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8 **UNITED STATES BANKRUPTCY COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
10 **SANTA ANA DIVISION**

11 In re:

12 TRX HOLDCO, LLC, a Delaware limited  
13 liability company,  
14 Debtor and Debtor in Possession.

Lead Case No.: 8:22-bk-10948-SC

Jointly administered with:  
8:22-bk-10949-SC  
Chapter 11 Cases

15 In re:

16 FITNESS ANYWHERE LLC, a Delaware  
17 limited liability company, dba TRX and TRX  
Training,  
18 Debtor and Debtor in Possession.

**DEBTORS' MOTION FOR AN ORDER: (1) APPROVING SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES; (2) APPROVING ASSUMPTION AND ASSIGNMENT OF UNEXPIRED LEASES AND EXECUTORY CONTRACTS AND DETERMINING CURE AMOUNTS, AND APPROVING REJECTION OF UNEXPIRED LEASES AND EXECUTORY CONTRACTS WHICH ARE NOT ASSUMED; (3) WAIVING THE 14-DAY STAY PERIODS OF BANKRUPTCY RULES 6004(h) AND 6006(d); AND (4) GRANTING RELATED RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES**

- 19  Affects both Debtors
- 20  Affects TRX Holdco, LLC only
- 21  Affects Fitness Anywhere, LLC only

**[Declarations of Brent Leffel, Joshua Benn and Mark Reis Filed Concurrently Herewith]**

**Date: August 18, 2022**  
**Time: 10:00 a.m.**  
**Place: \*Via ZoomGov**  
Courtroom 5C  
411 West Fourth Street  
Santa Ana, CA 92701

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1 **TO THE HONORABLE SCOTT C. CLARKSON, UNITED STATES BANKRUPTCY**  
2 **JUDGE, THE UNITED STATES TRUSTEE, THE DEBTORS' SECURED CREDITOR**  
3 **WOODFOREST NATIONAL BANK, FITNESS ANYWHERE LLC'S OFFICIAL**  
4 **COMMITTEE OF UNSECURED CREDITORS, TRX HOLDCO, LLC'S TWENTY**  
5 **LARGEST UNSECURED CREDITORS, AND ALL PARTIES WHO HAVE**  
6 **REQUESTED SPECIAL NOTICE IN THESE CASES:**

7 TRX Holdco, LLC ("Hold Co") and Fitness Anywhere LLC, dba TRX and TRX  
8 Training ("Product Co" and together with Hold Co and Product Co, the "Debtors"), the debtors  
9 and debtors-in-possession in the above-captioned, jointly-administered Chapter 11 bankruptcy  
10 cases<sup>1</sup>, hereby file this motion (the "Motion") seeking the entry of an order of the Court  
11 approving the Debtors' sale of substantially all of their assets free and clear of all liens, claims,  
12 encumbrances and other interests to the winning bidder and the winning back up bidder at the  
13 Auction to be held on August 17, 2022, in accordance with the terms of the Asset Purchase  
14 Agreement ("APA") between the Debtors and the winning bidder, and the Debtors and the  
15 winning backup bidder. The Debtors will make every effort to file with the Court prior to the  
16 hearing on August 18, 2022, and after the Auction on August 17, 2022, a supplement to this  
17 Motion describing the outcome of the Auction, and filing a copy of the APA with the winning  
18 bidder and a copy of the APA with the winning backup bidder.

19 By way of this Motion, the Debtors are also seeking the Court's approval of the Debtors'  
20 assumption and assignment to the winning bidder and the winning backup bidder of those  
21 unexpired leases and executory contracts, respectively, that the winning bidder and the winning  
22 backup bidder, respectively, wish to assume. Concurrently herewith, the Debtors have filed and  
23 served on contracting counterparties that certain *Notice Of: (1) Assumption And Assignment Of*  
24 *Executory Contracts And Unexpired Leases; (2) Establishment Of Cure Amounts In Connection*  
25 *Therewith; (3) Procedures And Deadlines Regarding Oppositions To Assumption And*  
26 *Assignment, And Cure Amounts; And (4) Hearing Thereon* (the "Assumption/Assignment

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27  
28 <sup>1</sup> The Court previously entered an order approving the joint administration of these chapter 11



1 Notice)<sup>2</sup> setting forth a schedule of all of the Debtors’ known executory contracts and unexpired  
2 leases (the “Contracts and Leases Schedule”), along with the Debtors’ belief as to all outstanding  
3 cure amounts owing by the Debtors to the other parties to those executory contracts and  
4 unexpired leases (the “Cure Amount”).

5 By way of this Motion, the Debtors are seeking the Court’s authority to assume and  
6 assign to the winning bidder/winning backup bidder all of the Debtors’ executory contracts and  
7 unexpired leases that the winning bidder/winning backup bidder wants to have assigned to it and  
8 to fix the required Cure Amounts that would need to be paid to the other parties to the executory  
9 contracts and unexpired leases to enable compliance with the provisions of Section 365(b)(1)(A)  
10 of the Bankruptcy Code at the Cure Amounts set forth in the Contracts and Leases Schedule  
11 unless the other parties to the executory contracts and unexpired leases file a timely objection to  
12 the Motion and the Court determines that the required Cure Amount is different than the amount  
13 set forth in the Contracts and Leases Schedule. By way of this Motion, the Debtors are also  
14 seeking a determination by the Court that none of the other parties to the executory contracts and  
15 unexpired leases have suffered any actual pecuniary loss resulting from any default by the  
16 Debtors so that no further payments beyond the proposed Cure Amounts are required to enable  
17 compliance with the provisions of Section 365(b)(1)(B) of the Bankruptcy Code.

18 On July 20, 2022, the Bankruptcy Court entered an order (the “Amended Bidding  
19 Procedures Order”) [Doc 182] approving the Debtors’ proposed Amended Bidding Procedures  
20 [Doc 181].

21 On July 20, 2022, the Debtors filed and served on all creditors, equity interest holders and  
22 contract counterparties that certain *Notice of Court-Approved Amended Bidding Procedures,*  
23 *Opportunity To Bid On Assets And Auction Schedule* (Doc 181).

24 As set forth in the record of this case, the Debtors made a determination shortly prior to  
25 their bankruptcy filings that proceeding with a free and clear asset sale process was in the best  
26 interests of their estate. While it appears that there is a substantial amount of interest in the  
27

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28 bankruptcy cases.

1 buying community to acquire the Debtors’ business and by many to serve as a stalking horse bid,  
2 since the Debtors only commenced their free and clear asset sale process shortly prior to their  
3 bankruptcy filings, the Debtors did not have a stalking horse bid lined up when they obtained  
4 Bankruptcy Court approval of the Amended Bidding Procedures. The Debtors concluded that  
5 proceeding to the Auction without a stalking horse bid in hand is the best option for these  
6 bankruptcy estates, with the Debtors retaining the right to seek an alternative order from the  
7 Court if facts and circumstances dictate otherwise.

8 After extensive consultation with the Debtors’ well regarded and experienced investment  
9 banker in Kroll Securities, LLC (“Kroll”), and after taking into account the Debtors’ financial  
10 situation, including the possibility that the Debtors will be provided with post-petition financing  
11 from the Debtors’ pre-petition secured lender, Woodforest National Bank (the “Bank”), the  
12 Debtors established, with the approval of the Bankruptcy Court and the consent of the Bank and  
13 the Official Committee of Unsecured Creditors in Product Co’s bankruptcy case, the following  
14 amended timetable in order to achieve the highest and best price for the Purchased Assets:

15 **July 27, 2022 at 5:00 p.m. (prevailing Pacific time) – Initial Indication of Interest**  
16 **Deadline** – This is the deadline for all parties who wish to be eligible to participate in the  
17 Auction to provide a non-binding written expression of interest in which the prospective bidder  
18 identifies (1) which of the Debtors’ assets the prospective bidder is interested in acquiring; (2) a  
19 preliminary expected range of purchase price within a \$3 million range (which will be kept  
20 completely confidential by Kroll but shared with the Committee upon request and the Bank); (3)  
21 the expected funding source, status and timing of approval of such funding source; (4) the  
22 expected business structure of the prospective buyer and the identities of all participants in the  
23 prospective bidder; (5) a specific description of remaining due diligence with outstanding  
24 questions and requests for information; (6) the identity of any retained counsel and/or financial  
25 advisor; and (7) what formal approvals (such as shareholder, board of director, etc.) are still  
26 needed for the prospective bidder to be able to submit a binding bid and consummate a sale

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27  
28 <sup>2</sup> The form of the Assumption/Assignment Notice was previously approved by the Court.

1 transaction. The Bank and Committee shall be provided with a copy of all Initial Indications of  
2 Interest by no later than July 28, 2022 at 10:00 a.m. (prevailing Pacific time).

3 **August 10, 2022 at 5 p.m. (prevailing Pacific time) – Initial Bid Deadline** – This is the  
4 deadline by when initial bids need to be submitted by parties who wish to participate in the  
5 Auction. In order to participate in the Auction, all prospective bidders must do all of the  
6 following:

- 7 1. Submit a redlined version of the template asset purchase agreement (the “Template  
8 APA”) indicating all changes that are requested to be made to the Template APA, with  
9 the Template APA to include their proposed initial bid;
- 10 2. Submit all documents to enable Kroll to determine whether the proposed bidder is  
11 financially qualified to participate in the Auction; and
- 12 3. Submit a deposit equal to \$2 million, which deposit would be deemed non-refundable if  
13 the bidder is deemed to be the winning bidder at the Auction and then the Debtors’  
14 proposed free and clear sale of the Purchased Assets to the bidder is approved by the  
15 Bankruptcy Court. Bidders will have the right to withdraw their bid at any time up until  
16 Noon (prevailing Pacific time) on August 16, 2022, in which case they will receive a  
17 return of their deposit and no longer be eligible to participate in the Auction.

18 **August 17, 2022 commencing at 10 a.m. (prevailing Pacific time)** - Auction to be held  
19 at the offices of Levene, Neale, Bender, Yoo & Golubchik L.L.P., which are located at 2818 La  
20 Cienega Avenue, Los Angeles, CA, or via zoom with all Qualified Bidders to be provided with  
21 particulars in advance of the Auction.

22 **August 18, 2022 at 10 a.m. (prevailing Pacific time)** - Hearing for the Court to consider  
23 approval of the Debtors’ proposed sale of the Purchased Assets to the winning bidder at the  
24 Auction.

25 **August 26, 2022** - Outside date by when the winning bidder at the Auction is required to  
26 close its purchase of the Purchased Assets unless the winning bidder and the Debtors jointly  
27 agree to extend the outside closing date.

1 The Amended Bidding Procedures approved by the Bankruptcy Court are designed to  
2 ensure that the highest price possible is paid for the Purchased Assets by a purchaser who has the  
3 financial ability to close on a purchase of the Purchased Assets. This is being done by providing  
4 all prospective buyers with a level playing field with no bidder having any financial advantage  
5 over any other bidder.

6 Kroll has established an extensive data room and, to date, approximately 54 prospective  
7 bidders have signed NDA's who are actively engaged in the data room in connection with the  
8 current asset sale process, and Kroll is receiving new and additional inquiries virtually daily –  
9 meaning that this is a very active asset sale process. Kroll is also in discussions with numerous  
10 prospective buyers who are relatively further along in the due diligence process. The Debtors  
11 (after extensive consultation with Kroll) are confident that the Amended Bidding Procedures  
12 make the most sense under the circumstances of these cases and will help result in the highest  
13 and best price being paid for the Purchased Assets.

14 For all of the reasons set forth herein and in the accompanying Memorandum of Points  
15 and Authorities and concurrently filed Declarations of Brent Leffel and Joshua Benn, the Debtors  
16 have concluded that consummating a sale of the Purchased Assets for the most money possible is  
17 in the best interests of the Debtors' estates.

18 The Debtors urge all parties in interest and prospective bidders to read the entire  
19 Amended Bidding Procedures document and the Amended Bidding Procedures Order to  
20 understand the details of the Auction and sale process. The Debtors have prepared a template  
21 Asset Purchase Agreement, the form of which has been approved by the Court, for prospective  
22 bidders to use in connection with submitting their bids.

23 The Debtors respectfully request that the Bankruptcy Court:

- 24 1. Grant this Motion;
- 25 2. Immediately enter an order granting this Motion;
- 26 3. Find that notice of this Motion, the relief requested therein, and the assumption

27 and assignment of and establishment of Cure Amounts for, the executory contracts and  
28 unexpired leases to be assumed and assigned, was proper, timely, adequate, appropriate and

1 sufficient and that no other or further notice of this Motion, the hearing on this Motion, or the  
2 assumption and assignment of such executory contracts and unexpired leases is or shall be  
3 required;

4 4. Find good, sufficient, and sound business purposes and justification and  
5 compelling circumstances for the Debtors' sale of the Purchased Assets and assumption and  
6 assignment of the contracts/leases to the winning bidder and the winning backup bidder prior to,  
7 and outside of, a plan of reorganization;

8 5. Find that the APA with the winning bidder and the APA with the winning backup  
9 bidder<sup>3</sup> was negotiated, proposed and entered into without collusion, in good faith, and from  
10 arm's-length bargaining positions and that the winning bidder and the winning backup bidder is  
11 acting as a good faith purchaser and is, accordingly, entitled to the protections set forth in section  
12 363(m) of the Bankruptcy Code;

13 6. Find the consideration provided by each of the respective the winning bidder and  
14 the winning backup bidder for the Purchased Assets: (i) to be fair and reasonable, (ii) to be the  
15 highest or otherwise best offer for the Purchased Assets that was received by the Debtors in  
16 accordance with the Amended Bidding Procedures Order, (iii) provides a greater recovery for the  
17 Debtors' estates than would be provided by any other practical available alternative, and (iv)  
18 constitutes reasonably equivalent value and fair consideration under the circumstances of these  
19 cases, and find that prospective overbidders were provided an adequate opportunity to participate  
20 in the Auction and to submit a higher or otherwise better bid;

21 7. Find that one or more of the standards set forth in 11 U.S.C. § 363(f)(1)-(5) has  
22 been satisfied for selling the Purchased Assets free and clear of all lien, claims encumbrances  
23 and other interests;

24 8. find that approval of the APA and the consummation of the Debtors' sale of the  
25 Purchased Assets and the Debtors' assumption and assignment of the contracts and leases to the  
26 winning bidder or the winning backup bidder are in the best interests of the Debtors' estates;

27 \_\_\_\_\_  
28 <sup>3</sup> References herein to "APA" shall in each case include the winning bidder's and the winning

1 9. authorize the Debtors to sell the Purchased Assets to the winning bidder and the  
2 winning backup bidder free and clear of all liens, claims encumbrances and other interests with  
3 all liens existing against the Purchased Assets at the time of the closing to attach to the net sale  
4 proceeds in the same order of priority, and with the same validity, force and effect, as such liens  
5 had against the Purchased Assets immediately before the closing, subject to any rights, claims  
6 and defenses of the Debtors and their bankruptcy estates;

7 10. determine that (i) with the payment of the Cure Amounts, the Debtors and the  
8 winning bidder or the winning backup bidder, as applicable, have cured, or have provided  
9 adequate assurance of cure, of any default existing or occurring prior to the closing under any of  
10 the assumed and assigned contracts and leases, and the winning bidder or winning backup  
11 bidder, as the case may be, has provided adequate assurance of its future performance of and  
12 under the assumed and assigned contracts and leases, (ii) the provisions of Section 365(b)(1)(A)  
13 of the Bankruptcy Code at the Cure Amounts set forth in the Contracts and Leases Schedule have  
14 been satisfied unless the other parties to the executory contracts and unexpired leases file a  
15 timely objection to this Motion and the Court determines that the required Cure Amount is  
16 different than the amount set forth in the Contracts and Leases Schedule, and (iii) none of the  
17 other parties to the executory contracts and unexpired leases have suffered any actual pecuniary  
18 loss resulting from any default by the Debtors so that no further payments beyond the proposed  
19 Cure Amounts are required to enable compliance with the provisions of Section 365(b)(1)(B) of  
20 the Bankruptcy Code.

21 11. Determine that the Debtors' assumption and assignment to the winning bidder or  
22 the winning backup bidder as the case may be, is approved, and the requirements for assumption  
23 and assignment are deemed satisfied and that the Debtors are authorized in accordance with 11  
24 U.S.C. §§ 105(a) and 365;

25  
26  
27  
28 backup bidder's form of asset purchase agreement.

1 12. Approve (effective as of the closing date) the Debtors' rejection of all of the  
2 Debtors' remaining unexpired leases and executory contracts which are not assumed and  
3 assigned;

4 13. Waive the 14-day stay periods set forth in Bankruptcy Rules 6004(h) and 6006(d);  
5 and

6 14. Grant such other and further relief as the Court deems just and proper under the  
7 circumstances of these cases.

8 Dated: July 28, 2022

TRX HOLDCO, LLC  
FITNESS ANYWHERE LLC

9  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. STATEMENT OF JURISDICTION AND VENUE**

3 This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This  
4 matter relates to the administration of the Debtors' bankruptcy estates and is accordingly a core  
5 proceeding pursuant to 28 U.S.C. § 157(b) (2) (A), (M), (N) and (O). Venue of the Bankruptcy  
6 Cases is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates  
7 for the relief requested in this Motion are (i) Sections 105(a) and 363(b), (f), (k), (l) and (m), 365  
8 of Title 11 of the United States Code (the "Bankruptcy Code"), (ii) Rules 2002(a)(2), 2002(c)(1)  
9 and (d), 6004 (a), (b), (c), (e), (f) and (h), 6006(a), (c) and (d), 9006, 9007, 9013 and 9014 of the  
10 Federal Rules of Bankruptcy Procedure, and (iii) Local Bankruptcy Rules 6004-1 and 9013-1.

11 **II. STATEMENT OF FACTS**<sup>4</sup>

12 **A. Brief Description Of The Debtors And Their Business.**

13 1. The Debtors and their respective subsidiaries (collectively referred to herein as  
14 "TRX") comprise a world leading functional fitness company. Since being founded in 2004,  
15 TRX has evolved into a digitally-enabled, vertically integrated, omni-channel fitness lifestyle  
16 brand with global reach powered by a large community of consumer and trainer enthusiasts.<sup>5</sup>  
17 TRX's flagship and patented product - Suspension Trainer™ - is a highly versatile, portable,  
18 compact and affordable fitness and training device/workout tool with broad reach across  
19 demographic groups and fitness levels, which can be utilized effectively across fitness  
20 modalities. TRX offers a full line of functional training tools and accessories to complement the  
21 Suspension Trainer™ to serve all types of functional needs, from at-home essentials to complete  
22 gym installations. TRX also launched in 2021 a purpose-built digital subscription-based  
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24 <sup>4</sup> The Debtors incorporate herein by this reference the *Declaration of Brent Leffel In Support Of*  
25 *Debtors' Cash Collateral Motion* (Doc 8) filed on June 8, 2022, in support of the facts set forth  
herein.

26 <sup>5</sup> Hold Co holds a preferential and controlling interest in Product Co. Hold Co also wholly owns  
27 TRXperience, LLC ("Experience Co"). Experience Co has not filed a bankruptcy case. Product  
28 Co wholly owns Fitness Anywhere International LLC (100% by Product Co) and Fitness  
Anywhere Europe Cooperatief U.A. Netherlands (99% by Product Co and 1% by Fitness  
Anywhere International LLC), none of which have filed a bankruptcy case.



1 platform - the TRX Training Club® - that offers a library of on-demand video and daily live  
2 classes.

3 2. TRX enjoys a strong origin story (the first version of the Suspension Trainer™  
4 was created in 1997 by Randy Hetrick, the founder of TRX), significant brand recognition and  
5 intellectual property protections around its flagship product Suspension Trainer™, which is  
6 distributed in over thirty (30) countries through commercial channels (gyms and vertical  
7 markets) and consumer markets (including through its direct-to-consumer platform  
8 [www.TRXtraining.com](http://www.TRXtraining.com) in the United States and United Kingdom, Amazon, and other retailers).

9 3. From 2004 through 2013, Mr. Hetrick launched and commercialized TRX,  
10 building a loyal community of trainers and market penetration in gyms. From 2014 to 2018, the  
11 TRX business matured after receiving a growth capital investment. In late 2018, an investor  
12 group led by Equity 38, LLC acquired the business in a highly structured transaction which  
13 included a credit facility with Woodforest National Bank (the “Bank”) alongside an equity  
14 investment and rollover investment from the previous investors, and, in 2019, various  
15 operational improvement initiatives were implemented to restructure the business. By the end of  
16 2019, the business required a capital infusion to reset its credit facility with the Bank and also  
17 secure operating capital to execute on a strategy which incorporated the pursuit of digital  
18 initiatives to broaden the company’s revenue opportunities beyond sales of its flagship product.

19 4. In March 2020, Hold Co was formed and additional equity capital was invested  
20 by existing and new investors in a further recapitalization of TRX. A portion of such proceeds  
21 were invested in Product Co to repay senior debt and provide working capital financing, and the  
22 balance remained at Hold Co to fund growth initiatives such as digital. After giving effect to the  
23 March 2020 recapitalization, Hold Co held a preferential and controlling interest in Product Co,  
24 and also became a guarantor of the credit facility. Hold Co also owns 100% of the interests of  
25 Experience Co, an entity that was formed at the time of the recapitalization for purposes of  
26 housing TRX’s digital platform services that were beginning to be developed and for its  
27 educational services and offerings through which TRX has qualified training professionals on  
28 suspension training/functional training techniques and programming. While the different entities

1 were established to allow for a segregation of the equity investment made in the recapitalization  
2 and to limit dilution to legacy shareholders, TRX has operated as one identifiable brand in the  
3 market, and through intercompany agreements, including a management services agreement  
4 between Hold Co and Product Co wherein Hold Co provides the services of executive  
5 management that oversee the entire TRX enterprise, it also effectively operates as a consolidated  
6 business.

7 5. In 2019, the Debtors generated approximately \$51 million in revenue. In 2020,  
8 the Debtors formulated a digital strategy with outside consultants while experiencing COVID-  
9 driven revenue growth, to approximately \$85 million. In 2021, the Debtors executed and  
10 invested in a number of initiatives focused on digital and marketing, hiring executives in key  
11 roles while building a significant inventory position and navigating through a rapidly changing  
12 macro environment, and generated approximately \$62 million in sales.

13 **B. Events Leading To Bankruptcies And The Debtors' Chapter 11 Goals.**

14 6. Despite the development and success of the Debtors' products over the years, the  
15 Debtors' revenue and cash flow from operations has been insufficient to support their current  
16 business operations as well as their continued growth. There have been many reasons for this  
17 including competition, macroeconomic conditions, purchases of inventory in anticipation of  
18 demand that did not occur in an unpredictable market, and higher than anticipated development  
19 costs associated with the Debtors' digital training platform and increased marketing expenses,  
20 partially attributable to general increases in paid advertising. It became apparent in late 2021  
21 that the Debtors would require additional cash and investment to fund the Debtors' long-term  
22 operations and growth and satisfy the Debtors' secured debt obligations owed to the Bank of  
23 more than \$19 million.<sup>6</sup>

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25 <sup>6</sup> Product Co and the Bank are parties to a Credit Agreement, dated as of December 26, 2018, as  
26 amended, pursuant to which Product Co obtained from the Bank a term loan in the principal  
27 amount of \$10,875,000, a term loan in the principal amount of \$1,000,000, and revolving loans  
28 in the principal and outstanding amount of \$7,500,000, for a total principal balance of  
\$19,375,000, which are secured by substantially all assets of the Debtors, and which are  
guaranteed by Hold Co, Experience Co and Fitness Anywhere International, LLC.

1           7.       Pre-petition, the Debtors hired Kroll Securities, LLC (“Kroll”) and Integrity  
2 Square LLC to, among other things, identify prospective investors and seek to obtain additional  
3 investments in the Debtors’ business to further capitalize the Debtors and meet the Debtors’  
4 operational and growth needs, or engage in a sale transaction. The Debtors’ pre-petition efforts  
5 to raise capital to pay down debt or engage in a strategic merger/acquisition with/by a buyer or  
6 investor did not result in a consummated transaction.

7           8.       The Debtors believe that timing and macroeconomic considerations both played a  
8 role in the Debtors not consummating a pre-petition transaction. For example, while various  
9 parties expressed interest in a transaction with the Debtors, those who signed nondisclosure  
10 agreements and engaged in discussions with the Debtors did not ultimately proceed with  
11 engaging in a transaction. The Debtors also explored potential financing arrangements and  
12 received various expressions of interest.<sup>7</sup>

13           9.       The Debtors’ current financial situation is precarious in that the Debtors estimate  
14 that unless they can consummate a transaction or obtain additional financing, the Debtors will  
15 not have sufficient liquidity to replenish inventory, impairing future customer sales and  
16 thereafter negatively impacting the Debtors’ goodwill. The Debtors believe that if there was a  
17 shutdown of their business with a resulting liquidation, it would be a disastrous result for  
18 creditors, including the Bank.<sup>8</sup>

19           10.       Despite these challenges, the Debtors believes that (i) the TRX brand is well-  
20 regarded and its products and services have significant demand; (ii) TRX has a compelling  
21 business model with significant growth opportunities; (iii) TRX is well-positioned to capitalize  
22 on growth in the fitness industry; and (iv) the Debtors’ business is extremely valuable especially  
23 when considering its substantial intellectual property portfolio that enables the Debtors to protect

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25 <sup>7</sup> It is possible that the Debtors will require debtor in possession financing if the Debtors’ cash on  
26 hand and cash generated post-petition are not sufficient to meet all of the Debtors’ operational  
27 needs during this chapter 11 case. Additionally, in order for the Debtors to purchase any  
28 significant inventory going forward, the Debtors will require additional funding.

<sup>8</sup> The Debtors are in discussions with the Bank regarding the Bank providing the Debtors with  
post-petition financing, which, if consummated, will be presented to the Court by way of a  
separate motion.

1 it against imitators of its famous Suspension Trainer™ product and the significant goodwill it  
2 has amassed with its consumers and qualified TRX trainers throughout its history. Moreover, the  
3 pre-petition marketing process undertaken by Kroll and Integrity Square was designed to result  
4 in a recapitalization of the Debtors' business and was not marketed as a distressed free and clear  
5 asset sale.

6 11. Based on the foregoing, the Debtors determined in the exercise of their business  
7 judgment that the best option available to the Debtors would be to conduct an expedited free and  
8 clear asset sale process in a chapter 11 bankruptcy proceeding and consummate that asset sale  
9 before the Debtors' inventory falls below required operational levels and the Debtors run out of  
10 sufficient liquidity to sustain operations.<sup>9</sup> The Debtors believe that proceeding in this manner  
11 will afford them with the best opportunity to achieve the maximum price possible for their assets  
12 for the benefit of their creditors and other parties in interest. The Debtors are optimistic that this  
13 free and clear asset sale process will result in a successful sale transaction closing. Given the  
14 high level of interest that has already been expressed by the buying community, the Debtors are  
15 hopeful that the sale will result in a purchase price sufficient to pay the Bank in full and provide  
16 for a distribution to the rest of the Debtors' creditors.

17 12. The Debtors' goal in these bankruptcy cases is to consummate a free and clear  
18 asset sale for the most money possible.

19 **C. The Debtors' Primary Assets and Secured Loans.**

20 13. The Debtors' primary assets are comprised of accounts receivable in the  
21 approximate gross amount of \$5.1 million as of the Petition Date, inventory with a cost basis of  
22 approximately \$17.8 million as of the Petition Date, intellectual property and goodwill associated  
23 with the Debtors' well-regarded brand, and the Debtors' vast domestic and international  
24 customer base.

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25  
26 <sup>9</sup> While the Debtors' Budgets reflect that the Debtors are projected to have sufficient cash during  
27 the term of the Budgets to fund the expenses in the Budgets, the Budgets do not include  
28 substantial additional purchases of inventory.

1 14. To support the financial needs of their growth and operations, on or about  
2 December 26, 2018, the Debtors (with Product Co as borrower and Hold Co ultimately as one of  
3 three guarantors<sup>10</sup>) obtained a senior secured credit facility revolving credit facility from the  
4 Bank, secured by substantially all of the Debtors' assets and property. The credit facility is  
5 evidenced by that certain "Credit Agreement Dated as of December 26, 2018" as amended from  
6 time to time, in the original principal amount of \$20,000,000. Based on five amendments to the  
7 Credit Agreement, the credit facility is currently comprised of a term loan with a principal  
8 balance of \$10,875,000, a term loan with a principal balance of \$1,000,000, and revolving loans  
9 up to \$8,000,000 with a principal balance of \$7,500,000. As of the Petition Date, the total  
10 principal balance of the loans made by the Bank to the Debtors is approximately \$19,375,000.

11 15. The Debtors also have a substantial amount of pre-petition unsecured debt.

12 **D. The Assets To Be Sold.**

13 16. The Debtors are selling all of their right, title and interest in and to all of the assets  
14 of Debtors used in connection with their business and which are summarized below (the  
15 "Purchased Assets"), free and clear of all liens, claims and interests pursuant to Section 363 of  
16 the Bankruptcy Code. Subject to the particular terms and conditions of the APA between the  
17 Debtors and the Winning Bidder, or the Debtors and the Winning Backup Bidder, the Purchased  
18 Assets generally consist of the following:

19 (a) All of the Debtors' supplies, computers, printers, equipment, furniture,  
20 fixtures and other similar assets or tangible personal property owned by Sellers;

21 (b) All of the Debtors' respective membership interests in TRXperience, LLC,  
22 Fitness Anywhere International LLC, and Fitness Anywhere Europe Cooperatief U.A.  
23 Netherlands (which owns TRX Training Japan Co., LTD. and Fitness Anywhere UK  
24 Limited);

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26 <sup>10</sup> The other two guarantors are Experience Co (a wholly owned subsidiary of Hold Co) and  
27 Fitness Anywhere International, LLC (a wholly owned subsidiary of Product Co). Hold Co and  
28 Experience Co became guarantors in connection with a recapitalization of TRX completed in  
2020.

1 (c) All of Debtors' rights, title, interest and benefits under the Debtors'  
2 agreements, contracts, licenses, instruments, commitments and understandings;

3 (d) All advance payments, claims for refunds and deposits, and other prepaid  
4 items relating to the Purchased Assets or the obligations assumed by a buyer, existing as of  
5 the closing date of a sale;

6 (e) All of the Debtors' accounts related to the Debtors' business and all  
7 schedules, records and other documentation related to such accounts or notes receivable,  
8 unless designated by the Debtors as an Excluded Asset (defined below);

9 (f) All of the Debtors' books and records directly related to, or used in  
10 connection with, the conduct of the Debtors' business or pertaining to the Purchased Assets,  
11 regardless of the medium on which such information is stored or maintained including,  
12 without limitation, all customer and employment records, vendor information and contracts,  
13 business plans and strategies, financial and operational data and reports, and marketing  
14 information and materials;

15 (g) To the extent transferable, all of the Debtors' licenses, permits or other  
16 authorizations of governmental or regulatory entities that are required under any laws, rules  
17 and regulations applicable to or affecting the Business;

18 (h) To the extent assignable, all of the Debtors' leased real property, including  
19 any leasehold improvements thereon;

20 (i) All of the Debtors' inventory;

21 (j) All of the Debtors' intellectual property rights and all goodwill associated  
22 with such intellectual property rights, including, without limitation, (i) the right to use, copy,  
23 modify, exploit, license, assign, convey and pledge the intellectual property rights, (ii) the  
24 right to exclude others from using the intellectual property rights, (iii) the right to sue others  
25 and collect damages for past, present and future infringement of the intellectual property  
26 rights, (iv) the right to create derivatives of the intellectual property and retain full ownership  
27 thereof, and (v) the right to file and prosecute applications for registration, now pending or  
28 hereinafter initiated, to protect any rights in the intellectual property rights;

1 (k) All insurance benefits, including rights and proceeds, arising from or  
2 relating to the Purchased Assets or the obligations assumed by a buyer prior to the closing  
3 date of a sale except to the extent designated by the Debtors as an Excluded Asset;

4 (l) All of the Debtors' claims and lawsuit rights (pending or not) against third  
5 parties relating to the Purchased Assets, whether choate or inchoate, known or unknown,  
6 contingent or non-contingent except for those designated by the Debtors as an Excluded  
7 Asset;

8 (m) Customer lists and contact information; and

9 (n) All goodwill associated with the Debtors' business and the Purchased  
10 Assets.

11 17. Subject to the terms of the APA, generally speaking, the Debtors shall retain, and  
12 are not selling, any of the following assets, properties and rights owned by the Debtors  
13 (collectively, the "Excluded Assets");

14 (a) All contracts and leases of the Debtors that are not assigned to a buyer;

15 (b) All notes receivable and any other debt instruments providing for money  
16 owing to the Debtors;

17 (c) All cash and cash equivalents of the Debtors and any other item  
18 designated by the Debtors in an asset purchase agreement as an Excluded Asset;

19 (d) The corporate seals, minute books, stock books, tax returns and other  
20 similar records relating to the Debtors' corporate organizations, and all employee related or  
21 employee benefit related files or records other than personnel files of employees hired by a  
22 buyer;

23 (e) Except as to the Purchased Assets, all insurance recovery rights of the  
24 Debtors;

25 (f) All tax refunds or credits owing to either of the Debtors, and any and all  
26 claims or rights related thereto, including, without limitation, all rights, claims and interests of  
27 the Debtors in employee retention credits under the CARES Act;

28

1 (g) All rights to all claims, causes of action, choses in action, rights of  
2 recovery and rights of set-off (whether choate or inchoate, known or unknown, contingent or  
3 non-contingent) in favor of the Debtors that are not included as a Purchased Asset, and all  
4 avoidance causes of action existing under any of sections 544-553, inclusive, of the  
5 Bankruptcy Code; and

6 (h) All other assets identified in the APA as an Excluded Asset.

7 **E. The Asset Sale Process.**

8 On July 20, 2022, the Bankruptcy Court entered that certain *Order Granting Debtors’*  
9 *Motion For Entry of Order Modifying Bidding Procedures Previously Approved By The Court*  
10 *For Free And Clear Sale Of Assets And granting Related Relief* (the “Amended Bidding  
11 Procedures Order”) [Doc 182] approving the Debtors’ amended bidding procedures (“Amended  
12 Bidding Procedures”) filed with the Bankruptcy Court as Docket No. 181.

13 As set forth in the record of this case, the Debtors made a determination shortly prior to  
14 their bankruptcy filings that proceeding with a free and clear asset sale process was in the best  
15 interests of their estate. While it appears that there is a substantial amount of interest in the  
16 buying community to acquire the Debtors’ business and by many to serve as a stalking horse bid,  
17 since the Debtors only commenced their free and clear asset sale process shortly prior to their  
18 bankruptcy filings, the Debtors did not have a stalking horse bid lined up when they obtained  
19 Bankruptcy Court approval of the Amended Bidding Procedures. The Debtors concluded that  
20 proceeding to the Auction without a stalking horse bid in hand is the best option for these  
21 bankruptcy estates, with the Debtors retaining the right to seek an alternative order from the  
22 Court if facts and circumstances dictate otherwise.

23 After extensive consultation with the Debtors’ well regarded and experienced investment  
24 banker in Kroll Securities, LLC (“Kroll”), and after taking into account the Debtors’ financial  
25 situation, including the possibility that the Debtors will be provided with post-petition financing  
26 from the Bank, the Debtors established, with the approval of the Bankruptcy Court and the  
27 consent of the Bank and the Official Committee of Unsecured Creditors in Product Co’s  
28 bankruptcy case, the Amended Bidding Procedures.



1 The Amended Bidding Procedures approved by the Bankruptcy Court are designed to  
2 ensure that the highest price possible is paid for the Purchased Assets by a purchaser who has the  
3 financial ability to close on a purchase of the Purchased Assets. This is being done by providing  
4 all prospective buyers with a level playing field with no bidder having any financial advantage  
5 over any other bidder.

6 The Amended Bidding Procedures explain to prospective bidders how a prospective  
7 bidder becomes qualified to participate in the Auction and how the Auction will proceed. In  
8 addition, Kroll has established an extensive data room and, to date, approximately 54 prospective  
9 bidders have signed NDA's who are actively engaged in the data room in connection with the  
10 current asset sale process, and Kroll is receiving new and additional inquiries virtually daily –  
11 meaning that this is a very active asset sale process. Kroll is also in discussions with numerous  
12 prospective buyers who are relatively further along in the due diligence process. The Debtors  
13 (after extensive consultation with Kroll) are confident that the Amended Bidding Procedures  
14 make the most sense under the circumstances of these cases and will help result in the highest  
15 and best price being paid for the Purchased Assets. To assist in this process, the Debtors  
16 obtained Bankruptcy Court approval of a template asset purchase agreement for bidders to use,  
17 and Kroll has made the template asset purchase agreement available to prospective bidders.

18 Initial Indications of Interest under the Amended Bidding Procedures were due on July  
19 27, 2022. Initial Bids under the Amended Bidding Procedures are due on August 10, 2022, and  
20 the Auction is scheduled for August 17, 2022. Given the process that was employed by the  
21 Debtors and Kroll (*see* concurrently filed Declaration of Joshua Benn), the Debtors are confident  
22 that they will obtain the highest and best offer under the circumstances, and are optimistic that  
23 they will close a sale of the Purchased Assets in the timeframe set forth in the Amended Bidding  
24 Procedures at the highest and best price possible under the circumstances.

### 25 **III. DISCUSSION**

#### 26 **A. The Bankruptcy Court Should Authorize The Debtors To Sell Substantially All Of** 27 **Their Assets To The Winning Bidder Or The Winning Backup Bidder.**

28 Section 363(b)(1) provides that “[t]he trustee, after notice and a hearing, may use, sell, or

1 lease, other than in the ordinary course of business, property of the estate....” 11 U.S.C. § 363  
2 (b)(1). To approve a use, sale or lease of property other than in the ordinary course of business,  
3 the court must find “some articulated business justification.” *See, e.g., In re Martin (Myers v.*  
4 *Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) citing *In re Schipper (Fulton State Bank v. Schipper)*,  
5 933 F.2d 513, 515 (7th Cir. 1991); *Comm. of Equity SEC Holders v. Lionel Corp. (In re Lionel*  
6 *Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *In re Abbotts Dairies of Pennsylvania, Inc.*, 788  
7 F.2d 143 (3d Cir. 1986) (implicitly adopting the “sound business judgment” test of *Lionel Corp.*  
8 and requiring good faith); *In re Delaware and Hudson Ry. Co.*, 124 B.R. 169 (D. Del. 1991)  
9 (concluding that the Third Circuit adopted the “sound business judgment” test in the *Abbotts*  
10 *Dairies* decision).

11 In the Ninth Circuit, “cause” exists for authorizing a sale of estate assets if it is in the best  
12 interest of the estate, and a business justification exists for authorizing the sale. *In re*  
13 *Huntington, Ltd.*, 654 F.2d 578 (9th Cir. 1981); *In re Walter*, 83 B.R. 14, 19-20 (9th Cir. B.A.P.  
14 1988). The Ninth Circuit has also held that section 363 allows the sale of substantially all assets  
15 of a debtor’s bankruptcy estate after notice and a hearing. *In re Qintex Entertainment, Inc.*, 950  
16 F.2d 1492 (9th Cir. 1991).

17 In determining whether a sale satisfies the business judgment standard, courts have held  
18 that: (1) there be a sound business reason for the sale; (2) accurate and reasonable notice of the  
19 sale be given to interested persons; (3) the sale yield an adequate price (i.e., one that is fair and  
20 reasonable); and (4) the parties to the sale have acted in good faith. *Titusville Country Club v.*  
21 *Pennbank (In re Titusville Country Club)*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); *see also,*  
22 *In re Walter*, 83 B.R. at 19-20.

23 The Debtors submit that their proposed sale of assets pursuant to the terms of the  
24 Amended Bidding Procedures Order clearly comports with each of these four criteria, and  
25 demonstrates that the Debtors’ business judgment to proceed with the proposed sale of  
26 substantially all of their assets in accordance with the terms of the Amended Bidding Procedures  
27 Order is sound.

28 **1. Sound Business Purpose.**

1           There must be some articulated business justification, other than appeasement of major  
2 creditors, for using, selling or leasing property out of the ordinary course of business before the  
3 bankruptcy court may order such disposition under Section 363(b). *In re Lionel Corp.*, 722 F.2d  
4 at 1070. The Ninth Circuit Bankruptcy Appellate Panel in *Walter v. Sunwest Bank (In re*  
5 *Walter)*, 83 B.R. 14, 19 (9th Cir. B.A.P. 1988) has adopted a flexible case-by-case test to  
6 determine whether the business purpose for a proposed sale justifies disposition of property of  
7 the estate under Section 363(b). In *Walter*, the Bankruptcy Appellate Panel, adopting the  
8 reasoning of the Fifth Circuit in *In re Continental Airlines, Inc.*, 780 F.2d 1223 (5th Cir. 1986)  
9 and the Second Circuit in *In re Lionel Corp.*, *supra*, articulated the standard to be applied under  
10 Section 363(b) as follows:

11  
12           Whether the proffered business justification is sufficient depends on the case. As  
13 the Second Circuit held in Lionel, the bankruptcy judge should consider all  
14 salient factors pertaining to the proceeding and, accordingly, act to further the  
15 diverse interests of the Debtor, creditors and equity holders, alike. He might, for  
16 example, look to such relevant facts as the proportionate value of the asset to the  
17 estate as a whole, the amount of elapsed time since the filing, the likelihood that  
18 a plan of reorganization will be proposed and confirmed in the near future, the  
19 effect of the proposed disposition on future plans of reorganization, the proceeds  
20 to be obtained from the disposition vis-a-vis any appraisals of the property,  
21 which of the alternatives of use, sale or lease the proposal envisions and, most  
22 importantly perhaps, whether the asset is increasing or decreasing in value. This  
23 list is not intended to be exclusive, but merely to provide guidance to the  
24 bankruptcy judge.

25           *In Re Walter*, 83 B.R. at 19-20, citing *In re Continental Air Lines, Inc.*, 780 F.2d 1223,  
26 1226 (5th Cir. 1986).

27           The facts pertaining to the Debtors' proposed sale of the Purchased Assets clearly  
28 substantiate the Debtors' business decision that such contemplated sale serves the best interests  
of their estates and merits the approval of the Court.

          For all of the reasons explained above, despite the development and success of the  
Debtors' products over the years, the Debtors' revenue and cash flow from operations has been  
insufficient to support their current business operations as well as their continued growth. The  
Debtors' current financial situation is precarious in that the Debtors estimate that unless they can

1 consummate a transaction or obtain additional financing, the Debtors will not have sufficient  
2 liquidity to replenish inventory, impairing future customer sales and thereafter negatively  
3 impacting the Debtors' goodwill. The Debtors believe that if there was a shutdown of their  
4 business with a resulting liquidation, it would be a disastrous result for creditors, including the  
5 Bank.<sup>11</sup>

6 Despite these challenges, the Debtors believes that (i) the TRX brand is well-regarded  
7 and its products and services have significant demand; (ii) TRX has a compelling business model  
8 with significant growth opportunities; (iii) TRX is well-positioned to capitalize on growth in the  
9 fitness industry; and (iv) the Debtors' business is extremely valuable especially when  
10 considering its substantial intellectual property portfolio that enables the Debtors to protect it  
11 against imitators of its famous Suspension Trainer™ product and the significant goodwill it has  
12 amassed with its consumers and qualified TRX trainers throughout its history. Moreover, the  
13 pre-petition marketing process undertaken by Kroll and Integrity Square was designed to result  
14 in a recapitalization of the Debtors' business and was not marketed as a distressed free and clear  
15 asset sale.

16 Based on the foregoing, the Debtors determined in the exercise of their business  
17 judgment that the best option available to the Debtors would be to conduct an expedited free and  
18 clear asset sale process in a chapter 11 bankruptcy proceeding and consummate that asset sale  
19 before the Debtors' inventory falls below required operational levels and the Debtors run out of  
20 sufficient liquidity to sustain operations.<sup>12</sup> The Debtors believe that proceeding in this manner  
21 will afford them with the best opportunity to achieve the maximum price possible for their assets  
22 for the benefit of their creditors and other parties in interest.

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<sup>11</sup> The Debtors are in discussions with the Bank regarding the Bank providing the Debtors with  
25 post-petition financing, which, if consummated, will be presented to the Court by way of a  
26 separate motion.

<sup>12</sup> While the Debtors' Budgets reflect that the Debtors are projected to have sufficient cash  
27 during the term of the Budgets to fund the expenses in the Budgets, the Budgets do not include  
28 substantial additional purchases of inventory.

1 The Debtors therefore submit that their proposed sale is justified by sound business  
2 purposes, satisfying the first requirement for a sale under Section 363(b) of the Bankruptcy  
3 Code.

4 **2. Accurate and Reasonable Notice.**

5 In connection with a proposed sale under Section 363 of the Bankruptcy Code, “four  
6 pieces of information must be presented to the creditors. The notice should: place all parties on  
7 notice that the debtor is selling its business; disclose accurately the full terms of the sale; explain  
8 the effect of the sale as terminating the debtor’s ability to continue in business; and explain why  
9 the proposed price is reasonable and why the sale is in the best interest of the estate.” *In re*  
10 *Delaware & Hudson Railway Co.*, 124 B.R. 169, 180 (D. Del. 1991). A notice is sufficient if it  
11 includes the terms and conditions of the sale and if it states the time for filing objections. *In re*  
12 *Karpe*, 84 B.R. 926, 930 (Bankr. M.D. Pa. 1988). The purpose of the notice is to provide an  
13 opportunity for objections and hearing before the court if there are objections. *Id.*

14 First, on July 20, 2022, the Debtors filed and served on all creditors and equity interest  
15 holders that certain *Notice of Court-Approved Amended Bidding Procedures, Opportunity To Bid*  
16 *On Assets And Auction Schedule* pursuant to which such parties received notice of the Auction  
17 and the Amended Bidding Procedures approved by the Court. Prospective bidders were also  
18 provided with the Amended Bidding Procedures and advised of the Court-approved amendments  
19 to bidding procedures; and the Amended Bidding Procedures document and above-referenced  
20 notice were was uploaded to the virtual data room.

21 Then, on July 28, 2022, concurrently with filing this Motion, the Debtors served that  
22 certain *Notice Of Hearing On Debtors’ Motion For An Order: (1) Approving Sale Of*  
23 *Substantially All Of The Debtors’ Assets Free And Clear Of All Liens, Claims, Encumbrances*  
24 *And Interests; (2) Approving Of Debtors’ Assumption And Assignment Of Certain Executory*  
25 *Contracts And Unexpired Leases And Determining Cure Amounts And Approving Debtors’*  
26 *Rejection Of Executory Contracts And Unexpired Leases Which Are Not Assumed And Assigned;*  
27 *(3) Waiving The 14-Day Stay Periods Set Forth In Bankruptcy Rules 6004(h) And 6006(d); And*  
28 *(4) Granting Related Relief* (the “Sale Notice”), the form of which the Court approved pursuant

1 to its Amended Bidding Procedures Order. The Sale Notice was served on all known creditors  
2 and equity interest holders of the Debtors. The Trustee submits that the foregoing satisfies the  
3 requirements of the Bankruptcy Rules 6004(a) and (c), which provide as follows:

4  
5 “(a) ... Notice of a proposed ... sale ... of property ... not in the ordinary course  
6 of business shall be given pursuant to Rule 2002(a)(2),(c)(1),(i) and (k) ...  
7 (c) ... A motion for authority to sell property free and clear of liens or other  
8 interests shall be made in accordance with Rule 9014 and shall be served on  
9 the parties who have liens or other interests in the property to be sold. The  
notice required by subdivision (a) of this rule shall include the date of the  
hearing on the motion and the time within which objections may be filed and  
served on the debtor in possession...”

10 Fed. R. Bankr. P. 6004(a)(c).

11 **3. Fair and Reasonable Price.**

12 In order to be approved under Section 363(b) of the Bankruptcy Code, the purchase price  
13 must be fair and reasonable. *Coastal Indus., Inc. v. U.S. Internal Revenue Service (In re Coastal*  
14 *Indus., Inc.)*, 63 B.R. 361, 368 (Bankr. N.D. Ohio 1986). Several courts have held that “fair  
15 value” is given for property in a bankruptcy sale when at least 75% of the appraised value of  
16 such property is paid. See *In re Karpe*, 84 B.R. at 933; *In re Abbotts Dairies of Pennsylvania,*  
17 *Inc.*, 788 F.2d 143, 149 (3d Cir. 1986); *Willemain v. Kivitz*, 764 F.2d 1019 (4th Cir. 1985); *In re*  
18 *Snyder*, 74 B.R. 872, 878 (Bankr. E.D. Pa. 1987); *In re The Seychelles, Partnership and Genius*  
19 *Corp. v. Banyan Corp.*, 32 B.R. 708 (N.D. Tex. 1983). However, the Trustee also realizes that  
20 “[his] main responsibility, and the primary concern of the bankruptcy court, is the maximization  
21 of the value of the asset sold.” *In re Integrated Resources, Inc.*, 135 B.R. 746, 750 (Bankr.  
22 S.D.N.Y. 1992), *aff’d*, 147 B.R. 650 (S.D.N.Y. 1992). “It is a well-established principle of  
23 bankruptcy law that the objective of bankruptcy rules and the trustee’s duty with respect to such  
24 sales is to obtain the highest price or greatest overall benefit possible for the estate.” *In re*  
25 *Atlanta Packaging Products, Inc.*, 99 B.R. 124, 131 (Bankr. N.D. Ga. 1988); see also *In re Wilde*  
26 *Horse Enterprises*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991) (“In any sale of estate assets, the  
27 ultimate purpose is to obtain the highest price for the property sold”).

28 The terms of the Amended Bidding Procedures and the marketing and sale process

1 undertaken by the Debtors and Kroll are designed to insure that the highest price possible is  
2 obtained for the Purchased Assets. The post-petition overbid marketing process that the Debtors  
3 are undertaking in accordance with the Amended Bidding Procedures approved by the Court  
4 insures that under the circumstances the highest and best price is paid for the Purchased Assets  
5 and that purchase price will necessarily will be equal to the current fair market value of the  
6 Purchased Assets.

7 **4. Good Faith.**

8 When a bankruptcy court authorizes a sale of assets pursuant to Section 363(b)(1), it is  
9 required to make a finding with respect to the “good faith” of the purchaser. *In re Abbotts*  
10 *Dairies*, 788 F.2d at 149. Such a procedure ensures that Section 363(b)(1) will not be employed  
11 to circumvent the creditor protections of Chapter 11, and as such, it mirrors the requirement of  
12 Section 1129, that the Bankruptcy Court independently scrutinizes the debtor’s reorganization  
13 plan and makes a finding that it has been proposed in good faith. *Id.* at 150.

14 “Good faith” encompasses fair value, and further speaks to the integrity of the  
15 transaction. *In re Wilde Horse Enterprises*, 136 B.R. at 842. With respect to a debtor’s conduct  
16 in conjunction with the sale, the good faith requirement “focuses principally on the element of  
17 special treatment of the Debtor’s insiders in the sale transaction.” *See In re Industrial Valley*  
18 *Refrig. and Air Cond. Supplies, Inc.*, 77 B.R. 15, 17 (Bankr. E.D. Pa. 1987). Here, the Debtors  
19 and Kroll, a highly sophisticated, reputable and talented investment banker, are conducting a sale  
20 process pursuant to Amended Bidding Procedures approved by the Court, the Bank and the  
21 Committee. Moreover, the Amended Bidding Procedures include various provisions and  
22 protections designed to ensure a level playing field for all third parties and foster a competitive  
23 bidding scenario where the highest and best offer is deemed to be the winning offer.

24 With respect to the buyer’s conduct, this Court should consider whether there is any  
25 evidence of “fraud, collusion between the purchaser and other bidders or the trustee, or an  
26 attempt to take grossly unfair advantage of other bidders.” *In re Abbotts Dairies*, 788 F.2d at  
27 147; *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978); *In re Wilde Horse*  
28 *Enterprises, Inc.*, 136 B.R. at 842; *In re Alpha Industries, Inc.*, 84 B.R. 703, 706 (Bankr. D.

1 Mont. 1988). In short, “[l]ack of good faith is generally determined by fraudulent conduct  
2 during the sale proceedings.” *In re Apex Oil Co.*, 92 B.R. 847, 869 (Bankr. E.D. Mo. 1988),  
3 citing *In re Exennium, Inc.*, 715 F.2d 1401, 1404-05 (9th Cir. 1983); see also *In re M Capital*  
4 *Corp.*, 290 B.R. 743 (B.A.P. 9<sup>th</sup> Cir. 2003).

5 In *In re Filtercorp, Inc.*, 163 F.3d 570 (9th Cir. 1998), the Ninth Circuit set forth the  
6 following test for determining whether a buyer is a good faith purchaser:

7  
8 A good faith buyer “is one who buys ‘in good faith’ and ‘for value.’”  
9 [citations omitted.] [L]ack of good faith is [typically] shown by ‘fraud,  
10 collusion between the purchaser and other bidders or the trustee, or an attempt  
11 to take grossly unfair advantage of other bidders.’” [citations omitted.]

12 *Filtercorp*, 163 F.3d at 577.

13 The Ninth Circuit made clear in *Filtercorp* that this standard for determining good faith is  
14 applicable even when the buyer is an insider. To the extent the Winning Bidder requests or  
15 requires a good faith finding under section 363(m) of the Bankruptcy Code (which the Debtors  
16 believe will be the case), the Debtors will supplement this Motion either in writing or orally at  
17 the hearing on the Motion with additional information regarding the purchaser. The Debtors are  
18 not aware of any fraud, collusion or attempt to take unfair advantage of any bidders.  
19 Additionally, the Bid Procedures were intensively negotiated at arm’s length in good faith  
20 between the Debtors, the Bank and the Committee. Based on the foregoing, and a declaration to  
21 be submitted (or testimony provided) by the winning bidder describing its good-faith conduct  
22 throughout the sale process, the Debtors submit that the Court should find that the winning  
23 bidder constitutes a good faith purchaser entitled to all of the protections afforded by Section  
24 363(m) of the Bankruptcy Code.

25 **Section 363(f) Of The Bankruptcy Code Permits The Debtors’ Sale Of The**  
26 **Purchased Assets To Be Free And Clear Of Any And All Liens, Claims,**  
27 **Encumbrances, And Interests.**

28 It is the Debtors’ expectation and hope that the Debtors’ marketing and sale efforts will  
result in the closing of a transaction that will pay in full the Bank’s secured claim, in which case,



1 there is no question that the Bank will consent to the sale under section 363(f)(2) and the sale  
2 could be approved under section 363(f)(3). The Debtors do not believe that there will be a  
3 scenario where the Bank does not ultimately consent to the sale of the Purchased Assets,  
4 particularly given the Bank’s credit bidding rights under the terms of the Amended Bidding  
5 Procedures Order. Therefore, the discussion below focuses primarily on section 363(f)(2) and  
6 (3). However, in order to maintain flexibility in the unlikely event that section 363(f)(2) and (3)  
7 are not satisfied, and with respect to any other parties in interest other than the Bank asserting a  
8 lien, claim, interest or encumbrance in the Purchased Assets, the Debtors’ discussion below  
9 includes an analysis of sections 363(f)(1), (4) and (5).

10 Section 363(f) of the Bankruptcy Code provides, in relevant part, as follows:

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

- 13 (1) applicable non-bankruptcy law permits the sale of such property free and  
clear of such interest; ...  
14 (2) such entity consents;  
15 (3) such interest is a lien and the price at which such property is to be sold is  
greater than the aggregate value of all liens on such property;  
16 (4) Such interest is in bona fide dispute; or  
(5) such entity could be compelled, in a legal or equitable proceeding, to  
accept a money satisfaction of such interest.

17 11 U.S.C. § 363(f).

18 Section 363(f) of the Bankruptcy Code was drafted in the disjunctive. Thus, a debtor in  
19 possession need only meet the provisions of one of the five subsections of section 363(f) in order  
20 for a sale of property to be free and clear of any and all liens, claims, interests, or encumbrances  
21 of any nature (defined collectively as “Encumbrances”)<sup>13</sup>. The Debtors submit that one or more  
22

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23 <sup>13</sup> The Bankruptcy Code does not define the phrase “interest in ... property” for purposes of §  
24 363(f). *See In re Gardens Reg'l Hosp. & Med. Ctr., Inc.*, 567 B.R. 820, 825 (Bankr. C.D. Cal.  
25 2017). “The Third Circuit has held that the phrase ‘interest in ... property’ is ‘intended to refer to  
26 obligations that are connected to, or arise from, the property being sold.’ *Folger Adam Sec., Inc.*  
*v. DeMatteis/MacGregor JV*, 209 F.3d 252, 259 (3d Cir. 2000). That conclusion is echoed by  
27 *Collier on Bankruptcy*, which observes a trend in caselaw ‘in favor of a broader definition [of the  
28 phrase] that encompasses other obligations that may flow from ownership of the property.’ 3  
Alan N. Resnick & Henry J. Sommer, *Collier on Bankruptcy* ¶ 363.06[1] (16th ed. 2017).” *Id.*

1 of the tests of Bankruptcy Code section 363(f) are satisfied with respect to the Debtors' proposed  
2 sale of the Purchased Assets free and clear of Encumbrances.

3 **1. The Debtors' Proposed Sale Is Permissible Pursuant To Section 363(f)(1).**

4 Applicable nonbankruptcy law permits the sale of the Purchased Assets free and clear of  
5 such interest. *See e.g., In the Matter of Spanish Peaks Holdings II, LLC*, 872 F.3d 892 (9<sup>th</sup> Cir.  
6 2017) ("Section 363(f)(1) does not require an actual or anticipated foreclosure sale. It is  
7 satisfied if such a sale would be legally permissible") (holding that, under Montana law, a  
8 foreclosure sale to satisfy a mortgage terminates a subsequent lease on the mortgaged property,  
9 and, therefore, the sale free and clear of a lease was permitted under section 363(f)(1)).

10 For example, under California law, a foreclosure sale of a personal property interest  
11 would terminate junior interests if conducted pursuant to the lien of a deed of trust, or an  
12 execution sale pursuant to a judgment lien. Specifically, a junior lienholder in California could  
13 be compelled to accept a money satisfaction upon a senior secured party's disposition of  
14 collateral under the default remedies provided in §9617 of California's Uniform Commercial  
15 Code.

16 Similarly, under New York's Uniform Commercial Code §9-617, "[a] secured party's  
17 disposition of collateral after default: (1) transfers to a transferee for value all of the debtor's  
18 rights in the collateral; (2) discharges the security interest under which the disposition is made;  
19 and (3) discharges any subordinate security interest or other subordinate lien other than liens  
20 created under any law of this state that are not to be discharged."

21 Based on the foregoing, the Debtors submits that applicable non-bankruptcy law permits  
22 the sale of the Property free and clear of Encumbrances.

23 **2. The Trustee's Proposed Sale is Permissible Pursuant to 11 U.S.C. Section**  
24 **363(f)(2).**

25 Section 363(f)(2) of the Bankruptcy Code authorizes a sale to be free and clear of an  
26 interest if the interest holder consents to the sale. However, the "consent" of an entity asserting  
27 an interest in the property sought to be sold, as referenced in section 363(f)(2) of the Bankruptcy  
28

1 Code, can be implied if such entity fails to make a timely objection to the sale after receiving  
2 notice of the sale. *In re Eliot*, 94 B.R. 343, 345 (E.D. Pa. 1988).

3 As discussed above, the Debtors are optimistic that the Bank will consent to the Debtors'  
4 sale of the Purchased Assets free and clear of its liens. Moreover, to the extent there are any  
5 other lienholders in connection with the Debtors' inventory (such as parties asserting warehouse  
6 liens or maritime liens), the Debtors believe that such parties will also consent to the sale of the  
7 Purchased Assets, as any such liens will attach to sale proceeds with the same validity, priority  
8 and extent. In the event that there any other Encumbrance holders, the Debtors request that the  
9 Bankruptcy Court approve the sale of the Purchased Assets free and clear of all Encumbrances of  
10 those parties who do not file a timely objection to the sale, by deeming all such parties to have  
11 consented to the sale pursuant to section 363(f)(2) of the Bankruptcy Code.

12 **3. The Debtors Proposed Sale is Projected to be Permissible Pursuant to 11**  
13 **U.S.C. Section 363(f)(3).**

14 Section 363(f)(3) of the Bankruptcy Code authorizes a sale to be free and clear of an  
15 interest if such interest is a lien and the price at which the property to be sold is greater than the  
16 aggregative value of all liens against the property. Here, the Debtors are optimistic that the sale  
17 price for the Purchased Assets will exceed the Bank's secured claim amount (and any other  
18 claim secured by a lien against any Purchased Assets).

19 **4. The Debtors' Proposed Sale is Permissible Pursuant to 11 U.S.C. Section**  
20 **363(f)(4).**

21 Section 363(f)(4) permits a sale free and clear of an interest if such interest is in bona fide  
22 dispute. Here, the Debtors are not seeking Bankruptcy Court approval of the sale under section  
23 363(f)(4) as it pertains to the Bank's security interest. However, to the extent any other party in  
24 interest asserts an Encumbrance against the Purchased Assets, the Debtors reserve the right to  
25 contend that such Encumbrance is in bona fide dispute.

26 **5. The Debtors' Proposed Sale is Permissible Pursuant to 11 U.S.C. Section**  
27 **363(f)(5).**

28 Section 363(f)(5) of the Bankruptcy Code permits a sale of property free and clear of

1 liens and interests if “such entity could be compelled, in a legal or equitable proceeding, to  
2 accept a money satisfaction of such interest.” 11 U.S.C. § 363(f)(5).

3 The Bankruptcy Appellate Panel for the Ninth Circuit has scrutinized § 363(f)(5) in the  
4 context of the sale of real property. *See Clear Channel Outdoor, Inc. v. Knupfer (In re PW,*  
5 *LLC)*, 391 B.R. 25 (9<sup>th</sup> Cir. B.A.P. 2008) (“*Clear Channel*”). In *Clear Channel*, the senior  
6 secured creditor attempted to purchase the debtor’s real property by way of a credit bid, free and  
7 clear of the interest of a nonconsenting junior lienholder outside of a plan of reorganization.  
8 The Bankruptcy Court approved the sale to the senior lender under § 363(f)(5), finding that  
9 § 363(f)(5) permits a sale free and clear of the creditor’s interest in property “whenever a claim  
10 can be paid with money.” 391 B.R. at 42.

11 In reversing the Bankruptcy Court’s decision, the Bankruptcy Appellate Panel found that  
12 § 363(f)(5) requires that “(1) a proceeding exists or could be brought, in which (2) the  
13 nondebtor could be compelled to accept a money satisfaction of (3) its interest.” *Id.* at 41.  
14 Taking up these factors in reverse order, the Bankruptcy Appellate Panel concluded that a lien,  
15 such as the lien of a secured lender, constitutes an “interest” for purposes of § 363(f)(5). With  
16 respect to the second factor, the Bankruptcy Appellate Panel ruled that § 363(f)(5) refers to  
17 those proceedings in which the creditor “could be compelled to take less than the value of the  
18 claim secured by the interest.” *Id.* In order to approve a sale free and clear under § 363(f)(5),  
19 the Court must “make a finding of the existence of ... a mechanism [to address extinguishing  
20 the lien or interest without paying such interest in full] and the [debtor in possession] must  
21 demonstrate how satisfaction of the lien ‘could be compelled.’” *Id.* at 45. Finally, the  
22 Bankruptcy Appellate Panel held that § 363(f)(5) requires that there be, “or that there be the  
23 possibility of, some proceeding, either at law or at equity, in which the nondebtor could be  
24 forced to accept money in satisfaction of its interest.” *Id.*

25 In *In re Jolan, Inc.*, 403 B.R. 866 (Bankr. W.D. Wash. 2009), decided after *Clear*  
26 *Channel*, the bankruptcy court held that *Clear Channel* “does not preclude a §363(b) sale free  
27 and clear for an amount less than enough to satisfy all liens....” *Id.* at 867. “The [Bankruptcy  
28 Appellate] Panel nowhere addressed non-contractual mechanisms whereby a lienholder might

1 get less than full payment yet lose the lien. In fairness, the appellees [in *Clear Channel*] did not  
2 even argue that there were any qualifying legal or equitable proceedings beyond cramdown  
3 under §1129.” *Id.* at 869.<sup>14</sup>

4 “As in *Clear Channel*, subsection (f)(5) is the only subsection of § 363 which might here  
5 permit the trustee’s proposed auction if the proceeds do not cover the debts secured by the  
6 collateral sold. But there are legal and equitable proceedings in Washington in which a junior  
7 lienholder could be compelled to accept a money satisfaction: a senior secured party’s  
8 disposition of collateral under the default remedies provided in part VI of Article 9, Secured  
9 Transactions of Washington’s Uniform Commercial Code, RCW 62A.9A.” *Id.*

10 Other examples provided by the *Jolan* court included: (1) a receiver’s sale free and clear  
11 of liens under applicable Washington law; (2) the liquidation of a probate estate under  
12 applicable Washington law; (3) a personal property tax sale; (4) a federal tax lien sale; and (5) a  
13 judicial or nonjudicial foreclosure of real property.

14 As discussed above in connection with section 363(f)(1), there are legal and equitable  
15 proceedings available in California and other jurisdictions that parallel the proceedings  
16 discussed by the bankruptcy court in *Jolan*.

17 Here, all of the factors set forth in *Clear Channel* for a sale free and clear of claimants’  
18 interests could be satisfied. Specifically, any party who asserts an “interest” in the Purchased  
19 Assets could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of  
20 its interest. Similarly, any unsecured creditor of the Debtors’ estates could undeniably be forced  
21 to accept, via court proceedings whereby such creditors could obtain money judgments against  
22 the Debtors, money satisfaction of their claims.

23 Based upon all of the foregoing, all creditors of the Debtors’ estates, could be compelled,  
24 in a legal or equitable proceeding, to accept a money satisfaction of their interest.

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25  
26 <sup>14</sup> *But see Clear Channel*, footnote 21: “*Collier* seems to indicate that UCC §9-320, which  
27 permits a sale free and clear of a consensual security interest if the collateral is sold in the  
28 ordinary course of business of the debtor, might satisfy paragraph (5). We think, however, that  
such a use is better classified under paragraph (1).

1 **C. The Bankruptcy Court Should Authorize The Debtors To Assume And Assign To**  
2 **The Winning Bidder Or The Winning Overbidder All Of The Assigned Contracts**  
3 **That The Winning Bidder Or The Winning Backup Bidder, As The Case May Be,**  
4 **Desires.**

5 Barring exceptions not herein relevant, sections 365(a) and 1107(a) authorizes a debtor in  
6 possession, “subject to the Court’s approval, ... [to] assume or reject any executory contract or  
7 unexpired lease of the debtor.” A debtor in possession may assume or reject executory contracts  
8 for the benefit of the estate. *In re Klein Sleep Products, Inc.*, 78 F.3d 18, 25 (2d. Cir. 1996); *In*  
9 *re Central Fla. Metal Fabrication, Inc.*, 190 B.R. 119, 124 (Bankr. N.D. Fla. 1995); *In re Gucci*,  
10 193 B.R. 411, 415 (S.D.N.Y. 1996). In reviewing a debtor in possession’s decision to assume or  
11 reject an executory contract, a bankruptcy court should apply the “business judgment test” to  
12 determine whether it would be beneficial to the estate to assume it. *In re Continental Country*  
13 *Club, Inc.*, 114 B.R. 763, 767 (Bankr. M.D. Fla. 1990); *see also In re Gucci*, 193 B.R. at 415.  
14 The business judgment standard requires that the court follow the business judgment of the  
15 debtor unless that judgment is the product of bad faith, whim, or caprice. *In re Prime Motors*  
16 *Inns*, 124 B.R. 378, 381 (Bankr. S.D. Fla. 1991), *citing Lubrizol Enterprises v. Richmond Metal*  
17 *Finishers*, 756 F.2d 1043, 1047 (4th Cir. 1985), *cert. denied*, 475 U.S. 1057 (1986).

18 Pursuant to section 365(f)(2) of the Bankruptcy Code, a debtor may assign its executory  
19 contracts and unexpired leases, provided the debtor first assumes such executory contracts and  
20 unexpired leases in accordance with section 365(b)(1), and provides adequate assurance of future  
21 performance by the assignee. Pursuant to section 365(b)(1), assumption of executory contracts  
22 and unexpired leases requires a debtor to: (a) cure any existing defaults under such agreements;  
23 (b) compensate all non-debtor parties to such agreements for any actual pecuniary loss resulting  
24 from the defaults; and (c) provide adequate assurance of future performance under the contract or  
25 lease. 11 U.S.C. § 365(b)(1); *see also In re Bowman*, 194 B.R. 227, 230 (Bankr. D. Ariz. 1995);  
26 *In re AEG Acquisition Corp.*, 127 B.R. 34, 44 (Bankr. C.D. Cal. 1991), *aff’d* 161 B.R. 50 (9th  
27 Cir. B.A.P. 1993). Pursuant to section 365(f)(1) of the Bankruptcy Code, a debtor may assign an  
28 executory contract or unexpired lease pursuant to section 365(f)(2) of the Bankruptcy Code

1 notwithstanding any provision in such executory contract or unexpired lease that prohibits,  
2 restricts or conditions the assignment of such executory contract or unexpired lease.

3 The assumption and assignment of executory contracts furthers the goals of Chapter 11 of  
4 promoting reorganization by balancing the debtor's interest in maximizing the value of its estate  
5 against the contracting party's interest in receiving the benefit of its bargain and being protected  
6 against default by the debtor after assumption has occurred. *In re Embers 86th Street, Inc.*, 184  
7 B.R. 892, 896 (Bankr. S.D.N.Y. 1995).

8 By way of this Motion, the Debtors are also seeking the Court's approval of the Debtors'  
9 assumption and assignment to the winning bidder and the winning backup bidder of those  
10 unexpired leases and executory contracts, respectively, that the winning bidder and the winning  
11 backup bidder, respectively, wish to assume.

12 Concurrently herewith, the Debtors have filed and served on contracting counterparties  
13 that certain *Notice Of: (1) Assumption And Assignment Of Executory Contracts And Unexpired*  
14 *Leases; (2) Establishment Of Cure Amounts In Connection Therewith; (3) Procedures And*  
15 *Deadlines Regarding Oppositions To Assumption And Assignment, And Cure Amounts; And (4)*  
16 *Hearing Thereon* (the "Assumption/Assignment Notice")<sup>15</sup> setting forth a schedule of all of the  
17 Debtors' known executory contracts and unexpired leases (the "Contracts and Leases  
18 Schedule"), along with the Debtors' belief as to all outstanding cure amounts owing by the  
19 Debtors to the other parties to those executory contracts and unexpired leases (the "Cure  
20 Amount").

21 By way of this Motion, the Debtors are seeking the Court's authority to assume and  
22 assign to the winning bidder/winning backup bidder all of the Debtors' executory contracts and  
23 unexpired leases that the winning bidder/winning backup bidder wants to have assigned to it and  
24 to fix the required Cure Amounts that would need to be paid to the other parties to the executory  
25 contracts and unexpired leases to enable compliance with the provisions of Section 365(b)(1)(A)  
26 of the Bankruptcy Code at the Cure Amounts set forth in the Contracts and Leases Schedule  
27

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28 <sup>15</sup> The form of the Assumption/Assignment Notice was previously approved by the Court.

1 unless the other parties to the executory contracts and unexpired leases file a timely objection to  
2 the Motion and the Court determines that the required Cure Amount is different than the amount  
3 set forth in the Contracts and Leases Schedule. By way of this Motion, the Debtors are also  
4 seeking a determination by the Court that none of the other parties to the executory contracts and  
5 unexpired leases have suffered any actual pecuniary loss resulting from any default by the  
6 Debtors so that no further payments beyond the proposed Cure Amounts are required to enable  
7 compliance with the provisions of Section 365(b)(1)(B) of the Bankruptcy Code.

8 The Debtors submit that none of the other parties to the executory contracts and  
9 unexpired leases have suffered any actual pecuniary loss resulting from any default by the  
10 Debtors so that no further payments beyond the proposed Cure Amounts are required to enable  
11 compliance with the provisions of Section 365(b)(1)(B) of the Bankruptcy Code. The Debtors  
12 therefore submit that any party that fails to file a timely objection to this Motion should be  
13 deemed to have consented to the Debtors' proposed Cure Amounts and pecuniary loss amounts  
14 and be forever barred from challenging the Debtors' proposed Cure Amounts and pecuniary loss  
15 amounts.

16 Pursuant to the Amended Bidding Procedures, an Initial Bid (due August 10, 2022) must  
17 identify all of the Debtors' executory contracts and unexpired leases with respect to which a  
18 Bidder seeks assignment from the Debtors, with the Winning Bidder having the right to amend  
19 such list at any time prior to the commencement of the hearing on this Motion.

20 Those executory contracts and unexpired leases that will not be assumed and assigned to  
21 the Winning Bidder (or the Winning Backup Bidder) at the closing of the sale, will be deemed  
22 rejected. The Debtors propose to file a notice with the Court subsequent to the closing of a sale  
23 setting forth a list of those contracts and leases that have been deemed rejected.

24 **D. The Debtors Request the Court to Waive the Fourteen-Day Waiting Periods Set**  
25 **Forth in Bankruptcy Rules 6004(h) and 6006(d).**

26 Bankruptcy Rule 6004(h) provides, among other things, that an order authorizing the use,  
27 sale or lease of property . . . is stayed until the expiration of fourteen days after entry of the Court  
28 order, unless the Court orders otherwise. Bankruptcy Rule 6006(d) has a similar provision with



1 respect to an order approving of a debtor's assumption and assignment of unexpired leases and  
2 executory contracts.

3 For all of the reasons set forth above, the Debtors believe that selling the Purchased  
4 Assets in accordance with the timeline provided in the Amended Bidding Procedures Order is in  
5 the best interests of the Debtors' estates. Closing the sale of the Purchased Assets as soon as  
6 possible will minimize the need for the Debtors to expend further cash for their business  
7 operations. In order to facilitate the most expeditious closing possible, the Debtors request that  
8 the order granting this Motion be effective immediately upon entry by providing that the  
9 fourteen-day waiting periods of Bankruptcy Rule 6004(h) and 6006(d) are waived.

10 **IV. CONCLUSION**

11 Based upon all of the foregoing, the Debtors respectfully requests that the Court enter an  
12 order granting this Motion in its entirety and all of the relief requested above in this Motion.

13 Dated: July 28, 2022

14 TRX HOLDCO, LLC  
FITNESS ANYWHERE LLC

15 By: /s/ Krikor J. Meshefejian  
16 RON BENDER  
17 KRIKOR J. MESHEFEJIAN  
18 LINDSEY L. SMITH  
19 LEVENE, NEALE, BENDER,  
20 YOO & GOLUBCHIK L.L.P.  
21 Attorneys for Chapter 11 Debtors and  
22 Debtors in Possession  
23  
24  
25  
26  
27  
28

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
2818 La Cienega Avenue, Los Angeles, CA 90034

A true and correct copy of the foregoing document entitled (*specify*): **DEBTORS' MOTION FOR AN ORDER: (1) APPROVING SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES; (2) APPROVING ASSUMPTION AND ASSIGNMENT OF UNEXPIRED LEASES AND EXECUTORY CONTRACTS AND DETERMINING CURE AMOUNTS, AND APPROVING REJECTION OF UNEXPIRED LEASES AND EXECUTORY CONTRACTS WHICH ARE NOT ASSUMED; (3) WAIVING THE 14-DAY STAY PERIODS OF BANKRUPTCY RULES 6004(h) AND 6006(d); AND (4) GRANTING RELATED RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **July 28, 2022**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Ron Bender rb@lnbyb.com
- Shawn M Christianson cmcintire@buchalter.com, schristianson@buchalter.com
- Michael I. Gottfried mgottfried@elkinskalt.com, cavila@elkinskalt.com
- Jonathan Gottlieb jdg@lnbyg.com
- Michael J Hauser michael.hauser@usdoj.gov
- Marsha A Houston mhouston@reedsmith.com, hvalencia@reedsmith.com
- Ori Katz okatz@sheppardmullin.com, lsegura@sheppardmullin.com
- Krikor J Meshefejian kjm@lnbyg.com
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- Christopher O Rivas crivas@reedsmith.com, chris-rivas-8658@ecf.pacerpro.com
- Lindsey L Smith lls@lnbyg.com, lls@ecf.inforuptcy.com
- United States Trustee (SA) ustpregion16.sa.ecf@usdoj.gov

2. **SERVED BY UNITED STATES MAIL**: On (*date*) **July 28, 2022**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) **July 28, 2022**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

### **SERVED BY PERSONAL DELIVERY**

Honorable Scott C. Clarkson  
U.S. Bankruptcy Court, Ronald Reagan Federal Building  
411 West Fourth Street  
Suite 5130  
Santa Ana, CA 92701-4593

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

July 28, 2022  
*Date*

Lourdes Cruz  
*Printed Name*

/s/ Lourdes Cruz  
*Signature*

Fitness Anywhere LLC &  
TRX Holdco  
Secured, Committee (Fitness),  
Top 20 (TRX), OUST, RSN

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Secured Creditor

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The Woodlands, TX 77380

Secured Creditor

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