

- a. **Potential Bidder.** Parties interested in participating in the bidding process ("**Potential Buyers**") and Wachovia, on its own behalf with respect to the Calm Waters Property, (together with Potential Buyers, the "**Potential Bidders**") may participate in the sale process. Potential Buyers will be required to deliver to the Debtors (and the Debtors will provide Wachovia (to the extent not already delivered)) the following:

- i. An executed confidentiality agreement in form and substance acceptable to the Debtors; and
- ii. The most current audited (if available) and the latest unaudited financial statements as well as financial information evidencing the Potential Bidder's ability to close the transaction that meets with the Debtors' satisfaction.

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 Calm Waters Property. The Debtors reserve the right to refuse any Potential Bidder access to the due diligence materials if such access is deemed to be harmful to the Debtors' estates. Wachovia will not be obligated to comply with subparagraphs (i) and (ii) above.

- b. **Deadline for Submission of Bids.** The deadline for Potential Bidders submitting any and all competing bids shall be on or before August 17, 2009, at 12:00 noon (Prevailing Delaware Time) (the "Bid Deadline").
- c. **Submission of Bids by Potential Buyers.** In order to qualify as a potential Qualified Bidder (as defined below) of the Calm Waters Property, a Potential Buyer must timely submit a written bid for a portion or all of the Calm Waters Property that:
 - i. Contains an executed Modified APA in substantially the same form as the APA filed contemporaneously herewith, with all modifications thereto, wherein the Potential Buyer proposes:
 1. Which portion of the Calm Waters Property the Potential Buyer seeks to acquire; and
 2. Which of the Debtor's executory contracts and unexpired leases such bidder seeks to assume and the proposed terms of cure (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 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

Buyer's board of directors (or comparable governing body) with respect to the submission, execution, delivery, and closing of the Modified APA.

- v. Information regarding such Potential Buyer's financial capability to consummate the transactions contemplated by the Modified APA containing such financial and other information that will allow the Debtors to make a reasonable determination as to the Potential Buyer's financial and other capabilities to consummate the transactions contemplated by the Modified APA, including, without limitation:
 - 1. The most current audited (if available) and latest unaudited financial statements (the "Financial Information") of such Potential Buyer; or
 - 2. If the Potential Buyer is an entity formed for the purpose of acquiring any portion of the Calm Waters Property then:
 - A. The Financial Information of the equity holder(s) of the Potential Buyer or such other form of financial disclosure acceptable to the Debtors; and
 - B. The written commitment of such equity holder(s) to be responsible for the Potential Buyer's obligations in connection with the acquisition of the Calm Waters Property.
- vi. Discloses fully the identity of each entity that will be bidding for the Calm Waters 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 Debtors' employees, management, or officers in connection with such bid.
- viii. Is accompanied by a cash deposit in an amount equal to 10% of the total purchase price set forth in the Modified APA (a "Deposit").
- ix. Permits Calm Waters, pursuant to the local rules of the Court, to maintain reasonable access to its books and records following the closing of any sale of the Calm Waters Property, as necessary for the administration of its bankruptcy case and estate.
- x. Identifies, to the extent the total bid submitted relates to the assets of more than one Debtor, the allocation of such total bid between each Debtor's property bid upon by such bidder.

- xi. Is delivered to (1) Debtors' counsel such that they are received by the close of business on the Bid Deadline by the following: (a) Victoria Counihan, Greenberg Traurig, LLP, The Nemours Building, 1007 North Orange Street, Suite 1200, Wilmington, Delaware 19801; and (b) Matthew Gensburg, Greenberg Traurig, LLP, 77 West Wacker Drive, Suite 3100, Chicago, Illinois 60601, and (2) counsel for any unsecured creditors' committee appointed in these cases (collectively, the "Notice Parties"). The Debtors shall provide Wachovia with copies of all documents delivered related to the Calm Waters Property.
- d. **Submission of Bids by Wachovia.** In order to qualify as a potential Qualified Credit Bidder (as defined below) of the Calm Waters Property, Wachovia (on its own behalf or as Administrative Agent) must timely submit a written bid (a "Qualified Credit Bidder") for a portion or all of the Calm Waters Property that:
 - i. Contains an executed Modified APA wherein Wachovia proposes:
 - 1. Which portion of the Calm Waters Property Wachovia (on its own behalf or as Administrative Agent) seeks to acquire; and
 - 2. Which of the Debtor's executory contracts and unexpired leases such bidder seeks to assume and the proposed terms of cure.
 - ii. The Modified APA shall be accompanied by a blacklined copy of the Modified APA showing all changes made to the APA. Nothing will require Wachovia to bid its entire Allowed Bid.
 - iii. The Modified APA shall not contain:
 - 1. A request by Wachovia for any type of expense reimbursement or similar type of payment; or
 - 2. Any due diligence, financing contingencies, or other contingency of any kind.
 - iv. Discloses fully the terms of the proposed employment of any of Debtors' employees, management, or officers in connection with such bid.
 - v. Is delivered to the Notice Parties that they are received by the close of business on the Bid Deadline.
 - vi. Permits Calm Waters, pursuant to the local rules of the Court, to maintain reasonable access to its books and records following the

closing of any sale of the Calm Waters Property, as necessary for the administration of its bankruptcy case and estate.

- e. **Qualification of Bid.** After a Potential Buyer has delivered a bid, the Debtors, in consultation with the Mortgagees, will determine whether such Potential Buyer is a "**Qualified Bidder**" and such bid is a "**Qualified Bid**." Promptly after making such determination, the Debtors will advise such bidder of this determination. The Debtors reserve the right to reject any bid. Wachovia on its own behalf with respect to the Calm Waters Property is deemed to be a Qualified Bidder with respect to the Calm Waters Property upon compliance with the provisions of Paragraph 14(d) of this Procedures Order.
- f. **Auction.** The Debtors will conduct an auction to determine the highest or best bid for the Calm Waters Property beginning at **10:00 a.m. (Prevailing Delaware Time) on August 19, 2009, at the law offices of Greenberg Traurig, LLP located at The Nemours Building, 1007 North Orange Street, Suite 1200, Wilmington, Delaware 19801** (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**." At the conclusion of the Auction, or as soon thereafter as practicable, the Debtors shall: (i) review each Qualified Bid on the basis of financial and contractual terms and the factors relevant to the process, the Debtor's estate and the Transactions, including those factors affecting the speed and certainty of consummating the Transactions; (ii) identify the highest or otherwise best offer(s) for the Calm Waters Property received at the Auction (the "**Highest Bid**", and the bidder(s) making such bid, the "**Highest Bidder**"); and (iii) designate any Back-Up Bidders (as defined below).
- g. **Right to Withdraw Asset or Permit Package Bids.** At any time prior to the Final Hearing, Wachovia on its own behalf with respect to the Calm Waters Property may withdraw the Calm Waters Property from the sale process if the amount to be paid to Wachovia from the relevant sale proceeds is less than the Allowed Bid. To withdraw the Calm Waters Property from the sale process, Wachovia shall give notice in writing that the Calm Waters Property is withdrawn from the sale process to Debtor. However, notwithstanding any such withdrawal of a property, Wachovia (with respect to the Calm Waters Property) shall pay all previously agreed carry costs, expenses, and fees associated with the sale process as outlined in Paragraphs 5 through 8 of this Procedures Order.
- h. **Auction Procedures.** The Auction will be conducted as follows:
 - i. The Auction will be conducted openly and all of the Debtors' creditors will be permitted to attend.

- ii. Only Qualified Bidders may make any subsequent Qualified Bids at the Auction.
- iii. At least one (1) business day prior to the Auction, each Qualified Bidder who has submitted timely a Qualified Bid must inform the Debtors 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. As soon as is practicable before the Auction, the Debtors must provide copies of the Qualified Bid the Debtors believe is the highest or otherwise best offer to all Qualified Bidders who are eligible to attend and participate in the Auction.
- iv. 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 will be fully disclosed to all other bidders throughout the entire Auction.
- v. All Qualified Bidders who have submitted a Qualified Bid shall agree to remain ready, willing, and able to close a Transaction with respect to the Calm Waters Property, under the terms of their last Qualified Bid submitted at or prior to such Auction with respect to the Calm Waters Property as the 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 with respect to the Calm Waters Property, or (2) September 4, 2009, and shall close if the Highest Bidder fails to close, if, as, and when determined by the Debtors, in consultation with Wachovia, to be the new Highest Bidder.
- vi. The Debtors 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. With respect to the Calm Waters Property, the order and the manner in which the Auction shall be conducted shall be in consultation with Wachovia.
- vii. Bidding at the Auction shall begin with the highest or otherwise best Qualified Bid. The bidding shall be in minimum increments to be set by the Debtors at the Auction. 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 and written confirmation of the then-existing highest bid or bids.

- viii. Each Qualified Bidder participating at the Auction shall confirm in writing at the Auction that it is not engaged in any collusion with respect to the bidding or sale.
- ix. Bidding at the Auction will be transcribed or videotaped.
- i. **Final Hearing.** A hearing to approve the Transactions (the "**Final Hearing**") will be held on **August 24, 2009, at 10:30 a.m. (Prevailing Delaware Time)**. All objections to any Transaction, other than specifically with respect to Cure Notices, shall be filed with the Bankruptcy Court and served on the Notice Parties on or before **August 17, 2009 at 4:00 p.m. (Prevailing Delaware Time)** (the "**Objection Deadline**"). The Highest Bidder(s) and any Back-Up Bidder(s) 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 Debtors will request that the Court approve each 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. At the hearing or promptly thereafter, the Court shall enter an order providing that, to the extent permitted by section 363 of the Bankruptcy Code, (a) the Highest Bidder, (i) if Wachovia (on its own behalf with respect to the Calm Waters Property), will be receiving title to the Calm Waters Property purchased and the Calm Waters Property will be sold free and clear of all liens, leases (except for the Boat Slip Lease), claims, contract claims, warranties, successor liability claims, and interests junior to the lien of Wachovia, as applicable, and any lien rights under the Assigned Contracts, and including any claims, rights, interests and the like asserted by Theodore Carmen Kirby, Ted Kirby, the Tifall Group or the Tifall Group, (ii) if a Potential Buyer, will be receiving title to the Calm Waters Property purchased and the Calm Waters Property will be sold free and clear of all liens, claims, and encumbrances and contract claims, warranties, and successor liability claims on the Purchased Asset, and (iii) whether Wachovia or a Potential Buyer, such Sale shall be free and clear of the Debtor's warranty liability claims, including but not limited to, any express or implied warranties of the Debtor under Fla. Stat. Ann. §718.203 or any similar or related statute; and (b) the Sale shall be as is, where is, free of any express or implied representations or warranties of any kind, including but not limited to, warranties of the Debtor under Fla. Stat. Ann. §718.203 or any similar or related statute, other than those representations and warranties expressly given in the Modified APA. For the avoidance of any doubt, no purchaser of the Calm Waters Property through this sale under section 363 of the Bankruptcy Code, whether Wachovia or a Potential Purchaser, nor such purchaser's successors or assigns, shall be

entitled to assert any warranty claims against the Debtors or their bankruptcy estates of any kind or nature, including but not limited to claims arising under Fla. Stat. Ann. §718.203 or any similar or related statute.

- j. **Closing.** Any closing of a Transaction shall take place on or before **August 31, 2009**, except upon the waiver of this requirement by the Debtors.
- k. **Return of Deposits.** The Deposits of all Qualified Bidders (except for the Highest Bidder) shall be held in an interest-bearing escrow account. Notwithstanding the foregoing, any Deposit, if any, submitted by the Highest Bidder, together with interest accrued thereon, shall be applied against the payment of the Purchase Price upon closing of the Transaction with the Highest Bidder. Except as otherwise provided in a Modified APA and herein, all Deposits (together with interest accrued thereon) shall be returned to each Qualified Bidder not selected by the Debtors 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 with respect to the related Purchased Asset.