

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

In re:)	Chapter 11
)	
TUSK ENERGY SERVICES, LLC, et al.,)	Case No. 16-51082
)	
Debtors.)	Jointly Administered
_____)	

**DEBTORS' MOTION FOR ORDERS: (A) AUTHORIZING SALE OF THE
ASSETS OF DEBTOR TUSK SUBSEA SERVICES, LLC
PURSUANT TO BANKRUPTCY CODE § 363; AND
(B) APPROVING SALE PROCEDURES, FORM OF NOTICE
FOR SALE, AND SCHEDULING FINAL SALE HEARING**

NOW INTO COURT, through undersigned counsel, come, Tusk Energy Services, LLC, Tusk Subsea Services, LLC, Tusk Construction, LLC, and Rene Cross Construction, Inc., as debtors and debtors-in-possession (collectively, the "Debtors"), and file this Motion ("Motion") for Orders: (A) Authorizing Sale of the Debtors' Assets Pursuant to Bankruptcy Code § 363; and (B) Approving Sale Procedures, Form of Notice for Sale, and Scheduling Final Sale Hearing, stating as follows.

SUMMARY

1.

This Court has previously approved a sale of substantially all of the assets of Debtors Rene Cross Construction, Inc. and Tusk Subsea Services, L.L.C. (the "RCC Assets"). (D.I. 168). That sale closed on January 12, 2017. The Debtors now request approval of bidding and auction procedures for an open auction to be conducted on or about March 29, 2017 to sell the remaining business assets of these estates. This sale, coupled with the on-going plan and disclosure statement process, should allow Debtors to move to confirmation and exit Chapter 11 in the coming months. Debtors request this sale process on an expedited schedule in light of the fact that the sale and

marketing process has been pending for some time, and Debtors anticipate all interested parties will be able to participate on the notice requested herein.

LEGAL STANDARD

3.

Sales or leases of assets outside the ordinary course of business are governed by Section 363 of the Bankruptcy Code. This Motion is filed under Sections 105 and 363 of the Bankruptcy Code, and Bankruptcy Rules 2002, 6004 and 9014. As discussed more fully below, the Debtors requests approval of a sale free and clear of existing liens and interests pursuant to Section 363(f).

FACTUAL BACKGROUND

4.

The Debtors had essentially two operating businesses: (i) a dredging and jetting services company, operating under the name of Tusk Subsea and operating through assets of Debtor Tusk Subsea Services, LLC (“Tusk Subsea”); and (ii) an inland marine construction business, operating under the name of Rene Cross Construction and operating through assets of Debtor Rene Cross Construction, Inc. (“Rene Cross Construction”) and assets of Debtor Tusk Construction, LLC (“Tusk Construction”). The fourth Debtor company, Tusk Energy Services, LLC, is essentially a holding company that owns 100% of the equity interests in Tusk Subsea, Rene Cross Construction, and Tusk Construction.

5.

The Debtors’ secured lender is Origin Bank (“Origin Bank”). Origin Bank asserts the Debtors are indebted to Origin Bank, as of the Petition Date, in the amount of approximately \$5,478,938 in principal, plus accrued interest, pursuant to a secured credit facility (“Pre-Petition Secured Credit Facility”). Origin Bank has security interests (“Pre-Petition Lender Liens”) in

substantially all of the Debtors' pre-petition equipment, receivables, and other assets (the "Pre-Petition Collateral"). Origin Bank has also extended to the Debtors a post-petition lending facility ("Post-Petition Secured Credit Facility"), which is in place pursuant to the Court's interim order entered on August 21, 2016 [Docket #21], and final order entered on September 28, 2016 [Docket #73].

6.

Prior to the Petition Date, the Debtors were in default under the Secured Credit Facility due to an inability to make required payments of principal and interest. Prior to the Petition Date, the Debtors suffered from the effects of the overall severe slowdown in onshore oil and gas exploration and production activity in Louisiana and in other areas where the Debtors conduct business. The decline in the price of crude oil that began in mid-2014 and extending into 2016 severely impacted exploration and production activities and demand for many of the Debtors' services.

7.

Prior to the Petition Date, the Debtors reviewed their strategic options and determined that, in order to maximize the value of their businesses and assets for the benefit of creditors and their estates, the Debtors either (i) required additional liquidity, in the form of refinancing, additional loans, or additional equity contributions; or (ii) should pursue marketing and potential sale of the Debtors' businesses. In the period before the Petition Date, the Debtors pursued various options for additional liquidity, unfortunately without success. The Debtors also solicited expressions of interest from interested parties to purchase the business and assets of the Debtors, and two parties presented the Debtors with letters of intent in July, 2016.

8.

After the Petition Date, the Debtors continued negotiations with interested parties, resulting in the sale of the RCC Assets, which was approved on January 26, 2017 and closed on January 12,

2017. (D.I. 168). After negotiations and discussions with several interested parties, the Debtors believe, in the exercise of their business judgment, that an open auction will maximize the value of the remaining Tusk Subsea business and assets (the “Tusk Subsea Assets”) for the benefit of the creditors and the estates.

PROPOSED SALE AND BIDDING PROCEDURES

9.

The proposed sale (“Sale”) of the Tusk Subsea Assets, is as follows:

- **Assets.** The Tusk Subsea Assets to be sold will consist of all assets of the Debtor Tusk Subsea, excluding (a) all cash and cash equivalents as of the Closing Date; (b) the accounts receivable of Tusk Subsea accrued as of the Effective Date (the “Accrued Accounts Receivable”); (c) all deposits which constitute Tusk Subsea’s property as of the Petition Date; and (d) all of Tusk Subsea’s avoidance actions and causes of action accrued as of the Closing Date.
- **Sale Price Floor.** The minimum sale price will be \$500,000, (subject to bidding at the Auction described below) with the final sale price being the “Sale Price”.
- **Purchase Agreement.** The Acquired Assets shall be sold pursuant to a purchase agreement (“Purchase Agreement”), which shall be submitted prior to the final hearing on the Sale and pursuant to the notice procedures below. (See “Sale Notice” below.)
- **Sale Free and Clear.** The Acquired Assets to be transferred by the Debtors will be transferred free and clear of all liens, claims and interests, other than those (if any) expressly assumed by Winning Bidder (defined below) or otherwise expressly permitted under the Purchase Agreement.
- **Sale As Is, Where Is and Without Warranties.** The Assets will be sold on an “as is, where is” basis and without any representations or warranties, express or implied, of any kind, nature, or type.
- **Closing Conditions / Contingencies.** The Sale and Purchase Agreement will include other customary closing conditions, including conditions relating to bankruptcy court approvals. No due diligence contingency will be allowed.
- **Sale Subject to Higher Offers.** The Sale is subject to higher offers pursuant to the Bidding Procedures defined below, with a proposed bid deadline of March 28, 2017 and auction date (if there are any higher qualified bids) of March 29, 2017.

The Debtors submit, and request approval of, the following bidding procedures (“Bidding Procedures”):

- **Bidders / Nondisclosure Agreement:** Any party wishing to submit a bid (“Potential Bidder”) must execute a nondisclosure agreement (“NDA”) in the form provided by Debtors’ counsel, in order to receive due diligence information from the Debtors.
- **Qualified Bids:** In order to be a “Qualified Bid,” any bids submitted by Potential Bidders must be submitted to the Debtors by no later than March 28, 2017 (the “Bid Deadline”), and must conform to the following: (a) the bidder must tender a deposit in the amount of \$10,000.00; (b) the bidder must include documentation to establish the bidder’s financial ability to close the transaction; (c) the bid must not be subject to any due diligence or other contingencies of the bidder other than entry of an order by the Bankruptcy Court authorizing the Sale and other customary conditions to closing for this type of transaction; and (d) the bid must be in the minimum amount of \$500,000.00.
- **Waiver of Credit Bid:** Origin Bank waives its right to credit bid, provided that a Closing occurs at or above a Sale Price of \$500,000.00. No party shall be entitled to submit any bid which is in whole or part based upon a credit for any amount or amounts alleged to be due from the Debtors.
- **Auction:** The Debtors shall conduct the Auction on March 29, 2017 at the offices of Locke Lord LLP, 601 Poydras St., Suite 2660, New Orleans, Louisiana 70130, commencing at 10:00 am. The Auction will be conducted to determine the best and highest bid (the “Winning Bid,” with the bidder being the “Winning Bidder”) for the Acquired Assets.
- **Bid Increments:** At the Auction, bid increments of at least \$10,000.00 shall be used and only Qualified Bidders may bid.
- **Report on Results of Auction:** Within three business days following the Auction, the Debtors shall file a report indicating the outcome of the Auction.
- **Closing / Payment in Cash:** The Closing shall take place by April 19, 2017, and payment of the Sale Price shall take place at Closing.

The full text of the proposed Bidding Procedures is included as Exhibit “A” to this Motion.

11.

It should be noted that all potential bidders are being notified of the Bid Deadline contemporaneously with filing of this motion through correspondence (and follow-up phone calls). Bidders have also been told in advance to expect a late March Bid Deadline. Therefore all bidders will be expecting the March 28, 2017 Bid Deadline and March 29, 2017 Auction.

RELIEF REQUESTED

12.

The Debtors are requesting to set this Sale Motion for an initial expedited hearing on March 23, 2017, at 10:30 AM, with a final hearing to be set by the Court on April 4, 2017. At the initial hearing, the Debtors will request approval of the proposed sale notice package, and the other sale and bidding procedures as discussed below. At the final hearing, the Debtors will request final approval of the sale “free and clear” under Sections 363(b) and (f) of the Bankruptcy Code. These requests for relief are discussed in turn below.

A. Approval of Sale Notice Package, Bidding Procedures, Break-Up Fee and Expense Reimbursement

1. Sale Notice

13.

The Debtors proposes to serve a “Sale Notice,” substantially in the form attached hereto as Exhibit “B,” which provides a general description of the Acquired Assets and the proposed Sale and Sale Consideration, the time and place of the final Sale Hearing, and the objection deadline under the local rules. The Sale Notice will further include the Bidding Procedures (defined below).

14.

The Sale Notice will be served by a deadline to be established at the initial hearing on this Motion upon the following (collectively, the “Notice Parties”): (i) the Office of the United

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States Trustee; (ii) all creditors on the creditor matrix; (iii) all known holders of equity interests in the Debtors; (iv) all relevant federal, state, and local regulatory or taxing authorities; and any other party which the Debtors, in their discretion, believes may have an interest in submitting a bid for the Acquired Assets.

2. Auction and Bidding Procedures

15.

The Debtors request approval of the Bidding Procedures summarized above and set forth in Exhibit “A” hereto. The Debtors submit that such Bidding Procedures are typical for cases of this size within this District and in other Districts in Louisiana.

16.

A proposed form of order for the relief requested at the initial hearing is attached as Exhibit “C” hereto. The Debtors’ submit that the initial hearing should be a final hearing as to the approval of the Sale Notice, Bidding Procedures, Break-Up Fee, and Expense Reimbursement.

B. Approval of Sale Under Bankruptcy Code Section 363(b) and (f)

17.

At the final hearing on the Sale, the Debtors will request approval of the Sale under Section 363(b) and (f), as a sale outside the ordinary course of business and “free and clear” of all liens and encumbrances.

1. Sale Outside of Ordinary Course of Business

18.

The Debtors submit that the requirements of Section 364(b) are met, in that there is a good and sufficient business justification for the sale. *In re Asarco, L.L.C.*, 650 F.3d 593, 601 (5th Cir. 2011) (Section 363(b) incorporates a business judgment standard, in order for the debtor-

in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.)

19.

The Debtors' business justification for the proposed Sale is as follows: the Debtors has been investigating potential strategic options and potential sales for some time, and several parties are interested in the Debtors' assets. The Debtors believe that an open auction will be the best way to maximize value.

2. Sale Free and Clear

20.

The Debtors also requests that the Sale be free and clear of liens and interests under Section 363(b), with such liens, claims, and interests, if any, to attach to the proceeds of the Sale, subject to any rights and defenses of the Debtors and other parties in interest with respect thereto.

21.

Section 363(f) of the Bankruptcy Code provides, in pertinent part:

The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if –

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). *See also In re Elliot*, 94 B.R. 343, 345 (E.D. Pa. 1988) (holding that section 363(f) written in disjunctive; court may approve sale “free and clear” provided at least one of the requirements is met).

22.

With respect to each creditor asserting an interest, one or more of the standards set forth in Section 363(f)(1)-(5) will be satisfied. Those holders of interests who do not object or who withdraw their objections to the Sale or the Motion are deemed to have consented to the Motion and Sale pursuant to Bankruptcy Code § 363(f)(2). Those holders of interests who do object will fall within one or more of the other subsections of Bankruptcy Code Section 363(f).

23.

Most significantly, the only known secured creditor, Origin Bank, has been consulted and agrees to the Sale and Bidding Procedures herein.

24.

In addition, the Debtors request that the final order approving the Sale include express language canceling and releasing any other liens and encumbrances in their entirety. The Debtors is not aware that any such liens (if any) have any significant value.

25.

A sale free and clear of liens, claims and interests is necessary to maximize the value of the Acquired Assets. A sale of the Acquired Assets other than one free and clear of all interests would yield substantially less value for Debtors’ estate, with less certainty than a transaction free and clear of all interests. The Debtors submit that holders of liens, claims and interests, if any, will be adequately protected by the availability of the proceeds of the sale to satisfy their liens, claims and interests.

26.

Finally, the Debtors briefly note the concern, sometimes expressed, relating to a Section 363 sale as a “sub rosa” plan. The Debtors have filed a liquidating plan, which will dovetail with the schedule and deadlines outlined herein.

3. Waiver of Automatic 14-Day Stay Under Bankruptcy Rule 6004(h)

27.

Pursuant to Bankruptcy Rule 6004(h), unless the Court orders otherwise, all orders authorizing the sale of property pursuant to Section 363 are automatically stayed for fourteen (14) days after entry of the order. The purpose of Bankruptcy Rule 6004(h) is to provide sufficient time for an objecting party to request a stay pending appeal before the order can be implemented. *See* Advisory Committee Notes to Rule 6004(h).

28.

Commentators agree that the 14-day stay period should be eliminated to allow a sale or other transaction to close immediately where there has been no objection to the procedure. *See generally* 10 *Collier on Bankruptcy* ¶ 6004.11 (16th ed. 2012). Furthermore, if an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time necessary to file such appeal. *Id.*

WHEREFORE, for the foregoing reasons, Tusk Energy Services, LLC, Tusk Subsea Services, LLC, Tusk Construction, LLC, and Rene Cross Construction, Inc. respectfully request that the Court enter the following Orders:

(1) After the interim hearing, an Order (in the form attached as Exhibit “C” hereto):

(a) approving the Sale Notice (in the form attached as Exhibit “B” hereto);

- (b) deeming the Sale Notice good and sufficient notice of the Sale and Bidding Procedures under Bankruptcy Code Section 363; and
- (c) setting the Sale for final hearing.

(2) Upon final hearing, an Order approving the Sale under Section 363(b) and (f) of the Bankruptcy Code, free and clear of all liens, claims and interests.

DATED: March 16, 2017

Respectfully Submitted,

/s/ C. Davin Boldissar

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**ATTORNEYS FOR TUSK ENERGY
SERVICES, LLC, TUSK SUBSEA SERVICES,
LLC, TUSK CONSTRUCTION, LLC, AND
RENE CROSS CONSTRUCTION, INC..**

EXHIBIT A

BIDDING PROCEDURES

Tusk Subsea Services, LLC, (“Tusk Subsea” or the “Debtor”) through counsel for the Debtors (the “Debtors’ Counsel”) propose to conduct an auction for the sale (“Sale”) of the Acquired Assets (defined below) and will proceed in accordance with the following bid procedures (“Bidding Procedures”) which have been approved pursuant to an Order entered by the United States Bankruptcy Court for the Western District of Louisiana (“Bankruptcy Court”) on March 23, 2017 (“Bid Procedures Order”).

1. **Assets to Be Sold.** These Bidding Procedures set forth the terms by which prospective bidders may qualify for and participate in the Auction (*defined below*), thereby competing to make the highest or otherwise best offer to purchase free and clear of any and all claims, liens, and other encumbrances the following assets (“Acquired Assets”): all assets of Tusk Subsea excluding certain excluded assets (“Excluded Assets”). The Excluded Assets consist of (a) all cash and cash equivalents as of the Closing Date; (b) the accounts receivable of Tusk Subsea accrued as of the Effective Date (the “Accrued Accounts Receivable”); (c) all deposits which constitute Tusk Subsea’s property as of the Petition Date; and (d) all of Tusk Subsea’s avoidance actions and causes of action accrued as of the Closing Date.
2. **Origin Bank.** As used in these Bidding Procedures, “Origin Bank” shall mean Origin Bank, which asserts a secured claim against the Debtor.
3. **Potential Bidders / Execution of NDA.** To participate in the Auction (defined below) Any party wishing to submit a bid (“Potential Bidder”) must execute a nondisclosure agreement (“NDA”) in the form provided by Debtors’ counsel, in order to receive due diligence information from the Debtors.
4. **Due Diligence.** After receipt of an executed NDA, the Debtors shall provide each Potential Bidder reasonable due diligence information, as requested, as soon as reasonably practicable after such request. The due diligence period will end on the Bid Deadline (*as defined herein*). In connection with the provision of due diligence information to Potential Bidders, the Debtors shall not furnish any confidential information relating to the Debtors or the Auction to any person except a Potential Bidder who has executed and delivered an NDA to the Debtors.
5. **Bid Deadline.** To be entitled to be Qualified Bids (*defined below*), Bids must meet the requirements under Paragraph (7) below and must be received by Debtors’ Counsel (Locke Lord LLP, 601 Poydras Street, Suite 2660, New Orleans, Louisiana 70130, Attn: Davin C. Boldissar, Fax: (504) 558-5200; [Email: dboldissar@lockelord.com](mailto:dboldissar@lockelord.com)) so as to be actually received **no later than 5:00 p.m. (Central Time) on March 28, 2017** (the “Bid Deadline”). Bids may be sent by email.
6. **Qualified Bid.** To be entitled to participate in the Auction, a Potential Bidder must deliver to the Debtors by the Bid Deadline an irrevocable offer

(each a “Bid”) that meets the following requirements to be a “Qualified Bid.” In order to qualify as a Qualified Bid, such Bid must:

- (a) be in writing;
- (b) constitute a good faith, bona fide offer to purchase the Acquired Assets in the minimum amount of \$500,000.00 in cash;
- (c) be accompanied by a deposit by wire transfer in the amount of at least \$10,000.00 in certified funds (“Deposit”);
- (d) provide sufficient and adequate information to demonstrate that such Potential Bidder has the financial wherewithal and ability to consummate the proposed Sale with readily available funds, including executed copies of any financing agreements, letters or commitments not subject to any contingency;
- (e) not be conditioned on any due diligence, financing, or other contingencies of the bidder other than authorizing the Sale and other customary conditions to closing for this type of transaction;
- (f) remain irrevocable until forty-eight (48) hours after the conclusion of the Sale Hearing (*defined below*) or such longer period of time as set forth below if the Potential Bidder is selected as the Back-Up Bidder (*defined below*); and
- (g) provide a commitment to close the Sale (such being the “Closing”) by April 19, 2017;

7. **Determination of Qualified Bids.** Between March 28, 2017 and March 29, 2017, the Debtors shall determine whether any submitted bids constitute Qualified Bids. The Debtor shall file and serve on all bidders a notice (the “Auction Notice”) indicating which additional Bids, if any, have been designated as Qualified Bids and which Bids, if any, do not qualify as Qualified Bids. If any Bids are designated as Qualified Bids, the Auction Notice shall set an Auction to be conducted on March 29, 2017. If no Qualified Bids are received by the Bid Deadline, then the Auction will not occur.
8. **No Credit Bidding.** No party shall be entitled to submit any Bid which is in whole or part based upon a credit for any amount or amounts alleged to be due from the Debtor.
9. **Auction.** The Debtors shall conduct the Auction on March 29, 2017 at the offices of Locke Lord LLP, 601 Poydras Street, Suite 2660, New Orleans, Louisiana 70130, commencing at 10:00 am. The Auction will be conducted to determine the best and highest bid (the “Winning Bid,” with the bidder being the “Winning Bidder”) for the Acquired Assets. The Auction will be

conducted in accordance with the following procedures (the “Auction Procedures”):

- (a) only Qualified Bidders, in person or through duly-authorized representatives at the Auction may bid at the Auction;
- (b) only such authorized representatives of each of the Qualified Bidders, the Debtors, and their respective advisors shall be permitted to attend the Auction;
- (c) bidding at the Auction shall begin at the amount of the highest Qualified Bid, with subsequent bids at the Auction to be made in minimum increments of at least \$10,000.00;
- (d) each Qualified Bidder will be informed of the terms of the previous bids;
- (e) the bidding will be transcribed to ensure an accurate recording of the bidding at the Auction;
- (f) the bidders shall not discuss the bidding or the Auction with each other until the Auction is closed;
- (g) absent irregularities in the conduct of the Auction, the Debtors will not consider any bids made after the Auction is closed; and
- (h) the Auction shall be governed by such other auction procedures as may be announced by the Debtors, from time to time on the record at the Auction.
- (i) Based on the bids received or for any other reason, the Debtors and Tusk Subsea may, in the exercise of their business judgment, elect to cancel the Auction.

10. Acceptance of the Winning Bid and Designation of the Back-Up Bid.

- (a) Upon the conclusion of the Auction (if such Auction is conducted), the Debtor, in the exercise of its reasonable, good-faith business judgment, shall identify (i) the Winning Bid, which is the highest or otherwise best Bid submitted at the Auction; and (ii) the next highest or otherwise best Qualified Bid (the “Back-Up Bid” and the party submitting the Back-Up Bid, the “Back-Up Bidder”). The Back-Up Bid shall remain open and the Back-Up Bidder shall remain obligated to perform pursuant thereto until the first business day following the Closing (defined below).
- (b) Within three business days following the Auction, the Debtor shall file a report with the Court indicating the outcome of the Auction.

- (c) The Debtor will present the results of the Auction to the Court at the Sale Hearing (*defined below*), at which certain findings will be sought from the Court regarding the Auction, including, among other things, that (i) the Auction was conducted, and the Winning Bidder was selected, in accordance with these Bidding Procedures, (ii) the Auction was fair in substance and procedure, (iii) the Winning Bid was a Qualified Bid, and (iv) Closing the Sale with the Winning Bid will provide the highest or otherwise best value for the Acquired Assets and is in the best interests of the Debtor.
- (d) If an Auction is held, the Debtors shall be deemed to have accepted a Qualified Bid only when (i) such bid is declared the Winning Bid at the Auction and (ii) definitive documentation has been executed in respect thereof. Such acceptance is conditioned upon approval by the Court of the Winning Bid and the entry of an Order approving the Winning Bid.

11. Sale Hearing.

- (a) The Sale Hearing is presently scheduled to take place **on April 4, 2017 at 10:00 o'clock a.m. (Central Time)**, or as soon thereafter as counsel may be heard, before the Honorable Robert Summerhays United States Bankruptcy Judge at U.S. Courthouse, 214 Jefferson Street, Suite 100, Lafayette, Louisiana 70501-7050.
- (b) At the Sale Hearing, the Debtor shall present the Winning Bid to the Court for approval. After the Sale Hearing, an Order approving the sale may be entered by the Bankruptcy Court and shall provide that any such sale shall be free and clear of any and all claims, liens, and other encumbrances (each a "Sale Order").

12. Closing. The Closing shall take place by April 19, 2017, and payment of the Sale Consideration shall be as follows, depending on the outcome of the Auction:

- (a) The Winning Bidder shall Close the Sale by remitting the Winning Bid in full and in cash at the Closing.

13. Performance by the Back-Up Bidder. In the event that the Winning Bidder fails to Close the Sale By April 19, 2017, the Debtors shall be authorized, but not required, to deem the Back-Up Bid as the Winning Bid, and the Debtor shall be authorized, but not required, to Close the Sale with the Back-Up Bid without further order of the Court.

14. Return Of Deposit.

- (a) The Deposit of the Winning Bidder, upon Closing shall be credited to the purchase price paid for the Acquired Assets. If the Winning Bidder fails to Close due to no fault of the Debtors, then the Deposit which

is the subject of the Winning Bid shall be forfeited to, and retained irrevocably by the Debtor.

- (b) The Deposit of any unsuccessful Qualified Bidders, except for the Back-Up Bidder, will be returned within three (3) business days after the conclusion of the Auction.
- (c) The Deposit of the Back-Up Bidder will be returned within two (2) business days after Closing.

15. **Reservation of Rights. THE DEBTORS RESERVES THEIR RIGHTS, TO MODIFY THESE BID PROCEDURES IN ANY MANNER CONSISTENT WITH THE PLAN, THE APA OR THE BID PROCEDURES ORDER AND THAT WILL BEST PROMOTE THE GOALS OF THE BIDDING PROCESS AND TO IMPOSE, AT OR PRIOR TO THE AUCTION, ADDITIONAL CUSTOMARY TERMS AND CONDITIONS ON THE SALE OF THE ACQUIRED ASSETS, INCLUDING, WITHOUT LIMITATION, MODIFYING THE REQUIREMENTS FOR A QUALIFIED BID, EXTENDING THE DEADLINES SET FORTH IN THESE BID PROCEDURES, ADJOURNING THE AUCTION AT THE AUCTION AND/OR ADJOURNING THE SALE HEARING IN OPEN COURT WITHOUT FURTHER NOTICE, AND REJECTING ANY OR ALL QUALIFIED BIDS IF, IN THE DEBTOR'S REASONABLE, GOOD-FAITH BUSINESS JUDGMENT, FOLLOWING CONSULTATION WITH DEBTOR'S COUNSEL, THE DEBTOR DETERMINES THAT SUCH QUALIFIED BID IS (I) INADEQUATE OR INSUFFICIENT, (II) NOT IN CONFORMITY WITH THE REQUIREMENTS OF THE BANKRUPTCY CODE OR ANY RELATED RULES OR THE TERMS SET FORTH HEREIN, OR (III) CONTRARY TO THE BEST INTERESTS OF THE DEBTORS.**