

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

|                                                         |   |                         |
|---------------------------------------------------------|---|-------------------------|
|                                                         | X |                         |
| In re:                                                  | : | Chapter 11              |
|                                                         | : |                         |
| FIRST MODE HOLDINGS, INC., <i>et al.</i> , <sup>1</sup> | : | Case No. 24-12794 (KBO) |
|                                                         | : |                         |
| Debtors.                                                | : | (Jointly Administered)  |
|                                                         | : |                         |
|                                                         | X | Ref. Docket No. 18      |

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

Upon the motion (the “**Motion**”)<sup>2</sup> of the above-captioned debtors and debtors in possession (the “**Debtors**”) for entry of an order (this “**Order**”) (i) authorizing and approving the Bid Procedures attached hereto as Exhibit 1 (the “**Bid Procedures**”) in connection with the sale (the “**Sale**”) of substantially all of the Debtors’ assets (the “**Assets**”); (ii) scheduling an auction (the “**Auction**”) and sale hearing (the “**Sale Hearing**”) with respect to the Sale of the Assets; (iii) the form and manner of notice of the Auction and the Sale Hearing (the “**Sale Notice**”), as attached hereto as Exhibit 2; (iv) authorizing the Debtors to enter into the Stalking Horse APA (as defined herein), pursuant to which the Stalking Horse Bidder agrees to purchase the Purchased Assets (as defined in the Stalking Horse APA) from the Debtors and certain of its non-Debtor affiliates on

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: First Mode Holdings, Inc. (7177), and Synchronous LLC (1829). The Debtors’ mailing address is 3417 1st Ave S, Seattle, WA, 98134.

<sup>2</sup> Capitalized terms used as defined terms herein but not otherwise defined shall have the meanings ascribed to them in the Motion or the Bid Procedures, as applicable.

the terms and conditions set forth therein; (v) approving the Bid Protections (as defined herein) granted to the Stalking Horse Bidder; (vi) approving procedures for the assumption and assignment of executory contracts and unexpired leases in connection with the Sale (collectively, the “**Assigned Contracts**”) and the notice thereof (the “**Assumption Notice**”), which is filed at Docket Number 97; and (vii) granting related relief; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the “**Hearing**”), the First Day Declaration and the Parr Declaration, and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and this Court having determined that there is good and sufficient cause for the relief granted in this Order, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

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

B. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012.

C. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). The Debtors have confirmed their consent, pursuant to Local Rule 9013-1(f), to the entry of a final order by this Court in connection with the Motion, to the extent it is later determined this Court, absent the consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

D. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

E. The bases for the relief requested in the Motion are Sections 105, 363, 365, 503, and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9007, and 9014, and Local Rules 2002-1, 6004-1, and 9013-1(m).

F. Notice of the Motion has been given to (i) the Office of the United States Trustee for the District of Delaware; (ii) the United States Attorney for the District of Delaware; (iii) the United States Department of Justice; (iv) the attorneys general for the states in which the Debtors conduct business; (v) the Internal Revenue Service; (vi) those creditors listed on the Debtors' consolidated list of thirty (30) creditors holding the largest unsecured claims; (vii) counsel to the DIP Lender, the Prepetition Facility Lender, and the Consenting Parent; (viii) the Stalking Horse Bidder; (ix) all entities reasonably known to have expressed an interest in a transaction with respect to any of the Assets during the past three (3) months; (x) all parties known by the Debtors to assert a lien on any of the Assets; and (xi) any party that has requested notice pursuant to Bankruptcy Rule 2002-1.

G. Notice of the Motion, including the relief sought therein, and the Hearing was good and sufficient under the circumstances, and such notice complied with all applicable requirements under the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and no other or further notice need be provided. A reasonable opportunity to object or be heard regarding the relief provided in this Order has been afforded to all parties in interest.

H. The Debtors have articulated good and sufficient reasons for this Court to grant the relief requested in the Motion, including (i) approving the Bid Procedures; (ii) scheduling the Auction and the Sale Hearing; (iii) approving the Sale Notice; (iv) authorizing the Debtors to enter into the Stalking Horse APA and approving the related Bid Protections, in the exercise of the Debtors' reasonable business judgment; and (v) approving procedures for the assumption and assignment of the Assigned Contracts, including the Assumption Notice. The entry of this Order is in the best interests of the Debtors, their estates, creditors, and other parties in interest.

I. The Bid Procedures attached hereto as Exhibit 1 are reasonable, appropriate and represent the best method for maximizing value for the benefit of the Debtors, their estates, and their creditors. The Bid Procedures were negotiated at arm's length, in good faith, and without collusion. The Bid Procedures are reasonably designed to attract value-maximizing proposals beneficial to the Debtors, their estates, their creditors, and other parties in interest. The Bid Procedures comply with the requirements of Local Rule 6004-1(c).

J. The Debtors have demonstrated compelling and sound business justifications for approval of, and authorization to perform under, that certain Asset Purchase Agreement, a copy of which is attached as Exhibit A to the Motion (the "**Stalking Horse APA**") by and among the Debtors and the Stalking Horse Bidder. The Stalking Horse APA, including the Break-up Fee and Expense Reimbursement (the "**Bid Protections**"), represents the highest or otherwise best offer

the Debtors have received to date as a result of their efforts to market the Purchased Assets for sale. The approval of the relief requested is a necessary constructive step toward completion of the sale process. The Stalking Horse APA and the Bid Protections allow the Debtors to solicit the highest or otherwise best bid for their assets through the Bid Procedures.

K. The Stalking Horse Bidder is not an “insider” or “affiliate” of any of the Debtors, as those terms are defined in section 101 of the Bankruptcy Code, and no common identity of incorporators, directors, or controlling stockholders exists between the Stalking Horse Bidder and the Debtors. 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 Stalking Horse APA, subject to (i) compliance with the Bid Procedures and (ii) entry of the Sale Order.

L. The Bid Protections, as set forth in the Stalking Horse APA, are: (i) an actual and necessary cost of preserving the Debtors’ estates within the meaning of sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code; (ii) fair, reasonable and appropriate and designed to maximize the value for the benefit of the Debtors’ estate; (iii) commensurate to the real and substantial benefits conferred upon the Debtors’ estates by the Stalking Horse Bidder; (iv) reasonable and appropriate in light of the size and nature of the proposed sale contemplated by the Stalking Horse APA, the commitments that have been made by the Stalking Horse Bidder, and the efforts that have been and will be expended by the Stalking Horse Bidder; and (v) necessary to induce the Stalking Horse Bidder to continue to pursue such sale and continue to be bound by the Stalking Horse APA and a condition of the Stalking Horse Bidder’s execution of the Stalking Horse APA.

M. The Bid Protections, to the extent payable under the Stalking Horse APA (as amended as set forth at Docket No. 163), pursuant to sections 105(a), 365(c)(1), 503(b), and

507(a)(2) of the Bankruptcy Code, are an administrative expense claim in each of the Debtors' estates.

N. The Sale Notice, substantially in the form attached hereto as Exhibit 2, regarding the Sale of the Assets by Auction and Sale Hearing, is reasonably calculated to provide interested parties with timely and proper notice of the proposed Sale, including, without limitation: (i) the date, time, and place of the Auction (if one is held); (ii) the Bid Procedures and certain dates and deadlines related thereto; (iii) the deadline for filing objections to the Sale of the Assets to the Stalking Horse Bidder and entry of the Sale Order, and the date, time, and place of the Sale Hearing; and (iv) instructions for promptly obtaining a copy of the Stalking Horse APA. No other or further notice of the Sale shall be required.

O. The Assumption Notice, which is filed at Docket Number 97, regarding the assumption and assignment of Assigned Contracts was reasonably calculated and provided each Assumed Contract Counterparty with proper notice of the potential assumption and assignment of such contracts and leases by the Successful Bidder or Back-Up Bidder or any of their known proposed assignees (if different from the Successful Bidder or Back-Up Bidder, respectively), the proposed Cure Amounts for such contract, and the requirement that each such Assumed Contract Counterparty assert any objection to the proposed Cure Amount or otherwise be barred from asserting claims arising out of or related to the contract or lease following the assumption and assignment thereof.

P. Neither the filing of the Motion, entry of this Order, the solicitation of bids or the conducting of the Auction in accordance with the Bid Procedures nor any other actions taken by the Debtors in accordance therewith shall constitute a Sale of the Assets, which Sale will only take place, if at all, following the Sale Hearing.

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is GRANTED as set forth herein.

2. All objections, statements, and reservations of rights with respect to the relief requested in the Motion with respect to the Bid Procedures that have not been withdrawn, waived, or settled, as announced to the Court at the Hearing on the Motion or by stipulation filed with the Court, are overruled and denied on the merits with prejudice.

**A. The Bid Procedures**

3. The Bid Procedures, attached hereto as Exhibit 1, are hereby approved in their entirety and fully incorporated into this Order. The Bid Procedures shall govern the submission, receipt, and analysis of all bids relating to the proposed Sale and any party desiring to submit a higher or better offer for the Assets must comply with the terms of the Bid Procedures and this Order. The Bid Procedures shall also govern the terms on which the Debtors will proceed with the Auction and/or Sale pursuant to the Stalking Horse APA. The DIP Lender, Prepetition Facility Lender, and the Consenting Parent shall be Consultation Parties (as defined in the Bid Procedures) and shall not become a Potential Bidder unless and until the Stalking Horse APA is terminated in accordance with its terms or the Stalking Horse Bidder irrevocably withdraws its Bid. The failure to specifically include a reference to any particular provision of the Bidding Procedures in this Order shall not diminish or impair the effectiveness of such provision.

4. The Stalking Horse Bidder shall be deemed a Qualified Bidder and the Stalking Horse APA shall be deemed a Qualified Bid pursuant to the Bid Procedures for all purposes. The Stalking Horse Bidder's status as a Qualified Bidder cannot be abrogated by subsequent amendment or modification of the Bid Procedures.

5. Solely in accordance with the Stalking Horse APA, the Break-Up Fee shall be set at three (3) percent of the Purchase Price (as defined in the Stalking Horse APA). The Stalking

Horse Bidder shall also be entitled to reimbursement of the reasonable and documented out-of-pocket costs and expenses of the Stalking Horse Bidder incurred, up to an amount equal to \$550,000, solely in accordance with the Stalking Horse APA.

6. Subject to paragraph 5, the proposed Bid Protections are hereby approved in their entirety and shall be payable by the Debtors in accordance with, and subject to, the terms of the Stalking Horse APA. The Debtors are authorized to pay the Bid Protections in accordance with, and subject to the terms of, the Stalking Horse APA and this Order without further order of the Court.

7. The Bid Protections, to the extent payable under the Stalking Horse APA (as amended as set forth at Docket No. 163), pursuant to sections 105(a), 365(c)(1), 503(b), and 507(a)(2) of the Bankruptcy Code, shall constitute a administrative expense claim in each of the Debtors' estates. Any overbid alternative transaction (including, for the avoidance of doubt, any credit-bid transaction) shall be required to include a cash component satisfactory to pay the Bid Protections in full.

8. Bid Deadline. The deadline to submit a bid to the Debtors, in writing (email being sufficient) and in accordance with the Bid Procedures, is **January 27, 2025 at 4:00 p.m. (prevailing Eastern Time)** (as may be amended by the Debtors in consultation with the Consultation Parties, the "**Bid Deadline**").

9. Bid Designations. The Debtors will notify each Bidder whether such party is a Qualified Bidder on **January 29, 2025** and shall provide each Qualified Bidder, including the Stalking Horse Bidder, with a copy of the Baseline Bid no later than 4:00 p.m. (prevailing Eastern Time) on the day before the Auction commences.

10. Auction. As further described in the Bid Procedures, if a Qualified Bid, other than the Stalking Horse APA, is received by the Bid Deadline, the Debtors will conduct the Auction at **10:00 a.m. (prevailing Eastern Time) on January 30, 2025** at the offices of Latham & Watkins LLP, 1271 Avenue of the Americas, New York, New York 10020, telephonically, or by video via Zoom, or such later time on such day or other place as the Debtors shall notify all Qualified Bidders who have submitted Qualified Bids, if a Qualified Bid is timely received. The Debtors are authorized, subject to the terms of this Order and the Bid Procedures, to take actions reasonably necessary to conduct and implement the Auction.

11. Post-Auction Notice Deadline. As soon as reasonably practicable after closing the Auction, if any, and in any event not more than twenty-four (24) hours after closing the Auction, the Debtors shall file and serve a notice identifying the Successful Bidder and Back-Up Bidder (the “**Post-Auction Notice**”).

12. Sale Hearing. The Sale Hearing shall be conducted on **February 6, 2025 at 9:30 a.m. (prevailing Eastern Time)**. The Debtors will seek entry of an order of the Court at the Sale Hearing approving and authorizing the Sale of the Assets to the Successful Bidder. Upon entry of this Order, the Debtors are authorized to perform any obligation intended to be performed prior to the Sale Hearing or entry of the Sale Order with respect thereto. In accordance with the Bid Procedures, the Sale Hearing may be adjourned from time to time without further notice other than such announcement being made in open court or a notice of adjournment filed on the Court’s docket.

**B. Entry into Stalking Horse APA and Approval of Bid Protections**

13. Subject to final approval at the Sale Hearing, the Debtors are authorized, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, to enter into and perform the Stalking Horse APA, subject to the solicitation of higher or otherwise better bids at the Auction.

14. The Stalking Horse APA shall be binding and enforceable on the parties thereto in accordance with its terms. The failure to describe specifically or include any provision of the Stalking Horse APA or related documents in the Motion or herein shall not diminish or impair the effectiveness of such provision. The Stalking Horse APA and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, solely in accordance with the terms thereof, without further order of the Court; *provided, however*, the parties may not amend the Purchase Price, Bid Protections, or make any other changes to the Stalking Horse APA which are materially adverse to the Debtors without further order of this Court; and *provided further* that the Debtors shall consult with the Consultation Parties prior to any amendment or change to the Stalking Horse APA.

15. The Bid Protections, as set forth in the Stalking Horse APA (as amended as set forth at Docket No. 163), are approved in their entirety. The obligation of the Debtors to pay the Bid Protections shall be payable only pursuant to the terms set forth in the Stalking Horse APA.

16. Any request to the Debtors for Expense Reimbursement shall be provided to the United States Trustee, the Committee, and to the Debtors and shall be accompanied by invoices (which may be in summary form but shall include a general description of the nature of the matters worked on, a list of professionals who worked on the matter, their hourly rate (if such professionals bill at an hourly rate), the number of hours each professional billed and, with respect to the invoices of law firms, the year of law school graduation for each attorney and shall be subject to a review period by the United States Trustee and the Creditors' Committee of five (5) Business Days after delivery of such invoices (the "**Fee Review Period**"); *provided* that under no circumstances shall the Stalking Horse Bidder or any of its advisors be required to include in such invoices information that is protected by attorney-client privilege. If no formal objection to the Expense Reimbursement

from the United States Trustee, Committee, or Debtors is received prior to the end of the Fee Review Period, then, upon the expiration of the Fee Review Period, without further order of, or application to, the Court or notice to any other party, such fees and expenses shall be promptly paid by the Debtors in accordance with this Order and the Stalking Horse APA. If a formal written objection is received, such portion of the Expense Reimbursement that has been objected to may not be paid without further order of the Court, unless consensually resolved.

17. For the avoidance of doubt and notwithstanding anything to the contrary contained in this Order, this Order does not approve the Sale of the Purchased Assets under the Stalking Horse APA or authorize the consummation of the Sale, such approval and authorization (if any) to be considered only at the Sale Hearing and all rights of all parties in interest to object to such approval and authorization are reserved.

18. No person or entity, other than the Stalking Horse Bidder, shall be entitled to any expense reimbursement, break-up fee, topping or termination fee, or other similar fee or payment, and, by submitting a Bid, such person or entity is deemed to have waived its right to request or file with this Court any request for expense reimbursement or any other fee of any nature in connection with the Auction and the Sale, whether by virtue of Bankruptcy Code § 503(b) or otherwise.

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

19. The procedures set forth below regarding the assumption and assignment of the executory contracts and unexpired leases proposed to be assumed by the Debtors pursuant to Section 365(b) of the Bankruptcy Code and assigned to the Stalking Horse Bidder (or other Successful Bidder, if any) pursuant to Section 365(f) of the Bankruptcy Code in connection with the Sale (the “**Assumption Procedures**”) are hereby approved to the extent set forth herein. These Assumption Procedures shall govern the assumption and assignment of all of the Assigned

Contracts to be assumed and assigned in connection with the Sale, subject to the payments necessary to cure any defaults arising under any such Assigned Contracts.

20. As of **January 6, 2025** (the “**Assumption Notice Deadline**”), the Debtors have filed with the Court, posted on the website maintained by the Debtors’ proposed Claims and Noticing Agent, Omni Agent Solutions, Inc., at <https://omniagentsolutions.com/FirstMode>, and served on the counterparties to the Assigned Contracts (each, an “**Assumed Contract Counterparty**”) that may be assumed by the Debtors and assigned to the Stalking Horse Bidder or other Successful Bidder after the results of the Auction, with the notice filed at Docket Number 97 (an “**Assumption Notice**”). The Assumption Notice informed each recipient of the timing and procedures relating to such assumption and assignment, and, to the extent applicable, (i) the title of the executory contract or unexpired lease, as applicable, (ii) the name of the counterparty to the executory contract or unexpired lease, as applicable, (iii) the Debtors’ good faith estimate of the cure amount (if any) required in connection with the executory contract or unexpired lease, as applicable, (iv) the identity of the Stalking Horse Bidder (as assignee, if applicable), and (v) the Assumed Contract Objection Deadline and Post-Auction Objection Deadline. The presence of an Assigned Contract on the Assumption Notice does not constitute an admission that such Assigned Contract is an executory contract or unexpired lease, and the presence of an Assigned Contract on any notice shall not prevent the Debtors from subsequently withdrawing such request for assumption or rejecting such Assigned Contract any time before such Assigned Contract is actually assumed and assigned pursuant to the Sale Order.

21. At any time after service of the Assumption Notice and before the closing of a Sale, the Debtors may (i) supplement the list of Assigned Contracts with previously omitted executory contracts or unexpired leases, (ii) remove Assigned Contracts from the list of executory contracts

and unexpired leases ultimately selected as Assigned Contracts that a Successful Bidder proposes to be assumed and assigned to it in connection with a Sale, and/or (iii) modify the previously stated cure amount associated with any Assigned Contract. In the event the Debtors exercise any of these reserved rights, the Debtors will promptly serve a supplemental notice of contract assumption (a “**Supplemental Assumption Notice**”) on each of the Assumed Contract Counterparties to such Assigned Contracts and their counsel of record, if any; *provided, however*, the Debtors may not add an executory contract to the list of Assigned Contracts that has been previously rejected by the Debtors by order of the Court. Each Supplemental Assumption Notice will include the same information with respect to listed Assigned Contracts as was included in the Assumption Notice.

22. To the extent any Assumed Contract Counterparty is added to the Assumption Notice after the initial Assumption Notice is served, or the cure amount for any contract on a prior Assumption Notice is modified, such new Assumed Contract Counterparty shall receive notice of the addition and/or the Debtors’ proposed cure amount through service of a Supplemental Assumption Notice, and that party shall have fourteen (14) days from the date of such notice to object to the proposed cure amount and assignment to the Successful Bidder (except as provided in this Order with respect to objections based on the ability of a Successful Bidder other than the Stalking Horse Bidder to provide adequate assurance of future performance).

23. Objections, if any, to (i) the potential assumption and assignment of any Assigned Contract to the Stalking Horse Bidder including the ability of the Stalking Horse Bidder to provide adequate assurance of future performance and (ii) the proposed cure amount to be paid in connection with the assumption and assignment of any Assigned Contract (each, an “**Assumed Contract Objection**”) **must** (i) be in writing, (ii) comply with the applicable provisions of the Bankruptcy Rules and the Local Rules, and (iii) state with specificity the nature of the objection

and, if the objection pertains to the proposed cure amount, the correct cure amount alleged by the objecting counterparty, together with any applicable and appropriate documentation in support thereof, and (iv) be filed with the Bankruptcy Court and served on the following parties:

(i) proposed counsel to the Debtors: (a) Latham & Watkins LLP (x) 330 North Wabash Avenue, Suite 2800, Chicago, IL 60611, Attn: Caroline Reckler, Esq. (email: caroline.reckler@lw.com); (y) 1271 Avenue of the Americas, New York, NY 10020, Attn: Annemarie V. Reilly, Esq. and Brian S. Rosen, Esq. (emails: annemarie.reilly@lw.com and brian.rosen@lw.com); and (z) 355 South Grand Avenue, Suite 100, Los Angeles, CA 90071, Attn: Jeffrey T. Mispagel, Esq. (email: jeffrey.mispagel@lw.com) and (b) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Michael R. Nestor, Esq., Kara Hammond Coyle, Esq., and Joseph M. Mulvihill, Esq. (emails: MNestor@ycst.com, KCoyle@ycst.com, and JMulvihill@ycst.com); (ii) counsel for the DIP Lender, the Prepetition Facility Lender, and the Consenting Parent: (a) Davis Polk & Wardwell LLP, 450 Lexington Ave, New York, NY 10017, Attn: Darren S. Klein, Esq. and Aryeh Ethan Falk, Esq. (emails: darren.klein@davispolk.com and aryeh.falk@davispolk.com) and (b) Morris, Nichols, Arsht & Tunnell LLP, 1201 N Market St # 1600, Wilmington, DE 19801, Attn: Robert J. Dehney, Sr., Esq. (email: rdehney@morrisnichols.com); (iii) counsel to Official Committee of Unsecured Creditors (the “**Committee**”), McDermott Will & Emery LLP, One Vanderbilt Avenue, New York, NY 10017, Attn: Kristin Going (kgoing@mwe.com), Darren Azman (dazman@mwe.com), David R. Hurst (dhurst@mwe.com), and Andrew A. Mark (amark@mwe.com); and (iv) the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801, Attn: Jane Leamy (email: Jane.M.Leamy@usdoj.gov) (the “**Objection Notice Parties**”) and counsel to the Stalking Horse Bidder, (i) Sidley Austin LLP, (a) 1 S. Dearborn St, Chicago, IL 60603, Attn:

Dennis M. Twomey, Esq. (email: dtwomey@sidley.com) and (b) 787 7<sup>th</sup> Ave, New York, NY 10019; Attn: Margaret R. Alden, Esq. (email: malden@sidley.com) and (ii) Barnes & Thornburg LLP, 222 Delaware Ave, Suite 1200, Wilmington, DE 19801, Attn: Kevin G. Collins, Esq. (email: kevin.collins@btlaw.com) (the “**Stalking Horse Notice Parties**”) so as to be actually received no later than **January 27, 2025 at 4:00 p.m. (prevailing Eastern Time)** (collectively, the “**Assumed Contract Objection Deadline**”).

24. If the Successful Bidder or Back-Up Bidder that prevails at the Auction is not the Stalking Horse Bidder, the deadline to object (a “**Post-Auction Objection**”) solely to (i) the identity of a Successful Bidder or Backup Bidder, (ii) the ability of the Successful Bidder or Back-Up Bidder to provide adequate assurance of future performance under any Assigned Contract, or (iii) the conduct of the Auction shall be **February 3, 2025 at 4:00 p.m. (prevailing Eastern Time)** (the “**Post-Auction Objection Deadline**”). Any Post-Auction Objection **must** (i) be in writing, (ii) comply with the applicable provisions of the Bankruptcy Rules and the Local Rules, and (iii) state with specificity the nature of the objection, and (iv) be filed with the Bankruptcy Court and served on the Objection Notice Parties before the Post-Auction Objection Deadline.

25. If an Assumed Contract Counterparty does not timely file and serve an Assumed Contract Objection by the applicable Assumed Contract Objection Deadline or a Post-Auction Objection by the Post-Auction Objection Deadline, then that party shall be forever barred from objecting to (i) the Debtors’ proposed cure amount and (ii) the assumption and assignment of that party’s executory contract or unexpired lease (including the adequate assurance of future performance), and (iii) the related relief requested in the Motion. Such party shall be forever barred and estopped from objecting to the cure amount, the assumption and assignment of that party’s executory contract or unexpired lease (including the adequate assurance of future

performance), the relief requested in the Motion, whether applicable law excuses such counterparty from accepting performance by, or rendering performance to, the Stalking Horse Bidder or the Successful Bidder, as applicable, for purposes of Section 365(c)(1) of the Bankruptcy Code and from asserting any additional cure or other amounts against the Debtors and the Stalking Horse Bidder or Successful Bidder, as applicable, with respect to such party's executory contract or unexpired lease.

26. If an Assumed Contract Counterparty timely files and serves an Assumed Contract Objection by the applicable Assumed Contract Objection Deadline or a Post-Auction Objection by the Post-Auction Objection Deadline, the Court will hear and determine such objection at the Sale Hearing or such other date that the Debtors, in consultation with the Successful Bidder and the Consultation Parties, shall determine in their discretion (subject to the Court's calendar).

27. The payment of the applicable cure amount by the Debtors or Stalking Horse Bidder (or other Successful Bidder), as applicable, shall (i) effect a cure of all defaults existing thereunder and (ii) compensate for any actual pecuniary loss to such counterparty resulting from such default, and such counterparty shall be forever barred from asserting any other claims related to such Assigned Contract against the Debtors and their estates or the Stalking Horse Bidder (or other Successful Bidder), or the property of any of the foregoing, that existed prior to the entry of any order resolving the applicable cure amount and the Sale Order.

**D. Notice of the Sale Process**

28. The Sale Notice, in substantially the form as annexed to this Order as Exhibit 2, the Assumption Notice, which is filed at Docket Number 97, and the Publication Notice, in substantially the forms as annexed to the Motion as Exhibit D, respectively, are hereby approved.

29. Within two (2) business days after the entry of this Order, the Debtors (or their agent) shall serve the Sale Notice by first-class mail upon: (i) the Office of the United States

Trustee for the District of Delaware (the “**U.S. Trustee**”), 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Jane Leamy (Jane.M.Leamy@usdoj.gov); (ii) counsel to the Committee, McDermott Will & Emery LLP, One Vanderbilt Avenue, New York, NY 10017, Attn: Kristin Going (kgoing@mwe.com), Darren Azman (dazman@mwe.com), David R. Hurst (dhurst@mwe.com), and Andrew A. Mark (amark@mwe.com); (iii) counsel to the Stalking Horse Bidder; (iv) counsel to DIP Lender, the Prepetition Facility Lender, and the Consenting Parent; (v) all parties known by the Debtors to assert a lien on any of the Assets; (vi) all entities reasonably known to have expressed an interest in a transaction with respect to any of the Assets during the past three (3) months; (vii) the United States Attorney’s Office for the District of Delaware; (viii) the Internal Revenue Service; (ix) all state and local taxing authorities with an interest in the Assets; (x) the offices of the attorneys general for the states in which the Debtors operate; (xi) all other governmental agencies with an interest in the Sale and transactions proposed thereunder; (xii) the office of the secretary of state in each state in which the Debtors operate or are organized; (xiii) all environmental authorities having jurisdiction over any of the Assets; (xiv) all other parties known or reasonably believed to have asserted an interest in the Assets; (xv) the Assumed Contract Counterparties; (xvi) the Debtors’ insurance carriers; (xvii) all known creditors of the Debtors; (xviii) all known holders of equity interests in the Debtors; (xix) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (xx) to the extent not included above, all parties in interest listed on Debtors’ creditor matrix

30. As soon as practicable after the entry of this Order, the Debtors shall publish the Publication Notice once in each of the *USA Today* or similar nationally circulated news publication and the *Financial Times* or similar publication circulated in the United Kingdom. In addition, as soon as reasonably practicable, as soon as practicable after entry of the Order, the Debtors will

also post the Sale Notice and this Order on the website maintained by the Debtors' proposed Claims and Noticing Agent, Omni Agent Solutions, Inc., at <https://omniagentsolutions.com/FirstMode>. Such publication notice as set forth in the preceding two sentences shall be deemed sufficient and proper notice of the Sale to any other interested parties whose identifies are unknown to the Debtors.

31. Objections to the Sale or the Sale Order shall be filed and served on the Objection Notice Parties and the Stalking Horse Notice Parties no later than **January 23, 2025 at 4:00 p.m. (prevailing Eastern Time)** (the "**Sale Objection Deadline**").

#### **E. Other Relief Granted**

32. Nothing in this Order, the Stalking Horse APA, or the Motion shall be deemed to or constitute the assumption or assignment of an executory contract or unexpired lease.

33. All rights of the Debtors, as they may reasonably determine to be in the best interest of their estates, in consultation with the Consultation Parties, to modify, subject to the terms of the Restructuring Support Agreement, the Bid Procedures in good faith, to further the goal of attaining the highest or otherwise best offer for the Assets, or impose, at or prior to selection of the Successful Bidder(s), additional customary terms and conditions on the Sale of the Assets, are reserved to the extent set forth in the Bid Procedures; *provided*, that any changes to the dates and deadlines set forth herein shall comply with the Milestones. The Debtors shall provide reasonable notice of any such modification to any Qualified Bidder, including the Stalking Horse Bidder.

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

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

36. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

37. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry, notwithstanding any provision in the Bankruptcy Rules or the Local Rules to the contrary, and the Debtors may, in their discretion and without further delay, take any action and perform any act authorized under this Order.

38. In the event of any inconsistencies between the Bid Procedures Order and the Bid Procedures, the Bid Procedures shall govern in all respects.

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

Dated: January 17th, 2025  
Wilmington, Delaware

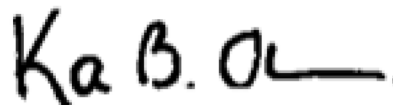
  
KAREN B. OWENS  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1**

**Bid Procedures**

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

|                                                         |   |                         |
|---------------------------------------------------------|---|-------------------------|
|                                                         | X |                         |
| In re:                                                  | : | Chapter 11              |
|                                                         | : |                         |
| FIRST MODE HOLDINGS, INC., <i>et al.</i> , <sup>1</sup> | : | Case No. 24-12794 (KBO) |
|                                                         | : |                         |
| Debtors.                                                | : | (Jointly Administered)  |
|                                                         | : |                         |

**BID PROCEDURES**

In the exercise of their good faith reasonable business judgment, the above-captioned debtors and debtors in possession (the “**Debtors**”) and certain of their non-Debtor affiliates (together with the Debtors, the “**Company**”) have executed an Asset Purchase Agreement (including all exhibits, schedules, and addenda thereto, the “**Stalking Horse APA**”) with Cummins Inc. (the “**Stalking Horse Bidder**”), pursuant to which the Stalking Horse Bidder proposes to (i) purchase, acquire, and take assignment and delivery of the Purchased Assets (as defined in the Stalking Horse APA) and (ii) assume certain Assumed Liabilities (as defined in the Stalking Horse APA), each as specifically enumerated in the Stalking Horse APA and subject to the terms and conditions set forth therein.

On [ ● ], 2025, the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) entered an order [Docket No. [ ● ]] (the “**Bid Procedures Order**”) approving, among other things, these bid procedures (the “**Bid Procedures**”).

These Bid Procedures set forth the process by which the Debtors are authorized to conduct the auction (the “**Auction**”) for the sale (the “**Sale**”) of the Purchased Assets. Subject to the entry of the Sale Order, the Sale may be implemented pursuant to the terms and conditions of the Stalking Horse APA, as the same may be amended pursuant to the terms thereof, subject to the receipt of higher or otherwise better Bids (as defined below) in accordance with these Bid Procedures. Pursuant to the Bid Procedures, the Debtors, in consultation with the Consultation Parties, will determine the highest or otherwise best offer for the sale of the Purchased Assets and, if applicable, other of the Debtors’ assets.

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: First Mode Holdings, Inc. (7177), and Synchronous LLC (1829). The Debtors’ mailing address is 3417 1st Ave S, Seattle, WA, 98134.

**A. Important Dates<sup>2</sup>**

| <b>Event</b>                                         | <b>Date</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Sale Objection Deadline                              | Objections to the Sale or Sale Order shall be filed and served no later than <b>January 23, 2025 at 4:00 p.m. (prevailing Eastern Time)</b> (collectively, the “ <b><u>Sale Objection Deadline</u></b> ”).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Bid Deadline                                         | <b>January 27, 2025 at 4:00 p.m. (prevailing Eastern Time).</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Assumed Contract Objection Deadline                  | Objections to (i) the potential assumption and assignment of any Assigned Contract to the Stalking Horse Bidder including the ability of the Stalking Horse Bidder to provide adequate assurance of future performance and (ii) the proposed cure amount to be paid in connection with the assumption and assignment of any Assigned Contract shall be filed and served no later than <b>January 27, 2025 at 4:00 p.m. (prevailing Eastern Time)</b> (collectively, the “ <b><u>Assumed Contract Objection Deadline</u></b> ”); <i>provided</i> that, to the extent any Assumed Contract Counterparty is added to the Assumption Notice after the initial notice is served, such new Assumed Contract Counterparty shall have fourteen (14) days from the date of service of the Supplemental Contract Notice to object to the proposed cure amount and assignment to the Successful Bidder. |
| Deadline for Debtors to designate Qualified Bids     | <b>January 29, 2025 at 4:00 p.m. (prevailing Eastern Time).</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Deadline to identify the Baseline Bid (if necessary) | Prior to 4:00 p.m. (prevailing Eastern Time) on the day before the Auction, the Debtors will provide copies of the Baseline Bid (as defined herein) to the Stalking Horse Bidder and all other Qualified Bidders.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Auction (if necessary)                               | <b>January 30, 2025 at 10:00 a.m. (prevailing Eastern Time).</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Post-Auction Notice Deadline                         | As soon as reasonably practicable after closing the Auction, if any, and in any event not more than twenty-four (24) hours after closing the Auction, the Debtors shall file and serve a notice identifying the Successful Bidder and Back-Up Bidder, if any.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Post-Auction Objection Deadline                      | If the Successful Bidder or Backup Bidder that prevails at the Auction is not the Stalking Horse Bidder, the deadline to object solely to (i) the identity of a Successful Bidder or Backup Bidder, (ii) the ability of the Successful Bidder or Backup Bidder to provide adequate assurance of future performance under any Assigned                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings given to them in the Motion or the Stalking Horse APA, as applicable.

|              |                                                                                                                       |
|--------------|-----------------------------------------------------------------------------------------------------------------------|
|              | Contract or (iii) the conduct of the Auction shall be <b>February 3, 2025 at 4:00 p.m. (prevailing Eastern Time).</b> |
| Sale Hearing | The Sale Hearing shall be on <b>February 6, 2025 at 9:30 a.m.</b>                                                     |

## B. Marketing Process

### 1. Contact Parties

The Debtors and their advisors have conducted and will continue to conduct an extensive marketing process. Through the marketing process, the Debtors' proposed investment banker, PJT Partners LP ("**PJT**"), has developed a list of "Contact Parties" who will receive a copy of an "**Information Package**," which is comprised of: (i) marketing materials; (ii) a copy of these proposed Bid Procedures (and once entered by the Court, the Bid Procedures Order); and (iii) a copy of the Stalking Horse APA. The list of Contact Parties encompasses parties whom the Debtors believe may be interested in pursuing a Sale and whom the Debtors reasonably believe may have the financial resources to consummate such a transaction.

### 2. Access to Diligence Materials

To receive due diligence information, including full access to the Debtors' electronic data room (the "**Data Room**") and additional non-public information regarding the Company (collectively, the "**Diligence Materials**"), any party interested in submitting a bid, other than the Stalking Horse Bidder (each a "**Potential Bidder**"), must deliver the following documents (collectively, the "**Preliminary Bid Documents**") by email to (i) proposed counsel to the Debtors: (a) Latham & Watkins LLP (x) 330 North Wabash Avenue, Suite 2800, Chicago, IL 60611, Attn: Caroline Reckler, Esq. (email: caroline.reckler@lw.com); (y) 1271 Avenue of the Americas, New York, NY 10020, Attn: Annemarie V. Reilly, Esq. and Brian S. Rosen, Esq. (emails: annemarie.reilly@lw.com and brian.rosen@lw.com); and (z) 355 South Grand Avenue, Suite 100, Los Angeles, CA 90071, Attn: Jeffrey T. Mispagel, Esq. (email: jeffrey.mispagel@lw.com) and (b) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Michael R. Nestor, Esq., Kara Hammond Coyle, Esq., and Joseph M. Mulvihill, Esq. (emails: MNestor@ycst.com, KCoyle@ycst.com, and JMulvihill@ycst.com); (ii) PJT Partners LP, Attn: Matt Parr, William Evarts, and Brandon Pinn (emails: parr@pjtpartners.com, evarts@pjtpartners.com, and pinn@pjtpartners.com); and (iii) counsel for Anglo American International Holdings Limited (the "**DIP Lender**" or the "**Prepetition Facility Lender**") and Anglo American Technical & Sustainability Limited (the "**Consenting Parent**"): (a) Davis Polk & Wardwell LLP, 450 Lexington Ave, New York, NY 10017, Attn: Darren S. Klein, Esq. and Aryeh Ethan Falk, Esq. (emails: darren.klein@davispolk.com and aryeh.falk@davispolk.com) and (b) Morris, Nichols, Arsht & Tunnell LLP, 1201 N Market St #1600, Wilmington, DE 19801, Attn: Robert J. Dehney, Sr., Esq. (email: rdehney@morrisnichols.com); and (iv) counsel to any official committee of unsecured creditors, if any (the "**Committee**," and together with the DIP Lender, the Prepetition Facility Lender, and the Consenting Parent, the "**Consultation Parties**") (collectively, the "**Bid Recipients**");

- (i) to the extent not already executed, an executed and signed confidentiality agreement on customary terms that are reasonably acceptable to the Debtors (an **“Acceptable Confidentiality Agreement”**); and
- (ii) evidence by the Potential Bidder of its financial capacity to close a proposed transaction for the Purchased Assets or other of the Debtors’ assets (a **“Transaction”**), the adequacy of which will be determined by the Debtors (with the assistance of their advisors) in consultation with the Consultation Parties.

The Debtors may decline to provide any Diligence Materials to Potential Bidders who, in the Debtors’ business judgment, have not established, or who have raised doubt, that such Potential Bidder intends in good faith or has the capacity to consummate a sale transaction for the Purchased Assets or any of the Debtors’ assets.

For any Potential Bidder who is a competitor of the Debtors or is affiliated with any competitor of the Debtors, the Debtors reserve the right to withhold any Diligence Materials that the Debtors determine are business-sensitive or otherwise not appropriate for disclosure to such Potential Bidder at such time.

For the avoidance of doubt, the Prepetition Facility Lender and the DIP Lender (as such terms are defined in the *Final Order (I) Authorizing Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (III) Granting Adequate Protection to the Prepetition Facility Lender, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing and (VI) Granting Related Relief* [Docket No. [ ● ]] (the **“Final DIP Order”**) are hereby deemed Potential Bidders, with no further action necessary on their part.

No due diligence will continue after the Bid Deadline (defined below). The Debtors shall provide the Stalking Horse Bidder with access to all material due diligence materials, management presentations, on-site inspections, and other information provided to any Potential Bidder or Qualified Bidder that were not previously made available to the Stalking Horse Bidder concurrently with the provision of such information or materials to such Potential Bidder or Qualified Bidder, as applicable.

Each Potential Bidder shall comply with all reasonable requests for additional information and due diligence access by the Debtors or their advisors regarding such Potential Bidder and its contemplated Transaction.

### 3. Auction Qualification Process

To be eligible to participate in the Auction, each offer, solicitation, or proposal (each, a **“Bid”**), and each party submitting such a Bid (each, a **“Bidder”**), must be determined by the Debtors, in consultation with the Consultation Parties, to satisfy each of the following conditions:

- (i) **Stalking Horse Bidder**. The Stalking Horse Bidder shall be deemed to be a Qualified Bidder and the Stalking Horse APA shall be deemed to be a Qualified Bid (the **“Stalking Horse Bid”**).

- (ii) Bid Deadline. Except as set forth herein, the Debtors must receive a Bid in writing (email being sufficient), on or before **January 27, 2025 at 4:00 p.m. (prevailing Eastern Time)** (as may be amended in consultation with the Consultation Parties, the “**Bid Deadline**”). Bids must be sent to the Bid Recipients by the Bid Deadline to be considered.
- (iii) Consultation Parties. For the avoidance of doubt, if a Consultation Party (or its affiliates, as applicable) is a Potential Bidder, then such party shall no longer be a Consultation Party unless and until the earlier of such Consultation Party’s (i) representation in writing to the Debtors that it is no longer a Potential Bidder and does not intend to pursue a Bid in the future and (ii) failure to be designated as the Successful or Back-Up Bidder (each as defined below) following the completion of the Auction (if any); *provided* that if such party is a member of the Committee, then the Committee’s counsel and the remaining members of the Committee other than the Potential Bidder shall continue to be Consultation Parties, but shall not provide any information they receive as Consultation Parties to the Potential Bidder. Neither the Debtors nor their representatives shall be obligated to furnish any information of any kind whatsoever relating to the Debtors’ assets to any party that is not a Potential Bidder or a Consultation Party.
- (iv) Form and Contents. All Bids shall be in the form of an irrevocable offer letter from a person or persons that the Debtors, in their reasonable discretion taking into account its fiduciary duties, deem financially able to consummate the Transaction, which letter states and includes:
  - (A) Marked Agreement. Each Bid must state that the Bidder irrevocably offers to purchase some or all of the Purchased Assets upon the terms and conditions set forth in a duly executed non-contingent and attached complete asset purchase agreement, which shall be in substantially the same form as the Stalking Horse APA, prepared and executed by the Bidder (an electronic version in Word format and blacklined against the Stalking Horse APA), together with its exhibits and schedules, including terms relating to Purchase Price (as defined below) and the time of closing (the “**Proposed Agreement**”);
  - (B) Assets. Each Bid must clearly specify the Debtors’ assets that are included in the Bid (it being understood that while Bids for a portion or subset of the Purchased Assets may be permitted, in determining whether the Bid is a Qualified Bid, the Debtors may consider whether the combined consideration for the Debtors’ assets (taking into account such Bid and other Bids) exceeds the Purchase Price of the Stalking Horse APA and/or other aspects of the Bid);
  - (C) Purchase Price. Each Bid must clearly set forth the terms of any proposed Transaction, including and identifying separately any cash and non-cash components of the proposed Transaction consideration, such as certain

liabilities to be assumed by the Bidder as part of the Transaction (the “**Purchase Price**”);

- (D) **Overbid.** Each Bid (i) must propose a Purchase Price equal to or greater than the sum of (a) the value of the Stalking Horse Bid, as determined by the Debtors in consultation with the Consultation Parties (including the Break-Up Fee and the Expense Reimbursement (each as defined below)) and (b) an initial overbid of at least \$250,000; (ii) must be on terms that are not materially more burdensome than the terms of the Stalking Horse Bid; and (iii) must obligate the Bidder to pay, to the extent provided in the Agreement, all liabilities and expenses that the Stalking Horse Bidder under the Agreement has agreed to pay, including any Assumed Liabilities (as defined in the Stalking Horse APA);
- (E) **Capacity to Consummate Transaction; Committed Financing.** Each Bid shall be accompanied by evidence of (i) the Bidder’s capacity to consummate the Transaction set forth in its Bid with cash on hand or (ii) sufficient, non-contingent financing and/or equity funding commitments to satisfy the Bidder’s Purchase Price and other obligations under its Bid. Such funding commitments or other financing acceptable to the Debtors must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions acceptable to the Debtors;
- (F) **Contingencies; No Financing or Diligence Outs.** A Bid shall not be conditioned on a Bidder obtaining financing or any internal approval, or on the outcome or review of due diligence, which must be completed before the Bid Deadline, but may be subject to the accuracy at the closing of specified representations and warranties or the satisfaction at the closing of specified conditions;
- (G) **Identity.** Each Bid must fully disclose the identity of each entity that will be bidding or otherwise participating in connection with such Bid (including each equity holder or other financial backer of the Bidder if such Bidder is an entity formed for the purpose of consummating the proposed Transaction contemplated by such Bid), and the complete terms of any such participation. Under no circumstances shall any undisclosed principals, equity holders, or financial backers be associated with any Bid. Each Bid must also include contact information for the specific person(s) and counsel the Debtors’ advisors should contact regarding such Bid;
- (H) **Authorization.** Each Bid must contain evidence that the Bidder has obtained authorization or approval from its board of directors, or a comparable governing body, acceptable to the Debtors with respect to the submission of its Bid and the consummation of the Transactions contemplated in such Bid; *provided*, however, if the Bidder is an entity specially formed for the

purpose of effectuating the transaction, then the Bidder must furnish written evidence reasonably acceptable to the Debtors of the approval of the transaction by the equity holder(s) of such Bidder;

- (I) Regulatory or Third-Party Approval. Each Bid must set forth any regulatory or third-party approval required for the Bidder to consummate the Sale, and the time period within which the Bidder expects to receive such regulatory and third-party approvals, if any;
- (J) Expenses; Disclaimer to Fees. Each Bid (other than the Stalking Horse Bid) must disclaim any right to receive a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation. For the avoidance of doubt, except as may be exclusively applicable to the Stalking Horse Bidder, no Potential Bidder will be permitted to request, or be granted by the Debtors, at any time, whether as part of the Auction or otherwise, a break-up fee, expense reimbursement, termination fee, substantial contribution, or any other similar form of compensation, and by submitting a Bid any Potential Bidder is waiving any assertion or request for reimbursement on any basis, including under Section 503(b) of the Bankruptcy Code;
- (K) Consummation. Each Bid must include a statement or evidence reflecting (i) that the Bidder is prepared to consummate the transaction upon entry of an order of the Bankruptcy Court approving the Sale to the Successful Bidder (the “**Sale Order**”) and consummation shall not be contingent on obtaining requisite government, regulatory, or other third-party approvals, (ii) that the Bidder has made or will make as soon as reasonably practicable all necessary filings, if any, with respect to any regulatory, antitrust and other laws and pay the fees associated therewith; and (iii) the Bidder’s plan and ability to obtain all requisite governmental, regulatory, or other third-party approvals, and the proposed timing for the Bidder to undertake the actions required to obtain such approvals, if any;
- (L) Irrevocability. Each Bid must include a statement that, in the event the Debtors select the Bidder to serve as the Successful Bidder or the Back-Up Bidder (as defined below), such Qualified Bidder’s offer is irrevocable until two (2) business days after the closing of the Transaction;
- (M) Assumed Contracts and Leases. Each Bid must identify any and all executory contracts and unexpired leases of the Debtors and non-Debtor affiliates that the Qualified Bidder wishes to be assumed and assigned to it pursuant to a Sale. A Bid must specify that such Bidder will be responsible for any cure costs associated with such assumption on the same or better terms as the Stalking Horse Bid, and include a good faith estimate of such cure costs (which estimate shall be provided by the Debtors). Further, a Bid must provide evidence of adequate assurance of future performance under

such executory contracts and unexpired leases to be assumed and assigned in such a Sale;

- (N) Employees. Each Bid must detail the treatment of the employees of the Debtors;
  - (O) Damages. Each Bid must provide that the Debtors have the right to pursue all available damages in the event of the Bidder's breach of, or failure to perform under, the Proposed Agreement;
  - (P) Consent to Jurisdiction. Each Bidder must submit to the exclusive jurisdiction of the Bankruptcy Court and waive any right to a jury trial in connection with any disputes relating to Debtors' qualification of Bids, the Auction, the construction and enforcement of these Bid Procedures, the Sale documents, and the closing of the sale, as applicable; and
  - (Q) Other Information. Each Bid must contain such other information as may be reasonably requested by the Debtors.
- (v) Combination of Bids. Each Bid shall be based on the Stalking Horse Bid and must exceed, either on its own terms or, in the case of a Bid for a portion or subset of the Debtors' assets, in combination with another Qualified Bid(s) (which combination shall be done by the Debtors, in consultation with the Consultation Parties), the Stalking Horse Bid in relation to the Purchased Assets. For the avoidance of doubt, joint Bids submitted by multiple Bidders will not be considered.
  - (vi) Back-Up Bidder. Each Bidder must acknowledge that by submitting a Bid, the Bidder agrees to be a Back-Up Bidder in accordance with the terms of these Bid Procedures, should the Bid be so selected.
  - (vii) As Is, Where Is. The sale of the Debtors' assets shall be on an "as is, where is" and "with all defects" basis and without representations or warranties of any kind, nature, or description by the Debtors, their agents or estates, except to the extent set forth in the Stalking Horse APA.
  - (viii) Good Faith Deposit. Each Qualified Bid must be accompanied by a cash deposit in the amount of 10% of the total Purchase Price to be held in an escrow account to be identified and established by the Debtors (the "**Deposit**").
  - (ix) Binding Effect. By submitting its Bid, each Bidder is agreeing, and shall be deemed to have agreed, to abide by and honor the terms of the Bid Procedures and to refrain from submitting a Qualified Bid or seeking to reopen the Auction after conclusion of the Auction.
  - (x) Time Frame for Closing. A Bid by a Bidder must be reasonably likely to be consummated, if selected as the Successful Bid, within a time frame acceptable to the Debtors but in no event later than sixty (60) days following the Petition Date.

A Bid received before the Bid Deadline will be considered a “**Qualified Bid**” and each Bidder that submits a Qualified Bid will be considered a “**Qualified Bidder**” if the Debtors determine in consultation with the Consultation Parties that such Bid meets the requirements above for a Bid as set forth in these Bid Procedures. The Debtors may also waive or modify any of the above requirements in the exercise of their reasonable business judgment after consultation with the Consultation Parties.

The Debtors will notify each Qualified Bidder whether such party is a Qualified Bidder on **January 29, 2025** (the “**Designation of Qualified Bid Deadline**”) and shall provide each Qualified Bidder, including the Stalking Horse Bidder, with a copy of the Baseline Bid no later than 4:00 p.m. (prevailing Eastern Time) on the day before the Auction commences.

Upon determination that any Bid is not a Qualified Bid, the Debtors shall notify such Bidder of such determination forthwith, but in any event not later than the Designation of Qualified Bid Deadline, and shall provide such bidder with the basis for such determination. In the event that such Bid is determined not to be a Qualified Bid, the Debtors may allow the Bidder until the commencement of the Auction to modify its Bid to increase the Purchase Price or otherwise improve the terms of the Bid in order to comply with the requirements for Qualified Bids as set forth herein.

To the extent there is any dispute regarding whether a Bidder is a Qualified Bidder, such dispute may be raised with the Bankruptcy Court on an expedited basis. If any Bid is determined not to be a Qualified Bid, the Debtors will refund such Bidder’s Deposit promptly after the Bid Deadline.

Between the date that the Debtors notify a Bidder that it is a Qualified Bidder and the Auction date, the Debtors may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Without the prior written consent of the Debtors, in consultation with the Consultation Parties, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase its Purchase Price, or otherwise improve the terms of the Qualified Bid, during the period that such Qualified Bid remains binding as specified in these Bid Procedures. The Stalking Horse Bidder shall be deemed a Qualified Bidder at all times, and the Stalking Horse APA shall be a Qualified Bid.

Prior to 4:00 p.m. (prevailing Eastern Time) on the day before the Auction (the “**Baseline Bid Deadline**”), the Debtors and their advisors will evaluate Qualified Bids and identify the Qualified Bid that is, in the Debtors’ reasonable business judgment, the highest or otherwise best bid (the “**Baseline Bid**” and the Bidder making such Baseline Bid, the “**Baseline Bidder**”), and shall notify the Stalking Horse Bidder and all Qualifying Bidders of the Baseline Bid no later than the Baseline Bid Deadline.

#### **4. Credit Bid**

Any Qualified Bidder who has a valid, undisputed, and perfected lien on any of the Debtors’ assets (a “**Secured Creditor**”) shall have the right to credit bid all or a portion of such Secured Creditor’s allowed secured claims pursuant to section 363(k) of the Bankruptcy Code; *provided that* a credit bid shall not constitute a Qualified Bid if the bid does not include a cash

component sufficient to pay in full, in cash, all Bid Protections (as defined below) and all claims for which there are valid, perfected, and unavoidable liens on any of the Debtors' assets included in such bid that are senior in priority to those of the party seeking to credit bid (unless such senior lien holder consents to alternative treatment). All rights to credit bid shall be subject to the terms of the Final DIP Order, including the Challenge Period (as defined in the Final DIP Order). For the avoidance of doubt, a Secured Creditor shall be required to provide cash consideration in respect of any assets to be acquired but that do not constitute collateral securing such Secured Creditor's claim(s), if any.

Notwithstanding anything to the contrary herein, any Bid submitted by the Prepetition Facility Lender or the DIP Lender (or their respective designee), as applicable, shall be deemed a Qualified Bid notwithstanding the requirements set forth in Section B.3 of the Bid Procedures (including, for the avoidance of doubt, the Deposit, which shall not be applicable to any credit bid by the Prepetition Facility Lender or the DIP Lender).

## 5. Stalking Horse Bid

Subject to Bankruptcy Court approval, pursuant to the Stalking Horse APA, the Stalking Horse Bidder has committed to pay a Purchase Price worth a total aggregate consideration as set forth in the Stalking Horse APA, free and clear of all claims or encumbrances (other than Assumed Liabilities and Permitted Liens, as defined in the Stalking Horse APA). To provide the Stalking Horse Bidder with an incentive to participate in a competitive process and to compensate the Stalking Horse Bidder for (i) performing substantial due diligence and incurring the expenses related thereto and (ii) entering into the Stalking Horse APA with the knowledge and risk that arises from participating in the sale and subsequent bidding process, in the event of a Qualifying Termination (as defined in the Stalking APA), the Debtors will pay the Stalking Horse Bidder (at the time required under the Stalking Horse APA) a break-up fee in the amount equal to three (3) percent of the Purchase Price (the "**Break-Up Fee**") and reimburse the Stalking Horse Bidder for its reasonable and documented expenses in conjunction with the Stalking Horse Bid up to a maximum amount of \$550,000 (the "**Expense Reimbursement**," and together with the Break-Up Fee, the "**Bid Protections**"). To the extent an Overbid is deemed the Successful Bid, such Overbid must provide cash satisfactory to pay the Bid Protections in full to the Stalking Horse Bidder; *provided* that, upon consummation of such Overbid (or a material portion of them), the Bid Protections, to the extent not previously paid in accordance with, and solely to the extent payable under and subject to the terms of the Stalking Horse APA, shall be paid from the proceeds of any such sale prior to any payment or other recoveries being made in respect of the DIP Facility or the Prepetition Facility Loans (each as defined in the Final DIP Order) from such proceeds. For the avoidance of doubt, the foregoing applies whether such Overbid transaction is consummated pursuant to section 363 of the Bankruptcy Code, pursuant to a plan of reorganization, or other transaction.

The Stalking Horse Bidder shall be deemed to be a Qualified Bidder and is not required to make any Deposit other than as contemplated in the Stalking Horse APA.

Any party that objects to the Sale or the Sale Order must file an objection (a "**Sale Objection**") on or before **4:00 p.m. prevailing Eastern Time on January 23, 2025**, which Sale Objection must be served on: (i) proposed counsel to the Debtors: (a) Latham & Watkins LLP

(x) 330 North Wabash Avenue, Suite 2800, Chicago, IL 60611, Attn: Caroline Reckler, Esq. (email: caroline.reckler@lw.com); (y) 1271 Avenue of the Americas, New York, NY 10020, Attn: Annemarie V. Reilly, Esq. and Brian S. Rosen, Esq. (emails: annemarie.reilly@lw.com and brian.rosen@lw.com); and (z) 355 South Grand Avenue, Suite 100, Los Angeles, CA 90071, Attn: Jeffrey T. Mispagel, Esq. (email: jeffrey.mispagel@lw.com) and (b) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Michael R. Nestor, Esq., Kara Hammond Coyle, Esq., and Joseph M. Mulvihill, Esq. (emails: MNestor@ycst.com, KCoyle@ycst.com, and JMulvihill@ycst.com); (ii) counsel for the DIP Lender, the Prepetition Facility Lender, and the Consenting Parent: (a) Davis Polk & Wardwell LLP, 450 Lexington Ave, New York, NY 10017, Attn: Darren S. Klein, Esq. and Aryeh Ethan Falk, Esq. (emails: darren.klein@davispolk.com and aryeh.falk@davispolk.com) and (b) Morris, Nichols, Arsht & Tunnell LLP, 1201 N Market St # 1600, Wilmington, DE 19801, Attn: Robert J. Dehney, Sr., Esq. (email: rdehney@morrisnichols.com); (iii) counsel to any statutory committee appointed in these cases; and (iv) the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801, Attn: Jane Leamy (email: Jane.M.Leamy@usdoj.gov) (the “**Objection Notice Parties**”) and counsel to the (i) Stalking Horse Bidder, Sidley Austin LLP, (a) 1 S. Dearborn St, Chicago, IL 60603, Attn: Dennis M. Twomey, Esq. (email: dtwomey@sidley.com) and (b) 787 7<sup>th</sup> Ave, New York, NY 10019; Attn: Margaret R. Alden, Esq. (email: malden@sidley.com) and (ii) Barnes & Thornburg LLP, 222 Delaware Ave, Suite 1200, Wilmington, DE 19801, Attn: Kevin G. Collins, Esq. (email: kevin.collins@btlaw.com) (the “**Stalking Horse Notice Parties**”), and filed with the Clerk of the Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, DE 19801. If a party does not timely file and serve a Sale Objection, that party will be forever barred from objecting to the identity of the Stalking Horse Bidder.

### C. Auction

If one or more Qualified Bids are received by the Bid Deadline (other than the Stalking Horse Bid), the Debtors will conduct the Auction to determine the highest or otherwise best Qualified Bid or combination of Qualified Bids. In determining which Qualified Bid constitutes the highest or otherwise best Qualified Bid or combination of Qualified Bids, the Debtors’ determination may take into account any factors the Debtors reasonably deem relevant to the value of the Qualified Bid to the estates, including, *inter alia*, the following non-exhaustive factors: (i) the amount and nature of the consideration; (ii) the proposed assumption of any liabilities, if any, and the excluded assets and/or executory contracts or unexpired leases, if any; (iii) the ability of the Qualified Bidder to close the proposed Transaction and the conditions to closing, and the timing thereof; (iv) whether the Bid is a bulk bid or a partial bid for only some of the Debtors’ assets; (v) the proposed closing date and the likelihood, extent and impact of any potential delays in closing; (vi) any purchase price adjustments; (vii) the impact of the proposed Transaction on any actual or potential litigation or on claims asserted against the Debtors’ estates; (viii) the net after-tax consideration to be received by the Debtors’ estates; (ix) the tax consequences of such Qualified Bid; (x) the regulatory approvals required to consummate the proposed Transaction; and (xi) the consent of the parties in interest and/or the cost and expense to the Debtors of resolving sale issues before Closing (collectively, the “**Bid Assessment Criteria**”).

If no Qualified Bids other than the Stalking Horse Bid are received prior to the Bid Deadline, then the Auction will not occur, the Stalking Horse Bid may be deemed the Successful

Bid (as defined below), and, subject to the termination rights under the Stalking Horse APA, the Debtors will pursue entry of an order by the Bankruptcy Court authorizing the Sale to the Stalking Horse Bidder as soon as practicable.

## **1. Procedures for Auction**

The Auction, if necessary, will commence on **January 30, 2025 at 10:00 a.m. (prevailing Eastern Time)** at the offices of Latham & Watkins LLP, 1271 Avenue of the Americas, New York, New York 10020, telephonically, or by video via Zoom, or such later time or other place as the Debtors shall notify all Qualified Bidders. Only the Stalking Horse Bidder and other Qualified Bidders will be entitled to make any Bids at the Auction. The Stalking Horse Bidder and other Qualified Bidders participating at the Auction shall appear themselves or through a duly authorized representative. Only the Debtors, the Stalking Horse Bidder, any participating Qualified Bidders, the Consultation Parties, and any creditor of the Debtors, together with the professional advisors to each of the foregoing parties, may attend the Auction; *provided* that any of the Debtors' creditors must provide two (2) days' written notice to counsel to the Debtors of their intent to attend the Auction.

## **2. The Debtors Shall Conduct the Auction**

The Debtors and their professionals shall direct and preside over the Auction and the Auction shall be transcribed or videotaped. Prior to the Baseline Bid Deadline, the Debtors, in consultation with the Consultation Parties, shall determine, in accordance with the requirements herein, the Baseline Bid, and shall promptly notify the Stalking Horse Purchaser and all Qualified Bidders with Qualified Bids of such Baseline Bid. The Debtors, in consultation with the Consultation Parties, shall have the discretion to determine how to proceed when auctioning the Debtors' assets, including by doing so in groupings that do not include all of the Debtors' assets so as to maximize the value of the Debtors' assets.

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 before the end of 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 Debtors in their reasonable business judgment, such Qualified Bidder shall be disqualified from continuing to participate in the Auction without the consent of the Debtors. For the avoidance of doubt, the Debtors, in consultation with the Consultation Parties, may conduct a round where Qualified Bidders are required to submit best and final Bids, including under seal to the Debtors directly.

All Bids made during the Auction shall be made and received on the record; *provided*, that, the Debtors may keep confidential any sealed Bids in the interest of maximizing the value of the sale. To the extent that final bids are sealed when shared with the Debtors, the Debtors shall read them into the record at the Auction at the time the Debtors determine appropriate. Further, all Bids must (i) be Overbids (as defined below), and (ii) include all material terms. The Debtors shall

maintain a transcript of all bids made and announced at the Auction, including the Baseline Bid and all Overbids.

### 3. Terms of Overbids

An “**Overbid**” is any Bid made at the Auction subsequent to the Debtors’ announcement of the Baseline Bid. To submit an Overbid for purposes of this Auction, a Bidder must comply with the following conditions:

#### a. Minimum Overbid Increment

Any Overbid after the Baseline Bid shall be made in increments of at least \$250,000 in cash, cash equivalents, or such other consideration that the Debtors, in consultation with the Consultation Parties, deem equivalent (the “**Minimum Overbid Increment**”). For the avoidance of doubt, in calculating the amount of any Overbid made by the Stalking Horse Bidder, the Stalking Horse Bidder shall be entitled to a credit in the amount of the Bid Protections.

#### b. Overbid Procedures

Bidding at the auction will begin with the Baseline Bid, and each participating Qualified Bidder will have the opportunity to submit an Overbid in each round of bidding (each, an “**Overbid Round Deadline**”).

After each Overbid Round Deadline, the Debtors shall determine whether an Overbid is higher or otherwise better than the Baseline Bid (as defined in the Bid Procedures) in the initial Overbid round or, in subsequent rounds, the Overbid previously designated by the Debtors as the prevailing highest or otherwise best Bid (the “**Prevailing Highest Bid**”). The Debtors shall announce and describe to all Qualified Bidders present at the Auction the material terms of any new Overbid designated by the Debtors as the Prevailing Highest Bid, as well as the value attributable by the Debtors to such Prevailing Highest Bid.

#### c. Remaining Terms Are the Same as for Qualified Bids

Except as modified herein, an Overbid must comply with the conditions for a Qualified Bid set forth above; *provided, however*, the Bid Deadline shall not apply and no additional Deposit shall be required beyond the Deposit previously submitted by a Qualified Bidder; *provided that* the Successful Bidder and Back-Up Bidder (each other than the Stalking Horse Bidder) shall be required to make a representation at the end of the Auction that they will provide any additional deposit necessary so that their Deposits are equal to the amount of ten percent (10%) of the cash purchase price contained in the Successful Bid and Back-Up Bid (each, as defined below), as applicable, no later than two (2) business days following the Auction. Any Overbid must include, in addition to the amount and form of consideration of the Overbid, a description of all changes (if any) requested by the Qualified Bidder to the Stalking Horse APA or a previously submitted Proposed Agreement, in connection therewith (including any changes to the designated assigned contracts and leases and assumed liabilities). Any Overbid must remain open and binding on the Bidder until and unless the Debtors name a Successful Bid and Back-Up Bid.

To the extent not previously provided (which shall be determined by the Debtors in consultation with the Consultation Parties) a Bidder submitting an Overbid must submit, as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors) demonstrating such Bidder's ability to close the transaction proposed by such Overbid; *provided, however*, this shall not apply to an Overbid by the Stalking Horse Bidder.

**d. No Collusion; Good-Faith *Bona Fide* Offer**

Each Qualified Bidder participating at the Auction will be required to confirm on the record at the Auction (i) it has not engaged in any collusion with respect to the Sale, bidding (including it has no agreement with any other Bidder or Qualified Bidder to control the price or other terms of any Bid) or any other Transaction 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 or Back-Up Bidder (if the Successful Bidder fails to consummate the proposed transaction).

**e. Back-Up Bidder**

Notwithstanding anything in the Bid Procedures to the contrary, if an Auction is conducted, the party(ies) with the second highest or otherwise second best Qualified Bid (or combination of Qualified Bids) at the Auction, as determined by the Debtors, in the exercise of their business judgment and in consultation with the Consultation Parties and with the consent of the Prepetition Facility Lender, shall be designated by the Debtors as backup bidder (the “**Back-Up Bidder**”). The Back-Up Bidder shall be required to keep its initial Qualified Bid (or if the Back-Up Bidder submitted one or more Overbids at the Auction, its final Overbid) (the “**Back-Up Bid**”) open and irrevocable until two (2) business days after the closing of the sale of the Purchased Assets (the “**Outside Back-Up Date**”); *provided*, that if the Stalking Horse Bid is selected as the Back-Up Bid, it must remain irrevocable only for so long as is required under the Stalking Horse APA. Following entry of the Sale Order, if the Successful Bidder fails to consummate an approved transaction because of a breach or failure to perform on the part of such Successful Bidder, the Debtors may designate the Back-Up Bidder to be the new Successful Bidder, and the Debtors will be authorized, but not required, to consummate the transaction with the Back-Up Bidder without further order of the Bankruptcy Court. In such case, except, solely for the Stalking Horse Bidder, to the extent otherwise provided in the Stalking Horse APA, the defaulting Successful Bidder's Deposit, if any, shall be forfeited to the Debtors' estates, and the Debtors specifically reserve the right to seek all available damages from the defaulting Successful Bidder. The closing date to consummate the transaction with the Back-Up Bidder shall be no later than ten (10) days after the date the Debtors provide notice to the Back-Up Bidder that the Successful Bidder has failed to consummate a sale and the Debtors desire to consummate the transaction with the Back-Up Bidder. Solely for the Stalking Horse Bidder, except to the extent otherwise provided in the Stalking Horse APA, the Deposit, if any, of the Back-Up Bidder shall be held by the Debtors until two (2) business days after the closing of the Sale with the Successful Bidder; *provided, however*, in the event the Successful Bidder does not consummate the transaction as described above and the Debtors provide notice to the Back-Up Bidder, the Back-Up Bidder's Deposit shall be held until the closing of the transaction with the Back-Up Bidder. In the event the Debtors fail to consummate a transaction with the Back-Up Bidder as described above, the Back-Up Bidder's Deposit shall be forfeited to the Debtors' estates, and the Debtors specifically reserve the right to seek all available

damages from the defaulting Back-Up Bidder. Notwithstanding anything to the contrary herein, for the avoidance of doubt, the Deposit submitted by the Stalking Horse Bidder pursuant to the Stalking Horse APA shall be treated, returned to the Stalking Horse Bidder, or forfeited to the Debtors' estates solely in accordance with the terms of the Stalking Horse APA.

#### **4. Consent to Jurisdiction as Condition to Bidding**

All Qualified Bidders, and all Bidders at the Auction, shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court and waived any right to a jury trial in connection with any disputes relating to the Stalking Horse APA, the Auction, or the construction and enforcement of any Transaction Documents.

#### **5. Adjournment of the Auction**

The Debtors reserve the right, in their reasonable business judgment, to adjourn the Auction one (1) or more times to, among other things, (i) facilitate discussions between the Debtors and Qualified Bidders, (ii) allow Qualified Bidders to consider how they wish to proceed, and (iii) provide Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their reasonable business judgment, may require, demonstrating that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt or equity funding commitments to consummate the proposed Sale at the prevailing bid amount.

#### **6. Closing the Auction**

The Auction shall continue until there is only one (1) Qualified Bid or combination of Qualified Bids that the Debtors determine in their reasonable business judgment, after consultation with their financial and legal advisors and the Consultation Parties and with the consent of the Prepetition Facility Lender, is the highest or otherwise best Qualified Bid at the Auction (the "**Successful Bid**" and the Bidder submitting such Successful Bid, the "**Successful Bidder**"). In making this decision, the Debtors, in consultation with their financial and legal advisors and the Consultation Parties, shall consider the Bid Assessment Criteria. The Auction shall not close unless and until all Bidders who have submitted Qualified Bids have been given a reasonable opportunity, in the Debtors' discretion, to submit an Overbid at the Auction to the then-existing Overbid and the Successful Bidder has submitted fully executed Transaction Documents memorializing the terms of the Successful Bid.

Promptly following the Debtors' selection of the Successful Bid and the conclusion of the Auction, the Debtors shall announce the Successful Bid and Successful Bidder. The Debtors will file a notice identifying the Successful Bidder and Back-Up Bidder (the "**Post-Auction Notice**") as soon as reasonably practicable after closing the Auction, if any, and in any event not more than twenty-four (24) hours following the close of the Auction.

**D. Procedures for Determining Cure Amounts and Adequate Assurance for Assumed Contract Counterparties to Assigned Contracts**

On **January 6, 2025** (the “**Assumption Notice Deadline**”), the Debtors filed and served a notice to each counterparty to an executory contract or unexpired lease (each an “**Assumed Contract Counterparty**”) setting forth the Debtors’ calculation of the cure amount, if any, that would be owing to such Assumed Contract Counterparty if the Debtors decided to assume or assume and assign such executory contract or unexpired lease, and alerting such Assumed Contract Counterparty that their contract may be assumed and assigned to the Successful Bidder (the “**Assumption Notice**”), which is filed at Docket Number 97. Any Assumed Contract Counterparty that objects to (i) the potential assumption and assignment of any Assigned Contract to the Stalking Horse Bidder including the ability of the Stalking Horse Bidder to provide adequate assurance of future performance and (ii) the proposed cure amount to be paid in connection with the assumption and assignment of any Assigned Contract, must file an objection (an “**Assumed Contract Objection**”) on or before **4:00 p.m. prevailing Eastern Time on January 27, 2025**, which Assumed Contract Objection must be served on the Objection Notice Parties and the Stalking Horse Notice Parties, and filed with the Clerk of the Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, DE 19801. If an Assumed Contract Counterparty does not timely file and serve an Assumed Contract Objection, that party will be forever barred from objecting to (i) the Debtors’ proposed cure amount or (ii) the assignment of that party’s executory contract or unexpired lease to the Stalking Horse Bidder.

If the Successful Bidder that prevails at the Auction is not the Stalking Horse Bidder, the deadline to object solely to (i) the identity of a Successful Bidder, (ii) the ability of the Successful Bidder to provide adequate assurance of future performance under any Assigned Contract, or (iii) the conduct of the Auction (each, a “**Post-Auction Objection**”) shall be **4:00 p.m. prevailing Eastern Time on February 3, 2025** (the “**Post-Auction Objection Deadline**”). Each Post-Auction Objection must be served on the Objection Notice Parties and filed with the Clerk of the Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, DE 19801, so it is actually received no later than the Post-Auction Objection Deadline. If a Post-Auction Objection is not filed, parties will be forever barred from objecting to the identity of the Successful Bidder or to the assignment of that party’s executory contract or unexpired lease to the Successful Bidder.

Where an Assumed Contract Counterparty to an Assigned Contract files a timely Assumed Contract Objection asserting a higher cure amount than the amount listed in the Assumption Notice, or timely files an Assumed Contract Objection or Post-Auction Objection, as applicable, to the possible assignment of that Assumed Contract Counterparty’s executory contract or unexpired lease, including the Successful Bidder’s ability to provide adequate assurance of future performance, and the parties are unable to consensually resolve the dispute, the amount to be paid (if any) under Section 365 of the Bankruptcy Code or, as the case may be, the Debtors’ ability to assign the executory contract or unexpired lease to the Successful Bidder will be determined at the Sale Hearing or at a later date as fixed by the Bankruptcy Court.

**E. Sale Hearing**

A hearing (the “**Sale Hearing**”) shall be held on **February 6, 2025, at 9:30 a.m. (prevailing Eastern Time)**, at which hearing the Debtors may, in their discretion, seek approval of the Sale with the Successful Bidder.

**F. Return of Good Faith Deposits**

The Deposit of the Successful Bidder, if applicable, shall be applied to the Purchase Price of such Transaction at closing. The Deposits from each Qualified Bidder shall be held in one or more accounts on terms acceptable to the Debtors in their sole discretion and shall be returned (other than with respect to the Successful Bidder and the Back-Up Bidder) on or before the date that is two (2) business days after the Auction is completed. The Back-Up Bidder’s Deposit shall be held by the Debtors and shall be returned on or before the date that is two (2) business days after the closing of the Transaction with the Successful Bidder. In the event the Successful Bidder fails to close the Transaction and the Debtors opt to close on the Transaction set forth in the Back-Up Bid, the Back-Up Bidder’s Deposit shall be applied to the Purchase Price of such Transaction at closing. In the event of a breach or failure to consummate a Transaction by the Successful Bidder or the Back-Up Bidder, as applicable, the defaulting Successful Bidder’s Deposit or Back-Up Bidder’s Deposit, as applicable, shall be forfeited to the Debtors, and the Debtors specifically reserve the right to seek all available remedies against the defaulting Successful Bidder or Back-Up Bidder, as applicable.

**G. Fiduciary Out**

Nothing in these Bid Procedures will require any director, manager, or officer of any Debtor to take any action, or to refrain from taking any action, with respect to these Bid Procedures, that would violate his or her fiduciary duties to any Debtor, including, but not limited to, requiring that any Bids submitted after the conclusion of the Auction and prior to the closing of the Transaction not be considered.

**H. Reservation of Rights**

The Debtors reserve their rights to modify these Bid Procedures in their reasonable business judgment and in consultation with the Consultation Parties in any manner that will best promote the goals of the bidding process, at or prior to the Auction, subject to the rights of the Stalking Horse Bidder. Notwithstanding the foregoing and subject in all respects to the Stalking Horse APA, the Debtors may not impair or modify the Stalking Horse Bidder’s rights and obligations under the Stalking Horse APA, including the Stalking Horse Bidder’s right to the Bid Protections or the Stalking Horse Bidder’s right to credit the Bid Protections as part of any subsequent Qualifying Bids as Overbids; and (ii) subject to the terms of the Stalking Horse APA, in the event the Debtors (a) elect to withdraw the applicable assets from the Auction, (b) cancel the Auction, and/or (c) reject all Qualifying Bids, the Bid Protections shall be payable to the extent payable to the Stalking Horse Bidder in accordance with the terms of the Stalking Horse APA.

**Exhibit 2**

**Sale Notice**

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

|                                                         |   |                         |
|---------------------------------------------------------|---|-------------------------|
|                                                         | X |                         |
| In re:                                                  | : | Chapter 11              |
|                                                         | : |                         |
| FIRST MODE HOLDINGS, INC., <i>et al.</i> , <sup>1</sup> | : | Case No. 24-12794 (KBO) |
|                                                         | : |                         |
| Debtors.                                                | : | (Jointly Administered)  |
|                                                         | : |                         |

**NOTICE OF BID PROCEDURES,  
AUCTION, HEARING AND DEADLINES RELATING TO THE  
SALE OF SUBSTANTIALLY ALL OF THE ASSETS OF THE DEBTORS**

**PLEASE TAKE NOTICE** that on December 16, 2024, the debtors and debtors in possession (the “Debtors”) in the above-captioned cases (the “Chapter 11 Cases”), filed a *Motion of Debtors for Entry of (I) An Order (A) Approving Bid Procedures in Connection with the Sale of Substantially All of the Debtors’ Assets, (B) Scheduling an Auction and Sale Hearing, (C) Approving the Form and Manner of Notice Thereof, (D) Authorizing the Debtors to Enter Into the Stalking Horse APA, (E) Approving Procedures for the Assumption and Assignment of Contracts and Leases, and (F) Granting Related Relief; and (II) An Order (A) Approving the Sale of Substantially All of the Debtors’ Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (B) Authorizing the Assumption and Assignment of Contracts and Leases, and (C) Granting Related Relief* [Docket No. 18] (the “Bid Procedures and Sale Motion”).<sup>2</sup> The Debtors seek to complete a sale (the “Sale”) of substantially all their assets (the “Assets”) to the Stalking Horse Bidder or a prevailing bidder or bidders (the “Successful Bidder”) at an auction free and clear of all liens, claims, encumbrances and other interests pursuant to Section 363 of the Bankruptcy Code (the “Auction”). A copy of the Stalking Horse APA may be obtained for free by accessing the website of the Debtors’ Claims and Noticing Agent, Omni Agent Solution, Inc., at <https://omniagentsolutions.com/FirstMode>.

**PLEASE TAKE FURTHER NOTICE** that, on [ ● ], 2025 the Bankruptcy Court entered an order [Docket No. [ ● ] (the “Bid Procedures Order”) approving the Bid Procedures set forth in the Bid Procedures and Sale Motion (the “Bid Procedures”), which set the key dates and times related to the sale of the Debtors’ Assets. **All interested bidders should carefully read the Bid Procedures.** To the extent there are any inconsistencies between the Bid Procedures and the summary description of their terms and conditions contained in this notice, the terms of the Bid Procedures shall control.

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: First Mode Holdings, Inc. (7177), and Synchronous LLC (1829). The Debtors’ mailing address is 3417 1st Ave S, Seattle, WA, 98134.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings set forth in the Bid Procedures and Sale Motion.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Bid Procedures, the Debtors must receive a Qualified Bid from interested bidders in writing on or before **January 27, 2025 at 4:00 p.m. (prevailing Eastern Time)** or such later date as may be agreed to by the Debtors (the “Bid Deadline”). To be considered, Bids must be sent in writing to the following at or before the Bid Deadline: (i) proposed counsel to the Debtors: (a) Latham & Watkins LLP (x) 330 North Wabash Avenue, Suite 2800, Chicago, IL 60611, Attn: Caroline Reckler, Esq. (email: caroline.reckler@lw.com); (y) 1271 Avenue of the Americas, New York, NY 10020, Attn: Annemarie V. Reilly, Esq. and Brian S. Rosen, Esq. (emails: annemarie.reilly@lw.com and brian.rosen@lw.com); and (z) 355 South Grand Avenue, Suite 100, Los Angeles, CA 90071, Attn: Jeffrey T. Mispagel, Esq. (email: jeffrey.mispagel@lw.com) and (b) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Michael R. Nestor, Esq., Kara Hammond Coyle, Esq., and Joseph M. Mulvihill, Esq. (emails: MNestor@ycst.com, KCoyle@ycst.com, and JMulvihill@ycst.com); (ii) PJT Partners LP, Attn: Matt Parr, William Evarts, and Brandon Pinn (emails: parr@pjtpartners.com, evarts@pjtpartners.com, and pinn@pjtpartners.com); and (iii) counsel for Anglo American International Holdings Limited (the “DIP Lender” or the “Prepetition Facility Lender”) and Anglo American Technical & Sustainability Limited (the “Consenting Parent”): (a) Davis Polk & Wardwell LLP, 450 Lexington Ave, New York, NY 10017, Attn: Darren S. Klein, Esq. and Aryeh Ethan Falk, Esq. (emails: darren.klein@davispolk.com and aryeh.falk@davispolk.com) and (b) Morris, Nichols, Arsht & Tunnell LLP, 1201 N Market St #1600, Wilmington, DE 19801, Attn: Robert J. Dehney, Sr., Esq. (email: rdehney@morrisnichols.com); and (iv) counsel to any official committee of unsecured creditors, if any (the “Committee,” and together with the DIP Lender, the Prepetition Facility Lender, and the Consenting Parent, the “Consultation Parties”) (collectively, the “Bid Recipients”).

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the terms of the Bid Procedures, if the Debtors receive one or more Qualified Bids (other than the Stalking Horse APA) by the Bid Deadline, the Auction will be conducted at the offices of Latham & Watkins LLP, 1271 Avenue of the Americas, New York, NY 10020 on **January 30, 2025 at 10:00 a.m. (prevailing Eastern Time)**, or at such other place, date and time as may be designated by the Debtors.

**PLEASE TAKE FURTHER NOTICE** that, on **January 6, 2025** (the “Assumption Notice Deadline”), the Debtors filed and served a notice to each counterparty to an executory contract or unexpired lease (each an “Assumed Contract Counterparty”) setting forth the Debtors’ calculation of the cure amount, if any, that would be owing to such Assumed Contract Counterparty if the Debtors decide to assume, or assume and assign, such executory contract or unexpired lease, and alerting such Assumed Contract Counterparty that their contract may be assumed and assigned to the Successful Bidder (the “Assumption Notice”), which is filed at Docket Number 97. Any Assumed Contract Counterparty that objects to (i) the potential assumption and assignment of any Assigned Contract to the Stalking Horse Bidder, including the ability of the Stalking Horse Bidder to provide adequate assurance of future performance and/or (ii) the proposed cure amount to be paid in connection with the assumption and assignment of any Assigned Contract, must file an objection (an “Assumed Contract Objection”) on or before **4:00 p.m. prevailing Eastern Time on January 27, 2025**, which Assumed Contract Objection must be served on the (i) proposed counsel to the Debtors: (a) Latham & Watkins LLP (x) 330 North Wabash Avenue, Suite 2800, Chicago, IL 60611, Attn: Caroline Reckler, Esq. (email: caroline.reckler@lw.com); (y) 1271 Avenue of the Americas, New York, NY 10020, Attn:

Annemarie V. Reilly, Esq. and Brian S. Rosen, Esq. (emails: annemarie.reilly@lw.com and brian.rosen@lw.com); and (z) 355 South Grand Avenue, Suite 100, Los Angeles, CA 90071, Attn: Jeffrey T. Mispagel, Esq. (email: jeffrey.mispagel@lw.com) and (b) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Michael R. Nestor, Esq., Kara Hammond Coyle, Esq., and Joseph M. Mulvihill, Esq. (emails: MNestor@ycst.com, KCoyle@ycst.com, and JMulvihill@ycst.com); (ii) counsel for the DIP Lender, the Prepetition Facility Lender, and the Consenting Parent: (a) Davis Polk & Wardwell LLP, 450 Lexington Ave, New York, NY 10017, Attn: Darren S. Klein, Esq. and Aryeh Ethan Falk, Esq. (emails: darren.klein@davispolk.com and aryeh.falk@davispolk.com) and (b) Morris, Nichols, Arsht & Tunnell LLP, 1201 N Market St #1600, Wilmington, DE 19801, Attn: Robert J. Dehney, Sr., Esq. (email: rdehney@morrisonichols.com); (iii) counsel to any statutory committee appointed in these cases; and (vii) the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801, Attn: Jane Leamy (email: Jane.M.Leamy@usdoj.gov) (the “Objection Notice Parties”) and counsel to the Stalking Horse Bidder, (i) Sidley Austin LLP, (a) 1 S. Dearborn St, Chicago, IL 60603, Attn: Dennis M. Twomey, Esq. (email: dtwomey@sidley.com) and (b) 787 7<sup>th</sup> Ave, New York, NY 10019; Attn: Margaret R. Alden, Esq. (email: malden@sidley.com) and (ii) Barnes & Thornburg LLP, 222 Delaware Ave, Suite 1200, Wilmington, DE 19801, Attn: Kevin G. Collins, Esq. (email: kevin.collins@btlaw.com) (the “Stalking Horse Notice Parties”), and filed with the Clerk of the Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, DE 19801. To the extent any Assumed Contract Counterparty is added to the Assumption Notice after the initial notice is served, such new Assumed Contract Counterparty shall be notified via a Supplemental Contract Notice and such new Assumed Contract Party shall have fourteen (14) days from the date of service of the Supplemental Contract Notice to object to the proposed cure amount and assignment to the Successful Bidder. If an Assumed Contract Counterparty does not timely file and serve an Assumed Contract Objection, that party shall be forever barred from objecting to (i) the assumption and assignment of any Assigned Contract to the Stalking Horse Bidder, including the ability of the Stalking Horse Bidder to provide adequate assurance of future performance and (ii) the cure amount to be paid in connection with the assumption and assignment of any Assigned Contract.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the terms of the Bid Procedures, any objections to the Sale or the Sale Order must be filed by **4:00 p.m. prevailing Eastern Time on January 23, 2025** (the “Sale Objection Deadline”) and served on the Objection Notice Parties and the Stalking Horse Notice Parties and filed with the Clerk of the Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, DE 19801. Any party that fails to timely file a Sale Objection will be forever barred from objecting to the Sale or the Sale Order.

**PLEASE TAKE FURTHER NOTICE** that if a Successful Bidder that is not the Stalking Horse Bidder prevails at the Auction, then the deadline to object (a “Post-Auction Objection”) solely to (i) the identity of a Successful Bidder or Back-up Bidder, (ii) the ability of the Successful Bidder or Back-up Bidder to provide adequate assurance of future performance under the Assigned Contract, or (iii) the conduct of the Auction shall be **February 3, 2025 at 4:00 p.m. (prevailing Eastern Time)** (the “Post-Auction Objection Deadline”), which Post-Auction Objection must be served on the Objection Notice Parties so it is actually received by the Post-Auction Objection Deadline and filed with the Clerk of the Bankruptcy Court for the District of Delaware, 824 North

Market Street, 3rd Floor, Wilmington, DE 19801. Any party that fails to timely file a Post-Auction Objection will be forever barred from objecting to the identity of the Successful Bidder or to the assignment of that party's executory contract or unexpired lease to the Successful Bidder.

**PLEASE TAKE FURTHER NOTICE** that where a counterparty to an Assumed Contract timely files and serves an Assumed Contract Objection by the applicable Assumed Contract Objection Deadline or Post-Auction Objection by the Post-Auction Objection Deadline, the Court will hear and determine such objection at the Sale Hearing or such other date that the Debtors, in consultation with the Successful Bidder and the Consultation Parties, shall determine in their discretion (subject to the Court's calendar). To the extent any Assumed Contract Counterparty is added to the Assumption Notice after the initial notice is served, such new Assumed Contract Counterparty shall receive notice of the addition and the Debtors' proposed cure amount through a supplemental Assumption Notice, and that party shall have fourteen (14) days from the date of such notice to object to the proposed cure amount and assignment to the Successful Bidder.

**PLEASE TAKE FURTHER NOTICE** that subject to the Court's availability, a hearing will be held to approve the sale of the Assets to the Successful Bidder (the "Sale Hearing") before the Honorable Karen B. Owens, U.S. Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, Delaware 19801, 6th Floor, Courtroom #3, on **February 6, 2025 at 9:30 a.m. (prevailing Eastern Time)**.

**PLEASE TAKE FURTHER NOTICE THAT ANY PARTY WHO FAILS TO MAKE A TIMELY ASSUMED CONTRACT OBJECTION, SALE OBJECTION OR POST-AUCTION OBJECTION ON OR BEFORE THE ASSUMED CONTRACT OBJECTION DEADLINE, SALE OBJECTION DEADLINE OR POST-AUCTION OBJECTION DEADLINE, RESPECTIVELY, IN ACCORDANCE WITH THE BID PROCEDURES ORDER SHALL BE FOREVER BARRED FROM ASSERTING ANY ASSUMED CONTRACT OBJECTION, SALE OBJECTION OR POST-AUCTION OBJECTION, INCLUDING WITH RESPECT TO THE TRANSFER OF THE ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS.**

**PLEASE TAKE FURTHER NOTICE** that the Debtors are seeking to waive the fourteen-day stay period under Bankruptcy Rules 6004(h) and 6006(d) in order for the Sale to close immediately upon entry of the Sale Order by this Court.

**PLEASE TAKE FURTHER NOTICE** that this notice is subject to the full terms and conditions of the Bid Procedures and Sale Motion, the Bid Procedures Order, and the Bid Procedures, which shall control in the event of any conflict, and the Debtors encourage parties in interest to review such documents in their entirety. A copy of the Bid Procedures and Sale Motion, the Bid Procedures, and the Bid Procedures Order may be obtained for free by accessing the website of the Debtors' proposed Claims and Noticing Agent, Omni Agent Solution, Inc., at <https://omniagentsolutions.com/FirstMode>.

Dated: [ • ], 2025  
Wilmington, Delaware

**LATHAM & WATKINS LLP**

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- and -

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Respectfully Submitted,

/s/

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TAYLOR, LLP**

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*Proposed Counsel for Debtors and Debtors in Possession*