

SO ORDERED.

SIGNED this 31st day of January, 2018.



Lena Mansori James

LENA MANSORI JAMES

UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

IN RE:

AUTO SUPPLY COMPANY, INC.,

Debtor.

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Case Number 18-50018
Chapter 11

ORDER (A) APPROVING THE FORM OF ASSET PURCHASE AGREEMENT; (B) APPROVING EXPENSE REIMBURSEMENT PROVISIONS; (C) AUTHORIZING AND SCHEDULING AN AUCTION; (D) APPROVING PROCEDURES FOR SUBMISSION OF COMPETING BIDS; (E) SCHEDULING A FINAL HEARING TO CONSIDER APPROVAL OF THE AUCTION SALE; (F) APPROVING THE FORM AND MANNER OF NOTICE OF AUCTION BIDDING PROCEDURES AND SALE FINAL HEARING; AND (I) GRANTING RELATED RELIEF INCLUDING THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND LEASES, AND, IF NECESSARY, A HEARING UNDER SECTION 506(a) OF THE BANKRUPTCY CODE

THIS MATTER came on for consideration before the United States Bankruptcy Judge for the Middle District of North Carolina presiding, upon the Motion of Debtor-In-Possession Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code for an order or orders (A) Authorizing the Sale of the Assets to

Fisher Auto Parts, Inc., as the Stalking Horse Bidder or to a Higher and Better Bidder; (B) Authorizing the Sale of the Assets to be Free and Clear of All Liens, Claims, Interests and Encumbrances and Transferring Such Liens, Claims, Interests and Encumbrances to the Proceeds of Sale; (C) Approving the Form of Asset Purchase Agreement; (D) Approving Expense Reimbursement Provisions; (E) Authorizing and Scheduling an Auction; (F) Approving Procedures for Submission of Competing Bids; (G) Scheduling a Final Hearing to Consider Approval of the Auction Sale; (H) Approving the Form and Manner of Notice of Auction Bidding Procedures and Sale Final Hearing; and (I) Granting Related Relief Including the Assumption and Assignment of Executory Contracts and Leases, and, if Necessary, a Hearing Under Section 506 of the Bankruptcy Code. [Docket No. 38] (“Sale and Auction Bidding Procedures Motion”) filed on January 10, 2018, by Auto Supply Company, Inc. (“Debtor”). The Motion was properly served on January 12, 2018, and notice of hearing was served on January 16, 2018 on the Bankruptcy Administrator for the Middle District of North Carolina, Debtor’s pre-petition secured creditors, all counterparties to Contracts and Leases, all unsecured creditors, and any party-in-interest requesting notice through the Court’s CM/ECF electronic noticing system by First Class Mail through the United States Postal Service.

Appearing at the hearing were Ashley S. Rusher and James E. Vaughan, proposed counsel for Debtor, Robert E. Price, counsel for the Bankruptcy Administrator for the Middle District of North Carolina, Jeremy M. Downs, Ashley A. Edwards and Jacob H. Marshall, counsel for Wells Fargo Bank, National

Association, Angela N. Offerman and Jennifer B. Lyday, counsel for the official committee of unsecured creditors (“Committee”), Duane M. Geck and Jill C. Walters, counsel for Ford Motor Company, Felton Parrish, counsel for General Motors, LLC, John H. Maddock, III and Kevin L. Denny, counsel for Fisher Auto Parts, Inc.

Ford Motor Company filed a Limited Objection to the Sale and Auction Bidding Procedures Motion on January 23, 2018 [Docket No. 101], General Motors LLC filed a Limited Objection to the Sale and Auction Bidding Procedures Motion on January 25, 2018 [Docket No. 116], The Bankruptcy Administrator filed a Response and Limited Objection to the Sale and Auction Bidding Procedures Motion on January 26, 2018 [Docket No. 126], and the Committee filed an Objection to the Sale and Auction Bidding Procedures Motion on January 29, 2018 [Docket No. 137] (collectively, the “Objections”).

Having considered the Sale and Auction Bidding Procedures Motion, the testimony of Charles A. Key, Jr. and Elaine T. Rudisill offered in support of the Sale and Auction Bidding Procedures Motion, the Objections of parties in interest, arguments of counsel, and the record in this case, and the Court having determined that the relief requested in the Sale and Auction Bidding Procedures Motion is necessary and proper, and is in the best interests of Debtor, its estate, and its creditors; and after due deliberation and sufficient cause appearing therefor, the Court makes the following findings of fact and conclusions of law¹:

¹ All capitalized terms not otherwise defined in this Order shall have the meaning ascribed to them in the Sale and Auction Bidding Procedures Motion.

1. This Court has jurisdiction over the Sale and Auction Bidding Procedures Motion pursuant to 28 U.S.C. §§157 and 1334. This is a core proceeding pursuant to 28 U.S.C. §157(b). Venue of this Chapter 11 case and this Motion in this District is proper pursuant to 28 U.S.C. §1408.

2. On January 8, 2018 (the “Petition Date”), Debtor commenced a case under Chapter 11 of Title 11, United States Code in this Court. Debtor continues to operate its business and manage its properties as Debtor-in-Possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

3. No trustee or examiner has been appointed in Debtor’s Chapter 11 case. A Committee has been appointed in the case pursuant to Section 1102 of the Bankruptcy Code.

4. Debtor is a corporation organized and existing under the laws of the State of North Carolina. Its principal business is the supply of original equipment manufacturer automotive replacement parts (“OEM Parts”) and aftermarket automotive replacement parts (“Aftermarket Parts”) for passenger vehicles and light duty trucks to automotive repair professionals. Its customers range from franchised automotive dealers, independent automotive dealers, repair shops, automotive fleets, government garage facilities, to the individual automobile enthusiast.

5. Debtor has actively marketed its business and assets for sale since on or around June, 2017, with those efforts intensifying during the last quarter of 2017.

6. Debtor has received from Fisher Auto Parts, Inc., a Virginia corporation ("Fisher"), an offer (the "Stalking Horse Offer") pursuant to an Agreement For the Sale of Assets ("Asset Purchase Agreement") wherein Fisher has agreed to buy and Debtor has agreed to sell substantially all of its assets including most of its inventory, accounts receivable, vehicles, furniture, fixtures and equipment, intellectual property, miscellaneous tangible personal property, and other intangible assets, all as more fully defined in the Asset Purchase Agreement and its exhibits attached thereto ("Assets"), except for cash, investment securities, insurance policies on the life of any shareholder(s) of Debtor, all tax refunds due to Debtor, all employee benefit plans of Debtor, causes of action or avoidance actions which are derived pursuant to Title 11 of the United States Code, and all Ford/Motorcraft inventory ("Excluded Assets") for a base purchase price in the amount of Ten Million and 00/100 Dollars (\$10,000,000.00), with the amount to be paid at Closing subject to a downward adjustment based on the amounts of inventory, accounts receivable and equipment actually delivered to Fisher at Closing as provided for in the Asset Purchase Agreement.

7. Debtor has negotiated with Fisher for it to act as and be designated a "stalking horse" bidder which permits Debtor to continue to market its business and assets to other interested strategic buyers or investors. The Stalking Horse Offer is designated as an opening bid, subject to Acceptable Upset Bids, at an auction sale ("Auction"), if Acceptable Upset Bids are received by the Bid Deadline as set forth in the Auction Bidding Procedures.

8. Wells Fargo Bank, National Association (“Wells Fargo”) and AC Delco/General Motors LLC (“GM”) assert secured claims against the Assets.

9. Debtor filed the Sale and Auction Bidding Procedures Motion on January 10, 2018. Attached to the Sale and Auction Bidding Procedures Motion were (i) the Asset Purchase Agreement; (ii) the proposed Auction Bidding Procedures; and (iii) a proposed Notice of Auction Sale and Auction Bidding Procedures (“Notice”). Due and adequate notice of the filing of the Sale and Auction Bidding Procedures Motion, and the hearing to approve same was given by service of the Sale and Auction Bidding Procedures Motion and Notice of Hearing in accordance with Bankruptcy Rules 2002, 6004 and 6006, as evidenced by the Certificate of Service filed with the Court.

10. Debtor has established that a sound business purpose and justification exists for this Court to authorize a pre-confirmation sale of the Assets, pursuant to Section 363(b) of the Bankruptcy Code. Any delay in selling the Assets will result in a deterioration in the value of the business. Capitalizing on a sale at this time will maximize the value of the business and reduce the risk of deterioration in the value received by Debtor’s estate.

11. The Stalking Horse Offer in amount of Ten Million and 00/100 Dollars (\$10,000,000.00), if ultimately the highest and best offer for the Assets, represents a fair and reasonable price for the Assets, derived through arms-length negotiations, and after full and proper exposure of the Assets to be sold to the marketplace.

12. The Assets are proposed to be sold free and clear of all liens, claims, interests and encumbrances (collectively, the “Liens and Claims”), with such Liens and Claims to attach to the proceeds of sale pursuant to Section 363(f)(2) of the Bankruptcy Code with the same extent, validity and priority as they had with respect to the Assets. Wells Fargo has consented to the sale to Fisher pursuant to the terms of its Stalking Horse Offer (as in effect on the date hereof) and the transfer of its lien to proceeds of such a sale, on the condition that after payment of closing costs and prorations (as provided in such Stalking Horse Offer) and the Distribution Carveout (as defined by the Final DIP Order) Wells Fargo receives at the closing thereof all such proceeds for final and permanent application to the obligations owed by Debtor to Wells Fargo until such obligations are paid in full.

13. The form of the Asset Purchase Agreement is acceptable, including the provisions contained therein for the payment to Fisher of an Expense Reimbursement in the event it is not the Successful Bidder at the Auction, except that Fisher has agreed to reduce the Expense Reimbursement to \$300,000.00. Based upon the risk associated with being a “stalking horse,” as well as the extensive due diligence and document preparation and negotiations, from which other Qualified Bidders will benefit, the reduced Expense Reimbursement is fair and reasonable to compensate Fisher for such risk and expense, and will provide a substantial benefit to the estate. The reduced Expense Reimbursement was negotiated by the parties at arms-length and in good faith. Fisher is unwilling to commit to hold open the Stalking Horse Offer under the terms of the Asset

Purchase Agreement unless Fisher is assured of payment of the reduced Expense Reimbursement. Thus, assurance to Fisher of payment of the reduced Expense Reimbursement is likely to promote more competitive bidding by inducing the Stalking Horse Offer that otherwise would not have been made, and without which bidding would have been limited. Further, because the reduced Expense Reimbursement induced Fisher to research the value of the Assets and submit the Stalking Horse Offer, Fisher has provided a benefit to Debtor's estate by increasing the likelihood that the price at which the Assets are sold will reflect their true worth. Finally, absent authorization of the reduced Expense Reimbursement, the highest or otherwise best available offer for the Assets may be lost.

14. The Sale and Auction Bidding Procedures, as amended and attached hereto as Exhibit A, are reasonable and appropriate and will allow the Assets to be properly and adequately exposed to the marketplace, create an appropriate and fair competitive bidding process to allow for the marketplace to determine the fair market value of the Assets to be sold and will allow for a timely sale of the Assets that preserves, to the best extent possible, the value of the Assets.

15. An Auction scheduled for February 23, 2018, provides reasonable and adequate time for Prospective Upset Bidders to determine if they will submit competitive bids at the Auction and qualify as Qualified Bidders.

16. Scheduling the Final Sale Hearing to be held three (3) business days after the Auction for the Court to consider final approval of the sale of the Assets, and such other matters as may be required to pass title to the Successful Bidder in

accordance with the Asset Purchase Agreement, is reasonable and provides adequate notice to creditors and parties-in-interest.

17. The Notice of Sale is reasonable and adequate to ensure that due process is served and that Prospective Upset Bidders, creditors, counterparties to Contracts and Leases and other parties-in-interest have received sufficient and adequate notice of the Auction, this Sale and Auction Bidding Procedures Order, and Notice of the Final Sale Hearing.

18. Debtor has complied with the provisions of Bankruptcy Rule 6006(f) regarding an omnibus motion for assumption and assignment of multiple executory contracts and unexpired leases which are not between the same parties. The Sale and Auction Bidding Procedures Motion provides adequate notice to counterparties to Contracts and Leases regarding their assumption by Debtor and assignment to Fisher or Successful Bidder, and the proposed Cure Amount.

19. Good cause exists and it is in the best interests of the creditors for this Court to authorize the sale of the Assets pursuant to Section 363(b) and (f) of the Bankruptcy Code upon the terms and conditions set forth herein and as contained in the Asset Purchase Agreement and Auction Bidding Procedures, with all Liens and Claims upon the Assets being transferred to the proceeds of sale.

NOW THEREFOR, IT IS HEREBY ORDERED that pursuant to Sections 105(a), 363(f) and 365 of the Bankruptcy Code, the Motion be, and is hereby, **GRANTED IN PART**, subject to a Final Sale Hearing, upon the terms set forth below:

1. The Objections to the Sale and Auction Bidding Procedures Motion and the relief requested therein, have been resolved as to the relief granted in this Order respecting the Auction Bidding Procedures and authorization to conduct the Auction. The Objections of each of Ford Motor Company, General Motors LLC, the Bankruptcy Administrator, and the Committee, as well as Wells Fargo (to the extent in accordance with Paragraph 12 of the Order), are hereby reserved with respect all other issues, for determination at the Final Sale Hearing, and the objecting parties, shall be entitled to assert any objection they may have, respectively, to the sale and the distribution of the proceeds thereof at the Final Sale Hearing including, without limitation, under Sections 363, 365 and 506(a) of the Bankruptcy Code;

2. The form of the Asset Purchase Agreement is approved; provided however, for the avoidance of doubt, the Excluded Assets shall include all avoidance actions, no matter how derived, and causes of action against officers, directors or other insiders;

3. The Auction Bidding Procedures, as amended, are approved for distribution to Prospective Upset Bidders and other parties-in-interest;

4. The provisions of the Asset Purchase Agreement and Auction Bidding Procedures providing for the reduced Expense Reimbursement are hereby approved in all respects and Debtor shall pay the reduced Expense Reimbursement to Fisher if: (a) Fisher is not in breach of or default under the Asset Purchase Agreement and (b) Fisher is not the Successful Bidder. If Fisher is the purchaser of the Assets at a

price in excess of the Stalking Horse Offer, then Fisher shall receive a credit in the amount of the Expense Reimbursement with regard to the price paid by Fisher at the closing of the sale of the Assets. By submitting an Acceptable Upset Bid, all Qualified Bidders, except Fisher, shall be deemed to have waived any right to seek a claim for an expense reimbursement, fees or other costs pursuant to Section 503 of the Bankruptcy Code;

5. Wells Fargo may credit bid at the Auction pursuant to Section 363(k) of the Bankruptcy Code; provided however, the Committee retains its right to examine the liens and claims of Wells Fargo pursuant to the Investigation Period as defined in the Order Authorizing Debtor To: (A) Use Cash Collateral On A Final Basis; (B) Incur Post-petition Debt On a Final Basis; And (C) Grant Adequate Protection And Provide Security And Other Relief To Wells Fargo Bank, N.A., As Lender ("Final DIP Order"), and challenge the allowed claim of Wells Fargo.

6. The applicable reduced Expense Reimbursement shall be payable to Fisher as an administrative expense of Debtor's estate pursuant to Sections 503(b) and 507(a)(1) of the Bankruptcy Code and shall be paid at closing from the proceeds of the sale of the Assets to a Successful Bidder other than Fisher;

7. If there are one or more Qualified Bidders other than Fisher, Debtor shall conduct an Auction on February 23, 2018 at 10:00 a.m. at the offices of Blanco Tackabery & Matamoros, P.A., 110 S. Stratford Road, Suite 500, Winston-Salem, North Carolina at which time it shall solicit competing bids for the sale of its Assets. All Qualified Bidders must have at least one representative, with authority,

present in person at the Auction. Members of the Committee and/or its counsel may attend the Auction. Debtor shall take minutes of the Auction, which minutes shall be available for inspection by all parties in interest. Debtor shall file a Report of Sale with the Court by 10:00 a.m. on February 26, 2018.

8. By submitting an Acceptable Upset Bid, each Qualified Bidder shall be deemed to have consented to the exclusive jurisdiction of the Court in connection with any dispute which arises regarding the Auction Bidding Procedures, the Auction, and the Final Sale Hearing;

9. The Court shall hold emergency hearings to resolve any disputes that may arise prior to or during the Auction. These emergency hearings would include, but not be limited to, any hearing as to whether a party should be designated as a Qualified Bidder. All such emergency hearings shall be held on Notice and Hearing as determined by the Court to be necessary under the circumstances and may include limited notice and/or telephonic notice to the designated parties. Where the Court deems appropriate, ex parte orders shall be issued by the Court to aid and assist in the consummation of this Sale;

10. The form and manner of the Notice of Sale is approved. Debtor shall serve the Notice of Sale along with this Order, the Cure Notice, and the Auction Bidding Procedures by first-class mail, within three (3) business days after entry of this Order on: (a) all potential purchasers with whom Debtor has communicated about the sale of the Assets; (b) all attorneys and other parties who have entered an appearance in this case; (c) all secured creditors, (d) applicable taxing authorities,

(e) the Bankruptcy Administrator, (f) any official committee appointed to represent the unsecured creditors, (g) all counterparties to the Contracts and Leases and (h) all other creditors listed on the official mailing matrix, and shall thereafter file a Certificate of Service of the same with the Court; and

11. Debtor may assume the Contracts and Leases, and assign them to Fisher or other Successful Bidder, subject to final approval at the Final Sale Hearing. Any objection to the Cure Amount or adequate assurance of future performance must be filed with the Court and served on Debtor's counsel, the Bankruptcy Administrator, counsel for any official committee of unsecured creditors appointed in the case, and Fisher or the Successful Bidder so as to be actually received by the Bankruptcy Court and such parties on or before 4:00 p.m. February 27, 2018.

IT IS FURTHER ORDERED, AND NOTICE IS HEREBY GIVEN that the **Final Sale Hearing shall take place at 1:00 p.m., on February 28, 2018** in the United States Bankruptcy court for the Middle District of North Carolina located at 226 S. Liberty Street, Winston-Salem, North Carolina to confirm the sale and enter such other appropriate orders as may be necessary to transfer marketable title to the Successful Bidder.

END OF DOCUMENT

EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION**

IN RE:	§	
	§	
AUTO SUPPLY COMPANY, INC.,	§	Case Number 18-50018
	§	Chapter 11
Debtor.	§	

AUCTION BIDDING PROCEDURES

Summary of Important Dates.

February 19, 2018	Sale Participation Deadline
February 21, 2018	Bid Deadline
February 22, 2018	Deadline to provide notice to Qualified Bidders
February 23, 2018	Auction to be conducted in the offices of Blanco Tackabery & Matamoros, P.A., 110 S. Stratford Road, Suite 500, Winston-Salem, North Carolina
February 27, 2018	Deadline for objections to Sale and Cure Amounts
February 28, 2017	Final Sale Hearing, to be conducted at the United States Bankruptcy Court for the Middle District of North Carolina

Sale. Sale means the sale of substantially all of the Assets (defined below) owned by Auto Supply Company, Inc. (“Debtor”) by means of an auction sale (“Auction”), subject to subsequent approval of the United States Bankruptcy Court for the Middle District of North Carolina and entry of a Final Sale Order.

Assets. The Assets offered for sale at the Auction will be Debtor’s inventory, accounts, vehicles, furniture, fixtures and equipment, intellectual property, miscellaneous tangible personal property, other intangible assets, Debtor’s interest

in certain real estate leases, equipment leases and supplier contracts, all as more fully described in the Agreement for the Sale of Assets ("Asset Purchase Agreement") dated January 8, 2018 by and between Debtor and Fisher Auto Parts, Inc. ("Fisher"), and Exhibits B, C D, E, and F attached thereto.

Excluded Assets. The Assets exclude cash, investment securities, insurance policies on the life of any shareholder(s) of Debtor, all tax refunds due to Debtor, all employee benefit plans of Debtor, causes of action or avoidance actions which are derived pursuant to Title 11 of the United States Code, and all Ford/Motorcraft inventory.²

Prospective Upset Bidders. A "Prospective Upset Bidder" is a party who has provided the following to Debtor on or before February 19, 2018 (the "Sale Participation Deadline"):

i. A fully executed non-disclosure agreement in form and substance acceptable to Debtor delivered to Elaine T. Rudisill, The Finley Group, 212 S. Tryon Street, Suite 1051, Charlotte, North Carolina 28202 or by electronic mail to elaine@finleygroup.com;

ii. Evidence of corporate authority to proceed with the purchase of the Assets, the identity and exact legal name of the bidder, and if the bidder is an entity formed solely for the purpose of this transaction, the identity of any financial backer or equity holder of the bidder, including the entity designated to be the assignee of Leases and Contracts to be included in a bid delivered to Elaine T. Rudisill, The Finley Group, 212 S. Tryon Street, Suite 1051, Charlotte, North Carolina 28202 or by electronic mail to elaine@finleygroup.com; and

iii. Evidence establishing, as reasonably determined by Debtor in consultation with Wells Fargo and counsel to the official committee of unsecured creditors appointed in the case ("Committee") such prospective bidder's financial ability to consummate the sale for a cash purchase price in an amount equal to or exceeding an Acceptable Upset Bid (defined below) in a timely manner if such bidder becomes the Successful Bidder at the Auction, delivered to Elaine T. Rudisill, The Finley Group, 212 S. Tryon Street, Suite 1051, Charlotte, North Carolina 28202 or by electronic mail to elaine@finleygroup.com. For the avoidance of doubt, the Committee shall be entitled to review all information provided to Debtor by each Prospective Upset Bidder.

Promptly following the Sale Participation Deadline, Debtor shall provide Fisher, the Bankruptcy Administrator, the Committee, Wells Fargo, GM, Ford and any other secured creditor who has requested notification in writing, the name of each Prospective Upset Bidder.

² It should be noted that Debtor is willing to sell the Ford/Motorcraft inventory, but Fisher excluded that inventory in the Asset Purchase Agreement.

Bid Deadline. No later than February 21, 2018 (the "Bid Deadline"), Prospective Upset Bidders seeking to participate in the Auction must deliver to Debtor the following:

i. A cash deposit in the amount of One Hundred Thousand and 00/100 Dollars (\$100,000.00); *provided that* Wells Fargo as a Qualified Bidder shall have no requirement that it submit a deposit or any evidence regarding its financial ability to consummate a sale. Such deposit shall be provided to the attorney for the Debtor-in-Possession at Blanco Tackabery & Matamoros, P.A. at P.O. Drawer 25008, Winston-Salem, North Carolina 27114. Debtor's attorney shall deposit said funds in a separate trust fund account maintained for all sale deposits at Branch Banking & Trust Company. Debtor's attorney shall cause all deposits of Qualified Bidders except the Successful Bidder and the Backup Bidder to be returned within two (2) business days following the Auction. The deposit shall be returned by first-class mail to the address and entity which the Prospective Upset Bidder in writing has instructed the attorney for Debtor to return the deposit. If a Prospective Upset Bidder desires that the deposit be returned by wire transfer, then said instructions for said wire transfer shall be provided to Debtor's attorney upon submission of the deposit. Failure of the Prospective Upset Bidder to provide proper instructions for the return of deposit will authorize Debtor's attorney to hold said deposit pending written instructions.

ii. An initial Acceptable Upset Bid (as hereinafter defined) delivered to the following: (i) Debtor at P.O. Box 4859, Winston-Salem, North Carolina, 27115-4859, ATTN: Karl W. Kapp or by electronic mail to karlk@ascodc.com, (ii) Ashley S. Rusher, Blanco Tackabery & Matamoros, P.A., P.O. Drawer 25008, Winston-Salem, North Carolina, 27114-5008 or by electronic mail to asr@blancolaw.com, and (iii) Elaine T. Rudisill, The Finley Group, 212 S. Tryon Street, Suite 1051, Charlotte, North Carolina 28202 or by electronic mail to elaine@finleygroup.com.

iii. Acceptable Upset Bids. An Acceptable Upset Bid (as hereinafter defined) may be made by a Prospective Upset Bidder by submitting a signed form of purchase agreement to Debtor, along with a redline comparison showing the differences between such purchase agreement and the Fisher Asset Purchase Agreement. All Acceptable Upset Bids made before the Auction must be in an amount equal to or greater than Four Hundred Fifty Thousand and 00/100 Dollars (\$450,000.00) in excess of the value of the Stalking Horse Offer to account for (i) the Expense Reimbursement and (ii) an initial overbid in the amount of One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00). For the avoidance of doubt, the value of the Stalking Horse Offer shall be calculated by TFG by taking the Base Price and adjusting it per the Asset Purchase Agreement. For the avoidance of doubt, the amount of the Acceptable Upset Bids shall be calculated by TFG by taking the purchase price set

forth in the Acceptable Upset Bid and adjusting it per any adjustments as may be provided in the Acceptable Upset Bids, plus the Expense Reimbursement, plus the initial overbid. Adjustments shall be calculated based on the actual inventory and accounts receivable of Debtor as of February 15, 2018 in order to determine the value of the Stalking Horse Offer and the amount of the Acceptable Upset Bids; provided, however, any actual adjustments to the Successful Bid (defined below) shall be taken on the Closing Date (defined below). Acceptable Upset Bids may, but are not required to, include the same purchase price adjustments contained in the Fisher Asset Purchase Agreement. An Acceptable Upset Bid must be a bid to purchase at least all of the Assets, other than executory contracts and unexpired leases, under the terms and conditions at least as favorable as those set forth in the Asset Purchase Agreement. An Acceptable Upset Bid may include other assets of Debtor, which are Excluded Assets in the Asset Purchase Agreement. If an Acceptable Upset Bid includes Excluded Assets, it must assign a purchase price for the Excluded Assets, which purchase price shall be in excess of and in addition to the Expense Reimbursement and initial overbid. The purchase price of an Acceptable Upset Bid must be payable only in cash. An Acceptable Upset Bid may not contain any contingencies, conditions or approvals in addition to those set forth in the Asset Purchase Agreement. An Acceptable Upset Bid must remain open and be irrevocable through the Final Sale Hearing and, (i) if it is determined at such hearing to be approved as the Successful Bid (defined below), it shall remain open and be irrevocable through the Closing Date (defined below) and (ii) if it is determined that such bid is the Back-up Bid (defined below) then such bid will remain open and be irrevocable through the time set forth below. A bid from a Prospective Upset Bidder in accordance with the foregoing terms (as determined by Debtor in consultation with Wells Fargo and the Committee) will constitute an "Acceptable Upset Bid". Wells Fargo shall have the right to credit bid at the Auction pursuant to Section 363(k) of the Bankruptcy Code up to the amount of the outstanding loan balance owed as of the Bid Deadline, and such credit bid, if any, shall be deemed an Acceptable Upset Bid. Each such Prospective Upset Bidder, Wells Fargo and Fisher will constitute a "Qualified Bidder". Debtor will provide a copy of each Acceptable Upset Bid along with any materials received in support of the Acceptable Upset Bid to the Bankruptcy Administrator, the Committee, Fisher, Wells Fargo, GM and Ford.

Time and Date of Auction. The Auction shall take place at 10:00 a.m. on Friday, February 23, 2018; provided that if no Acceptable Upset Bid is submitted by the Bid Deadline, then Fisher will be deemed the Successful Bidder, the Asset Purchase Agreement will be deemed the Successful Bid, and no Auction will be held.

Location. If there is at least one Acceptable Upset Bid, Debtor will conduct the Auction. The Auction shall take place in the law offices of Blanco Tackabery & Matamoros, P.A., 110 S. Stratford Road, Suite 500, Winston-Salem, North Carolina, or such other place as may be ordered by the U.S. Bankruptcy Court for the Middle District of North Carolina. Attendance at the Auction will be limited to: (i)

members, representatives of, and counsel to Debtor; (ii) members, representatives of, and counsel to Fisher; (iii) members, representatives of and counsel to any Qualified Bidders; (iv) members, representatives of, and counsel to the Committee; (v) members, representatives of, and counsel to GM; and (vi) members, representatives of, and counsel to Ford. All Qualified Bidders participating in the Auction must have at least one party, with authority, attending the Auction in person.

Acceptable Opening Bid. The opening bid at the Auction shall be the Stalking Horse Offer or such other higher or better Acceptable Upset Bid submitted no later than the Bid Deadline, as determined by Debtor in consultation with Wells Fargo and the Committee ("Acceptable Opening Bid") and will be announced by Debtor at the open of the Auction.

Subsequent Bids at Auction. Following announcement of the Acceptable Opening Bid, each subsequent bid must meet the requirements of an Acceptable Upset Bid and must also increase the value of the purchase price offered for the Assets by not less than One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00) above the other immediately prior Acceptable Upset Bid. The Auction shall continue until such time as Debtor in consultation with Wells Fargo and the Committee concludes that no higher or otherwise better Acceptable Upset Bids are reasonably and promptly expected from Qualified Bidders. Debtor, after consultation with Wells Fargo and the Committee, may alter the rules of the Auction as circumstances dictate if such alteration is in the best interests of Debtor's estate and its creditors, upon emergency application to the Court for telephonic hearing. For the avoidance of doubt any participant at the Auction may attend such telephonic hearing and be heard.

Determination of Successful Bidder. Debtor, in its business judgment, and in consultation with TFG, Wells Fargo, its counsel and advisors, the Bankruptcy Administrator, the Committee, its counsel and advisors, GM, its counsel and advisors and any other party so approved by an order of the Bankruptcy Court, shall make a determination of which Bid received at the Auction is the highest and best offer (the "Successful Bid"). All Qualified Bidders in attendance at the Auction will be notified of the Successful Bid designation at the conclusion of the Auction. The Qualified Bidder who made the Successful Bid at the Auction (the "Successful Bidder") shall promptly execute the applicable asset purchase agreement and a representation and agreement that its highest bid has been submitted pursuant to the terms and conditions of the Sale and Auction Bidding Procedures Order, and that said terms and conditions of such asset purchase agreement are agreed. The Successful Bid is not subject to any upset bid after the close of the Auction or at the Final Sale Hearing, unless upon application of Debtor, the Court orders otherwise in light of extraordinary circumstances not anticipated at the time of the Auction.

Designation of a Back-up Bidder. The Acceptable Upset Bid that is determined by the Debtor in consultation with TFG, Wells Fargo, its counsel and advisors, the Bankruptcy Administrator, the Committee, its counsel and advisors, GM, its counsel and advisors and any other party so approved by an order of the Bankruptcy Court to be the second-best bid will be designated the "Back-up Bid" and the submitting Qualified Bidder will be designated the "Back-up Bidder"; the Back-up Bid will remain open and irrevocable until the later of (a) fourteen (14) days after the Final Sale Hearing or (b) the Closing Date; *provided that* if Debtor sends the Back-up Bidder written notice that the Back-up Bidder is now the New Successful Bidder (defined below) while the Back-up Bid is still open, then the Back-up Bid will remain open and irrevocable an additional fifteen (15) days after Back-up Bidder's receipt of such notice. For the avoidance of doubt, Fisher has agreed that its Stalking Horse Offer will be the Back-up Bid if it is the second-best and highest bid.

Procedures if There are No Qualified Bidders Other than Fisher. If there are no Qualified Bidders other than Fisher, then no Auction will be held and the Stalking Horse Offer from Fisher in the amount of Ten Million and 00/100 Dollars (\$10,000,000.00), subject to the adjustments contained in the Asset Purchase Agreement, shall be deemed the highest and best offer for the Assets and shall therefore be submitted for approval by the Court at the Final Sale Hearing.

Court Hearings.

i. **Initial Sale Hearing.** An initial sale hearing is requested to be held by the Court which will approve the requested Auction Bidding Procedures, including authorizing Debtor to pay the Expense Reimbursement to Fisher as set forth in the Auction Bidding Procedures, deem Fisher as a Qualified Bidder, and deem Fisher's Stalking Horse Offer as the Acceptable Opening Bid (subject only to Debtor's receipt of a higher and better Acceptable Upset Bid).

ii. **Final Sale Hearing.** A final sale hearing will be held on February 28, 2018 at a time to be announced ("Final Sale Hearing"). It shall be the purpose of said hearing to confirm that the procedures as set forth in the Sale and Auction Bidding Procedures Order have been followed by Debtor and the Auction was conducted in accordance with the same, and to make such findings as are necessary to provide the Successful Bidder with an order that properly passes title in accordance with the terms and conditions of the applicable asset purchase agreement and to enter an order approving the sale of the Assets to Fisher or such other Successful Bidder in accordance with these bid procedures (such order, the "Final Sale Order"). Any objection to the Sale, entry of the Final Sale Order or Cure Amount must be filed with the Court and served on Debtor's counsel, Ashley S. Rusher, by electronic mail to asr@blancolaw.com; the Bankruptcy Administrator, c/o Robert E. Price, by electronic mail to robert_e_price@ncmba.uscourts.gov; , counsel for the Successful Bidder (if other than Fisher) and counsel for the Committee, by

electronic mail to jcoleman@krcl.com so as to be actually received by the Bankruptcy Court and such parties on or before 4:00 p.m, February 27, 2018. By submitting an Acceptable Upset Bid, all Qualified Bidders shall be deemed to have consented to the exclusive jurisdiction of the Court in connection with determinations made at the Initial Sale Hearing and the Final Sale Hearing.

Closing Date. The closing date shall be deemed to be the date upon which the consideration is paid and all closing documents are signed (the “Closing Date”). Closing must occur within three (3) business days of the date the Final Sale Order becomes a final, non-appealable order or as otherwise provided in the final, binding purchase agreement between Debtor and the Successful Bidder (including the Back-up Bidder if such Back-up Bidder becomes the Successful Bidder).

Effect of Failure to Close Within Time Required. In the event closing of the sale does not occur within three (3) business days of the date the Final Sale Order becomes a final, non-appealable order, and no extension of the Closing Date has been agreed to by Debtor, in consultation with Wells Fargo, the Committee and the Bankruptcy Administrator:

i. The Back-up Bidder shall be deemed to be the new Successful Bidder (“New Successful Bidder”) without further hearing or order of the Court.

ii. Debtor shall notify the New Successful Bidder in writing that it has been deemed to be the Successful Bidder, and the date such written notice is given to the New Successful Bidder shall be referred to as the “Notification Date.”

iii. Within three (3) business days of the Notification Date, the New Successful Bidder shall execute an asset purchase agreement and a representation and agreement that its highest bid has been submitted pursuant to the terms and conditions of the Sale and Auction Bidding Procedures Order, and that said terms and conditions of the asset purchase agreement are agreed to.

iv. Closing of the sale to the New Successful Bidder must take place within fifteen (15) days of the Notification Date.

Absolute Sale. The Auction shall be an absolute sale and not subject to upset bid after the Auction, but subject to entry of the Final Sale Order, unless upon application of Debtor, the Court orders otherwise in light of extraordinary circumstances not anticipated at the time of the Auction. Notwithstanding Bankruptcy Rule 6004(g), Debtor is authorized to close this sale immediately upon approval at the Final Sale Hearing.

Necessary Findings for Successful Bidder. A sale conducted pursuant to the procedures set forth herein shall result in the Assets being sold to the Successful Bidder as a good-faith purchaser. Said purchaser shall acquire all rights as can be conveyed pursuant to 11 U.S.C. § 363 including, but not limited to, the rights of a

good faith purchaser pursuant to 11 U.S.C. § 363(m), and a finding, based upon the sworn representation of the Successful Bidder, that the bidding was not pursuant to any improper collusive bidding practices, which prevent the sale from being avoided for reasons which would include 11 U.S.C. § 363(n).

Expense Reimbursement. A fee (the "Expense Reimbursement") shall be paid to Fisher as an expense reimbursement in the amount of Three Hundred Thousand and 00/100 Dollars (\$ 300,000.00) in the event the Assets are sold at the Auction and Fisher is not the Successful Bidder. This fee is to be deemed earned and shall be paid in consideration of the substantial cost and expense incurred by Fisher to move forward with the negotiation and preparation of the Asset Purchase Agreement and with all other pleadings and hearings necessary to obtain Bankruptcy Court approval of the Asset Purchase Agreement, entry of the Sale and Auction Bidding Procedures Order and the conduct of the Auction; and in recognition of the benefit gained by the Debtor in allowing Fisher's Acceptable Opening Bid to be subject to a higher bid pursuant to these Auction Bidding Procedures. By submitting an Acceptable Upset Bid, all Qualified Bidders, except Fisher, shall be deemed to have waived any right to seek a claim for an expense reimbursement, fees or other costs pursuant to Section 503 of the Bankruptcy Code.

Payment of Expense Reimbursement. If the Assets are sold to a Qualified Bidder other than Fisher for a price in excess of the value of the Stalking Horse Offer, including to a New Successful Bidder, then at the closing of such sale, Debtor shall pay, or cause to be paid, to Fisher the Expense Reimbursement in immediately available funds; provided, however, if Fisher is the purchaser of the Assets at a price in excess of the Stalking Horse Offer (including a sale of the Assets to Fisher under a Back-up Bid), then Fisher shall receive a credit in the amount of the Expense Reimbursement with regard to the price paid by Fisher at the closing of the sale of the Assets.

Dispute Resolution. The United States Bankruptcy Court for the Middle District of North Carolina shall retain exclusive jurisdiction to resolve any disputes which may arise concerning the Auction Bidding Procedures or other issues relevant to Debtor's sale of the Assets as outlined herein and in the Auction Bidding Procedures. By submitting an Acceptable Upset Bid, all Qualified Bidders shall be deemed to have consented to the exclusive jurisdiction of the Court in connection with determinations made regarding any disputes arising in connection with the Auction Bidding Procedures or the Auction sale.

Emergency Court Hearing with Notice and Hearing. The Sale and Auction Bidding Procedures Order shall authorize the Court to hold emergency hearings to resolve any disputes that may arise prior to the Auction. These emergency hearings would include, but not be limited to, any hearing as to whether a party should be designated as a Qualified Bidder. All such emergency hearings shall be held on Notice and Hearing as determined by the Court to be necessary under the

circumstances and may include limited notice and/or telephonic notice to the designated parties. Where deemed necessary, the Sale and Auction Bidding Procedures Order shall allow for ex parte orders to be issued by the Court to aid and assist in the consummation of this Sale.