

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
)	Chapter 11
)	
PES HOLDINGS, LLC, <i>et al.</i> , ¹)	Case No. 19-11626 (KG)
)	
Debtors.)	(Jointly Administered)
)	

**DEBTORS’ MOTION FOR ENTRY
OF AN ORDER (A) ESTABLISHING
BIDDING PROCEDURES, (B) APPROVING BID
PROTECTIONS, AND (C) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”)² respectfully state the following in support of this motion (this “Motion”):

Preliminary Statement

1. Following the Petition Date,³ the Debtors negotiated a \$100 million in senior secured debtor in possession financing (the “DIP Financing”), \$65 million of which was approved by this Court pursuant to the *Interim Order (I) Authorizing Debtors to (A) Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 363(b), 364(c)(1), 364(c)(2)*,

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: PES Holdings, LLC (8157); North Yard GP, LLC (5458); North Yard Logistics, L.P. (5952); PES Administrative Services, LLC (3022); PES Energy Inc. (0661); PES Intermediate, LLC (0074); PES Ultimate Holdings, LLC (6061); and Philadelphia Energy Solutions Refining and Marketing LLC (9574). The Debtors’ service address is: 1735 Market Street, Philadelphia, Pennsylvania 19103.

² A detailed description of the Debtors and their businesses, and the facts and circumstances supporting this Motion and the Debtors’ chapter 11 cases, are set forth in greater detail in the *Declaration of Jeffrey S. Stein, Chief Restructuring Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Motions* [Docket No. 32] (the “First Day Declaration”), filed contemporaneously with the Debtors’ voluntary petitions for relief filed under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). A copy of the First Day Declaration, as well as any other pleadings filed with the Court in these chapter 11 cases, can be obtained from the website maintained by the Debtors’ claims and noticing agent, Omni Management Group, Inc. (“Omni”), located at <https://cases.omniagentsolutions.com/pesholdings2019/> (the “Case Website”).

³ Capitalized terms used but not defined herein have the meaning given to such terms in the Plan, the Bidding Procedures (as defined herein), or the Interim DIP Order (as defined herein), as applicable.

364(c)(3), 364(d)(1) and 364(e) And (B) Utilize Cash Collateral Pursuant to 11 U.S.C. § 363, (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363, 364 and 507(b) and (III) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c)] [Docket No. 85] (the “Interim DIP Order”). The DIP Financing was provided to the Debtors by the several lenders from time to time parties thereto (the “DIP Lenders”), with Cortland Capital Markets Services LLC, as administrative and collateral agent (in such capacities, the “DIP Agent” and, together with the DIP Lenders, the “DIP Secured Parties”), to provide them with sufficient liquidity to achieve a value-maximizing transaction. Pursuant to the Interim DIP Order, the Debtors have agreed, in the exercise of their business judgment, to abide by a number of case milestones (the “DIP Milestones”).⁴ Interim DIP Order ¶ 16(d). The DIP Milestones are structured to allow sufficient time for the Debtors to pursue a value-maximizing transaction within the framework of a chapter 11 plan, all within approximately eight months of the Petition Date.

2. In order to advance these chapter 11 cases towards that ultimate goal, the Debtors filed on October 10, 2019 the *Joint Chapter 11 Plan of PES Holdings, LLC and its Debtor Affiliates* [Docket No. 462] (the “Plan”), accompanied by the *Corrected Disclosure Statement for the Joint Chapter 11 Plan of PES Holdings, LLC and its Debtor Affiliates* [Docket No. 465] (the “Disclosure Statement”). The Debtors have designed the Plan to serve as the vehicle for enabling the consummation of a value-maximizing transaction in these chapter 11 cases, which shall take the form of either an equitization of the Debtors’ existing debt, or a sale of their assets or equity. The Debtors’ Disclosure Statement hearing is currently scheduled to occur on November 14, 2019, and the hearing on confirmation of the Plan is scheduled to occur on

⁴ The DIP Milestones are described in section 5.17 of the “DIP Credit Agreement,” attached as Exhibit B to the Interim DIP Order.

January 22, 2020 (a date that is well in advance of the Debtors' February 11, 2020 Plan confirmation DIP Milestone).

3. On June 28, 2019, the Debtors engaged PJT Partners LP ("PJT") to act as their exclusive investment banker in connection with the Debtors' contingency planning efforts prior to the Petition Date. In connection with its engagement, PJT is spearheading a marketing process designed to identify potential bidders for the Debtors' assets. Specifically, prior to the date hereof, PJT contacted 211 potential bidders, representing both financial and strategic potential buyers. Of these potential bidders, all either reviewed a teaser document or participated in high-level discussions about the transaction. 37 bidders ultimately negotiated and executed confidentiality agreements and were provided access to a virtual data room containing detailed information about the Debtors' assets. Interested parties were invited to participate in initial discussions with PJT regarding the Debtors' assets and sale process. Parties that demonstrated sufficient interest in the transaction were then given access to further due diligence information via the virtual data room. Subsequently, following an initial round of bids, 15 parties provided written indications of interest. The Debtors and their advisors are currently advancing discussions with these parties in an effort to identify the highest or otherwise best bidders amongst them. The majority of potential buyers who submitted indications of interest will progress into a second round of bidding, which will involve completing on-site diligence visits, further management presentations, access to more detailed information about the Debtors' assets via a virtual data room, and importantly, negotiation of a sale and purchase agreement.

4. As noted above, the Debtors' marketing efforts have yielded concrete results. The substantial interest in the Debtors' assets exhibited by a variety of market players has led the Debtors to determine, in their business judgment, that establishing a go-forward, court-approved

schedule for their sale process leading to an Auction (as defined below) governed by court-approved Bidding Procedures (as defined below) will generate significant value for the Debtors' estates. Ultimately, if the Debtors are able to consummate a sale of their assets through the Plan, the Debtors expect that the proceeds thereof will satisfy a significant portion of the prepetition claims against the Debtors and pave the way for confirmation of the Plan.

5. By this Motion, the Debtors now seek approval of the Bidding Procedures (as defined below), to be used to ensure that the Debtors obtain the highest or otherwise best offer or combination of offers for the Debtors' assets. If approved, the Bidding Procedures will enable the Debtors to move expeditiously towards a value-maximizing sale and subsequent confirmation of the Plan. As set forth in further detail below, the Bidding Procedures, and the related relief requested in this Motion are in the best interests of the Debtors' estates and their stakeholders. Accordingly, the Debtors respectfully request that the Court grant the relief requested in this Motion.

Relief Requested

6. By this Motion, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Bidding Procedures Order"):

- (a) authorizing and approving bidding procedures, attached hereto as **Exhibit 1** to **Exhibit A** (the "Bidding Procedures"), by which the Debtors will solicit and select the highest or otherwise best offer(s) for the sale (the "Sale"), of all of the equity interests in Debtor PES Holdings, LLC (the "Interests") or some or all of the Debtors' assets (the "Assets"), in each case potentially at an auction if needed (the "Auction");
- (b) approving the Bid Protections (as defined below);
- (c) establishing the following dates and deadlines in connection with the Bidding Procedures; and
 - Bidding Procedures Objection Deadline: November 7, 2019, at 4:00 p.m. prevailing Eastern Time, as the deadline to object to the Bidding Procedures, Bid Protections, and form and manner of the

Auction Notice (the “Bidding Procedures Objection Deadline”);

- Bidding Procedures Hearing: November 14, 2019, at 10:00 a.m. prevailing Eastern Time, as the date and time the hearing to consider entry of the Bidding Procedures Order (the “Bidding Procedures Hearing”) will be held before the Honorable Kevin Gross, United States Bankruptcy Judge for the District of Delaware; and
- Bid Deadline: January 10, 2020, at 12:00 p.m. prevailing Eastern Time, as the deadline by which all binding bids must be actually received by the Debtors pursuant to the Bidding Procedures (the “Bid Deadline”).

(d) granting related relief.

7. The Debtors reserve the right to file and serve any supplemental pleading or declaration that the Debtors deem appropriate or necessary in their sole discretion, including any such pleading or declaration summarizing the competitive bidding and sale process and the results thereof.

Jurisdiction and Venue

8. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012 (the “Amended Standing Order”). This matter is a “core proceeding” within the meaning of 28 U.S.C. § 157(b)(2). The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), to entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court,

absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

9. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

10. The bases for the relief requested herein are sections 105(a), 363, 365, 503, and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, and 6006(a), and Local Rules 2002-1, 6004-1, and 9006-1.

Background

11. Headquartered in Philadelphia, Pennsylvania, the Debtors are owners and operators of the largest oil refining complex on the United States Eastern seaboard and have been continuously operating in some form for over 150 years. The refining complex sits on an approximately 1,300 acre industrial site roughly 2.5 miles from downtown Philadelphia. It is comprised of two interconnected refineries that have a combined distillation and refining capacity of 335,000 barrels of crude oil per day. The refining complex produces a full range of transportation fuels, such as gasoline and ultra-low sulfur diesel, as well as other refined products, including home heating oil, jet fuel, kerosene, fuel oil, propane, propylene, butane, cumene, and sulfur. The Debtors market and distribute these products by truck, rail, pipeline, and waterborne vessels throughout population centers in the northeastern United States and by waterborne vessels to international markets.

12. On the Petition Date, each of the Debtors filed a petition with the Court under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. These chapter 11 cases are procedurally consolidated and jointly administered pursuant to Bankruptcy Rule 1015(b). No party has requested the appointment of a

trustee or examiner in these chapter 11 cases. On August 5, 2019, the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the “Committee”) [Docket No. 152].

Need for a Timely Sale Process

13. The Debtors believe that the time periods set forth herein and in the Bidding Procedures are reasonable and will provide parties with sufficient time and information to submit a competitive bid for the Interests or some or all of the Assets. In formulating the Bidding Procedures and time periods set forth therein, the Debtors balanced the need to provide adequate notice to parties in interest and potential bidders with the need to run a fulsome, expeditious, and efficient sale process. The Bidding Procedures are designed to generate the highest or otherwise best available recoveries to the Debtors’ stakeholders by encouraging prospective bidders to submit competitive, value-maximizing bids for the Interests or some or all of the Assets. The Bidding Procedures are designed to allow the Debtors sufficient time to conduct the sale and potentially the auction process while simultaneously ensuring that the Debtors have a viable path forward within the confines of the DIP Milestones even if they do not receive any Qualified Bids (as defined in the Bidding Procedures).

14. Potential bidders have had, and will, in accordance with the Bidding Procedures, continue to have access to comprehensive information prepared by the Debtors and their advisors and compiled in an electronic data room. In light of the foregoing, the Debtors have determined that the Bidding Procedures are in the best interests of the Debtors’ estates, will establish whether and to what extent a market exists for the Interests and the Assets, and provide interested parties with sufficient opportunity to participate.

The Stalking Horse Bidder

15. The Debtors request authority, as set forth in the Bidding Procedures and the Bidding Procedures Order, to (a) select one or more bidders to act as stalking horse bidders in connection with the Auction (each, a “Stalking Horse Bidder”) and enter into a purchase agreement with such Stalking Horse Bidder (each such agreement, a “Stalking Horse Agreement”) and (b) in connection with any Stalking Horse Agreement with a Stalking Horse Bidder, (i) provide a breakup fee (the “Breakup Fee”), (ii) agree to reimburse reasonable and documented out-of-pocket fees and expenses (the “Expense Reimbursement”), (iii) agree to pay a “work fee” or other similar cash fee (the “Work Fee”), and/or (iv) agree to provide other appropriate and customary protections that are reasonably acceptable to the Consultation Parties (as defined in the Bidding Procedures) or otherwise approved by the Court (together with the Breakup Fee, the Expense Reimbursement and the Work Fee, the “Bid Protections”) to the extent the Debtors determine, in their sole discretion, that provision of such Bid Protections would be an actual and necessary cost of preserving the value of the Debtors’ estates. Having the flexibility to designate a Stalking Horse Bidder and provide Bid Protections thereto (if any) will enhance the Debtors’ ability to maximize value of the Debtors’ business and, accordingly, is in the best interests of their estates. Moreover, the aggregate amount of Bid Protections that may be paid to any Stalking Horse Bidders shall not exceed three percent of the proposed purchase price under such Stalking Horse Bidder’s Stalking Horse Agreement.

16. No later than one business day after the selection of a Stalking Horse Bidder, the Debtors will file with the Court, serve on the Objection Notice Parties (as identified and defined in the Bidding Procedures Order), and cause to be published on the Case Website a notice that contains information about the Stalking Horse Bidder, such Stalking Horse Bidder’s bid

(the “Stalking Horse Bid”), and attaches the proposed Stalking Horse Agreement (the “Stalking Horse Selection Notice”).

17. Parties in interest may file an objection to the designation of the Stalking Horse Bidder or any of the terms of the Stalking Horse Agreement, including to any of the proposed Bid Protections (each, a “Stalking Horse Objection”) within seven (7) calendar days after service of the Notice of Stalking Horse Bidder (the “Stalking Horse Objection Deadline”). If a timely Stalking Horse Objection is filed and served in accordance with the Bidding Procedures, the proposed designation of a Stalking Horse Bidder and Stalking Horse Bid Protections provided for under such agreement will not be deemed approved until either the Stalking Horse Objection is resolved by agreement of the objecting party and the Debtors or by order of the Court. If no timely Stalking Horse Objection is filed and served with respect to a Stalking Horse Bid in accordance with the Bidding Procedures, the Bid Protections contemplated by such bid shall be deemed approved without further order of the Court upon the expiration of the Stalking Horse Objection Deadline.

18. Given the Debtors’ need to maximize value for creditors and other stakeholders through a timely and efficient marketing and sale process, the ability to designate a Stalking Horse Bidder and offer Bid Protections to such bidder (although the Debtors ultimately may, in the exercise of their business judgment, not designate a Stalking Horse Bidder at all) is a reasonable and sound exercise of the Debtors’ business judgment and provides an actual benefit to the Debtors’ estates.

The Proposed Sale Schedule

19. The Debtors believe a prompt Sale of the Interests or of some or all of the Assets represents the best alternative available for all stakeholders in these chapter 11 cases. Moreover,

it is critical for the Debtors to execute on their proposed Sale transaction within the timeframe contemplated by the Bidding Procedures and Interim DIP Order. Under the Interim DIP Order, the Debtors are required to confirm an Acceptable Plan (as defined in the DIP Credit Agreement) by February 11, 2020, and to consummate such plan by March 2, 2020; otherwise, the Debtors will trigger an event of default under the DIP Credit Agreement.

20. The Debtors propose the following timeline for the Sale, as provided for in the Bidding Procedures:

Event or Deadline	Date and Time
Acceptable Bidder Qualification Deadline	November 22, 2019, at 9:00 a.m. (prevailing Eastern Time)
Determination of Acceptable Bidders	Within seven business days after a Potential Bidder delivers the Preliminary Qualification Documents
Deadline to designate a Stalking Horse Bidder	January 9, 2020
Bid Deadline	January 10, 2020, at 12:00 p.m. (prevailing Eastern Time)
Deadline for Debtors to provide Bids to the Consultation Parties	No later than three business days after the Bid Deadline
Determination of Qualified Bidders	Within five business days after the Bid Deadline
Auction (if applicable)	A date and time to be determined in consultation with the Consultation Parties and announced no later than one business day prior to the Auction
Confirmation Hearing	January 22, 2019, at 10:00 a.m. (prevailing Eastern Time)

21. The Debtors believe that this timeline provides the Debtors with an opportunity to conduct a fulsome marketing process for the Interests and the Assets while still proceeding expeditiously towards confirmation of the Plan. In addition to the Debtors' marketing efforts thus far, the Debtors will use the time period following entry of the Bidding Procedures Order to actively market the Interests and the Assets in an attempt to solicit higher or otherwise better bids

in advance of the Bid Deadline. The Debtors believe the relief requested by this Motion is in the best interests of their creditors, their other stakeholders, and all other parties in interest, and should be approved.

The Bidding Procedures Order

I. The Bidding Procedures.

22. To optimally and expeditiously solicit, receive, and evaluate bids in a fair and accessible manner, the Debtors have developed and proposed the Bidding Procedures, attached as **Exhibit 1** to the Bidding Procedures Order. The following describes the salient points of the Bidding Procedures and discloses certain information required pursuant to Local Rule 6004-1:⁵

- (a) **Qualification of Bidders (Local Bankr. R. 6004-1(c)(i)(A))**. To participate in the bidding process or otherwise be considered for any purpose under the Bidding Procedures, a Potential Bidder (as defined in the Bidding Procedures) must deliver the following Preliminary Qualification Documents (as defined in the Bidding Procedures) to the Debtors' advisors, as more fully set forth in the Bidding Procedures:
 - (i) a written disclosure of the identity of each entity that (a) will directly or indirectly own and/or control five percent or more (individually or collectively) of the equity and/or voting securities of the Potential Bidder, including its full legal name, jurisdiction of incorporation or formation and its location in the Potential Bidder's corporate structure, that will be bidding for the Interests, which is the preferred Sale transaction structure of the Debtors, or some or all of the Assets or otherwise participating in connection with such Bid, (b) will directly or indirectly own and/or control any amount of equity and/or voting securities of the Potential Bidder, (c) for trusts and similar legal arrangements that meet the criteria for subparts (a) and (b) above, (w) each trust's settlor (the provider of funds), (x) each trustee or person or entity exercising control over each trust, (y) any person with the power to remove any trustee and (z) the beneficiaries of such trust(s) or similar legal arrangement, (d) for foundations that meet the criteria for subparts

⁵ This summary is qualified in its entirety by the Bidding Procedures attached as **Exhibit 1** to the Bidding Procedures Order. All capitalized terms that are used in this summary but not otherwise defined herein shall have the meanings given to such terms in the Bidding Procedures. To the extent there are any conflicts between this summary and the Bidding Procedures, the terms of the Bidding Procedures shall govern.

- (a) and (b) above, (x) the founders of such foundation, (y) the key individuals who control such foundation and (x) such foundation's source of funds and (e) has a connection or agreement with any Debtor or with any other prospective bidder for the Interests or some or all of the Assets or any officer, director or equity security holder of any Debtor;
- (ii) an executed confidentiality agreement on terms acceptable to the Debtors ("Confidentiality Agreement"), to the extent not already executed;
 - (iii) a non-binding indication that the Potential Bidder is interested in acquiring the Interests or some or all of the Assets (identified with specificity);
 - (iv) a non-binding indication of the transaction structure(s) that the Potential Bidder is assuming and a description of the assumptions made regarding such transaction structure(s);
 - (v) a non-binding overview of the intended business plan, including but not limited to the intended commercial use of the PES site;
 - (vi) a non-binding preliminary amount of the cash purchase price in U.S. Dollars or other consideration that the Potential Bidder is prepared to pay or deliver in exchange for the acquisition of the Interests or some or all of the Assets;
- (A) to the extent a Potential Bidder proposes to acquire only certain specific Assets, the Potential Bidder should identify each such specific Asset as well as the corresponding cash purchase price or other consideration the Potential Bidder is prepared to pay or deliver for each such Asset;
 - (B) to the extent a Potential Bidder proposes to acquire the rights to insurance proceeds (in full or in part), the Potential Bidder should identify which rights the Potential Bidder intends to acquire as well as the corresponding cash purchase price or other consideration the Potential Bidder is prepared to pay or deliver for such rights; and
 - (C) to the extent a Potential Bidder proposes to acquire the rights to any potential excise tax refunds (in full or in part), the Potential Bidder should identify which rights the Potential Bidder intends to acquire as well as the corresponding cash purchase price or other consideration the Potential Bidder is prepared to pay or deliver for such rights;

- (vii) a non-binding preliminary assessment regarding the amount of time (measured from the date of execution of definitive documentation) necessary to complete the proposed Sale transaction, including (a) any period of time relating to governmental, regulatory or other consents and approvals, including any internal officer, board or director or manager, or committee approval, that the Potential Bidder believes will be required and (b) any conditions or contingencies which the Potential Bidder will or may be required to comply with, in each case along with the degree of certainty (with reasonable specificity) that any such approval or condition would be obtained or satisfied;
 - (viii) a non-binding preliminary mark-up of the draft purchase agreement, the form of which will be provided to Potential Bidders prior to the Acceptable Bidder Qualification Deadline, which modifications may not be materially more burdensome or otherwise inconsistent with these Bidding Procedures (as determined by the Debtors in their reasonable discretion upon consultation with the Consultation Parties);
 - (ix) preliminary proof by the Potential Bidder of its financial capacity to close the proposed Sale, including a confirmation of the source(s) of funds and expected funding commitments that the Potential Bidder will utilize to consummate the proposed Sale transaction, including the use of cash on hand, existing credit facilities, and/or any sources of external debt and/or equity financing assumed (including country of origin of any such financing), the anticipated process and timing and conditions involved to secure necessary funds, and confirmation that any final Bid proposal will not be subject to a financing contingency of any kind (including, if applicable, the terms, including principal amount, interest rate and term length of any such financing and the names of, and contact information for, any third party financing sources); and
 - (x) a list with the names and contact information for any financial, legal and other advisors the Potential Bidder has engaged to assist in connection with the proposed Sale.
- (b) **Bid Requirements (Local Bankr. R. 6004-1(c)(i)(B))**. To be a Qualified Bid (as defined in the Bidding Procedures), a Bid must be submitted in writing and determined by the Debtors, in their sole discretion, to have satisfied the following requirements:
- (i) **Purpose**. Each Acceptable Bidder must state that the Bid includes an irrevocable and binding offer by the Acceptable Bidder to

purchase the Interests or some or all of the Assets (identified with specificity) and specify the Debtors' liabilities that the Acceptable Bidder seeks to assume.

- (ii) **Identity & Corporate Authority.** Each Bid must fully disclose the identity of each entity that will be participating in connection with such Bid, and the complete terms of any such participation, along with sufficient evidence that the Acceptable Bidder is legally empowered, by power of attorney or otherwise, to complete the proposed Sale transaction on the terms contemplated by the parties. A Bid must also fully disclose any connections or agreements with any of the Debtors, any known, potential, prospective bidder, Acceptable Bidder or Qualified Bidder, or any officer, director, or equity security holder of the Debtors.
- (iii) **Purchase Price and Form of Consideration.** Each Bid must clearly set forth the purchase price in U.S. Dollars or other consideration to be paid or delivered in exchange for the Interests, all of the Assets or certain specific Assets (the "Purchase Price") and must (a) indicate the source of cash consideration, including funding commitments, and confirm that such consideration is not subject to any contingencies, (b) identify separately the cash and non-cash components of the Purchase Price, and (c) if the Bid is for only certain specific Assets (rather than the Interests), identify the portion of the total Purchase Price the Acceptable Bidder is assigning to each such Asset it is proposing to acquire. The Bid should include a detailed sources and uses schedule.
- (iv) **Bid Deposit.** Each Bid must be accompanied by a cash deposit equal to ten percent of the aggregate value of the cash and non-cash consideration of the Bid (the "Good Faith Deposit"), which will be held in an interest free escrow account to be identified and established pursuant to the authority granted by the order authorizing the Debtors to maintain and operate their bank accounts, by wire transfer or certified or cashier's check; *provided, however,* that the Debtors may, in consultation with the Consultation Parties on a no-name basis, and on a case-by-case basis, elect to waive the requirement that an Acceptable Bidder deliver the Good Faith Deposit if such Acceptable Bidder otherwise provides the Debtors with sufficient evidence satisfactory to the Debtors, in their reasonable business judgment, that such Acceptable Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate the proposed Sale transaction and to fully satisfy the Acceptable Bidder's Purchase Price and other obligations under its Bid.

- (v) **Committed Financing.** To the extent that a Bid is not accompanied by evidence of the Acceptable Bidder's capacity to consummate the Sale transaction set forth in its Bid with cash on hand, each Bid must include committed financing documented to the Debtors' satisfaction that demonstrates that the Acceptable Bidder has received sufficient debt and/or equity funding commitments to satisfy the Acceptable Bidder's Purchase Price and other obligations under its Bid. Such funding commitments or other financing must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions acceptable to the Debtors in their sole discretion. The Debtors may in their reasonable business judgment and upon consultation with the Consultation Parties waive this condition on a case-by-case basis.
- (vi) **Good Faith Offer.** Each Bid must constitute a good faith, irrevocable and bona fide binding offer to purchase the Interests or some or all of the Assets, as applicable.
- (vii) **Executed and Marked Agreement.** Each Bid must be accompanied by executed transaction documents, including a draft purchase agreement, the form of which will be provided to any Acceptable Bidder prior to the Bid Deadline and in the case of an Auction with a Stalking Horse Bidder, a markup of the Stalking Horse Agreement, including the exhibits, schedules and ancillary agreements related thereto and any other related material documents integral to such Bid pursuant to which the Acceptable Bidder proposes to effectuate the proposed Sale transaction, along with copies that are marked to reflect any amendments and modifications from the form purchase agreement provided to such Acceptable Bidder, which amendments and modifications may not be materially more burdensome or otherwise inconsistent with these Bidding Procedures. The Debtors, in their reasonable business judgment and upon consultation with the Consultation Parties, will determine whether any such amendments and modifications are materially more burdensome.
- (viii) **No Contingencies/Conditions.** A Bid must not be conditioned on any contingency, including, among others, on obtaining (a) financing, (b) equityholder, board of directors or board of managers, investment committee or other approval, or (c) the outcome or completion of a due diligence review by the Acceptable Bidder. A Bid must identify with particularity each and every condition to Closing (as defined herein), including the executory contracts and unexpired leases for which assumption and

assignment is required (as well as the regulatory approvals in Section D(xv)).

- (ix) **Binding and Irrevocable.** An Acceptable Bidder's Bid must be binding and irrevocable unless and until the Debtors accept a higher Bid and such Acceptable Bidder is not selected as the Back-Up Bidder (as defined herein).
- (x) **Joint Bids.** The Debtors will be authorized to approve joint Bids in their reasonable discretion on a case-by-case basis.
- (xi) **Adequate Assurance Information.** Each Bid must be accompanied by sufficient and adequate financial and other information (the "Adequate Assurance Information") to demonstrate, to the reasonable satisfaction of the Debtors that such Acceptable Bidder (a) has the financial wherewithal and ability to consummate the proposed Sale transaction (the "Closing"), and (b) can provide adequate assurance of future performance in connection with the proposed Sale transaction. The Bid must also identify a contact person that parties may contact to obtain additional Adequate Assurance Information.
- (xii) **Authorization.** Each Bid must contain evidence that the Acceptable Bidder has obtained authorization or approval from its board of directors (or a comparable governing body acceptable to the Debtors) with respect to the submission of its Bid and the consummation of the transactions contemplated in such Bid.
- (xiii) **No Fees.** Each Acceptable Bidder presenting a Bid or Bids will bear its own costs and expenses (including legal fees) in connection with the proposed transaction, and by submitting its Bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis, including under section 503(b) of the Bankruptcy Code; *provided* that the Debtors are authorized in their discretion to provide the Bid Protections to one or more Stalking Horse Bidders in accordance with these Bidding Procedures, in consultation with the Consultation Parties.
- (xiv) **Adherence to Bidding Procedures.** By submitting its Bid, each Acceptable Bidder is agreeing to abide by and honor the terms of these Bidding Procedures and agrees not to submit a Bid or seek to reopen the Sale Process, or the Auction (if held), after conclusion of the selection of the Winning Bidder (as defined herein). By submitting its Bid, each Acceptable Bidder is agreeing to comply in all respects with the Bankruptcy Code and any applicable non-bankruptcy law.

- (xv) **Regulatory Approvals and Covenants.** A Bid must set forth each regulatory and third-party approval required for the Acceptable Bidder to consummate the applicable Sale, if any, and the time period within which the Acceptable Bidder expects to receive such regulatory and third-party approvals (and in the case that receipt of any such regulatory or third-party approval is expected to take more than thirty days following execution and delivery of the purchase agreement, those actions the Acceptable Bidder will take to ensure receipt of such approvals as promptly as possible).
- (xvi) **Executory Contracts.** A bid must identify all executory contracts and unexpired leases of which the Potential Bidder seeks assignment from the Debtors, if any.
- (xvii) **As-Is, Where-Is.** Each Bid must include a written acknowledgement and representation that the Acceptable Bidder (a) has had an opportunity to conduct any and all due diligence regarding the Interests and Assets prior to making its offer, (b) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Assets in making its Bid, and (c) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, regarding the Interests and Assets or the completeness of any information provided in connection therewith, the Sale or the Auction (if held), except as expressly stated in the Acceptable Bidder's proposed purchase agreement.
- (xviii) **Time Frame for Closing.** A Bid by an Acceptable Bidder must be reasonably likely (based on antitrust or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Successful Bid (as defined herein), within a time frame reasonably acceptable to the Debtors, in consultation with the Consultation Parties.
- (xix) **Consent to Jurisdiction.** The Acceptable Bidder must submit to the jurisdiction of the Bankruptcy Court and waive any right to a jury trial in connection with any disputes relating to the Debtors' qualification of Bids, the Auction (if held), the construction and enforcement of these Bidding Procedures, the Plan, the Sale documents, and the Closing, as applicable.
- (xx) **DIP Order.** All Bids must be in accordance with the terms and conditions of the DIP Order and the DIP Credit Agreements.

- (xxi) **No Breakup Fee.** Other than a Stalking Horse Bidder, the Acceptable Bidder must not seek or request any breakup fee, transaction fee, termination fee, expense reimbursement, “work fee” or any similar type of payment of reimbursement.
- (xxii) **Cooperation.** The Acceptable Bidder must provide a covenant to cooperate with the Debtors to provide pertinent factual information regarding the Potential Bidder’s operations reasonably required to analyze issues arising with respect to any applicable laws or regulatory requirements.
- (c) **Bid Deadline.** Each bid must be transmitted via email (in .pdf or similar format) or other means so as to be *actually received* by the Debtors and their advisors on or before **January 10, 2020 at 12:00 p.m. (prevailing Eastern Time)** (the “Bid Deadline”).
- (d) **Right to Credit Bid.** The DIP Agent shall have the right to credit bid (subject, in all respects, to the Committee’s challenge rights under the DIP Order), in accordance with the DIP Order and the DIP Credit Agreements and subject to the Carve-Out (as defined in the DIP Order), up to the full amount of the DIP Obligations (as defined in the DIP Order) in any sale contemplated by these Bid Procedures pursuant to section 363(k) of the Bankruptcy Code; *provided, that* if the DIP Lenders submit a bid for any of the Assets, the DIP Agent shall cease being a Consultation Party as set forth herein. The Existing Term Loan Agent shall have the right to credit bid up to the full amount of the applicable Prepetition Debt, subject, in all respects, to the Committee’s challenge rights under the DIP Order and the Carve-Out in any sale contemplated by these Bid Procedures pursuant to section 363(k) of the Bankruptcy Code.
- (e) **The Auction.** If one or more Qualified Bids is received by the Bid Deadline, the Debtors may elect to conduct an Auction with respect to Interests and/or some or all of the Assets, as determined by the Debtors in the exercise of their reasonable business judgment, and in consultation with the Consultation Parties (as defined in the Bidding Procedures). For the avoidance of doubt, the Debtors may also conduct more than one Auction with respect to non-overlapping material portions of the Assets or elect to conduct no Auction at all, in each case, in consultation with the Consultation Parties. The Auction, if held, will commence at a time and place that the Debtors timely notify any Stalking Horse Bidders and all other Qualified Bidders, determined in consultation with the Consultation Parties.
- (f) **Bidding Increments (Local Bankr. R. 6004-1(c)(i)(C)).** Bidding at the Auction (if any) will begin at the Initial Minimum Overbid (as defined below). subsequent Bids at the Auction, including any Bids by any Stalking Horse Bidder, must be made in minimum increments of

\$5 million (or such other amount as the Debtors may determine, which amount may be higher or lower than \$5 million) of additional value after payment of the Bid Protections to any Stalking Horse Bidders, if applicable.

- (g) **Back-up Bidder (Local Bankr. R. 6004-1(c)(i)(E))**. If for any reason the Winning Bidder or Winning Bidders fail to consummate the Qualified Bid or Qualified Bids within the time permitted after the entry of the Confirmation Order approving the Sale to the Winning Bidder or Winning Bidders, then the Qualified Bidder or Qualified Bidders with the next-highest or otherwise second-best Bid or Bids (each, a “Back-Up Bidder”), as determined by the Debtors after consultation with their advisors and the Consultation Parties, will automatically be deemed to have submitted the highest or otherwise best Bid or Bids (each, a “Back-Up Bid”), and the Debtors will be authorized, but not required, to consummate the transaction pursuant to the Back-Up Bid or Back-Up Bids as soon as is commercially reasonable without further order of the Bankruptcy Court upon at least 24 hours advance notice, which notice will be filed with the Bankruptcy Court. Upon designation of the Back-Up Bidder or Back-Up Bidders, the Back-Up Bid or Back-Up Bids must remain open until the Closing of the Successful Bid or Successful Bids, as applicable, notwithstanding any outside date set forth in such Back-Up Bidder or Back-Up Bidders’ proposed purchase agreement.
- (h) **Initial Minimum Overbid**. When determining the highest or otherwise best Qualified Bid (the “Initial Minimum Overbid”), as compared to other Qualified Bids, the Debtors may consider the following factors in addition to any other factors that the Debtors deem appropriate: (i) the amount of the Purchase Price of the Qualified Bid; (ii) the value to be provided to the Debtors under the Bid, including the net economic effect upon the Debtors’ estates, taking into account any Stalking Horse Bidder’s rights to any Bid Protections; (iii) the proposed changes or modifications to the form purchase agreement delivered in connection with such Qualified Bid and the comparative favorability of the terms set forth in such proposed purchase agreement versus any Stalking Horse Agreements, to the extent applicable; (iv) the assets and liabilities excluded from the Qualified Bid and any executory contracts or leases or other liabilities proposed to be assumed; (v) any benefit to the Debtors’ bankruptcy estates from any assumption of liabilities or waiver of liabilities; (vi) the certainty of a Qualified Bid leading to a confirmed plan (whether the Plan or some other plan); (vii) the transaction structure and execution risk, including conditions to, timing of, and certainty of closing; termination provisions; availability of financing and financial wherewithal to meet all commitments; and required governmental or other approvals; and (viii) any other factors the Debtors may, consistent with their fiduciary duties, reasonably deem relevant.

- (i) **Acceptance of the Successful Bid or Successful Bids.** Upon the conclusion of the Auction if such Auction is conducted, or upon such other time that the Debtors, in the exercise of their reasonable, good-faith business judgment, and in consultation with the Consultation Parties, identify the highest or otherwise best Qualified Bid or Qualified Bids for the Interests and/or some or all Assets, as applicable (each, a “Successful Bid”), which will be determined by considering, among other things, (a) whether the Bid or Bids are for the purchase of the Interests or for some or all of the Assets, (b) the total expected consideration to be received, (c) the likelihood of the Qualified Bidder or Qualified Bidders’ ability to close a Sale transaction and the timing thereof (including any anticipated delays to Closing and the cost to the Debtors of such delays), (d) the expected net benefit to the Debtors’ estates, (e) the certainty of the Debtors being able to confirm a plan (whether the Plan or some other plan), and (f) any other criteria as may be considered by the Debtors in their reasonable, good-faith business judgment and in consultation with the Consultation Parties. For the avoidance of doubt, the Debtors may select more than one Qualified Bid to collectively serve as a Successful Bid if each such Qualified Bid contemplates the purchase of different Assets. The Qualified Bidder or Qualified Bidders having submitted the Successful Bid or Successful Bids will be deemed the “Winning Bidder” or “Winning Bidders,” as applicable. The Winning Bidder or Winning Bidders and the Debtors must, as soon as commercially reasonably practicable, complete and sign all agreements, contracts, instruments, or other documents evidencing and containing the terms upon which such Successful Bid or Successful Bids were made.

The Debtors will present the results of the Auction, if held, or otherwise present the Winning Bidder(s) to the Bankruptcy Court at the Confirmation Hearing (as defined herein), at which certain findings will be sought from the Bankruptcy Court regarding the Sale, including, among other things, that (a) the Sale was fair in substance and procedure and (b) consummation of the Successful Bid or Successful Bids will provide the highest or otherwise best value for the Interests or some or all of the Assets, as applicable, and is in the best interests of the Debtors’ estates.

If an Auction is held, the Debtors will be deemed to have accepted a Qualified Bid only when (a) such Qualified Bid is declared a Successful Bid at the Auction, and (b) definitive documentation has been executed in respect thereof. Such acceptance is conditioned upon approval by the Bankruptcy Court of the Successful Bid or Successful Bids and entry of an order approving such Successful Bid or Successful Bids and confirming the Plan (the “Confirmation Order”).

- (j) **Reservation of Rights (Local Bankr. R. 6004-1(c)(i)(D)).** The Debtors reserve the right to, in their reasonable business judgment and upon consultation with the Consultation Parties to modify these Bidding

Procedures in good faith, to further the goal of attaining the highest or otherwise best offer for the Interests or the Assets, or impose, at or prior to selection of the Winning Bidder, additional terms and conditions on the Sale of the Interests or the Assets, including, without limitation: (i) extending the deadlines set forth in these Bidding Procedures; (ii) adjourning the Auction (if held) without further notice; (iii) adding or modifying procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction (if held); (iv) canceling the Auction or electing not to hold an Auction; (v) rejecting any or all Bids or Qualified Bids; (vi) adjusting the applicable minimum overbid increment, including by requesting that Qualified Bidders submit last or final bids on a “blind” basis; and (vii) selecting a draft purchase agreement agreed to by a Qualified Bidder in connection with a Qualified Bid to serve as the purchase agreement that will be executed by the Winning Bidder or Winning Bidders, as applicable and with any necessary adjustments for the assets and liabilities being purchased and assumed, upon conclusion of the Auction, if held. The Debtors shall provide reasonable notice of any such modification to any Qualified Bidder, including any Stalking Horse Bidders.

23. Importantly, the Bidding Procedures recognize the Debtors’ fiduciary obligations to maximize sale value, and, as such, do not impair the Debtors’ ability to consider all qualified bid proposals, and, as noted, preserve the Debtors’ right to modify the Bidding Procedures to best promote the goals of the marketing and sale process, including, without limitation, the Debtors’ goal to maximize value for the Debtors’ estates.

Basis for Relief

I. The Relief Sought in the Bidding Procedures Order Is in the Best Interests of the Debtors’ Estates and Should Be Approved.

24. Courts have made clear that a debtor’s business judgment is entitled to substantial deference with respect to the procedures to be used in selling an estate’s assets. *See, e.g., In re Martin*, 91 F.3d 389, 395 (3d Cir. 1996) (“[U]nder normal circumstances the court would defer to the trustee’s judgment so long as there is a legitimate business justification.”) (citing *In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991) (“[T]he debtor in possession can sell property of the estate . . . if[] he has an ‘articulated business justification,’ he provides adequate notice to all

creditors, and a hearing is held on the sale.” (citations omitted)); ; *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (“In determining whether to authorize the use, sale or lease of property of the estate ... courts require the debtor to show that a sound business purpose justifies such actions.”).

25. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. See *In re Edwards*, 228 B.R. 552, 561 (Bankr. E.D. Pa. 1998) (“The purpose of procedural bidding orders is to facilitate an open and fair public sale designed to maximize value for the estate.”); *In re Food Barn Stores, Inc.*, 107 F.3d 558, 564–65 (8th Cir. 1997) (in bankruptcy sales, “a primary objective of the [Bankruptcy] Code [is] to enhance the value of the estate at hand.”); *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (“It is a well-established principle of bankruptcy law that the objective of the bankruptcy rules and the [Debtor]’s duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.” (citation omitted)); *Official Comm. of Unsecured Creditors v. Interforum Holding LLC*, 2011 WL 2671254, No. 11-cv-219, at *1 n. 1 (E.D. Wis. July 7, 2011) (“The goal of an asset sale in bankruptcy is to maximize the recovery of value for the bankruptcy estate.”).

26. Here, the Debtors submit that the Bidding Procedures will promote active bidding from interested parties and will elicit the highest or otherwise best offers available for the Interests or the Assets. The Bidding Procedures are designed to facilitate orderly yet competitive bidding to maximize the value realized from the Sale by these estates. In particular, the Bidding Procedures contemplate an open auction process and provide potential bidding parties with sufficient time to perform due diligence and acquire the information necessary to submit a timely and well-informed bid.

27. At the same time, the Bidding Procedures provide the Debtors with a robust opportunity to consider competing bids and select the highest or otherwise best offer or offers for the completion of the Sale. *See, e.g., In re Trans World Airlines, Inc.*, No. 01-00056, 2001 WL 1820326, at *4 (Bankr. D. Del. 2001) (“[T]he auction procedure has developed over the years as an effective means for producing an arm’s length fair value transaction.”). Having the option to enter into a Stalking Horse Agreement with a Stalking Horse Bidder ensures that the Debtors retain flexibility to set a minimum purchase price for the Interests or Assets that will be tested by the marketplace. As such, the Debtors and their creditors can be assured that, taking into account the financial condition of the Debtors and the economy, the consideration obtained will be fair and reasonable and at or above market.

28. The Debtors submit that the proposed Bidding Procedures will encourage competitive bidding, are appropriate under the relevant standards governing auction proceedings and bidding incentives in bankruptcy proceedings, and are consistent with other procedures previously approved by this District. *See In re Z Gallerie, LLC*, No. 19-10488 (LSS) (Bankr. D. Del. Apr. 11, 2019); *In re Things Remembered, Inc.*, No. 19-10234 (KG) (Bankr. D. Del. Feb. 21, 2019); *In re Emerald Oil, Inc.*, No. 16-10704 (KG) (Bankr. D. Del. Aug. 31, 2016); *In re Samson Res. Corp.*, No. 15-11934 (CSS) (Bankr. D. Del. Sept. 30, 2016); *In re Source Home Entm’t, LLC*, No. 14-11553 (KG) (Bankr. D. Del. July 21, 2014).⁶

II. The Bid Protections Have a Sound Business Purpose and Should Be Approved.

29. The Debtors are also seeking authority to designate one or more Stalking Horse Bidders and offer the Bid Protections to each such Stalking Horse Bidder. The use of a stalking horse in a public auction process for sales is a customary practice in chapter 11 cases, as the use

⁶ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request of the Debtors’ proposed counsel.

of a stalking horse bid is, in many circumstances, the best way to maximize value in an auction process by “establish[ing] a framework for competitive bidding and facilitat[ing] a realization of that value.” *Interforum Holding LLC*, 2011 WL 2671254 at *1 n. 1. As a result, stalking horse bidders virtually always require break-up fees and, in many cases, other forms of bidding protections as an inducement for “setting the floor at auction, exposing its bid to competing bidders, and providing other bidders with access to the due diligence necessary to enter into an asset purchase agreement.” *Id.* (citation omitted). Thus, the use of bidding protections has become an established practice in chapter 11 cases.

30. Indeed, break-up fees and other forms of bidding protections are a normal and, in many cases, necessary component of significant sales conducted in chapter 11: “Break-up fees are important tools to encourage bidding and to maximize the value of the debtor’s assets. . . . In fact, because the directors of a corporation have a duty to encourage bidding, break-up fees can be *necessary* to discharge the directors’ duties to maximize value.” *Integrated Res.*, 147 B.R. at 659–60 (emphasis in original). Specifically, bid protections “may be legitimately necessary to convince a ‘white knight’ to enter the bidding by providing some form of compensation for the risks it is undertaking.” *In re 995 Fifth Ave. Assocs., L.P.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (citation and quotations omitted); *see also Integrated Res.*, 147 B.R. at 660–61 (noting bid protections can prompt bidders to commence negotiations and “ensure that a bidder does not retract its bid”).

31. As a result, courts routinely approve such bidding protections in connection with proposed bankruptcy sales where a proposed fee or reimbursement provides a benefit to the estate. *See In re O’Brien Env’tl. Energy, Inc.*, 181 F.3d 527, 535 (3d Cir. 1999) (“In other words, the allowability of break-up fees, like that of other administrative expenses, depends upon the

requesting party's ability to show that the fees were actually necessary to preserve the value of the estate.”). The Debtors believe that the allowance of the Bid Protections is in the best interests of the Debtors' estates and their creditors, as each Stalking Horse Bid (if any) will establish a floor for further bidding that may increase the consideration given in exchange for the Interests or Assets, which will inure to the benefit of the Debtors' estates.

32. Here, the flexibility to offer Bid Protections is a critical component of the Debtors' ability to obtain the commitment of a Stalking Horse Bidder. To qualify as a Stalking Horse Bidder, a bidder will need to have expended and will continue to expend time and resources negotiating, drafting, and performing due diligence activities necessitated by the Sale transactions, despite the fact that its bid will be subject not only to Court approval, but also to overbidding by third parties. Any Bid Protections offered to a Stalking Horse Bidder will have been negotiated in good faith and at arm's length and with significant give-and-take with respect to such Bid Protections. As a result, by preserving the flexibility to offer the Bid Protections, the Debtors ensure that their estates can realize the benefit of a transaction with a Stalking Horse Bidder without sacrificing the potential for interested parties to submit overbids at the Auction.

33. If the Court does not approve the Bid Protections, the Debtors may not be able to induce one or more bidders to serve as Stalking Horse Bidders, to the detriment of the Debtors' estates. Further, if the Debtors enter into a Stalking Horse Agreement with Bid Protections that were ultimately to be paid, it will be because the Debtors have received higher or otherwise superior offers for the Interests or the Assets. In short, the proposed Bid Protections are fair and reasonable under the circumstances because they constitute a “fair and reasonable percentage of the proposed purchase price” and are “reasonably related to the risk, effort, and expenses of the

prospective purchaser.” *Integrated Res.*, 147 B.R. at 662. Accordingly, the Bid Protections should be approved.

Waiver of Bankruptcy Rule 6004(h)

34. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the fourteen-day stay period under Bankruptcy Rule 6004(h).

Reservation of Rights

35. Nothing contained herein is intended to or should be construed as (a) an admission as to the validity or priority of any claim or lien against the Debtors, (b) a waiver of the Debtors’ rights to subsequently dispute such claim or lien on any grounds, (c) a promise or requirement to pay any prepetition claim, (d) an implication or admission that any particular claim is of a type specified or defined in the Motion, the Bidding Procedures Order, or the Sale Order, (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code, or (f) a waiver of the Debtors’ or any other party in interest’s rights under the Bankruptcy Code or any other applicable law.

Notice

36. Notice of the hearing on the relief requested in the Motion has been provided by the Debtors in accordance and compliance with Bankruptcy Rules 4001 and 9014, as well as the Local Rules, and is sufficient under the circumstances. Without limiting the foregoing, due notice was afforded, whether by facsimile, electronic mail, overnight courier, or hand delivery, to parties in interest, including (a) the U.S. Trustee; (b) the Committee; (c) the administrative agent under the Debtors’ prepetition first lien term loan facility and counsel thereto; (d) the lenders under the Debtors’ prepetition first lien term loan facility and counsel thereto; (e) Merrill Lynch

Commodities, Inc. and counsel thereto; (f) NGL Energy Partners LP and counsel thereto; (h) the lenders under the Debtors' prepetition promissory note and counsel thereto; (g) counsel to ICBC Standard Bank Plc; (h) the lenders under the Debtors' debtor-in-possession financing facility and counsel thereto; (i) the United States Attorney's Office for the District of Delaware; (j) the Internal Revenue Service; (k) the state attorneys general for all states in which the Debtors conduct business; (l) all parties known by the Debtors to hold or assert a lien on any asset of any Debtor; and (m) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

37. No prior request for the relief sought in this motion has been made to this or any other court.

[Remainder of page intentionally left blank.]

WHEREFORE, the Debtors respectfully request that the Court enter the Bidding Procedures Order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: October 24, 2019
Wilmington, Delaware

/s/ Peter J. Keane

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