

**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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Co-Counsel to the Debtors and Debtors in Possession

**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)
)	

Objection Deadline: November 7, 2019 at 4:00 p.m. (ET)
Hearing Date: November 14, 2019 at 10:00 a.m. (ET)

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

TO: (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; (g) the lenders under the Debtors’ prepetition promissory note and counsel thereto; (h) counsel to ICBC Standard Bank Plc; (i) the lenders under the Debtors’ debtor-in-possession financing facility and counsel thereto; (j) the United States Attorney’s Office for the District of Delaware; (k) the Internal Revenue Service; (l) the state attorneys general for all states in which the Debtors conduct business; (m) all parties known by the Debtors to hold or assert a lien on any asset of any Debtor; and (n) any party that has requested notice pursuant to Bankruptcy Rule 2002.

PLEASE TAKE NOTICE that on October 24, 2019, the above-captioned debtors and debtors in possession (collectively, the “Debtors”), filed the *Debtors’ Motion for Entry of an Order (A) Establishing Bidding Procedures, (B) Approving Bid Protections, and (c) Granting Related Relief* (the “Motion”) with the United States Bankruptcy Court for the

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.

District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801 (the “Bankruptcy Court”). A copy of the Motion is attached hereto.

PLEASE TAKE FURTHER NOTICE that any response or objection to the entry of the order with respect to the relief sought in the Motion must be filed with the Bankruptcy Court on or before **November 7, 2019 at 4:00 p.m. Eastern Time**.

PLEASE TAKE FURTHER NOTICE that at the same time, you must also serve a copy of the response or objection upon: (a) counsel to the Debtors; (i) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Edward O. Sassower, P.C., Steven N. Serajeddini, and Matthew C. Fagen; and (ii) co-counsel to the Debtors, Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, P.O. Box 8705, Wilmington, Delaware 19899-8705 (Courier 19801), Attn: Laura Davis Jones; (b) counsel to the DIP Lenders, (i) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Damian S. Schaible and Aryeh E. Falk, and (ii) Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware 19899-1347, Attn: Robert J. Dehney and Andrew R. Remming; (c) counsel to ICBC Standard Bank Plc, (i) Hayes and Boone LLP, 2323 Victory Avenue, Suite 700, Dallas, Texas 75219, Attn: J. Frasher Murphy and Charles M. Jones II, and (ii) Reed Smith LLP, 1201 N. Market Street, Suite 1500, Wilmington, Delaware 19801, Attn: Kurt F. Gwynne; (d) counsel to the Committee, (i) Brown Rudnick LLP, 7 Times Square, New York, New York 10036, Attn: Robert Stark, and (ii) Elliott Greenleaf, PC, 1105 Market Street, Suite 1700, Wilmington, Delaware 19801, Attn: Rafael Zahralddin-Aravena; and (e) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: David L. Buchbinder.

PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE RELIEF SOUGHT IN THE MOTION WILL BE HELD ON **NOVEMBER 14, 2019 AT 10:00 A.M. EASTERN TIME BEFORE THE HONORABLE KEVIN GROSS, UNITED STATES BANKRUPTCY COURT JUDGE, AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 6TH FLOOR, COURTROOM NO. 3, WILMINGTON, DELAWARE 19801.**

[Remainder of page intentionally left blank]

Dated: October 24, 2019
Wilmington, Delaware

/s/ Peter J. Keane

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Co-Counsel to the Debtors and Debtors in Possession

Exhibit A

Proposed Bidding Procedures Order

**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)
)	

**ORDER (A) ESTABLISHING
BIDDING PROCEDURES, (B) APPROVING
BID PROTECTIONS, AND (C) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”), (a) authorizing and approving bidding procedures, attached hereto as **Exhibit 1** (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 held (the “Auction”), (b) approving the Bid Protections, (c) establishing certain dates and deadlines in connection with the Bidding Procedures; and it appearing that the relief requested is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core

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 Capitalized terms used but not otherwise defined herein have the meanings given to them in the Motion or the Bidding Procedures, as applicable.

proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of the Motion having been adequate and appropriate under the circumstances; and on the record developed at the hearing to consider the relief requested in the Motion (the “Hearing”); and after due deliberation and sufficient cause appearing therefor, it is hereby **FOUND AND DETERMINED THAT:**

A. The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction to hear and determine the Motion and to grant the relief requested therein with respect to the Bidding Procedures pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. The bases for the relief requested in the Motion are sections 105, 363, 365, 503, and 507 of the Bankruptcy Code, Bankruptcy Rules 2002(a)(2), 6004, 6006, 9007, and 9014, and Local Rule 6004-1.

D. Good and sufficient notice of the Motion, the Bidding Procedures, and the relief sought in the Motion has been given under the circumstances, and no other or further notice is required except as set forth herein and in the Bidding Procedures. A reasonable opportunity to object or be heard regarding the relief provided herein has been afforded to parties in interest.

E. The Bidding Procedures are fair, reasonable, and appropriate and are designed to promote participation and active bidding and ensure that the highest or otherwise best value is

generated for the Interests or the Assets.

F. The Debtors and their advisors engaged in a robust and extensive marketing and sale process after the Petition Date to solicit and develop the highest or otherwise best offer for the Interests or Assets. The Bidding Procedures are designed to continue that robust and extensive marketing and sale process following entry of this Order.

G. The Debtors have articulated good and sufficient business reasons for this Court to grant the relief requested in the Motion, including, without limitation, to approve the Bidding Procedures and the Bid Protections (to the extent payable under the Stalking Horse Agreement (if any)). Such compelling and sound business justification, which was set forth in the Motion and on the record at the Hearing, are incorporated herein by reference and, *inter alia*, form the basis for the Court's findings of fact and conclusions of law herein.

H. The Bid Protections provided to the Stalking Horse Bidder (if any is selected) (i) are an actual and necessary cost and expense of preserving the Debtors' estates within the meaning of sections 503(b) and 507(a)(2) of the Bankruptcy Code, (ii) are commensurate to the real and material benefits conferred upon the Debtors' estates by the Stalking Horse Bidder, (iii) are fair, reasonable, and appropriate, including in light of the size and nature of the proposed Sale, the commitments that have been made, and the efforts that have been and will be expended by the Stalking Horse Bidder. The Bid Protections are necessary to induce the Stalking Horse Bidder to pursue the Sale and to be bound by the Stalking Horse Agreement.

IT IS HEREBY ORDERED THAT:

1. The Motion is granted to the extent set forth herein.
2. All objections to the relief granted herein that have not been withdrawn with prejudice, waived, or settled, and all reservations of rights included in such objections, are overruled and denied on the merits with prejudice.

I. Important Dates and Deadlines

3. The following timeline of the Sale is hereby approved:

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)

4. **Bid Deadline.** The deadline by which all Bids for the Debtors' Assets must be *actually received* by the parties specified in the Bidding Procedures is 12:00 p.m. (prevailing Eastern Time), on January 10, 2020 (the "Bid Deadline").

5. **Winning Bidder(s).** The Debtors shall present the results of the Auction, if held, or otherwise present the Winning Bidder(s) (as defined in the Bidding Procedures) to the Bankruptcy Court at the Confirmation Hearing.

II. Auction, Bidding Procedures, and Related Relief

6. The Bidding Procedures are fully incorporated herein and approved in their entirety, and the Bidding Procedures shall govern the submission, receipt, and analysis of all Bids relating to the proposed sale of the Assets. Any party desiring to bid on the Interests or the Assets shall

comply with the Bidding Procedures and this Order. The Debtors are authorized to take all actions as are necessary or appropriate to implement the Bidding Procedures.

7. Pursuant to Local Rule 6004-1(c)(ii): (a) each bidder participating at the Auction (if any) shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the Sale, as set forth in the Bidding Procedures; (b) the Auction (if any) shall be conducted openly; and (c) the Auction (if any) shall be transcribed or videotaped.

8. Cortland Capital Market Services LLC, as agent under each of the Debtors' prepetition first lien term loan facility and postpetition debtor-in-possession financing facility (in such capacity, the "DIP Agent")³ and the Existing Term Loan Agent (the foregoing parties, the "Agents") shall be deemed to be Qualified Bidders. Each Agent shall have the "credit bid" in accordance with the Interim DIP Order or section 363(k) of the Bankruptcy Code, as applicable (the "Credit Bid Right"). Upon exercise of the Credit Bid Right, the applicable Agent shall not be required to take title to or ownership of, or have any obligation in connection with (in each case, legal, equitable, or otherwise), or be deemed to have taken title to or ownership of, or have any obligation in connection with (in each case, legal, equitable, or otherwise), any individual Asset, portion of the Interests or Assets, or all of the Interests or Assets, such Agent shall have the right to designate any person or entity in its sole and absolute discretion that shall take title to the individual Asset, portion of the Interests or Assets, or all of the Interests or Assets that are subject to the Credit Bid Right. In the event any Agent exercises the Credit Bid Right, and the amount of the credit bid of such Agent exceeds the total amount of the highest bids for the assets subject to the Credit Bid Right, such credit bid will be deemed the highest and best bid and will be accepted by the Debtors and presented to the Court for approval.

³ The term "Agent" shall include the representatives and professionals of the Agent.

9. Subject to the terms of the Bidding Procedures and the prior paragraph of this Order, in the event of a competing Qualified Bid, the Stalking Horse Bidder (if any) will be entitled, but not obligated, to submit overbids and will be entitled in any such overbids to credit bid: (a) all or a portion of the value of the secured portion of its claims within the meaning of section 363(k) of the Bankruptcy Code; and (b) the value of the Breakup Fee.

10. The Debtors may (a) determine which Qualified Bid is the highest or otherwise best offer, (b) at any time prior to entry of an Order of the Bankruptcy Court approving the Successful Bid, reject any Bid (other than the Stalking Horse Bid) that the Debtors determine, in their sole discretion, is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code or the Bidding Procedures, or (iii) contrary to the best interests of the Debtors' estates and their creditors, and (c) prior to conclusion of the Auction (if any), may impose such other terms and conditions upon Qualified Bidders as the Debtors determines to be in the best interests of the Debtors' estates in these chapter 11 cases.

11. No person or entity, other than the Stalking Horse Bidder (if any), shall be entitled to any expense reimbursement, break-up fees, "topping," termination, or other similar fee or payment, and by submitting a bid, such person or entity is deemed to have waived their right to request or to file with this court any request for expense reimbursement or any fee of any nature in connection with such bid, whether by virtue of section 503(b) of the Bankruptcy Code or otherwise.

III. The Stalking Horse and Bid Protections

12. The Debtors are authorized, but not directed, to select one or more bidders to act as the Stalking Horse Bidder, and are further authorized, but not directed, to enter into a Stalking Horse Agreement with such Stalking Horse Bidder.

13. The Bid Protections are approved in their entirety and are payable in accordance with, and subject to the terms of, the Stalking Horse Agreement. Except as expressly provided for herein or in the Stalking Horse Agreement, no other termination payments are authorized or permitted under this Order.

14. No later than one business day after the selection of a Stalking Horse Bidder (if such selection is made), the Debtors shall file with the Court, serve on the Objection Notice Parties (as defined below), 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 (each such bid, a "Stalking Horse Bid"), and attaches the proposed Stalking Horse Agreement (the "Stalking Horse Selection Notice").

15. For purposes of the preceding paragraph, the Objection Notice Parties shall be (a) the U.S. Trustee; (b) counsel to the Committee; (c) counsel to the administrative agent under the Debtors' prepetition first lien term loan facility; (d) counsel to the lenders under the Debtors' prepetition first lien term loan facility; (e) counsel to Merrill Lynch Commodities, Inc.; (f) counsel to NGL Energy Partners LP; (g) counsel to the lenders under the Debtors' prepetition promissory note; (g) counsel to ICBC Standard Bank Plc; (h) counsel to the administrative agent under the Debtors' debtor-in-possession financing facility; and (i) counsel to the lenders under the Debtors' debtor-in-possession financing facility.

16. Parties in interest may file Stalking Horse Objection by 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 shall 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.

IV. Miscellaneous

17. All parties in interest shall receive or be deemed to have received good and sufficient notice of the Motion, and no further notice of the foregoing shall be required except as expressly set forth herein.

18. All persons or entities (whether or not Qualified Bidders) that participate in the bidding process shall be deemed to have knowingly and voluntarily (i) consented to the entry of a final order by this Court in connection with the Motion to the extent that it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution and (ii) waived any right to jury trial in connection with any disputes relating to the any of the foregoing matters.

19. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

20. The Debtors are authorized to take all actions necessary or appropriate to effectuate the relief granted pursuant to this Order in accordance with the Motion.

21. This Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

Dated: _____, 2019
Wilmington, Delaware

THE HONORABLE KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Bidding Procedures

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

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

**BIDDING PROCEDURES FOR THE SUBMISSION, RECEIPT,
AND ANALYSIS OF BIDS IN CONNECTION WITH THE
SALE OF SUBSTANTIALLY ALL OF THE ASSETS OF THE DEBTORS**

On July 21, 2019, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

Concurrently herewith, the Debtors filed a motion with the Bankruptcy Court (the “Bidding Procedures Motion”) seeking entry of an order (the “Bidding Procedures Order”) approving, among other things, these bidding procedures (the “Bidding Procedures”). These Bidding Procedures set forth the process by which the Debtors are authorized to solicit the highest or otherwise best bids (each, a “Bid”), and potentially conduct an auction (the “Auction”), for the sale (the “Sale”) of all of the equity interests in PES Holdings, LLC (the “Interests”), which is the preferred Sale transaction structure of the Debtors, or some or all of the assets of the Debtors (the “Assets”).

The Sale will be implemented pursuant to the terms and conditions of the Debtors’ proposed chapter 11 plan Docket No. 462 (as modified, amended, or supplemented from time to time, the “Plan”).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 Holdings, 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 Capitalized terms used but not defined herein have the meaning given to such terms in the Plan, the Bidding Procedures Motion, the Bidding Procedures Order or 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), 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) (the “DIP Order”) [Docket No. 85], as applicable.*

Copies of the Bidding Procedures Order, the Plan, or any other documents in the Debtors' chapter 11 cases are available upon request to Omni Agent Solutions, by calling [866-989-6147](tel:866-989-6147), or by visiting <https://omniagentsolutions.com/pesholdings2019>.

A. Participation Requirements.

The Debtors seek to sell all of the Interests or some or all of the Assets. The following is a table setting forth key dates and deadlines with respect to the Sale process:

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)

To participate in the bidding process or otherwise be considered for any purpose hereunder, a person interested in submitting a Bid (a "Potential Bidder") must, on or before November 22, 2019, at 9:00 a.m., prevailing Eastern Time (the "Acceptable Bidder Qualification Deadline"), deliver the Preliminary Qualification Documents (unless previously delivered) to each of (i) counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Steven N. Serajeddini (steven.serajeddini@kirkland.com) and Matthew Fagen (matthew.fagen@kirkland.com), 1601 Elm Street Dallas, Texas 75201, Attn: Michael P. Considine (michael.considine@kirkland.com), and 609 Main Street, Houston, Texas 77002, Attn: John D. Furlow (john.furlow@kirkland.com); and (ii) financial advisor and investment banker to the Debtors, PJT Partners, 280 Park Avenue New York, New York 10017, Attn: John Singh (SinghJ@pjtpartners.com), Peter Laurinaitis (Laurinaitis@pjtpartners.com), Harold Kim (KimH@pjtpartners.com), and Scott Meyerson (Meyerson@pjtpartners.com), the following documents (the "Preliminary Qualification Documents"); *provided, however*, that the Debtors may consider Bids submitted by Potential Bidders after the Acceptable Bidder Qualification Deadline, but such Potential Bidders will not receive any extension of time to conduct a due

diligence review or to submit a Qualified Bid (as defined herein) beyond the Bid Deadline (as defined herein):

- (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 (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 (as defined herein));
- (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.

Each Potential Bidder shall comply with all reasonable requests for information and due diligence access by the Debtors or their advisors regarding the ability of such Potential Bidder, as applicable, to consummate a proposed Sale. The Debtors reserve the right to request preliminary proof by the Potential Bidder of its financial capacity to close a proposed Sale, which may include current unaudited or verified financial statements of, or verified financial commitments

obtained by, the Potential Bidder (or, if the Potential Bidder is an entity formed for the purpose of acquiring the property to be sold, the party that will bear liability for a breach), the adequacy of which will be assessed by the Debtors and their advisors in their reasonable discretion.

The Debtors are authorized to approve joint Bids in their reasonable discretion on a case-by-case basis.

Within seven business days after any such Potential Bidder's delivery of its Preliminary Qualification Documents, the Debtors will determine, in their reasonable discretion and upon consultation with the Consultation Parties, and notify such Potential Bidder whether such Potential Bidder has submitted acceptable Preliminary Qualification Documents so that such Potential Bidder may conduct additional due diligence with respect to the Interests or the Assets, as the case may be. Only those Potential Bidders that have submitted acceptable Preliminary Qualification Documents, as determined in the Debtors' reasonable discretion (each, an "Acceptable Bidder"), may submit Qualified Bids. The Debtors reserve the right to work with any Potential Bidder to cure any deficiencies in the Preliminary Qualification Documents of any Potential Bidder that is not initially deemed to be an Acceptable Bidder. The DIP Agent (on behalf of the DIP Lenders) and the Existing Term Loan Agent (on behalf of the Term Loan Lenders) shall be deemed Acceptable Bidders without the need to satisfy the requirements of this Section A.

The Debtors shall provide copies, on a "professionals' eyes only" basis, of the applicable bid portions of Preliminary Qualification Documents received (excluding underlying financial or qualifying documentation) as soon as reasonably practicable, but no later than three business days after receipt thereof, to each of the following parties (each, a "Consultation Party," and collectively, the "Consultation Parties"): (i) counsel to the DIP Agent, Norton Rose Fulbright US LLP, 1301 Avenue of the Americas, New York, New York 10019, Attn: H. Stephen Castro (stephen.castro@nortonrosefulbright.com), and David A. Rosenzweig (david.rosenzweig@nortonrosefulbright.com); (ii) to the ad hoc group of the Debtors' prepetition and post-petition lenders (the "Ad Hoc Group"), Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York, 10017, Attn: Damian Schaible (Damian.schaible@davispolk.com); and (iii) counsel to the Committee, Brown Rudnick LLP, Seven Times Square, New York, New York 10036, Attn: Robert J. Stark (rstark@brownrudnick.com), and Max Schlan (mschlan@brownrudnick.com) and 1 Financial Center, Boston, MA 02111 Attn: Steven Levine (slevine@brownrudnick.com); *provided* that during any period in which a Consultation Party has submitted Preliminary Qualification Documents, such Consultation Party shall not be considered a Consultation Party for purposes of these Bidding Procedures; *provided, further*, that the submission of a Bid by any individual DIP Lender or subset of DIP Lenders shall not cause the counsel to the DIP Lenders as a whole to cease to be Consultation Parties, and that counsel to the DIP Lenders and counsel to the Debtors shall establish reasonable protections to ensure that the Preliminary Qualification Documents are not shared with such individual DIP Lenders or subset of DIP Lenders; *provided, further, however*, that the Debtors, in their reasonable discretion, may provide redacted copies of the Preliminary Qualification Documents with identifying and other potentially sensitive information removed.

B. Due Diligence.**(i) Access to Due Diligence.**

Only Potential Bidders that have executed a Confidentiality Agreement and are deemed reasonably likely to submit a Qualified Bid by the Debtors will be entitled to receive due diligence access to additional non-public information regarding the Interests, the Assets and the Debtors. In connection with the provision of due diligence information to such Potential Bidders, the Debtors will not furnish any confidential information relating to the Debtors, the Debtors' assets or liabilities, or the Sale to any person except such a Potential Bidder or such Potential Bidder's duly-authorized representatives, in each case, to the extent provided in the Potential Bidder's Confidentiality Agreement and only to the extent of the Interests or Assets that are the subject of such Potential Bidder's Bid.

The Debtors and their advisors will coordinate all reasonable requests for additional information and due diligence access from any such Potential Bidders; *provided* that the Debtors may decline to provide such information to Potential Bidders who, in the Debtors' reasonable business judgment have not established that such Potential Bidders intend in good faith to, or have the capacity to, consummate their Bid or the proposed Sale. No conditions relating to the completion of due diligence will be permitted to exist after the Bid Deadline.

The Debtors also reserve the right to withhold any diligence materials that the Debtors determine are sensitive, proprietary, or otherwise not appropriate for disclosure to such a Potential Bidder who the Debtors determine, is a competitor of the Debtors or is affiliated with any competitor of the Debtors or otherwise poses a potential threat to the value that the Debtors' could receive through the Sale process; *provided* that the Debtors will promptly inform the Consultation Parties of any request for material diligence materials denied or otherwise withheld from such a Potential Bidder pursuant to the foregoing sentence.

Each such Potential Bidder will be deemed to acknowledge and represent that it: (a) has had an opportunity to conduct any and all due diligence regarding the Debtors and their respective assets and liabilities that are the subject of the Sale to the extent of the assets and liabilities that are the subject of their Bid prior to making any such Bids; (b) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Interests or 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, the Debtors' assets or liabilities, or the completeness of any information provided in connection therewith, except as expressly stated in these Bidding Procedures. None of the Debtors nor any of their employees, managers, officers, directors, affiliates, subsidiaries, representatives, agents, advisors, or professionals are responsible or will bear any liability with respect to any information obtained by such Potential Bidders in connection with the Sale.

<p>The Debtors have designated PJT Partners, 280 Park Avenue New York, New York 10017, Attn: John Singh (SinghJ@pjtpartners.com), Peter Laurinaitis (Laurinaitis@pjtpartners.com), Harold Kim (KimH@pjtpartners.com), and Scott Meyerson</p>

(Meyerson@pjtpartners.com), to coordinate all reasonable requests for additional information and due diligence access.

(ii) **No Communications Among Potential Bidders.**

There must be no communications between and amongst Potential Bidders, or between Potential Bidders and the Consultation Parties (as defined herein), unless the Debtors have previously authorized such communication in writing. For the avoidance of doubt, other than with respect to matters related to any Bid or the contents thereof, members of the Ad Hoc Group shall not be prohibited from communicating with other members of the Ad Hoc Group or counsel thereto solely on the basis of being deemed Acceptable Bidders or Qualified Bidders. Should any Potential Bidder attempt to communicate directly with a Consultation Party, such Consultation Party shall immediately direct the Potential Bidder to the designated persons at Kirkland & Ellis LLP, the Debtors' counsel, and PJT Partners, the Debtors' investment banker and financial advisor. The Debtors reserve the right, in their reasonable business judgment and upon consultation with the Consultation Parties, to disqualify any Potential Bidders that have communications between and amongst themselves without the prior consent of the Debtors. The Debtors further reserve their right, in their reasonable business judgment, to disqualify any Acceptable Bidders that have communications with a Consultation Party, and to strip any Consultation Party that violates this provision (except as otherwise provided in this paragraph) of its consultation rights hereunder without the prior consent of the Debtors; *provided* that the Debtors shall provide such Consultation Party with notice that the Debtors are exercising their rights to strip the Consultation Party of its consultation rights and shall work in good faith with such Consultation Party to resolve the issue without the need to strip the Consultation Party of its consultation rights.

C. Stalking Horse Bidders and Bid Protections.

Up until one day prior to the Bid Deadline, the Debtors shall be authorized, but not obligated, in an exercise of their business judgment and in consultation with the Consultation Parties, to: (a) select one or more Acceptable Bidders to act as stalking horse bidders in connection with the Sale (each, a "Stalking Horse Bidder") and enter into purchase agreement with respect to a Sale 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 or otherwise approved by the Bankruptcy Court (together with the Breakup Fee, the Expense Reimbursement and the Work Fee, the "Bid Protections"); *provided* that the aggregate amount of Bid Protections that may be paid to any or all Stalking Horse Bidders on account of foregoing subclauses (i)–(iv) shall not exceed three percent of the proposed Purchase Price (as defined herein). No later than one business day after the selection of a Stalking Horse Bidder, the Debtors shall file a notice with the Bankruptcy Court of such selection that includes a copy of an executed and binding Stalking Horse Agreement.

The Bid Protections shall be described in detail, including the amount and calculation of such Bid Protections, in the notice of Stalking Horse Bidder.

D. Bid Requirements.

To be selected to acquire the Interests or the Assets or to be eligible to participate in the Auction, if applicable, an Acceptable Bidder (other than a Stalking Horse Bidder) must deliver to the Debtors and their advisors, a written, irrevocable and binding offer that must be determined by the Debtors, in their business judgment to satisfy each of the following conditions (collectively, the “Bid 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 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.** Each 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.

Bids fulfilling all of the preceding requirements, as determined by the Debtors and their advisors will be deemed to be "Qualified Bids," and those parties submitting Qualified Bids will be deemed to be "Qualified Bidders." All information disclosed by any Acceptable Bidder in connection with all of the preceding requirements will be made available by the Debtors to the Consultation Parties promptly upon the Debtors' receipt thereof but in any event no later than seven business days following the Debtors' receipt of such information; *provided* that any confidential financing and/or equity commitment documents received from any such Acceptable Bidder shall only be shared with the Consultation Parties on a "professionals' eyes only" basis; *provided, further, however*, that the Debtors, in their reasonable discretion, may provide redacted copies of the Qualified Bid documents with identifying and other potentially sensitive information removed. Each Acceptable Bidder submitting a Bid shall comply with all reasonable requests for information and due diligence access by the Debtors or their advisors regarding the ability of such Acceptable Bidder, as applicable, to consummate a proposed Sale. The Debtors reserve the right to work with any Acceptable Bidder in advance of the selection of the Winning Bidder to cure any deficiencies in a Bid that is not initially deemed to be a Qualified Bid. The Debtors may accept a single Qualified Bid or multiple Bids for non-overlapping

material portions of the Assets such that, if taken together in the aggregate, would otherwise meet the standards for a single Qualified Bid (in which event those multiple bidders will be treated as a single Qualified Bidder for purposes of selecting the Winning Bidder; *provided* that the Debtors also reserve the right, in consultation with the Consultation Parties, to conduct more than one Sale process or Auction with respect to non-overlapping material portions of the Assets).

Within five business days after the Bid Deadline, the Debtors and their advisors, in consultation with the Consultation Parties, will determine which Acceptable Bidders are Qualified Bidders and will notify the Acceptable Bidders whether the Bids submitted constitute, alone or together with other Bids, Qualified Bids so as to enable such Qualified Bidders to bid at the Auction (if held). Any Bid that is not deemed a Qualified Bid may not be considered by the Debtors but the Debtors, in their reasonable discretion, may notify any such Acceptable Bidder of any specific deficiencies of such Acceptable Bidder's Bid and identify any further information or any changes in such Bid that shall be required for such Bid to become a Qualified Bid. For the avoidance of doubt, any Acceptable Bidders designated as Stalking Horse Bidders by the Debtors in consultation with the Consultation Parties and in accordance with these Bidding Procedures will be deemed to be Qualified Bidders, and any Stalking Horse Agreements submitted by such Stalking Horse Bidders will be deemed Qualified Bids, which qualify such Stalking Horse Bidders to participate in the Auction (if held) as Qualified Bidders. The DIP Agent (on behalf of the DIP Lenders) and the Existing Term Loan Agent (on behalf of the Prepetition Term Lenders) shall be deemed Qualified Bidders without the need to satisfy the requirements of this Section D.

Qualified Bids must be submitted to each of the Debtors and their advisors so as to be actually received no later than January 10, 2020, at 12:00 p.m., prevailing Eastern Time (the "Bid Deadline").

The Debtors shall provide copies of any Bids received from Qualified Bidders no later than three business days after receipt thereof, to each of the following parties to the Consultation Parties; *provided* that during any period in which a Consultation Party has submitted a Bid, such Consultation Party shall not be considered a Consultation Party for purposes of these Bidding Procedures; *provided, further*, that the submission of a Bid by any individual DIP Lender or subset of DIP Lenders shall not cause the counsel to the DIP Lenders as a whole to cease to be Consultation Parties, and that counsel to the DIP Lenders and counsel to the Debtors shall establish reasonable protections to ensure that the bid documents are not shared with such individual DIP Lenders or subset of DIP Lenders.

E. Evaluation of Qualified Bids.

Prior to the Auction (if held) the Debtors and their advisors will evaluate Qualified Bids and identify the Qualified Bid(s) that is, in the Debtors' reasonable business judgment, in consultation with the Consultation Parties, the highest or otherwise best Bid (the "Initial Minimum Overbid"). In addition, prior to the selection of the Winning Bidder, the Debtors may, in the Debtors' reasonable business judgment engage in negotiations with bidders with respect to their Bids. For the avoidance of doubt, the Debtors may select more than one Qualified Bid to collectively serve as the Initial Minimum Overbid in an Auction (if held) if each such Qualified

Bid contemplates the purchase of different Assets. In conducting the evaluation of the Qualified Bids, the Debtors will take into consideration the following non-exclusive factors:

- (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.

If the Debtors elect to conduct an Auction, within 48 hours of such determination of the Initial Minimum Overbid, but in no event later than 24 hours before the Auction, the Debtors will (1) notify the Consultation Parties and any Stalking Horse Bidders as to which Qualified Bid is the Initial Minimum Overbid and (2) distribute copies of the Initial Minimum Overbid to each Qualified Bidder who has submitted a Qualified Bid and the Consultation Parties.

If any Bid is determined by the Debtors not to be a Qualified Bid, the Debtors will refund such Acceptable Bidder's Good Faith Deposit within five business days after the Bid Deadline.

F. No Qualified Bids.

If no Qualified Bids are received by the Bid Deadline, the Debtors reserve the option, in their business judgment and in consultation with the Consultation Parties, to either hold the Auction or to pursue other options, in accordance with the Plan.

G. 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 Bidding 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 Bidding Procedures pursuant to section 363(k) of the Bankruptcy Code.

H. 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. 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.

The Auction, if held, will be conducted in accordance with the following procedures (the "Auction Procedures"):

- (i) only the Qualified Bidders, including any Stalking Horse Bidders and the DIP Agent, will be entitled to bid at the Auction;
- (ii) the Qualified Bidders, including any Stalking Horse Bidders and the DIP Agent, must appear in person or through duly-authorized representatives at the Auction;
- (iii) only such authorized representatives of each of the Qualified Bidders (including any Stalking Horse Bidders), the Debtors, their respective advisors, the Committee members, and the advisors to the Consultation Parties will be permitted to attend the Auction;
- (iv) bidding at the Auction will begin at the Initial Minimum Overbid;
- (v) 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;
- (vi) each Qualified Bidder will be informed of the terms of the previous Bids;
- (vii) the bidding will be transcribed to ensure an accurate recording of the bidding at the Auction;

- (viii) no Qualified Bidder (or its representatives) may communicate with one another, collude, or otherwise coordinate for purposes of participating in the Auction, and each Qualified Bidder will be required to confirm on the record of the Auction that (A) it has not engaged in any collusion, coordination or unfair competitive practices with respect to the bidding or the Sale and (B) its Bid represents an irrevocable, binding, good faith, and bona fide offer to purchase the Interests or some or all of the Assets identified in such Bid if such Bid is selected as the Successful Bid (as defined herein); *provided, however*, that two or more Qualified Bidders may coordinate to the extent they wish to provide a combined bid if the Debtors approve such coordination in their reasonable discretion;
- (ix) the Auction will not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an overbid at the Auction to the then prevailing highest Bid, subject to the Debtors' right to require last and final Bids to be submitted on a "blind" basis;
- (x) the Debtors reserve the right, in their reasonable business judgment and in consultation with the Consultation Parties, to adjourn the Auction one or more times to, among other things, (a) facilitate discussions between the Debtors and Qualified Bidders, (b) allow Qualified Bidders to consider how they wish to proceed, and (c) provide Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their 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 amount; and
- (xi) the Auction will be governed by such other Auction Procedures as may be announced by the Debtors and their advisors from time to time on the record at the Auction; *provided* that such other Auction Procedures are (a) not inconsistent with the Bidding Procedures Order, the Bankruptcy Code, or any other order of the Bankruptcy Court, (b) disclosed orally or in writing to all Qualified Bidders, and (c) determined by the Debtors, in good faith and in consultation with the Consultation Parties, to further the goal of attaining the highest or otherwise best offer for the Interests or the Assets, as applicable.

For the avoidance of doubt, nothing in the Auction Procedures (if an Auction is held) will prevent the Debtors from exercising their respective fiduciary duties under applicable law (as reasonably determined in good faith by the Debtors).

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. Confirmation Hearing.

A hearing before the Bankruptcy Court to consider approval of the Successful Bid or Successful Bids and the confirmation of the Plan (the "Confirmation Hearing"), pursuant to which the Debtors and the Winning Bidder or Winning Bidders will consummate the Sale, will be held on January 22, 2019, at 10:00 a.m., prevailing Eastern Time, before the Honorable Kevin Gross, United States Bankruptcy Judge for the Bankruptcy Court for the District of Delaware at 824 North Market Street, Wilmington, Delaware 19801.

The Confirmation Hearing may be continued to a later date by the Debtors, in consultation with the Consultation Parties, by sending notice prior to, or making an announcement at, the Confirmation Hearing. No further notice of any such continuance will be required to be provided to any party.

At the Confirmation Hearing, the Debtors will present the Plan, which will incorporate the terms of the Successful Bid or Successful Bids to the Bankruptcy Court for confirmation.

K. Designation of Back-Up Bidder or Back-Up Bidders.

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.

L. Return of Good Faith Deposit to Qualified Bidders that Submit Qualified Bids.

The Good Faith Deposit of the Winning Bidder or Winning Bidders will, upon consummation of the Successful Bid or Successful Bids, become property of the Debtors’ estates and be credited against the Purchase Price. If the Winning Bidder or Winning Bidders (or Back-Up Bidder or Back-Up Bidders, if applicable) fails to consummate the Successful Bid or Successful Bids (or Back-Up Bid or Back-Up Bids, if applicable), then the Good Faith Deposit of such Winning Bidder or Winning Bidders (or Back-Up Bidder or Back-Up Bidders, if applicable) will be irrevocably forfeited to the Debtors and may be retained by the Debtors as liquidated damages, in addition to any and all rights, remedies, or causes of action that may be available to the Debtors.

The Good Faith Deposit of any unsuccessful Qualified Bidders (except for the Back-Up Bidder or Back-Up Bidders and any Stalking Horse Bidders) will be returned within five business days after consummation of the Sale or upon the permanent withdrawal of the proposed Sale of the Interests or the applicable Assets. The Good Faith Deposit of the Back-Up Bidder or Back-Up Bidders, if any, will be returned to such Back-Up Bidder or Back-Up Bidders no later than five business days after a Closing with the Winning Bidder or Winning Bidders or will otherwise be credited to the portion of the Purchase Price in the event that there is a Closing with the Back-Up Bidder or Back-Up Bidders.

Each Good Faith Deposit shall be held in interest free escrow and at no time shall be deemed property of the Debtors’ estates absent further order of the Bankruptcy Court, except as otherwise provided herein.

M. Reservation of Rights.

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.

The Debtors may provide reasonable accommodations to any potential bidder(s) with respect to such terms, conditions, and deadlines of the bidding and Auction process to promote further bids on the Interests or the Assets, in each case, to the extent not materially inconsistent with these Bidding Procedures and the Bidding Procedures Order.

N. Consent to Jurisdiction.

All Qualified Bidders will 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 Sale, the Auction, the construction and enforcement of these Bidding Procedures, and/or the Preliminary Qualification Documents, as applicable.

Any parties raising a dispute relating to these Bidding Procedures must request that such dispute be heard by the Bankruptcy Court on an expedited basis.

O. Fiduciary Out.

Nothing in these Bidding Procedures will require the board of directors, board of managers, or such similar governing body of a Debtor or non-debtor affiliate to take any action, or to refrain from taking any action, with respect to these Bidding Procedures, to the extent such board of directors, board of managers, or such similar governing body reasonably determines in good faith that taking such action, or refraining from taking such action, as applicable, would be inconsistent with applicable law or its fiduciary obligations under applicable law.

P. Sale As Is, Where Is.

Except as otherwise provided in the Final Purchase Agreement (as defined herein), the Sale of the Interests or some or all Assets, as applicable, shall be on an “**as is, where is, with all faults, and without any warranty whatsoever, express or implied**” basis and without representations or warranties of any kind, nature or description by the Debtors or their estates except to the extent set forth in the Final Purchase Agreement as approved by the Bankruptcy Court.

Each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all desired due diligence regarding the Interests and Assets prior to making its Qualified Bid, that it has relied solely upon its own independent review, investigation and inspection of any documents, the Interests and/or the Assets in making its Qualified Bid, and that it 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 or Assets, or the completeness of any information provided in connection therewith, the Sale or the Auction, except as expressly stated in these Bidding Procedures or, as to the Winning Bidder(s) and the Back-up Bidder(s), the terms of the Sale(s) as set forth in the final form of the applicable purchase agreement(s) or modified purchase agreement(s) (the "Final Purchase Agreement"), which shall be on terms mutually acceptable to the Winning Bidder and Back-up Bidder, on the one hand, and the Debtors, on the other hand.

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