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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

In re:	§	**Chapter 11**
	§	
SPHERATURE INVESTMENTS LLC, *et al.*,	§	**Case No.: 20-42492**
	§	
	§	
Debtors.[1]	§	**Jointly Administered**

MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING AND APPROVING: (A) BID PROCEDURES; (B) STALKING HORSE BIDDER AND BID PROTECTIONS; AND (C) FORM AND MANNER OF NOTICES; (II) SCHEDULING AN AUCTION AND SALE HEARING; (III) APPROVING THE SALE OF SUBSTANTIALLY ALL THE ASSETS OF THE DEBTORS, FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS; (IV) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (V) GRANTING RELATED RELIEF

YOUR RIGHTS MAY BE AFFECTED BY THE RELIEF SOUGHT IN THIS PLEADING. YOU SHOULD READ THIS PLEADING CAREFULLY AND DISCUSS IT WITH YOUR ATTORNEY, IF YOU HAVE ONE IN THIS BANKRUPTCY CASE. IF YOU OPPOSE THE RELIEF SOUGHT BY THIS PLEADING, YOU MUST FILE A WRITTEN OBJECTION,

[1] The "**Debtors**" in the above-captioned jointly administered chapter 11 bankruptcy cases ("**Cases**") are: Spherature Investments LLC ("**Spherature**") EIN#5471; Rovia, LLC ("**Rovia**") EIN#7705; WorldVentures Marketing Holdings, LLC ("**WV Marketing Holdings**") EIN#3846; WorldVentures Marketplace, LLC ("**WV Marketplace**") EIN#6264; WorldVentures Marketing, LLC ("**WV Marketing**") EIN#3255; WorldVentures Services, LLC ("**WV Services**") EIN#2220.

EXPLAINING THE FACTUAL AND/OR LEGAL BASIS FOR OPPOSING THE RELIEF.

NO HEARING WILL BE CONDUCTED ON THIS MOTION/OBJECTION/APPLICATION UNLESS A WRITTEN OBJECTION IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AND SERVED UPON THE PARTY FILING THIS PLEADING WITHIN TWENTY-ONE (21) DAYS FROM THE DATE OF SERVICE SHOWN IN THE CERTIFICATE OF SERVICE UNLESS THE COURT SHORTENS OR EXTENDS THE TIME FOR FILING SUCH OBJECTION. IF NO OBJECTION IS TIMELY SERVED AND FILED, THIS PLEADING SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT. IF AN OBJECTION IS FILED AND SERVED IN A TIMELY MANNER, THE COURT WILL THEREAFTER SET A HEARING WITH APPROPRIATE NOTICE. IF YOU FAIL TO APPEAR AT THE HEARING, YOUR OBJECTION MAY BE STRICKEN. THE COURT RESERVES THE RIGHT TO SET A HEARING ON ANY MATTER.

Spherature Investments LLC ("**Spherature**") and its affiliates identified herein, as debtors and debtors-in-possession (collectively, the "**Debtors**"), hereby file this *Motion for Entry of an Order (I) Authorizing and Approving: (A) Bid Procedures; (B) Stalking Horse Bidder and Bid Protections; and (C) Form and Manner of Notices; (II) Scheduling an Auction and Sale Hearing; (III) Approving the Sale of Substantially All of the Debtors Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests; (IV) Authorizing the Assumption and Assignment Of Executory Contracts and Unexpired Leases; and (V) Granting Related Relief* (the "**Motion")** seeking the entry of an order, substantially in the form attached as **Exhibit "A,"** (a) approving the Bid Procedures, (b) approving the Stalking Horse Bidder and Bid Protections (each defined below), (c) approving the form and manner of notices, (d) scheduling an auction and final sale hearing, (e) approving the sale of substantially all of the assets of the Debtors free and clear of all liens, claims, encumbrances and interests pursuant to an asset purchase agreement consistent

with the terms and conditions set forth on the LOI (as defined below), and (f) granting related relief. In support of the Motion, the Debtors respectfully state as follows:

I.
PRELIMINARY STATEMENT

1. After considering available options within the context of the current status of their operations, the Debtors determined in their business judgment to conduct a competitive bid-and-sale process for the orderly sale of substantially all of the Debtors' going-concern assets (the "**Assets**") under sections 363(b) and (f) of the Bankruptcy Code. After extensive and arms-length negotiations, the Debtors negotiated a LOI (defined below) to sell the Assets to WV Holdings Co. LLC ("**WHC**") pursuant to preliminary terms and conditions identified in the LOI and more fully identified in the Stalking Horse APA (defined below) ("**WHC Proposal**").

2. The terms and conditions identified in the LOI and the to-be-finalized buy-sell agreement ("**Buy Sell**" or "**Stalking Horse APA**") between WHC and the Debtors are subject to higher and better bids at an auction. However, to induce WHC to serve as the "stalking-horse" bidder in the Court-approved sale process, the Debtors have agreed to certain bid procedures and protections, including a "break-up" fee (the "**Breakup Fee**"). Under this Motion, the Debtors seek court approval of the sale procedures, sale, and bid protections as set forth herein.

II.
JURISDICTION AND VENUE

3. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 1334 and 157(b). This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

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

5. The legal grounds for the relief requested herein are sections 105(a), 363, 365, 503(b), 507(a), 541, 1107(a), and 1108 of 11 U.S.C. §§ 101, *et seq*. (the "**Bankruptcy Code**"), and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**").

III.
PROCEDURAL POSTURE

6. On December 21, 2020 (the "**Petition Date**"), the Debtors filed their respective voluntary petitions for relief under chapter 11 of the Bankruptcy Code thereby initiating the above-captioned cases (the "**Cases**").

7. Contemporaneously with the filing of their "first-day" motions, the Debtors filed declaration testimony by the Debtors' proposed Chief Restructuring Offer, Erik Toth (the "**Toth Declaration**"),[2] which contains additional background information on the Debtors and their operations. The contents of the Toth Declaration are incorporated by reference, as if set forth herein verbatim, pursuant to Federal Rule of Civil Procedure 10(c).

8. The Debtors remain in possession of their property and are managing their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

9. To date, no trustee, examiner, or committee of creditors has been appointed in the chapter 11 Cases. The meeting of creditors required pursuant to section 341 of the Bankruptcy Code has been set for January 29, 2021.

[2] The Toth Declaration is filed at Docket No. 20 in the lead case of Spherature Investments LLC, pending before the Bankruptcy Court.

10. Pursuant to the Court's order entered at Docket 47, the Debtors' Schedules and Statements are currently due to be filed with the Court on January 22, 2021.

11. Subject to this Court's approval, the Debtors hired the undersigned as counsel to the Debtors effective as December 21, 2020.

12. Subject to this Court's approval, the Debtors hired Larx Advisors Inc. ("**Larx**") to serve as the Debtors' financial advisor and Mr. Erik Toth to serve as the Debtors' Chief Restructuring Offer ("**CRO**"). Larx's Chief Executive Officer ("**CEO**"), and Managing Partner, Mr. Erik Toth ("**Toth**"), will manage the day-to-day operations of the proposed sale process and report to the Debtors and other Larx personnel on the same. Any party interested in the proposed Sale process should contact Larx, c/o Erik Toth, at the following email address and phone number: 972.294.5884, erik@larxadvisors.com, and Larx Advisors Inc., c/o Erik Toth, 600 Network Boulevard, Suite 600, Frisco, Texas 75304.

13. Larx and Toth have begun a marketing process of the Assets, which includes the following:

(a) Establishing a data room with relevant documents about the Assets, the Debtors' financial status, and the Debtors' operations;

(b) Negotiating and executing non-disclosure agreements with interested parties;

(c) Preparing a confidential information presentation;

(d) Approaching strategic and financial buyers with industry and/or "special-situations" experience;

(e) Marketing the Debtors (i) as an entire portfolio, (ii) by individual market, and (iii) by individual facility;

(f) Having numerous informal discussions with bidders regarding the Assets and bidder due diligence; and

(g) Analyzing bids, selecting the stalking-horse bidder, negotiating the form buy-sell agreement, and recommending to the Debtors the highest or best offer(s) for the Assets.

14. Larx and Toth have each spent substantial time communicating with parties interested in the Assets, including WHC. All parties interested in buying the Assets should contact Larx and Toth at the above-listed contact information.

IV.
RELIEF REQUESTED

15. Generally, by this Motion, the Debtors seek approval of (a) the competitive bid process and procedures outlined in and attached to the proposed bid procedures order; (b) WHC as the "stalking-horse bidder" (the "**Stalking-Horse Bidder**") and its entitlement to a break-up fee assuming entry of the Bid Procedures Order, approval of the Bid Procedures (defined below), execution of a buy-sell agreement by the Debtors and WHC and performance by WHC in connection with the buy-sell agreement; and (c) the sale of the Assets to the highest or best offer(s).

16. *First*, by this Motion, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit "A"** (the "**Bid Procedures Order**"):

(a) approving the bidding procedures proposed to facilitate the orderly sale (the "**Sale**") of the Assets in the form attached hereto as **Exhibit "B"** and incorporated by reference herein (the "**Bid Procedures**"), inclusive of the overbid and break-up fee protections set forth therein for the Stalking Horse Bidder (the

"**Bid Protections**") to facilitate the orderly sale (the "**Sale**") of the Assets;

(b) approving the form and manner of notice of the hearing to approve the Sale (the "**Sale Hearing**," and the notice thereof, the "**Sale Notice**") attached hereto as **Exhibit "C"** and incorporated by reference herein;

(c) approving the form of the notice to be served on each non-debtor party to an executory contract or unexpired lease setting forth the amount of cure owed thereunder according to the Debtors' books and records (the "**Cure Notice**") attached as **Exhibit "F"**;

(d) subject to modification as necessary, fixing certain dates and deadlines, subject to modification as necessary, relating to the Bid Procedures, the auction (if one is necessary), the Sale Hearing and the filing of certain objections related thereto:

(i) **Good-Faith Deposit Deadline for the Stalking-Horse Bidder: 3:00 p.m. prevailing Central Time on February 9, 2021**, as the deadline by which the Stalking-Horse Bidder will pay its good-faith deposit;

(ii) **APA Filing Deadline for the Stalking-Horse Bidder: February 9, 2021**, as the deadline by which the Stalking Horse Bidder and the Debtors will execute and file the Stalking Horse APA and the proposed form of the Sale Order;

(iii) **Assumption and Assignment Notice Deadline**: **4:00 p.m. prevailing Central Time on March 9, 2021**, as the deadline by which the Debtors will file with the Court a notice identifying the proposed cure amounts for all unexpired leases and executory contracts;

(iv) **Objections to Cure Amounts: 4:00 p.m. prevailing Central Time on March 23, 2021**, as the deadline by which objections, if any, to the proposed cure amounts related to the assumption and assignment of unexpired leases and executory contracts must be filed and served with the Bid Procedures;

(v) **Bid Deadline**: **4:00 p.m. prevailing Central Time on March 26, 2021**, as the deadline by which Qualified Bidders (as defined in the Bid Procedures) must deliver written copies of their bidding materials consistent with, and to the parties specified in, the Bid Procedures and their good-faith deposit (the "**Bid Deadline**");

(vi) **Auction: 10:00 a.m. prevailing Central Time on March 29, 2021**, as the date on which an auction for the Assets (the "**Auction**"), if one is necessary, will commence at the offices of Foley & Lardner LLP, 2021 McKinney Avenue, Suite 1600, Dallas, TX 75201 by virtual appearance with credentials to be delivered and published with the notice of bid procedures;

(vii) **Sale Objection Deadline: 4:00 p.m. prevailing Central Time March 30, 2021**, as the deadline (the "**Sale Objection Deadline**") by which objections, if any, to the entry of the order approving the Sale Order (defined below) must be filed and served consistent with, and upon the parties specified in, the Bid Procedures; and

(viii) **Sale Hearing: March 31, 2021, or such other date selected by the Court, at a time convenient for the Court**, as the date on which the Sale Hearing will be held in the United States Bankruptcy Court for the Eastern District of Texas, Sherman Division, 660 North Central Expressway, Suite 300B Plano, Texas, 75074.

(e) granting related relief.

17. *Second*, by this Motion, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit "D"** (the "**Sale Order**"), approving (a) the sale of substantially all of the Assets free and clear of all liens, claims, encumbrances, and interests, together or in one or more asset packages (an "**Asset Package**"), and (b) the assumption and assignment of certain executory contracts related to and utilized in connection with the Assets to either (x) the Stalking Horse Bidder or (y) the Qualified Bidder who submits the highest or best bid in

accordance with the Bid Procedures (either, the "**Successful Bidder**" also referred to as the "**Purchaser**") under the terms of the final Asset Purchase Agreement ("**APA**") as the highest and best bid for the Assets.

V.
FACTUAL BACKGROUND

18. After considering all available options, and after consultation with their financial advisors, professionals and other interested parties, the Debtors have determined that the most prudent course of action would be to conduct a "sale process" for the orderly sale of substantially all of the Debtors' Assets under section 363 of the Bankruptcy Code, subject to higher and better bids pursuant to a Court-approved auction process.

19. To maximize value of the Assets, the Debtors have obtained a non-binding letter of intent (the "**LOI**"), attached hereto as **Exhibit "E,"** setting forth a "stalking-horse" bid from WHC for the purchase of the Assets for an estimated price of $69,500,000.00, with $10,000,000.00 constituting cash. As part of the LOI, WHC agreed to act as the Stalking Horse Bidder and incur the expenses associated with such a role, subject to the inclusion of the Bid Protections in the Bid Procedures. With the Stalking Horse Bidder and a minimum estimated purchase price now in place, the Debtors believe that it is a proper exercise of their business judgment to implement the competitive bidding process outlined in the Bid Procedures and promptly effectuate a Sale, either to the Stalking Horse Bidder or to another Qualified Bidder(s) who submits a higher or better Qualified Bid(s) for the Assets. The proposed Sale transaction is fair and appropriate and will maximize the value of the Assets for the stakeholders of the Debtors' bankruptcy estates (the "**Estates**"). Accordingly, the Debtors seek this Court's approval

of a proposed Sale transaction and related Bid Procedures so that it could solicit competing offers for the Assets.

VI.
BASIS FOR THE RELIEF REQUESTED

A. The Court should approve the proposed Bid Procedures.

20. The proposed Bid Procedures are attached as **Exhibit "A"** to this Motion. Any person interested in making an offer to purchase the Assets must comply with the Bid Procedures when they are approved by the Court. Generally, the Bid Procedures provide:

(a) If approved as the stalking-horse bidder, WHC will pay the $150,000.00 good-faith deposit into an interest-bearing escrow account, which will either be (i) applied to the purchase price at a closing on the Sale if WHC is the purchaser or (ii) refunded to WHC if WHC is not the ultimate buyer of the Assets, subject to the terms and conditions in the LOI and the Stalking Horse APA.

(b) Larx shall provide written notice to all parties with whom it has executed non-disclosure agreements concerning the marketing of the Assets of the Stalking Horse APA executed between the Debtors and WHC within twenty-four (24) hours after filing of the executed the Stalking Horse APA and shall provide to the Debtors a certificate of such notice.

(c) If the Bid Procedures Order is entered and no other Qualified Bid is received prior to the Bid Deadline, then the WHC Proposal, as formalized through the Stalking Horse APA, shall constitute the Successful Bid.

(d) If other Qualified Bid(s) are received by the Bid Deadline, then the Debtors shall conduct the Auction and select the highest or otherwise best Qualified Bid or Qualified Bids as the Successful Bid(s).

21. This Court should approve the proposed Bid Procedures because they will promote active bidding from interested parties and will identify the best or highest offer(s) for the sale of the Assets. The proposed Bid Procedures will allow the Debtors to conduct the sale process and Auction, if necessary, in a controlled, fair and open fashion that is designed to encourage active participation by financially capable bidders who have the ability and the desire to close the transaction. The Debtors believe that the Bid Procedures, inclusive of the Bid Protections for the Stalking Horse Bidder, are (a) sufficient to encourage active bidding for the Assets; (b) consistent with other procedures previously approved by bankruptcy courts; and (c) appropriate under relevant standards governing auction proceedings and bidding incentives in bankruptcy cases.

22. Once a debtor articulates a valid business justification for proposed Bid Procedures incident to an auction and sale, bankruptcy courts evaluate that justification under the business-judgment rule, which is "a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company." *In re S.N.A. Nut Co.*, 186 B.R. 98 (Bankr. N.D. Ill. 1995); *see also In re Broughton Ltd. P'ship*, 474 B.R. 206, 218 (Bankr. N.D. Tex. 2012) (citing *In re Cont'l Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986) ("[T]he court relies on an estate representative's sound business judgment in approving acts outside the ordinary course of business."); *In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992); *In re Johns-Manville Corp*., 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) ("A presumption of reasonableness attaches to a Debtor's management decisions.").

23. Courts have made clear that a debtor's business judgment is entitled to substantial deference with respect to the procedures to be used in selling assets of the estate. *See, e.g., In re Redwine Res.*, 2010 WL 5209287 at *2 (Bankr. N.D. Tex., June 24, 2010) (approving the debtor's proposed Bid Procedures where finding the debtors "have exercised sound business judgment and presented sound business reasons for approval of the [b]id [p]rocedures."); *Integrated Res*., 147 B.R. at 656-57 (noting that overbid procedures and break-up fee arrangements that have been negotiated by a debtor are to be reviewed according to the deferential "business judgment" standard, under which such procedures and arrangements are "presumptively valid"); *In re 995 Fifth Ave. Assocs., L.P.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (same).

24. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See, e.g., In re Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997) (in bankruptcy sales, "a primary objective of the Code [is] to enhance the value of the estate at hand"); *In re Atlanta Packaging Prods., Inc.*, 99 B.R. 124, 130 (Bankr. N.D. Ga. 1988) ("It is a well-established principle of bankruptcy law that the trustee's duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.").

25. To that end, courts uniformly recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and, therefore, are appropriate in the context of bankruptcy transactions. *See, e.g.*, *Integrated Res.*, 147 B.R. at 659 (such procedures "encourage bidding and to maximize the value of the debtor's assets"); *In re Fin. News Network, Inc.*, 126 B.R. 152, 156 (Bankr. S.D.N.Y. 1991),

("court-imposed rules for the disposition of assets ... [should] provide an adequate basis for comparison of offers, and [should] provide for a fair and efficient resolution of bankrupt estates").

26. Here, the Bid Procedures contain terms typical for a process through which a sale of bankruptcy estate assets and businesses is consummated, and will increase the likelihood that the Estates will receive the greatest possible consideration and value, because they will ensure a competitive and fair bidding process. Further, the Debtors believe that the consideration offered by the Stalking Horse Bidder in the LOI for the Assets is fair and adequate under the circumstances, and the Debtors are prepared to proceed to a sale to WHC for such consideration after the final terms and conditions are finalized in the Stalking Horse APA. However, to ensure that the Debtors maximize the value of the Assets, the Debtors with the guidance of Larx and Toth, as CRO, have identified sound business justifications for seeking approval of the Bid Procedures at this time to determine whether the consideration offered in the LOI is the highest and best consideration for the Assets. The Debtors believe that the presence of the Stalking Horse Bidder will not chill competitive bidding. To the contrary, the Debtors believe that the presence of the Stalking Horse Bidder combined with a fair and open process will increase interest and drive the value of the Assets for the stakeholders. In fact, prior to approval of the Bid Procedures, the Debtors remain free to consider proposals other than the WHC Proposal to determine if such proposals are higher or better than the WHC Proposal and may supplant the WHC Proposal as the one to propose as the Stalking Horse Bid, if, in the Debtors' business judgment, such other proposal is higher or better than the WHC Proposal.

27. In consideration for acting as the Stalking Horse Bidder and in consideration of the extensive time and diligence costs incurred and to be incurred by WHC Proposal, the Debtors request that the Court approve the Bid Protections, including (a) the proposed break-up fee of $500,000.00, which is 5% of the cash component of WHC's bid, (b) an expense reimbursement equal to the fees and expenses reasonably incurred by WHC and approved by this Court but not to exceed $500,000.00, (c) a minimum initial bid of $250,000.00, and (d) successive overbid increments of $500,000.00.

28. Break-up fees and reimbursements are a normal and, in many cases, necessary component of significant sales conducted under section 363 of the Bankruptcy Code: "[b]reak-up fees are important tools to encourage bidding and to maximize the value of the debtor's assets . . . In fact, because the . . . corporation ha[s] a duty to encourage bidding, break-up fees can be necessary to discharge [such] duties to maximize values." *Integrated Resources,* 147 B.R. at 659-60. Specifically, "break-up fees and other strategies may be legitimately necessary to convince a 'white knight' bidder to enter the bidding by providing some form of compensation for the risks it is undertaking." *In re 995 Fifth Ave. Assoc., L.P.,* 96 B.R. 24, 28 (Bantu-. S.D.N.Y. 1989) (quotations omitted); *Integrated Resources,* 147 B.R. at 660-61 (break-up fees can prompt bidders to commence negotiations and "ensure that a bidder does not retract its bid"); *In re Hupp Industries, Inc.,* 140 B.R. 191, 194 (Bankr. N.D. Ohio 1992) ("without such fees, bidders would be reluctant to make an initial bid for fear that their first bid will be shopped around for a higher bid from another bidder who would capitalize on the initial bidder's . . . due diligence").

29. Bankruptcy courts in Texas have likewise found that break-up fees and expense reimbursements are proper and necessary tools to ensure lively bidding, protect the auction process, and avoid potential litigation. *See e.g. In re Texas Rangers Baseball Partners,* 431 B.R. 706, 715 (Bankr. N.D. Tex. 2010).

30. As a consequence, bankruptcy courts frequently approve break-up fees and expense reimbursements in connection with proposed bankruptcy sales. In the process, courts generally consider "(1) whether the relationship of the parties who negotiated the fee is marked by self-dealing or manipulation; (2) whether the fee hampers, rather than encourages, bidding; and (3) whether the amount of the fee is reasonable in relation to the proposed purchase price." *In re Twenver, Inc.,* 149 B.R. 954, 956 (Bankr. D. Colo. 1992); *In re Bidermann Industries U.S.A., Inc.,* 203 B.R. 547, 552 (Bankr. S.D.N.Y. 1997).

31. The Debtors believe that the proposed break-up fee is reasonable and appropriate in these chapter 11 Cases for, among others, the following reasons:

(a) the break-up fee is well within the range approved by bankruptcy courts in similar circumstances;

(b) the break-up fee would be paid by any successful higher bidder at the Auction through the initial overbid, as opposed to being paid directly by the Estates;

(c) there is no self-dealing or manipulation, but rather arms-length negotiations; and

(d) the dollar amount of the bid by the Stalking Horse Bidder sets a floor price – not a ceiling – for the sale of the Assets, which will ensure that the Estates preserve and hopefully maximize value of the Assets.

32. As additional support, section 105(a) of the Bankruptcy Code provides that the Court "may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

33. In the Debtors' business judgment, the best option for maximizing the value of the Assets is through a sale of the Assets pursuant to the proposed Bid Procedures. Accordingly, the Debtors request that the Court permit WHC to act as the Stalking Horse Bidder pursuant to the Bid Procedures, and the Debtors further request that WHC have the protections afforded by the Bid Protections, including authorization to pay the Break-Up Fee if WHC is not the Successful Bidder and the Break-Up Fee is otherwise due.

B. The sale is an exercise of sound business judgment and should be approved.

34. Section 363 of the Bankruptcy Code authorizes a debtor to sell assets of the estate other than in the ordinary course of business and provides, in relevant part: "[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate . . . ." 11 U.S.C. § 363(b)(1).

35. Courts approve proposed sales of property pursuant to section 363 if the transaction represents the reasonable business judgment of the debtor. *See Inst. Creditors of Cont'l. Air Lines, Inc. v. Cont'l. Air Lines, Inc. (In re Cont'l. Air Lines)*, 780 F.2d 1223, 1226 (5th Cir. 1986) ("[F]or the debtor-in-possession or trustee to satisfy its fiduciary duty . . . there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business."); *In re Moore*, 608 F.3d 253, 263 (5th Cir. 2010) ("A sale of assets under § 363 . . . is subject to court approval and must be supported by an articulated

business justification, good business judgment, or sound business reasons."); *In re Delaware & Hudson Rv. Co.*, 124 B.R. 169, 176 (D. Del. 1991) (holding that a court must be satisfied that there is a "sound business reason" justifying the preconfirmation sale of assets); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987) (stating that the elements necessary for approval of a section 363 sale in a Chapter 11 case are "that the proposed sale is fair and equitable, that there is a good business reason for completing the sale and the transaction is in good faith"); *see also Comm. of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063 (2d Cir. 1983); *Stephens Indus. Inc. v. McClung*, 789 F.2d 386, 391 (6th Cir. 1986).

36. If a valid business justification exists for the sale – as it does in these chapter 11 Cases – a debtor's decision to sell property out of the ordinary course of business enjoys a strong presumption that "the directors of a corporation acted on an informed basis, in good faith and in an honest belief that the action taken was in the best interests of the company." *In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)); *see also In re ASARCO, L.L.C.*, 650 F.3d 593, 601 (5th Cir. 2011) ("The business judgment standard in section 363 is flexible and encourages discretion."); *GBL Holding Co.v. Blackburn/Travis/Cole, Ltd.*, 331 B.R. 251, 254 (Bankr. N.D. Tex. 2005) ("Great judicial deference is given to the [t]rustee's exercise of business judgment" [in approving a proposed sale under section 363].).

37. Therefore, any party objecting to the proposed sale must make a showing of "bad faith, self-interest or gross negligence." *In re Integrated Res., Inc.*, 147 B.R. at 656 (citing *Smith*

v. Van Gorkom, 488 A.2d 858, 872-73 (Del. 1985)); *see also Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) ("Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct.").

38. In determining whether a proposed section 363(b)(1) sale satisfies the "business-judgment standard," courts consider the following: (a) whether a sound business justification exists for the sale; (b) whether adequate and reasonable notice of the sale was given to interested parties; (c) whether the price is fair and reasonable; and (d) whether the parties have acted in good faith. *See, e.g.*, *In re N. Am. Techs. Group, Inc.*, 2010 Bankr. LEXIS 5834, *7 (Bankr. E.D. Tex. Aug. 16, 2010) (citing *In re Condere*, 228 B.R. 615, 626 (Bankr. S.D. Miss. 1998)); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987). The Debtors will show that the proposed sale of the Assets satisfies all these factors.

39. First, sound business justification exists for the Sale. The Debtors' liquidity is currently limited, and the Debtors face challenges to resolve that limitation in the near future. Accordingly, at this time, the proposed orderly sale of the Assets is the only viable alternative to maximize value of the Assets. The Debtors submit that the proposed Sale of the Assets is supported by a number of sound business reasons, and the facts support an expeditious but regulated and controlled sale of the Assets to preserve value.

40. Second, robust marketing efforts will continue and the Debtors will provide adequate and reasonable notice of the Sale. Notice will be given to interested parties of the Bid Procedures, the Auction, and the date of the Sale as required in the Bid Procedures Order. The Debtors submit that that such notice constitutes adequate and reasonable notice to interested parties, as set forth in the Bid Procedures Order, under the circumstances and should be approved.

41. Third, the ultimate purchase price for the Assets will be dictated by the market and fair and reasonable. Whether sold to the Stalking Horse Bidder for the price contemplated in the WHC Proposal, or to a Qualified Bidder willing to pay more, the value to be received by the Estates pursuant to the Bid Procedures and Auction is necessarily the highest possible value.

42. Fourth, under the Bid Procedures, the Debtors will have acted in good faith to canvas the market to ensure that the ultimate sales price for the Assets is the highest value possible. The Debtors submit that the approval of the proposed Sale is appropriate and warranted under section 363 of the Bankruptcy Code.

C. The Sale of the assets will be free and clear of liens, claims, encumbrances, and interests.

43. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of liens, claims, interests, and encumbrances in property of an entity other than the estate if

> (1) applicable nonbankruptcy law permits a sale of such property free and clear of such interest;
>
> (2) such entity consents;

> (3) such interest is a lien and the price at which such property is to be sold is greater than the value of all liens on such property;
>
> (4) such interest is in *bona fide* dispute; or
>
> (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

44. Because section 363(f) of the Bankruptcy Code is drafted "in the disjunctive," satisfaction of any one of its five (5) requirements will suffice to permit the sale of the Assets "free and clear" of liens and interests. *In re Nature Leisure Times, LLC*, 06-41357, 2007 WL 4554276, at *3 (Bankr. E.D. Tex. Dec. 19, 2007); *see also Michigan Employment Sec. Comm'n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (stating that Bankruptcy Code section 363(f) is written in the disjunctive; holding that the court may approve the sale "free and clear" provided at least one of the subsections of Bankruptcy Code section 363(f) is met); *In re Dundee Equity Corp.*, No. 89-B-10233, 1992 WL 53743, at *4 (Bankr. S.D.N.Y. Mar. 6, 1992) ("[S]ection 363(f) is in the disjunctive, such that the sale free of the interest concerned may occur if any one of the conditions of § 363(f) have been met."); *In re Bygaph, Inc.*, 56 B.R. 596, 606 n.8 (Bankr. S.D.N.Y. 1986).

45. The Court may also authorize the sale of a debtor's assets free and clear of any liens pursuant to section 105 of the Bankruptcy Code, even if section 363(f) did not apply. *See Matter of Selby Farms*, 15 B.R. 372, 375 (Bankr. S.D. Miss. 1981) ("The power of the Bankruptcy Court to sell property free and clear of liens has long been recognized.") (citing *Van Huffel v. Harkelrode*, 284 U.S. 225, 227-28 (1931)); *In re Trans World Airlines. Inc.*, No. 01-

0056, 2001 WL 1820325, at *3 (Bankr. D. Del. Mar. 27, 2001) ("Bankruptcy courts have long had the authority to authorize the sale of estate assets free and clear even in the absence of § 363(f)."); *see also Volvo White Truck Corp. v. Chambersberg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) ("Authority to conduct such sales [free and clear of liens] is within the court's equitable powers when necessary to carry out the provisions of Title 11.").

46. With regard to the sale of the Assets, the Debtors believe that at least one of the tests in section 363(f) will be satisfied. In particular, the Debtors believe that sections 363(f)(2) and (f)(5) will be satisfied first, because (a) any party asserting a lien on the Assets to be sold will have consented to this Motion and (b) absent such consent, any party asserting a lien on the Assets to be sold could be compelled to accept a monetary satisfaction of its security interest in the Assets. Further, all liens of any secured party against the Assets will attach to the proceeds from the sale of the Assets to the same extent and priority as such liens exist in the Assets.

D. The assumption and assignment of contracts as authorized by section 365 of the Bankruptcy Code.

47. Sections 365(a) and (b) of the Bankruptcy Code authorize a debtor-in-possession to assume, subject to the court's approval, executory contracts or unexpired leases of the debtor. *See generally* 11 U.S.C. § 365(a) and (b); *In re Idearc Inc.*, 423 B.R. 138, 162 (Bankr. N.D. Tex. 2009) (recognizing that, "[u]nder section 365 of the Bankruptcy Code, a debtor may assume an executory contract or unexpired lease"); *In re Jamesway Corp.*, 201 B.R. 73, 76 (Bankr. S.D.N.Y. 1996). In turn, section 365(b)(1) of the Bankruptcy Code codifies the requirements for assuming an unexpired lease or executory contract of a debtor, providing as follows:

> (b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee
>
> (A) cures or provides adequate assurance that the trustee will promptly cure, such default …;
>
> (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
>
> (C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

48. In analyzing whether the assumption or rejection of an executory contract or unexpired lease pursuant to section 365(a) should be approved, courts apply the "business-judgment" test, which requires a determination that the requested assumption or rejection be "advantageous to the estate and the decision be based on sound business judgment." *In re McCommas LFG Processing Partners, LP*, 07-32219-HDH-11, 2007 WL 4234139, at *14 (Bankr. N.D. Tex. Nov. 29, 2007). *See*, *e.g., In re Group of Institutional Investors, Inc. v. Chicago, Milwaukee, St. Paul and Pac. R.R. Co.*, 318 U.S. 523, 550 (1943) ("The question [of assumption] is one of business judgment."); *In re Idearc, Inc.*, 423 B.R. at 162 ("Courts apply the 'business judgment test' [to a debtor's decision to assume and executory contract or lease], which requires a showing that the proposed course of action will be advantageous to the estate . . . ."); *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1098-99 (2d Cir. 1993) (holding that, when deciding whether to grant a motion to assume, a

court must put itself in the trustee's position and determine whether such assumption would be a good decision or a bad one).

49. In making this determination, courts generally will not second-guess a debtor's business judgment concerning the assumption of an executory contract. *See In re McCommas LFG Processing Partners, LP*, 2007 WL 4234139, at *15 ("In the absence of a showing of bad faith or an abuse of business discretion, the debtor's business judgment will not be altered.") (citing *NLRB v. Bildisco & Bildisco (In re Bildisco)*, 682 F.2d 72, 79 (3d Cir.), aff'd, 465 U.S. 513 (1984)). *See, e.g.*, *In re Paolo Gucci*, 193 B.R. 411, 414 (S.D.N.Y. 1996); *Sharon Steel Corp. v. National Gas Fuel Distrib. Corp. (In re Sharon Steel Corp.)*, 872 F.2d 36, 40 (3d Cir. 1989); *In re III Enter., Inc.*, 163 B.R. 453, 469 (Bankr. E.D. Pa. 1994) ("Generally, a court will give great deference to a debtor's decision to assume or reject an executory contract. A debtor need only show that its decision to assume or reject the contract is an exercise of sound business judgment – a standard which we have concluded many times is not difficult to meet.").

50. Here, the Debtors' assumption and assignment of the Assigned Contracts (as defined in the LOI) to the Stalking Horse Bidder as set forth in the LOI or the to-be-finalized Stalking Horse APA – or the ultimate Successful Bidder after an Auction – meets the business-judgment standard and satisfies the requirements of section 365 of the Bankruptcy Code. First, the scope of the Assigned Contracts is focused and reasonable. As noted in the LOI, the Stalking Horse Bidder will provide a schedule of the contracts to be assumed and any associated cure amount, including, without limitation, all customer contracts and Representative Agreements (as defined in the LOI) to be assumed. As mentioned, the Debtors' liquidity is challenged, and the

Sale transactions contemplated by this process will preserve and maximize value of the Assets. Because the Debtors cannot obtain such preservation and maximization without the assumption and assignment of the Assigned Contracts, the assumption of these Assigned Contracts is a sound exercise of the Debtors' business judgment.

51. Further, a debtor-in-possession may assign an executory contract or an unexpired lease of the debtor if it assumes the agreement in accordance with section 365(a), and provides adequate assurance of future performance by the assignee, "whether or not there has been a default" under the agreement. 11 U.S.C. § 365(f)(2). Significantly, among other things, adequate assurance may be provided by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. *See, e.g.*, *In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (stating that adequate assurance of future performance is present when the prospective assignee of a lease from the debtor has financial resources and has expressed willingness to devote sufficient funding to the business in order to give it a strong likelihood of succeeding); *In re Old S. Coors*, 27 B.R. 923, 926 (Bankr. N.D. Miss. 1983) (finding that the assignees' "long and successful business experience and financial strength" satisfied the "reasonable standards of adequate assurance of future performance").

52. The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but it should be given "practical, pragmatic construction." *In re Liljeberg Enters, Inc.*, 304 F.3d 410, 438-39 (5th Cir. 2002) ("[T]o determine if the debtor in possession has provided 'adequate assurance of future performance' . . . courts must look to 'factual conditions,' including 'consider[ation of] whether the debtor's financial data indicated

its ability to generate an income stream sufficient to meet its obligations, the general economic outlook in the debtor's industry, and the presence of a guarantee.") (internal citations omitted); *EBG Midtown South Corp. v. McLaren/Hart Environmental Eng'g. Corp. (In re Sanshoe Worldwide Corp.)*, 139 B.R. 585, 592 (S.D.N.Y. 1992) (citations omitted), *aff'd,* 993 F.2d 300 (2d Cir. 1993).

53. Here, all monetary defaults that must be cured under section 365(b) as a pre-condition to the assumption and assignment of the Assigned Contracts will be cured prior to the proposed closing. By March 9, 2021, the Debtors will file with the Court and serve on each non-debtor party to an executory contract or unexpired lease a Cure Notice setting forth the amount of cure owed thereunder according to the Debtors' books and records. The Cure Notice shall state the cure amount that the Debtors believe is necessary to assume such contract or lease pursuant to section 365 of the Bankruptcy Code (the "**Cure Amount**"), and notify each non-debtor party that such party's lease or contract may be assumed and assigned to the Stalking Horse Bidder or to the successful bidder identified at the conclusion of the Auction, if any. The proposed form of the Cure Notice attached hereto as **Exhibit "F."**

54. In this Motion, the Debtors will request that this Court order that any objection to the Cure Amount be filed with the Court by March 23, 2021 (the "**Cure Amount Objection Deadline**"). Any objection to the Cure Amount must state with particularity what alternative cure amount the non-debtor party believes is required with appropriate supporting documentation and the legal and factual bases for that belief. If no objection is timely received, the Bid Procedures Order will provide that Cure Amount set forth in the Cure Notice shall be controlling,

notwithstanding anything to the contrary in any executory contract, unexpired lease, or other document that exists on the date of the Cure Notice; the non-debtor party to the executory contract or unexpired lease shall be deemed to have stipulated that the Cure Amount set forth in the Cure Notice is correct; the non-debtor party shall be forever barred, estopped, and enjoined from asserting or claiming that any additional amounts are due or other defaults exist under the unexpired lease or executory contract, that conditions to assignment must be satisfied or that there is any objection or defense to the assumption and assignment of such contract or lease, including any argument that there exist conditions to assumption and assignment that must be satisfied or that any required consent to assignment has not been given.

55. At the Sale Hearing, the Debtors will demonstrate that the Stalking Horse Bidder or other ultimately Successful Bidder has sufficient assets to continue performance under any Assigned Contract. The Debtors submit that the assumption and assignment of the Assigned Contracts as set forth herein should be approved.

56. To assist in the assumption and assignment of the Assigned Contracts, the Debtors request that the Court enter an order providing that any anti-assignment provisions, if any, in the Assigned Contracts shall not restrict, limit, or prohibit the assumption and assignment of the Assigned Contracts and are deemed and found to be unenforceable anti-assignment provisions within the meaning of section 365(f) of the Bankruptcy Code. Section 365(f)(1) of the Bankruptcy Code permits a debtor-in-possession to assign unexpired leases and executory contracts free from such anti-assignment restrictions, providing, in pertinent part, that:

> [N]otwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits,

> restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease under paragraph (2) of this subsection . . . .

11 U.S.C. § 365(f)(1).

57. By operation of law, section 365(f)(1) invalidates provisions that prohibit, restrict, or condition assignment of an executory contract or unexpired lease. *See In re Pin Oaks Apartments*, 7 B.R. 364, 367 (Bankr. S.D. Tex. 1980) (finding that section 365(f)(1) grants the debtor "rights to assign a lease to a third party who becomes fully liable thereunder, notwithstanding any contrary contractual provisions which restrict, prohibit or condition any such assignment"). *See, e.g.*, *Coleman Oil Co., Inc. v. The Circle K Corp. (In re The Circle K Corp.)*, 127 F. 3d 904, 910-11 (9th Cir. 1997) ("[N]o principle of bankruptcy or contract law precludes us from permitting the Debtors here to extend their leases in a manner contrary to the leases' terms, when to do so will effectuate the purposes of section 365.").

58. Section 365(f)(3) goes beyond the scope of section 365(f)(1) by prohibiting enforcement of any clause creating a right to modify or terminate the contract or lease upon a proposed assumption or assignment thereof. *See, e.g., In re Jamesway Corp.*, 201 B.R. 73 (Bankr. S.D.N.Y. 1996) (finding that section 365(f)(3) prohibits enforcement of any lease clause creating right to terminate lease because it is being assumed or assigned, thereby indirectly barring assignment by debtor; all lease provisions, not merely those entitled anti-assignment clauses, are subject to court's scrutiny regarding anti-assignment effect).

59. Other courts have recognized that provisions that have the effect of restricting assignments also cannot be enforced. *See In re Rickel Home Centers, Inc.*, 240 B.R. 826, 831 (D.

Del. 1998) ("In interpreting Section 365(f), courts and commentators alike have construed the terms to not only render unenforceable lease provisions which prohibit assignment outright, but also lease provisions that are so restrictive that they constitute de facto anti-assignment provisions."); *see also In re U.L Radio Corp.*, 19 B.R. 537, 543 (Bankr. S.D.N.Y. 1982) ("Any lease provision, not merely one entitled 'anti-assignment clause,' would be subject to the court's scrutiny regarding its anti-assignment effect.").

60. Similarly, in *In re Mr. Grocer, Inc.*, the court noted that:

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

77 B.R. 349, 354 (Bankr. D. N.H. 1987).

61. Accordingly, the Debtors request that any anti-assignment provisions be deemed not to restrict, limit, or prohibit the assumption and assignment of the Assigned Contracts and be deemed and found to be unenforceable anti-assignment provisions within the meaning of section 365(f) of the Bankruptcy Code.

E. The ultimate purchaser will be entitled to protections as a good-faith purchaser.

62. Bankruptcy Code section 363(m) states, in relevant part:

> The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in

> good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 365(m).

63. Bankruptcy courts in Texas have upheld section 363 purchase agreements "negotiated, proposed, and entered into . . . in good faith, without collusion . . . [resulting from] arm's-length bargaining with . . . parties represented by independent counsel." *In re TriDimension Energy, L.P.*, 2010 Bankr. LEXIS 4838, *13 (Bankr. N.D. Tex. Nov. 19, 2010). A sale to a good-faith purchaser cannot be avoided under section 363(m), unless the sale authorization was stayed pending appeal. *See* 11 U.S.C. § 363(m) ("The reversal or modification of an authorization under subsection (b) of this section of a sale . . . does not affect the validity of [the] sale . . . to an entity that purchased … the property in good faith . . . ."). However, "[t]he trustee may avoid a sale . . . if the sale price was controlled by an agreement among potential bidders . . . ." *Id.* § 363(n). Additionally, for the sale to be considered in good-faith, consideration must: (1) be fair and reasonable; (2) be the highest and best offer for the property; and (3) constitute reasonably equivalent value, fair value, and fair consideration. *In re TriDimension Energy, L.P.*, 2010 Bankr. LEXIS 4838, at *13.

64. The Debtors will show that they negotiated with the Successful Bidder at arm's-length, in good faith, and in an effort to achieve the best offer for the Assets. The Debtors will show that the Successful Bidder, who was represented by independent counsel, recognized the need for and actively encouraged transparency in the solicitation of competing bids via the Bid Procedures. The Successful Bidder will have, by definition, participated in a good faith manner

through compliance with the Bid Procedures. An Auction conducted in accordance with the Bid Procedures will further ensure that the sale of the Assets will be the result of arm's length, good faith negotiations between the Debtors and each party submitting a Qualified Bid. The Bid Procedures, coupled with the prospect of an open Auction, definitively preclude any conduct that would cause or permit the sale to be set aside under section 363(n) of the Bankruptcy Code. As such, the Debtors will show that the Successful Bidder is entitled to the protections of a good-faith purchaser under section 363(m) of the Bankruptcy Code, and the sale of the Assets does not constitute an avoidable transaction pursuant to section 363(n).

65. The Debtors reiterate that any agreement executed with or related to the sale of the Assets will provide substantial, essential value to the Estates because it will facilitate an efficient liquidation for fair and reasonable consideration. *See In re TriDimension Energy, L.P.*, 2010 Bankr. LEXIS 4838, at *9 (finding that reasonably equivalent value existed under the Bankruptcy Code); *Mellon Bank, NA. v. Metro Communications, Inc.*, 945 F.2d 635 (3d Cir. 1991), *cert. denied,* 503 U.S. 937 (1992) (same); *see also Mellon Bank, N.A. v. Official Comm. of Unsecured Creditors (In re R.M.I., Inc.)*, 92 F.3d 139 (3d Cir. 1996); *Salisbury v. Texas Commerce Bank-Houston, N.A. (In re WCC Holding Corp.)*, 171 B.R. 972, 984 (Bankr. N.D. Tex. 1994) (reasonably equivalent value under Texas law) (citing *Besing v. Hawthorne (In re Besing)*, 981 F.2d 1488, 1495 (5th Cir.), *cert. denied.* 510 U.S. 821 (1993) and *Southmark Corp. v. Riddle (In re Southmark Corp.)*, 138 B.R. 820, 829 (Bankr. N.D. Tex. 1992)); *In re China Resource Prod. Ltd. v. Favda Intern., Inc.*, 856 F. Supp. 856, 866 (D. Del. 1994) (citing *Geyer v. Ingersoll Publications Co.*, 621 A.2d 784, 792 (Del. Ch. 1992)).

66. Through the Bid Procedures, exposure of the Assets will not be limited or constricted, but the Assets will instead be subjected to an open process, subject to review by the Court, that recognizes the rights of all parties-in-interest while providing the Estates with reasonably equivalent value in exchange for the Assets. The Debtors believe that the to-be-determined ultimate purchaser of the Assets is therefore a "good faith" purchaser within the meaning of Bankruptcy Code, and will be entitled to the full protections afforded by section 363(m). Accordingly, the Debtors request that the Sale Order contain findings and protections pursuant to Bankruptcy Code section 363(m).

F. Cause exists to eliminate any stay imposed by the Bankruptcy Rules.

67. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property ... is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). Bankruptcy Rule 6006 provides that an "order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6006(d).

68. The Debtors request that any order approving this Motion (or authorizing a transaction to sell the Assets) be effective immediately, thereby waiving the 14-day stays imposed by Bankruptcy Rules 6004 and 6006. These waivers or eliminations of the 14-day stays are necessary for the Sale to close and the funding to be received as expeditiously as possible. The Debtors respectfully submit that it is in the best interest of the Estates to close the Sale as

soon as possible after all closing conditions have been met or waived. Accordingly, the Debtors request that the Court eliminate the 14-day stays imposed by Bankruptcy Rules 6004 and 6006.

VII.
NOTICE

69. The pleadings in these Cases and supporting papers are available on the Bankruptcy Court's website at https://ecf.txeb.uscourts.gov/ and on the Debtors' proposed Claims and Noticing Agent's website at https://cases.stretto.com/Spherature. You can also request any pleading you need from the Debtors' proposed counsel at: Foley & Lardner LLP, c/o Thomas C. Scannell, 2021 McKinney Avenue, Suite 1600, Dallas, Texas 75201 (tscannell@foley.com).

VIII.
CONCLUSION

WHEREFORE, the Debtors respectfully request that this Court enter the Bid Procedures Order in substantially the form attached as **Exhibit "A"** and thereby:

(a) approve the Bid Procedures;

(b) approve the Stalking Horse Bidder, including the Bid Protections;

(c) approve the form and manner of Notice of the Bid Procedures and the Auction;

(d) [approve the form and manner of the Cure Notice];

(e) schedule the Auction and the Sale Hearing: and

(f) grant the related relief set forth herein.

Further, the Debtors respectfully request at the conclusion of the Sale Hearing that this Court enter the Sale Order, substantially in the form attached as **Exhibit "D"** and thereby:

(a) authorize and approve the sale of the Assets to the party or parties that timely submit the highest and best Qualified Bid(s) in compliance with the Bid Procedures that, in the Debtors' business judgment, constitutes the highest or best offer(s) free and clear of all claims, encumbrances, liens, and other interests; and

(b) authorize the assumption and assignment of the Assigned Contracts; and

(c) for such other and further relief as the Debtors may show themselves justly entitled.

DATED: January 21, 2021

Respectfully submitted by:

FOLEY & LARDNER LLP

/s/ Marcus A. Helt

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PROPOSED COUNSEL FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

CERTIFICATE OF SERVICE

I hereby certify that, in compliance with Local Bankruptcy Rule 6004-1(a)(2), on January 21, 2021, a true and correct copy of the foregoing document was served (i) by First Class Mail on each party to the master mailing list (consolidated matrix for these Cases); and (ii) by electronic mail through the Court's CM/ECF PACER system on all parties registered to receive electronic notice in these Cases.

/s/ Thomas C. Scannell
Thomas C. Scannell

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

In re:	§	**Chapter 11**
	§	
SPHERATURE INVESTMENTS LLC, *et al.,*	§	**Case No.: 20-42492**
	§	
	§	
Debtors.[1]	§	**Jointly Administered**

ORDER (I) AUTHORIZING AND APPROVING: (A) BID PROCEDURES; (B) STALKING HORSE BIDDER AND BID PROTECTIONS; AND (C) FORM AND MANNER OF NOTICES; AND (II) SCHEDULING AN AUCTION AND SALE HEARING

This matter having come before this court on the *Motion for Entry of an Order (I) Authorizing and Approving: (A) Bid Procedures; (B) Stalking Horse Bidder and Bid Protections; and (C) Form and Manner of Notices; (II) Scheduling an Auction and Sale Hearing; (III) Approving the Sale of Substantially All of the Debtors Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests; (IV) Authorizing the Assumption and Assignment Of Executory Contracts and Unexpired Leases; and (V) Granting Related Relief* (the "**Motion**")[2] filed by Spherature Investments LLC ("**Spherature**"), together with its affiliates identified herein (collectively, the "**Debtors**"), the Debtors and debtors-in-possession in the above captioned chapter 11 cases (the "**Cases**").

[1] The "**Debtors**" in the above-captioned jointly administered chapter 11 bankruptcy cases ("**Cases**") are: Spherature Investments LLC ("**Spherature**") EIN#5471; Rovia, LLC ("**Rovia**") EIN#7705; WorldVentures Marketing Holdings, LLC ("**WV Marketing Holdings**") EIN#3846; WorldVentures Marketplace, LLC ("**WV Marketplace**") EIN#6264; WorldVentures Marketing, LLC ("**WV Marketing**") EIN#3255; WorldVentures Services, LLC ("**WV Services**") EIN#2220.

[2] Capitalized terms not defined herein shall have the meaning ascribed in the Motion.

The Court, having reviewed the Motion, and all matters brought to the Court's attention at the hearing to consider the requested Bid Procedures (the "**Bid Procedures Hearing**"), and after due deliberation and consideration, and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, that this is a core proceeding pursuant to 28 U.S.C. § 157(b), and that venue of this proceeding and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409, the Court finds that:

a) It has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue is proper in this District and in the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

b) The notice given of the Motion and the Bid Procedures Hearing thereon was reasonable and sufficient in light of the circumstances and nature of the relief requested, and no other or further notice of the Bid Procedures Hearing is necessary. A reasonable and fair opportunity to object to the Motion and the relief granted in this Order has been afforded under the circumstances.

c) The legal and factual bases set forth in the Motion and at the Bid Procedures Hearing establish just cause for the relief granted herein; granting the relief is in the best interests of the Debtors, the estates, and the creditors thereof.

d) The Debtors have articulated good and sufficient reasons for this Court to grant the relief requested in the Motion as provided herein. Such good and sufficient reasons were set forth in the Motion and on the record at the Bid Procedures

Hearing and are incorporated by reference herein and, among other things, form the basis for the findings of fact and conclusions of law set forth herein. Specifically, the Debtors have demonstrated a sound business justification for the Court to approve (i) WV Holdings Co. LLC ("**WHC**") as the Stalking Horse Bidder and (ii) the payment of the Break-Up Fee (as defined herein) to the Stalking Horse Bidder on the terms and conditions identified in the LOI, the Motion, and the Buy Sell ("**WHC Proposal**").

e) The Debtors have also demonstrated a compelling and sound business justification for the relief granted herein and the timeline proposed by the Debtors set forth below is reasonable:

i. **Good-Faith Deposit Deadline for the Stalking-Horse Bidder: 3:00 p.m. prevailing Central Time on February 9, 2021,** as the deadline by which the Stalking-Horse Bidder will pay its good-faith deposit;

ii. **APA Filing Deadline for the Stalking-Horse Bidder: February 9, 2021,** as the deadline by which the Stalking Horse Bidder and the Debtors will execute and file the Stalking Horse APA and the proposed form of the Sale Order;

iii. **Assumption and Assignment Notice Deadline**: **4:00 p.m. prevailing Central Time on March 9, 2021**, as the deadline by which the Debtors will file with the Court a notice identifying the proposed cure amounts for all unexpired leases and executory contracts;

iv. **Objections to Cure Amounts: 4:00 p.m. prevailing Central Time on May 23, 2021**, as the deadline by which objections, if any, to the proposed cure amounts related to the assumption and assignment of unexpired leases and executory contracts must be filed and served consistent with the Bid Procedures;

v. **Bid Deadline**: **4:00 p.m. prevailing Central Time on March 26, 2021**, as the deadline by which Qualified Bidders (as defined in the

Bid Procedures) must deliver written copies of their bidding materials consistent with, and to the parties specified in, the Bid Procedures and their good-faith deposit (the "**Bid Deadline**");

vi. **Auction: 10:00 a.m. prevailing Central Time on March 29, 2021**, as the date on which an auction for the Assets (the "**Auction**"), if one is necessary, will commence at the offices of Foley & Lardner LLP, 2021 McKinney Avenue, Suite 1600, Dallas, TX 75201 by virtual appearance with credentials to be delivered and published with the notice of bid procedures;

vii. **Sale Objection Deadline: 4:00 p.m. prevailing Central Time March 30, 2021**, as the deadline (the "**Sale Objection Deadline**") by which objections, if any, to the entry of the order approving the Sale Order (defined below) must be filed and served consistent with, and upon the parties specified in, the Bid Procedures; and

viii. **Sale Hearing: March 31, 2021, or such other date selected by the Court, at a time convenient for the Court**, as the date on which the Sale Hearing will be held in the United States Bankruptcy Court for the Eastern District of Texas, Sherman Division, 660 North Central Expressway, Suite 300B Plano, Texas, 75074.

f) The bid procedures (the "**Bid Procedures**") set forth in **Exhibit "B"** attached to the Motion (i) were proposed by the Debtors in good faith with the goal of maximizing value of the Assets for the benefit of all creditors of the estates and (ii) are fair, reasonable, and appropriate and are designed to maximize the value of the Assets to be sold.

g) Approval of the following bid protections (the "**Bid Protections**") as part of the Bid Procedures is a necessary and appropriate inducement to the Stalking Horse Bidder to make an initial offer that will serve as a "floor" for further bidding, and to enter into the Stalking Horse APA and consummate the transactions contemplated thereby, which are as follows:

i. a break-up fee of $500,000.00, which is 5% of the cash component WHC's bid, payable to WHC (a) in cash upon consummation of a sale to another bidder at a higher or better offer or (b) as an allowed administrative expense claim under § 503(b) of the Bankruptcy Code if the Debtors fail to close under the Stalking Horse APA for any reason other than (x) a material breach by WHC or (y) the termination of the Stalking Horse APA or the LOI by WHC (the "**Break-Up Fee**");

ii. an entitlement to an expense reimbursement ("**Expense Reimbursement**") of up to $500,000.00 (as defined in the LOI) payable to WHC a) in cash upon consummation of a sale to another bidder at a higher or better offer or (b) as an allowed administrative expense claim under section 503(b) of the Bankruptcy Code if the Debtors fail to close under the Stalking Horse APA for any reason other than (x) a material breach by WHC or (y) the termination of the Stalking Horse APA or the LOI by WHC;

iii. an initial overbid requirement equal to the sum of (a) the Purchase Price, (b) $250,000.00, (c) the Break-Up Fee, and (d) plus the Expense Reimbursement; and

iv. subsequent overbid increments of $500,000.00.

h) The form of notice (the "**Notice**") attached as **Exhibit "C"** to the Motion is adequate and reasonably calculated to provide due, proper, and timely notice to all interested parties of (i) the Bid Procedures; (ii) the objection deadline to the Motion and related transactions; (iii) the date and time set for the Auction, if necessary; (iv) the date and time set for the Sale Hearing in accordance with Bankruptcy Rule 2002 and the applicable provisions of the Bankruptcy Code; and (v) entry of this Order. Except as otherwise set forth herein, no other or further notice is necessary.

i) If held, the Auction is necessary to determine which Qualified Bid represents the highest or otherwise best Qualified Bid.

j) The Break-Up Fee and the Bid Protections are fair and reasonable and were negotiated by the parties at arm's length and in good faith. The Debtors' obligation to pay the Break-Up Fee and Expense Reimbursement, consistent with terms of the LOI, are each (i) an actual and necessary cost and expense of preserving the Debtors' bankruptcy estates, within the meaning of § 503(b) of the Bankruptcy Code, (ii) of substantial benefit to the Debtors' Estates, (iii) reasonable and appropriate, and (iv) necessary to ensure that WHC will continue to pursue its proposed acquisition of the Assets.

k) The Bid Procedures were and are material inducements for, and the conditions of, WHC's entering into the LOI. WHC is unwilling to commit to hold open its offer to purchase the Assets under the terms of the LOI unless the Break-Up Fee and Bid Protections are approved. Assurance to WHC of payment of the Break-Up Fee and Expense Reimbursement has promoted and will promote more competitive bidding by inducing WHC's bid that otherwise would not have been made, and without which bidding would have been and would continue to be limited. Further, because the Break-Up Fee and Expense Reimbursement induced WHC to submit a bid that will serve as a minimum floor bid on which other bidders and the Debtors may rely, WHC has provided a substantial benefit to the Estates by increasing the likelihood that the price at which the Assets are sold will reflect the true value of the Assets.

l) The findings of fact and conclusions of law herein constitute the Court's findings of fact and conclusions of law for the purposes of Bankruptcy Rule 7052, made

applicable pursuant to Bankruptcy Rule 9014. To the extent any findings of facts are conclusions of law, they are adopted as such. To the extent any conclusions of law are findings of fact, they are adopted as such.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is granted, and the Bid Procedures are hereby approved in their entirety to be used in connection with the proposed sale of the Assets. The Debtors are hereby granted the power and authority to take all steps necessary or appropriate to carry out the provisions of this Order and the Bid Procedures. The Bid Procedures are incorporated herein by reference as if fully set forth herein. Notwithstanding the foregoing, the consummation of the sale of the Assets shall remain subject to the entry of a Sale Order approving the sale of the Assets and related transactions as contemplated in the Motion.

2. The Bid Procedures and the Bid Protections, including the Break Up Fee and the Expense Reimbursement, are fair and reasonable, are reasonably calculated to produce the best or highest offers for the Assets, and will confer actual benefit on the Debtors and their estates. The Bid Procedures and the Bid Protections, including the Break Up Fee and the Expense Reimbursement, represent an exercise of the Debtors' sound business judgment and will facilitate an orderly sale process.

3. The Debtors are authorized to take any and all actions necessary or appropriate to implement the Bid Procedures. As described in the Bid Procedures, if the Debtors do not receive any Qualified Bids, the Auction will not be held. If one or more Qualified Bids is timely received from a Qualified Bidder in accordance with the Bid Procedures, then the Debtors shall determine

the Initial Bid and conduct the Auction as set forth therein. Any disputes as to the final selection of the highest or best Qualified Bid, or any other dispute arising from the implementation of the Bid Procedures, shall be resolved by this Court.

4. WHC is hereby approved as the Stalking Horse Bidder on the terms and conditions set forth in the LOI attached as **Exhibit "E"** to the Motion and the Stalking Horse APA.

5. All of the Bid Protections, including (without limitation) the Break-Up Fee and the Expense Reimbursement are approved. WHC shall be entitled to an allowed administrative expense in the amount of the Break-Up Fee and the Expense Reimbursement under section 503(b) of the Bankruptcy Code in accordance with the terms of the LOI and may rely on this Order for such administrative-expense claim without the need to file a separate motion with the Court.

6. If an Auction is held and WHC is not a Successful Bidder or any other conditions set forth in the LOI governing the Break-Up Fee and Expense Reimbursement are satisfied, then WHC will be entitled to the benefits afforded by the Bid Protections including payment of the Break-Up Fee and the Expense Reimbursement. Every bid that WHC submits during each round of any Auction shall include, as a credit against the total bid amount, the amount of the Break-Up Fee and the Expense Reimbursement, and if WHC is a Successful Bidder, the amount of consideration that WHC provides in order to acquire the Assets shall equal the amount of the Successful Bid less the amount of the Break-Up Fee and the Expense Reimbursement.

7. Within four (4) business days after the Court enters this Order, the Debtors shall serve copies of (a) this Order and (b) the Notice (with the Bid Procedures enclosed therewith) by first class United States mail, postage prepaid, as well as service via electronic mail where possible, on the following parties: (i) the Office of the United States Trustee for the Eastern District of Texas; (ii) the holders of the forty (40) largest unsecured claims against each of the Debtors (on a consolidated basis and as applicable); (iii) counsel for any committees appointed under section 1102 of the Bankruptcy Code; (iv) counsel for the Debtors' secured lenders; (v) counsel for the lenders and administrative agent for the Debtors' secured lenders, if any; (vi) the holders of claims or interests who both file with the Court and serve on counsel for the Debtors, at the above address, a request for special notice; (vii) any party that files a Notice of Appearance and request for service in the above-captioned bankruptcy cases; (viii) any party against whom direct relief is sought by motion, application or otherwise, such as the non-debtor party to an executory contract or unexpired lease being assumed or rejected, and parties asserting interests in property being sold; (ix) the U.S. Internal Revenue Service; and (x) all parties with whom the Debtors and/or Larx have a signed nondisclosure agreement with concerning the potential sale of the Assets.

8. The Sale Hearing shall be held on **March 31, 2021, at 2:00 p.m. prevailing Central Time** in the United States Bankruptcy Court for the Eastern District of Texas, Plano Division, 660 North Central Expressway, Suite 300B Plano, Texas, 75074.

9. Any objections, if any, to the Motion must (a) be in writing, (b) state with specificity the nature of such objection, (c) comply with the Federal Rules of Bankruptcy

Procedure, and (d) be filed with this Court, on or before **4:00 p.m., prevailing Central time, on March 30, 2021** (the "**Objection Deadline**").

10. Any person or entity failing to timely file an objection to the Motion shall be forever barred from objecting thereto, including (a) the sale of all of the Debtors' right, title and interest in, to, and in substantially all of its Assets free and clear of any and all liens, encumbrances, claims, and other interests; and (b) the assumption and assignment of certain specified executory contracts and unexpired leases related to and utilized in connection with the Assets and will be deemed to consent to the sale of such Assets free and clear of any and all liens, encumbrances, claims and other interests and the assumption and assignment of certain specified executory con-tracts and unexpired leases.

11. On February 9, 2021, the Debtors will file a copy of the executed Stalking Horse APA with this Court (the "**Stalking Horse APA Deadline**"). Within twenty-four (24) hours after the Stalking Horse APA is filed with the Court, Larx shall provide written notice of such filed document to all parties with whom it has executed non-disclosure agreements concerning the marketing of the Assets each shall provide the Debtors with a certificate of such notice, which the Debtors shall promptly file on the Court's docket.

12. On March 9, 2021, the Debtors will file with the Court and serve on each non-debtor party to the proposed Assigned Contracts a notice setting forth the amount of cure owed thereunder according to the Debtors' books and records (the "**Cure Notice**"), (the form of which is attached as **Exhibit "F"** to the Motion) is adequate and reasonably calculated to provide due, proper, and timely notice to all interested parties. The Cure Notice shall state the cure amount that the Debtors believe is necessary to assume such contract or lease pursuant to section 365 of

the Bankruptcy Code (the "**Cure Amount**"), and notify each non-debtor party that such party's lease or contract may be assumed and assigned to the Stalking Horse Bidder or to the successful bidder identified at the conclusion of the Auction, if any.

13. Any objection to the Cure Amount must be filed with the Court by March 23, 2021 (the "**Cure Amount Objection Deadline**"). Any objection to the Cure Amount must state with particularity what alternative cure amount the non-debtor party believes is required with appropriate supporting documentation. If no objection is timely received, the Cure Amount set forth in the Cure Notice shall be controlling notwithstanding any-thing to the contrary in any executory contract, unexpired lease or other document as of the date of the Cure Notice; the non-debtor party to the executory contract or unexpired lease shall be deemed to have stipulated that the Cure Amount set forth in the Cure Notice is correct; the non-debtor party shall be forever barred, estopped and enjoined from asserting or claiming that any additional amounts are due or other defaults exist, that conditions to assignment must be satisfied or that there is any objection or defense to the assumption and assignment of such contract or lease, including any argument that there exist conditions to assumption and assignment that must be satisfied or that any required consent to assignment has not been given.

14. Notwithstanding Bankruptcy Rules 6004, 6006, or otherwise, this Order shall be effective and enforceable immediately upon entry, and its provisions shall be self-executing. To the extent applicable, the stays described in Bankruptcy Rules 6004(h) and 6006(d) are hereby waived.

15. The terms of this Order shall control to the extent of any conflict with the Motion.

16. The Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Order.

17. Nothing in this Order, the LOI, or the "Buy Sell" Agreement releases, nullifies, precludes, or enjoins the enforcement of any police or regulatory liability to a governmental unit arising from or related to the enforcement of any applicable police or regulatory law or regulation to which any entity would be subject to as the owner or operator of property from and after the date of the closing of the Sale. Nothing in this Order authorizes the transfer or assignment of any govern-mental (a) license, (b) permit, (c) registration, (d) authorization, or (e) approval, or the discontinuation of any obligation thereunder, without compliance with all applicable legal requirements and approvals under police and regulatory law.

HONORABLE BRENDA T. RHOADES,
UNITED STATES BANKRUPTCY JUDGE

Submitted and Prepared by:

/s/ Marcus A. Helt
Marcus A. Helt (TX 24052187)
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PROPOSED COUNSEL FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

In re:	§	**Chapter 11**
	§	
SPHERATURE INVESTMENTS LLC, *et al.,*	§	**Case No.: 20-42492**
	§	
	§	
Debtors.[1]	§	**Jointly Administered**

BIDDING AND SALE PROCEDURES

Set forth below are the bid and sale procedures (the "**Bid Procedures**") to be employed with respect to the proposed disposition (the "**Sale**") of substantially all of the going-concern assets ("**Assets**") of Spherature Investments LLC, Rovia, LLC, WorldVentures Marketing, LLC, WorldVentures Services, LLC, WorldVentures Marketing Holdings, LLC, and WorldVentures Marketplace LLC (collectively, the "**Debtors**"), the debtors and debtors-in-possession in the above-captioned, jointly administered Chapter 11 Cases (the "**Cases**").

BID PROCEDURES MOTION

On January 21, 2021, the Debtors filed a *Motion for Entry of an Order (I) Authorizing and Approving: (A) Bid Procedures; (B) Stalking Horse Bidder and Bid Protections; and (C) Form and Manner of Notices; (II) Scheduling an Auction and Sale Hearing; (III) Approving the Sale of Substantially All of the Debtors Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests; (IV) Authorizing the Assumption and Assignment Of Executory Contracts and Unexpired Leases; and (V) Granting Related Relief* [Docket No.___] (the "**Sale Motion**") in the United States Bankruptcy Court for the Eastern District of Texas, Sherman Division (the "**Bankruptcy Court**") seeking the entry of an order: (a) approving the Bid Procedures, (b) approving the Stalking Horse Bidder and Bid Protections, (c) approving form and manner of notices, (d) scheduling an auction and sale hearing, (e) approving the sale of substantially all of the assets of the Debtors free and clear of all liens, claims, encumbrances and interests pursuant to an asset purchase agreement consistent with the terms and conditions set forth on the LOI (as defined below), (f) approving the assumption and assignment of the "Assigned Contracts" as defined in the LOI, and (g) granting related relief.

These Bid Procedures were approved and authorized by the Bankruptcy Court's *Order (I)*

[1] The "**Debtors**" in the above-captioned jointly administered chapter 11 bankruptcy cases ("**Cases**") are: Spherature Investments LLC ("**Spherature**") EIN#5471; Rovia, LLC ("**Rovia**") EIN#7705; WorldVentures Marketing Holdings, LLC ("**WV Marketing Holdings**") EIN#3846; WorldVentures Marketplace, LLC ("**WV Marketplace**") EIN#6264; WorldVentures Marketing, LLC ("**WV Marketing**") EIN#3255; WorldVentures Services, LLC ("**WV Services**") EIN#2220. The Debtors' corporate headquarters and service address in this district is 5100 Tennyson Parkway, Plano, TX 75024.

Authorizing and Approving: (A) Bid Procedures; (B) Stalking Horse Bidder and Bid Protections; and (C) Form and Manner of Notices; and (II) Scheduling an Auction and Sale Hearing [Docket No. ___] (the "**Bid Procedures Order**") in these Cases.

The Bidding Process

1. **Bidding Process**. Set forth below is the general process to be employed by the Debtors with respect to the Sale of the Assets (as defined in the Sale Motion):

a) With the assistance of their Chief Restructuring Officer – Mr. Erik Toth of Larx Advisors Inc. (the Debtors' financial advising firm), the Debtors shall market the Assets to those parties reasonably known to have a potential interest in purchasing such Assets.

b) The Debtors have obtained a "stalking-horse" bid from WV Holdings Co. LLC ("WHC" or the "**Stalking Horse Bidder**"). The Debtors and the Stalking Horse Bidder have entered into a nonbinding letter of intent (the "**LOI**") attached as **Exhibit "E"**[2] to the Sale Motion, which contemplates the sale of the Assets to the Stalking Horse Bidder for a purchase price of $69,500,000.00, made up of (i) $10,000,000.00 cash, (ii) the assumption of certain liabilities, and (iii) a cash earn out.

c) Any person interested in making an offer to purchase the Assets shall comply with these Bidding Procedures. Only Qualified Bids (as defined below) shall be considered by the Debtors.

d) If the Debtors do not receive another Qualified Bid prior to the Bid Deadline (as defined below), then the Stalking Horse Bidder's offer to acquire the Assets under the letter of intent shall constitute the Successful Bid (as defined below).

e) If the Debtors receive another Qualified Bid prior to the Bid Deadline, then the Debtors, after consultation with their counsel and professionals, shall select the highest or otherwise best Qualified Bid as the Successful Bid after the Auction (as defined below) considering, among other things, the financial and contractual terms relevant to the Sale, including those factors affecting speed and certainty of consummating the Sale or the overall value to be provided thereby.

f) Upon failure to consummate the Sale because of a breach on the part of the Successful Bidder (as defined below) after an order entered at the Sale Hearing, the Debtors shall be permitted to (i) retain the Successful Bidder's Deposit (as defined below) as liquidated damages and (ii) select the next highest

[2] The Debtors and the Stalking Horse expect to finalize an asset purchase agreement based on the LOI (the "**Stalking Horse APA**") prior to the hearing to consider the Bid Procedures Order.

or otherwise best Qualified Bid to be the Successful Bid and to consummate such transaction without further order of the Bankruptcy Court.

g) All Qualified Bidders (as defined below) at the Auction shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court and waive any right to a jury trial in connection with any disputes relating to the Auction, and the construction and enforcement of the Qualified Bidder's contemplated transaction documents, as applicable.

PARTICIPATION REQUIREMENTS

2. **Potential Bidder**. Any person other than the Stalking Horse Bidder desiring to participate in the bidding process (each, a "**Potential Bidder**") will be required to deliver (unless previously delivered) to the Notice Parties (defined below), on or before the Bid Deadline, a Qualified Bid inclusive of a complete Bid Package (defined below).

3. **Qualified Bid Requirements**. "**Qualified Bid**" means (a) the Stalking Horse Bidder's offer to acquire the Assets pursuant to the Stalking Horse APA (substantially conforming to the material terms set forth in the LOI); and (b) any competing bid from a Potential Bidder if (i) the Debtors determine that such competing bid is higher or otherwise better than the bid set forth in the Stalking Horse APA and would be consummated if selected as the Successful Bid and (ii) such bid was received prior to the Bid Deadline and included each of the following (collectively, a "**Bid Package**"):

a) An unqualified and binding bid in an amount of total consideration that exceeds the consideration offered by the Stalking Horse Bidder (including a minimum cash component of $10,000,000), plus the Break-Up Fee and plus the Expense Reimbursement of up to $500,000 (as defined in the LOI), plus a $250,000.00 initial overbid (provided, however, if the competing bid is for less than the total Assets contemplated by the Stalking Horse APA, such consideration shall reasonably represent a premium to an approximate allocation of such Stalking Horse APA; provided further, that in determining the value of the competing bid, the Debtors will not be limited to evaluating the dollar value of the consideration but may also consider other factors including the speed, certainty, viability and value to the Estates of the proposed transaction);

b) A form of asset purchase agreement, based on the Stalking Horse

APA and substantially identical to such Stalking Horse APA, marked to show changes from the Stalking Horse APA, inclusive of all schedules and exhibits thereto;

c) An earnest-money deposit (the "**Deposit**") in cash or in other form of immediately available U.S. funds equal to 10% of the Cash Component of the Potential Bidder's Bid to be held in the Debtor's counsel's trust account, which be refundable as set forth herein; and

d) Current financial statements of the Potential Bidder, or if the Potential Bidder is an entity formed for the purpose of acquiring the Assets, current financial statements of the equity holder(s) of the Potential Bidder and such other information as required by the Debtors, in their sole discretion sufficient to allow the Debtors to make a reasonable determination as to such bidder's financial wherewithal and capability to consummate the transaction contemplated by such Potential Bidder's competing bid.

To be considered a Qualified Bid, each Potential Bidder's APA shall remain open, enforceable, and irrevocable in accordance with its terms until after the Debtors close the purchase and sale of the Assets and shall:

a) Fully disclose the identity of the entity that will be bidding or participating in connection with such Bid, including any terms regarding or restricting such participation, and provide proof the Potential Bidder is legally empowered, by power of attorney or otherwise, to legally bind such Bidder to an enforceable Bid;

b) Provide that the Assets are being purchased "as is, where is," and that such Potential Bidder is not relying on any representation or warranty from the Debtors, or its bankruptcy estate or any person or entity, except as otherwise provided in the Stalking Horse APA, if any;

c) Contain no (i) contingencies of any kind or character, (ii) indemnities, (iii) purchase price adjustments, or (iv) qualifications relating to due diligence, financing or board approval;

d) Contain no conditions to closing of the Sale on the receipt of any third-party approvals (excluding required Bankruptcy Court approval);

e) Provide that the offer is irrevocable through thirty (30) days after the entry of the Sale Order approving the Sale;

f) Provide an express statement that: (i) the Potential Bidder agrees to

all terms of the Sale Procedures; and (ii) the Potential Bidder has not engaged in any collusive discussion with any other Potential Bidder.

For the avoidance of doubt, the Stalking Horse Bidder shall be deemed to be a Qualified Bidder and shall not be required to submit a Bid Package. Any lienholder shall be entitled to attend the Auction and credit bid, to the extent allowed by applicable law and subject to any order of this Court, provided that, if any such lienholder desires to credit bid its debt and is the ultimate buyer of the Assets, any such lienholder must pay out-of-pocket cash to be actually delivered and received by the Estates an amount equal to the Break-Up Fee and the Expense Reimbursement due to the Stalking Horse Bidder.

4. **Qualified Bidder**. Only Qualified Bidders may participate in the bidding process. A Potential Bidder who delivers the documents described above (including all subparagraphs) and who the Debtors determine, in their sole and absolute discretion, is likely (based on availability of financing, experience and other considerations) to be able to consummate the Sale will be deemed to be a "**Qualified Bidder**." The Debtors shall determine whether a Potential Bidder is a Qualified Bidder and shall provide written notice of its determination to such Potential Bidder and to each then existing Qualified Bidder.

NOTICE PARTIES

5. **Notice Parties**. The following parties are referred to herein and defined as the "**Notice Parties**" for the purpose of these Bid Procedures:

Counsel for the Debtors:
Marcus A. Helt
Thomas C. Scannell
Foley & Lardner LLP
2021 McKinney Avenue, Suite 1600
Dallas, TX 75201
Phone: 214-999-3000

Fax: 214-999-4667
mhelt@foley.com
tscannell@foley.com

Counsel for the Stalking Horse Bidder:
Kyle J. Ortiz
Togut, Segal & Segal LLP
One Penn Plaza, Suite 3335
New York, NY 10119
Phone: (212) 201-6582
kortiz@teamtogut.com

United States Trustee:
Marc Salitore
Office of the United States Trustee
110 N. College Ave., Suite 300
Tyler, Texas 75702
Phone: 903 590 1450 ext. 216
Fax: 903 590 1461
marc.f.salitore@usdoj.gov

BID DEADLINE AND REQUIREMENTS

6. **Bid Deadline**. A Qualified Bidder, other than the Stalking Horse Bidder, that desires to make a bid shall deliver written copies of its Bid Package by email so that such is **actually received** by counsel for the Debtors no later than **4:00 p.m. prevailing Central Time on March 26, 2021** (the "**Bid Deadline**"). The Debtors shall then distribute any Bid Packages received prior to the Bid Deadline to the Notice Parties.

7. **Bid Rejection**. In determining whether a bid is a Qualified Bid, the Debtors shall reject any bid that: (a) is on terms that are materially more burdensome or conditional than the terms of the Stalking Horse APA; (b) requires the Debtors to indemnify the Qualified Bidder or any other person; (c) includes non-cash consideration that is not freely marketable; or (d) is subject to any due-diligence condition, financing condition, or other contingencies or conditions that are not included in the Stalking Horse APA.

8. **Initial Bid**. After the Bid Deadline, the Debtors shall determine which Qualified Bid represents the then-highest or otherwise best value to the Debtors (the "**Initial Bid**"). No later than 12:00 p.m. prevailing Central Time on the day prior to the Auction, if any, the Debtors shall distribute copies of the Initial Bid to each Qualified Bidder.

AUCTION

9. **Auction**. If the Debtors receive one or more Qualified Bids (other than that of the Stalking Horse Bidder) on or prior to the Bid Deadline, the Debtors will conduct an auction (the "**Auction**") for the sale of the Assets. **If necessary, the Auction will commence at 10:00 a.m. prevailing Central Time on March 29, 2021, at the offices of Foley & Lardner LLP, 2021 McKinney Avenue, Suite 1600, Dallas, TX 75201.** Due to public health concerns arising from the current pandemic caused by the COVID-19 virus, and in observance of the safety restrictions currently imposed by the applicable governmental authorities, the Auction will be conducted virtually by online platform. No later than two (2) business days prior to the Auction, the Debtors will deliver appearance instructions and credentials to each Qualified Bidder and the United States Trustee for appearance and participation in the Auction.

10. **Participation**. Only Qualified Bidders and the United States Trustee are eligible to participate in the Auction. No later than 5:00 p.m. prevailing Central Time on the day prior to the Auction, each Qualified Bidder must inform the Debtors whether it intends to participate in the Auction. The Debtors will promptly thereafter inform in writing each Qualified Bidder who has expressed its intent to participate in the Auction of the identity of all other Qualified Bidders that have indicated their intent to participate in the Auction. If the Debtors do not receive any Qualified Bids other than the Stalking Horse APA or if no Qualified Bidder other than the Stalking Horse Bidder has indicated its intent to participate in the Auction, the Debtors will not

hold an auction and the Stalking Horse Bidder will be named the Successful Bidder.

11. Auction Procedures. The Auction shall be governed by the following procedures:

a) Attendance. Only the Debtors, the United States Trustee, Stalking Horse Bidder, and any other Qualified Bidder who has submitted a Qualified Bid and each of their respective advisors will be entitled to attend the Auction, and only the Stalking Horse Bidder and Qualified Bidders will be entitled to make any subsequent Qualified Bids at the Auction;

b) No Collusion. Each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the Sale;

c) Minimum Overbid. The Auction shall begin with the Initial Bid and proceed therefrom in minimum additional cash increments of $500,000;

d) Credit for Break-Up Fee. Every bid that the Stalking Horse Bidder submits during each round of any Auction shall include, as a credit against the total bid amount, the amount of the Break-Up Fee; and if the Stalking Horse Bidder is the Successful Bidder, the amount of consideration that the Stalking Horse Bidder provides to acquire the Assets shall equal the amount of the Successful Bid less the amount of the Break-Up Fee;

e) Bidding Disclosure. The Auction shall be conducted such that all bids will be made and received in one room, on an open basis, and all Qualified Bidders will be entitled to be present for all bidding with the understanding that the true identity of each bidder will be fully disclosed to all other bidders and that all material terms of each subsequent bid will be fully disclosed to all other bidders throughout the entire Auction;

f) Bidding Conclusion. The Auction shall continue in one or more rounds of bidding and will conclude after (i) each participating Qualified Bidder has had the opportunity to submit one or more additional bids with full knowledge and written confirmation of the then-existing highest bid or bids and (ii) there is only one offer that the Debtors determine is the Successful Bid; and,

g) No Post-Auction Bids. No bids will be considered for any purpose after the Auction has concluded.

SELECTION OF SUCCESSFUL BID

12. **Successful Bid Selection**. At the conclusion of the Auction, or as soon as practicable thereafter, the Debtors, in consultation with their advisors, will: (a) review each

Qualified Bid, considering, among other things, in their sole discretion, (i) the amount of the purchase price, (ii) the form of consideration being offered, (iii) the likelihood of the Qualified Bidder's ability to close a transaction and the timing thereof and (iv) the net benefit to the Estates; and (b) identify the highest or otherwise best offer for the Assets received at the Auction (the "**Successful Bid**" and the bidder making such bid, the "**Successful Bidder**").

13. **Successful Bid Acknowledgement**. Within one (1) business day after adjournment of the Auction, the Successful Bidder shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid was made (collectively, the "**APA**").

THE SALE HEARING

14. **Sale Hearing**. On March 31, 2021, **at [ ]:[ ] [ ].m. prevailing Central Standard Time**, the Debtors will seek entry of an order from the bankruptcy court at a hearing (the "**Sale Hearing**") to approve the APA and authorize a Sale to the Successful Bidder (i.e., the "**Purchaser**") pursuant to the Successful Bid (the "**Sale Order**"). With the consent of the Successful Bidder, the Sale Hearing may be adjourned or rescheduled by an announcement of the adjourned date at the Sale Hearing or otherwise.

BACK-UP BIDDER

15. **Back-Up Bidding**. At the conclusion of the Auction, the Debtors may, in their sole discretion, require the second highest Qualified Bidder to serve as a "**Back-Up Bidder**" and remain obligated to close the Sale at the terms set forth in its last Qualified Bid the ("**Back-Up Bid**") in the event that the Sale to the Successful Bidder does not close. The Back-Up Bidder shall be obligated until ten (10) business days after the Sale Order becomes final and non-

appealable, or such other time period as agreed to by the Back-Up Bidder and Sellers (the "**Back-Up Release Date**").

RETURN OF DEPOSITS

16. **Return Date**. The Deposits of all Qualified Bidders – including the Good Faith Deposit – will be held in an interest-bearing escrow account and all Qualified Bids (other than the Back-Up Bid and the Successful Bid) will remain open until two (2) business days following the Sale Hearing (the "**Return Date**"). The Deposit of the Back-Up Bidder will be held in an interest- bearing account until the earlier of (a) the next business day following the closing with the Successful Bidder and (b) the Back-Up Release Date. The Deposit submitted by the Successful Bidder, together with interest thereon, will be applied against the payment of the Purchase Price upon the closing of the Sale to the Successful Bidder. On the Return Date, the Debtors will return the Deposits of all other Qualified Bidders, including the Good Faith Deposit, together with the accrued interest thereon.

RESERVATION OF RIGHTS

17. **Sellers' Reservation of Rights**. The Debtors have the right to adopt such other rules for the Auction that the Debtor believes in its business judgment will promote the goals of the Auction, including, without limitation, that the Debtor can continue to take and negotiate bids in lot or in bulk until the Successful Bid(s) have been selected. At or before the conclusion of the Auction, the Debtors may impose such other terms and conditions on Qualified Bidders or change any of the above requirements as the Debtors determines to be in the best interests of the Debtors' Estates. Further, the Debtors may (a) determine, which Qualified Bid is the highest or otherwise best offer, (b) reject at any time before entry of an order of the Bankruptcy Court

approving a Qualified Bid, any Bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bid Procedures or the terms and conditions of sale or (iii) contrary to the best interests of the Debtors, their Estates and creditors, and (c) change the Bid Procedures to maximize the value of the Assets and in the best interests of the Estates and the stakeholders thereof.

SALE OF THE ASSETS FREE OF ANY AND ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS

18. **Assets to be Sold.** The Debtors seek to sell substantially all of their Assets in one or more Asset Package(s) (the "**Purchased Assets**"). The Debtors are considering all bid proposals but are seeking a comprehensive sale of their Assets and therefore encourage bidders to provide flexibility with regard to the Assets included in proposals.

19. **Sale Free and Clear**. Except as otherwise provided in the Sale Motion and any exhibits thereto, all of the Debtors' rights, title, and interest in and to the Assets subject thereto shall be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon and there against (collectively, the "**Interests**") in accordance with section 363 of the Bankruptcy Code, with such Interests to attach to the net proceeds of the sale of the Assets. However, notwithstanding anything contained in these Bid Procedures or the Sale Motion to the contrary, no sale under 11 U.S.C. § 363 shall occur without approval by the Bankruptcy Court.

Submitted and Prepared by:

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PROPOSED COUNSEL FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

In re:	§	**Chapter 11**
	§	
SPHERATURE INVESTMENTS LLC,	§	**Case No.: 20-42492**
et al.,	§	
	§	
Debtors.[1]	§	**Jointly Administered**

PLEASE TAKE NOTICE that, on January 21, 2021, Spherature Investments LLC, Rovia, LLC, WorldVentures Marketing, LLC, WorldVentures Services, LLC, WorldVentures Marketing Holdings, LLC, and WorldVentures Marketplace LLC (collectively, the "**Debtors**") filed a *Motion for Entry of an Order (I) Authorizing and Approving: (A) Bid Procedures; (B) Stalking Horse Bidder and Bid Protections; and (C) Form and Manner of Notices; (II) Scheduling an Auction and Sale Hearing; (III) Approving the Sale of Substantially All of the Debtors Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests; (IV) Authorizing the Assumption and Assignment Of Executory Contracts and Unexpired Leases; and (V) Granting Related Relief* [Docket No.___] (the "**Sale Motion**")[2] in the United States Bankruptcy Court for the Eastern District of Texas, Sherman Division (the "**Bankruptcy Court**") seeking the entry of an order: (a) approving the Bid Procedures, (b) approving the Stalking Horse Bidder and Bid Protections, (c) approving form and manner of notices, (d) scheduling an auction and sale hearing, (e) approving the sale of substantially all of the assets of the Debtors free and clear of all liens, claims, encumbrances and interests pursuant to an asset purchase agreement consistent with the terms and conditions set forth on the LOI (as defined below), (f) approving the assumption and assignment of the "Assigned Contracts" as defined in the LOI, and (g) granting related relief. The Sale Motion set forth the Debtors' intent to sell substantially all of its assets to the Successful Bidder (as defined in the Motion) or one of its affiliates (the "**Purchaser**").

On February [ ], 2021, the Court entered its *Order (I) Authorizing and Approving: (A) Bid Procedures; (B) Stalking Horse Bidder and Bid Protections; and (C) Form and Manner of Notices; and (II) Scheduling an Auction and Sale Hearing* [Docket No. ___] (the **"Bid Procedures Order**") in the Chapter 11 Case.

PLEASE TAKE FURTHER NOTICE THAT pursuant to the Bid Procedures (**attached as Exhibit "B" to the Motion and approved by the Court and enclosed herewith**),

[1] The "**Debtors**" in the above-captioned jointly administered chapter 11 bankruptcy cases ("**Cases**") are: Spherature Investments LLC ("**Spherature**") EIN#5471; Rovia, LLC ("**Rovia**") EIN#7705; WorldVentures Marketing Holdings, LLC ("**WV Marketing Holdings**") EIN#3846; WorldVentures Marketplace, LLC ("**WV Marketplace**") EIN#6264; WorldVentures Marketing, LLC ("**WV Marketing**") EIN#3255; WorldVentures Services, LLC ("**WV Services**") EIN#2220.

[2] Unless otherwise defined herein, capitalized terms and phrases bear the meanings assigned in the Sale Motion.

a Potential Bidder that desires to make a bid shall deliver an electronic copy of its bid to the parties identified in the Bid Procedures so as to be received **no later than 4:00 p.m. prevailing Central Time on March 26, 2001,** (the "**Bid Deadline**") and otherwise comply with the Bid Procedures. **FAILURE TO ABIDE BY THE BID PROCEDURES MAY RESULT IN A BID BEING REJECTED**. Any party interested in the proposed Sale process should contact Larx, c/o Mr. Erik Toth, at the following email address and phone number: 972.294.5884, erik@larxadvisors.com, and Larx Advisors Inc., c/o Erik Toth, 600 Network Boulevard, Suite 600, Frisco, Texas 75304.

PLEASE TAKE FURTHER NOTICE THAT pursuant to the Bid Procedures, if the Debtors receive at least one Qualified Bid (other than that of the Stalking Horse Bidder) on or prior to the Bid Deadline, the Debtors will conduct an auction (the "**Auction**") for the sale of the Assets. **If necessary, the Auction will commence at 10:00 a.m. prevailing Central Time on March 29, 2020, 2021, at the offices of Foley & Lardner LLP, 2021 McKinney Avenue, Suite 1600, Dallas, TX 75201 by virtual / online platform only. Only Qualified Bidders (including the Stalking Horse Bidder) shall be entitled to participate in the Auction.**

PLEASE TAKE FURTHER NOTICE THAT if the Debtors do not receive any Qualified Bids other than the Stalking Horse APA or if no Qualified Bidder other than the Stalking Horse Bidder has indicated its intent to participate in the Auction, the Debtors will not hold an auction and the Stalking Horse Bidder will be named the Successful Bidder.

PLEASE TAKE FURTHER NOTICE that the deadline for filing an objection to the Debtors' proposed cure amounts related to the assumption and assignment of the proposed Assigned Contracts is **March 23, 2021, at 4:00 P.M. CST**. Any such objection must (a) be in writing, (b) state with specificity the nature of such objection, (c) comply with the Federal Rules of Bankruptcy Procedure and the Bid Procedures, and (d) be timely filed with the Court and timely served so as to be actually received by the undersigned counsel for the Debtors and the Notice Parties, as set forth in the Bid Procedures.

PLEASE TAKE FURTHER NOTICE that the hearing (the "**Sale Hearing**") to approve the Motion will be held on **March 31, 2021 at 2:00 P.M. CST** in the in the United States Bankruptcy Court for the Eastern District of Texas, Sherman Division, 660 North Central Expressway, Suite 300B Plano, Texas, 75074.

PLEASE TAKE FURTHER NOTICE that the deadline for filing an objection to the Sale(s) is **March 30, 2021, at 4:00 P.M. CST**. Any such objection must (a) be in writing, (b) state with specificity the nature of such objection, (c) comply with the Federal Rules of Bankruptcy Procedure and the Bid Procedures, and (d) be filed with the Court and served on undersigned counsel for the Debtors and the Notice Parties as set forth in the Bid Procedures.

PLEASE TAKE FURTHER NOTICE that the deadline for filing an objection to the Debtors' proposed cure amounts related to the assumption and assignment of the proposed Assigned Contracts is **March 23, 2021, at 4:00 P.M. CST**. Any such objection must (a) be in writing, (b) state with specificity the nature of such objection, (c) comply with the Federal Rules of Bankruptcy Procedure and the Bid Procedures, and (d) be timely filed with the Court and

timely served so as to be actually received by the undersigned counsel for the Debtors and the Notice Parties, as set forth in the Bid Procedures.

PLEASE TAKE FURTHER NOTICE that copies of pleadings related to the proposed sale, including the Sale Procedures Order (and attached bid procedures) approved by the Court, are available on the Bankruptcy Court's website at https://ecf.txeb.uscourts.gov/ and on the Debtors' proposed claims agent's website at https://cases.stretto.com/Spherature. You can also request any pleading you need from the Debtors' proposed counsel at: Foley & Lardner LLP, c/o Thomas C. Scannell, 2021 McKinney Avenue, Suite 1600, Dallas, Texas 75201 (tscannell@foley.com).

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PROPOSED COUNSEL FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

In re:	§	**Chapter 11**
	§	
SPHERATURE INVESTMENTS LLC,	§	**Case No.: 20-42492**
et al.,	§	
	§	
Debtors.[1]	§	**Jointly Administered**

ORDER (I) AUTHORIZING AND APPROVING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS; (II) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (III) GRANTING RELATED RELIEF

This matter having come before this court on the *Motion for Entry of an Order (I) Authorizing and Approving: (A) Bid Procedures; (B) Stalking Horse Bidder and Bid Protections; and (C) Form and Manner of Notices; (II) Scheduling an Auction and Sale Hearing; (III) Approving the Sale of Substantially All of the Debtors Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests; (IV) Authorizing the Assumption and Assignment Of Executory Contracts and Unexpired Leases and (V) Granting Related Relief* (the "**Motion**")[2] filed by Spherature Investments LLC ("**Spherature**"), together with its affiliates identified herein (collectively, the "**Debtors**"), the Debtors and debtors-in-possession in the above captioned chapter 11 cases (the "**Cases**").

[1] The "**Debtors**" in the above-captioned jointly administered chapter 11 bankruptcy cases ("**Cases**") are: Spherature Investments LLC ("**Spherature**") EIN#5471; Rovia, LLC ("**Rovia**") EIN#7705; WorldVentures Marketing Holdings, LLC ("**WV Marketing Holdings**") EIN#3846; WorldVentures Marketplace, LLC ("**WV Marketplace**") EIN#6264; WorldVentures Marketing, LLC ("**WV Marketing**") EIN#3255; WorldVentures Services, LLC ("**WV Services**") EIN#2220.

[2] Capitalized terms not defined herein shall have the meaning ascribed in the Motion.

The Court, having reviewed the Motion and all matters brought to the Court's attention at the final hearing to approve the relief requested in the Motion (the "**Sale Hearing**"), and after due deliberation and consideration, and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, that this is a core proceeding pursuant to 28 U.S.C. § 157(b), and that venue of this proceeding and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409, the Court finds that:

a) It has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue is proper in this District and in the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

b) The notice given of the Motion, the Bid Procedures attached thereto, and approved by this *Court's Order (I) Authorizing and Approving: (A) Bid Procedures; (B) Stalking Horse Bidder and Bid Protections; and (C) Form and Manner of Notices; and (II) Scheduling an Auction and Sale Hearing* [Docket No.___] and the Bid Procedures Hearing thereon was reasonable and sufficient in light of the circumstances and nature of the relief requested, and no other or further notice is necessary. A reasonable and fair opportunity to object to the Motion and the relief granted in this Order has been afforded under the circumstances. Such good and sufficient reasons form the basis for the findings of fact and conclusions of law set forth herein.

c) The legal and factual bases set forth in the Motion and at the Sale Hearing establish just cause for the relief granted herein; granting the relief is in the best interests of the Debtors, the estates, and the creditors thereof.

d) The Purchase Price constitutes a reasonably equivalent value for the Assets.

e) The Debtors have demonstrated a compelling and sound business justification for the relief granted herein. Specifically, the APA represents the highest or best offer received by the Debtors for the Assets. The Purchase Price set forth in the APA: (a) is fair and reasonable consideration, (b) constitutes reasonably equivalent value under the Bankruptcy Code and the Uniform Fraudulent Conveyance Act or Uniform Fraudulent Transfer Act or similar laws of any state or other jurisdiction whose law is applicable to the contemplated transactions, and (c) will provide a greater recovery for the stakeholders of the Debtors' estates and other interested parties than would be provided by any other practically available alternative. In reaching this determination, the Court has taken into account both the direct consideration to be realized by the Debtors and the indirect benefits of such Sale for the Debtors' estates and the creditors thereof.

f) The Debtors' assumption and assignment of the Assigned Contracts to the Purchaser is a sound exercise of the Debtors' business judgment and satisfies the requirements of section 365 of the Bankruptcy Code.

g) Consummation of the Sale contemplated by the APA will provide the highest and otherwise best value for the Assets and is in the best interests of the Debtors, their estates, and the stakeholders thereof.

h) The transactions contemplated by the APA are undertaken by the Debtors and the Purchaser at arms' length, without collusion and in good faith within the meaning of § 363(m) of the Bankruptcy Code. The Purchaser is a good-faith purchaser under § 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby and otherwise has proceeded in good faith in all respects in connection with this proceeding in that: (a) the

Purchaser recognized that the Debtors were free to deal with any other party interested in acquiring the Assets; (b) the Purchaser did not in any way induce or cause the chapter 11 filing of the Debtors; (c) the Purchaser made the highest or otherwise best bid for the Assets after an opportunity for competitive bidding with other arm's-length bidders; and (d) the negotiation and execution of the APA and any other agreements or instruments related thereto were in good faith and at arms' length between the Purchaser and the Debtors.

i) The Debtors and the Purchaser have not engaged in any conduct that would permit the APA or the Sale to be avoided under § 363(n) of the Bankruptcy Code.

j) The APA was not entered into for the purpose of hindering, delaying or defrauding creditors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession or the District of Columbia.

k) The conditions of § 363(f) have been satisfied in full, including, any known creditors having or asserting liens on the Assets have reviewed the Debtors' alternatives and have consented to the Sale or can be compelled to accept a money satisfaction of such interest pursuant to § 363 of the Bankruptcy Code. All secured creditors' interests in the Assets will attach to the proceeds of the sale in the same validity, priority, and extent that such interests existed on the Petition Date, except as modified by agreement of such creditors or order of this Court. All parties with liens against the Assets who did not object to the Motion and the relief requested therein, who did not request adequate protection of any possessory right, or who withdrew their objections to the Motion, are deemed to have consented to the Motion pursuant to § 362(f)(2) of the Bankruptcy Code.

l) If the sale of the Assets were not free and clear of the liens of any kind or nature whatsoever, other than the assumed liabilities expressly assumed in the APA, the Purchaser would not have entered into the APA and would not consummate the transactions contemplated thereby, thus adversely affecting the Debtors, their estates, and the stakeholders thereof.

m) The findings of fact and conclusions of law herein constitute the Court's findings of fact and conclusions of law for the purposes of Bankruptcy Rule 7052, made applicable pursuant to Bankruptcy Rule 9014. To the extent any findings of facts are conclusions of law, they are adopted as such. To the extent any conclusions of law are findings of fact, they are adopted as such.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. Pursuant to all applicable statutory and procedural predicates, including, without limitation, §§ 105(a), 363(b), 363(f) and 365 of the Bankruptcy Code[3] and Bankruptcy Rules[4] 2002, 6004, 6006, and 9014, the Motion and APA attached thereto are hereby approved as provided herein. The Debtors and the Purchaser are authorized to take all actions and to execute all documents necessary to consummate the APA.

2. All objections to the Motion not expressly resolved herein that have not been withdrawn are hereby overruled or denied. Any person or entity failing to timely file an objection to the Motion shall be forever barred from objecting thereto, including the sale of the Debtors'

[3] References to the Bankruptcy Code mean 11 U.S.C. §§ 101, *et seq*. All section references cited herein refer to the Bankruptcy Code unless specifically noted otherwise.

[4] References to the Bankruptcy Rules mean the Federal Rules of Bankruptcy Procedure.

right, title and interest in, to, and in substantially all of its assets free and clear of any and all liens, encumbrances, claims, and other interests, and will be deemed to consent to the sale of such assets free and clear of any and all liens, encumbrances, claims and other interests.

3. Except as expressly provided by the express terms of the APA, the transfer of the Assets to the Purchaser under the APA shall not result in the Purchaser having any liability or responsibility (i) for any liens against the Debtors or against an insider of the Debtors, (ii) to the Debtors or to third parties for any liens, or (iii) for the satisfaction in any manner, whether at law or in equity, whether by payment, setoff or otherwise, directly or indirectly, of any liens. Without limiting the effect or scope of the foregoing, to the fullest extent permitted by law, the transfer of the Assets from the Debtors to the Purchaser shall not subject the Purchaser or its affiliates, successors or assigns or their respective properties (including the Assets) to any liability for liens against the Debtors in such Assets by reason of such transfer under the laws of the United States or any state, territory or possession thereof, or the District of Columbia, applicable to such transactions, including without limitation, any bulk-transfer laws, successor liability, or similar theories. Purchaser shall have no successor or vicarious liabilities of any kind or character, including, but not limited to, any theory of antitrust, environmental, successor or transferee liability, labor law, alter ego, veil piercing, continuity of enterprise, mere continuation, product line, de facto merger, or substantial continuity, whether known or unknown, legal or equitable, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, asserted or unasserted, whether arising prior to or subsequent to the commencement of these Bankruptcy Cases whether imposed by agreement, understanding, law, equity, or otherwise with respect to the Debtors or any obligations of the Debtors arising prior to the Closing Date (as defined in the

APA), including, but not limited to, liabilities on account of any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of the Assets prior to the Closing Date.

4. All parties with liens against the Assets who objected to the Motion, but who did not withdraw any objection, can be compelled to accept a monetary satisfaction of their liens within the meaning of § 363(f)(5) of the Bankruptcy Code and, in each case, are estopped and barred from taking any action against the Purchaser, its affiliates or any agent of the foregoing to recover any claim that such person or entity has solely against the Debtors or any of their affiliates. Therefore, the transfer of the Assets to the Purchaser under the APA as of the Closing Date shall be a legal, valid, and effective transfer of the Assets, and, except as expressly permitted under the express terms of the APA, shall vest the Purchaser with all right, title, and interest of the Debtors to the Assets free and clear of all liens, claims (as defined in § 101(5) of the Bankruptcy Code, and including, without limitation, successor liability claims), encumbrances, obligations, liabilities, demands, guarantees, options, rights, restrictions, contractual commitments, rights of first refusal or interests of any kind or nature whatsoever, whether known or unknown, legal or equitable, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, asserted or unasserted, whether arising prior to or after the commencement of these bankruptcy cases, and whether imposed by agreement, understanding, law, equity or otherwise.

5. The Purchaser is a good-faith purchaser under § 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby and otherwise has proceeded in good faith in all respects in connection with this proceeding.

6. The APA and the Sale shall not be avoided under § 363(n) of the Bankruptcy Code.

7. The Debtors are authorized in accordance with section 365 of the Bankruptcy Code to assume and assign to the Purchaser, effective upon the Closing of the Sale, the Assigned Contracts free and clear of all liens, claims, and other interests of any kind or nature whatsoever, and execute and deliver to the Purchaser such documents or other instruments as the Purchaser reasonably deems necessary to assign and transfer the Assigned Contracts.

8. The Closing Date shall occur as soon as reasonably possible, given time is of the essence to maximize recovery to the Debtors' Estates.

9. The Debtors shall deliver, or cause to be delivered, to the Purchaser: (i) executed bills of sale and such other instruments of transfer conveying the Assets to the Purchaser, in form and content reasonably satisfactory to the Purchaser and counsel to the Purchaser or as approved by subsequent Court order; and (ii) such other documents and certificates as the Purchaser may reasonably request to transfer the Assets.

10. Notwithstanding Bankruptcy Rules 6004, 6006, or otherwise, this Order shall be effective and enforceable immediately upon entry, and its provisions shall be self-executing. To the extent applicable, the stays described in Bankruptcy Rules 6004(h) and 6006(d) are hereby waived.

11. This Order shall be binding on any chapter 11 or chapter 7 trustee, or any other estate representative or fiduciary that may be appointed in this Bankruptcy Case. This Order shall remain in full force and effect notwithstanding any dismissal or conversion of these Cases.

12. In the event of any inconsistency between this Order and the APA, this Order governs. The failure to include any particular provision of the APA or the related agreements in this Order will not diminish the effectiveness of such provision. To the extent this Order does not include any provision contained in the APA, the APA shall govern and the terms thereof are incorporated herein by reference and hereby approved.

13. Nothing contained in any subsequent plan of reorganization or liquidation that may be confirmed in these Cases or any order of this Court confirming such plan shall conflict with or derogate from the provisions of the APA or the terms of this Order.

14. The provisions of this Order are non-severable and mutually dependent. For cause shown, this Order is effective and enforceable immediately and its provisions are self-executing upon entry notwithstanding any provision in the Bankruptcy Code, the Bankruptcy Rules, including, without limitation, Bankruptcy Rules 6004(h), 6006(d), or any other applicable provision under the law.

15. Each federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA and this Order. This Order shall be deemed to be in recordable form by all such federal, state, and local governmental agencies or departments to which this Order is tendered or delivered by Purchaser for recording.

16. This Court shall retain exclusive jurisdiction to interpret and enforce the provisions of the Motion, the APA, and this Order in all respects and further to hear and determine any and all disputes between the Debtors and the Purchaser and any creditor of the estate related thereto.

HONORABLE BRENDA T. RHOADES,
UNITED STATES BANKRUPTCY JUDGE

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PROPOSED COUNSEL FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

Non-Binding Term Sheet for the Acquisition of Assets from

SPHERATURE INVESTMENTS LLC; ROVIA, LLC; WORLDVENTURES MARKETINGHOLDINGS, LLC; WORLDVENTURES MARKETPLACE, LLC; WORLDVENTURES MARKETING, LLC; and AND WORLDVENTURES SERVICES, LLC

January 15, 2021

The following is a summary of proposed non-binding terms and conditions ("Term Sheet") by the Purchaser (as defined below) for the acquisition of the enterprise as a going concern, including substantially all of the assets of Spherature Investments LLC ("Spherature"); Rovia, LLC ("Rovia"); WorldVentures Marketing Holdings, LLC ("WV Marketing Holdings"); WorldVentures Marketplace, LLC ("WV Marketplace"); WorldVentures Marketing, LLC ("WV Marketing"), WorldVentures Services, LLC ("WV Services"), which are debtors and debtors in possession (collectively, "Debtors" or "Sellers") in chapter 11 cases being jointly administered in the United Bankruptcy Court for the Eastern District of Texas (the "Chapter 11 Cases"), as well as any assets to be sold to the Purchaser from the Debtors' direct and indirect subsidiaries, which may be identified by the Purchaser.

This Term Sheet is a non-binding expression of interest and the terms and conditions are subject to the completion of confirmatory business, tax and accounting, regulatory, legal, and financial due diligence satisfactory to the Purchaser at its sole discretion. The terms and conditions hereof are being provided on a confidential basis and should not be disclosed to any third party other than the attorneys, accountants, and financial advisors of the Debtors, without the consent of the Purchaser unless required by an order of a court of competent jurisdiction.

Sellers	The Debtors and their direct and indirect subsidiaries identified by the Purchaser as holding or owning assets to be sold to the Purchaser, which will become chapter 11 debtors in possession to the extent necessary.
Purchaser	WV Holding Co. LLC ("WHC") and/or one or more subsidiaries or affiliates of WHC as WHC may designate at any time prior to the Closing Date.
Purchase Price	[$69,500,000] constituting [$10,000,000] in cash (the "Cash Component"), plus [$12,500,000] in an earn out (the "Earn Out") as calculated below, plus up to [$36,000,000] for the assumption of Sales Representative Commissions, as defined below, plus up to [$11,000,000] for assumption of the Representative and

	Membership Rewards Program Liabilities, as defined below.
Purchase Price Deposit	Purchaser will deposit $150,000 with an escrow agent to be identified by Debtors and Purchaser. The Purchase Price Deposit will be returned to Purchaser in the event of a Termination Event or consummation of an Alternative Transaction.
Earn Out	Up to $12,500,000 calculated as a 1.0% royalty over a 36-month period following the Closing Date for each month that minimum monthly revenue of $6,000,000 is earned relating to historical travel and membership product lines.
Sales Representative Commissions	Up to an aggregate of $36,000,000 that sales representatives will be able to earn back for unpaid commissions (if any) under assumed sales representative agreements ("Representative Agreements") upon reaching agreement with the Purchaser on (i) specific terms to be determined based on future sales targets under an agreed upon timeframe, and (ii) a waiver of certain claims against the Debtors' estates.
Representative and Membership Rewards Program Liabilities	Up to $11,000,000 to be assumed as part of the continuation of existing rewards programs available to members and representatives, subject to terms and conditions (including trip availability, pricing, and customary blackout periods) to be determined with the Purchaser.
Closing Date	The first date practicable following the entry of an order by the Bankruptcy Court approving the acquisition on terms and conditions satisfactory to the Purchaser in its sole discretion (the "Sale Order").
Acquired Assets	Substantially all assets (tangible, intangible, real, personal or mixed) of the Sellers free and clear of all liens, claims and encumbrances, including, without limitation, all cash and all cash equivalents and deposits, all merchant reserves and holdbacks (the "Merchant Reserves"), accounts, executory contracts, unexpired leases, inventory, equipment, investment property, instruments, chattel paper, real estate, patents, copyrights, trademarks, and other general intangibles, and all products and proceeds thereof, other than the Excluded Assets (as defined below).
Excluded Assets	Debtors' causes of action, including avoidance actions.
Executory Contracts	Subject to the provisions set forth under the Section hereof entitled

and Unexpired Leases to be Assumed and Assigned to Purchaser	"Affirmative Covenants", the Purchaser will provide a schedule of the contracts to be assumed and assigned ("Assigned Contracts") and any associated cure amount, including, without limitation, all customer contracts and Representative Agreements to be assumed.
Executory Contracts and Unexpired Leases to be Rejected	The Sellers will reject all executory contracts not assumed and assigned to the Purchaser and Purchaser shall assume no liability or obligation of any kind or nature in connection with any contract rejected or not expressly assumed and assigned to Purchaser.
Employees	Purchaser or a "NewCo" created by Purchaser shall employ certain of the Sellers' employees and it is anticipated that Purchaser or NewCo will assume existing employment agreements or enter into new employment agreements with key employees to maintain the enterprise as a going concern.
Conditions Precedent to Closing	The asset purchase agreement (the "APA") will contain the following conditions precedent to closing as well as other customary conditions precedent to closing as determined by the Purchaser: • All documentation shall be in form and substance satisfactory to the Purchaser and its counsel in its sole discretion. • A consulting agreement with Wayne Nugent in form and substance satisfactory to the Purchaser and its counsel in its sole discretion. • Sellers shall deliver a "quality of earnings report" from a nationally reputable accounting firm (reasonably approved by the Purchaser) the results of which are reasonably satisfactory to the Purchaser. • All fees and expenses (including reasonable fees and expenses of legal and financial advisors) required to be paid to the Purchaser on or before the Closing Date shall have been paid in full. • All motions and other documents to be filed with and submitted to the Bankruptcy Court in connection with the acquisition (including, without limitation, the Sale Order) shall be in form and substance satisfactory to the Purchaser in its sole discretion. • All governmental and third party consents and approvals necessary in connection with the acquisition and the transactions contemplated thereby shall have been obtained and

	shall remain in effect, except as otherwise waived by the Purchaser. • The Sellers shall provide customary representations and warranties, provided that such representations and warranties shall be made only as to circumstances existing as of the Closing Date. • The representations and warranties of the Sellers shall be true and correct immediately prior to the Closing Date except to the extent that any such representation or warranty shall survive closing, in which case such representations and warranties shall be true and correct on such later date. • There shall exist no default or event of default under the APA or under the Cash Collateral Order. • The acquisition shall not violate any requirement of applicable law and shall not be enjoined, temporarily, preliminarily or permanently by any governmental authority. • The Bankruptcy Court shall have entered the Sale Order, in form and substance satisfactory to the Purchaser in its sole discretion, which order shall be in full force and effect and shall not have been reversed, vacated or stayed and shall not have been amended, supplemented or otherwise modified without the prior written consent of the Purchaser (which consent may be withheld in its sole discretion) (i) authorizing and approving the transactions contemplated thereby, including, without limitation, (X) the sale of the Acquired Assets free and clear of all liens, claims and encumbrances pursuant to section 363(f) of the Bankruptcy Code and (Y) the assumption and assignment to the Purchaser pursuant to section 365 of all of the executory contracts and unexpired leases selected by the Purchaser with the aggregate cure amount payable by the Purchaser not to exceed an amount to be agreed between the Sellers and the Purchaser in the APA, and (ii) finding that the Purchaser is entitled to the protections afforded under section 363(m) of the Bankruptcy Code and granting such protection to the fullest extent under section 363(m) of the Bankruptcy Code. • There shall have occurred no material adverse effect on any of the operations, performance, business, assets, or properties of the Sellers, taken as a whole (a "Material Adverse Effect"); provided, however, that any event or occurrence that would otherwise constitute a Material Adverse Effect as a consequence

	of (i) the filings in the Sellers' chapter 11 cases[1] effected by the Sellers contemplated in this Term Sheet; (ii) the hiring of any of the Sellers' personnel by Purchaser or any affiliate of Purchaser (iii) general economic, legal, regulatory or political conditions in the United States of America (provided that the impact on the Sellers and their subsidiaries is not materially disproportionate to the impact of similar entities), (iv) conditions generally affecting the industries in which the Sellers and their subsidiaries operate (provided that the impact on the Sellers and their subsidiaries is not materially disproportionate to the impact of similar entities), (v) the commencement or escalation of war or armed hostilities or the occurrence of acts of terrorism or sabotage, (vi) changes in the securities markets generally, and (vii) changes in law or generally accepted accounting principles, or any interpretation thereof shall be excluded from this clause. • Immediate termination of the so-called "Interim Agreement" with Seacret. • Such other conditions precedent as are customary.
Termination Events	The occurrence of any of the foregoing shall result in the termination of the obligations of the Purchaser under this Term Sheet unless waived by the Purchaser: • The APA is executed later than 1 day prior to the hearing to consider the Procedures Order (as defined below). • The Procedures Order shall not have been entered by the Bankruptcy Court on or before January 31, 2021 • Sale Order shall not have been entered by the Bankruptcy Court on or before 45 days after the execution of the APA. • Dismissal of any of the Chapter 11 Cases with respect to any of the Sellers or conversion of any Chapter 11 Cases to a chapter 7 case, or the sale of substantially all of the assets of any Sellers other than pursuant to the APA. • Appointment of a chapter 11 trustee or examiner with expanded powers or other person with expanded powers in any of the

[1] The act of filing the chapter 11 petitions for the Sellers itself was also not a Material Adverse Event for purposes of this Term Sheet.

	Chapter 11 Cases of the Sellers. • Granting of relief from the automatic stay to permit foreclosure or the exercise of other remedies on the material assets of any Sellers. • Sellers' modification or consent to any modification of the APA, in each case, without the prior agreement of the Purchaser. • Sellers' failure to satisfy all Conditions Precedent by the Closing Date.
Representations and Warranties	The APA shall contain customary representations and warranties to be agreed upon, including, but not limited to, representations as to fraud, gross negligence, or willful misconduct.
Affirmative Covenants	The APA will contain customary affirmative covenants to be agreed upon. In addition, the Sellers shall use commercially reasonable best efforts to identify and provide the Purchaser with copies of and/or information relating to (a) all contracts and agreements (including, without limitation, Representative Agreements) between any of the Sellers and any third party, and (b) all business opportunities known by each of the Sellers.
Cooperation and Access	The Sellers shall cooperate with the Purchaser and shall use commercially reasonable best efforts to effectuate an orderly transition of the business to the Purchaser and to minimize any disruption in the business resulting from the transactions contemplated hereby, including, without limitation, by providing the Purchaser with access to the Sellers' books, records, employees and Sales Representatives.
Negative Covenants	The APA will contain customary negative covenants to be agreed upon.
Procedures Order	Unless otherwise agreed among the parties, the order to establish the sale procedures and identify the Purchaser as a "stalking horse purchaser" (the "Procedures Order") will provide, among other things, (A) for competing bids to be more than an amount equal to the Purchase Price (including a minimum Cash Component of $10,000,000) plus the Breakup Fee (as defined below) plus the Expense Reimbursement plus a $250,000 initial overbid, and that any successive overbids shall be made in increments not less than $500,000 of cash consideration in excess of the last submitted,

	highest qualified bid for the Acquired Assets; (B) that a proposal for a competing bid must be in writing and submitted using the APA as a form (the "Competing Agreement"); (C) that a Competing Agreement must be marked to show changes from the APA; (D) for any person submitting a competing bid to provide an earnest money cash deposit of not less than 10% of the Cash Component of the Purchase Price; (E) that the Procedures Order shall govern the sale and auction of the assets of the Sellers; (F) for payment of a break-up fee, payable to the Purchaser under the terms and circumstances set forth herein, equal to 3% of the Purchase Price (the "Breakup Fee"); (G) for payment to the Purchaser under the terms and circumstances set forth herein in reimbursement (the "Expense Reimbursement") of the Purchaser's out-of-pocket costs, fees and other expenses (including legal expenses and other professional fees and expenses, and travel expenses) (collectively, "Expenses") incurred in connection with the proposed transactions described herein (including without limitation the negotiation of this Term Sheet and any other documents attendant hereto and the APA, drafting, review and comments on drafts, attendance at hearings and due diligence), up to a maximum aggregate amount of $500,000; (H) that the Breakup Fee and Expense Reimbursement shall be payable by the Sellers to the Purchaser (i) from the Debtors' estates in the event of a Termination Event or (ii) whether or not the Purchaser elects to submit overbids, upon the closing of an Alternate Transaction (as defined below); (I) that in the event of an Alternate Transaction, the Breakup Fee and Expense Reimbursement shall be paid to the Purchaser from the cash proceeds of such Alternate Transaction; (J) that in the event of a competing bid, the Purchaser shall be entitled to submit successive overbids and shall be entitled in the calculation of the amount of the Purchaser's overbids for a credit in the sum of the Breakup Fee plus the Expense Reimbursement (which Expense Reimbursement shall be deemed allowed for purposes of the Purchaser's overbids, without the necessity of further approval by the Bankruptcy Court, in an amount equal to the Purchaser's unpaid and accrued Expenses as evidenced by invoices or other documentation provided by the Purchaser); and (K) subject to judicial order, that all current and former employees and of the Sellers shall, upon notice, promptly turn over to the Sellers copies of any books or records relating to the Sellers' business, or contracts or agreements between a Seller and any third party. An "Alternate Transaction" shall mean any asset sale, stock sale, debt for equity swap, joint venture, financing, reorganization or recapitalization, funding of a plan of reorganization in the Sellers' Chapter 11 Cases, or any similar transaction which does not involve a sale or disposition of the Acquired Assets to the

	Purchaser.
Governing Law	State of New York