

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

In re:

SynCardia Systems, Inc.¹

Debtor.

Chapter 11

Case No. 16-11599

**DEBTOR'S MOTION PURSUANT TO 11 U.S.C. §§ 105(a), 363, 365 AND FED. R.
BANKR. P. 2002, 6004, and 6006 FOR**

(A) AN ORDER (I) ESTABLISHING BIDDING PROCEDURES RELATING TO THE SALE OF THE DEBTOR'S BUSINESS; (II) APPROVING BID PROTECTIONS IN CONNECTION WITH THE SALE; (III) ESTABLISHING PROCEDURES RELATING TO THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, INCLUDING NOTICE OF PROPOSED CURE AMOUNTS; (IV) APPROVING FORM AND MANNER OF NOTICE OF ALL PROCEDURES, PROTECTIONS, SCHEDULES, AND AGREEMENTS; (V) SCHEDULING A HEARING TO CONSIDER THE PROPOSED SALE; AND (VI) GRANTING CERTAIN RELATED RELIEF

AND

(B) AN ORDER (I) AUTHORIZING THE SALE OF THE DEBTOR'S BUSINESS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS; (II) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (III) GRANTING CERTAIN RELATED RELIEF

SynCardia Systems, Inc. ("SynCardia" or the "Debtor"), by and through its undersigned counsel, respectfully submits Debtor's Motion Pursuant to 11 U.S.C. §§ 105(a), 363, 365 and Fed. R. Bankr. P. 2002, 6004, and 6006 for (A) An Order Establishing Bidding Procedures Relating to the Sale of the Debtor's Business; (II) Approving Bid Protections in Connection with the Sale; (III) Establishing Procedures Relating to the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, Including Notice of Proposed Cure Amounts; (IV)

¹ The Debtor in this case (with the last four digits of its taxpayer ID no. in parenthesis): SynCardia Systems, Inc. (1044). The Debtor's corporate address is: 1992 E. Silverlake Road, Tucson, Arizona 85713.

Approving Form and Manner of Notice of All Procedures, Protections, Schedules, and Agreements; (V) Scheduling a Hearing to Consider the Proposed Sale; and (VI) Granting Certain Related Relief; and (B) an Order (I) Authorizing the Sale of the Debtor's Business Free and Clear of All Liens, Claims, Encumbrances, and Interests; (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (III) Granting Certain Related Relief (the "Motion") to this Court for entry of an order substantially in the form of Exhibit A (the "Bidding Procedures Order") (I) Establishing Bidding Procedures Relating To The Sale of the Debtor's Business; (II) Approving Bid Protections In Connection With The Sale; (III) Establishing Procedures Relating To The Assumption And Assignment Of Certain Executory Contracts And Unexpired Leases, Including Notice Of Proposed Cure Amounts; (IV) Approving Form And Manner Of Notice Of All Procedures, Protections, Schedules, And Agreements; (V) Scheduling A Hearing To Consider The Proposed Sale; And (VI) Granting Certain Related Relief. The Debtor further requests that at the Sale Hearing, subject to the results of the Auction and the bidding procedures for the auction of the Acquired Assets (the "Bidding Procedures") set forth herein, this Court enter an order, substantially in the form attached hereto as Exhibit B (the "Sale Order") approving and authorizing the sale of the Debtor's Business and Acquired Assets (as defined in the APA) (the "Sale Transaction") free and clear of all claims, liabilities, interests, encumbrances, liens, financing statements, mortgages, mechanics' liens, lis pendens, and all other documents or agreements evidencing interests in and/or claims against such Assets (collectively, the "Encumbrances"), except to the extent set forth in a Successful Bidder's APA or APA(s) (as defined below) and authorizing the assumption and assignment of certain executory contracts and unexpired leases. In support of the Motion, the Debtor, by and through its undersigned counsel, respectfully represents:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated as of February 29, 2012 (the “Amended Standing Order”). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the Bankruptcy Court for the District of Delaware (the “Local Rules”), the Debtor consents to entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue of this case and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested herein are §§ 105, 363, 365, 503 and 507 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6003, 6004, 6006, 9007, and 9008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Rules 2002-1 and 6004-1.

II. FACTUAL BACKGROUND

4. On July 1, 2016 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner in this case and the Debtor continues to operate its business and manage its property as a debtor-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code. As of the date hereof, no official committee of unsecured creditors has been appointed in the above-captioned bankruptcy case (the “Case”).

5. The Debtor is a privately-held company with global headquarters and manufacturing in Tucson, Arizona. The Debtor is the world leader in manufacturing a heart implant for humans whose hearts have failed, accounting for roughly 95% of all artificial heart implants. Its customers include hospitals, surgical centers and mechanical circulatory support programs across the United States, Canada, Europe, Australia and Saudi Arabia.

6. A description of the Debtor's business, capital structure and events leading to the chapter 11 filing is set forth *in the Declaration of Stephen Marotta in Support of Debtor's Chapter 11 Petition and First Day Motions* (the "Marotta Declaration") filed on the Petition Date and fully incorporated herein.

7. As a result of the challenges facing its business, the Debtor has commenced this case in order to preserve and maximize the value of its business for the benefit of stakeholders, including existing heart recipients whose lives are dependent on the Debtor's operations.

III. SUMMARY OF THE SALE PROCESS

8. With the assistance of Canaccord Genuity Inc. ("Canaccord") and Olshan Frome Wolosky, LLP and Ankura Consulting Group, LLC (formerly known as MGBD, LLC) (referred in the aggregate with Canaccord as "Advisors"), the Debtor extensively marketed its business prepetition, but was unable to secure an offer from outside of its capital structure. The Debtor has, however, received an offer (the "Stalking Horse Bid," by the "Stalking Horse Purchaser") to purchase its business, for a combination of \$150,000 in cash and a partial credit bid of \$19,000,000, plus amounts owing under the debtor in possession financing facility and the assumption of certain liabilities from Sindex SSI Lending, LLC (the "Stalking Horse Purchaser")

9. Under the Bidding Procedures, if approved by the Court, the Debtor intends to solicit higher and better offers than the Staking Horse Bid.

A. The Debtor's Marketing and Sales Efforts

10. As set forth in the Marotta Declaration, in September 2015, after a failed initial public offering, SynCardia realized that it had to consider potential transactions that would allow the Debtor to deleverage its capital structure and maximize value. Shortly thereafter, SynCardia began discussions with certain key stakeholders. The Debtor and its Advisors explored all third-party going-concern options up until this filing, focusing on three scenarios: the sale of the business, an orderly wind-down, or chapter 11 filings.

11. In October 2015, the Debtor engaged Canaccord Genuity Inc. ("Canaccord") to evaluate strategic alternatives, including the potential filing of this chapter 11 case. It also engaged Olshan Frome Wolosky, LLP and Ankura Consulting Group, LLC (formerly known as MGBD, LLC) (referred in the aggregate with Canaccord as "Advisors"). The Debtor and its Advisors continued to explore all third-party going-concern options up until this filing, focusing on three scenarios: the sale of the business, an orderly wind-down, or Chapter 11 filings.

12. Canaccord led the Debtor's extensive prepetition marketing efforts following the Debtor's failed IPO and unsuccessful M&A initiatives undertaken by a predecessor investment bank. Canaccord utilized both its industry and restructuring bankers to identify potential buyers and investors. Utilizing its proprietary databases and market knowledge, Canaccord contacted over 120 potential parties. Canaccord intentionally ran a broad process, but because of the highly specialized nature of the Debtor's business, believed that buyer interest likely would be limited to strategic parties or a select group of opportunistic purchasers. Of the 120 parties contacted, 17 signed confidentiality agreements. In addition to these 17 third parties, several of the Debtor's stakeholders parties also conducted extensive diligence. All of these parties received access to an online data room, the confidential information memorandum and to

management and the Debtor's other advisors to conduct extensive diligence. Several of these parties also engaged in onsite diligence, including management presentations.

13. As potential purchaser interest diminished, the Debtor redirected its efforts and focused on a possible transaction with SWK Holdings Corporation ("SWK"), the Debtor's senior lender, shareholder Delta Electronics Capital Company ("DECC") and certain affiliates. DECC proposed to provide new value to the Debtor in connection with a chapter 11 plan of reorganization. However, after weeks of intense negotiations, DECC and its affiliates declined to commit to a transaction.

14. Following the decision by DECC to not pursue a transaction, nearly all paths that could preserve going concern value had been exhausted. The Debtor also was depleting its liquidity and had no further availability under its credit facility with SWK. Accordingly, the Debtor and its advisors prepared contingency plans for an orderly wind-down of the Debtor's business in an effort to ensure that current patients would not be compromised.

15. The one party that continued to conduct diligence, the Stalking Horse Purchaser, was informed of the Debtor's deteriorating condition and thereafter expressed interest in purchasing SWK's debt. The Debtor and its professionals aggressively redirected their efforts to a possible transaction involving the Stalking Horse Purchaser after SWK agreed to a short period of exclusivity to enable the Stalking Horse Purchaser to negotiate with SWK regarding the terms of its debt purchase, the Stalking Horse Purchaser consummated the transaction with SWK as the first step in a two-step process of acquiring the Debtor.

16. In conjunction with its purchase of SWK's debt, the Stalking Horse Purchaser submitted the Stalking Horse Bid to purchase the Debtor's business for a combination of

\$150,000 in cash and a partial credit bid of \$19,000,000, aggregating to \$20,500,000, plus amounts owing under the DIP and the assumption of certain liabilities.

17. Under the Bidding Procedures, if approved by the Court, the Debtor intends to solicit higher and better offers than the Staking Horse Bid.

18. The Debtor has decided to sell substantially all the Assets in a sale pursuant to section 363 of the Bankruptcy Code for several important reasons. First, the Debtor believes that the nature of its business relationships with vendors is fragile and that it is therefore crucial for the business to emerge from chapter 11 as quickly as possible. Second, a sale of the Debtor's assets will enable the Debtor to continue to operate as a going concern, retain its customer base and the subsequent services to individuals whose lives depend on the Debtor's continued business, and avoid an erosion of customer and vendor confidence that could result from a protracted chapter 11 process. Finally, the Debtor does not have the financial resources for a protracted stay in chapter 11.

19. The Debtor has reached an agreement with the Stalking Horse Purchaser to sell to it the Debtor's business. Ultimately, the Debtor determined that implementing a chapter 11 filing with the Stalking Horse Purchaser was the best solution for preserving SynCardia's going-concern value. By this motion, the Debtor seeks to establish procedures the Bidding Procedures to allow the Debtor to solicit higher and better offers for its business. In this motion, the Debtor also seeks authority to solicit, consider and accept offers to purchase all the Debtor's business.

20. In addition to considering competing offers for the Assets related to the Debtor's business, the Bidding Procedures will also permit the Debtor to consider offers for Assets not being acquired by the Stalking Horse Purchaser.

21. Because time is of the essence, the Debtor proposes the following timeline and other provisions govern the Sale of the Debtor's Assets, as provided for in the Bidding

Procedures:

- a. scheduling a hearing approving the Bidding Procedures (the "Bidding Procedures Hearing") on or prior to July 27, 2016, a Submission Deadline for Qualified Bids (defined below) on or prior to August 15, 2016 at 5:00 p.m. (Prevailing eastern time), an auction for the sale of the Assets (the "Auction") on or prior to August 19, 2016, and a hearing to approve the sale of the Assets (the "Sale Hearing") on or before August 22, 2016);
- b. approving the Bidding Procedures for submitting competing bids for the Assets;
- c. authorizing the Debtor to provide certain bid protections to the Stalking Horse Purchaser without further order of the Court, as set forth in the Stalking Horse APA (defined below), a copy of which is filed hereto as Exhibit C;
- d. approving the form and manner of the notice of the Auction and the Sale Hearing, substantially in the form annexed as Exhibit E herein (the "Sale Notice"); and
- e. approving procedures for the assumption, assignment and sale of contracts and leases to any purchaser(s) of the Assets, and/or to resolve any objections thereto as set forth in the Bidding Procedures Order.

B. Summary of the Stalking Horse APA

22. The Stalking Horse Purchaser and the Debtor have entered into an Asset Purchase Agreement (the "Stalking Horse APA"), subject to the process set forth in this Motion. A copy of the Stalking Horse APA between the Stalking Horse Purchaser and the Debtor is attached

hereto and marked as Exhibit C. A summary of the principal terms of the Stalking Horse APA is as follows:²

- Credit Bid: At the Closing, (A) one hundred percent (100%) shall be payable, in Purchaser's sole and absolute discretion, in whole or in part, on a dollar-for-dollar basis, (x) by offset to the DIP Facility Obligations evidenced by Purchaser delivering to Seller releases and waivers, fully executed, from the applicable lenders (in each of their respective sole and absolute discretion) under the DIP Credit Agreement with respect to all of a part of Seller's obligations thereunder and/or (y) with the written consent of the applicable lenders under the DIP Credit Agreement (in each of their respective sole and absolute discretion), by Purchaser assuming all or a part of Seller's obligations thereunder on terms reasonably acceptable to Purchaser in its sole and absolute discretion; and (B) \$19 million, in Purchaser's sole and absolute discretion, in whole or in part, on a dollar-for-dollar basis, (1) by offset to the obligations outstanding under the Credit Agreement, evidenced by Purchaser delivering to Seller releases and waivers, fully executed, from the applicable lenders (in each of their respective sole and absolute discretion) under the Credit Agreement with respect to all of a part of Seller's obligations thereunder and/or (y) with the written consent of the applicable lenders under the Credit Agreement (in each of their respective sole and absolute discretion), by Purchaser assuming all or a part of Seller's obligations thereunder on terms reasonably acceptable to Purchaser in its sole and absolute discretion); (Section 3.1)
- Cash in the amount of \$150,000; (Section 3.1)
- Assignment and Assumption of Certain Liabilities. Subject to the terms and conditions set forth in the Stalking Horse APA, Purchaser shall assume from the Debtor and thereafter be responsible for the payment, performance or discharge of the the Assumed Liabilities and obligations of the Debtor as more fully described in Section 2.3 of the APA; and without duplication, all obligations of the Seller that first arise after the Closing under the Assumed Contracts.
- Assets Subject To Stalking Horse APA: All the Debtor's Assets and all properties, assets and rights used in or held for use by the Debtor in connection with, or related to the Debtor's business, or arising out of the Debtor's business as more fully described in Section 2.1 of the Stalking Horse APA, except for Excluded Assets.
- Termination to Pursue Higher or Better Offer. The Debtor may terminate the Stalking Horse APA to consummate an Alternate Transaction entered into in accordance with the Bidding Procedures Order, upon paying the Stalking Horse

² The following summary is qualified in its entirety by reference to the provisions of the Stalking Horse APA. In the event of any inconsistencies between the provisions of the Stalking Horse APA and the terms herein, the terms of the Stalking Horse APA shall govern. Unless otherwise defined in the summary set forth in the accompanying text, capitalized terms in this section of the Motion shall have the meanings assigned to such terms in the Stalking Horse APA.

Purchaser a break-up fee of 3% of the Purchase Price (the “Break-Up Fee”). The Break-Up Fee and the provisions on payment thereof are more fully described in Section 11.3 of the Stalking Horse APA.

- Provisions Requested in the Bidding Procedure Order: The form of the proposed Bidding Procedures Order approved by the Stalking Horse Purchaser and annexed to the Stalking Horse APA provides that each Bid, with the exception of the Bid by the Stalking Horse Purchaser, must be accompanied by a cash deposit in an amount equal to five percent (5%) of the cash portion of the highest proposed purchase price offered by the Qualified Bidder in its Qualified Bid.
- Expense Reimbursement. If the Stalking Horse APA is terminated under certain other circumstances, Stalking Horse Purchaser may be entitled to the reimbursement of its actual and reasonable expenses, including attorney’s fees, in an amount not to exceed \$1,750,000 (the “Maximum Reimbursement Amount” and together with the Break-Up Fee, the “Bid Protections”). The Maximum Reimbursement Amount and the provisions on payment thereof are more fully described in Section 11.3 of the Stalking Horse APA.
- Assumed Liabilities:
 - (a) all of Sellers’ liabilities and obligations under the Assigned Contracts arising after Closing; and
 - (b) those specific liabilities and obligations of Sellers (if any) identified on Schedule 2.3(b).
- Excluded Liabilities. The Stalking Horse Purchaser shall not assume any liabilities other than the Assumed Liabilities described above. Such excluded liabilities, include, without limitation, those liabilities set forth in Section 2.4 of the Stalking Horse APA.
- Relief from Bankruptcy Rule 6004(h). Pursuant to Bankruptcy Rules 7062, 9014, 6004(h), and 6006(d), the Sale Order shall be effective immediately upon entry and the Debtor and Stalking Horse Purchaser are authorized to close the Sale immediately upon entry of the Sale Order.

23. Local Rule 6004-1(b)(iv) states that a sale motion “must highlight material terms, including but not limited to (a) whether the proposed form of sale order and/or the underlying purchase agreement constitutes a sale or contains [certain highlighted provisions], (b) the location of any such provision in the proposed form of order or purchase agreement, and (c) the justification for the inclusion of any such provision.” In addition, Local Rule 6004-1(c) provides

that “[a] debtor may file a Bidding Procedures Motion seeking approval of an order . . . approving bidding and auction procedures either as part of the Sale Motion or by a separate motion filed in anticipation of an auction and a proposed sale.” Pursuant to Local Rule 6004-1(c)(i), a motion seeking approval of bidding and auction procedures must highlight certain provisions contained in the proposed order approving such procedures.

24. In accordance with Local Rule 6004-1, the Debtor hereby highlights the relevant provisions of both the Stalking Horse APA and the Bidding Procedures Order below, along with additional material terms thereof for the convenience of all interested parties. The Stalking Horse APA contemplates the Sale of the Transferred Assets, subject to higher and better bids, on the following material terms:³

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| <u>Buyers / Sale to Insiders</u> | Not applicable. The Stalking Horse Purchaser is not an insider of the Debtor. |
| <u>Agreements with Management</u> | Not applicable. The Stalking Horse APA does not contain any agreements or representations with individual members of the Debtor’s management team. To the extent any agreements or representations are made prior to the Sale Hearing, the Debtor will subsequently disclose them. |

³ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Stalking Horse APA.

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| <u>Releases</u> | <p>Pursuant to Section 12.16 of the Stalking Horse APA, effective upon the Closing, Seller, on behalf of itself and its estate, acknowledges that it has no claim, counterclaim, setoff, recoupment, action or cause of action of any kind or nature whatsoever (including, for the avoidance of doubt, actions for avoidance, subordination or recharacterization of any of Purchaser’s pre-Petition Date Claims, Encumbrances, and Liens) against Purchaser or any of its Related Persons, that directly or indirectly arise out of, relate to, are based upon, or in any manner are connected with Seller, any of its Related Persons or the Business (collectively, the “Released Claims”) (including, without limitation, (i) the pre-Petition Date Contracts to which Purchaser (or any of its Affiliates) and Seller were parties and all transactions referred to in such Contracts and (ii) any acquisition by Purchaser of Claims and Liens in and against Seller). Should any Released Claims nonetheless exist, Seller, on behalf of itself and its estate, hereby (i) releases and discharges Purchaser and each of its Related Persons from any claim, cause of action, liability or obligation whatsoever with respect to the Released Claims and (ii) releases, waives and discharges all of the Released Claims against Purchaser and each of its Related Persons.</p> |
| <u>Private Sale/No Competitive Bidding</u> | <p>Not applicable. The Debtor intends to execute a public auction process for the sale of the Transferred Assets.</p> |
| <u>Break-Up Fee and Expense Reimbursement Amount (Bid Protections)</u> Stalking Horse APA Section 11.3 | <ul style="list-style-type: none"> • Termination to Pursue Higher or Better Offer. Under certain circumstances, including if the Debtor terminates the APA to consummate an Alternate Transaction entered into in accordance with the Bidding Procedures Order, upon paying the Purchaser a breakup fee of 3% of the Purchase Price (the “<u>Break-Up Fee</u>”). The Break-Up Fee and the provisions on payment thereof are more fully described in Sections 8.4 and 11.3 of the APA. • Expense Reimbursement. If the APA is terminated under certain other circumstances, Purchaser may be entitled to the reimbursement of its actual and reasonable expenses, including attorney’s fees, in an amount not to exceed \$1.75 million the “<u>Maximum Reimbursement Amount</u>” and together with the Break-Up Fee, the “<u>Bid Protections</u>”). The Maximum Reimbursement Amount and the provisions on payment thereof are more fully described in Sections 8.4 and 11.3 of the APA. |

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| <p><u>Closing and Other Deadlines</u></p> <p>Bidding Procedures; Bidding Procedures Order</p> | <p>The deadlines related to the Closing and other milestones as set forth in the APA are consistent with the deadlines set forth in Debtor's debtor-in-possession financing order.</p> |
| <p><u>Good Faith Deposit</u></p> | <p>Not applicable with respect to the Stalking Horse Purchaser.</p> |
| <p><u>Interim Arrangements with Proposed Buyer</u></p> | <p>Not applicable. The Stalking Horse APA does not require any preclosing, interim arrangements with the Stalking Horse Purchaser.</p> |
| <p><u>Tax Exemption Under Bankruptcy Code Section 1146(a)</u></p> | <p>Not applicable</p> |
| <p><u>Record Retention</u></p> <p>Stalking Horse APA Section</p> | <p>The Stalking Horse APA only contemplates a sale of books and records exclusively or primarily related to the purchased Assets.</p> |
| <p><u>Sale of Avoidance Actions</u></p> <p>Stalking Horse APA Section 2.1(n)</p> | <p>The Stalking Horse APA provides for the sale of the Debtor's causes of action arising under chapter 5 of the Bankruptcy Code.</p> |
| <p><u>Requested Findings as to Successor Liability</u></p> <p>Stalking Horse APA Section 8.1, Proposed Sale Order ¶ X.</p> | <p>The Stalking Horse APA requires entry into the Bankruptcy Sale Order, which must contain a finding that the Stalking Horse Purchaser shall have no liability or responsibility for any Liability or other obligation of the Debtor arising under or related to the Assets other than as expressly set forth in the Stalking Horse APA/</p> |
| <p><u>Sale Free and Clear</u></p> <p>Stalking Horse APA Section 8.1, Proposed Sale Order ¶ X.</p> | <p>The Stalking Horse APA requires entry into the Bankruptcy Sale Order, which must contain a finding that the Assets shall be sold and transferred to the Stalking Horse Purchaser, free and clear of all Liens (except for Permitted Liens), and the Assumed Liabilities shall be assumed by Stalking Horse Purchaser, in each case, pursuant to the Stalking Horse APA.</p> |

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| <u>Sale Free and Clear of Unexpired Leases</u> Stalking Horse APA Section 2.5 | The Stalking Horse APA allows the Stalking Horse Purchaser to select which, if any, unexpired leases to assume and for the Stalking Horse Purchaser to take assignment of the same. Any such assumption and assignment will be pursuant to § 365 of the Bankruptcy Code. |
| <u>Credit Bid</u> Bidding Procedures | The Stalking Horse APA contains a credit bid as part of its payment of the Purchase Price. The Bidding Procedures shall permit the Stalking Horse Purchaser to credit bid the amount of its Break-Up Fee (if approved) at successive rounds at the Auction. |
| <u>Relief from Bankruptcy Rule 6004(h) and 6006(d)</u> Sale Order; Bidding Procedures Order | The Bidding Procedures Order and the Sale Order provide, among other things, that the provisions of Bankruptcy Rule 6004(h) and 6006(d) shall be waived. |
| <u>Employment of the Debtor's Employees</u> Stalking Horse APA Section 6.4 | The Stalking Horse Purchaser may offer employment to certain of the Debtor's employees on the terms provided in the Stalking Horse APA. |

C. Additional Provision for Name Change

25. The Debtor hereby requests the authority, upon and in connection with the Closing, to change its corporate name and the caption of this chapter 11 Case, consistent with applicable law. The Debtor shall file a notice of change of case caption, containing the new caption and the proposed new corporate name of the Debtor, within one (1) business day of the Closing, and the change of case caption for this chapter 11 Case shall be deemed effective as of the Closing.

D. Consumer Privacy Ombudsman

26. The Sale may include the transfer of “personally identifiable information” as defined in section 101(41A) of the Bankruptcy Code. However, no “consumer privacy ombudsman” need be appointed under Section 363(b)(1) of the Bankruptcy Code, because the

Stalking Horse Purchaser has agreed to adhere to any privacy policies applicable to the Debtor. *In re Velocity Express Corp.*, Case No. 09-13294 (MFW), 2009 WL 6690931, at *7 (Bankr. D. Del. Nov. 3, 2009); *see also In re Escada (USA) Inc.*, Case No. 09-15008 (SMB), 2010 WL 4916435, at *4 (Bankr. S.D.N.Y. Jan. 7, 2010 (finding that no consumer privacy ombudsman need be appointed under section 363(b)(1) of the Bankruptcy Code because the purchaser agreed to become the debtor's successor in interest as to the customer information and to use the customer information only in accordance with the privacy policy of the debtor).

27. Section 6.3(b) of the Stalking Horse APA provides that the Successful Bidder shall honor and observe, in connection with the transactions contemplated by the Stalking Horse APA, any and all policies of the Debtor in effect on the Petition Date prohibiting the transfer of personally identifiable information about individuals and otherwise comply with the requirements of section 363(b)(1)(A) of the Bankruptcy Code.

IV. **RELIEF REQUESTED**

28. The Debtor seeks entry of the Bidding Procedures Order (A) approving procedures for (i) submitting bids for the Debtor's Assets, (ii) conducting the Auction in the event that the Debtor receives more than one Bid (each, a "Competing Bid"); (B) approving the Bid Protections; (C) scheduling the Auction and a Sale Hearing with respect to any Bid accepted by the Debtor; (D) establishing Notice and Assumption and Assignment Procedures; and (E) approving form and manner of notice of all procedures, protections, schedules and agreements. A form of Bidding Procedures Order is attached hereto as Exhibit A.

29. The Debtor also requests the Court to schedule the Sale Hearing no later than August 22, 2016. At the Sale Hearing, pending the outcome of the Auction and as set forth in the Bidding Procedures, the Debtor intends to seek entry of an order (each a "Sale Order(s)"), approving the Sale of the Debtor's Assets described therein free and clear of all Encumbrances

and authorizing the assumption and assignment of certain executory contracts and unexpired leases. A form of the Sale Order for the Debtor's business is attached hereto as Exhibit B.

V. BASIS FOR RELIEF

A. Necessity for Sale

30. The Debtor has been marketing its business since well before the inception of this Case. It has engaged in a thorough marketing process and all potential purchasers have had an opportunity to make an offer on the Debtor's Assets and will have yet another opportunity should they wish to bid at the Auction.

B. The Bidding Procedures⁴

31. The Debtor seeks to conduct an open sale process pursuant to which the winning bidder will enter into an asset purchase agreement, substantially in the form of the Stalking Horse APA, for the purchase of substantially all of the Debtor's Assets, free and clear of liens, claims and encumbrances, with such liens, claims and encumbrances attaching to the sale proceeds.

32. The Bidding Procedures were developed consistent with the Debtor's need to proceed with an expedited sale process to preserve the going-concern value of its Assets, but with the objective of promoting active bidding that will result in the highest or best offer for the Assets, while affording appropriate protection for the Stalking Horse Purchaser. Moreover, the Bidding Procedures reflect the Debtor's objective of conducting the Auction in a controlled, but fair and open, fashion that promotes interest in the Assets by financially-capable, motivate bidders who are likely to close the Sale.

⁴ Terms used but not otherwise defined in this section of this Motion shall have the meanings ascribed to them in the Bidding Procedures attached hereto.

33. The terms of the Bidding Procedures are set forth in full in Exhibit D, and incorporated herein by reference.

34. Consistent with Local Rule 6004-1(c)(i), the following sets forth a summary of the key provisions of the Bidding Procedures, qualified in its entirety by reference to the actual Bidding Procedures:

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| <p><u>Provisions Governing Qualification of Bidders</u></p> <p>Bidding Procedures at 8</p> | <p>A “<u>Qualified Bidder</u>” is a Bidder that satisfies the Participant Requirements and that the Debtor determines has been submitted by the Bid Deadline a Qualified Bid that is determined by the Debtor to be able to consummate the Sale as proposed in the Stalking Horse APA if selected as a Successful Bidder or a Back-Up Bidder.</p> <p>Unless otherwise ordered by the Bankruptcy Court or waived by the Debtor, in order to participate in the bidding process, each Qualified Bidder must deliver (unless previously delivered) to the Debtor’s investment banker and counsel (as identified below), no later than August 15, 2016 at 5:00 p.m. (Prevailing Eastern Time) the Submission Deadline for Qualified Bids (as defined below), the following items (collectively, the “<u>Participation Requirements</u>”):</p> <ul style="list-style-type: none"> i. <u>Confidentiality Agreement</u>. An executed confidentiality agreement in form and substance reasonably acceptable to the Debtor (each, a “<u>Confidentiality Agreement</u>”); ii. <u>Identification of Potential Bidder</u>. Identification of the Potential Bidder and any principals and representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated Sale; and iii. <u>Proof of Ability to Close</u>. Written evidence that enables the Debtor and its representatives to determine, in their sole discretion, whether the Qualified Bidder has the ability to close the contemplated Sale and provide adequate assurance of future performance under all contracts to be assumed in such contemplated Sale. <p>The Stalking Horse Purchaser is deemed a Qualified Bidder for all purposes.</p> |
| <p><u>Provisions Governing Qualified Bids</u></p> <p>Bidding Procedures at</p> | <p>A Qualified Bid must be submitted to the parties designated in the Bidding Procedures on or before the Bid Deadline and must contain all the requirements provided for clauses (a)-(m) in the Bidding</p> |

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| 5-7 | Procedures. |
| <p><u>Stalking Horse Bid Protections</u></p> <p>Bidding Procedures at 7</p> | <p>The Stalking Horse Purchaser is entitled to the Break-Up Fee and the Expense Reimbursement Amount under the terms of the Stalking Horse APA.</p> <p>Each Qualified Bid (to the extent that it seeks to purchase any of the Assets) must provide for a proposed purchase price, the value in cash of which is determined by the Debtor to be equal to or greater than the sum of: (a) the Total Consideration provided for in the Stalking Horse APA plus (b) the Break-Up Fee plus (c) the Expense Reimbursement; and (d) \$250,000.</p> |
| <p><u>Modifications of Bidding Qualifications or Auction Procedures</u></p> <p>Bidding Procedures at 11</p> | <p>Subject to the Bidding Procedures Order, the Debtor shall have the right to adopt such other rules for the Bidding Procedures (including rules that may depart from those set forth herein), that, in the Debtor's reasonable discretion, after consultation with the agent for the Debtor's postpetition lender (the "Administrative Agent") and the Official Committee of Unsecured Creditors (the "Committee") will better promote the goals of the Bidding Procedures. With respect to all material decisions that the Debtor has the power to make under these Bidding Procedures, the Debtor will confer with the Administrative Agent and the Committee.</p> <p>The Debtor, in its reasonable discretion, and after consultation with the Administrative Agent and the Committee, may adopt rules for the Auction at or prior to the Auction that will better promote the goals of the Auction and that are not inconsistent with any of the provisions of the Bidding Procedures, the Bidding Procedures Order or the Bankruptcy Code.</p> |
| <p><u>Closing with Alternative Backup-Bidders</u></p> <p>Bidding Procedures at 11</p> | <p>If an Auction is held, upon conclusion of the bidding, the Auction shall be closed and no additional Bids may be considered following the closing of the Auction. The Debtor shall immediately review the final Overbid of each Qualified Bidder on the basis of financial and contractual terms and the factors relevant to the Sale, including those factors affecting the speed and certainty of consummating the proposed sale, and identify the highest or otherwise best offer for the Debtor's business (the "<u>Successful Bid</u>" and the entity submitting such Successful Bid, the "<u>Successful Bidder</u>") and the next highest or otherwise best offer after the Successful Bid (the "<u>Back-Up Bid</u>" and the entity submitting such Back-Up Bid, the "<u>Back-Up Bidder</u>").</p> <p>Following the approval of the Sale of any of the Debtor's Assets set forth in the applicable Purchase Agreement (as defined in the Stalking Horse APA) to the Successful Bidder at the Sale Hearing, if such Successful Bidder fails to consummate an approved Sale within</p> |

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| | <p>fifteen (15) days after the entry of the Sale Order (except where the sole cause of any delay of the Closing Date is the result of a default by the Debtor), the Debtor shall be authorized, but not required, to deem the Back-Up Bid with respect to such Assets, as disclosed at the Sale Hearing, the Successful Bid and the Debtor shall be authorized, but not required, to consummate the sale with the Back-Up Bidder without further notice or orders of the Court.</p> |
| <u>No Contingencies</u> | <p>A Bid may not be conditioned on obtaining internal approval, obtaining financing or on the outcome or review of due diligence, but it may be subject to the accuracy in all material respects at the Closing of specified representations and warranties or the satisfaction in all material respects at the closing of specified conditions, none of which shall be more burdensome than those set forth in the Stalking Horse APA.</p> |
| <u>Financing Sources</u> | <p>A Bid must contain evidence of the ability to consummate the Sale satisfactory to the Debtor with appropriate contact information for all such financing sources and may not contain any financial contingency.</p> |
| <u>Minimum Initial Bid Requirement</u> | <p>Each Qualified Bidder's Bid shall have an initial minimum bid requirement equal to the Stalking Horse Purchaser's Total Consideration, <i>plus the Break Fee; plus</i> the maximum amount of the Expense Reimbursement, <i>plus</i> \$250,000 (the "<u>Minimum Initial Bid</u>"), in cash (or cash equivalents).</p> |
| <u>Representation of Non-Collusion</u> | <p>Pursuant to Local Rule 6004-1, each bidder participating at the Auction must confirm that it has not engaged in any collusion with respect to the bidding or the Sale.</p> |

35. Pursuant to Local Rule 6004-1: (i) each bidder participating at the Auction will be required to confirm that it has not engaged in any collusion with respect to the bidding or the Sale; (ii) the Auction will be conducted openly, but only the Debtor, the Administrative Agent, the Official Committee of Unsecured Creditors, if one is appointed (the "Committee"), the Stalking Horse Purchaser, and any Qualified Bidder who has timely submitted a Qualified Bid (and professional advisors to each of these parties) may actively participate at the Auction, and (iii) bidding at the Auction will be transcribed. The Bidding Procedures are typical for asset

sales of this size and nature and require a deposit from Qualified Bidders, other than the Stalking Horse Purchaser.

36. In order to maximize the value of the Debtor's Assets for the benefit of the Debtor's estate and its respective creditors, the Debtor seeks to implement a competitive bidding process that is designed to generate maximum recovery. As described more fully in the Bidding Procedures, the Debtor seeks authority to sell the Debtor's Assets to any bidder that makes the highest or otherwise best offer for the Debtor's Assets or any subset or combination thereof.

37. By way of further explanation, the Bidding Procedures are meant to ensure that all parties have the ability to submit competing offers for the Assets related to the Debtor's business and to submit offers for all the Debtor's Assets. The Debtor believes the Bidding Procedures will secure the highest and best offer for the Assets related to the Debtor's business (either through the Stalking Horse APA or such other Alternative Transaction) and allows the Debtor to engage potential interested parties on their interest in all the Debtor's Assets.

38. A summary of the Bidding Procedures for which the Debtor herein seeks approval is set forth below.⁵

a. **The Bidding Process.** The Debtor and its advisors shall, in consultation with the Administrative Agent and the Committee (i) determine whether any bid for any of the Debtor's Assets is a Qualified Bid, (ii) coordinate the efforts of Qualified Bidders in conducting their due diligence investigations, (iii) solicit and receive offers from Qualified Bidders, and (iv) negotiate in good faith any offers made to purchase the Debtor's Assets (collectively, the "Bidding Process").

⁵ The following description of the Bidding Procedures is a summary of the terms set forth in Exhibit D attached hereto. To the extent that this summary differs in any way from terms set forth in the Bidding Procedures, the terms of the Bidding Procedures shall control.

b. **Free of Any and All Encumbrances.** Except as otherwise provided in the applicable agreement and subject to the Cash Collateral Order, all of the Debtor's right, title and interest in and to any of the Debtor's Assets proposed to be sold pursuant to a Sale Transaction, shall be sold free and clear of Encumbrances to the maximum extent permitted by §363 of the Bankruptcy Code, with such Encumbrances to attach to the net proceeds of the sale of the Debtor's Assets subject to the Sale Transaction with the same validity and priority as such Encumbrances applied against such Assets. Nothing herein shall prevent any party in interest from objecting to the Bankruptcy Court's approval of any sale of the Debtor's Assets pursuant to any agreement, except with respect to the Bid Protections which are being approved in connection with approval of the Bidding Procedures.

c. **Auction.** If a Qualified Bid other than that submitted by the Stalking Horse Purchaser has been received by the Debtor prior to the Bid Deadline, the Debtor shall conduct the Auction to consider and determine the highest and best offer for the Debtor's Assets. The time and date of the Auction shall be as set forth in the Bidding Procedures Order as approved by the Court. The Debtor shall notify the Qualified Bidders that have submitted Qualified Bids of the time and place of the Auction. Only Qualified Bidder that has submitted a Qualified Bid is eligible to participate at the Auction. During the Auction, bidding shall begin initially with the highest Qualified Bid as determined by the Debtor and subsequently continue in minimum increments of at least \$100,000 in cash. Except as otherwise set forth herein, the Debtor may conduct the Auction in the manner they determine will result in the highest, best or otherwise financially superior offer(s) for the Debtor's Assets.

d. **Successful Bid.** Prior to closing the Auction, the Debtor shall (i) immediately 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 proposed sale, and (ii) after consultation with the Administrative Agent and the Committee, identify the highest, best or otherwise financially superior offer(s) for the Debtor's Assets (the "Successful Bid(s)" and the entity or entities submitting such Successful Bid, the "Successful Bidder(s)"), which highest, best or otherwise financially superior offer(s) will provide the greatest amount of net value to the Debtor, and advise the Qualified Bidders of such determination.

e. The Debtor reserves the right to (a) waive terms and conditions set forth herein with respect to any or all potential bidders, (b) impose additional terms and conditions with respect to any or all potential bidders, (c) extend deadlines set forth herein or the date for the Auction, (d) cancel or extend the sale of the assets and/or Sale Hearing in open court; and (e) amend the Bidding Procedures as it may determine to be in the best interests of its estate or to withdraw this Motion at any time with or without prejudice.

f. **Acceptance of Successful Bids.** Subject to the limitations set forth above, the Debtor shall seek authority from the Bankruptcy Court at the Sale Hearing to sell its Assets to the Successful Bidder. The Debtor's presentation of a particular Successful Bid to the Bankruptcy Court for approval does not constitute the Debtor's acceptance of the bid; the Debtor will be deemed to have finally accepted a bid only when the bid has been approved by the Bankruptcy Court at the Sale Hearing. All interested parties reserve their right to object to the Debtor's selection of the Successful Bidder(s).

g. **The Bidding Protections.** Pursuant to §§105, 363, 503 and 507 of the Bankruptcy Code, the Debtor is authorized to pay the Break-Up Fee to the Stalking Horse Purchaser pursuant to the terms and conditions set forth in the Stalking Horse APA.

Specifically, the Break-Up Fee shall be paid to the Stalking Horse Purchaser upon the closing of an Alternative Transactions if and to the extent required pursuant to section 11.3 of the Stalking Horse APA. In addition the Debtor may reimburse the Stalking Horse Purchaser for out of pocket expenses incurred (up to the Maximum Reimbursement Amount) if and to the extent required pursuant to section 11.3 of the Stalking Horse APA. Upon entry of this Order, the Break-Up Fee or an amount of up to the Maximum Reimbursement Amount (each, if earned pursuant to the Stalking Horse APA) shall, until paid in full as set forth in the Stalking Horse APA, be entitled to administrative expense status pursuant to § 503(b)(1) and 507(a)(2) of the Bankruptcy Code.

C. Expense Reimbursement

39. The Debtor seeks approval to pay an expense reimbursement (the “Expense Reimbursement”) to the Stalking Horse Purchaser upon the terms and conditions set forth in the Stalking Horse APA, including in the event that the Stalking Horse Purchaser is not the Successful Bidder at the Auction, equal to the lesser of (A) the aggregate documented, actual, reasonable out-of-pocket fees and expenses (including, without limitation, fees and expenses of legal counsel, accounting fees and expenses, HSR Act filing fees, escrow and other fees and expenses) incurred by the Stalking Horse Purchaser in connection with the Stalking Horse APA (including, without limitation, the drafting, negotiation and implementation of the Stalking Horse APA), the transactions contemplated in the Stalking Horse APA and matters related to such transactions and to the Stalking Horse APA (including, without limitation, relating to business, legal and accounting due diligence and all matters in connection with the Bankruptcy Case), in each case whether incurred before or after the Petition Date, and (b) \$1,750,000. The Expense Reimbursement is in recognition of the Stalking Horse Purchaser’s substantial expenditure of time, energy and resources, and the benefits to the Debtor’s estate of securing a “stalking horse”

and guaranteed minimum bid. The Expense Reimbursement shall be a super-priority administrative expense obligation with priority over all expenses of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code, subject to any super-priority claims of the Debtor's postpetition lenders, payable pursuant to the terms of the Stalking Horse APA.

D. The Sale Hearing, Closing and Return of Deposits

40. The Debtor seeks approval for the Sale Hearing to be conducted by the Bankruptcy Court no later than July 27, 2016 or on such date and time as may be established by the Bankruptcy Court. The Debtor seeks approval of the Notice of the Sale Hearing, attached hereto as Exhibit E.

41. Within three (3) business days of the entry of the Bidding Procedures Order, the Debtor seeks to serve by first class mail, postage prepaid, copies of (i) the Bidding Procedures Order; and (ii) the Sale Notice upon the following entities: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to the Agent; (c) counsel to the Committee (if any); (d) all taxing authorities having jurisdiction over any of the Assets subject to the sale, including the Internal Revenue Service; (e) the Environmental Protection Agency; (f) the state/local environmental agencies in the jurisdictions where the Debtor owns or leases real property; (g) all parties that have requested special notice pursuant to Bankruptcy Rule 2002(a) as of the date prior to the date of entry of the Bidding Procedures Order; (h) all persons or entities known to the Debtor that have or have asserted a lien on, or security interest in, all or any portion of the Assets; and (i) any parties who have expressed an interest in acquitting the Debtor's business or substantially all of its assets within the last twelve months (collectively, the "Sale Notice Parties"). Additionally, the Debtor will serve the Sale Notice upon all other known creditors of the Debtor. The Debtor also seeks authorization to publish the Sale Notice in the

national edition of either the *Wall Street Journal*, *USA Today* or trade journal once within seven (7) business days after entry of the Bidding Procedures Order.

42. The Debtor further requests, pursuant to Bankruptcy Rule 9014, that objections, if any, to the proposed Sale: (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Rules; (c) be filed with the Clerk of the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801; and (d) be served on: (i) the Debtor; (ii) counsel to the Debtor; (iii) counsel to the Stalking Horse Purchaser; (iv) the U.S. Trustee; and (v) counsel to the Committee, in accordance with Local Bankruptcy Rule 2002-1(b).

43. The Bidding Procedures as proposed describe, among other things, the Assets available for sale, the manner in which Bidders and Bids become “qualified,” the coordination of diligence efforts among Qualified Bidders and the Debtor, the receipt and negotiation of Bids received, the conduct of any Auction, and the selection and approval of the Successful Bidder and the selection of the Back-Up Bid.

44. Upon conclusion of the Auction, the Debtor proposes to identify the highest or otherwise best offer for the Debtor’s business (the “Successful Bid” and the entity submitting such Successful Bid, the “Successful Bidder”)⁶ and the next highest or otherwise best offer after the Successful Bid (the “Back-Up Bid” and the entity submitting such Back-Up Bid, the “Back-Up Bidder”).

E. The Cure Procedures

45. The Debtor seeks approval of the following procedures with respect to cure obligations:

⁶ All references to the Successful Bidder herein shall apply equally to the Back-Up Bidder for purposes of the relief requested hereunder in the event the Debtor must close a transaction with a Back-Up Bidder.

a. No later than **the third business day after entry of the Bid Procedures Order**, the Debtor shall prepare and distribute to non-Debtor parties (the “Notice Parties”) to any executory contracts and unexpired nonresidential real property leases anticipated to be assumed in connection with a Sale (the “Anticipated Assumed Contracts”) a notice (a “Notice of Assignment”), substantially in the form annexed to this Motion as Exhibit F, listing (i) the Anticipated Assumed Contracts, and (ii) the Cure Amounts, if any.

b. Any party asserting a Contract Objection, including objecting to the Cure Amounts, whether or not such party previously has filed a proof of claim with respect to amounts due under the applicable agreement, or objecting to the potential assumption and assignment of Assumed Contracts, shall be required to file such Contract Objection with the Bankruptcy Court and serve the Contract Objection on, (i) counsel and investment banker for the Debtor, (ii) counsel for the Stalking Horse Purchaser, (iii) counsel to the Creditors’ Committee, if appointed, and (iv) counsel to the Administrative and Prepetition Agent. The Contract Objection shall be in writing, setting forth with specificity any and all cure obligations that the objecting party asserts must be cured or satisfied in respect of the Assumed Contracts and/or any and all objections to the potential assumption and assignment of such agreements, together with all documentation supporting such cure claim or objection. The Contract Objection must be (i) filed with the Court and (ii) served so as to be actually received no later than 4:00 p.m. (prevailing eastern time) on the Contract Objection Deadline, as applicable. If a Contract Objection is timely filed, the Bankruptcy Court shall hear any such Contract Objection and determine the amount of any disputed cure amount or objection to assumption and assignment not settled by the parties at the Sale Hearing or such later date as the Court may deem appropriate.

c. In the event that no Contract Objection is timely filed, the applicable party shall be deemed to have consented to the Cure Amount proposed by the Debtor and shall be forever enjoined and barred from seeking any additional amount on account of the Debtor's cure obligations under §365 of the Bankruptcy Code or otherwise from the Debtor, its estate or the Successful Bidders on account of the assumption and assignment of such executory contract or unexpired non-residential real property lease and deemed to have consented to the proposed assignment and assumption. In addition, if no timely Contract Objection is filed, the Successful Bidder shall enjoy all of the rights and benefits under all Assumed Contracts without the necessity of obtaining any party's written consent to the Debtor's assumption and assignment of such rights and benefits, and each such party shall be deemed to have waived any right to object to, consent to, condition or otherwise restrict any such assumption and assignment.

i. Designation by the Stalking Horse or Other Qualified Bidder

46. No later than two (2) days prior to the date on which the Auction occurs, the Stalking Horse Purchaser shall, by delivering written notice to the Debtor, designate each Contract on the Contracts Schedule as "Assumed," "Rejected" or "Held." Each Contract so designated as "Assumed" is referred to herein as an "Assumed Contract." Each Contract so designated as "Rejected" is referred to herein as a "Rejected Contract." Each Contract designated as "Held" is referred to herein as a "Held Contract."

47. Each Qualified Bidder, other than the Stalking Horse Purchaser, shall, by delivering written notice to the Debtor on the Bid Deadline, designate each Contract on the Contracts Schedule as "Assumed," "Rejected" or "Held." Each Contract so designated as "Assumed" is referred to herein as an "Assumed Contract." Each Contract so designated as

“Rejected” is referred to herein as a “Rejected Contract.” Each Contract designated as “Held” is referred to herein as a “Held Contract.”

48. Notwithstanding the foregoing, each Qualified Bidder, including the Stalking Horse Purchaser, shall have the right (in its sole and absolute discretion) to change such Qualified Bidder’s designation of each Contract and to notify the Debtor in writing of any such change until immediately prior to the commencement of the Sale Hearing in which case such Contract shall become an Assumed Contract, a Rejected Contract or an Held Contract as indicated by such changed designation.

49. The Debtor requests the Sale Order, among other things:

a. authorize and approve the assumption and assignment of the Assumed Contracts upon the Closing, without the need for any further action by any party, pursuant to section 365 of the Bankruptcy Code;

b. authorize and approve the rejection of the Rejected Contracts effective as of the Closing, without the need for any further action by any party, pursuant to section 365 of the Bankruptcy Code;

c. provide that where the Debtor does not believe that a default exists under a Contract, the Cure Amount relating to such Contract shall be set at \$0.00;

d. find that the Successful Bidder has established adequate assurance of future performance necessary to satisfy the requirements of section 365 of the Bankruptcy Code in respect of the assignment to the Successful Bidder of the Assumed Contracts and the Additional Assumed Contracts;

e. authorize and approve the assumption and assignment of the Additional Assumed Contracts upon entry of the applicable Additional Assumption Order in accordance

with the Additional Assumption Procedures (each as defined below), without the need for any further action by any party, pursuant to section 365 of the Bankruptcy Code; and

f. authorize and approve the rejection of the Additional Rejected Contracts effective as of the filing of an Additional Rejection Notice (as defined below) in accordance with the Additional Rejection Procedures, without the need for any further action by any party, pursuant to section 365 of the Bankruptcy Code.

i. Additional Designation of Held Contracts After Closing

50. During the seventy-five (75) day period following the Closing Date for all Contracts that are not unexpired leases of real property, or such later date as may be agreed upon by Purchaser and Debtor and during the seventy-five (75) day period following the Petition Date for all Contracts that are unexpired leases of real property or such later date as may be agreed upon by Purchaser and Debtor (collectively, the “Designation Period”), the Successful Bidder is authorized to, from time to time, by delivering one or more written notices to the Debtor (each such written notice is referred to herein as an “Additional Designation Notice”), designate, in its sole and absolute discretion, any Held Contract, previously designated as “Held” by the Successful Bidder, as “Assumed” or “Rejected.” Each such Held Contract so designated as “Assumed” during the Designation Period shall be referred to as an “Additional Assumed Contract,” and each Held Contract so designated as “Rejected” during the Designation Period shall be referred to as an “Additional Rejected Contract.”

51. During the Designation Period, but subject to the Successful Bidder’s obligations under the Successful Bidder’s asset purchase agreement, (i) each Held Contract shall be held by the Debtor, (ii) the Debtor shall not reject or seek to reject (pursuant to section 365 of the Bankruptcy Code or otherwise) any Held Contract, (iii) the Debtor shall not terminate, amend, supplement or modify, or waive any rights under, any Held Contract or take any affirmative

action not required by the terms thereof by the Debtor, without the prior written consent of the Successful Bidder, and (iv) the Successful Bidder shall perform under each Held Contract.

Following the end of the Designation Period, the Debtor shall promptly cause any Held Contract not designated as either “Assumed” or “Rejected” by the Successful Bidder during the Designation Period to be rejected pursuant to section 365 of the Bankruptcy Code.

i. Additional Assumption Procedures

52. To facilitate a prompt resolution of objections relating to the assumption and assignment of the Additional Assumed Contracts, the Debtor proposes the following “Additional Assumption Procedures”:

a. No later than the third (3rd) business day following the receipt of each Additional Designation Notice (the “Additional Designation Date”), the Debtor shall (x) file with the Court and (y) serve via overnight delivery service upon the following: (i) the non-Debtor parties to the Contracts designated as assumed in such Additional Designation Notice and their respective counsel, if known; (ii) any Committee; (iii) the U.S. Trustee; (iv) counsel to the Agent; and (v) counsel to the Successful Bidder; a notice (the “Additional Cure Notice”), substantially in the form annexed hereto as Exhibit G providing that such Additional Assumed Contact has been designated by the Successful Bidder as “Assumed” and establishing any additional Cure Amount due for the period between Closing and the filing of such Additional Cure Notice (the “Additional Cure”).

b. Each Contract Party to an Additional Cure Notice shall have until 4:00 p.m. (Prevailing Eastern Time) seven days from the filing of the Additional Cure Notice (the “Additional Cure Deadline”), which deadline may be extended in the sole discretion of the Debtor and the Successful Bidder, to object to the amount of the Additional Cure (such objection being the only permissible grounds for objection). If no objection to the Additional Cure is filed

by the Additional Cure Deadline, the Court will enter an order (an “Additional Assumption Order”) authorizing the assumption and assignment of the Additional Assumed Contract effective as of the date of the Additional Cure Notice. In the event an objection is filed by the Additional Cure Deadline, and the parties cannot consensually agree on the Additional Cure, the Debtor shall seek expedited determination of the objection by the Court on the first available hearing date.

c. Each Additional Assumed Contract shall be deemed to have been assumed and assigned as on the Additional Designation Date. The Debtor shall further take all other actions that at such time may be reasonably necessary to permit the assignment to the Successful Bidder, pursuant to section 365 of the Bankruptcy Code, of each Additional Assumed Contract set forth in the applicable Additional Designation Notice.

i. Additional Rejection Procedures

53. Because the Sale contemplates the Debtor selling substantially all of its assets to the Successful Bidder, the Debtor has determined in an exercise of its business judgment that it should reject all Rejected Contracts and Additional Rejected Contracts immediately upon being so designated by the Successful Bidder. To facilitate a prompt resolution of objections relating to the rejection of the Additional Rejected Contracts, the Debtor proposes the following

“Additional Rejection Procedures”:

a. On the Additional Designation Date, the Debtor shall (x) file with the Court and (y) serve via overnight delivery service upon the following: (i) the non-Debtor parties to the Contracts designated as rejected in such Additional Designation Notice and their respective counsel, if known; (ii) any Committee; (iii) the U.S. Trustee; and (iv) counsel to the Purchaser, a notice (the “Rejection Notice”), substantially in the form annexed hereto as “Exhibit”

H” providing that such Additional Rejected Contract has been designated by the Successful Bidder as “Rejected.”

b. Each Contract Party to an Additional Rejection Notice shall have until 4:00 p.m. (Prevailing Eastern Time) seven days from the filing of the Additional Rejection Notice (the “Rejection Objection Deadline”), which deadline may be extended in the sole discretion of the Debtor and the Successful Bidder, to object to the rejection. If no objection is filed by the Rejection Deadline, the Court will enter an order (an “Additional Rejection Order”) authorizing the rejection of the Additional Rejected Contract effective as of the date of the Rejection Notice. In the event an objection is filed by the Rejection Deadline and the parties cannot consensually agree on a resolution, the Debtor shall seek expedited determination of the objection by the Court on the first available hearing date.

c. Each Additional Rejected Contract shall be deemed to have been rejected as of the Additional Designation Date.

i. Process for Contracts Omitted from Contract Schedule

54. In the event that it is discovered that a Contract which should have been listed on the Contracts Schedule was not listed on the Contracts Schedule (any such Contract, a “Previously Omitted Contract”), the Debtor proposes the following procedures (collectively, the “Omitted Contract Procedures”):

a. Immediately following the discovery thereof (but in no event later than two (2) business days following such discovery), the Debtor shall (i) notify the Successful Bidder, in writing, of such Previously Omitted Contract and all Cure Amounts (if any) for such Previously Omitted Contract and (ii) file with the Bankruptcy Court and serve notice on the non-Debtor counterparties to any Previously Omitted Contract, a notice substantially in the form of the notice annexed hereto as “Exhibit I” (an “Omitted Contract Notice”) fixing the notice of the

Cure Amounts (if any) with respect to such Previously Omitted Contract and providing that such Previously Omitted Contract may be assumed by the Successful Bidder.

b. The Contract Party to the Previously Omitted Contract shall have fourteen (14) days from service of the applicable Omitted Contract Notice (the “Omitted Contract Objection Deadline”) to object to (i) the Cure Amounts listed by the Debtor on the applicable Omitted Contract Notice and to propose alternative cure amounts, and/or (ii) the proposed assumption and assignment of the Contracts in connection with the Sale, including without limitation the Debtor’s ability to assign the Contracts without the Contract Party’s consent or the adequate assurance of future performance to be provided by the Successful Bidder (an “Omitted Contract Objection”).

c. Unless an Omitted Contract Objection is filed and served before the applicable Omitted Contract Objection Deadline any Contract Party to such Previously Omitted Contract shall be (i) forever barred and precluded from objecting to the proposed Cure Amounts and from asserting any additional cure or other amounts (other than which may be set forth in an Additional Cure Notice), and the Debtor and the Successful Bidder shall be entitled to rely solely upon the proposed Cure Amounts set forth in the Cure Notices; (ii) deemed to have consented to the assumption and assignment of the Contracts; (iii) forever barred and estopped from asserting or claiming against the Debtor or the Successful Bidder that any additional amounts are due or other defaults exist (other than which may be set forth in an Additional Cure Notice), that conditions to assignment must be satisfied under such Contracts, including, without limitation, any consent rights, or that there is any objection or defense to the assumption and assignment of such Contracts; (iv) precluded from objecting to the Cure Amount (if any) (other than which may

be set forth in an Additional Cure Notice) and to the assumption and assignment; and (v) barred and estopped from asserting or claiming that their Contract contains an enforceable consent right.

d. Within fifteen (15) business days following the filing of an of the Omitted Contract Notice, the Successful Bidder shall deliver an Additional Designation Notice to the Debtor, designating such Previously Omitted Contract as “Assumed,” “Rejected” or “Held” and such Previously Omitted Contract shall be treated in accordance with the Additional Assumption Procedures and the Additional Rejection Procedures, as applicable.

VI. APPLICABLE AUTHORITY

A. The Sale Is Within the Sound Business Judgment of the Debtor and Approval of the Sale Is Warranted Under the Bankruptcy Code.

55. Section 363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. §363(b)(1). The Debtor has been permitted to conduct pre-confirmation sales of its property provided that a “sound business purpose” exists for the sale. *See, e.g., In re Montgomery Ward Holdings Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991); *see also In re Lionel Corp.*, 722 F. 2d 1063, 1069 (2d Cir. 1983) (“Section 363(b) of the Code seems on its face to confer upon the bankruptcy judge virtually unfettered discretion to authorize the use, sale, or lease, other than in the ordinary course of business, of property of the estate”); *In re Frezzo*, 217 B.R. 985, 988 (Bankr. E.D. Pa. 1998) (“In determining whether to approve a proposed sale under section 363, courts generally apply standards that, although stated in various ways, represent essentially a business judgment test.”).

56. Once the Debtor articulates a valid business justification for a sale outside of the ordinary course of business, the Debtor’s business judgment should be given deference. The

business judgment rule “is a presumption that in making a business decision the directors . . . acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the corporation.” *Brehm v. Eisner*, 746 A.2d 244, 264, n. 66 (Del. 2000) (quoting *Aronson v. Lewis*, 473 A.2d 805, 812 (Del. 1984)); *Grobow v. Perot*, 539 A.2d 180, 187 (Del. 1988); *In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005); *Ad Hoc Committee of Equity Holders of Tectonic Network, Inc. v. Wolford*, 554 F. Supp. 2d 538, 555 n.111 (D. Del. 2008); *Continuing Creditors’ Comm. of Star Telecomms., Inc. v. Edgecomb*, 385 F.Supp.2d 449, 462 (D. Del. 2004); *see also In re Johns-Manville Corp.*, 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) (“a presumption of reasonableness attaches to a Debtor’s management decisions”).

57. The Debtor has a sound business justification for soliciting offers and selling the Debtor’s Assets at this time. Based on the results of its analysis of the Debtor’s ongoing and future business prospects, the Debtor’s management and Advisors have concluded that a Sale of the Debtor’s Assets in accordance with the procedures set forth in the Bidding Procedures will be the best method to maximize recoveries to the estate and to ensure the continued servicing of existing heart recipient patients. The Debtor submits that maximization of the value of the Debtor’s Assets and the Debtor’s life-saving mission are each independent sound business purposes warranting authorization of any proposed Sale.

58. The Debtor further submits that an auction 45 days after the Petition Date and a sale hearing immediately thereafter is appropriate under the circumstances. As discussed above and in the First Day Affidavit, the Debtor’s business is primarily to manufacture and service its artificial hearts and corresponding drivers. As set forth above and in the Richards Declaration, for nearly a year, following the Debtor’s failed IPO, Canaccord has been working on a transaction to find a suitor for the business. A significant detour with a potential suitor caused

the Debtor to spend more cash and watch its balance sheet deteriorate to a dangerously low number. Although the Debtor welcomes and will actively seek post-petition bidding, the Debtor and the Administrative Agent each believe, as a result that of the extensive marketing by Canaccord, that it is highly unlikely that there will be any bidders, and that in any event, any potential bidder will have already accessed the Debtor's data room and be familiar with the Debtor's operations and financials. The Debtor submits that the proposed schedule is sufficient, in the parameters set forth through their post-petition financing agreement, and will minimize cost and uncertainty.

59. Any Sale of the Debtor's Assets will be subject to competing bids, enhancing the Debtor's ability to receive the highest or otherwise best value for the Debtor's Assets. Consequently, the fairness and reasonableness of the consideration to be received by the Debtor will ultimately be demonstrated by a "market check" through the auction process, which is the best means for establishing whether a fair and reasonable price is being paid.⁷

60. In addition, all creditors and parties in interest will receive adequate notice, reasonably calculated to provide timely and adequate notice to the Debtor's major creditor constituencies, those parties most interested in this Case, those parties potentially interested in bidding on the Debtor's Assets and others whose interests are potentially implicated by a proposed Sale, of the Bidding Procedures and Sale Hearing as set forth above. Accordingly, consummating the Sale as soon as possible is in the best interests of the Debtor and its creditors and parties in interest.

⁷ The Debtor reserves all rights not to submit any bid that is not acceptable to the Debtor for approval to the Bankruptcy Court.

B. The Bidding Procedures Are Fair and Are Designed to Maximize the Value Received for the Debtor's Assets.

61. Section 363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1).

62. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See In re Mushroom Transp. Co.*, 382 F.3d 325, 339 (3d Cir. 2004) (debtor in possession “had a fiduciary duty to protect and maximize the estate’s assets”); *Official Comm. of Unsecured Creditors of Cybergenics, Corp v. Chinery*, 330 F.3d 548, 573 (3d Cir. 2003) (same). To that end, courts recognize that procedures to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and therefore are appropriate in the context of bankruptcy transactions. *See In re O’Brien Envtl. Energy, Inc.*, 181 F.3d 527, 537 (3d Cir. 1999).

63. The Debtor believes that the Bidding Procedures are appropriate under §§ 105 and 363 of the Bankruptcy Code to ensure that the bidding process is fair and reasonable and will yield the maximum value for its estate and creditors. The Bidding Procedures proposed herein are designed to maximize the value received for the Debtor’s Assets by facilitating a competitive bidding process in which all potential bidders are encouraged to participate and submit competing bids. The Bidding Procedures provide potential bidders with sufficient notice and an opportunity to acquire information necessary to submit a timely and informed bid. At the same time, the Bidding Procedures provide the Debtor with the opportunity to consider all competing offers and to select the highest and best offer for the Debtor’s Assets as determined by the Debtor.

64. The Debtor requests this Court's approval of the Bidding Procedures, including the dates established thereby for the Auction and Sale Hearing. Accordingly, the Debtor and all parties in interest can be assured that the consideration for the Debtor's Assets will be fair and reasonable, and there are sound business reasons to approve the Bidding Procedures.

C. The Expense Reimbursement Is Reasonable and Appropriate

65. A bid incentive such as the Expense Reimbursement encourages a potential buyer to invest the time, money and effort required to negotiate with a debtor, despite the inherent risks and uncertainties of the chapter 11 process. The Debtor submits that approval of the Expense Reimbursement is justified by the facts and circumstances of this Case, whether considered under the business judgment rule or as an administrative expense of the estate.

66. Approval of the Expense Reimbursement is governed by standards for determining the appropriateness of bidding incentives in the bankruptcy context established by the Third Circuit in *Calpine Corp. v. O'Brien Envtl. Energy, Inc. (In re O'Brien Envtl. Energy, Inc.)* 181 F.3d 527 (3d Cir. 1999) and *In re Reliant Energy Channelview, L.P.*, 594 F.3d 200 (3d Cir. 2010). In *O'Brien*, the Third Circuit concluded that "the determination whether break-up fees or expenses are allowable under section 503(b) must be made in reference to general administrative expense jurisprudence. In other words, the allowability of [these fees] . . . depends upon the requesting party's ability to show that the fees were actually necessary to preserve the value of the estates." *O'Brien*, 181 F.3d at 535. Here, the Expense Reimbursement should be approved because it will provide a benefit to the Debtor's estate. The Third Circuit identified at least two instances in which bidding incentives may benefit the estate. First, a break-up fee may be necessary to preserve the value of the estate if assurance of the fee "promote[s] more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited." *Id.* At 537. Second, "if the availability of .

. . [reimbursement of] expenses were to induce a bidder to research the value of the debtor and convert that value to a dollar figure on which other bidders can rely, the bidder may have provided a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth.” *Id.*

67. In recognition of the expenditure of time, energy and resources as well as the benefits to the Debtor’s estate of securing a “stalking horse” or minimum bid, the Debtor has agreed to seek approval of the Expense Reimbursement for the Stalking Horse Purchaser. The Debtor’s ability to offer the Expense Reimbursement enables the Debtor to ensure the sale of the Assets to a contractually-committed bidder at a price the Debtor believes to be fair while, at the same time, providing the Debtor with the potential of a greater return to the estate. Moreover, the Stalking Horse Purchaser has spent, and likely will continue to spend, considerable time, money and energy pursuing the Sale and has engaged in extended and lengthy good faith negotiations under extremely stressful time pressure. The Debtor and the Stalking Horse Purchaser are not related, and each has acted in good faith throughout this process. The amount of the Expense Reimbursement represents less than 10 percent of the Purchase Price, is relatively small compared to the Purchase Price, and is not so high that it would cause any chilling effect on other prospective purchasers, and will have no adverse effect on any creditors. Absent authorization of the payment of the Expense Reimbursement, the Debtor might lose the opportunity to obtain the highest and best available offer for the Assets and the downside protection that will be afforded by the Stalking Horse APA.

68. The Stalking Horse Purchaser has provided a material benefit for the Debtor and its creditors by increasing the likelihood that the Debtor will receive the best possible price for the Assets. Moreover, the Debtor’s customers and employees will take comfort that the Stalking

Horse Purchaser's bid will ensure the continuation of the Debtor's business. Furthermore, approval of the Bidding Procedures, including the Expense Reimbursement, is required by the Stalking Horse APA as a condition to the Stalking Horse Purchaser's obligation to proceed with the transaction contemplated in the Stalking Horse APA. *See Reliant, L.P.*, 594 F.3d 200.

69. The Debtor believes that the Expense Reimbursement is fair and reasonable, given the benefits to the estate of having a definitive Stalking Horse APA and the risk to the Stalking Horse Purchaser that a third-party offer may ultimately be accepted, and is necessary to preserve and enhance the value of the Debtor's estate. In light of the benefit to the Debtor's estate that will be realized by having a signed purchase agreement, enabling the Debtor to preserve the value of its estate and promote more competitive bidding, ample support exists for the approval of the Expense Reimbursement. The Debtor's payment of the Expense Reimbursement under the circumstances described herein would be (i) an actual and necessary cost and expense of preserving the Debtor's estate, within the meaning of section 503(b) of the Bankruptcy Code; (ii) of substantial benefit to the Debtor's estate; and (iii) reasonable and appropriate in light of the efforts and significant due diligence costs and expenses that have been approved and will be expended by the Stalking Horse Purchaser. Thus, the Debtor requests that this Court approve and authorize the payment of the Expense Reimbursement pursuant to the terms of the Stalking Horse APA

D. The Stalking Horse Purchaser Should Be Allowed to Credit Bid

70. Section 363(k) of the Bankruptcy Code states: “[a]t a sale under subsection (b) of [Section 363] of property that is subject to a lien that secures an allowed claim, 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). Indeed, “[i]t is beyond peradventure that a secured creditor is entitled to credit bid its allowed claim.” *See In re Fisker Auto. Holdings, Inc.*, 510

B.R. 55, 59 (Bankr. D. Del. 2014)⁸ (citing *Radlax Gateway Hotel LLC v. Amalgamated Bank*, 132 S.Ct. 2065 (2012); *In re Philadelphia Newspapers, LLC*, 599 F.3d 298 (3d Cir. 2010)).

Where a secured creditor's claim is allowed, as is the case here, it is well settled in the Third Circuit that secured creditors can bid up to the full face value of their secured claims under Section 363 (k). *In re Submicron Svs. Corp.*, 432 F.3d 448 (3d Cir. 2006); *In re GWLS Holdings, Inc.*, Slip Copy, 2009 WL 453110 (Bankr. D. Del. 2009). This proposition is supported by other district and bankruptcy courts. See, e.g., *In re SunCruz Casinos, LLC*, 298 B.R. 833, 839 (Bankr. S.D. Fla. 2003) (“[T]he plain language of [Section 363(k)] makes clear that the secured creditor may credit bid its entire claim, including any unsecured deficiency portion thereof.” (emphasis in original)); *In re Morgan House Gen. P'ship*, Nos. 96-MC-184 & 96-MC-185, 1997 WL 50419, at *1 (E.D. Pa. Feb. 7, 1997) (holding that secured creditors may bid “to the extent of [their] claim” under § 363(k)); *In re Midway Invs., Ltd.*, 187 B.R. 382, 391 n. 12 (Bankr. S.D. Fla. 1995) (“[A] secured creditor may bid in the full amount of the creditor's allowed claim, including the secured portion and any unsecured portion thereof” (citing legislative history) (alteration in original) (internal quotation marks omitted)); *In re Realty Invs., Ltd. V*, 72 B.R. 143, 146 (Bankr. CD. Cal. 1987) (same); see also *Criimi Mae Servs. Ltd. P'ship v. WDH Howell, LLC* (In re WDH Howell, LLC), 298 B.R. 527, 532 n. 8 (Bankr. D.N.J. 2003).

⁸ In *Fisker*, Chief Judge Gross recently observed that the language in Section 363(k) that the Bankruptcy Court may “for cause order [] otherwise” justified limiting a secured creditor's credit bidding rights to the amount it paid for its secured claim. See *Fisker*, 55 B.R. at 59. In that case, and critical to the court's ruling, the parties stipulated to the following facts (among others): “the assets offered for sale” would include “material assets that are not subject to properly perfected liens in favor of [the proposed credit bidder] and ... material assets where there is a dispute as to whether [the proposed credit bidder] has a properly perfected lien, which dispute is not likely subject to quick or easy resolution.” *Id.* at 58. In *Fisker*, the court was also concerned about the compressed timing that the stalking horse bidder was imposing (i.e. allowing only 24 business days for parties to object to the sale). *Id.* at 60. The concerns that the court in *Fisker* confronted simply do not apply here. The Stalking Horse Purchaser, as the DIP lender, clearly has a lien on all of the assets it is acquiring under its credit bid and there can be no reasonable dispute as to the validity of its liens and claims.

71. Further, a plain reading of Section 363(k) would permit a DIP lender that maintains a lien on property securing its allowed claim to credit bid its debt to purchase property subject to that lien. There have been numerous orders entered in the lower courts in the Third Circuit and outside the Third Circuit permitting DIP lenders to credit bid. *See, e.g., In re MEE Apparel LLC and MEE Direct LLC*, Case No. 14-16484 (CMG) (Bankr. D.N.J. April 25, 2014) (approving DIP lender to credit bid); *In re PTC Alliance Corp.*, Case No. 09-13395 (CSS), 2010 WL 5054210, at *1 (Bankr. D. Del. March 10, 2010), Bidding Procedures Order (authorizing, among other parties, the DIP lender to credit bid the DIP credit facility pursuant to Section 363(k)); *In re Champion Enters., Inc.*, Case No. 09-14019, 2010 WL 2723820, at *4 (Bankr. D. Del. March 2, 2010), Sale Order (finding that the credit bid from the DIP lender constitutes a valid, effective and enforceable credit bid pursuant to Sections 363(b), 363(k) and 363(n)); *In re KLCG Prop., LLC*, Case No. 09-14418, 2010 WL 5093146, at *17 (Bankr. D. Del. Jan. 28, 2010), Final DIP Order (holding that DIP Lender may exercise its rights to credit bid its indebtedness under Section 363(k) of the Bankruptcy Code); *In re Delphi Corp.*, 2009 WL 2482146, at *6 (Bankr. S.D.N.Y. July 30, 2009), Order Approving Modifications to First Amended Plan (noting that at the auction of the debtor's assets, the DIP agent on behalf of the DIP lenders made a credit bid for the debtor's assets, which was submitted in conformity with Section 363(k) of the Bankruptcy Code, in an amount equal to 100% of the principal and interest due and owing in respect of the DIP loan under the DIP credit agreement); *In re Chrysler LLC*, Case No. 09-50002, 2009 WL 1360863, at *10 (Bankr. S.D.N.Y. May. 4, 2009), Interim DIP Order (the DIP Lenders may credit bid the loans and the additional notes under the DIP credit facility pursuant to Section 363(k) of the Bankruptcy Code).

72. Accordingly, the Stalking Horse Purchaser can bid any portion, or the full face value (as the Stalking Horse APA proposes), of its payment of the Purchase Price under and to the fullest extent permitted by Section 363(k) of the Bankruptcy Code.

E. The Bid Protections Are Necessary to Preserve the Value of the Debtor's Estate.

73. Pursuant to Bankruptcy Rule 6004(f)(1), a sale of property outside the ordinary course of business may be by private sale or by public auction. The Debtor believes that having the ability to offer the Bid Protections to the Stalking Horse Purchaser, and thereby facilitating an Auction, will maximize the realizable value of the Assets for the benefit of the Debtor's estate, creditors and other parties-in-interest.

74. The Third Circuit identified at least two instances in which bidding incentives may benefit the estate. First, a break-up fee may be necessary to preserve the value of the estate if assurance of the fee "promote[s] more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited." *Calpine Corp. v. O'Brien Envtl. Energy, Inc. (In re O'Brien Envtl. Energy, Inc.)*, 181 F.3d 527, 537 (3d Cir. 1999) (hereinafter, "O'Brien"); see also *In re Reliant Energy Channelview, LP*, 403 B.R. 308, 311 (D. Del. 2009). Second, if the break-up fee induces a bidder to research the value of the debtor and convert that value to a dollar figure on which other bidders can rely, the bidder provided a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth. *Id.*

75. In *O'Brien*, the Third Circuit reviewed nine (9) factors in deciding whether to award a break-up fee. Such factors include:

- i. the presence of self-dealing or manipulation in negotiating the break-up fee;
- ii. whether the fee harms, rather than encourages, bidding;

- iii. the reasonableness of the break-up fee relative to the purchase price;
- iv. whether the unsuccessful bidder placed the estate property in a “sales configuration mode” to attract other bidders to the auction;
- v. the ability of the request for a break-up fee “to attract or retain a potentially successful bid, establish a bid standard or minimum for other bidders, or attract additional bidders;
- vi. the correlation of the fee to a maximization of value of the debtor’s estate;
- vii. the support of the principal secured creditors and creditors’ committees of break-up fee;
- viii. the benefits of the safeguards to the debtor’s estate; and
- ix. the substantial adverse impact of the break-up fee on unsecured creditors, where such creditors are in opposition to the break-up fee.

See O’Brien, 181 F.3d at 536.

76. The Debtor extensively negotiated the terms of the Stalking Horse APA, including the Break-Up Fee and the Maximum Reimbursement Amount (together, the “Bid Protections”), at arms’ length with the Stalking Horse Purchaser and the Stalking Horse Purchaser would not agree to act as a Stalking Horse Purchaser without the Bid Protections. Moreover, payment of the Break-Up Fee will not diminish the Debtor’s estate. The Debtor only incurs an obligation to pay the Break-Up Fee if the Debtor terminates the Stalking Horse APA to accept a higher and better alternative bid (an “Alternative Transaction”).

77. In the event the Stalking Horse APA is terminated for certain other reasons, the Stalking Horse Purchaser may be entitled to reimbursement of certain out of pocket costs (including attorneys’ fees) up to the Maximum Reimbursement Amount.

78. In this case, the Stalking Horse Purchaser has expended and will continue to expend a substantial amount of time, money and energy pursuing a purchase of the Assets related to the Debtor's business. As part of the Debtor's prepetition marketing efforts, the Stalking Horse Purchaser engaged as the interested party proposing the highest and only offer for the Assets. In order to compensate the Stalking Horse Purchaser for the substantial investment of time and expenses to conduct due diligence, finalize the Stalking Horse APA and subject the Stalking Horse APA to higher and better offers, the Stalking Horse Purchaser and the Debtor agreed to the Bid Protections. In recognition of this expenditure of time, energy and resources, and the benefit to the Debtor's estate of securing a minimum bid for the Debtor's Assets, and further because the Debtor could not provide exclusivity to the Stalking Horse Purchaser, the Debtor has agreed to provide the Bid Protections to the Stalking Horse Purchaser.

79. The Bid Protections correlate with the value the Stalking Horse APA provided to the Debtor's estate. In addition to enabling the Stalking Horse Purchaser to invest time, resources and energy to enter into a Stalking Horse APA. The Bid Protections create a "floor value" for the Auction of the Debtor's Assets related to the Debtor's business and encourages competitive bidding. The purchase price being paid by the Stalking Horse Purchaser under the Stalking Horse APA demonstrates the existing market interest the assets related to the Debtor's business. With an established floor for assets related to the Debtor's business, the Debtor will be better able to insist that competing bids be materially higher or otherwise better than the Stalking Horse APA, a clear benefit to the Debtor's estate. Without the benefit of the Bid Protections, the bids received at Auction for the Debtor's business would not have any floor and could be substantially lower than that offered by Stalking Horse Purchaser.

80. The Debtor's ability to continue to shop the Assets for a higher or better offer without risk of losing the Stalking Horse Purchaser would be eliminated if the Debtor is not authorized to pay the Break-Up Fee. Therefore, absent authorization to pay the Break-Up Fee, the Debtor may lose the opportunity to obtain the highest and best offer for the Debtor's Assets and the downside protection provided by the Stalking Horse APA. If the protections are not approved, the Stalking Horse Purchaser may not go forward with the Sale.

81. Because the Debtor would be unable to attract a "Stalking Horse Purchaser" bid without the Bid Protections, such inducement is in the best interest of the Debtor's estate. Additionally, the Debtor's request for approval of Bid Protections is an appropriate exercise of the Debtor's business judgment because it provides a benefit to the Debtor's estate by encouraging competitive bidding and incentivizing the Stalking Horse Purchaser to serve as a Stalking Horse Purchaser.

82. Furthermore, the Break-Up Fee – 3% of the total consideration paid in the event the Debtor terminates the Stalking Horse APA to pursue an Alternate Transaction - is reasonable in amount and well within the magnitude as break-up fees approved in other cases. *See, e.g., In re Vertis Holdings, Inc.*, Case No. 12- 12821 (CSS) (Bankr. D. Del. Nov. 2, 2012) (court approved break-up fee of 3.0% in connection with a \$258 million sale of assets); *In re Solyndra LLC*, Case No. 11-12799 (MFW) (Bankr. D. Del. Sept. 28, 2012) (court approved break-up fee of 2.6% in connection with \$90 million sale of assets); *In re Northstar Aerospace (USA) Inc.*, Case No. 12-11817(MFW) (Bankr. D. Del. June 27, 2012) (court approved break-up fee of 3.5% in connection with \$70 million sale of assets); *In re Global Motorsport Group, Inc.*, Case No. 08-10192 (KJC) (Bankr. D. Del. Feb. 14, 2008) (court approved break-up fee of approximately 4% or \$500,000 in connection with sale of assets); *In re Radnor Holdings*, Case No. 0610894

(Bankr. D. Del. September 22, 2006) (aggregate fee and expense reimbursement of 3% permitted); *In re Global Home Products LLC*, Case No. 06-10340 (KG) (Bankr. D. Del. July 14, 2006) (order approving a break-up fee of \$650,000 or 3.1% of purchase price of \$21 million); *In re Caldor, Inc. - NY*, Case No. 95 B-44080 (JLG) (Bankr. S.D.N.Y. Feb. 4, 1999) (order approving break-up fees of \$1,900,000 on purchase price of \$75,735,000 and \$3,550,000 on purchase price of \$142,000,000 or approximately 2.5%).

83. The Stalking Horse Purchaser has provided a material benefit to the Debtor and its creditors by increasing the likelihood that the Debtor will receive the best possible price for the Debtor's Assets. Accordingly, the Debtor requests that the Court approve the Bid Protections as necessary to preserve the value of the Debtor's estate and as an appropriate exercise of the Debtor's business judgment.

F. The Proposed Sale(s) Satisfy the Requirements of §363(f) of the Bankruptcy Code for a Sale Free and Clear of Encumbrances.

84. Section 363(f) of the Bankruptcy Code permits the Debtor to sell the Debtor's Assets free and clear of all liens, claims, interests, charges and encumbrances (with any such liens, claims, interests, charges, and encumbrances attaching to the net proceeds of the sale with the same rights and priorities therein as in the sold Debtor's Assets). Specifically, § 363(f) of the Bankruptcy Code provides as follows:

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

- (1) applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on the property;
- (4) such interest is in bona fide dispute; or

- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

85. Section 363(f) of the Bankruptcy Code is stated in the disjunctive; thus, it is only necessary to meet one of the five conditions of §363(f) of the Bankruptcy Code in order to sell the Debtor's Assets free and clear. *In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002); *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988). The Debtor believes that it will be able to demonstrate that at the Sale Hearing that they have satisfied one or more of these conditions.

86. The Debtor proposes that any Encumbrances shall attach to the sale proceeds with the same force, validity, effect, priority and enforceability as such Encumbrances had in the Debtor's Assets prior to such Sale.

87. In the event that any secured creditors (other than the Administrative and Prepetition Agents) object to the sale of the Debtor's Assets free and clear, the Sale may proceed pursuant to § 363(f)(5) of the Bankruptcy Code because the liens of such secured creditors will attach to the proceeds of the sale and the Debtor will establish at the Sale Hearing that the secured lenders can be compelled to accept a monetary satisfaction of their claims.

G. A Successful Bidder Should Be Entitled to the Protections of §363(m) of the Bankruptcy Code

88. Pursuant to § 363(m) of the Bankruptcy Code, "a 'good faith purchaser' is generally one who purchases assets for value, in good faith, and without knowledge of adverse claims." *In re Youngstown Steel Tank Co.*, 27 B.R. 596, 598 (W.D. Pa. 1983); *see also In re Mark Bell Furniture Warehouse, Inc.*, 992 F.2d 7, 8 (1st Cir. 1993); *Willemain v. Kivitz*, 764 F.2d 1019, 1023 (4th Cir. 1985); *In re Congoleum Corp.*, Case No. 03-51524, 2007 WL 1428477, *2 (Bankr. D. N.J. May 11, 2007). "Good faith" in the context of §363(m) of the

Bankruptcy Code requires to Court to focus on the integrity of the purchaser's conduct during the course of the sale proceedings. *In re Abbott's Dairies of Pennsylvania, Inc.*, 788 F.2d 143, 147 (3d Cir. 1986).

89. The Debtor believes that providing any Successful Bidder with such protection will ensure that the maximum price will be received by the Debtor for the Debtor's Assets and closing of the same will occur promptly. The Debtor will adduce facts at the Sale Hearing on any objection demonstrating that any bidder who is deemed a Successful Bidder for all or any portion of the Debtor's Assets has negotiated at arm's-length, with all parties represented by their own counsel.

90. Accordingly, the Debtor's request that Sale Order include a finding that the Successful Bidder for any of the Debtor's Assets is a "good faith" purchaser within the meaning of §363(m) of the Bankruptcy Code.

H. The Assumption and Assignment of Executory Contracts and Unexpired Leases

91. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession "subject to the court's approval, may assume or reject any executory contract or [unexpired] lease of the debtor." 11 U.S.C. § 365(a). The standard governing bankruptcy court approval of a debtor's decision to assume or reject an executory contract or unexpired lease is whether the debtor's reasonable business judgment supports assumption or rejection. *See, e.g., Sharon Steel Corp. v. National Fuel Gas Distribution Corp.*, 872 F.2d 36, 39-40 (3d Cir. 1989) (citing *Wheeling-Pittsburgh Steel Corp. v. West Penn Power Co. (In re Wheeling-Pittsburgh Steel Corp.)*, 72 B.R. 845, 846 (Bankr. W.D.Pa. 1987) (in turn quoting *In re Stable Mews Assoc., Inc.*, 41 B.R. 594, 596 (Bankr. S.D.N.Y. 1984)); *In re Network Access Solutions Corp.*, 330 B.R. 67, 75 (Bankr. D. Del. 2005).

92. If the debtor's business judgment has been reasonably exercised, a court should approve the assumption or rejection of an unexpired lease or executory contract. *Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp.*, 872 F. 2d at 39-40. The business judgment test "requires only that the trustee [or debtor in possession] demonstrate that [assumption or] rejection of the contract will benefit the estate." *In re Wheeling-Pittsburgh Steel Corp.*, 72 B.R. at 846 (quoting *In re Stable Mews Assoc.*, 41 B.R. 594, 596 (Bankr. S.D.N.Y. 1984)); *see also In re Central Jersey Airport Servs., LLC*, 282 B.R. 176, 183 (Bankr. D.N.J. 2002).

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

94. Once an executory contract is assumed, the trustee or debtor in possession may elect to assign such contract. *See In re Rickel Home Center, Inc.*, 209 F.3d 291, 299 (3d Cir. 2000) ("[t]he Code generally favors free assignability as a means to maximize the value of the debtor's estate"); *see also In re Headquarters Doge, Inc.*, 13 F.3d 674, 682 (3d Cir. 1993) (noting purpose of section 365(f) is to assist trustee in realizing the full value of the debtor's assets).

95. Section 365(f) of the Bankruptcy Code provides that the "trustee may assign an executory contract...only if the trustee assumes such contract...and adequate assurance of future performance is provided." 11 U.S.C. § 365(f)(2). The phrase "adequate assurance of future performance" "is to be given a practical, pragmatic construction based upon the facts and circumstances of each case. Although no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance." *Cinicola v.*

Scharffenberger, 248 F.3d 110, 120 n.10 (3d Cir. 2001) (quoting *Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1988) and discussing legislative history of “Section 365(f) of the Bankruptcy Code); *In re DBSI, Inc.*, 405 B.R. 698, 708 (Bankr. D. Del. 2009). Among other things, adequate assurance may be given by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. *Accord In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when prospective assignee of lease from debtors has financial resources and has expressed willingness to devote sufficient funding to the business in order to give it strong likelihood of succeeding).

96. The Debtor will adduce facts at the Sale Hearing demonstrating the financial wherewithal of any Successful Bidder, and its willingness and ability to perform under the contracts to be assumed and assigned to them. The Sale Hearing therefore will provide the Court and other interested parties ample opportunity to evaluate and, if necessary, challenge the ability of any Successful Bidder to provide adequate assurance of future performance under the Assumed Contracts.

97. The Debtor respectfully submits that the proposed Assumption and Assignment Procedures are appropriate and reasonably tailored to provide Notice Parties with adequate notice in the form of the Notice of Assumption or Cure Notice, as applicable, of the proposed assumption and/or assignment of their applicable contract, as well as proposed Cure Amounts, if applicable. Such Notice Parties will then be given an opportunity to object to such notice. If an objection is filed, such objection will be heard at the Sale Hearing or at a later hearing, as determined by the Debtor.

98. Furthermore, to the extent that any defaults exist under any executory contract or unexpired lease that is to be assumed and assigned in connection with the Sale of any of the Debtor's Assets, the Debtor will cure any such default prior to such assumption and assignment. Moreover, the Debtor will adduce facts at the Sale Hearing demonstrating the financial wherewithal of the Successful Bidder(s), its experience in the industry, and its willingness and ability to perform under the contracts to be assumed and assigned to it.

99. Accordingly, the Debtor submits that implementation of the proposed Assumption and Assignment Procedures is appropriate in this Case. The Court therefore should have a sufficient basis to authorize the Debtor to reject or assume and assign contracts as will be set forth in a Successful Bidder's Stalking Horse APA.

I. Bankruptcy Rule 6003 Is Satisfied and Relief Under Bankruptcy Rules 6004(h) and 6006(d) Is Appropriate

100. The Debtor further submits that because the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtor for the reasons set forth herein and in the Marotta Declaration, Bankruptcy Rule 6003 has been satisfied (to the extent applicable if the Bid Procedures Order is heard on the 21st day of this chapter 11 case) and the relief requested herein should be granted.

101. Specifically, Bankruptcy Rule 6003 provides:

Except to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, grant relief regarding the following: . . . (b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition, but not a motion under Rule 4001."

102. The Third Circuit Court of Appeals has interpreted the "immediate and irreparable harm" language in the context of preliminary injunctions. In that context, irreparable harm has been interpreted as a continuing harm that cannot be adequately redressed by final

relief on the merits and for which money damages cannot provide adequate compensation. *See, e.g., Norfolk S. Ry. Co. v. City of Pittsburgh*, 235 Fed. Appx. 907, 910 (3d Cir. 2007) (citing *Glasco v. Hills*, 558 F.2d 179, 181 (3d Cir. 1977)). Further, the harm must be shown to be actual and imminent, not speculative or unsubstantiated. *See, e.g., Acierno v. New Castle County*, 40 F.3d 645, 653-55 (3d Cir. 1994).

103. The Debtor further seeks a waiver of any stay of the effectiveness of the order approving this Motion. 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 entry of the order, unless the court orders otherwise.” Additionally, Bankruptcy Rule 6006(d) provides that 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 Debtor requests that any Sale Order be effective immediately by providing that the 14-day stays under Bankruptcy Rules 6004(h) and 6006(d) are waived.

VII. NOTICE

104. Notice of this Motion will be provided to the following parties in accordance with Local Rule 9013-1(m): (i) the U.S. Trustee; (ii) counsel to the Debtor’s DIP Agent; counsel to the Debtor’s prepetition First Lien and Second Lien Agents; (iii) those creditors holding the thirty (30) largest unsecured claims against the Debtor; (iv) all parties that, as of the filing of this Motion, have requested notice in this chapter 11 case pursuant to Bankruptcy Rule 2002; and (v) all other parties entitled to notice pursuant to Local Rule 9013-1(m). The Debtor submits that, in light of the nature of the relief requested herein, no other or further notice need be given.

VIII. NO PRIOR REQUEST

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

WHEREFORE, the Debtor respectfully requests that this Court enter the Bidding Procedures Order substantially in the form attached hereto as Exhibit A, (i) approving the Bidding Procedures; (ii) approving the Bid Protections; (iii) scheduling the Auction and Sale Hearing to approve the Sale, and approving the form and manner of notice thereof; and (iv) granting such other and further relief as is just and proper. Additionally, the Debtor requests that, at the Sale Hearing, the Court enter a Sale Order subject to the result of the Auction and to the Bidding Procedures (i) approving and authorizing the Sale; and (ii) authorizing the assumption and assignment of certain executory contracts and unexpired leases.

Respectfully submitted,

Dated: July 1, 2016

YOUNG CONAWAY STARGATT &
TAYLOR, LLP

/s/ Sean T. Greecher

Robert S. Brady (No. 2847)
Sean T. Greecher (No. 4484)
Justin H. Rucki (No. 5304)
Norah Roth-Moore (No. 6125)
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1000 North King Street
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and

Michael S. Fox, Esquire
Jonathan H. Deblinger, Esquire
Jonathan T. Koevary, Esquire
OLSHAN FROME WOLOSKY LLP
1325 Avenue of the Americas
New York, New York 10019
(212) 451-2300
Proposed Counsel to the Debtor

EXHIBIT A

Proposed Bidding Procedures Order

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

In re:

SynCardia Systems, Inc.¹

Debtor.

Chapter 11

Case No. 16-11599

Ref. Docket No. ____

ORDER (I) ESTABLISHING BIDDING PROCEDURES RELATING TO THE SALE OF (A) THE DEBTOR'S BUSINESS AND (B) ANY OR ALL OF THE DEBTOR'S ASSETS; (II) APPROVING BID PROTECTIONS IN CONNECTION WITH THE SALE OF THE DEBTOR'S BUSINESS; (III) ESTABLISHING PROCEDURES RELATING TO THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, INCLUDING NOTICE OF PROPOSED CURE AMOUNTS; (IV) APPROVING FORM AND MANNER OF NOTICE OF ALL PROCEDURES, PROTECTIONS, SCHEDULES, AND AGREEMENTS; (V) SCHEDULING A HEARING TO CONSIDER THE PROPOSED SALES; AND (VI) GRANTING CERTAIN RELATED RELIEF

Upon the motion (the "Motion")² of the above-captioned Debtor for an order (the "Order") (i) approving the proposed auction and bidding procedures (the "Bidding Procedures"), which are attached as Exhibit D to the Motion, for the potential sale of (a) the Debtor's business and (b) any and all of the Debtor's assets (the "Assets"); (ii) approving bid protections with respect to the closing of the sale of the Assets to a party other than the Stalking Horse Purchaser (the "Bid Protections"); (iii) establishing procedures for the assumption and assignment of certain executory contracts and unexpired leases, including notice of proposed cure amounts (the "Assumption and Assignment Procedures"); (iv) approving the form and manner of notice of all procedures, protections, schedules, and agreements relating to the Sale Transactions (as defined below); and (v) scheduling a hearing (the "Sale Hearing") to approve any such sales

¹ The Debtor in this case (with the last four digits of its taxpayer ID no. in parenthesis): SynCardia Systems, Inc. (1044). The Debtor's corporate address is: 1992 E. Silverlake Road, Tucson, Arizona 85713.

² Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them in the Motion.

(collectively, the “Sale Transactions”); and the Court having considered the Motion, and the arguments of counsel made, and the evidence adduced, at the hearing on the Motion (the “Bidding Procedures Hearing”); and it appearing that the relief requested in the Motion is in the best interests of the Debtor, its estate, its creditors, and all other interested parties; and upon the record of the Bidding Procedures Hearing and the chapter 11 Case, and after due deliberation thereon, and good cause appearing therefor, it is hereby,

FOUND, CONCLUDED AND DECLARED THAT:³

A. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference dated February 29, 2012 issued by the United States District Court for the District of Delaware. This is a core proceeding under 28 U.S.C. § 157(b) and the Court may enter a final order consistent with Article III of the U.S. Constitution. Venue of this case and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409. The legal predicates for the relief requested in the Motion are §§ 105, 363, and 365 of the Bankruptcy Code. Such relief is also warranted pursuant to Bankruptcy Rules 2002, 6004 and 6006, and 9014 and Rules 2002-1 and 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the Bankruptcy Court for the District of Delaware (the “Local Rules”)

B. The relief granted herein is in the best interests of the Debtor, its estate, and other parties in interest.

C. The Debtor has articulated good and sufficient business reasons for the Court to (i) approve the Bidding Procedures, (ii) approve the Bid Protections, (iii) approve the Assumption and Assignment Procedures, (iv) approve the form and manner of notice of the

³ The findings and conclusions set forth herein constitute this 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.

Motion, the Auction, and the Sale Hearing, and (v) set the date of the Auction and the Sale Hearing.

D. The Debtor has provided notice of the relief sought with respect to the Bidding Procedures and the other relief requested in the Motion to:

- a) counsel to the Stalking Horse Purchaser;
- b) counsel to the official committees of unsecured creditors appointed in this case (the "Committee") or, if no Committee has been appointed, on the Debtor's consolidated 30 largest unsecured creditors,
- c) any party who, in the past year, expressed in writing to the Debtor an interest in the Debtor's business or any of the Debtor's Assets;
- d) non-debtor parties to the Anticipated Assumed Contracts;
- e) all parties who are known or reasonably believed to have asserted a lien, encumbrance, claim or other interest in the Debtor's business or any of the Debtor's Assets;
- f) the Internal Revenue Service;
- g) all federal, state, local and foreign regulatory or taxing authorities or recording offices that have a reasonable known interest in the relief requested by the Motion;
- h) the United States Attorney's Office for the District of Delaware;
- i) all persons or entities that have requested notice in this chapter 11 case under Bankruptcy Rule 2002; and
- j) the United States Trustee.

Due, sufficient, and adequate notice of the Bidding Procedures Hearing, the relief requested in the Motion, the relief granted herein, the Bidding Procedures, the Assumption and

Assignment Procedures, and the Auction has been given in light of the circumstances and the nature of the relief requested, and no other or further notice thereof is required.

E. The Bidding Procedures attached hereto, and incorporated herein by reference as if fully set forth herein, are fair, reasonable, and appropriate; were negotiated in good faith by the Debtor and the Stalking Horse Purchaser; and represent the best way to maximize the value of the Debtor's estate.

F. The Debtor has demonstrated a compelling business justification for the payment of the Bid Protections under the circumstances set forth in the Stalking Horse APA. The Bid Protections, to the extent payable under the Stalking Horse APA, (i) shall be deemed an actual and necessary cost of preserving the Debtor's estate within the meaning of § 503(b) of the Bankruptcy Code, (ii) are of substantial benefit to the Debtor's estate, (iii) are reasonable and appropriate, including in light of the size and nature of the Sale Transaction for the Assets and the efforts that have been and will be expended by the Stalking Horse Purchaser, (iv) have been negotiated by the parties and their respective advisors at arm's-length and in good faith, and (v) is necessary to ensure that the Stalking Horse Purchaser will continue to pursue the proposed Sale Transaction for the Assets. The Bid Protections are a material inducement for, and condition of, the Stalking Horse Purchaser's entry into the Stalking Horse APA. The Stalking Horse Purchaser is unwilling to commit to purchase the Assets under the terms of the Stalking Horse APA unless the Stalking Horse Purchaser is assured payment of the Bid Protections in accordance with the Stalking Horse APA.

G. The Assumption and Assignment Procedures are reasonable and appropriate.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED, as set forth herein.

2. The Bidding Procedures attached hereto are approved and incorporated into this Order by reference, as though fully set forth herein. Accordingly, the failure to recite or reference any particular provision of the Bidding Procedures shall not diminish the effectiveness of such provision, it being the intent of the Court that the Bidding Procedures be authorized and approved in their entirety. The Debtor is authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures.

Notice of the Sale Transactions

3. Within three (3) business days after the entry of this Order, or as soon thereafter as practicable (the “Mailing Date”), the Debtor (or its agents) shall serve the Motion, the Stalking Horse APA, this Order, and the Bidding Procedures by first-class mail, postage prepaid upon all parties identified in Paragraph D hereof.

4. On the Mailing Date or as soon thereafter as practicable, the Debtor (or its agents) shall serve by first-class mail, postage prepaid the Sale Notice upon all other known creditors of the Debtor.

5. The Debtor may publish notice of the proposed Sale Transaction for the Assets, and the Debtor’s sale of all or substantially all of the Debtor’s Assets in one or more Sale Transactions once in (a) the national edition of Wall Street Journal, or *USA Today*, as determined by the Debtor, in its sole discretion, or such other trade journals as the Debtor deems appropriate within seven days of entry of this Order or as soon as practicable thereafter. Such publication notice shall be sufficient and proper notice of the Sale Transactions to any other interested parties whose identities are unknown to the Debtor.

6. The Debtor’s proposed notices of (a) the Motion, (b) the proposed Sale Transactions, (c) the assumption and assignment of, and Cure Amounts for, the executory contract and unexpired leases to be assumed and assigned to the Successful Bidder, (d) the

Stalking Horse APA, (e) the Successful Bidder, and (f) the Bidding Procedures are appropriate and reasonably calculated to provide all interested parties with timely and proper notice of each, and no further notice of, or hearing on, each is necessary or required.

Assumption and Assignment Procedures

7. No later than the Mailing Date the Debtor shall file with the Court and serve on each party to any contract or lease to which any Debtor is a party (each such contract/lease, a “Potentially Transferred Contract”) a notice in substantially the form of Exhibit F to the Motion (a “Contract Notice”) that shall (a) state the cure amounts that the Debtor believes are necessary to assume such Potentially Transferred Contracts pursuant to section 365 of the Bankruptcy Code (the “Cure Amount”); (b) notify the non-Debtor party that such party’s contract or lease may be assumed and assigned to a purchaser as part of a Sale Transaction; (c) state the date of the Sale Hearing; and (d) state a deadline by which the non-Debtor party shall file an objection to the Cure Amount or to the assumption and assignment of the Potentially Transferred Contracts. The presence of a contract, lease, or agreement on the Contract Notice does not constitute an admission that such contract, lease, or agreement is an executory contract. The Debtor reserves all of its rights, claims, defenses, and causes of action with respect to all contracts, leases, and agreements listed on the Contract Notice.

8. Any objection (a “Contract Objection”) to the Cure Amount or to assumption and assignment, including with respect to adequate assurance of future performance must be filed with the Court and served, on or before the fourteenth day after service of the Contract Notice, on, (i) counsel to the Debtor, (a) Olshan Frome Wolosky LLP, 1325 Avenue of the Americas, New York, New York 10019, Attn: Michael Fox and Jonathan Koevary, and (b) Young Conaway Stargatt & Taylor, LLP, Attn: Justin Rucki; (ii) Canaccord Genuity Inc., 350 Madison Avenue, New York, NY 10017 (Attn: Geoffrey Richards, GRichards@canaccordgenuity.com);

(iii) counsel to the Stalking Horse Purchaser Landis Rath & Cobb LLP, 919 N. Market Street, Suite 1800, Wilmington, Delaware 19801, Attn: Adam G. Landis and Kerri K. Mumford; and (iii) counsel to the Committee _____ (Attn: _____, _____@_____.com).

9. Any Contract Objection must state the basis for such objection and state with specificity what Cure Amount the party to the Potentially Transferred Contract believes is required (in all cases with appropriate documentation in support thereof). If no Contract Objection is timely received, the Cure Amount set forth in the Cure Notice shall be controlling, notwithstanding anything to the contrary in any Potentially Transferred Contract or other document as of the date of the Cure Notice. The Cure Notice shall also provide that Contract Objection to any Cure Amount or to assumption and assignment will be heard at the Sale Hearing or at a later hearing, as determined by the Debtor. If a Successful Bidder that is not the Stalking Horse Purchaser prevails at the Auction, then the deadline to object to assumption and assignment (solely on grounds of adequate assurance of future performance) shall be extended to the Sale Hearing; provided, however, that the deadline to object to the Cure Amount shall not be extended.

10. Unless a non-Debtor party to any Potentially Transferred Contract files an objection to the Cure Amount by the applicable objection deadline, then such counterparty shall be (a) forever barred from objecting to the Cure Amount and (b) forever barred and estopped from asserting or claiming any Cure Amount, other than the Cure Amount listed on the schedule to the Cure Notice, against the Debtor, the Stalking Horse Purchaser, or any Successful Bidder or any other assignee of the relevant contract or lease.

11. Unless a non-Debtor party to any Potentially Transferred Contract files a timely objection to the assumption and assignment of the contract to the Stalking Horse Purchaser or other Successful Bidder, then such counterparty shall be deemed to have consented to the assumption and assignment to the Stalking Horse Purchaser or other Successful Bidder and will be forever barred from objecting to such assumption and assignment on account of Cure Amount, lack of adequate assurance, or any other grounds.

The Stalking Horse APA and Bid Protections

12. Any obligations of the Debtor set forth in the Stalking Horse APA that are intended to be performed prior to the Sale Hearing and/or entry of the Sale Order are authorized as set forth herein.

13. Pursuant to §§ 105, 363, 503, and 507 of the Bankruptcy Code, the Debtor is hereby authorized to pay the Break-Up Fee pursuant to the terms and conditions set forth in the Stalking Horse APA and the Bidding Procedures.

14. Specifically, the Break-Up Fee shall be paid to the Stalking Horse Purchaser, if and to the extent required, pursuant to section 11.3 of the Stalking Horse APA.

15. Pursuant to §§ 105, 363, 503, and 507 of the Bankruptcy Code, the Debtor is hereby authorized to pay the Maximum Reimbursement Amount pursuant to the terms and conditions set forth in the Stalking Horse APA.

16. Specifically, the Debtor may reimburse the Stalking Horse Purchaser for out of pocket expenses incurred (up to the Maximum Reimbursement Amount), if and to the extent required, pursuant to section 8.2 (c) of the Stalking Horse APA.

17. Upon entry of this Order, the Break-Up Fee or an amount of up to the Maximum Reimbursement Amount (each, if earned pursuant to the Stalking Horse APA) shall, until paid in full as set forth in the Stalking Horse APA, be entitled to administrative expense status pursuant

to §§ 503(b)(1) and 507(a)(2) of the Bankruptcy Code junior in all respects to the Debtor's debtor-in-possession credit facilities. The Debtor's obligation to pay the Break-Up Fee or an amount of up to the Maximum Reimbursement Amount pursuant to the terms of the Stalking Horse APA shall survive termination of the Stalking Horse APA.

The Bid Deadline

18. Except as expressly set forth herein or in the Bidding Procedures, for a Bid to be a Qualified Bid, the following parties must receive such Bid in writing **on or before August 15, 2016 at 5:00 p.m.** (prevailing Eastern Time) (the "Bid Deadline"): (i) counsel to the Debtor, (a) Olshan Frome Wolosky LLP, 1325 Avenue of the Americas, New York, New York 10019, Attn: Michael Fox and Jonathan Koevary, and (b) Young Conaway Stargatt & Taylor, LLP, Attn: Sean T. Greecher; (ii) Canaccord Genuity Inc., 350 Madison Avenue, New York, NY 10017 (Attn: Geoffrey Richards, GRichards@canaccordgenuity.com); (iii) counsel to the Stalking Horse Purchaser counsel to the Stalking Horse Purchaser Landis Rath & Cobb LLP, 919 N. Market Street, Suite 1800, Wilmington, Delaware 19801, Attn: Adam G. Landis and Kerri K. Mumford; and (iv) counsel to the Committee _____ (Attn: _____, _____@_____.com).

19. Notwithstanding anything herein to the contrary, the Stalking Horse APA is deemed to be a Qualified Bid and the Stalking Horse Purchaser is deemed a Qualified Bidder for all purposes.

20. In the event there are no other Qualifying Bids, the Debtor shall accept the bid of the Stalking Horse Purchaser as set forth in the Stalking Horse APA.

The Auction

106. In the event there are other Qualifying Bids, the Debtor shall conduct an auction. The Auction shall take place on **August 19, 2016 at 10:00 a.m. (prevailing Eastern Time)** at

the offices of counsel for the Debtor, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, or such other place, date and time as the Debtor shall notify all Qualified Bidders, the Stalking Horse Purchaser and its counsel, and the Committee.

21. The Stalking Horse Purchaser and the other Qualified Bidders will be entitled to make any Bids at the Auction in compliance with the Bidding Procedures.

22. Pursuant to Bankruptcy Code section 363(k), the Stalking Horse Purchaser shall be entitled to credit bid its claims against the Debtor in their entirety or any portion thereof.

23. The Debtor and its professionals shall direct and preside over the Auction, and the Auction shall be transcribed. Each Qualified 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 Bidding Procedures, and (c) has consented to the core jurisdiction of the Bankruptcy Court.

24. Within one (1) day after the Auction or, if there are no Qualified Bids, the Bid Deadline, the Debtor shall file with this Court a notice that identifies the Successful Bidder(s) and, in the case of an Auction, the Back-Up Bidder(s) and provides notice that, at the Sale Hearing, the Debtor will seek to assume and assign the Potentially Transferred Contracts to the Successful Bidder(s) effective upon the occurrence of the Closing.

Objections and the Sale Hearing

25. Objections, if any, to the selection of the Successful Bidder or to the conduct of the Auction must be filed and served on or before the fourteenth day after service of the Sale Notice, on (i) counsel to the Debtor, (a) Olshan Frome Wolosky LLP, 1325 Avenue of the Americas, New York, New York 10019, Attn: Michael Fox and Jonathan Koevary, and (b) Young Conaway Stargatt & Taylor, LLP, Attn: Justin Rucki; (ii) Canaccord Genuity Inc., 350

Madison Avenue, New York, NY 10017 (Attn: Geoffrey Richards, GRichards@canaccordgenuity.com); (iii) counsel to the Stalking Horse Purchaser Landis Rath & Cobb LLP, 919 N. Market Street, Suite 1800, Wilmington, Delaware 19801, Attn: Adam G. Landis and Kerri K. Mumford; and (iv) counsel to the Committee _____ (Attn: _____, _____@_____.com).

26. The Sale Hearing to approve the sale of the Assets to the Successful Bidder(s) therefor shall be held on **[August 22, 2016 at [____] _m.] (prevailing Eastern Time)**.

Related Relief

27. This Order shall constitute findings of fact and conclusions of law and shall take effect immediately upon execution hereof.

28. This Order shall be binding on the Debtor, including any chapter 7 or chapter 11 trustee or other fiduciary appointed for the estate of the Debtor. The provisions of this Order that relate to Bid Protections shall inure to the benefit of the Stalking Horse Purchaser and its affiliates, successors, and assigns.

29. Notwithstanding Bankruptcy Rules 6004(h), 6006(d), or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

30. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order, including any matter, claim or dispute arising from or relating to the Bid Protections, the Stalking Horse APA, and the Bidding Procedures.

Dated: __, 2016
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Proposed Sale Order

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

In re:

SYNCARDIA SYSTEMS, INC.,¹

Debtor.

Chapter 11

Case No. 16-11599 (_____)

Ref. Nos. _____

**ORDER (I) APPROVING ASSET PURCHASE AGREEMENT AND
AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S
ASSETS OUTSIDE THE ORDINARY COURSE OF BUSINESS, (II)
AUTHORIZING THE SALE OF ASSETS FREE AND CLEAR OF ALL LIENS,
CLAIMS, INTERESTS AND ENCUMBRANCES, (III) AUTHORIZING THE
ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS
AND UNEXPIRED LEASES, AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the "**Sale Motion**")² filed by the above-captioned debtor and debtor-in-possession (the "**Debtor**") seeking entry of an order (the "**Order**"), pursuant to sections 105(a), 363, and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (as amended or modified, the "**Bankruptcy Code**"), and rules 2002, 6004, 6006, 9007 and 9008 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 entry of an order (the "**Order**"), (i) authorizing and approving the asset purchase agreement (and all agreements related thereto collectively, the "**Agreement**") between the Debtor ("**Seller**") and Sindex SSI Lending, LLC (together with its permitted successors, designees and assigns, the "**Purchaser**"), a copy of which is attached hereto as **Exhibit 1**; (ii) authorizing the sale to the Purchaser free and clear of all pledges, security interests, Liens, Claims, Interests and Encumbrances (other than Permitted Exceptions and Permitted Liens) (the

¹ The Debtor in this case (with the last four digits of its taxpayer ID no. in parenthesis): SynCardia Systems, Inc. (1044). The Debtor's corporate address is: 1992 E. Silverlake Road, Tucson, Arizona 85713.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Sale Motion, the Agreement, or the Bidding Procedures Order, as applicable.

“**Transaction**” or the “**Sale**”) of substantially all of the Sellers’ assets (as discussed in greater detail below, the “**Acquired Assets**”); (iii) authorizing the assumption and assignment of Assigned Contracts, and (iv) granting related relief; and the Bankruptcy Court having established the date of the Sale Hearing; and the Bankruptcy Court having jurisdiction to consider the Sale Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157(b)(2) and 1334; and consideration of the Sale Motion, the relief requested therein, and the responses thereto being a core proceeding in accordance with 28 U.S.C. § 157(b); and the appearance of all interested parties and all responses and objections to the Sale Motion having been duly noted in the record of the Sale Hearing; and upon the record of the Sale Hearing, and all other pleadings and proceedings in this Chapter 11 Case, including the Sale Motion; and it appearing that the relief requested in the Sale Motion is in the best interests of the Debtor, its estate, its creditors and all other parties in interest; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY FOUND, DETERMINED AND CONCLUDED THAT:³

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

B. 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.

C. The Bankruptcy Court has jurisdiction over this matter and over the property of the Debtor’s estate, including the Acquired Assets to be sold, transferred or conveyed pursuant to the Agreement, and its respective estate pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core

³ All findings of fact and conclusions of law announced by the Bankruptcy Court at the Sale Hearing in relation to the Sale Motion are hereby incorporated herein to the extent not inconsistent herewith.

proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this Chapter 11 Case and the Sale Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

D. The Acquired Assets constitute property of the Debtor's estate, and title thereto is vested in the Debtor's estate within the meaning of section 541(a) of the Bankruptcy Code.

E. The statutory predicates for the relief sought in the Sale Motion and the basis for the approvals and authorizations herein are (i) sections 105(a), 363, and 365 of Bankruptcy Code, (ii) Bankruptcy Rules 2002, 6004, 6006, 9007 and 9008, and (iii) Local Rule 6004-1.

F. On July 1, 2016 (the "**Petition Date**"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtor has continued in possession of its properties and is operating and managing its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

G. On [INSERT DATE], 2016, the Court entered the [INSERT TITLE OF FINAL DIP ORDER] [D.I. [INSERT]] (the "**Final DIP Order**").

Proper Notice and Opportunity to Object

H. As evidenced by the affidavits of service filed with the Bankruptcy Court, proper, timely, adequate, and sufficient notice of the Sale Motion, the Auction, and the Sale Hearing have been provided in accordance with section 363(b) of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 9006, 9007, 9008 and 9014, the Local Rules, and in compliance with the Bidding Procedures Order and the Agreement.

I. As set forth on **Exhibit 2**, the Purchaser has designated certain Contracts as "Assumed," "Rejected" or "Held." As evidenced by the affidavits of service filed with the Bankruptcy Court, proper, timely, adequate, and sufficient notice of the assumption and assignment of the Assigned Contracts and of the Contract Procedures related to the Held Contracts was given to

the Contract Parties on **Exhibit 2** in accordance with sections 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6006, 9006, 9007, and 9014, the Local Rules, and in compliance with the Contract Procedures, the Bidding Procedures Order and the Agreement. Specifically, on [INSERT DATE], 2016, the Debtor filed the *Notice of Intent to Assume and Assign Leases and Executory Contracts and Fixing of Cure Amounts* [CONFIRM TITLE] [D.I. [INSERT]] (the “**Contract Notice**”). [INSERT ANY ADDITIONAL NOTICES] The Contract Notice was filed with the Court and served upon the parties to the contracts listed therein.

J. On [INSERT DATE], 2016, the Debtor mailed notice of the sale to, among others, (a) the Office of the United States Trustee for the District of Delaware; (b) the Office of the United States Attorney for all Districts of the states in which the Debtor conduct business; (c) the Office of the Attorney General for all of the states in which the Debtor conduct business; (d) the Department of Labor for all of the states in which the Debtor conduct business; (e) all creditors listed on the matrix of creditors filed by the Debtor; (f) all vendors, customers or suppliers of the Debtor; (g) counsel to the Agent (as defined in the DIP Orders), as agents for the Debtor’s pre-petition and post-petition secured lenders; (h) all taxing authorities having jurisdiction over any of the Acquired Assets subject to the sale, including the Internal Revenue Service; (i) counsel to the Purchaser; (j) the United States Environmental Protection Agency; (k) all parties asserting liens against the Acquired Assets; (l) all counter-parties to executory contracts and unexpired leases with the Debtor; (m) all potential bidders previously identified or otherwise known to the Debtor; (n) the Pension Benefit Guaranty Corporation; (o) all parties entering an appearance in this Chapter 11 Case pursuant to Rule 2002; (p) counsel to the Committee, if any; and (q) the state departments of environmental protection for all of the states in which the Debtor conducts business (collectively, the “**Sale Notice Parties**”).

K. In addition to the foregoing notice, the Debtor advertised the proposed Sale and the relief requested in this Order in the national edition of [INSERT TITLE] on [INSERT DATE], 2016.

L. Such notice was sufficient and appropriate under the particular circumstances. No other or further notice of the Sale Motion, the Auction, the Sale Hearing, the assumption and assignment of the Assigned Contracts or of the entry of this Order is necessary or shall be required.

M. A reasonable opportunity to object or be heard regarding the requested relief in the Sale Motion and the Order has been afforded to all interested persons and entities, including, without limitation, the Sale Notice Parties. Other parties interested in bidding on the Acquired Assets were provided, upon request, sufficient information to make an informed judgment on whether to bid on the Acquired Assets.

Good Faith

N. The Debtor has demonstrated a sufficient basis and compelling circumstances requiring it to enter into the Agreement, sell the Acquired Assets and assume and assign the Assigned Contracts under section 363 and 365 of the Bankruptcy Code prior to confirmation of a plan of reorganization under section 1129 of the Bankruptcy Code, and such actions are appropriate exercises of the Debtor's business judgment and in the best interests of the Debtor, its estate and its creditors. Such business reasons include, but are not limited to, the fact that (i) there is substantial risk of deterioration of the value of the Acquired Assets if the Sale is not consummated quickly; (ii) the Agreement constitutes the highest or best offer for the Acquired Assets; (iii) the Agreement and the Closing will present the best opportunity to realize the value of the Debtor on a going-concern basis and avoid decline in the Debtor's business; and (iv) unless the Sale is concluded

expeditiously as provided for in the Sale Motion and pursuant to the Agreement, creditors' recoveries may be diminished.

O. As demonstrated by (a) any testimony and other evidence proffered or adduced at the Sale Hearing or submitted by affidavit or declaration at or prior to the Sale Hearing and (b) the representations of counsel made on the record at the Sale Hearing, through marketing efforts and a competitive sale process conducted prepetition, the Debtor (i) afforded interested potential purchasers a full, fair and reasonable opportunity to qualify as bidders and submit their highest or otherwise best offer to purchase all of the Sellers' assets; (ii) provided potential purchasers, upon request, sufficient information to enable them to make an informed judgment on whether to bid on the Acquired Assets; and (iii) considered all Qualified Bids submitted on or before the Bid Deadline.

P. The offer of the Purchaser, upon the terms and conditions set forth in the Agreement, including the form and total consideration to be realized by the Debtor pursuant to the Agreement, (i) is the highest or otherwise best offer received by the Debtor; (ii) is fair and reasonable; (iii) is in the best interests of the Debtor's creditors and estate; and (iv) constitutes full and adequate consideration and reasonably equivalent value for the Acquired Assets.

Q. The Purchaser is a buyer in good faith, as that term is used in the Bankruptcy Code and the decisions thereunder, and is entitled to the protections of section 363(m) of the Bankruptcy Code with respect to all of the Acquired Assets and the relief provided for in the Order. The Agreement was negotiated at arm's length and entered into in good faith and without collusion or fraud of any kind. The Purchaser has not engaged in collusion or any conduct that would otherwise control or tend to control the sale price as between or among potential bidders and, therefore, has not violated section 363(n) of the Bankruptcy Code. Neither the Sellers nor the Purchaser have

engaged in any conduct that would prevent the application of section 363(m) of the Bankruptcy Code; or cause the application of or implicate section 363(n) of the Bankruptcy Code to the Agreement or to the consummation of the Sale and transfer of the Acquired Assets and the Assigned Contracts to the Purchaser. The Purchaser is entitled to all of the protections and immunities of section 363(m) of the Bankruptcy Code.

R. The Sellers have full corporate power and authority to execute the Agreement and all other documents contemplated thereby, and the Sale of the Acquired Assets has been duly and validly authorized by all necessary corporate authority by the Sellers to consummate the transactions contemplated by the Agreement. No consents or approvals, other than as may be expressly provided for in the Agreement, are required by the Sellers to consummate the Sale.

S. The Debtor has advanced sound business reasons for seeking to enter into the Agreement, as more fully set forth in the Sale Motion and as demonstrated at or before the Sale Hearing, and it is a reasonable exercise of the Debtor's business judgment to sell the Acquired Assets and to consummate the transactions contemplated by the Agreement. Notwithstanding any requirement for approval or consent by any person, the transfer of the Acquired Assets to the Purchaser and the assumption and assignment of the Assigned Contracts is a legal, valid and effective transfer of the Acquired Assets and any Assigned Contracts.

T. The terms and conditions of the Agreement, including the consideration to be realized by the Debtor pursuant to the Agreement, are fair and reasonable, and the transactions contemplated by the Agreement are in the best interests of the Debtor's estate.

U. The Purchaser is a secured creditor of the Debtor, holding valid, Liens, Claims, Interests and Encumbrances in and against the Debtor and its estate arising in connection with the DIP Credit Agreement, the Prepetition Credit Agreement and the related documents, instruments

and agreements, and the Final DIP Order (the “**Purchaser Liens**”). Pursuant to, and consistent with, the Final DIP Order, the Purchaser holds an allowed secured claim against the Debtor in the aggregate amount of approximately \$24,667,294 as of July 1, 2016, plus any additional borrowings under the DIP Credit Agreement thereafter and all accrued and accruing interest, fees, expenses and costs not included in the foregoing amount (the “**Allowed Claim**”) and was authorized to credit bid any or all of such Allowed Claim pursuant to the Final DIP Order.

V. The Purchaser’s Credit Bid pursuant to the Agreement was a valid and proper offer pursuant to the Bidding Procedures Order and sections 363(b) and 363(k) of the Bankruptcy Code. Furthermore, the Agreement was a valid and proper offer of the Purchaser pursuant to the Bidding Procedures Order and sections 363(b) and 363(k) of the Bankruptcy Code.

W. The total consideration provided by the Purchaser for the Acquired Assets is the highest and best offer received by the Debtor, and the Purchase Price constitutes (a) reasonably equivalent value under the Bankruptcy Code and the Uniform Fraudulent Transfer Act, (b) fair consideration under the Uniform Fraudulent Transfer Act and (c) reasonably equivalent value, fair consideration and fair value under any other applicable laws of the United States, any state, territory or possession, or the District of Columbia, for the Acquired Assets.

Transfer Free and Clear

X. Except with respect to Assumed Liabilities, Permitted Exceptions and Permitted Liens as expressly provided in the Agreement or this Order, upon Closing, the Acquired Assets shall be sold free and clear of all mortgages, restrictions, hypothecations, charges, indentures, loan agreements, instruments, leases, licenses, options, deeds of trust, security interests, conditional sale or other title retention agreements, pledges, liens (including, without limitation, mechanics’, materialmen’s and other consensual and non-consensual liens and statutory liens), judgments,

demands, encumbrances, rights of first refusal, offsets, set-offs, contracts, recoupment, rights of recovery, claims for reimbursement, contribution, indemnity, exoneration, products liability, alter-ego, environmental, pension, or tax liabilities, decrees of any court or foreign or domestic governmental entity, or charges or interests of any kind or nature, if any, including, but not limited to, any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership, debts arising in any way in connection with any agreements, acts, or failures to act, of the Debtor or the Debtor's predecessors or affiliates, claims (as that term is used in the Bankruptcy Code), reclamation claims, obligations, liabilities, demands, guaranties, options, rights, contractual or other commitments, restrictions, interests and matters of any kind and nature, whether known or unknown, choate or inchoate, filed or unfilled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, whether arising prior to or subsequent to the commencement of the Chapter 11 Case, and whether imposed by agreement, understanding, law, equity or otherwise, including claims arising under any doctrines of successor liability or alter-ego (collectively, "**Liens, Claims, Interests and Encumbrances**"), with such Liens, Claims, Interests and Encumbrances, upon Closing, to attach to the proceeds of the Sale to be received by the Debtor in accordance with the Agreement in the same priority and subject to the same defenses and avoidability, if any, as before the Closing, and the Purchaser would not enter into the Agreement to purchase the Acquired Assets otherwise.

Y. The transfer of the Acquired Assets to the Purchaser is a legal, valid and effective transfer of the Acquired Assets, and, except as may otherwise be provided in the Agreement or Order, shall vest, upon Closing, the Purchaser with all rights, titles and interests to the Acquired

Assets free and clear of any and all Liens, Claims, Interests and Encumbrances (other than Permitted Exceptions and Permitted Liens). Except as specifically provided in the Agreement or this Order, the Purchaser shall not assume or become liable for any Liens, Claims, Interests and Encumbrances relating to the Acquired Assets being sold by the Debtor.

Z. The transfer of the Acquired Assets to the Purchaser, free and clear of Liens, Claims, Interests and Encumbrances (other than Permitted Exceptions and Permitted Liens), will not result in any undue burden or prejudice to any holders of any Liens, Claims, Interests and Encumbrances as all such Liens, Claims, Interests and Encumbrances of any kind or nature whatsoever shall attach to the net proceeds of the Sale of the Acquired Assets received by the Debtor, if any, in the order of their priority, with the same validity, force and effect which they now have as against the Acquired Assets and subject to any claims and defenses the Debtor or other parties may possess with respect thereto. Except as otherwise set forth in this Order, all persons having Liens, Claims, Interests and Encumbrances of any kind or nature whatsoever against or in any of the Debtor or the Acquired Assets, other than Assumed Liabilities, Permitted Exceptions and Permitted Liens, shall be forever barred, estopped and permanently enjoined from pursuing or asserting such Liens, Claims, Interests and Encumbrances against the Purchaser, any of its assets, property, successors or assigns, or the Acquired Assets.

AA. The Debtor may sell the Acquired Assets free and clear of all Liens, Claims, Interests and Encumbrances of any kind or nature whatsoever, other than the Permitted Exceptions and Permitted Liens, because, in each case, one or more of the standards set forth in section 363(f) of the Bankruptcy Code has been satisfied. Those holders of Liens, Claims, Interests and Encumbrances and who did not object, or who withdrew their objections, to the Sale of the Acquired Assets and the Sale Motion, are deemed to have consented pursuant to section 363(f)(2)

of the Bankruptcy Code. All objections to the Sale Motion have been waived, overruled or resolved by agreement of the parties or as set forth in this Order. Those holders of Liens, Claims, Interests and Encumbrances who did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are adequately protected by having their Liens, Claims, Interests and Encumbrances, if any, attach to the proceeds of the Sale of the Acquired Assets, if any, ultimately attributable to the property against or in which they claim or may claim any Liens, Claims, Interests and Encumbrances, and with such Liens, Claims, Interests and Encumbrances being subject to treatment by separate order of the Bankruptcy Court.

BB. The Purchaser would not have entered into the Agreement if the Sale was not free and clear of all Liens, Claims, Interests and Encumbrances of any kind or nature whatsoever, other than the Permitted Exceptions and Permitted Liens, as set forth in the Agreement and herein, or if the Purchaser would, or in the future could, be liable for any such Liens, Claims, Interests and Encumbrances.

CC. Not selling the Acquired Assets free and clear of all Liens, Claims, Interests and Encumbrances, other than the Permitted Exceptions and Permitted Liens, to the Purchaser would adversely impact the Debtor's estate, and the Sale of Acquired Assets other than free and clear of all Liens, Claims, Interests and Encumbrances, other than the Permitted Exceptions and Permitted Liens, would be of substantially less value to the Debtor's estate.

DD. The Debtor and the Purchaser have, to the extent necessary, satisfied the requirements of section 365 of the Bankruptcy Code, including sections 365(b)(1)(A) and (B) and 365(f) of the Bankruptcy Code, in connection with the Sale and the assumption and assignment of the Assigned Contracts. The Purchaser has demonstrated adequate assurance of future performance with respect to the Assigned Contracts pursuant to section 365(b)(1)(C) of the Bankruptcy Code.

The Assigned Contracts are assignable notwithstanding any provisions contained therein to the contrary (other than as identified on Exhibit 2 hereto) and no section of any Assigned Contracts which purports to prohibit, restrict, or condition the use, transfer or assignment of any such Assigned Contracts in connection with the proposed Sale to the Purchaser shall have any force or effect. The Debtor has indicated that any cure payments will be paid by the Purchaser at closing and, therefore, have sufficiently provided for the cure payments required to assume and assign the Assigned Contracts to the Purchaser. The assumption and assignment of the Assigned Contracts pursuant to the terms of this Order and the Contract Procedures is integral to the Agreement and is in the best interests of the Debtor, its estate, its creditors and other parties in interest, and represents the exercise of sound and prudent business judgment by the Debtor.

EE. The transactions contemplated under the Agreement do not amount to a consolidation, merger or *de facto* merger of the Purchaser and the Debtor and/or the Debtor's estate, there is not substantial continuity between the Purchaser and the Debtor, there is no common identity between the Debtor and the Purchaser, there is no continuity of enterprise between the Debtor and the Purchaser, the Purchaser is not a mere continuation of the Debtor or its estate, and the Purchaser does not constitute a successor to the Debtor or its estate. Other than the Assumed Liabilities, the Purchaser shall have no obligations with respect to any liabilities of the Debtor, including, without limitation, the Excluded Liabilities and withdrawal liability under Subtitle E of Title IV of ERISA and this Order hereby releases and forever discharges the Purchaser and any of their affiliates, their successors and assigns from any and all claims, causes of action, obligations, liabilities, demands, losses, costs and expenses of any kind, character or nature whatsoever, known or unknown, fixed or contingent, relating to the Sale, except for the liabilities and obligations under the Agreement.

Other Provisions

FF. The Sale of the Acquired Assets outside of a plan of reorganization pursuant to the Agreement neither impermissibly restructures the rights of the Debtor's creditors nor impermissibly dictates the terms of a liquidating plan of reorganization for the Debtor. The Sale does not constitute a *sub rosa* chapter 11 plan.

GG. The Debtor is providing the Purchaser with a general release of claims and the Purchaser is providing fair value for such release.

HH. Time is of the essence in consummating the Sale. In order to maximize the value of the Acquired Assets, it is essential that the Sale of the Acquired Assets occur within the time constraints set forth in the Agreement. The Purchaser is acting in good faith, pursuant to section 363(m) of the Bankruptcy Code, in Closing the transactions contemplated by the Agreement at any time on or after the entry of this Order. Accordingly, there is cause to lift the stays contemplated by Bankruptcy Rules 6004 and 6006.

NOW, THEREFORE, BASED UPON ALL OF THE FOREGOING, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The relief requested in the Sale Motion is granted in its entirety, subject to the terms and conditions contained herein. The Sale Motion complies with all aspects of Local Rule 6004-1.
2. To the extent any objection, response or request for continuance was not otherwise withdrawn, waived, or settled, it, and all reservations of rights contained therein, is overruled and denied, unless otherwise set forth herein.
3. Notice of the Sale Hearing was fair and equitable under the circumstances and complied in all respects with section 102(1) of the Bankruptcy Code, Bankruptcy Rules 2002 and 6004 and 6006, the Local Rules and the orders of the Bankruptcy Court.

Approval of Sale

4. The Sale of the Acquired Assets, the terms and conditions of the Agreement (including all schedules and exhibits affixed thereto), and the transactions contemplated thereby be, and hereby are, authorized and approved in all respects.

5. The Sale of the Acquired Assets and the consideration provided by the Purchaser under the Agreement are fair and reasonable and shall be deemed for all purposes to constitute a transfer for reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable law.

6. The Purchaser is hereby granted and is entitled to all of the protections provided to a good faith buyer under section 363(m) of the Bankruptcy Code, including with respect to the transfer of the Assigned Contracts as part of the Sale of the Acquired Assets pursuant to section 365 of the Bankruptcy Code and this Order.

7. Pursuant to section 363(m) of the Bankruptcy Code, if any or all of the provisions of this Order are hereafter reversed, modified, or vacated by a subsequent order of this Bankruptcy Court or any other court, such reversal, modification, or vacatur shall not affect the validity and enforceability of any transfer under the Agreement or obligation or right granted pursuant to the terms of this Order (unless stayed pending appeal), and notwithstanding any reversal, modification or vacatur shall be governed in all respects by the original provisions of this Order and the Agreement, as the case may be.

8. The Debtor and the Purchaser are hereby authorized to fully assume, perform under, consummate and implement the terms of the Agreement together with any and all additional instruments and documents that may be reasonably necessary or desirable to implement and effectuate the terms of the Agreement, this Order and the Sale of the Acquired Assets contemplated thereby including, without limitation, deeds, assignments, stock powers and other instruments of

transfer, and to take all further actions as may reasonably be requested by the Purchaser for the purpose of assigning, transferring, granting, conveying and conferring to the Purchaser, or reducing to possession any or all of the Acquired Assets or Assumed Liabilities, as may be necessary or appropriate to the performance of the Debtor's obligations as contemplated by the Agreement, without any further corporate action or orders of this Bankruptcy Court. The Purchaser shall have no obligation to proceed with the Closing of the Agreement until all conditions precedent to its obligations to do so have been met, satisfied or waived.

9. The Debtor, the Purchaser and each other person or entity having duties or responsibilities under the Agreement, any agreements related thereto or this Order, and its respective directors, officers, employees, members, agents, representatives, and attorneys, are authorized and empowered, subject to the terms and conditions contained in the Agreement, to carry out all of the provisions of the Agreement and any related agreements; to issue, execute, deliver, file, and record, as appropriate, the documents evidencing and consummating the Agreement, and any related agreements; to take any and all actions contemplated by the Agreement, any related agreements or this Order; and to issue, execute, deliver, file, and record, as appropriate, such other contracts, instruments, releases, indentures, mortgages, deeds, bills of sale, assignments, leases, or other agreements or documents and to perform such other acts and execute and deliver such other documents, as are consistent with, and necessary or appropriate to implement, effectuate, and consummate, the Agreement, any related agreements and this Order and the transactions contemplated thereby and hereby, all without further application to, or order of, the Bankruptcy Court or further action by its respective directors, officers, employees, members, agents, representatives, and attorneys, and with like effect as if such actions had been taken by unanimous

action of the respective directors, officers, employees, members, agents, representatives, and attorneys of such entities.

10. The Debtor is further authorized and empowered to cause to be filed with the secretary of state of any state or other applicable officials of any applicable governmental units, any and all certificates, agreements, or amendments necessary or appropriate to effectuate the transactions contemplated by the Agreement, any related agreements and this Order, including amended and restated certificates or articles of incorporation and by-laws or certificates or articles of amendment, and all such other actions, filings, or recordings as may be required under appropriate provisions of the applicable laws of all applicable governmental units or as any of the officers of the Debtor may determine are necessary or appropriate. The execution of any such document or the taking of any such action shall be, and hereby is, deemed conclusive evidence of the authority of such person to so act. Without limiting the generality of the foregoing, this Order shall constitute all approvals and consents, if any, required by the corporation laws of the State of Delaware, and all other applicable business corporation, trust, and other laws of the applicable governmental units with respect to the implementation and consummation of the Agreement, any related agreements and this Order, and the transactions contemplated thereby and hereby.

Transfer of Assets

11. Except as otherwise set forth in this Order, effective as of the Closing, the Sale of the Acquired Assets by the Debtor to the Purchaser shall constitute a legal, valid and effective transfer of the Acquired Assets notwithstanding any requirement for approval or consent by any person and vests the Purchaser with all rights, titles and interests in and to the Acquired Assets, free and clear of all Liens, Claims, Interests and Encumbrances of any kind, other than Permitted Exceptions and Permitted Liens, pursuant to section 363(f) of the Bankruptcy Code. The assumption of any Assumed Liability by the Purchaser constitutes a legal, valid and effective delegation of any

Assumed Liabilities to the Purchaser and divests the Debtor of all liability with respect to any Assumed Liabilities.

12. Except to the extent specifically provided in the Agreement or this Order, upon the Closing, the Debtor shall be, and hereby is, authorized, empowered, and directed, pursuant to sections 105, 363(b), 363(f) and 365 of the Bankruptcy Code, to sell the Acquired Assets to the Purchaser. Except to the extent specifically provided in the Agreement or this Order, upon Closing, the sale of the Acquired Assets vests the Purchaser with all right, title and interest to the Acquired Assets free and clear of any and all Liens, Claims, Interests and Encumbrances (other than Permitted Exceptions and Permitted Liens) and other liabilities and claims, whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, disputed or undisputed, or known or unknown, whether arising prior to or subsequent to the Petition Date, whether imposed by agreement, understanding, law, equity or otherwise. All such Liens, Claims, Interests and Encumbrances are to attach only to the proceeds of the Sale with the same priority, validity, force, and effect, if any, as they now have in or against the Acquired Assets, subject to all claims and defenses the Debtor may possess with respect thereto. The Sale Motion shall be deemed to provide sufficient notice as to the Sale of the Acquired Assets free and clear of Liens, Claims, Interests and Encumbrances in accordance with Local Rule 6004-1. Following the Closing Date and upon the occurrence of the Closing, no holder of any Liens, Claims, Interests and Encumbrances, other than Permitted Liens or Permitted Encumbrances, in the Acquired Assets may interfere with the Purchaser's use and enjoyment of the Acquired Assets based on or related to such Liens, Claims, Interests and Encumbrances, or any actions that the Debtor may take in its Chapter 11 Case and no person may take any action to prevent, interfere with

or otherwise enjoin consummation of the transactions contemplated in or by the Agreement or this Order.

13. The provisions of this Order authorizing the Sale of the Acquired Assets free and clear of Liens, Claims, Interests and Encumbrances (other than Permitted Exceptions and Permitted Liens), shall be self-executing, and neither the Sellers nor the Purchaser shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate and implement the provisions of this Order. All such Liens, Claims, Interests and Encumbrances are to attach to the proceeds of the Sale, if any.

14. On, before or after the Closing Date, the Debtor's creditors are authorized and directed to execute such documents and take all other actions as may be necessary to release any Liens, Claims, Interests and Encumbrances of any kind against the Acquired Assets (other than Assumed Liabilities, Permitted Exceptions and Permitted Liens), as such Liens, Claims, Interests and Encumbrances may have been recorded or may otherwise exist. If any person or entity that has filed financing statements or other documents or agreements evidencing any Liens, Claims, Interests and Encumbrances in or against the Acquired Assets that are not Permitted Exceptions or Permitted Liens shall not have delivered to the Debtor prior to, at or after the Closing after request therefor, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, or releases of all such Liens, Claims, Interests and Encumbrances that the person or entity has with respect to the Acquired Assets, the Debtor or the Purchaser, may, in its sole option and at its sole discretion, execute and file on behalf and in the stead of such creditor any such document as may be necessary to evidence the discharge on any Lien, Claim or Encumbrance. Nothing herein is intended to affect or limit the provisions of paragraph 11 of this Order. Each filing office, recording office or other registry where Liens, Claims, Interests and Encumbrances are

filed or recorded is authorized and directed to release such Liens, Claims, Interests and Encumbrances based upon the filing of a certified copy of this Order. Contemporaneously with the Closing, the Agents (as defined in the Final DIP Order) shall have filed, or shall have agreed to file contemporaneously with the Closing, all termination statements with respect to their liens on the Acquired Assets.

15. To the greatest extent available under applicable law, the Purchaser shall be authorized, as of the Closing Date and upon the occurrence of Closing, to operate under any transferred license, permit, registration and governmental authorization or approval of the Debtor with respect to the Acquired Assets, and all such licenses, permits, registrations and governmental authorizations and approvals are deemed to have been, and hereby are, directed to be transferred to the Purchaser as of the Closing Date.

16. Except as otherwise set forth in this Order, all of the Debtor's interests in the Acquired Assets to be acquired by the Purchaser under the Agreement shall be, as of the Closing Date and upon the occurrence of the Closing, transferred to and vested in the Purchaser free and clear of all Liens, Claims, Interests and Encumbrances (other than Permitted Exceptions and Permitted Liens). Upon the occurrence of the Closing, this Order shall be considered and constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Acquired Assets acquired by the Purchaser under the Agreement and/or a bill of sale or assignment transferring good and marketable, indefeasible title and interest in the Acquired Assets to the Purchaser.

17. Except as otherwise expressly provided in the Agreement or this Order, all persons or entities, presently or on or after the Closing Date, in possession of some or all of the Acquired

Assets are directed to surrender possession of the Acquired Assets to the Purchaser on the Closing Date or at such time thereafter as the Purchaser may request.

18. Pursuant to section 2.1(n) of the Agreement, all of the Debtor's Causes of Action, including all Causes of Action arising under chapter 5 of the Bankruptcy Code, shall constitute Acquired Assets and be sold and transferred to the Purchaser effective as of the Closing.

Assigned Contracts and Assumed Leases

19. Subject to the terms of the Agreement and this Order and the occurrence of the Effective Date, the assumption by the Debtor of the Assigned Contracts and the assignment of such Contracts to the Purchaser, as provided for or contemplated by the Agreement, the Sale Motion and the Contract Procedures, be, and hereby is, authorized and approved pursuant to sections 363 and 365 of the Bankruptcy Code.

20. Upon the payment of the Cure Amounts, in accordance with sections 363 and 365 of the Bankruptcy Code, the Purchaser shall be fully and irrevocably vested in all right, title and interest of each Assigned Contract. The Debtor shall cooperate with, and take all actions reasonably requested by, the Purchaser to effectuate the foregoing.

21. Pursuant to sections 365(b)(1)(A) and (B) of the Bankruptcy Code, and except as otherwise provided in this Order, the Purchaser shall promptly pay or cause to be paid to the parties to any Assigned Contracts the requisite Cure Amounts, if any, set forth in the Cure Notice, Additional Cure Notice or Omitted Contract Notice, as applicable, with respect to the assumption and assignment of the Assigned Contract. The Cure Amounts are hereby fixed at the amounts set forth in the Cure Notice, Additional Cure Notice or Omitted Contract Notice, or the amounts determined on the record of the Sale Hearing, as the case may be, and the non-Debtor counterparties to the Assigned Contracts are forever bound by such Cure Amounts and are hereby

precluded from objecting to the Cure Amounts (if any) relating to and the assumption and assignment of any Assigned Contract and enjoined from taking any action against the Purchaser or the Acquired Assets with respect to any claim for cure, or any other claim, under any Assigned Contract.

22. All defaults, actual pecuniary losses (as defined in Section 365(b)(1)(B) of the Bankruptcy Code) or other obligations under the Assigned Contracts arising prior to the Closing (without giving effect to any acceleration clauses or any default provisions of the kind specified in section 365(b)(2) of the Bankruptcy Code) shall be deemed cured by payment of the Cure Amounts, and the non-Debtor counterparties to such Contracts shall be forever barred and estopped from asserting or claiming against the Debtor or the Purchaser that any additional amounts are due or other defaults exist.

23. Any provision in any Assigned Contract that purports to declare a breach, default or payment right as a result of an assignment or a change of control in respect of the Debtor is unenforceable, and all Assigned Contracts shall remain in full force and effect, subject only to payment of the appropriate Cure Amount, if any. No sections or provisions of any Assigned Contract that purports to provide for additional payments, penalties, charges, or other financial accommodations in favor of a non-Debtor third party to the Assigned Contracts shall have any force and effect with respect to the transactions contemplated by the Agreement and assignments authorized by this Order, and such provisions constitute unenforceable anti-assignment provisions under section 365(f) of the Bankruptcy Code and/or are otherwise unenforceable under section 365(e) of the Bankruptcy Code and no assignment of any Assigned Contract pursuant to the terms of the Agreement in any respect constitutes a default under any Assigned Contract. The non-Debtor counterparty to each Assigned Contract shall be deemed to have consented to such

assignment under section 365(c)(1)(B) of the Bankruptcy Code, and the Purchaser shall enjoy all of the rights and benefits under each such Assigned Contract as of the applicable date of assumption without the necessity of obtaining such non-Debtor counterparty's written consent to the assumption or assignment thereof.

24. Where the Debtor is unable to establish that a default exists under a Contract, the Cure Amount relating to such Contract shall be set at \$0.00.

25. The Purchaser has satisfied all requirements under sections 365(b)(1) and 365(f)(2) of the Bankruptcy Code to provide adequate assurance of future performance under the Assigned Contracts.

26. The Debtor and its estate shall be relieved of any liability for any breach of any of the Assigned Contracts occurring on and after Closing, pursuant to and in accordance with section 365(k) of the Bankruptcy Code.

27. The non-Debtor counterparties to the Assigned Contracts shall be prohibited from charging any rent acceleration, assignment fees, increases or other fees to the Purchaser as a result of the assumption and assignment of the Assigned Contracts.

28. The Purchaser shall have a period of seventy-five (75) days following the Closing Date with respect to all Held Contracts (the "**Designation Period**") to designate each of the Held Contracts as Assumed or Rejected.

29. During the Designation Period, but subject to the Purchaser's obligations under the Agreement, (i) each Held Contract shall be held by the Debtor, (ii) the Debtor shall not reject or seek to reject (pursuant to section 365 of the Bankruptcy Code or otherwise) any Held Contract, (iii) the Debtor shall not terminate, amend, supplement or modify, or waive any rights under, any Held Contract or take any affirmative action not required by the terms thereof by the Debtor,

without the prior written consent of the Purchaser, and (iv) the Purchaser shall perform under each Held Contract. Following the end of the Designation Period, the Debtor shall promptly cause any Held Contract not designated as either “Assumed” or “Rejected” by the Purchaser during the Designation Period to be rejected pursuant to section 365 of the Bankruptcy Code.

30. The assumption and assignment of the Additional Assumed Contracts shall be approved upon entry of the applicable Additional Assumption Order in accordance with the Additional Assumption Procedures, without the need for any further action by any party, pursuant to section 365 of the Bankruptcy Code.

Additional Provisions

31. Effective upon the Closing, the Debtor, on behalf of itself and its estate, acknowledges that it has no known claim, counterclaim, setoff, recoupment, action or cause of action of any kind or nature whatsoever (including, for the avoidance of doubt, actions for avoidance, subordination or recharacterization of any of the Purchaser’s prepetition Claims, Liens, Interests or Encumbrances) against the Purchaser or any of its Related Persons, that directly or indirectly arise out of, relate to, are based upon, or in any manner are connected with the Debtor, any of its respective Related Persons or the Business (collectively, the “**Released Claims**”) (including, without limitation, (i) the prepetition Contracts to which the Purchaser (or any of its Affiliates) and the Debtor were parties and all transactions referred to in such Contracts and (ii) any acquisition by the Purchaser of Claims and Liens in and against the Debtor). Should any Released Claims nonetheless exist, the Debtor, on behalf of itself and its estate, hereby (i) releases and discharges the Purchaser and each of its Related Persons from any claim, cause of action, liability or obligation whatsoever with respect to the Released Claims and (ii) releases, waives and discharges all of the Released Claims against the Purchaser and each of its Related Persons.

32. The Debtor is hereby authorized and empowered, upon and in connection with the Closing, to change its corporate name and the caption of this Chapter 11 Case, consistent with applicable law. The Debtor shall file a notice of change of case caption, containing the new caption and the proposed new corporate name of the Debtor, within one (1) business day of the Closing, and the change of case caption for this Chapter 11 Case shall be deemed effective as of the Closing.

33. Each and every federal, state, and local governmental agency or department is hereby authorized to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Agreement and this Order.

34. To the extent permitted by section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any permit or license relating to the operation of the Acquired Assets sold, transferred or conveyed to the Purchaser on account of the filing or pendency of this Chapter 11 Case or the consummation of the transaction contemplated by the Agreement.

35. The Purchaser has not assumed or is otherwise not obligated for any of the Sellers' obligations or liabilities other than the Assumed Liabilities as set forth in the Agreement or this Order, and the Purchaser has not purchased any of the Excluded Assets. Consequently, all persons, Governmental Units (as defined in sections 101(27) and 101(41) of the Bankruptcy Code) and all holders of Liens, Claims, Interests and Encumbrances based upon or arising out of liabilities retained by the Sellers are hereby enjoined from taking any action against the Purchaser or the Acquired Assets, including asserting any setoff, right of subrogation of any kind, to recover any Liens, Claims, Interests and Encumbrances or on account of any liabilities of the Debtor other than Assumed Liabilities pursuant to the Agreement. Except as otherwise set forth in this Order, all persons holding or asserting any Interest in the Excluded Assets are hereby enjoined from asserting

or prosecuting such Liens, Claims, Interests and Encumbrances or Causes of Action against the Purchaser or the Acquired Assets for any liability associated with the Excluded Assets.

36. The Purchaser is not a “successor” or alter-ego to the Sellers or the Debtor’s estate by reason of any theory of law or equity, and the Purchaser shall not assume, nor be deemed to assume, or in any way be responsible for any liability or obligation of any of the Sellers and/or the Debtor’s estate including, but not limited to, any bulk sales law, successor liability, liability or responsibility for any claim against the Debtor or against an insider of the Debtor, or similar liability except as otherwise expressly provided in the Agreement, and the Sale Motion contains sufficient notice of such limitation in accordance with Local Rule 6004-1. Except to the extent the Purchaser assumes the Assumed Liabilities pursuant to the Agreement, neither the purchase of the Acquired Assets by the Purchaser or its affiliates, nor the fact that the Purchaser or its affiliates are using any of the Acquired Assets previously operated by the Sellers, will cause the Purchaser or any of its affiliates to be deemed a successor or alter-ego in any respect to the Sellers’ business within the meaning of, or in connection with, (i) any foreign, federal, state or local revenue, pension, ERISA, including, but not limited to any withdrawal liability, tax, labor, employment, antitrust, environmental laws, or other law, rule or regulation (including without limitation filing requirements under any such laws, rules or regulations), (ii) under any products liability law or doctrine with respect to the Sellers’ liability under such law, rule or regulation or doctrine, or under any product warranty liability law or doctrine with respect to the Sellers’ liability under such law, rule or regulation or doctrine, (iii) any employment or labor agreements, collective bargaining agreements, consulting agreements, severance arrangements, change-in-control agreements or other similar agreement to which the Sellers are a party, (iv) any pension, health, welfare, compensation or other employee or retiree benefit plans, agreements, practices and programs, including, without

limitation, any pension plans of the Sellers, (v) the cessation of the Sellers' operations, dismissal of employees, or termination of employment or labor agreements, collective bargaining agreements, or pension, health, welfare, compensation or other employee or retiree benefit plans, agreements, practices and programs, and any obligations that might otherwise arise from any such cessation, dismissal or termination pursuant to any law of the United States, any State therein, or any other jurisdiction in the world, whether such obligations arise under any contract, agreement, statute, regulation, ordinance, common law, public policy, constitution or any other source, including without limitation, the Employee Retirement Income Security Act of 1974, as amended, the Fair Labor Standard Act, Title VII of the Civil Rights Act of 1964, the Age Discrimination and Employment Act of 1967, the Federal Rehabilitation Act of 1973, the National Labor Relations Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, COBRA, or the Worker Adjustment and Retraining Notification Act, (vi) environmental liabilities, debts, claims or obligations arising from conditions first existing on or prior to the Closing (including, without limitation, the presence of hazardous, toxic, polluting, or contaminating substances or wastes), which may be asserted on any basis, including, without limitation, under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.*, (vii) any liabilities, debts or obligations of or required to be paid by, the Sellers for any taxes of any kind for any period, (viii) any liabilities, debts, commitments or obligations for any taxes relating to the operation of the Acquired Assets prior to the Closing, and (ix) any litigation. The Purchaser shall have no successor, alter-ego or vicarious liabilities of any kind or character.

37. Except with respect to Assumed Liabilities, Permitted Exceptions and Permitted Liens, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, trade creditors, litigation claimants

and other creditors, holding Liens, Claims, Interests and Encumbrances of any kind or nature whatsoever against or in all or any portion of the Acquired Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, liquidated or unliquidated or subordinate), arising under or out of, in connection with, or in any way relating to the Sellers, the Acquired Assets, the operation of the Sellers' Business prior to the Closing Date or the transfer of the Acquired Assets to the Purchaser, hereby are forever barred, estopped and permanently enjoined from asserting, against the Purchaser, any of its affiliates, its successors or assigns, its property or the Acquired Assets, such persons' or entities' Liens, Claims, Interests and Encumbrances, other than Permitted Exceptions and Permitted Liens, in and to the Acquired Assets, including, without limitation, the following actions: (i) commencing or continuing in any manner any action or other proceeding against the Purchaser, any of its affiliates, successors, assets or properties; (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against the Purchaser, any of its affiliates, successors, assets or properties; (iii) creating, perfecting or enforcing any Lien or other Claim against the Purchaser, any of its affiliates, successors, assets or properties; (iv) asserting any setoff, right of subrogation or recoupment of any kind against any obligation due Purchaser, any of its affiliates or successors; (v) commencing or continuing any action, in any manner or place, that does not comply or is inconsistent with the Provisions of this Order or other orders of the Court, or the agreements or actions contemplated or taken in respect thereof; or (vi) revoking, terminating or failing or refusing to transfer or renew any license, permit or authorization to operate any of the Acquired Assets or conduct any of the business operated with the Acquired Assets.

38. Other than the Assumed Liabilities as provided for in the Agreement, the Purchaser shall have no obligations with respect to any liabilities of the Sellers, including, without limitation,

the Excluded Liabilities, and the Sellers are deemed to release and forever discharge the Purchaser and any of its affiliates, successors and assigns from any and all claims, causes of action, obligations, liabilities, demands, losses, costs and expenses of any kind, character or nature whatsoever, known or unknown, fixed or contingent, relating to the Sale, except for liabilities and obligations under the Agreement.

39. Subject to the terms of the Agreement and this Order, the Agreement and any related agreements may be waived, modified, amended, or supplemented by agreement of the Debtor, after consultation with the Committee, and the Purchaser, without further action or order of the Bankruptcy Court; provided, however, any such waiver, modification, amendment, or supplement is not material and substantially conforms to, and effectuates, the Agreement and any related agreements.

40. The failure specifically to include any particular provisions of the Agreement or any related agreements in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Bankruptcy Court, the Sellers and the Purchaser that the Agreement and any related agreements are authorized and approved in their entirety with such amendments thereto as may be made by the parties in accordance with this Order prior to the Closing.

41. No bulk sale law or any similar law of any state or other jurisdiction shall apply in any way to the sale and transactions contemplated by the Agreement. For the avoidance of doubt, Section 1146(a) of the Bankruptcy Code does not apply to this transaction.

42. To the extent any provisions of this Order conflict with the terms and conditions of the Agreement, this Order shall govern and control.

43. This Order and the Agreement shall be binding upon and govern the acts of all persons and entities, including without limitation, the Sellers and the Purchaser, their respective

successors and permitted assigns, including, without limitation, any chapter 11 trustee hereinafter appointed for the Debtor's estate or any trustee appointed in any applicable chapter 7 case if this Chapter 11 Case is converted from chapter 11, all creditors of the Seller (whether known or unknown), filing agents, filing officers, title agents, recording agencies, secretaries of state, and all other persons and entities who may be required by operation of law, the duties of its office or contract, to accept, file, register, or otherwise record or release any documents or instruments or who may be required to report or insure any title in or to the Acquired Assets.

44. The provisions of this Order are non-severable and mutually dependent.

45. Nothing in any order of this Bankruptcy Court or contained in any plan of reorganization or liquidation confirmed in the Chapter 11 Case, or in any subsequent or converted cases of the Debtor under chapter 7 or chapter 11 of the Bankruptcy Code, shall conflict with or derogate from the provisions of the Agreement or the terms of this Order.

46. Notwithstanding Bankruptcy Rules 6003, 6004, 6006 and 7062, this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. In the absence of any person or entity obtaining a stay pending appeal, the Sellers and the Purchaser are free to close under the Agreement at any time, subject to the terms of the Agreement. In the absence of any person or entity obtaining a stay pending appeal, if the Sellers and the Purchaser close under the Agreement, the Purchaser shall be deemed to be acting in "good faith" and shall be entitled to the protections of section 363(m) of the Bankruptcy Code as to all aspects of the transactions under and pursuant to the Agreement if this Order or any authorization contained herein is reversed or modified on appeal.

47. This Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms and provisions of this Order, the Bidding Procedures Order, and the Agreement in all respects and to

decide any disputes concerning this Order and the Agreement, or the rights and duties of the parties hereunder or thereunder or any issues relating to the Agreement and this Order including, but not limited to, the interpretation of the terms, conditions and provisions hereof and thereof, the status, nature and extent of the Acquired Assets and any Assigned Contracts, disputes with any third parties related to the Acquired Assets and any Assigned Contracts, and all issues and disputes arising in connection with the relief authorized herein, inclusive of those concerning the transfer of the assets free and clear of all Liens, Claims, Interests and Encumbrances, and the attachment of such Liens, Claims, Interests and Encumbrances to the proceeds of the Sale, if any.

Dated: _____, 2016
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT C

Stalking Horse APA

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the “**Agreement**”), dated as of July ____, 2016 (the “**Execution Date**”), is made by and among SynCardia Systems, Inc. (“**SynCardia**” or “**Seller**”) and Sindex SSI Lending, LLC (together with its permitted successors, designees and assigns, the “**Purchaser**”).

RECITALS

WHEREAS, SynCardia is a medical technology company that develops, manufactures and sells temporary Total Artificial Heart, or TAH-t, an implantable system designed to assume the full function of a failed human heart and provides related equipment to service the TAH-t (the “**Business**”). SynCardia sells SynCardia Systems Europe GmbH (“**SynCardia GmbH**”), its subsidiary, equipment who then sells the equipment to centers located in Europe;

WHEREAS, SynCardia intends to file a voluntary petition for reorganization relief (the “**Bankruptcy Case**”) pursuant to chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the “**Bankruptcy Code**”), and in concert with such filing, seek the entry of an order by the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) approving this Agreement and authorizing Seller to consummate the transactions contemplated hereby and by other transaction documents;

WHEREAS, Seller desires to sell, transfer and assign to Purchaser, and Purchaser desires to acquire and assume from Seller, pursuant to Sections 363 and 365 of the Bankruptcy Code, the Acquired Assets and the Assumed Liabilities as more specifically provided herein;

WHEREAS, the board of managers (or similar governing body) of Seller has determined that it is advisable and in the best interests of its respective estate and the beneficiaries of such estate to consummate the transactions provided for herein pursuant to the Bidding Procedures Order and the Bankruptcy Sale Order and has approved this Agreement; and

WHEREAS, the transactions contemplated by this Agreement are subject to the approval of the Bankruptcy Court and will be consummated only pursuant to the Bankruptcy Sale Order to be entered in the Bankruptcy Case.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Seller and Purchaser hereby agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Certain Terms Defined. Capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings ascribed to such terms on **Schedule 1** attached hereto and as set forth elsewhere herein.

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1.2 Interpretation. When a reference is made in this Agreement to a section or article, such reference shall be to a section or article of this Agreement unless otherwise clearly indicated to the contrary.

(a) Whenever the words “include,” “includes” or “including” are used in this Agreement they shall be deemed to be followed by the words “without limitation.”

(b) The words “hereof,” “herein” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement, and article, section, paragraph, exhibit and schedule references are to the articles, sections, paragraphs, exhibits and schedules of this Agreement unless otherwise specified.

(c) The meaning assigned to each term defined herein shall be equally applicable to both the singular and the plural forms of such term. Where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning.

(d) A reference to any party to this Agreement or any other agreement or document shall include such party’s permitted successors and assigns.

(e) A reference to any legislation or to any provision of any legislation shall include any amendment to, and any modification or reenactment thereof, any legislative provision substituted therefore and all regulations and statutory instruments issued thereunder or pursuant thereto.

(f) Any reference in this Agreement to \$ shall mean U.S. dollars.

(g) The parties hereto have 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 the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party hereto by virtue of the authorship of any provision of this Agreement.

ARTICLE 2
PURCHASE AND SALE OF THE ACQUIRED ASSETS

2.1 Purchase and Sale of Assets. Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, on the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser shall purchase, acquire and accept from Seller, and Seller shall sell, transfer, assign, convey and deliver to Purchaser, all of Seller’s, direct or indirect, right, title and interest in, to and under all of Seller’s tangible and intangible assets, properties and rights as of the Closing Date of whatever kind or nature and wherever situated or located, other than the Excluded Assets, free and clear of all pledges, security interests, Liens, Claims, Interests or Encumbrances (other than Permitted Exceptions and Permitted Liens). All of such assets, properties and rights (other than the Excluded Assets) are collectively referred to in this Agreement as the “**Acquired Assets**.” Without limitation of the foregoing, the Acquired Assets shall include Seller’s right, title and interest in and to the following assets as of the Closing Date, except to the extent that any of the following are also enumerated in Section 2.2 as being Excluded Assets:

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- (a) all Cash;
- (b) all Accounts Receivable;
- (c) all Inventories;

(d) all deposits (including, without limitation, security deposits (whether maintained in escrow or otherwise) for rent, electricity, telephone or otherwise), advances, prepayments, rights in respect of promotional allowances, vendor rebates and other refunds, claims, causes of action, rights of recovery, rights under warranties and guaranties, rights of set-off and rights of recoupment of every kind and nature (whether or not known or unknown or contingent or non-contingent), and the right to receive and retain mail, Accounts Receivable payments and other communications of Seller and the right to bill and receive payment for products shipped or delivered and services performed but unbilled or unpaid as of the Closing;

(e) to the extent that such lease (and any such agreement related thereto, if any) is an Assigned Contract, all rights under a lease (and any agreement related thereto) for a Leased Property, in each case together with all interests in and to all Improvements and fixtures located thereon or attached thereto, and other appurtenances thereto, and rights in respect thereof;

- (f) all FF&E;
- (g) all Intellectual Property;
- (h) all Assigned Contracts;
- (i) all Documents;
- (j) all Permits

(k) except to the extent that such insurance policy is an Excluded Asset under Section 2.2(i) below and to the extent assignable, all rights under or arising out of all insurance policies relating to the Business or any of the Acquired Assets (including, without limitation, returns and refunds of any premiums paid, or other amounts due back to Seller, with respect to cancelled policies), unless non-assignable as a matter of Law;

- (l) all industrial and motor vehicles owned by Seller;

(m) all rights under non-disclosure or confidentiality, non-compete, or non-solicitation agreements with employees and agents of Seller or with third parties (including, without limitation, any non-disclosure or confidentiality, non-compete, or non-solicitation agreements entered into in connection with the Auction);

(n) any rights, claims or Causes of Action, including all Causes of Action arising under chapter 5 of the Bankruptcy Code, against any Person;

(o) all rights under or pursuant to all warranties, representations and guarantees made by suppliers, manufacturers, contractors and any other Person to the

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extent relating to products sold, or services provided, to Seller or to the extent affecting any Acquired Assets, other than any warranties, representations and guarantees pertaining to any Excluded Assets;

- (p) all sales and promotional materials, catalogues and advertising literature;
- (q) all bank accounts, checkbooks and cancelled checks of Seller;
- (r) all Data and Documents;
- (s) all (or the benefit of all to the extent not assignable) Tax refunds, rebates, credits and similar items of Seller, in each case relating to any period, or portion of any period, on or prior to the Closing Date or any Tax Return;
- (t) all telephone numbers, fax numbers, e-mail addresses, websites, URLs and internet domain names;
- (u) the assets, if any, listed on **Schedule 2.1(u)** (regardless of whether such assets are covered by any of the foregoing);
- (v) to the extent applicable, all assets (including insurance and administrative service contracts) maintained pursuant to or in connection with the Assumed Benefit Plans;
- (w) all goodwill of the Business;
- (x) all equity interests of Syncardia GmbH; and
- (y) other assets related to, associated with or used in the conduct of the Business and/or the Acquired Assets, excepting therefrom only the Excluded Assets.

2.2 **Excluded Assets.** Notwithstanding anything to the contrary in this Agreement, nothing herein shall be deemed to sell, transfer, assign or convey any of the Excluded Assets to Purchaser; Purchaser hereby disclaims all liability or responsibility with respect to any of the Excluded Assets; and Seller shall retain all right, title and interest to, in and under, and all obligations with respect to the Excluded Assets. For all purposes of and under this Agreement, and as the same may be amended pursuant to Section 2.6, the term “**Excluded Assets**” shall consist of the following items and assets:

- (a) any asset of Seller that would constitute an Acquired Asset but for the fact that it is conveyed, leased or otherwise disposed of, in the Ordinary Course of Business prior to the Closing Date not in violation of this Agreement or (ii) it is leased by Seller to Purchaser pursuant to Section 9.2(n);
- (b) the corporate books and records of the Seller and corporate proceedings, Tax records, work papers and other records that Seller are required by Law to retain; provided, however, copies of the foregoing items shall be provided by Seller to Purchaser;

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- (c) the rights of Seller under this Agreement and all cash and non-cash consideration payable or deliverable to Seller under this Agreement;
- (d) except to the extent expressly assumed by Purchaser, all rights and interests in connection with, and assets of, any Employee Benefit Plan;
- (e) all shares of capital stock or other equity interests in Seller other than SynCardia GmbH or any securities convertible into, exchangeable or exercisable for shares of capital stock or other equity interests in Seller;
- (f) the assets, if any, listed on **Schedule 2.2(f)**;
- (g) all rights under or arising out of insurance policies not relating to the Business or the Acquired Assets;
- (h) all Tax attributes of Seller;
- (i) all Rejected Contracts and all Additional Rejected Contracts; and
- (j) Permits that are not transferable.

2.3 **Assumption of Liabilities.** Upon the terms and subject to the conditions of this Agreement, Purchaser shall, effective at the time of the Closing, assume and agree to discharge and perform when due, the liabilities and obligations of Seller (and only those liabilities and obligations of Seller) which are enumerated in this Section 2.3 (the “**Assumed Liabilities**”):

- (a) all of Seller’s liabilities and obligations under the Assigned Contracts arising after Closing;
- (b) current liabilities consisting solely of accounts payable to vendors (i) solely in respect of goods received by Seller within twenty (20) days prior to the Petition Date (as defined herein) that were sold to Seller in the ordinary course of business during such twenty (20) days, but only to the extent that such payables are allowed administrative claims in the Bankruptcy Case pursuant to Bankruptcy Code section 503(b)(9) and (ii) that were incurred in the Ordinary Course of Business from and after the Petition Date through the Closing solely in connection with goods purchased by, and services provided to, Seller during such period (it being understood and agreed that no liabilities that expressly constitute Excluded Liabilities or are included within the Cure Amounts shall be assumed by Purchaser pursuant to clauses (i) or (ii) of this Section 2.3(b)), provided, however, that any such amounts pursuant to clauses (i) or (ii) of this Section 2.3(b) shall not exceed \$300,000.00;
- (c) ordinary accruals for wages, commissions, vacation days, sick days and expense reimbursements of the Transferred Employees (as defined herein) that accrued in the Ordinary Course of Business solely for the period from and after the Petition Date through the Closing to the extent not paid prior to Closing (but expressly excluding all liabilities and obligations (i) relating to worker’s compensation claims which remain unpaid as of the Closing Date (whether reported or not), (ii) relating to the exempt or non-exempt status of any Transferred Employee, (iii) relating to litigation, including

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without limitation any claims for wrongful termination, any claims under Title VII of the Civil Rights Act of 1964, as amended, or similar state Law, and any whistleblower claims and/or (iv) retained by Seller in accordance with Section 2.4 or Section 6.4);

(d) any post-petition ordinary course payables to the extent not paid prior to Closing, but excluding any post-petition obligations incurred outside of the ordinary course, including but not limited to any fees or expenses incurred in connection the Seller's chapter 11 case, and

(e) those specific liabilities and obligations of Seller (if any) identified on **Schedule 2.3(b)**.

2.4 **Excluded Liabilities.** All claims against Seller, and all liabilities and obligations of Seller (in each case of any nature whatsoever, whether direct or indirect, matured or unmatured, known or unknown, absolute, accrued, contingent or otherwise, whether now existing or hereafter arising) which are (x) enumerated below in this Section 2.4 or (y) not specifically assumed by Purchaser pursuant to Section 2.3 are collectively referred to herein as the "**Excluded Liabilities.**" Purchaser shall not assume, be deemed to have assumed, or otherwise be responsible or liable for, any of the Excluded Liabilities. Excluded Liabilities include, but shall not be limited to:

(a) any and all liabilities and obligations for Taxes arising from or with respect to the Acquired Assets or the Business to the extent attributed to the operation of the Business on or before the Closing Date or the transactions contemplated by this Agreement;

(b) any and all liabilities for indebtedness of Seller with respect to borrowed money (other than (x) obligations with respect to capitalized leases that are Assigned Contracts and (y) any of the Obligations assumed pursuant to Section 3.1(b) below;

(c) any and all liabilities and obligations arising under any Environmental Law or any other Law (including as a result of any action or inaction of Seller or of any third party) relating to the storage, use or operation of the Acquired Assets;

(d) any and all liabilities and obligations for any violation of any Law;

(e) any and all liabilities and obligations for: (i) costs and expenses incurred by Seller or owed in connection with the administration of the Bankruptcy Case (including, without limitation, the U.S. Trustee fees, the fees and expenses of attorneys, accountants, financial advisors, consultants and other professionals retained by Seller, and the official creditors' committee, the fees and expenses of the post-petition lenders and pre-petition lenders incurred or owed in connection with the administration of the Bankruptcy Case); and (ii) all costs and expenses of Seller incurred in connection with the negotiation, execution and consummation of the transactions contemplated under this Agreement;

(f) any and all liabilities and obligations of Seller to the extent that its existence or magnitude constitutes or results in a breach of a representation, warranty or covenant made by Seller to Purchaser under this Agreement, or makes the information contained in the any Schedule incorrect or incomplete;

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(g) any liabilities of Seller under those Contracts and Permits which constitute Excluded Assets or which are not assigned to Purchaser pursuant to the provisions of this Agreement;

(h) any and all liabilities and obligations (i) that are the subject of any dispute, litigation, arbitration, judgment, order, decree or other proceeding as of the Closing Date, (ii) with respect to periods prior to the Closing Date and are or could be asserted as a claim in litigation or arbitration after the Closing Date, (iii) relating to any bodily injury, or damage to property, incurred by any Person or (iv) arising as a result of actions or omissions with respect to services provided to customers prior to the Closing;

(i) any liabilities or obligations which Purchaser may or could become liable for as a result of or in connection with any “defacto merger” or “successor-in-interest” theories of liability;

(j) those specific liabilities and obligations of Seller identified on **Schedule 2.4(j)** attached hereto;

(k) all liabilities or obligations arising under any Employee Benefit Plan that is not an Assumed Benefit Plan;

(l) any liability or obligation of Seller to its respective equity holders or affiliates;

(m) any costs and expenses that may be recovered from the Acquired Assets on account of the operation of Bankruptcy Code section 506(c);

(n) any liabilities arising out of any representation, warranties, actions or failure to act by Seller in connection with any Assigned Contract, including any claims by any person or entity other than the counter-party to such Assigned Contract; and

(o) without limitation by the specific enumeration of the foregoing, any and all liabilities and obligations of Seller or arising out of or related to the Acquired Assets or the Business that are not expressly assumed by Purchaser pursuant to the provisions of Section 2.3.

2.5 **Assignment and Assumption of Contracts; Assumed Benefit Plans.**

(a) **Assignment and Assumption at Closing.**

(i) No later than five (5) days following the Petition Date, Seller shall provide to Purchaser a schedule setting forth (x) each Contract to which any Seller is a party or by which any Seller is bound and that is used in or related to the Business or any of the Acquired Assets, (y) all Cure Amounts (if any) for each such Contract and (z) a detailed description of each such Contract (such schedule is referred to herein as the “**Contracts Schedule**”).

(ii) No later than one (1) day prior to the date on which the Auction occurs, Purchaser shall, by delivering written notice to Seller, designate each Contract on the Contracts Schedule as “Assumed,” “Rejected” or “Held.” Each

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Contract so designated as “Assumed” is referred to herein as an “**Assumed Contract**”; each Contract so designated as “Rejected” is referred to herein as a “**Rejected Contract**”; and each Contract designated as “Held” is referred to herein as a “**Held Contract**.” Notwithstanding the foregoing, Purchaser shall have the right (in its sole and absolute discretion) to change any such designation and to notify Seller in writing of any such change until Closing in which case such Contract shall become an Assumed Contract, a Rejected Contract or a Held Contract as indicated by such changed designation.

(iii) Seller shall provide timely and proper written notice of the procedures for the assumption and assignment of Contracts to parties to all Contracts and take all other actions necessary to cause all Assumed Contracts to be assumed by Seller and assigned to Purchaser, and all Rejected Contracts to be rejected by Seller, pursuant to Bankruptcy Code section 365, provided that (x) the only Contracts to be actually assumed and assigned to Purchaser at Closing will be the Assumed Contracts and (y) the only Contracts to be actually assumed and assigned to Purchaser after Closing will be the Additional Assumed Contracts. Purchaser shall, at or prior to Closing, comply with all requirements under Bankruptcy Code section 365 necessary to assign to Purchaser the Assumed Contracts.

(iv) At Closing, (x) Seller shall, pursuant to the Bankruptcy Sale Order and the Assignment and Assumption Agreement(s) and other transfer and assignment documents requested by Purchaser, assume and assign to Purchaser (the consideration for which is included in the Purchase Price) each of the Assumed Contracts and (y) Purchaser shall pay promptly all Cure Amounts (if any) in connection with such assumption and assignment (as agreed to among Purchaser and Seller or as determined by the Bankruptcy Court) and assume and agree to perform and discharge the Assumed Liabilities (if any) under the Assumed Contracts, pursuant to the Assignment and Assumption Agreement(s).

(b) Assignment and Assumption During the Designation Period.

(i) During the 75 day period following the Closing Date with respect to all Held Contracts, or such later date as may agreed to by the Seller and Purchaser (the “**Designation Period**”), Purchaser may from time to time, by delivering one or more written notices to Seller (each such written notice is referred to herein as an “**Additional Designation Notice**”), designate, in its sole and absolute discretion, any Held Contract as either “Assumed” or “Rejected.” Each such Held Contract so designated as “Assumed” during the Designation Period is referred to herein as an “**Additional Assumed Contract**”; and each Held Contract so designated as “Rejected” is referred to herein as an “**Additional Rejected Contract**.”

(ii) No later than the third (3rd) Business Day following the receipt by Seller of each Additional Designation Notice, Seller shall file (such date of a filing of an Additional Designation Notice, an “**Additional Designation Date**”) with the Bankruptcy Court, on notice, and with an opportunity to object, to all non-Seller parties to Contracts designated as Additional Assumed Contracts and

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Additional Rejected Contracts (as applicable) in such Additional Designation Notice, a notice (an “**Additional Cure Notice**”) providing that such Additional Assumed Contract and Additional Rejected Contract (as applicable) has been designated by Purchaser as “Assumed” or “Rejected” (as applicable) and establishing any additional Cure Amount due for an applicable Additional Assumed Contract for the period between Closing and the filing of such Additional Cure Notice.

(iii) Upon approval by the Bankruptcy Court of the assumption and assignment of such Additional Assumed Contract, (x) Seller shall assume and assign to Purchaser (the consideration for which is included in the Purchase Price) the applicable Additional Assumed Contracts and (y) Purchaser shall pay all Cure Amounts (if any) in connection with such assumption and assignment (as agreed to among Purchaser and Seller or as determined by the Bankruptcy Court) and assume and agree to perform and discharge the Assumed Liabilities (if any) under the applicable Additional Assumed Contracts, pursuant to the applicable Assignment and Assumption Agreement.

(iv) Each Additional Rejected Contract shall be deemed, for all purposes of this Agreement, rejected as of the applicable Additional Designation Date. Each Additional Assumed Contract shall be deemed, for all purposes of this Agreement, as assigned and assumed as of the applicable Additional Designation Date.

(c) Previously Omitted Contracts.

(i) In the event that it is discovered that a Contract should have been listed on the Contracts Schedule but was not listed on the Contracts Schedule (any such Contract, a “**Previously Omitted Contract**”), Seller shall, immediately following the discovery thereof (but in no event later than two (2) Business Days following the discovery thereof), (x) notify Purchaser of such Previously Omitted Contract and all Cure Amounts (if any) for such Previously Omitted Contract, and (y) file a motion with the Bankruptcy Court on notice to the counterparties to such Previously Omitted Contract seeking entry of an order (the “**Omitted Contract Order**”) fixing the Cure Amounts and approving the assumption and assignment of such Previously Omitted Contract in accordance with this Section 2.5 (provided that no Previously Omitted Contract shall be assumed and assigned unless such Previously Omitted Contract is designated by Purchaser as “Assumed” in accordance with Section 2.5(b) and Section 2.5(c)(ii)).

(ii) Within fifteen (15) Business Days following the filing of the Omitted Contract Order, Purchaser shall deliver written notice to Seller (such written notice shall be an “Additional Designation Notice”) to Seller, designating such Previously Omitted Contract set forth in such Omitted Contract Order as “Assumed,” “Rejected” or “Held.” For purposes of the application of this Section 2.5, each Previously Omitted Contract so designated as “Assumed” shall be an Additional Assumed Contract, each Previously Omitted Contract so designated as “Rejected” shall be an Additional Rejected Contract; and each Previously Omitted Contract so designated as “Held” shall be a Held Contract for purposes of this

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Section 2.5. Each Previously Omitted Contract shall then be treated in accordance with the provisions of this Section 2.5 with respect to Additional Assumed Contracts, Additional Rejected Contracts and Held Contracts.

(d) Held Contracts, Assumed Contracts and Additional Assumed Contracts.

(i) Subject to Purchaser's obligations under Section 2.5(f) below, during the Designation Period, (x) each Held Contract shall be held by Seller, (y) no Seller shall reject or seek to reject (pursuant to Section 365 of the Bankruptcy Code or otherwise) any Held Contract and (z) no Seller shall terminate, amend, supplement or modify, or waive any rights under, any Held Contract or take any affirmative action not required by the terms thereof by any Seller, without the prior written consent of Purchaser. Following the end of the Designation Period, Seller shall promptly cause all Held Contracts not designated as either "Assumed" or "Rejected" by Purchaser during the Designation Period to be rejected pursuant to Bankruptcy Code section 365.

(ii) On each date that each Assumed Contract or Additional Assumed Contract (as applicable) is assumed and assigned to Purchaser pursuant to this Section 2.5 (including, without limitation, the approval of the assumption and assignment thereof by the Bankruptcy Court), such Assumed Contract or Additional Assumed Contract (as applicable) shall constitute an "**Assigned Contract**" and shall be an Assigned Contract for all purposes under this Agreement, provided that no Assumed Contract or Additional Assumed Contract shall be assigned or transferred pursuant to this Agreement unless the Bankruptcy Court has previously approved the assumption and assignment thereof to Purchaser.

(e) Non-Assignment of Contracts and Permits. Notwithstanding anything contained in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign or transfer any Contract or any Permit, if, notwithstanding the provisions of Sections 363 and 365 of the Bankruptcy Code, an attempt at assignment or transfer thereof, without the consent or approval required or necessary for such assignment or transfer, would constitute a breach thereof or in any way adversely affect any of the rights of Purchaser (unless the restrictions on assignment or transfer thereunder would be rendered ineffective pursuant to Sections 9-406 through 9-409, inclusive, of the Uniform Commercial Code, as amended), as the assignee or transferee of such Contract or Permit (as the case may be) thereunder. If, notwithstanding the provisions of Sections 363 and 365 of the Bankruptcy Code and the efforts of Seller in accordance with the covenant set forth in Section 6.1(c)(xiii), such consent or approval (not including any approval under the HSR Act, if applicable) is required but not obtained with respect to an Assumed Contract or an Additional Assumed Contract (as applicable) or a Permit, neither Seller nor Purchaser shall be in breach of this Agreement nor shall the Purchase Price be adjusted nor (but subject to Purchaser's termination right set forth in Section 11.1(c)(x)) shall the Closing be delayed in respect of the Assumed Contracts or the Permits; provided, however, if the Closing occurs, then from and after the Closing Seller shall cooperate, without further consideration, with Purchaser in any reasonable arrangement Purchaser may request to provide Purchaser with all of the benefits of, or under, the applicable Assumed Contract or Additional Assumed Contract (as applicable) or

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applicable Permit, including enforcement for the benefit of Purchaser of any and all rights of Seller against any Person party to the applicable Assumed Contract or Additional Assumed Contract (as applicable) or applicable Permit arising out of the breach or cancellation thereof by such Person; provided, however, to the extent that any such arrangement has been made to provide Purchaser with all of the benefits of, or under, the applicable Assumed Contract or Additional Assumed Contract or applicable Permit, from and after Closing, Purchaser shall be responsible for all payment and other obligations under, and for all costs of enforcing rights under, such Assumed Contract or Additional Assumed Contract (as applicable) or Permit to the same extent as if such Assumed Contract or Additional Assumed Contract (as applicable) or Permit had been assigned or transferred at Closing with respect to Assumed Contracts and Permits and at such applicable later date specified in this Section 2.5 with respect to Additional Assumed Contracts. Any assignment to Purchaser of any Assumed Contract, or Additional Assumed Contract (as applicable) or Permit that shall, notwithstanding the provisions of Sections 363 and 365 of the Bankruptcy Code, require the consent or approval of any Person for such assignment as aforesaid shall be made subject to such consent or approval being obtained. From and after the date hereof, including through and after the Closing, Seller shall use commercially reasonable efforts to obtain all consents or approvals that are required with respect to Assumed Contracts, Permits and Additional Assumed Contracts, notwithstanding the provisions of Sections 363 and 365 of the Bankruptcy Code, for Seller to assume and assign to Purchaser such Contracts and Permits. For the avoidance of doubt, nothing in this Section 2.5(e) shall be deemed to (x) limit the liability, if any, of any Seller pursuant to this Agreement for failing to have obtained any required consent or approval or (y) alter or limit any rights of Purchaser under Section 11.1(c)(x) of this Agreement.

(f) Held Contracts. Following the Closing Date and through the date that such Held Contract becomes an Assigned Contract or an Additional Rejected Contract, with respect to the Held Contracts, Purchaser shall pay any and shall be solely responsible for, all actual and direct costs incurred by Seller associated with each Held Contract, including the direct and reasonable out-of-pocket legal costs, incurred by Seller in connection with the filings and hearings which are required for Held Contracts to become Assigned Contracts or Rejected Additional Contracts. Purchaser shall be obligated to satisfy any Cure Amounts with respect to each Held Contract that becomes an Assumed Contract. Notwithstanding the foregoing, Purchaser shall not be responsible for any liabilities or obligations relating to or arising out of such Held Contracts as a result of (A) any breach by Seller of such Contracts (provided that such breach is not caused by the breach of Purchaser of its obligations under this Section 2.5(f), (B) any violation of Law, breach of warranty, tort or infringement, in each case by Seller (provided that such violation is not caused by any act or omission of Purchaser after the Closing), (C) any charge, complaint, action, suit, proceeding, hearing, investigation, claim or demand against Seller prior to the Closing (provided that such matters do not arise out of the act or omission of the Purchaser after the Closing; or (D) any other obligation or liability which is enumerated herein as an Excluded Liability. In addition, Purchaser shall perform, or shall cause to be performed, any and all obligations of Seller under each such Held Contract relating to the period from and after the Closing until such each such Held Contract has been, in accordance with this Section 2.5, (i) assumed and assigned to Purchaser or (ii) designated as an Additional Rejected Contract. From and after the Closing, Seller shall cooperate, without further consideration, with Purchaser in

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any reasonable arrangement Purchaser may request to provide Purchaser with all of the benefits of, or under, the applicable Held Contracts, including enforcement for the benefit of Purchaser of any and all rights of Seller against any Person party to the applicable Held Contract arising out of the breach or cancellation thereof by such Person.

2.6 **Right to Change Designations.**

(a) Notwithstanding anything contained in this Agreement to the contrary, Purchaser reserves the right, and shall have the right, to designate in one or more written notices delivered to Seller (i) at any time prior to the Closing Date, any Acquired Asset as an Excluded Asset and (ii) at any time prior to the commencement of the Auction, any Excluded Asset as an Acquired Asset (it being understood and agreed that such written notices will be deemed to have automatically updated and revised Schedule 2.1(u) and Schedule 2.2(f) (in each case as applicable) for all purposes under this Agreement.

(b) On or before the Closing, Purchaser may, from time to time, update **Schedule 6.4** by adding or removing a particular Employee Benefit Plan from **Schedule 6.4**. At the Purchaser's sole and absolute discretion, any Employee Benefit Plan added to **Schedule 6.4** shall become an Assumed Benefit Plan, such that the sponsorship of, and all liabilities and obligations arising under, such Assumed Benefit Plan (other than any liabilities arising from any breach of any representation, warranty, or covenant hereunder) shall be Assumed Liabilities for all purposes of this Agreement subject to the provisions of Section 2.3 and all assets related thereto shall become Acquired Assets. Any Employee Benefit Plan removed from **Schedule 6.4** shall become an Excluded Liability for purposes of this Agreement, all liabilities and obligations at any time arising under or in connection with such Employee Benefit Plan shall be Excluded Liabilities for all purposes of this Agreement and all assets related thereto shall be Excluded Assets.

ARTICLE 3
CONSIDERATION

3.1 **Purchase Price.**

(a) In consideration of the sale of the Business and the Acquired Assets to Purchaser, and in reliance upon the representations, warranties, covenants and agreements of Seller set forth herein, and upon the terms and subject to the conditions set forth herein, the purchase price (the "**Purchase Price**") for the Business and the Acquired Assets shall be:

(i) At the Closing, (A) one hundred percent (100%) shall be payable, in Purchaser's sole and absolute discretion, in whole or in part, on a dollar-for-dollar basis, (x) by offset to the DIP Facility Obligations evidenced by Purchaser delivering to Seller releases and waivers, fully executed, from the applicable lenders (in each of their respective sole and absolute discretion) under the DIP Credit Agreement with respect to all of a part of Seller's obligations thereunder and/or (y) with the written consent of the applicable lenders under the DIP Credit Agreement (in each of their respective sole and absolute discretion), by Purchaser assuming all or a part of Seller's obligations thereunder on terms reasonably acceptable to Purchaser in its sole and absolute discretion; and (B) \$19 million, in

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Purchaser's sole and absolute discretion, in whole or in part, on a dollar-for-dollar basis, (1) by offset to the obligations outstanding under the Credit Agreement, evidenced by Purchaser delivering to Seller releases and waivers, fully executed, from the applicable lenders (in each of their respective sole and absolute discretion) under the Credit Agreement with respect to all of a part of Seller's obligations thereunder and/or (y) with the written consent of the applicable lenders under the Credit Agreement (in each of their respective sole and absolute discretion), by Purchaser assuming all or a part of Seller's obligations thereunder on terms reasonably acceptable to Purchaser in its sole and absolute discretion) , plus

(ii) \$150,000, plus

(iii) assumption of the Assumed Liabilities.

3.2 Allocation of Purchase Price.

(a) Within the earlier of (i) 120 days after the Closing Date and (ii) 20 days prior to the extended due date of the Tax Returns to which IRS Form 8594 must be attached, Purchaser shall deliver to Seller a statement (the "**Allocation Statement**") allocating, for tax purposes, the consideration paid by Purchaser for the Acquired Assets among the Acquired Assets in accordance with Section 1060 of the Code and the Treasury Regulations promulgated thereunder.

(b) The parties to this Agreement hereby agree to (i) be bound by the Allocation Statement (other than if Seller reasonably disagrees with the Allocation Statement, then the parties will work in good faith to resolve such disagreement), (ii) act in accordance with the Allocation Statement in connection with the preparation, filing and audit of any Tax Return (including, without limitation, in the filing of IRS Form 8594 and any other corresponding Tax forms), and (iii) take no position inconsistent with the Allocation Statement for any Tax purpose (including, without limitation, in any audit, judicial or administrative proceeding).

ARTICLE 4 **REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller hereby represents and warrants to Purchaser:

4.1 Organization. Seller is duly organized, validly existing and in good standing under the Laws of its state of formation and has all necessary power and authority to own, lease and operate its properties and to conduct its business in the manner in which its business is currently being conducted. Except as a result of the commencement of the Bankruptcy Case, Seller is qualified to do business and is in good standing in all jurisdictions where it owns or leases real property in connection with the operation of the Business or otherwise conducts the Business, except where the failure to so qualify or to so be in good standing has not had and would not reasonably be expected to have a Material Adverse Effect. SynCardia GmbH is duly organized, validly existing and in good standing under the Laws of the country of its formation and has all necessary power and authority to own, lease and operate its properties and to conduct its business in the manner in which its business is currently being conducted. SynCardia GmbH is qualified to do business and is in good standing in all jurisdictions where it owns or leases real

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property in connection with the operation of the Business or otherwise conducts the Business, except where the failure to so qualify or to so be in good standing has not had and would not reasonably be expected to have a Material Adverse Effect. SynCardia GmbH is directly or indirectly wholly-owned by SynCardia. Except with respect to SynCardia's interest in SynCardia GmbH, Seller does not (i) hold any equity or other interests in any Person or (ii) have any Affiliates.

4.2 Authorization of Agreement. Subject to entry of the Bankruptcy Sale Order and authorization as is required by the Bankruptcy Court:

(a) Seller has, or at the time of execution will have, all necessary corporate or limited liability company (as the case may be) power and authority to execute and deliver this Agreement and each Ancillary Agreement to which such Seller is or will become a party and to perform its obligations hereunder and thereunder;

(b) the execution and delivery of this Agreement and each Ancillary Agreement to which Seller is or will become a party and the performance of Seller's obligations hereunder and thereunder (including, without limitation, the consummation of the transactions contemplated by this Agreement) have been, or at the time of execution will be, duly authorized by all necessary corporate or limited liability company (as the case may be) action on the part of Seller and no other corporate or limited liability company (as the case may be) proceedings (shareholder, member or otherwise) on the part of Seller are necessary to authorize such execution, delivery and performance; and

(c) this Agreement and each Ancillary Agreement to which Seller is or will become a party have been, or when executed will be, duly and validly executed and delivered by Seller and (assuming the due authorization, execution and delivery by the other parties hereto and thereto) this Agreement and each Ancillary Agreement to which Seller is or will become a party constitutes, or will constitute, when executed and delivered, the valid and binding obligations of Seller enforceable against Seller in accordance with their respective terms, subject to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

4.3 Conflicts; Consents of Third Parties.

(a) Except as set forth on Schedule 4.3(a), the execution, delivery and performance by Seller of this Agreement and each Ancillary Agreement to which Seller is or will become a party, the consummation of the transactions contemplated hereby and thereby, or compliance by Seller with any of the provisions hereof and thereof do not, or will not, result in the creation of any Lien upon the Acquired Assets and do not, or will not, conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination or cancellation under any provisions of:

(i) Seller's certificates of formation, certificates of incorporation and by-laws, limited liability company agreements or comparable organizational documents of Seller;

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(ii) subject to entry of the Bankruptcy Sale Order, any Contract or Permit to which Seller is a party or by which any of the Acquired Assets are bound;

(iii) subject to entry of the Bankruptcy Sale Order, any order, writ, injunction, judgment or decree of any Governmental Authority applicable to Seller or any of the properties or assets of Seller as of the date hereof; or

(iv) subject to entry of the Bankruptcy Sale Order, any applicable Law.

(b) Subject to entry of the Bankruptcy Sale Order, except as set forth on **Schedule 4.3(b)** and such consents, waivers, approvals, orders, Permits or authorizations would not unreasonably be expected to have a Material Adverse Effect, no consent, waiver, approval, order, Permit or authorization of, or declaration, filing or registration with, or notification to, any Person or Governmental Authority is required on the part of Seller in connection with the execution, delivery and performance of this Agreement or any Ancillary Agreement to which it is or will become a party, the compliance by Seller with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby, or the assignment or conveyance of the Acquired Assets or the assumption of the Assumed Liabilities.

4.4 **Title to Acquired Assets.** Seller has good, valid, marketable and undivided title to the Acquired Assets free and clear of all Liens, Claims, Interests and Encumbrances, other than any exceptions expressly set forth on **Schedule 4.4** hereto (the “**Permitted Exceptions**”) and Permitted Liens, and Purchaser will be vested, to the maximum extent permitted by Bankruptcy Code sections 363 and 365, with good, valid, marketable and undivided title to the Acquired Assets free and clear of all Liens, Claims, Interests and Encumbrances, other than Permitted Exceptions and Permitted Liens.

4.5 **Contracts.** **Schedule 4.5** set forth a complete list, as of the date hereof, of all Contracts to which Seller is a party or by which it is bound and that are used in or related to the Business or the Acquired Assets. Purchaser has received true and complete copies of such Contracts and any and all amendments, modifications, supplements, exhibits and restatements thereto and thereof in effect as of the date of this Agreement.

4.6 **Property.** Seller does not own any real property. Except as described on **Schedule 4.6**, neither the Seller nor the Business lease, sublease, license or otherwise occupy any real property. Purchaser has received true and complete copies of the leases, ground leases, subleases and licenses and any and all amendments, modifications, supplements, exhibits and restatements thereto and thereof in effect as of the date of this Agreement relating to the Leased Property. Purchaser has received true and complete copies of all default notices and any other correspondence of a material nature to or from any party to any lease, ground lease, sublease or license relating to the Leased Property.

4.7 **Intellectual Property.** Except as set forth on **Schedule 4.7(i)**, (i) with respect to any Intellectual Property owned by Seller (as opposed to Intellectual Property of which Seller is a licensee), Seller has all right, title and interest to all such Intellectual Property, without any conflict known to Seller with the rights of others, (ii) no Person other than Seller has the right to use the Intellectual Property owned by Seller and (iii) Seller has the valid right to use, pursuant

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to a license, sublicense or other agreement, any Intellectual Property used in Seller's Business that is owned by a party other than Seller. **Schedule 4.7(ii)** sets forth a complete list, as of the date hereof, of all registered and applied for Intellectual Property owned by Seller (whether registered with the United States Patent and Trademark Office, the United States Copyright Office or otherwise).

4.8 **Permits.** **Schedule 4.8(i)** sets forth a complete list, as of the date hereof, of all Permits issued to Seller for the operation of the Business. **Schedule 4.8(ii)** sets forth a complete list, as of the date hereof, of all Permits applied for by Seller or the issuance of which to Seller is pending. Seller represents and warrants that such approvals are in full force and effect and have not been limited, revoked or modified in any manner and will continue in full force and effect immediately following the Closing. **Schedule 4.8(iii)** sets forth a complete list, as of the date hereof, of all Permits required for the operation of the Business which have not been issued to Seller or applied for by Seller or the issuance of which to Seller is not pending.

4.9 **Employee Benefit Plans; Employees.** **Schedule 4.9(i)** sets forth a list of each Employee Benefit Plan. Neither Seller nor any ERISA Affiliate has maintained, sponsored, or contributed to an Employee Benefit Plan that is subject to Title IV of ERISA within the last six years or, in any way, directly or indirectly, has any liability with respect to such a plan. All Employee Benefit Plans are being administered in compliance, in all material respects, with, where applicable, ERISA and the Code, and the regulations promulgated thereunder. Each Employee Benefit Plan that is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter upon which Seller may rely, or has pending or has time remaining in which to file an application for such determination from the United States Internal Revenue Service. **Schedule 4.9(ii)** sets forth a true, correct and complete list of the names, positions, work locations, hire dates, total compensation (listing separately applicable salaries and hourly rates) and eligibility and elections with respect to Employee Benefit Plans of all Employees, consultants and independent contractors engaged by Seller, and indicates which of such individuals are on disability leave or any other type of leave of absence, authorized or otherwise.

4.10 **Labor Relations.** Except as set forth on **Schedule 4.10**, no Seller is a party to or bound by or has an obligation to perform (including make payments) under any collective bargaining agreement or any Contract with a labor union or labor organization. Seller has not received written notice of any outstanding representation petitions involving Seller before the National Labor Relations Board or any state labor board, and, to the knowledge of Seller, no such petition has been threatened, and, to the knowledge of Seller, no labor dispute, strike, picketing, work slowdown, work stoppage or handbilling has been threatened in writing. Seller is not subject to any material unfair-labor-practice charge.

4.11 **Environmental Matters.** The Acquired Assets are in material compliance with all applicable Laws, regulations, or other legal requirements ("**Environmental Laws**") relating to the protection of the environment, pollution or human health and safety. At all times, Seller has conducted the Business and its respective operations in accordance with all Environmental Laws applicable to Seller and the Business. Seller has not received written notice of any investigation, suit, claim, action, or proceeding relating to or arising under Environmental Laws with respect to the Acquired Assets or the Business, nor, to the knowledge of Seller, are any of the same being threatened in writing against Seller or any real property owned, operated, or leased by Seller. Seller has not received any written notice of, or entered into, any obligation,

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order, settlement, judgment, injunction, or decree involving outstanding requirements relating to or arising under Environmental Laws. To the knowledge of Seller, there has been no release of any Hazardous Material into the environment at, onto, or from any property owned or leased by Seller which would reasonably be expected to result in material liability, costs or Claims relating to any Environmental Law. This Section 4.11 constitutes the sole and exclusive representation and warranty of Seller regarding environmental and human health and safety matters and liabilities and obligations and compliance with Laws relating thereto.

4.12 **Insurance.** Seller maintains the insurance policies set forth on **Schedule 4.12(i)**, which Schedule sets forth all insurance policies covering the property, assets, employees and operations of the Business (including policies providing property, casualty, liability and workers' compensation coverage). Such policies are in full force and effect and, except as set forth on **Schedule 4.12(ii)**, will continue in full force and effect immediately following the Closing. Seller has paid all premiums on such policies due and payable prior to the Execution Date. Seller has not done anything by way of action or inaction that invalidates any such policies in whole or in part.

4.13 **No Brokers or Finders.** Except as set forth on **Schedule 4.13**, no agent, broker, finder or investment or commercial banker, or other Person or firm engaged by, or acting on behalf of, Seller in connection with the negotiation, execution or performance of this Agreement or the transactions contemplated by this Agreement is or will be entitled to any brokerage or finder's or similar fees or other commissions as a result of this Agreement or such transactions.

4.14 **Litigation; Proceedings.** Except as set forth in **Schedule 4.14**, there is no material claim, action, suit, proceeding, complaint, charge, hearing, grievance or arbitration pending or, to knowledge of Seller, threatened against or related to the Business, whether at law or in equity, whether civil or criminal in nature or by or before any arbitrator or Governmental Authority, nor are there any investigations relating to the Business, pending or, to knowledge of Seller, threatened by or before any arbitrator or any Governmental Authority. None of the Acquired Assets is subject to any judgment, injunction, order, consent, or decree of any Governmental Authority or any arbitration award or settlement agreement with any Person.

4.15 **Board Approval and Recommendations.** The board of directors (or similar governing body) of Seller has determined that, based upon its consideration of the available alternatives, and subject to the approval of the Bankruptcy Court and the provisions in this Agreement regarding the solicitation of Alternate Transactions, if necessary, a sale, assignment and assumption of the Acquired Assets and the Assumed Liabilities pursuant to this Agreement under Bankruptcy Code sections 105, 363 and 365 is and are each in the best interests of Seller.

4.16 **Compliance with Laws.** Except as set forth on **Schedule 4.16(i)**, Seller (i) has complied with, is in compliance with and has operated the Business in compliance with all applicable Laws and Permits in all material respects, and (ii) holds all material Permits. Except as set forth on **Schedule 4.16(ii)**, Seller has not received any written notice or other written communication from any Governmental Entity or other Person (x) asserting any violation of, or failure to comply with, any requirement of any Law or Permit or (y) notifying Seller of the non-renewal, revocation or withdrawal of any Permit. Seller is in material compliance with the terms of the Permits.

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4.17 Affiliate Transactions. **Schedule 4.17** sets forth a true and complete list of all transactions and Contracts to which Seller is a party with (i) any officer, director, manager, employee or affiliate of Seller (other than for ordinary course services as employees, officers, directors or managers) and (ii) any corporation, partnership, trust or other Person in which any such officer, director, manager, employee or affiliate has a substantial interest or is an employee, officer, director, trustee or partner.

4.18 Taxes. (A) none of the Acquired Assets is tax-exempt use property within the meaning of Section 168(h) of the Code; (B) except as set forth on **Schedule 4.18**, all material Taxes shown on such Tax Returns have been or will be paid in a timely fashion or have been accrued for on the Seller's financial statements; (C) there are no liens for any Tax on the Acquired Assets, except for Taxes not yet due and payable; and (D) Seller is not a foreign person as defined in Treasury Regulation section 1.445-2(b)(2)(i).

4.19 Financial Statements.

(a) Seller has made available to Purchaser (i) the audited consolidated balance sheet of the Seller and the related consolidated statements of income, stockholders' equity and cash flow for the fiscal year ended December 31, 2014, all certified by Seller's accountants, (ii) the interim unaudited consolidated balance sheet of the Seller as of June 30, 2015 and the related consolidated statements of income, stockholders' equity and cash flow for the six months then ended, all reviewed by Seller's accountants, (iii) the unaudited consolidated balance sheet of the Seller and the related consolidated statements of income, stockholders' equity and cash flow for the fiscal year ended December 31, 2015, and (iv) the interim unaudited consolidated balance sheet of the Seller as of April 30, 2016, and the related interim unaudited consolidated statements of income for the four months then ended. The Financial Statements have been prepared from the books and records of Seller, have been prepared in accordance with GAAP (except as may be stated in the notes thereto) and fairly present the financial position and the results of operations and cash flows of Seller as of the times and for the periods referred to therein.

(b) **Schedule 4.19** contains an aged list of the Accounts Receivable of the Seller as of June 29, 2016. All such Accounts Receivable arose from, and all Accounts Receivables of the Seller existing as of the Closing Date will have arisen from, the delivery of products or services to centers and patients.

4.20 CMS Approvals. The Decision Memo for Artificial Hearts (CAG-00322N) dated May 1, 2008 ("**Decision Memo**") is in full force and effect, will continue in full force and effect immediately following the Closing, and has not been revoked, limited or modified in any manner. Sellers have not taken any action or inaction that invalidates such Decision Memo in whole or in part.

4.21 Warranties Are Exclusive. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, IN RESPECT OF ANY OF THEIR ASSETS (INCLUDING THE ACQUIRED ASSETS), LIABILITIES (INCLUDING THE ASSUMED LIABILITIES) OR OPERATIONS, INCLUDING, WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, OR NON-INFRINGEMENT, AND ANY SUCH OTHER REPRESENTATIONS OR WARRANTIES

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ARE HEREBY EXPRESSLY DISCLAIMED AND NONE SHALL BE IMPLIED AT LAW OR IN EQUITY. PURCHASER HEREBY ACKNOWLEDGES AND AGREES THAT PURCHASER IS PURCHASING THE ACQUIRED ASSETS ON AN “AS IS, WHERE IS” BASIS AFTER GIVING EFFECT TO THE TERMS CONTAINED HEREIN.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to Seller as follows:

5.1 Corporate Organization. Purchaser is an entity duly organized, validly existing and in good standing under the Laws of the State of Delaware and has all requisite power and authority to own its properties and assets and to conduct its businesses as now conducted.

5.2 Authorization and Validity. Purchaser has, or at the time of Purchaser’s execution of such Ancillary Agreement will have, all necessary limited liability company power and authority to execute and deliver this Agreement and any Ancillary Agreement to which Purchaser is or will become a party and to perform its obligations hereunder and thereunder. The execution and delivery of this Agreement and any Ancillary Agreement to which Purchaser is or will become a party and the performance of Purchaser’s obligations hereunder and thereunder (including, without limitation, the consummation of the transactions contemplated by this Agreement) have been, or at the time of execution will be, duly authorized by all necessary action by the board of managers (or similar governing body) of Purchaser, and no other limited liability company proceedings on the part of Purchaser is necessary to authorize such execution, delivery and performance. This Agreement and each Ancillary Agreement to which Purchaser is or will become a party have been, or at the time of execution will be, duly executed by Purchaser and (assuming the due authorization, execution and delivery by the other parties hereto and thereto) this Agreement and each Ancillary Agreement to which Purchaser is or will become a party constitutes, or will constitute, when executed and delivered, Purchaser’s valid and binding obligations, enforceable against Purchaser in accordance with their respective terms, subject to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

5.3 No Conflict or Violation. The execution, delivery and performance by Purchaser of this Agreement and any Ancillary Agreement to which Purchaser is or will become a party do not or will not at the time of execution (a) violate or conflict with any provision of the organizational documents of Purchaser, (b) violate any provision of applicable Law, or any order, writ, injunction, judgment or decree of any court or Governmental Authority applicable to Purchaser or (c) violate or result in a breach of or constitute (with due notice or lapse of time, or both) an event of default or default under any Contract to which Purchaser is a party or by which Purchaser is bound or to which any of Purchaser’s properties or assets are subject, in each case, other than any violation, conflict, breach, event of default or default that would not reasonably be expected to adversely affect Purchaser’s ability to perform its obligations under this Agreement on a timely basis.

5.4 Consents and Approvals. Except with respect to the issuance of the Bankruptcy Sale Order or as otherwise as set forth on **Schedule 5.4**, no consent, waiver, authorization or approval of any Person and no declaration to or filing or registration with any Governmental Authority is required in connection with the execution and delivery by Purchaser of this

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Agreement and each Ancillary Agreement to which Purchaser is or will become a party or the performance by Purchaser of its obligations hereunder or thereunder.

5.5 Financing. Purchaser currently has, and on the Closing Date will have, readily available funds in such amount as is required to consummate the transactions contemplated hereunder on the terms set forth herein and otherwise to perform all of Purchaser's obligations under this Agreement.

5.6 Litigation. There is no action, suit, proceeding or claim that is pending or, to Purchaser's knowledge, threatened in any court or by or before any Governmental Authority that would adversely affect Purchaser's ability to perform its obligations under this Agreement on a timely basis.

5.7 No Other Representations and Warranties. Except for the representations and warranties contained in this ARTICLE 5, neither Purchaser nor any other Person authorized by Purchaser makes any other express or implied representation or warranty on behalf of Purchaser.

ARTICLE 6
COVENANTS AND OTHER AGREEMENTS

6.1 Pre-Closing Covenants of Seller. Seller covenants to Purchaser that, during the period from and including the Execution Date through and including the Closing Date or the earlier termination of this Agreement in accordance with the provisions of ARTICLE 11:

(a) Cooperation. Seller shall, without payment of funds to counterparties, use commercially reasonable efforts to obtain, and assist Purchaser in obtaining, at no cost to Purchaser (other than Cure Amounts payable at or after the Closing), such consents, waivers or approvals of any third party or Governmental Authority required for the consummation of the transactions contemplated hereby, including the sale and assignment of the Acquired Assets. Seller shall take, or cause to be taken, all commercially reasonable actions and do, or cause to be done, all things necessary or proper, consistent with applicable Law, to consummate and make effective as soon as possible the transactions contemplated hereby.

(b) Access to Records and Properties. Seller shall (i) provide Purchaser and its Related Persons reasonable access upon reasonable notice to the facilities, offices and personnel of Seller and to the books and records of Seller, related to the Business or the Acquired Assets or otherwise reasonably requested by Purchaser if reasonably necessary to comply with the terms of this Agreement or the Ancillary Agreements or any applicable Law, including access to perform field examinations and inspections of the Business' or the Acquired Assets' inventories, facilities and equipment; (ii) furnish Purchaser with such financial and operating data and other information with respect to the condition (financial or otherwise), businesses, assets, properties, prospects or operations of Seller as Purchaser shall reasonably request; and (iii) permit Purchaser to make such reasonable inspections and copies thereof as Purchaser may require; provided, however, Purchaser shall use commercially reasonable efforts to prevent any such inspection from unreasonably interfering with the operation of the Business or the duties of any Employee of Seller.

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(c) Conduct of Business Prior to Closing. Except as expressly contemplated by this Agreement or disclosed on **Schedule 6.1(c)**, and except to the extent expressly required under the DIP Credit Agreement, the Bankruptcy Code, other applicable Law or any ruling or order of the Bankruptcy Court and except to the extent waived by Purchaser's prior written consent (which consent may be delivered via electronic mail by any senior officer of Purchaser and may be withheld in Purchaser's sole and absolute discretion), Seller shall ensure that:

(i) Seller shall not, directly or indirectly, take any action which, if taken, or omit to take any act which, if omitted to be taken, would constitute or result in an Event of Default (as defined in the DIP Credit Agreement) under the DIP Credit Agreement or the DIP Orders;

(ii) Seller shall not, directly or indirectly, sell or otherwise transfer or dispose, or offer, agree or commit (in writing or otherwise) to sell or otherwise transfer or dispose of any of the Acquired Assets other than the sale of Inventory in the Ordinary Course of Business or the use of cash collateral in accordance with the DIP Credit Agreement or the DIP Orders;

(iii) Seller shall not, directly or indirectly, permit, offer, agree or commit (in writing or otherwise) to permit, any of the Acquired Assets to become subject, directly or indirectly, to any Lien, Claim, Interest or Encumbrance, except for Permitted Exceptions and Permitted Liens and Liens granted in connection with the DIP Credit Agreement;

(iv) Seller shall not, directly or indirectly, enter into any transaction or take any other action which, if taken, or omit to take any act which, if omitted to be taken, could be reasonably expected to cause, result in or constitute a breach of any representation or warranty (as if then made) or covenant made by Seller in this Agreement;

(v) Seller shall notify Purchaser promptly in writing of the occurrence of any Material Adverse Effect;

(vi) Seller shall not, directly or indirectly, make any promise or representation, oral or written, or otherwise, to (x) increase the annual level of compensation payable or to become payable by Seller to any of its directors, managers, members, officers or Employees, (y) grant, or establish or modify any targets, goals, pools or similar provisions in respect of, any bonus, benefit or other direct or indirect compensation to or for any director, manager, member, officer or Employee, or increase the coverage or benefits available under any (or create any new) Employee Benefit Plan or (z) enter into any employment, deferred compensation, severance, consulting, non-competition, non-solicitation or similar agreement (or amend any such current agreement) to which Seller is a party or involving a director, manager, member, officer or Employee of Seller, except, in each case, as required by Law, or as required by any plans, programs or agreements existing on the Execution Date and disclosed on **Schedule 4.9(i)**;

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(vii) Seller shall comply in all material respects with all Laws applicable to them or having jurisdiction over the Business or any Acquired Asset;

(viii) Seller shall not, directly or indirectly, (x) enter into any Contract that is material to Seller, (y) enter into any Contract if entering into such Contract, when taken together with all other Contracts entered into by Seller, would be material in the aggregate to Seller (taken as a whole) or (z) assume, amend, modify, supplement or terminate, or waive any rights under, any Contract to which Seller is a party or by which it is bound and that is used in or related to the Business or the Acquired Assets (including any Assigned Contract) or take any affirmative action not required by the terms of any such Contract;

(ix) Seller shall not, directly or indirectly, cancel, forgive or compromise any material debt or claim or waive or release any right of Seller that constitutes an Acquired Asset;

(x) Seller shall not, directly or indirectly, enter into any commitment for any capital expenditure, except pursuant to any budget approved by the lenders under the DIP Credit Agreement;

(xi) Seller shall not, directly or indirectly, terminate, amend or modify in any manner any Contract for Leased Property;

(xii) Seller shall use commercially reasonable efforts to (i) conduct the Business in substantially the same manner as conducted as of the date of this Agreement and only in the Ordinary Course of Business, (ii) preserve the existing business organization and management of the Business intact, (iii) keep available the services of the current Employees, to the extent reasonably feasible, (iv) maintain the existing relations with customers, carriers, centers, distributors, suppliers, creditors, business partners, Employees and others having business dealings with the Business, to the extent reasonably feasible, and (v) refrain from changing in any material respect any of its product or service prices or pricing policies (*e.g.*, discount policies) for any of its products or services;

(xiii) Seller shall use commercially reasonable efforts to obtain all consents or approvals prior to the Closing that are required, notwithstanding the provisions of Bankruptcy Code sections 363 and 365, for Seller to assume and assign to Purchaser any Assumed Contract or Permit;

(xiv) Seller shall use commercially reasonable efforts to assist Purchaser in obtaining all Permits required to own or operate the Acquired Assets under applicable Laws, including making filings with the Governmental Authorities and issuing powers of attorneys to Purchaser, as necessary;

(xv) Seller shall not, directly or indirectly, take, or agree, commit or offer (in writing or otherwise) to take or omit to take, any action or actions in violation of the foregoing or which would otherwise adversely affect the consummation of the transactions contemplated hereby;

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(xvi) Seller shall maintain in full force and effect each Permit held by Seller as of the Execution Date or otherwise obtained by Seller prior to the Closing, Seller shall comply with the terms of each such Permit and Seller shall not permit any such Permit to terminate, expire or lapse; and

(xvii) Seller shall maintain in full force and effect without modification any insurance policy with respect to Acquired Assets, Seller shall comply with the terms of such insurance policy and no Seller shall permit any such policy to terminate, expire or lapse.

(d) Required Bankruptcy Deliveries. Seller shall file with the Bankruptcy Court, and deliver to Purchaser, all of the Required Bankruptcy Deliveries on or prior to the fifteenth (15th) day following the Petition Date.

(e) Notice of Certain Events. Seller shall promptly notify Purchaser of, and furnish Purchaser any information it may reasonably request with respect to, (i) the occurrence or nonoccurrence of any event or condition or the existence of any fact that would reasonably be expected or likely to cause either (A) any of the conditions to Purchaser's obligations to consummate the transaction(s) contemplated by this Agreement or by any Ancillary Agreement not to be fulfilled, (B) any material breach or inaccuracy of any representation or warranty of Seller contained in this Agreement, or (C) directly or indirectly, any Material Adverse Effect on Seller, or (ii) the receipt of any proposal for an Alternate Transaction and shall deliver all written proposals for an Alternate Transaction to Purchaser. Notwithstanding the foregoing, the delivery of any notice pursuant to this Section 6.1(e) shall not (x) be deemed to amend or supplement any of the Schedules contemplated hereby, (y) be deemed to cure any breach of any representation, warranty, covenant or agreement or to satisfy any condition or (z) limit or otherwise affect the remedies available hereunder to the party receiving such notice.

(f) Employees. Seller shall promptly (but in any event within three (3) days or the occurrence of any such change) deliver to Purchaser a revised **Schedule 4.9(ii)** if any of the information set forth thereon, or required to be set forth thereon (such as with respect to terminated Employees and new Employees) changes after the date hereof with respect to any Employee, consultant or independent contractor. On the Business Day immediately prior to Closing, Seller shall deliver to Purchaser a final **Schedule 4.9(ii)** which will be accurate and complete as of the Closing Date with respect to all information required to be set forth thereon.

6.2 Pre-Closing Covenants of Purchaser. Purchaser covenants to Seller that, during the period from the Execution Date through and including the Closing or the earlier termination of this Agreement in accordance with the provisions of ARTICLE 11:

(a) Cooperation. Purchaser shall take, or cause to be taken, all commercially reasonable actions and to do, or cause to be done, all things commercially reasonably necessary or proper, consistent with applicable Law, to consummate and make effective as soon as possible the transactions contemplated hereby, provided that the foregoing shall not require Purchaser to participate in the Auction or to make any expenditure of funds or to incur any other obligation or liability.

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(b) Adequate Assurance Regarding Assigned Contracts and Required Orders. Purchaser agrees that it will cooperate as reasonably requested by Seller to assist in establishing adequate assurance of future performance within the meaning of Bankruptcy Code section 365 with regard to the Assigned Contracts, provided that the foregoing shall not require Purchaser to make any expenditure of funds or to incur any other obligation or liability except as expressly set forth herein.

(c) Permits. Purchaser shall use commercially reasonable efforts to cooperate with Seller to obtain or consummate the transfer to Purchaser of any Permit required to own or operate the Acquired Assets under applicable Laws, provided that the foregoing shall not require Purchaser to make any expenditure of funds or to incur any other obligation or liability without its prior consent in Purchaser's sole and absolute discretion.

6.3 Other Covenants of Seller and Purchaser.

(a) Disclosure Schedules and Supplements. From time to time prior to the Closing Date, Seller, on the one hand, with respect to disclosure schedules relating to Seller, shall notify Purchaser of, and Purchaser on the other hand, with respect to disclosure schedules relating to Purchaser, shall notify Seller of, and shall supplement or amend the disclosure schedules (the "**Schedules**") to this Agreement with respect to, any matter that arises after the Execution Date and that, (i) if existing or occurring at or prior to such delivery of the Schedules, would have been required to be set forth or described in the Schedules to this Agreement or (ii) makes it necessary to correct any information in the Schedules to this Agreement or in any representation or warranty of Seller or Purchaser, as applicable, that has been rendered inaccurate thereby. Each such notification and supplement, to the extent known, shall be made by Seller to the Schedules prepared by Seller or Purchaser to the Schedules prepared by Purchaser, as applicable, no later than two (2) Business Days after discovery thereof by Seller or Purchaser, as applicable, or if such matter arises less than two (2) Business Days before the date set for the Closing by the parties hereto, then promptly after discovery thereof by Seller or Purchaser, as applicable, and in any event prior to the Closing. Notwithstanding the foregoing, (i) nothing contained herein shall detract from or diminish the rights of Purchaser under Section 9.2(a) or Section 11.1(c)(iv) as if the Schedules were not supplemented or amended pursuant to this Section 6.3(a) and (ii) no such supplement or amendment to the Schedules shall be deemed to cure any inaccuracy of any representation or warranty made in this Agreement.

(b) Personally Identifiable Information. Purchaser shall honor and observe, in connection with the transactions contemplated by this Agreement, any and all policies of Seller in effect on the Petition Date prohibiting the transfer of personally identifiable information about individuals and otherwise comply with the requirements of Bankruptcy Code section 363(b)(1)(A).

(c) Access to Records after Closing. From and after the Closing Date, each party hereto shall provide the other parties hereto (and their respective representatives) with access, at reasonable times and in a manner so as not to unreasonably interfere with their normal business, to the books and records acquired pursuant to this Agreement so as to enable Purchaser and Seller to prepare Tax, financial or court filings or reports, to

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respond to court orders, subpoenas or inquiries, investigations, audits or other proceedings of Governmental Authorities, and to prosecute and defend legal actions or for other like purposes, including, but not limited to claims objections and resolutions. If any party desires to dispose of any such records, such party shall, thirty (30) days prior to such disposal, provide the other party with a reasonable opportunity to remove such records to be disposed of at the removing party's expense.

(d) HSR Approval. To the extent necessary, Seller and Purchaser shall make all required filings of their respective forms under the HSR Act as promptly as practical, but in no event later than ten (10) Business Days after the date on which Purchaser notifies Seller that such filings are required under the HSR Act. Seller and Purchaser shall each supply as promptly as practicable any additional information and documentary material that may be requested pursuant to the HSR Act and take all other actions necessary, proper or advisable to cause the expiration or termination of the applicable waiting periods under the HSR Act as soon as practicable. Neither Purchaser nor any of its Affiliates shall be required to divest, dispose of or hold separate any assets or any business to secure HSR Act clearance or consents, approvals or waivers or otherwise take any action materially adverse to Purchaser or any of its Affiliates. The filing fee with respect thereto shall be borne by Seller.

(e) Schedules and Exhibits. On or prior to the date hereof, Seller shall deliver to Purchaser a preliminary set of all schedules and exhibits hereto which are true and correct to the Seller's knowledge. Within ten (10) Business Days hereafter, the Seller shall deliver to the Purchaser a true, correct and complete set of all schedules and exhibits hereto, which shall be true, correct and complete as the delivery thereof to Purchaser.

(f) Maintenance of Hearts and Drivers. The Purchaser shall assume any obligations in the same manner and ordinary course of the Seller pre-Closing regarding the maintenance, service and similar obligations related to the TAH-t units and drivers.

6.4 Employment Covenants and Other Undertakings.

(a) Employees. Purchaser shall have the right, but not the obligation, to employ or engage as contractors any or all of the Employees as Purchaser determines in its sole and absolute discretion. The terms of employment offered to any Employees shall be determined by Purchaser in its sole and absolute discretion. Any Employees actually employed by Purchaser are referred to herein as "**Transferred Employees**." Purchaser shall deliver a list of the Employees it intends to hire no later than five (5) days prior to the Closing Date. Seller shall deliver to Purchaser on or before the Closing Date all personnel files and employment records relating to the Transferred Employees (including completed I-9 forms and attachments with respect to all Transferred Employees, except for such Employees as Seller certifies in writing are exempt from such requirement).

(b) Purchaser Employee Benefit Plans. At Closing, Purchaser shall either, in its sole and absolute discretion, (i) assume sponsorship of and shall assume all liabilities and obligations (other than any liabilities arising as a result of any breach of any representation or warranty or covenant hereunder) arising under the Employee Benefit Plans listed on **Schedule 6.4** (if any), which such schedule will be provided by Purchaser

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to Seller no later than immediately prior to the Closing (such Employee Benefit Plans set forth on **Schedule 6.4**, the “**Assumed Benefit Plans**”) or (ii) make available or establish new benefit plans substantially comparable to those of Seller for the purpose of providing coverage to Transferred Employees. Purchaser shall credit (x) each Transferred Employee with his or her service with Seller, to the same extent such service would have been credited had such service been with Purchaser and (y) the Transferred Employees with all service recognized by Seller under employee benefit plans as service with Purchaser for purposes of eligibility to participate and vesting under all employee benefit plans, programs and policies of Purchaser, whether now existing or hereafter adopted (the Assumed Benefit Plans and the newly available or established Employee Benefit Plans, the “**Purchaser Plans**”). Purchaser shall waive any coverage waiting period, pre-existing condition and actively-at-work requirements that have been satisfied under corresponding plans of Seller and shall provide that any eligible expenses incurred before the Closing Date by a Transferred Employee (and his or her dependents) during the calendar year of the Closing and disclosed to Purchaser by such Transferred Employee shall be taken into account for purposes of satisfying the applicable deductible, coinsurance and maximum out-of-pocket provisions, and applicable annual and/or lifetime maximum benefit limitations of the Purchaser Plans. Nothing in this Section 6.4 shall obligate Purchaser to preserve or provide compensation or benefits that are determined to discriminate in favor of highly paid employees or that are provided pursuant to individual benefit or compensation agreements or arrangements or that are not in compliance with applicable Laws.

(c) Seller’s Employee Benefit Plans. Except as applicable with respect to Assumed Benefit Plans, if any, Seller shall retain (i) all liabilities and obligations in respect of its past, present and future employees under applicable Laws and (ii) all liabilities and obligations under any “employee benefit plan” within the meaning of Section 3(3) of ERISA and any other employee benefit plan or program maintained or contributed to by a Seller or any ERISA Affiliate, including any Employee Benefit Plans, and Purchaser shall have no liability or obligation whatsoever under the Employee Benefit Plans nor shall Purchaser assume the sponsorship of the Employee Benefit Plans.

(d) Other Obligations. Except as otherwise required by Law or otherwise agreed to in writing by Purchaser, neither Purchaser nor any of its Affiliates shall be obligated to provide any severance, separation pay or other payments or benefits, including any key employee retention payments, to any Employee on account of any termination of such Employee’s employment, and all such severance, separation pay and other payments and benefits (if any) shall remain obligations of Seller. For the avoidance of doubt, notwithstanding anything contained herein, Seller shall be responsible for (and Purchaser shall not be liable for) any wages or other remuneration, including, without limitation, with respect to paid time off, due to any Employee, whether with respect to their services as an Employee through the Closing Date or otherwise. In addition, Seller shall be responsible for, and Purchaser shall not be liable for, failure by Purchaser or Seller to provide notice under the WARN Act or other similar Law.

(e) Forms W-2 and W-4. Seller and Purchaser shall adopt the “standard procedure” for preparing and filing IRS Forms W-2 (Wage and Tax Statements) and Forms W-4 (Employee’s Withholding Allowance Certificate) regarding the Transferred Employees. Under this procedure, Seller shall keep on file all IRS Forms W-4 provided

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by the Transferred Employees for the period required by applicable Law concerning record retention and Purchaser will obtain new IRS Forms W-4 with respect to each Transferred Employee.

(f) Employee Communications. Prior to making any written or oral communications to the Employees pertaining to compensation or benefit matters that are affected by the transactions contemplated by this Agreement, Seller shall provide Purchaser with a copy of the intended communication.

(g) No Right to Employment. Nothing herein shall be deemed to create any right to employment or continued employment or to a particular term or condition of employment with Purchaser or any of its Affiliates. Nothing in this Section 6.4 or any other provision of this Agreement: (i) shall be construed to establish, amend, or modify any benefit or compensation plan, program, agreement or arrangement; (ii) shall limit the ability of Purchaser or any of its Affiliates to amend, modify or terminate any benefit or compensation plan, program, agreement or arrangement at any time assumed, established, sponsored or maintained by any of them; or (iii) shall be construed to create any third-party beneficiary right in any employee or other Person other than the parties to this Agreement.

6.5 Casualty. If, between the date of this Agreement and the Closing, any of the Acquired Assets shall be destroyed or damaged in whole or in part by fire, earthquake, flood, other casualty or any other cause (each a “**Casualty**”), then Purchaser shall have the option to: (a) acquire such Acquired Assets on an “as is” basis and take an assignment from Seller of all insurance proceeds payable to Seller in respect of the applicable Casualty or (b) in the event that the applicable Casualty would have a Material Adverse Effect, terminate this Agreement and the transactions contemplated hereby.

6.6 Confidentiality. The Seller and the Purchaser agree and acknowledge that the Acquired Assets include confidential information of the Business which will be transferred to Purchaser at Closing. From and after Closing; (a) Seller shall, and shall cause each of their respective Affiliates to, hold in confidence all confidential information included in the Acquired Assets and transferred to Purchaser; (b) in the event that Seller or any of its respective Affiliates shall be legally compelled to disclose any such information, Seller shall provide Purchaser with prompt written notice of such requirement so that Purchaser may seek a protective order or other remedy; and (c) in the event that such protective order or other remedy is not obtained, Seller or its respective Affiliates shall furnish only such information that is legally required to provide.

6.7 Collection on Acquired Assets. If, after the Closing Date, Seller shall receive payment with respect to any Acquired Assets, Seller shall immediately deliver such funds or assets to Purchaser and take all steps necessary to vest title to such funds or assets in Purchaser. Seller hereby designates Purchaser and its respective officers as Seller’s true and lawful attorney-in-fact, with full power of substitution, to execute and endorse for the benefit of Purchaser all checks, notes or other documents received by Seller in payment of or in substitution or exchange for any of the Acquired Assets. Seller hereby acknowledges and agrees that the power of attorney set forth in the preceding sentence in favor of Purchaser is coupled with an interest, and further agrees to execute and deliver to Purchaser from time to time any documents or other instruments requested by Purchaser to evidence such power of attorney.

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6.8 Waiver of Bulk Sales Law To the greatest extent permitted by applicable Law, Purchaser and Seller hereby waive compliance with the terms of any bulk sales or similar Laws in any applicable jurisdiction in respect to the transactions contemplated by this Agreement. The Bankruptcy Sale Order shall contain a finding by the Bankruptcy Court or shall decree that the Seller and Purchaser are not required to comply with any such Laws.

ARTICLE 7
TAXES

7.1 Taxes Related to Purchase of Acquired Assets.

(a) All transfer, conveyance, recording and similar Taxes, including all such state and local Taxes, incurred in connection with the transfer of the Acquired Assets, and all recording and filing fees (collectively, “**Transaction Taxes**”), that are imposed solely as a result of the sale, transfer, assignment and delivery of the Acquired Assets shall be borne by Purchaser. Purchaser and Seller shall cooperate to (a) determine the amount of Transaction Taxes payable in connection with the transactions contemplated under this Agreement, (b) provide all requisite exemption certificates and (c) prepare and file any and all required Tax Returns for or with respect to such Transaction Taxes with any and all appropriate taxing authorities.

(b) On or prior to the Closing Date, Seller shall pay all sales Taxes, use Taxes, payroll Taxes, and other Taxes which are then due and owing with respect to the Acquired Assets and the Business and attributable to Tax periods or portions thereof commencing on or after the Petition Date and ending on the Closing Date; provided, however, Seller shall not be obligated to pay any such Tax that is disputed in good faith by Seller, as long as appropriate reserves have been established in accordance with generally accepted accounting principles. All sales Taxes, use Taxes, payroll Taxes, real property Taxes, personal property Taxes and other ad valorem Taxes with respect to the Acquired Assets that accrue during, or attributable to, the period on or prior to the Closing Date and become due on or after the Closing Date shall be paid by Seller. Subject to Section 7.1(a), all sales Taxes, use Taxes, payroll Taxes, real property Taxes, personal property Taxes and other ad valorem Taxes with respect to the Acquired Assets that both accrue and are due after the Closing Date shall be paid by Purchaser.

ARTICLE 8
BANKRUPTCY COURT MATTERS

8.1 Motions. Seller shall file with the Bankruptcy Court, on the Petition Date, a motion or motions seeking the Bankruptcy Court’s approval of the Bidding Procedures Motion and the Bankruptcy Sale Order. Seller shall affix a true and complete copy of this Agreement to such motion or motions filed with the Bankruptcy Court. Such motion or motions shall request, among other things, (i) the scheduling of the date for the Auction to be commenced no later than forty-five (45) days from the Petition Date, and the Sale Hearing not more than one (1) Business Day following the completion of the Auction, (ii) the entry of the Bidding Procedures Order in all material respects on the terms set forth in Exhibit B and (iii) the entry of the Bankruptcy Sale Order in all material respects on the terms set forth in Exhibit A.

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8.2 Contracts. Seller shall serve on all non-Debtor counterparties to all of the Contracts on the Contracts Schedule a notice specifically stating that Seller is or may be seeking the assumption and assignment of such Contracts and shall notify such non-Debtor counterparties of the deadline for objecting to the Cure Amounts, which deadline shall not be less than seven (7) days prior to the Sale Hearing. In cases in which Seller is unable to establish that a default exists, the relevant cure amount shall be set at \$0.00. The motions contemplated by Section 8.1 and Section 2.5(c) shall reflect Purchaser's promise to perform from and after the Closing under all Assumed Contracts and the Additional Assumed Contracts (as applicable), which shall be the only adequate assurance of future performance necessary to satisfy the requirements of Bankruptcy Code section 365 in respect of the assignment to Purchaser of the Assumed Contracts and the Additional Assumed Contracts.

8.3 Procedure. Seller shall provide Purchaser with drafts of any and all pleadings and proposed orders to be filed or submitted in connection with this Agreement for Purchaser's prior review and comment and shall make all changes reasonably requested by Purchaser. Seller agrees to diligently prosecute the entry of the Bankruptcy Sale Order. In the event the entry of the Bankruptcy Sale Order shall be appealed, Seller and Purchaser shall use their respective commercially reasonable efforts to defend such appeal. Notwithstanding the foregoing, any resulting changes to this Agreement or the Ancillary Agreements or any resulting material changes to the Orders shall be subject to Purchaser's approval in its sole and absolute discretion.

8.4 Purchaser Protections. Seller shall pay to Purchaser the Expense Reimbursement and the Break-Up Fee pursuant to the terms and conditions set forth in Section 11.3 hereof.

ARTICLE 9
CONDITIONS PRECEDENT TO PERFORMANCE BY THE PARTIES

9.1 Conditions Precedent to Performance by Seller. The obligation of Seller to consummate the transactions contemplated by this Agreement is subject to the fulfillment, at or before the Closing, of the following conditions, any one or more of which (other than the conditions contained in Section 9.1(d)) may be waived by Seller, in its sole and absolute discretion:

(a) Representations and Warranties of Purchaser. Each and every representation and warranty of Purchaser made in this Agreement that is qualified by a materiality standard, in each case, shall have been true and correct when made and shall be true and correct as of the Closing Date as if originally made on and as of such Closing Date, and each and every representation and warranty of Purchaser made in this Agreement that is not qualified by a materiality standard, in each case, shall have been true and correct when made in all material respects and shall be true and correct in all material respects as of the Closing Date as if originally made on and as of such Closing Date.

(b) Performance of the Obligations of Purchaser. Purchaser shall have performed in all material respects (i) all obligations required under this Agreement that are to be performed by Purchaser on or before the Closing Date (except with respect to (1) obligations which Purchaser is to perform as of the Closing under this Agreement (including, without limitation, the obligation to pay the Purchase Price), Purchaser shall

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be ready, willing and able to perform such obligations against performance by Seller hereunder and simultaneously with the Closing Purchaser shall so perform such obligations and (2) any obligations qualified by materiality, which obligations shall be performed in all respects as required under this Agreement) and (ii) all obligations required under each Ancillary Agreement to which Purchaser is a party that are to be performed thereunder by Purchaser on or before the Closing Date (except with respect to (I) obligations which Purchaser is to perform as of the Closing under the applicable Ancillary Agreement, Purchaser shall be ready, willing and able to perform such obligations against performance by Seller thereunder and simultaneously with the Closing Purchaser shall so perform such obligations and (II) any obligations qualified by materiality, which obligations shall be performed in all respects as required under the applicable Ancillary Agreement).

(c) Bankruptcy Court Approval. The Bankruptcy Sale Order shall have been entered and shall not be subject to a stay.

(d) No Violation of Orders. No preliminary or permanent injunction or other order of any court or Governmental Authority or Law that prevents the consummation of the transactions contemplated hereby shall be in effect.

(e) Bidding Procedures Order. The Bidding Procedures Order shall have been entered in the Bankruptcy Case.

(f) Assumption, Sale and Assignment of Contracts. The Bankruptcy Court shall have authorized in the Bankruptcy Sale Order the assumption and assignment of the Assumed Contracts.

For avoidance of doubt, there shall be no conditions precedent to Seller's obligation to consummate the transactions contemplated by this Agreement, except for those conditions precedent specifically set forth in this Section 9.1.

9.2 Conditions Precedent to the Performance by Purchaser. The obligations of Purchaser to consummate the transactions contemplated by this Agreement are subject to the fulfillment, at or before the Closing, of the following conditions, any one or more of which (other than the conditions contained in Section 9.2(c), Section 9.2(e) and Section 9.2(k) (if applicable), except as expressly provided therein) may be waived by Purchaser, in its sole and absolute discretion:

(a) Representations and Warranties of Seller. Each and every representation and warranty of Seller made in this Agreement that is qualified by a materiality standard or Material Adverse Effect, in each case, shall have been true and correct when made and shall be true and correct as of the Closing Date as if originally made on and as of such Closing Date, and each and every representation and warranty of Seller made in this Agreement that is not qualified by a materiality standard or Material Adverse Effect, in each case, shall have been true and correct when made in all material respects and shall be true and correct in all material respects as of the Closing Date as if originally made on and as of such Closing Date (disregarding for all purposes of this Section 9.2(a) any supplement or amendment to any of the Schedules pursuant to Section 6.3(a)).

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(b) Performance of the Obligations of Seller. Seller shall have performed in all material respects (i) all obligations required by Seller under this Agreement that are to be performed by Seller on or before the Closing Date (except with respect to (1) obligations which Seller is to perform as of the Closing under this Agreement, Seller shall be ready, willing and able to perform such obligations against performance by Purchaser hereunder and simultaneously with the Closing, Seller shall so perform such obligations and (2) any obligations qualified by materiality, which obligations shall be performed in all respects as required under this Agreement) and (ii) all obligations required under each Ancillary Agreement to which Seller is a party that are to be performed thereunder by Seller on or before the Closing Date (except with respect to (I) obligations which Seller is to perform as of the Closing under the applicable Ancillary Agreement, Seller shall be ready, willing and able to perform such obligations against performance by Purchaser thereunder and simultaneously with the Closing Seller shall so perform such obligations and (II) any obligations qualified by materiality, which obligations shall be performed in all respects as required under the applicable Ancillary Agreement).

(c) Bankruptcy Court Approval. (i) The Bankruptcy Sale Order shall have been entered by the Bankruptcy Court and shall not be subject to a stay and the Bankruptcy Court shall have provided such other relief as may be necessary or appropriate to allow the consummation of the transactions contemplated by this Agreement, and (ii) the Bankruptcy Sale Order shall have become a final and nonappealable order, unless this condition in this clause (ii) has been waived in writing by Purchaser in its sole and absolute discretion.

(d) Stipulations and Releases. The Stipulations and the Releases (each as defined in the DIP Orders) shall have become finally entered and binding on all Persons, in each case in form and substance acceptable to Purchaser in its sole and absolute discretion.

(e) No Violation of Orders. No preliminary or permanent injunction or other order of any court or Governmental Authority or Law that prevents the consummation of the transactions contemplated hereby shall be in effect.

(f) Credit Bid Approval. The Bankruptcy Court shall have entered an order, binding on all parties in interest in the Bankruptcy Case unconditionally allowing, authorizing and approving the credit bid by Purchaser contemplated by this Agreement.

(g) Bidding Procedures Motion. The Bidding Procedures Motion shall have been filed in the Bankruptcy Case on the Petition Date.

(h) Bidding Procedures Order. The Bidding Procedures Order shall have been entered in the Bankruptcy Case no later than twenty-one days from the Petition Date.

(i) Bankruptcy Sale Order. The Bankruptcy Sale Order shall exempt Seller and Purchaser from compliance with the terms of any bulk sales or similar Laws in any applicable jurisdiction in respect of the transactions contemplated by this Agreement.

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(j) Assumption, Sale and Assignment of Contracts. Subject to Section 2.5(e), the Bankruptcy Court shall have authorized in the Bankruptcy Sale Order the assumption and assignment of the Assumed Contracts to Purchaser on terms satisfactory to Purchaser.

(k) HSR Approval. To the extent that the HSR Act is applicable, any waiting period applicable to the consummation of the transactions contemplated hereby under the HSR Act shall have expired or been earlier terminated.

(l) No Claims. No Claim shall have been brought by any Person against any of Purchaser, Agent (as defined in the Credit Agreement), Lenders (as defined in the Credit Agreement and the DIP Credit Agreement) or any of their affiliated or related Persons, and, to the extent applicable, all periods in which any Claim could be brought against any of the foregoing by any Person shall have expired.

(m) Permits. Purchaser shall have obtained Permits in replacement of any Permits that are not transferable by Seller to Purchaser and that are necessary for Purchaser to take title to all of the Acquired Assets at Closing and thereafter to operate all aspects of the Business.

(n) Certain Agreements. Purchaser shall have (i) (A) entered into a binding agreement with ADP TotalSource, Inc. (“**ADP**”) and its applicable affiliates that is in form and substance acceptable to Purchaser (in Purchaser’s sole and absolute discretion) or (B) entered into employment agreements with the some or all of the employees employed by ADP in the Purchaser’s sole and absolute discretion; and (ii) entered into a binding agreement with Trinity Capital Investment, LLC and Agility Lease Fund, III, LLC, in a form and substance acceptable to Purchaser (in Purchaser’s sole and absolute discretion). In addition, Purchaser shall have, with respect to any asset of Seller that may be secured by a purchase money security interest, security interest or lien that is senior to any security interest or lien of Purchaser, entered into a lease with Seller, in the Purchaser’s sole and absolute discretion, whereby Purchaser leases certain assets rather than purchasing such assets as an Acquired Asset hereunder.

(o) On or before the First Day Hearing, the Debtor’s shall file a motion to assume the Medtronic, Inc. (“**Medtronic**”) lease (the “**Medtronic Lease**”) and have obtained an order assuming such lease prior to Closing. Prior to or at Closing, the Medtronic Lease shall be assigned to the Purchaser, or the Purchaser and Medtronic shall have otherwise entered into a binding agreement with Medtronic in a form and substance acceptable to Purchaser (in Purchaser’s sole and absolute discretion)

(p) Contract Defaults. Other than pre-petition payment or notice defaults, there shall be no defaults, violations or breaches of, or under, any Contracts to which Seller is a party.

(q) Violations of Law. There shall be no violations of Law that, in the opinion of Purchaser in its sole and absolute discretion, could adversely affect in any manner Purchaser’s operation of the Business.

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(r) Applicable Schedules and Exhibits. All of the Schedules and Exhibits shall have been delivered prior to execution of this agreement and shall all be acceptable to Purchaser in its sole and absolute discretion.

For avoidance of doubt, there shall be no conditions precedent to Purchaser's obligation to consummate the transactions contemplated by this Agreement, except for those conditions precedent specifically set forth in this Section 9.2. Upon the non-fulfillment of any condition set forth in this Section 9.2, this Agreement may, at Purchaser's option, be terminated pursuant to, in accordance with and with the effect set forth in ARTICLE 11.

ARTICLE 10
CLOSING AND DELIVERIES

10.1 Closing. The consummation and effectuation of the transactions contemplated hereby pursuant to the terms and conditions of this Agreement (the "**Closing**") shall be held on the first Business Day on which all conditions (except for only those conditions that by their terms can only be satisfied on the Closing Date) to the obligations of the parties hereto set forth in ARTICLE 9 to consummate the transactions contemplated hereby are first satisfied and/or waived, or at such other time, date and place as the parties shall mutually agree (the "**Closing Date**"). The Closing shall on the Closing Date occur at 10:00 a.m., Eastern Time, in the offices of Landis Rath & Cobb LLP, 919 N. Market Street, Suite 1800, Wilmington, DE 19801. All proceedings to be taken and all documents to be executed and delivered by all parties at the Closing shall be deemed to have been taken and executed simultaneously and no proceedings shall be deemed to have been taken nor documents executed or delivered until all have been taken, executed and delivered. Upon consummation of the Closing, the purchase and sale of the Acquired Assets and the assumption of the Assumed Liabilities hereunder shall be deemed to have occurred as of 12:01 a.m. (Eastern Time) on the Closing Date.

10.2 Seller's Deliveries. At the Closing:

(a) the sale, transfer, assignment, conveyance and delivery by Seller of the Acquired Assets to Purchaser shall be effected by the execution and delivery by Seller of (i) the Bills of Sale, (ii) the Assignment and Assumption Agreement, (iii) the Trademark Assignment Agreements and (iv) such special or limited warranty deeds, additional bills of sale, endorsements, assignments and other instruments of transfer and conveyance reasonably satisfactory in form and substance to Purchaser;

(b) Seller shall deliver all keys to Leased Real Property that are included in the Acquired Assets, combinations to any safes thereon and passwords for all computers thereon and any security devices therein;

(c) Seller shall deliver an officer's certificate, duly executed by a senior officer of Seller, certifying the matters set forth in Section 9.2(a), Section 9.2(b) and Section 9.2(e), in form and substance satisfactory to Purchaser;

(d) Seller shall deliver a non-foreign affidavit dated as of the Closing Date in form and substance required under Treasury Regulations issued pursuant to Section 1445 of the Code so that Purchaser is exempt from withholding any portion of the Purchase Price;

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(e) Seller shall deliver possession of the Acquired Assets; and

(f) Seller shall deliver duly and properly authorized and executed documents (in form and substance satisfactory to Purchaser) as to the amendment of such Seller's organizational documents (the "**Organizational Amendments**") changing Seller's name to another name which does not include any of the following words "SynCardia Systems" "SynCardia".

10.3 Purchaser's Deliveries. At the Closing:

(a) Purchaser shall pay the Purchase Price; and

(b) Purchaser shall execute and deliver to Seller the Assignment and Assumption Agreement and any other Ancillary Agreement which Purchaser is required to execute under the terms of this Agreement.

ARTICLE 11
TERMINATION

11.1 Termination. This Agreement may be terminated only in accordance with this Section 11.1. This Agreement may be, or, as applicable, shall be, terminated at any time before the Closing as follows:

(a) by mutual written consent of Seller and Purchaser;

(b) automatically and without any action or notice by Seller to Purchaser, or Purchaser to Seller, immediately upon:

(i) the issuance of a final and non-appealable order, decree, or ruling or any other action by a Governmental Authority to restrain, enjoin or otherwise prohibit the transfer of the Acquired Assets contemplated hereby;

(ii) approval by the Bankruptcy Court of an Alternate Transaction;

(iii) acceptance by any Seller of an Alternate Transaction; or

(iv) Purchaser is not declared the winning bidder upon completion of the Auction.

(c) by Purchaser:

(i) if the Bidding Procedures Order shall not have been entered within twenty-one (21) days after the First Day Hearing;

(ii) if the Auction has not concluded on or prior to forty-five (45) days from the First Day Hearing;

(iii) if the Bankruptcy Court has not entered the Bankruptcy Sale Order on or prior to forty-six (46) days from the First Day Hearing;

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(iv) if there has been a material violation or breach by Seller of any representation, warranty, agreement or covenant contained in this Agreement (disregarding any supplement or amendment to any of the Schedules pursuant to Section 6.3(a) and the disclosure of Previously Omitted Contracts) which (x) has rendered the satisfaction of any condition to the obligations of Purchaser set forth in Section 9.2 impossible or is not curable or, if curable, has not been cured within seven (7) days following receipt by Seller of written notice of such violation or breach from Purchaser, and (y) has not been waived by Purchaser;

(v) at any time after forty-nine (49) days from the First Day Hearing, 2016, if the Closing shall not have occurred;

(vi) if, prior to the Closing, the Bankruptcy Case shall be converted into a case under Chapter 7 of the Bankruptcy Code or dismissed, or if a trustee or examiner with expanded powers is appointed in the Bankruptcy Case;

(vii) if the DIP Credit Agreement has been terminated or any of the lenders' obligations under the DIP Credit Agreement are terminated;

(viii) if either of the interim or final order authorizing and approving the DIP Credit Agreement has not been entered within the time periods set forth therein;

(ix) if any of the Milestones (as defined in the DIP Credit Agreement) are not met;

(x) if there shall be excluded from the Acquired Assets any Assumed Contract that is not assignable or transferable pursuant to the Bankruptcy Code or otherwise without the consent of any Person other than Seller, to the extent that such consent shall not have been given prior to the Closing and the exclusion of such Assumed Contract shall, in the opinion of Purchaser in its sole and reasonable discretion, prevent Purchaser from effectively operating the Business;

(xi) if Purchaser so elects in writing pursuant to Section 6.5 hereof;

(xii) if any Claim is brought by any Person against any of Purchaser, Agent (as defined in the Credit Agreement), Lenders (as defined in the Credit Agreement and the DIP Credit Agreement) or any of their affiliated or related Persons prior to the expiration of the applicable period in which such Claim could be brought;

(xiii) if Seller has not delivered to Purchaser all of the Required Bankruptcy Deliveries on or prior to the fifteenth (15th) day following the Petition Date;

(xiv) if the Acquired Assets, in the opinion of Purchaser in its sole and absolute discretion, are not sufficient to enable Purchaser to effectively operate the Business;

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(xv) if there exists any default, violation or breach of or under any Contract to which any Seller is a party;

(xvi) there exist any violations of Law (when either taken individually or in the aggregate) that, in the opinion of Purchaser in its sole and reasonable discretion, could adversely affect in any manner Purchaser's operation of the Business;

(xvii) either the Schedules Delivery or the Exhibits Delivery has not occurred on or prior to the Delivery Date;

(xviii) the Applicable Schedules delivered by Seller to Purchaser under this Agreement are not all acceptable to Purchaser in its sole and reasonable discretion; or

(xix) the Exhibits delivered by Seller to Purchaser under this Agreement are not all acceptable to Purchaser in its sole and reasonable discretion.

(d) by Seller, if there has been a material violation or breach by Purchaser of any representation, warranty, agreement or covenant contained in this Agreement which (x) has rendered the satisfaction of any condition to the obligations of Seller set forth in Section 9.1 impossible or is not curable or, if curable, has not been cured within seven (7) days following receipt by Purchaser of written notice of such violation or breach from Seller, and (y) has not been waived by Seller.

Each condition set forth in this Section 11.1 pursuant to which this Agreement may be terminated shall be considered separate and distinct from each other such condition. If more than one of the termination conditions set forth in Section 11.1 are applicable, Purchaser shall have the right to choose the termination condition pursuant to which this Agreement is to be terminated.

11.2 Effect of Termination. In the event of termination pursuant to Section 11.1 or Section 6.5, this Agreement shall become null and void and have no effect and no party hereto shall have any liability to the other parties hereto, except (i) if the circumstances giving rise to such termination were caused either by the other party's breach of this Agreement or by any of the representations and warranties contained in this Agreement by such other party being incorrect when made (disregarding any supplement or amendment to any of the Schedules pursuant to Section 6.3(a) and the disclosure of Previously Omitted Contracts and (ii) with respect to the provisions of ARTICLE 11 and ARTICLE 12 which shall expressly survive termination hereof.

11.3 Expense Reimbursement/Break-Up Fee.

(a) If this Agreement is terminated pursuant to (x) Sections 11.1(c)(i)-(iii), , Section 11.1(c)(v), Section 11.1(c)(vi), Section 11.1(c)(viii) or Section 11.1(c)(xiii) solely if the event specified in such applicable Section occurs as a result of Seller's actions or inactions, or (y) Section 11.1(a), Section 11.1(b), Section 11.1(c)(iv), Section 11.1(c)(vii), Section 11.1(c)(x), Section 11.1(c)(xi), Section 11.1(c)(xii), Section 11.1(c)(xiv), Section 11.1(c)(xv) or Section 11.1(c)(xvi), then the Expense Reimbursement and Break-Up Fee shall immediately become earned and due from Seller

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to Purchaser. The Expense Reimbursement and Break-Up Fee shall be a super-priority administrative expense priority obligation under Section 364(c)(1) of the Bankruptcy Code with priority over all expenses of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code, subject to any super-priority claims of Seller's post-petition lenders.

(b) Purchaser shall have no right to the Expense Reimbursement or Break-Up Fee if this Agreement is terminated pursuant to Section 11.1(d).

(c) The Expense Reimbursement and Break-Up Fee shall be paid to Purchaser by wire transfer of immediately available funds upon the earlier of (i) Seller's having available cash to pay the Expense Reimbursement (whether in whole or in part) and (ii) contemporaneous with the closing of an Alternate Transaction.

(d) Seller hereby acknowledges that the obligation to pay the Expense Reimbursement and Break-Up Fee shall survive the termination of this Agreement, and shall have administrative priority status against Seller and its estate.

ARTICLE 12
MISCELLANEOUS

12.1 Survival. No representations or warranties of Seller or Purchaser made in this Agreement shall survive the Closing Date except as otherwise expressly provided in this Agreement. All covenants and agreements of Seller and Purchaser contained herein shall survive the Closing in accordance with their terms.

12.2 Further Assurances. At the request and the sole expense of the requesting party, Purchaser or Seller, as applicable, shall execute and deliver, or cause to be executed and delivered, such documents as Purchaser or Seller, as applicable, or their respective counsel may reasonably request to effectuate the purposes of this Agreement and the Ancillary Agreements.

12.3 Successors and Assigns. This Agreement and the various rights and obligations arising hereunder shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and permitted assigns, including any trustee appointed in the Bankruptcy Case or subsequent chapter 7 case and Seller, if the Bankruptcy Case are dismissed. Except as set forth in clauses (a) or (b) below, neither this Agreement nor any of the rights, interests or obligations hereunder may be transferred or assigned (including by operation of law in connection with a merger or sale of stock, or sale of substantially all the assets, of a Person) by any of the parties hereto without the prior written consent of the other party or parties hereto (which consent may be granted, withheld, conditioned or delayed in such other party's sole and absolute discretion), and any attempted assignment in contravention or breach of the foregoing shall be void and of no force or effect. Notwithstanding the foregoing:

(a) Without the consent of Seller or any other Person, Purchaser may (i) assign this Agreement or any of Purchaser's rights, interests and/or obligations, in whole or in part (including the right or obligation to acquire any of the Acquired Assets or the right or obligation to assume any Assumed Liabilities), under this Agreement to one or more Persons who are Affiliates of Purchaser and (ii) designate any Person who is an Affiliate of Purchaser to perform any of Purchaser's obligations, in whole or in part (including the obligation to acquire any of the Acquired Assets or the obligation to

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assume any Assumed Liabilities), under this Agreement. In the event of any assignment or designation pursuant to this Section 12.3(a), Purchaser shall not be relieved of any liability or obligation to Seller hereunder; and

(b) Without the consent of Seller or any other Person, Purchaser may assign this Agreement or any of Purchaser's rights, interests and/or benefits, in whole or in part, under this Agreement as collateral to any lender of Purchaser; provided, however, no such assignment shall relieve Purchaser of any liability or obligation to Seller hereunder.

12.4 Governing Law; Jurisdiction. This Agreement shall be construed, performed and enforced in accordance with, and governed by, the Laws of the State of Delaware (without giving effect to the principles of conflicts of laws thereof), except to the extent that the Laws of such State are superseded by the Bankruptcy Code or other applicable federal Law. For so long as Seller is subject to the jurisdiction of the Bankruptcy Court, the parties irrevocably elect, as the sole judicial forum for the adjudication of any matters arising under or in connection with this Agreement, and consent as to the foregoing to the exclusive jurisdiction of, the Bankruptcy Court. After Seller is no longer subject to the jurisdiction of the Bankruptcy Court, the parties irrevocably elect, as the sole judicial forum for the adjudication of any matters arising under or in connection with this Agreement, and consent to the jurisdiction of, any state or federal court having competent jurisdiction in Delaware.

12.5 Expenses. Except as otherwise provided in this Agreement, each of the parties hereto shall pay its own expenses in connection with this Agreement and the transactions contemplated hereby, including any legal and accounting fees and commissions or finder's fees, whether or not the transactions contemplated hereby are consummated.

12.6 Severability. In the event that any part of this Agreement is declared by any court or other judicial or administrative body to be null, void or unenforceable, a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision, said provision shall survive to the extent it is not so declared, and all of the other provisions of this Agreement shall remain in full force and effect only if, after excluding the portion deemed to be unenforceable and the application of any provision so substituted, the remaining terms shall provide for the consummation of the transactions contemplated hereby in substantially the same manner as originally set forth at the later of (a) the Execution Date and (b) the date (if any) this Agreement was last amended.

12.7 Notices.

(a) All notices, requests, demands, consents, waivers and other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, if delivered personally; (ii) when sent, if sent by facsimile (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); (iii) on the day of transmission, if sent via electronic transmission to the email address below (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); and (iv) if sent by overnight courier service, one (1) Business Day after deposit with an overnight courier service with next

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day delivery specified, in each case, properly addressed to the party to receive the same. The addresses and facsimile numbers for such communications shall be:

If to Seller:

Syncardia Systems, Inc.
Attn: Michael Garippa
Chief Executive Officer
1992 E. Silverlake Rd.
Tucson, AZ 85713
Facsimile: (520) 545-1234

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

Olshan Frome Wolosky LLP
1325 Avenue of the Americas
New York, NY 10019
Attention: Michael Fox and Jonathan Deblinger
Email: mfox@olshan.com, jdeblinger@olshan.com
Facsimile: (212) 451-2222

If to Purchaser:

c/o Versa Capital Management, LLC
Cira Centre
2929 Arch Street
Philadelphia, PA 19104
Attention: David S. Lorry, Managing Director and Senior Counsel
Email: dlorry@versa.com
Facsimile: (215) 609-3499

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

Landis Rath & Cobb, LLP
919 N. Market Street, Suite 1800
Wilmington, DE 19801
Attention: Adam G. Landis and Kerri K. Mumford
Email: landis@lrclaw.com, mumford@lrclaw.com
Facsimile: (302) 467-4450

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(b) Any party hereto may change its address or facsimile number for the purpose of this Section 12.7 by giving the other parties written notice of its new address in the manner set forth above. Written confirmation of receipt (A) given by the recipient of such notice, request, demand, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's facsimile machine containing the time, date and recipient facsimile number or (C) provided by an overnight courier service shall be rebuttable evidence of personal service, receipt by facsimile or receipt from an overnight courier service in accordance with clause (i), (ii) or (iii) above, respectively.

12.8 Amendments; Waivers. This Agreement may be amended or modified, and any of the terms, covenants, representations, warranties or conditions hereof may be waived, only by a written instrument executed by Purchaser and Seller, or in the case of a waiver, by the party hereto waiving compliance. Any waiver by any party hereto of any condition, or of the breach of any provision, term, covenant, representation or warranty contained in this Agreement, in any one or more instances, shall not be deemed to be or construed as a furthering or continuing waiver of any such condition, or of the breach of any other provision, term, covenant, representation or warranty of this Agreement. Notwithstanding the foregoing, it is understood and agreed that any changes affected pursuant to Section 2.2(l) or Section 2.6 shall not require compliance with this Section 12.8.

12.9 Entire Agreement. This Agreement, the other Ancillary Agreements and the schedules and exhibits attached hereto and thereto and the instruments referenced herein and therein (all of which are hereby incorporated herein by reference), supersede all other prior oral or written agreements among the parties hereto solely with respect to the matters contained herein and therein, and this Agreement, the other Ancillary Agreements and the schedules and exhibits attached hereto and thereto and the instruments referenced herein and therein, contain the entire understanding of the parties hereto solely with respect to the matters contained herein and therein. For clarification purposes, the Recitals are part of this Agreement. It is understood and agreed by the parties hereto that (x) all rights, obligations and provisions set forth herein, as well as the exercise of any such rights, the performance of any such obligations and any action taken (or inaction) related to this Agreement by any party hereto, shall be completely separate from, and independent of, all of the foregoing related to, or arising under, the Credit Agreement or the DIP Credit Agreement and (y) except as explicitly set forth herein, neither the rights of Purchaser hereunder nor the obligations of Purchaser hereunder shall be modified, limited or expanded in any manner as a result of Purchaser be a party to the Credit Agreement or the DIP Credit Agreement.

12.10 Seller Disclosures. After notice to and consultation with Purchaser, Seller shall be entitled to disclose, if required by applicable Law or by order of the Bankruptcy Court, this Agreement and all information provided by Purchaser in connection herewith to the Bankruptcy Court, the United States Trustee, parties in interest in Seller's chapter 11 Bankruptcy Case and other Persons bidding on assets of Seller. Other than statements made in the Bankruptcy Court (or in pleadings filed therein), Seller shall not issue (prior to, on or after the Closing) any press release or make any public statement or public communication without the prior written consent of Purchaser, which shall not unreasonably be withheld or delayed, provided, however, Seller, without the prior consent of Purchaser, may issue such press release or make such public statement as may, upon the advice of counsel, be required by Law or any Governmental Authority with competent jurisdiction.

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12.11 Headings. The article and section headings in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

12.12 Counterparts. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to each other party. In the event that any signature is delivered by facsimile transmission or by an e-mail which contains a portable document format (.pdf) file of an executed signature page, such signature page shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature page were an original thereof.

12.13 Name Change. Immediately following the Closing, Seller shall discontinue the use of its current name (and any other tradenames currently utilized by Seller) and shall not subsequently change its name to or otherwise use or employ any name which includes the words "SynCardia Systems," or "SynCardia", and Seller shall cause its name in the caption of the Bankruptcy Case to be changed to the new name of Seller as provided in Section 10.2(g) and the last sentence of this Section 12.13. From and after the Closing, Seller covenants and agrees not to use or otherwise employ any of the trade names, corporate names, "d/b/a" names or similar Intellectual Property rights utilized by Seller in the conduct of the Business, which rights shall be included in the Acquired Assets purchased hereunder. Seller hereby irrevocably authorizes Purchaser to file, immediately following the Closing, the Organizational Amendments with the applicable Secretary of State Seller's jurisdiction of formation and in each State in which Seller is qualified to do business.

12.14 Payments and Revenues. If after the Closing, Seller shall receives any payment, revenue or other amount that belongs to Purchaser pursuant to this Agreement, Seller shall promptly remit or cause to be remitted the same to Purchaser.

12.15 Waiver of Jury Trial. **EACH PARTY HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON, RELATING TO OR ARISING OUT OF THIS AGREEMENT. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, ANTITRUST CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON-LAW OR STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH LEGAL COUNSEL OF ITS OWN CHOOSING, OR HAS HAD AN OPPORTUNITY TO DO SO, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS, HAVING HAD THE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS, OR MODIFICATIONS TO THIS AGREEMENT. IN THE EVENT OF LITIGATION, THIS**

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AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT WITHOUT A JURY.

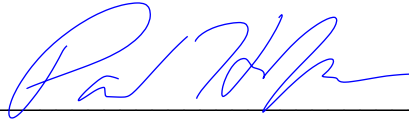
12.16 General Release. Effective upon the Closing, Seller, on behalf of itself and its estate, acknowledges that it has no claim, counterclaim, setoff, recoupment, action or cause of action of any kind or nature whatsoever (including, for the avoidance of doubt, actions for avoidance, subordination or recharacterization of any of Purchaser's pre-Petition Date Claims, Encumbrances, and Liens) against Purchaser or any of its Related Persons, that directly or indirectly arise out of, relate to, are based upon, or in any manner are connected with Seller, any of its Related Persons or the Business (collectively, the "**Released Claims**") (including, without limitation, (i) the pre-Petition Date Contracts to which Purchaser (or any of its Affiliates) and Seller were parties and all transactions referred to in such Contracts and (ii) any acquisition by Purchaser of Claims and Liens in and against Seller). Should any Released Claims nonetheless exist, Seller, on behalf of itself and its estate, hereby (i) releases and discharges Purchaser and each of its Related Persons from any claim, cause of action, liability or obligation whatsoever with respect to the Released Claims and (ii) releases, waives and discharges all of the Released Claims against Purchaser and each of its Related Persons.

12.17 No Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, other than Purchaser's Related Persons referred to in Section 12.16.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date first above written.

PURCHASER:

SINDEX SSI LENDING, LLC

By: 
Name: Paul Halpern
Title: Authorized Signatory

[signature pages continue]

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SELLER:

SYNCARDIA SYSTEMS, INC.

A handwritten signature in black ink, appearing to read "M. Garippa", written over a horizontal line.

By:

Name: Michael P. Garippa

Title: Chief Executive Officer

Schedule 1

DEFINED TERMS

“**Accounts Receivable**” means accounts receivable, negotiable instruments, chattel paper (including, without limitation, completed work that has not yet been billed and other receivables (including, without limitation, in respect of goods shipped, products sold, licenses granted, services rendered or otherwise associated with the Business and all amounts that may be returned or returnable with respect to letters of credit drawn down prior to Closing).

“**Acquired Assets**” has that meaning ascribed to it in Section 2.1 of this Agreement.

“**Additional Assumed Contract**” has that meaning ascribed to it in Section 2.5(b)(i) of this Agreement.

“**Additional Cure Notice**” has that meaning ascribed to it in Section 2.5(b)(ii) of this Agreement.

“**Additional Designation Date**” has that meaning ascribed to it in Section 2.5(b)(ii) of this Agreement.

“**Additional Designation Notice**” has that meaning ascribed to it in Section 2.5(b)(i) of this Agreement.

“**Additional Rejected Contract**” has that meaning ascribed to it in Section 2.5(b)(i) of this Agreement.

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

“**Allocation Statement**” has that meaning ascribed to it in Section 3.2 of this Agreement.

“**Alternate Transaction**” means a transaction or series of related transactions pursuant to which Seller (a) accepts a Qualified Bid, other than that of Purchaser, as the highest or best offer, or (b) sells, transfers, leases or otherwise disposes of, directly or indirectly, including through an asset sale, stock sale, merger, reorganization or other similar transaction (by Seller or otherwise), including pursuant to a stand-alone plan of reorganization or refinancing, all or substantially all of the Acquired Assets (or agrees to do any of the foregoing) in a transaction or series of transactions to a party or parties other than Purchaser.

“**Ancillary Agreement**” means any other agreement, document or instrument that any Seller or Purchaser, as applicable, enters into in connection with the consummation of the transactions contemplated hereby.

“**Applicable Schedules**” means Schedule 4.3(a) (Conflicts), Schedule 4.3(b) (Consents of Third Parties - Seller), Schedule 4.4 (Permitted Exceptions), Schedule 4.5 (Contracts),

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Schedule 4.6 (Real Property Leases), Schedule 4.7(i) (Intellectual Property), Schedule 4.7(ii) (Registered Intellectual Property), Schedule 4.8(i) (Permits Issued to Seller), Schedule 4.8(ii) (Permits Applied for by Seller), Schedule 4.8(iii) (Permits not Issued to or Applied for by Seller), Schedule 4.9(i) (Employee Benefit Plans), Schedule 4.9(ii) (Employees, Consultants and Independent Contractors), Schedule 4.10 (Labor Relations), Schedule 4.12(i) (Insurance Policies), Schedule 4.12(ii) (Effectiveness of Insurance Policies), Schedule 4.13 (Brokers and Finders of Seller), Schedule 4.14 (Prepaid Customer Service Liabilities), Schedule 4.15 (Litigation; Proceedings), Schedule 4.17(i) (Compliance with Laws), Schedule 4.17(ii) (Notices of Violation or Non-Renewal of Permits), Schedule 4.18 (Affiliate Transactions) and the Permitted Liens Schedule.

“**Assigned Contract**” has that meaning ascribed to it in Section 2.5(d)(ii) of this Agreement.

“**Assignment and Assumption Agreement**” means the Assignment and Assumption Agreement in substantially the form annexed hereto as **Exhibit D** evidencing the assignment to and assumption by Purchaser of all rights and obligations under the Assigned Contracts, which **Exhibit D** shall be acceptable to Purchaser in its sole and absolute discretion.

“**Assumed Benefit Plans**” has the meaning ascribed to it in Section 6.4(a) of this Agreement.

“**Assumed Contract**” has the meaning ascribed to it in Section 2.5(a)(ii) of this Agreement.

“**Assumed Liabilities**” has the meaning ascribed to it in Section 2.3 of this Agreement.

“**Auction**” means the auction for the sale of Seller’s assets conducted by Seller if any Qualified Bid is received pursuant to the Bidding Procedures Order.

“**Bankruptcy Sale Order**” means an order, in all material respects in the form of **Exhibit A**, issued by the Bankruptcy Court, which Bankruptcy Sale Order shall be acceptable to Purchaser in its sole and absolute discretion.

“**Bidding Procedures Motion**” means a motion, in form and substance satisfactory to Purchaser in its sole and absolute discretion, to approve the Bidding Procedures Order.

“**Bidding Procedures Order**” means an order, in all material respects in the form of **Exhibit B**, issued by the Bankruptcy Court that, among other things, establishes procedures for an auction process to solicit competing bids, which Bidding Procedures Order shall be acceptable to Purchaser in its sole and absolute discretion.

“**Bill of Sale**” means each Bill of Sale in all material respects in the form of **Exhibit C** conveying to Purchaser title to all of the Acquired Assets, which **Exhibit C** shall be acceptable to Purchaser in its sole and absolute discretion.

“**Break-Up Fee**” means 3% of the Purchase Price.

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“**Business Day**” means any day other than Saturday, Sunday and any day that is a legal holiday or a day on which banking institutions in New York or Delaware are authorized by Law or other governmental action to close.

“**Cash**” means all cash on hand and in banks, cash equivalents, marketable securities, short-term investments, treasury bills, money orders, checks (including cash in transit such as checks received prior to the Closing, whether or not deposited or cleared prior to the Closing), checking account balances, instruments for the payment of money, certificates of deposit and other time deposits and letters of credit.

“**Casualty**” has the meaning ascribed to it in Section 6.4(b) of this Agreement.

“**Causes of Action**” means all Claims and causes of action held by any Seller immediately prior to the Closing Date, including, but not limited to, any and all Claims, obligations, rights, suits, damages, causes of action, remedies and liabilities, whatsoever, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, whether arising under any contract or under the Bankruptcy Code or other federal, state or other non-bankruptcy law.

“**Claim**” has the meaning ascribed by Bankruptcy Code §101(5), including all rights, claims, causes of action, defenses, debts, demands, damages, offset rights, setoff rights, recoupment rights, obligations, and liabilities of any kind or nature under contract, at law or in equity, known or unknown, contingent or matured, liquidated or unliquidated, and all rights and remedies with respect thereto.

“**Closing**” has the meaning ascribed to it in Section 10.1 of this Agreement.

“**Closing Date**” has the meaning ascribed to it in Section 10.1 of this Agreement.

“**Code**” means the Internal Revenue Code of 1986, as amended, and the regulations issued thereunder.

“**Contract**” means any agreement, contract, lease (including, without limitation, leases for the Leased Property), sublease, purchase order, arrangement, license, commitment, insurance policy or other binding arrangement or understanding, whether written or oral, and any amendments, modifications or supplements thereto.

“**Contract Schedule**” has the meaning ascribed to it in Section 2.5(a)(i) of this Agreement.

“**Credit Agreement**” means that certain Amended and Restated Credit Agreement dated as of December 13, 2013, among SynCardia Systems, Inc., as borrower, the guarantors party thereto and SWK Funding, LLC, as Lender and administrative agent (as successor to Cantor Fitzgerald Securities), as the same has been and may be further amended, restated, supplemented or otherwise modified and in effect from time to time.

“**Cure Amounts**” means all amounts, costs and expenses required by the Bankruptcy Court to cure all defaults under the Contracts so that they may be sold and assigned to Purchaser pursuant to Bankruptcy Code Sections 363 and 365.

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“Data” means all Documents and data related to the Business, including, but not limited to all clinical, analytical, bench and manufacturing data.

“Delivery Date” means the Petition Date or such later date as determined by Purchaser in its sole and absolute discretion.

“Designation Period” has the meaning ascribed to it in Section 2.5(b)(i) of this Agreement.

“DIP Credit Agreement” means that certain Senior Secured, Super-Priority Debtor-In - Possession Loan and Security Agreement, of even date herewith, by and among Seller, the lenders from time to time party thereto and Purchaser, as may be amended, restated, supplemented or otherwise modified and in effect from time to time.

“DIP Facility Obligations” means the “Obligations” as defined in the DIP Orders.

“DIP Orders” means the interim and final orders of the Bankruptcy Court approving Seller’s entry into the DIP Credit Agreement.

“Documents” means all files, documents, instruments, papers, books, reports, records, tapes, microfilms, photographs, letters, budgets, forecasts, ledgers, journals, title policies, customer and supplier lists and information, regulatory filings, operating data and plans, technical documentation (design specifications, functional requirements, operating instructions, logic manuals, flow charts, etc.), user documentation (installation guides, user manuals, training materials, release notes, working papers, etc.), marketing documentation (sales brochures, flyers, pamphlets, Web pages, etc.), cost of pricing information, business plans, quality control records and procedures, blueprints, accounting, legal and tax files (including all related memoranda and analyses therein), all files, customer and supplier files and documents (including credit information), personnel files and employment records relating to employees (including, without limitation, applicable completed I-9 forms), supplier lists, records, literature and correspondence, including materials relating to Inventories, services, marketing, advertising, promotional materials, Intellectual Property, and other similar materials to the extent related to, used in, held for use in, the Business or the Acquired Assets in each case whether or not in electronic form, whether or not physically located on any of the premises of the Leased Property, but excluding any materials exclusively related to any Excluded Assets.

“Employee Benefit Plans” means all (a) employee pension benefit plans as defined in Section 3(2) of ERISA, (b) employee welfare benefit plans as defined in Section 3(1) of ERISA, and (c) stock option, bonus, deferred compensation, retention, severance, or termination pay plans or policies or any other plans or policies providing for compensation or benefits (including any employment, severance, change in control or similar agreement or any arrangement relating to a sale of the Business), in each case, that is maintained, administered, or contributed to (or with respect to which any obligation to contribute has been undertaken) by a Seller or any ERISA Affiliate and that covers any current or former employee, director, manager, member, officer or consultant of any Seller (or their dependents, spouses or beneficiaries).

“Employees” means all individuals employed by Seller in connection with the Business as of the Closing Date.

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“**Encumbrances**” means, to the extent not considered a Lien, any security interest, lien, collateral assignment, right of setoff, debt, obligation, liability, pledge, levy, charge, escrow, encumbrance, option, right of first refusal, restriction (whether on transfer, disposition or otherwise), third party right, right limited to Seller personally, other agreement term tending to limit any right or privilege of Seller under any Contract, conditional sale Contract, title retention Contract, mortgage, lease, deed of trust, hypothecation, indenture, security agreement, easement, license, servitude, proxy, voting trust, transfer restriction under any shareholder or similar agreement, or any other agreement, arrangement, Contract, commitment, understanding or obligation of any kind whatsoever, whether written or oral, or imposed by any Law, equity or otherwise.

“**Environmental Laws**” has that meaning ascribed to it in Section 4.11 of this Agreement.

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

“**ERISA Affiliate**” means any trade or business (whether or not incorporated) which is treated as a single employer with Seller under Section 414(b), (c), (m) or (o) of the Code or Section 4001 of ERISA.

“**Excluded Asset**” has the meaning ascribed to it in Section 2.2 of this Agreement.

“**Excluded Liability**” has the meaning ascribed to it in Section 2.4 of this Agreement.

“**Expense Reimbursement**” means an amount equal to the lesser of (a) the aggregate documented, actual, reasonable out-of-pocket fees and expenses (including, without limitation, fees and expenses of legal counsel, accounting fees and expenses, HSR Act filing fees, escrow and other fees and expenses) incurred by Purchaser in connection with this Agreement (including, without limitation, the drafting, negotiation and implementation of this Agreement), the transactions contemplated hereby and matters related hereto and thereto (including, without limitation, relating to business, legal and accounting due diligence and all matters in connection with the Bankruptcy Case), in each case whether incurred before or after the Petition Date, and (b) \$1,750,000.

“**Federal Rules of Bankruptcy Procedure**” means the rules of bankruptcy courts promulgated by the United States Supreme Court and published as an appendix to title 11 of the United States Code.

“**First Day Hearing**” means the hearing on the Debtor’s first day pleadings.

“**FF&E**” means all equipment (including, without limitation, laser equipment), machinery, fixtures, furniture and other tangible property (unless sold to any third party in the Ordinary Course of Business and not in violation of this Agreement) (including all such property that is damaged), including all attachments, appliances, fittings, gas and oil burners, lighting fixtures, signs, doors, cabinets, partitions, mantels, motors, pumps, screens, plumbing, heating, air conditioning, refrigerators, freezers, refrigerating and cooling systems, waste disposal and storing, wiring, telephones, televisions, monitors, security systems, racks, ovens, stoves, carpets, floor coverings, wall coverings, office equipments, kitchen appliances, computers (including point-of-sale terminals and systems), registers and safes, trash containers, meters and scales, combinations, codes and keys, and any other furniture, fixtures, equipment and improvements.

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“**Governmental Authority**” means any federal, state, local court, tribunal, governmental department, agency, board or commission, regulatory or supervisory authority, or other administrative, governmental or quasi-governmental body, subdivision or instrumentality.

“**Held Contract**” has the meaning ascribed to it in Section 2.5(a)(ii) of this Agreement.

“**HSR Act**” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the regulations thereunder.

“**Improvements**” means buildings, structures, systems, facilities, easements, rights-of-way, privileges, improvements, licenses, hereditaments, appurtenances and all other rights and benefits belonging, or in any way related, to the Leased Property.

“**Intellectual Property**” means all intellectual property, including, without limitation, (a) patents, patent applications and patent disclosures, together with all reissuances, continuations, continuations in part, revisions, extensions, reexaminations, provisionals, divisions, renewals, revivals, and foreign counterparts thereof and all registrations and renewals in connection therewith, (b) trademarks, service marks, trade dress, logos, trade names and corporate names and other indicia of origin and corporate branding, together with all translations, adaptations, derivations and combinations thereof and including all goodwill associated therewith, and all applications, registrations and renewals in connection therewith, (c) works of authorship, copyrightable works, copyrights and all applications, registrations and renewals in connection therewith, (d) mask works and all applications, registrations and renewals in connection therewith, (e) trade secrets, inventions and confidential business information (including ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information, business and marketing plans and proposals, assembly, test, installation, service and inspection instructions and procedures, technical, operating and service and maintenance manuals and data, hardware reference manuals and engineering, programming, service and maintenance notes and logs), (f) Software, (g) Internet addresses, uniform resource locaters, domain names, Websites and Web pages, (h) any and all other intellectual property and proprietary rights, (i) company-wide telephone numbers (including facsimile numbers) and (j) goodwill related to all of the foregoing, in each case to the extent used or useful in the operation of the Business or related to the Acquired Assets.

“**Interest**” means “interest” as that term is used in Bankruptcy Code Section 363(f).

“**Inventories**” or “**Inventory**” means all inventory of any kind or nature (other than FF&E) whether or not prepaid, and wherever located, held or owned, including, without limitation, office and medical supplies, service parts and accessories.

“**Law**” means any law, statute, ordinance, regulation, rule, code or rule of common law or otherwise of, or any order (including, without limitation, the Orders), judgment, injunction or decree issued, promulgated, enforced or entered by, any Governmental Authority.

“**Leased Property**” means all the real property leased, subleased or licensed by Seller which is used or useful in connection with the operation of the Business.

“**Lien**” has the meaning given to that term in the Bankruptcy Code.

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“**Material Adverse Effect**” means a state of facts, event, change or effect with respect to the Business, the Acquired Assets, the Assumed Liabilities or the enforceability of any Assigned Contract that results in a material adverse effect on the value of the Acquired Assets or the Business, taken as a whole, but excludes any state of facts, event, change or effect caused by events, changes or developments relating to (a) changes in economic, regulatory or political conditions generally; or (b) the fact that Seller filed as a debtor pursuant to the Bankruptcy Code.

“**Obligations**” means, collectively, the Prepetition First Priority Obligations (as defined in the DIP Orders) and the DIP Obligations.

“**Omitted Contract Order**” has that meaning ascribed to it in Section 2.5(c)(i) of this Agreement.

“**Orders**” means the Bankruptcy Sale Order and the Bidding Procedures Order.

“**Ordinary Course of Business**” means the conduct by Seller of the Business in substantially the same manner as conducted as of the Execution Date and in compliance with applicable Law in all material respects, after taking into consideration changes that are a result of, relating to, in connection with or resulting from the Bankruptcy Case.

“**Organizational Amendments**” has the meaning ascribed to it in Section 10.2(f) of this Agreement.

“**Permits**” means all certificates of occupancy or other certificates, permits, concessions, authorizations, grants, easements, variances, exemptions, consents, orders, franchise, filings, approvals, authorizations and licenses used, useable or useful in the operation of the Business or the use or enjoyment or benefit of the Acquired Assets.

“**Permitted Liens**” means: (a) statutory liens arising in the Ordinary Course of Business that are not overdue and that do not materially affect the value or use of the affected asset, all of which are listed on Permitted Liens Schedule attached hereto; (b) pledges or deposits in connection with workers’ compensation, unemployment insurance and other social-security legislation; and (c) easements, rights-of-way, restrictions and other similar encumbrances other than monetary encumbrances, judgments and monetary liens that in each case do not in any case materially detract from the value or use of the property subject thereto or materially interfere with the ordinary conduct of the business of Seller at the property subject thereto.

“**Person**” means any individual, corporation, partnership, limited liability company, firm, joint venture, association, joint-stock company, trust, unincorporated organization or Governmental Authority or other entity.

“**Petition Date**” means the date on which the Bankruptcy Case is filed with the Bankruptcy Court.

“**Purchase Price**” has the meaning ascribed to it in Section 3.1 of this Agreement.

“**Purchaser Plans**” has the meaning ascribed to it in Section 6.4(b) of this Agreement.

“**Previously Omitted Contract**” has the meaning ascribed to it in Section 2.5(c)(i) of this Agreement.

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“**Qualified Bid**” means competing bids qualified for the Auction in accordance with the Bidding Procedures Order.

“**Rejected Contract**” has the meaning ascribed to it in section 2.5(a)(ii) of this Agreement.

“**Related Person**” means, with respect to any Person, all past, present and future directors, officers, members, managers, partners, limited partners, stockholders, employees, controlling persons, Affiliates, agents, professionals, attorneys, accountants, lenders, investment bankers or representatives of any such Person.

“**Released Claims**” has the meaning ascribed to it in Section 12.16 of this Agreement.

“**Required Bankruptcy Deliveries**” means the schedules of assets and liabilities and statements of financial affairs for each Seller, as required by Rule 1007 of the Federal Rules of Bankruptcy Procedure.

“**Sale Hearing**” means the hearing to consider the entry of the Bankruptcy Sale Order.

“**Schedules**” has the meaning ascribe to it in Section 6.3 of this Agreement.

“**Software**” means any computer program, operating system, application, system, firmware or software of any nature, point-of-entry system, peripherals, and data whether operational, active, under development or design, nonoperational or inactive, including all object code, source code, comment code, algorithms, processes, formulae, interfaces, navigational devices, menu structures or arrangements, icons, operational instructions, scripts, commands, syntax, screen designs, reports, designs, concepts, visual expressions, technical manuals, tests scripts, user manuals and other documentation therefor, whether in machine-readable form, virtual machine-readable form, programming language, modeling language or any other language or symbols, and whether stored, encoded, recorded or written on disk, tape, film, memory device, paper or other media of any nature, and all databases necessary or appropriate in connection with the operation or use of any such computer program, operating system, application, system, firmware or software.

“**Tax**” or “**Taxes**” means all taxes, however denominated, including any interest, penalties or additions to tax that may become payable in respect thereof, imposed by any Governmental Authority, whether payable by reason of Contract, assumption, transferee liability, operation of law or Treasury Regulation Section 1.1502-6(a) (or any predecessor or successor thereof or any analogous or similar provision under Law), which taxes shall include all income taxes, payroll and employee withholding, unemployment insurance, social security (or similar), sales and use, excise, franchise, gross receipts, occupation, real and personal property, stamp, transfer, workers’ compensation, customs duties, registration, documentary, value-added, alternative or add-on minimum, estimated, environmental (including taxes under Section 59A of the Code) and other assessments or obligations of the same or a similar nature, whether arising before, on or after the Closing Date.

“**Tax Return**” means any report, return, information return, filing or other information, including any schedules, exhibits or attachments thereto, and any amendments to any of the foregoing required to be filed or maintained in connection with the calculation, determination, assessment or collection of any Taxes (including estimated Taxes).

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“**Trademark Assignment Agreement**” means each Trademark Assignment Agreement in substantially the form annexed hereto as **Exhibit E** evidencing the assignment to Purchaser of all trademarks which are Acquired Assets, which **Exhibit E** shall be acceptable to Purchaser in its sole and absolute discretion.

“**Transaction Taxes**” has the meaning ascribed to it in Section 7.1(c) of this Agreement.

“**Transferred Employee**” has the meaning ascribed to it in Section 6.4(b) of this Agreement.

“**Treasury Regulation**” means, with respect to any referenced provision, such provision of the regulations promulgated by the United States Department of the Treasury.

“**WARN Act**” means the Worker Adjustment and Retraining Notification Act, 29 U.S.C. Section 2101, *et seq*, as amended.

EXHIBIT D

Bidding Procedures

BIDDING PROCEDURES

Set forth below are the bidding procedures (the “Bidding Procedures”)¹ to be employed with respect to the potential sale (each a “Sale” and collectively, the “Sales”) of substantially all of the assets (the “Assets”) of SynCardia Systems, Inc., as debtor and debtor in possession (the “Debtor”), in Case No. 16-11599 (the “chapter 11 Case”) under title 11 of the United States Code (the “Bankruptcy Code”) pending in the United States Bankruptcy Court for the District of Delaware (the “Court”).

The Debtor reached an agreement with Sindex SSI Lending, LLC, (the “Stalking Horse Purchaser”), as the buyer and Stalking Horse Purchaser bidder for certain assets of the Debtor’s business (the “Assets”), as set forth more fully in that certain Asset Purchase Agreement among the Stalking Horse Purchaser and the Debtor, dated as of July 1, 2016 (the “Stalking Horse APA”). The Debtor will employ the Bidding Procedures to allow the Debtor to solicit higher and better offers for the Assets related to the Debtor’s business.

The Debtor will also solicit, consider and accept offers to purchase all or any portion of the Debtor’s Assets. The Debtor also conducts operations outside the United States through its non-US subsidiary. The Debtor does not intend to solicit and consider offers to purchase any stockholding interests or assets owned by Debtor’s subsidiary. To ensure that all interested parties have a full opportunity to propose transactions for the Debtor’s Assets, the Debtor is soliciting offers on all terms (or combinations of terms) that will maximize the Debtor’s overall estate.

On July 1, 2016, the Debtor filed a motion pursuant to §§ 105(a), 363, 365, 503, and 507 of the Bankruptcy Code and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedures (the “Bankruptcy Rules”) for entry of an order (a) approving and authorizing (i) the Bidding Procedures (including the conduct of an Auction (as defined below) if appropriate, (ii) payment of the Bid Protections (including a Break-Up Fee (as defined below)) for the Stalking Horse Purchaser, and (iii) the form and manner of notice of the Sale Hearing (as defined below); and, after conduct of the Auction (if held) (b) approving and authorizing (i) (A) the Sale of the Debtor’s Assets related to its business free and clear of all liens, claims, and encumbrances and/or (B) Sale of any other Assets of the Debtor determined to be in the best interests of the Debtor’s estate, and (ii) the assumption and assignment of certain executory contracts and unexpired leases in connection therewith; and (c) granting related relief (the “Sale Motion”).²

On _____, 2016, the Court entered an order (the “Bidding Procedures Order”) approving the Bidding Procedures. The Bidding Procedures Order sets [] as the date the Court will conduct the Sale Hearing. At the Sale Hearing, the Debtor will seek entry of an order (the “Sale Order”) authorizing and approving the Sale of the Assets to the Successful Bidder(s) as

¹ The Debtor reserves the right to waive or modify some of the Bidding Procedures to the extent such waiver or modification is in the best interests of the Debtor’s estate as determined by the Debtor, in its discretion, but after consultation with the Administrative Agent (as defined below) and consistent with the DIP Order (as defined below).

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Sale Motion or, if not defined therein, in the Stalking Horse APA.

determined by the Debtor to be in the best interests of the estate and, if such Successful Bidder fails to consummate the Sale within fifteen (15) days after entry of the Sale Order, to such Back-Up Bidder (defined below) as determined at the Auction, without further order of the Court.

In addition to the sale of the Assets through a single transaction to the Successful Bidder(s), consistent with its obligations under the Interim Order (I) Authorizing Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Adequate Protection to Prepetition Secured Lenders and (IV) Granting Related Relief the “Interim DIP Order”) and any final order granting such relief (together, the “DIP Order”), the Debtor reserves the right to seek approval of the Sale of all or substantially all of its Assets through a single transaction or through separate transactions in the event that the combination of such Sales is determined by the Debtor, in its discretion, but after consultation with (i) Canaccord Genuity Inc. (“Canaccord”), (ii) Ankura Consulting Group, LLC (formerly known as MGBD, LLC) (referred in the aggregate with Canaccord as “Advisors”) and (iii) the statutorily appointed official committee of unsecured creditors, if one is appointed (the “Committee”) to be in the best interests of the estate and, if such Successful Bidder fails to consummate the Sale within fifteen (15) days after entry of the Sale Order, to such Back-Up Bidder (defined below) as determined at the Auction, without further order of the Court.

STALKING HORSE APA

On July 1, 2016, the Debtor entered into the Stalking Horse APA pursuant to which the Stalking Horse Purchaser proposes to acquire all right, title and interest of the Debtor in, to or under substantially all the Assets of the Debtor of every kind and description, wherever located, real, personal or mixed, tangible or intangible, to the extent owned, leased, licensed, used or held for use in or relating to the Debtor’s business, as the same shall exist on the Closing Date (but, for the avoidance of doubt, excluding any Excluded Assets).

Pursuant to the Stalking Horse APA, the Stalking Horse Purchaser has agreed to purchase the Assets from the Debtor for consideration in the aggregate amount of the Purchase Price and the assumption of Assumed Liabilities. The Bidding Procedures Order, pursuant to which the Court approved the Bidding Procedures, entitles the Stalking Horse Purchaser to certain bid protections, including payment of a Break-Up Fee if and to the extent required under the terms of the Stalking Horse APA (the “Break-Up Fee”). The Break-Up Fee is intended to provide an incentive for and to compensate the Stalking Horse Purchaser for entering into the Stalking Horse APA with knowledge of the risks that arise from its participating in the subsequent bidding process, and absent which the Stalking Horse Purchaser would not have entered into the Stalking Horse APA. The Break-Up Fee shall be payable on the terms and conditions set forth in the Stalking Horse APA and the Bidding Procedures Order. The transaction contemplated by the Stalking Horse APA is subject to competitive bidding, as set forth herein, and approval by the Court pursuant to sections 363 and 365 of the Bankruptcy Code.

BID DEADLINE FOR ALL OF THE DEBTOR’S ASSETS

All offers, solicitations, or proposals (each, a “Bid”) must be submitted in writing on or before August 15, 2016 at 4:00 p.m. (the “Bid Deadline”). To properly submit a Bid, a Qualified Bidder (defined below) must deliver written copies of its Bid to the following parties

(collectively, the “Notice Parties”) by the Bid Deadline: (i) proposed counsel to the Debtor, (a) Olshan Frome Wolosky LLP, 1325 Avenue of the Americas, New York, New York 10019, Attn: Michael S. Fox and Jonathan T. Koevary, and (b) Young Conaway Stargatt & Taylor, LLP, Attn: Sean T. Greecher; (ii) counsel to the Stalking Horse Purchaser, Landis Rath & Cobb LLP, 919 N. Market Street, Suite 1800, Wilmington, Delaware 19801, Attn: Adam G. Landis and Kerri K. Mumford; and (iii) counsel to any Committee.

Unless determined otherwise by the Debtor, after consultation with Sindex, a Bid delivered after the Bid Deadline shall not constitute a Qualified Bid.

PARTICIPANT REQUIREMENTS

To participate in the process detailed herein and to otherwise be considered for any purpose hereunder, each Bid and each bidder (a “Bidder”) submitting a Bid must be determined by the Debtor to have satisfactorily provided the Debtor with each of the following (unless such requirement, other than the “Confidentiality Agreement” requirement set forth in paragraph (d) below, after consultation with Sindex is waived by the Debtor, on or before the Bid Deadline (the “Participant Requirements”):

- (a) **Identification of Bidder. Identification of the Bidder and/or any of the Principals (defined below), corporate officers or other representatives that are authorized to appear for and act on behalf of the Bidder with respect to the contemplated transaction.**
- (b) **Identification of Assets. Identification of the business, Assets or stock holdings owned by the Debtor to which the Bid applies**
- (c) **Corporate Authority. Written evidence of the Bidder’s authority to enter into the contemplated transaction and submit a Bid as well as the Bidder’s acknowledgement and acceptance of the terms set forth in the Bidding Procedures. In the event that the Bidder is an entity specially formed for the purpose of effectuating the contemplated transaction (an “Acquisition Entity”), then the Bidder must furnish written evidence, reasonably acceptable to the Debtor, of the approval of the contemplated transaction by the equity holder(s) or members of such Bidder (the “Principals”).**
- (d) **Confidentiality Agreement. An executed confidentiality agreement (the “Confidentiality Agreement”) in form and substance acceptable to the Debtor and its counsel.**
- (e) **Proof of Financial Ability to Perform. Written evidence, reasonably acceptable to the Debtor, that the Bidder has the necessary financial ability to close the contemplated transaction and provide adequate assurance of future performance of all obligations to be assumed in such contemplated transaction. Any such information may be shared by the Debtor with a counterparty to any contract or lease that Bidder seeks to assume or hold and may include, among other things, the following:**

- (i) **the Bidder's or, in the case of an Acquisition Entity, the Principals', current financial statements (audited if they exist);**
- (ii) **contact names and numbers for verification of financing sources;**
- (iii) **evidence of the Bidder's or Principals' internal resources and written evidence of a commitment for debt or equity funding that is needed to close the contemplated transaction; and**
- (iv) **any such other form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtor demonstrating that such Bidder has the ability to close the contemplated transaction; provided, however, that the Debtor shall determine, in its reasonable discretion, whether the written evidence of such financial wherewithal is reasonably acceptable, and shall not unreasonably withhold acceptance of a Bidder's financial qualifications.**

ACCESS TO DUE DILIGENCE MATERIALS

The Debtor has designated Canaccord Genuity Inc., 350 Madison Avenue, New York, NY 10017 (Attn: Geoffrey Richards, GRichards@canaccordgenuity.com) to coordinate all reasonable requests for additional information and due diligence access from (a) Qualified Bidders and (b) potential Bidders who submit to the Debtor (i) an executed confidentiality agreement in form and substance reasonably satisfactory to the Debtor and (ii) reasonable evidence demonstrating such party's financial capability to consummate a Sale of the Debtor's Assets to which the Bidder's Bid applies. In addition, the Debtor reserves the right not to provide due diligence access to any potential Bidder that the Debtor concludes in its reasonable business judgment is not likely to become a Qualified Bidder. The Debtor is not responsible for, and will bear no liability with respect to, any information obtained by Bidders in connection with the sale of any of the Debtor's Assets. Due diligence information will be furnished to the Stalking Horse Purchaser and other Qualified Bidders through an electronic data room with all Qualified Bidders receiving access to identical information. If the Debtor furnishes any material information related to the Debtor not previously given to the Stalking Horse Purchaser, then the Debtor shall place such information in the data room. The Debtor shall not be obligated to furnish any due diligence information after the Bid Deadline. Notwithstanding anything herein to the contrary, until such time as a party has submitted a Qualified Bid and as deemed a Qualified Bidder, the Debtor reserves the right to withhold information or restrict access to certain materials in any data room if providing such information or materials to a such party would, in the Debtor's business judgment, put the Debtor at a competitive disadvantage. The Debtor reserves the right to provide such information on an "advisors' eyes only" basis.

DUE DILIGENCE FROM BIDDERS

Each Bidder shall comply with all reasonable requests for information from the Debtor regarding such Bidder and its contemplated transaction. Failure by a Bidder to provide such information will be a basis for the Debtor, after consulting with the Administrative Agent and the

Committee, to deem that Bidder not to be a Qualified Bidder and to prohibit that Bidder from participating in any Auction.

BIDDING PROCESS

The Debtor shall: (a) determine whether a Bidder is a Qualified Bidder; (b) coordinate the efforts of Bidders in conducting their due diligence investigations, as permitted by the provisions herein; (c) receive offers from Qualified Bidders; and (d) negotiate any offers made to purchase the Assets, or any portion of the Debtor's Assets proposed to be transferred to the Qualified Bidder. Subject to the Bidding Procedures Order, the Debtor shall have the right to adopt such other rules for the Bidding Procedures (including rules that may depart from those set forth herein), that, in the Debtor's reasonable discretion, after consultation with the Administrative Agent and Committee, will better promote the goals of the Bidding Procedures. With respect to all material decisions that the Debtor has the power to make under these Bidding Procedures, the Debtor will confer with the Administrative Agent and Committee.

BID REQUIREMENTS

Except as set forth above under the headings "Bid Deadline" and "Designation as Qualified Bidder," to participate in the Auction (defined below), a Qualified Bidder must submit a Bid by the Bid Deadline that the Debtor determines satisfies each of the following conditions (each such Bid, a "Qualified Bid"):

- (a) **Written Submission of Purchase Agreement and Commitment to Close. The Debtor Shall File with the Court the Stalking Horse APA.**

Each Qualified Bidder submitting a Qualified Bid for any or all of the Assets must submit such Qualified Bid in writing and include: (i) a purchase agreement signed by the Qualified Bidder (the "Purchase Agreement"); (ii) a blackline reflecting the Qualified Bidder's proposed changes to the Stalking Horse APA; and (iii) a written commitment demonstrating that the Qualified Bidder will be able to close the transaction proposed in its Purchase Agreement on the terms and conditions set forth therein.

- (b) **Identification of Contracts and Leases to be Assumed.** Each Qualified Bid must include a comprehensive list of the Debtor's executory contracts and unexpired leases (collectively, the "Assumed Contracts") that the applicable Qualified Bidder desires to assume, and a packet of information, including financial information, that will be provided to the nondebtor counterparties to such Contracts and Leases sufficient to demonstrate adequate assurance of future performance.

- (c) **Irrevocable.** Each Qualified Bid must be irrevocable until the Debtor has designated a Qualified Bid as the Successful Bid (as defined below) and the Back-Up Bid (as defined below) (the "Termination Date"). The Back-Up Bid(s) will remain open until the earlier of (i) the Closing Date of the Sale with the Successful Bidder(s) or (ii) the fifteenth (15th) day after entry of the Sale Order; provided, however, that, if the Debtor delivers the Back-Up Notice during such

15-day period, the Back-Up Bidder shall have the obligations set forth in paragraph (g) below.

- (d) **Contingencies.** No Qualified Bid may be conditioned on obtaining financing, regulatory contingencies (other than on the condition that any applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the “HSR Act”) be satisfied, which may occur subsequent to the Bid Deadline, provided that the Bidder makes the initial filing required (if any) under the HSR Act by the deadline set forth above), any internal approval, or on the outcome or review of due diligence; provided, however, that the timing and likelihood of receiving regulatory approval will be a consideration in determining the highest and best Bid.
- (e) **Not Burdensome.** The terms of any Sale under any Purchase Agreement must not be materially more burdensome or conditional than the terms of the Sale under the Stalking Horse APA.
- (f) **Same or Better Terms.** Each Bid for any or all of the Assets must be on terms that, in the Debtor’s business judgment and after consulting with the Administrative Agent and Committee, are the same as or better than the terms of the Stalking Horse APA and each such Bid for any or all of the Assets must satisfy the “Minimum Bid” requirements set forth in paragraph (o) below.
- (g) **Closing.** The Purchase Agreement must provide that (A)(1) the Closing Date shall occur on or before August 24, 2016, unless otherwise agreed to by the Debtor, after consultation with the Administrative Agent and Committee, and (2) within one (1) business day after the Auction has concluded, the Qualified Bidder, if deemed the Successful Bidder, shall complete and execute all agreements, instruments, or other documents evidencing and containing the terms and conditions upon which the Successful Bid was made, including, but not limited to, the applicable Purchase Agreement; and (B) if the Qualified Bidder is deemed the Back-Up Bidder, then (1) the Closing Date shall occur within five (5) business days after the Debtor provides written notice of its intent to close the Sale under the Purchase Agreement (the “Back-Up Notice”) and (2) within one (1) business day after the Debtor sends the Back-Up Notice, the Qualified Bidder shall complete and execute all agreements, instruments, or other documents evidencing and containing the terms and conditions upon which the Back-Up Bid was made, including, but not limited to, the applicable Purchase Agreement.
- (h) **Financing Sources.** Each Qualified Bid must contain written evidence of a firm commitment for financing or other evidence of the financial wherewithal of such Qualified Bidder (with appropriate contact information for such financing sources), which the Debtor reasonably believes provides (after consultation with the Administrative Agent and Committee) the Qualified Bidder with the ability to consummate the Sale and provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code.

- (i) **No Fees Payable to Qualified Bidder.** With the exception of the Qualified Bid submitted by the Stalking Horse Purchaser, no Qualified Bid may request or otherwise entitle the Qualified Bidder to any break-up fee, expense reimbursement amount or similar type of payment. Further, by submitting a Qualified Bid, a Qualified Bidder shall be deemed to waive its right to pursue a substantial contribution claim under § 503 of the Bankruptcy Code or in any way related to the submission of its Bid or the Bidding Procedures.³
- (j) **Good Faith Deposit.** Each Qualified Bid must be accompanied by a deposit (the “Good Faith Deposit”) in the form of a certified check or cash payable (in U.S. Dollars) to the order of SynCardia Systems, Inc. in the amount of not less than five percent (5%) of the amount of the stated purchase price in the Qualified Bid, to be held in escrow until (i) in the case of a Qualified Bidder other than the Successful Bidder or the Back-Up Bidder, the Termination Date and (ii) in the case of the Back-Up Bidder, until the earlier of (A) the Closing Date of the Sale with the Successful Bidder(s) or (B) the [sixtieth (60th)] day after entry of the Sale Order (unless, during such 60-day period, the Debtor delivers the Back-Up Notice, in which case the Good Faith Deposit of the Back-Up Bidder shall be treated as described under the heading “Return of Good Faith Deposit” below). The Stalking Horse APA governs the terms of the Good Faith Deposit that must accompany the Stalking Horse APA.
- (k) **Purchase of a Portion of the Debtor’s Assets.** The Auction is intended to be an auction of all or substantially all of the Assets (and assumption of liabilities thereto) of the Debtor. The Debtor shall determine, after consultation with the Administrative Agent and Committee, whether a Qualified Bid or Qualified Bids (separately or collectively) for any portion of the Debtor’s Assets is in the best interests of the Debtor’s estate.
- (l) **Disclosure.** Each Qualified Bid must fully disclose the identity of each entity that will be bidding for the Assets or otherwise participating in connection with such Qualified Bid, the complete terms of any such participation, and any connections or agreements between such entity and the Debtor and/or any officer, director, or direct or indirect equity security holder of the Debtor.
- (m) **Minimum Overbid.** Each Qualified Bid (to the extent that it seeks to purchase any of the Assets) must provide for a proposed purchase price, the value in cash of which is determined by the Debtor to be equal to or greater than the sum of: (a) the Total Consideration provided for in the Stalking Horse APA plus (b) the Break-Up Fee plus (c), the Expense Reimbursement, plus (d) \$250,000.

If any Bid is determined by the Debtor not to be a Qualified Bid, the Bidder shall be refunded its Good Faith Deposit within three (3) business days after such determination.

³ The Stalking Horse APA provides for the Break-Up Fee. As noted herein, such Break-Up Fee shall only be available, to the extent approved by the Court, to the Stalking Horse Purchaser. A Qualified Bidder must remove any provisions relating to a break-up fee, expense reimbursement or similar type of payment from any Purchase Agreement submitted with its Bid in order for the Bid to be deemed a Qualified Bid.

Any Bid that is not deemed a Qualified Bid shall not be considered by the Debtor, and the Bidder submitting that Bid will not be permitted to participate in the Auction (as defined below); provided, however, that if the Debtor receives a Bid that is not a Qualified Bid, the Debtor, after consultation with the Administrative Agent, may provide such Bidder with the opportunity to remedy any deficiencies which remedies must be implemented no later than three (3) days after the Bid Deadline.

The Stalking Horse APA is deemed to be a Qualified Bid for all purposes.

DESIGNATION AS QUALIFIED BIDDER

A "Qualified Bidder" is a Bidder that satisfies the Participant Requirements and that the Debtor determines has submitted by the Bid Deadline a Qualified Bid that is determined by the Debtor to be able to consummate the Sale as proposed in the Purchase Agreement (defined below) if selected as a Successful Bidder or a Back-Up Bidder.

As soon as practicable after the Debtor receives a Bid from a Bidder, as well as the information required under paragraphs (a) through (d) above related to Participant Requirements, the Debtor shall determine, after consultation with the Administrative Agent, whether such Bidder is a Qualified Bidder and shall advise such Bidder of its determination.

Notwithstanding anything herein to the contrary, (a) the Stalking Horse Purchaser is deemed a Qualified Bidder for all purposes.

CREDIT BIDDING

Any and all Bids, shall be in cash (in U.S. Dollars) unless otherwise provided in these Bidding Procedures. Any and all credit bids submitted by a party (Stalking Horse Purchaser) shall include a cash component that is sufficient to pay the amount of the Break-Up Fee and/or the Maximum Reimbursement Amount to the extent the same would be payable if the Stalking Horse Purchaser is the Successful Bidder (as hereinafter defined).

Qualified Bidders holding allowed secured claims against the Debtor may make one or more credit bids of some or all of their allowed secured claims. Without limiting that the Stalking Horse Purchaser may credit bid, at each round of the Auction, the full amount of the Break-Up Fee.

AUCTION

If no Qualified Bid other than the Qualified Bid submitted by the Stalking Horse Purchaser is received by the Bid Deadline, then (a) the Auction will not be held, (b) the Stalking Horse Purchaser will be deemed the Successful Bidder for the Assets, (c) the Qualified Bid submitted by the Stalking Horse Purchaser in the Stalking Horse APA shall be deemed the Successful Bid, and (d) at the Sale Hearing on **August 22, 2016 at ____ : .m.** (prevailing Eastern Time), the Debtor will seek approval of the Court for authority to consummate the proposed Sale of the Assets to the Stalking Horse Purchaser as contemplated in the Stalking Horse APA.

Only if a Qualified Bid (other than the Qualified Bid submitted by the Stalking Horse Purchaser) is received by the Bid Deadline shall the Debtor conduct an auction (the "Auction"). The Auction shall commence on **August 19, 2016 at 10:00 a.m.** (prevailing Eastern Time), at the offices of Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, or such other location designated by the Debtor.

Prior to the commencement of the Auction, the Debtor shall determine (in its discretion, but after consultation with the Administrative Agent and the Committee) which Qualified Bid represents the then-highest or otherwise best Bid (the "Initial Bid") and shall identify the Assets to which the Bid applies.

The Debtor shall provide copies of the Initial Bid (as defined below) to all Qualified Bidders as soon as reasonably practicable after the Bid Deadline, but in any event not later than three (3) days after the Bid Deadline, which may be satisfied by posting the Qualified Bids in an online dataroom.

The determination of which Qualified Bid constitutes the Initial Bid shall take into account any factors the Debtor reasonably deems relevant to the value of the Qualified Bid to the estate, including, among other things, the following: (a) the amount and nature of the Debtor's assets to be transferred and the consideration therefor; (b) the proposed assumption of any liabilities; (c) the ability of the Qualified Bidder to close the proposed transaction; (d) the proposed closing date and the likelihood, extent and impact of any potential delays in closing; (e) any purchase-price adjustments; (f) the impact of the contemplated transaction on any actual or potential litigation; (g) the net economic effect of any changes from the Stalking Horse APA, if any, if the Bid relates only to a portion of the Assets or and/or the terms of the Purchase Agreement, if the Bid relates to all of the Assets and all contemplated documents related to the Bid (each set thereof, the "Contemplated Transaction Documents"); (h) the net after-tax consideration to be received by the Debtor's estate; and (i) such other considerations the Debtor deems relevant in its reasonable discretion; provided, however, if a Bid for all or substantially all of the Debtor's Assets does not allocate value for the Assets equal or greater to (a) the Total Consideration provided for in the Stalking Horse APA plus (b) the Break-Up Fee; plus (c) the Expense Reimbursement; plus (d) \$250,000, then the Stalking Horse Bid shall be the Initial Bid (collectively, the "Bid Assessment Criteria").

The Auction shall be conducted according to the following procedures:

(2) Participation at the Auction

Only the Debtor, the Committee, the Stalking Horse Purchaser, and any other Qualified Bidder, in each case, along with their representatives and counsel, and such other parties as the Debtor (in its sole discretion) admit shall attend the Auction (such attendance to be in person).

Each Qualified Bidder participating in the Auction will be required to confirm that it has not engaged in any collusion regarding the Bidding Procedures, the Auction or the proposed transaction.

(3) Terms of Overbids

Qualified Bidders will be permitted to increase their Bids at each round of the Auction. Bidding shall begin with the Initial Bid and subsequently continue in minimum increments of at least \$100,000 (or such other amount that the Debtor, after consultation with the Administrative Agent and Committee, determines appropriate to facilitate the Auction) (the “Minimum Bid Increment”).

An “Overbid” is any Bid made at the Auction subsequent to the Debtor’s announcement of the Initial Bid. All Overbids 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, provided however, that the Debtor, at any time during the Auction, may call for one final round of sealed bids.

To submit an Overbid for purposes of this Auction, a Qualified Bidder must comply with the following conditions:

(a) Minimum Overbid Increment

Any Overbid after the Initial Bid shall be made in increments of at least the Minimum Bid Increment.

(b) 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 herein. Any Overbid made by a Qualified Bidder must remain open and binding on the Qualified Bidder until and unless (i) the Debtor accepts a higher Qualified Bid as an Overbid and (ii) such Overbid is not selected as the Back-Up Bid.

To the extent not previously provided (which shall be determined by the Debtor), a Qualified 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 Debtor, in consultation with the Administrative Agent and Committee, demonstrating such Qualified Bidder’s ability to close the transaction proposed by such Overbid.

(c) Consideration of Overbids

The Debtor reserves the right, in its reasonable business judgment after consultation with the Administrative Agent and Committee to make one or more adjournments in the Auction to, among other things: (i) facilitate discussions between the Debtor and individual Qualified Bidders; (ii) allow individual Qualified Bidders to consider how they wish to proceed; (iii) consider and determine the current highest or otherwise best Overbid at any given time during the Auction; and (iv) give Qualified Bidders the opportunity to provide the Debtor with such additional evidence as the Debtor, in its reasonable business judgment and after consultation with the Administrative Agent may require to demonstrate that they have sufficient internal resources or sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount.

(d) Stalking Horse Purchaser May Credit Bid the Amount of the Break-Up Fee

The Break-Up Fee will be taken into account in each round of bidding and added to the bid of the Stalking Horse Purchaser. The Stalking Horse Purchaser shall be permitted to credit bid the full amount of the Break-Up Fee pursuant to any Overbid in connection with each round of bidding in the Auction.

(4) Additional Procedures

The Debtor, in its reasonable discretion, and after consultation with the Administrative Agent and Committee, may adopt new rules for the Auction at or prior to the Auction that will better promote the goals of the Auction and that are not inconsistent with any of the provisions of the Bankruptcy Code, or elect to waive any requirement in these Bidding Procedures.

The Debtor, after consultation with the Administrative Agent and Committee, will evaluate all options and determine which Qualified Bid is in the best interests of the Debtor, its estate, and its creditors.

Each Qualified Bidder will be permitted a fair, but limited, amount of time to respond to the previous Bid at the Auction. Bidding at the Auction will continue until such time as the highest or otherwise best offer is determined in accordance with these Bidding Procedures.

The Debtor will, from time to time, in an open forum, advise Qualified Bidders participating in the Auction of the then-highest or otherwise best Bid(s).

(5) Consent to Jurisdiction as Condition to Bid

All Qualified Bidders at the Auction shall be deemed to have consented to the jurisdiction of the Court and waived any right to a jury trial in connection with any disputes relating to the Auction, and the construction and enforcement of the Bidder's Contemplated Transaction Documents, as applicable.

(6) Closing the Auction

Upon conclusion of the bidding, the Auction shall be closed and no additional Bids may be considered following the closing of the Auction. The Debtor shall immediately review the final Overbid of each Qualified Bidder on the basis of financial and contractual terms and the factors relevant to the Sale, including those factors affecting the speed and certainty of consummating the proposed sale, and identify the highest or otherwise best offer for the Assets (the "Successful Bid" and the entity submitting such Successful Bid, the "Successful Bidder") and the next highest or otherwise best offer after the Successful Bid (the "Back-Up Bid" and the entity submitting such Back-Up Bid, the "Back-Up Bidder"). The Debtor will notify the Qualified Bidders and Notice Parties of such determination within one business day following the closing of the Auction.

(7) The Debtor Shall Preside Over the Auction

The Debtor and its professionals shall direct and preside over the Auction. The Debtor shall arrange for the actual bidding at the Auction to be transcribed, and the Auction shall be conducted openly, pursuant to the terms set forth herein.

ACCEPTANCE OF SUCCESSFUL BID

If an Auction is held, the Debtor shall be deemed to have accepted a Qualified Bid only when (a) such Bid is declared the Successful Bid, (b) definitive documentation has been executed in respect thereof, and (c) the Court enters an order approving the Sale to the applicable Successful Bidder.

Within one (1) business day after the closing of the Auction, the Debtor shall file with the Court and serve upon all Qualified Bidders and entities that have requested notice in this chapter 11 Case a notice identifying the Successful Bidder(s) and the Back-Up Bidder(s).

The Debtor's presentation of a particular Qualified Bid to the Court for approval does not constitute the Debtor's acceptance of such Bid. The Debtor will be deemed to have accepted a Bid only when the Bid has been approved by the Court.

The Debtor will present the results of the Auction to the Court at the Sale Hearing, at which time certain findings will be sought from the Court regarding the Auction, including, among other things, that: (a) the Auction was conducted and the Successful Bid(s) and the Back-Up Bid(s) were selected in accordance with these Bidding Procedures, (b) the Auction was fair in substance and procedure, and (c) consummation of the Sale(s), contemplated by the Successful Bid(s) will provide the highest or otherwise best Bid(s) and is in the best interests of the Debtor and its creditors.

FREE AND CLEAR SALE

Except as otherwise provided in the Stalking Horse APA, the applicable Purchase Agreement of another Successful Bidder, or the Sale Order, all of the Debtor's right, title, and interest in and to the Debtor's Assets contemplated thereunder shall be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests thereon and there against (collectively, the "Encumbrances") in accordance with § 363 of the Bankruptcy Code, with such Encumbrances to attach to the net proceeds of such sale.

SALE HEARING

A hearing to approve the Sale of the Assets subject to a Successful Bid to the respective Successful Bidder shall be conducted by the Court on **August 22, 2016 at ____: .m.** (prevailing Eastern Time) located at 824 North Market Street, __th Floor, Courtroom No. ____, Wilmington, DE 19801 (the "Sale Hearing"). Following the approval of the Sale of any of the Debtor's Assets set forth in the applicable Purchase Agreement to the Successful Bidder at the Sale Hearing, if such Successful Bidder fails to consummate an approved Sale within sixty (60) days after the entry of the Sale Order (except where the sole cause of any delay of the Closing Date is the result of a default by the Debtor), the Debtor shall be authorized, but not required, to

deem the Back-Up Bid with respect to such Assets, as disclosed at the Sale Hearing, the Successful Bid and the Debtor shall be authorized, but not required, to consummate the sale with the Back-Up Bidder without further notice or orders of the Court. The Sale Hearing may be adjourned or rescheduled without notice other than by announcement of the adjourned date at the Sale Hearing or notation on any applicable hearing agenda, provided that the Debtor first consults with Sindex SSI Lending, LLC.

RETURN OF GOOD FAITH DEPOSIT

The Good Faith Deposit of a Successful Bidder shall be applied to the Purchase Price, as defined in the applicable Purchase Agreement. The Good Faith Deposit of the Back-Up Bidder shall be retained by the Debtor until the earlier of (a) the Closing Date of the Sale with the Successful Bidder(s) or (b) the fifteenth (15th) day after entry of the Sale Order and thereafter returned to the Back-Up Bidder (unless, during such 15-day period, the Debtor delivers the Back-Up Notice). The Good Faith Deposits of all other Qualified Bidders shall be held by the Debtor until the designation of the Successful Bidder and the Back-Up Bidder, and thereafter returned to the respective Qualified Bidders. If a Successful Bidder fails to consummate an approved Sale because of a breach or failure to perform on the part of such Successful Bidder, the Debtor shall be entitled to retain the Good Faith Deposit, in addition to all other remedies provided for in the applicable Purchase Agreement.

Following the giving of the Back-Up Notice, the Good Faith Deposit of the Back-Up Bidder shall be applied to the Purchase Price as defined in the applicable Purchase Agreement.

If the Back-Up Bidder fails to consummate an approved Sale because of a breach or failure to perform on the part of such Back-Up Bidder, the Debtor shall be entitled to retain the Good Faith Deposit, in addition to all other remedies provided for in the applicable Purchase Agreement.

MODIFICATIONS AND RESERVATIONS

The Debtor may, after consultation with the Administrative Agent, (a) determine which Qualified Bid, if any, is the highest or otherwise best offer; and (b) reject at any time before entry of orders of the Court approving a Qualified Bid, any Bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of the Sale, or (iii) contrary to the best interests of the Debtor, its estate and its creditors.

RESERVATION OF RIGHTS OF THE DEBTOR

Subject to the Bidding Procedures Order, the Debtor reserves the right as it may determine, after consultation with the Administrative Agent and Committee, to be in the best interests of its estate to: (a) determine which Bidders are Qualified Bidders; (b) determine which Bids are Qualified Bids; (c) determine which Qualified Bid is the highest or otherwise best proposal and which is the next highest or otherwise best proposal; (d) reject any Bid that is (i) inadequate or insufficient or (ii) not in conformity with the requirements of the Bidding Procedures Order or the requirements of the Bankruptcy Code or any other orders entered by the Court, or (e) impose additional terms and conditions with respect to any or all Bidders other than

the Stalking Horse Purchaser; (f) adjourn the Auction and/or Sale Hearing in open court without further notice; and (g) consider or accept Bids for less than all of the Assets, so long as the Bid or combination of Bids, taken as a whole as permitted in these Bidding Procedures comply with all relevant Overbid requirements.

EXHIBIT E

Notice of the Sale Hearing

01:18859236.1

3563508-5
3756822-4

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

In re:

SynCardia Systems, Inc.¹

Debtor.

Chapter 11

Case No. 16-11599

**NOTICE OF SALE OF CERTAIN ASSETS OF THE DEBTOR
AND SALE HEARING**

PLEASE TAKE NOTICE that SynCardia Systems, Inc. (the “Debtor”) proposes to enter into an Asset Purchase Agreement dated as of July 1, 2016 (the “Stalking Horse APA”), pursuant to which Debtor proposes to sell the its Assets to Sindex SSI Lending, LLC or an alternative successful bidder (the “Buyer”) who will be selected following an auction to be held on **August 19, 2016 at 10:00 a.m. (Prevailing Eastern Time)** (the “Auction”).

PLEASE TAKE FURTHER NOTICE that, on July 1, 2016, the Debtor filed its *Debtor’s Motion Pursuant To 11 U.S.C. §§ 105(A), 363, 365 And Fed. R. Bankr. P. 2002, 6004, 6006 For (A) Order (i) Establishing Bidding Procedures Relating To The Sale Of (1) The Debtor’s Business And (2) Any Or All Of The Debtor’s Assets; (ii) Approving Bid Protections In Connection With The Sale Of The Debtor’s Business; (iii) Establishing Procedures Relating To The Assumption And Assignment Of Certain Executory Contracts And Unexpired Leases, Including Notice Of Proposed Cure Amounts; (iv) Approving Form And Manner Of Notice Of All Procedures, Protections, Schedules, And Agreements; (v) Scheduling A Hearing To Consider The Proposed Sales; And (vi) Granting Certain Related Relief And (B) An Order (i) Authorizing The Sale Of The Debtor’s Assets Free And Clear Of All Liens, Claims, Encumbrances, And Interests; (ii) Authorizing The Assumption And Assignment Of Certain Executory Contracts And Unexpired Leases; And (iii) Granting Certain Related Relief* (the “Sale Motion”; D.I. ____) with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

PLEASE TAKE FURTHER NOTICE that, on _____, 2016, the Bankruptcy Court entered an *Order (i) Establishing Bidding Procedures Relating To The Sale Of (A) The Debtor’s Business And (B) Any Or All Of The Debtor’s Assets; (ii) Approving Bid Protections In Connection With The Sale Of The Debtor’s Business; (iii) Establishing Procedures Relating To The Assumption And Assignment Of Certain Executory Contracts And Unexpired Leases, Including Notice Of Proposed Cure Amounts; (iv) Approving Form And Manner Of Notice Of All Procedures, Protections, Schedules, And Agreements; (v) Scheduling A Hearing To Consider*

¹ The Debtor in this case (with the last four digits of its taxpayer ID no. in parenthesis): SynCardia Systems, Inc. (1044). The Debtor’s corporate address is: 1992 E. Silverlake Road, Tucson, Arizona 85713.

The Proposed Sales; And (vi) Granting Certain Related Relief (the “Bidding Procedures Order”; D.I. ____).

PLEASE TAKE FURTHER NOTICE that the Bankruptcy Court scheduled a hearing on the Sale Motion and the contemplated sale for _____, **2016 at _____:00 .m. (prevailing eastern time)** at 824 Market Street, Wilmington, Delaware, 19801 (the “Sale Hearing”). At the Sale Hearing, the Debtor will ask that the Bankruptcy Court enter the proposed *Order (I) Authorizing the Sale of the Debtor’s Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests; (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (II) Granting Certain Related Relief* (the “Sale Order”).

PLEASE TAKE FURTHER NOTICE that the Stalking Horse APA contemplates, and the Sale Order, if approved, shall authorize the assumption and assignment of various executory contracts and unexpired leases which are the property of the Debtor (the “Assumed Contracts”). Additional individual notice setting forth the proposed cure amounts for such contracts will be given to all counterparties to Assumed Contracts.

PLEASE TAKE FURTHER NOTICE that any objections to the relief requested in the Sale Motion and any objections to the proposed sale contemplated by the Stalking Horse APA **MUST BE FILED WITH THE BANKRUPTCY COURT AND SERVED ON THE PARTIES IDENTIFIED IN THE BIDDING PROCEDURES ORDER:**

- a) counsel to the Stalking Horse Purchaser;
- b) counsel to the official committees of unsecured creditors appointed in this case (the “Committee”) or, if no Committee has been appointed, on the Debtor’s consolidated 30 largest unsecured creditors,
- c) any party who, in the past year, expressed in writing to the Debtor an interest in the Debtor’s business or any of the Debtor’s Assets;
- d) non-debtor parties to the Anticipated Assumed Contracts;
- e) all parties who are known or reasonably believed to have asserted a lien, encumbrance, claim or other interest in the Debtor’s business or any of the Debtor’s Assets;
- f) the Internal Revenue Service;

- g) all federal, state, local and foreign regulatory or taxing authorities or recording offices that have a reasonable known interest in the relief requested by the Motion;
- h) the United States Attorney's Office for the District of Delaware;
- i) all persons or entities that have requested notice in this chapter 11 case under Bankruptcy Rule 2002; and
- j) the United States Trustee.

ON OR BEFORE _____, 2016 (prevailing eastern time).

PLEASE TAKE FURTHER NOTICE that, notwithstanding the foregoing, in the event that the Stalking Horse Bidder is not the Successful Bidder, any objections to the ability of such other Successful Bidder to demonstrate adequate assurance of future performance to any party to an Assumed Contract **MUST BE FILED WITH THE BANKRUPTCY COURT AND SERVED ON THE PARTIES IDENTIFIED IN THE BIDDING PROCEDURES ORDER ON OR BEFORE THE SALE HEARING**

PLEASE TAKE FURTHER NOTICE that failure to timely object to the Sale Motion shall be deemed a consent to the relief requested therein, and to the entry of the Sale Order.

PLEASE TAKE FURTHER NOTICE that any person or entity that is interested in bidding upon all or a portion of the assets to be sold must comply with the Bidding Procedures Order. Under the procedures set forth therein, an interested bidder must, among other things, submit to the Debtor a Qualified Bid to purchase the assets to be sold, on or before **August 15, 2016 at 5:00 p.m. (prevailing eastern time)**. In order to be considered as a Qualified Bid, the bid must comply with the requirements set forth in the Bidding Procedures Order. In the event that you wish to explore the possibility of submitting a Qualified Bid, please contact Jonathan Koevary, Esq. at Olshan Frome Wolosky LLP, who will provide you with a copy of the Bidding Procedures Order and information concerning how to obtain access to due diligence materials.

PLEASE TAKE FURTHER NOTICE that copies of the Sale Motion, the Bidding Procedures Order, the proposed form of Sale Order, the Stalking Horse APA and all exhibits related to each of the foregoing may be obtained at <http://www.deb.uscourts.gov/> or by contacting undersigned counsel or on the Debtor's noticing agent website: <https://omnimgt.com/SynCardia>.

Dated: July [___], 2016

YOUNG CONAWAY STARGATT &
TAYLOR, LLP

Robert S. Brady (No. 2847)
Sean T. Greecher (No. 4484)
Justin H. Rucki (No. 5304)
Norah Roth-Moore (No. 6125)
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
(302) 571-6600

and

Michael S. Fox, Esquire
Jonathan H. Deblinger, Esquire
Jonathan T. Koevary, Esquire
OLSHAN FROME WOLOSKY LLP
1325 Avenue of the Americas
New York, New York 10019
(212) 451-2300
Proposed Counsel to the Debtor

EXHIBIT F

Notice of Assignment

01:18859236.1

3563508-5
3756822-4

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

In re:

SynCardia Systems, Inc.¹

Debtor.

Chapter 11

Case No. 16-11599

Hearing Date:

Objection Deadline:

**NOTICE OF ASSUMPTION AND ASSIGNMENT OF AND AMOUNTS
NECESSARY TO CURE DEFAULTS UNDER CONTRACTS AND LEASES
TO BE ASSUMED AND ASSIGNED TO SUCCESSFUL PURCHASER**

PLEASE TAKE NOTICE that SynCardia Systems, Inc. (“SynCardia” or the “Debtor”) proposes to enter into an Asset Purchase Agreement dated as of July 1, 2016 (the “Stalking Horse APA”), pursuant to which Debtor proposes to sell its business to Sindex SSI Lending, LLC or an alternative successful bidder (the “Buyer”) who will be selected following an auction to be held on **August 15, 2016** at 10:00 a.m. (Prevailing Eastern Time) (the “Auction”).

PLEASE TAKE FURTHER NOTICE that, on July 1, 2016, the Debtor filed its *Debtor’s Motion Pursuant To 11 U.S.C. §§ 105(A), 363, 365 And Fed. R. Bankr. P. 2002, 6004, 6006 For (A) Order (i) Establishing Bidding Procedures Relating To The Sale Of (1) The Debtor’s Business And (2) Any Or All Of The Debtor’s Assets; (ii) Approving Bid Protections In Connection With The Sale Of The Debtor’s Business; (iii) Establishing Procedures Relating To The Assumption And Assignment Of Certain Executory Contracts And Unexpired Leases, Including Notice Of Proposed Cure Amounts; (iv) Approving Form And Manner Of Notice Of All Procedures, Protections, Schedules, And Agreements; (v) Scheduling A Hearing To Consider The Proposed Sales; And (vi) Granting Certain Related Relief And (B) An Order (i) Authorizing The Sale Of The Debtor’s Assets Free And Clear Of All Liens, Claims, Encumbrances, And Interests; (ii) Authorizing The Assumption And Assignment Of Certain Executory Contracts And Unexpired Leases; And (iii) Granting Certain Related Relief* (the “Sale Motion”; D.I. __) with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

PLEASE TAKE FURTHER NOTICE that, on [____], 2016, the Bankruptcy Court entered an *Order (i) Establishing Bidding Procedures Relating To The Sale Of (A) The Debtor’s Business And (B) Any Or All Of The Debtor’s Assets; (ii) Approving Bid Protections In Connection With The Sale Of The Debtor’s Business; (iii) Establishing Procedures Relating To The Assumption And Assignment Of Certain Executory Contracts And Unexpired Leases, Including Notice Of Proposed Cure Amounts; (iv) Approving Form And Manner Of Notice Of All Procedures, Protections, Schedules, And Agreements; (v) Scheduling A Hearing To Consider*

¹ The Debtor in this case (with the last four digits of its taxpayer ID no. in parenthesis): SynCardia Systems, Inc. (1044). The Debtor’s corporate address is: 1992 E. Silverlake Road, Tucson, Arizona 85713.

The Proposed Sales; And (vi) Granting Certain Related Relief (the “Bidding Procedures Order”); D.I. ____).

PLEASE TAKE FURTHER NOTICE that, pursuant to the Bidding Procedures Order, parties to executory contracts and unexpired leases (the “Proposed Assigned Contracts”) are to be advised whether their contract is proposed for assumption and assignment to Buyer under the Stalking Horse APA and the proposed cure amount (the “Cure Costs”) for such Proposed Assigned Contracts.

PLEASE TAKE FURTHER NOTICE that attached hereto as Exhibit 3 is a list of all Proposed Assigned Contracts and the Debtor’s calculation of the Cure Costs for each such Proposed Assigned Contract.

PLEASE TAKE FURTHER NOTICE that any objections to the relief requested in the Sale Motion and any objections to the proposed sale contemplated by the Stalking Horse APA (other than objections of the non-debtor parties to Leases and Contracts based exclusively on arguments regarding adequate assurance of future performance) **MUST BE FILED WITH THE BANKRUPTCY COURT AND SERVED ON THE PARTIES IDENTIFIED IN THE BIDDING PROCEDURES ORDER ON OR BEFORE _____, 2016 (prevailing eastern time).**

PLEASE TAKE FURTHER NOTICE that any objections of the non-debtor parties to Leases and Contracts regarding adequate assurance of future performance **MUST BE FILED WITH THE BANKRUPTCY COURT AND SERVED ON THE PARTIES IDENTIFIED IN THE BIDDING PROCEDURES ORDER ON OR BEFORE _____, 2016 (prevailing eastern time):**

- a) counsel to the Stalking Horse Purchaser;
- b) counsel to the official committees of unsecured creditors appointed in this case (the “Committee”) or, if no Committee has been appointed, on the Debtor’s consolidated 30 largest unsecured creditors,
- c) any party who, in the past year, expressed in writing to the Debtor an interest in the Debtor’s business or any of the Debtor’s Assets;
- d) non-debtor parties to the Anticipated Assumed Contracts;
- e) all parties who are known or reasonably believed to have asserted a lien, encumbrance, claim or other interest in the Debtor’s business or any of the Debtor’s Assets;

- f) the Internal Revenue Service;
- g) all federal, state, local and foreign regulatory or taxing authorities or recording offices that have a reasonable known interest in the relief requested by the Motion;
- h) the United States Attorney's Office for the District of Delaware;
- i) all persons or entities that have requested notice in this chapter 11 case under Bankruptcy Rule 2002; and
- j) the United States Trustee.

PLEASE TAKE FURTHER NOTICE that, if no such objections are timely received, the non-Debtor party to the Proposed Assigned Contract shall be deemed to have consented to the assumption and assignment of the Proposed Assigned Contract to the Buyer and shall be forever barred from asserting any objection with regard to such assumption and assignment, and any Cure Costs identified pursuant to this Notice shall be controlling, notwithstanding anything to the contrary in any Proposed Assigned Contract, or any other document, and the non-Debtor party to a Proposed Assigned Contract shall be deemed to have consented to the Cure Costs and shall be forever barred from asserting any other claims related to such Proposed Assigned Contract against the Debtor or the Buyer, or the property of any of them.

PLEASE TAKE FURTHER NOTICE that copies of the Sale Motion, the Bidding Procedures Order, and further information relating to the sale transaction may be obtained at <http://www.deb.uscourts.gov/> or by contacting undersigned counsel.

Respectfully submitted,

Dated: July [___], 2016

YOUNG CONAWAY STARGATT &
TAYLOR, LLP

Robert S. Brady (No. 2847)
Sean T. Greecher (No. 4484)
Justin H. Rucki (No. 5304)
Norah Roth-Moore (No. 6125)
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
(302) 571-6600

and

Michael S. Fox, Esquire
Jonathan T. Koevary, Esquire
OLSHAN FROME WOLOSKY LLP
1325 Avenue of the Americas
New York, New York 10019
(212) 451-2300
Proposed Counsel to the Debtor

EXHIBIT 1

Proposed Assigned Contracts and Cure Costs

EXHIBIT G

Additional Cure Notice

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

In re:

SynCardia Systems, Inc.¹

Debtor.

Chapter 11

Case No. 16-11599

**NOTICE OF DEBTOR'S INTENT TO ASSUME
AND ASSIGN CERTAIN ADDITIONAL LEASES AND EXECUTORY
CONTRACTS AND FIXING OF ADDITIONAL CURE AMOUNTS**

PLEASE TAKE NOTICE that, on _____, 2016, the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") entered an order (the "Bidding Procedures Order") approving among other things (i) Bidding Procedures (the "Bidding Procedures") in connection with the sale of substantially all of the assets (the "Assets") of the above-captioned debtor and debtor in possession (the "Debtor") and (ii) procedures to determine cure amounts and deadlines for objections to certain executory contracts and unexpired leases (the "Contracts") to be assumed and assigned or rejected by the Debtor (the "Contract Procedures"), including the procedures for the expedited assumption of contracts designated as assumed by the Successful Bidder (as defined below).²

PLEASE TAKE FURTHER NOTICE, that pursuant to the Bidding Procedures Order and the Contract Procedures, the non-Debtor parties to the Contracts had until _____ to object (a "Contract Objection") to (i) the Cure Amounts listed by the Debtor (other than the Additional Cure Amounts (as defined below) and to propose alternative cure amounts, and/or (ii) the proposed assumption and assignment or rejection of the Contracts in connection with the Sale, including, without limitation, the Debtor's ability to assign the Contracts without the Contract Parties' consent or the adequate assurance of future performance to be provided.

PLEASE TAKE FURTHER NOTICE, that on _____, **2016**, the Bankruptcy Court entered an order (the "Sale Order") approving the sale of substantially all of the assets of the Debtor free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon to the maximum extent permitted by section 363 of the Bankruptcy Code (the "Sale") to the Successful Bidder in the Sale (the "Successful Bidder"), pursuant to the terms of a purchase agreement with the Successful Bidder (the "Agreement").

¹ The Debtor in this case (with the last four digits of its taxpayer ID no. in parenthesis): SynCardia Systems, Inc. (1044). The Debtor's corporate address is: 1992 E. Silverlake Road, Tucson, Arizona 85713.

² A copy of the Bidding Procedures Motion and the Bidding Procedures Order is available upon written request to Debtor's counsel. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Bidding Procedures Order and/or the Bidding Procedures Motion.

PLEASE TAKE FURTHER NOTICE that you have been identified as a party to a Contract that the Successful Bidder has designated to be assumed by the Debtor and assigned to the Successful Bidder. The Contract which has been designated as “Assumed” is set forth on “Exhibit 1” annexed hereto.

PLEASE TAKE FURTHER NOTICE that “Exhibit 1” further sets forth any additional Cure Amounts the Debtor believes is owed to you under the Additional Assumed Contract (the “Additional Cure”).

PLEASE TAKE FURTHER NOTICE that any objections to the Additional Cure (such objection being the only permissible grounds for objection) must be filed with the Bankruptcy Court and served on (i) counsel to the Debtor(a) Olshan Frome Wolosky LLP, 1325 Avenue of the Americas, New York, New York 10019, Attn: Jonathan Koevary, and (b) Young Conaway Stargatt & Taylor, LLP, 1000 N. King Street, Wilmington, DE 19801, Attn: Justin Rucki; (ii) Debtor’s Investment Banker, Canaccord Genuity, Inc., 350 Madison Ave., New York, NY 10017 (Attn: Michael Ballisteri); (iii) counsel to the Successful Bidder, [counsel]; (iv) counsel to the Committee (if any), []; and (v) the Office of the United States Trustee, 844 King Street, Suite 2207, Wilmington, DE 19801 (Attn: [], Esq.); so as to actually be received by 4:00 p.m. (Prevailing Eastern Time) on or before _____ (the “Additional Cure Deadline”), which deadline may be extended in the sole discretion of the Debtor and the Successful Bidder.

PLEASE TAKE FURTHER NOTICE THAT if no objection to the Additional Cure is filed by the Additional Cure Deadline, the Court will enter an order (an “Additional Assumption Order”) authorizing the assumption and assignment of the Additional Assumed Contract effective as of the date of this notice. In the event an objection is filed by the Additional Cure Deadline, and the parties cannot consensually agree on the Additional Cure, the Debtor will seek expedited determination of the objection by the Court on the first available hearing date.

[Remainder of Page Intentionally Left Blank]

PLEASE TAKE FURTHER NOTICE that, if no Additional Cure is due or you agree with the Additional Cure set forth on "Exhibit 1". no further action needs to be taken and the Court will enter an order authorizing the assumption by the Debtor and assignment to the Successful Bidder of the contracts listed on "Exhibit 1."

Dated: July [___], 2016

YOUNG CONAWAY STARGATT &
TAYLOR, LLP

Robert S. Brady (No. 2847)
Sean T. Greecher (No. 4484)
Justin H. Rucki (No. 5304)
Norah Roth-Moore (No. 6125)
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
(302) 571-6600

and

Michael S. Fox, Esquire
Jonathan T. Koevary, Esquire
OLSHAN FROME WOLOSKY LLP
1325 Avenue of the Americas
New York, New York 10019
(212) 451-2300
Proposed Counsel to the Debtor

EXHIBIT H

Rejection Notice

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

In re:

SynCardia Systems, Inc.¹

Debtor.

Chapter 11

Case No. 16-11599

**NOTICE OF DEBTOR'S INTENT TO REJECT
CERTAIN LEASES AND EXECUTORY CONTRACTS**

PLEASE TAKE NOTICE that, on _____, 2016 the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") entered an order (the "Bidding Procedures Order") approving among other things (i) Bidding Procedures (the "Bidding Procedures") in connection with the sale of substantially all of the assets (the "Assets") of the above-captioned debtor and debtor in possession (the "Debtor") and (ii) procedures to determine cure amounts and deadlines for objections to certain executory contracts and unexpired leases (the "Contracts") to be assumed and assigned or rejected by the Debtor (the "Contract Procedures"), including the procedures for the expedited rejection of contracts designated as rejected by the Successful Bidder (as defined below).²

PLEASE TAKE FURTHER NOTICE, that on _____, **2016** the Bankruptcy Court entered an order (the "Sale Order") approving the sale of substantially all of the assets of the Debtor free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon to the maximum extent permitted by section 363 of the Bankruptcy Code (the "Sale") to the Successful Bidder in the Sale ("Successful Bidder"), pursuant to the terms of a purchase agreement with the Successful Bidder (the "Agreement").

PLEASE TAKE FURTHER NOTICE that you have been identified as a party to a Contract that the Successful Bidder has designated to be rejected. The Contract which has been designated as "Rejected" is set forth on "Exhibit 1" annexed hereto.

PLEASE TAKE FURTHER NOTICE that any objections to the rejection must be filed with the Bankruptcy Court and served on (i) counsel to the Debtor(a) Olshan Frome Wolosky LLP, 1325 Avenue of the Americas, New York, New York 10019, Attn: Jonathan Koevary, and (b) Young Conaway Stargatt & Taylor, LLP, 1000 N. King Street, Wilmington, DE 19801, Attn: Justin Rucki; (ii) Debtor's Investment Banker, Canaccord Genuity, Inc., 350 Madison Ave., New

¹ The Debtor in this case (with the last four digits of its taxpayer ID no. in parenthesis): SynCardia Systems, Inc. (1044). The Debtor's corporate address is: 1992 E. Silverlake Road, Tucson, Arizona 85713.

² A copy of the Bidding Procedures Motion and the Bidding Procedures Order is available upon written request to Debtor's counsel. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Bidding Procedures Order and/or the Bidding Procedures Motion.

York, NY 10017 (Attn: Michael Ballisteri); (iii) counsel to the Successful Bidder, [counsel]; (iv) counsel to the Committee (if any), []; and (v) the Office of the United States Trustee, 844 King Street, Suite 2207, Wilmington, DE 19801 (Attn: [], Esq.); so as to actually be received by 4:00 p.m. (Prevailing Eastern Time) on or before _____ (the “Rejection Objection Deadline”), which deadline may be extended in the sole discretion of the Debtor and the Successful Bidder.

PLEASE TAKE FURTHER NOTICE THAT if no objection to the rejection is filed by the Rejection Objection Deadline, the Court will enter an order (an “Additional Rejection Order”) authorizing the rejection of the Additional Rejected Contract effective as of the date of this notice. In the event an objection is filed by the Rejection Objection Deadline, and the parties cannot consensually resolve such objection, the Debtor will seek expedited determination of the objection by the Court on the first available hearing date.

PLEASE TAKE FURTHER NOTICE THAT if any affected contract counterparty subject to this Notice (the “Rejection Claimant”) asserts a claim or claims against the Debtors arising from the rejection of an Executory Contract or Lease, such Rejection Claimant shall submit a proof of claim on or before the later of (i) the date that is 30 days after the date of this Notice and (ii) the general bar date established by this Court for filing proofs of claim against the Debtors. If a Rejection Claimant does not timely file such proof of claim, such claimant will be forever barred from asserting a claim for such rejection damages.

Dated: July [___], 2016

YOUNG CONAWAY STARGATT &
TAYLOR, LLP

Robert S. Brady (No. 2847)
Sean T. Greecher (No. 4484)
Justin H. Rucki (No. 5304)
Norah Roth-Moore (No. 6125)
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
(302) 571-6600

and

Michael S. Fox, Esquire
Jonathan H. Deblinger, Esquire
Jonathan T. Koevary, Esquire
OLSHAN FROME WOLOSKY LLP
1325 Avenue of the Americas
New York, New York 10019
(212) 451-2300
Proposed Counsel to the Debtor

EXHIBIT I

Omitted Contract Notice

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

In re:

SynCardia Systems, Inc.¹

Debtor.

Chapter 11

Case No. 16-11599

**NOTICE OF CERTAIN PREVIOUSLY OMITTED LEASES AND
EXECUTORY CONTRACTS**

PLEASE TAKE NOTICE that, on _____, 2016, the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) entered an order (the “Bidding Procedures Order”) approving among other things (i) Bidding Procedures (the “Bidding Procedures”) in connection with the sale of substantially all of the assets (the “Assets”) of the above-captioned debtor and debtor in possession (the “Debtor”) and (ii) procedures to determine cure amounts and deadlines for objections to certain executory contracts and unexpired leases (the “Contracts”) to be assumed and assigned or rejected by the Debtor (the “Contract Procedures”).²

PLEASE TAKE FURTHER NOTICE, that on _____, 2016, the Bankruptcy Court entered an order (the “Sale Order”) approving the sale of substantially all of the assets of the Debtor free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon to the maximum extent permitted by section 363 of the Bankruptcy Code (the “Sale”) to the Successful Bidder in the Sale (the “Successful Bidder”), pursuant to the terms of a purchase agreement with the Successful Bidder (the “Agreement”).

PLEASE TAKE FURTHER NOTICE that, pursuant to the Omitted Contract Procedures annexed hereto as “Exhibit 1,” the Debtor intends to seek approval to assume and assign or reject certain unexpired leases and executory contracts, pursuant to section 365 of the Bankruptcy Code (collectively, the “Scheduled Contracts”). You have been identified as a party a Scheduled Contract. The Scheduled Contract with respect to which you have been identified as a non-Debtor party and any Cure Amounts the Debtor believes are due and owing under such Scheduled Contract is set forth on “Exhibit 2” annexed hereto.

PLEASE TAKE FURTHER NOTICE that, the Debtor has indicated on “Exhibit 2” if it believes that the Scheduled Contract contains enforceable consent rights, pursuant to which the Debtor is required to obtain consent from the non-Debtor parties to assign such Scheduled Contract. To the extent that the Debtor indicates on “Exhibit 2” that it believes that the

¹ The Debtor in this case (with the last four digits of its taxpayer ID no. in parenthesis): SynCardia Systems, Inc. (1044). The Debtor’s corporate address is: 1992 E. Silverlake Road, Tucson, Arizona 85713.

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Scheduled Contract does not contain enforceable consent rights, such Scheduled Contract, subject to the Successful Bidder's designation, will be assumed and assigned to the Successful Bidder, without the need to obtain a consent from the non-Debtor party to such Contract, unless such non-Debtor party files a timely Omitted Contract Objection which is sustained.

PLEASE TAKE FURTHER NOTICE that, any party objecting to (i) any Cure Amount relating to and/or (ii) the proposed assumption and assignment or rejection of any Scheduled Contract in connection with the Sale must file with the Bankruptcy Court and serve an objection (a "Omitted Contract Objection"), in writing, setting forth with specificity any and all obligations that the objecting party asserts must be cured or satisfied in respect to the Scheduled Contract, and/or any and all objections to the potential assumption and assignment of such Scheduled Contract, together with all documentation supporting such cure claim or objection, upon: (i) counsel to the Debtor(a) Olshan Frome Wolosky LLP, 1325 Avenue of the Americas, New York, New York 10019, Attn: Jonathan Koevary, and (b) Young Conaway Stargatt & Taylor, LLP, 1000 N. King Street, Wilmington, DE 19801, Attn: Justin Rucki; (ii) Debtor's Investment Banker, Canaccord Genuity, Inc., 350 Madison Ave., New York, NY 10017 (Attn: Michael Ballisteri); (iii) counsel to the Successful Bidder, [counsel]; (iv) counsel to the Committee (if any), []; and (v) the Office of the United States Trustee, 844 King Street, Suite 2207, Wilmington, DE 19801 (Attn: [], Esq.); so as to be received no later than 4:00 p.m. (Prevailing Eastern Time) on the fourteenth (14th) day after the service of this Notice (the "Omitted Contract Objection Deadline").

PLEASE TAKE FURTHER NOTICE that, if no Cure Amount is due, or no other amount is due or owing under the Scheduled Contract, and the non-Debtor counterparty to such agreement does not otherwise object to the Debtor's assumption and assignment or rejection of such agreement, no further action needs to be taken on the part of that non-Debtor counterparty.

PLEASE TAKE FURTHER NOTICE that, unless an Omitted Contract Objection is filed and served before the applicable Omitted Contract Objection Deadline, any Contract Party to such Previously Omitted Contract shall be (i) forever barred and precluded from objecting to the proposed Cure Amounts and from asserting any additional cure or other amounts (other than which may be set forth in an Additional Cure Notice), and the Debtor, and the Successful Bidder shall be entitled to rely solely upon the proposed Cure Amounts set forth in the Cure Notices; (ii) deemed to have consented to the assumption and assignment of the Contracts; (iii) forever barred and estopped from asserting or claiming against the Debtor or the Successful Bidder that any additional amounts are due or other defaults exist (other than which may be set forth in an Additional Cure Notice), that conditions to assignment must be satisfied under such Contracts, including, without limitation, any consent rights, or that there is any objection or defense to the assumption and assignment of such Contracts; (iv) precluded from objecting to the Cure Amount (if any) (other than which may be set forth in an Additional Cure Notice) and to the assumption and assignment; and (v) barred and estopped from asserting or claiming that their Contract contains an enforceable consent right.

PLEASE TAKE FURTHER NOTICE that, the Debtor's decision to assume and assign or reject the Scheduled Contract is subject to the Successful Bidder's designation in accordance with the Contract Procedures. The designation of any agreement as an Scheduled Contract shall not constitute or be deemed to be a determination or admission by the Debtor or the Successful

Bidder that such document is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code (all rights with respect thereto being expressly reserved).

Dated: July [___], 2016

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EXHIBIT 1

OMITTED CONTRACT PROCEDURES

Following are the procedures (collectively, the “Omitted Contract Procedures”) proposed by the Debtor and approved by the Bankruptcy Court to determine (a) the Cure Amounts and (b) the deadline for objections to the Cure Amounts and/or the proposed assumption and assignment or rejection of the Previously Omitted Contracts:

Immediately following the discovery of a Previously Omitted Contract (but in no event later than two (2) business days following such discovery), the Debtor shall (i) notify the Successful Bidder, in writing, of such Previously Omitted Contract and all Cure Amounts (if any) for such Previously Omitted Contract and (ii) file with the Bankruptcy Court and serve notice on the non-Debtor counterparties to all Previously Omitted Contract, a notice substantially in the form of the notice annexed hereto as “Exhibit I” (an “Omitted Contract Notice”) fixing the notice of the Cure Amounts (if any) with respect to such Previously Omitted Contract and providing that such Previously Omitted Contract may be assumed by Successful Bidder.

The Contract Party to the Previously Omitted Contract shall have fourteen (14) days from service of the applicable Omitted Contract Notice (the “Omitted Contract Objection Deadline”) to object to (i) the Cure Amounts listed by the Debtor on the applicable Omitted Contract Notice and to propose alternative cure amounts, and/or (ii) the proposed assumption and assignment of the Contracts in connection with the Sale, including without limitation the Debtor’s ability to assign the Contracts without the Contract Parties’ consent or the adequate assurance of future performance to be provided by the Purchase (an “Omitted Contract Objection”).

Unless an Omitted Contract Objection is filed and served before the applicable Omitted Contract Objection Deadline any Contract Party to such Previously Omitted Contract shall be (i) forever barred and precluded from objecting to the proposed Cure Amounts and from asserting any additional cure or other amounts (other than which may be set forth in an Additional Cure Notice), and the Debtor and the Successful Bidder shall be entitled to rely solely upon the proposed Cure Amounts set forth in the Cure Notices; (ii) deemed to have consented to the assumption and assignment of the Contracts; (iii) forever barred and estopped from asserting or claiming against the Debtor or the Successful Bidder that any additional amounts are due or other defaults exist (other than which may be set forth in an Additional Cure Notice), that conditions to assignment must be satisfied under such Contracts, including, without limitation, any consent rights, or that there is any objection or defense to the assumption and assignment of such Contracts; (iv) precluded from objecting to the Cure Amount (if any) (other than which may be set forth in an Additional Cure Notice) and to the assumption and assignment; and (v) barred and estopped from asserting or claiming that their Contract contains an enforceable consent right.

Within fifteen (15) business days following the filing of an of the Omitted Contract Notice, the Successful Bidder shall deliver an Additional Designation Notice to the Debtor, designating such Previously Omitted Contract as “Assumed,” “Rejected” or “Held” and such Previously Omitted Contract shall be treated in accordance with the Additional Assumption Procedures and the Additional Rejection Procedures, as applicable.

Additional Assumption Procedures

No later than the third (3rd) business day following the receipt of each Additional Designation Notice (the “Additional Designation Date”), the Debtor shall (x) file with the Court and (y) serve via overnight delivery service upon the following: (i) the non-Debtor parties to the Contracts designated as assumed in such Additional Designation Notice and their respective counsel, if known; (ii) any Committee; (iii) the U.S. Trustee; (iv) counsel to the Agent; and (v) counsel to the Successful Bidder; a notice (the “Additional Cure Notice”), providing that such Additional Assumed Contract has been designated by the Successful Bidder as “Assumed” and establishing any additional Cure Amount due for the period between Closing and the filing of such Additional Cure Notice (the “Additional Cure”).

Each Contract Party to an Additional Cure Notice shall have until 4:00 p.m. (Prevailing Eastern Time) seven (7) days from the filing of the Additional Cure Notice (the “Additional Cure Deadline”), which deadline may be extended in the sole discretion of the Debtor and the Successful Bidder, to object to the amount of the Additional Cure (such objection being the only permissible grounds for objection). If no objection to the Additional Cure is filed by the Additional Cure Deadline, the Court will enter an order (an “Additional Assumption Order”) authorizing the assumption and assignment of the Additional Assumed Contract effective as of the date of the Additional Cure Notice. In the event an objection is filed by the Additional Cure Deadline, and the parties cannot consensually agree on the Additional Cure, the Debtor shall seek expedited determination of the objection by the Court on the first available hearing date.

Each Additional Assumed Contract shall be deemed to have been assumed and assigned as of the entry of the Additional Assumption Order. The Debtor shall further take all other actions that at such time may be reasonably necessary to permit the assignment to the Successful Bidder, pursuant to section 365 of the Bankruptcy Code, of each Additional Assumed Contract set forth in the applicable Additional Designation Notice.

Additional Rejection Procedures

On the Additional Designation Date, the Debtor shall (x) file with the Court and (y) serve via overnight delivery service upon the following: (i) the non-Debtor parties to the Contracts designated as rejected in such Additional Designation Notice and their respective counsel, if known; (ii) any Committee; (iii) the U.S. Trustee; (iv) counsel to the Agent; and (v) counsel to the Successful Bidder, a notice (the “Rejection Notice”), providing that such Additional Rejected Contract has been designated by the Successful Bidder as “Rejected.”

Each Contract Party to an Additional Rejection Notice shall have until 4:00 p.m. (Prevailing Eastern Time) seven (7) days from the filing of the Additional Rejection Notice (the “Rejection Deadline”), which deadline may be extended in the sole discretion of the Debtor and the Successful Bidder, to object to the rejection. If no objection is filed by the Rejection Deadline, the Court will enter an order (an “Additional Rejection Order”) authorizing the rejection of the Additional Rejected Contract effective as of the date of the Rejection Notice. In the event an objection is filed by the Rejection Deadline and the parties cannot consensually agree on a resolution, the Debtor shall seek expedited determination of the objection by the Court on the first available hearing date.

Each Additional Rejected Contract shall be deemed to have been rejected as of the Additional Designation Date.

ONLY CONTRACTS TO BE ACTUALLY ASSUMED AND ASSIGNED TO THE SUCCESSFUL BIDDER AFTER CLOSING PURSUANT TO THE ADDITIONAL ASSUMPTION PROCEDURES AND THE OMITTED CONTRACT PROCEDURES SHALL BE THE ADDITIONAL ASSUMED CONTRACTS.