

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

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In re:	:	Chapter 11
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ONE AVIATION CORPORATION, <i>et al.</i> , ¹	:	Case No. 18-12309 (CSS)
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Debtors.	:	Jointly Administered
	:	
	:	Obj. Deadline: June 24, 2019 at 4:00 p.m. (ET)
	:	Hearing Date: July 1, 2019 at 10:00 a.m. (ET)
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DEBTORS’ MOTION FOR ENTRY OF: (A) ORDER (I) APPROVING BIDDING PROCEDURES IN CONNECTION WITH SALE OF ASSETS OF THE DEBTORS, (II) APPROVING FORM AND MANNER OF NOTICE, (III) SCHEDULING AUCTION AND SALE HEARING, (IV) AUTHORIZING PROCEDURES GOVERNING ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (V) GRANTING RELATED RELIEF; AND (B) ORDER (I) APPROVING PURCHASE AGREEMENT, (II) AUTHORIZING SALE FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, AND (III) GRANTING RELATED RELIEF

ONE Aviation Corporation and its affiliated debtors as debtors in possession in the above-captioned cases (collectively, the “Debtors”) submit this motion (this “Motion”) for entry of:

- (a) an order, in substantially the form attached hereto as **Exhibit A** (the “Bidding Procedures Order”):
 - i. approving bidding procedures, substantially in the form attached to the Bidding Procedures Order as **Exhibit 1** (the “Bidding Procedures”), to govern the sale to the DIP Lender (as defined below) of the “Seller Assets,” which are all or substantially all of the assets of the Debtors as described in the Asset Purchase Agreement (the “Stalking Horse Agreement,” a copy of which is attached hereto

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor’s tax identification number, as applicable, are: ONE Aviation Corporation (9649); ACC Manufacturing, Inc. (1364); Aircraft Design Company (1364); Brigadoon Aircraft Maintenance, LLC (9000); DR Management, LLC (8703); Eclipse Aerospace, Inc. (9000); Innovatus Holding Company (9129); Kestrel Aircraft Company, Inc. (2053); Kestrel Brunswick Corporation (6741); Kestrel Manufacturing, LLC (1810); Kestrel Tooling Company (9439); and OAC Management, Inc. (9986). The debtors’ corporate headquarters is located at 3520 Spirit Drive SE, Albuquerque, NM 87106.

as **Exhibit B**)² and defined as the “Purchased Assets” in such agreement, dated as of **June 17, 2019**, between the Debtors, as the Sellers, and the DIP Lender, as the Purchaser (the “Stalking Horse Buyer”);

- ii. authorizing the Debtors to schedule an auction to sell the Seller Assets (the “Auction”);
 - iii. scheduling the hearing to approve a sale of the Seller Assets (the “Sale Hearing”);
 - iv. approving the form and manner of notice of the proposed sale transactions, the Bidding Procedures, the Auction, and the Sale Hearing;
 - v. authorizing procedures governing the assumption and assignment of certain executory contracts and unexpired leases (the “Assigned Contracts”) by the Stalking Horse Buyer or the Successful Bidder (as defined in the Bidding Procedures); and
 - vi. granting related relief.
- (b) an order to be filed with the Court in the Chapter 11 Cases (as defined below) and served on the entities receiving this Motion to consummate the sale contemplated by the Stalking Horse Agreement or as may be modified to consummate a transaction on account of a higher or otherwise better offer (the “Sale Order”)³:
- i. approving the Stalking Horse Agreement, or such other form of purchase agreement between the Debtors and the Successful Bidder;
 - ii. authorizing, at Closing, the sale of the Seller Assets and the assumption and assignment of the Assigned Contracts to the Stalking Horse Buyer or such other Successful Bidder at the Auction free and clear of all liens, claims, encumbrances, and other interests (collectively, “Liens”), other than, as applicable, (a) any Permitted Encumbrances as set forth in the Stalking Horse Agreement or (b) any permitted Liens as set forth in the purchase agreement with the Successful Bidder; and
 - iii. granting related relief.

In support of this Motion, the Debtors respectfully represent:

² Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Stalking Horse Agreement.

³ The form of Sale Order will be filed as soon as practicable with the Court before the Sale Hearing.

BACKGROUND

I. General

1. Commencing on October 9, 2018, (the “Petition Date”), the Debtors filed voluntary cases under chapter 11 (the “Chapter 11 Cases”) of the Bankruptcy Code (the “Chapter 11 Cases”) in the United States Bankruptcy Court for the District of Delaware (the “Court”). The Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 1015-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”). The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. On October 22, 2018, the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed an official committee of unsecured creditors (the “Committee”). No trustee or examiner has been appointed in the Chapter 11 Cases.

3. The Debtors’ principal business is the manufacturing and sale, refurbishment, upgrade, and service of aircraft in the “very light jet” market and the research and development of new aircraft.

4. Information regarding the Debtors’ business, capital structure, and the circumstances leading to the Chapter 11 Cases is set forth in the *Declaration of Michael Wyse in Support of Chapter 11 Petitions and First Day Motions* [Docket No. 2] (the “First Day Declaration”).

II. The Debtors’ Marketing and Sales Efforts

5. Pre-petition, the Debtors engaged Duff & Phelps Securities, LLC (“Duff & Phelps”) as their investment banker on December 27, 2017, to explore multiple restructuring

alternatives, including the sale of all or specific portions of the Debtors' operations, a new debt infusion, and a comprehensive restructuring of the Debtors' balance sheets. After the Debtors launched the sale process, communications between Duff & Phelps and potential acquirers began immediately and increased during the following weeks. As part of the marketing process (the "Prepetition Marketing Process"), Duff & Phelps contacted a total of 161 strategic and 315 potential investors, distributing a teaser regarding the sale to a total of 476 potential buyers. The extensive marketing process resulted in 41 parties executing non-disclosure agreements (each, an "NDA") to receive more information and buyers and then receiving a confidential information memorandum with detail on the Debtors' business. Throughout this process, Duff & Phelps and the Debtors worked closely to respond to potential investor inquiries and to encourage interest in acquiring or financing the Debtors. As detailed in the *Declaration of Vineet ("Vin") Batra, Managing Director of Duff & Phelps Securities, LLC in Support of the Proposed Debtor in Possession Financing Facility and the Joint Prepackaged Chapter 11 Plan of Reorganization of ONE Aviation Corporation and Its Debtor Affiliates* [Docket No. 16] (the "Batra Declaration"), despite an extensive outreach process and efforts to engaged with interested potential buyers, the sale process resulted in no viable bids for the Debtors' business or assets.

6. Ultimately, the Debtors sought to pursue a chapter 11 bankruptcy with a plan in place supported by the Debtors' prepetition first lien lender (and subsequently the DIP Lender). However, the Debtors continued to conduct a post-petition marketing process in conjunction with the plan process. Most importantly, Duff & Phelps continued to focus on identifying strategic and financial buyers and provided the Debtors and their boards of directors or managers, as applicable, with continuous updates.

7. In addition to contacting all of the parties who had previously signed an NDA during the Prepetition Marketing Process, as part of the Debtors' post-petition marketing efforts, the Debtors and their advisors corresponded with some 55 parties who the Debtors believed to have potential interest in a transaction given their experience and knowledge of the Debtors and their businesses. All of these parties received an investment summary based on public information and were invited to enter into an NDA to receive additional information. Three of these parties subsequently executed an NDA with the Debtors, two of which received a confidential information package. Of the three parties who executed an NDA, there were no firms that submitted preliminary indications of interest. Unfortunately, no other offers came forward.

8. During the course of the post-petition marketing process, discussions continued with the DIP Lender, who indicated a willingness to enter into the Stalking Horse Agreement and purchase the Debtors' assets when negotiations over the Debtors' plan of reorganization stalled. After careful consideration, the Debtors, in their business judgment, decided the best course of action is to pursue an auction and sale process with the DIP Lender serving as the stalking horse purchaser. With the approval of the Debtors' boards, the Debtors' advisors engaged with the DIP Lender to negotiate terms of an asset purchase agreement whereby the DIP Lender would be designated the stalking horse purchaser for the Debtors' assets, subject to higher or otherwise better offers to be determined through a continued postpetition marketing process.

III. Terms and Conditions of Stalking Horse Agreement

9. After arm's-length negotiations, the Debtors and the Stalking Horse Buyer have executed the Stalking Horse Agreement, which is subject to higher and better offers through an

auction process and the Court's approval. The following sets forth a summary of the material terms and conditions of the Stalking Horse Agreement, pursuant to Local Rule 6004-1(c).⁴

MATERIAL TERMS OF STALKING HORSE AGREEMENT	
<u>Sellers</u>	Eclipse Aerospace, Inc., Brigadoon Aircraft Maintenance, LLC, and ONE Aviation Corporation
<u>Stalking Horse Buyer</u>	Citiking International US, LLC
<u>Sale to Insider</u>	The Stalking Horse Buyer is not an insider of the Debtors within the meaning set forth in section 101(31) of the Bankruptcy Code.
<u>Credit Bid/Consideration (§ 3.1)</u>	The aggregate consideration for the sale and transfer of the Seller Assets is (a) a release and waiver of the Pre-Petition First Lien Obligations (as defined in the DIP Order) and the DIP Obligations (as defined in the DIP Order) in an aggregate amount equal to \$17,000,000, in the form of a credit bid of the DIP Obligations, to the extent permitted by applicable law in accordance with Section 363(k) of the Bankruptcy Code, provided, that any portion of the DIP Obligations not credit bid as part of the Purchase Price shall remain a Claim in the Chapter 11 Cases; (b) a cash payment to the Sellers of \$50,000 (the “ <i>Wind-Down Payment</i> ”), which shall be deposited into a segregated Sellers’ bank account (the “ <i>Wind-Down Account</i> ”) for distribution therefrom solely in accordance with <u>Section 9.18</u> of the Stalking Horse Agreement; and (c) including funding the Committee Settlement and Administrative Expense Claims (collectively, the “ <i>Purchase Price</i> ”).
<u>Good Faith Deposit</u>	The Stalking Horse Agreement does not provide for a “good faith” or other deposit on the part of the Stalking Horse Buyer.
<u>Transfer of the Acquired Assets (§§ 2.1, 2.3)</u>	The Stalking Horse Buyer agrees to purchase, acquire, and accept all of the Debtors’ right, title, and interest in the Acquired Assets. In addition, the Stalking Horse Buyer will assume and pay, perform, and discharge the Assumed Liabilities.

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If there are any inconsistencies between the summary set forth herein and the Stalking Horse Agreement, the terms and conditions of the Stalking Horse Agreement shall govern.

MATERIAL TERMS OF STALKING HORSE AGREEMENT	
<u>Excluded Assets and Liabilities (§§ 2.2, 2.4)</u>	The Sale shall not include the Excluded Assets or the Excluded Liabilities.
<u>Agreements with Management</u>	No agreements with management have been entered into in connection with the Sale.
<u>Transition Services (§ 4.2(e))</u>	The Stalking Horse Agreement contemplates that the Debtors will provide certain transition services to the Stalking Horse Buyer and that the Stalking Horse Buyer will provide certain operations support services to the Debtors for a period designated in the Transition Services Agreement, which is an Ancillary Agreement to be appended to the Stalking Horse Agreement.
<u>Representations and Warranties; Covenants (Articles V, VI, and IX)</u>	The representation and warranties and covenants include: (a) representations and warranties regarding (i) organization and qualifications of the Sellers and Purchaser, (ii) authorization to enter into and the validity of the transaction contemplated by the Agreement, (iii) consents and approvals and notification of the transaction contemplated by the Agreement, (iv) no brokers, finders or financial advisors, (v) Sellers' good title to the Purchase Assets, (vi) true and correct copies of all leases, (vii) leases of personal property, (viii) Intellectual Property and proprietary rights, (ix) litigation, (x), Permits, (xi) Inventory, (xii) Contracts, (xiii) taxes, (xiv) employees and employee benefits, (xv) labor matters, (xvi) bank accounts, (xvii) non-WARN Act occurrence, (xviii) environmental matters, (xix) absence of certain changes; and (b) covenants regarding (i) conduct of business by Sellers, (ii) access to information, (iii) conduct of business by Purchaser, (iv) rejected contracts, (v) reasonable efforts to cooperate, (vi) further assurances, (vii) notification of certain matters, (viii) confidentiality, (ix) preservation of records, (x) publicity, (xi) Material Adverse Effect, (xii) casualty loss, (xiii) no successor liability, (xiv) change of name, (xv) receivables, (xvi) governmental approvals, (xvii) certifications, and (xviii) Wind-Down Payments and Accounts.
<u>Bidding Procedures (§§ 8.1, 8.2)</u>	The Stalking Horse Agreement contemplates the approval of bidding procedures to govern the auction process.
<u>Releases</u>	The Stalking Horse Agreement provides for releases and the waiver of claims.
<u>Use of Proceeds</u>	The Debtors propose that the Stalking Horse Buyer purchase the Seller Assets partly through a credit bid, cash proceeds from the Sale will be used to pay Administrative Expense Claims and the Committee Settlement. Pursuant to the Motion, the Debtors intend to transfer the Seller Assets to the Stalking Horse Buyer

MATERIAL TERMS OF STALKING HORSE AGREEMENT	
	and wind down its operations.
<u>Tax Exemption</u>	The Debtors are not seeking pursuant to the Stalking Horse Agreement to have the Sale declared exempt from taxes under section 1146(a) of the Bankruptcy Code.
<u>Record Retention</u>	Prior to the Closing, the Debtors shall provide the Stalking Horse Buyer with reasonable access to business records, and, after the Closing, the Stalking Horse Buyer shall provide the Debtors with reasonable access to business records.
<u>Sale of Avoidance Actions</u>	The Debtors are not seeking to sell or otherwise limit their rights to pursue avoidance actions under chapter 5 of the Bankruptcy Code subject to applicable law, except as otherwise set forth in the Committee Settlement.
<u>Requested Findings as to Successor Liability</u>	The Debtors' consummation of a sale of the Seller Assets shall be sold free and clear of any successor liability.
<u>Sale Free and Clear of Unexpired Leases</u>	The sale of the Seller Assets and the assignment of the Assigned Contracts shall be free and clear of any and all Liens (other than the Permitted Encumbrances that the Stalking Horse Buyer has agreed to assume) pursuant to section 363(f) of the Bankruptcy Code.
<u>Relief from Bankruptcy Rule 6004(h)</u>	The Sale Order will provide for a waiver of the 14-day stay thereof, arising under Bankruptcy Rules 6004(h) and 6006(d), including the parties' ability to close the Sale and assign the Assigned Contracts in connection therewith.

IV. Proposed Bidding Procedures

10. The sale of the Seller Assets pursuant to the Stalking Horse Agreement remains subject to higher or otherwise better offers. To ensure that the highest or otherwise best offer is received for the Seller Assets, the Debtors established the proposed Bidding Procedures to govern the submission of competing bids at an Auction. Accordingly, the Debtors seek the Court's approval of the Bidding Procedures set forth in Exhibit 1 to the Bidding Procedures Order and incorporated herein in their entirety by this reference.

11. The Debtors' proposed timeline with respect to the Bidding Procedures, the Auction, the Sale Hearing, and the Sale is as follows:⁵

<u>Key Events and Deadlines</u>	<u>Date</u>
Bid Procedures Objection Deadline	June 24, 2019 at 4:00 p.m. (ET)
Bidding Procedures Hearing	July 1, 2019 at 11:00 a.m. (ET)
Deadline for Debtors to Serve Sale Notice and Cure Notice (deadline for any (i) objections to the Sale to the Stalking Horse Buyer and entry of the Sale Order and (ii) Contract Objections)	July 8, 2019
Bid Deadline	August 5, 2019
Sale Objection Deadline	July 29, 2019
Auction	August 12, 2019
Auction Objection Deadline (deadline for any (i) objections to the conduct of the Auction and (ii) Adequate Assurance Objections)	August 14, 2019
Sale Hearing	August 15, 2019

12. A summary of the following provisions set forth in the Bidding Procedures Order and the accompanying Bidding Procedures is set forth below, pursuant to Local Rule 6004-1(c):

Provisions Governing the Qualification of Bidders Bidding Procedures § 5	<p>A Bid that satisfies each of the Bid Requirements, as determined in the Debtors' reasonable business judgment and subject to consultation with the Consultation Parties, shall constitute a "Qualified Bid," and such Bidder shall be a "Qualified Bidder." The Debtors shall notify each Qualified Bidder that such party is a Qualified Bidder prior to the Auction. The Stalking Horse Agreement shall be deemed a Qualified Bid, and Stalking Horse Buyer shall be deemed a Qualified Bidder.</p> <p>If any Bid is determined by the Debtors not to be a Qualified Bid, the Debtors shall cause such Bidder to be refunded its Good Faith Deposit on or within three (3) business days after the Bid Deadline.</p> <p>Between the date that the Debtors notify a Bidder that it is a Qualified Bidder and the Auction, the Debtors may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Except as</p>
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⁵ The dates in this timeline are subject to the terms of the Bidding Procedures Order and the Bidding Procedures.

	<p>otherwise set forth in a Qualified APA, during the period that such Qualified Bid remains binding as specified herein a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid without the written consent of the Debtors (which consent may only be provided following consultation with the Consultation Parties), except for proposed amendments to increase the consideration contemplated by, or otherwise improve the terms of, the Qualified Bid; provided, that any Qualified Bid may be improved at the Auction as set forth herein. Any improved Qualified Bid must continue to comply with the requirements for Qualified Bids herein.</p> <p>Notwithstanding anything to the contrary herein, and for the avoidance of doubt, for all purposes under these Bidding Procedures the Stalking Horse Buyer shall be considered a Qualified Bidder.</p>
<p>Provisions Governing Qualified Bids: Bidding Procedures § 4</p>	<p>To constitute a Qualified Bid, a Bid submitted by a bidder (each, a “<u>Bidder</u>”) must: (i) be actually received by the parties specified in the Bidding Procedures on or prior to August 5, 2019 at 4:00 p.m. (Eastern Time) (the “<u>Bid Deadline</u>”) and (ii) satisfy the following requirements, as determined by the Debtors in their reasonable business judgment, following consultation with the Consultation Parties (collectively, the “<u>Bid Requirements</u>”):</p> <ol style="list-style-type: none"> a. contain a Qualified APA, that shall (i) identify the Seller Assets the Bidder seeks to purchase, (ii) contain the form of and total consideration to be paid by such Bidder, including the amount of proposed cash consideration and liabilities to be assumed, and generally contain terms no less favorable (in the Debtors’ reasonable business judgment (following consultation with the Consultation Parties)) than the Stalking Horse Agreement, and (iii) not be subject to any: (1) financing contingency, (2) contingency relating to due diligence after the Bid Deadline, (3) contingency relating to the approval of the Bidder’s board of directors or other internal approvals or non-governmental third-party consents or approvals, or (4) any conditions precedent to the Bidder’s obligation to purchase the Seller Assets; b. <i>Deliver to the Debtors a good faith deposit (the “<u>Good Faith Deposit</u>”), by a certified or bank check or wire transfer in immediately available funds, in the amount of at least 10% of the cash portion of the purchase price proposed in the Qualified APA. The Good Faith Deposit shall be held in escrow by the Debtors and credited to the closing payment if the Bidder is ultimately determined to be the Successful Bidder (as defined below), if any closing payment is due, or to be returned to the Bidder in whole or in part as applicable if the Bidder is not the Successful</i>

	<p><i>Bidder or the Backup Bidder (as defined below). In the event that a Bidder is selected as the Backup Bidder, the Good Faith Deposit shall be returned to the Backup Bidder within three (3) business days following the closing of a Sale to the Successful Bidder.</i></p> <p>c. <i>Contain a written statement that the Bidder agrees to be bound by the terms of the Bidding Procedures and the Bidding Procedures Order and include a commitment that the Bidder shall consummate the purchase of the relevant Seller Assets by [_____] , 2019.</i></p> <p>d. Identify, with particularity, each and every executory contract and unexpired lease it intends to assume.</p> <p>e. Be accompanied by evidence reasonably satisfactory to the Debtors that the Bidder is capable and qualified financially, operationally, legally and otherwise, of unconditionally performing all obligations under the Qualified APA, including, without limitation, the ability to provide adequate assurance of future performance under contracts and leases to be assumed pursuant to section 365 of the Bankruptcy Code.</p> <p>f. Provide (i) that the Bidder agrees to serve as the Backup Bid (as defined below) if it is selected as the next highest and best bid for any particular Seller Assets after the Successful Bid is determined in accordance with the Bidding Procedures and (ii) that the Bidder's Bid shall remain open and irrevocable until at least thirty (30) days after the closing conditions under the Successful Bid have been satisfied or waived.</p> <p>g. Fully disclose the identity of each entity that will be bidding in any Auction scheduled by the Debtors.</p>
<p>Modifications of Bidding Qualifications or Auction Procedures</p> <p>Bidding Procedures § 16</p>	<p>Notwithstanding any of the foregoing, the Debtors and their estates, in consultation with the Consultation Parties, reserve the right to modify these Bidding Procedures at or prior to the Auction, including, without limitation, to extend the deadlines set forth herein, modify bidding increments, waive terms and conditions set forth herein with respect to any or all Bidders (including, without limitation, the Qualified Bid requirements), impose additional terms and conditions with respect to any or all potential bidders, and adjourn or cancel the Auction at or prior to the Auction, and adjourn the Sale Hearing (collectively, the "<u>Consultation Rights</u>"); <u>provided, however</u>, that so long as the Stalking Horse Buyer has submitted a bid that remains open, the Debtors and their estates, in consultation with the Consultation Parties, shall be</p>

	<p>precluded from modifying the Consultation Rights.</p> <p>The Debtors shall consult with the Consultation Parties as explicitly provided for in these Bidding Procedures; <u>provided, however</u>, if any individual members of the Committee submit a Bid, then such Bid(s) shall not provide grounds for the Committee to not be consulted as a Consultation Party; <u>provided, further</u>, that such Committee shall take reasonable steps necessary to preclude any bidding member from receiving information or engaging in Committee decision-making with respect to the Sale Process.</p>
<p>Closing the Auction Bidding Procedures § 9(d).</p>	<p>(i) The Auction shall continue until there is only one offer that the Debtors determine, following consultation with the Consultation Parties, and subject to Court approval, is the highest or otherwise best offer for the purchase of the Seller Assets (whether in an aggregate sale to a single buyer or on an asset-by-asset basis (each a “<u>Successful Bid</u>”, and such Bidder, the “<u>Successful Bidder</u>”), at which point, the Auction will be closed. Such acceptance by the Debtors of the Successful Bid(s) is conditioned upon approval by the Court of the Successful Bid(s). The second highest bid, to the extent determined to be acceptable to the Debtors (following consultation with the Consultation Parties) shall be deemed to be the backup bid (the “<u>Backup Bid</u>” and such Bidder, the “<u>Backup Bidder</u>”);.</p> <p>(ii) The identity of the Backup Bidder(s) and the amount and material terms of the Backup Bid(s) shall be announced by the Debtors at the conclusion of the Auction at the same time the Debtors announce the identity of the Successful Bidder(s). The Backup Bidder(s) shall be required to keep its or their Qualified Bid(s) (or if the Backup Bidder(s) submitted one or more Overbids at the Auction, its final Overbid(s)) open and irrevocable until the closing of the transaction with the Successful Bidder(s).</p> <p>(iii) For the avoidance of doubt, nothing in these Bidding Procedures shall prevent the Debtors from exercising their fiduciary duties under applicable law.</p> <p>(iv) As soon as reasonably practicable after closing the Auction, the Debtors shall cause the definitive asset purchase agreement for the Successful Bid(s) to be filed with the Court.</p>

<p>Right to Credit Bid</p> <p>Bidding Procedures § 6; Stalking Horse Agreement § 3.1.</p>	<p>Any Qualified Bidder who has a valid, perfected, and undisputed lien on any Seller Assets of the Debtors' estates (a "<u>Secured Creditor</u>") shall have the right to credit bid all or a portion of the value of such Secured Creditor's claim within the meaning of section 363(k) of the Bankruptcy Code; <i>provided</i> 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.</p> <p>The Stalking Horse Buyer shall have the right to credit bid all or any portion of the aggregate amount of its outstanding secured obligations pursuant to section 363(k) of the Bankruptcy Code, and any such credit bid will be considered a Qualified Bid.</p> <p>The Stalking Horse Buyer seeks to purchase the Seller Assets through a partial credit bid.</p>
<p>Releases</p> <p>Stalking Horse Agreement §§ 3.1, 4.3.</p>	<p>The Stalking Horse Agreement provides for releases and the waiver of claims.</p>
<p>Private Sale / No Competitive Bidding</p>	<p>As noted in herein and as described further in the Bidding Procedures Order, the Debtors contemplate holding an Auction.</p>
<p>Closing and Other Deadlines</p> <p>Stalking Horse Agreement, Articles IV and X.</p>	<p>Except as may be extended pursuant to the terms of the Stalking Horse Agreement, the Closing (as defined in the Stalking Horse Agreement) shall take place pursuant to the terms of the Stalking Horse Agreement. As provided in Article IV, certain termination provisions will become effective if the Closing does not occur before the Outside Date (as defined in the Stalking Horse Agreement). In addition, certain covenants listed in Article X must be performed prior to their respective dates identified in the Stalking Horse Agreement.</p>
<p>Other Arrangements with Proposed Stalking Horse Buyer</p>	<p>Pursuant to the Debtors' <i>Final Order (I) Authorizing Debtor Borrowers to (A) Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e), (B) Grant Senior Liens and Superpriority Administrative Expense Status, and (C) Utilize Cash Collateral Pursuant to 11 U.S.C. §363; (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364; and (III) Granting Related Relief</i> [Docket No. 208] (the "<u>Final DIP Order</u>"), the Debtors have obtained authorization to access debtor in possession financing from certain of the Debtors' prepetition secured lenders that are part of the Stalking Horse Buyer and to use the cash collateral of the Prepetition First Lien Lenders.</p>

V. Proposed Assumption Procedures

13. To facilitate and effect the sale of the Seller Assets, the Debtors seek authority to assume and assign certain of the Debtors executory contracts and unexpired leases (each, as applicable, a “Contract” or “Lease” and, collectively, the “Contracts and Leases”), consistent with the procedures established in the Bidding Procedures Order and the Stalking Horse Agreement (the “Assumption Procedures”). The Debtors propose that the Assumption Procedures apply whether the Stalking Horse Buyer or another party is the Successful Bidder.

14. The proposed Assumption Procedures are as follows:

- (a) **Cure Notice.** No later than **July 8, 2019**, the Debtors will serve the notice attached as Exhibit 3 to the Bidding Procedures Order (the “Cure Notice”) on all non-Debtor counterparties to the Contracts and Leases (collectively, the “Contract Parties”) and its attorney, if known, *provided, however*, that the presence of any Contract or Lease on a Cure Notice does not constitute an admission that such Contract or Lease is an executory contract or unexpired lease or that the Debtors have any liability thereunder. Subject to the conditions set forth in the Stalking Horse Agreement, the determination whether a Contract or Lease is to be assumed and assigned is subject to a subsequent decision by the Successful Bidder to be made prior to the Designation Deadline and approval by the Court. Until the Designation Deadline, the Successful Bidder, in its sole and absolute discretion, may amend the list of executory contracts to (i) add or remove any Contract or Assumable Lease or (ii) modify the treatment of any Contract or Assumable Lease. The Debtors reserve all of their rights, claims, and causes of action with respect to any Contract or Lease.
- (b) **Content of the Cure Notice.** The Cure Notice will include the following information: (i) the title of the Contract or Lease that potentially may be assumed; (ii) the name of the counterparty to the Contract or Lease; (iii) any applicable cure amounts, whether arising prepetition or postpetition (the “Cure Amount”); (iv) the deadline by which any such Contract Party must object to the assumption or assignment of such Contract or Lease; and (iv) other objection-related requirements.
- (c) **Objections.** Objections to the proposed Cure Amount and adequate assurance of future performance obligations to the Contract Parties, and any other objections to the assumption and assignment of the Contracts and Leases must: (i) be in writing; (ii) set forth the nature of the objector’s claims against or interests in the Debtors’ estates and the basis for the objection and the specific grounds therefor; (iii) comply with the

Bankruptcy Rules, Local Rules , and orders of the Court; and (iv) be filed with the Court and served upon the Objection Notice Parties. **Objections to the proposed Cure Amount, the adequate assurance of future performance by the Stalking Horse Buyer, and any other objections to the assumption and assignment of the Contract or Lease, other than to adequate assurance of future performance by a Successful Bidder other than the Stalking Horse Buyer (collectively, the “Contract Objections”) must be filed and served by no later than the Sale Objection Deadline of 4:00 p.m. (prevailing Eastern time) on July 29, 2019. Any objections to the adequate assurance of future performance obligations by a Successful Bidder other than the Stalking Horse Buyer (“Adequate Assurance Objections”) must be filed no later than the Objection Deadline of 4:00 p.m. (prevailing Eastern Time) on August 14, 2019.**

- (d) **Effects of Objecting to a Cure Notice.** A properly filed and served objection to a Cure Notice will reserve such objecting party’s rights against the Debtors with respect to the relevant cure objection but will not constitute an objection to the remaining relief requested in the Motion. If any validly filed objection is not consensually resolved, the Court shall adjudicate such objection at the Sale Hearing or on such other date and time as agreed to by the Debtors and Successful Bidder or as may be fixed by the Court.
- (e) **Supplemental Cure Notice Procedures.**
 - i. If, at any time after the entry of the Bidding Procedures Order, the Debtors or any Qualified Bidder identify additional Contracts or Leases that may be assumed and assigned to the Stalking Horse Buyer or other Successful Bidder as Assigned Contracts (whether before or after closing of the Sale), as applicable, the Debtors shall file with the Court and serve a supplemental Cure Notice on the applicable Contract Party (and its attorney, if known) (the “Supplemental Cure Notice”).
 - ii. For a Contract Party listed on a Supplemental Cure Notice, (A) the deadline to file Contract Objections shall be the later of (i) fourteen (14) days after the date the Supplemental Cure Notice is filed and (ii) the Sale Objection Deadline and (B) the deadline to file Adequate Assurance Objections shall be the later of (i) the Contract Party’s deadline to file Contract Objections and (ii) the Auction Deadline.
 - iii. If the Supplemental Cure Notice provides for a deadline to file Contract Objections that is after the date of the Sale Hearing, unless the Contract Party timely files and serves an objection to the Supplemental Cure Notice, the Debtors shall be authorized to

assume and assign the applicable Contract or Lease, subject to the occurrence of the Closing, without further order or notice of hearing. If a validly filed objection is not consensually resolved, then the Debtors will schedule a hearing to consider the objection on the next scheduled omnibus hearing date.

JURISDICTION AND VENUE

15. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

16. The statutory bases for the relief requested herein are sections 105(a), 363, 365, 503, and 507 of the Bankruptcy Code and Bankruptcy Rules 2002, 3007, 6004, 6006, 9007, 9014, and Local Rule 6004-1.

RELIEF REQUESTED

17. By this Motion, the Debtors seek entry of the Bidding Procedures Order (a) approving the Bidding Procedures, (b) approving the form and manner of notice of the proposed sale transactions, the Bidding Procedures, the Auction, and the Sale Hearing, (c) authorizing the Debtors to hold the Auction, (d) scheduling the Sale Hearing, (e) authorizing procedures governing the assumption and assignment of the Assigned Contracts, and (f) granting related relief.

18. The Debtors also seek entry of the Sale Order (a) approving the Stalking Horse Agreement by and between the Debtors and the Stalking Horse Buyer, or such other purchase agreement between the Debtors and the successful bidder at the Auction, (b) authorizing the sale of the Seller Assets and the assumption and assignment of the Assigned Contracts to the Stalking Horse Buyer or other successful bidder at the Auction free and clear of all Liens, other than any

Permitted Encumbrances as set forth in the Stalking Horse Agreement or any permitted Liens as set forth in the purchase agreement with the Successful Bidder, and (c) granting related relief.

BASIS FOR RELIEF

I. Approval of Bidding Procedures Is Appropriate and in Best Interests of the Debtors' Estates.

A. Proposed Notices of Sale, Bidding Procedures, Auction, and Sale Hearing Are Appropriate.

19. The Debtors believe that if the Seller Assets are sold at this time through a well-advertised Auction that they will obtain the maximum recovery for their creditors. Before the Petition Date, the Debtors and their advisors, including Duff & Phelps, canvassed the market of parties that were capable of purchasing the Seller Assets to seek to maximize the value received in a sale of such assets. The Debtors have continued this process since the Petition Date.

20. Under Bankruptcy Rule 2002(a) and (c), the Debtors are required to notify creditors of the proposed sale of the Seller Assets, including disclosure regarding the Auction, the terms and conditions of the Sale, and the deadline for filing any objections. The Debtors request notice of the Sale, the Auction, the Sale Hearing, and the Bidding Procedures Order be deemed adequate and sufficient if:

- (a) No later than three business days after the entry of the Bidding Procedures Order, the Debtors (or their agent) serves by first class mail, postage prepaid, copies of (i) the Bidding Procedures Order, (ii) the Bidding Procedures, and (iii) a notice regarding the Sale (the "Sale Notice"), substantially in the form attached to the

Bidding Procedures Order as Exhibit 2⁶ on the following entities or their counsel, if known (collectively, the “Notice Parties”):

- (1) the U.S. Trustee;
 - (2) Citiking International US, LLC (“Citiking,” or the “DIP Lender”);
 - (3) the Debtors’ prepetition lenders;
 - (4) the Committee;
 - (5) the Internal Revenue Service;
 - (6) the United States Attorney for the District of Delaware;
 - (7) all federal, state, and local regulatory or taxing authorities or recording offices that have a reasonably known interest in the relief requested herein;
 - (8) any party known or reasonably believed to have asserted any lien, claim or encumbrance or other interest in the Debtors’ assets;
 - (9) any party known or reasonably believed to have expressed an interest in acquiring some or substantially all of the Debtors’ assets;
 - (10) the non-Debtor counterparties to the Contracts and Leases; and
 - (11) any parties that have requested notice in these cases pursuant to Bankruptcy Rule 2002.
- (b) Within five business days after the entry of the Bidding Procedures Order (or as soon as reasonably practicable thereafter, but no later than twenty-one (21) days prior to the Sale Objection Deadline), the Debtors also will publish the Sale Notice, which may be modified for publication, in the national edition of *USA Today* and the *Albuquerque Journal*, or other national or local publications as the Debtors deem appropriate.

⁶ In accordance with Bankruptcy Rule 2002(c)(1), the Sale Notice will include, among other things: (a) a description of how the Auction will be scheduled and the date, time, and place of the Sale Hearing; (b) a summary of certain of the terms and conditions of the Sale; (c) the time fixed for filing objections to the Sale; and (d) a description that the Sale of the Seller Assets is free of (i) any Permitted Encumbrances as set forth in the Stalking Horse Agreement or (ii) any permitted Liens as set forth in the purchase agreement with the Successful Bidder. The Sale Notice and Publication Notice (as defined herein) also will direct parties to access the website of the Debtors’ claims and noticing agent, <http://dm.epiq11.com/Oneaviation>, or call the Debtors’ restructuring information line at (855) 255-4838. The Sale Notice will provide that any party that wishes to obtain a copy of this Motion (and any related documents) may make such a request by calling the Debtors’ claims and notice agent, Epiq Bankruptcy Solutions, LLC at (855) 255-4838 or by visiting <http://dm.epiq11.com/Oneaviation>.

- (c) After the conclusion of the Auction, the Debtors will file with the Court a notice of Auction results (the “Auction Notice”) that will, among other things, identify the Successful Bidder and any applicable Backup Bidder. Within the earlier of (i) five business hours after the conclusion of the Auction and (ii) noon the next business day after the conclusion of the Auction, the Debtors will file the Auction Notice with the Court and post the same on the website maintained by the Debtors’ claims and noticing agent, but no further notice of the Auction Notice will be provided to any parties-in interest in the Chapter 11 Cases.

21. In addition, the Debtors requests the establishment of an objection deadline prior to the Sale Hearing such that that any objections related to the proposed Sale be served upon (such as to be **received** by) the following parties (the “Objection Notice Parties”), **on or before 4:00 p.m. (prevailing Eastern time) on July 29, 2019** (the “Sale Objection Deadline”):

(i) co-counsel for the Debtors, (x) Paul Hastings, LLP, 71 S. Wacker Drive, Forty-Fifth Floor, Chicago, IL 60606, Attn: Chris L. Dickerson, chrisdickerson@paulhastings.com, and 1117 S. California Avenue, Palo Alto, CA 94304, Attn: Todd M. Schwartz, toddschwartz@paulhastings.com, and (y) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: M. Blake Cleary and Jaime Luton Chapman, Mbcleary@ycst.com and JChapman@ycst.com; (ii) counsel for the Stalking Horse Buyer, Margolis Edelstein, 300 Delaware Avenue, Suite 800, Wilmington, DE 19801, Attn: James E. Huggett, jhuggett@margolisedelstein.com; (iii) co-counsel for the Committee, (x) Lowenstein Sandler, One Lowenstein Drive, Roseland, NJ 07068, Attn: Bruce D. Buechler, Bbuechler@lowenstein.com, and 1251 Avenue of the Americas, New York, NY 10020, Attn: Wojciech F. Jung, Wjung@lowenstein.com, and (y) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, DE 19801, Attn: Adam G. Landis and Kerri Mumford, Landis@lrclaw.com and mumford@lrclaw.com; and (iv) counsel for the Senior Subordinated Secured Noteholders, CKR Law, 100 N. West Street, Suite 1200, Wilmington, DE 19801, Attn: Marc J. Phillips, Mphillips@ckrlaw.com; (v) the Office of the United States Trustee for the

District of Delaware, 844 King Street, Room 2207, Lockbox 35, Wilmington, Delaware 19899-0035, Attn: Linda Casey, linda.casey@usdoj.gov; and (vi) those parties who have formally filed requests for notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002.

22. The Debtors submit that the foregoing notice and Sale Objection Deadline comply fully with Bankruptcy Rule 2002 and are reasonably calculated to provide timely and adequate notice of the Bidding Procedures, the Auction, the Sale Hearing, and the Sale to the Debtors' creditors and other parties in interest, and, if the Debtors believe that additional entities have a legitimate interest, then also to those who have expressed an interest, or may express an interest, in bidding on the Seller Assets. Based upon the foregoing, the Debtors respectfully request that the Court approve the notice procedures and the Sale Objection Deadline proposed above.

B. The Bidding Procedures Are Appropriate and Will Maximize Value Received in Sale of Seller Assets.

23. Courts have made clear that a debtor's business judgment is entitled to substantial deference with respect to the procedures to be used in selling assets from the estate.⁷

24. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate.⁸ To that end, courts uniformly recognize that procedures

⁷ See, e.g., *Calpine Corp. v. O'Brien Envtl. Energy, Inc. (In re O'Brien Envtl. Energy, Inc.)*, 181 F.3d 527, 535–37 (3d Cir. 1999) (detailing situations where bidding incentives are appropriate in bankruptcy because they provide a benefit to the estate); *In re Edwards*, 228 B.R. 552, 561 (Bankr. E.D. Pa. 1998) (“The purpose of procedural bidding orders is to facilitate an open and fair public sale designed to maximize value for the estate.”).

⁸ See, e.g., *In re Mushroom Transp. Co., Inc.*, 382 F.3d 325, 339 (3d Cir. 2004) (finding that debtor in possession “had a fiduciary duty to protect and maximize the estate’s assets”); *Official Comm. of Unsecured Creditors of Cybergenics, Corp. v. Chinery*, 330 F.3d 548, 573 (3d Cir. 2003) (same); *Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 564–65 (8th Cir. 1997) (noting that in bankruptcy sales, “a primary objective of the [Bankruptcy] Code [is] to enhance the value of the estate at hand”).

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 sales.⁹

25. The Debtors believe that the Bidding Procedures will establish sound parameters by which the proffered sale price of the Seller Assets may be tested at the Auction, as well as the ensuing Sale Hearing, and evaluated as described herein. Such procedures will increase the likelihood that the Debtors will receive the greatest possible consideration for the Seller Assets in a sale because they will ensure a competitive and fair bidding process. The Bidding Procedures also allow the Debtors to undertake the Auction process timely and efficiently, which the Debtors believe is essential to maintaining and maximizing the value of their estates.

26. The Debtors believe that the Auction and proposed Bidding Procedures promote active bidding from any seriously interested parties and will dispel any doubt as to the best or otherwise highest offer reasonably available at this time for the purchase of the Seller Assets. Moreover, the proposed Bidding Procedures will allow the Debtors to conduct the Auction in a controlled, fair, and open fashion that will encourage participation by financially capable bidders who demonstrate the ability to close a transaction. The Debtors believe that the Bidding Procedures will encourage bidding for the Seller Assets, are consistent with other procedures previously approved by this Court, and are appropriate under the relevant standards governing auction proceedings and bidding incentives in bankruptcy proceedings.¹⁰

⁹ See, e.g., *O'Brien Envtl. Energy, Inc.*, 181 F.3d at 537; *Official Comm. of Subordinated Bondholders v. Integrated Res. Inc. (In re Integrated Res. Inc.)*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (observing that bidding procedures “encourage bidding and ...maximize the value of the debtor’s assets”).

¹⁰ See, e.g., *In re Ciber, Inc.*, No. 17-10772 (BLS) (Bankr. D. Del. May 2, 2017) [ECF No. 150]; *In re Sungevity, Inc. (KG)* (Bankr. D. Del. March 31, 2017); *In re DirectBuy Holdings, Inc. et al.*, No. 16-12435 (CSS) (Bankr. D. Del. Dec. 1, 2016) [ECF No. 126]; *In re BPS US Holdings, Inc., et al.*, No. 16-12373 (KJC) (Bankr. D. Del. Nov. 30, 2016) [ECF No. 233]; *In re Emerald Oil, Inc. et al.*, No. 16-10704 (KG) (Bankr. D. Del. Aug. 31, 2016); *In re Savient Pharm., Inc.*, No. 13-12680 (MFW) (Bankr. D. Del. Nov. 4, 2013) [ECF No. 110]; *In re IPC Int’l Corp.*, No. 13-12050 (MFW) (Bankr. D. Del. Aug. 27, 2013) [ECF No. 98]; *In re Northstar Aerospace (USA) Inc.*, No. 12-11817 (MFW) (Bankr. D. Del. June 27, 2012) [ECF

27. Thus, the proposed Bidding Procedures are reasonable, appropriate, and within the Debtors' sound business judgment under the circumstances because they will serve to maximize the value that the Debtors will obtain on account of the Sale of the Seller Assets.

C. Initial And Subsequent Overbid Amounts Are Appropriate.

28. One important component of the Bidding Procedures is the "overbid" provision. For a bid to be considered a Qualified Bid (as that term is defined in the Bidding Procedures), it must be in a cash amount equal to or in excess of \$18.1 million, which amount is equal to the Purchase Price (including certain Assumed Liabilities) under the Stalking Horse Agreement *plus* \$100,000 (such amounts, in the aggregate, the "Initial Minimum Overbid"). Courts frequently authorize debtors to require bidders to submit minimum initial bids to ensure that the debtors receive the highest and best offers possible in asset sales.

29. In addition, the Debtors intend to conduct the Auction such that each bid at the Auction is higher or otherwise better than the previous bid. To this end, incorporating the concept of overbids in the Bidding Procedures is reasonable under the circumstances and will enable the Debtors to maximize the value for the sale of their assets while limiting any chilling effect on the Sale process. Courts frequently authorize debtors to require subsequent bidders to include an overbid in the consideration they offer as part of a sale process.

D. The Proposed Notice Procedures For The Assigned Contracts And Leases And The Identification Of Related Cure Amounts Are Appropriate.

30. As part of this Motion, the Debtors also seek authority to assume (to the extent not already assumed) and assign the Assigned Contracts to the Successful Bidder. To facilitate such assumption and assignment, the Debtors also seek approval of the related Assumption Procedures. The Assumption Procedures, as detailed above, outline the process by which the

No. 119]. Because of the voluminous nature of the orders cited herein, they are not attached to this Motion. Copies of these orders are available upon request of the Debtors' counsel.

Debtors will serve the Cure Notice and the procedures and deadlines for Contract Parties to file and serve related objections.

31. The Assumption and Assignment Procedures ensure that each Contract Party will have sufficient notice of the potential assumption and assignment of its Contract or Lease and an opportunity to contest any asserted Cure Amount, as well as the ability of the Stalking Horse Buyer or other Successful Bidder to provide adequate assurance of future performance.

32. Accordingly, the Debtors submit that the Assumption Procedures are fair and reasonable, and respectfully request that the Court approve such procedures.

II. Approval of Proposed Sale Transaction Is Appropriate and in Best Interest of the Debtors' Estates.

33. In accordance with Bankruptcy Rule 6004(f)(1), sales of property rights outside the ordinary course of business may be by private sale or public auction. The Debtors determined that a public Auction of the Seller Assets will enable the Debtors to obtain the highest or otherwise best offer in a sale of their assets at this time and is in the best interests of the Debtors, their estates, and their creditors.

A. Sale of Seller Assets s Sound Exercise of the Debtors' Business Judgment.

34. Section 363 of the Bankruptcy Code provides, in relevant part, that a debtor, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” Section 105(a) of the Bankruptcy Code provides, in relevant part that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”

35. Although section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale, or lease of property of

the estate, bankruptcy courts routinely authorize sales of a debtor's assets if such sale is based upon the sound business judgment of the debtor.¹¹

36. Courts typically consider the following factors in determining whether a proposed sale satisfies this standard: (a) whether a sound business justification exists for the sale; (b) whether adequate and reasonable notice of the sale was given to interested parties; (c) whether the sale will produce a fair and reasonable price for the property; and (d) whether the parties have acted in good faith.¹² In *In re Del. & Hudson Ry.*, the court further held that:

[o]nce a court is satisfied that there is a sound business reason or an emergency justifying the pre-confirmation sale, the court must also determine that the trustee has provided the interested parties with adequate and reasonable notice, that the sale price is fair and reasonable and that the [proposed] purchaser is proceeding in good faith.¹³

37. The business judgment rule shields a debtor's management from judicial second-guessing.¹⁴ Once a debtor articulates a valid business justification, "[t]he business judgment rule is a presumption that directors act in good faith, on an informed basis, honestly believing that their action is in the best interests of the company."¹⁵ Thus, if a debtor's actions satisfy the business judgment rule, then the transaction in question should be approved under section 363(b)(1) of the Bankruptcy Code.

¹¹ See, e.g., *In re Trans World Airlines, Inc.*, Case No. 01-00056, 2001 WL 1820326, at *10–11 (Bankr. D. Del. Apr. 2, 2001); *Meyers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 175–76 (D. Del. 1991).

¹² See *In re Del. & Hudson Ry.*, 124 B.R. at 176; *In re Phoenix Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987); *In re United Healthcare Sys., Inc.*, Case No. 97-1159, 1997 WL 176574, at *4-5, *4 n.2 (D.N.J. Mar. 26, 1997).

¹³ 124 B.R. at 176.

¹⁴ See *In re Tower Air*, 416 F.3d 229, 238 (3d Cir. 2005).

¹⁵ *Id.*

38. A sound business purpose for the sale of a debtor's assets outside the ordinary course of business may be found where such a sale is necessary to preserve the value of assets for the estate, its creditors, or interest holders.¹⁶ In fact, the paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate.¹⁷

39. 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 sales.¹⁸

40. The sale of the Seller Assets will be consummated only after thorough consideration of all viable alternatives and after concluding that such transactions are supported by sound business justifications. Based on available information, the Debtors believe that the consideration to be received for the Seller Assets under the Stalking Horse Agreement is fair and reasonable under the circumstances.

41. As further assurance of value, the Stalking Horse Buyer's initial bid will be tested through the Auction consistent with the requirements of the Bankruptcy Code and the Bankruptcy Rules and pursuant to the Bidding Procedures. Consequently, the fairness and reasonableness of a sale to the Stalking Horse Buyer ultimately will be considered in light of "market exposure" through an open and fair auction process and in light of any available alternatives.

¹⁶ See, e.g., *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2nd Cir. 1983).

¹⁷ See *In re Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997) (noting that in bankruptcy sales, "a primary objective of the [Bankruptcy] Code [is] to enhance the value of the estate at hand"); *In re Integrated Res., Inc.*, 147 B.R. at 659 ("It is a well-established principle of bankruptcy law that the ... [Debtor's] duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.") (quoting *In re Atlanta Packaging Prods., Inc.*, 99 B.R. 124, 130 (Bankr. N.D. Ga. 1988)).

¹⁸ See, e.g., *O'Brien Envtl. Energy*, 181 F.3d at 537; see also *In re Integrated Res., Inc.*, 147 B.R. at 659 (noting that break-up fees "encourage bidding and to maximize the value of the debtor's assets"); *In re Fin. News Network, Inc.*, 126 B.R. 152, 156 (S.D.N.Y. 1991) (as amended) ("[C]ourt-imposed rules for the disposition of assets . . . [should] provide an adequate basis for comparison of offers, and [should] provide for a fair and efficient resolution of bankrupt estates.").

B. Sale of Seller Assets and Assigned Contracts Free And Clear Of Liens Is Authorized By Section 363(f) Of The Bankruptcy Code.

42. The Debtors further submit that it is appropriate to sell the Seller Assets and to assign the Assigned Contracts free and clear of (i) any Permitted Encumbrances as set forth in the Stalking Horse Agreement or (ii) any permitted Liens as set forth in the purchase agreement with the Successful Bidder pursuant to section 363(f) of the Bankruptcy Code, with any such Liens attaching to the net sale proceeds of the Seller Assets, as and to the extent applicable. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of liens, claims, interests, and encumbrances if:

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

43. Because section 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the Seller Assets “free and clear” of Liens.¹⁹

44. The Debtors believe that one or more of the tests of section 363(f) of the Bankruptcy Code are satisfied with respect to the transfer of the Seller Assets and the assignment of the Assigned Contracts pursuant to the Stalking Horse Agreement. In particular, the Debtors

¹⁹ *In re Decora Indus., Inc.*, Case No. 00-4459 (JJF), 2002 WL 32332749, at *7 (D. Del. May 20, 2002) (“Because §363(f) is drafted in the disjunctive, the satisfaction of any of the requirements outlined is sufficient to warrant Debtors’ sale of the Acquired Assets free and clear of all Interests as provided in the Stalking Horse Agreement, except with respect to such Interests as are assumed liabilities pursuant to the Stalking Horse Agreement.”); *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (Bankr. E.D. Pa. 1988) (same).

believe that at least section 363(f)(2) of the Bankruptcy Code will be met in connection with the transactions proposed under the Stalking Horse Agreement because each of the parties holding Liens on the Seller Assets, if any, will consent, or, absent any objection to this Motion, will be deemed to have consented to, the Sale.

45. Any holder of a Lien also will be adequately protected by having its Liens, if any, attach to the sale proceeds received by the Debtors for the Sale of the Seller Assets to the Stalking Horse Buyer or other successful bidder at the Auction, in the same order of priority, with the same validity, force, and effect that such creditor had prior to such Sale, subject to any claims and defenses that the Debtors and their estates may possess with respect thereto. Accordingly, section 363(f) of the Bankruptcy Code authorizes the sale of the Seller Assets and the assignment of the Assigned Contracts free and clear of any such Liens.

C. If the Debtors Consummate Sale Of Assets, Seller Assets Should Be Sold Or Assumed Free And Clear Of Successor Liability.

46. The purchaser of the Seller Assets is unlikely to be liable for any of the Debtors' liabilities as a successor to the Debtors' business or otherwise, unless the purchaser expressly assumes such liabilities. Extensive case law exists providing that claims against the winning bidder are directed to the proceeds of a free and clear sale of property and may not subsequently be asserted against a buyer.

47. Although section 363(f) of the Bankruptcy Code provides for the sale of assets "free and clear of any interests," the term "any interest" is not defined in the Bankruptcy Code.²⁰ In *Trans World Airlines, Inc.*, the Third Circuit specifically addressed the scope of the term "any interest."²¹ The Third Circuit observed that while some courts have "narrowly interpreted

²⁰ *Folger Adam Security v. DeMatteis/MacGregor JV*, 209 F.3d 252, 257 (3d Cir. 2000). *Folger Adam Security v. DeMatteis/MacGregor JV*, 209 F.3d 252, 257 (3d Cir. 2000).

²¹ 322 F.3d 283, 288–89 (3d Cir. 2003).

interests in property to mean *in rem* interests in property,” the trend in modern cases is toward “a more expansive reading of ‘interests in property’ which ‘encompasses other obligations that may flow from ownership of the property.’”²² As determined by the Fourth Circuit in *Leckie Smokeless Coal Co.*, a case cited extensively and approvingly by the Third Circuit in *Folger*, the scope of section 363(f) of the Bankruptcy Code is not limited to *in rem* interests.²³ Thus, the Third Circuit in *Folger* quoted *Leckie* as holding that the debtors “could sell their assets under § 363(f) free and clear of successor liability that otherwise would have arisen under federal statute.”²⁴

48. Courts have held that a buyer of a debtor’s assets pursuant to a section 363 sale takes free from successor liability resulting from pre-existing claims.²⁵

49. Here, the Chapter 11 Cases were filed in good faith. The Debtors expect that if they seek to complete an asset sale of the Seller Assets, they will be able to satisfy the Court that (a) the purchaser engaged in arm’s-length negotiations with the Debtors and did not exert control or undue influence over the Debtors, (b) the purchaser is a completely and wholly unrelated entity to the Debtors, (c) the purchaser does not, and will not, share any common incorporators, officers, directors, or stockholders with the Debtors, and (d) the purchaser is not an insider of the Debtors.

²² *Id.* at 289 (citing 3 *Collier on Bankruptcy* ¶ 363.06[1]).

²³ 99 F.3d 573, 581–82 (4th Cir. 1996).

²⁴ *Folger*, 209 F.3d at 258 (internal quotation marks omitted).

²⁵ *See The Ninth Ave. Remedial Group v. Allis-Chalmers Corp.*, 195 B.R. 716, 732 (N.D. Ind. 1996) (stating that a bankruptcy court has the power to sell assets free and clear of any interest that could be brought against the bankruptcy estate during the bankruptcy); *MacArthur Co. v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 837 F.2d 89, 93-94 (2d Cir. 1988) (holding channeling of claims to proceeds consistent with intent of sale free and clear under section 363(f) of the Bankruptcy Code); *In re New England Fish Co.*, 19 B.R. 323, 329 (Bankr. W.D. Wash. 1982) (holding transfer of property in free and clear sale included free and clear of Title VII employment discrimination and civil rights claims of debtor’s employees); *In re Hoffman*, 53 B.R. 874, 876 (Bankr. D.R.I. 1985) (holding that transfer of liquor license free and clear of any interest permissible even though the estate had unpaid taxes was permissible).

50. For obvious reasons, the very purpose of an order purporting to authorize the transfer of assets free and clear of all “interests” would be frustrated if claimants could thereafter use the transfer as a basis to assert claims against a purchaser arising from a seller’s pre-sale conduct. Furthermore, the Debtors will provide notice of the proposed sale to all known parties in interest that may assert claims or interests relating to the Seller Assets against the Debtors, including trade creditors, contract counterparties, lenders, and other parties known to the Debtors to be asserting claims relating to the Seller Assets.

51. Under section 363(f) of the Bankruptcy Code, a purchaser of assets is entitled to know that the Seller Assets are not infected with latent claims that will be asserted against the purchaser after the proposed transaction is completed. Accordingly, consistent with the above-cited case law, the order approving the Sale of the Seller Assets may provide that the purchaser of the Seller Assets is not liable as a successor under any theory of successor liability, for claims that encumber or relate to the Seller Assets.

D. Stalking Horse Buyer Is Good Faith Purchaser And Is Entitled To Full Protection Of Section 363(m) Of The Bankruptcy Code, And Transfer And Sale Of Seller Assets Does Not Violate Section 363(n) Of The Bankruptcy Code Nor Will Transfer And Sale Of Seller Assets Negate The Committee Settlement.

52. The Debtors believes that the Stalking Horse Agreement has been negotiated at arm’s length and in good faith. Thus, the Stalking Horse Buyer is entitled to the full protections of section 363(m) of the Bankruptcy Code, which provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

While the Bankruptcy Code does not define “good faith,” the Third Circuit in held that:

[t]he requirement that a purchaser act in . . . good faith speaks to the integrity of his conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a purchaser's good faith status at a judicial sale involves fraud, collusion between the [proposed] purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.²⁶

53. Accordingly, absent a showing of fraud, collusion between a purchaser and a debtor, or an attempt by the purchaser to take grossly unfair advantage of other bidders, courts will uphold the transaction under section 363(m) of the Bankruptcy Code.²⁷

54. The Debtors and the Stalking Horse Buyer engaged in thorough arm's-length negotiations over the terms of the Stalking Horse Agreement and there has been no fraud, improper insider dealing, or collusion in those negotiations. In addition, the Stalking Horse Buyer is not an "insider," as that term is defined in section 101(31) of the Bankruptcy Code, of any of the Debtors. If the Debtors proceed to consummate the Stalking Horse Agreement, it will be because the Debtors believe that the consideration to be received by the Debtors pursuant to the Stalking Horse Agreement is substantial, fair, reasonable, and the best and highest bid under the circumstances.

55. The Stalking Horse Agreement does not constitute an avoidable transaction pursuant to section 363(n) of the Bankruptcy Code, and the Stalking Horse Buyer or other prevailing bidder should receive the protections afforded good faith purchasers by

²⁶ *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 147 (3d Cir. 1986) (citation omitted).

²⁷ *See, e.g., In re Trans World Airlines, Inc.*, Case No. Civ.A. 01-226 (SLR), 2002 WL 500569, * 1 (D. Del. Mar. 26, 2002) (upholding bankruptcy court's ruling premised on finding that there was "no evidence of unlawful insider influence or improper conduct," nor was there "any evidence of fraud or collusion between [the Successful Bidder] and [debtors], or [the Successful Bidder] and other bidders," that sale was in good faith); *In re Tempo Tech. Corp.*, 202 B.R. at 367 ("A purchaser's good faith status at a bankruptcy sale would be destroyed by misconduct involving 'fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.'" (quoting *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d at 147); *see also Kabro Assocs. of West Islip, L.L.C. v. Colony Hill Assocs. (In re Colony Hill Assocs.)*, 111 F.3d 269, 276 (2d Cir. 1997) ("Typically, the misconduct that would destroy a purchaser's good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.")).

section 363(m) of the Bankruptcy Code. Accordingly, the Debtors request that the Court make a finding at the Sale Hearing that the purchase agreement reached with the Stalking Horse Buyer or other prevailing bidder was at arm's length and is entitled to the full protections of section 363(m) of the Bankruptcy Code.

56. Crucially, the Stalking Horse Agreement preserves the Committee Settlement as set forth in Article 5.17 of the Plan.

E. Credit Bidding Should Be Authorized under Section 363(k) Of The Bankruptcy Code

57. A secured creditor is allowed to “credit bid” the amount of its claim in a sale. Section 363(k) of the Bankruptcy Code 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.” Even if a secured creditor is undersecured as determined in accordance with section 506(a) of the Bankruptcy Code, 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.²⁸

58. In this situation, the Stalking Horse Buyer should be entitled to credit bid some or all of the claims for the Stalking Horse Buyer's collateral pursuant to section 363(k) of the Bankruptcy Code. Because the Stalking Horse Buyer holds claims that are secured by substantially all of the Seller Assets, the Stalking Horse Buyer should be allowed to credit bid the face value of its secured claims to effectuate the transactions under the Stalking Horse Agreement to the fullest extent permitted by applicable law.

²⁸ See *Cohen v. KB Mezzanine Fund II, LP (In re Submicron Sys. Corp.)*, 432 F.3d 448, 459–60 (3d Cir. 2006) (providing that “[i]t is well settled among district and bankruptcy courts that creditors can bid the full face value of their secured claims under § 363(k)”).

F. Assumption And Assignment Of The Assigned Contracts Is Authorized By Section 365 Of The Bankruptcy Code.

59. Sections 365(a) and (b) of the Bankruptcy Code authorize a debtor in possession to assume, subject to the court's approval, executory contracts or unexpired leases of the debtor. Under section 365(a) of the Bankruptcy Code, a debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." Section 365(b)(1) of the Bankruptcy Code, in turn, codifies the requirements for assuming an unexpired lease or executory contract of a debtor, providing that:

If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee –

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default . . . ;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

60. The standard applied by the Third Circuit to determine whether an executory contract or unexpired lease should be assumed is the "business judgment" test, which requires a debtor to determine that the requested assumption or rejection would be beneficial to its estate.²⁹

61. Courts generally will not second guess a debtor's business judgment concerning the assumption of an executory contract.³⁰

²⁹ See *Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 39-40 (3d Cir. 1989).

³⁰ See *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984) (stating that section 365 is traditionally subject to the "business judgment" standard); *In re Decora Indus., Inc.*, No. 00-4459 JJF, 2002 WL 32332749, at *8 (D. Del. 2002); *Official Comm. for Unsecured Creditors v. Aust (In re Network Access Solutions, Corp.)*, 330 B.R. 67, 75 (Bankr. D. Del. 2005) ("The standard for approving the assumption of an executory contract is the business judgment rule."); *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006)

62. In the present case, the Debtors' assumption and assignment of the Assigned Contracts to the Successful Bidder will meet the business judgment standard and satisfy the requirements of section 365 of the Bankruptcy Code. As discussed above, the transactions contemplated by the Stalking Horse Agreement will provide significant benefits to the Debtors' estates. Because the Debtors cannot obtain the benefits of the Stalking Horse Agreement without the assumption of the Assigned Contracts, the assumption of these Assigned Contracts is undoubtedly a sound exercise of the Debtors' business judgment.

63. Further, a debtor in possession may assign an executory contract or an unexpired lease of the debtor if it assumes the agreement in accordance with section 365(a) of the Bankruptcy Code and provides adequate assurance of future performance by the assignee, whether or not there has been a default under the agreement.³¹ Significantly, among other things, adequate assurance may be provided by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned.³²

64. The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction."³³

("The propriety of a decision to reject an executory contract is governed by the business judgment standard."), *vacated on other grounds*, 607 F.3d 957 (3d Cir. 2010); *see also Phar-Mor, Inc. v. Strauss Bldg. Assocs.*, 204 B.R. 948, 952 (N.D. Ohio 1997) ("Courts should generally defer to a debtor's decision whether to reject an executory contract.") (citation omitted). Further, "[n]othing in the Code suggests that the debtor may not modify its contracts when all parties to the contract consent." *Network Access Solutions*, 330 B.R. at 74 (citations omitted). While "[s]ection 363 of the Bankruptcy Code allows a debtor to ... modify contracts ... [t]o the extent they are outside the ordinary course of business, court approval is necessary." *Id.* Regardless, "[t]here is ... no discernable difference in the notice requirements or standard for approval under section 363 and 365." *Id.*

³¹ *See* 11 U.S.C. § 365(f)(2).

³² *See, e.g., In re Bygaph, Inc.*, 56 B.R. 596, 605–06 (Bankr. S.D.N.Y. 1986) (finding adequate assurance of future performance to be present where prospective assignee of a lease from debtor had financial resources and expressed willingness to devote sufficient funding to the business in order to give it a strong likelihood of succeeding).

³³ *EBG Midtown South Corp. v. McLaren/Hart Envtl. Eng'g Corp. (In re Sanshoe Worldwide Corp.)*, 139 B.R. 585, 592 (S.D.N.Y. 1992) (citations omitted), *aff'd*, 993 F.2d 300 (2d Cir. 1993); *Carlisle Hornes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1988).

65. To assist in the assumption, assignment and sale of the Assigned Contracts, the Debtors also request that the Sale Order provide that anti-assignment provisions in the Assigned Contracts shall not restrict, limit or prohibit the assumption, assignment and sale of the Assigned Contracts and are deemed and found to be unenforceable anti-assignment provisions within the meaning of section 365(f) of the Bankruptcy Code.

66. Section 365(f)(1) of the Bankruptcy Code permits a debtor to assign unexpired leases and contracts free from such anti-assignment restrictions, providing, in pertinent part, that:

[N]otwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease under paragraph (2) of this subsection.

67. Section 365(f)(1) of the Bankruptcy Code, by operation of law, invalidates provisions that prohibit, restrict, or condition assignment of an executory contract or unexpired lease.³⁴

68. Other courts have recognized that provisions that have the effect of restricting assignments cannot be enforced.³⁵ Similarly, in *Mr. Grocer, Inc.*, the court noted that:

[the] case law interpreting § 365(f)(1) of the Bankruptcy Code establishes that the court does retain some discretion in

³⁴ See, e.g., *Coleman Oil Co., Inc. v. The Circle K Corp. (In re The Circle K Corp.)*, 127 F.3d 904, 910–11 (9th Cir. 1997) (“[N]o principle of bankruptcy or contract law precludes us from permitting the Debtors here to extend their leases in a manner contrary to the leases’ terms, when to do so will effectuate the purposes of section 365.”). Section 365(f)(3) of the Bankruptcy Code goes beyond the scope of section 365(f)(1) of the Bankruptcy Code by prohibiting enforcement of any clause creating a right to modify or terminate the contract or lease upon a proposed assumption or assignment thereof. See, e.g., *In re Jamesway Corp.*, 201 B.R. 73, 77–78 (Bankr. S.D.N.Y. 1996) (providing that section 365(f)(3) of the Bankruptcy Code prohibits enforcement of any lease clause creating right to terminate lease because it is being assumed or assigned, thereby indirectly barring assignment by debtor; all lease provisions, not merely those entitled anti-assignment clauses, are subject to court’s scrutiny regarding anti-assignment effect).

³⁵ See *In re Rickel Home Ctrs., Inc.*, 240 B.R. 826, 831 (D. Del. 1998) (“In interpreting section 365(f), courts and commentators alike have construed the terms to not only render unenforceable lease provisions which prohibit assignment outright, but also lease provisions that are so restrictive that they constitute de facto anti-assignment provisions.”).

determining that lease provisions, which are not themselves *ipso facto* anti-assignment clauses, may still be refused enforcement in a bankruptcy context in which there is no substantial economic detriment to the landlord shown, and in which enforcement would preclude the bankruptcy estate from realizing the intrinsic value of its assets.³⁶

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

WAIVER OF BANKRUPTCY RULES 6004(a) AND 6004(h)

69. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14 day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

RESERVATION OF RIGHTS

70. Nothing contained herein is intended or should be construed as an admission of the validity of any claim against the Debtors, a waiver of the Debtors' rights to dispute any claim, or an approval or assumption of any agreement, contract, or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their right to contest any invoice or claim related to the relief requested herein in accordance with applicable law.

CONSENT TO JURISDICTION

71. Pursuant to Local Rule 9013-1(f), the Debtors confirm their consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

³⁶ *In re Mr. Grocer, Inc.*, 77 B.R. 349, 354 (Bankr. D.N.H. 1987).

NOTICE

72. Notice of the Motion with respect to the Bidding Procedures Order has been provided to the following, or their counsel, if known: (i) the U.S. Trustee; (ii) the DIP Lender; (iii) the Debtors' prepetition lenders; (iv) the Committee; (v) the Internal Revenue Service; (vi) any parties that have requested notice in these cases pursuant to Bankruptcy Rule 2002. Notice of the Motion with respect to the Sale Order will be provided in accordance with the Bidding Procedures Order. The Debtors submit that in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtors respectfully request entry of the Bidding Procedures Order, substantially in the form attached hereto, and the Sale Order granting the relief requested in this Motion and such other and further relief as is just and proper.

Dated: June 17, 2019

Wilmington, Delaware

/s/ Jaime Luton Chapman

Robert S. Brady (No. 2847)

M. Blake Cleary (No. 3614)

Sean M. Beach (No. 4070)

Jaime Luton Chapman (No. 4936)

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Chris L. Dickerson (admitted *pro hac vice*)

Brendan M. Gage (admitted *pro hac vice*)

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Todd M. Schwartz (admitted *pro hac vice*)

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Palo Alto, California 94304

Telephone: (650) 320-1800

Facsimile: (650) 320-1900

Counsel to the Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

-----X
:
In re: : **Chapter 11**
:
ONE AVIATION CORPORATION, et al.,¹ : **Case No. 18-12309 (CSS)**
:
Debtors. : **Jointly Administered**
:
: **Bidding Procedures Objection Deadline:**
: **June 24, 2019 at 4:00 p.m. (ET)**
:
: **Bidding Procedures Hearing Date:**
: **July 1, 2019 at 11:00 a.m. (ET)**
-----X

NOTICE OF MOTION

TO: (I) THE U.S. TRUSTEE; (II) COUNSEL TO THE COMMITTEE; (III) COUNSEL TO CITIKING INTERNATIONAL US, LLC; (IV) THE DEBTORS' PREPETITION LENDERS; (V) THE DIP AGENT; AND (VI) ALL PARTIES THAT HAVE REQUESTED NOTICE IN THE CHAPTER 11 CASES PURSUANT TO BANKRUPTCY RULE 2002.

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (collectively, the "Debtors") have filed the attached *Debtors' Motion for Entry of: (A) Order (I) Approving Bidding Procedures in Connection with Sale of Assets of the Debtors, (II) Approving Form and Manner of Notice, (III) Scheduling Auction and Sale Hearing, (IV) Authorizing Procedures Governing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (V) Granting Related Relief; and (B) Order (I) Approving Purchase Agreement, (II) Authorizing Sale Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, and (III) Granting Related Relief* (the "Motion").²

PLEASE TAKE FURTHER NOTICE that any objections or responses to the Motion as it pertains to the request for entry of the proposed Bidding Procedures Order must be filed on or before **June 24, 2019 at 4:00 p.m. (ET)** (the "Objection Deadline") with the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 3rd Floor,

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor's tax identification number, as applicable, are: ONE Aviation Corporation (9649); ACC Manufacturing, Inc. (1364); Aircraft Design Company (1364); Brigadoon Aircraft Maintenance, LLC (9000); DR Management, LLC (8703); Eclipse Aerospace, Inc. (9000); Innovatus Holding Company (9129); Kestrel Aircraft Company, Inc. (2053); Kestrel Brunswick Corporation (6741); Kestrel Manufacturing, LLC (1810); Kestrel Tooling Company (9439); and OAC Management, Inc. (9986). The Debtors' corporate headquarters is located at 3250 Spirit Drive SE, Albuquerque, NM 87106.

² Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Motion.

Wilmington, Delaware 19801. At the same time, copies of any such responses or objections must be served upon the undersigned counsel to the Debtors so as to be received on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE THAT THE HEARING ON THE MOTION SOLELY WITH RESPECT TO ENTRY OF THE BIDDING PROCEDURES ORDER WILL BE HELD ON JULY 1, 2019 AT 11:00 A.M. (ET) BEFORE THE HONORABLE CHRISTOPHER S. SONTCHI, IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 N. MARKET STREET, 5TH FLOOR, COURTROOM NO. 6, WILMINGTON, DELAWARE 19801.

PLEASE TAKE FURTHER NOTICE that entry of the Sale Order shall be considered at the Sale Hearing to be scheduled by the Court pursuant to entry of the Bidding Procedures Order.

PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND TO THE MOTION IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITH RESPECT TO ENTRY OF THE BIDDING PROCEDURES ORDER WITHOUT FURTHER NOTICE OR A HEARING.

Dated: June 17, 2019
Wilmington, Delaware

/s/ Jaime Luton Chapman

Robert S. Brady (No. 2847)

M. Blake Cleary (No. 3614)

Sean M. Beach (No. 4070)

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Facsimile: (650) 320-1900

Counsel to the Debtors and Debtors in Possession

EXHIBIT A

BIDDING PROCEDURES ORDER

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

	X	
	:	
In re:	:	Chapter 11
	:	
ONE AVIATION CORPORATION, <i>et al.</i> , ¹	:	Case No. 18-12309 (CSS)
	:	
	:	
Debtors.	:	Jointly Administered
	:	
	:	RE: Docket No. ____

**ORDER (A) APPROVING BIDDING PROCEDURES IN CONNECTION WITH SALE
OF ASSETS OF THE DEBTORS, (B) APPROVING FORM AND MANNER OF
NOTICE, (C) SCHEDULING AUCTION AND SALE HEARING, (D) AUTHORIZING
PROCEDURES GOVERNING ASSUMPTION AND ASSIGNMENT OF CERTAIN
EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (E) GRANTING
RELATED RELIEF**

Upon the motion (the “Motion”)² of ONE Aviation Corporation and its affiliated debtors as debtors in possession (collectively, the “Debtors”) for the entry of an order: (a) establishing bidding procedures to govern the sale of all or substantially all of the assets of the Debtors (the “Bidding Procedures”); (b) approving the form and manner of notice of the Bidding Procedures; (c) scheduling an auction to sell the Seller Assets (the “Auction”) and the Sale Hearing; (d) authorizing procedures governing the assumption and assignment of certain executory contracts and unexpired leases; and (e) granting other related relief, as more fully described in

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor’s tax identification number, as applicable, are: ONE Aviation Corporation (9649); ACC Manufacturing, Inc. (1364); Aircraft Design Company (1364); Brigadoon Aircraft Maintenance, LLC (9000); DR Management, LLC (8703); Eclipse Aerospace, Inc. (9000); Innovatus Holding Company (9129); Kestrel Aircraft Company, Inc. (2053); Kestrel Brunswick Corporation (6741); Kestrel Manufacturing, LLC (1810); Kestrel Tooling Company (9439); and OAC Management, Inc. (9986). The debtors’ corporate headquarters is located at 3520 Spirit Drive SE, Albuquerque, NM 87106.

² Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Stalking Horse Agreement and the Motion, as applicable, and to the extent of any inconsistency in the defined terms, the Stalking Horse Agreement shall govern.

the Motion; and it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided under the particular circumstances; and it appearing that no other or further notice need be provided; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND THAT:³

A. The statutory bases for the relief requested in the Motion are sections 105(a), 363, and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), Bankruptcy Rules 2002, 3007, 6004, 6006, 9007, and 9014, and Local Rule 6004-1.

B. Notice of the Motion having been given to the following entities, or their counsel, if known: (i) the U.S. Trustee; (ii) the DIP Lender; (iii) the Debtors' prepetition lenders; (iv) the Committee; (v) the Internal Revenue Service; (vi) any parties that have requested notice in these cases pursuant to Bankruptcy Rule 2002, is sufficient in light of the circumstances and the nature of the relief requested in the Motion.

C. The Debtors have articulated good and sufficient reasons for this Court to: (i) approve the Bidding Procedures; (ii) approve the scheduling of an Auction and set the Sale Hearing and approve the manner of notice of the Auction and Sale Hearing; and (iii) approve the

³ The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this 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.

procedures for the assumption and assignment of the Assigned Contracts, including notice of proposed Cure Amounts.

D. Notice of Sale. This Order and the Sale Notice, substantially in the form attached as **Exhibit 2** to this Order, are reasonably calculated and sufficient to provide interested parties with timely and proper notice of the proposed Sale and any Auction, including, without limitation: (i) the date, time, and place of the Auction (if one is held); (ii) the Bidding Procedures; (iii) the deadline for filing objections to the Sale and entry of the Sale Order, and the date, time, and place of the Sale Hearing; (iv) reasonably specific identification of the Seller Assets to be sold pursuant to the terms of the Stalking Horse Agreement; (v) a description of the Sale as being free and clear of liens, claims, encumbrances and other interests, with all such liens, claims, encumbrances and other interests attaching with the same validity and priority to the Sale proceeds; and (vi) notice of the proposed Assumption and Assignment Procedures (as provided herein), and no other or further notice of the Sale shall be required.

E. Assumption and Assignment Procedures. This Order, the Assumption and Assignment Procedures set forth herein, and the Cure Notice substantially in the form attached as **Exhibit 3** to this Order, are reasonably calculated to provide Contract Counterparties to any Contracts and/or Leases to be assumed by the Debtors and assigned to the Successful Bidder(s) with proper notice of the intended assumption and assignment of their Contracts and/or Leases, the procedures in connection therewith, and any Cure Amounts relating thereto.

F. Based upon the foregoing findings and conclusions, the Motion and the record before the Court with respect to the Motion, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as provided herein.

2. All objections to the relief requested in the Motion that have not been withdrawn, waived, or settled as announced to the Court at the hearing on the Motion, are overruled.

A. Important Dates and Deadlines

3. Sale Hearing. The Sale Hearing shall commence on [**August 15**], **2019**, at __: __ **.m.**⁴ (**Eastern Time**) before the Honorable Christopher S. Sontchi, at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 5th Floor, Wilmington, DE 19801. Following consultation with the Consultation Parties, the Debtors may adjourn the Sale Hearing without further notice other than by announcement in open Court or on the Court's calendar.

4. Sale Objection Deadline. Objections, if any, to the Sale of the Seller Assets, the assumption and assignment of the Assigned Contracts, or any relief requested in the Motion other than the relief granted by this Court in the Bidding Procedures Order must be: (a) in writing; (b) signed by counsel or attested to by the objecting party; (c) in conformity with the Bankruptcy Rules and applicable local rules; (d) filed with the Clerk of the Bankruptcy Court, at 824 Market Street, 5th Floor, Wilmington, DE 19801; and (e) to be served upon (such as to be **received** by) the following parties (collectively, the "Objection Notice Parties") on or before **4:00 p.m. (Eastern time) on [July 29], 2019** (the "Sale Objection Deadline"): (i) co-counsel for the Debtors, (x) Paul Hastings, LLP, 71 S. Wacker Drive, Forty-Fifth Floor, Chicago, IL 60606, Attn: Chris L. Dickerson, Chrisdickerson@paulhastings.com, and 1117 S. California Avenue, Palo Alto, CA 94304, Attn: Todd M. Schwartz, Toddschwartz@paulhastings.com, and (y) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: M. Blake Cleary and Jaime Luton Chapman, Mbcleary@ycst.com and

⁴ Subject to Court availability.

JChapman@ycst.com; (ii) counsel for the Stalking Horse Buyer, Margolis Edelstein, 300 Delaware Avenue, Suite 800, Wilmington, DE 19801, Attn: James E. Huggett, jhuggett@margolisedelstein.com; (iii) co-counsel for the Committee, (x) Lowenstein Sandler, One Lowenstein Drive, Roseland, NJ 07068, Attn: Bruce D. Buechler, Bbuechler@lowenstein.com, and 1251 Avenue of the Americas, New York, NY 10020, Attn: Wojciech F. Jung, Wjung@lowenstein.com, and (y) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, DE 19801, Attn: Adam G. Landis and Kerri Mumford, Landis@lrclaw.com and mumford@lrclaw.com; (iv) counsel for the Senior Subordinated Secured Noteholders, CKR Law, 100 N. West Street, Suite 1200, Wilmington, DE 19801, Attn: Marc J. Phillips, Mphillips@ckrlaw.com; and (v) the Office of the United States Trustee for the District of Delaware, 844 King Street, Room 2207, Lockbox 35, Wilmington, Delaware 19899-0035, Attn: Linda Casey, linda.casey@usdoj.gov (these procedures are collectively referred to as the “Sale Objection Procedures”). Each objection shall state the legal and factual basis of such objection. For the avoidance of any doubt, and subject to compliance with the Sale Objection Procedures set forth herein, the approval of the Bidding Procedures as provided herein shall not operate to limit the right of any third party, including the Committee, from asserting any objection to approval of the Sale, all such objections being expressly reserved and preserved hereby.

5. Only those objections made in compliance with the Sale Objection Procedures will be considered by the Court at the Sale Hearing. The failure of any objecting person or entity to file its objections by the Sale Objection Deadline and in accordance with the Sale Objection Procedures will be a bar to the assertion, at the Sale Hearing or thereafter, of any objection (including to the Sale of the Seller Assets and assumption and assignment of Contracts and

Leases free and clear of all liens and interests) and shall be deemed to constitute any such party's consent to the entry of the Sale Order and consummation of the Sale and all transactions related thereto, including, without limitation, such assumption and assignment.

6. **Bid Deadline.** All bids by any third party that is interested in acquiring some or all of the Seller Assets must be actually received by the parties specified in the Bidding Procedures on or prior to **[August 5], 2019** (the "**Bid Deadline**").

7. **Auction.** If necessary, an Auction with respect to the Seller Assets will be held at the offices of Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801 on **[August 12], 2019 at [__:__ p.m.] (Eastern Time)**. As set forth more fully in the Bidding Procedures, only the Debtors, the Consultation Parties, Qualified Bidders, and their legal and financial advisors shall be entitled to attend the Auction and only Qualified Bidders shall be entitled to bid at the Auction; *provided, however*, creditors of the Debtors and representatives of the U.S. Trustee may attend the Auction if they send written notice by email by the Bid Deadline to the Debtors' counsel (jchapman@ycst.com) of their intention to attend Auction and in such notice identify the representatives who will attend; *provided, further, however*, the Debtors may limit the number of attendees per creditor to a reasonable number.

B. Auction, Bidding Procedures, and Related Relief

8. The Bidding Procedures, attached hereto as **Exhibit 1**, are hereby authorized, approved and made part of this Order as if fully set forth herein. The Bidding Procedures shall govern the submission, receipt, and analysis of all Bids relating to the proposed Sale of the Seller Assets. Any party desiring to bid on the Seller Assets shall comply with the Bidding Procedures and this Order. The Debtors is authorized to take any and all actions necessary to implement the Bidding Procedures.

9. A Qualified Bidder shall confirm that it has not engaged in any collusion with respect to the bidding or the Sale.

10. In the event that the Debtors timely receives more than one Qualified Bid, the Debtors may determine, in the exercise of their sound business judgment, and following consultation with the Consultation Parties, to schedule an Auction to request additional competitive Bids from Qualified Bidders with respect to the Seller Assets in accordance with the Bidding Procedures.

11. If the Debtors do not receive any Qualified Bids with respect to any or all of the Seller Assets other than the Stalking Horse Agreement, the Debtors shall report the same to the Court. In such circumstances, the Debtors shall promptly proceed to seek entry of the appropriate orders approving the Sale to the Staking Horse Bidder.

12. Subject to (i) the Bidding Procedures (including any required consultation with the Consultation Parties), (ii) the requirement for consultation with the Consultation Parties, and (iii) a final determination of this Court, the Debtors are authorized to determine, in their reasonable business judgment and pursuant to the Bidding Procedures, the highest or otherwise best Bid(s) and the Successful Bidder(s) or Backup Successful Bidder(s).

C. Assumption and Assignment Procedures

13. The following procedures regarding the assumption and assignment of the Contracts and Leases in connection with the Sale are hereby approved to the extent set forth herein, and shall govern the assumption and assignment of all Contracts and/or Leases proposed to be assumed by the Debtors pursuant to Section 365(b) of the Bankruptcy Code and assigned to the Successful Bidder(s) following a Sale or Sales pursuant to Section 365(f) of the Bankruptcy Code (as defined in the Motion, the “Assigned Contracts”).

14. As soon as practicable, the Debtors shall serve on all Contract Counterparties a Cure Notice substantially in the form attached hereto as **Exhibit 3**, that identifies, to the extent applicable, (i) the Contract(s) and/or Lease(s) that may be assumed by the Debtors and assigned to the Successful Bidder(s); (ii) the name and address of the Contract Counterparty thereto; (iii) notice of the proposed effective date of the assignment (subject to the right of the Debtors and Purchaser to withdraw such request for assumption and assignment of the Assigned Contract(s) prior to the Closing); (iv) the amount, if any, determined by the Debtors to be necessary to be paid to cure any applicable cure amounts, whether arising prepetition or postpetition (the “Cure Amount”); and (v) the deadlines by which any such Contract Counterparty must file an objection to the proposed assumption and assignment of any Assigned Contract; provided, however, that the presence of any Contract or Lease on a Cure Notice does not constitute an admission that such Contract or Lease is an executory contract or unexpired lease.

15. Within the earlier of (i) five business hours after the conclusion of the Auction and (ii) noon the next business day after the conclusion of the Auction, the Debtors will file the Auction Notice with the Court and post the same on the website maintained by the Debtors’ claims and noticing agent, but no further notice of the Auction Notice will be provided to any parties-in interest in the Chapter 11 Cases.

16. All objections to the assumption and assignment of any Assigned Contract, including, without limitation, any objection to the Debtors’ proposed Cure Amount or the provision of adequate assurance of future performance under any Assigned Contract pursuant to Section 365 of the Bankruptcy Code (“Adequate Assurance”) must: (a) comply with the Sale Objection Procedures; (b) identify the Contract(s) or Lease(s) to which the objector is party; (c) describe with particularity any cure the claimant contends is required under Section 365 of the

Bankruptcy Code (the “Cure Claim”) and identify the basis(es) of the alleged Cure Claim under the Contract or Lease; (d) attach all documents supporting or evidencing the Cure Claim; and (e) if the response contains an objection to Adequate Assurance, state with specificity what the objecting party believes is required to provide Adequate Assurance (collectively with the Sale Objection Procedures, the “Assigned Contract Objection Procedures”).

17. If no objection is timely and properly filed and served in accordance with the Assigned Contract Objection Procedures, (a) the Cure Amount set forth in the Cure Notice shall be controlling notwithstanding anything to the contrary in any Assigned Contract or other document and the Contract Counterparty thereto shall be forever barred from asserting any other claim against the Debtors or Purchaser with respect to such Assigned Contract arising prior to the assignment thereof and (b) the Purchaser’s promise to perform under the Assigned Contract shall be deemed Adequate Assurance thereunder. To the extent the Debtors dispute any Cure Claim, such dispute shall be presented to the Court at the Sale Hearing, or such later date and time as the Debtors and the Contract Counterparty may agree or the Court may order, but such dispute shall not affect in any way the effectiveness of any assumption and assignment of any Assigned Contract.

18. If at any time after the entry of this Order the Debtors identify additional prepetition executory contracts and/or unexpired leases to be assumed and assigned to the Purchaser as Assigned Contracts (whether before or after closing of any Sale(s) of relevant Seller Assets), the Debtors shall serve a supplemental Cure Notice by first-class mail, facsimile, electronic transmission (including email), or overnight mail on the Contract Counterparty (and its attorney, if known) to each supplemental Assigned Contract at the last known address available to the Debtors by no later than ten (10) calendar days before the proposed effective date

of the assignment. A Contract Counterparty receiving any such supplemental Cure Notice shall have until the later of (a) the Sale Objection Deadline or (b) ten (10) days from service of the supplemental Cure Notice to file an objection to the assumption and assignment of its Contract(s) and/or Lease(s) in accordance with the Assigned Contract Objection Procedures set forth herein.

D. Publication Notice and Sale Notice

19. The Publication Notice and Sale Notice are hereby approved. On or within three (3) business days following the entry of this Order, the Debtors shall cause the Sale Notice to be served on the following entities, or their counsel, if known: (i) the U.S. Trustee; (ii) the DIP Lender; (iii) the Debtors' prepetition lenders; (iv) the Committee; (v) the Internal Revenue Service; (vi) the United States Attorney for the District of Delaware; (vii) any party known or reasonably believed to have asserted any lien, claim or encumbrance or other interest in the Debtors' assets, including all Qualified Bidders; (ix) any party known or reasonably believed to have expressed an interest in acquiring some or substantially all of the Debtors' assets; (x) the counterparties to the Debtors' executory contracts and unexpired leases; and (xi) any parties that have requested notice in these cases pursuant to Bankruptcy Rule 2002. On or within five (5) business days following the entry of this Order, the Debtors shall cause the Publication Notice to be published in the national edition of *USA Today* and in the *Albuquerque Journal*.

E. Credit Bidding

20. In connection with the bidding and sale process authorized herein, the Stalking Horse Buyer and any other Qualified Bidder who has a valid and perfected lien on any Assets of the Debtors' estates (a "Secured Creditor") shall have the right to credit bid all or a portion of the value of such Secured Creditor's claim within the meaning of 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. The Stalking Horse Buyer shall be considered a “Qualified Bidder” with respect to its right to acquire all or any of the Seller Assets by Credit Bid.

F. Miscellaneous

21. The Debtors are authorized to take all actions necessary and appropriate to implement and effectuate the relief granted pursuant to this Order in accordance with the Motion and to expend such sums of money and do other things as may be necessary and appropriate to comply with the requirements established by the Bidding Procedures and this Order.

22. The Debtors are authorized to conduct the Sale without the necessity of complying with any state or local bulk transfer laws or requirements.

23. The Debtors shall submit to the Court the proposed Sale Order approving the Sale prior to the Sale Hearing.

24. In the event of any conflict between this Order, the Bidding Procedures, and any applicable Qualified APA(s), the terms of this Order shall control.

25. Any stay of this Order, whether arising from Bankruptcy Rules 6004 and/or 6006 or otherwise, is hereby expressly waived and the terms and conditions of this Order shall be effective and enforceable immediately upon its entry.

26. This Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of the Bidding Procedures and this Order.

EXHIBIT 1

BIDDING PROCEDURES

BIDDING PROCEDURES

On [_____, 2019], the United States Bankruptcy Court for the District of Delaware (the “Court”) entered the *Order (a) Approving Bidding Procedures in Connection with Sale of Assets of the Debtors, (b) Approving Form and Manner of Notice, (c) Scheduling auction and Sale Hearing, (d) Authorizing Procedures Governing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (e) Granting Related Relief* [Docket No. ____] (the “Bidding Procedures Order”), in which the Court approved the following bidding procedures, substantially in the form attached to the Bidding Procedures Order (the “Bidding Procedures”) setting forth the process by which One Aviation Corporation and its affiliated debtors as debtors in possession in the jointly administered chapter 11 bankruptcy cases before the Court, Case No. 18-12309 (CSS) (collectively, the “Debtors”) are authorized to conduct a sale or sales (the “Sale”) of substantially all of their assets (collectively, the “Seller Assets”).

2. Property to be Sold

The Seller Assets consist of substantially all of the Debtors’ property. The Seller Assets will be sold free and clear of all liens, claims, encumbrances and other interests (except as otherwise set forth in the applicable purchase and sale agreement or order of the Court).

The Sale of the Seller Assets shall be subject to a competitive bidding process as set forth herein and approval by the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) pursuant to sections 105, 363, and 365 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6003, 6004, 6006, 9007, 9008 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2002-1, 6004-1 and 9006-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”). The Debtors may consider bids for the Seller Assets (or any portion thereof) in a single bid from a single bidder, or in multiple bids from multiple bidders. The aggregate consideration offered must satisfy the requirements set forth in these Bidding Procedures, including without limitation, by either (x) providing cash plus assumption of any specified liabilities or (y) be approved and consented to by the Debtors. For the avoidance of doubt, the Debtors may consent to and approve a Credit Bid, as defined herein.

3. Due Diligence

Subject to execution of a confidentiality agreement on terms reasonably acceptable to the Debtors (a “Confidentiality Agreement”), any party willing to submit any proposal, solicitation or offer (each, a “Bid”) for the Seller Assets (such party, a “Potential Bidder”) may be granted access to public and non-public information relating to the Seller Assets to facilitate its consideration of making its Bid, including access to the Debtors’ on-line data room (the “Due Diligence Data Room”). For the avoidance of doubt, the Debtors shall provide (a) Citiking International US, LLC (the “Stalking Horse Buyer” or the “DIP Lender”), (b) counsel to the Senior Subordinated Secured Noteholders, and (c) the Stalking Horse Buyer (as defined in the Bidding Procedures Order), and (d) the official committee of unsecured creditors appointed in these chapter 11 cases (the “Committee”), together with their respective legal and financial professionals and representatives (collectively, the “Consultation Parties”) with access to the Due

Diligence Data Room. Any confidentiality agreement previously entered into between the Debtors and a Potential Bidder (as defined below) in effect on the date of the entry of the Bidding Procedures Order shall be deemed to be a Confidentiality Agreement for the purposes of these Bidding Procedures.

The Debtors shall provide to each Potential Bidder reasonable due diligence information as necessary to enable such Potential Bidder to evaluate the Seller Assets. Potential Bidders interested in conducting due diligence should contact the Debtors' investment banker, Duff & Phelps Securities, LLC. The Debtors shall have no obligation to furnish any due diligence information after the Bid Deadline (as defined below) and shall have no obligation to furnish due diligence information requested by one Potential Bidder to the other Potential Bidders.

In connection with the provision of due diligence information to Potential Bidders, the Debtors shall not furnish any confidential information relating to the Seller Assets, liabilities of the Debtors, or the Sale to any person except a Potential Bidder or such Potential Bidder's duly-authorized representatives to the extent covered by the applicable Confidentiality Agreement.

The Debtors and their advisors shall coordinate all reasonable requests for additional information and due diligence access from Potential Bidders; provided, however, that the Debtors may decline to provide such information to any Potential Bidder who, in the Debtors' reasonable business judgment and subject to consultation with the Consultation Parties, has not established that such Potential Bidder intends in good faith to, or has the capacity to, consummate a transaction. No conditions relating to the completion of due diligence shall be permitted to exist after the Bid Deadline.

4. "As is, Where is"

Other than as specifically provided in a Qualified APA(s) (as defined below), as applicable, any Sale of the Seller Assets shall be without representation or warranties of any kind, nature or description by the Debtors, their agents or their estates. All of the Seller Assets shall be transferred "as is," "where is" and "with all faults." THE DEBTORS EXPRESSLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND MAKE NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE NATURE, QUALITY, VALUE OR CONDITION OF ANY ASSET. Except as otherwise provided in the Stalking Horse Agreement (as defined in the Bidding Procedures Order), an applicable Qualified APA, or a Sale Order, all of the Debtors' rights, title, and interests in and to the respective Seller Assets will be transferred free and clear of all liens, claims, encumbrances and other interests in accordance with section 363(f) of the Bankruptcy Code.

Each Potential Bidder for any of the Seller Assets will be deemed to acknowledge and represent that it: (a) has had an opportunity to conduct due diligence regarding the Seller Assets prior to making its Bid (as defined below); (b) has relied solely upon its own independent review, investigation, and inspection of any document including, without limitation, executory contracts and unexpired leases, in making its Bid; and (c) did not rely upon or receive any written or oral statements, representations, promises, warranties, or guaranties whatsoever,

whether express, implied by operation of law, or otherwise, with respect to the Seller Assets, or the completeness of any information provided in connection with the Sale or the Auction.

5. Qualified Bids

In order to constitute a Qualified Bid (as defined below), a Bid submitted by a bidder (each, a “Bidder”) must: (i) be actually received by the parties specified in the Bidding Procedures on or prior to **August 5, 2019 at 4:00 p.m. (Eastern Time)** (the “Bid Deadline”) and (ii) satisfy the following requirements, as determined by the Debtors in their reasonable business judgment, following consultation with the Consultation Parties (collectively, the “Bid Requirements”):

a. Contain a signed definitive purchase and sale agreement (together with a copy of the signed agreement that is marked to show changes from the Stalking Horse Agreement) (a “Qualified APA”) and shall: (i) identify the Seller Assets the Bidder seeks to purchase, (ii) contain the form of and total consideration to be paid by such Bidder, including the amount of proposed cash consideration and liabilities to be assumed, and generally contain terms no less favorable (in the Debtors’ reasonable business judgment (following consultation with the Consultation Parties)) than the Stalking Horse Agreement, and (iii) not be subject to any: (1) financing contingency, (2) contingency relating to due diligence after the Bid Deadline, (3) contingency relating to the approval of the Bidder’s board of directors or other internal approvals or non-governmental third-party consents or approvals, or (4) any conditions precedent to the Bidder’s obligation to purchase the Seller Assets.

b. *Deliver to the Debtors a good faith deposit (the “Good Faith Deposit”), by a certified or bank check or wire transfer in immediately available funds, in the amount of at least 10% of the cash portion of the purchase price proposed in the Qualified APA. The Good Faith Deposit shall be held in escrow by the Debtors and credited to the closing payment if the Bidder is ultimately determined to be the Successful Bidder (as defined below), if any closing payment is due, or to be returned to the Bidder in whole or in part as applicable if the Bidder is not the Successful Bidder or the Backup Bidder (as defined below). In the event that a Bidder is selected as the Backup Bidder, the Good Faith Deposit shall be returned to the Backup Bidder within three (3) business days following the closing of a Sale to the Successful Bidder.*

c. *Contain a written statement that the Bidder agrees to be bound by the terms of the Bidding Procedures and the Bidding Procedures Order and include a commitment that the Bidder shall consummate the purchase of the relevant Seller Assets by [____], 2019.*

d. Identify, with particularity, each and every executory contract and unexpired lease it intends to assume; provided, however, that such list of contracts may be later modified to the extent permitted under the Qualified APA.

e. Be accompanied by evidence reasonably satisfactory to the Debtors that the Bidder is capable and qualified financially, operationally, legally and otherwise, of unconditionally performing all obligations under the Qualified APA, including, without limitation, the ability to provide adequate assurance of future performance under contracts and leases to be assumed pursuant to section 365 of the Bankruptcy Code.

f. Provide (i) that the Bidder agrees to serve as the Backup Bid (as defined below) if it is selected as the next highest and best bid for any particular Seller Assets after the Successful Bid is determined in accordance with the Bidding Procedures and (ii) that the Bidder's Bid shall remain open and irrevocable until at least thirty (30) days after the entry of an order by the Court approving a definitive agreement providing for the Sale of those Seller Assets.

g. Fully disclose the identity of each entity that will be bidding in any Auction scheduled by the Debtors.

Bids satisfying the above requirements should be submitted to the following parties so as to be received not later than **[August 5], 2019** (the "Bid Deadline"): (i) co-counsel for the Debtors, (x) Paul Hastings, LLP, 71 S. Wacker Drive, Forty-Fifth Floor, Chicago, IL 60606, Attn: Chris L. Dickerson, chrisdickerson@paulhastings.com, and 1117 S. California Avenue, Palo Alto, CA 94304, Attn: Todd M. Schwartz, toddswartz@paulhastings.com, and (y) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: M. Blake Cleary and Jaime Luton Chapman, mbcleary@ycst.com and JChapman@ycst.com; (ii) investment banker for the Debtors, Ernst & Young, LLP, 5 Times Square, New York, NY 10036, Attn: Brian Yano and Briana A. Richards, brian.yano@ey.com and briana.richards@ey.com; (iii) financial advisor for the Debtors, Duff & Phelps Securities, LLC, 10100 Santa Monica Blvd., Suite 1100, Los Angeles, CA 90067, Attn: Matthew Gates, matthew.gates@duffandphelps.com; (iv) counsel for the Stalking Horse Buyer, Margolis Edelstein, 300 Delaware Avenue, Suite 800, Wilmington, DE 19801, Attn: James E. Huggett, jhuggett@margolisedelstein.com; (v) co-counsel for the Committee, (x) Lowenstein Sandler, One Lowenstein Drive, Roseland, NJ 07068, Attn: Bruce D. Buechler, bbuechler@lowenstein.com, and 1251 Avenue of the Americas, New York, NY 10020, Attn: Wojciech F. Jung, wjung@lowenstein.com, and (y) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, DE 19801, Attn: Adam G. Landis and Kerri Mumford, landis@lrclaw.com and mumford@lrclaw.com; (vi) counsel for the Senior Subordinated Secured Noteholders, CKR Law, 100 N. West Street, Suite 1200, Wilmington, DE 19801, Attn: Marc J. Phillips, mphillips@ckrlaw.com; and (vii) the Office of the United States Trustee for the District of Delaware, 844 King Street, Room 2207, Lockbox 35, Wilmington, Delaware 19899-0035, Attn: Linda Casey, linda.casey@usdoj.gov. Following consultation with the Consultation Parties, the Debtors may extend the Bid Deadline until the commencement of any Auction for one or more Potential Bidders without further notice, but shall not be obligated to do so.

Promptly following the receipt of a Qualified Bid(s), but in no event later than **5:00 p.m. (Eastern Time) on [August 5], 2019** (or if, following consultation with the Consultation Parties, the Debtors determine to extend the Bid Deadline, then in such event not later than 5:00 p.m.

(Eastern Time) on such later bid deadline as the Debtors may determine), the Debtors shall provide copies of each Qualified Bid to the Stalking Horse Buyer.

6. Qualified Bidders

A Bid that satisfies each of the Bid Requirements, as determined in the Debtors' reasonable business judgment and subject to consultation with the Consultation Parties, shall constitute a "Qualified Bid," and such Bidder shall be a "Qualified Bidder." The Debtors shall notify each Qualified Bidder that such party is a Qualified Bidder prior to the Auction. The Stalking Horse Agreement shall be deemed a Qualified Bid, and Stalking Horse Buyer shall be deemed a Qualified Bidder.

If any Bid is determined by the Debtors not to be a Qualified Bid, the Debtors shall cause such Bidder to be refunded its Good Faith Deposit on or within three (3) business days after the Bid Deadline.

Between the date that the Debtors notify a Bidder that it is a Qualified Bidder and the Auction, the Debtors may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Except as otherwise set forth in a Qualified APA, during the period that such Qualified Bid remains binding as specified herein a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid without the written consent of the Debtors (which consent may only be provided following consultation with the Consultation Parties), except for proposed amendments to increase the consideration contemplated by, or otherwise improve the terms of, the Qualified Bid; provided, that any Qualified Bid may be improved at the Auction as set forth herein. Any improved Qualified Bid must continue to comply with the requirements for Qualified Bids herein.

Notwithstanding anything to the contrary herein, and for the avoidance of doubt, for all purposes under these Bidding Procedures: (i) the Stalking Horse Buyer; and (ii) any Secured Creditor (as defined below) shall be considered a Qualified Bidder.

7. Right to Credit Bid

Any Qualified Bidder who has a valid and perfected lien on any Seller Assets of the Debtors' estates (a "Secured Creditor") shall have the right to credit bid all or a portion of the value of such Secured Creditor's claim within the meaning of 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.

For the avoidance of doubt, the Stalking Horse Buyer shall have the right to credit bid all or any portion of the aggregate amount of its outstanding secured obligations pursuant to section 363(k) of the Bankruptcy Code, and any such credit bid will be considered a Qualified Bid.

8. Notice Procedures

a. Notice of Auction and Sale Hearing

The Debtors will cause the Notice of Auction and Sale Hearing, substantially in the form attached as **Exhibit 2** to the Bidding Procedures Order (the “Sale Notice”), to be published in the national edition of *USA Today* and in the *Albuquerque Journal* and served by first-class mail, postage prepaid, facsimile, electronic transmission (including email), or overnight mail upon the following entities, or their counsel (if known): (i) the U.S. Trustee; (ii) the DIP Lender; (iii) the Debtors’ prepetition lenders; (iv) the Committee; (vi) the Internal Revenue Service; (vii) the United States Attorney for the District of Delaware; (viii) any party known or reasonably believed to have asserted any lien, claim or encumbrance or other interest in the Debtors’ assets; (ix) any party known or reasonably believed to have expressed an interest in acquiring some or substantially all of the Debtors’ assets; (xi) the counterparties to the Debtors’ executory contracts and unexpired leases; and (xii) any parties that have requested notice in these cases pursuant to Bankruptcy Rule 2002 (to the extent any party to receive notice thereby would not receive notice pursuant to sections (i) through (xii) above).

b. Notice of Assumption and Assignment of Contracts

The Debtors will serve the Cure Notice, substantially in the form attached as **Exhibit 3** to the Bidding Procedures Order (the “Cure Notice”), by first-class mail, facsimile, electronic transmission (including email), or overnight mail on (a) each counterparty under each potential assumed and assigned contract (a “Contract Counterparty”) and its attorney, if known, in each case, at the last known address available to the Debtors.

The Cure Notice shall set forth the following information: (i) the Contract(s) and/or Lease(s) that may be assumed by the Debtors and assigned to the Successful Bidder(s) (as defined in the Motion, each an “Assigned Contract”); (ii) the name and address of the Contract Counterparty thereto; (iii) the amount, if any, determined by the Debtors to be necessary to be paid as any applicable cure amounts, whether arising prepetition or postpetition (the “Cure Amount”); and (iv) the deadlines by which any such Contract Counterparty must file an objection to the proposed assumption and assignment of any Assigned Contract; ***provided, however, that the presence of any Contract or Lease on a Cure Notice does not constitute an admission that such Contract or Lease is an executory contract or unexpired lease or that it will be assumed and assigned to the Successful Bidder.***

As soon as practicable after the conclusion of the Auction, the Debtors shall file with the Court and serve by facsimile, electronic transmission, overnight, or first-class mail on the Contract Counterparty (and its attorney, if known) to each Assigned Contract a notice: (a) identifying the Successful Bidder(s); (b) stating which Contract(s) and/or Lease(s) will be assumed and assigned thereto; and (c) containing a statement as to the Successful Bidder’s ability to perform the Debtors’ obligations under the applicable Assigned Contracts.

9. No Qualified Bids

If the Debtors do not receive any Qualified Bids with respect to any or all of the Seller Assets, other than the Stalking Horse Bid, the Debtors shall report the same to the Court, and

shall promptly proceed to seek entry of the appropriate orders approving the Sale pursuant to the Stalking Horse Agreement.

10. Auction

In the event the Debtors receive more than one Qualified Bid, the Debtors may determine, in the exercise of sound business judgment (and following consultation with the Consultation Parties) to schedule an Auction to request additional competitive Bids from Qualified Bidders.

Following consultation with the Consultation Parties, the Debtors shall determine which Qualified Bid shall constitute the “Baseline Bid” for purposes of the Auction. The Debtors shall notify each Qualified Bidder of the contents of the Baseline Bid. The Baseline Bid shall be subject to higher and better Bids at the Auction.

In making the determination of which Qualified Bid(s) constitutes the Successful Bid(s), the Debtors may, following consultation with the Consultation Parties, take into account any factors the Debtors reasonably deem relevant to the value of the Qualified Bid(s) to the Debtors’ estates, including, among other things: (a) the number, type, and nature of any changes to the Stalking Horse Agreement requested by the Qualified Bidder, including the type and amount of Seller Assets sought and the liabilities of the Debtors to be assumed in the Qualified Bid; (b) the amount and nature of the total consideration; (c) the likelihood of the Qualified Bidder’s ability to close a transaction and the timing thereof; and (d) the tax consequences of such Qualified Bid (collectively, the “Bid Assessment Criteria”).¹ The Debtors will evaluate competing Qualified Bids in a manner that will maximize the aggregate value to the estate.

In the event the Debtors determine to conduct an Auction, the Auction shall take place on **August 12, 2019 at [__:__] p.m. (Eastern Time)** at the offices of Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, or such later date and time as selected by the Debtors (following consultation with the Consultation Parties). The Auction shall be conducted in a timely fashion according to the following procedures:

¹ For avoidance of doubt, the Bid Assessment Criteria listed herein are not exhaustive and are provided for illustrative purposes only, and the Debtors, in their sole discretion and following consultation with the Consultation Parties, may consider any additional criteria that they consider reasonably relevant to the value of any Qualified Bid.

a. The Debtors Shall Conduct the Auction

The Debtors and their professionals shall direct and preside over the Auction. At the start of the Auction, the Debtors shall describe the terms of the Baseline Bid. All incremental Bids made thereafter shall be Overbids (as defined below) and shall be made and received on an open basis, and all material terms of each Overbid shall be fully disclosed to all other Qualified Bidders. The Debtors shall maintain a written transcript of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids, and the Successful Bid(s).

In order to participate in the Auction, each prospective purchaser must be a Qualified Bidder. Each Qualified Bidder must have at least one individual representative with authority to bind the Qualified Bidder attend the Auction in person. Only the DIP Lender, Qualified Bidders, the Committee (including its individual members) and their respective legal and financial advisors shall be entitled to attend and/or bid at the Auction. By attending the Auction, each party present at the Auction agrees to keep the Auction, the Bids (including any Overbid(s)) at the Auction and all details concerning the Auction confidential. The Auction shall be conducted in the presence of a certified court reporter who shall transcribe the Auction.

b. Auction Procedures.

A Qualified Bidder wishing to submit a Bid at the Auction must submit a Bid in a cash amount equal to or in excess of \$17 million, which amount is equal to the Purchase Price (including certain Assumed Liabilities) under the Stalking Horse Agreement *plus* \$100,000 (such amounts, in the aggregate, the “Initial Minimum Overbid”).

Subject to the Initial Minimum Overbid, Qualified Bidders may submit successive Overbids for the purchase of the Seller Assets for which it is bidding in increments to be determined by the Debtors at the Auction (the “Incremental Bid Amount”) following consultation with the Consultation Parties (each an “Overbid”).

During the course of the Auction, the Debtors shall, after the submission of each Overbid, promptly inform each Qualified Bidder which Overbid reflects, in the Debtors’ view, following consultation with the Consultation Parties, the highest or otherwise best Bid for some or all of the Seller Assets.

c. Consideration of Overbids

The Debtors reserve the right, in their reasonable business judgment (determined following consultation with the Consultation Parties), to adjourn the Auction to, among other things: facilitate discussions between the Debtors and Qualified Bidders; allow Qualified Bidders to consider how they wish to proceed; and provide Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their reasonable business judgment (determined following consultation with the Consultation Parties), that the Qualified Bidder has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount.

d. Closing the Auction

The Auction shall continue until there is only one offer that the Debtors determine, following consultation with the Consultation Parties, and subject to Court approval, is the highest or otherwise best offer for the purchase of the Seller Assets (whether in an aggregate sale to a single buyer or on an asset-by-asset basis (each a “Successful Bid”, and such Bidder, the “Successful Bidder”), at which point, the Auction will be closed. Such acceptance by the Debtors of the Successful Bid(s) is conditioned upon approval by the Court of the Successful Bid(s). The second highest bid, to the extent determined to be acceptable to the Debtors (following consultation with the Consultation Parties) shall be deemed to be the backup bid (the “Backup Bid” and such Bidder, the “Backup Bidder”).

The identity of the Backup Bidder(s) and the amount and material terms of the Backup Bid(s) shall be announced by the Debtors at the conclusion of the Auction at the same time the Debtors announce the identity of the Successful Bidder(s). The Backup Bidder(s) shall be required to keep its or their Qualified Bid(s) (or if the Backup Bidder(s) submitted one or more Overbids at the Auction, its final Overbid(s)) open and irrevocable until the thirty (30) after the closing conditions set forth in the Successful Bid have been satisfied or waived.

For the avoidance of doubt, nothing in these Bidding Procedures shall prevent the Debtors from exercising their fiduciary duties under applicable law.

Absent the prior written consent of each Consultation Party, the Debtors shall not consider any Bids or Overbids submitted after the conclusion of the Auction and any and all such Bids and Overbids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.

As soon as reasonably practicable after closing the Auction, the Debtors shall cause the definitive asset purchase agreement for the Successful Bid(s) to be filed with the Court.

e. No Collusion; Good Faith Bona Fide Offer

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

11. Backup Bidder

If a Successful Bidder fails to consummate an approved transaction contemplated by its Successful Bid, following consultation with the Consultation Parties the Debtors may select the applicable Backup Bidder as the Successful Bidder, and such Backup Bidder shall be deemed a Successful Bidder for all purposes. The Debtors will be authorized, but not required, to consummate all transactions contemplated by the Bid of such Backup Bidder without further order of the Court or notice to any party. In such case, the defaulting Successful Bidder’s Good Faith Deposit shall be forfeited to the Debtors, and the Debtors specifically reserves the right to

seek all available remedies against the defaulting Successful Bidder (or Backup Bidder, if such party shall also breach or fail to perform), as applicable, including with respect to specific performance. In the event that the Backup Bidder fails to consummate an approved Sale, the Seller Assets may be sold pursuant to one or more subsequent sales.

12. Highest or Otherwise Best Bid

At all times during the Sale Process, the Debtors shall retain the right to determine, following consultation with the Consultation Parties, which Bid or Bids constitutes the highest or otherwise best offer for the purchase of the Seller Assets (whether in an aggregate sale to a single buyer or on an asset-by-asset basis), and which Bid or Bids should be selected as the Successful Bid(s), if any, all subject to final approval by the Court pursuant to the provisions of Section 363(b) of the Bankruptcy Code. Following consultation with the Consultation Parties, the Debtors may adopt rules for the Auction that, in their reasonable judgment, will better promote the goals of the Auction and that are not inconsistent in any material respect with any of the other material provisions hereof or of any Court order.

13. Proceeds

All valid and properly perfected liens against the Debtors' assets shall attach to the proceeds of the Sale of such Seller Assets, and thereupon disbursed by the Debtors in accordance with the terms of the Final DIP Order.²

14. 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, the construction and enforcement of these Bidding Procedures, and/or the Confidentiality Agreements, as applicable.

15. Sale Hearing

A hearing to approve a sale of the Seller Assets (the "Sale Hearing") is presently scheduled to take place on **August 15, 2019 at [__:__ .m.]³ (Eastern Time)**, or as soon thereafter as counsel may be heard, before the Honorable Christopher S. Sontchi, at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 5th Floor, Wilmington, DE 19801.

Following consultation with the Consultation Parties, the Sale Hearing may be continued

² As used herein, "Final DIP Order" means that certain *Final Order (I) Authorizing Debtor Borrowers to (A) Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(C)(1), 364(C)(2), 364(C)(3), 364(D)(1) and 364(E), (B) Grant Senior Liens and Superpriority Administrative Expense Status, and (C) Utilize Cash Collateral Pursuant to 11 U.S.C. § 363; (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 And 364; (III) Scheduling a Final Hearing; and (IV) Granting Related Relief* [Docket No. 208].

³ Subject to Court availability.

to a later date by the Debtors by the filing of a notice on the Court's docket prior to, or making an announcement at, the Sale Hearing. No further notice of any such continuance will be required to be provided to any party.

At the Sale Hearing, the Debtors shall present the Successful Bid(s) (including any Backup Bid(s)) to the Court for approval. Following the approval of the Successful Bid(s) at the Sale Hearing, the Debtors will be authorized to take any and all actions necessary and appropriate to complete and implement the Sale(s) contemplated by the Successful Bid(s), including, without limitation, seeking entry of one or more orders approving such Sale(s).

16. Return of Good Faith Deposits

The Good Faith Deposit of the Successful Bidder(s) shall be applied to the purchase price of such transaction at a closing of the transaction. The Good Faith Deposits for each Qualified Bidder shall be held in one or more non-interest bearing escrow accounts on terms acceptable to the Debtors in their sole discretion and shall be returned (other than with respect to the Stalking Horse Buyer, the Successful Bidder(s) and the Backup Bidder(s)) on or within three (3) business days after the Auction. Upon the return of the Good Faith Deposits, their respective owners shall receive any and all interest that will have accrued thereon.

If a Successful Bidder fails to consummate a proposed transaction because of a breach by such Successful Bidder, the Debtors will not have any obligation to return the Good Faith Deposit deposited by such Successful Bidder, which may be retained by the Debtors as liquidated damages, in addition to any and all rights, remedies, and/or causes of action that may be available to the Debtors, and the Debtors shall be free to consummate the proposed transaction with the applicable Backup Bidder without the need for an additional hearing or order of the Court.

17. Reservation of Rights

Notwithstanding any of the foregoing, the Debtors and their estates, in consultation with the Consultation Parties, reserve the right to modify these Bidding Procedures at or prior to the Auction, including, without limitation, to extend the deadlines set forth herein, modify bidding increments, waive terms and conditions set forth herein with respect to any or all Bidders (including, without limitation, the Qualified Bid requirements), impose additional terms and conditions with respect to any or all potential bidders, and adjourn or cancel the Auction at or prior to the Auction, and adjourn the Sale Hearing (collectively, the "Consultation Rights"); provided, however, that so long as the Stalking Horse Buyer has submitted a bid that remains open, the Debtors and their estates, in consultation with the Consultation Parties, shall be precluded from modifying the Consultation Rights.

The Debtors shall consult with the Consultation Parties as explicitly provided for in these Bidding Procedures; provided, however, if any individual members of the Committee submit a Bid, then such Bid(s) shall not provide grounds for the Committee to not be consulted as a Consultation Party; provided, further, that such Committee shall take reasonable steps necessary

to preclude any bidding member from receiving information or engaging in Committee decision-making with respect to the Sale Process.

EXHIBIT 2

SALE NOTICE

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:	:	
	:	Chapter 11
ONE AVIATION CORPORATION, <i>et al.</i> , ¹	:	
	:	Case No. 18-12309 (CSS)
	:	
Debtors.	:	Jointly Administered

**NOTICE OF BID DEADLINE, PUBLIC AUCTION, AND SALE HEARING
IN CONNECTION WITH THE SALE OF ASSETS OF ONE AVIATION**

PLEASE TAKE NOTICE that on **June 17, 2019**, ONE Aviation Corporation and its affiliated debtors as debtors in possession in the above-captioned cases (collectively, the “Debtors”) entered into an Asset Purchase Agreement (the “Stalking Horse Agreement”) with Citiking International US, LLC, a Delaware limited liability company (the “Stalking Horse Buyer”), as more fully set forth in the *Debtors’ Motion for Entry of: (A) Order (I) Approving Bidding Procedures in Connection With Sale of Assets of the Debtors, (II) Approving Form and Manner of Notice, (III) Scheduling Auction and Sale Hearing, (IV) Authorizing Procedures Governing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (V) Granting Related Relief; and (B) Order (I) Approving Purchase Agreement, (II) Authorizing Sale Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, and (III) Granting Related Relief* filed with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) on **June 17, 2019** [Docket No. ____] (the “Motion”).² The debtors seek to sell all or substantially all of the Debtors’ assets (collectively, the “Seller Assets”) to the Stalking Horse Buyer or such other successful bidder at an auction (the “Successful Bidder”) free and clear of (a) any Permitted Encumbrances as set forth in the Stalking Horse Agreement or (b) any permitted Liens as set forth in the purchase agreement with the Successful Bidder pursuant to section 363 of the Bankruptcy Code.

PLEASE TAKE FURTHER NOTICE that on [____], **2019**, the Bankruptcy Court entered an order [Docket No. ____] (the “Bidding Procedures Order”) approving the bidding procedures (the “Bidding Procedures”), which, among other things, set the key dates, times, and procedures related to the sale pursuant to the terms outlined in the Motion. **All interested bidders should read the Bidding Procedures carefully.**

PLEASE TAKE FURTHER NOTICE that all interested parties are invited to submit Qualifying Bids (as defined in the Bidding Procedures) to purchase the Seller Assets in accordance with the Bidding Procedures and the Bidding Procedures Order.

PLEASE TAKE FURTHER NOTICE that the deadline to submit a Qualifying Bid for the Seller Assets (the “Bid Deadline”) is **August 5, 2019**. Pursuant to the Bidding Procedures Order, in the event that the Debtors timely receive one or more Qualifying Bids other than one from the Stalking Horse Buyer or, in any event, upon the reasonable request of the DIP Lender, the Debtors are authorized to conduct an auction (the “Auction”) for the Seller Assets. The Auction shall be held on **August 12, 2019 at [:__] p.m. (prevailing Eastern time)**, at the offices of Young Conaway Stargatt & Taylor, LLP, located at Rodney Square, 1000 North King Street, Wilmington, DE 19801 or

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor’s tax identification number, as applicable, are: ONE Aviation Corporation (9649); ACC Manufacturing, Inc. (1364); Aircraft Design Company (1364); Brigadoon Aircraft Maintenance, LLC (9000); DR Management, LLC (8703); Eclipse Aerospace, Inc. (9000); Innovatus Holding Company (9129); Kestrel Aircraft Company, Inc. (2053); Kestrel Brunswick Corporation (6741); Kestrel Manufacturing, LLC (1810); Kestrel Tooling Company (9439); and OAC Management, Inc. (9986). The debtors’ corporate headquarters is located at 3520 Spirit Drive SE, Albuquerque, NM 87106.

² Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Bidding Procedures Order.

such other location as shall be timely communicated to all entities entitled to attend the Auction. The Debtors, the Consultation Parties, and Qualified Bidders and their respective advisors shall be permitted to attend the Auction.

PLEASE TAKE FURTHER NOTICE THAT objections, if any, to the Motion, shall be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of Practice and Procedure for the United States Bankruptcy Court for the District of Delaware, shall set forth the name of the objecting party, the nature and amount of any claims or interests held or asserted against the Debtors' estate or properties, the basis for the objection, and the specific grounds therefore and shall be filed and served upon the following **so that they are actually received by no later than [4:00 p.m.] (prevailing Eastern time) on July 26, 2019** (the "Objection Deadline"): (i) co-counsel for the Debtors, (x) Paul Hastings, LLP, 71 S. Wacker Drive, Forty-Fifth Floor, Chicago, IL 60606, Attn: Chris L. Dickerson, Chrisdickerson@paulhastings.com, and 1117 S. California Avenue, Palo Alto, CA 94304, Attn: Todd M. Schwartz, Toddschwartz@paulhastings.com, and (y) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: M. Blake Cleary and Jaime Luton Chapman, Mbcleary@ycst.com and JChapman@ycst.com; (ii) counsel for the Stalking Horse Buyer, Margolis Edelstein, 300 Delaware Avenue, Suite 800, Wilmington, DE 19801, Attn: James E. Huggett, jhuggett@margolisedelstein.com; (iii) co-counsel for the Committee, (x) Lowenstein Sandler, One Lowenstein Drive, Roseland, NJ 07068, Attn: Bruce D. Buechler, Bbuechler@lowenstein.com, and 1251 Avenue of the Americas, New York, NY 10020, Attn: Wojciech F. Jung, Wjung@lowenstein.com, and (y) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, DE 19801, Attn: Adam G. Landis and Kerri Mumford, Landis@lrclaw.com and mumford@lrclaw.com; and (iv) counsel for the Senior Subordinated Secured Noteholders, CKR Law, 100 N. West Street, Suite 1200, Wilmington, DE 19801, Attn: Marc J. Phillips, Mphillips@ckrlaw.com; and (v) those parties who have formally filed requests for notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002.

PLEASE TAKE FURTHER NOTICE that failure of any entity to file an objection on or before the Objection Deadline shall be deemed to constitute consent to the sale of the Seller Assets to the Successful Bidder or the Backup Bidder and the other relief requested in the Motion, and be a bar to the assertion, at the Sale Hearing or thereafter, of any objection to the Motion, the Auction, the sale of the Seller Assets, or the Debtors' consummation and performance of the terms of the purchase agreement entered into with the Successful Bidder or the Backup Bidder.

PLEASE TAKE FURTHER NOTICE that the Bidding Procedures Order provides that a hearing to approve the sale of the Seller Assets to the Successful Bidder (the "Sale Hearing"), and approve the other relief requested in the Motion, is scheduled to take place on **August 15, 2019 at [__: __.m.]³ (prevailing Eastern time)** before the Honorable Christopher S. Sontchi, at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 5th Floor, Wilmington, DE 19801, or as soon thereafter as counsel may be heard.

For ease of reference, the following chart has been included to summarize key dates relevant to this notice:⁴

<u>Key Events and Deadlines</u>	<u>Date</u>
Bid Procedures Objection Deadline	June 24, 2019 at 4:00 p.m. (ET)
Bidding Procedures Hearing	July 1, 2019 at 11:00 a.m. (ET)
Deadline for Debtors to Serve Sale Notice and Cure Notice (deadline for any (i) objections to the Sale to the Stalking Horse Buyer and entry of the Sale Order and (ii) Contract Objections)	July 8, 2019

³ Subject to Court availability.

⁴ All dates, times, and deadlines are subject to change or modification in accordance with the Bidding Procedures Order. Please see the Bidding Procedures Order for additional information.

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Bid Deadline	August 5, 2019
Sale Objection Deadline	July 29, 2019
Auction	August 12, 2019
Auction Objection Deadline (deadline for any (i) objections to the conduct of the Auction and (ii) Adequate Assurance Objections)	August 14, 2019
Sale Hearing	August 15, 2019

PLEASE TAKE FURTHER NOTICE that this Notice is subject to the full terms and conditions of the Motion, the Bidding Procedures Order, and the Bidding Procedures, which shall control in the event of any conflict, and the Debtors' encourage parties in interest to review such documents in their entirety. A copy of the Motion, the Stalking Horse Agreement, the Bidding Procedures, and the Bidding Procedures Order, in addition to any related documents that may be filed, may be obtained by accessing (a) the website of the Debtors' notice and claims agent, Epiq Corporate Restructuring, LLC, at <http://dm.epiq11.com/Oneaviation> for no charge, or (b) the Court's internet site: <https://ecf.deb.uscourts.gov>, for a fee, through an account obtained from the PACER website at <http://pacer.psc.uscourts.gov>. The documents also may be obtained from the Debtors' claims and notice agent, Epiq Bankruptcy Solutions, LLC at (855) 255-4838 or by visiting <http://dm.epiq11.com/Oneaviation>.

CONSEQUENCES OF FAILING TO TIMELY FILE AND SERVE AN OBJECTION

ANY PARTY OR ENTITY WHO FAILS TO TIMELY FILE AND SERVE AN OBJECTION TO THE SALE ON OR BEFORE THE SALE OBJECTION DEADLINE IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION TO THE SALE, INCLUDING WITH RESPECT TO THE TRANSFER OF THE SELLER ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS AFFECTED THEREUNDER.

NO SUCCESSOR OR TRANSFEREE LIABILITY

The proposed Sale Order provides that the purchaser in the Sale (the "**Purchaser**") will have no responsibility for, and the assets will be sold free and clear of, any successor liability, including the following:

The Purchaser shall not be deemed, as a result of any action taken in connection with the APA, the consummation of the Transactions (as defined in the Sale Order) contemplated by the APA, or the transfer or operation of the Seller Assets, to (a) be a legal successor, or otherwise be deemed a successor to the Debtors (other than, for the Purchaser, with respect to any obligations as an assignee under the Assigned Agreements arising after the Closing); (b) have, de facto or otherwise, merged with or into the Debtors; or (c) be an alter ego or mere continuation or substantial continuation of the Debtors including, without limitation, within the meaning of any foreign, federal, state or local revenue law, pension law, the Employee Retirement Income Security Act, the Consolidated Omnibus Budget Reconciliation Act, the WARN Act (29 U.S.C. §§ 2101 et seq., the Comprehensive Environmental Response Compensation and Liability Act ("**CERCLA**"), the Fair Labor Standard Act, Title VII of the Civil Rights Act of 1964 (as amended), the Age Discrimination and Employment Act of 1967 (as amended), the Federal Rehabilitation Act of 1973 (as amended), the National Labor Relations Act, 29 U.S.C. § 151, et seq., environmental liabilities, debts, claims or obligations arising from conditions first existing on or prior to Closing (including, without limitation, the presence of hazardous, toxic, polluting, or contaminating substances or wastes), which may be asserted on any basis, including, without limitation, under CERCLA, any liabilities, debts or obligations of or required to be paid by the Debtors for any taxes of any kind for any period, labor, employment, or other law, rule or regulation (including without limitation filing requirements under any such laws, rules or regulations), or under any products liability law or doctrine with respect to the Debtors' liability under such law, rule or regulation or doctrine. Other than as expressly set forth in the APA with

respect to Assumed Liabilities, the Purchaser shall not have any responsibility for (a) any liability or other obligation of the Debtors or related to the Seller Assets or (b) any remaining Claims (as defined in the Sale Order) against the Debtors or any of their predecessors or affiliates. The Purchaser shall have no liability whatsoever with respect to the Debtors' (or their predecessors' or affiliates') respective businesses or operations or any of the Debtors' (or their predecessors' or affiliates') obligations based, in whole or part, directly or indirectly, on any theory of successor or vicarious liability of any kind or character, or based upon any theory of antitrust, environmental, successor or transferee liability, *de facto* merger or substantial continuity, labor and employment or products liability, whether known or unknown as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated, including liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Seller Assets prior to the Closing.

Dated: [____], 2019
Wilmington, Delaware

Robert S. Brady (No. 2847)
M. Blake Cleary (No. 3614)
Sean M. Beach (No. 4070)
Jaime Luton Chapman (No. 4936)
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Counsel to the Debtors and Debtors in Possession

EXHIBIT 3

CURE NOTICE

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

	X	
	:	
In re:	:	Chapter 11
	:	
ONE AVIATION CORPORATION, <i>et al.</i> , ¹	:	Case No. 18-12309 (CSS)
	:	
	:	
Debtors.	:	Jointly Administered
	:	
	:	
	X	

**NOTICE TO COUNTERPARTIES TO EXECUTORY CONTRACTS AND
UNEXPIRED LEASES ONE AVIATION MAY ASSUME AND ASSIGN**

PLEASE TAKE NOTICE that on **June 17, 2019**, ONE Aviation Corporation and its affiliated debtors as debtors in possession (collectively, the “Debtors”) entered into an Asset Purchase Agreement (the “Stalking Horse Agreement”) with Citiking International US, LLC, a Delaware limited liability company (the “Stalking Horse Buyer”), as more fully set forth in the *Debtors’ Motion for Entry of: (A) Order (I) Approving Bidding Procedures in Connection With Sale of Assets of the Debtors, (II) Approving Form and Manner of Notice, (III) Scheduling Auction and Sale Hearing, (IV) Authorizing Procedures Governing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (V) Granting Related Relief; and (B) Order (I) Approving Purchase Agreement, (II) Authorizing Sale Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, and (III) Granting Related Relief* filed with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) on **June 17, 2019** [Docket No. ____] (the “Motion”).² The Debtors seek to sell all or substantially all of the Debtors’ assets (collectively, the “Seller Assets”) to the Stalking Horse Buyer or such other successful bidder at an auction (the “Successful Bidder”) free and clear of liens, claims, encumbrances, and other interests pursuant to section 363 of the Bankruptcy Code.

YOU ARE RECEIVING THIS NOTICE BECAUSE YOU OR ONE OF YOUR AFFILIATES IS A COUNTERPARTY (A “CONTRACT PARTY”) TO ONE OR MORE CONTRACTS OR LEASES THAT MAY BE EXECUTORY CONTRACTS OR

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor’s tax identification number, as applicable, are: ONE Aviation Corporation (9649); ACC Manufacturing, Inc. (1364); Aircraft Design Company (1364); Brigadoon Aircraft Maintenance, LLC (9000); DR Management, LLC (8703); Eclipse Aerospace, Inc. (9000); Innovatus Holding Company (9129); Kestrel Aircraft Company, Inc. (2053); Kestrel Brunswick Corporation (6741); Kestrel Manufacturing, LLC (1810); Kestrel Tooling Company (9439); and OAC Management, Inc. (9986). The debtors’ corporate headquarters is located at 3520 Spirit Drive SE, Albuquerque, NM 87106.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Stalking Horse Agreement, the Motion, the Bidding Procedures, or the Bidding Procedures Order, as applicable, and to the extent of any inconsistency, the definitions in the Stalking Horse Agreement shall govern.

UNEXPIRED LEASES WITH ONE OR MORE OF THE DEBTORS AS SET FORTH ON EXHIBIT A ATTACHED HERETO.³

PLEASE TAKE FURTHER NOTICE that pursuant to the Bidding Procedures, the Debtors may assume and assign to the Stalking Horse Buyer or other Successful Bidder the executory contract(s) or unexpired lease(s) listed on Exhibit A attached hereto (each, as applicable, a “Contract” or “Lease” and, collectively, the “Contracts and Leases”) to which you are a counterparty. The Debtors have conducted a review of their books and records and have determined that the cure amount for unpaid monetary obligations under such Contract(s) or Lease(s) is as set forth on Exhibit A attached hereto (the “Cure Amount”). **If you disagree with the proposed Cure Amount, object to the proposed assumption and assignment to the Stalking Horse Buyer or other Successful Bidder of the Contract(s) or Lease(s) or object to the Stalking Horse Buyer’s or other Successful Bidder’s ability to provide adequate assurance of future performance with respect to any Contract(s) or Lease(s), you must file an objection with the Bankruptcy Court no later than 4:00 p.m. (prevailing Eastern Time) on July 26, 2019, (the “Objection Deadline”) and serve such objection so as to be received at such time by (a) counsel to the Debtors, Paul Hastings, LLP, 71 S. Wacker Drive, Forty-Fifth Floor, Chicago, IL 60606, Attn: Chris L. Dickerson, Chrisdickerson@paulhastings.com, and 1117 S. California Avenue, Palo Alto, CA 94304, Attn: Todd M. Schwartz, Toddschwartz@paulhastings.com; (b) counsel for the Stalking Horse Buyer, Margolis Edelstein, 300 Delaware Avenue, Suite 800, Wilmington, DE 19801, Attn: James E. Huggett, jhuggett@margolisedelstein.com; and (c) the Office of the United States Trustee for the District of Delaware, 844 King Street, Room 2207, Lockbox 35, Wilmington, Delaware 19899-0035, Attn: Linda Casey, linda.casey@usdoj.gov.**

PLEASE TAKE FURTHER NOTICE that the Debtors propose that if no objection to (a) the Cure Amount(s), (b) the proposed assumption and assignment of certain of the Contracts and Leases to the Stalking Horse Buyer or other Successful Bidder (the “Assigned Contracts”) or (c) adequate assurance of the Stalking Horse Buyer’s or other Successful Bidder’s ability to perform is filed by Objection Deadline, (i) you will be deemed to have agreed and stipulated that the Cure Amount(s) as determined by the Debtors is correct, (ii) you shall be forever barred, estopped, and enjoined from asserting any additional cure amount under the Assigned Contract(s) and (iii) you will be forever barred from objecting to the assumption and assignment of the Assigned Contract(s) to the Stalking Horse Buyer or other Successful Bidder adequate assurance of future performance.

PLEASE TAKE FURTHER NOTICE that, promptly following the Debtors’ selection of the Prevailing Bid and the conclusion of the Auction, the Debtors shall file with the Bankruptcy Court notice of the Prevailing Bid and Successful Bidder. In the event the Stalking Horse Buyer is not the Successful Bidder at the Auction, any counterparty to an Assigned Contract shall have the right to object to the Successful Bidder’s ability to perform on or before the Sale Hearing scheduled for **August 15, 2019 at [__:___.m.] (prevailing Eastern Time)**. To the extent such counterparty does not object in accordance herewith, the Bankruptcy Court may enter an order forever barring such counterparty to an Assigned Contract from objecting to the adequate assurance of the Successful Bidder’s ability to perform.

³ This Notice is being sent to counterparties to contracts and leases that may be executory contracts and unexpired leases. This notice is *not* an admission by the Debtors that such contract or lease is executory or unexpired

PLEASE TAKE FURTHER NOTICE that with respect to any Assigned Contract assumed and assigned to the Successful Bidder (including the Stalking Horse Buyer), all Cure Amounts shall be satisfied by payment of the Cure Amounts as soon as reasonably practicable after the effectiveness of the assumption and assignment of the Assigned Contracts and assumption and assignment of the Assigned Contracts to the Successful Bidder (including the Stalking Horse Buyer) or on such other terms as the parties to each such Assigned Contract may otherwise agree without any further notice to or action, order or approval of the Bankruptcy Court. In addition, the assumption and assignment of each such Assigned Contract may be conditioned upon the disposition of all issues with respect to such Assigned Contract.

PLEASE TAKE FURTHER NOTICE THAT pursuant to the Bidding Procedures Order, with respect to any Contract or Lease, in the event of a timely filed objection and dispute regarding: (a) any Cure Amount with respect to any of the Contracts or Leases; (b) the ability of the Successful Bidder or Successful Bidders (including the Stalking Horse Buyer or such other Successful Bidder) to provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code, if applicable, under an Assigned Contract; or (c) any other matter pertaining to assumption and assignment, the Cure Amount shall be paid as soon as reasonably practicable after the Closing (as defined in the Stalking Horse Agreement) and following the entry of a final order resolving the dispute and approving the assumption and assignment of such Assigned Contract; *provided, however*, that the Debtors are authorized to settle any dispute regarding the amount of any Cure Amount or assumption and assignment to the Successful Bidder (including the Stalking Horse Buyer) without any further notice to or action, order or approval of the Court.

PLEASE TAKE FURTHER NOTICE THAT pursuant to the Bidding Procedures Order, the Stalking Horse Buyer or other Successful Bidder may designate in writing any Contract or Lease to be assumed and assigned to it under the Stalking Horse Agreement by the Designation Deadline. At the Closing, the Stalking Horse Buyer or other Successful Bidder shall pay any Proposed Cure Costs associated with the assumption and assignment of an Assigned Contract at the Closing. The Stalking Horse Buyer or other Successful Bidder shall pay any Disputed Cure Costs as soon as practicable after the entry of an order of the Court resolving such dispute or pursuant to mutual agreement with the applicable Contract Party and entry of an order of the Court regarding the same. Further, no later than **August 9, 2019** (or such other date as shall constitute the Designation Deadline as set forth in Section 1.1(rr) of the Stalking Horse Agreement), the Stalking Horse Buyer or other Successful Bidder may designate additional Contracts or Leases, which had not previously been designated for assumption and assignment, to be assumed and assigned to the Stalking Horse Buyer or other Successful Bidder notwithstanding the occurrence of the Closing. The Stalking Horse Buyer or other Successful Bidder shall pay any Proposed Cure Costs associated with the assumption and assignment of such additional Contracts or Leases as soon as practicable after the assumption and assignment of such Contracts or Leases to the Stalking Horse Buyer or other Successful Bidder and entry of an order of the Court regarding the effectiveness of such assumption and assignment under the Sale Order, and shall pay any Disputed Cure Costs as soon as practicable after entry of an order by the Court resolving such dispute or pursuant to mutual agreement with the applicable Contract Party and entry of an order of the Court regarding the same.

PLEASE TAKE FURTHER NOTICE THAT notwithstanding anything herein, this Notice shall not be deemed to be an assumption, assignment, adoption, rejection, or termination of any of the Assigned Contracts. Moreover, the Debtors explicitly reserve their rights, in their

sole discretion, to reject or assume each Assigned Contract pursuant to section 365(a) of the Bankruptcy Code and nothing herein (a) alters in any way the prepetition nature of the Assigned Contracts or the validity, priority, or amount of any claims of a counterparty to an Assigned Contract against the Debtors that may arise under such Assigned Contract, (b) creates a postpetition contract or agreement, or (c) elevates to administrative expense priority any claims of an counterparty to an Assigned Contract against the Debtors that may arise under such Assigned Contract.

Dated: [____ _], 2019

Wilmington, Delaware

Robert S. Brady (No. 2847)

M. Blake Cleary (No. 3614)

Sean M. Beach (No. 4070)

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Facsimile: (650) 320-1900

Counsel to the Debtors and Debtors in Possession

EXHIBIT A TO CURE NOTICE

Counterparty Name	Contract/Lease	Cure Amount

EXHIBIT B

STALKING HORSE AGREEMENT (WITHOUT EXHIBITS)

[TO BE FILED SEPARATELY]

EXHIBIT C

PUBLICATION NOTICE

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

	X	
	:	
In re:	:	Chapter 11
	:	
ONE AVIATION CORPORATION, <i>et al.</i> , ¹	:	Case No. 18-12309 (CSS)
	:	
	:	
Debtors.	:	Jointly Administered
	:	
	:	
	X	

**NOTICE OF BID DEADLINE, PUBLIC AUCTION, AND SALE HEARING
IN CONNECTION WITH THE SALE OF ASSETS OF ONE Aviation Corporation**

PLEASE TAKE NOTICE that on **June 17, 2019**, ONE Aviation Corporation and its affiliated debtors as debtors in possession in the above-captioned cases (collectively, the “Debtors”) entered into an Asset Purchase Agreement (the “Stalking Horse Agreement”) with Citiking International US, LLC, a Delaware limited liability company (the “Stalking Horse Buyer”), as more fully set forth in the *Debtors’ Motion for Entry of: (A) Order (I) Approving Bidding Procedures in Connection With Sale of Assets of the Debtors, (II) Approving Form and Manner of Notice, (III) Scheduling Auction and Sale Hearing, (IV) Authorizing Procedures Governing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (V) Granting Related Relief; and (B) Order (I) Approving Purchase Agreement, (II) Authorizing Sale Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, and (III) Granting Related Relief* filed with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) on **June 17, 2019** [Docket No. ____] (the “Motion”).² The Debtors seeks to sell all or substantially all of the Debtors’ assets (collectively, the “Seller Assets”) to the Stalking Horse Buyer or such other successful bidder at an auction (the “Successful Bidder”) free and clear of liens, claims, encumbrances, and other interests pursuant to section 363 of the Bankruptcy Code.

PLEASE TAKE FURTHER NOTICE that on [____], **2019**, the Bankruptcy Court entered an order [Docket No. ____] (the “Bidding Procedures Order”) approving the bidding procedures (the “Bidding Procedures”), which, among other things, set the key dates,

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor’s tax identification number, as applicable, are: ONE Aviation Corporation (9649); ACC Manufacturing, Inc. (1364); Aircraft Design Company (1364); Brigadoon Aircraft Maintenance, LLC (9000); DR Management, LLC (8703); Eclipse Aerospace, Inc. (9000); Innovatus Holding Company (9129); Kestrel Aircraft Company, Inc. (2053); Kestrel Brunswick Corporation (6741); Kestrel Manufacturing, LLC (1810); Kestrel Tooling Company (9439); and OAC Management, Inc. (9986). The debtors’ corporate headquarters is located at 3520 Spirit Drive SE, Albuquerque, NM 87106.

² Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Stalking Horse Agreement, the Motion, or the Bidding Procedures, as applicable, and to the extent of any inconsistency, the definitions in the Stalking Horse Agreement shall govern.

times, and procedures related to the sale of the Seller Assets pursuant to the terms outlined in the Motion. **All interested bidders should read the Bidding Procedures carefully.**

PLEASE TAKE FURTHER NOTICE that, pursuant to the Bidding Procedures Order, in the event that the Debtors timely receive one or more Qualifying Bids other than one from the Stalking Horse Buyer or, in any event, upon the reasonable request of the DIP Lender, the Debtors are authorized to conduct an auction (the “Auction”) for the Seller Assets. The Auction shall be held on [____], 2019 at [__:__ .m.] (**prevailing Eastern time**), at the offices of Young Conaway Stargatt & Taylor, LLP, located at Rodney Square, 1000 North King Street, Wilmington, DE 19801 or such other location as shall be timely communicated to all entities entitled to attend the Auction. The Debtors, the Consultation Parties, and Qualified Bidders and their respective advisors shall be permitted to attend the Auction.

PLEASE TAKE FURTHER NOTICE that a hearing to approve the sale of the Seller Assets to the successful bidder (the “Sale Hearing”), and approve the other relief requested in the Motion, is scheduled to take place on [____], 2019 at [__:__ .m.]³ (**prevailing Eastern time**) before the Honorable Christopher S. Sontchi, at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 5th Floor, Wilmington, DE 19801, or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE that the Debtors reserve their rights, in the exercise of their fiduciary obligations, and in consultation with the Consultation Parties, (a) to modify the Bidding Procedures or impose, at or prior to the Auction, different and/or additional terms and conditions on the sale of the Seller Assets, and (b) to announce at the Auction additional procedural rules that are reasonable under the circumstances for conducting the Auction; provided that, in the case of both (a) and (b), such modifications or rules are not inconsistent in any material respect with, and do not violate, the Bidding Procedures or the Stalking Horse Agreement (unless the DIP Lender provides written consent to such modifications or rules).

PLEASE TAKE FURTHER NOTICE that objections, if any, to the Motion, shall be in writing, shall conform to the Bankruptcy Rules and the Local Rules, shall set forth the name of the objecting party, the nature and amount of any claims or interests held or asserted against the Debtors’ estate or properties, the basis for the objection, and the specific grounds therefore, and must be filed and served **so that they are actually received by the following entities by no later than [4:00 p.m.] (prevailing Eastern time) on [____], 2019:** (i) co-counsel for the Debtors, (x) Paul Hastings, LLP, 71 S. Wacker Drive, Forty-Fifth Floor, Chicago, IL 60606, Attn: Chris L. Dickerson, Chrisdickerson@paulhastings.com, and 1117 S. California Avenue, Palo Alto, CA 94304, Attn: Todd M. Schwartz, Toddschwartz@paulhastings.com, and (y) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: M. Blake Cleary and Jaime Luton Chapman, Mbcleary@ycst.com and JChapman@ycst.com; (ii) counsel for the Stalking Horse Buyer, Margolis Edelstein, 300 Delaware Avenue, Suite 800, Wilmington, DE 19801, Attn: James E. Huggett, jhuggett@margolisedelstein.com; (iii) co-counsel for the Committee, (x) Lowenstein Sandler, One Lowenstein Drive, Roseland, NJ 07068, Attn: Bruce D. Buechler, Bbuechler@lowenstein.com, and 1251 Avenue of the Americas, New York, NY 10020, Attn: Wojciech F. Jung, Wjung@lowenstein.com, and (y) Landis Rath & Cobb LLP, 919 Market

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Subject to Court availability.

Street, Suite 1800, Wilmington, DE 19801, Attn: Adam G. Landis and Kerri Mumford, Landis@lrclaw.com and mumford@lrclaw.com; and (iv) counsel for the Senior Subordinated Secured Noteholders, CKR Law, 100 N. West Street, Suite 1200, Wilmington, DE 19801, Attn: Marc J. Phillips, Mphillips@ckrlaw.com; and (v) those parties who have formally filed requests for notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002.

PLEASE TAKE FURTHER NOTICE that this Notice is subject to the full terms and conditions of the Motion, the Bidding Procedures Order, and the Bidding Procedures, which shall control in the event of any conflict, and the Debtors encourage parties in interest to review such documents in their entirety. A copy of the Motion, the Stalking Horse Agreement, the Bidding Procedures, and/or the Bidding Procedures Order, in addition to any related motions that may be filed, may be obtained by accessing (a) the website of the Debtors' notice and claims agent, Epiq Corporate Restructuring, LLC, at <http://dm.epiq11.com/Oneaviation> for no charge, or (b) the Court's internet site: <https://ecf.deb.uscourts.gov>, for a fee, through an account obtained from the PACER website at <http://pacer.psc.uscourts.gov>. The documents also may be obtained by written request made to counsel to the Debtors, Paul Hastings, LLP, 71 S. Wacker Drive, Forty-Fifth Floor, Chicago, IL 60606, Attn: Chris L. Dickerson, Chrisdickerson@paulhastings.com, and 1117 S. California Avenue, Palo Alto, CA 94304, Attn: Todd M. Schwartz, Toddschwartz@paulhastings.com.

CONSEQUENCES OF FAILING TO TIMELY FILE AND SERVE AN OBJECTION

ANY PARTY OR ENTITY WHO FAILS TO TIMELY FILE AND SERVE AN OBJECTION TO THE SALE ON OR BEFORE THE OBJECTION DEADLINE IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION TO THE SALE, INCLUDING WITH RESPECT TO THE TRANSFER OF THE SELLER ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS AFFECTED THEREUNDER.

NO SUCCESSOR OR TRANSFeree LIABILITY

The proposed Sale Order provides that the purchaser in the Sale (the "**Purchaser**") will have no responsibility for, and the assets will be sold free and clear of, any successor liability, including the following:

The Purchaser shall not be deemed, as a result of any action taken in connection with the APA, the consummation of the Transactions (as defined in the Sale Order) contemplated by the APA, or the transfer or operation of the Seller Assets, to (a) be a legal successor, or otherwise be deemed a successor to the Debtors (other than, for the Purchaser, with respect to any obligations as an assignee under the Assigned Agreements arising after the Closing); (b) have, *de facto* or otherwise, merged with or into the Debtors; or (c) be an alter ego or mere continuation or substantial continuation of the Debtors including, without limitation, within the meaning of any foreign, federal, state or local revenue law, pension law, the Employee Retirement Income Security Act, the Consolidated Omnibus Budget Reconciliation Act, the WARN Act (29 U.S.C. §§ 2101 et seq., the Comprehensive Environmental Response Compensation and Liability Act ("**CERCLA**"), the Fair Labor Standard Act, Title VII of the Civil Rights Act of 1964 (as amended), the Age Discrimination and Employment Act of 1967 (as amended), the Federal Rehabilitation Act of 1973 (as amended), the National Labor Relations Act, 29 U.S.C. § 151, et seq., environmental liabilities, debts, claims or obligations arising from conditions first existing

on or prior to Closing (including, without limitation, the presence of hazardous, toxic, polluting, or contaminating substances or wastes), which may be asserted on any basis, including, without limitation, under CERCLA, any liabilities, debts or obligations of or required to be paid by the Debtors for any taxes of any kind for any period, labor, employment, or other law, rule or regulation (including without limitation filing requirements under any such laws, rules or regulations), or under any products liability law or doctrine with respect to the Debtors' liability under such law, rule or regulation or doctrine. Other than as expressly set forth in the APA with respect to Assumed Liabilities, the Purchaser shall not have any responsibility for (a) any liability or other obligation of the Debtors or related to the Seller Assets or (b) any remaining Claims (as defined in the Sale Order) against the Debtors or any of their predecessors or affiliates. The Purchaser shall have no liability whatsoever with respect to the Debtors' (or their predecessors' or affiliates') respective businesses or operations or any of the Debtors' (or their predecessors' or affiliates') obligations based, in whole or part, directly or indirectly, on any theory of successor or vicarious liability of any kind or character, or based upon any theory of antitrust, environmental, successor or transferee liability, *de facto* merger or substantial continuity, labor and employment or products liability, whether known or unknown as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated, including liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Seller Assets prior to the Closing.