

Lena Mansori James
LENA MANSORI JAMES
UNITED STATES BANKRUPTCY JUDGE

Chapter 11

including the Internal Revenue Service, and Felton E. Parrish appeared on behalf of DCD Investments X, LLC. Based upon a review of the Amended Motion, the record in this case, the evidence presented at the hearing and arguments of counsel, the Court finds that the relief requested in the Amended Motion is in the best interest of the Debtor, the Debtor's creditors, and the Debtor's bankruptcy estate. In support hereof, the Court finds as follows and will grant the Amended Motion to the extent specified below:

A. On April 23, 2019 (the "Petition Date"), the Debtor commenced a case under Chapter 11 of Title 11, United States Code in this Court. The 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.

B. The Debtor's principal business is the manufacture of auto racing seats and accessories.

C. No trustee or examiner has been appointed in Debtor's Chapter 11 case, and no creditors or other official committee has been appointed herein pursuant to Section 1102 of the Bankruptcy Code.

D. On July 17, 2019, this Court approved the hiring of Three Twenty-One Capital Partners, LLC ("321 Capital Partners") as investment banker to facilitate a sale under Section 363 of the Bankruptcy Code (a "363 Sale").

E. 321 Capital Partners investigated the Assets of the Debtor and is marketing the same.

F. This court has jurisdiction over the Motion pursuant to 28 U.S.C. § 1334. This proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue is proper in this district and in this court pursuant to 28 U.S.C. §§ 1408 and 1409.

G. The statutory predicates for the relief requested herein are sections 105(a), 363(b)

and 363(f) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (as amended, the “Bankruptcy Code”) and Rules 2002(a)(2), 6004(a), (b), (c), (e) and (f), and 9007 and of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

H. Notice of the Motion was given to (i) the Bankruptcy Administrator, (ii) the Internal Revenue Service, (iii) the North Carolina Department of Revenue, and (iv) all creditors listed on the creditors’ matrix in this case (the “Service List”), and such notice is sufficient in light of the circumstances and the nature of the relief requested herein.

I. The Debtor has articulated good and sufficient reasons for this Court to grant the relief requested in the Motion regarding the sale process, including, without limitation: (i) approving the Bid Procedures; (ii) scheduling a Sale Hearing; and (iii) approving the Sale Notice.

J. There is no stalking horse bid.

K. The Bid Procedures described herein are fair and reasonable.

L. The Sale Notice attached hereto as Exhibit B is reasonably calculated to provide all interested parties with timely and proper notice of the Transaction, the Sale Hearing, and the Auction.

M. The entry of this Order is in the best interests of the Debtor, its estate, creditors, and other parties in interest.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Amended Motion is granted to the extent set forth herein.
2. The following bid procedures are approved:
 - a. In order to participate in the bidding process, each entity (a “Potential Bidder”) must first deliver (unless previously delivered) the following items (collectively, the “Participation Requirements”) to Debtor’s counsel or 321 Capital Partners:
 - i. An executed confidentiality agreement in form and substance reasonably acceptable to the Debtor (an “NDA”); and

- ii. Financial information evidencing the Potential Bidder's ability to close the Transaction, the sufficiency of which shall be determined by the Debtor in its reasonable discretion.
- b. Upon satisfaction of the Participation Requirements, the Debtor will afford each Potential Bidder due diligence access to the Acquired Assets; provided, however, that the Debtor will have no obligation to provide due diligence access after the Bid Deadline (defined below).
- c. To be eligible to attend and participate in the Auction, each Potential Bidder must deliver to the Debtor a written Bid that complies with each of the following conditions (such bid, a "Qualified Bid" and any bidder submitting a Qualified Bid, a "Qualified Bidder"):
 - i. The bid must include a signed version of an asset purchase agreement (an "APA") substantially in the form of the APA attached hereto as Exhibit A, together with a blacklined copy of the agreement to show all changes requested by the Bidder;
 - ii. The signed APA must be emailed to ryan@321capital.com and devin@321capital.com;
 - iii. The bid must be received by 321 Capital Partners and Debtor's counsel no later than 5:00 p.m. on October 7, 2019 (the "Bid Deadline");
 - iv. The bid must provide a purchase price and be accompanied by a cash deposit in the amount of 10% of the proposed purchase price;
 - v. The bid must make adequate representations and warranties regarding the Qualified Bidder's affiliation or relationship with the Debtor, any insider(s) of the Debtor, or any creditor(s) of the Debtor;
 - vi. The bid must warrant that it is not subject to any additional due diligence, any financing contingencies, or any further board or similar corporate approval;
 - vii. The bid must provide that it is irrevocable by the Qualified Bidder until three (3) days after a Court order approving a sale of the assets pursuant to which the Qualified Bidder does not hold the "Successful Bid" or "Back-Up-Bid";
 - viii. The bid must provide for a closing on the purchase as soon as possible after entry of an order approving the sale, but not later than three (3) business days after such order has become a final order (the "Closing").
 - ix. The bid must acknowledge that the sale is "as-is, where-is" with no warranties express or implied by the Debtor or 321 Capital Partners;

- x. The bid must represent and warrant to the Debtor and 321 Capital Partners that the Qualified Bidder (A) has relied solely upon the Qualified Bidder's own independent review, investigation, and/or inspection of the assets in making the bid and (B) did not rely upon any written or oral statements, representations, promises, warranties, or guarantees whatsoever, whether express, implied, by operation of law or otherwise, by the Debtor or 321 Capital Partners regarding the assets; and,
 - xi. The bid must not include any breakup fee, expense reimbursement, or similar payment obligation;
- d. In the event that the Debtor receives at least two Qualified Bids by the Bid Deadline, the Debtor shall conduct an auction (the "Auction") of the Acquired Assets to determine the highest and otherwise best bid with respect to the Acquired Assets. No later than October 9, 2019, the Debtor will notify all Qualified Bidders of (i) the highest or otherwise best Qualified Bid, (the "Baseline Bid") and (ii) confirm the time and place of the Auction. The Auction shall commence at 10:00 a.m. at the offices of the Nardone Law Firm, PLLC, 241 Church Street NE, Concord, North Carolina on October 15, 2019. The Debtor will seek approval of the sale of the Acquired Assets to the Successful Bidder at the Auction at the sale hearing.
- e. In the event that only one Qualified Bid is received by the Bid Deadline, the Debtor will report the same to the Bankruptcy Court, will declare it the Successful Bidder, and will seek approval of the sale of the Acquired Assets to the Successful Bidder at the sale hearing.
- 3. The Auction shall be conducted according to the following procedures:
 - a. Only the Debtor, counsel to the IRS, counsel to the North Carolina Department of Revenue, the Bankruptcy Administrator, and any Qualified Bidder who has timely submitted a Qualified Bid (and professional advisors to each of these parties) may participate in the Auction. Only Qualified Bidders may make any subsequent Qualified Bids at the Auction.
 - b. The Debtor and 321 Capital Partners shall direct and preside over the Auction. Bidding at the Auction shall begin with the Baseline Bid, which will be the Qualified Bid that reflects the highest or otherwise best value for the Assets. The Competitive Sale¹ will commence by 321 Capital Partners announcing the opening bid.
 - c. All Bids made thereafter shall be Overbids (as defined below) and shall be made and received on an open basis, and all material terms of each Bid shall be fully disclosed to all other Qualified Bidders.
 - d. An "Overbid" is any bid made at the Auction subsequent to the Debtor's

¹ The terms "Competitive Sale" and "Auction" may be used interchangeably herein.

announcement of the Baseline Bid. Any Qualified Bidder's initial Overbid shall be at least \$5,000.00 in excess of the Baseline Bid and each subsequent Overbid must be made in increments of at least \$5,000.00 over the previous highest or best bid.

- e. Each Overbid must comply with the conditions for a Qualified Bid set forth above. Any Overbid made by a Qualified Bidder must remain open and binding on the Qualified Bidder until and unless the Debtor accepts a higher Qualified Bid as an Overbid. The Debtor shall announce at the Auction the material terms of each Overbid and the basis for calculating the total consideration offered in each such Overbid.
- f. Upon conclusion of the bidding, the Auction shall be closed, and the Debtor, in consultation with its professionals, shall determine, after taking into account the terms and conditions of any assumed debt obligations, the highest or otherwise best offer for the Acquired Assets (the "Successful Bid") and the entity submitting such Successful Bid, the ("Successful Bidder") and the next highest or otherwise best offer after the Successful Bid (the "Back-Up Bid") and the entity submitting such Back-Up Bid (the "Back-Up Bidder"). No additional bidding may be submitted by any person after the Debtor designates the Successful Bidder and the Back-Up Bidder.
- g. The Debtor, in consultation with 321 Capital Partners, shall consult with any representative of the Bankruptcy Administrator's Office, Internal Revenue Service, and North Carolina Department of Revenue that attend the Auction before rejecting any bid and adjourning the Competitive Sale.

4. The hearing to consider approval of the sale of the Acquired Assets to the Successful Bidder, or Back-up Bidder shall be conducted on October 18, 2019, at 9:30 a.m. in the United States Bankruptcy Court, 601 West 4th Street, Suite 100, Winston-Salem, North Carolina (the "Sale Approval Hearing"). Any objections to the sale of the Acquired Assets other than any objection based on the conduct of the Auction shall be filed with the Court on or before October 16, 2019. The matters to be determined at the Sale Approval Hearing, based on the evidence presented at the hearing, include: (1) Approval of the Successful Bidder and/or the Back-up Bidder; (2) Approval of the terms of the sale of the Acquired Assets; (3) Resolution of objections to the sale, if any; and (4) Whether the Debtor has established grounds for relief under Section 363(f) of the Bankruptcy Code.

5. If the Court approves a sale based on the Successful Bid, then the Successful Bidder

shall close on the purchase no later than three (3) business days following the sale order becoming a final, non-appealable order, with the understanding that the Successful Bidder and Debtor shall make all reasonable efforts, but not be required, to consummate the sale on or before the tenth day following entry of an order approving the sale if the order approving the sale is not subject to any stay. If the Successful Bidder fails to consummate the purchase, then the Back-Up Bidder shall close on the purchase no later than twenty (20) days after an order approving the sale becoming a final, non-appealable order.

6. Whichever of the Successful Bidder and Back-Up Bidder actually completes the purchase of the Acquired Assets, shall have thirty (30) days following the Closing to notify the Debtor or 321 Capital Partners of any executory contracts such purchaser wishes to assume in connection with the purchase, and all actions reasonably necessary to assume and assign said contracts pursuant to Section 365 of the Code shall be taken.

END OF DOCUMENT

PARTIES IN INTEREST

William P. Miller
Bankruptcy Administrator

Kristen S. Nardone, Esq.
Attorney for the Debtor

Internal Revenue Service
Nathan Strup, Esq.

North Carolina Department of Revenue
Ronald Williams, Esq.

U.S. Attorney's Office
Middle District of North Carolina
Attn: Nathan Strup, Asst. U.S. Attorney
101 S. Edgeworth St., 4th Floor
Greensboro, NC 27401

NC Department of Justice
c/o Attorney General's Office
Attn: Ronald Williams, Esq.
9001 Mail Service Center
Raleigh, NC 27699-9001

ASSET PURCHASE AGREEMENT GENERAL PROVISIONS

Seller: Butler Specialties, Inc. T/A Butler Built Motorsports Equipment, Inc, Chapter 11 Debtor, through authorized investment banker 321 Capital Partners, LLC

Seller's Address: 5950 Symphony Woods Road, Columbia, MD 21044

Seller's Email Address: ryan@321capital.com, devin@321capital.com

Execution Date: _____

Buyer: _____

Assets Purchase Price: _____

Total Purchase Price: _____

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “Agreement”) is entered into by and among: Butler Specialties, Inc. T/A Butler Built Motorsports Equipment, Inc. (the “Debtor”) through 321 Capital Partners, LLC, its authorized investment banker (the “Seller”); the person or entity indicated as the “Buyer” in the *Asset Purchase Agreement General Provisions* (the “General Provisions”) appearing above and/or such person’s or entity’s successor(s) or assign(s) (“Buyer”) and the person signing this agreement as the “Buyer’s Control Person” (“Buyers Control Person”). Each of the Seller, Buyer and Buyer’s Control person may be sometimes referred to in this Agreement as a “Party” and collectively as the “Parties.”

RECITALS:

WHEREAS, the Debtor is in the business of manufacturing and selling racing seats and accessories.

WHEREAS, on April 23, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq* (the “Bankruptcy Code”), initiating case number 19-50417 before the Bankruptcy Court (the “Bankruptcy Case”);

WHEREAS, The Bankruptcy Court appointed 321 Capital Partners, LLC as the Debtor’s Investment Banker pursuant to a written Order entered in the Bankruptcy Case on July 17, 2019;

WHEREAS, as of the Petition Date, the Debtor owned certain real property (the “Real Property”) and personal property (the “Personal Property”) collectively the “Assets”;

WHEREAS the Internal Revenue Service and North Carolina Department of Revenue assert, as of the Petition Date, a lien in favor of each of them encumbering the Assets;

WHEREAS, pursuant to Bankruptcy Code §§ 363, 1106, and 1108, among others, the Debtor has the right and authority to operate the Debtor’s business, oversee the Debtor’s financial affairs, and use, sell, lease, or otherwise dispose of the Debtor’s Assets.

WHEREAS, Buyer desires to buy, and Seller desires to sell, certain related assets on the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. ***Definitions and Interpretation:*** Unless the context otherwise clearly indicates, in this Agreement: (a) the singular includes the plural; (b) “includes” and “including” are not limiting; (c) “may not” is prohibitive and not permissive; and (d) “or” is not exclusive. Notwithstanding, the following terms used in this Agreement shall have the following meanings.

1.1 “Acquired Assets” means all assets of the Seller but may be specified by Buyer to be limited to the Real Property Assets or Personal Property Assets if set forth specifically herein in writing. If no specification is indicated, without limiting the generality of the foregoing, the Acquired Assets shall include: Real property described as 70 Pitts School Road, Concord, North Carolina (the “Real Property” or “Real Property Assets”), and inventory, accounts receivable, vehicles, furniture, fixtures and equipment, its intellectual property, its miscellaneous tangible personal property, and other intangible assets (the “Personal Property Assets”).

1.2 “Acquisition Proposal” means a definitive proposal (other than by Buyer or its affiliates) relating to any merger, consolidation, business combination, sale or other disposition of all or any portion of the Acquired Assets pursuant to a transaction, the sale of all or substantially all of the outstanding shares of capital stock or equity interests of Debtor (including by way of a tender offer, foreclosure or plan of reorganization or liquidation) or a similar transaction or business combination.

1.3 “Back-Up- Bidder” shall have the meaning ascribed to in the Bidding Procedures Order.

1.4 “Bankruptcy Case” shall mean MDNC case number 19-50417.

1.5 “Bankruptcy Code” shall be the United States Bankruptcy Code.

1.6 “Bankruptcy Court” means the United States Bankruptcy Court for the Middle District of North Carolina.

1.7 “Bidding Procedures Order” means the order of the Bankruptcy Court, in the form attached hereto as Exhibit D.

1.8 “Business” shall mean the Debtor’s business of manufacturing and selling racing seats and accessories.

1.9 “Closing” means the occurrence of all acts necessary to consummate the transaction contemplated by this Agreement.

1.10 “Closing Date” means the date upon which the Closing occurs’ *provided, however,* that the Closing Date shall occur no later than three (3) business days following the Sale Order becoming a Final Order, with the understanding that the Parties shall make all reasonable efforts, but not be required, to complete the Closing on or before the tenth (10th) day of the Sale Order, except as otherwise provided in this Agreement.

1.11 “Competitive Sale” shall mean if more than one Qualified Bid is received on or before the Bid Deadline, then 321 Capital Partners shall conduct a competitive sale of the Assets (the “Competitive Sale”) pursuant to these Bidding and Sale Procedures on Wednesday, October 15, 2019, at 10:00 a.m. in the office of the Nardone Law Firm, PLLC located at 241 Church Street NE, Concord, North Carolina (the “Sale Location”).

1.12 “Encumbrance” shall mean any mortgage, pledge, lien, security interest, charge, or claim against, or other interest of any type, and the term interest shall be given the broadest possible meaning for purposes of Section 363(f) of the Bankruptcy Code.

1.13 “Escrow Agent” shall mean Nardone Law Firm, PLLC, or such other escrow agent that may be mutually agreed upon by Buyer and Seller.

1.14 “Execution Date” means the date of Buyer’s execution of this Agreement.

1.15 “Final Order” means an Order as to which the time to file an appeal, a motion for rehearing or reconsideration or a petition for writ of certiorari has expired and no such appeal, motion or petition is pending.

1.16 “Good Faith Deposit” means a dollar amount equal to ten percent (10%) of the Purchase Price.

1.17 “Material Adverse Change” means, any event, change, condition or matter that, individually or in the aggregate is or would reasonably be expected to materially impair the value of the Acquired Assets or results in a material adverse effect or change in the operation, condition (financial or otherwise) of the Acquired Assets or the Business, taken as a whole.

1.18 “NDA” means the *Confidentiality and Non-Disclosure Agreement* executed by Buyer and Seller in connection with the transactions contemplated herein but prior to execution of this Agreement.

1.19 “Outside Date” means November 15, 2019.

1.20 “Priority Wage Claims” means all claims in the Bankruptcy Case made by or on behalf of the Debtor’s current employees for past-due wages and reimbursable medical expenses entitled to priority pursuant to § 507(a)(4) of the Bankruptcy Code.

1.21 “Purchase Price” means the amount Buyer proposes to pay for the Real Property Assets and/or Personal Property Assets.

1.22 “Sale Approval Date” means the date that the Bankruptcy Court enters the Sale Order; *provided, however*, that in the event a stay of the Sale Order pending appeal has been entered prior to the Closing Date, then the Sale Approval Date shall be deemed to have not occurred.

1.23 “Sales Order” means an order entered by the Bankruptcy Court pursuant to Sections 363 and 365 of the Bankruptcy Code, in form and substance acceptable to Buyer in its reasonable discretion which order shall, amongst other approvals, approve the sale of the Acquired Assets to Buyer free and clear of all Encumbrances pursuant to Section

363 (f) of the Bankruptcy Code and which order shall include the determination that Buyer is a good faith purchaser for purposes of Section 363 (m) of the Bankruptcy Code.

1.24 "Titled Vehicles" means all of the Debtor's right, title and interest in and to those certain titled motor vehicles identified as a 2002 GMC Van and 2010 Lexus SUV.

1.25 "Transaction Documents" means this Agreement and any document required to be executed to consummate the transaction contemplated by this Agreement.

2. ***Effectiveness of Agreement:*** The terms and provisions of this Agreement shall be subject to the condition precedent of approval by the Bankruptcy Court. Except as otherwise provided herein, this Agreement shall be irrevocable by Buyer.

3. ***Asset Sale:*** Subject to the terms and conditions set forth herein, on the Closing Date, Buyer shall remit the Purchase Price to Seller, and Seller shall sell, assign, transfer, convey, and deliver to Buyer, and Buyer shall purchase from Seller, the Acquired Assets, and all rights of any nature arising thereunder or related thereto, to Buyer, AS IS, WHERE IS, WITH ALL FAULTS, and WITHOUT RECOURSE, WARRANTY OR REPRESENTATION (except as expressly set forth herein), to the extent set forth in the Sale Order, free and clear of all claims, liens, and encumbrances, with such claims, liens, and encumbrances attaching to the proceeds of the sale to the same extent, validity, and priority as existing with respect to the Acquired Assets immediately before the Closing.

4. ***No Liabilities/Assumption of Liabilities:*** Other than the Assumed Liabilities, Buyer shall not assume any liabilities or obligations of Seller of any kind, whether known or unknown, contingent, matured, or otherwise, whether currently existing or hereinafter created.

5. ***Bill of Sale:*** At Closing, Seller shall deliver to Buyer a duly-executed bill of sale substantially in the form appearing as Exhibit E attached hereto evidencing the conveyance of Seller's right, title, and interest in and to the Fixed Assets and Titled Vehicles to Buyer.

6. ***Titled Vehicles Titles:*** At Closing, Seller shall deliver to Buyer original titles to each of the Titled Vehicles properly endorsed to Buyer.

7. ***Physical Possession of Tangible Assets:*** At Closing, Seller shall deliver to Buyer physical possession of all of the Acquired Assets capable of passing by delivery with the intent that title in such Acquired Assets shall pass by and upon delivery.

8. ***Payment of Purchase Price:*** Buyer shall pay Seller the Purchase Price as follows:

8.1 Within one (1) business day of the Execution Date, Buyer shall pay the Good Faith Deposit to the Escrow Agent. The Good Faith Deposit shall be applied to the Purchase Price at Closing or otherwise disbursed by the Escrow Agent in accordance with the provisions of this Agreement.

8.2 In the event any Acquired Asset having an aggregate value of \$10,000 or more is lost or destroyed prior to the Closing Date, then the Purchase Price shall be reduced by any such asset's replacement value, as mutually agreed upon by the Parties in their reasonable discretion.

8.3 On the Closing Date, Buyer shall pay Seller an amount equal to the full Purchase Price, less the Good Faith Deposit (and any reduction for lost or destroyed Acquired Assets as set forth above), by wire transfer in immediately available funds to an account designated in writing by Seller, and the Good Faith Deposit shall be delivered to Seller. Each party shall pay its own expenses, taxes, and other costs incident to or resulting from this Agreement, whether or not the transaction contemplated hereby is consummated.

8.4 Notwithstanding any of the foregoing to the contrary, in the event Buyer is the Back-Up Bidder and the party holding the successful bid fails to close by the corresponding deadline provided in the sale approval order, then the Closing Date shall be the tenth (10th) day after such deadline or on such earlier day mutually agreed upon by the Parties; provided that the Closing Date shall not occur after the Outside Date without Buyer's consent.

9. ***Executory Contracts:*** With respect to any contract that is not assumed and assigned to Buyer as of the date of this Agreement, then provided that such contract has not been rejected by Seller pursuant to Section 365 of the Bankruptcy Code, upon written notice(s) from Buyer within sixty (60) days following the Closing of Buyer's desire to assume such contract, Seller shall take all actions reasonably necessary to assume and assign to Buyer pursuant to Section 365 of the Bankruptcy Code any contract(s) set forth in Buyer's notice(s); provided, that any applicable cure cost shall be satisfied by Buyer. Seller agrees and acknowledges that it shall provide Buyer with reasonable advance notice of any motion(s) to reject any contract.

10. ***Seller's Representations and Warranties:*** Seller hereby represents and warrants to Buyer that the following statements are true and correct as of the date hereof.

10.1 No approval, consent, license, permit, waiver, or other authorization is required in connection with the execution or delivery by Seller of this Agreement.

10.2 No broker, finder or other person is or shall be entitled to any commissions or finder's fees in connection with the transactions contemplated hereby by reason of any action taken by Seller other than 321 Capital Partners, LLC.

10.3 To the best of Seller's actual knowledge, the Debtor has good and marketable title to, or a valid leasehold interest in or all rights to use, all Acquired Assets, subject only to Encumbrances which shall be released from the Acquired Assets and attach to the proceeds thereof pursuant to the Sale Order. To the best of Seller's actual knowledge, subject to the Sale Order and completion of the Closing, Buyer shall have the right to use all of the Acquired Assets free and clear of any Encumbrances.

10.4 Upon entry of the Sale Order, Seller shall have the necessary power and authority to transfer the Acquired Assets to Buyer free and clear of any and all claims, liens, charges, encumbrances, and interests whatsoever.

10.5 To the best of Seller's actual knowledge, other than the Bankruptcy Case or as identified in the schedules filed in the Bankruptcy Case, there is no claim, action, suit, proceeding, or governmental investigation of any nature pending or, to Seller's knowledge, threatened against or by Seller (a) relating to or affecting the Acquired Assets; or (b) that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such action, to the best of Seller's actual knowledge.

10.6 Subject to any necessary authorization from the Bankruptcy Court, Seller has full power and authority to execute and deliver the Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. No other corporate or organizational proceedings on the part of Debtor or Seller are necessary to approve and authorize the execution and delivery of the Transaction Documents to which Seller is a party and the consummation of the transactions contemplated thereby. Subject to any necessary authorization from the Bankruptcy Court, all Transaction Documents to which Seller is a party have been duly executed and delivered by Seller, except such Transaction Documents that are required by the terms hereof to be executed and delivered by Seller after the date hereof, in which case such Transaction Documents will be duly executed and delivered by Seller at or prior to the Closing, and, subject to any necessary authorization from the Bankruptcy Court, all Transaction Documents constitute, or will constitute, as the case may be, the valid and binding agreements of Seller, enforceable against Seller in accordance with their term.

10.7 EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, SELLER MAKES

NO, AND NO PARTY SHALL BE ENTITLED TO RELY UPON, REPRESENTATIONS OR WARRANTIES AS TO ANY FACT OR MATTER ABOUT THE ASSETS OR SELLER, AND SELLER HEREBY DISCLAIMS ALL SUCH WARRANTIES AND REPRESENTATIONS. THE ASSETS ARE BEING SOLD WITHOUT RECOURSE TO SELLER. WITHOUT LIMITING THE FOREGOING, THERE IS NO WARRANTY RELATING TO TITLE, POSSESSION, QUIET ENJOYMENT, FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, OR THE LIKE IN CONNECTION WITH THIS SALE.

11. ***Buyer's Representations and Warranties:*** Buyer hereby represents and warrants to Seller that the following statements are true and correct as of the date hereof.

11.1 Buyer is duly organized, validly existing, and in good standing under the laws of Buyer's State of organization or incorporation. Buyer has the legal right and authority to execute and deliver this Agreement and perform Buyer's obligations hereunder. The execution and delivery of this Agreement and the consummation of the transactions

contemplated hereby have been duly and validly authorized, and no other proceedings or approvals on the part of Buyer are necessary to authorize this Agreement or to consummate the transactions contemplated hereby, and this Agreement constitutes a legal, valid, and binding obligation of Buyer.

11.2 No approval, consent, license, permit, waiver or other authorization is required in connection with the execution or delivery by Buyer of this Agreement, the performance of Buyer's obligations under this Agreement, or the consummation of the transactions contemplated herein.

11.3 There are no legal or governmental proceedings that have been commenced by or against Buyer or, to Buyer's knowledge, that have been threatened against or may affect Buyer or any of Buyer's properties, assets, or operations, or that challenge, or that may have the effect of preventing, delaying, making illegal, or otherwise interfering with, the transactions contemplated by this Agreement. There are no court orders or directives issued by any governmental agency to which Buyer or any of Buyer's assets are subject that may adversely affect Buyer or that challenge, or that may have the effect of preventing, delaying, making illegal, or otherwise interfering with, the transactions contemplated by this Agreement, or that affect the enforceability of this Agreement against Buyer or impair Buyer's ability to consummate the transactions contemplated by this Agreement.

11.4 No broker, finder, or other person is or shall be entitled to any commissions or finder's fees in connection with the transactions contemplated hereby by reason of any action taken by Buyer.

11.5 Buyer has no affiliation or relationship with the Debtor, any insider(s) (within the meaning of Bankruptcy Code 101 (31)) of the Debtor, or any creditor(s) of the Debtor whatsoever, other than the following:

11.6 Buyer expressly acknowledges and agrees this Agreement and Seller's efforts to sell the Acquired Assets more broadly are subject to Bankruptcy Court approval and a competitive sale process through which Seller will be permitted to advocate for a sale of the Acquired Assets to a different purchaser if deemed appropriate by Seller.

12. ***Access to Information and Facilities:*** Seller agrees that, prior to the Closing Date, Buyer and its respective representatives shall, upon reasonable notice and so long as such access does not unreasonably interfere with the business operations of Debtor, have reasonable access during normal business hours to all facilities and shall be entitled to make such reasonable investigation of the properties, businesses and operations of Debtor (including conducting a physical inventory of the Assets) and such examination of the books and records and financial condition of Seller as it reasonably requests and to make extracts and copies to the extent necessary.

13. ***Conduct of Business and Maintenance of Assets:*** Except as otherwise expressly contemplated by this Agreement or with the prior written consent of Buyer, and subject in all cases to Seller's compliance with the prohibitions and restrictions of the Bankruptcy Code or any Orders entered by the Bankruptcy Court, from the date hereof until the Closing Date, Seller shall: (a) use commercially reasonable efforts to (i) conduct the Business of the Debtor in the ordinary course of business, (ii) preserve the present business operations, organization and goodwill of the Business, (iii) maintain the Acquired Assets in the ordinary course of business, and (iv) preserve the present relationships with persons having business dealings with the Debtor (including suppliers of the Business).

14. ***Notification of Certain Matters:*** Seller shall give prompt written notice to Buyer of (a) the occurrence or nonoccurrence of any event that would be likely to cause either (i) any representation or warranty of Seller contained in this Agreement, or in connection with the transactions contemplated hereunder, to be untrue or inaccurate in any material respect at any time from the date hereof to the Closing or (ii) directly or indirectly, any material adverse effect on the Acquired Assets, or (b) any material failure of Seller to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder

15. ***Bankruptcy-Related Matters:***

15.1 ***Bankruptcy Actions:*** Seller will provide Qualified Bidders with a reasonable opportunity to review and comment upon all motions, applications, petitions, schedules and supporting papers relating to the transactions contemplated by this Agreement prepared by (including forms of Orders and Notices to interested parties) prior to the filing thereof in the Bankruptcy Case. All motions, applications, petitions, schedules and supporting papers prepared by Seller and relating to the transactions contemplated by this Agreement to be filed on behalf of Seller after the date hereof must be reasonably satisfactory in form and substance to Qualified Bidders. Each Qualified Bidder and Seller will promptly take such actions as are reasonably requested by the other party to assist in obtaining entry of the Sale Order and the Bidding Procedures Order, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for purposes, among others, of providing necessary assurances of performance by Seller of its obligations under this Agreement and the Transaction Documents and demonstrating that a Qualified Bidder is a good faith buyer under Section 363(m) of the Bankruptcy Code. Each Qualified Bidder and Seller will promptly take such actions as are reasonably requested by the other party to assist in obtaining any necessary consents to the consummation of the transactions contemplated by this Agreement.

15.2 ***Other Bids:*** Pursuant to the terms of the proposed Bidding Procedures Order, Seller will solicit bids from other prospective Buyers for the sale of all or substantially all of the Acquired Assets, on terms and conditions substantially the same in all respects to this Agreement (or more favorable terms to Seller) and in accordance with the procedures set forth in the proposed Bidding Procedures Order; provided that, following completion of the Competitive Sale until the Closing, Seller shall not, directly or indirectly, through any officer, director, employee, agent, professional or advisor, solicit

any proposal for an alternative transaction for all, or any portion of, the Acquired Assets.

15.3 *Other Bankruptcy Matters:* Seller and Buyer acknowledge that this Agreement and the sale of the Acquired Assets are subject to Court approval. Seller and Buyer acknowledge that to obtain such approval, Seller must demonstrate that Seller has taken reasonable steps to obtain the highest and otherwise best offer possible for the Acquired Assets, and that such demonstration shall include giving notice of the transactions contemplated by this Agreement to creditors and interested parties as ordered by the Bankruptcy Court. In the event an appeal is taken or a stay pending appeal is requested, from either the Bidding Procedures Order or the Sale Order, Seller shall immediately notify Buyer of such appeal or stay request and shall promptly provide to Buyer a copy of the related notice of appeal or Order of stay. Seller shall also provide Buyer with written notice of any motion or application filed in connection with any appeal from either of such Orders. From and after the Effective Date, Seller shall not take any action which is intended to (or is reasonably likely to), or fail to take any action the intent (or the reasonably likely result) of which failure to act is to, result in the reversal, voiding, modification or staying of Bidding Procedures Order.

16. *Conditions to Closing:*

16.1 *Conditions to Parties' Obligations:* The obligations of Buyer and Seller under this Agreement are subject to satisfaction of the following conditions precedent on or before the Closing Date, any one or more of which may be waived (but only in writing) by Buyer and Seller (provided that no such waiver shall be deemed to have cured any breach of any representation, warranty or covenant made in this Agreement): (a) all authorizations, consents, filings and approvals necessary to permit the parties to perform the transactions contemplated hereby shall have been duly obtained, made or given, shall be in form and substance, reasonably satisfactory to the Parties, shall not be subject to the satisfaction of any condition that has not been satisfied or waived and shall be in full force and effect; and (b) no order shall be issued by and no proceeding shall be pending before any governmental authority seeking or threatening to stay, restrain or prohibit the consummation of the transactions contemplated by this Agreement.

16.2 *Conditions to Performance by Buyer:* The obligations of Buyer under this Agreement are subject to satisfaction of the following conditions precedent on or before the Closing Date, any one or more of which may be waived (but only in writing) by Buyer: (a) Seller shall make all of the representations and warranties set forth in this Agreement on and as of the Closing Date, and such representations and warranties shall be true and correct as of the Closing Date in all material respects; (b) Seller shall have performed and complied in all material respects with all its respective obligations under this Agreement which are to be performed or complied with by it prior to or at the Closing; (c) the Sale Order shall approve and authorize the transactions contemplated by this Agreement, shall have been entered on the docket of the Bankruptcy Court, and shall have become a Final Order; (d) there shall not have

occurred a Material Adverse Change since the date hereof; and (e) Seller shall have delivered to Buyer all of the Closing deliverables required by this Agreement.

16.3 Conditions to Performance by Seller: The obligations of Seller under this Agreement are subject to satisfaction of the following conditions precedent on or before the Closing Date, any one or more of which may be waived (but only in writing) by Seller: (a) Buyer shall make all of the representations and warranties set forth in this Agreement on and as of the Closing Date, and such representations and warranties shall be true and correct as of the Closing Date in all material respects; (b) Buyer shall have performed and complied in all material respects with all its respective obligations under this Agreement which are to be performed or complied with by it prior to or at the Closing; (c) the Bankruptcy Court shall have entered an Order approving the execution of this Agreement by Seller and the consummation by Seller of the transactions contemplated herein; and (d) Buyer shall have delivered to Seller all of the Closing deliverables required by this Agreement.

17. Termination: This Agreement may be terminated prior to the Closing upon written notice to the non-terminating Party(ies) as follows: (i) by mutual written agreement of the Parties at any time; (ii) in the event of a material misrepresentation in this Agreement by Buyer or Buyer's Control Person, by Seller immediately upon written notice to Buyer; (iii) in the event of a material breach of this Agreement by Buyer or Buyer's Control Person, by Seller upon Buyer's or Buyer's Control Person's failure to cure such breach after ten (10) days' advance written notice; (iv) in the event of a material breach of this Agreement by Seller, by Buyer upon Seller's failure to cure such breach after ten (10) days' advance written notice; (v) by Buyer or Seller if there shall be in effect a Final Order restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated herein; (vi) automatically upon the Bankruptcy Court's entry of an order approving an Acquisition Proposal for all, or any portion of, the Acquired Assets.

18. Return of Deposit: If this Agreement is terminated or the transactions hereby are not consummated for any reason other than a termination by Seller based on Buyer's material misrepresentation or material breach, then Escrow Agent shall pay the Good Faith Deposit to Buyer within three (3) business days following the date of such termination.

19. Further Assurances: The Parties agree to use reasonable efforts to take such further actions as may be reasonably necessary following the Closing Date to effectuate the transactions contemplated by this Agreement. The Parties agree to execute and deliver any customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to the Parties, as may be required to give effect to this Agreement even if not specifically referenced in this Agreement.

20. Notices: All notices permitted or required to be made under this Agreement shall be made in writing and shall be deemed to have been given when delivered either: (a) in person, (b) by electronic mail, or (c) one (1) business day after being deposited with a nationally-recognized overnight carrier, and addressed to the address set forth for each Party in the General Provisions. Any notice sent by other means shall be deemed operative only upon actual

receipt. A Party's address set forth in this Agreement may be changed by a Party upon ten (10) days' written notice given to all Parties sought to be charged with notice of such change. The refusal of any Party to accept delivery or the inability to deliver because of changed address of which no notice was given shall be deemed the equivalent of receipt.

21. ***Miscellaneous:***

21.1 If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

21.2 This Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

21.3 No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

21.4 Seller reserves all rights, claims, and remedies (i) against all parties that are obligated to Seller on the indebtedness secured by the Acquired Assets or that have pledged any assets as collateral for such indebtedness, and (ii) with respect to any assets other than the Acquired Assets that have been pledged as collateral for such indebtedness, and Seller waives no such rights, claims, or remedies, except solely with respect to the Acquired Assets as of the Closing Date.

21.5 This Agreement shall bind and inure to the benefit of the Parties and their respective personal representatives, heirs, successors, and assigns. Neither this Agreement nor any of the rights, interests, or obligations hereunder shall be assigned by a Party without the prior written consent of the other Party.

21.6 All negotiations, considerations, representations, and understandings between the Parties with respect to the subject matter of this Agreement are incorporated and merged herein. This Agreement may be modified or altered only by agreement in writing between the Parties.

21.7 This Agreement may be signed in any number of separate copies, each of which shall be effective as an original, but all of which taken together shall constitute a single document. An electronic transmission or other facsimile of this Agreement or any related document shall be deemed an original and shall be admissible as evidence of the document and the signer's execution.

21.8 Time is of the essence with respect to the performance of the obligations under this Agreement.

21.9 All representations and warranties made in this Agreement or any other document furnished in connection with this Agreement shall survive the execution, delivery, and/or termination of this Agreement and the Closing.

21.10 This Agreement shall be governed by and pursuant to the internal laws of the State of North Carolina, except with respect to conflict of laws principles. The Bankruptcy Court shall be the exclusive venue to resolve any dispute that should arise between the Parties in connection with this Agreement.

21.11 Buyer hereby irrevocably consents to the personal jurisdiction of the Bankruptcy Court in any action, claim, or other proceeding arising out of any dispute in connection with this Agreement, any rights or obligations hereunder, or the performance of such rights and obligations. Buyer hereby irrevocably consents to the service of a summons and complaint and other process in any action, claim, or proceeding brought by Seller in connection with this Agreement, any rights or obligations hereunder, or the performance of such rights and obligations, on behalf of themselves or their property, by First Class U.S. Mail, postage prepaid, delivered to Buyer at Buyer's address set forth in the General Provisions; provided, however, nothing in this Section shall affect Seller's right to serve legal process in any other manner permitted by applicable law.

21.12 If legal proceedings are instituted to enforce any provision of this Agreement, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorneys' fees and court costs incurred in connection with the proceeding.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Execution Date.

SELLER:

Brian T. Bulter, as President and the Court authorized representative of Debtor, Butler Specialties, Inc. T/A Butler Built Motorsports Equipment, Inc.

BUYER:

By: _____

Printed Name: _____

Title: _____

BUYER'S CONTROL PERSON:

Printed Name: _____

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

| | | |
|------------------------------|---|-------------------|
| IN RE: |) | |
| |) | Case No. 19-50417 |
| BUTLER SPECIALTIES INC., T/A |) | |
| BUTLERBUILT MOTORSPORTS |) | Chapter 11 |
| EQUIPMENT, INC. |) | |
| |) | |
| Debtor. |) | |
| _____ |) | |

SALE NOTICE

On _____, 2019, the U.S. Bankruptcy Court for the Middle District of North Carolina (the "Court") granted the Motion for Order (I) Approving Bidding and Sale Procedures in Connection with the Sale of Assets, (II) Approving Form of Asset Purchase Agreement, (III) Scheduling Competitive Sale and Sale Approval Hearing, and (IV) Approving Sale Free and Clear of Liens to Good Faith Purchaser (the "Motion") and entered an Order in the above-captioned bankruptcy case approving the Bidding and Sale Procedures proposed by Butler Specialties, Inc. T/A Butler Built Motorsports Equipment, Inc. (the "Debtor") and 321 Capital Partners, LLC ("321 Capital Partners") which relate to the sale of the Debtor's assets. The Bidding and Sale Procedures are as follows:

SUMMARY OF IMPORTANT DATES:

| | |
|-------------------------|--|
| October 7, 2019 | Bid Deadline |
| October 14, 2019 | Sale Participation Deadline |
| October 15, 2019 | Auction to be conducted in the office of Nardone Law Firm, 241 Church St. NE, Concord, North Carolina 28025 |
| October 16, 2019 | Objection Deadline |
| October 18, 2019 | Court hearing to approve Sale |

ASSETS TO BE SOLD: The Debtor seeks to sell all of the Debtor's right, title, and interest in and to that Real property described as 70 Pitts School Road, Concord, North Carolina (the "Real Property" or "Real Property Assets"), and inventory, accounts receivable, vehicles, furniture, fixtures and equipment, its intellectual property, its miscellaneous tangible personal property,

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and other intangible assets (the "Personal Property Assets"). Collectively, the Real Property Assets and Personal Property Assets are referred to as the "Assets."

BID DEADLINE: Any person(s) or entities wishing to submit a bid to purchase the Assets and/or participate in the competitive sale of the Assets (the "Competitive Sale") shall: (1) immediately deliver a properly and validly executed *Confidentiality and Non-Disclosure Agreement* in the form attached hereto (an "NDA") to: ryan@321capital.com and devin@321capital.com and, if determined by 321 Capital Partners to be a "Qualified Bidder," then (2) deliver, **on or before October 7, 2019** (the "Bid Deadline") (a) an executed Asset Purchase Agreement in a form substantially similar to the form attached hereto (an "APA") and (b) either a version of the executed APA marked to show the changes against the attached APA or an electronic version in Word of the executed APA to: 321 Capital Partners, LLC, 5950 Symphony Woods Road, Columbia MC, 21044, or ryan@321capital.com and devin@321capital.com.

REQUIREMENTS FOR A QUALIFIED BIDDER: Immediately upon receipt of an NDA, 321 Capital Partners shall endeavor to determine whether an interested purchaser qualifies to participate in the Competitive Sale (a "Qualified Bidder"). 321 Capital Partners shall determine whether an interested person or entity is a Qualified Bidder. At a minimum, a Qualified Bidder will have the financial wherewithal to consummate the proposed transaction, including the willingness to provide detailed financial information to 321 Capital Partners to verify such financial wherewithal.

321 Capital Partners, LLC, shall endeavor to notify any person or entity who has delivered an NDA regarding whether the person or entity has been approved as a Qualified Bidder within one (1) business day after 321 Capital Partners approves such person or entity as a Qualified Bidder.

REQUIREMENTS FOR A QUALIFIED BID: At a minimum, a Qualified Bid must have the following characteristics, unless otherwise ordered by the Court.

- (1) A Qualified Bid must be timely submitted on or before the Bid Deadline.
- (2) A Qualified Bid makes adequate representations and warranties regarding the Qualified Bidder's affiliation or relationship with the Debtor, any insider(s) of the Debtor, or any creditor(s) of the Debtor.
- (3) A Qualified Bid requires the Qualified Bidder to make a good faith deposit in an amount equal to ten percent (10%) of the total consideration to be paid for the assets to be purchased by the Qualified Bidder within one (1) business day of the execution date of the APA.
- (4) A Qualified Bid warrants that it is not subject to any additional due diligence, any financing contingency(ies), or any further board or similar corporate approval.
- (5) A Qualified Bid provides that it is irrevocable by the Qualified Bidder unless and until three (3) days after a Court order approving a sale of the assets pursuant to which

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the Qualified Bidder does not hold the “Successful Bid” or “Back-Up Bid” (each defined below).

(6) A Qualified Bid commits to a closing on the purchase as soon as possible after entry of an order approving the sale, but not later than three (3) business days after such order has become a final order (the “Closing”).

(7) A Qualified Bid acknowledges that the sale is “as-is, where-is” with no warranties express or implied by the Debtor, other than a warranty that the Debtor has done nothing to impair title or Assets.

(8) A Qualified Bid represents and warrants to the Debtor that the Qualified Bidder (A) has relied solely upon the Qualified Bidder’s own independent review, investigation, and/or inspection of the Assets in making the bid and (B) did not rely upon any written or oral statements, representations, promises, warranties, or guarantees whatsoever, whether express, implied, by operation of law or otherwise, by the Debtor regarding the assets.

(9) A Qualified Bid includes no breakup fee, expense reimbursement, or similar payment obligation burdening the Debtor.

(10) A Qualified Bid must allocate the proposed purchase price among the Real Property Assets, Personal Property Assets, or Assets.

DUE DILIGENCE: All due diligence must be completed by any Qualified Bidders on or before the Bid Deadline such that all bids will be **free of all contingencies** other than the Court's approval of the sale free and clear of liens, with any liens transferring to the sale proceeds. Subject to the Qualified Bidder’s execution of the NDA, 321 Capital Partners shall provide Qualified Bidders with any documents requested prior to the Bid Deadline that are in 321 Capital Partners’ possession or are readily available to 321 Capital Partners. 321 Capital Partners shall not be obligated to furnish access to any information of any kind regarding the assets after the Bid Deadline.

SELECTION OF QUALIFIED BIDS: After a Qualified Bidder submits an APA, 321 Capital Partners may, in its discretion, communicate with the Qualified Bidder and request any additional information deemed necessary to evaluate whether the bid should be accepted as a Qualified Bid. If more than one Qualified Bid is received, 321 Capital Partners will send, on or before October 9, 2019, a written Competitive Sale invitation to all Qualified Bidders submitting Qualified Bids.

DESIGNATION OF COMPETITIVE SALE PARTICIPANTS: All Qualified Bidders wishing to bid at the Competitive Sale shall appear and participate at the Competitive Sale—either in person or telephonically—through a duly authorized representative. On or before October 14, 2019, all holders of Qualified Bids shall notify 321 Capital Partners in writing of the name and relationship to the Qualified Bidder of any representative who will appear at the Competitive Sale on the Qualified Bidder's behalf and a certification that the identified

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representative(s) will have the full authority to bid at the Competitive Sale on behalf of the Qualified Bidder.

LOCATION OF COMPETITIVE SALE: if more than one Qualified Bid is received, then 321 Capital Partners shall conduct a Competitive Sale at the law office of **Nardone Law Firm, PLLC, 241 Church Street NE, Concord, North Carolina, 28025** or in such other location 321 Capital Partners designates upon advance written notice to holders of Qualified Bids.

DATE AND TIME OF COMPETITIVE SALE: The Competitive Sale will be on October 15, 2019 at 10:00 a.m.

SALE PROCEDURES: The following rules shall govern the Competitive Sale.

- (1) Only Qualified Bidders submitting Qualified Bids are eligible to participate in the Competitive Sale. Other than Qualified Bidders and their representative, the only parties permitted to attend the Competitive Sale are the IRS and the IRS's counsel, the NCDOR and the NCDOR's counsel, 321 Capital Partners' representatives, a representative from the Bankruptcy Administrator's Office, Brian T. Butler, and the Debtor's counsel.
- (2) Prior to the Competitive Sale, 321 Capital Partners shall select the Qualified Bid that reflects the highest or otherwise best value for the Assets as the Competitive Sale's opening bid. 321 Capital Partners shall then commence the Competitive Sale by announcing the opening bid.
- (3) Thereafter, Competitive Sale participants may submit bids that are higher and better than a prior bid in increments of at least \$5,000.00 until 321 Capital Partners and the Debtor select a successful bid.
- (4) 321 Capital Partners may adjourn the Competitive Sale and/or adopt supplemental Competitive Sale rules or procedures in order to facilitate a more effective Competitive Sale after consultation with representatives the IRS, Bankruptcy Administrator's Office, and the NCDOR, if the NCDOR attends the Competitive Sale.
- (5) 321 Capital Partners and the Debtor shall select the Successful Bid and a Back-Up Bid during the Competitive Sale and conclude the Competitive Sale by announcing the Successful Bid and Back- Up Bid.
- (6) Any objections to the sale of the Acquired Assets other than any objection based on the conduct of the Auction shall be filed with the Court on or before October 16, 2019.
- (7) The Court will conduct an approval hearing to consider whether to approve the sale pursuant to § 363 of the Code on October 18, 2019 at 9:30 a.m., unless the Competitive Sale has adjourned to a later date and time.

CONSUMMATION OF SALE: If the Court approves a sale based on the Successful Bid, then the holder of the Successful Bid shall close on the purchase as soon as possible after entry of an

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order approving the sale, but not later than three (3) business days after such order has become a final order. If the holder of the Successful Bid fails to consummate the purchase, then the holder of the Back-Up Bid shall close on the purchase within twenty (20) days of the order approving the sale becoming a final order.

This the _____ day of September, 2019.

/s/ Kristen S. Nardone
KRISTEN S. NARDONE
N.C. Bar No. 28063
Attorney for the Debtor
704-784-9440

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