all parties entitled to notice pursuant to Local Rule 9013-1(m); and (o) any party that has requested notice pursuant to Bankruptcy Rule 2002.

G. Good and sufficient notice of the Motion, including the relief sought therein, and the Hearing was sufficient under the circumstances, and such notice complied with all applicable requirements under the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and no other or further notice need be provided. A reasonable opportunity to object or be heard regarding the relief provided in this Order has been afforded to all parties in interest.

H. The Debtors have articulated good and sufficient reasons for this Court to (i) approve the Bid Procedures, (ii) schedule the bid deadlines and the Auction and the Sale Hearing, (iii) approve the form and manner of notice of the Auction and Sale Hearing, (iv) approve procedures for the assumption and assignment of the Contracts, including notice of the proposed cure amounts, (v) authorize the Debtors to enter into a Stalking Horse Agreement, and (vi) extend to the Stalking Horse Bidder the Bid Protections, in the exercise of their reasonable business judgment. The entry of this Order is in the best interests of the Debtors, their estates, creditors, and other parties in interest.

I. The Bid Procedures attached hereto as Exhibit 1 are reasonable, appropriate and represent the best method for maximizing value for the benefit of the Debtors, their estates, and their creditors. The Bid Procedures were negotiated at arm's length, in good faith, and without collusion. The Bid Procedures balance the Debtors' interests in emerging expeditiously from the chapter 11 cases while preserving the opportunity to attract value-maximizing proposals beneficial to the Debtors, their estates, their creditors, and other parties in interest. The Bid Procedures comply with the requirements of Local Rule 6004-1(c).

J. The Debtors have demonstrated compelling and sound business justifications for authorization to (i) enter into both that certain Asset Purchase Agreement, a copy of which is attached as Exhibit A to the Motion (the "**Stalking Horse Agreement**") and that certain Option Agreement, a copy of which is attached as Exhibit B to the Motion (the "**Option Agreement**") each by and among the Debtors and Orchids Investments LLC (the "**Stalking Horse Bidder**") and (ii) offer the Stalking Horse Bidder the following: (a) a break-up fee equal to three percent (3%) of the Purchase Price (as defined in the Stalking Horse Agreement) of \$5,250,000 (the "**Break-Up Fee**") on the terms set forth in the Option Agreement and the Stalking Horse

Agreement, (b) reimbursement of the Stalking Horse Bidder's out of pocket costs, expenses, and fees in connection with evaluating, negotiating, documenting and performing the transactions contemplated by the Option Agreement and the Stalking Horse Agreement in the dollar amount equal to the lesser of (1) \$2,000,000, and (2) the aggregate amount of all reasonable and documented out of pocket costs, expenses and fees incurred by the Stalking Horse Bidder or those of the Stalking Horse Bidder's subsidiaries that will receive title to any Acquired Assets pursuant to the transactions contemplated by the Stalking Horse Agreement (the "**Expense Reimbursement**") on the terms set forth in the Stalking Horse Agreement, and (c) an initial overbid of up to \$7,750,000 (the "**Initial Overbid**" and, together with the Break-Up Fee and the Expense Reimbursement, the "**Bid Protections**"), consisting of the sum of the Break-Up Fee, the Expense Reimbursement and \$500,000. With respect to the Bid Protections, the Court makes the following findings:

- a. the Bid Protections are the product of extensive negotiations between the Debtors and the Stalking Horse Bidder conducted in good faith and at arm's length, and the Option Agreement and the Stalking Horse Agreement (including the Bid Protections) are the culmination of a process undertaken by the Debtors and their professionals to negotiate a transaction with a bidder who was prepared to pay the highest price or otherwise best purchase price to date for the Acquired Assets to maximize the value of the Debtors' estates;
- b. the Break-Up Fee and Expense Reimbursement are an actual and necessary cost and expenses of preserving the value of the respective Debtors' estates;
- c. the Bid Protections are fair, reasonable, and appropriate in light of, among other things, the size and nature of the proposal Sale under the Stalking Horse Agreement, the substantial efforts that have been and will be expended by the Stalking Horse Bidder, including the identification and quantification of assets to be included in the Acquired Assets, and notwithstanding that the proposed sale is subject to higher and better offers, the substantial benefits the Stalking Horse Bidder has provided to the Debtors, their estates, their creditors, and all parties in interest, including, among other things, by increasing the likelihood that the best possible price for the Acquired Assets will be received;

- d. the Bid Protections were material inducements for, and express conditions of, the Stalking Horse Bidder's willingness to enter into the Stalking Horse Agreement and were necessary to ensure that the Stalking Horse Bidder would continue to pursue the proposed acquisition on terms acceptable to the Debtors in their sound business judgment, subject to competitive bidding;
- e. the offer of the Bid Protections is intended to promote more competitive bidding by inducing the Stalking Horse Bid, which (i) will serve as a minimum floor bid on which all other bidders can rely with respect to the Acquired Assets, (ii) may prove to be the highest or otherwise best available offer for the Acquired Assets, and (iii) increases the likelihood that the final purchase price will reflect the true value of the Acquired Assets; and
- f. the Stalking Horse Bidder is unwilling to commit to purchase the Acquired Assets under the terms of the Stalking Horse Agreement without approval of the Bid Protections.

K. The Debtors' performance of certain pre-closing obligations contained in the Option Agreement and Stalking Horse Agreement is in the best interests of the Debtors, their estates, their creditors, and all other parties in interest, and represents a reasonable exercise of the Debtors' sound business judgment.

L. The Stalking Horse Bidder is not an "insider" or "affiliate" of any of the Debtors, as those terms are defined in section 101 of the Bankruptcy Code, and no common identity of incorporators, directors, managers, controlling shareholders, or other insider of the Debtors exist between the Stalking Horse Bidder and the Debtors.

M. The notice, substantially in the form attached hereto as Exhibit 2, provided by the Debtors regarding the Sale of the Assets by Auction and Sale Hearing (the "**Sale Notice**"), is reasonably calculated to provide interested parties with timely and proper notice of the proposed Sale, including, without limitation: (i) the date, time, and place of the Auction (if one is held), (ii) the Bid Procedures and certain dates and deadlines related thereto, (iii) the deadline for filing objections to the Sale and entry of the Sale Order, and the date, time, and place of the Sale

Hearing, (iv) reasonably specific identification of the assets for sale, (v) instructions for promptly obtaining a copy of the Stalking Horse Agreement, (vi) a description of the Sale as being free and clear of liens, claims, interests, and other encumbrances, with all such liens, claims, interests, and other encumbrances attaching with the same validity and priority to the sale proceeds, (vii) the commitment by the Stalking Horse Bidder to assume certain liabilities disclosed in the Stalking Horse Agreement (collectively, the “**Assumed Liabilities**”), and (viii) notice of the proposed assumption and assignment of Assigned Contracts to the Stalking Horse Bidder (or such other Contracts to another Successful Bidder (as defined in the Bid Procedures) arising from the Auction, if any) and the right, procedures, and deadlines for objecting thereto. No other or further notice of the Sale shall be required.

N. The Motion, this Order, and the Assignment Procedures (as defined below) set forth herein are appropriate and reasonably calculated to provide counterparties to any Contracts to be assumed by the Debtors and assigned to the Successful Bidder with proper notice of the intended assumption and assignment of their Contracts, the procedures in connection therewith, and any cure amounts relating thereto.

O. Neither the filing of the Motion, entry of this Order, the execution of the Option Agreement, the solicitation of bids or the conducting of the Auction in accordance with the Bid Procedures nor any other actions taken by the Debtors in accordance therewith shall constitute a sale of the Acquired Assets, which sale will only take place, if at all, following the Sale Hearing.

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. All objections, statements, and reservations of rights with respect to the relief requested in the Motion with respect to the Bid Procedures that have not been withdrawn,

waived, or settled, as announced to the Court at the hearing on the Motion or by stipulation filed with the Court, are overruled and denied on the merits with prejudice.

E. The Bid Procedures

3. The Bid Procedures, attached hereto as Exhibit 1, are hereby approved in their entirety and fully incorporated into this Order. The Bid Procedures shall govern the submission, receipt, and analysis of all bids relating to the proposed Sale and any party desiring to submit a higher or better offer for the Assets must comply with the terms of the Bid Procedures and this Order. The Bid Procedures shall also govern the terms on which the Debtors will proceed with the Auction and/or Sale pursuant to the Stalking Horse Agreement.

4. The Stalking Horse Bidder shall be deemed a Qualified Bidder pursuant to the Bid Procedures for all purposes.

5. The following dates and deadlines regarding competitive bidding are hereby established (subject to modification in accordance with the Bid Procedures):

- (All times are prevailing Eastern Time)
- **May 14, 2019 at 4:00 p.m.:** Debtors to send Cure and Possible Assumption and Assignment Notices to All Contract Counterparties and Notice of the Sale
- **May 31, 2019 at 4:00 p.m.:** Cure Objection Deadline
- **June 6, 2019 at 4:00 p.m.:** Deadline to submit Bid to be considered for the Auction
- **June 10, 2019 at 10:00 a.m.:** Proposed date of Auction
- **June 10, 2019 at 4:00 p.m.:** Debtors to file notice of Successful Bidder and Contract Assignment Notices
- **June 5, 2019 at 4:00 p.m.:** Deadline to file and serve objections to relief requested at Sale Hearing (except for any objection that arises at the Auction)
- **June 12, 2019 at _____ a.m./p.m.:** Proposed date of Sale Hearing

F. Entry into Option Agreement and Stalking Horse Agreement

6. The Option Agreement and the Stalking Horse Agreement are hereby approved. The Debtors are authorized to enter into the Option Agreement with the Stalking Horse Bidder and to pay the Break-Up Fee and Expense Reimbursement pursuant to the terms and conditions set forth in the Option Agreement. Following the expiration of the Bid Deadline, the Debtors are authorized, but not directed, to enter into the Stalking Horse Agreement.

7. The Debtors are authorized to perform all of their respective pre-closing obligations under the Option Agreement and Stalking Horse Agreement; *provided* that for the avoidance of doubt, approval and consummation of the transactions contemplated by the Stalking Horse Agreement shall be subject to the terms and conditions herein and the entry of an order approving the Sale of the Acquired Assets and the satisfaction or waiver of the other conditions to closing on the terms set forth in the Stalking Horse Agreement.

G. Approval of the Bid Protections

8. The Bid Protections are hereby approved. The Debtors are authorized to pay the Stalking Horse Bidder the Break-Up Fee and Expense Reimbursement if and to the extent they become due and payable under the Option Agreement or the Stalking Horse Agreement.

9. The Break-Up Fee and Expense Reimbursement shall constitute an allowed superpriority administrative expense claim against the Debtors' bankruptcy estates pursuant to Bankruptcy Code sections 363, 364(c)(1), 503(b), 507(a)(2), and 507(b). The Debtors' obligation to pay the Break-Up Fee and Expense Reimbursement shall survive the termination of the Option Agreement and the Stalking Horse Agreement and shall be payable only by the Debtors as otherwise provided in the Option Agreement and the Stalking Horse Agreement.

10. The Break-Up Fee and Expense Reimbursement shall be payable by the Debtors as provided in the Option Agreement and the Stalking Horse Agreement. To the extent not paid

earlier, the Break-Up Fee and Expense Reimbursement shall be payable from the proceeds of the Sale prior to any other payments or distributions being made from such Sale proceeds (including, for the avoidance of doubt, prior to any payments or distributions to professionals, or administrative claimants) and the Debtors' cash on hand. No further or additional order from the Court shall be required in order to give effect to such provisions relating to the terms of payment of the Break-Up Fee and Expense Reimbursement and the Stalking Horse Bidder's professional advisors are not obligated to comply with any provisions of the Bankruptcy Code regarding Court approval of professionals fees payable by the Debtors and included in the Expense Reimbursement.

11. Each Debtor's obligations relating to the Bid Protections arising under or in connection with the Option Agreement or the Stalking Horse Agreement shall be binding and enforceable against each such Debtor and its respective estate, and, as applicable, (i) any of its successor or assigns, (ii) any trustee, examiner, or other representative of the Debtors' estates, (iii) the reorganized Debtors, and (iv) any other entity vested or re-vested with any right, title, or interest in or to a material portion of the assets directly or indirectly owned by the Debtors or any other person claiming any rights in or control over a material portion of such assets (each, a "**Debtor Successor**") as if such Debtor Successor was the Debtors.

H. The Auction

12. As further described in the Bid Procedures, if a Qualified Bid, other than the Stalking Horse Agreement, is received by the Bid Deadline, the Debtors will conduct the Auction at **10:00 a.m. (prevailing Eastern Time) on June 10, 2019**, at the offices of the Debtors' counsel, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, DE 19801 or such later time on such day or other place as the Debtors shall notify all Qualified Bidders who

have submitted Qualified Bids, if a Qualified Bid is timely received. The Debtors are authorized, subject to the terms of this Order and the Bid Procedures, to take actions reasonably necessary to conduct and implement the Auction.

13. If the Debtors do not receive a Qualified Bid (other than the Stalking Horse Agreement): (i) the Debtors may cancel the Auction, (ii) the Stalking Horse Agreement may be deemed by the Debtors to be the Successful Bid for the Acquired Assets, and (iii) the Debtors shall be authorized to seek approval of the Stalking Horse Agreement as the Successful Bid at the Sale Hearing.

14. Only Qualified Bidders (including, for the avoidance of doubt, the Stalking Horse Bidder) will be entitled to make any Bids at the Auction.

15. The Debtors and their professionals shall direct and preside over the Auction and the Auction shall be transcribed or videotaped.

16. Each Qualified Bidder (including, for the avoidance of doubt, the Stalking Horse Bidder) participating in the Auction must confirm that it (a) has not engaged in any collusion with respect to the bidding or sale of any of the assets described herein, (b) has reviewed, understands, and accepts the Bid Procedures, and (c) has consented to the core jurisdiction of this Court and to the entry of a final order by this Court on any matter related to this Order, the Sale, or the Auction if it is determined that this Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the parties.

17. The Stalking Horse Bidder shall be deemed to be a Qualified Bidder and is not required to make any Good Faith Deposit. To the fullest extent permissible under Bankruptcy Code section 363(k), the Stalking Horse Bidder, in its capacity as the Prepetition Secured Lender and the DIP Lender, respectively, may credit bid, as a Qualified Bid or subsequent Bid, in its

sole and absolute discretion, any portion and up to the entire amount of Obligations owing under the Prepetition Loan Documents and the DIP Loan Documents (as defined in the DIP Order) , in the full amount of such obligations outstanding as of the date of the Auction on the Assets constituting the Prepetition Secured Lender Collateral (as defined in the DIP Order) in conjunction with the Sale of the Acquired Assets pursuant to the terms of the Stalking Horse Agreement (the “**Credit Bid**”). In the event the amount of the Credit Bid exceeds the total amount of the highest bids for the Assets subject to the Credit Bid, such Credit Bid will be deemed the highest and best bid and such Credit Bid will be accepted by the Debtors and be presented for approval to the Court.

18. In the event of a competing Qualified Bid, all Qualified Bidders will be entitled, but not obligated, to submit Overbids.

19. The Debtors may (i) determine, in consultation with the Creditors’ Committee, which Qualified Bid or combination of Qualified Bids (including the Stalking Horse Agreement) is the highest or otherwise best offer; (ii) reject at any time before the entry of the Sale Order any Bid (other than the Stalking Horse Agreement) that, in the discretion of the Debtors, is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, or the Bid Procedures, or (c) contrary to the best interest of the Debtors, their estates, their creditors, interest holders, or other parties in interest; and (iii) at or before the conclusion of the Auction may impose such other terms and conditions upon Qualified Bidders (other than the Stalking Horse Bidder) as the Debtors determine, in consultation with the Creditors’ Committee, to be in the best interest of the Debtors’ estates.

20. No person or entity, other than the Stalking Horse Bidder, shall be entitled to any expense reimbursement, breakup fee, topping or termination fee, or other similar fee or payment,

and, by submitting a Bid, such person or entity is deemed to have waived its right to request or file with this Court any request for expense reimbursement or any other fee of any nature in connection with the Auction and the Sale, whether by virtue of Bankruptcy Code section 503(b) or otherwise.

I. Assumption and Assignment Notices & Procedures

21. The procedures set forth below regarding the assumption and assignment of the executory contracts proposed to be assumed by the Debtors pursuant to section 365(b) of the Bankruptcy Code and assigned to the Stalking Horse Bidder (or other Successful Bidder, if any) pursuant to section 365(f) of the Bankruptcy Code in connection with the Sale (the “**Assignment Procedures**”) are hereby approved to the extent set forth herein. These Assignment Procedures shall govern the assumption and assignment of all of the Contracts to be assumed and assigned in connection with the Sale, subject to the payments necessary to cure any defaults arising under any such Contracts.

22. On or prior to **May 14, 2019**, the Debtors shall serve via overnight delivery on all non-Debtor counterparties (each a “**Contract Counterparty**” and, collectively, the “**Contract Counterparties**”) to any Contract (the “**Cure and Possible Assumption and Assignment Notice Parties**”) that may be assumed by the Debtors and assigned to the Stalking Horse Bidder or other Successful Bidder after the results of the Auction, which notice shall be substantially in the form attached hereto as Exhibit 3 (a “**Cure and Possible Assumption and Assignment Notice**”). The Cure and Possible Assumption and Assignment Notice shall inform each recipient of the timing and procedures relating to such assumption and assignment, and, to the extent applicable, (i) the title of the executory contract or unexpired lease, as applicable, (ii) the name of the counterparty to the executory contract or unexpired lease, as applicable, (iii) the Debtors’

good faith estimate of the cure amount (if any) required in connection with the executory contract or unexpired lease, as applicable, (iv) the identity of the Stalking Horse Bidder (as assignee, if applicable), and (v) the Contract Objection Deadline (as defined below). The presence of a Contract on the Cure and Possible Assumption and Assignment Notice does not constitute an admission that such Contract is an executory contract or unexpired lease, and the presence of a Contract on any notice shall not prevent the Debtors from subsequently withdrawing such request for assumption or rejecting such Contract any time before such Contract is actually assumed and assigned pursuant to the Sale Order.

23. No later than **June 11, 2019**, the Debtors shall file with the Court and serve on the Cure and Possible Assumption and Assignment Notice Parties who are parties to a Contract to be assumed and assigned a further notice substantially in the form attached hereto as Exhibit 4 (the “**Assumption Notice**”), stating which Contracts may be assumed and assigned, including cure amounts, and providing such parties with the Successful Bidder’s assurance of future performance.

24. Although the Debtors intend to make a good faith effort to identify all Contracts that may be assumed and assigned in connection with a Sale, the Debtors may discover certain executory contracts and unexpired leases inadvertently omitted from the list of Contracts, or Successful Bidders may identify other executory contracts and/or unexpired leases that they desire to assume and assign in connection with the Sale. Accordingly, the Debtors reserve the right, but only in accordance with the Stalking Horse Agreement, or as otherwise agreed to by the Debtors and the Successful Bidder, at any time after the service of the Assumption Notice and before the closing of a Sale, to (i) supplement the list of Contracts with previously omitted executory contracts, (ii) remove Contracts from the list of executory contracts and unexpired

leases ultimately selected as Contracts that a Successful Bidder proposes to be assumed and assigned to it in connection with a Sale, and/or (iii) modify the previously stated cure amount associated with any Contract. In the event the Debtors exercise any of these reserved rights, the Debtors will promptly serve a supplemental notice of contract assumption (a “**Supplemental Assumption Notice**”) on each of the counterparties to such Contracts and their counsel of record, if any; *provided, however*, the Debtors may not add an executory contract to the list of Contracts that has been previously rejected by the Debtors by order of the Court. Each Supplemental Assumption Notice will include the same information with respect to listed Contracts as was included in the Cure and Possible Assumption and Assignment Notice.

25. Objections, if any, to the cure amount set forth on the Cure and Possible Assumption and Assignment Notice or the possible assignment of its executory contract or unexpired lease (each, a “**Contract Objection**”) **must** (i) be in writing, (ii) comply with the applicable provisions of the Bankruptcy Rules and the Local Rules, and (iii) state with specificity the nature of the objection and, if the objection pertains to the proposed cure amount, the correct cure amount alleged by the objecting counterparty, together with any applicable and appropriate documentation in support thereof, and (iv) be filed with the Bankruptcy Court and served on the following parties so as to be actually received on or before **May 31, 2019 at 4:00 p.m. (prevailing Eastern Time) (the “Contract Objection Deadline”)**: (a) counsel for the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Christopher A. Ward (cward@polsinelli.com), and Polsinelli PC, 150 N. Riverside Plaza, Suite 3000, Chicago, Illinois 60606, Attn: Jerry L. Switzer, Jr. (jswitzer@polsinelli.com), (b) counsel for the DIP Lender and the Prepetition Secured Lender, Winston & Strawn LLP, 35 W. Wacker Drive, Chicago, Illinois 60601, Attn: Daniel J. McGuire (dmcguire@winston.com) and Fox

Rothschild LLP, Citizens Bank Center, 919 North Market Street, Suite 300, Wilmington, DE 19899-2323, Attn: Seth Niederman (sniederman@foxrothschild.com), (c) counsel for the Stalking Horse Bidder, Skadden, Arps, Slate, Meagher & Flom LLP, 155 N. Wacker Drive, Chicago, Illinois 60606, Attn: Kimberly A. deBeers (Kimberly.deBeers@skadden.com), (d) counsel for the Creditors' Committee, [____], and (e) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Ste. 2207 – Lockbox #35, Wilmington, DE 19801, Attn: Juliet Sarkessian (Juliet.M.Sarkessian@usdoj.gov). If a Successful Bidder that is not the Stalking Horse Bidder prevails at the Auction, then the deadline to object to assumption and assignment solely with respect to the adequate assurance of future performance shall be extended to the date that is two (2) business days after the conclusion of the Auction, but any such objection must be received before the start of the Sale Hearing, *provided, however,* that the deadline to object to the proposed cure amount shall not be so extended.

26. If a Contract Counterparty does not timely file and serve a Contract Objection, that party will be forever barred from objecting to (i) the Debtors' proposed cure amount, (ii) the assumption and assignment of that party's executory contract or unexpired lease (including the adequate assurance of future performance), (iii) the related relief requested in the Motion, and (iv) the Sale. Such party shall be forever barred and estopped from objecting to the cure amount, the assumption and assignment of that party's executory contract or unexpired lease (including the adequate assurance of future performance), the relief requested in the Motion, whether applicable law excuses such counterparty from accepting performance by, or rendering performance to, the Stalking Horse Bidder or the Successful Bidder, as applicable, for purposes of section 365(c)(1) of the Bankruptcy Code and from asserting any additional cure or other

amounts against the Debtors and the Stalking Horse Bidder or Successful Bidder, as applicable, with respect to such party's executory contract or unexpired lease.

27. Where a Contract Counterparty to an Assigned Contract files a timely Contract Objection asserting a higher cure amount than the amount listed in the Cure and Possible Assumption and Assignment Notice, or objecting to the possible assignment of that Contract Counterparty's executory contract or unexpired lease, and the parties are unable to consensually resolve the dispute, the amount to be paid under Bankruptcy Code section 365 (if any) or, as the case may be, the Debtors' ability to assign the executory contract or unexpired lease to the Successful Bidder will be determined at the Sale Hearing.

28. The payment of the applicable cure amount by the Debtors or Stalking Horse Bidder (or other Successful Bidder), as applicable, shall (i) effect a cure of all defaults existing thereunder and (ii) compensate for any actual pecuniary loss to such counterparty resulting from such default.

J. Notice of the Sale Process

29. The Sale Notice, the Cure and Possible Assumption and Assignment Notice, and the Assumption Notice, in substantially the forms as annexed to this Order as Exhibit 2, Exhibit 3, and Exhibit 4, respectively, and the Bid Procedures Notice, in substantially the forms as annexed to the Motion as Exhibit E, respectively, are hereby approved.

30. Within two (2) business days after the entry of this Order, the Debtors (or their agent) shall serve the Sale Notice by first-class mail upon: (a) the U.S. Trustee; (b) the holders of the twenty (20) largest unsecured claims against the Debtors; (c) counsel to the DIP Lender and the Prepetition Secured Lender; (d) counsel to the Stalking Horse Bidder; (e) all other parties who have expressed a written interest in the Assets; (f) the United States Attorney's Office for

the District of Delaware; (g) the Internal Revenue Service; (h) all state and local taxing authorities with an interest in the Assets; (i) the Attorney General for the State of Delaware; (j) the Securities and Exchange Commission; (k) all other governmental agencies with an interest in the Sale and transactions proposed thereunder; (l) all parties known or reasonably believed to have asserted an Interest in the Assets; (m) the Contract Counterparties; (n) the Debtors' insurance carriers; (o) all parties entitled to notice pursuant to Local Rule 9013-1(m); and (p) any party that has requested notice pursuant to Bankruptcy Rule 2002.

31. As soon as practicable after the entry of this Order, the Debtors shall publish the Bid Procedures Notice in *The New York Times (National Edition)*. In addition, as soon as reasonably practicable, but in no event later than three (3) business days after entry of this Order, the Debtors will also post the Sale Notice and this Bid Procedures on the website maintained by the Debtors' claims and noticing agent, Prime Clerk LLC, located at <http://cases.primeclerk.com/OrchidsPaper>. Such publication notice as set forth in the preceding two sentences shall be deemed sufficient and proper notice of the Sale to any other interested parties whose identifies are unknown to the Debtors.

K. The Sale Hearing

32. The Sale Hearing will be conducted on **June 12, 2019** at [____] **a.m./p.m. (prevailing Eastern Time)**. The Debtors will seek entry of an order of the Court at the Sale Hearing approving and authorizing the sale of the Acquired Assets to the Successful Bidder. Upon entry of this Order, the Debtors are authorized to perform any obligation intended to be performed prior to the Sale Hearing or entry of the Sale Order with respect thereto. The Sale Hearing may be adjourned from time to time without further notice other than such announcement being made in open court or a notice of adjournment filed on the Court's docket.

L. Objections to the Sale

33. Objections, if any, to the relief requested in the Motion relating to the Sale (each, a “**Sale Objection**”) must: (i) be in writing, (ii) comply with the Bankruptcy Rules and the Local Rules, (iii) be filed with the Court, and (iv) be served so it is actually received no later than **4:00 p.m. (prevailing Eastern Time) on June 5, 2019**, by (a) counsel for the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Christopher A. Ward (cward@polsinelli.com), and Polsinelli PC, 150 N. Riverside Plaza, Suite 3000, Chicago, Illinois 60606, Attn: Jerry L. Switzer, Jr. (jswitzer@polsinelli.com), (b) counsel for the DIP Lender and the Prepetition Secured Lender, Winston & Strawn LLP, 35 W. Wacker Drive, Chicago, Illinois 60601, Attn: Daniel J. McGuire (dmcguire@winston.com) and Fox Rothschild LLP, Citizens Bank Center, 919 North Market Street, Suite 300, Wilmington, DE 19899-2323, Attn: Seth Niederman (sniederman@foxrothschild.com), (c) counsel for the Stalking Horse Bidder, Skadden, Arps, Slate, Meagher & Flom LLP, 155 N. Wacker Drive, Chicago, Illinois 60606, Attn: Kimberly A. deBeers (Kimberly.deBeers@skadden.com), (d) counsel for the Creditors’ Committee, [____], and (e) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Ste. 2207 – Lockbox #35, Wilmington, DE 19801, Attn: Juliet Sarkessian (Juliet.M.Sarkessian@usdoj.gov).

34. A party’s failure to timely file a Sale Objection in accordance with this Order shall forever bar the assertion, at the applicable Sale Hearing or otherwise, of any objection to the relief requested in the Motion, or to the consummation of the Sale and the performance of the related transactions, including the transfer of the Assets to the applicable Successful Bidder(s), free and clear of all liens, claims, interests, and encumbrances pursuant to section 363(f) of the

Bankruptcy Code, and shall be deemed to be a “consent” for purposes of section 363(f) of the Bankruptcy Code.

M. Other Relief Granted

35. Nothing in this Order, the Stalking Horse Agreement, or the Motion shall be deemed to or constitute the assumption or assignment of an executory contract or unexpired lease.

36. The requirements of Bankruptcy Rules 6004(h) and 6006(d) are waived.

37. The Debtors are hereby authorized to conduct the Sale without the necessity of complying with any state or local bulk transfer laws or requirements.

38. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

39. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry, notwithstanding any provision in the Bankruptcy Rules or the Local Rules to the contrary, and the Debtors may, in their discretion and without further delay, take any action and perform any act authorized under this Order.

40. The Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2019

UNITED STATES BANKRUPTCY JUDGE

Exhibit 1 to Bid Procedures Order

Bid Procedures

Exhibit 1

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

In re:

ORCHIDS PAPER PRODUCTS
COMPANY, *et al.*,¹

Debtors.

Chapter 11

Case No. 19-10729 (MFW)

Jointly Administered

BID PROCEDURES

In the exercise of their good faith reasonable business judgment, the above-captioned debtors and debtors in possession (the “**Debtors**”) have executed an Option Agreement which grants the Debtors the option to enter into an Asset Purchase Agreement (the “**Stalking Horse Agreement**”) with Orchids Investment LLC (the “**Stalking Horse Bidder**”), pursuant to which Option Agreement and Stalking Horse Agreement (i) the Stalking Horse Bidder proposes to (a) purchase, acquire, and take assignment and delivery of the Acquired Assets (as defined in the Stalking Horse Agreement) and (b) assume certain Assumed Liabilities (as defined in the Stalking Horse Agreement), and (ii) the Debtors propose to, under certain circumstances in connection with the Option Agreement and the termination of the Stalking Horse Agreement, (a) pay the Stalking Horse Bidder an aggregate stalking-horse bidder fee in an amount equal to \$5,250,000, which is three (3%) percent of the Purchase Price (as defined in the Stalking Horse Agreement), in consideration of the Stalking Horse Bidder having expended considerable time and expense in connection with the Option Agreement and the Stalking Horse Agreement and the negotiation thereof, and the identification and quantification of assets to be included in the Acquired Assets (the “**Break-Up Fee**”) and/or (b) reimburse the Stalking Horse Bidder for its out of pocket costs, expenses, and fees in connection with evaluating, negotiating, documenting and performing the transactions contemplated by the Stalking Horse Agreement in the dollar amount equal to the lesser of (i) \$2,000,000, and (ii) the aggregate amount of all reasonable and documented out of pocket costs, expenses and fees incurred by the Stalking Horse Bidder or those of the Stalking Horse Bidder’s subsidiaries that will receive title to any Acquired Assets pursuant to the transactions contemplated by the Stalking Horse Agreement (the “**Expense Reimbursement**”), in each case, in accordance with the terms and conditions of the Option Agreement and the Stalking Horse Agreement.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Orchids Paper Products Company, a Delaware corporation (6944), Orchids Paper Products Company of South Carolina, a Delaware corporation (7198), and Orchids Lessor SC, LLC, a South Carolina limited liability company (7298). The location of the Debtors’ mailing address is 201 Summit View Drive, Suite 110, Brentwood, Tennessee 37027.

On [____], 2019, the Bankruptcy Court entered an order [Docket No. [____]] (the “**Bid Procedures Order**”) approving, among other things, these bid procedures (the “**Bid Procedures**”).

These Bid Procedures set forth the process by which the Debtors are authorized to conduct the auction (the “**Auction**”) for the sale (the “**Sale**”) of the Assets. Subject to the entry of the Sale Order, the Sale may be implemented pursuant to the terms and conditions of the Stalking Horse Agreement, as the same may be amended pursuant to the terms thereof, subject to the receipt of higher or otherwise better Bids (as defined below) in accordance with these Bid Procedures. Pursuant to the Bid Procedures, the Debtors will determine, in consultation with the Creditors’ Committee, the highest or otherwise best price for the sale of the Assets.

N. Important Dates

- (All times are prevailing Eastern Time)
- **May 14, 2019 at 4:00 p.m.:** Debtors to send Cure and Possible Assumption and Assignment Notices to All Contract Counterparties and Notice of the Sale
- **May 31, 2019 at 4:00 p.m.:** Cure Objection Deadline
- **June 6, 2019 at 4:00 p.m.:** Deadline to submit Bid to be considered for the Auction
- **June 10, 2019 at 10:00 a.m.:** Proposed date of Auction
- **June 10, 2019 at 4:00 p.m.:** Debtors to file notice of Successful Bidder and Contract Assignment Notices
- **June 5, 2019 at 4:00 p.m.:** Deadline to file and serve objections to relief requested at Sale Hearing (except for any objection that arises at the Auction)
- **June 12, 2019 at _____ a.m./p.m.:** Proposed date of Sale Hearing

O. Marketing Process

1. Contact Parties

The Debtors and their advisors have developed a list of parties who the Debtors believe may potentially be interested in and who the Debtors reasonably believe would have the financial resources to consummate a Sale, which list includes both potential strategic and financial investors (each, individually, a “**Contact Party**”, and collectively, the “**Contact Parties**”). The Debtors’ investment banker, Houlihan Lokey, has contacted or will contact the Contact Parties to explore their interest in pursuing a Sale. The Contact Parties may include parties whom the Debtors or their advisors have previously contacted regarding a Sale, regardless of whether such parties expressed any interest, at such time, in pursuing a Sale. The Debtors will continue to discuss and may supplement the list of Contact Parties throughout the marketing process, as appropriate.

The Debtors may distribute to each Contact Party an “**Information Package**,” which is comprised of:

- (a) a cover letter;
- (b) a copy of these Bid Procedures;
- (c) a copy of a confidentiality agreement in a form acceptable to the Debtors (the “**Confidentiality Agreement**”); and
- (d) a copy of the Stalking Horse Agreement.

2. Access to Diligence Materials

To participate in the bidding process and to receive access to any materials relating to the Assets (the “**Diligence Materials**”), a party must submit to the Debtors an executed Confidentiality Agreement. The executed Confidentiality Agreement must be signed and transmitted by the person or entity wishing to have access to the Debtors’ data room (the “**Data Room**”) and any other Diligence Materials.

A party who qualifies for access to the Diligence Materials shall be a “**Preliminarily Interested Investor**.” All due diligence requests must be directed to counsel to the Debtors.

For any Preliminary Interested Investor who is a competitor of the Debtors or is affiliated with any competitor of the Debtors, the Debtors reserve the right to withhold any Diligence Materials that the Debtors determine are business-sensitive or otherwise not appropriate for disclosure to such Preliminary Interested Investor.

No due diligence will continue after the Bid Deadline (defined below). The Debtors shall provide the Stalking Horse Bidder with access to all material due diligence materials, management presentations, on-site inspections, and other information provided to any Preliminary Interested Investor or Qualified Bidder that were not previously made available to the Stalking Horse Bidder concurrently with the provision of such information or materials to such Preliminary Interest Investor or Qualified Bidder, as applicable.

3. Auction Qualification Process

To be eligible to participate in the Auction, each offer, solicitation, or proposal (each, a “**Bid**”), and each party submitting such a Bid (each, a “**Bidder**”), must be determined by the Debtors, in consultation with the Creditors’ Committee, to satisfy each of the following conditions:

- (1) **Good Faith Offer; Partial Bids:** Each Bid must constitute a good faith, bona fide offer to purchase all or a portion of the Assets (it being understood that partial bids may be permitted only if the combined consideration exceeds the Purchase Price of the Stalking Horse Agreement).

- (2) **Good Faith Deposit:** Each Bid (other than the Bid made by the Stalking Horse Bidder) must be accompanied by a deposit in the amount of seven percent (7%) of the Bid's proposed cash purchase price to an interest bearing escrow account to be identified and established by the Debtors (the "**Good Faith Deposit**").
- (3) **Terms:** A Bid must be on terms that are substantially the same or better than the terms of the Stalking Horse Agreement, as determined by the Debtors in consultation with the Creditors' Committee.
- (4) **Executed Agreement:** Each Bid must be based on the Stalking Horse Agreement and must include (i) executed transaction documents, signed by an authorized representative of such Bidder and (ii) a copy of such asset purchase agreement marked to show all changes requested by the Bidder as compared to the Stalking Horse Agreement. A Bid will not be considered qualified for the Auction if (i) such Bid contains additional material representations and warranties, covenants, closing conditions, termination rights other than as may be included in the Stalking Horse Agreement (it being agreed and understood such Bid shall modify the Stalking Horse Agreement as needed to comply in all respects with the Bid Procedures Order and will remove provisions that apply only to the Stalking Horse Bidder such as the Bid Protections) (a "**Modified Purchase Agreement**"); (ii) such Bid is not received by the Debtors in writing on or prior to the Bid Deadline, and (iii) such Bid does not contain evidence that the Person submitting it has received unconditional debt and/or equity funding commitments (or has unrestricted and fully available cash) sufficient in the aggregate to finance the purchase contemplated thereby, including proof the Good Faith Deposit has been made. Each Modified Purchase Agreement must provide (1) a commitment to close within two (2) business days after all closing conditions are met and (2) a representation that the Bidder will (a) make all necessary filings under the Hart Scott Rodino Antitrust Improvements Act of 1976, as amended (the "**HSR Act**"), and (b) submit all necessary filings under the HSR Act within five (5) calendar days following the effective date of the Modified Purchase Agreement.
- (5) **Designation of Contracts and Leases:** A Bid must identify any and all executory contracts and unexpired leases of the Debtors that the Bidder wishes to be assumed pursuant to a Sale. A Bid must specify whether the Debtors or the Bidder will be responsible for any cure costs associated with such assumption, and include a good faith estimate of such cure costs (which estimate shall be provided by the Debtors).
- (6) **Designation of Assumed Liabilities:** A Bid must identify all liabilities which the Bidder proposes to assume.
- (7) **Amount of Bid:** Each Bid or combination of Bids must be for all of the Assets and shall clearly show the amount of the purchase price. In addition, a Bid or combination of Bids (a) must propose a purchase price equal to or greater than the sum of (i) the value of the Stalking Horse Agreement, as determined by the Debtors in consultation with the Creditors' Committee; and (ii) an initial overbid

of up to \$7,750,000 (the “**Initial Overbid**”), consisting of the sum of the Break-Up Fee, the Expense Reimbursement and \$500,000, and (b) must obligate the Bidder(s) to pay, to the extent provided in the Agreement, all amounts which the Stalking Horse Bidder under the Agreement has agreed to pay, including any assumed liabilities (as set forth in the Stalking Horse Agreement).

- (8) **Corporate Authority:** Written evidence reasonably acceptable to the Debtors demonstrating appropriate corporate authorization to consummate the proposed transaction; *provided, however*, if the Bidder is an entity specially formed for the purpose of effectuating the transaction, then the Bidder must furnish written evidence reasonably acceptable to the Debtors of the approval of the transaction by the equity holder(s) of such Bidder.
- (9) **Disclosure of Identity of Potential Bidder:** A Bid must fully disclose the identity of each entity that will be bidding for or purchasing the Assets or otherwise participating in connection with such Bid (including the identity of any parent companies of such entity), and the complete terms of any such participation, including any connections, agreements, arrangements or understanding with the Debtors, the Stalking Horse Bidder, or any other known, potential, or prospective bidder, or Potential Bidder, or any officer, director, or equity holder of the Debtors. Under no circumstances shall any undisclosed principals, equity holders or financial backers be associated with any Bid. Each Bid must also include contact information for the specific person(s) and counsel whom the Debtors’ advisors should contact regarding such Bid.
- (10) **Proof of Financial Ability to Perform:** Written evidence the Debtors reasonably conclude demonstrates the Bidder has the necessary financial ability to close the transaction and provide adequate assurance of future performance under all contracts to be assumed and assigned in such transaction. Such information should include, *inter alia*, the following:
 - (a) contact names and numbers for verification of financing sources,
 - (b) written evidence of the Bidder’s internal resources and proof of any debt or equity funding commitments that are needed to close the transaction;
 - (c) the Bidder’s current financial statements (audited if they exist);
 - (d) a description of the Bidder’s pro forma capital structure; and
 - (e) any such other form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors demonstrating such Bidder has the ability to close the transaction; *provided, however*, the Debtors shall determine in their reasonable discretion, in consultation with the Creditors’ Committee, whether the written evidence of such financial wherewithal is reasonably acceptable, and shall not unreasonably withhold acceptance of a Bidder’s financial qualifications.

- (11) **Regulatory and Third Party Approvals:** A Bid must set forth each regulatory and third-party approval required for the Bidder to consummate the Sale, and the time period within which the Bidder expects to receive such regulatory and third-party approvals.
- (12) **Employees:** A Bid must detail the treatment of the employees of the Debtors and their subsidiaries.
- (13) **Conditions/Contingencies:** Except as provided in the Stalking Horse Agreement, a Bid may not be conditioned on obtaining financing or any internal approval, or on the outcome or review of due diligence, but may be subject to the accuracy at the closing of specified representations and warranties in the manner set forth in the Stalking Horse Agreement.
- (14) **Irrevocable:** A Bid (other than the Bid of the Stalking Horse Bidder) must be irrevocable until two (2) business days after the closing of the Sale. Each Bidder (other than the Stalking Horse Bidder) further agrees that its Bid, if not chosen as the Successful Bidder, shall serve, without modification, as a Backup Bidder (as defined below) as may be designated by the Debtors at the Sale Hearing, in the event the Successful Bidder fails to close as provided in the Successful Bidder's purchase agreement, as modified, if at all, and the Sale Order. The Stalking Horse Bidder shall have the right, but not the obligation, to serve as a Backup Bidder if the Stalking Horse Bidder is not the Successful Bidder.
- (15) **Time Frame for Closing:** A Bid by a Bidder must be 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, in consultation with the Creditors' Committee, but in no event later than September 30, 2019.
- (16) **Consent to Jurisdiction:** Each Bidder must submit to the jurisdiction of the Bankruptcy Court to enter an order or orders, which shall be binding in all respects, in any way related to the Debtors, the Bid Procedures, and the Auction.
- (17) **Disclaimer of Fees:** Each Bid (other than the Stalking Horse Agreement) must disclaim any right to receive a fee analogous to a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation. For the avoidance of doubt, no Qualified Bidder (other than the Stalking Horse Bidder) will be permitted to request, nor be granted by the Debtors, at any time, whether as part of the Auction or otherwise, a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation. By submitting its Bid, each Bidder (other than the Stalking Horse Bidder) is agreeing to refrain from and waive any assertion or request for reimbursement on any basis, including pursuant to Bankruptcy Code section 503(b).
- (18) **Bid Deadline:** Regardless of when a party qualifies as a Preliminarily Interested Investor, the Debtors must receive a Bid in writing, on or before **June 6, 2019 at**

4:00 p.m. (prevailing Eastern Time) or such later date as may be agreed to by the Debtors (the “**Bid Deadline**”). Bids must be sent to the following by the Bid Deadline to be considered: (i) counsel for the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Christopher A. Ward (cward@polsinelli.com), and Polsinelli PC, 150 N. Riverside Plaza, Suite 3000, Chicago, Illinois 60606, Attn: Jerry L. Switzer, Jr. (jswitzer@polsinelli.com); (ii) investment bankers for the Debtors, Houlihan Lokey, 111 South Wacker Drive, 37th Floor, Chicago, IL 60606, Attn: Jeffrey Lewis (JLewis@HL.com); (iii) counsel for the DIP Lender and the Prepetition Secured Lender, Winston & Strawn LLP, 35 W. Wacker Drive, Chicago, Illinois 60601, Attn: Daniel J. McGuire (dmcguire@winston.com) and Fox Rothschild LLP, Citizens Bank Center, 919 North Market Street, Suite 300, Wilmington, DE 19899-2323, Attn: Seth Niederman (sniederman@foxrothschild.com); and (iv) counsel for the Creditors’ Committee, [_____].

A Bid received from a Bidder before the Bid Deadline that meets the above requirements shall constitute a “**Qualified Bid**,” and such Bidder shall constitute a “**Qualified Bidder**.” The Stalking Horse Bidder shall be deemed to be a Qualified Bidder.

Within two (2) days after the Bid Deadline, the Debtors and their advisors (in consultation with the Creditors’ Committee) will determine which Bidders are Qualified Bidders and will notify such Bidders whether Bids submitted constitute Qualified Bids so as to enable such Qualified Bidders to attend the Auction. Any Bid that is not deemed a Qualified Bid will not be considered by the Debtors. The Stalking Horse Agreement submitted by the Stalking Horse Bidder will be deemed a Qualified Bid, qualifying the Stalking Horse Bidder as a Qualified Bidder to participate in the Auction. To the extent there is any dispute regarding whether a bidder is a Qualified Bidder, such dispute may be raised with the Bankruptcy Court on an expedited basis prior to the commencement of the Auction.

Between the date that the Debtors notify a Bidder that it is a Qualified Bidder and the Auction, the Debtors may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Without the prior written consent of the Debtors in consultation with the Creditors’ Committee, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase the consideration contemplated by, or otherwise improve the terms of, the Qualified Bid, during the period that such Qualified Bid remains binding as specified in these Bid Procedures; *provided* that any such Qualified Bid may be improved at the Auction as set forth herein. Any improved Qualified Bid must continue to comply with the requirements for Qualified Bids set forth in these Bid Procedures.

Prior to the Auction, the Debtors and their advisors will evaluate Qualified Bids and identify the Qualified Bid that is, in the Debtors’ reasonable business judgment and in consultation with the Creditors’ Committee, the highest or otherwise best bid (the “**Starting Bid**”). For the avoidance of doubt, the Starting Bid shall equal (or exceed) an amount equal to the value of the Stalking Horse Agreement plus the Initial Overbid. In making such determination, the Debtors will take into account, among other things, the execution risk attendant to any submitted bids. Within twenty-four (24) hours of such determination, but in no event later than twenty-four (24) hours before the start of the Auction, the Debtors will (i) notify

the Stalking Horse Bidder and the Creditors' Committee as to which Qualified Bid is the Starting Bid and (ii) distribute copies of the Starting Bid to each Qualified Bidder who has submitted a Qualified Bid and the Creditors' Committee.

4. Credit Bid

The Stalking Horse Bidder, in its capacity as the DIP Lender and Prepetition Secured Lender, shall be deemed to be a Qualified Bidder and is not required to make any Good Faith Deposit. To the fullest extent permissible under Bankruptcy Code section 363(k), the Stalking Horse Bidder, in its capacity as the DIP Lender and Prepetition Secured Lender, may credit bid, as a Qualified Bid or subsequent Bid, in its sole and absolute discretion, any portion and up to the entire amount of Obligations owing under the DIP Loan Documents and the Prepetition Loan Documents (as defined in the DIP Order) in conjunction with the Sale of the Acquired Assets pursuant to the terms of the Stalking Horse Agreement (the "**Credit Bid**"). In the event the amount of the Credit Bid exceeds the total amount of the highest bids for the Assets subject to the Credit Bid, such Credit Bid will be deemed the highest and best bid and such Credit Bid may be accepted by the Debtors and be presented for approval to the Court.

P. Auction

If one or more Qualified Bids is received by the Bid Deadline (other than the Stalking Horse Agreement), the Debtors will conduct the Auction to determine the highest and best Qualified Bid or combination of Qualified Bids. This determination shall take into account any factors the Debtors reasonably deem relevant to the value of the Qualified Bid to the estates, including, *inter alia*, the following: (a) the amount and nature of the consideration; (b) the proposed assumption of any liabilities and/or executory contracts or unexpired leases, if any, and the excluded assets and/or executory contracts or unexpired leases, if any; (c) the ability of the Qualified Bidder to close the proposed Transaction and the conditions related thereto, and the timing thereof; (d) whether the Bid is a bulk bid or a partial bid for only some of the Debtors' assets; (e) the proposed closing date and the likelihood, extent and impact of any potential delays in closing; (f) any purchase price adjustments; (g) the impact of the Transaction on any actual or potential litigation; (h) the net after-tax consideration to be received by the Debtors' estates; and (i) the tax consequences of such Qualified Bid (collectively, the "**Bid Assessment Criteria**").

If no Qualified Bids other than the Stalking Horse Bid are received prior to the Bid Deadline, then the Auction will not occur, the Stalking Horse Agreement may be deemed the Successful Bid, and, subject to the termination rights under the Option Agreement or Stalking Horse Agreement, the Debtors will pursue entry of an order by the Bankruptcy Court authorizing the Sale to the Stalking Horse Bidder as soon as practicable.

Procedures for Auction

The Auction, if necessary, will take place on **June 10, 2019 at 10:00 a.m. (prevailing Eastern Time)** at the offices of Debtors' counsel, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, DE 19801 or such later time on such day or other place as the Debtors shall notify all Bidders who have submitted Qualified Bids; *provided, however*, that the Auction may not be postponed or adjourned beyond June 10, 2019 without the consent of the Stalking Horse

Bidder. Only the Stalking Horse Bidder and such other Qualified Bidders will be entitled to make any Bids at the Auction.

1. The Debtors Shall Conduct the Auction

The Debtors and their professionals shall direct and preside over the Auction and the Auction shall be transcribed or videotaped. At the start of the Auction the Debtors shall describe the terms of the Starting Bid and provide each participant in the Auction with a copy of the Modified Purchase Agreement associated with the Starting Bid.

All Bids made thereafter shall be Overbids (as defined below), and shall be made and received on an open basis, and all material terms of each Overbid shall be fully disclosed to all Bidders who have submitted Qualified Bids. The Debtors shall maintain a transcript of all bids made and announced at the Auction, including the Starting Bid and all Overbids. Upon the solicitation of each round of Overbids, the Debtors may announce a deadline (as the Debtors may, in their business judgment, extend from time to time) by which time any Overbids must be submitted to the Debtors.

2. Terms of Overbids

An “**Overbid**” is any Bid made at the Auction subsequent to the Debtors’ announcement of the Starting Bid. To submit an Overbid for purposes of this Auction, a Bidder must comply with the following conditions:

(1) Minimum Overbid Increment

Any Overbid after the Starting Bid shall be made in increments of at least \$500,000 (the “**Minimum Overbid Increment**”). Additional consideration in excess of the amount set forth in the Starting Bid may include cash and/or non-cash consideration; *provided, however* that the value for such non-cash consideration shall be determined by the Debtors in their reasonable business judgment and in consultation with the Creditors’ Committee.

(2) Remaining Terms Are the Same as for Qualified Bids

Except as modified herein, an Overbid must comply with the conditions for a Qualified Bid set forth above; *provided, however*, the Bid Deadline shall not apply and no additional Good Faith Deposit shall be required beyond the Good Faith Deposit previously submitted by a Qualified Bidder; *provided* that the Successful Bidder (other than the Stalking Horse Bidder) shall be required to make a representation at the end of the Auction that it will provide any additional deposit necessary so that its Good Faith Deposit is equal to the amount of seven percent (7%) of the cash purchase price contained in the Successful Bid. Any Overbid must include, in addition to the amount and form of consideration of the Overbid, a description of all changes (if any) requested by the Qualified Bidder to the Stalking Horse Agreement or a previously submitted Modified Purchase Agreement, in connection therewith (including any changes to the designated assigned contracts and leases and assumed liabilities). Any Overbid must remain open and binding on the Bidder until and unless the Debtors accept a higher Overbid (except to the extent required to serve as the Backup Bid).

To the extent not previously provided (which shall be determined by the Debtors in consultation with the Creditors' Committee), a Bidder submitting an Overbid must submit, as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors) demonstrating such Bidder's ability to close the transaction proposed by such Overbid; *provided, however*, this shall not apply to an Overbid by the Stalking Horse Bidder.

(3) **Announcing Overbids**

The Debtors shall announce at the Auction the material terms of each Overbid, the basis for calculating the total consideration offered in each such Overbid and the resulting benefit to the Debtors' estates based on, *inter alia*, the Bid Assessment Criteria.

(4) **Consideration of Overbids**

Subject to the deadlines set forth herein, the Debtors reserve the right, in their reasonable business judgment, to make one or more adjournments in the Auction to, among other things, facilitate discussions between the Debtors and individual Bidders and allow individual Bidders to consider how they wish to proceed.

3. No Collusion; Good-Faith *Bona Fide* Offer

Each Qualified Bidder participating at the Auction will be required to confirm on the record at the Auction (i) it has not engaged in any collusion with respect to the Sale or bidding (including it has no agreement with any other Bidder or Qualified Bidder to control the price) and (ii) its Qualified Bid is the good-faith *bona fide* offer and it intends to consummate the proposed transaction if selected as the Successful Bidder.

4. Backup Bidder

Notwithstanding anything in the Bid Procedures to the contrary, if an Auction is conducted, the party(ies) with the next highest or otherwise best Qualified Bid (or combination of Qualified Bids) at the Auction, as determined by the Debtors in consultation with the Creditors' Committee, in the exercise of their business judgment, shall be required to serve as backup bidder (the "**Backup Bidder**"). The Backup Bidder shall be required to keep its initial Bid(s) (or if the Backup Bidder submitted one or more Overbids at the Auction, its final Overbid) (the "**Backup Bid**") open and irrevocable until the earlier of 4:00 p.m. (prevailing Eastern Time) on the date that is twenty five (25) days after the date of the Sale Hearing (the "**Outside Backup Date**") or the closing of the transaction with the Successful Bidder. Following entry of the Sale Order, if the Successful Bidder fails to consummate an approved transaction because of a breach or failure to perform on the part of such Successful Bidder, the Debtors may designate the Backup Bidder to be the new Successful Bidder, and the Debtors will be authorized, but not required, to consummate the transaction with the Backup Bidder without further order of the Bankruptcy Court. In such case, the defaulting Successful Bidder's deposit, if any, shall be forfeited to the Debtors' estates, and the Debtors specifically reserve the right to seek all available damages from the defaulting Successful Bidder. The closing date to consummate the transaction with the Backup Bidder shall be no later than the later of twenty five

(25) days after the date the Debtors provide notice to the Backup Bidder the Successful Bidder failed to consummate a sale and the Debtors desire to consummate the transaction with the Backup Bidder or five (5) days after necessary regulatory approvals are completed by the Backup Bidder and/or the Debtors. The deposit, if any, of the Backup Bidder shall be held by the Debtors until the earlier of two (2) business days after (a) the closing of the Sale with the Successful Bidder and (b) the Outside Backup Date; *provided, however*, in the event the Successful Bidder does not consummate the transaction as described above and the Debtors provide notice to the Backup Bidder, the Backup Bidder's deposit shall be held until the closing of the transaction with the Backup Bidder. In the event the Debtors fail to consummate a transaction with the Backup Bidder as described above, the Backup Bidder's deposit shall be forfeited to the Debtors' estates, and the Debtors specifically reserve the right to seek all available damages from the defaulting Backup Bidder. Notwithstanding anything to the contrary herein, the Stalking Horse Bidder shall have the right, but not the obligation, to serve as a Backup Bidder in the event that the Stalking Horse Bidder is not selected as the Successful Bidder.

5. Additional Procedures

The Debtors may announce at the Auction additional procedural rules that are reasonable under the circumstances (*e.g.*, the amount of time to make subsequent Overbids) for conducting the Auction so long as such rules are not inconsistent with these Bid Procedures or the Stalking Horse Agreement.

6. Consent to Jurisdiction as Condition to Bidding

All Qualified Bidders, and all Bidders at the Auction, shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court and waived any right to a jury trial in connection with any disputes relating to the Stalking Horse Agreement, the Auction, or the construction and enforcement of any Transaction Documents.

7. Rights of the Stalking Horse Bidder to Credit Bid

Pursuant to Bankruptcy Code section 363(k), the Stalking Horse Bidder, in its capacity as the DIP Lender and Prepetition Secured Lender, shall have the right to submit a Credit Bid as set forth in the Stalking Horse Agreement and at the Auction as set forth herein and in the Bid Procedures Order. All Credit Bids shall be treated as the equivalent as a cash bid of the same amount and no Credit Bid shall be considered inferior to a cash bid in any respect as a result of the bid being a Credit Bid.

8. Closing the Auction

The Auction shall continue until there is only one Qualified Bid or combination of Qualified Bids that the Debtors determine in their reasonable business judgment after consultation with their financial and legal advisors and in consultation with the Creditors' Committee, is the highest and best Qualified Bid(s) at the Auction (the "**Successful Bid**" and the Bidder(s) submitting such Successful Bid, the "**Successful Bidder**"). In making this decision, the Debtors, in consultation with their financial and legal advisors, shall consider the Bid

Assessment Criteria. The Auction shall not close unless and until all Bidders who have submitted Qualified Bids have been given a reasonable opportunity to submit an Overbid at the Auction to the then-existing Overbid and the Successful Bidder has submitted fully executed Transaction Documents memorializing the terms of the Successful Bid.

The Auction shall close when the Successful Bidder submits fully executed sale and transaction documents memorializing the terms of the Successful Bid.

Promptly following the Debtors' selection of the Successful Bid and the conclusion of the Auction, the Debtors shall announce the Successful Bid and Successful Bidder and shall file with the Bankruptcy Court notice of the Successful Bid and Successful Bidder.

The Debtors shall not consider any Bids submitted after the conclusion of the Auction.

9. Break-Up Fee and Expense Reimbursement

To the extent payable in accordance with the Option Agreement or the Stalking Horse Agreement, the Break-Up Fee and Expense Reimbursement shall be paid as provided in the Option Agreement or the Stalking Horse Agreement and shall constitute an allowed superpriority administrative expense claim against the Debtors' bankruptcy estates pursuant to Bankruptcy Code sections 363, 364(c)(1), 503(b), 507(a)(2), and 507(b).

Q. Procedures for Determining Cure Amounts and Adequate Assurance for Contract Counterparties to Assigned Contracts

By **May 14, 2019**, the Debtors shall send a notice to each counterparty to an executory contract or unexpired lease (each a "**Contract Counterparty**") setting forth the Debtors' calculation of the cure amount, if any, that would be owing to such Contract Counterparty if the Debtors decided to assume or assume and assign such executory contract or unexpired lease, and alerting such Contract Counterparty that their contract may be assumed and assigned to the Successful Bidder (the "**Cure and Possible Assumption and Assignment Notice**"), a copy of which is attached to the Bid Procedures Order as Exhibit 3. Any Contract Counterparty that objects to the cure amount set forth in the Cure and Possible Assumption and Assignment Notice or the possible assignment of its executory contract or unexpired lease must file an objection (a "**Contract Objection**") on or before **4:00 p.m. prevailing Eastern Time on May 31, 2019**, which Contract Objection must be served on (i) counsel for the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Christopher A. Ward (cward@polsinelli.com), and Polsinelli PC, 150 N. Riverside Plaza, Suite 3000, Chicago, Illinois 60606, Attn: Jerry L. Switzer, Jr. (jswitzer@polsinelli.com), (ii) counsel for the DIP Lender and the Prepetition Secured Lender, Winston & Strawn LLP, 35 W. Wacker Drive, Chicago, Illinois 60601, Attn: Daniel J. McGuire (dmcguire@winston.com) and Fox Rothschild LLP, Citizens Bank Center, 919 North Market Street, Suite 300, Wilmington, DE 19899-2323, Attn: Seth Niederman (sniederman@foxrothschild.com), (iii) counsel for the Stalking Horse Bidder, Skadden, Arps, Slate, Meagher & Flom LLP, 155 N. Wacker Drive, Chicago, Illinois 60606, Attn: Kimberly A. deBeers (Kimberly.deBeers@skadden.com), (iv) counsel for the Creditors' Committee, [____], (v) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Ste. 2207 – Lockbox #35, Wilmington, DE

19801, Attn: Juliet Sarkessian (Juliet.M.Sarkessian@usdoj.gov), and (vi) the Clerk of the Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, DE 19801, so it is actually received no later than **4:00 p.m. prevailing Eastern Time on May 31, 2019**. If a Contract Counterparty does not timely file and serve a Contract Objection, that party will be forever barred from objecting to (a) the Debtors' proposed cure amount, or (b) the assignment of that party's executory contract or unexpired lease to the Successful Bidder. Where a Contract Counterparty to an Assigned Contract files a timely Contract Objection asserting a higher cure amount than the amount listed in the Cure and Possible Assumption and Assignment Notice, or an objection to the possible assignment of that Contract Counterparty's executory contract or unexpired lease, and the parties are unable to consensually resolve the dispute, the amount to be paid under Bankruptcy Code section 365 (if any) or, as the case may be, the Debtors' ability to assign the executory contract or unexpired lease to the Successful Bidder will be determined at the Sale Hearing.

R. Sale Hearing

The Bankruptcy Court has scheduled a hearing (the "**Sale Hearing**") on **June 12, 2019, at __: __ .m. (prevailing Eastern Time)**, at which hearing the Debtors may, in their discretion, seek approval of the Sale with the Successful Bidder. Objections to the sale of the Acquired Assets to the Successful Bidder or Backup Bidder must be filed, comply with the Bankruptcy Rules and Local Rules, and be served so they are actually received by no later than **4:00 p.m. (prevailing Eastern Time) on June 5, 2019** (except for any objection that arises at the Auction) by the following: (i) counsel for the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Christopher A. Ward (cward@polsinelli.com), and Polsinelli PC, 150 N. Riverside Plaza, Suite 3000, Chicago, Illinois 60606, Attn: Jerry L. Switzer, Jr. (jswitzer@polsinelli.com), (ii) counsel for the DIP Lender and the Prepetition Secured Lender, Winston & Strawn LLP, 35 W. Wacker Drive, Chicago, Illinois 60601, Attn: Daniel J. McGuire (dmcguire@winston.com) and Fox Rothschild LLP, Citizens Bank Center, 919 North Market Street, Suite 300, Wilmington, DE 19899-2323, Attn: Seth Niederman (sniederman@foxrothschild.com), (iii) counsel for the Stalking Horse Bidder, Skadden, Arps, Slate, Meagher & Flom LLP, 155 N. Wacker Drive, Chicago, Illinois 60606, Attn: Kimberly A. deBeers (Kimberly.deBeers@skadden.com), (iv) counsel for the Creditors' Committee, [____], (v) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Ste. 2207 – Lockbox #35, Wilmington, DE 19801, Attn: Juliet Sarkessian (Juliet.M.Sarkessian@usdoj.gov), and (vi) the Clerk of the Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, DE 19801.

S. Return of Good Faith Deposit

The Good Faith Deposits of all Qualified Bidders shall be held in one or more interest-bearing escrow accounts by the Debtors, but shall not become property of the Debtors' estates absent further order of the Court. The Good Faith Deposits of any Qualified Bidder that is neither the Successful Bidder nor the Backup Bidder shall be returned to such Qualified Bidder not later than two (2) business days after the Sale Hearing. The Good Faith Deposit of the Backup Bidder shall be returned to the Backup Bidder on the date that is the earlier of (i) two (2) business days after the closing of the Sale with the Successful Bidder and (ii) the Outside Backup Date. Upon the return of the Good Faith Deposits, their respective owners shall receive any and

all interest that will have accrued thereon. If the Successful Bidder timely closes the winning transaction, its Good Faith Deposit shall be credited towards its purchase price.

T. Reservation of Rights

The Debtors reserve their rights to modify these Bid Procedures in their reasonable business judgment in any manner that will best promote the goals of the bidding process or impose, at or prior to the Auction, additional customary terms and conditions on the sale of the Acquired Assets, including, without limitation: (a) adjourning the Auction at the Auction and/or adjourning the Sale Hearing in open court without further notice; (b) reopening the Auction to consider further Bids or Overbids; (c) adding procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction (*e.g.*, the amount of time to make subsequent overbids, whether a non-conforming Bid constitutes a Qualified Bid); (d) canceling the Auction; and (e) rejecting any or all Bids or Qualified Bids (including the Stalking Horse Agreement), in all cases, subject to the Stalking Horse Agreement, the Bid Procedures, and the Bid Procedures Order.

Notwithstanding the foregoing and subject in all respects to the Stalking Horse Agreement, the Debtors may not impair or modify the Stalking Horse Bidder's rights and obligations under the Stalking Horse Agreement or the Stalking Horse Bidder's right to credit bid at the Auction.

Exhibit 2 to Bid Procedures Order

Sale Notice

Exhibit 2

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

In re:

ORCHIDS PAPER PRODUCTS
COMPANY, *et al.*,¹

Debtors.

Chapter 11

Case No. 19-10729 (MFW)

Jointly Administered

**NOTICE OF BID PROCEDURES,
AUCTION, HEARING AND DEADLINES RELATING
TO THE SALE OF SUBSTANTIALLY ALL OF THE ASSETS OF THE DEBTORS**

PLEASE TAKE NOTICE that on April 1, 2019, the above-captioned debtors and debtors in possession (the “**Debtors**”) in the above-captioned case (the “**Bankruptcy Case**”), filed a *Motion of Debtors for Entry of (I) an Order (A) Approving Bid Procedures in Connection with the Potential Sale of Substantially All of the Debtors’ Assets, (B) Scheduling an Auction and Sale Hearing, (C) Approving the Form and Manner of Notice Thereof, (D) Authorizing the Debtors to Enter Into the Option Agreement and the Stalking Horse Agreement, (E) Approving Bid Protections, (F) Approving Procedures for the Assumption and Assignment of Contracts and Leases, and (G) Granting Related Relief; and (II) an Order (A) Approving the Sale of Substantially All of the Debtors’ Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (B) Authorizing the Assumption and Assignment of Contracts and Leases, and (C) Granting Related Relief* [Docket No. [___]] (the “**Bid Procedures and Sale Motion**”).² The Debtors seeks to complete a sale (the “**Transaction**”) of substantially all their assets (the “**Assets**”) to a prevailing bidder or bidders (the “**Successful Bidder**”) at an auction free and clear of all liens, claims, encumbrances and other interests pursuant to Bankruptcy Code section 363 (the “**Auction**”).

PLEASE TAKE FURTHER NOTICE that, on [____], 2019 the Bankruptcy Court entered an order [Docket No. ____] (the “**Bid Procedures Order**”) approving the Bid Procedures set forth in the Bid Procedures and Sale Motion (the “**Bid Procedures**”), which set the key dates and times related to the sale of the Debtors’ Assets. **All interested bidders should carefully read the Bid Procedures.** To the extent there are any inconsistencies between the Bid

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Orchids Paper Products Company, a Delaware corporation (6944), Orchids Paper Products Company of South Carolina, a Delaware corporation (7198), and Orchids Lessor SC, LLC, a South Carolina limited liability company (7298). The location of the Debtors’ mailing address is 201 Summit View Drive, Suite 110, Brentwood, Tennessee 37027.

² Capitalized terms not otherwise defined herein shall have the meanings set forth in the Bid Procedures and Sale Motion.

Procedures and the summary description of its terms and conditions contained in this notice, the terms of the Bid Procedures shall control.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Bid Procedures, the Debtors must receive a Qualified Bid from interested bidders in writing, on or before **June 6, 2019 at 4:00 p.m. (prevailing Eastern Time)** or such later date as may be agreed to by the Debtors (the “**Bid Deadline**”). To be considered, Qualified Bids must be sent to the following at or before the Bid Deadline: (i) counsel for the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Christopher A. Ward (cward@polsinelli.com), and Polsinelli PC, 150 N. Riverside Plaza, Suite 3000, Chicago, Illinois 60606, Attn: Jerry L. Switzer, Jr. (jswitzer@polsinelli.com); (ii) investment bankers for the Debtors, Houlihan Lokey, 111 South Wacker Drive, 37th Floor, Chicago, IL 60606, Attn: Jeffrey Lewis (JLewis@HL.com); (iii) counsel for the DIP Lender and the Prepetition Secured Lender, Winston & Strawn LLP, 35 W. Wacker Drive, Chicago, Illinois 60601, Attn: Daniel J. McGuire (dmcguire@winston.com) and Fox Rothschild LLP, Citizens Bank Center, 919 North Market Street, Suite 300, Wilmington, DE 19899-2323, Attn: Seth Niederman (sniederman@foxrothschild.com); and (iv) counsel for the Creditors’ Committee, [_____].

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Bid Procedures, if the Debtors receive one or more Qualified Bids (other than the Stalking Horse Agreement) by the Bid Deadline, the Auction will be conducted on **June 10, 2019 at 10:00 a.m. (prevailing Eastern Time)** at Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, or at such other place, date and time as may be designated by the Debtors.

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Bid Procedures, the Debtors have designated certain Assigned Contracts that may be assumed or assumed and assigned to the Successful Bidder. By May 14, 2019, the Debtors shall send a notice to each counterparty to an Assigned Contract setting forth the Debtors’ calculation of the cure amount, if any, that would be owing to such counterparty if the Debtors decided to assume or assume and assign such Assigned Contract, and alerting such nondebtor party that their contract may be assumed and assigned to the Successful Bidder (the “**Cure and Possible Assumption and Assignment Notice**”).

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Bid Procedures, any counterparty that objects to the cure amount set forth in the Cure and Possible Assumption and Assignment Notice or the possible assignment of their Assigned Contract(s) must file with the Bankruptcy Court and serve an objection (a “**Cure or Assignment Objection**”) so it is actually received on or before **4:00 p.m. prevailing Eastern Time on May 31, 2019**, by (i) counsel for the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Christopher A. Ward (cward@polsinelli.com), and Polsinelli PC, 150 N. Riverside Plaza, Suite 3000, Chicago, Illinois 60606, Attn: Jerry L. Switzer, Jr. (jswitzer@polsinelli.com), (ii) counsel for the DIP Lender and the Prepetition Secured Lender, Winston & Strawn LLP, 35 W. Wacker Drive, Chicago, Illinois 60601, Attn: Daniel J. McGuire (dmcguire@winston.com) and Fox Rothschild LLP, Citizens Bank Center, 919 North Market Street, Suite 300, Wilmington, DE 19899-2323, Attn: Seth Niederman (sniederman@foxrothschild.com), (iii) counsel for the Stalking Horse Bidder, Skadden, Arps,

Slate, Meagher & Flom LLP, 155 N. Wacker Drive, Chicago, Illinois 60606, Attn: Kimberly A. deBeers (Kimberly.deBeers@skadden.com), (iv) counsel for the Creditors' Committee, [____], (v) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Ste. 2207 – Lockbox #35, Wilmington, DE 19801, Attn: Juliet Sarkessian (Juliet.M.Sarkessian@usdoj.gov), and (vi) the Clerk of the Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, DE 19801. Where a counterparty to an Assigned Contract files a timely Cure or Assignment Objection asserting a higher cure amount than the amount listed in the Cure and Possible Assumption and Assignment Notice, or an objection to the possible assignment of that counterparty's Assigned Contract, and the parties are unable to consensually resolve the dispute, the amount to be paid under Bankruptcy Code section 365 (if any) or, as the case may be, the Debtors' ability to assign the Assigned Contract to the Successful Bidder will be determined at the Sale Hearing (as defined below).

PLEASE TAKE FURTHER NOTICE that a hearing will be held to approve the sale of the Acquired Assets to the Successful Bidder (the “**Sale Hearing**”) before the Honorable [____], U.S. Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801, 6th Floor, Courtroom [____], on **June 12, 2019 at [____] a.m./p.m. (prevailing Eastern Time)**, or at such time thereafter as counsel may be heard or at such other time as the Bankruptcy Court may determine. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing or on the agenda for such Sale Hearing. Objections to the sale of the Acquired Assets to the Successful Bidder must be filed and served so they are received no later than **4:00 p.m. (prevailing Eastern Time) on June 5, 2019**, by (i) counsel for the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Christopher A. Ward (cward@polsinelli.com), and Polsinelli PC, 150 N. Riverside Plaza, Suite 3000, Chicago, Illinois 60606, Attn: Jerry L. Switzer, Jr. (jswitzer@polsinelli.com), (ii) counsel for the DIP Lender and the Prepetition Secured Lender, Winston & Strawn LLP, 35 W. Wacker Drive, Chicago, Illinois 60601, Attn: Daniel J. McGuire (dmcguire@winston.com) and Fox Rothschild LLP, Citizens Bank Center, 919 North Market Street, Suite 300, Wilmington, DE 19899-2323, Attn: Seth Niederman (sniederman@foxrothschild.com), (iii) counsel for the Stalking Horse Bidder, Skadden, Arps, Slate, Meagher & Flom LLP, 155 N. Wacker Drive, Chicago, Illinois 60606, Attn: Kimberly A. deBeers (Kimberly.deBeers@skadden.com), (iv) counsel for the Creditors' Committee, [____], (v) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Ste. 2207 – Lockbox #35, Wilmington, DE 19801, Attn: Juliet Sarkessian (Juliet.M.Sarkessian@usdoj.gov), and (vi) the Clerk of the Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, DE 19801.

PLEASE TAKE FURTHER NOTICE that the Debtors are seeking to waive the fourteen-day stay period under Bankruptcy Rules 6004(h) and 6006(d) in order for the Sale to close immediately upon entry of the Sale Order by this Court.

PLEASE TAKE FURTHER NOTICE that this notice is subject to the full terms and conditions of the Bid Procedures and Sale Motion, the Bid Procedures Order and the Bid Procedures, which shall control in the event of any conflict, and the Debtors encourage parties in

interest to review such documents in their entirety. A copy of the Bid Procedures and Sale Motion, the Bid Procedures and the Bid Procedures Order may be obtained (i) by contacting counsel for the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Christopher A. Ward (cward@polsinelli.com) and Polsinelli PC, 150 N. Riverside Plaza, Suite 3000, Chicago, Illinois 60606, Attn: Jerry L. Switzer, Jr. (jswitzer@polsinelli.com), (ii) for free by accessing the website of the Debtors' noticing agent, Prime Clerk LLC, <http://cases.primeclerk.com/OrchidsPaper>, or (iii) for a fee via PACER at <http://www.deb.uscourts.gov>.

Dated: Wilmington, Delaware
[____], 2019

POLSINELLI PC

/s/ Christopher A. Ward

Christopher A. Ward (Del. Bar No. 3877)
Shanti M. Katona (Del. Bar No. 5352)
222 Delaware Avenue, Suite 1101
Wilmington, Delaware 19801
Telephone: (302) 252-0920
Facsimile: (302) 252-0921
cward@polsinelli.com
skatona@polsinelli.com

-and-

Jerry L. Switzer Jr. (*Pro Hac Vice* Pending)
150 North Riverside Plaza
Chicago, Illinois 60606
Telephone: (312) 873-3626
Facsimile: (312) 810-1810
jswitzer@polsinelli.com

*Proposed Counsel to the Debtors and
Debtors in Possession*

Exhibit 3 to Bid Procedures Order

Cure and Possible Assumption and Assignment Notice

Exhibit 3

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

In re:

ORCHIDS PAPER PRODUCTS
COMPANY, *et al.*,¹

Debtors.

Chapter 11

Case No. 19-10729 (MFW)

Jointly Administered

**NOTICE TO COUNTERPARTIES TO POTENTIALLY ASSUMED
EXECUTORY CONTRACTS AND UNEXPIRED LEASES REGARDING CURE
AMOUNTS AND POSSIBLE ASSIGNMENT TO THE STALKING HORSE BIDDER OR
SUCH OTHER SUCCESSFUL BIDDER AT AUCTION**

**YOU ARE RECEIVING THIS NOTICE BECAUSE YOU OR ONE OF YOUR
AFFILIATES MAY BE COUNTERPARTY TO ONE OR MORE EXECUTORY
CONTRACTS AND/OR UNEXPIRED LEASES WITH THE DEBTORS.²**

**PARTIES RECEIVING THIS NOTICE SHOULD (1) READ THIS NOTICE
CAREFULLY AS YOUR RIGHTS MAY BE AFFECTED BY THE TRANSACTIONS
DESCRIBED HEREIN AND (2) LOCATE THEIR NAME AND CONTRACT AND/OR
LEASE ON APPENDIX I HERETO**

PLEASE TAKE NOTICE that on April 1, 2019, the above-captioned debtors and debtors in possession (the “**Debtors**”) filed a motion (the “**Bid Procedures and Sale Motion**”) with the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”).

PLEASE TAKE FURTHER NOTICE that on [____], 2019, the Bankruptcy Court entered an order [Docket No. __] (the “**Bid Procedures Order**”), which (a) set key dates, times and procedures related to the Sale (the “**Sale**”) of substantially of the Debtors’ assets (the “**Assets**”) pursuant to an auction (the “**Auction**”) overseen by the Bankruptcy Court, which Auction is scheduled to occur on June 10, 2019, (b) authorized the Debtors to enter into a stalking horse asset purchase agreement (the “**Stalking Horse Agreement**”) with Orchids Investments LLC (the “**Stalking Horse Bidder**”), (c) established certain procedures relating to

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Orchids Paper Products Company, a Delaware corporation (6944), Orchids Paper Products Company of South Carolina, a Delaware corporation (7198), and Orchids Lessor SC, LLC, a South Carolina limited liability company (7298). The location of the Debtors’ mailing address is 201 Summit View Drive, Suite 110, Brentwood, Tennessee 37027.

² This Notice is being sent to counterparties to executory contracts and unexpired leases. This Notice is not an admission by the Debtors that such contract or lease is executory or unexpired.

the Debtors' assumption and assignment of executory contracts and unexpired leases in connection with the Sale, and (d) granted related relief.³ Approval of the Sale to the Stalking Horse Bidder or such other "Successful Bidder" (as defined in the Bid Procedures Order) after the results of the Auction and the Debtors' assumption and assignment of any executory contracts and unexpired leases in connection therewith, is scheduled to take place at a hearing before the Bankruptcy Court at [] (prevailing Eastern Time) on June 12, 2019 (the "**Sale Hearing**"). The Sale Hearing may be adjourned by the Bankruptcy Court or the Debtors without further notice other than such adjournment announced in open court or a notice of adjournment filed on the Bankruptcy Court's docket.

PLEASE TAKE FURTHER NOTICE that, in accordance with the Bid Procedures Order, the Debtors may assume and assign the executory contract(s) and/or unexpired lease(s) to which you may be a counterparty to the Stalking Horse Bidder or such other Successful Bidder after the outcome of the Auction.

PLEASE TAKE FURTHER NOTICE that the Debtors have conducted a review of their books and records and have determined the cure amount for unpaid monetary obligations under such contract or lease is set forth in the right hand column on Appendix I (the "**Cure Amount**"). If you object to (a) the proposed assumption or disagree with the proposed Cure Amount or (b) object to the possible assignment of such executory contract(s) or unexpired lease(s) to the Stalking Horse Bidder, **you must file an objection with the Bankruptcy Court no later than May 31, 2019 at 4:00 p.m. (prevailing Eastern Time) (the "Objection Deadline") and serve such objection on the following parties:**

POLSINELLI PC

Christopher A. Ward (Del. Bar No. 3877)
Shanti M. Katona (Del. Bar No. 5352)
222 Delaware Avenue, Suite 1101
Wilmington, Delaware 19801
Telephone: (302) 252-0920
Fax: (302) 252-0921

Jerry L. Switzer, Jr.
150 N. Riverside Plaza, Suite 3000
Chicago, Illinois 60606
Telephone: (312) 873-3626
Fax: (312) 819-1910

Counsel to the Debtors

WINSTON & STRAWN LLP

Daniel J. McGuire
35 W. Wacker Drive
Chicago, Illinois 60601
Telephone: (312) 558-6154
Fax: (312) 558-5700

FOX ROTHSCHILD LLP

Seth Niederman
Citizens Bank Center
919 N. Market Street, Suite 300
Wilmington, DE 19899-2323
Telephone: (302) 622-4238
Fax: (302) 655-7004

³ To the extent there are any inconsistencies between the Bid Procedures Order and the summary description of the terms and conditions contained in this Notice, the terms of the Bid Procedures Order shall control.

Counsel to the DIP Lender and the Prepetition Secured Lender

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

Kimberly A. DeBeers
155 N. Wacker Drive
Chicago, Illinois 60606
Telephone: (312) 407-0982
Fax: (312) 407-0411

Counsel to the Stalking Horse Bidder

Office of the United States Trustee for the
District of Delaware
J. Caleb Boggs Federal Building
844 King Street, Suite 2008 – Lockbox #35
Wilmington, DE 19801
Attn: Juliet Sarkessian
Telephone: (302) 573-6008
Fax: (302) 573-6497

Telephone: (____) ____-____
Fax: (____) ____-____

Counsel to the Creditors' Committee

Clerk of the Bankruptcy Court
United States Bankruptcy Court for the
District of Delaware
824 North Market Street, 3rd Floor
Wilmington, DE 19801

PLEASE TAKE FURTHER NOTICE that if no objection to the Cure Amount or the assignment of your Executory Contract(s) or Unexpired Lease(s) to the Successful Bidder is filed by the Objection Deadline, **you will be (a) forever barred from objecting to the Cure Amount or provision of adequate assurance of future performance and from asserting any additional cure or other amounts with respect to your contract(s) or lease(s), and the Debtors and the Stalking Horse Bidder or the Successful Bidder (as applicable) shall be entitled to rely solely upon the Cure Amount, (b) deemed to have consented to the assumption or assumption and assignment, and (c) forever barred and estopped from asserting or claiming defaults exist, that conditions to assignment must be satisfied under such contract(s) and/or lease(s) or that there is any objection or defense to the assumption and assignment of such contract(s) and/or lease(s).**

PLEASE TAKE FURTHER NOTICE that if you agree with the Cure Amount indicated on Appendix I and otherwise do not object to the Debtors' assumption or assumption and assignment of your contract(s) and/or lease(s), you need not take any further action.

PLEASE TAKE FURTHER NOTICE that copies of the Sale Motion, the Bid Procedures, and the Bid Procedures Order, as well as all related exhibits, including the proposed Sale Order, are available: (a) upon request from the proposed counsel to the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Christopher A. Ward and Polsinelli PC, 150 N. Riverside Plaza, Suite 3000, Chicago, Illinois 60606, Attn: Jerry L. Switzer, Jr.; (b) for free from the website of the Debtors' noticing agent, Prime Clerk LLC, <http://cases.primeclerk.com/OrchidsPaper>, and (c) for a fee via PACER by visiting <http://www.deb.uscourts.gov>.

POLSINELLI PC

/s/ Christopher A. Ward

Christopher A. Ward (Del. Bar No. 3877)
Shanti M. Katona (Del. Bar No. 5352)
222 Delaware Avenue, Suite 1101
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-and-

Jerry L. Switzer Jr. (*Pro Hac Vice* Pending)
150 North Riverside Plaza
Chicago, Illinois 60606
Telephone: (312) 873-3626
Facsimile: (312) 810-1810
jswitzer@polsinelli.com

*Proposed Counsel to the Debtors and
Debtors in Possession*

APPENDIX I

[Counterparty Name]	[Contract/Lease]	[Cure Amount]	[Proposed Assignee (if any)]
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Exhibit 4 to Bid Procedures Order

Assumption Notice

Exhibit 4

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

In re:

ORCHIDS PAPER PRODUCTS
COMPANY, *et al.*,¹

Debtors.

Chapter 11

Case No. 19-10729 (MFW)

Jointly Administered

**NOTICE OF PROPOSED ASSIGNMENT
OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**YOU ARE RECEIVING THIS NOTICE BECAUSE YOU OR ONE OF YOUR
AFFILIATES MAY BE COUNTERPARTY TO ONE OR MORE EXECUTORY
CONTRACTS AND/OR UNEXPIRED LEASES WITH THE DEBTORS.²**

**PARTIES RECEIVING THIS NOTICE SHOULD (1) READ THIS NOTICE
CAREFULLY AS YOUR RIGHTS MAY BE AFFECTED BY THE TRANSACTIONS
DESCRIBED HEREIN AND (2) LOCATE THEIR NAME AND CONTRACT AND/OR
LEASE ON SCHEDULE I HERETO**

PLEASE TAKE NOTICE that on April 1, 2019, the above-captioned debtors and debtors in possession (the “**Debtors**”) filed for relief pursuant to chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”), and also filed a motion (the “**Sale Motion**”)³ to sell substantially all of their assets (the “**Assets**”) free and clear of all liens, claims, encumbrances, and other interests (the “**Sale**”) and assume and assign certain

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Orchids Paper Products Company, a Delaware corporation (6944), Orchids Paper Products Company of South Carolina, a Delaware corporation (7198), and Orchids Lessor SC, LLC, a South Carolina limited liability company (7298). The location of the Debtors’ mailing address is 201 Summit View Drive, Suite 110, Brentwood, Tennessee 37027.

² This Notice is being sent to counterparties to executory contracts and unexpired leases. This Notice is not an admission by the Debtors that such contract or lease is executory or unexpired.

³ *Motion of Debtors for Entry of (I) an Order (A) Approving Bid Procedures in Connection with the Potential Sale of Substantially All of the Debtors’ Assets, (B) Scheduling an Auction and Sale Hearing, (C) Approving the Form and Manner of Notice Thereof, (D) Authorizing the Debtors to Enter Into the Option Agreement and the Stalking Horse Agreement, (E) Approving Bid Protections, (F) Approving Procedures for the Assumption and Assignment of Contracts and Leases, and (G) Granting Related Relief; and (II) an Order (A) Approving the Sale of Substantially All of the Debtors’ Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (B) Authorizing the Assumption and Assignment of Contracts and Leases, and (C) Granting Related Relief* [Docket No. ____]

of their executory contracts and unexpired leases (collectively, the “**Contracts**”) to the purchaser of the Assets.⁴

PLEASE TAKE FURTHER NOTICE that the Debtors are soliciting offers for the purchase of the Assets of the Debtors consistent with the bid procedures (the “**Bid Procedures**”) approved by the Court by the entry of an order on [____], 2019 (the “**Bid Procedures Order**”).⁵ The Bid Procedures include, among other things, procedures for the assumption and assignment of the Contracts (the “**Assumption Procedures**”).

PLEASE TAKE FURTHER NOTICE that, accordingly, pursuant to the Assumption Procedures, and by this written notice, the Debtors hereby notify you that they have determined, in the exercise of their business judgment, the Contracts and any modifications thereto set forth on Schedule 1 attached hereto (collectively, the “**Assigned Contracts**”) may be assumed and assigned to the Successful Bidder, subject to the Successful Bidder’s payment of the cure amount set forth on Schedule 1, or such other cure amounts as are agreed by the parties.

PLEASE TAKE FURTHER NOTICE that the Successful Bidder has the right under certain circumstances to designate additional Contracts as Assigned Contracts or remove certain Contracts from the list of Assigned Contracts prior to closing.

PLEASE TAKE FURTHER NOTICE that copies of the Sale Motion, the Bid Procedures, and the Bid Procedures Order, as well as all related exhibits, including the proposed Sale Order, are available: (a) upon request from the proposed counsel to the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Christopher A. Ward and Polsinelli PC, 150 N. Riverside Plaza, Suite 3000, Chicago, Illinois 60606, Attn: Jerry L. Switzer, Jr.; (b) for free from the website of the Debtors’ noticing agent, Prime Clerk LLC, <http://cases.primeclerk.com/OrchidsPaper>, and (c) for a fee via PACER by visiting <http://www.deb.uscourts.gov>.

PLEASE TAKE FURTHER NOTICE that, except as otherwise provided by the Bid Procedures Order, the time for filing objections to (a) the cure amounts related to the Assigned Contracts, (b) the Debtors’ ability to assume and assign the Assigned Contracts, and (c) adequate assurance of future performance of the Assigned Contract by the Successful Bidder has passed and no further notice or action is necessary with respect to such matters.

⁴ Capitalized terms used as defined terms but not defined herein shall have all the meanings ascribed to them in the Sale Motion.

⁵ *Order (I) Approving Bid Procedures in Connection with the Potential Sale of Substantially All of the Debtors’ Assets, (II) Scheduling an Auction and Sale Hearing, (III) Approving the Form and Manner of Notice Thereof, (IV) Authorizing the Debtors to Enter Into the Option Agreement and the Stalking Horse Agreement, (V) Approving Bid Protections, (VI) Approving Procedures for the Assumption and Assignment of Contracts and Leases, and (VII) Granting Related Relief* [Docket No. ____].

Dated: Wilmington, Delaware
[_____], 2019

POLSINELLI PC

/s/ Christopher A. Ward

Christopher A. Ward (Del. Bar No. 3877)
Shanti M. Katona (Del. Bar No. 5352)
222 Delaware Avenue, Suite 1101
Wilmington, Delaware 19801
Telephone: (302) 252-0920
Facsimile: (302) 252-0921
cward@polsinelli.com
skatona@polsinelli.com

-and-

Jerry L. Switzer, Jr. (*Pro Hac Vice* Pending)
150 North Riverside Plaza
Chicago, Illinois 60606
Telephone: (312) 873-3626
Facsimile: (312) 810-1810
jswitzer@polsinelli.com

*Proposed Counsel to the Debtors and
Debtors in Possession*

Schedule 1 to Assumption Notice

Assigned Contracts¹

Counterparty	Description of Assigned Contracts or Leases	Cure Amount	Proposed Assignee

¹ The presence of a contract or lease on this Schedule 1 does not constitute an admission by the Debtors that such contract is an executory contract or such lease is an unexpired lease pursuant to Bankruptcy Code section 365 or any other applicable law, and the Debtors reserve all rights to withdraw any proposed assumption and assignment or to reject any contract or lease at any time before such contract or lease is assumed and assigned pursuant to an order of the Court.

EXHIBIT F
FORM OF SALE ORDER

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

In re:

ORCHIDS PAPER PRODUCTS
COMPANY, *et al.*,¹

Debtors.

Chapter 11

Case No. 19-10729 (MFW)

Jointly Administered

Re: Docket Nos. ____ & ____

**ORDER (I) APPROVING THE SALE OF SUBSTANTIALLY
ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS,
ENCUMBRANCES, AND INTERESTS, (II) AUTHORIZING THE ASSUMPTION
AND ASSIGNMENT OF CONTRACTS AND LEASES, AND (III) GRANTING
RELATED RELIEF**

Upon consideration of the *Motion of Debtors for Entry of (I) an Order (A) Approving Bid Procedures in Connection with the Potential Sale of Substantially All of the Debtors' Assets, (B) Scheduling an Auction and Sale Hearing, (C) Approving the Form and Manner of Notice Thereof, (D) Authorizing the Debtors to Enter Into the Option Agreement and the Stalking Horse Agreement, (E) Approving Bid Protections, (F) Approving Procedures for the Assumption and Assignment of Contracts and Leases, and (G) Granting Related Relief; and (II) an Order (A) Approving the Sale of Substantially All of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (B) Authorizing the Assumption and Assignment of Contracts and Leases, and (C) Granting Related Relief* (the "**Sale Motion**") [Docket Entry No. ____] of the above-captioned debtors and debtors in possession (the "**Debtors**"), which requests an order (this "**Sale Order**") that, among other things, authorizes and approves (a) the sale,

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are Orchids Paper Products Company, a Delaware corporation (6944), Orchids Paper Products Company of South Carolina, a Delaware corporation (7198), and Orchids Lessor SC, LLC, a South Carolina limited liability company (7298). The location of the Debtors' mailing address is 201 Summit View Drive, Suite 110, Brentwood, Tennessee 37027.

assignment, transfer, conveyance and delivery of substantially all of the Debtors' assets identified as "Acquired Assets" (as defined in the Asset Purchase Agreement (including all related exhibits and schedules) (as may be amended, modified or supplemented in accordance with its terms, the "**Agreement**")² a complete copy of which is attached hereto as Exhibit A among the Debtors and [_____] (the "**Purchaser**"), and (b) the assumption and assignment of certain unexpired leases and executory contracts identified as "Assigned Contracts" (as defined in the Agreement), in each case, effective as of the Closing on the Closing Date, all as more fully set forth in the Motion; this Court having entered the *Order (I) Approving Bid Procedures in Connection with the Potential Sale of Substantially All of the Debtors' Assets, (II) Scheduling an Auction and a Sale Hearing, (III) Approving the Form and Manner of Notice Thereof, (IV) Authorizing the Debtors to Enter Into the Option Agreement and the Stalking Horse Agreement, (V) Approving Bid Protections, (VI) Approving Procedures for the Assumption and Assignment of Contracts and Leases, and (VII) Granting Related Relief on [_____], 2019*; this Court having reviewed and considered the Sale Motion and any objections thereto; this Court having heard statements of counsel and the evidence presented in support of the relief requested by the Debtors in the Sale Motion at a hearing before this Court (the "**Sale Hearing**"); upon the full record of these Chapter 11 Cases; it appearing no other notice need be given; it further appearing the legal and factual bases set forth in the Sale Motion and the record made at the Sale Hearing establish just cause for the relief granted herein; and after due deliberation and sufficient cause therefor:

THE COURT FINDS AND DETERMINES THAT:

² Except as otherwise defined herein, or where reference is made to a definition in the Sale Motion, all capitalized terms shall have the meanings ascribed to them in the Agreement.

Jurisdiction, Final Order, and Statutory Predicates

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012.

C. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). The Debtors have confirmed their consent, pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"), to the entry of a final order by this Court in connection with the Sale Motion, to the extent it is later determined the Court, absent the consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

D. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

E. The bases for the relief requested in this Motion are sections 105(a), 363, 365, 503, and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "**Bankruptcy Code**"), Bankruptcy Rules 2002, 6004, 6006, 9007, and 9014, and Local Rules 2002-1, 6004-1, and 9013-1(m).

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

Retention of Jurisdiction

G. It is necessary and appropriate for the Court to retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Sale Order and the Agreement, including its related documents, all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith to which the Debtors are a party or which has been assigned by the Debtors to the Purchaser, and to adjudicate, if necessary, any and all disputes involving the Debtors concerning or relating in any way to, or affecting, the Sale or the transactions contemplated in the Agreement, and related documents.

Corporate Authority; Consents and Approvals

H. Each of the Debtors has, to the extent necessary or applicable, (a) the full corporate power and authority to execute and deliver the Agreement and all other documents contemplated thereby, (b) all corporate authority necessary to consummate the transaction contemplated by the Agreement, and (c) taken all corporate action necessary to authorize and approve the Agreement and the consummation of the transactions contemplated thereby. The Sale has been duly and validly authorized by all necessary corporate action. No consents or approvals, other than those expressly provided for in the Agreement, are required for the Debtors to consummate the Sale, the Agreement, or the transactions contemplated thereby.

**Notice of Sale, Auction, Sale Hearing,
Agreement, and Assumption and Assignment**

I. Actual written notice of the Sale Motion, the Sale, the Auction, the Sale Hearing, and the transactions contemplated thereby, and a reasonable opportunity to object or be heard with respect to the Sale Motion and the relief requested therein, has been afforded to all known interested entities and parties, including, without limitation, the following entities and parties: (a) the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”); (b) the holders of the twenty (20) largest unsecured claims against the Debtors; (c) all of the Debtors’ other creditors; (d) counsel to the DIP Lender and the Prepetition Secured Lender; (e) counsel to the Stalking Horse Bidder; (f) all other parties who have expressed a written interest in the Assets; (g) the United States Attorney’s Office for the District of Delaware; (h) the Internal Revenue Service; (i) all state and local taxing authorities with an interest in the Assets; (j) the Attorney General for the State of Delaware; (k) the Securities and Exchange Commission; (l) all other governmental agencies with an interest in the Sale and transactions proposed thereunder; (m) all parties known or reasonably believed to have asserted an Interest in the Assets; (n) the counterparties to the Contracts (the “**Contract Counterparties**”); (o) the Debtors’ insurance carriers; (p) all parties entitled to notice pursuant to Local Rule 9013-1(m); and (q) any party that has requested notice pursuant to Bankruptcy Rule 2002.

J. In addition, the Debtors have caused notice of the Sale Motion, the Sale, the Auction, and the Sale Hearing to be (i) published in *The New York Times (National Edition)* on [____], 2019, and (ii) posted on the website maintained by the Debtors’ claims and noticing agent, Prime Clerk LLC, available at <http://cases.primeclerk.com/OrchidsPaper>, as required by the Bid Procedures Order. The foregoing notice was sufficient and reasonably calculated under

the circumstances to reach entities whose identities are not reasonably ascertainable by the Debtors.

K. In accordance with the provisions of the Bid Procedures Order, the Debtors have served notice upon the Contract Counterparties: (a) that the Debtors seek to assume and assign to the Purchaser the Assigned Contracts on the Closing Date (as defined in the Agreement); and (b) of the relevant Cure Amounts (as defined below). Service of such notice was good, sufficient, and appropriate under the circumstances, and no further notice need be given in respect of establishing a Cure Amount for the Contracts. Each of the Contract Counterparties has had an adequate opportunity to object to the Cure Amounts set forth in the notice and to the assumption and assignment to the Purchaser of the applicable Assigned Contracts (including objections related to the adequate assurance of future performance and objections based on whether applicable law excuses the counterparty from accepting performance by, or rendering performance to, the Purchaser (or its designee) for purposes of section 365(c)(1) of the Bankruptcy Code). All objections, responses, or requests for adequate assurance, if any, have been resolved, overruled, or denied, as applicable.

L. The notice of the Auction and the Sale Hearing provided all interested parties with timely and proper notice of the Sale, the Auction, and the Sale Hearing.

M. The Debtors have articulated good and sufficient reasons for this Court to grant the relief requested in the Sale Motion regarding the sales process, including, without limitation: (i) determination of final Cure Amounts; and (ii) approval and authorization to serve notice of the Auction and Sale Hearing.

N. As evidenced by the affidavits of service and affidavits of publication previously filed with the Court, proper, timely, adequate, and sufficient notice of the Sale Motion, the Sale,

the Auction, the Sale Hearing, and the transactions contemplated thereby, including, without limitation, the assumption and assignment of the Assigned Contracts to the Purchaser, has been provided in accordance with the Bid Procedures Order and Bankruptcy Code sections 105(a), 363, and 365 and Bankruptcy Rules 2002, 6004, 6006, 9007, 9008, and 9014. The notices described herein were good, sufficient, and appropriate under the circumstances, and no other or further notice of the Sale Motion, the Sale, the Auction, the Sale Hearing, or the assumption and assignment of the Assigned Contracts to the Purchaser is or shall be required.

O. The disclosures made by the Debtors concerning the Sale Motion, the Agreement, the Auction, the Sale Hearing, the Sale, and the assumption and assignment of the Assigned Contracts to the Purchaser were good, complete, and adequate.

P. A reasonable opportunity to object and be heard with respect to the Sale and the Sale Motion, and the relief requested therein (including, without limitation, the assumption and assignment of the Assigned Contracts to the Purchaser and any Cure Amounts relating thereto), has been afforded to all interested persons and entities, including the applicable notice parties.

Auction

Q. The Debtors conducted the Auction on **June 10, 2019** in connection with, and has otherwise complied in all respects with, the Bid Procedures Order. The Auction process set forth in the Bid Procedures Order afforded a full, fair, and reasonable opportunity for any entity to make a higher or otherwise better offer to purchase the Assets. The Auction was duly noticed and conducted in a non-collusive, fair, and good faith manner, and a reasonable opportunity has been given to any interested party to make a higher and better offer for the Assets. The Auction was transcribed and the transcript of the Auction was introduced into evidence at the Sale Hearing. At the conclusion of the Auction, the Debtors determined in the exercise of their good

faith business judgment that the Purchaser submitted the highest and best bid for the Assets and, accordingly, the Purchaser was determined to be the Successful Bidder for the Assets.

Good Faith of the Purchaser

R. As demonstrated by the representations of counsel and other evidence proffered or adduced at the Sale Hearing, the Debtors and their advisors marketed the Assets to secure the highest and best offer. The terms and conditions set forth in the Agreement are fair, adequate, and reasonable, including the amount of the Purchase Price, which is found to constitute reasonably equivalent and fair value.

S. The Purchaser is not an “insider” or “affiliate” of any of the Debtors, as those terms are defined in section 101 of the Bankruptcy Code, and no common identity of incorporators, directors, managers, controlling shareholders, or other insider of the Debtors exist between the Purchaser and the Debtors.

T. The Debtors and the Purchaser extensively negotiated the terms and conditions of the Agreement in good faith and at arm’s length. The Purchaser is purchasing the Acquired Assets and has entered into the Agreement in good faith and is a good faith buyer within the meaning of Bankruptcy Code section 363(m), and is therefore entitled to the full protection of that provision, and otherwise has proceeded in good faith in all respects in connection with this proceeding in that, *inter alia*: (i) the Purchaser recognized the Debtors were free to deal with any other party interested in purchasing the Acquired Assets; (ii) the Purchaser agreed to subject its bid to competitive bidding at the Auction; (iii) all payments to be made by the Purchaser and other agreements or arrangements entered into by the Purchaser in connection with the Sale have been disclosed; (iv) the Purchaser has not violated Bankruptcy Code section 363(n) by any action or inaction; (v) no common identity of directors or controlling stockholders exists between the

Purchaser and the Debtors; and (vi) the negotiation and execution of the Agreement was at arm's length and in good faith.

U. Neither the Debtors nor the Purchaser have engaged in any conduct that would cause or permit the Agreement to be avoided under Bankruptcy Code section 363(n). The Debtors and the Purchaser were represented by their own respective counsel and other advisors during such arm's length negotiations in connection with the Agreement and the Sale.

V. No party has objected to the Sale, the Agreement, or the Auction on the grounds of fraud or collusion.

W. Accordingly, the Purchaser is purchasing the Acquired Assets in good faith and is a good-faith buyer within the meaning of Bankruptcy Code section 363(m). The Purchaser is therefore entitled to all of the protections afforded under Bankruptcy Code section 363(m).

Highest and Best Offer

X. The Debtors conducted a sale process in accordance with, and have otherwise complied in all respects with, the Bid Procedures Order. The sale process set forth in the Bid Procedures Order afforded a full, fair, and reasonable opportunity for any person or entity to make a higher or otherwise better offer to purchase the Assets. The Auction was duly noticed in a non-collusive, fair, and good-faith manner, and a reasonable opportunity has been given to any interested party to make a higher and better offer for the Assets.

Y. (i) The Debtors and their advisors engaged in a robust and extensive marketing and sale process, both prior to the commencement of these Chapter 11 Cases and through the postpetition sale process in accordance with the Bid Procedures Order and the sound exercise of the Debtors' business judgment; (ii) the Debtors conducted a fair and open sale process; (iii) the sale process, the Bid Procedures, and the Auction were non-collusive, duly noticed, and provided

a full, fair, reasonable, and adequate opportunity for any entity that either expressed an interest in acquiring the Assets, or who the Debtors believed may have had an interest in acquiring the Assets, to make an offer to purchase the Debtors' assets, including, without limitation, the Acquired Assets; (iv) the Debtors and the Purchaser have negotiated and undertaken their roles leading to the entry into the Agreement in a diligent, non-collusive, fair, reasonable, and good faith manner; and (v) the sale process conducted by the Debtors resulted in the highest or otherwise best value for the Assets for the Debtors and their estates, was in the best interest of the Debtors, their estates, their creditors, and all parties in interest, and any other transaction would not have yielded as favorable a result. There is no legal or equitable reason to delay consummation of the Agreement and the transactions contemplated therein.

Z. The Agreement constitutes the highest and best offer for the Assets, and will provide a greater recovery for the Debtors' estates than would be provided by any other available alternative. The Debtors' determination that the Agreement constitutes the highest and best offer for the Assets constitutes a valid and sound exercise of the Debtors' business judgment.

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

BB. Approval of the Sale Motion and the Agreement and the consummation of the transaction contemplated thereby are in the best interests of the Debtors, their estates, their creditors, and other parties in interest.

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

DD. Entry of an order approving the Agreement and all the provisions thereof is a necessary condition precedent to Purchaser's consummation of the Sale, as set forth in the Agreement.

No Fraudulent Transfer or Merger

EE. The consideration provided by the Purchaser pursuant to the Agreement (a) is fair and reasonable, (b) is the highest or best offer for the Assets, and (c) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act, and under the laws of the United States, any state, territory, possession, or the District of Columbia.

FF. Neither the Purchaser nor its past, present, and future subsidiaries, parents, divisions, affiliates, agents, representatives, insurers, attorneys, successors and assigns, nor any of its nor their respective directors, managers, officers, employees, shareholders, members, agents, representatives, attorneys, contractors, subcontractors, independent contractors, owners, insurance companies, or partners (collectively, the "**Purchaser Parties**") is a mere continuation of the Debtors or their estates, and there is no continuity of enterprise between any Purchaser Party and the Debtors. No Purchaser Party is holding itself out to the public as a continuation of the Debtors or their respective estates. No Purchaser Party is a successor to the Debtors or their estates, and the Sale does not amount to a consolidation, merger, or *de facto* merger of the Purchaser (or any other Purchaser Party) and the Debtors.

Validity of Transfer

GG. The Agreement was not entered into for the purpose of hindering, delaying, or defrauding creditors under the Bankruptcy Code or under the laws of the United States, any of its states, territories, or possessions, or the District of Columbia. Neither the Debtors nor the Purchaser are entering into the transactions contemplated by the Agreement fraudulently, for the purposes of statutory and common law fraudulent conveyance and fraudulent transfer claims.

HH. The Debtors are the sole and lawful owner of the Acquired Assets. Subject to Bankruptcy Code section 363(f) (addressed below), the transfer of the Acquired Assets to the Purchaser will be, as of the Closing Date, a legal, valid, and effective transfer of the Acquired Assets, which transfer vests or will vest the Purchaser with all right, title, and interest of the Debtors to the Acquired Assets free and clear of (i) all liens (including any liens as that term is defined in section 101(37) of the Bankruptcy Code) and Encumbrances (as defined in the Agreement) relating to, accruing, or arising any time prior to the Closing Date (collectively, the “**Liens**”), and (ii) all debts (as that term is defined in section 101(12) of the Bankruptcy Code) arising under, relating to, or in connection with any act of the Debtors or claims (as that term is defined in section 101(5) of the Bankruptcy Code), liabilities, obligations, demands, guaranties, options in favor of third parties, rights, contractual commitments, restrictions, interests, mortgages, hypothecations, charges, indentures, loan agreements, instruments, collective bargaining agreements, leases, licenses, deeds of trusts, security interests or similar interests, conditional sale or other title retention agreements and other similar impositions, restrictions on transfer or use, pledges, judgments, claims for reimbursement, contribution, indemnity, exoneration, infringement, products liability, alter ego liability, suits, defenses, credits, allowances, options, limitations, causes of action, choses in action, rights of first refusal or first offer, rebate, chargeback, credit, or return, proxy, voting trust or agreement or transfer restriction

under any shareholder or similar agreement or encumbrance, easements, rights of way, encroachments, Liabilities (as defined in the Agreement), and matters of any kind and nature, whether arising prior to or subsequent to the Petition Date, whether known or unknown, legal or equitable, mature or unmatured, contingent or noncontingent, liquidated or unliquidated, asserted or unasserted, whether imposed by agreement, understanding, law, equity, or otherwise (including, without limitation, rights with respect to Claims (as defined below) and Liens (A) that purport to give any party a right or option to effect a setoff or recoupment against, or a right or option to effect any forfeiture, modification, profit sharing interest, right of first refusal, purchase or repurchase right or option, or termination of, any of the Debtors' or the Purchaser's interests in the Acquired Assets, or any similar rights, if any, or (B) in respect of taxes, restrictions, rights of first refusal, charges of interests of any kind or nature, if any, including without limitation, any restriction of use, voting, transfer, receipt of income, or other exercise of any attribute of ownership) collectively, as defined in this clause (ii), the "**Claims**" and, together with the Liens and other interests of any kind or nature whatsoever, the "**Interests**"), relating to, accruing or arising any time prior to the entry of this Sale Order, with the exception of the Assumed Liabilities and the Permitted Encumbrances (each as defined in the Agreement for conveyance purposes) to the extent set forth in the Agreement, and any covenants set forth in the Agreement.

II. For the avoidance of doubt, the terms "Liens" and "Claims," as used in this Sale Order, include, without limitation, rights with respect to any Liens and Claims:

- (a) that purport to give any party a right of setoff or recoupment against, or a right or option to affect any forfeiture, modification, profit-sharing interest, right of first refusal, purchase or repurchase writer option, or

termination of, any of the Debtors' or the Purchaser's interest in the Acquired Assets, or any similar rights; or

- (b) in respect of taxes, restrictions, rights of first refusal, charges of interest of any kind and nature, if any, and including, without limitation, any restriction of use, voting, transfer, receipt of income, or other exercise of any of the attributes of ownership relating to, accruing, or arising at any time prior to the Closing Date, with the exception of Permitted Encumbrances and Assumed Liabilities (as those terms are defined in the Agreement) that are expressly assumed by the Purchaser pursuant to the Agreement.

JJ. For the further avoidance of doubt, the Purchaser is expressly assuming responsibility for, and the Acquired Assets will be transferred subject to, the Cure Amounts and any obligations arising at or after the Closing Date under the Assigned Contracts, as set forth in the Agreement.

Section 363(f) Is Satisfied

KK. The conditions of Bankruptcy Code section 363(f) have been satisfied in full; therefore, the Debtors may sell the Acquired Assets free and clear of any Interests in the property other than any Permitted Encumbrances and Assumed Liabilities.

LL. The Purchaser would not have entered into the Agreement, and would not consummate the transactions contemplated thereby, if the Sale of the Acquired Assets to the Purchaser and the assumption of any Assumed Liabilities by the Purchaser were not free and clear of all Interests, other than Permitted Encumbrances and the Assumed Liabilities, or if the Purchaser would, or in the future could, be liable for any of such Interests (other than the

Permitted Encumbrances and the Assumed Liabilities). Unless otherwise expressly included in the Permitted Encumbrances or the Assumed Liabilities, the Purchaser shall not be responsible for any Interests against the Debtors, their estates, or any of the Acquired Assets, including in respect of the following: (a) any labor or employment agreement; (b) all mortgages, deeds of trust, and other security interests; (c) intercompany loans and receivables among the Debtors and any of their affiliates (as defined in Bankruptcy Code section 101(2)); (d) any other environmental, employee, workers' compensation, occupational disease, or unemployment- or temporary disability-related claim, including, without limitation, claims that might otherwise arise under or pursuant to (i) the Employee Retirement Income Security Act of 1974, as amended, (ii) the Fair Labor Standards Act, (iii) Title VII of the Civil Rights Act of 1964, (iv) the Federal Rehabilitation Act of 1973, (v) the National Labor Relations Act, (vi) the Worker Adjustment and Retraining Notification Act of 1988, (vii) the Age Discrimination and Employee Act of 1967 and the Age Discrimination in Employment Act, as amended, (viii) the Americans with Disabilities Act of 1990, (ix) the Consolidated Omnibus Budget Reconciliation Act of 1985, (x) state discrimination laws, (xi) the unemployment compensation laws or any other similar state laws, or (xii) any other state or federal benefits or claims relating to any employment with the Debtors or their predecessor, if any, (xiii) Claims or Liens arising under any Environmental Law (as defined in the Agreement) with respect to the Debtors' business, Excluded Liabilities (as defined in the Agreement), the Acquired Assets, the Excluded Assets (as defined in the Agreement), or any assets owned or operated by the Debtors or any corporate predecessor of the Debtors, at any time prior to the Closing Date, (xiv) any bulk sales or similar law, (xv) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended, and (xvi) any statutory or common-law bases for successor liability.

MM. The Debtors may sell the Acquired Assets free and clear of all Interests in such property of any entity other than the Debtors' estates, including, without limitation, any Liens and Claims against the Debtors, their estates, or any of the Acquired Assets (other than the Permitted Encumbrances and Assumed Liabilities) because, in each case, one or more of the standards set forth in Bankruptcy Code section 363(f)(1)-(5) has been satisfied. Those holders of Interests in the Acquired Assets, including, without limitation, holders of Liens and Claims against the Debtors, their estates, or any of the Acquired Assets, who did not object, or who withdrew their objections, to the Sale or the Sale Motion are deemed to have consented pursuant to Bankruptcy Code section 363(f)(2). All other holders of Interests (except to the extent such Interests are Permitted Encumbrances or Assumed Liabilities) are adequately protected by having their Interests, if any, in each instance against the Debtors, their estates, or any of the Acquired Assets, attached to the net proceeds of the Sale received by the Debtors ultimately attributable to the Acquired Assets in which such party alleges an Interest, in the same order of priority, with the same validity, force, and effect that such Interests had prior to the Sale, subject to any claims and defenses the Debtors and their estates may possess with respect thereto.

Credit Bid

NN. Pursuant to the Agreement and sections 363(b) and 363(k) of the Bankruptcy Code, Purchaser, in addition to the other consideration offered under the Agreement, credit bid a portion of the DIP Loan and the Prepetition Indebtedness in an amount equal to \$[_____] (the "**Credit Bid**"). With respect to the Credit Bid, the Court finds and determines that: (i) the Credit Bid was a valid and proper offer pursuant to the Bid Procedures Order, (ii) there is no cause to limit the amount of the Credit Bid pursuant to section 363(k) of the Bankruptcy Code, and (iii) in accordance with section 363(k) of the Bankruptcy Code, the Debtors valued each dollar of the

Credit Bid as equivalent to one dollar of cash, and such valuation was appropriate and represents a reasonable exercise of the Debtors' business judgment.

Assumption and Assignment of the Assigned Contracts

OO. The assumption and assignment of the Assigned Contracts pursuant to the terms of this Sale Order is integral to the Agreement and is in the best interest of the Debtors and their estates, their creditors, and all of the parties in interest, and represents the reasonable exercise of sound and prudent business judgment by the Debtors.

PP. Unless otherwise agreed and stated on the record at the Sale Hearing, the respective amounts set forth under the "Cure Amount" on Exhibit 1 attached hereto reflects the sole amounts necessary under Bankruptcy Code section 365(b) to cure all monetary defaults and pay all pecuniary losses under the Assigned Contracts (collectively, the "**Cure Amounts**"), and no other amounts are or shall be due in connection with the assumption by the Debtors and the assignment to the Purchaser of the Assigned Contracts.

QQ. Pursuant to the terms of the Agreement, the Purchaser shall: (a) to the extent necessary, cure or provide adequate assurance of cure, of any default existing prior to the date hereof with respect to the Contracts, within the meaning of Bankruptcy Code sections 365(b)(1)(A) and 365(f)(2)(A); and (b) to the extent necessary, provide compensation or adequate assurance of compensation to any Contract Counterparty for any actual pecuniary loss to such party resulting from a default prior to the date hereof with respect to the Assigned Contracts, within the meaning of Bankruptcy Code sections 365(b)(1)(B) and 365(f)(2)(A).

RR. As of the Closing Date, subject only to the payment of the Cure Amounts, as determined in accordance with the procedures identified in the Sale Motion and its accompanying and related documents, each of the Assigned Contracts will be in full force and

effect and enforceable by the Purchaser against any Contract Counterparty thereto in accordance with its terms.

SS. The Debtors have, to the extent necessary, satisfied the requirements of Bankruptcy Code sections 365(b)(1) and 365(f) in connection with the Sale, the assumption and assignment of the Assigned Contracts, and shall upon assignment thereto on the Closing Date, be relieved from any liability for any breach thereof.

TT. The Purchaser has demonstrated it has the financial wherewithal to fully perform and satisfy the obligations under the Assigned Contracts as required by Bankruptcy Code sections 365(b)(1)(C) and 365(f)(2)(B). Pursuant to Bankruptcy Code section 365(f)(2)(B), the Purchaser has provided adequate assurance of future performance of the obligations under the Assigned Contracts.

UU. The Purchaser's promise to pay the Cure Amounts and to perform the obligations under the Assigned Contracts after the Closing Date shall constitute adequate assurance of future performance within the meaning of Bankruptcy Code sections 365(b)(1)(C) and 365(f)(2)(B).

VV. Any objections to the assumption and assignment of any of the Assigned Contracts to the Purchaser are hereby overruled or withdrawn. Any objections to the Cure Amounts are hereby overruled or withdrawn. To the extent any Contract Counterparty failed to timely object to its Cure Amount or to the assumption and assignment of its Assigned Contracts to the Purchaser, such Contract Counterparty is deemed to have consented to such Cure Amount and the assignment of its Assigned Contract(s) to the Purchaser.

WW. No sections or provisions of the Assigned Contracts that purport to (a) prohibit, restrict or condition the Debtors' assignment of the Assigned Contracts, including, but not limited to, the conditioning of such assignment on the consent of the non-debtor parties to such

Assigned Contracts; (b) authorize the termination, cancellation or modification of the Assigned Contracts based on the filing of a bankruptcy case, the financial condition of the Debtors or similar circumstances; or (c) declare a breach or default or otherwise give rise to a right of termination as a result of any change in control in respect of the Debtors, shall have any force and effect, and such provisions constitute unenforceable anti-assignment provisions under Bankruptcy Code section 365(f) and/or are otherwise unenforceable under Bankruptcy Code section 365(e).

XX. The (i) transfer of the Acquired Assets to the Purchaser and (ii) assignment to the Purchaser of the Assigned Contracts, will not subject the Purchaser or any of its affiliates or designees to any liability whatsoever that arises prior to the Closing or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, on any theory of antitrust, successor, transferee, derivative, or vicarious liability or any similar theory and/or applicable state or federal law or otherwise.

Sound Business Purpose for the Sale

YY. Good and sufficient reasons for approval of the Agreement and the Sale have been articulated. The relief requested in the Sale Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest.

ZZ. The Debtors have demonstrated both (a) good, sufficient, and sound business purposes and justifications for approving the Agreement and (b) compelling circumstances for the sale outside the ordinary course of business, pursuant to Bankruptcy Code section 363(b) before, and outside of, a plan of reorganization, in that, among other things, the immediate consummation of the Sale to the Purchaser is necessary and appropriate to maximize the value of

the Debtors' estates, and the Sale will provide the means for the Debtors to maximize distributions to creditors.

Compelling Circumstances for an Immediate Sale

AAA. To maximize the value of the Acquired Assets and preserve the viability of the business to which the Acquired Assets relate, it is essential the Sale of the Acquired Assets occur promptly. Therefore, time is of the essence in effectuating the Agreement and consummating the Sale. As such, the Debtors and the Purchaser intend to close the Sale of the Acquired Assets as soon as reasonably practicable. The Debtors have demonstrated compelling circumstances and a good, sufficient and sound business purpose and justification for immediate approval and consummation of the Agreement. Accordingly, there is sufficient cause to waive the stay provided in Bankruptcy Rules 6004(h) and 6006(d).

BBB. Given all of the circumstances of these Chapter 11 Cases and the adequacy and fair value of the Purchase Price under the Agreement, the proposed Sale of the Acquired Assets to the Purchaser constitutes a reasonable and sound exercise of the Debtors' business judgment and should be approved.

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

DDD. The Sale does not constitute a *sub rosa* or *de facto* chapter 11 plan for which approval has not been sought without the protections a disclosure statement would afford, as it does not and does not propose to: (i) impair or restructure existing debt of, or equity interests in, the Debtors; (ii) impair or circumvent voting rights with respect to any future plan proposed by

the Debtors; (iii) circumvent chapter 11 plan safeguards, such as those set forth in Bankruptcy Code sections 1125 and 1129; or (iv) classify claims or equity interests, compromise controversies, or extend debt maturities. Accordingly, the Sale neither impermissibly restructures the rights of the Debtors' creditors, nor impermissibly dictates a liquidating chapter 11 plan for the Debtors.

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

General Provisions.

41. **Relief Granted.** The relief requested in the Sale Motion and the transactions contemplated thereby and by the Agreement are approved for the reasons set forth in this Sale Order and on the record of the Sale Hearing, which is incorporated herein as if fully set forth in this Sale Order.

42. **Objections Overruled.** All objections, statements, and reservations of rights to the Sale Motion and the relief requested therein that have not been withdrawn, waived, or settled by announcement to the Court during the Sale Hearing or by stipulation filed with the Court, including, without limitation, any and all reservations of rights included in such objections or otherwise, are hereby denied and overruled on the merits, with prejudice. Those parties who did not object, or withdrew their objections, to the Sale Motion are deemed to have consented pursuant to Bankruptcy Code section 363(f)(2).

43. **Prior Findings and Conclusions Incorporated.** This Court's findings of fact and conclusions of law set forth in the Bid Procedures Order are incorporated herein by reference.

44. **Sale Order and Agreement Binding on All Parties.** This Sale Order and the Agreement shall be binding in all respects upon all creditors of and holders of equity interests in

the Debtors (whether known or unknown), agents, trustees and collateral trustees, holders of Interests in, against, or on the Acquired Assets, or any portion thereof, all Contract Counterparties and any other non-debtor parties to any contracts with the Debtors (whether or not assigned), all successors and assigns of the Debtors, and any subsequent trustees appointed in the Chapter 11 Cases or upon a conversion of the Chapter 11 Cases to one or more cases under chapter 7 of the Bankruptcy Code and shall not be subject to rejection or unwinding. Nothing in any chapter 11 plan confirmed in the Chapter 11 Cases, the confirmation order confirming any such chapter 11 plan, any order approving the wind down or dismissal of the Chapter 11 Cases, or any order entered upon the conversion of the Chapter 11 Cases to one or more cases under chapter 7 of the Bankruptcy Code or otherwise shall conflict with or derogate from the provisions of the Agreement or this Sale Order.

Approval of the Agreement

45. **Agreement Approved.** The Agreement and all other ancillary documents, and all of the terms and conditions thereof, are hereby approved.

46. **Authorization to Consummate Transactions.** Pursuant to Bankruptcy Code sections 363(b) and (f), the Debtors are authorized, empowered, and directed to use their reasonable best efforts to take any and all actions necessary or appropriate to (a) consummate the Sale pursuant to and in accordance with the terms and conditions of the Agreement, (b) close the Sale as contemplated in the Agreement and this Sale Order, and (c) execute and deliver, perform under, consummate, implement, and fully close the Agreement, including the assumption and assignment to the Purchaser of the Assigned Contracts, together with additional instruments and documents that may be reasonably necessary or desirable to implement the Agreement and the Sale.

Transfer of the Acquired Assets

47. **Transfer of the Acquired Assets Authorized.** Pursuant to Bankruptcy Code sections 105(a), 363(b), 363(f), and 365 the Debtors are authorized and directed to (a) take any and all actions necessary or appropriate to perform, consummate, implement, and close the Sale in accordance with the terms and conditions set forth in the Agreement and this Sale Order, (b) assume and assign any and all Assigned Contracts, and (c) take all further actions and execute and deliver the Agreement and other related ancillary transaction documents and any and all additional instruments and documents that may be necessary or appropriate to implement the Agreement and the other related documents and consummate the Sale in accordance with the terms thereof, all without further order of the Court. At Closing, all of the Debtors' right, title, and interest in and to, and possession of, the Acquired Assets shall be immediately vested in the Purchaser (or its designee). Such transfer shall constitute a legal, valid, enforceable, and effective transfer of the Acquired Assets.

48. **Surrender of Acquired Assets by Third Parties.** All persons and entities that are in possession of some or all of the Acquired Assets on the Closing Date are directed to surrender possession of such Acquired Assets to the Purchaser or its assignee at the Closing. On the Closing Date, each of the Debtors' creditors are authorized and directed to execute such documents and take such other actions as may be reasonably necessary to release their Interests in the Acquired Assets, if any, as such Interests may have been recorded or may otherwise exist. All persons are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with , or which would be inconsistent with, the ability of the Debtors to sell and transfer the Acquired Assets to the Purchaser in accordance with the terms of the Agreement and this Sale Order.

49. **Transfer Free and Clear of Interests.** Upon the Debtors' receipt of the Purchase Price, and other than Permitted Encumbrances and Assumed Liabilities specifically set forth in the Agreement, the transfer of the Acquired Assets to the Purchaser shall be free and clear of all Interests of any kind or nature whatsoever, including, without limitation, (a) successor or successor-in-interest liability, (b) Claims in respect of the Excluded Liabilities, and (c) any and all Contracts not assumed and assigned to the Purchaser pursuant to the terms of the Agreement, with all such Interests to attach to the net proceeds received by the Debtors ultimately attributable to the Acquired Assets against, or in, which such Interests are asserted, subject to the terms thereof, with the same validity, force, and effect, and in the same order of priority, which such Interests now have against the Acquired Assets, subject to any rights, claims, and defenses that the Debtors or their estates, as applicable, may possess with respect thereto. If any person or entity that has filed financing statements, mortgages, mechanic's liens, *lis pendens* or other documents or agreements evidencing Encumbrances against or in the Acquired Assets shall not have delivered to the Debtors prior to the Closing of the Sale in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction or releases of all Encumbrances that the person or entity has with respect to such Acquired Assets, then only with regard to the Acquired Assets that are purchased by the Purchaser pursuant to the Agreement and this Sale Order, the Debtors are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Acquired Assets.

50. **Legal, Valid, and Marketable Transfer with Permanent Injunction.** The transfer of the Acquired Assets to the Purchaser pursuant to the Agreement constitutes a legal, valid, and effective transfer of good and marketable title of the Acquired Assets, and vests, or

will vest, the Purchaser with all right, title, and interest to the Acquired Assets, free and clear of all Interests except as otherwise expressly stated as obligations of the Purchaser under the Agreement. All Persons holding interests or claims of any kind or nature whatsoever against the Debtors or the Acquired Assets, the operation of the Acquired Assets prior to the Closing Date, the Auction or the Acquired Asset Sale are hereby and forever barred, estopped, and permanently enjoined from asserting against the Purchaser, its successors or assigns, its property, or the Acquired Assets, any claim, interest or liability existing, accrued, or arising prior to the Closing.

51. **Recording Offices and Releases of Interests.** On the Closing Date, this Sale Order shall be construed and shall constitute for any and all purposes a full and complete assignment, conveyance, and transfer of the Acquired Assets or a bill of sale transferring good and marketable title of the Acquired Assets to the Purchaser. This Sale Order is and shall be effective as a determination that, on the Closing Date, all Interests of any kind or nature whatsoever existing as to the Acquired Assets prior to the Closing, other than Permitted Encumbrances and Assumed Liabilities, or as otherwise provided in this Sale Order, shall have been unconditionally released, discharged, and terminated, and that the conveyances described herein have been affected. This Sale Order is and shall be binding upon and govern the acts of all persons, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other persons who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing persons is hereby directed to accept for filing any and all of the documents and instruments

necessary and appropriate to consummate the transactions contemplated by the Agreement. Each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Agreement. A certified copy of this Sale Order may be: (a) filed with the appropriate clerk; (b) recorded with the recorder; and/or (c) filed or recorded with any other governmental agency to act to cancel any Interests against the Acquired Assets, other than the Permitted Encumbrances and Assumed Liabilities.

52. **Cancellation of Third-Party Interests.** If any person or entity which has filed statements or other documents or agreements evidencing Interests on or in all or any portion of the Acquired Assets (other than with respect to Permitted Encumbrances or Assumed Liabilities) has not delivered to the Debtors prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements, and any other documents necessary for the purpose of documenting the release of all Interests which such person or entity has or may assert with respect to all or a portion of the Acquired Assets, the Debtors and the Purchaser are authorized to execute and file such statements, instruments, releases and other documents on behalf of such person or entity with respect to the Acquired Assets. Notwithstanding the foregoing, the provisions of this Sale Order authorizing the transfer of the Acquired Assets free and clear of all Interests (except only for Permitted Encumbrances and Assumed Liabilities) shall be self-executing, and it shall not be, or be deemed, necessary for any person or entity to execute or file releases, termination statements, assignments, consents, or other instruments in order for the provisions of this Sale Order to be implemented.

Assumption and Assignment of Contracts

53. **Authorization to Assume and Assign.** Upon the Closing, the Debtors are authorized and directed, in accordance with Bankruptcy Code sections 105(a), 363 and 365, to assume and assign each of the Assigned Contracts to the Purchaser free and clear of all Interests as of the Closing Date. The payment of the applicable Cure Amounts (if any) by the Purchaser shall (a) effect a cure or adequate assurance of cure of all defaults existing thereunder as of the date on which the Debtors filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the “**Petition Date**”) and (b) compensate for any actual pecuniary loss to such Contract Counterparty resulting from such default. The Purchaser shall then have assumed the Assigned Contracts and, pursuant to Bankruptcy Code section 365(f), the assignment by the Debtors of such Assigned Contracts shall not be a default thereunder. After the payment of the relevant Cure Amounts, neither the Debtors, nor the Purchaser shall have any further liabilities to the Contract Counterparties other than the Purchaser’s obligations under the Assigned Contracts, that accrue and become due and payable on or after the Closing Date.

54. **Assignment Requirements Satisfied.** The Assigned Contracts shall be transferred to, and remain in full force and effect for the benefit of, the Purchaser, in accordance with their respective terms, notwithstanding (a) any provision in any such Assigned Contract (including provisions of the type described in Bankruptcy Code sections 365(b)(2), (e)(1) and (f)(1)) which prohibits, restricts or conditions such assignment or transfer or (b) any default by the Debtors prior to Closing under any such Assigned Contract or any disputes between the Debtors and a Contract Counterparty with respect to any such Assigned Contract arising prior to Closing. In particular, any provisions in any Assigned Contract that restrict, prohibit or condition the assignment of such Assigned Contract or allow the Contract Counterparty to such Assigned Contract to terminate, recapture, impose any penalty, condition on renewal or extension or

modify any term or condition upon the assignment of such Assigned Contract, constitute unenforceable anti-assignment provisions that are void and of no force and effect. Additionally, no sections or provisions of the Assigned Contracts that purport to (a) prohibit, restrict or condition the Debtors' assignment of the Assigned Contracts, including, but not limited to, the conditioning of such assignment on the consent of the non-debtor parties to such Assigned Contracts; (b) authorize the termination, cancellation or modification of the Assigned Contracts based on the filing of a bankruptcy case, the financial condition of the Debtors or similar circumstances; or (c) declare a breach or default or otherwise give rise to a right of termination as a result of any change in control in respect of the Debtors, shall have any force and effect, and such provisions constitute unenforceable anti-assignment provisions under Bankruptcy Code section 365(f) and/or are otherwise unenforceable under Bankruptcy Code section 365(e). All other requirements and conditions under Bankruptcy Code sections 363 and 365 for the assumption by the Debtors and assignment to the Purchaser of the Assigned Contracts have been satisfied. Upon the Closing, in accordance with Bankruptcy Code sections 363 and 365, the Purchaser shall be fully and irrevocably vested with all right, title, and interest of the Debtors under the Assigned Contracts.

55. **Consent to Assign.** The Contract Counterparties to each Assigned Contract shall be and hereby are deemed to have consented to such assumption and assignment under Bankruptcy Code section 365(c)(1)(B) or this Court has determined that no such consent is required, and the Purchaser shall enjoy all of the rights and benefits under each such Assigned Contract as of the Closing Date without the necessity of obtaining the Contract Counterparty's written consent to the assumption and assignment thereof.

56. **Section 365(k).** Upon the Closing and (a) the payment of the applicable Cure Amount or (b) in the event of any dispute over the appropriate Cure Amount, the reserve and escrow of the amount necessary to satisfy the Cure Amount asserted by the Contract Counterparty pending resolution of the dispute by the Bankruptcy Court, the Purchaser shall be deemed to be substituted for the Debtors as a party to the applicable Assigned Contracts and the Debtors and their estates shall be relieved, pursuant to Bankruptcy Code section 365(k), from any further liability under the Assigned Contracts.

57. **No Default.** Subject to the terms hereof with respect to the Cure Amounts, all defaults or other obligations of the Debtors under the Assigned Contracts arising or accruing prior to the Closing Date have been cured or shall promptly be cured by the Debtors in accordance with the terms hereof such that the Purchaser shall have no liability or obligation with respect to any default or obligation arising or accruing under any Assigned Contract prior to the Closing Date, except to the extent expressly provided in the Agreement, except for the Purchaser's payment of the Cure Amounts. Each party to an Assigned Contract is forever barred, estopped, and permanently enjoined from asserting against the Purchaser or its property or affiliates, or successors and assigns, any breach or default under any Assigned Contract, any claim of lack of consent relating to the assignment thereof, or any counterclaim, defense, setoff, right of recoupment or any other matter arising prior to the Closing Date for such Assigned Contract or with regard to the assumption and assignment therefore pursuant to the Agreement or this Sale Order. Upon the payment of the applicable Cure Amount, if any, the Assigned Contracts will remain in full force and effect, and no default shall exist under the Assigned Contracts nor shall there exist any event or condition which, with the passage of time or giving of notice, or both, would constitute such a default.

58. **Adequate Assurance Provided.** The requirements of Bankruptcy Code sections 365(b)(1) and 365(f)(2) are hereby deemed satisfied with respect to the Assigned Contracts based on the Purchaser's evidence of its financial condition and wherewithal and without any further action by the Purchaser, including but not limited to any other or further deposit. Pursuant to Bankruptcy Code section 365(f), the Purchaser has provided adequate assurance of future performance of the obligations under the Assigned Contracts.

59. **No Fees.** There shall be no rent accelerations, assignment fees, increases or any other fees charged to the Purchaser or the Debtors as a result of the assumption and assignment of the Assigned Contracts.

60. **Injunction.** Pursuant to Bankruptcy Code sections 105(a), 363, and 365, other than the right to payment of the Cure Amounts, if any, all Contract Counterparties are forever barred and permanently enjoined from raising or asserting against the Debtors or the Purchaser any assignment fee, default, breach or claim, or pecuniary loss arising under or related to the Assigned Contracts existing as of the Petition Date or any assignment fee or condition to assignment arising by reason of the Closing.

61. **Contract Objections.** Except for a Contract Counterparty who files, or has filed, a timely objection to the Cure amount by **May 31, 2019, at 4:00 p.m. (prevailing Eastern Time)**, which objection shall be resolved in accordance with the procedures set forth in the Bid Procedures Order (a "**Contract Objection**"), such Contract Counterparty is deemed to have consented to such Cure Amount. Except for a Contract Counterparties who files, or has filed, a timely Contract Objection to the Debtors' proposed assignment of such Assigned Contracts to the Purchaser, which objection shall be resolved in accordance with the procedures set forth in the Bid Procedures Order, such Contract Counterparty is deemed to have consented to the

assumption and assignment, and the Purchaser shall be deemed to have demonstrated adequate assurance of future performance with respect to, such Assigned Contracts pursuant to Bankruptcy Code sections 365(b)(1)(C) and 365(f)(2)(B). With respect to any timely-filed Contract Objections, such objection shall be resolved in accordance with the procedures set forth in the Bid Procedures Order. The provisions of this Sale Order shall be effective and binding upon the Contract Counterparties to the extent set forth in, and in accordance with, such procedures. Nothing in this Sale Order, the Sale Motion, or in any notice or any other document is, or shall be, deemed an admission by the Debtors that any Assigned Contract is an executory contract or unexpired lease, or must be assumed and assigned pursuant to the Agreement in order to consummate the Sale.

62. **No Further Debtor Liability.** Except as provided in the Agreement or in this Sale Order, after the Closing, the Debtors and their estates shall have no further liabilities or obligations with respect to any Assumed Liabilities, and all holders of such Claims are forever barred and estopped from asserting such Claims against the Debtors, their successors or assigns, their property, or the Debtors' estates.

63. **No Waiver of Rights.** The failure of the Debtors or the Purchaser to enforce, at any time, one or more terms or conditions of any Assigned Contracts shall not be a waiver of any such terms or conditions, or of the Debtors' or the Purchaser's rights to enforce every term and condition of the Assigned Contracts.

Prohibition of Actions Against the Purchaser

64. **No Successor Liability.** Except for the Permitted Encumbrances and Assumed Liabilities set forth in the Agreement, or as otherwise expressly provided for in this Sale Order or the Agreement, the Purchaser shall not have any liability or other obligation of the Debtors arising under or related to any of the Acquired Assets. Without limiting the generality of the

foregoing, and except as otherwise expressly provided herein or in the Agreement, the Purchaser shall not be liable for any Claims against the Debtors or any of their predecessors or affiliates, and the Purchaser shall have no successor or vicarious liabilities of any kind or character, including, without limitation, under any theory of antitrust, environmental, successor, or transfer reliability, labor law, *de facto* merger, mere continuation, or substantial continuity, whether known or unknown as of the Closing Date, now existing, or hereafter arising, whether fixed or contingent, whether asserted or unasserted, whether legal or equitable, whether liquidated or unliquidated, including, without limitation, liabilities on account of warranties, intercompany loans, receivables among the Debtors and their affiliates, environmental liabilities, and any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of any of the Acquired Assets prior to the Closing.

65. Other than as expressly set forth in the Agreement, no Purchaser Party shall have any responsibility for (a) any liability or other obligation of the Debtors or related to the Acquired Assets or (b) any claims against the Debtors or any of their predecessors or affiliates. Except as expressly provided in the Agreement with respect to the Purchaser, no Purchaser Party shall have any liability whatsoever with respect to the Debtors' (or their predecessors' or affiliates') respective businesses or operations or any of the Debtors' (or their predecessors' or affiliates') obligations (as defined herein, "**Successor or Transferee Liability**") based, in whole or in part, directly or indirectly, on any theory of successor or vicarious liability of any kind of character, or based upon any theory of antitrust, environmental, successor, or transferee liability, *de facto* merger or substantial continuity, labor and employment or products liability, whether known or unknown as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated, including, without limitation, liabilities on

account of (a) any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the Acquired Assets or the Assumed Liabilities prior to the Closing or in respect of pre-Closing periods or (b) any plan, agreement, practice, policy, or program, whether written or unwritten, providing for pension, retirement, health, welfare, compensation, or other employee benefits which is or has been sponsored, maintained, or contributed to by any Debtor or with respect to which any Debtor has any liability, whether or not contingent, including, without limitation, any “multiemployer plan” (as defined in Section 3(37) of ERISA) or “pension plan” (as defined in Section 3(2) of ERISA) to which any Debtor has at any time contributed, or had any obligation to contribute. Except to the extent expressly included in the Assumed Liabilities with respect to the Purchaser or as otherwise expressly set forth in the Agreement, no Purchaser Party shall have any liability or obligation under any applicable law, including, without limitation, (a) the WARN Act, 29 U.S.C. §§ 2101 *et seq.*, (b) the Comprehensive Environmental Response Compensation and Liability Act, (c) the Age Discrimination and Employment Act of 1967 (as amended), (d) the Federal Rehabilitation Act of 1973 (as amended), (e) the National Labor Relations Act, 29 U.S.C. §§ 151 *et seq.*, or (f) any foreign, federal, state, or local labor, employment or environmental law, by virtue of the Purchaser’s purchase of the Acquired Assets, assumption of the Assumed Liabilities, or hiring of certain employees of the Debtors pursuant to the terms of the Agreement. Without limiting the foregoing, no Purchaser Party shall have any liability or obligation with respect to any environmental liabilities of the Debtors or any environmental liabilities associated with the Acquired Assets except to the extent they are Assumed Liabilities set forth in the Agreement.

66. **Actions Against the Purchaser Enjoined.** Except with respect to Permitted Encumbrances and Assumed Liabilities set forth in the Agreement, or as otherwise permitted by

the Agreement or this Sale Order, all persons and entities, including, without limitation, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade creditors, litigation claimants, and other creditors, holding Interests of any kind or nature whatsoever against, or in, all or any portion of the Acquired Assets, arising under, out of, in connection with, or in any way relating to, the Debtors, the Acquired Assets, the operation of the Debtors' business prior to the Closing Date, or the transfer of the Acquired Assets to the Purchaser, hereby are forever barred, estopped, and permanently enjoined from asserting against the Purchaser, or any of its affiliates, successors, or assigns, or their property or the Acquired Assets, such persons' or entities' Interests in and to the Acquired Assets, including, without limitation, the following actions against the Purchaser or its affiliates, or their successors, assets, or properties: (a) commencing or continuing in any manner any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral, or other proceeding; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or other order; (c) creating, perfecting, or enforcing any Lien or other Claim; (d) asserting any set off, right of subrogation, or recoupment of any kind; (e) commencing or continuing any action, in any manner or place, that does not comply or is inconsistent with the provisions of this Sale Order or other orders of this Court, or the agreements or actions contemplated or taken in respect thereof; or (f) revoking, terminating, or failing or refusing to transfer or renew any license, permit, or authorization to operate any of the Acquired Assets or conduct any of the business operated with the Acquired Assets.

Other Provisions

67. **Licenses.** To the maximum extent permitted by applicable law, and in accordance with the Agreement, the Purchaser (or its designee) shall be authorized, as of the Closing, to operate under any license, permit, registration, and governmental authorization or approval

(collectively, the “**Licenses**”) of the Debtors with respect to the Acquired Assets. To the extent the Purchaser (or its designee) cannot operate under any Licenses in accordance with the previous sentence, such Licenses shall be in effect while the Purchaser (or its designee), with assistance from the Debtors, works promptly and diligently to apply for and secure all necessary government approvals for new issuance of Licenses to the Purchaser (or its designee). The Debtors shall, at Purchaser’s sole cost, maintain the Licenses in good standing to the fullest extent allowed by applicable law for the Purchaser’s benefit until equivalent new Licenses are issued to the Purchaser (or its designee).

68. **Effective Immediately.** For cause shown, pursuant to Bankruptcy Rules 6004(h), 6006(d), and 7062(g), this Sale Order shall not be stayed and shall be effective immediately upon entry, and the Debtors and the Purchaser are authorized to close the Sale immediately upon entry of this Sale Order. The Debtors and the Purchaser may consummate the Agreement at any time after entry of this Sale Order by waiving any and all closing conditions set forth in the Agreement that have not been satisfied and by proceeding to close the Acquired Asset Sale without any notice to the Court, any pre-petition or post-petition creditor of the Debtors and/or any other party in interest.

69. **Access to Books and Records.** Following the Closing of the Sale, the Debtors shall have, and the Purchaser shall provide, reasonable access to their books and records, to the extent they are included in the Acquired Assets transferred to the Purchaser as part of the Sale as set forth in the Agreement.

70. **Bulk Sales Law.** No bulk sales law or any similar law of any state or other jurisdiction applies in any way to the Sale.

71. **Wind-Down Account.** The provisions of the Agreement relating to the establishment and administration of the Wind-Down Account are approved. The Wind-Down Payment shall be made by Purchaser to Orchids at the Closing. From and after the Closing, the Wind-Down Payment shall be deposited into the Wind-Down Account and shall be held in trust by Orchids, free and clear of any and all Encumbrances, for the benefit of Persons entitled to be paid priority claims, administrative expenses and other costs relating to the post-Closing administration and wind-down of Sellers' estates in accordance with the Wind-Down Budget and the provisions of 6.21 of the Agreement.

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

73. **Further Assurances.** From time to time, as and when requested, all parties shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as the requesting party may reasonably deem necessary or desirable to consummate the Sale, including such actions as may be necessary to vest, perfect, or confirm or record or otherwise in the Purchaser its right, title, and interest in and to the Acquired Assets.

74. **Modifications to Agreement.** The Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto and in accordance with the terms thereof, in a writing signed by such parties, without further order of this Court, provided any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estates.

75. **Standing.** The transactions authorized herein shall be of full force and effect, regardless of any Debtors' lack of good standing in any jurisdiction in which such Debtor is formed or authorized to transact business.

76. **Authorization to Effect Order.** The Debtors are authorized to take all actions necessary to effect the relief granted pursuant to this Sale Order in accordance with the Sale Motion.

77. **Automatic Stay.** The automatic stay pursuant to Bankruptcy Code section 362 is hereby modified, lifted, and annulled with respect to the Debtors and the Purchaser to the extent necessary, without further order of this Court, to (a) allow the Purchaser to deliver any notice provided for in the Agreement and (b) allow the Purchaser to take any and all actions permitted under the Agreement in accordance with the terms and conditions thereof. The Purchaser shall not be required to seek or obtain relief from the automatic stay under section 362 of the Bankruptcy Code to enforce any of its remedies under the Agreement or any other Sale-related document. The automatic stay imposed by section 362 of the Bankruptcy Code is modified solely to the extent necessary to implement the preceding sentence, *provided, however*, that this Court shall retain exclusive jurisdiction over any and all disputes with respect thereto.

78. **No Other Bids.** No further bids or offers for the Acquired Assets shall be considered or accepted by the Debtors after the date hereof unless the Sale to the Purchaser is not consummated or otherwise does not occur in accordance with the Agreement or its related documents.

79. **Name of Debtor.** Except as permitted in the Agreement, neither the Debtors nor any of their affiliates shall use, license or permit any third party to use, any name, slogan, logo or trademark which is confusingly or deceptively similar to any of the names, trademarks or service

marks included in the Intellectual Property in the Acquired Assets, and each Debtor is directed to change its corporate name to a name which (i) does not use the name “Orchids Paper” or any other name that references or reflects any of the foregoing in any manner whatsoever, (ii) is otherwise substantially dissimilar to its present name, and (iii) is approved in writing by the Purchaser. Within one (1) Business Day of the occurrence of the Closing of the Sale, the Debtors shall file and serve a notice of same (the “**Notice of Sale Closing and Effective Date of Amendment of Case Caption**”) and upon the filing of such notice, the Debtors’ case caption shall be amended as follows:

In re:

OPP LIQUIDATING
COMPANY, INC., *et al.*,³

Debtors.

Chapter 11

Case No. 19-10729 (MFW)

Jointly Administered

Upon the filing of the Notice of Sale Closing and Effective Date of Amendment of Case Caption, the Clerk of the Court is authorized and directed to make a docket entry in case numbers 19-10729, 19-10730, and 19-10731 consistent with the foregoing Paragraph of this Sale Order.

80. **Order to Govern.** To the extent this Sale Order is inconsistent with any prior order entered or pleading filed in these Chapter 11 Cases, the terms of this Sale Order shall

³ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are OPP Liquidating Company, Inc. (f/k/a Orchids Paper Products Company), a Delaware corporation (6944), OPP Liquidating Company of South Carolina, Inc. (f/k/a Orchids Paper Products Company of South Carolina), a Delaware corporation (7198), and OLSC Liquidating Company, LLC (f/k/a Orchids Lessor SC, LLC), a South Carolina limited liability company (7298). The location of the Debtors’ mailing address is 201 Summit View Drive, Suite 110, Brentwood, Tennessee 37027.

govern. To the extent there are any inconsistencies between the terms of this Sale Order and the Agreement (including all ancillary documents executed in connection therewith), the terms of this Sale Order shall govern.

81. **Standing.** The Purchaser has standing to seek to enforce the terms of this Sale Order.

82. **Retention of Jurisdiction.** This Court shall retain exclusive jurisdiction with respect to the terms and provisions of this Sale Order and the Agreement.

Dated: _____, 2019

UNITED STATES BANKRUPTCY JUDGE

Exhibit 1 to Sale Order

Assigned Contracts

Counterparty	Description of Assigned Contracts or Leases	Cure Amount

Exhibit 1

EXHIBIT G
FORM OF DIP ORDER

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

In re:

ORCHIDS PAPER PRODUCTS COMPANY,
et al.,¹

Debtors.

Chapter 11

Case No. 19-10729 (MFW)

(Join Administration Pending)

**INTERIM ORDER PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364 AND 507,
BANKRUPTCY RULES 2002, 4001, 6004 AND 9014 AND LOCAL BANKRUPTCY
RULES 2002-1, 4001-1, 4001-2 AND 6004-1 (I) AUTHORIZING THE DEBTORS TO
OBTAIN POSTPETITION SENIOR SECURED SUPERPRIORITY FINANCING, (II)
AUTHORIZING THE DEBTORS' LIMITED USE OF CASH COLLATERAL, (III)
GRANTING ADEQUATE PROTECTION TO THE PREPETITION SECURED
PARTIES, (IV) SCHEDULING A FINAL HEARING, AND (V) GRANTING RELATED
RELIEF**

Upon the motion (the "Motion") of the above referenced debtors and debtors in possession (the "Debtors") in the above-referenced chapter 11 cases (the "Chapter 11 Cases"), for entry of an interim order (this "Interim Order") and a final order (the "Final Order"), pursuant to sections 105, 361, 362, 363, 364 and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (as amended, the "Bankruptcy Code"), Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the "Bankruptcy Rules"), and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), seeking, *inter alia*:

- (i) authorization for (a) Debtor Orchids Paper Products Company, as borrower (the "Borrower"), and the other Debtors, as guarantors, to obtain up to \$11 million in principal amount of postpetition financing (the "DIP Facility"), and

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are Orchids Paper Products Company, a Delaware corporation (6944), Orchids Paper Products Company of South Carolina, a Delaware corporation (7198), and Orchids Lessor SC, LLC, a South Carolina limited liability company (7298). The location of the Debtors' mailing address is 201 Summit View Drive, Suite 110, Brentwood, Tennessee 37027.

to access up to \$4 million in the interim (the “Interim DIP Facility”) and pending a final hearing all on the terms and conditions set forth in this Interim Order and that certain Senior Secured Superpriority Debtors-in-Possession Credit Agreement (the “DIP Credit Agreement,” substantially in the form attached hereto as Exhibit A and together with this Interim Order, and all appendices, exhibits or schedules hereto and to the DIP Credit Agreement, including, without limitation, the Approved Budget (defined below) as the same may be amended, restated or supplemented from time to time in accordance with the terms hereof and thereof, collectively, the “DIP Loan Documents”),² among the Debtors, the lender(s) party thereto (collectively, the “DIP Lenders”), and Black Diamond Commercial Finance, L.L.C., a Delaware limited liability company, as Administrative Agent (the “DIP Agent”);

- (ii) authorization for the Debtors to, subject to the Carve-Out (defined below) and Permitted Prior Senior Liens (defined below), grant security interests, liens, and superpriority claims (including a superpriority administrative claim pursuant to sections 364(c)(1), 503(b) and 507(b) of the Bankruptcy Code, liens pursuant to sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code and priming liens pursuant to section 364(d) of the Bankruptcy Code) to the DIP Lenders to secure all obligations of the Debtors under and with respect to the DIP Facility (collectively, the “DIP Obligations”), including, subject to and effective upon entry of the Final Order, on the proceeds and property recovered in respect of the Debtors’ claims and causes of action (but not on the actual claims and causes of action) arising under Chapter 5 of the Bankruptcy Code, including sections 544, 545, 547, 548 and 550 or any other similar state or federal law (collectively, the “Avoidance Action Proceeds”);
- (iii) authorization for the Debtors, pursuant to sections 105, 361, 362, 363 and 507 of the Bankruptcy Code to use cash collateral, as such term is defined in section 363(a) of the Bankruptcy Code (“Cash Collateral”, which shall not include loan proceeds of the DIP Facility), and all other Prepetition Collateral (defined below), in accordance with the terms of this Interim Order and the Approved Budget, as provided herein;
- (iv) to, subject to the Carve-Out and any Permitted Prior Senior Liens, provide Adequate Protection (defined below) of the liens and security interests (such liens and security interests, the “Prepetition Liens”) of the prepetition lender(s) (such financial institutions in such capacities, the “Prepetition Lenders”) under that certain Second Amended and Restated Credit Agreement dated as of June 25, 2015 as amended, restated, replaced and/or modified from time to time (“Credit Agreement”, along with any other agreements, instruments, notes, guaranties and other documents related thereto are referred

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to those terms in the DIP Loan Documents.

to herein collectively as the “Prepetition Financing Documents”), by and among the Borrower, as borrower, the Guarantors, as guarantors, the Prepetition Lenders, and Ankura Trust Company, as administrative agent (as successor to U.S. Bank National Association) (in such capacity, the “Prepetition Agent”, and together with the Prepetition Lenders, the “Prepetition Secured Parties”), which Prepetition Liens are being consensually primed by the DIP Facility, as more fully set forth in this Interim Order;

- (v) modification of the automatic stay imposed under section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of this Interim Order and the Final Order;
- (vi) that this Court hold an interim hearing (the “Interim Hearing”) to consider the relief sought in the Motion and entry of the proposed Interim Order;
- (vii) that this Court schedule a final hearing (the “Final Hearing”) to consider entry of the Final Order granting the relief requested in the Motion on a final basis; and
- (viii) waiver of any applicable stay with respect to the effectiveness and enforceability of the Interim Order or the Final Order (including a waiver pursuant to Bankruptcy Rule 6004(h));

and the Interim Hearing having been held by this Court on April [REDACTED], 2019; and pursuant to Bankruptcy Rule 4001 and Local Rule 4001-2, due and sufficient notice of the Motion and the relief sought at the Interim Hearing having been given under the particular circumstances by the Debtors; this Court having considered the Motion and all pleadings related thereto, including the record made by the Debtors at the Interim Hearing; and after due deliberation and consideration, and good and sufficient cause appearing therefor:

THE COURT HEREBY FINDS AS FOLLOWS:

A. On April 1, 2019 (the “Petition Date”), each of the Debtors filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

B. No official committee of unsecured creditors (“Committee”), as provided for under section 1102 of the Bankruptcy Code, has been appointed in the Chapter 11 Cases.

C. Subject to Paragraph 16 below, without prejudice to the rights, if any, of any other party, the Debtors admit, stipulate and agree that: as of the Petition Date, the Debtors were indebted and liable, without defense, counterclaim or offset of any kind to the Prepetition Secured Parties under the Prepetition Financing Documents, including under that certain Credit Agreement in an aggregate principal amount of approximately \$187,845,838.04. All obligations of the Debtors arising under the Credit Agreement or any other Prepetition Financing Documents, including all loans, advances, debts, liabilities, principal, interest, fees, charges, expenses and obligations for the performance of covenants, tasks or duties, or for the payment of monetary amounts owing to the Prepetition Secured Parties by the Debtors, of any kind or nature, whether or not evidenced by any note, agreement or other instrument, shall be referred to herein collectively as the “Prepetition Secured Obligations”; and the collateral encumbered by the Prepetition Financing Documents pursuant to which each Debtor granted to the Prepetition Agent, for the benefit of the Prepetition Secured Parties, a first-priority security interest in and continuing lien on to secure such Debtors’ Prepetition Secured Obligations shall be referred to herein collectively as the “Prepetition Collateral”.

D. The Debtors have an immediate and critical need to obtain postpetition financing under the DIP Facility and to use Cash Collateral to, among other things, pay the costs and expenses associated with administering the Chapter 11 Cases, continue the orderly operation of the Debtors’ business, maximize and preserve the Debtors’ going concern value, make payroll and satisfy other working capital and general corporate purposes, in each case, in accordance with the Approved Budget. Without access to the DIP Facility and the continued use of Cash

Collateral to the extent authorized pursuant to this Interim Order, the Debtors and their estates would suffer immediate and irreparable harm. The Debtors do not have sufficient available sources of working capital and financing to operate their businesses or maintain their properties in the ordinary course of business without access to the DIP Facility and the authorized use of Cash Collateral.

E. In light of the Debtors' facts and circumstances, the Debtors would be unable to obtain (i) adequate unsecured credit allowable either (a) under sections 364(b) and 503(b)(1) of the Bankruptcy Code, or (b) under section 364(c)(1) of the Bankruptcy Code, (ii) adequate credit secured by (x) a senior lien on unencumbered assets of their estates under section 364(c)(2) of the Bankruptcy Code, and (y) a junior lien on encumbered assets under section 364(c)(3) of the Bankruptcy Code, or (iii) secured credit under section 364(d)(1) of the Bankruptcy Code from sources other than the DIP Lenders on terms more favorable than the terms of the DIP Facility. The only viable source of secured credit available to the Debtors, other than the use of Cash Collateral, is the DIP Facility. The Debtors require both additional financing under the DIP Facility and the continued use of Cash Collateral under the terms of this Interim Order to satisfy their postpetition liquidity needs.

F. The DIP Lenders have indicated a willingness to provide the Debtors with certain financing commitments, but solely on the terms and conditions set forth in this Interim Order and the DIP Loan Documents. Accordingly, after considering all of its practical alternatives, the Debtors have concluded, in an exercise of their sound business judgment, that the financing to be provided by the DIP Lenders pursuant to the terms of this Interim Order and the DIP Loan Documents represents the best financing currently available to the Debtors.

G. The consent of the Prepetition Secured Parties to the priming of their liens by the DIP Liens, the Carve-Out and use of the Prepetition Collateral, including Cash Collateral, by the Debtors, is limited to this Interim Order and the DIP Facility presently before this Court and shall not extend to any other postpetition financing or to any modified version of this DIP Facility with any parties other than the DIP Lenders. Furthermore, the consent of the Prepetition Secured Parties to the priming of their liens by the DIP Liens, the Carve-Out and use of the Prepetition Collateral, including Cash Collateral, by the Debtors does not constitute, and shall not be construed as constituting, an acknowledgment or stipulation by the Prepetition Secured Parties that their interests in the Prepetition Collateral are adequately protected pursuant to this Interim Order or otherwise, provided, however, the Prepetition Secured Parties agree that the Adequate Protection granted to the Prepetition Secured Parties in this Interim Order is reasonable and calculated to protect the interests of the Prepetition Secured Parties, subject to the rights of the Prepetition Secured Parties to seek a modification of such Adequate Protection, as set forth below.

H. The security interests and liens granted pursuant to this Interim Order to the DIP Lenders are appropriate under section 364(d) of the Bankruptcy Code because, among other things, either (i) such security interests and liens do not impair the interests of any holder of a valid, perfected, prepetition security interest or lien in the property of the Debtors' estates, (ii) the holders of such valid, perfected, prepetition security interests and liens have consented to the security interests and priming liens granted pursuant to this Interim Order to the DIP Lenders and/or (iii) the interests of any holder of a valid, perfected, prepetition security interest or lien are otherwise adequately protected.

I. Good cause has been shown for immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and (c)(2) and Local Rule 4001-2(b). In particular, the authorization granted herein for the Debtors to execute the DIP Loan Documents, to continue using the Prepetition Collateral, including Cash Collateral, and to obtain interim financing, including on a priming lien basis, is necessary to avoid immediate and irreparable harm to the Debtors and their estates. Entry of this Interim Order is in the best interest of the Debtors, their estates and creditors. The terms of the DIP Loan Documents (including the Debtors' continued use of the Prepetition Collateral, including Cash Collateral) are fair and reasonable under the circumstances, reflect the Debtors' exercise of prudent business judgment, and are supported by reasonably equivalent value and fair consideration for the Prepetition Secured Parties' consent thereto.

J. The Debtors, the DIP Lenders and the Prepetition Secured Parties have negotiated the terms and conditions of the DIP Loan Documents (including the Debtors' continued use of the Prepetition Collateral, including Cash Collateral) and this Interim Order in good faith and at arm's length, and any credit extended and loans made to the Debtors pursuant to this Interim Order shall be, and hereby are, deemed to have been extended, issued or made, as the Cases may be, in "good faith" within the meaning of section 364(e) of the Bankruptcy Code. The Prepetition Secured Parties are entitled to receive Adequate Protection as set forth herein pursuant to sections 361, 362, 363 and 364 of the Bankruptcy Code for any diminution in the value of their respective interests in the Prepetition Collateral, including Cash Collateral, resulting from the automatic stay or the Debtors' use, sale or lease of the Prepetition Collateral, including Cash Collateral, during the Chapter 11 Cases.

K. The Debtors acknowledge, represent, stipulate and agree, that, (i) subject to the entry of this Interim Order, the Debtors have obtained all known authorizations, consents and approvals necessary from, and have made all known filings with and given all known notices to, all federal, state and local governmental agencies, authorities and instrumentalities required to be obtained, made or given by the Debtors in connection with the execution, delivery, performance, validity and enforceability of the DIP Loan Documents; and (ii) due to the commencement of these Chapter 11 Cases, the Debtors are in default with respect to their Prepetition Obligations and an Event of Default has occurred under the Prepetition Financing Documents.

L. Notwithstanding anything to the contrary herein or in the Motion, Debtor Orchids Lessor SC, LLC ("Orchids Lessor SC") is not a borrower under or guarantor of the DIP Loan, is not pledging any of its assets as collateral to secure the DIP Loan, and is not otherwise a party to any of the DIP Loan Documents. Likewise, the Prepetition Secured Parties are not receiving a replacement or adequate protection lien against or any other rights with respect to Orchids Lessor SC or its assets.

M. Based on the foregoing, and upon the record made before this Court at the Interim Hearing, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:³

1. Granting of Motion. The Motion is granted, on an interim basis, as and to the extent set forth herein.

2. Jurisdiction and Venue. Consideration of the Motion constitutes a "core-proceeding" as defined in 28 U.S.C. § 157(b)(2). This Court has jurisdiction over this

³ Pursuant to Bankruptcy Rule 7052, findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact.

proceeding and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334. Venue for the Chapter 11 Cases and the proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

3. Notice. On the Petition Date, the Debtors filed the Motion with this Court and pursuant to Bankruptcy Rules 2002, 4001 and 9014, and the Local Rules of this Court, the Debtors have represented that they provided notice of the Motion and the Interim Hearing by electronic mail, facsimile, hand delivery or overnight delivery to the following parties and/or to their counsel as indicated below: (i) the Office of the United States Trustee for this District (the “U.S. Trustee”); (ii) the Debtors’ twenty (20) largest unsecured creditors on a consolidated basis; (iii) counsel to the Prepetition Agent, the DIP Agent and the DIP Lenders; (iv) all other known parties with liens of record on assets of the Debtors as of the Petition Date; (v) the local office for the Internal Revenue Service; (vi) the Securities and Exchange Commission; and (vii) any party having filed requests for notice in the Chapter 11 Cases (collectively, (i)-(vi), the “Notice Parties”). Given the nature of the relief sought in the Motion, this Court concludes that the form, scope and timing of the foregoing notice was sufficient and adequate under the circumstances and complies with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any other applicable law, and no further notice relating to the Interim Hearing or Motion is necessary or required.

4. The Approved Budget.

(a) Subject to and in accordance with the terms of the DIP Credit Agreement, the Borrower and its Subsidiaries shall not pay any expenses other than those set forth in the budget approved by the DIP Agent and the Required Lenders (defined in the DIP Credit Agreement), substantially in the form of the annexed hereto Exhibit B (together with any

subsequent budget which the DIP Agent and the Required Lenders may, in their sole discretion, approve, the “Approved Budget”), except that payment of Statutory Fees, as that term is defined in paragraph 12 below, shall not be subject to any budget. On or before each of the 1st and 15th day of each month, the Debtors shall provide to the DIP Agent and DIP Lenders an updated proposed budget and if the DIP Agent and DIP Lenders in their sole discretion shall approve such updated proposed budget, it shall replace and supersede the then existing Approved Budget. The Debtors shall file and serve any update Approved Budget in accordance with paragraph 4(b), below. The Debtors may use the proceeds of the DIP Facility and Cash Collateral, for the purposes and up to the amounts set forth in the Approved Budget (except that payment of Statutory Fees shall not be subject to any budget), subject to the terms and conditions set forth in the DIP Credit Agreement and this Interim Order. On or before the third Business Day of each week, the Debtors shall provide to the DIP Agent (A) a Variance Report for such week and (B) a certification by the Interim Chief Strategy Officer, that such person has no reason to believe that such Variance Report is incorrect or misleading in any material respect. On or before the second Business Day of each week, the Debtors shall provide to the DIP Agent, a report on the prior weekly sales by customer, together with a comparison to budgeted sales for such period and a certification by the Interim Chief Strategy Officer that such person has no reason to believe that such comparison is incorrect or misleading in any material respect. The amount of the DIP Facility and Cash Collateral authorized to be used hereby shall not exceed the amounts reflected in the Approved Budget and as otherwise provided in the DIP Credit Agreement, which shall be in form and substance satisfactory to the DIP Lenders for the time period set forth therein.

(b) The Approved Budget may be amended, supplemented, extended or otherwise modified from time to time in any manner as the DIP Agent and the Required Lenders

may, in their sole discretion, approve subject to the terms of the DIP Credit Agreement without further order of this Court; provided that notice of any amendments shall be given to the U.S. Trustee and counsel to any Committee.

5. Use of Prepetition Collateral (including Cash Collateral). Immediately upon entry of this Interim Order, the Debtors are authorized to use Cash Collateral, subject to and as set forth in the Approved Budget, this Interim Order and the DIP Loan Documents. The Debtors are further authorized to use the Prepetition Collateral (including Cash Collateral) during the period from the Petition Date through and including the maturity date in accordance with the terms and conditions of this Interim Order; provided, that the Prepetition Secured Parties are granted Adequate Protection as set forth in this Interim Order.

6. Borrowing Authorization.

(a) The DIP Facility. The Debtors are authorized to enter into and perform the transactions contemplated in this Interim Order and the DIP Loan Documents and such additional documents, instruments, and agreements as may be reasonably required by the DIP Lenders to implement the terms or effectuate the purposes of this Interim Order, and to receive financial accommodations and borrow under the Interim DIP Facility up to \$4,000,000.00 subject to the terms set forth in the DIP Credit Agreement. The DIP Credit Agreement and the other DIP Loan Documents shall constitute and are hereby deemed to be the legal, valid and binding obligations of the Debtors and their estates, enforceable against each such Debtors and their respective estates in accordance with the terms hereof and the DIP Loan Documents and any successor of each such Debtors or any representative of the estates (including a trustee, responsible person, or examiner with expanded powers). The Debtors are authorized to obtain financial accommodations pursuant to the terms of the Approved Budget, this Interim Order, the

DIP Credit Agreement, and the other DIP Loan Documents and the Guarantors are hereby authorized to guaranty such financial accommodations and borrowings in accordance with the terms of this Interim Order, the DIP Credit Agreement and the other DIP Loan Documents.

(b) Working Capital. The Debtors are authorized to use the DIP Facility and Cash Collateral to fund working capital requirements of the Debtors during the Chapter 11 Cases and other line items subject to and in accordance with the terms of the Approved Budget, this Interim Order, and the DIP Loan Documents.

7. Due Authorization. The Debtors acknowledge, represent, stipulate and agree, and this Court hereby finds and orders, that:

(a) in entering into the DIP Loan Documents and obtaining the use of Cash Collateral, and as consideration therefor and for the other accommodations and agreements of the DIP Lenders reflected herein and in the DIP Loan Documents, the Debtors hereby agree (but the Court does not Order) that until such time as all of the DIP Obligations are indefeasibly paid in final in full in cash and the DIP Credit Agreement and DIP Loan Documents are terminated in accordance with the terms thereof, the Debtors shall not in any way prime or seek to prime the DIP Obligations, the DIP Liens or the DIP Superpriority Claims provided to the DIP Lenders under this Interim Order by offering a subsequent lender or a party in interest a superior or *pari passu* lien or administrative expense pursuant to sections 105(a), 328, 330, 331, 364(c), 364(d), 503, 506, 507(a)(except for 507(a)(1), 507(b), 546(c) or 1114 of the Bankruptcy Code) or otherwise or acquiescing thereto except as expressly authorized in the DIP Credit Agreement (provided, that the DIP Liens, the DIP Superpriority Claims, the liens of the Prepetition Secured Parties, the Adequate Protection Liens (defined below), and the Section 507(b) Claims (defined below) of the Prepetition Secured Parties, shall be subordinate and subject to the Carve-Out

(defined below); and

(b) in no event shall the DIP Lenders, by exercising any rights or remedies under the DIP Facility or this interim Order, or by entering into the DIP Loan Documents, be deemed to be in control of the operations of the Debtors or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtors, so long as the actions of the DIP Lenders do not constitute, within the meaning of 42 U.S.C. § 9601(20)(F), actual participation in the management or operational affairs by the lender of a vessel or facility owned or operated by Debtors, or otherwise cause liability to arise to the federal or state government, or to be a responsible person or managing agent under applicable law (as such terms, or any similar terms, are used in the Comprehensive Environmental Response, Compensation and Liability Act, sections 9601 et seq. of title 42, United States Code, as amended, or any similar federal or state statute).

8. DIP Interest and Payment of Expenses.

(a) Each Advance shall bear interest at the applicable rate (including any applicable default rate after the occurrence of an Event of Default) set forth in the DIP Loan Documents, and be due and payable in accordance with this Interim Order and the DIP Loan Documents, in each Cases without further notice, motion or application to, order of, or hearing before, this Court.

(b) The Debtors shall pay the reasonable and documented prepetition and postpetition fees and expenses of the attorneys and advisors (each, a “DIP Lenders’ Advisor”) for the DIP Agent and the DIP Lenders as provided under the DIP Loan Documents. No DIP Lenders’ Advisor shall be required to file an application seeking compensation for services or reimbursement of expenses with this Court. Each DIP Lenders’ Advisor seeking compensation

for services or reimbursement of expenses under the DIP Loan Documents, this Interim Order or a Final Order shall transmit a summary invoice to counsel to the Debtors, the U.S. Trustee and the Committee, if any, which summary invoices shall include a general description of the nature of the matters worked on, a list of professionals who worked on the matter, their hourly rate (if such professionals bill at an hourly rate), the number of hours each professional billed and, with respect to the invoices of law firms, the year of law school graduation for each attorney; provided, however, that the U.S. Trustee reserves the right to seek copies of invoices containing the detailed time entries of any professional. Any summary invoice may be reasonably redacted by the DIP Lenders' Advisor to protect from disclosure any confidential information or information otherwise subject to a protective privilege such as attorney-client privilege or attorney work-product privilege, provided, however, that U.S. Trustee reserves his right to seek to obtain unredacted copies of such invoices. The Debtors, U.S. Trustee and Committee, if any, shall have ten (10) Business Days in which to raise an objection to the payment of any fees and expenses of such attorneys and advisors. Upon the expiration of such ten (10) Business Day period, the Debtors shall promptly pay any portion of such fees and expenses to which no objection has been interposed. To the extent any objection has been interposed and cannot be consensually resolved, the dispute will be scheduled for adjudication at the next regularly-scheduled omnibus hearing in the Chapter 11 Cases.

9. Amendments. The Debtors are expressly authorized and empowered to enter into amendments, supplements, extensions or other modifications from time to time in any manner as to which Debtors and the DIP Lenders, as required in the DIP Credit Agreement, mutually agree in writing without further order of this Court; provided, that any material modification or amendment shall require Court approval, upon a motion on notice to parties in

interest; and provided further that the Debtors shall provide notice of any modification or amendment that the Debtors believe to be immaterial to the U.S. Trustee and counsel to the Committee, if any, which parties may object to such modification or amendment, in writing, within five (5) Business Days from the date of the transmittal of such notice (which, to the extent such contact information for such parties is known to the Debtors, shall be transmitted by fax or e-mail, and, if not known, by overnight mail); provided, further, that if such objection is timely provided, then such modification or amendment shall be permitted only pursuant to an order of this Court, the entry of which may be sought on an expedited basis.

10. Superpriority Claims and DIP Liens. In respect of the DIP Obligations under the DIP Credit Agreement, the other DIP Loan Documents and this Interim Order, the DIP Lenders are granted the following with respect to the Debtors, their respective estates and all DIP Collateral:

(a) a superpriority administrative expense claim pursuant to section 364(c)(1) Bankruptcy Code with the priority specified in sections 503(b) and 507(b) of the Bankruptcy Code (including the kinds specified in or arising or ordered pursuant to sections 105(a), 328, 330, 331, 503(b), 506(c)(subject to and effective upon entry of a Final Order), 507(a)(other than 507(a)(1)), 507(b), 546(c) and 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment), and the Carve-Out (the “DIP Superpriority Claims”); provided that pursuant to applicable bankruptcy law, the DIP Superpriority Claims does not affect the status and superior priority of any liens, including the liens of the DIP Lenders, the Prepetition Secured Parties and the holder of any Permitted Prior Senior Lien (defined below).

(b) a first priority, priming security interest in and lien pursuant to section 364(d)(1) of the Bankruptcy Code on all encumbered property of the Debtors and their estates (the “Section 364(d)(1) Liens”), which Section 364(d)(1) Liens shall be senior to any existing liens or claims, subject only to (i) the Carve-Out and (ii) liens on property of the Debtors (including the proceeds of such property) that are in existence on the Petition Date but only, if applicable, (A) to the extent a lien on any property is valid, perfected, and not avoidable, (B) the lien on such property (or the proceeds of such property, as applicable) on the Petition Date is a valid, perfected and non-avoidable Permitted Lien (defined in the Credit Agreement) senior in priority to the prepetition liens on such property or (C) valid, non-avoidable liens that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code (the foregoing clauses (A)-(C) being referred to collectively as the “Permitted Prior Senior Liens”);⁴

(c) a first priority security interest and lien pursuant to section 364(c)(2) of the Bankruptcy Code on all unencumbered property of the Debtors (the “Section 364(c)(2) Liens”), including, subject to entry of the Final Order, Avoidance Action Proceeds, which Section 364(c)(2) Liens shall be subject only to the Carve-Out; and

(d) a junior security interest and lien pursuant to section 364(c)(3) of the Bankruptcy Code on all property of the Debtors and their estates that is subject to a Permitted Prior Senior Lien (collectively, the “Section 364(c)(3) Liens”), which Section 364(c)(3) Liens are also subject to the Carve-Out. The Section 364(d)(1) Liens, Section 364(c)(2) Liens, and Section 364(c)(3) Liens shall be collectively referred to as the “DIP Liens.”

11. DIP Collateral. The DIP Liens of the DIP Lenders under the DIP Loan

Documents and as approved and perfected by this Interim Order include, inter alia, liens upon and security interests in (i) all of those items and types of collateral in which security interests may be created under Article 9 of the Uniform Commercial Code, (ii) to the extent not expressly prohibited by law or contract, all of those items and types of collateral not governed by Article 9 of the Uniform Commercial Code, including, without limitation, licenses issued by any federal or state regulatory authority, any leasehold or other real property interests, and commercial tort claims of the Debtors, (iii) any and all other collateral of any nature or form, and (iv) the products, rents, offspring, profits, and proceeds of any of the foregoing (collectively, (i)-(iv), the “DIP Collateral”). None of the DIP Obligations, DIP Liens or DIP Superpriority Claims shall (a) be subject to or *pari passu* with any lien or security interest that is avoided and preserved for the benefit of the Debtors’ estates under section 551 of the Bankruptcy Code, (b) be subject to or *pari passu* with any inter-company claim, whether secured or unsecured, of any Debtor or any domestic or foreign subsidiary or affiliate of any Debtor, (c) be subject to sections 510, 549, or 550 of the Bankruptcy Code or (d) hereafter be subordinated to or made *pari passu* with any other lien or security interest under sections 361, 363 or 364 of the Bankruptcy Code or otherwise, except as expressly provided in this Interim Order.

12. Carve-Out.

(a) Generally. The DIP Liens, the DIP Superpriority Claims, the liens of the Prepetition Secured Parties, the Adequate Protection Liens, and the Section 507(b) Claims (defined below) of the Prepetition Secured Parties, shall be subject to the payment, without duplication, of the following fees and expenses (the amounts set forth below, together with the limitations set forth therein, collectively, the “Carve-Out”) from, at the Debtors’ discretion, any of loan proceeds of the DIP Facility, Cash Collateral or proceeds resulting from liquidation of

DIP Collateral or Prepetition Collateral: (i) fees payable to the Clerk of Court, and statutory fees payable to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6), together with the statutory rate of interest, which shall not be limited by any budget (“Statutory Fees”); and (ii) the reasonable fee and expense claims of the respective retained professionals of the Debtors and the Committee, if any, that have been approved by this Court at any time during the Chapter 11 Cases pursuant to sections 330 and 331 of the Bankruptcy Code including any interim approval as set forth in any procedures approved by the Court relating to the interim approval of fees and expenses of such retained professionals (the Court approved professionals of the Debtors and any Committee are collectively referred to as the “Retained Professionals”), which were incurred (A) on and after the Petition Date and through and including the Carve-Out Trigger Date (defined below) in an aggregate amount not exceeding the amount reflected in the Approved Budget, and (B) after the Carve-Out Trigger Date in an aggregate amount not exceeding \$500,000 for all Retained Professionals; provided that, in each case, such fees and expenses of the Retained Professionals are ultimately allowed on a final basis by this Court pursuant to sections 330 and 331 of the Bankruptcy Code or otherwise and are not excluded from the Carve-Out under Paragraph 17 of this Interim Order (nothing herein shall waive the right of any party in interest to object to the allowance of any such fees and expenses).

(b) Carve-Out Trigger Date. As used herein, the term “Carve-Out Trigger Date” means the date on which the DIP Lenders provide written notice to the Debtors, the U.S. Trustee and counsel to the Committee, if any, that the Carve-Out is invoked, which notice may be delivered only on or after the occurrence of an Event of Default under the DIP Loan Documents.

(c) Reduction of Amounts. The fixed dollar amount available to be paid under the Carve-Out following the Carve-Out Trigger Date on account of allowed fees and expenses incurred after the Carve-Out Trigger Date as set forth in subsection (a)(B) above shall be reduced, dollar-for-dollar, by the aggregate amount of payments made after the Carve-Out Trigger Date on account of fees and expenses incurred after the Carve-Out Trigger Date to Retained Professionals (whether from Cash Collateral, any proceeds of the DIP Financing, or otherwise).

(d) Reservation of Rights. The DIP Lenders reserve their rights to object to the allowance of any fees and expenses, including any fees and expenses sought that are not provided for in the Approved Budget. The payment of any fees or expenses of the Retained Professionals and reasonable expenses of members of the Committee pursuant to the Carve-Out shall not, and shall not be deemed to (i) reduce any Debtors' obligations owed to any of the DIP Lenders, Prepetition Secured Parties or to any holder of a Permitted Prior Senior Lien, or (ii) modify, alter or otherwise affect any of the liens and security interests of such parties in the DIP Collateral or Prepetition Collateral (or their respective claims against the Debtors). The DIP Lenders and Prepetition Secured Parties shall not be responsible for the direct payment or reimbursement of any fees or disbursements of any Retained Professionals (or of any other entity) incurred in connection with the Chapter 11 Cases or any successor cases, and nothing in this Interim Order or otherwise shall be construed to obligate such parties in any way directly to pay such compensation to or to reimburse such expenses.

13. Waiver of Right to Surcharge. Subject to and effective upon entry of the Final Order, in light of (i) the consent of the DIP Lenders to the current payment of administrative expenses of the Debtors' estates in accordance with the Approved Budget, (ii) the agreement of

the DIP Lenders to subordinate their Superpriority Claims to the Carve-Out and (iii) the agreement of the DIP Lenders to subordinate their DIP Liens to the Carve-Out and Permitted Prior Senior Liens, the DIP Lenders and Prepetition Secured Parties are each entitled to a waiver of (a) the provisions of section 506(c) of the Bankruptcy Code and (b) any “equities of the case” claims or other claims under sections 105(a) or 552(b) of the Bankruptcy Code. Upon entry of the Final Order, except for the Carve-Out, no costs or expenses of administration or other charge, lien, assessment or claim incurred at any time (including, without limitation, any expenses set forth in the Approved Budget) by any of the Debtors or any other person or entity shall be imposed or charged against any or all of the DIP Collateral, the DIP Lenders, the Prepetition Collateral, and the Prepetition Secured Parties or their respective claims or recoveries under the Bankruptcy Code, including sections 105(a), 506(c), 552(b) thereof, or otherwise, and the Debtors, on behalf of their estates, waive any such rights. It is expressly understood by all parties that in making all such undertakings and proceeding in compliance with the Approved Budget, this Interim Order and the DIP Loan Documents, the DIP Lenders and Prepetition Secured Parties have each relied on the foregoing provisions of this Paragraph. Notwithstanding any approval of or consent to the Approved Budget, nothing in this Interim Order shall constitute or be deemed to constitute the consent by any of the DIP Lenders and the Prepetition Secured Parties to the imposition of any costs or expense of administration or other charge, lien, assessment or claim (including, without limitation, any amounts set forth in the Approved Budget) against such party, its claims or its collateral under sections 105(a), 506(c) or 552(b) of the Bankruptcy Code or otherwise and no such consent shall be implied from any other action or inaction by such parties.

14. Automatic Perfection.

(a) The (i) DIP Liens granted to the DIP Lenders pursuant to this Interim Order and the DIP Loan Documents and (ii) Adequate Protection Liens granted pursuant to this Interim Order to the Prepetition Secured Parties shall be valid, enforceable, and perfected by operation of law upon entry of this Interim Order by this Court without any further action by any party. Neither the DIP Lenders in respect of the DIP Liens, nor the Prepetition Secured Parties in respect of the Adequate Protection Liens, shall be required to enter into or to obtain any control agreements, landlord waivers (unless required by law or contract), mortgagee waivers, bailee waivers or warehouseman waivers or to give, file or record any UCC-1 financing statements, mortgages, deeds of trust, leasehold mortgages, notices to account Debtors or other third parties, notices of lien or similar instruments in any jurisdiction (including filings with the United States Patent and Trademark Office, the United States Copyright Office or any similar agency in respect of trademarks, copyrights, trade names or patents with respect to intellectual property) (collectively, the "Perfection Documents"), or obtain consents from any licensor or similarly situated party in interest, or take any other action to validate, record or perfect the DIP Liens granted under the DIP Loan Documents and this Interim Order and the Adequate Protection Liens granted under this Interim Order and approved hereby, all of which are automatically and immediately perfected by the entry of this Interim Order. If the DIP Lenders or Prepetition Secured Parties, independently or collectively, in each of their sole discretion respectively, choose to obtain, enter into, give, record or file any Perfection Documents, (x) all such Perfection Documents shall be deemed to have been obtained, entered into, given, recorded or filed, as the case may be, as of the Petition Date, (y) no defect in any such act shall affect or impair the validity, perfection, priority or enforceability of the DIP Liens and Adequate

Protection Liens, and (z) such liens shall have the relative priority set forth herein notwithstanding the timing of filing of any such Perfection Documents. In lieu of optional recording or filing any Perfection Documents, the DIP Lenders, the DIP Agent and the Prepetition Agent may, in each of their sole discretion, choose to record or file a true and complete copy of this Interim Order in any place that any Perfection Document would or could be recorded or filed (which may include a description of the collateral appropriate to be indicated in a recording or filing at such place of recording or filing), and such recording or filing by the DIP Lenders, the DIP Agent or the Prepetition Agent shall have the same effect as if such Perfection Document had been filed or recorded as of the Petition Date. In addition, the DIP Lenders, the DIP Agent and the Prepetition Agent may, in their reasonable discretion, require the Debtors to file or record any Perfection Document. The Debtors are authorized to execute and deliver promptly upon demand to the DIP Lenders, the DIP Agent and the Prepetition Agent all Perfection Documents as they may reasonably request.

(b) Until the indefeasible payment in full in cash of the DIP Obligations, DIP Collateral and Perfection Documents evidencing liens subordinate to the DIP Liens in the possession, custody or control of the Prepetition Secured Parties (or in the possession, custody or control of agents or bailees of the Prepetition Secured Parties) shall be deemed to be sufficient for the purposes of perfecting the security interests granted in such DIP Collateral and the Prepetition Secured Parties (or their agents or bailees, as applicable) shall, to the extent applicable, be an agent or bailee, as the case may be, on behalf of and for the benefit of the DIP Lenders for the purposes of perfecting the security interests granted in such DIP Collateral. Upon an Event of Default and the request of the DIP Lenders, and subject to the provisions of Paragraph 22 below, the Prepetition Secured Parties (or their agents or bailees, as applicable)

shall transfer, assign and otherwise convey, as applicable, any DIP Collateral and Perfection Documents in their possession, custody or control to the DIP Lenders for the enforcement of rights and remedies under the DIP Loan Documents, and, upon the indefeasible payment in full in cash of all DIP Obligations, the DIP Lenders (or their agents or bailees, as applicable) shall transfer, assign and otherwise convey any Prepetition Collateral and Perfection Documents to the Prepetition Secured Parties. The authorization, grant, perfection, scope and vesting of the DIP Liens, the DIP Superpriority Claims and the DIP Obligations are fully effectuated by this Interim Order and any security agreements, collateral agreements or other Perfection Documents executed as part of the DIP Loan Documents shall supplement the authorization, grant, perfection, scope and vesting set forth herein as well as the powers and protections accorded to the DIP Lenders, but in no event shall any such security agreement, collateral agreement or other Perfection Document be interpreted as a limitation of such provisions of this Interim Order.

15. Stipulations and Waivers: Subject to and without prejudice to the rights of any Committee and any other party with standing as set forth in Paragraph 16 below, the Debtors admit, stipulate, and agree to the following, and make the releases and waivers set forth below, on and as of the Petition Date:

(a) All Prepetition Financing Documents are valid and enforceable by the Prepetition Secured Parties against each of the Debtors in accordance with their respective priorities. With respect to the Prepetition Collateral, the Prepetition Secured Parties have valid, duly-authorized, perfected, enforceable, non-voidable and binding security interests in, and liens on, substantially all of the Prepetition Collateral as of the Petition Date (with the Prepetition Secured Parties holding junior liens on all Collateral), including the Cash Collateral. The Debtors further admit, acknowledge and agree that (i) the Prepetition Secured Obligations

constitute legal, valid and binding obligations of each of the Debtors, (ii) no offsets, defenses or counterclaims to the Prepetition Secured Obligations exist, and (iii) no portion of the Prepetition Secured Obligations is subject to avoidance, disallowance, reduction or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

(b) The Debtors have no valid claims (as such term is defined in section 101(5) of the Bankruptcy Code) or causes of action against the Prepetition Secured Parties with respect to the Prepetition Financing Documents, whether arising at law, in contract or at equity, including any recharacterization, subordination, avoidance or other claims arising under or pursuant to sections 105, 510 or 542 through 553, inclusive, of the Bankruptcy Code.

(c) As of the Petition Date, the Prepetition Secured Obligations for which the Debtors, without defense, counterclaim or offset of any kind, were truly and justly indebted to the Prepetition Secured Parties are, not less than the amount set forth in paragraph C of this Interim Order, in aggregate principal amount of Prepetition Secured Obligations; plus, in each case, all accrued or hereafter accruing and unpaid interest thereon and any additional amounts, charges, fees and expenses (including any attorneys', accountants', appraisers' and financial advisors' fees and expenses that are chargeable or reimbursable under the Prepetition Financing Documents) now or hereafter due under the Prepetition Financing Documents.

(d) Subject to and effective upon the entry of the Final Order, the Debtors do not have, and hereby forever release and waive, any claims, objections, challenges, counterclaims, causes of action, defenses, setoff rights, obligations, rights to subordination or any other liabilities, whether arising under the Bankruptcy Code or applicable non-bankruptcy law, against the Prepetition Secured Parties, or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees from the beginning of time

through the Petition Date; provided that the Debtors do not waive any rights set forth in Paragraph 22.

16. Effect of Stipulations on Third Parties.

(a) Generally. The admissions, stipulations, agreements, releases, and waivers set forth in the immediately preceding Paragraph 15 and Paragraph C above of this Interim Order (collectively, the “Prepetition Lien and Claim Matters”) are and shall be binding on the Debtors, any subsequent trustee (including any chapter 7 trustee), responsible person, examiner with expanded powers, any other estate representative and all parties-in-interest and all of their successors-in-interest and assigns, including, without limitation, the Committee, if any, unless, and solely to the extent that, a party-in-interest with standing and requisite authority, (i) has timely filed the appropriate pleadings, and timely commenced the appropriate proceeding required under the Bankruptcy Code and Bankruptcy Rules, including, without limitation, as required pursuant to Part VII of the Bankruptcy Rules (in each case subject to the limitations set forth in Paragraph 17 of this Interim Order) challenging the Prepetition Lien and Claim Matters (each such proceeding or appropriate pleading commencing a proceeding or other contested matter, a “Challenge”) by the 40 days from entry of this Interim Order for all parties other than a Committee, and 60 days from formation of a Committee for the Committee, as such applicable date may be extended in writing from time to time in the sole discretion of the Prepetition Secured Parties or by this Court for good cause shown pursuant to an application filed by a party in interest prior to the expiration of the Challenge Deadline (the “Challenge Deadline”), provided, however, that if a chapter 7 or chapter 11 trustee is appointed prior to the Challenge Deadline, the Challenge Deadline shall be extended for the chapter 7 or chapter 11 trustee until 75 days after their appointment, and (ii) this Court enters judgment in favor of the plaintiff or

movant in any such timely and properly commenced Challenge proceeding and any such judgment has become a final judgment that is not subject to any further review or appeal. For the avoidance of doubt, any trustee appointed or elected in these Chapter 11 Cases, or any other party in interest who commences a Challenge on behalf of the Debtors' estates shall, until the expiration of the period provided herein for asserting Challenges, and thereafter for the duration of any adversary proceeding or contested matter commenced pursuant to this Paragraph), be deemed to be a party other than the Debtors and shall not, for purposes of such adversary proceeding or contested matter, be bound by the acknowledgments, admissions, confirmations and stipulations of the Debtors in this Interim Order. The filing of a motion seeking standing to file a Challenge before the Challenge Deadline, which attaches a proposed Challenge, shall extend the Challenge Deadline with respect to that party until three business days after the Court approves the standing motion, or such other time period ordered by the Court in approving the standing motion.

(b) Binding Effect. To the extent any Prepetition Lien and Claim Matters are not subject to a Challenge timely and properly commenced by the Challenge Deadline, or to the extent any Challenge does not result in a final and non-appealable judgment or order of this Court that is inconsistent with the Prepetition Lien and Claim Matters, then, without further notice, motion or application to, order of, or hearing before, this Court and without the need or requirement to file any proof of claim, the Prepetition Lien and Claim Matters shall pursuant to this Interim Order become binding, conclusive and final on any person, entity or party-in-interest in the Chapter 11 Cases, and their successors and assigns, and in any successor cases for all purposes and shall not be subject to challenge or objection by any party-in-interest, including, without limitation, a trustee, responsible individual, examiner with expanded powers or other

representative of the Debtors' estates. Notwithstanding anything to the contrary herein, if any such proceeding is properly and timely commenced, the Prepetition Lien and Claim Matters shall nonetheless remain binding unless such Challenge is successful pursuant to an order or judgment that is final and no longer subject to appeal or further review. To the extent any such Challenge proceeding is timely and properly commenced, the Prepetition Secured Parties shall be entitled to include the related costs and expenses, including but not limited to reasonable attorneys' fees, incurred in defending themselves in any such proceeding, pursuant to the Prepetition Financing Documents.

17. Limitation on Use of Proceeds. Notwithstanding anything in this Interim Order to the contrary, no portion or proceeds of the DIP Facility, the DIP Collateral, the Prepetition Collateral, the Cash Collateral, or the Carve-Out, and no disbursements set forth in the Approved Budget shall be used for the payment of professional fees, disbursements, costs or expenses incurred in connection with: (a) objecting, contesting or raising any defense to the validity, perfection, priority, or enforceability of, or any amount due under, the DIP Loan Documents or the Prepetition Financing Documents or any security interests, liens or claims granted under this Interim Order, the DIP Loan Documents, or the Prepetition Financing Documents to secure such amounts; (b) asserting any Challenges, claims, actions or causes of action against any of the DIP Lenders, the Prepetition Secured Parties or any of their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys or advisors; or (c) contesting the Prepetition Lien and Claim Matters; provided that no more than \$25,000 in the aggregate of the proceeds of the DIP Facility, the DIP Collateral, the Prepetition Collateral, the Cash Collateral, and the Carve-Out may be used by the Committee, if any, to investigate (but not prosecute or Challenge) Prepetition Lien and Claim Matters.

18. Avoidance Action Proceeds. Subject to and effective upon entry of the Final Order, (i) Avoidance Action Proceeds shall be DIP Collateral and shall be subject to the DIP Liens and DIP Superpriority Claims, and (ii) subject and subordinate to the DIP Liens and DIP Superpriority Claims, Avoidance Action Proceeds shall be subject to the Adequate Protection Liens and Section 507(b) Claims of the Prepetition Secured Parties.

19. Adequate Protection. The Prepetition Secured Parties agree, and this Court finds, that the adequate protection provided in this Interim Order (the "Adequate Protection"), including, without limitation, in this Paragraph, is reasonable and calculated to protect the interests of the Prepetition Secured Parties. Notwithstanding any other provision hereof, the grant of Adequate Protection to the Prepetition Secured Parties pursuant hereto is without prejudice to the right of the Prepetition Secured Parties to seek adequate protection or to seek modification of a grant of Adequate Protection provided in this Interim Order so as to provide different or additional adequate protection, and without prejudice to the right of the Debtors or any other party in interest to contest any such request.

(a) Adequate Protection Liens. As adequate protection, the Prepetition Agent, in accordance with sections 361, 363(e) and 364(d) of the Bankruptcy Code, is hereby granted, for the benefit of the Prepetition Secured Parties, valid, binding, enforceable and perfected junior security interests and replacement liens (the "Adequate Protection Liens") upon all property of the Debtors whether arising prepetition or postpetition of any nature whatsoever, wherever located, in each case to secure the Prepetition Secured Obligations against, without duplication, the aggregate diminution in value, if any, subsequent to the Petition Date, in the value of the Prepetition Collateral by: (i) the reduction in Prepetition Collateral available to satisfy Prepetition Secured Obligations as a consequence of the priming of the Prepetition Secured

Obligations by the DIP Obligations; (ii) depreciation, use, sale, loss, decline in market price or otherwise of the Prepetition Collateral as a consequence of the use, sale or lease of the Prepetition Collateral by the Debtors or as a result of the imposition of the automatic stay; and (iii) the sum of the aggregate amount of all Cash Collateral and the aggregate value of all non-cash Prepetition Collateral which is applied in payment of the DIP Obligations or any other obligations or expenses of the Debtors other than Prepetition Secured Obligations, but only to the extent of any decrease in the value of the Prepetition Collateral on account of subsections (i), (ii) and (iii) above, all to the extent authorized by the Bankruptcy Code. The Adequate Protection Liens are subject and subordinate to (A) the Carve-Out, (B) the DIP Obligations, the DIP Liens and the DIP Superpriority Claims, (C) the Permitted Prior Senior Liens. The Adequate Protection Liens shall not (x) be subject to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code, (y) subject to any inter-company claim, whether secured or unsecured, of the Debtors or any domestic or foreign subsidiary or affiliate of the Debtors, or (z) hereafter be subordinated to or made *pari passu* with any other lien or security interest under sections 361, 363 or 364 of the Bankruptcy Code or otherwise except as expressly provided in this Interim Order and the DIP Loan Documents, including, without limitation, with respect to the Carve-Out, Permitted Prior Senior Liens, DIP Obligations, DIP Liens and DIP Superpriority Claims.

(b) Section 507(b) Claims. To the extent that the Prepetition Agent shall hold claims allowable under sections 503(b) and 507(a)(2) of the Bankruptcy Code, notwithstanding the provision of Adequate Protection hereunder, the Prepetition Agent, for the benefit of the Prepetition Secured Parties, is hereby each granted an administrative expense claim pursuant to section 507(b) of the Bankruptcy Code (each, a "Section 507(b) Claim") with priority over all

administrative expense claims, priority claims and unsecured claims against the Debtors and their estates, now existing or hereafter arising, of the kind specified in section 507(b) of the Bankruptcy Code, but in all cases subject and subordinate to the Carve-Out, the Permitted Prior Senior Liens, DIP Obligations, DIP Liens and DIP Superpriority Claims.

(c) Expense Reimbursement. The Debtors shall pay the reasonable and documented prepetition and postpetition fees and expenses of the attorneys and advisors (each, a “Prepetition Lenders’ Advisor”) for the Prepetition Agent and the Prepetition Lenders as provided under the Prepetition Financing Documents. No Prepetition Lenders’ Advisor shall be required to file an application seeking compensation for services or reimbursement of expenses with this Court. Each Prepetition Lenders’ Advisor seeking compensation for services or reimbursement of expenses under the Prepetition Financing Documents, this Interim Order or a Final Order shall transmit a summary invoice to counsel to the Debtors, the U.S. Trustee and the Committee, if any, which summary invoices shall include a general description of the nature of the matters worked on, a list of professionals who worked on the matter, their hourly rate (if such professionals bill at an hourly rate), the number of hours each professional billed and, with respect to the invoices of law firms, the year of law school graduation for each attorney; provided, however, that the U.S. Trustee reserves the right to seek copies of invoices containing the detailed time entries of any professional. Any summary invoice may be reasonably redacted by the Prepetition Lenders’ Advisor to protect from disclosure any confidential information or information otherwise subject to a protective privilege such as attorney-client privilege or attorney work-product privilege, provided, however, that U.S. Trustee reserves his right to seek to obtain unredacted copies of such invoices. The Debtors, U.S. Trustee and Committee, if any, shall have ten (10) Business Days in which to raise an objection to the payment of any fees and

expenses of such attorneys and advisors. Upon the expiration of such ten (10) Business Day period, the Debtors shall promptly pay any portion of such fees and expenses to which no objection has been interposed. To the extent any objection has been interposed and cannot be consensually resolved, the dispute will be scheduled for adjudication at the next regularly-scheduled omnibus hearing in the Chapter 11 Cases.

(d) All Adequate Protection Liens granted by this Interim Order are subject to being set aside, all Section 507(b) Claims granted by this Interim Order are subject to being disallowed, and all Adequate Protection payments authorized by this Interim Order, including by paragraph 19(c) hereof, are subject to disgorgement, if and to the extent that the underlying Prepetition Lien or claim arising under the Prepetition Financing Documents is successfully challenged pursuant to paragraph 16 of this Interim Order.

20. Milestones. As a condition to the DIP Facility and the use of Cash Collateral, the Debtors shall comply with the milestones attached hereto as Exhibit C (the “Milestones”); provided that Milestones 2(b) and (c) shall only be effective upon entry of the Final Order. For the avoidance of doubt, the failure of the Debtors to comply with any of the Milestones (a) shall constitute an Event of Default under the DIP Facility and this Interim Order, (b) result in the automatic termination of the Debtors’ authority to use Cash Collateral under this Interim Order, and (c) permit the DIP Agent, subject to Paragraph 22, to exercise the rights and remedies provided for in this Interim Order and the DIP Facility.

21. Expense Reimbursement. The Debtors shall indemnify the DIP Agent, the DIP Lenders and their affiliates, successors and assigns and the officers, directors, employees, agents, advisors, controlling persons and members of each of the foregoing (each, an “Indemnified Person”) and hold each of them harmless from and against all costs, expenses (including

reasonable fees, disbursements and other charges of counsel) and liabilities of such Indemnified Person arising out of or relating to any claim or any litigation or other proceeding (regardless of whether such Indemnified Person is a party thereto and regardless of whether such matter is initiated by a third party or by the Debtors or any of their affiliates or shareholders) that relates to the DIP Facility or this Interim Order, including the financing contemplated hereby, the Chapter 11 Cases, or any transactions in connection therewith; provided that no Indemnified Person will be indemnified for any cost, expense or liability to the extent determined in a final, non-appealable judgment of a court of competent jurisdiction to have resulted from such Person's gross negligence, willful misconduct or fraud. Other than with respect to the proviso at the end of the immediately preceding sentence, nothing herein is meant to limit the scope of any indemnity provided for the benefit of the DIP Lenders in the DIP Loan Documents.

22. Remedies. Upon the occurrence of an Event of Default under the DIP Loan Documents, and in each case without further notice, motion or application to, order of, or hearing before, this Court (other than such notice required by this Paragraph), subject to the full funding of the Carve-Out, the DIP Lenders are granted leave to cease making financial accommodations to the Debtors, accelerate any or all of the DIP Obligations and declare such DIP Obligations to be immediately due and payable in full, in cash. Further, the DIP Agent may, and at the request of the Required Lenders shall, exercise all rights and remedies under the DIP Loan Documents and enforce all other rights and remedies under applicable law. In that regard, the automatic stay provisions of Bankruptcy Code section 362 are modified to the extent necessary to permit the DIP Agent to exercise all rights and remedies under the DIP Loan Documents upon the occurrence of an Event of Default and after the giving of three (3) Business Days' (any such three (3) Business Day period of time, the "Default Notice Period") written notice by the DIP

Agent to the Debtors, the Committee, if any, the U.S. Trustee, and their respective counsels of the occurrence of such Event of Default unless such Event of Default is cured by the Debtors prior to the expiration of such Default Notice Period; provided, that, during the Default Notice Period, the Debtors shall be entitled to continue to use Cash Collateral in accordance with the terms of this Interim Order and in accordance with the Approved Budget. The Debtors may seek an emergency hearing for the purpose of determining whether an Event of Default has occurred and is continuing.

23. Access to DIP Collateral. Subject to appropriate notice and subject to an effective upon entry of the Final Order, notwithstanding anything contained herein to the contrary and without limiting any other rights or remedies of the DIP Lenders contained in this Interim Order or the DIP Loan Documents, or otherwise available at law or in equity, and subject to the terms of the DIP Loan Documents, upon written notice to the landlord of any leased premises that an Event of Default has occurred and is continuing under the DIP Loan Documents, the DIP Lenders may, subject to the applicable notice provisions, if any, in this Interim Order and any separate agreement by and between such landlord and the DIP Lenders, and subject to applicable non-bankruptcy law, enter upon any leased premises of the Debtors or any other party for the purpose of exercising any remedy with respect to DIP Collateral located thereon and shall be entitled to all of the Debtors' rights and privileges as lessee under such lease without interference from the landlords thereunder. Nothing herein shall require the DIP Lenders to assume any lease as a condition to the rights afforded to the DIP Lenders in this Paragraph.

24. Insurance Policies. Effective as of entry of this Interim Order, the Debtors consent to, and the DIP Agent shall be, and shall be deemed to be, without any further action or notice, named as additional insureds and loss payees on each insurance policy maintained by the

Debtors that in any way relates to DIP Collateral, as applicable.

25. Successors and Assigns. This Interim Order, the DIP Credit Agreement and the other DIP Loan Documents shall be binding upon all parties in interest in these Chapter 11 Cases, including any subsequently appointed trustee, responsible individual, examiner with expanded powers, or other estate representative.

26. Survival. The provisions of this Interim Order and any actions taken pursuant hereto shall survive the entry of any subsequent order (other than entry of any subsequent Final Order which shall supersede this Interim Order), and the rights, remedies, powers, privileges, liens and priorities of the DIP Lenders and the Prepetition Secured Parties provided for in this Interim Order, in any DIP Loan Document and any Prepetition Financing Document shall not be modified, altered or impaired in any manner without their consent (which consent shall not be unreasonably withheld) by any order, including any order (i) confirming any plan of reorganization or liquidation in any of the Chapter 11 Cases (and, to the extent not indefeasibly paid in full in cash, the DIP Obligations shall not be discharged by the entry of any such order, each of the Debtors having hereby waived such discharge pursuant to section 1141(d)(4) of the Bankruptcy Code), (ii) converting any of the Chapter 11 Cases to a Chapter 7 case, (iii) dismissing any of the Chapter 11 Cases, or (iv) any superseding cases under the Bankruptcy Code. The terms and provisions of this Interim Order as well as the DIP Obligations, the DIP Liens, the DIP Superpriority Claim, the DIP Loan Documents, and the Adequate Protection Liens shall continue in full force and effect notwithstanding the entry of any such order, and such rights, claims and liens shall maintain their priority as provided by this Interim Order and the DIP Loan Documents to the maximum extent permitted by law until all of the DIP Obligations are indefeasibly paid in full, in cash.

27. Good Faith. The DIP Facility, the use of Cash Collateral, and the other provisions of this Interim Order, the DIP Credit Agreement and the other DIP Loan Documents have been negotiated in good faith and at arm's length among the Debtors, the DIP Lenders and the Prepetition Secured Parties, and the extension of the financial accommodations to the Debtors by the DIP Lenders and Prepetition Secured Parties pursuant to this Interim Order and the DIP Loan Documents have been and are deemed to be extended in good faith, as that term is used in section 364(e) of the Bankruptcy Code. The DIP Lenders and the Prepetition Secured Parties are entitled to, and are hereby granted, the full protections of section 364(e) of the Bankruptcy Code.

28. No Waiver. This Interim Order shall not be construed in any way as a waiver or relinquishment of any rights that the DIP Lenders and Prepetition Secured Parties may have to bring or be heard on any matter brought before this Court. Any consent, modification, declaration of default, or exercise of remedies or non-exercise of remedies under or in connection with this Interim Order or the DIP Loan Documents shall require the approval of the DIP Lenders and shall not be deemed a waiver or relinquishment of any of the rights of the DIP Lenders. Except as expressly set forth herein, nothing contained in this Interim Order (including without limitation, the authorization to use any Cash Collateral) shall impair, prejudice or modify any rights, claims or defenses available in law or equity to the DIP Lenders or the Prepetition Secured Parties, including, without limitation, the right (a) to request conversion of any of the Debtors' Chapter 11 Cases to Chapter 7, (b) to seek to terminate the exclusive rights of the Debtors to file, and solicit acceptances of, a plan of reorganization under section 1121 of the Bankruptcy Code or propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans, (c) to object to the fees and expenses of any Retained Professionals and

(d) to seek relief from the automatic stay. All such rights, claims and defenses, and the rights, objections and defenses of all parties in connection therewith, are hereby reserved.

29. Additional Defaults. In addition, and without limitation of the Events of Default set forth in and defined in the DIP Loan Documents or this Interim Order, it shall constitute an “Event of Default” under the DIP Loan Documents if an order is entered dismissing or converting the Chapter 11 Cases under section 1112 of the Bankruptcy Code or appointing a Chapter 11 trustee or an examiner or other estate representative with expanded powers. Any order for dismissal or conversion shall be automatically deemed to preserve the rights of the DIP Lenders and the Prepetition Secured Parties under this Interim Order and shall preserve the Carve-Out. It shall be an Event of Default for the sale of substantially all of the assets of the Debtors, unless, upon the closing of such transaction, all liens securing the DIP Obligations and the Prepetition Secured Obligations (in their respective priority) are transferred to the proceeds of such sale. If an order dismissing the Chapter 11 Cases under section 305 or 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall be deemed to provide that (a) the DIP Liens and the DIP Superpriority Claims granted to the DIP Lenders hereunder and in the DIP Loan Documents, as the case may be, and the Carve-Out shall continue in full force and effect, shall remain binding on all parties in interest and shall maintain their priorities as provided in this Interim Order until all DIP Obligations and indebtedness owing to the DIP Lenders under the DIP Loan Documents shall have been indefeasibly paid in full in cash and the DIP Lenders’ obligations and commitments under the DIP Loan Documents shall have been terminated.

30. Order Governs. In the event of any conflict between the provisions of this Interim Order and the DIP Loan Documents, the Motion, or any supporting documents, the provisions of this Interim Order shall control and govern to the extent of such conflicts.

31. Right to Credit Bid. Pursuant to section 363(k) of the Bankruptcy Code, (i) the DIP Agent shall have the exclusive right to use the DIP Obligations, DIP Liens and DIP Superpriority Claim to credit bid with respect to any bulk or piecemeal sale of all or any portion of the DIP Collateral, and (ii) the Prepetition Agent (or its designee or subagent, including any Prepetition Lender or the DIP Agent) shall have the exclusive right to use the Prepetition Secured Obligations and the Adequate Protection Liens and Section 507(b) Claims to credit bid with respect to any bulk or piecemeal sale of all or any portion of the Prepetition Collateral.

32. No Marshaling. Subject to and effective upon entry of the Final Order, none of the DIP Lenders, DIP Collateral, Prepetition Secured Parties or Prepetition Collateral shall be subject to the doctrine of marshaling or any similar doctrine or law of any jurisdiction requiring the recovery upon or application to any indebtedness of any collateral or proceeds in any particular order or action.

33. Waiver of Requirement to File Proofs of Claim.

(a) The DIP Lenders shall not be required to file proofs of claim in the Chapter 11 Cases or, subject to and effective upon the entry of the Final Order, any successor chapter 7 case, in order to maintain their claims for payment of the DIP Obligations under the applicable DIP Loan Documents. The statements of claim in respect of the DIP Obligations set forth in this Interim Order, together with the evidence accompanying the Motion and presented at the Interim Hearing are deemed sufficient to and do constitute proofs of claim in respect of such obligations and such secured status.

(b) The Prepetition Secured Parties shall not be required to file proofs of claim in the Chapter 11 Cases or, subject to and effective upon the entry of the Final Order, any successor chapter 7 case, in order to maintain their respective claims for payment of the Prepetition Obligations under the applicable Prepetition Financing Documents. The statements of claim in respect of the Prepetition Obligations set forth in this Interim Order, together with the evidence accompanying the Motion and presented at the Interim Hearing are deemed sufficient to and do constitute proofs of claim in respect of such obligations and such secured status.

R. Orchids Lessor SC. Notwithstanding anything to the contrary herein or in the Motion, Orchids Lessor SC is not a borrower under or guarantor of the DIP Loan, is not pledging any of its assets as collateral to secure the DIP Loan, and is not otherwise a party to any of the DIP Loan Documents. Likewise, the Prepetition Secured Parties are not receiving a replacement or adequate protection lien against or any other rights with respect to Orchids Lessor SC or its assets.

34. Notwithstanding anything to the contrary in this Interim Order, any interest the DIP Lenders and the Prepetition Secured Parties may have in any adequate assurance deposit made by the Debtors pursuant to section 366 of the Bankruptcy Code shall be subordinate to interests of the Debtors' utility providers until such time as the adequate assurance deposit is returned to the Debtors, or as otherwise ordered by the Court.

35. Headings. The headings in this Interim Order are for reference purposes only and will not in any way affect the meaning and interpretation of the terms of this Interim Order.

36. Immediate Effect of Order. This Interim Order shall take effect immediately upon execution hereof, and, notwithstanding anything to the contrary contained in Bankruptcy Rules, including Bankruptcy Rule 4001(a)(3), there shall be no stay of execution of effectiveness

of this Order. All objections to the entry of this Interim Order have been withdrawn or overruled and the Motion is approved on an interim basis on the terms and conditions set forth herein. The Debtors shall promptly mail copies of this Interim Order to the Notice Parties and to counsel to the Committee, if any.

37. Final Hearing. The Final Hearing is scheduled for April [], 2019, at [:] a.m. (prevailing Eastern Time) before this Court. Any objections by creditors or other parties in interest to any provisions of this Interim Order or the Final Order shall be deemed waived unless timely filed and served in accordance with this Paragraph. The Debtors shall promptly serve a notice of entry of this Interim Order and the Final Hearing, together with a copy of this Interim Order, by first class mail, postage prepaid or overnight mail upon the Notice Parties and any Committee (if and when it is appointed); all state taxing authorities in the states in which the Debtors have any tax liabilities; any federal or state regulatory authorities governing the Debtors' industry; and the U.S. Attorney's Office and Delaware Attorney General. The notice of the entry of this Interim Order and the Final Hearing shall state that objections to the entry of the Final Order shall be filed with this Court by no later than [4:00] p.m. (prevailing Eastern Time) on April [], 2019 (the "Objection Deadline"), and served on: (i) counsel for the Debtors, Polsinelli, 222 Delaware Avenue, Suite 1101 Wilmington, DE 19801, Attn. Jerry L. Switzer, Jr. and Christopher A. Ward (jswitzer@polsinelli.com; cward@polsinelli.com); (ii) counsel for the Prepetition Agent, DIP Lenders and DIP Agent, Winston & Strawn LLP, 35 Wacker Dr., Chicago, IL 60601, Attn. Dan McGuire (dmcguire@winston.com); Fox Rothschild LLP, Citizens Bank Center, 919 North Market Street, Suite 300, Wilmington, DE 19899-2323, Attn. Seth Niederman (sniederman@foxrothschild.com); (iii) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Suite 2207,

Wilmington, DE 19801, Attn: Juliet Sarkessian (juliet.m.sarkessian@usdoj.gov); and (iv) counsel to the Committee, if any.

Dated: _____, 2019
Wilmington, Delaware

United States Bankruptcy Judge

Exhibit A

DIP Credit Agreement

Exhibit B

Approved Budget

Exhibit C

Milestones

1. On or prior to April 1, 2019, the Debtors shall have filed a motion to approve the DIP Credit Agreement and the DIP Facility as provided therein. The hearing on the Interim Order shall occur on or prior to April 4, 2019.

2. On or prior to April 1, 2019, the Debtors shall have filed the Sale Motion in the Chapter 11 Cases. Incidental to the filing of such Sale Motion:

(a) On or prior to May 5, 2019, the Debtors shall have obtained approval of the bid procedures from the Bankruptcy Court (satisfactory to the Debtors, the DIP Agent and the Required Lenders) approving bid procedures for the sale of the Debtors' assets and the assumption and assignment of the Debtors' executory contracts and unexpired leases.

(b) On or prior to June 10, 2019, an auction among qualified bidders shall be conducted with the highest and best bid or combination of bids being selected by the Debtors, in consultation with the DIP Agent.

(c) On or prior to June 12, 2019, the Bankruptcy Court shall have conducted a sale hearing with respect to such sale and the Debtors shall have obtained an order of the Bankruptcy Court approving the Sale Motion. The Debtors shall consummate the sale of the assets described therein on or prior to August 16, 2019. Unless the DIP Agent and the Required Lenders otherwise agree, the sale shall be for cash or other proceeds sufficient to pay in full of the Obligations and the outstanding Pre-Petition Liabilities and the proceeds shall be so utilized without further order of the Bankruptcy Court.

3. The Debtors shall have retained as of the Petition Date, and continue to retain during the Chapter 11 Cases, (i) the Interim Chief Strategy Officer and (ii) the Investment Banker, in each case on terms and conditions acceptable to the Debtors, the DIP Administrative Agent and the Required Lenders in their sole and absolute discretion; provided that each of the DIP Agent and the Required Lenders acknowledges that the arrangements in place with the Interim Chief Strategy Officer and the Investment Banker Advisor as of the date of the DIP Credit Agreement are satisfactory to the DIP Agent and the Required Lenders.

Exhibit B to Motion

Option Agreement

OPTION AGREEMENT

This **OPTION AGREEMENT** is made as of April 1, 2019 (this "Option Agreement"), by and between Orchids Investment LLC, a Delaware limited liability company ("Purchaser"), Orchids Paper Products Company, a Delaware corporation ("Orchids"), Orchids Paper Products Company of South Carolina, a Delaware corporation ("Orchids South Carolina") and Orchids Lessor SC, LLC, a South Carolina limited liability company and a wholly owned subsidiary of Orchids ("Orchids SC") (collectively with Orchids and Orchids South Carolina, the "Sellers"). Purchaser and Sellers are collectively referred to herein as the "Parties" and individually as a "Party". Capitalized terms used herein and not otherwise defined have the respective meanings set forth in the Purchase Agreement (as defined below).

RECITALS:

WHEREAS, Sellers are engaged in the business of, directly or indirectly, producing bulk tissue paper and converting and manufacturing such bulk tissue paper into consumer tissue products for sale and distribution (the "Business");

WHEREAS, Sellers intend to file voluntary petitions for relief commencing the cases (collectively, the "Chapter 11 Cases") under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") on or about April 1, 2019 (the date on which such voluntary petitions are filed, the "Petition Date");

WHEREAS, Purchaser desires to grant Sellers the option, on the terms and subject to the conditions set forth herein, to enter into a binding agreement pursuant to which Sellers would sell, convey, assign, transfer and deliver, or cause to be sold, conveyed, assigned, transferred and delivered, to Purchaser, all of the Acquired Assets, and to assign and delegate to the Purchaser, all of the Assumed Liabilities, all in the manner and subject to the terms and conditions set forth herein;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The Option.

Section 1.1. Grant of the Option. Purchaser hereby grants to Sellers the option (the "Option") to enter into a binding agreement in the form attached as Exhibit A hereto (the "Purchase Agreement"), pursuant to which, on the terms and subject to the conditions set forth therein, Sellers would sell, convey, assign, transfer and deliver, or cause to be sold, conveyed, assigned, transferred and delivered, to Purchaser, all of the Acquired Assets, and would assign and delegate to the Purchaser, all of the Assumed Liabilities, all in the manner and subject to the terms and conditions set forth in the Purchase Agreement and in accordance with Sections 105, 363, and 365 of the Bankruptcy Code.

Section 1.2. Exercise of the Option.

(a) Sellers may exercise the Option at any time during the period beginning on June 6, 2019 or June 7, 2019, as applicable (the date that is the bid deadline as set forth in the Sale and Bid Procedures Motion Option) and ending on the commencement of the Sale Hearing (such Sale Hearing shall commence no later than June 12, 2019) (the "Option Period") by executing and delivering to Purchaser a written notice (the "Exercise Notice") stating that Sellers have

elected to exercise the Option and enclosing a counterpart signature page to the Purchaser Agreement, whereupon the Purchaser shall execute and date the Purchase Agreement and the Purchase Agreement shall become a legally binding obligation of the Parties.

(b) If Sellers fail to deliver an Exercise Notice during the Option Period, then Sellers shall be deemed to have elected not to exercise the Option.

2. Representations and Warranties.

Section 2.1. Representations and Warranties of Sellers. Sellers represent and warrant to Purchaser as follows:

(a) **Due Incorporation; Good Standing.** Each Seller is a corporation or limited liability company duly incorporated under the laws of the State of Delaware, and is in good standing thereunder. Subject to the Bankruptcy Code, each Seller has full power and authority to own, use and lease its properties and to conduct its Business as such properties are owned, used or leased and as such Business is currently conducted.

(b) **Authority.** Subject to the entry of the Bid Procedures Order and Sale Order, each Seller has all requisite corporate or limited liability company power and authority, as applicable, to enter into this Option Agreement and to carry out the transactions contemplated hereby, and the execution, delivery and performance of this Option Agreement by each Seller shall be duly and validly authorized and approved by all necessary corporate or limited liability company action, as applicable. Subject to the approval and entry of the Sale Order by the Bankruptcy Court (and assuming the due authorization, execution and delivery by the other Parties hereto), this Option Agreement shall constitute the legal and binding obligation of each Seller, enforceable against each Seller in accordance with its terms, except that the enforceability hereof may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar Laws now or hereafter in effect relating to creditors' rights generally and that the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding may be brought.

Section 2.2. Representations and Warranties of Purchaser. Purchaser represents and warrants to Sellers as follows:

(a) **Purchaser's Organization; Good Standing.** Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, with full power and authority to own, use or lease its properties and to conduct its business as such properties are owned, used or leased and as such business is currently conducted.

(b) **Purchaser's Authority.** Purchaser has all requisite limited liability company power and authority to enter into this Option Agreement and to carry out the transactions contemplated hereby, and the execution, delivery and performance of this Option Agreement by Purchaser shall be duly and validly authorized and approved by all necessary limited liability company action. This Option Agreement shall constitute the legal and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except that the enforceability hereof may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar Laws now or hereafter in effect relating to creditors' rights generally and that the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding may be brought.

3. Certain Covenants and Agreements of the Parties.

Section 3.1. Conduct of Business of Sellers. During the term of this Option Agreement, (a) Sellers shall use reasonable best efforts, except as otherwise required, authorized or restricted pursuant to the Purchase Agreement, the Bankruptcy Code or an Order of the Bankruptcy Court, (i) to operate the Business in the Ordinary Course of Business and (ii) to (A) preserve intact its business organizations, (B) maintain the Business and the Acquired Assets (normal wear and tear excepted), (C) keep available the services of its officers and Employees, (D) maintain satisfactory relationships with licensors, licensees, suppliers, contractors, distributors, consultants, customers, vendors and others having business relationships with Sellers in connection with the operation of the Business (other than payment of pre-petition claims), (E) pay all post-petition obligations in the Ordinary Course of Business, (F) continue to operate the Business and Acquired Assets in all material respects in compliance with all Laws applicable to the Business and Sellers, (G) comply in all material respects with the budget and other obligations set forth by the DIP Facility, in each case, taking into account Sellers' status as debtors in possession, and (H) pay all applicable Taxes that Sellers are required to pay, and (b) except (i) as required by Law, (ii) as expressly contemplated by this Agreement, or (iii) as consented to in writing by Purchaser (such consent not to be unreasonably withheld, delayed or conditioned), Sellers shall not do any of the following: (A) sell, lease, exchange, transfer or otherwise dispose of, or agree to sell, lease, exchange, transfer or otherwise dispose of, any Acquired Assets other than Inventory in the Ordinary Course of Business; (B) settle or compromise any litigation or claims relating to the Business or the Acquired Assets; (C) permit, allow or suffer any assets that would be Acquired Assets to be subjected to any Encumbrance other than Permitted Encumbrances; (D) enter into any Material Contract or terminate, amend, restate, supplement, extend or waive (partially or completely) any rights under any Material Contract; (E) cancel or compromise any material debt or claim that would be included in the Acquired Assets or waive or release any material right of Sellers that would be included in the Acquired Assets; (F) recognize any labor organization as a collective bargaining representative of any Persons employed by Sellers or their Subsidiaries, or enter into a collective bargaining agreement with any labor organization affecting any such Persons; (G) grant any increase in the compensation or benefits of any employee, including the grant, increase or acceleration in any severance, change in control, termination or similar compensation or benefits payable to any employee; (H) take any action that would reasonably be expected to prevent or significantly impede or materially delay the completion of the transactions contemplated hereunder; (I) make, revoke or change any election relating to Taxes, file any amended Tax Return, request, enter into or obtain any Tax ruling with or from a Governmental Body, or execute or file, or agree to execute or file, with any Governmental Body any agreement or other document extending, or having the effect of extending, the period of assessment or collection of any Taxes, in each case, that could reasonably be expected to have any adverse effect on the Purchaser or any of their Affiliates, for any taxable period, or portion thereof, beginning after the Closing Date; or (J) agree in writing to do any of the foregoing.

Section 3.2. Bankruptcy Court Filings.

(a) On or prior to April 1, 2019, each of Sellers shall file voluntary petitions for relief commencing cases under chapter 11 of the Bankruptcy Code in the Bankruptcy Court.

(b) On or prior to April 1, 2019, Sellers shall file the Sale and Bid Procedures Motion and the DIP Motion with the Bankruptcy Court, in form and substance reasonably acceptable to the Purchaser and Sellers.

(c) Sellers shall use their reasonable best efforts to cause the Bankruptcy Court to enter (i) the interim DIP Order on or prior to April 4, 2019, (ii) the final DIP Order on or prior to May 8, 2019, (iii) the Bid Procedures Order on or prior to May 5, 2019, and (iv) the Sale Order on or prior to June 14, 2019, which Sale Order shall approve a sale to the Purchaser.

(d) Sellers shall conduct the Auction for the Acquired Assets between June 6, 2019 and June 10, 2019.

(e) Sellers shall serve notices of assumption of the Assigned Contracts and Assumed Leased Real Property, including the designation of Cure Amounts, on all necessary parties by the 5th day following entry of the Bid Procedures Order.

(f) Sellers shall use their reasonable best efforts to provide Purchaser for review reasonably in advance of filing drafts of such material motions, pleadings or other filings relating to the process of consummating the transactions contemplated by this Agreement and the operation of Sellers to be submitted to the Bankruptcy Court, including the DIP Motion and the Sale and Bid Procedures Motion.

(g) In the event an appeal is taken or a stay pending appeal is requested from the Sale Order, Sellers shall promptly notify Purchaser of such appeal or stay request and shall provide Purchaser promptly a copy of the related notice of appeal or order of stay. Sellers shall also provide Purchaser with written notice of any motion or application filed in connection with any appeal from such orders. Sellers agree to take all action as may be reasonable and appropriate to defend against such appeal or stay request and Sellers and Purchaser agree to use their reasonable best efforts to obtain an expedited resolution of such appeal or stay request, provided that nothing herein shall preclude the parties hereto from consummating the transactions contemplated hereby, if the Sale Order shall have been entered and has not been stayed and the Purchaser, in its sole and absolute discretion, waives in writing the condition that the Sale Order be a Final Order.

(h) Sellers and the Purchaser acknowledge that this Agreement and the sale of the Acquired Assets and the assumption of the Assumed Liabilities are subject to Bankruptcy Court approval.

(i) After entry of the Sale Order, to the extent the Purchaser is the Successful Bidder at the Auction, neither the Purchaser nor Sellers shall take any action which is intended to, or fail to take any action the intent of which failure to act is to, result in the reversal, voiding, modification or staying of the Sale Order.

Section 3.3. Not a Required Back-Up Bidder. The Bid Procedures shall provide the Purchaser with the option but not any obligation to act as Back-Up Bidder (as defined in the Bid Procedures Order) following the Auction (if any) in the event that the Purchaser is not selected as the Successful Bidder.

Section 3.4. Purchaser's Access to Sellers' Records. From and after Sellers' execution and delivery of this Agreement, Sellers shall continue to provide Purchaser (or its designated representatives) reasonable access, upon reasonable advance notice to Sellers, to Sellers' Employees, books and records, corporate offices and other facilities for the purpose of conducting such additional due diligence as Purchaser deems appropriate or necessary in order to facilitate Purchaser's efforts to consummate the transaction provided for herein. Sellers hereby covenant and agree to reasonably cooperate with Purchaser in this regard.

Section 3.5. Financing Cooperation. During the Term, Sellers shall use commercially reasonable efforts to provide, and shall use commercially reasonable best efforts to cause their respective Representatives to provide, on a timely basis, such cooperation as is reasonably required and customary in connection with the arrangement of the Purchaser's financing arrangements in anticipation of the transactions contemplated by the Purchase Agreement, which cooperation may include using commercially reasonable efforts to: (a) upon reasonable advance notice, participate in a reasonable

number of due diligence or other sessions with prospective financing sources and their Representatives, and provide reasonable access to documents and other information in connection with customary due diligence investigations; (b) reasonably assisting (including participating in drafting sessions) with the preparation of materials; (c) furnishing the Purchaser with information required and reasonably requested in writing by the parties acting as lead arrangers for, or lenders under, any debt financing at least ten (10) Business Days prior to the Closing Date under applicable “know your customer” and anti-money laundering rules and regulations; (d) assisting the Purchaser in obtaining accountants’ comfort letters, including customary “negative assurance” comfort from Sellers’ independent accountants on customary terms; (e) cooperating with the Purchaser and the Purchaser’s efforts to obtain customary corporate, facilities and securities ratings; (f) providing and, if applicable, executing customary documents relating to the repayment of Indebtedness and the release of related encumbrances, including customary payoff letters and evidence that notice of such repayment has been timely delivered to the holders of such Indebtedness; (g) satisfying the conditions precedent set forth in any commitment letters or any definitive documentation relating to any debt financing to the extent the satisfaction of such conditions requires the cooperation of or is within the control of Sellers or their respective Affiliates, including causing officers of Sellers and their respective Affiliates to execute agreements, documents or certificates reasonably requested by the Purchaser that facilitate the creation, perfection or enforcement of encumbrances securing debt financing (including original copies of all certificated securities (with transfer powers executed in blank), control agreements, perfection certificates, landlord consents and access letters) as are requested by the Purchaser, its Affiliates or their debt financing sources (provided that no obligation under any such agreement, document or certificate shall be effective until the Closing); and (h) cooperating with the debt financing sources’ due diligence investigation to the extent reasonable and not unreasonably interfering with the business.

Section 3.6. Sellers' Employees.

(a) On and following the Initial Date, Sellers and Purchaser shall reasonably cooperate in all matters reasonably necessary to effect the transactions contemplated by Section 7.1 of the Purchase Agreement, including exchanging information and data relating to workers' compensation, employee benefits and employee benefit plan coverage, and in obtaining any governmental approvals required hereunder, except as would result in the violation of any applicable Law, including without limitation, any Law relating to the safeguarding of data privacy.

(b) Notwithstanding the foregoing, Sellers shall not (i) enter into, establish, adopt, materially amend or terminate any Benefit Plan (or any plan or arrangement that would be a Benefit Plan if in existence on the date of this Agreement), other than as required by Law, (ii) increase the compensation and benefits payable or to become payable to Employees, (iii) grant any extraordinary bonuses, benefits or other forms of directors' or consultants' compensation, (iv) promote, hire or terminate the employment of (other than for cause) any Employee or (v) transfer the employment of any individual such that such individual becomes an Employee or transfer the employment of any Employee such that such individual no longer qualifies as an Employee; provided, however that nothing in this Agreement shall prohibit or otherwise limit Sellers' ability to implement any remedial steps, including issuing offers of reinstatement, required by a court order in the matter set forth on Schedule 6.7(c) of the Purchase Agreement that Sellers determine, with the assistance of counsel, to be in Sellers' best interests (subject to Sellers' obtaining the consent of Purchaser, such consent not to be unreasonably withheld, delayed or conditioned).

(c) During the Term, (i) Sellers shall not enter into, adopt, extend, renew, terminate or materially amend any labor agreement, collective bargaining agreement or any other labor-related agreement or arrangement with any labor union or organization with respect to the Employees, except as required by applicable Law, and (ii) Sellers shall satisfy all pre-Closing legal or contractual requirements

to provide notice to, or to enter into any consultation procedure with, any labor union or organization, which is representing any Employee, in connection with the transactions contemplated by this Agreement.

4. Term and Termination.

Section 4.1. Term of Agreement. The term of this Option Agreement shall commence on the date hereof and continue until the expiration of the Option Period (the "Term"), unless earlier terminated in accordance with the other provisions of this Option Agreement.

Section 4.2. Termination. This Option Agreement may (at the option of the Party having the right to do so or by operation of this Option Agreement) be terminated at any time on or prior to the exercise of the Option for any reason that would permit termination of the Purchase Agreement in accordance with its terms. For purposes of this Option Agreement, references to any reason that would permit termination of the Purchase Agreement or similar phrases shall be interpreted to assume for such purposes that the Purchase Agreement has been executed and delivered by the Parties as of the date of this Option Agreement.

Section 4.3. Procedure and Effect of Termination. If this Option Agreement is terminated pursuant to Section 4.2, written notice thereof shall forthwith be given to the other Parties to this Agreement and all further obligations of the Parties under this Agreement shall terminate; provided, however, that the Parties shall, in all events, remain bound by and continue to be subject to the provisions set forth in this Section 4.

Section 4.4. Breach by Sellers. If termination of this Agreement is due solely to a material breach by Sellers that would permit termination of the Purchase Agreement pursuant to Section 11.1(c)(i) thereof, Purchaser shall thereupon, as its sole and exclusive remedy, immediately be entitled to payment of the Expense Reimbursement Amount, which amount shall be paid to Purchaser within three (3) days following its delivery to Sellers of its documented costs, fees and expenses. Sellers' obligation to pay the Expense Reimbursement Amount pursuant to this Section 4.4 shall survive termination of this Option Agreement and shall constitute an administrative expense of Sellers under Section 364(c)(1) of the Bankruptcy Code with priority over any and all administrative expenses of the kind specified in Section 503(b) or 507(b) of the Bankruptcy Code.

Section 4.5. Breach by Purchaser. If termination of this Agreement is due solely to a material breach by Purchaser that would permit termination of the Purchase Agreement pursuant to Section 11.1(d) thereof, Sellers, as their sole remedy, shall be entitled to liquidated damages in the amount of \$1,000,000, which shall be payable by Purchaser by the forgiveness of Prepetition Credit Agreement Indebtedness. The Parties hereby agree that the foregoing dollar amount is a fair and reasonable estimate of the total detriment that Sellers would suffer in the event of Purchaser's default and failure to complete the transaction hereunder.

Section 4.6. Break-Up Fee and Expense Reimbursement Amount.

(a) In consideration of Purchaser and its Affiliates granting the Option hereunder and having expended considerable time and expense in connection with this Option Agreement, the Purchase Agreement and the negotiation hereof and thereof, and the identification and quantification of assets to be included in the Acquired Assets, and to compensate the Purchaser as a stalking-horse bidder, Sellers, jointly and severally, shall pay in cash to Purchaser, by wire transfer of immediately available funds to the account specified by Purchaser to Sellers in writing, an amount equal to \$5,250,000, which is three percent (3%) of the Purchase Price (the "Break-Up Fee"), (x) in the event that this Option Agreement is terminated for any reason that would permit termination of the Purchase Agreement pursuant to Section

11.1(b)(iii) or Section 11.1(b)(iv) of the Purchaser Agreement or (y) in the event that (1) this Option Agreement is otherwise terminated for any reason that would permit termination of the Purchase Agreement pursuant to Section 11.1(b)(ii) of the Purchase Agreement or for any of Section 11.1(c)(ii) through Section 11.1(c)(xii) of the Purchase Agreement (other than a termination for any reason that would permit termination of the Purchase Agreement pursuant to Section 11.1(c)(vi) of the Purchase Agreement resulting from a conversion of the Chapter 11 Cases to chapter 7 pursuant to a motion brought by a party in interest other than Sellers, and (2) a Seller enters into any agreement or process with respect to an Alternative Transaction within nine (9) months after such termination of this Option Agreement which results in an Alternative Transaction being consummated; (A) such Break-Up Fee shall be due and payable simultaneously with any termination of this Agreement, in the case of the foregoing clause (x) and (B) fifty percent (50%) of such Break-Up Fee shall be due and payable simultaneously with the consummation of the Alternative Transaction in the case of the foregoing clause (y). Sellers' obligation to pay the Break-Up Fee pursuant to this Section shall survive termination of this Option Agreement and shall constitute an administrative expense of Sellers under Section 364(c)(1) of the Bankruptcy Code with priority over any and all administrative expenses of the kind specified in Section 503(b) or 507(b) of the Bankruptcy Code.

(b) In consideration of Purchaser and its Affiliates granting the Option hereunder and having expended considerable time and expense in connection with this Option Agreement, the Purchase Agreement and the negotiation hereof and thereof, and the identification and quantification of assets to be included in the Acquired Assets, if this Option Agreement is terminated for any reason that would permit termination of the Purchase Agreement in accordance with the terms set forth in Section 11.1 thereof (other than any termination for any reason that would permit termination of the Purchase Agreement pursuant to Section 11.1(a), Section 11.1(b)(i), Section 11.1(c)(xiv), Section 11.1(c)(xvi) or Section 11.1(d) thereof), then Sellers, jointly and severally, shall pay to Purchaser in cash not later than (i) in the case of a termination for any reason that would permit termination of the Purchase Agreement pursuant to Section 11.1(b)(iv), the closing of an Alternative Transaction and (ii) two (2) Business Days following receipt of documentation supporting the request for reimbursement of costs, fees and expenses, the Expense Reimbursement Amount, in each case by wire transfer of immediately available funds to an account specified by the Purchaser to Sellers in writing. Sellers' obligation to pay the Expense Reimbursement Amount pursuant to this Section shall survive termination of this Agreement and shall constitute an administrative expense of Sellers under Section 364(c)(1) of the Bankruptcy Code with priority over any and all administrative expenses of the kind specified in Section 503(b) or 507(b) of the Bankruptcy Code.

(c) Sellers agree and acknowledge that the Purchaser's due diligence, efforts, negotiation, and execution of this Option Agreement and the Purchase Agreement have involved substantial investment of management time and have required significant commitment of financial, legal, and other resources by Purchaser and its Affiliates, and that such due diligence, efforts, negotiation, and execution have provided value to Sellers and, in Sellers' reasonable business judgment, is necessary for the preservation of the value of Sellers' estate. Sellers further agree and acknowledge that the Break-Up Fee and Expense Reimbursement Amount are reasonable in relation to Purchaser's efforts, Purchaser's lost opportunities from pursuing this transaction, and the magnitude of the transactions contemplated hereby. The provision of the Break-Up Fee and the Expense Reimbursement Amount is an integral part of this Agreement, without which Purchaser would not have entered into this Agreement. Sellers' obligation to pay the Break-Up Fee and Expense Reimbursement Amount shall be joint and several among Sellers.

(d) If Sellers fail to take any action necessary to cause the delivery of the Break-Up Fee and/or the Expense Reimbursement Amount under circumstances where Purchaser is entitled to the Break-Up Fee and/or the Expense Reimbursement Amount and, in order to obtain such Break-Up Fee and/or the Expense Reimbursement Amount, Purchaser commences a suit which results in a judgment in

favor of Purchaser, Sellers shall pay to Purchaser, in addition to the Break-Up Fee and/or the Expense Reimbursement Amount, an amount of cash equal to the costs and expenses (including attorneys' fees) incurred by Purchaser in connection with such suit.

5. MISCELLANEOUS.

Section 5.1. Notices. Any notice, request, instruction or other document to be given hereunder by a Party hereto shall be in writing and shall be deemed to have been given when given in accordance with Section 12.4 of the Purchase Agreement.

Section 5.2. Applicable Law and Jurisdiction. THIS OPTION AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED WHOLLY WITHIN SUCH JURISDICTION. PURCHASER AND SELLERS FURTHER AGREE THAT THE BANKRUPTCY COURT SHALL HAVE JURISDICTION OVER ALL DISPUTES AND OTHER MATTERS RELATING TO (a) THE INTERPRETATION AND ENFORCEMENT OF THIS OPTION AGREEMENT.

Section 5.3. Amendment; Waiver. This Option Agreement may be amended, supplemented or changed, and any provision hereof may be waived, only by written instrument making specific reference to this Option Agreement signed by the Party against whom enforcement of any such amendment, supplement, modification or waiver is sought. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by applicable Law.

Section 5.4. Entire Agreement. This Option Agreement sets forth the entire agreement and understanding of the Parties hereto in respect to the transactions contemplated hereby. This Option Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns, but neither this Option Agreement nor any of the rights, interest or obligations hereunder shall be assigned by any of the Parties hereto without prior written consent of the other Parties.

Section 5.5. Assignments.

(a) Except as herein otherwise specifically provided, this Agreement shall be binding upon and inure to the benefit of the parties and their legal representatives, successors and permitted assigns.

(b) No party to this Agreement may assign this Agreement or any right, interest or obligation hereunder without the prior written consent of the other parties hereto, and any attempt to do so will be void; provided, that Option Holder may assign its rights and obligations hereunder to any Affiliate of Option Holder, and Owner may assign its rights and obligations hereunder to any Affiliate to which Option Holder transfers or assigns the Company Equity.

Section 5.6. Counterparts. This Option Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The exchange of copies of this Option Agreement and of signature pages by facsimile transmission (whether directly from one facsimile device to another by means of a dial-up connection or whether mediated by the worldwide web), by electronic mail in "portable document

format” (“.pdf”) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by combination of such means, shall constitute effective execution and delivery of this Option Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted electronically shall be deemed to be their original signatures for all purposes.

Section 5.7. Third Party Beneficiaries. This Agreement is solely for the benefit of the Parties hereto and their respective affiliates and no provision of this Agreement shall be deemed to confer upon third parties any remedy, claim, liability, reimbursement, claim of Action or other right.

Section 5.8. Time of Essence. Time is of the essence with regard to all dates and time periods set forth or referred to in this Option Agreement. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Option Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and delivered on the date first above written

PURCHASER:

Orchids Investment LLC

By: Leslie A. Meier

Name: Leslie A. Meier

Title: President

SELLERS:

Orchids Paper Products Company



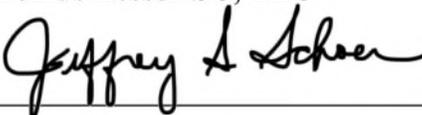
By: Jeffrey S. Schoen
Its: President and Chief Executive Officer

**Orchids Paper Products Company of
South Carolina**



By: Jeffrey S. Schoen
Its: President

Orchids Lessor SC, LLC



By: Jeffrey S. Schoen
Its: President

Exhibit C to Motion

Proposed Bid Procedures Order

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

In re:

ORCHIDS PAPER PRODUCTS
COMPANY, *et al.*,¹

Debtors.

Chapter 11

Case No. 19-10729 (MFW)

Jointly Administered

Re: Docket No. ____

**ORDER (I) APPROVING BID PROCEDURES IN CONNECTION WITH THE
POTENTIAL SALE OF SUBSTANTIALLY ALL OF THE DEBTORS’ ASSETS, (II)
SCHEDULING AN AUCTION AND A SALE HEARING, (III) APPROVING THE FORM
AND MANNER OF NOTICE THEREOF, (IV) AUTHORIZING THE DEBTORS TO
ENTER INTO THE OPTION AGREEMENT AND THE STALKING HORSE
AGREEMENT, (V) APPROVING BID PROTECTIONS, (VI) APPROVING
PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF CONTRACTS AND
LEASES, AND (VII) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)² of the above-captioned debtors and debtors in possession (the “**Debtors**”) for entry of an order (this “**Order**”) (i) authorizing and approving the Bid Procedures attached hereto as Exhibit 1 (the “**Bid Procedures**”) in connection with the sale (the “**Sale**”) of substantially all of the Debtors’ assets (the “**Assets**”), (ii) scheduling an auction and hearing to consider the Sale of the Assets, (iii) approving the form and manner of notice thereof, (iv) authorizing the Debtors to enter into the Option Agreement and the Stalking Horse Agreement (each as defined below), (v) approving the Bid Protections (as defined below) in connection therewith, (vi) approving procedures for the assumption and assignment of executory

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Orchids Paper Products Company, a Delaware corporation (6944), Orchids Paper Products Company of South Carolina, a Delaware corporation (7198), and Orchids Lessor SC, LLC, a South Carolina limited liability company (7298). The location of the Debtors’ mailing address is 201 Summit View Drive, Suite 110, Brentwood, Tennessee 37027.

² Capitalized terms used as defined terms herein but not otherwise defined shall have the meanings ascribed to them in the Motion or the Bid Procedures, as applicable. In the event there is a conflict between this Order and the Motion, this Order shall control and govern.

contracts and unexpired leases in connection with the Sale (collectively, the “**Contracts**”), and (vii) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration and other testimony and evidence submitted by the Debtors in support of the Motion; this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the “**Hearing**”); this Court having determined the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor:

THE COURT FINDS THAT:

A. The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012.

C. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). The Debtors have confirmed their consent, pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), to the entry of a final order by this Court in connection with the

Motion, to the extent it is later determined this Court, absent the consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

D. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

E. The bases for the relief requested in the Motion are sections 105, 363, 365, 503, and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), Bankruptcy Rules 2002, 6004, 6006, 9007, and 9014, and Local Rules 2002-1, 6004-1, and 9013-1(m).

F. Notice of the Motion has been given to: (a) the U.S. Trustee; (b) the holders of the twenty (20) largest unsecured claims against the Debtors; (c) counsel to the DIP Lender and the Prepetition Secured Lender; (d) counsel to the Stalking Horse Bidder; (e) the United States Attorney’s Office for the District of Delaware; (f) the Internal Revenue Service; (g) all state and local taxing authorities with an interest in the Assets; (h) the Attorney General for the State of Delaware; (i) the Securities and Exchange Commission; (j) all other governmental agencies with an interest in the Sale and transactions proposed thereunder; (k) all parties known or reasonably believed to have asserted an interest in the Assets; (l) the Contract Counterparties; (m) the Debtors’ insurance carriers; (n) all parties entitled to notice pursuant to Local Rule 9013-1(m); and (o) any party that has requested notice pursuant to Bankruptcy Rule 2002.

G. Good and sufficient notice of the Motion, including the relief sought therein, and the Hearing was sufficient under the circumstances, and such notice complied with all applicable requirements under the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and no other or further notice need be provided. A reasonable opportunity to object or be heard regarding the relief provided in this Order has been afforded to all parties in interest.

H. The Debtors have articulated good and sufficient reasons for this Court to (i) approve the Bid Procedures, (ii) schedule the bid deadlines and the Auction and the Sale Hearing, (iii) approve the form and manner of notice of the Auction and Sale Hearing, (iv) approve procedures for the assumption and assignment of the Contracts, including notice of the proposed cure amounts, (v) authorize the Debtors to enter into a Stalking Horse Agreement, and (vi) extend to the Stalking Horse Bidder the Bid Protections, in the exercise of their reasonable business judgment. The entry of this Order is in the best interests of the Debtors, their estates, creditors, and other parties in interest.

I. The Bid Procedures attached hereto as Exhibit 1 are reasonable, appropriate and represent the best method for maximizing value for the benefit of the Debtors, their estates, and their creditors. The Bid Procedures were negotiated at arm's length, in good faith, and without collusion. The Bid Procedures balance the Debtors' interests in emerging expeditiously from the chapter 11 cases while preserving the opportunity to attract value-maximizing proposals beneficial to the Debtors, their estates, their creditors, and other parties in interest. The Bid Procedures comply with the requirements of Local Rule 6004-1(c).

J. The Debtors have demonstrated compelling and sound business justifications for authorization to (i) enter into both that certain Asset Purchase Agreement, a copy of which is attached as Exhibit A to the Motion (the "**Stalking Horse Agreement**") and that certain Option Agreement, a copy of which is attached as Exhibit B to the Motion (the "**Option Agreement**") each by and among the Debtors and Orchids Investments LLC (the "**Stalking Horse Bidder**") and (ii) offer the Stalking Horse Bidder the following: (a) a break-up fee equal to three percent (3%) of the Purchase Price (as defined in the Stalking Horse Agreement) of \$5,250,000 (the "**Break-Up Fee**") on the terms set forth in the Option Agreement and the Stalking Horse

Agreement, (b) reimbursement of the Stalking Horse Bidder's out of pocket costs, expenses, and fees in connection with evaluating, negotiating, documenting and performing the transactions contemplated by the Option Agreement and the Stalking Horse Agreement in the dollar amount equal to the lesser of (1) \$2,000,000, and (2) the aggregate amount of all reasonable and documented out of pocket costs, expenses and fees incurred by the Stalking Horse Bidder or those of the Stalking Horse Bidder's subsidiaries that will receive title to any Acquired Assets pursuant to the transactions contemplated by the Stalking Horse Agreement (the "**Expense Reimbursement**") on the terms set forth in the Stalking Horse Agreement, and (c) an initial overbid of up to \$7,750,000 (the "**Initial Overbid**" and, together with the Break-Up Fee and the Expense Reimbursement, the "**Bid Protections**"), consisting of the sum of the Break-Up Fee, the Expense Reimbursement and \$500,000. With respect to the Bid Protections, the Court makes the following findings:

- a. the Bid Protections are the product of extensive negotiations between the Debtors and the Stalking Horse Bidder conducted in good faith and at arm's length, and the Option Agreement and the Stalking Horse Agreement (including the Bid Protections) are the culmination of a process undertaken by the Debtors and their professionals to negotiate a transaction with a bidder who was prepared to pay the highest price or otherwise best purchase price to date for the Acquired Assets to maximize the value of the Debtors' estates;
- b. the Break-Up Fee and Expense Reimbursement are an actual and necessary cost and expenses of preserving the value of the respective Debtors' estates;
- c. the Bid Protections are fair, reasonable, and appropriate in light of, among other things, the size and nature of the proposal Sale under the Stalking Horse Agreement, the substantial efforts that have been and will be expended by the Stalking Horse Bidder, including the identification and quantification of assets to be included in the Acquired Assets, and notwithstanding that the proposed sale is subject to higher and better offers, the substantial benefits the Stalking Horse Bidder has provided to the Debtors, their estates, their creditors, and all parties in interest, including, among other things, by increasing the likelihood that the best possible price for the Acquired Assets will be received;

- d. the Bid Protections were material inducements for, and express conditions of, the Stalking Horse Bidder's willingness to enter into the Stalking Horse Agreement and were necessary to ensure that the Stalking Horse Bidder would continue to pursue the proposed acquisition on terms acceptable to the Debtors in their sound business judgment, subject to competitive bidding;
- e. the offer of the Bid Protections is intended to promote more competitive bidding by inducing the Stalking Horse Bid, which (i) will serve as a minimum floor bid on which all other bidders can rely with respect to the Acquired Assets, (ii) may prove to be the highest or otherwise best available offer for the Acquired Assets, and (iii) increases the likelihood that the final purchase price will reflect the true value of the Acquired Assets; and
- f. the Stalking Horse Bidder is unwilling to commit to purchase the Acquired Assets under the terms of the Stalking Horse Agreement without approval of the Bid Protections.

K. The Debtors' performance of certain pre-closing obligations contained in the Option Agreement and Stalking Horse Agreement is in the best interests of the Debtors, their estates, their creditors, and all other parties in interest, and represents a reasonable exercise of the Debtors' sound business judgment.

L. The Stalking Horse Bidder is not an "insider" or "affiliate" of any of the Debtors, as those terms are defined in section 101 of the Bankruptcy Code, and no common identity of incorporators, directors, managers, controlling shareholders, or other insider of the Debtors exist between the Stalking Horse Bidder and the Debtors.

M. The notice, substantially in the form attached hereto as Exhibit 2, provided by the Debtors regarding the Sale of the Assets by Auction and Sale Hearing (the "**Sale Notice**"), is reasonably calculated to provide interested parties with timely and proper notice of the proposed Sale, including, without limitation: (i) the date, time, and place of the Auction (if one is held), (ii) the Bid Procedures and certain dates and deadlines related thereto, (iii) the deadline for filing objections to the Sale and entry of the Sale Order, and the date, time, and place of the Sale

Hearing, (iv) reasonably specific identification of the assets for sale, (v) instructions for promptly obtaining a copy of the Stalking Horse Agreement, (vi) a description of the Sale as being free and clear of liens, claims, interests, and other encumbrances, with all such liens, claims, interests, and other encumbrances attaching with the same validity and priority to the sale proceeds, (vii) the commitment by the Stalking Horse Bidder to assume certain liabilities disclosed in the Stalking Horse Agreement (collectively, the “**Assumed Liabilities**”), and (viii) notice of the proposed assumption and assignment of Assigned Contracts to the Stalking Horse Bidder (or such other Contracts to another Successful Bidder (as defined in the Bid Procedures) arising from the Auction, if any) and the right, procedures, and deadlines for objecting thereto. No other or further notice of the Sale shall be required.

N. The Motion, this Order, and the Assignment Procedures (as defined below) set forth herein are appropriate and reasonably calculated to provide counterparties to any Contracts to be assumed by the Debtors and assigned to the Successful Bidder with proper notice of the intended assumption and assignment of their Contracts, the procedures in connection therewith, and any cure amounts relating thereto.

O. Neither the filing of the Motion, entry of this Order, the execution of the Option Agreement, the solicitation of bids or the conducting of the Auction in accordance with the Bid Procedures nor any other actions taken by the Debtors in accordance therewith shall constitute a sale of the Acquired Assets, which sale will only take place, if at all, following the Sale Hearing.

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. All objections, statements, and reservations of rights with respect to the relief requested in the Motion with respect to the Bid Procedures that have not been withdrawn,

waived, or settled, as announced to the Court at the hearing on the Motion or by stipulation filed with the Court, are overruled and denied on the merits with prejudice.

E. The Bid Procedures

3. The Bid Procedures, attached hereto as Exhibit 1, are hereby approved in their entirety and fully incorporated into this Order. The Bid Procedures shall govern the submission, receipt, and analysis of all bids relating to the proposed Sale and any party desiring to submit a higher or better offer for the Assets must comply with the terms of the Bid Procedures and this Order. The Bid Procedures shall also govern the terms on which the Debtors will proceed with the Auction and/or Sale pursuant to the Stalking Horse Agreement.

4. The Stalking Horse Bidder shall be deemed a Qualified Bidder pursuant to the Bid Procedures for all purposes.

5. The following dates and deadlines regarding competitive bidding are hereby established (subject to modification in accordance with the Bid Procedures):

- (All times are prevailing Eastern Time)
- **May 14, 2019 at 4:00 p.m.:** Debtors to send Cure and Possible Assumption and Assignment Notices to All Contract Counterparties and Notice of the Sale
- **May 31, 2019 at 4:00 p.m.:** Cure Objection Deadline
- **June 6, 2019 at 4:00 p.m.:** Deadline to submit Bid to be considered for the Auction
- **June 10, 2019 at 10:00 a.m.:** Proposed date of Auction
- **June 10, 2019 at 4:00 p.m.:** Debtors to file notice of Successful Bidder and Contract Assignment Notices
- **June 5, 2019 at 4:00 p.m.:** Deadline to file and serve objections to relief requested at Sale Hearing (except for any objection that arises at the Auction)
- **June 12, 2019 at _____ a.m./p.m.:** Proposed date of Sale Hearing

F. Entry into Option Agreement and Stalking Horse Agreement

6. The Option Agreement and the Stalking Horse Agreement are hereby approved. The Debtors are authorized to enter into the Option Agreement with the Stalking Horse Bidder and to pay the Break-Up Fee and Expense Reimbursement pursuant to the terms and conditions set forth in the Option Agreement. Following the expiration of the Bid Deadline, the Debtors are authorized, but not directed, to enter into the Stalking Horse Agreement.

7. The Debtors are authorized to perform all of their respective pre-closing obligations under the Option Agreement and Stalking Horse Agreement; *provided* that for the avoidance of doubt, approval and consummation of the transactions contemplated by the Stalking Horse Agreement shall be subject to the terms and conditions herein and the entry of an order approving the Sale of the Acquired Assets and the satisfaction or waiver of the other conditions to closing on the terms set forth in the Stalking Horse Agreement.

G. Approval of the Bid Protections

8. The Bid Protections are hereby approved. The Debtors are authorized to pay the Stalking Horse Bidder the Break-Up Fee and Expense Reimbursement if and to the extent they become due and payable under the Option Agreement or the Stalking Horse Agreement.

9. The Break-Up Fee and Expense Reimbursement shall constitute an allowed superpriority administrative expense claim against the Debtors' bankruptcy estates pursuant to Bankruptcy Code sections 363, 364(c)(1), 503(b), 507(a)(2), and 507(b). The Debtors' obligation to pay the Break-Up Fee and Expense Reimbursement shall survive the termination of the Option Agreement and the Stalking Horse Agreement and shall be payable only by the Debtors as otherwise provided in the Option Agreement and the Stalking Horse Agreement.

10. The Break-Up Fee and Expense Reimbursement shall be payable by the Debtors as provided in the Option Agreement and the Stalking Horse Agreement. To the extent not paid

earlier, the Break-Up Fee and Expense Reimbursement shall be payable from the proceeds of the Sale prior to any other payments or distributions being made from such Sale proceeds (including, for the avoidance of doubt, prior to any payments or distributions to professionals, or administrative claimants) and the Debtors' cash on hand. No further or additional order from the Court shall be required in order to give effect to such provisions relating to the terms of payment of the Break-Up Fee and Expense Reimbursement and the Stalking Horse Bidder's professional advisors are not obligated to comply with any provisions of the Bankruptcy Code regarding Court approval of professionals fees payable by the Debtors and included in the Expense Reimbursement.

11. Each Debtor's obligations relating to the Bid Protections arising under or in connection with the Option Agreement or the Stalking Horse Agreement shall be binding and enforceable against each such Debtor and its respective estate, and, as applicable, (i) any of its successor or assigns, (ii) any trustee, examiner, or other representative of the Debtors' estates, (iii) the reorganized Debtors, and (iv) any other entity vested or re-vested with any right, title, or interest in or to a material portion of the assets directly or indirectly owned by the Debtors or any other person claiming any rights in or control over a material portion of such assets (each, a "**Debtor Successor**") as if such Debtor Successor was the Debtors.

H. The Auction

12. As further described in the Bid Procedures, if a Qualified Bid, other than the Stalking Horse Agreement, is received by the Bid Deadline, the Debtors will conduct the Auction at **10:00 a.m. (prevailing Eastern Time) on June 10, 2019**, at the offices of the Debtors' counsel, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, DE 19801 or such later time on such day or other place as the Debtors shall notify all Qualified Bidders who

have submitted Qualified Bids, if a Qualified Bid is timely received. The Debtors are authorized, subject to the terms of this Order and the Bid Procedures, to take actions reasonably necessary to conduct and implement the Auction.

13. If the Debtors do not receive a Qualified Bid (other than the Stalking Horse Agreement): (i) the Debtors may cancel the Auction, (ii) the Stalking Horse Agreement may be deemed by the Debtors to be the Successful Bid for the Acquired Assets, and (iii) the Debtors shall be authorized to seek approval of the Stalking Horse Agreement as the Successful Bid at the Sale Hearing.

14. Only Qualified Bidders (including, for the avoidance of doubt, the Stalking Horse Bidder) will be entitled to make any Bids at the Auction.

15. The Debtors and their professionals shall direct and preside over the Auction and the Auction shall be transcribed or videotaped.

16. Each Qualified Bidder (including, for the avoidance of doubt, the Stalking Horse Bidder) participating in the Auction must confirm that it (a) has not engaged in any collusion with respect to the bidding or sale of any of the assets described herein, (b) has reviewed, understands, and accepts the Bid Procedures, and (c) has consented to the core jurisdiction of this Court and to the entry of a final order by this Court on any matter related to this Order, the Sale, or the Auction if it is determined that this Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the parties.

17. The Stalking Horse Bidder shall be deemed to be a Qualified Bidder and is not required to make any Good Faith Deposit. To the fullest extent permissible under Bankruptcy Code section 363(k), the Stalking Horse Bidder, in its capacity as the Prepetition Secured Lender and the DIP Lender, respectively, may credit bid, as a Qualified Bid or subsequent Bid, in its

sole and absolute discretion, any portion and up to the entire amount of Obligations owing under the Prepetition Loan Documents and the DIP Loan Documents (as defined in the DIP Order) , in the full amount of such obligations outstanding as of the date of the Auction on the Assets constituting the Prepetition Secured Lender Collateral (as defined in the DIP Order) in conjunction with the Sale of the Acquired Assets pursuant to the terms of the Stalking Horse Agreement (the “**Credit Bid**”). In the event the amount of the Credit Bid exceeds the total amount of the highest bids for the Assets subject to the Credit Bid, such Credit Bid will be deemed the highest and best bid and such Credit Bid will be accepted by the Debtors and be presented for approval to the Court.

18. In the event of a competing Qualified Bid, all Qualified Bidders will be entitled, but not obligated, to submit Overbids.

19. The Debtors may (i) determine, in consultation with the Creditors’ Committee, which Qualified Bid or combination of Qualified Bids (including the Stalking Horse Agreement) is the highest or otherwise best offer; (ii) reject at any time before the entry of the Sale Order any Bid (other than the Stalking Horse Agreement) that, in the discretion of the Debtors, is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, or the Bid Procedures, or (c) contrary to the best interest of the Debtors, their estates, their creditors, interest holders, or other parties in interest; and (iii) at or before the conclusion of the Auction may impose such other terms and conditions upon Qualified Bidders (other than the Stalking Horse Bidder) as the Debtors determine, in consultation with the Creditors’ Committee, to be in the best interest of the Debtors’ estates.

20. No person or entity, other than the Stalking Horse Bidder, shall be entitled to any expense reimbursement, breakup fee, topping or termination fee, or other similar fee or payment,

and, by submitting a Bid, such person or entity is deemed to have waived its right to request or file with this Court any request for expense reimbursement or any other fee of any nature in connection with the Auction and the Sale, whether by virtue of Bankruptcy Code section 503(b) or otherwise.

I. Assumption and Assignment Notices & Procedures

21. The procedures set forth below regarding the assumption and assignment of the executory contracts proposed to be assumed by the Debtors pursuant to section 365(b) of the Bankruptcy Code and assigned to the Stalking Horse Bidder (or other Successful Bidder, if any) pursuant to section 365(f) of the Bankruptcy Code in connection with the Sale (the “**Assignment Procedures**”) are hereby approved to the extent set forth herein. These Assignment Procedures shall govern the assumption and assignment of all of the Contracts to be assumed and assigned in connection with the Sale, subject to the payments necessary to cure any defaults arising under any such Contracts.

22. On or prior to **May 14, 2019**, the Debtors shall serve via overnight delivery on all non-Debtor counterparties (each a “**Contract Counterparty**” and, collectively, the “**Contract Counterparties**”) to any Contract (the “**Cure and Possible Assumption and Assignment Notice Parties**”) that may be assumed by the Debtors and assigned to the Stalking Horse Bidder or other Successful Bidder after the results of the Auction, which notice shall be substantially in the form attached hereto as Exhibit 3 (a “**Cure and Possible Assumption and Assignment Notice**”). The Cure and Possible Assumption and Assignment Notice shall inform each recipient of the timing and procedures relating to such assumption and assignment, and, to the extent applicable, (i) the title of the executory contract or unexpired lease, as applicable, (ii) the name of the counterparty to the executory contract or unexpired lease, as applicable, (iii) the Debtors’

good faith estimate of the cure amount (if any) required in connection with the executory contract or unexpired lease, as applicable, (iv) the identity of the Stalking Horse Bidder (as assignee, if applicable), and (v) the Contract Objection Deadline (as defined below). The presence of a Contract on the Cure and Possible Assumption and Assignment Notice does not constitute an admission that such Contract is an executory contract or unexpired lease, and the presence of a Contract on any notice shall not prevent the Debtors from subsequently withdrawing such request for assumption or rejecting such Contract any time before such Contract is actually assumed and assigned pursuant to the Sale Order.

23. No later than **June 11, 2019**, the Debtors shall file with the Court and serve on the Cure and Possible Assumption and Assignment Notice Parties who are parties to a Contract to be assumed and assigned a further notice substantially in the form attached hereto as Exhibit 4 (the “**Assumption Notice**”), stating which Contracts may be assumed and assigned, including cure amounts, and providing such parties with the Successful Bidder’s assurance of future performance.

24. Although the Debtors intend to make a good faith effort to identify all Contracts that may be assumed and assigned in connection with a Sale, the Debtors may discover certain executory contracts and unexpired leases inadvertently omitted from the list of Contracts, or Successful Bidders may identify other executory contracts and/or unexpired leases that they desire to assume and assign in connection with the Sale. Accordingly, the Debtors reserve the right, but only in accordance with the Stalking Horse Agreement, or as otherwise agreed to by the Debtors and the Successful Bidder, at any time after the service of the Assumption Notice and before the closing of a Sale, to (i) supplement the list of Contracts with previously omitted executory contracts, (ii) remove Contracts from the list of executory contracts and unexpired

leases ultimately selected as Contracts that a Successful Bidder proposes to be assumed and assigned to it in connection with a Sale, and/or (iii) modify the previously stated cure amount associated with any Contract. In the event the Debtors exercise any of these reserved rights, the Debtors will promptly serve a supplemental notice of contract assumption (a “**Supplemental Assumption Notice**”) on each of the counterparties to such Contracts and their counsel of record, if any; *provided, however*, the Debtors may not add an executory contract to the list of Contracts that has been previously rejected by the Debtors by order of the Court. Each Supplemental Assumption Notice will include the same information with respect to listed Contracts as was included in the Cure and Possible Assumption and Assignment Notice.

25. Objections, if any, to the cure amount set forth on the Cure and Possible Assumption and Assignment Notice or the possible assignment of its executory contract or unexpired lease (each, a “**Contract Objection**”) **must** (i) be in writing, (ii) comply with the applicable provisions of the Bankruptcy Rules and the Local Rules, and (iii) state with specificity the nature of the objection and, if the objection pertains to the proposed cure amount, the correct cure amount alleged by the objecting counterparty, together with any applicable and appropriate documentation in support thereof, and (iv) be filed with the Bankruptcy Court and served on the following parties so as to be actually received on or before **May 31, 2019 at 4:00 p.m. (prevailing Eastern Time) (the “Contract Objection Deadline”)**: (a) counsel for the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Christopher A. Ward (cward@polsinelli.com), and Polsinelli PC, 150 N. Riverside Plaza, Suite 3000, Chicago, Illinois 60606, Attn: Jerry L. Switzer, Jr. (jswitzer@polsinelli.com), (b) counsel for the DIP Lender and the Prepetition Secured Lender, Winston & Strawn LLP, 35 W. Wacker Drive, Chicago, Illinois 60601, Attn: Daniel J. McGuire (dmcguire@winston.com) and Fox

Rothschild LLP, Citizens Bank Center, 919 North Market Street, Suite 300, Wilmington, DE 19899-2323, Attn: Seth Niederman (sniederman@foxrothschild.com), (c) counsel for the Stalking Horse Bidder, Skadden, Arps, Slate, Meagher & Flom LLP, 155 N. Wacker Drive, Chicago, Illinois 60606, Attn: Kimberly A. deBeers (Kimberly.deBeers@skadden.com), (d) counsel for the Creditors' Committee, [____], and (e) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Ste. 2207 – Lockbox #35, Wilmington, DE 19801, Attn: Juliet Sarkessian (Juliet.M.Sarkessian@usdoj.gov). If a Successful Bidder that is not the Stalking Horse Bidder prevails at the Auction, then the deadline to object to assumption and assignment solely with respect to the adequate assurance of future performance shall be extended to the date that is two (2) business days after the conclusion of the Auction, but any such objection must be received before the start of the Sale Hearing, *provided, however,* that the deadline to object to the proposed cure amount shall not be so extended.

26. If a Contract Counterparty does not timely file and serve a Contract Objection, that party will be forever barred from objecting to (i) the Debtors' proposed cure amount, (ii) the assumption and assignment of that party's executory contract or unexpired lease (including the adequate assurance of future performance), (iii) the related relief requested in the Motion, and (iv) the Sale. Such party shall be forever barred and estopped from objecting to the cure amount, the assumption and assignment of that party's executory contract or unexpired lease (including the adequate assurance of future performance), the relief requested in the Motion, whether applicable law excuses such counterparty from accepting performance by, or rendering performance to, the Stalking Horse Bidder or the Successful Bidder, as applicable, for purposes of section 365(c)(1) of the Bankruptcy Code and from asserting any additional cure or other

amounts against the Debtors and the Stalking Horse Bidder or Successful Bidder, as applicable, with respect to such party's executory contract or unexpired lease.

27. Where a Contract Counterparty to an Assigned Contract files a timely Contract Objection asserting a higher cure amount than the amount listed in the Cure and Possible Assumption and Assignment Notice, or objecting to the possible assignment of that Contract Counterparty's executory contract or unexpired lease, and the parties are unable to consensually resolve the dispute, the amount to be paid under Bankruptcy Code section 365 (if any) or, as the case may be, the Debtors' ability to assign the executory contract or unexpired lease to the Successful Bidder will be determined at the Sale Hearing.

28. The payment of the applicable cure amount by the Debtors or Stalking Horse Bidder (or other Successful Bidder), as applicable, shall (i) effect a cure of all defaults existing thereunder and (ii) compensate for any actual pecuniary loss to such counterparty resulting from such default.

J. Notice of the Sale Process

29. The Sale Notice, the Cure and Possible Assumption and Assignment Notice, and the Assumption Notice, in substantially the forms as annexed to this Order as Exhibit 2, Exhibit 3, and Exhibit 4, respectively, and the Bid Procedures Notice, in substantially the forms as annexed to the Motion as Exhibit E, respectively, are hereby approved.

30. Within two (2) business days after the entry of this Order, the Debtors (or their agent) shall serve the Sale Notice by first-class mail upon: (a) the U.S. Trustee; (b) the holders of the twenty (20) largest unsecured claims against the Debtors; (c) counsel to the DIP Lender and the Prepetition Secured Lender; (d) counsel to the Stalking Horse Bidder; (e) all other parties who have expressed a written interest in the Assets; (f) the United States Attorney's Office for

the District of Delaware; (g) the Internal Revenue Service; (h) all state and local taxing authorities with an interest in the Assets; (i) the Attorney General for the State of Delaware; (j) the Securities and Exchange Commission; (k) all other governmental agencies with an interest in the Sale and transactions proposed thereunder; (l) all parties known or reasonably believed to have asserted an Interest in the Assets; (m) the Contract Counterparties; (n) the Debtors' insurance carriers; (o) the Unions; and (p) all parties entitled to notice pursuant to Local Rule 9013-1(m); and (q) any party that has requested notice pursuant to Bankruptcy Rule 2002.

31. As soon as practicable after the entry of this Order, the Debtors shall publish the Bid Procedures Notice in *The New York Times (National Edition)*. In addition, as soon as reasonably practicable, but in no event later than three (3) business days after entry of this Order, the Debtors will also post the Sale Notice and this Bid Procedures on the website maintained by the Debtors' claims and noticing agent, Prime Clerk LLC, located at <http://cases.primeclerk.com/OrchidsPaper>. Such publication notice as set forth in the preceding two sentences shall be deemed sufficient and proper notice of the Sale to any other interested parties whose identifies are unknown to the Debtors.

K. The Sale Hearing

32. The Sale Hearing will be conducted on **June 12, 2019** at [____] **a.m./p.m. (prevailing Eastern Time)**. The Debtors will seek entry of an order of the Court at the Sale Hearing approving and authorizing the sale of the Acquired Assets to the Successful Bidder. Upon entry of this Order, the Debtors are authorized to perform any obligation intended to be performed prior to the Sale Hearing or entry of the Sale Order with respect thereto. The Sale Hearing may be adjourned from time to time without further notice other than such announcement being made in open court or a notice of adjournment filed on the Court's docket.

L. Objections to the Sale

33. Objections, if any, to the relief requested in the Motion relating to the Sale (each, a “**Sale Objection**”) must: (i) be in writing, (ii) comply with the Bankruptcy Rules and the Local Rules, (iii) be filed with the Court, and (iv) be served so it is actually received no later than **4:00 p.m. (prevailing Eastern Time) on June 5, 2019**, by (a) counsel for the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Christopher A. Ward (cward@polsinelli.com), and Polsinelli PC, 150 N. Riverside Plaza, Suite 3000, Chicago, Illinois 60606, Attn: Jerry L. Switzer, Jr. (jswitzer@polsinelli.com), (b) counsel for the DIP Lender and the Prepetition Secured Lender, Winston & Strawn LLP, 35 W. Wacker Drive, Chicago, Illinois 60601, Attn: Daniel J. McGuire (dmcguire@winston.com) and Fox Rothschild LLP, Citizens Bank Center, 919 North Market Street, Suite 300, Wilmington, DE 19899-2323, Attn: Seth Niederman (sniederman@foxrothschild.com), (c) counsel for the Stalking Horse Bidder, Skadden, Arps, Slate, Meagher & Flom LLP, 155 N. Wacker Drive, Chicago, Illinois 60606, Attn: Kimberly A. deBeers (Kimberly.deBeers@skadden.com), (d) counsel for the Creditors’ Committee, [____], and (e) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Ste. 2207 – Lockbox #35, Wilmington, DE 19801, Attn: Juliet Sarkessian (Juliet.M.Sarkessian@usdoj.gov).

34. A party’s failure to timely file a Sale Objection in accordance with this Order shall forever bar the assertion, at the applicable Sale Hearing or otherwise, of any objection to the relief requested in the Motion, or to the consummation of the Sale and the performance of the related transactions, including the transfer of the Assets to the applicable Successful Bidder(s), free and clear of all liens, claims, interests, and encumbrances pursuant to section 363(f) of the

Bankruptcy Code, and shall be deemed to be a “consent” for purposes of section 363(f) of the Bankruptcy Code.

M. Other Relief Granted

35. Nothing in this Order, the Stalking Horse Agreement, or the Motion shall be deemed to or constitute the assumption or assignment of an executory contract or unexpired lease.

36. The requirements of Bankruptcy Rules 6004(h) and 6006(d) are waived.

37. The Debtors are hereby authorized to conduct the Sale without the necessity of complying with any state or local bulk transfer laws or requirements.

38. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

39. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry, notwithstanding any provision in the Bankruptcy Rules or the Local Rules to the contrary, and the Debtors may, in their discretion and without further delay, take any action and perform any act authorized under this Order.

40. The Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2019

UNITED STATES BANKRUPTCY JUDGE

Exhibit 1 to Bid Procedures Order

Bid Procedures

Exhibit 1

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

In re:

ORCHIDS PAPER PRODUCTS
COMPANY, *et al.*,¹

Debtors.

Chapter 11

Case No. 19-10729 (MFW)

Jointly Administered

BID PROCEDURES

In the exercise of their good faith reasonable business judgment, the above-captioned debtors and debtors in possession (the “**Debtors**”) have executed an Option Agreement which grants the Debtors the option to enter into an Asset Purchase Agreement (the “**Stalking Horse Agreement**”) with Orchids Investment LLC (the “**Stalking Horse Bidder**”), pursuant to which Option Agreement and Stalking Horse Agreement (i) the Stalking Horse Bidder proposes to (a) purchase, acquire, and take assignment and delivery of the Acquired Assets (as defined in the Stalking Horse Agreement) and (b) assume certain Assumed Liabilities (as defined in the Stalking Horse Agreement), and (ii) the Debtors propose to, under certain circumstances in connection with the Option Agreement and the termination of the Stalking Horse Agreement, (a) pay the Stalking Horse Bidder an aggregate stalking-horse bidder fee in an amount equal to \$5,250,000, which is three (3%) percent of the Purchase Price (as defined in the Stalking Horse Agreement), in consideration of the Stalking Horse Bidder having expended considerable time and expense in connection with the Option Agreement and the Stalking Horse Agreement and the negotiation thereof, and the identification and quantification of assets to be included in the Acquired Assets (the “**Break-Up Fee**”) and/or (b) reimburse the Stalking Horse Bidder for its out of pocket costs, expenses, and fees in connection with evaluating, negotiating, documenting and performing the transactions contemplated by the Stalking Horse Agreement in the dollar amount equal to the lesser of (i) \$2,000,000, and (ii) the aggregate amount of all reasonable and documented out of pocket costs, expenses and fees incurred by the Stalking Horse Bidder or those of the Stalking Horse Bidder’s subsidiaries that will receive title to any Acquired Assets pursuant to the transactions contemplated by the Stalking Horse Agreement (the “**Expense Reimbursement**”), in each case, in accordance with the terms and conditions of the Option Agreement and the Stalking Horse Agreement.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Orchids Paper Products Company, a Delaware corporation (6944), Orchids Paper Products Company of South Carolina, a Delaware corporation (7198), and Orchids Lessor SC, LLC, a South Carolina limited liability company (7298). The location of the Debtors’ mailing address is 201 Summit View Drive, Suite 110, Brentwood, Tennessee 37027.

On [____], 2019, the Bankruptcy Court entered an order [Docket No. [____]] (the “**Bid Procedures Order**”) approving, among other things, these bid procedures (the “**Bid Procedures**”).

These Bid Procedures set forth the process by which the Debtors are authorized to conduct the auction (the “**Auction**”) for the sale (the “**Sale**”) of the Assets. Subject to the entry of the Sale Order, the Sale may be implemented pursuant to the terms and conditions of the Stalking Horse Agreement, as the same may be amended pursuant to the terms thereof, subject to the receipt of higher or otherwise better Bids (as defined below) in accordance with these Bid Procedures. Pursuant to the Bid Procedures, the Debtors will determine, in consultation with the Creditors’ Committee, the highest or otherwise best price for the sale of the Assets.

N. Important Dates

- (All times are prevailing Eastern Time)
- **May 14, 2019 at 4:00 p.m.:** Debtors to send Cure and Possible Assumption and Assignment Notices to All Contract Counterparties and Notice of the Sale
- **May 31, 2019 at 4:00 p.m.:** Cure Objection Deadline
- **June 6, 2019 at 4:00 p.m.:** Deadline to submit Bid to be considered for the Auction
- **June 10, 2019 at 10:00 a.m.:** Proposed date of Auction
- **June 10, 2019 at 4:00 p.m.:** Debtors to file notice of Successful Bidder and Contract Assignment Notices
- **June 5, 2019 at 4:00 p.m.:** Deadline to file and serve objections to relief requested at Sale Hearing (except for any objection that arises at the Auction)
- **June 12, 2019 at _____ a.m./p.m.:** Proposed date of Sale Hearing

O. Marketing Process

1. Contact Parties

The Debtors and their advisors have developed a list of parties who the Debtors believe may potentially be interested in and who the Debtors reasonably believe would have the financial resources to consummate a Sale, which list includes both potential strategic and financial investors (each, individually, a “**Contact Party**”, and collectively, the “**Contact Parties**”). The Debtors’ investment banker, Houlihan Lokey, has contacted or will contact the Contact Parties to explore their interest in pursuing a Sale. The Contact Parties may include parties whom the Debtors or their advisors have previously contacted regarding a Sale, regardless of whether such parties expressed any interest, at such time, in pursuing a Sale. The Debtors will continue to discuss and may supplement the list of Contact Parties throughout the marketing process, as appropriate.

The Debtors may distribute to each Contact Party an “**Information Package**,” which is comprised of:

- (a) a cover letter;
- (b) a copy of these Bid Procedures;
- (c) a copy of a confidentiality agreement in a form acceptable to the Debtors (the “**Confidentiality Agreement**”); and
- (d) a copy of the Stalking Horse Agreement.

2. Access to Diligence Materials

To participate in the bidding process and to receive access to any materials relating to the Assets (the “**Diligence Materials**”), a party must submit to the Debtors an executed Confidentiality Agreement. The executed Confidentiality Agreement must be signed and transmitted by the person or entity wishing to have access to the Debtors’ data room (the “**Data Room**”) and any other Diligence Materials.

A party who qualifies for access to the Diligence Materials shall be a “**Preliminarily Interested Investor**.” All due diligence requests must be directed to counsel to the Debtors.

For any Preliminary Interested Investor who is a competitor of the Debtors or is affiliated with any competitor of the Debtors, the Debtors reserve the right to withhold any Diligence Materials that the Debtors determine are business-sensitive or otherwise not appropriate for disclosure to such Preliminary Interested Investor.

No due diligence will continue after the Bid Deadline (defined below). The Debtors shall provide the Stalking Horse Bidder with access to all material due diligence materials, management presentations, on-site inspections, and other information provided to any Preliminary Interested Investor or Qualified Bidder that were not previously made available to the Stalking Horse Bidder concurrently with the provision of such information or materials to such Preliminary Interest Investor or Qualified Bidder, as applicable.

3. Auction Qualification Process

To be eligible to participate in the Auction, each offer, solicitation, or proposal (each, a “**Bid**”), and each party submitting such a Bid (each, a “**Bidder**”), must be determined by the Debtors, in consultation with the Creditors’ Committee, to satisfy each of the following conditions:

- (1) **Good Faith Offer; Partial Bids:** Each Bid must constitute a good faith, bona fide offer to purchase all or a portion of the Assets (it being understood that partial bids may be permitted only if the combined consideration exceeds the Purchase Price of the Stalking Horse Agreement).

- (2) **Good Faith Deposit:** Each Bid (other than the Bid made by the Stalking Horse Bidder) must be accompanied by a deposit in the amount of seven percent (7%) of the Bid's proposed cash purchase price to an interest bearing escrow account to be identified and established by the Debtors (the "**Good Faith Deposit**").
- (3) **Terms:** A Bid must be on terms that are substantially the same or better than the terms of the Stalking Horse Agreement, as determined by the Debtors in consultation with the Creditors' Committee.
- (4) **Executed Agreement:** Each Bid must be based on the Stalking Horse Agreement and must include (i) executed transaction documents, signed by an authorized representative of such Bidder and (ii) a copy of such asset purchase agreement marked to show all changes requested by the Bidder as compared to the Stalking Horse Agreement. A Bid will not be considered qualified for the Auction if (i) such Bid contains additional material representations and warranties, covenants, closing conditions, termination rights other than as may be included in the Stalking Horse Agreement (it being agreed and understood such Bid shall modify the Stalking Horse Agreement as needed to comply in all respects with the Bid Procedures Order and will remove provisions that apply only to the Stalking Horse Bidder such as the Bid Protections) (a "**Modified Purchase Agreement**"); (ii) such Bid is not received by the Debtors in writing on or prior to the Bid Deadline, and (iii) such Bid does not contain evidence that the Person submitting it has received unconditional debt and/or equity funding commitments (or has unrestricted and fully available cash) sufficient in the aggregate to finance the purchase contemplated thereby, including proof the Good Faith Deposit has been made. Each Modified Purchase Agreement must provide (1) a commitment to close within two (2) business days after all closing conditions are met and (2) a representation that the Bidder will (a) make all necessary filings under the Hart Scott Rodino Antitrust Improvements Act of 1976, as amended (the "**HSR Act**"), and (b) submit all necessary filings under the HSR Act within five (5) calendar days following the effective date of the Modified Purchase Agreement.
- (5) **Designation of Contracts and Leases:** A Bid must identify any and all executory contracts and unexpired leases of the Debtors that the Bidder wishes to be assumed pursuant to a Sale. A Bid must specify whether the Debtors or the Bidder will be responsible for any cure costs associated with such assumption, and include a good faith estimate of such cure costs (which estimate shall be provided by the Debtors).
- (6) **Designation of Assumed Liabilities:** A Bid must identify all liabilities which the Bidder proposes to assume.
- (7) **Amount of Bid:** Each Bid or combination of Bids must be for all of the Assets and shall clearly show the amount of the purchase price. In addition, a Bid or combination of Bids (a) must propose a purchase price equal to or greater than the sum of (i) the value of the Stalking Horse Agreement, as determined by the Debtors in consultation with the Creditors' Committee; and (ii) an initial overbid

of up to \$7,750,000 (the “**Initial Overbid**”), consisting of the sum of the Break-Up Fee, the Expense Reimbursement and \$500,000, and (b) must obligate the Bidder(s) to pay, to the extent provided in the Agreement, all amounts which the Stalking Horse Bidder under the Agreement has agreed to pay, including any assumed liabilities (as set forth in the Stalking Horse Agreement).

- (8) **Corporate Authority:** Written evidence reasonably acceptable to the Debtors demonstrating appropriate corporate authorization to consummate the proposed transaction; *provided, however*, if the Bidder is an entity specially formed for the purpose of effectuating the transaction, then the Bidder must furnish written evidence reasonably acceptable to the Debtors of the approval of the transaction by the equity holder(s) of such Bidder.
- (9) **Disclosure of Identity of Potential Bidder:** A Bid must fully disclose the identity of each entity that will be bidding for or purchasing the Assets or otherwise participating in connection with such Bid (including the identity of any parent companies of such entity), and the complete terms of any such participation, including any connections, agreements, arrangements or understanding with the Debtors, the Stalking Horse Bidder, or any other known, potential, or prospective bidder, or Potential Bidder, or any officer, director, or equity holder of the Debtors. Under no circumstances shall any undisclosed principals, equity holders or financial backers be associated with any Bid. Each Bid must also include contact information for the specific person(s) and counsel whom the Debtors’ advisors should contact regarding such Bid.
- (10) **Proof of Financial Ability to Perform:** Written evidence the Debtors reasonably conclude demonstrates the Bidder has the necessary financial ability to close the transaction and provide adequate assurance of future performance under all contracts to be assumed and assigned in such transaction. Such information should include, *inter alia*, the following:
 - (a) contact names and numbers for verification of financing sources,
 - (b) written evidence of the Bidder’s internal resources and proof of any debt or equity funding commitments that are needed to close the transaction;
 - (c) the Bidder’s current financial statements (audited if they exist);
 - (d) a description of the Bidder’s pro forma capital structure; and
 - (e) any such other form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors demonstrating such Bidder has the ability to close the transaction; *provided, however*, the Debtors shall determine in their reasonable discretion, in consultation with the Creditors’ Committee, whether the written evidence of such financial wherewithal is reasonably acceptable, and shall not unreasonably withhold acceptance of a Bidder’s financial qualifications.

- (11) **Regulatory and Third Party Approvals:** A Bid must set forth each regulatory and third-party approval required for the Bidder to consummate the Sale, and the time period within which the Bidder expects to receive such regulatory and third-party approvals.
- (12) **Employees:** A Bid must detail the treatment of the employees of the Debtors and their subsidiaries.
- (13) **Conditions/Contingencies:** Except as provided in the Stalking Horse Agreement, a Bid may not be conditioned on obtaining financing or any internal approval, or on the outcome or review of due diligence, but may be subject to the accuracy at the closing of specified representations and warranties in the manner set forth in the Stalking Horse Agreement.
- (14) **Irrevocable:** A Bid (other than the Bid of the Stalking Horse Bidder) must be irrevocable until two (2) business days after the closing of the Sale. Each Bidder (other than the Stalking Horse Bidder) further agrees that its Bid, if not chosen as the Successful Bidder, shall serve, without modification, as a Backup Bidder (as defined below) as may be designated by the Debtors at the Sale Hearing, in the event the Successful Bidder fails to close as provided in the Successful Bidder's purchase agreement, as modified, if at all, and the Sale Order. The Stalking Horse Bidder shall have the right, but not the obligation, to serve as a Backup Bidder if the Stalking Horse Bidder is not the Successful Bidder.
- (15) **Time Frame for Closing:** A Bid by a Bidder must be 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, in consultation with the Creditors' Committee, but in no event later than September 30, 2019.
- (16) **Consent to Jurisdiction:** Each Bidder must submit to the jurisdiction of the Bankruptcy Court to enter an order or orders, which shall be binding in all respects, in any way related to the Debtors, the Bid Procedures, and the Auction.
- (17) **Disclaimer of Fees:** Each Bid (other than the Stalking Horse Agreement) must disclaim any right to receive a fee analogous to a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation. For the avoidance of doubt, no Qualified Bidder (other than the Stalking Horse Bidder) will be permitted to request, nor be granted by the Debtors, at any time, whether as part of the Auction or otherwise, a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation. By submitting its Bid, each Bidder (other than the Stalking Horse Bidder) is agreeing to refrain from and waive any assertion or request for reimbursement on any basis, including pursuant to Bankruptcy Code section 503(b).
- (18) **Bid Deadline:** Regardless of when a party qualifies as a Preliminarily Interested Investor, the Debtors must receive a Bid in writing, on or before **June 6, 2019 at**

4:00 p.m. (prevailing Eastern Time) or such later date as may be agreed to by the Debtors (the “**Bid Deadline**”). Bids must be sent to the following by the Bid Deadline to be considered: (i) counsel for the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Christopher A. Ward (cward@polsinelli.com), and Polsinelli PC, 150 N. Riverside Plaza, Suite 3000, Chicago, Illinois 60606, Attn: Jerry L. Switzer, Jr. (jswitzer@polsinelli.com); (ii) investment bankers for the Debtors, Houlihan Lokey, 111 South Wacker Drive, 37th Floor, Chicago, IL 60606, Attn: Jeffrey Lewis (JLewis@HL.com); (iii) counsel for the DIP Lender and the Prepetition Secured Lender, Winston & Strawn LLP, 35 W. Wacker Drive, Chicago, Illinois 60601, Attn: Daniel J. McGuire (dmcguire@winston.com) and Fox Rothschild LLP, Citizens Bank Center, 919 North Market Street, Suite 300, Wilmington, DE 19899-2323, Attn: Seth Niederman (sniederman@foxrothschild.com); and (iv) counsel for the Creditors’ Committee, [_____].

A Bid received from a Bidder before the Bid Deadline that meets the above requirements shall constitute a “**Qualified Bid**,” and such Bidder shall constitute a “**Qualified Bidder**.” The Stalking Horse Bidder shall be deemed to be a Qualified Bidder.

Within two (2) days after the Bid Deadline, the Debtors and their advisors (in consultation with the Creditors’ Committee) will determine which Bidders are Qualified Bidders and will notify such Bidders whether Bids submitted constitute Qualified Bids so as to enable such Qualified Bidders to attend the Auction. Any Bid that is not deemed a Qualified Bid will not be considered by the Debtors. The Stalking Horse Agreement submitted by the Stalking Horse Bidder will be deemed a Qualified Bid, qualifying the Stalking Horse Bidder as a Qualified Bidder to participate in the Auction. To the extent there is any dispute regarding whether a bidder is a Qualified Bidder, such dispute may be raised with the Bankruptcy Court on an expedited basis prior to the commencement of the Auction.

Between the date that the Debtors notify a Bidder that it is a Qualified Bidder and the Auction, the Debtors may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Without the prior written consent of the Debtors in consultation with the Creditors’ Committee, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase the consideration contemplated by, or otherwise improve the terms of, the Qualified Bid, during the period that such Qualified Bid remains binding as specified in these Bid Procedures; *provided* that any such Qualified Bid may be improved at the Auction as set forth herein. Any improved Qualified Bid must continue to comply with the requirements for Qualified Bids set forth in these Bid Procedures.

Prior to the Auction, the Debtors and their advisors will evaluate Qualified Bids and identify the Qualified Bid that is, in the Debtors’ reasonable business judgment and in consultation with the Creditors’ Committee, the highest or otherwise best bid (the “**Starting Bid**”). For the avoidance of doubt, the Starting Bid shall equal (or exceed) an amount equal to the value of the Stalking Horse Agreement plus the Initial Overbid. In making such determination, the Debtors will take into account, among other things, the execution risk attendant to any submitted bids. Within twenty-four (24) hours of such determination, but in no event later than twenty-four (24) hours before the start of the Auction, the Debtors will (i) notify

the Stalking Horse Bidder and the Creditors' Committee as to which Qualified Bid is the Starting Bid and (ii) distribute copies of the Starting Bid to each Qualified Bidder who has submitted a Qualified Bid and the Creditors' Committee.

4. Credit Bid

The Stalking Horse Bidder, in its capacity as the DIP Lender and Prepetition Secured Lender, shall be deemed to be a Qualified Bidder and is not required to make any Good Faith Deposit. To the fullest extent permissible under Bankruptcy Code section 363(k), the Stalking Horse Bidder, in its capacity as the DIP Lender and Prepetition Secured Lender, may credit bid, as a Qualified Bid or subsequent Bid, in its sole and absolute discretion, any portion and up to the entire amount of Obligations owing under the DIP Loan Documents and the Prepetition Loan Documents (as defined in the DIP Order) in conjunction with the Sale of the Acquired Assets pursuant to the terms of the Stalking Horse Agreement (the "**Credit Bid**"). In the event the amount of the Credit Bid exceeds the total amount of the highest bids for the Assets subject to the Credit Bid, such Credit Bid will be deemed the highest and best bid and such Credit Bid may be accepted by the Debtors and be presented for approval to the Court.

P. Auction

If one or more Qualified Bids is received by the Bid Deadline (other than the Stalking Horse Agreement), the Debtors will conduct the Auction to determine the highest and best Qualified Bid or combination of Qualified Bids. This determination shall take into account any factors the Debtors reasonably deem relevant to the value of the Qualified Bid to the estates, including, *inter alia*, the following: (a) the amount and nature of the consideration; (b) the proposed assumption of any liabilities and/or executory contracts or unexpired leases, if any, and the excluded assets and/or executory contracts or unexpired leases, if any; (c) the ability of the Qualified Bidder to close the proposed Transaction and the conditions related thereto, and the timing thereof; (d) whether the Bid is a bulk bid or a partial bid for only some of the Debtors' assets; (e) the proposed closing date and the likelihood, extent and impact of any potential delays in closing; (f) any purchase price adjustments; (g) the impact of the Transaction on any actual or potential litigation; (h) the net after-tax consideration to be received by the Debtors' estates; and (i) the tax consequences of such Qualified Bid (collectively, the "**Bid Assessment Criteria**").

If no Qualified Bids other than the Stalking Horse Bid are received prior to the Bid Deadline, then the Auction will not occur, the Stalking Horse Agreement may be deemed the Successful Bid, and, subject to the termination rights under the Option Agreement or Stalking Horse Agreement, the Debtors will pursue entry of an order by the Bankruptcy Court authorizing the Sale to the Stalking Horse Bidder as soon as practicable.

Procedures for Auction

The Auction, if necessary, will take place on **June 10, 2019 at 10:00 a.m. (prevailing Eastern Time)** at the offices of Debtors' counsel, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, DE 19801 or such later time on such day or other place as the Debtors shall notify all Bidders who have submitted Qualified Bids; *provided, however*, that the Auction may not be postponed or adjourned beyond June 10, 2019 without the consent of the Stalking Horse

Bidder. Only the Stalking Horse Bidder and such other Qualified Bidders will be entitled to make any Bids at the Auction.

1. The Debtors Shall Conduct the Auction

The Debtors and their professionals shall direct and preside over the Auction and the Auction shall be transcribed or videotaped. At the start of the Auction the Debtors shall describe the terms of the Starting Bid and provide each participant in the Auction with a copy of the Modified Purchase Agreement associated with the Starting Bid.

All Bids made thereafter shall be Overbids (as defined below), and shall be made and received on an open basis, and all material terms of each Overbid shall be fully disclosed to all Bidders who have submitted Qualified Bids. The Debtors shall maintain a transcript of all bids made and announced at the Auction, including the Starting Bid and all Overbids. Upon the solicitation of each round of Overbids, the Debtors may announce a deadline (as the Debtors may, in their business judgment, extend from time to time) by which time any Overbids must be submitted to the Debtors.

2. Terms of Overbids

An “**Overbid**” is any Bid made at the Auction subsequent to the Debtors’ announcement of the Starting Bid. To submit an Overbid for purposes of this Auction, a Bidder must comply with the following conditions:

(1) Minimum Overbid Increment

Any Overbid after the Starting Bid shall be made in increments of at least \$500,000 (the “**Minimum Overbid Increment**”). Additional consideration in excess of the amount set forth in the Starting Bid may include cash and/or non-cash consideration; *provided, however* that the value for such non-cash consideration shall be determined by the Debtors in their reasonable business judgment and in consultation with the Creditors’ Committee.

(2) Remaining Terms Are the Same as for Qualified Bids

Except as modified herein, an Overbid must comply with the conditions for a Qualified Bid set forth above; *provided, however*, the Bid Deadline shall not apply and no additional Good Faith Deposit shall be required beyond the Good Faith Deposit previously submitted by a Qualified Bidder; *provided* that the Successful Bidder (other than the Stalking Horse Bidder) shall be required to make a representation at the end of the Auction that it will provide any additional deposit necessary so that its Good Faith Deposit is equal to the amount of seven percent (7%) of the cash purchase price contained in the Successful Bid. Any Overbid must include, in addition to the amount and form of consideration of the Overbid, a description of all changes (if any) requested by the Qualified Bidder to the Stalking Horse Agreement or a previously submitted Modified Purchase Agreement, in connection therewith (including any changes to the designated assigned contracts and leases and assumed liabilities). Any Overbid must remain open and binding on the Bidder until and unless the Debtors accept a higher Overbid (except to the extent required to serve as the Backup Bid).

To the extent not previously provided (which shall be determined by the Debtors in consultation with the Creditors' Committee), a Bidder submitting an Overbid must submit, as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors) demonstrating such Bidder's ability to close the transaction proposed by such Overbid; *provided, however*, this shall not apply to an Overbid by the Stalking Horse Bidder.

(3) **Announcing Overbids**

The Debtors shall announce at the Auction the material terms of each Overbid, the basis for calculating the total consideration offered in each such Overbid and the resulting benefit to the Debtors' estates based on, *inter alia*, the Bid Assessment Criteria.

(4) **Consideration of Overbids**

Subject to the deadlines set forth herein, the Debtors reserve the right, in their reasonable business judgment, to make one or more adjournments in the Auction to, among other things, facilitate discussions between the Debtors and individual Bidders and allow individual Bidders to consider how they wish to proceed.

3. No Collusion; Good-Faith *Bona Fide* Offer

Each Qualified Bidder participating at the Auction will be required to confirm on the record at the Auction (i) it has not engaged in any collusion with respect to the Sale or bidding (including it has no agreement with any other Bidder or Qualified Bidder to control the price) and (ii) its Qualified Bid is the good-faith *bona fide* offer and it intends to consummate the proposed transaction if selected as the Successful Bidder.

4. Backup Bidder

Notwithstanding anything in the Bid Procedures to the contrary, if an Auction is conducted, the party(ies) with the next highest or otherwise best Qualified Bid (or combination of Qualified Bids) at the Auction, as determined by the Debtors in consultation with the Creditors' Committee, in the exercise of their business judgment, shall be required to serve as backup bidder (the "**Backup Bidder**"). The Backup Bidder shall be required to keep its initial Bid(s) (or if the Backup Bidder submitted one or more Overbids at the Auction, its final Overbid) (the "**Backup Bid**") open and irrevocable until the earlier of 4:00 p.m. (prevailing Eastern Time) on the date that is twenty five (25) days after the date of the Sale Hearing (the "**Outside Backup Date**") or the closing of the transaction with the Successful Bidder. Following entry of the Sale Order, if the Successful Bidder fails to consummate an approved transaction because of a breach or failure to perform on the part of such Successful Bidder, the Debtors may designate the Backup Bidder to be the new Successful Bidder, and the Debtors will be authorized, but not required, to consummate the transaction with the Backup Bidder without further order of the Bankruptcy Court. In such case, the defaulting Successful Bidder's deposit, if any, shall be forfeited to the Debtors' estates, and the Debtors specifically reserve the right to seek all available damages from the defaulting Successful Bidder. The closing date to consummate the transaction with the Backup Bidder shall be no later than the later of twenty five

(25) days after the date the Debtors provide notice to the Backup Bidder the Successful Bidder failed to consummate a sale and the Debtors desire to consummate the transaction with the Backup Bidder or five (5) days after necessary regulatory approvals are completed by the Backup Bidder and/or the Debtors. The deposit, if any, of the Backup Bidder shall be held by the Debtors until the earlier of two (2) business days after (a) the closing of the Sale with the Successful Bidder and (b) the Outside Backup Date; *provided, however*, in the event the Successful Bidder does not consummate the transaction as described above and the Debtors provide notice to the Backup Bidder, the Backup Bidder's deposit shall be held until the closing of the transaction with the Backup Bidder. In the event the Debtors fail to consummate a transaction with the Backup Bidder as described above, the Backup Bidder's deposit shall be forfeited to the Debtors' estates, and the Debtors specifically reserve the right to seek all available damages from the defaulting Backup Bidder. Notwithstanding anything to the contrary herein, the Stalking Horse Bidder shall have the right, but not the obligation, to serve as a Backup Bidder in the event that the Stalking Horse Bidder is not selected as the Successful Bidder.

5. Additional Procedures

The Debtors may announce at the Auction additional procedural rules that are reasonable under the circumstances (*e.g.*, the amount of time to make subsequent Overbids) for conducting the Auction so long as such rules are not inconsistent with these Bid Procedures or the Stalking Horse Agreement.

6. Consent to Jurisdiction as Condition to Bidding

All Qualified Bidders, and all Bidders at the Auction, shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court and waived any right to a jury trial in connection with any disputes relating to the Stalking Horse Agreement, the Auction, or the construction and enforcement of any Transaction Documents.

7. Rights of the Stalking Horse Bidder to Credit Bid

Pursuant to Bankruptcy Code section 363(k), the Stalking Horse Bidder, in its capacity as the DIP Lender and Prepetition Secured Lender, shall have the right to submit a Credit Bid as set forth in the Stalking Horse Agreement and at the Auction as set forth herein and in the Bid Procedures Order. All Credit Bids shall be treated as the equivalent as a cash bid of the same amount and no Credit Bid shall be considered inferior to a cash bid in any respect as a result of the bid being a Credit Bid.

8. Closing the Auction

The Auction shall continue until there is only one Qualified Bid or combination of Qualified Bids that the Debtors determine in their reasonable business judgment after consultation with their financial and legal advisors and in consultation with the Creditors' Committee, is the highest and best Qualified Bid(s) at the Auction (the "**Successful Bid**" and the Bidder(s) submitting such Successful Bid, the "**Successful Bidder**"). In making this decision, the Debtors, in consultation with their financial and legal advisors, shall consider the Bid

Assessment Criteria. The Auction shall not close unless and until all Bidders who have submitted Qualified Bids have been given a reasonable opportunity to submit an Overbid at the Auction to the then-existing Overbid and the Successful Bidder has submitted fully executed Transaction Documents memorializing the terms of the Successful Bid.

The Auction shall close when the Successful Bidder submits fully executed sale and transaction documents memorializing the terms of the Successful Bid.

Promptly following the Debtors' selection of the Successful Bid and the conclusion of the Auction, the Debtors shall announce the Successful Bid and Successful Bidder and shall file with the Bankruptcy Court notice of the Successful Bid and Successful Bidder.

The Debtors shall not consider any Bids submitted after the conclusion of the Auction.

9. Break-Up Fee and Expense Reimbursement

To the extent payable in accordance with the Option Agreement or the Stalking Horse Agreement, the Break-Up Fee and Expense Reimbursement shall be paid as provided in the Option Agreement or the Stalking Horse Agreement and shall constitute an allowed superpriority administrative expense claim against the Debtors' bankruptcy estates pursuant to Bankruptcy Code sections 363, 364(c)(1), 503(b), 507(a)(2), and 507(b).

Q. Procedures for Determining Cure Amounts and Adequate Assurance for Contract Counterparties to Assigned Contracts

By **May 14, 2019**, the Debtors shall send a notice to each counterparty to an executory contract or unexpired lease (each a "**Contract Counterparty**") setting forth the Debtors' calculation of the cure amount, if any, that would be owing to such Contract Counterparty if the Debtors decided to assume or assume and assign such executory contract or unexpired lease, and alerting such Contract Counterparty that their contract may be assumed and assigned to the Successful Bidder (the "**Cure and Possible Assumption and Assignment Notice**"), a copy of which is attached to the Bid Procedures Order as Exhibit 3. Any Contract Counterparty that objects to the cure amount set forth in the Cure and Possible Assumption and Assignment Notice or the possible assignment of its executory contract or unexpired lease must file an objection (a "**Contract Objection**") on or before **4:00 p.m. prevailing Eastern Time on May 31, 2019**, which Contract Objection must be served on (i) counsel for the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Christopher A. Ward (cward@polsinelli.com), and Polsinelli PC, 150 N. Riverside Plaza, Suite 3000, Chicago, Illinois 60606, Attn: Jerry L. Switzer, Jr. (jswitzer@polsinelli.com), (ii) counsel for the DIP Lender and the Prepetition Secured Lender, Winston & Strawn LLP, 35 W. Wacker Drive, Chicago, Illinois 60601, Attn: Daniel J. McGuire (dmcguire@winston.com) and Fox Rothschild LLP, Citizens Bank Center, 919 North Market Street, Suite 300, Wilmington, DE 19899-2323, Attn: Seth Niederman (sniederman@foxrothschild.com), (iii) counsel for the Stalking Horse Bidder, Skadden, Arps, Slate, Meagher & Flom LLP, 155 N. Wacker Drive, Chicago, Illinois 60606, Attn: Kimberly A. deBeers (Kimberly.deBeers@skadden.com), (iv) counsel for the Creditors' Committee, [____], (v) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Ste. 2207 – Lockbox #35, Wilmington, DE

19801, Attn: Juliet Sarkessian (Juliet.M.Sarkessian@usdoj.gov), and (vi) the Clerk of the Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, DE 19801, so it is actually received no later than **4:00 p.m. prevailing Eastern Time on May 31, 2019**. If a Contract Counterparty does not timely file and serve a Contract Objection, that party will be forever barred from objecting to (a) the Debtors' proposed cure amount, or (b) the assignment of that party's executory contract or unexpired lease to the Successful Bidder. Where a Contract Counterparty to an Assigned Contract files a timely Contract Objection asserting a higher cure amount than the amount listed in the Cure and Possible Assumption and Assignment Notice, or an objection to the possible assignment of that Contract Counterparty's executory contract or unexpired lease, and the parties are unable to consensually resolve the dispute, the amount to be paid under Bankruptcy Code section 365 (if any) or, as the case may be, the Debtors' ability to assign the executory contract or unexpired lease to the Successful Bidder will be determined at the Sale Hearing.

R. Sale Hearing

The Bankruptcy Court has scheduled a hearing (the "**Sale Hearing**") on **June 12, 2019, at __: __ .m. (prevailing Eastern Time)**, at which hearing the Debtors may, in their discretion, seek approval of the Sale with the Successful Bidder. Objections to the sale of the Acquired Assets to the Successful Bidder or Backup Bidder must be filed, comply with the Bankruptcy Rules and Local Rules, and be served so they are actually received by no later than **4:00 p.m. (prevailing Eastern Time) on June 5, 2019** (except for any objection that arises at the Auction) by the following: (i) counsel for the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Christopher A. Ward (cward@polsinelli.com), and Polsinelli PC, 150 N. Riverside Plaza, Suite 3000, Chicago, Illinois 60606, Attn: Jerry L. Switzer, Jr. (jswitzer@polsinelli.com), (ii) counsel for the DIP Lender and the Prepetition Secured Lender, Winston & Strawn LLP, 35 W. Wacker Drive, Chicago, Illinois 60601, Attn: Daniel J. McGuire (dmcguire@winston.com) and Fox Rothschild LLP, Citizens Bank Center, 919 North Market Street, Suite 300, Wilmington, DE 19899-2323, Attn: Seth Niederman (sniederman@foxrothschild.com), (iii) counsel for the Stalking Horse Bidder, Skadden, Arps, Slate, Meagher & Flom LLP, 155 N. Wacker Drive, Chicago, Illinois 60606, Attn: Kimberly A. deBeers (Kimberly.deBeers@skadden.com), (iv) counsel for the Creditors' Committee, [____], (v) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Ste. 2207 – Lockbox #35, Wilmington, DE 19801, Attn: Juliet Sarkessian (Juliet.M.Sarkessian@usdoj.gov), and (vi) the Clerk of the Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, DE 19801.

S. Return of Good Faith Deposit

The Good Faith Deposits of all Qualified Bidders shall be held in one or more interest-bearing escrow accounts by the Debtors, but shall not become property of the Debtors' estates absent further order of the Court. The Good Faith Deposits of any Qualified Bidder that is neither the Successful Bidder nor the Backup Bidder shall be returned to such Qualified Bidder not later than two (2) business days after the Sale Hearing. The Good Faith Deposit of the Backup Bidder shall be returned to the Backup Bidder on the date that is the earlier of (i) two (2) business days after the closing of the Sale with the Successful Bidder and (ii) the Outside Backup Date. Upon the return of the Good Faith Deposits, their respective owners shall receive any and

all interest that will have accrued thereon. If the Successful Bidder timely closes the winning transaction, its Good Faith Deposit shall be credited towards its purchase price.

T. Reservation of Rights

The Debtors reserve their rights to modify these Bid Procedures in their reasonable business judgment in any manner that will best promote the goals of the bidding process or impose, at or prior to the Auction, additional customary terms and conditions on the sale of the Acquired Assets, including, without limitation: (a) adjourning the Auction at the Auction and/or adjourning the Sale Hearing in open court without further notice; (b) reopening the Auction to consider further Bids or Overbids; (c) adding procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction (*e.g.*, the amount of time to make subsequent overbids, whether a non-conforming Bid constitutes a Qualified Bid); (d) canceling the Auction; and (e) rejecting any or all Bids or Qualified Bids (including the Stalking Horse Agreement), in all cases, subject to the Stalking Horse Agreement, the Bid Procedures, and the Bid Procedures Order.

Notwithstanding the foregoing and subject in all respects to the Stalking Horse Agreement, the Debtors may not impair or modify the Stalking Horse Bidder's rights and obligations under the Stalking Horse Agreement or the Stalking Horse Bidder's right to credit bid at the Auction.

Exhibit 2 to Bid Procedures Order

Sale Notice

Exhibit 2

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

In re:

ORCHIDS PAPER PRODUCTS
COMPANY, *et al.*,¹

Debtors.

Chapter 11

Case No. 19-10729 (MFW)

Jointly Administered

**NOTICE OF BID PROCEDURES,
AUCTION, HEARING AND DEADLINES RELATING
TO THE SALE OF SUBSTANTIALLY ALL OF THE ASSETS OF THE DEBTORS**

PLEASE TAKE NOTICE that on April 1, 2019, the above-captioned debtors and debtors in possession (the “**Debtors**”) in the above-captioned case (the “**Bankruptcy Case**”), filed a *Motion of Debtors for Entry of (I) an Order (A) Approving Bid Procedures in Connection with the Potential Sale of Substantially All of the Debtors’ Assets, (B) Scheduling an Auction and Sale Hearing, (C) Approving the Form and Manner of Notice Thereof, (D) Authorizing the Debtors to Enter Into the Option Agreement and the Stalking Horse Agreement, (E) Approving Bid Protections, (F) Approving Procedures for the Assumption and Assignment of Contracts and Leases, and (G) Granting Related Relief; and (II) an Order (A) Approving the Sale of Substantially All of the Debtors’ Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (B) Authorizing the Assumption and Assignment of Contracts and Leases, and (C) Granting Related Relief* [Docket No. [___]] (the “**Bid Procedures and Sale Motion**”).² The Debtors seeks to complete a sale (the “**Transaction**”) of substantially all their assets (the “**Assets**”) to a prevailing bidder or bidders (the “**Successful Bidder**”) at an auction free and clear of all liens, claims, encumbrances and other interests pursuant to Bankruptcy Code section 363 (the “**Auction**”).

PLEASE TAKE FURTHER NOTICE that, on [____], 2019 the Bankruptcy Court entered an order [Docket No. ____] (the “**Bid Procedures Order**”) approving the Bid Procedures set forth in the Bid Procedures and Sale Motion (the “**Bid Procedures**”), which set the key dates and times related to the sale of the Debtors’ Assets. **All interested bidders should carefully read the Bid Procedures.** To the extent there are any inconsistencies between the Bid

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Orchids Paper Products Company, a Delaware corporation (6944), Orchids Paper Products Company of South Carolina, a Delaware corporation (7198), and Orchids Lessor SC, LLC, a South Carolina limited liability company (7298). The location of the Debtors’ mailing address is 201 Summit View Drive, Suite 110, Brentwood, Tennessee 37027.

² Capitalized terms not otherwise defined herein shall have the meanings set forth in the Bid Procedures and Sale Motion.

Procedures and the summary description of its terms and conditions contained in this notice, the terms of the Bid Procedures shall control.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Bid Procedures, the Debtors must receive a Qualified Bid from interested bidders in writing, on or before **June 6, 2019 at 4:00 p.m. (prevailing Eastern Time)** or such later date as may be agreed to by the Debtors (the “**Bid Deadline**”). To be considered, Qualified Bids must be sent to the following at or before the Bid Deadline: (i) counsel for the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Christopher A. Ward (cward@polsinelli.com), and Polsinelli PC, 150 N. Riverside Plaza, Suite 3000, Chicago, Illinois 60606, Attn: Jerry L. Switzer, Jr. (jswitzer@polsinelli.com); (ii) investment bankers for the Debtors, Houlihan Lokey, 111 South Wacker Drive, 37th Floor, Chicago, IL 60606, Attn: Jeffrey Lewis (JLewis@HL.com); (iii) counsel for the DIP Lender and the Prepetition Secured Lender, Winston & Strawn LLP, 35 W. Wacker Drive, Chicago, Illinois 60601, Attn: Daniel J. McGuire (dmcguire@winston.com) and Fox Rothschild LLP, Citizens Bank Center, 919 North Market Street, Suite 300, Wilmington, DE 19899-2323, Attn: Seth Niederman (sniederman@foxrothschild.com); and (iv) counsel for the Creditors’ Committee, [_____].

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Bid Procedures, if the Debtors receive one or more Qualified Bids (other than the Stalking Horse Agreement) by the Bid Deadline, the Auction will be conducted on **June 10, 2019 at 10:00 a.m. (prevailing Eastern Time)** at Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, or at such other place, date and time as may be designated by the Debtors.

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Bid Procedures, the Debtors have designated certain Assigned Contracts that may be assumed or assumed and assigned to the Successful Bidder. By May 14, 2019, the Debtors shall send a notice to each counterparty to an Assigned Contract setting forth the Debtors’ calculation of the cure amount, if any, that would be owing to such counterparty if the Debtors decided to assume or assume and assign such Assigned Contract, and alerting such nondebtor party that their contract may be assumed and assigned to the Successful Bidder (the “**Cure and Possible Assumption and Assignment Notice**”).

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Bid Procedures, any counterparty that objects to the cure amount set forth in the Cure and Possible Assumption and Assignment Notice or the possible assignment of their Assigned Contract(s) must file with the Bankruptcy Court and serve an objection (a “**Cure or Assignment Objection**”) so it is actually received on or before **4:00 p.m. prevailing Eastern Time on May 31, 2019**, by (i) counsel for the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Christopher A. Ward (cward@polsinelli.com), and Polsinelli PC, 150 N. Riverside Plaza, Suite 3000, Chicago, Illinois 60606, Attn: Jerry L. Switzer, Jr. (jswitzer@polsinelli.com), (ii) counsel for the DIP Lender and the Prepetition Secured Lender, Winston & Strawn LLP, 35 W. Wacker Drive, Chicago, Illinois 60601, Attn: Daniel J. McGuire (dmcguire@winston.com) and Fox Rothschild LLP, Citizens Bank Center, 919 North Market Street, Suite 300, Wilmington, DE 19899-2323, Attn: Seth Niederman (sniederman@foxrothschild.com), (iii) counsel for the Stalking Horse Bidder, Skadden, Arps,

Slate, Meagher & Flom LLP, 155 N. Wacker Drive, Chicago, Illinois 60606, Attn: Kimberly A. deBeers (Kimberly.deBeers@skadden.com), (iv) counsel for the Creditors' Committee, [____], (v) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Ste. 2207 – Lockbox #35, Wilmington, DE 19801, Attn: Juliet Sarkessian (Juliet.M.Sarkessian@usdoj.gov), and (vi) the Clerk of the Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, DE 19801. Where a counterparty to an Assigned Contract files a timely Cure or Assignment Objection asserting a higher cure amount than the amount listed in the Cure and Possible Assumption and Assignment Notice, or an objection to the possible assignment of that counterparty's Assigned Contract, and the parties are unable to consensually resolve the dispute, the amount to be paid under Bankruptcy Code section 365 (if any) or, as the case may be, the Debtors' ability to assign the Assigned Contract to the Successful Bidder will be determined at the Sale Hearing (as defined below).

PLEASE TAKE FURTHER NOTICE that a hearing will be held to approve the sale of the Acquired Assets to the Successful Bidder (the “**Sale Hearing**”) before the Honorable [____], U.S. Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801, 6th Floor, Courtroom [____], on **June 12, 2019 at [____] a.m./p.m. (prevailing Eastern Time)**, or at such time thereafter as counsel may be heard or at such other time as the Bankruptcy Court may determine. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing or on the agenda for such Sale Hearing. Objections to the sale of the Acquired Assets to the Successful Bidder must be filed and served so they are received no later than **4:00 p.m. (prevailing Eastern Time) on June 5, 2019**, by (i) counsel for the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Christopher A. Ward (cward@polsinelli.com), and Polsinelli PC, 150 N. Riverside Plaza, Suite 3000, Chicago, Illinois 60606, Attn: Jerry L. Switzer, Jr. (jswitzer@polsinelli.com), (ii) counsel for the DIP Lender and the Prepetition Secured Lender, Winston & Strawn LLP, 35 W. Wacker Drive, Chicago, Illinois 60601, Attn: Daniel J. McGuire (dmcguire@winston.com) and Fox Rothschild LLP, Citizens Bank Center, 919 North Market Street, Suite 300, Wilmington, DE 19899-2323, Attn: Seth Niederman (sniederman@foxrothschild.com), (iii) counsel for the Stalking Horse Bidder, Skadden, Arps, Slate, Meagher & Flom LLP, 155 N. Wacker Drive, Chicago, Illinois 60606, Attn: Kimberly A. deBeers (Kimberly.deBeers@skadden.com), (iv) counsel for the Creditors' Committee, [____], (v) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Ste. 2207 – Lockbox #35, Wilmington, DE 19801, Attn: Juliet Sarkessian (Juliet.M.Sarkessian@usdoj.gov), and (vi) the Clerk of the Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, DE 19801.

PLEASE TAKE FURTHER NOTICE that the Debtors are seeking to waive the fourteen-day stay period under Bankruptcy Rules 6004(h) and 6006(d) in order for the Sale to close immediately upon entry of the Sale Order by this Court.

PLEASE TAKE FURTHER NOTICE that this notice is subject to the full terms and conditions of the Bid Procedures and Sale Motion, the Bid Procedures Order and the Bid Procedures, which shall control in the event of any conflict, and the Debtors encourage parties in

interest to review such documents in their entirety. A copy of the Bid Procedures and Sale Motion, the Bid Procedures and the Bid Procedures Order may be obtained (i) by contacting counsel for the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Christopher A. Ward (cward@polsinelli.com) and Polsinelli PC, 150 N. Riverside Plaza, Suite 3000, Chicago, Illinois 60606, Attn: Jerry L. Switzer, Jr. (jswitzer@polsinelli.com), (ii) for free by accessing the website of the Debtors' noticing agent, Prime Clerk LLC, <http://cases.primeclerk.com/OrchidsPaper>, or (iii) for a fee via PACER at <http://www.deb.uscourts.gov>.

Dated: Wilmington, Delaware
[____], 2019

POLSINELLI PC

/s/ Christopher A. Ward

Christopher A. Ward (Del. Bar No. 3877)
Shanti M. Katona (Del. Bar No. 5352)
222 Delaware Avenue, Suite 1101
Wilmington, Delaware 19801
Telephone: (302) 252-0920
Facsimile: (302) 252-0921
cward@polsinelli.com
skatona@polsinelli.com

-and-

Jerry L. Switzer Jr. (*Pro Hac Vice* Pending)
150 North Riverside Plaza
Chicago, Illinois 60606
Telephone: (312) 873-3626
Facsimile: (312) 810-1810
jswitzer@polsinelli.com

*Proposed Counsel to the Debtors and
Debtors in Possession*

Exhibit 3 to Bid Procedures Order

Cure and Possible Assumption and Assignment Notice

Exhibit 3

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

In re:

ORCHIDS PAPER PRODUCTS
COMPANY, *et al.*,¹

Debtors.

Chapter 11

Case No. 19-10729 (MFW)

Jointly Administered

**NOTICE TO COUNTERPARTIES TO POTENTIALLY ASSUMED
EXECUTORY CONTRACTS AND UNEXPIRED LEASES REGARDING CURE
AMOUNTS AND POSSIBLE ASSIGNMENT TO THE STALKING HORSE BIDDER OR
SUCH OTHER SUCCESSFUL BIDDER AT AUCTION**

**YOU ARE RECEIVING THIS NOTICE BECAUSE YOU OR ONE OF YOUR
AFFILIATES MAY BE COUNTERPARTY TO ONE OR MORE EXECUTORY
CONTRACTS AND/OR UNEXPIRED LEASES WITH THE DEBTORS.²**

**PARTIES RECEIVING THIS NOTICE SHOULD (1) READ THIS NOTICE
CAREFULLY AS YOUR RIGHTS MAY BE AFFECTED BY THE TRANSACTIONS
DESCRIBED HEREIN AND (2) LOCATE THEIR NAME AND CONTRACT AND/OR
LEASE ON APPENDIX I HERETO**

PLEASE TAKE NOTICE that on April 1, 2019, the above-captioned debtors and debtors in possession (the “**Debtors**”) filed a motion (the “**Bid Procedures and Sale Motion**”) with the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”).

PLEASE TAKE FURTHER NOTICE that on [____], 2019, the Bankruptcy Court entered an order [Docket No. __] (the “**Bid Procedures Order**”), which (a) set key dates, times and procedures related to the Sale (the “**Sale**”) of substantially of the Debtors’ assets (the “**Assets**”) pursuant to an auction (the “**Auction**”) overseen by the Bankruptcy Court, which Auction is scheduled to occur on June 10, 2019, (b) authorized the Debtors to enter into a stalking horse asset purchase agreement (the “**Stalking Horse Agreement**”) with Orchids Investments LLC (the “**Stalking Horse Bidder**”), (c) established certain procedures relating to

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Orchids Paper Products Company, a Delaware corporation (6944), Orchids Paper Products Company of South Carolina, a Delaware corporation (7198), and Orchids Lessor SC, LLC, a South Carolina limited liability company (7298). The location of the Debtors’ mailing address is 201 Summit View Drive, Suite 110, Brentwood, Tennessee 37027.

² This Notice is being sent to counterparties to executory contracts and unexpired leases. This Notice is not an admission by the Debtors that such contract or lease is executory or unexpired.

the Debtors' assumption and assignment of executory contracts and unexpired leases in connection with the Sale, and (d) granted related relief.³ Approval of the Sale to the Stalking Horse Bidder or such other "Successful Bidder" (as defined in the Bid Procedures Order) after the results of the Auction and the Debtors' assumption and assignment of any executory contracts and unexpired leases in connection therewith, is scheduled to take place at a hearing before the Bankruptcy Court at [] (prevailing Eastern Time) on June 12, 2019 (the "**Sale Hearing**"). The Sale Hearing may be adjourned by the Bankruptcy Court or the Debtors without further notice other than such adjournment announced in open court or a notice of adjournment filed on the Bankruptcy Court's docket.

PLEASE TAKE FURTHER NOTICE that, in accordance with the Bid Procedures Order, the Debtors may assume and assign the executory contract(s) and/or unexpired lease(s) to which you may be a counterparty to the Stalking Horse Bidder or such other Successful Bidder after the outcome of the Auction.

PLEASE TAKE FURTHER NOTICE that the Debtors have conducted a review of their books and records and have determined the cure amount for unpaid monetary obligations under such contract or lease is set forth in the right hand column on Appendix I (the "**Cure Amount**"). If you object to (a) the proposed assumption or disagree with the proposed Cure Amount or (b) object to the possible assignment of such executory contract(s) or unexpired lease(s) to the Stalking Horse Bidder, **you must file an objection with the Bankruptcy Court no later than May 31, 2019 at 4:00 p.m. (prevailing Eastern Time) (the "Objection Deadline") and serve such objection on the following parties:**

POLSINELLI PC

Christopher A. Ward (Del. Bar No. 3877)
Shanti M. Katona (Del. Bar No. 5352)
222 Delaware Avenue, Suite 1101
Wilmington, Delaware 19801
Telephone: (302) 252-0920
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Chicago, Illinois 60606
Telephone: (312) 873-3626
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Counsel to the Debtors

WINSTON & STRAWN LLP

Daniel J. McGuire
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Telephone: (312) 558-6154
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FOX ROTHSCHILD LLP

Seth Niederman
Citizens Bank Center
919 N. Market Street, Suite 300
Wilmington, DE 19899-2323
Telephone: (302) 622-4238
Fax: (302) 655-7004

³ To the extent there are any inconsistencies between the Bid Procedures Order and the summary description of the terms and conditions contained in this Notice, the terms of the Bid Procedures Order shall control.

Counsel to the DIP Lender and the Prepetition Secured Lender

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

Kimberly A. DeBeers
155 N. Wacker Drive
Chicago, Illinois 60606
Telephone: (312) 407-0982
Fax: (312) 407-0411

Counsel to the Stalking Horse Bidder

Office of the United States Trustee for the
District of Delaware
J. Caleb Boggs Federal Building
844 King Street, Suite 2008 – Lockbox #35
Wilmington, DE 19801
Attn: Juliet Sarkessian
Telephone: (302) 573-6008
Fax: (302) 573-6497

Telephone: (____) ____-____
Fax: (____) ____-____

Counsel to the Creditors' Committee

Clerk of the Bankruptcy Court
United States Bankruptcy Court for the
District of Delaware
824 North Market Street, 3rd Floor
Wilmington, DE 19801

PLEASE TAKE FURTHER NOTICE that if no objection to the Cure Amount or the assignment of your Executory Contract(s) or Unexpired Lease(s) to the Successful Bidder is filed by the Objection Deadline, **you will be (a) forever barred from objecting to the Cure Amount or provision of adequate assurance of future performance and from asserting any additional cure or other amounts with respect to your contract(s) or lease(s), and the Debtors and the Stalking Horse Bidder or the Successful Bidder (as applicable) shall be entitled to rely solely upon the Cure Amount, (b) deemed to have consented to the assumption or assumption and assignment, and (c) forever barred and estopped from asserting or claiming defaults exist, that conditions to assignment must be satisfied under such contract(s) and/or lease(s) or that there is any objection or defense to the assumption and assignment of such contract(s) and/or lease(s).**

PLEASE TAKE FURTHER NOTICE that if you agree with the Cure Amount indicated on Appendix I and otherwise do not object to the Debtors' assumption or assumption and assignment of your contract(s) and/or lease(s), you need not take any further action.

PLEASE TAKE FURTHER NOTICE that copies of the Sale Motion, the Bid Procedures, and the Bid Procedures Order, as well as all related exhibits, including the proposed Sale Order, are available: (a) upon request from the proposed counsel to the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Christopher A. Ward and Polsinelli PC, 150 N. Riverside Plaza, Suite 3000, Chicago, Illinois 60606, Attn: Jerry L. Switzer, Jr.; (b) for free from the website of the Debtors' noticing agent, Prime Clerk LLC, <http://cases.primeclerk.com/OrchidsPaper>, and (c) for a fee via PACER by visiting <http://www.deb.uscourts.gov>.

POLSINELLI PC

/s/ Christopher A. Ward

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jswitzer@polsinelli.com

*Proposed Counsel to the Debtors and
Debtors in Possession*

APPENDIX I

[Counterparty Name]	[Contract/Lease]	[Cure Amount]	[Proposed Assignee (if any)]
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Exhibit 4 to Bid Procedures Order

Assumption Notice

Exhibit 4

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

In re:

ORCHIDS PAPER PRODUCTS
COMPANY, *et al.*,¹

Debtors.

Chapter 11

Case No. 19-10729 (MFW)

Jointly Administered

**NOTICE OF PROPOSED ASSIGNMENT
OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**YOU ARE RECEIVING THIS NOTICE BECAUSE YOU OR ONE OF YOUR
AFFILIATES MAY BE COUNTERPARTY TO ONE OR MORE EXECUTORY
CONTRACTS AND/OR UNEXPIRED LEASES WITH THE DEBTORS.²**

**PARTIES RECEIVING THIS NOTICE SHOULD (1) READ THIS NOTICE
CAREFULLY AS YOUR RIGHTS MAY BE AFFECTED BY THE TRANSACTIONS
DESCRIBED HEREIN AND (2) LOCATE THEIR NAME AND CONTRACT AND/OR
LEASE ON SCHEDULE I HERETO**

PLEASE TAKE NOTICE that on April 1, 2019, the above-captioned debtors and debtors in possession (the “**Debtors**”) filed for relief pursuant to chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”), and also filed a motion (the “**Sale Motion**”)³ to sell substantially all of their assets (the “**Assets**”) free and clear of all liens, claims, encumbrances, and other interests (the “**Sale**”) and assume and assign certain

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Orchids Paper Products Company, a Delaware corporation (6944), Orchids Paper Products Company of South Carolina, a Delaware corporation (7198), and Orchids Lessor SC, LLC, a South Carolina limited liability company (7298). The location of the Debtors’ mailing address is 201 Summit View Drive, Suite 110, Brentwood, Tennessee 37027.

² This Notice is being sent to counterparties to executory contracts and unexpired leases. This Notice is not an admission by the Debtors that such contract or lease is executory or unexpired.

³ *Motion of Debtors for Entry of (I) an Order (A) Approving Bid Procedures in Connection with the Potential Sale of Substantially All of the Debtors’ Assets, (B) Scheduling an Auction and Sale Hearing, (C) Approving the Form and Manner of Notice Thereof, (D) Authorizing the Debtors to Enter Into the Option Agreement and the Stalking Horse Agreement, (E) Approving Bid Protections, (F) Approving Procedures for the Assumption and Assignment of Contracts and Leases, and (G) Granting Related Relief; and (II) an Order (A) Approving the Sale of Substantially All of the Debtors’ Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (B) Authorizing the Assumption and Assignment of Contracts and Leases, and (C) Granting Related Relief* [Docket No. ____]

of their executory contracts and unexpired leases (collectively, the “**Contracts**”) to the purchaser of the Assets.⁴

PLEASE TAKE FURTHER NOTICE that the Debtors are soliciting offers for the purchase of the Assets of the Debtors consistent with the bid procedures (the “**Bid Procedures**”) approved by the Court by the entry of an order on [____], 2019 (the “**Bid Procedures Order**”).⁵ The Bid Procedures include, among other things, procedures for the assumption and assignment of the Contracts (the “**Assumption Procedures**”).

PLEASE TAKE FURTHER NOTICE that, accordingly, pursuant to the Assumption Procedures, and by this written notice, the Debtors hereby notify you that they have determined, in the exercise of their business judgment, the Contracts and any modifications thereto set forth on Schedule 1 attached hereto (collectively, the “**Assigned Contracts**”) may be assumed and assigned to the Successful Bidder, subject to the Successful Bidder’s payment of the cure amount set forth on Schedule 1, or such other cure amounts as are agreed by the parties.

PLEASE TAKE FURTHER NOTICE that the Successful Bidder has the right under certain circumstances to designate additional Contracts as Assigned Contracts or remove certain Contracts from the list of Assigned Contracts prior to closing.

PLEASE TAKE FURTHER NOTICE that copies of the Sale Motion, the Bid Procedures, and the Bid Procedures Order, as well as all related exhibits, including the proposed Sale Order, are available: (a) upon request from the proposed counsel to the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Christopher A. Ward and Polsinelli PC, 150 N. Riverside Plaza, Suite 3000, Chicago, Illinois 60606, Attn: Jerry L. Switzer, Jr.; (b) for free from the website of the Debtors’ noticing agent, Prime Clerk LLC, <http://cases.primeclerk.com/OrchidsPaper>, and (c) for a fee via PACER by visiting <http://www.deb.uscourts.gov>.

PLEASE TAKE FURTHER NOTICE that, except as otherwise provided by the Bid Procedures Order, the time for filing objections to (a) the cure amounts related to the Assigned Contracts, (b) the Debtors’ ability to assume and assign the Assigned Contracts, and (c) adequate assurance of future performance of the Assigned Contract by the Successful Bidder has passed and no further notice or action is necessary with respect to such matters.

⁴ Capitalized terms used as defined terms but not defined herein shall have all the meanings ascribed to them in the Sale Motion.

⁵ *Order (I) Approving Bid Procedures in Connection with the Potential Sale of Substantially All of the Debtors’ Assets, (II) Scheduling an Auction and Sale Hearing, (III) Approving the Form and Manner of Notice Thereof, (IV) Authorizing the Debtors to Enter Into the Option Agreement and the Stalking Horse Agreement, (V) Approving Bid Protections, (VI) Approving Procedures for the Assumption and Assignment of Contracts and Leases, and (VII) Granting Related Relief* [Docket No. ____].

Dated: Wilmington, Delaware
[_____], 2019

POLSINELLI PC

/s/ Christopher A. Ward

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*Proposed Counsel to the Debtors and
Debtors in Possession*

Schedule 1 to Assumption Notice

Assigned Contracts¹

Counterparty	Description of Assigned Contracts or Leases	Cure Amount	Proposed Assignee

¹ The presence of a contract or lease on this Schedule 1 does not constitute an admission by the Debtors that such contract is an executory contract or such lease is an unexpired lease pursuant to Bankruptcy Code section 365 or any other applicable law, and the Debtors reserve all rights to withdraw any proposed assumption and assignment or to reject any contract or lease at any time before such contract or lease is assumed and assigned pursuant to an order of the Court.

Exhibit D to Motion

Proposed Sale Order

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

In re:

ORCHIDS PAPER PRODUCTS
COMPANY, *et al.*,¹

Debtors.

Chapter 11

Case No. 19-10729 (MFW)

Jointly Administered

Re: Docket Nos. ____ & ____

**ORDER (I) APPROVING THE SALE OF SUBSTANTIALLY
ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS,
ENCUMBRANCES, AND INTERESTS, (II) AUTHORIZING THE ASSUMPTION
AND ASSIGNMENT OF CONTRACTS AND LEASES, AND (III) GRANTING
RELATED RELIEF**

Upon consideration of the *Motion of Debtors for Entry of (I) an Order (A) Approving Bid Procedures in Connection with the Potential Sale of Substantially All of the Debtors' Assets, (B) Scheduling an Auction and Sale Hearing, (C) Approving the Form and Manner of Notice Thereof, (D) Authorizing the Debtors to Enter Into the Option Agreement and the Stalking Horse Agreement, (E) Approving Bid Protections, (F) Approving Procedures for the Assumption and Assignment of Contracts and Leases, and (G) Granting Related Relief; and (II) an Order (A) Approving the Sale of Substantially All of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (B) Authorizing the Assumption and Assignment of Contracts and Leases, and (C) Granting Related Relief (the "Sale Motion")* [Docket Entry No. ____] of the above-captioned debtors and debtors in possession (the "**Debtors**"), which requests an order (this "**Sale Order**") that, among other things, authorizes and approves (a) the sale,

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are Orchids Paper Products Company, a Delaware corporation (6944), Orchids Paper Products Company of South Carolina, a Delaware corporation (7198), and Orchids Lessor SC, LLC, a South Carolina limited liability company (7298). The location of the Debtors' mailing address is 201 Summit View Drive, Suite 110, Brentwood, Tennessee 37027.

assignment, transfer, conveyance and delivery of substantially all of the Debtors' assets identified as "Acquired Assets" (as defined in the Asset Purchase Agreement (including all related exhibits and schedules) (as may be amended, modified or supplemented in accordance with its terms, the "**Agreement**")² a complete copy of which is attached hereto as Exhibit A among the Debtors and [_____] (the "**Purchaser**"), and (b) the assumption and assignment of certain unexpired leases and executory contracts identified as "Assigned Contracts" (as defined in the Agreement), in each case, effective as of the Closing on the Closing Date, all as more fully set forth in the Motion; this Court having entered the *Order (I) Approving Bid Procedures in Connection with the Potential Sale of Substantially All of the Debtors' Assets, (II) Scheduling an Auction and a Sale Hearing, (III) Approving the Form and Manner of Notice Thereof, (IV) Authorizing the Debtors to Enter Into the Option Agreement and the Stalking Horse Agreement, (V) Approving Bid Protections, (VI) Approving Procedures for the Assumption and Assignment of Contracts and Leases, and (VII) Granting Related Relief on [_____], 2019*; this Court having reviewed and considered the Sale Motion and any objections thereto; this Court having heard statements of counsel and the evidence presented in support of the relief requested by the Debtors in the Sale Motion at a hearing before this Court (the "**Sale Hearing**"); upon the full record of these Chapter 11 Cases; it appearing no other notice need be given; it further appearing the legal and factual bases set forth in the Sale Motion and the record made at the Sale Hearing establish just cause for the relief granted herein; and after due deliberation and sufficient cause therefor:

THE COURT FINDS AND DETERMINES THAT:

² Except as otherwise defined herein, or where reference is made to a definition in the Sale Motion, all capitalized terms shall have the meanings ascribed to them in the Agreement.

Jurisdiction, Final Order, and Statutory Predicates

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012.

C. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). The Debtors have confirmed their consent, pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"), to the entry of a final order by this Court in connection with the Sale Motion, to the extent it is later determined the Court, absent the consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

D. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

E. The bases for the relief requested in this Motion are sections 105(a), 363, 365, 503, and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "**Bankruptcy Code**"), Bankruptcy Rules 2002, 6004, 6006, 9007, and 9014, and Local Rules 2002-1, 6004-1, and 9013-1(m).

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

Retention of Jurisdiction

G. It is necessary and appropriate for the Court to retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Sale Order and the Agreement, including its related documents, all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith to which the Debtors are a party or which has been assigned by the Debtors to the Purchaser, and to adjudicate, if necessary, any and all disputes involving the Debtors concerning or relating in any way to, or affecting, the Sale or the transactions contemplated in the Agreement, and related documents.

Corporate Authority; Consents and Approvals

H. Each of the Debtors has, to the extent necessary or applicable, (a) the full corporate power and authority to execute and deliver the Agreement and all other documents contemplated thereby, (b) all corporate authority necessary to consummate the transaction contemplated by the Agreement, and (c) taken all corporate action necessary to authorize and approve the Agreement and the consummation of the transactions contemplated thereby. The Sale has been duly and validly authorized by all necessary corporate action. No consents or approvals, other than those expressly provided for in the Agreement, are required for the Debtors to consummate the Sale, the Agreement, or the transactions contemplated thereby.

**Notice of Sale, Auction, Sale Hearing,
Agreement, and Assumption and Assignment**

I. Actual written notice of the Sale Motion, the Sale, the Auction, the Sale Hearing, and the transactions contemplated thereby, and a reasonable opportunity to object or be heard with respect to the Sale Motion and the relief requested therein, has been afforded to all known interested entities and parties, including, without limitation, the following entities and parties: (a) the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”); (b) the holders of the twenty (20) largest unsecured claims against the Debtors; (c) all of the Debtors’ other creditors; (d) counsel to the DIP Lender and the Prepetition Secured Lender; (e) counsel to the Stalking Horse Bidder; (f) all other parties who have expressed a written interest in the Assets; (g) the United States Attorney’s Office for the District of Delaware; (h) the Internal Revenue Service; (i) all state and local taxing authorities with an interest in the Assets; (j) the Attorney General for the State of Delaware; (k) the Securities and Exchange Commission; (l) all other governmental agencies with an interest in the Sale and transactions proposed thereunder; (m) all parties known or reasonably believed to have asserted an Interest in the Assets; (n) the counterparties to the Contracts (the “**Contract Counterparties**”); (o) the Debtors’ insurance carriers; (p) all parties entitled to notice pursuant to Local Rule 9013-1(m); and (q) any party that has requested notice pursuant to Bankruptcy Rule 2002.

J. In addition, the Debtors have caused notice of the Sale Motion, the Sale, the Auction, and the Sale Hearing to be (i) published in *The New York Times (National Edition)* on [____], 2019, and (ii) posted on the website maintained by the Debtors’ claims and noticing agent, Prime Clerk LLC, available at <http://cases.primeclerk.com/OrchidsPaper>, as required by the Bid Procedures Order. The foregoing notice was sufficient and reasonably calculated under

the circumstances to reach entities whose identities are not reasonably ascertainable by the Debtors.

K. In accordance with the provisions of the Bid Procedures Order, the Debtors have served notice upon the Contract Counterparties: (a) that the Debtors seek to assume and assign to the Purchaser the Assigned Contracts on the Closing Date (as defined in the Agreement); and (b) of the relevant Cure Amounts (as defined below). Service of such notice was good, sufficient, and appropriate under the circumstances, and no further notice need be given in respect of establishing a Cure Amount for the Contracts. Each of the Contract Counterparties has had an adequate opportunity to object to the Cure Amounts set forth in the notice and to the assumption and assignment to the Purchaser of the applicable Assigned Contracts (including objections related to the adequate assurance of future performance and objections based on whether applicable law excuses the counterparty from accepting performance by, or rendering performance to, the Purchaser (or its designee) for purposes of section 365(c)(1) of the Bankruptcy Code). All objections, responses, or requests for adequate assurance, if any, have been resolved, overruled, or denied, as applicable.

L. The notice of the Auction and the Sale Hearing provided all interested parties with timely and proper notice of the Sale, the Auction, and the Sale Hearing.

M. The Debtors have articulated good and sufficient reasons for this Court to grant the relief requested in the Sale Motion regarding the sales process, including, without limitation: (i) determination of final Cure Amounts; and (ii) approval and authorization to serve notice of the Auction and Sale Hearing.

N. As evidenced by the affidavits of service and affidavits of publication previously filed with the Court, proper, timely, adequate, and sufficient notice of the Sale Motion, the Sale,

the Auction, the Sale Hearing, and the transactions contemplated thereby, including, without limitation, the assumption and assignment of the Assigned Contracts to the Purchaser, has been provided in accordance with the Bid Procedures Order and Bankruptcy Code sections 105(a), 363, and 365 and Bankruptcy Rules 2002, 6004, 6006, 9007, 9008, and 9014. The notices described herein were good, sufficient, and appropriate under the circumstances, and no other or further notice of the Sale Motion, the Sale, the Auction, the Sale Hearing, or the assumption and assignment of the Assigned Contracts to the Purchaser is or shall be required.

O. The disclosures made by the Debtors concerning the Sale Motion, the Agreement, the Auction, the Sale Hearing, the Sale, and the assumption and assignment of the Assigned Contracts to the Purchaser were good, complete, and adequate.

P. A reasonable opportunity to object and be heard with respect to the Sale and the Sale Motion, and the relief requested therein (including, without limitation, the assumption and assignment of the Assigned Contracts to the Purchaser and any Cure Amounts relating thereto), has been afforded to all interested persons and entities, including the applicable notice parties.

Auction

Q. The Debtors conducted the Auction on **June 10, 2019** in connection with, and has otherwise complied in all respects with, the Bid Procedures Order. The Auction process set forth in the Bid Procedures Order afforded a full, fair, and reasonable opportunity for any entity to make a higher or otherwise better offer to purchase the Assets. The Auction was duly noticed and conducted in a non-collusive, fair, and good faith manner, and a reasonable opportunity has been given to any interested party to make a higher and better offer for the Assets. The Auction was transcribed and the transcript of the Auction was introduced into evidence at the Sale Hearing. At the conclusion of the Auction, the Debtors determined in the exercise of their good

faith business judgment that the Purchaser submitted the highest and best bid for the Assets and, accordingly, the Purchaser was determined to be the Successful Bidder for the Assets.

Good Faith of the Purchaser

R. As demonstrated by the representations of counsel and other evidence proffered or adduced at the Sale Hearing, the Debtors and their advisors marketed the Assets to secure the highest and best offer. The terms and conditions set forth in the Agreement are fair, adequate, and reasonable, including the amount of the Purchase Price, which is found to constitute reasonably equivalent and fair value.

S. The Purchaser is not an “insider” or “affiliate” of any of the Debtors, as those terms are defined in section 101 of the Bankruptcy Code, and no common identity of incorporators, directors, managers, controlling shareholders, or other insider of the Debtors exist between the Purchaser and the Debtors.

T. The Debtors and the Purchaser extensively negotiated the terms and conditions of the Agreement in good faith and at arm’s length. The Purchaser is purchasing the Acquired Assets and has entered into the Agreement in good faith and is a good faith buyer within the meaning of Bankruptcy Code section 363(m), and is therefore entitled to the full protection of that provision, and otherwise has proceeded in good faith in all respects in connection with this proceeding in that, *inter alia*: (i) the Purchaser recognized the Debtors were free to deal with any other party interested in purchasing the Acquired Assets; (ii) the Purchaser agreed to subject its bid to competitive bidding at the Auction; (iii) all payments to be made by the Purchaser and other agreements or arrangements entered into by the Purchaser in connection with the Sale have been disclosed; (iv) the Purchaser has not violated Bankruptcy Code section 363(n) by any action or inaction; (v) no common identity of directors or controlling stockholders exists between the

Purchaser and the Debtors; and (vi) the negotiation and execution of the Agreement was at arm's length and in good faith.

U. Neither the Debtors nor the Purchaser have engaged in any conduct that would cause or permit the Agreement to be avoided under Bankruptcy Code section 363(n). The Debtors and the Purchaser were represented by their own respective counsel and other advisors during such arm's length negotiations in connection with the Agreement and the Sale.

V. No party has objected to the Sale, the Agreement, or the Auction on the grounds of fraud or collusion.

W. Accordingly, the Purchaser is purchasing the Acquired Assets in good faith and is a good-faith buyer within the meaning of Bankruptcy Code section 363(m). The Purchaser is therefore entitled to all of the protections afforded under Bankruptcy Code section 363(m).

Highest and Best Offer

X. The Debtors conducted a sale process in accordance with, and have otherwise complied in all respects with, the Bid Procedures Order. The sale process set forth in the Bid Procedures Order afforded a full, fair, and reasonable opportunity for any person or entity to make a higher or otherwise better offer to purchase the Assets. The Auction was duly noticed in a non-collusive, fair, and good-faith manner, and a reasonable opportunity has been given to any interested party to make a higher and better offer for the Assets.

Y. (i) The Debtors and their advisors engaged in a robust and extensive marketing and sale process, both prior to the commencement of these Chapter 11 Cases and through the postpetition sale process in accordance with the Bid Procedures Order and the sound exercise of the Debtors' business judgment; (ii) the Debtors conducted a fair and open sale process; (iii) the sale process, the Bid Procedures, and the Auction were non-collusive, duly noticed, and provided

a full, fair, reasonable, and adequate opportunity for any entity that either expressed an interest in acquiring the Assets, or who the Debtors believed may have had an interest in acquiring the Assets, to make an offer to purchase the Debtors' assets, including, without limitation, the Acquired Assets; (iv) the Debtors and the Purchaser have negotiated and undertaken their roles leading to the entry into the Agreement in a diligent, non-collusive, fair, reasonable, and good faith manner; and (v) the sale process conducted by the Debtors resulted in the highest or otherwise best value for the Assets for the Debtors and their estates, was in the best interest of the Debtors, their estates, their creditors, and all parties in interest, and any other transaction would not have yielded as favorable a result. There is no legal or equitable reason to delay consummation of the Agreement and the transactions contemplated therein.

Z. The Agreement constitutes the highest and best offer for the Assets, and will provide a greater recovery for the Debtors' estates than would be provided by any other available alternative. The Debtors' determination that the Agreement constitutes the highest and best offer for the Assets constitutes a valid and sound exercise of the Debtors' business judgment.

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

BB. Approval of the Sale Motion and the Agreement and the consummation of the transaction contemplated thereby are in the best interests of the Debtors, their estates, their creditors, and other parties in interest.

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

DD. Entry of an order approving the Agreement and all the provisions thereof is a necessary condition precedent to Purchaser's consummation of the Sale, as set forth in the Agreement.

No Fraudulent Transfer or Merger

EE. The consideration provided by the Purchaser pursuant to the Agreement (a) is fair and reasonable, (b) is the highest or best offer for the Assets, and (c) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act, and under the laws of the United States, any state, territory, possession, or the District of Columbia.

FF. Neither the Purchaser nor its past, present, and future subsidiaries, parents, divisions, affiliates, agents, representatives, insurers, attorneys, successors and assigns, nor any of its nor their respective directors, managers, officers, employees, shareholders, members, agents, representatives, attorneys, contractors, subcontractors, independent contractors, owners, insurance companies, or partners (collectively, the "**Purchaser Parties**") is a mere continuation of the Debtors or their estates, and there is no continuity of enterprise between any Purchaser Party and the Debtors. No Purchaser Party is holding itself out to the public as a continuation of the Debtors or their respective estates. No Purchaser Party is a successor to the Debtors or their estates, and the Sale does not amount to a consolidation, merger, or *de facto* merger of the Purchaser (or any other Purchaser Party) and the Debtors.

Validity of Transfer

GG. The Agreement was not entered into for the purpose of hindering, delaying, or defrauding creditors under the Bankruptcy Code or under the laws of the United States, any of its states, territories, or possessions, or the District of Columbia. Neither the Debtors nor the Purchaser are entering into the transactions contemplated by the Agreement fraudulently, for the purposes of statutory and common law fraudulent conveyance and fraudulent transfer claims.

HH. The Debtors are the sole and lawful owner of the Acquired Assets. Subject to Bankruptcy Code section 363(f) (addressed below), the transfer of the Acquired Assets to the Purchaser will be, as of the Closing Date, a legal, valid, and effective transfer of the Acquired Assets, which transfer vests or will vest the Purchaser with all right, title, and interest of the Debtors to the Acquired Assets free and clear of (i) all liens (including any liens as that term is defined in section 101(37) of the Bankruptcy Code) and Encumbrances (as defined in the Agreement) relating to, accruing, or arising any time prior to the Closing Date (collectively, the “**Liens**”), and (ii) all debts (as that term is defined in section 101(12) of the Bankruptcy Code) arising under, relating to, or in connection with any act of the Debtors or claims (as that term is defined in section 101(5) of the Bankruptcy Code), liabilities, obligations, demands, guaranties, options in favor of third parties, rights, contractual commitments, restrictions, interests, mortgages, hypothecations, charges, indentures, loan agreements, instruments, collective bargaining agreements, leases, licenses, deeds of trusts, security interests or similar interests, conditional sale or other title retention agreements and other similar impositions, restrictions on transfer or use, pledges, judgments, claims for reimbursement, contribution, indemnity, exoneration, infringement, products liability, alter ego liability, suits, defenses, credits, allowances, options, limitations, causes of action, choses in action, rights of first refusal or first offer, rebate, chargeback, credit, or return, proxy, voting trust or agreement or transfer restriction

under any shareholder or similar agreement or encumbrance, easements, rights of way, encroachments, Liabilities (as defined in the Agreement), and matters of any kind and nature, whether arising prior to or subsequent to the Petition Date, whether known or unknown, legal or equitable, mature or unmatured, contingent or noncontingent, liquidated or unliquidated, asserted or unasserted, whether imposed by agreement, understanding, law, equity, or otherwise (including, without limitation, rights with respect to Claims (as defined below) and Liens (A) that purport to give any party a right or option to effect a setoff or recoupment against, or a right or option to effect any forfeiture, modification, profit sharing interest, right of first refusal, purchase or repurchase right or option, or termination of, any of the Debtors' or the Purchaser's interests in the Acquired Assets, or any similar rights, if any, or (B) in respect of taxes, restrictions, rights of first refusal, charges of interests of any kind or nature, if any, including without limitation, any restriction of use, voting, transfer, receipt of income, or other exercise of any attribute of ownership) collectively, as defined in this clause (ii), the "**Claims**" and, together with the Liens and other interests of any kind or nature whatsoever, the "**Interests**"), relating to, accruing or arising any time prior to the entry of this Sale Order, with the exception of the Assumed Liabilities and the Permitted Encumbrances (each as defined in the Agreement for conveyance purposes) to the extent set forth in the Agreement, and any covenants set forth in the Agreement.

II. For the avoidance of doubt, the terms "Liens" and "Claims," as used in this Sale Order, include, without limitation, rights with respect to any Liens and Claims:

- (a) that purport to give any party a right of setoff or recoupment against, or a right or option to affect any forfeiture, modification, profit-sharing interest, right of first refusal, purchase or repurchase writer option, or

termination of, any of the Debtors' or the Purchaser's interest in the Acquired Assets, or any similar rights; or

- (b) in respect of taxes, restrictions, rights of first refusal, charges of interest of any kind and nature, if any, and including, without limitation, any restriction of use, voting, transfer, receipt of income, or other exercise of any of the attributes of ownership relating to, accruing, or arising at any time prior to the Closing Date, with the exception of Permitted Encumbrances and Assumed Liabilities (as those terms are defined in the Agreement) that are expressly assumed by the Purchaser pursuant to the Agreement.

JJ. For the further avoidance of doubt, the Purchaser is expressly assuming responsibility for, and the Acquired Assets will be transferred subject to, the Cure Amounts and any obligations arising at or after the Closing Date under the Assigned Contracts, as set forth in the Agreement.

Section 363(f) Is Satisfied

KK. The conditions of Bankruptcy Code section 363(f) have been satisfied in full; therefore, the Debtors may sell the Acquired Assets free and clear of any Interests in the property other than any Permitted Encumbrances and Assumed Liabilities.

LL. The Purchaser would not have entered into the Agreement, and would not consummate the transactions contemplated thereby, if the Sale of the Acquired Assets to the Purchaser and the assumption of any Assumed Liabilities by the Purchaser were not free and clear of all Interests, other than Permitted Encumbrances and the Assumed Liabilities, or if the Purchaser would, or in the future could, be liable for any of such Interests (other than the

Permitted Encumbrances and the Assumed Liabilities). Unless otherwise expressly included in the Permitted Encumbrances or the Assumed Liabilities, the Purchaser shall not be responsible for any Interests against the Debtors, their estates, or any of the Acquired Assets, including in respect of the following: (a) any labor or employment agreement; (b) all mortgages, deeds of trust, and other security interests; (c) intercompany loans and receivables among the Debtors and any of their affiliates (as defined in Bankruptcy Code section 101(2)); (d) any other environmental, employee, workers' compensation, occupational disease, or unemployment- or temporary disability-related claim, including, without limitation, claims that might otherwise arise under or pursuant to (i) the Employee Retirement Income Security Act of 1974, as amended, (ii) the Fair Labor Standards Act, (iii) Title VII of the Civil Rights Act of 1964, (iv) the Federal Rehabilitation Act of 1973, (v) the National Labor Relations Act, (vi) the Worker Adjustment and Retraining Notification Act of 1988, (vii) the Age Discrimination and Employee Act of 1967 and the Age Discrimination in Employment Act, as amended, (viii) the Americans with Disabilities Act of 1990, (ix) the Consolidated Omnibus Budget Reconciliation Act of 1985, (x) state discrimination laws, (xi) the unemployment compensation laws or any other similar state laws, or (xii) any other state or federal benefits or claims relating to any employment with the Debtors or their predecessor, if any, (xiii) Claims or Liens arising under any Environmental Law (as defined in the Agreement) with respect to the Debtors' business, Excluded Liabilities (as defined in the Agreement), the Acquired Assets, the Excluded Assets (as defined in the Agreement), or any assets owned or operated by the Debtors or any corporate predecessor of the Debtors, at any time prior to the Closing Date, (xiv) any bulk sales or similar law, (xv) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended, and (xvi) any statutory or common-law bases for successor liability.

MM. The Debtors may sell the Acquired Assets free and clear of all Interests in such property of any entity other than the Debtors' estates, including, without limitation, any Liens and Claims against the Debtors, their estates, or any of the Acquired Assets (other than the Permitted Encumbrances and Assumed Liabilities) because, in each case, one or more of the standards set forth in Bankruptcy Code section 363(f)(1)-(5) has been satisfied. Those holders of Interests in the Acquired Assets, including, without limitation, holders of Liens and Claims against the Debtors, their estates, or any of the Acquired Assets, who did not object, or who withdrew their objections, to the Sale or the Sale Motion are deemed to have consented pursuant to Bankruptcy Code section 363(f)(2). All other holders of Interests (except to the extent such Interests are Permitted Encumbrances or Assumed Liabilities) are adequately protected by having their Interests, if any, in each instance against the Debtors, their estates, or any of the Acquired Assets, attached to the net proceeds of the Sale received by the Debtors ultimately attributable to the Acquired Assets in which such party alleges an Interest, in the same order of priority, with the same validity, force, and effect that such Interests had prior to the Sale, subject to any claims and defenses the Debtors and their estates may possess with respect thereto.

Credit Bid

NN. Pursuant to the Agreement and sections 363(b) and 363(k) of the Bankruptcy Code, Purchaser, in addition to the other consideration offered under the Agreement, credit bid a portion of the DIP Loan and the Prepetition Indebtedness in an amount equal to \$[_____] (the "**Credit Bid**"). With respect to the Credit Bid, the Court finds and determines that: (i) the Credit Bid was a valid and proper offer pursuant to the Bid Procedures Order, (ii) there is no cause to limit the amount of the Credit Bid pursuant to section 363(k) of the Bankruptcy Code, and (iii) in accordance with section 363(k) of the Bankruptcy Code, the Debtors valued each dollar of the

Credit Bid as equivalent to one dollar of cash, and such valuation was appropriate and represents a reasonable exercise of the Debtors' business judgment.

Assumption and Assignment of the Assigned Contracts

OO. The assumption and assignment of the Assigned Contracts pursuant to the terms of this Sale Order is integral to the Agreement and is in the best interest of the Debtors and their estates, their creditors, and all of the parties in interest, and represents the reasonable exercise of sound and prudent business judgment by the Debtors.

PP. Unless otherwise agreed and stated on the record at the Sale Hearing, the respective amounts set forth under the "Cure Amount" on Exhibit 1 attached hereto reflects the sole amounts necessary under Bankruptcy Code section 365(b) to cure all monetary defaults and pay all pecuniary losses under the Assigned Contracts (collectively, the "**Cure Amounts**"), and no other amounts are or shall be due in connection with the assumption by the Debtors and the assignment to the Purchaser of the Assigned Contracts.

QQ. Pursuant to the terms of the Agreement, the Purchaser shall: (a) to the extent necessary, cure or provide adequate assurance of cure, of any default existing prior to the date hereof with respect to the Contracts, within the meaning of Bankruptcy Code sections 365(b)(1)(A) and 365(f)(2)(A); and (b) to the extent necessary, provide compensation or adequate assurance of compensation to any Contract Counterparty for any actual pecuniary loss to such party resulting from a default prior to the date hereof with respect to the Assigned Contracts, within the meaning of Bankruptcy Code sections 365(b)(1)(B) and 365(f)(2)(A).

RR. As of the Closing Date, subject only to the payment of the Cure Amounts, as determined in accordance with the procedures identified in the Sale Motion and its accompanying and related documents, each of the Assigned Contracts will be in full force and

effect and enforceable by the Purchaser against any Contract Counterparty thereto in accordance with its terms.

SS. The Debtors have, to the extent necessary, satisfied the requirements of Bankruptcy Code sections 365(b)(1) and 365(f) in connection with the Sale, the assumption and assignment of the Assigned Contracts, and shall upon assignment thereto on the Closing Date, be relieved from any liability for any breach thereof.

TT. The Purchaser has demonstrated it has the financial wherewithal to fully perform and satisfy the obligations under the Assigned Contracts as required by Bankruptcy Code sections 365(b)(1)(C) and 365(f)(2)(B). Pursuant to Bankruptcy Code section 365(f)(2)(B), the Purchaser has provided adequate assurance of future performance of the obligations under the Assigned Contracts.

UU. The Purchaser's promise to pay the Cure Amounts and to perform the obligations under the Assigned Contracts after the Closing Date shall constitute adequate assurance of future performance within the meaning of Bankruptcy Code sections 365(b)(1)(C) and 365(f)(2)(B).

VV. Any objections to the assumption and assignment of any of the Assigned Contracts to the Purchaser are hereby overruled or withdrawn. Any objections to the Cure Amounts are hereby overruled or withdrawn. To the extent any Contract Counterparty failed to timely object to its Cure Amount or to the assumption and assignment of its Assigned Contracts to the Purchaser, such Contract Counterparty is deemed to have consented to such Cure Amount and the assignment of its Assigned Contract(s) to the Purchaser.

WW. No sections or provisions of the Assigned Contracts that purport to (a) prohibit, restrict or condition the Debtors' assignment of the Assigned Contracts, including, but not limited to, the conditioning of such assignment on the consent of the non-debtor parties to such

Assigned Contracts; (b) authorize the termination, cancellation or modification of the Assigned Contracts based on the filing of a bankruptcy case, the financial condition of the Debtors or similar circumstances; or (c) declare a breach or default or otherwise give rise to a right of termination as a result of any change in control in respect of the Debtors, shall have any force and effect, and such provisions constitute unenforceable anti-assignment provisions under Bankruptcy Code section 365(f) and/or are otherwise unenforceable under Bankruptcy Code section 365(e).

XX. The (i) transfer of the Acquired Assets to the Purchaser and (ii) assignment to the Purchaser of the Assigned Contracts, will not subject the Purchaser or any of its affiliates or designees to any liability whatsoever that arises prior to the Closing or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, on any theory of antitrust, successor, transferee, derivative, or vicarious liability or any similar theory and/or applicable state or federal law or otherwise.

Sound Business Purpose for the Sale

YY. Good and sufficient reasons for approval of the Agreement and the Sale have been articulated. The relief requested in the Sale Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest.

ZZ. The Debtors have demonstrated both (a) good, sufficient, and sound business purposes and justifications for approving the Agreement and (b) compelling circumstances for the sale outside the ordinary course of business, pursuant to Bankruptcy Code section 363(b) before, and outside of, a plan of reorganization, in that, among other things, the immediate consummation of the Sale to the Purchaser is necessary and appropriate to maximize the value of

the Debtors' estates, and the Sale will provide the means for the Debtors to maximize distributions to creditors.

Compelling Circumstances for an Immediate Sale

AAA. To maximize the value of the Acquired Assets and preserve the viability of the business to which the Acquired Assets relate, it is essential the Sale of the Acquired Assets occur promptly. Therefore, time is of the essence in effectuating the Agreement and consummating the Sale. As such, the Debtors and the Purchaser intend to close the Sale of the Acquired Assets as soon as reasonably practicable. The Debtors have demonstrated compelling circumstances and a good, sufficient and sound business purpose and justification for immediate approval and consummation of the Agreement. Accordingly, there is sufficient cause to waive the stay provided in Bankruptcy Rules 6004(h) and 6006(d).

BBB. Given all of the circumstances of these Chapter 11 Cases and the adequacy and fair value of the Purchase Price under the Agreement, the proposed Sale of the Acquired Assets to the Purchaser constitutes a reasonable and sound exercise of the Debtors' business judgment and should be approved.

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

DDD. The Sale does not constitute a *sub rosa* or *de facto* chapter 11 plan for which approval has not been sought without the protections a disclosure statement would afford, as it does not and does not propose to: (i) impair or restructure existing debt of, or equity interests in, the Debtors; (ii) impair or circumvent voting rights with respect to any future plan proposed by

the Debtors; (iii) circumvent chapter 11 plan safeguards, such as those set forth in Bankruptcy Code sections 1125 and 1129; or (iv) classify claims or equity interests, compromise controversies, or extend debt maturities. Accordingly, the Sale neither impermissibly restructures the rights of the Debtors' creditors, nor impermissibly dictates a liquidating chapter 11 plan for the Debtors.

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

General Provisions.

41. **Relief Granted.** The relief requested in the Sale Motion and the transactions contemplated thereby and by the Agreement are approved for the reasons set forth in this Sale Order and on the record of the Sale Hearing, which is incorporated herein as if fully set forth in this Sale Order.

42. **Objections Overruled.** All objections, statements, and reservations of rights to the Sale Motion and the relief requested therein that have not been withdrawn, waived, or settled by announcement to the Court during the Sale Hearing or by stipulation filed with the Court, including, without limitation, any and all reservations of rights included in such objections or otherwise, are hereby denied and overruled on the merits, with prejudice. Those parties who did not object, or withdrew their objections, to the Sale Motion are deemed to have consented pursuant to Bankruptcy Code section 363(f)(2).

43. **Prior Findings and Conclusions Incorporated.** This Court's findings of fact and conclusions of law set forth in the Bid Procedures Order are incorporated herein by reference.

44. **Sale Order and Agreement Binding on All Parties.** This Sale Order and the Agreement shall be binding in all respects upon all creditors of and holders of equity interests in

the Debtors (whether known or unknown), agents, trustees and collateral trustees, holders of Interests in, against, or on the Acquired Assets, or any portion thereof, all Contract Counterparties and any other non-debtor parties to any contracts with the Debtors (whether or not assigned), all successors and assigns of the Debtors, and any subsequent trustees appointed in the Chapter 11 Cases or upon a conversion of the Chapter 11 Cases to one or more cases under chapter 7 of the Bankruptcy Code and shall not be subject to rejection or unwinding. Nothing in any chapter 11 plan confirmed in the Chapter 11 Cases, the confirmation order confirming any such chapter 11 plan, any order approving the wind down or dismissal of the Chapter 11 Cases, or any order entered upon the conversion of the Chapter 11 Cases to one or more cases under chapter 7 of the Bankruptcy Code or otherwise shall conflict with or derogate from the provisions of the Agreement or this Sale Order.

Approval of the Agreement

45. **Agreement Approved.** The Agreement and all other ancillary documents, and all of the terms and conditions thereof, are hereby approved.

46. **Authorization to Consummate Transactions.** Pursuant to Bankruptcy Code sections 363(b) and (f), the Debtors are authorized, empowered, and directed to use their reasonable best efforts to take any and all actions necessary or appropriate to (a) consummate the Sale pursuant to and in accordance with the terms and conditions of the Agreement, (b) close the Sale as contemplated in the Agreement and this Sale Order, and (c) execute and deliver, perform under, consummate, implement, and fully close the Agreement, including the assumption and assignment to the Purchaser of the Assigned Contracts, together with additional instruments and documents that may be reasonably necessary or desirable to implement the Agreement and the Sale.

Transfer of the Acquired Assets

47. **Transfer of the Acquired Assets Authorized.** Pursuant to Bankruptcy Code sections 105(a), 363(b), 363(f), and 365 the Debtors are authorized and directed to (a) take any and all actions necessary or appropriate to perform, consummate, implement, and close the Sale in accordance with the terms and conditions set forth in the Agreement and this Sale Order, (b) assume and assign any and all Assigned Contracts, and (c) take all further actions and execute and deliver the Agreement and other related ancillary transaction documents and any and all additional instruments and documents that may be necessary or appropriate to implement the Agreement and the other related documents and consummate the Sale in accordance with the terms thereof, all without further order of the Court. At Closing, all of the Debtors' right, title, and interest in and to, and possession of, the Acquired Assets shall be immediately vested in the Purchaser (or its designee). Such transfer shall constitute a legal, valid, enforceable, and effective transfer of the Acquired Assets.

48. **Surrender of Acquired Assets by Third Parties.** All persons and entities that are in possession of some or all of the Acquired Assets on the Closing Date are directed to surrender possession of such Acquired Assets to the Purchaser or its assignee at the Closing. On the Closing Date, each of the Debtors' creditors are authorized and directed to execute such documents and take such other actions as may be reasonably necessary to release their Interests in the Acquired Assets, if any, as such Interests may have been recorded or may otherwise exist. All persons are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with , or which would be inconsistent with, the ability of the Debtors to sell and transfer the Acquired Assets to the Purchaser in accordance with the terms of the Agreement and this Sale Order.

49. **Transfer Free and Clear of Interests.** Upon the Debtors' receipt of the Purchase Price, and other than Permitted Encumbrances and Assumed Liabilities specifically set forth in the Agreement, the transfer of the Acquired Assets to the Purchaser shall be free and clear of all Interests of any kind or nature whatsoever, including, without limitation, (a) successor or successor-in-interest liability, (b) Claims in respect of the Excluded Liabilities, and (c) any and all Contracts not assumed and assigned to the Purchaser pursuant to the terms of the Agreement, with all such Interests to attach to the net proceeds received by the Debtors ultimately attributable to the Acquired Assets against, or in, which such Interests are asserted, subject to the terms thereof, with the same validity, force, and effect, and in the same order of priority, which such Interests now have against the Acquired Assets, subject to any rights, claims, and defenses that the Debtors or their estates, as applicable, may possess with respect thereto. If any person or entity that has filed financing statements, mortgages, mechanic's liens, *lis pendens* or other documents or agreements evidencing Encumbrances against or in the Acquired Assets shall not have delivered to the Debtors prior to the Closing of the Sale in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction or releases of all Encumbrances that the person or entity has with respect to such Acquired Assets, then only with regard to the Acquired Assets that are purchased by the Purchaser pursuant to the Agreement and this Sale Order, the Debtors are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Acquired Assets.

50. **Legal, Valid, and Marketable Transfer with Permanent Injunction.** The transfer of the Acquired Assets to the Purchaser pursuant to the Agreement constitutes a legal, valid, and effective transfer of good and marketable title of the Acquired Assets, and vests, or

will vest, the Purchaser with all right, title, and interest to the Acquired Assets, free and clear of all Interests except as otherwise expressly stated as obligations of the Purchaser under the Agreement. All Persons holding interests or claims of any kind or nature whatsoever against the Debtors or the Acquired Assets, the operation of the Acquired Assets prior to the Closing Date, the Auction or the Acquired Asset Sale are hereby and forever barred, estopped, and permanently enjoined from asserting against the Purchaser, its successors or assigns, its property, or the Acquired Assets, any claim, interest or liability existing, accrued, or arising prior to the Closing.

51. **Recording Offices and Releases of Interests.** On the Closing Date, this Sale Order shall be construed and shall constitute for any and all purposes a full and complete assignment, conveyance, and transfer of the Acquired Assets or a bill of sale transferring good and marketable title of the Acquired Assets to the Purchaser. This Sale Order is and shall be effective as a determination that, on the Closing Date, all Interests of any kind or nature whatsoever existing as to the Acquired Assets prior to the Closing, other than Permitted Encumbrances and Assumed Liabilities, or as otherwise provided in this Sale Order, shall have been unconditionally released, discharged, and terminated, and that the conveyances described herein have been affected. This Sale Order is and shall be binding upon and govern the acts of all persons, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other persons who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing persons is hereby directed to accept for filing any and all of the documents and instruments

necessary and appropriate to consummate the transactions contemplated by the Agreement. Each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Agreement. A certified copy of this Sale Order may be: (a) filed with the appropriate clerk; (b) recorded with the recorder; and/or (c) filed or recorded with any other governmental agency to act to cancel any Interests against the Acquired Assets, other than the Permitted Encumbrances and Assumed Liabilities.

52. **Cancellation of Third-Party Interests.** If any person or entity which has filed statements or other documents or agreements evidencing Interests on or in all or any portion of the Acquired Assets (other than with respect to Permitted Encumbrances or Assumed Liabilities) has not delivered to the Debtors prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements, and any other documents necessary for the purpose of documenting the release of all Interests which such person or entity has or may assert with respect to all or a portion of the Acquired Assets, the Debtors and the Purchaser are authorized to execute and file such statements, instruments, releases and other documents on behalf of such person or entity with respect to the Acquired Assets. Notwithstanding the foregoing, the provisions of this Sale Order authorizing the transfer of the Acquired Assets free and clear of all Interests (except only for Permitted Encumbrances and Assumed Liabilities) shall be self-executing, and it shall not be, or be deemed, necessary for any person or entity to execute or file releases, termination statements, assignments, consents, or other instruments in order for the provisions of this Sale Order to be implemented.

Assumption and Assignment of Contracts

53. **Authorization to Assume and Assign.** Upon the Closing, the Debtors are authorized and directed, in accordance with Bankruptcy Code sections 105(a), 363 and 365, to assume and assign each of the Assigned Contracts to the Purchaser free and clear of all Interests as of the Closing Date. The payment of the applicable Cure Amounts (if any) by the Purchaser shall (a) effect a cure or adequate assurance of cure of all defaults existing thereunder as of the date on which the Debtors filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the “**Petition Date**”) and (b) compensate for any actual pecuniary loss to such Contract Counterparty resulting from such default. The Purchaser shall then have assumed the Assigned Contracts and, pursuant to Bankruptcy Code section 365(f), the assignment by the Debtors of such Assigned Contracts shall not be a default thereunder. After the payment of the relevant Cure Amounts, neither the Debtors, nor the Purchaser shall have any further liabilities to the Contract Counterparties other than the Purchaser’s obligations under the Assigned Contracts, that accrue and become due and payable on or after the Closing Date.

54. **Assignment Requirements Satisfied.** The Assigned Contracts shall be transferred to, and remain in full force and effect for the benefit of, the Purchaser, in accordance with their respective terms, notwithstanding (a) any provision in any such Assigned Contract (including provisions of the type described in Bankruptcy Code sections 365(b)(2), (e)(1) and (f)(1)) which prohibits, restricts or conditions such assignment or transfer or (b) any default by the Debtors prior to Closing under any such Assigned Contract or any disputes between the Debtors and a Contract Counterparty with respect to any such Assigned Contract arising prior to Closing. In particular, any provisions in any Assigned Contract that restrict, prohibit or condition the assignment of such Assigned Contract or allow the Contract Counterparty to such Assigned Contract to terminate, recapture, impose any penalty, condition on renewal or extension or

modify any term or condition upon the assignment of such Assigned Contract, constitute unenforceable anti-assignment provisions that are void and of no force and effect. Additionally, no sections or provisions of the Assigned Contracts that purport to (a) prohibit, restrict or condition the Debtors' assignment of the Assigned Contracts, including, but not limited to, the conditioning of such assignment on the consent of the non-debtor parties to such Assigned Contracts; (b) authorize the termination, cancellation or modification of the Assigned Contracts based on the filing of a bankruptcy case, the financial condition of the Debtors or similar circumstances; or (c) declare a breach or default or otherwise give rise to a right of termination as a result of any change in control in respect of the Debtors, shall have any force and effect, and such provisions constitute unenforceable anti-assignment provisions under Bankruptcy Code section 365(f) and/or are otherwise unenforceable under Bankruptcy Code section 365(e). All other requirements and conditions under Bankruptcy Code sections 363 and 365 for the assumption by the Debtors and assignment to the Purchaser of the Assigned Contracts have been satisfied. Upon the Closing, in accordance with Bankruptcy Code sections 363 and 365, the Purchaser shall be fully and irrevocably vested with all right, title, and interest of the Debtors under the Assigned Contracts.

55. **Consent to Assign.** The Contract Counterparties to each Assigned Contract shall be and hereby are deemed to have consented to such assumption and assignment under Bankruptcy Code section 365(c)(1)(B) or this Court has determined that no such consent is required, and the Purchaser shall enjoy all of the rights and benefits under each such Assigned Contract as of the Closing Date without the necessity of obtaining the Contract Counterparty's written consent to the assumption and assignment thereof.

56. **Section 365(k).** Upon the Closing and (a) the payment of the applicable Cure Amount or (b) in the event of any dispute over the appropriate Cure Amount, the reserve and escrow of the amount necessary to satisfy the Cure Amount asserted by the Contract Counterparty pending resolution of the dispute by the Bankruptcy Court, the Purchaser shall be deemed to be substituted for the Debtors as a party to the applicable Assigned Contracts and the Debtors and their estates shall be relieved, pursuant to Bankruptcy Code section 365(k), from any further liability under the Assigned Contracts.

57. **No Default.** Subject to the terms hereof with respect to the Cure Amounts, all defaults or other obligations of the Debtors under the Assigned Contracts arising or accruing prior to the Closing Date have been cured or shall promptly be cured by the Debtors in accordance with the terms hereof such that the Purchaser shall have no liability or obligation with respect to any default or obligation arising or accruing under any Assigned Contract prior to the Closing Date, except to the extent expressly provided in the Agreement, except for the Purchaser's payment of the Cure Amounts. Each party to an Assigned Contract is forever barred, estopped, and permanently enjoined from asserting against the Purchaser or its property or affiliates, or successors and assigns, any breach or default under any Assigned Contract, any claim of lack of consent relating to the assignment thereof, or any counterclaim, defense, setoff, right of recoupment or any other matter arising prior to the Closing Date for such Assigned Contract or with regard to the assumption and assignment therefore pursuant to the Agreement or this Sale Order. Upon the payment of the applicable Cure Amount, if any, the Assigned Contracts will remain in full force and effect, and no default shall exist under the Assigned Contracts nor shall there exist any event or condition which, with the passage of time or giving of notice, or both, would constitute such a default.

58. **Adequate Assurance Provided.** The requirements of Bankruptcy Code sections 365(b)(1) and 365(f)(2) are hereby deemed satisfied with respect to the Assigned Contracts based on the Purchaser's evidence of its financial condition and wherewithal and without any further action by the Purchaser, including but not limited to any other or further deposit. Pursuant to Bankruptcy Code section 365(f), the Purchaser has provided adequate assurance of future performance of the obligations under the Assigned Contracts.

59. **No Fees.** There shall be no rent accelerations, assignment fees, increases or any other fees charged to the Purchaser or the Debtors as a result of the assumption and assignment of the Assigned Contracts.

60. **Injunction.** Pursuant to Bankruptcy Code sections 105(a), 363, and 365, other than the right to payment of the Cure Amounts, if any, all Contract Counterparties are forever barred and permanently enjoined from raising or asserting against the Debtors or the Purchaser any assignment fee, default, breach or claim, or pecuniary loss arising under or related to the Assigned Contracts existing as of the Petition Date or any assignment fee or condition to assignment arising by reason of the Closing.

61. **Contract Objections.** Except for a Contract Counterparty who files, or has filed, a timely objection to the Cure amount by **May 31, 2019, at 4:00 p.m. (prevailing Eastern Time)**, which objection shall be resolved in accordance with the procedures set forth in the Bid Procedures Order (a "**Contract Objection**"), such Contract Counterparty is deemed to have consented to such Cure Amount. Except for a Contract Counterparties who files, or has filed, a timely Contract Objection to the Debtors' proposed assignment of such Assigned Contracts to the Purchaser, which objection shall be resolved in accordance with the procedures set forth in the Bid Procedures Order, such Contract Counterparty is deemed to have consented to the

assumption and assignment, and the Purchaser shall be deemed to have demonstrated adequate assurance of future performance with respect to, such Assigned Contracts pursuant to Bankruptcy Code sections 365(b)(1)(C) and 365(f)(2)(B). With respect to any timely-filed Contract Objections, such objection shall be resolved in accordance with the procedures set forth in the Bid Procedures Order. The provisions of this Sale Order shall be effective and binding upon the Contract Counterparties to the extent set forth in, and in accordance with, such procedures. Nothing in this Sale Order, the Sale Motion, or in any notice or any other document is, or shall be, deemed an admission by the Debtors that any Assigned Contract is an executory contract or unexpired lease, or must be assumed and assigned pursuant to the Agreement in order to consummate the Sale.

62. **No Further Debtor Liability.** Except as provided in the Agreement or in this Sale Order, after the Closing, the Debtors and their estates shall have no further liabilities or obligations with respect to any Assumed Liabilities, and all holders of such Claims are forever barred and estopped from asserting such Claims against the Debtors, their successors or assigns, their property, or the Debtors' estates.

63. **No Waiver of Rights.** The failure of the Debtors or the Purchaser to enforce, at any time, one or more terms or conditions of any Assigned Contracts shall not be a waiver of any such terms or conditions, or of the Debtors' or the Purchaser's rights to enforce every term and condition of the Assigned Contracts.

Prohibition of Actions Against the Purchaser

64. **No Successor Liability.** Except for the Permitted Encumbrances and Assumed Liabilities set forth in the Agreement, or as otherwise expressly provided for in this Sale Order or the Agreement, the Purchaser shall not have any liability or other obligation of the Debtors arising under or related to any of the Acquired Assets. Without limiting the generality of the

foregoing, and except as otherwise expressly provided herein or in the Agreement, the Purchaser shall not be liable for any Claims against the Debtors or any of their predecessors or affiliates, and the Purchaser shall have no successor or vicarious liabilities of any kind or character, including, without limitation, under any theory of antitrust, environmental, successor, or transfer reliability, labor law, *de facto* merger, mere continuation, or substantial continuity, whether known or unknown as of the Closing Date, now existing, or hereafter arising, whether fixed or contingent, whether asserted or unasserted, whether legal or equitable, whether liquidated or unliquidated, including, without limitation, liabilities on account of warranties, intercompany loans, receivables among the Debtors and their affiliates, environmental liabilities, and any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of any of the Acquired Assets prior to the Closing.

65. Other than as expressly set forth in the Agreement, no Purchaser Party shall have any responsibility for (a) any liability or other obligation of the Debtors or related to the Acquired Assets or (b) any claims against the Debtors or any of their predecessors or affiliates. Except as expressly provided in the Agreement with respect to the Purchaser, no Purchaser Party shall have any liability whatsoever with respect to the Debtors' (or their predecessors' or affiliates') respective businesses or operations or any of the Debtors' (or their predecessors' or affiliates') obligations (as defined herein, "**Successor or Transferee Liability**") based, in whole or in part, directly or indirectly, on any theory of successor or vicarious liability of any kind of character, or based upon any theory of antitrust, environmental, successor, or transferee liability, *de facto* merger or substantial continuity, labor and employment or products liability, whether known or unknown as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated, including, without limitation, liabilities on

account of (a) any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the Acquired Assets or the Assumed Liabilities prior to the Closing or in respect of pre-Closing periods or (b) any plan, agreement, practice, policy, or program, whether written or unwritten, providing for pension, retirement, health, welfare, compensation, or other employee benefits which is or has been sponsored, maintained, or contributed to by any Debtor or with respect to which any Debtor has any liability, whether or not contingent, including, without limitation, any “multiemployer plan” (as defined in Section 3(37) of ERISA) or “pension plan” (as defined in Section 3(2) of ERISA) to which any Debtor has at any time contributed, or had any obligation to contribute. Except to the extent expressly included in the Assumed Liabilities with respect to the Purchaser or as otherwise expressly set forth in the Agreement, no Purchaser Party shall have any liability or obligation under any applicable law, including, without limitation, (a) the WARN Act, 29 U.S.C. §§ 2101 *et seq.*, (b) the Comprehensive Environmental Response Compensation and Liability Act, (c) the Age Discrimination and Employment Act of 1967 (as amended), (d) the Federal Rehabilitation Act of 1973 (as amended), (e) the National Labor Relations Act, 29 U.S.C. §§ 151 *et seq.*, or (f) any foreign, federal, state, or local labor, employment or environmental law, by virtue of the Purchaser’s purchase of the Acquired Assets, assumption of the Assumed Liabilities, or hiring of certain employees of the Debtors pursuant to the terms of the Agreement. Without limiting the foregoing, no Purchaser Party shall have any liability or obligation with respect to any environmental liabilities of the Debtors or any environmental liabilities associated with the Acquired Assets except to the extent they are Assumed Liabilities set forth in the Agreement.

66. **Actions Against the Purchaser Enjoined.** Except with respect to Permitted Encumbrances and Assumed Liabilities set forth in the Agreement, or as otherwise permitted by

the Agreement or this Sale Order, all persons and entities, including, without limitation, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade creditors, litigation claimants, and other creditors, holding Interests of any kind or nature whatsoever against, or in, all or any portion of the Acquired Assets, arising under, out of, in connection with, or in any way relating to, the Debtors, the Acquired Assets, the operation of the Debtors' business prior to the Closing Date, or the transfer of the Acquired Assets to the Purchaser, hereby are forever barred, estopped, and permanently enjoined from asserting against the Purchaser, or any of its affiliates, successors, or assigns, or their property or the Acquired Assets, such persons' or entities' Interests in and to the Acquired Assets, including, without limitation, the following actions against the Purchaser or its affiliates, or their successors, assets, or properties: (a) commencing or continuing in any manner any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral, or other proceeding; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or other order; (c) creating, perfecting, or enforcing any Lien or other Claim; (d) asserting any set off, right of subrogation, or recoupment of any kind; (e) commencing or continuing any action, in any manner or place, that does not comply or is inconsistent with the provisions of this Sale Order or other orders of this Court, or the agreements or actions contemplated or taken in respect thereof; or (f) revoking, terminating, or failing or refusing to transfer or renew any license, permit, or authorization to operate any of the Acquired Assets or conduct any of the business operated with the Acquired Assets.

Other Provisions

67. **Licenses.** To the maximum extent permitted by applicable law, and in accordance with the Agreement, the Purchaser (or its designee) shall be authorized, as of the Closing, to operate under any license, permit, registration, and governmental authorization or approval

(collectively, the “**Licenses**”) of the Debtors with respect to the Acquired Assets. To the extent the Purchaser (or its designee) cannot operate under any Licenses in accordance with the previous sentence, such Licenses shall be in effect while the Purchaser (or its designee), with assistance from the Debtors, works promptly and diligently to apply for and secure all necessary government approvals for new issuance of Licenses to the Purchaser (or its designee). The Debtors shall, at Purchaser’s sole cost, maintain the Licenses in good standing to the fullest extent allowed by applicable law for the Purchaser’s benefit until equivalent new Licenses are issued to the Purchaser (or its designee).

68. **Effective Immediately.** For cause shown, pursuant to Bankruptcy Rules 6004(h), 6006(d), and 7062(g), this Sale Order shall not be stayed and shall be effective immediately upon entry, and the Debtors and the Purchaser are authorized to close the Sale immediately upon entry of this Sale Order. The Debtors and the Purchaser may consummate the Agreement at any time after entry of this Sale Order by waiving any and all closing conditions set forth in the Agreement that have not been satisfied and by proceeding to close the Acquired Asset Sale without any notice to the Court, any pre-petition or post-petition creditor of the Debtors and/or any other party in interest.

69. **Access to Books and Records.** Following the Closing of the Sale, the Debtors shall have, and the Purchaser shall provide, reasonable access to their books and records, to the extent they are included in the Acquired Assets transferred to the Purchaser as part of the Sale as set forth in the Agreement.

70. **Bulk Sales Law.** No bulk sales law or any similar law of any state or other jurisdiction applies in any way to the Sale.

71. **Wind-Down Account.** The provisions of the Agreement relating to the establishment and administration of the Wind-Down Account are approved. The Wind-Down Payment shall be made by Purchaser to Orchids at the Closing. From and after the Closing, the Wind-Down Payment shall be deposited into the Wind-Down Account and shall be held in trust by Orchids, free and clear of any and all Encumbrances, for the benefit of Persons entitled to be paid priority claims, administrative expenses and other costs relating to the post-Closing administration and wind-down of Sellers' estates in accordance with the Wind-Down Budget and the provisions of 6.21 of the Agreement.

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

73. **Further Assurances.** From time to time, as and when requested, all parties shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as the requesting party may reasonably deem necessary or desirable to consummate the Sale, including such actions as may be necessary to vest, perfect, or confirm or record or otherwise in the Purchaser its right, title, and interest in and to the Acquired Assets.

74. **Modifications to Agreement.** The Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto and in accordance with the terms thereof, in a writing signed by such parties, without further order of this Court, provided any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estates.

75. **Standing.** The transactions authorized herein shall be of full force and effect, regardless of any Debtors' lack of good standing in any jurisdiction in which such Debtor is formed or authorized to transact business.

76. **Authorization to Effect Order.** The Debtors are authorized to take all actions necessary to effect the relief granted pursuant to this Sale Order in accordance with the Sale Motion.

77. **Automatic Stay.** The automatic stay pursuant to Bankruptcy Code section 362 is hereby modified, lifted, and annulled with respect to the Debtors and the Purchaser to the extent necessary, without further order of this Court, to (a) allow the Purchaser to deliver any notice provided for in the Agreement and (b) allow the Purchaser to take any and all actions permitted under the Agreement in accordance with the terms and conditions thereof. The Purchaser shall not be required to seek or obtain relief from the automatic stay under section 362 of the Bankruptcy Code to enforce any of its remedies under the Agreement or any other Sale-related document. The automatic stay imposed by section 362 of the Bankruptcy Code is modified solely to the extent necessary to implement the preceding sentence, *provided, however*, that this Court shall retain exclusive jurisdiction over any and all disputes with respect thereto.

78. **No Other Bids.** No further bids or offers for the Acquired Assets shall be considered or accepted by the Debtors after the date hereof unless the Sale to the Purchaser is not consummated or otherwise does not occur in accordance with the Agreement or its related documents.

79. **Name of Debtor.** Except as permitted in the Agreement, neither the Debtors nor any of their affiliates shall use, license or permit any third party to use, any name, slogan, logo or trademark which is confusingly or deceptively similar to any of the names, trademarks or service

marks included in the Intellectual Property in the Acquired Assets, and each Debtor is directed to change its corporate name to a name which (i) does not use the name “Orchids Paper” or any other name that references or reflects any of the foregoing in any manner whatsoever, (ii) is otherwise substantially dissimilar to its present name, and (iii) is approved in writing by the Purchaser. Within one (1) Business Day of the occurrence of the Closing of the Sale, the Debtors shall file and serve a notice of same (the “**Notice of Sale Closing and Effective Date of Amendment of Case Caption**”) and upon the filing of such notice, the Debtors’ case caption shall be amended as follows:

In re:

OPP LIQUIDATING
COMPANY, INC., *et al.*,³

Debtors.

Chapter 11

Case No. 19-10729 (MFW)

Jointly Administered

Upon the filing of the Notice of Sale Closing and Effective Date of Amendment of Case Caption, the Clerk of the Court is authorized and directed to make a docket entry in case numbers 19-10729, 19-10730, and 19-10731 consistent with the foregoing Paragraph of this Sale Order.

80. **Order to Govern.** To the extent this Sale Order is inconsistent with any prior order entered or pleading filed in these Chapter 11 Cases, the terms of this Sale Order shall

³ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are OPP Liquidating Company, Inc. (f/k/a Orchids Paper Products Company), a Delaware corporation (6944), OPP Liquidating Company of South Carolina, Inc. (f/k/a Orchids Paper Products Company of South Carolina), a Delaware corporation (7198), and OLSC Liquidating Company, LLC (f/k/a Orchids Lessor SC, LLC), a South Carolina limited liability company (7298). The location of the Debtors’ mailing address is 201 Summit View Drive, Suite 110, Brentwood, Tennessee 37027.

govern. To the extent there are any inconsistencies between the terms of this Sale Order and the Agreement (including all ancillary documents executed in connection therewith), the terms of this Sale Order shall govern.

81. **Standing.** The Purchaser has standing to seek to enforce the terms of this Sale Order.

82. **Retention of Jurisdiction.** This Court shall retain exclusive jurisdiction with respect to the terms and provisions of this Sale Order and the Agreement.

Dated: _____, 2019

UNITED STATES BANKRUPTCY JUDGE

Exhibit 1 to Sale Order

Assigned Contracts

Counterparty	Description of Assigned Contracts or Leases	Cure Amount

Exhibit E to Motion

Bid Procedures Notice

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

In re:

ORCHIDS PAPER PRODUCTS
COMPANY, *et al.*,¹

Debtors.

Chapter 11

Case No. 19-10729 (MFW)

Jointly Administered

NOTICE OF BID PROCEDURES²

PLEASE TAKE NOTICE that on April 1, 2019, the above-captioned debtors and debtors in possession (the “**Debtors**”) filed a motion (the “**Bid Procedures and Sale Motion**”) with the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”).

PLEASE TAKE FURTHER NOTICE that on [____], 2019, the Bankruptcy Court entered an order [Docket No. ____] (the “**Bid Procedures Order**”) approving Bid Procedures (the “**Bid Procedures**”), which set key dates, times and procedures related to the sale of substantially of the Debtors’ assets (the “**Assets**”). **All interested bidders should carefully read the Bid Procedures.** To the extent there are any inconsistencies between the Bid Procedures and the summary description of the terms and conditions contained in this Notice, the terms of the Bid Procedures shall control.

PLEASE TAKE FURTHER NOTICE that the Debtors have been and will continue to market the Acquired Assets in advance of the Auction. To be eligible to participate in the Auction, each Bid and each Bidder must be determined by the Debtors, in consultation with the Creditors’ Committee, to comply with the conditions set forth in the Bid Procedures. The deadline to submit a Qualified Bid is **June 6, 2019 at 4:00 p.m. (prevailing Eastern Time)** or such later date as may be agreed to by the Debtors (the “**Bid Deadline**”). To be considered, any Bid must comply with the requirements set forth in the Bid Procedures.

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Bid Procedures Order, an auction (the “**Auction**”) may be held on **June 10, 2019 at 10:00 a.m. (prevailing Eastern Time)** at the offices of Debtors’ counsel, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, DE 19801 or such later time on such day or other place as the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Orchids Paper Products Company, a Delaware corporation (6944), Orchids Paper Products Company of South Carolina, a Delaware corporation (7198), and Orchids Lessor SC, LLC, a South Carolina limited liability company (7298). The location of the Debtors’ mailing address is 201 Summit View Drive, Suite 110, Brentwood, Tennessee 37027.

² Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Bid Procedures or the Bid Procedures Order, as applicable.

Debtors shall notify all Bidders who have submitted Qualified Bids, or at another location as may be timely disclosed by the Debtors to all Qualified Bidders.

PLEASE TAKE FURTHER NOTICE that, by **May 14, 2019**, the Debtors shall send a notice to each Contract Counterparty to an executory contract or unexpired lease setting forth the Debtors' calculation of the cure amount, if any, that would be owing to such counterparty if the Debtors decided to assume or assume and assign such executory contract or unexpired lease, and alerting such nondebtor party that their contract may be assumed and assigned to the Successful Bidder (the "**Cure and Possible Assumption and Assignment Notice**"). Any Contract Counterparty that objects to the cure amount set forth in the Cure and Possible Assumption and Assignment Notice or the possible assignment of their executory contract or unexpired lease to the Successful Bidder must file an objection (a "**Cure or Assignment Objection**") on or before **4:00 p.m. prevailing Eastern Time on May 31, 2019**, which Cure or Assignment Objection must be served on (i) counsel for the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Christopher A. Ward (cward@polsinelli.com) and Polsinelli PC, 150 N. Riverside Plaza, Suite 3000, Chicago, Illinois 60606, Attn: Jerry L. Switzer, Jr. (jswitzer@polsinelli.com), (ii) counsel for the DIP Lender and the Prepetition Secured Lender, Winston & Strawn LLP, 35 W. Wacker Drive, Chicago, Illinois 60601, Attn: Daniel J. McGuire (dmcguire@winston.com) and Fox Rothschild LLP, Citizens Bank Center, 919 North Market Street, Suite 300, Wilmington, DE 19899-2323, Attn: Seth Niederman (sniederman@foxrothschild.com), (iii) counsel to the Stalking Horse Bidder, Skadden, Arps, Slate, Meagher & Flom LLP, 155 N. Wacker Drive, Chicago, Illinois 60606, Attn: Kimberly A. deBeers (Kimberly.deBeers@skadden.com), (iv) counsel to the Creditors' Committee, [____], (v) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Ste. 2008 – Lockbox #35, Wilmington, DE 19801, Attn: Juliet M. Sarkessian (Juliet.M.Sarkessian@usdoj.gov), and (vi) the Clerk of the Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, DE 19801, so it is actually received no later than 4:00 p.m. prevailing Eastern Time on May 31, 2019. If a Contract Counterparty does not timely file and serve a Cure or Assignment Objection, that party will be forever barred from objecting to (a) the Debtors' proposed cure amount, or (b) the assignment of that party's executory contract or unexpired lease to the Successful Bidder.

PLEASE TAKE FURTHER NOTICE that a hearing will be held to confirm the results of the Auction and approve the transactions contemplated in the Bid Procedures and the Bid Procedures and Sale Motion to the Successful Bidder at the Auction (the "**Sale Hearing**") before the Honorable Mary F. Walrath, Courtroom #4, U.S. Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, DE 19801, on **June 12, 2019 at ____ .m. (prevailing Eastern Time)**, or at such time thereafter as counsel may be heard. The Sale Hearing may be adjourned by the Bankruptcy Court or the Debtors without further notice other than such adjournment announced in open court or a notice of adjournment filed on the Bankruptcy Court's docket. **Objections to the sale of the Acquired Assets to the Successful Bidder or the Backup Bidder must be filed and served so they are actually received by the Debtors no later than 4:00 p.m. (prevailing Eastern Time) on June 5, 2019.**

PLEASE TAKE FURTHER NOTICE that this Notice is subject to the full terms and conditions of the Bid Procedures and the Bid Procedures Order, which shall control in the event of any conflict with this Notice. The Debtors encourage parties in interest to review such

documents in their entirety. A copy of the Bid Procedures and the Bid Procedures Order may be obtained (i) by contacting counsel for the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Christopher A. Ward (cward@polsinelli.com) and Polsinelli PC, 150 N. Riverside Plaza, Suite 3000, Chicago, Illinois 60606, Attn: Jerry L. Switzer, Jr. (jswitzer@polsinelli.com), (ii) for free on the website of the Debtors' noticing agent, Prime Clerk LLC, <http://cases.primeclerk.com/OrchidsPaper>, or (iii) for a fee via PACER at <http://www.deb.uscourts.gov>.

POLSINELLI PC

/s/ Christopher A. Ward

Christopher A. Ward (Del. Bar No. 3877)
Shanti M. Katona (Del. Bar No. 5352)
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Wilmington, Delaware 19801
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cward@polsinelli.com
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-and-

Jerry L. Switzer, Jr. (*Pro Hac Vice* Pending)
150 North Riverside Plaza
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Telephone: (312) 873-3626
Facsimile: (312) 810-1810
jswitzer@polsinelli.com

*Proposed Counsel to the Debtors and
Debtors in Possession*