

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

In re:)	
)	Chapter 11
PACKABLE HOLDINGS, LLC F/K/A)	
ENTOURAGE COMMERCE, LLC, <i>et al.</i> , ¹)	Case No. 22-10797 (CTG)
)	
Debtors.)	(Jointly Administered)
)	
)	Hearing Date: October 26, 2022 at 2:00 p.m. (ET)
)	Objection Deadline: October 19, 2022 at 4:00 p.m. (ET)

DEBTORS’ MOTION FOR (I) ENTRY OF AN ORDER (A) APPROVING CERTAIN BIDDING PROCEDURES AND THE FORM AND MANNER OF NOTICE THEREOF, (B) SCHEDULING AN AUCTION FOR THE DEBTORS’ PERRIS, CALIFORNIA LEASEHOLD INTEREST, AND (C) SCHEDULING A HEARING TO APPROVE THE SALE AND THE ASSUMPTION AND ASSIGNMENT OF THE CALIFORNIA LEASE; (II) ENTRY OF AN ORDER APPROVING AND AUTHORIZING (A) THE SALE AND (B) THE ASSUMPTION AND ASSIGNMENT OF THE CALIFORNIA LEASE; AND (III) RELATED RELIEF

By this motion (the “Motion”), the above-captioned debtors and debtors in possession (the “Debtors”) seek, pursuant to sections 105, 363, 365, 503 and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), Rules 2002, 6004, 6006, and 9006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rules 2002-1, 6004-1 and 9006-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”):

- (i) entry of an order (the “Bidding Procedures Order”), substantially in the form attached hereto as **Exhibit A**:
 - (a) approving proposed auction and bidding procedures (the “Bidding Procedures”) in connection with the sale (the “Sale”) of the interest of Debtor Pharmapacks, LLC (“Pharmapacks”) in that certain lease with CH/BDG Harvill, LLC (“Landlord”) of premises located at 21500 Harvill Avenue, Perris, California 92570 (the “California Lease”) in the form attached to the Bidding Procedures

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number include: Packable Holdings, LLC (6932); Greenpharm Ventures LLC (1513); Packable Media, LLC (6006); Pharmapacks, LLC (6676); Packable Ventures, LLC (1172); and Access Brands, LLC (8582). The location of the Debtors’ service address in these chapter 11 cases is 1985 Marcus Avenue, Suite 207, Lake Success, NY 11042.

Order as Exhibit 1, and approving the form and manner of notice thereof in the form attached to the Bidding Procedures Order as Exhibit 2;

- (b) scheduling an auction (the “Auction”) and a sale hearing (the “Sale Hearing”) in connection with the Sale; and
- (ii) entry of an order (the “Sale Order”):
 - (a) authorizing and approving the Debtors’ Sale of Pharmapacks’ interest in the California Lease to the Successful Bidder or Next-Highest Bidder, as applicable;
 - (b) authorizing and approving the assumption and assignment of the California Lease in connection with the Sale; and
- (iii) a grant of related relief.

In support of this Motion, the Debtors rely on and incorporate by reference the declaration of Brian Teets in support of this Motion filed contemporaneously herewith (the “Teets Decl.”) and respectfully state as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. The Debtors confirm their consent, pursuant to Local Rule 9013-1(f), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

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

3. The statutory and legal predicates for the relief requested herein are sections 105(a), 363, 365, 503, and 507 of title 11 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, and 6006, and Local Rule 6004-1.

BACKGROUND

4. On August 28, 2022 (the “Petition Date”), the Debtors commenced these chapter 11 cases by filing petitions for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”). The Debtors continue to manage and operate their business as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. The Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed an official committee of unsecured creditors (the “Committee”) on September 13, 2022. [D.I. 81] No trustee or examiner has been appointed in the Chapter 11 Cases.

6. Packable Holdings, LLC (“Holdings”), together with its affiliated debtors, debtors in possession, and affiliated non-debtors (collectively, “Packable”), is a privately-owned tech-enabled e-commerce company with its principal place in Hauppauge, New York. Packable operates as a third-party seller of health and beauty products on online marketplaces in North America.

7. As is further discussed in the *Declaration of Brian Teets in Support of the Chapter 11 Petition and First Day Motions* [D.I. 13] (the “First Day Declaration”),² the Debtors commenced the Chapter 11 Cases to effectuate an orderly winding down of the Debtors’ operations and to liquidate their assets in a value maximizing manner for the benefit of their creditors.

RELEVANT BACKGROUND AND PROPOSED SALE PROCESS

8. As explained in the First Day Declaration, in early 2022, the Debtors announced the planned opening of a new warehouse and fulfillment facility in Perris, California (the “California Facility”), which was expected open in the second quarter of 2022. In connection with that process, Debtor Pharmapacks entered into the California Lease, dated June 30, 2021, which

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Bidding Procedures or the First Day Declaration, as applicable.

has an initial term of approximately twelve years and six months from the Term Commencement Date (as defined in the California Lease), and two optional five-year extensions. Teets Decl. at ¶ 5. The leased premises comprise approximately 333,572 square feet, with annual base rent payments of approximately \$3.67 million at the beginning of the initial term, which scale up to approximately \$5.54 million at the end of the initial term. *Id.*

9. Packable subsequently suspended its efforts to open the California Facility prepetition in order to preserve liquidity, and ultimately abandoned those efforts upon the commencement of the company's wind-down. *Id.* at ¶ 6. As a result, the California Facility is presently vacant (although certain fixtures and equipment remains onsite) and is not being used by the Debtors. *Id.* While the Debtors have no further need of the California Facility, they have reason to believe the California Lease may have value that can be monetized through the Sale of Pharmapacks' leasehold interest in the California Facility (the "Asset") and the corresponding assumption and assignment of the California Lease to a third-party purchaser. *Id.* at ¶ 7. The Debtors are current on their obligations under the California Lease and believe that the cure amount associated with the assumption of the California Lease (the "Cure Costs") is \$0. *Id.* at ¶ 6.

10. Contemporaneously with this Motion, the Debtors are filing an application to retain Retail Consulting Services, Inc. d/b/a RCS Real Estate Advisors ("RCS") and Jones Lang LaSalle Americas, Inc. ("JLL") and, collectively with RCS, the "Consultant") to assist with the marketing of certain commercial real estate leases, including the California Lease. In order to limit the further accrual of monthly rental payments for a property that is not in use, Consultant has commenced

marketing of Pharmapacks' interest in California Lease pending approval of Consultant's retention and the relief requested in this Motion.³

11. The Debtors file this Motion to proceed with a bidding and auction process to consummate a Sale and generate maximum value for the Asset. To facilitate the Sale, the Debtors, in consultation with their professional advisors, have developed certain customary bidding procedures (i.e., the Bidding Procedures) to preserve the flexibility of the sale process, generate the greatest level of interest in the Asset, and obtain the highest or otherwise best value for it. Among other things, these procedures, in the Debtors' business judgment, create an appropriate timeline for the sale process.⁴

THE PROPOSED BIDDING PROCEDURES

12. The Debtors are requesting approval of the Bidding Procedures, which describe, among other things, (a) the Asset available for sale, (b) the manner in which bids become "qualified," (c) the coordination of diligence efforts among the bidders and the Debtors, (d) the receipt and negotiation of bids received, (e) the conduct of any Auction, and (f) the selection and approval of the Successful Bidder and the selection of the Next-Highest Bidder. The Bidding Procedures reflect the Debtors' objective of conducting the sale process in a controlled but fair and

³ Should no Qualified Bids for the Asset be submitted by the Bid Deadline, the Debtors intend to immediately move to reject the California Lease as well as any and all other related executory contracts and unexpired leases for furniture, fixtures and equipment located at the California Facility for which a rejection motion has not previously been filed.

⁴ The Debtors have not yet received the ABL Lenders' consent with respect to the Bidding Procedures but expect to resolve any issues in advance of the hearing to approve them.

open manner while ensuring that the highest or best bid is generated for the Asset. The following is a summary of the Debtors' proposed Bidding Procedures⁵ as required by Local Rule 6004-1.

13. Determination by the Debtors. Following consultation with the Consultation Parties, the Debtors shall (a) coordinate with Potential Bidders regarding the conduct of their respective due diligence, (b) evaluate bids from Potential Bidders on the Asset, (c) negotiate any bid made to acquire the Asset, and (d) make such other determinations as are provided in these Bidding Procedures.

14. Due Diligence. The Debtors, with the assistance of the Consultant, will coordinate all reasonable requests for information related to the Asset and due diligence access from Potential Bidders and the Consultation Parties. In the event that any such due diligence material is in written form and has not previously been provided to any other Potential Bidder, the Debtors will simultaneously provide access to such materials to (a) all Potential Bidders, and (b) all Consultation Parties.

15. Bid Deadline. On or before October 28, 2022, at 5:00 p.m. (prevailing Eastern Time) (the "Bid Deadline"), a Potential Bidder that desires to make a Bid is required to deliver written copies of its Bid to Consultant, Attn: Spence Mehl (smehl@rcsrealestate.com) and Seth Geldzahler (seth.geldzahler@am.jll.com). As soon as reasonably practicable following the Bid Deadline, the Debtors will provide to the Consultation Parties copies of all Qualified Bids (with such distribution permissible by electronic means).

16. Bid Requirements. All Bids must comply with the following Bid Requirements:

(a) be accompanied by a letter or email:

⁵ Any summary of the Bidding Procedures contained herein is qualified in its entirety by the actual terms and conditions of the Bidding Procedures attached as Exhibit 1 to the Bidding Procedures Order. To the extent that there is any conflict between the summary contained herein and the actual terms and conditions of the Bidding Procedures reflected in Exhibit 1 to the Bidding Procedures Order, the terms and conditions of the Bidding Procedures control.

- (i) fully disclosing the identity of the Potential Bidder and providing the contact information of the specific person(s) whom the Debtors or its advisors should contact (including any equity holder or other financial backer if the Potential Bidder is an entity formed for the purpose of consummating the proposed Sale) in the event that the Debtors have any questions or wish to discuss the Bid submitted by the Potential Bidder;
- (ii) setting forth the purchase price to be paid by such Potential Bidder and forms of consideration the Potential Bidder intends to use to pay such purchase price;
- (iii) stating with specificity the liabilities and obligations (including applicable cure costs) to be assumed by the Potential Bidder in connection with the Sale;
- (iv) providing that the Bid is not subject to any bidding, break-up fee, termination fee, transaction fee, expense reimbursement or any similar type of reimbursement (the “Bidding Fee”), and including an express waiver of any substantial contribution administrative expense claim under section 503(b) of the Bankruptcy Code related to bidding for the Asset;
- (v) agreeing that the Potential Bidder’s offer is binding, unconditional, and irrevocable until two (2) business days after the closing of the Sale;
- (vi) containing a commitment to close the contemplated transaction(s) by a Closing Date (as defined below) of no later than November 30, 2022 (unless otherwise agreed);
- (vii) providing that such Bid is not subject to contingencies of any kind, including, without limitation, contingencies related to financing, internal approval, or due diligence;
- (viii) containing an acknowledgment that the Potential Bidder has had an opportunity to conduct any and all due diligence regarding the Asset and has relied solely upon its own independent review, investigation and/or inspection of any documents and any other information in making the Bid;
- (ix) providing that the Potential Bidder agrees to serve as a backup bidder (the “Next-Highest Bidder”) if the Potential Bidder’s Qualified Bid (as defined below) is the next highest or best bid after the Successful Bid (as defined below) (the “Next-Highest Bid”) with respect to the relevant Asset through the Closing Date; and

- (b) be accompanied by an executed lease disposition agreement in form and substance reasonably acceptable to the Debtors;⁶
- (c) be accompanied by adequate assurance of future performance information (the “Adequate Assurance Information”), which may include (i) information about the Potential Bidder’s financial condition, such as federal tax returns for two years, a current financial statement, or bank account statements, (ii) information demonstrating (in the Debtors’ reasonable business judgment) that the Potential Bidder has the financial capacity to consummate the proposed Sale and perform under the terms of the California Lease, (iii) evidence that the Potential Bidder has obtained authorization or approval from its board of directors (or comparable governing body) with respect to the submission of its Bid, and (iv) such additional information regarding the Potential Bidder as the Potential Bidder may elect to include. By submitting a Bid, Potential Bidders agree that the Debtors may disseminate their Adequate Assurance Information to the Landlord and the Consultation Parties in the event that the Debtors determines such bid to be a Qualified Bid (as defined below); and
- (d) be accompanied by (i) a deposit in the form of a certified check or wire transfer, payable to the order of the Debtors, in the amount of ten percent (10%) of the cash consideration of the Bid, which funds will be deposited into an escrow account to be identified and established by the Debtors (a “Good Faith Deposit”), and (ii) written evidence, documented to the Debtors’ satisfaction, that demonstrates the Potential Bidder has available cash, a commitment for financing if selected as the Successful Bidder (as defined below) with respect to the Asset (provided, however, that the closing shall not be contingent in any way on the Successful Bidder’s financing) and such other evidence of ability to consummate the transaction(s) as the Debtors may request, including proof that such funding commitments or other financing are not subject to any internal approvals, syndication requirements, diligence or credit committee approvals (provided further that such commitments may have covenants and conditions acceptable to the Debtors). The Debtors reserve the right to increase the Good Faith Deposit for one or more Qualified Bidders (as defined below) in its sole discretion after consulting with the Consultation Parties.

17. A bid received from a Potential Bidder for the Asset that is determined by the Debtors, in consultation with the Consultation Parties, to meet the above requirements will be considered a “Qualified Bid” and each Potential Bidder that submits such a Qualified Bid will be considered a “Qualified Bidder.” The Debtors shall inform Qualified Bidders that their Bids have

⁶ A proposed form agreement will be provided to Potential Bidders upon request and the Successful Bidder’s executed agreement will be filed in advance of the Sale Hearing.

been designated as Qualified Bids no later than the earlier of (a) twenty-four (24) hours after such Bids are received, or (b) October 28, 2022, at 9:00 p.m. ET. If at least two Qualified Bids are received by the Bid Deadline with regard to the Asset, the Debtors will conduct an auction (the “Auction”) with respect to the Asset and shall determine, after consultation with the Consultation Parties, which Qualified Bid is the highest or otherwise best Qualified Bid for purposes of constituting the opening bid at the Auction (the “Starting Bid”). The Starting Bid will be communicated to Qualified Bidders prior to the commencement of the Auction. The determination of which Qualified Bid constitutes the Starting Bid and which Qualified Bid constitutes the Successful Bid shall take into account any factors the Debtors (in consultation with the Consultation Parties) reasonably deem relevant to the value of the Qualified Bid to the Debtors’ estates, including, among other things, the following: (a) the amount and nature of the consideration, including any obligations to be assumed; (b) the executory contracts and unexpired leases of the Debtors for furniture, fixtures or equipment located at the California Facility, if any, for which assumption and assignment or rejection is required, and the costs and delay associated with any litigation concerning executory contracts and unexpired leases necessitated by such bid; (c) the likelihood of the Qualified Bidder being able to close the proposed transaction (including obtaining any required regulatory approvals) and the timing thereof; (d) the net benefit to the Debtors’ estates; and (e) the tax consequences of such Qualified Bid. The Starting Bid will be provided to Qualified Bidders on or before October 31, 2022, at 9:00 p.m. ET.

18. Auction. The Auction shall be held virtually on November 3, 2022, starting at 10:00 a.m. (prevailing Eastern Time). Professionals and principals for the Debtors, each Qualified Bidder (including, its representative(s), if any), each of the Consultation Parties, and any creditor of the Debtors that has provided notice in writing of its intent to observe the Auction at least one

(1) day prior to the start of the Auction shall be permitted to attend and observe the Auction, along with any other parties the Debtors deem appropriate, through a Zoom link to be provided to all such parties prior to the commencement of the Auction. Each Qualified Bidder participating in the Auction will be required to confirm, in writing, and on the record at the Auction, that (a) it has not engaged in any collusion with respect to the Bidding Process, and (b) its Qualified Bid is a good faith *bona fide* offer that it intends to consummate if selected as the Successful Bidder.

19. At the Auction, participants will be permitted to increase their bids and improve their terms in accordance with the Bidding Procedures; provided that any such increased or improved bid must be a Qualified Bid (except that the Bid Deadline will not apply). Bidding for the Asset will start at the applicable Starting Bid and will continue, in one or more rounds of bidding, so long as during each round at least one Subsequent Bid is submitted by a Qualified Bidder. Following consultation with the Consultation Parties, the Debtors may at any time adopt rules for the Auction that the Debtors reasonably determine to be appropriate to promote the goals of the bidding process and not in conflict with the Bidding Procedures, the Bankruptcy Code, or applicable orders of the Court.

20. Prior to the conclusion of the Auction, the Debtors will: (a) review and evaluate each bid made at the Auction on the basis of financial and contractual terms and other factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the sale transaction; (b) in the exercise of their good faith business judgment and consistent with the Bidding Procedures, identify the highest or otherwise best offer or collection of offers in respect of the Asset (the “Successful Bid”); (c) inform and consult with the Consultation Parties regarding the foregoing, so long as the Consultation Party is not also a Potential Bidder; and (d) notify all Qualified Bidders participating in the Auction, prior to its

adjournment, of the successful bidder or bidders (the “Successful Bidder”) and the amount and other material terms of the Successful Bid.

21. After determining the Successful Bid for the Asset, the Debtors may determine, in their reasonable business judgment, in consultation with the Consultation Parties, which Qualified Bid is the next best bid for the Asset (the “Next-Highest Bid”).

22. Acceptance of Qualified Bids. The Debtors’ selection and submission to the Court of the selected bid as the Successful Bid will not constitute the Debtors’ acceptance of the bid. The Debtors will have accepted a Qualified Bid only when such Qualified Bid has been approved by the Court at the Sale Hearing. If the Successful Bidder does not close the Sale by the date agreed upon by the Debtors and the Successful Bidder, then the Debtors shall be authorized, but not required, to close with the party that submitted the Next-Highest Bid (the “Next-Highest Bidder”) pursuant to further order of the Court.

23. Modification of Bidding Procedures. Following consultation with the Consultation Parties, the Debtors may amend the Bidding Procedures or the bidding process at any time and from time to time in any manner that it determines in good faith will best promote the goals of the process, including extending or modifying any of the dates described herein.

24. Return of Good Faith Deposit. The Good Faith Deposits of all Qualified Bidders will be held in escrow and while held in escrow will not become property of the Debtors’ bankruptcy estates unless released from escrow pursuant to terms of the applicable escrow agreement or pursuant to further order of the Court. At the closing of a sale transaction contemplated by a Successful Bid, the applicable Successful Bidder will be entitled to a credit for the amount of its Good Faith Deposit to the extent such a deposit was provided. The Good Faith Deposits of any Next-Highest Bidder shall be retained until three (3) business days after the

applicable Closing Date. The Good Faith Deposits of any other Qualified Bidders will be returned as soon as practicable but no later than seven (7) business days following the Auction.

**NOTICE PROCEDURES FOR THE SALE,
BIDDING PROCEDURES, AUCTION AND SALE HEARING**

25. The Debtors also request approval of the notice of the Auction, Sale Hearing and Bidding Procedures (the “Sale Notice”), substantially in the form attached to the Bidding Procedures Order as Exhibit 2.

26. As soon as practicable after the entry of the Bidding Procedures Order, the Debtors will serve the Sale Notice by regular mail and/or email upon: (a) the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”); (b) the United States Securities and Exchange Commission; (c) the United States Department of Justice; (d) counsel to the ABL Agent; (e) counsel to the Committee; (f) the California attorney general and consumer protection agency; (g) the parties included on the Debtors’ list of thirty (30) largest unsecured creditors; (h) all parties who are known by the Debtors to assert liens against or interests in the Asset, if any; (i) all non-Debtor parties to the Assumed Contracts; (j) any party known or reasonably believed to have expressed an interest in acquiring the Asset; and (k) all parties who, as of the filing of this Motion, have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002 (collectively, “Sale Notice Parties”).

27. The Debtors will also cause the Sale Notice to be published once in the New York Times, and will post the Sale Notice and the Bidding Procedures Order on the website of the Debtors’ claims and noticing agent. The Sale Notice will include, among other things, the date, time and place of the Auction and the Sale Hearing and the deadline for filing any objections to the relief requested in the Sale Motion once they are set by the Court.

KEY SALE PROCESS DATES

28. The following is a summary of the proposed key dates for the sale process:

<u>Date</u>	<u>Deadline/Event</u>
October 19, 2022, at 4:00 p.m. (ET)	Deadline to object to the Debtors' proposed assumption and assignment of the California Lease and related Cure Costs ⁷
October 26, 2022, at 2:00 p.m. (ET)	Bidding Procedures Hearing
October 28, 2022, at 5:00 p.m. (ET)	Bid Deadline
No later than the earlier of (a) twenty-four (24) hours after such Bids are received, or (b) October 28, 2022, at 9:00 p.m. (ET)	Deadline for Debtors to notify Potential Bidders of whether their Bids are Qualified Bids
November 3, 2022, starting at 10:00 a.m. (ET)	Auction (if necessary)
November 4, 2022, at 4:00 p.m. (ET)	Deadline to file and serve Notice of Successful Bidder
November 7, 2022, at 4:00 p.m. (ET)	Deadline to object to (a) the Sale of the Asset; (b) the conduct of the Auction; (c) the proposed Sale to the Successful Bidder; and (d) the ability of the Successful Bidder to provide adequate assurance of future performance, or the proposed form of adequate assurance of future performance
November 8, 2022, at 10:00 a.m. (ET)	Sale Hearing
On or prior to November 30, 2022 ⁸	Closing

29. The Debtors respectfully submit that the timeline set forth above is reasonable and necessary under the circumstances of these Chapter 11 Cases. The proposed schedule provides an

⁷ This objection deadline applies to all objections to the assumption and assignment of the California Lease to a Successful Bidder, including the amount of any Cure Costs, with the exception of objections related solely to the identity of the Successful Bidder and adequate assurance of future performance by the Successful Bidder.

⁸ Unless otherwise agreed.

approximately six-week period between the commencement of a formal marketing process by the Consultant and the Bid Deadline. This timeline will allow potential bidders sufficient time to formulate bids for the Asset. In light of the limited universe of potential Bidders for the Asset, the Debtors believe that the most likely potential purchasers for the Asset have been contacted regarding the potential to purchase the Asset. Moreover, a copy of the California Lease will be provided to potential Bidders upon request, allowing them to immediately conduct due diligence on the Asset. Critically, an expeditious marketing process will also allow the Debtors to determine whether the California Lease has value that can be monetized for the benefit of the estates before another month of rent accrues for a property that the Debtors do not need and are not using.

THE PROPOSED SALE ORDER

30. The Debtors anticipate that the Sale Order will contain certain provisions that require disclosure under Local Rule 6004-1. At this time, the Debtors make the following statements:

- (a) Local Rule 6004-1(b)(iv)(A). To the extent a proposed purchaser is an insider (within the meaning of section 101(31) of the Bankruptcy Code), the Debtors will make the necessary disclosures to the Court and take measures to ensure the fairness of the sale process and the proposed transaction.
- (b) Local Rule 6004-1(b)(iv)(B). The Debtors do not presently have any agreement between any interested bidder and the Debtors' management or key employees. If any agreements are reached, the Debtors will make the necessary disclosures.
- (c) Local Rule 6004-1(b)(iv)(C). To the extent that the Sale Order includes a release in favor of any entity, the Debtors will make the necessary disclosures.
- (d) Local Rule 6004-1(b)(iv)(E). The contemplated Closing Date for the Sale is November 30, 2022.
- (e) Local Rule 6004-1(b)(iv)(F). The Debtors are requiring Qualified Bids to include a good faith deposit constituting ten percent (10%) of the total cash consideration of the bid.

- (f) Local Rule 6004-1(b)(iv)(G). The Debtors do not currently have any interim management or other agreement with any party. If any agreements are reached, the Debtors will make the necessary disclosures.
- (g) Local Rule 6004-1(b)(iv)(H). The Debtors are not seeking to release or allocate any sale proceeds without further order of the Court.
- (h) Local Rule 6004-1(b)(iv)(I). The Debtors are not seeking to have the Sale declared exempt from taxes under section 1146(a) of the Bankruptcy Code pursuant to this Motion.
- (i) Local Rule 6004-1(b)(iv)(J). The Debtors will retain necessary books and records, or copies thereof, to enable it to administer these Chapter 11 Cases in any Sale.
- (j) Local Rule 6004-1(b)(iv)(K). The Debtors are not seeking to sell avoidance actions.
- (k) Local Rule 6004-1(b)(iv)(L). The Debtors are seeking to sell the Asset free and clear of successor liability claims. The Debtors will have material unpaid prepetition unsecured claims after the closing of the Sale. No party would likely be willing to purchase the Asset if it were at risk of liability for those claims under principles of successor liability.
- (l) Local Rule 6004-1(b)(iv)(M). The Debtors are seeking to sell the Asset free and clear of all liens, claims, and encumbrances to the fullest extent permitted by sections 363 and 365 of the Bankruptcy Code.
- (m) Local Rule 6004-1(b)(iv)(O). The Debtors are seeking relief from the fourteen-day stay imposed by Bankruptcy Rule 6004(h) for the Sale, as further described below.

RELIEF REQUESTED

31. By this Motion, the Debtors seek entry of (a) the Bidding Procedures Order, (i) scheduling a date for the Auction and Sale Hearing, (ii) approving the Bidding Procedures, and the form and manner of notice thereof; and (b) the Sale Order authorizing and approving the Sale, and the assumption and assignment of the California Lease; and (c) an order granting related relief.

32. **The Debtors assert that there are no Cure Costs owing with respect to the California Lease pursuant to section 365(b)(1)(A)-(B) of the Bankruptcy Code as of the date hereof. However, to the extent the Landlord or other counterparty to the California Lease**

disagrees, such party must file an objection to this Motion asserting that a claim or unsatisfied obligation exists under the California Lease by October 19, 2022 at 4:00 p.m. (ET) (the “Cure Objection Deadline”). If a party does not object to the proposed Cure Amount by the Cure Objection Deadline, such party shall be deemed to have forever waived any such claim or other obligation and any such party shall be deemed to have forever waived such claim or obligation and shall be barred and enjoined from asserting any such claim or other obligation against the Debtors.

33. To the extent a counterparty objects to the Cure Costs and establishes that a cure or other amount is owing, that obligation will be satisfied by the Debtors upon the resolution of the cure objection upon assumption of the California Lease.

BASIS FOR RELIEF REQUESTED

A. Approval of the Sale Is Warranted Under Section 363(b) of the Bankruptcy Code

34. Section 363(b) of the Bankruptcy Code provides that a debtor, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b). Debtors must demonstrate a sound business justification for a sale or use of assets outside the ordinary course of business. *See, e.g., In re Martin*, 91 F.3d 389 (3d Cir. 1996) (citing *In re Schipper*, 933 F.2d 513 (7th Cir. 1991)); *In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992); *Stephens Indus., Inc. v. McClung*, 789 F.2d 386 (6th Cir. 1986); *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983).

35. Courts typically consider the following factors in determining whether a proposed sale meets this standard:

- a. whether a sound business justification exists for the sale;
- b. whether adequate and reasonable notice of the sale was given to interested parties;

- c. whether the sale will produce a fair and reasonable price for the property; and
- d. whether the parties have acted in good faith.

In re Decora Indus., Inc., 2002 WL 32332749, at * 2 (D. Del. May 20, 2002) (citing *Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991)).

36. When a debtor demonstrates a valid business justification for a decision, a strong presumption arises “that in making [the] business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1990) (holding that Delaware business judgment rule has “vitality by analogy” in chapter 11) (citations omitted).

37. The Debtors submit that their decision to pursue a Sale on the terms set forth in this Motion represents a reasonable exercise of the Debtors’ business judgment and, accordingly, the Sale should be approved under section 363(b) of the Bankruptcy Code. The Debtors will continue to conduct a fulsome process to market the Asset. The open and fair Auction and sale process contemplated by the Bidding Procedures will ensure that the Debtors’ estates receive the highest or best value available for the Asset by allowing the market to dictate the value of the Asset and will provide a greater recovery than would be provided by any other available alternative. Furthermore, compliance with the Bidding Procedures will ensure the fairness and reasonableness of the consideration to be paid by the Successful Bidder and establish that the Debtors and the Successful Bidder proceeded in good faith.

38. Additionally, the Debtors believe that the notice procedures described above are reasonable and adequate under the circumstances. Bankruptcy Rules 2002(a) and (c) require the Debtors to notify creditors of the Sale, the terms and conditions of the Sale, the time and place of

the Auction, and the deadline for filing any objections. The Debtors believe that the proposed notice procedures fully comply with Bankruptcy Rule 2002 and are reasonably calculated to provide timely and adequate notice of the Sale, the Auction, and the Sale Hearing to the Debtors' creditors and all other parties in interest that are entitled to notice, as well as those parties that have expressed a *bona fide* interest in acquiring the Asset.

39. The Sale, conducted in accordance with the Bidding Procedures, is likely to generate maximum value for the Debtors' estates, and represents the best path forward for maximizing recoveries. The Debtors submit that ample business justification exists for the consummation of the Sale, and therefore request that the Court approve such Sale.

B. The Sale of the Asset Free and Clear of All Encumbrances Is Authorized Under Section 363(f) of the Bankruptcy Code

40. The Debtors request approval to sell the Asset free and clear of any and all liens, claims, interests and encumbrances in accordance with section 363(f) of the Bankruptcy Code. Pursuant to section 363(f), a debtor in possession may sell estate property "free and clear of any interest in such property of an entity other than the estate" if any one of the following conditions is satisfied:

- (a) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (b) such entity consents;
- (c) 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;
- (d) such interest is in bona fide dispute; or
- (e) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f); *see Citicorp Homeowners Serv., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (Bankr. E.D. Pa. 1988) (because section 363(f) is written in the disjunctive, a court may approve a “free and clear” sale even if only one of the subsections is met).

41. Furthermore, it is well established that a bankruptcy court has the power, pursuant to section 363(f) of the Bankruptcy Code, to approve the sale of the Debtors’ assets free and clear of any claims against the Debtors. *In re TWA Airlines, Inc.*, 322 F.3d 283, 288-90 (3d Cir. 2003) (holding that successor liability claims are “interests in property” within the meaning of section 363(f)); *United Mine Workers of Am. Benefit Plan v. Leckie Smokeless Coal Co. (In re Leckie Smokeless Coal Co.)*, 99 F.3d 573 (4th Cir. 1996) (same).

42. The Debtors submit that the Sale of the Asset free and clear of encumbrances will satisfy the requirements of section 363(f) of the Bankruptcy Code. The Debtors also believe that the service of the Auction and Hearing Notice in accordance with the terms set forth in this Motion will afford creditors sufficient notice of the Sale and therefore provides additional justification for approval of the Sale free and clear of all encumbrances.

C. The Sale Should Be Subject to the Protections of Section 363(m) of the Bankruptcy Code

43. Section 363(m) of the Bankruptcy Code provides, in part, that the reversal or modification on appeal of an authorization of a sale pursuant to section 363(b) or section 363(c) of the Bankruptcy Code does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal. *See* 11 U.S.C. § 363(m).

44. In approving the Sale free and clear of encumbrances, the Debtors request that the Court find and hold that all purchasers of the Asset purchased in accordance with the Bidding

Procedures are entitled to the protections afforded by section 363(m) of the Bankruptcy Code. Such relief is appropriate in that selection of the Successful Bidder will be the result of a competitive bidding process and arm's-length, good-faith negotiations, and parties in interest will have the opportunity to review and object to a proposed transaction. *See Esposito v. Title Ins. Co. of Pa. (In re Fernwood Mkts.)*, 73 B.R. 616, 620 (Bankr. E.D. Pa. 1987) (good faith purchasers are protected under section 363(m) where notice is provided to lienholders).

D. The Court Should Approve the Bidding Procedures

45. The key objective in any sale of property of a debtor's estate is to maximize the value received by the estate. *See In re Mushroom Transp. Co.*, 382 F.3d 325, 339 (3d Cir. 2004) (finding that debtors "had a fiduciary duty to protect and maximize the estate's assets"); *Official Comm. of Unsecured Creditors of Cybergenics, Corp v. Chinery*, 330 F.3d 548, 573 (3d Cir. 2003) (same). Procedures used to enhance competitive bidding support this objective and, therefore, are appropriate in the context of bankruptcy sales. *See In re O'Brien Envtl. Energy, Inc.*, 181 F.3d 527, 537 (3d Cir. 1999); *see also Integrated Res. Inc.*, 147 B.R. at 659 (stating that bidding procedures "encourage bidding and . . . maximize the value of the Debtors' assets").

46. The Debtors and their professional advisors have designed the Bidding Procedures to promote a competitive and fair bidding process and, thus, to maximize value for the Debtors' estates and creditors. The Bidding Procedures will allow the Debtors to conduct the Auction in a controlled, fair, and open fashion that will encourage participation by financially capable bidders, thereby increasing the likelihood that the Debtors will receive the highest or best possible consideration for the Asset. Furthermore, the Bidding Procedures provide an appropriate framework for the Debtors and their independent fiduciaries and professional advisors to review,

analyze, and compare any bids received to determine which bids are in the best interests of the Debtors' estates and their creditors.

47. The Debtors submit that the Bidding Procedures are necessary and transparent and will derive the highest or best bids for the Asset. Therefore, the Debtors request that the Court approve the Bidding Procedures.

E. The Assumption and Assignment of the California Lease Satisfies Section 365 of the Bankruptcy Code

48. 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 HQ Global Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003) (finding that Debtors' decision to assume or reject executory contract is governed by business judgment standard and can only be overturned if decision was product of bad faith, whim or caprice); *see also In re Market Square Inn, Inc.*, 978 F.2d 116, 121 (3d Cir. 1992) (finding that assumption or rejection of lease "will be a matter of business judgment by the bankruptcy court").

49. 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). Any more exacting scrutiny would slow the administration of a debtor's estate and increase costs, interfere with the Bankruptcy Code's provision for private control of administration of the estate, and threaten a court's ability to control a case impartially. *See Richmond Leasing Co. v. Capital Bank*, 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 “actual pecuniary loss” relating to such default. 11 U.S.C. § 365(b)(1).

50. Under section 365(f) of the Bankruptcy Code, a debtor, after assuming a contract, may assign its rights under the contract to a third party. 11 U.S.C. § 365(f); *see also In re Rickel Home Center, Inc.*, 209 F.3d 291, 299 (3d Cir. 2000) (“The Code generally favors free assignability as a means to maximize the value of the Debtors’ estate.”); *see also In re Headquarters Dodge, Inc.*, 13 F.3d 674, 682 (3d Cir. 1994) (noting that the purpose of section 365(f) is to assist the trustee in realizing the full value of the debtors’ assets). Section 365(f)(2)(B) requires that the non-debtor contract counterparty be given adequate assurance of future performance by an assignee. 11 U.S.C. § 365(f)(2)(B). The purpose of the adequate assurance requirement is to protect the interests of the non-debtor party to an assigned contract, as section 365(k) of the Bankruptcy Code relieves a debtor from liability for any breach of a contract that may occur after an assignment. *Cinicola v. Scharffeberger*, 248 F.3d 110, 120 (3d Cir. 2001). Adequate assurance of future performance is not required for every term of an executory contract or unexpired lease, but only such terms that are “material and economically” significant. *In re Fleming Cos., Inc.*, 499 F.3d 300, 305 (3d Cir. 2007).

51. The meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case, but should be given a “practical, pragmatic construction.” *In re DBSI, Inc.*, 405 B.R. 698, 708 (Bankr. D. Del. 2009); *see also In re Decora Indus.*, 2002 U.S. Dist. LEXIS 27031, at *23 (D. Del. 2002) (“[A]dequate assurance falls short of an absolute guarantee of payment.”). Adequate assurance may be provided by demonstrating the assignee’s

financial health and experience in managing the type of enterprise or property assigned. *See, e.g., In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (finding that adequate assurance is present when prospective assignee of lease from debtors has financial resources and has expressed willingness to devote sufficient funding to business to give it strong likelihood of success).

52. The assumption and assignment of the California Lease (subject to the receipt and acceptance of a Qualified Bid for the Asset) is an appropriate exercise of the Debtors' business judgment. Additionally, the Debtors submit that the notice provisions and the objection deadlines for the Landlord and any other party in interest to raise objections to the assumption and assignment of the California Lease as proposed in this Motion are adequate to protect the rights of those parties. Furthermore, the Debtors will demonstrate adequate assurance of future performance at the Sale Hearing.

WAIVER OF RULES 6004(h) AND 6006(d)

53. The Debtors request that, upon entry of the Sale Order, the Court waive the 14-day stay requirements of Bankruptcy Rules 6004(h) and 6006(d). The waiver of the 14-day stay imposed by Bankruptcy Rules 6004(h) and 6006(d) is necessary to permit the Sale to close expeditiously in order to minimize the accrual of additional rent. The Debtors respectfully request that the Court waive the 14-day stay requirements contained in Bankruptcy Rules 6004(h) and 6006(d).

NOTICE

54. Notice of this Motion will be provided to the following, or their counsel, if known: (a) the U.S. Trustee; (b) the United States Securities and Exchange Commission; (c) the United States Department of Justice; (d) counsel to the ABL Agent; (e) counsel to the Committee; (f) the

California attorney general and consumer protection agency; (g) all parties who are known by the Debtors to assert liens against the Asset; (h) the Landlord; (i) any party known or reasonably believed to have expressed an interest in acquiring the Asset; and (j) all parties who, as of the filing of this Motion, have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002.

55. No prior request for the relief sought herein has been made to this or any other court.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court (a) grant the relief requested herein and (b) grant such other and further relief to the Debtors as the Court may deem proper and just.

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Dated: October 5, 2022
Wilmington, Delaware

Respectfully submitted,

/s/ L. Katherine Good

Christopher M. Samis (No. 4909)

L. Katherine Good (No. 5101)

Aaron H. Stulman (No. 5807)

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Proposed Counsel for Debtors and Debtors in Possession

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

<p>In re:</p> <p>PACKABLE HOLDINGS, LLC F/K/A ENTOURAGE COMMERCE, 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>Chapter 11</p> <p>Case No. 22-10797 (CTG)</p> <p>(Jointly Administered)</p> <p>Hearing Date: October 26, 2022 at 2:00 p.m. (ET)</p> <p>Objection Deadline: October 19, 2022 at 4:00 p.m. (ET)</p>
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NOTICE OF DEBTORS’ MOTION FOR (I) ENTRY OF AN ORDER (A) APPROVING CERTAIN BIDDING PROCEDURES AND THE FORM AND MANNER OF NOTICE THEREOF, (B) SCHEDULING AN AUCTION FOR THE DEBTORS’ PERRIS, CALIFORNIA LEASEHOLD INTEREST, AND (C) SCHEDULING A HEARING TO APPROVE THE SALE AND THE ASSUMPTION AND ASSIGNMENT OF THE CALIFORNIA LEASE; (II) ENTRY OF AN ORDER APPROVING AND AUTHORIZING (A) THE SALE AND (B) THE ASSUMPTION AND ASSIGNMENT OF THE CALIFORNIA LEASE; AND (III) RELATED RELIEF

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (collectively, the “Debtors”), filed the *Debtors’ Motion for (I) Entry of an Order (A) Approving Certain Bidding Procedures and the Form and Manner of Notice Thereof, (B) Scheduling an Auction for the Debtors’ Perris, California Leasehold Interest, and (C) Scheduling a Hearing to Approve the Sale and the Assumption and Assignment of the California Lease; (II) Entry of an Order Approving and Authorizing (A) the Sale and (B) the Assumption and Assignment of the California Lease; and (III) Related Relief* (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Court”).

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number include: Packable Holdings, LLC (6932); Greenpharm Ventures LLC (1513); Packable Media, LLC (6006); Pharmapacks, LLC (6676); Packable Ventures, LLC (1172); and Access Brands, LLC (8582). The location of the Debtors’ service address in these chapter 11 cases is 1985 Marcus Avenue, Suite 207, Lake Success, NY 11042.

PLEASE TAKE FURTHER NOTICE that objections to the Motion, if any, must be in writing, filed with the Clerk of the United States Bankruptcy Court for the District of Delaware, 3rd Floor, 824 N. Market Street, Wilmington, Delaware 19801, on or before **October 19, 2022 at 4:00 p.m. (ET)** (the “Objection Deadline”), and served upon and received by the undersigned proposed counsel for the Debtors.

PLEASE TAKE FURTHER NOTICE that, if any objections to the Motion are received, the Motion and such objections shall be considered at a hearing before the Honorable Craig T. Goldblatt at the Bankruptcy Court, 824 N. Market Street, 3rd Floor, Courtroom No. 7, Wilmington, Delaware 19801 on **October 26, 2022 at 2:00 p.m. (ET)**.

IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

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Dated: October 5, 2022
Wilmington, Delaware

Respectfully submitted,

/s/ L. Katherine Good

Christopher M. Samis (No. 4909)

L. Katherine Good (No. 5101)

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Proposed Counsel for Debtors and Debtors in Possession

EXHIBIT A

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

<p>In re:</p> <p>PACKABLE HOLDINGS, LLC F/K/A ENTOURAGE COMMERCE, 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>Chapter 11</p> <p>Case No. 22-10797 (CTG)</p> <p>(Jointly Administered)</p> <p>Re: Docket No. __</p>
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**ORDER (I) (A) APPROVING CERTAIN BIDDING PROCEDURES
AND THE FORM AND MANNER OF NOTICE THEREOF, (B) SCHEDULING AN
AUCTION FOR THE DEBTORS’ PERRIS, CALIFORNIA LEASEHOLD INTEREST,
AND (C) SCHEDULING A HEARING TO APPROVE THE SALE AND
THE ASSUMPTION AND ASSIGNMENT OF THE CALIFORNIA
LEASE; AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”),² of the Debtors in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), seeking, pursuant to sections 105, 363, 365, 503 and 507 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004, 6006, 9007, 9008 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rules 2002-1, 6004-1 and 9006-1 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), an order (a) approving certain bidding procedures attached hereto as **Exhibit 1** (the “Bidding Procedures”) for the sale (the “Sale”) of the interest of Debtor Pharmapacks, LLC (“Pharmapacks”) in the California Lease (the “Asset”) and form and manner of notice thereof substantially in the form attached hereto as **Exhibit 2** (the “Sale Notice”), (b) scheduling an Auction in connection with the Sale, and

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number include: Packable Holdings, LLC (6932); Greenpharm Ventures LLC (1513); Packable Media, LLC (6006); Pharmapacks, LLC (6676); Packable Ventures, LLC (1172); and Access Brands, LLC (8582). The location of the Debtors’ service address in these chapter 11 cases is 1985 Marcus Avenue, Suite 207, Lake Success, NY 11042.

² Capitalized terms not otherwise defined in this Order shall have the meanings given to them in the Motion or the Bidding Procedures (defined below), as applicable.

(c) scheduling a hearing to authorize and approve the Sale and assumption and assignment of the California Lease; the Court having reviewed the Motion and conducted a hearing to consider the relief requested therein regarding the Bidding Procedures and related matters (the “Bidding Procedures Hearing”); and the Court having considered the statements of counsel, the Declaration of Brian Teets in support of the Motion, and the evidence presented at the Bidding Procedures Hearing; and after due deliberation and sufficient cause appearing therefor, it is hereby

FOUND AND DETERMINED THAT:³

A. The Court has jurisdiction over this matter and over the property of the Debtors and their bankruptcy estates pursuant to 28 U.S.C. §§ 157(a) and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M), (N), and (O). The statutory predicates for the relief sought herein are 11 U.S.C. §§ 105, 363, 365 and Fed. R. Bankr. P. 2002, 6004, 6006, 9007, 9008, and 9014. Venue of the Chapter 11 Cases and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

B. The Debtors have offered good and sufficient reasons for, and the best interests of their estates will be served by, this Court granting the Motion to the extent provided in this Order, including (a) approving the Bidding Procedures, attached hereto as Exhibit 1, and form and manner of notice thereof substantially in the form of the Sale Notice attached hereto as Exhibit 2, (b) scheduling an Auction in connection with the Sale, and (c) scheduling a hearing to authorize and approve (i) the Sale and (ii) assumption and assignment of the California Lease.

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 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. All findings of fact and conclusions of law announced by the Court at the Bidding Procedures Hearing are hereby incorporated herein to the extent not inconsistent herewith.

C. Good and sufficient notice of the relief sought in the Motion has been given under the circumstances, and no further notice is required except as set forth herein with respect to the Auction and the Sale Hearing. Subject to the immediately preceding sentence, a reasonable opportunity to object or to be heard regarding the relief requested in the Motion was afforded to all interested persons and entities.

D. In accordance with Local Rules 6004-1, the Debtors have properly filed and noticed the Motion. The issuance and immediate effectiveness of this Order as of the date hereof, including approval of the Bidding Procedures, is supported by evidence of compelling business justifications and other circumstances demonstrating that the relief granted by this Order is necessary to prevent immediate and irreparable harm to the Debtors and their estates.

E. The proposed Sale Notice, as set forth in the Motion and this Order, are appropriate, sufficient, and reasonably calculated to provide all interested parties with timely and proper notice of the Auction, the Sale Hearing, the Bidding Procedures, and the assumption and assignment of the California Lease, and no other or further notice shall be required for the Sale or the assumption and assignment of the California Lease.

F. The Bidding Procedures were negotiated in good faith and at arms' length.

G. The Bidding Procedures are fair, reasonable, and appropriate under the circumstances, and are reasonably designed to maximize the value to be achieved for the Asset.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED to the extent provided herein.
2. All objections to the entry of this Order or to the relief provided herein that have not been withdrawn, waived, resolved, or settled are hereby denied and overruled.

3. The Bidding Procedures, attached as **Exhibit 1** to this Order, are hereby approved in their entirety, incorporated by reference as if fully set forth herein, and shall govern all Bids and Bid Proceedings relating to the Asset. The Debtors and their claims agent are authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures.

4. The deadline for submitting a Qualified Bid shall be October 28, 2022, at 10:00 a.m. (prevailing Eastern Time), unless extended by the Debtors pursuant to the Bidding Procedures (the "Bid Deadline"), provided that the Debtors may extend the Bid Deadline without further order of the Court.

5. All bidders submitting a Qualified Bid are deemed to have submitted to the exclusive jurisdiction of this Court with respect to all matters related to the Auction and the terms and conditions of the transfer of the Asset.

6. If at least two Qualified Bids are received by the Bid Deadline with regard to the Asset, the Debtors will conduct the Auction. The Auction will take place virtually on November 3, 2022, starting at 10:00 a.m. (prevailing Eastern Time) or such other time as the Debtors shall designate and notify to all Qualified Bidders. Professionals and principals for the Debtors, each Qualified Bidder (including, its representative(s), if any), each of the Consultation Parties, and any creditor of the Debtors that has provided notice in writing of its intent to observe the Auction at least one (1) day prior to the start of the Auction shall be able to attend and observe the Auction, along with any other parties the Debtors deem appropriate, through a Zoom link that the Debtors will distribute to all such parties prior to the commencement of the Auction.

7. Each Qualified Bidder participating at the Auction will be required to confirm in writing, that (a) it has not engaged in any collusion with respect to the bidding process, and (b) its

Qualified Bid is a good faith *bona fide* offer that it intends to consummate if selected as the Successful Bidder.

8. The Auction will be conducted openly and will be transcribed, at the Debtors' option.

9. Within twenty-four (24) hours following the conclusion of the Auction, the Debtors will file a notice identifying the Successful Bidder and the Next-Highest Bidder.

10. The Court shall convene the Sale Hearing on November 8, 2022, at 10:00 a.m. (prevailing Eastern Time) or as soon thereafter as counsel and interested parties may be heard, at which time the Court will consider approval of the Sale to the Successful Bidder and the entry of the Sale Order. The Debtors shall file a form of Sale Order no later than fourteen (14) days before the Sale Hearing. At the Sale Hearing, the Debtors will seek the entry of the Sale Order approving and authorizing the Sale to the Successful Bidder, and the assumption of the California Lease by Pharmapacks and its assignment to the Successful Bidder. Subject to consultation with the Consultation Parties, the Debtors may adjourn the Sale Hearing from time to time without further notice to creditors or other parties in interest other than by announcement of said adjournment at the Sale Hearing or in notice or agenda filed with the Court.

11. Objections to approval of the Sale (including objections related to the conduct of the Auction, identity of the Successful Bidder, and ability of the Successful Bidder to provide adequate assurance of future performance), must be in writing, state the basis of such objection with specificity, and be filed with this Court and served on or before 4:00 p.m. (prevailing Eastern Time) on November 7, 2022 (prevailing Eastern Time) (the "Sale Objection Deadline") on the following parties (collectively, the "Notice Parties"):

- (a) proposed counsel to the Debtors, Cooley LLP, 55 Hudson Yards, New York, NY 10001 (Attn: Michael A. Klein (mklein@cooley.com) and Erica Richards (erichards@cooley.com));
- (b) proposed co-counsel to the Debtors, Potter Anderson & Corroon LLP, 1313 N. Market Street, 6th Floor, Wilmington, DE 19801 (Attn: Christopher Samis (csamis@potteranderson.com), Katherine Good (kgood@potteranderson.com), and Aaron Stulman (astulman@potteranderson.com));
- (c) the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”), J. Caleb Boggs Federal Building, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (Attn: Timothy Fox (Timothy.Fox@usdoj.gov));
- (d) Morgan, Lewis & Bockius LLP, as counsel to the ABL Agent (Attn: Julia Frost-Davies (julia.frost-davies@morganlewis.com), Marc Leduc (marc.leduc@morganlewis.com), and Charlie Liu (charlie.liu@morganlewis.com));
- (e) Richards, Layton & Finger LLP, as co-counsel to the ABL Agent (Attn: Mark Collins (collins@rlf.com), Zachary Shapiro (shapiro@rlf.com)); and
- (f) Kelley Drye & Warren LLP as proposed counsel to the Committee (Attn: Jason Adams (JAdams@KelleyDrye.com), Maeghan McLoughlin (MMcLoughlin@KelleyDrye.com), and Eric Wilson (EWilson@KelleyDrye.com)).

12. Failure to timely file an objection in accordance with this Order shall forever bar the assertion of any objection to the Motion, entry of the Sale Order, or consummation of the Sale, and shall be deemed to constitute consent to entry of the Sale Order and consummation of the Sale and all transactions related thereto including, without limitation, for purposes of section 363(f) of the Bankruptcy Code.

13. In the absence of a timely objection to the assumption and assignment of the California Lease by any non-Debtor party to the California Lease, such non-Debtor counterparty are (a) be forever barred from objecting to the Cure Costs and from asserting any additional cure or other amounts with respect to the California Lease, and the Debtors and the Successful Bidder shall be entitled to rely solely upon the Cure Costs set forth in the Motion; (b) be deemed to have

consented to the assumption and assignment of the California Lease (excluding objections related to the identity of the Successful Bidder, and ability of the Successful Bidder to provide adequate assurance of future performance, which are reserved and due by the Sale Objection Deadline); and (c) be forever barred, estopped and permanently enjoined from asserting or claiming against the Debtors, the Successful Bidder or their respective property that any additional amounts are due or other defaults exist, that conditions to assignment must be satisfied under the California Lease or that there is any objection or defense to the assumption and assignment of the California Lease. In addition, the Cure Costs set forth in the Motion are binding upon the non-Debtor parties to the California Lease for all purposes in the Chapter 11 Cases and constitute a final determination of the total Cure Costs required to be paid by the Debtors in connection with the assumption and assignment of the California Lease.

14. The form of the Sale Notice annexed hereto is hereby approved and appropriate and sufficient for all purposes and no other or further notice shall be required. No finding or ruling is made in this Order as to the merits of any motion for approval of the Sale. As soon as reasonably practicable after entry of this Order, the Debtors shall cause the Sale Notice to be served upon, without limitation, (a) the U.S. Trustee; (b) the United States Securities and Exchange Commission; (c) the United States Department of Justice; (d) counsel to ABL Agent; (e) counsel to the Committee; (f) the California attorney general and consumer protection agency; (g) all parties who are known by the Debtors to assert liens against the Asset; (h) the Landlord; (i) any party known or reasonably believed to have expressed an interest in acquiring the California Lease; and (j) all parties who, as of the filing of this Motion, have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002 (collectively, "Sale Notice Parties").

15. All parties (whether or not Qualified Bidders) that participate in the Bidding Process shall be deemed to have knowingly and voluntarily (a) consented to the entry of a final order by this Court in connection with the Motion or this Order (including any disputes relating to the Bidding Process, the Auction and/or the Sale) to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution, and (b) waived any right to jury trial in connection with any disputes relating to the any of the foregoing matters.

16. The requirements set forth in Local Rules 6004-1 and 9013-1 are hereby satisfied, modified, or waived.

17. Notwithstanding any applicability of Bankruptcy Rule 6004(h), 6006(d), 7052 or 9014, this Order shall be immediately effective and enforceable upon entry of this Order. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

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

EXHIBIT 1

The Bidding Procedures

BIDDING PROCEDURES

On August 28, 2022, Packable Holdings, LLC and its debtor affiliates in the above-captioned chapter 11 cases (collectively, the “Debtors”), filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

Set forth below are the bidding procedures (the “Bidding Procedures”)¹ to be used with respect to the sale or disposition (the “Sale”) of the Asset (as defined below) of the Debtors.

Any party interested in bidding on the Asset should contact Spence Mehl (smehl@rcsrealestate.com; 212-300-5375) of RCS Real Estate Advisors (“RCS”) or Seth Geldzahler (seth.geldzahler@am.jll.com; 732-491-2170) of Jones Lang LaSalle Americas, Inc. (“JLL” and, jointly with RCS, the “Consultant”) the Debtors’ proposed real estate marketing consultant in these Chapter 11 Cases.

Summary of Key Sale Process Dates

<u>Date</u>	<u>Deadline/Event</u>
October 19, 2022, at 4:00 p.m. (ET)	Deadline to object to the Debtors’ proposed assumption and assignment of the California Lease and related Cure Costs
October 26, 2022, at 2:00 p.m. (ET)	Bidding Procedures Hearing
October 28, 2022, at 5:00 p.m. (ET)	Bid Deadline
No later than the earlier of (a) twenty-four (24) hours after such Bids are received, or (b) October 28, 2022, at 9:00 p.m. (ET)	Deadline for Debtors to notify Potential Bidders of whether their Bids are Qualified Bids
November 16, 2022, starting at 10:00 a.m. (ET)	Auction (if necessary)
November 4, 2022, at 4:00 p.m. (ET)	Deadline to file and serve Notice of Successful Bidder

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the *Motion of Debtors’ Motion for Entry of (I) An Order (A) Approving Certain Bidding Procedures and the Form and Manner of Notice Thereof, (B) Scheduling an Auction for the Debtors’ Perris, California Leasehold Interest, and (C) Scheduling a Hearing to Approve the Sale and the Assumption and Assignment of the California Lease; (II) An Order Approving and Authorizing (A) the Sale and (B) the Assumption and Assignment of the California Lease; and (III) Granting Related Relief* (the “Motion”).

<u>Date</u>	<u>Deadline/Event</u>
November 7, 2022, at 4:00 p.m. (ET)	Deadline to object to (a) the Sale of the Asset; (b) the conduct of the Auction; (c) the proposed Sale to the Successful Bidder; and (d) the ability of the Successful Bidder to provide adequate assurance of future performance, or the proposed form of adequate assurance of future performance
November 8, 2022, at 10:00 a.m. (ET)	Sale Hearing
On or prior to November 30, 2022 ²	Closing

I. Description of the Asset to be Sold

The Debtors are seeking to sell the interest of Debtor Pharmapacks, LLC (“Pharmapacks”) in that certain lease (the “California Lease”) with CH/BDG Harvill, LLC (“Landlord”) of premises located at 21500 Harvill Avenue, Perris, California 92570 (the “Asset”), free and clear of all liens, claims, and encumbrances thereon.

The Sale of the Asset shall be subject to a competitive bidding process as set forth herein and approval by the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) pursuant to sections 105, 363, and 365 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6003, 6004, 6006, 9007, 9008 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2002-1, 6004-1 and 9006-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

II. Determination by the Debtors

As appropriate, the Debtors will consult with the committee of unsecured creditors appointed in the Chapter 11 Cases (the “Committee”), the ABL Agent, and any other party that the Debtors deem appropriate (the “Consultation Parties”), and shall (a) coordinate with Potential Bidders regarding the conduct of their respective due diligence, (b) evaluate bids from Potential Bidders on the Asset, (c) following consultation with the Consultation Parties, negotiate any bid made to acquire the Asset, and (d) following consultation with the Consultation Parties, make such other determinations as are provided in these Bidding Procedures (collectively, the “Bidding Process”); provided that the Debtors shall not consult with a Consultation Party (or its advisors) that is actively participating as a bidder for the Asset. Neither the Debtors nor their representatives shall be obligated to furnish any information of any kind whatsoever relating to the Asset to any party that is not a Potential Bidder or a Consultation Party.

² Unless otherwise agreed.

III. Due Diligence

Up to and including the Bid Deadline (as defined below) (such period, the “Diligence Period”), the Debtors shall afford any Potential Bidder such due diligence access or additional information as may be reasonably requested by the Potential Bidder that the Debtors, in their business judgment, determine to be reasonable and appropriate under the circumstances. The Debtors may designate a representative or representatives to coordinate all reasonable requests for additional information and due diligence access from such Potential Bidders and/or Consultation Parties, as applicable. In the event that any such due diligence material is in written form and has not previously been provided to any other Potential Bidder, the Debtors will simultaneously provide access to such materials to (a) all Potential Bidders, and (b) all Consultation Parties. Each Potential Bidder shall be required to acknowledge that it has had an opportunity to conduct any and all due diligence regarding the Asset in conjunction with submitting its Bid (as defined below).

Neither the Debtors nor any of their representatives shall be obligated to furnish any information of any kind whatsoever relating to the Asset to any person or entity who is not a Potential Bidder who does not otherwise comply with the participation requirements set forth above.

IV. Bid Deadline

A Potential Bidder that desires to make a Bid shall deliver written copies of its Bid to Consultant, Attn: Spence Mehl (smehl@rcsrealestate.com) and Seth Geldzahler (seth.geldzahler@am.jll.com) by no later than October 28, 2022, at 5:00 p.m. (prevailing Eastern Time) (as may be extended in the discretion of the Debtors, the “Bid Deadline”). As soon as reasonably practicable following the Bid Deadline, the Debtors will provide to the Consultation Parties copies of all Qualified Bids (with such distribution permissible by electronic means).

V. Bid Requirements

All bids (each hereinafter, a “Bid”) must comply with the following requirements (collectively, the “Bid Requirements”):

- (a) be accompanied by a letter or email:
 - (i) fully disclosing the identity of the Potential Bidder and providing the contact information of the specific person(s) whom the Debtors or its advisors should contact (including any equity holder or other financial backer if the Potential Bidder is an entity formed for the purpose of consummating the proposed Sale) in the event that the Debtors have any questions or wish to discuss the Bid submitted by the Potential Bidder;
 - (ii) setting forth the purchase price to be paid by such Potential Bidder and forms of consideration the Potential Bidder intends to use to pay such purchase price;

- (iii) stating with specificity the liabilities and obligations (including applicable cure costs) to be assumed by the Potential Bidder in connection with the Sale;
- (iv) providing that the Bid is not subject to any bidding, break-up fee, termination fee, transaction fee, expense reimbursement or any similar type of reimbursement (the “Bidding Fee”), and including an express waiver of any substantial contribution administrative expense claim under Section 503(b) of the Bankruptcy Code related to bidding for the Asset;
- (v) agreeing that the Potential Bidder’s offer is binding, unconditional, and irrevocable until two (2) business days after the closing of the Sale;
- (vi) containing a commitment to close the contemplated transaction(s) by a Closing Date (as defined below) of no later than November 30, 2022 (unless otherwise agreed);
- (vii) providing that such Bid is not subject to contingencies of any kind, including, without limitation, contingencies related to financing, internal approval, or due diligence;
- (viii) containing an acknowledgment that the Potential Bidder has had an opportunity to conduct any and all due diligence regarding the Asset and has relied solely upon its own independent review, investigation and/or inspection of any documents and any other information in making the Bid;
- (ix) providing that the Potential Bidder agrees to serve as a backup bidder (the “Next-Highest Bidder”) if the Potential Bidder’s Qualified Bid (as defined below) is the next highest or best bid after the Successful Bid (as defined below) (the “Next-Highest Bid”) with respect to the Asset through the Closing Date; and

(b) be accompanied by an executed lease disposition agreement in form and substance reasonably acceptable to the Debtors;³

(c) be accompanied by adequate assurance of future performance information (the “Adequate Assurance Information”), which may include (i) information about the Potential Bidder’s financial condition, such as federal tax returns for two years, a current financial statement, or bank account statements, (ii) information demonstrating (in the Debtors’ reasonable business judgment) that the Potential Bidder has the financial capacity to consummate the proposed Sale and perform under the terms of the California Lease, (iii) evidence that the Potential Bidder has obtained authorization or approval from its board of directors (or comparable governing body) with respect to the submission of its Bid, and (iv) such additional information regarding the Potential Bidder as the Potential Bidder may elect to include. By submitting a Bid, Potential

³ A proposed form agreement will be provided to Potential Bidders upon request and the Successful Bidder’s executed agreement will be filed in advance of the Sale Hearing.

Bidders agree that the Debtors may disseminate their Adequate Assurance Information to affected counterparties to the Landlord and the Consultation Parties in the event that the Debtors determine such bid to be a Qualified Bid (as defined below); and

(d) be accompanied by (i) a deposit in the form of a certified check or wire transfer, payable to the order of the Debtor, in the amount of ten percent (10%) of the cash consideration of the Bid, which funds will be deposited into an escrow account to be identified and established by the Debtors (a “Good Faith Deposit”), and (ii) written evidence, documented to the Debtors’ satisfaction, that demonstrates the Potential Bidder has available cash, a commitment for financing if selected as the Successful Bidder (as defined below) with respect to the Asset (provided, however, that the closing shall not be contingent in any way on the Successful Bidder’s financing) and such other evidence of ability to consummate the transaction(s) as the Debtors may request, including proof that such funding commitments or other financing are not subject to any internal approvals, syndication requirements, diligence or credit committee approvals (provided further that such commitments may have covenants and conditions acceptable to the Debtors). The Debtors reserve the right to increase the Good Faith Deposit for one or more Qualified Bidders (as defined below) in their sole discretion after consulting with the Consultation Parties.

The Debtors, in consultation with the Consultation Parties, will review each Bid received from a Potential Bidder to determine whether it meets the requirements set forth above. A Bid received from a Potential Bidder that meets the above requirements, and is otherwise satisfactory to the Debtors, will be considered a “Qualified Bid” and each Potential Bidder that submits a Qualified Bid will be considered a “Qualified Bidder.” The Debtors shall inform Qualified Bidders that their Bids have been designated as Qualified Bids no later than the earlier of (a) twenty-four (24) hours after such Bids are received, or (b) October 28, 2022, at 9:00 p.m. ET.

A Qualified Bid will be valued by the Debtors based upon any and all factors that the Debtors deem pertinent in their reasonable business judgment, including, among others, (a) the amount of the Qualified Bid, (b) the risks and timing associated with consummating the transaction(s) with the Qualified Bidder, and (c) any other factors that the Debtors, in consultation with the Consultation Parties, may reasonably deem relevant.

The Debtors, in their business judgment and in consultation with the Consultation Parties, reserve the right to reject any Bid if such Bid, among other things:

- (a) requires any indemnification of the Potential Bidder in any Qualified Bid Purchase Agreement submitted as part of the Bid;
- (b) is not received by the Bid Deadline;
- (c) does not comport with the Bid Requirements;
- (d) is subject to any contingencies (including representations, warranties, covenants and timing requirements) of any kind or any other conditions precedent to such party’s obligation to acquire the relevant Asset; or

(e) does not, in the Debtors' determination (after consultation with the Consultation Parties), include a fair and adequate price or the acceptance of which would not be in the best interests of the Debtors' estates or the Auction.

Any Bid rejected pursuant to the foregoing shall not be deemed to be a Qualified Bid; provided that the Debtors have the right to work with the parties to any rejected Bid to cure any such defects. In the event that any Bid is so rejected, the Debtors shall cause the Good Faith Deposit of such Potential Bidder (including all accumulated interest thereon) to be refunded to it as soon as reasonably practicable, but no later than five (5) business days after the Bid Deadline.

The Debtors may, in consultation with the Consultation Parties, among other things, (y) extend the Bid Deadline and postpone the Auction, or (z) cancel the Auction and terminate the proposed Sale for the Asset.

VI. Auction

Unless otherwise ordered by the Bankruptcy Court for cause shown, only the Qualified Bidders are eligible to participate at the Auction (as defined below). The Consultation Parties shall be permitted to attend the Auction. In addition, any creditor of the Debtors or party the Debtors deem appropriate may observe the Auction; *provided, however*, that any such party must provide notice of its intent to observe to the Debtors at least one (1) day before the Auction by electronic mail to Erica Richards, Esq. at erichards@cooley.com. At least one (1) day prior to the start of the Auction, each Qualified Bidder must inform the Debtors in writing whether it intends to participate in the Auction. If the Debtors receive only one Qualified Bid, (a) the Debtors shall not hold an Auction; (b) the Qualified Bid will be deemed the Successful Bid; and (c) the Qualified Bidder will be named the Successful Bidder.

If at least two Qualified Bids are received by the Bid Deadline, the Debtors will conduct an auction (the "Auction") with respect to the Asset and shall determine, after consultation with the Consultation Parties, which Qualified Bid is the highest or otherwise best Qualified Bid for purposes of constituting the opening bid at the Auction (the "Starting Bid"). The determination of which Qualified Bid constitutes the Starting Bid and which Qualified Bid constitutes the Successful Bid shall take into account any factors the Debtors (in consultation with the Consultation Parties) reasonably deem relevant to the value of the Qualified Bid to the Debtors' estates, including, among other things, the following: (a) the amount and nature of the consideration, including any obligations to be assumed; (b) the executory contracts and unexpired leases of the Debtors for furniture, fixtures or equipment located at the California Facility, if any, for which assumption and assignment or rejection is required, and the costs and delay associated with any litigation concerning executory contracts and unexpired leases necessitated by such bid; (c) the likelihood of the Qualified Bidder being able to close the proposed transaction (including obtaining any required regulatory approvals) and the timing thereof; (d) the net benefit to the Debtors' estates; and (e) the tax consequences of such Qualified Bid. The Starting Bid will be provided to Qualified Bidders on or before October 31, 2022, at 9:00 p.m. ET.

The Auction shall be held virtually on November 3, 2022, starting at 10:00 a.m. (prevailing Eastern Time). Professionals and principals for the Debtors, each Qualified Bidder (including, its representative(s), if any), each of the Consultation Parties, and any creditor of the Debtors that has

provided notice in writing of its intent to observe the Auction at least one (1) day prior to the start of the Auction shall be able to attend and observe the Auction, along with any other parties the Debtors deem appropriate, through a Zoom link to be provided to all such parties prior to the commencement of the Auction. Each Qualified Bidder participating in the Auction will be required to confirm, in writing, and on the record at the Auction, that (a) it has not engaged in any collusion with respect to the Bidding Process, and (b) its Qualified Bid is a good faith *bona fide* offer that it intends to consummate if selected as the Successful Bidder.

Bidding at the Auction for the Asset will begin with the Starting Bid and continue, in one or more rounds of bidding, so long as during each round at least one Subsequent Bid (defined below) is submitted by a Qualified Bidder that (i) improves on such Qualified Bidder's immediately prior Qualified Bid (a "Subsequent Bid") and (ii) the Debtors reasonably determine, in consultation with the Consultation Parties, that such Subsequent Bid is (A) for the first round, a higher or otherwise better offer than the Starting Bid, and (B) for subsequent rounds, a higher or otherwise better offer than the Leading Bid (as defined below). Each Subsequent Bid at the Auction shall provide net value to the estates in an amount equal to or greater than \$100,000 or such other amount determined by the Debtors in consultation with the Consultation Parties ("Incremental Overbid") over the Starting Bid or the Leading Bid (as defined below), as the case may be, as determined by the Debtors in the exercise of their reasonable business judgment and in consultation with the Consultation Parties. After the first round of bidding and between each subsequent round of bidding, the Debtors shall announce the bid that they believe to be the highest or otherwise best offer for the Asset (the "Leading Bid"). A round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid, subject to the Debtors' authority to revise the Auction procedures as set forth below.

The Debtors may, in consultation with the Consultation Parties, announce at the Auction additional procedural rules (*e.g.*, the amount of time to make Subsequent Bids, the amount of the Incremental Overbid, or the requirement that parties submit "best and final" Bids) for conducting the Auction or otherwise modify these Bidding Procedures; provided that such rules (1) are not materially inconsistent with these Bidding Procedures, the Bankruptcy Code, or applicable orders of the Bankruptcy Court, and (2) are disclosed to each Qualified Bidder during the Auction. The bidding at the Auction shall be transcribed and the Debtors shall maintain a transcript of all Bids made and announced at the Auction.

Immediately prior to the conclusion of the Auction, the Debtors, in consultation with the Consultation Parties, will: (a) determine, consistent with the Bidding Procedures, which bid constitutes the highest or otherwise best bid (the "Successful Bid"); and (b) notify all Qualified Bidders at the Auction, prior to its conclusion, of the name of the maker of the Successful Bid (the "Successful Bidder"), and the amount and other material terms of the Successful Bid. The Debtors may, in consultation with the Consultation Parties, designate the Next-Highest Bid (and the corresponding Next-Highest Bidder) to close in the event that the Successful Bidder does not close the Sale. Unless the Bankruptcy Court orders otherwise upon application by the Debtors, the Debtors shall not consider any Bids or Subsequent Bids submitted after the conclusion of the Auction and any and all such Bids and Subsequent Bids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.

As soon as practicable following the conclusion of the Auction, the Debtors shall file a notice on the Bankruptcy Court's docket identifying (with specificity) the Successful Bidder for the Asset and any applicable Next-Highest Bidders.

All bidders at the Auction will be deemed to have consented to the core jurisdiction and constitutional authority of the Bankruptcy Court and waived any right to jury trial in connection with any disputes relating to the Auction, the Sale and all agreements entered into in connection with any proposed sale transaction.

VII. Acceptance of Qualified Bids

The Debtors may reject at any time, before entry of an order of the Bankruptcy Court approving the Sale, any Bid that, in the Debtors' business judgment, upon considering any comments of the Consultation Parties, is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bankruptcy Code, or the Bidding Procedures, or (c) contrary to the best interests of the Debtors and their estates.

The Debtors' presentation to the Bankruptcy Court for approval of a selected Qualified Bid as a Successful Bid does not constitute the Debtors' acceptance of such Bid. The Debtors will have accepted a Successful Bid only when such Successful Bid has been approved by the Bankruptcy Court at the Sale Hearing.

VIII. No Fees for Potential Bidders or Qualified Bidders

Potential Bidders or Qualified Bidders shall not be allowed any Bidding Fee as a precondition to, or in consideration of, presenting any bid or participating in the Bidding Process reflected herein.

IX. Sale Hearing

Each Successful Bid and any Next-Highest Bid (or if no Qualified Bid other than that of one Qualified Bidder is received with respect to the Asset, then the Qualified Bid of such Qualified Bidder) shall be subject to approval by the Bankruptcy Court. The hearing to approve a Successful Bid and any Next-Highest Bid (or if no Qualified Bid other than that of one Qualified Bidder is received with respect to the Asset, then the Qualified Bid of such Qualified Bidder) shall take place on November 8, 2022, at 10:00 a.m. (prevailing Eastern Time) (the "Sale Hearing"). The Sale Hearing may be adjourned by the Debtors from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing or by filing a notice, which may be a hearing agenda stating the adjournment, on the docket of the Chapter 11 Cases.

X. Return of Good Faith Deposit

The Good Faith Deposits of all Qualified Bidders shall be held in escrow, but shall not become property of the Debtors' estates absent further order of the Bankruptcy Court. The Debtors shall retain any Good Faith Deposit submitted by each Successful Bidder. At the closing of a Sale contemplated by a Successful Bid, the applicable Successful Bidder will be entitled to a credit for the amount of its Good Faith Deposit to the extent such a deposit was provided. The Good Faith

Deposits of any Next-Highest Bidder shall be retained until three (3) business days after the applicable closing date (the “Closing Date”). The Good Faith Deposits of any other Qualified Bidders will be returned as soon as reasonably practicable, but no later than seven (7) business days following the Auction.

If a Successful Bidder (or, if the Sale is to be closed with a Next-Highest Bidder, then the Next-Highest Bidder) fails to consummate the Sale because of a breach or failure to perform on the part of such bidder, then the Debtors and their estates shall be entitled to retain the Good Faith Deposit of such Successful Bidder (or, if the Sale is to be closed with the Next-Highest Bidder, then such Next-Highest Bidder) as part of the damages resulting to the Debtors and their estates for such breach or failure to perform.

XI. Reservation of Rights and Modifications

Notwithstanding any of the foregoing, the Debtors, in consultation with the Consultation Parties, reserve the right to modify these Bidding Procedures at or prior to the Auction, including, without limitation, to extend the deadlines set forth herein, modify bidding increments, waive terms and conditions set forth herein with respect to any or all Potential Bidders (including, without limitation, the Bid Requirements), impose additional terms and conditions with respect to any or all potential bidders, adjourn or cancel the Auction at or prior to the Auction, and/or adjourn the Sale Hearing.

The Debtors shall consult with the Consultation Parties as explicitly provided for in these Bidding Procedures; *provided, however*,² that the Debtors shall not be required to consult with any Consultation Party (or its advisors) if the Debtors determine, in their reasonable business judgment, that consulting with such Consultation Party regarding any issue, selection, or determination is (y) likely to have a chilling effect on the potential bidding or (z) otherwise contrary to the goal of maximizing value from the Sale process for the Debtors’ estates, their creditors, and all other parties in interest.

XII. Next-Highest Bidder

Notwithstanding any of the foregoing, in the event that the Successful Bidder fails to close the Sale prior to such date as specified in the lease disposition agreement (or such date as may be extended by the Debtors), the Debtors, upon written notice to the Next-Highest Bidder, may designate the Next-Highest Bid as the Successful Bid for the Asset, the Next-Highest Bidder will be deemed to be the Successful Bidder for the Asset, and the Debtors will be authorized, but not directed, to close the Sale to the Next-Highest Bidder subject to the terms of the Next-Highest Bid as approved by further order of the Bankruptcy Court.

EXHIBIT 2

Sale Notice

Debtors that has provided notice in writing of its intent to observe the Auction at least one (1) day prior to the start of the Auction shall be able to attend and observe the Auction, along with any other parties the Debtors deem appropriate, through a Zoom link that the Debtors will distribute to all such parties prior to the commencement of the Auction. Only parties that have submitted a Qualified Bid, as set forth in the Bidding Procedures Order, by no later than **October 28, 2022, at 5:00 p.m. (prevailing Eastern Time)** (the “Bid Deadline”) may bid at the Auction. Any party that wishes to take part in this process and submit a Bid (as defined in the Bidding Procedures) for the Asset must submit their competing Bid prior to the Bid Deadline and in accordance with the Bidding Procedures.

4. The Sale Hearing to consider approval of the sale of the Asset to the Successful Bidder at the Auction, free and clear of all liens, claims and encumbrances, will be held before Judge Craig T. Goldblatt, United States Bankruptcy Judge, 824 North Market Street, Wilmington, Delaware 19801 on **November 8, 2022, at 10:00 a.m. (prevailing Eastern Time)**, or at such other time thereafter as counsel may be heard. The Sale Hearing may be adjourned by the Debtors from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing or by filing of a notice with the Bankruptcy Court.

5. Objections to approval of the Sale (including objections related solely to the conduct of the Auction, identity of the Successful Bidder, and ability of the Successful Bidder to provide adequate assurance of future performance), must be in writing, state the basis of such objection with specificity, and be filed with the Bankruptcy Court and served before **4:00 p.m. (prevailing Eastern Time) on November 7, 2022** (the “Sale Objection Deadline”) by the following parties (collectively, the “Notice Parties”):

- (a) proposed counsel to the Debtors, Cooley LLP, 55 Hudson Yards, New York, NY 10001 (Attn: Michael A. Klein (mklein@cooley.com) and Erica Richards (erichards@cooley.com));
- (b) proposed co-counsel to the Debtors, Potter Anderson & Corroon LLP, 1313 N. Market Street, 6th Floor, Wilmington, DE 19801 (Attn: Christopher Samis (csamis@potteranderson.com), Katherine Good (kgood@potteranderson.com), and Aaron Stulman (astulman@potteranderson.com));
- (c) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (Attn: Timothy Fox (Timothy.Fox@usdoj.gov));
- (d) Morgan, Lewis & Bockius LLP, as counsel to the ABL Agent (Attn: Julia Frost-Davies (julia.frost-davies@morganlewis.com), Marc Leduc (marc.leduc@morganlewis.com), and Charlie Liu (charlie.liu@morganlewis.com));
- (e) Richards, Layton & Finger LLP, as co-counsel to the ABL Agent (Attn: Mark Collins (collins@rlf.com), Zachary Shapiro (shapiro@rlf.com)); and

- (f) Kelley Drye & Warren LLP as proposed counsel to the Committee (Attn: Jason Adams (JAdams@KelleyDrye.com), Maeghan McLoughlin (MMcLoughlin@KelleyDrye.com), and Eric Wilson (EWilson@KelleyDrye.com)).

UNLESS AN OBJECTION IS TIMELY SERVED AND FILED IN ACCORDANCE WITH THIS NOTICE, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT AND THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED WITHOUT FURTHER HEARING AND NOTICE.

6. This Sale Notice is subject to the fuller terms and conditions of the Bidding Procedures and Sale Motion and the Bidding Procedures Order, with such Bidding Procedures Order controlling in the event of any conflict. The Debtors encourage all parties-in-interest to review such documents in their entirety. Parties interested in receiving more information regarding the sale of the Asset and/or copies of any related document, including the Bidding Procedures and Sale Motion or the Bidding Procedures Order, may make a written request to Erica Richards, Esq. (erichards@cooley.com). In addition, copies of the Bidding Procedures and Sale Motion, the Bidding Procedures Order and this Notice are on file with the Clerk of the Bankruptcy Court, Third Floor, 824 Market Street, Wilmington, Delaware 19801 and are available on the Debtors' claims and noticing agent's website free of charge at <https://dm.epiq11.com/case/packable/info>.

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Dated: October [__], 2022
Wilmington, Delaware

Respectfully submitted,

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