

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

In re:

F-Squared Investment Management, LLC, *et al.*¹

Debtors.

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Chapter 11

Case No. 15-_____ (_____)

(Joint Administration Requested)

**DEBTORS' MOTION TO (A) ESTABLISH BIDDING PROCEDURES
RELATED TO THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS'
ASSETS, APPROVE RELATED BID PROTECTIONS AND ESTABLISH
NOTICE PROCEDURES FOR DETERMINING CURE AMOUNTS,
AND (B) APPROVE THE SALE OF SUBSTANTIALLY ALL
OF THE DEBTORS' ASSETS AND ASSUME AND ASSIGN
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

The debtors and debtors in possession (collectively, the “**Debtors**” or the “**Sellers**”, as applicable) hereby move, pursuant to 11 U.S.C. §§ 105, 363, 365, 503 and 507 and Fed. R. Bankr. Proc. 2002, 6004 and 6006 for entry of two orders. The first, the “**Bidding Procedures Order**”, attached hereto as **Exhibit A**, requests that the Court (A) establish bidding and auction procedures (the “**Bidding Procedures**”) in connection with the sale of substantially all of the Debtors’ assets (the “**Assets**”) free and clear of all claims and any other interests, liens, mortgages, pledges, security interests, rights of first refusal, obligations and encumbrances of any kind whatsoever (collectively, the “**Interests**”), except to the extent identified in a Winning Bidder’s (as defined below) asset purchase agreement; (B) approve the proposed bid protections, including the termination fee (the “**Break-Up Fee**”) and expense reimbursement (the “**Expense Reimbursement**”), to Broadmeadow Capital, LLC (the “**Purchaser**” or the “**Stalking Horse**

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: F-Squared Investment Management, LLC (9247), F-Squared Investments, Inc. (0788), F-Squared Retirement Solutions, LLC (9247), F-Squared Alternative Investments, LLC (9247), F-Squared Solutions, LLC (9247), F-Squared Institutional Advisors, LLC (9247), F-Squared Capital, LLC (5257), AlphaSector LLS GP 1, LLC (3342), and Active Index Solutions, LLC (0788). The Debtors’ address is Wellesley Office Park, 80 William Street, Suite 400, Wellesley, Massachusetts 02481.

Bidder”), as applicable, a wholly owned subsidiary of Cedar Capital, LLC (“**Cedar Capital**”), in accordance with the Asset Purchase Agreement dated July 3, 2015 (the “**Stalking Horse Agreement**”),² a copy of which is attached hereto as **Exhibit B**; (C) schedule an auction (the “**Auction**”) and set a date and time for a sale hearing (the “**Sale Hearing**”) for the sale of the Assets (the “**Sale**”), and approve the form and manner of notice thereof; (D) establish procedures for noticing and determining cure amounts for executory contracts (“**Executory Contracts**”) and unexpired leases (“**Leases**”) to be assumed and assigned in connection with the Sale; and (E) grant certain related relief.

The second order, the “**Sale Order**”, attached hereto as **Exhibit C**, requests that, at the Sale Hearing, subject to the results of the Auction, the Court (A) approve and authorize the Sale, free and clear of all Interests, except to the extent set forth in the Winning Bidder’s (as defined below) asset purchase agreement; and (B) authorize the assumption and assignment of certain Executory Contracts and Leases. In support hereof, the Debtors respectfully represent:

JURISDICTION

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.³

GENERAL BACKGROUND

2. On July 8, 2015 (the “**Petition Date**”), the Debtors filed voluntary chapter 11 petitions commencing these cases. The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. Additional information regarding the Debtors’ business and the background

² Unless otherwise indicated, capitalized terms that are used herein and not otherwise defined shall have the meanings assigned to such terms in the Stalking Horse Agreement.

³ The Debtors confirm their consent pursuant to Local Rule 9013-1(f) to the entry of a final order by this Court.

relating to the events leading up to these cases can be found in the *Declaration of David N. Phelps in Support of Chapter 11 Petitions and First Day Motions* (the “**First Day Declaration**”), filed contemporaneously herewith and incorporated herein by reference.

BACKGROUND ON THE SALE

A. The Marketing Process and the Stalking Horse Agreement

3. As described in greater detail in the First Day Declaration, given the economic effects of a settlement with the Securities and Exchange Commission (the “**SEC**”) and loss of customers, F-Squared retained PL Advisors (“**PL Advisors**”) as its investment banker and financial advisor in March 2015. PL Advisor’s initial charge was to raise capital, but allowed for possible alternative transactions. PL Advisors identified financial and strategic investors (collectively, the “**Interested Parties**”) to garner interest in pursuing a recapitalization in the Debtors.

4. Commencing on April 9, 2015, PL Advisors contacted and/or sent teasers to fifty one (51) Interested Parties. Twenty-six (26) Interested Parties executed non-disclosure agreements by May 1, 2015. On or around May 1, 2015, PL Advisors sent a letter to all Interested Parties, excluding those Interested Parties that had indicated they would not be submitting a bid, requesting all non-binding letters of intent by May 18, 2015 at 12:00 p.m. (ET).

5. On May 11, 2015, Virtus Investment Partners, Inc. (“**Virtus**”) terminated its relationship with the Debtors. As a result of the Virtus termination, the Debtors’ board determined that a sale of the Debtors’ assets rather than a capital raise was likely to maximize value. Due to further marketing, five (5) additional non-disclosure agreements were executed after the Virtus termination, resulting in a total of thirty-one (31) non-disclosure agreements executed by Interested Parties. On May 15, 2015, PL Advisors updated the confidential

information memorandum to account for the Virtus termination and distributed it to thirteen (13) Interested Parties that remained interested in a transaction with the Debtors.

6. PL Advisors received its first letter of intent (“**LOI**”) on May 18, 2015. In all, four LOI’s were received. All Interested Parties that submitted an LOI were given access to an electronic dataroom.

7. Based upon feedback received by certain bidders and an analysis of the evolving landscape, on or about June 1, 2015, the Debtors’ board made the decision to pursue a sale process pursuant to Section 363 of the Bankruptcy Code to maximize value. PL Advisors informed all Interested Parties still engaged in the transaction to revise their bids to account for a Section 363 sale process. Four (4) Interested Parties submitted LOIs incorporating a Section 363 sale process. On June 12, 2015, after reviewing and carefully considering the revised LOIs, the Debtors, in consultation with their advisors, determined that PL Advisors should request that each bidder submit their best and final letter of intent (“**Best and Final LOI**”). After reviewing and carefully considering the Best and Final LOIs received, the Debtors determined, in consultation with their advisors, that the Best and Final LOI submitted by Cedar Capital was the highest or otherwise best offer for the Debtors’ assets. The other three bidders were informed that they were not chosen as the highest best offer, and that the Debtors had not entered into an exclusivity arrangement with the stalking horse bidder. In fact, during the process of negotiating the Stalking Horse Agreement with Purchaser, the Debtors went back to a previous bidder to see if it was still interested in purchasing the assets. The other bidder told the Debtors that it was not interested unless the Debtors agreed to certain conditions that were plainly inappropriate.

8. On July 3, 2015, the Debtors and the Purchaser entered into the Stalking Horse Agreement, pursuant to which the Debtors will sell substantially all of their assets to the

Purchaser in exchange up to \$5 million cash plus earn-out payments on the first and second anniversary of the closing date, determined by a formula that is subject to the amount of assets under advisement (“AUA”) at the end of such period. The \$5 million is subject to reduction if AUA that can be transferred pursuant to the Stalking Horse Agreement is below \$2 billion.

9. The Stalking Horse Agreement provides the Debtors with a firm commitment that is not subject to any financing or due diligence contingencies and thereby provides the Debtors with a floor against which other bidders can submit competing bids. The Stalking Horse Agreement allows for the Debtors’ creditors to benefit from the potential upside captured by the earn-out and preserves the jobs of certain of the Debtors’ employees.

10. In addition, the proposed Sale to the Purchaser is in the best interest of the Debtors’ estates and is essential in maintaining their relationship with distribution customers. Specifically, the Purchaser is knowledgeable about the Debtors’ business and the needs of their customers, because it is a quantitative asset manager with a significant presence in Boston, like the Debtors. The Purchaser’s parent, Cedar Capital, is providing a guaranty of the payment and performance of Purchaser’s obligations under the Stalking Horse Agreement. Moreover, Cedar Capital has strong capital resources with the backing of two premier financial services sponsors, FTV and LLR Capital. Cedar Capital delivers innovative investment solutions, primarily via financial advisors, through its affiliates, providing a single point of access to multiple, diversified and unique investment strategies. In other words, the Purchaser knows this business. The Debtors believe that this fact will be helpful in encouraging their clients to stick with the Debtors during the sale process because of this key fact. That, in turn, inures to the benefit of the estates in maximizing recovery under the Stalking Horse Agreement, because levels of recovery for both the payment of closing and the earn-out are tied to AUA.

B. Proposed Timeline for Sale of Assets

11. Given the centrality of AUA to both the initial cash payment at close and the earn-out, the Debtors believe it is essential for the preservation of value to conduct the Sale in an orderly and efficient manner in order to retain AUA during these chapter 11 cases. An expedited sale is the only likely path to retaining AUA and therefore maximizing value under the Stalking Horse Agreement.

12. The Debtors' business is conducted through advisory agreements and investment advisory agreements with their clients. The Stalking Horse Agreement requires that the Debtors obtain affirmative or negative notice consents from these clients (the "**AUA Consents**") depending on the requirements of the clients' investment advisory agreements. The Debtors are required to obtain \$1 billion of AUA Consents prior to closing. Because Broadmeadow will not be confirmed as the winning bidder until the auction, the timing of contacting these clients to obtain their consent might not be able to be achieved prior to the sale hearing. In addition, some clients may be reluctant to provide an AUA Consent until the Winning Bidder is confirmed. Accordingly, it is likely that the sale won't close for some period after the Sale Hearing. As a result, it is essential that sale process move as efficiently and quickly as possible to enable Debtors to obtain in the required AUA Consents while retaining customers, in order to maximize value for the Debtors' estates.

13. With these paramount considerations, and taking into account the prepetition marketing process discussed above, as well as the need for the Debtors to retain as many customers through this process in order to maximize value, the Debtors request the following timeline for conducting the Sale process:

<u>Event</u>	<u>Deadline</u>
Proposed Bidding Procedures Hearing.....	On or about July 29, 2015
Proposed Bid Deadline	On or about August 18, 2015
Auction.....	On or about August 19, 2015
Sale Hearing.....	On or about August 24, 2015
Closing.....	No later than September 25, 2015

14. Given the Debtors' prepetition marketing efforts and the significant information compiled in the Schedules to the Stalking Horse Agreement, the proposed timeline is sufficient to complete a fair and open sale process that will maximize the value received for the Assets. The most likely competing bidders are among those who previously submitted a letter of intent. Thus, these parties need minimal time to submit competing bids. If new bidders emerge, the proposed timeline will provide them with sufficient time to perform due diligence given that the process is well understood at this juncture and bidders can utilize the Stalking Horse Agreement and its Schedules. Thus, the schedule is sufficient, while respecting the necessity to consummate the Sale as quickly as possible to maximize the value received for the Assets.

C. Terms of the Stalking Horse Agreement

15. A summary of the pertinent terms of the Stalking Horse Agreement, including the terms to be highlighted pursuant to Local Rule 6004-1, is as follows:⁴

- **Assets**: Section 2.1 of the Stalking Horse Agreement lists the Purchased Assets, which are comprised of substantially all of the Debtor's assets (excluding the Excluded Assets).
- **Assumed Liabilities**: As set forth in Section 2.3 of the Stalking Horse Agreement, only certain liabilities will be assumed by the Purchaser, primarily relating to the Seller's Business. The Purchaser will not assume any of the Excluded Liabilities.

⁴ The following summary is qualified in its entirety by reference to the provisions of the Stalking Horse Agreement. In the event of any inconsistencies between the provisions of the Stalking Horse Agreement and the terms herein, the terms of the Stalking Horse Agreement shall control. Unless otherwise defined in the summary set forth in the accompanying text, capitalized terms shall have the meanings assigned to such terms in the Stalking Horse Agreement.

- **Purchase Price:** Section 3.1(a) of the Stalking Horse Agreement provides that the Purchase Price for the Purchased Assets shall be (a) an amount of cash equal to the (i) the Closing Payment, plus (ii) plus the Investment In Hedge Fund Amount (solely if the requisite number of LP Consents is obtained in accordance with Section 8.3 of the Stalking Horse Agreement), plus (iii) the Investment In Seeded Strategies Amount, plus or minus (iv) the Fee Adjustment Amount, plus or minus (v) the Adjustment Amount plus (vi) the Initial Earn-out Payment, plus (vii) the Final Earn-Out Payment, and (b) the assumption of Assumed Liabilities.
- **Termination and Other Deadlines:** Section 4.4(a) of the Stalking Horse Agreement allows either Party to terminate the Stalking Horse Agreement if the Closing has not occurred by the Termination Date (which date may be extended until the 60th day following the entry of the Sale Order in the circumstances described in 4.4(a) of the Stalking Horse Agreement).
- **Break-Up Fee and Expense Reimbursement:** The Break-Up Fee is \$250,000 and the Expense Reimbursement includes the actual out-of-pocket documented (to the reasonable satisfaction of the Seller) expenses incurred by the Purchaser in connection with the Transactions, with a cap of \$250,000. Section 7.5 of the Stalking Horse Agreement provides that, subject to Court approval, in the event that (i) the Purchaser is not determined to be the Winning Bidder at the Auction and Seller closes a transaction contemplated by a Competing Bid with another bidder or (ii) Purchaser is the Winning Bidder and Sellers fail to close the Transaction for reasons other than a breach of Purchaser's obligations or representations and warranties in the Stalking Horse Agreement and Sellers close a transaction contemplated by a Competing Bid with another bidder, then Seller shall pay the Purchaser the Break-Up Fee and Expense Reimbursement on the third (3rd) Business Day following the date of the closing of a transaction contemplated by a Competing Bid.
- **Closing Conditions.** The respective obligations of the Purchaser and the Seller to consummate the closing are subject to the satisfaction or waiver of the closing conditions set forth in Article X of the Stalking Horse Agreement.
- **Good Faith Deposit.** Pursuant to Section 3.2 of the Stalking Horse Agreement, the Purchaser deposited with Richards, Layton & Finger, P.A., in its capacity as escrow holder, Five Million Dollars (\$500,000).
- **Transition Services Agreement.** The parties anticipate the need for a TSA.
- **Record Retention.** Section 8.7 of the Stalking Horse Agreement provides that each of the Seller and the Purchaser agree to preserve and keep the

records, or in the case of the Seller, arrange for the preservation and keeping of the records, held by it or their Affiliates relating to the Business for a period of six (6) years from the Closing Date, and shall make such records and personnel available to the other Party, subject to the provisions of Section 8.6 thereof, as may be reasonably required by such Party in connection with, among other things, any insurance claims, Proceedings or Tax audits against or governmental investigations of Seller or Purchaser or any of their Affiliates, administering this case, including in connection with any motion or claim objection filed or to be filed by or against the Seller in this case, winding up the Seller, or in order to enable the Seller or the Purchaser to comply with its obligations under the Stalking Horse Agreement and each other agreement, document or instrument contemplated by such agreements.

- **No Successor Liability.** Paragraph 25 of the Sale Order provides that, except as may be expressly set forth in the Stalking Horse Agreement with respect to the Assumed Liabilities and the Permitted Exceptions, the transfer of the Purchased Assets, including, without limitation, the assumption, assignment and transfer of any Purchased Contract, to the Purchaser shall not cause or result in the Purchaser, any of its Affiliates or subsidiaries, or any of their respective Representatives, having any liability, obligation, or responsibility for, or any Purchased Assets being subject to or being recourse for, any Interest whatsoever, whether arising under any doctrines of successor, transferee or vicarious liability, breach of fiduciary duty, aiding or abetting breach of fiduciary duty or otherwise, whether at Law or in equity, directly or indirectly, and whether by payment, setoff, recoupment, or otherwise.
- **Relief From Bankruptcy Rule 6004(h).** Paragraph 30 of the Sale Order provides that the Sale Order will be effective and enforceable immediately upon entry.

RELIEF REQUESTED

16. By this Motion, the Debtors seek entry of the Bidding Procedures Order: (A) approving the Bidding Procedures; (B) approving the Break-Up Fee and the Expense Reimbursement in accordance with the Stalking Horse Agreement; (C) scheduling the Auction (if necessary) and a Sale Hearing, and approving the form and manner of notice thereof; and (D) establishing the Cure Procedures (as defined below).

17. The Debtors request that this Court set the Sale Hearing on or about August 24, 2015. At the Sale Hearing, pending the outcome of the Auction and as set forth in the Bidding Procedures, the Debtors intend to seek entry of a Sale Order (A) approving the Sale, free and clear of all Interests, and (B) authorizing the assumption and assignment of certain Executory Contracts and Leases.

BASIS FOR RELIEF

A. Necessity for Sale

18. Given the settlement with the SEC, the mounting legal and indemnification expenses and the loss of customers, the Debtors determined that the most effective way to preserve the Debtors' going concern value for the benefit of their stakeholders was through a sale of the Debtors' assets following a thorough marketing process. The Debtors submit that a Sale of the Assets, along the timeline proposed herein, will achieve such goal. Indeed, the proposed sale process will allow the Debtors to maintain their day to day operations with their customers with very little, if any, disruption. The lack of disruption in the Debtors' operations will enable the Debtors to attempt to maintain AUA, which as set forth above is crucial to the potential recoveries to stakeholders through the earn-out contemplated in the Stalking Horse Agreement. In the absence of a sale transaction conducted in accordance with such timeline, the Debtors face a deterioration in the value of the business and the value of the Stalking Horse Agreement.

B. The Bidding Procedures⁵

19. In order to maximize value for the benefit of the Debtors' estates and their stakeholders, the Debtors seek to implement a competitive bidding process that is designed to generate maximum value for the Assets. As described more fully in the Bidding Procedures,

⁵ Terms used but not otherwise defined in this section of this Motion shall have the meanings ascribed to them in the Bidding Procedures attached as **Schedule 1** to the Bidding Procedures Order.

attached as **Schedule 1** to the Bidding Procedures Order attached hereto as **Exhibit A**, the Debtors seek approval to sell the Assets to a Qualified Bidder that makes the highest or otherwise best offer for the Assets.

20. As described more fully in the Bidding Procedures, the Debtors request that competing bids for the Assets be governed by the following procedures:⁶

- **Bid Deadline.** Any party interested in submitting a bid (a “**Bidder**”) must transmit such bid (a “**Bid**”) via electronic mail to the parties identified on **Schedule 1** to the Bidding Procedures not later than 5:00 p.m. (prevailing Eastern Time) on August 18, 2015 (the “**Bid Deadline**”).
- **Required Bid Materials.** To constitute a “Qualified Bid”, a Bid (other than the Stalking Horse Agreement, which shall constitute a Qualified Bid for all purposes) must be a written irrevocable offer from a Qualified Bidder (as defined below) and provide for the following:
 - (i) **Identification of Potential Bidder.** Identification of the party submitting the bid (the “**Potential Bidder**”) (and any equity holders, in the case of a Potential Bidder which is an entity specially formed for the purpose of effectuating the contemplated transaction) and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction.
 - (ii) **Asset Purchase Agreement.** An executed copy of an asset purchase agreement providing for the purchase of substantially all of the assets of the Debtors along with a redline marked against the Stalking Horse Agreement reflecting variations from the Stalking Horse Agreement. The Debtors may consider any bids, including those which may propose alternative transaction structures to the Stalking Horse Agreement.
 - (iii) **Financing.** Evidence of the Potential Bidder’s ability to consummate the transaction and payment of the purchase price in cash at the Closing, including, but not limited to:
 - (a) a signed commitment for any debt or equity financing;

⁶ The following description of the Bidding Procedures is only a summary of the terms set forth in the Bidding Procedures attached as **Schedule 1** to the Bidding Procedures Order. The following summary is qualified in its entirety by reference to the provisions of the Bidding Procedures. In the event of any inconsistencies between the provisions of the Bidding Procedures and the terms herein, the terms of the Bidding Procedures shall control.

(b) a bank or other account statement showing the ability of a Potential Bidder to pay cash for the Assets;

(c) contact names and numbers for verification of financing sources; and

(d) any additional information or evidence, satisfactory to the Debtors, in their discretion, as requested to validate the ability to fund the Minimum Bid Amount (defined below),

- (iv) **Minimum Bid Amount.** The bid must be higher or otherwise better than the offer of the Stalking Horse Bidder under the Stalking Horse Agreement. To be higher or otherwise better than the offer of the Stalking Horse Bidder such bid must be valued in an amount that is at least the equivalent of \$600,000 over the Closing Payment (the “**Minimum Bid Amount**”).⁷
- (v) **Irrevocability of Bid.** A letter stating that the Potential Bidder’s offer is irrevocable and binding until the first business day after the Assets for which the Potential Bidder is submitting a bid have been sold pursuant to the closing of the sale or sales approved by the Court.
- (vi) **Bid Deposit.** A cash deposit in the amount of \$560,000 by wire transfer or certified or cashier’s check, which amount shall be made payable to the Debtors.
- (vii) **Identification of Executory Contracts and Leases.** The bid shall identify with particularity the Debtors’ executory contracts and unexpired leases with respect to which the Potential Bidder seeks to receive an assignment and any designation rights it seeks.
- (viii) **No Financing or Diligence Constituencies.** The bid shall not contain any due diligence or financing contingencies of any kind.
- (ix) **Consent to Jurisdiction.** The bid shall state that the offering party consents to the jurisdiction of the Court.
- (x) **Corporate Authority.** The bid shall include evidence of authorization and approval from the Potential Bidder’s board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the submitted asset purchase agreement of the Potential Bidder.

⁷ The Minimum Bid Amount represents the initial overbid amount of \$100,000 plus the Break-Up Fee (which is \$250,000) plus the Expense Reimbursement (which, for purposes of determining the Minimum Bid Amount, is \$250,000).

- (xi) **Adequate Assurance Information.** The bid shall include sufficient financial or other information (the “**Adequate Assurance Information**”) to establish adequate assurance of future performance with respect to any lease or contract to be assumed and assigned to the bidder in connection with the proposed transaction. The bid shall also identify a contact person (with relevant contact information) that counterparties to any lease or contract can contact to obtain additional Adequate Assurance Information.
- (xii) **Other Information.** The bid shall include such other information as may be reasonably requested in writing by the Debtors prior to the Auction.

A “**Qualified Bidder**” is a Potential Bidder that delivers the documents described in subparagraphs (i)-(xii) above, and that the Debtors determine, in consultation with the official committee of unsecured creditors (the “**Creditors’ Committee**”) (if any), is reasonably likely (based on financial information submitted by the Potential Bidder, the availability of financing, experience and other consideration deemed relevant by the Debtors) to be able to consummate a sale if selected as the Winning Bidder. Notwithstanding the foregoing, the Stalking Horse Bidder shall be deemed a Qualified Bidder. Not later than two (2) business days after the Bid Deadline, the Debtors shall determine and shall notify the Potential Bidder, if such Potential Bidder is a Qualified Bidder. On or prior to 11:59 p.m. (prevailing Eastern Time) on the day of the Bid Deadline, the Debtors will notify the parties identified on **Schedule 1** to the Bid Procedures and the Stalking Horse Bidder by electronic mail of any extension of the Bid Deadline. A bid from a Qualified Bidder is a “**Qualified Bid.**” No later than three (3) business days after the Bid Deadline, the Debtors shall provide copies of all Qualified Bids (other than the Stalking Horse Bidder’s bid) by electronic mail to the parties identified on **Schedule 1** to the Bid Procedures and all Qualified Bidders (including the Stalking Horse Bidder).

- **Minimum Bid Increment.** Unless otherwise agreed by the Debtors, in consultation with the Creditors’ Committee (if any), subsequent bids at the Auction shall not provide consideration of less than \$100,000 in excess of the preceding bid.
- **Auction.** If a Qualified Bid, other than that submitted by the Stalking Horse Bidder, has been received by the Debtors, the Debtors will conduct the Auction with respect to all or some of the Assets. The Auction shall be conducted at the offices of Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801 at a date and time determined by the Court, or such other place and time as the Debtors, in consultation with the Creditors’ Committee (if any), may determine.

C. Break-Up Fee and Expense Reimbursement

21. All of the Interested Parties that submitted a Best and Final LOI to purchase the Assets required a break-up fee and expense reimbursement. Presumably, this was because such break-up fee and expense reimbursement provided Interested Parties with some assurance that they will be compensated for the considerable time and expense needed to enter into definitive documentation and the risk that arises from participating in the bidding and subsequent auction process. Indeed, one Interested Party demanded a combined breakup fee and expenses reimbursement that, even after multiple rounds of negotiation, was substantially more than double the combined breakup fee and expense reimbursement contained in the Stalking Horse Agreement.

22. Since the Stalking Horse Bidder entered into the LOI, the Stalking Horse Bidder has, in fact, incurred considerable time and expense negotiating the Stalking Horse Agreement. Other potential bidders will benefit from the time and expense that the Stalking Horse Bidder spent negotiating and finalizing such documents. As such, the Debtors believe that providing the Stalking Horse Bidder with the Break-Up Fee and the Expense Reimbursement is appropriate in order to compensate the Stalking Horse Bidder for the time and expense that it incurred in negotiating the definitive documentation and the risk that it may be outbid at the Auction.

23. In addition to compensating the Stalking Horse Bidder, providing the Stalking Horse Bidder with the Break-Up Fee and the Expense Reimbursement (which the Stalking Horse Bidder required as a condition to entering into the Stalking Horse Agreement) will benefit the Debtors' estates because the purchase price in the Stalking Horse Agreement establishes a floor and promotes more competitive bidding. Specifically, the purchase price in the Stalking Horse Agreement sends a message to the marketplace that the Assets are worth at least such price.

Without that floor, there is a real risk that the ultimate purchase price for the Assets may be undervalued.

D. Notice of Bidding Procedures, Auction and Sale

24. Notice of Sale Hearing. On the date the notice of motion and hearing of this Motion is filed, the Debtors caused this Motion and all exhibits hereto, including the Stalking Horse Agreement, the Bidding Procedures and a copy of the proposed Bidding Procedures Order, by first-class mail, postage prepaid, to be served upon (a) the United States Trustee for the District of Delaware; (b) the creditors listed on the Debtors' consolidated list of 30 largest unsecured creditors, as filed with the Debtors' chapter 11 petition; (c) counsel to the Stalking Horse Bidder; (d) any party asserting a security interest in the Assets to the extent any such interest is reasonably known to the Debtors; (e) each of the Debtors' landlords and any notice parties identified in the Leases; (f) various federal, state, county and city tax and regulatory authorities; (g) all entities known to have expressed an interest in a transaction with respect to the Assets since April 9, 2015 or that have been identified by the Debtors or their advisors as a potential purchaser of the Assets; (h) the SEC; (i) the United States Attorney General/Antitrust Division of the Department of Justice; (j) local and state environmental authorities and the federal Environmental Protection Agency; (k) local, state and federal authorities and agencies that have issued licenses or permits to the Debtors with respect to the operation and use of the Assets; (l) all of the Debtors' creditors, and (m) all parties requesting notice pursuant to Bankruptcy Rule 2002 (collectively, the "**Sale Notice Parties**").

25. Notice of Sale. Within two (2) days of the entry of the Bidding Procedures Order or as soon thereafter as practicable, the Debtors shall cause to be served, by first-class mail, postage prepaid, a sale notice (the "**Notice of Auction and Sale Hearing**") setting forth, among other things, the dates established for submission of Qualified Bids, the Auction and the Sale

Hearing, substantially in the form attached to the Bidding Procedures Order as **Schedule 2**, upon the Sale Notice Parties and all know non-debtor counterparties to any unexpired leases or executory contracts that could potentially be assumed and assigned to the Stalking Horse Bidder. In addition, within five (5) days of the entry of the Bidding Procedures Order, the Debtors shall cause a summary version of the Notice of Auction and Sale Hearing to be published on (a) the website of the Debtors' court approved claims agent, BMC Group, Inc. and (ii) in the newspaper publication of *USA Today* (the "**Publication Notice**").

26. **Post-Auction Notice.** As soon as possible after the conclusion of the Auction, the Debtors shall file, but not serve, a notice identifying any winning bidder (the "**Winning Bidder**").

E. The Cure Procedures

27. The Debtors request the following procedures (the "**Cure Procedures**") for notifying counterparties to Executory Contracts and Leases of potential Cure Amounts (as defined below) with respect to those Executory Contracts and Leases that the Debtors may seek to assume and assign on the Closing Date.

28. Within two (2) days of the entry of the Bidding Procedures Order, the Debtors will file notices of potential assumption, assignment and/or transfer of the Executory Contracts and Leases listed therein (the "**Designated Executory Contracts**"), substantially in the forms attached to the Bidding Procedures Order as **Schedule 3** (collectively, the "**Notices of Assumption and Assignment**"), and serve such notice on all non-debtor parties to the Designated Executory Contracts (the "**Contract Notice Parties**").

29. Specifically, the Debtors shall serve all Designated Executory Contracts (other than those Designated Executory Contracts for investment advisory services (collectively, the

“AUA Consent Contracts”)) with a notice substantially in the form attached to the Bidding Procedures Order as **Schedule 3(a)**.

30. For those AUA Consent Contracts that require the Debtors to obtain affirmative AUA Consent (the **“Affirmative AUA Consent Contracts”**), the Debtors shall serve a notice, substantially in the form attached to the Bidding Procedures Order as **Schedule 3(b)**, on all Affirmative AUA Consent Contracts that will include a form of written consent that the non-debtor party to such Affirmative AUA Consent Contract would complete and return to the Debtors consenting to the assignment of the such Contract to the Purchaser or an Winning Bidder. If a party to an Affirmative AUA Consent Contract fails to return a written consent or expressly objects to the assignment of such Contract, then such Affirmative AUA Consent Contract shall not be assumed by the Debtors and assigned to the Purchaser or any Winning Bidder until such consent is received.

31. For those AUA Consent Contracts that may be assigned by the Debtors upon negative consent of assignment to such party (the **“Negative AUA Consent Contracts”**), the Debtors will serve a notice, substantially in the form attached to the Bidding Procedures Order as **Schedule 3(c)**, on all Negative AUA Consent Contracts that shall set a deadline thirty (30) days from the service of such Notice of Assumption and Assignment by which the non-debtor party to a Negative AUA Consent Contract may file an objection to the assumption and assignment of such Contract. If a party to a Negative AUA Consent Contract fails to object to the assignment of such Contract, then such Negative AUA Consent Contract may be assumed by the Debtors and assigned to the Purchaser or any Winning Bidder without further notice. If a party to a Negative AUA Consent Contract objects to the assignment of such Contract to the Purchaser or

any Winning Bidder, then such Negative AUA Consent Contract shall not be assumed by the Debtors and assigned to the Purchaser or any Winning Bidder until such consent is received.

32. All three forms of Notices of Assumption and Assignment will identify the calculation of the cure amounts, if any, that the Debtors believe must be paid to cure all defaults outstanding under each Designated Executory Contract (the “**Cure Amounts**”) as of such date. The Notices of Assumption and Assignment shall also contain information regarding how a non-debtor party to a Designated Executory Contract may obtain adequate assurance of future performance information from the Stalking Horse Bidder (the “**Stalking Horse Adequate Assurance Information**”). The Notice of Assumption and Assignment shall set a deadline by which the non-debtor party to a Designated Executory Contract may file an objection to the Cure Amount, the Stalking Horse Adequate Assurance Information or the assumption and assignment of such contract or lease (as applicable). In addition, if the Debtors identify additional Contracts or Leases that might be assumed by the Debtors and assigned that are not set forth in the original Notice of Assumption and Assignment, the Debtors shall promptly send a supplemental notice (a “**Supplemental Notice of Assumption and Assignment**”) to the applicable counterparties to such additional Contracts and Leases.

33. The Debtors request that this Court set the deadline to object to any Cure Amount, the Stalking Horse Adequate Assurance Information or the assumption and assignment of any Designated Executory Contract (other than with respect to the AUA Consent Contracts) as three (3) days prior to the Auction; provided, however, that in the event that the Winning Bidder is not the Stalking Horse Bidder, the Debtors propose that any objections solely as it relates to whether such bidder can provide adequate assurance of future performance may be raised at the Sale Hearing. To that end, the Notices of Assumption and Assignment and any Supplemental Notice

of Assumption and Assignment shall also provide that objections to any Cure Amount, the Stalking Horse Adequate Assurance Information or the assumption and assignment of any Designated Executory Contract (other than with respect to the AUA Consent Contracts) will be heard at the Sale Hearing or at a later hearing, as determined by the Debtors subject to the Court's calendar. As set forth above, with respect to any Affirmative AUA Consent Contracts, the Debtors may not assign such contract until the Debtors receive written consent from such Affirmative AUA Consent Contract. Further, with respect to the Negative AUA Consent Contracts, the Debtors request that the Court set the deadline to object to the assumption and assignment of any Negative AUA Consent Contract as thirty (30) days after service of the Notice of Assumption and Assignment .

34. The procedures and the Stalking Horse Agreement also contemplate that the Purchaser may amend the list of Designated Executory Contracts to be assumed and assigned up to the date of the Sale Hearing, or in the case of any Designated Executory Contract for which a contract party objects to an identified Cure Amount, forty-eight (48) hours after the Bankruptcy Court enters an order providing a cure amount different from the one set forth in the Notice of Assumption and Assignment or any Supplemental Notice of Assumption and Assignment. Moreover, the Stalking Horse Agreement and the Sale Order contemplate an AUA Consent Contract shall not be assumed and assigned until the Debtors have obtained such AUA Consent (including any Negative Consent). In addition, if the Debtors fail to obtain any AUA Consent then such AUA Consent Contract shall not be assumed by the Debtors and assigned to the Purchaser or any Winning Bidder.

35. At the Sale Hearing, the Debtors and/or the Winning Bidder shall (i) present evidence necessary to demonstrate adequate assurance of future performance by any Winning

Bidder and (ii) request entry of an order requesting approval of the assumption and assignment of any or all Executory Contracts and Leases to be assumed and assigned on the Closing Date to any Winning Bidder. For the foregoing reasons, the Debtors believe that granting the relief requested herein is appropriate and in the best interests of all parties-in-interest.

APPLICABLE AUTHORITY

36. “Under Delaware law, the business judgment rule operates as a presumption ‘that directors making a business decision, not involving self-interest, act on an informed basis, in good faith and in the honest belief that their actions are in the corporation’s best interest.’” Continuing Creditors’ Committee of Star Telecomms., Inc. v. Edgecomb, 385 F. Supp. 2d 449, 462 (D. Del. 2004) (quoting Grobow v. Perot, 539 A.2d 180, 187 (Del. 1988)); see also Ad Hoc Committee of Equity Holders of Tectonic Network, Inc. v. Wolford, 554 F. Supp. 2d 538, 555 n.111 (D. Del. 2008). Thus, this Court should grant the relief requested in this Motion if the Debtors demonstrate a sound business justification therefor. See In re Delaware Hudson Ry. Co., 124 B.R. 169, 179 (Bankr. D. Del. 1991).

37. As discussed above, the Debtors determined that the most effective way to preserve the Debtors’ going concern value for the benefit of their stakeholders was through a sale of the Debtors’ assets following a thorough marketing process. The Debtors submit that a Sale of the Assets, along the timeline proposed herein, will achieve such goal. In the absence of a sale transaction conducted in accordance with such timeline, the Debtors may face a significant deterioration in the value of the business. As such, the Debtors submit that they have demonstrated a sound business justification for the relief requested herein.

A. The Bidding Procedures are Fair and are Designed to Maximize the Value Received for the Assets

38. Section 363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). The Debtors submit that the Bidding Procedures are appropriate to ensure that the bidding process is fair and reasonable and will yield the maximum value for their stakeholders. Among other things, the Bidding Procedures (i) provide potential bidders with sufficient notice and an opportunity to acquire information necessary to submit a timely and informed bid, especially given the substantial pre-petition marketing described above, (ii) are designed to maximize the value received for the Assets by facilitating a competitive bidding process in which all potential bidders are encouraged to participate and submit competing bids, and (iii) will provide the Debtors with the opportunity to consider all competing offers and to select the highest or otherwise best offer for the sale of substantially all of the Assets.

39. The Debtors request this Court’s approval of the Bidding Procedures, including the dates established thereby for an Auction and a Sale Hearing. Accordingly, the Debtors and all parties-in-interest can be assured that the consideration for the Assets will be fair and reasonable, and there are sound business reasons to approve the Bidding Procedures.

B. The Bid Protections Are Necessary to Preserve the Value of the Debtors’ Estates

40. Pursuant to Bankruptcy Rule 6004(f)(1), a sale of property outside the ordinary course of business may be by private sale or by public auction. Having the ability to offer the Break-Up Fee and the Expense Reimbursement to the Stalking Horse Bidder will likely maximize the realizable value of the Assets for the benefit of the Debtors’ estates. Cf. ¶ 20, supra.

41. Approval of the Break-Up Fee and the Expense Reimbursement is governed by standards for determining the appropriateness of bid protections in the bankruptcy context. Courts have identified at least two instances in which bid protections may benefit the estate. First, a break-up fee or expense reimbursement may be necessary to preserve the value of the estate if assurance of the fee “promote[s] more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited.” Calpine Corp. v. O’Brien Envtl. Energy, Inc. (In re O’Brien Envtl. Energy, Inc.), 181 F.3d 527, 537 (3d Cir. 1999) (hereinafter, “O’Brien”); see also Reliant Energy Channelview LP v. Kelson Channelview LLC, 594 F.3d 200, 206-07 (3d Cir. 2010) (hereinafter, “Reliant”). Second, if the availability of break-up fees and expense reimbursements were to induce a bidder to research the value of the debtor and convert the value to a dollar figure on which other bidders can rely, the bidder may have provided a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth. Reliant, 594 F.3d at 206-07; O’Brien, 181 F.3d at 537.

42. The O’Brien court reviewed the following nine factors set forth by the lower court as relevant in deciding whether to award a break-up fee:

- A. the presence of self-dealing or manipulation in negotiating the break-up fee;
- B. whether the fee harms, rather than encourages, bidding;
- C. the reasonableness of the break-up fee relative to the purchase price;
- D. whether the unsuccessful bidder placed the estate property in a “sales configuration mode” to attract other bidders to the auction;
- E. the ability of the request for a break-up fee to serve to attract or retain a potentially successful bid, establish a bid standard or minimum for other bidders, or attract additional bidders;
- F. the correlation of the fee to a maximum of value of the debtor’s estate;

- G. the support of the principal secured creditors and creditors committee of the break-up fee;
- H. the benefits of the safeguards to the debtor's estate; and
- I. the substantial adverse impact of the break-up fee on unsecured creditors, where such creditors are in opposition to the break-up fee.

See O'Brien, 181 F.3d at 536.

43. Here, and as is set forth in greater detail supra, the Break-Up Fee and the Expense Reimbursement are necessary to preserve the value of the Debtors' estates because they will enable the Debtors to secure an adequate floor for the Assets and to therefore insist that competing bids be materially higher or otherwise better than the Stalking Horse Agreement — a clear benefit to the Debtors' estates. Moreover, the Stalking Horse Bidder (and the other Interested Parties that submitted a Best and Final LOI for the purchase of the Assets) would not agree to act as a stalking horse without the Break-Up Fee and the Expense Reimbursement given the substantial time and expense that would be incurred in connection with entering into definitive documentation and the risk that it will be outbid at the Auction. Without the Break-Up Fee and the Expense Reimbursement, the Debtors might lose the opportunity to obtain the highest or otherwise best offer for the Assets and would certainly lose the downside protection that will be afforded by the existence of the Stalking Horse Bidder. Furthermore, the bid of the Stalking Horse Bidder sends a message to all potential bidders that the Assets are at least worth the purchase price in such agreement. Therefore, without the benefit of the bid of the Stalking Horse Bidder (*i.e.*, a bid providing the floor), the bids received at auction for the Assets could be substantially lower than the bid offered by the Stalking Horse Bidder.

44. “The usual rule is that if break-up fees encourage bidding, they are enforceable; if they stifle bidding, they are not enforceable.” The Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 660 (S.D.N.Y. 1992). The

Debtors do not believe that the Break-Up Fee and the Expense Reimbursement will stifle bidding. To the contrary, the Debtors believe that, should an auction be held, such bid protections will encourage bidding by serving “any of three possible useful functions: (1) to attract or retain a potentially successful bid; (2) to establish a bid standard or minimum for other bidders to follow; or (3) to attract additional bidders.” Id. at 662.

45. Here, the bid of the Stalking Horse Bidder serves all three functions. First, the Stalking Horse Bidder would not enter into the Stalking Horse Agreement without the Break-Up Fee and the Expense Reimbursement. Second, pursuant to the Bidding Procedures, any bidder that wishes to participate in the Auction must submit an offer that is higher or otherwise better than the bid of the Stalking Horse Bidder. Third, the bid of the Stalking Horse Bidder attracts additional bidders because, among other things, additional bidders will be able to save considerable time and expense because they can use many of the documents that the Stalking Horse Bidder heavily negotiated, including, among other things, the Stalking Horse Agreement, the schedules thereto, in making their bid. In sum, if the Assets are sold to a competing bidder, the Sale likely will be the result of Stalking Horse Bidder’s crucial role as an initial bidder generating interest in the Assets and establishing a minimum acceptable price and offer against which other parties can bid.

46. In addition, “[a] break-up fee should constitute a fair and reasonable percentage of the proposed purchase price, and should be reasonably related to the risk, effort, and expenses of the prospective purchaser. When reasonable in relation to the bidder’s efforts and to the magnitude of the transaction, break-up fees are generally permissible.” Id.

47. Here, the Break-Up Fee is equal to \$250,000 (or five percent (5%) of \$5,000,000, which is the maximum cash portion of the Purchase Price paid by the Stalking Horse Bidder at

Closing). When taking into account that the consideration to be paid by the Purchaser may increase significantly if the earn-outs are triggered, the Break-Up Fee and Expense Reimbursement (capped at \$250,000) is consistent with the range of bid protections typically paid in sale transactions that have been approved by this Court. Given the size of the purchase price and the potential increase in consideration due to the earn-outs, the Debtor believes that the amounts of the Break-Up Fee and the Expense Reimbursement are appropriate. Indeed, given that one of the competing bidders sought after multiple rounds of negotiations a breakup-fee and expense reimbursement of more than double which is provided in the Stalking Horse Agreement palpably demonstrates that the Stalking Horse Agreement is reasonable.

C. Approval of the Sale is Warranted Under Bankruptcy Code 363(b)

48. Section 363(b)(1) of the Bankruptcy Code provides that a debtor, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Although Section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, courts in this district and elsewhere have found that a debtor’s sale or use of assets outside the ordinary course of business should be approved if the debtor can demonstrate a sound business justification for the proposed transaction. See, e.g., In re Eagle Picher Holdings, Inc., 2005 Bankr. LEXIS 2894, at ¶ 3 (Bankr. S.D. Ohio 2005); In re Martin, 91 F.3d 389, 395 (3d Cir. 1996); In re Abbotts Dairies of Penn., Inc., 788 F.2d 143 (3d Cir. 1986); In re Lionel Corp., 722 F.2d 1063, 1071 (2d Cir. 1983). Once a debtor articulates a valid business justification, “[t]he business judgment rule ‘is a presumption that in making the business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.’” In re S.N.A. Nut Co., 186 B.R. 98 (Bankr. N.D. Ill. 1995); see also In re Integrated Res., Inc., 147 B.R. 650, 656

(Bankr. 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”).

49. The sale of a debtor’s assets is appropriate where there are sound business reasons behind such a determination. See Myers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996); see also Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp., (In re Montgomery Ward Holding Corp.), 242 B.R. 147, 153 (Bankr. D. Del. 1999); In re Del. & Hudson Ry. Co., 124 B.R. 169, 176 (D.D.C. 1991); Stephens Indus., Inc. v. McClung, 789 F.2d 386 (6th Cir. 1986) (sale of substantially all assets of estate authorized where “a sound business purpose dictates such action”).

50. The Debtors are running a fair and open process in chapter 11 after already having run a fair, comprehensive prepetition marketing effort. The combined result achieves the objective of obtaining the highest or otherwise best offer and sale of their business for the benefit of the Debtors’ estates. The Sale of the Assets will be subject to competing bids, enhancing the Debtors’ ability to receive the highest or otherwise best value for the Assets. Consequently, the fairness and reasonableness of the consideration to be received by the Debtors will ultimately be demonstrated by a “market check” through the auction process, which is the best means for establishing whether a fair and reasonable price is being paid.

51. For the reasons outlined above, the Debtors believe that their entry into the Stalking Horse Agreement and other ancillary documents is a sound exercise of their business judgment and supported by the facts and circumstances of this case.

52. In addition, all creditors and parties-in-interest will receive adequate notice of the Bidding Procedures and Sale Hearing as set forth above. Such notice is reasonably calculated to provide timely and adequate notice to the Debtors’ major creditor constituencies, those parties

most interested in these chapter 11 cases, those parties potentially interested in bidding on the Assets and others whose interests are potentially implicated by a proposed Sale. Accordingly, consummating the Sale as soon as possible is in the best interests of the Debtors and their stakeholders and parties-in-interest.

D. The Proposed Sale Satisfies the Requirements of Section 363(f) for a Sale Free and Clear of Interests

53. Section 363(f) of the Bankruptcy Code permits a debtor to sell assets free and clear of all liens, claims, interests, charges and encumbrances (with any such liens, claims, interests, charges, and encumbrances attaching to the net proceeds of the sale with the same rights and priorities therein as in the sold assets). As Section 363(f) of the Bankruptcy Code is stated in the disjunctive, when proceeding pursuant to Section 363(b), it is only necessary to meet one of the five conditions of Section 363(f). Citicorp Homeowners Servs., Inc. v. Elliot, 94 B.R. 343, 345 (Bankr. E.D. Pa. 1988) (stating that Section 363(f) of the Bankruptcy Code is written in the disjunctive; holding that if any of the five conditions of Section 363(f) are met, the trustee has the authority to conduct the sale free and clear of all liens). The Debtors are prepared to demonstrate at the Sale Hearing that they have satisfied one or more of these conditions.

E. A Winning Bidder Should be Entitled to the Protections of Section 363(m)

54. Pursuant to Section 363(m) of the Bankruptcy Code, a good faith purchaser is one who purchases assets for value, in good faith, and without notice of adverse claims. See In re Abbotts Dairies, 788 F.2d at 147; In re Mark Bell Furniture Warehouse, Inc., 992 F.2d 7, 9 (1st Cir. 1993); In re Willemain V. Kivitz, 764 F.2d 1019, 1023 (4th Cir. 1985).

55. The Stalking Horse Agreement was negotiated at arm's length, with both parties represented by their own counsel. Additionally, the Debtors will adduce facts at the Sale

Hearing demonstrating that any bidder who is deemed a Winning Bidder for the Assets had negotiated at arm's length, with all parties represented by their own counsel.

56. Accordingly, the Sale Order will include a provision that the Winning Bidder for the Assets, is a "good faith" purchaser within the meaning of Section 363(m) of the Bankruptcy Code. The Debtors believe that providing any Winning Bidder with such protection will ensure that the maximum price will be received by the Debtors for the Assets and that closing of the Sale will occur promptly.

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

57. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession "subject to the court's approval, may assume or reject any executory contract or [unexpired] lease of the debtor." 11 U.S.C. § 365(a). The standard governing bankruptcy court approval of a debtor's decision to assume or reject an executory contract or unexpired lease is whether the debtor's reasonable business judgment supports assumption or rejection. See e.g., In re Stable Mews Assoc., Inc., 41 B.R. 594, 596 (Bankr. S.D.N.Y. 1984). If the debtor's business judgment has been reasonably exercised, a court should approve the assumption or rejection of an unexpired lease or executory contract. See Group of Institutional Investors v. Chicago M. St. P. & P.R.R. Co., 318 U.S. 523 (1943); Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp., 872 F.2d 36, 39-40 (3rd. Cir. 1989). The business judgment test "requires only that the trustee [or debtor-in-possession] demonstrate that [assumption or] rejection of the contract will benefit the estate." Wheeling-Pittsburgh Steel Corp. v. West Penn Power Co. (In re Wheeling-Pittsburgh Steel Corp.), 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987) (quoting In re Stable Mews Assoc., 41 B.R. 594, 596 (Bankr. S.D.N.Y. 1984)). Any more exacting scrutiny would slow the administration of a debtors' estate and increase costs, interfere with the Bankruptcy Code's provision for private control of administration of the estate, and threaten this Court's ability to

control a case impartially. See Richmond Leasing Co. v. Capital Bank, NA., 762 F.2d 1303, 1311 (5th Cir. 1985). Moreover, pursuant to Section 365(b)(1) of the Bankruptcy Code, for a debtor to assume an executory contract, it must “cure, or provide adequate assurance that the debtor will promptly cure,” any default, including compensation for any “actual pecuniary loss” relating to such default. 11 U.S.C. § 365(b)(1).

58. Once an executory contract is assumed, the trustee or debtor-in-possession may elect to assign such contract. See In re Rickel Home Center, Inc., 209 F.3d 291, 299 (3d Cir. 2000) (“[t]he Code generally favors free assignability as a means to maximize the value of the debtor’s estate”); see also In re Headquarters Doge, Inc., 13 F.3d 674, 682 (3d Cir. 1994) (noting purpose of Section 365(f) is to assist trustee in realizing the full value of the debtor’s assets).

59. Section 365(f) of the Bankruptcy Code provides that the “trustee may assign an executory contract . . . only if the trustee assumes such contract . . . and adequate assurance of future performance is provided.” 11 U.S.C. § 365(f)(2). The meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case, but should be given “practical, pragmatic construction.” See Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.), 103 B. R. 524, 538 (Bankr. D.N.J. 1989); see also In re Natco Indus., Inc., 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean absolute assurance that debtor will thrive and pay rent). Among other things, adequate assurance may be given by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. See In re Bygaph, Inc., 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when a prospective assignee of a lease from debtors has financial resources and has expressed willingness to devote sufficient funding to business in order to give it strong likelihood of succeeding).

60. Additionally, information will be included in the Notices of Assignment and Assumption as part of the Stalking Horse Adequate Assurance Information, including contact information on where adequate assurance information can be obtained. Adequate assurance of future performance with respect to any Winning Bidder who is not the Stalking Horse Bidder shall be presented at the Sale Hearing. Based upon the Debtors' own diligence, it can represent that upon closing, the Stalking Horse Bidder will have financial resources that are more than sufficient to perform under any Executory Contracts or Leases it seeks to have the Debtors assume and assign. If necessary, the Debtors will adduce facts at the Sale Hearing to refute any objection, demonstrating the financial wherewithal of the Stalking Horse Bidder or any Winning Bidder, and their willingness and ability to perform under the Executory Contracts and Leases to be assumed and assigned. The Sale Hearing therefore will provide this Court and other interested parties with ample opportunity to evaluate and, if necessary, challenge the ability of any Winning Bidder to provide adequate assurance of future performance under the Executory Contracts and Leases that the Debtors seek to assume and assign.

61. Accordingly, the Debtors respectfully submit that the procedures proposed herein for Executory Contracts and Leases being assumed and assigned on the Closing Date are appropriate and reasonably tailored to provide Contract Notice Parties with adequate notice in the form of the Notices of Assignment and Assumption of the proposed assumption and/or assignment of their applicable contract, as well as proposed Cure Amounts, if applicable.

62. Furthermore, to the extent that any defaults exist under any Executory Contract or Lease that is to be assumed and assigned in connection with the Sale of the Assets, the Winning Bidder or the Debtors (as applicable under the Winning Bidder's asset purchase agreement) will

cure any such default contemporaneously with or as soon as practicable after consummation of an assumption and assignment of such Executory Contract or Lease.

63. Accordingly, this Court therefore should have a sufficient basis to authorize the Debtors to assume and assign Executory Contracts and Leases as may be set forth in any Winning Bidder's asset purchase agreement.

G. Relief Under Bankruptcy Rules 6004(h) and 6006(d) is Appropriate

64. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale or lease of property... is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Additionally, Bankruptcy Rule 6006(d) provides that an "order authorizing the trustee to assign an executory contract or unexpired lease... is stayed until the expiration of the 14 days after the entry of the order, unless the court orders otherwise." The Debtors request that any Sale Order be effective immediately by providing that the 14-day stays under Bankruptcy Rules 6004(h) and 6006(d) are waived. This relief is necessary to allow the consent process to start immediately. See supra ¶ 12.

NOTICE

65. The Debtors shall serve a copy of this Motion by first class mail upon: (a) the United States Trustee for the District of Delaware; (b) the creditors listed on the Debtors' consolidated list of 30 largest unsecured creditors, as filed with the Debtors' chapter 11 petitions; (c) counsel to the Stalking Horse Bidder; (d) all parties asserting a security interest in the Assets to the extent any such interest is reasonably known to the Debtor; (e) each of the Debtors' landlords and any notice parties identified in the Leases, to the extent possible; (f) various federal, state, county and city tax and regulatory authorities; (g) all entities known to have expressed an interest in a transaction with respect to the Assets since April 9, 2015 or that has been identified by the Debtors or their advisors as a potential purchaser of the Assets; (h) the

United States Attorney General/Antitrust Division of the Department of Justice; (i) the SEC; (j) local and state environmental authorities and the federal Environmental Protection Agency; (k) local, state and federal authorities and agencies that have issued licenses or permits to the Debtors with respect to the operation and use of the Purchased Assets; (l) all of the Debtors' creditors; and (m) all parties requesting notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no further notice is required or needed under the circumstances.

NO PRIOR REQUEST

66. No prior motion for the relief requested herein has been made to this Court or any other Court.

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WHEREFORE, the Debtors respectfully request that this Court enter the Bidding Procedures Order, substantially in the form attached hereto as **Exhibit A**, (A) approving the Bidding Procedures; (B) approving the Break-Up Fee and the Expense Reimbursement; (C) scheduling an Auction and a Sale Hearing to approve such sale, and approving the form and manner of notice thereof; (D) approving the Cure Procedures; and (E) granting such other and further relief as this Court deems appropriate. Additionally, the Debtors request that at the Sale Hearing, this Court enter a Sale Order, subject to the result of the Auction and to the Bidding Procedures, (A) approving and authorizing the Sale; (B) authorizing the assumption and assignment of certain Executory Contracts and Leases; and (C) granting such other and further relief as this Court deems appropriate.

Dated: July 8, 2015
Wilmington, Delaware

RICHARDS, LAYTON & FINGER, P.A.

/s/ Russell C. Silberglied

Russell C. Silberglied (No. 3462)

Michael J. Merchant (No. 3854)

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Proposed Counsel for Debtors and Debtors in
Possession

Exhibit A

Form of Bidding Procedures Order

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

In re:

F-Squared Investment Management, LLC, *et al.*¹

Debtors.

)

Chapter 11

)

Case No. 15-_____ (_____)

)

(Joint Administration Requested)

)

**ORDER ESTABLISHING BIDDING PROCEDURES RELATED TO THE SALE
OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, APPROVING
RELATED BID PROTECTIONS AND ESTABLISHING NOTICE
PROCEDURES FOR DETERMINING CURE AMOUNTS**

Upon consideration of the motion (the “**Sale Motion**”)² of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”), pursuant to sections 105, 363, 365, 503 and 507 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), for entry of orders approving, among other things, the sale of substantially all of the Debtors’ assets and related bidding procedures; and the Court having determined that the relief provided herein is in the best interest of the Debtors, their estates and creditors and other parties in interest; and due and adequate notice of the Sale Motion having been given under the circumstances; and upon the record of the hearing on the Bidding Procedures and the other relief granted herein, and the full record of this case; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby:

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: F-Squared Investment Management, LLC (9247), F-Squared Investments, Inc. (0788), F-Squared Retirement Solutions, LLC (9247), F-Squared Alternative Investments, LLC (9247), F-Squared Solutions, LLC (9247), F-Squared Institutional Advisors, LLC (9247), F-Squared Capital, LLC (5257), AlphaSector LLS GP 1, LLC (3342), and Active Index Solutions, LLC (0788). The Debtors’ address is Wellesley Office Park, 80 William Street, Suite 400, Wellesley, Massachusetts 02481.

² Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Sale Motion or the Stalking Horse Agreement (as defined in the Sale Motion), as applicable.

FOUND AND DETERMINED THAT:³

A. This Court has jurisdiction over the Sale Motion and the transactions contemplated by the Stalking Horse Agreement pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M) and (O). Venue in this district is proper under 28 U.S.C. §§ 1408 and 1409.

B. Good and sufficient notice of the Sale Motion and the relief sought therein has been given under the circumstances, and no other or further notice is required except as set forth herein with respect to the Auction and Sale Hearing. A reasonable opportunity to object or to be heard regarding the relief provided herein has been afforded to parties-in-interest.

C. The Debtors' proposed notice of the Auction, Sale Hearing and procedures related to the assumption and assignment of contracts and related cure amounts are appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Auction, the sale of the Purchased Assets, the Bidding Procedures to be employed in connection therewith and the Sale Hearing.

D. The Stalking Horse Agreement represents the highest or otherwise best offer that the Debtors have received to date as a result of their efforts to market the Purchased Assets for sale.

E. The Debtors have articulated good and sufficient business reasons for this Court to approve: (i) the Bidding Procedures; (ii) the scheduling of a bid deadline, Auction and Sale Hearing with respect to the proposed sale of the Purchased Assets; (iii) payment of the Break-Up Fee and Expense Reimbursement under the terms and conditions set forth in the

³ The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this matter pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

Stalking Horse Agreement; and (iv) the establishment of procedures to fix the Cure Amounts to be paid pursuant to section 365 of the Bankruptcy Code in connection with the assumption, assignment and/or transfer of certain executory contracts and unexpired leases (the “**Designated Executory Contracts**”).

F. The Bidding Procedures are reasonably designed to maximize the value to be achieved for the Purchased Assets.

G. Each of the Break-Up Fee and the Expense Reimbursement is: (i) an actual and necessary cost and expense of preserving the Debtors’ estates within the meaning of section 503(b) of the Bankruptcy Code; (ii) commensurate to the real and substantial benefit conferred upon the Debtors’ estates by the Purchaser; (iii) reasonable and appropriate in light of the size and nature of the proposed sale, comparable transactions, the commitments that have been made, and the efforts that have been and will be expended by the Purchaser; and (iv) necessary to induce the Purchaser to continue to pursue the purchase of the Purchased Assets and to be bound by the Stalking Horse Agreement.

H. The assurance of the payment of the Break-Up Fee and Expense Reimbursement: (i) will promote more competitive bidding by inducing the Purchaser’s bid, which otherwise would not have been made and which may be the highest or otherwise best available offer for the Purchased Assets; (ii) induced the Purchaser to research the value of the Purchased Assets, conduct extensive due diligence and propose the transaction, including, among other things, submission of a bid that will serve as a minimum or floor bid on which all other bidders can rely; and (iii) will provide a benefit to the Debtors’ estates by increasing the likelihood that the price at which the Purchased Assets are sold will reflect market value.

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

1. The Sale Motion is **GRANTED** as and to the extent set forth herein.

2. All objections to the Sale Motion with respect to the entry of this Order that have not been withdrawn, waived or settled, and all reservations of rights included therein with respect to the entry of this Order, hereby are overruled and denied on the merits.

A. Approval of the Stalking Horse Agreement and Bidding Procedures

3. Immediately upon entry of this Order, the Stalking Horse Agreement shall be binding upon the parties thereto in accordance with its terms. Notwithstanding the foregoing, the approval of the sale of substantially all of the Debtors' assets shall be subject to Court approval at the Sale Hearing.

4. The Bidding Procedures, in substantially the form attached hereto as **Schedule 1**, are incorporated herein, approved in their entirety. The Debtors are authorized to take all actions incidental, necessary or appropriate to implement the Bidding Procedures.

5. The Break-Up Fee and Expense Reimbursement are approved in their entirety. Subject to the terms and conditions of the Stalking Horse Agreement, without further order of this Court, the Debtors shall, and are directed to, remit to the Purchaser the Break-Up Fee and the Expense Reimbursement within three (3) business days following the date of the closing of a transaction contemplated by a Competing Bid if such closing occurs on or before the Termination Date; provided, however, that the aggregate amount of the Expense Reimbursement shall in no event exceed \$250,000. The Debtors' obligations to pay the Break-Up Fee and Expense Reimbursement, if such amounts become due and payable in accordance with the terms of the Stalking Horse Agreement, shall constitute allowed super-priority administrative expense claims against the Debtors under Sections 503 and 507(b) of the Bankruptcy Code. The Break-Up Fee and the Expense Reimbursement shall only be payable to the Purchaser in accordance

with the terms of the Stalking Horse Agreement and this Order. This Court shall retain jurisdiction to hear any dispute with respect to the Purchaser's entitlement to the Break-Up Fee or Expense Reimbursement; provided, however, that any dispute regarding the Purchaser's entitlement to the Break-Up Fee or Expense Reimbursement shall be raised prior to the commencement of the Sale Hearing and any such dispute shall be heard and determined at the Sale Hearing (or such other date that the Court may determine is appropriate under the circumstances).

6. The deadline for submitting bids for the Purchased Assets (the “**Bid Deadline**”) is **August 18, 2015 at 5:00 p.m. (prevailing Eastern Time)**.

7. The Debtors may sell the Purchased Assets by conducting an Auction in accordance with the Bidding Procedures. If one or more Qualified Bids are timely received by the Debtors in accordance with the Bidding Procedures, the Auction shall take place on _____, 2015 at __:__.m. (prevailing Eastern Time) at the offices of Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801, or such other place and time as the Debtors shall notify the Purchaser, the Creditors' Committee (if appointed), all Qualified Bidders, and other invitees (as determined by the Debtors). If, however, no such Qualified Bid is received by the Bid Deadline, then the Auction will not be held and the Debtors shall designate the Purchaser as the Winning Bidder and may promptly seek Court approval of the Stalking Horse Agreement.

8. At any Auction, the minimum initial overbid must be at least the equivalent of \$600,000 over the Closing Payment (the “**Initial Overbid**”). The Initial Overbid \$100,000 plus the Break-Up Fee (which is \$250,000) plus the Expense Reimbursement (which, for purposes of determining the Initial Overbid, is \$250,000). If the Initial Overbid is received,

subsequent overbids (each such bid, an “**Overbid**”) must be in cash increments of at least \$100,000 greater than the Initial Overbid and any subsequent Overbid.

9. Each Qualified Bidder participating at the Auction will be required to confirm that it has not engaged in any collusion with respect to the bidding or the Sale. All bidding activity at the Auction shall be transcribed and/or videotaped. The Auction will be conducted openly, and any of the Debtors’ creditors are permitted to attend.

B. Scheduling of Sale Hearing and Related Notices

10. The notice of auction and sale hearing to be issued in connection with the proposed sale of the Purchased Assets, substantially in the form annexed hereto as **Schedule 2** (the “**Notice of Auction and Sale Hearing**”), is hereby approved.

11. The Sale Hearing shall be held before this Court on _____, **2015 at __: __** **.m. (prevailing Eastern Time)**.

12. Objections to the sale of the Purchased Assets, or the relief requested in the Sale Motion must: (i) be in writing; (ii) comply with the Bankruptcy Rules and the Local Rules; (iii) state with specificity the nature of such objection; (iv) be filed with the clerk of the Court, Third Floor, 824 N. Market Street, Wilmington, Delaware 19801, on or before **4:00 p.m. (prevailing Eastern Time) on _____, 2015** (the “**Objection Deadline**”); and (v) be served so as to be received by no later than the Objection Deadline, on the parties identified in **Exhibit A** attached hereto (the “**Notice Parties**”). Any party that fails to file an objection to the sale of the Purchased Assets by the Objection Deadline will (a) be forever barred from objecting to the sale of the Purchased Assets on any grounds, and (b) be deemed to have consented to the sale of the Purchased Assets free and clear of any pledges, liens, security interests, encumbrances, claims of every type or nature (including without limitation any and all claims against Purchaser or the

Purchased Assets under any successor liability or other theory), charges, options and interests thereon (collectively, the “**Interests**”) in accordance with the Stalking Horse Agreement or the Winning Bidder’s asset purchase agreement and any order approving the sale of the Purchased Assets.

13. On or before two (2) days after entry of this Order, the Debtors will cause the Notice of Auction and Sale Hearing and this Order to be sent by first-class mail postage prepaid, to all parties that were served with the Sale Motion.⁴ Within five (5) days of this Order, the Debtors shall cause a summary version of the Notice of Auction and Sale Hearing to be published in the newspaper publication of *USA Today*.

14. In addition to the foregoing, electronic copies of, among other things, the Sale Motion, this Order and the Notice of Auction and Sale Hearing will be available for viewing, free of charge, on the case website maintained by BMG Group, Inc., the Debtors’ proposed claims and noticing agent, at www.bmcgroup.com/fsquared.

15. PL Advisors, the proposed investment banker for the Debtors, intends to contact all Persons known or reasonably believed to have expressed an interest in acquiring some or all of the Purchased Assets since April 9, 2015 within three (3) days of the entry of this Order.

C. Procedures Related to Assumption and Assignment of Executory Contracts and Unexpired Leases

16. On or before two (2) days after the entry of this Order, the Debtors shall serve, or cause to be served, by first class mail, the notices of potential assumption, assignment and/or transfer of the Designated Executory Contracts, substantially in the forms attached hereto

⁴ The Notice of Auction and Sale Hearing will, among other things, (i) direct parties that are interested in submitting a bid for the Purchased Assets to contact PL Advisors, the proposed investment banker for the Debtors, for more information and (ii) will provide that any party in interest that wishes to obtain a copy of any related document that is not publically available, subject to any necessary confidentiality agreement, may make a request in writing as specified in the Notice of Auction and Sale Hearing.

as **Schedule 3** (the “**Notices of Assumption and Assignment**”) on all non-debtor parties to the Designated Executory Contracts, provided, however, that the identification of a contract or lease in a Notice of Assumption and Assignment shall not constitute an admission by the Debtors that such contract or lease is an executory contract or unexpired lease. The Debtors reserve all of their rights, claims and causes of action with respect to the contracts and leases listed in a Notice of Assumption and Assignment. The Notices of Assumption and Assignment shall identify the cure amount(s) that the Debtors believe must be paid in order to cure all defaults outstanding under the Designated Executory Contracts (the “**Cure Amounts**” and as to any particular Designated Executory Contract the “**Cure Amount**”) as of such date (the “**Cure Date**”). The Cure Amount applicable to a Designated Executory Contract shall for all purposes be deemed to reflect all damages and amounts that are or could be payable to any person or entity as a result of any breach at any time by any of the Debtors of any obligation, representation or warranty of any of the Debtors to any person or entity under, related to or otherwise with respect to such Designated Executory Contract, including without limitation any actual or contingent claim for indemnification from the Debtors under the terms of such Designated Executory Contract related to or arising from any breach by any of the Debtors of any obligation, representation or duty of the Debtors to any person or entity arising under any applicable law at any time irrespective of whether any such indemnification claim has been asserted or is known as of the Closing Date. In addition, if the Debtors identify additional contracts or unexpired leases that might be assumed by the Debtors and assigned to the Purchaser that are not set forth in the original Notices of Assumption and Assignment, the Debtors shall promptly send a supplemental notice (a “**Supplemental Notice of Assumption and Assignment**”) to the applicable counterparties to such additional executory contracts and unexpired leases.

17. Unless the non-debtor party to a Designated Executory Contract files an objection (each, a “**Cure Amount/Assignment Objection**”) to (i) its scheduled Cure Amount, and/or (ii) the assumption, assignment and/or transfer of such Designated Executory Contract (other than with respect to the assumption, assignment and/or transfer of AUA Consent Contracts) (including, without limitation, with respect to the Purchaser, adequate assurance of future performance) **no later than three (3) days before the Auction** (collectively, the “**Cure/Assignment Objection Deadline**”) and serves a copy of the Cure Amount/Assignment Objection so as to be received no later than the Cure/Assignment Objection Deadline by the Notice Parties, then such non-debtor party will (a) be forever barred from objecting to the Cure Amount and from asserting any additional cure or other amounts as of the Cure Date with respect to such Designated Executory Contract against the Debtors, the Purchaser, such other Winning Bidder or any other party, and such parties shall be entitled to rely solely upon the Cure Amount, (b) be forever barred from asserting any claim (including any contingent claim) at any time against the Purchaser or Winning Bidder or any other assignee of the relevant Designated Executory Contract arising from, related to or based on any actual or alleged default or breach by any of the Debtors of any duty, obligation or representation to any person or entity at any time, related in any way to such Designated Executory Contract, including without limitation any (i) claim for indemnification against any Debtor or Purchaser under such Designated Executory Contract based on or arising from any breach by any Debtor of any duty, obligation or representation to any person or entity at any time, and (ii) claim against Purchaser under any successor liability or other theory of any type or nature whatsoever that relates to or arises from any acts, omissions or conduct of any of the Debtors at any time, in any amount that is greater than the scheduled Cure Amount applicable to such Designated Executory Contract, and (c)

subject to paragraph 21 of this Order, be deemed to have consented to the assumption, assignment and/or transfer of such Designated Executory Contract (other than with respect to the AUA Consent Contracts), notwithstanding any consent right that such party could have asserted, and shall be forever barred and estopped from asserting or claiming against the Debtors, the Purchaser, or such other Winning Bidder or any other assignee of the relevant Designated Executory Contract that any additional amounts are due or defaults exist, or conditions to assumption, assignment, and/or transfer must be satisfied, as of the Cure Date, under such Designated Executory Contract.

18. With respect to any Affirmative AUA Consent Contract, the assumption and assignment of such Affirmative AUA Consent Contract to the Purchaser or any Winning Bidder is not effective until the Debtors receive written consent from such Affirmative AUA Consent Contract.

19. With respect to any Negative AUA Consent Contract, the deadline to object to the assumption and assignment of any Negative AUA Consent Contract shall be **thirty (30) days** (the “**Assumption Objection Deadline**”) after service of the Notice of Assumption and Assignment. If no objection is timely received prior to the Assumption Objection Deadline, the Negative AUA Consent Contract shall be assumed and assigned to the Purchaser or any Winning Bidder.

20. If an objection challenges a Cure Amount, the objection must set forth the cure amount being claimed by the objecting party (the “**Claimed Cure Amount**”) with appropriate documentation in support thereof. Upon receipt of an objection to a Cure Amount, the Debtors may, in their sole discretion, hold an amount equal to the Claimed Cure Amount in reserve pending further order of the Court or agreement between the Debtors and the objecting

party. The Debtors, in their discretion, may in good faith (i) resolve any disputed Claimed Cure Amount without further order of the Court, or (ii) pursue a contested determination by this Court of any disputed Claimed Cure Amount. Subject to the foregoing, if the Debtors hold a Claimed Cure Amount in reserve as a result of an objection to a Cure Amount, then the Debtors may assume and assign the Designated Executory Contract that is the subject of such objection prior to the resolution of such objection and without further delay.

21. In the event that the Purchaser is not the Winning Bidder for the Purchased Assets, immediately after the conclusion of the Auction, the Debtors will serve a notice identifying the Winning Bidder on the non-debtor parties to the Designated Executory Contracts identified in such Winning Bid. The non-debtor parties to the Designated Executory Contracts may, at or prior to the Sale Hearing, object to the assumption, assignment and/or transfer of such Designated Executory Contract solely on the issue of whether the Winning Bidder can provide adequate assurance of future performance as required by Section 365 of the Bankruptcy Code. Any non-debtor party to a Designated Executory Contract that does not object to the assignment of its respective Designated Executory Contract shall be deemed to have consented to the assumption, assignment and/or transfer of such Designated Executory Contract to the Winning Bidder. For the avoidance of any doubt, nothing in this paragraph 21 shall extend, shorten or otherwise affect the time period, or the ability to otherwise object, to any Cure Amount.

22. The Notices of Assumption and Assignment to be issued in connection with the proposed sale of the Purchased Assets, substantially in the forms annexed hereto as **Schedule 3**, are hereby approved.

D. Other Provisions

23. Subject to the provisions of the Stalking Horse Agreement, the Debtors, in their discretion, may, from time to time, adjourn the Sale Hearing without further notice to creditors or other parties-in-interest other than by announcement of such adjournment before this Court or on the agenda for the date scheduled for such hearing.

24. Subject to the provisions of the Stalking Horse Agreement, the Bidding Procedures and this Order, the Debtors, in consultation with the Creditors' Committee (if appointed), shall have the right as they may reasonably determine to be in the best interests of their estates to: (a) determine which bidders are Qualified Bidders; (b) determine which bids are Qualified Bids; (c) determine which Qualified Bid is the highest and otherwise best proposal and which is the next highest and otherwise best proposal; (d) reject any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code or (iii) contrary to the best interests of the Debtors and their estates; (e) remove some of the Purchased Assets from the Auction; (f) impose additional terms and conditions with respect to all potential bidders and the Purchaser, except that no such additional terms and conditions may alter or amend any of Purchaser's rights and protections under this Order (including such rights and protections set forth in paragraphs 16-21 of this Order; (g) extend the deadlines set forth herein; (h) except, as set forth herein, adjourn or cancel the Auction and/or Sale Hearing without further notice; (i) modify the Bidding Procedures consistent with the terms of this Order; and/or (j) withdraw the Sale Motion at any time with or without prejudice. For the avoidance of doubt, the Purchaser is a Qualified Bidder and the transaction set forth in, and by virtue of, the Stalking Horse Agreement is a Qualified Bid.

25. At any Auction, the Purchaser shall be entitled to credit bid all or any portion of the Break-Up Fee and the Expense Reimbursement without limitation, in each round

of successive bidding. Accordingly, the full amount of the Break-Up Fee and Expense Reimbursement shall be included as value of any bid of Purchaser in each round of bidding at the Auction, including for purposes of comparing the value of Purchaser's bid to the bid of any Competing Bidder in any such round of bidding.

26. The Purchaser shall have standing to appear and to be heard on any and all issues related to the Auction, the sale of the Assets and the Bidding Procedures, including, without limitation, to object to any sale of the Assets.

27. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 6006(d), 7062, 9014, or otherwise, the terms and conditions of this order shall be immediately effective and enforceable upon its entry, and no automatic stay of execution shall apply to this order.

28. This Court shall retain jurisdiction over any matters related to or arising from the implementation of this Order.

Dated: _____, 2015
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

Notice Parties

- 1) The Debtors, (i) Wellesley Office Park, 80 William Street, Suite 400, Wellesley, Massachusetts 02481 (Attn: Laura Dagan; email: ldagan@f2inv.com) and (ii) c/o Stillwater Advisory Group LLC, PO Box 1022, Beverly Shores, Indiana 46301 (Attn: David Phelps; email: dphelps@dnphelps.com);
- 2) Counsel to the Debtors, Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801 (Attn: Russell C. Silberglied and Michael J. Merchant; email: silberglied@rlf.com and merchant@rlf.com);
- 3) Counsel to the Purchaser, (i) Fox, Swibel, Levin & Carroll, LLP), 200 West Madison Street, Suite 200, Chicago, Illinois 60606 (Attn: N. Neville Reid; email: nreid@fslc.com) and (ii) [Delaware Counsel to the Purchaser];
- 4) Counsel to the Creditors' Committee (if appointed); and
- 5) The Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Richard L. Schepacarter and Natalie Cox; email: Richard.Schepacarter@usdoj.gov and Natalie.Cox@usdoj.gov).

Schedule 1

The Bidding Procedures

BIDDING PROCEDURES

By motion, dated July 8, 2015 [Docket No. ____] (the “**Motion**”)¹, F-Squared Investment Management, LLC and its subsidiaries (collectively, the “**Debtors**”) sought approval of, among other things, the procedures by which it will determine the highest or otherwise best bid for the sale (the “**Sale**”) of substantially all of their assets (the “**Purchased Assets**”), as described in the Asset Purchase Agreement by and among Broadmeadow Capital, LLC (the “**Stalking Horse Bidder**”) and the Debtors, dated as of July 3, 2015 (the “**Stalking Horse Agreement**”), a copy of which is attached to the Motion.

On _____, 2015, the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) entered an order (the “**Bidding Procedures Order**”) that, among other things, authorized the Debtors to determine the highest or otherwise best bid for the Purchased Assets through the process and procedures set forth below (the “**Bidding Procedures**”). To the extent set forth in the Bidding Procedures Order and subject to the rights of the Stalking Horse Bidder set forth therein, the Debtors, in consultation with the Creditors’ Committee (if appointed), reserve the right to modify or waive the Bidding Procedures.

Bid Requirements

Any party interested in submitting a bid (a “**Bidder**”) must transmit such bid (a “**Bid**”) via electronic mail to the parties identified on **Schedule 1** attached hereto not later than **5:00 p.m. (prevailing Eastern Time) on August 18, 2015** (the “**Bid Deadline**”). To constitute a “**Qualified Bid**”, a Bid (other than the Stalking Horse Agreement, which shall constitute a Qualified Bid for all purposes) must be a written irrevocable offer from a Qualified Bidder (as defined below) and provide for the following:

- (a) **Identification of Potential Bidder**. Identification of the party submitting the bid (the “**Potential Bidder**”) (and any equity holders, in the case of a Potential Bidder which is an entity specially formed for the purpose of effectuating the contemplated transaction) and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction.
- (b) **Asset Purchase Agreement**. An executed copy of an asset purchase agreement providing for the purchase of substantially all of the assets of the Debtors along with a redline marked against the Stalking Horse Agreement reflecting variations from the Stalking Horse Agreement. The Debtors may consider any bids, including those which may propose alternative transaction structures to the Stalking Horse Agreement.
- (c) **Financing**. Evidence of the Potential Bidder’s ability to consummate the transaction and payment of the purchase price in cash at the Closing, including, but not limited to:

¹ Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Bidding Procedures Order or the Stalking Horse Agreement, as applicable.

- (i) a signed commitment for any debt or equity financing;
 - (ii) a bank or other account statement showing the ability of a Potential Bidder to pay cash for the Assets;
 - (iii) contact names and numbers for verification of financing sources; and
 - (iv) any additional information or evidence, satisfactory to the Debtors, in their discretion, as requested to validate the ability to fund the Minimum Bid Amount (defined below).
- (d) **Minimum Bid Amount.** The bid must be higher or otherwise better than the offer of the Stalking Horse Bidder under the Stalking Horse Agreement. To be higher or otherwise better than the offer of the Stalking Horse Bidder such bid must be valued in an amount that is at least the equivalent of \$600,000 over the Closing Payment (the “**Minimum Bid Amount**”).²
- (e) **Irrevocability of Bid.** A letter stating that the Potential Bidder’s offer is irrevocable and binding until the first business day after the Assets for which the Potential Bidder is submitting a bid have been sold pursuant to the closing of the sale or sales approved by the Bankruptcy Court.
- (f) **Bid Deposit.** A cash deposit in the amount of \$560,000 (the “**Bid Deposit**”) by wire transfer or certified or cashier’s check, which amount shall be made payable to the Debtors.
- (g) **No Financing or Diligence Conditions.** The bid shall not contain any due diligence or financing contingencies of any kind.
- (h) **Consent to Jurisdiction.** The bid shall state that the offering party consents to the jurisdiction of the Bankruptcy Court.
- (i) **Corporate Authority.** The bid shall include evidence of authorization and approval from the Potential Bidder’s board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the submitted asset purchase agreement of the Potential Bidder.

² The Minimum Bid Amount represents the initial overbid amount of \$100,000 plus the Break-Up Fee (which is \$250,000) plus the Expense Reimbursement (which, for purposes of determining the Minimum Bid Amount, is \$250,000).

- (j) **Adequate Assurance Information.** The bid shall include sufficient financial or other information (the “**Adequate Assurance Information**”) to establish adequate assurance of future performance with respect to any lease or contract to be assumed and assigned to the bidder in connection with the proposed transaction. The bid shall also identify a contact person (with relevant contact information) that counterparties to any lease or contract can contact to obtain additional Adequate Assurance Information.
- (k) **Other Information.** Include such other information as may be reasonably requested in writing by the Debtors prior to the Auction.

A “**Qualified Bidder**” is a Potential Bidder that delivers the documents and information described in subparagraphs (a)-(k) above, and that the Debtors determine, in consultation with the Creditors’ Committee (if appointed), is reasonably likely (based on, among other possible criteria, financial information submitted by the Potential Bidder, the availability of financing, experience and other consideration deemed relevant by the Debtors) to be able to consummate a sale if selected as the Winning Bidder. Notwithstanding the foregoing, the Stalking Horse Bidder shall be deemed a Qualified Bidder. On or prior to 11:59 p.m. (prevailing Eastern Time) on the day of the Bid Deadline, the Debtors will notify the parties identified on **Schedule 1** hereto and the Stalking Horse Bidder by electronic mail of any extension of the Bid Deadline. Not later than two (2) business days after the Bid Deadline, the Debtors shall determine and shall notify such Potential Bidder, if such Potential Bidder is a Qualified Bidder. A bid from a Qualified Bidder is a “**Qualified Bid**.” No later than three (3) business days after the Bid Deadline, the Debtors shall provide copies of all Qualified Bids (other than the Stalking Horse Bidder’s bid) by electronic mail to the parties identified on **Schedule 1** to the Bid Procedures and all Qualified Bidders (including the Stalking Horse Bidder).

In the event that any Bid is determined by the Debtors, in consultation with the Creditors’ Committee (if appointed), not to be a Qualified Bid, the Debtors shall cause such Bidder to be refunded its Bid Deposit within seven (7) business days after the Bid Deadline or as soon as reasonably practicable thereafter.

Access to Due Diligence Materials

The Debtors have designated PL Advisors, the Debtors' proposed investment banker, to coordinate all reasonable requests for additional information and due diligence access from the Bidders. Contact information for PL Advisors is as follows:

PL Advisors
Attn: Colette R. Taylor or Domonkos L. Koltai
757 Third Avenue (17th Floor)
New York, NY 10017
Telephone: 212-596-3462 or 212-596-3463
Email: Ctaylor@PL-Advisors.com or
DKoltai@PL-Advisors.com

Unless the Debtors otherwise agree, only Bidders who have executed a confidentiality agreement in form and substance acceptable to the Debtors are eligible to receive due diligence access or additional non-public information. If the Debtors determine that a Bidder that has executed such a confidentiality agreement is not a Qualified Bidder pursuant to the criteria above, then such Bidder's right to receive due diligence access or additional non-public information shall terminate unless otherwise agreed. The Debtors may, but shall not be obligated to, furnish any due diligence information after the Bid Deadline. Neither the Debtors nor any of their employees, officers, directors, affiliates, subsidiaries, representatives, agents, advisors or professionals are responsible for, nor shall they bear liability with respect to, any information obtained by Bidders in connection with the sale of the Purchased Assets.

Each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Purchased Assets that are the subject of the Auction prior to making any such Bids; that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets in making its Bid; and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise regarding the Purchased Assets, or the completeness of any information provided in connection therewith, except as expressly stated in these Bidding Procedures or, as to the Winning Bidder or the Stalking Horse Agreement.

Due Diligence From Bidders

Each Bidder shall comply with all reasonable requests for additional information and due diligence access by the Debtors or their advisors regarding each such Bidder and its contemplated transaction. Failure by a Bidder to comply with the requests for additional information and due diligence access shall be a basis for the Debtors, in consultation with the Creditors' Committee (if appointed), to determine that such Bidder is not a Qualified Bidder. Failure by a Potential or Qualified Bidder to comply with requests for additional information and due diligence access shall be a basis for the Debtors, in consultation with the Creditors' Committee (if appointed), to determine that a Bid made by such Potential or Qualified Bidder is not a Qualified Bid.

Auction

If one (1) or more Qualified Bids are submitted (in addition to the Stalking Horse Agreement, which is deemed to be a Qualified Bid) in accordance with the Bidding Procedures, the Debtors will conduct an auction (the “**Auction**”) in accordance with such Bidding Procedures; and, at such Auction, the Debtors shall have the right to select the winning Bid from any Person (including the Stalking Horse Bidder) who submitted a Qualified Bid (the “**Winning Bid**” and the Bidder submitting such Winning Bid, the “**Winning Bidder**”), which will be determined, in consultation with the Creditors’ Committee (if appointed), by considering, among other things: (1) the number, type and nature of any changes to the Stalking Horse Agreement requested by each Bidder; (2) the extent to which such modifications are likely to delay closing of the sale of the Purchased Assets and the cost to the Debtors of such modifications or delay; (3) the total consideration to be received by the Debtors; (4) the likelihood of the Bidder’s ability to close a transaction and the timing thereof; (5) job preservation with respect to the Debtors’ work force, and (6) the net benefit to the Debtors’ estates, taking into account the Stalking Horse Bidder’s rights to the Break-Up Fee and Expense Reimbursement (collectively, the “**Bid Assessment Criteria**”). If no Qualified Bid (other than the Stalking Horse Agreement) is received by the Bid Deadline, the Debtors shall not conduct the Auction and shall designate the Stalking Horse Agreement as the Winning Bid for the purposes of these Bidding Procedures.

The Auction shall be conducted at the offices of Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801 at __:__ a.m. (**prevailing Eastern Time**) on _____, **2015**, or such other place and time as the Debtors, in consultation with the Creditors’ Committee (if appointed), may determine.

The Auction shall be conducted according to the following procedures:

(a) **The Debtors Shall Conduct the Auction.**

The Debtors and their professionals shall direct and preside over the Auction. At the start of the Auction, the Debtors shall describe the terms of the opening Bid. All incremental Bids made thereafter shall be made and received on an open basis, and all material terms of each such Bid shall be fully disclosed to all Qualified Bidders. Whenever the Debtors determine any Bid to be the then-current highest or otherwise best bid during the Auction, the Debtors shall announce (i) the relevant bases to that determination, with specific references to the Bid Assessment Criteria, and (ii) to the extent practicable, the minimum consideration necessary to submit an overbid. The Debtors shall maintain a transcript or videotape of all Bids made and announced at the Auction.

The Debtors, after consultation with the Creditors’ Committee (if appointed) and subject to the Bidding Procedures Order, shall have the right, in the exercise of their fiduciary duties, to adopt such other rules for the conduct of the Auction (including rules that may depart from those set forth herein) that will better promote the goals of the Auction.

(b) Minimum Bid Increment.

Unless otherwise agreed by the Debtors, in consultation with the Creditors' Committee (if appointed), subsequent bids at the Auction shall not provide consideration of less than \$100,000 in excess of the preceding bid.

(c) Back-Up Bidder.

Following the approval of the Sale of all or substantially all of the Assets to the Winning Bidder at the Sale Hearing, if the Debtors fail to consummate an approved Sale with the Winning Bidder, the Debtors shall be authorized, but not required, to deem the next highest or otherwise best Qualified Bid (the "**Back-Up Bid**" and the party submitting the Back-Up Bid, the "**Back-Up Bidder**"), as disclosed at the Sale Hearing, the Winning Bid, and the Debtors shall be authorized, but not required, to consummate the sale with the Back-Up Bidder submitting such bid without further order of the Bankruptcy Court. The Back-Up Bid shall remain open until the first business day following the consummation of a Sale of the Purchased Assets to the Winning Bidder.

(d) Consent to Jurisdiction as Condition to Bidding.

The Stalking Horse Bidder and all other Qualified Bidders shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court and waived any right to a jury trial in connection with any disputes relating to the Stalking Horse Agreement, the Auction or the construction and enforcement of any competing transaction documents.

(e) Closing the Auction.

The Auction shall continue until there is only one Qualified Bid that the Debtors determine, in consultation with the Creditors' Committee (if appointed), in their reasonable business judgment, is the Winning Bid. In making this decision, the Debtors shall consider the Bid Assessment Criteria and any other criteria that it deems to be appropriate. The Auction shall not close unless and until all Bidders who have submitted Qualified Bids have been given a reasonable opportunity to submit an overbid at the Auction to the then-existing highest or otherwise best Bid.

(f) No Collusion; Good Faith Bona Fide Offer.

Each Qualified Bidder participating at the Auction will be required to confirm that (i) it has not engaged in any collusion with respect to the bidding and (ii) its Qualified Bid is a good faith bona fide offer and it intends to consummate the proposed Sale if selected as the Winning Bidder.

Free of Any and All Liens, Claims and Interests

All of the Debtors' right, title and interest in and to the Purchased Assets subject thereto shall be sold free and clear of any pledges, liens, security interests, encumbrances, claims, charges, alleged ownership rights of entities other than the Debtors, options and interests therein or thereon (collectively, the "**Interests**") to the maximum extent permitted by section 363 of the

Bankruptcy Code, with such Interests to attach to the net proceeds of the sale of the Purchased Assets with the same validity and priority as such Interests applied against the Purchased Assets in accordance with the Stalking Horse Agreement or the Winning Bidder's asset purchase agreement and any order approving the sale of the Purchased Assets.

Sale Hearing

The Court has scheduled a hearing (the "**Sale Hearing**") on _____, 2015 at __:___ __.m. (**prevailing Eastern Time**), at which time it will consider approval of the sale of substantially all of the Debtors' assets to the Winning Bidder. Subject to the provisions of the Stalking Horse Agreement, the Debtors, in the exercise of their business judgment, reserve their right to change the date and/or time of the Sale Hearing (or any other dates related to the Sale) in order to achieve the maximum value for the Purchased Assets.

Return of Deposit

The Bid Deposit of the Winning Bidder shall be applied to the Purchase Price. The Bid Deposit of the Back-up Bidder shall be held by the Debtors until two (2) business days after the Closing of the transaction contemplated by the Winning Bid, and thereafter returned to the Back-up Bidder. Bid Deposits of all other Qualified Bidders shall be held in an interest-bearing escrow account until no later than two (2) business days after the Sale Hearing, and thereafter returned to the respective Bidders.

Schedule 1

Recipients of Bids

- 1) The Debtors, (i) Wellesley Office Park, 80 William Street, Suite 400, Wellesley, Massachusetts 02481 (Attn: Laura Dagan; email: ldagan@f2inv.com) and (ii) c/o Stillwater Advisory Group LLC, PO Box 1022, Beverly Shores, Indiana 46301 (Attn: David Phelps; email: dphelps@dnphelps.com);
- 2) Proposed counsel to the Debtors, Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801 (Attn: Russell C. Silberglied and Michael J. Merchant; email: silberglied@rlf.com and merchant@rlf.com);
- 3) Proposed investment banker to the Debtors, PL Advisors, 757 Third Avenue (17th Floor), New York, NY, 10017 (Attn: Colette R. Taylor and Domonkos L. Koltai; email: Ctaylor@PL-Advisors.com and DKoltai@PL-Advisors.com);
- 4) Counsel to the Creditors' Committee (if appointed); and
- 5) The Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Richard L. Schepacarter and Natalie Cox; email: Richard.Schepacarter@usdoj.gov and Natalie.Cox@usdoj.gov).

Schedule 2

The Notice of Auction and Sale Hearing

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

In re:

F-Squared Investment Management, LLC, *et al.*¹

Debtors.

Chapter 11

Case No. 15-_____ (_____)

(Joint Administration Requested)

Re: Docket Nos.

Objection Deadline to Sale Motion:
_____, 2015 at 4:00 p.m. (EDT)

**Deadline for Submitting Bids: _____, 2015
at 5:00 p.m. (EDT)**

Auction Date: _____, 2015 at __:___.m.
(EDT) (if required)

Hearing Date on Sale Motion: _____,
2015 at __:__.m. (EDT)

NOTICE OF SALE PROCEDURES, AUCTION DATE AND SALE HEARING

1. The above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”) have entered into an agreement (the “**Stalking Horse Agreement**”) with Broadmeadow Capital, LLC (the “**Proposed Purchaser**”), to sell substantially all of their assets (the “**Purchased Assets**”) to the Proposed Purchaser. The Debtors’ ability to close the transactions contemplated by the Stalking Horse Agreement is subject to higher or otherwise better offers and the approval of the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”).

1 The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: F-Squared Investment Management, LLC (9247), F-Squared Investments, Inc. (0788), F-Squared Retirement Solutions, LLC (9247), F-Squared Alternative Investments, LLC (9247), F-Squared Solutions, LLC (9247), F-Squared Institutional Advisors, LLC (9247), F-Squared Capital, LLC (5257), AlphaSector LLS GP 1, LLC (3342), and Active Index Solutions, LLC (0788). The Debtors' address is Wellesley Office Park, 80 William Street, Suite 400, Wellesley, Massachusetts 02481.

2. The Debtors are soliciting offers for the Purchased Assets, and the Bankruptcy Court has entered the *Order Establishing Bidding Procedures Related to the Sale of Substantially All of the Debtors' Assets, Approving Related Bid Protections and Establishing Notice Procedures for Determining Cure Amounts* [Docket No. ____] (the “**Bidding Procedures Order**”), approving, *inter alia*, auction and sale procedures (the “**Bidding Procedures**”) for the Purchased Assets.²

3. On July 8, 2015, the Debtors filed the *Debtors' Motion to (A) Establish Bidding Procedures Related to the Sale of Substantially All of the Debtors' Assets, Approve Related Bid Protections and Establish Notice Procedures for Determining Cure Amounts, and (B) Approve the Sale of Substantially All of the Debtors' Assets and Assume and Assign Certain Executory Contracts and Unexpired Leases* [Docket No. ____] (the “**Sale Motion**”).

4. Pursuant to the Sale Motion, the Debtors propose to: (i) sell the Purchased Assets to the Proposed Purchaser (or such other party that submits the highest or otherwise best bid at an auction (the “**Auction**”)), free and clear of all liens, claims (including without limitation any and all alleged ownership or successor liability claims against the Debtors or Purchaser), or encumbrances thereon, except for certain expressly assumed liabilities and permitted exceptions specifically described in the Stalking Horse Agreement; and (ii) assume and assign certain executory contracts and unexpired leases of the Debtors to the Proposed Purchaser (or such other party that submits the highest or otherwise best bid at the Auction).

5. The Bidding Procedures approved by the Bidding Procedures Order describe, *inter alia*, the terms of the bidding process, the requirements and deadlines for participation therein, the required terms of any bids, and the time, location and conduct of the Auction.

² Copies of the Bidding Procedures Order, the Bidding Procedures, the Stalking Horse Agreement and the Sale Motion (as defined below) are available for viewing free of charge at the website of the Debtor's claims and noticing agent, BMC Group, Inc., www.bmcgroup.com/fsquared.

6. The deadline for submitting bids for the Purchased Assets is **August 18, 2015 at 5:00 p.m. (prevailing Eastern Time)**. All interested parties are invited to submit a bid to purchase the Purchased Assets.

7. If one or more Qualified Bids (as defined in the Bidding Procedures) are received in accordance with the Bidding Procedures, the Auction shall take place on _____, **2015 at __:__ .m. (prevailing Eastern Time)** at the offices of proposed counsel for the Debtors, Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801.

8. The Bankruptcy Court has scheduled a hearing for __:__ .m. (**prevailing Eastern Time**) on _____, **2015** (the “**Sale Hearing**”) to consider approval of the winning bid and confirm the results at the Auction (if held) for the Purchased Assets. The Sale Hearing will be held before The Honorable [], United States Bankruptcy Judge, at the Bankruptcy Court, 824 N. Market Street, []th Floor, Courtroom [], Wilmington, Delaware 19801.

9. Any objection to the sale of the Purchased Assets must be in writing, state the basis of such objection with specificity, and shall be filed with the Bankruptcy Court by _____, **2015 by 4:00 p.m.** (prevailing Eastern Time) (the “**Sale Objection Deadline**”). At the same time, any objector must also serve a copy of such objection, so as to be received by the Sale Objection Deadline, on: (i) the Debtors’ proposed counsel, Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801 (Attn: Russell C. Silberglie and Michael J. Merchant; email: silberglie@rlf.com and merchant@rlf.com); (ii) the Debtors, (a) Wellesley Office Park, 80 William Street, Suite 400, Wellesley, Massachusetts 02481 (Attn: Laura Dagan; email: ldagan@f2inv.com) and (b) c/o Stillwater Advisory Group LLC, PO Box 1022, Beverly Shores, Indiana 46301 (Attn: David Phelps; email:

dphelps@dnphelps.com); (iii) counsel to the Proposed Purchaser, (a) Fox, Swibel, Levin & Carroll, LLP), 200 West Madison Street, Suite 200, Chicago, Illinois 60606 (Attn: N. Neville Reid; email: nreid@fslc.com) and (b) [Delaware counsel to purchaser]; (iv) counsel to any official statutory committee appointed in this chapter 11 case; and (v) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Richard L. Schepacarter and Natalie Cox).

10. All requests for information regarding the Purchased Assets from parties that are interested in acquiring such assets should be directed toward the Debtors' proposed investment banker, PL Advisors, which can be contacted at:

<p>PL Advisors Attn: Colette R. Taylor or Domonkos L. Koltai 757 Third Avenue (17th Floor) New York, NY 10017 Telephone: 212-596-3462 or 212-596-3463 Email: Ctaylor@PL-Advisors.com or DKoltai@PL-Advisors.com</p>
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11. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court or on the agenda filed by the Debtors with the Bankruptcy Court.

12. IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED BY THE SALE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Date: _____, 2015
Wilmington, Delaware

RICHARDS, LAYTON & FINGER, P.A.

Russell C. Silberglied (No. 3462)

Michael J. Merchant (No. 3854)

Zachary I. Shapiro (No. 5103)

Amanda R. Steele (No. 5530)

920 N. King Street

Wilmington, Delaware 19801

Telephone: 302-651-7700

Facsimile: 302-651-7701

Email: silberglied@rlf.com

merchant@rlf.com

shapiro@rlf.com

steele@rlf.com

Proposed Counsel for the Debtors and Debtors
in Possession

Schedule 3

The Notices of Assumption and Assignment

Schedule 3(a)

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

In re:

F-Squared Investment Management, LLC, *et al.*¹

Debtors.

)
) Chapter 11

)
) Case No. 15-_____ (____)

)
) (Joint Administration Requested)

)
) Re: Docket Nos.

)
) Obj. Deadline: _____, 2015 at 4:00 p.m.
) (EDT)

**NOTICE OF EXECUTORY CONTRACTS AND UNEXPIRED
LEASES WHICH MAY BE ASSUMED AND ASSIGNED, PURSUANT
TO SECTION 365 OF THE BANKRUPTCY CODE, IN CONNECTION
WITH THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS
AND THE PROPOSED CURE AMOUNTS WITH RESPECT THERETO**

PLEASE TAKE NOTICE THAT:

1. On July 8, 2015, the above captioned debtors and debtors in possession (collectively, the “**Debtors**”) filed the *Debtors’ Motion to (A) Establish Bidding Procedures Related to the Sale of Substantially All of the Debtors’ Assets, Approve Related Bid Protections and Establish Notice Procedures for Determining Cure Amounts, and (B) Approve the Sale of Substantially All of the Debtors’ Assets and Assume and Assign Certain Executory Contracts and Unexpired Leases* [Docket No. __] (the “**Motion**”)² with the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”), 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801.

2. Pursuant to the Motion, the Debtors seek the entry of an order (i) establishing bidding and auction procedures in connection with the sale of substantially all of the Debtors’ assets (the “**Purchased Assets**”); (ii) approving proposed bid protections, including a break-up fee and expense reimbursement, for Broadmeadow Capital, LLC (the “**Proposed Purchaser**”), in accordance with that certain Asset Purchase Agreement dated July 3, 2015 (the “**Stalking Horse Agreement**”) for the purchase of the Purchased Assets; (iii) scheduling an auction (the “**Auction**”) and setting a date and time for a sale hearing (the “**Sale Hearing**”) for

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: F-Squared Investment Management, LLC (9247), F-Squared Investments, Inc. (0788), F-Squared Retirement Solutions, LLC (9247), F-Squared Alternative Investments, LLC (9247), F-Squared Solutions, LLC (9247), F-Squared Institutional Advisors, LLC (9247), F-Squared Capital, LLC (5257), AlphaSector LLS GP 1, LLC (3342), and Active Index Solutions, LLC (0788). The Debtors’ address is Wellesley Office Park, 80 William Street, Suite 400, Wellesley, Massachusetts 02481.

² Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion. For a copy of the Motion, please visit the website of the Debtors’ proposed claims and noticing agent, BMC Group, Inc., www.bmcgroup.com/fsquared.

the sale of the Purchased Assets (the “**Sale**”), and approving the form and manner of notice thereof; (iv) establishing procedures (the “**Cure Procedures**”) for the assumption and assignment of contracts (“**Contracts**”) and leases (“**Leases**”), including notice of proposed cure amounts (the “**Cure Amounts**”); and (v) granting certain related relief. By the Motion, the Debtors further request that, at the Sale Hearing, subject to the results of the Auction, the Court enter an order (i) approving and authorizing the Sale; and (ii) authorizing the assumption and assignment of the Contracts and Leases.

3. In accordance with the Cure Procedures, the Debtors are delivering this notice (the “**Cure Notice**”) identifying (i) those Contracts and Leases which may be assumed by the Debtors and assigned as part of the Sale; and (ii) the proposed entire cure amount (the “**Cure Amount**”) applicable to any and all defaults for each Contract and Lease identified on the Cure Notice. The Cure Amount applicable to a Lease or Contract is intended to, and shall, reflect all damages and amounts that are or could be payable to any person or entity as a result of any breach at any time by any of the Debtors of any obligation, representation or warranty of any of the Debtors under, related to or otherwise with respect to such Contract or Lease, including without limitation any contingent claim for indemnification from the Debtors under the terms of such Contract or Lease related to or arising from any breach by any of the Debtors of any obligation, representation or duty of the Debtors to any person or entity arising under any applicable law at any time.

4. Adequate assurance information for the Proposed Purchaser is available by contacting counsel to the Proposed Purchaser, (i) Fox, Swibel, Levin & Carroll, LLP, 200 West Madison Street, Suite 200, Chicago, Illinois 60606 (Attn: N. Neville Reid) and (ii) [Delaware counsel to the Purchaser].

5. You have been identified as a party to a Contract or Lease that the Debtors may seek to assume and assign as part of the Sale. The Contract or Lease with respect to which you have been identified as a non-debtor counterparty, and the corresponding proposed Cure Amount, if any, has been set forth on **Exhibit 1** attached hereto.

6. Objections, if any, to the proposed Cure Amount or the assumption and assignment of any Contract or Lease listed on the Cure Notice must be made in writing, filed with the Bankruptcy Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, and served so as to be received by the following parties on or before 4:00 p.m. (prevailing Eastern Time) on _____, 2015 (the “**Cure Objection Deadline**”): (i) the Debtors’ proposed counsel, Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801 (Attn: Russell C. Silberglied and Michael J. Merchant; email: silberglied@rlf.com and merchant@rlf.com); (ii) the Debtors, (a) Wellesley Office Park, 80 William Street, Suite 400, Wellesley, Massachusetts 02481 (Attn: Laura Dagan; email: ldagan@f2inv.com) and (b) c/o Stillwater Advisory Group LLC, PO Box 1022, Beverly Shores, Indiana 46301 (Attn: David Phelps; email: dphelps@dnphelps.com); (iii) counsel to the Proposed Purchaser, (a) Fox, Swibel, Levin & Carroll, LLP, 200 West Madison Street, Suite 200, Chicago, Illinois 60606 (Attn: N. Neville Reid; email: nreid@fslc.com) and (b) [Delaware counsel to purchaser]; (iv) counsel to any official statutory committee appointed in this chapter 11 case; and (v) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Richard L. Schepacarter

and Natalie Cox; email: Richard.Schepacarter@usdoj.gov and Natalie.Cox@usdoj.gov). The objection must set forth (i) the basis for the objection, (ii) the exact amount the party asserts as the Cure Amount, and (iii) sufficient documentation to support the Cure Amount alleged.

7. If an objection is timely filed by the Cure Objection Deadline, a hearing with respect to such objection will be held before The Honorable [JUDGE], United States Bankruptcy Judge, at the Bankruptcy Court, 824 N. Market Street, []th Floor, Courtroom [], Wilmington, Delaware 19801, on _____, **2015 at __:__ .m. (prevailing Eastern Time)** or at a later hearing, as determined by the Debtors, subject to the Court's calendar. A hearing regarding the Cure Amount, if any, may be continued at the sole discretion of the Debtors.

8. UNLESS YOU FILE AN OBJECTION TO THE CURE AMOUNT AND/OR THE ASSUMPTION OR ASSIGNMENT OF YOUR CONTRACT OR LEASE IN ACCORDANCE WITH THE INSTRUCTIONS AND DEADLINES SET FORTH HEREIN, YOU SHALL BE FOREVER (A) BARRED FROM OBJECTING TO THE CURE AMOUNT SET FORTH ON **EXHIBIT 1**, (B) ESTOPPED FROM ASSERTING OR CLAIMING ANY CURE AMOUNT AGAINST THE DEBTORS, THE PROPOSED PURCHASER OR WINNING BIDDER OR ANY OTHER ASSIGNEE OF THE RELEVANT CONTRACT OR LEASE THAT IS GREATER THAN THE CURE AMOUNT SET FORTH ON **EXHIBIT 1**, (C) BARRED FROM ASSERTING ANY CLAIM (INCLUDING ANY CONTINGENT CLAIM) AT ANY TIME AGAINST THE PROPOSED PURCHASER OR WINNING BIDDER OR ANY OTHER ASSIGNEE OF THE RELEVANT CONTRACT OR LEASE ARISING FROM, RELATED TO OR BASED ON ANY ACTUAL OR ALLEGED DEFAULT OR BREACH BY ANY OF THE DEBTORS OF ANY DUTY, OBLIGATION OR REPRESENTATION TO ANY PERSON OR ENTITY AT ANY TIME, RELATED IN ANY WAY TO SUCH CONTRACT OR LEASE, INCLUDING WITHOUT LIMITATION ANY (I) CLAIM FOR INDEMNIFICATION AGAINST PROPOSED PURCHASER UNDER SUCH CONTRACT OR LEASE BASED ON OR ARISING FROM ANY BREACH BY ANY DEBTOR OF ANY DUTY, OBLIGATION OR REPRESENTATION TO ANY PERSON OR ENTITY AT ANY TIME AND (II) CLAIM AGAINST PROPOSED PURCHASER UNDER ANY SUCCESSOR LIABILITY OR OTHER THEORY OF ANY TYPE WHATSOEVER THAT RELATES TO OR ARISES FROM ANY ACTS, OMISSIONS OR CONDUCT OF THE ANY OF THE DEBTORS, IN ANY AMOUNT THAT IS GREATER THAN THE CURE AMOUNT SET FORTH ON **EXHIBIT 1**, AND (D) DEEMED TO HAVE CONSENTED TO THE ASSUMPTION AND/OR ASSIGNMENT OF YOUR CONTRACT OR LEASE (SUBJECT TO YOUR ABILITY TO OBJECT TO WHETHER THE WINNING BIDDER (OTHER THAN THE PROPOSED PURCHASER) CAN PROVIDE ADEQUATE ASSURANCE OF FUTURE PERFORMANCE).

9. The presence of a Contract or Lease listed on **Exhibit 1** attached hereto does not constitute an admission that such contract or lease is an executory contract or unexpired lease or that such contract or lease will be assumed and assigned as part of the Sale. The Debtors reserve all of its rights, claims and causes of action with respect to the Contracts and Leases listed on **Exhibit 1** attached hereto.

Date: _____, 2015
Wilmington, Delaware

RICHARDS, LAYTON & FINGER, P.A.

Russell C. Silberglied (No. 3462)

Michael J. Merchant (No. 3854)

Zachary I. Shapiro (No. 5103)

Amanda R. Steele (No. 5530)

920 N. King Street

Wilmington, Delaware 19801

Telephone: 302-651-7700

Facsimile: 302-651-7701

Email: silberglied@rlf.com

merchant@rlf.com

shapiro@rlf.com

steele@rlf.com

Proposed Counsel for the Debtors and Debtors
in Possession

EXHIBIT 1

Schedule of Contracts, Leases and Cure Amounts

Schedule 3(b)

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

In re:

F-Squared Investment Management, LLC, *et al.*¹

Debtors.

)
) Chapter 11
)

) Case No. 15-_____ (_____)
)

) (Joint Administration Requested)
)

) **Re: Docket Nos.**

) **Obj. Deadline:** _____, 2015 at 4:00 p.m.
) (EDT)

**NOTICE OF EXECUTORY CONTRACTS WHICH MAY BE ASSUMED AND
ASSIGNED, PURSUANT TO SECTION 365 OF THE BANKRUPTCY CODE, IN
CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS'
ASSETS AND THE PROPOSED CURE AMOUNTS WITH RESPECT THERETO**

PLEASE TAKE NOTICE THAT:

1. On July 8, 2015, the above captioned debtors and debtors in possession (collectively, the “**Debtors**”) filed the *Debtors’ Motion to (A) Establish Bidding Procedures Related to the Sale of Substantially All of the Debtors’ Assets, Approve Related Bid Protections and Establish Notice Procedures for Determining Cure Amounts, and (B) Approve the Sale of Substantially All of the Debtors’ Assets and Assume and Assign Certain Executory Contracts and Unexpired Leases* [Docket No. __] (the “**Motion**”)² with the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”), 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801.

2. Pursuant to the Motion, the Debtors seek the entry of an order (i) establishing bidding and auction procedures in connection with the sale of substantially all of the Debtors’ assets (the “**Purchased Assets**”); (ii) approving proposed bid protections, including a break-up fee and expense reimbursement, for Broadmeadow Capital, LLC (the “**Proposed Purchaser**”), in accordance with that certain Asset Purchase Agreement dated July 3, 2015 (the “**Stalking Horse Agreement**”) for the purchase of the Purchased Assets; (iii) scheduling an auction (the “**Auction**”) and setting a date and time for a sale hearing (the “**Sale Hearing**”) for the sale of the Purchased Assets (the “**Sale**”), and approving the form and manner of notice

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: F-Squared Investment Management, LLC (9247), F-Squared Investments, Inc. (0788), F-Squared Retirement Solutions, LLC (9247), F-Squared Alternative Investments, LLC (9247), F-Squared Solutions, LLC (9247), F-Squared Institutional Advisors, LLC (9247), F-Squared Capital, LLC (5257), AlphaSector LLS GP 1, LLC (3342), and Active Index Solutions, LLC (0788). The Debtors’ address is Wellesley Office Park, 80 William Street, Suite 400, Wellesley, Massachusetts 02481.

² Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion. For a copy of the Motion, please visit the website of the Debtors’ proposed claims and noticing agent, BMC Group, Inc., www.bmcgroup.com/fsquared.

thereof; (iv) establishing procedures (the “**Cure Procedures**”) for the assumption and assignment of contracts (“**Contracts**”) and leases (“**Leases**”), including notice of proposed cure amounts (the “**Cure Amounts**”); and (v) granting certain related relief. By the Motion, the Debtors further request that, at the Sale Hearing, subject to the results of the Auction, the Court enter an order (i) approving and authorizing the Sale; and (ii) authorizing the assumption and assignment of the Contracts and Leases.

3. In accordance with the Cure Procedures, the Debtors are delivering this notice (the “**Cure Notice**”) identifying (i) those Contracts which may be assumed by the Debtors and assigned as part of the Sale; and (ii) the proposed entire cure amount (the “**Cure Amount**”) applicable to any and all defaults for each Contract identified on the Cure Notice. The Cure Amount applicable to Contract is intended to, and shall, reflect all damages and amounts that are or could be payable to any person or entity as a result of any breach at any time by any of the Debtors of any obligation, representation or warranty of any of the Debtors under, related to or otherwise with respect to such Contract, including without limitation any contingent claim for indemnification from the Debtors under the terms of such Contract related to or arising from any breach by any of the Debtors of any obligation, representation or duty of the Debtors to any person or entity arising under any applicable law at any time.

4. Adequate assurance information for the Proposed Purchaser is available by contacting counsel to the Proposed Purchaser, (i) Fox, Swibel, Levin & Carroll, LLP, 200 West Madison Street, Suite 200, Chicago, Illinois 60606 (Attn: N. Neville Reid) and (ii) [Delaware counsel to the Purchaser].

5. You have been identified as a party to a Contract that the Debtors may seek to assume and assign as part of the Sale. The Contract with respect to which you have been identified as a non-debtor counterparty, and the corresponding proposed Cure Amount, if any, has been set forth on **Exhibit 1** attached hereto.

6. If you agree to the assumption and assignment of your Contract to the Proposed Purchaser or any Winning Bidder please complete and return the consent (the “**Consent**”), a copy of which is attached hereto as **Exhibit 2** to (i) the Debtors’ proposed counsel, Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801 (Attn: Russell C. Silberglie and Michael J. Merchant; email: silberglie@rlf.com and merchant@rlf.com); and (ii) the Debtors, (a) Wellesley Office Park, 80 William Street, Suite 400, Wellesley, Massachusetts 02481 (Attn: Laura Dagan; email: ldagan@f2inv.com) and (b) c/o Stillwater Advisory Group LLC, PO Box 1022, Beverly Shores, Indiana 46301 (Attn: David Phelps; email: dphelps@dnphelps.com) as soon as possible. By completing and returning the Consent, you expressly agree to the assumption and assignment of your Contract and your Contract may be assumed and assigned to the Proposed Purchaser or any Winning Bidder without further notice or order from the Bankruptcy Court.

7. Even if you agree to the assumption and assignment of your Contract, you have the right to object to the proposed Cure Amount if you disagree with the amount set forth on **Exhibit 1**. Objections, if any, to the **proposed Cure Amount of any Contract** listed on the Cure Notice must be made in writing, filed with the Bankruptcy Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, and served so as to be received by the following parties on

or before 4:00 p.m. (prevailing Eastern Time) on _____, 2015 (the “**Cure Objection Deadline**”): (i) the Debtors’ proposed counsel, Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801 (Attn: Russell C. Silberglid and Michael J. Merchant; email: silberglid@rlf.com and merchant@rlf.com); (ii) the Debtors, (a) Wellesley Office Park, 80 William Street, Suite 400, Wellesley, Massachusetts 02481 (Attn: Laura Dagan; email: ldagan@f2inv.com) and (b) c/o Stillwater Advisory Group LLC, PO Box 1022, Beverly Shores, Indiana 46301 (Attn: David Phelps; email: dphelps@dnphelps.com); (iii) counsel to the Proposed Purchaser, (a) Fox, Swibel, Levin & Carroll, LLP, 200 West Madison Street, Suite 200, Chicago, Illinois 60606 (Attn: N. Neville Reid; email: nreid@fslc.com) and (b) [Delaware counsel to purchaser]; (iv) counsel to any official statutory committee appointed in this chapter 11 case; and (v) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Richard L. Schepacarter and Natalie Cox; email: Richard.Schepacarter@usdoj.gov and Natalie.Cox@usdoj.gov). The objection must set forth (i) the basis for the objection, (ii) the exact amount the party asserts as the Cure Amount, and (iii) sufficient documentation to support the Cure Amount alleged.

8. If an objection is timely filed by the Cure Objection Deadline, a hearing with respect to such objection will be held before The Honorable [JUDGE], United States Bankruptcy Judge, at the Bankruptcy Court, 824 N. Market Street, []th Floor, Courtroom [], Wilmington, Delaware 19801, on _____, 2015 at __: __ .m. (prevailing Eastern Time) or at a later hearing, as determined by the Debtors, subject to the Court’s calendar. A hearing regarding the Cure Amount, if any, may be continued at the sole discretion of the Debtors.

9. UNLESS YOU FILE AN OBJECTION TO THE CURE AMOUNT AND/OR THE ASSUMPTION OR ASSIGNMENT OF YOUR CONTRACT IN ACCORDANCE WITH THE INSTRUCTIONS AND DEADLINES SET FORTH HEREIN, YOU SHALL BE FOREVER (A) BARRED FROM OBJECTING TO THE CURE AMOUNT SET FORTH ON **EXHIBIT 1**, (B) ESTOPPED FROM ASSERTING OR CLAIMING ANY CURE AMOUNT AGAINST THE DEBTORS, THE PROPOSED PURCHASER OR WINNING BIDDER OR ANY OTHER ASSIGNEE OF THE RELEVANT CONTRACT THAT IS GREATER THAN THE CURE AMOUNT SET FORTH ON **EXHIBIT 1**, (C) BARRED FROM ASSERTING ANY CLAIM (INCLUDING ANY CONTINGENT CLAIM) AT ANY TIME AGAINST THE PROPOSED PURCHASER OR WINNING BIDDER OR ANY OTHER ASSIGNEE OF THE RELEVANT CONTRACT ARISING FROM, RELATED TO OR BASED ON ANY ACTUAL OR ALLEGED DEFAULT OR BREACH BY ANY OF THE DEBTORS OF ANY DUTY, OBLIGATION OR REPRESENTATION TO ANY PERSON OR ENTITY AT ANY TIME, RELATED IN ANY WAY TO SUCH CONTRACT, INCLUDING WITHOUT LIMITATION ANY (I) CLAIM FOR INDEMNIFICATION AGAINST PROPOSED PURCHASER UNDER SUCH CONTRACT BASED ON OR ARISING FROM ANY BREACH BY ANY DEBTOR OF ANY DUTY, OBLIGATION OR REPRESENTATION TO ANY PERSON OR ENTITY AT ANY TIME AND (II) CLAIM AGAINST PROPOSED PURCHASER UNDER ANY SUCCESSOR LIABILITY OR OTHER THEORY OF ANY TYPE WHATSOEVER THAT RELATES TO OR ARISES FROM ANY ACTS, OMISSIONS OR CONDUCT OF THE ANY OF THE DEBTORS, IN ANY AMOUNT THAT IS GREATER THAN THE CURE AMOUNT SET FORTH ON **EXHIBIT 1**, AND (D) DEEMED TO HAVE CONSENTED TO THE ASSUMPTION AND/OR ASSIGNMENT OF

YOUR CONTRACT (SUBJECT TO YOUR ABILITY TO OBJECT TO WHETHER THE WINNING BIDDER (OTHER THAN THE PROPOSED PURCHASER) CAN PROVIDE ADEQUATE ASSURANCE OF FUTURE PERFORMANCE).

10. The presence of a Contract listed on **Exhibit 1** attached hereto does not constitute an admission that such contract is an executory contract or that such contract or lease will be assumed and assigned as part of the Sale. The Debtors reserve all of its rights, claims and causes of action with respect to the Contracts listed on **Exhibit 1** attached hereto.

Date: _____, 2015
Wilmington, Delaware

RICHARDS, LAYTON & FINGER, P.A.

Russell C. Silberglid (No. 3462)
Michael J. Merchant (No. 3854)
Zachary I. Shapiro (No. 5103)
Amanda R. Steele (No. 5530)
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Proposed Counsel for the Debtors and Debtors
in Possession

EXHIBIT 1

Schedule of Contracts and Cure Amounts

EXHIBIT 2

Consent

Schedule 3(c)

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

In re:

F-Squared Investment Management, LLC, *et al.*¹

Debtors.

)
) Chapter 11
)

) Case No. 15-_____ (_____)
)

) (Joint Administration Requested)
)

) Re: Docket Nos.
)

) Obj. Deadline: _____, 2015 at 4:00 p.m.
) (EDT)

**NOTICE OF EXECUTORY CONTRACTS WHICH MAY BE ASSUMED AND
ASSIGNED, PURSUANT TO SECTION 365 OF THE BANKRUPTCY CODE, IN
CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS'
ASSETS AND THE PROPOSED CURE AMOUNTS WITH RESPECT THERETO**

PLEASE TAKE NOTICE THAT:

1. On July 8, 2015, the above captioned debtors and debtors in possession (collectively, the “**Debtors**”) filed the *Debtors’ Motion to (A) Establish Bidding Procedures Related to the Sale of Substantially All of the Debtors’ Assets, Approve Related Bid Protections and Establish Notice Procedures for Determining Cure Amounts, and (B) Approve the Sale of Substantially All of the Debtors’ Assets and Assume and Assign Certain Executory Contracts and Unexpired Leases* [Docket No. ____] (the “**Motion**”)² with the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”), 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801.

2. Pursuant to the Motion, the Debtors seek the entry of an order (i) establishing bidding and auction procedures in connection with the sale of substantially all of the Debtors’ assets (the “**Purchased Assets**”); (ii) approving proposed bid protections, including a break-up fee and expense reimbursement, for Broadmeadow Capital, LLC (the “**Proposed Purchaser**”), in accordance with that certain Asset Purchase Agreement dated July 3, 2015 (the “**Stalking Horse Agreement**”) for the purchase of the Purchased Assets; (iii) scheduling an auction (the “**Auction**”) and setting a date and time for a sale hearing (the “**Sale Hearing**”) for the sale of the Purchased Assets (the “**Sale**”), and approving the form and manner of notice

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: F-Squared Investment Management, LLC (9247), F-Squared Investments, Inc. (0788), F-Squared Retirement Solutions, LLC (9247), F-Squared Alternative Investments, LLC (9247), F-Squared Solutions, LLC (9247), F-Squared Institutional Advisors, LLC (9247), F-Squared Capital, LLC (5257), AlphaSector LLS GP 1, LLC (3342), and Active Index Solutions, LLC (0788). The Debtors’ address is Wellesley Office Park, 80 William Street, Suite 400, Wellesley, Massachusetts 02481.

² Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion. For a copy of the Motion, please visit the website of the Debtors’ proposed claims and noticing agent, BMC Group, Inc., www.bmcgroup.com/fsquared.

thereof; (iv) establishing procedures (the “**Cure Procedures**”) for the assumption and assignment of contracts (“**Contracts**”) and leases (“**Leases**”), including notice of proposed cure amounts (the “**Cure Amounts**”); and (v) granting certain related relief. By the Motion, the Debtors further request that, at the Sale Hearing, subject to the results of the Auction, the Court enter an order (i) approving and authorizing the Sale; and (ii) authorizing the assumption and assignment of the Contracts and Leases.

3. In accordance with the Cure Procedures, the Debtors are delivering this notice (the “**Cure Notice**”) identifying (i) those Contracts which may be assumed by the Debtors and assigned as part of the Sale; and (ii) the proposed entire cure amount (the “**Cure Amount**”) applicable to any and all defaults for each Contract identified on the Cure Notice. The Cure Amount applicable to Contract is intended to, and shall, reflect all damages and amounts that are or could be payable to any person or entity as a result of any breach at any time by any of the Debtors of any obligation, representation or warranty of any of the Debtors under, related to or otherwise with respect to such Contract, including without limitation any contingent claim for indemnification from the Debtors under the terms of such Contract related to or arising from any breach by any of the Debtors of any obligation, representation or duty of the Debtors to any person or entity arising under any applicable law at any time.

4. Adequate assurance information for the Proposed Purchaser is available by contacting counsel to the Proposed Purchaser, (i) Fox, Swibel, Levin & Carroll, LLP, 200 West Madison Street, Suite 200, Chicago, Illinois 60606 (Attn: N. Neville Reid) and (ii) [Delaware counsel to the Purchaser].

5. You have been identified as a party to a Contract that the Debtors may seek to assume and assign as part of the Sale. The Contract with respect to which you have been identified as a non-debtor counterparty, and the corresponding proposed Cure Amount, if any, has been set forth on **Exhibit 1** attached hereto.

6. Any objection to **the assumption and assignment of your Contract** to the Proposed Purchaser or any Winning Bidder must be in writing and received by the following parties on or before **[30 days after service]**, 2015 (the “**Assignment Objection Deadline**”): (i) the Debtors’ proposed counsel, Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801 (Attn: Russell C. Silberglie and Michael J. Merchant; email: silberglie@rlf.com and merchant@rlf.com); and (ii) the Debtors, (a) Wellesley Office Park, 80 William Street, Suite 400, Wellesley, Massachusetts 02481 (Attn: Laura Dagan; email: ldagan@f2inv.com) and (b) c/o Stillwater Advisory Group LLC, PO Box 1022, Beverly Shores, Indiana 46301 (Attn: David Phelps; email: dphelps@dnphelps.com) as soon as possible. If you fail to object to assumption and assignment of your Contract prior to the Assignment Objection Deadline, your Contract may be assumed and assigned to the Proposed Purchaser or any Winning Bidder without further notice or order by the Bankruptcy Court.

7. Objections, if any, to the **proposed Cure Amount of any Contract** listed on the Cure Notice must be made in writing, filed with the Bankruptcy Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, and served so as to be received by the following parties on or before 4:00 p.m. (prevailing Eastern Time) on _____, 2015 (the “**Cure**

Objection Deadline’): (i) the Debtors’ proposed counsel, Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801 (Attn: Russell C. Silberglied and Michael J. Merchant; email: silberglied@rlf.com and merchant@rlf.com); (ii) the Debtors, (a) Wellesley Office Park, 80 William Street, Suite 400, Wellesley, Massachusetts 02481 (Attn: Laura Dagan; email: ldagan@f2inv.com) and (b) c/o Stillwater Advisory Group LLC, PO Box 1022, Beverly Shores, Indiana 46301 (Attn: David Phelps; email: dphelps@dnphelps.com); (iii) counsel to the Proposed Purchaser, (a) Fox, Swibel, Levin & Carroll, LLP, 200 West Madison Street, Suite 200, Chicago, Illinois 60606 (Attn: N. Neville Reid; email: nreid@fslc.com) and (b) [Delaware counsel to purchaser]; (iv) counsel to any official statutory committee appointed in this chapter 11 case; and (v) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Richard L. Schepacarter and Natalie Cox; email: Richard.Schepacarter@usdoj.gov and Natalie.Cox@usdoj.gov). The objection must set forth (i) the basis for the objection, (ii) the exact amount the party asserts as the Cure Amount, and (iii) sufficient documentation to support the Cure Amount alleged.

8. If an objection is timely filed by the Cure Objection Deadline, a hearing with respect to such objection will be held before The Honorable [JUDGE], United States Bankruptcy Judge, at the Bankruptcy Court, 824 N. Market Street, []th Floor, Courtroom [], Wilmington, Delaware 19801, on _____, **2015 at __: __ .m. (prevailing Eastern Time)** or at a later hearing, as determined by the Debtors, subject to the Court’s calendar. A hearing regarding the Cure Amount, if any, may be continued at the sole discretion of the Debtors.

9. UNLESS YOU FILE AN OBJECTION TO THE CURE AMOUNT AND/OR THE ASSUMPTION OR ASSIGNMENT OF YOUR CONTRACT IN ACCORDANCE WITH THE INSTRUCTIONS AND DEADLINES SET FORTH HEREIN, YOU SHALL BE FOREVER (A) BARRED FROM OBJECTING TO THE CURE AMOUNT SET FORTH ON **EXHIBIT 1**, (B) ESTOPPED FROM ASSERTING OR CLAIMING ANY CURE AMOUNT AGAINST THE DEBTORS, THE PROPOSED PURCHASER OR WINNING BIDDER OR ANY OTHER ASSIGNEE OF THE RELEVANT CONTRACT THAT IS GREATER THAN THE CURE AMOUNT SET FORTH ON **EXHIBIT 1**, (C) BARRED FROM ASSERTING ANY CLAIM (INCLUDING ANY CONTINGENT CLAIM) AT ANY TIME AGAINST THE PROPOSED PURCHASER OR WINNING BIDDER OR ANY OTHER ASSIGNEE OF THE RELEVANT CONTRACT ARISING FROM, RELATED TO OR BASED ON ANY ACTUAL OR ALLEGED DEFAULT OR BREACH BY ANY OF THE DEBTORS OF ANY DUTY, OBLIGATION OR REPRESENTATION TO ANY PERSON OR ENTITY AT ANY TIME, RELATED IN ANY WAY TO SUCH CONTRACT, INCLUDING WITHOUT LIMITATION ANY (I) CLAIM FOR INDEMNIFICATION AGAINST PROPOSED PURCHASER UNDER SUCH CONTRACT BASED ON OR ARISING FROM ANY BREACH BY ANY DEBTOR OF ANY DUTY, OBLIGATION OR REPRESENTATION TO ANY PERSON OR ENTITY AT ANY TIME AND (II) CLAIM AGAINST PROPOSED PURCHASER UNDER ANY SUCCESSOR LIABILITY OR OTHER THEORY OF ANY TYPE WHATSOEVER THAT RELATES TO OR ARISES FROM ANY ACTS, OMISSIONS OR CONDUCT OF THE ANY OF THE DEBTORS, IN ANY AMOUNT THAT IS GREATER THAN THE CURE AMOUNT SET FORTH ON **EXHIBIT 1**, AND (D) DEEMED TO HAVE CONSENTED TO THE ASSUMPTION AND/OR ASSIGNMENT OF YOUR CONTRACT (SUBJECT TO YOUR ABILITY TO OBJECT TO WHETHER THE

WINNING BIDDER (OTHER THAN THE PROPOSED PURCHASER) CAN PROVIDE ADEQUATE ASSURANCE OF FUTURE PERFORMANCE).

10. The presence of a Contract listed on **Exhibit 1** attached hereto does not constitute an admission that such contract is an executory contract or that such contract or lease will be assumed and assigned as part of the Sale. The Debtors reserve all of its rights, claims and causes of action with respect to the Contracts listed on **Exhibit 1** attached hereto.

Date: _____, 2015
Wilmington, Delaware

RICHARDS, LAYTON & FINGER, P.A.

Russell C. Silberglie (No. 3462)
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merchant@rlf.com
shapiro@rlf.com
steele@rlf.com

Proposed Counsel for the Debtors and Debtors
in Possession

EXHIBIT 1

Schedule of Contracts and Cure Amounts

Exhibit B

Stalking Horse Agreement

ASSET PURCHASE AGREEMENT

BY AND AMONG

F-SQUARED INVESTMENT MANAGEMENT, LLC,
THE SUBSIDIARIES LISTED ON SCHEDULE A HERETO

BROADMEADOW CAPITAL, LLC,

AND SOLELY FOR THE PURPOSE OF SECTION 8.4

CEDAR CAPITAL, LLC

Dated as of July 3, 2015

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Schedule 8.2	Conduct of Business
Schedule 8.14	Acquired Seeded Strategies
Schedule 9.1	Accrued Vacation Days

ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT, dated as of July 3, 2015 (this "Agreement"), by and among F-SQUARED INVESTMENT MANAGEMENT, LLC, a Delaware limited liability company ("Parent"), THE DIRECT OR INDIRECT WHOLLY OWNED SUBSIDIARIES OF THE PARENT LISTED ON SCHEDULE A ATTACHED HERETO (the "Seller Subsidiaries" and, together with Parent, each a "Seller" and jointly, "Sellers"), and BROADMEADOW CAPITAL, LLC, a Delaware limited liability company ("Purchaser"), and solely for the purpose of agreeing to Section 8.4, CEDAR CAPITAL, LLC, a Delaware limited liability company ("Cedar"). Sellers and Purchaser are sometimes herein referred to collectively as the "Parties" and individually as a "Party."

WITNESSETH:

WHEREAS, Sellers will file a voluntary petition for relief (the "Bankruptcy Case") on or about July 8, 2015 (the "Petition Date"), under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court");

WHEREAS, Sellers operate the Business (as defined below); and

WHEREAS, Sellers desire to sell, transfer and assign to Purchaser, and Purchaser desires to purchase, acquire and assume from Sellers, all of the Purchased Assets and Assumed Liabilities (each as defined below), all as more specifically provided herein.

WHEREAS, the Purchased Assets will be sold pursuant to the Sale Order (as defined below) approving the sale of the Purchased Assets under Section 363 of the Bankruptcy Code, which shall include the concurrent assignment to Purchaser of the Purchased Contracts under Section 365 of the Bankruptcy Code, and the terms and conditions of this Agreement; and

WHEREAS, Sellers desires to sell the Purchased Assets and to assign the Purchased Contracts to further its reorganization efforts and to enable it to consummate a plan of reorganization in the Bankruptcy Case.

WHEREAS, Cedar will receive substantial benefit from the Transactions and as a condition to Sellers entering into this Agreement, Sellers are requiring Cedar to enter into a guaranty agreement (the "Affiliate Guaranty") to provide for the guarantee by Cedar of the payment and performance by Purchaser of its obligations hereunder.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter contained, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Certain Definitions.

For purposes of this Agreement, the following terms shall have the meanings specified in this Section 1.1:

"Accounts Receivable" means (i) all trade accounts receivable and other rights to payment from customers of any Seller and the full benefit of all security for such accounts or rights to payment, including all trade accounts receivable representing amounts receivable in respect of goods shipped or products sold or services rendered to customers of any Seller, (ii) all other accounts or notes receivable of any Seller and the full benefit of all security for such accounts or notes and (iii) any claim, remedy or other right related to any of the foregoing.

"Acquired Seeded Strategies" means those Seeded Strategies that Purchaser adds to Schedule 8.14 in accordance with Section 8.14.

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

"Assets Under Advisement" and "AUA" mean as of a specified time, (A) prior to the Closing Date Effective Time, (i) the sum of the amount of assets under management in Client accounts, in each case valued at the fair market thereof as reasonably determined, and (ii) the sum of the amount of assets under advisement, in each case, in respect of which Sellers receive a fee, as an investment advisor, subadvisor, index manager, index provider, signal provider or under any other similar arrangement, and (B) after the Closing Date Effective Time, (i) the sum of the amount of assets under management in Purchaser's or any of its Affiliates client accounts, in each case valued at the fair market thereof as reasonably determined, and (ii) the sum of the amount of assets under advisement, in each case, in respect of which Purchaser or any of its Affiliates receives a fee, as an investment advisor, subadvisor, index manager, index provider, signal provider or under any other similar arrangement, in the case of (B)(i) or (ii), to the extent such assets directly accrue, derive, generate or arise from or attributable to any of the Purchased Assets. For the avoidance of doubt, the term "Assets Under advisement" and "AUA" as used in this Agreement includes assets under management and assets under advisement with Sellers prior to the Closing and with the Purchaser and its Affiliates after the Closing, but does not include any assets under the management of Purchaser that do not directly accrue, derive, generate or arise from and are not attributable to any of the Purchased Assets.

"AUA Consent" means those Consents in respect of Clients identified on Schedule 5.4 hereto (including any Negative Consents) which Sellers are required to use their best efforts to obtain pursuant to Section 2.6.

"Avoidance Actions" means any and all claims and causes of action arising under the Bankruptcy Code, including without limitation, Sections 544 through 553 thereof, or any similar laws of the United States or any state, territory or possession thereof, or the District of Columbia (including without limitation, any preference or fraudulent conveyance action under such laws).

"Bid Deadline" has the meaning ascribed to such term in the Bidding Procedures Order.

"Bidding Procedures Order" means an order of the Bankruptcy Court reasonably satisfactory to Purchaser and Sellers and in the substantially the form attached hereto as Exhibit A which order and its exhibits referenced therein (i) may be amended before any hearing seeking entry thereof to the extent necessary to effectuate or implement the intent and provisions hereof, and (ii) among other things, establishes a date by which qualified bids meeting the requirements approved in the Bidding Procedures Order must be submitted by bidders and establishes procedures for the auction process.

"Break-Up Fee" means Two Hundred Fifty Thousand Dollars (\$250,000).

"Business" means the business comprised of the Purchased Assets as owned and operated by Sellers.

"Business Day" means any day of the year on which national banking institutions in New York are open to the public for conducting business and are not required or authorized to close.

"Cash and Cash Equivalents" means all of Sellers' cash (including petty cash and checks and drafts received or in transit, including, without limitation, all checks and drafts that have been submitted, posted or deposited, prior to the Closing Date Effective Time), checking account balances, bank deposits, marketable securities, certificates of deposits, time deposits, bankers' acceptances, commercial paper and government securities, other cash equivalents and similar cash items.

"Client" means each fee paying client with whom Seller has entered into an advisory agreement or investment advisory services agreement and each Person who receives investment advisory services from any Seller through another Person with which Seller has entered into a written agreement for the provision of such services.

"Closing Date Assets Under Advisement" means the aggregate amount of all Assets Under Advisement as of the Closing AUA Date for which Sellers have obtained AUA Consents.

"Closing AUA Date" means the date which is the end of the last calendar month ending at least fifteen (15) calendar days prior to the Closing Date.

"Closing Escrow Agreement" means that certain Escrow Agreement, dated on or about the Closing Date, by and among Sellers, Purchaser and the Closing Escrow Holder.

"Closing Escrow Holder" means Richards, Layton & Finger, P.A., in its capacity as escrow holder.

"Code" means the Internal Revenue Code of 1986, as amended.

"Consents" means consents, orders, approvals, waivers, authorizations, ratifications, filings, registrations and notifications (including any notifications delivered by any Seller under Contracts with Clients).

"Contract" means any agreement, contract, indenture, note, bond, lease, license or other agreement, consensual obligation, promise or undertaking (whether written or oral and whether express or implied).

"Debtor" or "Debtors" means each Seller and each of the other Affiliates of Sellers that is a debtor under the Bankruptcy Case.

"Delivered" means in respect of any agreement, document, instrument or other materials means that a true, complete and legible copy thereof, and all amendments, supplements, waivers and releases, have been delivered to Purchaser or its counsel or deposited into that certain Intralinks data room maintained by Sellers and its advisors in connection with this Agreement and the Transaction (the "Deal Room") to which the Purchaser and its counsel have been given access to all portions containing such agreements, documents, instruments or other materials.

"Documents" means all files, documents, electronically stored information in any format or in any medium or other storage device including electronically transmitted written or vocal messages, instruments, papers, books, reports, records, tapes, microfilms, photographs, letters, budgets, forecasts, ledgers, journals, title policies, customer lists, regulatory filings, operating data and plans, other data or data compilations, technical documentation (design specifications, functional requirements, operating instructions, logic manuals, flow charts, etc.), user documentation (installation guides, user manuals, training materials, release notes, working papers, etc.), marketing documentation (sales brochures, flyers, pamphlets, web pages, etc.), and other similar materials related to the Business or the Purchased Assets, in each case whether or not in electronic form.

"Effective Date" means the date of this Agreement.

"Employees" mean all individuals, as of Effective Date, whether or not actively at work as of the Effective Date, who were employed by any Seller, together with individuals who are hired by any Seller after the Effective Date and prior to the Closing, if any.

"Equity Interests" means capital stock, partnership or limited liability company interests, trust interests or units (whether general or limited), and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distribution of assets of, the issuing entity.

"Equity Securities" means (i) Equity Interests, (ii) subscriptions, calls, warrants, options or commitments of any kind or character relating to, or entitling any Person to acquire,

any Equity Interests and (iii) securities convertible into or exercisable or exchangeable for any Equity Interests.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Escrow Agreement" means the Escrow Agreement, dated as of the date hereof, by and among Sellers, Purchaser and the Escrow Holder.

"Excluded Contracts" means all Contracts of Sellers, including such Contracts set forth on Schedule 1.1(a), other than the Purchased Contracts.

"Excluded Employee Loan Receivables" means all Accounts Receivable or other rights to payments from the Employees in connection with the employee loan program and all loans made thereunder.

"Expense Reimbursement" means the amount of the reasonable and documented expenses (including reasonable attorneys' fees) of Purchaser incurred in connection with the Transactions and approved by the Bankruptcy Court upon "negative notice" up to an aggregate amount of \$250,000. For purposes hereof, the term "negative notice" shall mean (i) the Debtors' request for payment of such expenses of Purchaser, through a motion filed with the Bankruptcy Court, upon fifteen (15) days' notice to parties entitled to such notice under the Federal Rules of Bankruptcy Procedure, and (ii) the failure of any such parties to have filed an objection to such request within the applicable time period specified in such notice.

"Furniture and Equipment" means all furniture, fixtures, furnishings, equipment, vehicles, leasehold improvements, and other tangible personal property owned or leased by any of Sellers in the conduct of the Business, including all such machines, tools, artwork, desks, chairs, tables, Hardware, copiers, telephone lines and numbers, facsimile machines and other telecommunication equipment, cubicles and miscellaneous office furnishings and supplies.

"GAAP" means in respect of a Person generally accepted accounting principles in the United States as of the date hereof as applied by such Person consistently with prior practices of such Person.

"Governmental Body" means any government or governmental or regulatory body thereof, or political subdivision thereof, whether foreign, federal, state, or local, or any agency, instrumentality or authority thereof, or any court or arbitrator (public or private).

"Hardware" means any and all computer and computer-related hardware, including, but not limited to, computers, file servers, facsimile servers, scanners, color printers, laser printers and networks.

"Indebtedness" of any Person means, without duplication: (i) the principal of and premium (if any) in respect of (A) indebtedness of such Person for money borrowed and (B) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable; (ii) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations of such

Person and all obligations of such Person under any title retention agreement (but excluding trade accounts payable and other accrued current liabilities arising in the Ordinary Course of Business); (iii) all obligations of such Person under leases required to be capitalized in accordance with GAAP; (iv) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker's acceptance or similar credit transaction; (v) all obligations of the type referred to in clauses (i) through (iv) of any Persons for the payment of which such Person is responsible or liable, directly or indirectly, as obligor, guarantor, surety or otherwise, including guarantees of such obligations; and (vi) all obligations of the type referred to in clauses (i) through (v) of other Persons secured by any Lien on any property or asset of such Person (whether or not such obligation is assumed by such Person).

"Intellectual Property" means the intellectual property utilized by Sellers in connection with their execution of the Investment Strategies and their provision of services to Clients in any jurisdiction throughout the world and each of the following in respect thereof: (i) patents and patent applications, together with all continuations, revisions, and extensions in connection therewith; (ii) Marks and all passwords and other access requirements in respect of Marks; (iii) works of authorship (whether or not copyrightable), copyrights, data and database rights and moral rights, and all registrations, applications for registration and renewals in connection therewith; (iv) inventions, trade secrets, know-how, processes, techniques, protocols, methods, formulae, data, designs, plans, specifications, methodologies, ideas, research and development information, reports, studies and confidential information, whether or not patentable or copyrightable and whether or not reduced to practice; (v) software (including source code, executable code, systems, tools, data, databases, firmware, and related documentation), (vi) other proprietary and intellectual property rights (including remedies against infringement thereof and rights of protection of interest therein under the applicable Laws of all jurisdictions), and (vii) all tangible embodiments thereof.

"Investment In Hedge Fund Amount" means the aggregate amount of Sellers' investment in F-Squared US Sector Fund reflected on Sellers records as of the Business Day preceding the Closing Date, supported by reasonable evidence provided by Sellers.

"Investment In Seeded Strategies Amount" means the actual aggregate amount of any investments in the Acquired Seeded Strategies reflected on Sellers records as of the Business Day preceding the Closing Date, which shall be supported by reasonable evidence provided by Sellers.

"Intellectual Property Licenses" means (i) any grant to a third Person of any right to use any of Sellers' Intellectual Property and (ii) any grant to any Seller of a right to use a third Person's Intellectual Property.

"IRS" means the Internal Revenue Service.

"Investment Strategies" means all investment strategies based on the Intellectual Property utilized by any Seller at any time in the course of providing services to Clients, including but not limited to (i) the investment strategies listed on Schedule 1.1(b), and (ii) the investment strategies that are in the research and development phase and that are listed on Schedule 1.1(b).

"Investment Strategy Derivation" means all investment strategies developed and implemented by the Purchaser after the Closing that directly arise from or are based on the Intellectual Property or on confidential or proprietary information that underlies the Intellectual Property. For the avoidance of doubt, "Investment Strategy Derivation" does not include any investment strategy used by Purchaser or its Affiliates prior to the Closing Date or thereafter acquired, licensed or developed by Purchaser or its Affiliates from any Person other than Sellers without the use of the Intellectual Property.

"Knowledge of Purchaser" means the actual knowledge of any of those officers of Purchaser identified on Schedule 1.1(c) after reasonable inquiry of those direct reports of such officers identified on Schedule 1.1(c).

"Knowledge of Sellers" means the actual knowledge of any of those officers of Sellers identified on Schedule 1.1(d) after reasonable inquiry of those direct reports of such officers identified on Schedule 1.1(d).

"Law" means, with respect to any Person, (i) constitutions, treaties, statutes, laws (including the common law), regulations, rules, ordinances or orders of a Governmental Body having jurisdiction over such Person; (ii) Orders relating to such Person; and (iii) orders, decisions, injunctions, judgments, awards and decrees of, or agreements with, a Governmental Body having jurisdiction over such Person..

"Liability" means any debt, liability or obligation (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due), and including all costs and expenses relating thereto.

"Lien" means any lien, encumbrance, pledge, mortgage, deed of trust, security interest, claim, lease, charge, option, right of first refusal, easement, servitude, proxy, voting trust or agreement, transfer restriction under any shareholder or similar agreement or encumbrance.

"Loss" shall mean any actual losses, liabilities, claims, damages or expenses (excluding any costs of investigation or defense, attorneys' fees and expenses) of a Party arising from or in connection with a breach or alleged breach by the other Party of this Agreement, the Seller Documents, or the Purchaser Documents, or other claim arising out of or in connection with this this Agreement, the Seller Documents, or the Purchaser Documents.

"Marks" means trademarks, service marks, designs, trade dress, logos, slogans, Internet domain names, corporate names, trade names, business names and all other indicia of origin, together with all translations, adaptations, derivations, and combinations thereof and all registrations, applications for registration and renewals in connection therewith, and all goodwill associated with any of the foregoing.

"Offset Escrow Agreement" means that certain Escrow Agreement that will be entered into with the Closing Escrow Holder pursuant to Section 11.4 by and among Sellers, Purchaser and the Closing Escrow Holder.

"Order" means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award of a Governmental Body.

"Ordinary Course of Business" means the ordinary and usual course of normal day-to-day operations of the Business consistent with past practice.

"Organizational Documents" means (i) the certificate or articles of incorporation or charter documents and bylaws of each Person that is a corporation, (ii) the certificate of formation, articles of organization, limited liability company agreements or regulations, as applicable, of each Person that is a limited liability company, (iii) the certificates of limited partnership and the agreements of limited partnership of each Person that is a limited partnership, (iv) the trust declaration, trust agreement, indenture or other governing instrument for any statutory or common law trust and (v) the memorandum or articles of association, charter, constitution, shareholders agreement, business license or other documentation governing the formation, organization, governance, ownership and existence of any Person organized under the Laws of a jurisdiction other than the United States of America, the District of Columbia or any State of the United States of America.

"Permits" means any approvals, authorizations, consents, licenses, permits or certificates of a Governmental Body.

"Permitted Assigns" means any Person, including, but not limited to a liquidating trust, appointed (i) pursuant to a plan of reorganization or liquidation to administer and implement such plan of reorganization or liquidation, as applicable, or (ii) to facilitate the administration and closure of the Bankruptcy Case whether under Chapter 11 or Chapter 7 of the Bankruptcy Code.

"Permitted Exceptions" means those items listed on Schedule PE, consisting solely of: (i) as to any real estate owned by any of Sellers, (a) all easements, rights of way and encumbrances disclosed in policies of title insurance which have been Delivered to Purchaser, and (b) zoning and other land use and environmental regulations by any Governmental Body related to such real estate, provided that such regulations have not been violated; and (ii) title of a lessor under a capital or operating lease, copies of which have been Delivered to Purchaser, but in each case of clauses (i) and (ii) of this definition of Permitted Exceptions, solely to the extent that the Sale Order or Section 363 of the Bankruptcy Code does not extinguish any of same.

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

"Pre-Closing Liability Cap" means an amount not to exceed \$250,000.

"Privileged Communications" means any attorney-client communications, confidences, files, work product or other communications related to the Seller Engagements.

"Proceeding" means any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, whether public or private) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Body or arbitrator.

"Purchased Contracts" means all Contracts set forth on Schedule 1.1(e), which shall not include (a) the Excluded Contracts and (b) any Contract as to which the other party thereto (i.e., the non-Seller Party to the Contract) shall have terminated a Seller's provision of services pursuant thereto prior to the Closing Date. Schedule 1.1(e) may be updated from time to time as provided for in Section 2.5(c). Schedule 1.1(e) shall include without limitation, (x) those Contracts in respect of which an AUA Consent shall be provided by Sellers to Purchaser in accordance with this Agreement (or, with respect to a Negative Consent Contract, as to which Negative Consent shall have been obtained and as to which Sellers shall have certified the same to Purchaser in accordance with this Agreement), and (y) such other Contracts entered into after the date hereof as to which any Seller and the Purchaser shall have agreed in writing by the execution and delivery of a new Schedule 1.1(e) subject to the procedure provided for in Section 2.5(c).

"Purchased Intellectual Property" means all Intellectual Property owned by any Seller as of the Closing Date, all rights of any Seller in or to any Intellectual Property used but not owned by any Seller as of the Closing Date and all rights of each Seller in and to each Intellectual Property License to which it is a party.

"Purchaser Excluded Matter" as of any specified time any one or more of the following (except for any of the following which has a disproportionate impact on Purchaser in comparison to other participants in the same type of business or industry of Purchaser) which shall have occurred prior to the specified time: (i) the effect of any change in the United States or foreign economies or securities or financial markets in general; (ii) the effect of any change that generally affects any industry in which Purchaser operates; (iii) the effect of any change arising in connection with earthquakes, hostilities, acts of war, sabotage or terrorism or military actions or any escalation or material worsening of any such hostilities, acts of war, sabotage or terrorism or military actions existing or underway as of the date hereof; (iv) the effect of any action taken by any Seller with respect to the Transactions or with respect to Purchaser, any of its Affiliates, including their Employees; (v) the effect of any changes in applicable Laws or accounting rules; (vi) any effect resulting from the public announcement of this Agreement; (vii) any effect resulting from the compliance with terms of this Agreement or the consummation of the Transactions; or (viii) any effect resulting from the filing of the Bankruptcy Case and reasonably anticipated effects thereof.

"Purchaser Liability Cap" shall mean: (i) with respect to Purchaser's obligation to pay the Purchase Price to Sellers in accordance with the terms and conditions set forth in this Agreement, an amount not to exceed the Purchase Price plus, solely to the extent Purchaser is found liable for a breach of the obligation to pay the Purchase Price, all reasonable attorneys' fees or litigation costs incurred by Sellers in connection Sellers' enforcement of this Agreement in connection with such breach; and (ii) unless otherwise provided for in Section 11.5(e)(ii), with respect to Purchaser's obligations under Section 11.2(b), an amount equal to fifty (50%) percent of the aggregate amount of the Initial Earn-Out Payment (if any) and the Final Earn-Out Payment (if any) actually received by or paid at the direction of any Seller or the Bankruptcy Court or, in the event of a material breach of this Agreement by Purchaser, that would have been received or paid had Purchaser not materially breached its obligations under this Agreement and failed to cure such breach (if curable) within fifteen (15) Business Days after Purchaser's receipt from Seller of reasonably detailed notice thereof.

"Purchaser Material Adverse Effect" means a material adverse effect on (i) the business, assets, properties, results of operations or financial condition Purchaser or (ii) the ability of the Purchaser to consummate the Transactions or perform any of its obligations under this Agreement or any other agreement or instrument entered into in connection with the Transaction, other than, with respect to clauses (i) and (ii), an effect resulting from a Purchaser Excluded Matter.

"Real Property" means the real property subject to the Real Property Leases.

"Sale" shall mean the sale and transfer of the Purchased Assets to Purchaser pursuant to the terms hereof and the Sale Order.

"Sale Hearing" shall mean the hearing of the Bankruptcy Court at which the Sale Order is entered.

"Sale Motion" means the motion or motions of Sellers seeking approval and entry of the Bidding Procedures Order and Sale Order.

"Sale Order" means an order or orders of the Bankruptcy Court reasonably satisfactory to Purchaser and Sellers and in the substantially the form attached hereto as Exhibit B, which order(s) and any exhibits referenced therein (i) may be amended before any hearing seeking entry thereof to the extent necessary to effectuate or implement the intent and provisions hereof, and (ii) shall approve, *inter alia*, this Agreement and all of the terms and conditions hereof, and approve and authorize Sellers to consummate the Transactions on the terms and conditions set forth herein.

"Schedules" means the Schedules prepared in connection with this Agreement.

"SEC Related Actions" means, collectively: (i) the Order of the U.S. Securities and Exchange Commission dated December 22, 2014 entitled "In the Matter of F-Squared Investments, Inc." Admin. Proc. File No. 3-16325; (ii) SEC v. Howard B. Present, Civil Action No. 1:14-cv-14692-LTS (D. Mass.); (iii) the facts and circumstances related to or giving rise to the items described in the preceding clauses (i) and (ii); and (iv) all liability of any nature and all indemnification obligations of the Sellers arising out of or related to the items described in the preceding clauses (i), (ii) and (iii), including without limitation indemnification obligations pursuant to the Organizational Documents of the Sellers.

"SEC Actions Related Claims" means any claims or causes of action brought against Purchaser or any of its Affiliates initiated by a third Person arising from or related to the SEC Related Actions.

"Seeded Strategies" means the Seeded Strategies listed on Schedule 1.1(g).

"Seller Engagements" means any matters for which any Seller has engaged Richards, Layton & Finger, P.A., Gennari Aronson, LLP, Stillwater Advisory Group LLC, and/or PL Advisors in connection with a possible negotiated transaction involving any of Sellers or the Subsidiaries and a Third-Party, state or federal bankruptcy or insolvency proceeding, an out of court of restructuring and/or any financing transaction.

"Seller Excluded Matter" means as of any specified time any one or more of the following (except for any of the following which has a disproportionate impact on any Seller in comparison to other participants in the same type of business or industry of such Seller) which shall have occurred prior to the specified time: (i) the effect of any change in the United States or foreign economies or securities or financial markets in general; (ii) the effect of any change that generally affects any industry in which Sellers operate; (iii) the effect of any change arising in connection with earthquakes, hostilities, acts of war, sabotage or terrorism or military actions or any escalation or material worsening of any such hostilities, acts of war, sabotage or terrorism or military actions existing or underway as of the date hereof; (iv) the effect of any action taken by Purchaser or its Affiliates with respect to the Transactions or with respect to any of Sellers or the Subsidiaries, including their Employees; (v) the effect of any changes in applicable Laws or accounting rules; or (vi) any effect resulting from the public announcement of this Agreement; (vii) any effect resulting from the compliance with terms of this Agreement or the consummation of the Transactions; (viii) any effect resulting from the filing of the Bankruptcy Case and reasonably anticipated effects thereof.

"Seller Material Adverse Effect" means a material adverse effect on (i) the business, assets, properties, results of operations or financial condition of Sellers or (ii) the ability of Sellers to consummate the Transactions or perform its obligations under this Agreement or any other agreement or instrument entered into in connection with the Transaction, other than, with respect to clauses (i) and (ii), an effect resulting from a Seller Excluded Matter. For the avoidance of doubt, the Parties agree that only any effect(s) (other than any effect(s) resulting from an Excluded Matter) on the business, assets, properties, results of operations or financial condition of Sellers that has resulted in or is likely to result in aggregate Losses to the Purchaser in excess of \$625,000 is considered to be a "Seller Material Adverse Effect."

"Sellers' Liability Cap" shall mean at any time fifty (50%) percent of the aggregate amount of the Initial Earn-Out Payment (if any) and the Final Earn-Out Payment (if any) actually received by or paid at the direction of any Seller or the Bankruptcy Court.

"Sellers' Representative" has the meaning set forth in Section 14.1.

"Special Accountants" shall mean PricewaterhouseCoopers LLP or, if such firm shall decline or is unable to act, the Special Accountants shall be another independent accounting firm of international reputation mutually acceptable to Purchaser and Sellers.

"Stalking Horse Agreement" has the meaning ascribed to such term in the Bidding Procedures Order.

"Stalking Horse Bidder" has the meaning ascribed to such term in the Bidding Procedures Order.

"Subsidiaries" means the Seller Subsidiaries and the other subsidiaries of Sellers identified on Schedule 1.1(f)

"Tax Return" means all returns, declarations, reports, estimates, information returns and statements required to be filed in respect of any Taxes.

"Taxes" means (i) all federal, state, local or foreign taxes, charges or other assessments, including all net income, gross receipts, capital, sales, use, ad valorem, value added, transfer, franchise, profits, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation, property and estimated taxes, and (ii) all interest, penalties, fines, additions to tax or additional amounts imposed in connection with any item described in clause (i).

"Third-Party" means a Person that is not a party to this Agreement.

"Transactions" means the transactions contemplated by this Agreement.

"Unearned Fees" means any amount received by a Seller from or on behalf of any Client in advance of the full provision of services to which the amount relates, which as to any period of time to which such amount relates shall be the portion of such period of time that shall not have passed by the Closing Date.

"Unpaid Fees" means as of any time any accrued fees for the provision of services provided by any Seller but not yet paid by a Client, which as to any period of time to which such amount relates shall be the portion of such period of time during which the Sellers shall have provided such investment services to such Client prior to the Closing Date.

"WARN Laws" means Worker Adjustment and Retaining Notification Act, 29 U.S.C. § 21.01 et seq., and any other similar provision of any Law governing plant closings or mass layoffs.

Section 1.2 Terms Defined Elsewhere in this Agreement. For purposes of this Agreement, the following terms have meanings set forth in the Sections indicated:

Term	Section
Actual Closing Date Assets Under Management	3.6(a)
Adjustment Amount	3.6(d)
Affiliate Guaranty Agreement	Preamble
Asset Acquisition Statement	12.3
Assumed Liabilities	2.3
Auction	7.3
AUA	3.4(b)
Balance Sheet Date	5.5(a)
Bankruptcy Case	Preamble
Bankruptcy Code	Preamble
Bankruptcy Court	Preamble
Basket Amount	11.5
Cedar	Preamble
Change of Control Transaction	3.4(d)
Closing	4.1
Closing Escrow	3.3(b)

Term	Section
Closing Payment	3.4(a)
Closing Date	4.1
Closing Date Effective Time	4.1
Competing Bid	7.1
Confidentiality Agreement	8.6
Consent Period	2.6(a)
Cure Amounts	2.5
Deal Room	Definition of "Delivered"
Division	13.2(b)
Eligible Receivable	3.4(b)
Employee Benefit Plans	5.13(a)
Escrow Holder	3.2
Escrowed Funds	3.2
Excluded Assets	2.2
Excluded Liabilities	2.4
Fee Adjustment Amount	3.5
Final Earn-Out Payment	3.4(b)
Final Earn-Out Period	3.4(b)
Financial Statements	5.5(a)
Initial Calculation	3.6(b)
Initial Earn-Out Payment	3.4(b)
Initial Earn-Out Period	3.4(b)
LP Consents	8.3
Marks	1.1 (in Purchased Intellectual Property definition)
Material Contracts	5.11(a)
Negative Consent Contract	2.6
Negative Consent	2.6
Nonassignable Assets	2.7(b)
Noticing Party	8.7
Notification Expiration Date	11.4
Offset Amount	11.4
Offset Dispute	11.4
Offset Escrow	11.4
Original Notice	8.7
Party or Parties	Preamble
Personal Property Leases	5.9
Petition Date	Preamble
Post-Closing Assets Under Advisement	3.6(a)
Post-Closing Period	12.2
Pre-Closing Assets Under Advisement	3.6(a)
Pre-Closing Period	12.2
Purchase Price	3.1
Purchased Assets	2.1
Purchaser	Preamble

Term	Section
Purchaser Documents	6.2
Purchaser Indemnified Parties	11.2(a)
Purchaser Plans	9.2(a)
Qualified Bid	7.1
Qualified Plans	8.2(e)
Real Property Lease	5.7
Restricted Material	8.6 (as defined in the Confidentiality Agreement)
Revenue Multiple	3.4(b)
Revised Statements	12.3
SEC Basket Amount	11.5
Seller and Sellers	Preamble
Seller Documents	5.3
Seller Indemnified Parties	11.2(b)
Seller's Objection Notice	3.6(b)
Seller Subsidiaries	Preamble
Tax Claim	12.4
Termination Date	4.4(a)
Transfer Taxes	12.1
Transferred Employees	9.1(a)
Transferred Employees List	9.1(a)
Transferred Plans	9.2(c)

Section 1.3 Other Definitional and Interpretive Matters.

(a) Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

Calculation of Time Period. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

Dollars. Any reference in this Agreement to \$ shall mean U.S. dollars.

Exhibits/Schedules. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any matter or item disclosed on one Schedule shall be deemed to have been disclosed on each other Schedule. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

Gender and Number. Any reference in this Agreement to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

Headings. The provision of a Table of Contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement. All references in this Agreement to any "Article" or "Section" are to the corresponding Article or Section of this Agreement unless otherwise specified.

Herein. The words such as "herein," "hereinafter," "hereof," and "hereunder" refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

Including. The word "including" or any variation thereof means "including, without limitation" and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(b) The Parties have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.

ARTICLE II

PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES

Section 2.1 Purchase and Sale of Assets. On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser shall purchase, acquire and accept from Sellers, and Sellers shall sell, transfer, assign, convey and deliver to Purchaser, all of each Seller's right, title and interest in and to all of such Seller's property and assets, real, personal or mixed, tangible and intangible, of every kind and description, wherever located, as of the Closing and related to the Business, including the following (but excluding the Excluded Assets), in each case, and unless otherwise provided for herein, free and clear of any and all Liens (whether or not Disclosed to Purchaser or known by Purchaser) other than Permitted Encumbrances that have not been released or terminated by the Sale Order:

- (a) all inventory;
- (b) all rights relating to deposits (including customer deposits and security deposits for rent, utilities or otherwise), prepaid charges and expenses related to the Purchased Contracts, provided, however all rights relating to deposits and prepaid charges and expenses paid in connection with or relating to any Excluded Assets shall be Excluded Assets;
- (c) all of the Real Property Leases which are Purchased Contracts, together with all improvements, fixtures and other appurtenances thereto and rights in respect thereof;
- (d) the Furniture and Equipment;
- (e) all Intellectual Property, including but not limited to all right, title and interest in and to the Investment Strategies;

(f) the Purchased Contracts;

(g) all Documents that are used in, held for use in or intended to be used in, or that arise primarily out of, the Business, including any Documents relating to products, services, marketing, advertising, promotional materials, Purchased Intellectual Property, personnel files for Transferred Employees, all files, customer files and documents (including credit information), supplier lists, records, literature and correspondence, whether or not physically located on any of the premises referred to in clause (d) above, but excluding (i) personnel files (other than copies of any confidentiality, non-compete, non-solicitation, non-disparagement or similar restrictive agreement to the extent assumed or assigned in accordance with this agreement) for Employees who are not Transferred Employees, (ii) such files or Documents which any Seller is not permitted to transfer pursuant to applicable Law or any contractual confidentiality obligation owed to any Third-Party, and (iii) any Documents primarily related to, or is required to realize the benefits, if any, of any Excluded Assets or Excluded Liabilities;

(h) all Permits used in the Business to the extent assignable;

(i) all supplies used in connection with the Business;

(j) all rights under or pursuant to all warranties, representations and guarantees made by suppliers, manufacturers and contractors to the extent relating to products sold, or services provided to any Seller or to the extent affecting any Purchased Asset, to the extent assignable or assigned, other than any warranties, representations and guarantees pertaining solely to any Excluded Assets or rights and defenses pertaining to any Excluded Liabilities;

(k) goodwill and other intangible assets associated with the Business, including customer and supplier lists and the goodwill associated with the Marks included in the Purchased Intellectual Property; and

(l) all other assets, agreements, property and rights pertaining to the Business or any Purchased Asset described in clauses (a) through and including (l) above, other than Excluded Assets.

All of the property and assets to be transferred to Purchaser hereunder are herein referred to collectively as the "Purchased Assets".

Section 2.2 Excluded Assets. Nothing herein contained shall be deemed to sell, transfer, assign or convey the Excluded Assets to Purchaser, and Seller shall retain all right, title and interest to, in and under the Excluded Assets. "Excluded Assets" shall mean all of the following assets, properties, interests and rights of any of Sellers:

(a) all deposit accounts and other bank or securities accounts relating to the Business, including those deposit and other bank or securities accounts specifically identified on Schedule 2.2(a) attached hereto (the "Retained Accounts"), all Cash and Cash Equivalents, bank deposits or similar cash items, or securities in the Retained Accounts (other than any account or funds or assets held in any account described in Section 2.1(b) and other than Unearned Fees);

(b) all Accounts Receivable, including the Excluded Employee Loan Receivables;

(c) the Excluded Contracts;

(d) all deposits or prepaid charges and expenses paid in connection with or relating to any Excluded Assets;

(e) any (i) books and records that any Seller is required by Law to retain, including Tax Returns, financial statements, and corporate or other entity filings; provided, however, that Purchaser shall have the right to make copies of any portions of such retained books and records that relate to the Business or any of the Purchased Assets to the extent any Seller is not required by Law to keep such retained books and records confidential or private, (ii) minute books, stock, limited liability company interest, partnership interest or unit ledgers and stock, interest or unit certificates of any Seller, (iii) documents relating to proposals to acquire the Business by Persons other than Purchaser (including non-disclosure or confidentiality agreements entered into by any Seller in connection with the proposed sale of all or a portion of its assets whether contemplated by the Bidding Procedures Order or otherwise), and (iv) the Documents excluded under Section 2.1(g)(i), (ii) or (iii) hereof;

(f) any claim, right or interest in or to any refund, rebate, abatement or other recovery for Taxes other than Transfer Taxes, together with any interest due thereon or penalty rebate arising therefrom, for any Tax period (or portion thereof) ending on or prior to the Closing Date;

(g) all insurance policies or rights to proceeds or refunds thereof relating to the assets, properties, business or operations of any Seller;

(h) any rights, claims or causes of action of any of Sellers or their Subsidiaries against third parties relating to assets, properties, business or operations of each Seller arising out of events occurring on or prior to the Closing Date (other than any rights, claims or causes of action that are Purchased Assets pursuant to Section 2.1(j));

(i) all Avoidance Actions and the proceeds thereof;

(j) all rights and/or claims of any Seller arising out of this Agreement, the Seller Documents and any other agreement entered into pursuant to this Agreement;

(k) all Privileged Communications;

(l) all rights in connection with and assets of the Employee Benefit Plans other than the Transferred Plans;

(m) to the extent not provided for in Section 2.2(l), all rights of any Seller or its Subsidiaries, under the employee loan program and all loans made thereunder;

(n) all Equity Securities of any Seller;

(o) other than the Unearned Fees, all investment advisor fees, subadvisor fees, index manager fees, index provider fees, signal provider fees or other management fees or similar fees for the provision of goods or services by any Seller that has not been accrued by the Closing Date but that is derived, generated or arising from or attributable to the provision of goods or services by any Seller prior to the Closing Date Effective Time

(p) any rights, claims or causes of action, of any kind or of any nature whatsoever, of any of Sellers or their Subsidiaries, including without limitation claims for indemnification, against former officers, directors or managers, members, unitholders or other indemnities, or any of their respective Affiliates (other than any rights, claims or causes of action that are in respect of Purchased Assets or that relate to the Purchased Assets and that arise out of events occurring after the Closing Date);

(q) any rights, claims or causes of action, of any kind or of any nature whatsoever, of any of Sellers or their Subsidiaries against Newfound Research LLC or any of its Affiliates, and any current or former officer, director or manager, members, unitholder or other equity holder thereof; and

(r) those assets listed on Schedule 2.2.

Section 2.3 Assumption of Liabilities. On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser shall assume, and shall timely perform and discharge in accordance with their respective terms, the following Liabilities of Sellers (collectively, the "Assumed Liabilities"):

(a) all Liabilities incurred after the Closing Date Effective Time under the Purchased Contracts;

(b) all of the Cure Amounts;

(c) all Liabilities specifically assumed by Purchaser pursuant to Article IX;

(d) all Transfer Taxes applicable to, and imposed solely by reason of, the transfer of the Purchased Assets pursuant to this Agreement; and

(e) those Liabilities listed on Schedule 2.3.

Section 2.4 Excluded Liabilities. Purchaser shall not assume and shall be deemed not to have assumed, and Sellers shall be solely and exclusively liable with respect to, any Liabilities of each Seller other than the Assumed Liabilities (collectively, the "Excluded Liabilities"). For the avoidance of doubt, the Excluded Liabilities include the following:

(a) all Liabilities arising out of Excluded Assets, including the Excluded Contracts;

(b) all Liabilities of any Seller for any Taxes (regardless of whether such Liability arises out of any law, regulation or contract, and regardless of whether any other Person also is or may be liable for such Taxes); (ii) all Liabilities of any direct or indirect owner of

Equity Interests in any Seller for Taxes; (iii) all Liabilities of any employee or independent contractor of any Seller for Taxes; (iv) all Liabilities for any Taxes relating to any business or assets (including without limitation any Purchased Assets) of any Seller for any Tax period (or portion of a Tax period) ending on or before the Closing Date;

(c) all Liabilities relating to amounts required to be paid by Sellers hereunder;

(d) except to the extent specifically provided in Article IX, all Liabilities arising out of, relating to or with respect to the employment or performance of services, or termination of employment or services by any Seller of any individual on or before the Closing Date;

(e) all Liabilities arising from or relating to the SEC Related Actions;

(f) all Liabilities arising, occurring or accruing in respect of any matter, event, occurrence, action, failure to act or circumstance that occurred or existed prior to the Closing Date Effective Time, including without limitation all such Liabilities arising under tort, contract, violation of law, fraud, misrepresentation, non-disclosure, misleading disclosure or any other theory of law of any nature or type whatsoever; and

(g) all Liabilities arising from or in connection with the Bankruptcy Case not expressly assumed by Purchaser herein

Section 2.5 Assignment of Contracts; Cure Amounts and Purchased Contracts; Deemed Consent.

(a) At Closing and pursuant to Section 365 of the Bankruptcy Code and the Sale Order, Sellers shall assume and assign to Purchaser, and Purchaser shall assume from Sellers, the Purchased Contracts subject to the terms hereof.

(b) The cure costs, whether or not determined by the Bankruptcy Court, if any, (i) necessary to cure all defaults, if any, or to pay any actual or pecuniary losses that have resulted from such defaults under the Purchased Contracts, and (ii) which are set forth on Schedule 2.5 prepared in accordance with Section 2.5(c) shall be paid or payable by Purchaser (such amounts, the "Cure Amounts").

(c) On or before the Effective Date, Sellers have Delivered Schedule 2.5 which provides the Cure Amounts derived from Sellers records for Contracts with Customers that to the Knowledge of Seller Purchaser intends to be Purchased Contracts. Within 14 days after the Effective Date, Purchaser shall deliver to Sellers an updated Schedule 1.1(e) and an updated Schedule 1.1(a) to identify, as of such date, the Contracts Purchaser intends to be Purchased Contracts and the Contracts Purchaser intends to be Excluded Contracts. Prior to the hearing before the Bankruptcy Court to consider the entry of the Bidding Procedures Order, Sellers shall provide to Purchaser an updated Schedule 2.5 that sets forth the Cure Amounts for Contracts set forth in the updated Schedule 1.1(e), based on Sellers' records. Schedule 1.1(e) shall be amended from time to time at the written direction of Purchaser by the addition to or subtraction from such schedule of any Contract identified by Purchaser up to the date of the Sale Hearing or, in the case of any Contract for which a contract party objects to an identified Cure

Amount, forty-eight (48) hours after the Bankruptcy Court enters an order providing a cure amount different from the one set forth on Schedule 2.5, even if such 48-hour period expires after the Sale Hearing. Any Contract removed from Schedule 1.1(e) in accordance with this section shall be deemed an Excluded Contract.

(d) For all purposes of this Agreement (including all representations and warranties of Sellers contained herein), Sellers shall be deemed to have obtained all required consents in respect of the assignment of any Purchased Contract (other than AUA Consents) and to have cured all defaults thereunder if, and to the extent that, pursuant to Sale Order, Sellers are authorized and directed to assume and assign the Purchased Contracts to Purchaser pursuant to Section 365 of the Bankruptcy Code.

Section 2.6 AUA Consents.

(a) Commencing the day after the entry of the Sale Order or such other time as mutually agreed to by Purchaser and Sellers, Sellers shall use their best efforts to receive from, or provide to (to the extent a Sellers is expressly permitted by a particular Contract to assign its rights and obligations under such Contract by provision of written notice to the counterparty thereto if such counterparty does not object in writing (any such Contract, a "Negative Consent Contract")) the relevant Clients the AUA Consents. Upon the receipt (and not until such receipt) by a Seller from a Customer of an executed AUA Consent or of Negative Consent (as hereinafter defined) from a particular Client which complies with the preceding sentence, the relevant AUA Consent or Negative Consent, as the case may be, shall be deemed obtained by Sellers under this Agreement. The form and substance of each AUA Consent must be reasonably satisfactory to the Purchaser and Purchaser will within five (5) Business Days prior the Auction provide a form of AUA Consent for a Negative Consent and a form of AUA Consent for all other AUA Consents. Each AUA Consent must be received from or provided to the Client, as applicable, in writing; provided, however, that with respect to a Negative Consent Contract, the Client shall be deemed to consent to the assignment thereof to Purchaser if such Client does not provide written notice of its objection to such assignment within thirty (30) days after Seller has sent an AUA Consent to such Client (the "Consent Period") (failure of a Client to provide such a written notice of objection, a "Negative Consent"). Prior to the Closing Date, the Sellers shall deliver on a weekly basis by the Monday next following the end of each week to the Purchaser a written list of all Clients, and their respective amounts of Closing Date Assets Under Advisement as of the end of such week, whose AUA Consents have been obtained, together with a copy of such AUA Consent, together with a written list of all Clients who shall have refused to provide an AUA Consent and their respective amounts of Assets Under Advisement. A copy of each AUA Consent obtained by Sellers shall promptly be provided to Purchaser and delivered to Purchaser at Closing.

(b) Sellers agree to deliver to Purchaser on or after the Closing AUA Date but prior to the second Business Day preceding the Closing Date a schedule stating the amount of Closing Date Assets Under Advisement per Client and the market value of each investment in which any Assets Under Advisement is invested as reasonably determined as of the Closing AUA Date. At the same time, Sellers shall deliver to Purchaser a certification by an officer of Parent stating that the list of Clients on such schedule is true and complete, each of the Clients on such schedule that an AUA Consent has been received by such Client or given by Sellers, as

applicable, any of such Clients that has revoked an AUA Consent or which has given written notice of termination of any Seller's service, and that the market values set forth on such schedule as to each investment shall have been determined on the basis of reasonable valuation assumptions and practices consistent with the assumptions and practices regularly applied by the relevant Seller in the Ordinary Course of Business.

(c) After an AUA Consent has been obtained by Sellers, Purchaser may, after providing prior written notice to Sellers, inquire from (i) any Client or (ii) any custodian of the Clients' assets, to the extent applicable, in either case, that has provided an AUA Consent, the Assets Under Advisement for such Client as of the end of the most recently completed calendar month.

(d) If a Negative Consent or other AUA Consent is obtained after the Closing Date Effective Time, but prior to the expiration of the Consent Period, the AUA Consent for such Client shall be deemed obtained by Sellers under this Agreement and the Contract associated with such AUA Consent shall be deemed a Purchased Contract under this Agreement and assumed and assigned to Purchaser in accordance with the terms of this Agreement and the Sale Order.

Section 2.7 Further Conveyances; Nonassignable Assets.

(a) From time to time following the Closing and at the sole cost and expense of Purchaser (provided, however, that Purchaser shall not be required to compensate Sellers or their employees for the expenditure of an immaterial amount of time by such parties to comply with this Section 2.7(a)), Sellers and Purchaser shall, and shall use commercially reasonable efforts to cause their respective Affiliates to, execute, acknowledge and deliver all such further conveyances, notices, assumptions and such other instruments, and shall take such further actions as may be reasonably necessary or appropriate to assure fully to Purchaser and its successors or assigns, all of the properties, rights, titles, interests, estates, remedies, powers and privileges intended to be conveyed to Purchaser under this Agreement and the Seller Documents and to assure fully to Sellers and its Affiliates and their successors and assigns, the assumption of the liabilities and obligations intended to be assumed by Purchaser under this Agreement, the Purchaser Documents and the Seller Documents, and to otherwise make effective the transactions contemplated hereby and thereby. Notwithstanding the foregoing, nothing in this section or this Agreement (including Section 8.7) shall require Sellers to remain a validly existing entity beyond the Closing Date or to require Sellers or Purchaser take any action, perform any obligations, or comply with any terms or covenants set forth in this Section after the Closing Date if Sellers' corporate existence has ceased or has been cancelled, except that Sellers shall maintain their respective corporate or other organization existence after the Closing Date to the extent necessary to enable Sellers to perform their obligations hereunder.

(b) Nothing in this Agreement, the Seller Documents nor the Purchaser Documents, nor the consummation of the Transactions shall be construed as an attempt or agreement to assign any Purchased Assets which by their terms or by applicable Law are nonassignable without the consent of a Third-Party or a Governmental Body or are cancelable by a Third-Party in the event of an assignment without consent (the "Nonassignable Assets") unless and until such consent shall have been obtained or the Bankruptcy Court has authorized such

assignment without such consent (other than in the case of an AUA Consent, which shall be governed by Section 2.6). When and if any such consents are obtained, to the extent permitted by applicable Law and the terms of the applicable Nonassignable Asset, the assignment of the Nonassignable Asset subject thereto shall become effective automatically as of the Closing Date, without further action on the part of any party. The parties agree to use their commercially reasonable efforts to obtain on a timely basis the consents required to assign the Nonassignable Assets, *provided, however*, that such efforts shall not require any Seller or Purchaser or any of their respective Affiliates to incur any expenses or Liabilities or provide any financial accommodation. No Seller shall be obligated to remain secondarily or contingently liable for any Assumed Liability in order to obtain such consent. In the event consents to the assignment of a Nonassignable Asset (other than Contracts for the provision of investment advisory services) cannot be obtained or the Bankruptcy Court has not authorized such assignment without such consent, at Purchaser's election with respect to any Contract for which consent has not been obtained, one of the following two shall occur upon written notice from Purchaser to Sellers: (i) to the extent permitted by applicable Law and the terms of the applicable Nonassignable Asset, such Nonassignable Asset shall be held from and after the Closing Date, by Sellers in trust for Purchaser and the covenants and obligations thereunder shall, at the sole and exclusive election in writing by Purchaser at the time, be performed by Purchaser in the name of Sellers and all benefits, obligations and liabilities existing thereunder shall be for Purchaser's account and shall be deemed an Assumed Liability under this Agreement; or (ii) such Contract shall not be assigned to Purchaser and shall be deemed an Excluded Contract hereunder. For the avoidance of doubt, the Parties agree that this Section 2.7 does not apply to any Contract that is subject to an AUA Consent, the obtaining of AUA Consents being governed solely by Section 2.6 of this Agreement.

Section 2.8 Bulk Sales Laws. Subject to entry of the Sale Order, Purchaser hereby waives compliance by Sellers with the requirements and provisions of any "bulk-transfer" Laws of any jurisdiction that may otherwise be applicable with respect to the sale and transfer of any or all of the Purchased Assets to Purchaser.

ARTICLE III

CONSIDERATION

Section 3.1 Consideration and Closing Payment Determination.

(a) *Consideration.* The aggregate consideration for the Purchased Assets shall be (a) an amount in cash equal to (i) the Closing Payment, plus (ii) the Investment In Hedge Fund Amount (solely if the requisite number of LP consents is obtained in accordance with Section 8.3), plus (iii) the Investment In Seeded Strategies Amount, plus or minus (iv) the Fee Adjustment Amount, plus or minus (v) the Adjustment Amount plus (vi) the Initial Earn-out Payment, plus (vii) the Final Earn-Out Payment (collectively, the "Purchase Price"), and (b) the assumption of the Assumed Liabilities.

(b) *Closing Payment Determination.* The amount of the payment that will be made by Purchaser to Sellers at the Closing, in accordance with Section 3.3, shall be determined

as follows (the "Closing Payment"). All amounts referenced in this clause (b) shall be determined as provided in the definition of Closing Date Assets Under Advisement:

(i) If the Closing Date Assets Under Advisement is equal to or greater than \$2,000,000,000, then the Closing Payment shall be \$5,000,000.

(ii) If the Closing Date Assets Under Advisement is equal to or greater than \$1,500,000,000 but less than \$2,000,000,000, then the Closing Payment shall be equal to the amount determined using the following formula: $\text{Closing Payment} = \$5,000,000 - [0.6\% * (\$2,000,000,000 - \text{Closing Date Assets Under Advisement})]$.

(iii) If the Closing Date Assets Under Advisement is equal to or greater than \$1,000,000,000 but less than \$1,500,000,000, then the Closing Payment shall be equal to the amount determined using the following formula: $\text{Closing Payment} = \$2,000,000 - [0.2\% * (\$1,500,000,000 - \text{Closing Date Assets Under Advisement})]$.

Notwithstanding any provision in this Agreement, in no event shall the Closing Payment, as adjusted by the Adjustment Amount, be less than \$1,000,000. For the avoidance of doubt, the term "Closing Payment" does not include the Investment In Hedge Fund Amount (if any) or the Investment In Seeded Strategies Amount (if any).

Section 3.2 Purchase Price Deposit. Upon the execution of this Agreement, pursuant to the terms of the Escrow Agreement, Purchaser shall immediately deposit with Richards, Layton & Finger, P.A., in its capacity as escrow holder (the "Escrow Holder"), Five Hundred Thousand Dollars (\$500,000) by wire transfer of immediately available funds (the "Escrowed Funds"), to be released by the Purchaser Escrow Holder and delivered to either Purchaser or Sellers, in accordance with the provisions of the Purchaser Escrow Agreement. Pursuant to the Purchaser Escrow Agreement, Escrowed Funds (together with all accrued investment income thereon) shall be distributed as follows:

(a) if the Closing shall occur, the Escrowed Funds and all accrued investment income thereon shall be applied towards the Closing Payment payable by Purchaser to Sellers under Section 3.3;

(b) if this Agreement is terminated by Sellers pursuant to Section 4.4(f), the Escrowed Funds, together with all accrued investment income thereon, shall be delivered to Sellers; or

(c) if this Agreement is terminated for any reason other than by Sellers pursuant to Section 4.4(f), the Escrowed Funds, together with all accrued investment income thereon, shall in each case be returned to Purchaser.

Section 3.3 Payment of Purchase Price.

(a) On the Closing Date, Purchaser shall pay (i) the Closing Payment plus (ii) the Investment In Hedge Fund Amount (solely if the requisite number of LP consents is obtained in accordance with Section 8.3) plus (iii) the Investment In Seeded Strategies Amount less (iv) the Escrowed Funds (which shall be released to Sellers by the Escrow Holder) to Sellers less (v)

the Closing Escrow (if any), plus or minus (vi) the Fee Adjustment Amount, which shall be paid by wire transfer of immediately available funds into one or more accounts designated by Sellers.

(b) At the Closing, if the Closing Date Assets Under Advisement are greater than \$1,000,000,000, pursuant to the terms of the Closing Escrow Agreement, Purchaser shall deposit with Closing Escrow Holder, within three (3) business days of the determination of the amount of Closing Date Assets Under Advisement, the lesser of (x) twenty percent (20%) of the Closing Payment or (y) the difference between the Closing Payment and \$1,000,000, by wire transfer of immediately available funds (the "Closing Escrow"), to be released by the Escrow Holder and delivered to either Purchaser or Sellers, in accordance with the provisions of the Closing Escrow Agreement. The Closing Escrow Agreement shall terminate at upon the distribution of all of the Closing Escrow in accordance with the terms of the Closing Escrow Agreement. The Parties hereby agree that if the Closing Date Assets Under Advisement are equal to or less than \$1,000,000,000, there will be no Closing Escrow. Pursuant to the Closing Escrow Agreement, the Closing Escrow (together with all accrued investment income thereon) shall be distributed as follows:

(i) if the determination of the Adjustment Amount requires a payment to Purchaser pursuant to Section 3.6(d), the portion of the Closing Escrow (if any) equal to the Adjustment Amount and all accrued investment income thereon shall be delivered to Purchaser to the extent of amounts owed by Seller to Purchaser pursuant to Section 3.6(d), any remaining portion of the Closing Escrow shall be delivered to Sellers; or

(ii) if the determination of the Adjustment Amount requires a payment to Sellers pursuant to Section 3.6(d), the Closing Escrow (if any) and all accrued investment income thereon shall be delivered, and the Adjustment Amount shall paid by Purchaser by wire transfer in immediately available funds, to one or more accounts designated by Sellers to satisfy amounts owed to Sellers by Purchaser pursuant to Section 3.6(d).

Section 3.4 Earn-Out.

(a) *Nature of Earn-Out.*

(i) Within five (5) Business Days of a binding and conclusive determination of the Eligible Revenue for the Initial Earn-Out Period in accordance with Section 3.4(c), Purchaser will pay to Sellers, in immediately available funds by wire transfer to an account or accounts designated in writing by Sellers, the Initial Earn-Out Payment.

(ii) Within five (5) Business Days of a binding and conclusive determination of the Eligible Revenue for the Final Earn-Out Period in accordance with Section 3.4(c), Purchaser will pay to Sellers, in immediately available funds by wire transfer to an account or accounts designated in writing by Sellers, the Final Earn-Out Payment.

(b) *Earn-Out Definitions and Calculations.* As used in this Section 3.4, the following terms shall mean or be calculated, as applicable, as follows:

"Eligible Revenue" means (a) for determining the Initial Earn-Out Payment, the aggregate revenue of Purchaser and its Affiliates directly accruing, derived, generated or arising

from the Investment Strategy or Investment Strategy Derivation, for the ninety day period ending on the last day of the calendar month preceding or coterminous with the last day of the Initial Earn-Out Period if the Initial Earn-Out Period ends on the last day of the calendar month, and (b) for determining the Final Earn-Out Payment, the aggregate revenue of Purchaser and its Affiliates directly accruing, derived, generated or arising from the Investment Strategy or Investment Strategy Derivation, for the ninety day period ending on the last day of the calendar month preceding or coterminous with the last day of the Final Earn-Out Period if the Final Earn-Out Period ends on the last day of the calendar month, in each case, calculated in accordance with GAAP applied consistently with Sellers past practice prior to the Closing and Schedule 3.4 hereto. For avoidance of doubt, notwithstanding anything to the contrary contained herein, Eligible Revenue shall not include revenue of Purchaser or its Affiliates directly arising from any investment strategy developed or utilized by Purchaser or its Affiliates that is not based on and does not utilize the Investment Strategy or the Investment Strategy Derivation.

"Final Earn-Out Payment" means the amount determined using the following formula:

$$[(\text{Eligible Revenue} * 4) * \text{Revenue Multiple}] - \text{the Closing Payment} - \text{Initial Earn-Out Payment}$$

"Final Earn-Out Period" means the period commencing on the Closing Date and ending on the second (2nd) year anniversary of the Closing Date.

"Initial Earn-Out Payment" means the amount determined using the following formula:

$$[((\text{Eligible Revenue} * 4) * \text{Revenue Multiple}) - \text{the Closing Payment}] / 2$$

"Initial Earn-Out Period" means the period commencing on the Closing Date and ending on the first (1st) year anniversary of the Closing Date.

"Revenue Multiple" means the Revenue Multiple set forth below for Assets Under Advisement at the end of the Initial Earn-Out Period or the Final Earn-Out Period, as applicable.

<u>Assets Under Advisement</u>	<u>Revenue Multiple</u>
$\$0.00 \leq \text{AUA} < \$1,000,000,000$	0.0
$\$1,000,000,000 \leq \text{AUA} < \$2,000,000,000$	1.0
$\$2,000,000,000 \leq \text{AUA} < \$3,000,000,000$	1.2
$\$3,000,000,000 \leq \text{AUA} < \$4,000,000,000$	1.3
$\$4,000,000,000 \leq \text{AUA} < \$5,000,000,000$	1.4
$\$5,000,000,000 \leq \text{AUA}$	1.5

(c) *Time of Determination.*

(i) The Eligible Revenue shall be determined within thirty (30) days of the last day of the Initial Earn-Out Period or the Final Earn-Out Period, as applicable, by Purchaser. Copies of its report setting forth its computation of the Eligible Revenue shall be submitted in writing to Sellers and, unless of Sellers notify Purchaser within thirty (30) days after receipt of the report that it objects to the computation of the Eligible Revenue set forth therein, the report shall be binding and conclusive for the purposes of this Agreement. To verify the computation of the Eligible Revenue made by Purchaser, Sellers shall have access to the books and records of the Purchaser and its Affiliates during regular business hours (other than any legally privileged information) that are reasonably relevant to the determination of Eligible Revenue and to Purchaser's workpapers, Purchaser's and its Affiliates' employees during regular business hours until a binding and conclusive determination of the Eligible Revenue for the Initial Earn-Out Period or the Final Earn-Out Period, as applicable, has been made in accordance with this Section 3.4(c).

(ii) If Sellers notify the Purchaser in writing within thirty (30) days after receipt of Purchaser's report that it objects to the computation of Eligible Revenue set forth therein, the binding and conclusive amount of Eligible Revenue for the Initial Earn-Out Period or the Final Earn-Out Period to which such report relates shall be determined by negotiation between Sellers and Purchaser. If Sellers and Purchaser are unable to reach agreement within fifteen (15) days after such notification, the determination of the amount of Eligible Revenue for the period in question shall be submitted to the Special Accountants for determination, whose determination shall be binding and conclusive on the parties. The Special Accountants shall have thirty (30) days from the date that the Special Accountants are engaged by Sellers and Purchaser to make the determination of the Eligible Revenue for the period in question. If the Special Accountants determine that the Eligible Revenue for the period in question has been understated by five (5%) percent or more, then Purchaser shall pay the Special Accountants' fees, costs and expenses. If the Eligible Revenue has not been understated or has been understated by less than five (5%) percent, then Sellers shall pay the Special Accountants' fees, costs and expenses.

(d) *Purchaser's Obligations Regarding Earn-Out.* Commencing on the Effective Date and continuing until the expiration of the Final Earn-Out Period (or such earlier date if the rights of Sellers to the Initial Earn-Out Payment or the Final Earn-Out Payment have terminated in accordance with this Agreement or if Closing does not occur):

(i) Neither Purchaser nor any of its Affiliates shall sell, transfer, assign, encumber or otherwise convey, or abandon, use of the Investment Strategies.

(ii) Neither Purchaser nor any of its Affiliates shall, directly or indirectly, (A) affirmatively request or encourage any Protected Client (as hereinafter defined) to discontinue its relationship with Purchaser or any of its Affiliates or to withdraw any of its capital from any Investment Product (as hereinafter defined) managed or advised by Purchaser or its Affiliates pursuant to a Purchased Contract, (B) modify or amend a Purchased Contract with a Protected Client in a way that could reasonably be expected to adversely affect the Initial Earn-Out Payment or the Final Earn-Out Payment, or (C) terminate any Purchased Contract with a Protected Client. Notwithstanding the preceding sentence or anything to the contrary contained

herein, Purchaser shall be expressly permitted at all times to solicit any Client or investor with respect to a prospective investment in any Investment Product, so long as Purchaser does not affirmatively request or encourage in connection with such solicitation that a Protected Client discontinue its relationship with Purchaser or its Affiliates or withdraw any of its capital from any Investment Product managed or advised by Purchaser or its Affiliates pursuant to a Purchased Contract. For purposes hereof: (i) the term "Protected Client" shall mean a Client whose relationship with Purchaser or its Affiliates is governed by a Purchased Contract that remains in full force and effect; and (ii) the term "Investment Product" shall mean any managed account, collective investment vehicle, fund, or other investment product of any nature whatsoever.

(iii) In the event of the consummation of any of the following transactions (a "Change of Control Transaction") with respect to Purchaser or any entity owning, directly or indirectly, Purchaser: (A) the sale or other similar disposition of all or substantially all of the assets of such entity, or (B) the consolidation or merger of such entity, or the sale or other transfer of equity securities of such entity, in each of the foregoing cases in one transaction or a series of related transactions, resulting in the holders of such entity's outstanding equity securities immediately prior to such transaction beneficially holding less than a majority of such entity's outstanding equity securities or, in the case of an asset sale or a consolidation or merger where such entity is not the surviving entity, holding less than a majority of the voting securities or economic interests in the acquiring or surviving entity immediately following such transaction, at the election of Sellers or their Permitted Assigns (which election shall be made on behalf of all of the Sellers or their Permitted Assigns in order to be effective), Purchaser shall either (x) pay to Sellers the full amount of the Initial Earn-Out Payment and the Final Earn-Out Payment (such payments to be calculated based on the Assets Under Advisement as of the day immediately prior to the consummation of the Change of Control Transaction or (y) cause the acquiring or surviving entity to assume the Purchaser's obligations under this Section 3.4. In order to effectuate the election set forth in this paragraph (iii), Purchaser shall provide Seller with written notification of the Change of Control Transaction at least fourteen (14) days prior to the Closing thereof and disclose the name of the acquiring company and, if requested, its financial information (upon the execution of a non-disclosure agreement by Sellers).

(iv) Purchaser shall (A) provide itself and any of its Affiliates in any way using the Investment Strategies after the Closing with, or (B) ensure itself and any of its Affiliates in any way using the Investment Strategies after the Closing access to, financial, operational, administrative, marketing, advertising and other business support reasonably required to support such business activities as determined by the Purchaser in its good faith business judgment in light of all relevant facts and circumstances.

(v) Purchaser and its Affiliates shall act in good faith and the spirit of fair dealing, and use their respective commercially reasonable efforts to (A) support the growth of their businesses utilizing the Investment Strategies worldwide, (B) seek to preserve the image and reputation of the Investment Strategies, and (C) maximize the Eligible Revenues.

(vi) Purchaser and its Affiliates shall maintain financial records necessary to calculate the Initial Earn-Out Payment and the Final Earn-Out Payment in

accordance with this Section 3.4 at least until the determination of such amounts as provided above.

(vii) Purchaser shall use commercially reasonable efforts to receive prompt payment of all fees, commissions and other payments which could constitute Eligible Revenues but shall not under any circumstances be obligated to commence or pursue legal action or credit reporting in respect thereof.

Section 3.5 Fee Adjustment Amount. Not later than three (3) Business Days prior to the Closing Date, the Sellers shall deliver to the Purchaser an estimated statement of the amounts of the Unearned Fees and the Unpaid Fees estimated as of the Closing Date, accompanied by reasonable supporting documentation and data used by Sellers to calculate such amounts. Immediately prior to Closing, Sellers and Purchaser shall unanimously agree on the amount of the Unpaid Fees at the Closing Date Effective Time and the amount of the Unearned Fees at the Closing Date Effective Time; such amounts shall be set forth on Schedule 3.5. If Sellers and Purchaser cannot agree on the amount of the Unpaid Fees at the Closing Date Effective Time and the amount of the Unearned Fees at the Closing Date Effective Time, either party may file a motion in the Bankruptcy Court seeking the Bankruptcy Court's determination of such Unpaid Fees and Unearned Fees. If the Unpaid Fees at the Closing Date Effective Time exceed the Unearned Fees at the Closing Date Effective Time, the amount such Unpaid Fees exceed the Unearned Fees shall be the "Fee Adjustment Amount" that shall be added to the Purchase Price. If the Unearned Fees at the Closing Date Effective Time exceed the Unpaid Fees at the Closing Date Effective Time, the amount such Unearned Fees exceed the Unpaid Fees shall be the "Fee Adjustment Amount" that shall be subtracted from the Purchase Price.

Section 3.6 Purchase Price Adjustment.

(a) Certain Defined Terms and Calculations.

(i) "Actual Closing Date Assets Under Advisement" means the estimated Assets Under Advisement as of the later of (i) the Closing Date or (ii) last day of the Consent Period, calculated by linear interpolation based on the Pre-Closing Date Assets Under Advisement and Post-Closing Assets Under Advisement.

(ii) "Pre-Closing Assets Under Advisement" means the Assets Under Advisement as of last day of the end of the calendar month immediately preceding the later of (i) the Closing Date or (ii) last day of the Consent Period.

(iii) "Post-Closing Assets Under Advisement" means the Assets Under Advisement as of last day of the end of the calendar month immediately following the later of (i) the Closing Date or (ii) last day of the Consent Period.

(b) No later than thirty (30) days after the month end following the expiration of the Consent Period, Purchaser shall prepare and deliver to Sellers its calculation of the Actual Closing Date Assets Under Advisement (the "Initial Calculations") accompanied by reasonable supporting documentation and data used by Purchaser to calculate the Actual Closing Date Assets Under Advisement as may be reasonably appropriate to support such calculations. If Sellers object to all or part of the Initial Calculations, a Seller must deliver to Purchaser written

notice of such objections (the "Seller's Objection Notice") not more than fifteen (15) days after the date Sellers receive such Initial Calculations and the supporting work papers and back-up materials from Purchaser. Any Seller's Objection Notice shall specify in reasonable detail the nature and amount of any and all items in dispute, the amounts of any proposed adjustments and the basis for Sellers' proposed adjustments. If a Seller does not deliver a Seller's Objection Notice to Purchaser within such fifteen (15) day period, Sellers shall be deemed to have accepted the Initial Calculations.

(c) If a Seller timely delivers a Seller's Objection Notice to Purchaser, Purchaser and Seller shall use commercially reasonable efforts to resolve all objections relating to the Initial Calculations. If Purchaser and Sellers do not reach a final resolution of all such objections within thirty (30) days after delivery of the Seller's Objection Notice, Purchaser and a Seller shall submit all unresolved objections to the Special Accountants for resolution. Sellers and Purchaser each agree to sign a customary engagement letter with the Special Accountants. The Special Accountants shall determine only the remaining accounting related differences so submitted by Purchaser to Sellers (and not by independent review). Any documents submitted by either Purchaser or a Seller to the Special Accountants, either unilaterally or at the Special Accountants' request, shall be simultaneously submitted to the other Party. The determination of the Actual Closing Date Assets Under Advisement by the Special Accountants shall be set forth in writing and shall be conclusive and binding upon Purchaser and Sellers. Purchaser and Sellers shall share equal responsibility for the fees and expenses of the Special Accountants.

(d) If the Actual Closing Date Assets Under Advisement is greater than the Closing Date Assets Under Advisement, then Purchaser shall pay to Sellers an amount equal to the difference between the Closing Payment and the amount that the Closing Payment would have been had the Actual Closing Date Assets Under Advisement been used to calculate the Closing Payment for the Closing. If the Actual Closing Date Assets Under Advisement is less than the Closing Date Assets Under Advisement, then Sellers shall pay to Purchaser, to the extent of the Closing Escrow, an amount equal to the difference between the Closing Payment and the amount that the Closing Payment would have been had the Actual Closing Date Assets Under Advisement been used to calculate the Closing Payment for the Closing. Any amount payable to Sellers pursuant to this Section 3.6(d) shall be paid within five (5) Business Days after determination of the amount that the Actual Closing Date Assets Under Advisement. Any amount payable to Purchaser pursuant to this Section 3.6(d) shall be paid within five (5) Business Days after determination of Actual Closing Date Assets Under Advisement. Payments made pursuant to this Section 3.6(d) (the "Adjustment Amount") shall be deemed adjustments to the Purchase Price.

ARTICLE IV

CLOSING AND TERMINATION

Section 4.1 Closing Date. Subject to the satisfaction of the conditions set forth in Section 10.1, Section 10.2 and Section 10.3 (or the waiver thereof by the Party entitled to waive that condition), the closing of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities provided for in Article II (the "Closing") shall take place at the offices of Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington,

Delaware 19801 (or at such other place as Sellers and Purchaser may designate in writing) at 10:00 a.m. (eastern time) on the date that no later than two (2) Business Days following the satisfaction or waiver of the conditions set forth in Article X (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions), unless another time or date, or both, are agreed to in writing by the Parties. The date on which the Closing shall be held is referred to in this Agreement as the "Closing Date." Unless otherwise agreed by the Parties in writing, the Closing shall be deemed effective and all right, title and interest of Sellers to be acquired by Purchaser hereunder including the Assumed Liabilities shall be considered to have passed to Purchaser as of 12:00 a.m. (eastern time) on the Closing Date (the "Closing Date Effective Time").

Section 4.2 Deliveries by Sellers. At the Closing, Sellers shall deliver, or cause to be delivered, to Purchaser:

- (a) a duly executed bill of sale in a form acceptable to Purchaser and Sellers;
- (b) (i) a duly executed assignment and assumption agreement in a form acceptable to Purchaser and Sellers, and (ii) duly executed assignments of Purchased Intellectual Property, in forms suitable for recording in the U.S. Patent and Trademark Office and the U.S. Copyright Office, as applicable, and duly executed general assignments of all other Purchased Intellectual Property, if any;
- (c) the officer's certificate required to be delivered pursuant to Section 10.1(a) and Section 10.1(b);
- (d) the information and certifications required by Section 2.6(b) and
- (e) true and complete copies of the AUA Consents, along with a certification from a duly appointed representative of Sellers stating that all Negative Consents obtained by the Closing have been properly obtained in accordance with this Agreement; and
- (f) a certified copy of the Sale Order, as entered by the Bankruptcy Court.

Section 4.3 Deliveries by Purchaser. At the Closing, Purchaser shall deliver, or cause to be delivered, to Sellers:

- (a) the Closing Payment (less the Escrowed Funds), in immediately available funds, as set forth in Section 3.3;
- (b) a duly executed assignment and assumption agreement in a form acceptable to Purchaser and Sellers; and
- (c) the officer's certificate required to be delivered pursuant to Section 10.2(a) and Section 10.2(b).

Section 4.4 Termination of Agreement. This Agreement may be terminated prior to the Closing as follows:

(a) by Sellers or Purchaser, if the Closing shall not have occurred by the close of business on 45th day following the entry of the Sale Order (the "Termination Date"); provided, however, that, if the Closing shall not have occurred due to the conditions to Closing set forth in Section 10.3 remaining unsatisfied or having not been waived and if all other conditions to the respective obligations of the Parties to close hereunder that are capable of being fulfilled by the Termination Date shall have been so fulfilled or waived, then no Party may terminate this Agreement prior to 60th day following the entry of the Sale Order; provided, further, that if the Closing shall not have occurred on or before the Termination Date due to a material breach of any representations, warranties, covenants, agreements or obligations contained in this Agreement by Purchaser or Sellers, then the breaching Party may not terminate this Agreement pursuant to this Section 4.4(a);

(b) by mutual written consent of Sellers and Purchaser;

(c) by Purchaser, if any of the conditions to the obligations of Purchaser set forth in Sections 10.1 or 10.3 shall have become incapable of fulfillment other than as a result of a breach by Purchaser of any covenant, agreement or obligation contained in this Agreement, and such condition is not waived by Purchaser;

(d) by Sellers, if any condition to the obligations of Sellers set forth in Sections 10.2 or 10.3 shall have become incapable of fulfillment other than as a result of a breach by Sellers of any covenant, agreement or obligation contained in this Agreement, and such condition is not waived by Sellers;

(e) by Purchaser, if there shall be a breach by Sellers of any representation or warranty, or any covenant, agreement or obligation contained in this Agreement which would result in a failure of a condition set forth in Sections 10.1 or 10.3 and which breach cannot be cured or has not been cured by the earlier of (i) ten (10) Business Days after the giving of written notice by Purchaser to Seller of such breach or (ii) the Termination Date;

(f) by Sellers, if there shall be a breach by Purchaser of any representation or warranty, or any covenant, agreement or obligation contained in this Agreement which would result in a failure of a condition set forth in Sections 10.2 or 10.3 and which breach cannot be cured or has not been cured by the earlier of (i) ten (10) Business Days after the giving of written notice by Sellers to Purchaser of such breach or (ii) the Termination Date;

(g) by Sellers or Purchaser, if there shall be in effect a final nonappealable Order of a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the Transactions; or

(h) by Sellers or Purchaser, if (i) any Seller enters into a definitive agreement with respect to a Competing Bid and the Bankruptcy Court enters an order approving a Competing Bid or (ii) the Bankruptcy Court enters an order that otherwise precludes the consummation of the Transactions on the terms and conditions set forth in this Agreement, subject to any limitations set forth in Section 7.3 and the Bidding Procedures Order.

Section 4.5 Procedure Upon Termination. In the event of termination by Purchaser or Sellers, or both, pursuant to Section 4.4, written notice thereof shall forthwith be given to the

other Party or Parties, and this Agreement shall terminate, and the purchase of the Purchased Assets hereunder shall be abandoned, without further action by Purchaser or Sellers. If this Agreement is terminated as provided herein, each Party shall redeliver all documents, work papers and other material of any other Party relating to the Transactions, whether so obtained before or after the execution hereof, to the Party furnishing the same.

Section 4.6 Effect of Termination.

(a) In the event that this Agreement is validly terminated as provided herein, then each of the Parties shall be relieved of its duties, covenants, agreements and obligations arising under this Agreement after the date of such termination and such termination shall be without liability to Purchaser or Sellers; provided, however, that the covenants, agreements and obligations of the Parties set forth in Section 3.2, this Section 4.6, Section 8.6 through Section 8.8, Section 11.3 and Article XIII shall survive any such termination and shall be enforceable hereunder.

(b) Subject to Article XI, nothing in this Section 4.6 shall relieve Purchaser or Sellers of any liability for a breach of this Agreement prior to the date of termination or the Closing; provided that Sellers' liability hereunder for any and all such breaches (other than for any failure of Sellers to perform their obligation to return or cause a return of the Escrowed Funds to Purchaser in accordance with Section 3.2 hereof or any other agreement between Sellers and Purchaser related to the Escrowed Funds, which obligation shall under no circumstances be affected by any Pre-closing Liability Cap or any other limitation herein) shall not exceed in the aggregate the Pre-Closing Liability Cap except for Losses caused by failure of Sellers to return or cause a return to Purchaser the Escrowed Funds in accordance with the terms hereof or any other agreement related to the Escrowed Funds. The Losses recoverable by the non-breaching Party shall include all attorneys' fees reasonably incurred by such Party in connection with the Transactions, provided that in no event shall Purchaser be entitled to recover Losses (including any attorneys' fees reasonably incurred by Purchaser) in excess of the Pre-closing Liability Cap. The parties hereto agree that the Pre-closing Liability Cap is an amount which is reasonable in the light of the anticipated or actual harm caused by any such breach contemplated above (other than any breach related to the failure of Purchaser to receive a return of the Escrowed Funds in accordance with Section 3.2 or any other agreement related to the Escrowed Funds), the difficulties of proof of loss arising from such breach, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy for such breach.

(c) The Confidentiality Agreement shall survive any termination of this Agreement and nothing in this Section 4.6 shall relieve Purchaser or Sellers of its obligations under the Confidentiality Agreement.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF SELLERS

Sellers hereby jointly and severally represent and warrant to Purchaser that:

Section 5.1 Organization and Good Standing. Each Seller is duly organized or formed, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation and has all requisite power and authority to own, lease and operate its properties and to carry on its business as now conducted. Each Seller is duly qualified or authorized to do business and is in good standing under the laws of each jurisdiction in which it leases real property or in which the conduct of its business or the ownership of its property requires such qualification or authorization.

Section 5.2 Equity Interests; Capitalization. Schedule 5.2 accurately sets forth the ownership structure and capitalization of each of the Seller Subsidiaries as of the Effective Date.

Section 5.3 Authorization of Agreement. Upon the entry of the Sale Order, each Seller has all necessary power, and authority to execute and deliver this Agreement and each other agreement, document, instrument or certificate contemplated by this Agreement to which it is a party or to be executed by any Seller in connection with the consummation of the Transactions (the "Seller Documents"), to perform its obligations hereunder and thereunder and to consummate the transaction contemplated hereby and thereby. Upon the entry of the Sale Order, the execution, delivery and performance by each Seller of this Agreement and the Seller Documents to which such Seller is a party and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate or limited liability company action, as applicable, on the part of such Seller. This Agreement has been, and each of the Seller Documents will be at or prior to the Closing, duly and validly executed and delivered by each Seller party thereto and (assuming the due authorization, execution and delivery by the other parties hereto and thereto, the entry of the Sale Order and the entry of the Bidding Procedures Order) this Agreement constitutes, and the Seller Documents when so executed and delivered will constitute, legal, valid and binding obligations of such Seller, enforceable against such Seller in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

Section 5.4 Conflicts; Consents of Third Parties.

(a) Subject to the entry of the Sale Order and except as set forth on Schedule 5.4, none of the execution and delivery by each Seller of this Agreement or the Seller Documents to which such Seller is a party, the consummation of the transactions contemplated hereby or thereby, or compliance by Sellers with any of the provisions hereof or thereof will conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination or cancellation under any provision of (i) the Organizational Documents of Sellers; (ii) any Contract or Permit to which any of Sellers is a party or by which any of Sellers or any of its properties or assets is bound; (iii) any Order of any Governmental Body applicable to any of Sellers or any of the properties or assets of any of Sellers as of the date hereof; or (iv) any applicable Law.

(b) No consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Person or Governmental Body is required on the

part of any of Seller in connection with the execution and delivery of this Agreement or the Seller Documents to which such Seller is a party, the compliance by any Seller with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby or the taking by any Seller or of any other action contemplated hereby or thereby, except for (i) the entry of the Sale Order and the Bidding Procedures Order, or (ii) as set forth on Schedule 5.4, including such consents, waivers, approvals, authorizations or notifications identified on Schedule 5.4 under the heading "AUA Consents."

Section 5.5 Financial Statements.

(a) Sellers have delivered to Purchaser true and complete copies of the unaudited financial statements of Sellers, consisting of (i) a balance sheet for the period ending on December 31, 2014 and the related statements of income and cash flows for the 12 month period then ended, (ii) a balance sheet for the period ending on May 31, 2015 (the "Balance Sheet Date") and the related statements of income and cash flows for the 5 month period then ended (collectively, the items described in 5.4(a)(i) and (ii) shall be hereinafter referred to as the "Financial Statements"). The Financial Statements were prepared in accordance with GAAP and fairly present, in all material respects, the financial position of Sellers as of the Balance Sheet Date (subject to the absence of notes and normal year-end adjustments which are not material, either individually or in the aggregate).

Section 5.6 No Undisclosed Liabilities. None of Sellers has any liability or obligation that would be required to be disclosed on a balance sheet prepared in accordance with GAAP, except for liabilities and obligations of such Sellers (i) set forth in the Financial Statements, (ii) incurred in the Ordinary Course of Business consistent with past practice subsequent to the Balance Sheet Date, or (iii) as set forth in Schedule 5.6.

Section 5.7 Title to Purchased Assets. Except for the real property subject to the Real Property Leases, intellectual property or other property licensed to any Seller, and the personal property subject to the Personal Property Leases, and except as specifically set forth on Schedule 5.7, (a) Sellers own the Purchased Assets, and (b) at the Closing and subject to the Sale Order, Purchaser will be vested with good title to such Purchased Assets, free and clear of all Liens (other than Permitted Exceptions), to the fullest extent permissible under Section 363(f) of the Bankruptcy Code.

Section 5.8 Taxes.

(a) Except as set forth on Schedule 5.8: (i) Sellers have timely filed all Tax Returns required to be filed with the appropriate Tax Authorities in all jurisdictions in which such Tax Returns are required to be filed (taking into account any extension of time to file granted or to be obtained on behalf of Sellers); (ii) to the Knowledge of Sellers, all such Tax Returns are accurate and complete as filed; and (iii) all Taxes shown as due, or required to be shown as due, on such Tax Returns have been paid.

(b) No Seller is a foreign person within the meaning of Section 1445 of the Code, a "foreign financial institution" within the meaning of Section 1471 of the Code, or a "non-financial foreign entity" within the meaning of Section 1472 of the Code.

Section 5.9 Real Property. Schedule 5.9 sets forth a complete list of material real property and interests in real property leased by Sellers, as lessee (individually, a "Real Property Lease" and collectively, the "Real Property Leases"). Except as set forth on Schedule 5.9, no Seller has received any written notice of any default or event that with notice or lapse of time, or both, would constitute a material default by any Seller under any of the Real Property Leases. No Seller owns in fee any real property.

Section 5.10 Tangible Personal Property Leases. Schedule 5.10 sets forth all leases of personal property ("Personal Property Leases") involving annual payments in excess of \$50,000 relating to personal property used by Sellers in the Business or to which any of Sellers is a party or by which the properties or assets of any of Sellers is bound. No Seller has received any written notice of any default or event that with notice or lapse of time or both would constitute a default by any of Sellers under any of the Personal Property Leases.

Section 5.11 Intellectual Property. Each Seller owns or has rights to use all material Purchased Intellectual Property used by it in the Ordinary Course of Business. Except as set forth on Schedule 5.11, (a) the material Purchased Intellectual Property used by each Seller is not the subject of any challenge received by any of Sellers in writing and (b) none of Sellers has received any written notice of any default or any event that with notice or lapse of time, or both, would constitute a default under any material Intellectual Property License to which any of Sellers is a party.

Section 5.12 Material Contracts.

(a) Schedule 5.12(a) sets forth all of the following Contracts to which any of Sellers is a party or by which Seller is bound or by which the Purchased Assets may be bound or affected (collectively, the "Material Contracts");

(i) Contracts entered into within three (3) years prior to the Effective Date with any Affiliate or current or former officer or director of Sellers (other than Contracts made in the Ordinary Course of Business on terms generally available to similarly situated non-affiliated parties);

(ii) Contracts for the sale of any of the assets of the Business;

(iii) Contracts for the employment of any individual involving annual aggregate compensation in excess of \$125,000;

(iv) Contracts relating to incurrence of Indebtedness by any of Sellers or the making of any loans to any of Sellers, in each case involving amounts in excess of \$100,000;

(v) Contracts which involve the expenditure of more than \$50,000 in the aggregate or require performance by any party more than one (1) year from the date hereof;

(vi) Contracts involving the performance of services, delivery of goods or materials to, or payments by, any of Sellers, in each case involving amounts in excess of \$50,000 per year; or

(vii) Contracts with any customers of any of Sellers involving the performance of services, delivery of goods or materials by, or payments to any of Sellers, in each case involving amounts in excess of \$100,000 per year.

(b) Except as set forth on Schedule 5.12(b), each Material Contract is valid and binding on each Seller party thereto and, to Knowledge of Sellers, on the counterparties therein, is in full force and effect. Other than as set forth on Schedule 5.12(b), in connection with Seller's inability to pay pre-petition amounts owed under certain Material Contracts due to the commencement of the Bankruptcy Case, or the implementation of the automatic stay under Section 362 of the Bankruptcy Code, none of Sellers has received any written notice of any default or event that with notice or lapse of time or both would constitute a default by any of Sellers under any Material Contract. To the Knowledge of Seller, the Cure Costs set forth on Schedule 2.5 are accurately listed.

Section 5.13 Employee Benefits.

(a) Schedule 5.13 lists all "employee benefit plans" (as defined in Section 3(3) of and subject to ERISA) and all other material plans or agreements (other than governmental plans, statutorily required benefit arrangements and individual grant agreements) providing bonus, incentive compensation, deferred compensation, employee loan programs, change in control, pension, welfare benefit, severance, sick leave, vacation pay, salary continuation, disability, life insurance, and educational assistance as to which Sellers have any Liability for current or former employees of any of Sellers (the "Employee Benefit Plans").

(b) True, correct and complete copies of the following documents, with respect to each of the Transferred Plans have been made Delivered to Purchaser: (i) any plans and related trust documents, and all amendments thereto; (ii) the most recent Form 5500 and schedules thereto; (iii) the most recent financial statement and actuarial valuation; (iv) the most recent IRS determination letter; and (v) the most recent summary plan description (including letters or other documents updating such description).

(c) None of the Employee Benefit Plans is a "multiemployer plan" (as defined in Section 3(37) of ERISA) or is or has been subject to Sections 4063 or 4064 of ERISA, or is subject to Title IV of ERISA.

(d) Each of the Transferred Plans (other than any multiemployer plan) intended to qualify under Section 401 of the Code has been determined by the IRS to be so qualified and, to the Knowledge of Sellers, nothing has occurred with respect to the operation of any such plan which could reasonably be expected to result in the revocation of such favorable determination.

(e) Any "nonqualified deferred compensation plan" of any of the Sellers that is subject to Section 409A of the Code has been operated by such Seller at all times since January 1, 2005 in good faith compliance with Section 409A of the Code and the guidance and regulations issued thereunder. Any "nonqualified deferred compensation plan" of any of the Sellers that is exempt from the application of Code Section 409A as a "grandfathered" plan has

not been "materially modified" (within the meaning prescribed in the regulations promulgated under Code Section 409A) at any time after October 3, 2004.

Section 5.14 Labor.

(a) There is no labor or collective bargaining agreement, works council or similar agreement to which any of Sellers is a party.

(b) Except as set forth on Schedule 5.15, there are no (i) strikes, work stoppages, work slowdowns or lockouts pending or, to the Knowledge of Sellers, threatened against or involving any of Sellers, or (ii) unfair labor practice charges, grievances or complaints pending or, to the Knowledge of Sellers threatened by or on behalf of any of the Employees or former employee of any of Sellers.

Section 5.15 Litigation. Except as set forth on Schedule 5.15, and except for the Bankruptcy Case and the SEC Related Actions, there are no Proceedings pending or, to the Knowledge of Sellers, threatened against any of Sellers. As of the Closing Date, Sellers will have provided all requisite notices of the Sale Order, the Sale Hearing, the Sale Motion and the Auction to all Persons with a pending Proceeding against Sellers, that have threatened in writing a Proceeding against Sellers or, to the Knowledge of Sellers are considering commencing a Proceeding against Sellers.

Section 5.16 Compliance with Laws; Permits.

(a) Except for the SEC Related Actions, each Seller is in compliance with all material Laws applicable to the Purchased Assets or the Business. Except for the SEC Related Actions, none of Sellers has received any written notice of or been charged with the violation of any Laws.

(b) Each Seller has (i) all material Permits which are required for the operation of the Business, and (ii) all material Permits which are required for the Purchased Assets. To the Knowledge of Sellers, none of Sellers is in default or violation (and no event has occurred which, with notice or the lapse of time or both, would constitute a default or violation) of any term, condition or provision of any Permit to which it is a party.

Section 5.17 SEC Claims and Related Matters. Except as specifically set forth on Schedule 5.17: (a) no Seller has received any written communication, notice or demand from the SEC since December 22, 2014; (b) there is no pending investigation, review, audit, prosecution, subpoena, inquiry or other proceeding pending before or brought by the SEC or any federal, state or other governmental agency or authority, or to the Sellers' Knowledge threatened, against any Seller or any of their respective officers, directors, equity holders, managers or employees; (c) no Seller has received any written communication, notice or demand from any person, firm or entity (other than governmental authorities described in clause (b) above)) since December 22, 2014, in respect of, pertaining to or in connection with any SEC Related Action. True and correct copies of all written communications, notices and demands set forth on Schedule 5.17 have been Delivered to Purchaser.

Section 5.18 No Other Representations or Warranties; Schedules. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS ARTICLE V (AS MODIFIED BY THE SCHEDULES), NO SELLER MAKES ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WITH RESPECT TO SELLERS, THE BUSINESS, THE PURCHASED ASSETS, THE ASSUMED LIABILITIES OR THE TRANSACTIONS, AND EACH SELLER DISCLAIMS ANY OTHER REPRESENTATIONS OR WARRANTIES, WHETHER MADE BY ANY SELLER, ANY AFFILIATE OF SELLERS OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS ARTICLE V (AS MODIFIED BY THE SCHEDULES), EACH SELLER (I) EXPRESSLY DISCLAIMS AND NEGATES ANY REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, AT COMMON LAW, BY STATUTE, OR OTHERWISE, RELATING TO THE CONDITION OF THE PURCHASED ASSETS (INCLUDING ANY IMPLIED OR EXPRESSED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR OF CONFORMITY TO MODELS OR SAMPLES OF MATERIALS) AND (II) DISCLAIMS ALL LIABILITY AND RESPONSIBILITY FOR ANY REPRESENTATION, WARRANTY, PROJECTION, FORECAST, STATEMENT, OR INFORMATION MADE, COMMUNICATED, OR FURNISHED (ORALLY OR IN WRITING) TO PURCHASER OR ITS AFFILIATES OR REPRESENTATIVES (INCLUDING ANY OPINION, INFORMATION, PROJECTION, OR ADVICE THAT MAY HAVE BEEN OR MAY BE PROVIDED TO PURCHASER BY ANY DIRECTOR, OFFICER, EMPLOYEE, AGENT, CONSULTANT, OR REPRESENTATIVE OF ANY SELLER OR ANY OF ITS AFFILIATES). SELLERS DO NOT MAKE ANY REPRESENTATIONS OR WARRANTIES TO PURCHASER REGARDING THE PROBABLE SUCCESS OR PROFITABILITY OF THE BUSINESS. THE DISCLOSURE OF ANY MATTER OR ITEM IN ANY SCHEDULE SHALL NOT BE DEEMED TO CONSTITUTE AN ACKNOWLEDGMENT THAT ANY SUCH MATTER IS REQUIRED TO BE DISCLOSED OR IS MATERIAL OR THAT SUCH MATTER WOULD BE REASONABLY LIKELY TO RESULT IN A SELLER MATERIAL ADVERSE EFFECT.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Sellers that:

Section 6.1 Organization and Good Standing. Purchaser is duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite power and authority to own, lease and operate its properties and to carry on its business as now conducted.

Section 6.2 Authorization of Agreement. Purchaser has all requisite power and authority to execute and deliver this Agreement and each other agreement, document, instrument or certificate contemplated by this Agreement or to be executed by Purchaser in connection with the consummation of the Transactions (the "Purchaser Documents"), to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by Purchaser of this Agreement and the Purchaser

Documents and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary limited liability company action on behalf of Purchaser. This Agreement has been, and each Purchaser Document will be at or prior to the Closing, duly executed and delivered by Purchaser and (assuming the due authorization, execution and delivery by the other parties hereto and thereto) this Agreement constitutes, and each Purchaser Document when so executed and delivered will constitute, legal, valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

Section 6.3 Conflicts; Consents of Third Parties.

(a) None of the execution and delivery by Purchaser of this Agreement or the Purchaser Documents, the consummation of the transactions contemplated hereby or thereby, or the compliance by Purchaser with any of the provisions hereof or thereof will conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination or cancellation under any provision of (i) the Organizational Documents of Purchaser, (ii) any Contract or Permit to which Purchaser is a party or by which Purchaser or its properties or assets is bound or (iii) any Order of any Governmental Body applicable to Purchaser or any of its properties or assets or (iv) any applicable Law.

(b) No consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Person or Governmental Body is required on the part of Purchaser in connection with the execution and delivery of this Agreement or the Purchaser Documents, the compliance by Purchaser with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby or the taking by Purchaser of any other action contemplated hereby or thereby, or for Purchaser to conduct the Business, except for (i) the entry of the Sale Order and the Bidding Procedures Order, and (ii) such other consents, waivers, approvals, Orders, Permits, authorizations, declarations, filings and notifications, the failure of which to obtain or make would not be reasonably likely to result in a Purchaser Material Adverse Effect.

Section 6.4 Reserved.

Section 6.5 Litigation. There are no Proceedings pending or, to the knowledge of Purchaser, threatened against Purchaser, or to which Purchaser is otherwise a party, which, if adversely determined, would reasonably be expected to have a Purchaser Material Adverse Effect on the ability of Purchaser to perform its obligations under this Agreement or to consummate the Transactions. Purchaser is not subject to any Order of any Governmental Body except to the extent the same would not reasonably be expected to have a Purchaser Material Adverse Effect on the ability of Purchaser to perform its obligations under this Agreement or to consummate the Transactions.

Section 6.6 Bankruptcy. There are no bankruptcy, reorganization or insolvency proceedings pending against, being contemplated by or, to the knowledge of Purchaser, threatened against, Purchaser.

Section 6.7 Financial Capability. Purchaser (a) has, and at the Closing will have, sufficient internal funds (without giving effect to any unfunded financing regardless of whether any such financing is committed) available to pay the Purchase Price and any expenses incurred by Purchaser in connection with the Transactions, (b) has, and at the Closing will have, the resources and capabilities (financial or otherwise) to perform its obligations hereunder and the other Purchaser Documents, and (c) has not incurred any obligation, commitment, restriction or Liability of any kind, which would impair or adversely affect such resources and capabilities.

Section 6.8 Adequate Assurances Regarding Executory Contracts. Purchaser is and will be capable of satisfying the conditions in Section 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code. Purchaser shall be solely responsible for any fees and expenses it incurs in responding to any adequate assurance objections filed with the Bankruptcy Court.

Section 6.9 Condition of the Business. NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY, PURCHASER ACKNOWLEDGES AND AGREES THAT NO SELLER IS MAKING ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, BEYOND THOSE EXPRESSLY GIVEN BY SUCH SELLER IN ARTICLE V (AS MODIFIED BY THE SCHEDULES, AS SUPPLEMENTED OR AMENDED), AND PURCHASER ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN ARTICLE V, THE PURCHASED ASSETS ARE BEING TRANSFERRED ON AN "AS IS," "WHERE IS" AND "WITH ALL FAULTS" BASIS AND WITHOUT REPRESENTATIONS, WARRANTIES OR GUARANTEES, EXPRESSLY IMPLIED OR STATUTORY, WRITTEN OR ORAL, OF ANY KIND, NATURE OR DESCRIPTION, BY ANY SELLER OR ITS AFFILIATES, ESTATES, AGENTS, REPRESENTATIVES, DIRECTORS, OFFICERS, MANAGERS, MEMBERS. ANY CLAIMS PURCHASER MAY HAVE FOR BREACH OF REPRESENTATION OR WARRANTY SHALL BE BASED SOLELY ON THE REPRESENTATIONS AND WARRANTIES OF SELLERS SET FORTH IN ARTICLE V (AS MODIFIED BY THE SCHEDULES, AS SUPPLEMENTED OR AMENDED). PURCHASER FURTHER REPRESENTS THAT NO SELLER NOR ANY OF ITS AFFILIATES NOR ANY OTHER PERSON HAS MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE ACCURACY OR COMPLETENESS OF ANY INFORMATION REGARDING SELLERS, THE BUSINESS OR THE TRANSACTIONS NOT EXPRESSLY SET FORTH IN THIS AGREEMENT. PURCHASER ACKNOWLEDGES THAT IT HAS CONDUCTED TO ITS SATISFACTION, ITS OWN INDEPENDENT INVESTIGATION OF THE BUSINESS AND THE PURCHASED ASSETS AND, IN MAKING THE DETERMINATION TO PROCEED WITH THE TRANSACTIONS, PURCHASER HAS RELIED ON THE RESULTS OF ITS OWN INDEPENDENT INVESTIGATION.

ARTICLE VII

BANKRUPTCY COURT MATTERS

Section 7.1 Competing Transaction. This Agreement is subject to approval by the Bankruptcy Court and the consideration by Sellers of higher or better competing bids (each a "Competing Bid"). From the date hereof (and any prior time) and until the Transactions are consummated, Sellers are permitted to cause their representatives and Affiliates to initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, any Person (in addition to Purchaser and its Affiliates, agents and representatives) in connection with any sale or other disposition of the Purchased Assets. In addition, Sellers may respond to any inquiries or offers to purchase all or any part of the Purchased Assets and perform any and all other acts related thereto which are required under the Bankruptcy Code, the Bidding Procedures Order or other applicable Law, including supplying information relating to the Business and the assets of Sellers or any of their Subsidiaries to prospective purchasers.

Section 7.2 Bankruptcy Court Filings. Sellers will file with the Bankruptcy Court the Sale Motion seeking entry of the Sale Order and the Bidding Procedures Order. Sellers will promptly take such actions as are reasonably necessary to (a) obtain authority to pay the Expense Reimbursement and the Break-Up Fee subject to and in accordance with the terms of Section 7.4 of this Agreement and (b) subject to Purchaser being determined to be the winning bidder under the terms of the Bidding Procedures Order, obtain entry of the Sale Order approving this Agreement and authorizing the Transactions, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Purchaser under this Agreement and demonstrating that Purchaser is a "good faith" purchaser under Section 363(m) of the Bankruptcy Code. Purchaser shall not, without the prior written consent of Sellers, file, join in, or otherwise support in any manner whatsoever any motion or other pleading relating to the sale of the Purchased Assets hereunder, except to enforce any Seller's obligation or Purchaser's rights hereunder. In the event the entry of the Sale Order or the Bidding Procedures Order shall be appealed, Sellers and Purchaser shall use their respective commercially reasonable efforts to defend such appeal.

Section 7.3 Back-up Bidder. Sellers and Purchaser agree that, in the event that Purchaser is not the winning bidder at the auction undertaken pursuant to the Bidding Procedures Order (the "Auction"), and the transaction with the winning bidder at the Auction does not close, if and only if Purchaser submits the next highest or otherwise best bid at the Auction, as contemplated by the Bidding Procedures Order, Purchaser shall promptly consummate the Transactions upon the terms and conditions as set forth herein, including the Purchase Price, as the same may modified by Purchaser at the Auction.

Section 7.4 Notice. Sellers will provide notice of the Bidding Procedures Order, the Transactions, the Sale Motion and the Sale Order, and, if required by law, the Bankruptcy Case, to all Persons legally entitled to receive notice thereof under applicable Law, to all Persons who, to the Knowledge of Sellers may be deemed "creditors" under the Bankruptcy Code (for all purposes including under Section 101(10) of the Bankruptcy Code), including without limitation all potential creditors based on, to the Knowledge of Sellers, any past breaches of any duties by Sellers that occurred prior to the date of the Sale Motion, or, to the Knowledge of Sellers who are

otherwise legally entitled to receive notice thereof under the Federal Rules of Bankruptcy Procedure, and to any other Persons which Purchaser reasonably requests Seller to provide such notice to as a result of Purchaser's due diligence, within the time periods required under such rules, other than persons or entities which Purchaser and Seller mutually agree in writing need not receive notice of a particular event or matter in the Bankruptcy Case (collectively, such persons and entities the "Notice Parties"); provided, however, unless Purchaser and Sellers mutually agree or required by applicable Law, the Notice Parties shall not include any former Clients of Sellers.

Section 7.5 Expense Reimbursement and Break-Up Fee. In consideration for Purchaser having expended considerable time and expense in connection with this Agreement and the negotiation thereof and the identification and quantification of assets of Sellers, in the event that (i) Purchaser is not determined to be the winning bidder at the Auction and Seller closes a transaction contemplated by a Competing Bid with another bidder or (ii) Purchaser is the winning bidder and Sellers fail to close the Transactions for reasons other than a breach of Purchaser's obligations or representations and warranties herein and Sellers close a transaction contemplated by a Competing Bid with another bidder, Seller shall pay Purchaser the Expense Reimbursement and the Break-Up Fee in accordance with the terms of this Section 7.4 and the Bidding Procedures Order and only upon the Bankruptcy Court having approved the Expense Reimbursement and the Break-Up Fee. The Expense Reimbursement and the Break-Up Fee shall be paid on the third (3rd) Business Day following the date of the closing of a transaction contemplated by a Competing Bid if such closing occurs on or before the Termination Date and there has not been a material breach by Purchaser of this Agreement. For the avoidance of doubt, the Expense Reimbursement and the Break-Up Fee provided for hereunder shall only be paid to the Purchaser if the Purchaser is the Stalking Horse Bidder, this Agreement is the Stalking Horse Agreement as provided for in the Bidding Procedures Order and the Bankruptcy Court approves the Expense Reimbursement and the Break-Up Fee. The Expense Reimbursement and the Break-Up Fee shall not be paid to Purchaser (a) if Purchaser is the winning bidder at the Auction (whether or not Purchaser closes the transaction contemplated by such winning bid) or (b) if Purchaser is not the winning bidder at the Auction, Sellers fails to close a transaction contemplated by a Competing Bid by the Termination Date.

ARTICLE VIII

COVENANTS

Section 8.1 Access to Information. Each Seller agrees that, prior to the Closing Date, other than Privileged Communications, Purchaser shall be entitled, through its officers, employees and representatives (including its legal advisors and accountants), to make such investigation of the properties, businesses and operations of the Business and such examination of the books and records of the Business, the Purchased Assets and the Assumed Liabilities as it reasonably requests and to make extracts and copies of such books and records. Any such investigation and examination shall be conducted during regular business hours upon reasonable advance notice and under reasonable circumstances and shall be subject to restrictions under applicable Law. Each Seller shall cause the officers, employees, consultants, agents, accountants, attorneys and other representatives of such Seller to cooperate with Purchaser and Purchaser's representatives in connection with such investigation and examination, and Purchaser

and its representatives shall cooperate with each Seller and its representatives and shall use their reasonable efforts to minimize any disruption to the Business. Notwithstanding anything herein to the contrary, for the avoidance of doubt, the Transactions and the provisions of this Section are subject to the Confidentiality Agreement, and no such investigation or examination shall be permitted to the extent that it would require any Seller to disclose information (i) subject to attorney-client privilege work product doctrine or any other applicable privilege (including, but not limited to Privileged Communications) or (ii) that would conflict with any confidentiality obligations to which any of Seller or its Affiliates is bound.

Section 8.2 Conduct of the Business Pending the Closing.

(a) Except (1) as set forth on Schedule 8.2, (2) as required by applicable Law or by an Order of the Bankruptcy Court that is not inconsistent with the terms of this Agreement, (3) as otherwise contemplated by this Agreement or (4) with the prior written consent of Purchaser (which consent shall not be unreasonably withheld, delayed or conditioned), Sellers shall:

(i) conduct the Business only in the Ordinary Course of Business consistent with past practices; and

(ii) use its commercially reasonable efforts to (A) preserve the present business operations, organization and goodwill of the Business, and (B) preserve the present relationships with customers and suppliers of Sellers.

(b) Except (1) as set forth on Schedule 8.2, (2) as required by applicable Law or by an Order of the Bankruptcy Court that is not inconsistent with the terms of this Agreement, (3) as otherwise contemplated by this Agreement or (4) with the prior written consent of Purchaser (which consent shall not be unreasonably withheld, delayed or conditioned), Sellers shall not:

(i) other than in the Ordinary Course of Business consistent with past practices, as required by any Transferred Plan or Contract or as approved by an Order of the Bankruptcy Court that is not inconsistent with the terms of this Agreement (A) materially increase the annual level of compensation of any Employees, (B) grant any unusual or extraordinary additional compensation to any Employees, (C) materially increase the coverage or benefits available under any Transferred Plan or (D) enter into any employment, deferred compensation, severance or similar agreement (or amend any such agreement) to which any of Sellers is a party with an Employee unless such agreement is consistent with current or past practices of any of Sellers;

(ii) subject any of the Purchased Assets to any Lien, except for Permitted Exceptions;

(iii) except in the Ordinary Course of Business consistent with past practices, acquire any material properties or assets that would be Purchased Assets or sell, assign, license, transfer, convey, lease or otherwise dispose of any of the Purchased Assets (except for the purpose of disposing of obsolete or worthless assets);

(iv) waive or release any material right of any of Sellers that constitutes a Purchased Asset except in the Ordinary Course of Business consistent with past practices;

(v) enter into to enter into, any commitment for capital expenditures in excess of \$50,000 per year for any individual commitment and \$100,000 per year for all commitments in the aggregate;

(vi) enter into any labor or collective bargaining agreement; and

(vii) agree to do anything prohibited by this Section 8.2.

Section 8.3 Consents.

(a) Sellers shall use its best efforts, and Purchaser shall cooperate with Seller, to obtain at the earliest practicable date all consents and approvals required to consummate the Transactions (each of which shall be reasonably satisfactory to Purchaser), including the consents and approvals referred to in Section 5.4(b) and written consents from a majority of interest of the limited partners of F-Squared US Sector Opportunities Fund LP (the "F-Squared US Sector Fund") which afford Purchaser the legal right to serve as the general partner of the F-Squared US Sector Fund effective as of the Closing Date (the "LP Consents"); provided, however, that (a) Sellers shall not be obligated to pay any consideration therefor to any Person or to initiate any litigation or Proceedings to obtain any such consent or approval, and (b) Sellers shall not be required obtain all such consents and approvals required to consummate the Transactions (including the consents and approvals referred to in Section 5.4(b) or the LP Consents), if Sellers, acting reasonably, determine that the closing condition set forth in Section 10.3(d) is not capable of being fulfilled by the Termination Date.

Section 8.4 Affiliate Guaranty. Upon execution of this Agreement, Cedar hereby agrees to immediately execute and deliver to Sellers the Affiliate Guaranty and a copy of the executed Affiliate Guaranty shall be attached hereto as Exhibit C. Cedar hereby represents and warrants that Cedar has all requisite power and authority to execute this Agreement to perform its obligations hereunder. The execution, delivery and performance by Cedar of this Agreement has been duly authorized by all necessary limited liability company action on behalf of Cedar. This Agreement has been duly executed and delivered by Cedar and (assuming the due authorization, execution and delivery by the other parties hereto and thereto) this Agreement constitutes legal, valid and binding obligations of Cedar, enforceable against Cedar in accordance with its respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

Section 8.5 Further Assurances. Sellers and Purchaser shall use their commercially reasonable efforts to (a) take all actions necessary or appropriate to consummate the Transactions and (b) cause the fulfillment at the earliest practicable date of all of the conditions to their respective obligations to consummate the Transactions.

Section 8.6 Confidentiality. Purchaser acknowledges that the Restricted Material (as defined in the Confidentiality Agreement) provided to it in connection with this Agreement, including under Section 8.1 and Section 8.10, and the consummation of the Transactions, is subject to the terms of the confidentiality agreement between Cedar and Seller, dated June 3, 2015 (the "Confidentiality Agreement"), the terms of which are incorporated herein by reference. Purchaser hereby agrees to be bound by the Confidentiality Agreement and the terms thereof as if it were a party to the Confidentiality Agreement.

Section 8.7 Preservation of Records.

(a) Each of Sellers and Purchaser agree to preserve and keep the records, or in the case of Sellers, arrange for the preservation and keeping of the records, held by it or their Affiliates relating to the Business for a period of six (6) years from the Closing Date and shall make such records and personnel available to the other Party as may be reasonably required by such Party in connection with, among other things, any insurance claims, Proceedings or Tax audits against or governmental investigations of Sellers or Purchaser or any of their Affiliates, administering the Bankruptcy Case, including in connection with any motion or claim objection filed or to be filed by or against any of Sellers or its Affiliates in the Bankruptcy Case, winding up Seller, or in order to enable Sellers or Purchaser to comply with its obligations under this Agreement and each other agreement, document or instrument contemplated hereby or thereby. Each Party understands that making personnel available to the other Party pursuant to this section includes making personnel available to assist with and/or to provide testimony (including deposition testimony) in connection with, among other things, any insurance claims, Proceedings or Tax audits against or governmental investigations of any of Sellers or its Affiliates or Purchaser or any of its Affiliates, administering the Bankruptcy Case or winding up Sellers.

(b) Notwithstanding Section 8.7(a), in the event any Seller or Purchaser wishes to destroy records subject to the preservation requirements of Section 8.7(a), such Party (the "Noticing Party") shall be entitled to destroy such records by (i) giving ninety (90) days prior written notice (the "Original Notice") to the other Party and such other Party shall have the right at its option and expense, upon prior written notice given to the Noticing Party within such ninety (90) day period, to take possession of the records within one hundred and eighty (180) days after the date of the Original Notice, or (ii) seeking and obtaining an Order of the Bankruptcy Court approving the destruction of such records and complying with such order of the Bankruptcy Court.

(c) Neither Purchaser nor any Seller shall be obligated to provide the other party with access to any records (including personnel files) pursuant to this Section 8.7 where such access would violate any Law or, after consultation with legal counsel of the party who possesses such records, it is determined by such party's legal counsel that providing access to such records would likely lead to the loss of any privilege provided to such party or such records.

Section 8.8 Publicity. From the Effective Date until the Closing Date, neither Sellers nor Purchaser shall issue any press release or public announcement concerning this Agreement or the Transactions without obtaining the prior written approval of the other Party, which approval will not be unreasonably withheld or delayed, unless, in the reasonable judgment of Purchaser or Sellers, disclosure is otherwise required by applicable Law; provided that the Party

intending to make such release shall use its commercially reasonable efforts consistent with such applicable Law to consult with the other Party with respect to the text thereof. The Parties agree to issue a joint press release contemporaneously with the execution of this Agreement.

Section 8.9 Supplementation and Amendment of Schedules. Sellers may, at its option, include in the Schedules items that are not material in order to avoid any misunderstanding, and such inclusion, or any references to Dollar amounts, shall not be deemed to be an acknowledgement or representation that such items are material, to establish any standard of materiality or to define further the meaning of such terms for purposes of this Agreement. Information or matters disclosed in any part of the Schedules shall be deemed to be incorporated into each of the other parts of these Schedules with respect to which such disclosures apply if the relevance of such disclosure to such other representations and warranties is reasonably apparent on the face of the disclosure. From time to time prior to the Closing, Sellers shall have the right to supplement or amend the Schedules with respect to any matter hereafter arising or discovered after the delivery of the Schedules pursuant to this Agreement; provided, however, that notwithstanding anything to the contrary contained herein, in the event the representations and warranties set forth in this Agreement as of the date of execution hereof are not true and correct as a result of any such supplement or amendment, (a) at Purchaser's election (unless such not true or incorrect representations and warranties do not result in a Sellers' Material Adverse Effect and in which case, Purchaser shall have no right to make an election under this Section 8.9(a)), the condition precedent set forth in Section 10.1(a) shall not be satisfied and Purchaser shall not be obligated to close the Transactions, and (b) in the event Purchaser nevertheless elects to close the Transactions, Purchaser shall be deemed to have waived any right or claim pursuant to the terms of this Agreement or otherwise with respect to any and all matters disclosed pursuant to any such supplement or amendment at or prior to the Closing.

Section 8.10 Information Regarding Assets Under Advisements.

(a) On a weekly basis until the Closing or the termination of this Agreement, Sellers shall provide Purchaser with a written summary of open accounts under management by strategy and platform, including the asset value of each such account as of the previous Friday, as derived from Seller's Advent APX Software.

(b) On a monthly basis until the Closing or the termination of this Agreement, Sellers shall provide Purchaser with a written summary of assets under advisement on behalf of each Client of the Company, by platform, based on the most recent information provided to Sellers by such Clients.

Section 8.11 Reserved.

Section 8.12 Wind-Up of F-Squared US Sector Fund. If Sellers are not able to obtain the requisite number of LP Consents in accordance with Section 8.3 to afford Purchaser the legal right to serve as the general partner of F-Squared US Sector Fund effective as of the Closing Date, Sellers agree, F-Squared US Sector Fund shall be deemed an Excluded Asset. If F-Squared US Sector Fund is deemed an Excluded Asset, within thirty (30) days of the Closing Date, Sellers shall cease operating such fund. After Sellers have ceased operating F-Squared US

Sector Fund, Sellers shall expeditiously liquidate and wind-up F-Squared US Sector Fund in accordance with applicable Law and the Bankruptcy Case.

Section 8.13 Transition Services. Purchaser and Sellers hereby agree to use their best efforts in good faith to agree to a transition services agreement on or before the Petition Date or as soon thereafter as reasonably practicable.

Section 8.14 Acquired Seeded Strategies.

By the Bid Deadline, Purchaser shall provide to Sellers Schedule 8.14 setting forth Sellers' Seeded Strategies it determines to acquire (such seeded strategies, the "Acquired Seeded Strategies"). At Closing, the Acquired Seeded Strategies together with the custodial accounts and other relevant assets directly related to the Acquired Seeded Strategies shall be sold, transferred and conveyed to Purchaser pursuant to Section 2.1, in accordance with the terms and conditions of this Agreement. Any Seeded Strategies not identified on Schedule 8.14 shall be deemed an Excluded Asset. Within thirty (30) days of the Closing Date, for any Seeded Strategies not identified on Schedule 8.14, Sellers shall cease operating such Seeded Strategies. After Sellers have ceased operating such Seeded Strategies, Sellers shall expeditiously liquidate and wind-up the Seeded Strategies in accordance with applicable Law and the Bankruptcy Case.

ARTICLE IX

EMPLOYEES AND EMPLOYEE BENEFITS

Section 9.1 Employment.

(a) Transferred Employees. No later than the Bid Deadline, Purchaser shall provide to Sellers a list of Employees that Purchaser intends to offer employment to as of the Closing Date (the "Transferred Employees List"). The Employees who accept an offer of employment (including deemed acceptance by continuing to report to work following the Closing Date) are hereinafter referred to as the "Transferred Employees." No later than five (5) Business Days prior to the Closing, Sellers shall provide to Purchaser, for each of the Employees on the Transferred Employee List, a schedule of all Liabilities with respect to such Employees attributable to (i) their accrued and unpaid salary or wages, and (ii) their accrued and unused vacation, sick days, personal days or other salary continuation, in each case, through the Closing Date (the items in subsection (ii) of this sentence shall be hereinafter collectively referred to as "Accrued Vacation Days"). As of June 9, 2015, the Accrued Vacation Days for the Transferred Employees are set forth on Schedule 9.1. Purchaser hereby agrees to assume Sellers' Liabilities for the Accrued Vacation Days set forth on Schedule 9.1, plus any additional Liabilities of Sellers for Accrued Vacation Days for the Transferred Employees that accrue from June 9, 2015 through the Closing Date. Purchaser shall, at its discretion: (x) pay to each Transferred Employee, as a signing bonus, an amount equal to the economic benefit of such Transferred Employee's Accrued Vacation Days; or (y) permit a Transferred Employee to utilize in the course of his or her employment with Purchaser that number of vacation days, sick days and personal days that are commensurate with the amount of same that such Transferred Employee accrued with Sellers prior to the Closing Date.

(b) Standard Procedure. Pursuant to the "Standard Procedure" provided in Section 4 of Revenue Procedure 2004-53, 2004-2 CB 320, (i) Purchaser and Sellers shall report on a predecessor/successor basis as set forth therein, (ii) Sellers will not be relieved from filing a Form W-2 with respect to any Transferred Employees, and (iii) Purchaser will undertake to file (or cause to be filed) a Form W-2 for each such Transferred Employee with respect to the portion of the year during which such Employees are employed by Purchaser that includes the Closing Date, excluding the portion of such year that such Employee was employed by Sellers or its Affiliates.

Section 9.2 Employee Benefits.

(a) Nothing contained in this Section 9.2 or elsewhere in this Agreement shall be construed to prevent the termination of employment of any individual Transferred Employee or any change in the particular employee benefits available to any individual Transferred Employee.

(b) Except as otherwise provided in this Article IX and subject to Section 9.2(e) below, Purchaser may, in its sole discretion, by written notice to Seller prior to the Closing Date, elect to assume sponsorship of and Liability under any Employee Benefit Plans (other than the employee loan programs) (collectively, the "Transferred Plans").

(c) Purchaser may, in its sole discretion, assume sponsorship of any or all Employee Benefit Plans intended to qualify under Section 401(a) of the Code (the "Qualified Plans") by written notice to Sellers at least five (5) Business Days prior to the Closing Date. If Purchaser has not exercised its right to assume any or all of the Qualified Plans by such date, any Seller may adopt a resolution terminating any and all Qualified Plans not being assumed by Purchaser immediately prior to the Closing Date and Purchaser shall administer the wind-up of such terminating plans.

ARTICLE X

CONDITIONS TO CLOSING

Section 10.1 Conditions Precedent to Obligations of Purchaser. The obligation of Purchaser to consummate the Transactions is subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by Purchaser in whole or in part to the extent permitted by applicable Law):

(a) the representations and warranties of Sellers set forth in this Agreement shall be true and correct at and as of the Closing Date as if made on and as of the Closing Date (or, to the extent given as of a specific date, as of such date), except for such failures to be true and correct that individually and in the aggregate would not be reasonably likely to result in a Seller Material Adverse Effect. Purchaser shall have received a certificate signed by an authorized signatory of Sellers, dated the Closing Date, to the foregoing effect;

(b) Sellers shall have performed and complied with all obligations and agreements required in this Agreement to be performed or complied with by it prior to the Closing Date; provided that the condition set forth in this Section 10.1(b) shall be deemed

satisfied unless such failures to so perform or comply taken together would be reasonably likely to result in a Seller Material Adverse Effect, and Purchaser shall have received a certificate signed by an authorized signatory of Sellers, dated the Closing Date, to the foregoing effect; and

(c) Sellers shall have delivered, or caused to be delivered, to Purchaser all of the items set forth in Section 4.2.

Section 10.2 Conditions Precedent to Obligations of Sellers. The obligation of Sellers to consummate the Transactions are subject to the fulfillment, prior to or on the Closing Date, of each of the following conditions (any or all of which may be waived by Seller in whole or in part to the extent permitted by applicable Law):

(a) the representations and warranties of Purchaser set forth in this Agreement shall be true and correct at and as of the Closing Date as if made on and as of the Closing Date (or, to the extent given as of a specific date, as of such date), except for such failures to be true and correct that individually and in the aggregate would not be reasonably likely to result in a Purchaser Material Adverse Effect. Sellers shall have received a certificate signed by an authorized signatory of Purchaser, dated the Closing Date, to the foregoing effect;

(b) Purchaser shall have performed and complied in all material respects with all obligations and agreements required by this Agreement to be performed or complied with by Purchaser on or prior to the Closing Date, provided that the condition set forth in this Section 10.2(b) shall be deemed satisfied unless such failures to so perform or comply taken together would be reasonably likely to result in a Purchaser Material Adverse Effect, and Sellers shall have received a certificate signed by an authorized signatory of Sellers, dated the Closing Date, to the foregoing effect; and

(c) Purchaser shall have delivered, or caused to be delivered, to Sellers all of the items set forth in Section 4.3.

Section 10.3 Conditions Precedent to Obligations of Purchaser and Sellers. The respective obligations of Purchaser and Sellers to consummate the Transactions are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by Purchaser and Seller in whole or in part to the extent permitted by applicable Law):

(a) there shall not be in effect any Order by a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the Transactions;

(b) the Bankruptcy Court shall have entered the Bidding Procedures Order;

(c) the Bankruptcy Court shall have entered the Sale Order and any stay period applicable to the Sale Order shall have expired or shall have been waived by the Bankruptcy Court; and

(d) The Closing Date Assets Under Advisement shall be equal to or greater than \$1,000,000,000.

Section 10.4 Frustration of Closing Conditions. Neither Purchaser nor Seller may rely on the failure of any condition set forth in Sections 10.1, 10.2 or 10.3, as the case may be, if such failure was caused by such Party's failure to comply with any provision of this Agreement.

ARTICLE XI

SURVIVAL; INDEMNIFICATION; REMEDIES; LIMITATION ON LIABILITY

Section 11.1 Survival of Representations and Warranties. The representations and warranties in this Agreement, and the covenants, agreements and obligations in this Agreement that are to be performed at or before the Closing shall survive the Closing and the consummation of the Transactions and continue until the second anniversary of the Closing Date (provided, that, subject to (c) below, no claim for a breach thereof may be brought after the second anniversary of the Closing Date), at which time they shall expire and be of no further force and effect; provided, however, that notwithstanding the foregoing provisions of this Section 11.1, (a) the representations and warranties set forth in Section 5.2, Section 5.3, Section 5.7 and Section 6.2 shall survive indefinitely (provided, that, subject to (c) below, no claim for a breach thereof may be brought after payment of the Final Earn-Out Payment), (b) the representations and warranties set forth in Section 5.8 shall survive until the date that is sixty (60) days after the expiration of the applicable statute of limitations (provided, that, subject to (c) below, no claim for a breach thereof may be brought after payment of the Final Earn-Out Payment), and (c) any claim related to the breach of a representation, covenant, agreement or obligation set forth in this Agreement that is asserted in writing in accordance with Section 13.6 prior to the applicable survival end date described above shall survive until such claim is finally resolved and satisfied. The Parties agree that the covenants, agreements and obligations contained in this Agreement to be performed after the Closing shall survive the Closing, and, subject to the terms of this Agreement (including Section 11.3), each Party shall be liable to the other after the Closing for any breach thereof.

Section 11.2 Indemnification.

(a) *Indemnification of Purchaser*. Solely to the extent of Purchaser's right to set-off set forth in Section 11.4, Sellers shall jointly and severally indemnify, defend and hold harmless Purchaser and its officers, directors, managers, and Affiliates other than any Affiliate that is an indirect equity holder of Purchaser as of the Effective Date, employees and agents, and their respective heirs and successors (each, a "Purchaser Indemnified Party"), from and against any and all Loss incurred by any Purchaser Indemnified Party to extent resulting from or arising out of:

(i) The breach of any representation or warranty made by Sellers herein or in any certificate furnished by Sellers to Purchaser on or before the Closing pursuant to this Agreement;

(ii) The failure of Sellers to perform any covenant or agreement of Sellers under this Agreement or the Seller Documents;

(iii) Any litigation, action or proceeding (including, without limitation, the SEC Related Actions) arising from or related to actions or omissions by Sellers or their respective officers, directors, managers, equity holders, employees or agents that occurred prior to the date of this Agreement; and

(iv) Any Taxes of any of the Sellers (regardless of whether arising out of any law or regulation or contract, and regardless of whether any other Person also is or may be liable for such Taxes), (ii) any Taxes of any direct or indirect owner of Equity Interests in any Seller, (iii) any Taxes of any employee or independent contractor of any Seller, and (iv) any Taxes relating to any business or assets (including without limitation any Purchased Assets) of any Seller for any Tax period (or portion of a Tax period) ending on or before the Closing Date; in each of the foregoing cases, except for Transfer Taxes assumed by the Purchaser pursuant to Section 2.3(d) of this Agreement and real or personal property Taxes or similar ad valorem obligations for which Purchaser is responsible pursuant to Section 12.2 of this Agreement.

(b) *Indemnification of Sellers.* Purchaser shall indemnify, defend and hold harmless Sellers and their Affiliates and any of their Permitted Assigns (each, a "Seller Indemnified Party"), from and against any and all Loss incurred by any Seller Indemnified Party to extent resulting from or arising out of:

(i) The breach of any representation or warranty made by Purchaser herein or in any certificate furnished by Purchaser to Sellers on or before the Closing pursuant to this Agreement; and

(ii) The failure of Purchaser to perform any covenant or agreement or satisfy any obligations of Purchaser under this Agreement or the Purchaser Documents (including Purchaser's obligations under Article IX and the other Assumed Liabilities).

Section 11.3 Injunctive Relief. Damages at law are an inadequate remedy for the breach of any of the covenants, promises and agreements contained in this Agreement, and, accordingly, any Party shall be entitled to injunctive relief with respect to any such breach, including specific performance of such covenants or obligations or an order enjoining a Party from any threatened, or from the continuation of any actual, breach of the covenants or obligations contained in this Agreement. The rights set forth in this Section 11.2 shall be in addition to any other rights which a Party may have at law or in equity pursuant to this Agreement.

Section 11.4 Purchaser's Right of Set-Off. Any liability of Sellers arising under this Section 11.2(a) or any other liability of Sellers arising under this Agreement which provides Purchaser with offset rights (if any) that is due and payable from any Seller to Purchaser, may only be, at Purchaser's option, upon providing 30 days prior written notice to Sellers, offset up to the Sellers' Liability Cap against the Initial Earn-Out Payment or the Final Earn-Out Payment due and payable by Purchaser to any Sellers pursuant to this Agreement. Notwithstanding the foregoing, if prior to expiration of the 30 day notice period referenced above (the "Notification Expiration Date"), Sellers object in good faith (an "Offset Dispute") to the offset proposed in such notice (such proposed offset amount, the "Offset Amount"), Purchaser shall deposit (the "Offset Escrow") with the Closing Escrow Holder, within five (5) Business Days of Purchaser's

receipt of notice with respect to an Offset Dispute, the Offset Amount until the earlier of (i) the day that the Offset Dispute is finally resolved by the Bankruptcy Court or another court as provided for in Section 13.3 or (ii) 30 days after the Notification Expiration Date if Sellers (or any of their Permitted Assigns) have filed a motion or commenced by such date a proceeding in the Bankruptcy Court or another court as provided for in Section 13.3. If an Offset Dispute arises, after a court of competent jurisdiction finally resolves such dispute, Purchaser may only offset the amount approved by such court (up to the Sellers' Liability Cap), with such amount being paid from the Offset Escrow to the Purchaser and the remaining Offset Escrow being paid to the Sellers, in accordance with the terms of the Offset Escrow Agreement. If the Offset Escrow is permitted to be released by the Closing Escrow Holder pursuant to clause (ii) of this Section 11.4, then upon receipt by Closing Escrow Holder and Sellers of Purchaser's written instructions to the Closing Escrow Holder in accordance with the terms of the Escrow Agreement, the Closing Escrow Holder may pay the Offset Escrow to Purchaser.

Section 11.5 Limitations on Liability.

(a) IF THE CLOSING OCCURS, PURCHASER SHALL BE DEEMED TO HAVE WAIVED, AND HEREBY WAIVES, IN FULL ANY BREACH OF ANY SELLER'S REPRESENTATIONS OR WARRANTIES, COVENANTS, AGREEMENTS OR OBLIGATIONS THAT ARE TO BE PERFORMED AT OR BEFORE THE CLOSING, TO THE EXTENT THAT PURCHASER HAS ACTUAL KNOWLEDGE: (I) OF THE EXISTENCE OF SUCH BREACH BEFORE OR AT THE CLOSING; AND (II) THAT SUCH BREACH, ALONG WITH ANY OTHER SUCH BREACHES, WILL BE REASONABLY LIKELY TO CAUSE OR HAS CAUSED A SELLER MATERIAL ADVERSE EFFECT.

(b) IF THE CLOSING OCCURS, SELLERS SHALL BE DEEMED TO HAVE WAIVED, AND HEREBY WAIVE, IN FULL ANY BREACH OF ANY OF PURCHASER'S REPRESENTATIONS OR WARRANTIES THAT ARE TO BE PERFORMED AT OR BEFORE THE CLOSING, TO THE EXTENT THAT ANY OF SELLERS HAS ACTUAL KNOWLEDGE OF SUCH BREACH BEFORE OR AT THE CLOSING.

(c) *Dollar Limitations on Claims Against Sellers.* After the Closing, no claims (other than a SEC Actions Related Claim) under this Agreement may be made against any Seller until the total of all Loss with respect to claims (other than a SEC Actions Related Claim) against Sellers exceed \$1,000,000 (the "Basket Amount"); provided, however, that once such total exceeds the Basket Amount, Purchaser may recover all such Loss (from dollar one, without regard to the Basket Amount) other than Excluded Losses. After the Closing, no SEC Actions Related Claims under this Agreement may be made against any Seller until the total of all Loss with respect to the SEC Actions Related Claim exceeds \$100,000 (the "SEC Basket Amount"); provided, however, that once such total exceeds the SEC Basket Amount, Purchaser may recover all such Losses arising from the SEC Actions Related Claims (from dollar one, without regard to the Basket Amount) other than Excluded Losses.

(d) *Dollar Limitations on Claims Against Purchaser.* No claims under this Agreement may be made against Purchaser until the total of all Loss with respect to such claims exceeds the Basket Amount; provided, however, that once such total exceeds the Basket Amount, Seller may recover all such Loss (from dollar one, without regard to the Basket Amount).

(e) *Maximum Liability.*

(i) *Sellers' Liability.* IF THE CLOSING OCCURS, NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, IN NO EVENT SHALL SELLERS' AGGREGATE LIABILITY FOR LOSSES ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE SELLER DOCUMENTS, THE PURCHASER DOCUMENTS OR THE TRANSACTIONS, WHETHER RELATING TO A BREACH OF A REPRESENTATION AND WARRANTY, COVENANT, AGREEMENT OR OBLIGATION IN THIS AGREEMENT AND WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OTHER LAWS OR OTHERWISE, EXCEED THE SELLERS' LIABILITY CAP; PROVIDED THAT, SUCH LIMITATION ON LIABILITY SHALL NOT APPLY TO ANY SUCH LOSSES RESULTING FROM, ARISING OUT OF OR RELATING TO (I) SELLERS' FRAUD, (II) ANY EXCLUDED LIABILITY (WHICH LOSSES SHALL BE LIMITED TO THE ACTUAL DOLLAR AMOUNT OF THE SPECIFIC EXCLUDED LIABILITY GIVING RISE TO THE LOSSES) OR (III) ANY FEES AND EXPENSES OWED TO ANY PERSON WHO HAS ACTED, DIRECTLY OR INDIRECTLY, AS A BROKER, FINDER OR FINANCIAL ADVISOR TO SELLERS IN CONNECTION WITH THE TRANSACTIONS (WHICH LOSSES SHALL BE LIMITED TO THE ACTUAL DOLLAR AMOUNT OF SUCH FEES AND EXPENSES). NOTWITHSTANDING THE FOREGOING OR ANY OTHER PROVISION HEREOF TO THE CONTRARY, NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED TO LIMIT, MODIFY OR EXTINGUISH THE PROVISIONS OF THE SALE ORDER OR BIDDING PROCEDURES ORDER THAT CONFER ANY RIGHTS ON PURCHASER, INCLUDING WITHOUT LIMITATION ANY SUCH PROVISIONS THEREOF THAT PROTECT OR INSULATE PURCHASER FROM CLAIMS RELATED TO ANY ACTS, OMISSIONS OR CONDUCT OF ANY SELLER OR ANY SUCCESSOR LIABILITY CLAIMS.

(ii) *Purchaser's Liability* WHETHER OR NOT CLOSING OCCURS, NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF PURCHASER FOR LOSSES ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE PURCHASER DOCUMENTS OR THE TRANSACTIONS, WHETHER RELATING TO A BREACH OF A REPRESENTATION AND WARRANTY, COVENANT, AGREEMENT OR OBLIGATION IN THIS AGREEMENT AND WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OTHER LAWS OR OTHERWISE, EXCEED THE PURCHASER LIABILITY CAP; *PROVIDED* THAT, SUCH LIMITATION ON LIABILITY SHALL NOT APPLY TO ANY SUCH LOSSES RESULTING FROM, ARISING OUT OF OR RELATING TO (I) PURCHASER'S FRAUD, (II) ANY ASSUMED LIABILITY (WHICH LOSSES SHALL BE LIMITED TO THE ACTUAL DOLLAR AMOUNT OF THE SPECIFIC ASSUMED LIABILITY GIVING RISE TO THE LOSSES) OR (III) ANY FEES AND EXPENSES OWED TO ANY PERSON WHO HAS ACTED, DIRECTLY OR INDIRECTLY, AS A BROKER, FINDER OR FINANCIAL

ADVISOR TO PURCHASER IN CONNECTION WITH THE TRANSACTIONS (WHICH LOSSES SHALL BE LIMITED TO THE ACTUAL DOLLAR AMOUNT OF SUCH FEES AND EXPENSES).

(f) *Limitation of Damages.* NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, (A) NEITHER PURCHASER NOR ANY SELLER SHALL BE LIABLE FOR SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES (INCLUDING LOSS OF REVENUE, INCOME OR PROFITS BUT ONLY TO THE EXTENT THE SAME ARE NOT DIRECT DAMAGES), DIMINUTION OF VALUE OR LOSS OF BUSINESS REPUTATION OR OPPORTUNITY OF ANY OTHER PARTY OR ANY OF SUCH PARTY'S AFFILIATES, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OTHER LAW OR OTHERWISE, (B) IN NO EVENT SHALL ANY SELLER BE LIABLE UNDER SECTION 11.2 OR ANY OTHER PROVISION OF THIS AGREEMENT FOR ANY ATTORNEYS' FEES OR LITIGATION COSTS INCURRED BY PURCHASER OR ITS AFFILIATES OR SUCCESSORS OR ASSIGNS IN CONNECTION WITH PURCHASER'S ENFORCEMENT OF THIS AGREEMENT OR ANY OF ITS RIGHTS HEREUNDER UNLESS ANY SELLER IS FOUND LIABLE BY A COURT WITH JURISDICTION UNDER SECTION 13.3 (the "Excluded Losses"), AND (C) IN NO EVENT SHALL PURCHASER BE LIABLE UNDER SECTION 11.2 OR ANY OTHER PROVISION OF THIS AGREEMENT FOR ANY ATTORNEYS' FEES OR LITIGATION COSTS INCURRED BY SELLERS OR THEIR AFFILIATES OR SUCCESSORS OR ASSIGNS IN CONNECTION WITH SELLERS' ENFORCEMENT OF THIS AGREEMENT OR ANY OF SELLERS' RIGHTS HEREUNDER UNLESS PURCHASER IS FOUND LIABLE BY A COURT WITH JURISDICTION UNDER SECTION 13.3.

(g) *Remedies Cumulative and Exclusive Remedies.* Subject to Sections 11.5(a) through (f) of this Agreement, all remedies hereunder are cumulative and are not exclusive of any other remedies provided by law; provided, however, if Closing occurs (i) Purchaser's exclusive remedies hereunder are limited to the remedies provided for in Section 11.2 through Section 11.4, and (ii) Sellers' exclusive remedies hereunder are limited to the remedies provided for in Section 11.2 and Section 11.3.

ARTICLE XII

TAXES

Section 12.1 Transfer Taxes. Purchaser shall be responsible for (and shall indemnify and hold harmless each Seller and its directors, officers, employees, Affiliates, agents, successors, members, managers, successors and assigns for) any sales, use, stamp, documentary, filing, recording, transfer or similar fees or Taxes or governmental charges (including any real property transfer Taxes, UCC-3 filing fees, real estate, aircraft and motor vehicle registration, title recording or filing fees and other amounts payable in respect of transfer filings, and including any interest and penalty thereon, but excluding any real or personal property Taxes and income Taxes) payable in connection with, and imposed solely by reason of, the transfer of the Purchased Assets pursuant to this Agreement ("Transfer Taxes"). To the extent that any Transfer Taxes are required to be paid and are paid by any Seller or its Affiliates (or such Transfer Taxes

are assessed against and paid by any Seller or its Affiliates), Purchaser shall promptly reimburse Sellers for such Transfer Taxes. Sellers and Purchaser shall cooperate and consult with each other prior to filing any Tax Returns in respect of Transfer Taxes. Sellers and Purchaser shall cooperate and otherwise take commercially reasonable efforts to obtain any available refunds for Transfer Taxes.

Section 12.2 Tax Payments. Seller shall be responsible for and shall pay all real and personal property Taxes, and any sales or use Taxes or similar ad valorem obligations, payable with respect to the Purchased Assets or the business of the Sellers attributable to taxable periods beginning prior to the Closing Date Effective Time (the "Pre-Closing Period") and Purchaser shall be responsible for and shall pay all real and personal property Taxes, and sales or use Taxes or similar ad valorem obligations, payable with respect to the Purchased Assets or the business of the Sellers attributable to taxable periods beginning after the Closing Date Effective Time (the "Post-Closing Period"). In the case of any real or personal property Taxes payable with respect to the Purchased Assets or the business of the Sellers that are attributable to any taxable period that begins before and ends after the Closing Date (any "Straddle Period"), the portion of any such real or personal property Taxes attributable to the period of time for which Seller shall be responsible shall be deemed to be the amount of such Taxes for the entire Tax period multiplied by a fraction, the numerator of which is the number of days in the Tax period ending on (and including) the Closing Date and the denominator of which is the number of days in the Straddle Period. In the case of any sales or use Taxes or similar ad valorem obligations payable with respect to the Purchased Assets or the business of the Sellers that are attributable to any Straddle Period, the portion of any such sales or use Taxes or similar ad valorem obligations attributable to the period of time for which Seller shall be responsible shall be deemed equal to the amount which would be payable as computed on an interim closing-of-the-books basis if the relevant period ended at the close of business on the Closing Date.

Section 12.3 Purchase Price Allocation (Federal Income Tax). Purchaser shall allocate the purchase price (including the Assumed Liabilities) among the Purchased Assets in accordance with Code Section 1060 and the Regulations thereunder. In accordance with such allocation, Purchaser shall timely prepare and deliver to Sellers copies of Form 8594 and any required exhibits thereto (the "Asset Acquisition Statement"). Purchaser shall prepare and deliver to Sellers from time to time revised copies of the Asset Acquisition Statement (the "Revised Statements") so as to report any matters on the Asset Acquisition Statement that need updating (including purchase price adjustments, if any). Upon delivery to Sellers of any Asset Acquisition Statement or a Revised Statement, Sellers shall have thirty (30) days to object to such statement by delivering to Purchaser written notice of such objection. Purchaser and Seller shall use commercially reasonable efforts to resolve all objections relating to any Asset Acquisition Statement or a Revised Statement and, in connection therewith, Purchaser shall provide Sellers with any reasonable supporting documentation and data used by Purchaser to prepare the Asset Acquisition Statement, any Revised Statements or to determine the allocation in accordance with Code Section 1060 and the Regulations thereunder. If Purchaser and Sellers do not reach a final resolution of all such objections within thirty (30) days after delivery by Sellers of its objection, Purchaser and Sellers shall submit all unresolved objections to the Special Accountants for resolution in accordance with Section 3.6(c). The purchase price for the

Purchased Assets shall be allocated in accordance with the Asset Acquisition Statement or, if applicable, the last Revised Statements, provided by Purchaser to Sellers, and agreed to by the Parties or as provided for by any conclusive and binding determination by the Special Accountants. All income Tax Returns and reports filed by Purchaser and Sellers shall be prepared consistently with such allocation, except as provided by a change in applicable Tax Law or the good faith resolution of a Tax contest.

Section 12.4 Audits, Claims and Proceedings. Sellers shall have the right to control the conduct of the defense of any audit, claim, proceeding, investigation, or other controversy relating to Taxes ("Tax Claim") of Sellers for any taxable period ending on or prior to, or including, the Closing Date; provided that Sellers will not have the right to settle any such Tax Claim if the resolution or determination of such Tax Claim is reasonably likely to materially adversely affect Purchaser without first obtaining Purchaser's written consent, such consent to not be unreasonably withheld, conditioned or delayed.

Section 12.5 Cooperation. Sellers, on the one hand, and Purchaser, on the other hand, will provide each other with such cooperation and information as either of them reasonably may request of the other in filing any Tax Return, amended Tax Return or claim for refund, determining a Liability for Taxes or a right to a refund of Taxes, or participating in or conducting any audit or other proceeding in respect of Taxes. Such cooperation and information shall include providing copies of relevant Tax Returns or portions thereof, together with accompanying schedules, related work papers and documents relating to rulings and other determinations by Tax Authorities. Any information obtained under this Section 12.5 shall be kept confidential except as may be otherwise necessary in connection with the filing of Tax Returns or claims for refund or in conducting any audit or other proceeding.

ARTICLE XIII

MISCELLANEOUS

Section 13.1 Expenses and Financial Advisors Fees. Except as otherwise provided in this Agreement, each Party shall bear its own expenses incurred in connection with the negotiation and execution of this Agreement and each other agreement, document and instrument contemplated by this Agreement and the consummation of the transactions contemplated hereby and thereby, including any fees and expenses owed to any Person who has acted, directly or indirectly, as a broker, finder or financial advisor for such Party in connection with the Transactions; provided that Purchaser shall be responsible for and shall indemnify Seller for any governmental charges relating to UCC-3 filing fees, FAA, ICC, DOT, real estate and motor vehicle registration, title recording or filing fees and other amounts payable in respect of transfer filings in connection with the Transactions.

Section 13.2 Governing Law. This Agreement, and all claims or causes of action (whether in contract or tort) that may be based upon, arise out of or relate to this Agreement (including the Exhibits and Schedules), or the negotiation, execution, termination, validity, performance or nonperformance of this Agreement, or the transactions contemplated hereby shall be governed by and construed in accordance with the laws of the State of Delaware applicable to

contracts made and to be performed in such State, without regard to any conflict of laws principles thereof.

Section 13.3 Submission to Jurisdiction; Consent to Service of Process.

(a) Without limiting any Party's right to appeal any order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the Transactions, and (ii) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 13.6; provided, however, that if the Bankruptcy Case has closed or has not commenced, the Parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the United States District Court for the District of Delaware sitting in New Castle County or the courts of the State of Delaware sitting in New Castle County and any appellate court from any thereof, for the resolution of any such claim or dispute. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable Law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(b) To the fullest extent permitted by applicable Law, each of the Parties hereby consents to process being served by any Party in any suit, action or proceeding by delivery of a copy thereof in accordance with the provisions of Section 13.6.

Section 13.4 WAIVER OF RIGHT TO TRIAL BY JURY. EACH PARTY HERETO WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, MATTER OR PROCEEDING BASED UPON, ARISING OUT OF, OR RELATED TO THIS AGREEMENT, ANY PROVISION HEREOF OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 13.5 Entire Agreement; Amendments and Waivers. This Agreement (including the Schedules and Exhibits) and the Confidentiality Agreement represent the entire understanding and agreement between the Parties with respect to the subject matter hereof. This Agreement can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed by the Party against whom enforcement of any such amendment, supplement, modification or waiver is sought. No action taken pursuant to this Agreement, including any investigation by or on behalf of any Party, shall be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or

partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

Section 13.6 Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed given (a) when delivered personally by hand (with written confirmation of receipt), (b) five (5) days after being deposited with the United States Post Office, by registered or certified mail, postage prepaid, (c) one (1) business day following the day sent by overnight courier (with written confirmation of receipt), or (d) when sent by electronic mail (with acknowledgment received), in each case at the following addresses and (or to such other address as a Party may have specified by notice given to the other Party pursuant to this provision):

If to Sellers, to:

F-Squared Investment Management, LLC
80 William Street, Suite 400
Wellesley, Massachusetts 02481
Attention: Laura Dagan
email: LDagan@F2inv.com

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

Stillwater Advisory Group, LLC
PO Box 1022
Beverly Shores, Indiana 46301
Attention: David Phelps
email: Dphelps@dnphelps.com

- and -

Richards, Layton & Finger, P.A.
One Rodney Square
920 North King Street
Wilmington, Delaware 19801
Attention: Russell Silberglid
email: Silberglid@RLF.com

If to Purchaser, to:

Broadmeadow Capital, LLC
155 N. Wacker Drive, Suite 1850
Chicago, Illinois 60606
Attention: Paul R. Ingersoll
email: Paul.ingersoll@cedarcapital.com

With a copy to:

Fox, Swibel, Levin & Carroll, LLP
200 West Madison Street, Suite 3000
Chicago, Illinois 60606
Attention: David J. Morris
email: Dmorris@fslc.com

Section 13.7 Severability. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any law or public policy, all other terms or provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the Transactions is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the Transactions are consummated as originally contemplated to the greatest extent possible.

Section 13.8 Binding Effect; No Third-Party Beneficiaries; Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Nothing in this Agreement shall create or be deemed to create any Third-Party beneficiary rights in any Person or entity not a party to this Agreement except as provided below. No assignment of this Agreement or of any rights or obligations hereunder may be made by any Seller or Purchaser (by operation of law or otherwise) without the prior written consent of the other Parties (by Sellers, in the case of a proposed assignment by Purchaser) and any attempted assignment without the required consents shall be void, *provided, however*, notwithstanding the foregoing, each of Sellers is hereby authorized to assign this Agreement or of any their rights or obligations hereunder to any Permitted Assigns without the consent of Purchaser. No assignment of any obligations hereunder shall relieve the Parties of any such obligations. Upon any permitted assignment by Purchaser, as assignor, the references in this Agreement to Purchaser shall also apply to the assignee of Purchaser's rights or obligations unless the context otherwise requires. Upon any permitted assignment by any Seller, as assignor, the references in this Agreement to such Seller shall also apply to any assignee of such Seller's rights or obligations unless the context otherwise requires.

Section 13.9 Non-Recourse. Except pursuant to the Parent Guaranty or except in the case of fraud, no past, present or future director, officer, employee, agent, incorporator, member, manager, partner, stockholder or other equityholder of either Party shall have any liability for any obligations or liabilities of such Party under this Agreement or the Seller Documents or the Purchaser Documents (as applicable), or for any claim based on, in respect of, or by reason of, the transactions contemplated hereby and thereby.

Section 13.10 Privileged Communications.

(a) Sellers and Purchaser hereby acknowledge and agree that notwithstanding any provision of this Agreement, neither Purchaser nor any of its Affiliates shall have access to (and each hereby waives any right of access it may otherwise have with respect to) any Privileged Communications, whether or not the Closing occurs. Without limiting the generality

of the foregoing, Purchaser hereby acknowledges and agrees, upon and after the Closing: (i) neither Purchaser nor any of its Affiliates shall be a holder of, or have any right, title or interest to the Privileged Communications; (ii) only Sellers shall hold property rights in the Privileged Communications and shall have the right to waive or modify such property rights; and (iii) Sellers shall have no duty whatsoever to reveal or disclose any Privileged Communications to Purchaser or any of its Affiliates.

(b) To the extent that any Privileged Communications is disclosed or made available to Purchaser, the Parties hereby agree (i) that the disclosure, receipt and/or review of such Privileged Communication is entirely inadvertent and shall not waive, modify, limit or impair in any form or fashion the protected nature of the Privileged Communications, (ii) it is their desire, intention and mutual understanding that the sharing of such material is not intended to, and shall not, waive or diminish in any way the confidentiality of such material or its continued protection under the attorney-client privilege, work product doctrine or other applicable privilege, (iii) Sellers shall have the right in its sole discretion and at any time to require the return and/or destruction of the Privileged Communications.

Section 13.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same Agreement. Delivery of an executed counterpart of this Agreement by an electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Agreement. The failure to deliver an original executed counterpart shall not affect the validity, enforceability or binding effect hereof.

ARTICLE XIV

SELLERS' REPRESENTATIVE

Section 14.1 Sellers' Representative. Sellers hereby designate and irrevocably appoint Parent (the "Sellers' Representative"), as their agent and attorney-in-fact with full power and authority to do the following, it being agreed that such appointment of the Sellers' Representative and its actions in carrying out its duties pursuant thereto are essential terms of the Transactions and this Agreement and shall be binding on the parties hereto and all Sellers: (a) deliver and receive notices, including service of process, with respect to any matter under this Agreement or otherwise pertaining to the Sellers' Representative's duties; (b) execute and deliver any and all documents and take any and all such actions as shall be required or permitted of the Sellers' Representative pursuant to this Agreement; (c) take such actions as shall be deemed necessary or appropriate by the Sellers' Representative in connection with any Transaction Documents to which the Sellers' Representative is a party; (d) provide notice of, demand, pursue and enforce, in its discretion, any claim against Purchaser for a breach of this Agreement; (e) take, in its discretion, any and all actions, and deliver and receive any and all notices hereunder in respect of or in connection with any claim by Sellers for indemnification under this Agreement, including the negotiation, settlement or compromise of any disagreement or dispute in respect thereof; (f) withhold funds to pay expenses and obligations arising in its capacity as Sellers' Representative; (g) execute and deliver any contract, agreement, amendment or other document or certificate, including any settlement agreement or release of claims, to effectuate any of the foregoing or as may otherwise be specifically permitted by this Agreement, any such contract,

agreement, amendment or other document or certificate; (h) determine and pay such compensation to Persons who provide services to the Sellers' Representative, in such amounts, on such terms and subject to such conditions as may be determined by the Sellers' Representative in its reasonable discretion; (h) take all such other actions as the Sellers' Representative shall deem necessary or appropriate, in its discretion, for the accomplishment of the foregoing and the Transactions or in the best interests of the Sellers in connection with the Transactions; and (i) engage such attorneys, accountants, consultants and other Persons as the Sellers' Representative, in its discretion, deems necessary or appropriate to accomplish any action required or permitted of it hereunder.

The Sellers' Representative shall have the sole and exclusive right to handle the foregoing matters for which the Sellers' Representative has been appointed. No Seller shall have any right to participate in the resolution of such matters in any manner. The Sellers' Representative shall accept notices for all purposes under this Agreement in connection with its duties as Sellers' Representative as provided herein, and Purchaser shall not be required to provide to any Seller any notice in respect thereof.

Section 14.2 Substitute Appointment. In the event of the resignation, dissolution or liquidation of the Sellers' Representative, the Sellers shall promptly designate a substitute and provide written notice to Purchaser of such substitute, which substitute shall from the time of such designation have all the rights and responsibilities of the Sellers' Representative hereunder, and the term "Sellers' Representative" as used in this Agreement includes any successor Sellers' Representative. Purchaser and Sellers hereby agree that Parent's Permitted Assigns shall be entitled to be the Sellers' Representative without any act or consent of any Person other than Parent.

Section 14.3 Decisions of Sellers' Representative. A decision, act, instruction or consent of the Sellers' Representative constitutes a decision, act, instruction or consent of all the Sellers and is final, binding and conclusive upon the Sellers, and Purchaser and any Purchaser Indemnified Party may rely upon any such decision, act, instruction or consent of the Sellers' Representative as being the decision, act, instruction or consent of the Sellers. So long as Purchaser or any Purchaser Indemnified Party is acting or failing to act in good faith and is not negligent in acting or failing to act, Purchaser and any Purchaser Indemnified Party is hereby relieved from any liability to any Person for any acts done or omissions by Purchaser and any Purchaser Indemnified Party in accordance with such decision, act, instruction or consent of the Sellers' Representative. Without limiting the generality of the foregoing, Purchaser and any Purchaser Indemnified Party is entitled to rely, without inquiry, upon any document delivered by the Sellers' Representative as being true and complete and having been duly signed or sent by the Sellers' Representative.

Section 14.4 Reliance by Sellers' Representative. As between the Sellers' Representative and the Sellers, the Sellers' Representative shall be entitled to rely, and shall be fully protected against the Sellers in relying, upon any statements furnished to it by any Seller or Purchaser, and the Sellers' Representative shall be entitled to act on the advice of counsel and other professional advisers selected by it and shall not be liable for any action or inaction done in good faith by the Sellers' Representative based on such advice.

Section 14.5 No Liability of Sellers' Representative. The Sellers' Representative will not be liable to the Sellers for any action taken by the Sellers' Representative in good faith without gross negligence or willful misconduct. The limitations set forth in the preceding sentence shall not apply or have any force or effect in the case of fraud or willful misconduct.

Section 14.6 Interest and Consideration of Mutual Covenants. This appointment and grant of power and authority by the Members to the Sellers' Representative pursuant to this Article XIV is coupled with an interest, is in consideration of the mutual covenants made in this Agreement, is irrevocable and may not be terminated by the act of any Seller or by operation of law, whether upon the death, incapacity, dissolution or liquidation of any Seller, or by the occurrence of any other event.

[Signature Page Follows]

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

SELLERS

PARENT:

F-SQUARED INVESTMENT MANAGEMENT, LLC

By: Laura P. Dagan
Name: Laura P. Dagan
Title: CEO

SELLER SUBSIDIARIES:

F-SQUARED INVESTMENTS, INC.

By: Laura P. Dagan
Name: Laura P. Dagan
Title: CEO

F-SQUARED INSTITUTIONAL ADVISORS, LLC

By: Laura P. Dagan
Name: Laura P. Dagan
Title: AUTHORIZED PERSON

F-SQUARED ALTERNATIVE INVESTMENTS, LLC

By: Laura P. Dagan
Name: Laura P. Dagan
Title: AUTHORIZED PERSON

ALPHASECTOR LLS GP 1, LLC

By: Laura P. Dagan
Name: Laura P. Dagan
Title: AUTHORIZED PERSON

[Signature Page to Asset Purchase Agreement]

ACTIVE INDEX SOLUTIONS, LLC

By: Laura P. Dagan
Name: Laura P. Dagan
Title: AUTHORIZED PERSON

F-SQUARED RETIREMENT SOLUTIONS, LLC

By: Laura P. Dagan
Name: Laura P. Dagan
Title: AUTHORIZED PERSON

F-SQUARED SOLUTIONS, LLC

By: Laura P. Dagan
Name: Laura P. Dagan
Title: AUTHORIZED PERSON


F-SQUARED CAPITAL, LLC

By: Laura P. Dagan
Name: Laura P. Dagan
Title: AUTHORIZED PERSON

[Signature Page to Asset Purchase Agreement]

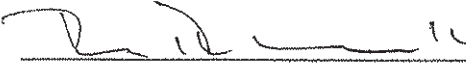
PURCHASER

BROADMEADOW CAPITAL, LLC

By: 
Name: PAUL R. INGERSON
Title: CEO

and solely for the purpose of agreeing to Section 8.4,

CEDAR CAPITAL, LLC

By: 
Name: PAUL R. INGERSON
Title: CEO

SCHEDULE A

Seller Subsidiaries

F-SQUARED INVESTMENTS, INC.

F-SQUARED INSTITUTIONAL ADVISORS, LLC

F-SQUARED ALTERNATIVE INVESTMENTS, LLC

ALPHASECTOR LLS GP 1, LLC

ACTIVE INDEX SOLUTIONS, LLC

F-SQUARED RETIREMENT SOLUTIONS, LLC

F-SQUARED SOLUTIONS, LLC

F-SQUARED CAPITAL, LLC

EXHIBIT A

(Proposed Form of Bid Procedures Order)

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

In re: F-Squared Investment Management, LLC, <i>et al.</i> ¹ <div style="text-align: right;">Debtors.</div>)))))))	Chapter 11 Case No. 15-_____ (_____) (Joint Administration Requested)
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**ORDER ESTABLISHING BIDDING PROCEDURES RELATED TO THE SALE
OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, APPROVING
RELATED BID PROTECTIONS AND ESTABLISHING NOTICE
PROCEDURES FOR DETERMINING CURE AMOUNTS**

Upon consideration of the motion (the “**Sale Motion**”)² of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”), pursuant to sections 105, 363, 365, 503 and 507 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), for entry of orders approving, among other things, the sale of substantially all of the Debtors’ assets and related bidding procedures; and the Court having determined that the relief provided herein is in the best interest of the Debtors, their estates and creditors and other parties in interest; and due and adequate notice of the Sale Motion having been given under the circumstances; and upon the record of the hearing on the Bidding Procedures and the other relief granted herein, and the full record of this case; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby:

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: F-Squared Investment Management, LLC (9247), F-Squared Investments, Inc. (0788), F-Squared Retirement Solutions, LLC (9247), F-Squared Alternative Investments, LLC (9247), F-Squared Solutions, LLC (9247), F-Squared Institutional Advisors, LLC (9247), F-Squared Capital, LLC (5257), AlphaSector LLS GP 1, LLC (3342), and Active Index Solutions, LLC (0788). The Debtors’ address is Wellesley Office Park, 80 William Street, Suite 400, Wellesley, Massachusetts 02481.

² Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Sale Motion or the Stalking Horse Agreement (as defined in the Sale Motion), as applicable.

FOUND AND DETERMINED THAT:³

A. This Court has jurisdiction over the Sale Motion and the transactions contemplated by the Stalking Horse Agreement pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M) and (O). Venue in this district is proper under 28 U.S.C. §§ 1408 and 1409.

B. Good and sufficient notice of the Sale Motion and the relief sought therein has been given under the circumstances, and no other or further notice is required except as set forth herein with respect to the Auction and Sale Hearing. A reasonable opportunity to object or to be heard regarding the relief provided herein has been afforded to parties-in-interest.

C. The Debtors' proposed notice of the Auction, Sale Hearing and procedures related to the assumption and assignment of contracts and related cure amounts are appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Auction, the sale of the Purchased Assets, the Bidding Procedures to be employed in connection therewith and the Sale Hearing.

D. The Stalking Horse Agreement represents the highest or otherwise best offer that the Debtors have received to date as a result of their efforts to market the Purchased Assets for sale.

E. The Debtors have articulated good and sufficient business reasons for this Court to approve: (i) the Bidding Procedures; (ii) the scheduling of a bid deadline, Auction and Sale Hearing with respect to the proposed sale of the Purchased Assets; (iii) payment of the Break-Up Fee and Expense Reimbursement under the terms and conditions set forth in the

³ The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this matter pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

Stalking Horse Agreement; and (iv) the establishment of procedures to fix the Cure Amounts to be paid pursuant to section 365 of the Bankruptcy Code in connection with the assumption, assignment and/or transfer of certain executory contracts and unexpired leases (the “**Designated Executory Contracts**”).

F. The Bidding Procedures are reasonably designed to maximize the value to be achieved for the Purchased Assets.

G. Each of the Break-Up Fee and the Expense Reimbursement is: (i) an actual and necessary cost and expense of preserving the Debtors’ estates within the meaning of section 503(b) of the Bankruptcy Code; (ii) commensurate to the real and substantial benefit conferred upon the Debtors’ estates by the Purchaser; (iii) reasonable and appropriate in light of the size and nature of the proposed sale, comparable transactions, the commitments that have been made, and the efforts that have been and will be expended by the Purchaser; and (iv) necessary to induce the Purchaser to continue to pursue the purchase of the Purchased Assets and to be bound by the Stalking Horse Agreement.

H. The assurance of the payment of the Break-Up Fee and Expense Reimbursement: (i) will promote more competitive bidding by inducing the Purchaser’s bid, which otherwise would not have been made and which may be the highest or otherwise best available offer for the Purchased Assets; (ii) induced the Purchaser to research the value of the Purchased Assets, conduct extensive due diligence and propose the transaction, including, among other things, submission of a bid that will serve as a minimum or floor bid on which all other bidders can rely; and (iii) will provide a benefit to the Debtors’ estates by increasing the likelihood that the price at which the Purchased Assets are sold will reflect market value.

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

1. The Sale Motion is **GRANTED** as and to the extent set forth herein.

2. All objections to the Sale Motion with respect to the entry of this Order that have not been withdrawn, waived or settled, and all reservations of rights included therein with respect to the entry of this Order, hereby are overruled and denied on the merits.

A. Approval of the Stalking Horse Agreement and Bidding Procedures

3. Immediately upon entry of this Order, the Stalking Horse Agreement shall be binding upon the parties thereto in accordance with its terms. Notwithstanding the foregoing, the approval of the sale of substantially all of the Debtors' assets shall be subject to Court approval at the Sale Hearing.

4. The Bidding Procedures, in substantially the form attached hereto as **Schedule 1**, are incorporated herein, approved in their entirety. The Debtors are authorized to take all actions incidental, necessary or appropriate to implement the Bidding Procedures.

5. The Break-Up Fee and Expense Reimbursement are approved in their entirety. Subject to the terms and conditions of the Stalking Horse Agreement, without further order of this Court, the Debtors shall, and are directed to, remit to the Purchaser the Break-Up Fee and the Expense Reimbursement within three (3) business days following the date of the closing of a transaction contemplated by a Competing Bid if such closing occurs on or before the Termination Date; provided, however, that the aggregate amount of the Expense Reimbursement shall in no event exceed \$250,000. The Debtors' obligations to pay the Break-Up Fee and Expense Reimbursement, if such amounts become due and payable in accordance with the terms of the Stalking Horse Agreement, shall constitute allowed super-priority administrative expense claims against the Debtors under Sections 503 and 507(b) of the Bankruptcy Code. The Break-Up Fee and the Expense Reimbursement shall only be payable to the Purchaser in accordance

with the terms of the Stalking Horse Agreement and this Order. This Court shall retain jurisdiction to hear any dispute with respect to the Purchaser's entitlement to the Break-Up Fee or Expense Reimbursement; provided, however, that any dispute regarding the Purchaser's entitlement to the Break-Up Fee or Expense Reimbursement shall be raised prior to the commencement of the Sale Hearing and any such dispute shall be heard and determined at the Sale Hearing (or such other date that the Court may determine is appropriate under the circumstances).

6. The deadline for submitting bids for the Purchased Assets (the “**Bid Deadline**”) is _____, 2015 at 5:00 p.m. (prevailing Eastern Time).

7. The Debtors may sell the Purchased Assets by conducting an Auction in accordance with the Bidding Procedures. If one or more Qualified Bids are timely received by the Debtors in accordance with the Bidding Procedures, the Auction shall take place on _____, 2015 at __:__.m. (prevailing Eastern Time) at the offices of Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801, or such other place and time as the Debtors shall notify the Purchaser, the Creditors' Committee (if appointed), all Qualified Bidders, and other invitees (as determined by the Debtors). If, however, no such Qualified Bid is received by the Bid Deadline, then the Auction will not be held and the Debtors shall designate the Purchaser as the Winning Bidder and may promptly seek Court approval of the Stalking Horse Agreement.

8. At any Auction, the minimum initial overbid must be at least [\$5,600,000 (the “**Initial Overbid**”). The Initial Overbid represents] [INSERT CHANGES BASED ON CLOSING DATE PRICE FORMULA] \$100,000 plus [\$5,000,000 (which is the maximum cash portion of the Purchase Price paid by the Purchaser at Closing)] [SAME] plus the Break-

Up Fee (which is \$250,000) plus the Expense Reimbursement (which, for purposes of determining the Initial Overbid, is \$250,000). If the Initial Overbid is received, subsequent overbids (each such bid, an “**Overbid**”) must be in cash increments of at least \$100,000 greater than the Initial Overbid and any subsequent Overbid.

9. Each Qualified Bidder participating at the Auction will be required to confirm that it has not engaged in any collusion with respect to the bidding or the Sale. All bidding activity at the Auction shall be transcribed and/or videotaped. The Auction will be conducted openly, and any of the Debtors’ creditors are permitted to attend.

B. Scheduling of Sale Hearing and Related Notices

10. The notice of auction and sale hearing to be issued in connection with the proposed sale of the Purchased Assets, substantially in the form annexed hereto as **Schedule 2** (the “**Notice of Auction and Sale Hearing**”), is hereby approved.

11. The Sale Hearing shall be held before this Court on _____, **2015 at __:___**
__m. (prevailing Eastern Time).

12. Objections to the sale of the Purchased Assets, or the relief requested in the Sale Motion must: (i) be in writing; (ii) comply with the Bankruptcy Rules and the Local Rules; (iii) state with specificity the nature of such objection; (iv) be filed with the clerk of the Court, Third Floor, 824 N. Market Street, Wilmington, Delaware 19801, on or before **4:00 p.m. (prevailing Eastern Time) on _____, 2015** (the “**Objection Deadline**”); and (v) be served so as to be received by no later than the Objection Deadline, on the parties identified in **Exhibit A** attached hereto (the “**Notice Parties**”). Any party that fails to file an objection to the sale of the Purchased Assets by the Objection Deadline will (a) be forever barred from objecting to the sale of the Purchased Assets on any grounds, and (b) be deemed to have consented to the sale of the

Purchased Assets free and clear of any pledges, liens, security interests, encumbrances, claims of every type or nature (including without limitation any and all claims against Purchaser or the Purchased Assets under any successor liability or other theory), charges, options and interests thereon (collectively, the “**Interests**”) in accordance with the Stalking Horse Agreement or the Winning Bidder’s asset purchase agreement and any order approving the sale of the Purchased Assets.

13. On or before three (3) days after entry of this Order, the Debtors will cause the Notice of Auction and Sale Hearing and this Order to be sent by first-class mail postage prepaid, to all parties that were served with the Sale Motion.⁴

14. In addition to the foregoing, electronic copies of, among other things, the Sale Motion, this Order and the Notice of Auction and Sale Hearing will be available for viewing, free of charge, on the case website maintained by BMG Group, Inc., the Debtors’ proposed claims and noticing agent, at [website].

15. PL Advisors, the proposed investment banker for the Debtors, intends to contact all Persons known or reasonably believed to have expressed an interest in acquiring some or all of the Purchased Assets since [March 30, 2015] within three (3) days of the entry of this Order.

C. Procedures Related to Assumption and Assignment of Executory Contracts and Unexpired Leases

16. On or before three (3) days after the entry of this Order, the Debtors shall serve, or cause to be served, by first class mail, a notice of potential assumption, assignment

⁴ The Notice of Auction and Sale Hearing will, among other things, (i) direct parties that are interested in submitting a bid for the Purchased Assets to contact PL Advisors, the proposed investment banker for the Debtors, for more information and (ii) will provide that any party in interest that wishes to obtain a copy of any related document that is not publically available, subject to any necessary confidentiality agreement, may make a request in writing as specified in the Notice of Auction and Sale Hearing.

and/or transfer of the Designated Executory Contracts, substantially in the form attached hereto as **Schedule 3** (the “**Notice of Assumption and Assignment**”) on all non-debtor parties to the Designated Executory Contracts, provided, however, that the identification of a contract or lease in a Notice of Assumption and Assignment shall not constitute an admission by the Debtors that such contract or lease is an executory contract or unexpired lease. The Debtors reserve all of their rights, claims and causes of action with respect to the contracts and leases listed in a Notice of Assumption and Assignment. The Notice of Assumption and Assignment shall identify the cure amount(s) that the Debtors believe must be paid in order to cure all defaults outstanding under the Designated Executory Contracts (the “**Cure Amounts**” and as to any particular Designated Executory Contract the “**Cure Amount**”) as of such date (the “**Cure Date**”). The Cure Amount applicable to a Designated Executory Contract shall for all purposes be deemed to reflect all damages and amounts that are or could be payable to any person or entity as a result of any breach at any time by any of the Debtors of any obligation, representation or warranty of any of the Debtors to any person or entity under, related to or otherwise with respect to such Designated Executory Contract, including without limitation any actual or contingent claim for indemnification from the Debtors under the terms of such Designated Executory Contract related to or arising from any breach by any of the Debtors of any obligation, representation or duty of the Debtors to any person or entity arising under any applicable law at any time irrespective of whether any such indemnification claim has been asserted or is known as of the Closing Date. In addition, if the Debtors identify additional contracts or unexpired leases that might be assumed by the Debtors and assigned to the Purchaser that are not set forth in the original Notice of Assumption and Assignment, the Debtors shall promptly send a supplemental

notice (a **“Supplemental Notice of Assumption and Assignment”**) to the applicable counterparties to such additional executory contracts and unexpired leases.

17. Unless the non-debtor party to a Designated Executory Contract files an objection (each, a **“Cure Amount/Assignment Objection”**) to (i) its scheduled Cure Amount, and/or (ii) the assumption, assignment and/or transfer of such Designated Executory Contract (including, without limitation, with respect to the Purchaser, adequate assurance of future performance) **no later than three (3) days before the Auction** (collectively, the **“Cure/Assignment Objection Deadline”**) and serves a copy of the Cure Amount/Assignment Objection so as to be received no later than the Cure/Assignment Objection Deadline by the Notice Parties, then such non-debtor party will (a) be forever barred from objecting to the Cure Amount and from asserting any additional cure or other amounts as of the Cure Date with respect to such Designated Executory Contract against the Debtors, the Purchaser, such other Winning Bidder or any other party, and such parties shall be entitled to rely solely upon the Cure Amount, (b) be forever barred from asserting any claim (including any contingent claim) at any time against the Purchaser or Winning Bidder or any other assignee of the relevant Designated Executory Contract arising from, related to or based on any actual or alleged default or breach by any of the Debtors of any duty, obligation or representation to any person or entity at any time, related in any way to such Designated Executory Contract, including without limitation any (i) claim for indemnification against any Debtor or Purchaser under such Designated Executory Contract based on or arising from any breach by any Debtor of any duty, obligation or representation to any person or entity at any time, and (ii) claim against Purchaser under any successor liability or other theory of any type or nature whatsoever that relates to or arises from any acts, omissions or conduct of any of the Debtors at any time, in any amount that is greater

than the scheduled Cure Amount applicable to such Designated Executory Contract, and (c) subject to paragraph 19 of this Order, be deemed to have consented to the assumption, assignment and/or transfer of such Designated Executory Contract, notwithstanding any consent right that such party could have asserted, and shall be forever barred and estopped from asserting or claiming against the Debtors, the Purchaser, or such other Winning Bidder or any other assignee of the relevant Designated Executory Contract that any additional amounts are due or defaults exist, or conditions to assumption, assignment, and/or transfer must be satisfied, as of the Cure Date, under such Designated Executory Contract.

18. If an objection challenges a Cure Amount, the objection must set forth the cure amount being claimed by the objecting party (the “**Claimed Cure Amount**”) with appropriate documentation in support thereof. Upon receipt of an objection to a Cure Amount, the Debtors may, in their sole discretion, hold an amount equal to the Claimed Cure Amount in reserve pending further order of the Court or agreement between the Debtors and the objecting party. The Debtors, in their discretion, may in good faith (i) resolve any disputed Claimed Cure Amount without further order of the Court, or (ii) pursue a contested determination by this Court of any disputed Claimed Cure Amount. Subject to the foregoing, if the Debtors hold a Claimed Cure Amount in reserve as a result of an objection to a Cure Amount, then the Debtors may assume and assign the Designated Executory Contract that is the subject of such objection prior to the resolution of such objection and without further delay.

19. In the event that the Purchaser is not the Winning Bidder for the Purchased Assets, immediately after the conclusion of the Auction, the Debtors will serve a notice identifying the Winning Bidder on the non-debtor parties to the Designated Executory Contracts identified in such Winning Bid. The non-debtor parties to the Designated Executory

Contracts may, at or prior to the Sale Hearing, object to the assumption, assignment and/or transfer of such Designated Executory Contract solely on the issue of whether the Winning Bidder can provide adequate assurance of future performance as required by Section 365 of the Bankruptcy Code. Any non-debtor party to a Designated Executory Contract that does not object to the assignment of its respective Designated Executory Contract shall be deemed to have consented to the assumption, assignment and/or transfer of such Designated Executory Contract to the Winning Bidder. For the avoidance of any doubt, nothing in this paragraph 19 shall extend, shorten or otherwise affect the time period, or the ability to otherwise object, to any Cure Amount.

20. The Notice of Assumption and Assignment to be issued in connection with the proposed sale of the Purchased Assets, substantially in the form annexed hereto as **Schedule 3**, is hereby approved.

D. Other Provisions

21. Subject to the provisions of the Stalking Horse Agreement, the Debtors, in their discretion, may, from time to time, adjourn the Sale Hearing without further notice to creditors or other parties-in-interest other than by announcement of such adjournment before this Court or on the agenda for the date scheduled for such hearing.

22. Subject to the provisions of the Stalking Horse Agreement, the Bidding Procedures and this Order, the Debtors, in consultation with the Creditors' Committee (if appointed), shall have the right as they may reasonably determine to be in the best interests of their estates to: (a) determine which bidders are Qualified Bidders; (b) determine which bids are Qualified Bids; (c) determine which Qualified Bid is the highest and otherwise best proposal and which is the next highest and otherwise best proposal; (d) reject any bid that is (i) inadequate or

insufficient, (ii) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code or (iii) contrary to the best interests of the Debtors and their estates; (e) remove some of the Purchased Assets from the Auction; (f) impose additional terms and conditions with respect to all potential bidders and the Purchaser, except that no such additional terms and conditions may alter or amend any of Purchaser's rights and protections under this Order (including such rights and protections set forth in paragraphs 16-20 of this Order; (g) extend the deadlines set forth herein; (h) except, as set forth herein, adjourn or cancel the Auction and/or Sale Hearing without further notice; (i) modify the Bidding Procedures consistent with the terms of this Order; and/or (j) withdraw the Sale Motion at any time with or without prejudice. For the avoidance of doubt, the Purchaser is a Qualified Bidder and the transaction set forth in, and by virtue of, the Stalking Horse Agreement is a Qualified Bid.

23. At any Auction, the Purchaser shall be entitled to credit bid all or any portion of the Break-Up Fee and the Expense Reimbursement without limitation, in each round of successive bidding. Accordingly, the full amount of the Break-Up Fee and Expense Reimbursement shall be included as value of any bid of Purchaser in each round of bidding at the Auction, including for purposes of comparing the value of Purchaser's bid to the bid of any Competing Bidder in any such round of bidding.

24. The Purchaser shall have standing to appear and to be heard on any and all issues related to the Auction, the sale of the Assets and the Bidding Procedures, including, without limitation, to object to any sale of the Assets.

25. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 6006(d), 7062, 9014, or otherwise, the terms and conditions of this order shall be immediately

effective and enforceable upon its entry, and no automatic stay of execution shall apply to this order.

26. This Court shall retain jurisdiction over any matters related to or arising from the implementation of this Order.

Dated: _____, 2015
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

Notice Parties

- 1) The Debtors, (i) Wellesley Office Park, 80 William Street, Suite 400, Wellesley, Massachusetts 02481 (Attn: Laura Dagan; email: ldagan@f2inv.com) and (ii) c/o Stillwater Advisory Group LLC, PO Box 1022, Beverly Shores, Indiana 46301 (Attn: David Phelps; email: dphelps@dnphelps.com);
- 2) Counsel to the Debtors, Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801 (Attn: Russell C. Silberglied and Michael J. Merchant; email: silberglied@rlf.com and merchant@rlf.com);
- 3) Counsel to the Purchaser, (i) Fox, Swibel, Levin & Carroll, LLP), 200 West Madison Street, Suite 200, Chicago, Illinois 60606 (Attn: N. Neville Reid; email: nreid@fslc.com) and (ii) [Delaware Counsel to the Purchaser];
- 4) Counsel to the Creditors' Committee (if appointed); and
- 5) The Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: []).

Schedule 1

The Bidding Procedures

BIDDING PROCEDURES

By motion, dated _____, 2015 [Docket No. ____] (the “**Motion**”)¹, F-Squared Investment Management, LLC and its subsidiaries (collectively, the “**Debtors**”) sought approval of, among other things, the procedures by which it will determine the highest or otherwise best bid for the sale (the “**Sale**”) of substantially all of their assets (the “**Purchased Assets**”), as described in the Asset Purchase Agreement by and among [Cedar Capital, LLC] (the “**Stalking Horse Bidder**”) and the Debtors, dated as of _____, 2015 (the “**Stalking Horse Agreement**”), a copy of which is attached to the Motion.

On _____, 2015, the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) entered an order (the “**Bidding Procedures Order**”) that, among other things, authorized the Debtors to determine the highest or otherwise best bid for the Purchased Assets through the process and procedures set forth below (the “**Bidding Procedures**”). To the extent set forth in the Bidding Procedures Order and subject to the rights of the Stalking Horse Bidder set forth therein, the Debtors, in consultation with the Creditors’ Committee (if appointed), reserve the right to modify or waive the Bidding Procedures.

Bid Requirements

Any party interested in submitting a bid (a “**Bidder**”) must transmit such bid (a “**Bid**”) via electronic mail to the parties identified on **Schedule 1** attached hereto not later than **5:00 p.m. (prevailing Eastern Time) on _____, 2015** (the “**Bid Deadline**”). To constitute a “**Qualified Bid**”, a Bid (other than the Stalking Horse Agreement, which shall constitute a Qualified Bid for all purposes) must be a written irrevocable offer from a Qualified Bidder (as defined below) and provide for the following:

- (a) **Identification of Potential Bidder**. Identification of the party submitting the bid (the “**Potential Bidder**”) (and any equity holders, in the case of a Potential Bidder which is an entity specially formed for the purpose of effectuating the contemplated transaction) and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction.
- (b) **Asset Purchase Agreement**. An executed copy of an asset purchase agreement providing for the purchase of substantially all of the assets of the Debtors along with a redline marked against the Stalking Horse Agreement reflecting variations from the Stalking Horse Agreement. The Debtors may consider any bids, including those which may propose alternative transaction structures to the Stalking Horse Agreement.
- (c) **Financing**. Evidence of the Potential Bidder’s ability to consummate the transaction and payment of the purchase price in cash at the Closing, including, but not limited to:

¹ Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Bidding Procedures Order or the Stalking Horse Agreement, as applicable.

- (i) a signed commitment for any debt or equity financing;
 - (ii) a bank or other account statement showing the ability of a Potential Bidder to pay cash for the Assets;
 - (iii) contact names and numbers for verification of financing sources; and
 - (iv) any additional information or evidence, satisfactory to the Debtors, in their discretion, as requested to validate the ability to fund the Minimum Bid Amount (defined below).
- (d) **Minimum Bid Amount.** The bid must be higher or otherwise better than the offer of the Stalking Horse Bidder under the Stalking Horse Agreement. To be higher or otherwise better than the offer of the Stalking Horse Bidder such bid must be valued in an amount that is at least the equivalent of [INSERT PRICE CLOSING FORMULA] [\$5,600,000] (the “**Minimum Bid Amount**”).²
- (e) **Irrevocability of Bid.** A letter stating that the Potential Bidder’s offer is irrevocable and binding until the first business day after the Assets for which the Potential Bidder is submitting a bid have been sold pursuant to the closing of the sale or sales approved by the Bankruptcy Court.
- (f) **Bid Deposit.** A cash deposit in the amount of \$560,000 (the “**Bid Deposit**”) by wire transfer or certified or cashier’s check, which amount shall be made payable to the Debtors.
- (g) **No Financing or Diligence Conditions.** The bid shall not contain any due diligence or financing contingencies of any kind.
- (h) **Consent to Jurisdiction.** The bid shall state that the offering party consents to the jurisdiction of the Bankruptcy Court.
- (i) **Corporate Authority.** The bid shall include evidence of authorization and approval from the Potential Bidder’s board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the submitted asset purchase agreement of the Potential Bidder.

² To be higher or otherwise better than the offer of the Stalking Horse Bidder such bid must be valued in an amount that is at least the equivalent of \$600,000 over the Closing Payment.

- (j) **Adequate Assurance Information.** The bid shall include sufficient financial or other information (the “**Adequate Assurance Information**”) to establish adequate assurance of future performance with respect to any lease or contract to be assumed and assigned to the bidder in connection with the proposed transaction. The bid shall also identify a contact person (with relevant contact information) that counterparties to any lease or contract can contact to obtain additional Adequate Assurance Information.
- (k) **Other Information.** Include such other information as may be reasonably requested in writing by the Debtors prior to the Auction.

A “**Qualified Bidder**” is a Potential Bidder that delivers the documents and information described in subparagraphs (a)-(k) above, and that the Debtors determine, in consultation with the Creditors’ Committee (if appointed), is reasonably likely (based on, among other possible criteria, financial information submitted by the Potential Bidder, the availability of financing, experience and other consideration deemed relevant by the Debtors) to be able to consummate a sale if selected as the Winning Bidder. Notwithstanding the foregoing, the Stalking Horse Bidder shall be deemed a Qualified Bidder. On or prior to 11:59 p.m. (prevailing Eastern Time) on the day of the Bid Deadline, the Debtors will notify the parties identified on **Schedule 1** hereto and the Stalking Horse Bidder by electronic mail of any extension of the Bid Deadline. Not later than two (2) business days after the Bid Deadline, the Debtors shall determine and shall notify such Potential Bidder, if such Potential Bidder is a Qualified Bidder. A bid from a Qualified Bidder is a “**Qualified Bid**.” No later than three (3) business days after the Bid Deadline, the Debtors shall provide copies of all Qualified Bids (other than the Stalking Horse Bidder’s bid) by electronic mail to the parties identified on **Schedule 1** to the Bid Procedures and all Qualified Bidders (including the Stalking Horse Bidder).

In the event that any Bid is determined by the Debtors, in consultation with the Creditors’ Committee (if appointed), not to be a Qualified Bid, the Debtors shall cause such Bidder to be refunded its Bid Deposit within seven (7) business days after the Bid Deadline or as soon as reasonably practicable thereafter.

Access to Due Diligence Materials

The Debtors have designated PL Advisors, the Debtors' proposed investment banker, to coordinate all reasonable requests for additional information and due diligence access from the Bidders. Contact information for PL Advisors is as follows:

<p>PL Advisors Attn: Colette R. Taylor or Domonkos L. Koltai 757 Third Avenue (17th Floor) New York, NY 10017 Telephone: 212-596-3462 or 212-596-3463 Email: Ctaylor@PL-Advisors.com or DKoltai@PL-Advisors.com</p>
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Unless the Debtors otherwise agree, only Bidders who have executed a confidentiality agreement in form and substance acceptable to the Debtors are eligible to receive due diligence access or additional non-public information. If the Debtors determine that a Bidder that has executed such a confidentiality agreement is not a Qualified Bidder pursuant to the criteria above, then such Bidder's right to receive due diligence access or additional non-public information shall terminate unless otherwise agreed. The Debtors may, but shall not be obligated to, furnish any due diligence information after the Bid Deadline. Neither the Debtors nor any of their employees, officers, directors, affiliates, subsidiaries, representatives, agents, advisors or professionals are responsible for, nor shall they bear liability with respect to, any information obtained by Bidders in connection with the sale of the Purchased Assets.

Each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Purchased Assets that are the subject of the Auction prior to making any such Bids; that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets in making its Bid; and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise regarding the Purchased Assets, or the completeness of any information provided in connection therewith, except as expressly stated in these Bidding Procedures or, as to the Winning Bidder or the Stalking Horse Agreement.

Due Diligence From Bidders

Each Bidder shall comply with all reasonable requests for additional information and due diligence access by the Debtors or their advisors regarding each such Bidder and its contemplated transaction. Failure by a Bidder to comply with the requests for additional information and due diligence access shall be a basis for the Debtors, in consultation with the Creditors' Committee (if appointed), to determine that such Bidder is not a Qualified Bidder. Failure by a Potential or Qualified Bidder to comply with requests for additional information and due diligence access shall be a basis for the Debtors, in consultation with the Creditors' Committee (if appointed), to determine that a Bid made by such Potential or Qualified Bidder is not a Qualified Bid.

Auction

If one (1) or more Qualified Bids are submitted (in addition to the Stalking Horse Agreement, which is deemed to be a Qualified Bid) in accordance with the Bidding Procedures, the Debtors will conduct an auction (the “**Auction**”) in accordance with such Bidding Procedures; and, at such Auction, the Debtors shall have the right to select the winning Bid from any Person (including the Stalking Horse Bidder) who submitted a Qualified Bid (the “**Winning Bid**” and the Bidder submitting such Winning Bid, the “**Winning Bidder**”), which will be determined, in consultation with the Creditors’ Committee (if appointed), by considering, among other things: (1) the number, type and nature of any changes to the Stalking Horse Agreement requested by each Bidder; (2) the extent to which such modifications are likely to delay closing of the sale of the Purchased Assets and the cost to the Debtors of such modifications or delay; (3) the total consideration to be received by the Debtors; (4) the likelihood of the Bidder’s ability to close a transaction and the timing thereof; (5) job preservation with respect to the Debtors’ work force, and (6) the net benefit to the Debtors’ estates, taking into account the Stalking Horse Bidder’s rights to the Break-Up Fee and Expense Reimbursement (collectively, the “**Bid Assessment Criteria**”). If no Qualified Bid (other than the Stalking Horse Agreement) is received by the Bid Deadline, the Debtors shall not conduct the Auction and shall designate the Stalking Horse Agreement as the Winning Bid for the purposes of these Bidding Procedures.

The Auction shall be conducted at the offices of Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801 at __:__ a.m. (**prevailing Eastern Time**) on _____, **2015**, or such other place and time as the Debtors, in consultation with the Creditors’ Committee (if appointed), may determine.

The Auction shall be conducted according to the following procedures:

(a) **The Debtors Shall Conduct the Auction.**

The Debtors and their professionals shall direct and preside over the Auction. At the start of the Auction, the Debtors shall describe the terms of the opening Bid. All incremental Bids made thereafter shall be made and received on an open basis, and all material terms of each such Bid shall be fully disclosed to all Qualified Bidders. Whenever the Debtors determine any Bid to be the then-current highest or otherwise best bid during the Auction, the Debtors shall announce (i) the relevant bases to that determination, with specific references to the Bid Assessment Criteria, and (ii) to the extent practicable, the minimum consideration necessary to submit an overbid. The Debtors shall maintain a transcript or videotape of all Bids made and announced at the Auction.

The Debtors, after consultation with the Creditors’ Committee (if appointed) and subject to the Bidding Procedures Order, shall have the right, in the exercise of their fiduciary duties, to adopt such other rules for the conduct of the Auction (including rules that may depart from those set forth herein) that will better promote the goals of the Auction.

(b) Minimum Bid Increment.

Unless otherwise agreed by the Debtors, in consultation with the Creditors' Committee (if appointed), subsequent bids at the Auction shall not provide consideration of less than \$100,000 in excess of the preceding bid.

(c) Back-Up Bidder.

Following the approval of the Sale of all or substantially all of the Assets to the Winning Bidder at the Sale Hearing, if the Debtors fail to consummate an approved Sale with the Winning Bidder, the Debtors shall be authorized, but not required, to deem the next highest or otherwise best Qualified Bid (the "**Back-Up Bid**" and the party submitting the Back-Up Bid, the "**Back-Up Bidder**"), as disclosed at the Sale Hearing, the Winning Bid, and the Debtors shall be authorized, but not required, to consummate the sale with the Back-Up Bidder submitting such bid without further order of the Bankruptcy Court. The Back-Up Bid shall remain open until the first business day following the consummation of a Sale of the Purchased Assets to the Winning Bidder.

(d) Consent to Jurisdiction as Condition to Bidding.

The Stalking Horse Bidder and all other Qualified Bidders shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court and waived any right to a jury trial in connection with any disputes relating to the Stalking Horse Agreement, the Auction or the construction and enforcement of any competing transaction documents.

(e) Closing the Auction.

The Auction shall continue until there is only one Qualified Bid that the Debtors determine, in consultation with the Creditors' Committee (if appointed), in their reasonable business judgment, is the Winning Bid. In making this decision, the Debtors shall consider the Bid Assessment Criteria and any other criteria that it deems to be appropriate. The Auction shall not close unless and until all Bidders who have submitted Qualified Bids have been given a reasonable opportunity to submit an overbid at the Auction to the then-existing highest or otherwise best Bid.

(f) No Collusion; Good Faith Bona Fide Offer.

Each Qualified Bidder participating at the Auction will be required to confirm that (i) it has not engaged in any collusion with respect to the bidding and (ii) its Qualified Bid is a good faith bona fide offer and it intends to consummate the proposed Sale if selected as the Winning Bidder.

Free of Any and All Liens, Claims and Interests

All of the Debtors' right, title and interest in and to the Purchased Assets subject thereto shall be sold free and clear of any pledges, liens, security interests, encumbrances, claims, charges, alleged ownership rights of entities other than the Debtors, options and interests therein or thereon (collectively, the "**Interests**") to the maximum extent permitted by section 363 of the

Bankruptcy Code, with such Interests to attach to the net proceeds of the sale of the Purchased Assets with the same validity and priority as such Interests applied against the Purchased Assets in accordance with the Stalking Horse Agreement or the Winning Bidder's asset purchase agreement and any order approving the sale of the Purchased Assets.

Sale Hearing

The Court has scheduled a hearing (the "**Sale Hearing**") on _____, 2015 at __:___ __.m. (**prevailing Eastern Time**), at which time it will consider approval of the sale of substantially all of the Debtors' assets to the Winning Bidder. Subject to the provisions of the Stalking Horse Agreement, the Debtors, in the exercise of their business judgment, reserve their right to change the date and/or time of the Sale Hearing (or any other dates related to the Sale) in order to achieve the maximum value for the Purchased Assets.

Return of Deposit

The Bid Deposit of the Winning Bidder shall be applied to the Purchase Price. The Bid Deposit of the Back-up Bidder shall be held by the Debtors until two (2) business days after the Closing of the transaction contemplated by the Winning Bid, and thereafter returned to the Back-up Bidder. Bid Deposits of all other Qualified Bidders shall be held in an interest-bearing escrow account until no later than two (2) business days after the Sale Hearing, and thereafter returned to the respective Bidders.

Schedule 1

Recipients of Bids

- 1) The Debtors, (i) Wellesley Office Park, 80 William Street, Suite 400, Wellesley, Massachusetts 02481 (Attn: Laura Dagan; email: ldagan@f2inv.com) and (ii) c/o Stillwater Advisory Group LLC, PO Box 1022, Beverly Shores, Indiana 46301 (Attn: David Phelps; email: dphelps@dnphelps.com);
- 2) Proposed counsel to the Debtors, Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801 (Attn: Russell C. Silberglid and Michael J. Merchant; email: silberglid@rlf.com and merchant@rlf.com);
- 3) Proposed investment banker to the Debtors, PL Advisors, 757 Third Avenue (17th Floor), New York, NY, 10017 (Attn: Colette R. Taylor and Domonkos L. Koltai; email: Ctaylor@PL-Advisors.com and DKoltai@PL-Advisors.com);
- 4) Counsel to the Creditors' Committee (if appointed); and
- 5) The Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: []).

Schedule 2

The Notice of Auction and Sale Hearing

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

In re:

F-Squared Investment Management, LLC, *et al.*¹

Debtors.

)
) Chapter 11
)

) Case No. 15-_____ (_____)
)

) (Joint Administration Requested)
)

) **Re: Docket Nos.**
)

) **Objection Deadline to Sale Motion:**
) _____, 2015 at 4:00 p.m. (EDT)
)

) **Deadline for Submitting Bids:** _____, 2015
) at 5:00 p.m. (EDT)
)

) **Auction Date:** _____, 2015 at __:__ .m.
) (EDT) (if required)
)

) **Hearing Date on Sale Motion:** _____,
) 2015 at __:__ .m. (EDT)
)

NOTICE OF SALE PROCEDURES, AUCTION DATE AND SALE HEARING

1. The above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”) have entered into an agreement (the “**Stalking Horse Agreement**”) with [Cedar Capital, LLC] (the “**Proposed Purchaser**”), to sell substantially all of their assets (the “**Purchased Assets**”) to the Proposed Purchaser. The Debtors’ ability to close the transactions contemplated by the Stalking Horse Agreement is subject to higher or otherwise better offers and the approval of the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”).

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: F-Squared Investment Management, LLC (9247), F-Squared Investments, Inc. (0788), F-Squared Retirement Solutions, LLC (9247), F-Squared Alternative Investments, LLC (9247), F-Squared Solutions, LLC (9247), F-Squared Institutional Advisors, LLC (9247), F-Squared Capital, LLC (5257), AlphaSector LLS GP 1, LLC (3342), and Active Index Solutions, LLC (0788). The Debtors’ address is Wellesley Office Park, 80 William Street, Suite 400, Wellesley, Massachusetts 02481.

2. The Debtors are soliciting offers for the Purchased Assets, and the Bankruptcy Court has entered the *Order Establishing Bidding Procedures Related to the Sale of Substantially All of the Debtors' Assets, Approving Related Bid Protections and Establishing Notice Procedures for Determining Cure Amounts* [Docket No. ____] (the “**Bidding Procedures Order**”), approving, *inter alia*, auction and sale procedures (the “**Bidding Procedures**”) for the Purchased Assets.²

3. On July __, 2015, the Debtors filed the *Debtors' Motion to (A) Establish Bidding Procedures Related to the Sale of Substantially All of the Debtors' Assets, Approve Related Bid Protections and Establish Notice Procedures for Determining Cure Amounts, and (B) Approve the Sale of Substantially All of the Debtors' Assets and Assume and Assign Certain Executory Contracts and Unexpired Leases* [Docket No. ____] (the “**Sale Motion**”).

4. Pursuant to the Sale Motion, the Debtors propose to: (i) sell the Purchased Assets to the Proposed Purchaser (or such other party that submits the highest or otherwise best bid at an auction (the “**Auction**”)), free and clear of all liens, claims (including without limitation any and all alleged ownership or successor liability claims against the Debtors or Purchaser), or encumbrances thereon, except for certain expressly assumed liabilities and permitted exceptions specifically described in the Stalking Horse Agreement; and (ii) assume and assign certain executory contracts and unexpired leases of the Debtors to the Proposed Purchaser (or such other party that submits the highest or otherwise best bid at the Auction).

5. The Bidding Procedures approved by the Bidding Procedures Order describe, *inter alia*, the terms of the bidding process, the requirements and deadlines for participation therein, the required terms of any bids, and the time, location and conduct of the Auction.

² Copies of the Bidding Procedures Order, the Bidding Procedures, the Stalking Horse Agreement and the Sale Motion (as defined below) are available for viewing free of charge at the website of the Debtor's claims and noticing agent, Rust Consulting/Omni Bankruptcy, www.omnimgt.com/epx.

6. The deadline for submitting bids for the Purchased Assets is _____, **2015 at 5:00 p.m. (prevailing Eastern Time)**. All interested parties are invited to submit a bid to purchase the Purchased Assets.

7. If one or more Qualified Bids (as defined in the Bidding Procedures) are received in accordance with the Bidding Procedures, the Auction shall take place on _____, **2015 at __:__ .m. (prevailing Eastern Time)** at the offices of proposed counsel for the Debtors, Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801.

8. The Bankruptcy Court has scheduled a hearing for __:__ .m. (**prevailing Eastern Time**) on _____, **2015** (the “**Sale Hearing**”) to consider approval of the winning bid and confirm the results at the Auction (if held) for the Purchased Assets. The Sale Hearing will be held before The Honorable [], United States Bankruptcy Judge, at the Bankruptcy Court, 824 N. Market Street, []th Floor, Courtroom [], Wilmington, Delaware 19801.

9. Any objection to the sale of the Purchased Assets must be in writing, state the basis of such objection with specificity, and shall be filed with the Bankruptcy Court by _____, **2015 by 4:00 p.m.** (prevailing Eastern Time) (the “**Sale Objection Deadline**”). At the same time, any objector must also serve a copy of such objection, so as to be received by the Sale Objection Deadline, on: (i) the Debtors’ proposed counsel, Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801 (Attn: Russell C. Silberglied and Michael J. Merchant; email: silberglied@rlf.com and merchant@rlf.com); (ii) the Debtors, (a) Wellesley Office Park, 80 William Street, Suite 400, Wellesley, Massachusetts 02481 (Attn: Laura Dagan; email: ldagan@f2inv.com) and (b) c/o Stillwater Advisory Group LLC, PO Box 1022, Beverly Shores, Indiana 46301 (Attn: David Phelps; email:

dphelps@dnphelps.com); (iii) counsel to the Proposed Purchaser, (a) Fox, Swibel, Levin & Carroll, LLP), 200 West Madison Street, Suite 200, Chicago, Illinois 60606 (Attn: N. Neville Reid; email: nreid@fslc.com) and (b) [Delaware counsel to purchaser]; (iv) counsel to any official statutory committee appointed in this chapter 11 case; and (v) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: []).

10. All requests for information regarding the Purchased Assets from parties that are interested in acquiring such assets should be directed toward the Debtors' proposed investment banker, PL Advisors, which can be contacted at:

<p>PL Advisors Attn: Colette R. Taylor or Domonkos L. Koltai 757 Third Avenue (17th Floor) New York, NY 10017 Telephone: 212-596-3462 or 212-596-3463 Email: Ctaylor@PL-Advisors.com or DKoltai@PL-Advisors.com</p>
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11. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court or on the agenda filed by the Debtors with the Bankruptcy Court.

12. IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED BY THE SALE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Date: _____, 2015
Wilmington, Delaware

RICHARDS, LAYTON & FINGER, P.A.

Russell C. Silberglied (No. 3462)

Michael J. Merchant (No. 3854)

Zachary I. Shapiro (No. 5103)

Amanda R. Steele (No. 5530)

920 N. King Street

Wilmington, Delaware 19801

Telephone: 302-651-7700

Facsimile: 302-651-7701

Email: silberglied@rlf.com

merchant@rlf.com

shapiro@rlf.com

steele@rlf.com

Proposed Counsel for the Debtors and Debtors
in Possession

Schedule 3

The Notice of Assumption and Assignment

the sale of the Purchased Assets (the “**Sale**”), and approving the form and manner of notice thereof; (iv) establishing procedures (the “**Cure Procedures**”) for the assumption and assignment of contracts (“**Contracts**”) and leases (“**Leases**”), including notice of proposed cure amounts (the “**Cure Amounts**”); and (v) granting certain related relief. By the Motion, the Debtors further request that, at the Sale Hearing, subject to the results of the Auction, the Court enter an order (i) approving and authorizing the Sale; and (ii) authorizing the assumption and assignment of the Contracts and Leases.

3. In accordance with the Cure Procedures, the Debtors are delivering this notice (the “**Cure Notice**”) identifying (i) those Contracts and Leases which may be assumed by the Debtors and assigned as part of the Sale; and (ii) the proposed entire cure amount (the “**Cure Amount**”) applicable to any and all defaults for each Contract and Lease identified on the Cure Notice. The Cure Amount applicable to a Lease or Contract is intended to, and shall, reflect all damages and amounts that are or could be payable to any person or entity as a result of any breach at any time by any of the Debtors of any obligation, representation or warranty of any of the Debtors under, related to or otherwise with respect to such Contract or Lease, including without limitation any contingent claim for indemnification from the Debtors under the terms of such Contract or Lease related to or arising from any breach by any of the Debtors of any obligation, representation or duty of the Debtors to any person or entity arising under any applicable law at any time.

4. Adequate assurance information for the Proposed Purchaser is available by contacting counsel to the Proposed Purchaser, (i) Fox, Swibel, Levin & Carroll, LLP), 200 West Madison Street, Suite 200, Chicago, Illinois 60606 (Attn: N. Neville Reid) and (ii) [Delaware counsel to the Purchaser].

5. You have been identified as a party to a Contract or Lease that the Debtors may seek to assume and assign as part of the Sale. The Contract or Lease with respect to which you have been identified as a non-debtor counterparty, and the corresponding proposed Cure Amount, if any, has been set forth on **Exhibit 1** attached hereto.

6. Objections, if any, to the proposed Cure Amount or the assumption and assignment of any Contract or Lease listed on the Cure Notice must be made in writing, filed with the Bankruptcy Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, and served so as to be received by the following parties on or before 4:00 p.m. (prevailing Eastern Time) on _____, 2015 (the “**Cure Objection Deadline**”): (i) the Debtors’ proposed counsel, Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801 (Attn: Russell C. Silberglied and Michael J. Merchant; email: silberglied@rlf.com and merchant@rlf.com); (ii) the Debtors, (a) Wellesley Office Park, 80 William Street, Suite 400, Wellesley, Massachusetts 02481 (Attn: Laura Dagan; email: ldagan@f2inv.com) and (b) c/o Stillwater Advisory Group LLC, PO Box 1022, Beverly Shores, Indiana 46301 (Attn: David Phelps; email: dphelps@dnphelps.com); (iii) counsel to the Proposed Purchaser, (a) Fox, Swibel, Levin & Carroll, LLP), 200 West Madison Street, Suite 200, Chicago, Illinois 60606 (Attn: N. Neville Reid; email: nreid@fslc.com) and (b) [Delaware counsel to purchaser]; (iv) counsel to any official statutory committee appointed in this chapter 11 case; and (v) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: []). The objection must set

forth (i) the basis for the objection, (ii) the exact amount the party asserts as the Cure Amount, and (iii) sufficient documentation to support the Cure Amount alleged.

7. If an objection is timely filed by the Cure Objection Deadline, a hearing with respect to such objection will be held before The Honorable [JUDGE], United States Bankruptcy Judge, at the Bankruptcy Court, 824 N. Market Street, []th Floor, Courtroom [], Wilmington, Delaware 19801, on _____, **2015 at __:__ .m. (prevailing Eastern Time)** or at a later hearing, as determined by the Debtors, subject to the Court's calendar. A hearing regarding the Cure Amount, if any, may be continued at the sole discretion of the Debtors.

8. UNLESS YOU FILE AN OBJECTION TO THE CURE AMOUNT AND/OR THE ASSUMPTION OR ASSIGNMENT OF YOUR CONTRACT OR LEASE IN ACCORDANCE WITH THE INSTRUCTIONS AND DEADLINES SET FORTH HEREIN, YOU SHALL BE FOREVER (A) BARRED FROM OBJECTING TO THE CURE AMOUNT SET FORTH ON **EXHIBIT 1**, (B) ESTOPPED FROM ASSERTING OR CLAIMING ANY CURE AMOUNT AGAINST THE DEBTORS, THE PROPOSED PURCHASER OR WINNING BIDDER OR ANY OTHER ASSIGNEE OF THE RELEVANT CONTRACT OR LEASE THAT IS GREATER THAN THE CURE AMOUNT SET FORTH ON **EXHIBIT 1**, (C) BARRED FROM ASSERTING ANY CLAIM (INCLUDING ANY CONTINGENT CLAIM) AT ANY TIME AGAINST THE PROPOSED PURCHASER OR WINNING BIDDER OR ANY OTHER ASSIGNEE OF THE RELEVANT CONTRACT OR LEASE ARISING FROM, RELATED TO OR BASED ON ANY ACTUAL OR ALLEGED DEFAULT OR BREACH BY ANY OF THE DEBTORS OF ANY DUTY, OBLIGATION OR REPRESENTATION TO ANY PERSON OR ENTITY AT ANY TIME, RELATED IN ANY WAY TO SUCH CONTRACT OR LEASE, INCLUDING WITHOUT LIMITATION ANY (I) CLAIM FOR INDEMNIFICATION AGAINST PROPOSED PURCHASER UNDER SUCH CONTRACT OR LEASE BASED ON OR ARISING FROM ANY BREACH BY ANY DEBTOR OF ANY DUTY, OBLIGATION OR REPRESENTATION TO ANY PERSON OR ENTITY AT ANY TIME AND (II) CLAIM AGAINST PROPOSED PURCHASER UNDER ANY SUCCESSOR LIABILITY OR OTHER THEORY OF ANY TYPE WHATSOEVER THAT RELATES TO OR ARISES FROM ANY ACTS, OMISSIONS OR CONDUCT OF THE ANY OF THE DEBTORS, IN ANY AMOUNT THAT IS GREATER THAN THE CURE AMOUNT SET FORTH ON **EXHIBIT 1**, AND (D) DEEMED TO HAVE CONSENTED TO THE ASSUMPTION AND/OR ASSIGNMENT OF YOUR CONTRACT OR LEASE (SUBJECT TO YOUR ABILITY TO OBJECT TO WHETHER THE WINNING BIDDER (OTHER THAN THE PROPOSED PURCHASER) CAN PROVIDE ADEQUATE ASSURANCE OF FUTURE PERFORMANCE).

9. The presence of a Contract or Lease listed on **Exhibit 1** attached hereto does not constitute an admission that such contract or lease is an executory contract or unexpired lease or that such contract or lease will be assumed and assigned as part of the Sale. The Debtors reserve all of its rights, claims and causes of action with respect to the Contracts and Leases listed on **Exhibit 1** attached hereto.

Date: _____, 2015
Wilmington, Delaware

RICHARDS, LAYTON & FINGER, P.A.

Russell C. Silberglid (No. 3462)

Michael J. Merchant (No. 3854)

Zachary I. Shapiro (No. 5103)

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steele@rlf.com

Proposed Counsel for the Debtors and Debtors
in Possession

EXHIBIT 1

Schedule of Contracts, Leases and Cure Amounts

EXHIBIT B

(Proposed Form of Bid Procedures Order)

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

<p>In re:</p> <p>F-Squared Investment Management, LLC, <i>et al.</i>¹</p> <p style="text-align: center;">Debtors.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Chapter 11</p> <p>Case No. 15-_____ (____)</p> <p>(Joint Administration Requested)</p> <p>Re: Docket Nos.</p>
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**ORDER (A) AUTHORIZING AND APPROVING (1) THE SALE OF
SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS
FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES
AND OTHER INTERESTS; AND (2) THE ASSUMPTION AND
ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN
CONNECTION THEREWITH; AND (B) GRANTING RELATED RELIEF**

Upon consideration of the motion, dated June [___], 2015 (the “**Motion**”) of F-Squared Investment Management, LLC and its subsidiaries, the debtors and debtors-in-possession (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), pursuant to sections 105(a), 363, 365, and 503 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), for (i) entry of an order (the “**Bidding Procedures Order**”) (a) establishing bidding and auction procedures (the “**Bidding Procedures**”) related to the sale of the Debtors’ assets (the “**Sale**”); (b) approving bidding protections in connection therewith; (c) scheduling an auction (the “**Auction**”) and a hearing for such Sale; (d) establishing certain notice procedures for determining cure amounts

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: F-Squared Investment Management, LLC (9247), F-Squared Investments, Inc. (0788), F-Squared Retirement Solutions, LLC (9247), F-Squared Alternative Investments, LLC (9247), F-Squared Solutions, LLC (9247), F-Squared Institutional Advisors, LLC (9247), F-Squared Capital, LLC (5257), AlphaSector LLS GP 1, LLC (3342), and Active Index Solutions, LLC (0788). The Debtors’ address is Wellesley Office Park, 80 William Street, Suite 400, Wellesley, Massachusetts 02481.

for executory contracts and unexpired leases to be assumed and assigned in connection with such Sale (the “**Assumption and Assignment Procedures**”); and (e) granting certain related relief; and (ii) entry of an order (this “**Sale Order**”) (a) approving the Sale of the Debtors’ assets, free and clear of all Interests (as defined below); (b) authorizing the assumption and assignment and/or transfer of certain executory contracts and unexpired leases; and (c) granting certain related relief; after holding a hearing on _____ (the “**Bidding Procedures Hearing**”), this Court entered the Bidding Procedures Order on _____ [D.I. _____]; and the Auction having been [held on ____ OR cancelled because no Qualified Bidders other than the Purchaser]; and [Cedar Capital, LLC] (the “**Purchaser**”) having been selected as the Winning Bidder; and upon the Purchaser and the Debtors having entered into that certain Asset Purchase Agreement, dated as of _____ (attached hereto as **Exhibit A**, and as it may be amended, modified, or supplemented in accordance with the terms hereof and thereof, the “**Asset Purchase Agreement**”);² and this Court having conducted a hearing on the Motion on _____ (the “**Sale Hearing**”); and all parties in interest having been heard, or having had the opportunity to be heard, regarding the Motion, the Asset Purchase Agreement, and this Sale Order; and this Court having reviewed and considered the Motion and all objections thereto, and the arguments of counsel made, and the evidence adduced, at the Bidding Procedures Hearing and the Sale Hearing; and upon the entire record of the Bidding Procedures Hearing and the Sale Hearing, and after due deliberation thereon, and good cause appearing therefor:

²

Capitalized terms used, but not otherwise defined, herein shall have the meaning ascribed to such terms in the Asset Purchase Agreement or, if not defined therein, in the Motion.

THE COURT HEREBY FINDS THAT:³

Jurisdiction, Final Order and Statutory Predicates

A. This Court has jurisdiction to hear and determine the Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these Chapter 11 Cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

B. This Sale Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, this Court expressly finds that there is no just reason for delay in the implementation of this Sale Order, and expressly directs entry of judgment as set forth herein.

C. The statutory predicates for the relief sought in the Motion are sections 105(a), 363, 365 and 503 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9014, and the applicable Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”).

Notice of the Sale, Auction and the Cure Payments

D. Actual written notice of the Sale Hearing, the Auction, the Motion, the Sale, this Sale Order, and/or the assumption, assignment and/or transfer of the Purchased Contracts, and a reasonable opportunity to object or be heard with respect thereto and to the entry of this Sale Order has been afforded to all creditors, known interested Persons and entities entitled to receive such notice, including, but not limited to, the following parties: (i) Creditors’ Committee (if appointed); (ii) counsel to the Purchaser;; (iii) the Office of the United States Trustee; (iv) all entities (or counsel therefor)

³ The findings and conclusions set forth herein constitute this Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

known to have asserted any lien, charge, claim or encumbrance on the Purchased Assets or against any of the Debtors; (v) all federal, state and local regulatory or taxing authorities which are reasonably ascertainable by the Debtors to have a known interest in the Purchased Assets or a claim against any of the Debtors; (vi) known non-debtor counterparties to any unexpired leases or executory contracts that could potentially be assumed and assigned to the Winning Bidder; (vii) those parties who previously executed NDAs as part of the sale process or expressed a bona fide interest in acquiring the Assets since [March 30, 2015]; and (ix) those parties who have requested notice pursuant to Bankruptcy Rule 2002 (collectively, the “**Actual Notice**”).

E. The Debtors have published, or caused to be published, notice of the Sale, the Bidding Procedures, the Stalking Horse APA, the time and place of the proposed Auction, the time and place of the Sale Hearing and the time for filing an objection to the Motion (i) on the website maintained by BMC Group, Inc., the Debtors’ claims and noticing agent appointed in these Chapter 11 Cases, promptly after entry of the Bidding Procedures Order, and (ii) in the newspaper publication USA Today (collectively, the “**Publication Notice**”). It would be impractical for the Debtors to notify all persons who might assert that they have a claim against any of the Debtors, based on or arising from past conduct, omissions or acts (whether alleged, known or proven) of the Debtors, in light of the thousands of clients, clients of clients, investors or other persons who directly or indirectly had a relationship with the Debtors and who may assert that they have been harmed by any such past conduct, omissions or acts. Under such circumstances and pursuant to Section 102 of the Bankruptcy Code, the Actual Notice and Publication Notice collectively constitute sufficient notice of this Sale Order, the Sale, and the Sale Motion and sufficient opportunity to object to any of them, to all persons or entities who at any time and for any reason may have had any relationship with any of the Debtors or any claim whatsoever (whenever arising) against any of the Debtors, so as to legally bind all such

persons and entities (including actual and potential creditors of all of the Debtors) to all of the provisions of this Sale Order, including without limitation all provisions hereof that enjoin any and all persons, entities and creditors from pursuing any claims against the Purchaser (under any successor liability theory or otherwise) related to conduct, acts or omissions of any of the Debtors.

F. In accordance with the provisions of the Bidding Procedures Order, the Debtors have served, or caused to be served, notice (the “**Assumption and Assignment Notice**”) upon all of the Contract Notice Parties to the Purchased Contracts setting forth: (i) the contract(s) and/or lease(s) that may be assumed by the Debtors and assigned to the Purchaser; (ii) the name and address of the Contract Counterparty thereto; (iii) notice of the proposed effective date of the assignment (subject to the right of the Debtors and/or the Purchaser to withdraw such request for assumption and assignment of the Purchased Contract(s) prior to the Closing); (iv) the amount, if any, determined by the Debtors to be necessary to be paid to cure and compensate for any existing default in accordance with sections 365(b) and 365(f)(2) of the Bankruptcy Code (the “**Cure Amount**”); and (v) the deadlines by which any such Contract Counterparty must file an objection to the proposed assumption and assignment of any Purchased Contract.

G. The service of such Assumption and Assignment Notice (i) was good, sufficient and appropriate under the circumstances of these Chapter 11 Cases; (ii) provided such counterparties with a full and fair opportunity to object to such assumption, assignment, or transfer and to the proposed Cure Amount set forth in the Assumption and Assignment Notice; and (iii) was in compliance with the Bidding Procedures Order and applicable provisions of the Bankruptcy Rules and Local Rules. Accordingly, no other or further notice need be given in connection with such assumption, assignment, or transfer or with respect to the amount of Cure Payments.

H. As evidenced by the affidavits of service previously filed with this Court and as

approved under the Bidding Procedures Order: (i) due, proper, timely, adequate and sufficient notice of the Motion, the Auction, the Sale Hearing, the assumption and assignment of the Purchased Contracts, the entry of this Sale Order, and the Sale has been provided to all parties-in-interest, including without limitation any and all known, unknown, actual or potential creditors of the Debtors; (ii) such notice was, and is, good, sufficient and appropriate under the circumstances of these Chapter 11 Cases, provided a fair and reasonable opportunity for parties-in-interest to object, and to be heard, with respect thereto, and was provided in accordance with sections 102(1), 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9006, 9007 and 9014, and the applicable Local Rules; and (iii) no other or further notice of with respect to such matters is necessary or shall be required.

Business Judgment

The Debtors have demonstrated good, sufficient and sound business purposes and justifications for, and compelling circumstances to promptly consummate, the Sale and other transactions contemplated by the Asset Purchase Agreement and the related transaction documents (collectively, the “**Transaction Documents**”), including, without limitation, the assumption, assignment, and/or transfer of the Purchased Contracts (collectively, the “**Transactions**”) pursuant to sections 363 and 365 of the Bankruptcy Code, prior to and outside of a plan of reorganization, and such action is an appropriate exercise of the Debtors’ business judgment and in the best interests of the Debtors, their estates, and their creditors. Such business reasons include, but are not limited to, the facts that: (i) there is a risk of depreciation of the value of the Purchased Assets if the Sale is not consummated promptly; (ii) the Asset Purchase Agreement constitutes the highest or otherwise best offer for the Purchased Assets; (iii) the Asset Purchase Agreement and the Closing will present the best opportunity to realize the value of the Debtors on a going concern basis and avoid decline and devaluation of the

Debtors' business; and (iv) unless the Sale is concluded expeditiously as provided for in this Sale Order and pursuant to the Asset Purchase Agreement, potential stakeholder recoveries may be substantially diminished.

Good Faith of the Purchaser; No Collusion

I. The Purchaser is not an insider (as that term is defined in section 101(31) of the Bankruptcy Code) of any of the Debtors.

J. The Purchaser is purchasing the Purchased Assets in good faith, and is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code, and is therefore entitled to, and granted pursuant to paragraph 27 below, the full rights, benefits, privileges, and protections of that provision, and has otherwise proceeded in good faith in all respects in connection with the Transactions in that, *inter alia*: (i) the Purchaser recognized that the Debtors were free to deal with any other party interested in acquiring the Purchased Assets; (ii) the Purchaser complied with the provisions in the Bidding Procedures Order; (iii) the Purchaser agreed to subject its bid to the competitive bidding procedures set forth in the Bidding Procedures Order; (iv) all payments to be made by the Purchaser and other agreements or arrangements entered into by the Purchaser in connection with the Sale have been disclosed; (v) the Purchaser has not violated section 363(n) of the Bankruptcy Code by any action or inaction; (vi) no common identity of directors or controlling stockholders exists between the Purchaser, on the one hand, and the Debtors, on the other hand; and (vii) the negotiation and execution of the Asset Purchase Agreement and Transaction Documents were at arms' length and in good faith.

K. Neither the Debtors nor the Purchaser, nor any of their respective Representatives, has engaged in any conduct that would cause or permit the Asset Purchase Agreement or any of the Transaction Documents, or the consummation of the Transaction, to be avoidable or avoided, or for

costs or damages to be imposed, under section 363(n) of the Bankruptcy Code, or has acted in bad faith or in any improper or collusive manner with any Person in connection therewith.

Highest or Otherwise Best Offer

L. In accordance with the Bidding Procedures Order, the Asset Purchase Agreement was deemed a Qualified Bid and the Purchaser was eligible to participate at the Auction.

M. The Debtors conducted an auction process in accordance with, and has otherwise complied in all material respects with, the Bidding Procedures Order. The auction process set forth in the Bidding Procedures Order afforded a full, fair and reasonable opportunity for any Person or entity to make a higher or otherwise better offer to purchase the Purchased Assets. The Auction was duly noticed and conducted in a non-collusive, fair and good faith manner and a reasonable opportunity has been given to any interested party to make a higher or otherwise better offer for the Purchased Assets.

N. The Asset Purchase Agreement constitutes the highest or otherwise best offer for the Purchased Assets, and will provide a greater recovery for the Debtors' estates than would be provided by any other available alternative. The Debtors' determination that the Asset Purchase Agreement constitutes the highest or otherwise best offer for the Purchased Assets constitutes a valid and sound exercise of the Debtors' business judgment.

O. The Asset Purchase Agreement represents a fair and reasonable offer to purchase the Purchased Assets under the circumstances of these Chapter 11 Cases.

P. Approval of the Motion and the Asset Purchase Agreement, and the prompt consummation of the Transactions contemplated thereby, is in the best interests of the Debtors, their creditors, their estates and other parties-in-interest.

No Fraudulent Transfer; Not a Successor

Q. The Asset Purchase Agreement and Transaction Documents were not entered into, and

the Transactions are not being consummated, for the purpose of hindering, delaying or defrauding creditors of the Debtors under applicable Law, and none of the Parties to the Asset Purchase Agreement or any of the Transaction Documents are consummating the Transactions with any fraudulent or otherwise improper purpose. The Purchase Price for the Purchased Assets constitutes (i) reasonably equivalent value under the Bankruptcy Code and the Uniform Fraudulent Transfer Act, (ii) fair consideration under the Uniform Fraudulent Conveyance Act, and (iii) reasonably equivalent value, fair consideration, and fair value under any other applicable Laws of the United States, any state, territory or possession or the District of Columbia.

R. Except as expressly set forth in the Asset Purchase Agreement with respect to the Assumed Liabilities and the Permitted Exceptions (except such Permitted Exceptions that are released at or prior to Closing), the Purchaser shall have no liability, responsibility, or obligations of any kind or nature whatsoever for any Interest (as defined below) of or against the Debtors, or otherwise related to the Purchased Assets, by reason of the transfer of the Purchased Assets to the Purchaser. The Purchaser shall not at any time be deemed, as a result of any action taken in connection with the Transactions, to: (1) be a successor (or other such similarly situated party) to the Debtors (other than with respect to the Assumed Liabilities and the Permitted Exceptions (except such Permitted Exceptions that are released at or prior to Closing) as expressly stated in the Asset Purchase Agreement) for any reason whatsoever; or (2) have, *de facto* or otherwise, merged or consolidated with or into the Debtors. The Purchaser is not acquiring or assuming any Interest, except as expressly set forth in the Asset Purchase Agreement with respect to the Assumed Liabilities and the Permitted Exceptions (except such Permitted Exceptions that are released at or prior to Closing).

Validity of Transfer

S. Subject to the entry of this Sale Order, the Debtors have full corporate power and authority (i) to perform all of their obligations under the Asset Purchase Agreement and the Transaction Documents, and the Debtors' prior execution and delivery thereof and performance thereunder, is hereby ratified, approved and ordered in full, and (ii) to consummate the Transactions. The Asset Purchase Agreement and Transaction Documents, and the Transactions contemplated thereby, have been duly and validly authorized by the Debtors by all necessary corporate action. No further consents or approvals are required for the Debtors to consummate the Transactions or otherwise perform their obligations under the Asset Purchase Agreement or the Transaction Documents, except in each case as otherwise expressly set forth in the Asset Purchase Agreement or applicable Transaction Documents.

T. As of the Closing Date, the transfer of the Purchased Assets to the Purchaser, including, without limitation, the assumption, assignment and transfer of the Purchased Contracts, will be a legal, valid, and effective transfer thereof, and vests the Purchaser with all right, title, and interest of the Debtors in and to the Purchased Assets, free and clear of all Interests accruing or arising any time prior to the Closing Date, except as expressly set forth in the Asset Purchase Agreement with respect to the Assumed Liabilities and the Permitted Exceptions (except such Permitted Exceptions that are released at or prior to Closing).

Section 363(b)(1) is Satisfied

U. The Transactions pursuant to the Asset Purchase Agreement, Transaction Documents and this Sale Order are consistent with the provisions of section 363(b)(1) of the Bankruptcy Code. Additionally, (i) the privacy policy given to consumers does not prohibit the Sale contemplated under

the Asset Purchase Agreement, and (ii) the Sale is consistent with the privacy policy given by the Debtors to the consumers.

Section 363(f) Is Satisfied

V. The Purchaser would not have entered into the Asset Purchase Agreement and would not consummate the transactions contemplated thereby if the Sale of the Purchased Assets, including the assumption, assignment and transfer of the Purchased Contracts, to the Purchaser were not free and clear of all Interests of any kind or nature whatsoever (except as expressly set forth in the Asset Purchase Agreement with respect to the Assumed Liabilities and the Permitted Exceptions (except such Permitted Exceptions that are released at or prior to Closing)), or if the Purchaser, or any of its Affiliates or subsidiaries, or any of its Representatives, would, or in the future could, be liable for any of such Interests (except as expressly set forth in the Asset Purchase Agreement with respect to the Assumed Liabilities and the Permitted Exceptions (except such Permitted Exceptions that are released at or prior to Closing)).

W. The Debtors may sell or otherwise transfer the Purchased Assets free and clear of all Interests because, in each case, one or more of the standards set forth in section 363(f)(1)–(5) of the Bankruptcy Code has been satisfied. Those holders of Interests against the Debtors, their estates or any of the Purchased Assets who did not object, or who withdrew their objections, to the Sale or the Motion are deemed to have consented thereto pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of such Interests who did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are adequately protected by having their Interests, if any, attach to the proceeds of the Sale ultimately attributable to the Purchased Assets in which such creditor alleges or asserts an Interest, in the same order of priority, with the same validity, force and effect, that such creditor had immediately prior to consummation of the Sale, subject to any claims and defenses

the Debtors and their estates may possess with respect thereto.

X. As used in this Sale Order, the term “**Interest**” includes, in addition to the types of claims described in paragraph Y below, all claims or interests of every type or nature whatsoever, including without limitation all of the following, in each case to the extent against or with respect to the Debtors or in, on, or against or with respect to any of the Purchased Assets: liens (as defined in section 101(37) of the Bankruptcy Code, and whether consensual, statutory, possessory, judicial or otherwise); claims (as defined in section 101(5) of the Bankruptcy Code); debts (as defined in section 101(12) of the Bankruptcy Code); encumbrances, obligations, Liabilities, demands, guarantees, actions, suits, defenses, deposits, credits, allowances, options, rights, restrictions, limitations, contractual commitments, rights of first refusal, rights of setoff or recoupment, or interests of any kind or nature whatsoever, whether known or unknown, legal or equitable, matured or unmatured, contingent or noncontingent, liquidated or unliquidated, asserted or unasserted, whether arising prior to or subsequent to the commencement of these Chapter 11 Cases, whether imposed by agreement, understanding, Law, equity or otherwise, including, but not limited to, (i) Interests that purport to give to any Person a right or option to effect a setoff against or any forfeiture, modification or termination of the Debtors’ interests in the Purchased Assets, or any similar rights; (ii) Interests arising under all mortgages, deeds of trust, security interests, conditional sale or other title retention agreements, pledges, liens, judgments, demands, encumbrances, rights of first refusal or charges of any kind or nature; (iii) Interests that are or constitute, or that arise in connection with or with respect to, any Excluded Liability; (iv) Interests that arise from or in connection with any bulk sales or similar law; (v) all asserted ownership rights in or title to any of the Purchased Assets; and (vi) Interests arising under or in connection with any acts, or failures to act, of any of the Debtors or any of the Debtors’ predecessors, Affiliates, or subsidiaries, or any of their respective Representatives, including, but not

limited to, Interests arising under any doctrines of successor, transferee, or vicarious liability, violation of applicable securities laws or regulations, breach of fiduciary duty, or aiding or abetting breach of fiduciary duty, or any similar theories under applicable Law or otherwise.

Y. Except as expressly set forth in the Asset Purchase Agreement with respect to the Assumed Liabilities and the Permitted Exceptions (except such Permitted Exceptions that are released at or prior to Closing), and without limiting the nature or scope of paragraph X above, the transfer of the Purchased Assets, including the assumption, assignment and/or transfer of the Purchased Contracts, to the Purchaser will not subject the Purchaser, or its Affiliates or subsidiaries, or any of their respective Representatives to, or subject any Purchased Asset to or provide recourse for, any Liability or encumbrance whatsoever with respect to the operation or condition of the Business or any of the Purchased Assets prior to the Closing or with respect to any facts, acts, actions, omissions, circumstances or conditions existing, occurring or accruing with respect thereto prior to the Closing Date, including, without limitation, any Liability or encumbrance arising from any of the following: (i) any employment or labor agreements, consulting agreements, severance arrangements, change in control agreements or other similar agreements to which the Debtors are or were a party; (ii) any pension, welfare, compensation or other employee benefit plans, agreements, practices, and programs, including without limitation, any pension plan of the Debtors; (iii) the cessation of the Debtors' operations, dismissal of employees, or termination of employment or labor agreements or pension, welfare, compensation or other employee benefit plans, agreements, practices and programs and any obligations with respect thereto that arise from the Employee Retirement Income Security Act of 1974, the Fair Labor Standard Act, Title VII of the Civil rights Act of 1964, the Age Discrimination and Employment Act of 1967, the Americans with Disabilities Act of 1990, the Federal Rehabilitation Act of 1973, the National Labor Relations Act, the Consolidated Omnibus Budget Reconciliation Act

of 1985 or the Worker Adjustment and Retraining Notification Act; (iv) workmen's compensation, occupational disease or unemployment or temporary disability insurance claims; (v) environment liabilities, debts, claims or obligations which may be asserted on any basis, including, without limitation, under the Comprehensive Environmental Response, Compensation and Liability Act or any Environmental Laws; (vi) products liability or warranties, (vii) any bulk sales or similar law; (viii) any litigation by or against the Debtors; and (ix) the Laws of the United States, any state, territory or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, in any theory of law or equity, including, without limitation, any theory of antitrust, products liability, or successor, vicarious or transferee liability. For the avoidance of doubt, the Liabilities and encumbrances set forth in this paragraph are included in the defined term "**Interests**" for all purposes of this Sale Order.

Assumption, Assignment and/or Transfer of the Purchased Contracts

Z. The assumption, assignment and/or transfer of the Purchased Contracts to the Purchaser pursuant to the terms of this Sale Order is integral to the Asset Purchase Agreement and is in the best interests of the Debtors and their estates, creditors and other parties in interest, and represents the reasonable exercise of sound and prudent business judgment by the Debtors.

AA. To the extent necessary or required by applicable Law, the Debtors or Purchaser, as applicable, has or will have as of the Closing Date: (i) cured, or provided adequate assurance of cure, of any default existing prior to the Closing Date with respect to the Purchased Contracts, within the meaning of sections 365(b)(1)(A) and 365(f)(2)(A) of the Bankruptcy Code, and (ii) provided compensation, or adequate assurance of compensation, to any party for any actual pecuniary loss to such party resulting from such default, within the meaning of section 365(b)(1)(B) of the Bankruptcy Code. The respective amounts set forth on **Exhibit B** hereto (subject to the adjustments that may be

made as expressly noted on **Exhibit B** hereto) are the sole amounts necessary under sections 365(b)(1)(A) and 365(f)(2)(A) of the Bankruptcy Code to cure all such monetary defaults and pay all actual or potential pecuniary losses under the Purchased Contracts.

BB. The promise of the Purchaser to perform the obligations first arising under the Purchased Contracts after their assumption and assignment to the Purchaser constitutes adequate assurance of future performance within the meaning of sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code to the extent that any such assurance is required and not waived by the counterparties to such Purchased Contracts. Any objections to the foregoing, the determination of any Cure Amount, or otherwise related to or in connection with the assumption, assignment or transfer of any of the Purchased Contracts to the Purchaser are hereby overruled on the merits or otherwise treated as set forth in paragraph 3 below. Those non-Debtor parties to Purchased Contracts who did not object to the assumption, assignment or transfer of their applicable Purchased Contract, or to their applicable Cure Amount, are deemed to have consented thereto for all purposes of this Sale Order.

Compelling Circumstances for an Immediate Sale

CC. Time is of the essence in consummating the Sale pursuant to the Asset Purchase Agreement. Accordingly, there is cause to lift the stay contemplated by Bankruptcy Rules 6004 and 6006 with regards to the Transactions contemplated by this Sale Order, the Asset Purchase Agreement and the Transaction Documents.

DD. Given all of the circumstances of these Chapter 11 Cases and the adequacy and fair value of the Purchase Price under the Asset Purchase Agreement, the proposed transfer of the Purchased Assets to the Purchaser constitutes a reasonable and sound exercise of the Debtors' business judgment, is in the best interests of the Debtors, their estate, and their creditors, and should be approved.

EE. The consummation of the Transactions is legal, valid and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, sections 105, 363 and 365 of the Bankruptcy Code, and all of the applicable requirements of such sections have been complied with in respect of the Transactions.

FF. The Sale does not constitute a *de facto* plan of reorganization or liquidation or an element of such a plan for the Debtors, as it does not and does not propose to: (i) impair or restructure existing debt of, or equity interests in, the Debtors; (ii) impair or circumvent voting rights with respect to any future plan proposed by the Debtors; (iii) circumvent chapter 11 plan safeguards, such as those set forth in sections 1125 and 1129 of the Bankruptcy Code; or (iv) classify claims or equity interests, compromise controversies or extend debt maturities.

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

General Provisions

1. The Motion, and the relief requested therein, is granted and approved, and the Transactions contemplated thereby and by the Asset Purchase Agreement and Transaction Documents are approved, in each case as set forth in this Sale Order and on the record.

2. This Court's findings of fact and conclusions of law set forth in the Bidding Procedures Order and hereinabove are incorporated herein by reference.

3. All objections to the Motion or the relief requested therein that have not been withdrawn, waived, resolved, or otherwise settled as set forth herein, as announced to this Court at the Sale Hearing or by stipulation filed with this Court, and all reservations of rights included therein, are hereby denied and overruled on the merits.

Approval of Asset Purchase Agreement; Binding Nature

4. The Asset Purchase Agreement and the Transaction Documents, and all of the terms and conditions thereof, are hereby approved as set forth herein.

5. The consideration provided by the Purchaser for the Purchased Assets under the Asset Purchase Agreement is fair and reasonable and shall be deemed for all purposes to constitute reasonably equivalent value, fair value, and fair consideration under the Bankruptcy Code and any other applicable Law, and the Transactions may not be avoided, or costs or damages imposed or awarded, under section 363(n) or any other provision of the Bankruptcy Code. In accordance with the terms of section 3.1(b) of the Asset Purchase Agreement, the Purchaser is authorized to reduce the Closing Payment subject to the determinations set forth therein.

6. Pursuant to sections 363 and 365 of the Bankruptcy Code, the Debtors are authorized and empowered to and shall take any and all actions necessary or appropriate to (a) consummate the Sale and the other Transactions pursuant to and in accordance with the terms and conditions of the Asset Purchase Agreement and the Transaction Documents, and (b) execute and deliver, perform under, consummate, implement, and take any and all other acts or actions as may be reasonably necessary or appropriate to the performance of its obligations as contemplated by the Asset Purchase Agreement and the Transaction Documents, in each case without further notice to or order of this Court. The Transactions authorized herein shall be of full force and effect, regardless of the Debtors' lack or purported lack of good standing in any jurisdiction in which the Debtors are formed or authorized to transact business.

7. This Sale Order shall be binding in all respects upon the Debtors, their estates, all creditors, all holders of equity interests in the Debtors, all holders of any and all claim(s) of every type or nature (whether known or unknown, matured or unmatured) against the Debtors (including without

limitation all “claims” as defined in Section 101(5) of the Bankruptcy Code and all “Claims” as defined in the Motion), all persons or entities who at any time had any relationship directly or indirectly with any of the Debtors in any capacity (including as a client, creditor, investor, platform or otherwise), all local, state and federal governmental entities (including without limitation the Securities and Exchange Commission, the Internal Revenue Service and all local and state taxing authorities), any and all holders of any Interests against, in or on all or any portion of the Purchased Assets or against any of the Debtors, all non-Debtor parties to the Purchased Contracts, the Purchaser and all successors and assigns of the foregoing, including, without limitation, any trustee, if any, subsequently appointed in these Chapter 11 Cases or upon a conversion to chapter 7 under the Bankruptcy Code of these Chapter 11 Cases. The Debtors shall take any and all actions requested by the Purchaser to preserve and maintain the value of the Purchased Assets.

Transfer of Purchased Assets Free and Clear of Interests; Injunction

8. Pursuant to sections 105(a), 363(b), 363(f), 365(b) and 365(f) of the Bankruptcy Code, the Debtors are authorized and directed to transfer the Purchased Assets, including but not limited to the Purchased Contracts, to the Purchaser on the Closing Date in accordance with the Asset Purchase Agreement and Transaction Documents. Upon and as of the Closing Date, such transfer shall constitute a legal, valid, binding and effective transfer of such Purchased Assets and the Purchaser shall take title to and possession of such Purchased Assets free and clear of all Interests (except as expressly set forth in the Asset Purchase Agreement with respect to the Permitted Exceptions (except such Permitted Exceptions that are released at or prior to Closing) and Assumed Liabilities).

9. All such Interests shall attach solely to the proceeds of the Sale with the same validity, priority, force and effect that they now have as against the Purchased Assets, subject to any claims and defenses the Debtors and their estates may possess with respect thereto. This Sale Order shall be

effective as a determination that, on and as of the Closing, all Interests of any kind or nature whatsoever (except as expressly set forth in the Asset Purchase Agreement with respect to the Assumed Liabilities and the Permitted Exceptions (except such Permitted Exceptions that are released at or prior to Closing)) have been unconditionally released, discharged and terminated in, on or against the Purchased Assets and against Purchaser. The provisions of this Sale Order authorizing and approving the transfer of the Purchased Assets free and clear of Interests shall be self-executing, and neither the Debtors nor the Purchaser shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate and implement the provisions of this Sale Order.

10. Except as expressly permitted by the Asset Purchase Agreement or this Sale Order, all Persons and entities holding Interests (other than the Assumed Liabilities and the Permitted Exceptions (except such Permitted Exceptions that are released at or prior to Closing)) are hereby forever barred, estopped and permanently enjoined from asserting their respective Interests against the Purchaser, any of its respective Affiliates and subsidiaries, and any of their respective Representatives, and each of their respective property and assets, including, without limitation, the Purchased Assets. On and after the Closing Date, the Purchaser shall be authorized to execute and file such documents, and to take all other actions as may be necessary, on behalf of each holder of an Interest to release, discharge and terminate such Interests in, on and against the Purchased Assets as provided for herein, as such Interests may have been recorded or may otherwise exist. On and after the Closing Date, and without limiting the foregoing, the Purchaser shall be authorized to file termination statements or lien terminations in any required jurisdiction to remove any record, notice filing, or financing statement recorded to attach, perfect or otherwise notice any Interest that is extinguished or otherwise released pursuant to this Sale Order. This Sale Order constitutes authorization under all applicable jurisdictions

and versions of the Uniform Commercial Code for the Purchaser to file UCC termination statements with respect to all security interests in or liens on the Purchased Assets.

11. On and after the Closing, the Persons holding an Interest (other than a Permitted Exception or an Assumed Liability) shall execute such documents and take all other actions as may be reasonably necessary to release their respective Interests in the Purchased Assets, as such Interests may have been recorded or otherwise filed. The Purchaser may, but shall not be required to, file a certified copy of this Sale Order in any filing or recording office in any federal, state, county or other jurisdiction in which the Debtors are incorporated or have real or personal property, or with any other appropriate clerk or recorded with any other appropriate recorder, and such filing or recording shall be accepted and shall be sufficient to release, discharge and terminate any of the Interests as set forth in this Sale Order as of the Closing Date. All persons and entities that are in possession of any portion of the Purchased Assets on the Closing Date shall promptly surrender possession thereof to the Purchaser at the Closing.

12. The transfer of the Purchased Assets to the Purchaser pursuant to the Asset Purchase Agreement and Transaction Documents does not require any consents other than specifically provided for in the Asset Purchase Agreement, and to the extent that any party could have asserted a consent right, its failure to do so prior to the entry of this Sale Order is hereby held to be a waiver of such right.

13. This Sale Order is and shall be binding upon and govern the acts of all Persons and entities (including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, and secretaries of state, federal and local officials) who may be required by operation of law, the duties of their office, or contract to accept, file, register or otherwise record or release any

documents or instruments, or who may be required to report or insure any title or state of title in or to any lease. Each of the foregoing Persons and entities shall accept for filing any and all of the documents and instruments necessary and appropriate to release, discharge and terminate any of the Interests or to otherwise consummate the Transactions contemplated by this Sale Order, the Asset Purchase Agreement or any Transaction Document.

Purchased Contracts; Cure Payments

14. Pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code, and subject to and conditioned upon the Closing Date, the Debtors' assumption, and assignment and/or transfer to the Purchaser, of the Purchased Contracts are hereby authorized and approved in full subject to the terms set forth below. The Purchaser shall, on or prior to the Closing, pay the Cure Amounts (or reserve the Alleged Cure Claim as set forth below). To the extent the Debtors are responsible for any Cure Amount pursuant to the terms of the Asset Purchase Agreement or Transaction Documents, the Purchaser may, upon prior written notice to the Debtors and in its sole discretion, (i) pay such amount(s) on behalf of the Debtors, in which case the Debtors shall have no further responsibility therefor, and (ii) offset such amount(s) against any amount(s) Purchaser may owe the Debtors (including by deducting such amounts, at the Closing, from the Purchase Price or, without duplication, recovering such amounts from the Closing Payment); provided, however, that to the extent the Debtors object to any Cure Amount, this Court shall retain jurisdiction over such dispute.

15. Upon and as of the Closing, the Debtors are authorized and empowered to, and shall, assume, assign and/or transfer each of the Purchased Contracts to the Purchaser free and clear of all Interests (except as expressly set forth in the Asset Purchase Agreement with respect to the Assumed Liabilities and the Permitted Exceptions (except such Permitted Exceptions that are released at or prior to Closing)). The payment of the applicable Cure Amounts (if any), or the reservation by the Debtors

or Purchaser, as applicable, of an amount of cash that is equal to the lesser of (i) the amount of any cure or other compensation asserted by the applicable Contract Counterparty as required under section 365 of the Bankruptcy Code or (ii) the amount approved by order of this Court to reserve for such payment (such lesser amount, the “**Alleged Cure Claim**”) shall, pursuant to section 365 of the Bankruptcy Code and other applicable Law, (a) effect a cure, or provide adequate assurance of cure, of all defaults existing thereunder as of the Closing Date and (b) compensate, or provide adequate assurance of compensation, for any actual pecuniary loss to such non-Debtor party resulting from such default. Accordingly, on and as of the Closing Date, other than such payment or reservation, such non-Debtor party shall be forever barred from objecting to the Cure Amount and from asserting any additional cure or other amounts with respect to such Purchased Contract against the Debtors, the Purchaser, such other Winning Bidder, or any other party, and no such parties shall have any further liabilities or obligations to the non-Debtor parties to the Purchased Contracts, and the non-Debtor parties to the Purchased Contracts shall be forever enjoined and barred from seeking any additional amounts or claims (as defined in section 101(5) of the Bankruptcy Code) that arose, accrued or were incurred at any time on or prior to the Closing Date on account of the Debtors’ cure or compensation obligations arising under section 365 of the Bankruptcy Code. The Purchaser has provided adequate assurance of future performance under the relevant Purchased Contracts within the meaning of section 365(f) of the Bankruptcy Code.

16. To the extent any provision in any Purchased Contract assumed or assumed and assigned (as applicable) pursuant to this Sale Order (including, without limitation, any “change of control” provision) (a) prohibits, restricts or conditions, or purports to prohibit, restrict or condition, assumption or assignment, or (b) is modified, breached or terminated, or deemed modified, breached or terminated by any of the following: (i) the commencement of these Chapter 11 Cases, (ii) the

insolvency or financial condition of the Debtors at any time before the closing of these Chapter 11 Cases, (iii) the Debtors' assumption or assumption and assignment (as applicable) of such Purchased Contract, or (iv) the consummation of the Transactions, then such provision shall be deemed modified so as to not entitle any non-Debtor party thereto to prohibit, restrict or condition assumption or assignment, to modify or terminate such Purchased Contract, or to exercise any other default-related rights or remedies with respect thereto, including, without limitation, any such provision that purports to allow the non-Debtor party thereto to recapture such Purchased Contracts, impose any penalty thereunder, condition any renewal or extension thereof, impose any rent acceleration or assignment fee, or increase or otherwise impose any other fees or other charges in connection therewith. All such provisions constitute unenforceable anti-assignment provisions and are held to be void and of no force and effect pursuant to sections 365(b), 365(e) and 365(f) of the Bankruptcy Code.

17. All requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to the Purchaser of the Purchased Contracts have been satisfied. Upon the Closing, in accordance with sections 363 and 365 of the Bankruptcy Code, the Purchaser shall be fully and irrevocably vested with all right, title and interest of the Debtors in and under the Purchased Contracts, and each Purchased Contract shall be fully enforceable by the Purchaser in accordance with its respective terms and conditions, except as limited or modified by the provisions of this Sale Order. Upon and as of the Closing, the Purchaser shall be deemed to be substituted for the Debtors as a party to the applicable Purchased Contracts and, accordingly, the Debtors shall be relieved, pursuant to section 365(k) of the Bankruptcy Code, from any further liability under the Purchased Contracts.

18. Upon the payment of the applicable Cure Amount or reservation of the Alleged Cure Claim, if any, the Purchased Contracts will remain in full force and effect, and no default shall exist,

or be deemed to exist, under the Purchased Contracts as of the Closing Date nor shall there exist, or be deemed to exist, any event or condition which, with the passage of time or giving of notice, or both, would constitute such a default.

19. With respect to any Contract which is not a Purchased Contract on the Closing Date and provided such Contract has not been rejected by Debtors after the Closing Date pursuant to section 365 of the Bankruptcy Code, upon written notice(s) from the Purchaser to the Debtors given at any time after the Closing Date, the Debtors are hereby authorized to take all actions reasonably necessary to assume and assign to the Purchaser pursuant to section 365 of the Bankruptcy Code any such Contract(s) as set forth in such notice(s); *provided* that any Cure Amount applicable thereto shall be satisfied solely by the Purchaser without any deduct, credit or setoff of the Purchase Price except as otherwise set forth in the Asset Purchase Agreement. Notwithstanding anything in this Sale Order to the contrary, on the date any such Contract is assumed and assigned to Purchaser such Contract shall thereafter be deemed a Purchased Asset for all purposes under this Sale Order and the Asset Purchase Agreement.

20. All Contract Counterparties to the Purchased Contracts shall be deemed to have consented to such assumption and assignment under section 365(c)(1)(B) of the Bankruptcy Code and the Purchaser shall enjoy all of the Debtors' rights, benefits and privileges under each such Purchased Contract as of the applicable date of assumption and assignment without the necessity to obtain any non-Debtor parties' written consent to the assumption or assignment thereof.

21. Nothing in this Sale Order, the Motion, or in any notice or any other document is or shall be deemed an admission by the Debtors that any Purchased Contract is an executory contract or unexpired lease under section 365 of the Bankruptcy Code.

22. The failure of the Debtors or the Purchaser to enforce at any time one or more terms or

conditions of any Purchased Contract shall not be a waiver of such terms or conditions, or of its respective rights to enforce every term and condition of the Purchased Contracts.

Additional Injunction; No Successor Liability

23. Effective upon the Closing Date and except as expressly set forth in the Asset Purchase Agreement with respect to the Assumed Liabilities and the Permitted Exceptions (except such Permitted Exceptions that are released at or prior to Closing), all Persons and entities are forever prohibited and permanently enjoined from (i) commencing or continuing in any manner any action or other proceeding, the employment of process, or any act (whether in law or equity, in any judicial, administrative, arbitral or other proceeding), to collect, recover or offset any Interest; (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order with respect to an Interest; (iii) creating, perfecting or enforcing any Interest; or (iv) asserting any setoff, right of subrogation or recoupment of any kind with respect to an Interest, in each case as against the Purchaser, any of its Affiliates or subsidiaries, or any of their respective Representatives, or any of their respective property or assets, including the Purchased Assets.

24. The Transactions contemplated by the Asset Purchase Agreement and the Transaction Documents do not cause there to be, and there is not (i) a consolidation, merger, or *de facto* merger of the Purchaser, on the one hand, with or into the Debtors or the Debtors' estates, on the other hand, or vice versa; (ii) a substantial continuity between the Purchaser, on the one hand, and the Debtors or the Debtors' estates, on the other hand; (iii) a common identity between the Purchaser, on the one hand, and the Debtors or the Debtors' estates, on the other hand; or (iv) a mere continuation of the Debtors or their estates, on the one hand, with the Purchaser, on the other hand.

25. Except as expressly set forth in the Asset Purchase Agreement with respect to the Assumed Liabilities and the Permitted Exceptions (except such Permitted Exceptions that are released

at or prior to Closing), the transfer of the Purchased Assets, including, without limitation, the assumption, assignment and transfer of any Purchased Contract, to the Purchaser shall not cause or result in, or be deemed to cause or result in, the Purchaser, any of its Affiliates or subsidiaries, or any of their respective Representatives, having any liability, obligation, or responsibility for, or any Purchased Assets being subject to or being recourse for, any Interest whatsoever, whether arising under any doctrines of successor, transferee or vicarious liability, breach of fiduciary duty, aiding or abetting breach of fiduciary duty or otherwise, whether at Law or in equity, directly or indirectly, and whether by payment, setoff, recoupment, or otherwise.

26. For the avoidance of doubt, notwithstanding the consummation of the Transactions and the employment by the Purchaser of certain Persons previously employed by the Debtors, (i) the Purchaser shall not have any obligations or liabilities to any employee of the Debtors or in respect of any employee benefits owing to any employee of the Debtors by the Debtors or by any plan or program administered by the Debtors or for the benefit of the Debtors' employees, and (ii) any obligations of the Purchaser to any such Person shall be expressly limited to (a) those obligations expressly agreed upon by the Purchaser (if any) with such Person, and (b) those obligations explicitly assumed by the Purchaser (if any) under the Asset Purchase Agreement.

Good Faith

27. The Transactions contemplated by this Sale Order, the Asset Purchase Agreement and Transaction Documents are undertaken by the Purchaser without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale and other Transactions shall not alter, affect, limit, or otherwise impair the validity of the Sale or such other Transactions (including the assumption, assignment and/or transfer of the Purchased Contracts), unless

such authorization and consummation are duly stayed pending such appeal. The Purchaser is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to, and hereby granted, the full rights, benefits, privileges and protections of section 363(m) of the Bankruptcy Code.

Other Provisions

28. The Purchaser is hereby authorized, in its discretion, in connection with consummation of the Transactions to allocate the Purchased Assets, Assumed Liabilities, and Purchased Contracts among its Affiliates, subsidiaries, designees, assignees, and/or successors in a manner as it, in its discretion, deems appropriate and such Person shall be entitled to all of the rights, benefits, privileges and protections of the Purchaser as are accorded to the Purchaser under this Sale Order, and the Debtors shall, to the extent set forth in the Asset Purchase Agreement and Transaction Documents, cooperate with and take all actions reasonably requested by Purchaser to effectuate any of the foregoing. In the event that the Purchaser designates a Person to acquire any Purchased Assets (each a **“Purchaser Designee”**), including, without limitation, any Purchased Contracts, then any reference to the “Purchaser” in this Sale Order shall be deemed to be a reference to “the Purchaser and/or such applicable Purchaser Designee,” unless the context requires otherwise. Upon the transfer of any Purchased Asset or Purchased Contract to, or the assumption of any Assumed Liability by, a Purchaser Designee, such Purchaser Designee shall be solely responsible for such Purchased Asset, Assumed Liability, or Purchased Contract (including performance thereunder), as applicable.

29. Nothing contained in any plan of reorganization or liquidation, or order of any type or kind entered in (a) these Chapter 11 Cases, (b) any subsequent chapter 7 case into which any such chapter 11 case may be converted, or (c) any related proceeding subsequent to entry of this Sale Order, shall conflict with or derogate from the provisions of the Asset Purchase Agreement or the terms of

this Sale Order. To the extent of any such conflict or derogation, the terms of this Sale Order shall govern.

30. Pursuant to Bankruptcy Rules 6004(h), 6006(d), 7062, and 9014, this Sale Order shall not be stayed after the entry hereof, but shall be effective and enforceable immediately upon entry, and the stays provided in Bankruptcy Rules 6004(h) and 6006(d) are hereby expressly waived and shall not apply. Accordingly, the Debtors are authorized and empowered to close the Sale and other Transactions immediately upon entry of this Sale Order.

31. Nothing in this Sale Order shall modify or waive any closing conditions or termination rights in Article IV of the Asset Purchase Agreement, and all such conditions and rights shall remain in full force and effect in accordance with their terms.

32. No bulk sales law or any similar law of any state or other jurisdiction applies in any way to the Transactions. Accordingly, Purchaser shall not under any circumstances at any time be held liable or responsible for any of the tax liabilities (of any type or nature whatsoever, however arising, federal, state or local, including fines, penalties or interest or additions thereto) of any of the Debtors, including as an alleged successor or otherwise, except as otherwise expressly set forth in the Asset Purchase Agreement.

33. Any payment or reimbursement obligations of the Debtors owed to the Purchaser pursuant to the Asset Purchase Agreement or the Transaction Documents shall be paid in the manner provided therein, without further notice to or order of this Court. Any such obligations shall constitute allowed administrative claims against the Debtors with first priority administrative expense status under sections 503(b) and 507(a)(2) of the Bankruptcy Code.

34. The failure specifically to include any particular provision of the Asset Purchase Agreement in this Sale Order shall not diminish or impair the effectiveness of such provision, it being

the intent of this Court that the Asset Purchase Agreement be authorized and approved in its entirety.

35. The Asset Purchase Agreement and Transaction Documents may be modified, amended or supplemented in a writing signed by the parties thereto and in accordance with the terms thereof, without further notice to or order of this Court; provided, however, that any such modification, amendment or supplement shall not have a material adverse effect on the Debtors' estates unless approved by order of this Court. All such modifications, amendments and/or supplements, and all Transaction Documents, not previously provided to the Creditors' Committee shall be provided promptly to the Creditors' Committee, if appointed.

36. This Court retains jurisdiction, pursuant to its statutory powers under 28 U.S.C. § 157(b), to, among other things, (i) interpret, implement, and enforce the terms and provisions of this Sale Order, the Asset Purchase Agreement, the Transaction Documents, and any amendments thereto and any waivers and consents given thereunder; (ii) compel delivery of the Purchased Assets to the Purchaser; (iii) enforce the injunctions and limitations of liability set forth in this Sale Order; and (iv) enter any orders under sections 363 and 365 of the Bankruptcy Code with respect to the Purchased Contracts.

37. All time periods set forth in this Sale Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

38. The automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to implement the provisions of this Sale Order and the terms and conditions of the Asset Purchase Agreement and the Transaction Documents.

39. The rules of construction set forth in section 1.3 of the Asset Purchase Agreement shall apply to this Sale Order, *mutatis mutandis*.

40. To the extent that this Sale Order is inconsistent with any prior order or pleading with

respect to the Motion, the terms of this Sale Order shall govern. To the extent there are any inconsistencies between the terms of this Sale Order or the Bidding Procedures Order, on the one hand, and the Asset Purchase Agreement or any Transaction Document, on the other hand, the terms of this Sale Order and the Bidding Procedures Order shall govern, as applicable.

Dated: _____, 2015
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

Asset Purchase Agreement

EXHIBIT C

(Affiliate Guaranty)

Execution Version

GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT (this "Guaranty") is made as of the 3rd day of July, 2015, by CEDAR CAPITAL, LLC, a Delaware limited liability company ("Guarantor"), in favor of F-SQUARED INVESTMENT MANAGEMENT, LLC, a Delaware limited liability company ("F-Squared"), THE DIRECT OR INDIRECT WHOLLY OWNED SUBSIDIARIES OF F-SQUARED PARTY HERETO (collectively, "Seller") and any Permitted Assigns (as defined in the Purchase Agreement (as defined below)) of Seller (collectively, the "Beneficiary").

WHEREAS, on the date hereof, Seller and BROADMEADOW CAPITAL, LLC, a Delaware limited liability company ("Purchaser"), entered into that certain Asset Purchase Agreement (the "Purchase Agreement"), pursuant to which Seller will sell, transfer and assign to Purchaser all of the Purchased Assets (as defined in the Purchase Agreement) and Purchaser will pay to Seller the Purchase Price in accordance with the terms of the Purchase Agreement.

WHEREAS, the Purchase Price is defined in the Purchase Agreement as (a) an amount in cash equal to (i) the Closing Payment (as defined in the Purchase Agreement) plus or minus (ii) the Fee Adjustment Amount (as defined in the Purchase Agreement) plus or minus (iii) the Adjustment Amount (as defined in the Purchase Agreement) plus (iv) the Initial Earn-Out Payment (as defined in the Purchase Agreement) plus (v) the Final Earn-Out Payment (as defined in the Purchase Agreement), and (b) the assumption of the Assumed Liabilities (as defined in the Purchase Agreement).

WHEREAS, Purchaser is an affiliate of Guarantor and Guarantor is receiving a substantial benefit from the transactions contemplated by the Purchase Agreement.

WHEREAS, to induce Seller to enter into the Purchase Agreement and perform its obligations thereunder, Guarantor has agreed to enter into this Guaranty for the benefit of Seller, whereby Guarantor agrees to guarantee the payment of the Purchase Price and the performance by Purchaser of its obligations under the Purchase Agreement, including Article XI thereof.

WHEREAS, Seller has advised Guarantor that it would not enter into the Purchase Agreement in the absence of Guarantor's guaranty on the terms set forth herein, and that in so doing, Seller is relying on and will rely on the absolute and unconditional nature of this Guaranty.

NOW, THEREFORE, in consideration of the premises herein set forth and certain other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby represents, warrants, covenants and agrees to and with Seller and any of Seller's successors or assigns as follows:

1. Definitions and Construction.

(a) *Definitions.* All initially capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed thereto in the Purchase Agreement.

(b) *Construction.*

i. Unless the context of this Guaranty clearly requires otherwise, references to the plural include the singular and to the singular include the plural, the part includes the whole, the term "including" is not limiting, and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder" and other similar terms in this Guaranty refer to this Guaranty as a whole and not exclusively to any particular provision of this Guaranty. Article, section, subsection, exhibit and schedule references are to this Guaranty unless otherwise specified. Any reference to any of the following documents includes any and all alterations, amendments, restatements, extensions, modifications, renewals or supplements thereto or thereof, as applicable: this Guaranty, the Purchase Agreement, or any of the other Purchaser Documents.

ii. Neither this Guaranty nor any uncertainty or ambiguity herein shall be construed or resolved against Guarantor or Beneficiary, whether under any rule of construction or otherwise. On the contrary, this Guaranty has been reviewed by both of the parties and their respective counsel and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of the parties hereto.

iii. In the event of any direct conflict between the express terms and provisions of this Guaranty and the Purchase Agreement, the terms and provisions of the Purchase Agreement shall control.

2. Guaranty. Guarantor hereby unconditionally, absolutely and irrevocably guarantees to Seller and any Permitted Assigns of Seller under the Purchase Agreement (a) the due and punctual payment in full (and not merely the collectability) of the Purchase Price, when due and payable, (b) the due and punctual payment in full (and not merely the collectability) of all other sums and charges of any kind which may at any time be due and payable by Purchaser under and in connection with the Purchase Agreement or the other Purchaser Documents, including any amounts owed under Article XI of the Purchase Agreement and (c) the due and punctual performance of all of the other terms, covenants, conditions or obligations of Purchaser contained in the Purchase Agreement or the other Purchaser Documents.

3. AMENDMENTS WITH RESPECT TO OBLIGATIONS, ETC. GUARANTOR AGREES THAT BENEFICIARY MAY, IN BENEFICIARY'S SOLE DISCRETION, WITHOUT NOTICE TO OR CONSENT OF GUARANTOR AND WITHOUT IN ANY WAY RELEASING, AFFECTING OR IMPAIRING THE OBLIGATIONS AND LIABILITIES OF GUARANTOR HEREUNDER, AT ANY TIME: (A) EXTEND THE TIME OF PAYMENT OF ANY AMOUNTS DUE UNDER THE PURCHASE AGREEMENT OR THE OTHER PURCHASER DOCUMENTS AND OTHERWISE WAIVE COMPLIANCE WITH ANY CONDITIONS, TERMS OR COVENANTS, OR WAIVE ANY BREACHES, DEFAULTS OR EVENTS OF DEFAULT UNDER, OR GRANT ANY OTHER INDULGENCES OR FORGIVENESS WITH RESPECT TO, THE PURCHASE AGREEMENT OR THE OTHER PURCHASER DOCUMENTS, (B) MODIFY, AMEND OR CHANGE, IN ANY MANNER,

ANY TERMS OR PROVISIONS OF THE PURCHASE AGREEMENT OR THE OTHER PURCHASER DOCUMENTS, IN EACH CASE IN ACCORDANCE WITH THE TERMS THEREOF (C) GRANT EXTENSIONS WITH RESPECT TO THE PURCHASE AGREEMENT OR THE OTHER PURCHASER DOCUMENTS, (D) EFFECT ANY RELEASE, COMPROMISE OR SETTLEMENT IN CONNECTION WITH THE PURCHASE AGREEMENT OR THE OTHER PURCHASER DOCUMENTS, IN EACH CASE IN ACCORDANCE WITH THE TERMS THEREOF, (E) MAKE ADVANCES FOR THE PURPOSE OF OBSERVING OR PERFORMING ANY TERM, COVENANT OR AGREEMENT CONTAINED IN THE PURCHASE AGREEMENT OR THE OTHER PURCHASER DOCUMENTS WITH RESPECT TO WHICH PURCHASER MAY BE IN BREACH OR DEFAULT, (F) ASSIGN OR OTHERWISE TRANSFER THE GUARANTY, THE PURCHASE AGREEMENT OR THE OTHER PURCHASER DOCUMENTS IN ACCORDANCE WITH THE TERMS THEREOF, AND (G) DEAL IN ALL RESPECTS WITH PURCHASER AS IF THIS GUARANTY WERE NOT IN EFFECT. IN FURTHERANCE OF THE FOREGOING, THIS GUARANTY SHALL IN ALL RESPECTS BE VALID AND BINDING ON GUARANTOR EVEN IF ALL OR ANY PORTION OF THE ASSETS OF OR EQUITY (INCLUDING LIMITED LIABILITY COMPANY INTERESTS) WHETHER OWNED DIRECTLY OR INDIRECTLY BY GUARANTOR OR OTHER BENEFICIAL INTERESTS IN PURCHASER IS TRANSFERRED TO ANY OTHER PERSON OR ENTITY OR THERE OCCURS ANY MERGER, CONSOLIDATION, RESTRUCTURING, TERMINATION, DISSOLUTION OR LIQUIDATION OF PURCHASER.

4. Guaranty Absolute and Unconditional. This is a guaranty of payment and performance and not of collection, and the liability of Guarantor under this Guaranty shall be primary, direct and immediate, and not conditional or contingent upon pursuit by Beneficiary of any remedies it may have against Purchaser with respect to the Purchase Agreement or the other Purchaser Documents, whether pursuant to the terms thereof or by law, or against any other person or entity or against any property of any person or entity. Without limiting the generality of the foregoing, Beneficiary shall not be required to make any demand on Purchaser, or otherwise pursue or exhaust its remedies against Purchaser, or against any other person or entity before, simultaneously with or after enforcing its rights and remedies hereunder against Guarantor. Any one or more successive and/or concurrent actions may be brought hereunder against Guarantor either in the same action, if any, brought against Purchaser, or in separate actions, as often as Beneficiary may deem advisable.

5. Certain Waivers. Guarantor hereby acknowledges receipt of a copy of the Purchase Agreement and the other Purchaser Documents, and hereby expressly waives: (a) presentment and demand for payment, (b) notice of acceptance of this Guaranty and of any liability to which it applies, and notice of presentment, demand and protest, notice of protest, notice of non-payment, and notice of sale, (c) notice of any breach, default or Event of Default (as hereinafter defined) hereunder or under the Purchase Agreement or the other Purchaser Documents, and of all indulgences with respect thereto, (d) demand for observance or performance of, or enforcement of, any terms or provisions of the Purchase Agreement or the other Purchaser Documents, (e) the defense of the statute of limitations in any action hereunder or for the collection of any amount or the performance of Purchaser's obligations and any defense based upon an election of remedies by Beneficiary, (f) the benefit of all laws now or hereafter in effect in any way limiting or restricting the liability of Guarantor under this

Guaranty, including all right to stay of execution and exemption of property in any action to enforce the liability of Guarantor hereunder, (g) all surety defenses, and (h) any duty on the part of Beneficiary to disclose to Guarantor any fact which Beneficiary may now or hereafter know about Purchaser, regardless of whether Beneficiary has reason to believe that such fact materially increases the risk beyond that which Guarantor intends to assume, or has reason to believe that such fact is unknown to Guarantor, or has a reasonable opportunity to communicate such fact to Guarantor, it being agreed that Guarantor is fully responsible for being and keeping informed of the financial condition of Purchaser and of all facts and circumstances bearing on the satisfaction and performance of Purchaser's obligations under the Purchase Agreement and the other Purchaser Documents.

6. Guaranty in Affect; Reinstatement. The obligations of Guarantor under this Guaranty shall not be otherwise affected, modified or impaired upon the happening of any event, including, without limitation, (a) any legal disability, incapacity or similar defense, (b) the sale or transfer of all or any portion of the assets of or equity (including limited liability company interests) whether owned directly or indirectly by Guarantor or other beneficial interests in Purchaser (including a sale resulting from a foreclosure action or other exercise of remedies by Beneficiary), (c) the merger, consolidation, restructuring, termination, dissolution or liquidation of Purchaser and (d) any event or action that would, in the absence of this clause, result in the release or discharge by operation of law of Guarantor from the performance or observance of any obligation, warranty or agreement contained in this Guaranty. If any of the present or future obligations of Purchaser under the Purchase Agreement are guaranteed by persons, partnerships, corporations, companies or other entities in addition to Guarantor, the death, release or discharge in whole or in part, or the bankruptcy, liquidation or dissolution of one or more of them, shall not discharge or affect the liabilities of Guarantor under this Guaranty. Notwithstanding anything contained in this Guaranty to the contrary, this Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time payment of all, or any part thereof, of the Purchase Price is rescinded or must otherwise be restored by Beneficiary, whether due to any bankruptcy or insolvency or otherwise. The insolvency of Purchaser, and any bankruptcy or reorganization proceeding with respect thereto, shall not affect in any way Guarantor's unconditional and absolute liability hereunder.

7. Subordination and No Subrogation. If Guarantor advances any sums to Purchaser, or its successors or assigns, or if Purchaser or its successors and assigns shall hereafter become indebted to Guarantor, such sums and indebtedness shall be subordinate in all respects to the amounts then or thereafter due and owing Beneficiary under the Purchase Agreement and the other Purchaser Documents. Guarantor irrevocably waives any and all rights to which Guarantor may be entitled, by operation of law or otherwise, upon making any payment hereunder, (a) to be subrogated to the rights of Beneficiary against Purchaser with respect to such payment or otherwise to be reimbursed, indemnified or exonerated by Purchaser in respect thereof, or (b) to receive any payment, in the nature of contribution or for any other reason, from any person or entity with respect to such payment. No set-off, counterclaim or reduction, no diminution of an obligation, and no defense of any kind or nature that Guarantor may have against Purchaser or Beneficiary shall affect, modify or impair the obligations hereunder of Guarantor, provided however by the foregoing provisions, Guarantor has in no way waived any claim Guarantor might separately assert against Beneficiary.

8. Recourse. Guarantor hereby subjects Guarantor's property to this Guaranty and hereby expressly agrees that recourse may be had against such property to enforce Guarantor's obligations hereunder. Guarantor further agrees that any and all of such property shall be subject to execution for any judgment or decree enforcing this Guaranty. At all times during which this Guaranty remains in effect, Guarantor shall maintain, preserve and keep Guarantor's assets and properties in substantially the same repair and condition as presently exist, ordinary wear and tear excepted.

9. Representations and Warranties. Guarantor represents and warrants that:

(a) it will derive a substantial financial or other advantage from Purchaser acquiring the Purchased Assets and the obligations incurred by Purchaser under the Purchase Agreement and the other Purchaser Documents;

(b) the execution, delivery and performance of this Guaranty have been duly authorized by all necessary action and do not contravene any provision of Guarantor's charter, partnership agreement, operating agreement or similar organizational documents or any applicable law, order of Governmental Body binding on Guarantor or its assets;

(c) all consents, approvals, authorizations, permits of, filings with and notifications to, any Governmental Body necessary for the due execution, delivery and performance of this Guaranty by Guarantor have been obtained or made and all conditions thereof have been duly complied with, and no other action by, and no notice to or filing with, any Governmental Body or regulatory body is required in connection with the execution, delivery or performance of this Guaranty;

(d) neither the execution or delivery of this Guaranty, nor the observance and performance of the agreements and obligations contained herein, are prohibited by, in conflict with or constitute a breach of any contract, agreement or other instrument or any law, ordinance, regulation, order, writ or decree to which Guarantor is a party or by which Guarantor is bound;

(e) this Guaranty constitutes a legal, valid and binding obligation of Guarantor enforceable against Guarantor in accordance with its terms, subject to (i) the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other similar laws affecting creditors' rights generally and (ii) general equitable principles (whether considered in a proceeding in equity or at law);

(f) Guarantor has the legal authority and the financial capacity to pay and perform, or cause to be paid and performed, its obligations under this Guaranty, and all funds necessary for Guarantor to fulfill its obligations under this Guaranty shall be available to Guarantor for so long as this Guaranty shall remain in effect;

(g) there are no suits or proceedings by or before any court, commission, board or other Governmental Body pending, or to the knowledge of Guarantor threatened, which involve or affect the validity or enforceability of this Guaranty or involve any risk of any judgment or liability being imposed upon Guarantor which could materially adversely affect the

financial condition of Guarantor or Guarantor's ability to observe and perform Guarantor's agreements and obligations hereunder; and

(h) Guarantor is not insolvent or bankrupt and has not committed any act of bankruptcy; Guarantor has not made any general assignment for the benefit of Guarantor's creditors; no proceeding seeking (i) relief under any bankruptcy or insolvency law, (ii) the rearrangement or readjustment of debt, or (iii) the appointment of a receiver, custodian, liquidator or trustee to take possession of substantially all of the assets has been commenced or threatened.

10. Payment. Guarantor shall pay to Beneficiary, upon demand, all expenses (including all reasonable attorneys' fees) incurred by Beneficiary in connection with the collection of the amounts due under the Purchase Agreement and the other Purchaser Documents, including the enforcement of Guarantor's obligations under this Guaranty. Any reference to "attorneys' fees" shall include, but not be limited to, those attorneys' or legal fees, costs and charges incurred by Beneficiary in the defense of actions arising hereunder and the collection, protection or set-off of any claim Beneficiary may have in a proceeding under title 11 of the United States Code. All sums payable by Guarantor to Beneficiary hereunder shall be due and payable on demand. Beneficiary shall have the right immediately to set-off against Guarantor's liabilities to Beneficiary (a) any money owed by Beneficiary in any capacity to Guarantor, whether or not then due, and/or (b) any money or other property of Guarantor in possession of Beneficiary, and, to the fullest extent permitted by applicable law, Beneficiary shall be deemed to have exercised such right of set-off and to have made a charge against any such money and/or property immediately upon the occurrence of an Event of Default under this Guaranty, even though the actual book entries may be made at some time subsequent thereto.

11. Events of Default. Any one or more of the following shall constitute an "Event of Default" hereunder:

(a) the failure of Guarantor to make any payment or perform any obligation pursuant to the terms of this Guaranty within two (2) business days of receipt of written demand;

(b) if any material representation, warranty or statement by Guarantor contained herein or in any writing delivered to Beneficiary by or at the direction of Guarantor proves to be untrue in any material respect as of the date when made;

(c) the insolvency (however defined) of Guarantor;

(d) the commencement by or against Guarantor of any proceeding under any bankruptcy, reorganization, arrangement or debt, insolvency, receivership, liquidation or dissolution law or statute of any state or country, and the same is not discharged within thirty (30) days; and

(e) a breach by Purchaser of the Purchase Agreement or the other Purchaser Documents (including any term, provision or condition thereof) (subject to the receipt of any required notice and the passage of any applicable cure period).

12. Remedies. In case any one or more Events of Default shall occur, be continuing, and not have been waived, Beneficiary may proceed to protect and enforce the rights of Beneficiary by an action at law, suit in equity, or other appropriate proceeding, whether for the specific performance of any agreement contained herein or for an injunction against a violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or thereby, or by law. The remedies provided in this Guaranty shall be cumulative and in addition to all other remedies available under this Guaranty at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit Beneficiary's right to pursue actual and consequential damages for any failure by Guarantor to comply with the terms of this Guaranty. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by Beneficiary and shall not, except as expressly provided herein, be subject to any other obligation of Guarantor (or the performance thereof).

13. Notices. All notices and other communications under this Guarantee shall be in writing and shall be deemed given (a) when delivered personally by hand (with written confirmation of receipt), (b) five (5) days after being deposited with the United States Post Office, by registered or certified mail, postage prepaid, (c) one (1) business day following the day sent by overnight courier (with written confirmation of receipt), or (d) when sent by electronic mail (with acknowledgment received), in each case at the following addresses (or to such other address as Seller or Guarantor may have specified by notice given pursuant to this provision):

If to Seller, to:

F-Squared Investment Management, LLC
80 William Street, Suite 400
Wellesley, Massachusetts 02481
Attention: Laura Dagan
email: LDagan@F2inv.com

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

Stillwater Advisory Group, LLC
PO Box 1022
Beverly Shores, Indiana 46301
Attention: David Phelps
email: Dphelps@dnphelps.com

- and -

Richards, Layton & Finger
One Rodney Square
920 North King Street
Wilmington, Delaware 19801
Attention: Russell C. Silberglie
email: silberglie@rlf.com

If to Guarantor, to:

Cedar Capital, LLC
155 N. Wacker Drive, Suite 1850
Chicago, Illinois 60606
Attention: Paul R. Ingersoll
email: Paul.ingersoll@cedarcapital.com

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

Fox, Swibel, Levin & Carroll, LLP
200 West Madison Street, Suite 3000
Chicago, Illinois 60606
Attention: David J. Morris
email: Dmorris@fslc.com

14. Certain Waivers. Guarantor hereby waives and renounces any and all exemption rights under or by virtue of the laws of any state, or the United States, as against this debt or any renewal debt. No delay or omission on the part of Beneficiary in exercising any right hereunder shall operate as a waiver of such right or of any other right. A waiver on any one occasion shall not be construed as a bar to or waiver of any such right and/or remedy in any future occasion.

15. Severability. Each provision of this Guaranty shall be considered severable, and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those provisions (including the enforceability thereof) of this Guaranty which are valid, enforceable and legal. If any provision of this Guaranty is determined to be invalid, unenforceable or illegal, the parties will in good faith attempt to effect the business agreement represented by such invalid, unenforceable or illegal provision to the fullest extent permitted by applicable law. In the event the parties cannot reach a mutually agreeable and enforceable replacement for such provision or provisions, then such provision or provisions which have been determined to be invalid, illegal or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid, illegal or unenforceable. If any provision is inapplicable to any person, entity or circumstance, it shall nevertheless remain applicable to all other persons, entities and circumstances.

16. Further Assurances. Guarantor shall, promptly following the request of Beneficiary, execute, acknowledge, deliver and record or file such further documents and do such further acts as may be necessary, desirable or proper to carry out more effectively the purpose of this Guaranty and such other instruments, or as may be deemed advisable by Beneficiary, and Guarantor shall pay on demand all reasonable costs connected with any of the foregoing.

17. Assignments. This Guaranty shall inure to the benefit of, and be enforceable by, Beneficiary and its successors, endorsees and assigns, and shall be binding upon, and enforceable against, Guarantor and Guarantor's successors and assigns. In no event shall this Guaranty be

assigned by Guarantor without the prior written consent of Beneficiary and any attempted or purported assignment shall constitute an Event of Default hereunder and shall be void ab initio.

18. Governing Law. This Guaranty, and all claims or causes of action (whether in contract or tort) that may be based upon, arise out of or relate to this Guaranty, or the negotiation, execution, termination, performance or nonperformance of this Guaranty, shall be governed by and construed in accordance with the laws of the State of Delaware applicable to contracts made and performed in such State, without regard to any conflict of laws principles thereof.

19. Submission to Jurisdiction; Consent to Service of Process.

(a) Without limiting any of Beneficiary's or Guarantor's right to appeal any order of the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Guaranty and to decide any claims or disputes which may arise or result from, or be connected with, this Guaranty, the Purchase Agreement and the other Purchaser Documents, any breach or default thereunder, or the transactions contemplated thereby, and (ii) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and Guarantor hereby consents to and submits to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 13 of this Guaranty; provided, however, that if the Seller's voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101 et seq., has closed, Guarantor agrees to unconditionally and irrevocably submit to the exclusive jurisdiction of the United States District Court for the District of Delaware sitting in New Castle County or the courts of the State of Delaware sitting in New Castle County and any appellate court from any thereof, for the resolution of any such claim or dispute. Guarantor hereby irrevocably waives, to the fullest extent permitted by applicable Law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Guarantor agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(b) To the fullest extent permitted by applicable Law, Guarantor hereby consents to process being served by Beneficiary in any suit, action or proceeding by delivery of a copy thereof in accordance with the provisions of Section 13 of this Guaranty.

20. WAIVER OF RIGHT TO TRIAL BY JURY. GUARANTOR HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, MATTER OR PROCEEDING BASED UPON, ARISING OUT OF, OR RELATED TO THIS GUARANTY, ANY PROVISION HEREOF OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY.

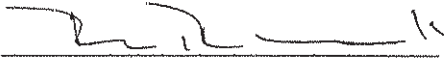
21. Indemnification. Guarantor shall indemnify, defend and hold Beneficiary harmless from and against any and all losses, liabilities, damages, costs and obligations (or actions or claims in respect thereof) (including reasonable attorneys' fees), which Beneficiary may suffer or incur arising out of or based upon (i) any misrepresentation or failure to fulfill any agreement or covenant on the part of Guarantor under this Guaranty; and/or (ii) any and all

actions, suits, proceedings, demands, assessments, judgments, costs and legal and other expenses incident to any of the foregoing.

[Signature Page Follows]

IN WITNESS WHEREOF, Guarantor, intending to be legally bound hereby, has duly and validly executed this Guaranty under seal as of the day and year first written above.

CEDAR CAPITAL, LLC

By: 
Name: PAUL R. INGERSOLL
Title: CEO

[Signature page to Guaranty]

Acknowledged and agreed to by:

F-SQUARED INVESTMENT MANAGEMENT, LLC

By: Laura P. Dagan
Name: Laura P. Dagan
Title: CEO

F-SQUARED INVESTMENTS, INC.

By: Laura P. Dagan
Name: Laura P. Dagan
Title: CEO

F-SQUARED INSTITUTIONAL ADVISORS, LLC

By: Laura P. Dagan
Name: Laura P. Dagan
Title: AUTHORIZED PERSON

F-SQUARED ALTERNATIVE INVESTMENTS,
LLC

By: Laura P. Dagan
Name: Laura P. Dagan
Title: AUTHORIZED PERSON

ALPHASECTOR LLS GP I, LLC

By: Laura P. Dagan
Name: Laura P. Dagan
Title: AUTHORIZED PERSON

ACTIVE INDEX SOLUTIONS, LLC

By: Laura P. Dagan
Name: Laura P. Dagan
Title: AUTHORIZED PERSON

[Signature page to Guaranty]

F-SQUARED RETIREMENT SOLUTIONS, LLC

By: Laura P. Dagan
Name: Laura P. Dagan
Title: AUTHORIZED PERSON

F-SQUARED SOLUTIONS, LLC

By: Laura P. Dagan
Name: Laura P. Dagan
Title: AUTHORIZED PERSON

F-SQUARED CAPITAL, LLC

By: Laura P. Dagan
Name: Laura P. Dagan
Title: AUTHORIZED PERSON

Exhibit C

Sale Order

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

In re:

F-Squared Investment Management, LLC, *et al.*¹

Debtors.

)
) Chapter 11
)

) Case No. 15-_____ (_____)
)

) (Joint Administration Requested)
)

) **Re: Docket Nos.**
)
)

**ORDER (A) AUTHORIZING AND APPROVING (1) THE SALE OF
SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS
FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES
AND OTHER INTERESTS; AND (2) THE ASSUMPTION AND
ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN
CONNECTION THEREWITH; AND (B) GRANTING RELATED RELIEF**

Upon consideration of the motion, dated July 8, 2015 (the “**Motion**”) of F-Squared Investment Management, LLC and its subsidiaries, the debtors and debtors-in-possession (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), pursuant to sections 105(a), 363, 365, and 503 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), for (i) entry of an order (the “**Bidding Procedures Order**”) (a) establishing bidding and auction procedures (the “**Bidding Procedures**”) related to the sale of the Debtors’ assets (the “**Sale**”); (b) approving bidding protections in connection therewith; (c) scheduling an auction (the “**Auction**”) and a hearing for such Sale; (d) establishing certain notice procedures for determining cure amounts

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: F-Squared Investment Management, LLC (9247), F-Squared Investments, Inc. (0788), F-Squared Retirement Solutions, LLC (9247), F-Squared Alternative Investments, LLC (9247), F-Squared Solutions, LLC (9247), F-Squared Institutional Advisors, LLC (9247), F-Squared Capital, LLC (5257), AlphaSector LLS GP 1, LLC (3342), and Active Index Solutions, LLC (0788). The Debtors’ address is Wellesley Office Park, 80 William Street, Suite 400, Wellesley, Massachusetts 02481.

for executory contracts and unexpired leases to be assumed and assigned in connection with such Sale (the “**Assumption and Assignment Procedures**”); and (e) granting certain related relief; and (ii) entry of an order (this “**Sale Order**”) (a) approving the Sale of the Debtors’ assets, free and clear of all Interests (as defined below); (b) authorizing the assumption and assignment and/or transfer of certain executory contracts and unexpired leases; and (c) granting certain related relief; after holding a hearing on _____ (the “**Bidding Procedures Hearing**”), this Court entered the Bidding Procedures Order on _____ [D.I. _____]; and the Auction having been [held on ____ OR cancelled because no Qualified Bidders other than the Purchaser]; and Broadmeadow Capital, LLC (the “**Purchaser**”) having been selected as the Winning Bidder; and upon the Purchaser and the Debtors having entered into that certain Asset Purchase Agreement, dated as of July 3, 2015 (attached hereto as **Exhibit A**, and as it may be amended, modified, or supplemented in accordance with the terms hereof and thereof, the “**Asset Purchase Agreement**”);² and this Court having conducted a hearing on the Motion on _____ (the “**Sale Hearing**”); and all parties in interest having been heard, or having had the opportunity to be heard, regarding the Motion, the Asset Purchase Agreement, and this Sale Order; and this Court having reviewed and considered the Motion and all objections thereto, and the arguments of counsel made, and the evidence adduced, at the Bidding Procedures Hearing and the Sale Hearing; and upon the entire record of the Bidding Procedures Hearing and the Sale Hearing, and after due deliberation thereon, and good cause appearing therefor:

²

Capitalized terms used, but not otherwise defined, herein shall have the meaning ascribed to such terms in the Asset Purchase Agreement or, if not defined therein, in the Motion.

THE COURT HEREBY FINDS THAT:³

Jurisdiction, Final Order and Statutory Predicates

A. This Court has jurisdiction to hear and determine the Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these Chapter 11 Cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

B. This Sale Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, this Court expressly finds that there is no just reason for delay in the implementation of this Sale Order, and expressly directs entry of judgment as set forth herein.

C. The statutory predicates for the relief sought in the Motion are sections 105(a), 363, 365 and 503 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9014, and the applicable Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”).

Notice of the Sale, Auction and the Cure Payments

D. Actual written notice of the Sale Hearing, the Auction, the Motion, the Sale, this Sale Order, and/or the assumption, assignment and/or transfer of the Purchased Contracts, and a reasonable opportunity to object or be heard with respect thereto and to the entry of this Sale Order has been afforded to all creditors, known interested Persons and entities entitled to receive such notice, including, but not limited to, the following parties: (i) Creditors’ Committee (if appointed); (ii) counsel to the Purchaser;; (iii) the Office of the United States Trustee; (iv) all entities (or counsel therefor)

³ The findings and conclusions set forth herein constitute this Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

known to have asserted any lien, charge, claim or encumbrance on the Purchased Assets or against any of the Debtors; (v) all federal, state and local regulatory or taxing authorities which are reasonably ascertainable by the Debtors to have a known interest in the Purchased Assets or a claim against any of the Debtors; (vi) known non-debtor counterparties to any unexpired leases or executory contracts that could potentially be assumed and assigned to the Winning Bidder; (vii) those parties who previously executed NDAs as part of the sale process or expressed a bona fide interest in acquiring the Assets since April 9, 2015; and (ix) those parties who have requested notice pursuant to Bankruptcy Rule 2002 (collectively, the “**Actual Notice**”).

E. The Debtors have published, or caused to be published, notice of the Sale, the Bidding Procedures, the Stalking Horse APA, the time and place of the proposed Auction, the time and place of the Sale Hearing and the time for filing an objection to the Motion (i) on the website maintained by BMC Group, Inc., the Debtors’ claims and noticing agent appointed in these Chapter 11 Cases, promptly after entry of the Bidding Procedures Order, and (ii) in the newspaper publication *USA Today* (collectively, the “**Publication Notice**”). It would be impractical for the Debtors to notify all persons who might assert that they have a claim against any of the Debtors, based on or arising from past conduct, omissions or acts (whether alleged, known or proven) of the Debtors, in light of the thousands of clients, clients of clients, investors or other persons who directly or indirectly had a relationship with the Debtors and who may assert that they have been harmed by any such past conduct, omissions or acts. Under such circumstances and pursuant to Section 102 of the Bankruptcy Code, the Actual Notice and Publication Notice collectively constitute sufficient notice of this Sale Order, the Sale, and the Sale Motion and sufficient opportunity to object to any of them, to all persons or entities who at any time and for any reason may have had any relationship with any of the Debtors or any claim whatsoever (whenever arising) against any of the Debtors, so as to legally bind all such

persons and entities (including actual and potential creditors of all of the Debtors) to all of the provisions of this Sale Order, including without limitation all provisions hereof that enjoin any and all persons, entities and creditors from pursuing any claims against the Purchaser (under any successor liability theory or otherwise) related to conduct, acts or omissions of any of the Debtors.

F. In accordance with the provisions of the Bidding Procedures Order, the Debtors have served, or caused to be served, notice (the “**Assumption and Assignment Notice**”) upon all of the Contract Notice Parties to the Purchased Contracts setting forth: (i) the contract(s) and/or lease(s) that may be assumed by the Debtors and assigned to the Purchaser; (ii) the name and address of the Contract Counterparty thereto; (iii) notice of the proposed effective date of the assignment (subject to the right of the Debtors and/or the Purchaser to withdraw such request for assumption and assignment of the Purchased Contract(s) prior to the Closing); (iv) the amount, if any, determined by the Debtors to be necessary to be paid to cure and compensate for any existing default in accordance with sections 365(b) and 365(f)(2) of the Bankruptcy Code (the “**Cure Amount**”); and (v) the deadlines by which any such Contract Counterparty must file an objection to the proposed assumption and assignment of any Purchased Contract.

G. The service of such Assumption and Assignment Notice (i) was good, sufficient and appropriate under the circumstances of these Chapter 11 Cases; (ii) provided such counterparties with a full and fair opportunity to object to such assumption, assignment, or transfer and to the proposed Cure Amount set forth in the Assumption and Assignment Notice; and (iii) was in compliance with the Bidding Procedures Order and applicable provisions of the Bankruptcy Rules and Local Rules. Accordingly, no other or further notice need be given in connection with such assumption, assignment, or transfer or with respect to the amount of Cure Payments.

H. As evidenced by the affidavits of service previously filed with this Court and as approved

under the Bidding Procedures Order: (i) due, proper, timely, adequate and sufficient notice of the Motion, the Auction, the Sale Hearing, the assumption and assignment of the Purchased Contracts, the entry of this Sale Order, and the Sale has been provided to all parties-in-interest, including without limitation any and all known, unknown, actual or potential creditors of the Debtors; (ii) such notice was, and is, good, sufficient and appropriate under the circumstances of these Chapter 11 Cases, provided a fair and reasonable opportunity for parties-in-interest to object, and to be heard, with respect thereto, and was provided in accordance with sections 102(1), 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9006, 9007 and 9014, and the applicable Local Rules; and (iii) no other or further notice of with respect to such matters is necessary or shall be required.

Business Judgment

I. The Debtors have demonstrated good, sufficient and sound business purposes and justifications for, and compelling circumstances to promptly consummate, the Sale and other transactions contemplated by the Asset Purchase Agreement and the related transaction documents (collectively, the “**Transaction Documents**”), including, without limitation, the assumption, assignment, and/or transfer of the Purchased Contracts (collectively, the “**Transactions**”) pursuant to sections 363 and 365 of the Bankruptcy Code, prior to and outside of a plan of reorganization, and such action is an appropriate exercise of the Debtors’ business judgment and in the best interests of the Debtors, their estates, and their creditors. Such business reasons include, but are not limited to, the facts that: (i) there is a risk of depreciation of the value of the Purchased Assets if the Sale is not consummated promptly; (ii) the Asset Purchase Agreement constitutes the highest or otherwise best offer for the Purchased Assets; (iii) the Asset Purchase Agreement and the Closing will present the best opportunity to realize the value of the Debtors on a going concern basis and avoid decline and devaluation of the Debtors’ business; and (iv) unless the Sale is concluded expeditiously as provided

for in this Sale Order and pursuant to the Asset Purchase Agreement, potential stakeholder recoveries may be substantially diminished.

Good Faith of the Purchaser; No Collusion

J. The Purchaser is not an insider (as that term is defined in section 101(31) of the Bankruptcy Code) of any of the Debtors.

K. The Purchaser is purchasing the Purchased Assets in good faith, and is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code, and is therefore entitled to, and granted pursuant to paragraph 28 below, the full rights, benefits, privileges, and protections of that provision, and has otherwise proceeded in good faith in all respects in connection with the Transactions in that, *inter alia*: (i) the Purchaser recognized that the Debtors were free to deal with any other party interested in acquiring the Purchased Assets; (ii) the Purchaser complied with the provisions in the Bidding Procedures Order; (iii) the Purchaser agreed to subject its bid to the competitive bidding procedures set forth in the Bidding Procedures Order; (iv) all payments to be made by the Purchaser and other agreements or arrangements entered into by the Purchaser in connection with the Sale have been disclosed; (v) the Purchaser has not violated section 363(n) of the Bankruptcy Code by any action or inaction; (vi) no common identity of directors or controlling stockholders exists between the Purchaser, on the one hand, and the Debtors, on the other hand; and (vii) the negotiation and execution of the Asset Purchase Agreement and Transaction Documents were at arms' length and in good faith.

L. Neither the Debtors nor the Purchaser, nor any of their respective Representatives, has engaged in any conduct that would cause or permit the Asset Purchase Agreement or any of the Transaction Documents, or the consummation of the Transaction, to be avoidable or avoided, or for costs or damages to be imposed, under section 363(n) of the Bankruptcy Code, or has acted in bad

faith or in any improper or collusive manner with any Person in connection therewith.

Highest or Otherwise Best Offer

M. In accordance with the Bidding Procedures Order, the Asset Purchase Agreement was deemed a Qualified Bid and the Purchaser was eligible to participate at the Auction.

N. The Debtors conducted an auction process in accordance with, and has otherwise complied in all material respects with, the Bidding Procedures Order. The auction process set forth in the Bidding Procedures Order afforded a full, fair and reasonable opportunity for any Person or entity to make a higher or otherwise better offer to purchase the Purchased Assets. The Auction was duly noticed and conducted in a non-collusive, fair and good faith manner and a reasonable opportunity has been given to any interested party to make a higher or otherwise better offer for the Purchased Assets.

O. The Asset Purchase Agreement constitutes the highest or otherwise best offer for the Purchased Assets, and will provide a greater recovery for the Debtors' estates than would be provided by any other available alternative. The Debtors' determination that the Asset Purchase Agreement constitutes the highest or otherwise best offer for the Purchased Assets constitutes a valid and sound exercise of the Debtors' business judgment.

P. The Asset Purchase Agreement represents a fair and reasonable offer to purchase the Purchased Assets under the circumstances of these Chapter 11 Cases.

Q. Approval of the Motion and the Asset Purchase Agreement, and the prompt consummation of the Transactions contemplated thereby, is in the best interests of the Debtors, their creditors, their estates and other parties-in-interest.

No Fraudulent Transfer; Not a Successor

R. The Asset Purchase Agreement and Transaction Documents were not entered into, and the Transactions are not being consummated, for the purpose of hindering, delaying or defrauding

creditors of the Debtors under applicable Law, and none of the Parties to the Asset Purchase Agreement or any of the Transaction Documents are consummating the Transactions with any fraudulent or otherwise improper purpose. The Purchase Price for the Purchased Assets constitutes (i) reasonably equivalent value under the Bankruptcy Code and the Uniform Fraudulent Transfer Act, (ii) fair consideration under the Uniform Fraudulent Conveyance Act, and (iii) reasonably equivalent value, fair consideration, and fair value under any other applicable Laws of the United States, any state, territory or possession or the District of Columbia.

S. Except as expressly set forth in the Asset Purchase Agreement with respect to the Assumed Liabilities and the Permitted Exceptions (except such Permitted Exceptions that are released at or prior to Closing), the Purchaser shall have no liability, responsibility, or obligations of any kind or nature whatsoever for any Interest (as defined below) of or against the Debtors, or otherwise related to the Purchased Assets, by reason of the transfer of the Purchased Assets to the Purchaser. The Purchaser shall not at any time be deemed, as a result of any action taken in connection with the Transactions, to: (1) be a successor (or other such similarly situated party) to the Debtors (other than with respect to the Assumed Liabilities and the Permitted Exceptions (except such Permitted Exceptions that are released at or prior to Closing) as expressly stated in the Asset Purchase Agreement) for any reason whatsoever; or (2) have, *de facto* or otherwise, merged or consolidated with or into the Debtors. The Purchaser is not acquiring or assuming any Interest, except as expressly set forth in the Asset Purchase Agreement with respect to the Assumed Liabilities and the Permitted Exceptions (except such Permitted Exceptions that are released at or prior to Closing).

Validity of Transfer

T. Subject to the entry of this Sale Order, the Debtors have full corporate power and authority (i) to perform all of their obligations under the Asset Purchase Agreement and the Transaction

Documents, and the Debtors' prior execution and delivery thereof and performance thereunder, is hereby ratified, approved and ordered in full, and (ii) to consummate the Transactions. The Asset Purchase Agreement and Transaction Documents, and the Transactions contemplated thereby, have been duly and validly authorized by the Debtors by all necessary corporate action. No further consents or approvals are required for the Debtors to consummate the Transactions or otherwise perform their obligations under the Asset Purchase Agreement or the Transaction Documents, except in each case as otherwise expressly set forth in the Asset Purchase Agreement or applicable Transaction Documents.

U. As of the Closing Date, the transfer of the Purchased Assets to the Purchaser, including, without limitation, the assumption, assignment and transfer of the Purchased Contracts, will be a legal, valid, and effective transfer thereof, and vests the Purchaser with all right, title, and interest of the Debtors in and to the Purchased Assets, free and clear of all Interests accruing or arising any time prior to the Closing Date, except as expressly set forth in the Asset Purchase Agreement with respect to the Assumed Liabilities and the Permitted Exceptions (except such Permitted Exceptions that are released at or prior to Closing).

Section 363(b)(1) is Satisfied

V. The Transactions pursuant to the Asset Purchase Agreement, Transaction Documents and this Sale Order are consistent with the provisions of section 363(b)(1) of the Bankruptcy Code. Additionally, (i) the privacy policy given to consumers does not prohibit the Sale contemplated under the Asset Purchase Agreement, and (ii) the Sale is consistent with the privacy policy given by the Debtors to the consumers.

Section 363(f) Is Satisfied

W. The Purchaser would not have entered into the Asset Purchase Agreement and would not consummate the transactions contemplated thereby if the Sale of the Purchased Assets, including the assumption, assignment and transfer of the Purchased Contracts, to the Purchaser were not free and clear of all Interests of any kind or nature whatsoever (except as expressly set forth in the Asset Purchase Agreement with respect to the Assumed Liabilities and the Permitted Exceptions (except such Permitted Exceptions that are released at or prior to Closing)), or if the Purchaser, or any of its Affiliates or subsidiaries, or any of its Representatives, would, or in the future could, be liable for any of such Interests (except as expressly set forth in the Asset Purchase Agreement with respect to the Assumed Liabilities and the Permitted Exceptions (except such Permitted Exceptions that are released at or prior to Closing)).

X. The Debtors may sell or otherwise transfer the Purchased Assets free and clear of all Interests because, in each case, one or more of the standards set forth in section 363(f)(1)–(5) of the Bankruptcy Code has been satisfied. Those holders of Interests against the Debtors, their estates or any of the Purchased Assets who did not object, or who withdrew their objections, to the Sale or the Motion are deemed to have consented thereto pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of such Interests who did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are adequately protected by having their Interests, if any, attach to the proceeds of the Sale ultimately attributable to the Purchased Assets in which such creditor alleges or asserts an Interest, in the same order of priority, with the same validity, force and effect, that such creditor had immediately prior to consummation of the Sale, subject to any claims and defenses the Debtors and their estates may possess with respect thereto.

Y. As used in this Sale Order, the term “**Interest**” includes, in addition to the types of claims

described in paragraph X below, all claims or interests of every type or nature whatsoever, including without limitation all of the following, in each case to the extent against or with respect to the Debtors or in, on, or against or with respect to any of the Purchased Assets: liens (as defined in section 101(37) of the Bankruptcy Code, and whether consensual, statutory, possessory, judicial or otherwise); claims (as defined in section 101(5) of the Bankruptcy Code); debts (as defined in section 101(12) of the Bankruptcy Code); encumbrances, obligations, Liabilities, demands, guarantees, actions, suits, defenses, deposits, credits, allowances, options, rights, restrictions, limitations, contractual commitments, rights of first refusal, rights of setoff or recoupment, or interests of any kind or nature whatsoever, whether known or unknown, legal or equitable, matured or unmatured, contingent or noncontingent, liquidated or unliquidated, asserted or unasserted, whether arising prior to or subsequent to the commencement of these Chapter 11 Cases, whether imposed by agreement, understanding, Law, equity or otherwise, including, but not limited to, (i) Interests that purport to give to any Person a right or option to effect a setoff against or any forfeiture, modification or termination of the Debtors' interests in the Purchased Assets, or any similar rights; (ii) Interests arising under all mortgages, deeds of trust, security interests, conditional sale or other title retention agreements, pledges, liens, judgments, demands, encumbrances, rights of first refusal or charges of any kind or nature; (iii) Interests that are or constitute, or that arise in connection with or with respect to, any Excluded Liability; (iv) Interests that arise from or in connection with any bulk sales or similar law; (v) all asserted ownership rights in or title to any of the Purchased Assets; and (vi) Interests arising under or in connection with any acts, or failures to act, of any of the Debtors or any of the Debtors' predecessors, Affiliates, or subsidiaries, or any of their respective Representatives, including, but not limited to, Interests arising under any doctrines of successor, transferee, or vicarious liability, violation of applicable securities laws or regulations, breach of fiduciary duty, or aiding or abetting breach of

fiduciary duty, or any similar theories under applicable Law or otherwise.

Z. Except as expressly set forth in the Asset Purchase Agreement with respect to the Assumed Liabilities and the Permitted Exceptions (except such Permitted Exceptions that are released at or prior to Closing), and without limiting the nature or scope of paragraph Y above, the transfer of the Purchased Assets, including the assumption, assignment and/or transfer of the Purchased Contracts, to the Purchaser will not subject the Purchaser, or its Affiliates or subsidiaries, or any of their respective Representatives to, or subject any Purchased Asset to or provide recourse for, any Liability or encumbrance whatsoever with respect to the operation or condition of the Business or any of the Purchased Assets prior to the Closing or with respect to any facts, acts, actions, omissions, circumstances or conditions existing, occurring or accruing with respect thereto prior to the Closing Date, including, without limitation, any Liability or encumbrance arising from any of the following: (i) any employment or labor agreements, consulting agreements, severance arrangements, change in control agreements or other similar agreements to which the Debtors are or were a party; (ii) any pension, welfare, compensation or other employee benefit plans, agreements, practices, and programs, including without limitation, any pension plan of the Debtors; (iii) the cessation of the Debtors' operations, dismissal of employees, or termination of employment or labor agreements or pension, welfare, compensation or other employee benefit plans, agreements, practices and programs and any obligations with respect thereto that arise from the Employee Retirement Income Security Act of 1974, the Fair Labor Standard Act, Title VII of the Civil rights Act of 1964, the Age Discrimination and Employment Act of 1967, the Americans with Disabilities Act of 1990, the Federal Rehabilitation Act of 1973, the National Labor Relations Act, the Consolidated Omnibus Budget Reconciliation Act of 1985 or the Worker Adjustment and Retraining Notification Act; (iv) workmen's compensation, occupational disease or unemployment or temporary disability insurance claims; (v) environment

liabilities, debts, claims or obligations which may be asserted on any basis, including, without limitation, under the Comprehensive Environmental Response, Compensation and Liability Act or any Environmental Laws; (vi) products liability or warranties, (vii) any bulk sales or similar law; (viii) any litigation by or against the Debtors; and (ix) the Laws of the United States, any state, territory or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, in any theory of law or equity, including, without limitation, any theory of antitrust, products liability, or successor, vicarious or transferee liability. For the avoidance of doubt, the Liabilities and encumbrances set forth in this paragraph are included in the defined term “**Interests**” for all purposes of this Sale Order.

Assumption, Assignment and/or Transfer of the Purchased Contracts

AA. The assumption, assignment and/or transfer of the Purchased Contracts to the Purchaser pursuant to the terms of this Sale Order is integral to the Asset Purchase Agreement and is in the best interests of the Debtors and their estates, creditors and other parties in interest, and represents the reasonable exercise of sound and prudent business judgment by the Debtors.

BB. To the extent necessary or required by applicable Law, the Debtors or Purchaser, as applicable, has or will have as of the Closing Date: (i) cured, or provided adequate assurance of cure, of any default existing prior to the Closing Date with respect to the Purchased Contracts, within the meaning of sections 365(b)(1)(A) and 365(f)(2)(A) of the Bankruptcy Code, and (ii) provided compensation, or adequate assurance of compensation, to any party for any actual pecuniary loss to such party resulting from such default, within the meaning of section 365(b)(1)(B) of the Bankruptcy Code. The respective amounts set forth on **Exhibit B** hereto (subject to the adjustments that may be made as expressly noted on **Exhibit B** hereto) are the sole amounts necessary under sections

365(b)(1)(A) and 365(f)(2)(A) of the Bankruptcy Code to cure all such monetary defaults and pay all actual or potential pecuniary losses under the Purchased Contracts.

CC. The promise of the Purchaser to perform the obligations first arising under the Purchased Contracts after their assumption and assignment to the Purchaser constitutes adequate assurance of future performance within the meaning of sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code to the extent that any such assurance is required and not waived by the counterparties to such Purchased Contracts. Any objections to the foregoing, the determination of any Cure Amount, or otherwise related to or in connection with the assumption, assignment or transfer of any of the Purchased Contracts to the Purchaser are hereby overruled on the merits or otherwise treated as set forth in paragraph 3 below. Those non-Debtor parties to Purchased Contracts who did not object to the assumption, assignment or transfer of their applicable Purchased Contract, or to their applicable Cure Amount, are deemed to have consented thereto for all purposes of this Sale Order.

Compelling Circumstances for an Immediate Sale

DD. Time is of the essence in consummating the Sale pursuant to the Asset Purchase Agreement. Accordingly, there is cause to lift the stay contemplated by Bankruptcy Rules 6004 and 6006 with regards to the Transactions contemplated by this Sale Order, the Asset Purchase Agreement and the Transaction Documents.

EE. Given all of the circumstances of these Chapter 11 Cases and the adequacy and fair value of the Purchase Price under the Asset Purchase Agreement, the proposed transfer of the Purchased Assets to the Purchaser constitutes a reasonable and sound exercise of the Debtors' business judgment, is in the best interests of the Debtors, their estate, and their creditors, and should be approved.

FF. The consummation of the Transactions is legal, valid and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, sections 105, 363 and

365 of the Bankruptcy Code, and all of the applicable requirements of such sections have been complied with in respect of the Transactions.

GG. The Sale does not constitute a *de facto* plan of reorganization or liquidation or an element of such a plan for the Debtors, as it does not and does not propose to: (i) impair or restructure existing debt of, or equity interests in, the Debtors; (ii) impair or circumvent voting rights with respect to any future plan proposed by the Debtors; (iii) circumvent chapter 11 plan safeguards, such as those set forth in sections 1125 and 1129 of the Bankruptcy Code; or (iv) classify claims or equity interests, compromise controversies or extend debt maturities.

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

General Provisions

1. The Motion, and the relief requested therein, is granted and approved, and the Transactions contemplated thereby and by the Asset Purchase Agreement and Transaction Documents are approved, in each case as set forth in this Sale Order and on the record.

2. This Court's findings of fact and conclusions of law set forth in the Bidding Procedures Order and hereinabove are incorporated herein by reference.

3. All objections to the Motion or the relief requested therein that have not been withdrawn, waived, resolved, or otherwise settled as set forth herein, as announced to this Court at the Sale Hearing or by stipulation filed with this Court, and all reservations of rights included therein, are hereby denied and overruled on the merits.

Approval of Asset Purchase Agreement; Binding Nature

4. The Asset Purchase Agreement and the Transaction Documents, and all of the terms and conditions thereof, are hereby approved as set forth herein.

5. The consideration provided by the Purchaser for the Purchased Assets under the Asset Purchase Agreement is fair and reasonable and shall be deemed for all purposes to constitute reasonably equivalent value, fair value, and fair consideration under the Bankruptcy Code and any other applicable Law, and the Transactions may not be avoided, or costs or damages imposed or awarded, under section 363(n) or any other provision of the Bankruptcy Code. In accordance with the terms of section 3.1(b) of the Asset Purchase Agreement, the Purchaser is authorized to reduce the Closing Payment subject to the determinations set forth therein.

6. Pursuant to sections 363 and 365 of the Bankruptcy Code, the Debtors are authorized and empowered to and shall take any and all actions necessary or appropriate to (a) consummate the Sale and the other Transactions pursuant to and in accordance with the terms and conditions of the Asset Purchase Agreement and the Transaction Documents, and (b) execute and deliver, perform under, consummate, implement, and take any and all other acts or actions as may be reasonably necessary or appropriate to the performance of its obligations as contemplated by the Asset Purchase Agreement and the Transaction Documents, in each case without further notice to or order of this Court. The Transactions authorized herein shall be of full force and effect, regardless of the Debtors' lack or purported lack of good standing in any jurisdiction in which the Debtors are formed or authorized to transact business.

7. This Sale Order shall be binding in all respects upon the Debtors, their estates, all creditors, all holders of equity interests in the Debtors, all holders of any and all claim(s) of every type or nature (whether known or unknown, matured or unmatured) against the Debtors (including without limitation all "claims" as defined in Section 101(5) of the Bankruptcy Code and all "Claims" as defined in the Motion), all persons or entities who at any time had any relationship directly or indirectly with any of the Debtors in any capacity (including as a client, creditor, investor, platform or

otherwise), all local, state and federal governmental entities (including without limitation the Securities and Exchange Commission, the Internal Revenue Service and all local and state taxing authorities), any and all holders of any Interests against, in or on all or any portion of the Purchased Assets or against any of the Debtors, all non-Debtor parties to the Purchased Contracts, the Purchaser and all successors and assigns of the foregoing, including, without limitation, any trustee, if any, subsequently appointed in these Chapter 11 Cases or upon a conversion to chapter 7 under the Bankruptcy Code of these Chapter 11 Cases. The Debtors shall take any and all actions requested by the Purchaser to preserve and maintain the value of the Purchased Assets.

Transfer of Purchased Assets Free and Clear of Interests; Injunction

8. Pursuant to sections 105(a), 363(b), 363(f), 365(b) and 365(f) of the Bankruptcy Code, the Debtors are authorized and directed to transfer the Purchased Assets, including but not limited to the Purchased Contracts, to the Purchaser on the Closing Date in accordance with the Asset Purchase Agreement and Transaction Documents. Upon and as of the Closing Date, such transfer shall constitute a legal, valid, binding and effective transfer of such Purchased Assets and the Purchaser shall take title to and possession of such Purchased Assets free and clear of all Interests (except as expressly set forth in the Asset Purchase Agreement with respect to the Permitted Exceptions (except such Permitted Exceptions that are released at or prior to Closing) and Assumed Liabilities).

9. All such Interests shall attach solely to the proceeds of the Sale with the same validity, priority, force and effect that they now have as against the Purchased Assets, subject to any claims and defenses the Debtors and their estates may possess with respect thereto. This Sale Order shall be effective as a determination that, on and as of the Closing, all Interests of any kind or nature whatsoever (except as expressly set forth in the Asset Purchase Agreement with respect to the Assumed Liabilities and the Permitted Exceptions (except such Permitted Exceptions that are released

at or prior to Closing)) have been unconditionally released, discharged and terminated in, on or against the Purchased Assets and against Purchaser. The provisions of this Sale Order authorizing and approving the transfer of the Purchased Assets free and clear of Interests shall be self-executing, and neither the Debtors nor the Purchaser shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate and implement the provisions of this Sale Order.

10. Except as expressly permitted by the Asset Purchase Agreement or this Sale Order, all Persons and entities holding Interests (other than the Assumed Liabilities and the Permitted Exceptions (except such Permitted Exceptions that are released at or prior to Closing)) are hereby forever barred, estopped and permanently enjoined from asserting their respective Interests against the Purchaser, any of its respective Affiliates and subsidiaries, and any of their respective Representatives, and each of their respective property and assets, including, without limitation, the Purchased Assets. On and after the Closing Date, the Purchaser shall be authorized to execute and file such documents, and to take all other actions as may be necessary, on behalf of each holder of an Interest to release, discharge and terminate such Interests in, on and against the Purchased Assets as provided for herein, as such Interests may have been recorded or may otherwise exist. On and after the Closing Date, and without limiting the foregoing, the Purchaser shall be authorized to file termination statements or lien terminations in any required jurisdiction to remove any record, notice filing, or financing statement recorded to attach, perfect or otherwise notice any Interest that is extinguished or otherwise released pursuant to this Sale Order. This Sale Order constitutes authorization under all applicable jurisdictions and versions of the Uniform Commercial Code for the Purchaser to file UCC termination statements with respect to all security interests in or liens on the Purchased Assets.

11. On and after the Closing, the Persons holding an Interest (other than a Permitted

Exception or an Assumed Liability) shall execute such documents and take all other actions as may be reasonably necessary to release their respective Interests in the Purchased Assets, as such Interests may have been recorded or otherwise filed. The Purchaser may, but shall not be required to, file a certified copy of this Sale Order in any filing or recording office in any federal, state, county or other jurisdiction in which the Debtors are incorporated or have real or personal property, or with any other appropriate clerk or recorded with any other appropriate recorder, and such filing or recording shall be accepted and shall be sufficient to release, discharge and terminate any of the Interests as set forth in this Sale Order as of the Closing Date. All persons and entities that are in possession of any portion of the Purchased Assets on the Closing Date shall promptly surrender possession thereof to the Purchaser at the Closing.

12. The transfer of the Purchased Assets to the Purchaser pursuant to the Asset Purchase Agreement and Transaction Documents does not require any consents other than specifically provided for in the Asset Purchase Agreement, and to the extent that any party could have asserted a consent right, its failure to do so prior to the entry of this Sale Order is hereby held to be a waiver of such right.

13. This Sale Order is and shall be binding upon and govern the acts of all Persons and entities (including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, and secretaries of state, federal and local officials) who may be required by operation of law, the duties of their office, or contract to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease. Each of the foregoing Persons and entities shall accept for filing any and all of the documents and instruments necessary and appropriate to release, discharge and terminate any of the

Interests or to otherwise consummate the Transactions contemplated by this Sale Order, the Asset Purchase Agreement or any Transaction Document.

Purchased Contracts; Cure Payments

14. Pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code, and subject to and conditioned upon the Closing Date, the Debtors' assumption, and assignment and/or transfer to the Purchaser, of the Purchased Contracts are hereby authorized and approved in full subject to the terms set forth below. The Purchaser shall, on or prior to the Closing, pay the Cure Amounts (or reserve the Alleged Cure Claim as set forth below). To the extent the Debtors are responsible for any Cure Amount pursuant to the terms of the Asset Purchase Agreement or Transaction Documents, the Purchaser may, upon prior written notice to the Debtors and in its sole discretion, (i) pay such amount(s) on behalf of the Debtors, in which case the Debtors shall have no further responsibility therefor, and (ii) offset such amount(s) against any amount(s) Purchaser may owe the Debtors (including by deducting such amounts, at the Closing, from the Purchase Price or, without duplication, recovering such amounts from the Closing Payment); provided, however, that to the extent the Debtors object to any Cure Amount, this Court shall retain jurisdiction over such dispute.

15. Upon and as of the Closing, the Debtors are authorized and empowered to, and shall, assume, assign and/or transfer each of the Purchased Contracts to the Purchaser free and clear of all Interests (except as expressly set forth in the Asset Purchase Agreement with respect to the Assumed Liabilities and the Permitted Exceptions (except such Permitted Exceptions that are released at or prior to Closing)). The payment of the applicable Cure Amounts (if any), or the reservation by the Debtors or Purchaser, as applicable, of an amount of cash that is equal to the lesser of (i) the amount of any cure or other compensation asserted by the applicable Contract Counterparty as required under section 365 of the Bankruptcy Code or (ii) the amount approved by order of this Court to reserve for such

payment (such lesser amount, the “**Alleged Cure Claim**”) shall, pursuant to section 365 of the Bankruptcy Code and other applicable Law, (a) effect a cure, or provide adequate assurance of cure, of all defaults existing thereunder as of the Closing Date and (b) compensate, or provide adequate assurance of compensation, for any actual pecuniary loss to such non-Debtor party resulting from such default. Accordingly, on and as of the Closing Date, other than such payment or reservation, such non-Debtor party shall be forever barred from objecting to the Cure Amount and from asserting any additional cure or other amounts with respect to such Purchased Contract against the Debtors, the Purchaser, such other Winning Bidder, or any other party, and no such parties shall have any further liabilities or obligations to the non-Debtor parties to the Purchased Contracts, and the non-Debtor parties to the Purchased Contracts shall be forever enjoined and barred from seeking any additional amounts or claims (as defined in section 101(5) of the Bankruptcy Code) that arose, accrued or were incurred at any time on or prior to the Closing Date on account of the Debtors’ cure or compensation obligations arising under section 365 of the Bankruptcy Code. The Purchaser has provided adequate assurance of future performance under the relevant Purchased Contracts within the meaning of section 365(f) of the Bankruptcy Code.

16. To the extent any provision in any Purchased Contract assumed or assumed and assigned (as applicable) pursuant to this Sale Order (including, without limitation, any “change of control” provision) (a) prohibits, restricts or conditions, or purports to prohibit, restrict or condition, assumption or assignment, or (b) is modified, breached or terminated, or deemed modified, breached or terminated by any of the following: (i) the commencement of these Chapter 11 Cases, (ii) the insolvency or financial condition of the Debtors at any time before the closing of these Chapter 11 Cases, (iii) the Debtors’ assumption or assumption and assignment (as applicable) of such Purchased Contract, or (iv) the consummation of the Transactions, then such provision shall be deemed modified

so as to not entitle any non-Debtor party thereto to prohibit, restrict or condition assumption or assignment, to modify or terminate such Purchased Contract, or to exercise any other default-related rights or remedies with respect thereto, including, without limitation, any such provision that purports to allow the non-Debtor party thereto to recapture such Purchased Contracts, impose any penalty thereunder, condition any renewal or extension thereof, impose any rent acceleration or assignment fee, or increase or otherwise impose any other fees or other charges in connection therewith. All such provisions constitute unenforceable anti-assignment provisions and are held to be void and of no force and effect pursuant to sections 365(b), 365(e) and 365(f) of the Bankruptcy Code.

17. All requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to the Purchaser of the Purchased Contracts have been satisfied. Upon the Closing, in accordance with sections 363 and 365 of the Bankruptcy Code, the Purchaser shall be fully and irrevocably vested with all right, title and interest of the Debtors in and under the Purchased Contracts, and each Purchased Contract shall be fully enforceable by the Purchaser in accordance with its respective terms and conditions, except as limited or modified by the provisions of this Sale Order. Upon and as of the Closing, the Purchaser shall be deemed to be substituted for the Debtors as a party to the applicable Purchased Contracts and, accordingly, the Debtors shall be relieved, pursuant to section 365(k) of the Bankruptcy Code, from any further liability under the Purchased Contracts.

18. Upon the payment of the applicable Cure Amount or reservation of the Alleged Cure Claim, if any, the Purchased Contracts will remain in full force and effect, and no default shall exist, or be deemed to exist, under the Purchased Contracts as of the Closing Date nor shall there exist, or be deemed to exist, any event or condition which, with the passage of time or giving of notice, or both, would constitute such a default.

19. Notwithstanding anything to the contrary set forth herein, those Purchased Contracts that require AUA Consent (as defined in the Asset Purchase Agreement), shall not be assumed and assigned to the Purchaser until the Debtors have obtained such AUA Consent (including any Negative Consents). Further, notwithstanding anything to the contrary set forth herein, if the Debtors fail to obtain any AUA Consent then such Purchased Contract shall not be assumed by the Debtors and assigned to the Purchaser.

20. With respect to any Contract which is not a Purchased Contract on the Closing Date and provided such Contract has not been rejected by Debtors after the Closing Date pursuant to section 365 of the Bankruptcy Code, upon written notice(s) from the Purchaser to the Debtors given at any time after the Closing Date, the Debtors are hereby authorized to take all actions reasonably necessary to assume and assign to the Purchaser pursuant to section 365 of the Bankruptcy Code any such Contract(s) as set forth in such notice(s); *provided* that any Cure Amount applicable thereto shall be satisfied solely by the Purchaser without any deduct, credit or setoff of the Purchase Price except as otherwise set forth in the Asset Purchase Agreement. Notwithstanding anything in this Sale Order to the contrary, on the date any such Contract is assumed and assigned to Purchaser such Contract shall thereafter be deemed a Purchased Asset for all purposes under this Sale Order and the Asset Purchase Agreement.

21. All Contract Counterparties to the Purchased Contracts shall be deemed to have consented to such assumption and assignment under section 365(c)(1)(B) of the Bankruptcy Code and the Purchaser shall enjoy all of the Debtors' rights, benefits and privileges under each such Purchased Contract as of the applicable date of assumption and assignment without the necessity to obtain any non-Debtor parties' written consent to the assumption or assignment thereof.

22. Nothing in this Sale Order, the Motion, or in any notice or any other document is or shall be deemed an admission by the Debtors that any Purchased Contract is an executory contract or unexpired lease under section 365 of the Bankruptcy Code.

23. The failure of the Debtors or the Purchaser to enforce at any time one or more terms or conditions of any Purchased Contract shall not be a waiver of such terms or conditions, or of its respective rights to enforce every term and condition of the Purchased Contracts.

Additional Injunction; No Successor Liability

24. Effective upon the Closing Date and except as expressly set forth in the Asset Purchase Agreement with respect to the Assumed Liabilities and the Permitted Exceptions (except such Permitted Exceptions that are released at or prior to Closing), all Persons and entities are forever prohibited and permanently enjoined from (i) commencing or continuing in any manner any action or other proceeding, the employment of process, or any act (whether in law or equity, in any judicial, administrative, arbitral or other proceeding), to collect, recover or offset any Interest; (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order with respect to an Interest; (iii) creating, perfecting or enforcing any Interest; or (iv) asserting any setoff, right of subrogation or recoupment of any kind with respect to an Interest, in each case as against the Purchaser, any of its Affiliates or subsidiaries, or any of their respective Representatives, or any of their respective property or assets, including the Purchased Assets.

25. The Transactions contemplated by the Asset Purchase Agreement and the Transaction Documents do not cause there to be, and there is not (i) a consolidation, merger, or *de facto* merger of the Purchaser, on the one hand, with or into the Debtors or the Debtors' estates, on the other hand, or vice versa; (ii) a substantial continuity between the Purchaser, on the one hand, and the Debtors or the Debtors' estates, on the other hand; (iii) a common identity between the Purchaser, on the one hand,

and the Debtors or the Debtors' estates, on the other hand; or (iv) a mere continuation of the Debtors or their estates, on the one hand, with the Purchaser, on the other hand.

26. Except as expressly set forth in the Asset Purchase Agreement with respect to the Assumed Liabilities and the Permitted Exceptions (except such Permitted Exceptions that are released at or prior to Closing), the transfer of the Purchased Assets, including, without limitation, the assumption, assignment and transfer of any Purchased Contract, to the Purchaser shall not cause or result in, or be deemed to cause or result in, the Purchaser, any of its Affiliates or subsidiaries, or any of their respective Representatives, having any liability, obligation, or responsibility for, or any Purchased Assets being subject to or being recourse for, any Interest whatsoever, whether arising under any doctrines of successor, transferee or vicarious liability, breach of fiduciary duty, aiding or abetting breach of fiduciary duty or otherwise, whether at Law or in equity, directly or indirectly, and whether by payment, setoff, recoupment, or otherwise.

27. For the avoidance of doubt, notwithstanding the consummation of the Transactions and the employment by the Purchaser of certain Persons previously employed by the Debtors, (i) the Purchaser shall not have any obligations or liabilities to any employee of the Debtors or in respect of any employee benefits owing to any employee of the Debtors by the Debtors or by any plan or program administered by the Debtors or for the benefit of the Debtors' employees, and (ii) any obligations of the Purchaser to any such Person shall be expressly limited to (a) those obligations expressly agreed upon by the Purchaser (if any) with such Person, and (b) those obligations explicitly assumed by the Purchaser (if any) under the Asset Purchase Agreement.

Good Faith

28. The Transactions contemplated by this Sale Order, the Asset Purchase Agreement and Transaction Documents are undertaken by the Purchaser without collusion and in good faith, as that

term is defined in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale and other Transactions shall not alter, affect, limit, or otherwise impair the validity of the Sale or such other Transactions (including the assumption, assignment and/or transfer of the Purchased Contracts), unless such authorization and consummation are duly stayed pending such appeal. The Purchaser is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to, and hereby granted, the full rights, benefits, privileges and protections of section 363(m) of the Bankruptcy Code.

Other Provisions

29. The Purchaser is hereby authorized, in its discretion, in connection with consummation of the Transactions to allocate the Purchased Assets, Assumed Liabilities, and Purchased Contracts among its Affiliates, subsidiaries, designees, assignees, and/or successors in a manner as it, in its discretion, deems appropriate and such Person shall be entitled to all of the rights, benefits, privileges and protections of the Purchaser as are accorded to the Purchaser under this Sale Order, and the Debtors shall, to the extent set forth in the Asset Purchase Agreement and Transaction Documents, cooperate with and take all actions reasonably requested by Purchaser to effectuate any of the foregoing. In the event that the Purchaser designates a Person to acquire any Purchased Assets (each a **“Purchaser Designee”**), including, without limitation, any Purchased Contracts, then any reference to the “Purchaser” in this Sale Order shall be deemed to be a reference to “the Purchaser and/or such applicable Purchaser Designee,” unless the context requires otherwise. Upon the transfer of any Purchased Asset or Purchased Contract to, or the assumption of any Assumed Liability by, a Purchaser Designee, such Purchaser Designee shall be solely responsible for such Purchased Asset, Assumed Liability, or Purchased Contract (including performance thereunder), as applicable.

30. Nothing contained in any plan of reorganization or liquidation, or order of any type or kind entered in (a) these Chapter 11 Cases, (b) any subsequent chapter 7 case into which any such chapter 11 case may be converted, or (c) any related proceeding subsequent to entry of this Sale Order, shall conflict with or derogate from the provisions of the Asset Purchase Agreement or the terms of this Sale Order. To the extent of any such conflict or derogation, the terms of this Sale Order shall govern.

31. Pursuant to Bankruptcy Rules 6004(h), 6006(d), 7062, and 9014, this Sale Order shall not be stayed after the entry hereof, but shall be effective and enforceable immediately upon entry, and the stays provided in Bankruptcy Rules 6004(h) and 6006(d) are hereby expressly waived and shall not apply. Accordingly, the Debtors are authorized and empowered to close the Sale and other Transactions immediately upon entry of this Sale Order.

32. Nothing in this Sale Order shall modify or waive any closing conditions or termination rights in Article IV of the Asset Purchase Agreement, and all such conditions and rights shall remain in full force and effect in accordance with their terms.

33. No bulk sales law or any similar law of any state or other jurisdiction applies in any way to the Transactions. Accordingly, Purchaser shall not under any circumstances at any time be held liable or responsible for any of the tax liabilities (of any type or nature whatsoever, however arising, federal, state or local, including fines, penalties or interest or additions thereto) of any of the Debtors, including as an alleged successor or otherwise, except as otherwise expressly set forth in the Asset Purchase Agreement.

34. Any payment or reimbursement obligations of the Debtors owed to the Purchaser pursuant to the Asset Purchase Agreement or the Transaction Documents shall be paid in the manner provided therein, without further notice to or order of this Court. Any such obligations shall constitute

allowed administrative claims against the Debtors with first priority administrative expense status under sections 503(b) and 507(a)(2) of the Bankruptcy Code.

35. The failure specifically to include any particular provision of the Asset Purchase Agreement in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the Asset Purchase Agreement be authorized and approved in its entirety.

36. The Asset Purchase Agreement and Transaction Documents may be modified, amended or supplemented in a writing signed by the parties thereto and in accordance with the terms thereof, without further notice to or order of this Court; provided, however, that any such modification, amendment or supplement shall not have a material adverse effect on the Debtors' estates unless approved by order of this Court. All such modifications, amendments and/or supplements, and all Transaction Documents, not previously provided to the Creditors' Committee shall be provided promptly to the Creditors' Committee, if appointed.

37. This Court retains jurisdiction, pursuant to its statutory powers under 28 U.S.C. § 157(b), to, among other things, (i) interpret, implement, and enforce the terms and provisions of this Sale Order, the Asset Purchase Agreement, the Transaction Documents, and any amendments thereto and any waivers and consents given thereunder; (ii) compel delivery of the Purchased Assets to the Purchaser; (iii) enforce the injunctions and limitations of liability set forth in this Sale Order; and (iv) enter any orders under sections 363 and 365 of the Bankruptcy Code with respect to the Purchased Contracts.

38. All time periods set forth in this Sale Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

39. The automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to implement the provisions of this Sale Order and the terms and

conditions of the Asset Purchase Agreement and the Transaction Documents.

40. The rules of construction set forth in section 1.3 of the Asset Purchase Agreement shall apply to this Sale Order, *mutatis mutandis*.

41. To the extent that this Sale Order is inconsistent with any prior order or pleading with respect to the Motion, the terms of this Sale Order shall govern. To the extent there are any inconsistencies between the terms of this Sale Order or the Bidding Procedures Order, on the one hand, and the Asset Purchase Agreement or any Transaction Document, on the other hand, the terms of this Sale Order and the Bidding Procedures Order shall govern, as applicable.

Dated: _____, 2015
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

Asset Purchase Agreement