

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
IN AND FOR BREVARD COUNTY, FLORIDA

IN RE:

AERION CORPORATION, a Delaware corporation, AERION TECHNOLOGIES CORPORATION, a Delaware corporation; AERION SUPERSONIC LLC, a Delaware limited liability company; AERION INTELLECTUAL PROPERTY MANAGEMENT CORPORATION, a Delaware corporation,

CASE NO. 05-2021-CA-037231

Assignors,

to

JOSEPH J. LUZINSKI,  
an individual,

Assignee.

**ORDER GRANTING ASSIGNEE'S MOTION FOR ENTRY OF:  
(I) AN ORDER APPROVING BID PROCEDURES; AND (II) AN ORDER  
(A) APPROVING THE SALE OF THE ASSIGNORS' ASSETS FREE AND  
CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER  
INTERESTS AND (B) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")<sup>1</sup> of the Assignee, Joseph J. Luzinski ("Assignee"), as Assignee for the Benefit of Creditors of Assignors, Aerion Corporation, Aerion Technologies Corporation, Aerion Supersonic LLC, and Aerion Intellectual Property Management Corporation (collectively, the "Assignors"), for entry of an order (I) approving the proposed bid procedures (the "Bid Procedures") to be used in connection with the sale of all or substantially all of the Assignors' Assets; (II) establishing and approving certain Notice Procedures; (III) scheduling a sale hearing and scheduling an Auction; and (IV) granting related relief; and having reviewed the Motion; and based on the Motion, it appearing that the relief requested in the Motion are in the

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<sup>1</sup> Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Motion.

best interests of the Assignors' estates and all parties in interest; and after due deliberation thereon and good cause appearing and no further notice being required, it is hereby **FOUND AND DETERMINED THAT:**

A. This Court has jurisdiction over the Motion and the relief requested therein.

B. Good and sufficient notice of the relief requested in the Motion has been given and no further notice is required. All interested persons and entities have been afforded a reasonable opportunity to object or be heard regarding the relief requested in the Motion.

C. The proposed notice of the Bid Procedures, the Auction, the Sale Hearing, and the proposed sale as set forth in the Motion is reasonably calculated to provide all interested parties with timely and proper notice of the Bid Procedures, the Auction, the Sale Hearing, and the Sale, and no further notice of the Bid Procedures, the Auction, and the Sale of the Assets, as set forth herein and in the Motion is required.

D. The Assignee has demonstrated good and sufficient cause for the Court to grant the relief requested in the Motion, including this Court's approval of (i) the Bid Procedures attached hereto as **Schedule 1**; (ii) approval of the form and the manner of service of the notice of the Motion, the Auction, and the Sale Hearing attached hereto as **Schedule 2**, and (iii) approval of the Marketing Budget.

E. The Assignee has demonstrated good and sufficient cause for, and the best interests of the Assignors' estates will be served by, this Court scheduling a subsequent hearing to determine whether to grant the remainder of the relief requested in the Motion, including approval of the proposed Sale.

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

1. All objections (if any) to entry of this Order or to the relief provided herein and requested in the Motion that have not been withdrawn, waived, resolved, or settled are hereby denied and overruled in their entirety.

### **The Bid Procedures**

2. The Bid Procedures, as set forth in **Schedule 1** hereto and incorporated by reference as if fully set forth herein, are hereby approved in all respects and shall govern all bids and bid proceedings relating to the Assets.

3. The deadline for submitting bids for the Assets (the “Bid Deadline”) shall be **September 7, 2022, at 4:00 p.m. EST**, unless otherwise extended by the Assignee. The following parties must receive such bid by the Bid Deadline: (1) the Assignee, Development Specialists, Inc., 500 West Cypress Creek Road, Suite 400, Fort Lauderdale, Florida 33309, Attn: Joseph J. Luzinski (jluzinski@DSIConsulting.com); and (2) counsel to the Debtors, Baker & Hostetler LLP, 200 SunTrust Center, Suite 2300, 200 South Orange Avenue, Orlando, Florida 32801, Attn: Elizabeth A. Green (egreen@bakerlaw.com) and Andrew V. Layden (alayden@bakerlaw.com).

4. The Assignee is authorized to extend the deadlines set forth in this Bid Procedures Order and/or adjourn, continue, or suspend the Auction and/or the Sale Hearing for any reason, without further order of this Court, by filing a notice with this Court.

5. The relief granted herein is without prejudice to the Assignee’s rights, in consultation with the DIP Lenders, to (a) modify the Bid Procedures or impose, at or prior to the Auction, different and/or additional terms and conditions or procedural rules on the Sale of the Assets; (b) determine which Potential Bidders (other than the DIP Lenders) are Qualified Bidders; (c) determine which bids are Qualified Bids; (d) determine whether to enter into or

accept a Qualified Bid; (e) determine which Qualified Bids are the highest or otherwise best proposals and which are the Back Up Bidders with respect to each Asset Group; (f) reject any bid that is (i) inadequate or insufficient; (ii) not in conformity with the requirements set forth by the Bid Procedures; or (iii) contrary to the best interests of the Assignors' estates; (g) waive terms and conditions set forth in the Bid Procedures with respect to all Potential Bidders; (h) extend the deadlines set forth in the Bid Procedures.

6. The Marketing Budget is approved.

7. The Assignee is authorized to take any and all actions necessary to implement the Bid Procedures.

#### **The Auction**

8. The Auction Date shall be **September 16, 2022, at 9:00 a.m. EST**, and the Auction shall take place via (i) a remote videoconference platform, such as Zoom, (ii) in-person at the law offices of Baker & Hostetler LLP located at 200 South Orange Avenue, Suite 2300, Orlando, Florida 32801, or (iii) at such other place and time as the Assignee shall notify all Qualified Bidders and the DIP Lenders. The DIP Lenders and the Collateral Agent have and reserve the right to credit bid all or a portion of any of the outstanding obligations owing to the DIP Lenders, whether prepetition or postpetition, and the DIP Lenders and Collateral Agent shall be deemed Qualified Bidders for all purposes hereof. Only the Assignee, the DIP Lenders and Collateral Agent, and all Qualified Bidders, including their representatives and counsel, shall be entitled to attend and participate in the Auction.

9. The Assignee and his professionals shall direct and preside over the Auction, and the Auction shall be transcribed. Each Qualified Bidder participating in the Auction must confirm that it: (a) has not engaged in any collusion with respect to the bidding or sale of any of

the assets described herein; (b) has reviewed, understands, and accepts the Bid Procedures; and (c) has consented to the jurisdiction of this Court.

### **The Sale Hearing**

10. To the extent necessary or advisable, a Sale Hearing will be scheduled and noticed by the Assignee's counsel (the "Sale Hearing") to consider (i) approval of the Sale of the Assets to each Successful Bidder; (ii) entry of the Proposed Sale Order; (iii) any other objections timely expressed by the parties; and (iv) the granting of such other or further relief as this Court deems just and proper.

11. The Sale Hearing may be adjourned by the Assignee, from time to time without further order of the Court, by filing notice and serving such notice on all of the Qualified Bidders and the DIP Lenders.

### **Notice**

12. The Sale Notice substantially in the form attached hereto as **Schedule 2** is hereby approved.

13. Within two (2) business days after the entry of this Order or as soon thereafter as reasonably practicable (the "Mailing Date"), the Assignee or his agents shall serve the Sale Notice, this Order, and the Bid Procedures by first-class mail, postage prepaid upon (a) any party known to hold or assert any liens on the Assets; (b) all known affected federal, state, and local regulatory and taxing authorities; (c) all entities known to have expressed an interest in a transaction with respect to the Assets since the commencement of these assignment cases; and (d) all known creditors of the Assignors.

14. The notice and publication as set forth in the preceding paragraph shall constitute good and sufficient notice of the Motion, the Auction, the Sale Hearing, and the Proposed Sale

Order, and no other or further notice of the Motion, the Auction, the Sale Hearing, and/or the Proposed Sale Order shall be necessary or required.

**Objections to the Sale**

15. Objections, if any, to the Sale of the Assets to each Successful Bidder shall be filed with the Court and served so as to be actually received no later than September 19, 2022 (the “Objection Deadline”) by counsel for the Assignee, Baker & Hostetler LLP, 200 SunTrust Center, Suite 2300, 200 South Orange Avenue, Orlando, Florida 32801, Attn: Elizabeth A. Green (egreen@bakerlaw.com) and Andrew V. Layden (alayden@bakerlaw.com). Only timely filed and served responses, objections, and other pleadings will be considered by the Court at the Sale Hearing.

16. The failure of any person or entity to file an objection to the Motion on or before the Objection Deadline shall forever bar any such objection to the Motion or the relief requested therein, or to the consummation of the Sale free and clear of liens, claims, encumbrances, or other interests.

**Additional Provisions**

17. The Assignee is authorized and empowered to take such steps, incur and pay such costs and expenses, and do such things as may be reasonably necessary to fulfill the notice requirements established by this Order.

18. This Order shall take effect immediately upon execution hereof and shall be binding on the Assignee and the Assignors and their estates.

19. Notwithstanding anything to the contrary contained herein or in the Bid Procedures, nothing shall direct (or be deemed to direct) the Assignee to sell the Assets, and the Assignee has the ability to decide, at any point, that he is not selling the Assets for any reason,

including but not limited to the DIP Lenders indicating an intent to credit bid in excess of bids that can reasonably be expected to materialize.


20. The Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Order, including any matter, claim, or dispute arising from or relating to the Bid Procedures.

It is further ADJUDGED that within five days from the date of eservice of this Order/Judgment, the Petitioner shall:

1. Furnish a copy of this Order to each self-represented party by U.S. Mail, first class, postage paid; and
2. File a certificate signed by Assignee's counsel that delivery of this Order has been made as set forth herein.

DONE AND ORDERED at the Moore Justice Center, Viera, Brevard County, Florida on Tuesday, July 12, 2022.

05-2021-CA-037231 07/12/2022 09:17:51 AM



David Dugan, Circuit Judge  
05-2021-CA-037231 07/12/2022 09:17:51 AM

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that copies have been furnished by U.S. Mail or via filing with the Florida Courts E-Filing Portal on Tuesday, July 12, 2022.

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05-2021-CA-037231 07/12/2022 10:20:35 AM



Monica Gabbard

Monica Gabbard, Judicial Assistant  
05-2021-CA-037231 07/12/2022 10:20:35 AM

**SCHEDULE 1**

**(PROPOSED BID PROCEDURES)**

## **[PROPOSED] BID PROCEDURES FOR THE ASSIGNORS**

By Motion dated June 16, 2022 (the “Motion”)<sup>2</sup> the Assignee, Joseph J. Luzinski (“Assignee”), as Assignee for the Benefit of Creditors of Assignors, Aerion Corporation, Aerion Technologies Corporation, Aerion Supersonic LLC, and Aerion Intellectual Property Management Corporation (collectively, the “Assignors”), sought approval of procedures to determine the highest or otherwise best price for the sale (the “Sale”) of substantially all of the Assignors’ assets (collectively, the “Assets”), as divided into groups (each, an “Asset Group”).

The Sale will be subject to competitive bidding as set forth herein and approval of the Circuit Court of the Eighteenth Judicial Circuit in and for Brevard County, Florida (the “Court”) pursuant to Fla. Stat. § 727.101 *et seq.* The Assignee shall seek approval of the Sale to the highest or otherwise best bid for each Asset Group (each, the “Successful Bid”) submitted by such bidder (each, a “Successful Bidder”) in the Sale Motion as described therein and below.

On \_\_\_\_\_, 2022, the Court entered an order (the “Bid Procedures Order”), which, among other things, approved the process and procedures set forth below (the “Bid Procedures”).

### **A. Key Dates**

The Bid Procedures establish the following key dates for the bidding process:

1. **Bid Deadline**: The Bid Deadline for submitting bids on the Assets by a Qualified Bidder shall be **September 7, 2022, at 4:00 p.m. EST** (the “Bid Deadline”).
2. **Auction**: If a Qualified Bidder submits a Qualified Bid by the Bid Deadline, an auction (the “Auction”) with respect to the sale of the Assets shall take place on **September 16, 2022 at 9:00 a.m. EST** (the “Auction Date”) via (i) a remote videoconference platform, such as Zoom, (ii) in-person at the law offices of Baker & Hostetler LLP located at 200 South Orange Avenue, Suite 2300, Orlando, Florida 32801, or (iii) at such other place and time as the Assignee shall notify all Qualified Bidders and the DIP Lenders.
3. **Sale Hearing**: Following the Auction, the counsel for the Assignee may schedule and notice a hearing (the “Sale Hearing”) to consider approval of the Sale of the Assets to each Successful Bidder at the Harry T. and Harriette V. Moore Justice Center, 2825 Judge Fran Jamieson Way, Viera, Florida 32940.

### **B. Bid Requirements**

Any entity wishing to participate in the bidding process (each a “Potential Bidder”) may submit a bid for either: (i) substantially all of the Assignors’ Assets; or (ii) an Asset Group. The Assignee will advise each Potential Bidder in writing whether or not it is a Qualified Bidder (as defined in the Proposed Bid Procedures). To participate in the Sale process, each Potential Bidder must submit the following, among other required items, on or before the Bid Deadline:

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

1. Identify of Potential Bidder, Authorization, and Ability to Close: The Potential Bidder must fully disclose the identity of each entity that will be bidding for the Assets or otherwise participating in connection with such bid and the complete terms of any such participation. The Potential Bidder must also provide evidence of authority for execution of the Asset Purchase Agreement (defined below) and provide sufficient information of the ability to close the anticipated transaction.
2. Executed Confidentiality Agreement: The Potential Bidder must submit an executed confidentiality agreement to the Assignee, in form and substance acceptable to the Assignee.
3. Executed Asset Purchase Agreement: The Potential Bidder must submit an irrevocable offer in the form of an executed asset purchase agreement (the "Asset Purchase Agreement") without financing, regulatory, or due diligence contingencies, unless otherwise approved by the Assignee. The Potential Bidder must also confirm in writing its agreement to accept and abide by the terms, conditions, and procedures set forth herein.
4. Purchase Price and Minimum Bid: The bidder must identify its proposed offered purchase price.
5. Good Faith Deposit: The Potential Bidder must make a good faith cash deposit in the form of a cashier's check or wire transfer into a noninterest-bearing escrow account ("Escrow Account") maintained by the Assignee's counsel in an amount not less than ten percent (10%) of the competing bid amount, except as set forth in the Proposed Bid Procedures, which deposit shall immediately become non-refundable. If the Potential Bidder is not a Successful Bidder, such Potential Bidder's deposit shall be refunded within fifteen (15) business days.
6. Fees: The Potential Bidder will not request or seek entitlement to any break-up fee, expense reimbursement, termination fee, or similar type of payment or bid protection.

Notwithstanding anything herein to the contrary, the DIP Lenders and the Collateral Agent have and reserve the right to credit bid all or a portion of any of the outstanding obligations owing to the DIP Lenders, whether prepetition or postpetition, and the DIP Lenders and Collateral Agent shall be deemed to be "Qualified Bidders" for all purposes herein and any such bid submitted by them shall be deemed to be a "Qualified Bid" for all purposes herein.

**C. Obtaining Due Diligence Access and Due Diligence Requests from Potential Bidders**

Upon the execution of a confidentiality agreement in a form acceptable to the Assignee and the completion of other certain of the other Bid Requirements, any Potential Bidder that wishes to conduct due diligence on the Assets may be granted access to all material information.

Requests should be directed to the Assignee via telephone (305.374.2717 ext. 1429) or email (jluzinski@DSIConsulting.com).

**D. “As Is, Where Is”**

The Sale of the Assets shall be on an “as is, where is” basis and without representations or warranties of any kind, nature, or description by the Assignee or his agents (including his attorneys), except to the extent set forth in the purchase agreement between the Assignee and each Successful Bidder, the assignment and bill of sale delivered pursuant to such purchase agreement, or the order approving the sale of the Assets by the Assignee to such Successful Bidder.

**E. The Auction**

The following rules shall apply at the Auction:

- A. Qualified Bidders: Only Qualified Bidders that have submitted Qualified Bids shall be entitled to bid or otherwise participate in the Auction. The Assignee, in his business judgment, shall determine whether a Potential Bidder is a “Qualified Bidder” and whether a submitted bid is a “Qualified Bid,” or whether any noncompliance shall be waived.
- B. In-Person Bidding: Each Qualified Bidder shall appear in person or have an authorized representative appear on the Qualified Bidder’s behalf.
- C. No Collusion: Each Qualified Bidder participating in the Auction will be required to confirm that it has not engaged in any collusion with respect to the bidding or the Sale.
- D. Assignee Determines Manner in Which Auction is Conducted: The Assignee, in his business judgment, will conduct the Auction in the manner that he determines will best promote the goals of the bidding process and achieve maximum value for the Assets.
- E. Conclusion of Auction: At the conclusion of the Auction, the Assignee shall identify each Successful Bid and Successful Bidder, and shall name the entity presenting the next highest and best bid of each Asset Group (each, the “Back Up Bid”) and the entity presenting the same (each, the “Back Up Bidder”). Each Successful Bidder and each Back Up Bidder shall remain obligated to close within thirty (30) days from entry of the Proposed Sale Order. At the Sale Hearing, the Assignee shall present each Successful Bid and each Back Up Bid to the Court for approval. Each Successful Bidder and each Back Up Bidder agree to purchase the corresponding Asset Group as provided in their highest bid made at the Auction.
- F. Auction Record: Bidding at the Auction will be transcribed to ensure an accurate

recording of the bidding.

**F. Reservation of Rights**

The Assignee reserves all rights to terminate the bidding process at any time if the Assignee determines, consistent with his fiduciary duties and in his business judgment, and in consultation with the DIP Lenders, that the bidding process will not maximize the value of the Assignors' Assets. The Assignee may modify the Bid Procedures at any time prior to or during the Auction if the Assignee determines, in his judgment, that such modifications will better promote the goals of the Auction and are in the best interests of the assignment estates and the creditors thereof.

**SCHEDULE 2**

**(NOTICE OF SALE, BID PROCEDURES, AUCTION, AND SALE HEARING)**

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
IN AND FOR BREVARD COUNTY, FLORIDA

IN RE:

AERION CORPORATION, a Delaware corporation, AERION TECHNOLOGIES CORPORATION, a Delaware corporation; AERION SUPERSONIC LLC, a Delaware limited liability company; AERION INTELLECTUAL PROPERTY MANAGEMENT CORPORATION, a Delaware corporation,

CASE NO. 05-2021-CA-037231

Assignors,

to

JOSEPH J. LUZINSKI,  
an individual,

Assignee.

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

**PLEASE TAKE NOTICE** that, on June 16, 2022, the Assignee, Joseph J. Luzinski (“Assignee”), as Assignee for the Benefit of Creditors of Assignors, Aerion Corporation, Aerion Technologies Corporation, Aerion Supersonic LLC, and Aerion Intellectual Property Management Corporation (collectively, the “Assignors”), filed with this Court his Motion for Entry of: (I) an Order Approving Bid Procedures; and (II) an Order (A) Approving the Sale of the Assignors’ Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests and (B) Granting Related Relief (the “Motion”).<sup>3</sup>

**PLEASE TAKE FURTHER NOTICE** that the Assignee is seeking to sell all or substantially all of the Assignors’ assets (the “Assets”).

**PLEASE TAKE FURTHER NOTICE** that, on July \_\_\_\_, 2022, the Court entered the order granting the Motion (the “Order”). Under the Order the Assignee is authorized to conduct an Auction with respect to the Sale of the Assets on **September 16, 2022, at 9:00 a.m. EST** (the “Auction Date”) via (i) a remote videoconference platform, such as Zoom, (ii) in-person at the law offices of Baker & Hostetler LLP located at 200 South Orange Avenue, Suite 2300, Orlando, Florida 32801, or (iii) at such other place and time as the Assignee shall notify all Qualified Bidders and the DIP Lenders

**PLEASE TAKE FURTHER NOTICE THAT FAILURE TO ABIDE BY THE BID**

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<sup>3</sup> Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Motion.



**PROCEDURES MAY RESULT IN THE DENIAL OF YOUR BID.** A written offer by a Qualified Bidder must be delivered so as to be received by no later than **September 7, 2022, at 4:00 p.m. EST** (the “Bid Deadline”) to: (1) the Assignee, Development Specialists, Inc., 500 West Cypress Creek Road, Suite 400, Fort Lauderdale, Florida 33309, Attn: Joseph J. Luzinski (jluzinski@DSIConsulting.com); and (2) counsel to the Debtors, Baker & Hostetler LLP, 200 SunTrust Center, Suite 2300, 200 South Orange Avenue, Orlando, Florida 32801, Attn: Elizabeth A. Green (egreen@bakerlaw.com) and Andrew V. Layden (alayden@bakerlaw.com). Instructions for how to submit a Qualified Bid can be found in the Order and the Bid Procedures.

**PLEASE TAKE FURTHER NOTICE** that, the Assignee will review and evaluate each Qualified Bid and determine which offer is the highest or otherwise best offer for each Asset Group among the Qualified Bids submitted at the Auction (each bid, a “Successful Bid,” and the Qualified Bidder submitting each Successful Bid, the “Successful Bidder”), which shall be subject to Court approval.

**PLEASE TAKE FURTHER NOTICE** that the Assignee’s counsel may schedule a notice a hearing before the Court (the “Sale Hearing”) to consider and approve the subject sale.

**PLEASE TAKE FURTHER NOTICE** that the deadline to file an objection with the Court to the proposed sale of the Assets is **September 19, 2022 at 4:00 p.m. EST** (the “Objection Deadline”). Objections must be filed and served on the Assignee’s counsel at their address listed above.

**PLEASE TAKE FURTHER NOTICE THAT THE FAILURE OF ANY PERSON OR ENTITY TO FILE AND SERVE AN OBJECTION BY THE OBJECTION DEADLINE SHALL BE A BAR TO THE ASSERTION BY SUCH PERSON OR ENTITY OF ANY OBJECTION TO THE MOTION, THE ORDER, AND THE SALE TRANSACTION.**

**PLEASE TAKE FURTHER NOTICE THAT THE FAILURE OF ANY PERSON OR ENTITY WITH A LIEN ON THE ASSETS WHO DOES NOT FILE AND SERVE AN OBJECTION BY THE OBJECTION DEADLINE SHALL BE DEEMED TO CONSENT TO THE SALE TRANSACTION BEING FREE AND CLEAR OF ALL LIENS.**