

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:

Meier's Wine Cellars Acquisition, LLC,
et al.,¹

Debtors.

Chapter 11

Case No. 24-11575 (____)

(Joint Administration Requested)

**MOTION OF THE DEBTORS AND DEBTORS IN POSSESSION FOR ENTRY OF
ORDERS (I)(A) APPROVING BIDDING PROCEDURES FOR THE SALE OF
SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, (B) AUTHORIZING THE
DEBTORS TO ENTER INTO ONE OR MORE STALKING HORSE AGREEMENTS
AND TO PROVIDE BIDDING PROTECTIONS THEREUNDER, (C) SCHEDULING AN
AUCTION AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF,
(D) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES,
(E) SCHEDULING A SALE HEARING AND APPROVING THE FORM AND MANNER
OF NOTICE THEREOF AND (F) GRANTING RELATED RELIEF; AND
(II)(A) APPROVING THE SALE OF THE DEBTORS' ASSETS FREE AND CLEAR OF
LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES, (B) APPROVING THE
ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND
UNEXPIRED LEASES AND (C) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the
"Debtors" or the "Company"), respectfully represent as follows:

Relief Requested

1. Pursuant to sections 105, 363 and 365 of title 11 of the United States Code
(the "Bankruptcy Code"), Rules 2002, 6004, 6006, 9007, 9008 and 9014 of the Federal Rules of
Bankruptcy Procedure (the "Bankruptcy Rules") and Rules 2002-1, 6004-1 and 9006-1 of the

¹ The Debtors are the following eleven entities (the last four digits of their respective taxpayer identification numbers, if any, follow in parentheses): Meier's Wine Cellars Acquisition, LLC (5557); California Cider Co., Inc. (0443); Girard Winery LLC (5076); Grove Acquisition, LLC (9465); Meier's Wine Cellars, Inc. (2300); Mildara Blass Inc. (1491); Sabotage Wine Company, LLC (8393); Thames America Trading Company Ltd. (0696); Vinesse, LLC (3139); Vintage Wine Estates, Inc. (CA) (2279); and Vintage Wine Estates, Inc. (NV) (5902). The Debtors' noticing address in these chapter 11 cases is 205 Concourse Boulevard, Santa Rosa, California 95403.

Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), the Debtors hereby seek entry of the following:

- (a) an order (the "Bidding Procedures Order"), substantially in the form attached hereto as Exhibit A, granting the following relief:
 - (i) approving the procedures, substantially in the form attached to the Bidding Procedures Order as Exhibit 1 (the "Bidding Procedures"), to be used in connection with one or more sales (each, a "Sale Transaction") of substantially all of the Debtors' assets (collectively, the "Assets");
 - (ii) authorizing the Debtors to enter into one or more asset purchase agreements with one or more "stalking horse" bidders (each such agreement, a "Stalking Horse Agreement" and, each such bidder, a "Stalking Horse Bidder" and, the bid of any such Stalking Horse Bidder, a "Stalking Horse Bid"), and to provide certain bidding protections, including a Termination Payment (as defined below), to any Stalking Horse Bidder in connection therewith;
 - (iii) scheduling (A) an auction of the Primary Assets (as defined below) (the "Primary Auction") on September 10, 2024, and (B) a final hearing to consider approval of the proposed sale of Primary Assets (the "Primary Sale Hearing") on September 16, 2024, subject to the availability of the Court;
 - (iv) authorizing the Debtors to hold one or more subsequent auctions (each such auction, a "Subsequent Auction" and together with the Primary Auction, the "Auctions") after the Primary Auction, provided, that, the Debtors will provide a Subsequent Auction Notice (as defined below) to Qualified Bidders and the Consultation Parties no later than five days prior to such Subsequent Auction;
 - (v) scheduling a final hearing or hearings to approve any Sale Transaction(s) for the sale of any Subsequent Assets (each such hearing, a "Subsequent Sale Hearing" and together with the Primary Sale Hearing, the "Sale Hearings") no later than six days after the conclusion of any Subsequent Auction, subject to the availability of the Court;
 - (vi) approving the form and manner of notice of the Bidding Procedures, the Auctions and the Sale Hearings, substantially in the form attached to the Bidding Procedures Order as Exhibit 2 (the "Sale Notice") and as Exhibit 3 (the "Auction Notice");

- (vii) approving procedures for the assumption and assignment of executory contracts and unexpired leases (collectively, the "Contracts") in connection with any Sale Transaction (the "Assumption and Assignment Procedures");
 - (viii) approving the form and manner of notice to each relevant non-debtor counterparty to a Contract (each, a "Counterparty") of (A) the Debtors' calculation of the amount necessary to cure any defaults under an applicable Contract (the "Cure Costs") and (B) certain other information regarding the potential assumption and assignment of Contracts in connection with a Sale Transaction, substantially in the form attached to the Bidding Procedures Order as Exhibit 4 (the "Assumption and Assignment Notice") and
 - (ix) granting related relief; and
- (b) one or more orders (each, a "Sale Order"), substantially in the form attached hereto as Exhibit B, granting the following relief:
- (i) authorizing one or more Sale Transactions for the sale of the Assets free and clear of all liens, claims, interests and encumbrances, except certain permitted encumbrances as determined by the Debtors and any Successful Bidder (as defined below), with liens to attach to the proceeds of the applicable Sale Transaction;
 - (ii) authorizing the assumption and assignment of certain Contracts in connection with an applicable Sale Transaction; and
 - (iii) granting related relief.

In support of this motion (this "Motion"), the Debtors submit the *Declaration of Jeff Raithel in Support of the Bidding Procedures Motion* (the "Raithel Declaration") and the *Declaration of Seth Kaufman in Support of the Bidding Procedures Motion* (the "Kaufman Bidding Procedures Declaration"), both of which were filed contemporaneously herewith.

Jurisdiction and Venue

2. This Court has jurisdiction to consider 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 is a core proceeding

pursuant to 28 U.S.C. § 157(b). Venue for this matter is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

A. The Debtors and the Commencement of These Cases

3. On the date hereof (the "Petition Date"), each of the Debtors commenced a case under chapter 11 of the Bankruptcy Code (collectively, the "Chapter 11 Cases").

The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. The Debtors comprise a leading vintner in the United States, producing, bottling and selling wines and hard ciders through wholesale, direct-to-consumer and business-to-business sales. The Debtors' current portfolio consists of more than 30 brands, including luxury and lifestyle wines, and the Debtors own and lease approximately 1,850 acres in premium wine-growing regions in the United States, operating 11 wineries that support nine tasting rooms. The Debtors employ more than 400 employees in 15 states.

5. Concurrently with the filing of this Motion, the Debtors have filed the DIP Financing Motion (as defined below), seeking approval of post-petition financing, the proceeds of which the Debtors will utilize to continue to operate as debtors in possession.

6. A comprehensive description of the Debtors' business and operations, capital structure and the events leading to the commencement of these Chapter 11 Cases can be found in the *Declaration of Seth Kaufman, the President and Chief Executive Officer of Debtor*

Vintage Wine Estates, Inc., in Support of First Day Motions of Debtors and Debtors in Possession (the "First Day Declaration"), which is incorporated herein by reference.²

B. Prepetition Marketing Efforts and Sale Process

7. As set forth in the Raithel Declaration and the Kaufman Bidding Procedures Declaration, in mid-to-late 2023, the Debtors began to evaluate various strategic alternatives to address their financial challenges and engaged an advisory firm. In early 2024, the Company considered pursuing a comprehensive restructuring that would involve selling some of the Debtors' non-core Assets and reorganizing the Company in a newly formed "NewCo" entity (the "Initial Restructuring Process"), in the hope that the Company would be able to streamline its operations, resulting in reduced operating expenses and a more financially viable entity moving forward.

8. However, by Spring 2024, it became apparent that the NewCo entity was not viable because it would require an unrealistic amount of new money and that the Company was unlikely to succeed in pursuing the Initial Restructuring Process or any other out-of-court process. The Debtors retained GLC Advisors & Co., LLC and GLC Securities, LLC (collectively, "GLC") in April 2024, to serve as its investment banker and financial advisor. As part of its engagement, GLC provided, among other services, marketing services to solicit interest from third parties in purchasing the Assets. Starting in Spring 2024, GLC led an expansive marketing process focused on gauging interest in transactions for all, or any portion, of the Debtors' Assets.

² Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the First Day Declaration or the Bidding Procedures (as defined below), as applicable.

9. Prior to GLC's retention, the Debtors had already been contacted by certain parties that were interested in learning more about the Assets to evaluate potential transactions. These communications continued after GLC was retained. As of the Petition Date, GLC has contacted and distributed marketing materials to over 500 parties in order to solicit interest in the Assets. These communications resulted in nearly 150 parties signing confidentiality agreements and receiving access to a data site that provided them with additional diligence information about the Assets as of the Petition Date. The Company's management also held calls and meetings with potential bidders to facilitate the parties' ability to conduct a thorough due diligence process.

10. Due to the unique composition of the Assets, the Debtors knew it would be unlikely for a single party to offer to purchase all of the Assets. Thus, the Debtors and GLC have undergone an intentional marketing process that aimed to market individual Assets or Asset groups to potentially interested parties. Despite some success in the prepetition marketing process, the Debtors ultimately determined that the most viable approach for maximizing the value of the Assets would be to commence these Chapter 11 Cases. While the Debtors were unable to sell or obtain Stalking Horse Bidders for all of the Assets prior to the Petition Date, the Debtors believe that the substantial prepetition marketing efforts will facilitate continued interest in the Assets during the postpetition marketing process, leading to an eventual sale of all or substantially all of the Assets through the Auctions and the sale process (collectively, the "Sale Process").³

³ Despite the Debtors' and GLC's best efforts, the Company was unable to obtain a Stalking Horse Bidder for any of its Assets prior to the Petition Date, but, as described in the First Day Declaration, the Company successfully closed the sale of its Cosentino assets prior to the Petition Date.

11. The Debtors and GLC are also committed to pursuing Stalking Horse Bids as needed. Thus, the Debtors seek authority to designate Stalking Horse Bidders following entry of the Bidding Procedures Order and enter into Stalking Horse Agreements after providing notice and holding a hearing, if necessary, in accordance with the Bidding Procedures. Any Stalking Horse Bid would constitute an offer that would ensure the sale of the applicable Assets to a contractually-committed buyer at a price point the Debtors believed to be fair and reasonable and serve as a floor for the price of the relevant Assets at the Auctions. If granted, the relief requested herein will position the Debtors to execute and complete a postpetition Sale Process that will generate the highest or best value for their Assets for the benefit of their estates and their economic stakeholders.

The Need for a Timely Process

12. On the Petition Date, the Debtors sought interim Court approval of postpetition financing (the "DIP Financing") provided by certain of the Debtors' Prepetition Lenders (in such capacity, the "DIP Lenders"). See DIP Financing Motion.⁴ Appreciating their challenging financial condition and the tight timeline that governs the Sale Process under the DIP Financing (and together with the credit agreement governing the DIP Financing, the "DIP Agreement"), the Debtors accomplished as much as reasonably possible prior to the commencement of these Chapter 11 Cases. The Debtors are prepared to execute the final

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Concurrently with the filing of this Motion, the Debtors are also filing the *Motion of the Debtors and Debtors in Possession Pursuant to Sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d), 364(e), 503, 507 and 552 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004, and 9014 and Local Rules 2002-1, 4001-2, 7007-1 and 9013-1 for Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral on a Limited Basis, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* (the "DIP Financing Motion"), seeking one or more orders granting the relief requested therein (any such order, a "DIP Order").

phase of their Sale Process, which will include postpetition marketing campaigns, consistent with the terms of the Bidding Procedures.

13. Although the Debtors expect that access to the DIP Financing, together with the use of cash collateral, will provide them with sufficient runway to consummate one or more value-maximizing Sale Transactions, it cannot be overstated that time is of the essence. Given the Debtors' current financial condition, the Debtors and the DIP Lenders have negotiated and agreed to, among others, the following milestones established under the DIP Agreement (the "Milestones"), which tie the availability of funding to progress in the Sale Process.⁵

KEY DATES AND DEADLINES FOR PRIMARY AUCTION	
Deadline for Debtors to file and serve Sale Notice	Three business days after the entry of the Bidding Procedures Order
Deadline for Debtors to file and serve Assumption and Assignment Notice	Three business days after the entry of the Bidding Procedures Order
Stalking Horse Bidder Designation Deadline	August 22, 2024, at 4:00 p.m. (prevailing Eastern Time)
Stalking Horse Hearing	August 27, 2024, subject to the availability of the Court.
Bid Deadline for All Assets	August 29, 2024, at 4:00 p.m. (prevailing Eastern Time)
Sale Objection Deadline for All Assets	August 30, 2024, at 4:00 p.m. (prevailing Eastern Time)
Cure Objection Deadline for All Potentially Assumed Contracts	August 30, 2024, at 4:00 p.m. (prevailing Eastern Time)
Primary Auction Notice Deadline	September 5, 2024, at 4:00 p.m. (prevailing Eastern Time)
Primary Auction	September 10, 2024, at 10:00 a.m. (prevailing Eastern Time) at the offices of Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801.
Deadline for Debtors to file and serve Notice of Primary Auction Results	September 10, 2024

⁵ Capitalized terms used in this chart but not previously defined herein shall have the respective meanings ascribed to such terms later in this Motion.

Adequate Assurance and Supplemental Sale Objection Deadlines for Primary Assets	September 13, 2024, at 4:00 p.m. (prevailing Eastern Time)
Primary Sale Hearing	September 16, 2024, subject to the availability of the Court
Deadline to obtain entry of the Primary Sale Order	September 17, 2024
Deadline to consummate approved Primary Sale Transaction(s)	September 27, 2024

KEY DATES AND DEADLINES FOR SUBSEQUENT AUCTION(S) (AS NEEDED)	
Subsequent Auction Notice Deadline	4:00 p.m. (prevailing Eastern Time), on the date five days prior to the applicable Subsequent Auction.
Subsequent Auction	TBD
Deadline for Debtors to file and serve Notice of Subsequent Auction Results	On the date of any Subsequent Auction.
Adequate Assurance and Supplemental Sale Objection Deadlines for Subsequent Assets	4:00 p.m. (prevailing Eastern Time), on the date no later than three days after the service of any Notice of Subsequent Auction Results.
Subsequent Sale Hearing	No later than six days after the conclusion of any Subsequent Auction, subject to the availability of the Court.
Deadline to obtain entry of a Subsequent Sale Order	No later than one day after the conclusion of any Subsequent Sale Hearing.
Deadline to consummate approved Subsequent Sale Transaction(s)	No later than ten days after the entry of the applicable Subsequent Sale Order

14. The Debtors and their advisors believe that the negotiated timeline balances the need to provide adequate notice to parties in interest and efficiently continue to market the Assets (particularly in light of the extensive marketing process the Debtors went through prepetition), with the need to quickly and efficiently consummate one or more Sale Transactions while the Assets have realizable going-concern value. The Bidding Procedures and the Debtors' proposed timeline for the Sale Process are a product of good-faith, arm's-length negotiations and will allow the Debtors to achieve the maximum value for the Assets under the

circumstances of these Chapter 11 Cases. Moreover, avoiding a protracted bankruptcy proceeding will result in significant cost-savings to the estates and ultimately provide greater recovery to the Debtors' stakeholders. As detailed above and in the Raithel Declaration and the Kaufman Bidding Procedures Declaration, the Debtors' business has been thoroughly marketed to a wide range of potential strategic and financial buyers in the wine production industry and beyond prior to the Petition Date. The Debtors and their advisors expect that the same parties that were communicating with the Company prior the Petition Date will consider purchasing the Debtors' Assets in these Chapter 11 Cases. A substantial amount of information regarding the Debtors' businesses has been made available to these prospective purchasers during the prepetition phase of the Sale Process. In addition, as set forth in the Bidding Procedures, bidders will have access to additional, updated information about the Debtors' businesses that will aid parties in developing thoughtful and competitive bids. As such, the Debtors believe that prospective bidders already know the Assets well and will have sufficient time and information to conduct the necessary due diligence to submit binding bids in accordance with the timeline proposed herein.

15. Access to the DIP Financing is critical to the Debtors' ability to operate their businesses through the completion of the Sale Process and during the pendency of these Chapter 11 Cases. Failure to adhere to the Milestones could jeopardize the Debtors' available borrowing under the DIP Financing and, in turn, compromise the Debtors' chapter 11 strategy. Indeed, the key focus of these Chapter 11 Cases is transitioning the Debtors' Assets to new owners efficiently and expeditiously. Given the anticipated cost of administering these Chapter 11 Cases, the Debtors cannot afford any delay in selling their Assets. The Bidding Procedures and the proposed timeline allow the Debtors to maximize value while minimizing administrative

expenses. In view of the foregoing, the Debtors respectfully submit that the Court should grant the relief requested herein, in accordance with the proposed timeline for completing the Sale Process.

Stalking Horse Procedures

16. As of the filing of this Motion, the Debtors are in the process of engaging with a number of parties in pursuing a strategic transaction involving one or more of the Assets. Based on the progress the parties have achieved thus far, and on the advice and counsel of the Debtors' advisors, the Debtors have determined, in their reasonable business judgment, that having the flexibility to designate Stalking Horse Bidders will enhance the Debtors' ability to maximize the value of the Assets.

17. Accordingly, as set forth in further detail in Section II of the Bidding Procedures (the "Stalking Horse Procedures"), the Debtors request authority to enter into one or more Stalking Horse Agreements with one or more bidders that the Debtors determine to designate as a Stalking Horse Bidder. The Debtors also request authority to provide any so-designated Stalking Horse Bidder with certain bidding protections, including a "break-up" fee and an expense reimbursement (together, a "Termination Payment"), if the Debtors determine, in the exercise of their reasonable business judgment, that setting a floor for the applicable Assets is in the best interests of their estates. In accordance with the Stalking Horse Procedures, within two business days after executing a Stalking Horse Agreement, the Debtors will file with the Court, serve on the Sale Notice Parties (as defined in Section X.B of the Bidding Procedures) and cause to be published on the Epiq Website,⁶ a notice setting forth the material terms of

⁶ The Debtors will cause any Stalking Horse Notice (as hereinafter defined) to be published on the website maintained by Epiq Corporate Restructuring, LLC, the Debtors' claims and noticing agent in these Chapter 11 Cases, located at <https://dm.epiq11.com/VintageWine> (the "Epiq Website").

the proposed Stalking Horse Agreement, including the terms and conditions of any Termination Payment to be provided thereunder (each, a "Stalking Horse Notice").

18. The Debtors will request that the Court schedule a hearing (the "Stalking Horse Hearing") to be held, subject to the Court's availability, on August 27, 2024, to consider approval of any applicable Stalking Horse Agreement and the provision of any Termination Payment to be provided thereunder.

19. Parties in interest that wish to object to the designation of, or provision of a Termination Payment to, a Stalking Horse Bidder will be afforded an opportunity to file with the Court and serve on the applicable Objection Notice Parties (as defined in Section X.D of the Bidding Procedures) an objection (each such objection, a "Bidding Protection Objection") within three calendar days after service of the applicable Stalking Horse Notice. If the parties are unable to consensually resolve a Bidding Protection Objection, such Bidding Protection Objection will be heard and resolved by the Court at the applicable Stalking Horse Hearing. Under the Stalking Horse Procedures, in the absence of any Bidding Protection Objection, the Debtors may file, upon certification of counsel and after consulting with the Consultation Parties, a proposed order authorizing and approving the Debtors' entry into the applicable Stalking Horse Agreement and the provision of a Termination Payment thereunder in lieu of holding a Stalking Horse Hearing.

20. Given the urgency of the Debtors' need to maximize value for their stakeholders through a timely and efficient Sale Process, the ability to designate Stalking Horse Bidders and provide bidding protections as proposed herein is justified, appropriate and in the best interests of the Debtors and all parties in interest in these Chapter 11 Cases.

The Proposed Form Sale Order

21. A proposed form Sale Order, substantially in the form attached hereto as Exhibit B, will be provided to all Prospective Bidders (as defined in Section IV of the Bidding Procedures). As set forth in further detail below and in the Bidding Procedures, Prospective Bidders will be required to submit to the Debtors a modified proposed Sale Order, revised to reflect the terms of their respective bids. In accordance with Local Rule 6004-1(b)(iv), the below chart summarizes certain significant terms of the proposed Sale Order:⁷

MATERIAL TERMS OF THE FORM SALE ORDER	
Requested Findings as to Successor Liability Local Rule 6004-1(b)(iv)(L)	The sale and transfer of the Purchased Assets to the Buyer, including the assumption by the Debtors and assignment, transfer and/or sale to the Buyer of any of the Contracts, will not subject the Buyer to any liability with respect to the operation of the Debtors' businesses prior to the Closing or by reason of such transfer, except that, upon the Closing, the Buyer shall remain liable for the applicable Assumed Liabilities (as defined in the Asset Purchase Agreement). <u>See</u> Sale Order, ¶¶ K, L, 12-14.
Relief from Bankruptcy Rule 6004(h) Stay Local Rule 6004-1(b)(iv)(O)	Notwithstanding Bankruptcy Rules 6004(h), 6006(d), 7062 and any applicable Local Rules, this Order shall not be stayed and shall be effective and enforceable immediately upon entry. <u>See</u> Sale Order, ¶¶ T, 31.

The Bidding Procedures

A. Overview

22. The Bidding Procedures are designed to promote a competitive and expedient Sale Process. If approved, the Bidding Procedures will allow the Debtors to solicit and identify bids from potential buyers that constitute the highest or otherwise best offer for the Assets on a schedule consistent with the Milestones and the Debtors' chapter 11 strategy.

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This summary is qualified in its entirety by the provisions of the proposed form Sale Order. To the extent that there is any inconsistency between the terms of the proposed Sale Order and this summary, the terms of the proposed Sale Order shall control. To the extent a particular type of provision identified in Local Rule 6004-1(b)(iv) is not herein summarized, the proposed form Sale Order does not contain a provision of such type or such provision is otherwise inapplicable to the relief requested herein. Capitalized terms used but not defined prior to or in this summary shall have the respective meanings ascribed to such terms later in the Motion or in the proposed Sale Order, as applicable.

As the Bidding Procedures are attached to the Bidding Procedures Order, they are not herein restated in their entirety. Pursuant to Local Rule 6004-1(c), certain of the key terms of the Bidding Procedures are highlighted in the chart below:⁸

MATERIAL TERMS OF THE BIDDING PROCEDURES	
Provisions Governing Qualification of Bidders and Qualified Bids Local Rule 6004-1(c)(i)(A)-(B)	Qualified Bid and Qualified Bidder Requirements are set forth in Sections IV, V and VI of the Bidding Procedures. A. Due Diligence – Execute confidentiality agreement with the Debtors. B. Bid Deadline – Submit Qualified Bid by August 29, 2024, at 4:00 p.m. (prevailing Eastern Time) C. Qualified Bid Requirements <u>Identification of Bidder.</u> A Qualified Bid must fully disclose the legal identity of the bidder and any related parties participating in the bidding and Auction process. <u>Purchase Price.</u> A Qualified Bid must (a) identify the Assets to be purchased, including any then-known Contracts that are proposed to be assumed and assigned to the bidder and any liabilities to be assumed and (b) set forth the purchase price of the bid and include the valuation allocated to the applicable Assets included therein. <u>Form of Consideration.</u> <i>Credit Bid.</i> A bidder holding a perfected security interest in any of the Assets may seek to credit bid all or a portion of such bidder's claims for its respective collateral (each such bid, a "<u>Credit Bid</u>") in accordance with section 363(k) of the Bankruptcy Code; <u>provided that</u>, such Credit Bid complies with the terms of the DIP Orders. <i>All-Cash Offer.</i> Unless a bid includes a Credit Bid, the bid must include (i) a statement confirming that the bid is based on an all-cash offer and (ii) sufficient cash consideration to pay any applicable Termination Payment to a Stalking Horse Bidder for the Assets pursuant to the terms of an applicable Stalking Horse Agreement. <u>Minimum Bid for Stalking Horse Assets.</u> Each bid for Assets that are the subject of a particular Stalking Horse Bid (any such Assets, the "<u>Stalking Horse Assets</u>") must either (a)(i) be a bid for all of the Stalking Horse Assets in the Stalking Horse Bid and (ii) exceed the cash purchase price in the Stalking Horse Bid, plus any applicable Termination Payment; or (b) propose an alternative transaction that, in

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This summary is qualified in its entirety by the provisions of the Bidding Procedures. To the extent that there is any inconsistency between the terms of the Bidding Procedures and this summary, the terms of the Bidding Procedures shall control. Capitalized terms used but not defined prior to or in this summary shall have the respective meanings ascribed to such terms later in the Motion or in the Bidding Procedures, as applicable.

the Debtors' reasonable business judgment, provides higher or better terms than the Stalking Horse Bid, taking into account, among other things, any applicable Expense Reimbursement.

The Debtors, in consultation with the Consultation Parties, may consider a bid for a portion of any applicable Stalking Horse Assets (each such bid, a "Partial Bid") if (a) the Debtors receive another Partial Bid for the remaining applicable Stalking Horse Assets such that, when taken together, the Partial Bids constitute a higher or better bid than the Stalking Horse Bid plus any applicable Termination Payment; or (b) the Partial Bid proposes a purchase price for the applicable Stalking Horse Assets that, when taken together with the estimated liquidation value of the remaining applicable Stalking Horse Assets, exceeds the purchase price in the Stalking Horse Bid plus any applicable Termination Payment.

The Debtors, in consultation with the Consultation Parties, may consider a bid for a portion, or the entirety, of Assets subject to an applicable Stalking Horse Bid together with other Assets that are not the subject of any Stalking Horse Bid (each such bid, a "Mixed Bid") if the Debtors determine, in their reasonable business judgment, that the Mixed Bid provides more value to the Debtors' estates than the applicable Stalking Horse Bid, taking into account, among other things, the estimated liquidation value of the Assets not the subject of any Stalking Horse Bid, the estimated liquidation value of the remaining Stalking Horse Assets not subject to the Mixed Bid and any applicable Termination Payment.

5. Proposed Asset Purchase Agreement. A Qualified Bid must constitute an irrevocable offer and be in the form of an asset purchase agreement reflecting the terms and conditions of the bid and marked against the form asset purchase agreement provided by the Debtors to Prospective Bidders to reflect the proposed Sale Transaction (each, a "Proposed Asset Purchase Agreement"). A Qualified Bid for Stalking Horse Assets must also include a marked copy of the applicable Stalking Horse Agreement showing the differences between the Stalking Horse Agreement and the Prospective Bidder's Proposed Asset Purchase Agreement.
6. Proposed Sale Order. A Qualified Bid must include a proposed sale order that is based on and marked against the form Sale Order to reflect the proposed Sale Transaction (each, a "Proposed Sale Order"). A Qualified Bid for Stalking Horse Assets must also include a marked copy of any Sale Order included or prepared in connection with any applicable Stalking Horse Bid (each, a "Stalking Horse Sale Order") showing the differences between the Stalking Horse Sale Order and the Prospective Bidder's Proposed Sale Order.
7. Financial Information. A Qualified Bid must include (a) a statement that the Prospective Bidder is financially capable of consummating the proposed Sale Transaction; (b) sufficient evidence to determine that the Prospective Bidder has, or can obtain, the financial wherewithal to consummate the proposed Sale Transaction and (c) Adequate Assurance Information (as defined below).
8. Good Faith Deposit. Each Qualified Bid must be accompanied by a good faith deposit (each, a "Good Faith Deposit") in the form of cash (or other form acceptable to the Debtors in their sole discretion) in an amount equal to 10% of the cash portion of the proposed purchase price for the applicable Assets (inclusive of any amount thereof comprising any applicable Credit Bid consideration).
9. Adequate Assurance. A Qualified Bid must include evidence of the Prospective Bidder's ability to comply with section 365 of the Bankruptcy Code, including providing adequate assurance of such Prospective Bidder's (or any other relevant

	assignee's) ability to perform future obligations arising under any Contracts included in its bid. The Debtors may require (a) information evidencing the Prospective Bidder's (or any other relevant assignee's) financial wherewithal and willingness to perform under any Contracts included in the bid, which information may include (i) a corporate organizational chart or similar disclosure identifying corporate ownership and control, (ii) financial statements, (iii) tax returns and (iv) annual reports; and (b) the Prospective Bidder's (or any other relevant assignee's) proposed use of any leased premises included in the bid (collectively, the "<u>Adequate Assurance Information</u>"). All Adequate Assurance Information must be in a form that will permit its immediate dissemination to Counterparties. 10. <u>Representations and Warranties</u>. A Qualified Bid must include a statement that (a) the Prospective Bidder has had an opportunity to conduct any and all due diligence regarding the applicable Assets prior to submitting its bid; and (b) the Prospective Bidder has relied solely upon its own due diligence in making its bid. 11. <u>Authorization</u>. A Qualified Bid must include evidence of corporate authorization with respect to the submission, execution and delivery of a bid, participation in the Auctions and closing the proposed Sale Transaction. 12. <u>Other Requirements</u>. A Qualified Bid must also satisfy, among others (as set forth in Section VI.A.12 of the Bidding Procedures), the following requirements: • state that the Prospective Bidder agrees to serve as a backup bidder (a "<u>Backup Bidder</u>") if such bidder's Qualified Bid is selected at the applicable Auction as the next highest or next best bid after the Successful Bid (as defined below) for the applicable Assets (each such bid, a "<u>Backup Bid</u>"); • state that the bid represents a binding, good-faith and <u>bona fide</u> offer to purchase the applicable Assets and is irrevocable (a) until the selection of the Successful Bid; or, (b) if the bid is selected as a Successful Bid or as a Backup Bid, until the Backup Bid Expiration Date (as defined below); • state and acknowledge that the Prospective Bidder shall not be entitled to any bidding protection or payment in connection with the submission of a bid for the Assets or otherwise participating in the Sale Process; • state that the Prospective Bidder is committed to closing the Sales Transactions contemplated in its bid as soon as practicable; • expressly waive any claim or right to assert any substantial contribution administrative expense claim under section 503(b) of the Bankruptcy Code in connection with bidding for any of the Assets and/or otherwise participating in the applicable Auction or the Sale Process; • not contain any financing or due diligence contingencies of any kind; • state whether the Prospective Bidder intends to offer future employment to any of the Debtors' employees; • state or estimate the types of transition services, if any, the Prospective Bidder would require of and/or provide to the Debtors; • certify that the Prospective Bidder did not collude with any other bidders and is not otherwise a partnership, joint venture or other entity in which more than one bidder (or any affiliates of a bidder) has a direct or indirect interest, unless consented to in writing by the Debtors; and • include a covenant to comply with the terms of the Bidding Procedures and the Bidding Procedures Order. 13. <u>Discretionary Qualification</u>. Notwithstanding the foregoing requirements, the Debtors, at their own discretion and in accordance with their fiduciary duties and applicable law, may treat any bid received before the Bid Deadline as
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	a Qualified Bid.
Provisions Providing Bid Protections to Stalking Horse or Initial Bidder Local Rule 6004-1(c)(i)(C)	Section II of the Bidding Procedures sets forth the proposed Stalking Horse Procedures, which, if approved, would govern the Debtors' provision of bidding protections to designated Stalking Horse Bidders. Because the Stalking Horse Procedures are discussed in detail in this Motion, they are not restated in this summary. <u>See supra</u> ¶¶ 16-20. In addition, Section VII.B.3 of the Bidding Procedures provides that to the extent that a Baseline Bid (as defined below) is a Stalking Horse Bid, the bidding for the applicable Stalking Horse Assets shall commence at an amount equal to the sum of (i) the purchase price in the Stalking Horse Bid, (ii) the amount of any applicable Termination Payment and (iii) the amount of the applicable Minimum Overbid (as defined below).
Modification of Bidding Procedures Local Rule 6004-1(c)(i)(D)	Section IX of the Bidding Procedures sets forth the Debtors' reservation of rights to, in their reasonable business judgment, in a manner consistent with their fiduciary duties and applicable law and after consulting with the Consultation Parties, modify the Bidding Procedures, including to, among other things, extend or waive deadlines or other terms and conditions set forth therein; adopt new rules and procedures for conducting the bidding and Auction process; if applicable, provide reasonable accommodations to a Stalking Horse Bidder or otherwise modify the Bidding Procedures to further promote competitive bidding for and maximizing the value of the Assets.
Closing with Alternative Backup Bidders Local Rule 6004-1(c)(i)(E)	Section VII.C.2 of the Bidding Procedures sets forth the primary requirements with respect to Backup Bids. Immediately prior to the conclusion of the applicable Auction for an Auction Package (as defined below), the Debtors (in consultation with the Consultation Parties) will (a) determine, in a manner consistent with the Bidding Procedures, which Qualified Bid is the Backup Bid for the Auction Package; and (b) notify all Qualified Bidders at the applicable Auction for the Auction Package of the identity of the Backup Bidder for the Auction Package and the amount of the purchase price and other material terms of the Backup Bid. A Backup Bid will remain binding on the applicable Backup Bidder until the earlier of (a) the first business day after the closing of a Sale Transaction with the Successful Bidder for the applicable Auction Package and (b) 60 days after the applicable Sale Hearing (such date, the "<u>Backup Bid Expiration Date</u>"). If the Sale Transaction with the applicable Successful Bidder is terminated prior to the Backup Bid Expiration Date, the Backup Bidder shall be deemed the new Successful Bidder for the applicable Auction Package and shall be obligated to consummate the Backup Bid as if it were the Successful Bid at the applicable Auction; <u>provided, that</u>, the Debtors may, in their reasonable business judgment (after consulting with the Consultation Parties and providing notice to the Sale Notice Parties), elect not to pursue the Sale Transaction contemplated by the Backup Bid. The Debtors shall be authorized to consummate the bid of the Backup Bidder without further order of the Court or notice to parties in interest.
Provisions Governing the Auction Local Rule 6004-1(c)(ii)	Section VII of the Bidding Procedures sets forth the procedures governing the Auction(s). If the Debtors receive more than one Qualified Bid for an Asset, the Debtors will conduct an Auction for such Asset. With respect to Assets for which the Debtors receive only one Qualified Bid by the Bid Deadline, the Debtors may, in their reasonable business judgment, and in consultation with the Consultation Parties, determine to consummate a Sale Transaction with the applicable Qualified Bidder or include such Assets in the applicable Auction. In the event the Debtors determine not to hold an Auction for some or all of the Assets, the Debtors will file and serve a notice stating that the Auction for such Assets has been canceled and providing all other relevant information to the Sale Notice Parties as required by the Bidding Procedures.

	The "<u>Primary Auction</u>," if required, will be conducted on September 10, 2024, at the offices of Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801, or at such other date, time or location as designated by the Debtors, after consulting with the Consultation Parties and providing notice to the Sale Notice Parties. The Debtors, in consultation with the Consultation Parties, may hold one or more subsequent auctions (each such auction, a "<u>Subsequent Auction</u>" and together with the Primary Auction, the "<u>Auctions</u>") after the Primary Auction for the sale of Assets not sold during the Primary Auction. A. <u>Participation</u>. Each participant in the Auctions must (i) be a Qualified Bidder, (ii) appear at the applicable Auction personally or through a duly authorized representative and (iii) confirm on the record that (A) the participant has not engaged in any collusion with respect to any bid or the Sale Process and (B) any and all Qualified Bids submitted by the participant constitute good faith, binding and <u>bona fide</u> offers to purchase the applicable Assets. B. <u>Proceedings</u>. Each of the Auction proceedings will (i) be transcribed and/or video recorded and (ii) include open bidding in the presence of all Qualified Bidders, subject to reasonable limitations imposed by a virtual auction platform to be evaluated and determined by the Debtors. C. <u>Auction Packages</u>. Prior to the commencement of any Auction, the Debtors (in consultation with the Consultation Parties) will make a determination regarding the Assets and/or combinations of Assets for which the Debtors will conduct an Auction (each such Asset or group of Assets, an "<u>Auction Package</u>"). The Debtors may determine to include an individual Asset in more than one Auction Package. D. <u>Baseline Bids</u>. Prior to the commencement of the applicable Auction, the Debtors will determine, in their reasonable business judgment (and in consultation with the Consultation Parties), the highest and/or best Qualified Bid submitted for each Auction Package (each such Qualified Bid, a "<u>Baseline Bid</u>"). Bidding for each Auction Package at the applicable Auction shall commence at the amount of the applicable Baseline Bid. E. <u>Minimum Overbids</u>. At each round of bidding for an Auction Package, Qualified Bidders may submit successive bids higher than the Leading Bid (as defined below) from the prior round, which initially will be based on and increased from the applicable Baseline Bid. After consulting with the Consultation Parties, the Debtors will announce before the applicable Auction the minimum required increments for successive Qualified Bids (each, such bid, a "<u>Minimum Overbid</u>"); <u>provided, that</u>, to the extent that the Baseline Bid is a Stalking Horse Bid, the bidding for the applicable Stalking Horse Assets shall commence at an amount equal to the sum of (a) the purchase price in the Stalking Horse Bid, (b) the amount of any applicable Termination Payment; and (c) the amount of the applicable Minimum Overbid (each such bid, a "<u>Stalking Horse Overbid</u>"). The Debtors may, in their reasonable discretion (and in consultation with the Consultation Parties), announce increases or reductions to Minimum Overbids or Stalking Horse Overbids at any time during the Auctions. F. <u>Leading Bids</u>. After the first round of bidding and between each subsequent round of bidding, the Debtors will announce, in consultation with the Consultation Parties, the bid that they believe to be the highest or otherwise best offer for the applicable
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	Auction Package (each such bid, a "<u>Leading Bid</u>") and describe the material terms thereof. G. <u>Successful Bids</u>. Immediately prior to the conclusion of the applicable Auction for an Auction Package, the Debtors, in consultation with the Consultation Parties, will (i) determine which Qualified Bid constitutes the highest or otherwise best bid for the Auction Package (each such bid, a "<u>Successful Bid</u>") and (ii) notify all Qualified Bidders at the Auction of the identity of the bidder that submitted the Successful Bid for the Auction Package (each such bidder, a "<u>Successful Bidder</u>") and the material terms of the Successful Bid. H. <u>Incremental Deposit Amount</u>. Upon a Qualified Bidder's declaration of a bid at the applicable Auction, the Qualified Bidder must state on the record its commitment to pay following the applicable Auction, if such bid were to be selected as the Successful Bid or as the Backup Bid for the applicable Auction Package, the incremental amount of the Qualified Bidder's Good Faith Deposit calculated based on the increased purchase price of such bid (such Good Faith Deposit so increased, the "<u>Incremental Deposit Amount</u>"). As a condition to remaining the Successful Bidder, the Successful Bidder shall, within two business days after the conclusion of the Auction, wire to the Debtors in immediately available funds the Incremental Deposit Amount, calculated based on the purchase price in the Successful Bid.
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B. Sale Noticing and Objection Procedures

23. The below chart sets forth the noticing and objection procedures and requirements established by the Bidding Procedures (collectively, the "Sale Noticing and Objection Procedures"):

SALE NOTICING AND OBJECTION PROCEDURES	
Sale Notice	Three days after the entry of the Bidding Procedures Order, the Debtors will file with the Court, serve on the Sale Notice Parties and cause to be published on the Epiq Website a notice (the " <u>Sale Notice</u> ") setting forth (a) a description of the Assets available for sale in accordance with the Bidding Procedures; (b) the date, time and location of the Auctions and Sale Hearings; (c) the Sale Objection Deadline and Supplemental Sale Objection Deadlines (each as defined below) and the procedures for filing such objections; and, if applicable, (d) a summary of the material terms of any Stalking Horse Agreement, including the terms and conditions of any Termination Payment to be provided thereunder, as of the date of the Sale Notice.
Sale Objections	Objections to a sale of the Assets, including any objections to (i) a sale of Assets free and clear of all liens, claims, interests and encumbrances pursuant to section 363(f) of the Bankruptcy Code and (ii) the entry of any Sale Order (each such objection, a " <u>Sale Objection</u> ") shall be filed with the Court and served on the Objection Notice Parties by no later than August 30, 2024, at 4:00 p.m. (prevailing Eastern Time) (the " <u>Sale Objection Deadline</u> ").

Publication Notice	Within three business days after the entry of the Bidding Procedures Order, the Debtors will cause the information contained in the Sale Notice to be published once in the national edition of <i>USA Today</i> and once in the <i>Santa Rosa Press Democrat</i> (collectively, the " <u>Publication Notice</u> ").
Stalking Horse Notice	If applicable, within two business days after executing a Stalking Horse Agreement, the Debtors will file with the Court, serve on the Sale Notice Parties and cause to be published on the Epiq Website a Stalking Horse Notice containing a summary of the material terms of the applicable Stalking Horse Agreement, including the terms and conditions of any Termination Payment to be provided thereunder.
Bidding Protection Objection	Bidding Protection Objections must be (i) in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof, (ii) filed with the Court; and (iii) served on the applicable Objection Notice Parties by no later than three calendar days after service of the applicable Stalking Horse Notice.
Qualified Bid Selections	The Debtors will evaluate timely bids, in consultation with the Consultation Parties, and will (i) make a determination regarding which bids qualify as Qualified Bids and which Qualified Bids have been selected as Baseline Bids and (ii) notify bidders whether they qualify as Qualified Bidders as soon as commercially reasonable following the Bid Deadline.
Auction Notice	The Debtors will file with the Court, serve on the Sale Notice Parties and cause to be published on the Epiq Website a notice (the "<u>Primary Auction Notice</u>") setting forth (i) the date, time and location of the Primary Auction; (ii) the Assets the Debtors intend to sell at the Primary Auction (each such Asset, a "<u>Primary Asset</u>"); and (iii) the date and time of the Primary Sale Hearing on September 5, 2024, at 4:00 p.m. (prevailing Eastern Time) (the "<u>Primary Auction Notice Deadline</u>"). The Debtors will file with the Court, serve on the Sale Notice Parties and cause to be published on the Epiq Website a notice (each such notice, a "<u>Subsequent Auction Notice</u>" and together with the Primary Auction Notice, the "<u>Auction Notices</u>") setting forth (i) the date, time and location of any Subsequent Auction; (ii) the Assets that the Debtors intend to sell at a Subsequent Auction (each such Asset, a "<u>Subsequent Asset</u>" and together with the Primary Assets, the "<u>Assets</u>"); and (iii) the date and time of the applicable Subsequent Sale Hearing by 4:00 p.m. (prevailing Eastern Time), on the date five days prior to such Subsequent Auction (each such deadline, a "<u>Subsequent Auction Notice Deadline</u>" and together with the Primary Auction Notice Deadline, the "<u>Auction Notice Deadlines</u>").

Auction Results	On September 10, 2024, the Debtors will file with the Court, serve on the Sale Notice Parties and cause to be published on the Epiq Website, a notice of the results of the Primary Auction (the "<u>Notice of Primary Auction Results</u>"), which will (i) identify each Successful Bidder and each Backup Bidder; (ii) include a copy of each Successful Bid and each Backup Bid or a summary of the material terms of such bids, including any proposed assumption and assignment of Contracts contemplated thereby and (iii) set forth the Primary Supplemental Sale Objection Deadline (as defined below) and the date, time and location of the Primary Sale Hearing and any other relevant dates or other information necessary to reasonably apprise the Sale Notice Parties of the outcome of the Primary Auction. On the date of any Subsequent Auction, the Debtors will file with the Court, serve on the Sale Notice Parties and cause to be published on the Epiq Website, a notice of the results of the applicable Subsequent Auction (each such notice, a "<u>Notice of Subsequent Auction Results</u>"), which will (i) identify each Successful Bidder and each Backup Bidder; (ii) include a copy of each Successful Bid and each Backup Bid or a summary of the material terms of such bids, including any proposed assumption and assignment of Contracts contemplated thereby and (iii) set forth the applicable Subsequent Supplemental Sale Objection Deadline (as defined below) and the date, time and location of the applicable Subsequent Sale Hearing and any other relevant dates or other information necessary to reasonably apprise the Sale Notice Parties of the outcome of the applicable Subsequent Auction.
Supplemental Sale Objections	Following service of the Notice of Primary Auction Results, Sale Notice Parties may object to the conduct of the Primary Auction and/or the particular terms of any proposed Sale Transaction in a Successful Bid (each such objection, a "<u>Primary Supplemental Sale Objection</u>") by September 13, 2024, at 4:00 p.m. (prevailing Eastern Time) (the "<u>Primary Supplemental Sale Objection Deadline</u>"). Following service of any Notice of Subsequent Auction Results, the Sale Notice Parties may object to the conduct of the applicable Subsequent Auction and/or the particular terms of any proposed Sale Transaction in a Successful Bid (each such objection, a "<u>Subsequent Supplemental Sale Objection</u>") by 4:00 p.m. (prevailing Eastern Time), on the date no later than three days after the service of any Notice of Subsequent Auction Results (each such deadline, a "<u>Subsequent Supplemental Sale Objection Deadline</u>" and together with the Primary Supplemental Sale Objection Deadline, the "<u>Supplemental Sale Objection Deadlines</u>").

24. The Debtors submit that the Sale Noticing and Objection Procedures, coupled with the Assumption and Assignment Procedures set forth below, constitute adequate and reasonable notice of the key dates and deadlines and other important information regarding the Sale Process, including the Objection Deadlines (as defined below), the Bid Deadline and the time and location of the Auctions and Sale Hearings. Accordingly, the Debtors request that the Court approve the form of Sale Notice, substantially in the form attached to the Bidding Procedures Order as Exhibit 2, approve the form of Auction Notice, substantially in the form

attached to the Bidding Procedures Order as Exhibit 3, and find that the Sale Noticing and Objection Procedures comply with the requirements of Bankruptcy Rule 2002 and Local Rule 2002-1.

C. Assumption and Assignment Procedures

25. In connection with any Sale Transaction, the Debtors may seek to assume and assign to a Successful Bidder one or more Contracts. The Assumption and Assignment Procedures are designed to, among other things, govern the Debtors' provision of Adequate Assurance Information and notice of Cure Costs to applicable Counterparties. The below chart sets forth the Assumption and Assignment Procedures:

ASSUMPTION AND ASSIGNMENT PROCEDURES	
Assumption and Assignment Notice	Three business days after the entry of the Bidding Procedures Order, the Debtors will file with the Court and serve on each Counterparty to a Contract that may be assumed in connection with any Sale Transaction an Assumption and Assignment Notice, which will (i) identify the applicable Contracts; (ii) list the Debtors' good-faith calculation of Cure Costs with respect to each Contract; (iii) expressly state that assumption or assignment of a Contract is not guaranteed and is subject to Court approval and (iv) prominently display the deadlines to file Cure Objections and Adequate Assurance Objections (each as defined below).
Cure Objections	<u>Cure Objection Deadline.</u> Any Counterparty to a Contract that wishes to object to the Debtors' proposed Cure Costs (each such objection, a "<u>Cure Objection</u>") shall file with the Court and serve on the Objection Notice Parties its Cure Objection, which must state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof, by no later than August 30, 2024, at 4:00 p.m. (prevailing Eastern Time) (the "<u>Cure Objection Deadline</u>"). <u>Resolution of Cure Objections.</u> The Debtors (in consultation with the Consultation Parties) and the objecting Counterparty shall first confer in good faith to attempt to resolve the Cure Objection without Court intervention. If the parties are unable to consensually resolve the Cure Objection prior to the commencement of the applicable Sale Hearing, the Court shall make all necessary determinations relating to the applicable Cure Costs and Cure Objection at a hearing scheduled pursuant to the following paragraph. If a Cure Objection is resolved in a manner that is not in the best interests of the Debtors and their estates, whether or not such resolution occurs prior to or after the closing of the applicable Sale Transaction, the Debtors may determine that any Contract subject to such resolved Cure Objection will no longer be assumed and assigned pursuant to the applicable Sale Transaction (subject to the terms of the applicable Sale Transaction). All other objections to the proposed assumption and assignment of the Debtors' right, title and interest in, to and under a Contract will be heard at the applicable Sale Hearing. <u>Adjournment.</u> If a timely filed Cure Objection cannot otherwise be resolved by the parties, the Cure Objection may be heard at the applicable Sale Hearing, or, at the Debtors' option, be adjourned to a subsequent hearing (each such Cure Objection, an "<u>Adjourned Cure Objection</u>"). An Adjourned Cure Objection may be resolved after the closing date of

	the applicable Sale Transaction. Upon resolution of an Adjourned Cure Objection and the payment of the applicable cure amount, if any, the applicable Contract that was the subject of such Adjourned Cure Objection shall, as applicable, be deemed assumed and assigned to the applicable Successful Bidder as of the closing date of the applicable Sale Transaction. <u>Failure to Timely Object.</u> If a Counterparty fails to file with the Court and serve on the Objection Notice Parties a timely Cure Objection, the Counterparty forever shall be barred from asserting any objection with regard to the cost to cure any defaults under the applicable Contract. The Cure Costs set forth in the applicable Assumption and Assignment Notice shall be controlling and will be the only amount necessary to cure outstanding defaults under the Contract and satisfy the requirements of section 365(b) of the Bankruptcy Code, and the Counterparty to the Contract shall be bound by and deemed to have consented to the Cure Costs.
Adequate Assurance Objections	<u>Adequate Assurance Objection Deadline.</u> Any Counterparty to a Contract proposed to be assumed by and assigned to a Successful Bidder at the Primary Auction that wishes to object to the proposed assumption and assignment of the Contract, the subject of which objection is such Successful Bidder's proposed form of adequate assurance of future performance (each such objection, a "<u>Primary Adequate Assurance Objection</u>"), must file with the Court and serve on the Objection Notice Parties a Primary Adequate Assurance Objection, which must state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof, by September 13, 2024, at 4:00 p.m. (prevailing Eastern Time), (the "<u>Primary Adequate Assurance Objection Deadline</u>"). Any Counterparty to a Contract proposed to be assumed by and assigned to a Successful Bidder at any Subsequent Auction that wishes to object to the proposed assumption and assignment of the Contract, the subject of which objection is such Successful Bidder's proposed form of adequate assurance of future performance (each such objection, a "<u>Subsequent Adequate Assurance Objection</u>" and together with any Primary Adequate Assurance Objection, the "<u>Adequate Assurance Objections</u>"), must file with the Court and serve on the Objection Notice Parties a Subsequent Adequate Assurance Objection, which must state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof, by 4:00 p.m. (prevailing Eastern Time) on the date no later than three days after the service of the applicable Notice of Subsequent Auction Results (the "<u>Subsequent Adequate Assurance Objection Deadline</u>" and together with the Primary Adequate Assurance Objection Deadline, the "<u>Adequate Assurance Objection Deadlines</u>"). <u>Resolution of Adequate Assurance Objections.</u> Pursuant to the Bidding Procedures Order, the Debtors and the objecting Counterparty must first confer in good faith to attempt to resolve any Adequate Assurance Objection without Court intervention. If the parties are unable to consensually resolve the Adequate Assurance Objection prior to the commencement of the applicable Sale Hearing, the Adequate Assurance Objection and all issues of adequate assurance of future performance of the applicable Successful Bidder (or any other relevant assignee) shall be determined by the Court at the applicable Sale Hearing. <u>Failure to Timely Object.</u> If a Counterparty fails to file with the Court and serve on the Objection Notice Parties a timely Adequate Assurance Objection, the Counterparty shall be forever barred from asserting any objection to the assumption and/or assignment of the applicable Contract with regard to adequate assurance of future performance. The applicable Successful Bidder (or any other relevant assignee) shall be deemed to have provided adequate assurance of future performance with respect to the Contract in accordance with Bankruptcy Code section 365(f)(2)(B) and, if applicable, Bankruptcy Code section 365(b)(3), notwithstanding anything to the contrary in the Contract or any other document.

Notice of Assumed Contracts	As soon as reasonably practicable after the closing of a Sale Transaction, the Debtors will file with the Court, serve on the applicable Counterparties and cause to be published on the Epiq Website, a notice containing the list of Contracts that the Debtors assumed and assigned pursuant to any asset purchase agreement with a Successful Bidder.
Reservation of Rights	The inclusion of a Contract or Cure Costs with respect to any Contract on any Assumption and Assignment Notice or any Notice of Auction Results, shall not constitute or be deemed a determination or admission by the Debtors, any Successful Bidder or any other party that such Contract is an executory contract or an unexpired lease within the meaning of the Bankruptcy Code, and shall not be a guarantee that such Contract ultimately will be assumed or assigned. The Debtors reserve all of their rights, claims and causes of action with respect to each Contract listed on the aforementioned notices.

Basis for Relief

A. The Bidding Procedures Are Fair, Appropriate and in the Best Interests of the Debtors and Their Stakeholders

26. The Bidding Procedures are specifically designed to promote what courts have deemed to be the paramount goal of any proposed sale of a debtor's property: maximizing the value of sale proceeds received by the estate. See Burtch v. Ganz (In re Mushroom Transp. Co.), 382 F.3d 325, 339 (3d Cir. 2004) (finding that debtor "had a fiduciary duty to protect and maximize the estate's assets"); Off. Comm. of Unsecured Creditors of Cybergenics Corp. v. Chinery, 330 F.3d 548, 573 (3d Cir. 2003) (debtor has "fiduciary duty to maximize the value of the bankruptcy estate"); Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.), 107 F.3d 558, 564-65 (8th Cir. 1997) ("a primary objective of the Code [in asset sales is] to enhance the value of the estate at hand.") (citing Metro. Airports Comm'n v. Nw. Airlines, Inc. (In re Midway Airlines, Inc.), 6 F.3d 492, 494 (7th Cir. 1993) ("Section 365 . . . advances one of the Code's central purposes, the maximization of the value of the bankruptcy estate for the benefit of creditors.")) (alteration in source)).

27. Courts uniformly recognize that procedures established for the purpose of enhancing competitive bidding are consistent with the fundamental goal of maximizing the value of a debtor's estate. See Calpine Corp. v. O'Brien Envtl. Energy, Inc. (In re O'Brien Envtl.

Energy, Inc.), 181 F.3d 527, 537 (3d Cir. 1999) (noting that bidding procedures that promote competitive bidding provide a benefit to a debtor's estate); see also In re Fin. News Network, Inc., 126 B.R. 152, 156 (S.D.N.Y. 1991) ("[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."); Off. Comm. Of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 659 (S.D.N.Y. 1992) (bidding procedures "are important tools to encourage bidding and to maximize the value of the debtor's assets").

28. The Bidding Procedures provide for an orderly, uniform and appropriately competitive process through which interested parties may submit offers to purchase the Assets. Given the extensive prepetition marketing efforts, the Debtors and the Debtors' investment banker, GLC, believe that the parties that would be bidders for the Debtors' Assets during these Chapter 11 Cases are the same parties that have previously engaged in extensive due diligence. Therefore, the Debtors believe the Milestones that set the timeline for the Debtors' Sale Process are reasonable and will in no way hinder the Debtors' ability to sufficiently market the Assets. The Debtors, with the assistance of their advisors, have structured the Bidding Procedures to attract competitive and active bidding from parties with the financial capability to close on a Sale Transaction quickly and efficiently.

29. Courts in this District routinely approve procedures substantially similar to the proposed Bidding Procedures. See, e.g., In re New Rue21 Holdco, Inc., No. 24-10939 (BLS) [Docket No. 194] (Bankr. D. Del. May 23, 2024) (approving bidding procedures, with designated stalking horse bid protections, including bid deadline five days after entry of bidding procedures order and sale hearing 28 days after the petition date); In re Casa Sys., Inc., No. 24-

10695 (KBO) [Docket No. 261] (Bankr. D. Del. May 2, 2024) (approving bidding procedures, with designated stalking horse bid protections, including bid deadline 22 days after entry of bidding procedures order and sale hearing 62 days after the petition date); In re SC Healthcare Holding, LLC, No. 24-10443 (TMH) [Docket No. 341] (Bankr. D. Del. May 21, 2024) (approving bidding procedures, with designated stalking horse bid protections, including bid deadline 33 days after entry of bidding procedures order and sale hearing 112 days after the petition date); In re Sientra, Inc., No. 24-10245 (JTD) [Docket No. 123] (Bankr. D. Del. Mar. 25, 2024) (approving bidding procedures, with designated stalking horse bid protections, including bid deadline 20 days after entry of bidding procedures order and sale hearing 42 days after the petition date); In re Nanostring Techs., Inc., No. 24-10160 (CTG) [Docket No. 384] (Bankr. D. Del. Mar. 28, 2024) (approving bidding procedures, with designated stalking horse bid protections, including bid deadline 15 days after entry of bidding procedures order and sale hearing 75 days after the petition date); In re ViewRay, Inc., No. 23-10935 (KBO) [Docket No. 208] (Bankr. D. Del. Aug. 23, 2023) (approving bidding procedures, with designated stalking horse protections, including bid deadline 27 days after entry of bidding procedures order and sale hearing 74 days after the petition date); In re EYP Grp. Holdings, Inc., No. 22-10367 (MFW) [Docket No. 81] (Bankr. D. Del. May 11, 2022) (approving bidding procedures, including bid deadline 23 days after entry of bidding procedures order and sale hearing 59 days after the petition date); In re MobiTV, Inc., No. 21-10457 (LSS) [Docket No. 164] (Bankr. D. Del. Apr. 7, 2021) (approving bidding procedures, with designated stalking horse protections, including bid deadline 30 days after entry of bidding procedures order and sale hearing 81 days after the petition date); In re Shiloh Indus., Inc., No. 20-12024 (LSS) [Docket No. 206] (Bankr. D. Del. Sept. 25, 2020) (approving bidding procedures, with designated stalking horse bid protections,

including bid deadline 31 days after entry of bidding procedures order and sale hearing 72 days after the petition date); In re Lucky Brand Dungarees, LLC, No. 20-11768 (CSS) [Docket No. 251] (Bankr. D. Del July 30, 2020) (approving bidding procedures, with designated stalking horse bid protections, including bid deadline 8 days after entry of bidding procedures order and sale hearing 40 days after the petition date); In re FTD Cos., Inc., No. 19-11240 (LSS) [Docket No. 201] (Bankr. D. Del. June 25, 2019) (approving bidding procedures, with procedures to designate stalking horse bidders, including bid deadline 20 days after entry of bidding procedures order and sale hearing 59 days after the petition date).⁹

30. Accordingly, the Bidding Procedures should be approved, not just because they are aligned with the circumstances of the Debtors' Chapter 11 Cases, but also because they are consistent with procedures approved by courts in this District in cases of similarly-situated debtors.

B. The Designation of Stalking Horse Bidders, Including the Provision of Termination Payments, Is Necessary, Reasonable and Appropriate

31. Providing a stalking horse bidder with certain bidding protections in connection with a sale of significant assets under section 363 of the Bankruptcy Code has become standard practice in Chapter 11 Cases. In the Third Circuit, "break-up" fees and expense reimbursements are considered administrative expenses and must be necessary to preserve the value of a debtor's estate. See In re O'Brien Envtl. Energy, Inc., 181 F.3d at 533. In O'Brien, the Third Circuit provided two examples of a potential benefit accruing from the payment of a break-up fee. See id. First, a benefit to the estate may arise if, "assurance of a break-up fee promoted [a] more competitive bidding [process], such as by inducing a bid that otherwise would

⁹ The unreported orders cited herein are voluminous and not attached to this Motion. Copies of these orders will be made available upon request to the proposed counsel for the Debtors.

not have been made and without which bidding would have been limited." Id. at 537. Second, bidding protections encourage potential bidders to evaluate thoroughly a debtor's value, thereby "increasing the likelihood that the price at which the debtor is sold will reflect its true worth." Id. Termination and similar fees are effective mechanisms for protecting bidders in connection with an asset sale and can be "important tools to encourage bidding and to maximize the value of the debtor's assets." In re Integrated Res., Inc., 147 B.R. at 659, appeal dismissed, 3 F.3d 49 (2d Cir. 1993). Put differently, these bidding protections enable a debtor to ensure a sale to a contractually committed bidder at a price the debtor believes is fair and reasonable, while providing the debtor with the opportunity to generate even greater value through an auction process. See In re 995 Fifth Ave. Assocs., L.P., 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (bidding incentives may be "legitimately necessary to convince a white knight to enter the bidding by providing some form of compensation for the risks it is undertaking") (citation and internal quotation marks omitted).

32. The designation of, and provision of bidding protections to, Stalking Horse Bidders would be reasonable and appropriate here because the Debtors only would enter into a Stalking Horse Agreement to the extent the Debtors determined, in their reasonable business judgment, that the Stalking Horse Agreement would maximize the ultimate sale price for the applicable Assets and would not have a chilling effect on competitive bidding. Indeed, the Debtors would only enter into a Stalking Horse Agreement and offer a Termination Payment to a Stalking Horse Bidder if they determined that doing so would enhance competitive bidding. Any Termination Payment would be paid out of the proceeds of an alternative transaction that generated higher or better value for the applicable Assets. Further, the Debtors will carefully negotiate the terms of any Termination Payment to ensure that the amount of such payment is

commensurate with the value conferred on the estates by the relevant Stalking Horse Bid. That approval of any Stalking Horse Agreement would be subject to the Sale Notice Parties' right to object and be heard further ensures that the corresponding Termination Payment would satisfy the standard articulated by the Third Circuit in O'Brien. Authority to enter into Stalking Horse Agreements and offer bidding protections to Stalking Horse Bidders affords the Debtors the necessary flexibility to direct the Sale Process in a manner that maximizes their ability to generate the highest or best value for the Assets. Accordingly, there is ample justification for authorizing the Debtors to enter into one or more Stalking Horse Agreements and to offer bidding protections in accordance with the Stalking Horse Procedures.

C. Approval of a Sale of the Assets Is Warranted Under Section 363 of the Bankruptcy Code

33. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that the debtor may, "after notice and a hearing . . . use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). While the Bankruptcy Code does not specify the appropriate standard for approving the sale of property under section 363, courts routinely authorize a sale if it is based upon the debtor's sound business judgment. See Culp v. Stanziale (In re Culp), 550 B.R. 683, 697 (D. Del. 2015) ("In determining whether to authorize use, sale or lease of property of the estate under Section 363, courts require the [Debtor] to show that a sound business purpose justifies such actions.' . . . If the [Debtor's] decision evidences a sound business purpose, then the Bankruptcy Court should approve the sale.") (quoting Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.), 242 B.R. 147, 153 (D. Del. 1999)); see also Myers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996) (citing Fulton State Bank v. Schipper (In re Schipper), 933 F.2d 513, 515 (7th Cir. 1991)); Off. Comm. of Unsecured Creditors of LTV

Aerospace and Def. Co. v. LTV Corp. (In re Chateaugay Corp.), 973 F.2d 141, 143 (2d Cir. 1992); Stephen Indus., Inc. v. McClung, 789 F.2d 386, 390 (6th Cir. 1986); Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983).

34. Courts typically consider the following factors in determining whether a sale under section 363 of the Bankruptcy Code passes muster under the business judgment standard: (a) whether a sound business justification exists for the sale; (b) whether adequate and reasonable notice of the sale was provided 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. See In re Decora Indus., Inc., No. 00-4459, 2002 WL 32332749, at *2 (D. Del. May 20, 2002) (adopting Lionel factors) (citing Guilford Transp. Indus., Inc. v. Delaware & Hudson Ry. Co. (In re Delaware & Hudson Ry. Co.), 124 B.R. 169, 176 (D. Del. 1991) (listing non-exclusive factors that may be considered by a court in determining whether there is a sound business purpose for an asset sale)). As such, it follows that when a debtor demonstrates a valid business justification for a decision, the presumption is that the business decision was made "on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company." See In re Integrated Res., Inc., 147 B.R. at 656 (quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985)).

1. The Debtors Have Demonstrated a Sound Business Justification for the Sale of the Assets

35. The first question the Courts consider when evaluating whether a sale passes muster under the business judgment standard is whether sound business justification exists for the sale. See, e.g., In re Lionel Corp., 722 F.2d at 1071 (adopting a rule "require[ing] that a judge determining a § 363(b) application expressly find from the evidence presented before him . . . a good business reason to grant" the sale); In re Delaware & Hudson Ry. Co.,

124 B.R. at 179 (approving the sale of the debtor as a going concern upon a showing of "a valid business purpose").

36. As set forth above and in the Raithel Declaration and the Kaufman Bidding Procedures Declaration, a strong business justification exists for a sale of the Debtors' Assets as described herein. An orderly but expeditious sale of the Assets is critical to preserving their going-concern value and maximizing recoveries for the Debtors' economic stakeholders. Moreover, a timely closing of a sale of the Assets is required under the DIP Financing, without which, the Debtors would not be able to fund the Sale Process or continue their operations during the pendency of these Chapter 11 Cases.

2. The Sale Noticing and Objection Procedures Are Appropriate and Comply with Bankruptcy Rules 2002 and 6004

37. Second, the Court will consider whether adequate and reasonable notice of the sale was provided to interested parties. Bankruptcy Rules 2002 and 6004 require the Debtors to notify creditors of the proposed sale, provide a description of the Assets and disclose the time and place of the Auctions, the terms and conditions of any proposed Sale Transaction and the Objection Deadlines. See Fed. R. Bankr. P. 2002(a), 2002(c) and 6004(a). The Sale Noticing and Objection Procedures set forth above are reasonably calculated to provide all of the Debtors' known creditors and other parties in interest with adequate and timely notice of all of the key dates, deadlines and other material information related to the Sale Process. Further, publishing the Publication Notice in *USA Today* and the *Santa Rosa Press Democrat* is designed to capture any creditors and parties in interest not currently known to the Debtors. Accordingly, the Debtors request that the Court approve the Sale Noticing and Objection Procedures as set forth herein, including the Sale Notice, substantially in the form attached to the Bidding Procedures Order as Exhibit 2, and the Auction Notice, substantially in the form attached to

the Bidding Procedures Order as Exhibit 3, and find that no other or further notice of the Bidding Procedures, the Auctions or the Sale Hearings is necessary or required, except for the notices expressly contemplated by the Bidding Procedures.

3. The Bidding Procedures are Designed to Yield a Fair and Reasonable Purchase Price for the Assets

38. The third factor Courts consider in evaluating whether the business judgment standard is satisfied is whether the sale will produce a fair and reasonable price for the assets. As set forth above, the Debtors believe that any Sale Transaction governed by the Bidding Procedures will yield a fair and reasonable price for the Assets. The Bidding Procedures were carefully designed to facilitate a robust and competitive bidding process. The Debtors are poised to capitalize on the progress made during the prepetition phase of their Sale Process to maximize the value of the Assets quickly and efficiently.

39. The Debtors also constructed the Bidding Procedures to promote transparency, good faith and fairness throughout the entire Sale Process. The Bidding Procedures provide an appropriate framework for the Debtors to review, analyze and compare bids for the Assets and to engage with bidders on an arm's-length basis to work to improve the quality of their bids for the benefit of all parties in interest. Further, the Bidding Procedures require the Debtors to engage with and consider the interests of the Consultation Parties and their respective constituencies at nearly every juncture. This required level of engagement among the parties will further safeguard the integrity of the Sale Process.

40. A Sale Transaction governed by the Bidding Procedures undoubtedly will serve the important objectives of obtaining not only a fair and reasonable purchase price for the Assets, but also the highest or best value for the Assets. This is a critical feature of

the Bidding Procedures, which will inure to the benefit of all parties in interest in these Chapter 11 Cases.

4. The Bidding Procedures Ensure that the Sale Process Is Conducted in Good Faith

41. Finally, the Court will consider whether the parties have acted in good faith. While the Bankruptcy Code does not define "good faith," the Third Circuit has held that indicia of bad faith typically include "fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders." Cumberland Farms Dairy, Inc. v. Abbotts Dairies of Penn., Inc. (In re Abbotts Dairies of Penn., Inc.), 788 F.2d 143, 147 (3d Cir. 1986) (quoting In re Rock Indus. Mach. Corp., 572 F.2d 1195, 1198 (7th Cir. 1978)) (other citation omitted); see also Kabro Assoc. of West Islip, LLC v. Colony Hill Assocs. (In re Colony Hill Assocs.), 111 F.3d 269, 276 (2d Cir. 1997).

42. As set forth above, the Bidding Procedures were designed with the goal of producing a fair and transparent Sale Process that will yield the highest or best value for the Assets. Any asset purchase agreement executed by the Debtors will be negotiated at arm's length and in good faith at each stage of the negotiations.

5. A Sale of the Assets Free and Clear of Liens, Claims, Interests and Encumbrances Is Appropriate under Section 363(f) of the Bankruptcy Code

43. In the interest of attracting the best offers, the Court should authorize the Debtors to sell the Assets free and clear of any liens, claims, interests and other encumbrances, in accordance with section 363(f) of the Bankruptcy Code. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of all liens, claims, interests and encumbrances of an entity other than the estate if any one of the following conditions is met:

- (a) applicable non-bankruptcy law permits sale of such property free and clear of such interest;

- (b) such entity consents;
- (c) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (d) such interest is in bona fide dispute; or
- (e) such entity could be compelled, in legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f)(1)–(5); see also In re Kellstrom Indus., Inc., 282 B.R. 787, 793

(Bankr. D. Del. 2002) ("Section 363(f) is written in the disjunctive, not the conjunctive, and if any of the five conditions are met, the debtor has the authority to conduct the sale free and clear of all liens."); Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot), 94 B.R. 343, 345 (E.D. Pa. 1988) (same); Mich. Emp. Sec. Comm'n v. Wolverine Radio Co. (In re Wolverine Radio Co.), 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (same); Grochocinski v. Zeigler (In re Zeigler), 320 B.R. 362, 381 (Bankr. N.D. Ill. 2005) (same); In re Bygaph, Inc., 56 B.R. 596, 606 n.8 (Bankr. S.D.N.Y. 1986) (same).

44. The Debtors anticipate that any Sale Transaction they elect to pursue will satisfy one or more of the requirements under section 363(f) of the Bankruptcy Code to permit a "free and clear" sale of the applicable Assets. The Debtors expect that the proposed DIP Lenders, who are secured by liens on substantially all of the Assets, will consent to such a sale. Accordingly, the Debtors request that the Court authorize the sale of the Assets free and clear of any liens, claims, interests and encumbrances, to the fullest extent permitted by section 363(f) of the Bankruptcy Code.

D. The Debtors' Assumption and Assignment of Executory Contracts and Unexpired Leases, and the Assumption and Assignment Procedures, Are Appropriate under Section 365 of the Bankruptcy Code

45. Section 365(a) of the Bankruptcy Code provides that a debtor "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). Courts employ the business judgment standard in determining whether to approve a debtor's decision to assume or reject an executory contract or an unexpired lease. See, e.g., In re Market Square Inn, Inc., 978 F.2d 116, 121 (3d Cir. 1992) (finding that assumption or rejection of a lease "will be a matter of business judgment"); In re HQ Glob. Holdings, Inc., 290 B.R. 507, 511 (Bankr. D. Del. 2003) (finding debtor's decision to assume or reject executory contract is governed by business judgment standard and can only be overturned "if the decision was the product of bad faith, whim or caprice"). In this context, the business judgment test only requires that a debtor demonstrate that assumption or rejection of an executory contract or unexpired lease benefits the estate. See Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp., 872 F.2d 36, 39-40 (3d Cir. 1989); Wheeling-Pittsburgh Steel Corp. v. West Penn Power Co., (In re Wheeling-Pittsburgh Steel Corp.), 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987).

46. Any proposed Sale Transaction will provide a Successful Bidder with the opportunity to designate certain Contracts for assumption and assignment. Assumption of any Contract is an exercise of the Debtors' sound business judgment because the transfer of Contracts in connection with a Sale Transaction is an essential element in the Debtors' ability to maximize the value of the Assets — and, particularly so when a Contract is integral to the ownership or operation of the Assets to be acquired. Further, the ability to assume and assign Contracts will increase the likelihood that the Debtors will be able to sell the Assets as a going

concern, thereby avoiding needless value-destruction through a liquidation of otherwise marketable operating assets and facilitating the preservation of as many jobs as possible.

47. The consummation of any Sale Transaction involving the assignment of a Contract will be contingent upon the Debtors' compliance with the applicable requirements of section 365 of the Bankruptcy Code. Section 365(b)(1) requires that any outstanding defaults under the Contracts to be assumed be cured or that the Debtors provide adequate assurance that such defaults will be promptly cured. See 11 U.S.C. § 365(b)(1). The Debtors' assumption and assignment of any Contracts will be dependent upon payment of Cure Costs and effective only upon the closing of an applicable Sale Transaction. As set forth above, subject to the Court's approval, the Debtors will file with the Court and serve on each Counterparty an Assumption and Assignment Notice setting forth the Debtors' good-faith calculation of the Cure Costs for each Contract that could be assumed in connection with a Sale Transaction. Counterparties will have an opportunity to raise any Cure Objections in advance of the applicable Sale Hearing.

48. Section 365(f) of the Bankruptcy Code requires, in part, that the assignee of any executory contract provide "adequate assurance of future performance . . . whether or not there has been a default in such contract." 11 U.S.C. § 365(f)(2). While the Bankruptcy Code does not define "adequate assurance," courts have held that "adequate assurance of future performance" are not words of art, and should be given a practical, pragmatic construction and "must be determined by consideration of the facts of the proposed assumption." See In re Fleming Cos., 499 F.3d 300, 307 (3d Cir. 2007) (citation and internal quotation marks omitted); see also In re Alipat, Inc., 36 B.R. 274, 276-77 (Bankr. E.D. Mo. 1984) (recognizing that the term adequate assurance "borrowed its critical language . . . from Section 2-609 of the Uniform Commercial Code" which "suggest[s] that adequate assurance is to be defined by commercial

rather than legal standards . . . [and] factual considerations") (citations omitted). While no single standard governs every case, adequate assurance "will fall considerably short of an absolute guarantee of performance." Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.), 103 B.R. 524, 538 (Bankr. D.N.J. 1988) (citations omitted); see also In re Natco Indus., Inc., 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean absolute assurance that debtor will thrive and pay rent).

49. Adequate assurance may be provided by demonstrating, among other things, the assignee's financial health and experience in managing the type of enterprise or property assigned. See, e.g., In re Bygaph, Inc., 56 B.R. at 605-06 (finding that industrial expertise, past success in running a similar business and financial wherewithal satisfied the adequate assurance requirement of section 365 of the Bankruptcy Code).

50. The Bidding Procedures expressly specify that for a bid to qualify as a "Qualified Bid," a Prospective Bidder must include with its bid Adequate Assurance Information regarding the Prospective Bidder's (or any other relevant assignee's) ability to perform the applicable obligations under any Contracts that may be included in the bid. The Debtors will furnish all available Adequate Assurance Information to the relevant Counterparties as soon as reasonably possible following their receipt of such information. Any Counterparty that is dissatisfied with the content or quality of any relevant Adequate Assurance Information will have an opportunity to request additional information from the Debtors and, if necessary, lodge an Adequate Assurance Objection in advance of the Sale Hearings.

51. The Assumption and Assignment Procedures also require the Debtors to provide notice to Counterparties to any Contracts that are, after service of the applicable Notice

of Auction Results, designated by a Successful Bidder for assumption and assignment or as an excluded asset pursuant to the terms of the asset purchase agreement governing the applicable Successful Bid. Accordingly, because the Assumption and Assignment Procedures are carefully designed to ensure that Counterparties receive timely and sufficient notice with respect to the disposition of their Contracts at each phase of the Sale Process, the Debtors respectfully request that the Court approve the Assumption and Assignment Procedures. In light of the foregoing, the Debtors' assumption and assignment of any Contracts in accordance with the Assumption and Assignment Procedures would satisfy the requirements of section 365 of the Bankruptcy Code and should be approved.

52. Finally, in order to facilitate the assumption and assignment of Contracts in furtherance of maximizing the value of the Assets, the Debtors further request that the Court find that any anti-assignment provision included in any Contract, whether such provision expressly prohibits, or has the effect of restricting or limiting assignment of a Contract, is unenforceable and prohibited pursuant to section 365(f) of the Bankruptcy Code.¹⁰

E. Requests for Immediate Relief & Waiver of Stay

53. Pursuant to Bankruptcy Rules 6004(h) and 6006(d), the Debtors seek a waiver of any stay of the effectiveness of the Bidding Procedures Order, any Sale Order and any other order authorizing the assumption or assumption and assignment of a Contract in connection with a Sale Transaction. Bankruptcy Rule 6004(h) provides that "[a]n order

¹⁰ Section 365(f)(1) provides in pertinent part that, "notwithstanding 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." 11 U.S.C. § 365(f)(1). Further, section 365(f)(3) provides that "[n]otwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law that terminates or modifies, or permits a party other than the debtor to terminate or modify, such contract or lease or a right or obligation under such contract or lease on account of an assignment of such contract or lease, such contract, lease, right, or obligation may not be terminated or modified under such provision because of the assumption or assignment of such contract or lease by the trustee." 11 U.S.C. § 365(f)(3).

authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). Bankruptcy Rule 6006(d) provides that "[a]n order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of 14 days after entry of the order unless the court orders otherwise." Fed. R. Bankr. P. 6006(d).

54. As set forth above and in the Raithel Declaration and the Kaufman Bidding Procedures Declaration, the relief requested herein is necessary and appropriate to maximize the value of the Debtors' Assets for the benefit of the Debtors' economic stakeholders. Given the Debtors' precarious financial condition, their obligation to comply with the Milestones under the DIP Financing and the fact that the Assets were subjected to significant marketing for the past several months, the relief requested herein should be granted and effective as soon as practicable. Any delay in the Sale Process could jeopardize the Debtors' chapter 11 strategy. Accordingly, the Debtors submit that ample cause exists to justify waiving the fourteen-day stay imposed by Bankruptcy Rules 6004(h) and 6006(d), in each case, to the extent that such stay applies to the relief requested herein.

Consent to Jurisdiction

55. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that the Court would lack Article III jurisdiction to enter such final order or judgment absent consent of the parties.

Notice

56. Notice of this Motion shall be provided to (a) the Office of the United States Trustee for the District of Delaware; (b) the Debtors' thirty largest unsecured creditors on a consolidated basis, as identified in their chapter 11 petitions; (c) counsel to the proposed DIP Agent and DIP Lenders, Buchalter, Attn: Robert Miller (rmiller@buchalter.com), Khaled Tarazi

(ktarazi@buchalter.com) and co-counsel to the proposed DIP Agent and DIP Lenders, Womble Bond Dickinson, Attn: Matthew Ward (matthew.ward@wbd-us.com); (d) the Internal Revenue Service; (e) all persons and entities known by the Debtors to have expressed interest to the Debtors in a Sale Transaction involving any of the Assets during the past six months, including any party that has submitted bid for any of the Assets; (f) all persons and entities known by the Debtors to have asserted any lien on or encumbrance with respect to the Assets (for whom identifying information and addresses are available to the Debtors); (g) the United States Securities and Exchange Commission; (h) the United States Attorney's Office for the District of Delaware; and (i) any other party entitled to notice pursuant to Bankruptcy Rule 2002 or order of the Court. The Debtors respectfully submit that no further notice of this Motion need be provided.

No Prior Request

57. No prior request for the relief sought herein has been made to this Court or any other court in connection with these Chapter 11 Cases.

WHEREFORE, the Debtors respectfully request that the Court (i) enter the Bidding Procedures Order, substantially in the form attached hereto as Exhibit A; (ii) enter one or more Sale Orders, as applicable, substantially in the form attached hereto as Exhibit B, authorizing one or more sales of the Assets free and clear of all liens, claims, interests and encumbrances to the fullest extent permitted by section 363(f) of the Bankruptcy Code and (iii) grant such other and further relief to the Debtors as the Court may deem proper.

Dated: July 24, 2024
Wilmington, Delaware

Respectfully submitted,

/s/ Zachary I. Shapiro

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*Proposed Counsel for the Debtors and
Debtors in Possession*

Exhibit A

Bidding Procedures Order

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:

Meier's Wine Cellars Acquisition, LLC,
et al.,¹

Debtors.

Chapter 11

Case No. 24-11575 (____)

(Jointly Administered)

**ORDER (I) APPROVING BIDDING PROCEDURES FOR THE SALE OF
SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, (II) AUTHORIZING THE
DEBTORS TO ENTER INTO ONE OR MORE STALKING HORSE AGREEMENTS
AND TO PROVIDE BIDDING PROTECTIONS THEREUNDER, (III) SCHEDULING
AN AUCTION AND APPROVING THE FORM AND MANNER OF NOTICE
THEREOF, (IV) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES,
(V) SCHEDULING A SALE HEARING AND APPROVING THE FORM AND MANNER
OF NOTICE THEREOF AND (VI) GRANTING RELATED RELIEF**

This matter coming before the Court on the *Motion of the Debtors and Debtors in Possession for Entry of Orders (I)(A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors' Assets, (B) Authorizing the Debtors to Enter into One or More Stalking Horse Agreements and to Provide Bidding Protections Thereunder, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures, (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof and (F) Granting Related Relief; and (II)(A) Approving the Sale of the Debtors' Assets Free and Clear of Liens, Claims, Interests and Encumbrances, (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases and (C) Granting*

¹ The Debtors are the following eleven entities (the last four digits of their respective taxpayer identification numbers, if any, follow in parentheses): Meier's Wine Cellars Acquisition, LLC (5557); California Cider Co., Inc. (0443); Girard Winery LLC (5076); Grove Acquisition, LLC (9465); Meier's Wine Cellars, Inc. (2300); Mildara Blass Inc. (1491); Sabotage Wine Company, LLC (8393); Thames America Trading Company Ltd. (0696); Vinesse, LLC (3139); Vintage Wine Estates, Inc. (CA) (2279); and Vintage Wine Estates, Inc. (NV) (5902). The Debtors' noticing address in these chapter 11 cases is 205 Concourse Boulevard, Santa Rosa, California 95403.

Related Relief [Docket No. [•]] (the "Motion")² filed by the debtors and debtors in possession (collectively, the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases"); the Court having reviewed the Motion, the First Day Declaration [Docket No. [•]], the Raithel Declaration [Docket No. [•]] and the Kaufman Bidding Procedures Declaration [Docket No. [•]], and having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing before the Court on _____, 2024, to consider certain of the relief requested in the Motion (the "Bidding Procedures Hearing"); and after due deliberation, this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates and their creditors, and the Debtors having demonstrated good, sufficient and sound business justifications for the relief granted herein;

IT IS HEREBY FOUND AND DETERMINED THAT:

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

B. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Notice of the Motion and the Bidding Procedures Hearing was sufficient under the circumstances and no other or further notice need be provided.

² Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Motion or in the Bidding Procedures, as applicable.

D. The bidding procedures attached hereto as Exhibit 1 (the "Bidding Procedures") are fair, reasonable and appropriate and are designed to maximize the value of the proceeds of one or more sales (each, a "Sale Transaction") of substantially all of the Debtors' assets (the "Assets").

E. The Bidding Procedures comply with the requirements of Rule 6004-1(c) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules").

F. The procedures set forth herein regarding the Debtors' assumption and assignment of executory contracts and unexpired leases (collectively, the "Contracts") in connection with any Sale Transaction (the "Assumption and Assignment Procedures") are fair, reasonable and appropriate and comply with the provisions of section 365 of title 11 of the United States Code (the "Bankruptcy Code") and Rule 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

G. The Debtors have articulated good and sufficient business reasons for the Court to approve (i) the Bidding Procedures; (ii) the form and manner of notice of the Bidding Procedures, the Auctions (as defined in the Motion) and the Sale Hearings (as defined in the Motion), substantially in the form attached hereto as Exhibit 2 (the "Sale Notice") and Exhibit 3 (the "Auction Notice"); (iii) the form and manner of notice to each relevant non-debtor counterparty to a Contract (each, a "Counterparty") of (a) the Debtors' calculation of the amount necessary to cure any defaults under an applicable Contract (the "Cure Costs") and (b) certain other information regarding the potential assumption and assignment of Contracts in connection with a Sale Transaction, substantially in the form attached hereto as Exhibit 4 (the "Assumption and Assignment Notice"); and (iv) the Assumption and Assignment Procedures.

H. The Bidding Procedures are reasonably designed to promote active bidding at and participation in the Auctions, if necessary, to ensure that the highest or otherwise best value is generated for the Assets.

I. Good and sufficient notice of the relief sought in the Motion has been provided under the circumstances, and no other or further notice is required except as set forth in the Bidding Procedures and the Assumption and Assignment Procedures. A reasonable opportunity to object and be heard regarding the relief granted herein has been afforded to all parties in interest.

J. The Sale Notice, the Publication Notice (as defined below) and the Assumption and Assignment Notice are appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Auctions, the Sale Hearings, the Bidding Procedures, the Assumption and Assignment Procedures, the Debtors' proposed Cure Costs, any proposed assumption of a Contract in connection with a Sale Transaction and all relevant and important dates and deadlines with respect to the foregoing, and no other or further notice of the Auctions, the sale of the Assets or the assumption and assignment of Contracts in connection therewith shall be required.

K. Good and sufficient business reasons exist for the Court to authorize the "stalking horse" procedures set forth in Section II of the Bidding Procedures (the "Stalking Horse Procedures"), which permit the Debtors to designate one or more Stalking Horse Bidders and seek authorization of certain bidding protections pursuant to the terms of an applicable Stalking Horse Agreement, including the payment of a "break-up" fee and an expense reimbursement (together, a "Termination Payment").

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

1. The Motion is GRANTED as set forth herein.

2. All objections to the relief granted in this Order that have not been withdrawn, waived or settled, and all reservations of rights included therein, are hereby overruled and denied on the merits with prejudice.

A. The Bidding Procedures

3. The Bidding Procedures attached hereto as Exhibit 1 are hereby approved and are incorporated herein by reference. The Bidding Procedures shall govern the bids and proceedings related to the Auctions and the sale of the Assets. The Debtors are authorized to take all actions necessary or appropriate to implement the Bidding Procedures.

4. Any party holding a perfected security interest in any of the Assets may seek to credit bid all, or a portion of, such party's claims for its respective collateral in accordance with section 363(k) of the Bankruptcy Code (each such bid, a "Credit Bid"); provided, that, a Credit Bid must also comply with, and be subject to, the terms of the DIP Orders,³ if entered.

5. Subject to this Order and the Bidding Procedures, the Debtors, in the exercise of their reasonable business judgment and in a manner consistent with their fiduciary duties and applicable law, and in consultation with the Consultation Parties, shall have the right to (a) determine which bidders qualify as "Qualified Bidders," and which bids qualify as "Qualified Bids;" (b) make final determinations as to which Assets or combinations of Assets for

³ Concurrently with the filing of this Motion, the Debtors are also filing the *Motion of the Debtors and Debtors in Possession Pursuant to Sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d), 364(e), 503, 507 and 552 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004, and 9014 and Local Rules 2002-1, 4001-2, 7007-1 and 9013-1 for Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral on a Limited Basis, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* (the "DIP Financing Motion"), seeking one or more orders granting the relief requested therein (any such order, a "DIP Order").

which the Debtors will conduct an Auction (each such Asset or group of Assets, an "Auction Package"); (c) select the Baseline Bid (as defined in Section VII.B.2 of the Bidding Procedures) for each Auction Package; (d) determine the amount of each Minimum Overbid; (e) determine the Leading Bid (as defined in Section VII.B.7 of the Bidding Procedures) for each Auction Package; (f) determine which Qualified Bid (as defined in Section VI.C of the Bidding Procedures) is the highest or otherwise best bid for each Auction Package (each such Qualified Bid, a "Successful Bid") and which Qualified Bid is the next highest and next best bid after the Successful Bid for an Auction Package (each such Qualified Bid, a "Backup Bid"); (g) reject any bid that is (i) inadequate or insufficient; (ii) not in conformity with the requirements of this Order or any other applicable order of the Court, the Bidding Procedures, the Bankruptcy Code or other applicable law; or (iii) contrary to the best interests of the Debtors and their estates; (h) adjourn or cancel the applicable Auction with respect to any or all of the Assets in accordance with the Bidding Procedures; and (i) adjourn the applicable Sale Hearing with respect to a Sale Transaction involving any or all of the Assets in accordance with the Bidding Procedures.

6. In accordance with the Bidding Procedures, the Debtors, in the exercise of their reasonable business judgment and in a manner consistent with their fiduciary duties and applicable law, and after consulting with the Consultation Parties, shall have the right to modify the Bidding Procedures, including to (a) extend or waive deadlines or other terms and conditions set forth herein; (b) adopt new rules and procedures for conducting the bidding and Auction process; (c) if applicable, provide reasonable accommodations to a Stalking Horse Bidder; and (d) otherwise modify the Bidding Procedures to further promote competitive bidding for and maximizing the of value of the Assets; provided, that, the Bid Deadline (as defined below) shall not be extended absent consultation with the Consultation Parties.

B. Stalking Horse Agreements and Bidding Protections

7. The Debtors, in the exercise of their reasonable business judgment and in a manner consistent with the Bidding Procedures, their fiduciary duties and applicable law, may, subject to approval by the Court or in accordance with the Bidding Procedures, designate one or more Stalking Horse Bidders for the sale of the Assets and provide any such Stalking Horse Bidder a Termination Payment in connection therewith in accordance with the Stalking Horse Procedures set forth in Section II of the Bidding Procedures.

8. Unless authorized by separate order of the Court, no person or entity shall be entitled to any expense reimbursement or termination or "break-up" fee, or any other bidding protection in connection with the submission of a bid for the Assets or otherwise participating in the Auctions or the Sale Process.

C. Bid Deadline and Auction(s)

9. Any Prospective Bidder, other than a Stalking Horse Bidder, that intends to participate in any Auction must submit in writing to the Bid Notice Parties (as defined in Section X.A of the Bidding Procedures) a Qualified Bid on or before **August 29, 2024, at 4:00 p.m. (prevailing Eastern Time)**, or such other date as may be agreed to by the Debtors after consulting with the Consultation Parties (the "Bid Deadline"). The Debtors shall promptly provide a copy of each Qualified Bid to each of the Consultation Parties, unless a Consultation Party is a bidder for the applicable Asset(s).

10. If the Debtors receive one or more Qualified Bids for an Asset, the Debtors shall conduct an Auction for such Asset. With respect to Assets for which the Debtors only receive one Qualified Bid by the Bid Deadline, the Debtors, in their reasonable business judgment, and in consultation with the Consultation Parties, may determine to

consummate a Sale Transaction with the applicable Qualified Bidder (subject to Court approval) or include such Assets in the applicable Auction.

11. The "Primary Auction," if necessary, will be conducted (a) on **September 10, 2024, at 10:00 a.m. (prevailing Eastern Time)**, either at the offices of Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801 or (ii) virtually, or (b) at such other time and location as designated by the Debtors, after consulting with the Consultation Parties. If the Debtors conduct the Primary Auction virtually, the Debtors will provide instructions setting forth how to attend the Primary Auction to the participants and other attendees via electronic mail. The Debtors will provide notice (via electronic mail or otherwise) of any change in the date, time or location of the Primary Auction to Qualified Bidders and the Consultation Parties, and will cause publication of such change to occur on the Epiq Website.⁴

12. The Debtors will file with the Court, serve on the Sale Notice Parties and cause to be published on the Epiq Website a notice (the "Primary Auction Notice") setting forth (i) the date, time and location of the Primary Auction; (ii) the Assets the Debtors intend to sell at the Primary Auction (each such Asset, a "Primary Asset"); and (iii) the date and time of the Primary Sale Hearing on **September 5, 2024, at 4:00 p.m. (prevailing Eastern Time)** (the "Primary Auction Notice Deadline").

13. The Debtors, in consultation with the Consultation Parties, may hold one or more subsequent auctions (each such auction, a "Subsequent Auction") after the Primary Auction for the sale of Assets not sold during the Primary Auction.

⁴ The Debtors will cause any such notice to be published on the website maintained by Epiq Corporate Restructuring, LLC, the Debtors' claims and noticing agent in these Chapter 11 Cases, located at <https://dm.epiq11.com/VintageWine> (the "Epiq Website").

14. The Debtors will file with the Court, serve on the Sale Notice Parties and cause to be published on the Epiq Website a notice (each such notice, a "Subsequent Auction Notice" and together with the Primary Auction Notice, the "Auction Notices") setting forth (i) the date, time and location of any Subsequent Auction; (ii) the Assets that the Debtors intend to sell at a Subsequent Auction (each such Asset, a "Subsequent Asset"); and (iii) the date and time of the applicable Subsequent Sale Hearing by 4:00 p.m. (prevailing Eastern Time), on the date five days prior to such Subsequent Auction (each such deadline, a "Subsequent Auction Notice Deadline" and together with the Primary Auction Notice Deadline, the "Auction Notice Deadlines").

15. If held, the Auctions will be transcribed and/or video recorded.

16. In the event the Debtors determine not to hold an Auction for some or all of the Assets, the Debtors shall file with the Court, serve on the Sale Notice Parties (as defined in Section X.B of the Bidding Procedures) and cause to be published on the Epiq Website, a notice containing the following information (as applicable): (a) a statement that the Auction for the relevant Assets has been canceled; (b) the identity of the Successful Bidder; (c) a copy of the Successful Bid or a summary of the material terms of such bid, including any assumption or assignment of Contracts contemplated thereby, or instructions for accessing the Successful Bid free of charge from the Epiq Website; and (d) the date, time and location of the applicable Sale Hearing.

17. Only Qualified Bidders shall be eligible to participate in the Auctions, subject to any other limitations as the Debtors may reasonably impose in accordance with the Bidding Procedures. Qualified Bidders participating in the Auctions must attend the applicable Auction personally or through a duly authorized representative. The Debtors may

establish a reasonable limit on the number of representatives and/or professional advisors that may appear on behalf of or accompany each Qualified Bidder at the Auction.

18. Each Qualified Bidder participating in any of the Auctions shall confirm on the record at the applicable Auction that (i) it has not engaged in any collusion with respect to the applicable Auction or the submission of any bid for any of the Assets; and (ii) its Qualified Bid that gained the Qualified Bidder admission to participate in the applicable Auction and each Qualified Bid submitted by the Qualified Bidder at the applicable Auction constitutes a binding, good-faith and bona fide offer to purchase the Assets identified in such bids.

19. On **September 10, 2024**, the Debtors shall file with the Court, serve on the Sale Notice Parties and cause to be published on the Epiq Website, a notice setting forth the results of the Primary Auction (the "Notice of Primary Auction Results"), which shall (i) identify each Successful Bidder and each Backup Bidder; (ii) either include a copy of each Successful Bid and each Backup Bid or a summary of the material terms of such bids, including any assumption and assignment of Contracts contemplated thereby, or provide instructions for accessing each Successful Bid and each Backup Bid free of charge from the Epiq Website; and (iii) set forth the Primary Supplemental Sale Objection Deadline (as defined below), the date, time and location of the Primary Sale Hearing (as defined below) and any other relevant dates or other information necessary to reasonably apprise the Sale Notice Parties of the outcome of the Primary Auction.

20. On the date of any Subsequent Auction, the Debtors shall file with the Court, serve on the Sale Notice Parties and cause to be published on the Epiq Website, a notice setting forth the results of the applicable Subsequent Auction (each such notice, a "Notice of Subsequent Auction Results"), which shall (i) identify each Successful Bidder and

each Backup Bidder; (ii) either include a copy of each Successful Bid and each Backup Bid or a summary of the material terms of such bids, including any assumption and assignment of Contracts contemplated thereby, or provide instructions for accessing each Successful Bid and each Backup Bid free of charge from the Epiq Website; and (iii) set forth the applicable Subsequent Supplemental Sale Objection Deadline (as defined below), the date, time and location of the applicable Subsequent Sale Hearing (as defined below) and any other relevant dates or other information necessary to reasonably apprise the Sale Notice Parties of the outcome of the applicable Subsequent Auction.

D. Sale Noticing and Objection Procedures

21. Objections to a sale of the Assets, including (a) any objection to the sale of Assets free and clear of liens, claims, interests and encumbrances pursuant to section 363(f) of the Bankruptcy Code to a Successful Bidder and/or a Backup Bidder (as applicable) and (b) any objection to the entry of any Sale Order (each such objection, a "Sale Objection") shall be (i) in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof; (ii) be filed with the Court; and (iii) served on the Objection Notice Parties (as defined in Section X.D of the Bidding Procedures) by no later than **August 30, 2024, at 4:00 p.m. (prevailing Eastern Time)** (the "Sale Objection Deadline").

22. Following service of the Notice of Primary Auction Results, the Sale Notice Parties may object to the conduct of the Primary Auction and/or the particular terms of any proposed Sale Transaction in a Successful Bid (each such objection, a "Primary Supplemental Sale Objection"). Any Primary Supplemental Sale Objection shall be (a) in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof; (b) be filed with the Court and (c) served on the Objection

Notice Parties by no later than **September 13, 2024 at 4:00 p.m. (prevailing Eastern Time)** (the "Primary Supplemental Sale Objection Deadline").

23. Following service of any Notice of Subsequent Auction Results, the Sale Notice Parties may object to the conduct of the applicable Subsequent Auction and/or the particular terms of any proposed Sale Transaction in a Successful Bid (each such objection, a "Subsequent Supplemental Sale Objection"). Any Subsequent Supplemental Sale Objection shall be (a) in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof; (b) be filed with the Court and (c) served on the Objection Notice Parties by 4:00 p.m. (prevailing Eastern Time), on the date no later than three days after the service of any Notice of Subsequent Auction Results (each such deadline, a "Subsequent Supplemental Sale Objection Deadline" and together with the Primary Supplemental Sale Objection Deadline, the "Supplemental Sale Objection Deadlines").

24. Any party who fails to file and serve a timely Sale Objection or Supplemental Sale Objection in accordance with the terms of this Order shall be forever barred from asserting, at the applicable Sale Hearing or thereafter, any Sale Objection or Supplemental Sale Objection to the relief requested in the Motion, or to the consummation or performance of the applicable Sale Transaction(s), including the transfer of Assets to the applicable Successful Bidder free and clear of liens, claims, interests and encumbrances pursuant to section 363(f) of the Bankruptcy Code, and shall be deemed to "consent" to such sale for purposes of section 363(f) of the Bankruptcy Code.

25. Consummation of any Sale Transaction pursuant to a Successful Bid shall be subject to Court approval. The hearing to approve any Sale Transaction consummated in accordance with the Bidding Procedures (except in the case of a Sale Transaction contemplated

by a Backup Bid that subsequently is deemed a Successful Bid) for the sale of any Primary Assets (the Primary Sale Hearing) shall be held before the Court on **September 16, 2024 (prevailing Eastern Time)**.

26. The hearing or hearings to approve any Sale Transaction consummated in accordance with these Bidding Procedures (except in the case of a Sale Transaction contemplated by a Backup Bid that subsequently is deemed a Successful Bid) for the sale of any Subsequent Assets (each such hearing, a "Supplemental Sale Hearing" and together with the Primary Sale Hearing, the "Sale Hearings") shall be held before the court no later than six days after the conclusion of any Subsequent Auction.

27. The Debtors may, in their reasonable business judgment (after consulting with the Consultation Parties and the Successful Bidder(s)) adjourn or reschedule any or all Sale Hearing(s), including by announcing such adjournment or rescheduling at the applicable Auction or in Court on the date of the applicable originally scheduled Sale Hearing.

28. The Sale Notice, substantially in the form attached hereto as Exhibit 2, and the Auction Notice, substantially in the form attached hereto as Exhibit 3, are approved, and no other or further notice of the proposed sale of the Assets, the Auctions, the Sale Hearings, the Sale Objection Deadline or the Supplemental Sale Objection Deadlines shall be required if the Debtors serve and publish the Sale Notice and the Auction Notices in the manner provided in the Bidding Procedures and this Order.

29. By no later than three days after the entry of this Order, the Debtors shall file with the Court, serve on the Sale Notice Parties and cause to be published on the Epiq Website, the Sale Notice.

30. Within three business days after the entry of this Order, the Debtors shall cause the information contained in the Sale Notice to be published once in the national edition of *USA Today* and once in the *Santa Rosa Press Democrat* (the "Publication Notice").

E. Assumption and Assignment Procedures

31. The Assumption and Assignment Notice, substantially in the form attached hereto as Exhibit 4, is approved, and no other or further notice of the Debtors' proposed Cure Costs with respect to Contracts listed on an Assumption and Assignment Notice is necessary or required.

32. By no later than three business days after the entry of this Order, the Debtors shall file with the Court, serve on the applicable Counterparties and cause to be published on the Epiq Website, the Assumption and Assignment Notice.

33. Any objection to the Debtors' proposed Cure Costs (each such objection, a "Cure Objection") shall (a) be in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof; (b) be filed with the Court; and (c) served on the Objection Notice Parties by no later than **August 30, 2024, at 4:00 p.m. (prevailing Eastern Time)**.

34. The Debtors (in consultation with the Consultation Parties) and the objecting Counterparty shall first confer in good faith to attempt to resolve the Cure Objection without Court intervention. If the parties are unable to consensually resolve the Cure Objection prior to the commencement of the applicable Sale Hearing, the Court shall make all necessary determinations relating to the applicable Cure Costs and Cure Objection at a hearing scheduled pursuant to paragraph 35 of this Order. If a Cure Objection is resolved in a manner that is not in the best interests of the Debtors and their estates, whether or not such resolution occurs prior to or after the closing of the applicable Sale Transaction, the Debtors may determine that any

Contract subject to such resolved Cure Objection no longer will be assumed and assigned in connection with the applicable Sale Transaction (subject to the terms of the applicable Sale Transaction); provided, that, in the case of an unexpired lease of non-residential real property, such determination shall be made prior to the expiration of the applicable deadline to assume or reject unexpired leases under section 365(d)(4) of the Bankruptcy Code. All other objections to the Debtors' proposed assumption and assignment of the Debtors' right, title and interest in, to and under a Contract shall be heard at the applicable Sale Hearing.

35. If a timely Cure Objection cannot otherwise be resolved by the parties, the Cure Objection may be heard at the applicable Sale Hearing or, at the option of the Debtors, in consultation with the Consultation Parties, be adjourned to a subsequent hearing (each such Cure Objection, an "Adjourned Cure Objection"). An Adjourned Cure Objection may be resolved after the closing date of the applicable Sale Transaction. Upon resolution of an Adjourned Cure Objection and the payment of the applicable cure amount, if any, the Contract that was the subject of such Adjourned Cure Objection shall be deemed assumed and assigned to the applicable Successful Bidder as of the closing date of the applicable Sale Transaction.

36. If a Counterparty fails to file with the Court and serve on the Objection Notice Parties a timely Cure Objection, the Counterparty forever shall be barred from asserting any objection with regard to the cost to cure any defaults under the applicable Contract. The Cure Costs set forth in the applicable Assumption and Assignment Notice shall be controlling and will be the only amount necessary to cure outstanding defaults under the Contract and satisfy the requirements of section 365(b) of the Bankruptcy Code, and the Counterparty to the Contract shall be bound by and deemed to have consented to the Cure Costs.

37. In accordance with the Bidding Procedures, Qualified Bids shall be accompanied by Adequate Assurance Information (as defined in Section VI.A.9 of the Bidding Procedures). The Debtors shall use commercially reasonable efforts to furnish all available Adequate Assurance Information to applicable Counterparties as soon as reasonably practicable following their receipt of such information.

38. Any Counterparty to a Contract proposed to be assumed by and assigned to a Successful Bidder at the Primary Auction that wishes to object to the proposed assumption and assignment of the Contract, the subject of which objection is such Successful Bidder's (or any other relevant assignee's) proposed form of adequate assurance of future performance with respect to the Contract (each, such objection, a "Primary Adequate Assurance Objection"), shall file with the Court and serve on the Objection Notice Parties a Primary Adequate Assurance Objection, which must state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof, by **September 13, 2024, at 4:00 p.m. (prevailing Eastern Time)** (the "Primary Adequate Assurance Objection Deadline").

39. Any Counterparty to a Contract proposed to be assumed by and assigned to a Successful Bidder at any Subsequent Auction that wishes to object to the proposed assumption and assignment of the Contract, the subject of which objection is such Successful Bidder's (or any other relevant assignee's) proposed form of adequate assurance of future performance with respect to the Contract (each, such objection, a "Subsequent Adequate Assurance Objection" and together with any Primary Adequate Assurance Objection, the "Adequate Assurance Objections"), shall file with the Court and serve on the Objection Notice Parties a Subsequent Adequate Assurance Objection, which must state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof, by 4:00

p.m. (prevailing Eastern Time), on the date no later than three days after the service of the applicable Notice of Subsequent Auction Results (the "Subsequent Adequate Assurance Objection Deadline") and together with the Primary Adequate Assurance Objection Deadline, the "Adequate Assurance Objection Deadlines").

40. The Debtors and a Counterparty that has filed an Adequate Assurance Objection shall first confer in good faith to attempt to resolve the Adequate Assurance Objection without Court intervention. If the parties are unable to consensually resolve the Adequate Assurance Objection prior to the commencement of the applicable Sale Hearing, the Adequate Assurance Objection and all issues of adequate assurance of future performance of the applicable Successful Bidder (or any other relevant assignee) shall be determined by the Court at the applicable Sale Hearing.

41. If a Counterparty fails to file with the Court and serve on the Objection Notice Parties a timely Adequate Assurance Objection, the Counterparty shall be forever barred from asserting any objection to the assumption and/or assignment of a Contract with regard to adequate assurance of future performance. The applicable Successful Bidder (or any other relevant assignee) shall be deemed to have provided adequate assurance of future performance with respect to a Contract in accordance with Bankruptcy Code sections 365(b)(1)(C), 365(f)(2)(B) and, if applicable, Bankruptcy Code section 365(b)(3), notwithstanding anything to the contrary in the Contract or any other document.

42. As soon as reasonably practicable after the closing of a Sale Transaction, the Debtors shall file with the Court, serve on the applicable Counterparties and cause to be published on the Epiq Website, a notice containing the list of Contracts that the Debtors assumed and assigned pursuant to any asset purchase agreement with a Successful Bidder.

43. The inclusion of a Contract or Cure Costs with respect to any Contract on any Assumption and Assignment Notice, shall not constitute or be deemed a determination or admission by the Debtors, any Stalking Horse Bidder, any Successful Bidder or any other party that such Contract is an executory contract or an unexpired lease within the meaning of the Bankruptcy Code, and shall not be a guarantee that such Contract ultimately will be assumed or assigned. The Debtors reserve all of their rights, claims and causes of action with respect to each Contract listed on any Assumption and Assignment Notice.

F. Other Related Relief

44. All persons and entities that participate in the Auctions or bidding for any Asset during the Sale Process shall be deemed to have knowingly and voluntarily (i) consented to the core jurisdiction of the Court to enter any order related to the Bidding Procedures, the Auctions or any other relief requested in the Motion or granted in this Order; (ii) waived any right to a jury trial in connection with any disputes relating to the Bidding Procedures, the Auctions or any other relief requested in the Motion or granted in this Order; and (iii) consented to the entry of a final order or judgment in connection with any disputes relating to the Bidding Procedures, the Auctions or any other relief requested in the Motion or granted in this Order, if it is determined that the Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the relevant parties.

45. Notwithstanding the applicability of any of Bankruptcy Rules 6004(h), 6006(d), 7062, 9014 or any other provisions of the Bankruptcy Rules or the Local Rules stating to the contrary, the terms and provisions of this Order shall be immediately effective and enforceable upon its entry, and any applicable stay of the effectiveness and enforceability of this Order is hereby waived.

46. The Debtors are authorized to take all steps necessary or appropriate to implement the relief granted in this Order.

47. This Court shall retain exclusive jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

Exhibit 1

Bidding Procedures

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

Meier's Wine Cellars Acquisition, LLC,
et al.,¹

Debtors.

Chapter 11

Case No. 24-11575 (____)

(Joint Administration Requested)

BIDDING PROCEDURES

The above-captioned debtors and debtors in possession (collectively, the "Debtors") in these chapter 11 cases (collectively, the "Chapter 11 Cases") will use the procedures set forth herein (the "Bidding Procedures") to conduct a marketing and sale process (including pursuant to one or more Auctions (as defined below), if any) for the sale or sales (each a "Sale") of substantially all of the Debtors' assets (collectively, the "Assets"), through one or more sale transactions (each, a "Sale Transaction").

On July 24, 2024, the Debtors filed with the United States Bankruptcy Court for the District of Delaware (the "Court") the *Motion of the Debtors and Debtors in Possession for Entry of Orders (I)(A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors' Assets, (B) Authorizing the Debtors to Enter into One or More Stalking Horse Agreements and to Provide Bidding Protections Thereunder, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures, (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof and (F) Granting Related Relief, and (II)(A) Approving the Sale of the Debtors' Assets Free and Clear of Liens, Claims, Interests and Encumbrances, (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases and (C) Granting Related Relief* [Docket No. ____] (the "Motion"). By the Motion, the Debtors sought, among other things, entry of an order approving the Bidding Procedures for soliciting bids for the Assets, conducting one or more auctions (each, an "Auction") of the Assets and consummating one or more Sale Transactions, as further described herein.

On [____], 2024, the Court entered an *Order (I) Approving Bidding Procedures for the Sale of Substantially All of the Debtors' Assets, (II) Authorizing the Debtors to Enter into One or More Stalking Horse Agreements and to Provide Bidding Protections Thereunder, (III) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (IV) Approving Assumption and Assignment Procedures, (V) Scheduling a Sale Hearing and Approving the*

¹ The Debtors are the following eleven entities (the last four digits of their respective taxpayer identification numbers, if any, follow in parentheses): Meier's Wine Cellars Acquisition, LLC (5557); California Cider Co., Inc. (0443); Girard Winery LLC (5076); Grove Acquisition, LLC (9465); Meier's Wine Cellars, Inc. (2300); Mildara Blass Inc. (1491); Sabotage Wine Company, LLC (8393); Thames America Trading Company Ltd. (0696); Vinesse, LLC (3139); Vintage Wine Estates, Inc. (CA) (2279); and Vintage Wine Estates, Inc. (NV) (5902). The Debtors' noticing address in these chapter 11 cases is 205 Concourse Boulevard, Santa Rosa, California 95403.

Form and Manner of Notice Thereof and (VI) Granting Related Relief [Docket No. [___]] (the "Bidding Procedures Order").²

I. ASSETS FOR SALE

The Debtors intend to sell all or substantially all of their Assets. The Debtors intend to use a multi-stage sale process whereby certain Assets will be sold at different times throughout the Chapter 11 Cases.

A Prospective Bidder (as defined in Section IV below) may bid on all or any combination of the Assets, subject to the conditions set forth herein.

The ability to undertake and consummate any sale of the Assets pursuant to these Bidding Procedures shall be subject to competitive bidding, as set forth herein, and approval by the Court. In addition to the Stalking Horse Bids (as defined in the Motion), and subject to the terms herein, the Debtors will consider bids for any or all of the Assets in a single bid from a single bidder or in multiple bids from multiple bidders. Any bid for an individual Asset, even if such bid is the highest or best bid for such individual Asset, is subject to higher or better bids (including any Credit Bid (as defined in Section VI.A.3.a below)) on packages of Assets that include the individual Asset. Additionally, any bid on all of the Assets is subject to bids on individual Assets or packages of Assets (including Credit Bids) that are, in the aggregate, higher or better bids.

Any party interested in submitting a bid for any of the Debtors' Assets should contact the Debtors' investment banker – GLC Advisors & Co., 1900 Avenue of the Stars, Suite 2410, Los Angeles, California 90067 (Attn: Jeff Raithel (jeff.raithel@glca.com) and John Hill (john.hill@glca.com)).

II. STALKING HORSE PROCEDURES

The Debtors may, as they deem necessary or appropriate, and after consulting with the Consultation Parties (as defined in Section XI below), enter into one or more asset purchase agreements with one or more "stalking horse" bidders that the Debtors designate to serve as such (each such agreement, a "Stalking Horse Agreement" and, each such bidder, a "Stalking Horse Bidder" and, the bid of any such Stalking Horse Bidder, a "Stalking Horse Bid"). The Debtors also may determine to provide certain bidding protections to designated Stalking Horse Bidders, including a "break-up" fee and an expense reimbursement (together, a "Termination Payment"), in each case, in accordance with the terms of the applicable Stalking Horse Agreement.

A Stalking Horse Bid may also take the form of a Credit Bid, including a credit bid by any of (i) BMO Bank N.A., as successor in interest to Bank of the West ("BMO" and, in its capacity as administrative agent under the DIP Financing Agreement, the "DIP Agent" and, in its capacity as administrative agent under the Prepetition Credit Facility, the "Prepetition Agent"); (ii) the lenders under the DIP Financing Agreement (the "DIP Lenders"); and (iii) the lenders

² Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms later in these Bidding Procedures or in the Motion and/or the Bidding Procedures Order, as applicable.

under the Prepetition Credit Facility (the "Prepetition Lenders" and together with the DIP Lenders and BMO, in its capacity as the DIP Agent and the Prepetition Agent, the "Secured Parties").³

1. Stalking Horse Notice. Within two business days after executing a Stalking Horse Agreement, the Debtors will file with the Court, serve on the Sale Notice Parties (as defined in Section X.B below) and cause to be published on the website maintained by Epiq Corporate Restructuring, LLC, the Debtors' claims and noticing agent in these Chapter 11 Cases, located at <https://dm.epiq11.com/VintageWine> (the "Epiq Website"), a notice setting forth the material terms of the proposed Stalking Horse Agreement, including (a) the identity of the Stalking Horse Bidder (and if the Stalking Horse Bidder is a newly-formed entity, then the Stalking Horse Bidder's parent company or sponsor); (b) the specific Assets subject to the Stalking Horse Bid; (c) the amount of the Stalking Horse Bid and what portion is cash (the "Stalking Horse Bid Amount"); (d) the terms and conditions of any Termination Payment to be provided under the Stalking Horse Agreement; and (e) the deadline to object to the Stalking Horse Bidder designation and any relevant Termination Payment (each such notice, a "Stalking Horse Notice").
2. Deadline to Designate Stalking Horse Bidders. Any Stalking Horse Bidder designated by the Debtors in accordance with these Bidding Procedures will be designated by no later than **August 22, 2024, at 4:00 p.m. (prevailing Eastern Time)** (the "Stalking Horse Bidder Designation Deadline"), provided, that, the Debtors may, in their reasonable business judgment, after consulting with the Consultation Parties, extend the Stalking Horse Bidder Designation Deadline.

In the event the Debtors designate a Stalking Horse Bidder after the occurrence of the Stalking Horse Bidder Designation Deadline, but prior to the Primary Auction (as defined in Section VII below), the Debtors may seek Court approval on an expedited basis of such Stalking Horse Bidder and the related Stalking Horse Agreement, including any Termination Payment provided thereunder. The Debtors reserve their right to file such a motion at any time after the Stalking Horse Bidder Designation Deadline and prior to the Primary Auction. Prior to the filing of any such motion, the Debtors will consult with the Consultation Parties with respect to the designation of such a Stalking Horse Bidder and Stalking Horse Agreement.

In the event the Debtors designate a Stalking Horse Bidder after

³ Further discussion of the Prepetition Credit Agreement and the DIP Financing Agreement can be found in the *Declaration of Seth Kaufman, the President and Chief Executive Officer of Debtor Vintage Wine Estates, Inc., in Support of First Day Motions of Debtors and Debtors in Possession* (the "First Day Declaration") and the DIP Financing Motion (as defined below).

the occurrence of the Stalking Horse Bidder Designation Deadline and after the Primary Auction, but prior to an applicable Subsequent Auction (as defined in Section VII below), the Debtors may seek Court approval on an expedited basis of such Stalking Horse Bidder and the related Stalking Horse Agreement, including any Termination Payment provided thereunder. The Debtors reserve their right to file such a motion at any time after the Stalking Horse Bidder Designation Deadline and the Primary Auction but prior the applicable Subsequent Auction. Prior to the filing of any such motion, the Debtors will consult with the Consultation Parties with respect to the designation of such a Stalking Horse Bidder and Stalking Horse Agreement.

3. Stalking Horse Hearing. The Debtors will request that the Court schedule a hearing (the "Stalking Horse Hearing") to be held, subject to the Court's availability, on **August 27, 2024**, to consider approval of any applicable Stalking Horse Agreement(s) and the provision of any Termination Payment to be provided thereunder.
4. Bidding Protection Objections. Any objection to the designation of, or provision of a Termination Payment to, a Stalking Horse Bidder in accordance with this Section II (each such objection, a "Bidding Protection Objection") must (a) be in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof; and (b) be filed with the Court and served on the applicable Objection Notice Parties (as defined in Section X.D. below) within three calendar days after service of the applicable Stalking Horse Notice.

If the parties are unable to consensually resolve a Bidding Protection Objection, such Bidding Protection Objection will be heard and resolved by the Court at the Stalking Horse Hearing.

5. Failure to File a Timely Bidding Protection Objection. If no timely Bidding Protection Objection is filed and served in accordance with these Bidding Procedures, the Debtors may file, upon certification of counsel and after consulting with the Consultation Parties, a proposed order authorizing and approving the Debtors' entry into the applicable Stalking Horse Agreement and the provision of a Termination Payment thereunder in lieu of holding a Stalking Horse Hearing.

III. GLOBAL SALE PROCESS KEY DATES AND DEADLINES⁴

KEY DATES AND DEADLINES FOR PRIMARY AUCTION	
Deadline for Debtors to file and serve Sale Notice	Three business days after the entry of the Bidding Procedures Order
Deadline for Debtors to file and serve Assumption and Assignment Notice	Three business days after the entry of the Bidding Procedures Order
Stalking Horse Bidder Designation Deadline	August 22, 2024, at 4:00 p.m. (prevailing Eastern Time)
Stalking Horse Hearing	August 27, 2024, subject to the availability of the Court.
Bid Deadline for All Assets	August 29, 2024, at 4:00 p.m. (prevailing Eastern Time)
Sale Objection Deadline for All Assets	August 30, 2024, at 4:00 p.m. (prevailing Eastern Time)
Cure Objection Deadline for All Potentially Assumed Contracts	August 30, 2024, at 4:00 p.m. (prevailing Eastern Time)
Primary Auction Notice Deadline	September 5, 2024, at 4:00 p.m. (prevailing Eastern Time)
Primary Auction	September 10, 2024, at 10:00 a.m. (prevailing Eastern Time) at the offices of Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801
Deadline for Debtors to file and serve Notice of Primary Auction Results	September 10, 2024
Adequate Assurance and Supplemental Sale Objection Deadlines for Primary Assets	September 13, 2024, at 4:00 p.m. (prevailing Eastern Time)
Primary Sale Hearing	September 16, 2024, subject to the availability of the Court
Deadline to obtain entry of the Primary Sale Order	September 17, 2024
Deadline to consummate approved Primary Sale Transaction(s)	September 27, 2024

⁴ Capitalized terms used but not defined in this chart shall have the respective meanings ascribed to such terms later in these Bidding Procedures or the Motion or the Bidding Procedures Order, as applicable.

KEY DATES AND DEADLINES FOR SUBSEQUENT AUCTION(S) (AS NEEDED)	
Subsequent Auction Notice Deadline	4:00 p.m. (prevailing Eastern Time), on the date five days prior to the applicable Subsequent Auction.
Subsequent Auction	TBD
Deadline for Debtors to file and serve Notice of Subsequent Auction Results	On the date of any Subsequent Auction.
Adequate Assurance and Supplemental Sale Objection Deadlines for Subsequent Assets	4:00 p.m. (prevailing Eastern Time), on the date no later than three days after the service of any Notice of Subsequent Auction Results.
Subsequent Sale Hearing	No later than six days after the conclusion of any Subsequent Auction, subject to the availability of the Court.
Deadline to obtain entry of a Subsequent Sale Order	No later than one day after the conclusion of any Subsequent Sale Hearing.
Deadline to consummate approved Subsequent Sale Transaction(s)	No later than ten days after the entry of the applicable Subsequent Sale Order

IV. DUE DILIGENCE

Each person or entity that desires to participate in any Auction (each, a "Prospective Bidder") must first deliver to each of the Bid Notice Parties (as defined in Section X.A below) the following:

- an executed confidentiality agreement, in form and substance satisfactory to the Debtors;
- a statement and other factual support demonstrating to the Debtors, in the exercise of their reasonable business judgment, that the Prospective Bidder has a bona fide interest in purchasing some or all of the Assets; and
- preliminary proof by the Prospective Bidder of its financial capacity to close a proposed Sale Transaction, which may include current unaudited or verified financial statements of, or verified financial commitments obtained by, the Prospective Bidder (or, if the Prospective Bidder is an entity formed for the purpose of acquiring the Assets to be sold, the party that will bear liability for a breach by the Prospective Bidder of an asset purchase agreement or other agreement entered into in respect of an applicable Sale Transaction), the adequacy of which the Debtors and their advisors will determine in their sole discretion.

A Stalking Horse Bidder is a Prospective Bidder and a Qualified Bidder (as defined in Section VI.C below).

Upon execution of a valid confidentiality agreement and subject to the other limitations and guidelines set forth herein, the Debtors may grant a Prospective Bidder that the Debtors identify as reasonably likely to become a Qualified Bidder with access to information allowing such Prospective Bidder to conduct due diligence with respect to the potential acquisition of some or all of the Assets. The Debtors will post in the Debtors' electronic data room substantially all written due diligence provided to any Prospective Bidder and will make any due diligence that has been made available to any other Prospective Bidder for the relevant Assets available to the applicable Stalking Horse Bidder. If any Prospective Bidder is (or is affiliated with) a competitor of the Debtors, the Debtors will not be required to disclose to such Prospective Bidder any trade secrets or proprietary information (as determined by the Debtors in their sole discretion), unless the confidentiality agreement executed by such Prospective Bidder is satisfactory to the Debtors and contains provisions sufficient to ensure that such Prospective Bidder will not use such trade secrets or proprietary information for an improper purpose or to gain an unfair competitive advantage.

If the Debtors determine that a Prospective Bidder is unlikely to qualify as a Qualified Bidder or fails to become a Qualified Bidder, then such Prospective Bidder shall have no further right to access due diligence or any other non-public information. The Prospective Bidder shall return or destroy any non-public information the Debtors or their advisors provided to the Prospective Bidder in accordance with the terms of the confidentiality agreement executed by the Debtors and the Prospective Bidder.

The Debtors will work to accommodate all reasonable requests from Prospective Bidders for additional information and due diligence access. All due diligence requests shall be directed to (i) the Debtors, 205 Concourse Boulevard, Santa Rosa, California 95403 (Attn: Amir Sadr (asadr@vintagewineestates.com)); (ii) the Debtors' counsel, (a) Jones Day, 901 Lakeside Avenue, Cleveland, Ohio 44114 (Attn: T. Daniel Reynolds, Esq. (tdreynolds@jonesday.com) and Nick Buchta, Esq. (nbuchta@jonesday.com)) and (b) Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801 (Attn: Zachary I. Shapiro, Esq. (shapiro@rlf.com)); and (iii) the Debtors' investment banker, GLC Advisors & Co., 1900 Avenue of the Stars, Suite 2410, Los Angeles, California 90067 (Attn: Jeff Raithel (jeff.raithel@glca.com) and John Hill (john.hill@glca.com)).

V. BID DEADLINE

Any Prospective Bidder, other than a Stalking Horse Bidder, that intends to participate in any Auction must submit in writing to the Bid Notice Parties a Qualified Bid (as defined in Section VI.C below) on or before **August 29, 2024, at 4:00 p.m. (prevailing Eastern Time)**, or such other date as may be agreed to by the Debtors after consulting with the Consultation Parties (the "Bid Deadline"). The Debtors shall promptly provide a copy of each bid to each of the Consultation Parties, unless a Consultation Party is a bidder for the applicable Asset(s).⁵

⁵ This qualification applies to every instance where the Debtors are required to consult with the Consultation Parties in these Bidding Procedures.

VI. BID REQUIREMENTS

A. Qualified Bid Requirements

To qualify as a "Qualified Bid," a bid must be in writing and determined by the Debtors to satisfy the following requirements:

1. Identification of Bidder. A Qualified Bid must fully disclose the following: (a) the legal identity of each person or entity bidding for the applicable Assets and/or otherwise sponsoring, financing (including through the issuance of debt in connection with such bid), or participating in (including through license or similar arrangement with respect to the Assets to be acquired in connection with such bid) the applicable Auction in connection with such bid and the complete terms of any such participation; and (b) any past or present connections or agreements with the Debtors or their non-debtor affiliates, a Stalking Horse Bidder, any other known Prospective Bidder or Qualified Bidder, any Secured Party or any officer or director of any of the foregoing (including any current or former officer or director of the Debtors or their non-debtor affiliates).
2. Purchased Assets. A Qualified Bid must identify the following:
 - a) the Assets to be purchased, including any executory contracts and unexpired leases (collectively, the "Contracts") that, as of the submission of such bid, the Prospective Bidder proposes to be assumed and assigned by the Debtors in connection with the proposed Sale Transaction; provided, that, any Successful Bidder (as defined in Section VII.C.1 below) will have an opportunity to make a final determination regarding any such Contracts prior to closing an applicable Sale Transaction;
 - b) if applicable, any Assets included in the bid that the Prospective Bidder intends to operate as a going concern;
 - c) the liabilities, if any, to be assumed, including any debt to be assumed;
 - d) the valuation that the Prospective Bidder associates with each applicable Asset, including a description of any significant assumptions upon which each such valuation is based; and
 - e) if a bid is for more than one Asset, an allocation of the purchase price across the individual Assets.
3. Form of Consideration.
 - a) **Credit Bidding.** A Prospective Bidder holding a perfected security interest in any of the Assets may seek to credit bid all or

a portion of the Prospective Bidder's claims for its respective collateral (each such bid, a "Credit Bid") in accordance with section 363(k) of title 11 of the United States Code (the "Bankruptcy Code"); provided that, such Credit Bid complies with the terms of the DIP Orders⁶, if entered.

b) **All-Cash Offer.** Unless a bid includes a Credit Bid, the bid must include (i) a statement confirming that the bid is based on an all-cash offer and (ii) sufficient cash consideration to pay any applicable Termination Payment to a Stalking Horse Bidder for the Assets pursuant to the terms of an applicable Stalking Horse Agreement.

4. Minimum Bid for Stalking Horse Assets. Each bid submitted in connection with Assets that are the subject of a particular Stalking Horse Bid (any such Assets, the "Stalking Horse Assets") must either (a)(i) be a bid for all of the Stalking Horse Assets in the Stalking Horse Bid and (ii) exceed the cash purchase price in the Stalking Horse Bid, plus any applicable Termination Payment; or (b) propose an alternative transaction that, in the Debtors' reasonable business judgment, provides higher or better terms than the Stalking Horse Bid, taking into account, among other things, any applicable Termination Payment.

The Debtors, in consultation with the Consultation Parties, may consider a bid for a portion of any applicable Stalking Horse Assets (each such bid, a "Partial Bid") if (i) the Debtors receive another Partial Bid for the remaining Stalking Horse Assets such that, when taken together, the Partial Bids constitute a higher or otherwise better bid than the Stalking Horse Bid plus any applicable Termination Payment; or (ii) the Partial Bid proposes a purchase price for the applicable Stalking Horse Assets that, when taken together with the estimated liquidation value of the remaining applicable Stalking Horse Assets, exceeds the purchase price in the Stalking Horse Bid plus any applicable Termination Payment.

The Debtors, in consultation with the Consultation Parties, may consider a bid for a portion, or the entirety, of Assets subject to an applicable

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Concurrently with the filing of the Motion, the Debtors are also filing the *Motion of the Debtors and Debtors in Possession Pursuant to Sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d), 364(e), 503, 507 and 552 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004, and 9014 and Local Rules 2002-1, 4001-2, 7007-1 and 9013-1 for Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral on a Limited Basis, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* (the "DIP Financing Motion"), seeking one or more orders granting the relief requested therein (any such order, a "DIP Order").

Stalking Horse Bid together with other Assets that are not the subject of any Stalking Horse Bid (each such bid, a "Mixed Bid") if the Debtors determine, in their reasonable business judgment, that the Mixed Bid provides more value to the Debtors' estates than the applicable Stalking Horse Bid, taking into account, among other things, the estimated liquidation value of the Assets not the subject to any Stalking Horse Bid, the estimated liquidation value of the remaining Stalking Horse Assets not subject to the Mixed Bid and any applicable Termination Payment.

If the value of a bid (whether such bid is for all of the applicable Stalking Horse Assets, is a Partial Bid or is a Mixed Bid) relative to the applicable Stalking Horse Bid includes additional non-cash components (such as fewer contingencies than are in the applicable Stalking Horse Agreement), the bidder should include an analysis or description of the value of any such additional non-cash components, including any supporting documentation, to assist the Debtors in better evaluating the competing bid.

5. Proposed Asset Purchase Agreement. A Qualified Bid must constitute an irrevocable offer and be in the form of an asset purchase agreement reflecting the terms and conditions of the bid (each, a "Proposed Asset Purchase Agreement"). A Proposed Asset Purchase Agreement shall (a) be duly authorized and executed; (b) be based on, and marked against, the form asset purchase agreement provided by the Debtors to Prospective Bidders to reflect the proposed Sale Transaction and to show any other proposed modifications to the form purchase agreement; (c) specify the proposed purchase price for the applicable Assets in U.S. dollars; (d) include all exhibits and schedules contemplated thereby (other than exhibits and schedules that, by their nature, must be prepared by the Debtors); and (e) identify any Contracts that, as of the submission of such bid, the Prospective Bidder proposes to be assumed and assigned by the Debtors in connection with the proposed Sale Transaction.

A Qualified Bid for Stalking Horse Assets must also include a marked copy of the applicable Stalking Horse Agreement showing the differences between the Stalking Horse Agreement and the Prospective Bidder's Proposed Asset Purchase Agreement.

6. Proposed Sale Order. A Qualified Bid must include a proposed sale order (each, a "Proposed Sale Order") that is based on, and marked against, the form Sale Order attached to the Motion as Exhibit B to reflect the proposed Sale Transaction and to show any other proposed modifications to the form Sale Order.

A Qualified Bid for Stalking Horse Assets must also include a marked copy of any Sale Order included or prepared in connection with any applicable Stalking Horse Bid (each, a "Stalking Horse Sale Order")

showing the differences between the Stalking Horse Sale Order and the Prospective Bidder's Proposed Sale Order.

7. Financial Information. A Qualified Bid must include the following:
- a) a statement that the Prospective Bidder is financially capable of consummating the Sale Transaction contemplated by the Prospective Bidder's Proposed Asset Purchase Agreement and Proposed Sale Order;
 - b) sufficient evidence, as reasonably determined by the Debtors (in consultation with the Consultation Parties), to determine that the Prospective Bidder has, or will obtain no later than the applicable Auction date, the financial wherewithal to consummate the Sale Transaction contemplated by the Prospective Bidder's Proposed Asset Purchase Agreement and Proposed Sale Order; and
 - c) Adequate Assurance Information (as defined in Section VI.A.9 below) with respect to any Contracts included or that may be included in the Prospective Bidder's bid, including the identity of any known proposed assignee of the applicable Contracts (if different from the Prospective Bidder), including contact information for such proposed assignee.
8. Good Faith Deposit. Each Qualified Bid must be accompanied by a good faith deposit (each, a "Good Faith Deposit") in the form of cash in an amount equal to 10% of the cash portion of the proposed purchase price for the applicable Assets (inclusive of any amount thereof comprising any applicable Credit Bid consideration).
- Good Faith Deposits shall be deposited with an escrow agent selected by the Debtors (the "Escrow Agent") and held in escrow until no later than 10 business days after the conclusion of the applicable Auction (except for the Good Faith Deposit of any bidder who is selected at such applicable Auction as a Successful Bidder or as a Backup Bidder (as defined in Section VI.A.12.a below)) and thereafter returned to the respective Qualified Bidders in accordance with Section VII.D of these Bidding Procedures; provided, that, the return of any Good Faith Deposit of a Stalking Horse Bidder may be governed by the applicable Stalking Horse Agreement.
9. Adequate Assurance. A Qualified Bid must include evidence of the Prospective Bidder's (or any other relevant assignee's) ability to comply with section 365 of the Bankruptcy Code (to the extent applicable), including providing adequate assurance of such Prospective Bidder's (or any other relevant assignee's) ability to perform future obligations

arising under any Contracts included in its bid. The Debtors may require the following information in connection with demonstrating adequate assurance of future performance: (a) information evidencing the Prospective Bidder's (or any other relevant assignee's) financial wherewithal and willingness to perform under any Contracts included in the bid, which information may include (i) a corporate organizational chart or similar disclosure identifying corporate ownership and control, (ii) financial statements, (iii) tax returns and (iv) annual reports; and (b) the Prospective Bidder's (or any other relevant assignee's) proposed use of any leased premises or other property included in the bid (the information described in clauses (a) and (b) of this Section VI.A.9, the "Adequate Assurance Information").

All Adequate Assurance Information must be in a form that will permit its immediate dissemination to the applicable Counterparties.

10. Representations and Warranties. A Qualified Bid must include the following representations and warranties:
 - a) a statement that the Prospective Bidder has had an opportunity to conduct any and all due diligence regarding the Debtors' businesses and the applicable Assets prior to submitting its bid; and
 - b) a statement that the Prospective Bidder has relied solely upon its own independent review, investigation and/or inspection of any relevant documents and the Assets in making its bid and did not rely on any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied, by operation of law or otherwise, regarding the Debtors' businesses or the applicable Assets or the completeness of any information provided in connection therewith, except as expressly stated in the representations and warranties contained in a Stalking Horse Agreement or any asset purchase agreement ultimately accepted and executed by the Debtors.
11. Authorization. A Qualified Bid must (a) include evidence of authorization and approval from the Prospective Bidder's board of directors (or comparable governing body) with respect to the submission, execution and delivery of any bid for the Assets, participation in the Auction and closing of the Sale Transactions contemplated by the Prospective Bidder's Proposed Asset Purchase Agreement and Proposed Sale Order; or (b) if the Prospective Bidder is an entity formed for the purpose of effecting the proposed Sale Transaction, provide written evidence acceptable to the Debtors of authorization and the approval by the equity holder(s) of such Prospective Bidder.

12. Other Requirements. A Qualified Bid must:

- a) state that the Prospective Bidder agrees to serve as a backup bidder (a "Backup Bidder") if such bidder's Qualified Bid is selected at the applicable Auction as the next highest or next best bid after the Successful Bid (as defined in Section VII.C.1 below) for the applicable Assets (each such bid, a "Backup Bid");
- b) state that the bid represents a binding, good-faith and bona fide offer to purchase the applicable Assets and is not subject to or conditioned on any further due diligence, is not subject to or conditioned on any antitrust or other applicable regulatory approval and is irrevocable (i) until the selection of the Successful Bid in accordance with these Bidding Procedures; or (ii) if the bid is selected as a Successful Bid or as a Backup Bid, until the Backup Bid Expiration Date (as defined in Section VII.C.2 below);
- c) expressly state and acknowledge that the Prospective Bidder shall not be entitled to a break-up fee, termination fee, expense reimbursement or other "bidding protection" in connection with submitting a bid for the applicable Assets or otherwise participating in the applicable Auction or the Sale Process, unless otherwise granted by the Debtors and approved by an order of the Court;
- d) state that the Prospective Bidder is committed to closing the Sales Transactions contemplated in its bid as soon as practicable;
- e) expressly waive any claim or right to assert any substantial contribution administrative expense claim under section 503(b) of the Bankruptcy Code in connection with bidding for any of the Assets and/or otherwise participating in the applicable Auction or the Sale Process;
- f) not contain any financing contingencies of any kind;
- g) include a covenant to cooperate with the Debtors to provide pertinent factual information regarding the Prospective Bidder's operations reasonably required to analyze issues arising with respect to any applicable laws and regulatory requirements;
- h) state whether the Prospective Bidder intends to offer future employment to any of the Debtors' employees and whether it intends to assume the Debtors' prepetition compensation, incentive, retention, bonus or other compensatory arrangements, plans or agreements, including offer letters, employment agreements, consulting agreements, severance arrangements, retention bonus

agreements, change in control agreements, retiree benefits and any other employment related agreements;

- i) state or otherwise estimate the types of, and costs or charges for, transition services, if any, the Prospective Bidder would require of and/or provide to the Debtors, including an estimate of the time any such transition services would be required of and/or provided to the Debtors, if the Prospective Bidder's bid were selected as the Successful Bid for the applicable Assets;
- j) certify that the Prospective Bidder did not collude with any other bidders and is not otherwise a partnership, joint venture or other entity in which more than one bidder (or any affiliates of a bidder) has a direct or indirect interest, unless consented to in writing by the Debtors;
- k) include a covenant to comply with the terms of these Bidding Procedures and the Bidding Procedures Order; and
- l) include contact information for the specific person(s) the Debtors should contact in the event they have any questions about the Prospective Bidder's bid.

13. Discretionary Qualification. Notwithstanding the foregoing requirements of Section VI.A, the Debtors, at their own discretion and in accordance with their fiduciary duties and applicable law, may treat any bid received before the Bid Deadline as a Qualified Bid.

B. Bid Review Process

The Debtors will evaluate timely bids in consultation with the Consultation Parties. Based upon their evaluation of the content of each bid, the Debtors may, as they deem appropriate in their reasonable business judgment and in a manner consistent with their fiduciary duties and applicable law, engage in negotiations with any Prospective Bidder for the purposes of (i) curing any deficiencies in a bid that prevents it from constituting a Qualified Bid, (ii) improving the terms of the Prospective Bidder's bid or (iii) otherwise promoting a more competitive bidding and Auction process with the ultimate goal of maximizing the value of the Assets.

In evaluating a bid, the Debtors may take into consideration any and all factors that the Debtors deem reasonably pertinent, including (i) the amount of the proposed purchase price and proposed form of consideration; (ii) any Assets included in, or excluded from, the bid, including any Contracts marked for assumption and assignment; (iii) the value to be provided to the Debtors under the bid, including the net economic effect on the Debtors' estates (taking into account any Stalking Horse Bidder's rights with respect to any Termination Payment); (iv) any benefit to the Debtors' estates from any assumption or waiver of liabilities contemplated by the bid; (v) the structure of the proposed Sale Transaction and any attendant execution risk, including conditions to, timing of and certainty of closing; termination provisions; financing

contingencies; availability of financing and general financial wherewithal to meet all commitments and any required governmental approvals; and (vi) the impact of the proposed Sale Transaction on the Debtors' employees, trade creditors, landlords and any other parties in interest.

The Debtors, in consultation with the Consultation Parties, will make a determination regarding the bids that qualify as Qualified Bids and as Baseline Bids (as defined in Section VII.B.2 below) and will notify the applicable bidders as to whether they have been selected as Qualified Bidders as soon as commercially reasonable following the Bid Deadline, but no later than two days before the applicable Auction. A Qualified Bidder shall not (without the consent of the Debtors), modify, amend or withdraw its Qualified Bid, unless for the purposes of increasing the purchase price or otherwise improving the terms of the bid, as determined by the Debtors in their reasonable business judgment.

C. Qualified Bidders

A bid received for all or any portion of the Assets that the Debtors (in consultation with the Consultation Parties) determine satisfies the requirements set forth in Sections V and VI above will qualify as a "Qualified Bid," and any bidder that submits a Qualified Bid (including any Stalking Horse Bidder) will qualify as a "Qualified Bidder."

In the case of a Credit Bid for Assets securing their respective debt, each of the Secured Parties is a Qualified Bidder, and each such Credit Bid is a Qualified Bid, to the extent such bid (i) is received by the Bid Notice Parties by the Bid Deadline; (ii) complies with the applicable requirements set forth under Section V and Section VI above; and (iii) complies with section 363(k) of the Bankruptcy Code.

The Debtors may, in their reasonable business judgment, in a manner consistent with their fiduciary duties and applicable law, and in consultation with the Consultation Parties, amend or waive the conditions precedent to qualifying as a Qualified Bidder.

D. Bidding Protections

Other than any Termination Payment provided to a Stalking Horse Bidder pursuant to the terms of a Court-approved Stalking Horse Agreement, no bidder or any other party shall be entitled to any expense reimbursement or termination or "break-up" fee, or any other bidding protection in connection with the submission of a bid for the Assets or otherwise participating in the applicable Auction or the Sale Process, unless otherwise granted by the Debtors and approved by an order of the Court.

VII. THE AUCTION(S)

If the Debtors receive one or more Qualified Bids (including a combination of bids that, when considered together, constitute a Qualified Bid) for an Asset, the Debtors will conduct an Auction for such Asset. With respect to Assets for which the Debtors receive only one Qualified Bid by the Bid Deadline, the Debtors may, in their reasonable business judgment, and in consultation with the Consultation Parties, determine to consummate a Sale Transaction with the applicable Qualified Bidder or include such Assets in the applicable Auction. In the event

the Debtors determine not to hold an Auction for some or all of the Assets, the Debtors will file with the Court, serve on the Sale Notice Parties and cause to be published on the Epiq Website, a notice containing the following information, as applicable: (i) a statement that the Auction for the relevant Asset or Assets has been canceled; (ii) the identity of the Successful Bidder; (iii) either a copy of the Successful Bid or a summary of the material terms of such bid, including any assumption and assignment of Contracts contemplated thereby, or instructions for accessing the Successful Bid free of charge from the Epiq Website; and (iv) the date, time and location of the applicable Sale Hearing.

The "Primary Auction," if required, will be conducted (i) on **September 10, 2024**, either (a) at the offices of Richards, Layton & Finger, One Rodney Square, 920 North King Street, Wilmington, DE 19801, or (b) virtually, or (ii) at such other date, time or location as designated by the Debtors, after consulting with the Consultation Parties. If the Debtors conduct the Primary Auction virtually, the Debtors will provide instructions setting forth how to attend the Primary Auction to the participants and other attendees via electronic mail. The Debtors will provide notice (via electronic mail or otherwise) of any change in the date, time or location of the Primary Auction to Qualified Bidders and the Consultation Parties, and will cause publication of such change to occur on the Epiq Website.

The Debtors will file with the Court, serve on the Sale Notice Parties and cause to be published on the Epiq Website a notice (the "Primary Auction Notice") setting forth (i) the date, time and location of the Primary Auction, (ii) the Assets the Debtors intend to sell at the Primary Auction (each such Asset, a "Primary Asset"); and (iii) the date and time of the Primary Sale Hearing on **September 5, 2024, at 4:00 p.m. (prevailing Eastern Time)** (the "Primary Auction Notice Deadline").

The Debtors, in consultation with the Consultation Parties, may hold one or more subsequent auctions (each such auction, a "Subsequent Auction" and together with the Primary Auction, the "Auctions") after the Primary Auction for the sale of Assets not sold during the Primary Auction.

The Debtors will file with the Court, serve on the Sale Notice Parties and cause to be published on the Epiq Website a notice (each such notice, a "Subsequent Auction Notice" and together with the Primary Auction Notice, the "Auction Notices") setting forth (i) the date, time and location of any Subsequent Auction, (ii) the Assets that the Debtors intend to sell at such Subsequent Auction (each such Asset, a "Subsequent Asset" and together with the Primary Assets, the "Assets"); and (iii) the date and time of the applicable Subsequent Sale Hearing by 4:00 p.m. (prevailing Eastern Time), on the date five days prior to such Subsequent Auction (each such deadline, a "Subsequent Auction Notice Deadline").

If held, the Auctions will be transcribed and/or video recorded.

A. Participants and Attendees

Only Qualified Bidders are eligible to participate in the Auctions, subject to other limitations as may be reasonably imposed by the Debtors in accordance with these Bidding Procedures. Qualified Bidders participating in the Auctions must attend the applicable Auction

personally or through a duly authorized representative. Subject to the Auction procedures set forth in Section VII, all Qualified Bidders and the Consultation Parties are permitted to attend the applicable Auction; provided, that, the Debtors may, in their sole discretion, establish a reasonable limit on the number of representatives and/or professional advisors that may appear on behalf of a Qualified Bidder or otherwise attend the applicable Auction. Notwithstanding the foregoing, the Auctions will be conducted openly and all creditors will be permitted to attend (but, unless such creditor is a Qualified Bidder or Consultation Party, not participate in) the Auctions, subject to reasonable limitations that may be imposed by the Debtors given space limitations and/or other applicable limitations if the applicable Auction is conducted virtually; provided, that, any such creditor that wishes to attend the applicable Auction must provide the Debtors written notice of its intent to attend such Auction two (2) business days prior to the Auction, which notice shall be sent via email to the Debtors' counsel, (a) Jones Day, 901 Lakeside Avenue, Cleveland, Ohio 44114 (Attn: T. Daniel Reynolds, Esq. (tdreynolds@jonesday.com) and Nick Buchta, Esq. (nbuchta@jonesday.com)) and (b) Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801 (Attn: Zachary I. Shapiro, Esq. (shapiro@rlf.com)).

Each Qualified Bidder participating in the Auctions will be required to confirm in writing and on the record at the applicable Auction that (i) it has not engaged in any collusion with respect to the applicable Auction or the submission of any bid for any of the Assets and (ii) its Qualified Bid that gained the Qualified Bidder admission to participate in the applicable Auction and each Qualified Bid submitted by the Qualified Bidder at the applicable Auction is a binding, good-faith and bona fide offer to purchase the Assets identified in such bids.

All Prospective Bidders and Qualified Bidders (including any Stalking Horse Bidder, Successful Bidder and Backup Bidder) shall be deemed to have (i) consented to the core jurisdiction of the Court to enter any order related to these Bidding Procedures, the Auctions, any other relief requested in the Motion or granted pursuant to the Bidding Procedures Order or the construction or enforcement of any agreement or any other document relating to any Sale Transaction; (ii) waived any right to a jury trial in connection with any disputes relating to these Bidding Procedures, the Auctions or the construction or enforcement of any agreement or any other document relating to any Sale Transaction; and (iii) consented to the entry of a final order or judgment in connection with any disputes relating to these Bidding Procedures, the Auctions or the construction or enforcement of any agreement or any other document relating to any Sale Transaction, if it is determined that the Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the relevant parties.

B. Auction Procedures

The Auctions shall be governed by the following procedures, subject to the Debtors' right to modify such procedures in their reasonable business judgment (in a manner consistent with their fiduciary duties and in consultation with the Consultation Parties):

1. Auction Packages. Prior to the commencement of any Auction, the Debtors (in consultation with the Consultation Parties) will make a determination regarding the Assets and/or combinations of Assets for which the Debtors will conduct an Auction (each such Asset or group of

Assets, an "Auction Package"). For the avoidance of doubt, the Debtors may, in their reasonable business judgment (and in consultation with the Consultation Parties) determine to include an individual Asset in more than one Auction Package.

2. Baseline Bids. Prior to the commencement of the applicable Auction, the Debtors will determine, in their reasonable business judgment (and in consultation with the Consultation Parties), the highest and/or best Qualified Bid submitted for each Auction Package (each such Qualified Bid, a "Baseline Bid"). Bidding for each Auction Package at the applicable Auction shall commence at the amount of the applicable Baseline Bid.
3. Minimum Overbid. At each round of bidding for an Auction Package, Qualified Bidders may submit successive bids higher than the Leading Bid (as defined below) from the prior round, which initially will be based on and increased from the applicable Baseline Bid. After consulting with the Consultation Parties, the Debtors will announce before the applicable Auction, the minimum required increments for successive Qualified Bids (each, such bid, a "Minimum Overbid"); provided, that, to the extent that the Baseline Bid is a Stalking Horse Bid, the bidding for the applicable Stalking Horse Assets shall commence at an amount equal to the sum of (a) the purchase price in the Stalking Horse Bid, (b) the amount of any applicable Termination Payment; and (c) the amount of the applicable Minimum Overbid (each such bid, a "Stalking Horse Overbid"). The Debtors may, in their reasonable discretion (and in consultation with the Consultation Parties), announce increases or reductions to Minimum Overbids or Stalking Horse Overbids at any time during the applicable Auction.

Upon a Qualified Bidder's declaration of a bid at the applicable Auction, the Qualified Bidder must state on the record its commitment to pay following the applicable Auction, if such bid were to be selected as the Successful Bid or as the Backup Bid for the applicable Auction Package, the incremental amount of the Qualified Bidder's Good Faith Deposit calculated based on the increased purchase price of such bid (such Good Faith Deposit so increased, the "Incremental Deposit Amount").

Except as specifically set forth herein, for the purpose of evaluating the value of the consideration provided by any bid subsequent to a Baseline Bid, the Debtors will, at each round of bidding, consider and/or give effect to (a) any Termination Payment payable to any Stalking Horse Bidder under an applicable Stalking Horse Agreement; (b) any additional liabilities to be assumed by a Qualified Bidder under the bid, including whether such liabilities are secured or unsecured; and (c) any additional costs that may be imposed on the Debtors.

4. No Round-Skipping. Round-skipping, as described herein, is explicitly prohibited. To remain eligible to participate in the applicable Auction, in each round of bidding, (a) each Qualified Bidder must submit a bid in such round of bidding that is a better offer than the immediately preceding bid submitted by a Qualified Bidder in such round of bidding and (b) to the extent a Qualified Bidder fails to bid in such round of bidding or to submit a bid in such round of bidding that is a better offer than the immediately preceding bid submitted by a Qualified Bidder in such round of bidding, as determined by the Debtors in their reasonable business judgment (after consultation with the Consultation Parties), such Qualified Bidder shall be disqualified from continuing to participate in the applicable Auction for such Assets.

5. Overbid Alterations. An Overbid may contain alterations, modifications, additions or deletions of any terms of the bid no less favorable to the Debtors' estates than any prior Qualified Bid or Overbid, as determined in the Debtors' business judgment, but shall otherwise comply with the terms of these Bidding Procedures.

6. Additional Information. The Debtors have the right to request any additional information that will allow the Debtors to make a reasonable determination as to a Qualified Bidder's financial and other capabilities to consummate the transactions contemplated by their proposal and any further information that the Debtors believe is reasonably necessary to clarify and evaluate any bid made by a Qualified Bidder during the applicable Auction.

7. Leading Bid. After the first round of bidding and between each subsequent round of bidding, the Debtors will announce, in consultation with the Consultation Parties, the bid that they believe to be the highest or otherwise best offer for the applicable Auction Package (each such bid, a "Leading Bid") and describe the material terms thereof. Each round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a subsequent bid with full knowledge of the material terms of the Leading Bid.

Each Auction may include open bidding in the presence of all other Qualified Bidders bidding on Assets designated for the applicable Auction. Each Qualified Bidder shall have the right to be present for all rounds of bidding and to submit additional bids and make modifications to its Proposed Asset Purchase Agreement at the applicable Auction to improve its bid. The Debtors may, in their reasonable business judgment, negotiate with any and all Qualified Bidders participating in the applicable Auction.

The Debtors shall have the right to determine, in their reasonable business judgment (and in consultation with the Consultation Parties),

which bid is the highest or otherwise best bid with respect to the applicable Auction Package and reject, at any time, without liability, any bid that the Debtors deem to be inadequate or insufficient, not in conformity with the requirements of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), these Bidding Procedures, any order of the Court or the best interests of the Debtors and their estates.

C. Auction Results

1. Successful Bids. Immediately prior to the conclusion of the applicable Auction for an Auction Package, the Debtors, in consultation with the Consultation Parties, will (a) determine, consistent with these Bidding Procedures, which Qualified Bid constitutes the highest or otherwise best bid(s) for the Auction Package (each such bid, a "Successful Bid") and (b) notify all Qualified Bidders at the applicable Auction of the identity of the bidder that submitted the Successful Bid for the Auction Package (each such bidder, a "Successful Bidder") and the amount of the purchase price and other material terms of the Successful Bid. As a condition to remaining the Successful Bidder, the Successful Bidder shall, within two business days after the conclusion of the applicable Auction, wire to the Debtors in immediately available funds the Incremental Deposit Amount, calculated based on the purchase price in the Successful Bid.
2. Backup Bids. Immediately prior to the conclusion of the applicable Auction for an Auction Package, the Debtors (in consultation with the Consultation Parties) will (a) determine, in a manner consistent with these Bidding Procedures, which Qualified Bid is the Backup Bid for the Auction Package; and (b) notify all Qualified Bidders at the applicable Auction for the Auction Package of the identity of the Backup Bidder for the Auction Package and the amount of the purchase price and other material terms of the Backup Bid.

A Backup Bid will remain binding on the applicable Backup Bidder until the earlier of (a) the first business day after the closing of a Sale Transaction with the Successful Bidder for the applicable Auction Package and (b) 60 days after the applicable Sale Hearing (such date, the "Backup Bid Expiration Date"). If the Sale Transaction with the applicable Successful Bidder is terminated prior to the Backup Bid Expiration Date, the Backup Bidder shall be deemed the new Successful Bidder for the applicable Auction Package and shall be obligated to consummate the Backup Bid as if it were the Successful Bid at the applicable Auction; provided, that, the Debtors may, in their reasonable business judgment (after consulting with the Consultation Parties and providing notice to the Sale Notice Parties), elect not to pursue

the Sale Transaction contemplated by the Backup Bid. The Debtors shall be authorized to consummate the bid of the Backup Bidder without further order of the Court or notice to parties in interest.

3. Notice of Auction Results.

- a) **Primary Auction Results.** On **September 10, 2024**, the Debtors will file with the Court, serve on the Sale Notice Parties, and cause to be published on the Epiq Website, a notice setting forth the results of the Primary Auction (the "Notice of Primary Auction Results"), which will (i) identify each Successful Bidder and each Backup Bidder; (ii) either include a copy of each Successful Bid and each Backup Bid or a summary of the material terms of such bids, including any proposed assumption and assignment of Contracts contemplated thereby, or provide instructions for accessing each Successful Bid and each Backup Bid free of charge from the Epiq Website; and (iii) set forth the Primary Supplemental Sale Objection Deadline (as defined in Section X.D below), the date, time and location of the Primary Sale Hearing and any other relevant dates or other information necessary to reasonably apprise the Sale Notice Parties of the outcome of the Primary Auction.
- b) **Subsequent Auction(s) Results.** On the date of any Subsequent Auction, the Debtors will file with the Court, serve on the Sale Notice Parties and cause to be published on the Epiq Website, a notice setting forth the results of the applicable Subsequent Auction (each such notice, a "Notice of Subsequent Auction Results"), which will (i) identify each Successful Bidder and each Backup Bidder; (ii) either include a copy of each Successful Bid and each Backup Bid or a summary of the material terms of such bids, including any proposed assumption and assignment of Contracts contemplated thereby, or provide instructions for accessing each Successful Bid and each Backup Bid free of charge from the Epiq Website; and (iii) set forth the applicable Subsequent Supplemental Sale Objection Deadline (as defined in Section X.D below), the date, time and location of the applicable Subsequent Sale Hearing and any other relevant dates or other information necessary to reasonably apprise the Sale Notice Parties of the outcome of the applicable Subsequent Auction.

D. Disposition of Good Faith Deposit

- 1. Prospective Bidders. Within ten business days after the Debtors make final determinations as to which Prospective Bidders qualify as Qualified Bidders for an applicable Auction, the Escrow Agent shall return to each Prospective Bidder that did not qualify as a Qualified Bidder, as confirmed

by the Debtors, such Prospective Bidder's Good Faith Deposit exclusive of any interest. Upon the authorized return of a Prospective Bidder's Good Faith Deposit in accordance with this Section VII.D, the bid of such Prospective Bidder shall be deemed terminated and no longer binding against the Prospective Bidder.

2. Qualified Bidders.

- a) **Forfeiture of Good Faith Deposit.** The Good Faith Deposit of a Qualified Bidder shall be forfeited if the Qualified Bidder attempts to withdraw its Qualified Bid, except as may be permitted by these Bidding Procedures, during the time the Qualified Bid remains binding and irrevocable under these Bidding Procedures. The Debtors and their estates shall be entitled to retain the Qualified Bidder's Good Faith Deposit as partial compensation for the damages caused to the Debtors and their estates as a result of the Qualified Bidder's failure to adhere to the terms of these Bidding Procedures and/or the relevant Qualified Bid. In the event that a Qualified Bidder's Good Faith Deposit is deemed forfeited, the Escrow Agent shall release such Good Faith Deposit by wire transfer of immediately available funds to an account designated by the Debtors within two business days after the Escrow Agent receives written notice by an authorized officer of the Debtors stating that the applicable Qualified Bidder has breached or otherwise failed to satisfy its obligations in accordance with these Bidding Procedures and the applicable Qualified Bid.
- b) **Return of Good Faith Deposit.** With the exception of the Good Faith Deposits of Successful Bidders and Backup Bidders, the Escrow Agent shall return to any other Qualified Bidder the Qualified Bidder's Good Faith Deposit exclusive of any interest, within ten business days after the conclusion of the applicable Auction for the applicable Auction Package.
- c) **Backup Bidder.** The Escrow Agent shall return a Backup Bidder's Good Faith Deposit, within ten business days after the occurrence of the applicable Backup Bid Expiration Date.
- d) **Successful Bidder.** At the closing of a Sale Transaction, the Successful Bidder shall be entitled to a credit against the purchase price for the applicable Assets in the amount of the Successful Bidder's Good Faith Deposit. The Good Faith Deposit of a Successful Bidder shall be forfeited if the Successful Bidder fails to consummate the applicable Sale Transaction because of a breach that entitles the Debtors to terminate the applicable asset purchase agreement with such Successful Bidder, and the Debtors and their estates shall be entitled to retain the Successful Bidder's

Good Faith Deposit as partial compensation for the damages caused to the Debtors and their estates as a result of such breach. In the event that a Successful Bidder's Good Faith Deposit is deemed forfeited, the Escrow Agent shall release such Good Faith Deposit by wire transfer of immediately available funds to an account designated by the Debtors within two business days after the Escrow Agent receives written notice by an authorized officer of the Debtors stating that the applicable Successful Bidder has breached or otherwise failed to satisfy its obligations in accordance with these Bidding Procedures and the applicable Successful Bid.

VIII. SALE HEARING(S)

Each Successful Bid (including any Backup Bid that is subsequently deemed a Successful Bid) will be subject to Court approval. The hearing to approve any Sale Transaction consummated in accordance with these Bidding Procedures (except in the case of a Sale Transaction contemplated by a Backup Bid that subsequently is deemed a Successful Bid) for the sale of any Primary Assets shall take place on **September 16, 2024** (the "Primary Sale Hearing"), before the Honorable [____], United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, located at 824 N. Market Street, Wilmington, Delaware 19801.

The hearing or hearings to approve any Sale Transaction consummated in accordance with these Bidding Procedures (except in the case of a Sale Transaction contemplated by a Backup Bid that subsequently is deemed a Successful Bid) for the sale of any Subsequent Assets (each such hearing, a "Subsequent Sale Hearing" and together with the Primary Sale Hearing, the "Sale Hearings") shall take place no later than six days after the conclusion of any Subsequent Auction before the Honorable [____], United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, located at 824 N. Market Street, Wilmington, Delaware 19801.

At the Sale Hearings, the Debtors will seek entry of one or more orders (each, a "Sale Order") approving, among other things, one or more sales of the applicable Assets to the Successful Bidder(s).

The Debtors may, in their reasonable business judgment (after consulting with the Consultation Parties and the Successful Bidder(s)), adjourn or reschedule any or all Sale Hearing(s), including by announcing such adjournment or rescheduling at the applicable Auction or in Court on the date of the applicable originally scheduled Sale Hearing.

The Debtors' presentation to the Court for approval of a selected Qualified Bid as a Successful Bid does not constitute the Debtors' acceptance of such bid. The Debtors will have accepted a Successful Bid only when such Successful Bid has been approved by the Court at the applicable Sale Hearing. Upon the Court's approval of a Successful Bid, the Debtors will be bound by the terms of that Successful Bid with no further opportunity for an auction of the applicable Assets.

IX. RESERVATION OF RIGHTS TO MODIFY BIDDING PROCEDURES

The Debtors reserve the right to, in their reasonable business judgment, in a manner consistent with their fiduciary duties and applicable law, and after consulting with the Consultation Parties, modify these Bidding Procedures, including to, among other things, extend or waive deadlines or other terms and conditions set forth herein; adopt new rules and procedures for conducting the bidding and Auction process; if applicable, provide reasonable accommodations to a Stalking Horse Bidder; or otherwise modify these Bidding Procedures to further promote competitive bidding for and maximizing the value of the Assets, in each case, to the extent not materially inconsistent with these Bidding Procedures or the Bidding Procedures Order.

X. NOTICING

A. Bid Notice Parties

Qualified Bids must be submitted in writing to the following parties (collectively, the "Bid Notice Parties"):

- the Debtors, 205 Concourse Boulevard, Santa Rosa, California 95403 (Attn: Amir Sadr (asadr@vintagewineestates.com));
- counsel for the Debtors, (i) Jones Day 901 Lakeside Avenue, Cleveland, Ohio 44114 (Attn: Heather Lennox, Esq. (hlennox@jonesday.com), T. Daniel Reynolds, Esq. (tdreynolds@jonesday.com) and Nick Buchta, Esq. (nbuchta@jonesday.com)); (ii) Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801 (Attn: Zachary I. Shapiro, Esq. (shapiro@rlf.com)) and
- the Debtors' investment banker, GLC Advisors & Co., 1900 Avenue of the Stars, Suite 2410, Los Angeles, California 90067 (Attn: Jeff Raithel (jeff.raithel@glca.com) and John Hill (john.hill@glca.com)).

B. Sale Notice Parties

The "Sale Notice Parties" shall include the following persons and entities:

- the Consultation Parties (as applicable);
- counsel to any Stalking Horse Bidder;
- all persons and entities known by the Debtors to have expressed an interest to the Debtors in a Sale Transaction involving any of the Assets during the past 12 months, including any person or entity that has submitted a bid for any of the Assets;
- all persons and entities known by the Debtors to have asserted any lien, claim, interest or encumbrance in the Assets (for whom identifying information and addresses are available to the Debtors);
- all relevant non-debtor parties (each, a "Counterparty") to any Contract that may be assumed or rejected in connection with a Sale Transaction;

- all of the Debtors' known creditors (for whom identifying information and addresses are available to the Debtors);
- any governmental authority known to have a claim against the Debtors in these Chapter 11 Cases;
- the office of the U.S. Trustee;
- all applicable federal, state and local taxing authorities, including the Internal Revenue Service;
- all applicable federal, state and local licensing authorities related to the Debtors;
- the United States Securities and Exchange Commission;
- the United States Attorney's Office for the District of Delaware;
- United States Attorney General's Office for the District of Delaware;
- the Office of the Attorney General and the Secretary of State in each state in which the Debtors operate;
- the Antitrust Division of the United States Department of Justice;
- the Federal Trade Commission;
- counsel for any official committee of unsecured creditors appointed in these Chapter 11 Cases (the "Creditors' Committee");
- all of the parties entitled to notice pursuant to Bankruptcy Rule 2002; and
- other parties as directed by the Court.

C. Sale Notice and Publication Notice

Three business days after the entry of the Bidding Procedures Order, the Debtors will file with the Court, serve on the Sale Notice Parties, and cause to be published on the Epiq Website a notice (the "Sale Notice") setting forth (i) a description of the Assets available for sale in accordance with these Bidding Procedures; (ii) the date, time and location of the Auctions and Sale Hearings; (iii) the Sale Objection Deadline and Supplemental Sale Objection Deadlines (each as defined in Section X.D below) and the procedures for filing such objections; and, if applicable, (iv) a summary of the material terms of any Stalking Horse Agreement, including the terms and conditions of any Termination Payment to be provided thereunder, as of the date of the Sale Notice.

Within three business days after entry of the Bidding Procedures Order, the Debtors will cause the information contained in the Sale Notice to be published once in the national edition of *USA Today* and once in the *Santa Rosa Press Democrat* (collectively, the "Publication Notice").

D. Sale Objections and Supplemental Sale Objections

Objections to a sale of the Assets, including any objections to (i) a sale of Assets free and clear of all liens, claims, interests and encumbrances pursuant to section 363(f) of the Bankruptcy Code and (ii) entry of any Sale Order (each such objection, a "Sale Objection") shall, by no later than **August 30, 2024, at 4:00 p.m. (prevailing Eastern Time)** (the "Sale Objection"),

Deadline"), be filed with the Court and served on the following parties (collectively, the "Objection Notice Parties"):

- the Debtors, 205 Concourse Boulevard, Santa Rosa, California 95403 (Attn: Amir Sadr (asadr@vintagewineestates.com));
- counsel for the Debtors, (i) Jones Day, 901 Lakeside Avenue, Cleveland, Ohio 44114 (Attn: Heather Lennox, Esq. (hlennox@jonesday.com), T. Daniel Reynolds, Esq. (tdreynolds@jonesday.com) and Nick Buchta, Esq. (nbuchta@jonesday.com)); (ii) Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801 (Attn: Zachary I. Shapiro, Esq. (shapiro@rlf.com)) and
- the Debtors' investment banker, GLC Advisors & Co., 1900 Avenue of the Stars, Suite 2410, Los Angeles, California 90067 (Attn: Jeff Raithel (jeff.raithel@glca.com) and John Hill (john.hill@glca.com)).
- counsel for the Creditors' Committee, if any such committee is appointed;
- counsel to the proposed DIP Agent and DIP Lenders, Buchalter, (Attn: Robert Miller (rmiller@buchalter.com) and Khaled Tarazi (ktarazi@buchalter.com)) and co-counsel to the proposed DIP Agent and DIP Lenders, Womble Bond Dickinson, (Attn: Matthew Ward (matthew.ward@wbd-us.com);
- if applicable, counsel for any relevant Stalking Horse Bidder or relevant Successful Bidder(s); and
- if applicable, counsel for any relevant Backup Bidder(s).

Following service of the Notice of Primary Auction Results, the Sale Notice Parties may object to the conduct of the Primary Auction and/or the particular terms of any proposed Sale Transaction in a Successful Bid (each such objection, a "Primary Supplemental Sale Objection") by **September 13, 2024, at 4:00 p.m. (prevailing Eastern Time)** (the "Primary Supplemental Sale Objection Deadline").

Following service of any Notice of Subsequent Auction Results, the Sale Notice Parties may object to the conduct of the applicable Subsequent Auction and/or the particular terms of any proposed Sale Transaction in a Successful Bid (each such objection, a "Subsequent Supplemental Sale Objection") by 4:00 p.m. (prevailing Eastern Time), on the date no later than three days after the service of any Notice of Subsequent Auction Results (each such deadline, a "Subsequent Supplemental Sale Objection Deadline" and together with the Primary Supplemental Sale Objection Deadline, the "Supplemental Sale Objection Deadlines").

E. Auction Notice(s)

No later than five days prior to the date of any Auction, the Debtors will file with the Court, serve on the Sale Notice Parties and cause to be published on the Epiq Website an Auction Notice setting forth: (i) the date, time and location of such Auction; (ii) the Assets

that the Debtors intend to sell at the applicable Auction; and (iii) the date and time of the applicable Sale Hearing.

F. Notices Regarding Assumption and Assignment of Contracts

The Debtors will provide all notices regarding the proposed assumption and assignment of Contracts in accordance with the Assumption and Assignment Procedures set forth in the Bidding Procedures Order.

XI. CONSULTATION BY THE DEBTORS

Throughout the Sale Process, the Debtors and their advisors will consult with the following parties (collectively, the "Consultation Parties"), as provided in these Bidding Procedures, or as is otherwise necessary or appropriate, as determined in the Debtors' business judgment: (i) the legal and financial advisors for BMO, in its capacity as DIP Agent and Prepetition Agent; and (ii) the legal and financial advisors for any Creditors' Committee, if any such committee is appointed.

Notwithstanding the foregoing, the Debtors will not consult with or provide copies of any bids or other confidential information to any Consultation Party or any insider or affiliate of the Debtors if such party is an active bidder for any of the Assets at the applicable time. If, however, a member of an official committee appointed in these Chapter 11 Cases submits a Qualified Bid for any of the Assets, the applicable committee will maintain its consultation rights as a Consultation Party, provided, that, such committee excludes the bidding committee member from any discussions or deliberations regarding a transaction involving the relevant Assets, and shall not provide any confidential information regarding the Assets or otherwise involving the Sale Process to the bidding committee member.

For the avoidance of doubt, any consultation rights afforded to the Consultation Parties by these Bidding Procedures or the Bidding Procedures Order shall not in any way limit the Debtors' discretion and shall not include the right to veto any decision made by the Debtors in the exercise of their reasonable business judgment.

Exhibit 2

Sale Notice

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

Meier's Wine Cellars Acquisition, LLC,
et al.¹

Debtors.

Chapter 11

Case No. 24-11575 (____)

(Joint Administration Requested)

**NOTICE OF SALE, BIDDING PROCEDURES, AUCTION,
SALE HEARING AND OTHER DEADLINES RELATED THERETO**

PLEASE TAKE NOTICE OF THE FOLLOWING:

On July 24, 2024, the above-captioned debtors and debtors in possession (collectively, the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases") filed with the United States Bankruptcy Court for the District of Delaware (the "Court") a motion [Docket No. [•]] (the "Motion") seeking entry of (i) an order (the "Bidding Procedures Order") (a) approving bidding procedures (the "Bidding Procedures")² to be used in connection with one or more sales (each, a "Sale Transaction") of substantially all of the Debtors' assets (the "Assets"); (b) authorizing the Debtors to enter into one or more asset purchase agreements with one or more "stalking horse" bidders (each such agreement, a "Stalking Horse Agreement" and, each such bidder, a "Stalking Horse Bidder," and the bid of any such Stalking Horse Bidder, a "Stalking Horse Bid") and to provide certain bidding protections, including an expense reimbursement and a break-up fee, to any Stalking Horse Bidder in connection therewith; (c) scheduling one or more auctions of the Assets (collectively, the "Auctions") and one or more final hearings to consider approval of any proposed Sale Transactions (collectively, the "Sale Hearings"); (d) approving the form and manner of notice of the Bidding Procedures, the Auctions and the Sale Hearings; (e) approving procedures for the assumption and assignment of executory contracts and unexpired leases (collectively, the "Contracts") in connection with any Sale Transaction; (f) approving the form and manner of notice to each relevant non-debtor counterparty to a Contract of the Debtors' calculation of the amount necessary to cure any

¹ The Debtors are the following eleven entities (the last four digits of their respective taxpayer identification numbers, if any, follow in parentheses): Meier's Wine Cellars Acquisition, LLC (5557); California Cider Co., Inc. (0443); Girard Winery LLC (5076); Grove Acquisition, LLC (9465); Meier's Wine Cellars, Inc. (2300); Mildara Blass Inc. (1491); Sabotage Wine Company, LLC (8393); Thames America Trading Company Ltd. (0696); Vinesse, LLC (3139); Vintage Wine Estates, Inc. (CA) (2279); and Vintage Wine Estates, Inc. (NV) (5902). The Debtors' noticing address in these chapter 11 cases is 205 Concourse Boulevard, Santa Rosa, California 95403.

² Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Motion or the Bidding Procedures, as applicable. Any summary of the Bidding Procedures or the Bidding Procedures Order (or any provision thereof) contained herein is qualified in its entirety by the actual terms and conditions thereof. To the extent that there is any inconsistency between any summary in this Sale Notice and the terms and conditions of either of the Bidding Procedures or the Bidding Procedures Order, the actual terms and conditions in those documents shall control.

defaults under an applicable Contract and certain other information regarding the potential assumption and assignment of Contracts in connection with a Sale Transaction; and (g) granting related relief; and (ii) one or more orders (each, a "Sale Order") (a) authorizing one or more Sale Transactions for a sale of the Assets free and clear of all liens, claims, interests and encumbrances, except certain permitted encumbrances as determined by the Debtors and any Successful Bidder (as defined below) for the applicable Assets, with liens to attach to the proceeds of the applicable Sale Transaction; (b) authorizing the assumption and assignment of certain Contracts in connection with approved Sale Transactions; and (c) granting related relief.

On [•], 2024, the Court entered the Bidding Procedures Order [Docket No. [•]].

ASSETS FOR SALE

The Debtors are seeking to sell all or substantially all of their Assets.

A Prospective Bidder (as defined in Section IV of the Bidding Procedures) may bid on all or any combination of the Assets, subject to the conditions set forth herein.

The ability to undertake and consummate any sale of the Assets pursuant to the Bidding Procedures shall be subject to competitive bidding, as set forth herein, and approval by the Court. In addition to the Stalking Horse Bids (as defined in the Motion), and subject to the terms herein, the Debtors will consider bids for any or all of the Assets in a single bid from a single bidder or in multiple bids from multiple bidders. Any bid for an individual Asset, even if such bid is the highest or best bid for such individual Asset, is subject to higher or better bids (including any Credit Bid (as defined in Section VI.A.3.a of the Bidding Procedures)) on packages of Assets that include the individual Asset. Additionally, any bid on all of the Assets is subject to bids on individual Assets or packages of Assets (including Credit Bids) that are, in the aggregate, higher or better bids.

Any party interested in submitting a bid for any of the Debtors' Assets should contact the Debtors' investment banker – GLC Advisors & Co., 600 Lexington Ave., 9th Floor, New York, NY 10022 (Attn: Jeff Raithel (jeff.raithel@glca.com) and John Hill (john.hill@glca.com)).

STALKING HORSE PROCEDURES

The Debtors may, as they deem necessary or appropriate, and after consulting with the Consultation Parties (as defined in Section XI of the Bidding Procedures), enter into one or more Stalking Horse Agreements with one or more bidders that the Debtors designate to serve as Stalking Horse Bidder. The Debtors also may determine to provide certain bidding protections to designated Stalking Horse Bidders, including a "break-up" fee and an expense reimbursement (together, a "Termination Payment"), in each case, in accordance with the terms of the applicable Stalking Horse Agreement.

A Stalking Horse Bid may also take the form of a Credit Bid, including a credit bid by any of (i) BMO Bank N.A., as successor in interest to Bank of the West ("BMO" and, in its capacity as administrative agent under the DIP Financing Agreement, the "DIP Agent" and, in its

capacity as administrative agent under the Prepetition Credit Facility, the "Prepetition Agent"; (ii) the lenders under the DIP Financing Agreement (the "DIP Lenders"); and (iii) the lenders under the Prepetition Credit Facility (the "Prepetition Lenders" and together with the DIP Lenders and BMO, in its capacity as the DIP Agent and the Prepetition Agent, the "Secured Parties").

1. Stalking Horse Notice. Within two business days after executing a Stalking Horse Agreement, the Debtors will file with the Court, serve on the Sale Notice Parties (as defined in Section X.B of the Bidding Procedures) and cause to be published on the website maintained by Epiq Corporate Restructuring, LLC, the Debtors' claims and noticing agent in these Chapter 11 Cases, located at <https://dm.epiq11.com/VintageWine> (the "Epiq Website"), a notice setting forth the material terms of the proposed Stalking Horse Agreement, including (i) the identity of the Stalking Horse Bidder (and if the Stalking Horse Bidder is a newly-formed entity, then the Stalking Horse Bidder's parent company or sponsor); (ii) the specific Assets subject to the Stalking Horse Bid; (iii) the amount of the Stalking Horse Bid and what portion is cash (the "Stalking Horse Bid Amount"); (iv) the terms and conditions of any Termination Payment to be provided under the Stalking Horse Agreement; and (v) the deadline to object to the Stalking Horse Bidder designation and any relevant Termination Payment (each such notice, a "Stalking Horse Notice").
2. Deadline to Designate Stalking Horse Bidders. Any Stalking Horse Bidder designated by the Debtors in accordance with these Bidding Procedures will be designated by no later than **August 22, 2024, at 4:00 p.m. (prevailing Eastern Time)** (the "Stalking Horse Bidder Designation Deadline"), provided, that, the Debtors may, in their reasonable business judgment, after consulting with the Consultation Parties, extend the Stalking Horse Bidder Designation Deadline.

In the event the Debtors designate a Stalking Horse Bidder after the occurrence of the Stalking Horse Bidder Designation Deadline, but prior to the Primary Auction (as defined in Section VII of the Bidding Procedures), the Debtors may seek Court approval on an expedited basis of such Stalking Horse Bidder and the related Stalking Horse Agreement, including any Termination Payment provided thereunder. The Debtors reserve their right to file such a motion at any time after the Stalking Horse Bidder Designation Deadline and prior to the Primary Auction. Prior to the filing of any such motion, the Debtors will consult with the Consultation Parties with respect to the designation of such a Stalking Horse Bidder and Stalking Horse Agreement.

3. Stalking Horse Hearing. The Debtors will request that the Court schedule a hearing (the "Stalking Horse Hearing") to be held, subject to the Court's availability, on **August 27, 2024**, to consider approval of any applicable Stalking Horse Agreement(s) and the provision of any Termination Payment to be provided thereunder.

4. Bidding Protection Objections. Any objection to the provisions of a Termination Payment offered to a Stalking Horse Bidder in accordance with Section II of the Bidding Procedures (each such objection, a "Bidding Protection Objection") must (i) be in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof; and (ii) be filed with the Court and served on the applicable Objection Notice Parties (as defined in Section X.D below) within three calendar days after service of the applicable Stalking Horse Notice.

If the parties are unable to consensually resolve a Bidding Protection Objection, such Bidding Protection Objection will be heard and resolved by the Court at the Stalking Horse Hearing.

5. Failure to File a Timely Bidding Protection Objection. If no timely Bidding Protection Objection is filed and served in accordance with these Bidding Procedures, the Debtors may file, upon certification of counsel and after consulting with the Consultation Parties, a proposed order authorizing and approving the Debtors' entry into the applicable Stalking Horse Agreement and the provision of a Termination Payment thereunder in lieu of holding a Stalking Horse Hearing.

KEY DATES AND DEADLINES

A. Bid Deadline

Any Prospective Bidder, other than a Stalking Horse Bidder, that intends to participate in any Auction must submit in writing to the Bid Notice Parties (as defined in Section X.A of the Bidding Procedures) a Qualified Bid (as defined in Section VI.C of the Bidding Procedures) on or before **August 29, 2024, at 4:00 p.m. (prevailing Eastern Time)**, or such other date as may be agreed to by the Debtors after consulting with the Consultation Parties (the "Bid Deadline"). The Debtors shall promptly provide a copy of each bid to each of the Consultation Parties, unless a Consultation Party is a bidder for the applicable Asset(s).³

The Qualified Bid requirements are set forth in Sections IV, V and VI of the Bidding Procedures.

B. Auction(s)

If the Debtors receive one or more Qualified Bids (including a combination of bids that, when considered together, constitute a Qualified Bid) for an Asset, the Debtors will conduct an Auction for such Asset. With respect to Assets for which the Debtors receive only one Qualified Bid by the Bid Deadline, the Debtors may, in their reasonable business judgment, and in consultation with the Consultation Parties, determine to consummate a Sale Transaction with the applicable Qualified Bidder or include such Assets in the applicable Auction.

³ This qualification applies to every instance where the Debtors are required to consult with the Consultation Parties in these Bidding Procedures.

Prior to the commencement of any Auction, the Debtors (in consultation with the Consultation Parties) will make a determination regarding the Assets and/or combinations of Assets for which the Debtors will conduct an Auction (each such Asset or group of Assets, an "Auction Package"). The Debtors may determine to include an individual Asset in more than one Auction Package.

The "Primary Auction," if required, will be conducted (i) on **September 10, 2024**, either (a) at the offices of Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801, or (b) virtually, or (ii) at such other date, time or location as designated by the Debtors, after consulting with the Consultation Parties. If the Debtors conduct the Primary Auction virtually, the Debtors will provide instructions setting forth how to attend the Primary Auction to the participants and other attendees via electronic mail. The Debtors will provide notice (via electronic mail or otherwise) of any change in the date, time or location of the Primary Auction to Qualified Bidders and the Consultation Parties, and will cause publication of such change to occur on the Epiq Website.

The Debtors will file with the Court, serve on the Sale Notice Parties and cause to be published on the Epiq Website a notice (the "Primary Auction Notice") setting forth (i) the date, time and location of the Primary Auction, (ii) the Assets the Debtors intend to sell at the Primary Auction (each such Asset, a "Primary Asset"); and (iii) the date and time of the Primary Sale Hearing on **September 5, 2024, at 4:00 p.m. (prevailing Eastern Time)** (the "Primary Auction Notice Deadline").

The Debtors, in consultation with the Consultation Parties, may hold one or more subsequent auctions (each such auction, a "Subsequent Auction" and together with the Primary Auction, the "Auctions") after the Primary Auction for the sale of Assets not sold during the Primary Auction.

The Debtors will file with the Court, serve on the Sale Notice Parties and cause to be published on the Epiq Website a notice (each such notice, a "Subsequent Auction Notice" and together with the Primary Auction Notice, the "Auction Notices") setting forth (i) the date, time and location of any Subsequent Auction (ii) the Assets that the Debtors intend to sell at such Subsequent Auction (each such Asset, a "Subsequent Asset" and together with the Primary Assets, the "Assets"); (iii) and the date and time of the applicable Subsequent Sale Hearing by 4:00 p.m. (prevailing Eastern Time), on the date five days prior to such Subsequent Auction (each such deadline, a "Subsequent Auction Notice Deadline").

On **September 10, 2024**, the Debtors will file with the Court, serve on the Sale Notice Parties and cause to be published on the Epiq Website, a notice setting forth the results of the Primary Auction (the "Notice of Primary Auction Results"), which will (i) identify the bidder that submitted the highest or best bid for each Auction Package (each such bidder, a "Successful Bidder" and, each such bid, a "Successful Bid"); (ii) identify the bidder that submitted the next highest or next best bid after the Successful Bid for each Auction Package (each such bidder, a "Backup Bidder" and, each such bid, a "Backup Bid"); (iii) include a copy of each Successful Bid and each Backup Bid or a summary of the material terms of such bids, including any assumption and assignment of Contracts contemplated thereby, or provide instructions for accessing each Successful Bid and each Backup Bid free of charge from the Epiq Website; and

(iv) set forth the Primary Supplemental Sale Objection Deadline (as defined below) and the date, time and location of the Primary Sale Hearing (as defined below) and any other relevant dates or other information necessary to reasonably apprise parties in interest of the outcome of the Primary Auction.

On the date of any Subsequent Auction, the Debtors will file with the Court, serve on the Sale Notice Parties and cause to be published on the Epiq Website, a notice setting forth the results of the applicable Subsequent Auction (each such notice, a "Notice of Subsequent Auction Results"), which will (i) identify each Successful Bidder and each Backup Bidder; (ii) either include a copy of each Successful Bid and each Backup Bid or a summary of the material terms of such bids, including any proposed assumption and assignment of Contracts contemplated thereby, or provide instructions for accessing each Successful Bid and each Backup Bid free of charge from the Epiq Website; and (iii) set forth the applicable Subsequent Supplemental Sale Objection Deadline (as defined below), the date, time and location of the applicable Subsequent Sale Hearing (as defined below) and any other relevant dates or other information necessary to reasonably apprise the Sale Notice Parties of the outcome of the applicable Subsequent Auction.

C. Objection Deadlines

1. Sale Objection Deadline. Objections to a sale of the Assets, including (i) any objection to a sale of the Assets free and clear of all liens, claims, interests and encumbrances pursuant to section 363(f) of the Bankruptcy Code and (ii) entry of any Sale Order (each such objection, a "Sale Objection") shall be filed with the Court and served on the Objection Notice Parties (as defined in Section X.D of the Bidding Procedures) by no later than **August 30, 2024, at 4:00 p.m. (prevailing Eastern Time)** (the "Objection Notice Parties").
2. Primary Supplemental Sale Objection Deadline. Following service of the Notice of Primary Auction Results, Sale Notice Parties may object to the conduct of the Primary Auction and/or the particular terms of any proposed Sale Transaction in a Successful Bid (each such objection, a "Primary Supplemental Sale Objection") by **September 13, 2024, at 4:00 p.m. (prevailing Eastern Time)** (the "Primary Supplemental Sale Objection Deadline").
3. Subsequent Supplemental Sale Objection Deadline. Following service of any Notice of Subsequent Auction Results, the Sale Notice Parties may object to the conduct of the applicable Subsequent Auction and/or the particular terms of any proposed Sale Transaction in a Successful Bid (each such objection, a "Subsequent Supplemental Sale Objection") by 4:00 p.m. (prevailing Eastern Time) on the date no later than three days after the service of any Notice of Subsequent Auction Results (each such deadline, a "Subsequent Supplemental Sale Objection Deadline" and together with the Primary Supplemental Sale Objection Deadline, the "Supplemental Sale Objection Deadlines").

D. Sale Hearing(s)

The Primary Sale Hearing (as defined in Section VIII of the Bidding Procedures) shall take place on **September 13, 2024, at [_____]** before the Honorable [•], United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, located at 824 N. Market Street, Wilmington, Delaware 19801.

Each Subsequent Sale Hearing (as defined in Section VIII of the Bidding Procedures) shall take place no later than six days after the conclusion of any Subsequent Auction before the Honorable [•], United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, located at 824 N. Market Street, Wilmington, Delaware 19801.

RESERVATION OF RIGHTS TO MODIFY BIDDING PROCEDURES

The Debtors reserve the right to, in their reasonable business judgment, in a manner consistent with their fiduciary duties and applicable law, and after consulting with the Consultation Parties, modify the Bidding Procedures, including to, among other things, extend or waive deadlines or other terms and conditions set forth therein; adopt new rules and procedures for conducting the bidding and Auction process so long as any such modifications are disclosed to all Prospective Bidders and Qualified Bidders, as applicable; if applicable, provide reasonable accommodations to a Stalking Horse Bidder; or otherwise modify the Bidding Procedures to further promote competitive bidding for and maximizing the of value of the Assets, in each case, to the extent not materially inconsistent with the Bidding Procedures and the Bidding Procedures Order.

ADDITIONAL INFORMATION

Copies of the Motion, the Bidding Procedures Order and the Bidding Procedures may be obtained free of charge by visiting the Epiq Website.

FAILURE TO ABIDE BY THE BIDDING PROCEDURES, THE BIDDING PROCEDURES ORDER OR ANY OTHER APPLICABLE ORDER OF THE COURT ENTERED IN THESE CHAPTER 11 CASES MAY RESULT IN THE REJECTION OF YOUR BID AND YOUR DISQUALIFICATION FROM PARTICIPATING IN THE BIDDING FOR AND AUCTION OF ANY OF THE DEBTORS' ASSETS.

THE FAILURE OF ANY PERSON OR ENTITY TO FILE AND SERVE AN OBJECTION IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER, INCLUDING THE FAILURE TO FILE ANY SUCH OBJECTION BY THE APPLICABLE OBJECTION DEADLINE, SHALL FOREVER BAR SUCH PERSON OR ENTITY FROM ASSERTING, AT THE SALE HEARING OR THEREAFTER, ANY SUCH OBJECTION TO THE RELIEF REQUESTED IN THE MOTION, THE CONSUMMATION OF ANY APPLICABLE SALE TRANSACTION, INCLUDING THE SALE OF ANY ASSETS TO A SUCCESSFUL BIDDER FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES PURSUANT TO SECTION 363(f) OF THE BANKRUPTCY CODE OR THE TERMS OF ANY STALKING HORSE AGREEMENT OR OTHER ASSET PURCHASE AGREEMENT EXECUTED BY THE DEBTORS.

Dated: [], 2024
Wilmington, Delaware

Respectfully submitted,

/s/

Daniel J. DeFranceschi (No. 2732)
Michael J. Merchant (No. 3854)
Zachary I. Shapiro (No. 5103)
Matthew P. Milana (No. 6681)
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- and -

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*Proposed Counsel for the Debtors and
Debtors in Possession*

Exhibit 3

Auction Notice

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

Meier's Wine Cellars Acquisition, LLC,
et al.¹

Debtors.

Chapter 11

Case No. 24-____ (____)

(Joint Administration Requested)

**NOTICE OF AUCTION, SALE HEARING AND
OTHER DEADLINES RELATED THERETO**

PLEASE TAKE NOTICE OF THE FOLLOWING:

On July 24, 2024, the above-captioned debtors and debtors in possession (collectively, the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases") filed with the United States Bankruptcy Court for the District of Delaware (the "Court") a motion [Docket No. [•]] (the "Motion") seeking entry of (i) an order (the "Bidding Procedures Order") (a) approving bidding procedures (the "Bidding Procedures")² to be used in connection with one or more sales (each, a "Sale Transaction") of substantially all of the Debtors' assets (the "Assets"); (b) authorizing the Debtors to enter into one or more asset purchase agreements with one or more "stalking horse" bidders (each such agreement, a "Stalking Horse Agreement" and, each such bidder, a "Stalking Horse Bidder," and the bid of any such Stalking Horse Bidder, a "Stalking Horse Bid") and to provide certain bidding protections, including an expense reimbursement and a break-up fee, to any Stalking Horse Bidder in connection therewith; (c) scheduling one or more auctions of the Assets (collectively, the "Auctions") and one or more final hearings to consider approval of any proposed Sale Transactions (collectively, the "Sale Hearings"); (d) approving the form and manner of notice of the Bidding Procedures, the Auctions and the Sale Hearings; (e) approving procedures for the assumption and assignment of executory contracts and unexpired leases (collectively, the "Contracts") in connection with any Sale Transaction; (f) approving the form and manner of notice to each relevant non-debtor counterparty to a Contract of the Debtors' calculation of the amount necessary to cure any

¹ The Debtors are the following eleven entities (the last four digits of their respective taxpayer identification numbers, if any, follow in parentheses): Meier's Wine Cellars Acquisition, LLC (5557); California Cider Co., Inc. (0443); Girard Winery LLC (5076); Grove Acquisition, LLC (9465); Meier's Wine Cellars, Inc. (2300); Mildara Blass Inc. (1491); Sabotage Wine Company, LLC (8393); Thames America Trading Company Ltd. (0696); Vinesse, LLC (3139); Vintage Wine Estates, Inc. (CA) (2279); and Vintage Wine Estates, Inc. (NV) (5902). The Debtors' noticing address in these chapter 11 cases is 205 Concourse Boulevard, Santa Rosa, California 95403.

² Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Motion or the Bidding Procedures, as applicable. Any summary of the Bidding Procedures or the Bidding Procedures Order (or any provision thereof) contained herein is qualified in its entirety by the actual terms and conditions thereof. To the extent that there is any inconsistency between any summary in this Sale Notice and the terms and conditions of either of the Bidding Procedures or the Bidding Procedures Order, the actual terms and conditions in those documents shall control.

defaults under an applicable Contract and certain other information regarding the potential assumption and assignment of Contracts in connection with a Sale Transaction; and (g) granting related relief; and (ii) one or more orders (each, a "Sale Order") (a) authorizing one or more Sale Transactions for a sale of the Assets free and clear of all liens, claims, interests and encumbrances, except certain permitted encumbrances as determined by the Debtors and any Successful Bidder (as defined below) for the applicable Assets, with liens to attach to the proceeds of the applicable Sale Transaction; (b) authorizing the assumption and assignment of certain Contracts in connection with approved Sale Transactions; and (c) granting related relief.

On [•], 2024, the Court entered the Bidding Procedures Order [Docket No. [•]].

THE [PRIMARY] AUCTION

The Debtors are seeking to sell all or substantially all of their Assets.

On August 29, 2024 (the "Bid Deadline"), the Debtors received several Qualified Bids (as defined in Section VI.A of the Bidding Procedures) for the Assets from Qualified Bidders (as defined in Section VI.C of the Bidding Procedures). Pursuant to Section VII of the Bidding Procedures, the Debtors will conduct a [primary] auction (the "[Primary] Auction") (i) on **[September 10, 2024]**, either (a) at the offices of Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801, or (b) virtually, or (ii) at such other date, time or location as designated by the Debtors, after consulting with the Consultation Parties (as defined in Section XI of the Bidding Procedures).

The Debtors intend to sell the following Assets (collectively, the "[Primary] Assets") at the [Primary] Auction:

[•]

On **[September 10, 2024]**, the Debtors will file with the Court, serve on the Sale Notice Parties (as defined in Section X.B of the Bidding Procedures) and cause to be published on the Epiq Website, a notice setting forth the results of the [Primary] Auction (the "Notice of [Primary] Auction Results"), which will (i) identify the bidder that submitted the highest or best bid for each Auction Package, as defined in Section VII.B.1 of the Bidding Procedures (each such bidder, a "Successful Bidder" and, each such bid, a "Successful Bid"; (ii) identify the bidder that submitted the next highest or next best bid after the Successful Bid for each Auction Package (each such bidder, a "Backup Bidder" and, each such bid, a "Backup Bid"; (iii) include a copy of each Successful Bid and each Backup Bid or a summary of the material terms of such bids, including any assumption and assignment of Contracts contemplated thereby, or provide instructions for accessing each Successful Bid and each Backup Bid free of charge from the Epiq Website; and (iv) set forth the Primary Supplemental Sale Objection Deadline (as defined below) and the date, time and location of the Primary Sale Hearing (as defined below) and any other relevant dates or other information necessary to reasonably apprise parties in interest of the outcome of the [Primary] Auction.

Following service of the Notice of [Primary] Auction Results, Sale Notice Parties may object to the conduct of the [Primary] Auction and/or the particular terms of any proposed

Sale Transaction in a Successful Bid (each such objection, a "[Primary] Supplemental Sale Objection") by [September 13, 2024] at 4:00 p.m. (prevailing Eastern Time) (the "[Primary] Supplemental Sale Objection Deadline").

THE [PRIMARY] SALE HEARING

The [Primary] Sale Hearing (as defined in Section VIII of the Bidding Procedures) shall take place on [September 16], 2024, at [] before the Honorable [•], United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, located at 824 N. Market Street, Wilmington, Delaware 19801.

ADDITIONAL INFORMATION

Copies of the Motion, the Bidding Procedures Order and the Bidding Procedures may be obtained free of charge by visiting the Epiq Website.

FAILURE TO ABIDE BY THE BIDDING PROCEDURES, THE BIDDING PROCEDURES ORDER OR ANY OTHER APPLICABLE ORDER OF THE COURT ENTERED IN THESE CHAPTER 11 CASES MAY RESULT IN THE REJECTION OF YOUR BID AND YOUR DISQUALIFICATION FROM PARTICIPATING IN THE BIDDING FOR AND AUCTION OF ANY OF THE DEBTORS' ASSETS.

THE FAILURE OF ANY PERSON OR ENTITY TO FILE AND SERVE AN OBJECTION IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER, INCLUDING THE FAILURE TO FILE ANY SUCH OBJECTION BY THE APPLICABLE OBJECTION DEADLINE, SHALL FOREVER BAR SUCH PERSON OR ENTITY FROM ASSERTING, AT THE SALE HEARING OR THEREAFTER, ANY SUCH OBJECTION TO THE RELIEF REQUESTED IN THE MOTION, THE CONSUMMATION OF ANY APPLICABLE SALE TRANSACTION, INCLUDING THE SALE OF ANY ASSETS TO A SUCCESSFUL BIDDER FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES PURSUANT TO SECTION 363(f) OF THE BANKRUPTCY CODE OR THE TERMS OF ANY STALKING HORSE AGREEMENT OR OTHER ASSET PURCHASE AGREEMENT EXECUTED BY THE DEBTORS.

Dated: [], 2024
Wilmington, Delaware

Respectfully submitted,

/s/

Daniel J. DeFranceschi (No. 2732)
Michael J. Merchant (No. 3854)
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- and -

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*Proposed Counsel for the Debtors and
Debtors in Possession*

Exhibit 4

Assumption and Assignment Notice

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

Meier's Wine Cellars Acquisition, LLC,
et al.¹

Debtors.

Chapter 11

Case No. 24-11575 (____)

(Joint Administration Requested)

**NOTICE OF CURE COSTS AND POTENTIAL ASSUMPTION
AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED
LEASES IN CONNECTION WITH SALE OF SUBSTANTIALLY ALL ASSETS**

PLEASE TAKE NOTICE OF THE FOLLOWING:

On July 24, 2024, the above-captioned debtor and its debtor affiliates as debtors and debtors in possession (collectively, the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases") filed with the United States Bankruptcy Court for the District of Delaware (the "Court") a motion [Docket No. [•]] (the "Motion") seeking entry of (i) an order (the "Bidding Procedures Order") (a) approving bidding procedures (the "Bidding Procedures")² to be used in connection with one or more sales (each, a "Sale Transaction") of substantially all of the Debtors' assets (the "Assets"); (b) authorizing the Debtors to enter into one or more asset purchase agreements with one or more "stalking horse" bidders and to provide certain bidding protections in connection therewith; (c) scheduling one or more auctions of the Assets (collectively, the "Auctions") and one or more final hearings to consider approval of any proposed Sale Transactions (collectively, the "Sale Hearings"); (d) approving the form and manner of notice of the Bidding Procedures, the Auctions and the Sale Hearings; (e) approving procedures for the assumption and assignment of executory contracts and unexpired leases (collectively, the "Contracts") in connection with any Sale Transaction (the "Assumption and Assignment Procedures"); (f) approving the form and manner of notice to each relevant non-debtor counterparty to a Contract (each, a "Counterparty") of the Debtors' calculation of the amount necessary to cure any defaults under an applicable Contract (the "Cure Costs") and

¹ The Debtors are the following eleven entities (the last four digits of their respective taxpayer identification numbers, if any, follow in parentheses): Meier's Wine Cellars Acquisition, LLC (5557); California Cider Co., Inc. (0443); Girard Winery LLC (5076); Grove Acquisition, LLC (9465); Meier's Wine Cellars, Inc. (2300); Mildara Blass Inc. (1491); Sabotage Wine Company, LLC (8393); Thames America Trading Company Ltd. (0696); Vinesse, LLC (3139); Vintage Wine Estates, Inc. (CA) (2279); and Vintage Wine Estates, Inc. (NV) (5902). The Debtors' noticing address in these chapter 11 cases is 205 Concourse Boulevard, Santa Rosa, California 95403.

² Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Motion or the Bidding Procedures, as applicable. Any summary of the Bidding Procedures or the Bidding Procedures Order (or any provision thereof) contained herein is qualified in its entirety by the actual terms and conditions thereof. To the extent that there is any inconsistency between any summary in this Notice and the terms and conditions of either of the Bidding Procedures or the Bidding Procedures Order, the actual terms and conditions in those documents shall control.

certain other information regarding the potential assumption and assignment of Contracts in connection with a Sale Transaction; and (g) granting related relief; and (ii) the form of sale order (a "Sale Order") (a) authorizing one or more Sale Transactions for a sale of the Assets free and clear of all liens, claims, interests and encumbrances, except certain permitted encumbrances as determined by the Debtors and any Successful Bidder (as defined in Section VII.C.1 of the Bidding Procedures) for the applicable Assets, with liens to attach to the proceeds of the applicable Sale Transaction; (b) authorizing the assumption and assignment of certain Contracts in connection with approved Sale Transactions; and (c) granting related relief.

On [____], 2024, the Court entered the Bidding Procedures Order [Docket No. [•]].

You are receiving this Notice because you may be a Counterparty to a Contract of the Debtors that may be assumed and assigned to a Successful Bidder for the Debtors' Assets.

CURE COSTS

In accordance with the Assumption and Assignment Procedures and the Bidding Procedures Order, the Debtors may, in connection with one or more Sale Transactions with a Successful Bidder at the applicable Auction, seek to assume and assign to the Successful Bidder certain of their Contracts. Each of the Contracts that potentially could be assumed and assigned in connection with a Sale Transaction, together with the Debtors' calculation of Cure Costs with respect to such Contracts, is set forth on Schedule 1 hereto. The inclusion of any Contract on Schedule 1 does not constitute an admission by the Debtors or any other party that such Contract is an executory contract or an unexpired lease within the meaning of the Bankruptcy Code or require or guarantee that such Contract ultimately will be assumed or assigned. All rights of the Debtors with respect thereto are reserved.

CURE OBJECTIONS

A. Cure Objection Deadline

Any Counterparty that wishes to object to the Debtors' proposed Cure Costs (each such objection, a "Cure Objection") must file with the Court and serve on the Objection Notice Parties (as defined in Section X.D of the Bidding Procedures) its Cure Objection, which must be in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof, by no later than **August 30, 2024, at 4:00 p.m. (prevailing Eastern Time)**.

B. Resolution of Cure Objections

Pursuant to the Bidding Procedures Order, the Debtors (in consultation with the Consultation Parties) and the objecting Counterparty must first confer in good faith to attempt to resolve the Cure Objection without Court intervention. If the parties are unable to consensually resolve the Cure Objection prior to the commencement of the applicable Sale Hearing, the Court shall make all necessary determinations relating to the applicable Cure Costs and Cure Objection at a hearing scheduled pursuant to the following paragraph. If a Cure Objection is resolved in a manner that is not in the best interests of the Debtors and their estates,

whether or not such resolution occurs prior to or after the closing of the applicable Sale Transaction, the Debtors may determine that any Contract subject to such resolved Cure Objection no longer will be assumed and assigned; provided, that, in the case of an unexpired lease of non-residential real property, such determination shall be made prior to the expiration of the applicable deadline to assume or reject unexpired leases under section 365(d)(4) of the Bankruptcy Code. All other objections to the Debtors' proposed assumption and assignment of the Debtors' right, title and interest in, to and under a Contract shall be heard at the applicable Sale Hearing.

C. Adjourned Cure Objections

If a timely filed Cure Objection cannot otherwise be resolved by the parties, the Cure Objection may be heard at the Sale Hearing, or, at the option of the Debtors, in consultation with the Consultation Parties (as defined in Section XI of the Bidding Procedures), be adjourned to a subsequent hearing (each such Cure Objection, an "Adjourned Cure Objection"). An Adjourned Cure Objection may be resolved after the closing date of the applicable Sale Transaction. Upon resolution of an Adjourned Cure Objection and the payment of the applicable cure amount, if any, the applicable Contract that was the subject of such Adjourned Cure Objection shall (as applicable) be deemed assumed and assigned to the applicable Successful Bidder as of the closing date of the applicable Sale Transaction.

IF A COUNTERPARTY FAILS TO FILE WITH THE COURT AND SERVE ON THE OBJECTION NOTICE PARTIES A TIMELY CURE OBJECTION, THE COUNTERPARTY FOREVER SHALL BE BARRED FROM ASSERTING ANY OBJECTION WITH REGARD TO THE COST TO CURE ANY DEFAULTS UNDER THE APPLICABLE CONTRACT. THE CURE COSTS SET FORTH ON SCHEDULE 1 HERETO SHALL BE CONTROLLING AND WILL BE THE ONLY AMOUNT NECESSARY TO CURE OUTSTANDING DEFAULTS UNDER THE CONTRACT AND SATISFY THE REQUIREMENTS OF SECTION 365(b) OF THE BANKRUPTCY CODE, AND THE COUNTERPARTY TO THE CONTRACT SHALL BE DEEMED BOUND BY AND TO HAVE CONSENTED TO THE CURE COSTS.

NOTICE OF AUCTION RESULTS

A. Notice of Primary Auction Results

The "Primary Auction," if required, will be conducted (a) on **September 10, 2024**, either (i) at the offices of Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801, or (ii) virtually, or (b) at such other date, time or location as designated by the Debtors, after consulting with the Consultation Parties. If the Debtors conduct the Primary Auction virtually, the Debtors will provide instructions setting forth how to attend the Primary Auction to the participants and other attendees via electronic mail. The Debtors will provide notice (via electronic mail or otherwise) of any change in the date, time or location of

the Primary Auction to Qualified Bidders and the Consultation Parties, and will cause publication of such change to occur on the Epiq Website.³

The Debtors will file with the Court, serve on the Sale Notice Parties and cause to be published on the Epiq Website a notice (the "Primary Auction Notice") setting forth (i) the date, time and location of the Primary Auction, (ii) the Assets the Debtors intend to sell at the Primary Auction (each such Asset, a "Primary Asset"); and (iii) the date and time of the Primary Sale Hearing on **September 5, 2024, at 4:00 p.m. (prevailing Eastern Time)** (the "Primary Auction Notice Deadline").

On **September 10, 2024**, the Debtors will file with the Court, serve on the Sale Notice Parties (as defined in Section X.B of the Bidding Procedures) and cause to be published on the Epiq Website, a notice setting forth the results of the Primary Auction (the "Notice of Primary Auction Results"), which will (i) identify the bidder that submitted the highest or best bid for each Auction Package (as defined in Section VII.B.1 of the Bidding Procedures) (each such bidder, a "Successful Bidder" and, each such bid, a "Successful Bid"); (ii) identify the bidder that submitted the next highest or next best bid after the Successful Bid for each Auction Package (each such bidder, a "Backup Bidder" and, each such bid, a "Backup Bid"); (iii) include a copy of each Successful Bid and each Backup Bid or a summary of the material terms of such bids, including any assumption and assignment of Contracts contemplated thereby, or provide instructions for accessing each Successful Bid and each Backup Bid free of charge from the Epiq Website; and (iv) set forth the Primary Supplemental Sale Objection Deadline (as defined Section X.D of the Bidding Procedures) and the date, time and location of the Primary Sale Hearing (as defined in Section VIII of the Bidding Procedures) and any other relevant dates or other information necessary to reasonably apprise parties in interest of the outcome of the Primary Auction.

B. Notice of Subsequent Auction Results

The Debtors, in consultation with the Consultation Parties, may hold one or more subsequent auctions (each such auction, a "Subsequent Auction" and together with the Primary Auction, the "Auctions") after the Primary Auction for the sale of Assets not sold during the Primary Auction.

The Debtors will file with the Court, serve on the Sale Notice Parties and cause to be published on the Epiq Website a notice (each such notice, a "Subsequent Auction Notice" and together with the Primary Auction Notice, the "Auction Notices") setting forth (i) the date, time and location of any Subsequent Auction (ii) the Assets that the Debtors intend to sell at such Subsequent Auction (each such Asset, a "Subsequent Asset" and together with the Primary Assets, the "Assets"); (iii) and the date and time of the applicable Subsequent Sale Hearing by 4:00 p.m. (prevailing Eastern Time), on the date five days prior to such Subsequent Auction (each such deadline, a "Subsequent Auction Notice Deadline").

³ The Debtors will cause any such notice described above to be published on the website maintained by Epiq Corporate Restructuring, LLC, the Debtors' claims and noticing agent in these Chapter 11 Cases, located at <https://dm.epiq11.com/VintageWine> (the "Epiq Website").

On the date of any Subsequent Auction, the Debtors will file with the Court, serve on the Sale Notice Parties and cause to be published on the Epiq Website, a notice of the results of the applicable Subsequent Auction (each such notice, a "Notice of Subsequent Auction Results"), which will (i) identify each Successful Bidder and each Backup Bidder; (ii) include a copy of each Successful Bid and each Backup Bid or a summary of the material terms of such bids, including any proposed assumption and assignment of Contracts contemplated thereby and (iii) set forth the applicable Subsequent Supplemental Sale Objection Deadline (as defined in Section X.D of the Bidding Procedures) and the date, time and location of the applicable Subsequent Sale Hearing (as defined in Section VIII of the Bidding Procedures) and any other relevant dates or other information necessary to reasonably apprise the Sale Notice Parties of the outcome of the applicable Subsequent Auction.

ADEQUATE ASSURANCE OBJECTIONS

A. Primary Adequate Assurance Objections

1. Primary Adequate Assurance Objection Deadline. Any Counterparty to a Contract proposed to be assumed by and assigned to a Successful Bidder at the Primary Auction that wishes to object to the proposed assumption and assignment of the Contract, the subject of which objection is such Successful Bidder's proposed form of adequate assurance of future performance (each such objection, a "Primary Adequate Assurance Objection"), must file with the Court and serve on the Objection Notice Parties a Primary Adequate Assurance Objection, which must state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof, by **September 13, 2024, at 4:00 p.m. (prevailing Eastern Time)**, (the "Primary Adequate Assurance Objection Deadline").
2. Resolution of Primary Adequate Assurance Objections. Pursuant to the Bidding Procedures Order, the Debtors and the objecting Counterparty must first confer in good faith to attempt to resolve the Primary Adequate Assurance Objection without Court intervention. If the parties are unable to consensually resolve the Primary Adequate Assurance Objection prior to the commencement of the Primary Sale Hearing, the Primary Adequate Assurance Objection and all issues of adequate assurance of future performance of the applicable Successful Bidder (or any other relevant assignee) shall be determined by the Court at the Primary Sale Hearing.

B. Subsequent Adequate Assurance Objections

1. Subsequent Adequate Assurance Objection Deadline. Any Counterparty to a Contract proposed to be assumed by and assigned to a Successful Bidder at any Subsequent Auction that wishes to object to the proposed assumption and assignment of the Contract, the subject of which objection is such Successful Bidder's proposed form of adequate assurance of future performance (each such objection, a "Subsequent Adequate Assurance Objection" and together with any Primary Adequate Assurance Objection, the "Adequate Assurance Objections"),

must file with the Court and serve on the Objection Notice Parties a Subsequent Adequate Assurance Objection, which must state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof, by 4:00 p.m. (prevailing Eastern Time) on the date no later than three days after the service of the applicable Notice of Subsequent Auction Results (the "Subsequent Adequate Assurance Objection Deadline" and together with the Primary Adequate Assurance Objection Deadline, the "Adequate Assurance Objection Deadlines").

2. Resolution of Subsequent Adequate Assurance Objections. Pursuant to the Bidding Procedures Order, the Debtors and the objecting Counterparty must first confer in good faith to attempt to resolve any Subsequent Adequate Assurance Objection without Court intervention. If the parties are unable to consensually resolve the Subsequent Adequate Assurance Objection prior to the commencement of the applicable Subsequent Sale Hearing, the Subsequent Adequate Assurance Objection and all issues of adequate assurance of future performance of the applicable Successful Bidder (or any other relevant assignee) shall be determined by the Court at the applicable Subsequent Sale Hearing.

IF A COUNTERPARTY FAILS TO FILE WITH THE COURT AND SERVE ON THE OBJECTION NOTICE PARTIES A TIMELY ADEQUATE ASSURANCE OBJECTION, THE COUNTERPARTY FOREVER SHALL BE BARRED FROM ASSERTING ANY OBJECTION TO THE ASSUMPTION AND/OR ASSIGNMENT OF THE APPLICABLE CONTRACT WITH REGARD TO ADEQUATE ASSURANCE OF FUTURE PERFORMANCE. THE APPLICABLE SUCCESSFUL BIDDER SHALL BE DEEMED TO HAVE PROVIDED ADEQUATE ASSURANCE OF FUTURE PERFORMANCE WITH RESPECT TO THE CONTRACT IN ACCORDANCE WITH BANKRUPTCY CODE SECTIONS 365(b)(1)(C), 365(f)(2)(B) AND, IF APPLICABLE, 365(b)(3), NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE CONTRACT OR ANY OTHER DOCUMENT.

SALE HEARING

A. Primary Sale Hearing

The Primary Sale Hearing shall take place on **September 16, 2024**, at [_____] before the Honorable [•], United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, located at 824 N. Market Street, Wilmington, Delaware 19801.

B. Subsequent Sale Hearing

Each Subsequent Sale Hearing shall take place no later than six days after the conclusion of any Subsequent Auction before the Honorable [•], United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, located at 824 N. Market Street, Wilmington, Delaware 19801.

ADDITIONAL INFORMATION

Copies of the Motion, the Bidding Procedures Order and the Bidding Procedures may be obtained free of charge by visiting the Omni Website.

Dated: [], 2024
Wilmington, Delaware

Respectfully submitted,

/s/

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- and -

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*Proposed Counsel for the Debtors and
Debtors in Possession*

Schedule 1

Exhibit B

Proposed Form Sale Order

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:

Meier's Wine Cellars Acquisition, LLC,
et al.¹

Debtors.

Chapter 11

Case No. 24-____ (____)

(Jointly Administered)

**ORDER (I) APPROVING THE SALE OF THE DEBTORS' ASSETS FREE AND CLEAR
OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES, (II) APPROVING THE
ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND
UNEXPIRED LEASES AND (III) GRANTING RELATED RELIEF**

This matter coming before the Court on the *Motion of the Debtors and Debtors in Possession for Entry of Orders (I)(A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors' Assets, (B) Authorizing the Debtors to Enter into One or More Stalking Horse Purchase Agreements and to Provide Bidding Protections Thereunder, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures, (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof and (F) Granting Related Relief; and (II)(A) Approving the Sale of the Debtors' Assets Free and Clear of Liens, Claims, Interests and Encumbrances, (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases and (C) Granting Related Relief* (the "Sale Motion") [Docket No. [●]],²

¹ The Debtors are the following eleven entities (the last four digits of their respective taxpayer identification numbers, if any, follow in parentheses): Meier's Wine Cellars Acquisition, LLC (5557); California Cider Co., Inc. (0443); Girard Winery LLC (5076); Grove Acquisition, LLC (9465); Meier's Wine Cellars, Inc. (2300); Mildara Blass Inc. (1491); Sabotage Wine Company, LLC (8393); Thames America Trading Company Ltd. (0696); Vinesse, LLC (3139); Vintage Wine Estates, Inc. (CA) (2279); and Vintage Wine Estates, Inc. (NV) (5902). The Debtors' noticing address in these chapter 11 cases is 205 Concourse Boulevard, Santa Rosa, California 95403.

² Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Sale Motion or the Asset Purchase Agreement (as hereinafter defined), as applicable .

filed by the debtors and debtors in possession (collectively, the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases") and upon the First Day Declaration [Docket No. [•]], the Raithel Declaration [Docket No. [•]] and the Kaufman Bidding Procedures Declaration [Docket No. [•]], and upon the *Order (I) Approving Bidding Procedures for the Sale of Substantially of the Debtors' Assets, (II) Authorizing the Debtors to Enter into One or More Stalking Horse Agreements and to Provide Bidding Protections Thereunder, (III) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (IV) Approving Assumption and Assignment Procedures, (V) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof and (VI) Granting Related Relief* [Docket No. [•]] (the "Bidding Procedures Order"); and that certain [_____] agreement, dated as of _____, 2024, by and among _____ (the "Asset Purchase Agreement"), a copy of which is attached hereto as Exhibit 1, by which _____ (the "Buyer") submitted the highest or best bid for the Purchased Assets (as defined in the Asset Purchase Agreement); and the Court having conducted a hearing to consider certain relief requested in the Sale Motion on _____, 2024 (the "[•] Sale Hearing"), at which time all interested parties were offered an opportunity to be heard with respect to the Sale Motion; and the Court having reviewed and considered (i) the Sale Motion; (ii) the Asset Purchase Agreement; (iii) the Bidding Procedures Order and the record of the hearing before the Court on _____, 2024, after which hearing the Bidding Procedures Order was entered; (iv) the First Day Declaration, the Raithel Declaration and the Kaufman Bidding Procedures Declaration [Docket Nos. [•]]; and (v) the arguments of counsel made, and the evidence proffered or adduced, at the Bidding Procedures Hearing or the [•] Sale Hearing; and after due deliberation the Court having determined that the legal and factual bases set forth in the Sale Motion establish just cause for the relief granted herein; and it appearing that

the relief requested in the Sale Motion is in the best interest of the Debtors, their estates and their creditors, and the Debtors having demonstrated good, sufficient and sound business justifications for the relief granted herein;

IT IS HEREBY FOUND AND DETERMINED THAT:³

A. Jurisdiction and Venue. This Court has jurisdiction to consider the Sale Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1134 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated as of February 29, 2012. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Final Order. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a).

C. Statutory Predicates. The statutory and other legal predicates for the relief sought in the Sale Motion and granted herein are sections 105, 363 and 365 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004, 6006, 9007, 9008 and 9014 of 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").

D. Notice and Opportunity to Be Heard. As evidenced with the certificates of service filed with the Court [Docket Nos. [●]], the Debtors have provided proper, timely, adequate and sufficient notice of, and a fair and reasonable opportunity to object and be heard

³ The findings and conclusions of law set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent 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. The Court's findings also shall include any oral findings of fact and conclusions of law made by the Court during the [●] Sale Hearing.

with respect to, the Sale Motion, the Bidding Procedures, the Auctions, the Sale Hearings, the sale of the Purchased Assets pursuant to the Asset Purchase Agreement (the "Sale Transaction") free and clear of any Liens within the meaning of section 363(f) of the Bankruptcy Code, the Notice of [●] Auction Results [Docket No. [●]], the Assumption and Assignment Notice [Docket No. [●]] and the assumption and assignment of the executory contracts and unexpired leases to be assumed and assigned to Buyer at Closing (as defined in the Asset Purchase Agreement) pursuant to this Order and the terms of the Asset Purchase Agreement (collectively, the "Contracts"), in accordance with sections 102(1), 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004, 6006, 9007 and 9014, Local Rules 2002-1, 6004-1 and 9006-1 and the Bidding Procedures Order, to all persons and entities entitled to such notice, including the Sale Notice Parties (as defined in the Bidding Procedures) and all other persons and entities as directed by the Court. Such notice was good, sufficient and appropriate under the circumstances, and no other or further notice of any of the foregoing is required. With respect to parties in interest whose identities could not be reasonably ascertained by the Debtors, the Publication Notice (as defined in the Bidding Procedures Order) published in *USA Today* on _____, 2024, and in the *Santa Rosa Press Democrat* on _____, 2024, was sufficient and reasonably calculated to provide notice to such parties under the circumstances.

E. Disclosures. The disclosures made by the Debtors in the Sale Motion, the Sale Notice, the Assumption and Assignment Notice, the Notice of [●] Auction Results and all other related notices and documents filed with the Court concerning the Asset Purchase Agreement and Sale Transaction were complete and adequate.

F. Sound Business Purpose. The Debtors have demonstrated good, sufficient and sound business purposes and justifications for approval of the Sale Motion and the approval of and entry into the Sale Transaction, the Asset Purchase Agreement and any ancillary agreements thereto (i) are a result of due deliberation by the Debtors and constitute a sound and reasonable exercise of the Debtors' business judgment consistent with their fiduciary duties; (ii) provide value and are beneficial to the Debtors' estates, and are in the best interests of the Debtors, their estates and their stakeholders; and (iii) are reasonable and appropriate under the circumstances. Business justifications for entry into the Sale Transaction and the Asset Purchase Agreement include, but are not limited to, (A) the Asset Purchase Agreement constitutes the highest or best offer received for the Purchased Assets; (B) the Asset Purchase Agreement presents the best opportunity to maximize the value of the Purchased Assets on a going-concern basis and to avoid decline and devaluation as a result of delay or liquidation; (C) failure to consummate the Sale Transaction expeditiously, as provided under the Asset Purchase Agreement, could materially diminish creditor recoveries; and (D) the immediate consummation of the Sale Transaction is necessary to maximize the value of the Debtors' estates.

G. Compliance with Bidding Procedures. The Debtors conducted an open and fair Sale Process. The Sale Process was non-collusive in all respects, and all interested parties were provided a full, fair and reasonable opportunity to make an offer to purchase the Purchased Assets. The Debtors, the Buyer and their respective counsel and other advisors have complied with the Bidding Procedures and the Bidding Procedures Order in all respects.

H. Highest or Best Value. The Debtors determined, in their reasonable business judgment, in a manner consistent with their fiduciary duties and in consultation with

the Consultation Parties, that the Buyer's Qualified Bid, as documented in the Asset Purchase Agreement, was the highest or otherwise best Qualified Bid for the Purchased Assets. Consummating the Sale Transaction will yield greater value to the Debtors' estates than would have been provided by any other available alternative transaction.

I. Fair Consideration. The consideration to be paid by the Buyer under the Asset Purchase Agreement constitutes (i) fair and reasonable consideration for the Purchased Assets; and (ii) reasonably equivalent value and fair consideration under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act, the Uniform Voidable Transactions Act and other laws of the United States, any state, territory, possession thereof or the District of Columbia.

J. Free and Clear Sale. The Debtors may sell the Purchased Assets free and clear of all Liens (unless otherwise expressly assumed under, or expressly permitted by, the Asset Purchase Agreement), because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Any holders of Liens that objected to the Sale Transaction or the Sale Motion and that have a Lien on the Purchased Assets could be compelled in a legal or equitable proceeding to accept money in satisfaction of such Lien pursuant to section 363(f)(5), or fall within one or more of the other subsections of section 363(f) and, therefore, are adequately protected by having their Liens on the Purchased Assets attach solely to the proceeds of the Sale Transaction ultimately attributable to the sale of the property in which such holders have a Lien, in the same order of priority, and with the same validity, force and effect that such Liens had prior to the consummation of the Sale Transaction, subject to any rights, claims or defenses of the Debtors and their estates. Any Lien holders that did not object, or that withdrew their objections, to the Sale Motion or the Sale Transaction, are

deemed to have consented to the sale of the Purchased Assets free and clear of their respective Liens on the Purchased Assets pursuant to section 363(f)(2) of the Bankruptcy Code.

K. Buyer's Reliance on Free and Clear Sale. The Buyer would not have entered into the Asset Purchase Agreement and would not consummate the Sale Transaction or the other transactions contemplated thereby if the sale of the Purchased Assets were not free and clear of all Liens, or if the Buyer would, or in the future could, be liable for any such Liens. A sale of the Purchased Assets other than one free and clear of all Liens would adversely impact the Debtors, their estates and their creditors, and would yield substantially less value for the Purchased Assets and the Debtors' estates, with less certainty than provided by the Sale Transaction. The total consideration to be provided under the Asset Purchase Agreement reflects the Buyer's reliance on this Order to provide it, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, with title to and possession of the Purchased Assets free and clear of all Liens, including, without limitation, any potential derivative, vicarious, transferee or successor liability Liens.

L. No Successor or Other Derivative Liability. By consummating the Sale Transaction pursuant to the Asset Purchase Agreement, the Buyer is not a mere continuation of any of the Debtors or any Debtor's estate, and there is no continuity of enterprise or otherwise or common identity between the Buyer and any Debtor. The Buyer is not holding itself out as a continuation of any Debtor. The Buyer is not a successor to any Debtor or any Debtor's estate by reason of any theory of law or equity, and the Sale Transaction does not amount to a consolidation, merger or de facto merger of the Buyer and the Debtors or any of their estates. Neither the Buyer nor any of its affiliates or their respective successors, assigns, members, partners, principals or shareholders (or the equivalent thereof) shall assume or in any way be

responsible for any obligation or liability of any Debtor (or any affiliate of any Debtor) or any Debtor's estate, except as expressly provided in the Asset Purchase Agreement. The sale and transfer of the Purchased Assets to the Buyer, including the assumption by the Debtors and assignment, transfer and/or sale to the Buyer of any of the Contracts, will not subject the Buyer to any liability with respect to the operation of the Debtors' businesses prior to the Closing or by reason of such transfer, except that, upon the Closing, the Buyer shall remain liable for the applicable Assumed Liabilities (as defined in the Asset Purchase Agreement).

M. Good Faith. The Debtors, the Buyer and their respective counsel and other advisors have negotiated and entered into the Asset Purchase Agreement and each of the transactions contemplated thereby in good faith, without collusion and from arms'-length bargaining positions. The Buyer is a good-faith purchaser and is acting in good faith within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby. The Debtors were free to deal with any other party interested in acquiring all or some of the Purchased Assets. Neither the Debtors nor the Buyer have engaged in any conduct that would cause or permit the Sale Transaction, the Asset Purchase Agreement or any of the transactions contemplated thereby to be avoided or subject to monetary damages under section 363(n) of the Bankruptcy Code, or that would prevent the application of sections 363(m) or 364(e) of the Bankruptcy Code. The Buyer has not violated section 363(n) of the Bankruptcy Code by any action or inaction. Specifically, the Buyer has not acted in a collusive manner with any person or entity, and the Buyer's participation in and bidding at the [●] Auction were not controlled by any agreement among bidders. All payments to be made by the Buyer and all agreements entered into by the Buyer and the Debtors and any other Seller under the Asset Purchase Agreement in connection with

the Sale Transaction have been disclosed and are appropriate. The Asset Purchase Agreement was not entered into for the purpose of hindering, delaying or defrauding creditors under laws of the United States, any state, territory, possession or the District of Columbia.

N. Insider Status. The Buyer is not an "insider" of any Debtor, as that term is defined in section 101(31) of the Bankruptcy Code. No common identity of directors or controlling stockholders (or the equivalent thereof) exists between the Buyer and any of the Debtors.

O. Assumption and Assignment of Contracts. The assumption and assignment of the Contracts are an integral part of the Sale Transaction, are in the best interests of the Debtors and their estates and represent the valid and reasonable exercise of the Debtors' sound business judgment. Specifically, the assumption and assignment of the Contracts (i) are necessary to sell the Purchased Assets to the Buyer as contemplated by the Asset Purchase Agreement, (ii) allow the Debtors to sell the Purchased Assets to the Buyer as a going concern, (iii) limit the losses suffered by the Counterparties to the Contracts and (iv) maximize the recoveries of other creditors of the Debtors by avoiding claims against the Debtors' estates that would arise from the Debtors' rejection of the Contracts.

Any Counterparty to any Contract that has not actually filed with the Court and served on the Objection Notice Parties (as defined in the Bidding Procedures) an objection to the assumption and/or assignment of such Contract as of the applicable date specified in the Bidding Procedures Order (as such date may have been modified or extended in accordance with the terms of the Bidding Procedures Order) is deemed to have consented to the assumption and assignment of the Contract.

P. Compliance with Section 365 of the Bankruptcy Code. The Debtors

have met all requirements of section 365(b) of the Bankruptcy Code with respect to the assumption and assignment of each of the Contracts. The Debtors have provided adequate assurance (within the meaning of section 365(b)(1) of the Bankruptcy Code) of cure of any default existing under any of the Contracts on or before the Closing Date (as defined in the Asset Purchase Agreement). The Buyer has demonstrated adequate assurance of future performance of and under the Contracts within the meaning of sections 365(b)(1)(C), 365(f)(2)(B) and 365(b)(3) (to the extent applicable) of the Bankruptcy Code. Pursuant to section 365(f) of the Bankruptcy Code, the Contracts shall be assigned and transferred to, and remain in full force and effect for the benefit of, the Buyer, notwithstanding any provision in the Contracts or other restrictions prohibiting their assignment or transfer.

Q. Property of the Estates. The Purchased Assets constitute property of the Debtors' estates within the meaning of section 541(a) of the Bankruptcy Code.

R. Validity of the Sale Transaction. The consummation of the Sale Transaction is legal, valid and properly authorized under all applicable provisions of the Bankruptcy Code, including sections 105(a), 363(b), 363(f), 363(m), 365(b) and 365(f) and all of the applicable requirements of such sections have been complied with in all respects in connection with the Sale Transaction. As of the Closing, the transfer of the Purchased Assets to the Buyer will be a legal, valid and effective transfer of the Purchased Assets, including the assigned Contracts, and will vest the Buyer with all right, title and interest of the Debtors in and to the Purchased Assets free and clear of all Liens. The Debtors have full corporate or other applicable authority to execute the Asset Purchase Agreement and all other documents contemplated thereby, and the Sale Transaction has been duly and validly authorized by all necessary corporate action of the Debtors. Upon entry of this Order, other than any consents

identified in the Asset Purchase Agreement, no consent or approval from any other person, entity or legal authority is required to consummate the Sale Transaction.

S. No Sub Rosa Plan. Neither the Sale Transaction nor the Asset Purchase Agreement impermissibly restructures the rights of any of the Debtors' creditors or impermissibly dictates the terms of a liquidating plan of reorganization of the Debtors. Neither the Sale Transaction nor the Asset Purchase Agreement constitutes a sub rosa or de facto plan of reorganization or liquidation, as neither proposes to (i) impair or restructure any existing debt of, or equity interests in, the Debtors; (ii) impair or circumvent voting rights with respect to any plan proposed by the Debtors; (iii) circumvent chapter 11 safeguards, such as those set forth in sections 1125 and 1129 of the Bankruptcy Code; or (iv) classify claims or equity interests or extend debt maturities.

T. No Stay of Order. Time is of the essence to implement the Asset Purchase Agreement and consummate the Sale Transaction. The Sale Transaction must be approved and consummated promptly in order to preserve the value of the Purchased Assets and to ensure the Debtors' compliance with their obligations under their post-petition financing agreements. The Debtors have demonstrated compelling circumstances and sound business justifications for the immediate approval and consummation of the Sale Transaction as contemplated by the Asset Purchase Agreement. Notwithstanding the provisions of Bankruptcy Rules 6004(h), 6006(d), 7062 or any applicable provisions of the Local Rules, this Order shall not be stayed and shall be effective and enforceable immediately upon entry.

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

1. Sale Motion Granted. The Sale Motion and the relief requested therein (to the extent not previously granted by the Court pursuant to the Bidding Procedures Order or otherwise) are GRANTED and approved as set forth herein.

2. Objections Overruled. Any objections to the Sale Motion or the relief requested therein that have not been withdrawn, waived or settled and all reservations of rights included such objections are hereby overruled on the merits with prejudice.

3. Sale Transaction Approved. The Asset Purchase Agreement and all transactions contemplated thereby are APPROVED.

4. Debtors' Performance Authorized. The Debtors are hereby authorized to enter into and perform their obligations under the Asset Purchase Agreement, and to take such other actions as may be necessary or desirable to effectuate the terms of the Asset Purchase Agreement and other instruments or documents that may be reasonably necessary or desirable to implement and effectuate the terms of the Asset Purchase Agreement, the Sale Transaction or this Order, including, without limitation, deeds, assignments, stock powers, transfers of membership interests and any other instruments of transfer, without further order of the Court. The Debtors are hereby further authorized to take all other actions as may reasonably be requested by the Buyer or otherwise for the purpose of assigning, transferring, granting, conveying and conferring to the Buyer, or reducing to the Buyer's possession any or all of the Purchased Assets, including the Contracts, as may be necessary or appropriate for the Debtors to perform their obligations under the Asset Purchase Agreement and consummate the Sale Transaction, without further order of the Court.

5. The Debtors are hereby authorized and empowered to cause to be executed and filed such statements, instruments, releases and other documents with respect to the Purchased Assets that are necessary or appropriate to effectuate the Asset Purchase Agreement, the Sale Transaction or this Order, including, as applicable, amended and restated certificates or articles of incorporation and by-laws or certificates or articles of amendment, and

all such other actions, filings or recordings as may be required under appropriate provisions of the applicable laws of all applicable governmental units or as any of the officers of the Debtors may determine are necessary or appropriate.

6. Valid Transfer. Effective as of the Closing Date, the sale and assignment of the Purchased Assets and the Contracts by the Debtors to the Buyer shall constitute a legal, valid and effective transfer of the Purchased Assets and the Contracts, notwithstanding any requirement for approval or consent by any person, and will vest the Buyer with all right, title and interest of the Debtors in and to the Purchased Assets and the Contracts, free and clear of all Liens (unless otherwise expressly assumed under, or expressly permitted by, the Asset Purchase Agreement), pursuant to section 363(f) of the Bankruptcy Code.

7. Free and Clear Sale. Except to the extent specifically provided in the Asset Purchase Agreement, upon the Closing Date, the Debtors shall be, and hereby are, authorized and empowered, pursuant to sections 105, 363(b) and 363(f) of the Bankruptcy Code, to sell and transfer to the Buyer the Purchased Assets. The sale and transfer of the Purchased Assets to the Buyer shall vest the Buyer with all right, title and interest of the Debtor in and to the Purchased Assets free and clear of any and all Liens of any person or entity, with all such Liens to attach to the net proceeds of the Sale Transaction ultimately attributable to the sale of the property in which such holders have a Lien, in the same order of priority, and with the same validity, force and effect that such Liens had prior to the consummation of the Sale Transaction, subject to any rights, claims or defenses of the Debtors or their estates. Following the Closing, no holder of any Lien on any of the Purchased Assets shall interfere with the Buyer's use or enjoyment of any of the Purchased Assets based on or related to such Lien or any actions that the Debtors have taken or may take

in their Chapter 11 Cases.

8. The provisions of this Order authorizing the sale and transfer of the Purchased Assets free and clear of Liens shall be self-executing, and neither the Debtors nor the Buyer shall be required to execute or file releases, termination statements, assignments, consents or other instruments in order to effectuate, consummate or implement the provisions of this Order. For the avoidance of doubt, on or after the Closing Date, the Debtors and/or the Buyer shall be authorized, but not directed, to file any such releases, termination statements, assignments, consents or other instruments in any jurisdiction to record the release, discharge and termination of Liens on the Purchased Assets pursuant to the terms of this Order.

9. Direction to Creditors. This Order shall be (a) effective as a determination that, as of the Closing Date, all Liens on the Purchased Assets (unless otherwise expressly assumed under, or expressly permitted by, the Asset Purchase Agreement) shall be unconditionally released, discharged and terminated as to the Buyer and the Purchased Assets; and (b) binding upon all persons and entities, including all the Debtors' creditors and any holder of a Lien in any of the Purchased Assets, and all such persons and entities are hereby authorized and directed to execute such documents and take all other actions as may be reasonably necessary to release their respective Liens on the Purchased Assets, if any. If any person or entity that has filed a financing statement, mortgage, mechanics lien, lis pendens or other document, instrument, notice or agreement evidencing any Lien on the Purchased Assets has not delivered to the Debtors on or before the Closing, in proper form for filing and executed by the appropriate parties, termination statements, releases or instruments of satisfaction that the person or entity has with respect to the Purchased Assets, the Debtors and/or the Buyer are authorized to (x) execute and file such termination statements, releases, instruments of

satisfaction or other documents with respect to the Purchased Assets on behalf of the applicable person or entity; and (y) file, register or otherwise record a certified copy of this Order which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Liens on the Purchased Assets. This Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, local, tribal or foreign government agency, department or office.

10. Direction to Recording Officers. This Order shall be binding upon all persons and entities, including filing agents or officers, title agents or companies, recorders of mortgages or deeds, registrars, administrative agencies, governmental units or departments, secretaries of state, governmental officials and all other persons or entities that may be required by operation of law, the duties of their office or contract to accept, file, register or otherwise record or release any documents or instruments regarding the Purchased Assets or who may be required to report or insure any title or state of title in or to the Purchased Assets, (collectively, the "Recording Officers"). All Recording Officers are hereby authorized and directed to (a) accept any and all documents or instruments necessary and appropriate to consummate the Sale Transaction or to record and reflect that the Buyer is the owner of the Purchased Assets free and clear of all Liens (unless otherwise expressly assumed under, or expressly permitted by, the Asset Purchase Agreement) and (b) strike all recorded Liens on the Purchased Assets from their records.

11. Direction to Surrender the Purchased Assets. All persons or entities in possession or control of any of the Purchased Assets, either presently or on or before the Closing Date, are directed to surrender possession or control of the Purchased Assets to the Buyer on the Closing Date.

12. No Successor Liability. The Buyer and its affiliates and their respective predecessors, successors, assigns, members, partners, officers, directors, principals and shareholders (or the equivalent thereof) are not and shall not be (a) deemed a "successor" in any respect to any of the Debtors or any of their estates as a result of the consummation of the Sale Transaction or any other event occurring in the Debtors' Chapter 11 Cases under any theory of law or equity; (b) deemed to have, de facto or otherwise, merged or consolidated with or into any of the Debtors or any of their estates; (c) deemed to be an alter ego of or have a common identity with the any of the Debtors; (d) deemed to have a continuity of enterprise with any of the Debtors; or (e) deemed to be a continuation or substantial continuation of any of the Debtors or any enterprise of any of the Debtors, including (with respect to clauses (a) through (e) of this paragraph) within the meaning of any foreign, federal, state or local revenue, pension, ERISA, tax, labor, employment, environmental, products liability or other law, doctrine, rule or regulation (including any filing requirements under any such laws, rules or regulations) with respect to the Debtors' liability under such law, doctrine, rule or regulation.

13. The Buyer shall not assume, nor be deemed to have assumed or in any way be responsible for, any liability or obligation of any of the Debtors or any of their estates including, but not limited to, any Excluded Liabilities, any bulk sales law, successor or vicarious liability, liability or responsibility for any claim against any of the Debtors or against any insider of any of the Debtors or similar liability except as otherwise expressly provided in the Asset Purchase Agreement, and the Sale Motion, Sale Notice and Notice of [●] Auction Results contain sufficient notice of such limitation in accordance with applicable law. Except for the Assumed Liabilities, the transfer of the Purchased Assets and the Contracts to the Buyer under the Asset Purchase Agreement shall not result in (a) the Buyer, its affiliates or any of

their respective predecessors, successors, assigns, members, partners, officers, directors, principals or shareholders (or the equivalent thereof) or any of the Purchased Assets having any liability or responsibility for any claim against any of the Debtors or against any insider of any of the Debtors (including, without limitation, Excluded Liabilities); (b) the Buyer, its affiliates or any of their respective predecessors, successors, assigns, members, partners, officers, directors, principals or shareholders (or the equivalent thereof) or any of the Purchased Assets having any liability whatsoever with respect to, or being required to satisfy in any manner, whether at law or in equity, whether by payment, setoff or otherwise, directly or indirectly, any Liens or Excluded Liabilities; or (c) the Buyer, its affiliates or any of their respective predecessors, successors, assigns, members, partners, officers, directors, principals or shareholders (or the equivalent thereof) or any of the Purchased Assets having any liability or responsibility to any of the Debtors except as is expressly set forth in the Asset Purchase Agreement.

14. Effective upon the Closing Date, all persons and entities are forever prohibited and enjoined from commencing or continuing in any manner any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral or other proceeding against the Buyer, its assets (including the Purchased Assets) or its successors or assigns, with respect to any (a) Lien on the Purchased Assets or (b) successor, transferee, vicarious or other similar liability or theory of liability, including (i) commencing or continuing any action or other proceeding pending or threatened, in any manner or place, that does not comply with, or is inconsistent with, the provisions of this Order or other orders of the Court or the agreements or actions contemplated or taken in respect hereof or thereof; (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order;

(iii) creating, perfecting or enforcing any Lien; (iv) asserting any setoff, right of subrogation or recoupment of any kind; or (v) revoking, terminating or failing or refusing to renew any license, permit or authorization to operate any of the Purchased Assets or conduct any of the businesses operated with the Purchased Assets.

15. Assumption and Assignment of Contracts. Under sections 105(a), 363 and 365 of the Bankruptcy Code, and subject to and conditioned upon the closing of the Sale Transaction, the Debtors' assumption and assignment of the Contracts to the Buyer free and clear of all Liens pursuant to the terms of the Asset Purchase Agreement, as modified by the terms of any amendments reached by the Buyer and the respective Counterparty, is hereby approved, and the requirements of sections 365(b)(1), 365(f)(2) and 365(b)(3) (to the extent applicable) of the Bankruptcy Code with respect thereto are hereby deemed satisfied. Upon the Debtors' assumption and assignment of the Contracts to the Buyer, each applicable Counterparty shall be forever barred, estopped and permanently enjoined from raising or asserting against the Debtors, the Buyer or their respective property, any assignment fee, default, breach, claim, pecuniary loss, liability or obligation (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, known or unknown, liquidated or unliquidated senior or subordinate) arising under or out of, in connection with or in any way related to, the Contracts existing as of the Closing Date or arising by reason of the Closing. Upon the Debtors' assumption and assignment of the Contracts to the Buyer, the Buyer shall be fully and irrevocably vested with all right, title and interest of the Debtors in and to the Contracts and, pursuant to section 365(k) of the Bankruptcy Code, the Debtors shall be relieved from any further liability with respect to the Contracts. The Debtors' assumption and assignment of the Contracts to the Buyer shall not constitute a default under or

a termination of any Contract.

16. Cure Obligations. Any defaults or other obligations under the Contracts shall be deemed cured by the Debtors' or the Buyer's (as applicable) payment or other satisfaction of the cure amounts, if any, associated with the Contracts (the "Cure Costs").

17. Cure Objections. Except as provided herein, all objections to the Debtors' calculation of Cure Costs with respect to any of the Contracts (each such objection, a "Cure Objection") have been overruled, withdrawn, waived, settled or otherwise resolved. Any Cure Objections as to applicable Cure Costs that have not been resolved by the parties may be heard at a later date as set by the Court. The pendency of a dispute relating to a particular Contract shall not prevent or delay the assumption or assignment of any other Contract or the closing of the Sale Transaction.

18. Adequate Assurance. The Buyer has provided adequate assurance of future performance under the Contracts within the meaning of sections 365(b)(1)(C), 365(f)(2)(B) and 365(b)(3) (to the extent applicable) of the Bankruptcy Code. Any Adequate Assurance Objections (as defined in the Sale Motion) that have not been withdrawn, waived or settled and all reservations of rights included in such objections are hereby overruled on the merits with prejudice. All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the Debtors' assumption and assignment of the Contracts to the Buyer have been satisfied in accordance with the terms of this Order.

19. Anti-Assignment Provisions Unenforceable. No section or provision of any Contract that purports to (a) prohibit, restrict or condition the assignment of a Contract, including, but not limited to, the conditioning of such assignment on the consent of any Counterparty to such Contract; (b) authorize the termination, cancellation or modification of

a Contract based on the filing of a bankruptcy case, the financial condition of the Debtors or similar circumstances; (c) declare a breach or default as a result of a change in control in respect of the Debtors; or (d) provide for additional payments, profit sharing, penalties, conditions, renewals, extensions, charges or other financial accommodations in favor of the Counterparty to a Contract, or modification of any term or condition upon the assignment of a Contract or the occurrence of the conditions set forth in subsection (b) above, shall have any force or effect, and any such section or provision constitutes an unenforceable anti-assignment provision under section 365(f) of the Bankruptcy Code and/or is otherwise unenforceable under section 365(e) of the Bankruptcy Code.

20. Direction to Contract Counterparties. All Counterparties to Contracts assigned to the Buyer in accordance with the terms of this Order and the Asset Purchase Agreement shall cooperate with, and expeditiously execute and deliver upon, any reasonable request of the Buyer for any instruments, applications, consents or other documents that may be required or requested by any governmental unit or other public or quasi-public authority or other party to effectuate the applicable transfers in connection with the Debtors' assumption and assignment of the Contracts to the Buyer.

21. Licenses and Permits. To the extent provided in the Asset Purchase Agreement and available under applicable law, the Buyer shall be authorized, as of the Closing Date, to operate under any license, permit, registration and any other governmental authorization or approval of the Debtors with respect to the Purchased Assets and the Contracts, and all such licenses, permits, registrations and governmental authorizations and approvals are deemed to have been, and hereby are, directed to be transferred to the Buyer as of the Closing Date. To the extent any license or permit necessary for the operation of the Purchased Assets is

determined not to be an executory contract that may be assumed and assigned under section 365 of the Bankruptcy Code, the Buyer shall apply for and obtain any necessary license or permit promptly after the Closing Date, and such license or permit of the Debtors shall remain in place for the Buyer's benefit until a new license or permit is obtained.

22. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any permit or license relating to the operation of the Purchased Assets sold, transferred or conveyed to the Buyer on account of the filing or pendency of these Chapter 11 Cases or the consummation of the Sale Transaction.

23. Good-Faith Purchaser. The Buyer is a good-faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and is entitled to all of the protections afforded thereby. Pursuant to section 363(m) of the Bankruptcy Code, if any or all of the provisions of this Order are hereafter reversed, modified or vacated by a subsequent order of this Court or any other court, such reversal, modification or vacatur shall not affect the validity or enforceability of any sale, transfer or assignment under the Asset Purchase Agreement or obligation or right granted pursuant to the terms of this Order (unless stayed pending appeal prior to the Closing Date) and, notwithstanding any reversal, modification or vacatur, any sale, transfer or assignment under the Asset Purchase Agreement, shall be governed in all respects by the original provisions of this Order or the Asset Purchase Agreement, as applicable.

24. No Avoidance. Neither the Sale Transaction nor the Asset Purchase Agreement is subject to avoidance, and no party is entitled to any damages or other recovery in connection therewith under section 363(n) of the Bankruptcy Code.

25. Bulk Sales. No bulk sales law, bulk transfer law or similar law of any state or other jurisdiction shall apply in any way to the Sale Transaction.

26. Amendments. The Asset Purchase Agreement may be amended, supplemented or otherwise modified by the parties thereto and in accordance with the terms thereof, without further order of the Court; provided, that, any such amendment, supplement or modification shall not have a material adverse effect on the Debtors' estates.

27. Binding Order. This Order and the Asset Purchase Agreement shall be binding upon and govern the acts of all persons and entities, including without limitation, the Debtors and the Buyer, their respective successors and permitted assigns, including, without limitation, any chapter 11 trustee hereinafter appointed for the Debtors' estates or any trustee appointed in a chapter 7 case of any of the Debtors if any of these Chapter 11 Cases is converted from a case under chapter 11 to a case under chapter 7, all creditors of any and all of the Debtors (whether known or unknown), all Counterparties to any Contracts and all Recording Officers. Neither the Sale Transaction nor the Asset Purchase Agreement shall be subject to rejection or avoidance under any circumstances. This Order and the Asset Purchase Agreement shall inure to the benefit of the Debtors, their estates, their creditors, the Buyer and its respective successors and assigns.

28. Failure to Specify Provisions; Conflicts. The failure specifically to include or mention any particular provision of the Asset Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court, the Debtors and the Buyer that the Asset Purchase Agreement be authorized and approved in its entirety, including any amendments thereto as may be made by the parties thereto in accordance with the terms thereof and this Order.

29. Further Assurances. From time to time, as and when requested, all parties to the Sale Transaction shall execute and deliver, or cause to be executed and delivered,

all such documents and instruments and shall take, or cause to be taken, all such further or other actions as the requesting party may reasonably deem necessary or desirable to consummate the Sale Transaction, including such actions as may be necessary to vest, perfect, confirm, record or otherwise in the Buyer its right, title and interest in and to the Purchased Assets and the assigned Contracts.

30. Automatic Stay. The automatic stay pursuant to section 362 of the Bankruptcy Code is hereby modified to the extent necessary, without further order of the Court, to allow the Buyer to deliver any notice provided for in the Asset Purchase Agreement and to take any and all actions permitted or required under the Asset Purchase Agreement in accordance with the terms and conditions thereof.

31. No Stay of Order. Notwithstanding Bankruptcy Rules 6004(h), 6006(d), 7062 and any applicable Local Rules, this Order shall not be stayed and shall be effective and enforceable immediately upon entry. The provisions of this Order shall be self-executing. Time is of the essence in implementing the Asset Purchase Agreement and closing the Sale Transaction. Any party objecting to this Order or any of the relief granted herein must exercise due diligence in filing an appeal and obtaining a stay prior to the Closing of the Sale Transaction or risk its appeal being foreclosed as moot.

32. Governing Terms. To the extent this Order is inconsistent with any prior order or pleading in these Chapter 11 Cases, the terms of this Order shall govern. To the extent there is any inconsistency between the terms of this Order and the terms of the Asset Purchase Agreement, the terms of this Order shall govern.

33. Retention of Jurisdiction. This Court shall retain exclusive jurisdiction to (a) interpret, implement and enforce the terms and provisions of this Order, the Asset Purchase

Agreement, including all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith; and (b) decide any issues or disputes concerning this Order, the Asset Purchase Agreement or the rights and duties of the parties hereunder or thereunder, including the interpretation of the terms, conditions and provisions hereof and thereof, and the status, nature and extent of the Purchased Assets and the Contracts.

34. The Debtors are authorized and empowered to take all actions necessary or appropriate to implement the relief granted in this Order.

Exhibit 1

Asset Purchase Agreement