

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

In re:

NORTHSTAR OFFSHORE  
GROUP, LLC,

DEBTOR.

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Case No. 16-34028  
Chapter 11

**DEBTOR’S SUPPLEMENT TO MOTION, PURSUANT TO BANKRUPTCY CODE SECTIONS 105(A), 363, AND 365, AND BANKRUPTCY RULES 2002, 6004, AND 6006, FOR ENTRY OF: (I) ORDER (A) APPROVING SALE AND BIDDING PROCEDURES IN CONNECTION WITH SALE OF ASSETS OF THE DEBTOR, (B) APPROVING FORM AND MANNER OF NOTICE, (C) SCHEDULING AUCTION AND SALE HEARING, (D) AUTHORIZING PROCEDURES GOVERNING ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (E) GRANTING RELATED RELIEF; AND (II) ORDER (A) APPROVING PURCHASE AGREEMENT, (B) AUTHORIZING SALE FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, AND (C) GRANTING RELATED RELIEF**

[Related to Docket No. 437]

TO THE HONORABLE MARVIN ISGUR, UNITED STATES BANKRUPTCY JUDGE:

Northstar Offshore Group, LLC (the “Debtor”) files this *Supplement to Motion, Pursuant to Bankruptcy Code Sections 105(a), 363, and 365, and Bankruptcy Rules 2002, 6004, and 6006, for Entry of: (I) Order (A) Approving Sale and Bidding Procedures in Connection with Sale of Assets of the Debtor, (B) Approving Form and Manner of Notice, (C) Scheduling Auction and Sale Hearing, (D) Authorizing Procedures Governing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (E) Granting Related Relief; and (II) Order (A) Approving Purchase Agreement, (B) Authorizing Sale Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, and (C) Granting Related Relief* (this “Supplement”) to supplement and amend the relief requested in *Motion, Pursuant to Bankruptcy Code Sections 105(a), 363, and 365, and Bankruptcy Rules 2002, 6004, and 6006, for Entry of: (I) Order*

*(A) Approving Sale and Bidding Procedures in Connection with Sale of Assets of the Debtor, (B) Approving Form and Manner of Notice, (C) Scheduling Auction and Sale Hearing, (D) Authorizing Procedures Governing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (E) Granting Related Relief; and (II) Order (A) Approving Purchase Agreement, (B) Authorizing Sale Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, and (C) Granting Related Relief (the “Motion”).* In support of the Motion, as supplemented and amended by this Supplement, the Debtor respectfully submits the following:

**SUPPLEMENTS AND AMENDMENTS TO SALE PROCESS**

1. The Debtor seeks authority to sell any or all of its assets (collectively, the “Assets”) pursuant to the Motion as supplemented and amended by the Supplement. All capitalized terms used but not defined herein have the meanings assigned to them in the Motion.

2. The Debtor believes that the procedures proposed in the Motion with respect to the sale of the Assets (the “Sale”) as supplemented and amended by this Supplement are the best way to maximize the value of these assets for the Debtor’s estate and for its creditors and stakeholders under the circumstances. The Debtor seeks entry of the supplements and amendments set forth herein to make the sale process more efficient and address certain objections raised by parties in interest to the Sale Motion.

**A. Bid Protections for Stalking Horse Bidder**

3. The Debtor seeks authority, without further order of the Bankruptcy Court, to grant a break-up fee and expense reimbursement to each bidder the Debtor identifies as a Stalking Horse Bidder (subject to the consultation provisions in the Bidding Procedures) as follows:

- The aggregate break-up fee shall not exceed 3.0% of the cash or cash equivalent portion of the purchase price set forth in the Stalking Horse APA and the expense reimbursement shall not exceed the aggregate of \$200,000.00 (as the Debtor may allocate in its discretion if more than one Stalking Horse Bidder).
- The break-up fee will only be paid if a Sale transaction closes and the Stalking Horse Bidder is not the Successful Bidder.
- The expense reimbursement will be paid from the cash proceeds of a Sale and only for the Stalking Horse Bidder's documented out-of-pocket expenses incurred in connection with the Sale.
- Provided that the Bid Protections to each Stalking Horse Bidder are consistent with the terms set forth in the Bidding Procedures, such Bid Protections shall be deemed administrative expenses under section 503(b) of the Bankruptcy Code.

**B. Revised Bidding Procedures, Sale Notice and Assumption and Assignment Notice**

4. The Debtor seeks approval of revised proposed bidding procedures to govern the Sale (as revised, the "Bidding Procedures"), together with a revised Sale Notice and an Assumption and Assignment Notice.

5. The revised Bidding Procedures are attached as Exhibit 1-A and a redline comparing the revised Bidding Procedures to the original Bidding Procedures is attached as Exhibit 1-B. The revised Sale Notice is attached as Exhibit 2-A and a redline comparing the revised Sale Notice to the original Sale Notice is attached as Exhibit 2-B. The revised Assumption and Assignment Notice is attached as Exhibit 3-A and a redline comparing the revised Assumption and Assignment Notice to the original Assumption and Assignment Notice is attached as Exhibit 3-B.

6. The Debtor requests that this Court approve the revised Bidding Procedures and the related Sale Notice and Assumption and Assignment Notice consistent with the terms of the Motion as supplemented and amended by this Supplement. The revised Bidding Procedures,

Sale Notice and Assumption and Assignment Notice add provisions to address the Bid Protections as discussed above. Other changes to the revised Bidding Procedures include the following:<sup>1</sup>

- Commitment to Close. Revising the commitment of Qualified Bidders to consummate the purchase of the Assets from ten (10) days following entry of the Sale Order to fifteen (15) days following entry of the Sale Order so that the closing occurs outside the appeal period.
- Service of Sale Notice. Adding requirement for the Debtor to serve the Sale Notice no later than twenty-one (21) days before the General Objection Deadline.
- Objection Deadlines. Changing the General Objection Deadline to Friday, June 16, 2017 and providing an Extended Objection Deadline of Thursday, July 13, 2017 at 12:00 p.m. (CT) for events that occur after the General Objection Deadline.
- Stalking Horse Bids. Providing that the Debtor will email a copy of any Qualified Bid from potential Stalking Horse Purchasers with one business day after receiving such bid to counsel for the Committee.
- Bid Protections. Providing that the Bid Protections amounts will be noticed to parties in interest with the results of the auction.
- Qualified Bids. Adding that the Debtor will send copies of Bids received by the Bid Deadline to counsel for the Committee within one (1) day of receipt.
- Credit Bidding. Acknowledging that parties in interest may have a right to credit bid, provided that any credit bid is subject to (i) satisfaction of all senior claims in full, (ii) demonstration of the validity and scope of the liens on the particular Asset, and (iii) the rights of all parties to challenge the right to credit bid under section 363(k) of the Bankruptcy Code; and adding a process for parties, other than the DIP Agent, to seek credit bidding rights at the Auction by submitting evidence of the validity and scope of the liens with the Bid and requiring such party to get entry of an order from the Bankruptcy Court permitting it to credit bid if the Debtor objects to the asserted credit bid right.

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<sup>1</sup> The summary contained herein is qualified in its entirety by the revised Bidding Procedures, revised Sale Notice and revised Assumption and Assignment Notice. All capitalized terms that are used in this summary but not otherwise defined herein shall have the meaning ascribed to such term in the Bidding Procedures. To the extent there are any conflicts or inconsistencies between this summary and the Bidding Procedures, the terms of the Bidding Procedures shall govern in all respects.

- Minimum Overbid. Revising the Minimum Overbid to require that a Qualified Bidder wishing to submit a bid at the Auction for the assets subject to the Stalking Horse APA or a bid at the Auction for all or substantially all of the Debtor's assets to submit a bid in an amount that is at least (i) the total consideration contained in the Stalking Horse APA, plus (ii) the break-up fee owed to the Stalking Horse Bidder, (ii) plus \$250,000.
- Reservation of Rights. Confirming that the Debtor may not reduce the amount of time for parties to object under the Bidding Procedures without consent of the affected parties or further order from the Bankruptcy Court.
- Consultation Parties. Adding a consultation parties provision that provides the following terms. The Debtor will confer with counsel to First National Bank of Central Texas, counsel to Eleanor Fiduciary Services, counsel to the Official Committee of Unsecured Creditors, counsel to Platinum Partners Credit Opportunities fund and Platinum Partners Liquidity Opportunity fund, and counsel to the Liquidators of Platinum Partners Value Arbitrage Fund, L.P. (each a "Consultation Party" and collectively, the "Consultation Parties") on (i) the selection of the Stalking Horse Bidder, (ii) the Incremental Bid Amount, (iii) any Bid the Debtor determines is not a Qualified Bid, (iv) the Baseline Bid, and (v) any modification of the Bidding Procedures. Each Consultation Party and their advisors are entitled to attend the Auction. For any Consultation Party that attends the Auction and is not a bidder, the Debtor will confer with such Consultation Party on any adjournment of the Auction, and the determination of which Bid or Bids constitutes the highest or otherwise best offer for the purchase of the Assets, and which Bid or Bids should be selected as the Successful Bid(s). Nothing shall limit or otherwise restrict the ability of any potential bidder to enter into negotiations with any Consultation Party regarding the participation of such Consultation Party in any bid, including the assumption of Liens or liabilities of the Debtor. These negotiations shall not constitute collusion provided that the applicable Consultation Party (i) fully discloses the negotiations to the Debtor, the DIP Agent, and the other Consultation Parties, (ii) is not a bidder and (iii) does not share any confidential information received from one bidder with any other bidder. The Debtor shall confer as set forth in the Bidding Procedures to address issues and objections prior to the sale hearing; however, the Debtor shall have the sole authority to take actions and make decisions without receiving the approval of any Consultation Party or the DIP Agent.

7. The Sale Notice and Assumption and Assignment Notice have been revised to include corresponding changes.

**RELIEF REQUESTED**

8. The Debtor requests the entry of the revised order attached hereto (as revised, the “Bidding Procedures Order”) approving the revised Bidding Procedures as supplemented and amended by the revised Bidding Procedures and as summarized above. A redline of reflecting the changes to the revised Bidding Procedures Order to the original Bidding Procedures Order is attached.

**BASIS FOR RELIEF**

**A. Approval of Bid Protections is Appropriate**

9. The Debtor seeks the pre-approval of this Court to allow the Debtor to choose a Stalking Horse Bidder or Bidders and to offer such bidder(s) Bid Protections without the need to return to Court. The ability of the Debtor to offer any Stalking Horse Bidder the Bid Protections is beneficial to the Debtor’s estate and creditors in that the Debtor can provide the incentive required to induce a potential Bidder to submit or increase its bid prior to the Auction. To the extent bids can be improved prior to the Auction, a higher floor is established for further bidding. Thus, even if a Stalking Horse Bidder is offered the Bid Protections and ultimately is not a Successful Bidder, the Debtor, its estate and creditors will have benefited from the higher floor established by the improved bids.

10. As set forth in the Bidding Procedures, the Debtor must enter into a stalking horse purchase agreement or agreements on terms no less favorable and substantially similar to the terms of the Form APA which, individually or collectively, are sufficient to indefeasibly pay in full in cash and completely satisfy the DIP Obligations (as defined in the Final DIP Order). The Debtor will exercise prudent business judgment before offering or agreeing to any of the Bid Protections and will offer or agree to such protections only if, in the reasonable business

judgment of the Debtor, it is likely to result in the realization of greater value for the Debtor and its estate.

11. Approval of break-up fees and other forms of bidding protections in connection with the sale of significant assets pursuant to section 363 of the Bankruptcy Code is appropriate to protect a potential purchaser from competing purchasers that use a stalking horse offer as a baseline to submit a better offer without undertaking customary diligence. *In re Metaldyne Corp.*, 409 B.R. 661, 670 (Bankr. S.D.N.Y. 2009).

12. Bankruptcy courts have approved bidding incentives similar to the break up fee and expense reimbursement under the business judgment rule, which proscribes judicial second-guessing of the actions of the Debtor taken in good faith and in the exercise of its business judgment. *See e.g., In re ASARCO LLC*, 441 B.R. 813, 832 (S.D. Tex. 2010), *aff'd sub nom. In re ASARCO, L.L.C.*, 650 F.3d 593 (5th Cir. 2011).

13. In addition, the maximum amount of the break-up fee (3.0% of the cash or cash equivalent of the purchase price) is reasonable relative to the assets being proposed to be purchased, and comparable to those approved in the context of asset sales in other chapter 11 cases. *See In re TXCO Resources, Inc.*, Case No. 09-51807-rbk, ECF No. 813 (Bankr. W.D. Tex. Nov. 30, 2009) (approving a 3% break-up fee for the purchase of an ongoing business); *In re TWTR, Inc.*, Case No. 07-10787(PJW) (Bankr. D. Del. June 26, 2007), ECF No. 212 (approving a combined 3% break-up fee and expense reimbursement).

14. Likewise, any Stalking Horse Bidder should be entitled to the expense reimbursement. Approval of the expense reimbursement as a form of bidder protection in connection with a sale of assets pursuant to § 363 of the Bankruptcy Code is appropriate and has become a recognized practice in chapter 11 cases because it enables a debtor to ensure a

sale to a contractually committed buyer at a price the debtor believes is fair, while providing the debtor with the potential of obtaining an enhanced recovery through an auction process. *In re Texas Rangers Baseball Partners*, 431 B.R. 706, 715 (Bankr. N.D. Tex. 2010) (“[I]t is not uncommon for an agreement to provide for payment of the stalking horse’s expenses in addition to a breakup fee”); *In re APP Plus, Inc.*, 223 B.R. 870, 874 (Bankr. E.D.N.Y. 1998) (“Typically, the break-up fee covers reimbursement of the disappointed purchaser’s out-of-pocket expenses . . .”).

15. There is also substantial justification and existing precedent for authorizing the Debtor to choose a stalking horse bidder after approval of the Bid Procedures but before the Auction in a situation in which (a) the stalking horse bidder is not readily apparent and (b) any such later determination to enter into a Stalking Horse Agreement will only be made after consultation with key creditors. *See, e.g., In re Dune Energy, Inc.*, No. 15-10336 (Bankr. W.D. Tex. Apr. 7, 2015), ECF No. 149 (authorizing debtors to provide bid protection to a stalking horse bidder in the event the debtors entered into a stalking-horse PSA); *In re Footstar, Inc.*, No. 04-22350 (Bankr. S.D.N.Y. Apr. 5, 2004), ECF No. 316 (approving a break-up fee if the debtors, after consultation with the DIP lenders and the creditors’ committee, determined in their business judgment to enter into a stalking horse asset purchase agreement); *In re Rhythms NetConnections Inc.*, No. 01-14283 (Bankr. S.D.N.Y. Aug. 8, 2001), ECF No. 51 (approving a break-up fee if the debtors determined in their sound business judgment that it was in the best interests of the estates to enter into a stalking horse asset purchase agreement); *In re Electric Transp. Eng’g Corp. (d/b/a Ecotality N. Am.)*, No. 2:13-BK-16126 (RJH) (Bankr. D. Ariz. Sept. 19, 2013), ECF No. 56 (pre-authorizing debtors to enter into stalking horse agreement(s) and to provide bid protections to the potential



stalking horse purchaser(s)); *see also In re Athletes Foot Stores LLC*, No. 04-17779 (SMB) (Bankr. S.D.N.Y. Dec. 15, 2004), ECF No. 55 (approving break-up fee and expense reimbursement for unknown stalking horse, subject to the consent of a major prepetition lender); *In re Supplements LT Inc. (f/k/a In re Leiner Health Products Inc.)*, No. 08-10446 (Bankr. D. Del. May 14, 2008), ECF No. 299 (authorizing the debtors, with the consent of, *inter alia*, the creditors' committee, to set a telephonic hearing with the court to approve a stalking horse agreement and break-up fee). In this case, where the Debtor does not yet have a stalking horse bid but are hopeful that such a bid will emerge, pre-approval of the Bid Protections will be beneficial to the Debtor's efforts to attract a higher and better offer to maximize value for all constituents.

16. The Debtor submits that, to the extent its determines, after consultation with the Consultation Parties, including the DIP Agent and the Creditors' Committee, that it is in the best interests of its estate to enter into a Stalking Horse Agreement, the Bid Protections meet the business judgment standard. The break-up fee is reasonable because, at a maximum of 3.0% of any cash or cash equivalent portion of the Purchase Price, (i) it is not excessive compared to bidding protections approved in other cases and (ii) it will ultimately enhance the Debtor's estate. More generally, the Bid Protections would enable the Debtor to assure an expeditious sale to a contractually committed bidder at a price that the Debtor believe is fair and reasonable, while providing the Debtor the opportunity to obtain even more value for its Assets through the Auction.

17. The Debtor submits that the proposed Bid Protections will not chill bidding – instead, they will only be offered, after consultation with the Consultation Parties, including the DIP Agent and the Creditors' Committee, if the Debtor receives a bid that is worthy of

such protections. Moreover, the Bid Protections are reasonable, and their availability to the Debtor will enable the Debtor to maximize the value of its Assets. Accordingly, the Debtor should be authorized to offer such forms of bid protection, as is necessary in the Debtor's business judgment.

**B. Revised Bidding Procedures are Appropriate**

18. The Debtor has revised the Bidding Procedures to address comments and objections received from parties in interest. The Debtor believes that the revisions to the Bidding Procedures, and the corresponding revisions to the Sale Notice and the Assumption and Assignment Notice, are appropriate under the circumstances and should be approved as an exercise of the Debtor's reasonable business judgment.

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WHEREFORE, the Debtor respectfully requests that this Court (i) enter an order substantially in the form of the revised Bidding Procedures Order attached hereto: (a) authorizing and approving the revised Bidding Procedures; (b) approving the form and manner of the revised Sale Notice; (c) scheduling the Auction and Sale Hearing; (d) approving the Assumption and Assignment Procedures and the revised Assumption and Assignment Notice; and (e) granting such other and further relief as it deems just and proper; and (ii) at the conclusion of the Sale Hearing, enter an order (or orders): (a) approving the Sale(s) of the Assets free and clear of all liens, encumbrances, claims and other interests pursuant to a Qualified APA; (b) authorizing the assumption and assignment of any Assumed and Assigned Contracts; and (c) granting such other and further relief as it deems just and proper.

Dated: May 8, 2017

Respectfully submitted,

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>In re:</b>	§	
	§	
<b>NORTHSTAR OFFSHORE GROUP, LLC,</b>	§	<b>Case No. 16-34028</b>
	§	
<b>DEBTOR.</b>	§	<b>(Chapter 11)</b>
	§	

**BIDDING PROCEDURES**

On \_\_\_\_\_, 2017, the U.S. Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”) entered the *Order (A) Approving Sale and Bidding Procedures in Connection with Sale of Assets of the Debtor, (B) Approving Form and Manner of Notice, (C) Scheduling Auction and Sale Hearing, (D) Authorizing Procedures Governing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (E) Granting Related Relief* [Docket No. \_\_\_] (the “Bidding Procedures Order”) in which the Court approved the following procedures (the “Bidding Procedures”) setting forth the process by which Northstar Offshore Group, LLC (“Northstar” or the “Debtor”) is authorized to conduct a sale or sales (the “Sale”) of substantially all of its assets (collectively, the “Assets”), which are defined and described in further detail in the Form APA. Capitalized terms used but not defined herein have the meanings assigned to such terms in the Bidding Procedures Order. Copies of the Bidding Procedures Order and other related documents are available on Prime Clerk’s website at: <https://cases.primeclerk.com/northstar>.

**1. Key Dates**

Identification of Stalking Horse Bidder	June 5, 2017
General Objection Deadline	June 16, 2017
Bid Deadline	June 27, 2017
Auction	July 10, 2017
Extended Objection Deadline	July 13, 2017
Sale Hearing	July 17, 2017
Projected Closing Date	August 1, 2017

## 2. Assets to be Sold

The Assets consist of the Debtor's leasehold and other interests in wells, leases located in Texas and Louisiana, as well as related assets, including, but not limited to, various production facilities, pipelines, machinery and production equipment appurtenant to or used in connection with these operations.<sup>1</sup> The Assets will be sold free and clear of all liens, claims, encumbrances and other interests (except as otherwise set forth in the applicable asset purchase agreement).

The Debtor may consider bids for all or substantially all of the Assets (or any portion of the Assets) in a single bid from a single bidder or multiple bids from multiple bidders for the Assets. Bids to purchase the Assets must consist of cash (or credit bids under section 363(k)) plus assumption of any specified liabilities.

## 3. Due Diligence

Subject to execution of a confidentiality agreement on terms reasonably acceptable to the Debtor (a "Confidentiality Agreement"), any party willing to submit any proposal, solicitation or offer (each, a "Bid") for the Assets (such party, a "Potential Bidder") may be granted access to public and non-public information relating to the Assets to facilitate its consideration of making its Bid, including access to the Debtor's on-line data room (the "Due Diligence Data Room"). Any confidentiality agreement previously entered into between the Debtor and a Potential Bidder in effect on the date of the entry of the Bidding Procedures Order shall be deemed to be a Confidentiality Agreement for the purposes of these Bidding Procedures.

The Debtor shall provide to each Potential Bidder reasonable due diligence information as necessary to enable such Potential Bidder to evaluate the Assets. Potential Bidders interested in conducting due diligence should contact the Debtor's investment banker, Parkman Whaling LLC, JP Morgan Chase Tower, 600 Travis Street, Suite 600, Houston, TX 77002, Tel: (713) 333-8400; Attn: Michael E. Hanson, Jr., email: mhanson@parkmanwhaling.com. The Debtor shall have no obligation to furnish any due diligence information after the Bid Deadline and shall have no obligation to furnish due diligence information requested by one Potential Bidder to the other Potential Bidders.

In connection with the provision of due diligence information to Potential Bidders, the Debtor shall not furnish any confidential information relating to the Assets, liabilities of the Debtor, or the Sale to any person except a Potential Bidder or such Potential Bidder's duly authorized representatives to the extent covered by the applicable Confidentiality Agreement.

The Debtor and its advisors shall coordinate all reasonable requests for additional information and due diligence access from Potential Bidders (including on-site inspection of Assets); provided, however, that the Debtor may decline to provide such information to any Potential Bidder who, in the Debtor's reasonable business judgment has not established that such Potential Bidder intends in good faith to, or has the capacity to, consummate a transaction. No conditions relating to the completion of due diligence shall be permitted to exist after the Bid Deadline.

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<sup>1</sup> The Assets and the Debtor's interests therein are more particularly described in the Form APA.

#### **4. “As is, Where is”**

Other than as specifically provided in a Qualified APA(s) (as defined below), as applicable, any Sale of the Assets shall be without representation or warranties of any kind, nature or description by the Debtor, its agents or its estate. All of the Assets shall be transferred “as is,” “where is” and “with all faults.” THE DEBTOR EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE NATURE, QUALITY, VALUE OR CONDITION OF ANY ASSET. Except as otherwise provided in the Form APA or applicable Qualified APA, all of the Debtor’s right, title, and interest in and to the respective Assets will be transferred free and clear of all liens, claims, encumbrances and other interests in accordance with Section 363(f) of the Bankruptcy Code.

Each Potential Bidder for any of the Assets shall be deemed to acknowledge and represent that it: (a) has had an opportunity to conduct due diligence regarding the Assets prior to making its Bid; (b) has relied solely upon its own independent review, investigation, and inspection of any document including, without limitation, executory contracts and unexpired leases, in making its Bid; and (c) did not rely upon or receive any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, with respect to the Assets, or the completeness of any information provided in connection with the Sale or the Auction.

#### **5. Stalking Horse Bids**

Subject to the provisions set forth herein and in consultation with the DIP Agent, the Debtor shall, on or before June 5, 2017 (or such later date as required by the DIP Credit Agreement as may be amended from time to time) identify a stalking horse purchaser or purchasers (individually or each a “Stalking Horse Purchaser”) and enter into a stalking horse purchase agreement or agreements on terms no less favorable and substantially similar to the terms of the Form APA (each a “Stalking Horse APA”) which, individually or collectively, are sufficient to indefeasibly pay in full in cash and completely satisfy the DIP Obligations (as defined in the Final DIP Order) (the “Stalking Horse Bid”). The Stalking Horse Bid shall be subject to higher or otherwise better offers at the Auction (defined below), with any Bidder that submits a Qualified Bid entitled to participate at the auction. The Debtor shall email a copy of any Qualified Bid from potential Stalking Horse Purchasers within one (1) business day after receiving such bid to counsel for the Committee.

The Stalking Horse APA(s) may contain certain customary terms and conditions, including expense reimbursement and a break-up fee in favor of the Stalking Horse Bidder(s) (the “Bid Protections”) in amounts set forth herein. The Debtor may, without further order of the Bankruptcy Court, grant a break-up fee and expense reimbursement to each bidder the Debtor identifies as a Stalking Horse Bidder; provided that, the aggregate break-up fee shall not exceed 3.0% of the cash or cash equivalent portion of the purchase price set forth in the Stalking Horse APA and the expense reimbursement shall not exceed the aggregate of \$200,000.00 (as the Debtor may allocate in its discretion if more than one Stalking Horse Bidder). The break-up fee will only be paid if a Sale transaction closes and the Stalking Horse Bidder is not the Successful Bidder. The expense reimbursement will be paid from the cash proceeds of a Sale and only for

the Stalking Horse Bidder's documented reasonable out-of-pocket expenses incurred in connection with the Sale. Provided that the Bid Protections to each Stalking Horse Bidder and the terms and conditions under which such Bid Protections would be payable to the Stalking Horse Bidder are consistent with the terms set forth herein, such Bid Protections are deemed administrative expenses under section 503(b) of the Bankruptcy Code. The Bid Protection amounts will be noticed to parties in interest with the results of the auction.

To the extent the Debtor enters into a Stalking Horse APA, the Debtor shall serve notice of the Stalking Horse APA (each, a "Stalking Horse Notice") on all parties receiving notice of the motion to approve the Bidding Procedures (the "Motion") at least four (4) business days before the General Objection Deadline. Each Stalking Horse Notice will include (i) the identity of the Stalking Horse Bidder; (ii) a summary of the key terms of the Stalking Horse APA; and (iii) a summary of the type and amount of Bid Protections, if any, proposed to be afforded to the Stalking Horse Bidder.

Any Stalking Horse APA executed by the Debtor and the transactions contemplated thereby will be deemed a Qualified Bid for all purposes, and any Stalking Horse Bidder party to a Stalking Horse APA executed by the Debtor will be deemed to be a Qualified Bidder.

No party submitting a bid shall be entitled to a break-up fee or expense reimbursement except for the Bid Protections granted to a Stalking Horse Bidder. Any substantial contribution claims under section 503(b) of the Bankruptcy Code or otherwise by any bidder are deemed waived in connection with submitting a bid.

## **6. Qualified Bids**

In order to constitute a Qualified Bid (as defined below), any proposal, solicitation or offer for the Assets (each, a "Bid") submitted by a bidder (each, a "Bidder") must (i) be submitted in writing prior to **Tuesday, June 27, 2017 at 12:00 p.m. (Central Time)** (the "Bid Deadline") and (ii) satisfy the following requirements, as determined by the Debtor in its reasonable business judgment after consultation with the DIP Agent (collectively, the "Bid Requirements"):

- (a) Qualified APA. Bid must contain a signed definitive asset purchase agreement (together with a copy of the signed agreement that is marked to show changes from the Form APA) (a "Qualified APA") and shall:
  - i. identify the Assets the Bidder seeks to purchase,
  - ii. contain the form of and total consideration to be paid by such Bidder, including the amount of proposed cash consideration and liabilities to be assumed, with such consideration allocated on an asset by asset basis,
  - iii. provide for the assumption of all plugging and abandonment and other obligations relating to the Assets subject to the Bid as set forth in Section 1.4(g) of the Form APA (the "Assumed Liabilities"),

- iv. provide for the compliance with the bonding obligations required by Section 6.10 of the Form APA relating to the Assets subject to the Bid, and
  - v. be on terms no less favorable (in the Debtor's reasonable business judgment after consultation with the DIP Agent) than the Form APA, including after consideration of any Bid Protections payable thereunder, if any.
- (b) No Contingencies. Bid must not be subject to any: (a) financing contingency, (b) contingency relating to due diligence after the Bid Deadline, (c) contingency relating to the approval of the Bidder's board of directors or other internal approvals or non-governmental third-party consents or approvals, or (d) any conditions precedent to the Bidder's obligation to purchase the Assets other than those included in the Form APA.
- (c) Good Faith Deposit. A Bid must be accompanied by the provision of a bank check or wire transfer in the amount of at least 10% of the purchase price proposed in the Qualified APA as a good faith deposit (the "Good Faith Deposit") as liquidated damages if the Bidder shall default with respect to its offer. If the DIP Agent is credit bidding, the DIP Agent shall not be required to submit a Good Faith Deposit.
- (d) Commitment. Bid must contain a written statement that the Bidder agrees to be bound by the terms of the Bidding Procedures and the Bidding Procedures Order and include a commitment that the Bidder shall (i) commence and complete all filings with respect to necessary government and other approvals within three (3) days following the entry of the Sale Order (as defined in the Bidding Procedures Order) with respect to the relevant Assets and (ii) consummate the purchase of the relevant Assets within fifteen (15) days following entry of the Sale Order.
- (e) Assumed Contracts and Leases. The Bid must identify, with particularity, each and every executory contract and unexpired lease the Bidder intends to assume; provided, however, that such list of contracts may be later modified to the extent permitted under the Qualified APA.
- (f) Proof of Authority and Capability. The Bid must be accompanied by evidence satisfactory to the Debtor that the Bidder is willing, authorized (including by such Bidder's board of directors or comparable governing body), capable and qualified financially, operationally, legally and otherwise, of unconditionally performing all obligations under the Qualified APA, including, without limitation, (1) all Assumed Liabilities with respect to the relevant Assets, and (2) the ability to provide adequate assurance of future performance under contracts and leases to be assumed pursuant to Section 365 of the Bankruptcy Code. The Bid will also contain written evidence of a firm commitment for financing or other evidence of ability to consummate the proposed transaction without financing, provided however, that the Debtor will determine in its business judgment and after



consultation with the DIP Agent whether the written evidence of such financial wherewithal is acceptable; provided further that such evidence need not be provided by the DIP Agent if its entire Bid is a credit bid.

- (g) Backup Successful Bidder. Bid must provide (i) that the Bidder agrees to serve as the Backup Successful Bid (as defined herein) if it is selected as the next highest and best bid for any particular Assets after the Successful Bid is determined in accordance with the Bidding Procedures, and (ii) that the Bidder's Bid shall remain open and irrevocable until at least thirty (30) days after the entry of an order by the Bankruptcy Court approving a definitive agreement providing for the Sale of those Assets.
- (h) Identity of Bidders. Fully disclose the identity of each entity that will be bidding in any Auction scheduled by the Debtor (and any equity holders in the case of a Bidder which is an entity specially formed for the purposes of effectuating the contemplated transaction) and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction.
- (i) Be submitted to counsel to the Debtor: Diamond McCarthy, LLP, 909 Fannin, Suite 1500, Houston, TX, 77010 Attn: Kyung S. Lee and Charles Rubio, klee@diamondmccarthy.com and crubio@diamondmccarthy.com, and to the Debtor's investment bankers, Michael E. Hanson, Jr., mhanson@parkmanwhaling.com, so as to be received not later than the Bid Deadline. Within one (1) day of receipt, counsel for the Debtor shall forward any Bid received to (a) counsel to the DIP Agent, Andrews Kurth Kenyon LLP, 600 Travis, Suite 4200, Houston, Texas 77002, Attn: Timothy A. "Tad" Davidson II and Joseph Rovira, taddavidson@andrewskurth.com and josephrovira@andrewskurth.com and (b) counsel to the Committee, DLA Piper LLP (US), 1717 Main Street, Suite 4600, Dallas, Texas 75201-4629, Attn: Vincent P. Slusher and David E. Avraham, vince.slusher@dlapiper.com and david.avraham@dlapiper.com. The Debtor, in consultation with the DIP Agent, may extend the Bid Deadline until the start of any Auction for one or more bidders without further notice, but shall not be obligated to do so.

## **7. Qualified Bidders**

A Bid that satisfies each of the Bid Requirements, as determined in the Debtor's reasonable business judgment after consultation with the DIP Agent shall constitute a "Qualified Bid," and such Potential Bidder shall be a "Qualified Bidder." The Debtor shall notify each Qualified Bidder that such party is a Qualified Bidder within two (2) business days after the Bid Deadline. The Bidder identified by the Debtor as the "Stalking Horse Bidder" will be deemed a Qualified Bidder and the Stalking Horse Bidder's bid will be deemed a Qualified Bid. For the avoidance of doubt, the DIP Agent shall be deemed a Qualified Bidder and any bid submitted by the DIP Agent shall be deemed a Qualified Bid so long as it satisfies subsections (a), (b), (d) and (e) of Section 6 above.

If any Bid is determined by the Debtor in consultation with the DIP Agent not to be a Qualified Bid, the Debtor shall cause such Bidder to be refunded its Good Faith Deposit on or within three (3) business days after the Bid Deadline.

Between the date that the Debtor notifies a Potential Bidder that it is a Qualified Bidder and the Auction, the Debtor may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Except as otherwise set forth in a Qualified APA, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid without the written consent of the Debtor after consultation with the DIP Agent, except for proposed amendments to increase the consideration contemplated by, or otherwise improve the terms of, the Qualified Bid, during the period that such Qualified Bid remains binding as specified herein; provided, that any Qualified Bid may be improved at the Auction as set forth herein. Any improved Qualified Bid must continue to comply with the requirements for Qualified Bids herein.

## **8. Right to Credit Bid**

For the avoidance of doubt, the DIP Agent or its designee is deemed an allowed “Credit Bidder” and may credit bid all outstanding amounts under the DIP Facility pursuant to section 363(k).

Nothing herein shall limit or restrict the right of any holder of a claim secured by the Assets, whether such claim holder is First National Bank of Central Texas, Eleanor Fiduciary Services, Platinum Partners Credit Opportunities Fund, Platinum Partners Liquidity Opportunity Fund, Platinum Partners Value Arbitrage Fund L.P. or any other party, to credit bid pursuant to section 363(k); provided that, any credit bid (other than the credit bid of the DIP Agent) is subject to (i) satisfaction of all senior claims in full, (ii) demonstration of the validity and scope of the lien on the particular Asset, and (iii) the rights of all parties in interest to challenge the right to credit bid for cause under section 363(k) of the Bankruptcy Code. Any rights to object to credit bidding is hereby preserved.

Any party, other than the DIP Agent, seeking to credit bid will include with its Bid evidence of the validity and scope of its liens. Within two (2) business days after submission of the Bid to the Debtor, the Debtor, after consultation with the DIP Agent, will notify the bidder if it objects to the credit bid. If the Debtor objects to the credit bid, such party will be barred from credit bidding at the Auction unless the party seeks relief from the Bankruptcy Court and the Bankruptcy Court enters an order permitting such party to credit bid prior to the Auction.

## **9. Notice Procedures**

### **a. Notice of Auction and Sale Hearing**

After entry of the Bidding Procedures Order, the Debtor will cause the Notice of Auction and Sale Hearing, substantially in the form attached as Exhibit 2 to the Bidding Procedures Order (the “Sale Notice”), to be served by first-class mail, postage prepaid, facsimile, electronic transmission, or overnight mail upon: (i) all entities known by the Debtor to have expressed an interest in a transaction with respect to the Assets during the past eighteen (18) months, including all Qualified Bidders; (ii) all state and local taxing authorities or recording offices which have a

reasonably known interest in the relief requested; (iii) all of the Debtor's insurers; (iv) all non-debtor parties to relevant contracts or leases (executory or otherwise); (v) all parties who are known or reasonably believed, after reasonable inquiry, to have asserted any lien, encumbrance, claim, or other interest in the Assets; and (vi) upon all parties set forth in the Debtor's Master Service List maintained in these cases (to the extent any party to receive notice thereby has not received notice pursuant to sections (i) through (v) above). The Debtor will serve the Sale Notice no later than twenty-one (21) days before the General Objection Deadline.

Objections, if any, to the Sale of the Assets, the assumption and assignment of the Assumed and Assigned Contracts, or any relief requested in the Motion other than the relief granted in the Bidding Procedures Order must be: (a) in writing; (b) signed by counsel or attested to by the objecting party; (c) in conformity with the Bankruptcy Rules and the Local Rules of this Court; (d) filed with the Clerk of the Court for the Southern District of Texas, Houston Division, 515 Rusk, Houston, TX 77002, by no later than **Friday, June 16, 2017 at 5:00 p.m. (Central Time)** (the "General Objection Deadline"), provided, however, that any party may object based on events occurring after the General Objection Deadline until **Thursday, July 13, 2017 at 12:00 p.m. (Central Time)** (the "Extended Objection Deadline"); and (e) served in accordance with the Local Rules so as to be received on or before the relevant objection deadline (these procedures are collectively referred to as the "General Objection Procedures"). Each objection shall state the legal and factual basis of such objection.

Only those objections made in compliance with the General Objection Procedures will be considered by the Court at the Sale Hearing. The failure of any objecting person or entity to file its objections by the General Objection Deadline and in accordance with the General Objection Procedures will be a bar to the assertion, at the Sale Hearing or thereafter, of any objection (including to the Sale of Assets free and clear of Liens and assumption and assignment of Assumed and Assigned Contracts) and shall be deemed to constitute any such party's consent to the entry of the Sale Order and consummation of the Sale and all transactions related thereto, including, without limitation, such assumption and assignment of the Assumed and Assigned Contracts.

b. Consensual Rights Notice

If any person or entity receiving the Sale Notice asserts that any property or right (including an Assumed and Assigned Contract) cannot be transferred, sold, assumed, and/or assigned free and clear of all liens, encumbrances, claims and other interests except as otherwise set forth in the applicable purchase and sale agreement on account of one or more alleged approval rights, consent rights, preferential purchase rights, rights of purchase, rights of first refusal, rights of first offer, tag-along rights or similar rights (each, a "Consensual Right"), then such person or entity must file a notice with the Court with all supporting documentation (a "Consensual Rights Notice") on or before the General Objection Deadline. Each Consensual Rights Notice must identify the properties or rights that are subject to such alleged right, identify the type of right(s) claimed by such party, identify the agreement, document, or statute giving rise to such right and identify the portion of the agreement, document or statute giving rise to such right. For avoidance of doubt, the Debtor's sureties must file a Consensual Rights Notice if

the sureties are going to assert that the bonds give them a right to consent to or otherwise condition a sale of the Debtor's property.

c. Notice of Assumption and Assignment of Contracts

The Debtor will serve the completed Assumption and Assignment Notice using the form attached as Exhibit 3 to the Bidding Procedures Order (the "Assumption and Assignment Notice"), by first-class mail, facsimile, electronic transmission, or overnight mail on (a) each counterparty under each potential Assumed and Assigned Contract (as defined below) (a "Contract Counterparty") and its attorney, if known, in each case, at the last known address available to the Debtor. The Debtor will serve the Assumption and Assignment Notice no later than twenty-one (21) days before the General Objection Deadline.

The Assumption and Assignment Notice shall set forth the following information: (i) the Contract(s) and/or Lease(s) that may be assumed by the Debtor and assigned to the Successful Bidder(s); (ii) the name and address of the Contract Counterparty thereto; (iii) the amount, if any, determined by the Debtor to be necessary to be paid to cure any existing default in accordance with Sections 365(b) and 365(f)(2) of the Bankruptcy Code (the "Cure Amount"); and (iv) the deadlines by which any such Contract Counterparty must file an objection to the proposed assumption and assignment of any Assumed and Assigned Contract, provided, however, that the presence of any Contract or Lease on an Assumption and Assignment Notice does not constitute an admission that such Contract or Lease is an executory contract or unexpired lease.

As soon as practicable after the conclusion of the Auction, the Debtor shall file with the Bankruptcy Court and serve by facsimile, electronic transmission, overnight, or first-contract mail on the Contract Counterparty (and its attorney, if known) to each Assumed and Assigned Contract a notice: (a) identifying the Successful Bidder(s); (b) stating which Contract(s) and/or Lease(s) will be assumed and assigned thereto; and (c) containing a statement as to the Successful Bidder(s)' ability to perform the Debtor's obligations under the applicable Assumed and Assigned Contracts.

**10. No Qualified Bids**

If the Debtor does not receive more than one Qualified Bid with respect to any or all of the Assets, the Debtor shall report the same to the Bankruptcy Court and proceed to the Sale Hearing

**11. Auction**

In the event the Debtor receives more than one Qualified Bid with respect to any or all of the assets, the Debtor will conduct the Auction.

The Debtor, in consultation with the DIP Agent, shall determine which Qualified Bid shall constitute the starting bid at the Auction (the "Baseline Bid"). The Debtor shall notify each Qualified Bidder of the contents of the Baseline Bid. The Baseline Bid shall be subject to higher and better Bids at the Auction.

In making the determination of which Qualified Bid(s) constitutes the Successful Bid(s), the Debtor, in consultation with the DIP Agent, shall take into account any factors the Debtor reasonably deems relevant to the value of the Qualified Bid(s) to the Debtor's estate, including, among other things: (a) the number, type, and nature of any changes to the Form APA requested by the Qualified Bidder, including the type and amount of Assets sought and the liabilities of the Debtor to be assumed in the Bid and the liabilities, if any, which will be released as a result of such Bid; (b) the amount and nature of the total consideration; and (c) the likelihood of the Bidder's ability to close a transaction and the timing thereof (collectively, the "Bid Assessment Criteria").<sup>2</sup> The Debtor may evaluate competing bids in a manner that will maximize the aggregate value to the estate.

In the event the Debtor, in consultation with the DIP Agent, determines to conduct an Auction, the Auction shall take place on **Monday, July 10, 2017** (the "Auction Date"), beginning at 10:00 a.m. (CST), at the offices of Diamond McCarthy LLP at 909 Fannin Street, Suite 3700, Houston, Texas 77010, or such later date and time or such other location as may be designated by the Debtor (the "Auction") to determine the highest or best bid. The Auction shall be conducted in a timely fashion according to the following procedures:

a. The Debtor Shall Conduct the Auction

The Debtor and its professionals shall direct and preside over the Auction. At the start of the Auction, the Debtor shall describe the terms of the Baseline Bid. All incremental Bids made thereafter shall be Overbids (as defined herein) and shall be made and received on an open basis, and all material terms of each Overbid shall be fully disclosed to all other Qualified Bidders. The Debtor shall maintain a written transcript of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids, and the Successful Bid(s).

In order to participate in the Auction, each prospective purchaser must be a Qualified Bidder. Each Qualified Bidder must have at least one individual representative with authority to bind the Qualified Bidder attend the Auction in person. Only Qualified Bidders and their legal and financial advisors shall be entitled to attend and/or bid at the Auction. For the avoidance of doubt, the DIP Agent and its advisors are entitled to attend the Auction whether or not the DIP Agent submits a Bid. By attending the Auction, each party present at the Auction agrees to keep the Auction, the Bids at the Auction and all details concerning the Auction confidential. The Auction shall be conducted in the presence of a certified court reporter who shall transcribe the Auction. The Debtor has the right to remove anyone from the Auction that the Debtor deems in its sole discretion disruptive to the Auction process.

b. Auction Procedures

A Qualified Bidder wishing to submit a bid at the Auction for the assets subject to the Stalking Horse APA or a bid at the Auction for all or substantially all of the Debtor's assets must bid in an amount that is at least (i) the total consideration contained in the Stalking Horse APA,

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<sup>2</sup> For avoidance of doubt, the Bid Assessment Criteria listed herein are not exhaustive and are provided for illustrative purposes only, and the Debtor, in consultation with the DIP Agent, may consider any additional criteria that they consider reasonably relevant to the value of any Qualified Bid.

plus (ii) the break-up fee owed to the Stalking Horse Bidder, plus (iii) \$250,000 (the “Minimum Overbid”).

Subject to the Minimum Overbid, Qualified Bidders shall submit successive Overbids in increments to be determined by the Debtor in consultation with the DIP Agent at the Auction (the “Incremental Bid Amount”) for the purchase of the Assets for which it is bidding (each an “Overbid”).

During the course of the Auction, the Debtor shall, after the submission of each Overbid, promptly inform each Qualified Bidder which Overbid reflects, in the Debtor’s view, the highest or otherwise best Bid for some or all of the Assets.

c. Consideration of Overbids

The Debtor reserves the right, in its reasonable business judgment, after consultation with the DIP Agent, to adjourn the Auction one or more times to, among other things: facilitate discussions between the Debtor and Qualified Bidders; allow Qualified Bidders to consider how they wish to proceed; and provide Qualified Bidders the opportunity to provide the Debtor with such additional evidence as the Debtor, in its reasonable business judgment may require, that the Qualified Bidder has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount.

d. Closing the Auction

- (i) The Auction shall continue until there is only one offer that the Debtor determines in consultation with the DIP Agent, subject to Bankruptcy Court approval, is the highest and/or best offer for the purchase of the Assets (whether in an aggregate sale to a single buyer or on an asset by asset basis (each a “Successful Bid” and such Bidder, the “Successful Bidder”), at which point, the Auction will be closed. The Auction shall not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an Overbid at the Auction to the then-existing Overbid(s). Such acceptance by the Debtor of the Successful Bid(s) is conditioned upon approval by the Court of the Successful Bid(s). The second highest bid, to the extent determined to be acceptable to the Debtor shall be deemed to be the backup bid (the “Backup Successful Bid” and such Bidder, the “Backup Successful Bidder”), provided, however, that the DIP Agent shall not be required to serve as the Backup Successful Bidder in connection with a credit bid. In the event that the DIP Agent makes a determination not to serve as the Backup Successful Bidder (whether before or after submitting any credit bid or other bid), the DIP Agent shall provide notice to the Debtor no later than one (1) business day after the Auction, and the third highest bidder, to the extent determined to be acceptable to the Debtor shall be deemed to be the Backup Successful Bidder.

- (ii) The identity of the Backup Successful Bidder(s) and the amount and material terms of the Backup Successful Bid(s) shall be announced by the Debtor at the conclusion of the Auction at the same time the Debtor announce the identity of the Successful Bidder(s), including the third highest bidder. The Backup Bidder(s) shall be required to keep its or their Qualified Bid(s) (or if the Backup Bidder(s) submitted one or more Overbids at the Auction, its final Overbid(s)) open and irrevocable until the closing of the transaction with the Successful Bidder(s).
- (iii) For the avoidance of doubt, nothing in these Bidding Procedures shall prevent the Debtor from exercising its fiduciary duties under applicable law.
- (iv) The Debtor shall not consider any Bids or Overbids submitted after the conclusion of the Auction. Any and all such Bids and Overbids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.
- (v) As soon as reasonably practicable after closing the Auction, the Debtor shall cause the definitive asset purchase agreement for the Successful Bid(s) to be filed with the Court.

e. No Collusion; Good Faith Bona Fide Offer

Each Qualified Bidder participating at the Auction will be required to confirm on the record that: (i) it has not engaged in any collusion with respect to the bidding; and (ii) its Qualified Bid is a good faith bona fide offer and it intends to consummate the proposed transaction if selected as the Successful Bidder.

**12. Backup Successful Bidder**

If a Successful Bidder fails to consummate an approved transaction contemplated by its Successful Bid, the Debtor may select the applicable Backup Successful Bidder as the Successful Bidder, and such Backup Successful Bidder shall be deemed a Successful Bidder for all purposes. The Debtor will be authorized, but not required, to consummate all transactions contemplated by the Bid of such Backup Successful Bidder without further order of the Court or notice to any party. In such case, the defaulting Successful Bidder's Good Faith Deposit shall be forfeited to the Debtor, and the Debtor specifically reserves the right to seek all available remedies against the defaulting Successful Bidder (or Backup Successful Bidder, if such party shall also breach or fail to perform), as applicable, including with respect to specific performance. In the event that the Backup Successful Bidder fails to consummate an approved Sale, the Assets may be sold pursuant to one or more subsequent sales. For the avoidance of doubt, the DIP Agent shall not be required to serve as the Backup Successful Bidder in connection with a credit bid. In the event that the DIP Agent makes a determination not to serve as the Backup Successful Bidder (whether before or after submitting any credit bid or other bid), the DIP Agent shall provide notice to the Debtor no later than one (1) business day after the

Auction, and the third highest bidder, to the extent determined to be acceptable to the Debtor shall be deemed to be the Backup Successful Bidder.

### **13. Highest or Otherwise Best Bid**

At all times during the Proposed Sale Process, the Debtor shall retain full discretion and right, in consultation with the DIP Agent, to determine which Bid or Bids constitutes the highest or otherwise best offer for the purchase of the Assets (whether in an aggregate sale to a single buyer or on an asset by asset basis), and which bid or bids should be selected as the Successful Bid(s), if any, all subject to final approval by the Bankruptcy Court pursuant to the provisions of Section 363(b) of the Bankruptcy Code. The Debtor, in consultation with the DIP Agent, may adopt rules for the Auction that, in its judgment, will better promote the goals of the Auction and that are not inconsistent in any material respect with any of the other material provisions hereof or of any Bankruptcy Court order.

### **14. Proceeds**

Except with respect to Assumed Liabilities and Permitted Encumbrances, all valid and properly perfected Liens against the Debtor's Assets shall attach to the net cash proceeds ultimately attributable to the Assets against which such Liens are asserted with the same validity, enforceability, priority, and force and effect as they had against the Assets or their proceeds prior to the Sale (except to the extent such Liens are assumed under the applicable asset purchase agreement). In accordance with Final Order (i) Approving Postpetition Financing, (ii) Granting Liens and Providing Superpriority Administrative Expense Status, (iii) Granting Adequate Protection, and (iv) Modifying Automatic Stay [Docket No. 326] (the "Final DIP Order"), the proceeds of the sale shall be used to indefeasibly pay in full in cash and completely satisfy the DIP Obligations (as defined in the Final DIP Order) and no order approving the sale shall be entered over the DIP Agent's objections that does not provide for the indefeasible payment in full in cash and completely satisfy the DIP Obligations.

### **15. Reservation of Rights**

The Debtor reserves the right, in consultation with the DIP Agent, to modify these Bidding Procedures at or prior to the Auction, including, without limitation, extending the deadlines set forth herein with respect to any or all Potential Bidders, imposing additional terms and conditions with respect to any or all Potential Bidders, adjourning or cancelling the Auction at or prior to the Auction and/or adjourning the Sale Hearing; provided however, the Debtor may not reduce the amount of time available to parties to object under the Bidding Procedures without the consent of the affected parties of a further Bankruptcy Court order or delete or otherwise remove this provision from the Bidding Procedures.

### **16. Consent to Jurisdiction**

All Qualified Bidders at the Auction shall be deemed to have consented to the jurisdiction of the Bankruptcy Court and waived any right to a jury trial in connection with any disputes relating to the Auction, the construction and enforcement of these Bidding Procedures, and/or the Confidentiality Agreements, as applicable.



### **17. Sale Hearing**

A hearing to consider approval of the Sale of all or substantially all of the Assets to the Successful Bidder(s) (the “Sale Hearing”) is presently scheduled to take place on **July 17, 2017 at 9:00 a.m. (Central Time)**, or as soon thereafter as counsel may be heard, before the Honorable Marvin Isgur in Courtroom 404, 515 Rusk, Houston, TX 77002.

The Sale Hearing may be continued to a later date by the Debtor by sending notice prior to, or making an announcement at, the Sale Hearing. No further notice of any such continuance will be required to be provided to any party.

At the Sale Hearing, the Debtor shall present the Successful Bid(s) to the Court for approval. Following the approval of the Successful Bid(s) at the Sale Hearing, the Debtor will be authorized to take any and all actions necessary and appropriate to complete and implement the Sale(s) contemplated by the Successful Bid(s), including, without limitation, seeking entry of one or more orders approving such Sale(s).

### **18. Return of Good Faith Deposits**

The Good Faith Deposits of all Qualified Bidders shall be held in one or more accounts by the Debtor, but shall not become property of the Debtor’s estate absent further order of the Bankruptcy Court. The Good Faith Deposit of any Qualified Bidder that is neither the Successful Bidder(s) nor the Backup Successful Bidder(s) shall be returned to such Qualified Bidder not later than five (5) business days after the Sale Hearing. The Good Faith Deposit of the Backup Successful Bidder(s), if any, shall be returned to the Backup Successful Bidder on the date that is the earlier of 72 hours after (i) the closing of the transaction with the Successful Bidder for the property bid upon by the Backups Successful Bidder(s), and (ii) thirty (30) days after the date of entry of the Sale Order. If the Successful Bidder timely closes the winning transaction, the Good Faith Deposit shall be credited towards the purchase price.

If a Successful Bidder fails to consummate a proposed transaction because of a breach by such Successful Bidder, the Debtor will not have any obligation to return the Good Faith Deposit deposited by such Successful Bidder, which may be retained by the Debtor as liquidated damages, in addition to any and all rights, remedies, and/or causes of action that may be available to the Debtor, and the Debtor shall be free to consummate the proposed transaction with the applicable Backup Successful Bidder without the need for an additional hearing or order of the Court.

### **19. No Modification of Bidding Procedures**

Except as otherwise provided herein, these Bidding Procedures may not be modified except with the Debtor’s consent in consultation with DIP Agent.

## 20. Consultation Parties

Notwithstanding anything to the contrary in these Bidding Procedures, in addition to the DIP Agent as provided herein, the Debtor will confer with counsel to First National Bank of Central Texas, counsel to Eleanor Fiduciary Services, counsel to the Official Committee of Unsecured Creditors, counsel to Platinum Partners Credit Opportunities fund and Platinum Partners Liquidity Opportunity fund, and counsel to the Liquidators of Platinum Partners Value Arbitrage Fund, L.P. (each a Consultation Party” and collectively, the “Consultation Parties”) on (i) the selection of the Stalking Horse Bidder, (ii) the Incremental Bid Amount, (iii) any Bid the Debtor determines is not a Qualified Bid, (iv) the Baseline Bid, and (v) any modification of the Bidding Procedures. The Consultation Parties and the DIP Agent reserve all rights to object to a proposed sale.

Each Consultation Party and their advisors are entitled to attend the Auction. For any Consultation Party that attends the Auction and is not a bidder, the Debtor will confer with such Consultation Party on any adjournment of the Auction, and the determination of which Bid or Bids constitutes the highest or otherwise best offer for the purchase of the Assets, and which Bid or Bids should be selected as the Successful Bid(s). Nothing herein shall limit or otherwise restrict the ability of any potential bidder to enter into negotiations with any Consultation Party regarding the participation of such Consultation Party in any bid, including the assumption of Liens or liabilities of the Debtor. These negotiations shall not constitute collusion provided that the applicable Consultation Party (i) fully discloses the negotiations to the Debtor, the DIP Agent and the other Consultation Parties, (ii) is not a bidder and (iii) does not share any confidential information received from one bidder with any other bidder.

**The Debtor shall confer with the Consultation Parties and the DIP Agent as set forth herein to address issues and objections prior to the sale hearing; however, the Debtor shall have the sole authority to take actions and make decisions without receiving the approval of any Consultation Party or the DIP Agent.**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<p><b>In re:</b></p> <p><b>NORTHSTAR OFFSHORE GROUP, LLC,</b></p> <p style="text-align: center;"><b>DEBTOR.</b></p>	§ § § § § §	<p><b>Case No. 16-34028</b></p> <p><b>(Chapter 11)</b></p>
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**BIDDING PROCEDURES**

On \_\_\_\_\_, 2017, the U.S. Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”) entered the *Order (A) Approving Sale and Bidding Procedures in Connection with Sale of Assets of the Debtor, (B) Approving Form and Manner of Notice, (C) Scheduling Auction and Sale Hearing, (D) Authorizing Procedures Governing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (E) Granting Related Relief* [Docket No. \_\_\_\_] (the “Bidding Procedures Order”) in which the Court approved the following procedures (the “Bidding Procedures”) setting forth the process by which Northstar Offshore Group, LLC (“Northstar” or the “Debtor”) is authorized to conduct a sale or sales (the “Sale”) of substantially all of its assets (collectively, the “Assets”), which are defined and described in further detail in the Form APA. Capitalized terms used but not defined herein have the meanings assigned to such terms in the Bidding Procedures Order. Copies of the Bidding Procedures Order and other related documents are available on Prime Clerk’s website at: <https://cases.primeclerk.com/northstar>.

**1. Key Dates**

<u>Identification of Stalking Horse Bidder</u>	<u>June 5, 2017</u>
<u>General Objection Deadline</u>	<u>June 16, 2017</u>
Bid Deadline	June 27, 2017
Auction	July 10, 2017
<u>Extended Objection Deadline</u>	<u>July 13, 2017</u>
Sale Hearing	July 17, 2017
Projected Closing Date	August 1, 2017

## 2. Assets to be Sold

The Assets consist of the Debtor's leasehold and other interests in wells, leases located in Texas and Louisiana, as well as related assets, including, but not limited to, various production facilities, pipelines, machinery and production equipment appurtenant to or used in connection with these operations.<sup>1</sup> The Assets will be sold free and clear of all liens, claims, encumbrances and other interests (except as otherwise set forth in the applicable asset purchase agreement).

The Debtor may consider bids for all or substantially all of the Assets (or any portion of the Assets) in a single bid from a single bidder or multiple bids from multiple bidders for the Assets. Bids to purchase the Assets must consist of cash (or credit bids under section 363(k)) plus assumption of any specified liabilities.

## 3. Due Diligence

Subject to execution of a confidentiality agreement on terms reasonably acceptable to the Debtor (a "Confidentiality Agreement"), any party willing to submit any proposal, solicitation or offer (each, a "Bid") for the Assets (such party, a "Potential Bidder") may be granted access to public and non-public information relating to the Assets to facilitate its consideration of making its Bid, including access to the Debtor's on-line data room (the "Due Diligence Data Room"). Any confidentiality agreement previously entered into between the Debtor and a Potential Bidder in effect on the date of the entry of the Bid Bidding Procedures Order shall be deemed to be a Confidentiality Agreement for the purposes of these Bidding Procedures.

The Debtor shall provide to each Potential Bidder reasonable due diligence information as necessary to enable such Potential Bidder to evaluate the Assets. Potential Bidders interested in conducting due diligence should contact the Debtor's investment banker, Parkman Whaling LLC, JP Morgan Chase Tower, 600 Travis Street, Suite 600, Houston, TX 77002, Tel: (713) 333-8400; Attn: Michael E. Hanson, Jr., email: mhanson@parkmanwhaling.com. The Debtor shall have no obligation to furnish any due diligence information after the Bid Deadline and shall have no obligation to furnish due diligence information requested by one Potential Bidder to the other Potential Bidders.

In connection with the provision of due diligence information to Potential Bidders, the Debtor shall not furnish any confidential information relating to the Assets, liabilities of the Debtor, or the Sale to any person except a Potential Bidder or such Potential Bidder's duly authorized representatives to the extent covered by the applicable Confidentiality Agreement.

The Debtor and its advisors shall coordinate all reasonable requests for additional information and due diligence access from Potential Bidders (including on-site inspection of Assets); provided, however, that the Debtor may decline to provide such information to any Potential Bidder who, in the Debtor's reasonable business judgment has not established that such Potential Bidder intends in good faith to, or has the capacity to, consummate a transaction. No conditions relating to the completion of due diligence shall be permitted to exist after the Bid Deadline.

<sup>1</sup> The Assets and the Debtor's interests therein are more particularly described in the Form APA.

#### 4. “As is, Where is”

Other than as specifically provided in a Qualified APA(s) (as defined below), as applicable, any Sale of the Assets shall be without representation or warranties of any kind, nature or description by the Debtor, its agents or its estate. All of the Assets shall be transferred “as is,” “where is” and “with all faults.” THE DEBTOR EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE NATURE, QUALITY, VALUE OR CONDITION OF ANY ASSET. Except as otherwise provided in the Form APA or applicable Qualified APA, all of the Debtor’s right, title, and interest in and to the respective Assets will be transferred free and clear of all liens, claims, encumbrances and other interests in accordance with Section 363(f) of the Bankruptcy Code.

Each Potential Bidder for any of the Assets ~~will~~shall be deemed to acknowledge and represent that it: (a) has had an opportunity to conduct due diligence regarding the Assets prior to making its Bid; (b) has relied solely upon its own independent review, investigation, and inspection of any document including, without limitation, executory contracts and unexpired leases, in making its Bid; and (c) did not rely upon or receive any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, with respect to the Assets, or the completeness of any information provided in connection with the Sale or the Auction.

#### 5. Stalking Horse Bids

Subject to the provisions set forth herein and in consultation with the DIP Agent, the Debtor shall, on or before June 5, ~~2017~~,2017 (or such later date as required by the DIP Credit Agreement as may be amended from time to time) identify a stalking horse purchaser or purchasers (individually or each a “Stalking Horse Purchaser”) and enter into a stalking horse purchase agreement or agreements on terms no less favorable and substantially similar to the terms of the Form APA (each a “Stalking Horse APA”) which, individually or collectively, are sufficient to indefeasibly pay in full in cash and completely satisfy the DIP Obligations (as defined in the Final DIP Order) (the “Stalking Horse Bid”). The Stalking Horse Bid shall be subject to higher or otherwise better offers at the Auction (defined below), with any Bidder that submits a Qualified Bid entitled to participate at the auction. The Debtor shall email a copy of any Qualified Bid from potential Stalking Horse Purchasers within one (1) business day after receiving such bid to counsel for the Committee.

The Stalking Horse APA(s) may contain certain customary terms and conditions, including expense reimbursement and a break-up fee in favor of the Stalking Horse Bidder(s) (the “Bid Protections”) in amounts ~~to be determined. To the extent the Debtor enters into a Stalking Horse APA, the Debtor shall seek expedited approval of its entry into such agreement and any Bid Protections included therein together with~~set forth herein. The Debtor may, without further order of the Bankruptcy Court, grant a break-up fee and expense reimbursement to each bidder the Debtor identifies as a Stalking Horse Bidder; provided that, the aggregate break-up fee shall not exceed 3.0% of the cash or cash equivalent portion of the purchase price set forth in the Stalking Horse APA and the expense reimbursement shall not exceed the aggregate of \$200,000.00 (as the Debtor may allocate in its discretion if more than one Stalking Horse

Bidder). The break-up fee will only be paid if a Sale transaction closes and the Stalking Horse Bidder is not the Successful Bidder. The expense reimbursement will be paid from the cash proceeds of a Sale and only for the Stalking Horse Bidder's documented reasonable out-of-pocket expenses incurred in connection with the Sale. Provided that the Bid Protections to each Stalking Horse Bidder and the terms and conditions under which such Bid Protections would be payable to the Stalking Horse Bidder (the "Stalking Horse Hearing"). The are consistent with the terms set forth herein, such Bid Protections are deemed administrative expenses under section 503(b) of the Bankruptcy Code. The Bid Protection amounts will be noticed to parties in interest with the results of the auction.

To the extent the Debtor enters into a Stalking Horse APA, the Debtor shall serve notice of the Stalking Horse APA and the (each, a "Stalking Horse Hearing Notice") on all parties receiving notice of the Motion motion to Approve approve the Bid Bidding Procedures (each, a "Stalking Horse Notice") the "Motion") at least four (4) business days before the General Objection Deadline. Each Stalking Horse Notice will include (i) the identity of the proposed Stalking Horse Bidder; (ii) a summary of the key terms of the Stalking Horse APA; and (iii) a summary of the type and amount of Bid Protections, if any, proposed to be afforded to the Stalking Horse Bidder. Notwithstanding anything herein or in the Bid Procedures Order to the contrary, all parties in interest with standing shall have the right, at any time before the start of the Stalking Horse Hearing, to object to the designation of a Stalking Horse Bidder, the provisions of the Bid Protections to each Stalking Horse Bidder and the terms and conditions under which such Bid Protections would be payable to the Stalking Horse Bidder.

Any Stalking Horse APA executed by the Debtor and the transactions contemplated thereby will be deemed a Qualified Bid for all purposes, and any Stalking Horse Bidder party to a Stalking Horse Agreement APA executed by the Debtor will be deemed to be a Qualified Bidder.

No party submitting a bid shall be entitled to a break-up fee or expense reimbursement except for the Bid Protections granted to a Stalking Horse Bidder ~~which have been approved by the Bankruptcy Court~~. Any substantial contribution claims under section 503(b) of the Bankruptcy Code or otherwise by any bidder are deemed waived in connection with submitting a bid.

## 6. Qualified Bids

In order to constitute a Qualified Bid (as defined below), any proposal, solicitation or offer for the Assets (each, a "Bid") submitted by a bidder (each, a "Bidder") must (i) be submitted in writing prior to **Tuesday, June 27, 2017 at 12:00 p.m. (Central Time)** (the "Bid Deadline") and (ii) satisfy the following requirements, as determined by the Debtor in its reasonable business judgment after consultation with the DIP Agent (collectively, the "Bid Requirements"):

- (a) Qualified APA. Bid must contain a signed definitive asset purchase agreement (together with a copy of the signed agreement that is marked to show changes from the Form APA) (a "Qualified APA") and shall:
  - i. identify the Assets the Bidder seeks to purchase,

- ii. contain the form of and total consideration to be paid by such Bidder, including the amount of proposed cash consideration and liabilities to be assumed, with such consideration allocated on an asset by asset basis,
  - iii. provide for the assumption of all plugging and abandonment and other obligations relating to the Assets subject to the Bid as set forth in Section 1.4(g) of the Form APA (the “Assumed Liabilities”),
  - iv. provide for the ~~performance of~~compliance with the bonding obligations required by Section 6.10 of the Form APA relating to the Assets subject to the Bid, and
  - v. be on terms no less favorable (in the Debtor’s reasonable business judgment after consultation with the DIP Agent) than the Form APA, including after consideration of any Bid Protections payable thereunder, if any, ~~and~~.
- (b) No Contingencies. Bid must not be subject to any: (a) financing contingency, (b) contingency relating to due diligence after the Bid Deadline, (c) contingency relating to the approval of the Bidder’s board of directors or other internal approvals or non-governmental third-party consents or approvals, or (d) any conditions precedent to the Bidder’s obligation to purchase the Assets other than those included in the Form APA.
- (c) Good Faith Deposit. A Bid must be accompanied by the provision of a ~~certified~~ ~~or~~ bank check or wire transfer in the amount of at least 10% of the purchase price proposed in the Qualified APA as a good faith deposit (the “Good Faith Deposit”) as liquidated damages if the Bidder shall default with respect to its offer. If the DIP Agent is credit bidding, the DIP Agent shall not be required to submit a Good Faith Deposit.
- (d) Commitment. Bid must contain a written statement that the Bidder agrees to be bound by the terms of the Bidding Procedures and the Bidding Procedures Order and include a commitment that the Bidder shall (i) commence and complete all filings with respect to necessary government and other approvals within three (3) days following the entry of the Sale Order (as defined in the Bidding Procedures Order) with respect to the relevant Assets and (ii) consummate the purchase of the relevant Assets within ~~ten~~fifteen (~~10~~15) days following entry of the Sale Order.
- (e) Assumed Contracts and Leases. The Bid must identify, with particularity, each and every executory contract and unexpired lease the Bidder intends to assume; provided, however, that such list of contracts may be later modified to the extent permitted under the Qualified APA.
- (f) Proof of Authority and Capability. The Bid must be accompanied by evidence satisfactory to the Debtor that the Bidder is willing, authorized (including by such Bidder’s board of directors or comparable governing body), capable and qualified financially, operationally, legally and otherwise, of unconditionally performing all obligations under the Qualified APA, including, without limitation, (1) all Assumed Liabilities with respect to the relevant Assets, and (2) the ability to provide adequate assurance of future performance under contracts and leases to be assumed pursuant to Section 365 of the Bankruptcy Code. The Bid will also contain written evidence of a firm commitment for financing or other evidence of ability to consummate the proposed transaction without financing, provided

however, that the Debtor will determine in its business judgment and after consultation with the DIP Agent whether the written evidence of such financial wherewithal is acceptable; provided further that such evidence need not be provided by the DIP Agent if its entire Bid is a credit bid.

- (g) Backup Successful Bidder. Bid must provide (i) that the Bidder agrees to serve as the Backup Successful Bid (as defined herein) if it is selected as the next highest and best bid for any particular Assets after the Successful Bid is determined in accordance with the Bidding Procedures, and (ii) that the Bidder's Bid shall remain open and irrevocable until at least thirty (30) days after the entry of an order by the Bankruptcy Court approving a definitive agreement providing for the Sale of those Assets.
- (h) Identity of Bidders. Fully disclose the identity of each entity that will be bidding in any Auction scheduled by the Debtor (and any equity holders in the case of a Bidder which is an entity specially formed for the purposes of effectuating the contemplated transaction) and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction.
- (i) Be submitted to counsel to the Debtor: Diamond McCarthy, LLP, 909 Fannin, Suite 1500, Houston, TX, 77010 Attn: Kyung S. Lee and Charles Rubio, klee@diamonddmccarthy.com and crubio@diamonddmccarthy.com, and to the Debtor's investment bankers, Michael E. Hanson, Jr., mhanson@parkmanwhaling.com, so as to be received not later than the Bid Deadline. Within one (1) day of receipt, counsel for the Debtor shall forward any Bid received to (a) counsel to the DIP Agent, Andrews Kurth Kenyon LLP, 600 Travis, Suite 4200, Houston, Texas 77002, Attn: Timothy A. "Tad" Davidson II and Joseph Rovira, taddavidson@andrewskurth.com and josephrovira@andrewskurth.com and (b) counsel to the Committee, DLA Piper LLP (US), 1717 Main Street, Suite 4600, Dallas, Texas 75201-4629, Attn: Vincent P. Slusher and David E. Avraham, vince.slusher@dlapiper.com and david.avraham@dlapiper.com. The Debtor, in consultation with the DIP Agent, may extend the Bid Deadline until the start of any Auction for one or more bidders without further notice, but shall not be obligated to do so.

## 7. **Qualified Bidders**

A Bid that satisfies each of the Bid Requirements, as determined in the Debtor's reasonable business judgment after consultation with the DIP Agent shall constitute a "Qualified Bid," and such Potential Bidder shall be a "Qualified Bidder." The Debtor shall notify each Qualified Bidder that such party is a Qualified Bidder within two (2) business days after the Bid Deadline. The Bidder identified by the Debtor as the "Stalking Horse Bidder" will be deemed a Qualified Bidder and the Stalking Horse Bidder's bid will be deemed a Qualified Bid. For the avoidance of doubt, the DIP Agent shall be deemed a Qualified Bidder and any bid submitted by the DIP Agent shall be deemed a Qualified Bid so long as it satisfies subsections (a), (b), (d) and (e) of Section 6 above.



If any Bid is determined by the Debtor in consultation with the DIP Agent not to be a Qualified Bid, the Debtor shall cause such Bidder to be refunded its Good Faith Deposit ~~and all accumulated interest thereon~~ on or within three (3) business days after the Bid Deadline.

Between the date that the Debtor notifies a Potential Bidder that it is a Qualified Bidder and the Auction, the Debtor may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Except as otherwise set forth in a Qualified APA, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid without the written consent of the Debtor after consultation with the DIP Agent, except for proposed amendments to increase the consideration contemplated by, or otherwise improve the terms of, the Qualified Bid, during the period that such Qualified Bid remains binding as specified herein; provided, that any Qualified Bid may be improved at the Auction as set forth herein. Any improved Qualified Bid must continue to comply with the requirements for Qualified Bids herein.

## **8. Right to Credit Bid**

For the avoidance of doubt, the DIP Agent or its designee is deemed an allowed “Credit Bidder” and may credit bid all outstanding amounts under the DIP Facility pursuant to section 363(k).

Nothing herein shall limit or restrict the right of any holder of a claim secured by the Assets, whether such claim holder is First National Bank of Central Texas, Eleanor Fiduciary Services, Platinum Partners Credit Opportunities Fund, Platinum Partners Liquidity Opportunity Fund, Platinum Partners Value Arbitrage Fund L.P. or any other party, to credit bid pursuant to section 363(k); provided that, any credit bid (other than the credit bid of the DIP Agent) is subject to (i) satisfaction of all senior claims in full, (ii) demonstration of the validity and scope of the lien on the particular Asset, and (iii) the rights of all parties in interest to challenge the right to credit bid for cause under section 363(k) of the Bankruptcy Code. Any rights to object to credit bidding is hereby preserved.

Any party, other than the DIP Agent, seeking to credit bid will include with its Bid evidence of the validity and scope of its liens. Within two (2) business days after submission of the Bid to the Debtor, the Debtor, after consultation with the DIP Agent, will notify the bidder if it objects to the credit bid. If the Debtor objects to the credit bid, such party will be barred from credit bidding at the Auction unless the party seeks relief from the Bankruptcy Court and the Bankruptcy Court enters an order permitting such party to credit bid prior to the Auction.

## **9. Notice Procedures**

### **a. Notice of Auction and Sale Hearing**

After entry of the Bidding Procedures Order, the Debtor will cause the Notice of Auction and Sale Hearing, substantially in the form attached as Exhibit 2 to the Bidding Procedures Order (the “Sale Notice”), to be served by first-class mail, postage prepaid, facsimile, electronic transmission, or overnight mail upon: (i) all entities known by the Debtor to have expressed an interest in a transaction with respect to the Assets during the past eighteen (18) months,

including all Qualified Bidders; (ii) all state and local taxing authorities or recording offices which have a reasonably known interest in the relief requested; (iii) all of the Debtor's insurers; (iv) all non-debtor parties to relevant contracts or leases (executory or otherwise); (v) all parties who are known or reasonably believed, after reasonable inquiry, to have asserted any lien, encumbrance, claim, or other interest in the Assets; and (vi) upon all parties set forth in the Debtor's Master Service List maintained in these cases (to the extent any party to receive notice thereby has not received notice pursuant to sections (i) through (v) above). The Debtor will serve the Sale Notice no later than twenty-one (21) days before the General Objection Deadline.

Objections, if any, to the Sale of the Assets, the assumption and assignment of the Assumed and Assigned Contracts, or any relief requested in the Motion other than the relief granted in the Bidding Procedures Order must be: (a) in writing; (b) signed by counsel or attested to by the objecting party; (c) in conformity with the Bankruptcy Rules and the Local Rules of this Court; (d) filed with the Clerk of the Court for the Southern District of Texas, Houston Division, 515 Rusk, Houston, TX 77002, by no later than **Friday, June 16, 2017 at 5:00 p.m. (Central Time)** (the "General Objection Deadline"), provided, however, that any party may object based on events occurring after the General Objection Deadline until **Thursday, July 13, 2017 at 12:00 p.m. (Central Time)** (the "Extended Objection Deadline"); and (e) served in accordance with the Local Rules so as to be received on or before the relevant objection deadline (these procedures are collectively referred to as the "General Objection Procedures"). Each objection shall state the legal and factual basis of such objection.

Only those objections made in compliance with the General Objection Procedures will be considered by the Court at the Sale Hearing. The failure of any objecting person or entity to file its objections by the General Objection Deadline and in accordance with the General Objection Procedures will be a bar to the assertion, at the Sale Hearing or thereafter, of any objection (including to the Sale of Assets free and clear of Liens and assumption and assignment of Assumed and Assigned Contracts) and shall be deemed to constitute any such party's consent to the entry of the Sale Order and consummation of the Sale and all transactions related thereto, including, without limitation, such assumption and assignment of the Assumed and Assigned Contracts.

b. Consensual Rights Notice

If any person or entity receiving the Sale Notice asserts that any property or right (including an Assumed and Assigned Contract) cannot be transferred, sold, assumed, and/or assigned free and clear of all liens, encumbrances, claims and other interests except as otherwise set forth in the applicable purchase and sale agreement on account of one or more alleged approval rights, consent rights, preferential purchase rights, rights of purchase, rights of first refusal, rights of first offer, tag-along rights or similar rights (each, a "Preferential Rights Consensual Right"), then such person or entity must file a notice with the Court with all supporting documentation (a "Consensual Rights Notice") on or before the ~~Bid~~General Objection Deadline. Each Consensual Rights Notice must identify the properties or rights that are subject to such alleged right, identify the type of right(s) claimed by such party, identify the agreement, document, or statute giving rise to such right and identify the portion of the agreement, document or statute giving rise to such right. For avoidance of doubt, the Debtor's

sureties must file a Consensual Rights Notice if the sureties are going to assert that the bonds give them a right to consent to or otherwise condition a sale of the Debtor's property.

c. Notice of Assumption and Assignment of Contracts

The Debtor will serve the completed Assumption and Assignment Notice using the form attached as Exhibit 3 to the Bidding Procedures Order (the "Assumption and Assignment Notice"), by first-class mail, facsimile, electronic transmission, or overnight mail on (a) each counterparty under each potential Assumed and Assigned Contract (as defined below) (a "Contract Counterparty") and its attorney, if known, in each case, at the last known address available to the Debtor. The Debtor will serve the Assumption and Assignment Notice no later than twenty-one (21) days before the General Objection Deadline.

The Assumption and Assignment Notice shall set forth the following information: (i) the Contract(s) and/or Lease(s) that may be assumed by the Debtor and assigned to the Successful Bidder(s); (ii) the name and address of the Contract Counterparty thereto; (iii) the amount, if any, determined by the Debtor to be necessary to be paid to cure any existing default in accordance with Sections 365(b) and 365(f)(2) of the Bankruptcy Code (the "Cure Amount"); and (iv) the deadlines by which any such Contract Counterparty must file an objection to the proposed assumption and assignment of any Assumed and Assigned Contract, provided, however, that the presence of any Contract or Lease on an Assumption and Assignment Notice does not constitute an admission that such Contract or Lease is an executory contract or unexpired lease.

As soon as practicable after the conclusion of the Auction, the Debtor shall file with the Bankruptcy Court and serve by facsimile, electronic transmission, overnight, or first-contract mail on the Contract Counterparty (and its attorney, if known) to each Assumed and Assigned Contract a notice: (a) identifying the Successful Bidder(s); (b) stating which Contract(s) and/or Lease(s) will be assumed and assigned thereto; and (c) containing a statement as to the Successful Bidder(s)' ability to perform the Debtor's obligations under the applicable Assumed and Assigned Contracts.

**10. No Qualified Bids**

If the Debtor does not receive more than one Qualified ~~Bids~~Bid with respect to any or all of the Assets, the Debtor shall report the same to the Bankruptcy Court and proceed to the Sale Hearing

**11. Auction**

In the event the Debtor receives more than one Qualified Bid with respect to any or all of the assets, the Debtor will conduct the Auction.

The Debtor, in consultation with the DIP Agent, shall determine which Qualified Bid shall constitute the starting bid at the Auction (the "Baseline Bid"). The Debtor shall notify each

Qualified Bidder of the contents of the Baseline Bid. The Baseline Bid shall be subject to higher and better Bids at the Auction.

In making the determination of which Qualified Bid(s) constitutes the Successful Bid(s), the Debtor, in consultation with the DIP Agent, shall take into account any factors the Debtor reasonably deems relevant to the value of the Qualified Bid(s) to the Debtor's estate, including, among other things: (a) the number, type, and nature of any changes to the Form APA requested by the Qualified Bidder, including the type and amount of Assets sought and the liabilities of the Debtor to be assumed in the Bid and the liabilities, if any, which will be released as a result of such Bid; (b) the amount and nature of the total consideration; and (c) the likelihood of the Bidder's ability to close a transaction and the timing thereof; ~~and (d) the tax consequences of such Qualified Bid~~ (collectively, the "Bid Assessment Criteria").<sup>2</sup> The Debtor may evaluate competing bids in a manner that will maximize the aggregate value to the estate.

In the event the Debtor, in consultation with the DIP Agent, determines to conduct an Auction, the Auction shall take place on **Monday, July 10, 2017** (the "Auction Date"), beginning at 10:00 a.m. (CST), at the offices of Diamond McCarthy LLP at 909 Fannin Street, Suite 3700, Houston, Texas 77010, or such later date and time or such other location as may be designated by the Debtor (the "Auction") to determine the highest or best bid. The Auction shall be conducted in a timely fashion according to the following procedures:

a. The Debtor Shall Conduct the Auction

The Debtor and its professionals shall direct and preside over the Auction. At the start of the Auction, the Debtor shall describe the terms of the Baseline Bid. All incremental Bids made thereafter shall be Overbids (as defined herein) and shall be made and received on an open basis, and all material terms of each Overbid shall be fully disclosed to all other Qualified Bidders. The Debtor shall maintain a written transcript of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids, and the Successful Bid(s).

In order to participate in the Auction, each prospective purchaser must be a Qualified Bidder. Each Qualified Bidder must have at least one individual representative with authority to bind the Qualified Bidder attend the Auction in person. Only Qualified Bidders and their legal and financial advisors shall be entitled to attend and/or bid at the Auction. For the avoidance of doubt, the DIP Agent and its advisors are entitled to attend the Auction whether or not the DIP Agent submits a Bid. By attending the Auction, each party present at the Auction agrees to keep the Auction, the Bids at the Auction and all details concerning the Auction confidential. The Auction shall be conducted in the presence of a certified court reporter who shall transcribe the Auction. The Debtor has the right to remove anyone from the Auction that the Debtor deems in its sole discretion disruptive to the Auction process.

b. Auction Procedures

<sup>2</sup> For avoidance of doubt, the Bid Assessment Criteria listed herein are not exhaustive and are provided for illustrative purposes only, and the Debtor, in consultation with the DIP Agent, may consider any additional criteria that they consider reasonably relevant to the value of any Qualified Bid.

A Qualified Bidder wishing to submit a bid at the Auction for the assets subject to the Stalking Horse APA or a bid at the Auction for all or substantially all of the Debtor's assets must bid in an amount that is at least ~~\$50,000 greater than~~ (i) the total consideration contained in the Baseline Bid Stalking Horse APA, plus (ii) the break-up fee owed to the Stalking Horse Bidder, plus (iii) \$250,000 (the "Minimum Overbid").

Subject to the Minimum Overbid, Qualified Bidders shall submit successive Overbids in increments to be determined by the Debtor in consultation with the DIP Agent at the Auction (the "Incremental Bid Amount") for the purchase of the Assets for which it is bidding (each an "Overbid").

During the course of the Auction, the Debtor shall, after the submission of each Overbid, promptly inform each Qualified Bidder which Overbid reflects, in the Debtor's view, the highest or otherwise best Bid for some or all of the Assets.

c. Consideration of Overbids

The Debtor reserves the right, in its reasonable business judgment, after consultation with the DIP Agent, to adjourn the Auction one or more times to, among other things: facilitate discussions between the Debtor and Qualified Bidders; allow Qualified Bidders to consider how they wish to proceed; and provide Qualified Bidders the opportunity to provide the Debtor with such additional evidence as the Debtor, in its reasonable business judgment may require, that the Qualified Bidder has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount.

d. Closing the Auction

- (i) The Auction shall continue until there is only one offer that the Debtor determines in consultation with the DIP Agent, subject to Bankruptcy Court approval, is the highest and/or best offer for the purchase of the Assets (whether in an aggregate sale to a single buyer or on an asset by asset basis (each a "Successful Bid" and such Bidder, the "Successful Bidder"), at which point, the Auction will be closed. The Auction shall not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an Overbid at the Auction to the then-existing Overbid(s). Such acceptance by the Debtor of the Successful Bid(s) is conditioned upon approval by the Court of the Successful Bid(s). The second highest bid, to the extent determined to be acceptable to the Debtor shall be deemed to be the backup bid (the "Backup Successful Bid" and such Bidder, the "Backup Successful Bidder"), provided, however, that the DIP Agent shall not be required to serve as the Backup Successful Bidder in connection with a credit bid. In the event that the DIP Agent makes a determination not to serve as the Backup Successful Bidder (whether before or after submitting any credit bid or other bid), the DIP Agent shall provide notice to the Debtor no later than one (1) business day

after the Auction, and the third highest bidder, to the extent determined to be acceptable to the Debtor shall be deemed to be the Backup Successful Bidder.

- (ii) The identity of the Backup Successful Bidder(s) and the amount and material terms of the Backup Successful Bid(s) shall be announced by the Debtor at the conclusion of the Auction at the same time the Debtor announce the identity of the Successful Bidder(s); including the third highest bidder. The Backup Bidder(s) shall be required to keep its or their Qualified Bid(s) (or if the Backup Bidder(s) submitted one or more Overbids at the Auction, its final Overbid(s)) open and irrevocable until the closing of the transaction with the Successful Bidder(s).
- (iii) For the avoidance of doubt, nothing in these Bidding Procedures shall prevent the Debtor from exercising its fiduciary duties under applicable law.
- (iv) The Debtor shall not consider any Bids or Overbids submitted after the conclusion of the Auction ~~and any.~~ Any and all such Bids and Overbids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.
- (v) As soon as reasonably practicable after closing the Auction, the Debtor shall cause the definitive asset purchase agreement for the Successful Bid(s) to be filed with the Court.

e. No Collusion; Good Faith Bona Fide Offer

Each Qualified Bidder participating at the Auction will be required to confirm on the record that: (i) it has not engaged in any collusion with respect to the bidding; and (ii) its Qualified Bid is a good faith bona fide offer and it intends to consummate the proposed transaction if selected as the Successful Bidder.

**12. Backup Successful Bidder**

If a Successful Bidder fails to consummate an approved transaction contemplated by its Successful Bid, the Debtor may select the applicable Backup Successful Bidder as the Successful Bidder, and such Backup Successful Bidder shall be deemed a Successful Bidder for all purposes. The Debtor will be authorized, but not required, to consummate all transactions contemplated by the Bid of such Backup Successful Bidder without further order of the Court or notice to any party. In such case, the defaulting Successful Bidder's Good Faith Deposit shall be forfeited to the Debtor, and the Debtor specifically reserves the right to seek all available remedies against the defaulting Successful Bidder (or Backup Successful Bidder, if such party shall also breach or fail to perform), as applicable, including with respect to specific performance. In the event that the Backup Successful Bidder fails to consummate an approved Sale, the Assets may be sold pursuant to one or more subsequent sales. For the avoidance of

doubt, the DIP Agent shall not be required to serve as the Backup Successful Bidder in connection with a credit bid. In the event that the DIP Agent makes a determination not to serve as the Backup Successful Bidder (whether before or after submitting any credit bid or other bid), the DIP Agent shall provide notice to the Debtor no later than one (1) business day after the Auction, and the third highest bidder, to the extent determined to be acceptable to the Debtor shall be deemed to be the Backup Successful Bidder.

### **13. Highest or Otherwise Best Bid**

At all times during the Proposed Sale Process, the Debtor shall retain full discretion and right, in consultation with the DIP Agent, to determine which Bid or Bids constitutes the highest or otherwise best offer for the purchase of the Assets (whether in an aggregate sale to a single buyer or on an asset by asset basis), and which bid or bids should be selected as the Successful Bid(s), if any, all subject to final approval by the Bankruptcy Court pursuant to the provisions of Section 363(b) of the Bankruptcy Code. The Debtor, in consultation with the DIP Agent, may adopt rules for the Auction that, in its judgment, will better promote the goals of the Auction and that are not inconsistent in any material respect with any of the other material provisions hereof or of any Bankruptcy Court order.

### **14. Proceeds**

Except with respect to Assumed Liabilities and Permitted Encumbrances, all valid and properly perfected Liens against the Debtor's Assets shall attach to the net cash proceeds ultimately attributable to the Assets against which such Liens are asserted with the same validity, enforceability, priority, and force and effect as they had against the Assets or their proceeds ~~as of prior to~~ the ~~Petition Date~~ Sale (except to the extent such Liens are assumed under the applicable asset purchase agreement). In accordance with Final Order (i) Approving Postpetition Financing, (ii) Granting Liens and Providing Superpriority Administrative Expense Status, (iii) Granting Adequate Protection, and (iv) Modifying Automatic Stay [Docket No. 326] (the "Final DIP Order"), the proceeds of the sale shall be used to indefeasibly pay in full in cash and completely satisfy the DIP Obligations (as defined in the Final DIP Order) and no order approving the sale shall be entered over the DIP Agent's objections that does not provide for the indefeasible payment in full in cash and completely satisfy the DIP Obligations.

### **15. Reservation of Rights**

The Debtor reserves the right, in consultation with the DIP Agent, to modify these Bidding Procedures at or prior to the Auction, including, without limitation, extending the deadlines set forth herein with respect to any or all Potential Bidders, imposing additional terms and conditions with respect to any or all Potential Bidders, adjourning or cancelling the Auction at or prior to the Auction and/or adjourning the Sale Hearing; provided however, the Debtor may not reduce the amount of time available to parties to object under the Bidding Procedures without the consent of the affected parties of a further Bankruptcy Court order or delete or otherwise remove this provision from the Bidding Procedures.

### **16. Consent to Jurisdiction**

All Qualified Bidders at the Auction shall be deemed to have consented to the jurisdiction of the Bankruptcy Court and waived any right to a jury trial in connection with any disputes relating to the Auction, the construction and enforcement of these Bidding Procedures, and/or the Confidentiality Agreements, as applicable.

#### **17. Sale Hearing**

A hearing to consider approval of the Sale of all or substantially all of the Assets to the Successful Bidder(s) (the “Sale Hearing”) is presently scheduled to take place on **July 17, 2017 at 9:00 a.m. (Central Time)**, or as soon thereafter as counsel may be heard, before the Honorable Marvin Isgur in Courtroom 404, 515 Rusk, Houston, TX 77002.

The Sale Hearing may be continued to a later date by the Debtor by sending notice prior to, or making an announcement at, the Sale Hearing. No further notice of any such continuance will be required to be provided to any party.

At the Sale Hearing, the Debtor shall present the Successful Bid(s) to the Court for approval. Following the approval of the Successful Bid(s) at the Sale Hearing, the Debtor will be authorized to take any and all actions necessary and appropriate to complete and implement the Sale(s) contemplated by the Successful Bid(s), including, without limitation, seeking entry of one or more orders approving such Sale(s).

#### **18. Return of Good Faith Deposits**

The Good Faith Deposits of all Qualified Bidders shall be held in one or more accounts by the Debtor, but shall not become property of the Debtor’s estate absent further order of the Bankruptcy Court. The Good Faith Deposit of any Qualified Bidder that is neither the Successful Bidder(s) nor the Backup Successful Bidder(s) shall be returned to such Qualified Bidder not ~~late~~later than five (5) business days after the Sale Hearing. The Good Faith Deposit of the Backup Successful Bidder(s), if any, shall be returned to the Backup Successful Bidder on the date that is the earlier of 72 hours after (i) the closing of the transaction with the Successful Bidder for the property bid upon by the Backups Successful Bidder(s), and (ii) thirty (30) days after the date of entry of the Sale Order. If the Successful Bidder timely closes the winning transaction, the Good Faith Deposit shall be credited towards the purchase price.

If a Successful Bidder fails to consummate a proposed transaction because of a breach by such Successful Bidder, the Debtor will not have any obligation to return the Good Faith Deposit deposited by such Successful Bidder, which may be retained by the Debtor as liquidated damages, in addition to any and all rights, remedies, and/or causes of action that may be available to the Debtor, and the Debtor shall be free to consummate the proposed transaction with the applicable Backup Successful Bidder without the need for an additional hearing or order of the Court. ~~Upon the return of the Good Faith Deposits, their respective owners shall receive any and all interest that will have accrued thereon.~~

#### **19. No Modification of Bidding Procedures**



Except as otherwise provided herein, these Bidding Procedures may not be modified except with the Debtor's consent in consultation with DIP Agent.

## **20. Consultation Parties**

Notwithstanding anything to the contrary in these Bidding Procedures, in addition to the DIP Agent as provided herein, the Debtor will confer with counsel to First National Bank of Central Texas, counsel to Eleanor Fiduciary Services, counsel to the Official Committee of Unsecured Creditors, counsel to Platinum Partners Credit Opportunities fund and Platinum Partners Liquidity Opportunity fund, and counsel to the Liquidators of Platinum Partners Value Arbitrage Fund, L.P. (each a Consultation Party" and collectively, the "Consultation Parties") on (i) the selection of the Stalking Horse Bidder, (ii) the Incremental Bid Amount, (iii) any Bid the Debtor determines is not a Qualified Bid, (iv) the Baseline Bid, and (v) any modification of the Bidding Procedures. The Consultation Parties and the DIP Agent reserve all rights to object to a proposed sale.

Each Consultation Party and their advisors are entitled to attend the Auction. For any Consultation Party that attends the Auction and is not a bidder, the Debtor will confer with such Consultation Party on any adjournment of the Auction, and the determination of which Bid or Bids constitutes the highest or otherwise best offer for the purchase of the Assets, and which Bid or Bids should be selected as the Successful Bid(s). Nothing herein shall limit or otherwise restrict the ability of any potential bidder to enter into negotiations with any Consultation Party regarding the participation of such Consultation Party in any bid, including the assumption of Liens or liabilities of the Debtor. These negotiations shall not constitute collusion provided that the applicable Consultation Party (i) fully discloses the negotiations to the Debtor, the DIP Agent and the other Consultation Parties, (ii) is not a bidder and (iii) does not share any confidential information received from one bidder with any other bidder.

The Debtor shall confer with the Consultation Parties and the DIP Agent as set forth herein to address issues and objections prior to the sale hearing; however, the Debtor shall have the sole authority to take actions and make decisions without receiving the approval of any Consultation Party or the DIP Agent.

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