

B. Bidding Procedures.

24. The Debtor proposes that the Court approve the following specific bidding procedures (the “**Bidding Procedures**”) and certain bid protections, as further described below, for the Purchaser:

- a. **Potential Bidder.** Parties interested in participating in the bidding process (each person other than the Purchaser, a “**Potential Bidder**”) will be required to deliver to the Debtor (to the extent not already delivered) the following:
 - i. An executed confidentiality agreement in form and substance acceptable to the Debtor; and
 - ii. The most current financial information evidencing the Potential Bidder’s ability to close the transaction that meets with the Debtor’s satisfaction (the “**Financial Information**”), in consultation with any committee of unsecured creditors appointed in this case (a “**Committee**”).

As promptly as practicable after a Potential Bidder delivers the above information, the Potential Bidder shall be eligible to commence due diligence with respect to the Property as defined in the APA. The Debtor, in consultation with any Committee, reserves the right to refuse any Potential Bidder access to the due diligence materials if such access is deemed to be harmful to the Debtor’s estates.

- b. **Deadline for Submission of Bids.** The deadline for submitting any and all competing bids shall be on or before **August 21, 2009, at 5:00 p.m. (Prevailing Texas Time)** (the “**Bid Deadline**”).
- c. **Submission of Bids.** In order to qualify as a potential Qualified Bidder (as defined below) of the Purchased Assets, a Potential Bidder must timely submit a written bid (a “**Qualified Bid**”) for the Purchased Assets that:
 - i. Contains an executed asset purchase agreement in substantially the

same form with all modifications, which shall be no less favorable than those proposed by the Purchaser in the APA (a “**Modified APA**”).

- ii. The Modified APA shall be accompanied by a blacklined copy of the Modified APA showing all changes made to the APA.
- iii. The Modified APA shall not contain:
 - 1. A request for any type of break-up fee, expense reimbursement, or similar type of payment; or
 - 2. Any due diligence, financing contingencies, or other contingency of any kind.
- iv. Evidence of authorization and approval from such Potential Bidder’s board of directors (or comparable governing body) with respect to the submission, execution, delivery, and closing of the APA or the Modified APA, as the case may be.
- v. Information regarding such Potential Bidder’s financial capability to consummate the transactions contemplated by the APA or Modified APA, as the case may be, containing such financial and other information that will allow the Debtor, in consultation with any Committee, to make a reasonable determination as to the Qualified Bidder’s financial and other capabilities to consummate the transactions contemplated by the APA or the Modified APA, as the case may be, including, without limitation:
 - 1. The most current Financial Information of such Potential Bidder; or
 - 2. If the Potential Bidder is an entity formed for the purpose of acquiring the Property then:
 - A. The Financial Information of the equity holder(s) of the Potential Bidder or such other form of financial disclosure acceptable to the Debtor; and
 - B. The written commitment of such equity holder(s) to be responsible for the Potential Bidder’s obligations in connection with the acquisition of the Assets.
- vi. Discloses fully the identity of each entity that will be bidding for the Property or otherwise participating in connection with such Qualified Bid, and the complete terms of any such participation.

- vii. Discloses fully the terms of the proposed employment of any of Debtor's employees, management, or officers in connection with such bid.
 - viii. Is in an amount that exceeds the amount initially bid by the Purchaser in the APA (the "**Stalking Horse Bid**") by not less than \$1,700,000 Purchase Price; plus a three percent (3%) breakup fee (\$51,000) and an over bid amount of \$50,000 for a total over bid of not less than \$1,801,000.
 - ix. Is accompanied by a cash deposit in an amount equal to \$180,000 (the "**Deposit**").
 - x. Is delivered to the following parties (except items under subsections (v) and (viii) above are only to be delivered to the Debtor and Debtor's counsel) such that they are received by the close of business on the Bid Deadline: (1) the Debtor's Chief Restructuring Officer, Attn: John Greer, 2555 East Camelback Road, Suite 800, Phoenix, AZ 85016; (2) the Debtor's counsel, Greenberg Traurig, LLP, Attn: Clifton R. Jessup, Jr., 2200 Ross Avenue, Suite 5200, Dallas, Texas, 75201; (3) counsel for any Committee; and (4) the Purchaser, Arbeit Investments Limited Partnership, 10350 Buen Road, West Minnetonka, MN 55343, Attn: Suzanne Flannigan (collectively, the "**Notice Parties**").
- d. **Qualification of Bid.** After a Potential Bidder has delivered a bid, the Debtor, in consultation with any Committee, will determine whether such Potential Bidder is a "**Qualified Bidder**" and such bid is a "**Qualified Bid.**" Promptly after making such determination, the Debtor will advise such bidder of this determination. The Debtor, in consultation with any Committee, reserve the right to reject any bid if such bid is on terms that are materially more burdensome or conditional than the terms of the APA.
- e. **Auction.** In the event that one or more competitive Qualified Bids other than that of the Purchaser are received, the Debtor will conduct an auction to determine the highest or best bid for the Assets beginning at **10:00 a.m. (Prevailing Texas Time) on August 26, 2009, at the law offices of Greenberg Traurig, LLP, 2200 Ross Avenue, Suite 5200, Dallas, Texas, 75201** (the "**Auction**"). The Auction may be adjourned by announcement of the adjournment at the Auction to those parties who appear at the Auction. Each Qualified Bid other than the opening bid is referred to as a "**Subsequent Bid.**" If the Debtor does not receive any Qualified Bids other than the Stalking Horse Bid in the APA received from Purchaser, the Debtor will report the same to the Court and will promptly proceed with the Transaction pursuant to the terms of the APA,

upon entry of an order approving the Transaction.

At the conclusion of the Auction, or as soon thereafter as practicable, the Debtor, in consultation with its financial advisors and any Committee appointed in this case, shall: (i) review each Qualified Bid on the basis of financial and contractual terms and the factors relevant to the process, including those factors affecting the speed and certainty of consummating the Transaction; (ii) identify the highest or otherwise best offer(s) for the Assets received at the Auction (the “**Highest Bid**”, and the bidder(s) making such bid, the “**Highest Bidder**”); and (iii) designate the Back-Up Bidder.

- f. **Auction Procedures.** In the event an Auction is necessary, such Auction will be conducted as follows:
- i. Only the Debtor, the Purchaser, any representative of any Committee, and any Qualified Bidder who has timely submitted a Qualified Bid (and the legal and financial advisers to each of the foregoing) may attend the Auction, and only the Purchaser and the other Qualified Bidders may make any subsequent Qualified Bids at the Auction.
 - ii. At least one (1) business days prior to the Auction, each Qualified Bidder who has submitted timely a Qualified Bid must inform the Debtor whether it intends to participate in the Auction. Failure to comply with this provision may preclude an otherwise Qualified Bidder from attending and/or participating in the Auction.
 - iii. All Qualified Bidders who have submitted a Qualified Bid shall be entitled to be present for all Subsequent Bids with the understanding that the true identity of each bidder shall be fully disclosed to all other bidders and that all material terms of each Subsequent Bids (including any Subsequent Bid by Purchaser) will, upon request, be fully disclosed to all other bidders throughout the entire Auction.
 - iv. All Qualified Bidders or their representatives (including the Purchaser) shall agree to remain ready, willing, and able to close the Transaction under the terms of its last Qualified Bid (including the Stalking Horse Bid by Purchaser, if Purchaser is the designated Back-Up Bidder) submitted at or before such Auction as the sole back-up bidder (the “**Back-Up Bidder**” and such last bid, the “**Back-Up Bid**”) until the earlier of (1) the close of the Transaction, or (2) September 2, 2009, and shall close if the Highest Bidder fails to close, if, as, and when determined by the Debtor to be the new Highest Bidder.

- v. The Debtor, in consultation with any Committee, may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances (e.g., the amount of time allotted to make Subsequent Bids) for conducting the Auction, provided that such rules are not inconsistent with these Bidding Procedures, the Bankruptcy Code, or any order entered in connection herewith.
- vi. Bidding at the Auction shall begin with the highest or otherwise best Qualified Bid. The bidding shall be in minimum increments of at least \$50,000 higher than the previous bid or bids (after giving effect to the minimum required to exceed the Stalking Horse Bid for each bid to be determined to be a Qualified Bid). The Auction shall also continue in one or more rounds of bidding and shall conclude after each participating bidder has had the opportunity to submit one or more additional Subsequent Bids with full knowledge of the then-existing highest bid or bids. For the purpose of evaluating the value of the consideration provided by Subsequent Bids (including any Subsequent Bid by Purchaser), the Debtor must give effect to any Break-Up Fee that may be payable to the Purchaser under the APA such that the Purchaser's bid in an amount that is as much as \$51,000 less than a competing bid in fact matches any such Qualified Bid.
- vii. Purchaser shall be entitled to cancel any outstanding amounts owed by Debtor due pursuant to the priority security financing extended to the Debtor by the Purchaser and use such cancellations as a credit or offset (the "**Credit Amount**") against the purchase price for the assets, including principal, interest, fees, and expenses, and also including using the Credit Amount as a portion of any "bid" submitted for the Property.
- viii. The credit bid rights of any secured party, including the Purchaser, shall be preserved in accordance with Section 363(k) of the Bankruptcy Code (provided that cash payment of the Bid Protections shall still apply).
- g. **Bid Protections.** In the event that the Debtor consummates any Alternative Transaction, including a sale of all or a substantial portion of the Purchased Assets by a competing bid from a party other than the Purchaser, or the confirmation of any Chapter 11 Plan, within 180 days of the execution of the APA, the Purchaser shall be entitled to a fee of three percent (3%) of the Purchase Price (\$51,000) (the "**Break-Up Fee**"), to be paid from the proceeds of the closing of such transaction. The Break-Up Fee shall be payable to the Purchaser as a super-priority administrative

expense claim under Section 507(b) of the Bankruptcy Code. In no event shall the Purchaser be entitled to the Break-Up Fee if the APA is terminated under Section 4.4(b).

- h. **Final Hearing.** The Court has scheduled a hearing to approve the Transaction (the “**Final Hearing**”) on **August 27, 2009, at : .m. (Prevailing Texas Time)**. All objections to the Transaction shall be filed with the Bankruptcy Court and served on the Notice Parties at least three (3) days prior to the Final Hearing. The Highest Bidder and the Back-Up Bidder must produce a competent witness at the Final Hearing (and any subsequent hearing) to provide testimony, if necessary, to establish adequate assurance of future performance by each such bidder under the unexpired leases and executory contracts to be assigned to such bidder, to the extent required by Sections 365(b) of the Bankruptcy Code. At the Final Hearing, the Debtor will request that the Court approve the Transaction with regard to the Back-Up Bidder in the event the contemplated Transaction with the Highest Bidder does not timely close; in which case such Back-Up Bidder shall become the Highest Bidder without further order of the Court. The Highest Bidder (if other than the Purchaser) shall be substituted for the Purchaser under the APA (as amended to reflect terms of the Highest Bidder’s bid) and the proposed Order.
- i. **Closing.** Closing shall take place on August 31, 2009, and shall be only upon such order becoming a final order, except upon the waiver of this prerequisite (of a final order) by the Highest Bidder.
- j. **Return of Deposits.** The Deposits of all Qualified Bidders (except for the Highest Bidder) shall be held in non-interest-bearing escrow account. Notwithstanding the foregoing, the Deposit, if any, submitted by the Highest Bidder, shall be applied against the payment of the Purchase Price upon closing of the Transaction with the Highest Bidder. Except as otherwise provided in the APA and herein, all Deposits shall be returned to each Qualified Bidder not selected by the Debtor as either the Highest Bidder or the Back-Up Bidder within five (5) business days of the adjournment of the Auction. The Deposit of the Back-Up Bidder, to the extent not designated as the Highest Bidder, shall be returned to the Back-Up Bidder within five (5) business days of the date of closing the Transaction.