

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:)	
	)	Chapter 11
)	
IEH AUTO PARTS HOLDING LLC, <i>et al.</i> , ¹	)	Case No. 23-90054 (CML)
)	
Debtors.	)	(Jointly Administered)
)	

DEBTORS’ MOTION FOR ENTRY OF AN ORDER (I) APPROVING THE BID PROCEDURES, (II) APPROVING THE SALE OF THE DEBTORS’ ASSETS FREE AND CLEAR, AND (III) GRANTING RELATED RELIEF

If you object to the relief requested you must appear at the hearing if one is set, or file a written response within twenty-one days of the date this was served on you. Otherwise, the Court (as defined herein) may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on March 10, 2023, at 10:00 a.m. (prevailing Central Time) in Courtroom 401, 4th floor, 515 Rusk Street, Houston, Texas 77002. You may participate in the hearing either in person or by an audio and video connection.

Audio communication will be by use of the Court’s dial-in facility. You may access the facility at (832) 917-1510. Once connected, you will be asked to enter the conference room number. Judge Lopez’s conference room number is 590153. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Lopez’s homepage. The meeting code is “Judge Lopez”. Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the “Electronic Appearance” link on Judge Lopez’s homepage. Select the case name, complete the required fields and click “Submit” to complete your appearance.

¹ The Debtor entities in these chapter 11 cases, along with the last four digits of each Debtor entity’s federal tax identification number, are: IEH Auto Parts Holding LLC (6529); AP Acquisition Company Clark LLC (4531); AP Acquisition Company Gordon LLC (5666); AP Acquisition Company Massachusetts LLC (7581); AP Acquisition Company Missouri LLC (7840); AP Acquisition Company New York LLC (7361); AP Acquisition Company North Carolina LLC (N/A); AP Acquisition Company Washington LLC (2773); Auto Plus Auto Sales LLC (6921); IEH AIM LLC (2233); IEH Auto Parts LLC (2066); IEH Auto Parts Puerto Rico, Inc. (4539); and IEH BA LLC (1428). The Debtors’ service address is: 112 Townpark Drive NW, Suite 300, Kennesaw, GA 30144.



The above-captioned debtors and debtors in possession (collectively, the “Debtors”) state the following in support of this motion (this “Motion”):²

Relief Requested

1. The Debtors seek entry of an order, substantially in the form of the attached proposed order (the “Bid Procedures Order”):

- a. approving the proposed bid procedures attached to the Bid Procedures Order as Exhibit A (the “Bid Procedures”);
- b. establishing the dates and deadlines set forth in the Bid Procedures, including the Bid Deadline, Auction, and Sale Hearing;
- c. authorizing and approving the form of notice of the Sale, the Bid Deadline, the Auction, and the Sale Hearing, substantially in the form attached to the Bid Procedures Order as Exhibit B (the “Sale Notice”);
- d. approving the assumption and assignment procedures attached to the Bid Procedures Order as Exhibit C (the “Assumption and Assignment Procedures”) for any executory contract or unexpired lease to be assumed by the Debtors and assigned to the Winning Bidder pursuant to section 365 of the Bankruptcy Code (if any) (the “Designated Contracts”);
- e. approving the form of notice to each non-Debtor counterparty to Designated Contracts (if any), substantially in the form attached to the Bid Procedures Order as Exhibit D (the “Assignment Notice”); and
- f. granting related relief.

2. In the event the Debtors determine to pursue consummation of a Sale in accordance with the Bid Procedures, the Debtors further seek entry of an order authorizing and approving (a) the sale of the Assets free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests except to the extent otherwise set forth in the purchase agreement executed by the Debtors and the Winning Bidder, (b) the assumption and assignment of Designated Contracts (if any), and (c) granting related relief (the “Sale Order”).

² Capitalized terms used but not otherwise defined in this Motion shall have the meaning ascribed to them in the Bid Procedures or the DIP Order.

Jurisdiction and Venue

3. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). The Debtors confirm their consent to the entry of a final order by the Court.

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

5. The bases for the relief requested are sections 105, 363, and 365 of title 11 of the Bankruptcy Code (the “Bankruptcy Code”), rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 4002-1(e) and 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “Bankruptcy Local Rules”).

Background

6. On January 31, 2023 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in this chapter 11 case, and no official committees have been appointed or designated.³

7. The Debtors filed these chapter 11 cases to consummate a sale of their assets, either in whole or multiple asset packages. Beginning in 2022, the Debtors began to explore transactions with strategic partners for a going concern sale of its business and also sales of certain regions where the Debtors operate. Although the Debtors received informal indications of interest, preliminary discussions with counterparties did not resolve in actionable offers.

³ Background information on the Debtors can be found in the *Declaration of Michael Neyrey, Chief Executive Officer of IEH Auto Parts Holding LLC, in Support of the Debtors’ Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”) filed at Docket No. 24 and available here: <http://www.kccllc.net/autoplus/document/list/5789>.

8. On February 1, 2023, the Debtors began a comprehensive marketing process to sell their businesses. The Debtors file this Motion in order to achieve consummation of a sale of their businesses in accordance with the negotiated sale milestones under the DIP Term Sheet.

The Bid Procedures and Sale Notice

9. The Debtors seek approval of the Bid Procedures, attached to the Bid Procedures Order as Exhibit A, to establish a clear and open process for the solicitation, receipt, and evaluation of bids on a timeline that would allow the Debtors to consummate a sale of the Assets. The Debtors are seeking approval of a sale on May 19, 2023, prior to May 31, 2023, which is the negotiated milestone deadline for a sale consummation under the DIP Term Sheet.

10. The Bid Procedures set forth: (a) the requirements for participation in the bidding and sale process, including the criteria to be designated as a Qualified Bid, (b) the process for the submission and evaluation of bids, (c) the requirements for participation in, and rules governing the conduct of, the Auction, (d) the process for approval of the Sale of the Assets to the Winning Bidder and the designation of a Backup Bidder, and (e) all related dates and deadlines.

11. The Bid Procedures recognize and comport with the Debtors' fiduciary obligations to maximize sale value, do not impair the Debtors' ability to consider all Qualified Bids made at or prior to the Auction, and preserve the Debtors' right to modify the Bid Procedures as necessary or appropriate to maximize value for the Debtors' estate.

12. The Debtors also request approval of the Sale Notice, substantially in the form attached to the Bid Procedures Order as Exhibit B. The Debtors propose to serve the Sale Notice on all known parties in interest in the chapter 11 case, publish the sale notice on the Debtors' claims, noticing, and solicitation agent's website for the case, and publish the Sale Notice in *The Wall Street Journal*.

Potential Selection of Stalking Horse Bidder

13. At this time the Debtors have not identified a Stalking Horse Bidder. If the Debtors select a Stalking Horse Bidder, then no later than one (1) business day after selecting a Stalking Horse Bidder, the Debtors shall file with the Court and serve a notice (the “Stalking Horse Notice”) on the Notice Parties identifying the Stalking Horse Bidder and the material terms of the Stalking Horse Bid (including the purchase price and Assets subject to the Stalking Horse Bid).

14. If in selecting a Stalking Horse Bidder the Debtors determine, in their business judgment, that bid protections would maximize the value of the Sale, instead of the Stalking Horse Notice, the Debtors will file a motion (the “Bid Protections Motion”) that designates the Stalking Horse Bidder and seeks approval of certain bid protections.

15. Flexibility to designate a Stalking Horse Bidder and provide certain bid protections will provide the Debtors with the ability to maximize value of the Assets. The ability to designate a Stalking Horse Bidder and seek approval of Bid Protections for such bidder is a sound exercise of the Debtors’ business judgment.

The Assumption and Assignment Procedures and Assignment Notice

16. The Debtors are seeking approval of the Assumption and Assignment Procedures attached to the Bid Procedures Order as Exhibit C to facilitate the fair and orderly assumption and assignment to any Winning Bidder the Designated Contracts in accordance with the Assumption and Assignment Procedures. The Assumption and Assignment Procedures (including service of the Assignment Notice) will notify the counterparties to any Potential Assumed Contracts (as defined in the Assumption and Assignment Procedures), and ultimately Designated Contracts, of the intended assumption and assignment of their contracts or leases and the Debtors’ calculation of any cure amount. The Debtors also request approval of the Assignment Notice, substantially in the form attached to the Bid Procedures Order as Exhibit D.

Basis for Relief

A. The Bid Procedures Are Fair, Designed to Maximize the Value Received for the Assets, and Are Consistent with the Debtors' Reasonable Business Judgment.

17. Bankruptcy Code section 363 and Bankruptcy Rule 6004(f)(1) authorize a debtor to sell property outside the ordinary course of business by private sale or by auction. Bankruptcy Code section 363(b) provides that “[t]he [debtor in possession], after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate”⁴ Bankruptcy Code section 105(a) empowers bankruptcy courts to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). The procedures used in selling estate assets are subject to the debtor’s business judgment, which is entitled to substantial deference, as long as the debtor articulates an adequate business justification.⁵ The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate.⁶ Courts uniformly recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and therefore are appropriate in the context of bankruptcy transactions.⁷

18. The Debtors carefully designed the Bid Procedures to attract active bidding from potential purchasers and to maximize the sale value for the Assets in the current market, based on the Debtors’ advisors’ experience with similar sales. The Debtors developed the Bid Procedures

⁴ 11 U.S.C. § 363(b)(1).

⁵ See, e.g., *In re Cont'l Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986) (“[F]or a debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside of the ordinary course of business.”); *In re Asarco, L.L.C.*, 650 F.3d 593, 601 (5th Cir. 2011) *aff'g* 441 B.R. 813, 824 (S.D. Tex. 2010) (“Section 363 of the Bankruptcy Code addresses the debtor’s use of property of the estate and incorporates a business judgment standard.”).

⁶ See, e.g., *In re Bigler, LP*, 443 B.R. 101, 115 (Bankr. S.D. Tex. 2010).

⁷ See, e.g., *In re Integrated Res., Inc.*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (bid procedures “are important tools to encourage bidding and to maximize the value of the debtor’s assets”).

to allow the Debtors to solicit offers and conduct a sale in a controlled, fair, and open fashion that will encourage participation by financially capable bidders.

19. The Bid Procedures provide the Debtors with an opportunity to consider competing bids and select the highest or otherwise best offers for the completion of the sale. All creditors can be assured that the consideration obtained will be fair and reasonable, and at or above market. The Bid Procedures will maximize the value of the Assets and are appropriate under the relevant standards governing auction proceedings and bidding incentives in bankruptcy proceedings. The Bid Procedures should be approved.

B. The Form and Manner of the Sale Notice Should Be Approved.

20. Bankruptcy Rules 2002(a)(2) and 2002(i) generally require a debtor to provide creditors with a minimum of 21-days' notice of a proposed sale of property outside the ordinary course of business under Bankruptcy Code section 363(b)(1) by mail to "the debtor, the trustee, all creditors and indenture trustees" and any committee appointed under Bankruptcy Code section 1102. Bankruptcy Rule 2002(c) requires any such notice to include the time and place of the auction, the hearing, and the deadline for filing any objections to the relief requested. Courts are authorized to limit notice of a proposed sale to the United States Trustee, any official committee appointed under Bankruptcy Code 1102, and any other creditor or equity holder who requests notice.

21. The Debtors seek approval of the Sale Notice as proper and sufficient notice of the Auction, the Sale Hearing, and the deadline to object to the Sale. Notice of this Motion and the related hearing to consider entry of the Bid Procedures Order, coupled with service of the Sale Notice, constitutes good and adequate notice of the Auction and the related proceedings in compliance with, and satisfaction of, the applicable requirements of Bankruptcy Rule 2002.

C. The Assumption and Assignment Procedures and the Assignment of Any Designated Contracts Should Be Approved.

22. Bankruptcy Code section 365(a) provides that a debtor-in-possession “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.”⁸ The standard governing approval of a debtor’s decision to assume or reject an executory contract is whether the debtor’s reasonable business judgment supports assumption or rejection.⁹ Under the business judgment test, a court should approve a debtor’s proposed assumption if such assumption will benefit the estate.¹⁰

23. The Assumption and Assignment Procedures are reasonable under the circumstances and are necessary to notify parties to Designated Contracts of the assumption and assignment of their contract, the related proposed cure amount, and the Winning Bidder’s adequate assurance of future performance. The Debtors will be prepared to demonstrate at the Sale Hearing that the requirements for assumption and assignment of any Designated Contracts to a Winning Bidder will be satisfied. The Debtors will evaluate the financial wherewithal of potential bidders before designating such party a Qualified Bidder or Winning Bidder, including as it relates to such Qualified Bidder’s willingness and ability to perform under the Designated Contracts.

24. The Assumption and Assignment Procedures provide the Court and other interested parties opportunity to evaluate and, if necessary, challenge the ability of a Winning Bidder to provide adequate assurance of future performance and object to the assumption and assignment of the Designated Contracts or proposed cure amounts. The Court will have a sufficient basis to

⁸ 11 U.S.C. § 365(a).

⁹ *Mirant Corp. v. Potomac Electric Power Co. (In re Mirant Corp.)*, 378 F.3d 511, 524-25 & n.5 (5th 2004).

¹⁰ *In re Food City, Inc.*, 94 B.R. 91, 93-94 (Bankr. W.D. Tex. 1988).

authorize the Debtors to assume and assign the Designated Contracts as set forth in the definitive agreement of a Winning Bidder.

25. The Assumption and Assignment Procedures, including the form and manner of the Assignment Notice, should be approved as reasonable and necessary measures to adequately notify parties in interest and assume and assign Designated Contracts in a fair, efficient, and proper manner.

D. The Assets May Be Sold Free and Clear of Liens, Claims, Interests and Encumbrances under Bankruptcy Code Section 363(f).

26. Bankruptcy Code section 363(f) authorizes a debtor to sell assets free and clear of all liens, claims, interests and encumbrances provided that one of the following conditions is met:

- a. applicable non-bankruptcy law permits sale of such property free and clear of such interests;
- 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

This provision is supplemented by Bankruptcy Code section 105(a), which provides that “[t]he Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].”¹²

¹¹ 11 U.S.C. § 363(f).

¹² 11 U.S.C. § 105(a).

27. Because Bankruptcy Code section 363(f) is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the Assets free and clear of the interests.¹³ The Debtors anticipate satisfying one or more of the conditions under section 363(f).

28. To the extent that the Court finds that the Sale satisfies section 363(f), the Debtors request that the Court also hold that the Sale is free and clear of successor liability relating to the Debtors' businesses. The purpose of a free and clear sale under section 363(f) would be frustrated if claimants could thereafter assert claims arising from the Debtors' pre-sale conduct against the eventual purchaser. The absence of such assurance may chill bidding or result in reduced bids.

E. Credit Bidding Should Be Authorized Under Bankruptcy Code Section 363(k).

29. A secured creditor is allowed to "credit bid" the amount of its claim in a sale. Bankruptcy Code section 363(k) provides, in relevant part, that unless the court for cause orders otherwise, the holder of a claim secured by property that is the subject of the sale "may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property."¹⁴ Even if a secured creditor is undersecured as determined in accordance with Bankruptcy Code section 506(a), section 363(k) allows such secured creditor to bid the total face value of its claim and does not limit the credit bid to the claim's economic value.¹⁵

30. The Bid Procedures provide that Secured Creditors have the right to credit bid all or any portion of the Secured Creditor's claim on a dollar-for-dollar basis pursuant to section 363(k) with respect to the collateral by which such Secured Creditor is secured. A credit bid is

¹³ *In re Nature Leisure Times, LLC*, No. 06-41357, 2007 WL 4554276, at *3 (Bankr. E.D. Tex. Dec. 19, 2007).

¹⁴ 11 U.S.C. § 363(k).

¹⁵ *See In re Submicron Sys. Corp.*, 432 F.3d 448, 459-60 (3d Cir. 2006).

permitted only to the extent such credit bid is permitted under the DIP Facility, any other relevant agreements, and the Bankruptcy Code.

F. The Winning Bidder Should be Entitled to the Protections of Bankruptcy Code Section 363(m).

31. Pursuant to Bankruptcy Code section 363(m), a good faith purchaser is one who purchases assets for value, in good faith, and without notice of adverse claims.¹⁶ If the Debtors seek to consummate a Sale pursuant to a Winning Bid obtained in accordance with the Bid Procedures, such Sale will have been negotiated at arm's length or through a fair and open auction process. The Debtors request that the Sale Order include a provision that the Winning Bidder of the Assets is a "good faith" purchaser within the meaning of Bankruptcy Code section 363(m). Providing the Winning Bidder with such protection will ensure that the Debtors receive the maximum price for the Assets and the Sale closing will occur promptly.

Waiver of Bankruptcy Rules 6004(a) and 6004(h)

32. The Debtors request the Court enter an order providing that notice of the relief requested satisfies Bankruptcy Rule 6004(a) and the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

Notice

33. The Debtors will provide notice of this Motion to the Master Service List and any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, no other or further notice need be given.

¹⁶ See *TMT Procurement Corp. v. Vantage Drilling Co. (In re TMT Procurement Corp.)*, 764 F.3d 512, 521 (5th Cir. 2014).

The Debtors request that the Court enter the Bid Procedures Order granting the relief requested in this Motion and granting such other and further relief as is appropriate under the circumstances.

Dated: February 10, 2023

/s/ Veronica A. Polnick

JACKSON WALKER LLP

Matthew D. Cavanaugh (TX Bar No. 24062656)

Veronica A. Polnick (TX Bar No. 24079148)

Vienna Anaya (TX Bar No. 24091225)

Emily Meraia (TX Bar No. 24129307)

1401 McKinney Street, Suite 1900

Houston, TX 77010

Telephone: (713) 752-4200

Facsimile: (713) 752-4221

Email: mcavanaugh@jw.com

vpolnick@jw.com

vanaya@jw.com

emeraia@jw.com

*Proposed Counsel to the Debtors
and Debtors in Possession*

Certificate of Service

I certify that on February 10, 2023, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Veronica A. Polnick

Veronica A. Polnick

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

		) Chapter 11
In re:)	
	)	Case No. 23-90054 (CML)
IEH AUTO PARTS HOLDING LLC, <i>et al.</i> , ¹)	
	)	(Joint Administration Requested)
Debtors.)	
	)	Re: Docket No. _____

ORDER APPROVING THE BID PROCEDURES AND GRANTING RELATED RELIEF

The Debtors filed their motion (the “Motion”)² of the above captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”) approving the Bid Procedures and granting related relief, all as more fully set forth in the Motion. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. § 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order on the Motion. The relief requested in the Motion is in the best interests of the Debtor, its estate, stakeholders, and other parties in interest and the Debtors gave sufficient and proper notice of the Motion and related hearings under the circumstances. Upon consideration of the Motion and any evidence or arguments in support of the relief requested at the hearing before the Court on March 10, 2023 at 10:00 a.m., prevailing Central Time

¹ The Debtor entities in these chapter 11 cases, along with the last four digits of each Debtor entity’s federal tax identification number, are: IEH Auto Parts Holding LLC (6529); AP Acquisition Company Clark LLC (4531); AP Acquisition Company Gordon LLC (5666); AP Acquisition Company Massachusetts LLC (7581); AP Acquisition Company Missouri LLC (7840); AP Acquisition Company New York LLC (7361); AP Acquisition Company North Carolina LLC (N/A); AP Acquisition Company Washington LLC (2773); Auto Plus Auto Sales LLC (6921); IEH AIM LLC (2233); IEH Auto Parts LLC (2066); IEH Auto Parts Puerto Rico, Inc. (4539); and IEH BA LLC (1428). The Debtors’ service address is: 112 Townpark Drive NW, Suite 300, Kennesaw, GA 30144.

² Capitalized terms used but not otherwise defined have the meanings ascribed to them in the Motion or the Bid Procedures.

(the “Hearing”), the Court finds that good cause exists to grant the requested relief. The Court finds as follows:

A. The findings and conclusions set forth in this Order 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.

B. The Bid Procedures attached as Exhibit A are fair, reasonable, and appropriate, and are designed to promote participation and active bidding and ensure that the highest or otherwise best value is generated for the Assets. The Bid Procedures were negotiated at arm’s length, in good faith, and without collusion.

C. The Assumption and Assignment Procedures attached as Exhibit C are fair, reasonable and appropriate and comply with the provisions of Bankruptcy Code section 365.

D. The Debtors demonstrated a compelling and sound business justification for this Court to enter this Order, to approve the Bid Procedures and the Assumption and Assignment Procedures, and to establish the dates and deadlines set forth in the Bid Procedures.

E. The Sale Notice attached as Exhibit B and Assignment Notice attached as Exhibit D are appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Bid Procedures (including the Bid Deadline, the Auction, and the Sale Hearing), the Assumption and Assignment Procedures, the Sale, the Designated Contracts (if any) and related cure amounts, and all relevant and important dates and deadlines with respect to the foregoing. No other or further notice of the Sale, the Auction, or the assumption and assignment of Designated Contracts shall be required.

It is ORDERED THAT:

1. Any and all objections to the relief granted that have not been withdrawn with prejudice, waived, or settled, and all reservations of rights included in such objections, are overruled and denied on the merits with prejudice.

2. The Bid Procedures attached as **Exhibit A** are fully incorporated and approved in their entirety. All dates and deadlines set forth in the Bid Procedures are hereby established.

3. The Bid Procedures shall govern the submission, receipt, and analysis of all bids relating to any proposed sale of the Assets and the conduct of the Auction and sale of the Assets. Any party desiring to bid on the Assets shall comply with this Order, including the Bid Procedures. The Debtors are authorized to take all actions as are necessary or appropriate to implement the Bid Procedures and otherwise effectuate the relief granted in this Order.

4. Pursuant to the Final DIP Order, the Debtors have stipulated to the amount, nature, extent, validity, and perfection of the secured claims of the DIP Lender and the DIP Lender has the right under section 363(k) of the Bankruptcy Code to credit bid the full dollar amount of all Obligations then outstanding.

5. The form of the Sale Notice attached as **Exhibit B** is approved. The failure to specifically include a reference to any particular provision of the Bid Procedures in the Sale Notice shall not diminish or impair the effectiveness of such provision. The Debtors are authorized to serve the Sale Notice on all known parties in interest in the chapter 11 case and, post the Notice on the Debtors' claims, noticing, and solicitation agent's website for the case, as soon as reasonably practicable, publish the Sale Notice in *The Wall Street Journal*.

6. Objections to any Sale, including any objection to (a) the sale of any Assets free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and

interests pursuant to Bankruptcy Code section 363(f), (b) the Winning Bidder's adequate assurance of future performance, (c) the proposed assumption and assignment of any executory contract or unexpired lease (including any proposed cure amount), and/or (d) entry of any Sale Order, must (x) be in writing and specify the nature of such objection, (y) comply with the Bankruptcy Code, Bankruptcy Rules, Bankruptcy Local Rules and all orders of the Court, and (z) be filed with the Court by **May 17, 2023 at 5:00 p.m. (prevailing Central Time)**.

7. If any party fails to file an objection by the foregoing deadline, such party shall be (a) barred from asserting any objection to the relief requested in the Motion or to the consummation of the Sale, including the transfer of the Assets to the Winning Bidder free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests pursuant to Bankruptcy Code section 363(f) and (b) deemed to consent to such "free and clear" sale for purposes of Bankruptcy Code section 363(f).

8. The Debtors are authorized to seek emergency relief for their Bid Protections Motion.

9. The Assumption and Assignment Procedures attached as **Exhibit C** are approved.

10. As set forth in the Assumption and Assignment Procedures, the Debtors will file with the Court and serve the Cure Notice on or before April 11, 2023 (the "Initial Cure Notice Deadline"). Any objections to the initial Cure Notice, including the Cure Amount or the assumption and assignment of any contract or lease included on the Cure Notice must be filed and served by **5:00 p.m. (prevailing Central Time) on April 25, 2023** (the "Cure Objection Deadline").

11. As set forth in the Assumption and Assignment Procedures, the Debtors may file with the Court and serve the Supplemental Cure Notice until such time as the closing of the Sale.

Any objection to a Supplemental Cure Notice, including the Cure Amount, must be filed within 14 days following the date of service of such Supplemental Cure Notice (the “Supplemental Cure Objection Deadline”).

12. The form of the Assignment Notice attached as **Exhibit D** is approved. The Debtors are authorized to serve the Assignment Notice on all non-Debtor counterparties to Designated Contracts (if any) as soon as reasonably practicable after the Debtors file the Notice of Winning Bid. The inclusion of a contract in any list of Designated Contracts or an Assignment Notice, Cure Notice (as defined in the Assumption and Assignment Procedures), or Supplemental Cure Notice (as defined in the Assumption and Assignment Procedures) shall not (a) obligate the Debtors to assume or assign such contract or (b) constitute any admission or agreement by the Debtors that such contract is an executory contract. Only those contracts that are included on a schedule of assumed and acquired contracts attached to definitive documentation in the Sale that is approved by the Sale Order will be assumed and assigned.

13. All persons or entities (whether or not a Qualified Bidder) 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 to the extent that it is later determined that this 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.

14. All parties in interest shall receive or be deemed to have received good and sufficient notice of the Motion and of the Auction, and no further notice of the foregoing shall be required.

15. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

16. Notice of the Motion is good and sufficient notice of such Motion, and the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

17. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

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

19. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2023

CHRISTOPHER M. LOPEZ
UNITED STATES BANKRUPTCY JUDGE

Exhibit A

Bid Procedures

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

)	
In re:	)	Chapter 11
)	
IEH AUTO PARTS HOLDING LLC, <i>et al.</i> , ¹	)	Case No. 23-90054 (CML)
)	
Debtors.	)	(Jointly Administered)
)	

BID PROCEDURES

On January 31, 2023 (the “Petition Date”), the above-captioned debtors and debtors in possession (the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of Texas (the “Court”). On February 10, 2023, the Debtors filed their *Motion for Entry of an Order (I) Approving the Bid Procedures, (II) Approving the Sale of the Debtors’ Assets Free and Clear, and (III) Granting Related Relief* [Docket No. ●] (the “Bid Procedures Motion”).

On [●], 2023, the Court entered the *Order Approving the Bid Procedures and Granting Related Relief* [Docket No. [●]] (the “Bid Procedures Order”), which approved the procedures set forth below pursuant to which the Debtors are authorized to sell all or substantially all of the Debtors’ assets (the “Bid Procedures”).²

The Debtors are offering investors or purchasers the opportunity to acquire some or all of the Debtors’ assets, in whole or in parts. On February 1, 2023, the Debtors’ proposed investment bank, Lincoln Partners Advisors LLC (“Lincoln”), commenced the distribution of teaser and other promotional materials to potentially interested parties advising them of the opportunity to acquire the Debtors’ assets, in whole or in part, pursuant to a section 363 sale (a “Sale”). The Debtors’ representatives, including Lincoln, shall oversee the Sale process.

Copies of the Bid Procedures Order and other related documents are available at <http://www.kcellc.net/autoplus>.

¹ The Debtor entities in these chapter 11 cases, along with the last four digits of each Debtor entity’s federal tax identification number, are: IEH Auto Parts Holding LLC (6529); AP Acquisition Company Clark LLC (4531); AP Acquisition Company Gordon LLC (5666); AP Acquisition Company Massachusetts LLC (7581); AP Acquisition Company Missouri LLC (7840); AP Acquisition Company New York LLC (7361); AP Acquisition Company North Carolina LLC (N/A); AP Acquisition Company Washington LLC (2773); Auto Plus Auto Sales LLC (6921); IEH AIM LLC (2233); IEH Auto Parts LLC (2066); IEH Auto Parts Puerto Rico, Inc. (4539); and IEH BA LLC (1428). The Debtors’ service address is: 112 Townpark Drive NW, Suite 300, Kennesaw, GA 30144.

² Capitalized terms used but not defined herein have the meanings ascribed to them in the Bid Procedures Order or the DIP Order.

DEBTOR REPRESENTATIVES AND CONTACT INFORMATION	
Proposed Investment Banker to the Debtors	
Lincoln Partners Advisors LLC	projectclutch@lincolninternational.com and Brendan Murphy at BMurphy@lincolninternational.com
Proposed Co-Counsel to the Debtors	
Jackson Walker LLP	SaleJW-AutoPlus@jw.com
The Law Office of Liz Freeman	liz@lizfreemanlaw.com

I. KEY SALE DATES AND DEADLINES

Deadline to Designate Stalking Horse Bidders (if any)	April 3, 2023
Bid Deadline	May 3, 2023
Auction	May 10, 2023
Sale Objection Deadline	May 17, 2023
Sale Hearing	May 19, 2023, at 10:00 a.m.
Deadline to Consummate Sale	May 31, 2023

II. MARKETING PROCESS

The Debtors, in consultation with Lincoln, developed a list of parties whom they believe may be interested in, and whom the Debtors reasonably believe would have the financial resources to consummate, a transaction through a section 363 sale process. The list of parties includes both strategic investors and financial investors whom the Debtors or their advisors previously contacted regarding a possible transaction, regardless of whether these parties had expressed any interest in pursuing a transaction (collectively, the “Contact Parties”). The Debtors will continue to discuss and may supplement the list of Contact Parties throughout the marketing process, as appropriate.

The Debtors may distribute (if not already distributed) to each Contact Party and any other potential bidder (“Potential Bidder”) an “Information Package” consisting of:

- (i) a copy of the Bid Procedures, Bid Procedures Order, and the Bid Procedures Motion;
- (ii) a form non-disclosure agreement (“NDA”), substantially in the form attached as Schedule 1, and acceptable to the Debtors; and
- (iii) any other materials appropriate under the circumstances.

III. OVERVIEW

a. **Assets to be Sold.** The Debtors seek to sell substantially all of the Debtors’ assets in one or more asset packages (each an “Asset Package and, collectively, the “Assets”).

b. **Free and Clear of Any and All Claims and Interests.** Except as otherwise provided in any Winning Bidder’s purchase agreement, all of the Debtors’ right, title, and interest in and to the Assets shall be sold free and clear of all liens, claims, encumbrances and interests (collectively, the “Encumbrances”) to the maximum extent permitted by section 363 of the Bankruptcy Code (other than Permitted Liens and Assumed Liabilities), with these Encumbrances to attach to the proceeds of the Sale with the same validity and priority as such Encumbrances applied against the Assets.

IV. PARTICIPATION REQUIREMENTS

a. **Due Diligence.** To receive due diligence information, including full access to the Debtors’ electronic data room and to additional non-public information regarding the Debtors, a Potential Bidder must deliver the following documents (collectively, the “Preliminary Bid Documents”) by email to each of: (i) Jackson Walker LLP; and (ii) Lincoln (collectively, the “Bid Recipients”):

- (i) an executed NDA on terms acceptable to the Debtors;
- (ii) the identity of the Potential Bidder and a list of contacts for the Potential Bidder; and
- (iii) a description of the diligence the Potential Bidder seeks to conduct.

Upon delivery of the Preliminary Bid Documents, the Debtors will provide instructions to such party for accessing the Data Room. The Debtors will address all reasonable requests for additional information and due diligence access. The Debtors may refuse any party access to due diligence information, including access to the Data Room, in whole or in part and at any time, if the Debtors determine in their reasonable business judgment after consultation with counsel that (i) access by such party may be harmful to the Debtors or their estates or (ii) such party has not established that it intends or has the capacity to consummate a sale transaction for the Assets in good faith.

The due diligence period and the Data Room shall be open until the Bid Deadline. After the Bid Deadline, the Debtors shall have no obligation to furnish due diligence information. The

Debtors may, in the exercise of their reasonable business judgment and in consultation with their counsel, extend a party's time to conduct due diligence.

The Debtors make no representation or warranty as to the information provided through this due diligence process or otherwise, including the documents in the Data Room, except as set forth in any executed definitive documents for the Sale.

b. Qualified Bid Requirements. Only bids and bidders that satisfy the following conditions will be considered or permitted to participate in the bidding, Auction, or Sale (each, a "Qualified Bid" and the bidder(s) submitting a Qualified Bid, a "Qualified Bidder"):

1. The bid must be in writing and timely and properly submitted in accordance with the bid submission process set forth below, including successful and timely delivery of the Good Faith Deposit (defined below).
2. The bid must fully disclose the identity of each person or entity that is participating in the bid (and the complete terms of such participation) and each such person or entity shall have delivered an executed NDA to the Debtors in accordance with the instructions set forth above. "Participation" in a bid includes persons or entities that are equity holders in an entity specially formed for the purpose of effectuating a Sale transaction for the Assets.
3. The bid must identify an Asset Package or else be for all Assets and identify (a) the cash consideration to be paid (or the amount of any credit bid as allowed herein) for the Asset Package or Assets, as applicable, and (b) any liabilities to be assumed as part of the proposed acquisition, including a reasonable estimate of the cash value thereof (clauses (a) and (b) together, the "Proposed Purchase Price").
4. The bid must state that the bidder is prepared to consummate the transaction promptly following entry of an order approving the Sale and be accompanied by (a) a purchase and sale agreement executed by the bidder (the "Proposed APA"), a form of which will be available in the Data Room (the "Form APA"), (b) a redline of the Proposed APA against the Form APA, and (c) evidence of authorization and approval from the board (or comparable governing body) of each person or entity participating in the bid with respect to the submission, execution, delivery, and performance of the bid and Proposed APA.
5. The bid must be (a) unqualified and not subject to any contingencies or conditions (including any further due diligence, material financing conditions, internal approval (such as but not limited to board approval)) and (b) binding and irrevocable until (i) if such bid is the Winning Bid or a Backup Bid, the earlier of (x) the closing of the Sale or (y) 45 days after the conclusion of the Auction (or, if no Auction is held, 45 days after the date on which the Debtors file a notice of cancellation of Auction) or (ii) the Debtors file a notice of Winning Bid that does not name such bid as the Winning Bid or a Backup Bid.
6. The bid must include financial and other information sufficient for the Debtors to make a reasonable determination as to the bidder's financial and other capabilities to consummate the transactions contemplated by the Proposed APA by no later than May 31, 2023, including (a) the availability of funds to satisfy the Proposed Purchase Price and (b) information constituting adequate assurance of future performance under contracts and

leases to be assumed pursuant to section 365 of the Bankruptcy Code (if any), which information the Debtors may request be supplemented or altered such that it can be served on counterparties to any contracts or leases to be assumed and assigned in connection with the Sale that request such information.

7. The bid must identify any and all executory contracts and unexpired leases to which the Debtors are a party that the bidder wishes to have assumed and assigned to it in connection with the acquisition (if any). The bidder shall be solely responsible for the payment of any cure cost required pursuant to section 365 of the Bankruptcy Code.
8. Unless consented to in writing by the Debtors and approved by the Court, the bid must not request or entitle the bidder to any break-up fee, topping fee, expense reimbursement, or similar type of payment (and by submitting a bid, a bidder shall be deemed to have waived its right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code in any way related to the submission of its bid or these Bid Procedures) or indemnification by the Debtors in favor of the bidder.
9. The bid must include contact information for the specific person(s) the Debtors should contact in the event they have questions regarding the bid.

By submitting a bid, a bidder is deemed to acknowledge (and shall represent in any definitive document) that (i) it has had an opportunity to inspect and examine the Assets and to conduct any and all due diligence prior to submitting its bid, (ii) it has relied solely upon its own independent review, investigation, and/or inspection of the Assets and any documents in submitting its bid, (iii) it did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express or implied by operation of law or otherwise, regarding the Debtors' business, the Assets, or the completeness of any information provided in connection with the Bid Procedures or the Sale process.

The Debtors and their advisors shall maintain in confidence in accordance with the applicable executed NDA any information provided by a bidder that is designated as confidential, except as otherwise set forth in these Bid Procedures, and shall use such confidential information only in connection with the evaluation of bids or otherwise in connection with the chapter 11 case or in accordance with the executed NDA. Notwithstanding the foregoing and any provisions in an executed NDA, the Debtors and Debtors' advisors may disclose confidential information (i) with the prior written consent of the applicable bidder, (ii) to the applicable bidder, and (iii) as otherwise required or allowed by any applicable confidentiality agreement with respect to a particular bidder or other agreement, law, court, or other governmental order, or regulation, including, as appropriate, regulatory agencies.

c. Bid Submission and Evaluation Process. Bids (including all requirements to be considered a Qualified Bid) must be submitted in writing to the Bid Recipients so as to be received by no later than **May 3, 2023** (the "Bid Deadline").

Concurrent with the submission of its bid, and in no event later than the Bid Deadline, a bidder must deposit with the Debtors in cash 10% of the bidder's Proposed Purchase Price

(the “Good Faith Deposit”), which shall be refundable as described below. Bank information for the Debtors will be included in the Data Room.

Each bidder shall comply with all reasonable requests by the Debtors for additional information and due diligence access regarding the ability of a bidder to consummate the Sale. A bidder’s failure to comply with such requests may be a basis for the Debtors to determine such bidder is not a Qualified Bidder and the associated bid is not a Qualified Bid.

The Debtors shall determine, in their reasonable business judgment (i) which bids meet the criteria to qualify as a Qualified Bid and (ii) if there is more than one Qualified Bid, which Qualified Bid will serve as the baseline bid at the commencement of the Auction to facilitate obtaining the highest and best value for the Debtors’ estates. Any bid that does not meet the criteria for a Qualified Bid set forth above shall be rejected as a non-conforming bid. If there are no timely Qualified Bids other than a credit bid by the DIP Lender submitted, no Auction will be held.

V. STALKING HORSE BIDDERS

Subject to the procedures set forth in the Bid Procedures Order, the Debtors are authorized, in an exercise of their business judgment, to select one or more Qualified Bidder to act as stalking horse bidders in connection with the Sale (each, a “Stalking Horse Bidder”), and enter into a purchase agreement with respect to a Sale with such Stalking Horse Bidder (each such agreement, a “Stalking Horse Agreement”). No later than one business day after the selection of a Stalking Horse Bidder, the Debtors shall file a notice with the Court of such selection that includes a copy of an executed and binding Stalking Horse Agreement pursuant to the Bid Procedures Order.

VI. AUCTION

If the Debtors receive more than one timely Qualified Bid, the Debtors shall conduct an auction at **10:00 a.m.** (prevailing Central Time) on **May 10, 2023** (the “Auction”) **via video conference and in-person** at the offices of Jackson Walker LLP, 1401 McKinney Street, Suite 1900, Houston, Texas 77010. The Auction will be subject to the following rules:

1. Only Qualified Bidders may participate in or make subsequent bids at the Auction.
2. Only the Debtors, Qualified Bidders, the DIP Lender, the United States Trustee, and such parties’ representatives and advisors may attend the Auction.
3. All Qualified Bidders shall appear at the Auction; *provided* they may appear through a duly authorized representative bearing a valid and enforceable power of attorney or other written proof evidencing their ability to bind the applicable Qualified Bidder, which document(s) shall be delivered to the Debtors prior to the commencement of the Auction.
4. Each Qualified Bidder will be required to confirm on the record at the Auction that (a) it has not engaged in any collusion with respect to the bidding or Sale and (b) its Qualified Bid and any subsequent bid, is a good-faith bona fide offer and it intends to consummate the proposed sale if selected as a Winning Bidder.

5. The Auction will begin at the baseline bid, and each Qualified Bidder may submit subsequent bids for the Proposed Purchase Price in minimum overbid increments of at least \$2,500,000 for the Assets or \$1,000,000 for an Asset Package over the amount of the Proposed Purchase Price in the highest and best bid at that time; *provided* that the Debtors, in consultation with their advisors and any statutorily-appointed committee and the DIP Lender (the committee together with the DIP Lender, the “Consultation Parties”), shall retain the right to modify the overbid increment at the Auction without any additional or prior notice.
6. Each Qualified Bidder, including the DIP Lender, that has a valid and perfected lien on any of the Assets (a “Secured Creditor”) shall have the right to credit bid all or any portion of the Secured Creditor’s claim on a dollar-for-dollar basis pursuant to section 363(k) of the Bankruptcy Code; *provided* that a Secured Creditor shall have the right to credit bid its claim only with respect to the collateral by which such Secured Creditor is secured and only to the extent such credit bid is permitted under the DIP Facility, any other relevant agreements, and the Bankruptcy Code.
7. The Auction will be conducted openly and the Qualified Bidders will be informed of the terms of the highest and best bid promptly following receipt by the Debtors at the Auction.
8. All Qualified Bidders shall have the right to submit subsequent bids and make modifications to the Proposed APA at the Auction; *provided* that any such modifications to the Proposed APA on an aggregate basis and viewed in the whole shall not be less favorable or more burdensome to the Debtors’ estates, as determined by the Debtors, in consultation with their advisors, than the terms of the highest and best bid at that time.
9. The Auction shall continue until there is only one bid that the Debtors determine, in consultation with their advisors and the Consultation Parties, is the highest or otherwise best for either a select Asset Package or for the Assets, as applicable, at the Auction (the “Winning Bid”). In making such determination, the Debtors shall consider, without limitation, the amount of the Proposed Purchase Price, the form of consideration being offered, the likelihood of the Qualified Bidder’s ability to close a transaction and the timing thereof, the number, type, and nature of any changes to the Form APA requested by the bidders, and the net benefit to the Debtors’ estates. The Qualified Bidder submitting a Winning Bid shall be a winning bidder (a “Winning Bidder”) and shall have such rights and responsibilities of the Purchaser set forth in the Proposed APA associated with the Winning Bid.
10. The Debtors, in consultation with their advisors and the Consultation Parties, may also designate a bid that is the next highest or otherwise best after the Winning Bid (the “Backup Bid”) and the Qualified Bidder submitting the Backup Bid shall be the backup bidder (the “Backup Bidder”).
11. At the conclusion of the Auction, the Debtors will announce the Winning Bid and, if applicable, the Backup Bid.

- a. The Winning Bidder(s) and Backup Bidder(s) shall have 1 (one) business day from the announcement of the Winning Bid and Backup Bid to deposit with the Debtors in cash an amount sufficient to increase such bidder's Good Faith Deposit to 10% of the Proposed Purchase Price provided for in the Winning Bid or Backup Bid, as applicable.
 - b. As soon as reasonably practicable after conclusion of the Auction, the Debtors shall file with the Court a notice of the results of the Auction (the "Notice of Winning Bid"), which shall include (i) a copy of the Winning Bid and Backup Bid, (ii) the identities of the Winning Bidder(s) and Backup Bidder(s), and (iii) a list of all executory contracts and unexpired leases proposed to be assumed and assigned as part of the Sale (if any) and the cure cost pursuant to section 365(b) associated with each.
12. The Debtors may adopt such other rules for the Auction (including procedural rules and rules that may depart from those set forth herein) that they reasonably determine will result in the highest or otherwise best value for the Debtors' estates and that are not inconsistent with any Court order; *provided* that any changed or additional rules of the Auction are not materially inconsistent with these Bid Procedures, do not favor one Qualified Bidder over another, and are communicated to all participants substantially simultaneously at or prior to the Auction.

VII. SALE

A hearing to approve the Sale of the Assets to the Winning Bidder(s) in accordance with the terms of the Winning Bid and pursuant to the Proposed APA associated therewith (the "Sale Hearing") will take place on **May 19, 2023 at 10:00 a.m.** (prevailing Central time).

- a. If, for any reason, a Winning Bidder fails to timely consummate the purchase of the Assets, the Debtors may seek to consummate a Sale to the Backup Bidder in accordance with the terms of the Backup Bid and pursuant to the Proposed APA associated therewith without further approval by the Court (in which case the Backup Bidder shall be deemed the Winning Bidder).
- b. If a Winning Bidder fails to timely consummate the purchase of the Assets due to a breach or failure to perform on the part of the Winning Bidder, the defaulting Winning Bidder's Good Faith Deposit shall be forfeited to the Debtors (which funds shall be subject to the DIP Liens and DIP Budget) and the Debtors specifically reserve the right to seek all available damages from the defaulting Winning Bidder.
- c. The Backup Bid(s) and the obligation of the Backup Bidder(s) to consummate the purchase of the Assets shall remain open and in full force, including with respect to the Backup Bidder's Good Faith Deposit, until the earlier of (a) the closing of a Sale of the Assets to a Winning Bidder or Backup Bidder or (b) 45 days after the conclusion of the Auction (or, if no Auction is held, 45 days after the date on which the Debtors file a notice of cancellation of Auction).

- d. The Winning Bidder(s) shall appear at the Sale Hearing personally or through a duly authorized representative who shall be prepared to testify in support of the Winning Bid(s) and the Winning Bidder's ability to close the Sale in a timely manner and provide adequate assurance of future performance under any and all executory contracts and unexpired leases to be assumed and assigned as part of the Sale.

Any objections to the proposed Sale, including objections to the Winning Bidder's adequate assurance of future performance and the proposed assumption and assignment of any executory contract or unexpired lease (including any proposed cure cost), must be filed with the Court no later than **May 17, 2023 at 5:00 p.m.** (prevailing Central time).

The Debtors and the Winning Bidder(s) shall consummate the Sale no later than **May 31, 2023**. At the closing of the Sale, the Winning Bidder(s) will be entitled to a credit for the amount of its Good Faith Deposit.

VIII. OTHER PROVISIONS

a. Good Faith Deposits Held in Escrow; Return of Deposits. The Good Faith Deposits shall be held in a non-interest-bearing account established and held by, and in the name of, the Debtors. The Good Faith Deposits are not property of the Debtors or their estates.

1. Within five business days of determining a bid does not qualify as a Qualified Bid, the Debtors shall return by check or wire the full amount of the Good Faith Deposit submitted in connection with such non-qualified bid.
2. Within five business days of the conclusion of the Auction, the Debtors shall return by check or wire the full amount of each Good Faith Deposit submitted by a party that is not selected as the Winning Bidder(s) or Backup Bidder(s).
3. Unless a Sale is consummated with such bidder or the Good Faith Deposit is forfeited as provided above, the full amount of the Winning Bidder's or Backup Bidder's Good Faith Deposit, as applicable, shall be returned by check or wire within five business days of earlier of (i) the closing of the Sale or (ii) 45 days after the conclusion of the Auction (or, if no Auction is held, 45 days after the date on which the Debtors file a notice of cancellation of Auction).
4. All Good Faith Deposits shall be returned within five business days of the entry of an order dismissing or converting the chapter 11 case under section 1112 of the Bankruptcy Code if such dismissal or conversion occurs prior to the consummation of a Sale.

b. Bid Protections. No bidder, whether or not a Qualified Bidder, shall be entitled to bid protections unless consented to in writing by the Debtors and approved by the Court. The Debtors reserve the right to seek, in consultation with their advisors and the Consultation Parties, approval of bid protections from the Court on emergency notice to the extent the Debtors

determine, in their business judgment, that such bid protections are necessary or advisable under the circumstances to facilitate obtaining the highest and best value for the Debtors' estates.

c. **Reservation of Rights.** The Debtors reserve their rights to modify these Bid Procedures in their business judgment in any manner that will best promote the goals of these Bid Procedures or impose additional customary terms and conditions on the Sale, including extending the deadlines set forth herein, adjourning the Auction or the Sale Hearing, adding procedural rules that are reasonably necessary or advisable under the circumstances to conduct the Auction, cancelling the Auction, and rejecting any or all bids or Qualified Bids.

d. **Consent to Jurisdiction.** All Qualified Bidders at the Auction shall be deemed to have consented to the jurisdiction of the Court and waived any right to a jury trial in connection with any disputes relating to the Auction or the construction and enforcement of these Bid Procedures.

e. **Fiduciary Duties.** Notwithstanding anything to the contrary in these Bid Procedures, the Bid Procedures Order, or any other document, order, or instrument in these chapter 11 cases, nothing in these Bid Procedures shall require the Debtors, after consulting with counsel, to take any action or to refrain from taking any action with respect to any sale or other transaction if taking or failing to take such action would be inconsistent with applicable law or its fiduciary obligations under applicable law.

f. **Consultation Parties as Potential Bidders.** Notwithstanding anything to the contrary in these Bid Procedures, potential bidders shall not be considered Consultation Parties.

Houston, Texas
Dated: [●], 2023

/s/ Veronica A. Polnick

JACKSON WALKER LLP

Matthew D. Cavanaugh (TX Bar No. 24062656)

Veronica A. Polnick (TX Bar No. 24079148)

Vienna Anaya (TX Bar No. 24091225)

Emily Meraia (TX Bar No. 24129307)

1401 McKinney Street, Suite 1900

Houston, TX 77010

Telephone: (713) 752-4200

Facsimile: (713) 752-4221

Email: mcavanaugh@jw.com

vpolnick@jw.com

vanaya@jw.com

emeraia@jw.com

*Proposed Counsel to the Debtors
and Debtors in Possession*

Schedule 1

Form NDA

PROJECT CLUTCH
CONFIDENTIALITY AGREEMENT

This CONFIDENTIALITY AGREEMENT (this "Agreement") shall govern the conditions under which we _____ ("Recipient" or "we" or "us" or "our") have agreed to discuss a possible transaction known as Project Clutch (the "Potential Transaction") with IEH Auto Parts Holding LLC (the "Company"). Company and Recipient may be referred to herein individually as a "Party" or collectively as the "Parties."

1. As a condition to such discussions, we agree to keep strictly confidential all information conveyed by the Company or the Company's "Representatives" (as defined below), including Lincoln International LLC and its affiliates ("Lincoln"), to us or by us or on our behalf to our "Representatives" (as defined below) in connection with the Potential Transaction, in whatever form, whether written or oral, hereinafter referred to as the "Confidential Information," and to refrain from using the same except as provided below. A Party's "Representatives" shall mean all of the Party's affiliates and subsidiaries and its and their respective officers, directors, employees, members, debt financing sources, attorneys, accountants, consultants, agents and financial advisors. Recipient's "Representatives" shall be further defined to mean only those of its Representatives to whom the Confidential Information has been or hereafter is provided.
2. This Agreement will confirm our agreement to retain in strict confidence all Confidential Information, unless such information (i) is, was or becomes available to us or our Representatives from a source other than the Company or the Company's Representatives, provided that such other source is not known by us to be in violation of any other obligation of confidentiality or nonuse, (ii) was or becomes available to the public from a source other than us or our Representatives, or (iii) is independently developed by us or our Representatives without the use of or reference to any Confidential Information. We will use such Confidential Information only in connection with our consideration of whether to enter into the Potential Transaction with the Company and, except as otherwise expressly permitted herein, will not otherwise use it in our business or disclose it to others. We shall have the right to communicate the Confidential Information to our Representatives assisting with the Potential Transaction, provided that each such person shall be directed to abide by the terms of this Agreement. We hereby agree that we will be responsible for any breach of any provision of this Agreement by our Representatives. We agree to direct all requests for information to Lincoln. We agree not to initiate, contact, or engage in discussions with any employee, customer, or supplier of the Company regarding the Potential Transaction without the prior written consent of the Company, the Company's legal counsel, or Lincoln. We agree that, without prior written consent of the Company and except in accordance with the provisions set forth in this Agreement with respect to a "Required Disclosure" (as defined herein), we will not disclose to any other person that we have received Confidential Information, that we are in discussions or negotiations with the Company as to the Potential Transaction, or that the Company is considering the Potential Transaction.
3. For a period of two (2) years from the date of this Agreement, we and our Representatives (excluding Representatives who are debt financing sources, attorneys, accountants, consultants, agents and financial advisors so long as such Representatives are not acting on our behalf with respect to employee solicitation or hiring) agree not to directly or indirectly solicit for employment or employ any Employees of the Company, other than through a public general advertisement or through the use of search firms (in each case not directed at, or targeted to, the Company or any of the Company's Employees). "Employees" shall be defined as any employees of the Company with whom we or any of our Representatives have direct contact or who become known to us or any of our Representatives in connection with the Potential Transaction.

4. We acknowledge that neither the Company nor any of the Company's Representatives makes any representation as to the accuracy or completeness of such Confidential Information and that neither the Company nor any of the Company's Representatives shall have any liability to us as a result of our reliance on or use of such Confidential Information. We agree that, until a definitive acquisition agreement is executed between us and the Company, the Company has no legal obligation of any kind whatsoever with respect to any transaction (including the Potential Transaction) by virtue of this Agreement or otherwise. Notwithstanding the preceding sentence, nothing in this Agreement shall prohibit the enforcement of any binding terms of an executed letter of intent or any other definitive written agreement between us and the Company.
5. We acknowledge that (i) the Company and Lincoln will conduct the process for the Potential Transaction in their sole discretion (including, without limitation, negotiating with any prospective party and entering into definitive agreements without prior notice to us or any other person), (ii) any procedures relating to the Potential Transaction may be changed at any time without notice to us or any other person, (iii) the Company shall have the right, in its sole discretion, to reject or accept any potential party, proposal, or offer, and to terminate any discussions and negotiations, at any time and for any or no reason, and (iv) we shall have no claims whatsoever against the Company or the Company's Representatives (including Lincoln) arising out of or relating to such actions.
6. Promptly upon a written request by or on behalf of the Company, we agree to destroy (and we shall confirm all such destruction in writing by an authorized signatory) all Confidential Information in our or our Representatives' possession or to which either we or our Representatives have access. Notwithstanding the foregoing, we and our Representatives shall (i) be permitted to retain a copy of the Confidential Information to the extent required to comply with applicable law or regulatory authority or written and established internal document retention policies and (ii) not be required to destroy, delete, or modify any backup tapes or other media pursuant to automated archival processes in our ordinary course of business, provided in each case (i) and (ii) herein, any such Confidential Information retained shall remain subject to the confidentiality obligations of this Agreement for so long as such Confidential Information is retained.
7. We may disclose Confidential Information to the extent required by any law, regulation, or legal, regulatory, or judicial process or proceeding or by the rules of any recognized stock exchange, but we will provide prompt advance written notice (to the extent legally permissible and if circumstances permit) to the Company prior to disclosing any Confidential Information and cooperate with any attempt by the Company (at the Company's sole cost and expense) to obtain confidential treatment thereof. A disclosure pursuant to this paragraph 9 is herein referred to as a "Required Disclosure."
8. The Recipient acknowledges that certain of the securities of the Company's parent company, Icahn Enterprises L.P. (the "Parent") are registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and that certain of the Parent's securities are publicly traded. Accordingly, the Recipient agrees that so long as the Recipient possesses information about the Company or the Parent that may be considered "material non-public information" for purposes of the Securities Act of 1933, as amended, and the Exchange Act, and the rules and regulations promulgated thereunder, including Regulation FD, the Recipient shall not, directly or indirectly (including through any affiliate of the Recipient) purchase or sell, in any way, shape or form (including, but not limited to, pursuant to a "hedging" transaction (whether or not such transaction involves the actual exchange of securities) or "short selling"), directly or indirectly, the Parent's securities.
9. We acknowledge and agree that money damages would not be a sufficient remedy for any breach of this Agreement and that, as a remedy for any such breach, the Company shall be entitled to specific

performance, injunctive, and/or other equitable relief. Such remedies shall not be deemed to be the exclusive remedies for any breach of this Agreement, but shall be in addition to all other remedies available at law or equity. In addition to the Company's other rights hereunder, the Company retains all rights and remedies the Company may have under applicable law.

10. This Agreement and all matters arising from or relating to this Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of law principles thereof.
11. We agree and acknowledge that this Agreement cannot be amended or terminated, and no provision may be waived or modified, without the written consent of both Recipient and the Company.
12. To the extent that any Confidential Information includes materials or other information subject to the attorney-client privilege, work product doctrine, or any other applicable privilege or doctrine concerning pending or threatened legal proceedings or governmental investigations, we understand and agree that we and the Company have a commonality of interest with respect to such matters and it is the Parties' desire, intention, and mutual understanding that the sharing of such material or other information is not intended to, and shall not, waive or diminish in any way the confidentiality of such material or information or its continued protection under the attorney-client privilege, work product doctrine, or other applicable privilege or doctrine as a result of disclosing any Confidential Information (including Confidential Information related to pending or threatened litigation) to us or anyone acting on our behalf.
13. We agree that no provision of this Agreement nor any of the actions contemplated hereby, including the Potential Transaction, will create an association, partnership, joint venture, relationship of principal and agent, master and servant, or employer and employee, between us and the Company and neither we nor any of our Representatives have authority to make commitments or enter into contracts on behalf of, bind or otherwise obligate or act for or on behalf of the Company in any manner whatsoever.
14. This Agreement will continue for a period of two (2) years from the date hereof.

The undersigned is duly authorized to bind us to this Agreement.

Name of company (Recipient): _____

Name: _____

Signature: _____

Title: _____

Date: _____

Exhibit B

Sale Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

	)	Chapter 11
In re:)	
IEH AUTO PARTS HOLDING LLC, <i>et al.</i> , ¹	)	Case No. 23-90054 (CML)
	)	(Jointly Administered)
Debtors.	)	Re: Docket No. _____

NOTICE OF SALE, BID PROCEDURES, AUCTION, AND SALE HEARING

PLEASE TAKE NOTICE:

On January 31, 2023 (the “Petition Date”), the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of Texas (the “Court”).

On [●], the Debtors filed a motion [Docket No. [●]] (the “Bid Procedures Motion”) with the Court seeking entry of orders, among other things: (i)(a) approving procedures for the solicitation of bids in connection with the proposed sale of substantially all of the Debtors’ assets, (the “Bid Procedures”), (b) establishing the dates and deadlines set forth in the Bid Procedures, including the Bid Deadline, Auction, and Sale Hearing, (c) authorizing and approving the form of Sale Notice, (d) approving the Assumption and Assignment Procedures for the Designated Contracts (if any), (e) approving the form of Assignment Notice, and (f) granting related relief and (ii) authorizing and approving (a) the sale of the Assets free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests except to the extent otherwise set forth in the purchase agreement executed by the Debtors and the Winning Bidder, (b) the assumption and assignment of Designated Contracts (if any), and (c) granting related relief.²

On [●], 2023, the Court entered an order [Docket No. [●]] (the “Bid Procedures Order”) approving, among other things, the Bid Procedures, which establish key dates and deadlines related to the Auction for, and the Sale of, the Assets. **All interested bidders and parties in interest in**

¹ The Debtor entities in these chapter 11 cases, along with the last four digits of each Debtor entity’s federal tax identification number, are: IEH Auto Parts Holding LLC (6529); AP Acquisition Company Clark LLC (4531); AP Acquisition Company Gordon LLC (5666); AP Acquisition Company Massachusetts LLC (7581); AP Acquisition Company Missouri LLC (7840); AP Acquisition Company New York LLC (7361); AP Acquisition Company North Carolina LLC (N/A); AP Acquisition Company Washington LLC (2773); Auto Plus Auto Sales LLC (6921); IEH AIM LLC (2233); IEH Auto Parts LLC (2066); IEH Auto Parts Puerto Rico, Inc. (4539); and IEH BA LLC (1428). The Debtors’ service address is: 112 Townpark Drive NW, Suite 300, Kennesaw, GA 30144.

² Capitalized terms used but not defined have the meanings ascribed to them in the Bid Procedures or the Bid Procedures Motion.

these chapter 11 cases should carefully read the Bid Procedures Order and the Bid Procedures in their entirety.

Copies of the Bid Procedures, Bid Procedures Motion, the Bid Procedures Order, and all other documents filed with the Court, are available free of charge on the Debtors' case information website, located at <https://kccllc.net/autoplus>.

Participation in the Sale Process

The Bid Procedures set forth the requirements for submitting a Qualified Bid and any person interested in making an offer to purchase the Assets must strictly comply with the Bid Procedures. Only Qualified Bids will be considered by the Debtors in accordance with the Bid Procedures.

Any interested bidder should contact the Bid Recipients as soon as practicable.

Important Dates and Deadlines³

The Bid Procedures include a number of dates and deadlines that must be strictly complied with, only a few of which are highlighted here:

- **Bid Deadline.** The deadline to submit a qualified Bid is **May 3, 2023, at 5:00 p.m.** (prevailing Central Time).
- **Auction.** The Auction (if any) will commence on **May 10, 2023, at 10:00 a.m.** (prevailing Central Time), via video conference and in-person at the offices of Jackson Walker LLP, 1401 McKinney Street, Suite 1900, Houston, Texas 77010.
- **Notice of Winning Bid.** As soon as reasonably practicable after conclusion of the Auction, the Debtors shall file with the Court a notice of the results of the Auction.
- **Deadline to Object to the Sale.** Objections to the Sale (or the assumption and assignment of Designated Contract) must be filed with the Court by **May 17, 2023, at 5:00 p.m.** (prevailing Central Time) and otherwise meet the requirements set forth in the Bid Procedures Order.
- **Sale Hearing.** A hearing to consider approval of the proposed Sale will be held before the Court on **May 19, 2023, at 10:00 a.m.** (prevailing Central Time) at 515 Rusk Street Courtroom 401, Houston, Texas 77002. **Participation in the hearing may be in person or by an audio and video connection, as set forth in the Bid Procedures Motion.**

Consequences of Failing to Timely Assert an Objection

Except as otherwise ordered by the Court, any party or entity that fails to timely make an objection to the Sale on or before the objection deadline in accordance with the Bid Procedures Order and this notice shall be forever barred from asserting any objection to the Sale, including

³ The following dates and deadlines may be extended by the Debtors (with the consent of the DIP Lender) by filing a notice with the Court, pursuant to the Bid Procedures.

with respect to the transfer of the assets free and clear of all liens, claims, encumbrances, and other interests.

No Successor Liability

By the Bid Procedures Motion, the Debtors are seeking to transfer the Assets to the Winning Bidder free and clear of, among other things, any claim arising from any conduct of the Debtors prior to the closing of the Sale, whether known or unknown, due or become due, accrued, absolute, contingent or otherwise, so long as such claim arises out of or relates to events occurring prior to the closing of the Sale. The Debtors are requesting the Court order that, as a result of the Sale, the Winning Bidder will not be a successor to the Debtors by reason of any theory of law or equity and the Winning Bidder will have no liability, except as expressly provided in the definitive documentation for the Sale, for any liens, claims, encumbrances, and other interests against or in the Debtors or their assets under any theory of law including successor liability theories.

Houston, Texas
Dated: [●], 2023

/s/ Veronica A. Polnick

JACKSON WALKER LLP

Matthew D. Cavanaugh (TX Bar No. 24062656)

Veronica A. Polnick (TX Bar No. 24079148)

Vienna Anaya (TX Bar No. 24091225)

Emily Meraia (TX Bar No. 24129307)

1401 McKinney Street, Suite 1900

Houston, TX 77010

Telephone: (713) 752-4200

Facsimile: (713) 752-4221

Email: mcavanaugh@jw.com

vpolnick@jw.com

vanaya@jw.com

emeraia@jw.com

*Proposed Counsel to the Debtors
and Debtors in Possession*

Exhibit C

Assumption and Assignment Procedures

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

	)	Chapter 11
In re:)	
	)	Case No. 23-90054 (CML)
IEH AUTO PARTS HOLDING LLC, <i>et al.</i> ,)	
	)	(Jointly Administered)
Debtors.)	
	)	Re: Docket No. _____

ASSUMPTION AND ASSIGNMENT PROCEDURES

On January 31, 2023 (the “Petition Date”), the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of Texas (the “Court”).

On [•], 2023, the Court entered the *Order Approving the Bid Procedures and Granting Related Relief* [Docket No. [•]] (the “Bid Procedures Order”), which approved (a) procedures pursuant to which the Debtors are authorized to sell all or substantially all of the Debtors’ assets (the “Bid Procedures”) and (b) the procedures in connection with the assumption and assignment of Designated Contracts (if any) set forth below (the “Assumption and Assignment Procedures”).¹

1. The Assumption and Assignment Procedures are as follows:

- a. **The Cure Notice.** On or before April 11, 2023 (the “Initial Cure Notice Deadline”), the Debtors shall file with the Court and serve on each counterparty (each, a “Counterparty,” and collectively, the “Counterparties”) to an executory contract or unexpired lease (collectively, the “Executory Contracts or Unexpired Leases”) a notice setting forth (a) each of the Executory Contracts and Unexpired Leases that potentially could be assumed and assigned in connection with the sale of Assets, including the name of each Counterparty (the “Potential Assumed Contracts”), and (b) the amount of cure owed thereunder according to the Debtors’ books and records (the “Cure Notice”).
- b. **The Cure Objection.** The Cure Notice shall include, without limitation, (a) a list of the Potential Assumed Contracts, (b) the cure amount (each, a “Cure Amount”), if any, that the Debtors reasonably believe is required to be paid to the applicable Counterparty under section 365(b)(1)(A) and (B) of the Bankruptcy Code for each of the Potential Assumed Contracts listed, (c) an express disclaimer that the assumption or assignment of any Executory Contracts or Unexpired Leases is not guaranteed and is subject to Court approval, (d) the Cure Objection Deadline (as

¹ Capitalized terms used but not defined have the meanings ascribed to them in the Bid Procedures Order.

defined below), and (e) the date, time, and location of the Sale Hearing.² If a Counterparty objects to (i) the Cure Amount for its Potential Assumed Contract or (ii) the provision of adequate assurance of future performance, the Counterparty must file with the Court and serve on the Objection Notice Parties (as defined below) a written objection (a “Cure Objection”). If a Potential Assumed Contract is designated by the Winning Bidder (or Stalking Horse Bidder, as applicable) as an executory contract or unexpired lease it wishes to have assumed and assigned in connection with the Sale (the “Designated Contracts”), then unless a Counterparty properly and timely files and serves a Cure Objection pursuant to the Cure Notice, the Counterparty will receive payment from the Winning Bidder of the Cure Amount (if any) as set forth in the Cure Notice consistent with the terms and procedures set forth in the Stalking Horse Bidder’s or Winning Bidder’s asset purchase agreement, as applicable.

- c. **The Cure Objection Deadline.** Any Cure Objection shall: (i) be in writing; (ii) comply with the Bankruptcy Rules and the Local Rules; (iii) be filed with the Clerk of the Court, by electronic submission through PACER (Public Access to Court Electronic Records at <https://ecf.txsb.uscourts.gov>), or if submitted through non-electronic means, by U.S. Mail or other hand delivery system at the following address: United States Bankruptcy Court, 515 Rusk Street, #5300, Houston, TX 77002, **on or before 5:00 p.m. (CT) on April 25, 2023** (the “Cure Objection Deadline”); (iv) be served, so as to be actually received on or before the Cure Objection Deadline, upon the Objection Notice Parties by email; and (v) state with specificity the legal and factual grounds for such objection, including, without limitation, the Cure Amounts the Counterparty believes is required to cure defaults under the relevant Executory Contracts or Unexpired Leases. If any Stalking Horse Bidder is designated the Winning Bidder in accordance with the Bid Procedures, any objections to adequate assurance of performance by such Stalking Horse Bidder shall be filed by the Cure Objection Deadline. Any objections to adequate assurance of future performance by a Winning Bidder other than a Stalking Horse Bidder shall be filed in accordance with subparagraphs (g) and (h) below.
- d. **The Objection Notice Parties.** The “Objection Notice Parties” are as follows: (i) counsel to the Debtors, Jackson Walker LLP (SaleJW-AutoPlus@jw.com) and The Law Office of Liz Freeman (liz@lizfreemanlaw.com); (ii) proposed counsel to any official committee of unsecured creditors appointed in the Debtors’ chapter 11 cases; (iii) the Office of the United States Trustee, 515 Rusk Street, Suite 3516, Houston, Texas 77002 (Attn: Jayson Ruff (Jayson.B.Ruff@usdoj.gov); Andrew Jimenez (Andrew.Jimenez@usdoj.gov)); and (iv) counsel to the Stalking Horse Bidder, if any.

² The Debtors shall serve on all parties requesting notice pursuant to Bankruptcy Rule 2002, via first class mail, a modified version of the Cure Notice, without the list of Potential Assumed Contracts, which will include instructions regarding how to view the Potential Assumed Contracts list at <http://www.kccllc.net/autoplus/document/list/5789>.

- e. **The Supplemental Cure Notice.** If after the Initial Cure Notice Deadline additional executory contracts or unexpired leases of the Debtors are determined to be Designated Contracts (such additional contracts, the “Additional Contracts”), as soon as practicable thereafter, the Debtors shall file with the Court and serve, by overnight delivery, on the Counterparties a supplemental notice (the “Supplemental Cure Notice”), and such Counterparties shall file a Cure Objection to the Supplemental Cure Notice (the “Supplemental Cure Objection”) not later than **14 days following the date of service of such Supplemental Cure Notice.**

- f. **The Notice of Winning Bid.** As set forth in the Bidding Procedures, as soon as reasonably practicable after the conclusion of the Auction, the Debtors shall file with the Court a notice identifying the Winning Bidder (a “Notice of Winning Bid”), which shall set forth, among other things, the Designated Contracts and applicable Cure Amounts and a certification by the Debtors that the Debtors have provided, or will provide, in coordination with the proposed assignee, the Winning Bidder’s Adequate Assurance Information to each affected Counterparty on a confidential basis.

- g. **The Assignment Notice.** As soon as reasonably practicable after filing the Notice of Winning Bid, the Debtors will cause to be served by overnight mail upon each affected Counterparty and its counsel (if known) a notice, substantially in the form attached to the Bidding Procedures Order as Exhibit D (the “Assignment Notice”), which shall: (i) identify of the Winning Bidder(s); (ii) identify the Designated Contracts; (iii) identify the applicable Cure Amounts for each Designated Contract; (iv) expressly states that assumption or assignment of an Executory Contract or Unexpired Lease is not guaranteed and is subject to Court approval; (v) prominently displays the deadline to object *solely on the basis of adequate assurance of future performance* by no later than the Sale Objection Deadline, or **May 17, 2023, at 5:00 p.m. (prevailing Central Time)**; and (vi) prominently displays the date, time, and location of the Sale Hearing.

- h. **Reservation of Rights.** At the Sale Hearing, the Debtors will seek Court approval of their assumption and assignment to any Winning Bidder of only those Executory Contracts or Unexpired Leases that have been selected by any Winning Bidder to be Designated Contracts. The Debtors and their estates reserve any and all rights with respect to any Executory Contracts or Unexpired Leases that are not ultimately designated as Designated Contracts.

- i. **No Cure Objections.** If no Cure Objection or Supplemental Cure Objection is timely received with respect to an Executory Contract or Unexpired Lease designated by the Stalking Horse Bidder, if any, or Winning Bidder as a Designated Contract: (i) the Counterparty to such Designated Contract shall be deemed to have consented to the assumption by the Debtors and assignment to the Winning Bidder of the Designated Contract, and be forever barred from asserting any objection with regard to such assumption and assignment (including, without limitation, with respect to adequate assurance of future performance by the Stalking Horse Bidder or Winning Bidder, as applicable); (ii) any and all defaults under the Designated

Contract and any and all pecuniary losses related thereto shall be deemed cured and compensated pursuant to section 365(b)(1)(A) and (B) of the Bankruptcy Code; and (iii) *the Cure Amount for such Designated Contract shall be controlling, notwithstanding anything to the contrary in such Designated Contract, or any other related document, and the Counterparty shall be deemed to have consented to the Cure Amount and shall be forever barred from asserting any other claims related to such Designated Contract against the Debtors and their estates or any Winning Bidder, or the property of any of them, that existed prior to the entry of the Sale Order.*

- j. **Dispute Resolution.** To the extent that the parties are unable to consensually resolve any Cure Objection or Supplemental Cure Objection prior to the commencement of the Sale Hearing, including, without limitation, any dispute with respect to the cure amount required to be paid to the applicable Counterparty under section 365(b)(1)(A) and (B) of the Bankruptcy Code (any such dispute, a “Cure Dispute”), such Cure Objection or Supplemental Cure Objection will be adjudicated at the Sale Hearing or at such other date and time as may be determined by the Debtors or fixed by the Court; *provided, however*, that to the extent that any Cure Dispute cannot be resolved by the parties, such Designated Contract shall be assumed and assigned only upon satisfactory resolution of the Cure Dispute, to be determined in the Stalking Horse Bidder’s (if applicable) or other Winning Bidder’s reasonable discretion. To the extent a Cure Dispute exists, the Designated Contract may be conditionally assumed and assigned, subject to the consent of the Stalking Horse Bidder, if any, or other Winning Bidder, pending a resolution of the Cure Dispute after notice and a hearing. If a Cure Dispute is not satisfactorily resolved, the Stalking Horse Bidder, if any, or other Winning Bidder may determine that such Designated Contract should be rejected and not assigned, in which case the Stalking Horse Bidder, if any, or other Winning Bidder will not be responsible for any Cure Amounts in respect of such contract unless otherwise provided in the applicable asset purchase agreement.
2. Notwithstanding anything to the contrary herein, if after the Sale Hearing or the entry of the Sale Order additional executory contracts or unexpired leases of the Debtors are determined to be Designated Contracts, as soon as practicable thereafter, the Debtors shall file with the Court and serve, by overnight delivery, on the Counterparties a supplemental Assignment Notice (the “Supplemental Assignment Notice”), and such Counterparties shall file any objections not later than twenty-one (21) days thereafter. If no objection is timely received, the Debtors shall be authorized to assume and assign such Designated Contracts included on the Supplemental Assignment Notice to the Stalking Horse Bidder, if any, or any Winning Bidder, without further notice to creditors or other parties in interest and without the need for further order of the Court, and such assumption and assignment shall be subject to the terms of the Sale Order.
3. Counterparties to the Designated Contracts may request adequate assurance of future performance by the Winning Bidder or Backup Bidder by contacting counsel to the Debtors, Jackson Walker LLP (SaleJW-AutoPlus@jw.com) and The Law Office of Liz

Freeman (liz@lizfreemanlaw.com). Such adequate assurance may be provided on a confidential basis for all nonpublic information.

4. The Winning Bidder will pay undisputed cure amounts consistent with the terms and procedures set forth in the Winning Bidder's asset purchase agreement.
5. Except as otherwise ordered by the Court, any party or entity that fails to timely object to the assumption and assignment of a Designated Contract on or before the objection deadline in accordance with the Bid Procedures Order shall be forever barred from asserting any objection to the assumption and assignment of such Designated Contract, the proposed cure amount, or adequate assurance of future performance. Any counterparty to a Designated Contract that fails to object to the proposed assumption and assignment by the objection deadline will be deemed to assent to the assumption of the Designated Contract on the terms set forth in the Assignment Notice..
6. The inclusion of an Executory Contract or Unexpired Lease, or Cure Amounts with respect thereto on a Cure Notice, a Supplemental Cure Notice, or an Assignment Notice, shall not constitute or be deemed a determination or admission by the Debtors, the Stalking Horse, if any, the Winning Bidder(s), or any other party in interest that such contract or lease is an executory contract or unexpired lease within the meaning of the Bankruptcy Code. The Debtors reserve all of their rights, claims, and causes of action with respect to each Executory Contract and Unexpired Lease listed on a Cure Notice, a Supplemental Cure Notice, or an Assignment Notice. The Debtors' inclusion of any Executory Contract or Unexpired Lease on the Cure Notice, a Supplemental Cure Notice, or an Assignment Notice shall not be a guarantee that such Executory Contract or Unexpired Lease, Potential Assumed Contract, or Designated Contract, ultimately will be assumed or assumed and assigned.
7. **Assumption and assignment of any Designated Contract shall result in the full release and satisfaction of any cures, claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or any bankruptcy-related defaults, arising at any time prior to the effective date of assumption. Any and all proofs of claim based upon executory contracts or unexpired leases that have been assumed in the chapter 11 cases, including pursuant to the Sale Order, shall be deemed disallowed and expunged as of the later of (1) the date of entry of an order of the Court (including the Sale Order) approving such assumption and (2) the effective date of such assumption without the need for any objection or any further notice to or action, order, or approval of the Court.**

Houston, Texas
Dated: [●], 2023

/s/ Veronica A. Polnick

JACKSON WALKER LLP

Matthew D. Cavanaugh (TX Bar No. 24062656)
Veronica A. Polnick (TX Bar No. 24079148)
Vienna Anaya (TX Bar No. 24091225)
Emily Meraia (TX Bar No. 24129307)
1401 McKinney Street, Suite 1900
Houston, TX 77010
Telephone: (713) 752-4200
Facsimile: (713) 752-4221
Email: mcavanaugh@jw.com
vpolnick@jw.com
vanaya@jw.com
emeraia@jw.com

*Proposed Counsel to the Debtors
and Debtors in Possession*

Exhibit D

Assignment Notice

Assignment of Designated Contracts to the Winning Bidder

You are receiving this notice (the “Assignment Notice”) because you are a counterparty to the executory contract(s) listed on **Schedule 2**, which the Debtors are proposing to assume and assign to the Winning Bidder in connection with the Sale.

A. Cure Amounts

Section 365(b)(1) of the Bankruptcy Code requires a debtor to cure, or provide adequate assurance that it will promptly cure, any defaults under executory contracts and unexpired leases at the time of assumption.

In accordance with the assumption and assignment procedures authorized by the Court pursuant to the Bid Procedures Order (the “Assumption and Assignment Procedures”), on [●], 2023, the Debtors filed with the Court and served upon the non-Debtor counterparties to the Designated Contracts, one or more notices (each, a “Cure Notice”) setting forth that such executory contract or unexpired lease may be assumed or assigned to the Purchaser and the applicable cure amount the Debtors believe is necessary to satisfy to assume such executory contract or unexpired lease in accordance with section 365 of the Bankruptcy Code. The deadline to object to that Cure Notice was on [●], 2023 (the “Cure Objection Deadline”).

Schedule 2 sets forth the cure amount (if any) of Designated Contracts according to the Debtors’ records that is required pursuant to section 365(a) of the Bankruptcy Code. The cure amounts set forth in **Schedule 2** shall be controlling as of the date of this Assignment Notice; the non-debtor party to each unexpired lease set forth on **Schedule 2** stipulated that the Cure Amount set forth in this Assignment Notice is correct in accordance with the Assignment and Assumption Procedures; the non-debtor party shall be forever barred, estopped and enjoined from asserting or claiming that any additional amounts are due or other defaults exist.

Schedule 3 sets forth the proposed cure amount (if any) of Designated Contracts not previously included on a Cure Notice according to the Debtors’ records that is required pursuant to section 365(a) of the Bankruptcy Code. **The proposed cure amount represents all monetary defaults of any nature that the Debtors believe are or may be outstanding under the Designated Contract prior to the closing of the Sale. If you believe the proposed cure amount is listed with an incorrect amount, you must object in accordance with the procedures described in this notice by no later than the objection deadline set forth below under the heading “Important Dates and Deadlines.”**

B. Adequate Assurance of Future Performance

Section 365(a) of the Bankruptcy Code conditions assignment on the Winning Bidder providing “adequate assurance of future performance.” Counterparties to Designated Contracts may request adequate assurance of future performance by the Winning Bidder or Backup Bidder by contacting counsel to the Debtors, Jackson Walker LLP (SaleJW-AutoPlus@jw.com) and The Law Office of Liz Freeman (liz@lizfreemanlaw.com). Such adequate assurance may be provided on a confidential basis for all nonpublic information. **If you object to assumption and assignment of your Designated Contract based solely on the adequate assurance of future**

performance, you must object in accordance with the procedures described in this notice by no later than the objection deadline set forth below under the heading “Important Dates and Deadlines.”

To the maximum extent permitted by law, to the extent any provision in any Designated Contract assumed and assigned pursuant to the Sale Order restricts or prevents, or purports to restrict or prevent, or is breached or deemed breached by, the assumption or assumption and assignment of such Designated Contract (including any “change in control” provision), then such provision shall be deemed modified such that the transactions contemplated by the Sale Order and any definitive documentation for the Sale shall not entitle the non-Debtor party to terminate such Designated Contract or to exercise any other default-related rights with respect, unless such non-Debtor party properly and timely files an objection and such objection is not overruled, withdrawn or otherwise resolved.

Important Dates and Deadlines²

The Bid Procedures Order and Assumption and Assignment Procedures include a number of dates and deadlines, only a few of which are highlighted here:

- **Deadline to Object to the Sale.** Objections to the Sale (or the assumption and assignment of any Designated Contract, including objections to the proposed cure amount of the Designated Contracts on **Schedule 3** or adequate assurance of future performance by the Winning Bidder of any of the Designated Contracts) must be filed with the Court by **May 17, 2023, at 5:00 p.m.** (prevailing Central Time) and otherwise meet the requirements set forth in the Bid Procedures Order.
- Any objection to the assumption and assignment of a Designated Contract **must:** (a) be in writing; (b) comply with the Bankruptcy Code, Bankruptcy Rules, the Bankruptcy Local Rules, and any orders of the Court; (c) state the name and address of the objecting party and identify the Designated Contract at issue; (d) state, with particularity, the basis and nature of any objection to the assumption and assignment, cure amount, and/or adequate assurance of future performance; and (e) be filed with the Court with proof of service thereof so as to be actually received on or before the objection deadline.
- **Sale Hearing.** A hearing to consider approval of the proposed Sale (including assignment of Designated Contracts) will be held before the Court on **May 19, 2023, at 10:00 a.m.** (prevailing Central Time) at 515 Rusk Street Courtroom 401, Houston, Texas 77002. Participation in the hearing may be in person or by an audio and video connection, as set forth in the Bid Procedures Motion.

Consequences of Failing to Timely Assert an Objection

Except as otherwise ordered by the Court, any party or entity that fails to timely make an objection to the Sale on or before the objection deadline in accordance with the Bid Procedures

² The following dates and deadlines may be extended by the Debtors (with the consent of the DIP Lender) by filing a notice with the Court, pursuant to the Bid Procedures.

Order and this notice shall be forever barred from asserting any objection to the Sale, including with respect to (a) the transfer of the assets free and clear of all liens, claims, encumbrances, and other interests and (b) the assumption and assignment of a Designated Contract, proposed cure amount, or adequate assurance of future performance. Any counterparty to a Designated Contract that fails to object to the proposed assumption and assignment by the objection deadline will be deemed to assent to the assumption of the Designated Contract on the terms defined in this Notice.

Assumption and assignment of any Designated Contract shall result in the full release and satisfaction of any cures, claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or any bankruptcy-related defaults, arising at any time prior to the effective date of assumption. Any and all proofs of claim based upon executory contracts or unexpired leases that have been assumed in the chapter 11 cases, including pursuant to the Sale Order, shall be deemed disallowed and expunged as of the later of (1) the date of entry of an order of the Court (including the Sale Order) approving such assumption and (2) the effective date of such assumption without the need for any objection or any further notice to or action, order, or approval of the Court.

Dated: February [●], 2023

/s/ Veronica A. Polnick

JACKSON WALKER LLP

Matthew D. Cavanaugh (TX Bar No. 24062656)

Veronica A. Polnick (TX Bar No. 24079148)

Vienna Anaya (TX Bar No. 24091225)

Emily Meraia (TX Bar No. 24129307)

1401 McKinney Street, Suite 1900

Houston, TX 77010

Telephone: (713) 752-4200

Facsimile: (713) 752-4221

Email: mcavanaugh@jw.com

vpolnick@jw.com

vanaya@jw.com

emeraia@jw.com

*Proposed Counsel to the Debtors
and Debtors in Possession*