

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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 In re: : Chapter 11  
 :  
 MD HELICOPTERS, INC., *et al.*,<sup>1</sup> : Case No. 22-10263 (KBO)  
 :  
 Debtors. : (Joint Administration Requested)  
 :  
 : **Obj. Deadline: April 13, 2022 at 4:00 p.m. (ET)**  
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**MOTION OF DEBTORS FOR ENTRY OF (I) AN ORDER (A) APPROVING BID PROCEDURES IN CONNECTION WITH THE 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 STALKING HORSE AGREEMENT, (E) APPROVING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF CONTRACTS AND LEASES, AND (F) 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 debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**”) hereby file this motion (this “**Motion**”) pursuant to Sections 105(a), 363, and 365 of Title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”), Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States 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 B (the “**Bid Procedures Order**”),

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<sup>1</sup> The two Debtors in these cases are MD Helicopters, Inc. (“**MDHI**”) and Monterrey Aerospace, LLC (“**Monterrey**”), and their address is 4555 E. McDowell Road, Mesa, AZ 85215. The last four digits of MD Helicopters, Inc.’s taxpayer identification number are 4088. Monterrey Aerospace, LLC has not been assigned a taxpayer identification number as of the date hereof.

(a) approving procedures in connection with the sale of substantially all of the Debtors' assets substantially in the form attached to the Bid Procedures Order as Exhibit 1 (the "**Bid Procedures**"), (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) approving, and authorizing the Debtors to perform under, the Stalking Horse Agreement (as defined below), (e) approving procedures related to the assumption and assignment of certain of the Debtors' executory contracts and unexpired leases (including Government Contracts (as defined below)), and (f) granting related relief; and (ii) an order, substantially in the form attached hereto as Exhibit C (the "**Sale Order**"),<sup>2</sup> (a) approving the Sale of the Assets (as defined below) free and clear of all liens, claims, encumbrances, and other interests, (b) approving the assumption and assignment of certain of the Debtors' executory contracts and unexpired leases related thereto (subject to the satisfaction of certain requirements related to the Government Contracts), and (c) granting related relief. In support of this Motion, the Debtors rely upon (i) the *Declaration of Barry Sullivan, Chief Financial Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings* (the "**First Day Declaration**"), and (ii) *Declaration of Adam B. Keil in Support of Motion of Debtors for Entry of (I) an Order (A) Approving Bid Procedures in Connection with the 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 Stalking Horse Agreement, (E) Approving Procedures for the Assumption and Assignment of Contracts and Leases, and (F) 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,*

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<sup>2</sup> Exhibit C was not available for inclusion with the Motion at the time of filing. The Debtors shall file the Sale Order as soon as possible after the filing of this Motion.

*and Interests, (B) Authorizing the Assumption and Assignment of Contracts and Leases, and (C) Granting Related Relief* (the “**Keil Declaration**,” and together with the First Day Declaration, the “**Declarations**”). 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 February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b). 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 Sections 105, 363, 365, 503 and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9007, and 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**”), the Debtors filed voluntary petitions in this Court commencing cases (the “**Chapter 11 Cases**”) for relief under chapter 11 of the Bankruptcy Code. 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.<sup>3</sup>

4. The Debtors continue to manage and operate their business as debtors in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in the Chapter 11 Cases, and no committees have yet been appointed.

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<sup>3</sup> Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to such terms in the First Day Declaration.

5. Simultaneously with the filing of this Motion, the Debtors filed a motion with this Court pursuant to Bankruptcy Rule 1015(b) seeking joint administration of these cases and for consolidation for procedural purposes only.

### **RELIEF REQUESTED**

6. As described more fully herein and in the Declarations, the Debtors have determined, in consultation with their advisors and certain of their constituents, that a sale of substantially all of their Assets (as defined below) is the best available path to maximize the value of their estates and in the best interest of the Debtors and their stakeholders (including their customers, employees, and suppliers). The Debtors undertook several actions prior to commencing these Chapter 11 Cases to ensure that the sale process yields a value-maximizing transaction. Specifically, the Debtors have conducted an extensive prepetition marketing process that culminated in entry into the Stalking Horse Agreement, subject to the Debtors' receipt of higher or better offers at the Auction. The Stalking Horse Agreement offers the Debtors and their stakeholders certainty by establishing a minimum purchase price for the Assets and signaling to other potential bidders the prevailing market value of the Assets, while also affording the Debtors an opportunity to seek higher or otherwise better offers. In addition to the prepetition marketing efforts, the Debtors (in consultation with the Zohar Lenders) executed a settlement agreement with the relators in the Qui Tam Action, thereby clearing a significant impediment to an orderly and swift sale transaction.

7. As described in further detail herein, it is imperative that the Debtors stabilize their business and provide certainty to their vendors, suppliers, customers, and workforce regarding the path forward for the business from the outset of these Chapter 11 Cases. Establishing a process for the swift and orderly transition of the Debtors' business to the Successful Bidder will signal to the Debtors' stakeholders that the situation in which the Debtors find themselves is temporary only

and the Debtors will emerge from the chapter 11 process with new owners and a clean slate. It is therefore imperative that the Debtors consummate a value-maximizing sale as expeditiously as possible.

8. Accordingly, by this Motion, first the Debtors seek entry of the Bid Procedures Order in substantially the form attached hereto as Exhibit B:

- (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, and perform under, that certain Asset Purchase Agreement with MDH Holdco LLC (the “**Stalking Horse Bidder**”), dated March 30, 2022 (including all schedules and exhibits attached thereto, as it may be amended from time to time in accordance with its terms), a copy of which is attached hereto as Exhibit A (the “**Stalking Horse Agreement**”), pursuant to which the Stalking Horse Bidder agrees to purchase the Assets (as defined in the Stalking Horse Agreement) from the Debtors on the terms and conditions set forth therein (the “**Stalking Horse Bid**”);
- (e) approving an overbid amount of \$1,000,000;
- (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 “**Assumed Contracts**”) and approving the form and manner of notice thereof, a copy of which is attached to the Bid Procedures as Exhibit 3 (the “**Assumption Notice**”); and
- (g) granting related relief.

9. Following entry of, and compliance with, the Bid Procedures Order, the Debtors intend to seek entry of the Sale Order at the conclusion of the Sale Hearing in substantially the form attached hereto as Exhibit C:

- (a) if an Auction is conducted, authorizing and approving the sale of the Assets to the Qualified Bidder (as defined in the Bid Procedures) that the Debtors determine has made the highest or otherwise best Qualified Bid (as defined in the Bid Procedures) for the Assets (the “**Successful Bidder**”) (or, if the Successful Bidder fails to consummate the Sale, to the Qualified Bidder with the next-highest or second-best Qualified Bid at the Auction for the Assets (the “**Back-Up Bidder**”), free and clear of all liens, claims, encumbrances, and other interests other than Permitted Liens and Assumed Liabilities (as such terms are defined in the Stalking Horse Agreement);
- (b) if an Auction is not conducted, authorizing and approving the Sale of the Assets to the Stalking Horse Bidder free and clear of all liens, claims, encumbrances, and other interests other than Permitted Liens and Assumed Liabilities;
- (c) authorizing the assumption and assignment of the Assumed Contracts; and
- (d) granting any related relief.

10. 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.

#### **THE ZOHAR FUNDS’ BANKRUPTCY AND RELATED ORDERS**

11. As described more fully in the First Day Declaration, the lenders under the Debtors’ senior secured term loan credit agreement (the “**Prepetition First Lien Credit Agreement**”), dated as of July 8, 2005, are Zohar CDO 2003-1, Limited (“**Zohar I**”), Zohar II 2005-1, Limited (“**Zohar II**”), Zohar III, Limited (“**Zohar III**,” and together with Zohar I and Zohar II, the “**Zohar Funds**” or the “**Zohar Lenders**”), Ark Investment Partners II, L.P. (“**AIP**”) and Ark II 2001-1 Limited (“**Ark II**,” and together with AIP, the “**Patriarch Lenders**” and together with the Zohar Lenders, the “**Prepetition First Lien Lenders**”). As of the Petition Date, not less than \$357 million in respect of loans made under the Prepetition First Lien Credit Agreement remain outstanding, of which the Zohar Funds hold no less than approximately \$332 million, or

approximately 93%, and the Patriarch Lenders hold no less than approximately \$25 million, or approximately 7%. The term loan indebtedness matured in April 2019 and is currently in default.

12. Zohar I and Zohar II also own approximately 49.7% of MDHI's equity. The Patriarch Lenders together own approximately 45.8% of MDHI's equity and third-party investors own the remaining approximately 4.5%.

13. In March 2018, the Zohar Funds commenced cases under chapter 11 of the Bankruptcy Code in this Court and their cases are ongoing (the "**Zohar Chapter 11 Cases**"). On November 9, 2018, the Court entered the *Order in Aid of Implementation of the Global Settlement Agreement Approved in these Cases Establishing Certain Procedures for the Independent Director's Approval of Monetization Transactions and Related Relief* [Docket No. 545] (the "**Zohar Monetization Procedures Order**") and on July 2, 2020, entered the *Amended Order Establishing Certain Guidelines and Milestones in Furtherance of the Monetization Process for the Group A and Group B Portfolio Companies* [Docket No. 1751] (the "**Zohar Timeline Order**") and together with the Zohar Monetization Procedures Order, the "**Zohar Orders**").

14. The Zohar Monetization Procedures Order governs the processes and procedures for the Zohar Funds' disposition and monetization of their debt and equity interests in a slate of portfolio companies, which includes MDHI (the "**Zohar Interests**"). The Zohar Timeline Order establishes additional guidelines and milestones regarding the disposition of the Zohar Interests from and after the period of time when Lynn Tilton resigned as the sole director of MDHI (and other Zohar Fund portfolio companies). In April 2020, a majority of MDHI's shareholders – including non-Zohar Fund investors – elected Alan Carr (the "**Director**") as the sole director for Debtor MDHI. The Director was subsequently appointed as the sole manager of Debtor Monterrey. Under the Zohar Timeline Order, the Director, as MDHI's Independent Fiduciary (as

defined in the Zohar Timeline Order), is “responsible for conducting the sale process on behalf of the Portfolio Company [i.e., the Debtors].” See Zohar Timeline Order, ¶ 8.

### **PREPETITION MARKETING AND SALE PROCESS**

15. As described in further detail in the First Day Declaration, the Debtors have determined that pursuing a sale of the Assets pursuant to Section 363 of the Bankruptcy Code is the best available method for maximizing the value of those Assets for the benefit of all stakeholders.

16. In July 2020, the Debtors engaged Moelis & Company LLC (“**Moelis**”) to serve as their financial advisor and investment banker in connection with developing, and advising the Debtors with respect to, various strategic alternatives, including a potential sale and chapter 11 sale process.<sup>4</sup> In October 2021, Moelis, at the direction of and under the supervision of the Director, commenced a process to market the Assets.

17. Throughout the pre-marketing process, Moelis has worked closely with Debtors’ management and other restructuring professionals and has become well-acquainted with the Debtors’ capital structure, which is more fully set forth in the *Declaration of Barry Sullivan, Chief Financial Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings* (the “**First Day Declaration**”), liquidity needs, and business operations.

18. The Debtors’ marketing efforts included targeted mailings and calls to both potential strategic and financial entities that the Debtors and their advisors believed might be interested in discussing a potential purchase of the Assets. During this process, the Debtors and/or Moelis contacted and sent form non-disclosure agreements to over 170 potential buyers, including

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<sup>4</sup> Moelis was previously retained by the Debtors in May 2018 to explore strategic alternatives. The Debtors (under prior leadership) ultimately determined not to pursue a transaction at that time. Moelis was then reengaged by the Director in July 2020.

26 strategic buyers. The potential buyers included 19 of the 24 parties that were contacted as part of the process commenced in 2018.<sup>5</sup> The Debtors invited these potential buyers to execute non-disclosure agreements and submit an initial indication of interest with respect to a sale of the Assets. In response to the initial outreach, the Debtors executed confidentiality agreements (collectively, the “NDAs”) with 83 prospective buyers of the Assets, each of which received the same package of marketing materials, and received 21 initial indications of interests.

19. The Debtors, in consultation with their advisors, selected 12 potential buyers with the most competitive indications of interest to move to the next phase of the sale process. The Debtors then engaged in further discussions regarding a sale transaction for the Assets with those potential buyers over the following weeks. During this period, each of the potential buyers was granted dataroom access and the Debtors additionally arranged for representatives of each potential buyer to meet with members of the Debtors’ management team, either in person at the Debtors’ headquarters in Mesa, Arizona or through video conference depending on the preference of the particular potential buyer.

20. On or before December 26, 2021, the Debtors received 9 further indications of interest and selected the 2 potential buyers with the highest and best offers to move to the next phase of the sale process. The Debtors engaged in advanced discussions regarding a sale transaction for the Assets with each of those potential buyers over the following 12 weeks leading up to the Petition Date, including engaging in extensive negotiations with each regarding the form of a stalking horse asset purchase agreement.

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<sup>5</sup> Given the overall deterioration in the financial performance of the Debtors since the 2018 process commenced, there were 5 parties contacted by Moelis in connection with the prior process for whom the Debtors’ financial profile was no longer a good fit in that the transaction size now fell below the party’s investment mandate. As a result, these parties were not contacted in connection with the current process.

21. The culmination of the prepetition marketing process was the execution of the Stalking Horse Agreement, which represents the highest or otherwise best offer the Debtors have received to date. The Stalking Horse Agreement was the product of arms' length, good faith negotiations among the Debtors and the Stalking Horse Bidder. The negotiation of the Stalking Horse Agreement on behalf of the Debtors was led by the Debtors' management and advisors under the oversight of the Director. On March 29, 2022, the Director adopted resolutions authorizing the Debtors to enter into the Stalking Horse Agreement.

22. The Stalking Horse Bidder is an affiliate of the Zohar Funds, which own approximately 49.7% of MDHI's equity and hold approximately 93% of the Obligations under the Prepetition First Lien Credit Agreement and are therefore affiliates of the Debtors. The Zohar Funds are bidding in conjunction with their creditors, which will be the ultimate beneficial economic owners of the Stalking Horse Bidder. As demonstrated by the fact that the Stalking Horse Bid does not provide for a break-up fee, expense reimbursement, or any other bid protections, the Zohar Funds' and their creditors' interests are aligned with the Debtors in ensuring that the Debtors are able to run a fulsome, competitive process that maximizes the value of the Assets. In furtherance of the process, certain creditors of the Zohar Funds have offered the Debtors' debtor-in-possession ("DIP") financing, as an integral component of the Stalking Horse Bid, that will ensure the Debtors have liquidity required to run the process contemplated in the Bid Procedures and close a value-maximizing transaction.

23. Notwithstanding the lengthy and thorough prepetition process noted above, there may be additional entities, in addition to the Stalking Horse Bidder, interested in participating in the Auction with respect to the Assets. Pursuant to the terms of the Stalking Horse Agreement, and with the support of the Stalking Horse Bidder and the DIP Lenders, the Debtors, with the

assistance of Moelis, have continued, and will continue, to market the Assets to potential buyers through the Bid Deadline. Further, upon entry of the Bid Procedures Order, the Debtors, with the assistance of Moelis, will continue discussions with any party that complies with the requirements of the Bid Procedures Order and the Bid Procedures, with the goal of having such parties participate in the Auction in order to maximize the value achievable for the Assets. The Debtors believe that, given the extensive prepetition marketing effort, the number of parties that already have executed NDAs, and the fact that the Debtors already have marketed the Assets to the most likely bidders for Assets of the type the Debtors are selling, the prepetition and postpetition marketing process leading up to the Auction will achieve the greatest possible level of interest and consideration for the Assets in the Chapter 11 Cases and confirm whether the bid submitted by the Stalking Horse represents the highest and otherwise best offer for the Assets.

#### STALKING HORSE AGREEMENT

24. 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:

Provision	Summary
<b>Purchase Price / Consideration</b>	<p>The Stalking Horse Agreement provides for the following consideration in exchange for the Assets:</p> <p>On the terms and subject to the conditions set forth in the Stalking Horse Agreement, the aggregate consideration for the Purchased Assets shall be (a)(i) the credit bid pursuant to Section 363(k) of the Bankruptcy Code against \$150,000,000 of the Obligations (as defined in the Term Loan Agreement) as of the Closing and (ii) an assumption by Buyer of up to \$60,000,000 of the DIP Obligations, subject to Buyer reaching an acceptable agreement for such assumption with the requisite lenders under the DIP Facility (clause (a)(i) and (ii), collectively the “<i>Credit Bid</i>”), (b) the instruction to Sellers to retain and use the Retained Cash in accordance with the Wind-Down Budget and (c) the assumption of the Assumed Liabilities (collectively, the “<i>Purchase Price</i>”); <u>provided, however</u>, that the credit bid amount in <i>Section 3.1(a)(i)</i> shall be</p>

Provision	Summary
	<p>increased by the difference between \$60,000,000 and the outstanding DIP Obligations being assumed pursuant to <i>Section 3.1(a)(ii)</i>, up to a maximum increase of \$30,000,000; <u>provided, further</u>, that Buyer reserves the right, in its sole discretion to increase the Purchase Price (including any component thereof), subject to the Bid Procedures Order and applicable Law.</p> <p><i>See Stalking Horse Agreement § 3.2.</i></p>
<b>Assets</b>	<p>On the terms and subject to the conditions set forth in the Stalking Horse Agreement, effective as of the Closing, each Seller shall sell, assign, transfer, convey and deliver to Buyer or its Designated Purchaser, and Buyer or its Designated Purchaser shall purchase and acquire from each Seller, all of each Seller's right, title and interest in and to all of the assets, properties, interests and rights of every nature, kind and description, tangible and intangible of each Seller, other than the Excluded Assets (the "<b><i>Purchased Assets</i></b>"), in each case, free and clear of any Liens (other than Permitted Liens). The Purchased Assets shall include the following:</p> <p>(a) the Leased Real Property set forth on <i>Schedule 2.1(a)</i>, together with any buildings, fixtures and improvements located on or attached to such real property, and all rights arising therefrom, and all tenements, hereditaments, appurtenances and other real property rights appertaining thereto;</p> <p>(b) all tangible assets, including machinery, tools, equipment, computers, information management systems (including software and hardware related thereto), telephone systems, supplies and other tangible personal property owned by any Seller, including (i) any such property located at any Leased Real Property, (ii) any such property that is leased to the extent such lease is an Assigned Contract and (iii) any such property on order to be delivered to any Seller;</p> <p>(c) all warranties, indemnities or guaranties from any Person with respect to any Purchased Asset, including any item of real property, personal property or equipment;</p> <p>(d) all Intellectual Property owned by any Seller, including the Intellectual Property set forth on <i>Schedule 2.1(d)</i> (the "<b><i>Purchased Intellectual Property</i></b>");</p> <p>(e) the Seller Plans set forth on <i>Schedule 2.1(e)</i> (the "<b><i>Assumed Plans</i></b>"), all funding arrangements related thereto (including all assets, trusts, insurance policies (including, for the avoidance of doubt, any director and officer insurance policy) and administrative service Contracts related thereto), and all rights and obligations thereunder;</p> <p>(f) other than the Excluded Permits, all Permits held by any Seller, including those set forth on <i>Schedule 2.1(f)</i>;</p>

Provision	Summary
	<p>(g) other than the Retained Cash, all Cash and Cash Equivalents (the “<i>Transferred Cash</i>”);</p> <p>(h) all deposits, credits, prepaid expenses, deferred charges, advance payments, refunds, rights of set-off, rights of recovery, security deposits, prepaid items and duties related to the Purchased Assets (including the Assigned Contracts);</p> <p>(i) all accounts receivable, notes, negotiable instruments and chattel paper owned or held, together with any unpaid interest or fees accrued thereon or other amounts due with respect thereto, and other amounts receivable from any Person before the Closing;</p> <p>(j) all rights and obligations under or arising out of all insurance policies (including, for the avoidance of doubt, all rights of the Sellers under any director and officer insurance policy, if any) relating to any of the Purchased Assets or any of the Assumed Liabilities (including returns and refunds of any premiums paid, or amounts due back to any Seller, with respect to cancelled insurance policies), and all benefits of any nature of any Seller with respect thereto (including any claims of Seller arising under such policies and all credits, premium refunds, proceeds, causes of action or rights thereunder);</p> <p>(k) subject to <i>Section 7.13</i>, all rights against any Person (including (i) customers, suppliers, vendors, lessors, lessees, licensees, licensors of any Seller and (ii) Buyer, its Affiliates or any of its or their respective directors, officers, members, partners, shareholders, managers, advisors or representatives) arising under or related to any Assigned Contract, other Purchased Asset (including any use, ownership, possession, operation, sale or lease thereof) or Assumed Liability or the operation or conduct of the Business, including Proceedings, Claims, counterclaims, defenses, credits, rebates (including any vendor or supplier rebates), demands, allowances, refunds, rights of set off, rights of recovery (including rights to insurance proceeds), rights of subrogation, rights of recoupment, rights under or with respect to express or implied guarantees, warranties, representations, covenants, indemnities, exculpation, advancement, reimbursement of expenses or contract renewal rights and other similar rights, in each case, whether direct or derivative, known or unknown, liquidated or unliquidated, contingent or otherwise; including all rights of any Seller against any current or former directors, officers, members, partners, shareholders, equity holders, managers, advisors or other professionals of such Seller, including any Proceedings and Claims (“<i>D&amp;O Claims</i>”) and all avoidance, recovery, subordination claims or causes of action of any Seller under Chapter 5 of the Bankruptcy Code or any analogous state or federal statutes or common law relating to the Purchased Assets and Assumed Liabilities; <u>provided</u> that neither Buyer, the Designated Purchaser or any Person claiming by or through Buyer or the Designated Purchaser (including by operation of law, sale, assignment, conveyance or otherwise) shall pursue, prosecute, litigate, institute or commence any Proceeding based on, assert, sell, convey, assign or file any Claim that relates to any rights, claims or causes of action transferred under this <i>Section 2.1(k)</i> against any Seller or any of their</p>

Provision	Summary
	<p>current or former subsidiaries or any of their respective current or former officers or directors, in each case other than a Specified Person. Nothing herein shall limit the right of Buyer (or any assignee or transferee thereof) to bring any claims or causes of action against a Specified Person. “<b>Specified Person</b>” shall mean Lynn Tilton, or any other officer, director, employee, manager, advisor or other representative of any Seller who is or has been a director, officer, equityholder, manager, Affiliate, member or representative of Patriarch Partners, LLC or any of its Affiliates (excluding, for purposes of this <i>Section 2.1(k)</i> and <i>Section 7.13</i>, Sellers and their respective current or former subsidiaries). For the avoidance of doubt, the Patriarch Stakeholders and any other Affiliate of Lynn Tilton (other than Sellers and the Zohars) shall be deemed Specified Persons;</p> <p>(l) all goodwill related to the Purchased Assets (including the goodwill associated with the Trademarks and other Intellectual Property included in the Purchased Assets);</p> <p>(m) the Type Certificates;</p> <p>(n) all inventory, including all (i) raw materials, bulk and pan stock, (ii) stores inventory, (iii) work-in process, (iv) aircraft in flow, (v) used Parts, (vi) finished goods, (vii) Aircraft, (viii) Airframe, (ix) Engines and (x) spare Parts (collectively, “<b>Inventory</b>”);</p> <p>(o) all Tax refunds, overpayments, credits or other attributes, including (i) with respect to Taxes for any Pre-Closing Tax Period or (ii) with respect to Taxes that are Excluded Liabilities;</p> <p>(p) the Assigned Contracts (including, with respect to the Specified Contracts, in accordance with <i>Section 2.5(g)</i>); and</p> <p>(q) other than the Excluded Records, all of each Seller’s current or historical written files, documents, instruments, papers, books, reports, records, tapes, microfilms, photographs, letters, budgets, forecasts, plans, operating records, safety and environmental reports, data, studies, ledgers, journals, title policies, customer lists, supplier lists, vendor lists, price lists, mailing lists, invoices, shipping records, standard forms of documents, 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, <i>etc.</i>), user documentation (installation guides, user manuals, training materials, release notes, working papers, <i>etc.</i>), marketing documentation (catalogs, sales brochures, flyers, pamphlets, web pages, <i>etc.</i>), consulting materials, opinions and other documents commissioned by or on behalf of any Seller, development, quality control, quality assurance, and other regulatory documents, all personnel and employment records for the Transferred Employees or any individual independent contractors of any Seller, and other books and records of any Seller and any rights thereto owned by any Seller, in each case whether stored in hard copy form or on electronic, magnetic, optical</p>

Provision	Summary
	<p>or other media, and including any of the foregoing (other than the Excluded Records) that is subject to attorney-client privilege or attorney work-product protection.</p> <p><i>See Stalking Horse Agreement § 2.1.</i></p>
<b>Assumed Liabilities</b>	<p>On the terms and subject to the conditions of the Stalking Horse Agreement, effective as of the Closing, Buyer or its Designated Purchaser shall assume only the following Liabilities of each Seller (the “<i>Assumed Liabilities</i>”):</p> <p>(a) all Cure Costs to the extent they have not been paid on or before the Closing; <u>provided, however</u>, that neither Buyer nor any Designated Purchaser shall be liable for any applicable Cure Costs that are waived by the contract counterparty pursuant to and consistent with <i>Section 2.5(a)</i> hereof, or otherwise paid by or on behalf of Buyer or its Designated Purchaser in an amount and on terms agreed upon between Buyer and such contract counterparty;</p> <p>(b) all Liabilities with respect to the Assumed Plans to the extent relating to Transferred Employees, whether or not arising prior to or after the Closing Date;</p> <p>(c) all Liabilities of each Seller relating to or arising out of the Assigned Contracts to be paid or performed after the Closing Date, except to the extent such liabilities and obligations, but for a breach or default by any Seller would have been paid, performed or otherwise discharged on or prior to the Closing Date or to the extent the same arises out of any such breach or default;</p> <p>(d) any and all Liabilities for (i) Taxes that relate to the Purchased Assets or the Assumed Liabilities with respect to Post-Closing Tax Periods allocable to Buyer in accordance with <i>Section 7.3(a)</i> and (ii) Transfer Taxes;</p> <p>(e) all accounts payable and other trade obligations, in each case, to the extent (and solely to the extent) (i) incurred in the ordinary course of business and otherwise in compliance with the terms and conditions of the Stalking Horse Agreement (including <i>Section 6.1</i>), (ii) not yet delinquent and (iii) not arising under or otherwise relating to any Excluded Asset; and</p> <p>accrued compensation, vacation pay, employee unreimbursed business expenses and benefits, in each case for any Transferred Employee, but only to the extent allocable to Buyer in accordance with <i>Section 7.4</i>.</p> <p><i>See Stalking Horse Agreement § 2.3.</i></p>
<b>Sale to Insider (Local Rule 6004-1(b)(iv)(A))</b>	<p>As described above and in the First Day Declaration, the Stalking Horse Bidder is an affiliate of the Zohar Funds, which own approximately 49.7% of MDHI’s equity and hold approximately 93% of the Obligations under the Prepetition First Lien Credit Agreement and are therefore affiliates of the Debtors. The</p>

Provision	Summary
	<p>Zohar Funds are bidding in conjunction with their creditors, which will be the ultimate beneficial economic owners of the Stalking Horse Bidder.</p> <p>Prior to the Petition Date, the Director was appointed as the sole director for Debtor MDHI and the sole manager of Debtor Monterrey. Under the Zohar Timeline Order, the Director, as MDHI's Independent Fiduciary (as defined in the Zohar Monetization Order), is "responsible for conducting the sale process on behalf of the Portfolio Company [e.g., the Debtors]." <i>See</i> Zohar Monetization Order, ¶ 8.</p> <p>The Debtors' management and advisors, at the direction of and in consultation with the Director, engaged in extensive arms' length negotiations with the Stalking Horse Bidder regarding the Stalking Horse Agreement. The Director ultimately determined, in consultation with the Debtors' advisors, that the Stalking Horse Agreement represented the highest and best offer received for the Assets.</p> <p>At all times, the Stalking Horse Bidder has been represented by separate counsel in negotiations resulting in entry into the Stalking Horse Agreement.</p>
<p><b>Agreements with Management (Local Rule 6004-1(b)(iv)(B))</b></p>	<p>The Stalking Horse Agreement also provides that the Stalking Horse Bidder and the Debtors will execute (i) a Subcontract Agreement Pending Novation and (ii) a Transition Services Agreement concerning the provision of wind-down services by the Debtors to Seller following the Closing. In order to effectuate the assumption and assignment of the Government Contracts, the Debtors, the Stalking Horse Bidder, and the Government must enter one or more novation agreements, and such other documents as the applicable governmental authorities may require. The Parties do not expect to obtain such approvals prior to the Closing and therefore, obtaining such approvals is not a condition to the Closing. Following the Closing, so long as such approvals remain pending, the Stalking Horse Bidder will engage the Debtors as a subcontractor under the Government Contracts and perform under the Transition Services Agreement in order to enable the new ownership to operate the business in the ordinary course in accordance with the terms and conditions of the Subcontract Agreement Pending Novation</p> <p><i>See</i> Stalking Horse Agreement § 6.5.</p>
<p><b>Releases (Local Rule 6004-1(b)(iv)(C))</b></p>	<p>Not applicable.</p>
<p><b>Private Sale/No Competitive Bidding (Local Rule 6004-1(b)(iv)(D))</b></p>	<p>Not applicable.</p>

Provision	Summary
<p><b>Closing and Other Deadlines (Local Rule 6004-1(b)(iv)(E))</b></p>	<p>The Stalking Horse Agreement sets forth the conditions and terms for the Closing of the sale:</p> <p>The closing of the transactions contemplated by the Stalking Horse Agreement (the “<b>Closing</b>”) shall take place by electronic exchange of documents on the date that is two (2) Business Days after the date on which the conditions set forth in <i>Article VIII</i> have been satisfied or waived in writing by the Party entitled to the benefit thereof (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver in writing (by the Party entitled to the benefit thereof) of such conditions at the Closing) or such other time and place as Buyer and Sellers may mutually agree in writing. The date on which the Closing occurs is referred to in the Stalking Horse Agreement as the “<b>Closing Date</b>”.</p> <p><i>See Stalking Horse Agreement § 3.1.</i></p> <p>The Stalking Horse Agreement also includes the following milestones:</p> <p>(a) within two (2) Business Days after the Execution Date, commence the Chapter 11 Cases by filing in the Bankruptcy Court one or more voluntary petitions for relief as debtors-in-possession under Chapter 11 of the Bankruptcy Code;</p> <p>(b) within two (2) Business Days after the Petition Date, Sellers shall have filed the Sale Motion, including this Agreement;</p> <p>(c) no later than twenty-eight (28) days after the Petition Date, the Bankruptcy Court shall have (x) approved the (i) Bid Procedures and (ii) the form and manner of notice of the sale of the Purchased Assets hereunder and assumption and assignment of executory contracts and unexpired leases, in form and substance reasonably acceptable to Sellers and Buyer, and (y) scheduled the Auction and Sale Hearing; and</p> <p>(d) within ten (10) days after consummation of the Auction (or if the Auction is not necessary, within ten (10) days after the deadline for submitting a qualified bid as set forth in the Bid Procedures), but subject to availability of the Bankruptcy Court, the Sale Hearing shall have occurred and the Bankruptcy Court shall have approved the transaction contemplated by this Agreement.</p>
<p><b>Good Faith Deposit (Local Rule 6004-1(b)(iv)(F))</b></p>	<p>The Purchase Price is comprised of the Credit Bid and assumption of the Assumed Liabilities. Accordingly, the Stalking Horse Agreement does provide for a deposit.</p>
<p><b>Interim Arrangements with Proposed Buyer</b></p>	<p>The Stalking Horse Agreement sets forth customary provisions regarding the Debtors’ conduct of their businesses pending the Closing Date.</p> <p><i>See Stalking Horse Agreement § 6.1.</i></p>

Provision	Summary
<b>(Local Rule 6004-1(b)(iv)(G))</b>	<p>The Stalking Horse Agreement also provides that the Stalking Horse Bidder and the Debtors will execute (i) a Subcontract Agreement Pending Novation and (ii) a Transition Services Agreement concerning the provision of wind-down services by the Debtors to Seller following the Closing. In order to effectuate the assumption and assignment of the Government Contracts, the Debtors, the Stalking Horse Bidder, and the Government must enter one or more novation agreements, and such other documents as the applicable governmental authorities may require. The Parties do not expect to obtain such approvals prior to the Closing and therefore, obtaining such approvals is not a condition to the Closing. Following the Closing, so long as such approvals remain pending, the Stalking Horse Bidder will engage the Debtors as a subcontractor under the Government Contracts and perform under the Transition Services Agreement in order to enable the new ownership to operate the business in the ordinary course in accordance with the terms and conditions of the Subcontract Agreement Pending Novation</p> <p><i>See Stalking Horse Agreement § 6.5.</i></p>
<b>Use of Proceeds (Local Rule 6004-1(b)(iv)(H))</b>	<p>The Purchase Price is comprised of the Credit Bid and assumption of the Assumed Liabilities. Accordingly, the Stalking Horse Agreement does provide for the use of proceeds.</p>
<b>Tax Exemption (Local Rule 6004-1(b)(iv)(I))</b>	<p>Applicable law shall apply.</p>
<b>Record Retention (Local Rule 6004-1(b)(iv)(J))</b>	<p>Excluded from the Purchased Assets are (a) records, documents or other information solely to the extent relating to any current or former Employee who is not or does not become a Transferred Employee and any materials to the extent containing information about any Employee, disclosure of which to Buyer as the acquirer of the Business would violate applicable Law and (b) all attorney-client privilege and attorney work-product protection of any Seller or associated with its businesses solely to the extent arising with respect to legal counsel representation of any Seller or any of their respective Affiliates or their businesses in connection with the transactions contemplated by the Stalking Horse Agreement or any of the Transaction Documents.</p> <p>For a period of six (6) years following the Closing Date, Buyer shall provide to Sellers, their respective Affiliates, and their respective officers, employees and representatives (after reasonable advance notice and during regular business hours) reasonable access to, including the right to make copies of, all books and records included in and otherwise related to the Business, any of the Purchased Assets or any of the Assumed Liabilities, to the extent necessary to permit each Seller to determine any matter relating to their respective rights and obligations hereunder, to any Proceeding or to any Pre-Closing Tax Period (for example, for purposes of any Tax or accounting audit or any claim or litigation matter) or otherwise related to the Excluded Assets or Excluded Liabilities, for periods prior to the Closing and shall preserve such books and records until the latest of (i) such period as shall be consistent with Buyer's</p>

Provision	Summary
	<p>records retention policy in effect from time to time, (ii) the retention period required by applicable Law, (iii) the conclusion of all bankruptcy proceedings relating to the Chapter 11 Cases and (iv) in the case of books and records relating to Taxes, the expiration of the statute of limitations applicable to such Taxes. Such access shall include access to any information in electronic form to the extent reasonably available.</p> <p><i>See Stalking Horse Agreement §§ 2.2, 7.1(a).</i></p>
<p><b>Sale of Avoidance Actions</b> <b>(Local Rule 6004-1(b)(iv)(K))</b></p>	<p>Avoidance actions are sold to the Purchaser.</p> <p><i>See Stalking Horse Agreement § 2.1(k).</i></p>
<p><b>Requested Findings as to Successor Liability</b> <b>(Local Rule 6004-1(b)(iv)(L))</b></p>	<p>The Stalking Horse Agreement provides that the Sale Order shall, among other things, find that Buyer shall have no Liability or responsibility for any Liability or other obligation of any Seller other than the Assumed Liabilities as expressly set forth in the Stalking Horse Agreement or as required under applicable non-bankruptcy Law, whether known or unknown as of the Closing Date or in connection with the transactions contemplated to occur on the Closing, whether now existing or hereafter arising, or whether fixed or contingent, with respect to the businesses of Sellers, the Purchased Assets or any Liability of any Seller, including successor or vicarious Liabilities of any kind or character, including any theory of antitrust, successor, or transferee Liability, labor law, de facto merger, or substantial continuity and that Buyer shall not be the successor of any Seller, have, de facto, or otherwise, merged with or into any Seller, or be a mere continuation or substantial continuation of any Seller or the enterprise of any Seller, (v) find that Buyer has provided adequate assurance (as that term is used in Section 365 of the Bankruptcy Code) of future performance in connection with the assumption of the Assigned Contracts.</p> <p><i>See Stalking Horse Agreement § 7.2(d)(iv).</i></p>
<p><b>Sale Free and Clear of Unexpired Leases</b> <b>(Local Rule 6004-1(b)(iv)(M))</b></p>	<p>The Debtors are seeking to sell the Assets free and clear of all Claims, encumbrances, and other interests pursuant to Section 363(f) of the Bankruptcy Code, except as to the Permitted Liens and Assumed Liabilities.</p>
<p><b>Credit Bid</b> <b>(Local Rule 6004-1(b)(iv)(N))</b></p>	<p>Included in the Purchase Price is shall be (a)(i) the credit bid pursuant to Section 363(k) of the Bankruptcy Code against \$150,000,000 of the Obligations (as defined in the Term Loan Agreement) as of the Closing and (ii) an assumption by Buyer of up to \$60,000,000 of the DIP Obligations, subject to Buyer reaching an acceptable agreement for such assumption with the requisite lenders under the DIP Facility; <u>provided, however</u>, that the credit bid amount in <i>Section 3.1(a)(i)</i> shall be increased by the difference between \$60,000,000 and the outstanding DIP Obligations being assumed pursuant to <i>Section 3.1(a)(ii)</i>, up to a maximum increase of \$30,000,000</p>

Provision	Summary
	<i>See Stalking Horse Agreement § 3.2.</i>
<b>Relief from Bankruptcy Rule 6004(h) (Local Rule 6004-1(b)(iv)(O))</b>	As noted in this Motion, the Debtors are requesting relief from the 14-day stay imposed by Bankruptcy Rules 6004(h) and 6006(d).

### THE PROPOSED SALE

25. The Debtors believe that a prompt sale of the Assets through a competitive sale process represents 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 a sale transaction as expeditiously as possible.

26. As described in further detail in the First Day Declaration, a number of factors have destabilized the Debtors' business and threaten to further deteriorate the value of the Assets. The Debtors' senior secured prepetition term loan indebtedness matured in June 2019 and the Debtors were unable to repay or refinance such indebtedness. Since that time, the Debtors have been in default under the Prepetition First Lien Credit Agreement, which effectively foreclosed the Debtors' access to financing and, in turn, has hampered its ability to compete for certain contracts. Specifically, the Debtors have been unable to obtain bonding due to the default under the Prepetition First Lien Credit Agreement and, as a result, has been unable to compete for contracts that include bonding requirements.

27. The Debtors have also been named as defendants in several lawsuits and have expended significant resources defending those lawsuits. Two of those lawsuits resulted in significant verdicts against the Debtors: (i) the State of the Netherlands obtained a judgment of approximately \$15 million against Debtor MDHI in May 2012, which was registered in Arizona

and New York in November 2018 and September 2020, respectively, and (ii) a jury returned a verdict against Debtor MDHI in the Qui Tam Action awarding damages in the amount of approximately \$36.8 million in September 2021.

28. Compounding these issues, the Debtors' business has also faced headwinds from the U.S. military's withdrawal from Afghanistan and attendant wind-down of the Debtors' contracts to supply helicopters and provide related services to the Afghanistan military, which represented approximately 40% of the Debtors' gross revenues. The Afghanistan withdrawal resulted in the Debtors losing orders to supply approximately 20 helicopters that would have generated \$160 million in gross revenue. Additionally, the Debtors have experienced supply chain disruptions caused by the COVID-19 pandemic, which have resulted in delays in certain sales. As a result of these factors, among others, the Debtors have been operating under a cloud of uncertainty that has strained the Debtors' cash flows and negatively affected liquidity.

29. In light of these challenges, the Debtors are critically focused on stabilizing the business and providing certainty to their vendors, suppliers, customers and workforce regarding the path forward for the business by consummating a value maximizing sale transaction. Prepetition, the Debtors took important first steps towards achieving that goal by executing the Qui Tam Settlement, which contemplates a sale of the Debtors' assets pursuant to Section 363 of the Bankruptcy Code, and negotiating and executing the Stalking Horse Agreement. It is critical that the Debtors seize on that momentum by cementing a process for the swift and orderly transition of the Debtors' business to the Successful Bidder. This is of the utmost importance as it will signal to the Debtors' customers, vendors, employees, and other constituents from the outset of these Chapter 11 Cases that the Debtors' situation is temporary only and that the business will emerge from the chapter 11 process with new owners, a more stable capital structure, and the

issues related to the Qui Tam Action squarely in the rear-view mirror. In other words, time is of the essence.

30. While there is a manifest need for expediency here, the Debtors recognize that conducting a postpetition market check on the Stalking Horse Bid is appropriate and necessary to ensure that the value of the Assets is maximized. To that end, the timeline contemplated by the Bid Procedures appropriately balances the need for expediency with the interest in providing interested parties with a sufficient opportunity to participate in a competitive postpetition sale process and auction. Specifically, by this Motion, the Debtors respectfully request that this Court approve the following sale timeline:

- (a) ***Assumed Contract Objection Deadline:*** Objections to (i) the potential assumption and assignment of any Contract to the Stalking Horse Bidder including the ability of the Stalking Horse Bidder to provide adequate assurance of future performance and (ii) the proposed cure amount to be paid in connection with the assumption and assignment of any Contract shall be filed and served no later than **May 11, 2022 at 4:00 p.m. (prevailing Eastern Time)** (the “**Assumed Contract Objection Deadline**”); *provided* that, to the extent any Contract Counterparty is added to the Assumption Notice after the initial notice is served, such new Contract Counterparty shall have ten (10) days from the date of service of the Supplemental Contract Notice to object to the proposed cure amount and assignment to the Successful Bidder.
- (b) ***Sale Objection Deadline:*** Objections to the Sale shall be filed and served no later than **May 11, 2022 at 4:00 p.m. (prevailing Eastern Time)**.
- (c) ***Intention to Submit Qualified Bid Deadline:*** Intentions to Submit Qualified Bid must be received by no later than **May 20, 2022 at 4:00 p.m. (prevailing Eastern Time)** (the “**Intention to Submit Qualified Bid Deadline**”).
- (d) ***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 3, 2022 at 4:00 p.m. (prevailing Eastern Time)** or such later date as may be agreed to by the Debtors (the “**Bid Deadline**”).

- (e) **Auction:** The Auction, if necessary, shall be held on **June 9, 2022 at 10:00 a.m. (prevailing Eastern Time)**, or such other location as identified by the Debtors after notice to all Qualified Bidders.
- (f) **Post-Auction Notice Deadline:** As soon as reasonably practicable after closing the Auction, if any, and in any event not less than 24 hours after closing the Auction, the Debtors shall file and serve a notice identifying the Successful Bidder and Back-Up Bidder (the “**Post-Auction Notice**”).
- (g) **Post-Auction Objection Deadline:** If the Successful Bidder that prevails at the Auction is not the Stalking Horse Bidder, the deadline to object solely to (i) the identity of a Successful Bidder or (ii) the ability of the Successful Bidder to provide adequate assurance of future performance under the Assumed Contract shall be **June 13, 2022 at 4:00 p.m. (prevailing Eastern Time)** (the “**Post-Auction Objection Deadline**”).
- (h) **Sale Hearing:** Subject to this Court’s availability and schedule, (i) if the Debtors receive one or more Intention(s) to Submit Qualified Bid, the Sale Hearing shall commence on or before **June 17, 2022** and (ii) if the Debtors do not receive any Intention to Submit Qualified Bid by the Intention to Submit Qualified Bid Deadline, the Sale Hearing shall commence on or before **May 27, 2022**.

31. The Debtors believe this timeline maximizes the prospect of receiving the highest or best offer for the Assets while ensuring that the Debtors can close the Sale on the timeline contemplated in the Stalking Horse Agreement. Given the Debtors’ extensive prepetition marketing efforts, the proposed timeline is more than adequate to complete a fair, robust and open sale process that will maximize the value received for the Assets. Indeed, the Debtors and their advisors have been actively marketing the Assets to prospective bidders since October 2021 and believe that the most likely potential bidders in an auction have already been contacted and afforded an opportunity to conduct diligence in connection with the prepetition marketing process. To further ensure that the Debtors’ proposed sale process maximizes value for the benefit of the Debtors’ estates, and in accordance with the Stalking Horse Agreement, 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.

### **THE BID PROCEDURES ORDER**

#### **A. The Bid Procedures and Auction Process**

32. 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 promote participation and active bidding, and to ensure that 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.

33. 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, the criteria for selecting a successful bidder and the non-exhaustive procedures for conducting an action if timely Qualified Bids other than the Stalking Horse Bid are received.

34. The following summary describes the salient points of the Bid Procedures and discloses certain information required pursuant to Local Rule 6004-1:<sup>6</sup>

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<sup>6</sup> 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.

Provision	Summary
<p><b>Provisions Governing Qualifications of Bidders (Local Bankr. R.6004-1(c)(i)(A))</b></p>	<p>The Stalking Horse Bidder shall at all times be deemed to be a Qualified Bidder and the Stalking Horse Agreement shall at all times be deemed to be a Qualified Bid (the “<b><u>Stalking Horse Bid</u></b>”).</p> <p>To receive due diligence information, including full access to the Debtors’ electronic data room and to additional non-public information regarding the Debtors, any party interested in submitting a bid, other than the Stalking Horse Bidder (each a “<b><u>Potential Bidder</u></b>”), must deliver the following documents (collectively, the “<b><u>Preliminary Bid Documents</u></b>”) by email to the Debtors’ investment banker, Moelis, Attn: Azad Badakhsh (azad.badakhsh@moelis.com) and Adam Keil (adam.keil@moelis.com), with a copy to the Debtors’ counsel, Latham &amp; Watkins, LLP, Attn: Suzzanne Uhland (suzzanne.uhland@lw.com), Adam S. Ravin (adam.ravin@lw.com) and Brett M. Neve (brett.neve@lw.com), and Troutman Pepper Hamilton Sanders LLP, Attn: David B. Stratton (david.stratton@troutman.com), David M. Fournier (david.fournier@troutman.com) and Evelyn J. Meltzer (evelyn.meltzer@troutman.com) (collectively, the “<b><u>Bid Recipients</u></b>”):</p> <ul style="list-style-type: none"> <li>(i) an “<b><u>Acceptable Confidentiality Agreement</u></b>,” which, as defined in the Stalking Horse Agreement, shall mean a confidentiality agreement that contains provisions that are not less favorable in the aggregate to the Debtors than those contained in the confidentiality agreement executed between the Debtors and the Stalking Horse Bidder, to the extent not already executed;</li> <li>(ii) identification of the Potential Bidder and any principals and representatives thereof who are authorized to appear and act on its behalf for all purposes regarding the contemplated Sale; and</li> <li>(iii) evidence by the Potential Bidder of its financial capacity to close a proposed transaction, which shall include financial statements of the Potential Bidder, including current audited and unaudited financial statements or other financial information of the Potential Bidder, or, if the Potential Bidder is an entity formed for the purpose of acquiring the Assets, current audited and unaudited financial statements or other financial information of the Potential Bidder’s equity holder or other financial backer, or such other form of financial disclosure and evidence acceptable to the Debtors and their advisors in their reasonable discretion, demonstrating such Potential Bidder’s ability to close the proposed transaction, to finance going concern operations to the extent contemplated, and to provide adequate assurance of future performance to counterparties to any executory contracts and unexpired leases to be assumed by the Potential Bidder.</li> </ul>

Provision	Summary
	<p>Promptly after a Potential Bidder delivers Preliminary Bid Documents to the Bid Recipients, the Debtors shall assess the adequacy of the evidence of its capacity and notify the Potential Bidder whether such Potential Bidder has submitted acceptable Preliminary Bid Documents so that the Potential Bidder may proceed to conduct due diligence and ultimately submit an Intention to Submit Qualified Bid, a Bid and participate in the Auction, as applicable. Only those Potential Bidders that have submitted acceptable Preliminary Bid Documents (each, a “<b>Bidder</b>”) may submit Bids.</p> <p>As soon as reasonably practicable after the Debtors determine that a Potential Bidder is a Bidder, the Debtors shall provide such Bidder with access to an electronic data room and reasonable due diligence information as requested by such Bidder (to the extent such Bidder has not already been provided such access and information). All due diligence requests must be directed to Moelis. Moelis will work to facilitate meetings between any interested Bidder and the Debtors’ management team. For all Bidders (except for the Stalking Horse Bidder), the due diligence period will end on the Bid Deadline, and after the Bid Deadline, the Debtors will have no obligation to furnish any due diligence information.</p> <p>The Debtors and their advisors shall coordinate all reasonable requests from Bidders for additional information and due diligence access. The Debtors may decline to provide such information to Bidders who, in the Debtors’ business judgment, have not established, or who have raised doubt, that such Bidder intends in good faith or has the capacity to consummate a sale transaction of all or substantially all of the Assets (a “<b>Transaction</b>”).</p> <p>For any Bidder 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 inappropriate for disclosure to such Bidder at such time.</p> <p>Each Bidder shall comply with all reasonable requests for additional information and due diligence access by the Debtors or their advisors regarding such Bidder and its contemplated Transaction.</p> <p><i>See Bid Procedures § J.2.</i></p> <p>After receipt of the Diligence Materials, each Potential Bidder that intends, in good faith, to submit a Bid that it believes will be a Qualified Bid must submit an indication of interest setting forth its intention to submit a Qualified Bid to the Bid Recipients (an “<b>Intention to Submit Qualified Bid</b>”) by the Intention to Submit Qualified Bid Deadline. Each Intention to Submit Qualified Bid shall include:</p> <p>(i) <u>Purchase Price</u>. Each Intention to Submit Qualified Bid must clearly set forth the terms of any proposed Transaction, including and identifying separately any cash and non-cash components of the proposed Transaction consideration, such as</p>

Provision	Summary
	<p>certain liabilities to be assumed by the Bidder as part of the Transaction;</p> <p>(ii) <u>Financing</u>. Each Intention to Submit Qualified Bid must clearly state whether the Potential Bidder intends to (a) consummate the Transaction set forth in its Intention to Submit Qualified Bid with cash on hand or (b) rely on financing to consummate such Transaction. To the extent that a Potential Bidder intends to consummate such Transaction with cash on hand, evidence by the Potential Bidder of its financial capacity to close a proposed transaction, which shall include financial statements of the Potential Bidder, including current audited and unaudited financial statements or other financial information of the Potential Bidder, or, if the Potential Bidder is an entity formed for the purpose of acquiring the Assets, current audited and unaudited financial statements or other financial information of the Potential Bidder's equity holder or other financial backer, or such other form of financial disclosure and evidence acceptable to the Debtors and their advisors in their reasonable discretion, demonstrating such Potential Bidder's ability to close the proposed transaction, to finance going concern operations to the extent contemplated, and to provide adequate assurance of future performance to counterparties to any executory contracts and unexpired leases to be assumed by the Potential Bidder. To the extent that a Potential Bidder intends to consummate such Transaction through financing, each Intention to Submit Qualified Bid must identify the source(s) of potential debt and/or equity funding commitments to satisfy the Potential Bidder's purchase price;</p> <p>(iii) <u>Identity</u>. Each Intention to Submit Qualified Bid must fully disclose the identity of each entity that will be bidding or otherwise participating in connection with a potential Bid (including each equity holder or other financial backer of the Potential Bidder if such Potential Bidder is an entity formed for the purpose of consummating the proposed Transaction contemplated by a potential Bid), and the complete terms of any such participation. Under no circumstances shall any undisclosed principals, equity holders, or financial backers be associated with any potential Bid. Each potential Bid must also include contact information for the specific person(s) and counsel the Debtors' advisors should contact regarding such potential Bid;</p> <p>(iv) <u>Authorization</u>. Each Intention to Submit Qualified Bid must contain evidence that the Potential Bidder has obtained authorization or approval from its board of directors (or a comparable governing body acceptable to the Debtors) acceptable to the Debtors with respect to the submission of the</p>

Provision	Summary
	<p>Intention to Submit Qualified Bid and its potential Bid and the consummation of the Transactions contemplated in such potential Bid;</p> <p>(v) <u>Regulatory or Third-Party Approval</u>. Each Intention to Submit Qualified Bid must set forth any regulatory or third-party approval required for the Potential Bidder to consummate the Sale, and the time period within which the Potential Bidder expects to receive such regulatory and third-party approvals;</p> <p>(vi) <u>Due Diligence</u>. Each Intention to Submit Qualified Bid must set forth with specificity any due diligence that must be conducted in order for the Potential Bidder to submit a timely Bid.</p> <p>(vii) <u>Substantial Contribution Waiver</u>. Each Intention to Submit Qualified Bid must contain an express waiver, effective upon submission of the Intention to Submit Qualified Bid, of any substantial contribution claims by the Potential Bidder;</p> <p>(viii) <u>Expenses; Disclaimer to Fees</u>. Each Intention to Submit Qualified Bid must disclaim any right to receive a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation. For the avoidance of doubt, no Potential Bidder will be permitted to request, or be granted by the Debtors, at any time, whether as part of the Auction or otherwise, a break-up fee, expense reimbursement, termination fee, substantial contribution, or any other similar form of compensation, and by submitting an Intention to Submit Qualified Bid any Potential Bidder is waiving any assertion or request for reimbursement on any basis, including under Section 503(b) of the Bankruptcy Code;</p> <p>(ix) <u>Consent to Jurisdiction</u>. Each Intention to Submit Qualified Bid must submit to the exclusive jurisdiction of the Bankruptcy Court and waive any right to a jury trial in connection with any disputes relating to Debtors' qualification of Bids, the Auction, the construction and enforcement of these Bid Procedures, the Sale documents, and the closing of the sale, as applicable; and</p> <p>(x) <u>Other Information</u>. Each Intention to Submit Qualified Bid must contain such other information as may be reasonably requested by the Debtors.</p> <p>Promptly after a Potential Bidder delivers an Intention to Submit Qualified Bid to the Bid Recipients, the Debtors will assess the adequacy of such Intention to Submit Qualified Bid and notify the Potential Bidder whether such Potential Bidder has submitted an acceptable Intention to Submit Qualified Bid so that</p>

Provision	Summary
	<p>the Potential Bidder may proceed to conduct due diligence and ultimately submit a Bid and participate in the Auction, as applicable.</p> <p>If no Potential Bidder submits an Intention to Submit Qualified Bid by the Intention to Submit Qualified Bid Deadline, the Debtors shall promptly file a Notice of Successful Bidder identifying the Stalking Horse Bidder as the Successful Bidder. Such notice shall terminate the Bid Deadline, cancel the Auction, and provide notice of the Sale Hearing to be held on May 27, 2022.</p> <p><i>See Bid Procedures § J.3.</i></p>
<p><b>Good Faith Deposit (Local Rule 6004-1(b)(iv)(F))</b></p>	<p>Each Qualified Bid, other than the Stalking Horse Bid, must be accompanied by a cash deposit in the amount of 10% of the total cash and non-cash consideration proposed by the bidder to be held in an escrow account to be identified and established by the Debtors (the “<b>Deposit</b>”).</p> <p><i>See Bid Procedures § J.3(xii).</i></p>
<p><b>Other Highlighted Terms Under Del. Bankr. L.R. 6004-1(b)(iv)</b></p>	<p><u>Private Sale/No Competitive Bidding</u>: The Sale is being conducted pursuant to the competitive bidding process detailed in the Motion.</p> <p><u>Credit Bid</u>: The Stalking Horse Bidder shall automatically be deemed a Qualified Bidder and shall have the right to credit bid on a dollar-for-dollar basis all or a portion of (i) the DIP Obligations (as defined in the Stalking Horse Agreement) held by the Stalking Horse Bidder, which may include any DIP Obligations assigned to, and assumed by, the Stalking Horse Bidder, and (ii) the Obligations (as defined in the Prepetition First Lien Credit Agreement) held by the Stalking Horse Bidder, which may include any Obligations assigned to, and assumed by, the Stalking Horse Bidder.</p> <p><i>See Bid Procedures § J.4.</i></p> <p>Relief from Bankruptcy Rule 6004(h): As noted in this Motion, the Debtors are requesting relief from the 14-day stay imposed by Bankruptcy Rules 6004(h) and 6006(d).</p>
<p><b>Provisions Governing Qualified Bids (Local Bankr. R. 6004-1(c)(i)(A), (B))</b></p>	<p>To be eligible to participate in the Auction, each offer, solicitation, or proposal (each, a “<b>Bid</b>”), and each Bidder, must be determined by the Debtors, to satisfy each of the following conditions:</p> <p>(i) <u>Stalking Horse Bidder</u>. The Stalking Horse Bidder shall be deemed to be a Qualified Bidder and the Stalking Horse Agreement shall be deemed to be a Qualified Bid (the “<b>Stalking Horse Bid</b>”).</p> <p>(ii) <u>Bid Deadline</u>. The Debtors must receive a Bid in writing, on or before <b>June 3, 2022 at 4:00 p.m. (prevailing Eastern Time)</b> or such later date as may be agreed to by the Debtors (the “<b>Bid</b>”).</p>

Provision	Summary
	<p><b><u>Deadline</u></b>”). Bids must be sent to the Bid Recipients by the Bid Deadline to be considered.</p> <p>(i) <b><u>Form and Contents</u></b>. All Bids shall be in the form of an irrevocable offer letter from a person or persons that the Debtors, in their reasonable discretion taking into account its fiduciary duties, deem financially able to consummate the purchase of the Assets, which letter states and includes:</p> <p>(A) <b><u>Marked Agreement</u></b>. Each Bid must state the Bidder irrevocably offers to purchase some or all of the Assets upon the terms and conditions set forth in a duly executed non-contingent and attached complete asset purchase agreement, which shall be in substantially the same form as the Stalking Horse Agreement, prepared and executed by the Bidder (an electronic version in Word format and blacklined against the Stalking Horse Agreement), together with its exhibits and schedules, including terms relating to price and the time of closing (the <b><u>“Proposed Agreement”</u></b>);</p> <p>(B) <b><u>Assets</u></b>. Each Bid must clearly specify the Assets that are included in the Bid (it being understood that while Bids for a portion or subset of the Assets may be permitted, the Debtors may consider whether the combined consideration for the Assets exceeds the Purchase Price of the Stalking Horse Agreement and/or other aspects of the bid in determining whether the Bid is a Qualified Bid);</p> <p>(C) <b><u>Purchase Price</u></b>. Each Bid must clearly set forth the terms of any proposed Transaction, including and identifying separately any cash and non-cash components of the proposed Transaction consideration, such as certain liabilities to be assumed by the Bidder as part of the Transaction (the <b><u>“Purchase Price”</u></b>);</p> <p>(D) <b><u>Overbid</u></b>. Each 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; and (ii) an initial overbid of at least \$1,000,000, 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);</p>

Provision	Summary
	<p>(E) <u>Committed Financing.</u> To the extent that a Bid is not accompanied by evidence of the Bidder's capacity to consummate the Transaction set forth in its Bid with cash on hand, each Qualified Bid must include evidence of committed financing that demonstrates that the Bidder has received sufficient, non-contingent financing that demonstrates that the Bidder has received sufficient non-contingent and binding debt and/or equity funding commitments to satisfy the Bidder's Purchase Price and other obligations under its Bid. Such funding commitments or other financing acceptable to the Debtors must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions acceptable to the Debtors;</p> <p>(F) <u>Contingencies; No Financing or Diligence Outs.</u> A Bid shall not be conditioned on a Bidder obtaining, or the sufficiency of, financing or any internal approval, or on the outcome or review of due diligence, which must be completed before the Bid Deadline, but may be subject to the accuracy at the closing of specified representations and warranties or the satisfaction at the closing of specified conditions;</p> <p>(G) <u>Identity.</u> Each Bid must fully disclose the identity of each entity that will be bidding or otherwise participating in connection with such Bid (including each equity holder or other financial backer of the Bidder if such Bidder is an entity formed for the purpose of consummating the proposed Transaction contemplated by such Bid), and the complete terms of any such participation. 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 the Debtors' advisors should contact regarding such Bid;</p> <p>(H) <u>Authorization.</u> Each Bid must contain evidence that the Bidder has obtained authorization or approval from its board of directors (or a comparable governing body acceptable to the Debtors) acceptable to the Debtors with respect to the submission of its Bid and the consummation of the Transactions contemplated in such Bid;</p>

Provision	Summary
	<p>(I) <u>Regulatory or Third-Party Approval</u>. Each Bid must set forth any regulatory or 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;</p> <p>(J) <u>Substantial Contribution Waiver</u>. Each Bid must contain an express waiver, effective upon submission of the Bid, of any substantial contribution claims by the Bidder;</p> <p>(K) <u>Expenses; Disclaimer to Fees</u>. Each Bid must disclaim any right to receive a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation. For the avoidance of doubt, no Potential Bidder will be permitted to request, or be granted by the Debtors, at any time, whether as part of the Auction or otherwise, a break-up fee, expense reimbursement, termination fee, substantial contribution, or any other similar form of compensation, and by submitting a Bid any Potential Bidder is waiving any assertion or request for reimbursement on any basis, including under Section 503(b) of the Bankruptcy Code;</p> <p>(L) <u>Consummation</u>. Each Bid must include a statement or evidence reflecting (i) that the Bidder is prepared to consummate the transaction upon entry of an order of the Bankruptcy Court approving the Sale to the Successful Bidder (the “<u>Sale Order</u>”) and consummation shall not be contingent on obtaining requisite government, regulatory, or other third-party approvals for novation of the Government Contracts or security clearances, (ii) that the Bidder has made or will make as soon as reasonably practicable all necessary filings with respect to any regulatory, antitrust and other laws and pay the fees associated therewith; and (iii) the Bidder’s plan and ability to obtain all requisite governmental, regulatory, or other third-party approvals, including novation of the Government Contracts (as defined below) and obtaining security clearances, and the proposed timing for the Bidder to undertake the actions required to obtain such approvals;</p> <p>(M) <u>Irrevocability</u>. Each Bid must include a statement that, in the event the Bidder becomes the Successful Bidder or the Back-Up Bidder (as defined below), such</p>

Provision	Summary
	<p>Qualified Bidder's offer is irrevocable until two (2) business days after the closing of the sale of the Assets;</p> <p>(N) <u>Actual Value</u>. The Bid must state the proposed actual value of such Bidder's bid to the Debtors' estate;</p> <p>(O) <u>Assumed Contracts and Leases</u>. Each Bid must identify any and all executory contracts and unexpired leases of the Debtors that the Qualified Bidder wishes to be assumed pursuant to a Sale. A Bid must specify that such 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);</p> <p>(P) <u>Employees</u>. Each Bid must detail the treatment of the employees of the Debtors;</p> <p>(Q) <u>Damages</u>. Each Bid must provide that the Debtors have the right to pursue all available damages in the event of the Bidder's breach of, or failure to perform under, the Proposed Agreement;</p> <p>(R) <u>Consent to Jurisdiction</u>. Each Bidder must submit to the exclusive jurisdiction of the Bankruptcy Court and waive any right to a jury trial in connection with any disputes relating to Debtors' qualification of Bids, the Auction, the construction and enforcement of these Bid Procedures, the Sale documents, and the closing of the sale, as applicable; and</p> <p>(S) <u>Other Information</u>. Each Bid must contain such other information as may be reasonably requested by the Debtors.</p> <p><u>Same or Better Terms</u>. Each Bid shall be based on the Stalking Horse Bid and must exceed, either on its own terms or, in the case of a Bid for a portion or subset of the Assets, in combination with another Qualified Bid(s), the Stalking Horse Bid in relation to the Assets by the Minimum Overbid Increment (as that term is defined in the Bid Procedures Order). Each Bid must be on terms that are not more burdensome than the terms of the Stalking Horse Bid, as determined by the Debtors, and considering, among other factors, the scope and manner of the proposed Transaction.</p> <p>(ii) <u>Corporate Authority</u>. 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</p>

Provision	Summary
	<p>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.</p> <p>(iii) <u>Adequate Assurance</u>. All Bids must provide for adequate working capital financing to finance going concern operations to the extent contemplated, and to provide adequate assurance of future performance to counterparties to any executory contracts and unexpired leases to be assumed by the Bidder.</p> <p>(iv) <u>Back-Up Bidder</u>. Each Bidder must acknowledge that by submitting a Bid, the Bidder agrees to be a Back-Up Bidder, should the Bid be so selected.</p> <p>(v) <u>Wind-Down Amounts</u>. The Bid must ensure that the Debtors will retain sufficient cash to fund the orderly wind-down of the Debtors' estates in a manner at least equivalent to the Wind-Down Budget (as defined in the Stalking Horse Agreement).</p> <p>(vi) <u>Proof of Financial Ability to Perform</u>. All Bidders must provide 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, <u>inter alia</u>, 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.</p> <p>(vii) <u>As Is, Where Is</u>. The sale of the Assets shall be on an "as is, where is" and "with all defects" basis and without representations or warranties of any kind, nature, or description by the Debtors, their agents or estates, except to the extent set forth in the Proposed Agreement of the Successful Bidder.</p> <p>(viii) <u>Free and Clear</u>. Except as otherwise provided in the Proposed Agreement, all of the Debtors' right, title, and interest in and to the Assets to be acquired shall be sold free and clear of all liens, claims, charges, security interests, restrictions, and other encumbrances of any kind or nature thereon and there against</p>

Provision	Summary
	<p>(collectively, the “Transferred Liens”), with such Transferred Liens to attach to the proceeds of the sale.</p> <p>(ix) <u>Good Faith Deposit</u>. Each Qualified Bid must be accompanied by a cash deposit in the amount of 10% of the total Purchase Price to be held in an escrow account to be identified and established by the Debtors (the “<b>Deposit</b>”).</p> <p>(x) <u>Binding Effect</u>. By submitting its Bid, each Bidder is agreeing, and shall be deemed to have agreed, to abide by and honor the terms of the Bid Procedures and to refrain from submitting a Qualified Bid or seeking to reopen the Auction after conclusion of the Auction.</p> <p>(xi) <u>Repayment of DIP Obligations</u>. A Bid by a Bidder must provide for (a) payment, in full, in cash of all DIP Obligations (as defined in the Stalking Horse Agreement) and (b) funding of the carve-out under any financing order(s) entered by the Bankruptcy Court, in each case as of the Closing Date.</p> <p>(xii) <u>Time Frame for Closing</u>. A Bid by a Bidder must be reasonably likely to be consummated, if selected as the Successful Bid, within a time frame acceptable to the Debtors but in no event later than one hundred fifty (150) days following the Petition Date.</p> <p>Notwithstanding anything to the contrary herein, a Bid may be in the form of a plan of reorganization (a “<b>Restructuring Transaction</b>”), it being understood that the Debtors reserve the right to modify these procedures, including without limitation, the Qualified Bid requirements, as necessary or appropriate to accommodate the submission and the Debtors’ consideration of one or more Bids in the form of a Restructuring Transaction; <i>provided</i> that (a) in order for a Bid in the form of a Restructuring Transaction to constitute a Qualified Bid, such Bid must be capable of satisfying the requirements of Section 1129 of the Bankruptcy Code and being consummated, as determined by the Debtors, and (b) the failure of any such Bid to satisfy the requirements set forth above in subparagraphs (ii) through (xiv) may be taken into account by the Debtors in evaluating the Bid.</p> <p><i>See Bid Procedures § J.4.</i></p>
<b>Stalking Horse Bid Protections (Local Rule 6004-1(c)(i)(C))</b>	Not applicable.

Provision	Summary
<p><b>Bidding Increments (Local Rule 6004-1(c)(i)(C)(3))</b></p>	<p>Any Overbid after the Baseline Bid (as defined in the Bid Procedures) shall be made in increments of at least <b>\$1,000,000</b> (the “<b>Minimum Overbid Increment</b>”). Additional consideration in excess of the amount set forth in the Baseline Bid may include cash and/or non-cash consideration; <u>provided, however,</u> that the value for such non-cash consideration shall be determined by the Debtors in their reasonable business judgment. Upon the solicitation of each round of Overbids, the Debtors may announce a deadline (the “<b>Overbid Round Deadline</b>”), by which time any Overbids must be submitted to the Debtors. An Overbid may contain alterations, modifications, additions, or deletions of any terms of the Bid no less favorable to the Debtors’ estates than any prior Qualified Bid or Overbid and shall otherwise comply with the terms of these Bid Procedures.</p> <p><i>See Bid Procedures § K.2</i></p> <p>After each Overbid Round Deadline, the Debtors shall determine whether an Overbid is higher or otherwise better than the Baseline Bid (as defined in the Bid Procedures) in the initial Overbid round or, in subsequent rounds, the Overbid previously designated by the Debtors as the prevailing highest or otherwise best Bid (the “<b>Prevailing Highest Bid</b>”). The Debtors shall announce and describe to all Qualified Bidders present at the Auction the material terms of any new Overbid designated by the Debtors as the Prevailing Highest Bid, as well as the value attributable by the Debtors to such Prevailing Highest Bid.</p> <p>Any Overbid to a Prevailing Highest Bid by any Qualified Bidder must provide more value for the Debtors’ estates than any prior bid.</p> <p><i>See Bid Procedures § K.2.</i></p>
<p><b>Modifications of Bidding and Auction Procedures (Local Rule 6004-1(c)(i)(D))</b></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, at or prior to the Auction, subject to the rights of the Stalking Horse Bidder. Notwithstanding the foregoing and subject in all respects to the Stalking Horse Agreement, the Debtors may not (i) impair or modify the Stalking Horse Bidder’s rights and obligations under the Stalking Horse Agreement; or (ii) modify Section J.4(xiv) without the consent of the Required DIP Lenders (as defined in the DIP Credit Agreement).</p> <p><i>See Bid Procedures § O.</i></p>

Provision	Summary
<p><b>Closing with Alternative Backup Bidders</b> <b>(Local Rule 6004-1(c)(i)(E))</b></p>	<p>Prior to concluding the Auction, the Debtors shall: (i) review each Qualified Bid on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the Sale; and (ii) using their reasonable discretion, identify and announce to all attending the Auction the highest or otherwise best offer or combination of offers for the Assets (the “<b>Successful Bid</b>”) and any second-highest offer (the “<b>Back-Up Bid</b>” and the “<b>Back-Up Bidder</b>”). Any Potential Bidder submitting a Bid that otherwise constitutes a Qualified Bid is deemed, by the submission of such Qualified Bid, to consent to such Qualified Bid being treated by the Debtors as Back-Up Bidder.</p> <p><i>See Bid Procedures § K.2.</i></p> <p>The Stalking Horse Agreement provides that if an Auction is conducted and the Debtors do not choose the Stalking Horse Bidder as the Successful Bidder, but instead chooses the Stalking Horse Bidder as the Back-Up Bidder, the Stalking Horse Bidder will serve as the Back-up Bidder. If the Stalking Horse Bidder is chosen as the Back-up Bidder, the Stalking Horse Bidder will be required to keep its bid to consummate the transactions contemplated by the Stalking Horse Agreement on the terms and conditions set forth in the Stalking Horse Agreement (as may be amended with Stalking Horse Bidder’s written consent prior to or at the Auction) open and irrevocable until two (2) Business Days after the closing of the sale of the Purchased Assets to the Successful Bidder. If the agreement with the Successful Bidder is terminated prior to closing of the sale of the Purchased Assets to the Successful Bidder, the Stalking Horse Bidder will be deemed the Successful Bidder and will forthwith consummate the transactions contemplated by the Stalking Horse Agreement on the terms and conditions set forth in the Stalking Horse Agreement (as may be amended with the Stalking Horse Bidder’s written consent prior to or at the Auction).</p> <p><i>See Stalking Horse Agreement § 7.2(g).</i></p>
<p><b>Provisions Governing the Auction</b> <b>(Local Rule 6004-1(c)(ii))</b></p>	<p><u>Auction.</u> If one or more Qualified Bid is received by the Bid Deadline (other than the Stalking Horse Bid), the Debtors will conduct the Auction to determine the highest or otherwise best Qualified Bid or combination of Qualified Bids.</p> <p><u>Time and Place.</u> The Auction, if necessary, shall be held on <b>June 9, 2022, at 10:00 a.m. (prevailing Eastern Time)</b>, or such other location as identified by the Debtors after notice to all Qualified Bidders.</p>

Provision	Summary
	<p><u>Baseline Bid.</u> Prior to the commencement of the Auction, the Debtors shall determine which of the Qualified Bids, at such time, is the highest or otherwise best bid for purposes of constituting the opening bid of the Auction (the “<b>Baseline Bid</b>” and the Qualified Bidder submitting the Baseline Bid, the “<b>Baseline Bidder</b>”), and shall promptly notify the Stalking Horse Bidder and all Qualified Bidders with Qualified Bids of the Baseline Bid. The Baseline Bid may be comprised of any combination of the Assets, and the Debtors may determine that different Baseline Bids exist for different groupings of the Assets. The Debtors shall have the discretion to determine how to proceed when auctioning the Assets in groupings that do not include all of Debtors’ Assets so as to maximize the value of the Assets.</p> <p><u>Auction Procedures.</u> The Auction shall be conducted in a timely fashion according to the following procedures:</p> <ul style="list-style-type: none"> <li>(i) The Debtors and their professional advisors shall direct, preside over, and transcribe the Auction.</li> <li>(ii) At the start of the Auction, the Debtors shall describe the terms of the Baseline Bid. All incremental Bids made thereafter shall be Overbids and shall be made and received on an open basis, and all material terms of each Overbid shall be fully disclosed to all other Qualified Bidders. The Debtors shall maintain a written transcript of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids, and the Successful Bid.</li> <li>(iii) Only the Stalking Horse Bidder and other Qualified Bidders shall be entitled to make Bids at the Auction, subject to the terms of the Bid Procedures and other limitations as may reasonably be imposed by the Debtors.</li> <li>(iv) The Auction Bidders shall appear at the Auction, or through a duly authorized representative, who also may appear at the Auction. Only the Debtors, the Auction Bidders, any creditor of the Debtors, together with the professional advisors to each of the foregoing parties, may attend the Auction; <i>provided</i> that any of the Debtors’ creditors must provide three (3) business days’ written notice to counsel to the Debtors of their intent to attend the Auction.</li> <li>(v) The Auction shall continue until the Debtors determine which Qualified Bid is the highest or otherwise best bid for the Assets, which determination shall take into account any factors the Debtors reasonably deem relevant to the value of the Qualified Bid to the estates, including, <i>inter alia</i>, the following non-exhaustive factors: (a) the amount and nature of the consideration; (b) the proposed assumption of any liabilities</li> </ul>

Provision	Summary
	<p>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; (i) the tax consequences of such Qualified Bid; and (j) the consent of the parties in interest and/or the cost and expense to the Debtors of resolving sale issues before Closing (collectively, the “<b><u>Bid Assessment Criteria</u></b>”).</p> <p><u>Closing the Auction.</u> The Auction shall continue until there is only one Qualified Bid that the Debtors determine, after taking into account the Bid Assessment Criteria, to be the highest or otherwise best Qualified Bid for the Assets. Such Qualified Bid shall be declared the Successful Bid, and such Qualified Bidder, the Successful Bidder, and the Auction shall be closed. Such acceptance by the Debtors of the Successful Bid is conditioned upon approval by the Court of the Successful Bid.</p> <p><u>No Collusion; Good-Faith Bona Fide Offer.</u> Each Qualified Bidder participating at the Auction shall be required to confirm on the record at the Auction that (i) it has not engaged in any collusion with respect to the bidding, (ii) its Qualified Bid is a good-faith bona fide offer, and (iii) it intends to consummate the proposed Transaction if selected as the Successful Bidder.</p> <p><i>See Bid Procedures § K.</i></p>

35. Importantly, the Bid Procedures (and the Stalking Horse Bid) 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 Bids. Additionally, as noted above, the Bid Procedures preserve the Debtors’ rights to modify the Bid Procedures as necessary or appropriate to maximize the value of the Assets for the benefit of the Debtors’ estates.

**B. Form and Manner of Sale Notice**

36. On or within two (2) business days after entry of the Bid Procedures Order, the Debtors shall 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**”), 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Joseph J. McMahon, Jr. (joseph.mcmahon@usdoj.gov); (b) the holders of the thirty (30) largest, non-insider unsecured claims against the Debtors, if no official committee of unsecured creditors has been appointed; (c) counsel to the official committee of unsecured creditors, if one has been appointed; (d) counsel to the Stalking Horse Bidder; (e) counsel to Ankura Trust Company, LLC (“**Ankura**”); (f) counsel to Patriarch Partners Agent Services, LLC (“**PPAS**”); (g) counsel to the Zohar Lenders; (h) counsel to the Patriarch Lenders; (i) all parties known by the Debtors to assert a lien on any of the Assets; (j) all entities reasonably known to have expressed an interest in a transaction with respect to any of the Assets during the past nine (9) months; (k) the United States Attorney’s Office for the District of Delaware; (l) the Internal Revenue Service; (m) all state and local taxing authorities with an interest in the Assets; (n) the offices of the attorneys general for the states in which the Debtors operate; (o) all other governmental agencies with an interest in the Sale and transactions proposed thereunder; (p) the office of the secretary of state in each state in which the Debtors operate or are organized; (q) all environmental authorities having jurisdiction over any of the Assets; (r) all other parties known or reasonably believed to have asserted an interest in the Assets; (s) the counterparties to the Assumed Contracts (the “**Assumed Contract Counterparties**”); (t) the Debtors’ insurance carriers; (u) all known creditors of the Debtors; (v) all known holders of equity interests in the Debtors; (x) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (y) to the extent not included above, all parties in interest listed on Debtors’ creditor matrix.

37. In addition, the Debtors propose to publish the notice attached hereto as Exhibit D (the “**Publication Notice**”) once in *USA Today*, *The Arizona Republic*, and *Vertical Magazine* 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, Kroll Restructuring Administration LLC (f/k/a Prime Clerk LLC), located at <https://cases.primeclerk.com/MDHelicopters>.

**C. Summary of the Assumption Procedures**

38. The Debtors are also seeking approval of certain procedures to facilitate the fair and orderly assumption and assignment of the Assumed Contracts in connection with the Sale. Pursuant to the Bid Procedures Order, notice of the proposed assumption and assignment of the Assumed Contracts to the Successful Bidder, the proposed cure amounts related thereto, and the right, procedures, and deadlines for objecting thereto, shall be provided in the Assumption Notice to be sent to the applicable Assumed 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 shall serve notice to all Assumed 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 Assumed Contracts to the extent necessary.

39. The Debtors are party to a number of contracts (collectively, the “**Government Contracts**”) with the United States, its agencies, departments or agents (collectively, the “**Government**”). For the avoidance of doubt, the Sale Order will provide that, notwithstanding anything to the contrary in the Motion, the Bid Procedures Order, the Stalking Horse Agreement or any other document in connection with the Sale, no Government Contract may be assumed and/or assigned without: (i) the express written consent of the Government, (ii) the execution of a novation agreement applicable to the Government Contract, and (iii) the payment of all outstanding obligations and cure amounts arising under or related to such Government Contract.

## **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**

40. The Debtors filed these Chapter 11 Cases to pursue a value-maximizing sale for the benefit of the Debtors' stakeholders. The Stalking Horse Agreement is the product of a five-plus month prepetition marketing process, during which the Debtors and Moelis contacted 170 potential buyers, executed 83 NDAs, and received initial indications of interest from 21 prospective buyers. The Debtors believe that the most likely bidders for the Assets have already been contacted as part of the prepetition marketing process and had ample opportunity to engage in the process and conduct appropriate diligence. In light of the extensive prepetition marketing process, the Debtors believe that the Bid Procedures, and in particular the timeline contemplated therein, will ensure a value-maximizing sale while, at the same time, providing an achievable path towards an orderly resolution of these Chapter 11 Cases. Moreover, the sale timeline is designed to comply with the milestones in the DIP Credit Agreement, which require, among other milestones, the entry of the Sale Order no later than 105 days after the Petition Date and the closing of a Sale no later than 120 days after the Petition Date.

### **2. The Proposed Notice of the Bid Procedures and the Sale Process Is Appropriate**

41. 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 continue to conduct an extensive marketing process. Moelis has 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 shall encompass those parties whom the Debtors believe may be interested in pursuing a Sale, or 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.

42. Under Bankruptcy Rule 2002(a) and (c), the Debtors shall 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.

43. The Debtors respectfully submit that the Sale Notice is reasonably calculated to provide 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 all liens, claims, encumbrances, and other interests other than Permitted Liens 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 Assumed Contracts to the Successful Bidder.

44. 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 Assumption Notice, and publication of the Publication 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.

**3. The Bid Procedures Are Appropriate and Will Maximize Value**

45. 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").

46. 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.

47. 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”).

48. 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.

49. The Debtors believe that 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.

50. 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.

51. 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 Stalking Horse Agreement with the Stalking Horse Bidder ensures that the Debtors obtain fair market value by setting a minimum purchase price for the Assets 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.

52. 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 Alpha Latam Management, LLC*, et al., Case No. 21-11109 (JKS) (Bankr. D. Del. Sept. 15, 2021); *In re Avadim Health, Inc.*, et al., Case No. 21-10883 (CTG) (Bankr. D. Del. June 23, 2021); *In re CarbonLite Holdings LLC*, et al., Case No. 21-10527 (JTD) (Bankr. D. Del. April 9, 2021); *In re RTI Holding Company, LLC*, Case No. 20-12456 (JTD) (Bankr. D. Del. Nov. 20, 2020); *In re Gorham Paper and Tissue, LLC*, et al., Case No. 20-12814 (KBO) (Bankr. D. Del. Nov. 19, 2020); *In re Kona Grill, Inc.*, et al., Case No. 19-10953 (CSS) (Bankr. D. Del. May 29, 2019); *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).<sup>7</sup>

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<sup>7</sup> 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' counsel.

53. 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.

**4. The Minimum Overbid Increment Is Appropriate**

54. One important component of the proposed Bid Procedures is the "Overbid" provision. Once the Debtors determine the Baseline Bid, which shall equal or exceed the value of the Stalking Horse Agreement plus \$1,000,000, as determined by the Debtors, and hold the Auction, bidding on the Assets must be in Minimum Overbid Increments of at least \$1,000,000.

55. The Debtors believe that 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 potential chilling effect in the marketing process.

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

56. As set forth above, the Sale contemplates the potential assumption and assignment of the Assumed 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 Assumed Contract Counterparties can reconcile cure obligations, if any, in accordance with Sections 105(a) and 365 of the Bankruptcy Code, and (ii) such counterparties can object to the potential assumption and assignment of the Assumed Contracts and/or related cure amounts.

57. The Bid Procedures specify the process by which the Debtors will serve Assumption Notices and the procedures and deadline for Assumed Contract Counterparties to Assumed Contracts to file and serve Assumed Contract Objections and Post-Auction Objections.

58. Except as may otherwise be agreed to in the Successful Bid or by the parties to an Assumed Contract, at the closing of the Sale, the Successful Bidder shall cure those defaults under

the Assumed Contracts that need to be cured in accordance with Section 365(b) of the Bankruptcy Code, by (i) payment of the undisputed cure amount (the “**Cure Amount**”) and/or (ii) reserving amounts with respect to any disputed cure amounts.

59. As set forth in the Bid Procedures Order, the Debtors also request, to the fullest extent permitted by law, that any party that fails to object to the proposed assumption and assignment of any Assumed Contract be deemed to consent to the assumption and assignment of the applicable Assumed Contract pursuant to Section 365 of the Bankruptcy Code on the terms set forth in the Sale Order, along with the Cure Amounts identified in the Assumption 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).

60. The Debtors believe the Assumption Procedures are fair and reasonable, provide sufficient notice to the Assumed Contract Counterparties of the potential assumption and assignment of its Assumed Contracts, and provide certainty to all parties in interest regarding their obligations and rights with respect thereof. Accordingly, the Debtors request this 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 Assets Should Be Authorized Pursuant to Bankruptcy Code Section 363 as a Sound Exercise of the Debtors’ Business Judgment.**

61. Section 363(b)(1) of the Bankruptcy Code provides that 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 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); *In re ICL Holding Co.*, 802 F.3d 547, 551

(3d Cir. 2015) (finding that bankruptcy courts use the “sound business purpose” test to decide approval of sales under section 363) (citing *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153-54 (Bankr. D. Del. 1999)); *Chamberlain v. Stanziale (In re Chamberlain)*, 545 B.R. 827, 844 (D. Del. 2016) (“Transactions under Section 363 must be based upon the sound business judgment of the trustee.”); *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) (“Under Section 363, the debtor in possession can sell property of the estate outside the ordinary course of business if: he has an ‘articulated business justification’ . . . .”); *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).

62. 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, 33536 (Bankr. D. Del. 1987).

63. 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).

64. “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); see also *In re Chamberlain*, 545 B.R. at 844 (same) (citing *In re Filene's Basement, LLC*, 2014 Bankr. LEXIS 2000, \*39-40 (Bankr. D. Del. April 29, 2014)). 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 Section 363(b)(1) of the Bankruptcy Code. 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.”).

65. The Debtors have a sound business justification for selling the Assets. As described in further detail in the First Day Declaration, Debtor MDHI’s equity holders include certain entities that are themselves debtors in the Zohar Chapter 11 Cases. The Zohar Chapter 11 Cases were commenced to provide an orderly mechanism to monetize and maximize the value of the Zohar

portfolio companies. In furtherance of that goal, this Court entered the Zohar Orders, which established guidelines and milestones for monetization of certain Zohar portfolio companies, including the Debtors. The Director was appointed as the sole director of Debtor MDHI and sole manager of Debtor Monterrey in advance of the Petition Date, and under the Zohar Monetization Order, is the person “responsible for conducting the sales process on behalf of the Portfolio Company [(i.e., the Debtors)].” The Debtors determined, in consultation with their advisors, that pursuing a sale of the Assets under section 363 of the Bankruptcy Code, and in accordance with the Zohar Monetization Order, is the best available means to maximize the value of the Assets for the benefit of all stakeholders.

66. Further, the Debtors believe the sale of substantially all of the Debtors’ Assets will preserve substantial going-concern value that would otherwise be lost if the Assets were sold on a stand-alone or liquidation basis. To the extent the Successful Bidder assumes certain of the Assumed Contracts, it will result in payment in full for a number of the Debtors’ creditors.

67. The sale of the Assets will also 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, which has already been market-tested through an extensive prepetition sale process, will be further tested through the Auction conducted pursuant to and according to the Bid Procedures. Ultimately, the Successful Bid, after being subject to a postpetition “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.

68. 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.<sup>8</sup> 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. Adequate and Reasonable Notice of the Sale Will Be Provided**

69. 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 Assumed 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

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<sup>8</sup> The Debtors reserve all rights to implement the sale in a manner that in their determination will maximize value for the estates.

Court pursuant to the Bid Procedures Order, after notice and a hearing, before it is served on parties in interest.

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

70. 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 and Stalking Horse Agreement, including, without limitation, by providing acceptable Bidders, with executed NDAs, with access to the Data Room and requested information. In this way, the number of Bidders 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.

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

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

72. Section 363(f) of the Bankruptcy Code 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, or (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).

73. 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 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 § 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).

74. The Debtors submit that, excluding Assumed Contracts, if any, the 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 Section 363(f). Consistent with Section 363(f)(2), subject to the terms of the Stalking Horse Agreement, each of the parties holding liens on the 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 Assets. Furthermore, any party holding a valid lien against the 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 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 order by this Court, and claims and defenses the Debtors and their estates may possess with respect thereto. Accordingly, Section 363(f) of the Bankruptcy Code authorizes the sale and transfer of the Assets free and clear of any such Interests.

**5. The Assets and the Assumed Contracts Should Be Sold Free and Clear of Successor Liability.**

75. The Sale Order provides the Purchaser shall not have any successor liability related to Seller or the 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.

76. Although Section 363(f) of the Bankruptcy Code 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.

77. 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 *In re Trans World Airlines, Inc.*, 322 F.3d 283, 290 (3d Cir. 2002) (agreeing with *Collier’s* that “Section 363(f) permits the bankruptcy court to authorize a sale free of ‘any interest’ that an entity has in property of the estate.”); *In re NE Opco, Inc.*, 513 B.R. 871, 876 (Bankr. D. Del. 2014) (finding that “*TWA* establishes that successor liability claims may be barred by section 363(f) findings.”); *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 § 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 § 363(f)).

78. The purpose and value of an order authorizing the transfer of the Assets would be frustrated if claimants thereafter could still assert claims against the purchaser or the Assets. Under Section 363(f) of the Bankruptcy Code, 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.

79. Accordingly, consistent with the above-cited case law and provisions of the Bankruptcy Code, 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.

**6. 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 Assets Does Not Violate Bankruptcy Code Section 363(n)**

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

81. 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).

82. Section 363(m) thus protects the purchaser of assets sold pursuant to 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.” Although 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).

83. 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 Section 363(m) of the Bankruptcy Code, and the resulting purchase agreement would be a good-faith agreement on arm’s length terms entitled to the protections of Section 363(m).<sup>9</sup> 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 the 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’

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<sup>9</sup> The Debtors believe a finding of good faith within the meaning of 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 Back-Up Bidder any entity whose good faith under 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 Section 363(m) has been satisfied.

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 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" or similar conduct, there is no cause that would permit the Sale to be avoided pursuant to 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 Section 363(m).

84. 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 Section 363(n) of the Bankruptcy Code, and, as a result, the Purchaser should receive the protections afforded good faith purchasers by Section 363(m). Accordingly, the Debtors request that 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 Section 363(m) of the Bankruptcy Code. The Debtors will submit evidence at the Sale Hearing to support these conclusions.

**7. Credit Bidding Should Be Authorized Pursuant to Section 363(k) of the Bankruptcy Code**

85. 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. Section 363(k) of the Bankruptcy Code 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 Section 506(a) of the Bankruptcy Code § 506(a), Section 363(k) of the Bankruptcy Code 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)”).

86. 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 Alpha Latam Management, LLC*, et al., Case No. 21-11109 (JKS) (Bankr. D. Del. Sept. 15, 2021) (order approved bid procedures authorizing secured creditors to exercise right under Bankruptcy Code § 363(k) to credit bid); *In re Avadim Health, Inc.*, et al., Case No. 21-10883 (CTG) (Bankr. D. Del. June 23, 2021) (order authorizing secured creditors to credit bid); *In re RTI Holding Company, LLC*, Case No. 20-12456 (JTD) (Bankr. D. Del. Nov. 20, 2020) (order authorizing secured creditors to exercise right under Bankruptcy Code § 363(k) to credit bid); *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 § 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 § 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).

87. Thus, pursuant to Section 363(k) of the Bankruptcy Code and subject to the Bid Procedures, the Stalking Horse Bidder, in its capacity as an assignee of Obligations under the Prepetition First Lien Credit Agreement and by virtue of its proposed assumption of the DIP Obligations (as defined in the Stalking Horse Agreement), should be allowed to submit a Credit Bid as set forth in the Stalking Horse Agreement at an Auction. Stalking Horse Agreement, § 3.2. *See In re GNC Holdings, Inc. et al.*, 20–11662 (KBO) (Bank. D. Del. July 22, 2020), Docket No. 59 at ¶ 17 (“Subject to the terms of the Bidding Procedures, in the event of a competing Qualified Bid, the Stalking Horse Bidder (if any) will be entitled, but not obligated, to submit overbids and will be entitled in any such overbids to credit bid all of its claims for Bid Protections pursuant to section 363(k) of the Bankruptcy Code.”).

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

**1. The Assumption and Assignment of the Assumed Contracts Reflects the Debtors’ Reasonable Business Judgment**

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

89. Section 365 of the Bankruptcy Code 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).

90. 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).

91. 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 § 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.

92. Here, the Court should approve the decision to assume and assign the Assumed Contracts in connection with the Sale as a sound exercise of the Debtors' business judgment. First, the Assumed Contracts are necessary to operate the Assets and, as such, they are essential to inducing the best offer for the Assets. Second, it is unlikely any purchaser would want to acquire the Assets unless a significant number of the contracts and leases needed to manage the day-to-day operations of the Debtors' business and which represent important sources of revenue were included in the transaction. Third, the Assumed 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 Assumed Contracts, if required by the Successful Bidder, should be approved as a sound exercise of the Debtors' business judgment.

93. A debtor in possession may assign an executory contract or an unexpired lease of the debtor if it assumes the agreement in accordance with 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). 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).

94. Counterparties to Assumed Contracts will have the opportunity to object to adequate assurance of future performance by the Successful Bidder by the Assumed Contract Objection Deadline or the Post-Auction Objection Deadline as applicable. Accordingly, the Debtors submit the assumption and assignment of the Assumed Contracts as set forth herein should be approved.

95. To assist in the assumption, assignment, and sale of the Assumed Contracts, the Debtors also request, to the fullest extent permitted by law, that the Sale Order approving the Sale of the Assets provide that anti-assignment provisions in the Assumed Contracts shall not restrict, limit, or prohibit the assumption, assignment, and sale of the Assumed Contracts and are deemed and found to be unenforceable anti-assignment provisions within the meaning of Section 365(f) of the Bankruptcy Code. However, nothing in the Sale Order, or any of the other sale documents, shall affect the validity or enforceability of any anti-assignment provisions in any Government Contracts.

96. Section 365(f)(1) of the Bankruptcy Code 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).

97. 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). Section 365(f)(3) goes beyond the scope of 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) (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).

98. 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 that any anti-assignment provisions be deemed not to restrict, limit, or prohibit the assumption, assignment, and sale of the Assumed Contracts, and be deemed and found to be unenforceable anti-assignment provisions within the meaning of Section 365(f).

99. Orders granting motions to sell property and for the assumption and assignment of executory contracts or unexpired leases 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 . . . .”).

100. Notwithstanding the general prohibition that the Bankruptcy Code places on contractual provisions that attempt to restrict assignment of such contracts, the Debtors recognize that such Bankruptcy Code prohibitions may be inapplicable with respect to the Government Contracts as Section 365(c) of the Bankruptcy Code recognizes the applicability of statutes, such as the Anti-Assignment Act (41 U.S.C. § 6305) that excuse the non-debtor from accepting performance from an entity other than the debtor. It is for that reason that, prior to the Petition

Date, the Debtors developed a comprehensive plan for interfacing with the appropriate points of contact within the Government in an effort to obtain the Government's consent to the assignment of the Government Contracts to the Stalking Horse Bidder or other Successful Bidder. In advance of the filing of these Chapter 11 Cases, the Director met with the appropriate points of contact within the Government to inform the Government of (a) the decision to commence these Chapter 11 Cases to effectuate a sale transaction, (b) the identity of the Stalking Horse Bidder, and (c) the likelihood that the sale will necessitate a request for novation of the Government Contracts. The Debtors have also begun, in consultation with the Stalking Horse Bidder's advisors, preparing a comprehensive package of documents in support of a novation request, which the Debtors expect to be prepared to submit to the Government promptly after the Successful Bidder is identified. The Debtors are hopeful that the time spent in the development of the process will result in an efficient novation process and the Debtors further intend to keep the Court apprised of the status of such process and any material issues that develop that would be likely to have a negative impact upon any aspect of the sale process.

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

101. Bankruptcy Rule 6004(h) provides that 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.

102. The purpose of Bankruptcy Rules 6004(h) and 6006(d) is to provide sufficient time for an 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.*

103. To maximize the value received from the Assets, and to ensure they are in compliance with their obligations under the Stalking Horse Agreement, the Debtors seek to close the Sale as soon as possible after the Sale Hearing. Accordingly, the Debtors hereby request that the Court waive the 14-day stay periods under Bankruptcy Rules 6004(h) and 6006(d).

#### **CONSENT TO JURISDICTION**

104. 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 that the Court would lack Article III jurisdiction to enter such final order or judgment absent consent of the parties.

#### **NOTICE**

105. Notice of this Motion shall be given to (a) the Office of the United States Trustee for the District of Delaware; (b) the United States Attorney for the District of Delaware; (c) the Internal Revenue Service; (d) the offices of the attorneys general for the states in which the Debtors operate; (e) those creditors listed on the Debtors’ consolidated list of thirty creditors holding the largest unsecured claims; (f) counsel to the Stalking Horse Bidder; (g) counsel to Ankura; (h) counsel to PPAS; (i) counsel to the Zohar Lenders; (j) counsel to the Patriarch Lenders; (k) counsel to the DIP Lenders; (l) the offices of the attorneys general for the states in which the

Debtors operate; (m) all parties known by the Debtors to assert a lien on any of the Assets; (n) all parties entitled to notice pursuant to Local Rules 2002-1(b). The Debtors submit that, under the circumstances, no other or further notice is required.

106. A copy of this Motion is available on (a) the Court's website, at [www.deb.uscourts.gov](http://www.deb.uscourts.gov), and (b) the website maintained by the Debtors' proposed Claims and Noticing Agent, Kroll Restructuring Administration LLC (f/k/a Prime Clerk LLC), at <https://cases.primeclerk.com/MDHelicopters/>.

*[Signature Page Follows]*

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

Dated: March 30, 2022  
Wilmington, Delaware

Respectfully Submitted,  
/s/ David B. Stratton

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*Proposed Counsel for Debtors and Debtors-in-Possession*

**Exhibit A to Motion**

**Stalking Horse Agreement**

**CONFIDENTIAL**  
*Execution Version*

**ASSET PURCHASE AGREEMENT**

by and among

MD HELICOPTERS, INC.,

MONTERREY AEROSPACE, LLC,

and

MDH HOLDCO, LLC

Dated as of March 30, 2022

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## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this “*Agreement*”) is entered into as of March 30, 2022 (the “*Execution Date*”), by and among MD Helicopters, Inc., an Arizona corporation (“*MDH*”), and Monterrey Aerospace, LLC, a Delaware limited liability company (“*Monterrey Sub*” and, together with MDH, “*Sellers*” and, each, a “*Seller*”), on the one hand, and MDH Holdco, LLC, a Delaware limited liability company (“*Buyer*”), on the other hand. Buyer and each Seller may be referred to collectively as the “*Parties*” or individually as a “*Party*.”

### **Recitals**

**WHEREAS**, Sellers (collectively, the “*Debtors*”), intend to file voluntary petitions for relief as debtors-in-possession, to be jointly administered (the “*Chapter 11 Cases*”), under Chapter 11 of the United States Bankruptcy Code, 11 USC §§ 101-1532 (the “*Bankruptcy Code*”) in the United States Bankruptcy Court for the District of Delaware (the “*Bankruptcy Court*”);

**WHEREAS**, each Seller owns personal property assets and intangible assets, and holds various rights, in each case relating to the Business (as defined below); and

**WHEREAS**, Buyer desires to purchase substantially all assets of each Seller, and to assume certain liabilities of each Seller, and each Seller desires to sell such assets to Buyer or its Designated Purchaser and to assign such liabilities to Buyer or its Designated Purchaser, all on the terms and subject to the conditions set forth in this Agreement, the Bid Procedures Order and the Sale Order (each as defined below), and in accordance with Sections 105, 363 and 365 of the Bankruptcy Code and other applicable provisions of the Bankruptcy Code (the “*Transaction*”).

**NOW, THEREFORE**, for and in consideration of the representations, warranties, covenants and agreements set forth in this Agreement, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

## **ARTICLE I DEFINITIONS AND INTERPRETATION**

**1.1 Defined Terms.** Capitalized terms used herein and not otherwise defined shall have the meanings given such terms as set forth below in this *Section 1.1*:

“*Accounting Firm*” has the meaning set forth in *Section 2.6*.

“*Affiliate*” means, with respect to any Person, another Person that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such Person, where “control” means the possession, directly or indirectly, of the power to direct the management and policies of a Person whether through the ownership of voting securities, by contract or otherwise. For the avoidance of doubt, ownership of more than fifty percent (50%) of the voting securities shall be deemed to be “control” for purposes of this definition. For purposes of this Agreement, Buyer’s Affiliates shall in no event include any Seller.

“*Agreement*” has the meaning set forth in the preamble.

“**Aircraft**” means the aircraft described in *Schedule 4.11(c)* (including the Airframe, each Engine, each Part and the Aircraft Documents).

“**Airframe**” means the Aircraft together with all Parts relating to it, but excluding the Engines (or any engines from time to time installed thereon) and the Aircraft Documents.

“**Aircraft Documents**” means all logs, books, modification, technical data, manuals and maintenance records pertaining to the Aircraft at any time required to be maintained with respect to the Aircraft, any Engine or any Part, in accordance with the rules and regulations of the Aviation Authority.

“**Aircraft Object**” has the meaning assigned to the term “aircraft object” under the Cape Town Convention.

“**Allocation Schedule**” has the meaning set forth in *Section 2.6*.

“**Alternative Transaction**” means, subject to the Bid Procedures, the sale, transfer or disposition of all or any material portion of the Purchased Assets (whether effected pursuant to a reorganization, merger, consolidation, business combination, joint venture, partnership, sale of assets, or restructuring or similar transaction), other than (a) the transactions contemplated by and in accordance with this Agreement and (b) sales of Inventory in the ordinary course of business.

“**Anti-Bribery Laws**” means collectively, the Foreign Corrupt Practices Act of 1977, as amended, and all other applicable anti-corruption and bribery Laws (including the U.K. Bribery Act 2010, and any rules or regulations promulgated thereunder or other Laws of other countries implementing the OECD Convention on Combating Bribery of Foreign Officials).

“**Anti-Money Laundering Laws**” means collectively, all Laws concerning or relating to the prevention of money laundering or countering the financing of terrorism, including, without limitation, the Currency and Financial Transactions Reporting Act of 1970, as amended by the USA PATRIOT Act, which legislative framework is commonly referred to as the “Bank Secrecy Act,” and the rules and regulations thereunder.

“**Applicable Contracts**” means all Contracts, if any, to which any Seller is a party that relate to any of the Purchased Assets or the Business.

“**Approvals**” has the meaning set forth in *Section 4.4(b)*.

“**Assigned Contracts**” has the meaning set forth in *Section 2.5(b)*.

“**Assignment and Assumption Agreements**” has the meaning set forth in *Section 3.3(a)(i)*.

“**Assignment of Copyrights**” has the meaning set forth in *Section 3.3(a)(iii)*.

“**Assignment of Domain Names**” has the meaning set forth in *Section 3.3(a)(iii)*.

“**Assignment of Patents**” has the meaning set forth in *Section 3.3(a)(iii)*.

“**Assignment of Trade Secrets and Software**” has the meaning set forth in *Section 3.3(a)(iii)*.

“**Assignment of Trademarks**” has the meaning set forth in *Section 3.3(a)(iii)*.

“**Assumed Liabilities**” has the meaning set forth in *Section 2.3*.

“**Assumed Plans**” has the meaning set forth in *Section 2.1(e)*.

“**Antitrust Laws**” has the meaning set forth in *Section 6.4(a)*.

“**Auction**” means an auction or auctions, if any, for the sale of each Seller’s assets conducted pursuant to the terms and conditions of the Bid Procedures Order.

“**Aviation Authority**” means the FAA and any successor organization and each other Governmental Authority or other Person who shall from time to time be vested with the control and supervision of, or have jurisdiction over, the registration, airworthiness and operation of aircraft or other matters relating to civil aviation in the United States or the country of registration of the applicable aircraft and engines.

“**Avoidance Action**” means any and all claims for relief of the Debtors under chapter 5 of the Bankruptcy Code or state fraudulent conveyance, fraudulent transfer, or similar Laws.

“**Back-up Bidder**” means the bidder for the Purchased Assets with the next-highest or otherwise second-best bid for the Purchased Assets as determined in accordance with the Bid Procedures.

“**Balance Sheet Date**” has the meaning set forth in *Section 4.10*.

“**Bankruptcy and Equity Exception**” means any Laws relating to bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance or preferential transfers, or similar Laws relating to or affecting creditors’ rights generally and subject, as to enforceability, to the effect of general principles of equity (regardless of whether such enforceability is considered in any Proceeding in equity or at Law).

“**Bankruptcy Code**” has the meaning set forth in the recitals.

“**Bankruptcy Court**” has the meaning set forth in the recitals.

“**Bid Procedures**” means the Bid Procedures attached to the Bid Procedures Order as Exhibit 1 thereto.

“**Bid Procedures Order**” means an Order by the Bankruptcy Court, in form and substance reasonably acceptable to Buyer and Sellers, among other things, (a) approving the Bid Procedures and (b) authorizing the other transactions contemplated by this Agreement, as such order may be amended, supplemented or modified from time to time.

“**Boeing Cross License**” means that certain cross license, dated February 4, 2005, by and between MDH and McDonnell Douglas Helicopter Company, an indirect wholly-owned subsidiary of The Boeing Company.

“**Business**” means the business of developing, manufacturing, selling and servicing helicopters and after-market Parts and components for helicopters and providing training and similar services in connection therewith.

“**Business Day**” means any day other than Saturday or Sunday or a day on which banking institutions in New York, New York are required or authorized by Law to close.

“**Buyer**” has the meaning set forth in the preamble.

“**Cape Town Convention**” means, collectively, the official English language texts of the Convention on International Interests in Mobile Equipment (the “**Convention**”) and the Protocol on the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (the “**Protocol**”) both signed in Cape Town, South Africa on 16 November 2001, together with any protocols, regulations, rules, orders, agreements, instruments, amendments, supplements or revisions or otherwise, that have or will be made subsequently in connection with the Convention or the Protocol by the “Supervisory Authority” (as defined in the Protocol), the “International Registry” or “Registrar” (as defined in the Convention) or appropriate “Registry Authority” (as defined in the Protocol) or any other international, or national, body or authority.

“**Cash and Cash Equivalents**” means, with respect to each Seller, all cash (including petty cash and checks held as of the close of business on the day immediately prior to 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, in each case, of each Seller, whether on hand, in transit to any Seller, in banks or other financial institutions, or otherwise held as of the close of business on the day immediately prior to the Closing Date, including any amounts used as deposit or escrow or otherwise securing any surety bonds or financial assurances, but in each case other than (x) any uncleared checks or amounts in transit from any Seller and (y) any amounts used as deposit or escrow or otherwise securing any surety bonds or financial assurances relating to any Excluded Asset.

“**Certificate of Airworthiness**” means a standard airworthiness certificate, FAA form 8100-2.

“**Certificate of Registration**” means, with respect to any Aircraft or Engine, a certificate of registration for such Aircraft or Engine, as the case may be, issued by the applicable Aviation Authority.

“**Chapter 11 Cases**” has the meaning set forth in the recitals.

“**Claim**” means a “claim” as defined in Section 101 of the Bankruptcy Code.

“**Closing**” has the meaning set forth in *Section 3.1*.

“**Closing Date**” has the meaning set forth in *Section 3.1*.

“**COBRA**” means the Consolidated Omnibus Budget Reconciliation Act of 1985, Part 6 of Subtitle B of Title I of ERISA, Section 4980B of the Code and any similar state Law.

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

“**Company Financial Statements**” has the meaning set forth in *Section 4.10*.

“**Confidentiality Agreements**” means (i) that certain Confidentiality Agreement among MDH, Zohar CDO 2003-1 Limited, Zohar II 2005-1 Limited and Zohar III Limited, dated as of October 15, 2021 and (ii) that certain Confidentiality Agreement among MDH, Zohar CDO 2003-1 Limited, Zohar CDO 2003-1, Corp., Zohar II 2005-1 Limited, Zohar III Limited and Zohar III, Corp., dated as of January 25, 2021.

“**Contract**” means any written or oral contract, agreement, license, sublicense, Lease, sales order, purchase order, instrument, undertaking or other legally binding commitment.

“**Contributor**” has the meaning set forth in *Section 4.12(d)*.

“**Credit Bid**” has the meaning set forth in *Section 3.2*.

“**Cure Costs**” has the meaning set forth in *Section 2.5(a)*.

“**Current Government Contract**” has the meaning set forth in *Section 4.8(a)(iv)*.

“**D&O Claims**” has the meaning set forth in *Section 2.1(k)*.

“**Data**” has the meaning set forth in *Section 4.12(g)*.

“**Data Laws**” has the meaning set forth in *Section 4.12(g)*.

“**Data Standards**” has the meaning set forth in *Section 4.12(g)*.

“**Data Room**” has the meaning set forth in *Section 4.10*.

“**Debt Financing**” means any debt financing incurred or intended to be incurred by Buyer or one of its Subsidiaries in connection with the consummation of the transactions contemplated by this Agreement.

“**Debtors**” has the meaning set forth in the recitals.

“**Designated Purchaser**” has the meaning set forth in *Section 11.4(b)*.

“**Designation Deadline**” means the date that is one (1) Business Day prior to the Closing Date, or such other date as Buyer and Sellers may mutually agree in writing and, if applicable, as the Bankruptcy Court may authorize.

“**DFARS**” means the Defense Federal Acquisition Regulation Supplement.

“**DIP Credit Agreement**” means that certain debtor-in-possession financing agreement dated as of 30, 2022, and as agreed to by and among Sellers, the DIP Agent (as defined therein) and the lenders party thereto.

“**DIP Facility**” means a superpriority senior secured new money debtor-in-possession financing facility as further described in the DIP Credit Agreement, as approved by the Bankruptcy Court.

“**DIP Obligations**” means all “Obligations” under and as defined in the DIP Credit Agreement and shall include all Indebtedness outstanding under the DIP Credit Agreement during the pendency of the Chapter 11 Cases, including any Obligations and Indebtedness arising from any subsequent conversion of all or a portion of the DIP Obligations or Indebtedness into an exit credit facility (or similar post-Chapter 11 or post-bankruptcy emergence credit facility).

“**DIP Order**” means any order of the Bankruptcy Court approving the Debtors’ entry into the DIP Facility.

“**DOJ**” has the meaning set forth in *Section 6.4(a)*.

“**Disclosure Schedules**” means the disclosure schedules delivered by Sellers to Buyer concurrently with this Agreement.

“**Employee**” means all employees of each Seller, including those on disability or a leave of absence, whether paid or unpaid.

“**Employee Schedule**” has the meaning set forth in *Section 4.17(a)*.

“**Engine**” means the engines described in *Schedule 4.11(c)* (including each Part and the Aircraft Documents) or, if applicable, any part of any such engine that is a Purchased Asset.

“**Environmental Laws**” means all applicable Laws concerning or relating to pollution or protection of the environment, including those relating to the presence, use, manufacturing, refining, production, generation, handling, transportation, treatment, recycling, transfer, storage, disposal, distribution, importing, labeling, testing, processing, Release, threatened Release, control or other action or failure to act involving cleanup of any Hazardous Materials, or the protection of worker health and safety (solely to the extent related to exposure to Hazardous Materials).

“**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.

“**Escrow Agent**” has the meaning set forth in *Section 3.3(c)(i)*.

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

“**Excluded Contracts**” has the meaning set forth in *Section 2.2(c)*.

“**Excluded Permits**” means the Permits set forth on *Schedule 1.1(b)*.

“**Excluded Plans**” has the meaning set forth in *Section 2.2(e)*.

“**Excluded Records**” has the meaning set forth in *Section 2.2(b)*.

“**Execution Date**” has the meaning set forth in preamble.

“**Export Approvals**” has the meaning set forth in *Section 4.22(c)*.

“**FAA**” means the Federal Aviation Administration of the Department of Transportation of the United States of America and any successor that under the laws of the United States of America shall from time to time have control or supervision of civil aviation in the United States of America or have jurisdiction over the registration, airworthiness or operation of, or other matters relating to, any aircraft or engine.

“**FAA Bill of Sale**” means the FAA form AC-8050-2.

“**FAR**” means the Federal Acquisition Regulation.

“**FAR Rights**” has the meaning set forth in *Section 4.23(s)*.

“**Filing Party**” has the meaning set forth in *Section 11.1*.

“**Final Order**” means a judgment or Order of the Bankruptcy Court (or any other court of competent jurisdiction) entered by the clerk of the Bankruptcy Court (or such other court) on the docket in the Chapter 11 Cases (or the docket of such other court), which has not been modified, amended, reversed, vacated or stayed.

“**Fraud**” means, with respect to a Party, an actual and intentional fraud with respect to the making of the representations and warranties by such Party in *Article IV* or *Article V*, as applicable; provided that such actual and intentional fraud of a Party shall only be deemed to exist if any such Person has actual knowledge (as opposed to imputed or constructive knowledge) of a material misrepresentation with respect to the representations and warranties made by such Person in such *Article IV* or *Article V*, as applicable, as qualified by the Disclosure Schedules, and such misrepresentation was made with the intention of deceiving another Party who is relying on such representation or warranty (and does not include any fraud claim based on constructive knowledge, negligent misrepresentation, recklessness or any similar theory).

“**Former Government Employee**” has the meaning set forth in *Section 4.23(t)*.

“**FTC**” has the meaning set forth in *Section 6.4(a)*.

“**Fundamental Representations**” means, collectively, the representations and warranties of Sellers set forth in *Section 4.1 (Organization; Existence)*, *Section 4.3 (Authorization; Execution*

*and Delivery; Enforceability), Section 4.19 (Brokers) and Section 4.23(n) (Government Contracts, Suspension and Debarment).*

“**GAAP**” means generally accepted accounting principles in the United States of America.

“**Government Bid**” means any outstanding quotation, bid or proposal by any Seller that, if accepted or awarded, would lead to a Government Contract.

“**Government Contract**” means any Contract entered into between any Seller and: (a) any Governmental Authority; (b) any prime contractor to any Governmental Authority (in its capacity as such); or (c) any subcontractor (of any tier) with respect to any Contract described in clauses (a) and (b).

“**Governmental Authority**” means any (a) national, multinational, tribal, federal, state, municipal, local or other governmental or public department, central bank, court, commission, commissioner, tribunal, arbitrator, board, bureau, agency or instrumentality, domestic or foreign, (b) subdivision or authority of any of the foregoing, (c) regulatory or administrative authority or (d) other body exercising executive, judicial, regulatory, administrative, police, military or taxing governmental functions.

“**Hazardous Materials**” means any waste, pollutant, mixture, hazardous or toxic substance or waste, petroleum, petroleum-byproduct or waste, asbestos, radioactive material, pesticide, contaminant, polychlorinated biphenyls, or any other substance or waste which is defined or regulated as hazardous or toxic under applicable Environmental Law.

“**HSR**” has the meaning set forth in *Section 6.4(a)*.

“**Inbound License**” has the meaning set forth in *Section 4.8(a)(v)*.

“**Indebtedness**” means, of any Person, without duplication, (a) the principal of, premium (if any) on, accrued but unpaid interest on, and prepayment penalties or similar contractual charges in respect of (i) indebtedness of such Person for money borrowed, whether or not contingent, and (ii) indebtedness of such Person evidenced by notes, debentures, bonds or other similar instruments for the payment; (b) all obligations of such Person, whether or not contingent, issued or assumed as the deferred purchase price of property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but, in each case, excluding trade accounts payable for goods and services arising in the ordinary course of business); (c) all obligations of such Person, whether or not contingent, for the reimbursement of any obligor on any performance bond, security bond, bank guarantee, letter of credit, banker’s acceptance or similar credit transaction; (d) the liquidation value of all redeemable preferred stock of such Person; (e) all obligations of such Person with respect to leases required to be classified as capitalized leases in accordance with GAAP (without giving effect to the treatment of operating leases as capital leases under ASC 842), (f) obligations under any interest rate, currency or hedging agreement, (g) all pension obligations, including under any defined benefit pension plan, retiree welfare plan or any frozen plan, (h) all obligations of the type references in clauses (a) through (g) of any other Person for the payment of which such Person is responsible or liable, directly or indirectly, as obligor, guarantor, surety or otherwise and whether or not contingent, including guaranties of such obligations, whether or not evidenced by a note, bond, debenture, mortgage or

other debt security, guaranty or similar instrument; and (i) all obligations of the type referred to in clauses (a) through (h) of other Persons secured by any Lien on any property or asset of such Person (whether or not such obligation is assumed by such Person).

“**Initial Contract Notices**” has the meaning set forth in *Section 2.5(c)*.

“**Intellectual Property**” means any and all intellectual property of every kind or nature throughout the world, whether protected or arising under the Laws of the United States or any other jurisdiction, including all intellectual or industrial property rights in any of the following: (a) all trademarks, service marks, names, brand names, product names, corporate names, trade names, symbols, trade dress, logos, protectable distinguishing guises and indicia, design rights, slogans and other similar designations of source or origin, together with the goodwill symbolized by any of the foregoing and, in each case, all worldwide rights, title and interest associated with the foregoing, whether registered or not, in any form including abbreviation, derivation, variation, diffusion or otherwise, whether stylized or not stylized, and for all purposes and for all goods, products and services, and all registrations, renewals and applications therefor (collectively, “**Trademarks**”), (b) methods, techniques, ideas, know-how, research and development, technical data, molds, prototypes, models and designs, programs, materials, specifications, processes, patents, patent applications, patent disclosures, and all related continuations, continuations-in-part, divisional, reissues, re-examinations, substitutions, and extensions thereof and other similar materials and improvements thereto, and all tangible embodiments of the foregoing (collectively, “**Patents**”), (c) all copyrights and copyrightable subject matter (registered or unregistered), including published and unpublished works of authorship, including without limitation audiovisual works, collective works, computer programs, databases, derivative works, literary works, maskworks, and sound recordings, and any associated rights, including applications and registrations thereof (collectively, “**Copyrights**”), (d) all trade secrets, confidential or proprietary business information, including Software, business databases, data analytics, data, know-how, algorithms, techniques, concepts, methods, processes, inventions (patentable or unpatentable), specifications, product designs, prototypes, blue prints, surveys, customer reviews, customer/vendor lists, customer contact information, email lists, databases, sales plans, formulae, reports, and other proprietary or confidential information and know-how including rights granted under the Uniform Trade Secrets Act or the Defend Trade Secrets Act (collectively, “**Trade Secrets**”), (e) databases, compilations and collections of data, (f) domain names, and web addresses, (g) all rights of publicity, (h) all moral and economic rights of authors, inventors, however denominated, and (i) all other intellectual property and proprietary rights.

“**International Interest**” has the meaning set forth under the Cape Town Convention.

“**International Registry**” has the meaning set forth under the Cape Town Convention.

“**International Trade Laws**” means all Laws relating to the import, export, re-export, deemed export, deemed re-export, or transfer of information, data, goods, and technology, including the Export Administration Regulations administered by the United States Department of Commerce, the International Traffic in Arms Regulations administered by the United States Department of State, customs and import Laws administered by United States Customs and Border Protection, any other export or import controls administered by an agency of the United States government, the anti-boycott regulations administered by the United States Department of

Commerce and the United States Department of the Treasury, and other Laws adopted by Governmental Authorities of other countries relating to the same subject matter as the Laws described above.

“***Inventory***” has the meaning set forth in *Section 2.1(n)*.

“***Knowledge***” means, with respect to each Seller, the actual knowledge, after reasonable inquiry, of the following Persons: (i) Cheryl Bazzelll (solely with respect to *Section 4.16* and *Section 4.17*); (ii) Richard Borough (solely with respect to *Section 4.14*); (iii) Alan Carr; (iv) Yaropolk R. (YR) Hladkyj; (v) Chris Jaran; (vi) Jason Lindauer; (vii) Nick Nenadovic; and (viii) Barry Sullivan.

“***Law***” means each provision of any law, treaty, statute, ordinance, directive, decree, Order, rule, regulation, constitution or code of any Governmental Authority.

“***Lease***” means any lease, together with any other subleases, assignments and similar agreements, in each case under which any Seller leases, uses or occupies, or has the right to use or occupy, any real property.

“***Leased Real Property***” means any real property leased, subleased or which any Seller has the right to use or occupy, pursuant to a Lease.

“***Liability***” means any and all debts, liabilities, commitments and obligations of any kind, whether fixed, contingent or absolute, matured or unmatured, liquidated or unliquidated, accrued or not accrued, asserted or not asserted, known or unknown, secured or unsecured, disputed or undisputed, joint or several, due or to become due, determined, determinable or otherwise, whenever or however arising and whether or not the same is required to be accrued on the financial statements of a Person (including, whether arising out of any Contract, Law, Order or tort based on negligence, strict liability or otherwise).

“***Lien***” means any mortgage, lien, pledge, security interest, charge or other encumbrance.

“***Material Adverse Effect***” means any change, effect, event, circumstance, occurrence or state of facts (collectively, “***Effects***”) that, individually or in the aggregate, (a) has, or would reasonably be expected to have, a material adverse effect on the Purchased Assets and the Assumed Liabilities, taken as a whole, or on the results of operations or condition (financial or otherwise) of the Business, or (b) prevents or materially impairs, or would reasonably be expected to prevent or materially impair, the consummation of the transactions contemplated by this Agreement and the other Transaction Documents; provided, however, that in no event shall any Effect that results from or arises out of the following be deemed to constitute, or be taken into account, in determining whether there has been, or would reasonably be expected to be, a Material Adverse Effect: (i) general changes or developments in global or national political, economic, business, monetary, financial or capital or credit market conditions or trends; (ii) general political, economic, business, monetary, financial or capital or credit market conditions or trends (including interest rates, exchange rates, tariffs, trade wars and credit markets); (iii) geopolitical conditions or any outbreak or escalation of hostilities, acts of terrorism or war, cyberterrorism, sabotage, cybercrime, civil unrest, regional, national or international emergency, or any acts of God, effects of weather, meteorological conditions or events or natural or manmade disasters (including earthquakes,

hurricanes, tsunamis, typhoons, lightning, hail storms, blizzards, tornadoes, droughts, floods, cyclones, arctic frosts, mudslides or wildfires); (iv) the failure of the financial or operating performance of any Seller or any of their respective businesses to meet any projections, forecasts, budgets estimates or predictions for any period (it being understood that the underlying cause of such failure to meet such projections, forecasts, budgets, estimates or predictions may be taken into account in determining whether a Material Adverse Effect has occurred, or would reasonably be expected to occur, to the extent not otherwise excluded by another clause of this definition); (v) changes in Laws or any guidance relating thereto or the interpretation or enforcement thereof, in each case after the date hereof; (vi) changes in GAAP or other accounting regulations or principles or any guidance relating thereto or the interpretation thereof, in each case after the date hereof; (vii) the execution, announcement or pendency of this Agreement and the Transaction Documents or the terms hereof or thereof or the transactions contemplated hereby or thereby, including the impact thereof on the relationships, contractual or otherwise, of the Business with customers, employees, suppliers or other business relationships (in each case solely to the extent resulting from the identity of Buyer or any of its Affiliates, or any communication by Buyer or any of its Affiliates regarding plans, proposals or projections with respect to the Business, any of the Purchased Assets or any of the Assumed Liabilities); (viii) any global or national epidemic, disease outbreak or pandemic (including the COVID-19 pandemic); (ix) any Law issued by a Governmental Authority requiring business closures, quarantine or sheltering-in-place or similar restrictions in connection with the COVID-19 pandemic; (x) any actual or potential sequester, stoppage, shutdown, default or similar event or occurrence by or involving any Governmental Authority; (xi) any actual or potential break-up of any existing political or economic union of or within any country or countries or any actual or potential exit by any country or countries from, or suspension or termination of its or their membership in, any such political or economic union; (xii) any action taken or omitted to be taken by or at the written request or with the written consent of Buyer or that is required or expressly permitted by this Agreement; (xiii) labor strikes, requests for representation, organizing campaigns, work stoppages, slowdowns or other labor disputes; (xiv) any breach, violation or non-performance of any provision of this Agreement by Buyer or any of its Affiliates; or (xv) the Chapter 11 Cases, including (A) the Auction and any announced liquidation of any Seller or any of their respective assets, (B) any objections in the Bankruptcy Court to this Agreement or any of the transactions contemplated hereby, the reorganization of any Seller, the Bid Procedures Order, the assumption or rejection of any Assigned Contract otherwise in compliance with this agreement, and (C) any Order of the Bankruptcy Court or any actions or omissions of any Seller required to be taken (or not taken) to comply therewith; provided, further, that, in the case of clause (i), (ii), (iii), (v), (vi), (viii), (ix), (x), (xi) or (xiii), only to the extent that the effects of any such Effect has a disproportionate effect on the Purchased Assets and the Assumed Liabilities, taken as a whole, or the Business, relative to other Persons in the industries in which any Seller operates, then such Effect may be taken into account in determining whether there has been or would reasonably be expected to be, a Material Adverse Effect (in which case only such incremental disproportionate effect may be taken into account in determining whether there has been a Material Adverse Effect).

“**Material Contracts**” has the meaning set forth in *Section 4.8*.

“**Material Customer**” has the meaning set forth in *Section 4.9(a)*.

“**Material Permits**” has the meaning set forth in *Section 4.7*.

“**Material Supplier**” has the meaning set forth in *Section 4.9(b)*.

“**NIST**” has the meaning set forth in *Section 4.23(r)*.

“**Non-Filing Party**” has the meaning set forth in *Section 11.1*.

“**Non-Offered Employee**” has the meaning set forth in *Section 7.4(a)*.

“**Non-Paying Party**” has the meaning set forth in *Section 7.3(b)*.

“**Non-PII**” has the meaning set forth in *Section 4.12(g)*.

“**Offered Employees**” has the meaning set forth in *Section 7.4(a)*.

“**Open Source Software**” means any Software that is licensed, distributed or conveyed as “open source software”, “free software”, “copyleft” or under a similar licensing or distribution model, or under a Contract that requires as a condition of its use, modification or distribution that it, or other Software into which such Software is incorporated, integrated or with which such Software is combined or distributed or that is derived from or linked to such Software, be disclosed or distributed in source code form, delivered at no charge or be licensed, distributed or conveyed under the same terms as such Contract (including, but not limited to, Software licensed under the GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), BSD licenses, Microsoft Shared Source License, Common Public License, Artistic License, Netscape Public License, Sun Community Source License (SCSL), Sun Industry Standards License (SISL), Apache License and any license listed at [www.opensource.org](http://www.opensource.org) or [www.fsf.org](http://www.fsf.org)).

“**Order**” means any award, writ, injunction, judgment, order, ruling, decision, subpoena, precept, directive, consent, approval, award, decree or similar determination or finding entered, issued, made or rendered by any Governmental Authority, including for the avoidance of doubt any order entered by the Bankruptcy Court, including the Sale Order.

“**Organizational Conflict of Interest**” has the meaning set forth in *Section 4.23(u)*.

“**Organizational Documents**” means, with respect to any Person, the certificate or articles of incorporation and by-laws, certificate of formation or articles of organization and limited liability company agreement or operating agreement, partnership agreement, trust agreement, equity or stockholders’ agreement or other similar governing documents of such Person.

“**Outbound License**” has the meaning set forth in *Section 4.8(a)(v)*.

“**Parts**” means, collectively, all appliances, components, parts, instruments, appurtenances, avionics, accessories, furnishings, auxiliary power units, software and other equipment of whatever nature (other than complete Engines or engines) that may now or from time to time be incorporated or installed in or attached to the Airframe or any Engine, or that, having been removed therefrom remain the property of Sellers (each of the foregoing individually, a “**Part**”).

“**Party**” and “**Parties**” have the meanings set forth in the preamble.

“**Patriarch Stakeholders**” means, without limitation, each of the following entities or individuals: Ark Angels, LLC; Ark Angels II, LLC; Ark Angels III, LLC; Ark Angels VIII, LLC; Ark Investment Partners II, LP; Ark II CLO 2001-1, Ltd.; LD Investments, LLC; Lynn Tilton; Octaluna LLC; Octaluna II, LLC; Octaluna III, LLC; Patriarch Partners, LLC; Patriarch Partners VIII, LLC; Patriarch Partners, XIV, LLC; Patriarch Partners XV, LLC; Patriarch Partners Management Group, LLC; Patriarch Partners Agency Services, LLC; Zohar Holdings, LLC; and any respective current and former controlled Affiliates of each of the foregoing (each, a “**Patriarch Stakeholder**”).

“**Paying Party**” has the meaning set forth in *Section 7.3(b)*.

“**Permit**” means any franchises, permits, licenses, consents, certificates, clearances, approvals, exceptions, variances, permissions, filings, publications, declarations, notices, waivers, and authorizations, including environmental permits, of or with any Governmental Authority.

“**Permitted Liens**” means the following Liens: (a) statutory Liens for Taxes, assessments or other governmental charges or levies that are not yet due and payable or delinquent or that are being contested in good faith by appropriate Proceedings and for which adequate reserves are being maintained in accordance with GAAP; (b) mechanics’, materialmen’s, repairmen’s and other statutory Liens incurred in the ordinary course of business and for which adequate reserves are being maintained in accordance with GAAP; (c) Liens incurred or deposits made in the ordinary course of business in connection with workers’ compensation, unemployment insurance or other types of social security; (d) purchase money Liens and Liens securing rental payments under capital lease arrangements set forth on *Schedule 1.1(a)*; (e) with respect to Leased Real Property, easements, declarations, covenants or rights-of-way, restrictions and similar non-monetary Liens which do not, individually or in the aggregate, materially impair the use, occupancy or value of such Leased Real Property or the ordinary conduct of the Business as currently conducted; (f) zoning ordinances, variances, conditional use permits and other generally applicable land use restrictions which do not, individually or in the aggregate, materially impair the use, occupancy or value of any Leased Real Property or the ordinary conduct of the Business as currently conducted; (g) Liens that will be released at the Closing with no Liability to Buyer or its Affiliates; (h) any Lien granted or incurred pursuant to an Order of the Bankruptcy Court; and (i) outbound Intellectual Property licenses, covenants not to sue and similar rights or licenses that are subject to Section 365(n) of the Bankruptcy Code.

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

“**Petition Date**” means the date of the Debtors’ voluntary petitions for relief as debtors-in-possession, under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court.

“**PII**” has the meaning set forth in *Section 4.12(g)*.

“**Post-Closing Tax Period**” means any Tax period beginning after the Closing Date and with respect to any taxable period that begins on or prior to the Closing Date and ending after the Closing Date, the portion thereof beginning after the Closing Date.

**“Pre-Closing Tax Period”** means any Tax period ending on or before the Closing Date and with respect to any taxable period that includes but does not end on the Closing Date, the portion thereof ending on the Closing Date.

**“Privacy Policy”** has the meaning set forth in *Section 4.12(g)*.

**“Proceeding”** means any claim, action, suit, arbitration, audit, hearing, inquiry, review, prosecution, examination, investigation, litigation or proceeding by or before any Governmental Authority.

**“Property Taxes”** has the meaning set forth in *Section 7.3(a)*.

**“Purchase Price”** has the meaning set forth in *Section 3.2*.

**“Purchased Assets”** has the meaning set forth in *Section 2.1*.

**“Purchased Intellectual Property”** has the meaning set forth in *Section 2.1(d)*.

**“Qui Tam Action”** means that certain qui tam action filed against MDH, among others, in the United States District Court for the Northern District of Alabama (Northeastern Division), captioned United States ex rel. Philip Marsteller, et al. v. Lynn Tilton, MD Helicopters, Inc., et al., Case No. 5:13-cv-00830-AKK.

**“Qui Tam Settlement Agreement”** means that certain settlement agreement with respect to the Qui Tam Action to be entered into pursuant to the terms of the Restructuring Support Agreement.

**“Qui Tam Settlement Motion”** means a motion filed by the Debtors with the Bankruptcy Court under Rule 9019 of the Federal Rules of Bankruptcy Procedure seeking entry of an order approving the Qui Tam Settlement Agreement.

**“Qui Tam Settlement Order”** means an order entered by the Bankruptcy Court granting the relief sought in the Qui Tam Settlement Motion.

**“Release”** means any release, spill, emission, leaking, pumping, injection, emitting, emptying, escape, injection, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Materials into the indoor or outdoor environment.

**“Responsible Contracting Officer”** has the meaning set forth in *Section 2.5(g)*.

**“Restructuring Support Agreement”** means that certain Restructuring Support Agreement, dated as of March 30, 2022, among the Debtors, Zohar CDO 2003-1, Ltd., Zohar II 2005-1, Ltd., Zohar III, Ltd., Philip Marsteller, Robert M. Swisher, and National Union Fire Insurance Company of Pittsburgh, Pa.

**“Retained Cash”** means Cash and Cash Equivalents held by any Seller at the time of Closing in an amount equal to \$1,000,000 or such other amount as may be mutually agreed to by the Parties in good faith.

“**Sale Hearing**” means the hearing held in the Bankruptcy Court on the Sale Motion.

“**Sale Motion**” means a motion filed by the Debtors in the Bankruptcy Court, in form and substance reasonably acceptable Buyer and Seller, among other things, requesting (a) approval of this Agreement, (b) authorization of the sale of the Purchased Assets to Buyer pursuant to section 363 of the Bankruptcy Code, pursuant to the terms and conditions set forth herein, free and clear of any Liens (other than Permitted Liens), (c) authorization of the assumption by, and assignment to, Buyer of the Assigned Contracts and the Assumed Liabilities pursuant to section 365 of the Bankruptcy Code and (d) authorization of the other transactions contemplated by this Agreement.

“**Sale Order**” means an Order by the Bankruptcy Court, in form and substance reasonably acceptable to Buyer and Sellers, among other things, (a) approving this Agreement, (b) authorizing the sale of the Purchased Assets to Buyer pursuant to section 363 of the Bankruptcy Code, pursuant to the terms and conditions set forth herein, free and clear of any Liens (other than Permitted Liens), (c) authorizing the assumption by, and assignment to, Buyer of the Assigned Contracts and the Assumed Liabilities pursuant to section 365 of the Bankruptcy Code and (d) authorizing the other transactions contemplated by this Agreement.

“**Sanctioned Country**” means at any time, a country or territory which is itself the subject or target of any comprehensive Sanctions Laws (including, at the time of this Agreement, the Crimea region of Ukraine, the so-called Donetsk People’s Republic or Luhansk People’s Republic regions of Ukraine, Cuba, Iran, North Korea and Syria).

“**Sanctioned Person**” means any Person that is the target of Sanctions Laws, including (i) any Person identified in any Sanctions Law-related list of designated Persons maintained by (a) the United States, including by the U.S. Department of the Treasury’s Office of Foreign Assets Control, the U.S. Department of Commerce, Bureau of Industry and Security, or the U.S. Department of State; (b) Her Majesty’s Treasury of the United Kingdom; (c) any committee of the United Nations Security Council; or (d) the European Union; (ii) any Person located, organized, or resident in, organized in, or a Governmental Authority or government instrumentality of, any Sanctioned Country; or (iii) any Person directly or indirectly owned or controlled by, or acting for the benefit or on behalf of, a Person described in clause (i) or (ii), either individually or in the aggregate.

“**Sanctions Laws**” means any trade, economic or financial sanctions Laws administered, enacted or enforced from time to time by (i) the United States (including the Department of the Treasury’s Office of Foreign Assets Control or the U.S. Department of State), (ii) the European Union and/or its member states, (iii) the United Nations, or (iv) Her Majesty’s Treasury of the United Kingdom.

“**SBA**” has the meaning set forth in *Section 4.23(o)*.

“**Security Incident**” has the meaning set forth in *Section 4.12(g)*.

“**Seller**” has the meaning set forth in the preamble.

“**Seller Plan**” means each (i) “employee benefit plan” as defined in Section 3(3) of ERISA, whether or not subject to ERISA, (ii) end of service or severance, termination protection,

retirement, pension, profit sharing, deferred compensation, phantom, equity or equity-based, health or welfare, vacation, change in control, transaction, retention, bonus or other incentive, fringe benefit, paid time off or similar plan, agreement, arrangement, program or policy, or (iii) other plan, Contract, policy or arrangement providing compensation or benefits, in each case whether or not written, including any employment or consulting agreements with Service Providers that are not terminable at will or upon 30 days or less notice, in the case of clauses (i)-(iii), that is sponsored, maintained, administered, contributed to or entered into by any Seller, for the benefit of any of its current or former Service Providers, or for which any Seller has any direct or indirect liability.

“**Service Provider**” means a director, officer, employee or independent contractor that is an individual or alter ego thereof.

“**Software**” means software, artificial intelligence, algorithms, firmware and computer programs and applications (including source code, executable or object code, software architecture, software algorithms, data files, computerized databases, plugins, libraries, operating systems, subroutines, tools, and APIs) and related documentation used to design, plan, organize and develop any of the foregoing.

“**Specified Contracts**” has the meaning set for in *Section 2.5(g)*.

“**Specified Contract Assignments**” has the meaning set forth in *Section 2.5(g)*.

“**Specified Date**” means April 20, 2020.

“**Specified Litigation**” means (i) the Qui Tam Action, (ii) that certain litigation arising out of a contract dispute between the Dutch National Police Services Agency and Helifly, nv., including (w) the judgment against MDH issued by the Hague Court of Appeal in May 2012, (x) State of the Netherlands v. MD Helicopters, Inc., No. CV2015-095127 (AZ Maricopa Super. Ct. Nov. 13, 2018), (y) State of the Netherlands v. MD Helicopters, Inc., 250 Ariz. 235 (2020), and (z) State of the Netherlands v. MD Helicopters, Inc., Index. No. 157756/2020, ECF No. 6 (N.Y. Sup. Ct. Sept. 23, 2020) and (iii) that certain ICC Arbitration No. 26802/FS - TAI vs. MDHI.

“**Specified Person**” has the meaning set forth in *Section 2.1(k)*.

“**Straddle Period**” has the meaning set forth in *Section 7.3(a)*.

“**Structures**” has the meaning set forth in *Section 4.13(a)(i)*.

“**Subcontract Agreement Pending Novation**” has the meaning set forth in *Section 6.5*.

“**Subsidiary**” means, with respect to any Person, any corporation, entity or other organization, whether incorporated or unincorporated, of which (a) such first Person directly or indirectly owns or controls at least a majority of the securities or other interests having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions or (b) such first Person is a general partner or managing member.

“**Successful Bidder**” has the meaning set forth in the Bid Procedures.

“**Supplemental Contract Notices**” has the meaning set forth in *Section 2.5(c)*.

“**Tax**” means all federal, state, local or foreign income, gross receipts, franchise, estimated, alternative minimum, add-on minimum, sales, use, transfer, real property gains, registration, value added, excise, natural resources, severance, stamp, occupation, premium, windfall profit, environmental, customs, duties, real property, special assessment, personal property, capital stock, social security, unemployment, disability, payroll, license, employee or other withholding tax, profits, lease, service, recording, documentary, filing, permit or authorization, gains, import, export, intangibles, or any other taxes, fees, assessments or charges of any kind whatsoever imposed by any Governmental Authority including any interest, penalties or additions to tax or additional amounts in respect of the foregoing.

“**Tax Return**” means any report, return, election, extension or similar document (including declarations, disclaimers, notices, disclosures, estimates, claims (including claims for refunds), real property transfer tax returns, information returns, schedules or any related or supporting information) filed or required to be filed with respect to Taxes with any Governmental Authority or other authority in connection with the determination, assessment or collection of any Tax or the administration of any Laws or administrative requirements relating to any Tax, including any amended return or declaration of estimated Taxes.

“**Term Loan**” means all obligations, Liabilities, and Indebtedness of every kind, nature and description owing by MDH in its capacity as the borrower under the Term Loan Agreement.

“**Term Loan Agreement**” means that certain Credit Agreement, dated as of July 8, 2005 among the Debtors and the Term Loan Lenders and Term Loan Agent thereunder, as amended.

“**Term Loan Lenders**” means, collectively, the lenders that are or may become parties to the Term Loan Agreement and their respective successors and assigns (including any other lender or group of lenders that at any time succeeds to or refinances, replaces or substitutes) for all or any portion of the Term Loan at any time and from time to time.

“**Transaction**” has the meaning set forth in the recitals of this Agreement.

“**Transaction Documents**” means this Agreement, the Assignment and Assumption Agreements, the Bills of Sale, the Assignment of Patents, the Assignment of Trademarks, the Subcontract Agreement Pending Novation, the Transition Services Agreement and any other agreements, instruments or documents entered into pursuant to, or as contemplated by, this Agreement.

“**Transfer Taxes**” means any sales, use, purchase, excise, gross receipts, ad valorem, direct or indirect real property, business and occupation, value added, filing, permit or authorization, leasing, license, lease, severance, franchise, profits, fixed asset, property transfer or gains, documentary, stamp, registration, intangible, conveyance, recording or similar Tax (including, for certainty, goods and services tax, harmonized sales tax and land transfer tax) and any recording costs or fees, however styled or designated, or other amounts in the nature of transfer Taxes payable in connection with the transactions contemplated by this Agreement.

“**Transferred Cash**” has the meaning set forth in *Section 2.1(g)*.

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

“*Transition Services Agreement*” has the meaning set forth in *Section 6.5*.

“*Type Certificates*” means the type certificates issued by the Federal Aviation Administration set forth on *Schedule 1.1(c)*.

“*Willful Breach*” means an action or failure to act by one of the Parties that constitutes a material and intentional breach of this Agreement, and such action was taken or such failure occurred as a consequence of a deliberate act or failure to act by such Party.

“*Zohars*” means, collectively, Zohar CDO 2003-1 Limited, Zohar II 2005-1 Limited and Zohar III Limited, Zohar CDO 2003-1, Corp. and Zohar III, Corp.

**1.2 References and Rules of Construction.** All references in this Agreement to Exhibits, Schedules, Articles, Sections, subsections and other subdivisions refer to the corresponding Exhibits, Schedules, Articles, Sections, subsections and other subdivisions of or to this Agreement unless expressly provided otherwise. Titles appearing at the beginning of any Articles, Sections, subsections and other subdivisions of this Agreement are for convenience only, do not constitute any part of this Agreement, and shall be disregarded in construing the language hereof. The words “this Agreement,” “herein,” “hereby,” “hereunder” and “hereof,” and words of similar import, refer to this Agreement as a whole and not to any particular Article, Section, subsection or other subdivision unless expressly so limited. The word “including” (in its various forms) means including without limitation. Unless expressly provided to the contrary, the word “or” is not exclusive and has the meaning represented by the phrase “and/or”. All references to “\$” or “dollars” shall be deemed references to United States dollars. Each accounting term not defined herein, and each accounting term partly defined herein to the extent not defined, will have the meaning given to it under GAAP as in effect from time to time. An item arising with respect to a specific representation or warranty shall be deemed to be “reflected” or “disclosed” on a balance sheet or financial statements, to the extent (A) there is a reserve, accrual or other similar item underlying a number on such balance sheet or financial statement that is specifically related to the subject matter of such item, (B) such item is otherwise specifically set forth on the balance sheet or financial statement, or (C) such item is reflected on the balance sheet or financial statement and is referred to in the notes thereto. The phrase “ordinary course” or “ordinary course of business” means the ordinary course of business consistent with past practice. Pronouns in masculine, feminine or neuter genders shall be construed to state and include any other gender, and words, terms and titles (including terms defined herein) in the singular form shall be construed to include the plural and vice versa, unless the context otherwise requires. Except as expressly provided otherwise in this Agreement, references to any Law or agreement means such Law or agreement as it may be amended from time to time. The word “extent” in the phrase “to the extent” shall mean the degree or proportion to which a subject or other thing extends, and such phrase shall not mean simply “if.” If a date specified herein for giving any notice or taking any action is not a Business Day (or if the period during which any notice is required to be given or any action taken expires on a date which is not a Business Day), then the date for giving such notice or taking such action (and the expiration date of such period during which notice is required to be given or action taken) shall be the next day which is a Business Day.

## ARTICLE II PURCHASE AND SALE

**2.1 Purchase and Sale.** On the terms and subject to the conditions set forth in this Agreement, effective as of the Closing, each Seller shall sell, assign, transfer, convey and deliver to Buyer or its Designated Purchaser, and Buyer or its Designated Purchaser shall purchase and acquire from each Seller, all of each Seller's right, title and interest in and to all of the assets, properties, interests and rights of every nature, kind and description, tangible and intangible of each Seller, other than the Excluded Assets (the "**Purchased Assets**"), in each case, free and clear of any Liens (other than Permitted Liens). The Purchased Assets shall include the following:

(a) the Leased Real Property set forth on *Schedule 2.1(a)*, together with any buildings, fixtures and improvements located on or attached to such real property, and all rights arising therefrom, and all tenements, hereditaments, appurtenances and other real property rights appertaining thereto;

(b) all tangible assets, including machinery, tools, equipment, computers, information management systems (including software and hardware related thereto), telephone systems, supplies and other tangible personal property owned by any Seller, including (i) any such property located at any Leased Real Property, (ii) any such property that is leased to the extent such lease is an Assigned Contract and (iii) any such property on order to be delivered to any Seller;

(c) all warranties, indemnities or guaranties from any Person with respect to any Purchased Asset, including any item of real property, personal property or equipment;

(d) all Intellectual Property owned by any Seller, including the Intellectual Property set forth on *Schedule 2.1(d)* (the "**Purchased Intellectual Property**");

(e) the Seller Plans set forth on *Schedule 2.1(e)* (the "**Assumed Plans**"), all funding arrangements related thereto (including all assets, trusts, insurance policies (including, for the avoidance of doubt, any director and officer insurance policy) and administrative service Contracts related thereto), and all rights and obligations thereunder;

(f) other than the Excluded Permits, all Permits held by any Seller, including those set forth on *Schedule 2.1(f)*;

(g) other than the Retained Cash, all Cash and Cash Equivalents (the "**Transferred Cash**");

(h) all deposits, credits, prepaid expenses, deferred charges, advance payments, refunds, rights of set-off, rights of recovery, security deposits, prepaid items and duties related to the Purchased Assets (including the Assigned Contracts);

(i) all accounts receivable, notes, negotiable instruments and chattel paper owned or held, together with any unpaid interest or fees accrued thereon or other amounts due with respect thereto, and other amounts receivable from any Person before the Closing;

(j) all rights and obligations under or arising out of all insurance policies (including, for the avoidance of doubt, all rights of the Sellers under any director and officer insurance policy, if any) relating to any of the Purchased Assets or any of the Assumed Liabilities (including returns and refunds of any premiums paid, or amounts due back to any Seller, with respect to cancelled insurance policies), and all benefits of any nature of any Seller with respect thereto (including any claims of Seller arising under such policies and all credits, premium refunds, proceeds, causes of action or rights thereunder);

(k) subject to *Section 7.13*, all rights against any Person (including (i) customers, suppliers, vendors, lessors, lessees, licensees, licensors of any Seller and (ii) Buyer, its Affiliates or any of its or their respective directors, officers, members, partners, shareholders, managers, advisors or representatives) arising under or related to any Assigned Contract, other Purchased Asset (including any use, ownership, possession, operation, sale or lease thereof) or Assumed Liability or the operation or conduct of the Business, including Proceedings, Claims, counterclaims, defenses, credits, rebates (including any vendor or supplier rebates), demands, allowances, refunds, rights of set off, rights of recovery (including rights to insurance proceeds), rights of subrogation, rights of recoupment, rights under or with respect to express or implied guarantees, warranties, representations, covenants, indemnities, exculpation, advancement, reimbursement of expenses or contract renewal rights and other similar rights, in each case, whether direct or derivative, known or unknown, liquidated or unliquidated, contingent or otherwise; including all rights of any Seller against any current or former directors, officers, members, partners, shareholders, equity holders, managers, advisors or other professionals of such Seller, including any Proceedings and Claims (“*D&O Claims*”) and all avoidance, recovery, subordination claims or causes of action of any Seller under Chapter 5 of the Bankruptcy Code or any analogous state or federal statutes or common law relating to the Purchased Assets and Assumed Liabilities; provided that neither Buyer, the Designated Purchaser or any Person claiming by or through Buyer or the Designated Purchaser (including by operation of law, sale, assignment, conveyance or otherwise) shall pursue, prosecute, litigate, institute or commence any Proceeding based on, assert, sell, convey, assign or file any Claim that relates to any rights, claims or causes of action transferred under this *Section 2.1(k)* against any Seller or any of their current or former subsidiaries or any of their respective current or former officers or directors, in each case other than a Specified Person. Nothing herein shall limit the right of Buyer (or any assignee or transferee thereof) to bring any claims or causes of action against a Specified Person. “*Specified Person*” shall mean Lynn Tilton, or any other officer, director, employee, manager, advisor or other representative of any Seller who is or has been a director, officer, equityholder, manager, Affiliate, member or representative of Patriarch Partners, LLC or any of its Affiliates (excluding, for purposes of this *Section 2.1(k)* and *Section 7.13*, Sellers and their respective current or former subsidiaries). For the avoidance of doubt, the Patriarch Stakeholders and any other Affiliate of Lynn Tilton (other than Sellers and the Zohars) shall be deemed Specified Persons;

(l) all goodwill related to the Purchased Assets (including the goodwill associated with the Trademarks and other Intellectual Property included in the Purchased Assets);

(m) the Type Certificates;

(n) all inventory, including all (i) raw materials, bulk and pan stock, (ii) stores inventory, (iii) work-in process, (iv) aircraft in flow, (v) used Parts, (vi) finished goods, (vii) Aircraft, (viii) Airframe, (ix) Engines and (x) spare Parts (collectively, “***Inventory***”);

(o) all Tax refunds, overpayments, credits or other attributes, including (i) with respect to Taxes for any Pre-Closing Tax Period or (ii) with respect to Taxes that are Excluded Liabilities;

(p) the Assigned Contracts (including, with respect to the Specified Contracts, in accordance with *Section 2.5(g)*); and

(q) other than the Excluded Records, all of each Seller’s current or historical written files, documents, instruments, papers, books, reports, records, tapes, microfilms, photographs, letters, budgets, forecasts, plans, operating records, safety and environmental reports, data, studies, ledgers, journals, title policies, customer lists, supplier lists, vendor lists, price lists, mailing lists, invoices, shipping records, standard forms of documents, 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 (catalogs, sales brochures, flyers, pamphlets, web pages, *etc.*), consulting materials, opinions and other documents commissioned by or on behalf of any Seller, development, quality control, quality assurance, and other regulatory documents, all personnel and employment records for the Transferred Employees or any individual independent contractors of any Seller, and other books and records of any Seller and any rights thereto owned by any Seller, in each case whether stored in hard copy form or on electronic, magnetic, optical or other media, and including any of the foregoing (other than the Excluded Records) that is subject to attorney-client privilege or attorney work-product protection.

**2.2 Excluded Assets.** Notwithstanding any provision in this Agreement to the contrary, Buyer shall not purchase, no Seller shall sell, transfer, assign, convey or deliver, and Sellers shall retain all right, title and interest to, in and under the following assets, properties, interests and rights (collectively, the “***Excluded Assets***”):

(a) the Organizational Documents, corporate records and minute books, in each case solely to the extent pertaining to the formation or capitalization of any Seller;

(b) any (i) records, documents or other information solely to the extent relating to any current or former Employee who is not or does not become a Transferred Employee and any materials to the extent containing information about any Employee, disclosure of which to Buyer as the acquirer of the Business would violate applicable Law and (ii) all attorney-client privilege and attorney work-product protection of any Seller or associated with its businesses solely to the extent arising with respect to legal counsel representation of any Seller or any of their respective Affiliates or their businesses in connection with the transactions contemplated by this Agreement or any of the Transaction Documents (such documents described in clauses (i) and (ii), collectively, the “***Excluded Records***”);

(c) subject to *Section 2.5*, any Contract that is not an Assigned Contract (collectively, the “***Excluded Contracts***”);

(d) all rights, claims or causes of action that accrue or will accrue to any Seller pursuant to this Agreement or any of the other Transaction Documents;

(e) any Seller Plans other than the Assumed Plans (the “***Excluded Plans***” which such Excluded Plans include, in all events, all equity incentive plans and grants thereunder and any arrangements subject to Title IV of ERISA), together with all funding arrangements related thereto (including all assets, trusts, insurance policies and administrative service Contracts related thereto), and all rights and obligations thereunder;

(f) all shares of capital stock or other equity interests of any Seller or any Affiliate thereof or any securities convertible into, exchangeable or exercisable for shares of capital stock or other equity interests of any Seller or any Affiliate thereof;

(g) all proceeds received from the sale or liquidation of any other Excluded Assets;

(h) all bank accounts of any Seller;

(i) the Retained Cash; and

(j) the Excluded Permits.

**2.3 Assumed Liabilities.** On the terms and subject to the conditions of this Agreement, effective as of the Closing, Buyer or its Designated Purchaser shall assume only the following Liabilities of each Seller (the “***Assumed Liabilities***”):

(a) all Cure Costs to the extent they have not been paid on or before the Closing; provided, however, that neither Buyer nor any Designated Purchaser shall be liable for any applicable Cure Costs that are waived by the contract counterparty pursuant to and consistent with *Section 2.5(a)* hereof, or otherwise paid by or on behalf of Buyer or its Designated Purchaser in an amount and on terms agreed upon between Buyer and such contract counterparty;

(b) all Liabilities with respect to the Assumed Plans to the extent relating to Transferred Employees, whether or not arising prior to or after the Closing Date;

(c) all Liabilities of each Seller relating to or arising out of the Assigned Contracts to be paid or performed after the Closing Date, except to the extent such liabilities and obligations, but for a breach or default by any Seller would have been paid, performed or otherwise discharged on or prior to the Closing Date or to the extent the same arises out of any such breach or default;

(d) any and all Liabilities for (i) Taxes that relate to the Purchased Assets or the Assumed Liabilities with respect to Post-Closing Tax Periods allocable to Buyer in accordance with *Section 7.3(a)* and (ii) Transfer Taxes;

(e) all accounts payable and other trade obligations, in each case, to the extent (and solely to the extent) (i) incurred in the ordinary course of business and otherwise in compliance with the terms and conditions of this Agreement (including *Section 6.1*), (ii) not yet delinquent and (iii) not arising under or otherwise relating to any Excluded Asset; and

(f) accrued compensation, vacation pay, employee unreimbursed business expenses and benefits, in each case for any Transferred Employee, but only to the extent allocable to Buyer in accordance with *Section 7.4*.

**2.4 Excluded Liabilities.** Notwithstanding any provision in this Agreement to the contrary, other than the Assumed Liabilities, neither Buyer nor any Designated Purchaser shall assume, be required to pay, perform or discharge, or be liable hereunder for any Liabilities of any Seller, whether or not related to the Business or the Purchased Assets, and Sellers shall retain and be responsible for all other Liabilities, including the following (collectively, the “*Excluded Liabilities*”):

(a) all Liabilities arising out of or relating to any Purchased Asset or the operation of the Business on or prior to the Closing Date, other than Assumed Liabilities pursuant to *Section 2.3*;

(b) all Liabilities for Taxes (other than Transfer Taxes), including Taxes payable by reason of contract, assumption, transferee or successor Liability, operation of Law, pursuant to Treasury Regulation Section 1.1502-6 (or any similar provision of any state or local law), (i) that relate to the Purchased Assets or Assumed Liabilities with respect to Pre-Closing Tax Periods allocable to any Seller in accordance with *Section 7.3(a)*, (ii) owed by any Seller or any of their respective Affiliates (whether or not relating to a Pre-Closing Tax Period) or (iii) arising from or in connection with an Excluded Asset;

(c) except to the extent of any Liabilities expressly assumed pursuant to *Section 2.3(c)*, all Liabilities arising under any Contract;

(d) except to the extent of any Liabilities expressly assumed pursuant to *Section 2.3(c)*, *Section 2.3(e)* or *Section 2.3(f)*, all Liabilities of each Seller for Indebtedness;

(e) all obligations of each Seller pursuant to this Agreement or any of the other Transaction Documents;

(f) all Liabilities arising out of, relating to or with respect to (i) the employment or termination of employment of any current or former Employee or other Service Provider who is not a Transferred Employee or (ii) the employment of any Transferred Employee, in each case except to the extent allocable to Buyer in accordance with *Section 7.4*;

(g) all Liabilities arising out of, relating to or with respect to any Excluded Plan;

(h) all Liabilities of each Seller arising under or pursuant to any Environmental Laws or Health and Safety Requirements, including with respect to any real property owned, operated, leased or otherwise used by any Seller, whether or not used in the ordinary course, including any Liabilities for noncompliance with any Environmental Laws or Health and Safety

Requirements (including the Release of Hazardous Materials), in each case only to the extent arising as a result of any act, omission, or circumstances taking place on or prior to the Closing, whether known or unknown as of the Closing;

(i) all Liabilities arising out of, relating to or with respect to any Order or Proceeding involving, against or affecting any Purchased Asset, the Business, any Seller or any assets or properties of any Seller (i) commenced, filed or initiated as of the Closing or (ii) relating to facts, events or circumstances arising or occurring prior the Closing (including, for the avoidance of doubt, any Order related to fraud, breach of fiduciary duty, misfeasance or under any other theory relating to conduct, performance or non-performance of any Seller, or any of their respective directors, officers, or employees, and any breach, default, failure to perform, torts related to performance, violations of Law, infringements or indemnities, guaranties and overcharges, underpayments or penalties, whether in respect of any Contract, agreement, arrangement, promise or understanding of any kind), including (x) any successor liability claims or obligations that may be owed to or assessed by, any Governmental Authority or other Person, and whether commenced, filed, initiated, or threatened prior to, on or following the Closing, and (y) the Specified Litigation; and

(j) all other Liabilities of each Seller that are not Assumed Liabilities.

## **2.5 Assigned Contracts; Cure Costs.**

(a) Unless otherwise waived by a contract counterparty, at the Closing, Buyer or its Designated Purchaser shall pay in cash an amount and on terms agreed between Buyer or its Designated Purchaser and such contract counterparty, or otherwise satisfy as agreed between Buyer or its Designated Purchaser and such contract counterparty, in each case pursuant to Section 365 of the Bankruptcy Code, Section 1123(b)(2) of the Bankruptcy Code, and the Sale Order, any and all costs or expenses that are required to be paid under Sections 365(b)(1)(A) and 365(b)(1)(B) of the Bankruptcy Code, as applicable, to cure any defaults in connection with the assumption and assignment of the Assigned Contracts (such costs or expenses required to be paid by Buyer, the “**Cure Costs**”). Buyer agrees that, in exchange for a waiver of any Cure Costs, it shall not initiate any civil or administrative proceeding related to any Avoidance Action against any Assigned Contract counterparty with an allowed claim for or entitled to receive Cure Costs at the time of Closing; provided that such contract counterparty consents in return to the assignment of its Assigned Contract to Buyer and waives its claim for or right to receive Cure Costs from Buyer. For the avoidance of doubt, neither Buyer nor any Designated Purchaser or Buyer Affiliates shall be required to make any payment of Cure Costs with respect to any Excluded Contract.

(b) On the Execution Date, and subject to Buyer’s rights under *Section 2.5(d)* to subsequently amend such designations, Buyer will deliver to Sellers a list of the Applicable Contracts to be assumed by Sellers and assigned to Buyer at the Closing (such Applicable Contracts (as such designation may be modified in accordance with *Section 2.5(d)*), the “**Assigned Contracts**”). Sellers shall promptly commence appropriate proceedings before the Bankruptcy Court and otherwise use commercially reasonable efforts to take all reasonably necessary actions in order to determine Cure Costs with respect to any Assigned Contracts including providing sufficient notice in accordance with the Bid Procedures Order to all counterparties to the Assigned Contracts of their assumption or rejection and, with respect to the Assigned Contracts to be

assumed, providing a schedule of Cure Costs. Any Applicable Contracts that are not set forth on such list of Applicable Contracts to be assumed shall be Excluded Contracts and deemed rejected, and shall be an Excluded Asset for all purposes hereof.

(c) No later than two (2) Business Days following entry of the Bid Procedures Order, Sellers shall deliver written notices, in form and substance reasonably acceptable to Buyer and Sellers (the “**Initial Contract Notices**”), of the potential assignments of the Applicable Contracts then known to Sellers for each such Applicable Contract to all non-debtor parties to such Applicable Contracts, which notice shall specify (i) Sellers’ good faith estimate of the proposed Cure Cost for such Applicable Contract and (ii) an objection deadline for such non-debtor party to object to the proposed Cure Cost. To the extent Buyer exercises its right under *Section 2.5(d)* to amend or modify designations from time to time to include additional Assigned Contracts, Sellers shall deliver written notices (each, a “**Supplemental Contract Notice**” and, together with the Initial Contract Notice, the “**Contract Notices**”) to all non-debtor parties to such Applicable Contracts in substantially the same form as the Initial Contract Notices and in accordance with the Bid Procedures Order.

(d) At any time prior to the Designation Deadline, Buyer shall have the right, which may be exercised in Buyer’s sole discretion, to provide written notice to Sellers of Buyer’s election to designate any Applicable Contract (including any Contract that is an Assigned Contract immediately before such designation) (i) as an Excluded Contract and upon such designation such Contract shall constitute an Excluded Contract and, if applicable, shall cease to constitute an Assigned Contract or (ii) to the extent not already rejected, as an Assigned Contract and upon such designation such Contract shall constitute an Assigned Contract. If an Applicable Contract is subject to a cure dispute or other dispute as to the assumption or assignment of such Applicable Contract that has not been resolved to the reasonable satisfaction of Buyer and Sellers prior to the Designation Deadline, then the Designation Deadline shall be extended (but only with respect to such Applicable Contract) to no later than the earliest of (A) the date on which such dispute has been resolved to the reasonable satisfaction of Buyer and Sellers, (B) the date on which such Applicable Contract is deemed rejected by operation of Sections 365(d)(4) or 1123(b)(2) of the Bankruptcy Code, as applicable, or (C) the date required by the Bankruptcy Court and set forth in the Sale Order.

(e) Notwithstanding anything in this Agreement to the contrary, Sellers shall not reject any Applicable Contracts without the prior written consent of Buyer in its sole discretion; provided that, after the Designation Deadline, Sellers may reject Excluded Contracts without the consent of Buyer so long as such Applicable Contracts were identified to Buyer in writing prior to the Designation Deadline. In the event that any Seller identifies (whether before or after the Designation Deadline) any additional Applicable Contracts capable of being assumed or rejected that were not previously identified as such, Sellers shall promptly notify Buyer of (i) such Applicable Contracts and (ii) Sellers’ good faith estimate of the amount of the Cure Costs payable in respect of each such Applicable Contract. For the avoidance of doubt, Buyer may designate each such additional Applicable Contract described in the immediately preceding sentence as an Assigned Contract or Excluded Contract pursuant to this *Section 2.5*, notwithstanding the passage of the Designation Deadline.

(f) Subject to *Section 2.5(g)* in the case of any Specified Contract, in the event any Assigned Contract requires a third party's, including any Governmental Authority's, consent to the assignment thereof, and any such consent is not obtained prior to Closing, such Assigned Contract will not be assigned to Buyer at the Closing and each Seller and Buyer will continue to use commercially reasonable efforts to obtain such consent. Unless and until the applicable consent is obtained, each Seller will, to the extent practicable, keep the relevant Assigned Contract in effect and give Buyer the rights and benefits of such Assigned Contract to the same extent as if it had been assigned to Buyer and as if Buyer was directly a party thereto, and Buyer will perform the obligations under such Assigned Contract on behalf of Sellers in a timely manner to the extent that such obligations would have existed if such Assigned Contract had been assigned to Buyer. In addition, such Seller will not enter into, or negotiate to enter into, any amendment, extension, termination, modification, cancellation, assignment, transfer or renewal of any such Assigned Contract, or grant any waiver thereunder, or compromise or settle any amount receivable or payable arising thereunder after the Closing, without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed. If after the Closing Date such consent is obtained, Buyer will assume such Assigned Contract as of the date of such consent. Nothing in this Agreement may be construed as an attempt to assign any Contract that is by its terms nonassignable without the consent of the other party thereto. For the avoidance of doubt, notwithstanding anything to the contrary in this *Section 2.5(f)*, in no event shall any Seller have any obligation to renew or extend any such Assigned Contract. The Parties shall treat Buyer as the owner of such Assigned Contracts for applicable Tax purposes from and after the Closing Date to the maximum extent permitted by Law. For the avoidance of doubt, in no event will the failure to obtain the consent of any third party to the assignment of any Assigned Contract, in and of itself, be a breach of this Agreement.

(g) Without limiting anything contained in *Section 2.5(f)*, from and after the Closing and until the receipt of all Approvals required to effect the transfer (by novation or assignment or otherwise) of each of the contracts set forth on *Schedule 2.5(g)* (the "***Specified Contracts***") and such transfers, the "***Specified Contract Assignments***") in accordance with this *Section 2.5(g)*: (i) the Parties will enter into and shall comply with the terms of the Subcontract Agreement Pending Novation concerning the disposition of each Specified Contract not yet assigned at Closing; and (ii) the Parties shall use commercially reasonable efforts to obtain any Approvals of any Governmental Authority, including by jointly preparing, in accordance with FAR Subpart 42.12, and any applicable agency regulations or policies, written requests meeting the requirements of FAR Subpart 42.12, as reasonably interpreted by the applicable responsible contracting officer (as such term is used in FAR Subpart 42.1202, each, a "***Responsible Contracting Officer***"), which shall be in form and substance reasonably satisfactory to the Parties and which shall be submitted by the applicable Seller to the applicable Responsible Contracting Officer to (A) recognize Buyer as such Seller's successor-in-interest to each such Specified Contract, and (B) enter into one or more novation agreements, and such other documents as the applicable Governmental Authorities may require, in form and substance reasonably satisfactory to the Parties, pursuant to which, subject to the requirements of the FAR Subpart 42.12, all of such Seller's right, title and interest in and to, and all of such Seller's obligations and liabilities under, such Specified Contract shall be validly conveyed, transferred and assigned and novated to Buyer, in each case in order to permit the Specified Contract Assignments as promptly as reasonably practicable following the Closing.

**2.6 Purchase Price Allocation.** No later than sixty (60) days after the Closing Date, Buyer shall deliver to Sellers a schedule allocating the Purchase Price (less the Retained Cash, and taking into account other relevant items for U.S. federal income tax purposes) among the Purchased Assets (the “*Allocation Schedule*”). The Allocation Schedule (including the determination of the purchase price for applicable tax purposes) shall be prepared in accordance with Section 1060 of the Code, the regulations promulgated thereunder, Treasury Regulations Section 1.166-6(b)(2), and any similar provision of applicable Law. The Allocation Schedule shall be deemed final unless Sellers notify Buyer in writing that Sellers object to one or more items reflected in the Allocation Schedule as inconsistent with applicable Law within thirty (30) days after delivery of the Allocation Schedule to Sellers. In the event of any such objection, Buyer and Sellers shall negotiate in good faith to resolve such dispute. Upon resolution of the disputed items, the Allocation Schedule shall be adjusted to reflect such resolution. If Buyer and Sellers are unable to resolve any disputed items regarding the Allocation Schedule (including, for the avoidance of doubt, the determination of the purchase price for applicable tax purposes) within twenty (20) days following the date Buyer receives Sellers’ written notice of objection, Buyer and Sellers shall submit the dispute on the next Business Day to a mutually agreed independent internationally recognized accounting firm (the “*Accounting Firm*”) (which may in turn select an appraiser if needed) whose review shall be limited to whether a disputed item has been prepared in accordance with the applicable law and shall be final and binding on all Parties. The Accounting Firm shall resolve any such disputed items within thirty (30) days after it receives the submission. The costs, fees and expenses of the Accounting Firm shall be borne equally by Buyer and Sellers. If the Purchase Price is adjusted pursuant to this Agreement, the final Allocation Schedule shall be correspondingly adjusted as appropriate and the Parties shall cooperate in making any such adjustments. The Parties shall report all Taxes and file all Tax Returns, including Form 8594 (*Asset Acquisition Statement Under Section 1060*), in a manner consistent with the final Allocation Schedule and shall not take any position inconsistent therewith (including upon examination of any Tax Return, in any Tax refund claim, in any Tax Proceeding, or otherwise) unless, in each case and then only to the extent, otherwise required by a “final determination” within the meaning of Section 1313 of the Code. Buyer and Sellers (or any of their respective Affiliates) shall exchange completed and executed forms required by applicable Law with respect to the allocation (including IRS Form 8594) at least thirty (30) days prior to the due date for filing such forms and shall cooperate in the filing of any such forms, including any amendments to such forms required as a result of any adjustment to the Purchase Price pursuant to this Agreement.

### **ARTICLE III CLOSING; PURCHASE PRICE**

**3.1 Closing.** The closing of the transactions contemplated by this Agreement (the “*Closing*”) shall take place by electronic exchange of documents on the date that is two (2) Business Days after the date on which the conditions set forth in *Article VIII* have been satisfied or waived in writing by the Party entitled to the benefit thereof (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver in writing (by the Party entitled to the benefit thereof) of such conditions at the Closing) or such other time and place as Buyer and Sellers may mutually agree in writing. The date on which the Closing occurs is referred to in this Agreement as the “*Closing Date*”.

**3.2 Purchase Price.** On the terms and subject to the conditions set forth in this Agreement, the aggregate consideration for the Purchased Assets shall be (a)(i) the credit bid pursuant to Section 363(k) of the Bankruptcy Code against \$150,000,000 of the Obligations (as defined in the Term Loan Agreement) as of the Closing and (ii) an assumption by Buyer of up to \$60,000,000 of the DIP Obligations, subject to Buyer reaching an acceptable agreement for such assumption with the requisite lenders under the DIP Facility (clause (a)(i) and (ii), collectively the “**Credit Bid**”), (b) the instruction to Sellers to retain and use the Retained Cash and (c) the assumption of the Assumed Liabilities (collectively, the “**Purchase Price**”); provided, however, that the credit bid amount in *Section 3.2(a)(i)* shall be increased by the difference between \$60,000,000 and the outstanding DIP Obligations being assumed pursuant to *Section 3.2(a)(ii)*, up to a maximum increase of \$30,000,000; provided, further, that Buyer reserves the right, in its sole discretion to increase the Purchase Price (including any component thereof), subject to the Bid Procedures Order and applicable Law.

**3.3 Closing Deliverables.**

(a) At or prior to the Closing, Sellers shall deliver, or cause to be delivered:

(i) to Buyer, one or more assignment and assumption agreements, in a form and substance reasonably acceptable to Buyer and Seller (the “**Assignment and Assumption Agreements**”), duly executed by each Seller;

(ii) to Buyer, one or more bills of sale, in a form and substance reasonably acceptable to Buyer and Sellers (the “**Bills of Sale**”), duly executed by each Seller;

(iii) to Buyer, (A) one or more instruments of assignment of the Patents in form and substance reasonably acceptable to Buyer and Sellers (the “**Assignment of Patents**”); (B) one or more instruments of assignment of the Trademarks in a form and substance reasonably acceptable to Buyer and Sellers (the “**Assignment of Trademarks**”); (C) one or more instruments of assignment of the Trade Secrets and Software in form and substance reasonably acceptable to Buyer and Sellers (the “**Assignment of Trade Secrets and Software**”); (D) one or more instruments of assignment of the Copyrights in form and substance reasonably acceptable to Buyer and Sellers (the “**Assignment of Copyrights**”); and (E) one or more instruments of assignment of the domain names in form and substance reasonably acceptable to Buyer and Sellers (the “**Assignment of Domain Names**”), in each case, duly executed by each Seller;

(iv) to Buyer, pursuant to wire instructions provided by Buyer to Sellers at least two (2) Business Days prior to the Closing, the Transferred Cash;

(v) to Buyer, a properly executed IRS Form W-9 with respect to each Seller;

(vi) to Buyer, a counterpart of the Subcontract Agreement Pending Novation, duly executed by each Seller;

(vii) to Buyer, a counterpart of the Transition Services Agreement, duly executed by each Seller;

(viii) to the Escrow Agent, an original, signed but undated FAA Bill of Sale in respect of each Aircraft, together with all other documents required to be filed with the applicable Aviation Authority to register such Aircraft and Engine in the name of Buyer with the applicable Aviation Authority;

(ix) to Buyer, at least two (2) Business Days prior to the Closing Date, a priority search certificate from the International Registry evidencing either (A) that there are no registrations on the International Registry relating to each Airframe and Engine or (B) if there are any registrations on the International Registry relating to any Airframe or Engine, evidence of the discharge of such registration effective at or prior to the Closing; and

(x) to Buyer, at least five (5) Business Days prior to the Closing Date, copies of the Certificate of Registration and Certificate of Airworthiness with respect to each Aircraft.

(b) At the Closing, Buyer shall deliver, or cause to be delivered, to Sellers:

(i) satisfaction of the Purchase Price as to the Credit Bid by discharging each Seller, and each Seller shall be discharged, from (x) the Term Loan Agreement in an amount equal to the Term Loan Agreement component of the Credit Bid and (y) the DIP Credit Agreement in an amount equal to the DIP Obligations that are a component of the Credit Bid;

(ii) the Assignment and Assumption Agreements, duly executed by Buyer;

(iii) the Bills of Sale, duly executed by Buyer;

(iv) the Assignment of Patents, Assignment of Trademarks, Assignment of Trade Secrets and Software, Assignment of Copyrights and Assignment of Domain Names, each duly executed by Buyer;

(v) a counterpart of the Subcontract Agreement Pending Novation, duly executed by Buyer; and

(vi) a counterpart of the Transition Services Agreement, duly executed by Buyer.

(c) ***Escrow Procedures.***

(i) As promptly as reasonably practicable following the date hereof, Sellers shall engage an escrow agent reasonably acceptable to Buyer (the “***Escrow Agent***”) for purposes of facilitating the transfer of the Airframe and Engines to Buyer as

contemplated by this Agreement. Sellers, on the one hand, and Buyer, on the other hand, shall each bear fifty percent (50%) of the costs of the Escrow Agent.

(ii) Immediately following the Closing, Sellers shall instruct the Escrow Agent to (A) date and cause the filing and recording of the FAA Bill of Sale for the benefit of Buyer or its Designated Purchaser and (B) upon receipt of the necessary authorization codes from the FAA register the transfer of each Airframe and Engine) from Sellers to Buyer or its Designated Purchaser as a sale on the International Registry.

**3.4 Withholding.** Buyer shall be entitled to deduct and withhold from any consideration otherwise payable or deliverable to Sellers pursuant to this Agreement such amounts as may be required to be deducted or withheld therefrom under any Law. The Parties shall cooperate in good faith to minimize, to the extent permissible under applicable Law, the amount of any such deduction or withholding. To the extent such amounts are so deducted or withheld, and remitted to the applicable Governmental Authority in accordance with applicable Law, such amounts shall be treated for all purposes as having been paid to the Person to whom such amounts would otherwise have been paid absent such deduction or withholding.

#### **ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLERS**

Each Seller represents and warrants to Buyer, as of the Execution Date and as of the Closing Date, the following:

**4.1 Organization; Existence.**

(a) Each Seller is duly organized, validly existing and in good standing under the Laws of jurisdiction of its organization and, subject to the provisions of the Bankruptcy Code, has requisite power and authority to own, lease and operate its properties and conduct its business (including the Business) as currently conducted.

(b) Each Seller is duly qualified to do business and is in good standing as a foreign corporation or other entity in each jurisdiction where such qualification is required for the ownership or operation of the its assets, except for failures to be so qualified or to be in such good standing as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**4.2 Subsidiaries.** Other than Monterrey Sub, MDH has no Subsidiaries and does not own any securities of any other Person. Monterrey Sub has no Subsidiaries and does not own any securities of any other Person. Monterrey Sub does not own or hold any Permits necessary for Sellers to own, lease and use the Purchased Assets as currently owned, leased or used and to carry on and operate the Business as currently conducted.

**4.3 Authorization; Execution and Delivery; Enforceability.** Subject to entry of the Sale Order and any other Order necessary to consummate the transactions contemplated by this Agreement, the execution, delivery and performance by each Seller of this Agreement and each Transaction Document to which any Seller is or will be a party and the consummation by each Seller of the transactions contemplated hereby and thereby have been, or prior to the Closing will

be, duly authorized by all necessary corporate or other action on the part of each Seller. Each Seller has all necessary power and authority to execute and deliver this Agreement and each other Transaction Document to which any Seller is or will be a party and to consummate the transactions contemplated hereby and thereby and to perform its obligations hereunder and thereunder. Subject to entry of the Sale Order and any other Order necessary to consummate the transactions contemplated by this Agreement and the other Transaction Documents, this Agreement has been, and at or prior to the Closing, each Transaction Document to which any Seller is or will be a party will be, duly and validly executed and delivered by each Seller and, assuming due authorization, execution and delivery by the other Parties and the entry of the Sale Order, this Agreement constitutes, and each other Transaction Document to which any Seller is or will be a party (when duly and validly executed and delivered) will constitute, the legal, valid and binding obligation of each Seller, enforceable against each Seller in accordance with its terms, subject to the Bankruptcy and Equity Exception.

#### **4.4 *Noncontravention; Consents and Approvals.***

(a) Subject to entry of the Sale Order and any other Order necessary to consummate the transactions contemplated by this Agreement, neither the execution and delivery by any Seller of this Agreement and each other Transaction Document to which any Seller is or will be a party, nor the consummation by any Seller of the transactions contemplated hereby or thereby, will (i) conflict with or result in a breach of the Organizational Documents of any Seller, (ii) violate any Law or Order to which any Seller or its respective assets or properties, or any of the Purchased Assets may be subject, (iii) violate, conflict with, result in a breach of, constitute a default (with or without notice or lapse of time, or both) under, result in the acceleration of, create in any Person the right to accelerate, terminate, modify or cancel or require any notice under, or result in the creation of any Lien (other than Permitted Liens) on, any Material Contract, after giving effect to the Sale Order and any applicable Order of the Bankruptcy Court authorizing the assignment and assumption of any such Material Contract hereunder, or (iv) result in the creation of any Lien (other than Permitted Liens) upon any of the Purchased Assets, except, in the case of clause (ii), (iii) or (iv), for such violations, conflicts, breaches, defaults, accelerations, rights, failures to give notice, or Liens as would not, individually or in the aggregate, reasonably be expected to be material to the Business and the Purchased Assets, taken as a whole.

(b) Except for (i) the entry of the Sale Order, (ii) compliance with applicable requirements under Antitrust Laws, and (iii) as set forth on *Schedule 4.4(b)*, no consent, waiver, approval, Order or authorization of, or declaration or filing with, or notification to, any Person or Governmental Authority (“**Approvals**”) is required on the part of any Seller in connection with the execution and delivery by any Seller of this Agreement or any other Transaction Document which any Seller is or will be a party or the consummation by any Seller of the transactions contemplated hereby or thereby (with or without notice or lapse of time, or both), except for such consents, waivers, approvals, Orders, authorizations, declarations, filings or notifications, the failure of which to obtain or make would not, individually or in the aggregate, reasonably be expected to be material to the Business and the Purchased Assets, taken as a whole.

**4.5 *Litigation.*** Except as set forth on *Schedule 4.5*, there are no, and since January 1, 2019 there have been no, (a) Proceedings pending, or, to the Knowledge of any Seller, threatened against any Seller, the Purchased Assets, the Assumed Liabilities or the Business, or (b) Orders

outstanding, which, in each case, would (x) adversely affect the ability of any Seller to enter into this Agreement or to consummate the transactions contemplated hereby, (y) impose any material Liability upon the Purchased Assets, the Assumed Liabilities or the Business (other than an Excluded Liability) or (z) otherwise, individually or in the aggregate, reasonably be expected to be material to the Business and the Purchased Assets, taken as a whole.

**4.6 Compliance with Laws.** Each Seller is, and since the Specified Date has been, in compliance with applicable Laws, except where any non-compliance would not, individually or in the aggregate, reasonably be expected to be material to the Business and the Purchased Assets, taken as a whole. No Seller has received any written notice, or to Knowledge of any Seller any other notice, from any Governmental Authority relating to violations or alleged violations of, failure to comply with or defaults under, any Law, Order or Permit, except as would not, individually or in the aggregate, reasonably be expected to be material to the Business and the Purchased Assets, taken as a whole.

**4.7 Permits.** Each Seller holds all Permits necessary for Sellers to own, lease and use the Purchased Assets as currently owned, leased or used and to carry on and operate the Business as currently conducted except where the failure to possess any such Permit would not, individually or in the aggregate, reasonably be expected to be material to the Business and the Purchased Assets, taken as a whole. *Schedule 4.7(i)* sets forth a list as of the date hereof of all Permits material to the Business (the “**Material Permits**”). Except as set forth on *Schedule 4.7(ii)*, (i) all Permits held by Sellers are valid and in full force and effect, (ii) each Seller is in compliance with the terms of all such Permits, (iii) there are no Proceedings pending or, to the Knowledge of any Seller, threatened that seek the revocation, cancellation, suspension, failure to renew or adverse modification of any such Permit or that would reasonably be expected to result in the imposition of a fine, forfeiture, or civil penalty against any Seller, (iv) each Seller has timely filed applications to renew all such Permits, (v) no Governmental Authority has commenced, or given written notice to any Seller that it intends to commence, any Proceeding to revoke, or suspend, rescind, modify or not renew, or to impose any materially adverse condition on, any such Permit, and (vi) all reports and filings required to be filed with any Governmental Authority by any Seller with respect to any such Permit have been timely filed, and all regulatory fees, contributions and surcharges due and payable with respect to such Permits have been timely paid, in each case of the foregoing clauses (i) through (vi), except as would not, individually or in the aggregate, reasonably be expected to be material to the Purchased Assets and the Business, taken as a whole.

**4.8 Material Contracts.**

(a) *Schedule 4.8* sets forth a true, correct and complete list of the following the Assigned Contracts as of the date hereof (collectively, the “**Material Contracts**”):

- (i) any Lease with respect to the Leased Real Property;
- (ii) any Contract for the lease of personal property (tangible or intangible) to or from any Person providing for lease payments in excess of \$250,000 per annum;
- (iii) any Contract with any Material Customer or Material Supplier;

(iv) any Government Contract the period of performance of which has not yet expired or been terminated and that provides for payments to any Seller (“**Current Government Contract**”);

(v) any Contract to which any Seller is a party (A) pursuant to which any Seller is granted a right to use any third party Intellectual Property that is material to the Business, other than (x) non-exclusive licenses for commercially available or off-the-shelf software or (y) software that is subject to click-through or shrink wrap agreements entered into by any Seller in the ordinary course of business, in each case solely to the extent licensed at less than \$50,000 per annum (each, an “**Inbound License**”), (B) pursuant to which any Seller grants a third party the right to use any Purchased Intellectual Property that is material to the Business, other than any Contract with any end user of any Sellers’ products or services which is entered into in the ordinary course of business or any marketing agreement which contains an incidental trademark license to use the Trademarks of any Seller in the scope of providing such services (each, an “**Outbound License**”), (C) covering the settlement of any claims related to any Intellectual Property or (D) pursuant to which any Seller is prohibited or restricted in any manner from using any Purchased Intellectual Property; or

(vi) any Contract with any Employee that includes base annual compensation in excess of \$100,000 that is not terminable at-will on no more than thirty (30) days’ advance notice and includes no severance-type benefits;

(vii) any Contract that (A) restricts the ability of any Seller or the Business to compete in any geography or in any line of business with any Person, (B) grants any right of first refusal or right of first obligations or restrictions to any Person, (C) contains exclusivity obligations binding on any Seller or the Business or (D) grants “most favored nation” status to any Person;

(viii) any Contract for capital expenditures in excess of \$250,000;

(ix) any Contract with respect to a joint venture, partnership or other similar arrangement exclusively;

(x) any Contract that relates to the acquisition or disposition of any assets or properties used in the conduct of the Business (whether by merger, sale of stock, sale of assets or otherwise) pursuant to which (A) payment obligations by or to any Seller that remain outstanding, (B) any earn-out, indemnification, deferred or contingent payment obligations remain outstanding or (C) any indemnification payment obligations remain outstanding (in each case, excluding acquisitions or dispositions of supplies, inventory, merchandise or products in the ordinary course of business);

(xi) any Contract related to Indebtedness;

(xii) any Contract that is a collective bargaining agreement; and

(xiii) to the extent not otherwise included in *Section 4.8(a)(i)-(xii)*, any Contract with an Affiliate of any Seller (other than another Seller).

(b) With respect to each Material Contract, (i) such Contract is in full force and effect and constitutes the legal, valid and binding obligation of the applicable Seller and, to the Knowledge of any Seller, each counterparty thereto, enforceable against the applicable Seller and, to the Knowledge of any Seller, each counterparty thereto in accordance with its terms and conditions, subject to the Bankruptcy and Equity Exception and (ii) neither the applicable Seller nor, to the Knowledge of any Seller, any counterparty thereto is in material breach or material default thereof, and (iii) since the Specified Date, neither the applicable Seller nor, to the Knowledge of any Seller, any counterparty thereto, has commenced any Proceeding against any other party to such Contract or given or received any written or, to the Knowledge of any Seller, other notice of any material breach or material default under such Contract that has not been withdrawn or dismissed, except, in the cases of clauses (ii) and (iii), for breaches or defaults caused by or resulting from the Chapter 11 Cases. Each Seller has prior to the date of this Agreement delivered to, or made available to, Buyer, true and complete copies of each Material Contract.

#### **4.9 *Material Customers; Material Suppliers.***

(a) *Schedule 4.9(a)* contains a true and correct list of the two (2) customers that generated the most revenue for the Business during the twelve (12)-month period ended December 31, 2021 (“**Material Customers**”), and the aggregate amount of such sales for each Material Customer during such period. Since December 31, 2020, no Material Customer has canceled or otherwise adversely modified in any material respect, any Contract related to the Business (and no Seller has received, since December 31, 2020, any written or, to Knowledge of any Seller, other notice or communication of any intention to do so). There is no material dispute pending or, to the Knowledge of any Seller, threatened with or by any Material Customer with respect to its business relationship with the Business.

(b) *Schedule 4.9(b)* contains a true and correct list of the ten (10) suppliers and vendors of goods and services for which the Business paid the most fees to during the twelve (12)-month period ended December 31, 2021 (“**Material Suppliers**”), and the aggregate amount paid to each Material Supplier during such period. Since December 31, 2020, no Material Supplier has canceled or otherwise adversely modified in any material respect, any Contract related to the Business (and no Seller has received, since December 31, 2020, any written or, to Knowledge of any Seller, other notice or communication of any intention to do so). There is no material dispute pending or, to the Knowledge of any Seller, threatened with or by any Material Supplier with respect to its business relationship with the Business.

#### **4.10 *Financial Statements; No Undisclosed Liabilities.***

(a) Sellers have delivered to Buyer true and complete copies of (collectively the “**Company Financial Statements**”): (i) audited financial statements of Sellers as of and for the years ended December 31, 2019 and December 31, 2020 and (ii) an interim unaudited balance sheet and statement of income of Sellers as of and for the nine (9)-month-period ended September 30, 2021 (the “**Balance Sheet Date**”). A true and accurate copy of the Company Financial Statements has been posted to the data room hosted by Intralinks titled “Project Maverick” (the “**Data Room**”) in a location accessible to Buyer at least five (5) days prior to the Execution Date. The Company Financial Statements present fairly, in all material respects, the financial condition, and results of operations of Sellers for the dates or periods indicated thereon, in all material

respects in accordance with GAAP applied on a consistent basis throughout the periods indicated, except, in the case of the interim unaudited Company Financial Statements, for normal recurring year-end adjustments and the absence of footnotes and other presentation items.

(b) Sellers do not have any known Liabilities, except for (i) the Liabilities and obligations reflected in the Company Financial Statements as of the Balance Sheet Date, (ii) trade payables, accrued expenses and other current liabilities incurred by any Seller in the ordinary course of business after the Balance Sheet Date, (iii) Liabilities in respect of future performance under existing executory Contracts (other than on account of a breach or default thereunder), (iv) Liabilities that constitute Excluded Liabilities or (v) such Liabilities that would not reasonably be expected to be material to the Business and the Purchased Assets, taken as a whole.

(c) The books and records of Sellers, in all material respects, accurately and fairly reflect in reasonable detail the transactions in and dispositions of the assets of the Business. Sellers maintain a system of internal accounting controls sufficient to provide reasonable assurance that, with respect to the Business, in all material respects: (i) transactions are executed in accordance with management's general or specific authorization, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with the methodologies and assumptions used in the preparation of the Company Financial Statements in accordance with GAAP, (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

#### ***4.11 Title and Sufficiency of Assets; Tangible Property.***

(a) The applicable Seller has good and valid title to, a valid leasehold interest in or a valid license to use all of the material Purchased Assets (whether tangible or intangible, including Intellectual Property), free and clear of all Liens (other than Permitted Liens). Upon Closing, Buyer will acquire exclusive, good and valid title to, a valid leasehold interest in or a valid license to use all of the material Purchased Assets.

(b) Disregarding *Section 2.5*, the Purchased Assets constitute all material assets (whether tangible or intangible, including Intellectual Property) and material rights used in or necessary to conduct the Business in all material respects as conducted by Sellers as of the date hereof and as of the Closing and are sufficient in all material respects for the continued conduct of the Business immediately following the Closing in substantially the same manner as conducted as of the date hereof and as of the Closing.

(c) *Schedule 4.11(c)* contains a true and complete list of all Aircraft, Airframes and Engines, in each case, as of February 23, 2022. All material tangible Purchased Assets, including all Inventory, machinery, tools and equipment, are in good condition (subject to normal wear and tear and taking into account age and usage) and are suitable in all material respects for the uses for which intended.

#### ***4.12 Intellectual Property.***

(a) ***Registered Intellectual Property; Material Software.*** *Schedule 4.12(a)(i)* contains a complete and accurate list, as of the date hereof, of the following items included in the

Purchased Intellectual Property (including the title, registration or application number (as applicable), filing date and issuance date therefor): (i) Patent applications and issued Patents, (ii) Trademark registrations and applications, (iii) Copyright registrations and applications, and (iv) domain names of any Seller. The applicable Seller is the sole and exclusive legal and beneficial owner and, with respect to applications and registrations, record owner of all of the Purchased Intellectual Property in *Schedules 4.12(a)(i)* and *4.12(a)(ii)*, and all such Purchased Intellectual Property is subsisting, and to the Knowledge of any Seller, valid and enforceable. No Seller has granted any Person any right to control the prosecution or registration of any Purchased Intellectual Property, or to commence, defend, or otherwise control any Claim with respect to any Purchased Intellectual Property. All necessary maintenance and renewal documentation and fees in connection with the Patents in *Schedule 4.12(a)* have been timely filed with the appropriate authorities and paid.

(b) ***Ownership and Rights to Use Intellectual Property.*** No Seller has assigned any Purchased Intellectual Property to any other Person. Except as set forth on *Schedule 4.12(b)*, none of the Purchased Intellectual Property is subject to any Proceeding before, outstanding Order, writ, or injunction of or stipulation with any Governmental Authority, or any Contract entered into in settlement of such a Proceeding, restricting the use, transfer, licensing or exploitation by any Seller. Except as disclosed in *Schedule 4.12(b)*, no Seller has granted any exclusive licenses to or exclusive rights under any material Purchased Intellectual Property. Except as set forth on *Schedule 4.12(b)*, neither this Agreement nor the transactions contemplated hereby will result in (A) any Person being granted rights or access to, or the placement in or release from escrow of, any source code of any Seller, (B) Buyer or any Seller being obligated to grant to any other Person any right in any Purchased Intellectual Property, (C) any current or former Affiliate, partner, director, stockholder, officer, third-party consultant or employee retaining any rights to use or otherwise exploit any of the Purchased Intellectual Property, (D) any Person having the right to terminate or alter Buyer's or Sellers' right to own, use, or hold for use any Purchased Intellectual Property as presently owned, used or held for use in the conduct of the Business, or (E) Buyer or any Seller being obligated to pay any royalties or other amounts to any other Person in excess of those payable by any Seller prior to the Closing Date. The applicable Seller has the right to use any Inbound License and Outbound License, and Buyer will have the same rights immediately after the Closing Date, in each case as would not, individually or in the aggregate, have a Material Adverse Effect.

(c) ***No Infringement.*** To the Knowledge of Sellers, the conduct of the business of Sellers, as such business has been conducted, has not infringed, diluted, misappropriated or otherwise violated, and Sellers' continued conduct of the business, which includes the sale or other distribution of its products does not infringe, dilute, misappropriate, or otherwise violate the Intellectual Property or other rights of any Person. Since the Specified Date there has been no written or, to the Knowledge of Sellers, oral claim of infringement, dilution, misappropriation, or other violation, asserted or, to the Knowledge of any Seller, threatened (including in the form of offers or invitations to obtain a license) against any Seller. To the Knowledge of any Seller, (i) no product currently sold by any Seller infringes any Person's Intellectual Property rights or otherwise violates or is in breach of any Material Contract, including the Boeing Cross License; and (ii) no Person is infringing, misappropriating, or otherwise violating any Purchased Intellectual Property, and since January 1, 2019 no such claims have been asserted or threatened in writing against any Person by any Seller.

(d) **Contributors.** Each current and former employee, consultant and independent contractor of each Seller that has invented, created, developed or reduced to practice any Patents, Copyrights or Trade Secrets included in the Purchased Intellectual Property (each, a “**Contributor**”) has executed a written agreement substantially in the form provided to Buyer that (i) assigns to the applicable Seller all right, title and interest in and to any and all Purchased Intellectual Property invented, created, developed or reduced to practice by such Contributor in the course of his, her or its activities for any Seller or during working hours for any Seller or using the resources of any Seller (except for moral rights for which Sellers have received a waiver) and (ii) contains provisions designed to prevent unauthorized disclosure of Sellers’ Trade Secrets. To the Knowledge of any Seller, no party to such written agreements has breached or violated the terms thereof or has attempted or threatened to challenge the enforceability, scope or applicability of any such agreement. No Purchased Intellectual Property that is material to the Business as currently conducted was invented, created, developed or reduced to practice by a current or former employee, consultant or independent contractor of any Seller prior to such Person’s employment or engagement by any Seller which has not been assigned to any Seller pursuant to a written agreement, copies of which agreements have been provided to Buyer.

(e) **Maintenance of Trade Secrets.** Each Seller takes reasonable measures consistent with industry standards to protect the confidentiality of Trade Secrets, including requiring all Persons having access thereto to execute written non-disclosure agreements. To the Knowledge of any Seller, there has not been any unauthorized disclosure or publication of any material Trade Secret of each Seller (including any such information of any other Person disclosed in confidence to any Seller) to any Person in a manner that has resulted in the loss of Trade Secret protection or other proprietary rights in and to such information.

(f) **Information Technology; Security.** Each Seller has taken commercially reasonable steps and implemented commercially reasonable procedures to protect its information technology systems from (i) the inclusion of any device or feature designed to permit unauthorized access, disrupt, disable or otherwise harm, damage or impair Software, hardware or data and (ii) unauthorized access, use, modification or other misuse. There have been no material security breaches in the information technology systems of each Seller, and there have been no disruptions in any of the information technology systems of each Seller that have materially adversely impacted the Business or operations of any Seller. Each Seller maintains commercially reasonable disaster recovery and security plans, procedures and facilities.

(g) **Privacy.** Each Seller with respect to the privacy and security of all information and data of any kind possessed, received, held, accessed, used or processed by any Seller in each case defined as “personal data,” “personally identifiable information,” or “personal information” under any applicable Data Laws (as defined below), including information that identifies any individual, or can be used to identify any individual (“**PII**”), has since the Specified Date, been in material compliance with (A) all applicable Laws that apply to such Seller’s use of such PII (collectively, “**Data Laws**”), and (B) any applicable externally published privacy policy of such Seller applicable to such PII (each being a “**Privacy Policy**”) and (A) to (B) being together the “**Data Standards**”). Except as would not reasonably be expected to be, individually or in the aggregate, material to the Business or the Purchase Assets, since January 1, 2020, each Seller has taken commercially reasonable measures, including organizational, physical and technical measures, designed to protect PII against unauthorized and unlawful loss, access, use, or

modification. To the Knowledge of any Seller, since the Specified Date, there has been no material unauthorized or unlawful loss, access, use, modification, or disclosure of PII by any Seller or, to the Knowledge of any Seller, by any of Sellers' suppliers, service providers, or contractors ("**Security Incident**"). Since the Specified Date, no claims have been asserted in writing or, to the Knowledge of any Seller, threatened against any Seller alleging a violation of any Person's privacy rights, or any Data Laws, including with respect to a Security Incident.

(h) **Open Source.** Except as set forth on *Schedule 4.12(h)*, no Seller has Open Source Software that has been incorporated into, integrated with, combined with, or linked to any Software developed by any Seller in any way, or used in any manner that, with respect to any of Sellers' products (excluding the Open Source Software itself): (i) requires its disclosure or distribution in source code form, (ii) requires the licensing thereof for the purpose of making derivative works, (iii) imposes any restriction on the consideration to be charged for the distribution thereof, or (iv) creates, or purports to create, obligations for any Seller with respect to Purchased Intellectual Property or grant, or purport to grant, to any third party, any rights or immunities under Purchased Intellectual Property. With respect to any Open Source Software that is or has been used by any Seller in any way that is material to the Business, such Seller has been, and is in material compliance with, all applicable licenses with respect thereto.

#### **4.13 Real Property.**

(a) **No Owned Real Property.**

(i) Sellers do not own any real property or any buildings or other structures (other than the structures located on the Leased Real Property (the "**Structures**")), and Sellers do not own any interest in real property, except for the Leased Real Property. None of the Sellers has any options or any contractual obligations to purchase or acquire any interest in real property.

(ii) *Schedule 4.13(a)(ii)* sets forth a true, correct and complete list of all material Structures. All Structures and all improvements and fixtures located on, under or within the Structures, and all other material aspects of each Structure (including heating, cooling and ventilation, electrical, plumbing, drainage, sprinkler and other mechanical or other systems or improvements) comply in all material respects with valid and current certificates of occupancy or similar Permits to the extent required by Law for the use thereof, and conform in all material respects with all applicable Laws.

(iii) No Seller has leased or granted to any Person, nor are any of the Structures subject to any Lease or grant to any Person of, any right to the use, purchase, occupancy or enjoyment of such Structures (or any portion thereof). The Structures are located within the boundary lines of the real property parcels on which they reside, are not encroached upon, are not in violation in any material respect of any applicable setback requirements, Law, restriction or similar agreement and do not encroach in any material way on any other property or any easement that may burden in any material respect the Structures.

(b) *Leased Real Property.*

(i) *Schedule 4.13(b)* sets forth a true, correct and complete list of all Leased Real Property as of the date hereof. The applicable Seller has a good and valid leasehold or sublease interest to the Leased Real Property, free and clear of all Liens (other than Permitted Liens). Except as set forth on *Schedule 4.13(b)*, none of the Leased Real Property is subject to any sublease or grant to any Person of any right to the use, occupancy or enjoyment of the Leased Real Property (or any portion thereof) that would materially impair the use of the Leased Real Property in the operation of the Business as conducted on the date hereof.

(ii) With respect to the Leased Real Property: (A) the applicable Seller is in exclusive possession thereof; (B) the Leases are valid, binding and in full force and effect and there are no unwritten or oral modifications thereof or any course of dealing or business operations that would reasonably be construed as a modification to the Leases that would reasonably be expected to be material to the Business; (C) the applicable Seller is not a lessor under, or otherwise a party to, any lease, sublease, license, concession or other agreement pursuant to which such Seller has granted to any Person the right to use or occupy all or any portion of the Leased Real Property; (D) there is no, and no Seller has received written notice from any Governmental Authority regarding, condemnation, expropriation or other Proceedings in eminent domain pending or affecting the Leased Real Property, or any change in zoning affecting the current use thereof, and, to the Knowledge of any Seller, no such condemnation or other taking or change in zoning is threatened; and (E) no Seller has received notice from any Governmental Authority or other Person, that the use and occupancy of any of the Leased Real Property, as currently used and occupied, and the conduct of the business thereon, in the ordinary course, violates in any material respect any deed restrictions, contractual obligation, or applicable Law consisting of building codes, zoning, subdivision or other land use or similar Laws.

(iii) Except pursuant to the Leases relating to the Leased Real Property, no Seller leases, subleases, licenses or uses or occupies any real property.

**4.14 *Environmental, Health and Safety.***

(a) Except as set forth on *Schedule 4.14*, each Seller is in compliance with all applicable Environmental Laws with respect to the Purchased Assets and the Leased Real Property, except in any such case where the failure to be in compliance would not, individually or in the aggregate, reasonably be expected to be material to the Business and the Purchased Assets, taken as a whole. No Seller has received any notice or report regarding any material violation of Environmental Laws or any material Liabilities relating to the Purchased Assets or the Leased Real Property arising under Environmental Laws, other than any such notice or report that has now been resolved. There are no material Orders issued to any Seller outstanding, or any Proceedings pending or, to the Knowledge of any Seller, threatened relating to compliance with or Liability under any Environmental Laws affecting the Purchased Assets or any Leased Real Property.

(b) There is no pending or, to the Knowledge of any Seller, threatened Proceeding alleging Liability under or a violation of any Environmental Law that would

reasonably be expected to be material to the Business and the Purchased Assets, taken as a whole. There are no currently existing facts, circumstances, conditions or occurrences regarding any Seller, the Purchased Asset, the Assumed Liabilities or the Business that, to the Knowledge of any Seller, would reasonably be expected (i) to form the basis of such a Proceeding or (b) cause any Purchased Asset to be subject to any material restrictions on its ownership, occupancy, operation or use under any Environmental Laws.

(c) In connection with Sellers' operation of the Business, there has been no Release of, or exposure to, any Hazardous Materials at any Leased Real Property or, to the Knowledge of any Seller, at any off-site location to which Hazardous Materials generated by the Business were sent for treatment, recycling, storage or disposal, that, in either case, would reasonably be expected to give rise to any liability under any Environmental Laws that would be material to the Business and the Purchased Assets, taken as a whole.

(d) Each Seller has made available to Buyer all material environmental reports, studies, analyses, investigations, audits and reviews in Sellers' possession with respect to the Purchased Assets and the Leased Real Property.

#### ***4.15 Taxes.***

(a) All Tax Returns required to be filed relating to the Purchased Assets or the Assumed Liabilities have been timely filed (taking into account any extension of time within which to file), and all such Tax Returns are true, correct, and complete in all material respects. No Seller is currently the beneficiary of any extension of time within which to file any Tax Return, except for any automatic extensions obtained in the ordinary course of business. All material amounts of Taxes (whether or not reflected on such Tax Returns) relating to the Purchased Assets, the Business or the Assumed Liabilities required to be paid have been timely paid in full.

(b) No written notice from any Governmental Authority of any proposed adjustment, deficiency or underpayment of material amounts of Taxes by, or with respect to, the Purchased Assets has been received by any Seller that has not since been fully satisfied by payment or been finally withdrawn, and no written notification has been provided by any Governmental Authority of an intent to raise such issues.

(c) No claim has been made in the past five (5) years by a Governmental Authority that material Tax Returns are required to be filed in relation to the Purchased Assets, the Business or the Assumed Liabilities in a jurisdiction where no such Tax Returns have been filed are currently filed (as applicable).

(d) No agreement or waiver extending any statute of limitations period for assessment, reassessment or collection of any Taxes with respect to the Purchased Assets, the Business or the Assumed Liabilities has been executed or filed with any Governmental Authority for any taxable period with respect to which the statute of limitations has not expired (after giving effect to any extension or waiver).

(e) No Liens for Taxes (other than Permitted Liens) exist with respect to any of the Purchased Assets.

(f) There are no pending, in progress or threatened audits, investigations, disputes, notices of deficiency, assessments or other actions or Proceedings for or relating to any Liability for Taxes of any Seller with respect to the Purchased Assets, the Business or the Assumed Liabilities.

(g) None of the Assumed Liabilities includes (i) any obligation to any Person under any Tax allocation, sharing, indemnity obligation, or similar agreement, arrangement, understanding, or practice with respect to Taxes (other than any commercial agreement entered into in the ordinary course of business, the principal subject of which is not Taxes), and (ii) an obligation to pay the Taxes of any Person as a transferee or successor or by contract, including an obligation under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or foreign Law) (other than any commercial agreement entered into in the ordinary course of business, the principal subject of which is not Taxes).

#### **4.16 Employee Benefits.**

(a) *Schedule 4.16(a)* contains a true, correct and complete list of all material Seller Plans as of the date hereof. With respect to each material Seller Plan, each Seller has made available to Buyer true, correct and complete copies of (i) the current plan document, including any amendments thereto, (ii) the most recent summary plan description (including any summary of material modifications), (iii) any material communication to or from any Governmental Authority, (iv) the most recently filed IRS Form 5500, (v) the most recent actuarial report, financial statement and trustee report and (vi) the most recent determination or opinion letter from the IRS.

(b) (i) Each Assumed Plan has been and is being administered, maintained and operated in all material respects in compliance with all applicable Laws and in accordance with its terms, (ii) each Assumed Plan that is intended to be “qualified” within the meaning of Section 401(a) of the Code has received or is the subject of a currently applicable favorable determination letter, opinion letter or advisory letter from the IRS, stating that its related trust is exempt from taxation under Section 501(a) of the Code, and no event or circumstance exists that has affected or is likely to adversely affect the qualified status of any such Assumed Plan, (iii) there are no Proceedings (other than routine claims for benefits) relating to any Assumed Plan.

(c) No Seller has any obligation to provide or make available postemployment benefits under any Assumed Plan which is a “welfare plan” (as defined in Section 3(1) of ERISA), except as may be required under COBRA or similar Law, and at the sole expense of such individual.

(d) Except as set forth on *Schedule 4.16(d)*, no Seller nor any ERISA Affiliate maintains or contributes to, or has any Liability in respect of any plan that is (i) subject to Section 412 or 430 of the Code, Section 302 or 303 of ERISA or Title IV of ERISA, (ii) a multiple employer plan as described in Section 413(c) of the Code, or (iii) a “multiple employer welfare arrangement” within the meaning of Section 3(40) of ERISA.

(e) The consummation of the transactions contemplated by this Agreement will not, either alone or in combination with another event, (i) increase any benefits or result in the acceleration of the timing of payment, vesting or funding of any benefits under any Assumed Plan,

(ii) entitle any Service Provider to, or accelerate the time of payment or vesting, or increase the amount of, any compensation or benefit due any Service Provider, (iii) result in the triggering or imposition of any restrictions or limitations on the rights to amend or terminate any Assumed Plan, or (iv) result in any payment or benefit that would be nondeductible pursuant to Section 280G of the Code.

(f) No Assumed Plan is maintained, contributed to or required to be contributed to outside the United States or otherwise covers any Employee or other Service Provider who principally resides or works outside of the United States on behalf of any Seller.

(g) There are no pending, or to the Knowledge of any Seller, threatened claims involving any Assumed Plan (other than routine claims for benefits).

(h) Each Assumed Plan that constitutes a “non-qualified deferred compensation plan” within the meaning of Section 409A of the Code complies in all material respects in both form and operation with the requirements of Section 409A of the Code.

#### **4.17 Labor Matters.**

(a) Each Seller has provided Buyer on a confidential basis a true, complete and correct list of the Employees as of the most recent practicable date prior to the date hereof specifying each individual’s (i) title or position, (ii) base salary, (iii) 2021 bonus, (iv) date of hire, (v) Fair Labor Standards Act classification, and (vi) leave status (the “*Employee Schedule*”).

(b) Except as set forth on *Schedule 4.17(b)*, (i) no Seller is a party to any collective bargaining agreement with respect to Employees, (ii) no Employee is represented by any labor organization, (iii) no labor organization or group of Employees has made a demand for recognition or request for certification that is pending as of the date hereof and (iv) there are no representation or certification Proceedings or petitions seeking a representation election presently pending or, to the Knowledge of any Seller, threatened in writing, to be brought or filed with the National Labor Relations Board or other labor relations tribunal involving any Seller. During the past year, there have been no strikes, lockouts, work stoppages or slowdowns pending nor, to the Knowledge of any Seller, are any currently threatened in writing, against or involving any Seller.

(c) Except as set forth on *Schedule 4.17(c)*, there are no material charges, arbitrations, grievances, complaints or Proceedings pending or, to the Knowledge of any Seller, threatened against any Seller relating to the employment or termination of employment of any individual or group of individuals by any Seller.

(d) No Seller has experienced a “plant closing” or “mass layoff” or similar group employment loss (as defined in the WARN Act) with respect to which there is any unsatisfied Liability.

(e) Each Seller is, and for the last three (3) years has been, in compliance in all material respects with all applicable Laws respecting labor and employment practices, including all Laws respecting discrimination or harassment in employment, terms and conditions of employment, termination of employment, wages, disability rights or benefits, occupational safety and health (including the federal Occupational Safety and Health Act and any applicable state or

local Laws concerning COVID-19-related health and safety issues), employee whistle-blowing, immigration, workers' compensation, employee leave issues, affirmative action, unemployment insurance, employee privacy, employment practices and classification of employees, consultants and independent contractors.

(f) Since the Specified Date, no Seller has been party to a settlement agreement with a current or former Employee or other Service Provider resolving allegations of sexual harassment, nor have there been any material allegations of sexual harassment by or against any current or former Employee or other Service Provider in respect of the Business.

**4.18 Insurance Policies.** Except as would not, individually or in the aggregate, be material to Sellers, taken as a whole, Sellers are insured by insurance policies that are sufficient for compliance by Sellers with all applicable Laws and all Material Contracts. *Schedule 4.18* sets forth each material insurance policy or binders of fire, liability, product liability, umbrella liability, real and personal property, workers' compensation, vehicular, directors' and officers' liability, fiduciary liability and other casualty and property insurance and other material policies or binders applicable to or otherwise covering any Seller relating to the Purchased Assets or the Assumed Liabilities as of the date hereof. With respect to each such material insurance policy, (a) such policy is in full force and effect and constitutes the legal, valid and binding of the applicable Seller and, to the Knowledge of any Seller, the counterparty thereto, enforceable against the applicable Seller and, to the Knowledge of any Seller, the counterparty thereto in accordance with its terms and conditions, subject to the Bankruptcy and Equity Exception, (b) no Seller has received any written or, to the Knowledge of any Seller, other notice of cancellation or termination with respect to such policy or that any insurance will not be available in the future on substantially the same terms as currently in effect, and (c) there is no material claim pending under such policy, except, in the case of the foregoing clauses (a) through (c), as would not, individually or in the aggregate, reasonably be expected to be material to the Business and the Purchased Assets, taken as a whole.

**4.19 Brokers.** Except as set forth on *Schedule 4.19*, the fees and expenses of which will be paid by Sellers on or prior to the Closing Date, no broker, finder, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission, or the reimbursement of expenses in connection therewith, in connection with the transactions contemplated hereby based upon arrangements made by or on behalf of any Seller.

**4.20 Absence of Changes.**

(a) Since the Balance Sheet Date to the date hereof (i) there has not been any Material Adverse Effect and (ii) except for the activities undertaken in (x) connection with the transactions contemplated by this Agreement or (y) preparation of the Chapter 11 Cases and actions related thereto, each Seller has operated in all material respects in the ordinary course of business.

(b) Except as set forth on *Schedule 4.20(b)*, since the Balance Sheet Date there have not been any actions or events that would have required Buyer's consent pursuant to *Section 6.1* had such action or event occurred after the date hereof.

**4.21 Products Warranties and Liabilities.** The products that, since the Specified Date, have been sold by any Seller have been in conformity in all material respects with all express and implied warranties. No Seller has any material Liabilities arising out of any actual or alleged injury to individuals or property as a result of the ownership, possession or use of any product manufactured, sold, leased or delivered by any Seller. Since the Specified Date, (a) there have been no written, or to the Knowledge of any Seller, other product recalls or withdrawals or requests for product recalls or withdrawals by any Governmental Authority and (b) no written, or to the Knowledge of any Seller, other report of any material defects or malfunctions involving any product of any Seller has been filed or was or is required to have been filed with any Governmental Authority or Law.

**4.22 Absence of Unlawful Payments; Anticorruption; Anti-Money Laundering; Sanctions.**

(a) Except as set forth on *Schedule 4.22(a)*, each Seller is, and since the Specified Date, has been, in compliance with all applicable Anti-Bribery Laws, Anti-Money Laundering Laws, International Trade Laws and Sanctions Laws. Each Seller has adopted policies, procedures, and a system of internal controls that prohibit bribery and are designed to ensure compliance with all Anti-Bribery Laws, Anti-Money Laundering Laws, International Trade Laws and Sanctions Laws.

(b) Since the Specified Date, (i) no director, officer, or employee of any Seller is a Governmental Authority or employed by a Governmental Authority and (ii) no Seller nor, to the Knowledge of any Seller, any director, officer, employee, or agent acting on behalf of any Seller, has offered or given anything of value to: (x) any official or employee of a Governmental Authority, any political party or official thereof, or any candidate for political office or (y) any other Person, in any such case while knowing that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to any official or employee of a Governmental Authority or candidate for political office, in each case in violation of the Anti-Bribery Laws. There are no current or pending, and there have not since the Specified Date been any, internal investigations, third party investigations (including by any Governmental Authority), or internal or external audits that address any allegations or information concerning possible violations of the Anti-Bribery Laws by any Seller.

(c) Except as set forth on *Schedule 4.22(c)*, each Seller has obtained all required licenses, consents, notices, waivers, approvals, orders, registrations, declarations, Permits or other authorizations from, and have made any filings with, any applicable Governmental Authority for the import, export, re-export, deemed export, deemed re-export, or transfer required under the International Trade Laws and Sanctions Laws (the “*Export Approvals*”), in each case, necessary for the conduct of the Business as currently conducted. There are no pending or, to the Knowledge of any Seller, threatened, claims, complaints, charges, investigations, voluntary disclosures or Proceedings against any Seller related to any Anti-Money Laundering Laws, International Trade Laws or Sanctions Laws or any Export Approvals.

(d) No Seller nor, to the Knowledge of any Seller, any of their respective directors, officers, employees, (i) is, or has during the past five (5) years, been a Sanctioned Person

or (ii) has transacted business directly or indirectly with any Sanctioned Person or in or with any Sanctioned Country.

**4.23 Government Contracts.** Notwithstanding anything in the representations and warranties in this Agreement (including this *Section 4.23*) to the contrary, the Parties acknowledge that a jury trial in the Qui Tam Action was conducted in the Alabama District Court, on September 24, 2021, the jury returned a unanimous verdict finding against MDH and awarding damages in the amount of \$36,181,725 (the “**Jury Verdict**”) and MDH, Philip Marsteller and Robert M. Swisher, the United States, and National Union Fire Insurance Company of Pittsburgh, Pa. intend to enter into the Qui Tam Settlement Agreement. The existence of the Qui Tam Action, the Jury Verdict, and the Qui Tam Settlement Agreement, and the facts underlying the foregoing, in and of itself, shall not be deemed a breach or failure to perform any of Sellers’ representations, warranties, covenants or agreements in this Agreement for any purpose, including in respect of the conditions to Closing set forth in *Article VIII*; provided that the foregoing shall not limit in any manner the representations made in *Section 4.23(n)*.

(a) *Schedule 4.23(a)(i)* contains a complete and accurate list of each Current Government Contract as of the date hereof. To Sellers’ Knowledge, each Current Government Contract entered into since the Specified Date was legally awarded to Sellers. *Schedule 4.23(a)(ii)* contains a complete and accurate list as of the date hereof of all Government Bids submitted by Sellers since the Specified Date and for which no award has yet been made, including for each such Government Bid: (A) the customer name, (B) the type and number of the relevant solicitation document; (C) if such Government Bid is for a subcontract or task order under a prime contract, the applicable prime contract number, (D) the date of submission, and (E) the estimated value of the anticipated contract based on the Government Bid. Set forth on *Schedule 4.23(a)(iii)* is a list of each outstanding teaming agreement or existing joint venture agreement, of which Sellers have made available to Buyer correct and complete copies.

(b) (i) Sellers are not in material breach of or material default under any Current Government Contract, and no event has occurred which would constitute such a material breach or material default by Sellers; (ii) Sellers are in compliance with all applicable Laws relating to Government Contracts in all material respects, including FAR, DFARS, Cost Accounting Standards, Service Contract Act of 1963, as amended (including requirements for paying applicable Service Contract Act wage rate and fringe benefit rates), the Truthful Cost or Pricing Data Act (f/k/a the Truth in Negotiations Act), the Procurement Integrity Act and the Anti-Kickback Act, where and as applicable to each Current Government Contract or Government Bid; (iii) to the Knowledge of Sellers, no reasonable basis exists to give rise to a claim for Fraud in connection with any Government Contract or under the False Claims Act; and (iv) no Current Government Contract or Government Bid is currently the subject of any bid protest before any Governmental Authority and to the Knowledge of any Seller, no reasonable basis exists for any such Current Government Contract or Government Bid to become the subject of a bid protest.

(c) With respect to each Current Government Contract entered into since the Specified Date: (i) all representations and certifications made by Sellers in relation to any such Government Contract or Government Bid were complete and accurate in all material respects as of the date such representations and certificates were made by Sellers; and (ii) except as set forth on *Schedule 4.23(c)(ii)*, Sellers have not, since the Specified Date, received any notice of

termination for convenience, notice of termination for default, cure notice or show cause notice that related to a material non-performance that was not properly resolved and withdrawn pertaining to such Government Contract and, to the Knowledge of any Seller, there is no reasonable basis for any such notice.

(d) Since the Specified Date, Sellers have not been the subject or target of any audit, subpoena, investigation, prosecution or administrative proceeding related to any Government Contract or Government Bid (other than routine audits or review conducted by the Defense Contract Audit Agency, Defense Contract Management Agency, or the Office of Federal Contract Compliance Policy that were closed without any finding of liability or non-compliance). Since the Specified Date, no Seller has received any written or, to the Knowledge of any Seller, other notice of any pending or threatened audit, subpoena, investigation, prosecution or administrative proceeding related to any Government Contract or Government Bid (other than routine audits or review conducted by the Defense Contract Audit Agency, Defense Contract Management Agency, or the Office of Federal Contract Compliance Policy that were closed without any finding of liability or non-compliance).

(e) Since the Specified Date, no Seller has conducted or initiated any internal investigation or made any voluntary or mandatory disclosure to any Governmental Authority with respect to any alleged irregularity, misstatement, noncompliance or omission arising under or relating to a Government Contract or Government Bid or any Laws.

(f) To the Knowledge of any Seller, since the Specified Date, no cost incurred by any Seller pertaining to any Current Government Contract has been disallowed by any Governmental Authority.

(g) Since the Specified Date, no money due to any Seller under any Current Government Contract has been withheld or set off.

(h) Since the Specified Date, Sellers have not received any written or, to the Knowledge of any Seller, oral notification of quality, cost, schedule or technical problems that reasonably would support claims against Seller (or successors in interest) by a Governmental Authority, a prime contractor, or a higher-tier subcontractor, with regard to any Current Government Contract.

(i) Since the Specified Date, Sellers have not received any adverse or negative past performance evaluations or ratings by any Governmental Authority on any Current Government Contract, and, to the Knowledge of any Seller, there is no reasonable basis for any adverse or negative past performance evaluation or rating by any Governmental Authority regarding Sellers' Current Government Contracts, or that would reasonably be expected to adversely affect the evaluation of Sellers' Government Bids.

(j) To the Knowledge of any Seller, with respect to any Current Government Contract that is a "fixed price" Government Contract, the costs associated with completing the performance of such "fixed price" Government Contract after the Closing Date are not currently expected to exceed the fixed price to be earned and paid thereunder after the Closing Date.

(k) Since the Specified Date, all invoices and claims (including requests for progress payments and provisional costs payments) submitted under any Current Government Contracts were current, accurate and complete in all material respects as of their submission date.

(l) To the Knowledge of any Seller, no Government Bid, if accepted and resulting in the award of a Government Contract, is reasonably expected to result in a loss in excess of \$100,000 to Sellers at contract completion, and no Current Government Contract is reasonably expected to result in a loss in excess of \$100,000 to Sellers at contract completion.

(m) Except as set forth on *Schedule 4.23(m)(i)*, since the Specified Date, no Seller has received any written, or to the Knowledge of any Seller, other notice of any (i) outstanding claims, either by any Governmental Authority or by any prime contractor, subcontractor, vendor or other Person, arising under or relating to any Government Contract, or (ii) except as set forth on *Schedule 4.23(c)(ii)*, outstanding claims or requests for equitable adjustment or disputes between any Seller, on the one hand, and the United States government, on the other hand, under the United States Contract Disputes Act, as amended, or any other Law or between any Seller, on the one hand, and any prime contractor, higher-tier contractor, subcontractor, vendor or other Person, on the other hand, arising under or relating to any Government Contract or Government Bid.

(n) *Suspension and Debarment.* Except as set forth on *Schedule 4.23(n)*, since the Specified Date, no Seller nor, to the Knowledge of any Seller, any director, officer, employee or consultant of any Seller (i) has been or has been proposed for, or is currently (x) debarred or suspended from participation in, or the award of, Contracts with any Governmental Authority; (y) the subject of any debarment or suspension inquiry; or (z) otherwise precluded from participating in programs funded by any Governmental Authority or in the award of any Government Contract or (ii) has received any letter of concern regarding Sellers' present responsibility, request to show cause or notice of proposed suspension or debarment from any Government Authority.

(o) Except as set forth on *Schedule 4.23(o)*, since the Specified Date, (i) none of the Current Government Contracts were set-asides reserved for small businesses or any other designation that entitles any Seller to a favored status or benefits, and (ii) aside from the any Seller's small business status, no member Seller has certified, represented or otherwise indicated (either orally or in writing) to any Person, including any Governmental Authority, that it is a woman-, veteran-, or minority-owned business or any other designation that entitles any Seller to a favored status or benefits. Sellers have not, since the Specified Date, been the subject of a Small Business Administration ("*SBA*") certificate of competency, size determination, size protest, size appeal or a review of eligibility of any status under the administration of the SBA. Any representations made by Sellers since the Specified Date about size status were accurate, complete, and in compliance with all applicable Laws as of the date such representations were made by Sellers.

(p) No Seller nor any of its employees is required to maintain any personnel or facility security clearance to perform any Current Government Contract.

(q) No Seller uses any covered articles (as defined in FAR 52.204-23), telecommunications equipment, or services, (as defined in FAR 52.204-25) and no Seller provides covered articles, telecommunications equipment, or services to the U.S. federal government.

(r) Each Seller is compliant with the requirements of DFARS 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting, including compliance with the cybersecurity standards set forth in the National Institute of Standards and Technology (“*NIST*”) Special Publication 800-171, if applicable to the Current Government Contracts. All facts set forth in or acknowledged by, and any representations or certifications made or submitted by or on behalf of any Seller since the Specified Date in connection with its compliance with DFARS 252.204-7012 and DFARS 252.204-7008, Compliance with Safeguarding Covered Defense Information Controls, were true and accurate as of the date such representations or certificates were made or submitted by or on behalf of Sellers.

(s) Except as set forth on *Schedule 4.23(s)* no Governmental Authority has rights in any Intellectual Property of Sellers, except for Limited Rights in technical data or Restricted Rights in computer software (as each term is defined in FAR 52.227-14 and “DFARS” 252.227-7013 and -7014), or SBIR data rights in either technical data or computer software (as each term is defined in DFARS 252.227-7018), or other applicable similar rights pursuant to Government Contract clauses that are prescribed in the applicable federal acquisition regulations (collectively, “*FAR Rights*”). No prime contractor or subcontractor at any tier under a Government Contract with Sellers has been granted or otherwise is entitled to any rights in any material Intellectual Property of Sellers pursuant to the terms of such Government Contract with Sellers or otherwise.

(t) Each Seller has since the Specified Date been in compliance in all material respects with all applicable Laws regarding post-employment conflict of interest restrictions applicable to such Seller’s employees formerly employed by a Governmental Authority (“*Former Government Employees*”), and to the Knowledge of any Seller, Former Government Employees are, and have been, in compliance in all material respects with all Laws regarding post-employment conflict of interest restrictions applicable Former Government Employees.

(u) No Seller is (i) subject to or bound by any Organizational Conflict of Interest (as defined by Subpart 9.5 of the FAR, an “*Organizational Conflict of Interest*”) contractual provisions that have had or reasonably would be expected to have an effect on the ability of any Seller to perform or seek to perform future Government Contracts, or (ii) a party to or bound by any mitigation plan resulting from any actual or perceived Organizational Conflict of Interest involving Sellers. Since the Specified Date, Sellers have not had access to non-public information or provided systems engineering, technical direction, consultation, technical evaluation, source selection services, or services of any type, or prepared specifications or statements of work, or engaged in any other conduct, that creates an unmitigated Organizational Conflict of Interest with respect to those Current Government Contracts to which any Seller is a party.

(v) *Schedule 4.23(v)* lists as of the date hereof all U.S. Government property which has been provided to any Seller pursuant to the Current Government Contracts and which, as of the date of this Agreement, is in Sellers’ possession (“*Government Furnished Items*”). Since

the Specified Date, each Seller, when and as required, has certified to the applicable Governmental Authority in a timely manner that all government property is in good working order, reasonable wear and tear excepted, and otherwise meets the requirements of the applicable Current Government Contract and all applicable Laws. There are no outstanding loss, damage or destruction reports that have been or were required by law to be submitted to any Governmental Authority in respect of any government property.

(w) Each Seller is in compliance with all U.S. domestic preference requirements (including the Buy American Act, 41 U.S.C. §§ 8301-8305) and foreign sourcing prohibitions, and supply chain security requirements as included in the Current Government Contracts.

**4.24 No other Representations.** OTHER THAN THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS *ARTICLE IV* AND IN ANY OTHER TRANSACTION DOCUMENT, NO SELLER MAKES ANY REPRESENTATION OR WARRANTY, ORAL OR WRITTEN, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, IN RESPECT OF ANY OF THE BUSINESS, THE PURCHASED ASSETS OR THE ASSUMED LIABILITIES, INCLUDING WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR THE ACCURACY OR COMPLETENESS OF ANY DOCUMENTS OR OTHER INFORMATION PROVIDED OR MADE AVAILABLE IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY, AND ANY SUCH OTHER REPRESENTATIONS OR WARRANTIES ARE HEREBY EXPRESSLY AND IRREVOCABLY DISCLAIMED. NO SELLER NOR ANY OF THEIR RESPECTIVE AFFILIATES, NOR ANY OF THEIR RESPECTIVE DIRECTORS, MANAGERS, OFFICERS, EMPLOYEES, EQUITY HOLDERS, PARTNERS, MEMBERS, ADVISORS, AGENTS OR REPRESENTATIVES HAS MADE, OR IS MAKING, ANY REPRESENTATION OR WARRANTY, ORAL OR WRITTEN, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, RELATING OR WITH RESPECT TO ANY FINANCIAL PROJECTIONS, FORECASTS OR BUDGETS MADE AVAILABLE TO BUYER OR TO ANY OTHER PERSON.

## **ARTICLE V REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to each Seller, as of the Execution Date and as of the Closing Date, the following:

**5.1 Organization; Existence.** Buyer is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware and has all power and authority to carry on its business as presently conducted.

**5.2 Authorization; Execution and Delivery; Enforceability.** The execution, delivery and performance by Buyer of this Agreement and each Transaction Document to which Buyer is or will be a party and the consummation by Buyer of the transactions contemplated hereby and thereby have been, or prior to the Closing will be, duly authorized by all necessary corporate or other action on the part of Buyer. Buyer has all necessary power and authority to execute and deliver this Agreement and each other Transaction Documents to which Buyer is or will be a party and to consummate the transactions contemplated hereby and thereby and to perform its obligations hereunder and thereunder. This Agreement has been, and at or prior to the Closing,

each Transaction Document to which Buyer is or will be a party will be, duly and validly executed and delivered by Buyer and, assuming due authorization, execution and delivery by Sellers and the entry of the Sale Order, this Agreement constitutes, and each other Transaction Document to which Buyer is or will be a party (when duly and validly executed and delivered) will constitute, the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, subject to the Bankruptcy and Equity Exception.

**5.3 *Noncontravention; Consents and Approvals.***

(a) Neither the execution and delivery by Buyer of this Agreement and each other Transaction Document to which Buyer is or will be a party, nor the consummation by Buyer of the transactions contemplated hereunder or thereunder, will (with or without notice or lapse of time, or both), subject to entry of the Sale Order and compliance with applicable requirements under Antitrust Laws, (i) conflict with or result in a breach of the Organizational Documents of Buyer, (ii) violate any Law or Order to which Buyer or any of its assets or properties may be subject, (iii) violate, conflict with, result in a breach of, constitute a default (with or without notice or lapse of time, or both) under, result in the acceleration of, create in any Person the right to accelerate, terminate, modify or cancel or require any notice under, or result in the creation of any Lien (other than Permitted Liens) on, any Contract to which Buyer is a party or by which Buyer or any of its assets or properties is bound, except, in the case of clause (ii) or (iii), for such violations, conflicts, breaches, defaults, accelerations, rights, failures to give notice or Liens as would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on Buyer's ability to consummate the transactions contemplated by this Agreement.

(b) No consent, waiver, approval, Order or authorization of, or declaration or filing with, or notification to, any Person or Governmental Authority is required on the part of any Buyer in connection with the execution and delivery of this Agreement or any other Transaction Document which Buyer is or will be a party, the compliance by Buyer with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby or any other action by Buyer contemplated hereby or thereby (with or without notice or lapse of time, or both), except for such consents, waivers, approvals, Orders, authorizations, declarations, filings or notifications, the failure of which to obtain or make would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on Buyer's ability to consummate the transactions contemplated by this Agreement.

**5.4 *Availability of Funds; Solvency.*** Buyer will have at the Closing, sufficient funds to pay the costs, fees and expenses which may be required to be paid by or on behalf of Buyer under this Agreement and the other Transaction Documents to which Buyer is or will be a party. Buyer has not incurred any obligation, commitment, restriction or Liability of any kind, and is not contemplating or aware of any obligation, commitment, restriction or Liability of any kind, in either case which would reasonably be expected to impair or adversely affect such resources. Buyer acknowledges that receipt or availability of funds or financing by Buyer or any of its Affiliates shall not be a condition to Buyer's obligations hereunder. No funds to be paid to any Seller have derived from or will have been derived from, or constitute, either directly or indirectly, the proceeds of any criminal activity under the anti-money laundering Laws of the United States. Upon consummation of the transaction contemplated by this Agreement, (a) Buyer will not be insolvent as defined in Section 101 of the Bankruptcy Code, (b) Buyer will not be left with

unreasonably small capital, (c) Buyer will not have incurred debts beyond its ability to pay such debts as they mature and (d) the capital of Buyer will not be impaired.

**5.5 Litigation.** Except as set forth on *Schedule 5.5*, there are no Proceedings to which Buyer is a party pending, or, to the knowledge of Buyer, threatened against Buyer that would affect in any material respect Buyer's ability to perform its obligations under this Agreement or any other Transaction Documents or to consummate the transactions contemplated hereby or thereby.

Buyer's representations in *Section 5.2*, *Section 5.3*, *Section 5.4* and this *Section 5.5* are subject to entry of the Order referenced in *Section 8.1(c)*.

**5.6 Brokers.** Except as set forth on *Schedule 5.6*, the fees and expenses of which will be paid by Buyer, no broker, finder, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission, or the reimbursement of expenses in connection therewith, in connection with the transactions contemplated hereby based upon arrangements made by or on behalf of Buyer.

**5.7 Non-Foreign Person.** Upon consummation of the transaction contemplated by this Agreement, Buyer will not be owned or controlled directly or indirectly by (a) any foreign person within the meaning of the CFIUS regulations (31 C.F.R. Part 800.208) or (b) a "foreign interest," as defined in the NISPOM. Upon consummation of the transaction contemplated by this Agreement, Buyer will be a "U.S. Person" as defined at 22 C.F.R. §120.15).

**5.8 Independent Evaluation.**

(a) Buyer acknowledges that it has conducted its own independent investigation and analysis of the business, operations, assets, liabilities, results of operations, condition (financial or otherwise) and prospects of the Business, the Purchased Assets and the Assumed Liabilities, and that it and its representatives have received adequate access to the books and records, facilities, equipment, Contracts and other assets of the Business (including the Purchased Assets and the Assumed Liabilities) for such purpose. Buyer has relied on its own legal, tax and financial advisers for its evaluation of its investment decision to purchase the Business and the Purchased Assets, to assume the Assumed Liabilities and to enter into this Agreement and not on the advice of any Seller or any of their respective Affiliates or any of its or their respective legal, tax or financial advisers.

(b) Buyer acknowledges that any financial projections that may have been provided to it are based on assumptions of future operating results based on assumptions about certain events (many of which are beyond the control of Sellers). Buyer understands that no assurances or representations can be given that the actual results of the operation of the Business or the Purchased Assets will conform to the projected results for any period. Buyer specifically acknowledges that no representation or warranty has been made, and that Buyer has not relied on any representation or warranty as to the accuracy of any such projections, estimates, budgets, future revenues, future results from operations, future cash flows, the future condition (financial or otherwise) of any Seller or the businesses or assets thereof (including the Business, the Purchased Assets and the Assumed Liabilities).

(c) Buyer acknowledges and agrees that, except for the representations and warranties of Sellers contained in *Article IV* and the certificate delivered pursuant to *Section 8.2(d)*, (i) no Seller nor any of their respective Affiliates makes or has made any representation or warranty, either express or implied in connection with the transactions contemplated by this Agreement (including any implied warranty or representation as to condition, merchantability, suitability or fitness for a particular purpose or trade), (ii) none of Buyer, any of its Affiliates and any of its and their respective directors, officers, employees, equity holders, stockholders, partners, members and other representatives, has relied on or is relying on any representation, warranty or statement of any kind by any Seller, or any of their respective Affiliates, agents or other representatives, or any other Person, beyond those expressly given by each Seller in *Article IV* and the certificate delivered pursuant to *Section 8.2(d)*, and (iii) each Seller and each of their respective Affiliates, agents and other representatives have specifically disclaimed and do hereby specifically disclaim any such representations or warranties made by any Person, beyond those expressly given by each Seller in *Article IV* and in any other Transaction Document. Without limiting the generality of the foregoing, it is understood that any cost estimates, financial or other projections or other predictions that may be contained or referred to in the Disclosure Schedules or elsewhere, as well as any information, documents or other materials (including any such materials contained in the Data Room or reviewed by Buyer or any of its Affiliates, agents or other representatives) or management presentations that have been or shall hereafter be provided to Buyer or any of its Affiliates, agents or other representatives are not and will not be deemed to be representations or warranties of any Seller, or any of their respective Affiliates, agents or other representatives, and no representation or warranty is made as to the accuracy or completeness of any of the foregoing. Buyer understands and agrees that any inventory, equipment, vehicles, assets, properties and businesses of each Seller are furnished “as is”, “where is” and, subject only to the representations and warranties contained in *Article IV* and the certificate delivered pursuant to *Section 8.2(d)*.

**5.9 OFAC Obligations.** Neither Buyer nor any of Buyer’s Affiliates nor any of their respective directors, officers, managers, members, partners, equity holders, shareholders, representatives, agents, or employees, or any person who owns a controlling interest in or otherwise controls Buyer or any of Buyer’s Affiliates, nor any of Buyer’s transferees or permitted assigns will be at the time of Closing, a person or entity (i) listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control (“*OFAC*”), Department of Treasury or any other similar lists maintained by *OFAC* pursuant to any authorizing statute, Executive Order or regulation, (ii) listed on the Denied Persons List maintained by the United States Department of Commerce, (iii) designated under Section 1(b), (c) or (d) of Executive Order No. 13224 (September 23, 2001), any related enabling legislation or any other similar Executive Orders, or (iv) included on any other United States Governmental list of prohibited or restricted parties, and Buyer is not and will not engage in any dealings or transactions or be otherwise associated with any such Persons. There exists no prohibition under the Laws of the United States on the transaction contemplated by this Agreement related to the identity, citizenship, location or business of Buyer or the purpose for which Buyer is acquiring any Aircraft.

## ARTICLE VI COVENANTS OF SELLERS

**6.1 Conduct of Business.** Except (w) as consented to by Buyer (which consent shall not be unreasonably withheld, conditioned or delayed), (x) as required or approved by the

Bankruptcy Code or any Orders entered by the Bankruptcy Court in the Chapter 11 Cases, or as required or approved by the DIP Credit Agreement or DIP Order, (y) as otherwise necessary to comply with applicable Law or (z) as set forth on *Schedule 6.1*, from the date hereof until the Closing Date (or the earlier valid termination of this Agreement), Sellers (i) shall conduct the Business in the ordinary course, including using commercially reasonable efforts to maintain the goodwill associated with the Purchased Assets and Sellers' business relationships with employees, customers, suppliers, vendors, clients, contractors and other Persons in connection with the Purchased Assets and (ii) shall not:

(a) sell, lease or license on an exclusive basis or otherwise create any Lien (other than Permitted Liens) or dispose of any Purchased Assets, other than (x) sales of Inventory in the ordinary course of business and (y) sales and dispositions of obsolete or worn-out assets to unaffiliated third parties;

(b) establish a record date for, declare, set aside for payment or pay any dividend on, make any other distribution in respect of, or redeem or repurchase, any shares of the capital stock or other equity or voting interests of any Seller;

(c) renew, materially amend or modify, terminate (excluding expirations in accordance with the terms of any Material Contract or Material Permit), cancel or waive any material rights under, or create any Lien (other than a Permitted Lien) on, any of the Material Contracts or any Material Permits, or enter into any Contract that would have been a Material Contract if in effect on the date hereof;

(d) acquire any Person or all or substantially all of the assets of any Person or any business line of such Person or make any other investment in any Person;

(e) terminate, let lapse or amend or modify any material insurance policy maintained by any Seller or any of their respective Affiliates with respect to any Purchased Assets or any Assumed Liability;

(f) cancel any debts owed to or claims held by the Business;

(g) (A) accelerate or delay collection of notes or accounts receivable generated by the Business in advance of or beyond their regular due dates or the dates when the same would have been collected in the ordinary course of business; (B) delay or accelerate payment of any account payable or other liability of the Business beyond or in advance of its due date or the date when such liability would have been paid in the ordinary course of business; or (C) other than (x) sales of Inventory or (y) the disposition of obsolete Inventory, in each case in the ordinary course of business, change the levels of Inventory (excluding any Aircraft, Airframes or Engines that constitute Inventory) in any material respect from the levels customarily maintained in the Business;

(h) (A) sell, transfer, assign, abandon, cancel any Purchased Intellectual Property that is material to the Business, (B) let lapse or fail to renew, continue to prosecute, protect or defend, or otherwise dispose of, any Purchased Intellectual Property that is material to the Business, or (C) enter into any Contract regarding the license, sublicense, agreement or permission

to use any Purchased Intellectual Property that is material to the Business, other than non-exclusive license agreements in the ordinary course of business;

(i) (A) fail to exercise any rights of renewal with respect to any Leased Real Property that by its terms would otherwise expire and such expiration would be material to the Business or (B) enter into any Contract for the sublease of Leased Real Property that is material to the Business;

(j) except (i) for any payments made pursuant to the “first day” or “second day” orders entered by the Bankruptcy Court or the Qui Tam Settlement Order or (ii) as provided pursuant to any other order of the Bankruptcy Court reasonable acceptable to Buyer, concede, discharge, waive, release, assign, satisfy, consent to, pay, compromise, settle or agree to settle (A) any Proceeding or Claim before any court or other Governmental Authority that would reasonably be expected to result in (i) (a) liability or the payment of money damages in excess of \$100,000 individually or \$250,000 in the aggregate that is entitled to administrative expense priority status in the Bankruptcy Cases pursuant to an order entered by the Bankruptcy Court or (b) liability or the payment of money damages in excess of \$20,000 individually or \$100,000 in the aggregate that is entitled to general unsecured claim status or otherwise (except claims entitled to administrative claim status which shall be governed by the thresholds noted in the immediately preceding clause (a)) in the Bankruptcy Cases pursuant to an order entered by the Bankruptcy Court or (ii) any material restriction on the Purchased Assets or the Business, or (B) any material Claims which are included in the Purchased Assets;

(k) make any commitments for capital expenditures with respect to the Business which are in excess of \$250,000 individually or \$500,000 in the aggregate in any twelve (12) month period;

(l) (A) other than in the course of annual renewals for health and welfare plans for 2022, or the termination of deferred compensation deferral opportunities for 2022, enter into, materially amend, or terminate (other than for cause) any Assumed Plan or any other agreement, plan or arrangement that would be an Assumed Plan as in effect on the date hereof (including any Contracts for the administration of any Assumed Plan) or waive any performance or vesting criteria or accelerate vesting or exercisability under any Assumed Plan, (B) increase or decrease or change in any manner the compensation or benefits payable or to become payable to any Employee, (C) grant any bonus, severance, retention, change in control, termination or similar pay to any Employee, (D) communicate in writing with Employees regarding any compensation or benefits to be provided by Buyer or any of its Affiliates after the Closing without the prior consent of Buyer (which consent shall not be unreasonably withheld), and Buyer shall review such written communication within five (5) business days of the date any Seller provides Buyer with a copy of such written communication, or (E) hire any individual as an Employee or cause any employee of any Seller or any of their respective Affiliates to become an Employee or terminate the employment of any Employee (other than for cause) with annual base compensation in excess of \$100,000;

(m) recognize any labor union or enter into, terminate, or amend any collective bargaining agreement or other labor union agreement with respect to Employees;

(n) make any changes in any accounting methods, principles or practices in connection with the Purchased Assets or the Assumed Liabilities, except as required by Law or a change in GAAP (or authoritative interpretation thereof) or by a Governmental Authority;

(o) (A) make, alter or rescind any material Tax election in respect of the Purchased Assets, Assumed Liabilities or the Business, (B) settle or compromise any Tax liability or enter into any closing agreement relating to any Taxes in respect of the Purchased Assets, Assumed Liabilities or the Business, (C) consent to any claim or audit adjustment relating to Taxes of the Purchased Assets, Assumed Liabilities or the Business, or (D) consent to any extension or waiver of a limitation period applicable to any Tax claim or assessment relating to the Purchased Assets, Assumed Liabilities or the Business, in each case of clauses (A) through (D), to the extent such action would reasonably be expected to materially and adversely impact Buyer or its Affiliates; or

(p) enter into a binding agreement, in writing or otherwise, to take any of the foregoing actions.

Notwithstanding the foregoing, nothing contained in this Agreement is intended to give Buyer, directly or indirectly, the right to control any Sellers' operations prior to the Closing. Any action taken, or omitted to be taken, by any Seller that is necessary (as determined by Sellers in good faith) to comply with any Law or guidance issued by a Governmental Authority providing for business closures, "sheltering-in-place" or other restrictions in connection with the COVID-19 pandemic shall in no event be deemed to constitute a breach of this *Section 6.1*; provided that Sellers provides notice to Buyer as soon as reasonably practicable prior to taking (or omitting to take) any such action or, to the extent not possible, as soon as reasonably practicable after taking (or omitting to take) any such action.

**6.2 Access to Information.** From the date hereof until the Closing (or the earlier valid termination of this Agreement), Buyer shall be entitled, through its Affiliates and representatives, to have such reasonable access to and make such reasonable investigation and examination of the books and records, properties, assets, operations and personnel of each Seller relating (and solely to the extent relating) to the Purchased Assets and the Assumed Liabilities as Buyer may reasonably request. Any such investigation and examination shall be conducted during regular business hours upon reasonable advance notice and in a manner not to unreasonably interfere with the Business. Each Seller shall use commercially reasonable efforts to cause its representatives to cooperate with Buyer and its Affiliates and representatives in connection with such investigations and examinations. Notwithstanding the foregoing, no Seller shall be required to afford such access to the extent that such Seller reasonably believes that doing so would: (a) result in the loss of attorney-client or other legal privilege, (b) violate any applicable Law or (c) contravene any obligation of confidentiality or restriction on access by reason of any Contract with a third party or would otherwise expose any Seller or any of their respective Affiliates to a material risk of Liability; provided that, in the case of each of subclauses (a) through (c), each Seller shall use its commercially reasonable efforts to allow for such access or disclosure in a manner that does not result in any such loss of attorney-client privilege, violation, contravention or exposure. Buyer shall have the right to retain copies of all information and documents provided by Sellers to Buyer subject to the terms of the Confidentiality Agreements. Any information provided to or obtained

by Buyer or its Affiliates or representatives pursuant to this *Section 6.2* shall be subject to the terms of the Confidentiality Agreements.

**6.3 *Change of Name.*** Promptly (and, in any event, within thirty (30) Business Days) following the Closing, Sellers shall discontinue the use of the current name (and any other trade names or “d/b/a” names currently utilized by Sellers in the Business) and shall not subsequently change any of its names to or otherwise use or employ any name which includes the words “MD Helicopters” without the prior written consent of Buyer.

**6.4 *Antitrust Approvals and Cooperation.***

(a) Each of Buyer and Sellers shall, as promptly as reasonably practicable after the date of this Agreement (and, in any event, within ten (10) Business Days), file with the United States Federal Trade Commission (the “*FTC*”) and the United States Department of Justice (the “*DOJ*”) the notification and report form, with respect to the transactions contemplated hereby and any supplemental information requested in connection therewith pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the “*HSR Act*”). Such notification and report form and supplemental information shall be in substantial compliance with the requirements of the HSR Act. Each of Buyer and Sellers shall (and Buyer shall cause its Affiliates to) furnish to the other such necessary information and reasonable assistance as the other may reasonably request in connection with its preparation of any filing or submission which is necessary under the HSR Act. Sellers and Buyer shall keep each other apprised of the status of any substantive communications with, and any inquiries or requests for additional information from, the FTC and the DOJ relating to the transactions contemplated hereby. Each of Buyer and Sellers shall use commercially reasonable efforts to take, or cause to be taken, any and all steps necessary to obtain any clearance required under the HSR Act for the consummation of the transactions contemplated hereby as promptly as reasonably practicable.

(b) Buyer and Sellers shall use commercially reasonable efforts to take, or cause to be taken, any and all steps necessary to resolve such objections, if any, as may be asserted by any Governmental Authority with respect to the transactions contemplated by this Agreement under the HSR Act, the Sherman Act, as amended, the Clayton Act, as amended, the Federal Trade Commission Act, as amended, and any other applicable United States federal or state or foreign Laws that are designed to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade (collectively, the “*Antitrust Laws*”). Each of Buyer and Sellers shall take, and Buyer will cause its Affiliates to take, any and all steps necessary to avoid or eliminate each and every impediment under any Law that may be asserted by any Governmental Authority with respect to the transactions contemplated by this Agreement under the Antitrust Laws so as to enable all waiting periods under applicable Antitrust Laws to expire, to avoid or eliminate impediments under applicable Antitrust Laws asserted by any Governmental Authority and to otherwise enable the Parties to expeditiously close the transactions contemplated by this Agreement, including (i) promptly complying with or modifying any requests for additional information (including any second request) by any Governmental Authority, (ii) if necessary to obtain clearance by any Governmental Authority, offering, negotiating, committing to and effecting, by consent decree, hold separate order or otherwise, the sale, divestiture, license or other disposition of any and all of the capital stock, assets, rights, products or businesses of Buyer and its Affiliates after the Closing (including entering into customary ancillary agreements relating to

any such sale, divestiture, licensing or disposition of such assets or businesses) and any other restrictions on the activities of Buyer and its Affiliates and (iii) after taking all steps necessary pursuant to clauses (i) and (ii) above, contesting, defending and appealing any threatened or pending preliminary or permanent injunction or other order, decree or ruling or statute, rule, regulation or executive order that would adversely affect the ability of any Party to consummate the transactions contemplated by this Agreement and taking other actions to prevent the entry, enactment or promulgation thereof.

(c) Each Party (i) shall cooperate with each other Party in connection with the filings and consents contemplated by this *Section 6.4*, (ii) shall promptly inform each other Party of any material substantive communication received by such Party from any Governmental Authority with respect to the transactions contemplated by this Agreement under the Antitrust Laws and any filing, notification or request for consent related thereto, and (iii) shall permit each other Party to review in advance any proposed written communication or information submitted to any such Governmental Authority in response thereto and in good faith consider the other Party's reasonable comments on drafts of any such communication or information, in each case under any Antitrust Laws relating to the transactions contemplated by this Agreement except for the notification and report form filed pursuant to *Section 6.4(a)*, including all attachments, and in each case subject to an appropriate confidentiality agreement and the advice of such party's antitrust counsel. In addition, none of Sellers or Buyer shall (and Buyer shall ensure that its Affiliates do not) agree to participate in any substantive meeting, discussion, telephone call or conference with any Governmental Authority in respect of any filings, investigation or other inquiry with respect to the transactions contemplated by this Agreement under the Antitrust Laws or any such filing, notification or request for consent related thereto unless it consults with the other Parties in advance and, to the extent permitted by any such Governmental Authority and applicable Law, gives the other Parties the opportunity to attend and participate thereat, in each case to the maximum extent practicable. Sellers and Buyer shall, and Buyer shall cause its Affiliates to, furnish to the other Party, copies of all material correspondence, filings and communications between it and its Affiliates on the one hand, and the Governmental Authority or members of its staff on the other hand, with respect to the transactions contemplated by this Agreement under the Antitrust Laws or any such filing, notification or request for consent related thereto (in each case, excluding documents and communications which are subject to confidentiality agreements or to the attorney-client privilege or work product doctrine and, for the avoidance of doubt, except for the notification and report form filed pursuant to *Section 6.4(a)*, including all attachments). Each of Sellers and Buyer shall (and Buyer shall cause its Affiliates to) furnish each other Party with such necessary information and assistance as such other Party and its Affiliates may reasonably request in connection with its preparation of necessary filings, registrations or submissions of information to any Governmental Authority with respect to the transactions contemplated by this Agreement under the Antitrust Laws and any such filing, notification or request for consent related thereto.

(d) None of the Parties or their respective Affiliates shall take any action, or refrain from taking any action, or permit any action to be taken or not taken, that would reasonably be expected to have the effect of preventing, materially delaying, making illegal or otherwise materially interfering with obtaining the required clearances under the Antitrust Laws of the transactions contemplated by this Agreement.

**6.5 Ancillary Agreements.** Each of Sellers and Buyer undertakes and agrees to, as promptly as practicable and advisable, negotiate in good faith and use commercially reasonable efforts to take or cause to be taken all actions, and to do or cause to be done all things necessary, proper or advisable on their respective parts to execute and enter into (i) a Subcontract Agreement Pending Novation (the “*Subcontract Agreement Pending Novation*”) concerning the disposition of the Specified Contracts not yet assigned at Closing and (ii) a Transition Services Agreement (the “*Transition Services Agreement*”) concerning the provision of certain wind-down services by Buyer to Seller following the Closing, in each case not later than the Closing Date.

**6.6 Further Assurances.** Without prejudice to any other term or provision of this Agreement, from time to time, as and when requested by any Party and at such requesting Party’s expense, any other Party will 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 Transaction and the transfer of title to the Purchased Assets to Buyer or its Designated Purchaser in accordance with the terms of the Agreement. Except for Approvals with respect to the Specified Contracts, which shall be governed by *Sections 2.5* and *7.8*, to the extent applicable, Sellers and Buyer shall, and shall cause their respective Affiliates to, use commercially reasonable efforts to obtain promptly, or cause to be obtained promptly, all Approvals required to sell, assign, assume or otherwise transfer the Purchased Assets and Assumed Liabilities.

## ARTICLE VII ADDITIONAL COVENANTS

### **7.1 Preservation of and Access to Books and Records; Contacts with Business Relations.**

(a) For a period of six (6) years following the Closing Date, Buyer shall provide to Sellers, their respective Affiliates, and their respective officers, employees and representatives (after reasonable advance notice and during regular business hours) reasonable access to, including the right to make copies of, all books and records included in and otherwise related to the Business, any of the Purchased Assets or any of the Assumed Liabilities, to the extent necessary to permit each Seller to determine any matter relating to their respective rights and obligations hereunder, to any Proceeding or to any Pre-Closing Tax Period (for example, for purposes of any Tax or accounting audit or any claim or litigation matter) or otherwise related to the Excluded Assets or Excluded Liabilities, for periods prior to the Closing and shall preserve such books and records until the latest of (i) such period as shall be consistent with Buyer’s records retention policy in effect from time to time, (ii) the retention period required by applicable Law, (iii) the conclusion of all bankruptcy proceedings relating to the Chapter 11 Cases and (iv) in the case of books and records relating to Taxes, the expiration of the statute of limitations applicable to such Taxes. Such access shall include access to any information in electronic form to the extent reasonably available.

(b) Prior to Closing and following entry of the Bid Procedures Order, each Seller shall, and shall cause its representatives to, (i) as soon as is reasonably practicable, and in any event prior to the Closing, make reasonable arrangements for Buyer to conduct customer calls with all customers under any Current Government Contract, (ii) upon Buyer’s reasonable request, provide Buyer with reasonable access to the Material Customers, Material Suppliers and other

material contractual counterparties of such Seller; provided that while in no event shall Buyer engage in any communications with Material Customers or Material Suppliers without such Seller's participation in such communications (unless such Seller in its sole discretion affirmatively elects to not so participate), Buyer shall be permitted to engage in communications with Governmental Authorities to the extent reasonably necessary to obtain governmental approvals necessary for Closing, (iii) to the extent permitted by Law, upon request, promptly inform the legal and financial advisors to Buyer as to the status, or any changes in the status, of obtaining any necessary authorizations (including consents) from any competent judicial body, Governmental Authority, banking, taxation or regulatory body, and (iv) to the extent permitted by Law, provide the legal and financial advisors to Buyer with copies of any information, correspondence and communications from a Governmental Authority that is material to such Sellers' business.

## **7.2 Bankruptcy Court Matters.**

(a) Sellers and Buyer shall cooperate to obtain the Bankruptcy Court's entry of the Sale Order and any other Order reasonably necessary in connection with the transactions contemplated by this Agreement as promptly as reasonably practicable, including furnishing affidavits, non-confidential financial information, or other documents or information for filing with the Bankruptcy Court and making such advisors of Buyer and Sellers and their respective Affiliates available to testify before the Bankruptcy Court for the purposes of, among other things, providing adequate assurances of future performance by Buyer as required under Section 365 of the Bankruptcy Code, and demonstrating that Buyer is a "good faith" purchaser under Section 363(m) of the Bankruptcy Code. To the extent such adequate assurance of future performance is not provided with respect to an Assigned Contract, then such Assigned Contract will be excluded from the Purchased Assets and included in the Excluded Assets. Sellers and Buyer acknowledge that in order to obtain such approval and to satisfy each Sellers' fiduciary duties to all applicable stakeholders in accordance with applicable Law, each Seller must demonstrate that they have taken reasonable steps to obtain the highest or otherwise best offer possible for the Purchased Assets and that such demonstration shall include serving notice of the transactions contemplated by this Agreement to creditors and interested parties as ordered by the Bankruptcy Court and, if necessary, conducting the Auction.

(b) Each of Sellers and Buyer shall appear formally or informally in the Bankruptcy Court if reasonably requested by the other Party or required by the Bankruptcy Court in connection with the transactions contemplated by this Agreement and keep the other Party reasonably apprised of the status of material matters related to this Agreement, including promptly furnishing the other Party with copies of notices or other communications received by such Party from the Bankruptcy Court or any third party or any Governmental Authority with respect to the transactions contemplated by this Agreement.

(c) Each Seller shall consult with Buyer and its representatives concerning any order of the Bankruptcy Court relating to this Agreement and use commercially reasonable efforts to provide Buyer with copies of all applications, pleadings, proposed orders and other material documents relating thereto as soon as reasonably practicable prior to any submission thereof to the Bankruptcy Court. If any order of the Bankruptcy Court relating to this Agreement, including the Bid Procedures Order and the Sale Order, shall be appealed by any Person (or a petition for

certiorari or motion for reconsideration, amendment, clarification, modification, vacation, stay, rehearing or re-argument shall be filed with respect to any such order), each Seller shall diligently defend against such appeal, petition or motion and shall use commercially reasonable efforts to obtain an expedited resolution of any such appeal, petition or motions; provided that Sellers shall consult with Buyer regarding the status of any such actions. Sellers further covenant and agree that, after the Closing, the terms of any reorganization plan submitted to the Bankruptcy Court or any other court by or with the support of Sellers for confirmation shall not conflict with, supersede, abrogate, nullify or restrict the terms of this Agreement, or in any way prevent or interfere with the consummation or performance of the transactions contemplated by this Agreement.

(d) The Sale Order shall, among other things, (i) approve, pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, (A) the execution, delivery and performance by each Seller of this Agreement, (B) the sale of the Purchased Assets to Buyer on the terms set forth herein and free and clear of all Liens (other than Liens included in the Assumed Liabilities and Permitted Liens) and (C) the performance by each Seller of its obligations under this Agreement, (ii) authorize and empower each Seller to assume and assign to Buyer the Assigned Contracts, (iii) find that Buyer is a “good faith” buyer within the meaning of Section 363(m) of the Bankruptcy Code, find that Buyer is not a successor to any Seller and grant Buyer the protections of Section 363(m) of the Bankruptcy Code, (iv) find that Buyer shall have no Liability or responsibility for any Liability or other obligation of any Seller other than the Assumed Liabilities as expressly set forth in this Agreement or as required under applicable non-bankruptcy Law, whether known or unknown as of the Closing Date or in connection with the transactions contemplated to occur on the Closing, whether now existing or hereafter arising, or whether fixed or contingent, with respect to the businesses of Sellers, the Purchased Assets or any Liability of any Seller, including successor or vicarious Liabilities of any kind or character, including any theory of antitrust, successor, or transferee Liability, labor law, de facto merger, or substantial continuity and that Buyer shall not be the successor of any Seller, have, de facto, or otherwise, merged with or into any Seller, or be a mere continuation or substantial continuation of any Seller or the enterprise of any Seller, (v) find that Buyer has provided adequate assurance (as that term is used in Section 365 of the Bankruptcy Code) of future performance in connection with the assumption of the Assigned Contracts and (vi) find that Buyer shall have no Liability for any Excluded Liability. Without limiting any Sellers’ obligation to take all such actions as are reasonably necessary to obtain Bankruptcy Court approval of the Sale Order, Buyer agrees that it will promptly take reasonable actions to assist in obtaining Bankruptcy Court approval of the Sale Order, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for purposes, among others, of (x) demonstrating that Buyer is a “good faith” purchaser under Section 363(m) of the Bankruptcy Code and (y) establishing adequate assurance of future performance within the meaning of Section 365 of the Bankruptcy Code. Nothing in this Agreement shall require Buyer, any Seller or any of their respective Affiliates to give testimony to or submit any pleading, affidavit or information to the Bankruptcy Court or any Person that is untruthful or to violate any duty of candor or other fiduciary duty to the Bankruptcy Court or their respective stakeholders.

(e) Each Seller acknowledges and agrees, and the Sale Order shall provide that, except as otherwise provided in *Section 2.3*, on the Closing Date and concurrently with the Closing, all then existing or thereafter arising obligations, Liabilities and Liens of, against or created by any Seller or its bankruptcy estate, to the fullest extent permitted by Section 363 of the Bankruptcy Code, shall be fully released from and with respect to the Purchased Assets. On the Closing Date,

the Purchased Assets shall be transferred to Buyer free and clear of all obligations, Liabilities and Liens, other than Permitted Liens and the Assumed Liabilities to the fullest extent permitted by Section 363 of the Bankruptcy Code.

(f) Notwithstanding anything to the contrary herein, Buyer agrees and acknowledges that each Seller and their respective Affiliates, including through their representatives, are and may continue soliciting or responding to inquiries, proposal or offers from third parties with respect to the Purchased Assets or any reorganization, merger, transaction, consolidation, business combination, joint venture, partnership, financing, or restructuring or similar transaction, and may facilitate, including furnishing any information (subject to entering into a customary confidentiality agreement) with respect to, any effort or attempt by any Person to seek to do any of the foregoing in connection with the same. No later than one day prior to the start of the Auction, Sellers shall provide Buyer with a copy of each Qualified Bid (as defined in the Bid Procedures).

(g) If an Auction is conducted and Sellers do not choose Buyer as the Successful Bidder, but instead chooses Buyer as the Back-Up Bidder, Buyer will serve as the Back-up Bidder. If Buyer is chosen as the Back-up Bidder, Buyer will be required to keep its bid to consummate the transactions contemplated by this Agreement on the terms and conditions set forth in this Agreement (as may be amended with Buyer's written consent prior to or at the Auction) open and irrevocable until two (2) Business Days after the closing of the sale of the Purchased Assets to the Successful Bidder. If the agreement with the Successful Bidder is terminated prior to closing of the sale of the Purchased Assets to the Successful Bidder, Buyer will be deemed the Successful Bidder and will forthwith consummate the transactions contemplated by this Agreement on the terms and conditions set forth in this Agreement (as may be amended with Buyer's written consent prior to or at the Auction).

(h) Nothing in this Agreement, including this *Section 7.2*, shall require any director or officer of any Seller to violate the fiduciary duties they owe to such Seller. No action or inaction on the part of any director or officer of any Seller that such director or officer reasonably believes is required by the fiduciary duties they owe to such Seller shall be limited or precluded by this Agreement; provided, however, that no such action or inaction shall be deemed to prevent Buyer from exercising any termination rights it may have hereunder as a result of such action or inaction.

(i) Each Seller shall comply with the following timeline:

(i) within two (2) Business Days after the Execution Date, commence the Chapter 11 Cases by filing in the Bankruptcy Court one or more voluntary petitions for relief as debtors-in-possession under Chapter 11 of the Bankruptcy Code;

(ii) within two (2) Business Days after the Petition Date, Sellers shall have filed the Sale Motion, including this Agreement;

(iii) no later than twenty-eight (28) days after the Petition Date, the Bankruptcy Court shall have (x) approved the (i) Bid Procedures and (ii) the form and manner of notice of the sale of the Purchased Assets hereunder and assumption and

assignment of executory contracts and unexpired leases, in form and substance reasonably acceptable to Sellers and Buyer, and (y) scheduled the Auction and Sale Hearing; and

(iv) within ten (10) days after consummation of the Auction (or if the Auction is not necessary, within ten (10) days after the deadline for submitting a qualified bid as set forth in the Bid Procedures), but subject to availability of the Bankruptcy Court, the Sale Hearing shall have occurred and the Bankruptcy Court shall have approved the transaction contemplated by this Agreement.

### **7.3 Tax Matters.**

(a) For purposes of this Agreement, any real property, personal property, *ad valorem* and similar Taxes imposed on a periodic basis (other than Transfer Taxes, which shall be governed by *Section 11.1*) (including for this purpose, for the avoidance of doubt, any exemptions, allowances or deductions) (“**Property Taxes**”) relating to a taxable period beginning on or before and ending after the Closing Date (a “**Straddle Period**”) shall be allocated as follows: the amount of Property Taxes that is allocable to the Pre-Closing Tax Period shall be the amount of such Taxes for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of calendar days in the portion of the Straddle Period ending on and including the Closing Date, and the denominator of which is the number of calendar days in the entire Straddle Period, and the remaining amount of such Taxes shall be allocable to the Post-Closing Tax Period.

(b) The Party required by applicable Law to pay to a Governmental Authority any Taxes described in *Section 7.3(a)* for a Straddle Period, and to file any related Tax Return (the “**Paying Party**”), shall provide the other party (the “**Non-Paying Party**”) a statement setting forth the Non-Paying Party’s share of such Taxes for a Straddle Period as determined pursuant to this Agreement, together with such supporting evidence as is reasonably necessary to calculate such amount, and the Non-Paying Party shall reimburse the Paying Party its share of such Taxes, not later than five (5) Business Days before such Taxes are required to be paid. The Paying Party shall furnish the Non-Paying Party a copy of any such Tax Return and a copy of a receipt showing payment of any such Taxes to the Governmental Authority.

(c) The Parties agree to treat any payment made from one Party to another pursuant to this Agreement that is not reflected as part of the Purchase Price under this Agreement as an adjustment to the Purchase Price for all income Tax purposes, unless otherwise required by applicable Law.

(d) Buyer and Sellers agree to use commercially reasonable efforts to promptly furnish or cause their Affiliates to promptly furnish, to each other, upon request, such information and assistance relating to the Purchased Assets and Assumed Liabilities as is reasonably necessary for the filing of all Tax Returns and other Tax filings contemplated by this Agreement, the preparation for any audit or Tax Proceeding by any Governmental Authority.

(e) To the extent that this *Section 7.3* conflicts with any other provision in this Agreement (other than *Section 11.1* as it relates to Transfer Taxes), this *Section 7.3* shall govern.

#### 7.4 *Employee Matters.*

(a) At least fifteen (15) Business Days prior to the anticipated Closing Date, Sellers shall provide, or cause to be provided, to Buyer an updated Employee Schedule. At least ten (10) Business Days prior to the anticipated Closing Date, Buyer shall, or shall cause one or more of its Affiliates to, make an offer of employment, to commence as of the Closing (or, in the case of any Employee who is not actively at work immediately prior to the Closing, as of the date of such individual's return to active employment within three (3) months following the Closing Date), to all Employees who are employed immediately prior to the Closing (each such Employee, an "**Offered Employee**"). Each Offered Employee who receives and accepts such an offer of employment with Buyer or its applicable Affiliate and who commences employment as of the Closing Date (or, in the case of any Employee who is not actively at work immediately prior to the Closing, such later date) is referred to herein as a "**Transferred Employee**", and Buyer shall, or shall cause its applicable Affiliate to, employ each Transferred Employee in accordance with such accepted offer as of the Closing (or, in the case of any Employee who is not actively at work immediately prior to the Closing, such later date). Buyer hereby agrees that the offers to the Offered Employees shall include, and for the period immediately following the Closing through and including the twelve (12) month anniversary of the Closing, Buyer shall, or shall cause the applicable Buyer Affiliate to, provide (i) a level of base pay to each Transferred Employee that is no less favorable than the base pay provided by each Seller or their respective Affiliates to such Offered Employee as of the Closing, and (ii) welfare benefit plans and defined contribution retirement savings plans for the benefit or welfare of each Transferred Employee (each, a "**Buyer Benefit Plan**"), that are comparable in the aggregate to such benefits (exclusive of any retention benefits) provided to such Offered Employee by each Seller or their respective Affiliates as of the Closing.

(b) Not more than ten (10) Business Days following the Closing Date (and in the case of any Offered Employee not actively at work immediately prior to the Closing, not more than ten (10) Business Days following such individual's employment commencement date with Buyer or its Affiliates in compliance with *Section 7.4(a)*), Buyer shall deliver, or cause to be delivered, to Sellers a list of Transferred Employees.

(c) The applicable Seller shall be solely responsible for all Liabilities and obligations with respect to any Employee or former Employee who is not and does not become a Transferred Employee (including all severance obligations with respect to any Employee or former employee in connection with their termination of employment with such Seller and its Affiliates); provided that no Seller shall be responsible for any severance, termination pay or notice pay with respect to any Employee who was employed immediately prior to the Closing who did not receive an offer of employment from Buyer consistent with *Section 7.4(a)* ("**Non-Offered Employees**").

(d) Following the Closing, Buyer or its employing Affiliate shall process the payroll for, and pay (or cause to be paid), the base wages, base salary and ordinary course sales commissions accrued for the payroll period in which the Closing Date falls (the "**Closing Payroll Period**") with respect to each Employee employed at any time during the Closing Payroll Period. Each Seller shall reimburse Buyer for the base wages, base salary and ordinary course sales commissions accrued and payable for the Closing Payroll Period to any Employee who is not a Transferred Employee. The Closing Payroll Period shall extend from the final payroll date

preceding the Closing through and including the first payroll date on or following the Closing Date. In connection therewith, Buyer shall withhold and remit, on behalf of each Seller, all applicable Taxes, including payroll taxes, as required by Law.

(e) Buyer shall assume, pay and discharge the Liabilities of each Seller for unused vacation, sick days, personal days or leave earned or accrued by each Transferred Employee through Closing. In addition, Buyer shall assume, pay and discharge the liabilities of each Seller for any obligations or Liabilities under any Assumed Plan other than any severance obligations under any Assumed Plan in connection with the termination of any Transferred Employee that is not a Non-Offered Employee. Sellers and Buyer shall adopt the “alternate procedure” for preparing and filing IRS Forms W-2 (Wage and Tax Statements) and filing IRS Form W-4, as described in Revenue Procedure 2004-53. Additionally, with respect to garnishments, tax levies, child support orders, and wage assignments in effect with any Seller on the Closing Date for Transferred Employees, to the extent permitted by applicable Law Buyer shall honor such payroll deduction authorizations with respect to Transferred Employees and will continue to make payroll deductions and payments to the authorized payee, as specified by the Court or Order from a Governmental Authority which was filed with any Seller on or before the Closing Date. Each Seller shall, as soon as practicable (and in any event not more than two (2) Business Days) after the Closing Date, provide Buyer with such information as may be reasonably requested by Buyer or necessary for Buyer to make the payroll deductions and payments to the authorized payee as required by this *Section 7.4(e)*.

(f) Unless otherwise prohibited by this or another agreement entered into in connection with the transactions contemplated hereby, or by a Seller Plan document, with respect to Transferred Employees with authorizations for payroll deductions in effect with any Seller or any of their respective Affiliates on the Closing Date, to the extent permitted by applicable Law Buyer will honor such payroll deduction authorizations relating to each Transferred Employee, and shall not require that such Transferred Employee submit a new authorization to the extent that the type of deduction by Buyer does not differ from that made by any Seller. Such deduction types include: contributions to any Assumed Plan; scheduled loan repayments to any Assumed Plan or to an employee credit union; and direct deposit of payroll, bonus advances, union dues, employee relocation loans, and other types of authorized company receivables usually collectible through payroll deductions. Each Seller shall, as soon as practicable (and in any event not more than two (2) Business Days) after the Closing Date, provide Buyer with such information as may be reasonably requested by Buyer or necessary for Buyer to honor the payroll deduction authorizations contemplated by this *Section 7.4(f)*.

(g) With respect to Transferred Employees and Non-Offered Employees, Buyer shall assume, pay and discharge the Liabilities of each Seller under the WARN Act (provided, however, that, to the extent that the WARN Act is applicable to any such Employee, such Seller and its Affiliates shall have complied with all procedural aspects thereof through the Closing Date and, on the Closing Date, such Seller shall have provided Buyer with any information needed by Buyer to determine whether any Liability could arise under this *Section 7.4(g)* by reason of actions taken by Buyer or its Affiliates on or after the Closing Date), and such Seller shall be solely responsible for all other obligations under the WARN Act in respect of current or former Employees.

(h) Notwithstanding anything in this Agreement to the contrary, Buyer shall assume, pay and discharge the Liabilities of each Seller under COBRA (and any comparable state law) for all individuals who are “M&A qualified beneficiaries” (as such term is defined in U.S. Treasury Regulation Section 54.4980B-9) from and after the Closing. Buyer hereby acknowledges that it will be a “successor employer” for purposes of U.S. Treasury Regulation Section 54.4980B-9.

(i) Transferred Employees shall receive credit for purposes of eligibility to participate and vesting (and, for purposes of paid time off and severance benefits only, benefit accrual) under any Buyer Benefit Plan under which each Transferred Employee may be eligible to participate on or after the Closing to the same extent recognized by any Seller under comparable Seller Plans as of the date hereof; provided, however, that such crediting of service shall not operate to duplicate any benefit or the funding of any such benefit. With respect to any Buyer Benefit Plan that is a welfare benefit plan, program or arrangement and in which a Transferred Employee may be eligible to participate on or after the Closing, Buyer shall, or shall cause the applicable Buyer Affiliate to, use commercially reasonable efforts to, (i) waive, or use reasonable efforts to cause its insurance carrier to waive, all limitations as to pre-existing, waiting period or actively-at-work conditions, if any, with respect to participation and coverage requirements applicable to each Transferred Employee under such Buyer Benefit Plan to the same extent waived under a comparable Seller Plan and (ii) provide credit to each Transferred Employee (and such Transferred Employee’s beneficiaries) for any co-payments, deductibles and out-of-pocket expenses paid by such Transferred Employee (and such Transferred Employee’s beneficiaries) under the comparable Seller Plan during the relevant plan year, up to and including the Closing; provided, however, that such credit shall not operate to duplicate any benefit or the funding of any such benefit.

(j) Buyer agrees to honor and assume, or to cause a Buyer Affiliate to honor and assume, in accordance with their terms, each Assumed Plan and all trust agreements, insurance contracts, administrative service agreements and investment management agreements related to the funding and administrations of such Assumed Plans. Each Seller shall take such actions as are reasonably required to enable Buyer to comply with such obligations.

(k) No provision in this *Section 7.4* or otherwise in this Agreement, whether express or implied, shall (a) create any third-party beneficiary or other rights in any employee or former employee of any Seller or any of their respective Affiliates (including any beneficiary or dependent thereof), any other participant in any Seller Plan or any other Person; (b) create any rights to continued employment with any Seller, Buyer or any of their respective subsidiaries or Affiliates or in any way limit the ability of any Seller, Buyer or any of their respective subsidiaries or Affiliates to terminate the employment of any individual at any time and for any reason; or (c) constitute or be deemed to constitute an amendment to any Seller Plan, Buyer Benefit Plan or any other employee benefit plan, program, policy, agreement or arrangement sponsored or maintained by any Seller, Buyer or any of their respective subsidiaries or Affiliates.

#### **7.5 *Misallocated Transfers; Wrong Pocket.***

(a) If, following the Closing, Buyer or any of its Affiliates own or hold any Excluded Asset (including by having an Excluded Asset located at any Leased Real Property that

is or will be owned or leased by Buyer or any of its Affiliates), Buyer shall transfer, or shall cause its applicable Affiliate to transfer, at no cost to any Seller, such Excluded Asset as soon as practicable to the applicable Seller. If, following the Closing, any Seller or any of their respective Affiliates own any Purchased Asset, such Seller shall transfer, or shall cause its applicable Affiliates to transfer, such Purchased Asset as soon as practicable to Buyer.

(b) In the event that any Seller receives any payment from a third party (other than Buyer or any of its Affiliates) after the Closing Date pursuant to any of the Assigned Contracts (or with respect to the operation by Buyer of the business of any Seller or any Purchased Asset following the Closing) and to the extent such payment is not made in connection with an Excluded Asset or an Excluded Liability, such Seller shall forward such payment, as promptly as practicable but in any event within thirty (30) days after such receipt, to Buyer (or other entity nominated by Buyer in writing to such Seller). Notwithstanding anything to the contrary in this Agreement, in the event that Buyer or any of its Affiliates receives any payment from a third party after the Closing on account of, or in connection with, any Excluded Asset, Buyer shall forward such payment, as promptly as practicable but in any event within thirty (30) days after such receipt, to the applicable Seller (or such other entity as such Seller may designate).

**7.6 Public Announcements.** The Parties shall reasonably consult with each other before issuing any press release or otherwise making any public statements with respect to this Agreement or the transactions contemplated hereby, and neither Party shall, except as may be required to comply with applicable Law (in which case such Party shall provide the other Party a reasonable opportunity to review and comment on such proposed disclosure, which such disclosing Party shall consider in good faith), issue any press release or make any public statement prior to obtaining, with respect to any Seller, Buyer's, and with respect to Buyer, each Sellers', prior written consent (which consent, in each case, shall not be unreasonably withheld, conditioned or delayed).

**7.7 Notification of Certain Matters; Schedule Updates.**

(a) Each Party will promptly (and, in any event, within five (5) Business Days) notify the other Party in writing (e-mail being sufficient) of: (i) any written notice or other written communication from any Person alleging that the consent of such Person is or may be required in connection with the Transaction; (ii) any written notice or other written communication from any Governmental Authority, or the commencement of any Proceeding by any Governmental Authority, related to or in connection with the Transaction (including that would reasonably be expected to restrain, enjoin or otherwise prohibit the consummation of the Transaction); or (iii) any Proceeding commenced or, to the Knowledge of any Seller, or Buyer, as applicable, threatened against, relating to or involving or otherwise affecting such Party which relates to this Agreement or the transactions contemplated hereunder that would reasonably be expected to restrain, enjoin or otherwise prohibit the consummation of the Transaction or adversely affect in any material respect the right or ability of Buyer to own, operate or control the Business or the Purchased Assets as currently conducted or as will be conducted immediately prior to the Closing; provided that in no event will any notice be deemed to amend or modify any section of the Disclosure Schedules or otherwise affect the representations, warranties or covenants of, or the conditions of, any Party to this Agreement.

(b) Until the date that is fifteen (15) Business Days following the date hereof, Sellers may disclose to Buyer in writing (in the form of updated Disclosure Schedules) any occurrence, fact or circumstance existing as of the date hereof that is discovered or becomes known to Sellers in connection with the review of the representations and warranties contained in this Agreement by the individuals identified in clauses (i), (ii), (v), (vi) or (vii) of the definition of “Knowledge”. Any such disclosure shall for all purposes hereunder amend and supplement the Disclosure Schedules delivered on the date hereof. The delivery of any such updated Disclosure Schedules will be deemed to cure any misrepresentation or breach of warranty that otherwise might have existed hereunder as of the date hereof by reason of any such inaccuracy or breach of the representations or warranties of Sellers contained in this Agreement and Buyer will not have any claim (including any claim that the conditions to Closing set forth in *Section 8.2(a)* have not been satisfied) in respect of any such breach or inaccuracy.

**7.8 Specified Contracts.** In connection with the Specified Contracts set forth on *Schedule 2.5(g)* and referenced in *Section 2.5(g)*, during the period following the Closing and prior to the assignment of such Specified Contracts to Buyer, (A) Buyer (or one of its Subsidiaries) shall, as a subcontractor of the applicable Seller, perform such Seller’s obligations under the Specified Contracts to the maximum extent permitted under the terms of such Specified Contract, (B) to the extent Buyer (or one of its Subsidiaries) cannot perform such Seller’s obligations under the Specified Contracts, such Seller will continue to perform its obligations under the Specified Contracts, and (C) to the extent the applicable Seller cannot perform such Seller’s obligations under the Specified Contracts as provided in clause (B), Buyer (or one of its Subsidiaries) shall, if requested by Sellers, second necessary employees to the applicable Seller. Sellers and Buyer agree that any fees or quantifiable accommodations (financial or otherwise) paid or granted to any third party (including any Governmental Authority) in connection with *Sections 2.5(f)* or *2.5(g)* shall be borne by Sellers.

**7.9 Cape Town Convention.** The Parties agree that for all purposes of the Cape Town Convention (i) this Agreement constitutes a separate International Interest with respect to the Airframe and each Engine, and (ii) the Airframe and each Engine constitutes an Aircraft Object.

**7.10 ITAR.** Buyer shall issue any required notice within five (5) days after Closing pursuant to Section 122.4 of the International Traffic in Arms regulations.

**7.11 Financing.** Each Seller agrees to use commercially reasonable efforts to provide customary assistance with the Debt Financing as is reasonably requested by Buyer, including by: (a) participating (and causing senior management and representatives of Sellers to participate) in a reasonable number of calls, presentations, due diligence sessions (including accounting due diligence sessions), drafting sessions and, in the case of any asset backed securitization financing, sessions with rating agencies; (b) assisting Buyer with the timely preparation of customary rating agency presentations (in the case of any asset backed securitization financing), lender presentations and similar documents required in connection with the Debt Financing; (c) furnishing any financing source in connection with the Debt Financing with financial and other pertinent information regarding the Business, the Purchased Assets and the Assumed Liabilities as may be reasonably requested by Buyer to consummate the Debt Financing; and (d) providing Buyer with customary and readily available financial information. Sellers hereby consent to the use of all of Sellers logos solely in connection with the Debt Financing. Buyer shall promptly reimburse Sellers

for all reasonable and documented out-of-pocket costs and expenses (including attorneys' fees) to the extent such costs and expenses are incurred by Sellers in connection with the cooperation contemplated by this *Section 7.11*. For the avoidance of doubt and notwithstanding anything to the contrary in this Agreement, Buyer acknowledges and agrees that its obligations to consummate the transactions contemplated hereby are not conditioned upon the availability or consummation of the Debt Financing or receipt of proceeds therefrom. Buyer acknowledges and agrees that, other than the obligations to cooperate expressly set forth in this *Section 7.11*, none of the Sellers have any responsibility in relation to any financing that Buyer may seek or obtain in connection with the transactions contemplated hereby. Notwithstanding anything herein to the contrary, it is understood and agreed that the condition precedent set forth in *Section 8.2(b)*, as applied to Sellers' obligations under this *Section 7.11*, shall be deemed to be satisfied unless the failure of such condition to be satisfied was caused by the knowing and willful material breach by any Seller of their obligations under this *Section 7.11*.

**7.12 *Minimum Cash.*** The Parties shall cooperate in good faith to determine the appropriate amount of Cash to be held by the Company immediately prior to the Closing.

**7.13 *Matters Relating to Directors and Officers.***

(a) Neither Buyer nor the Designated Purchaser shall initiate, and shall cause their respective Affiliates not to initiate, any civil or administrative Proceeding of any nature against any present or former director or officer of any Seller or any of their current or former subsidiaries (other than any Specified Person), out of or in connection with the transactions contemplated by this Agreement; provided, however, that nothing herein shall impact, impair or otherwise prejudice in any way whatsoever (i) Buyer's (or the Designated Purchaser's) rights to bring a Claim or initiate a Proceeding against Sellers under and in accordance with the terms and limitations of this Agreement or (ii) Buyer's (or the Designated Purchaser's) ability to comply with any criminal or other Proceeding initiated by any Governmental Authority or to otherwise comply with applicable Law.

(b) In the event that any present or former director or officer of any Seller or any of their current or former subsidiaries, is sued or made party to or subject of (or is threatened to be sued in or made party to or subject of) any Proceeding out of or in connection with any acts or omissions of such person in connection with his or her current or former position as a director or officer of any Seller or any of their current or former subsidiaries prior to the Closing, Buyer (or the Designated Purchaser, if applicable) shall arrange that, subject to adequate measures regarding confidentiality (such as the execution of a customary confidentiality agreement), such director or officer shall have reasonable access to documents and information constituting Purchased Assets as are in the possession of Buyer (or the Designated Purchaser, if applicable) or its Affiliates, and that such director or officer may make copies of such documents as are reasonably necessary for the defense of such Proceeding.

(c) Buyer (or the Designated Purchaser, if applicable) shall not, directly or indirectly, cancel or otherwise reduce coverage under any "tail", "run-off" or other insurance policies purchased by Sellers or any of their current or former subsidiaries prior to the Closing; provided that no payments shall be required of Buyer (or the Designated Purchaser, as applicable) after the Closing.

(d) This *Section 7.13* is intended to be for the benefit of each of the directors, and officers described in this *Section 7.13* and may be enforced by any such Person as if such Person were a party to this Agreement. The obligations of *Section 7.13* will not be terminated or modified in such a manner as to adversely affect any Person to whom this *Section 7.13* applies without the express written consent of each such affected Person.

## ARTICLE VIII CONDITIONS TO CLOSING

**8.1 *Mutual Conditions to Closing.*** The obligations of each of Buyer and Sellers to consummate the Closing, are subject to the satisfaction or valid waiver (to the extent permitted by Law) of the following conditions:

(a) (i) no provision of any Law or Order shall then be in effect prohibiting, enjoining or making illegal the consummation of the Closing, (ii) no Proceeding seeking to prohibit, enjoin or make illegal the consummation of the Closing, or that would reasonably be expected to result in the imposition of criminal liability or the imposition of regulatory fines, shall be pending and (iii) no Proceeding seeking monetary damages that would reasonably be expected to result in an Material Adverse Effect shall be pending;

(b) the Bankruptcy Court shall have entered the Sale Order and the Sale Order shall be a Final Order;

(c) Buyer shall have obtained all requisite authority to consummate the Closing (and all transactions related thereto) and for the transfer of membership interests in Buyer, including any requisite Order, and such Order shall have become a Final Order and shall be in both form and substance reasonably acceptable to both Buyer and Sellers;

(d) all filing and waiting periods applicable (including any extensions thereof) to the consummation of the transactions contemplated by this Agreement under the HSR Act shall have expired or been terminated; and

(e) the Parties shall have given notice to the controlling FAA Flight Standards District Office for each Type Certificate of the pending transfer of such Type Certificate to Buyer at the Closing.

**8.2 *Buyer's Conditions to Closing.*** The obligations of Buyer to consummate the Closing are subject to the satisfaction or valid waiver of the following conditions:

(a) (i) the Fundamental Representations shall be true and correct in all respects, except for *de minimis* inaccuracies, as of the date of this Agreement and at and as of the Closing Date with the same force and effect as if they had been made at such time (except to the extent expressly made as of an earlier date, in which case such representations and warranties shall be true and correct in all respects, except for *de minimis* inaccuracies, as of such earlier date), and (ii) all other representations and warranties of each Seller in *Article IV* shall be true and correct as of the date of this Agreement and at and as of the Closing Date with the same force and effect as if they had been made at such time (except to the extent expressly made as of an earlier date, in which case such representations and warranties shall be true and correct as of such earlier date) except

where the failure of such representations and warranties to be true and correct (without giving effect to any limitation as to “materiality,” “material adverse effect,” “Material Adverse Effect” or similar qualifiers contained therein), has not had a Material Adverse Effect;

(b) the covenants and agreements that each Seller is required to perform or to comply with pursuant to this Agreement at or prior to the Closing shall have been performed and complied with in all material respects;

(c) since the date of this Agreement, there shall not have occurred any Material Adverse Effect;

(d) Sellers shall have delivered to Buyer a certificate, dated as of the Closing Date and executed by a duly authorized officer of Sellers, certifying that the conditions set forth in *Section 8.2(a)*, *Section 8.2(b)* and *Section 8.2(c)* have been satisfied;

(e) Sellers shall have delivered, or cause to be delivered, to Buyer each item set forth in *Section 3.3(a)*;

(f) there shall be no Order of the Bankruptcy Court or any other court of competent jurisdiction prohibiting Buyer from submitting a credit bid and consummating the Transaction;

(g) (i) Buyer shall have received or been issued all Permits necessary to replace the Excluded Permits or (ii) the applicable Seller shall have agreed to, and shall have full power and authority to, provide Buyer will use of the Excluded Permits pursuant to the Transition Services Agreement; and

(h) Sellers shall have obtained the consents and approvals required from third parties on *Schedule 8.2(h)*, and all such consents and Contracts shall be in full force and effect.

**8.3 *Sellers’ Conditions to Closing.*** The obligations of each Seller to consummate the Closing are subject to the satisfaction or valid waiver of the following conditions:

(a) the representations and warranties of Buyer in *Article V* shall be true and correct as of the date of this Agreement and at and as of the Closing Date with the same force and effect as if they had been made at such time (except to the extent expressly made as of an earlier date in which case such representations and warranties shall be true and correct as of such earlier date), except where the failure of such representations and warranties to be true and correct (without giving effect to any limitation as to “materiality,” “material adverse effect” or similar qualifiers contained therein), would not materially impair or prevent Buyer’s ability to consummate the transactions contemplated by this Agreement;

(b) the covenants and agreements that Buyer is required to perform or to comply with pursuant to this Agreement at or prior to the Closing shall have been performed and complied with in all material respects;

(c) Buyer shall have delivered to Sellers a certificate, dated as of the Closing Date and executed by a duly authorized officer of Buyer, certifying that the conditions set forth in *Section 8.3(a)* and *Section 8.3(b)* have been satisfied; and

(d) Buyer shall have delivered, or caused to be delivered, to Sellers each item set forth in *Section 3.3(b)*.

## ARTICLE IX NON-SURVIVAL

**9.1 Non-Survival.** The Parties, intending to modify any applicable statute of limitations, agree that (a)(i) the representations and warranties in this Agreement and in any certificate delivered pursuant hereto and (ii) the covenants in this Agreement only requiring performance prior to the Closing shall, in each case, terminate and be of no further force and effect effective as of the Closing and shall not survive the Closing for any purpose, and thereafter there shall be no liability on the part of, nor shall any claim be made by or on behalf of, any Party or any Party's Affiliates in respect thereof and (b) the covenants in this Agreement that contemplate performance at or after the Closing or expressly by their terms survive the Closing shall survive the Closing in accordance with their respective terms (the "***Surviving Post-Closing Covenants***") until the earlier of (i) full performance of such covenant in accordance with its terms and (ii) three (3) years following the Closing Date. Except with respect to the Surviving Post-Closing Covenants, no other remedy shall be asserted or sought by Buyer, and Buyer shall cause its Affiliates not to assert or seek any other remedy, against any Seller or any of their respective Affiliates under any contract, misrepresentation, tort, strict liability, or statutory or regulatory Law or theory or otherwise, in each case for any liabilities in connection with this Agreement or the transactions contemplated by this Agreement, all such remedies being hereby knowingly and expressly waived and relinquished to the fullest extent permitted under applicable Law; provided that, notwithstanding anything to the contrary in this Agreement, the foregoing shall not waive any remedies in the case of Fraud. Buyer and Sellers acknowledge and agree, on their own behalf and on behalf of their Affiliates that the agreements contained in this *Section 9.1* are an integral part of the transactions contemplated hereby and that, without the agreements set forth in this *Section 9.1*, none of the Parties would enter into this Agreement.

## ARTICLE X TERMINATION

**10.1 Termination.** This Agreement may be terminated and the transactions contemplated herein may be abandoned at any time at or prior to Closing:

(a) by mutual written agreement of Sellers and Buyer;

(b) by either Sellers or Buyer, if the Closing shall not have been consummated on or before the date that is one hundred fifty (150) days following the date hereof (the "***End Date***"); provided that the right to terminate this Agreement pursuant to this *Section 10.1(b)* shall not be available to a Party whose breach of any of its representations, warranties, covenants or agreements contained herein has been the primary cause of the failure of the Closing to occur on or before the End Date;

(c) by Sellers, if Buyer breaches or fails to perform any of its representations, warranties, covenants or agreements contained in this Agreement and such breach or failure to perform (i) would prevent (or delay beyond the End Date) the satisfaction of a condition set forth in *Section 8.1* or *Section 8.3* and (ii) cannot be, or has not been, cured by the earlier of (A) the End Date or (B) ten (10) days following delivery of written notice to Buyer of such breach or failure to perform; provided that the right to terminate this Agreement pursuant to this *Section 10.1(c)* shall not be available to Sellers if any Seller is then in material breach of its representations, warranties, covenants or agreements contained herein;

(d) by Buyer, if any Seller breaches or fails to perform any of its representations, warranties, covenants or agreements contained in this Agreement and such breach or failure to perform (i) would prevent (or delay beyond the End Date) the satisfaction of a condition set forth in *Section 8.1* or *Section 8.2* and (ii) cannot be, or has not been, cured by the earlier of (A) the End Date or (B) ten (10) days following delivery of written notice to Sellers of such breach or failure to perform; provided that the right to terminate this Agreement pursuant to this *Section 10.1(d)* shall not be available to Buyer if Buyer is then in material breach of its representations, warranties, covenants or agreements contained herein;

(e) by Sellers or Buyer, if any Governmental Authority issues any Order permanently enjoining or otherwise permanently prohibiting the transactions contemplated by this Agreement and such Order shall have become final and non-appealable;

(f) by either Sellers or Buyer, if at the end of the Auction for the Purchased Assets (if any), Buyer is not determined by Sellers to be either the Successful Bidder or the Back-up Bidder;

(g) by either Buyer or Sellers, if an Order of the Bankruptcy Court is entered denying approval of the Bid Procedures Order, the Sale Order or the Order referenced in *Section 8.1(c)* and such Order denying approval shall have become a non-appealable Final Order;

(h) by Buyer, if, under Section 363(k) of the Bankruptcy Code, Buyer is disallowed from providing the Credit Bid as contemplated by this Agreement in connection with the payment of the Purchase Price pursuant to an Order of the Bankruptcy Court or any other court of competent jurisdiction;

(i) by Buyer, if there is an Event of Default as defined in the DIP Credit Agreement, the DIP Facility is accelerated and the Commitments (as defined in the DIP Credit Agreement), are terminated;

(j) by Buyer, if Sellers file a motion seeking an order of the Bankruptcy Court dismissing the Chapter 11 Cases or converting the Chapter 11 Cases to a case or cases under Chapter 7 of the Bankruptcy Code (except with Buyer's prior written consent), or if Sellers file a motion seeking an order of the Bankruptcy Court appointing a trustee or examiner with expanded powers to operate or manage the financial affairs, the business or the reorganization of Sellers in the Chapter 11 Cases;

(k) by Buyer, if the Bankruptcy Court approves an Alternative Transaction and Buyer is not the Back-Up Bidder; or

- (1) automatically, upon consummation of an Alternative Transaction.

**10.2 Effect of Termination.** If this Agreement is terminated in accordance with *Section 10.1*, this Agreement shall become null and void and of no further force, and no Party (nor any stockholder, director, officer, employee, agent, consultant or representative of any such Party) shall thereafter have any Liability hereunder, in each case except for the provisions of this *Section 10.2* and *Article XI* and the Confidentiality Agreements, which shall survive such termination of this Agreement; provided that nothing in this *Section 10.2* shall be deemed to release any Party from any liability for any Willful Breach of this Agreement or Fraud by such Party occurring prior to its termination.

## ARTICLE XI MISCELLANEOUS

**11.1 Expenses and Transfer Taxes.** Except as otherwise specifically provided, all fees, costs and expenses incurred by the Parties in negotiating this Agreement or in consummating the transactions contemplated by this Agreement (including legal and accounting fees, costs and expenses) shall be paid by the Party incurring the same, whether or not the transactions contemplated hereby are consummated. All Transfer Taxes and all required documentary, filing and recording fees and expenses in connection with the filing and recording of the assignments, conveyances or other instruments required to convey title to the Purchased Assets to Buyer shall be borne by Buyer. The Parties will use commercially reasonable efforts to cooperate and timely prepare any Tax Returns relating to such Transfer Taxes, including any claim for exemption or exclusion from the application or imposition of any Transfer Taxes. Unless otherwise required by applicable Law, Buyer or any of its Affiliates will prepare and timely file all Tax Returns with respect to Transfer Taxes. Sellers or any of their Affiliates will file any other Tax Return with respect to Transfer Taxes required to be filed by Sellers or any of their Affiliates. The Party that files such Tax Return ("**Filing Party**") shall furnish to the other Party ("**Non-Filing Party**") a copy of any such Tax Return and a copy of a receipt showing payment (or, if the applicable Governmental Authority does not make such a receipt reasonably available to the Filing Party, other documentation evidencing such payment) of any such Transfer Taxes within ten (10) Business Days of availability of such receipt or such other documentation, as applicable. The Non-Filing Party shall pay to the Filing Party all Transfer Taxes that it owes pursuant to this *Section 11.1* within five (5) Business Days of written demand from the Filing Party, provided that no payment shall be required more than three (3) days before the Transfer Tax is required to be paid.

**11.2 Notices.** All notices, requests and other communications to any Party hereunder shall be in writing and shall be delivered to the addresses set forth below (or pursuant to such other address(es) as may be designated in writing by the Party to receive such notice):

if to Buyer:

MDH Holdco, LLC  
c/o MBIA Insurance Corporation  
1 Manhattanville Road #301  
Purchase, New York 10577  
Attention: Jonathan Harris – Managing Director and Counsel  
Keith Borelli – Director

Email: jonathan.harris@mbia.com  
keith.borelli@mbia.com

with copies, which shall not constitute notice, to:

Cadwalader, Wickersham & Taft LLP  
200 Liberty Street  
New York, New York 10281  
Attention: Gregory M. Petrick

Ingrid Bagby  
William P. Mills  
Braden K. McCurrach  
Email: gregory.petrick@cwt.com  
ingrid.bagby@cwt.com  
william.mills@cwt.com  
braden.mccurrach@cwt.com

and

Young Conaway Stargatt & Taylor, LLP  
1000 N. King Street  
Wilmington, Delaware 19801  
Attention: Michael Nestor

Allurie Kephart  
Email: mnestor@ycst.com  
akephart@ycst.com

if to any Seller, to:

MD Helicopters, Inc.  
4555 E. McDowell Road  
Mesa, Arizona 85215  
Attention: Alan Carr  
Barry Sullivan  
Email: acarr@drivetrainllc.com  
barry.sullivan@mdhelicopters.com

with a copy, which shall not constitute notice, to:

Latham & Watkins LLP  
1271 Avenue of the Americas  
New York, New York 10020  
Attention: James Gorton  
Suzanne Uhland  
Adam Ravin  
Edmond Parhami  
Email: james.gorton@lw.com

suzanne.uhland@lw.com  
adam.ravin@lw.com  
edmond.parhami@lw.com

All such notices, requests and other communications shall be deemed received (a) if delivered prior to 5:00 p.m. New York time on a day which is a Business Day, then on such date of delivery if delivered personally, or, if by email, upon written confirmation of delivery by email (which may be electronic), and if delivered after 5:00 p.m. New York time (whether personally or by email) then on the next succeeding Business Day, (b) on the first (1st) Business Day following the date of dispatch if delivered utilizing a next-day service by a recognized next-day courier or (c) on the earlier of confirmed receipt or the fifth (5th) Business Day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid.

### ***11.3 Amendments and Waivers.***

(a) Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each of Buyer and Sellers, or, in the case of a waiver, by the Party against whom the waiver is to be effective. For clarity, Bankruptcy Court approval shall not be required for any amendment to this Agreement.

(b) No failure or delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by Law.

### ***11.4 Successors and Assigns.***

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns; provided that Buyer, on the one hand, may not assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of Sellers, and Sellers, on the other hand, may not assign, delegate or otherwise transfer any of their respective rights or obligations under this Agreement without the prior written consent of Buyer; provided, further, that a Party (subject to such Party remaining liable for its obligations hereunder) may assign any of its rights or obligations hereunder to any of its Affiliates without the consent of any Person. Any attempted assignment in violation of this *Section 11.4* shall be null and void, *ab initio*. For the avoidance of doubt, a change of control of Buyer shall not be deemed an assignment for purposes of this Agreement and shall not require the consent of any other Party.

(b) At any time prior to the date that is five (5) Business Days prior to the Closing, and notwithstanding anything contained herein to the contrary, Buyer shall be entitled to designate, by written notice to Sellers, one or more U.S. Persons to (i) purchase the Purchased Assets (including specified Assigned Contracts), pay the corresponding Purchase Price relating to such Purchased Assets or require payment of the Cure Costs, as applicable or (ii) assume the Assumed Liabilities (any such U.S. Person that shall be designated in accordance with this clause,

a “*Designated Purchaser*”). In addition, and for the avoidance of doubt, a Designated Purchaser shall be entitled to employ any of the Transferred Employees on and after the Closing Date (otherwise in accordance with *Section 7.4*) and to perform any other covenants or agreements of Buyer under this Agreement. Notwithstanding the foregoing, Buyer’s designation of any Designated Purchaser pursuant to this *Section 11.4* shall not relieve Buyer of its obligations under this Agreement.

**11.5 Governing Law.** This Agreement shall be governed by and construed in accordance with the Laws of the State of Delaware, without regard to the conflicts or choice of law rules of the State of Delaware that would result in the application of the Laws of any other jurisdiction.

**11.6 Exclusive Jurisdiction.** The Parties irrevocably agree that, during the period from the date hereof until the date on which the Chapter 11 Cases are closed or dismissed, any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought exclusively in the Bankruptcy Court. The Parties further irrevocably agree that, after the Chapter 11 Cases are closed or dismissed, any Proceeding with respect to this Agreement or the transactions contemplated hereby shall be brought against any of the Parties exclusively in either the United States District Court for the District of Delaware or any state court of the State of Delaware located in such district, and each of the Parties hereby irrevocably consents to the jurisdiction of such court and the Bankruptcy Court (and of the appropriate appellate courts therefrom) in any such Proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such Proceeding in such courts or that any such Proceeding which is brought in such courts has been brought in an inconvenient forum. Process in any Proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of the Bankruptcy Court, the United States District Court for the District of Delaware or any state court of the State of Delaware. Without limiting the foregoing, each Party agrees that service of process on such Party in the manner as provided in *Section 11.2* for notices shall be deemed effective service of process on such Party.

**11.7 WAIVER OF JURY TRIAL.** TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW THAT CANNOT BE WAIVED, EACH PARTY HEREBY WAIVES, AND COVENANTS THAT IT WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE), ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE, CLAIM, DEMAND, ACTION OR CAUSES OF ACTION ARISING IN WHOLE OR IN PART UNDER, RELATED TO, BASED ON OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT OR THE SUBJECT MATTER HEREOF OR THEREOF, WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN TORT OR CONTRACT OR OTHERWISE. ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS *SECTION 11.7* WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF EACH SUCH PARTY TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

**11.8 Counterparts; Third-Party Beneficiaries.** This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each Party shall have received a counterpart hereof signed by the other Party. Delivery of a .pdf

version of one or more signatures to this Agreement shall be deemed adequate delivery for purposes of this Agreement. No other provision of this Agreement is intended to confer upon any Person other than the Parties any rights, benefits, Proceedings or remedies hereunder.

**11.9 Specific Performance.** It is understood and agreed by the Parties that money damages (even if available) would not be a sufficient remedy for any breach of this Agreement by Sellers or Buyer and as a consequence thereof, after the Bankruptcy Court's entry of the Sale Order and the Order referenced in *Section 8.1(c)*, Sellers and Buyer shall each be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach or threatened breach in addition to any other remedy to which such Party may be entitled in Law or in equity, including an Order of the Bankruptcy Court or other court of competent jurisdiction requiring Buyer or Sellers, as may be applicable, to comply promptly with any of their obligations hereunder. Each of the Parties agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief on the basis that the other Party has an adequate remedy at Law or that any award of specific performance is not an appropriate remedy for any reason at Law or in equity. Any Party seeking an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement shall not be required to provide any bond or other security in connection with such Order.

**11.10 Privileges.** The Parties hereto hereby agree that their respective rights and obligations to maintain, preserve, assert or waive any attorney-client and work product privileges belonging to any such Party with respect to the Business, the Purchased Assets, the Excluded Assets, the Assumed Liabilities, and the Excluded Liabilities (collectively, "**Privileges**"), shall be governed by the provisions of this *Section 11.10*. With respect to matters relating to the Excluded Assets or the Excluded Liabilities, and with respect to the Excluded Records, Sellers shall have sole authority to determine whether to assert or waive any Privileges, including the right to assert any Privilege against Buyer and its Affiliates. Buyer and its Affiliates shall take no action without the prior written consent of Sellers that would reasonably be expected to result in any waiver of any such Privileges of Sellers or any of their Affiliates. After the Closing, Buyer and its Affiliates shall have sole authority to determine whether to assert or waive any Privileges with respect to matters relating to the Business (except for the Excluded Liabilities or the Excluded Assets), the Purchased Assets or the Assumed Liabilities, including the right to assert any Privilege against Sellers or their Affiliates. Sellers shall not, and shall cause its Affiliates not to, take any action after the Closing without the prior written consent of Buyer that would reasonably be expected to result in any waiver of any such Privileges of Buyer or any of its Affiliates. The rights and obligations created by this *Section 11.10* shall apply to all files, documents, instruments, papers, books, reports, work papers, communications, records and other information as to which Sellers or Buyer or their respective Affiliates would be entitled to assert or has asserted a Privilege without regard to the effect, if any, of the Transaction (the "**Privileged Information**"). Upon receipt by Seller or their Affiliates, or by Buyer and its Affiliates, as the case may be, of any subpoena, discovery or other request from any third party that actually or arguably calls for the production or disclosure of Privileged Information of the other Party, such Party shall promptly notify the other Party of the existence of the request and shall provide such other Party a reasonable opportunity to review the Privileged Information and to assert any rights it may have under this *Section 11.10* or otherwise (at its sole cost) to prevent the production or disclosure of Privileged Information. Sellers' transfer of any files, documents, instruments, papers, books, reports, work papers, communications, records or other information or Privileged Information to Buyer in accordance

with this Agreement and Sellers' agreement to permit Buyer to obtain Privileged Information existing prior to the Closing are made in reliance on the Parties' respective agreements, as set forth in the Confidentiality Agreements and this *Section 11.10* to maintain the confidentiality of such Privileged Information and to take the steps provided herein for the preservation of all Privileges that may belong to or be asserted by Sellers or Buyer, as the case may be. The access to files, documents, instruments, papers, books, reports, work papers, communications, records or other information or Privileged Information being granted pursuant to this Agreement, and the disclosure to Buyer and Sellers of Privileged Information relating to the Business, the Purchased Assets, the Excluded Assets, the Assumed Liabilities or the Excluded Liabilities pursuant to this Agreement in connection with the Transaction shall not be asserted by Sellers or Buyer to constitute, or otherwise be deemed, a waiver of any Privilege that has been or may be asserted under this *Section 11.10* or otherwise.

**11.11 Entire Agreement.** This Agreement and the other Transaction Documents (together with the Schedules and Exhibits hereto and thereto) constitute the entire agreement between the Parties with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, both oral and written, between the Parties with respect to such subject matter. No Party to this Agreement shall be liable or bound to any other Party in any manner by any representations, warranties, covenants or agreements relating to such subject matter except as specifically set forth herein and therein.

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

**11.13 Severability.** If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such a determination, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transaction contemplated hereby be consummated as originally contemplated to the fullest extent possible.

**11.14 Disclosure Schedules.** The representations and warranties of each Seller set forth in this Agreement are made and given subject to the Disclosure Schedules. Inclusion of information in the Disclosure Schedules will not be construed as an admission that such information is material to the business, operations or condition (financial or otherwise) of any Seller or their respective businesses, in whole or in part, or as an admission of Liability or obligation of any Seller to any Person. The sections of the Disclosure Schedules have been organized for purposes of convenience in numbered sections corresponding to the sections in this Agreement; provided, however, that any disclosure in any section of the Disclosure Schedules will

apply to and will be deemed to be disclosed with respect to any other representation and warranty, so long as the applicability of such disclosure is readily apparent on its face. It is understood and agreed that the specification of any dollar amount in the representations and warranties or covenants contained in this Agreement or the inclusion of any specific item in the Disclosure Schedules is not intended to imply that such amounts or higher or lower amounts, or the items so included or other items, are or are not material, and no Party or other Person shall use the fact of the setting of such amounts or the fact of the inclusion of any such item in the Disclosure Schedules in any dispute or controversy as to whether any obligation, item or matter not described in this Agreement or included in the Disclosure Schedules is or is not material for purposes of this Agreement. Nothing in this Agreement (including the Disclosure Schedules) shall be deemed an admission by either Party or any of its Affiliates, in any Proceedings, that such Party or any such Affiliate, or any third party, is or is not in breach or violation of, or in default in, the performance or observance of any term or provisions of any Contract or Law. The Disclosure Schedules and the information and disclosures contained therein are intended only to modify the representations or warranties of Sellers contained in this Agreement. Where the terms of a contract or document have been summarized or described in the Disclosure Schedules, such summary or description does not purport to be a complete statement of the material terms of such contract or document and all such summaries and descriptions are qualified in their entirety by reference to the contract or document being summarized or described to the extent such contract or other document has been made available to Buyer prior to the date hereof.

**11.15 Diligence Materials.** Sellers shall, within ten (10) Business Days after the Closing Date and at Buyer's sole cost and expense, direct its applicable representative to deliver to Buyer (at the address designated by Buyer) one (1) USB containing copies of all the documents and information furnished to Buyer or its representatives in the Data Room.

**11.16 Bulk Sales.** Buyer hereby waives compliance by Sellers with the provision of any bulk sales, or bulk transfer Laws of any jurisdiction in connection with the transactions contemplated hereby.

**11.17 No Recourse.** Notwithstanding anything in this Agreement or in any other Transaction Document, the Parties hereby acknowledge and agree that, except to the extent a Person is a named party to this Agreement, no Person, including any current, former or future director, officer, employee, incorporator, member, manager, director, partner, investor, shareholder, agent, representative, or Affiliate of any, shall have any liability to the other Party, and each Party shall have no recourse against, any Person other than the other Party in connection with any liability, claim or cause of action arising out of, or in relation to, this Agreement, any other Transaction Document or the transactions contemplated hereby and thereby, whether granted by statute or based on theories of contract, tort, strict liability, equity, agency, control, instrumentality, alter ego, domination, sham, single business enterprise, piercing the veil, unfairness, undercapitalization, or otherwise. Notwithstanding the foregoing, nothing herein shall limit, restrict, or otherwise affect any Person's right or ability to make, pursue, enforce or prosecute a claim for Fraud.

[Signature pages follow]

IN WITNESS WHEREOF, Sellers and Buyer have executed this Agreement on the Execution Date.

**SELLERS:**

MD HELICOPTERS, INC.

By: Barry A. Sullivan  
Name: Barry A Sullivan  
Title: CEO

MONTERREY AEROSPACE, LLC

By: Barry A. Sullivan  
Name: Barry A Sullivan  
Title: CEO

**BUYER:**

MDH HOLDCO, LLC

By: Zohar II 2005-1, Corp., its manager

By:   
\_\_\_\_\_

Name: Michael Katzenstein

Title: Chief Restructuring Officer

**Exhibit B to Motion**

**Proposed Bid Procedures Order**

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

	X	
	:	
In re:	:	Chapter 11
	:	
MD HELICOPTERS, INC., <i>et al.</i> , <sup>10</sup>	:	Case No. 22-_____ (_____)
	:	
Debtors.	:	(Jointly Administered)
	:	
	:	<b>Re: D.I.</b> _____
	X	

**ORDER (I) APPROVING BID PROCEDURES IN CONNECTION WITH THE 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 STALKING HORSE AGREEMENT, (V) APPROVING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF CONTRACTS AND LEASES, AND (VI) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)<sup>11</sup> 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 Stalking Horse Agreement (each as defined below), (v) approving procedures for the assumption and assignment of executory contracts and unexpired leases in connection with the Sale (collectively, the “**Assumed Contracts**”), and

---

<sup>10</sup> The two Debtors in these cases are MD Helicopters, Inc. and Monterrey Aerospace, LLC, and their address is 4555 E. McDowell Road, Mesa, AZ 85215. The last four digits of MD Helicopters, Inc.’s taxpayer identification number are 4088. Monterrey Aerospace, LLC has not been assigned a taxpayer identification number as of the date hereof.

<sup>11</sup> 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.

(vi) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration and [supplemental] declarations and other testimony and evidence submitted by the Debtors in support of the Motion; and 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**”); and this Court having determined the legal and factual bases set forth in the Motion and at the Hearing establish good and sufficient cause for the relief granted in this Order, it is hereby:

**FOUND THAT:**

A. The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. 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 Local Rule 9013-1(f), 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 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 Office of the United States Trustee for the District of Delaware; (b) the United States Attorney for the District of Delaware; (c) the Internal Revenue Service; (d) the offices of the attorneys general for the states in which the Debtors operate; (e) those creditors listed on the Debtors' consolidated list of thirty creditors holding the largest unsecured claims; (f) counsel to the Stalking Horse Bidder; (g) counsel to Ankura; (h) counsel to PPAS; (i) counsel to the Zohar Lenders; (j) counsel to the Patriarch Lenders; (k) counsel to the DIP Lenders; (l) the offices of the attorneys general for the states in which the Debtors operate; (m) all parties known by the Debtors to assert a lien on any of the Assets; (n) all parties entitled to notice pursuant to Local Rules 2002-1(b).

G. Notice of the Motion, including the relief sought therein, and the Hearing was good and 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 Assumed Contracts, including notice of the proposed cure amounts, and (v) authorize the Debtors to enter into a Stalking Horse Agreement,

in the exercise of the Debtors' 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 are reasonably designed 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 approval of, and authorization to perform under, that certain Asset Purchase Agreement, a copy of which is attached as Exhibit A to the Motion (the "**Stalking Horse Agreement**") by and among the Debtors and the Stalking Horse Bidder. The Stalking Horse Agreement represents the highest or otherwise best offer the Debtors have received to date as a result of their efforts to market the Assets for sale.

K. The Debtors' performance of certain pre-closing obligations contained in the 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 Sale Notice, substantially in the form attached hereto as Exhibit 2, regarding the Sale of the Assets by Auction and Sale Hearing, 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 all 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 Assumed Liabilities disclosed in the Stalking Horse Agreement, and (viii) notice of the proposed assumption and assignment of Assumed Contracts to the Stalking Horse Bidder (or such other Assumed Contracts to another Successful Bidder (as defined in the Bid Procedures) arising from the Auction, if any) and the rights, procedures, and deadlines for objecting thereto. No other or further notice of the Sale shall be required.

M. The Motion, the Sale Notice, the Assumption Notice, this Order, and the Assumption Procedures (as defined below) set forth herein are appropriate and reasonably calculated to provide any Assumed Contract Counterparties with proper notice of the intended assumption and assignment of their Assumed Contracts, the procedures in connection therewith, and any cure amounts relating thereto.

N. Neither the filing of the Motion, entry of this Order, 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 Assets, which Sale will only take place, if at all, following the Sale Hearing.

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED 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.

**A. 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):

Event	Date
Assumed Contract Objection Deadline	The deadline by which objections to the proposed assumption and assignment of any Contract, the proposed cure amount, if any, or adequate assurance of future performance by the Stalking Horse Bidder must be filed with the Court is May 11, 2022 at 4:00 p.m. (prevailing Eastern Time) (the “ <b>Assumed Contract Objection Deadline</b> ”); <i>provided</i> , that, to the extent any Contract Counterparty is added to the Assumption Notice after the initial notice is served, such new Contract Counterparty shall have ten (10) days from the date of service of the Supplemental Contract Notice to object to the propose cure amount and assignment to the Successful Bidder.
Sale Objection Deadline	May 11, 2022 at 4:00 p.m. (prevailing Eastern Time).
Intention to Submit Qualified Bid Deadline	May 20, 2022 at 4:00 p.m. (prevailing Eastern Time).
Bid Deadline	June 3, 2022 at 4:00 p.m. (prevailing Eastern Time).
Auction	June 9, 2022 at 10:00 a.m. (prevailing Eastern Time).

Post-Auction Notice Deadline	As soon as reasonably practicable after closing the Auction, if any, and in any event not less than 24 hours after closing the Auction, the Debtors shall file and serve a notice identifying the Successful Bidder and Back-Up Bidder (the “ <b>Post-Auction Notice</b> ”).
Post-Auction Objection Deadline	If the Successful Bidder that prevails at the Auction is not the Stalking Horse Bidder, the deadline to object solely to (i) the identity of a Successful Bidder or (ii) the ability of the Successful Bidder to provide adequate assurance of future performance under the Assumed Contract shall be June 13, 2022 at 4:00 p.m. (prevailing Eastern Time) (the “ <b>Post-Auction Objection Deadline</b> ”).
Sale Hearing	If the Debtors receive one or more Intention(s) to Submit Qualified Bid by the Intention to Submit Qualified Bid Deadline, the Sale Hearing shall be June 17, 2022.  If the Debtors do not receive any Intention to Submit Qualified Bid by the Intention to Submit Qualified Bid Deadline, the Sale Hearing shall be May 27, 2022.

## B. Entry into Stalking Horse Agreement

6. The Stalking Horse Agreement is hereby approved. Upon entry of this Order, the Stalking Horse Agreement shall be binding on the parties thereto in accordance with its terms.

7. The Debtors are authorized to perform all of their respective pre-closing obligations under the 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 Assets and the satisfaction or waiver of the other conditions to closing on the terms set forth in the Stalking Horse Agreement.

## C. The Auction

8. 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 9, 2022**, 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.

9. 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 will be deemed by the Debtors to be the Successful Bid for the Assets, and (iii) the Debtors shall be authorized to seek approval of the Stalking Horse Agreement as the Successful Bid at the Sale Hearing.

10. Only Qualified Bidders (including, for the avoidance of doubt, the Stalking Horse Bidder) shall be entitled to make any Bids at the Auction.

11. The Debtors and their professionals shall direct and preside over the Auction and the Auction shall be transcribed or videotaped.

12. 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.

13. The Stalking Horse Bidder shall be deemed to be a Qualified Bidder and is not required to make any Deposit other than as contemplated in the Stalking Horse Agreement. To the fullest extent permissible under Section 363(k) of the Bankruptcy Code, the Stalking Horse Bidder may credit bid, in its sole and absolute discretion, any or all of (i) the DIP Obligations (as

defined in the Stalking Horse Agreement) held by the Stalking Horse Bidder, which may include any DIP Obligations assigned to, and assumed by, the Stalking Horse Bidder, and (ii) the Obligations (as defined in the Prepetition First Lien Credit Agreement) held by the Stalking Horse Bidder, which may include any Obligations assigned to, and assumed by, the Stalking Horse Bidder, pursuant to the terms of the Stalking Horse Agreement (the “**Credit Bid**”).

14. In the event of a competing Qualified Bid, all Qualified Bidders shall be entitled, but not obligated, to submit Overbids.

15. Any Potential Bidder shall be precluded from submitting any further bids if such Potential Bidder fails to deliver a Qualified Bid by the Bid Deadline. Subject to the Debtors’ selection of the Successful Bidder at the Auction, if an Auction occurs, upon the closing of the Auction, all non-Successful Bidders shall be precluded from submitting any further bids and shall not have any further access to due diligence information, the members of the Debtors’ management team, or the Debtors’ employees. For the avoidance of doubt, the Debtors, in their discretion, may (i) modify or waive the provisions of this paragraph 15, (ii) consider any Qualified Bid submitted after the applicable deadline set forth herein, and (iii) determine that such Qualified Bid is a higher or otherwise better offer for the Assets and declare such Qualified Bidder to be the Successful Bidder.

16. The Debtors may: (i) determine 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 to be in the best interest of the Debtors' estates.

17. No person or entity, other than the Stalking Horse Bidder, shall be entitled to any expense reimbursement, break-up 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 § 503(b) or otherwise.

**D. Assumption and Assignment Notices & Procedures**

18. The procedures set forth below regarding the assumption and assignment of the executory contracts and unexpired leases 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 "**Assumption Procedures**") are hereby approved to the extent set forth herein. These Assumption Procedures shall govern the assumption and assignment of all of the Assumed Contracts to be assumed and assigned in connection with the Sale, subject to the payments necessary to cure any defaults arising under any such Assumed Contracts.

19. No later than two business days after entry of this Order, the Debtors shall serve via overnight delivery on all non-Debtor Assumed Contract Counterparties to any Assumed Contract (the "**Assumption 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 "**Assumption Notice**"). The Assumption 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 Assumed Contract Objection Deadline (as defined below) and Post-Auction Objection Deadline (as defined below). The presence of an Assumed Contract on the Assumption Notice does not constitute an admission that such Assumed Contract is an executory contract or unexpired lease, and the presence of an Assumed Contract on any notice shall not prevent the Debtors from subsequently withdrawing such request for assumption or rejecting such Assumed Contract any time before such Assumed Contract is actually assumed and assigned pursuant to the Sale Order.

20. Although the Debtors have informed the Court that they intend to make a good faith effort to identify all Assumed 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 Assumed 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 have 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 Assumed Contracts with previously omitted executory contracts or unexpired leases, (ii) remove Assumed Contracts from the list of executory contracts and unexpired leases ultimately selected as Assumed 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 Assumed 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 Assumed Contract Counterparties to such Assumed Contracts and their counsel of record, if any; provided, however, the Debtors may not add an executory contract to the list of Assumed 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 Assumed Contracts as was included in the Assumption Notice.

21. To the extent any Contract Counterparty is added to the Assumption Notice after the initial notice is served, such new Contract Counterparty shall receive notice of the addition and the Debtors’ proposed cure amount through service of a Supplemental Assumption Notice, and that party shall have ten (10) days from the date of such notice to object to the proposed cure amount and assignment to the Successful Bidder.

22. Objections, if any, to (i) the cure amount set forth on the Assumption Notice or (ii) the possible assignment of its executory contract or unexpired lease to the Stalking Horse Bidder including adequate assurance of future performance by the Stalking Horse Bidder (each, an “**Assumed 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 11, 2022 at 4:00 p.m. (prevailing Eastern Time)** (the “**Assumed Contract Objection Deadline**”): (a) counsel for the Debtors, Latham & Watkins LLP, 1271 Avenue of the Americas, New York, NY 10020, Attn: Suzanne Uhland (suzanne.uhland@lw.com), Adam S. Ravin (adam.ravin@lw.com), Brett M. Neve

(brett.neve@lw.com) and Troutman Pepper Hamilton Sanders LLP, Hercules Plaza, Suite 5100, 1313 Market Street, Wilmington, Delaware 19801, Attn: David B. Stratton (david.stratton@troutman.com), David M. Fournier (david.fournier@troutman.com) and Evelyn J. Meltzer (evelyn.meltzer@troutman.com); (b) counsel for the Stalking Horse Bidder, (i) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Michael Nestor (mnestor@ycst.com) and Allurie Kephart (akephart@ycst.com), (ii) Cadwalader Wickersham & Taft LLP, 200 Liberty Street, New York, NY 10281, Attn: Ingrid Bagby (ingrid.bagby@cwt.com), William Mills (william.mills@cwt.com), and Michele C. Maman (michele.maman@cwt.com), and (iii) Arnold & Porter Kaye Scholer LLP, 250 West 55th Street, New York, NY 10019, Attn: Brian Lohan (brian.lohan@arnoldporter.com) and Jonathan Levine (jonathan.levine@arnoldporter.com); (c) counsel to the Zohar Lenders, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Michael Nestor (mnestor@ycst.com), Joseph Barry (jbarry@ycst.com), and Ryan Bartley (rbartley@ycst.com); (d) counsel to the Patriarch Lenders and PPAS, Cole Schotz P.C., 1325 Avenue of the Americas, 19th Floor, New York, NY 10019, Attn: Daniel F.X. Geoghan (dgeoghan@coleschotz.com), and Cole Schotz P.C., 500 Delaware Ave, Ste 1410, Wilmington, DE 19801, Attn: Norman L. Pernick (npernick@coleschotz.com) and G. David Dean (ddean@coleschotz.com); (e) counsel to the DIP Lenders, (i) Arnold & Porter Kaye Scholer LLP, 250 W. 55th Street, New York, NY 10019, Attn: Brian J. Lohan (brian.lohan@arnoldporter.com) and Jonathan Levine (jonathan.levine@arnoldporter.com), (ii) Baker & McKenzie LLP, 452 Fifth Avenue, New York, NY 10018, Attn: Blaire A. Cahn (blaire.cahn@bakermckenzie.com) and Andrew Sagor (andrew.sagor@bakermckenzie.com), and (iii) Womble Bond Dickinson (US) LLP, 1313 N. Market Street, Suite 1200, Wilmington, Delaware 19801, Attn: Morgan L. Patterson

(morgan.patterson@wbd-us.com); (f) counsel to Ankura, Milbank, Tweed, Hadley & McCloy LLP, 28 Liberty Street, New York, NY 10005, Attn: Dennis F. Dunne (ddunne@milbank.com) and Andrew Harmeyer (aharmeyer@milbank.com); (g) counsel for the Creditors' Committee, [\_\_\_\_]; and (h) 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: Joseph J. McMahon, Jr. (joseph.mcmahon@usdoj.gov) (the “**Objection Notice Parties**”).

23. If a Successful Bidder that is not the Stalking Horse Bidder prevails at the Auction, then the deadline to object (a “**Post-Auction Objection**”) solely to (i) the identity of a Successful Bidder or (ii) the ability of the Successful Bidder to provide adequate assurance of future performance under the Assumed Contract shall be **June 13, 2022 at 4:00 p.m. (prevailing Eastern Time)**<sup>12</sup> (the “**Post-Auction Objection Deadline**”), provided, however, that the deadline to object to the proposed cure amount shall not be so extended.

24. If an Assumed Contract Counterparty does not timely file and serve an Assumed Contract Objection by the Assumed Contract Objection Deadline or a Post-Auction Objection by the Post-Auction Objection Deadline, then that party shall 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

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<sup>12</sup> If the Auction is cancelled, the Debtors will promptly file a Notice of Successful Bidder identifying the Stalking Horse Bidder as the Successful Bidder.

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.

25. Where an Assumed Contract Counterparty to an Assumed Contract timely files an (i) Assumed Contract Objection asserting a higher cure amount than the amount listed in the Assumption Notice or (ii) Assumed Contract Objection or Post-Auction Objection, as applicable, objecting to the possible assignment of that Assumed Contract Counterparty's executory contract or unexpired lease, and the parties are unable to consensually resolve the dispute, the amount (if any) to be paid under Section 365 of the Bankruptcy Code or, as the case may be, the Debtors' ability to assign the executory contract or unexpired lease to the Successful Bidder shall be determined at the Sale Hearing or such later date as fixed by the Court. To the extent an Assumed Contract Objection or Post-Auction Objection shall be pending as of the date of the closing of any Sale, the Assumed Contract subject to such objection shall be deemed assumed and assigned, as between the Debtors and the Successful Bidder, as of the closing of the Sale until such time as (i) the amount (if any) to be paid under Section 365 of the Bankruptcy Code or (ii) the Debtors' ability to assign the Assumed Contract to the Successful Bidder is determined by the Court. Upon a determination by the Court (i) of the amount (if any) to be paid under Section 365 of the Bankruptcy Code with respect to any Assumed Contract, the Successful Bidder may elect to (a) pay such amount and have the Assumed Contract assigned to it or (b) remove such Assumed Contract as an Assumed Contract or (ii) that any Assumed Contract is nonassignable, such Assumed Contract shall be removed as an Assumed Contract. Any Assumed Contract

subsequently removed as an Assumed Contract, either in accordance with the preceding sentence or pursuant to an agreement with the contract counterparty, shall no longer be deemed assumed and assigned to the Successful Bidder, as between the Successful Bidder and the Debtors, as of the date such Assumed Contract is removed as an Assumed Contract. For the avoidance of doubt, no Government Contract may be assumed and/or assigned without: (i) the express written consent of the Government, (ii) the execution of a novation agreement applicable to the Government Contract, and (iii) the payment of all outstanding obligations and cure amounts arising under or related to such Government Contract.

26. 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.

**E. Notice of the Sale Process**

27. The Sale Notice, and the Assumption Notice, in substantially the forms as annexed to this Order as Exhibit 2 and Exhibit 3, respectively, and the Publication Notice, in substantially the forms as annexed to the Motion as Exhibit D, respectively, are hereby approved.

28. 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 Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”), 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Joseph J. McMahon, Jr. (joseph.mcmahon@usdoj.gov); (b) the holders of the thirty (30) largest, non-insider unsecured claims against the Debtors; (c) counsel to the official committee of unsecured creditors, if one is appointed; (d) counsel to the Stalking Horse Bidder; (e) counsel to Ankura; (f) counsel to PPAS; (g) counsel to the Zohar Lenders; (h) counsel to the Patriarch Lenders; (i) all parties known by the Debtors to assert a lien on any of the Assets; (j) all entities reasonably known to have expressed an interest in a transaction with respect to any

of the Assets during the past nine (9) months; (k) the United States Attorney’s Office for the District of Delaware; (l) the Internal Revenue Service; (m) all state and local taxing authorities with an interest in the Assets; (n) the offices of the attorneys general for the states in which the Debtors operate; (o) all other governmental agencies with an interest in the Sale and transactions proposed thereunder; (p) the office of the secretary of state in each state in which the Debtors operate or are organized; (q) all environmental authorities having jurisdiction over any of the Assets; (r) all other parties known or reasonably believed to have asserted an interest in the Assets; (s) the counterparties to the Assumed Contracts (the “**Assumed Contract Counterparties**”); (t) the Debtors’ insurance carriers; (u) all known creditors of the Debtors; (v) all known holders of equity interests in the Debtors; and (w) any party that has requested notice pursuant to Bankruptcy Rule 2002.

29. As soon as practicable after the entry of this Order, the Debtors shall publish the Publication Notice in *USA Today*, *The Arizona Republic*, and *Vertical Magazine*. In addition, as soon as reasonably practicable, but in no event later than one (1) business day after entry of this Order, the Debtors will also post the Sale Notice and this Order on the website maintained by the Debtors’ claims and noticing agent, Kroll Restructuring Administration LLC (f/k/a Prime Clerk LLC), located at <https://cases.primeclerk.com/MDHelicopters>. 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.

#### **F. The Sale Hearing**

30. If the Debtors receive one or more Intention(s) to Submit Qualified Bid by the Intention to Submit Qualified Bid Deadline, the Sale Hearing shall be conducted on **June 17, 2022 at [ ● ] a.m./p.m. (prevailing Eastern Time)**. If the Debtors do not receive any Intention to Submit Qualified Bid by the Intention to Submit Qualified Bid Deadline, the Sale Hearing shall

be **May 27, 2022 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 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.

**G. Objections to the Sale**

31. Objections, if any, to the relief requested in the Motion relating to the Sale (each, a "**Sale Objection**") must: (i) be in writing and specify the nature of such objection, (ii) comply with the Bankruptcy Rules and the Local Rules, (iii) be filed with the Court no later than **4:00 p.m. (prevailing Eastern Time) on May 11, 2022**; and (iv) be served upon the Objection Notice Parties; *provided* that, if the Successful Bidder that prevails at the Auction is not the Stalking Horse Bidder, the deadline to object solely to (i) the identity of a Successful Bidder or (ii) the ability of the Successful Bidder to provide adequate assurance of future performance under the Assumed Contract shall be the Post-Auction Objection Deadline.

32. 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.

**H. Other Relief Granted**

33. If and to the extent any Prepetition First Lien Lender confirms in writing acceptable to the Debtors, in their sole discretion, that such Prepetition First Lien Lender and its affiliates shall irrevocably cease to be a participant in the sale process, including as a participant in the Stalking Horse Bid (as applicable) and the Auction (if any), and disclaim any right to submit further bids for the Assets, either directly or indirectly, alone or in concert with another bidder, the Debtors shall consult with such Prepetition First Lien Lender, in its capacity as a lender under the Prepetition First Lien Credit Agreement, over the Sale of the Assets, implementation of the Bid Procedures and conduct of the Auction, including, but not limited to, any decisions to deviate from, waive or alter any of the provisions of the Bid Procedures and the selection of the Successful Bidder and Back-Up Bidder. For the avoidance of doubt, and notwithstanding the preceding sentence, the Debtors reserve their right in their reasonable business judgment to implement the Bid Procedures and conduct the Auction in any manner that will best promote the goals of the sale process.

34. 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.

35. The requirements of Bankruptcy Rules 6004(h) and 6006(d) are waived.

36. The Debtors are hereby authorized to conduct the Sale without the necessity of complying with any state or local bulk transfer laws or requirements.

37. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

38. 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.

39. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation or enforcement of this Order.

**Exhibit 1 to Bid Procedures Order**

**Bid Procedures**

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

	X	
	:	
In re:	:	Chapter 11
	:	
MD HELICOPTERS, INC., <i>et al.</i> , <sup>1</sup>	:	Case No. 22-_____ (_____)
	:	
Debtors.	:	(Jointly Administered)
	:	
	X	

**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 Asset Purchase Agreement (the “**Stalking Horse Agreement**”) with MDH Holdco LLC or its assignee (the “**Stalking Horse Bidder**”), pursuant to which the Stalking Horse Bidder proposes to (i) purchase, acquire, and take assignment and delivery of the Purchased Assets (as defined in the Stalking Horse Agreement) and (ii) assume certain Assumed Liabilities (as defined in the Stalking Horse Agreement).

On [ ● ], 2022, the United States Bankruptcy Court for the District of Delaware (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 the highest or otherwise best offer for the sale of the Assets.

**I. Important Dates**

Event	Date
Assumed Contract Objection Deadline	Objections to (i) the potential assumption and assignment of any Contract to the Stalking Horse Bidder including the ability of the Stalking Horse Bidder to provide adequate assurance of future performance and (ii) the proposed cure amount to be paid in connection with the assumption and

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<sup>1</sup> The two Debtors in these cases are MD Helicopters, Inc. and Monterrey Aerospace, LLC, and their address is 4555 E. McDowell Road, Mesa, AZ 85215. The last four digits of MD Helicopters, Inc.’s taxpayer identification number are 4088. Monterrey Aerospace, LLC has not been assigned a taxpayer identification number as of the date hereof.

	assignment of any Contract shall be filed and served no later than May 11, 2022 at 4:00 p.m. (prevailing Eastern Time) (the “ <b>Assumed Contract Objection Deadline</b> ”); <i>provided</i> that, to the extent any Contract Counterparty is added to the Assumption Notice after the initial notice is served, such new Contract Counterparty shall have ten (10) days from the date of service of the Supplemental Contract Notice to object to the propose cure amount and assignment to the Successful Bidder.
Sale Objection Deadline	May 11, 2022 at 4:00 p.m. (prevailing Eastern Time).
Intention to Submit Qualified Bid Deadline	May 20, 2022 at 4:00 p.m. (prevailing Eastern Time).
Bid Deadline	June 3, 2022 at 4:00 p.m. (prevailing Eastern Time).
Auction	June 9, 2022 at 10:00 a.m. (prevailing Eastern Time).
Post-Auction Notice Deadline	As soon as reasonably practicable after closing the Auction, if any, and in any event not less than 24 hours after closing the Auction, the Debtors shall file and serve a notice identifying the Successful Bidder and Back-Up Bidder.
Post-Auction Objection Deadline	If the Successful Bidder that prevails at the Auction is not the Stalking Horse Bidder, the deadline to object solely to (i) the identity of a Successful Bidder or (ii) the ability of the Successful Bidder to provide adequate assurance of future performance under the Assumed Contract shall be June 13, 2022 at 4:00 p.m. (prevailing Eastern Time).
Sale Hearing	If the Debtors receive one or more Intention(s) to Submit Qualified Bid by the Intention to Submit Qualified Bid Deadline, the Sale Hearing shall be June 17, 2022.  If the Debtors <b>do not</b> receive any Intention to Submit Qualified Bid by the Intention to Submit Qualified Bid Deadline, the Sale Hearing shall be May 27, 2022

## J. Marketing Process

### 1. Contact Parties

The Debtors and their advisors have conducted and will continue to conduct an extensive marketing process. Moelis has a list of “Contact Parties” who will receive a copy of the “Information Package.” The list of Contact Parties will encompass those parties whom the Debtors believe may be interested in pursuing a Sale, or whom the Debtors reasonably believe may have the financial resources to consummate such a transaction.

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; and (c) a copy of the Stalking Horse Agreement.

## 2. Access to Diligence Materials

To receive due diligence information, including full access to the Debtors' electronic data room (the "**Data Room**") and to additional non-public information regarding the Debtors (collectively, the "**Diligence Materials**"), any party interested in submitting a bid, other than the Stalking Horse Bidder (each a "**Potential Bidder**"), must deliver the following documents (collectively, the "**Preliminary Bid Documents**") by email to (a) counsel for the Debtors, Latham & Watkins, LLP, Attn: Suzanne Uhland (suzanne.uhland@lw.com), Adam S. Ravin (adam.ravin@lw.com), and Brett M. Neve (brett.neve@lw.com) and Troutman Pepper Hamilton Sanders LLP, Attn: David B. Stratton (david.stratton@troutman.com), David M. Fournier (david.fournier@troutman.com) and Evelyn J. Meltzer (evelyn.meltzer@troutman.com) and (b) Moelis & Company LLC, Attn: Azad Badakhsh (azad.badakhsh@moelis.com) and Adam Keil (adam.keil@moelis.com) (collectively, the "**Bid Recipients**"):

- (vi) an executed and signed "**Acceptable Confidentiality Agreement**," which, as defined in the Stalking Horse Agreement, shall mean a confidentiality agreement that contains provisions that are not less favorable in the aggregate to the Debtors than those contained in the confidentiality agreement executed between the Debtors and the Stalking Horse Bidder, to the extent not already executed;
- (vii) identification of the Potential Bidder and any principals and representatives thereof who are authorized to appear and act on its behalf for all purposes regarding the contemplated Sale;
- (viii) evidence by the Potential Bidder of its financial capacity to close a proposed transaction, which shall include financial statements of the Potential Bidder, including current audited and unaudited financial statements or other financial information of the Potential Bidder, or, if the Potential Bidder is an entity formed for the purpose of acquiring the Assets, current audited and unaudited financial statements or other financial information of the Potential Bidder's equity holder or other financial backer, or such other form of financial disclosure and evidence acceptable to the Debtors and their advisors in their reasonable discretion, demonstrating such Potential Bidder's ability to close the proposed transaction, to finance going concern operations to the extent contemplated, and to provide adequate assurance of future performance to counterparties to any executory contracts and unexpired leases to be assumed by the Potential Bidder; and
- (iv) evidence by the Potential Bidder of its ability to obtain any regulatory approvals and security clearances necessary to consummate a sale of the Assets.

Promptly after a Potential Bidder delivers Preliminary Bid Documents to the Bid Recipients, the Debtors will assess the adequacy of the evidence of its financial capacity and notify the Potential Bidder whether such Potential Bidder has submitted acceptable Preliminary Bid Documents so that the Potential Bidder may proceed to conduct due diligence and ultimately submit an Intention to Submit Qualified Bid, a Bid and participate in the Auction, as applicable. All due diligence requests must be directed to counsel to the Debtors.

The Debtors and their advisors will coordinate all reasonable requests from Bidders for additional information and due diligence access. The Debtors may decline to provide such information to Bidders who, in the Debtors' business judgment, have not established, or who have raised doubt, that such Bidder intends in good faith or has the capacity to consummate a sale transaction of all or substantially all of the Debtors' Assets (a "**Transaction**").

For any Potential Bidder 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 Potential Bidder at such time.

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 Potential Bidder 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.

Each Potential Bidder shall comply with all reasonable requests for additional information and due diligence access by the Debtors or their advisors regarding such Potential Bidder and its contemplated Transaction.

### **3. Intention to Submit Qualified Bid Deadline**

After receipt of the Diligence Materials, each Potential Bidder that intends, in good faith, to submit a Bid that it believes will be a Qualified Bid must submit an indication of interest setting forth its intention to submit a Qualified Bid to the Bid Recipients (an "**Intention to Submit Qualified Bid**") by the Intention to Submit Qualified Bid Deadline. Each Intention to Submit Qualified Bid shall include:

- (i) **Purchase Price**. Each Intention to Submit Qualified Bid must clearly set forth the terms of any proposed Transaction, including and identifying separately any cash and non-cash components of the proposed Transaction consideration, such as certain liabilities to be assumed by the Bidder as part of the Transaction;
- (ii) **Financing**. Each Intention to Submit Qualified Bid must clearly state whether the Potential Bidder intends to (a) consummate the Transaction set forth in its Intention to Submit Qualified Bid with cash on hand or (b) rely on financing to consummate such Transaction. To the extent that a Potential Bidder intends to consummate such Transaction with cash on hand, evidence by the Potential Bidder of its financial capacity to close a proposed transaction, which shall include financial statements of the Potential Bidder, including current audited and unaudited financial statements or other financial information of the Potential Bidder, or, if the Potential Bidder is an entity formed for the purpose of acquiring the Assets, current audited and unaudited financial statements or other financial information of the Potential Bidder's equity holder or other financial backer, or such other form of financial disclosure and evidence acceptable to the Debtors and their advisors in their

reasonable discretion, demonstrating such Potential Bidder's ability to close the proposed transaction, to finance going concern operations to the extent contemplated, and to provide adequate assurance of future performance to counterparties to any executory contracts and unexpired leases to be assumed by the Potential Bidder. To the extent that a Potential Bidder intends to consummate such Transaction through financing, each Intention to Submit Qualified Bid must identify the source(s) of potential debt and/or equity funding commitments to satisfy the Potential Bidder's purchase price;

- (iii) Identity. Each Intention to Submit Qualified Bid must fully disclose the identity of each entity that will be bidding or otherwise participating in connection with a potential Bid (including each equity holder or other financial backer of the Potential Bidder if such Potential Bidder is an entity formed for the purpose of consummating the proposed Transaction contemplated by a potential Bid), and the complete terms of any such participation. Under no circumstances shall any undisclosed principals, equity holders, or financial backers be associated with any potential Bid. Each potential Bid must also include contact information for the specific person(s) and counsel the Debtors' advisors should contact regarding such potential Bid;
- (iv) Authorization. Each Intention to Submit Qualified Bid must contain evidence that the Potential Bidder has obtained authorization or approval from its board of directors (or a comparable governing body acceptable to the Debtors) acceptable to the Debtors with respect to the submission of the Intention to Submit Qualified Bid and its potential Bid and the consummation of the Transactions contemplated in such potential Bid;
- (v) Regulatory or Third-Party Approval. Each Intention to Submit Qualified Bid must set forth any regulatory or third-party approval required for the Potential Bidder to consummate the Sale, and the time period within which the Potential Bidder expects to receive such regulatory and third-party approvals;
- (vi) Due Diligence. Each Intention to Submit Qualified Bid must set forth with specificity any due diligence that must be conducted in order for the Potential Bidder to submit a timely Bid.
- (vii) Substantial Contribution Waiver. Each Intention to Submit Qualified Bid must contain an express waiver, effective upon submission of the Intention to Submit Qualified Bid, of any substantial contribution claims by the Potential Bidder;
- (viii) Expenses; Disclaimer to Fees. Each Intention to Submit Qualified Bid must disclaim any right to receive a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation. For the avoidance of doubt, no Potential Bidder will be permitted to request, or be granted by the Debtors, at any time, whether as part of the Auction or otherwise, a break-up fee, expense reimbursement, termination fee, substantial contribution, or any other similar form of compensation, and by submitting an Intention to Submit Qualified Bid any

Potential Bidder is waiving any assertion or request for reimbursement on any basis, including under Section 503(b) of the Bankruptcy Code;

- (ix) Consent to Jurisdiction. Each Intention to Submit Qualified Bid must submit to the exclusive jurisdiction of the Bankruptcy Court and waive any right to a jury trial in connection with any disputes relating to Debtors' qualification of Bids, the Auction, the construction and enforcement of these Bid Procedures, the Sale documents, and the closing of the sale, as applicable; and
- (x) Other Information. Each Intention to Submit Qualified Bid must contain such other information as may be reasonably requested by the Debtors.

Promptly after a Potential Bidder delivers an Intention to Submit Qualified Bid to the Bid Recipients, the Debtors will assess the adequacy of such Intention to Submit Qualified Bid and notify the Potential Bidder whether such Potential Bidder has submitted an acceptable Intention to Submit Qualified Bid so that the Potential Bidder may proceed to conduct due diligence and ultimately submit a Bid and participate in the Auction, as applicable.

If no Potential Bidder submits an Intention to Submit Qualified Bid by the Intention to Submit Qualified Bid Deadline, the Debtors shall promptly file a Notice of Successful Bidder identifying the Stalking Horse Bidder as the Successful Bidder. Such notice shall terminate the Bid Deadline, cancel the Auction, and provide notice of the Sale Hearing to be held on May 27, 2022.

#### **4. 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 to satisfy each of the following conditions:

- (ix) Stalking Horse Bidder. The Stalking Horse Bidder shall be deemed to be a Qualified Bidder and the Stalking Horse Agreement shall be deemed to be a Qualified Bid (the "**Stalking Horse Bid**").
- (x) Bid Deadline. The Debtors must receive a Bid in writing, on or before **June 3, 2022 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 Bid Recipients by the Bid Deadline to be considered.
- (xi) Form and Contents. All Bids shall be in the form of an irrevocable offer letter from a person or persons that the Debtors, in their reasonable discretion taking into account its fiduciary duties, deem financially able to consummate the purchase of the Assets, which letter states and includes:
  - (A) Marked Agreement. Each Bid must state the Bidder irrevocably offers to purchase some or all of the Assets upon the terms and conditions set forth in a duly executed non-contingent and attached complete asset purchase agreement, which shall be in substantially the same form as the Stalking

Horse Agreement, prepared and executed by the Bidder (an electronic version in Word format and blacklined against the Stalking Horse Agreement), together with its exhibits and schedules, including terms relating to price and the time of closing (the “**Proposed Agreement**”);

- (B) Assets. Each Bid must clearly specify the Assets that are included in the Bid (it being understood that while Bids for a portion or subset of the Assets may be permitted, the Debtors may consider whether the combined consideration for the Assets exceeds the Purchase Price of the Stalking Horse Agreement and/or other aspects of the bid in determining whether the Bid is a Qualified Bid);
- (C) Purchase Price. Each Bid must clearly set forth the terms of any proposed Transaction, including and identifying separately any cash and non-cash components of the proposed Transaction consideration, such as certain liabilities to be assumed by the Bidder as part of the Transaction (the “**Purchase Price**”);
- (D) Overbid. Each 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; and (ii) an initial overbid of at least \$1,000,000, 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);
- (E) Committed Financing. To the extent that a Bid is not accompanied by evidence of the Bidder’s capacity to consummate the Transaction set forth in its Bid with cash on hand, each Qualified Bid must include evidence of committed financing that demonstrates that the Bidder has received sufficient, non-contingent financing that demonstrates that the Bidder has received sufficient non-contingent and binding debt and/or equity funding commitments to satisfy the Bidder’s Purchase Price and other obligations under its Bid. Such funding commitments or other financing acceptable to the Debtors must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions acceptable to the Debtors;
- (F) Contingencies; No Financing or Diligence Outs. A Bid shall not be conditioned on a Bidder obtaining, or the sufficiency of, financing or any internal approval, or on the outcome or review of due diligence, which must be completed before the Bid Deadline, but may be subject to the accuracy at the closing of specified representations and warranties or the satisfaction at the closing of specified conditions;

- (G) Identity. Each Bid must fully disclose the identity of each entity that will be bidding or otherwise participating in connection with such Bid (including each equity holder or other financial backer of the Bidder if such Bidder is an entity formed for the purpose of consummating the proposed Transaction contemplated by such Bid), and the complete terms of any such participation. 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 the Debtors' advisors should contact regarding such Bid;
- (H) Authorization. Each Bid must contain evidence that the Bidder has obtained authorization or approval from its board of directors (or a comparable governing body acceptable to the Debtors) acceptable to the Debtors with respect to the submission of its Bid and the consummation of the Transactions contemplated in such Bid;
- (I) Regulatory or Third-Party Approval. Each Bid must set forth any regulatory or 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;
- (J) Substantial Contribution Waiver. Each Bid must contain an express waiver, effective upon submission of the Bid, of any substantial contribution claims by the Bidder;
- (K) Expenses; Disclaimer to Fees. Each Bid must disclaim any right to receive a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation. For the avoidance of doubt, no Potential Bidder will be permitted to request, or be granted by the Debtors, at any time, whether as part of the Auction or otherwise, a break-up fee, expense reimbursement, termination fee, substantial contribution, or any other similar form of compensation, and by submitting a Bid any Potential Bidder is waiving any assertion or request for reimbursement on any basis, including under Section 503(b) of the Bankruptcy Code;
- (L) Consummation. Each Bid must include a statement or evidence reflecting (i) that the Bidder is prepared to consummate the transaction upon entry of an order of the Bankruptcy Court approving the Sale to the Successful Bidder (the "Sale Order") and consummation shall not be contingent on obtaining requisite government, regulatory, or other third-party approvals for novation of the Government Contracts or security clearances, (ii) that the Bidder has made or will make as soon as reasonably practicable all necessary filings with respect to any regulatory, antitrust and other laws and pay the fees associated therewith; and (iii) the Bidder's plan and ability to obtain all requisite governmental, regulatory, or other third-party approvals, including novation of the Government Contracts (as defined below) and

obtaining security clearances, and the proposed timing for the Bidder to undertake the actions required to obtain such approvals;

- (M) Irrevocability. Each Bid must include a statement that, in the event the Bidder becomes the Successful Bidder or the Back-Up Bidder (as defined below), such Qualified Bidder's offer is irrevocable until two (2) business days after the closing of the sale of the Assets;
  - (N) Actual Value. The Bid must state the proposed actual value of such Bidder's bid to the Debtors' estate;
  - (O) Assumed Contracts and Leases. Each Bid must identify any and all executory contracts and unexpired leases of the Debtors that the Qualified Bidder wishes to be assumed pursuant to a Sale. A Bid must specify that such 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);
  - (P) Employees. Each Bid must detail the treatment of the employees of the Debtors;
  - (Q) Damages. Each Bid must provide that the Debtors have the right to pursue all available damages in the event of the Bidder's breach of, or failure to perform under, the Proposed Agreement;
  - (R) Consent to Jurisdiction. Each Bidder must submit to the exclusive jurisdiction of the Bankruptcy Court and waive any right to a jury trial in connection with any disputes relating to Debtors' qualification of Bids, the Auction, the construction and enforcement of these Bid Procedures, the Sale documents, and the closing of the sale, as applicable; and
  - (S) Other Information. Each Bid must contain such other information as may be reasonably requested by the Debtors.
- (xii) Same or Better Terms. Each Bid shall be based on the Stalking Horse Bid and must exceed, either on its own terms or, in the case of a Bid for a portion or subset of the Assets, in combination with another Qualified Bid(s), the Stalking Horse Bid in relation to the Assets by the Minimum Overbid Increment (as that term is defined in the Bid Procedures Order). Each Bid must be on terms that are not more burdensome than the terms of the Stalking Horse Bid, as determined by the Debtors, and considering, among other factors, the scope and manner of the proposed Transaction.
- (xiii) 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.

- (xiv) Adequate Assurance. All Bids must provide for adequate working capital financing to finance going concern operations to the extent contemplated, and to provide adequate assurance of future performance to counterparties to any executory contracts and unexpired leases to be assumed by the Bidder.
- (xv) Back-Up Bidder. Each Bidder must acknowledge that by submitting a Bid, the Bidder agrees to be a Back-Up Bidder, should the Bid be so selected.
- (xvi) Wind-Down Amounts. The Bid must ensure that the Debtors will retain sufficient cash to fund the orderly wind-down of the Debtors' estates in a manner at least equivalent to the Wind-Down Budget (as defined in the Stalking Horse Agreement).
- (xvii) Proof of Financial Ability to Perform. All Bidders must provide 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.
- (xviii) As Is, Where Is. The sale of the Assets shall be on an "as is, where is" and "with all defects" basis and without representations or warranties of any kind, nature, or description by the Debtors, their agents or estates, except to the extent set forth in the Proposed Agreement of the Successful Bidder.
- (xix) Free and Clear. Except as otherwise provided in the Proposed Agreement, all of the Debtors' right, title, and interest in and to the Assets to be acquired shall be sold free and clear of all liens, claims, charges, security interests, restrictions, and other encumbrances of any kind or nature thereon and there against (collectively, the "Transferred Liens"), with such Transferred Liens to attach to the proceeds of the sale.
- (xx) Good Faith Deposit. Each Qualified Bid must be accompanied by a cash deposit in the amount of 10% of the total Purchase Price to be held in an escrow account to be identified and established by the Debtors (the "**Deposit**").
- (xxi) Binding Effect. By submitting its Bid, each Bidder is agreeing, and shall be deemed to have agreed, to abide by and honor the terms of the Bid Procedures and to refrain

from submitting a Qualified Bid or seeking to reopen the Auction after conclusion of the Auction.

- (xxii) Repayment of DIP Obligations. A Bid by a Bidder must provide for (a) payment, in full, in cash of all DIP Obligations (as defined in the Stalking Horse Agreement) and (b) funding of the carve-out under any financing order(s) entered by the Bankruptcy Court, in each case as of the Closing Date.
- (xxiii) Time Frame for Closing. A Bid by a Bidder must be reasonably likely to be consummated, if selected as the Successful Bid, within a time frame acceptable to the Debtors but in no event later than one hundred fifty (150) days following the Petition Date.

A Bid received before the Bid Deadline will be considered a “**Qualified Bid**” and each Bidder that submits a Qualified Bid will be considered a “**Qualified Bidder**” if the Debtors determine that such Bid meets the requirements above for a Bid as set forth in these Bid Procedures. Notwithstanding anything to the contrary herein, a Bid may be in the form of a plan of reorganization (a “**Restructuring Transaction**”), it being understood that the Debtors reserve the right to modify these procedures, including without limitation, the Qualified Bid requirements, as necessary or appropriate to accommodate the submission and the Debtors’ consideration of one or more Bids in the form of a Restructuring Transaction; *provided* that (a) in order for a Bid in the form of a Restructuring Transaction to constitute a Qualified Bid, such Bid must be capable of satisfying the requirements of Section 1129 of the Bankruptcy Code and being consummated, as determined by the Debtors, and (b) the failure of any such Bid to satisfy the requirements set forth above in subparagraphs (ii) through (xiv) may be taken into account by the Debtors in evaluating the Bid.

No later than one day prior to the start of the Auction, the Debtors will notify each Qualified Bidder whether such party is a Qualified Bidder and shall provide each Qualified Bidder, including the Stalking Horse Bidder, with a copy of each Qualified Bid.

Upon determination that any Bid is not a Qualified Bid, the Debtors shall notify such Bidder of such determination forthwith, but in any event not later than the commencement of the Auction, and shall provide such bidder with the basis for such determination. In the event that such Bid is determined not to be a Qualified Bid, the Bidder shall have until the commencement of the Auction to modify its Bid to increase the purchase price or otherwise improve the terms of the Bid in order to comply with the requirements for Qualified Bids as set forth herein; *provided* that any Qualified Bid may be improved during the Auction only as set forth in these Bid Procedures. 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. If any Bid is determined not to be a Qualified Bid, the Debtors will refund such Bidder’s Deposit promptly after the Bid Deadline.

Between the date that the Debtors notify a Bidder that it is a Qualified Bidder and the Auction date, the Debtors may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Without the prior written consent of the Debtors, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase its

Purchase Price, 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 Qualified Bid may be improved at the Auction as set forth in these Bid Procedures. Any improved Qualified Bid must continue to comply with the requirements for Qualified Bids set forth in these Bid Procedures. The Stalking Horse shall be deemed a Qualified Bidder at all times, and the Stalking Horse Agreement shall be a Qualified Bid.

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, the highest or otherwise best bid (the "**Baseline Bid**" and the Bidder making such Baseline Bid, the "**Baseline Bidder**"), and shall notify the Stalking Horse Bidder and all Qualifying Bidders with Qualifying Bids of the Baseline Bid no later than the opening of the Auction.

## 5. Credit Bid

The Stalking Horse Bidder shall be deemed to be a Qualified Bidder and is not required to make any Deposit other than as contemplated in the Stalking Horse Agreement. To the fullest extent permissible under Section 363(k) of the Bankruptcy Code, the Stalking Horse Bidder may credit bid as set forth in the Stalking Horse Agreement and at the Auction, in its sole and absolute discretion, any of (a) the DIP Obligations (as defined in the Stalking Horse Agreement) held by the Stalking Horse Bidder, which may include any DIP Obligations assigned to, and assumed by, the Stalking Horse Bidder, and (b) the Obligations (as defined in the Prepetition First Lien Credit Agreement) held by the Stalking Horse Bidder, which may include any Obligations assigned to, and assumed by, the Stalking Horse Bidder, pursuant to the terms of the Stalking Horse Agreement (the "**Credit Bid**").

## K. Auction

If one or more Qualified Bid is received by the Bid Deadline (other than the Stalking Horse Agreement), the Debtors will conduct the Auction to determine the highest or otherwise 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 non-exhaustive factors: (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; (i) the tax consequences of such Qualified Bid; and (j) the consent of the parties in interest and/or the cost and expense to the Debtors of resolving sale issues before Closing (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 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 9, 2022 at 10:00 a.m. (prevailing Eastern Time)** or such later time on such day or other place as the Debtors shall notify all Bidders who have submitted Qualified Bids. Only the Stalking Horse Bidder and other Qualified Bidders will be entitled to make any Bids at the Auction. The Stalking Horse Bidder and other Qualified Bidders participating at the Auction shall appear, or through a duly authorized representative, who also may appear at the Auction. Only the Debtors, the Stalking Horse Bidder, the creditors of the Zohar Funds participating in the Stalking Horse Bid, any participating Qualified Bidders, and any creditor of the Debtors, together with the professional advisors to each of the foregoing parties, may attend the Auction; provided that any of the Debtors' creditors must provide three (3) business days' written notice to counsel to the Debtors of their intent to attend 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. Prior to the commencement of the Auction, the Debtors shall determine which of the Qualified Bids, at such time, is the highest or otherwise best bid for purposes of constituting the opening bid of the Auction, and shall promptly notify the Stalking Horse Purchaser and all Qualified Bidders with Qualified Bids of such Baseline Bid. The Baseline Bid may be comprised of any combination of the Assets, and the Debtors may determine that different Baseline Bids exist for different groupings of the Assets. The Debtors shall have the discretion to determine how to proceed when auctioning the Assets in groupings that do not include all of Debtors' Assets so as to maximize the value of the Assets.

All Bids made after the start of the Auction 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.

#### **2. Terms of Overbids**

An "**Overbid**" is any Bid made at the Auction subsequent to the Debtors' announcement of the Baseline Bid. To submit an Overbid for purposes of this Auction, a Bidder must comply with the following conditions:

##### **a. Minimum Overbid Increment**

Any Overbid after the Baseline Bid shall be made in increments of at least \$1,000,000 (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.

**b. Overbid Procedures**

Upon the solicitation of each round of Overbids, the Debtors may announce a deadline (the “**Overbid Round Deadline**”), by which time any Overbids must be submitted to the Debtors.

After each Overbid Round Deadline, the Debtors shall determine whether an Overbid is higher or otherwise better than the Baseline Bid (as defined in the Bid Procedures) in the initial Overbid round or, in subsequent rounds, the Overbid previously designated by the Debtors as the prevailing highest or otherwise best Bid (the “**Prevailing Highest Bid**”). The Debtors shall announce and describe to all Qualified Bidders present at the Auction the material terms of any new Overbid designated by the Debtors as the Prevailing Highest Bid, as well as the value attributable by the Debtors to such Prevailing Highest Bid.

Any Overbid to a Prevailing Highest Bid by any party must provide more value for the Debtors’ estates than any prior bid.

**c. 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 Deposit shall be required beyond the 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 Deposit is equal to the amount of ten percent (10%) 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.

To the extent not previously provided (which shall be determined by the Debtors) 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.

**d. 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 (a) 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 (b) its Qualified Bid is the good-faith *bona fide* offer and it intends to consummate the proposed transaction if selected as the Successful Bidder.

**e. Back-Up Bidder**

Notwithstanding anything in the Bid Procedures to the contrary, if an Auction is conducted, the party(ies) with the second highest or otherwise second best Qualified Bid (or combination of Qualified Bids) at the Auction, as determined by the Debtors, in the exercise of their business judgment, shall be designated by the Debtors as backup bidder (the “**Back-Up Bidder**”). The Back-Up Bidder shall be required to keep its initial Qualified Bid(s) (or if the Back-Up Bidder submitted one or more Overbids at the Auction, its final Overbid) (the “**Back-Up Bid**”) open and irrevocable until two (2) business days after the closing of the sale of the Assets (the “**Outside Back-Up Date**”). 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 Back-Up Bidder to be the new Successful Bidder, and the Debtors will be authorized, but not required, to consummate the transaction with the Back-Up 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 Back-Up Bidder shall be no later than the later of (a) twenty five (25) days after the date the Debtors provide notice to the Back-Up Bidder that the Successful Bidder has failed to consummate a sale and the Debtors desire to consummate the transaction with the Back-Up Bidder and (b) five (5) days after necessary regulatory approvals are completed by the Back-Up Bidder and/or the Debtors. The Deposit, if any, of the Back-Up Bidder shall be held by the Debtors until two (2) business days after the closing of the Sale with the Successful Bidder; *provided, however*, in the event the Successful Bidder does not consummate the transaction as described above and the Debtors provide notice to the Back-Up Bidder, the Back-Up Bidder’s Deposit shall be held until the closing of the transaction with the Back-Up Bidder. In the event the Debtors fail to consummate a transaction with the Back-Up Bidder as described above, the Back-Up 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 Back-Up Bidder.

**3. 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.

**4. 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, is the highest or otherwise 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, in the Debtors’ discretion, 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. The Debtors will file a notice identifying the Successful Bidder and Back-Up Bidder (the "**Post-Auction Notice**") as soon as reasonably practicable after closing the Auction, if any, and in any event not more than 24 hours following closing the Auction.

The Debtors shall not consider any Bids submitted after the conclusion of the Auction.

**L. Procedures for Determining Cure Amounts and Adequate Assurance for Assumed Contract Counterparties to Assumed Contracts**

No later than two business days after entry of the Bid Procedures Order, the Debtors shall send a notice to each counterparty to an executory contract or unexpired lease (each an "**Assumed Contract Counterparty**") setting forth the Debtors' calculation of the cure amount, if any, that would be owing to such Assumed Contract Counterparty if the Debtors decided to assume or assume and assign such executory contract or unexpired lease, and alerting such Assumed Contract Counterparty that their contract may be assumed and assigned to the Successful Bidder (the "**Assumption Notice**"), a copy of which is attached to the Bid Procedures Order as Exhibit 3. Any Assumed Contract Counterparty that objects to the cure amount set forth in the Assumption Notice or the possible assignment of its executory contract or unexpired lease to the Stalking Horse Bidder, including the ability of the Stalking Horse Bidder to provide adequate assurance of future performance, must file an objection (an "**Assumed Contract Objection**") on or before **4:00 p.m. prevailing Eastern Time on May 11, 2022**, which Assumed Contract Objection must be served on: (a) counsel for the Debtors, Latham & Watkins LLP, 1271 Avenue of the Americas, New York, NY 10020, Attn: Suzanne Uhland (suzanne.uhland@lw.com), Adam S. Ravin (adam.ravin@lw.com), Brett M. Neve (brett.neve@lw.com) and Troutman Pepper Hamilton Sanders LLP, Hercules Plaza, Suite 5100, 1313 Market Street, Wilmington, Delaware 19801, Attn: David B. Stratton (david.stratton@troutman.com), David M. Fournier (david.fournier@troutman.com) and Evelyn J. Meltzer (evelyn.meltzer@troutman.com); (b) counsel for the Stalking Horse Bidder, (i) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Michael Nestor (mnestor@ycst.com) and Allurie Kephart (akephart@ycst.com), (ii) Cadwalader Wickersham & Taft LLP, 200 Liberty Street, New York, NY 10281, Attn: Ingrid Bagby (ingrid.bagby@cwt.com), William Mills (william.mills@cwt.com), and Michele C. Maman (michele.maman@cwt.com), and (iii) Arnold & Porter Kaye Scholer LLP, 250 West 55th Street, New York, NY 10019, Attn: Brian Lohan (brian.lohan@arnoldporter.com) and Jonathan Levine (jonathan.levine@arnoldporter.com); (c) counsel to the Zohar Lenders, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Michael Nestor (mnestor@ycst.com), Joseph Barry (jbarry@ycst.com), and Ryan Bartley (rbartley@ycst.com); (d) counsel to the Patriarch Lenders and PPAS, Cole Schotz P.C., 1325 Avenue of the Americas, 19th Floor, New York, NY 10019, Attn: Daniel F.X. Geoghan

(dgeoghan@coleschotz.com), and Cole Schotz P.C., 500 Delaware Ave, Ste 1410, Wilmington, DE 19801, Attn: Norman L. Pernick (npernick@coleschotz.com) and G. David Dean (ddean@coleschotz.com), (e) counsel to the DIP Lenders, (i) Arnold & Porter Kaye Scholer LLP, 250 W. 55th Street, New York, NY 10019, Attn: Brian J. Lohan (brian.lohan@arnoldporter.com) and Jonathan Levine (jonathan.levine@arnoldporter.com), (ii) Baker & McKenzie LLP, 452 Fifth Avenue, New York, NY 10018, Attn: Blaire A. Cahn (blaire.cahn@bakermckenzie.com) and Andrew Sagor (andrew.sagor@bakermckenzie.com), and (iii) Womble Bond Dickinson (US) LLP, 1313 N. Market Street, Suite 1200, Wilmington, Delaware 19801, Attn: Morgan L. Patterson (morgan.patterson@wbd-us.com); (f) counsel to Ankura, Milbank, Tweed, Hadley & McCloy LLP, 28 Liberty Street, New York, NY 10005, Attn: Dennis F. Dunne (ddunne@milbank.com) and Andrew Harmeyer (aharmeyer@milbank.com); (g) counsel for the Creditors' Committee, [\_\_\_\_]; and (h) 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: Joseph J. McMahon, Jr. (joseph.mcmahon@usdoj.gov) (the “**Objection Notice Parties**”), and filed with the Clerk of the Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, DE 19801. If an Assumed Contract Counterparty does not timely file and serve an Assumed 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 Stalking Horse Bidder.

If the Successful Bidder that prevails at the Auction is not the Stalking Horse Bidder, the deadline to object solely to (a) the identity of a Successful Bidder or (b) the ability of the Successful Bidder to provide adequate assurance of future performance under the Assumed Contract (each, a “**Post-Auction Objection**”) shall be the Post-Auction Objection Deadline (defined below). Each Post-Auction Objection must be served on the Objection Notice Parties and filed with 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 June 13, 2022** (the “**Post-Auction Objection Deadline**”). If a Post-Auction Objection is not filed, parties will be forever barred from objecting to the identity of the Successful Bidder or to the assignment of that party's executory contract or unexpired lease to the Successful Bidder.

Where an Assumed Contract Counterparty to an Assumed Contract files a timely Assumed Contract Objection asserting a higher cure amount than the amount listed in the Assumption Notice, or timely files an Assumed Contract Objection or Post-Auction Objection, as applicable, to the possible assignment of that Assumed Contract Counterparty's executory contract or unexpired lease including the Successful Bidder's ability to provide adequate assurance of future performance, and the parties are unable to consensually resolve the dispute, the amount to be paid (if any) under Section 365 of the Bankruptcy Code 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 or at a later date as fixed by the Bankruptcy Court.

## **M. Sale Hearing**

If the Debtors receive one or more Intention(s) to Submit Qualified Bid by the Intention to Submit Qualified Bid Deadline, a hearing (the “**Sale Hearing**”) shall be held on **June 17, 2022, at \_\_: \_\_.m. (prevailing Eastern Time)**, at which hearing the Debtors may, in their discretion, seek approval of the Sale with the Successful Bidder. If the Debtors do not receive any Intention

to Submit Qualified Bid by the Intention to Submit Qualified Bid Deadline, the Sale Hearing shall be **May 27, 2022, at \_\_:\_\_.m. (prevailing Eastern Time)**. Objections, if any, to the relief requested in the Motion relating to the Sale (each, a “**Sale Objection**”) must: (a) be in writing and specify the nature of such objection, (b) comply with the Bankruptcy Rules and the Local Rules, (c) be filed with the Bankruptcy Court no later than **4:00 p.m. (prevailing Eastern Time) on May 11, 2022**, and (d) served on the Objection Notice Parties.

**N. Return of Good Faith Deposits**

The 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 Bankruptcy Court. The Deposits of any Qualified Bidder that is neither the Successful Bidder nor the Back-Up Bidder shall be returned to such Qualified Bidder not later than two (2) business days after the Sale Hearing. The Deposit of the Back-Up Bidder shall be returned to the Back-Up Bidder two (2) business days after the closing of the Sale with the Successful Bidder; provided, however, in the event the Successful Bidder does not consummate the transaction as described above and the Debtors provide notice to the Back-Up Bidder, the Back-Up Bidder’s Deposit shall be held until the closing of the transaction with the Back-Up Bidder. Upon the return of the 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 Deposit shall be credited towards its purchase price.

**O. 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, at or prior to the Auction, subject to the rights of the Stalking Horse Bidder. Notwithstanding the foregoing and subject in all respects to the Stalking Horse Agreement, the Debtors may not (a) impair or modify the Stalking Horse Bidder’s rights and obligations under the Stalking Horse Agreement; or (b) modify Section J.4(xiv) without the consent of the Required DIP Lenders (as defined in the DIP Credit Agreement).

**Exhibit 2 to Bid Procedures Order**

**Sale Notice**

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

-----	X	
	:	
In re:	:	Chapter 11
	:	
MD HELICOPTERS, INC., <i>et al.</i> , <sup>1</sup>	:	Case No. 22-_____ (_____)
	:	
Debtors.	:	(Jointly Administered)
	:	
-----	X	

**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 [ ● ], 2022, the above-captioned debtors and debtors in possession (the “**Debtors**”) in the above-captioned cases (the “**Bankruptcy Cases**”), filed a *Motion of Debtors for Entry of (I) an Order (A) Approving Bid Procedures in Connection with the 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 Stalking Horse Agreement, (E) Approving Procedures for the Assumption and Assignment of Contracts and Leases, and (F) 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**”).<sup>2</sup> The Debtors seek to complete a sale (the “**Sale**”) of substantially all their assets (the “**Assets**”) to the Stalking Horse Bidder or a prevailing bidder or bidders (the “**Successful Bidder**”) at an auction free and clear of all liens, claims, encumbrances and other interests pursuant to Section 363 of the Bankruptcy Code (the “**Auction**”).

PLEASE TAKE FURTHER NOTICE that, on [ ● ], 2022 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 Procedures and the summary description of its terms and conditions contained in this notice, the terms of the Bid Procedures shall control.

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<sup>1</sup> The two Debtors in these cases are MD Helicopters, Inc. and Monterrey Aerospace, LLC, and their address is 4555 E. McDowell Road, Mesa, AZ 85215. The last four digits of MD Helicopters, Inc.’s taxpayer identification number are 4088. Monterrey Aerospace, LLC has not been assigned a taxpayer identification number as of the date hereof.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings set forth in the Bid Procedures and Sale Motion.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Bid Procedures, the Debtors must receive an Intention to Submit Qualified Bid from interested bidders in writing on or before **May 20, 2022 at 4:00 p.m. (prevailing Eastern Time)** or such later date as may be agreed to by the Debtors (the “**Intention to Submit Qualified Bid Deadline**”). To be considered, Intention(s) to Submit Qualified Bid must be sent to the following at or before the Intention to Submit Qualified Bid Deadline: (a) counsel for the Debtors, Latham & Watkins, LLP, Attn: Suzzanne Uhland (suzzanne.uhland@lw.com), Adam S. Ravin (adam.ravin@lw.com), and Brett M. Neve (brett.neve@lw.com) and Troutman Pepper Hamilton Sanders LLP, Attn: David B. Stratton (david.stratton@troutman.com), David M. Fournier (david.fournier@troutman.com) and Evelyn J. Meltzer (evelyn.meltzer@troutman.com) and (b) investment banker to the Debtors, Moelis & Company LLC, Attn: Azad Badakhsh (azad.badakhsh@moelis.com) and Adam Keil (adam.keil@moelis.com) (the “**Bid Recipients**”).

**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 3, 2022 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 Bid Recipients on or before the Bid Deadline

**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 9, 2022 at 10:00 a.m. (prevailing Eastern Time)**, 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 Assumed Contracts that may be assumed or assumed and assigned to the Successful Bidder. Within two (2) business days of entry of the Bid Procedures Order, the Debtors shall send a notice to each counterparty to an Assumed 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 Assumed Contract, and alerting such nondebtor party that their contract may be assumed and assigned to the Successful Bidder (the “**Assumption 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 Assumption Notice or the possible assignment of their Assumed Contract(s) to the Stalking Horse Bidder must file with the Bankruptcy Court and serve an objection (a “**Assumed Contract Objection**”) so it is actually received on or before **4:00 p.m. prevailing Eastern Time on May 11, 2022** (the “**Assumed Contract Objection Deadline**”), by (a) counsel for the Debtors, Latham & Watkins LLP, 1271 Avenue of the Americas, New York, NY 10020, Attn: Suzzanne Uhland (suzzanne.uhland@lw.com), Adam S. Ravin (adam.ravin@lw.com), Brett M. Neve (brett.neve@lw.com) and Troutman Pepper Hamilton Sanders LLP, Hercules Plaza, Suite 5100, 1313 Market Street, Wilmington, Delaware 19801, Attn: David B. Stratton (david.stratton@troutman.com), David M. Fournier (david.fournier@troutman.com) and Evelyn J. Meltzer (evelyn.meltzer@troutman.com); (b) counsel for the Stalking Horse Bidder, (i) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Michael Nestor (mnestor@ycst.com) and Allurie Kephart (akephart@ycst.com),

(ii) Cadwalader Wickersham & Taft LLP, 200 Liberty Street, New York, NY 10281, Attn: Ingrid Bagby (ingrid.bagby@cwt.com), William Mills (william.mills@cwt.com), and Michele C. Maman (michele.maman@cwt.com), and (iii) Arnold & Porter Kaye Scholer LLP, 250 West 55th Street, New York, NY 10019, Attn: Brian Lohan (brian.lohan@arnoldporter.com) and Jonathan Levine (jonathan.levine@arnoldporter.com); (c) counsel to the Zohar Lenders, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Michael Nestor (mnestor@ycst.com), Joseph Barry (jbarry@ycst.com), and Ryan Bartley (rbartley@ycst.com); (d) counsel to the Patriarch Lenders and PPAS, Cole Schotz P.C., 1325 Avenue of the Americas, 19th Floor, New York, NY 10019, Attn: Daniel F.X. Geoghan (dgeoghan@coleschotz.com), and Cole Schotz P.C., 500 Delaware Ave, Ste 1410, Wilmington, DE 19801, Attn: Norman L. Pernick (npernick@coleschotz.com) and G. David Dean (ddean@coleschotz.com), (e) counsel to the DIP Lenders, (i) Arnold & Porter Kaye Scholer LLP, 250 W. 55th Street, New York, NY 10019, Attn: Brian J. Lohan (brian.lohan@arnoldporter.com) and Jonathan Levine (jonathan.levine@arnoldporter.com), (ii) Baker & McKenzie LLP, 452 Fifth Avenue, New York, NY 10018, Attn: Blaire A. Cahn (blaire.cahn@bakermckenzie.com) and Andrew Sagor (andrew.sagor@bakermckenzie.com), and (iii) Womble Bond Dickinson (US) LLP, 1313 N. Market Street, Suite 1200, Wilmington, Delaware 19801, Attn: Morgan L. Patterson (morgan.patterson@wbd-us.com), (f) counsel to Ankura, Milbank, Tweed, Hadley & McCloy LLP, 28 Liberty Street, New York, NY 10005, Attn: Dennis F. Dunne (ddunne@milbank.com) and Andrew Harmeyer (aharmeyer@milbank.com); (g) counsel for the Creditors' Committee, [\_\_\_\_]; and (h) 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: Joseph J. McMahon, Jr. (joseph.mcmahon@usdoj.gov) (the “**Objection Notice Parties**”). If a Contract Counterparty does not timely file and serve a Assumed 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 Stalking Horse Bidder.

**PLEASE TAKE FURTHER NOTICE** that if a Successful Bidder that is not the Stalking Horse Bidder prevails at the Auction, then the deadline to object (a “**Post-Auction Objection**”) solely to (a) the identity of a Successful Bidder or (b) the ability of the Successful Bidder to provide adequate assurance of future performance under the Assumed Contract shall be **June 13, 2022 at 4:00 p.m.** (prevailing Eastern Time) (the “**Post-Auction Objection Deadline**”), which Post-Auction Objection must be served on the Objection Notice Parties so it is actually received by the Post-Auction Objection Deadline and filed with the Clerk of the Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, DE 19801. If a Post-Auction Objection is not filed, parties will be forever barred from objecting to the identity of the Successful Bidder or to the assignment of that party's executory contract or unexpired lease to the Successful Bidder.

**PLEASE TAKE FURTHER NOTICE** that where a counterparty to an Assumed Contract timely files an (a) Assumed Contract Objection asserting a higher cure amount than the amount listed in the Assumption Notice, or (b) Assumed Contract Objection or Post-Auction Objection, as applicable, to the possible assignment of that counterparty's Assumed Contract, and the parties are unable to consensually resolve the dispute, the amount (if any) to be paid under Section 365 of the Bankruptcy Code or, as the case may be, the Debtors' ability to assign the Assumed Contract to the Successful Bidder will be determined at the Sale Hearing (as defined below) or at a later date as fixed by the Bankruptcy Court. To the extent any Contract Counterparty is added to the

Assumption Notice after the initial notice is served, such new Contract Counterparty shall receive notice of the addition and the Debtors' proposed cure amount through a supplemental Assumption Notice, and that party shall have ten (10) days from the date of such notice to object to the propose cure amount and assignment to the Successful Bidder.

**PLEASE TAKE FURTHER NOTICE** that if the Debtors receive one or more Intention(s) to Submit Qualified Bid by the Intention to Submit Qualified Bid Deadline, a hearing will be held to approve the sale of the Assets to the Successful Bidder (the "**Sale Hearing**") before the Honorable [ ● ], U.S. Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, Delaware 19801, 6th Floor, Courtroom [ ], on **June 17, 2022 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. If the Debtors do not receive any Intention to Submit Qualified Bid by the Intention to Submit Qualified Bid Deadline, the Sale Hearing shall be held on **May 27, 2022 at [ ● ] a.m./p.m. (prevailing Eastern Time)**. 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, if any, to the relief requested in the Motion relating to the Sale (each, a "**Sale Objection**") must: (a) be in writing and specify the nature of such objection, (b) comply with the Bankruptcy Rules and the Local Rules, (c) be filed with the Court no later than **4:00 p.m. (prevailing Eastern Time) on May 11, 2022** (the "**Sale Objection Deadline**") and (d) be served on the Objection Notice Parties by the Sale Objection Deadline.

**PLEASE TAKE FURTHER NOTICE THAT ANY PARTY WHO FAILS TO MAKE A TIMELY SALE OBJECTION ON OR BEFORE THE SALE OBJECTION DEADLINE OR POST-AUCTION OBJECTION DEADLINE, AS APPLICABLE, IN ACCORDANCE WITH THE BID PROCEDURES ORDER SHALL BE FOREVER BARRED FROM ASSERTING ANY SALE OBJECTION, INCLUDING WITH RESPECT TO THE TRANSFER OF THE ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS.**

**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 for free by accessing the website of the Debtors' noticing agent, Kroll Restructuring Administration LLC (f/k/a Prime Clerk LLC), located at <https://cases.primeclerk.com/MDHelicopters>.

Dated: \_\_\_\_\_, 2022  
Wilmington, Delaware

Respectfully Submitted,

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**TROUTMAN PEPPER HAMILTON SANDERS LLP**

David B. Stratton (DE No. 960)  
David M. Fournier (DE No. 2812)  
Evelyn J. Meltzer (DE No. 4581)  
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- and -

**LATHAM & WATKINS LLP**

Suzanne Uhland (*pro hac vice* admission pending)  
Adam S. Ravin (*pro hac vice* admission pending)  
Brett M. Neve (*pro hac vice* admission pending)  
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*Proposed Counsel for Debtors and Debtors-in-Possession*

**Exhibit 3 to Bid Procedures Order**

**Assumption Notice**

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

	X	
	:	
In re:	:	Chapter 11
	:	
MD HELICOPTERS, INC., <i>et al.</i> , <sup>1</sup>	:	Case No. 22-_____ (_____)
	:	
Debtors.	:	(Jointly Administered)
	:	
	X	

**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.<sup>2</sup>**

**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 [ ● ], 2022, 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 [ ● ], 2022, 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 13, 2022 at 10:00 a.m. (prevailing Eastern Time)**, (b) authorized the Debtors to enter into a stalking horse asset purchase agreement (the “**Stalking Horse Agreement**”) with MDH Holdco LLC or its assignee (the “**Stalking Horse Bidder**”), (c) established certain

<sup>1</sup> The two Debtors in these cases are MD Helicopters, Inc. and Monterrey Aerospace, LLC, and their address is 4555 E. McDowell Road, Mesa, AZ 85215. The last four digits of MD Helicopters, Inc.’s taxpayer identification number are 4088. Monterrey Aerospace, LLC has not been assigned a taxpayer identification number as of the date hereof.

<sup>2</sup> 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.

procedures relating to the Debtors' assumption and assignment of executory contracts and unexpired leases in connection with the Sale, and (d) granted related relief.<sup>3</sup> If the Debtors receive one or more Intention(s) to Submit Qualified Bid by the Intention to Submit Qualified Bid Deadline, 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 (the "**Sale Hearing**") at [ ● ] (**prevailing Eastern Time**) on **June 17, 2022**. If the Debtors do not receive any Intention to Submit Qualified Bid by the Intention to Submit Qualified Bid Deadline, the Sale Hearing is scheduled to take place at [ ● ] (**prevailing Eastern Time**) on **May 27, 2022**. 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 11, 2022 at 4:00 p.m. (prevailing Eastern Time) (the "Assumed Contract Objection Deadline") and serve such objection on the following parties:** (a) counsel for the Debtors, Latham & Watkins LLP, 1271 Avenue of the Americas, New York, NY 10020, Attn: Suzanne Uhland (suzanne.uhland@lw.com), Adam S. Ravin (adam.ravin@lw.com), Brett M. Neve (brett.neve@lw.com) and Troutman Pepper Hamilton Sanders LLP, Hercules Plaza, Suite 5100, 1313 Market Street, Wilmington, Delaware 19801, Attn: David B. Stratton (david.stratton@troutman.com), David M. Fournier (david.fournier@troutman.com) and Evelyn J. Meltzer (evelyn.meltzer@troutman.com); (b) counsel for the Stalking Horse Bidder, (i) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Michael Nestor (mnestor@ycst.com) and Allurie Kephart (akephart@ycst.com), (ii) Cadwalader Wickersham & Taft LLP, 200 Liberty Street, New York, NY 10281, Attn: Ingrid Bagby (ingrid.bagby@cwt.com), William Mills (william.mills@cwt.com), and Michele C. Maman (michele.maman@cwt.com), and (iii) Arnold & Porter Kaye Scholer LLP, 250 West 55th Street, New York, NY 10019, Attn: Brian Lohan (brian.lohan@arnoldporter.com) and Jonathan Levine (jonathan.levine@arnoldporter.com); (c) counsel to the Zohar Lenders, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Michael Nestor (mnestor@ycst.com), Joseph Barry (jbarry@ycst.com), and Ryan Bartley (rbartley@ycst.com); (d) counsel to the Patriarch Lenders and PPAS, Cole Schotz P.C., 1325

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<sup>3</sup> 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.

Avenue of the Americas, 19th Floor, New York, NY 10019, Attn: Daniel F.X. Geoghan (dgeoghan@coleschotz.com), and Cole Schotz P.C., 500 Delaware Ave, Ste 1410, Wilmington, DE 19801, Attn: Norman L. Pernick (npernick@coleschotz.com) and G. David Dean (ddean@coleschotz.com); (e) counsel to the DIP Lenders, (i) Arnold & Porter Kaye Scholer LLP, 250 W. 55th Street, New York, NY 10019, Attn: Brian J. Lohan (brian.lohan@arnoldporter.com) and Jonathan Levine (jonathan.levine@arnoldporter.com), (ii) Baker & McKenzie LLP, 452 Fifth Avenue, New York, NY 10018, Attn: Blaire A. Cahn (blaire.cahn@bakermckenzie.com) and Andrew Sagor (andrew.sagor@bakermckenzie.com), and (iii) Womble Bond Dickinson (US) LLP, 1313 N. Market Street, Suite 1200, Wilmington, Delaware 19801, Attn: Morgan L. Patterson (morgan.patterson@wbd-us.com); (f) counsel to Ankura, Milbank, Tweed, Hadley & McCloy LLP, 28 Liberty Street, New York, NY 10005, Attn: Dennis F. Dunne (ddunne@milbank.com) and Andrew Harmeyer (aharmeyer@milbank.com); (g) counsel for the Creditors' Committee, [\_\_\_\_]; and (h) 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: Joseph J. McMahon, Jr. (joseph.mcmahon@usdoj.gov) (the “**Objection Notice Parties**”). If a Contract Counterparty does not timely file and serve a Assumed 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 Stalking Horse Bidder.

**PLEASE TAKE FURTHER NOTICE** that if a Successful Bidder that is not the Stalking Horse Bidder prevails at the Auction, then the deadline to object (a “**Post-Auction Objection**”) solely to (a) the identity of a Successful Bidder or (b) the ability of the Successful Bidder to provide adequate assurance of future performance under the Assumed Contract shall be **June 13, 2022 at 4:00 p.m. (prevailing Eastern Time)** (the “**Post-Auction Objection Deadline**”), which Post-Auction Objection must be served on the Objection Notice Parties so it is actually received by the Post-Auction Objection Deadline and filed with the Clerk of the Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, DE 19801. If a Post-Auction Objection is not filed, parties will be forever barred from objecting to the identity of the Successful Bidder or to the assignment of that party's executory contract or unexpired lease to the Successful Bidder.

**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 Assumed Contract Objection Deadline or Post-Auction Objection Deadline, as applicable, **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 may be obtained for free by accessing the website of the Debtors' noticing agent, Kroll Restructuring Administration LLC (f/k/a Prime Clerk LLC), located at <https://cases.primeclerk.com/MDHelicopters>.

Dated: \_\_\_\_\_, 2022  
Wilmington, Delaware

Respectfully Submitted,

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**TROUTMAN PEPPER HAMILTON SANDERS LLP**

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- and -

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Adam S. Ravin (*pro hac vice* admission pending)  
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*Proposed Counsel for Debtors and Debtors-in-Possession*

**APPENDIX I**

[Counterparty Name]	[Contract/Lease]	[Cure Amount]	[Proposed Assignee (if any)]
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**Exhibit C to Motion**

**Proposed Sale Order**

**[TO BE FILED]**

**Exhibit D to Motion**

**Publication Notice**

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

	x	
	:	
In re:	:	Chapter 11
	:	
MD HELICOPTERS, INC., <i>et al.</i> , <sup>1</sup>	:	Case No. 22-_____ (_____)
	:	
Debtors.	:	(Jointly Administered)
	:	
	x	

**NOTICE OF BID PROCEDURES<sup>2</sup>**

PLEASE TAKE NOTICE that, on [ ● ], 2022, 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 [ ● ], 2022, 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, pursuant to the Bid Procedures, the Debtors must receive an Intention to Submit Qualified Bid from interested bidders in writing on or before **May 20, 2022 at 4:00 p.m. (prevailing Eastern Time)** or such later date as may be agreed to by the Debtors (the “**Intention to Submit Qualified Bid Deadline**”). To be considered, any Intention to Submit Qualified Bid must comply with the requirements set forth in the Bid Procedures.

PLEASE TAKE FURTHER NOTICE that, to be eligible to participate in the Auction, each Bid and each Bidder must be determined by the Debtors to comply with the conditions set forth in the Bid Procedures. The deadline to submit a Qualified Bid is **June 3, 2022 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.

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<sup>1</sup> The two Debtors in these cases are MD Helicopters, Inc. and Monterrey Aerospace, LLC, and their address is 4555 E. McDowell Road, Mesa, AZ 85215. The last four digits of MD Helicopters, Inc.’s taxpayer identification number are 4088. Monterrey Aerospace, LLC has not been assigned a taxpayer identification number as of the date hereof.

<sup>2</sup> 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.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the terms of the Bid Procedures Order, an auction (the “**Auction**”) may be held on **June 9, 2021 at 10:00 a.m. (prevailing Eastern Time)** or such later time on such day or other place as the 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 two (2) business days following entry of the Bid Procedures Order, 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 “**Assumption Notice**”). Any Contract Counterparty that objects 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, (a “**Assumed Contract Objection**”) with the Bankruptcy Court on or before **4:00 p.m. prevailing Eastern Time on May 11, 2022**, which Assumed Contract Objection must be served on the following parties: (a) counsel for the Debtors, Latham & Watkins LLP, 1271 Avenue of the Americas, New York, NY 10020, Attn: Suzzanne Uhland (suzzanne.uhland@lw.com), Adam S. Ravin (adam.ravin@lw.com), Brett M. Neve (brett.neve@lw.com) and Troutman Pepper Hamilton Sanders LLP, Hercules Plaza, Suite 5100, 1313 Market Street, Wilmington, Delaware 19801, Attn: David B. Stratton (david.stratton@troutman.com), David M. Fournier (david.fournier@troutman.com) and Evelyn J. Meltzer (evelyn.meltzer@troutman.com); (b) counsel for the Stalking Horse Bidder, (i) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Michael Nestor (mnestor@ycst.com) and Allurie Kephart (akephart@ycst.com), (ii) Cadwalader Wickersham & Taft LLP, 200 Liberty Street, New York, NY 10281, Attn: Ingrid Bagby (ingrid.bagby@cwt.com), William Mills (william.mills@cwt.com), and Michele C. Maman (michele.maman@cwt.com), and (iii) Arnold & Porter Kaye Scholer LLP, 250 West 55th Street, New York, NY 10019, Attn: Brian Lohan (brian.lohan@arnoldporter.com) and Jonathan Levine (jonathan.levine@arnoldporter.com); (c) counsel to the Zohar Lenders, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Michael Nestor (mnestor@ycst.com), Joseph Barry (jbarry@ycst.com), and Ryan Bartley (rbartley@ycst.com); (d) counsel to the Patriarch Lenders and PPAS, Cole Schotz P.C., 1325 Avenue of the Americas, 19th Floor, New York, NY 10019, Attn: Daniel F.X. Geoghan (dgeoghan@coleschotz.com), and Cole Schotz P.C., 500 Delaware Ave, Ste 1410, Wilmington, DE 19801, Attn: Norman L. Pernick (npernick@coleschotz.com) and G. David Dean (ddean@coleschotz.com); (e) counsel to the DIP Lenders, (i) Arnold & Porter Kaye Scholer LLP, 250 W. 55th Street, New York, NY 10019, Attn: Brian J. Lohan (brian.lohan@arnoldporter.com) and Jonathan Levine (jonathan.levine@arnoldporter.com), (ii) Baker & McKenzie LLP, 452 Fifth Avenue, New York, NY 10018, Attn: Blaire A. Cahn (blaire.cahn@bakermckenzie.com) and Andrew Sagor (andrew.sagor@bakermckenzie.com), and (iii) Womble Bond Dickinson (US) LLP, 1313 N. Market Street, Suite 1200, Wilmington, Delaware 19801, Attn: Morgan L. Patterson (morgan.patterson@wbd-us.com); (f) counsel to Ankura, Milbank, Tweed, Hadley & McCloy LLP, 28 Liberty Street, New York, NY 10005, Attn: Dennis F. Dunne (ddunne@milbank.com) and Andrew Harmeyer (aharmeyer@milbank.com); (g) counsel for the Creditors’ Committee, [\_\_\_\_]; and (h) 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: Joseph

J. McMahon, Jr. (joseph.mcmahon@usdoj.gov) (the “**Objection Notice Parties**”). If a Contract Counterparty does not timely file and serve a Assumed 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 Stalking Horse Bidder.

**PLEASE TAKE FURTHER NOTICE** that where a counterparty to an Assumed Contract timely files an (i) Assumed Contract Objection asserting a higher cure amount than the amount listed in the Assumption Notice, or (ii) Assumed Contract Objection or Post-Auction Objection, as applicable, to the possible assignment of that counterparty’s Assumed Contract, and the parties are unable to consensually resolve the dispute, the amount (if any) to be paid under Section 365 of the Bankruptcy Code or, as the case may be, the Debtors’ ability to assign the Assumed Contract to the Successful Bidder will be determined at the Sale Hearing (as defined below) or at a later date as fixed by the Bankruptcy Court. To the extent any Contract Counterparty is added to the Assumption Notice after the initial notice is served, such new Contract Counterparty shall receive notice of the addition and the Debtors’ proposed cure amount through a supplemental Assumption Notice, and that party shall have ten (10) days from the date of such notice to object to the propose cure amount and assignment to the Successful Bidder.

**PLEASE TAKE FURTHER NOTICE** that if the Debtors receive one or more Intention(s) to Submit Qualified Bid by the Intention to Submit Qualified Bid Deadline, a hearing will be held to approve the sale of the Assets to the Successful Bidder (the “**Sale Hearing**”) before the Honorable \_\_\_\_\_, U.S. Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, Delaware 19801, 6th Floor, Courtroom [ ● ], on **June 17, 2022, 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. If the Debtors to not receive any Intention to Submit Qualified Bid by the Intention to Submit Qualified Bid Deadline, the Sale Hearing shall be held on **May 27, 2022, at [ ● ] a.m./p.m. (prevailing Eastern Time)**. 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, if any, to the relief requested in the Motion relating to the Sale (each, a “**Sale Objection**”) must: (a) be in writing and specify the nature of such objection, (b) comply with the Bankruptcy Rules and the Local Rules, (c) be filed with the Court no later than **4:00 p.m. (prevailing Eastern Time) on May 11, 2022** (the “**Sale Objection Deadline**”) and (d) be served on the Objection Notice Parties by the Sale Objection Deadline.

**PLEASE TAKE FURTHER NOTICE** that if a Successful Bidder that is not the Stalking Horse Bidder prevails at the Auction, then the deadline to object (a “**Post-Auction Objection**”) solely to (a) the identity of a Successful Bidder or (b) the ability of the Successful Bidder to provide adequate assurance of future performance under the Assumed Contract shall be **June 13, 2022 at 4:00 p.m. (prevailing Eastern Time)** (the “**Post-Auction Objection Deadline**”), which Post-Auction Objection must be served on the Objection Notice Parties so it is actually received by the Post-Auction Objection Deadline and filed with the Bankruptcy Court. If a Post-Auction Objection is not filed, parties will be forever barred from objecting to the identity of the Successful Bidder or to the assignment of that party’s executory contract or unexpired lease to the Successful Bidder.

**PLEASE TAKE FURTHER NOTICE THAT ANY PARTY WHO FAILS TO MAKE A TIMELY SALE OBJECTION ON OR BEFORE THE SALE OBJECTION DEADLINE OR POST-AUCTION OBJECTION DEADLINE, AS APPLICABLE, IN ACCORDANCE WITH THE BID PROCEDURES ORDER SHALL BE FOREVER BARRED FROM ASSERTING ANY SALE OBJECTION, INCLUDING WITH RESPECT TO THE TRANSFER OF THE ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS.**

**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 for free by accessing the website of the Debtors' noticing agent, Kroll Restructuring Administration LLC (f/k/a Prime Clerk LLC), located at <https://cases.primeclerk.com/MDHelicopters>.

Dated: \_\_\_\_\_, 2022  
Wilmington, Delaware

Respectfully Submitted,

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**TROUTMAN PEPPER HAMILTON SANDERS LLP**

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- and -

**LATHAM & WATKINS LLP**

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*Proposed Counsel for Debtors and Debtors-in-Possession*