

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

In re:

Consolidated Energy Holdings, LLC,

Debtors.

Case No. 15-80199

Chapter 11

Substantively consolidated with:
15-80200 and 15-80201

MOTION FOR THE ENTRY OF ORDERS (I) APPROVING BIDDING AND AUCTION PROCEDURES IN CONNECTION WITH THE SALE OF IMMOVABLE PROPERTY, (II) APPROVING SALE OF IMMOVABLE PROPERTY FREE AND CLEAR, AND (III) GRANTING RELATED RELIEF

NOW INTO COURT, through undersigned counsel, come the substantively consolidated debtors (the “Debtors”),¹ who hereby who move for the entry of an order (i) approving bidding and auction procedures in connection with the sale of immovable property located at Debtors’ port facility in Alexandria, LA; (ii) approving the sale of such property free and clear of any liens and encumbrances; and (iii) granting related relief. In support, Debtors represent as follows:

I. Jurisdiction

1.

This Court has jurisdiction over this Motion under 28 U.S.C. §§157 and 1334. Venue is proper under 28 U.S.C. §§1408 and 1409. This is a core proceeding as defined in 28 U.S.C. §157(b)(2).

II. Background

¹ The debtors in these substantively consolidated cases are: Consolidated Energy Holdings, LLC (“CEH”), case no. 15-80199; Vanguard Synfuels, L.L.C. (“Vanguard”), case no. 15-80200; and Port Asset Acquisition, LLC (“PAAL”), case no. 15-80201.

2.

On Monday, February 23, 2015 Debtors commenced these voluntary Chapter 11 cases by filing voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. Since filing, Debtors have operated as debtors-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108. Neither a trustee nor an unsecured creditors' committee has been appointed.

3.

Debtors have previously sold a portion of the estate's immovable property and certain related property located at Vanguard's Pollock, LA biodiesel refinery (the "Plant Property") to UAB Investimus Foris, a Lithuanian limited liability company (the "Vanguard Sale") via this Court's Order dated November 23, 2015 [P-268]. Debtors also sold, via auction, related movable property via this Court's Order dated July 17, 2016 [P-374].

4.

The Debtors now seek to sell the Estate's remaining property consisting of immovable property located at the Port of Alexandria in Rapides Parish, as more particularly described in Exhibit "A" (the "Port Property").

5.

Debtors were contacted by Alexandria Terminal Company LLC, a Delaware limited liability company ("ATC") expressing an interest in the Port Property. ATC offered to purchase for \$2,250,000.00. After considering various options, Debtors accepted ATC's offer, and the parties agreed to transfer the Port Property.

6.

Debtors have determined to ATC according to the terms of that Purchase and Sale Agreement attached hereto as Exhibit "B" (the "ATC Sale Agreement"). The important terms

and conditions of the ATC Sale Agreement are as follows: (i) purchase price of \$2,250,000.00; (ii) deposit of 10%; (iii) no break-up fee; and (iv) no contingencies other than title related contingencies.

III Relief Requested

7.

This motion seeks entry of two orders. Under the first order (the “Bid Procedures Order”), the Debtors seek to (i) establish a process governing the sale of the Property and setting up auction procedures by which interested parties may bid (“Bid Procedures”);² (ii) approve the a form purchase agreement by which potential purchasers will bid on the Property (“Form Port Property Sale Agreement”)³; and (iii) a determination by the Court that Debtors may sell the Port Property free and clear of any Liens and Claims (defined below) pursuant to 11 U.S.C. § 363(f). Debtors currently seek hearing on this first order on December __, 2016.

8.

Through the second order, Debtors request the approval of the sale of the Port Property (“Sale Order”), including: (i) approval of the sale to the qualified bidder selected of the (a) highest and best bid (the “Purchaser”); (ii) approval of the second highest and best bid (the “Backup Purchaser”), (iii) a finding that the Purchaser is a good faith purchaser pursuant to 11 U.S.C. § 363(m), and (iv) abrogation of the fourteen (14) day stay imposed by FED. R. BANKR. P. 6004(h). Debtors propose that a hearing on this second order be held February 1, 2017.

Current Liens and Claims

9.

² A copy of the proposed Bid Procedures is attached hereto as Exhibit “C”.

³ A copy of which is attached hereto as Exhibit “D”.

Undersigned counsel is aware of the following liens and encumbrances affecting the Port Property, which are listed in order of date of recordation. Undersigned counsel has not verified the validity or amount of such liens.

1. Notice of Lis Pendens, in the principal amount of \$3,721.91, filed by SPI Municipal Supply, Inc., filed 7/22/1985, MBk. 1025, Page 577.
2. Multiple indebtedness mortgage in the principal amount of \$9,000,000.00, in favor of Union Bank, filed 10/1/2010, Reg. No. 1435065, MBk. 2558, Page 79.
3. Multiple indebtedness mortgage in the principal amount of \$1,000,000.00, in favor of BOKF, NA d/b/a Bank of Oklahoma, as indenture trustee ("BOKF"), filed 1/3/2012, Reg. 1465925, MBk. 2639, Page 541.
4. Intercreditor and Subordination Agreement between Union Bank and BOKF, filed 2/1/2012, Reg. 1467998, MBk. 2644, Page 929.
5. Notice of Seizure in favor of the Union Bank, filed 2/3/2015, Reg. 1544995, MBk. 2849, Page 730.
6. Request for Notice of Seizure in favor of The Union Bank, filed 10/1/15, Reg. 1435066, MBk. 2558, Page 109.
7. Tax Sale, Conveyance Book 2009, Page 283, #1552286, PAAL to Bakies Properties LLC, recorded 5/28/14, 2014 Taxes
8. Tax Sale, Conveyance Book 2036, Page 361, 31576009, Bakies Properties LLC to Jerry Johnson, recorded 5/18/16 for 2015 taxes
9. Tax Sale, Conveyance Book 2036, Page 901, 31576479, Bakies Properties LLC to Bakies Properties LLC, recorded 5/23/16 for 2015 taxes

IV. Approval of Bid Procedures and Form Port Property Sale Agreement

Approval of the Bid Procedures is Appropriate

10.

The Bid Procedures are reasonably calculated to encourage a buyer to submit a final bid within the range of reasonably anticipated values. ATC will be a stalking horse for purposes of setting a floor and drawing competitive bids, perhaps leading to further competition and the establishment of a baseline against which higher or otherwise better offers can be measured.

11.

Debtors believe that the Bid Procedures are appropriate under 11 U.S.C. §§ 105 and 363 to ensure that the bidding process is fair and reasonable and will yield the maximum value for

the estate and its creditors. The Bid Procedures proposed herein are designed to maximize the value received for the Port Property by facilitating a competitive bidding process in which all potential bidders are encouraged to participate and submit competing bids. The Bid Procedures provide potential bidders with sufficient notice and an opportunity to acquire information necessary to submit a timely and informed bid. Thus, Debtors and all parties in interest can be assured that the consideration for the Port Property will be fair and reasonable. At the same time, the Bid Procedures provide Debtors with the opportunity to consider all competing offers and to select, in his reasonable business judgment the highest and best offer for the Port Property.

12.

Debtors submit that the Bid Procedures are fair and appropriate under the circumstances, consistent with the procedures routinely approved by courts in this state and in the best interest of Debtors' estates. Debtors believe that it is imperative that they promptly move forward in hope that higher and better offers are generated for the Port Property. Accordingly, the Bid Procedures were developed consistent with the estates' need to expedite the sale process, but with the objective of promoting further active bidding that will result in the highest or better offer for the Port Property. The Bid Procedures are designed to facilitate the orderly, yet competing, bidding to maximize the net value realized from the sale by the estates. In particular, the Bid Procedures contemplate an auction process with minimum (but appropriate) barriers to entry and provide potential bidding parties with sufficient time to perform due diligence and acquire the information necessary to submit a timely and well-informed bid. Debtors accordingly request entry of an order approving the Bid Procedures.

Approval of the Form Port Property Purchase Agreement

13.

The Bid Procedures require potential Purchasers to utilize the Form Port Property Purchase Agreement. The Form Port Property Purchase Agreement is identical to the ATC Purchase Agreement,⁴ and contains terms and conditions customary for the sale of immovable property in such circumstances. The Debtors request approval of the Form Port Property Purchase Agreement.

V. Approval of the Sale to Purchaser

Business Judgment

14.

This motion contemplates that Debtors will sell the Port Property to the Purchaser.⁵ This sale will be accomplished pursuant to 11 U.S.C. § 363, which provides that Debtors, “after notice and a hearing, may [...] sell [...], other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). The Court should approve the sale of the Port Property to the Purchaser if it finds that Debtors demonstrate a sound business reason for the sale and the parties acted in good faith to sell the Port Property at a fair and reasonable price. *See In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983) (holding that the proper standard to use when considering a proposed motion to sell is the business judgment test). *See also In re 240 N. Brand Partners*, 200 B.R. 653, 659 (9th Cir. B.A.P. 1996) (citing to *Lionel* for proposition that “debtors who wish to utilize section 363(b) to dispose of property of the estate must demonstrate that such disposition has a valid business justification.”).

15.

⁴ Besides the blanks for purchase price and name of purchaser completed, the only other material difference in the two forms is that the Form Port Property Purchase Agreement does not contain a 90 day bid deadline from execution in Section 3(b)(vii), as Debtors determined that is unnecessary in the context of a bidder.

⁵ Purchaser means ATC or the Successful Bidder at the Auction.

Once a debtor-in-possession articulates a valid business reason for a sale, the business judgment rule acts as a presumption that the debtor-in-possession has acted on an informed basis, in good faith, and in the honest belief that the sale is in the best interests of the estate. *See In re Gulf States Steel Inc. of Ala.*, 285 B.R. 497, 514 (Bankr. N.D. Ala. 2002) (“The Trustee is responsible for the administration of the estate and his or her judgment on the sale and the procedure for the sale is entitled to respect and deference from the Court, so long as the burden of giving sound business reasons is met.”).

16.

“When conducting an asset sale, the ultimate responsibility of the debtor, and the primary focus of the bankruptcy court, is the maximization of the value of the assets sold.” John J. Jerome & Robert D. Drain, *Bankruptcy Court is Newest Arena for M&A Action*, N.Y.L.J., June 3, 1991. In furtherance of that goal, bidding procedures, such as those proposed here, may be used in court-supervised asset sales because they streamline the acquisition process, “help to provide an adequate basis by which to compare offers” and ultimately, maximize value. *See id.* *See also In re Integrated Res., Inc.*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (bidding procedures “are important tools to encourage bidding and to maximize the value of the debtor’s assets.”).

17.

Debtors’ decision to sell the Port Property to the Purchaser is based on its sound business judgment. Debtors seek to liquidate their substantively consolidated estates so that they may justly and equitably compensate their creditors. The Port Property is a significant asset of Debtors’ estates, and its sale will help expedite payment to the holders of allowed claims.

18.

The Purchase Price (\$2,250,000.00) is fair and reasonable consideration for the sale of the Port Property because it represents the product of extensive, arm's length negotiations between Debtors and ATC and represents fair value for the Port Property. Upon information and belief, a 2015 appraisal update by Union Bank reflected a fair market value of the Port Property at of \$1,124,000.00.

19.

Moreover, the sale of the Port Property is an integral part of the settlement of the affairs between Debtors, Union Bank and BOKF. Union Bank and BOKF have asserted liens upon property of Debtors' estates. Debtors submit that the Purchase Price adequately takes into consideration the risk that they will not prevail if they sought to avoid or disallow those claims, the time that it will take for the parties to litigate the allowance or avoidance of those claims, and the substantial costs that inevitably will result from protracted litigation. Moreover, the sale of the Port Property will result in the immediate infusion of a significant amount of money into Debtors' estates, which will be available for distributions to holders of allowed claims, while extended litigation will leave the issue of distributions uncertain for potentially many years to come.

20.

With regards to the Purchaser at the auction, the ultimate sale price was or will have been reached after an open marketing and auction process and through competitive bidding between qualified bidders. By definition, value received through such an auction process is fair and reasonable.

21.

At the same time, the Bid Procedures provide Debtors with an adequate opportunity to consider competing bids and select the highest and best offer for the completion of the sale. Entering into the approved Form Port Property Purchase Agreement with the Purchaser ensures the estate obtains fair market value by setting a minimum purchase price that will be tested in the marketplace. As such, Debtors' creditors can be assured that, taking into account the financial condition of Debtors and the economy, the consideration obtained will be fair and reasonable and at or above market.

The Sale is Appropriate Under § 363(b)

22.

Section 363(b)(1) of the Bankruptcy Code provides that a debtor, "after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Section 105(a) provides in relevant part that "[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

23.

A sale of a debtor's assets should be authorized pursuant to § 363 if a sound business exists for doing so. *See Stephens Indus. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986) ("bankruptcy court can authorize a sale of all a Chapter 11 debtor's assets under [Section] 363(b)(1) when a sound business purpose dictates such action."); *In re Gucci*, 126 F. 3d 380, 387 (2d Cir. 1997) ("A sale of a substantial part of a Chapter 11 estate may be conducted if a good business reason exists to support it."); *In re Lionel Corp.*, 722 F. 2d 1063, 1071 (2d Cir. 1983); *In re Chateaugay Corp.*, 973 F. 2d 141, 143 (2d Cir. 1992); *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) ("Where the debtor articulates a reasonable basis for its

business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct.”).

24.

Courts typically consider the following four factors in determining whether a proposed sale satisfies this standard: (a) whether a sound business justification exists for the sale, (b) whether adequate and reasonable notice of the sale was given to interested parties, (c) whether the sale will produce a fair and reasonable price for the property and (d) whether the parties have acted in good faith. *See, e.g., In re Weatherly Frozen Food Group, Inc.*, 149 B.R. 480, 483 (Bankr. N.D. Ohio 1992); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991).

25.

Here, each of the preceding four factors has been satisfied. As discussed above, sound business justification exists for the sale and, in light of the facts surrounding the ATC offer and the proposed Bid Procedures, the sale proposed herein will result in a fair and reasonable price for the Port Property. Debtors currently have inadequate liquidity to continue operating. In fact, Debtors are not operating. The orderly sale of the Port Property will monetize the Port Property for the benefit of Debtors' creditors. Debtors will be providing adequate and reasonable notice to interested parties of the opportunity to bid on the Port Property and of the opportunity to object to the sale. *See, e.g., Folger Adam Security Inc. v. DeMatteis/MacGregor*, 209 F. 3d 252, 265 (3d Cir. 2000) (stating that notice is sufficient if it includes “the time and place of any public sale, the terms and conditions of any private sale, states the time for filing objections and, if real estate is being sold, provides a general description of the property”); *In re WBQ P'ship*, 189 B.R. 97, 103 (Bankr. E.D. Va. 1995) (“notice is sufficient if it includes the terms and conditions of the sale, if it states the time for filing objections, and if the estate is selling real estate, it generally

describes the property”) (quoting *In re Karpe*, 84 B.R. 926, 929 (Bankr. M.D. Pa. 1988)). Debtors are proceeding in good faith and will make a showing at the Sale Hearing that the purchaser of the Port Property has acted in good faith. Courts generally conclude that parties have acted in good faith with respect to a proposed sale if the purchase price is adequate and reasonable and the terms of the sale are disclosed fully. *See, e.g., In re Abbotts Dairies of Pa., Inc.*, 788 F. 2d 143, 149-50 (3d Cir. 1986). The sale of the Port Property pursuant to the Bid Procedures proposed herein should therefore be approved.

Good Faith

26.

A condition to the consummation of the purchase of the Port Property is that the Court find that the Purchaser has acted in “good faith” within the meaning of 11 U.S.C. § 363(m). Section 363(m) provides that “[t]he reversal or modification on appeal of an authorization under [section 363(b) or (c)] of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith.” 11 U.S.C. § 363(m).

27.

The good-faith requirement in § 363(m) is not specifically defined. Many courts turn to “traditional equitable principles and [hold] that the phrase encompasses one who purchases in good faith and for value.” *Hytken v. Williams*, 2007 U.S. Dist. LEXIS 27671, *14 (S.D. Tex. Mar. 30, 2007) (quoting *In re Colony Hill Assocs.*, 111 F.3d 269, 276 (2d Cir. 1997), *aff’d*, 2008 U.S. App. LEXIS 12240 (5th Cir. June 6, 2008) (per curiam). “Typically, the misconduct that would destroy a Purchaser’s good faith status at a judicial sale involves fraud, collusion between the Purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of

other bidders.” *Hytken*, 2007 U.S. Dist. LEXIS 27671 at **14-15 (quoting *Dick’s Clothing & Sporting Goods, Inc. v. Phar-Mor, Inc.*, 212 B.R. 283, 290 (N.D. Ohio 1997) (quoting *In re Rock Indus. Machinery Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978))). “The requirement that a Purchaser act in good faith, of course, speaks to the integrity of his conduct in the course of the sale proceedings.” *Id.* at *15 (quoting *Rock Indus.*, 572 F.2d at 1198). The good-faith requirement prohibits “fraudulent, collusive actions specifically intended to affect the sale price or control the outcome of the sale.” *Id.* (quoting *In re Made in Detroit, Inc.*, 414 F.3d 576, 581 (6th Cir. 2005)).

28.

A bankruptcy court is not required to make an explicit finding of good faith in order to authorize a sale under the Bankruptcy Code. *See In re Zinke*, 97 B.R. 155, 156 (E.D.N.Y. 1989) (finding that a duty to make an explicit finding of good faith before permitting a sale “has not been imposed by the Second Circuit or the United States Supreme Court”). Although the Bankruptcy Code does not define “good faith Purchaser,” courts interpreting Section 363(m) of the Bankruptcy Code have held that “to show lack of good faith [a party] must show fraud, collusion... or an attempt to take grossly unfair advantage of other bidders.” *In re Coated Sales, Inc.*, No. 89 Civ. 37-4 (KMW), 1990 WL 212899 (S.D.N.Y. Dec. 13, 1990). *See also In re Sasson Jeans, Inc.*, 90 B.R. 608, 610 (S.D.N.Y. 1988) (quoting *In re Bel Air Asocs., Ltd.*, 706 F.2d 301, 305 (10th Cir. 1983)). Yet, because there is no bright line test, courts examine the facts of each case by concentrating on the “integrity of [an actor’s] conduct during the sale proceedings.” *In re Pisces Leasing Corp.*, 66 B.R. 671, 673 (E.D.N.Y. 1986) (quoting *Rock Indus.*, 572 F.2d at 1198). *See also In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 147 (3d Cir. 1986) (“The requirement that a Purchaser act in good faith...speaks to the integrity of his

conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a Purchaser's good faith status at a judicial sale involves fraud, collusion between the Purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.") (citations omitted).

29.

Under these standards – and by any other – the Purchaser clearly has acted in good faith. The ATC Sale Agreement (and the Form Port Property Purchase Agreement), and the sale of the Port Property pursuant thereto, is the product of good faith, arm's length negotiations between Debtors and ATC. The consideration to be received by the estate is substantial, fair and reasonable. The parties entered into the agreement in good faith and after extensive arm's-length negotiations, during which both sides were represented by competent counsel of similar bargaining positions. There is no indication of any fraud, collusion between ATC (and other bidders) or Debtors, or an attempt to take grossly unfair advantage of other bidders or similar conduct that would cause or permit the sale or the ATC Sale Agreement (or the Form Port Property Purchase Agreement) to be avoided under 11 U.S.C. § 363(n). Therefore, the Court should find that ATC (or other Purchaser) should be considered a "good faith Purchaser" within the meaning of § 363(m) with respect to the APA and the sale of the Port Property.

Free and Clear

30.

Section 363(f) of the Bankruptcy Code permits a debtor-in-possession to sell property free and clear of another party's interest in the property if:

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). Because § 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any one of its five requirements will be sufficient to permit the sale of the Port Property free and clear of all liens, claims and encumbrances that may be asserted herein. *See In re Elliot*, 94 B.R. 343, 345 (E.D. Pa. 1988) (sale “free and clear” may be approved provided the requirements of at least one subsection are met). *See also In re Dundee Equity Corp.*, 1992 Bankr. LEXIS 436, *12 (Bankr. S.D.N.Y. Mar. 6, 1992) (a “sale free of the interest concerned may occur if any one of the conditions of § 363(f) have been met”).

31.

The known Liens and Claims on the Port Property are listed below, and any and all Liens and Claims, including those listed below, shall be released from the Port Property, only insofar as they apply to the above described Port Property to be sold, and such Liens and Claims shall be referred to the proceeds of the sale, with such funds to be held by Debtors, subject to said Liens and Claims, for further proceedings to determine the validity, priority and extent of such Liens and Claims:

1. Notice of Lis Pendens, in the principal amount of \$3,721.91, filed by SPI Municipal Supply, Inc., filed 7/22/1985, MBk. 1025, Page 577.
2. Multiple Indebtedness Mortgage in the principal amount of \$9,000,000.00, in favor of Union Bank, filed 10/1/2010, Reg. No. 1435065, MBk. 2558, Page 79.
3. Multiple Indebtedness Mortgage in the principal amount of \$1,000,000.00, in favor of BOKF, filed 1/3/2012, Reg. 1465925, MBk. 2639, Page 541.
4. Intercreditor and Subordination Agreement between Union Bank and BOKF, filed 2/1/2012, Reg. 1467998, MBk. 2644, Page 929.
5. Notice of Seizure in favor of the Union Bank, filed 2/3/2015, Reg. 1544995, MBk. 2849, Page 730.

6. Request for Notice of Seizure in favor of The Union Bank, filed 10/1/15, Reg. 1435066, MBk. 2558, Page 109.
7. Tax Sale, Conveyance Book 2009, Page 283, #1552286, PAAL to Bakies Properties LLC, recorded 5/28/14, 2014 Taxes.
8. Tax Sale, Conveyance Book 2036, Page 361, 31576009, Bakies Properties LLC to Jerry Johnson, recorded 5/18/16 for 2015 taxes
9. Tax Sale, Conveyance Book 2036, Page 901, 31576479, Bakies Properties LLC to Bakies Properties LLC, recorded 5/23/16 for 2015 taxes

32.

As part of the proposed sale free and clear of liens, claims, interests, and encumbrances, Debtors are generally required to provide adequate protection to the holder of any interest in the Property. 11 U.S.C. § 363(e). Here, all liens and security interests in and to the Property will attach to the proceeds with the same validity, extent, and priority that otherwise exists. Debtors submit that these provisions and protections provide adequate protection to any creditor or party with an interest in the Property.

33.

Debtors request that the sale of the Port Property, upon closing, shall: (i) be a legal, valid and effective transfer of the Port Property to the Purchaser, and (ii) vest the Purchaser with all right, title, and interest of the estate in and to the Port Property free and clear of all (a) mortgages, security interests, privileges, conditional sale or other title retention agreements, pledges, liens, judgments, demands, encumbrances, easements, lis pendens, restrictions or charges of any kind or nature, if any, including any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership (the foregoing collectively referred to herein as “Liens”) and (b) debts arising in any way in connection with any acts of Debtors, claims (as that term is defined in the Bankruptcy Code), obligations, demands, guaranties, options, rights, contractual commitments, executory contracts, unexpired leases, employment

agreements, restrictions, rights of lesion beyond moiety, co-owner, community property or other spousal rights, tort claims, product liability claims, interests and matters of any kind and nature, whether arising prior to or subsequent to the commencement of this case, and whether imposed by agreement, understanding, law, equity or otherwise (the foregoing collectively referred to as “Claims” herein).

34.

Debtors request that the Court authorize and direct the Clerk and Recorder of Mortgages or Clerk of Court of Grant Parish or other public officials to cancel and release the Port Property from the effect of all liens and encumbrances shown in the public records only insofar as they attach to the Port Property.

Distribution of Proceeds

35.

To satisfy the Liens and Claims described above, Debtors request approval on distributing the proceeds of the sale as follows:

- A. First, payment of all necessary costs of the sale paid by sellers at closing, including cancellation charges, recordation charges, real estate taxes and other closing costs attributable to the estate, along with payment for tax sale redemptions, as set forth in Paragraphs 37-39 herein.
- B. Second, to Union Bank in the amount of its outstanding allowed claim.⁶
- C. Third, the remainder to be held in escrow pending further order of this Court.

Waiver of Bankruptcy Rule 6004(h)

36.

As time is of the essence to the proposed sale, Debtors requests the Court waive the 14-day automatic stay of any final order granting this motion and order that the final relief requested

⁶ Debtor reserves the right to object to the amount of Union Bank’s claim prior to disbursement.

in this motion may be immediately available upon the entry of an order approving the proposed Sale.

Related Relief

37.

In order to facilitate a smooth and swift closing, Debtors further request that from the proceeds at the closing of the sale of the Port Property the closing notary, as an agent of Debtors, be authorized to make payment of any and all necessary costs of the sale paid by sellers at closing, including cancellation charges, recordation charges, real estate taxes and other closing costs attributable to the estate.

38.

Debtors further request that any outstanding real estate taxes owed and outstanding on the Port Property the closing date be paid by the closing notary at closing from the sale proceeds, with Purchaser to be responsible for real estate taxes accruing on or after the closing date.

39.

Lastly, Debtors request that they be authorized to redeem the tax sales as set forth in Paragraph 31.

WHEREFORE, Debtors request the entry of orders granting the following relief:

- A. Under the Bid Procedures Order, (i) Approval of the Bid Procedures; (ii) Approval of the ATC Purchase Agreement; (iii) Approval of the Form Port Property Purchase Agreement; and (iv) a determination by the Court that Debtors may sell the Port Property free and clear of any Liens and Claims pursuant to 11 U.S.C. § 363(f).
- B. Under the Sale Order, (i) approval of the sale of the Port Property to the Purchaser; (ii) approval of the Backup Purchaser; (ii) a finding that the Purchaser (and Backup

Purchaser) is a good faith purchaser pursuant to 11 U.S.C. § 363(m), and (iv) abrogation of the fourteen (14) day stay imposed by FED. R. BANKR. P. 6004(h); (v) approval of the distribution of sale proceeds as set out above; and (vi) related relief including payment of any and all necessary costs of the sale paid by sellers at closing, including cancellation charges, recordation charges, real estate taxes and other closing costs attributable to the estate, along with all costs of tax sale redemptions.

C. Such other relief as the facts may warrant and justice so requires.

STEWART ROBBINS & BROWN, LLC

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4828-2226-8468, v. 1

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") is entered into on or as of this 21 day of Nov., 2016, by and between **Port Asset Acquisition LLC**, Chapter 11 Debtor-in-possession, Case No. 15-80201 substantively consolidated with 15-80199 and 15-80200, United States Bankruptcy Court for the Western District of Louisiana, (the "Seller"), and Alexandria Terminal Company LLC, a Delaware limited liability company (the "Purchaser").

Recitals

A. Seller filed Chapter 11 bankruptcy in the United States Bankruptcy Court, Western District of Louisiana, and Case No. 15-80201 on February 23, 2015, and the case was subsequently administratively and substantially consolidated with affiliated cases No. 15-80199 and 15-80200 ("Bankruptcy Case").

B. The Seller is the owner of certain parcel of real property used or usable in the operations of a fuel terminal in Alexandria, Louisiana, as more particularly described in Exhibit "A" hereto, together with all improvements, constructions, component parts located thereon, and servitudes, easements, rights of way, privileges, appurtenances and other rights pertaining thereto (the "Property").

C. Purchaser desires to purchase the Property and Seller desires to sell the Property and assign the Port Lease pursuant to the terms and conditions of this Agreement.

Agreement

NOW, THEREFORE, in consideration of the above Recitals and other good and valuable consideration, including the mutual covenants and promises herein contained, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree as follows:

1. Agreement to Sell. For the consideration set forth in Paragraph 2 below, Seller hereby agree to grant, bargain, sell, assign and convey to Purchaser, the Property, with good and merchantable title, free and clear of all liens, mortgages, debts, obligations, taxes or any other burdens..

2. Purchase Price: Deposit

(a) Purchase Price. The purchase price for the Property and the assignment of the Port Lease ("Purchase Price") shall be Two Million, Two Hundred and Fifty Thousand (\$2,250,000.00) Dollars, Total, all to be paid as hereinafter provided. The closing of the sale and purchase of the Property (the "Closing") shall occur on the Closing Date, as defined in Paragraph 8.

(b) Allocation of Purchase Price. The parties covenant and agree that the Purchase Price shall be allocated among the Property in accordance with Section 1060 of the Internal Revenue Code of 1986, as determined by Seller. The parties hereto agree to report this

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transaction for federal and state tax purposes in accordance with the foregoing.

(c) Deposit. Purchaser has delivered to the Seller funds in the amount of Two Hundred Twenty Five Thousand (\$225,000.00) Dollars (the "Deposit"), to be held and disbursed pursuant to this agreement. Said Deposit is not to be considered "earnest money". The Deposit shall be applied to the Purchase Price upon the passing of the act of sale contemplated herein; provided, however, that in the event Purchaser defaults hereunder, at Seller's option, Seller shall be entitled to retain the Deposit or demand specific performance. Should Purchaser fail to purchase the Property for any of the reasons set forth in Paragraph 5 below, the Deposit, together with interest, if any, shall be refunded to Purchaser and this Agreement shall terminate.

3. Overbids. It is understood and agreed that this Agreement is executed in conjunction with a competitive bidding process in Seller's Bankruptcy Case.

(a) Overbid Increase in Purchase Price. If Purchaser, in an effort to become high bidder and acquire the Property submits one or more bids at the Sale Consummation Hearing in excess of the Purchase Price set forth herein, the Purchase Price for the Property shall be automatically increased and shall be the amount of the highest, final, approved bid submitted, and the Purchase Price for the Property shall be deemed increased to reflect the highest, final, approved bid. Purchaser's right to participate in the Sale Consummation Hearing(s) and the terms applicable thereto shall be set forth in the Compromise, Sale and Procedures Order (defined below).

(b) Bid Process; Competitive Bids.

- i. Bankruptcy Court Matters. Seller has or will file a motion with the Bankruptcy Court seeking an order regarding the procedures to be used in connection with the Sale Consummation Hearing and approving this form of Purchase and Sale Agreement, and related bidding procedures (set forth in Exhibit D, hereto, the "Bidding Procedures") (such order is referred to herein as the "Compromise, Sale and Procedures Order").
- ii. Compliance with Bidding Procedures. At the time of delivery of the mutual execution of this Agreement, Purchaser shall have complied with all of the Bidding Procedures (as the same may have been amended) necessary to be deemed a Qualified Bidder, and its bid a Qualified Bid (as those terms are defined in the Bidding Procedures), including, but not limited to (i) a statement and supporting financial information demonstrating that Purchaser or Purchaser's prospective assignee is financially capable of consummating the transaction(s) contemplated by this Agreement, and (ii) written evidence of the approval of the contemplated transaction(s) by Purchaser's board of directors or comparable governing body.
- iii. Overbid Hearing. The Bankruptcy Court may hold a hearing (the "Sale Consummation Hearing"), at which the Bankruptcy Court shall, among

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other things, preside over any overbidding for the Property, as well as review and approve the Seller's selection of Successful Bidder (and the Back-Up Bidder, if any). Successful Bidder means the bidder at the Sale Consummation Hearing who submits and offer that Seller determines, subject to Bankruptcy Court approval, is the highest or best offer from among the bids submitted at the Sale Consummation Hearing, understanding that Seller may also consider bids on other property as set forth in subsection viii below, and provided, however, that in the event no bid is made with respect to the Property, then Buyer shall be deemed for all purposes to be the Successful Bidder with respect to the Property. At that hearing, the Seller will seek an order confirming the sale of the to the Successful Bidder (and the Back-Up Bidder, if any) (the "Sale Consummation Order"). Seller and Purchaser (if and to the extent Purchaser is the Successful Bidder) shall use commercially reasonable efforts to obtain the Sale Consummation Order from the Bankruptcy Court.

- iv. Appeal. In the event the entry of the Sale Consummation Order shall be appealed, Seller and Purchaser shall use their respective reasonable efforts to defend such appeal. Notwithstanding anything to the contrary set forth herein, Purchaser shall not be obligated to defend any appeal and may elect to terminate this Agreement if the Bankruptcy Court stays the Closing hereunder for a period exceeding twenty-five (25) days from the date of entry of the Sale Consummation Order. If Purchaser elects to terminate this Agreement following an appeal and subsequent stay of Closing exceeding twenty five (25) days, Purchaser shall receive a full refund of the Deposit and Purchaser shall be released of all its duties and obligations hereunder.
- v. Competing Bids. This Agreement is subject to approval by the Bankruptcy Court and the consideration by Seller of higher or better competing bids (each a "Competing Bid"). From the date hereof (and any prior time) and until the transaction contemplated by this Agreement is consummated, Seller is permitted, through his broker or other means, to initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, any person (in addition to Purchaser) in connection with any sale or other disposition of the Property. In addition, Seller shall have the responsibility and obligation to respond to any inquiries or offers to purchase the Property and perform any and all other acts related thereto that are required under applicable law, including supplying information relating to the Property to prospective purchasers. The Parties agree that Seller shall be entitled to consider and enter into one or more transactions in connection with a Competing Bid consistent with his fiduciary obligations in the Bankruptcy Case. Purchaser acknowledges that this Agreement is the culmination of an extensive process undertaken by Seller to identify and negotiate a transaction with a bidder who was prepared to

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pay the highest or best purchase price for the Property, among other material considerations, in order to maximize value of the Property. The Bidding Procedures are designed to facilitate a full and fair process designed to maximize the value of the Property.

- vi. Back-Up Bid Requirement. Purchaser acknowledges and agrees that the bidder with the second highest or otherwise best bid (as determined by Seller in the exercise of its business judgment) at the Sale Consummation Hearing may serve as a back-up bidder (the "Back-Up Bidder") and keep such bid open and irrevocable until five (5) business days after the later of the approval of the bid or back-up bid by in the Sale Consummation Order and the Closing. In the event Purchaser is named Back-Up Bidder, Seller shall continue to hold its Deposit. Following the Sale Consummation Hearing, if the Successful Bidder fails to consummate an approved sale, the Back-Up Bidder will be deemed to be the new Successful Bidder, and Seller will be authorized, to consummate the sale with the Back-Up Bidder without further order of the Bankruptcy Court. If Purchaser is the Back-Up Bidder and the Successful Bidder fails to consummate an approved sale, then Seller may, without further order of the Bankruptcy Court, consummate the sale with Purchaser; provided, however, that Purchaser is not otherwise in default. For purposes of this Section, Purchaser shall be deemed a bidder and this Agreement shall be deemed a bid.
- vii. Irrevocability. Purchaser acknowledges that its bid and obligation to purchase the Property hereunder is irrevocable until five (5) business days after the later of the approval of the bid or back-up bid by in the Sale Consummation Order and the Closing or until entry of an order certifying approval of the Bidding Procedures or entry of an order approving the Bidding Procedures in a form which in Purchaser's sole discretion differs materially from the Bidding Procedures proposed. Notwithstanding any other provision contained herein, Purchaser's bid shall not be binding after a period of ninety (90) days after the date of execution of this agreement.
- viii. Bidding on other property. It is acknowledged that Seller and its affiliates may seek to sell other equipment and property ("Equipment") in conjunction with the sale of the Property hereunder. Seller is seeking to maximize the value of the Property and the Equipment, thus for any person or entity bidding on both the Property and the Equipment, Seller may consider the overall value of both bids when determining the highest or best bid on the Property. Purchaser may bid on the Equipment, but shall not be obligated to do so. Such bidding shall have no effect on Purchaser's rights and obligations as to the sale of the Property hereunder, except that Seller may take into consideration bids on other equipment and property when determining the highest or best bid on the Property.

(c) Terminating Event. In the event the Bidding Procedures are not approved by the Bankruptcy Court, or are materially modified (as determined in the sole discretion of Purchaser), this Agreement shall be terminable by the Purchaser, and the Purchaser shall have retained all of its rights and claims without waiver and all Deposit will be returned to Purchaser within ten (10) days.

4. Right of Inspection. Upon full execution of this Agreement, Purchaser acknowledges and agrees that it has already been afforded the right to conduct any inspections of the Property deemed advisable, and is satisfied with the results of same

5. Application of Deposit or Refund. The Deposit shall be applied to the Purchase Price to be paid by Purchaser at Closing. Upon Purchaser's request, the Deposit shall be immediately refunded upon the occurrence of any of the following:

(a) Seller is unable to convey title to the Property or fails to cure a title defect or title objection as required under Paragraph 13 of this Agreement; or

(b) The sale of the Property is not approved by the United States Bankruptcy Court, or the Purchaser is not selected as the Successful Bidder or Back-Up Bidder.

If the foregoing 5(a) shall occur, then the parties shall proceed as set forth in Paragraph 13.

In the event that Purchaser is selected as the Back-Up Bidder, but the sale of the Property closes with the High Bidder, then the Deposit shall be returned to Purchaser immediately with no further obligations of the parties.

6. Cooperation. Upon request of Purchaser, Seller shall provide to Purchaser, to the extent such are in its possession or control, copies of any surveys, inspection reports, environmental reports, engineering reports, and title commitments or policies (the "Documents"). Said Documents so provided shall be received by Purchaser without any representation or warranty whatsoever, and Purchaser shall release and indemnify Seller from Purchaser's or anyone claiming under Purchaser, reliance on those documents.

7. Possession. Seller shall deliver possession of the Property (together with all necessary titles thereto) to Purchaser on the Closing Date.

8. Bankruptcy Court Approval; Place and Date of Closing. The Seller shall seek Bankruptcy Court approval for the sale contemplated herein as soon as practical following the execution of this Agreement, but not later than five (5) days of execution hereof. It is understood that a copy of this Agreement, together with representations pertaining to same, shall be filed in association therewith. The Closing shall take place through the offices of the counsel for Seller, no later than ten (10) days following the Sale Consummation Order, unless extended for title issues as provided in Section 13, or at such other location and date as may be agreed upon by the parties hereto in writing. The actual date of Closing is referred to herein as the "Closing Date." Time shall be of the essence with respect to the Closing Date.

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9. Conveyance and Assignment.

(a) Purchaser hereby acknowledges and agrees that Seller will transfer its right, title and interest in and to the Property without any warranty or recourse whatsoever, express or implied, not even as to the return of all or any part of the Purchase Price, and with the sole peril and risk of eviction being assumed by Purchaser, but with full substitution and subrogation in and to all of the rights and actions of warranty which Seller has or may have against all preceding owners or vendors.

(b) The Property will be sold AS IS, WHERE IS, with all faults, and without any warranties, express or implied, including but not limited to warranties of condition, fitness for a particular purpose or habitability. Purchaser acknowledges and agrees that Seller has made no representation, warranty or guaranty, express or implied, oral or written, past, present or future, of, as to, or including: (i) the condition or state of repair of the Property, including, without limitation, any condition arising in connection with the generation, use, transportation, storage, release or disposal of hazardous substances (which includes all substances listed as such by applicable law, all pollutants or contaminants, whether harmful or not, petroleum and natural gas and their components and distillates, asbestos and naturally-occurring but harmful substances such as methane or radon) on, in, under, above, upon or in the vicinity of the Property; (ii) the quality, nature, adequacy and physical condition of the Property, including but not limited to, the presence or absence of termites or other wood destroying insects and/or any damage related thereto, and including but not limited to the structural elements, environmental issues, appurtenances, access, landscaping, parking facilities and the electrical, mechanical, plumbing, sewage, and utility systems and facilities; (iii) the quality, nature, adequacy and physical conditions of soils and geology and the existence of ground water; (iv) the existence, quality, nature, adequacy and physical conditions of utilities serving the Property; (v) the development potential of the Property, its habitability, merchantability, or the fitness, suitability or adequacy of the Property for any particular purpose; (vi) the zoning or other legal status of the Property; (vii) the Property or its operations' compliance with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions, and restrictions of any governmental or quasi-governmental entity or of any other person or entity; (viii) the quality of any labor and materials; and (ix) the nature, status and extent of any servitude, permit, right-of-way, or lease, right of redemption, possession, lien, encumbrance, license, reservation, covenant, condition, restriction, and any other matter affecting title. Seller and Purchaser agree that the above provisions shall survive the execution of this agreement and the Closing.

Purchaser hereby acknowledges and declares that Purchaser shall rely solely on Purchaser's own examination, inspection and evaluation of the Property, and not on any warranties or representations, whether express or implied or written or oral, from Seller. Any and all warranties, whether express or implied, with respect to the Property or the Leased Premises, including but not limited to those related to merchantability of the Property or fitness of the Property for a particular purpose, are hereby disclaimed by Seller and shall be expressly waived by Purchaser.

Purchaser hereby expressly waives and renounces any and all rights in redhibition pursuant to Louisiana Civil Code Article 2520, et seq., the warranty imposed by Louisiana Civil

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Code Article 2475, and Purchaser's ability to rescind the sale of the Property or seek a reduction in the Purchase Price for any reason whatsoever, and Purchaser hereby releases Seller from any and all liability whatsoever in connection therewith.

Purchaser and Seller agree that Purchaser has been afforded the opportunity to conduct and complete such inspections of the Property and all components parts thereof as are deemed necessary or advisable by Purchaser, and by purchasing the Property Purchaser acknowledges that he has been afforded such opportunity and that he accepts the Property in its existing "AS IS" and "WHERE IS" condition and that his waiver of, and Seller's disclaimer of, express and implied warranties of title, fitness and the condition of the Property is reflected in, and is a function of, the Purchase Price.

PURCHASER HEREBY ACKNOWLEDGES THAT: (i) THE FOREGOING WAIVERS AND DISCLAIMERS HAVE BEEN BROUGHT TO THE ATTENTION OF PURCHASER, (ii) THE FOREGOING WAIVERS AND DISCLAIMERS HAVE BEEN READ AND ARE UNDERSTOOD BY PURCHASER, (iii) THE AGREEMENT OF PURCHASER WITH AND TO ALL OF THE TERMS AND CONDITIONS OF THESE WAIVERS AND DISCLAIMERS IS AN INTEGRAL PART OF THIS AGREEMENT BETWEEN SELLER AND PURCHASER, WITHOUT WHICH THIS AGREEMENT WOULD NOT HAVE BEEN ENTERED INTO BY SELLER, AND (iv) THE PURCHASE PRICE REFLECTS, AND TAKES INTO CONSIDERATION, THE FOREGOING WAIVERS AND DISCLAIMERS.

The above waiver of warranties will be contained in the Act of Sale and the Assignment of Lease executed at Closing.

10. Costs and Fees. Purchaser shall pay all costs and fees related to it due diligence, survey, appraisal, environmental audits, and the recording of the deed. Seller and Purchaser shall pay the fees of their own attorneys for services related to the preparation and negotiation of this Agreement and the sale and purchase of the Property. Seller may pay, but shall not be obligated to pay the costs of any title curative work necessary to provide Purchaser merchantable title and the costs of any title policy set forth in Section 13. Should Seller refuse to pay for such curative work or decline to take the necessary action to make the title merchantable, then Purchaser may, at its own expense make the title merchantable, or alternatively, Purchaser may declare this contract null and void and immediately obtain a refund of its Deposit.

11. Apportionments. Ad valorem taxes for the current year shall be prorated as of the Closing Date and shall be paid by Sell and Purchaser when due. If the current year's assessment is not available at the time of the Closing, the proration shall be based upon the most recent assessment available. The proration of ad valorem taxes effected at the Closing shall be final and not subject to adjustment after the Closing.

12. Disclaimer Purchaser acknowledges and agrees that Seller have not made, do not make and specifically negate and disclaim any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning, or with respect to (i) the value, nature, quality or condition of the Property, including, without limitation, the water, soil and geology, (ii) the income to be derived from the Property, (iii) the suitability of the

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Property for any and all activities and uses which Purchaser may conduct thereon, (iv) the compliance of or by the Property or its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body, (v) the habitability, merchantability, marketability, profitability, or fitness for a particular purpose of the Property, (vi) any other matter with respect to the Property, and specifically, that Seller have not made, does not make and specifically disclaim any representations regarding compliance with any environmental protection, pollution or land uses laws, rules, regulations, orders or requirements, including solid waste, as defined by the U.S. Environmental Protection Agency regulations at 40 C.F.R. Part 261, or the disposal or existence, in or on the Property, of any hazardous substance, as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and regulations promulgated thereunder. Purchaser further acknowledges and agrees that having been given the opportunity to inspect the Property, Purchaser is relying solely on its own investigation of the Property and not on any information provided or to be provided by Seller. Purchaser further acknowledges and agrees that any information provided or to be provided with respect to the Property was obtained from a variety of sources and that Seller have not made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information. Seller are not liable or bound in any manner by any verbal or written statements, representations or information pertaining to the Property, or the operation thereof, furnished by any real estate broker, agent, employee, servant or other person. Purchaser further acknowledges and agrees that to the maximum extent permitted by law, the sale of the Property as provided for herein is made on an "AS IS" condition.

13. Title Work.

Purchaser may, at its expense, perform a title search during the Inspection Period. During the Inspection Period, Purchaser shall notify Seller, in writing, of any objections to Seller's title to the Property. Purchaser agrees to accept the Property subject to, and shall not have the right to object to Seller's title on the basis of, the following matters: (i) any lien for the current year's property taxes not yet due and payable; (ii) any recorded or apparent public purpose, access, sewerage, or utility servitude or right-of-way affecting the Property; (iii) any restrictions of record affecting the Property; (iv) any and all discrepancies, conflicts or shortages in area or boundary lines, encroachments, or overlapping of improvements; (v) any and all rights of parties in possession; (vi) any building set back line affecting the Property; (vii) any building and zoning ordinances affecting the Property; (viii) riparian rights; and (ix) any mineral lease, mineral servitude, and other mineral right affecting the Property, provided surface rights have been waived. All objections of which Seller is not timely notified shall be deemed waived and accepted by Purchaser. In the event Purchaser timely notifies Seller of any objection to Seller's title to the Property, at Seller's option, (a) this agreement shall be considered immediately null and void and the Deposit shall be returned to Purchaser, or (b) the Closing Date shall be extended by up to sixty (60) days (at Seller's option) to allow Seller the opportunity to perform curative work, or allow Seller to provide Purchaser with a standard ALTA owners title insurance policy through a reputable, national title insurance company acceptable to Purchaser, at Seller's sole cost and expense which does not take an exception for, or provides affirmative coverage over, the title objections raised by Purchaser. Seller is not obligated to undertake any title curative work. In the event Seller elects to extend the Closing Date and the title curative work is

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not completed within the 60-day closing extension period, this agreement shall be null and void and the Deposit shall be returned to Purchaser. In the event Purchaser timely notifies Seller of any objection to Seller's title to the Property, Purchaser shall have the option and right, prior to the Closing Date, to waive all objections to title and accept title to the Property subject to these objections.

14. Conditions Precedent to Closing; Maintenance. The obligations of Purchaser and Seller under this Agreement are subject to all covenants, agreements, actions, proceedings, instruments and documents required pursuant to this Agreement having been performed, complied with or delivered (as the case may be) in accordance with this Agreement. Seller shall continue to maintain the Property prior to Closing.

15. Documents for Closing.

(a) Seller, at Seller's sole cost and expense, shall deliver or cause to be delivered to Purchaser the following documents:

(i) All necessary instruments required in connection with transferring title to the Property to Purchaser to Purchaser; and

(ii) such additional documents and instruments reasonably required to transfer Seller's interest in the Property pursuant to the terms of this Agreement, each of which shall be in form and substance reasonably satisfactory to the Purchaser; and

(b) At the Closing, Purchaser shall deliver, or cause to be delivered, to Seller in accordance with the terms of this Agreement, the Purchase Price (subject to a credit for any Deposit delivered to the Seller) and prorations.

16. Default; Remedies.

a. Seller's Default. In the event that this Agreement is terminated pursuant to the provisions of Paragraph 5, this shall not constitute a default by Seller, and Purchaser shall be entitled only to a return of the Deposit. If Seller defaults in any of Seller's other obligations to engage in the closing of the transaction, then provided Purchaser is not in default, Purchaser may, at Purchaser's sole election, by written notice to Seller within ten (10) days after the Closing Date as provided herein, either (i) terminate this Agreement, whereupon the Deposit shall be returned to Purchaser and neither party shall have any further liability or obligation to the other; or (ii) have specific performance of this Agreement.

b. Purchaser's Default. If Purchaser defaults hereunder, then, provided Seller are not in default, Seller may, at Seller's sole election terminate this Agreement, whereupon Seller shall be entitled to retain the Deposit, which the parties agree shall be deemed liquidated damages.

c. If either party fails to comply with all of the terms, covenants and conditions of this Agreement, the prevailing party in any lawsuit will be entitled to all expenses, including a reasonable attorney's fee, incurred as a result of such failure.

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17. Condemnation and Destruction. If, on the Closing Date, all or any reasonably substantial portion of the Property or the Leased Premises is the subject of a pending or contemplated taking by eminent domain which has not been consummated or if the Property has been materially damaged or destroyed, Seller shall notify Purchaser of such fact and Purchaser shall have the option to terminate this Agreement and, in the event Purchaser shall elect to terminate this Agreement, Seller shall refund to Purchaser the Deposit together with all interest earned thereon. If this Agreement is terminated and the Deposit together with accrued interest is returned, as aforesaid, neither party shall have any further rights or obligations hereunder. If, after receipt of Seller's notice, as aforesaid, Purchaser does not exercise its option to terminate this Agreement, the parties hereto shall remain bound hereunder and Seller shall assign and turn over, and Purchaser shall be entitled to receive and keep, all awards for the taking by eminent domain described in said notice or all insurance proceeds payable as a result of such destruction or damage.

18. Confidentiality. It is understood by the parties hereto that the information, documents and instruments delivered to Purchaser by Seller and the information, documents and instruments delivered to Seller by Purchaser are of a confidential and proprietary nature. Purchaser agrees that it will maintain the confidentiality of all such confidential information, documents or instruments delivered to it by Seller or its agents in connection with the negotiation of this Agreement or in compliance with the terms, conditions and covenants hereof and only disclose such information, documents and instruments to their duly authorized officers, directors, attorneys, accountants, representatives, and agents. Upon the Closing, Purchaser's confidentiality covenants shall be terminated. If the Closing does not occur, then Purchaser's confidentiality obligations shall continue. Purchaser further agrees that if the transactions contemplated hereby are not consummated, it will return all documents and instruments and all copies thereof in their possession received in association herewith to the Seller. Purchaser recognizes that any breach of this Section may result in irreparable harm to the Seller and its affiliates and that therefore Purchaser shall be entitled to an injunction to prohibit any such breach or anticipated breach, without the necessity of proving actual damages or posting a bond, cash or otherwise, in addition to all of their other legal and equitable remedies. Nothing in this Section, however, shall prohibit the use or disclosure of such confidential information, documents or information as are required by law or governmental regulations or to defend itself in a legal proceeding.

18. Final Agreement. This Agreement represents the final agreement of the parties and no agreements or representations, unless incorporated in this Agreement, shall be binding on any of the parties, and no portion hereof shall be amended or modified unless such change shall be in writing and signed by both parties thereto.

19. Notice. Any notice required hereunder shall be in writing and sent by certified mail, return receipt requested and/or email. Notice shall be deemed to be given when sent or deposited in the United States mail, postage prepaid. Personal delivery may be substituted for certified mail. Notice shall be sent to the following individuals:

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If To Purchaser:

Alexandria Terminal Company LLC
2101 Cedar Springs Rd., Suite 600
Dallas, Texas 75201
Attn: Ronald D. Hurst
rhurst@petrohunt.com

If to Seller:

Port Asset Acquisition LLC
Mr. Darrell Dubroc
429 Murray Street, Suite 700
Alexandria, LA 71301
darrell@cenergyhllc.com

With a copy to:

Paul Douglas Stewart
Stewart Robbins & Brown, LLC
620 Florida St., Suite 100
Baton Rouge, LA 70801
dstewart@stewartrobbins.com

20. Number and Gender. Whenever the singular number is used herein and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and the word "person" shall include a corporation, firm, partnership, joint venture, trust or estate.

21. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Louisiana.

22. Assignment. This Agreement may not be assigned by Purchaser without the prior written consent of Seller.

23. Survival. The representations, warranties and indemnities contained herein shall be deemed to have been made again by the parties as of the Closing Date, and shall survive the expiration or termination of this Agreement, the discharge of all other obligations owed by the parties to each other, and any transfer of title to the Property, and shall not be affected by any investigation by or on behalf of Purchaser, or by any information which Purchaser may have or obtain with respect thereto.

24. Severability. In the event that any condition or covenant herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or conditions herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

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25. Waiver and Amendment. No breach of any provision hereof can be waived unless in writing. Waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or any other provision hereof. This Agreement may be amended only by a written agreement executed by all of the parties hereto.

26. Captions and Interpretations. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or any provision hereof. No provision in this Agreement is to be interpreted for or against either party because that party or such party's legal representative drafted such provision.

27. Brokers. The parties shall indemnify each other against any and all claims for broker's fees, costs or commissions which might arise in connection with the purchase and sale of the Property as a result of either's action. The provisions of this Paragraph shall survive closing. Each party hereby represents to the other that it has not utilized the services of any real estate agent or broker in connection with this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized corporate officers (in counterparts as necessary) as of the date(s) set forth below.

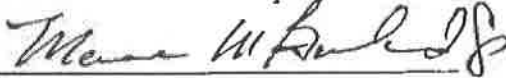
Witnesses:



Witnesses:

PURCHASER:

Alexandria Terminal Company LLC

By 

Name:

Title: PRESIDENT

Date: 11/21/16

SELLER:

Port Asset Acquisition LLC

By _____

Name:

Title:

Date: _____

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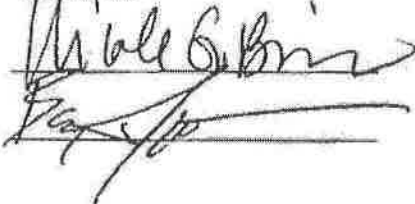
25. Waiver and Amendment. No breach of any provision hereof can be waived unless in writing. Waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or any other provision hereof. This Agreement may be amended only by a written agreement executed by all of the parties hereto.

26. Captions and Interpretations. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or any provision hereof. No provision in this Agreement is to be interpreted for or against either party because that party or such party's legal representative drafted such provision.

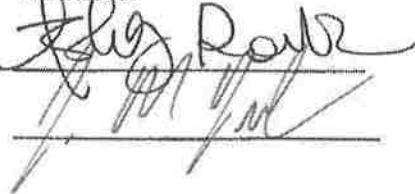
27. Brokers. The parties shall indemnify each other against any and all claims for broker's fees, costs or commissions which might arise in connection with the purchase and sale of the Property as a result of either's action. The provisions of this Paragraph shall survive closing. Each party hereby represents to the other that it has not utilized the services of any real estate agent or broker in connection with this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized corporate officers (in counterparts as necessary) as of the date(s) set forth below.

Witnesses:

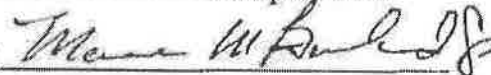


Witnesses:



PURCHASER:

Alexandria Terminal Company LLC

By 


Name:

Title: PRESIDENT

Date: 11/21/16

SELLER:

Port Asset Acquisition LLC

By 

Name: Dargell J. Dubroc

Title: Manager

Date: 11/21/16

4814-4585-4244, v. 2

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EXHIBIT "A"

TRACT 1: A certain piece, parcel or tract of land, together with all buildings and improvements located thereon, with all rights, ways and privileges thereto appertaining, being, lying and situated in Rapides Parish, Louisiana, and being more particularly described as follows, to-wit:

Cotumence on the Southwest corner of Parcel 2K as identified in Act of Conveyance and Agreement between Guaranty Realty Corporation as Seller and City of Alexandria as Buyer as recorded in Conveyance Book 1066, page 187, records of Rapides Parish, Louisiana, thence North 15 degrees 22 minutes 12 seconds East a distance of 50.00 feet to the POINT OF BEGINNING; thence North 15 degrees 22 minutes 12 seconds East a distance of 160.43 feet; thence South 74 degrees 37 minutes 48 seconds East a distance of 100 feet; thence North 15 degrees 22 minutes 12 seconds East a distance of 200 feet; thence along the arc of a curve to the right having a radius of 89.23 feet (the long chord of which bears North 50 degrees 02 minutes 10 seconds East and measures 101.49 feet) a distance of 107.96 feet; thence North 84 degrees 41 minutes 51 seconds East a distance of 442.57 feet; thence along the arc of a curve to the right having a radius of 754.74 feet (the long chord of which bears South 83 degrees 28 minutes 17 seconds East and measures 309.50 feet) a distance of 311.71 feet; thence South 71 degrees 38 minutes 23 seconds East a distance of 270.45 feet; thence South 12 degrees West a distance of 614.96 feet to the North right-of-way of the Port Road; thence along said right-of-way North 78 degrees West a distance of 867.93 feet; thence North 12 degrees 00 minutes 00 seconds East a distance of 30.00 feet; thence North 74 degrees 22 minutes 59 seconds West a distance of 315.66 feet to the POINT OF BEGINNING and containing 14.71 acres, more or less, as shown on Certificate of Survey prepared by Meyer, Meyer, LaCroix & Hixon, Inc. dated October 29, 1987 revised January 14, 1968 which is recorded at COB 1252, page 356, official records of the Clerk and Recorder in and for the Parish of Rapides, State of Louisiana.

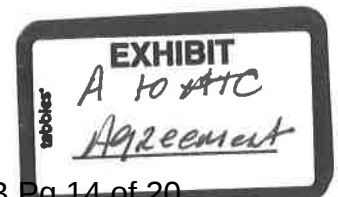
TRACT 2: A certain tract of land situated in the Parish of Rapides, State of Louisiana, described as Tract C, containing 7.00 acres, all as shown on that certain map entitled "Alexandria Industrial Park, 3rd Filing, Tracts B-1, C & D, a Resubdivision of Tract B of the Alexandria Industrial Park, 2nd Filing, situated in the Experiment Plantation in the City of Alexandria, Rapides Parish, Louisiana", made by John C. Jordan, P.L.S. dated September 4, 2007, and recorded with the office of the Clerk of Court and Recorder of Mortgages for Rapides Parish, Louisiana at Plat Book 30, page 29.

That Property is further described on that certain survey entitled "Alegro Biodiesel, Survey of a 14.71 Acre Tract and Tract C, being 7.00 acres located in Section 11, Township 4 North, Range 1 West, Rapides Parish, Louisiana, made by J. Michael Bradas, P.L.S., dated November 8, 2007, as follows:

A parcel or tract of land being situated in Section 11, Township 4 North, Range 1 West, City of Alexandria, Rapides Parish, Louisiana, and being more particularly described as follows:

Commence at a found Corp of Engineers Monument No. 168H at Station 1110+62.77 in Section 11, Township 4 North, Range 1 West, City of Alexandria, Rapides Parish, Louisiana. Thence run North 72 degrees 59 minutes 47 seconds West a distance of 40.35 feet to a found iron rod, thence run North 15 degrees 19 minutes 52 seconds East a distance of 1,391.22 feet to a found iron rod, thence run South 74 degrees 40 minutes 06 seconds East a distance at 140.00 feet to a found iron rod, thence run South 15 degrees 19 minutes 52 seconds West a distance of 310.33 feet to a found iron rod, thence run South 78 degrees 02 minutes 18 seconds East a distance of 100.13 feet to a found iron rod, said point being the POINT OF BEGINNING of the tract described herein, thence run South 78 degrees 02 minutes 18 seconds East a distance of 625.43 feet to a found iron rod, thence run South 02 degrees 57 minutes 31 seconds East a distance of 104.88 feet to a found iron rod, thence run North 78 degrees 02 minutes 25 seconds West a distance of 79.33 feet to a found iron rod, thence run South 40 degrees 58 minutes 00 seconds West a distance of 143.01 feet to a chiseled "x" in concrete, thence run South 51 degrees 59 minutes 35 seconds East a distance of 147.18 feet to a found iron rod on the westerly right-of-way of Industrial Park Site Road, thence run along said right-of-way along an arc of a curve having a radius of 1,195.92 feet (the long chord of which bears South 31 degrees 20 minutes 28 seconds West - 277.09 feet) a distance of 277.71 feet to a found iron rod, thence leaving said right-of-way run North 69 degrees 08 minutes 35 seconds West a distance of 578.44 feet to a found

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iron rod, thence run North 15 degrees 21 minutes 09 seconds East a distance of 463.81 feet to the POINT OF BEGINNING and containing 7.00 acres, more or less, and being shown on Survey by Meyer, Meyer, LaCroix & Hixson, Inc., dated November 8, 2007.

ALL MORTGAGOR'S RIGHTS, TITLE AND INTEREST IN AND TO THE FOLLOWING:

1. Pipeline Right of Way and Servitude Agreement by and between City of Alexandria, Louisiana Mortgagor effective as of February 25, 2008.
2. All Improvements, including but not limited to,
 - Two (2) 55,000 barrel AST, cone roof with internal floating roofs
 - One (1) 15,000 barrel insulated AST, cone roof
 - All equipment, including by not limited to piping/pumps, located on or connected to the dock and truck rack facilities
 - Multi-bay covered truck loading area with some infrastructure, piping and containment
 - Truck scales
 - Guard shack/office building
 - Secondary Containment for ASTs
 - Some fencing around parameter of facility

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BID PROCEDURES FOR PORT ASSET ACQUISITION PROPERTY

The following procedures (the "Bid Procedures") shall govern the sale of certain immovable property owned by **Port Asset Acquisition LLC**, Chapter 11 Debtor-in-possession (the "Debtor" or "Seller"), Case No. 15-80201 substantially consolidated with 15-80199 and 15-80200, United States Bankruptcy Court for the Western District of Louisiana (the "Bankruptcy Court"), pursuant to a sale process (the "Auction") approved by the Bankruptcy Court.

1. Property to be Sold.

The property to be sold is set forth in the Seller's Purchase and Sale Agreement (the "Property"). The sale is subject to a determination at hearing by the Bankruptcy Court to which entity has submitted the highest or otherwise best bid pursuant to the procedures set forth herein (the "Sale Consummation Hearing").

2. Due Diligence.

The sale process will be supervised and managed by Seller. The Seller may be assisted and advised in the conduct of the sale process described in these Bid Procedures by a professional or professionals (the "Advisor" or "Advisors").

Upon receipt by William S. Robbins, Stewart Robbins and Brown, 620 Florida St., Suite 100, Baton Rouge, LA 70801, email: wrobbins@stewartrobbins.com, of evidence satisfactory to the Seller that a potential bidder is reasonably likely to be able to consummate a purchase of the Property and satisfy each of sub-paragraphs (a) and (b) of Paragraph 3 below in form and substance satisfactory to the Seller in his sole discretion, a potential bidder shall be afforded the opportunity to inspect the Property, provided that potential bidders shall be required to execute an agreement holding the estate harmless and indemnifying it from any and all claims or damages associated such inspections. In addition, all reasonable efforts will be made to provide a potential bidder who has satisfied the conditions of this Section with information as any such potential bidder may determine is necessary or relevant to the formulation of its bid, *provided however that potential bidders shall be solely responsible for their own due diligence and neither the Debtor, or any of his employees, agents or professionals, including counsel and Advisors shall have any liability to any bidder or purchaser in connection therewith or related thereto.*

3. Qualified Bidders.

- a. A potential bidder that has satisfied the requirements set forth in Paragraph 3 b. below by the Bidding Deadline and that the Seller determines, in his sole discretion (or the **Bankruptcy Court** determines, in the event of a dispute), is reasonably likely to consummate a purchase of Property shall be considered a "Qualified Bidder", and may participate in the Auction.
- b. Unless otherwise ordered by the Bankruptcy Court, no bid for the Property will be considered unless prior to or in conjunction with making such bid, the bidder delivers the following items to William S. Robbins, Stewart Robbins and Brown, 620 Florida St., Suite 100, Baton Rouge, LA 70801, email: wrobbins@stewartrobbins.com:



- i. Financial disclosure that is acceptable to, and as requested by the Seller in his sole discretion, and that demonstrates the financial capability of the bidder to consummate the proposed purchase of Property.
 - ii. Evidence that the bidder has internal authorization and approval necessary to make a bid and consummate a sale without the consent of any entity that has not already been obtained.
 - iii. A good faith deposit in immediately available funds in the amount of ten per cent (10%) of the proposed offer (the "Deposit"), which shall be made payable to and delivered to Stewart Robbins & Brown LLC, 620 Florida Street, Suite 100, Baton Rouge, LA 70801 ("SRB"), the Seller's bankruptcy counsel, by no later than the Bid Deadline (as defined below) (or such later date agreed to by the Seller in his sole discretion). All Deposits will be non-refundable to a Qualified Bidder in the event such bidder's bid is approved by the Bankruptcy Court at the Sale Consummation Hearing as the highest or otherwise best offer and such bidder fails to close on the purchase of the Property for any reason. The Deposit of a Successful Bidder will be applied against the purchase price at the closing. Within five (5) days following the entry of the Sale Order, SRB will return the Deposit (without interest) of any bidder (except the Backup Bidder) that is not selected as a Successful Bidder (or Back Up Bidder) at the Sale Consummation Hearing.
 - iv. An acknowledgement that the bid be irrevocable until five (5) business days after the later of the approval of the bid or back-up bid by the Bankruptcy Court at the Sale Consummation Hearing and the closing of such sale with regard to the the Property (the "Termination Date").
 - v. An acknowledgement that the bidder (i) will not request or be entitled to any "substantial contribution claim" under Bankruptcy Code § 503, or any breakup fee, termination fee, expense reimbursement or similar type of payment from the estate or the Seller in any way related to or arising from the submission of its Bid, or the Bid Procedures, or the sale of the Property, and (ii) irrevocably waives the right to file and/or be paid a "substantial contribution claim" under Bankruptcy Code § 503 or any related breakup fee, termination fee, expense reimbursement or similar type of payment from the estate or the Seller in any way related to or arising from to the submission of its Bid, or the Bid Procedures, or the sale of the Property.
- c. Unless otherwise ordered by the Bankruptcy Court, there will be no credit bidding by lenders with allowed secured claims ("Secured Lenders") on Property at the Auction under 11 U.S.C. Section 363(k). Should the Bankruptcy Court allow a Secured Lender to credit bid, such credit bids shall be subject to the payment in cash at Closing to the Seller of the costs of preserving, operating and disposing of the Property in an amount (i) agreed to in writing by the Debtor, or (ii) in the event of a dispute with respect to such amount, in an amount established by the Court, in such event prior to the Secured Lender making any such credit bid. Any Secured Lender credit bidding pursuant to this Paragraph 3(c) shall be subject to the provisions of Paragraph 3(b), except as otherwise ordered by the Bankruptcy Court. Secured Lenders credit bidding pursuant to this Paragraph 3(c) are not required to make such credit bids by the Bid Deadline and may credit bid as provided herein at and during the Auction. The Seller may require in his discretion that any credit

bids made at the Auction be reduced to writing and contain such terms and conditions, including one or more of those set forth in Paragraph 5 hereof, entitled "Form and Content of Bid", as the Seller deems necessary and prudent in his discretion to protect the estate and the integrity of the auction process.

4. Time for Submission of Bids.

Any Qualified Bidder that desires to participate in the Auction (as defined below) shall deliver a written bid no later than 5:00 p.m. (Central Prevailing Time) on January 27, 2017 (the "Bid Deadline") by email to William S. Robbins, Stewart Robbins and Brown, 620 Florida St., Suite 100, Baton Rouge, LA 70801, email: wrobbins@stewartrobbins.com. The Seller may extend the Bid Deadline for any Qualified Bidder to participate in the Auction, at his own discretion, but shall have no obligation to do so.

5. Form and Content of Bids.

To constitute a "Qualified Bid," a bid must be made by a Qualified Bidder, provide for payment in cash or other consideration at the Closing (other than with respect to any credit bid described in Paragraph 3.c.) in excess of \$2,250,000.00, and must be made using the attached Form Purchase and Sale Agreement (the "PSA"). The only derivations allowed from the PSA are as to the name of the Purchaser and amount of offer to be acquired (the "Marked Agreement").

The Marked Agreement shall be accompanied by the following two (2) acknowledgements:

- a. That the bidder (i) will not request or be entitled to any "substantial contribution claim" under Bankruptcy Code § 503, or any breakup fee, termination fee, expense reimbursement or similar type of payment from the estate or the Seller in any way related to or arising from the submission of its Bid, or the Bid Procedures, or the sale of the Property, and (ii) irrevocably waives the right to file and/or be paid a "substantial contribution claim" under Bankruptcy Code § 503 or any related breakup fee, termination fee, expense reimbursement or similar type of payment from the estate or the Seller in any way related to or arising from the submission of its Bid, or the Bid Procedures, or the sale of the Property.
- b. That the Marked Agreement is not conditioned on obtaining financing or any internal approval, or on the outcome or review of due diligence that has not been satisfied as of the time of the Auction (defined herein) but may be subject to the accuracy in material respects of specified representations and warranties or the satisfaction in all material respects at the closing of specified conditions, none of which shall be materially more burdensome than those set forth in the Form APA.

6. Notification of Opening Bid.

Debtor will identify the bid or bids that the Seller determines, in his discretion, to be the highest or otherwise best bid and shall announce such bid to those Qualified Bidders appearing at the Auction (the "Leading Bid(s)").

7. The Auction.

- a. **An auction to consider any competing Qualified Bids will be held in open court on February 1, 2017, at 9:00 o'clock a.m. Central Time ("Auction").** Each Qualified

Bidder may participate in the Auction except as otherwise determined by the Debtor. Only Qualified Bidders who have submitted a Qualified Bid will be eligible to participate at the Auction.

- b. At the start of the Auction, the Seller shall announce the Leading Bid and will then open the auction seeking higher bids. All bids made after selection of the Leading Bid shall be in minimal increments of \$25,000.00 ("Overbids").
- c. Qualified Bidders may attend the Auction in person or through an authorized representative or agent with actual authority to participate in the Auction and bind such Qualified Bidder. Any bid or offer made during the Auction by any attorney or agent for a Qualified Bidder shall be binding on the Qualified Bidder. During the Auction, any Qualified Bidder may increase its Qualified Bid by making another Qualified Bid.

8. Selection of the Successful Bidder.

The Seller or Court will continue the Auction until he believes in the exercise of his discretion that he has obtained the highest and best bids for the Property. Upon conclusion of the Auction, the bidding will be closed, and the Seller shall review each Qualified Bid and promptly identify the highest, best, financial or otherwise superior offers for the Property (the "Successful Bid" and "Successful Bidder"), and, if the Seller deems it appropriate, in his discretion, the next highest or otherwise best offer after the Successful Bid (the "Backup Bid" and "Backup Bidder"), advise the Qualified Bidders of such determination, and file a notice or pleading in the record of the Bankruptcy Court as provided below seeking Bankruptcy Court approval of his selection of the Successful Bid and any Back Up Bid and for an order approving the sale of Property.

9. Court Approval of Sale of Property.

Immediately after the Auction the Seller will seek an order from the sale to the Successful Bidder(s) (the "Sale Consummation Order"). At the Auction, the Seller will recommend to the Bankruptcy Court the Qualified Bid or Overbid that the Seller believes constitute the highest or otherwise best bid for the Property. If necessary, the Bankruptcy Court will hold a hearing ("Sale Consummation Hearing") to determine the highest or otherwise best offers. The Bankruptcy Court will enter a Sale Consummation Order authorizing and approving the Sale and Purchase Agreement of the Successful Bidder (and approving the Backup Bidder). The sale of the Property shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Seller, its agents, or its estate except to the extent set forth in the PSA. The Sale Order and relevant PSA shall provide a deadline for the closing of the Sale of Property within ten (10) business days.

Each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Property prior to making its offer, that it has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Property in making its bid, and that it did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Property, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bid Procedures.

10. Failure to Consummate Purchase.

The Bankruptcy Court may register the second highest bid of the Backup Bidder, whose asset purchase agreement shall be a binding contract with the Seller and shall close in the event the Successful Bidder

fails to timely consummate the acquisition of the Property in accordance with the provisions described above and in the Sale and Procedures Order. Any closing with the Backup Bidder shall occur within five (5) days of notification from the Debtors that the Successful Bidder failed to close by the Closing Deadline.

11. Business Judgment of the Debtor.

Except as otherwise specifically provided herein, the Debtor, in its sole discretion, reserves the right to (a) determine whether each Marked Agreement is acceptable; (b) determine which Qualified Bid constitutes the highest or otherwise best offer; (c) reject at any time prior to entry of an order of the Bankruptcy Court approving the sale to the Successful Bidder, any bid which the Seller deems to be (i) inadequate or insufficient, or (ii) not in conformity with the requirements of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code") or the Bid Procedures; and/or modify these Bid Procedures in any manner that is not otherwise inconsistent with any order of the Bankruptcy Court.

Furthermore, based upon the Qualified Bids received, the number of Qualified Bidders participating, and such other information the Seller determines is relevant, the Seller may, except as otherwise specifically provided herein, adopt such other rules for conducting the Auction, that, in the Debtor's business judgment, will better promote the goals of the bidding process and that are not inconsistent with the Bankruptcy Code or any order of the Bankruptcy Court.

12. Consent to Jurisdiction as Condition to Bidding.

All Bidders shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court and the entry of final orders by the Bankruptcy Court in connection with any disputes relating to the Bid Procedures and the Auction and waived any right to a jury trial with respect thereto.

13. Other Terms of the Auction.

The Seller reserves the right, in its discretion, to make adjustments in the Auction Procedures to, among other things: (A) facilitate discussions between the Seller and individual Qualified Bidders; (B) allow individual Qualified Bidders to consider how they wish to proceed, and (C) make adjustments or modifications to the Bid and Auction procedure.

END OF BID PROCEDURES

BID PROCEDURES FOR PORT ASSET ACQUISITION PROPERTY

The following procedures (the "Bid Procedures") shall govern the sale of certain immovable property owned by **Port Asset Acquisition LLC**, Chapter 11 Debtor-in-possession (the "Debtor" or "Seller"), Case No. 15-80201 substantially consolidated with 15-80199 and 15-80200, United States Bankruptcy Court for the Western District of Louisiana (the "Bankruptcy Court"), pursuant to a sale process (the "Auction") approved by the Bankruptcy Court.

1. Property to be Sold.

The property to be sold is set forth in the Seller's Purchase and Sale Agreement (the "Property"). The sale is subject to a determination at hearing by the Bankruptcy Court to which entity has submitted the highest or otherwise best bid pursuant to the procedures set forth herein (the "Sale Consummation Hearing").

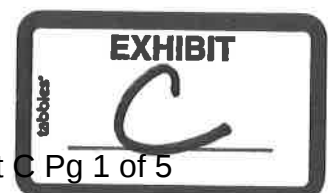
2. Due Diligence.

The sale process will be supervised and managed by Seller. The Seller may be assisted and advised in the conduct of the sale process described in these Bid Procedures by a professional or professionals (the "Advisor" or "Advisors").

Upon receipt by William S. Robbins, Stewart Robbins and Brown, 620 Florida St., Suite 100, Baton Rouge, LA 70801, email: wrobbins@stewartrobbins.com, of evidence satisfactory to the Seller that a potential bidder is reasonably likely to be able to consummate a purchase of the Property and satisfy each of sub-paragraphs (a) and (b) of Paragraph 3 below in form and substance satisfactory to the Seller in his sole discretion, a potential bidder shall be afforded the opportunity to inspect the Property, provided that potential bidders shall be required to execute an agreement holding the estate harmless and indemnifying it from any and all claims or damages associated such inspections. In addition, all reasonable efforts will be made to provide a potential bidder who has satisfied the conditions of this Section with information as any such potential bidder may determine is necessary or relevant to the formulation of its bid, *provided however that potential bidders shall be solely responsible for their own due diligence and neither the Debtor, or any of his employees, agents or professionals, including counsel and Advisors shall have any liability to any bidder or purchaser in connection therewith or related thereto.*

3. Qualified Bidders.

- a. A potential bidder that has satisfied the requirements set forth in Paragraph 3 b. below by the Bidding Deadline and that the Seller determines, in his sole discretion (or the **Bankruptcy Court** determines, in the event of a dispute), is reasonably likely to consummate a purchase of Property shall be considered a "Qualified Bidder", and may participate in the Auction.
- b. Unless otherwise ordered by the Bankruptcy Court, no bid for the Property will be considered unless prior to or in conjunction with making such bid, the bidder delivers the following items to William S. Robbins, Stewart Robbins and Brown, 620 Florida St., Suite 100, Baton Rouge, LA 70801, email: wrobbins@stewartrobbins.com:



- i. Financial disclosure that is acceptable to, and as requested by the Seller in his sole discretion, and that demonstrates the financial capability of the bidder to consummate the proposed purchase of Property.
 - ii. Evidence that the bidder has internal authorization and approval necessary to make a bid and consummate a sale without the consent of any entity that has not already been obtained.
 - iii. A good faith deposit in immediately available funds in the amount of ten per cent (10%) of the proposed offer (the "Deposit"), which shall be made payable to and delivered to Stewart Robbins & Brown LLC, 620 Florida Street, Suite 100, Baton Rouge, LA 70801 ("SRB"), the Seller's bankruptcy counsel, by no later than the Bid Deadline (as defined below) (or such later date agreed to by the Seller in his sole discretion). All Deposits will be non-refundable to a Qualified Bidder in the event such bidder's bid is approved by the Bankruptcy Court at the Sale Consummation Hearing as the highest or otherwise best offer and such bidder fails to close on the purchase of the Property for any reason. The Deposit of a Successful Bidder will be applied against the purchase price at the closing. Within five (5) days following the entry of the Sale Order, SRB will return the Deposit (without interest) of any bidder (except the Backup Bidder) that is not selected as a Successful Bidder (or Back Up Bidder) at the Sale Consummation Hearing.
 - iv. An acknowledgement that the bid be irrevocable until five (5) business days after the later of the approval of the bid or back-up bid by the Bankruptcy Court at the Sale Consummation Hearing and the closing of such sale with regard to the the Property (the "Termination Date").
 - v. An acknowledgement that the bidder (i) will not request or be entitled to any "substantial contribution claim" under Bankruptcy Code § 503, or any breakup fee, termination fee, expense reimbursement or similar type of payment from the estate or the Seller in any way related to or arising from the submission of its Bid, or the Bid Procedures, or the sale of the Property, and (ii) irrevocably waives the right to file and/or be paid a "substantial contribution claim" under Bankruptcy Code § 503 or any related breakup fee, termination fee, expense reimbursement or similar type of payment from the estate or the Seller in any way related to or arising from to the submission of its Bid, or the Bid Procedures, or the sale of the Property.
- c. Unless otherwise ordered by the Bankruptcy Court, there will be no credit bidding by lenders with allowed secured claims ("Secured Lenders") on Property at the Auction under 11 U.S.C. Section 363(k). Should the Bankruptcy Court allow a Secured Lender to credit bid, such credit bids shall be subject to the payment in cash at Closing to the Seller of the costs of preserving, operating and disposing of the Property in an amount (i) agreed to in writing by the Debtor, or (ii) in the event of a dispute with respect to such amount, in an amount established by the Court, in such event prior to the Secured Lender making any such credit bid. Any Secured Lender credit bidding pursuant to this Paragraph 3(c) shall be subject to the provisions of Paragraph 3(b), except as otherwise ordered by the Bankruptcy Court. Secured Lenders credit bidding pursuant to this Paragraph 3(c) are not required to make such credit bids by the Bid Deadline and may credit bid as provided herein at and during the Auction. The Seller may require in his discretion that any credit

bids made at the Auction be reduced to writing and contain such terms and conditions, including one or more of those set forth in Paragraph 5 hereof, entitled "Form and Content of Bid", as the Seller deems necessary and prudent in his discretion to protect the estate and the integrity of the auction process.

4. Time for Submission of Bids.

Any Qualified Bidder that desires to participate in the Auction (as defined below) shall deliver a written bid no later than 5:00 p.m. (Central Prevailing Time) on January 27, 2017 (the "Bid Deadline") by email to William S. Robbins, Stewart Robbins and Brown, 620 Florida St., Suite 100, Baton Rouge, LA 70801, email: wrobbins@stewartrobbins.com. The Seller may extend the Bid Deadline for any Qualified Bidder to participate in the Auction, at his own discretion, but shall have no obligation to do so.

5. Form and Content of Bids.

To constitute a "Qualified Bid," a bid must be made by a Qualified Bidder, provide for payment in cash or other consideration at the Closing (other than with respect to any credit bid described in Paragraph 3.c.) in excess of \$2,250,000.00, and must be made using the attached Form Purchase and Sale Agreement (the "PSA"). The only derivations allowed from the PSA are as to the name of the Purchaser and amount of offer to be acquired (the "Marked Agreement").

The Marked Agreement shall be accompanied by the following two (2) acknowledgements:

- a. That the bidder (i) will not request or be entitled to any "substantial contribution claim" under Bankruptcy Code § 503, or any breakup fee, termination fee, expense reimbursement or similar type of payment from the estate or the Seller in any way related to or arising from the submission of its Bid, or the Bid Procedures, or the sale of the Property, and (ii) irrevocably waives the right to file and/or be paid a "substantial contribution claim" under Bankruptcy Code § 503 or any related breakup fee, termination fee, expense reimbursement or similar type of payment from the estate or the Seller in any way related to or arising from the submission of its Bid, or the Bid Procedures, or the sale of the Property.
- b. That the Marked Agreement is not conditioned on obtaining financing or any internal approval, or on the outcome or review of due diligence that has not been satisfied as of the time of the Auction (defined herein) but may be subject to the accuracy in material respects of specified representations and warranties or the satisfaction in all material respects at the closing of specified conditions, none of which shall be materially more burdensome than those set forth in the Form APA.

6. Notification of Opening Bid.

Debtor will identify the bid or bids that the Seller determines, in his discretion, to be the highest or otherwise best bid and shall announce such bid to those Qualified Bidders appearing at the Auction (the "Leading Bid(s)").

7. The Auction.

- a. **An auction to consider any competing Qualified Bids will be held in open court on February 1, 2017, at 9:00 o'clock a.m. Central Time ("Auction").** Each Qualified

Bidder may participate in the Auction except as otherwise determined by the Debtor. Only Qualified Bidders who have submitted a Qualified Bid will be eligible to participate at the Auction.

- b. At the start of the Auction, the Seller shall announce the Leading Bid and will then open the auction seeking higher bids. All bids made after selection of the Leading Bid shall be in minimal increments of \$25,000.00 ("Overbids").
- c. Qualified Bidders may attend the Auction in person or through an authorized representative or agent with actual authority to participate in the Auction and bind such Qualified Bidder. Any bid or offer made during the Auction by any attorney or agent for a Qualified Bidder shall be binding on the Qualified Bidder. During the Auction, any Qualified Bidder may increase its Qualified Bid by making another Qualified Bid.

8. Selection of the Successful Bidder.

The Seller or Court will continue the Auction until he believes in the exercise of his discretion that he has obtained the highest and best bids for the Property. Upon conclusion of the Auction, the bidding will be closed, and the Seller shall review each Qualified Bid and promptly identify the highest, best, financial or otherwise superior offers for the Property (the "Successful Bid" and "Successful Bidder"), and, if the Seller deems it appropriate, in his discretion, the next highest or otherwise best offer after the Successful Bid (the "Backup Bid" and "Backup Bidder"), advise the Qualified Bidders of such determination, and file a notice or pleading in the record of the Bankruptcy Court as provided below seeking Bankruptcy Court approval of his selection of the Successful Bid and any Back Up Bid and for an order approving the sale of Property.

9. Court Approval of Sale of Property.

Immediately after the Auction the Seller will seek an order from the sale to the Successful Bidder(s) (the "Sale Consummation Order"). At the Auction, the Seller will recommend to the Bankruptcy Court the Qualified Bid or Overbid that the Seller believes constitute the highest or otherwise best bid for the Property. If necessary, the Bankruptcy Court will hold a hearing ("Sale Consummation Hearing") to determine the highest or otherwise best offers. The Bankruptcy Court will enter a Sale Consummation Order authorizing and approving the Sale and Purchase Agreement of the Successful Bidder (and approving the Backup Bidder). The sale of the Property shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Seller, its agents, or its estate except to the extent set forth in the PSA. The Sale Order and relevant PSA shall provide a deadline for the closing of the Sale of Property within ten (10) business days.

Each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Property prior to making its offer, that it has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Property in making its bid, and that it did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Property, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bid Procedures.

10. Failure to Consummate Purchase.

The Bankruptcy Court may register the second highest bid of the Backup Bidder, whose asset purchase agreement shall be a binding contract with the Seller and shall close in the event the Successful Bidder

fails to timely consummate the acquisition of the Property in accordance with the provisions described above and in the Sale and Procedures Order. Any closing with the Backup Bidder shall occur within five (5) days of notification from the Debtors that the Successful Bidder failed to close by the Closing Deadline.

11. Business Judgment of the Debtor.

Except as otherwise specifically provided herein, the Debtor, in its sole discretion, reserves the right to (a) determine whether each Marked Agreement is acceptable; (b) determine which Qualified Bid constitutes the highest or otherwise best offer; (c) reject at any time prior to entry of an order of the Bankruptcy Court approving the sale to the Successful Bidder, any bid which the Seller deems to be (i) inadequate or insufficient, or (ii) not in conformity with the requirements of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code") or the Bid Procedures; and/or modify these Bid Procedures in any manner that is not otherwise inconsistent with any order of the Bankruptcy Court.

Furthermore, based upon the Qualified Bids received, the number of Qualified Bidders participating, and such other information the Seller determines is relevant, the Seller may, except as otherwise specifically provided herein, adopt such other rules for conducting the Auction, that, in the Debtor's business judgment, will better promote the goals of the bidding process and that are not inconsistent with the Bankruptcy Code or any order of the Bankruptcy Court.

12. Consent to Jurisdiction as Condition to Bidding.

All Bidders shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court and the entry of final orders by the Bankruptcy Court in connection with any disputes relating to the Bid Procedures and the Auction and waived any right to a jury trial with respect thereto.

13. Other Terms of the Auction.

The Seller reserves the right, in its discretion, to make adjustments in the Auction Procedures to, among other things: (A) facilitate discussions between the Seller and individual Qualified Bidders; (B) allow individual Qualified Bidders to consider how they wish to proceed, and (C) make adjustments or modifications to the Bid and Auction procedure.

END OF BID PROCEDURES