

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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In re: : Chapter 11  
:   
LA PALOMA GENERATING : Case No. 16-12700 (CSS)  
COMPANY, LLC, *et al.*,<sup>1</sup> :   
: Jointly Administered  
Debtors. :   
: **Hearing Date: September 6, 2017 at 10:00 a.m.**  
: **Objection Deadline: August 30, 2017 at 4:00 p.m.**  
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**DEBTORS’ MOTION FOR ENTRY OF AN ORDER  
(A) ESTABLISHING BIDDING PROCEDURES FOR THE SALE OF SUBSTANTIALLY  
ALL OF THE DEBTORS’ ASSETS, (B) ESTABLISHING PROCEDURES FOR THE  
ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND  
UNEXPIRED LEASES IN CONNECTION WITH THE SALE, (C) APPROVING  
CERTAIN BIDDER INCENTIVES IN CONNECTION WITH THE DEBTORS’ ENTRY  
INTO A STALKING HORSE AGREEMENT, IF ANY, (D) ESTABLISHING CERTAIN  
RELATED DEADLINES AND (E) GRANTING RELATED RELIEF**

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The above-captioned debtors and debtors in possession (collectively, the “Debtors”) move the Court, pursuant to sections 105, 363, 365, 503, 507 and 1123 of title 11 of the United States Code (the “Bankruptcy Code”), rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and rules 2002-1 and 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), for the entry of an order (the “Bidding Procedures Order”), substantially in the form attached hereto as Exhibit A:

- (i) approving the proposed bidding and auction procedures, substantially in the form attached as Exhibit 1 to the Bidding Procedures Order (the “Bidding Procedures”), in connection with the sale of substantially all of

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are La Paloma Generating Company, LLC (9359), La Paloma Acquisition Co, LLC (2500), and CEP La Paloma Operating Company, LLC (2503). The address of the Debtors’ corporate headquarters is 1700 Pennsylvania Avenue, NW, Suite 800, Washington, DC 20006.

the Debtors' assets pursuant to the *Joint Chapter 11 Plan for La Paloma Generating Company, LLC, et al.*, filed with the Court on August 2, 2017 [D.I. 542] (as it may be amended from time to time, the "**Plan**");

- (ii) authorizing the Debtors, in their discretion, exercised in good faith, to enter into a stalking horse asset purchase agreement (a "**Stalking Horse APA**") and the purchaser thereunder, the "**Stalking Horse Bidder**") pursuant to the terms of the Bidding Procedures;
- (iii) authorizing the Debtors, in their discretion, exercised in good faith, to offer a break-up fee of up to 3.0% of the total cash consideration payable under a Stalking Horse APA (the "**Break-Up Fee**") and such total cash consideration, the "**Purchase Price**") plus expense reimbursement for the Stalking Horse Bidder in an amount up to 1.0% of the Purchase Price (the "**Expense Reimbursement**");
- (iv) scheduling an auction (the "**Auction**") in connection with the Sale;
- (v) establishing procedures for the assumption and assignment of executory contracts and unexpired leases, including notice of proposed cure amounts (the "**Assumption and Assignment Procedures**"), and approving the form and manner of notice of the proposed assumption and assignment of executory contracts and unexpired leases in the form attached hereto as Exhibit 2 to the Bidding Procedures Order (the "**Assumption and Assignment Notice**"); and
- (vi) granting certain related relief as described herein.

In support of this motion (this "**Motion**"), the Debtors further respectfully represent as follows:

#### **Preliminary Statement**

1. The Debtors have filed their proposed disclosure statement and the Plan, which provides for a sale (the "**Sale**") of their natural gas-fired, combined cycle electric generating facility located in McKittrick, California (the "**Facility**") and substantially all of their other operating assets (together with the Facility, the "**Acquired Assets**"), all as more fully described in the proposed disclosure statement accompanying the Plan [D.I. 543] (the "**Proposed Disclosure Statement**"). In furtherance of the Sale, the Debtors, through their investment banker, began soliciting indications of interest from potential purchasers on or about July 21, 2017 and are continuing to pursue potential purchasers. To the extent that the Debtors receive

sufficiently attractive indications of interest from such potential purchasers on or before August 30, 2017, the Debtors intend to conduct an Auction for the Acquired Assets in parallel with the Debtors' plan process and have developed the proposed Bidding Procedures for that Auction to maximize value for their estates. If the Debtors do not receive sufficiently attractive indications of interest, the Debtors intend to pursue the Sale as a private sale to their first-lien lender, LNV Corporation ("LNV"), under the Plan without a further Auction, but will still require approval of the proposed Bidding Procedures to establish or confirm the amount of LNV's allowed credit bid for the Acquired Assets.

### **Jurisdiction and Statutory Predicates**

2. This Court has jurisdiction to consider this motion under 28 U.S.C. §§ 157 and 1334, and venue is proper under 28 U.S.C. §§ 1408 and 1409. This is a core proceeding under 28 U.S.C. § 157(b).<sup>2</sup>

### **General Background**

3. On December 6, 2016 (the "**Petition Date**"), each of the Debtors filed a voluntary petition with this Court for relief under chapter 11 of the Bankruptcy Code. The Debtors manage and operate their business as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code. On December 8, 2016, this Court entered an order directing joint administration of the Debtors' chapter 11 cases for procedural purposes only pursuant to Bankruptcy Rule 1015(b) and Local Rule 1015-1 [D.I. 37].

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<sup>2</sup> Under Local Rule 9013-1(f), the Debtors hereby expressly confirm their consent to the entry of a final order by this Court in connection with this motion if it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments in connection therewith consistent with Article III of the United States Constitution.

4. On January 24, 2017, the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) issued a statement that it has not appointed a statutory committee of unsecured creditors in the Debtors’ chapter 11 cases [D.I. 185].

5. On August 2, 2017, the Debtors filed the Plan and Proposed Disclosure Statement with the Court. Additional information regarding the Debtors and these cases, including the Debtors’ business, corporate structure, financial condition and the events and key disputes leading up to and during these chapter 11 cases, is set forth in the Proposed Disclosure Statement.

### **Overall Sale Process**

6. La Paloma Generating Company, LLC (“**La Paloma**”), one of the Debtors, owns the Facility, which has a nameplate generating capacity of 1,022 megawatts. The Facility is located approximately 110 miles northwest of Los Angeles and 40 miles west of Bakersfield, at a point on the electric transmission grid where it can provide energy for use in both northern and southern California.

7. The Bidding Procedures formalize a process that has already been started by the Debtors and their advisors to sell the Acquired Assets for the highest or otherwise best offer. This process is being managed by the Debtors’ investment banker, Jefferies LLC (“**Jefferies**”). Since July 21, 2017, Jefferies has contacted no fewer than 177 parties to gauge their interest in the Sale, including both domestic and international strategic and financial buyers. As of the date hereof, 23 of these parties have executed confidentiality agreements with the Debtors, all of which have received a comprehensive confidential information memorandum regarding the Debtors’ business and the Acquired Assets, a financial model, an independent engineer report, a market study and other marketing materials (the “**Marketing Materials**”).

8. The Debtors have requested that potentially interested parties provide their preliminary indications of interest no later than August 30, 2017, which is a week before the hearing to consider this Motion. If indications of interest are received that are acceptable to the Debtors, then the Debtors intend to request that the Court schedule an Auction for the Acquired Assets and approve the proposed Bidding Procedures as proposed.<sup>3</sup> If no acceptable indications of interest are received by August 30, 2017, then the Debtors intend to request that the Court approve the Bidding Procedures as modified to omit the Auction and to contemplate the negotiation of definitive sale documentation with LNV with respect to the Acquired Assets without incurring the additional expense of holding a subsequent Auction. In either case, (i) absent a settlement pursuant to Bankruptcy Rule 9019, which will be presented to the Court for approval at the hearing on this motion, the Debtors will seek a determination from the Court in the Bidding Procedures Order of the amount that LNV may credit bid as part of any consideration offered for the Acquired Assets, as described more fully below,<sup>4</sup> and (ii) subject to Court approval of the Bidding Procedures, the Debtors intend to seek approval of the Sale in connection with the Court's confirmation of the Plan, with an intent to consummate the Sale on or before November 1, 2017.

### **Proposed Bidding Procedures**

9. By this Motion, the Debtors are requesting that the Court approve the Bidding Procedures for the Acquired Assets, which are set forth in Exhibit 1 to the Bidding

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<sup>3</sup> The Debtors reserve the right, in their business judgment, to modify certain aspects of the proposed Bidding Procedures based on feedback from secured creditors and prospective purchasers and subject to their business judgment, and if the Debtors make such a determination, they will notify the Court of the proposed modification prior to the hearing on this motion and will seek approval of Bidding Procedures as so modified.

<sup>4</sup> The parties are in active negotiations regarding a potential resolution of this issue and hope to reach an agreement before the hearing on the Motion.

Procedures Order. This Motion does not seek approval of the Sale, which relief will be sought in connection with, and pursuant to, confirmation of the Plan.

**A. Overview**

10. As set forth in detail therein, the Bidding Procedures include requirements for prospective purchasers to participate in the bidding process, the availability and conduct of due diligence by prospective bidders, the deadline and requirements for submitting a bid, the method and criteria for bids to become “qualified,” the manner in which qualified bids will be negotiated, clarified and improved, and the criteria for selecting the successful bidder (the “**Successful Bidder**”), including if necessary, through a public auction. These procedures will facilitate a fair and efficient sales process and allow the Debtors to promptly identify the highest or otherwise best offer for the Acquired Assets.

11. In addition, to facilitate this sale process, the Debtors seek authority to select a Stalking Horse Bidder and to provide the Stalking Horse Bidder with certain customary bid protections in the form of the Break-Up Fee and Expense Reimbursement. If the Debtors are able to reach an agreement with a Stalking Horse Bidder on a Stalking Horse APA in advance of the hearing on this Motion, the Debtors propose to supplement this Motion with the applicable disclosures required by Local Rule 6004-1.

**B. Proposed Timeline**

12. The following is a summary of the timeline proposed in this Motion and the Bidding Procedures:

<u>Event or Action</u>	<u>Date</u>
Objection Deadline for the Motion	August 30, 2017 at 4:00 p.m. (prevailing Eastern time)
Bidding Procedures Hearing and Deadline for Entry into Stalking Horse APA, if any	September 6, 2017 at 10:00 a.m. (prevailing Eastern time)

<u>Event or Action</u>	<u>Date</u>
Cure/Assignment Objection Deadline	September 19, 2017 at 4:00 p.m. (prevailing Eastern time)
Bid Deadline	September 22, 2017 at 5:00 p.m. (prevailing Eastern time)
Auction	September 27, 2017 at 10:00 a.m. (prevailing Eastern time)
Objection Deadline for Plan Confirmation and the Sale and for Adequate Assurance Objections	October 6, 2017 at 4:00 p.m. (prevailing Eastern time)
Sale and Confirmation Hearing	October 12, 2017 at 10:00 a.m. (prevailing Eastern time)
Effective Date of Plan and Sale Closing	October 26, 2017

13. These proposed dates have been chosen to allow interested parties time to complete diligence on the Acquired Assets, to engage in an Auction process and to consummate the Sale on or before November 1, 2017, the date when certain CARB Obligations (as defined in the Plan) become due. As more fully described in the Proposed Disclosure Statement, the extent to which a purchaser of the Facility will be responsible for CARB Obligations relating to the Facility, including CARB Obligations that relate to greenhouse gas emissions that occurred before the Sale, is subject to dispute. *See* Proposed Disclosure Statement Section II.D(ii).<sup>5</sup>

14. The Debtors requested that Jefferies market La Paloma's assets to evaluate interest from third parties on an expedited timeline. Accordingly, the proposed Bidding Procedures reflect a desire to emerge from these chapter 11 cases prior to November 1, 2017. The Debtors reserve the right to extend the marketing process, depending on feedback from prospective purchasers and subject to their business judgment, and if the Debtors make such a

<sup>5</sup> The Plan provides that, absent agreement and settlement among the Debtors, such purchaser and the California Air Resources Board ("CARB"), the Court will determine on or before the Confirmation Date (as defined in the Plan) the extent to which, if any, the Purchaser is responsible for CARB Obligations, including CARB Obligations relating to emissions of the Facility occurring before the Sale.

determination, they will notify the Court of the proposed modification prior to the hearing on this motion and seek approval of Bidding Procedures as so modified based upon an extended timeline.

**C. Description of Bidding Procedures**

15. The following is a summary of the Bidding Procedures that describes the key terms that Local Rule 6004-1 requires a debtor to highlight in a bidding procedures motion.<sup>6</sup>

- (a) Stalking Horse Bidder. The Debtors, in their discretion, exercised in good faith, may execute, subject to higher or otherwise better offers, a Stalking Horse APA with a Qualified Bidder that submits a Qualified Bid for the Acquired Assets; provided that such Stalking Horse APA is executed no later than September 6, 2017. The purchaser under the Stalking Horse APA will serve as the “Stalking Horse Bidder” at the Auction, if one is held. If the Debtors choose to enter into a Stalking Horse APA, the Debtors, in their discretion, exercised in good faith, may offer the Stalking Horse Bidder a Break-Up Fee of up to 3.0% of the Purchase Price plus Expense Reimbursement for the Stalking Horse Bidder’s reasonable and documented out-of-pocket costs and expenses in an amount up to 1.0% of the Purchase Price. In the event that a Stalking Horse APA is entered into, the Debtors will promptly file such agreement with the Court.
- (b) Participation Requirements. Unless otherwise ordered by the Court, to participate in the Bidding Process, each interested person or entity (each, an “**Interested Party**”) must deliver the following to the Debtors so as to be received no later than the Bid Deadline:
  - (i) an executed confidentiality agreement in form and substance satisfactory to the Debtors;
  - (ii) a statement and other factual support demonstrating to the Debtors’ satisfaction that such Interested Party has a good faith, *bona fide* interest in purchasing the Acquired Assets; and
  - (iii) sufficient information, as determined by the Debtors, to allow the Debtors to determine that such Interested Party has the financial wherewithal, and any required internal corporate, legal or other authorizations, to consummate the Sale, including financial statements of such Interested Party (or such other form of financial disclosure acceptable to the Debtors in their sole discretion).

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<sup>6</sup> This summary is qualified in its entirety by reference to the Bidding Procedures. Unless otherwise defined in this motion, capitalized terms used in this summary shall have the meanings ascribed to them in the Bidding Procedures. To the extent of any inconsistency between this summary and the Bidding Procedures, the Bidding Procedures will control.



If the Debtors determine that an Interested Party has a good faith, *bona fide* interest in the Acquired Assets, such Interested Party shall be deemed a “**Potential Bidder**” and, no later than two Business Days after the Debtors make such determination and have received the materials described in clauses (i)-(iii) above, the Debtors or their representatives shall provide such Potential Bidder with the Marketing Materials and, on or before August 30, 2017, an electronic copy of a form of asset purchase agreement (the “**Proposed APA**”) or the Stalking Horse APA, as applicable. The Debtors also intend to set up a confidential electronic data room (the “**Data Room**”) and, once available, promptly provide access to Potential Bidders. The Debtors reserve the right to determine whether any Interested Party has satisfied the above participation requirements. Once an Interested Party is deemed a Potential Bidder, the Debtors may disclose its identity to the Stalking Horse Bidder, if applicable.

- (c) Due Diligence. Until the Bid Deadline, in addition to access to the Data Room, the Debtors will provide any Potential Bidder such additional due diligence materials or information as the Debtors determine to be reasonable under the circumstances. All additional due diligence and information requests shall be directed to Kevin Phillips, Jeffrey Finger, Adil Sener, Seth Herman and Konrad Stefanek of Jefferies at kphillips@jefferies.com; jfinger@jefferies.com; asener@jefferies.com; sherman@jefferies.com; and kstefanek@jefferies.com. The Debtors, with the assistance of Jefferies, will coordinate all reasonable requests for additional due diligence materials and information from Potential Bidders. In the event that any such due diligence material or information is in written form and has not previously been provided to the Stalking Horse Bidder, if applicable, or any other Potential Bidder, subject to any confidentiality obligations related to such due diligence material or information, the Debtors will simultaneously provide access to such due diligence material or information to the Stalking Horse Bidder, if applicable, and all Potential Bidders.<sup>7</sup>

Unless otherwise determined by the Debtors, the availability of additional due diligence and information to a Potential Bidder will cease if the Potential Bidder does not become a Qualified Bidder by the Bid Deadline or the Bidding Process is terminated. Except as provided above with respect to access to the Data Room, neither the Debtors nor their

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To preserve the Debtors’ trade secrets or confidential research, development or commercial information, the Debtors may limit the information provided to any Potential Bidder that is, in the Debtors’ judgment, a competitor of the Debtors. Any such limitation may include the redaction of certain information or the establishment of access to information on a “professionals’ eyes only” basis. To the extent that the Debtors determine that any limitation is warranted, they will advise the applicable Potential Bidder of the extent of such limitation. If the applicable Potential Bidder contests any such limitation, it may seek relief from the Bankruptcy Court.

representatives will be obligated to furnish any information of any kind whatsoever relating to the Acquired Assets to any party.

- (d) Bid Deadline. A Potential Bidder that desires to make a bid must deliver electronic copies of its bid (in accordance with clause (e)) in **both** Portable Document Format (.pdf) and Microsoft Word (.doc/.docx) format to the Notice Parties (as defined below) so as to be received no later than the Bid Deadline.

Information that must be provided under these Bidding Procedures must be provided to the following parties (the “**Notice Parties**”): (i) the Debtors, La Paloma Generating Company, LLC, 1700 Pennsylvania Avenue, NW, Suite 800, Washington, D.C. 20006, Attn: Andrew Ellenbogen (email: Andrew.Ellenbogen@eigpartners.com); (ii) counsel to the Debtors, Debevoise & Plimpton LLP, 919 Third Avenue, New York, NY 10022, Attn: M. Natasha Labovitz and Craig A. Bruens (email: nlabovitz@debevoise.com and cabruens@debevoise.com); (iii) Delaware bankruptcy counsel to the Debtors, Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Attn: Mark D. Collins and Jason M. Madron (email: Collins@rlf.com and Madron@rlf.com); (iv) counsel to the holders of First Lien Claims, White & Case LLP, 555 South Flower Street, Suite 2700 Los Angeles, CA 90071, Attn: Rob Kampfner and Michael Garza (email: rkampfner@whitecase.com and michael.garza@whitecase.com); and (v) counsel to the holders of Second Lien Claims, Morgan, Lewis & Bockius LLP, 101 Park Avenue, New York, NY 10178, Attn: Glenn E. Siegel and Josh Dorchak (glenn.siegel@morganlewis.com and Joshua.dorchak@morganlewis.com).

- (e) Form and Content of a Qualified Bid. A bid in respect of the Acquired Assets (other than the Stalking Horse APA, if any) is a proposal from a Potential Bidder (other than the Stalking Horse Bidder, if any), at a minimum, that:
- (i) identifies the legal name of the Potential Bidder (including any equity holders and other financial backers, if the Potential Bidder is an entity formed for the purpose of consummating the Sale);
  - (ii) provides that the Potential Bidder offers (alone or together with other Potential Bidders) to purchase the Acquired Assets at the purchase price and upon the terms and conditions set forth in a copy of the Proposed APA or the Stalking Horse APA, as applicable, enclosed therewith, marked to show any proposed amendments and modifications to the version of the Proposed APA or the Stalking Horse APA filed with the Court pursuant to clause (b), as applicable (the “**Marked Agreement**”);

- (iii) states that all necessary filings under applicable regulatory, antitrust and other laws will be made (pursuant to the terms and conditions in the applicable Marked Agreement) and that payment of the fees associated with such filings will be made by the Potential Bidder, and includes a covenant to cooperate with the Debtors to provide pertinent factual information regarding the Potential Bidder's operations reasonably required to analyze issues arising with respect to any applicable regulatory, antitrust and other laws;
- (iv) is formal, binding and unconditional (except for those conditions expressly set forth in the applicable Marked Agreement), is not subject to any due diligence and is irrevocable until the earlier of November 30, 2017 and the first Business Day following the closing of the Sale;
- (v) includes a commitment to close the transactions contemplated by the bid no later than October 31, 2017;
- (vi) does not entitle such Potential Bidder to a Break-Up Fee, termination fee, expense reimbursement or similar type of payment or reimbursement and includes a waiver of any substantial contribution administrative expense claim under section 503(b) of the Bankruptcy Code related to bidding for the Acquired Assets;
- (vii) if a Stalking Horse APA has been entered into:
  - (A) is determined by the Debtors to result in a value to the Debtors' estates that is more than the aggregate value of the of the consideration provided by the Stalking Horse APA, taking into account any Break-Up Fee, the maximum amount of the Expense Reimbursement and the Minimum Overbid (as defined below); and
  - (B) includes cash consideration sufficient to pay the Break-Up Fee and the maximum amount of the Expense Reimbursement;
- (viii) is accompanied by a wire transfer to the Debtors of immediately available funds, to be held by the Debtors in a segregated bank account, equal to 10% of the gross consideration payable at closing pursuant to the applicable Marked Agreement, as calculated in good faith by the Debtors (each such deposit, a "**Good Faith Deposit**"); provided that the Stalking Horse Bidder shall not be required to make any such deposit except to the extent set forth in the Stalking Horse APA; and
- (ix) is received by the Bid Deadline.

The Debtors will have the right to determine that any bid that satisfies all of the foregoing requirements is a “**Qualified Bid**,” and each Potential Bidder that submits such a bid will be considered a “**Qualified Bidder**,” if each of the following additional requirements are met:

- (x) the bid is accompanied by such written evidence as the Debtors may reasonably request of available cash, a commitment for financing (not subject to any conditions other than those expressly set forth in the applicable Marked Agreement) or such other evidence of ability to consummate the Sale as contemplated by the Marked Agreement (and, as applicable, to provide adequate assurance of future performance of all obligations to be assumed in such Sale);
- (xi) a copy of a board resolution or similar document demonstrating the authority of the Potential Bidder to make a binding and irrevocable bid on the terms proposed;
- (xii) if the bid includes a Marked Agreement that is not executed, a signed statement by a duly authorized representative of such Potential Bidder that such bid is irrevocable until the earlier of November 30, 2017 and the first Business Day following the closing of the Sale; and
- (xiii) if a Stalking Horse APA has been entered into, the terms of the bid are not materially more burdensome or conditional than the terms of the Stalking Horse APA or any such increase in burdensomeness or conditionality is offset by a material increase in the purchase price, which determination may take into consideration:
  - (A) whether the bid requires any indemnification of the Potential Bidder on terms that are materially more burdensome than the terms of the Stalking Horse APA, if applicable;
  - (B) (whether the bid provides sufficient cash consideration to pay transfer taxes, cure costs or other cash costs of the Sale (including professionals’ fees and the Break-Up Fee and Expense Reimbursement, if any);
  - (C) any risks associated with regulatory approvals that may be required before the bid could be consummated; and
  - (D) any other factors that the Debtors may deem relevant.

If a bid is received and, in the Debtors’ judgment, it is not clear to the Debtors whether the bid is a Qualified Bid, the Debtors may consult with

the applicable Potential Bidder and seek additional information in an effort to establish whether or not a bid is a Qualified Bid.

For purposes hereof and notwithstanding anything to the contrary contained herein, the Stalking Horse Bidder, if any, will be a Qualified Bidder and the Stalking Horse APA, if any, will be a Qualified Bid. No later than one Business Day after the Bid Deadline, the Debtors shall provide copies of all bids received by the Debtors to each of the Notice Parties and the Stalking Horse Bidder.

A Qualified Bid and any bids at the Auction may be valued by the Debtors, based upon such factors as they deem relevant, including:

- (I) the value of the consideration provided in the Qualified Bid, including any benefit to the Debtors' bankruptcy estates from any assumption of liabilities, the satisfaction of liabilities through a credit bid and valuation of other non-cash consideration;
- (II) the net economic effect upon the Debtors' estates after the payment of the Break-Up Fee and Expense Reimbursement, if applicable;
- (III) contingencies with respect to the applicable Sale and the likelihood of closing the proposed Sale without delay, and any incremental costs to the Debtors from any closing delays;
- (IV) the ability to obtain any and all necessary antitrust and other regulatory approvals; and
- (V) any other factors the Debtors may deem relevant.

The Debtors may, at any time prior to the Bidding Deadline, impose additional terms and conditions with respect to Qualified Bidders that the Debtors determine in good faith will best promote the goals of the Bidding Process and are not inconsistent with the terms of these Bidding Procedures.

- (f) Baseline Bid. The Debtors shall select what they determine to be the highest or otherwise best Qualified Bid for the Acquired Assets (the "**Baseline Bid**") to serve as the opening bid at the Auction, which may be the Stalking Horse APA, if applicable, after taking into account all relevant considerations; including payment of the Break-Up Fee and the Expense Reimbursement, if applicable, and the financial condition of the applicable Qualified Bidder(s). As soon as reasonably practicable and not later than one day prior to the Auction, the Debtors will identify the Baseline Bid and provide a copy thereof to the Notice Parties and each Qualified Bidder (with such distribution permissible by electronic means, including though a posting to the Data Room).

- (g) Auction. If (x) at least two Qualified Bids are received by the Bid Deadline or (y) at least one Qualified Bid in addition to the Stalking Horse APA, if one is entered into, is received by the Bid Deadline, the Debtors will conduct the Auction for the Acquired Assets. The Auction will take place at the offices of Debevoise & Plimpton LLP, 919 Third Avenue, New York, New York 10022, at 10:00 am (prevailing Eastern time) on the Auction Date, or such other time as the Debtors may notify the Qualified Bidders. Only Qualified Bidders are eligible to participate in the Auction, subject to such limitations as the Debtors may impose in good faith. A reasonable number (as determined by the Debtors) of representatives of the Qualified Bidders will be permitted to attend and observe the Auction.

Each Qualifying Bidder participating in the Auction will be required to confirm, in writing, that (a) it has not engaged in any collusion with respect to the Bidding Process, and (b) its bid is a good faith, *bona fide* offer that it intends and has the ability to consummate the Sale if selected as a Successful Bidder.

- (h) Minimum Overbid. At the Auction, participants will be permitted to increase their Qualifying Bids and improve their terms; provided that any such increased or improved bid must be a Qualified Bid (except that the Bid Deadline will not apply). The Debtors will announce the bidding increments for bids (the “**Minimum Overbid**”) at the outset of the Auction. If a Stalking Horse APA has been entered into and the Stalking Horse Bidder bids at the Auction, the Stalking Horse Bidder shall be entitled to a credit for the amount of any Break-Up Fee and the maximum amount of any Expense Reimbursement, to be counted towards its bid such that the cash and other consideration proposed by the Stalking Horse Bidder plus such Break-Up Fee credit and such Expense Reimbursement credit must exceed the most recent bid by at least the Minimum Overbid amount.
- (i) Additional Rules for Auction. The Debtors may at any time adopt rules for the Auction that the Debtors determine in good faith will best promote the goals of the Bidding Process and are not inconsistent with the terms of these Bidding Procedures, including one or more adjournments of the Auction.

The Debtors may, at any time before entry of the Confirmation Order (as defined in the Plan), reject any bid (other than the Stalking Horse APA, if applicable) that, in the Debtors’ judgment, is: (a) inadequate or insufficient; (b) not in conformity with the requirements of the Bankruptcy Code, these Bidding Procedures or the terms and conditions of the Sale; or (c) contrary to the best interests of the Debtors and their estates.

- (j) Section of the Successful Bid. Prior to the conclusion of the Auction, the Debtors shall:

- (i) review and evaluate each bid made at the Auction on the basis of financial and contractual terms and other factors relevant to the Sale;
- (ii) in the exercise of their good faith business judgment and consistent with the Bidding Procedures, identify the highest or otherwise best offer in respect of the Acquired Assets (the "**Successful Bid**"); and
- (iii) notify all Qualified Bidders participating in the Auction, prior to its adjournment, of the successful bidder or bidders (the "**Successful Bidder(s)**") and the amount and other material terms of the Successful Bid.

Absent irregularities in the conduct of the Auction or reasonable and material confusion during the bidding, each as determined by the Court, the Debtors shall not consider bids made after the Auction has been closed. In the event that the Stalking Horse APA is the only Qualified Bid for the Acquired Assets received by the Debtors by the Bid Deadline, no Auction will be conducted, the Stalking Horse APA will be the Successful Bid and the Stalking Horse Bidder will be the Successful Bidder.

After determining the Successful Bid, the Debtors may determine, in their good faith business judgment, which Qualified Bid is the next highest or otherwise best bid for the Acquired Assets (the "**Next Best Bid**" and the Qualified Bidder(s) submitting such bid, the "**Next Best Bidder(s)**").

- (k) Sale and Confirmation Hearing. At the Sale and Confirmation Hearing, the Debtors may present the Successful Bid to the Court for approval. Following the entry of the Confirmation Order, the Debtors will proceed as promptly as practicable to close the Sale upon the satisfaction or waiver of all applicable conditions precedent to closing.
- (l) Acceptance of Qualified Bids. The Debtors currently intend to consummate the Sale with the Successful Bidder(s); however, the Debtors' presentation of the Successful Bid to the Court for approval does not constitute the Debtors' acceptance of such bid(s). The Debtors will be deemed to have accepted a Successful Bid only when a contract therefor has been executed and such bid has been approved by the Confirmation Order.

If a failure to consummate the Sale is the result of a breach by a Successful Bidder of the applicable Successful Bid contract, the Debtors may retain the Good Faith Deposit of such Successful Bidder and reserve the right to seek, in addition to the Good Faith Deposit, specific performance as well as any and all available additional damages from such Successful Bidder.

If a Successful Bidder does not close the applicable Sale contemplated by the applicable Successful Bid by the outside date set forth in the Successful Bid contract, then the Debtors shall be authorized, but not required, to close with the Qualified Bidder that submitted the Next Best Bid, in accordance with the terms of the Confirmation Order.

- (m) Modification of Bidding Procedures. The Debtors may amend these Bidding Procedures or the Bidding Process at any time and from time to time in any manner that they determine in good faith will best promote the goals of the Bidding Process and are not inconsistent with the terms of these Bidding Procedures, including extending or modifying any of the dates described herein.
- (n) “As Is, Where Is”. Any Sale will be on an “as is, where is” basis and without representations or warranties of any kind by the Debtors, their agents, affiliates, authorized persons, representatives or the Debtors’ chapter 11 estates, except and solely to the extent expressly set forth in the final Sale agreement approved by the Court. Each Qualified Bidder will be required to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the assets that are the subject of the Auction prior to making its bid, that it has relied solely upon its own independent review and investigation in making its bid and that it did not rely on the completeness of any information provided in connection with the Auction or its bid. Except as otherwise provided in the final asset purchase agreement or the Stalking Horse APA, as applicable, approved by the Court, all of the Debtors’ right, title and interest in the Acquired Assets will be sold free and clear of all liens, claims (as such term is defined in section 101(5) of the Bankruptcy Code), interests and encumbrances (collectively, “**Liens**”), with any Liens to attach to the proceeds of the Sale as provided in the Confirmation Order.
- (o) Return of Good Faith Deposit. The Good Faith Deposits shall be held in escrow by the Debtors and while held in escrow will not become property of the Debtors’ bankruptcy estates unless released to the Debtors from escrow pursuant to an order of the Court. The Debtors will retain the Good Faith Deposits of the Successful Bidder(s) and Next Best Bidder(s) until the closing of the Sale unless otherwise ordered by the Court. The Good Faith Deposits of the other Qualified Bidders shall be returned no later than the earlier of November 30, 2017 and the first Business Day following the closing of the Sale. At the closing of the Sale contemplated by the Successful Bid, the Successful Bidder(s) or the Next Best Bidder(s), as applicable, will be entitled to a credit for the amount of its Good Faith Deposit (including any interest accrued thereon). Upon the return of the Good Faith Deposits, their respective will receive any and all interest that has accrued thereon.



16. Pursuant to Local Rule 6004-1(c)(ii), each Qualifying Bidder participating at the Auction will be required to confirm, in writing, that (a) it has not engaged in any collusion with respect to the Bidding Process, and (b) its bid is a good faith, *bona fide* offer that it intends and has the ability to consummate the Sale if selected as a Successful Bidder. The Auction will be conducted openly and will be transcribed. However, the Debtors request that the Court waive the requirement in Local Rule 6004-1(c)(ii) that all creditors be permitted to attend the Auction, and, instead, limit attendance at the Auction to Qualified Bidders and their professionals and representatives as set forth in the Bidding Procedures.

17. By no later than August 30, 2017, if the Debtors have received sufficiently attractive indications of interest for the Acquired Assets, the Debtors will file with the Court a copy of the Proposed APA that they intend to send to Interested Bidders and will highlight the relevant provisions required by Local Rule 6004-1.

**D. Credit Bidding**

18. While approval of the Sale will be sought by separate motion in connection with confirmation of the Plan, Local Rule 6004-1(b)(iv)(N) requires that sale motions disclose any credit bidding provisions included in any proposed asset purchase agreement. If LNV participates in the Auction, including as the Stalking Horse Bidder, it is expected that LNV will seek to credit bid as part of the consideration being offered for the Acquired Assets in the Sale. As more fully described in the Proposed Disclosure Statement, LNV and the other holders of the First Lien Claims purport to be secured by first-priority liens on substantially all of the assets and membership interests of La Paloma. However, certain parties have disputed, among other things, the extent to which all of the Debtors' assets, including the Acquired Assets, are covered by a perfected first-priority lien. *See generally* Proposed Disclosure Statement Section

II.D(i). In particular, as of the Petition Date, LNV appears to have only have a perfected lien on substantially all of the Debtors' real property and fixtures—and not on any of the Debtors' personal property. Further, certain parties have disputed what portion of the Acquired Assets constitute real property and what portion constitute unencumbered assets, although it is clear that at least some of the Acquired Assets are not LNV's collateral. Accordingly, LNV will be required to include a cash component in any offer for the Acquired Assets on account of such unencumbered assets.

19. On or before August 25, 2017, the Debtors will file a supplement to this Motion describing the categories of Acquired Assets that the Debtors believe are not encumbered by LNV's liens, or are subject to an avoidable lien in favor of LNV, and the value that the Debtors ascribe to such assets for purposes of the Bidding Procedures. This value will be the Debtors good faith determination of the amount of cash LNV should be required to include in any bid for the Acquired Assets.

20. Absent a settlement pursuant to Bankruptcy Rule 9019, or as may otherwise be agreed among the Debtors, the holders of First Lien Claims, and the holders of Second Lien Claims, the Debtors will seek a determination from the Court at the hearing on this Motion on the foregoing issues. Specifically, the Debtors will request that the Court state in the Bidding Procedures Order the amount of cash that LNV would be required to include in any bid for the Acquired Assets.

**E. *Proposed Notice of the Bidding Procedures, Auction and Sale Hearing***

21. Because the Debtors are seeking approval of the Sale in connection with confirmation of the Plan, the Debtors will provide notice of the deadlines relevant to the Bidding Procedures and Sale pursuant to certain notices of the hearing on confirmation of the Plan

(collectively, the “**Sale and Confirmation Hearing Notices**”).<sup>8</sup> The Sale and Confirmation Hearing Notices will be served on the parties set forth in the Solicitation Motion and include, among other things, the Bid Deadline; the date, time and place of the Auction (if any) and the Sale and Confirmation Hearing; and the deadline for objecting to the Sale and confirmation of the Plan once they are set by the Court, and, will therefore comply with Bankruptcy Rule 2002(c).

22. The Sale and Confirmation Notices shall indicate that copies of the Proposed Disclosure Statement, the Plan, this Motion, the Bidding Procedures, the Stalking Horse APA, if applicable, and other items filed on the docket in these chapter 11 cases can be obtained on the website of the Debtors’ claims and noticing agent, Epiq Bankruptcy Solutions, LLC, <http://dm.epiq11.com/LAP>.

#### **Proposed Assumption and Assignment Procedures**

23. Additionally, the Debtors, as part of the Sale, may seek to assume and assign certain executory contract and unexpired leases (the “**Assumed and Assigned Agreements**”) to the Successful Bidder. The Debtors propose that the following Assumption and Assignment Procedures govern the assumption and assignment of the Assumed and Assigned Agreements in connection with the Sale of Assets to the Successful Bidder(s):

- (a) By no later than five (5) business days after entry of the Bidding Procedures Order, the Debtors will file a schedule (the “**Cure Schedule**”), which will be attached to the Assumption and Assignment Notice, identifying (i) the Assumed and Assigned Agreements, potentially to be assumed and assigned to a buyer in the event of a Sale and (ii) the amount, if any, the Debtors believe is necessary to cure all monetary defaults under such agreement pursuant to section 365 of the Bankruptcy Code (the “**Cure Costs**”).

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<sup>8</sup> Pursuant to a motion being filed simultaneously with this Motion (the “**Solicitation Motion**”), the Debtors are requesting that the Court approve procedures governing the Plan process, including approval of the form and manner of service of the Sale and Confirmation Hearing Notice.

- (b) Upon the filing of the Cure Schedule, the Debtors will serve the Cure Schedule and the Assumption and Assignment Notice on each of the non-debtor counterparties listed on the Cure Schedule by first class mail. The Assumption and Assignment Notice will state that the Debtors are or may be seeking the Sale, assumption and assignment of the Assumed and Assigned Agreements and include (i) a description of each executory contract and unexpired lease that may be assumed and assigned in connection with the Sale, (ii) the deadline for objecting (a **“Cure/Assignment Objection”**) to the amount of the proposed Cure Costs related to any executory contract or unexpired lease, which is proposed to be September 19, 2017 at 4:00 p.m. (prevailing Eastern time), three (3) business days prior to the Bid Deadline (the **“Cure/Assignment Objection Deadline”**) and (iii) the deadline for objecting (an **“Adequate Assurance Objection”**) to the ability of the relevant purchaser to provide adequate assurance of future performance under any Assumed and Assigned Agreement, which is proposed to be October 6, 2017 at 4:00 p.m. (prevailing Eastern time), the same deadline for objections to the Sale and confirmation of the Plan (the **“Adequate Assurance Objection Deadline”** and collectively, the **“Cure/Adequate Assurance Objection Deadlines”**).
- (c) Each Cure/Assignment Objection and/or Adequate Assurance Objection must be filed with the Bankruptcy Court and served on the following parties so as to be received no later than the applicable Cure/Adequate Assurance Objection Deadline: (i) each Notice Party and (ii) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Linda J Casey.
- (d) If no objections are received with respect to any Assumed and Assigned Agreement, then the Cure Cost set forth in the Cure Schedule for such agreement will be binding upon the non-debtor counterparty to such agreement for all purposes and will constitute a final determination of the Cure Cost required to be paid by the applicable Debtor in connection with the assumption and assignment of such agreement. In addition, all counterparties to the Assumed and Assigned Agreements who fail to file an objection before the applicable Cure/Adequate Assurance Objection Deadlines, as applicable, shall be (i) forever barred from objecting to the Cure Costs or adequate assurance of future performance with respect to the Assumed and Assigned Agreements, and the Debtors and the applicable purchaser(s) will be entitled to rely solely upon the Cure Cost set forth in the Cure Schedule; (ii) deemed to have consented to the assumption and assignment; and (iii) forever barred and estopped from asserting or claiming against the applicable Debtor(s) or the applicable purchaser(s) that any additional amounts are due or other defaults exist, that conditions to assignment must be satisfied or that there is any other objection or defense to the assumptions or assignment of the applicable Assumed and Assigned Agreements.

- (e) At any time prior to the Sale and Confirmation Hearing, the Successful Bidder may amend the Cure Schedule and/or the Schedule of Assumed Contracts and Leases (as such term is defined in the Plan) to remove any executory contract or unexpired lease therefrom. The non-debtor counterparty or parties to any such excluded contract or lease will be notified of such exclusion by written notice mailed within one (1) business day after such amendment. Any executory contracts or unexpired leases not included on the Schedule of Assumed Contracts and Leases will be deemed rejected pursuant to the Plan unless such contract or lease (i) previously was assumed or rejected; (ii) previously expired or terminated pursuant to its terms; or (iii) is the subject of a motion or notice to assume or assume and assign filed on or before the Effective Date (as defined in the Plan), including in connection with the Sale.
- (f) Where a non-debtor counterparty to an Assumed and Assigned Agreement files a Cure/Assignment Objection asserting a cure amount higher than the proposed Cure Cost (the “**Disputed Cure Amount**”), then (i) the parties may consensually resolve the Disputed Cure Amount prior to the Sale and Confirmation Hearing, subject to the applicable purchaser’s consent to such resolution; or (ii) to the extent the parties are unable to consensually resolve the dispute prior to the Sale and Confirmation Hearing, the amount to be paid under section 365 of the Bankruptcy Code with respect to such Disputed Cure Amount will be determined at such date and time as may be fixed by the Court. The Debtors intend to cooperate with counterparties to Assumed and Assigned Agreements to attempt to reconcile any differences with respect to a particular Cure Cost. At any time prior to or after the Court’s ruling on the Disputed Cure Amount, the Debtors may remove such contract or lease from the list of Assumed and Assigned Agreements.

24. The Debtors request that any party failing to object to the proposed transactions be deemed to consent to the treatment of its executory contract and/or unexpired lease under section 365 of the Bankruptcy Code. Moreover, the Debtors request that each such party be deemed to consent to the assumption and assignment of its executory contract and/or unexpired lease notwithstanding any anti-alienation provision or other restriction on assignment.

See 11 U.S.C. §§ 365(c)(1)(B), (e)(2)(A)(ii), and (f).

**Request for Approval of the Bidding Procedures**

**A. *Approval of Bidding Procedures***

25. Section 1123(a)(5)(D) of the Bankruptcy Code permits the sale of all or some of a debtor's assets pursuant to a plan. 11 U.S.C. § 1123(a)(5)(D). Moreover, under section 105(a) of the Bankruptcy Code, “[t]he court may issue any order . . . that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). In essence, the Court may enter an order that safeguards the value of a debtor's estate if doing so is consistent with the Bankruptcy Code. *See, e.g., In re Joubert*, 411 F.3d 452, 455 (3d Cir. 2005) (“Section 105(a) empowers bankruptcy courts and district courts sitting in bankruptcy to fashion orders in furtherance of Bankruptcy Code provisions.”); *In re Combustion Eng'g*, 391 F.3d 190, 236 (3d Cir. 2004) (noting that section 105(a) “has been construed to give a bankruptcy court ‘broad authority’ to provide equitable relief appropriate to assure the orderly conduct of reorganization proceedings”).

26. To that end, courts recognize that procedures to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and therefore are appropriate in the context of bankruptcy transactions. *See In re O'Brien Envtl. Energy, Inc.*, 181 F.3d 527, 537 (3d Cir. 1999); *see also Official Comm. of Subordinated Bondholders v. Integrated Res. Inc. (In re Integrated Res. Inc.)*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (noting that bid procedures “encourage bidding and . . . maximize the value of the debtor's assets”).

27. The Debtors believe that the Bidding Procedures are appropriately tailored to ensure that the bidding process is fair and reasonable and will yield the maximum value for their estates and creditors. The proposed Bidding Procedures are designed to maximize the value received for the Acquired Assets by facilitating a competitive bidding process in which all potential bidders are encouraged to participate and submit competing bids. The Bidding

Procedures provide potential bidders with sufficient notice and an opportunity to acquire information necessary to submit a timely and informed bid. At the same time, the Bidding Procedures provide the Debtors with the opportunity to consider all competing offers and to select, in their reasonable business judgment, the highest or otherwise best offer for the Acquired Assets.

28. The Debtors submit that the Bid Procedures are generally consistent with other procedures routinely approved by courts in this and other districts, and are appropriate under the relevant standards governing auction proceedings and bidding incentives in bankruptcy proceedings. *See In re O'Brien*, 181 F.3d at 537; *see also, e.g., In re Violin Memory, Inc.*, No. 16-12782 (LSS) (Bankr. D. Del. Jan. 6, 2017) [D.I. 93]; *In re Molycorp*, No. 15-11357 (CSS) (Bankr. D. Del. 15-11357) [D.I. 1095]; *In re RS Legacy Corp.*, No. 15-10197 (BLS) (Bankr. D. Del. Mar. 12, 2015) [D.I. 946]. Accordingly, the Debtors believe the Court should approve the Bidding Procedures.

**B. *Approval of Authority to Enter into a Stalking Horse APA***

29. As part of the Bidding Procedures Order, the Debtors are also requesting authority to enter, if applicable, into a Stalking Horse APA and to offer the Break-Up Fee and Expense Reimbursement to the Stalking Horse Bidder to encourage interested parties to submit bids. Under the Bidding Procedures, the Debtors may, in their discretion, exercised in good faith, execute a Stalking Horse APA with a Qualified Bidder that submits a Qualified Bid for the Acquired Assets no later than September 6, 2017. Pursuant to the proposed Bidding Procedures Order, upon selecting a Stalking Horse Bidder, the Debtors will file a notice of the proposed Stalking Horse APA and the identity of the proposed Stalking Horse Bidder with the Court and provide the U.S. Trustee five (5) business days to file an objection with the Court (the “**Stalking**

**Horse Objection Deadline**”). The Debtors request that, unless the U.S. Trustee files an objection on or prior to the Stalking Horse Objection Deadline, they be authorized to enter into the Stalking Horse APA without further notice or order of the Court. If the U.S. Trustee does file an objection on or prior to the Stalking Horse Objection Deadline, the Debtors shall seek an emergency hearing with the Court to resolve such objection on an expedited basis. This process is appropriate under the circumstances of this case and is similar to the process approved by the Court in *In re Molycorp, Inc.*, Case No. 15-11359 (CSS) (Bankr. D. Del Jan. 1, 2016) [D.I. 1095].

30. The Break-Up Fee and Expense Reimbursement are designed to incentivize potential bidders to make an initial binding bid for the Acquired Assets and establish a floor price for the Auction. If approved by this Court, the Debtors would be authorized, in their discretion, exercised in good faith, to offer a Stalking Horse Bidder a Break-Up Fee of 3.0% of the Purchase Price plus Expense Reimbursement for the Stalking Horse Bidder’s reasonable and documented out-of-pocket costs and expenses in an amount up to 1.0% of the Purchase Price. These incentives would only be payable in the event the Stalking Horse Bidder is overbid at the Auction and the Debtors close a transaction with the overbidder. Any such overbid must be in an amount greater than the Stalking Horse Bid, including any applicable Break-Up Fee and Expense Reimbursement, and include sufficient cash consideration to pay the Breakup Fee and Expense Reimbursement in full.

**C. *Determination of LNV’s Credit Bid***

As part of the Bidding Procedures Order, the Debtors are also requesting a determination from the Court of the amount of cash LNV should be required to include in any bid for the Acquired Assets. It is axiomatic that a creditor is only entitled to credit bid the value of its



claims as consideration for assets secured by a lien in favor of such creditor. 11 U.S.C. § 363(k). Therefore, in connection with approving the Bidding Procedures, the Debtors request that the Court set the minimum amount of cash that LNV would need to include in any offer for the Acquired Assets on account of the assets being sold that do not constitute LNV's collateral or are subject to a lien in favor of LNV that may be avoided pursuant to the Bankruptcy Code.

**Request for Approval of the Procedures Governing  
Assumption and Assignment of Executory Contracts and Unexpired Leases**

31. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession “subject to the court’s approval, may assume or reject any executory contract or [unexpired] lease of the debtor.” 11 U.S.C. § 365(a). The standard governing bankruptcy court approval of a debtor’s decision to assume or reject an executory contract or unexpired lease is whether the debtor’s reasonable business judgment supports assumption or rejection. *See, e.g., In re HQ Global Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003) (finding that debtor’s decision to assume or reject executory contract is governed by business judgment standard and can only be overturned if decision was product of bad faith, whim or caprice); *see also In re Market Square Inn, Inc.*, 978 F.2d 116, 121 (3d Cir. 1992) (finding that assumption or rejection of lease “will be a matter of business judgment by the bankruptcy court”).

32. The business judgment test “requires only that the trustee [or debtor in possession] demonstrate that [assumption] or rejection of the contract will benefit the estate.” *Wheeling-Pittsburgh Steel Corp. v. West Penn Power Co.*, (*In re Wheeling-Pittsburgh Steel Corp.*), 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987). Any more exacting scrutiny would slow the administration of a debtor’s estate and increase costs, interfere with the Bankruptcy Code’s provision for private control of administration of the estate, and threaten a court’s ability to

control a case impartially. *See Richmond Leasing Co. v. Capital Bank*, 762 F.2d 1303, 1311 (5th Cir. 1985). Moreover, pursuant to section 365(b)(1) of the Bankruptcy Code, for a debtor to assume an executory contract, it must “cure, or provide adequate assurance that the debtor will promptly cure,” any default, including compensation for “actual pecuniary loss” relating to such default. 11 U.S.C. § 365(b)(1).

33. Under section 365(f) of the Bankruptcy Code, a debtor, after assuming a contract, may assign its rights under the contract to a third party. 11 U.S.C. § 365(f); *see also In re Rickel Home Center, Inc.*, 209 F.3d 291, 299 (3d Cir. 2000) (“The Code generally favors free assignability as a means to maximize the value of the debtor’s estate.”); *see also In re Headquarters Dodge, Inc.*, 13 F.3d 674, 682 (3d Cir. 1994) (noting that the purpose of section 365(f) is to assist the trustee in realizing the full value of the debtor’s assets). Section 365(f)(2)(B) requires, however, that adequate assurance of future performance by an assignee exist. 11 U.S.C. § 365(f)(2)(B). The purpose of the adequate assurance requirement is to protect the interests of the non-debtor party to an assigned contract, as section 365(k) of the Bankruptcy Code relieves a debtor from liability for any breach of a contract that may occur after an assignment. *Cinicola v. Scharffeberger*, 248 F.3d 110, 120 (3d Cir. 2001). Adequate assurance of future performance is not required for every term of an executory contract or unexpired lease, but only such terms that are “material and economically” significant. *In re Fleming Cos., Inc.*, 499 F.3d 300, 305 (3d Cir. 2007). The meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case, but should be given a “practical, pragmatic construction.” *In re DBSI, Inc.*, 405 B.R. 698, 708 (Bankr. D. Del. 2009); *see also In re Decora Indus.*, 2002 U.S. Dist. LEXIS 27031, at \*23 (D. Del. 2002) (“[A]dequate assurance falls short of an absolute guarantee of payment.”). Adequate assurance may be

provided by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. *See, e.g., In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (finding that adequate assurance is present when prospective assignee of lease from debtor has financial resources and has expressed willingness to devote sufficient funding to business to give it strong likelihood of success).

34. The Debtors expect that the assumption and assignment of at least some executory contracts and unexpired leases will be central to their ability to sell the Acquired Assets, including the Facility, as a going concern. It is thus an appropriate exercise of business judgment for the Debtors to propose that purchasers may direct the Debtors to assume and assign to them the contracts and leases that will be required in connection with the Sale. The assumption and assignment of the Assumed and Assigned Agreements will be subject to the final approval by the Court in connection with confirmation of the Plan. Additionally, the Debtors submit that the objection deadline for counterparties to raise objections to the assumption and assignment of contracts and leases, as proposed in this Motion, are adequate to protect the rights of counterparties to the Debtors' contracts and leases. Finally, the Debtors submit that the Assumption and Assignment Notice provides adequate notice of the proposed assumption and assignment of counterparties' contracts and/or leases and should be approved.

#### **Notice**

35. Notice of this Motion shall be provided on the date hereof via U.S. first class mail to: (i) the U.S. Trustee; (ii) the holders of the 30 largest unsecured claims against the Debtors on a consolidated basis; (iii) all agents and trustees under the Debtors' prepetition debt instruments; (iv) counsel to the agents and trustees under the Debtors' prepetition debt instruments; (v) the Internal Revenue Service; (vi) the Securities and Exchange Commission; (vii) all counterparties to the Debtors' executory contracts and unexpired leases, (viii) any entity

known or reasonably believed to have asserted a security interest in or lien against any of the Acquired Assets, (ix) any entity that has expressed a *bona fide* interest in acquiring the Acquired Assets in the last twelve months; and (x) all persons and entities that have filed a request for service of filings in these chapter 11 cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

**No Prior Request**

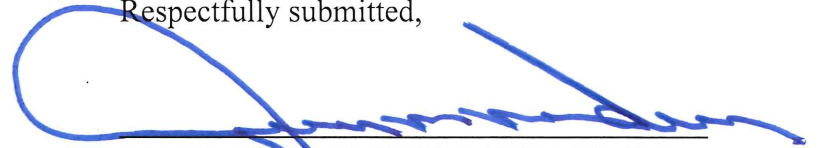
36. No prior request for the relief sought herein has been made to this Court or any other Court.

*[Remainder of page intentionally left blank.]*

WHEREFORE, the Debtors respectfully request that the Court (i) enter the Bidding Procedures Order, in substantially the form attached hereto as Exhibit A, and (ii) grant such other and further relief to the Debtors as the Court may deem proper.

Dated: August 16, 2017  
Wilmington, Delaware

Respectfully submitted,

A large, stylized handwritten signature in blue ink, appearing to be 'Mark D. Collins', written over a horizontal line.

**RICHARDS, LAYTON & FINGER, P.A.**

Mark D. Collins (No. 2981)  
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-and-

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*Attorneys for the Debtors  
and Debtors in Possession*

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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In re:	:	Chapter 11
	:	
LA PALOMA GENERATING	:	Case No. 16-12700 (CSS)
COMPANY, LLC, <i>et al.</i> , <sup>1</sup>	:	
Debtors.	:	Jointly Administered
	:	
	:	<b>Hearing Date: September 6, 2017 at 10:00 a.m.</b>
	:	<b>Objection Deadline: August 30, 2017 at 4:00 p.m.</b>

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**NOTICE OF “DEBTORS’ MOTION FOR ENTRY OF AN ORDER (A) ESTABLISHING BIDDING PROCEDURES FOR THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS’ ASSETS, (B) ESTABLISHING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH THE SALE, (C) APPROVING CERTAIN BIDDER INCENTIVES IN CONNECTION WITH THE DEBTORS’ ENTRY INTO A STALKING HORSE AGREEMENT, IF ANY, (D) ESTABLISHING CERTAIN RELATED DEADLINES AND (E) GRANTING RELATED RELIEF” AND HEARING THEREON**

PLEASE TAKE NOTICE that, on August 16, 2017, La Paloma Generating Company, LLC and its affiliated debtors and debtors in possession (collectively, the “Debtors”) filed the attached **Debtors’ Motion for Entry of an Order (A) Establishing Bidding Procedures for the Sale of Substantially All of the Debtors’ Assets, (B) Establishing Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection With the Sale, (C) Approving Certain Bidder Incentives in Connection With the Debtors’ Entry Into a Stalking Horse Agreement, If Any, (D) Establishing Certain Related Deadlines and (E) Granting Related Relief** (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are La Paloma Generating Company, LLC (9359), La Paloma Acquisition Co, LLC (2500), and CEP La Paloma Operating Company, LLC (2503). The address of the Debtors’ corporate headquarters is 1700 Pennsylvania Avenue, NW, Suite 800, Washington, DC 20006.

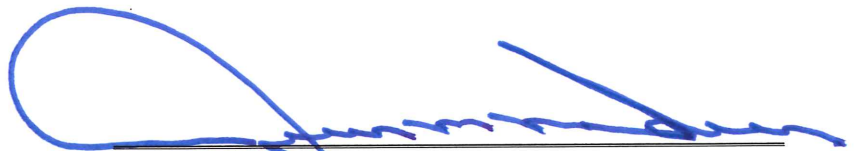
PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion must be in writing, filed with the Clerk of the Bankruptcy Court, 824 North Market Street, 3<sup>rd</sup> Floor, Wilmington, Delaware 19801, and served upon and received by the undersigned co-counsel for the Debtors on or before **August 30, 2017 at 4:00 p.m. (Eastern Daylight Time)**.

PLEASE TAKE FURTHER NOTICE that if an objection is timely filed, served and received and such objection is not otherwise timely resolved, a hearing to consider such objection and the Motion will be held before The Honorable Christopher S. Sontchi at the Bankruptcy Court, 824 North Market Street, 5<sup>th</sup> Floor, Courtroom 6, Wilmington, Delaware 19801 on **September 6, 2017 starting at 10:00 a.m. (Eastern Daylight Time)**.

IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

*[Remainder of page intentionally left blank.]*

Dated: August 16, 2017  
Wilmington, Delaware

A large, stylized handwritten signature in blue ink, written over a horizontal line. The signature is somewhat abstract, with a large loop on the left side and a long, sweeping tail on the right.

Mark D. Collins (No. 2981)

Jason M. Madron (No. 4431)

**RICHARDS, LAYTON & FINGER, P.A.**

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- and -

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**EXHIBIT A**

**BIDDING PROCEDURES ORDER**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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In re:	: Chapter 11
LA PALOMA GENERATING COMPANY,	: Case No. 16-12700 (CSS)
LLC, <i>et al.</i> , <sup>1</sup>	: Jointly Administered
Debtors.	:
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**ORDER (A) ESTABLISHING BIDDING PROCEDURES  
FOR THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS,  
(B) ESTABLISHING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF  
EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (C) APPROVING CERTAIN  
BIDDER INCENTIVES IN CONNECTION WITH THE DEBTORS' ENTRY INTO A  
STALKING HORSE AGREEMENT, IF ANY, (D) ESTABLISHING CERTAIN  
RELATED DEADLINES AND (E) GRANTING RELATED RELIEF**

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Upon the motion (the “**Motion**”)<sup>2</sup> of the Debtors, pursuant to sections 105, 363, 365, 503, 507 and 1123 of title 11 of the United States Code (the “**Bankruptcy Code**”), rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and rules 2002-1 and 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), for the entry of an order (the “**Bidding Procedures Order**”), all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012; and consideration of the Motion and the

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are La Paloma Generating Company, LLC (9359), La Paloma Acquisition Co, LLC (2500), and CEP La Paloma Operating Company, LLC (2503). The address of the Debtors’ corporate headquarters is 1700 Pennsylvania Avenue, NW, Suite 800, Washington, DC 20006.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion, the Plan or the Disclosure Statement, as applicable.

relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and adequate notice of the Motion and opportunity for objection having been given under the circumstances; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein and that such relief is in the best interests of the Debtors, their estates, their creditors and all parties in interest; and any objections to the Motion having been withdrawn or overruled on the merits; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY FOUND THAT:**

A. The Debtors have offered good and sufficient reasons for, and the best interests of their estates will be served by, this Court granting the Motion to the extent provided in this Order, including approval of (i) the Bidding Procedures, attached hereto as Exhibit 1, (ii) the procedures described below for the determination of the amounts necessary to cure defaults under the Assumed and Assigned Agreements so as to permit the assumption and assignment under section 365 of the Bankruptcy Code of the Assumed and Assigned Agreements and (iii) the form and manner of notice of the Auction and Sale described in the Motion and this Order.

B. The issuance and immediate effectiveness of this Order as of the date hereof, including approval of the Bidding Procedures, is supported by evidence of compelling business justifications and other circumstances demonstrating that the relief granted by this Order is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

C. The proposed notice of the Bidding Procedures, as set forth in the Motion and this Order, is appropriate and sufficient, and is reasonably calculated to provide all interested parties

with timely and proper notice of the Auction, the Sale and Confirmation Hearing and the Bidding Procedures, and no other or further notice shall be required.

D. The Bidding Procedures were negotiated in good faith and at arm's-length.

E. The Bidding Procedures are reasonably designed to maximize the value to be achieved for the Assets.

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

1. The Motion is GRANTED as set forth herein. Any objections or responses to the Motion that have not been withdrawn, waived or settled prior to the entry of this order are hereby OVERRULED.

2. The Bidding Procedures, attached hereto as Exhibit 1, are hereby approved, are incorporated herein by reference and shall govern all bids and proceedings relating to the Assets.

3. The deadline for submitting a Qualified Bid shall be 5:00 p.m. (prevailing Eastern time) on September 22, 2017 (the "**Bid Deadline**").

4. The form of the notice of the proposed assumption and assignment of the Assumed and Assigned Agreements, substantially in the form attached hereto as Exhibit 2, is hereby approved and deemed sufficient for all purposes, and no other or further notice shall be required if the Debtors serve such notices in the manner provided in the Motion and this Order.

5. The Auction, if necessary pursuant to the terms of this Order and the Bidding Procedures, will take place at 10:00 a.m. (prevailing Eastern time) on September 27, 2017, at the offices of Debevoise & Plimpton LLP, 919 Third Avenue, New York, New York 10022, or such other time as the Debtors may notify Qualified Bidders who have submitted Qualified Bids.

6. Each Qualifying Bidder participating in the Auction will be required to confirm, in writing, that (a) it has not engaged in any collusion with respect to the Bidding Process, and

(b) its bid is a good faith, *bona fide* offer that it intends and has the ability to consummate the Sale if selected as a Successful Bidder.

7. The Auction will be conducted openly and will be transcribed. The requirement in Local Rule 6004-1(c)(ii) that all creditors be permitted to attend the Auction is hereby waived, and only Qualified Bidders and their professionals and representatives may attend the Auction in accordance with the Bidding Procedures.

8. As soon as reasonably practicable following the conclusion of the Auction, the Debtors shall file copies of the Successful Bid(s) and the Next Highest Bid(s), if any, with the Court.

9. Final approval of the Sale shall be considered by the Court as part of the Sale and Confirmation Hearing. The Sale and Confirmation Hearing which is scheduled for October 12, 2017 at 10:00 a.m. (prevailing Eastern time). The Sale and Confirmation Hearing may be continued from time to time by the Court without further notice or with limited or shortened notice to parties other than the announcement of the adjourned date at the Sale and Confirmation Hearing or any continued hearing thereof.

10. Promptly after the conclusion of the Auction, but no later than 12:00 p.m. (prevailing Eastern time) two business days before the Sale and Confirmation Hearing, the Debtors shall file a proposed Confirmation Order, which shall include approval of the Sale as agreed upon between the Debtors and the Successful Bidder(s).

11. Pursuant to sections 105, 363 and 503 of the Bankruptcy Code, the Debtors are hereby authorized to pay the Break-Up Fee and Expense Reimbursement pursuant to the procedures set forth herein and in the Bidding Procedures, and such bidder incentives are hereby approved.

12. Subject to the Bidding Procedures, in their discretion, exercised in good faith, may select a potential purchaser to serve as a Stalking Horse Bidder and may offer such Stalking Horse Bidder the Break-Up Fee and Expense Reimbursement. Upon selecting a Stalking Horse Bidder, the Debtors shall file a notice of the proposed Stalking Horse APA and the identity of the proposed Stalking Horse Bidder with the Court and provide the U.S. Trustee five (5) business days to file an objection with the Court (the “Stalking Horse Objection Deadline”). Unless the U.S. Trustee files an objection on or prior to the Stalking Horse Objection Deadline, the Debtors shall be authorized to enter into the Stalking Horse APA without further notice or order of the Court. If the U.S. Trustee does file an objection on or prior to the Stalking Horse Objection Deadline, the Debtors shall seek an emergency hearing with the Court to resolve such objection on an expedited basis.

13. If LNV submits a bid for the Acquired Assets, it must include no less than \$[ ] of cash consideration on account of the Acquired Assets that are not encumbered by LNV’s liens, or are subject to an avoidable lien in favor of LNV.

14. The Assumption and Assignment Notice, substantially in the form attached hereto as Exhibit 2, is hereby approved. The following Assumption and Assignment Procedures govern the assumption and assignment of the Assumed and Assigned Agreements in connection with the Sale of Assets to the Successful Bidder(s):

1. By no later than five (5) business days after entry of this Bidding Procedures Order, the Debtors will file a schedule (the “**Cure Schedule**”), which will be attached to the Assumption and Assignment Notice, identifying (i) the Assumed and Assigned Agreements, potentially to be assumed and assigned to a buyer in the event of a Sale and (ii) the amount, if any, the Debtors believe is necessary to cure all monetary defaults under such agreement pursuant to section 365 of the Bankruptcy Code (the “**Cure Costs**”).

2. Upon the filing of the Cure Schedule, the Debtors will serve the Cure Schedule and the Assumption and Assignment Notice on each of the non-debtor counterparties listed on the Cure Schedule by first class mail. The Assumption and Assignment Notice will state that the Debtors are or may be seeking the Sale, assumption and assignment of the Assumed and Assigned Agreements and include (i) a description of each executory contract and unexpired lease that may be assumed and assigned in connection with the Sale, (ii) the deadline for objecting (a “**Cure/Assignment Objection**”) to the amount of the proposed Cure Costs related to any executory contract or unexpired lease, which is proposed to be September 19, 2017 at 4:00 p.m. (prevailing Eastern time), three (3) business days prior to the Bid Deadline (the “**Cure/Assignment Objection Deadline**”) and (iii) the deadline for objecting (an “**Adequate Assurance Objection**”) to the ability of the relevant purchaser to provide adequate assurance of future performance under any Assumed and Assigned Agreement, which is proposed to be October 6, 2017 at 4:00 p.m. (prevailing Eastern time), the same deadline for objections to the Sale and confirmation of the Plan (the “**Adequate Assurance Objection Deadline**” and collectively, the “**Cure/Adequate Assurance Objection Deadlines**”).
3. Each Cure/Assignment Objection and/or Adequate Assurance Objection must be filed with the Bankruptcy Court and served on the following parties so as to be received no later than the applicable Cure/Adequate Assurance Objection Deadline: (i) each Notice Party and (ii) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Linda J Casey.
4. If no objections are received with respect to any Assumed and Assigned Agreement, then the Cure Cost set forth in the Cure Schedule for such agreement will be binding upon the non-debtor counterparty to such agreement for all purposes and will constitute a final determination of the Cure Cost required to be paid by the applicable Debtor in connection with the assumption and assignment of such agreement. In addition, all counterparties to the Assumed and Assigned Agreements who fail to file an objection before the applicable Cure/Adequate Assurance Objection Deadlines, as applicable, shall be (i) forever barred from objecting to the Cure Costs or adequate assurance of future performance with respect to the Assumed and Assigned Agreements, and the Debtors and the applicable purchaser(s) will be entitled to rely solely upon the Cure Cost set forth in the Cure Schedule; (ii) deemed to have consented to the assumption and assignment; and (iii) forever barred and estopped from asserting or

claiming against the applicable Debtor(s) or the applicable purchaser(s) that any additional amounts are due or other defaults exist, that conditions to assignment must be satisfied or that there is any other objection or defense to the assumptions or assignment of the applicable Assumed and Assigned Agreements.

5. At any time prior to the Sale and Confirmation Hearing, the Successful Bidder may amend the Cure Schedule and/or the Schedule of Assumed Contracts and Leases (as such term is defined in the Plan) to remove any executory contract or unexpired lease therefrom. The non-debtor counterparty or parties to any such excluded contract or lease will be notified of such exclusion by written notice mailed within one (1) business day after such amendment. Any executory contracts or unexpired leases not included on the Schedule of Assumed Contracts and Leases will be deemed rejected pursuant to the Plan unless such contract or lease (i) previously was assumed or rejected; (ii) previously expired or terminated pursuant to its terms; or (iii) is the subject of a motion or notice to assume or assume and assign filed on or before the Effective Date (as defined in the Plan), including in connection with the Sale.
6. Where a non-debtor counterparty to an Assumed and Assigned Agreement files a Cure/Assignment Objection asserting a cure amount higher than the proposed Cure Cost (the “**Disputed Cure Amount**”), then (i) the parties may consensually resolve the Disputed Cure Amount prior to the Sale and Confirmation Hearing, subject to the applicable purchaser’s consent to such resolution; or (ii) to the extent the parties are unable to consensually resolve the dispute prior to the Sale and Confirmation Hearing, the amount to be paid under section 365 of the Bankruptcy Code with respect to such Disputed Cure Amount will be determined at such date and time as may be fixed by the Court. The Debtors intend to cooperate with counterparties to Assumed and Assigned Agreements to attempt to reconcile any differences with respect to a particular Cure Cost. At any time prior to or after the Court’s ruling on the Disputed Cure Amount, the Debtors may remove such contract or lease from the list of Assumed and Assigned Agreements.

15. For the avoidance of doubt, the presence of an Assumed and Assigned Agreement on the Cure Schedule (a) does not constitute an admission that such Assumed and Assigned Agreement is an executory contract or unexpired lease and (b) shall not prevent the Debtors or any Successful Bidder(s) from subsequently withdrawing such assumption or rejecting such



Assumed and Assigned Agreement at any time before such Assumed and Assigned Agreement is actually assumed and assigned pursuant to an order of the Court.

16. The Debtors shall provide or cause to be provided adequate assurance information regarding all Successful Bidder(s) and Next Highest Bidder(s), if any, to the non-debtor counterparties to each Assumed and Assigned Agreement that may be assumed and assigned to such Successful Bidder(s) or Next Highest Bidder(s), if any, upon request. Each of the non-debtor counterparties to the Assumed and Assigned Agreements who receive adequate assurance information in the form of voluntary disclosures or discovery from the Debtors or a proposed assignee regarding a proposed assignee shall keep the adequate assurance information confidential and only use or disclose the information as may be necessary to conduct due diligence on the proposed assignee and/or object to a proposed assignment of the Assumed and Assigned Agreement.

17. The Court shall retain jurisdiction with respect to all matters related to this Order.

Dated: \_\_\_\_\_  
Wilmington, Delaware

\_\_\_\_\_  
THE HONORABLE CHRISTOPHER S. SONTCHI  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT I TO BIDDING PROCEDURES ORDER**

**Bidding Procedures**

## **BIDDING PROCEDURES**<sup>1</sup>

By motion (the “**Motion**”), dated August 16, 2017, La Paloma Generating Company, LLC and its affiliated debtors, each as a debtor and debtor in possession (collectively, the “**Debtors**”), sought, among other things, approval of the process and procedures for soliciting bids for and obtaining approval of the sale (the “**Sale**”) of the Acquired Assets (as defined in the Plan).

The United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) has entered an order (the “**Bidding Procedures Order**”) that, among other things, authorizes the Debtors to solicit bids in respect of the Acquired Assets through the procedures described below (the “**Bidding Procedures**”).

Any Sale will be subject to the approval of the subject to the approval of the Successful Bid (as defined below) by the Bankruptcy Court, which approval will be sought in connection with the confirmation of the Plan. The Debtors will not proceed to close any Sale if the Plan is not confirmed by the Bankruptcy Court. A joint hearing before the Bankruptcy Court on the approval of the Sale and the confirmation of the Plan is currently scheduled for 10:00 a.m. (prevailing Eastern time) on October 12, 2017, before the Honorable Christopher S. Sontchi (the “**Sale and Confirmation Hearing**”).

### 1. **Important Dates and Contact Information**

The Debtors shall:

- (a) assist Potential Bidders (as defined below) in conducting their respective due diligence investigations and receive Qualified Bids (as defined below) until the deadline for receipt of Qualified Bids, which is 5:00 p.m. (prevailing Eastern time) on September 22, 2017 (the “**Bid Deadline**”);
- (b) evaluate bids and negotiate with bidders in preparation for an auction (the “**Auction**”) to begin at 10:00 a.m. (prevailing Eastern time) on September 27, 2017 (the “**Auction Date**”); and
- (c) select the Successful Bidder (as defined below) for the Acquired Assets at the conclusion of the Auction and seek approval of the Successful Bid for such Acquired Assets at the Sale and Confirmation Hearing.

Information that must be provided under these Bidding Procedures must be provided to the following parties (the “**Notice Parties**”): (i) the Debtors, La Paloma Generating Company, LLC, 1700 Pennsylvania Avenue, NW, Suite 800, Washington, D.C. 20006, Attn: Andrew Ellenbogen (email: Andrew.Ellenbogen@eigpartners.com); (ii) counsel to the Debtors, Debevoise & Plimpton LLP, 919 Third Avenue, New York, NY 10022, Attn: M. Natasha Labovitz and Craig A. Bruens (email: nlabovitz@debevoise.com and cabruens@debevoise.com);

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<sup>1</sup> Capitalized terms not otherwise defined herein have the meanings given to them in the Bidding Procedures Order or the Motion, as applicable.

(iii) Delaware bankruptcy counsel to the Debtors, Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Attn: Mark D. Collins and Jason M. Madron (email: Collins@rlf.com and Madron@rlf.com); (iv) counsel to the holders of First Lien Claims, White & Case LLP, 555 South Flower Street, Suite 2700 Los Angeles, CA 90071, Attn: Rob Kampfner and Michael Garza (email: rkampfner@whitecase.com and michael.garza@whitecase.com); and (v) counsel to the holders of Second Lien Claims, Morgan, Lewis & Bockius LLP, 101 Park Avenue, New York, NY 10178, Attn: Glenn E. Siegel and Josh Dorchak (glenn.siegel@morganlewis.com and Joshua.dorchak@morganlewis.com).

2. **Stalking Horse Bidder**

The Debtors, in their discretion, exercised in good faith, may execute, subject to higher or otherwise better offers, an asset purchase agreement (the “**Stalking Horse APA**”) with a Qualified Bidder that submits a Qualified Bid for the Acquired Assets; provided that such Stalking Horse APA is executed no later than September 6, 2017. The purchaser under the Stalking Horse APA will serve as the “**Stalking Horse Bidder**” at the Auction, if one is held. If the Debtors choose to enter into a Stalking Horse APA, the Debtors, in their discretion, exercised in good faith, may offer the Stalking Horse Bidder a break-up fee of up to 3.0% of the total cash consideration payable under such Stalking Horse APA (the “**Break-Up Fee**” and such total cash consideration, the “**Purchase Price**”) plus expense reimbursement for the Stalking Horse Bidder’s reasonable and documented out-of-pocket costs and expenses in an amount up to 1.0% of the Purchase Price (the “**Expense Reimbursement**”). In the event that a Stalking Horse APA is entered into, the Debtors will promptly file such agreement with the Bankruptcy Court.

3. **The Sale and Confirmation Hearing**

At the Sale and Confirmation Hearing, the Debtors will seek the entry of an order authorizing and approving, among other things, the sale of the Acquired Assets and confirming the Debtors’ joint chapter 11 plan of reorganization (the “**Confirmation Order**”) (a) if a Stalking Horse APA is entered into and no other Qualified Bid with respect to the Acquired Assets is received by the Debtors by the Bid Deadline, to the Stalking Horse Bidder pursuant to the terms and conditions set forth in the Stalking Horse APA; or (b) if one or more Qualified Bids with respect to the Acquired Assets are received by the Debtors by the Bid Deadline, to the Successful Bidder pursuant to the terms and conditions set forth in the Successful Bid. The Sale and Confirmation Hearing may be adjourned or rescheduled without notice or with limited and shortened notice to parties, including by (i) an announcement of such adjournment at the Sale and Confirmation Hearing or at the Auction; or (ii) the filing of a notice of adjournment with the Bankruptcy Court prior to the commencement of the Sale and Confirmation Hearing.

4. **Determination by the Debtors**

The Bidding Procedures as described herein are calculated to obtain the highest or otherwise best offer for the Acquired Assets. The Debtors will (a) determine, with the assistance of their advisors, whether any person or entity is a Qualified Bidder; (b) receive bids from Qualified Bidders; (c) evaluate and negotiate such bids; and (d) conduct the Auction (clauses (a) through (d) and Section 1 above, collectively, the “**Bidding Process**”). Neither the Debtors nor any of their representatives will be obligated to furnish any information of any kind whatsoever

relating to the Acquired Assets to any person or entity who is not a Qualified Bidder and who does not comply with the requirements set forth herein.

#### 5. Participation Requirements

Unless otherwise ordered by the Bankruptcy Court, to participate in the Bidding Process, each interested person or entity (each, an “**Interested Party**”) must deliver the following to the Debtors so as to be received no later than the Bid Deadline:

- (a) an executed confidentiality agreement in form and substance satisfactory to the Debtors;
- (b) a statement and other factual support demonstrating to the Debtors’ satisfaction that such Interested Party has a good faith, *bona fide* interest in purchasing the Acquired Assets; and
- (c) sufficient information, as determined by the Debtors, to allow the Debtors to determine that such Interested Party has the financial wherewithal, and any required internal corporate, legal or other authorizations, to consummate the Sale, including financial statements of such Interested Party (or such other form of financial disclosure acceptable to the Debtors in their sole discretion).

If the Debtors determine that an Interested Party has a good faith, *bona fide* interest in the Acquired Assets, such Interested Party shall be deemed a “Potential Bidder” and, no later than two Business Days after the Debtors make such determination and have received the materials described in clauses (i)-(iii) above, the Debtors or their representatives shall provide such Potential Bidder with the Marketing Materials and, on or before August 30, 2017, an electronic copy of a form of asset purchase agreement (the “**Proposed APA**”) or the Stalking Horse APA, as applicable. The Debtors also intend to set up a confidential electronic data room (the “**Data Room**”) and, once available, promptly provide access to Potential Bidders. The Debtors reserve the right to determine whether any Interested Party has satisfied the above participation requirements. Once an Interested Party is deemed a Potential Bidder, the Debtors may disclose its identity to the Stalking Horse Bidder, if applicable, and other Potential Bidders.

#### 6. Due Diligence

Until the Bid Deadline, in addition to access to the Data Room, the Debtors will provide any Potential Bidder such additional due diligence materials or information as the Debtors determine to be reasonable under the circumstances. All additional due diligence and information requests shall be directed to Kevin Phillips, Jeffrey Finger, Adil Sener, Seth Herman and Konrad Stefanek of Jefferies LLC (“**Jefferies**”) at [kphillips@jefferies.com](mailto:kphillips@jefferies.com); [jfinger@jefferies.com](mailto:jfinger@jefferies.com); [asener@jefferies.com](mailto:asener@jefferies.com); [sherman@jefferies.com](mailto:sherman@jefferies.com); and [kstefanek@jefferies.com](mailto:kstefanek@jefferies.com). The Debtors, with the assistance of Jefferies, will coordinate all reasonable requests for additional due diligence materials and information from Potential Bidders. In the event that any such due diligence material or information is in written form and has not previously been provided to the Stalking Horse Bidder, if applicable, or any other Potential Bidder, subject to any confidentiality obligations related to such due diligence material

or information, the Debtors will simultaneously provide access to such due diligence material or information to the Stalking Horse Bidder, if applicable, and all Potential Bidders.

Unless otherwise determined by the Debtors, the availability of additional due diligence and information to a Potential Bidder will cease if the Potential Bidder does not become a Qualified Bidder by the Bid Deadline or the Bidding Process is terminated. Except as provided above with respect to access to the Data Room, neither the Debtors nor their representatives will be obligated to furnish any information of any kind whatsoever relating to the Acquired Assets to any party.

To preserve the Debtors' trade secrets or confidential research, development or commercial information, the Debtors may limit the information provided to any Potential Bidder that is, in the Debtors' judgment, a competitor of the Debtors. Any such limitation may include the redaction of certain information or the establishment of access to information on a "professionals' eyes only" basis. To the extent that the Debtors determine that any limitation is warranted, they will advise the applicable Potential Bidder of the extent of such limitation. If the applicable Potential Bidder contests any such limitation, it may seek relief from the Bankruptcy Court.

#### 7. **Bid Deadline**

A Potential Bidder that desires to make a bid must deliver electronic copies of its bid (in accordance with Section 8) in **both** Portable Document Format (.pdf) and Microsoft Word (.doc/.docx) format to the Notice Parties so as to be received no later than the Bid Deadline.

#### 8. **Form and Content of a Qualified Bid**

A bid in respect of the Acquired Assets (other than the Stalking Horse APA, if any) is a proposal from a Potential Bidder (other than the Stalking Horse Bidder, if any), at a minimum, that:

- (a) identifies the legal name of the Potential Bidder (including any equity holders and other financial backers, if the Potential Bidder is an entity formed for the purpose of consummating the Sale);
- (b) provides that the Potential Bidder offers (alone or together with other Potential Bidders) to purchase the Acquired Assets at the purchase price and upon the terms and conditions set forth in a copy of the Proposed APA or the Stalking Horse APA, as applicable, enclosed therewith, marked to show any proposed amendments and modifications to the version of the Proposed APA or the Stalking Horse APA filed with the Bankruptcy Court pursuant to Section 2, as applicable (the "**Marked Agreement**");
- (c) states that all necessary filings under applicable regulatory, antitrust and other laws will be made (pursuant to the terms and conditions in the applicable Marked Agreement) and that payment of the fees associated with such filings will be made by the Potential Bidder, and includes a covenant to cooperate with the Debtors to provide pertinent factual information regarding the Potential Bidder's

operations reasonably required to analyze issues arising with respect to any applicable regulatory, antitrust and other laws;

- (d) is formal, binding and unconditional (except for those conditions expressly set forth in the applicable Marked Agreement), is not subject to any due diligence and is irrevocable until the earlier of November 30, 2017 and the first Business Day following the closing of the Sale;
- (e) includes a commitment to close the transactions contemplated by the bid no later than October 31, 2017;
- (f) does not entitle such Potential Bidder to a Break-Up Fee, termination fee, expense reimbursement or similar type of payment or reimbursement and includes a waiver of any substantial contribution administrative expense claim under section 503(b) of the Bankruptcy Code related to bidding for the Acquired Assets;
- (g) if a Stalking Horse APA has been entered into:
  - (i) is determined by the Debtors to result in a value to the Debtors' estates that is more than the aggregate value of the of the consideration provided by the Stalking Horse APA, taking into account any Break-Up Fee, the maximum amount of the Expense Reimbursement and the Minimum Overbid (as defined below); and
  - (ii) includes cash consideration sufficient to pay the Break-Up Fee and the maximum amount of the Expense Reimbursement;
- (h) is accompanied by a wire transfer to the Debtors of immediately available funds, to be held by the Debtors in a segregated bank account, equal to 10% of the gross consideration payable at closing pursuant to the applicable Marked Agreement, as calculated in good faith by the Debtors (each such deposit, a "**Good Faith Deposit**"); provided that the Stalking Horse Bidder shall not be required to make any such deposit except to the extent set forth in the Stalking Horse APA; and
- (i) is received by the Bid Deadline.

The Debtors will have the right to determine that any bid that satisfies all of the foregoing requirements is a "**Qualified Bid**," and each Potential Bidder that submits such a bid will be considered a "**Qualified Bidder**," if each of the following additional requirements are met:

- (j) the bid is accompanied by such written evidence as the Debtors may reasonably request of available cash, a commitment for financing (not subject to any conditions other than those expressly set forth in the applicable Marked Agreement) or such other evidence of ability to consummate the Sale as contemplated by the Marked Agreement (and, as applicable, to provide adequate assurance of future performance of all obligations to be assumed in such Sale);

- (k) a copy of a board resolution or similar document demonstrating the authority of the Potential Bidder to make a binding and irrevocable bid on the terms proposed;
- (l) if the bid includes a Marked Agreement that is not executed, a signed statement by a duly authorized representative of such Potential Bidder that such bid is irrevocable until the earlier of November 30, 2017 and the first Business Day following the closing of the Sale; and
- (m) if a Stalking Horse APA has been entered into, the terms of the bid are not materially more burdensome or conditional than the terms of the Stalking Horse APA or any such increase in burdensomeness or conditionality is offset by a material increase in the purchase price, which determination may take into consideration:
  - (i) whether the bid requires any indemnification of the Potential Bidder on terms that are materially more burdensome than the terms of the Stalking Horse APA, if applicable;
  - (ii) whether the bid provides sufficient cash consideration to pay transfer taxes, cure costs or other cash costs of the Sale (including professionals' fees and the Break-Up Fee and Expense Reimbursement, if any);
  - (iii) any risks associated with regulatory approvals that may be required before the bid could be consummated; and
  - (iv) any other factors that the Debtors may deem relevant.

If a bid is received and, in the Debtors' judgment, it is not clear to the Debtors whether the bid is a Qualified Bid, the Debtors may consult with the applicable Potential Bidder and seek additional information in an effort to establish whether or not a bid is a Qualified Bid.

For purposes hereof and notwithstanding anything to the contrary contained herein, the Stalking Horse Bidder, if any, will be a Qualified Bidder and the Stalking Horse APA, if any, will be a Qualified Bid. No later than one Business Day after the Bid Deadline, the Debtors shall provide copies of all bids received by the Debtors to each of the Notice Parties and the Stalking Horse Bidder.

A Qualified Bid and any bids at the Auction may be valued by the Debtors based upon such factors as they deem relevant, including:

- (A) the value of the consideration provided in the Qualified Bid, including any benefit to the Debtors' bankruptcy estates from any assumption of liabilities, the satisfaction of liabilities through a credit bid and valuation of other non-cash consideration;
- (B) the net economic effect upon the Debtors' estates after the payment of the Break-Up Fee and Expense Reimbursement, if applicable;



- (C) contingencies with respect to the applicable Sale and the likelihood of closing the proposed Sale without delay, and any incremental costs to the Debtors from any closing delays;
- (D) the ability to obtain any and all necessary antitrust and other regulatory approvals; and
- (E) any other factors the Debtors may deem relevant.

The Debtors may at any time prior to the Bidding Deadline impose additional terms and conditions with respect to Qualified Bidders that the Debtors determine in good faith will best promote the goals of the Bidding Process and are not inconsistent with the terms of these Bidding Procedures.

9. **Baseline Bid**

The Debtors shall select what they determine to be the highest or otherwise best Qualified Bid for the Acquired Assets (the “**Baseline Bid**”) to serve as the opening bid at the Auction, which may be the Stalking Horse APA, if applicable, after taking into account all relevant considerations, including payment of the Break-Up Fee and the Expense Reimbursement, if applicable, and the financial condition of the applicable Qualified Bidder(s). As soon as reasonably practicable and not later than one day prior to the Auction, the Debtors will identify the Baseline Bid and provide a copy thereof to the Notice Parties and each Qualified Bidder (with such distribution permissible by electronic means, including though a posting to the Data Room).

10. **Auction**

If (x) at least two Qualified Bids are received by the Bid Deadline or (y) at least one Qualified Bid in addition to the Stalking Horse APA, if one is entered into, is received by the Bid Deadline, the Debtors will conduct the Auction for the Acquired Assets. The Auction will take place at the offices of Debevoise & Plimpton LLP, 919 Third Avenue, New York, New York 10022, at 10:00 am, on September 27, 2017 at 10:00 a.m. (prevailing Eastern time) on the Auction Date, or such other time as the Debtors may notify the Qualified Bidders. Only Qualified Bidders are eligible to participate in the Auction, subject to such limitations as the Debtors may impose in good faith. A reasonable number (as determined by the Debtors) of representatives of the Qualified Bidders will be permitted to attend and observe the Auction.

Each Qualifying Bidder participating in the Auction will be required to confirm, in writing, that (a) it has not engaged in any collusion with respect to the Bidding Process, and (b) its bid is a good faith, *bona fide* offer that it intends and has the ability to consummate the Sale if selected as a Successful Bidder.

At the Auction, participants will be permitted to increase their Qualifying Bids and improve their terms; provided that any such increased or improved bid must be a Qualified Bid (except that the Bid Deadline will not apply). The Debtors will announce the bidding increments for bids (the “**Minimum Overbid**”) at the outset of the Auction. If a Stalking Horse APA has been entered into and the Stalking Horse Bidder bids at the Auction, the Stalking Horse Bidder

shall be entitled to a credit for the amount of any Break-Up Fee and the maximum amount of any Expense Reimbursement, to be counted towards its bid such that the cash and other consideration proposed by the Stalking Horse Bidder plus such Break-Up Fee credit and such Expense Reimbursement credit must exceed the most recent bid by at least the Minimum Overbid amount.

The Debtors may at any time adopt rules for the Auction that the Debtors determine in good faith will best promote the goals of the Bidding Process and are not inconsistent with the terms of these Bidding Procedures, including one or more adjournments of the Auction.

The Debtors may at any time before entry of the Confirmation Order reject any bid (other than the Stalking Horse APA, if applicable) that, in the Debtors' judgment, is: (a) inadequate or insufficient; (b) not in conformity with the requirements of the Bankruptcy Code, these Bidding Procedures or the terms and conditions of the Sale; or (c) contrary to the best interests of the Debtors and their estates.

Prior to the conclusion of the Auction, the Debtors shall:

- (a) review and evaluate each bid made at the Auction on the basis of financial and contractual terms and other factors relevant to the Sale;
- (b) in the exercise of their good faith business judgment and consistent with the Bidding Procedures, identify the highest or otherwise best offer in respect of the Acquired Assets (the "**Successful Bid**"); and
- (c) notify all Qualified Bidders participating in the Auction, prior to its adjournment, of the successful bidder or bidders (the "**Successful Bidder(s)**") and the amount and other material terms of the Successful Bid.

Absent irregularities in the conduct of the Auction or reasonable and material confusion during the bidding, each as determined by the Bankruptcy Court, the Debtors shall not consider bids made after the Auction has been closed. In the event that the Stalking Horse APA is the only Qualified Bid for the Acquired Assets received by the Debtors by the Bid Deadline, no Auction will be conducted, the Stalking Horse APA will be the Successful Bid and the Stalking Horse Bidder will be the Successful Bidder.

After determining the Successful Bid, the Debtors may determine, in their good faith business judgment, which Qualified Bid is the next highest or otherwise best bid for the Acquired Assets (the "**Next Best Bid**" and the Qualified Bidder(s) submitting such bid, the "**Next Best Bidder(s)**").

At the Sale and Confirmation Hearing, the Debtors may present the Successful Bid to the Bankruptcy Court for approval. Following the entry of the Confirmation Order, the Debtors will proceed as promptly as practicable to close the Sale upon the satisfaction or waiver of all applicable conditions precedent to closing.

11. **Acceptance of Qualified Bids**

The Debtors currently intend to consummate the Sale with the Successful Bidder(s); however, the Debtors' presentation of the Successful Bid to the Bankruptcy Court for approval does not constitute the Debtors' acceptance of such bid(s). The Debtors will be deemed to have accepted a Successful Bid only when a contract therefor has been executed and such bid has been approved by the Confirmation Order.

If a failure to consummate the Sale is the result of a breach by a Successful Bidder of the applicable Successful Bid contract, the Debtors may retain the Good Faith Deposit of such Successful Bidder and reserve the right to seek, in addition to the Good Faith Deposit, specific performance as well as any and all available additional damages from such Successful Bidder.

If a Successful Bidder does not close the applicable Sale contemplated by the applicable Successful Bid by the outside date set forth in the Successful Bid contract, then the Debtors shall be authorized, but not required, to close with the Qualified Bidder that submitted the Next Best Bid, in accordance with the terms of the Confirmation Order.

12. **Modification of Bidding Procedures**

The Debtors may amend these Bidding Procedures or the Bidding Process at any time and from time to time in any manner that they determine in good faith will best promote the goals of the Bidding Process and are not inconsistent with the terms of these Bidding Procedures, including extending or modifying any of the dates described herein.

13. **"As Is, Where Is"**

Any Sale will be on an "as is, where is" basis and without representations or warranties of any kind by the Debtors, their agents, affiliates, authorized persons, representatives or the Debtors' chapter 11 estates, except and solely to the extent expressly set forth in the final Sale agreement approved by the Bankruptcy Court. Each Qualified Bidder will be required to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the assets that are the subject of the Auction prior to making its bid, that it has relied solely upon its own independent review and investigation in making its bid and that it did not rely on the completeness of any information provided in connection with the Auction or its bid. Except as otherwise provided in the final asset purchase agreement or the Stalking Horse APA, as applicable, approved by the Bankruptcy Court, all of the Debtors' right, title and interest in the Acquired Assets will be sold free and clear of all liens, claims (as such term is defined in section 101(5) of the Bankruptcy Code), interests and encumbrances (collectively, "Liens"), with any Liens to attach to the proceeds of the Sale as provided in the Confirmation Order.

14. **Return of Good Faith Deposit**

The Good Faith Deposits shall be held in escrow by the Debtors and while held in escrow will not become property of the Debtors' bankruptcy estates unless released to the Debtors from escrow pursuant to an order of the Bankruptcy Court. The Debtors will retain the Good Faith Deposits of the Successful Bidder(s) and Next Best Bidder(s) until the closing of the Sale unless otherwise ordered by the Bankruptcy Court. The Good Faith Deposits of the other Qualified

Bidders shall be returned no later than the earlier of November 30, 2017 and the first Business Day following the closing of the Sale. At the closing of the Sale contemplated by the Successful Bid, the Successful Bidder(s) or the Next Best Bidder(s), as applicable, will be entitled to a credit for the amount of its Good Faith Deposit (including any interest accrued thereon). Upon the return of the Good Faith Deposits, their respective will receive any and all interest that has accrued thereon.

**EXHIBIT II TO BIDDING PROCEDURES ORDER**

**Assumption and Assignment Notice**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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In re:	:	Chapter 11
LA PALOMA GENERATING COMPANY,	:	Case No. 16-12700 (CSS)
LLC, <i>et al.</i> , <sup>1</sup>	:	Jointly Administered
Debtors.	:	

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**PLEASE TAKE NOTICE OF THE FOLLOWING:**

**NOTICE OF DEBTORS' INTENT TO ASSUME, ASSIGN AND/OR TRANSFER  
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

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1. On December 6, 2017, the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) commenced these cases by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”).

2. On August 2, 2017, the Debtors filed a chapter 11 plan of reorganization [D.I. 542] (as it may be amended, modified or supplemented, the “**Plan**”) and a related disclosure statement [D.I. 543] (as it may be amended, modified or supplemented, the “**Disclosure Statement**”). Copies of the Plan, Disclosure Statement, the Bidding Procedures and other items filed on the docket in the Debtors’ chapter 11 cases can be obtained on the website of the Debtors’ claims and noticing agent, Epiq Bankruptcy Solutions, LLC, <http://dm.epiq11.com/LAP>.

3. On [September 6], 2017, the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) entered an Order (A) Establishing Bidding Procedures for the Sale of Substantially All of the Debtors’ Assets, (B) Establishing Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases, (C) Approving Certain Bidder Incentives in Connection with the Debtors’ Entry into a Stalking Horse Agreement, If Any, (D) Establishing Certain Related Deadlines and (E) Granting Related Relief [D.I. [ ]] (the “**Bidding Procedures Order**”).<sup>2</sup> Among other things, the Bidding Procedures Order: (a) established certain procedures (the “**Bidding Procedures**”) for the sale (the “**Sale**”) of substantially all of the Debtors’ assets (the “**Acquired Assets**”) pursuant to an auction (the

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are La Paloma Generating Company, LLC (9359), La Paloma Acquisition Co, LLC (2500), and CEP La Paloma Operating Company, LLC (2503). The address of the Debtors’ corporate headquarters is 1700 Pennsylvania Avenue, NW, Suite 800, Washington, DC 20006.

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

“**Auction**”) overseen by the Bankruptcy Court and (b) scheduled the time and place for the Auction. Approval of the Sale will take place in connection with the Bankruptcy Court’s consideration of whether to confirm the Plan, which is scheduled for October 12, 2017 at 10:00 a.m. (prevailing Eastern time).

4. Pursuant to the Bidding Procedures Order, the Debtors may potentially assume and assign to the Successful Bidder one or more of those executory contracts and unexpired leases listed on Annex 1 attached hereto (collectively, the “**Assumed and Assigned Agreements**” and each, an “**Assigned Agreement**”), pursuant to section 365 of the Bankruptcy Code.

5. The Debtors have indicated on Annex 1 attached hereto the cure amounts that the Debtors believe must be paid to cure all pre-petition defaults and pay all amounts accrued under each Assigned Agreement (in each instance, the “**Cure Amount**”).

6. Any party seeking to object to the assumption by the Debtors and assignment/transfer to the Successful Bidder of any Assigned Agreement, including the validity of the Cure Amount as determined by the Debtors, or otherwise assert that any other amounts, defaults, conditions or pecuniary losses must be cured or satisfied under any of the Assigned Agreements for such contract or lease to be assumed and assigned, must file an objection (the “**Cure/Assignment Objection**”) that (a) is in writing, (b) sets forth the specific monetary amount the objector asserts to be due, and the specific types of the alleged defaults, pecuniary losses, accrued amounts and conditions to assignment and the support therefor, (c) is filed with the Clerk of the Bankruptcy Court and (d) is served so as to be actually received by the following parties (collectively, the “**Notice Parties**”) on or before 4:00 p.m. (prevailing Eastern Time) on September 19, 2017 (the “**Cure/Assignment Objection Deadline**”): (i) the Debtors, La Paloma Generating Company, LLC, 1700 Pennsylvania Avenue, NW, Suite 800, Washington, D.C. 20006, Attn: Andrew Ellenbogen; (ii) counsel to the Debtors, Debevoise & Plimpton LLP, 919 Third Avenue, New York, NY 10022, Attn: M. Natasha Labovitz and Craig A. Bruens; (iii) Delaware bankruptcy counsel to the Debtors, Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Attn: Mark D. Collins and Jason M. Madron; (iv) counsel to the holders of First Lien Claims, White & Case LLP, 555 South Flower Street, Suite 2700 Los Angeles, CA 90071, Attn: Rob Kampfner and Michael Garza; (v) counsel to the holders of Second Lien Claims, Morgan, Lewis & Bockius LLP, 101 Park Avenue, New York, NY 10178, Attn: Glenn E. Siegel and Josh Dorchak; and (vi) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Linda J Casey.

7. Any party seeking to object to the ability of the Successful Bidder(s) to provide adequate assurance of future performance of an Assigned Agreement must file and serve an objection (the “**Adequate Assurance Objection**”) so that such objection is actually received by the Notice Parties on or before 4:00 p.m. (prevailing Eastern Time) on October 6, 2017 (the “**Adequate Assurance Objection Deadline**”).

8. Unless a Cure/Assignment Objection or Adequate Assurance Objection is filed and served before the applicable objection deadline, all parties shall (a) be forever barred from objecting to the Cure Amount or provision of adequate assurance of future performance and from

asserting any additional cure or other amounts with respect to the Assigned Agreements, and the Debtors and the Successful Bidder(s) shall be entitled to rely solely upon the Cure Amount; (b) be deemed to have consented to the assumption and assignment; and (c) be forever barred and estopped from asserting or claiming defaults exist, that conditions to assignment must be satisfied under such Assigned Agreements or that there is any objection or defense to the assumption and assignment of such Assigned Agreements.

9. Any hearings with respect to the Cure/Assignment Objections or Adequate Assurance Objections may be held at such date as the Bankruptcy Court may designate upon request by the Debtors and the Successful Bidder. Where a non-debtor counterparty to a Assigned Agreement files an objection asserting a cure amount higher than the proposed Cure Amount (the “**Disputed Cure Amount**”), then (a) to the extent that the parties are able to consensually resolve the Disputed Cure Amount prior to the Confirmation Hearing, the Debtors shall promptly provide the Notice Parties with notice and opportunity to object to such proposed resolution or (b) to the extent the parties are unable to consensually resolve the dispute prior to the Confirmation Hearing, then the amount to be paid under section 365 of the Bankruptcy Code with respect to such Disputed Cure Amount will be determined at the Confirmation Hearing or at such other date and time as may be fixed by the Bankruptcy Court.

10. If you agree with the Cure Amount indicated on Annex 1 and otherwise do not object to the Debtors’ assignment of your lease or contract, you need not take any further action.

11. The Debtors’ decision to assume and assign the Assigned Agreements is subject to the approval of the Bankruptcy Court and confirmation of the Plan. Accordingly, the Debtors shall be deemed to have assumed and assigned each of the Assigned Agreements as of the date of, and effective only upon, the effective date of the Plan, and, absent such occurrence, each of the Assigned Agreements shall neither be deemed assumed nor assigned and shall in all respects be subject to further administration under the Bankruptcy Code.

12. Inclusion of any document on the list of Assigned Agreements shall not constitute or be deemed to be a determination or admission by the Debtors or the Successful Bidder that such document is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code, and all rights with respect thereto are expressly reserved.

*[Remainder of page intentionally left blank.]*



Dated: [ ], 2017  
Wilmington, Delaware

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*Attorneys for the Debtors and Debtors in  
Possession*

Annex 1

**Cure Schedule**