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**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF UTAH CENTRAL DIVISION**

In re:

VOBEV, LLC, a Utah limited liability
company,

Debtor-in-Possession.

Bankruptcy Case No. 24-26346 (JTM)

Chapter 11

Honorable Joel T. Marker

**DEBTOR'S MOTION PURSUANT TO SECTIONS 105, 363 AND 365 OF THE
BANKRUPTCY CODE FOR ENTRY OF AN ORDER (I) APPROVING THE BIDDING
PROCEDURES, INCLUDING THE DEBTOR'S ENTRY INTO THE STALKING
HORSE APA, THE SALE TIMELINE, AND THE FORM AND MANNER OF NOTICE
THEREOF; (II) APPROVING THE DEBTOR'S (A) SALE OF ALL OR
SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS FREE AND CLEAR OF ALL
LIENS OTHER THAN ASSUMED LIABILITIES AND (B) ASSUMPTION AND
ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED
LEASES TO THE SUCCESSFUL BIDDER; AND (III) GRANTING RELATED RELIEF**

Vobev, LLC, the debtor and debtor in possession (the “Debtor”) in the above-captioned chapter 11 case, by and through its undersigned proposed counsel, hereby submits this motion (this “Motion”)¹ for entry of orders granting the relief described below. In support hereof, the Debtor represents as follows:

BACKGROUND

1. As set forth in the *Declaration of Alan Boyko, Chief Transformation Officer of the Debtor, in Support of Debtor’s Chapter 11 Petition and First Day Motions* (the “First Day Declaration”) [Docket No. 23] and the *Declaration of John Popehn in Support of the Debtor’s Motion to Obtain Postpetition Debtor in Possession Financing and the Debtor’s Bidding Procedures Motion* [Docket No. 22] (the “Popehn Declaration”), the Debtor filed this chapter 11 case to effectuate a sale (the “Sale”) of all or substantially all of its assets, including any and all rights, claims, and causes of action, and all of the issued and outstanding equity interests of certain non-debtor foreign entities (collectively, the “Assets”) to maximize value for all stakeholders. By this Motion, the Debtor seeks the Court’s approval of bidding procedures pursuant to which they will seek bids for the Sale of all or substantially all of the Assets.

2. A thorough yet expedited bidding process and consummation of the Sale are vitally important to the Debtor’s efforts to maximize value by selling the Assets. The expedited timeline set forth in the Bidding Procedures, attached as Exhibit 1 (the “Bidding Procedures”) to the Bidding Procedures Order (as defined below) is reasonable under the circumstances of this chapter

¹ Capitalized terms used but not defined herein have the meanings ascribed to them in the First Day Declaration, the Bidding Procedures Order, the Stalking Horse Term Sheet (as defined herein), or the *Debtor Motion for Entry of Interim and Final Orders (I) Authorizing Debtor to Obtain Postpetition Senior Secured Financing, (II) Authorizing the Debtor to Use Cash Collateral on a Limited Basis, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* [Docket No. 15] (the “DIP Motion”).

11 case and is necessary to meet the milestone included in the Debtor's proposed debtor in possession financing facility for closing of the Sale.

3. The Bidding Procedures and the related relief requested in this Motion are in the best interests of the Debtor's estate and its stakeholders. Accordingly, the Debtor requests that this Court grant this Motion.

JURISDICTION AND VENUE

4. The United States Bankruptcy Court for the District of Utah (the "Court") has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. The Debtor confirms its consent to the 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.

5. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this chapter 11 case and this Motion is proper in this district under 28 U.S.C. §§ 1408 and 1409.

6. The statutory bases for the relief requested herein are sections 105, 363, and 365 of title 11 of the United States Code, as amended (the "Bankruptcy Code"), Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedures (the "Bankruptcy Rules").

RELIEF REQUESTED

7. The Debtor seeks entry of an order approving, among other things, the Bidding Procedures, in substantially the form attached hereto as **Exhibit A** (the "Bidding Procedures Order"), which:

- (a) authorizes and approves the Bidding Procedures;
- (b) authorizes the Debtor to enter into the asset purchase agreement with the Stalking Horse Purchaser (as defined below) (the "Stalking Horse APA")

on terms to be finalized between the parties thereto and substantially in the form and substance to be filed on or around December 26, 2024, consistent with the Vobev, LLC – Stalking Horse Term Sheet (the “Stalking Horse Term Sheet”), attached hereto as **Exhibit B**;

- (c) approves the form and manner of notice of the proposed Sale of Assets, the Stalking Horse APA, the Bidding Procedures, the Auction (as defined below), and the Sale Hearing (as defined below), attached to the Bidding Procedures Order as Exhibit 2 (the “Sale Notice”), and the notice of Successful Bidder, attached to the Bidding Procedures Order as Exhibit 3;
- (d) approves procedures for the assumption and assignment of the Purchased Contracts (as defined in the Bidding Procedures Order) in connection with any sale, and approves the form and manner of the notice thereof, attached as Exhibit 4 to the Bidding Procedures Order (as defined below);
- (e) schedules certain dates with respect thereto; and
- (g) grants related relief.

8. The Debtor will seek entry of a sale order (the “Sale Order”) at the Sale Hearing (as defined below), which the Debtor will file in advance of the Sale Hearing. The proposed Sale Order will, among other things:

- (a) authorize and approve the Sale to the Stalking Horse Purchaser or otherwise Successful Bidder (as defined in the Bidding Procedures), on the terms substantially set forth in the Successful Bid (as defined in the Bidding Procedures);
- (b) authorize and approve the Sale of the Assets free and clear of any claim, pledge, option, charge, hypothecation, easement, security interest, right-of-way, encroachment, mortgage, statutory or deemed trust, and deed of trust or other encumbrance to the extent set forth in the asset purchase agreement with the Successful Bidder, attached to the Sale Order, which may be the Stalking Horse APA;
- (c) authorize and approve the assumption and assignment of the Purchased Contracts to the Successful Bidder; and
- (d) grants related relief.

9. The Debtor will file declarations or other evidence in support of the Sale in advance of the sale hearing (the “Sale Hearing”) to approve the Successful Bid and any Backup Bid (as defined below) (or if no Acceptable Bid (as defined below) other than that of the Stalking Horse Purchaser is received, then the Stalking Horse Term Sheet).

THE PROPOSED SALE

II. The Prepetition Marketing Process

10. On May 31, 2024, the Debtor engaged Houlihan Lokey Capital Inc. (“Houlihan”) to serve as its investment banker to begin exploring strategic alternatives to canvas the market for interested buyers and to restructure the Debtor’s debt obligations. Upon its retention, Houlihan immediately began conducting due diligence with respect to the Assets and the Debtor’s operations. Subsequent to its initial assessment of alternatives and timing of a marketing process, Houlihan began marketing preparations, including determining market interest in (a) a potential sale of the Debtor’s business or (b) a new debt financing deal that would be coupled with a restructuring of existing debt claims.

11. Beginning in early-June 2024, Houlihan began contacting potential bidders regarding the debt sale, and has provided a detailed teaser to one-hundred-sixty-two (162) potential strategic and financial sponsor parties. Of those parties, fifty-four (54) potential bidders executed non-disclosure agreements, after which Houlihan held numerous follow-up diligence calls for such parties’ benefit. Houlihan requested that potential bidders submit non-binding indications of interest by July 17, 2024, and received five (5) such formal and informal bids by the initial bid deadline. Ultimately, Houlihan received seven (7) indications of interest. Houlihan continued to engage with potential bidders, advancing the potential bidders to a second round, where Houlihan

responded to additional diligence requests from the potential bidders and uploaded more information to the virtual data room, and conducted extended market outreach. As the sale process continued, Houlihan and the Debtor hosted management presentations with the potential bidders during August 2024, and site visits to the Debtor's Salt Lake City, Utah facility in October and November of 2024.

12. Unfortunately, after further discussions, those bidders either withdrew their interest, were either unwilling or unable to advance to binding documentation or were not willing to raise their bids to value levels that were acceptable to the Debtor and the Prepetition Lenders. As Houlihan engaged with potential third-party bidders, they also engaged with the DIP Lenders to, through one or more affiliates or newly formed affiliate entities, serve as the stalking horse bidder (the "Stalking Horse Purchaser") for substantially all of the Debtor's businesses (the "Sale Transaction").

13. During these discussions and through the Petition Date, Houlihan continued its efforts to solicit offers for the Debtor's Assets as well as its business segments, and to that end, the Debtor commenced this chapter 11 case to conduct a further market check as to whether the Stalking Horse Term Sheet constitutes the highest or otherwise best bid for the Debtor's business.

14. As part of the proposed postpetition sale process, the Debtor, through Houlihan and its other professionals, will continue its marketing efforts with respect to the Debtor's Assets continuing to contact both financial and strategic investors regarding a potential sale, including all parties contacted prior to the commencement of the chapter 11 case. Many of the interested parties remain under non-disclosure agreements with the Company and have access to a data room maintained by the Debtor. Any other interested parties will be given an opportunity to execute a

non-disclosure agreement and be given access to the data room. Those parties that execute a non-disclosure agreement will be provided with substantial due diligence information concerning, and access to, the Debtor, including, without limitation, presentations by the Debtor and its advisors, and access to financial, operational, and other detailed information.

III. The Proposed Schedule.

15. Pursuant to the Bidding Procedures, the Debtor will solicit the highest or otherwise best proposals according to the following proposed schedule, subject to Court approval and availability (the “Sale Timeline”):

<u>Event or Deadline</u>	<u>Date</u>	<u>Description</u>
File Stalking Horse APA	December 26, 2024	Date for filing of Stalking Horse APA
Entry of Bidding Procedures Order	January 9, 2025	Date for the approval of the Bidding Procedures
Bid Deadline	January 17, 2025 at 4:00 p.m. prevailing Mountain Time	Deadline for when the Debtor must actually receive binding bids from parties.
Sale Objection Deadline (if no Auction is Necessary)	January 21, 2025	Deadline by which (i) general objections to the sale must be filed with the Court and served so as to be actually received by the appropriate notice parties and (ii) objections by the counterparties to adequate assurance of future performance by the Stalking Horse Purchaser with respect to Initial Purchased Contracts must be filed with the Court and served so as to be actually received by the appropriate notice parties (the “ <u>Sale Objection Deadline</u> ”).
Auction (if Necessary)	January 27, 2025	Date for when an auction for the Assets (the “ <u>Auction</u> ”) will be conducted, if necessary. The Auction will be conducted at the office of Ropes & Gray LLP, 1211 6th Avenue, New York New York 10036 or via remote video at the Debtor’s election.
Sale Objection Deadline (if Auction is Necessary)	January 29, 2025	Same as the Sale Objection Deadline above.
Sale Hearing	February 5, 2025	Date for the hearing to consider the approval of the Sale Order

16. The Debtor believes that this timeline balances a thorough marketing process to maximize value with the need to proceed expeditiously, as required under the Debtor’s postpetition financing. In addition to the Debtor’s marketing efforts thus far, the Debtor will use the time prior to, and after, entry of the Bidding Procedures Order to actively market the Assets to expedite the solicitation of bids for the Debtor’s Assets in advance of the deadline for interested parties to

submit bids for the Debtor's Assets (the "Bid Deadline"). In light of the foregoing, the Debtor has determined that the proposed schedule is in the best interests of the Debtor's estate, will assist in establishing whether and to what extent a market exists for the Assets, and provides interested parties with sufficient opportunity to participate in any sale transaction(s) and ultimately, will result in the highest or otherwise best bid for the underlying Assets under the circumstances.

IV. The Bidding Procedures

17. To optimally and expeditiously solicit, receive, and evaluate bids in a fair and efficient manner, the Debtor requests that the Court approve the propose Bidding Procedures.² The proposed Bidding Procedures are designed to permit a fair, efficient, competitive, and value-maximizing auction process for the Debtor's assets, consistent with the Debtor's goal of implementing a cost-effective Sale.

18. The Bidding Procedures will provide potential bidders with ample notice and time to conduct thorough due diligence to submit binding bids in advance of the Sale Hearing. Indeed, the Debtor's investment banker, Houlihan, commenced a marketing and sale process over six months ago to inform the Debtor and its secured lenders of a market view of the value of the Debtor's assets and business. The Bidding Procedures are designed to encourage all prospective bidders to put their best bid forward, effectuate an expeditious sale process with minimal disruption, and create a path towards entry of the Sale Order that will secure the highest or

² This summary is qualified in its entirety by the Bidding Procedures attached as Exhibit 1 to the Bidding Procedures Order. All capitalized terms that are used in this summary but not otherwise defined herein shall have the meanings given to such terms in the Bidding Procedures or the DIP Orders, as applicable. To the extent there are any conflicts between this summary and the Bidding Procedures, the terms of the Bidding Procedures shall govern.

otherwise best value for the business and the Debtor's stakeholders. The proposed Bidding Procedures are in the best interests of all stakeholders and should be approved.

19. The Debtor also requests authority, as set forth in the Bidding Procedures Order, to enter into the Stalking Horse APA with the Stalking Horse Purchaser, consistent with the Stalking Horse Term Sheet. The Stalking Horse APA will provide the Debtor with the ability to maximize the value of the Assets by setting a floor for potential bidders and encouraging potential bidders to put forth their best bid. Therefore, given the Debtor's need to maximize value for creditors and other stakeholders through a timely and efficient marketing process, the Debtor's entry into the Stalking Horse APA is a reasonable and sound exercise of the Debtor's business judgment and provides an actual benefit to the Debtor's estate.

20. The chart below sets forth the salient points of the proposed Bidding Procedures:

<u>Requirement</u>	<u>Description</u>
Stalking Horse Purchaser & Purchase Price	The Debtor is in the process of negotiating the Stalking Horse APA with the Stalking Horse Purchaser and will file the final form by December 26, 2025. As set forth more fully in the Stalking Horse APA, the aggregate consideration for the Purchased Assets (the "<u>Purchase Price</u>") shall consist of: (a) a credit bid pursuant to section 363(k) of the Bankruptcy Code of 100% of the DIP Loans, including all principal, fees, penalties and other obligations thereunder (by the DIP Agent on behalf of the DIP Lenders) plus an amount of the Prepetition Loans, including all principal, fees, penalties and other obligations thereunder (by the Prepetition Agent on behalf of the Prepetition Lenders) such that the aggregate credit bid amount is equal to \$150,000,000 (the "<u>Credit Bid Amount</u>"); (b) assumption of the Assumed Liabilities; and (c) the Excluded Cash (which shall remain with the Sellers at Closing). The Stalking Horse APA also includes various customary representations, warranties, and covenants by and from the Debtor and the Stalking Horse Purchaser, and certain conditions to closing and rights of termination related to the Sale and the chapter 11 case generally. The Stalking Horse Purchaser is deemed to be an Acceptable Bidder (as defined below) and the Stalking Horse APA is deemed to be an Acceptable Bid. Subject to the DIP Orders, the Stalking Horse Purchaser is credit bidding pursuant to 11 U.S.C. § 363(k), and thus is not required to make a Deposit (as defined below) with the Debtor.
Assets to be Sold	The Debtor shall offer for sale the Assets; <i>provided</i>, that if the Debtor, in consultation with the Consultation Parties, determine that the aggregate consideration offered by any bid, or combination of bids, for the Assets, satisfies the requirements set forth in these Bidding Procedures, Potential Bidders may bid on all or any number of combinations of the Assets.

<u>Requirement</u>	<u>Description</u>
Participation Requirements: Acceptable Bidders	Any person or entity that wishes to conduct diligence about the Debtor (an “<u>Interested Party</u>”) may request access to the Debtor’s confidential electronic data room concerning the Assets (the “<u>Data Room</u>”). To become an Interested Party, and thus be able to conduct due diligence, an Interested Party must execute a non-disclosure agreement, in form and substance satisfactory to the Debtor, with the Debtor and submit the following documents (collectively the “<u>Preliminary Bid Documents</u>”). Any Interested Party that wishes to participate in the bidding process for the Assets other than in the case of the Stalking Horse Purchaser (each, a “<u>Potential Bidder</u>”) must first become an “<u>Acceptable Bidder</u>.” To become an Acceptable Bidder, an Acceptable Bidder must submit to the Debtor and its advisors: i. documentation identifying the Potential Bidder, its principals, and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction; ii. an executed confidentiality agreement on terms acceptable to the Debtor, to the extent not already executed, which confidentiality agreement shall, among other terms, contain customary provisions regarding: (i) the nondisclosure of confidential information, (ii) prohibitions on contacting third parties in connection with a transaction, (iii) covenant to not solicit employees of the Debtor, (iv) prohibitions on purchasing or otherwise acquiring the Debtor’s debt and equity securities, and (v) the survival of certain provisions of the confidentiality agreement; iii. evidence by the Potential Bidder of its sufficient financial capacity to close a proposed transaction, which may include financial statements of, or verified financial commitments obtained by, the Potential Bidder (or, if the Potential Bidder is an entity formed for the purpose of acquiring the Assets, the party that will bear liability for a breach), the adequacy of which will be assessed by the Debtor, with the assistance of the Debtor’s advisors; iv. a statement and other factual support that the Potential Bidder has a bona fide interest in consummating a sale transaction, to the reasonable satisfaction of the Debtor after consultation with the Consultation Parties (as defined below); v. written disclosure of any connections or agreements with the Debtor, the Stalking Horse Purchaser, any other known Potential Bidder, or Qualified Bidder (as defined below), “insiders” of the Debtor (as that term is contemplated by section 101(31) of the Bankruptcy Code), or any manager or direct or indirect equity security holder of the Debtor; and vi. documentation identifying the Potential Bidder, its principals, and the representatives thereof who are authorized to appear and act on its behalf for all purposes regarding the contemplated transaction. Only Acceptable Bidders may submit Bids. Notwithstanding anything to the contrary herein, and for the avoidance of doubt, for all purposes under the Bidding Procedures: (i) the Stalking Horse Purchaser shall be considered an Acceptable Bidder, and the Stalking Horse

<u>Requirement</u>	<u>Description</u>
	APA shall be considered an Acceptable Bid, for all purposes under the Bidding Procedures, without regard to any of the requirements or conditions set forth therein and without any other or further action by the Stalking Horse Purchaser; and (ii) in determining whether the Potential Bidders constitute Acceptable Bidders, the Debtor may consider a combination of bids for the Assets.
Bankruptcy Court Jurisdiction	Any Potential, Acceptable Bidders, and Acceptable Bidders shall: (i) be deemed to have waived any right to a jury trial in connection with, and consented and submitted to the exclusive jurisdiction of the Court over, any disputes relating to, actions or proceedings arising from or relating to the Bidding Procedures, the Sale, the Auction and the construction and enforcement of the contemplated transaction documents; (ii) bring any such action or proceeding in the Court; and (ii) be deemed to have consented to the Court entering a final judgment determining any such action or proceeding and that such final judgment in any such action or proceeding, including all appeals, shall be conclusive and may be enforced in other jurisdictions (including any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law.
Due Diligence	The Debtor will provide any Acceptable Bidder with reasonable access to the Data Room and any other additional information that the Debtor believes to be reasonable and appropriate under the circumstances. All additional due diligence requests shall be directed to: (a) proposed investment banker for the Debtor, Houlihan Lokey Capital, Inc., attn: William Hardie (whardie@hl.com) and John Popehn (jpopehn@hl.com); or (b) proposed counsel for the Debtor, Ropes & Gray LLP, Gregg M. Galardi, Esq. (212-596-9139; gregg.galardi@ropesgray.com); and Eric P. Schriesheim, Esq. (312-845-1208; eric.schriesheim@ropesgray.com). The due diligence period shall extend through and including the Bid Deadline. The Debtor, in its business judgment, may, but shall not be obligated to, furnish any due diligence information after the Bid Deadline. The Debtor reserves the right, in its reasonable discretion, to withhold or limit access to any due diligence information that the Debtor determines is business-sensitive or otherwise not appropriate for disclosure to a Acceptable Bidder. Notwithstanding any prepetition limitations, including, without limitation, any non-disclosure, confidentiality or similar provisions relating to any due diligence information, the Debtor and its estate shall be authorized to provide due diligence information to Acceptable Bidders <i>provided</i> that such Acceptable Bidders have delivered an executed confidentiality agreement in form and substance acceptable to the Debtor. The Debtor and its estate are not responsible for, and shall have no liability with respect to, any information obtained by, or provided to, any Acceptable Bidders in connection with the Bidding Procedures and the Sale.
Qualified Bids & Bid Requirements	Each bid (a “<u>Bid</u>”) submitted by an Acceptable Bidder must be submitted in writing and satisfy the following requirements (collectively, the “<u>Bid Requirements</u>,”) unless otherwise modified by the Debtor (except for the requirement set forth in II(c) below), in its discretion: i. <u>Marked Agreement</u>. A Bid must be in writing and include an executed asset purchase agreement (a “<u>Competing APA</u>”), together with all exhibits and schedules (the “<u>Transaction Documents</u>”), pursuant to which the Acceptable Bidder proposes to effectuate the contemplated transaction, which Competing APA must be similar in form and substance to the Stalking Horse APA and be marked to reflect the differences between the Stalking Horse APA and the Acceptable Bidder’s Competing APA, including, without limitation, specification of the proposed purchase price,

<u>Requirement</u>	<u>Description</u>
	any assumed liabilities, and any changes to any exhibits or schedules to the Competing APA. A Bid must identify with particularity each and every condition to closing and all executory contracts and unexpired leases to be assumed and assigned pursuant to the Transaction Documents. The Transaction Documents must include a commitment to close the Transaction by no later than the Closing Date provided in the Stalking Horse APA. A Bid should propose a contemplated transaction involving all or substantially all of the Assets; <i>provided, however</i>, that the Debtor in its discretion may consider proposals for less than substantially all the Assets, <i>provided further</i> that the Debtor will evaluate all Bids, in its sole discretion, subject to prior consultation with the Consultation Parties, to determine whether such Bid or combination of Bids maximizes the value of the Debtor's estate as a whole in light of any factors regarding such bid which the Debtor, in its discretion, determine are appropriate to be considered in evaluating Bids. ii. <u>Purpose.</u> Each Acceptable Bidder must state that the Bid includes an offer by the Acceptable Bidder to purchase some or all of the Assets and state which Assets with reasonable specificity. Each Bid must clearly identify the following: (i) contracts to be assumed, including cure amounts to be paid, if any, and parties responsible for payment thereof; (ii) the liabilities, if any, to be assumed; (iii) leases of equipment or stores to be assumed, including cure amounts to be paid, if any, and parties responsible for payment thereof; and (iv) which employees or groups thereof will be offered employment. iii. The consideration proposed by a Bid may include cash or other consideration acceptable to the Debtor in an amount of no less than the sum of (i) the Purchase Price <u>plus</u> (ii) \$500,000; <i>provided that</i> the Bid must include sufficient cash to pay (A) all DIP Obligations and Pre-petition Obligations that have been credit bid by the Stalking Horse Purchaser (the "<u>Credit Bid Amount</u>"), and (B) any sale transaction fee payable to Houlihan pursuant to Houlihan's letter agreement with the Debtor dated as of May 31, 2024, on account of the Transaction. iv. <u>Forms of Consideration.</u> Each Bid must (a) indicate (x) whether it is an all-cash offer (including confirmation that the cash component of the Bid is based in U.S. Dollars) or consists of certain non-cash components, such as a credit bid or the assumption of liabilities; and (y) the liabilities to be assumed, if applicable; and (b) provide sufficient cash consideration specifically designated for the payment of the Credit Bid Amount. The Debtor may request that any Bid include the allocation of the Purchase Price among the Assets to be acquired. In addition, any Bid shall identify separately any cash and non-cash components, which non-cash components shall be limited only to credit-bids in accordance with section 363(k) of the Bankruptcy Code and assumed liabilities. v. <u>Deposit.</u> Each Bid must be accompanied by a cash deposit in the amount equal to 10% of the aggregate value of the cash and non-cash consideration (with the deposit amount for the non-cash consideration determined by the

<u>Requirement</u>	<u>Description</u>
	Debtor in its discretion) of the Bid to be held in an escrow account to be identified and established by the Debtor (the “<u>Deposit</u>”); provided that that the Debtor reserve the right to increase the amount of the Deposit in its discretion, including, without limitation, the right to request an additional Deposit in the event an Acceptable Bidder increases the amount of its Bid. For the avoidance of doubt, the Stalking Horse Purchaser shall not be required to provide a Deposit. vi. <u>Irrevocable</u>. All Bids must be irrevocable until the Debtor’s selection of the Successful Bid and Backup Bid (each as defined below); provided, however, that the Successful Bid shall be irrevocable until the closing of the Approved Transaction (as defined below) and the Backup Bid must be irrevocable in accordance with Section VI below, as applicable. vii. <u>Committed Financing</u>. To the extent that a Bid is not accompanied by evidence of the Acceptable Bidder’s capacity to consummate the Transaction set forth in its Bid with cash on hand, each Bid must include committed financing documented to the Debtor’s satisfaction that demonstrates that the Acceptable Bidder has received sufficient debt or equity funding commitments to satisfy the Acceptable Bidder’s purchase price and other obligations under its Bid. Such funding commitments or other financing must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions acceptable to the Debtor. viii. <u>Unconditional Offer / Contingencies</u>. A statement that the Bid is formal, binding, and unconditional and is not subject to any further due diligence or contingencies related to financing, internal approval, due diligence, or otherwise, and is irrevocable until the Debtor notify the Acceptable Bidder that such Bid is not a Successful Bid or a Backup Bid. ix. <u>Non-Reliance</u>. A Bid must include a written acknowledgement and representation of the Acceptable Bidder that it has had an opportunity to conduct any and all due diligence regarding the Assets and assumed liabilities prior to making its Bid, that it has relied solely upon its own independent review, investigation or inspection of any documents or the Assets in making its bid, and that it did not rely upon any written or oral statements, representations, warranties, or guaranties, express, implied, statutory or otherwise, regarding the Assets, the financial performance of the Assets or the physical condition of the Assets, the assumed liabilities, or the completeness of any information provided in connection therewith or the Auction. x. <u>Identity</u>. Each Bid must fully disclose the identity of each entity that will be bidding or otherwise participating in connection with such Bid (including each equity holder, sponsor, parent company or other financial backer of the Acceptable Bidder, including if such Acceptable Bidder is an entity formed for the purpose of consummating the proposed Transaction contemplated by such Bid), and the complete terms of any such

<u>Requirement</u>	<u>Description</u>
	participation. Under no circumstances shall any undisclosed principals, equity holders, or financial backers be associated with any Bid. Each Bid must also include contact information for the specific person(s), counsel and other advisors whom the Debtor's Advisors should contact regarding such Bid. Nothing herein shall preclude multiple Acceptable Bidders from submitting a joint Bid, subject to the Debtor's prior written consent to such submission and the disclosure requirements set forth herein. xi. <u>Adequate Assurance.</u> Each Bid must contain evidence acceptable to the Debtor in its discretion that the Acceptable Bidder has the ability to perform thereunder and otherwise complies with the requirements of adequate assurance of future performance under sections 365(b)(1) and 365(b)(3) of the Bankruptcy Code. Such evidence may include audited and unaudited financial statements, tax returns, bank account statements, a description of the proposed business to be conducted at the premises or any other documentation that the Debtor further requests. xii. <u>Authorization.</u> Each Bid must contain evidence that the Acceptable Bidder has obtained authorization or approval from its board of directors (or a comparable governing body acceptable to the Debtor) with respect to the submission of its Bid and the closing of the Transaction contemplated in such Bid (including the submission, execution, and delivery of the Competing APA). <u>No Fees Payable to Bidder.</u> A Bid may not request or entitle the Bidder to any break-up fee, termination fee, expense reimbursement or similar type of payment. Moreover, by submitting a Bid, a Bidder shall be deemed to waive the right to pursue any break-up fee, termination fee, expense reimbursement or similar type of payment, or substantial contribution claim under section 503 of the Bankruptcy Code related in any way to the submission of its Bid or the Bidding Procedures. By submitting its Bid, each Acceptable Bidder is agreeing, and shall be deemed to have agreed, to abide by and honor the terms of the Bidding Procedures and to refrain from submitting a Bid or seeking to reopen any round of bidding or the Auction after conclusion of any round of bidding or the Auction. The submission of a Bid shall constitute a binding and irrevocable offer to acquire the Assets as reflected in such Bid. Notwithstanding anything herein to the contrary and for the avoidance of doubt, for all purposes under the Bidding Procedures, the Stalking Horse APA submitted by the Stalking Horse Purchaser is a Qualified Bid without regard to any of the requirements or conditions set forth therein and without any other or further action by the Stalking Horse Purchaser.
Bid Deadline	An Acceptable Bidder, other than the Stalking Horse Purchaser, that desires to make a bid shall deliver a written and electronic copy of its bid in both PDF and MS-WORD format to the Notice Parties (as defined below) and the Consultation Parties so as to be received on or before January 17, 2025 at 5:00 p.m. (E.T.) (the "Bid Deadline"); <i>provided</i> that the Debtor, in its sole discretion may extend the Bid Deadline without further order of the Court; <i>provided further</i> that such modification shall be subject to the Milestones (as defined in the DIP Order) and after consultation with the Consultation Parties. To the extent that the Bid Deadline is extended for all parties, the Debtor shall file a notice on the docket of the chapter

<u>Requirement</u>	<u>Description</u>
	11 case indicating the same. Any party that does not submit a bid by the Bid Deadline will not be allowed to (a) submit any offer after the Bid Deadline, or (b) participate in the Auction.
Designation of Acceptable Bidders	A Bid will be considered a “<u>Qualified Bid</u>,” and each Acceptable Bidder that submits a Qualified Bid will be considered a “<u>Qualified Bidder</u>,” if the Debtor determines, in its discretion, subject to prior consultation with the Consultation Parties, that such Bid: i. satisfies the Bid Requirements set forth above; and ii. is reasonably likely (based on availability of financing, antitrust, or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Successful Bid, within a time frame acceptable to the Debtor. The Debtor will notify each Qualified Bidder whether such party is a Qualified Bidder and shall provide the Notice Parties (as defined below) with a copy of each Bid that has been submitted to the Debtor (whether or not such bid has been determined by the Debtor to be a Qualified Bid). If any Bid is determined by the Debtor not to be a Qualified Bid, the Debtor will refund such Acceptable Bidder’s Deposit on the date that is the later of (i) three (3) Business Days after the Bid Deadline and (ii) the date on which the Debtor make a final determination that such Bid is not a Qualified Bid or, in each case, as soon as is reasonably practicable thereafter. The Debtor reserves the right to work with any Acceptable Bidder in advance of the Auction to cure any deficiencies in a Bid that is not initially deemed a Qualified Bid and to determine at any time prior to the start of the Auction that such Bid, as modified, is a Qualified Bid. Between the date that the Debtor notifies an Acceptable Bidder that it is a Qualified Bidder and the Auction, the Debtor may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Without the prior written consent of the Debtor, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase the Acceptable Bidder’s purchase price, or otherwise improve the terms of, the Qualified Bid, during the period that such Qualified Bid remains binding as specified in these Bidding Procedures; provided that any Qualified Bid may be improved at the Auction as set forth herein; provided, further, that the Stalking Horse Bid may be modified or amended pursuant to its terms. Any improved Qualified Bid must continue to comply in all respects with the requirements for Qualified Bids set forth in these Bidding Procedures. Notwithstanding anything herein to the contrary, the Debtor reserves the right, (a) to work with potential bidders and Acceptable Bidders to aggregate two or more Bids into a single consolidated Bid prior to the Bid Deadline or (b) to work with Qualified Bidders to aggregate two or more Qualified Bids into a single Qualified Bid prior to the conclusion of the Auction. No bidders, Acceptable Bidders or Qualified Bidders may aggregate any Bids without the Debtor’s prior consent, subject to prior consultation with the Consultation Parties. Notwithstanding anything herein to the contrary and for the avoidance of doubt, for all purposes under the Bidding Procedures, the Stalking Horse Purchaser is a Qualified Bidder

<u>Requirement</u>	<u>Description</u>
	without regard to any of the requirements or conditions set forth therein and without any other or further action by the Stalking Horse Purchaser.
Authorization to Credit Bid	Unless otherwise ordered by the Court, any Qualified Bidder who has a valid and perfected lien on any assets of the Debtor’s estate (a “<u>Secured Creditor</u>”) and the right, power, and authorization to credit bid claims secured by such liens, shall have the right to credit bid all or a portion of such Secured Creditor’s secured claims within the meaning of, and subject to, section 363(k) of the Bankruptcy Code; <i>provided</i> that a Secured Creditor shall have the right to credit bid its secured claim only with respect to the collateral by which such Secured Creditor is secured. As set forth in the DIP Order, the DIP Lenders or the Prepetition Lenders (each as defined in the DIP Order) are permitted to credit bid any of the outstanding DIP Obligations or Prepetition Obligations, respectively, in accordance with section 363(k) of the Bankruptcy Code in any sale of the Assets, and may assign such right to credit bid in whole or in part to any of their affiliates (including, but not limited to, the Stalking Horse Purchaser). The Stalking Horse Purchaser (as an affiliate of the DIP Lenders and the Prepetition Lenders) shall have the unqualified right to credit bid on a dollar-for-dollar basis up to the full amount of the DIP Obligations and the Prepetition Obligations pursuant to section 363(k) of the Bankruptcy Code.
Auction	If no Qualified Bid (other than the Stalking Horse Bid) is received by the Bid Deadline, the Stalking Horse Purchaser shall be deemed the Successful Bidder without the need or requirement to hold or open the Auction. If the Debtor receives more than one Qualified Bid for the Assets (other than the Stalking Horse Bid), the Debtor will conduct the Auction to determine both the Successful Bidder and the Backup Bidder with respect to such Assets. The Auction shall take place on January 27, 2025, at the offices of Ropes & Gray, LLP, at 1211 6th Avenue, New York NY 10036, or such later date and time as selected by the Debtor (following consultation with the Consultation Parties); provided that such modification shall be subject to the Milestones. No later than the day before the Auction, the Debtor will notify all Qualified Bidders of the highest or otherwise best Qualified Bid, or, if multiple bids are received in respect of non-overlapping Assets, the highest or best Qualified Bid(s) received in relation to each group of Assets, in each case as determined in the Debtor’s business judgment (each such bid, a “<u>Baseline Bid</u>”), and provide copies of the documents supporting the Baseline Bid(s) to all Qualified Bidders and the Consultation Parties. The determination of which Qualified Bid(s) constitutes the Baseline Bid(s) and which Qualified Bid(s) constitutes the Successful Bid(s) shall take into account any factors the Debtor, in consultation of the Consultation Parties, reasonably deem relevant to the value of the Qualified Bid(s) to the Debtor’s estate, which may include, among other things: (a) the type and amount of Assets sought to be purchased in the Bid; (b) the amount and nature of the total consideration; (c) the likelihood of the Bidder’s ability to close a transaction and the timing thereof; (d) the net economic effect of any changes to the value to be received by the Debtor’s estate from the transaction contemplated by the Bid; (e) the tax consequences of such Bid; (f) the assumption of obligations, including contracts and leases; (g) the cure amounts to be paid; and (h) the

<u>Requirement</u>	<u>Description</u>
	impact on employees, including the number of employees proposed to be transferred and employee-related obligations to be assumed (collectively, the “<u>Bid Assessment Criteria</u>”). The Auction shall be conducted pursuant to the following procedures: <u>The Debtor Shall Conduct the Auction</u> The Debtor and the Debtor’s Advisors shall direct and preside over the Auction. The Auction shall be conducted in an open format (and not by way of sealed bids). At the start of the Auction, the Debtor shall describe the terms of the Baseline Bid(s). All incremental Bids made thereafter shall be Overbids (as defined below) and shall be made and received on an open basis, and all material terms of each Overbid shall be fully disclosed to all other Qualified Bidders and the Consultation Parties. The Debtor shall maintain a written transcript of all Bids made and announced at the Auction, including the Baseline Bid(s), all Overbids, the Successful Bid(s), and any Backup Bid(s). Only (i) Qualified Bidders (including, for the avoidance of doubt, the Stalking Horse Purchaser) and (ii) the Consultation Parties, and each of their respective legal and financial advisors, shall be entitled to attend the Auction, and the Qualified Bidders shall appear at the Auction in person (live or on videoconference) and may speak or bid themselves or through duly authorized representatives. Only Qualified Bidders (including, for the avoidance of doubt, the Stalking Horse Purchaser) shall be entitled to make any subsequent bids at the Auction; provided, however, that any creditor who wishes to physically attend the Auction (other than (i) the parties set forth in the Bidding Procedures (including the Qualified Bidders), and (ii) such other parties the Debtor deem appropriate), shall provide at least two (2) days’ notice of such attendance prior to the Auction by sending an email to counsel to the Debtor. <u>Terms of Overbids</u> “<u>Overbid</u>” means any bid made at the Auction by a Qualified Bidder subsequent to the Debtor’s announcement of the Baseline Bid. Each Overbid must comply with the following conditions: i. Minimum Overbid Increment. Any Overbid to the initial Baseline Bid at the start of the Auction shall be in increments of no less than a value equal to \$500,000 unless otherwise determined by the Debtor in an exercise of its business judgment. ii. Conclusion of Each Overbid Round. Upon the solicitation of each round of Overbids, the Debtor may announce a deadline (as the Debtor may, in its business judgment, extend from time to time, the “<u>Overbid Round Deadline</u>”) by which time any Overbids must be submitted to the Debtor. iii. Overbid Alterations. An Overbid may contain alterations, modifications, additions, or deletions of any terms of the Bid no less favorable to the Debtor’s estate than any prior Qualified Bid or

<u>Requirement</u>	<u>Description</u>
	Overbid, as determined in the Debtor’s business judgment, but shall otherwise comply with the terms of these Bidding Procedures. iv. No Round-Skipping. Round-skipping, as described herein, is explicitly prohibited. To remain eligible to participate in the Auction, in each round of bidding, (i) each Qualified Bidder must submit a Bid in such round of bidding that is a higher or otherwise better offer than the immediately preceding Bid submitted by a Qualified Bidder in such round of bidding and (ii) to the extent a Qualified Bidder fails to bid in such round of bidding or to submit a Bid in such round of bidding that is a higher or otherwise better offer than the immediately preceding Bid submitted by a Qualified Bidder in such round of bidding, as determined by the Debtor in its reasonable business judgment, such Qualified Bidder shall be disqualified from continuing to participate in the Auction for the Assets including, without limitation, submitting further Bids. v. Announcing Highest Bid. With respect to the Auction, the Debtor shall, subsequent to each Overbid Round Deadline, announce whether the Debtor in consultation with the Consultation Parties have identified (a) in the initial Overbid round, an Overbid as being higher or otherwise better than the Baseline Bid in respect of the Assets that are the subject of the Auction or (b) in subsequent rounds, an Overbid as being higher or otherwise better than the Overbid previously designated by the Debtor as the prevailing highest or otherwise best Bid (the “<u>Prevailing Highest Bid</u>”). The Debtor shall describe to all Qualified Bidders the material terms of any new Overbid designated by the Debtor as the Prevailing Highest Bid as well as the value attributable by the Debtor to such Prevailing Highest Bid based on, among other things, the Bid Assessment Criteria. <u>Consideration of Overbids</u> The Debtor reserves the right, in its business judgment, to adjourn the Auction one or more times, to, among other things, (i) facilitate discussions between the Debtor and Qualified Bidders, (ii) allow Qualified Bidders to consider how they wish to proceed, and (iii) provide Qualified Bidders the opportunity to provide the Debtor with such additional evidence as the Debtor, in its business judgment, may require that the Qualified Bidder has sufficient internal approvals and resources or has received sufficient non-contingent debt or equity funding commitments to consummate the proposed Transaction at the prevailing Overbid amount; provided that such adjournment shall be subject to the Milestones. <u>Closing the Auction</u> The Auction shall continue until there is only one Qualified Bid that the Debtor determines, in its discretion following consultation with the Consultation Parties, to be the highest or otherwise best Qualified Bid for the Assets. Such Qualified Bid shall be declared the “<u>Successful Bid</u>,” and such Qualified Bidder, the “<u>Successful Bidder</u>,” at which point the Auction will be closed. The Auction shall not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an Overbid at the Auction to the then

<u>Requirement</u>	<u>Description</u>
	Prevailing Highest Bid. Such acceptance by the Debtor of such Successful Bid is conditioned upon approval by the Court of such Successful Bid. As soon as reasonably practicable after closing the Auction, the Debtor shall finalize definitive documentation to implement the terms of the Successful Bid, and, as applicable, cause such definitive documentation to be filed with the Court. <u>No Collusion; Good Faith Bona Fide Offer</u> Each Qualified Bidder participating at the Auction will be required to confirm on the record at the Auction that (i) it has not engaged in any collusion, within the meaning of section 363(n) of the Bankruptcy Code with respect to any bids submitted or not submitted in connection with the Sale, and (ii) its Qualified Bid is a good faith bona fide offer and it intends to consummate the proposed Transaction if selected as the Successful Bidder.
Sale Hearing	The Sale Hearing, pursuant to which the Debtor and the Successful Bidder will consummate the Transaction (the “<u>Approved Transaction</u>”), will be held no later than January 31, 2025. The Sale Hearing may be continued to a later date by the Debtor by sending notice prior to, or making an announcement at, the Sale Hearing; provided that such later date is consistent with the Milestones, or the Debtor have obtained the necessary consents under the DIP Order. No further notice of any such continuance will be required to be provided to any party.
Backup Bidder	Notwithstanding anything in these Bidding Procedures to the contrary, if the Auction is conducted, the Qualified Bidder with the next-highest or otherwise second-best Qualified Bid at the conclusion of the Auction for the Assets or any sub-group thereof, as determined by the Debtor in the exercise of its business judgment, shall be required to serve as a backup bidder (the “<u>Backup Bidder</u>”) in accordance with the terms and conditions set forth herein. Each Qualified Bidder shall agree and be deemed to agree to be a Backup Bidder if so designated by the Debtor, subject to the terms of such Backup Bidder’s Competing APA. The identity of a Backup Bidder and the amount and material terms of the Qualified Bid of such Backup Bidder shall be announced by the Debtor, at the conclusion of the Auction at the same time the Debtor announce the identity of the Successful Bidder related thereto. Such Backup Bidder shall be required to keep its Qualified Bid (the “<u>Backup Bid</u>”) (or if the Backup Bidder submits one or more Overbids at the Auction, its final Overbid) open and irrevocable until the earlier of (i) the closing of the Approved Transaction and (ii) 30 days from entry of the Sale Order. Each Backup Bidder’s Deposit shall be held in escrow until the earlier of (i) three (3) Business Days after the closing of the Approved Transaction and (ii) 30 days from entry of the Sale Order, subject to the terms of such Backup Bidder’s Competing APA. If a Successful Bidder fails to consummate the Approved Transaction contemplated by its Successful Bid, the Debtor may select the Backup Bidder (which may be the Stalking Horse Purchaser) with respect to the Assets or sub-group of the Debtor’s Assets or business as the Successful Bidder, and such Backup Bidder shall be deemed a Successful Bidder for all purposes. The Debtor will be authorized, but not required, to consummate all transactions contemplated by the Bid of such Backup Bidder without further order of the Court or notice to any party. Notwithstanding any of the foregoing, in the event that the Successful Bidder (other than the Stalking Horse Purchaser) fails to consummate the Transaction on or before [●], 2025 (or such date as may be extended by the Debtor with the consent of the DIP Agent (as defined in the

<u>Requirement</u>	<u>Description</u>
	DIP Order) and in consultation with the Consultation Parties), the Backup Bid will be deemed to be the Successful Bid, the Backup Bidder will be deemed to be the Successful Bidder, and the Debtor shall be authorized to consummate the Transaction with the Backup Bidder subject to the terms of the Backup Bid without the need for further order of the Court and without the need for further notice to any interested parties.
Return of Deposits	The Deposit of the Successful Bidder shall be applied to the purchase price of the Approved Transaction at closing. The Deposits for each Qualified Bidder shall be held in one or more escrow accounts on terms acceptable to the Debtor in its sole discretion and shall be returned (other than with respect to each Successful Bidder and each Backup Bidder) on the date that is three (3) business days after the Auction, or as soon as is reasonably practicable thereafter. Upon the return of the Deposits, the applicable Qualified Bidders shall receive any and all interest that will have accrued thereon. If the Successful Bidder (or, if the Sale is to be closed with the Backup Bidder, then the Backup Bidder) other than the Stalking Horse Purchaser fails to consummate the Sale because of a breach or failure to perform on the part of such bidder, then, subject to the terms of the Competing APA, the Debtor and its estate shall be entitled to retain the Deposit of the Successful Bidder (or, if the Sale is to be closed with the Backup Bidder, then the Backup Bidder). To the extent the Debtor do not consummate the proposed transaction with the Backup Bidder due to the closing of the transaction with the Successful Bidder, the Backup Bidder's deposit shall be refunded within three (3) business days of the closing of the Approved Transaction.
Notice and Consultation Parties	Information that is provided to the "<u>Notice Parties</u>" under these Bidding Procedures must be provided to the following parties: (a) proposed co-counsel to the Debtor, (i) Ropes & Gray LLP, 1211 Avenue of the Americas, New York, NY 10036, Attn: Gregg M. Galardi (gregg.galardi@ropesgray.com) and Eric P. Schriesheim (eric.schriesheim@ropesgray.com) and (ii) Ray Quinney & Nebeker, PC, 36 South State Street, Suite 1400, Salt Lake City, Utah 84111 (Attn: Michael R. Johnson and Jeffrey W. Shields: email: mjohnson@rqn.com and jshields@rqn.com); (b) counsel to the DIP Secured Parties, the Prepetition Secured Parties, and the Stalking Horse Purchaser, (i) Proskauer Rose LLP, Eleven Times Square, New York, New York 10036 (Attn: Vincent Indelicato (vindelicato@proskauer.com) and Matthew R. Koch (mkoch@proskauer.com)), and One International Place Boston, Massachusetts 02110 (Attn: Charles A. Dale (cdale@proskauer.com)), and (ii) Parr Brown Gee & Loveless, PC, 101 South 200 East, Suite 700, Salt Lake City, Utah 84111 (Attn: Joseph M.R. Covey (jcovey@parrbrown.com)); and (c) the Office of the U.S. Trustee for the District of Utah, 405 South Main Street, Suite 300, Salt Lake City, Utah 84111 (Attn: David W. Newman or by email at david.w.newman@usdoj.gov). The term "<u>Consultation Parties</u>" as used in these Bidding Procedures shall mean (a) any official committee of unsecured creditors appointed in the chapter 11 case (the "<u>Creditors' Committee</u>") and, (b) in the event that the Stalking Horse Purchaser terminates its credit bid, the DIP Agent.
Reservation of Rights	The Debtor reserves its rights, subject to prior consultation with the Consultation Parties and subject to the DIP Order and the DIP Credit Agreement (as defined therein), to modify these Bidding Procedures in its business judgment in any manner that will best promote the goals of these Bidding Procedures or impose at or prior to the Auction, additional customary terms and conditions on a Transaction, including, without limitation: (a) extending the deadlines set forth in these Bidding Procedures; (b) adjourning the Auction at the Auction; (c) adding procedural rules that are reasonably necessary or advisable under the circumstances for

<u>Requirement</u>	<u>Description</u>
	conducting the Auction; (d) canceling the Auction; and (e) rejecting any or all Bids or Qualified Bids (other than the Stalking Horse Bid). Notwithstanding the foregoing, the Debtor shall not be permitted to modify these Bidding Procedures in any way that (i) permits the submission of Bids after the close of bidding or the close of the Auction, (ii) permits Qualified Bids that propose consideration that does not include cash sufficient and specifically designated to pay the Credit Bid Amount.

21. Importantly, the Bidding Procedures recognize and comply with the Debtor's fiduciary obligations to maximize sale value, and, as such, do not impair the Debtor's ability to consider all qualified bid proposals and, as noted, preserve the Debtor's right to modify the Bidding Procedures as necessary or appropriate to maximize value for the Debtor's estate.

IV. The Stalking Horse Term Sheet

22. Certain material terms of the Stalking Horse Term Sheet, and certain provisions of the Stalking Horse Term Sheet, are described below:³

Key Terms of the Stalking Horse Term Sheet⁴	
Stalking Horse Purchaser Stalking Horse Term Sheet § 2	A newly formed entity organized and controlled by the DIP Lenders or affiliates thereof (the " <u>Purchaser</u> ")
Purchase Price Stalking Horse Term Sheet § 3	The aggregate consideration for the Purchased Assets (the " <u>Purchase Price</u> ") shall consist of: i. a credit bid pursuant to section 363(k) of the Bankruptcy Code of 100% of the DIP Loans, including all principal, fees, penalties and other obligations thereunder (by the DIP Agent on behalf of the DIP Lenders) plus an amount of the Prepetition Loans, including all principal, fees, penalties and other obligations thereunder (by the Prepetition Collateral Agent on behalf of the Prepetition Lenders) such that the aggregate credit bid amount is equal to \$150,000,000 (the "<u>Credit Bid Amount</u>");

³ Any summary of the Stalking Horse Term Sheet contained herein is qualified in its entirety by the actual terms and conditions of the Stalking Horse Term Sheet. To the extent that there is any conflict between any summary contained herein and the actual terms and conditions of the Stalking Horse Term Sheet, the actual terms and conditions of the Stalking Horse Term Sheet shall control.

⁴ Capitalized terms used in this table and not otherwise defined herein shall have the meaning ascribed to such terms in the Stalking Horse Term Sheet.

Key Terms of the Stalking Horse Term Sheet⁴	
	ii. assumption of the Assumed Liabilities; and iii. the Excluded Cash (which shall remain with the Seller at Closing). If cash on hand and cash drawn under the DIP Facility is not sufficient to fund all of the amounts (a), (b) and (c) below in the definition of “Excluded Cash”, Purchaser will fund an amount in cash at Closing equal to the sum of each of (a), (b) and (c) in the definition of Excluded Cash to an account(s) controlled by Seller.
Purchased Assets Stalking Horse Term Sheet § 4	The “<u>Purchased Assets</u>” shall include substantially all of the assets of the Seller, free and clear of all liens, claims, interests and encumbrances (other than certain permitted liens) to the fullest extent permitted by Section 363 of the Bankruptcy Code and/or other applicable law, other than the Excluded Assets, as shall be more fully set forth in the APA, including, without limitation, all of Seller’s right, title and interest to, as of the Closing, each of the following: i. all cash, cash equivalents, prepayments (including, without limitation, all prepayments made to third party vendors), deferred assets, refunds, credits or overpayments, in each case, except for the Excluded Cash; ii. all accounts receivable of the Seller (including, without limitation, credit card receivables, funds in transit, deposits and other receivables from customers and other payments/fees, allowances due from landlords with respect to the Assigned Leases, etc.); iii. all inventory of the Seller; iv. to the extent transferable pursuant to applicable law, all insurance policies of the Seller and any claims thereunder to the extent such policies relate to the operation of the Seller’s business or to any Assumed Liabilities, other than any Excluded Insurance Policy, <i>provided</i>, that to the extent any insurance policies of the Seller covers any excluded liabilities of the Seller, including, without limitation, tort liabilities, operational liabilities, and environmental liabilities, such policies must be made available to satisfy bona fide claims of any third party that are covered by such insurance policies; v. those unexpired leases specifically designated by Purchaser at least three (3) days prior to the Auction (“<u>Assigned Leases</u>”); vi. those executory contracts specifically designated by the Purchaser at least three (3) days prior to the Auction (“<u>Assigned Contracts</u>”);

Key Terms of the Stalking Horse Term Sheet⁴	
	vii. to the extent transferable, any security deposits held by counterparties to Assigned Leases and Assigned Contracts; viii. all furniture, fixtures, equipment, marketing materials and other personal property used in the operations of the Seller, including, without limitation, to the extent transferable, all rights to any software; ix. all merchandise and other personal property used in the operations of the Seller; x. to the extent transferable pursuant to applicable law, all permits required for Seller to conduct business as currently conducted or for the ownership, operation, use, maintenance or repair of any of the Purchased Assets, including, without limitation, alcohol and/or liquor or other similar licenses; xi. all books and records of the Seller, other than the Excluded Books and Records, <u>provided</u> that Purchaser will provide the Seller and any court-appointed chapter 7 trustee or other fiduciary charged with winding up the affairs of the Seller with reasonable access to books and records for the purposes of conducting any wind-down activities (which wind-down activities shall include any liquidation, “<u>Wind-Down Activities</u>”)) post-closing; xii. all intellectual property of the Seller; provided, Purchaser will provide the Seller and any court-appointed chapter 7 trustee or other fiduciary charged with winding up the affairs of the Seller a license (without charge) to use any such intellectual for purposes of conduct specified Wind-Down Activities; xiii. all general intangibles associated with the Seller’s business; xiv. all guarantees, representations, warranties and indemnities given by any third party associated with the operation of the business to the extent related to any Purchased Assets or any Assumed Liabilities; xv. all claims, causes of action, choses in action, rights of recovery, rights of set off and rights of recoupment including, without limitation, all causes of action arising under Chapter 5 of the Bankruptcy Code and state law equivalents, other than claims, causes of action, counterclaims and defenses related to Excluded Assets and any proceeds thereof; xvi. all prepayments, deposits, deferred assets, rights to refunds and credits (including, without limitation, pre and post-

Key Terms of the Stalking Horse Term Sheet⁴	
	bankruptcy rights to tax refunds or credits), rights to recover overpayments or other receivables; xvii. all tax returns of or with respect to any Purchased Asset and all records (including, without limitation, working papers) related thereto, <i>provided</i>, that the Seller and any court-appointed chapter 7 trustee or other fiduciary charged with winding up the affairs of the Seller shall have reasonable access to any tax returns and working papers, as applicable, upon prior written request; xviii. any funds owed to any Seller in connection with the Paycheck Protection Program of the Coronavirus Aid, Relief and Economic Security Act of 2020 or any other COVID-19 relief law (including, without limitation, employee retention credits); xix. all rights in or under employee plans of the Seller which are specifically set forth on a schedule to the APA to be provided by the Purchaser prior to the Auction and thereby designated as “Assumed Employee Plans” under the APA, if any; and xx. all rights under non-disclosure or confidentiality, non-compete or non-solicitation agreements with employees and agents of any Seller or with third parties. For purposes hereof, “<u>Auction</u>” means the auction undertaken pursuant to the Bidding Procedures Order, if any.
Excluded Assets Stalking Horse Term Sheet § 5	The Purchased Assets shall not include the following assets (collectively, the “<u>Excluded Assets</u>”): i. all books and records relating solely to the Excluded Assets, the organizational documentation and stock and minute books of the Seller, and any books and records or other documents that any Seller is prohibited by applicable law or contract from delivering to Purchaser (the “<u>Excluded Books and Records</u>”); ii. executory contracts and unexpired leases of the Seller that are not Assigned Leases or Assigned Contracts; iii. any confidential personnel or other records to the extent pertaining to any current or former employee who is not a Transferred Employee; iv. all equipment and other assets and items that are (a) owned by third parties or (b) leased to any Seller or an affiliate thereof, or are not freely assignable, saleable and transferable to the Purchaser, in each case, pursuant to a contract or

Key Terms of the Stalking Horse Term Sheet ⁴	
	agreement that is not an Assigned Lease or an Assigned Contract; v. the Purchase Price and all rights that accrue or will accrue to the Seller under (A) any of the documents with respect to the Sale and (B) any documents prepared or received by Seller in connection with the Sale (including, without limitation, any privileged materials); vi. cash on hand and cash drawn under the DIP Facility (collectively, the “<u>Excluded Cash</u>”), in an amount equal to, (a) after taking into account any amounts held by any Seller or estate professionals, or any funds of Seller held in escrow or reserve with respect to the fees and expenses of any estate professionals, an amount sufficient to satisfy the estimated accrued professional fees and expenses of estate professionals as of the Closing Date, but only to the extent that such fees of such estate professionals are included in the Carve-Out (as defined in the DIP Term Sheet) or the Professional Fee Reserve (as defined in the DIP Term Sheet), <u>plus</u> (b) an amount sufficient to pay all ordinary course administrative expenses arising or incurred on or after the petition date and that are included within the Approved budget, accrued and unpaid as of the Closing Date and any other claims for payroll, compensation (including accrued PTO), taxes or other liabilities that if not paid would reasonably be expected to result in personal liability of any current or former employee, officer or director of the Company or its subsidiaries, but only to the extent such expenses or liabilities are not Assumed Liabilities (<u>provided</u>, that any such expenses or liabilities that are assumed as Assumed Liabilities are promptly paid by Purchaser when required), <u>plus</u> (c) an amount equal to \$350,000 that will be used to fund the wind-down expenses (collectively, the “<u>Post-Sale Expenses</u>”); vii. one or more bank accounts designated by Sellers to be used for Wind-Down Activities or to hold professional fees or other deposits; viii. (1) all director and officer insurance policies and (2) any other insurance policy (a) related solely to any Excluded Asset, (b) required to cover claims or expenses in the Chapter 11 Case or (c) are required to be retained by Seller in connection with the wind-down of the Seller’s bankruptcy estate following the Closing (the “<u>Excluded Insurance Policies</u>”) and, in each case, all rights and benefits of any nature of Seller with respect thereto; ix. any employee benefit plan that is not an Assumed Employee Plan and all assets of any such employee benefits plan, or any

Key Terms of the Stalking Horse Term Sheet⁴	
	trust or other funding vehicles with respect to any such employee benefit plan; x. all guarantees, representations, warranties and indemnities to the extent pertaining to any Excluded Asset or rights and defenses to the extent pertaining to any Excluded Liability; xi. all rights to any software used in any computer equipment included in the Purchased Assets, to the extent not freely transferable to Purchaser; xii. all documents protected by any applicable privilege, including attorney-client or attorney work product privilege; and xiii. all shares of capital stock or other equity interests of Seller or any of their subsidiaries. The Purchaser may revise the Stalking Horse APA to add or remove Purchased Assets (including, for the avoidance of doubt, any Assigned Lease or Assigned Contract) and/or Excluded Assets with no effect on the Purchase Price at any time prior to no later than three (3) Business Days prior to the Closing. In the event that Purchaser seeks to add an Assigned Lease, the Sellers shall provide notice of the Assigned Lease within two (2) business days of receiving notice from the Purchaser and shall provide the third party with five (5) business days' notice to object to such assignment.
Assumed Liabilities Stalking Horse Term Sheet § 6	<u>"Assumed Liabilities"</u> shall include the following: i. all liabilities of the Seller relating to, or arising in respect of, the Purchased Assets arising out of or relating to (a) events, occurrences, acts or omissions occurring or existing on or after the Closing Date or (b) the operation of the Seller's business or the Purchased Assets by Purchaser on or after the Closing Date; ii. all liabilities of the Seller under any Assigned Leases and Assigned Contracts (collectively, the <u>"Purchased Contracts"</u>), including, without limitation, amounts necessary to cure any defaults in connection with the assumption of any Purchased Contracts (collectively, the <u>"Cure Costs"</u>) not to exceed the Cure Costs Cap; iii. all liabilities incurred after the Closing Date relating to the employment or performance of services, termination of employment or services of any Transferred Employee or any liabilities arising under each Assumed Employee Plan after the Closing Date;

Key Terms of the Stalking Horse Term Sheet⁴	
	iv. to the greatest extent permitted by applicable law, all liabilities related to any accrued or earned paid time off of any employees who become Transferred Employees; v. solely to the extent caused by an action taken by or inaction of Purchaser (including if Purchaser does not hire any employee of Seller), any liability under the WARN Act or similar state, local or foreign law, or with respect to COBRA or similar state, local or foreign law; vi. all liabilities with respect to transfer taxes arising in connection with the Sale (the “<u>Transfer Taxes</u>”); vii. any collected and unremitted payroll, sales or use taxes and (b) property and ad valorem taxes (i) secured by liens that are senior to the liens held by the Prepetition Lenders or DIP Lenders payable in respect of the Purchased Assets or (ii) for which the Debtor is obligated under an executory contract or unexpired lease that becomes a Purchased Contract; viii. any and all costs and expenses necessary in connection with providing “adequate assurance of future performance” with respect to the Purchased Contracts (as contemplated by Section 365 of the Bankruptcy Code); ix. liabilities for all ordinary course administrative expenses, accounts payable and operating expenses, in each case, arising or incurred on or after the Petition Date and on or prior to the Closing Date; and x. all liabilities agreed to be assumed by Purchaser or for which Purchaser agrees to be responsible pursuant to the APA. The Seller will file a motion to fix Cure Costs within 13 days of the Petition Date, with an objection deadline no later than 5 days prior to the Auction. Purchaser and Seller will then negotiate in good faith and agree within 3 days of filing such motion (or prior to signing of the definitive purchase agreement, if later) on an aggregate amount of Cure Costs to be assumed by Purchaser (the “<u>Cure Costs Cap</u>”), which Cure Costs Cap will be based on the Cure Costs set forth in the motion plus a reasonable buffer.
Retained Liabilities Stalking Horse Term Sheet § 6	All prepetition and post-petition liabilities of the Seller, other than the Assumed Liabilities, including, without limitation, any liability arising out of a contract or lease that is not a Purchased Contract, shall be “<u>Excluded Liabilities</u>,” including, without limitation: i. any liability of any Seller to the extent arising from any Excluded Asset; ii. any Cure Costs in excess of the Cure Costs Cap;

Key Terms of the Stalking Horse Term Sheet⁴	
	iii. all liabilities or indebtedness for borrowed money of the Seller (including, without limitation, any indebtedness or accounts payable owing from any Seller to any affiliate of the Seller); iv. except for the Transfer Taxes and any other Assumed Liabilities, (a) all tax liabilities of the Seller and (b) all tax liabilities relating to the Purchased Assets attributable to a taxable period (or portion thereof) ending on or before the Closing Date; v. all liabilities of Seller or any of their predecessors or their respective affiliates or ERISA Affiliates arising out of, relating to or with respect to (a) the employment or performance of services, termination of employment or services of any employee, or independent contractor or any other person who has performed services for or on behalf of any Seller or any of its affiliates on or before the close of business on the Closing Date, (b) employment or labor liabilities accruing either directly or indirectly against the Seller or any of their affiliates that relate to the period on or before the close of business on the Closing Date, irrespective of whether such claims are made prior to or after the Closing Date, and (c) all liabilities (including, without limitation, to the IRS or United States Department of Labor, under ERISA or the Internal Revenue Code, or otherwise) with respect to any employee benefit plan (including, without limitation, all assets, trusts, insurance policies and administration service contracts related thereto) sponsored, maintained or contributed to by the Seller or any of their respective affiliates or ERISA Affiliates, or with respect to which any of them could have any liability (whether current or contingent), in each case that is not an Assumed Employee Plan, in each case, other than those included as "Assumed Liabilities"; vi. all liabilities relating to claims arising from or related to the rejection of a contract or lease pursuant to section 365 of the Bankruptcy Code; vii. any tort liabilities of any Seller; viii. all liabilities relating to the CARES Act, including, without limitation, any obligation with respect to deferred payroll taxes; ix. all environmental liabilities relating to, resulting from, caused by or arising out of the ownership, operation or control of the Seller's business, to the extent accruing, arising out of or relating to events, occurrences, acts or omissions occurring or existing prior to the Closing Date;

Key Terms of the Stalking Horse Term Sheet⁴	
	x. all actions against each Seller, any of their respective assets, their businesses and any of their past or present operations or activities (except to the extent (and only to such extent that) such actions relate to an Assumed Liability); xi. any liability (whether arising before, on or after the Closing Date) with respect to any employee or former employee of the Sellers who is not a Transferred Employee; xii. all liabilities relating to claims for indemnification of any present or former officer, manager, employee, partner or member of any Seller whether arising under bylaws, certificates of formation or other formation documents, or contract arising prior to the Closing Date; and xiii. all pre-petition accounts payable of any Seller (except to the extent expressly assumed by Purchaser).
Conditions to Closing Stalking Horse Term Sheet § 9	The respective obligations of the Seller and Purchaser to consummate the Sale (the “<u>Closing</u>”, and the date of the Closing, the “<u>Closing Date</u>”) shall be subject to the satisfaction at or prior to the Closing Date of customary conditions, including, without limitation, the following conditions: i. no temporary restraining order, preliminary or permanent injunction or other order issued by a governmental authority preventing consummation of the Sale shall be in effect; ii. no law shall be in effect which prohibits the transactions contemplated by the Sale; iii. no default of Event of Default shall have occurred and be continuing under the DIP Facility; iv. no breach of Seller’s or Purchaser’s covenants and accuracy of Seller’s and Purchaser’s representations and warranties as of the Closing Date that would not reasonably be expected to have a material adverse change (as customarily defined, which definition shall expressly exclude effects related to the bankruptcy case and Seller’s financial distress); v. no material adverse change (as customarily defined) shall have occurred; vi. the APA shall continue to remain in full force and effect; vii. the Bankruptcy Court shall have entered the Bidding Procedures Order and the Sale Order, in form and substance acceptable to the Required DIP Lenders (as defined in the DIP Term Sheet) on behalf of the Purchaser;

Key Terms of the Stalking Horse Term Sheet⁴	
	viii. the aggregate Cure Costs do not exceed the Cure Costs Cap; and ix. to the extent necessary to facilitate the transactions contemplated hereby, including, without limitation, the purchase and sale of all Purchased Assets, the parties shall enter into a transition services agreement, or other similar agreement in form and substance acceptable to Seller and the Purchaser (any such agreement, a “<u>Transition Services Agreement</u>”)⁵
Closing and Other Deadlines Stalking Horse Term Sheet § 10	The Closing shall occur on the Closing Date, which shall occur no later than 60 days after the Petition Date.
Credit Bid Stalking Horse Term Sheet § 19	Notwithstanding anything else herein, holders of at least 50.1% of the outstanding principal amount of the DIP Loans and unfunded DIP Commitment (as defined in the DIP Term Sheet) shall have provided authorization to the DIP Agent (as defined in the DIP Term Sheet) before submitting a credit bid under section 363(k) of the Bankruptcy Code on behalf of the DIP Lenders. Purchaser or the DIP Agent shall provide evidence of such authorization upon the request of Seller.
Relief from Bankruptcy Rule 6004(h)	This Motion seeks, and the proposed Final Bidding Procedures Order approves, relief from the fourteen-day stay imposed by Bankruptcy Rule 6004(h).
Sale Free and Clear of Unexpired Leases Stalking Horse Term Sheet § 4	The Debtor’s contracts and leases shall, to the extent designated by the Purchaser, be assumed and assigned.

V. Notice Procedures for the Sale, Bidding Procedures, Auction, and Sale Hearing

23. The Debtor also requests approval of the Sale Notice, substantially in the form attached to the Bidding Procedures Order as Exhibit 2.

24. Within three (3) business days of the entry of the Bidding Procedures Order or as soon as reasonably practicable thereafter, the Debtor will cause the Sale Notice, substantially in

⁵ Scope of services under TSA to be mutually agreed by the parties prior to the Closing; to the extent reasonably necessary for the wind-down of the Sellers’ estate and transfer of the Purchased Assets, scope of services provided by (i) Purchaser (and/or its affiliates) shall include, among other things, reasonable access to the accounting staff and accounting systems of the acquired business for as long as reasonably necessary for such wind-down (ii) Seller (and/or its affiliates), shall include, among other things, all reasonable actions needed to transfer any licenses or to make any regulatory filings.

the form attached as Exhibit 2 to the Bidding Procedures Order, to be served on the following parties or their respective counsel, if known: (a) the U.S. Trustee; (b) counterparties to the executory contracts and unexpired leases of nonresidential property (the “Contract Counterparties”), if known; (c) all parties who are known or reasonably believed, after reasonable inquiry, to have asserted any lien, encumbrance, claim, or interest in the Assets; (d) the Internal Revenue Service; (e) all applicable state and local taxing authorities; (f) all the Debtor’s other creditors; (g) each governmental agency that is an interested party with respect to the proposed Sale Transaction; and (h) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002.

25. Within seven (7) business days of the entry of the Bidding Procedures Order or as soon as reasonably practicable thereafter, the Debtor will also provide notice of the Sale Hearing through publication of the Sale Notice on their restructuring website, <https://cases.ra.kroll.com/Vobev> (the “Case Website”) and will also publish the Sale Notice, with any modifications necessary for ease of publication (the “Publication Notice”) once in the national edition of *USA Today* or another nationally circulated newspaper, with any modifications necessary for ease of publication.

26. The Debtor respectfully submits that the Sale Notice and Publication Notice are reasonably calculated to provide all interested parties with timely and proper notice of the proposed Sale Transaction, including: (a) the date, time, and place of the Auction; (b) the Bidding Procedures; (c) the deadline for filing objections to the Sale Transaction and entry of the Sale Order, and the date, time, and place of the Sale Hearing; (d) a description of the Sale Transaction as being free and clear of liens, claims, interests, and other encumbrances, with all such liens,

claims, interests, and other encumbrances attaching with the same validity and priority to the Sale Transaction proceeds; and (f) notice of the proposed assumption and assignment of the Contracts to the Successful Bidder arising from the Auction, if any.

27. The Debtor further submits that notice of this Motion and the related hearing to consider entry of the Bidding Procedures Order, coupled with service of the Sale Notice and the Assumption Notice substantially in the form attached as Exhibit 3 to the Bidding Procedures Order (where applicable), as provided for herein, constitutes good and adequate notice of the Sale Transaction and the proceedings with respect thereto in compliance with, and satisfaction of, the applicable requirements of Bankruptcy Rule 2002. The Debtor proposes that no other or further notice of the Sale Transaction shall be required. Accordingly, the Debtor requests that this Court approve the form and manner of the Sale Notice.

VII. Assumption and Assignment Notice

28. Within thirteen (13) days of the Petition Date, the Debtor intends to file a motion to fix monetary amounts that the Debtor would be obligated to pay in connection with the assumption or the assumption and assignment of executory contracts and unexpired leases and to elicit any objection to the assumption and assignment of such executory contracts and unexpired leases other than objections based on adequate assurance of future performance by a purchaser (such motion, the “Cure Amounts Motion”).

29. The Debtor is in the process of reviewing its prepetition executory contracts and unexpired leases and designated which of those executory contracts and leases a purchaser of all of the Assets may wish to have assumed and assigned to it. At the Sale Hearing, to facilitate and effect the sale of Assets, the Debtor will also seek authorization to assume certain of the executory

contracts and leases (collectively, the “Purchased Contracts”) and to assign the Purchased Contracts to the Successful Bidder.

30. By this Motion, the Debtor requests approval of the assumption and assignment notice (the “Assumption Notice”), substantially in the form attached to the Bidding Procedures Order as Exhibit 3, to be sent to counterparties to Purchased Contracts to provide notice of the potential assumption and assignment of its Purchased Contracts by the Successful Bidder. Supplements to the Assumption Notice shall be served on parties no later than two days following the Stalking Horse Purchaser’s or other potential bidder’s designation of any additional executory contracts or unexpired leases as Purchased Contracts. Any objections by the counterparties to adequate assurance of future performance by the Stalking Horse Purchaser with respect to Initial Purchased Contracts are due on the Sale Objection Deadline, and any objections with respect to subsequently added Purchased Contracts are due seven (7) days from service of the applicable supplement to the Assumption Notice.

31. As soon as reasonably practicable after the completion of the Auction, the Debtor shall file with the Court a notice identifying the Successful Bidder (a “Notice of Successful Bidder”), which shall set forth, among other things, (i) the Successful Bidder and Back-Up Bidder (if any) and the amount of each of the Winning Bid and the Back-Up Bid (if any), (ii) the Purchased Contracts the Successful Bidder intends to assume, and (iii) the proposed assignee(s) of such Purchased Contracts. To the extent the Successful Bidder is not the Stalking Horse Purchaser, the non-debtor counterparties to the Purchased Contracts shall have until 10:00 a.m. on January 29, 2025 to file any objections to adequate assurance of future performance by the Successful Bidder.

32. The inclusion of a contract, lease, or other agreement on either the Assumption Amounts Motion, the list of Purchased Contracts attached to the Stalking Horse APA and any Assumption Notice shall not (a) constitute or be deemed a determination or admission by the Debtor and its estate or any other party in interest that such contract, lease, or other agreement is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code, and any and all rights with respect thereto shall be reserved; or (b) obligate the Debtor to assume any Purchased Contract listed thereon or the Successful Bidder(s) to take assignment of such Purchased Contract. Only those Purchased Contracts that are included on a schedule of assumed and acquired contracts attached to the final asset purchase agreement with the Successful Bidder (including amendments or modifications to such schedules in accordance with such asset purchase agreement) will be assumed and assigned to the Successful Bidder, subject to the terms of the applicable sale order and asset purchase agreement.

33. If, following the Closing Date, and only to the extent permitted under the asset purchase agreement that is the Winning Bid, the Stalking Horse Purchaser or other Successful Bidder designates a contract or lease not initially included as a Purchased Contract as a Purchased Contract, and not previously rejected by the Debtor, the Debtor will promptly file and serve, at the Stalking Horse Purchaser or other Successful Bidder's expense (except with respect to any Omitted Contracts under the Stalking Horse APA, which shall be at the Debtor's expense), a supplemental notice of potential assumption and assignment by electronic transmission, hand delivery, or overnight mail on the counterparty to the Purchased Contract (each, a "Supplemental Purchased Contract Counterparty") to each impacted Purchased Contract, and its attorney, if known, at the last known address available to the Debtor (a "Supplemental Assumption Notice").

34. Any Supplemental Purchased Contract Counterparty may file an objection (a “Supplemental Purchased Contract Objection”) to, as applicable, the proposed assumption and assignment of such Purchased Contract, the proposed Cure Amounts (if any) (as defined below), or adequate assurance of future performance by the Stalking Horse Purchaser or other Successful Bidder. All Supplemental Purchased Contract Objections must: (a) to the extent the monetary amount the Debtor believes it will be required to pay under section 365(b)(1)(A) and (B) of the Bankruptcy Code (the “Cure Amount”) has not been resolved by the Assumption Amounts Motion, state, with specificity, the legal and factual basis for the objection and, if applicable, what Cure Amounts are required; (b) include appropriate documentation in support of the objection; and (c) be filed and served so as to be actually received by the Objection Notice Parties no later than seven (7) days from the date of service of such Supplemental Assumption Notice, which date will be set forth in the Supplemental Assumption Notice.

BASIS FOR RELIEF

I. THE COURT SHOULD APPROVE THE BIDDING PROCEDURES AND ENTRY INTO THE STALKING HORSE APA

35. The key objective in any sale of property of a debtor’s estate is to maximize the value received by the estate. *See In re Korea Tech. Indus. Am., Inc.*, No. 11-32259, 2011 WL 6004120, at *4 (Bankr. D. Utah Nov. 15, 2011); *In re Mushroom Transp. Co.*, 382 F.3d 325, 339 (3d Cir. 2004) (finding that debtor “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). Procedures used to enhance competitive bidding support this objective and, therefore, are appropriate in the context of bankruptcy sales. *See In re Naartjie Custom Kids, Inc.*, No. 14-29666, 2010 WL 11824169, at *2 (Bankr. D. Utah Aug. 30, 2010); *In re O’Brien*

Envtl. Energy, Inc., 181 F.3d 527, 537 (3d Cir. 1999); *see also Integrated Res. Inc.*, 147 B.R. at 659 (stating that bidding procedures “encourage bidding and . . . maximize the value of the debtor’s assets”).

36. The Debtor and its professional advisors, including Houlihan, have designed the Bidding Procedures, including the Sale Timeline, to promote a competitive and fair bidding process and, thus, to maximize value for the Debtor’s estate and creditors. The proposed Sale Timeline contemplates an efficient sale process, and the Debtor wants to ensure that all interested parties, and any potential bidders, understand the timeline to participate in the sale process and submit Acceptable Bids.

37. The Debtor submits that the Sale Timeline is appropriate. The Debtor and its advisors have negotiated a timeline that balances the need to provide adequate notice to parties in interest, including to sufficiently market the Assets in the context of a postpetition sale process, with the need to quickly and efficiently consummate one or more sale transactions while the Assets have realizable going-concern value. The sale timeline is a product of good-faith, arm’s-length negotiations and reflects the best option for maximizing the value of the Assets under the circumstances of this chapter 11 case. As detailed above, the Debtor’s business has been thoroughly marketed to a wide range of potential strategic and financial buyers. A substantial amount of information regarding the Debtor’s businesses has been made available to these prospective purchasers during the prepetition phase of the sale process. As such, the Debtor believes that prospective bidders already know the Assets well and will have sufficient time and information to conduct the necessary due diligence to submit binding bids in accordance with the Sale Timeline. Moreover, Bankruptcy Rule 2002(a)(2) requires twenty-one (21) days’ notice of

the Sale and given the Debtor spent over six months conducting an extensive pre-bankruptcy marketing process, the Sale Timeline is more than adequate.

38. Access to the DIP Facility (as defined in the DIP Orders) is critical to the Debtor's ability to operate its businesses through the completion of the sale process and during the pendency of this chapter 11 case. Failure to adhere to a quick and efficient Sale Timeline, could jeopardize the Debtor's available borrowing under the DIP Facility and, in turn, compromise the Debtor's chapter 11 strategy of transitioning the Debtor's Assets to new owners efficiently and expeditiously. Given the anticipated cost of administering this chapter 11 case, the Debtor cannot afford any delay in monetizing its Assets. The proposed Sale Timeline allows the Debtor to maximize value while minimizing administrative expenses.

39. The Bidding Procedures will allow the Debtor to conduct the Auction in an orderly, fair, and open fashion, which will encourage participation by financially capable bidders, thereby increasing the likelihood that the Debtor will receive the highest or best possible consideration for the Assets. The Debtor's entry into the Stalking Horse APA further increases the likelihood of the Debtor receiving the highest or best consideration for the Assets by setting the floor for the Sale. Furthermore, the Bidding Procedures and the Stalking Horse APA will provide an appropriate framework for the Debtor and its fiduciaries and professional advisors to review, analyze and compare any bids received to determine which bids are in the best interests of the Debtor's estate and its creditors. Houlihan, the Debtor's investment banker in connection with the sale process, believes that the Bidding Procedures and Stalking Horse APA are appropriately crafted to maximize the value of the Assets. Approval of the Bidding Procedures and the Debtor's entry into

the Stalking Horse APA sets a floor for the Debtor at the Auction and increases the likelihood that the Debtor receive the highest or best consideration for the Assets.

40. The Debtor submits that the Bidding Procedures and entry into the Stalking Horse APA are necessary and provide for a fair and transparent sale process that will result in the Debtor's obtaining the highest or otherwise best value for the Assets. Therefore, the Debtor requests the Court to approve the Bidding Procedures and entry into the Stalking Horse APA through the Bidding Procedures Order.

III. THE PREPETITION AGENTS AND DIP AGENT SHOULD BE AUTHORIZED TO CREDIT BID ON THE ASSETS UNDER SECTION 363(K) OF THE BANKRUPTCY CODE

41. Section 363(k) of the Bankruptcy Code provides that, unless the court for cause orders otherwise, the holder of a claim secured by property that is the subject of a sale "may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property." 11 U.S.C. § 363(k). Even if a secured creditor is undersecured as determined in accordance with section 506(a) of the Bankruptcy Code, section 363(k) allows such secured creditor to bid the full face value of its claim and does not limit the credit bid to the claim's economic value. *See Cohen v. KB Mezzanine Fund II, LP (In re Submicron Sys. Corp.)*, 432 F.3d 448, 459-60 (3d Cir. 2006).

42. As a result, the Debtor proposes that the Prepetition Agents and the DIP Agent, in its capacities as such under the DIP Orders, which hold claims that are secured by valid, binding, enforceable, non-avoidable and perfected liens on and security interests in substantially all of the Assets as provided for in the DIP Orders, be entitled to credit bid all or a portion of the amounts then outstanding under the Prepetition Lenders' claims and the DIP Lenders' claims, or any part

thereof, under section 363(k) of the Bankruptcy Code and as provided for in the DIP Orders and the Bidding Procedures.

IV. SUFFICIENT BUSINESS JUSTIFICATION EXISTS FOR CONSUMMATION OF THE SALE UNDER SECTIONS 105(A) AND 363(B) OF THE BANKRUPTCY CODE

43. Pursuant to section 105(a) of the Bankruptcy Code, a “[c]ourt may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Section 363(b) of the Bankruptcy Code provides that a debtor, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b). Although section 363(b) does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, courts have required that such use, sale or lease be based upon the sound business judgment of the debtor. *See, e.g., In re Allen*, 607 F. App’x 840, 843 (10th Cir. 2015); *Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (internal citation omitted); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 107071 (2d Cir. 1983); *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143, 147-48 (3d Cir. 1986) (implicitly adopting the “sound business judgment” test of *In re Lionel Corp.*); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 175-76 (D. Del. 1991) (holding that the Third Circuit adopted the “sound business judgment” test in *Abbotts Dairies*); *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (same).

44. The demonstration of a valid business justification by the debtor leads to a strong presumption “that in making [the] business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests

of the company.” *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)); see also *Simantob v. Claims Prosecutor, L.L.C. (In re Lahijani)*, 325 B.R. 282, 288-89 (B.A.P. 9th Cir. 2005) (explaining that debtor in possession is afforded deference when exercising sound business judgment).

45. The Debtor submits that its decision to consummate the Sale represents a reasonable exercise of the Debtor’s business judgment, and accordingly the Sale should be approved under sections 105(a) and 363(b) of the Bankruptcy Code. The Debtor will continue to conduct an extensive and fulsome process to market the Assets. The open and fair auction and sale process contemplated by the Bidding Procedures will ensure that the Debtor’s estate receives the highest or best value available for the Assets by allowing the market to dictate the value of the Assets and will provide a greater recovery than would be provided by any other available alternative. Furthermore, compliance with the Bidding Procedures will ensure the fairness and reasonableness of the consideration to be paid by the Stalking Horse Purchaser or, in the event the Stalking Horse Purchaser is not the Successful Bidder, then the Successful Bidder, and establish that the Debtor and such bidder have proceeded in good faith.

46. Additionally, the Debtor believes that the notice procedures described above are reasonable and adequate under the circumstances. Bankruptcy Rules 2002(a) and (c) require the Debtor to notify creditors of the Sale, the terms and conditions of the Sale, the time and place of the Auction, and the deadline for filing any objections. The Debtor believes that the proposed notice procedures fully comply with Bankruptcy Rule 2002, and are reasonably calculated to provide timely and adequate notice of the Stalking Horse APA, the Bidding Procedures, the

Auction, the Sale Hearing, and the Sale to the Debtor's creditors and all other parties in interest that are entitled to notice, as well as those parties that have expressed a *bona fide* interest in acquiring the Assets.

47. The Sale, conducted in accordance with the Bidding Procedures, will generate significant value for the Debtor's estate and represents the best path forward for maximizing recoveries in connection with this chapter 11 case. The Debtor submits that ample business justification exists for the consummation of the Sale and, therefore, request that this Court approve such Sale.

V. THE SALE OF THE ASSETS FREE AND CLEAR OF ALL ENCUMBRANCES OTHER THAN THE ASSUMED LIABILITIES IS AUTHORIZED UNDER SECTION 363(F) OF THE BANKRUPTCY CODE

48. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of liens, claims, interests and encumbrances if:

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest; (2) such entity consents; (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such 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). This provision is supplemented by section 105(a) of the Bankruptcy Code, which provides that “[t]he court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a).

49. Because section 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the Sale of the Assets “free and clear” of liens and interests. *See Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (noting that because section 363(f) is written in the disjunctive, a

court may approve a sale free and clear if any one subsection is met); *see also Mich. Emp't Sec. Comm'n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (same); *In re Bygaph, Inc.*, 56 B.R. 596, 606 n.8 (Bankr. S.D.N.Y. 1986) (same). Furthermore, a debtor possesses broad authority to sell assets free and clear of liens. *See In re Med. Software Sols.*, 286 B.R. 431, 446 (Bankr. D. Utah 2002) ("The authority to sell free and clear is broad because it reflects a compelling policy intended by Congress in § 363."); *In re Trans World Airlines, Inc.*, 322 F.3d 283, 289 (3d Cir. 2003).

50. The Debtor submits that, in the interest of attracting the best offers, it is appropriate to sell the Assets on a final "as is" basis, free and clear of any and all Liens other than Assumed Liabilities (both as defined in the Stalking Horse Term Sheet) (and except as otherwise expressly set forth in the Sale Order), in accordance with section 363(f) of the Bankruptcy Code because one or more of the tests of section 363(f) are satisfied with respect to such Sale. In particular, the Debtor believes that section 363(f)(2) of the Bankruptcy Code will be met because the Prepetition Agents and DIP Agent will effectuate the Sale to the Stalking Horse Purchaser via credit bid, pursuant to the Stalking Horse Term Sheet, subject to higher or better terms as set forth in an Competing APA.

51. Moreover, with respect to any other party asserting a lien, claim, encumbrance or the like against the Assets, the Debtor anticipates that they will be able to satisfy one or more of the conditions set forth in section 363(f) of the Bankruptcy Code. In particular, known lienholders will receive notice and will be given sufficient opportunity to object to the relief requested. Such lienholders that do not object to the Sale should be deemed to have consented. *See FutureSource LLC v. Reuters Ltd.*, 312 F.3d 281, 285-86 (7th Cir. 2002) ("[L]ack of objection (provided of

course there is notice) counts as consent. It could not be otherwise; transaction costs would be prohibitive if everyone who might have an interest in the bankrupt's assets had to execute a formal consent before they could be sold.") (internal citations omitted); *Hargrave v. Twp. of Pemberton (In re Tabone, Inc.)*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (holding that creditor's failure to object to sale free and clear of liens, claims and encumbrances satisfies section 363(f)(2)); *In re Elliot*, 94 B.R. at 345 (same). Consistent with the foregoing, the Bidding Procedures Order provides that the absence of a timely objection to the Sale of the Assets in accordance therewith shall be "consent" to such Sale within the meaning of section 363(f)(2) of the Bankruptcy Code.

52. Furthermore, the Debtor proposes that any Lien asserted against the Assets be transferred to, and attach to, the proceeds of the Sale, and application of the proceeds generated by the Sale will be subject to any applicable provisions of the DIP Orders and the DIP Term Sheet.

VI. THE SUCCESSFUL BIDDER SHOULD BE ENTITLED TO THE PROTECTIONS OF SECTION 363(M) OF THE BANKRUPTCY CODE

53. Section 363(m) of the Bankruptcy Code provides, in part, that the reversal or modification on appeal of an authorization of a sale pursuant to section 363(b) or section 363(c) of the Bankruptcy Code does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal. *See* 11 U.S.C. § 363(m). In approving the Sale free and clear of Liens other than Assumed Liabilities, the Debtor requests the Court find and hold that all purchasers of Assets purchased in accordance with the Bidding Procedures, including, without limitation, the Stalking Horse Purchaser, are entitled to the protections afforded by section 363(m) of the Bankruptcy Code. Such relief is appropriate in that selection of the Successful Bidder will be the result of a competitive

bidding process and arm's-length, good-faith negotiations, and parties in interest will have the opportunity to review and object to a proposed transaction. *See In re Tempo Technology Corp.*, 202 B.R. 363, 370 (D. Del. 1996) (affirming the bankruptcy court's approval of a sale under section 363(b) of the Bankruptcy Code where, *inter alia*, adequate notice to creditors and other interested parties was given and the negotiations between buyer and seller took place at arm's-length with no evidence of fraud, collusion, or interested dealing); *see also In re HRAF Holdings, LLC*, No. 10-32433, 2011 WL 1314493, at *3 (Bankr. D. Utah Apr. 1, 2011).

VII. THE ASSUMPTION AND ASSIGNMENT OF THE PURCHASED CONTRACTS IN CONNECTION WITH THE SALE SATISFIES SECTION 365 OF THE BANKRUPTCY CODE

54. 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).

55. In reviewing whether to approve the Debtor's assumption of a contract or an unexpired lease, the Court applies the "business judgment" standard. *See In re Korea Tech. Indus. Am., Inc.*, 2011 WL 6004120, at *4; *In re Railyard Co., LLC*, 562 B.R. 481, 487 (Bankr. D.N.M. 2016); *In re AbitibiBowater Inc.*, 418 B.R. 815, 831 (Bankr. D. Del. 2009) (finding that a debtor's decision to assume or reject an executory contract will stand so long as "a reasonable business person would make a similar decision under similar circumstances."); *In re HQ Global Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003) (stating a debtor's decision to reject an executory contract is governed by the business judgment standard and can only be overturned if the decision was the product of bad faith, whim, or caprice). As described above, "[t]he business judgment rule 'is a presumption that in making a business decision the directors of a corporation acted on an

informed basis, in good faith and in the honest belief that the action taken was in the best interest of the company.” *Integrated Res., Inc.*, 147 B.R. at 656 (quoting *Smith v. Van Gorkom*, 488 A.2d at 872). Indeed, “the sole issue is whether the rejection benefits the estate.” *In re HQ Global*, 290 B.R. at 511; see *In re Railyard Co., LLC*, 562 B.R. at 488.

56. The business judgment rule is crucial in chapter 11 cases and shields a debtor’s management from judicial second-guessing. See, e.g., *id.*; *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006) (“The propriety of a decision to reject an executory contract is governed by the business judgment standard”); *In re Network Access Sols., Corp.*, 330 B.R. 67, 75 (Bankr. D. Del. 2005) (“The standard for approving the assumption of an executory contract is the business judgment rule.”). Generally, courts defer to a debtor in possession’s business judgment to assume or reject an executory contract or lease. See *Sharon Steel Corp. v. Nat’l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 39–40 (3d Cir. 1989) (describing deference to a debtor’s business judgment as “breathing space afforded [to] the debtor to consider whether to reject or assume executory contracts under the [Bankruptcy] Code.”) (internal quotations omitted); see also *In re Trans World Airlines, Inc.*, 261 B.R. 103, 123 (Bankr. D. Del. 2001) (“Section 365(a) grants a debtor in possession the fundamental authority to assume or reject an executory contract as a vital part of the bankruptcy process...[The debtor in possession] has decided, based on its business judgment and as joined by the Committee, that rejection is in the best interest of the estate and its decision is entitled to the appropriate deference by this Court.”).

57. Here, the Debtor has exercised its sound business judgment in determining that assumption and assignment of the Purchased Contracts is in the best interests of the Debtor and its estate, and accordingly the Court should approve the proposed assumption under section 365(a) of

the Bankruptcy Code. *See, e.g., In re Philadelphia Newspapers, LLC*, 424 B.R. 178, 182-83 (Bankr. E.D. Pa. 2010) (stating that if a debtor’s business judgment has been reasonably exercised, a court should approve the assumption or rejection of an executory contract or unexpired lease); *Westbury Real Estate Ventures, Inc. v. Bradlees, Inc. (In re Bradlees Stores, Inc.)*, 194 B.R. 555, 558 n.1 (Bankr. S.D.N.Y. 1996); *Summit Land Co. v. Allen (In re Summit Land Co.)*, 13 B.R. 310, 315 (Bankr. D. Utah 1981) (holding that, absent extraordinary circumstances, court approval of a debtor’s decision to assume or reject an executory contract “should be granted as a matter of course”).

58. As set forth above, the Sale will provide significant benefits to the Debtor’s estate. To that end, the assumption, assignment and sale of the Purchased Contracts is necessary for the Debtor to obtain the benefits of the Stalking Horse APA or a Competing APA, as applicable. In addition, under section 365(k) of the Bankruptcy Code, the assignment by a debtor to an entity of a contract or lease “relieves the trustee and the estate from any liability for any breach of such contract or lease occurring after such assignment.” 11 U.S.C. § 365(k). Thus, following an assignment to the Successful Bidder of any Purchased Contract, the Debtor will be relieved from any liability for any subsequent breach associated therewith.

59. Furthermore, section 365(b)(1) of the Bankruptcy Code requires that any outstanding defaults under the Purchased Contracts must be cured or that adequate assurance be provided that such defaults will be promptly cured. 11 U.S.C. § 365(b)(1). As detailed in the Stalking Horse Term Sheet and the Bidding Procedures Order, the Debtor proposes fixing the Cure Amounts through the Cure Amounts Motion and allowing the counterparties the opportunity to

object to the proposed Cure Amount, as well as the Debtor's assumption and assignment of the Purchased Contracts.

60. Section 365(f)(2) of the Bankruptcy Code provides that a debtor may assign an executory contract or unexpired lease of nonresidential real property if "adequate assurance of future performance by the assignee of such contract or lease is provided." 11 U.S.C. § 365(f)(2). The words "adequate assurance of future performance" must be given a "practical, pragmatic construction" in light of the facts and circumstances of the proposed assumption. *See In re Fleming Cos., Inc.*, 499 F.3d 300, 307 (3d Cir. 2007) (internal citation omitted); *Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1988) (same); *see also In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (finding that adequate assurance of future performance does not mean absolute assurance that debtor will thrive and profit); *In re Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985) ("Although no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance."); *In re Colorado Sun Oil Processing LLC*, No. BR 10-24424-SBB, 2011 WL 3585565, at *12 (Bankr. D. Colo. Aug. 12, 2011).

61. Specifically, adequate assurance may be given by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. *See In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (holding that adequate assurance of future performance is given where the assignee of lease has financial resources and expressed a willingness to devote sufficient funding to the business to ensure its success, and that in the leasing context, the chief determinant of adequate assurance is whether rent will be paid).

62. Here, the Successful Bidder will have provided adequate assurance of future performance with respect to any Purchased Contract. For its bid to be deemed a Acceptable Bid, each Acceptable Bidder will be required to provide evidence supporting its ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) and, if applicable, section 365(b)(3) of the Bankruptcy Code (the “Adequate Assurance Information”), including: (a) the bidder’s financial wherewithal and willingness to perform under any contracts that are assumed and assigned to such potential bidder; and (b) a contact person for the proposed assignee that the counterparty may directly contact in connection with the adequate assurance of future performance. To the extent that the Acceptable Bidder (other than the Stalking Horse Purchaser) is a newly formed acquisition entity or the like, the financial and other information supporting the Acceptable Bidder’s financial wherewithal shall include financial and other information supporting the financial wherewithal of the Acceptable Bidder’s parent company or sponsor. Furthermore, given that the Debtor will submit evidence that all requirements for the assumption and assignment of such contracts at the Sale Hearing, the Court and other interested parties will have the opportunity to evaluate the ability of each Successful Bidder to provide adequate assurance of future performance.

63. Therefore, the Debtor requests the Court to approve the proposed assumption and assignment of the Purchased Contracts.

WAIVER OF STAY UNDER BANKRUPTCY RULE 6004(h) AND 6006(d)

64. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). Furthermore, Bankruptcy

Rule 6006(d) provides that an “order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6006(d). As set forth throughout this Motion, any delay in the Debtor’s ability to consummate the Sale on the timeline contemplated by the Bidding Procedures would be detrimental to the Debtor, its creditors and estate.

65. For this reason and those set forth above, the Debtor submits that ample cause exists to justify a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h) and 6006(d), to the extent applicable.

NOTICE

66. The Debtor will provide notice of this Motion to: (a) United States Trustee for the District of Utah; (b) the United States Attorney’s Office for the District of Utah; (c) the state attorneys general for all states in which the Debtor conducts business; (d) the Internal Revenue Service; (e) the United States Securities and Exchange Commission; (f) the holders of the thirty (30) largest unsecured claims against the Debtor on a consolidated basis; (g) counsel to the DIP Agent and the DIP Lenders; (h) counsel to the Prepetition Agents; (j) the banks and financial institutions where the Debtor maintain accounts; and (k) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtor respectfully submits that, in light of the nature of the relief requested, no further notice is necessary.

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CONCLUSION

WHEREFORE, the Debtor requests entry of the Bidding Procedures Order and the Sale Order to be filed in advance of the Sale Hearing, granting the relief requested herein and such other and further relief as is just and proper.

Dated: December 10, 2024

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**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF UTAH CENTRAL DIVISION**

In re:

VOBEV, LLC, a Utah limited liability
company,

Debtor-in-Possession.

Bankruptcy Case No. 24-26346 (JTM)

Chapter 11

Honorable Joel T. Marker
[Filed Electronically]

**ORDER (I)(A) APPROVING CERTAIN BIDDING
PROCEDURES AND THE FORM AND MANNER OF
NOTICE THEREOF, (B) APPROVING THE DEBTOR'S ENTRY INTO
THE STALKING HORSE APA, (C) APPROVING THE FORM AND MANNER
OF NOTICE OF THE SALE HEARING; AND (II) GRANTING RELATED RELIEF**

Upon consideration of the motion (the "Motion") of the above-captioned debtor and debtor in possession (the "Debtor") for, *inter alia*, the entry of an order (this "Order")¹: (i) scheduling a hearing (the "Sale Hearing") on approval of the proposed sale (the "Sale") of all or substantially all of the Debtor's assets (the "Assets") free and clear of all Liens other than Assumed Liabilities to [the Stalking Horse Purchaser] and the assumption and assignment of certain executory contracts and unexpired leases (each, a "Purchased Contract" and collectively, the "Purchased Contracts"); (ii) authorizing and approving certain bidding procedures for the Sale (collectively, the "Bidding Procedures," a copy of which is attached as **Exhibit 1** to this Order), and the form and manner of notice thereof, including the Sale Notice; (iii) authorizing the Debtor's entry into the Stalking Horse APA on the terms set forth in the "Stalking Horse Term Sheet" with the Stalking Horse Purchaser; (iv) scheduling an auction for the Assets (the "Auction"); and (v) granting related relief; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required except as set forth herein; and it appearing that the Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having reviewed the Motion; and the Bidding Procedures Hearing (as defined herein) having been held; and the Court having found and determined that the relief

¹ Capitalized terms used but not defined herein shall have the meanings given them in the Bidding Procedures, or to the extent not defined therein, the Motion, the Stalking Horse APA, or the DIP Order.

set forth herein is in the best interests of the Debtor, its estate and creditors and all parties in interest, and that the legal and factual bases set forth in the Motion and the evidence adduced at the Bidding Procedures Hearing establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby

FOUND AND DETERMINED THAT:²

A. This Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334.

B. Venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

C. The statutory and legal predicates for the relief requested in the Motion and provided for herein are sections 105, 363, and 365 of the Bankruptcy Code, Rules 2002, 6004, 6006, and 9014 of the Bankruptcy Rules.

D. In the Motion and at the hearing on the relief set forth herein (the “Bidding Procedures Hearing”), the Debtor demonstrated that good and sufficient notice of the relief granted by this Order has been given and no further notice is required except as otherwise provided for herein. A reasonable opportunity to object or be heard regarding the relief granted by this Order (including, without limitation, with respect to the Bidding Procedures) has been afforded to those parties entitled to notice pursuant to Bankruptcy Rule 2002 and all other interested parties.

E. The Debtor has articulated good and sufficient business reasons for the Court to approve the Bidding Procedures attached hereto as Exhibit 1. The Bidding Procedures are fair, reasonable, and appropriate and are designed to maximize the value of the proceeds of one or more

² The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that 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.

Sale Transactions of all or substantially all of the Debtor's Assets. The Bidding Procedures were negotiated in good faith and at arm's length and are reasonably designed to promote a competitive and robust bidding process to generate the greatest level of interest in the Debtor's Assets. The process for selecting the Stalking Horse Bidder, respectively, was fair and appropriate under the circumstances and in the best interests of the Debtor's estate.

F. The Sale Notice, in substantially the form attached to this Order as **Exhibit 2**, is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of this Order, the Bidding Procedures, the Auction, the Sale, and the Sale Hearing, and any and all objection deadlines related thereto, and no other or further notice is required of the foregoing.

G. The Debtor has articulated good and sufficient business reasons for the Court to approve the Bidding Procedures. The Bidding Procedures are: (i) fair, reasonable, and appropriate; and (ii) designed to maximize recovery with respect to the Sale. The Bidding Procedures were negotiated in good faith and at arm's-length and are reasonably designed to promote a competitive and robust bidding process to generate the greatest level of interest in the Debtor's Assets. The process for selecting the Stalking Horse Purchaser was fair and appropriate under the circumstances and in the best interests of the Debtor's estate.

H. The Stalking Horse APA represents the highest or otherwise best offer the Debtor has received to date to purchase the Assets designated for purchase thereunder. The Stalking Horse APA provides the Debtor with the opportunity to sell such Assets in a manner designed to preserve and maximize their value and provides a floor for a further marketing and auction process. Without the Stalking Horse APA, the Debtor is at significant risk of realizing a lower price for its Assets. The Stalking Horse Purchaser shall act as a "stalking horse bidder" pursuant to the Stalking Horse

APA and shall be subject to higher or otherwise better offers in accordance with the Stalking Horse APA and the Bidding Procedures. Without the Stalking Horse Bid, the Debtor is at a significant risk of realizing a lower price for the Purchased Assets. As such, the contributions of the Stalking Horse Bidder to the process have indisputably provided a substantial benefit to the Debtor, its estate, and the creditors in this chapter 11 case. The Stalking Horse Bid will enable the Debtor to minimize disruption to the Debtor's restructuring and/or sale process and secure a fair and adequate Baseline Bid for the Purchased Assets at the Auction(s) (if any). Pursuit of the Stalking Horse Purchaser as a "stalking horse bidder" and the Stalking Horse APA as a "stalking horse purchase agreement" is in the best interests of the Debtor and the Debtor's estate and its creditors, and it reflects a sound exercise of the Debtor's business judgment.

I. The Stalking Horse Bidder and its counsel and advisors have acted in "good faith" within the meaning of Section 363(m) of the Bankruptcy Code in connection with the Stalking Horse Bidder's negotiation of the Bidding Procedures and entry into the Stalking Horse Agreement.

J. The Debtor has articulated good and sufficient business reasons for the Court to approve the Assumption Procedures and the Assumption Notice (defined below) attached hereto as Exhibit 4, which are fair, reasonable, and appropriate. The Assumption Procedures comply with the provisions of Section 365 of the Bankruptcy Code and Bankruptcy Rule 6006.

K. The Assumption Notice is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Assumption and Assignment Procedures, as well as any and all objection deadlines related thereto, and no other or further notice shall be required for the Sale Motion and the procedures described therein, except as expressly required herein.

L. Entry of this Order is in the best interests of the Debtor, its estate and creditors and all other interested parties.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Those portions of the Motion seeking approval of (a) the Debtor's entry into the Stalking Horse APA (subject to higher or otherwise better offers in accordance with this Order), (b) the Bidding Procedures substantially in the form attached to this Order as **Exhibit 1**, (c) the date and time of the Sale Hearing, and (d) the noticing and objection procedures related to each of the foregoing, including, without limitation, the notice of the Sale and the Sale Hearing, substantially in the form attached to this Order as **Exhibit 2** (the "Sale Notice"), the notice of the Successful Bidder in the form attached to this Order as **Exhibit 3** (the "Notice of Successful Bidder"), and the notice of the Debtor's potential assumption and assignment of the Purchased Contracts, substantially in the form attached to this Order as **Exhibit 4** (the "Assumption Notice"), (subclauses (a) - (d) above, collectively, the "Bidding and Auction Process"), are hereby GRANTED to the extent set forth herein.

2. Any objections to the Motion as it pertains to the Bidding and Auction Process or the relief granted by this Order that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby overruled and denied on the merits with prejudice.

3. The Bidding Procedures are hereby approved. The failure to specifically include or reference any particular provision of the Bidding Procedures in the Motion or this Order shall not diminish or otherwise impair the effectiveness of such procedures, it being this Court's intent that the Bidding Procedures are approved in their entirety, as if fully set forth in this Order. The

Debtor is hereby authorized to conduct the Auction pursuant to the terms of the Bidding Procedures and this Order.

4. The Debtor shall have the right, in its reasonable discretion, to withhold or limit access to any due diligence information that the Debtor determines is business-sensitive or otherwise not appropriate for disclosure to an Acceptable Bidder. The Debtor and its estate shall be authorized to provide due diligence information to Acceptable Bidders.

5. For all purposes under the Bidding Procedures: (a) the Stalking Horse Purchaser shall be considered a Qualified Bidder, and the Stalking Horse APA shall be considered a Qualified Bid; (b) the Stalking Horse Purchaser is, and will be deemed to be, a Qualified Bidder for all purposes under the Bidding Procedures, without regard to any of the requirements or conditions set forth herein and without any other or further action by the Stalking Horse Purchaser; and (c) in determining whether the Acceptable Bidders constitute Qualified Bidders, the Debtor may consider a combination of bids for the Assets.

6. The Bidding Procedures shall apply to the Acceptable Bidders, the Qualified Bidders, the submission, receipt, and analysis of all bids relating to the Sale, and the conduct of the Sale and the Auction.

7. The Debtor's decision to assume and assign the Purchased Contracts to the Stalking Horse Purchaser or, in the event the Stalking Horse Purchaser is not the Successful Bidder, then to the Successful Bidder, is subject to this Court's approval and the closing of the Sale. Accordingly, absent this Court's approval and the closing of the Sale, the Purchased Contracts shall not be deemed assumed or assumed and assigned, and shall in all respects be subject to further administration by the Debtor and its estate under the Bankruptcy Code in connection with this chapter 11 case (the "Chapter 11 Case").

8. The Assumption Notice is: (a) reasonably calculated to (i) provide sufficient, effective notice to all counterparties and any other affected parties of the Debtor's intent to assume and assign to the Stalking Horse Purchaser or, in the event the Stalking Horse Purchaser is not the Successful Bidder, then to the Successful Bidder, some or all of the Purchased Contracts, and (ii) afford the counterparties the opportunity to exercise any rights affected by the Motion and the relief granted by this Order pursuant to Bankruptcy Rules 2002(a)(2), 6004, and 6006; and (b) hereby approved.

9. The inclusion of a contract, lease or other agreement on the Sale Notice or Assumption Notice shall not constitute or be deemed a determination or admission by the Debtor and its estate or any other party in interest that such contract, lease or other agreement is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code, and any and all rights of the Debtor and its estate with respect thereto shall be reserved.

10. The Sale Notice, the Assumption Notice, any Supplemental Assumption Notice, the Bidding Procedures, the Auction, and the Sale Hearing, and the objection periods associated with each of the foregoing are reasonably calculated to provide notice to any affected party and afford the affected party the opportunity to exercise any rights affected by the Motion as it relates to the Bidding Procedures, the Auction, the Sale, the Sale Hearing, and the assumption and assignment to the Stalking Horse Purchaser or, in the event the Stalking Horse Purchaser is not the Successful Bidder, then to the Successful Bidder, of the Purchased Contracts pursuant to Bankruptcy Rules 2002(a)(2), 6004, and 6006, and such notice and objection periods are hereby approved.

11. The Sale Notice is approved. Within three (3) business days of the entry of this Order or as soon as reasonably practicable thereafter, the Debtor shall the Sale Notice on the

following parties or their respective counsel, if known: (a) the U.S. Trustee; (b) counterparties to the executory contracts and unexpired leases of nonresidential property (the “Contract Counterparties”), if known; (c) all parties who are known or reasonably believed, after reasonable inquiry, to have asserted any lien, encumbrance, claim, or interest in the Assets; (d) the Internal Revenue Service; (e) all applicable state and local taxing authorities; (f) all the Debtor’s other creditors; (g) each governmental agency that is an interested party with respect to the proposed Sale Transaction; and (h) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002.

12. The Assumption Notice is approved. Within three (3) business days of the entry of this Order or as soon as reasonably practicable thereafter, the Debtor shall serve the Assumption Notice by regular mail on counterparties to Purchased Contracts to provide notice of the potential assumption and assignment of their Purchased Contracts by the Successful Bidder.

13. The Debtor shall post the Sale Notice, the Assumption Notice, any Supplemental Assumption Notice, and this Order on the website of the Debtor’s claims and noticing agent. Within seven (7) business days of the entry of this Order or as soon as reasonably practicable thereafter, the Debtor shall cause the Sale Notice to be published once in the national edition of *USA Today* or other nationally circulated newspaper, with any modifications necessary for ease of publication. Publication of the Sale Notice as described in this Order conforms to the requirements of Bankruptcy Rules 2002(l) and 9008 and is reasonably calculated to provide notice to any affected party, including any Potential Bidders, and afford the affected party the opportunity to exercise any rights affected by the Motion and the relief granted by this Order.

14. Any objections to the Sale or the relief requested in connection with the Sale, including any objection to the sale of any Purchased Assets free and clear of liens, claims, interests,

and encumbrances pursuant to section 363(f) of the Bankruptcy Code, the identity of the Stalking Horse Purchaser, or the adequate assurance of future performance by the Stalking Horse Purchaser but not including objections related to cure amounts for the Purchased Contracts or general objections to the assumption and assignment of the Purchased Contracts (each, a “Sale Objection”), must: (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Rules; (c) set forth the specific basis for the Sale Objection; (d) be filed with the Clerk of this Court, 351 South West Temple, Salt Lake City, Utah 84101 (the “Clerk”), and proof of service of such Sale Objection upon the Objection Notice Parties (as defined in the Sale Notice) shall be filed with the Court as and when required by the Local Rules; and (e) be served upon the Objection Notice Parties. Sale Objections must be filed with the Clerk **on or before 4:00 p.m. (M.T.) on January 21, 2025** if there is no Auction and **on or before 4:00 p.m. (M.T.) on January 29, 2025** if there is an Auction.

15. If a Sale Objection is not filed and served on or before the applicable Sale Objection Deadline in accordance with the requirements in the foregoing paragraphs, the objecting party may be barred from objecting to the Sale and being heard at the Sale Hearing, and this Court may enter the Sale Order without further notice to such party.

16. Failure to file a Sale Objection on or before the applicable Sale Objection Deadline (a) may forever bar the assertion, whether at any Sale Hearing or thereafter, of any objection to the Motion, to entry of the Sale Order, and to the consummation and performance of the Sale contemplated by the Stalking Horse APA or any alternative asset purchase agreement (an “Alternative APA”) with a Successful Bidder other than the Stalking Horse Purchaser, and (b) for purposes of section 363(f)(2) of the Bankruptcy Code, shall be deemed to be “consent” to entry of the Sale Order and consummation of the Sale and all transactions related thereto.

17. As part of its bid, each Qualified Bidder must provide the Debtor, the other Bidding Procedures Notice Parties, and the Consultation Parties information supporting the Qualifying Bidder's ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) and, if applicable, section 365(b)(3) of the Bankruptcy Code (the "Adequate Assurance Information"), including (a) the Qualifying Bidder's financial wherewithal and willingness to perform under any contracts and leases that are assumed and assigned to such Qualifying Bidder; and (b) a contact person for the proposed assignee that the applicable counterparty may directly contact in connection with the adequate assurance of future performance. In the event that a Qualifying Bidder (other than the Stalking Horse Purchaser) is a newly formed acquisition entity or the like, the financial and other information supporting the Qualified Bidder's financial wherewithal shall include financial and other information supporting the financial wherewithal of the Qualified Bidder's parent company or sponsor. Adequate Assurance Information shall be made available to contract counterparties within 48 hours of the Bid Deadline upon written request to the Debtor's counsel (email being sufficient).

18. Any party in receipt of Adequate Assurance Information under this Order shall review the Adequate Assurance Information received on a confidential basis and shall not disclose the Adequate Assurance Information except as expressly provided in this Order and the Bidding Procedures. Such counterparty may not use or disclose, except to representatives, attorneys, advisors and financing sources (collectively, "Representatives"), any confidential Adequate Assurance Information for any purpose other than: (a) evaluating whether adequate assurance of future performance as required under section 365(f)(2)(B) and, if applicable, section 365(b)(3) of the Bankruptcy Code has been provided; and (b) in support of any objection (the "Assignment Objection") (subject to the limitations on disclosure set forth herein) by such counterparty relating

to adequate assurance of future performance. Any Assignment Objection that includes confidential, non-public Adequate Assurance Information must be filed under seal unless disclosure of such confidential, non-public information is authorized by the Debtor and the applicable assignee(s). The party filing an Assignment Objection under seal shall follow the procedures for the same set forth in Local Rule 5003-2(c). The unredacted versions of such Assignment Objections shall be served upon the Debtor, the other Bidding Procedures Notice Parties, the Consultation Parties and the U.S. Trustee; *provided further* that all rights of all parties in interest in the Chapter 11 Case are reserved to oppose the filing under seal of any such information and to seek any other relief from this Court with respect to such matter. Any Representative receiving Adequate Assurance Information shall be notified and shall agree to be bound by the restrictions set forth in this Order. Assignment Objections, (a) in the event the Stalking Horse Purchaser is the Successful Bidder, must be filed with the Clerk by the Sale Objection Deadline and, (b) in the event the Successful Bidder is not the Stalking Horse Purchaser, need not be written and filed and may be raised at the Sale Hearing.

19. The Stalking Horse Purchaser shall be deemed to be a Qualified Bidder and the Stalking Horse APA is deemed to be a Qualified Bid. The Stalking Horse Purchaser is credit bidding pursuant to 11 U.S.C. § 363(k), and thus is not required to make a Deposit with the Debtor. The Stalking Horse Purchaser shall have the unqualified right at any time to credit bid on a dollar-for-dollar basis up to the full amount of the Prepetition First Lien Obligations and the DIP Obligations. Notwithstanding the foregoing, nothing in this Order shall abridge the Challenge Period (as defined in the Final DIP Order).

20. If no timely Qualified Bids other than the Stalking Horse APA are submitted on or before the Bid Deadline, then on or before **January 17, 2025 at 4:00 p.m. (M.T.)** the Debtor shall

file a notice on the docket of the Chapter 11 Case indicating that an Auction will not be held and shall request at the Sale Hearing that this Court approve the Stalking Horse APA and the transactions contemplated thereunder. If the Debtor timely receives one or more Qualified Bids other than the Stalking Horse Term Sheet, then the Debtor shall conduct the Auction on **January 27, 2025 at 10:00 a.m. (M.T.)**, at the offices of Ropes & Gray LLP, 1211 6th Avenue, New York, NY 10036, or virtually via telephone and/or video conference pursuant to information to be timely provided by the Debtor to the Auction Participants (as defined herein). Only the Debtor, the Qualified Bidders (including the Stalking Horse Purchaser), the Consultation Parties, the U.S. Trustee, and any creditors of the Debtor, together with the professional advisors to each of the foregoing parties, may attend the Auction (collectively, the “Auction Participants”); *provided that* any such creditors provide Debtor’s counsel with written notice of their intent to attend the Auction no later than 5:00 p.m. (M.T.) two (2) days prior to the Auction.

21. The Debtor shall have until the Sale Hearing to file and serve a reply to any objection filed in connection with the Sale, including any Sale Objection or Assignment Objection.

22. The Sale Hearing shall be held in this Court on **February 5, 2025 at 2:00 p.m. (M.T.)**, unless otherwise determined by this Court. The Sale Hearing may be adjourned by the Debtor, in consultation with the Stalking Horse Purchaser or, in the event the Stalking Horse Purchaser is not the Successful Bidder, then in consultation with the DIP Agent, and the Successful Bidder, from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing, or by filing a hearing agenda or notice on the docket of the Chapter 11 Case.

23. All persons and entities that participate in the Auction or bid for any Asset during the sale process shall be deemed to have knowingly and voluntarily (a) consented to the core

jurisdiction of the Court to enter any order related to the Bidding Procedures, the Auction, or any other relief requested in the Motion or granted in this Order; (b) waived any right to a jury trial in connection with any disputes relating to the Bidding Procedures, the Auction, or any other relief requested in the Motion or granted in this Order; and (c) consented to the entry of a final order or judgment in connection with any disputes relating to the Bidding Procedures, the Auction, or any other relief requested in the Motion or granted in this Order, if it is determined that the Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the relevant parties.

24. In the event that there is a conflict between this Order or the Bidding Procedures, on the one hand, and the Motion, the Stalking Horse APA, or an Alternative APA, on the other hand, this Order and the Bidding Procedures shall control and govern. If there is a conflict between this Order and the Bidding Procedures, this Order shall control and govern. If there is a conflict between this Order or the Bidding Procedures, on the one hand, and any notice served in connection with the Motion or this Order, on the other hand, this Order and the Bidding Procedures shall control and govern.

25. Prior to mailing the Assumption Notice, any Supplemental Assumption Notice, and the Sale Notice, the Debtor may fill in, or cause to be filled in, any missing dates and other information, correct any typographical errors, conform the provisions thereof to the provisions of this Order, and make such other, non-material changes as the Debtor deems necessary or appropriate.

26. This Order shall be effective immediately upon entry, and any stay of orders provided for in Bankruptcy Rules 6004(h) or 6006(d) or any other provision of the Bankruptcy Code, the Bankruptcy Rules or the Local Rules is expressly waived. The Debtor is not subject to

any stay in the implementation, enforcement or realization of the relief granted in this Order, and may, in their sole discretion and without further delay, take any action and perform any act authorized or approved under this Order.

27. The Debtor is authorized to take all steps necessary or appropriate to implement the relief granted in this Order.

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

-----**END OF ORDER**-----

EXHIBIT 1

Bidding Procedures

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Jeffrey W. Shields (2948)
David H. Leigh (9433)
Mel Jones-Cannon (19286)
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Proposed Counsel to the Debtor and Debtor in Possession

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**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF UTAH CENTRAL DIVISION**

In re:

VOBEV, LLC, a Utah limited liability
company,

Debtor-in-Possession.

Bankruptcy Case No. 24-26346 (JTM)

Chapter 11

Honorable Joel T. Marker

BIDDING PROCEDURES

On December 9, 2024 (the “Petition Date”), the above captioned debtor and debtor in possession (the “Debtor”) commenced its chapter 11 case (the “Chapter 11 Case”) by filing a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Utah

(the “Court”). The Debtor is maintaining its business and managing their property as Debtor in possession pursuant to section 1107(a) and 1108 of the Bankruptcy Code.

On December 10, 2024, the Debtor filed the *Debtor’s Motion Pursuant to Sections 105, 363, and 365 of the Bankruptcy Code for Entry of an Order (I) Approving the Bidding Procedures, Including the Debtor’s Entry into the Stalking Horse APA, the Sale Timeline, and the Form and Manner of Notice Thereof; (II) Approving the Debtor’s (A) Sale of All or Substantially All of the Debtor’s Assets Free and Clear of All Liens Other Than Assumed Liabilities and (B) Assumption and Assignment of Certain Executory Contracts and Unexpired Leases to the Successful Bidder; and Granting Related Relief* [Docket No. [●]] (the “Combined Sale/Bidding Procedures Motion”)¹ seeking approval of, among other things, the procedures to be employed by the Debtor in connection with the proposed sale of all or substantially all of the Debtor’s assets (collectively, the “Assets”), through a section 363 sale process (any such purchase, a “Transaction”).

On [●], the Court entered an order at Docket No. [●] (the “Bidding Procedures Order”), among other things, granting certain relief requested in the Combined Sale/Bidding Procedures Motion, including authorizing the Debtor to solicit bids and approving the procedures contemplated herein (the “Bidding Procedures”). The Bidding Procedures set forth the process by which the Debtor is authorized to solicit bids and conduct an auction (the “Auction”) to determine the Successful Bidder (as defined below) for the Assets (the “Sale”).

To facilitate the Sale, an affiliate of the DIP Lenders (the “Stalking Horse Purchaser”) and the Debtor has executed that certain *Asset Purchase Agreement*, dated December 26, 2024 (as amended, supplemented or otherwise modified by the parties thereto from time to time, and including the disclosure schedules and exhibits attached thereto, the “Stalking Horse APA”), pursuant to which the Stalking Horse Purchaser has agreed to purchase the Assets set forth in the Stalking Horse APA, free and clear of all Liens, Claims (each as defined in the Stalking Horse Term APA), and interests pursuant to section 363(f) of the Bankruptcy Code other than the Assumed Liabilities (as defined in the Stalking Horse Term APA), and subject to the terms and conditions set forth therein. The Debtor is conducting an ongoing marketing process intended to obtain the highest or otherwise best bid for the Assets. The bid contained in the Stalking Horse Term Sheet is subject to higher and better offers submitted in accordance with the terms of the Bidding Procedures and, as such, the Stalking Horse Term Sheet has been approved by the Court as the “stalking-horse” bid for the Assets set forth therein (the “Stalking Horse Bid”).

Any party interested in bidding on the assets should contact:

- (a) Houlihan Lokey Capital, Inc., William Hardie (whardie@hl.com) and John Popehn (jpopehn@hl.com), proposed investment banker for the Debtor; and
- (b) Gregg M. Galardi, esq. (212-596-9139; gregg.galardi@ropesgray.com) and Eric P. Schriesheim, esq. (312-845-1208; eric.schriesheim@ropesgray.com) of Ropes & Gray LLP, and Ray Quinney & Nebeker, PC, 36 South State Street, Suite 1400, Salt Lake City, Utah 84111 (Attn: Michael R. Johnson and Jeffrey W. Shieldsemail:

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Combined Sale/Bidding Procedures Motion or the Stalking Horse Term Sheet (as defined herein) as applicable).

johnson@rqn.com and jshields@rqn.com proposed co-counsels for the Debtor.

Summary of Key Dates Established by Bidding Procedures

<u>Event</u>	<u>Due Date</u>
Entry of Bidding Procedures Order	January 9, 2025
Bid Deadline	January 17, 2025 at 4:00 p.m. prevailing Mountain Time
Sale Objection Deadline (if no Auction is Necessary)	January 21, 2025
Auction (if Necessary)	January 27, 2025
Sale Objection Deadline (if Auction is Necessary)	January 29, 2025
Sale Hearing	February 5, 2025

Marketing Process

I. Contact Parties.

As part of the marketing process, the Debtor has continued and continues to assemble materials in order to streamline potential purchasers' diligence requests, and develop a list of parties who may be interested in, and who the Debtor reasonably believes have the financial resources to consummate, a Transaction (each, a "Contact Party", and collectively, the "Contact Parties"). Parties interested in becoming Contact Parties should contact: proposed investment banker to the Debtor, Houlihan Lokey Capital, Inc., 245 Park Avenue, 20th Floor, New York, NY 10167, Attn: William Hardie (whardie@hl.com) and John Popehn (jpopehn@hl.com).

The Debtor may distribute (to the extent not already distributed) to each Contact Party and any other interested party or potential bidder materials consisting of: (a) a copy of the Bidding Procedures, the Bidding Procedures Order, and the Combined Sale/Bidding Procedures Motion; (b) a form confidentiality agreement (a "Confidentiality Agreement"); and (c) such other materials as appropriate under the circumstances.

II. Participation Requirements.

To receive due diligence information and to receive additional non-public information regarding the Debtor, a potential bidder must deliver to each of: (i) (a) proposed co-counsel to the Debtor, Ropes & Gray LLP, 1211 Avenue of the Americas, Attn: Gregg M. Galardi, esq. (gregg.galardi@ropesgray.com) and Eric P. Schriesheim (eric.schriesheim@ropesgray.com) and (b) proposed co-counsel to the Debtor, Ray Quinney & Nebeker, PC, 36 South State Street, Suite 1400, Salt Lake City, Utah 84111 (Attn: Michael R. Johnson and Jeffrey W. Shields, email: mjohnson@rqn.com and jshields@rqn.com) and (ii) proposed investment banker to the Debtor, Houlihan Lokey Capital, Inc., 245 Park Avenue, 20th Floor, New York, NY 10167, Attn: William Hardie (whardie@hl.com) and John Popehn (jpopehn@hl.com) (collectively,

the “Debtor’s Advisors”), the following documents (collectively, the “Preliminary Bid Documents”) unless otherwise waived by the Debtor in its discretion:

- a. documentation identifying the interested party, its principals, and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction;
- b. an executed Confidentiality Agreement on terms acceptable to the Debtor, to the extent not already executed, which Confidentiality Agreement shall, among other terms, contain customary provisions regarding: (i) the nondisclosure of confidential information, (ii) prohibitions on contacting third parties in connection with a Transaction, (iii) covenant to not solicit employees of the Debtor, and (iv) the survival of certain provisions of the Confidentiality Agreement;
- c. evidence by the potential bidder of its sufficient financial capacity to close a proposed transaction, which may include financial statements of, or verified financial commitments obtained by, the potential bidder (or, if the potential bidder is an entity formed for the purpose of acquiring the Assets, the party that will bear liability for a breach), the adequacy of which will be assessed by the Debtor, with the assistance of the Debtor’s Advisors;
- d. a statement and other factual support that the potential bidder has a *bona fide* interest in consummating a sale transaction, to the reasonable satisfaction of the Debtor after consultation with the Consultation Parties (as defined below);
- e. written disclosure of any connections or agreements with the Debtor, the Stalking Horse Purchaser, any other known potential bidder, or Qualified Bidder (as defined below), “insiders” of the Debtor (as that term is contemplated by section 101(31) of the Bankruptcy Code), or any manager or direct or indirect equity security holder of the Debtor; and
- f. documentation identifying the potential bidder, its principals, and the representatives thereof who are authorized to appear and act on its behalf for all purposes regarding the contemplated transaction.

Only those potential bidders that have submitted acceptable Preliminary Bid Documents, as determined by the Debtor (each, an “Acceptable Bidder”) may submit Bids. For the avoidance of doubt, and notwithstanding the foregoing, the Stalking Horse Purchaser is an Acceptable Bidder.

Beginning on or as soon as is reasonably practicable after the Debtor determines that a potential bidder is an Acceptable Bidder, the Debtor will provide such Acceptable Bidder with reasonable access to due diligence information, to the extent reasonably requested by such Acceptable Bidder. All due diligence requests must be directed to: the proposed investment banker to the Debtor, Houlihan Lokey Capital, Inc., 245 Park Avenue, 20th Floor, New York, NY 10167, Attn: William Hardie (whardie@hl.com) and John Popehn (jpopehn@hl.com).

To the extent reasonably practicable, the Debtor will also facilitate meetings between any interested Acceptable Bidder and the Debtor's management team, which meetings will proceed in a manner determined by the Debtor, in its discretion. The due diligence period will end on the Bid Deadline (as defined below) and, subsequent to the Bid Deadline, the Debtor will have no obligation to furnish any due diligence information.

Neither the Debtor nor any of its representatives shall be obligated to furnish any information of any kind whatsoever related to the Assets (i) to any person or entity who (a) is not an Acceptable Bidder; (b) does not comply with the participation requirements set forth above; or (c) in the case of competitively sensitive information, is a competitor of the Debtor (except pursuant to "clean team" or other information sharing procedures reasonably satisfactory to the Debtor in the Debtor's discretion) and (ii) to the extent not permitted by law.

The Debtor and the Debtor's Advisors will coordinate all reasonable requests from Acceptable Bidders for additional information and due diligence access; *provided* that the Debtor may decline to provide such information to Acceptable Bidders who, at such time and in the Debtor's business judgment, have not established, or who have raised doubt, that such Acceptable Bidder intends in good faith to, or has the capacity to, consummate a Transaction. No potential bidder, Acceptable Bidder, or Qualified Bidder (as defined below) shall communicate with any of the Debtor's employees, landlords, vendors, or other potential bidder, Acceptable Bidder, or Qualified Bidder with respect to any bid or potential Transaction absent the prior written consent of the Debtor; *provided* that, if such consent is given, a representative of the Debtor shall be present for or party to any such communications (unless otherwise agreed by the Debtor in its sole discretion).

For any Acceptable Bidder who is a competitor of the Debtor or is affiliated with any competitor of the Debtor, the Debtor reserves the right to withhold, redact, code, or delay providing any diligence materials that the Debtor determines are business-sensitive or otherwise inappropriate for disclosure to such Bidder at such time.

Each Acceptable Bidder shall comply with all reasonable requests for additional information and due diligence access by the Debtor or the Debtor's Advisors regarding such Acceptable Bidder and its contemplated Transaction.

Auction Process

I. Bid Deadline.

An Acceptable Bidder, other than the Stalking Horse Purchaser, that desires to make a proposal, solicitation, or offer (each, a "Bid") shall transmit such proposal, solicitation, or offer via email (in pdf or similar format) so as to be **actually received** on or before December 26, 2024 (the "Bid Deadline");

- a. Proposed co-counsel to the Debtor, Ropes & Gray, 1211 Avenue of the Americas, New York, NY 10036 (Attn: Gregg M. Galardi (gregg.galardi@ropesgray.com) and Eric P. Schriesheim (eric.schriesheim@ropesgray.com));

- b. Proposed co-counsel to the Debtor, Ray Quinney & Nebeker, PC, 36 South State Street, Suite 1400, Salt Lake City, Utah 84111 (Attn: Michael R. Johnson and Jeffrey W. Shields email: mjohnson@rqn.com and jshields@rqan.com); and
- c. Proposed investment banker to the Debtor, Houlihan Lokey Capital, Inc., 245 Park Avenue, 20th Floor, New York, NY 10167, Attn: William Hardie (whardie@hl.com) and John Popehn (jpopehn@hl.com).

A Bid must be received no later than the Bid Deadline, unless otherwise extended by the Debtor in its sole discretion; *provided that* such modification shall be subject to the Milestones (as defined in the DIP Order) and after consultation with the Consultation Parties. To the extent that the Bid Deadline is extended for all parties, the Debtor shall file a notice on the docket of the Chapter 11 Case indicating the same. Any party that does not submit a bid by the Bid Deadline will not be allowed to (a) submit any offer after the Bid Deadline, or (b) participate in the Auction.²

II. Bid Requirements.

Each Bid submitted by an Acceptable Bidder must be submitted in writing and satisfy the following requirements (collectively, the “Bid Requirements,” unless otherwise modified by the Debtor (except for the requirement set forth in II(c) below), in its discretion:

- a. Marked Agreement. A Bid must be in writing and include an executed asset purchase agreement (a “Competing APA”), together with all exhibits and schedules (the “Transaction Documents”), pursuant to which the Acceptable Bidder proposes to effectuate the contemplated transaction, which Competing APA must be similar in form and substance to the Stalking Horse APA and be marked to reflect the differences between the Stalking Horse APA and the Acceptable Bidder’s Competing APA, including, without limitation, specification of the proposed purchase price, any assumed liabilities, and any changes to any exhibits or schedules to the Competing APA. A Bid must identify with particularity each and every condition to closing and all executory contracts and unexpired leases to be assumed and assigned pursuant to the Transaction Documents. The Transaction Documents must include a commitment to close the Transaction by no later than the Closing Date provided in the Stalking Horse APA. A Bid may propose a contemplated transaction involving all or substantially all of the Assets or any subset of Assets. The Debtor will evaluate all Bids, in its sole discretion, subject to prior consultation with the Consultation Parties, to determine whether such Bid or combination of Bids maximizes the value of the Debtor’s estates as a whole in light of any factors regarding such bid which the Debtor, in its discretion, determine are appropriate to be considered in evaluating Bids.

² For purposes of these Bidding Procedures, “DIP Order” means that certain Exhibit A to the Debtor’s Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Senior Secured Financing, (II) Authorizing the Debtors to Use Cash Collateral on a Limited Basis, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief [Docket No. 15], together with any other orders approving the DIP Facility on an interim or final basis.

- b. Purpose. Each Acceptable Bidder must state that the Bid includes an offer by the Acceptable Bidder to purchase some or all of the Assets and state which Assets with reasonable specificity. Each Bid must clearly identify the following: (i) contracts to be assumed, including cure amounts to be paid, if any, and parties responsible for payment thereof; (ii) the liabilities, if any, to be assumed; (iii) leases of equipment or stores to be assumed, including cure amounts to be paid, if any, and parties responsible for payment thereof; and (iv) which employees or groups thereof will be offered employment.
- c. Purchase Price. The consideration proposed by a Bid may include cash or other consideration acceptable to the Debtor in an amount of no less than the sum of (i) the Purchase Price plus (ii) \$500,000; *provided that* the Bid must include sufficient cash to pay (A) all DIP Obligations and Prepetition Obligations that have been credit bid by the Stalking Horse Purchaser (the “Credit Bid Amount”), and (B) Houlihan Lokey Capital, Inc.’s Sale Transaction Fee (as defined in Houlihan Lokey Capital, Inc.’s engagement agreement dated as of May 31, 2024).
- d. Forms of Consideration. Each Bid must (a) indicate (x) whether it is an all-cash offer (including confirmation that the cash component of the Bid is based in U.S. Dollars) or consists of certain non-cash components, such as a credit bid or the assumption of liabilities; and (y) the liabilities to be assumed, if applicable; and (b) provide sufficient cash consideration specifically designated for the payment of the Credit Bid Amount, a minimum of \$350,000 to be used to fund the wind-down of the Debtor’s estates, and Houlihan Lokey Capital, Inc.’s Sale Transaction Fee (as defined in Houlihan Lokey Capital, Inc.’s engagement agreement dated as of May 31, 2024). The Debtor may request that any Bid include the allocation of the Purchase Price among the Assets to be acquired. In addition, any Bid shall identify separately any cash and non-cash components, which non-cash components shall be limited only to credit-bids in accordance with section 363(k) of the Bankruptcy Code and assumed liabilities.
- e. Deposit. Each Bid must be accompanied by a cash deposit in the amount equal to 10% of the aggregate value of the cash and non-cash consideration (with the deposit amount for the non-cash consideration determined by the Debtor in its discretion) of the Bid to be held in an escrow account to be identified and established by the Debtor (the “Deposit”); *provided that* that the Debtor reserves the right to increase the amount of the Deposit in its discretion, including, without limitation, the right to request an additional Deposit in the event an Acceptable Bidder increases the amount of its Bid. For the avoidance of doubt, the Stalking Horse Purchaser shall not be required to provide a Deposit.
- f. Irrevocable. All Bids must be irrevocable until the Debtor’s selection of the Successful Bid and Backup Bid (each as defined below); *provided, however*, that the Successful Bid shall be irrevocable until the closing of the Approved Transaction (as defined below) and the Backup Bid must be irrevocable in accordance with Section VI below, as applicable.

- g. Committed Financing. To the extent that a Bid is not accompanied by evidence of the Acceptable Bidder's capacity to consummate the Transaction set forth in its Bid with cash on hand, each Bid must include committed financing documented to the Debtor's satisfaction that demonstrates that the Acceptable Bidder has received sufficient debt or equity funding commitments to satisfy the Acceptable Bidder's purchase price and other obligations under its Bid. Such funding commitments or other financing must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions acceptable to the Debtor.
- h. Unconditional Offer / Contingencies. A statement that the Bid is formal, binding, and unconditional and is not subject to any further due diligence or contingencies related to financing, internal approval, due diligence, or otherwise, and is irrevocable until the Debtor notify the Acceptable Bidder that such Bid is not a Successful Bid or a Backup Bid.
- i. Non-Reliance. A Bid must include a written acknowledgement and representation of the Acceptable Bidder that it has had an opportunity to conduct any and all due diligence regarding the Assets and assumed liabilities prior to making its Bid, that it has relied solely upon its own independent review, investigation or inspection of any documents or the Assets in making its bid, and that it did not rely upon any written or oral statements, representations, warranties, or guaranties, express, implied, statutory or otherwise, regarding the Assets, the financial performance of the Assets or the physical condition of the Assets, the assumed liabilities, or the completeness of any information provided in connection therewith or the Auction.
- j. Identity. Each Bid must fully disclose the identity of each entity that will be bidding or otherwise participating in connection with such Bid (including each equity holder, sponsor, parent company or other financial backer of the Acceptable Bidder, including if such Acceptable Bidder is an entity formed for the purpose of consummating the proposed Transaction contemplated by such Bid), and the complete terms of any such participation. Under no circumstances shall any undisclosed principals, equity holders, or financial backers be associated with any Bid. Each Bid must also include contact information for the specific person(s), counsel and other advisors whom the Debtor's Advisors should contact regarding such Bid. Nothing herein shall preclude multiple Acceptable Bidders from submitting a joint Bid, subject to the Debtor's prior written consent to such submission and the disclosure requirements set forth herein.
- k. Adequate Assurance. Each Bid must contain evidence acceptable to the Debtor in its discretion that the Acceptable Bidder has the ability to perform thereunder and otherwise complies with the requirements of adequate assurance of future performance under sections 365(b)(1) and 365(b)(3) of the Bankruptcy Code. Such evidence may include audited and unaudited financial statements, tax returns, bank account statements, a description of the proposed business to be conducted at the premises or any other documentation that the Debtor further request.

- l. Authorization. Each Bid must contain evidence that the Acceptable Bidder has obtained authorization or approval from its board of directors (or a comparable governing body acceptable to the Debtor) with respect to the submission of its Bid and the closing of the Transaction contemplated in such Bid (including the submission, execution, and delivery of the Competing APA).
- m. No Fees Payable to Bidder. A Bid may not request or entitle the Bidder to any break-up fee, termination fee, expense reimbursement or similar type of payment. Moreover, by submitting a Bid, a Bidder shall be deemed to waive the right to pursue any break-up fee, termination fee, expense reimbursement or similar type of payment, or substantial contribution claim under section 503 of the Bankruptcy Code related in any way to the submission of its Bid or the Bidding Procedures.

By submitting its Bid, each Acceptable Bidder is agreeing, and shall be deemed to have agreed, to abide by and honor the terms of the Bidding Procedures and to refrain from submitting a Bid or seeking to reopen any round of bidding or the Auction after conclusion of any round of bidding or the Auction. **The submission of a Bid shall constitute a binding and irrevocable offer to acquire the Assets as reflected in such Bid.**

Notwithstanding anything herein to the contrary and for the avoidance of doubt, for all purposes under the Bidding Procedures, the Stalking Horse APA submitted by the Stalking Horse Purchaser is a Qualified Bid without regard to any of the requirements or conditions set forth therein and without any other or further action by the Stalking Horse Purchaser.

III. Designation of Qualified Bidders.

A Bid will be considered a “Qualified Bid,” and each Acceptable Bidder that submits a Qualified Bid will be considered a “Qualified Bidder,” if the Debtor determines, in its discretion, subject to prior consultation with the Consultation Parties, that such Bid:

- a. satisfies the Bid Requirements set forth above; and
- b. is reasonably likely (based on availability of financing, antitrust, or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Successful Bid, within a time frame acceptable to the Debtor.

The Debtor will notify each Qualified Bidder whether such party is a Qualified Bidder and shall provide the Notice Parties (as defined below) with a copy of each Bid that has been submitted to the Debtor (whether or not such bid has been determined by the Debtor to be a Qualified Bid).

If any Bid is determined by the Debtor not to be a Qualified Bid, the Debtor will refund such Acceptable Bidder’s Deposit on the date that is the later of (i) three (3) Business Days after the Bid Deadline and (ii) the date on which the Debtor make a final determination that such Bid is not a Qualified Bid or, in each case, as soon as is reasonably practicable thereafter. The Debtor reserve the right to work with any Acceptable Bidder in advance of the Auction to cure any deficiencies in a Bid that is not initially deemed a Qualified Bid and to determine at any time prior to the start of the Auction that such Bid, as modified, is a Qualified Bid.

Between the date that the Debtor notify an Acceptable Bidder that it is a Qualified Bidder and the Auction, the Debtor may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Without the prior written consent of the Debtor, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase the Acceptable Bidder's purchase price, or otherwise improve the terms of, the Qualified Bid, during the period that such Qualified Bid remains binding as specified in these Bidding Procedures; *provided* that any Qualified Bid may be improved at the Auction as set forth herein; *provided, further*, that the Stalking Horse Bid may be modified or amended pursuant to its terms. Any improved Qualified Bid must continue to comply in all respects with the requirements for Qualified Bids set forth in these Bidding Procedures.

Notwithstanding anything herein to the contrary, the Debtor reserve the right, (a) to work with potential bidders and Acceptable Bidders to aggregate two or more Bids into a single consolidated Bid prior to the Bid Deadline or (b) to work with Qualified Bidders to aggregate two or more Qualified Bids into a single Qualified Bid prior to the conclusion of the Auction. No bidders, Acceptable Bidders or Qualified Bidders may aggregate any Bids without the Debtor's prior consent, subject to prior consultation with the Consultation Parties.

Notwithstanding anything herein to the contrary and for the avoidance of doubt, for all purposes under the Bidding Procedures, the Stalking Horse Purchaser is a Qualified Bidder without regard to any of the requirements or conditions set forth therein and without any other or further action by the Stalking Horse Purchaser.

IV. Right to Credit Bid.

As set forth in the DIP Order, the DIP Lenders or the Prepetition Lenders are permitted to credit bid any of the outstanding DIP Obligations or Prepetition Obligations, respectively, in accordance with section 363(k) of the Bankruptcy Code in any sale of the Assets, and may assign such right to credit bid in whole or in part to any of their affiliates (including, but not limited to, the Stalking Horse Purchaser). The Stalking Horse Purchaser shall have the unqualified right to credit bid on a dollar-for-dollar basis up to the full amount of the DIP Obligations and the Prepetition Obligations pursuant to section 363(k) of the Bankruptcy Code.

V. Auction.

If no Qualified Bid (other than the Stalking Horse Bid) is received by the Bid Deadline, the Stalking Horse Purchaser shall be deemed the Successful Bidder without the need or requirement to hold or open the Auction.

If the Debtor receives more than one Qualified Bid for the Assets (other than the Stalking Horse Bid), the Debtor will conduct the Auction to determine both the Successful Bidder and the Backup Bidder with respect to such Assets. The Auction shall take place on January 27, 2025, at the offices of Ropes & Gray, LLP, 1211 Avenue of the Americas, New York, NY 10036, or such later date and time as selected by the Debtor (following consultation with the Consultation Parties); *provided that* such modification shall be subject to the Milestones.

No later than the day before the Auction, the Debtor will notify all Qualified Bidders of

the highest or otherwise best Qualified Bid, or, if multiple bids are received in respect of non-overlapping Assets, the highest or best Qualified Bid(s) received in relation to each group of Assets, in each case as determined in the Debtor's business judgment (each such bid, a "Baseline Bid"), and provide copies of the documents supporting the Baseline Bid(s) to all Qualified Bidders and the Consultation Parties. The determination of which Qualified Bid(s) constitutes the Baseline Bid(s) and which Qualified Bid(s) constitutes the Successful Bid(s) shall take into account any factors the Debtor, in consultation of the Consultation Parties, reasonably deem relevant to the value of the Qualified Bid(s) to the Debtor's estates, which may include, among other things: (a) the type and amount of Assets sought to be purchased in the Bid; (b) the amount and nature of the total consideration; (c) the likelihood of the Bidder's ability to close a transaction and the timing thereof; (d) the net economic effect of any changes to the value to be received by the Debtor's estates from the transaction contemplated by the Bid; (e) the tax consequences of such Bid; (f) the assumption of obligations, including contracts and leases; (g) the cure amounts to be paid; and (h) the impact on employees, including the number of employees proposed to be transferred and employee-related obligations to be assumed (collectively, the "Bid Assessment Criteria").

The Auction shall be conducted pursuant to the following procedures:

a. The Debtor Shall Conduct the Auction

The Debtor and the Debtor's Advisors shall direct and preside over the Auction.

The Auction shall be conducted in an open format (and not by way of sealed bids). At the start of the Auction, the Debtor shall describe the terms of the Baseline Bid(s). All incremental Bids made thereafter shall be Overbids (as defined below) and shall be made and received on an open basis, and all material terms of each Overbid shall be fully disclosed to all other Qualified Bidders and the Consultation Parties. The Debtor shall maintain a written transcript of all Bids made and announced at the Auction, including the Baseline Bid(s), all Overbids, the Successful Bid(s), and any Backup Bid(s).

Only (i) Qualified Bidders (including, for the avoidance of doubt, the Stalking Horse Purchaser) and (ii) the Consultation Parties, and each of their respective legal and financial advisors, shall be entitled to attend the Auction, and the Qualified Bidders shall appear at the Auction in person (live or on videoconference) and may speak or bid themselves or through duly authorized representatives. Only Qualified Bidders (including, for the avoidance of doubt, the Stalking Horse Purchaser) shall be entitled to make any subsequent bids at the Auction; *provided, however*, that any creditor who wishes to physically attend the Auction (other than (i) the parties set forth in the Bidding Procedures (including the Qualified Bidders), and (ii) such other parties the Debtor deems appropriate), shall provide at least two (2) days' notice of such attendance prior to the Auction by sending an email to counsel to the Debtor.

b. Terms of Overbids

"Overbid" means any bid made at the Auction by a Qualified Bidder subsequent to the Debtor's announcement of the Baseline Bid. Each Overbid must comply with the following conditions:

- (i) Minimum Overbid Increment. Any Overbid to the initial Baseline Bid at the start of the Auction shall be in increments of no less than a value equal to \$500,000 unless otherwise determined by the Debtor in an exercise of their business judgment.
- (ii) Conclusion of Each Overbid Round. Upon the solicitation of each round of Overbids, the Debtor may announce a deadline (as the Debtor may, in their business judgment, extend from time to time, the “Overbid Round Deadline”) by which time any Overbids must be submitted to the Debtor.
- (iii) Overbid Alterations. An Overbid may contain alterations, modifications, additions, or deletions of any terms of the Bid no less favorable to the Debtor’s estates than any prior Qualified Bid or Overbid, as determined in the Debtor’s business judgment, but shall otherwise comply with the terms of these Bidding Procedures.
- (iv) No Round-Skipping. Round-skipping, as described herein, is explicitly prohibited. To remain eligible to participate in the Auction, in each round of bidding, (i) each Qualified Bidder must submit a Bid in such round of bidding that is a higher or otherwise better offer than the immediately preceding Bid submitted by a Qualified Bidder in such round of bidding and (ii) to the extent a Qualified Bidder fails to bid in such round of bidding or to submit a Bid in such round of bidding that is a higher or otherwise better offer than the immediately preceding Bid submitted by a Qualified Bidder in such round of bidding, as determined by the Debtor in its reasonable business judgment, such Qualified Bidder shall be disqualified from continuing to participate in the Auction for the Assets including, without limitation, submitting further Bids.
- (v) Announcing Highest Bid. With respect to the Auction, the Debtor shall, subsequent to each Overbid Round Deadline, announce whether the Debtor in consultation with the Consultation Parties have identified (a) in the initial Overbid round, an Overbid as being higher or otherwise better than the Baseline Bid in respect of the Assets that are the subject of the Auction or (b) in subsequent rounds, an Overbid as being higher or otherwise better than the Overbid previously designated by the Debtor as the prevailing highest or otherwise best Bid (the “Prevailing Highest Bid”). The Debtor shall describe to all Qualified Bidders the material terms of any new Overbid designated by the Debtor as the Prevailing Highest Bid as well as the value attributable by the Debtor to such Prevailing Highest Bid based on, among other things, the Bid Assessment Criteria.

c. Consideration of Overbids

For the purpose of evaluating the value of the consideration provided by any Bid subsequent to the Baseline Bid, the Debtor will at each round of bidding, give effect to the Breakup Fee and Expense Reimbursement payable to the Stalking Horse Purchaser under the Stalking

Horse APA.

The Debtor reserves the right, in its business judgment, to adjourn the Auction one or more times, to, among other things, (i) facilitate discussions between the Debtor and Qualified Bidders, (ii) allow Qualified Bidders to consider how they wish to proceed, and (iii) provide Qualified Bidders the opportunity to provide the Debtor with such additional evidence as the Debtor, in its business judgment, may require that the Qualified Bidder has sufficient internal approvals and resources or has received sufficient non-contingent debt or equity funding commitments to consummate the proposed Transaction at the prevailing Overbid amount; *provided that* such adjournment shall be subject to the Milestones.

d. Closing the Auction

The Auction shall continue until there is only one Qualified Bid that the Debtor determines, in its discretion following consultation with the Consultation Parties, to be the highest or otherwise best Qualified Bid for the Assets. Such Qualified Bid shall be declared the “Successful Bid,” and such Qualified Bidder, the “Successful Bidder,” at which point the Auction will be closed. The Auction shall not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an Overbid at the Auction to the then Prevailing Highest Bid. Such acceptance by the Debtor of such Successful Bid is conditioned upon approval by the Court of such Successful Bid. As soon as reasonably practicable after closing the Auction, the Debtor shall finalize definitive documentation to implement the terms of the Successful Bid, and, as applicable, cause such definitive documentation to be filed with the Court.

e. No Collusion; Good Faith *Bona Fide* Offer

Each Qualified Bidder participating at the Auction will be required to confirm on the record at the Auction that (i) it has not engaged in any collusion, within the meaning of section 363(n) of the Bankruptcy Code with respect to any bids submitted or not submitted in connection with the Sale, and (ii) its Qualified Bid is a good faith *bona fide* offer and it intends to consummate the proposed Transaction if selected as the Successful Bidder.

VI. Backup Bidder.

- a. Notwithstanding anything in these Bidding Procedures to the contrary, if the Auction is conducted, the Qualified Bidder with the next-highest or otherwise second-best Qualified Bid at the conclusion of the Auction for the Assets or any sub-group thereof, as determined by the Debtor in the exercise of its business judgment, shall be required to serve as a backup bidder (the “Backup Bidder”) in accordance with the terms and conditions set forth herein. Each Qualified Bidder shall agree and be deemed to agree to be a Backup Bidder if so designated by the Debtor, subject to the terms of such Backup Bidder’s Competing APA.
- b. The identity of a Backup Bidder and the amount and material terms of the Qualified Bid of such Backup Bidder shall be announced by the Debtor, at the conclusion of the Auction at the same time the Debtor announces the identity of the Successful Bidder related thereto. Such Backup Bidder shall be required to keep its Qualified

Bid (or if the Backup Bidder submits one or more Overbids at the Auction, its final Overbid) open and irrevocable until the earlier of (i) the closing of the Approved Transaction and (ii) 30 days from entry of the Sale Order. Each Backup Bidder's Deposit shall be held in escrow until the earlier of (i) three (3) Business Days after the closing of the Approved Transaction and (ii) 30 days from entry of the Sale Order, subject to the terms of such Backup Bidder's Competing APA.

- c. If a Successful Bidder fails to consummate the Approved Transaction contemplated by its Successful Bid, the Debtor may select the Backup Bidder (which may be the Stalking Horse Purchaser) with respect to the Assets or sub-group of the Debtor's Assets or business as the Successful Bidder, and such Backup Bidder shall be deemed a Successful Bidder for all purposes. The Debtor will be authorized, but not required, to consummate all transactions contemplated by the Bid of such Backup Bidder without further order of the Court or notice to any party.
- d. Notwithstanding any of the foregoing, in the event that the Successful Bidder (other than the Stalking Horse Purchaser) fails to consummate the Transaction on or before [●], 2025 (or such date as may be extended by the Debtor with the consent of the DIP Agent (as defined in the DIP Order) and in consultation with the Consultation Parties), the Backup Bid will be deemed to be the Successful Bid, the Backup Bidder will be deemed to be the Successful Bidder, and the Debtor shall be authorized to consummate the Transaction with the Backup Bidder subject to the terms of the Backup Bid without the need for further order of the Court and without the need for further notice to any interested parties.

VII. Notice and Consultation Parties.

Information that is provided to the "Notice Parties" under these Bidding Procedures must be provided to the following parties: (a) proposed co-counsel to the Debtor, (i) Ropes & Gray LLP, 1211 Avenue of the Americas, New York, NY 10036, Attn: Gregg M. Galardi (gregg.galardi@ropesgray.com) and Eric P. Schriesheim (eric.schriesheim@ropesgray.com) and (ii) Ray Quinney & Nebeker, PC, 36 South State Street, Suite 1400, Salt Lake City, Utah, 84111 (Attn: Michael R. Johnson and Jeffrey W. Shields email: mjohanson@rqn.com and jshields@rqn.com); (b) counsel to the DIP Secured Parties, the Prepetition Secured Parties, and the Stalking Horse Purchaser, (i) Proskauer Rose LLP, Eleven Times Square, New York, New York 10036 (Attn: Vincent Indelicato (vindelicato@proskauer.com) and Matthew R. Koch (mkoch@proskauer.com)), and One International Place Boston, Massachusetts 02110 (Attn: Charles A. Dale (cdale@proskauer.com)), and (ii) Parr Brown Gee & Loveless, PC, 101 South 200 East, Suite 700, Salt Lake City, Utah 84111 (Attn: Joseph M.R. Covey (jcovey@parrbrown.com)); and (c) the Office of the U.S. Trustee for the District of Utah, 405 South Main Street, Suite 300, Salt Lake City, Utah 84111 (Attn: David W. Newman or by email at david.w.newman@usdoj.gov).

The term "Consultation Parties" as used in these Bidding Procedures shall mean (a) any official committee of unsecured creditors appointed in the Chapter 11 Case (the "Creditors' Committee") and, (b) in the event that the Stalking Horse Purchaser terminates its credit bid, the DIP Agent.

VIII. Consent to Jurisdiction.

Any Acceptable Bidders and Qualified Bidders shall: (i) be deemed to have waived any right to a jury trial in connection with, and consented and submitted to the exclusive jurisdiction of the Court over, any disputes relating to, actions or proceedings arising from or relating to the Bidding Procedures, the Sale, the Auction and the construction and enforcement of the contemplated transaction documents; (ii) bring any such action or proceeding in the Court; and (ii) be deemed to have consented to the Court entering a final judgment determining any such action or proceeding and that such final judgment in any such action or proceeding, including all appeals, shall be conclusive and may be enforced in other jurisdictions (including any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law.

IX. Sale Hearing.

A hearing to consider approval of the sale (the “Sale Hearing”), pursuant to which the Debtor and the Successful Bidder will consummate the Transaction (the “Approved Transaction”), will be held no later than January 31, 2025.

The Sale Hearing may be continued to a later date by the Debtor by sending notice prior to, or making an announcement at, the Sale Hearing; *provided* that such later date is consistent with the Milestones, or the Debtor have obtained the necessary consents under the DIP Order. No further notice of any such continuance will be required to be provided to any party.

X. Objection Deadlines

Any objections to the Sale or the relief requested in connection with the Sale including objections related to the adequate assurance of future performance by the Stalking Horse Purchaser but not including objections related to cure amounts for the Purchased Contracts or general objections to the assumption and assignment of the Purchased Contracts (a “Sale Objection”) must: (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Rules of Practice of the United States Bankruptcy Court for the District of Utah (the “Local Rules”); (c) set forth the specific basis for the Sale Objection; (d) be filed with the Clerk of the Court, 351 South West Temple, Salt Lake City, Utah 84101 on or before January 21, 2025, if there is no Auction, or January 29, 2025, if there is an Auction (the “Sale Objection Deadline”), with proof of service of such Sale Objection upon the Notice Parties being filed with the Court as and when required by the Local Rules; and (e) be served upon the Notice Parties.

XI. Return of Deposits.

The Deposit of the Successful Bidder shall be applied to the purchase price of the Approved Transaction at closing. The Deposits for each Qualified Bidder shall be held in one or more escrow accounts on terms acceptable to the Debtor in its sole discretion and shall be returned (other than with respect to each Successful Bidder and each Backup Bidder) on the date that is three (3) business days after the Auction, or as soon as is reasonably practicable thereafter. Upon the return of the Deposits, the applicable Qualified Bidders shall receive any and all interest that will have accrued thereon.

If the Successful Bidder (or, if the Sale is to be closed with the Backup Bidder, then the Backup Bidder) other than the Stalking Horse Purchaser fails to consummate the Sale because of a breach or failure to perform on the part of such bidder, then, subject to the terms of the Competing APA, the Debtor and its estate shall be entitled to retain the Deposit of the Successful Bidder (or, if the Sale is to be closed with the Backup Bidder, then the Backup Bidder).

To the extent the Debtor do not consummate the proposed transaction with the Backup Bidder due to the closing of the transaction with the Successful Bidder, the Backup Bidder's deposit shall be refunded within three (3) business days of the closing of the Approved Transaction.

XII. Sale Is As Is/Where is

Except as may be set forth in the Stalking Horse APA or Competing APA, the Assets sold pursuant to the Bidding Procedures shall be conveyed at the closing of such sale in their then-present condition, **"AS IS, WITH ALL FAULTS, AND WITHOUT ANY WARRANTY WHATSOEVER, EXPRESS OR IMPLIED."**

XIII. Reservation of Rights.

The Debtor reserves its rights, subject to prior consultation with the Consultation Parties and subject to the DIP Order, the DIP Term Sheet (as defined therein), and the Stalking Horse Term Sheet, to modify these Bidding Procedures in their business judgment in any manner that will best promote the goals of these Bidding Procedures or impose at or prior to the Auction, additional customary terms and conditions on a Transaction, including, without limitation: (a) extending the deadlines set forth in these Bidding Procedures; (b) adjourning the Auction at the Auction; (c) adding procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction; (d) canceling the Auction; and (e) rejecting any or all Bids or Qualified Bids (other than the Stalking Horse Bid). Notwithstanding the foregoing, the Debtor shall not be permitted to modify these Bidding Procedures in any way that permits Qualified Bids that propose consideration that does not include cash sufficient and specifically designated to pay (i) the Credit Bid Amount, (ii) a minimum of \$350,000 to be used to wind-down the Debtor's estates, and (iii) Houlihan Lokey Capital, Inc.'s Sale Transaction Fee (as defined in Houlihan Lokey Capital, Inc.'s engagement agreement dated as of May 31, 2024, as amended, restated, amended and restated, or modified from time to time).

* * *

EXHIBIT 2

Sale Notice

Michael R. Johnson (7070)
Jeffrey W. Shields (2948)
David H. Leigh (9433)
Mel Jones-Cannon (19286)
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*Proposed Counsel to the Debtor and Debtor
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**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF UTAH CENTRAL DIVISION**

In re:

VOBEV, LLC, a Utah limited liability
company,

Debtor-in-Possession.

Bankruptcy Case No. 24-26346 (JTM)

Chapter 11

Honorable Joel T. Marker
[Filed Electronically]

**NOTICE OF PROPOSED SALE OF
ASSETS, STALKING HORSE APA, BIDDING
PROCEDURES, AUCTION, AND SALE HEARING**

PLEASE TAKE NOTICE that the above-captioned debtor and debtor-in-possession (the “Debtor”) filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), on December 9, 2024, in the United States

Bankruptcy Court for the District of Utah (the “Bankruptcy Court”). The Debtor is seeking to sell (the “Sale”) all or substantially all of its assets (the “Assets”), free and clear of all Liens other than Assumed Liabilities (each as defined in the Stalking Horse APA, as defined below).¹ In connection with the Sale, the Debtor has entered into an asset purchase agreement dated as of [●], 2024 (the “Stalking Horse APA”) with [●], subject to the Debtor’s acceptance of higher or otherwise better offers in accordance with the Bidding Procedures (as defined below).

Summary of Key Dates Established by Bidding Procedures

<u>Date</u>	<u>Event or Deadline</u>	
File Stalking Horse APA	December 26, 2024	Date for filing of Stalking Horse APA
Entry of Bidding Procedures Order	January 9, 2025	Date for the approval of the Bidding Procedures
Bid Deadline	January 17, 2025 at 4:00 p.m. prevailing Mountain Time	Deadline for when the Debtor must <i>actually receive</i> binding bids from parties.
Sale Objection Deadline (if no Auction is Necessary)	January 21, 2025	Deadline by which (i) general objections to the sale must be filed with the Court and served so as to be actually received by the appropriate notice parties and (ii) objections by the counterparties to adequate assurance of future performance by the Stalking Horse Purchaser with respect to Initial Purchased Contracts must be filed with the Court and served so as to be actually received by the appropriate notice parties (the “ <u>Sale Objection Deadline</u> ”).
Auction (if Necessary)	January 27, 2025	Date for when an auction for the Assets (the “ <u>Auction</u> ”) will be conducted, if necessary. The Auction will be conducted at the office of Ropes & Gray LLP, 1211 6th Avenue, New York New York 10036 or via remote video at the Debtor’s election.
Sale Objection Deadline (if Auction is Necessary)	January 29, 2025	Same as the Sale Objection Deadline above.

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Bidding Procedures Order and Bidding Procedures (each as defined below).

<u>Date</u>	<u>Event or Deadline</u>	
Sale Hearing	February 5, 2025	Date for the hearing to consider the approval of the Sale Order

PLEASE TAKE FURTHER NOTICE that by order, dated [●], 2025 [Docket No. [●]] (the “Bidding Procedures Order”), the Bankruptcy Court approved certain relief requested in the related motion [Docket No. [●]] (the “Bidding Procedures Motion”), and certain “Bidding Procedures” that govern the sale of the Assets to the highest or otherwise best bidders. Copies of the Bidding Procedures Motion, the Bidding Procedures Order, the Bidding Procedures and the Stalking Horse APA are available for download at <https://cases.ra.kroll.com/Vobev/> (the “Case Website”) or from the Debtor’s claims and noticing agent, Kroll Restructuring Administration LLC, via telephone at 833-570-5418 (US & Canada toll free) and +1 646-650-5707 (International) or via email to VobevTeam@ra.kroll.com. A separate notice will be provided to counterparties to executory contracts and unexpired leases with the Debtor that may be assumed and assigned in connection with the Sale. **Any interested bidder should contact the Debtor’s proposed investment banking advisor, Houlihan Lokey, John Popehn (jpopehn@hl.com) and John Hartigan (jhartigan@hl.com).**

PLEASE TAKE FURTHER NOTICE that the deadline to submit a bid for any Assets is **January 17, 2025, at [4]:00 p.m. (M.T.).**

PLEASE TAKE FURTHER NOTICE that an auction for the Assets, unless cancelled or adjourned in accordance with the Bidding Procedures Order, will be held on **January 27, 2025 at 10:00 a.m. (M.T.)**, at the offices of Ropes & Gray LLP, 1211 6th Avenue, New York, NY 10036, or virtually via telephone and/or video conference pursuant to information to be timely provided by the Debtor to the Auction Participants.

PLEASE TAKE FURTHER NOTICE that unless adjourned in accordance with the Bidding Procedures Order, the Bankruptcy Court will conduct a hearing (the “Sale Hearing”) to consider the Sale on **February 5, 2025 at 2:00 p.m. (M.T.)**, subject to the Bankruptcy Court’s availability.

PLEASE TAKE FURTHER NOTICE that any objections to the Sale or the relief requested in connection with the Sale, including any objection to the sale of any Purchased Assets free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code, the identity of the Stalking Horse Purchaser, or the adequate assurance of future performance by the Stalking Horse Purchaser but not including objections related to cure amounts for the Purchased Contracts or general objections to the assumption and assignment of the Purchased Contracts (each, a “Sale Objection”), must: (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Rules; (c) set forth the specific basis for the Sale Objection; (d) be filed with the Clerk of this Court, [address] (the “Clerk”), and proof of service of such Sale Objection upon the Objection Notice Parties (as defined below) shall be filed with the Court as and when required by the Local Rules; and (e) be served upon the Objection Notice Parties. Sale Objections must be filed with the Clerk **on or before 4:00 p.m. (M.T.) on January 21, 2025** if no Auction is necessary or **on or before 4:00 p.m. (M.T.) on January 29, 2025** if an auction is necessary.

PLEASE TAKE FURTHER NOTICE that any Assignment Objections, (a) in the event the Stalking Horse Purchaser is the Successful Bidder, must be filed with the Clerk by the Sale Objection Deadline and, (b) in the event the Successful Bidder is not the Stalking Horse Purchaser, need not be written and filed and may be raised at the Sale Hearing.

The “Objection Notice Parties” are as follows: (a) proposed co-counsel to the Debtor, Ropes & Gray LLP, 1211 Avenue of the Americas, New York, NY 10036 (Attn: Gregg M. Galardi and Eric P. Schriesheim, email: gregg.galardi@ropesgray.com and eric.schriesheim@ropesgray.com); and Ray Quinney & Nebeker P.C., 36 South State Street, Suite 1400, Salt Lake City, Utah 84111 (Attn: Michael R. Johnson and Jeffrey W. Shields; email: mjohnson@rqn.com and jshields@rqn.com); (b) the U.S. Trustee for Utah, 405 South Main Street, Suite 300, Salt Lake City, Utah 84111 (Attn: David W. Newman, email: david.w.newman@usdoj.gov); (c) counsel to the DIP Secured Parties, the Prepetition Secured Parties, and the Stalking Horse Purchaser, (i) Proskauer Rose LLP, Eleven Times Square, New York, New York 10036 (Attn: Vincent Indelicato (vindelicato@proskauer.com) and Matthew R. Koch (mkoch@proskauer.com)), and One International Place Boston, Massachusetts 02110 (Attn: Charles A. Dale (cdale@proskauer.com)), and (ii) Parr Brown Gee & Loveless, PC, 101 South 200 East, Suite 700, Salt Lake City, Utah 84111 (Attn: Joseph M.R. Covey (jcovey@parrbrown.com)); and (d) counsel for any statutory committee appointed in this chapter 11 case.

PLEASE TAKE FURTHER NOTICE THAT FAILURE TO ABIDE BY THE BIDDING PROCEDURES, THE BIDDING PROCEDURES ORDER OR ANY OTHER APPLICABLE ORDER OF THE COURT ENTERED IN THIS CHAPTER 11 CASE MAY RESULT IN THE REJECTION OF YOUR BID AND YOUR DISQUALIFICATION FROM PARTICIPATING IN THE BIDDING FOR AND AUCTION OF ANY OF THE DEBTOR’S ASSETS.

PLEASE TAKE FURTHER NOTICE THAT IF A SALE OBJECTION IS NOT FILED AND SERVED ON OR BEFORE THE APPLICABLE SALE OBJECTION DEADLINE IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER, THE OBJECTING PARTY MAY BE BARRED FROM OBJECTING TO THE SALE AND BEING HEARD AT THE SALE HEARING, AND THE BANKRUPTCY COURT MAY ENTER THE SALE ORDER WITHOUT FURTHER NOTICE TO SUCH PARTY.

Dated: January [●], 2025
Salt Lake City, Utah

RAY QUINNEY & NEBEKER, PC

/s/ Michael R. Johnson

Michael R. Johnson

Jeffrey W. Shields

E-mail: mjohnson@rqn.comjshields@rqn.com

-and-

ROPES & GRAY LLP

Gregg M. Galardi (admitted *pro hac vice*)

E-mail: gregg.galardi@ropesgray.com

-and-

ROPES & GRAY LLP

Eric P. Schriesheim (admitted *pro hac vice*)

E-mail: eric.schriesheim@ropesgray.com

*Proposed Counsel to the Debtor and Debtor in
Possession*

EXHIBIT 3

Notice of Successful Bidder

Michael R. Johnson (7070)
Jeffrey W. Shields (2948)
David H. Leigh (9433)
Mel Jones-Cannon (19286)
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*Proposed Counsel to the Debtor and Debtor
in Possession*

Gregg M. Galardi (admitted *pro hac vice*)
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1211 Avenue of the Americas
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**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF UTAH CENTRAL DIVISION**

In re:

VOBEV, LLC, a Utah limited liability
company,

Debtor-in-Possession.

Bankruptcy Case No. 24-26346 (JTM)

Chapter 11

Honorable Joel T. Marker
[Filed Electronically]

**NOTICE OF SUCCESSFUL BIDDER AND
BACK-UP BIDDER FOR CERTAIN OF THE DEBTOR'S ASSETS**

PLEASE TAKE NOTICE OF THE FOLLOWING:

On [●], 2025, United States Bankruptcy Court for the District of Utah (the “Court”) entered the *Order (I)(A) Approving Certain Bidding Procedures and the Form and Manner of Notice Thereof, and (B) Approving the Debtor’s Entry into the Stalking Horse APA; and (II) Granting Related Relief* [Docket No. ●] (the “Order”),¹ by which the Court approved procedures setting forth the process by which the Debtor is authorized to conduct a marketing and auction process for the sale or sales of substantially all of the Debtor’s assets (the “Assets”) through one or more sale transactions.

On **January 27, 2025 at 10:00 a.m. (M.T.)**, pursuant to the Order, the Debtor commenced the Auction with respect to certain Assets either in-person or by videoconference or such other form of remote communication established by the Debtor.

At the conclusion of the Auction, the Debtor, in consultation with the Consultation Parties, selected the following Successful Bidder and Back-Up Bidder with respect to the Assets subject to the applicable Auction.

Asset(s)	Successful Bidder	Back-Up Bidder	Key Terms

The Sale Hearing to consider approval of the sale of the above-listed Assets to the Successful Bidder at the Auction referenced above will be held before the Honorable Joel T. Marker, Bankruptcy Court Judge, at the United States Bankruptcy Court for the District of Utah, by Zoom, www.utb.uscourts.gov/court-hearings-be-conducted-zoom Meeting ID 161 5478 8875, Passcode 3834558, on **February 5, 2025, at 2:00 p.m. (M.T.)**.

At the Sale Hearing, the Debtor will seek the Court's approval of the Successful Bid and designation of the Back-Up Bid (if any) for the applicable Assets. Unless the Court orders otherwise, the Sale Hearing shall be an evidentiary hearing on matters relating to the sale for the applicable Assets, and there will be no further bidding at the Sale Hearing. If a Successful Bidder cannot or refuses to consummate the applicable sale transaction following entry of the applicable Sale Order because of the breach or failure on the part of the Successful Bidder, the Back-Up Bidder (if any) shall be deemed the new Successful Bidder and the Debtor shall be authorized, but not required, to close the applicable sale transaction with such Back-Up Bidder on the terms and provisions of such applicable Back-Up Bid without further order of the Court upon filing a notice with the Court providing at least five (5) days for parties to object to the sale to the Back-Up Bidder.

This notice is subject to the terms and conditions of the Order, and the Debtor encourages parties in interest to review such documents, including the Bidding Procedures, attached as Exhibit 1 to the Order, in their entirety. Parties interested in receiving additional or other information regarding the proposed Sale, proposed sale transaction, or other disposition of the

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Order or the Bidding Procedures, attached to the Order as Exhibit 1 thereto, as applicable.

applicable Assets may make contact Kroll Restructuring Administration LLC (“Kroll”), via telephone at 833-570-5418 (US & Canada toll free) and +1 646-650-5705 (International) or via email at Vobevteam@ra.kroll.com.

Copies of the Motion, the Order, the Bidding Procedures, this notice, and any other related documents are available: (a) upon request to Kroll, via telephone at 833-570-5418 (US & Canada toll free) and +1 646-650-5705 (International) or via email at Vobevteam@ra.kroll.com; (b) by visiting the Debtor’s restructuring website at <https://cases.ra.kroll.com/Vobev/>; or (c) for a fee via PACER by visiting <https://pacer.uscourts.gov>.

EXHIBIT 4

Assumption Notice

Michael R. Johnson (7070)
Jeffrey W. Shields (2948)
David H. Leigh (9433)
Mel Jones-Cannon (19286)
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*Proposed Counsel to the Debtor and Debtor
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**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF UTAH CENTRAL DIVISION**

In re:

VOBEV, LLC, a Utah limited liability
company,

Debtor-in-Possession.

Bankruptcy Case No. 24-26346 (JTM)

Chapter 11

Honorable Joel T. Marker
[Filed Electronically]

**NOTICE OF POSSIBLE ASSUMPTION AND ASSIGNMENT WITH RESPECT
TO EXECUTORY CONTRACTS AND UNEXPIRED LEASES OF THE DEBTOR**

PLEASE TAKE NOTICE THAT:

The above-captioned debtor and debtor in possession (the “Debtor”) filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), on December 9, 2024, in the United States Bankruptcy Court for the District of Utah (the “Bankruptcy Court”). The Debtor is seeking to assume and assign certain of their executory contracts and unexpired leases in connection with the sale (the “Sale”) of all or substantially all of their assets (the “Assets”), free and clear of all Liens other than Assumed Liabilities (each as defined in the Stalking Horse Term Sheet, as defined below)¹ pursuant to the order, dated [●], 2025 [Docket No. [●]] (the “Bidding Procedures Order”) and certain “Bidding Procedures” that govern the sale of the Assets to the highest or otherwise best bidders. In connection with the Sale, the Debtor has entered into an asset purchase agreement dated as of [●], 2024 (the “Stalking Horse APA”) with [●], subject to the Debtor’s acceptance of higher or otherwise better offers in accordance with the Bidding Procedures.

You are receiving this notice because you or one of your affiliates may be a party to an unexpired lease or an executory contract that *may* be assumed and assigned (collectively, the “Purchased Contracts”) in connection with such Sale. A list of the Purchased Contracts is attached hereto as Exhibit A.

If there is no Auction, to the extent that a Counterparty to a Contract objects to adequate assurance of performance by the Stalking Horse Purchaser, the Counterparty must file and serve an objection (a “Sale Objection”). Any Sale Objection shall: (i) be in writing; (ii) comply with the Bankruptcy Rules and the Local Rules; (iii) be filed with the Clerk of the United States Bankruptcy Court for the District of Utah, Orrin G. Hatch Federal Courthouse, 351 South West Temple, Salt Lake City, Utah 84101 by January 21, 2025 at 4:00 p.m. (MT) (the “Sale Objection Deadline”), and proof of service of such Sale Objection upon the Objection Notice Parties shall be filed with the Court as and when required by the Local Rules; (iv) be served upon the Objection Notice Parties; and (v) state with specificity the grounds for such objection.

****Any objections to adequate assurance of future performance by a Successful Bidder following the Auction, if any, shall be filed not later than January 29, 2025, at 4:00 p.m. (MT).****

The “Objection Notice Parties” are as follows: (a) proposed co-counsel to the Debtor, Ropes & Gray LLP, 1211 Avenue of the Americas, New York, NY 10036 (Attn: Gregg M. Galardi and Eric P. Schriesheim, email: gregg.galardi@ropesgray.com and eric.schriesheim@ropesgray.com); and Ray Quinney & Nebeker P.C. 36 South State Street, Suite 1400, Salt Lake City, Utah 84111 (Attn: Michael R. Johnson and Jeffrey W. Shields, email mjohnson@rqn.com and jshields@rqn.com); (b) the United States Trustee for the District of Utah 405 South Main Street, Suite 300, Salt Lake City, Utah 84111 (Attn: David W. Newman email: david.w.newman@usdoj.gov); (c) counsel to the DIP Secured Parties, the Prepetition Secured Parties, and the Stalking Horse Purchaser, (i) Proskauer Rose LLP, Eleven Times Square,

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Bidding Procedures Order (as defined below).

New York, New York 10036 (Attn: Vincent Indelicato (vindelicato@proskauer.com) and Matthew R. Koch (mkoch@proskauer.com)), and One International Place Boston, Massachusetts 02110 (Attn: Charles A. Dale (cdale@proskauer.com) and (ii) Parr Brown Gee & Loveless, PC, 101 South 200 East, Suite 700, Salt Lake City, Utah 84111 (Attn: Joseph M.R. Covey (jcovey@parrbrown.com)); and (d) counsel for any statutory committee appointed in these chapter 11 cases.

If no timely objection is received as to adequate assurance of future performance with respect to a Contract, the non-Debtor party to such Contract shall be deemed to have consented to the Court determining that adequate assurance of future performance has been sufficiently demonstrated and shall be forever barred and estopped from asserting or claiming that the requirement of adequate assurance of future performance is not satisfied or demonstrated.

Subject to the terms of the Bidding Procedures Order, an auction (the “Auction”) for the Assets, including the Contracts, will be conducted on **January 27, 2025 at 10:00 a.m. (MT)**, at the offices of Ropes & Gray LLP, 1211 6th Avenue, New York, NY 10036, or virtually via telephone and/or video conference pursuant to information to be timely provided by the Debtor to the Auction Participants. After the Auction, the Debtor will file and serve a notice that identifies the Successful Bidder for the Assets, including any Contracts.

The Debtor will seek to assume and assign the Contracts that have been selected by the Successful Bidder (which, for the avoidance of doubt, may be the Stalking Horse Purchaser) (collectively, the “Selected Purchased Contracts”) at a hearing before the Honorable Joel T. Marker, Bankruptcy Court Judge, in the United States Bankruptcy Court for the District of Utah, by Zoom, www.utb.uscourts.gov/court-hearings-be-conducted-zoom, Meeting ID 161 5478 8875, Passcode 3834658 (telephone connection 669-254-5252, (a “Sale Hearing”) on February 5, 2025 at 2:00 p.m. (M.T.), subject to the Bankruptcy Court’s availability, or such other date as determined by the Debtor, in consultation with the Stalking Horse Purchaser or, in the event the Stalking Horse Purchaser is not the Successful Bidder, then in consultation with the Successful Bidder, in accordance with the terms of the Bidding Procedures Order.

Dated: January [●], 2025
Salt Lake City, Utah

RAY QUINNEY & NEBEKER, PC

/s/ Michael R. Johnson

Michael R. Johnson

Jeffrey W. Shields

E-mail: mjohnson@rqn.comjshields@rqn.com

-and-

ROPES & GRAY LLP

Gregg M. Galardi (admitted *pro hac vice*)

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-and-

ROPES & GRAY LLP

Eric P. Schriesheim (admitted *pro hac vice*)

E-mail: eric.schriesheim@ropesgray.com

*Proposed Counsel to the Debtor and Debtor in
Possession*

EXHIBIT A TO ASSUMPTION NOTICE