

- a. Confidentiality Agreement. Each person desiring to review any due diligence materials should contact Streambank for the Debtors' standard form confidentiality agreement which must be executed without material modification and returned to Streambank.
- b. Proof of Financial Ability to Perform. Each person desiring to review due diligence materials and/or to submit a bid (a "Potential Bidder") should also contact Streambank regarding what financial disclosures, if any, the Debtors may require in order to consider a bid submitted by such Potential Bidder and that Potential Bidder's ability to close a sale, the sufficiency of which shall be determined by the Debtors in their sole discretion. Any Potential Bidder that the Debtors determine is able to close a sale and which submits a Qualified Bid (as set forth below) shall be a "Qualified Bidder."
- c. Qualifying Bids. In order to participate in the bidding process, each Qualified Bidder must submit a "Qualifying Bid" in writing on or before the Bid Deadline (as defined below) by delivering to the Debtors an executed asset purchase agreement identical to -- or demonstrably better for the Debtors than -- the Agreement.
- d. To constitute a Qualifying Bid, a bid must also comply with the following conditions:

- i. Modified Agreement. A written bid shall include a clean and duly executed Agreement and a black-lined copy reflecting any changes from the Agreement, including, without limitation, those related to the Transaction Consideration.
- ii. Minimum Transaction Consideration. Each bid shall provide for Transaction Consideration consisting of: (A) cash equal to the Purchase Price; and (B) the assumption of at least the same liabilities that are to be assumed as set forth in the Agreement. In addition, each bid shall also provide that the purchase price component of such bid will be paid in cash in immediately available funds. The Debtors may set minimum opening bid amounts for each of the asset groups prior to the Bid Deadline.
- iii. Multiple Bids/Assets – Both in the initial bid and at the Auction, Qualified Bidders may submit a single bid for multiple assets or multiple bids for multiple assets.
- iv. Contingencies. A bid may not contain any due diligence or financing contingencies of any kind.
- v. No Fees. A bid may not request any break-up fee, termination fee, expense reimbursement or similar type of payment.
- vi. Identity of Bidders. Each bidder must fully disclose the identity of the party or parties that will be bidding for the Subject Assets or otherwise participating in connection with such bid, and the complete terms of any such participation.
- vii. Good Faith Deposit. Each bid must be accompanied by a deposit, in immediately available funds, equal to ten (10%) percent of the purchase price provided for in connection with the bid or such other amounts as the Debtors may, in their reasonable discretion, establish.
- viii. Other Evidence. Each bid must contain evidence satisfactory to the Debtors that the bidder is reasonably likely to be able, and has all requisite authority to timely consummate the transaction contemplated by the Agreement if selected as the Successful Bidder (as defined below).
- ix. Agreement to Keep Bid Open. Each bid must acknowledge that the Sellers, in their sole discretion, may designate a Qualified Bid as the second highest and best bid for the Subject Assets, and that such bidder shall remain bound to the Agreement, on its existing terms and at the purchase price bid by bidder, unless and until a sale is consummated with the Successful Bidder (as defined below).
- e. Bid Deadline. Qualifying Bids must be received by the Debtors' counsel on or before 7:00 p.m. (prevailing Eastern time) on November 5, 2010 (the "Bid Deadline"). Qualifying Bids should be delivered to: Streambank LLC, 97 Chapel

Street, 3rd Floor, Needham, MA 02492, Attn: Gabriel Fried (gfried@streambankllc.com), with a copy to Debtors' counsel, SNR Denton US LLP, 1221 Avenue of the Americas, New York, New York 10020, Attn: John A. Bicks (john.bicks@snrdenton.com) and Louis A. Curcio (louis.curcio@snrdenton.com), Facsimile: (212) 768-6800. The Debtors, in their sole discretion, may extend the Bid Deadline.

- f. Auction. In the event that the Debtors receive at least two (2) Qualifying Bids, the Debtors shall conduct, or shall ask the Court to conduct, an auction (the "Auction") of the Subject Assets to determine the highest and best bid for the Subject Assets. The Debtors also request that a sale hearing (the "Sale Hearing") be scheduled to commence immediately after the conclusion of the Auction. The Debtors will request at the hearing on this Motion that the Auction and Sale Hearing be scheduled for November 9, 2010.

At the commencement of the Auction, the Debtors will announce on the record the highest or best Qualifying Bid or combination of Qualifying Bids (the "Baseline Bid(s)"). The Auction shall be governed by the following procedures:

- i. Any Qualifying Bidders shall appear in person at the Auction through a duly authorized representative. The Debtors may, in their discretion, consider requests to allow Qualified Bidders to participate in the Auction by telephone.
- ii. Each Qualifying Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding for the Subject Assets.
- iii. Bidding shall commence at the Baseline Bid.
- iv. Qualifying Bidders may then submit successive bids in increments to be established by the Debtors at the outset of the Auction, which bid increments may be modified during the course of the Auction (the "Minimum Overbid"). Unless otherwise agreed by the Debtors in their sole discretion with respect to any one or more Qualifying Bids, all additional consideration in excess of the amount set forth in the Baseline Bid must be in cash.
- v. All Qualifying Bidders shall have the right to submit additional bids, subject to clause (iv) above, and to make additional modifications to the Agreement, as applicable, at the Auction.
- vi. The Auction shall continue until there is only one offer or combination of offers that the Debtors determine, in consultation with the Prepetition Secured Parties and subject to Court approval, is the highest or best offer from among the Qualifying Bidders submitted at the Auction (the "Successful Bid"). In making this decision, the Debtors may consider, without limitation, the amount of the transaction consideration, the form of

consideration being offered, the Qualifying Bidder's ability to close a transaction and the timing thereof, the number, type and nature of any changes to the Agreement requested by each Qualifying Bidder, the net benefit to the Debtors' estates, and the views of the Prepetition Secured Parties. The party submitting such Successful Bid shall become the "Successful Bidder".

- vii. If a Successful Bid is approved by the Court, then within two (2) business days of entry of the Sale Order (or such later date as may be agreed by the parties), the Successful Bidder shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid was made and make and pay for all necessary filings with all applicable government or other authorities. Bids made after the close of the Auction shall not be considered by the Debtors.
- viii. In the event the Successful Bidder fails to timely consummate the Sale as a result of the Successful Bidder's default or breach under the applicable agreement, the Debtors shall (i) retain the Successful Bidder's Good Faith Deposit as liquidated damages; and (ii) be free to enter into and consummate a new agreement with the next highest Qualified Bidder at the highest price bid by the bidder at the Auction, whose Qualifying Bid shall be deemed open, without the need for an additional hearing before, or order of, the Bankruptcy Court.
- g. Return of Good Faith Deposit. The Good Faith Deposits of the Successful Bidder(s) shall be applied to amounts to be paid in connection with such transaction at closing. The Good Faith Deposits of the second highest Qualified Bidder(s) shall be returned by no later than the fifth (5th) Business Day following such closing. The Good Faith Deposits of all other Qualified Bidders shall be returned by no later than the third (3rd) Business Day following the Auction.
- h. Form of Order. The Sale Order shall be acceptable to the Prepetition Secured Parties in their reasonable discretion and shall provide, *inter alia*, that all amounts due to the Debtors under the Agreement and the proceeds thereof shall be subject to the perfected security interests of the Prepetition Secured Parties and the Prepetition Second Lien Term Parties and shall be subject to liens and administrative expense claims of the Prepetition Secured Parties and the Prepetition Second Lien Term Parties as provided in, and subject to the priorities set forth in, the Cash Collateral Order, as amended, without further action by the Prepetition Secured Parties or the Prepetition Second Lien Term Parties.

30. The proposed procedures outlined above (the "Auction Procedures") carefully balance the Debtors' interests in (i) inducing bidders to commit to consummate the transaction and (ii) preserving the Debtors' ability to attract higher and better offers. Further, the Debtors