

ENTERED

September 26, 2024

Nathan Ochsner, Clerk

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	
	§	Case No. 23-32810 (CML)
Polaris Operating, LLC, et al.,	§	
	§	Chapter 11
Debtors.¹	§	
	§	(Jointly Administered)

**ORDER (I) SCHEDULING AUCTION DATE AND SALE HEARING DATE AND
APPROVING FORM AND MANNER OF NOTICE THEREOF; (II) APPROVING
CERTAIN BID PROCEDURES FOR THE AUCTION; AND
(III) GRANTING RELATED RELIEF**

Upon the *Emergency Motion, Pursuant To Bankruptcy Code Sections 105(A); 363, And 365, And Bankruptcy Rules 2002, 6004, And 6006 For Entry Of: (I) An Order Vacating The Court's Prior Masterson Sale Order And Withdrawing The Debtors Prior Sale Motion; (II) An Order: (A) Scheduling Auction And Sale Hearing And Approving The Form And Manner Of Service Of Notice Thereof; And (B) Approving Certain Bid Procedures In Connection Therewith; And (III) An Order: (A) Approving Asset Purchase Agreement; (B) Authorizing Sale Free And Clear Of All Liens, Claims, Encumbrances, And Other Interests, (C) Approving Form And Manner Of Service Of Notice Of Sale Hearing; And (D) Granting Related Relief* (the "Motion")² of Polaris Operating, LLC, et al. (the "Debtors") in the above-captioned chapter 11 cases (collectively, the "Chapter 11 Cases"), seeking entry of an order (the "Order") pursuant to sections 105(a), 363 and 365 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended from time to time, the

¹ The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective Employer Identification Numbers, are as follows: CCCB Energy Partners, LLC (5918); Polaris Operating, LLC (9852); NAP I, LLC (6767); and Cottonwood Gas Gathering, LLC (8983). The Debtors' service address is: 5944 Luther Lane, Suite 400, Dallas, TX 75225.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to the in the Debtors' Motion or the Bidding Procedures attached as Exhibit 1 to this Order, as applicable.

“Bankruptcy Rules”), and the Bankruptcy Local Rules for the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Local Rules”), for the entry of orders (i)(a) approving certain bid procedures in connection with the sale of the Masterson Assets; (b) scheduling an Auction and Sale Hearing and approving the form and manner of notice thereof; and (c) granting related relief; (ii) vacating the Court’s prior sale order [Dkt. # 252] and withdrawing the Debtors’ modified sale motion [Dkt. # 404]; and, (iii) entry of an order (the “Sale Order”) after the Sale Hearing (a) authorizing the sale of the Purchased Assets to the Successful Bidder, free and clear of Encumbrances, except as provided by the relevant Asset Purchase Agreement; and (b) granting related relief; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. § 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M), (N) and (O); and venue being proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion being adequate and appropriate under the particular circumstances; and upon consideration of the record of the August 29, 2024 status conference and all proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, creditors, and other parties in interest; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and any objections to the requested relief having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing, therefore;

IT IS FOUND AND DETERMINED THAT:

A. The Debtors articulated good and sufficient reasons for, and the best interests of their estates will be served by, this Court granting the relief set forth in this Order relating to the bidding process, including approval of (1) the bidding procedures attached hereto as **Exhibit 1** (the

“Bidding Procedures”), (2) the Bidding Protections, if any, and (3) the form and manner of the Sale Notice.

B. The Debtors have articulated good and sufficient reasons for, and the best interests of their estates will be served by, this Court scheduling an Auction Date for parties to appear and bid on the Masterson Assets and a Sale Hearing to consider granting the other relief requested in the Motion, including approval of a sale of the Masterson Assets and the transfer of the Purchased Asset to the Successful Bidder free and clear of all Encumbrances and other interests pursuant to sections 363(f) and 365 of the Bankruptcy Code.

C. The Bidding Procedures substantially in the form attached hereto as **Exhibit 1** are fair, reasonable, and appropriate and are designed to maximize the recovery from the Sale of the Masterson Assets.

D. The Debtors’ proposed Sale Notice is appropriate. Service of the Sale Notice as provided for in the Motion and this Bidding Procedures Order is reasonably calculated to provide all interested parties with timely and proper notice of the Bidding Procedures, the Auction and the Sale Hearing, and no other or further notice is required.

E. 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.

F. To the extent any of the preceding findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the preceding conclusions of law constitute findings of fact, they are adopted as such.

IT IS HEREBY ORDERED THAT:

1. The Auction shall be held before the Honorable United States Bankruptcy Judge

Christopher Lopez, at the United States Bankruptcy Court for the Southern District of Texas at **3:00 p.m. (prevailing Central Time) on October 8, 2024**, in Courtroom 401, 4th Floor, 515 Rusk Avenue, Houston, Texas 77002.

2. The Debtors are authorized, but not directed, to select one or more bidders to act as a Back-up Bidder and are authorized, but not directed, to enter into an Asset Purchase Agreement with such Back-up Bidder.

3. **All discovery propounded by Contango Oil & Gas, LLC, and all responses, deadlines, objections and pleadings related thereto, are hereby stayed pending further Order of the Court.**

Bidding Procedures

4. The Bidding Procedures attached hereto as **Exhibit I** are APPROVED and fully incorporated into this Order by reference. The failure to specifically include or reference any particular provision of the Bidding Procedures in this Order shall not diminish or impair the effectiveness of such procedures, it being the intent of this Court that the Bidding Procedures be authorized and approved in their entirety. The Bidding Procedures shall govern all Bids and bidding procedures relating to the Sale of the Purchased Assets. Any party desiring to submit a Bid shall do so strictly in accordance with the terms of the Bidding Procedures and this Order. The Debtors are authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures, including incurring and paying costs and expenses, and in accordance with the Final Cash Collateral Order (as amended and supplemented by stipulation or otherwise).

5. Any deposits made by a bidder shall be held in escrow by the Debtors or their agent, and shall not become property of the Debtors' bankruptcy estates unless and until released from escrow to the Debtors pursuant to the terms of the applicable escrow agreement.

6. The Bid Deadline shall be **October 4th, 2024 at 5:00 p.m. (prevailing Central Time)**.

7. The Debtors' Chief Restructuring Officer shall have the right to determine whether a bid is a Qualified Bid and shall notify all Potential Bidders whether they have been designated as a Qualified Bidder, as promptly as practicable after a Potential Bidder delivers the materials required by the Bidding Procedures. The Debtors shall notify the Prepetition Lender upon a determination that a Bid constitutes a Qualified Bid and promptly provide copies of such Qualified Bid to the Prepetition Lender.

8. The Honorable United States Bankruptcy Judge Christopher Lopez shall preside over the Auction.

9. As soon as reasonably practicable after the conclusion of the Auction, but no later than the first business day following the conclusion of the Auction, the Debtors shall file notice of the identity of the Successful Bidder, the Back-Up Bidder, if any, and the respective amounts of such bids, and shall serve such notice by first class United States Mail or email (where available) to: (i) the Debtors' Master Service List; (ii) the United States Trustee for the Southern District of Texas; (iii) the Prepetition Lender; and (iv) any party requesting notice pursuant to Bankruptcy Rule 2002.

10. Objections, if any, to the manner in which the Auction was conducted and selection of the Successful Bidder must (a) be filed with the Clerk of the Court no later than **October 10th, 2024 at 5:00 p.m. (prevailing Central Time)** (the "Auction Objection Deadline"); (b) set forth in writing and describe with specificity the factual and legal basis for the Auction Objection; and (c) comply with the Bankruptcy Rules and Bankruptcy Local Rules (any such objection, an "Auction Objection"). Failure to timely or appropriately file an Auction Objection by the Auction Objection

Deadline shall be deemed to be consent to the Successful Bidder and the manner in which the Auction was conducted.

11. At the Auction, each Qualified Bidder attending shall be required to confirm that it has not engaged in any collusion, within the meaning of section 363(n) of the Bankruptcy Code, with respect to the bidding or the Sale. The Auction shall be recorded or transcribed.

12. Subject to the terms of the Bidding Procedures, the Debtors shall determine which Qualified Bid is the highest or otherwise best offer for the Purchased Assets, as well as any additional liabilities to be assumed by the relevant Qualified Bidder and any additional costs which may be imposed on the Debtors. For purposes of valuing Qualified Bids and determining the Successful Bid(s), the full face amount of a credit bid shall be deemed to have the same value as the equivalent amount of cash.

13. The Sale Hearing shall be held before the Honorable United States Bankruptcy Judge Christopher Lopez, at the United States Bankruptcy Court for the Southern District of Texas on **a date to be determined by the Court**. The Sale Hearing may be adjourned by the Debtors, in consultation with the Prepetition Lender, without further notice to creditors or parties in interest other than by announcement in open Court on the date scheduled for the Sale Hearing or by filing a notice on the docket of the Debtors' Chapter 11 Cases.

14. The Successful Bidder shall appear at the Sale Hearing and be prepared to testify, if necessary, in support of the Successful Bid and the Successful Bidder's ability to close in a timely manner.

Sale Notice Procedures

15. The Sale Notice, substantially in the form attached to the Motion, is hereby approved. The Sale Notice is reasonably calculated to provide sufficient notice to all parties in

interest of the Debtors' intent to consummate one or more sale(s) with the Successful Bidder(s) and constitutes adequate notice of the sale. Additionally, the following Sale Notice procedures are hereby approved:

The Debtors shall serve the Sale Notice, together with the Bidding Procedures, within two (2) days after the entry of this Order, upon all parties on the Debtors' Master Service List, and, for the avoidance of doubt: (a) counsel to Vista Bank; (b) counsel to the known bidders (c) the United States Trustee for the Southern District of Texas; (d) all other parties known to the Debtors who have or may have asserted liens, claims, encumbrances, or interests in or against the Masterson assets (e) the Debtors' thirty (30) largest unsecured creditors (on a consolidated basis); (f) all of the Debtors' creditors as required by Bankruptcy Rule 2002(a)(2); (g) federal, state, and local taxing authorities; (h); all parties that have requested notice pursuant to Bankruptcy Rule 2002; and (i) all parties known to have expressed an interest in a transaction with respect to all or a part of the Masterson assets

- (i) Any objections to the relief requested in the Motion as relates to the sale of the Purchased Assets to the Successful Bidder (a "Sale Objection") must: (a) set forth in writing and describe with specificity the factual and legal basis for the Sale Objection; (b) comply with the Bankruptcy Rules and Bankruptcy Local Rules; (c) be filed with the Clerk of the Court no later than **5:00 p.m. (prevailing Central Time) on October 10, 2024** (the "Sale Objection Deadline"); and (d) be served, so as to be actually received on or before the Sale Objection Deadline by the service parties (the "Service Parties") consisting of: (i) counsel for the Debtors, Okin Adams LLP, 1113 Vine Street, Suite 240, Houston, Texas 77002, Attn: Christopher Adams (cadams@okinadams.com) and John Thomas Oldham (joldham@okinadams.com) (ii) counsel to the Prepetition Lender, Hunton Andrews Kurth LLP, Attn: Justin Paget (jpaget@HuntonAK.com) and Jennifer Wuebker (jwuebker@HuntonAk.com) and Munsch Hardt Kopf & Harr, P.C., Attn: John D. Cornwell (jcornwell@munsch.com) and Brenda Funk (bfunk@munsch.com); and (iii) counsel to Contango Oil & Gas, LLC and SNW Operating Company, Inc.
- (ii) The failure of any person or entity to file a Sale Objection by the Sale Objection Deadline shall be deemed a consent to the sale of the Purchased Assets to the Successful Bidder and the other relief requested in the Sale Motion for purposes of Bankruptcy Code section 363(f). Further, the failure to file a Sale Objection by the Sale Objection Deadline shall be a bar to the assertion, at the Sale Hearing or thereafter, of (i) any objection to the Motion; (ii) the sale of the Purchased Assets free and clear of an liens, claims, and encumbrances; and (iii) the Debtors' consummation and performance of the Asset Purchase Agreement.
- (iii) If a Sale Objection is timely filed by the Sale Objection Deadline and the relevant parties are unable to resolve the Sale Objection prior to the commencement of the

Sale Hearing, such Sale Objection will be adjudicated at the Sale Hearing or at such other date and time as may be fixed by the Court.

Miscellaneous Provisions

16. Prior to service, the Debtors may make final, non-substantive edits to the Bidding Procedures and Sale Notice, consisting solely of correcting typographical and grammatical errors, making stylistic and formatting improvements, adding relevant dates and deadlines, and adding revisions announced on the record at the Bidding Procedures Hearing, each of which shall be deemed approved by this Order without further notice or hearing.

17. The Debtors are authorized to conduct the Sale without the necessity of complying with any state or local bulk transfer laws or requirements.

18. In the event that there is a conflict between this Order or the Bidding Procedures, on the one hand, and the Motion, or an Asset Purchase Agreement, on the other hand, this Order and the Bidding Procedures shall control and govern, and this Order shall control in the event of any conflict with the Bidding Procedures attached as Exhibit 1 hereto.

19. Nothing in this Order shall release, nullify, preclude, or enjoin the enforcement of any police power or regulatory liability to any governmental unit (as defined in section 101(27) of the Bankruptcy Code) that any entity would be subject to for its actions as the post-Closing owner, lessee, permittee, controller, or operator of the acquired assets nor shall the Order or Motion release the Debtors from any claims against the estate based on any pre-Closing actions. Nothing in the Order shall limit any governmental unit in the exercise of its police or regulatory powers in accordance with 11 U.S.C. § 362(b)(4) or 28 U.S.C. § 959.

20. Further, nothing in this Order, the Motion, or related documents, authorizes the transfer or assignment of any governmental (a) license, (b) permit, (c) registration, (d) authorization or (e) approval, or the discontinuation of any obligation thereunder, without

compliance with all applicable legal requirements and approvals under police or regulatory law. Nothing in this Order shall relieve any entity from any obligation to address or comply with information requests or inquiries from any governmental unit. Nothing in this Order shall affect any setoff or recoupment rights of any governmental unit. Nothing in this Order divests any tribunal of any jurisdiction it may have under police or regulatory law to interpret this Order or to adjudicate any defense asserted under this Order.

21. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

22. The Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this Order.

23. Notwithstanding the possible applicability of Bankruptcy Rules 6004, 7062, 9014 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable.

Signed: September 26, 2024



Christopher Lopez
United States Bankruptcy Judge

Exhibit 1

(Bidding Procedures)

POLARIS OPERATING, LLC, *ET AL.* - BIDDING PROCEDURES

Set forth below are the bidding procedures (the “Bidding Procedures”) to be employed in connection with the proposed sale of the Masterson Assets (the “Purchased Assets”) of the Debtors (as defined below) that own the Purchased Assets (in such capacity, the “Sellers”), in connection with the Debtors’ jointly administered chapter 11 cases of Polaris Operating, LLC *et al.* (each a “Debtor” and collectively, the “Debtors”) pending in the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”), lead Case No. 23-32810.

On September ____, 2024, the Bankruptcy Court entered an Order (the “Order”) [ECF # ●], which, among other things, authorized the Debtors to solicit bids and approved these Bidding Procedures, which are to be employed by the Debtors in connection with the proposed sale of, or acquisition transactions of the Debtors’ Masterson Assets and other related interests, free and clear of all liens, claims, encumbrances and other interests (collectively, the “Encumbrances”), other than those Encumbrances permitted by an Asset Purchase Agreement (as defined below) (any and each such transaction, a “Sale”), on an AS-IS, WHERE-IS WITH ALL FAULTS BASIS.

KEY DATES

Date and Time	Applicable Deadline
October 10, 2024 at 5:00 p.m.	Sale Objection Deadline
October 4, 2024 at 5:00 p.m.	Bid Deadline
October 8, 2024 at 3:00 p.m.	Auction Date
October 10, 2024 at 5:00 p.m.	Auction Objection Deadline
To Be Determined by the Court	Sale Hearing

ASSETS TO BE SOLD AND ASSET PURCHASE AGREEMENT

1. The Debtors seek to consummate one or more Sales of the Purchased Assets. The Debtors will consider bids to acquire substantially all of the Masterson Assets. The Debtors, in consultation with the Prepetition Lender, have drafted a form of asset purchase agreement (together with all ancillary documents and agreements, the “Asset Purchase Agreement”), for parties interested in acquiring the Purchased Assets. The Debtors intend to provide copies of the form of Asset Purchase Agreement to all parties who express interest in submitting a Bid and will also make such form of Asset Purchase Agreement available in the electronic data room established by the Debtors in connection with their Sale process.

2. The Sale of the Purchased Assets is on an “as is, where is” basis and without representations or warranties of any kind, nature, or description by the Sellers, their agents or estates, except to the extent set forth in the Asset Purchase Agreement of the Successful Bidder (as defined herein) as approved by the Bankruptcy Court. Pursuant to the form of Asset Purchase Agreement, the Successful Bidder shall acquire the Purchased Assets free and clear of any and all Encumbrances, subject to certain other conditions and except as otherwise provided in an Asset Purchase Agreement, with such Encumbrances to attach solely to the net proceeds of the Sale with the same validity and priority as such Encumbrances applied against the Purchased Assets prior to the Sale.

THE BIDDING PROCEDURES

A. Provisions Governing Qualifications of Bidders

3. Unless otherwise ordered by the Bankruptcy Court, in order to participate in the bidding process, prior to the Bid Deadline (defined below), each person, who wishes to participate in the bidding process (each, a “Potential Bidder”) must deliver the following to the Bid Notice Parties (as defined below):

- (i) a written disclosure of the identity of each entity that will be bidding for the Purchased Assets or otherwise participating in connection with such Bid; and
- (ii) an executed confidentiality agreement (to be delivered prior to the distribution of any confidential information by the Sellers to a Potential Bidder) in form and substance satisfactory to the Debtors.

4. As promptly as practicable after a person delivers all of the materials required above, and after consultation with the Prepetition Lender, the Debtors will determine and will notify such Potential Bidder if it qualifies as a bidder (each a “Qualified Bidder”).

B. Due Diligence

5. The Debtors, with the assistance of their investment banker and other advisors, will provide any Potential Bidder such due diligence access or additional information as the Debtors, in their reasonable discretion, deem appropriate, which may include differentiations between the diligence provided to strategic and financial bidders, as appropriate, and contractual obligations to limit access to certain proprietary information. The due diligence period will extend through and include the Auction. Unless otherwise deemed reasonably appropriate by the Debtors after consultation with the Prepetition Lender, the Debtors and their representatives and advisors shall not be obligated to furnish any due diligence information after the Auction. Diligence inquiries should be made to the Debtors’ investment banker using the contact information below:

SP Securities LLC

Attn: Joseph Mims

Tel: 713.542.8004

Email: Jmims@onerangersolutions.com

Address: 1717 St. James Place, Ste. 250, Houston, Texas 77056

C. Bid Deadline

6. A Qualified Bidder that desires to make a Bid will deliver written copies of its Bid via email to the following parties (collectively, the “Bid Notice Parties”): (i) the Debtors, by and through their Chief Restructuring Officer, Attn: Douglas J. Brickley (dbrickley@stout.com); (ii) investment banker to the Debtors, SP Securities LLC, Attn: Joseph Mims (jmims@onerangersolutions.com); and (iii) counsel for the Debtors, Okin Adams LLP Attn: Christopher Adams (cadams@okinadams.com) and John Thomas Oldham (joldham@okinadams.com).

7. Bids must be actually received by the Bid Notice Parties by a date no later than **5:00 p.m. (prevailing Central Time) on October 4, 2024** (the “Bid Deadline”). The Bid Deadline may be extended by the Debtors in consultation with the Prepetition Lender.

D. Credit Bid Notification

8. To the extent that the Prepetition Lender, in its capacity as Prepetition Secured Lender, desires to submit a competing credit bid for the Purchased Assets, the Prepetition Lender shall notify the Debtors in writing of its intention to potentially credit bid no later than the Bid Deadline (the “Credit Bid Notification”). If the Prepetition Lender indicates in a Credit Bid Notification that it intends to credit bid at the Auction, the Prepetition Lender shall not receive the consent/consultation rights with respect to determination of Qualified Bids, Qualified Bidders, the Auction(s), or the selection of the Successful Bidder or Back-Up Bidder, each as defined and more fully set forth below; *provided, however*, that the Prepetition Lender shall retain the consent rights and consultation rights set forth in subparagraph (l) of paragraph 15 and paragraph 28 below. In the event the Prepetition Lender subsequently revokes the Credit Bid Notification in writing and notifies the Debtors that it no longer intends to credit bid, then it shall again be afforded the consent rights and consultation rights described in these Bidding Procedures.

9. Notwithstanding the foregoing or anything herein to the contrary, unless otherwise ordered by the Bankruptcy Court for cause, the Prepetition Lender may submit credit bid(s) of all or a portion of its respective secured claims any time after the Bid Deadline or during the Auction, so long as (i) such credit bid shall only serve as a “back-up” bid to the Stalking Horse Bid or such other Successful Bid, if applicable; (ii) the Prepetition Lender shall provide an Asset Purchase Agreement to the Debtors no later than one (1) business day after the Bid Deadline; and (iii) such credit bid shall remain irrevocable until the closing of the Sale to the Successful Bidder (any such credit bid, a “Credit Bid Back-up Bid” and such submitting lender, the “Credit Bid Back-up Bidder”). Other than with respect to the Asset Purchase Agreement, the Credit Bid Back-up Bid shall not be subject to the requirements herein for a Qualified Bid or a Back-up Bid. For the avoidance of doubt, the Credit Bid Back-up Bidder cannot be designated as the Back-up Bidder unless such party consents to such designation.

E. Provisions Governing Qualified Bids

10. A Bid will be considered a “Qualified Bid” only if the Bid is submitted by a Qualified Bidder and complies with all of the following:

- a. it states that the applicable Qualified Bidder offers to purchase, in cash or through a credit bid, some or all of the Purchased Assets upon the terms and conditions that the Debtors reasonably determine are no less favorable to the Debtors than those set forth in the Asset Purchase Agreement;
- b. it specifies the assets that are included in the Bid and states that such Qualified Bidder offers to purchase those assets included in the applicable Asset Purchase Agreement upon substantially the same terms as, or terms more favorable to the Debtors and their estates than, the terms set forth in the applicable Asset Purchase Agreement;
- c. it includes a signed writing stating that the Qualified Bidder’s offer is binding on such Qualified Bidder and irrevocable until the selection of the Successful Bidder, *provided, however*, that if such Qualified Bidder is selected as the Successful Bidder or the Back-Up Bidder (each, as defined below) its offer shall remain irrevocable until the later of (i) the closing of the Sale to the Successful Bidder or the Back-Up Bidder, and (ii) the date that is thirty (30) days after the Sale Hearing;
- d. it includes written confirmation that there are no conditions precedent to the Qualified Bidder’s ability to enter into a definitive agreement, including due diligence or

financing contingencies, and that all necessary internal and shareholder approvals have been obtained prior to the submission of the Bid;

- e. it includes a duly authorized and executed copy of a purchase agreement, based on the Asset Purchase Agreement (if one exists), including the purchase price for the Purchased Assets expressed in U.S. Dollars (the “Purchase Price”), together with all exhibits and schedules thereto, together with copies marked to show any amendments and modifications to the Asset Purchase Agreement and the proposed order for approval of the Sale by the Bankruptcy Court, and includes a copy of a redline reflecting all of the changes to the Asset Purchase Agreement (if any);
- f. it includes confirmation that the Bid is not contingent upon such Qualified Bidder obtaining financing and includes financial statements or other written evidence, including (if applicable) a firm, irrevocable commitment for financing, establishing the ability of the Qualified Bidder to consummate the proposed Sale and pay the Purchase Price in cash, such as will allow the Debtors, in consultation with the Prepetition Lender, to make a reasonable determination as to the Qualified Bidder’s financials and other capabilities to consummate the transaction contemplated by the Asset Purchase Agreement;
- g. it includes an acknowledgement and representation that the Qualified Bidder: (i) has had an opportunity to conduct any and all required due diligence regarding the Purchased Assets prior to making its Bid; (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Purchased Assets in making its Bid; and, (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Purchased Assets or the completeness of any information provided in connection therewith or with the Auction, except as expressly stated in the Asset Purchase Agreement.
- h. it is accompanied by a good faith deposit (a “Good Faith Deposit”) in the form of a wire transfer (to a bank account specified by the Debtors), certified check or such other form acceptable to the Debtors, payable to the order of the Debtors (or such other party as the Debtors may determine) in an amount equal to ten percent (10%) of the Purchase Price;
- i. it contains full disclosure of the identity of each entity that will be bidding for the Purchased Assets or otherwise participating in connection with such Bid, and the complete terms of any such participation, as well as disclose the organizational form and business conducted by each entity;
- j. it contains a commitment to close the Sale of the Purchased Assets upon entry of the Sale Order;
- k. it contains such other information as may be reasonably requested by the Debtors, in consultation with the Debtors’ investment banker; and
- l. it is received prior to the Bid Deadline.

11. The Debtors shall have the discretion to determine whether a Bid meets the above requirements and is therefore a Qualified Bid. Promptly upon determining that a Bid (other than a Stalking

Horse Bid) constitutes a Qualified Bid, the Debtors shall notify the Prepetition Lender, in writing of such determination and will notify each Qualified Bidder that has submitted a Bid whether such Qualified Bidder's Bid constitutes a Qualified Bid promptly after such determination has been made; *provided, however*, that such notification shall not be given later than one (1) calendar day following the expiration of the Bid Deadline. Only those Qualified Bidders who have submitted Qualified Bids, as determined by the Debtors, in consultation with the Prepetition Lender, shall be deemed "Qualified Bidders" for purposes of these Bidding Procedures and the Auction.

F. Evaluation of Competing Bids

12. A Qualified Bid will be valued based upon several factors including, without limitation, (1) the amount of the Purchase Price provided by such Qualified Bid, (2) the risks and timing associated with consummating such Qualified Bid, (3) any proposed revisions to the Asset Purchase Agreement and/or the Stalking Horse Agreement and/or the proposed Sale Order, (4) the ability of the Qualified Bidder to obtain appropriate regulatory approvals, if any, and (5) any other factors deemed relevant by the Debtors, in consultation with their investment banker and the Prepetition Lender, as necessary. For purposes of such valuation, the full face amount of a credit bid shall be deemed to have the same value as the equivalent amount of cash. The Debtors shall treat comparable credit bids, cash bids, and bids contemplating the assumption of liabilities as equivalent and no credit bid shall be considered inferior to a comparable cash bid or bid contemplating the assumption of liabilities because it is a credit bid.

G. Auction Process

13. The Debtors will conduct an auction of the Assets (the "Auction"), which shall be on **October 8, 2024, at 3:00 p.m. (prevailing Central Time)** before the Honorable United States Bankruptcy Judge Christopher Lopez, at the United States Bankruptcy Court for the Southern District of Texas.

14. At the start of the Auction, the Debtors shall describe the material terms of the Starting Bid (as defined below) for the Purchased Assets on the record. The Debtors shall maintain a written transcript of the Auction and all bids made and announced at the Auction, if any, including the Starting Bid, any and all Subsequent Bids, and the Successful Bid. The Auction, which shall be recorded or transcribed, shall be held in accordance with the following procedures:

- a. each Qualified Bidder participating in the Auction shall be required to confirm on the record at the Auction (a) it has not engaged in any collusion with respect to the bidding and the Auction, (b) its Qualified Bid is a good faith *bona fide* offer that it intends to consummate if selected as the Successful Bidder or Back-up Bidder, and (c) the Qualified Bidder (other than the Credit Bid Back-up Bidder) agrees to serve as the Back-up Bidder if its Qualified Bid is the next highest or otherwise best bid after the Successful Bid;
- b. at least one (1) business day prior to the Auction, each Qualified Bidder who has timely submitted a Qualified Bid must inform the Debtors whether it intends to attend the Auction and all Qualified Bidders wishing to attend the Auction must have at least one individual representative with authority to bind such Qualified Bidder in attendance at the Auction in person; *provided* that in the event a Qualified Bidder elects not to attend the Auction, such Qualified Bidder's Qualified Bid shall nevertheless remain fully enforceable against such Qualified Bidder until the selection of the Successful Bidder and Back-Up Bidder at the conclusion of the Auction. At least one (1) business day prior to the Auction, the Debtors will provide copies of the Qualified Bid, or combination of Qualified Bids, which the Debtors believe, after consultation with the

Prepetition Lender (which may be present at the Auction), is the highest or otherwise best offer for the Purchased Assets (the “Starting Bid”) to the Prepetition Lender.

- c. the actual identity of each Qualified Bidder will be disclosed on the record at the Auction;
- d. bidding at the Auction will begin with the Starting Bid and continue in bidding increments (each, a “Subsequent Bid”) providing a net value to the Debtors’ estates of at least \$100,000 above the prior Bid. After the first round of bidding and between each subsequent round of bidding, the Debtors, after consultation with the Prepetition Lender, shall announce the Bid (and the value of such Bid) that they believe to be the highest or otherwise best Bid (each, the “Leading Bid”).
- e. A round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid.
- f. The Debtors may accept Bids for all or substantially all of the Purchased Assets.
- g. The Debtors explicitly reserve the right, in their business judgment and after consultation with the Prepetition Lender, to exercise their discretion in conducting the Auction (in a manner that is not inconsistent with the Bidding Procedures, the Bankruptcy Code, or any Order of the Bankruptcy Court entered in connection herewith), including (x) modifying bidding increments as necessary to achieve the highest and best Bids for the Purchased Assets, and (y) determining whether to adjourn the Auction to facilitate separate discussions between any Qualified Bidders, the Debtors, and/or the Prepetition Lender, as applicable.

H. Selection of Successful Bid

15. Prior to the conclusion of the Auction, the Debtors, in consultation with the Prepetition Lender, will review and evaluate each Qualified Bid submitted in accordance with the procedures set forth herein and determine which offer is the highest or otherwise best offer (one or more such bids, collectively the “Successful Bid” and the bidder(s) making such bid(s), collectively, the “Successful Bidder”), and communicate to the other Auction participants the identity of the Successful Bidder and the details of the Successful Bid. The determination of the Successful Bid by the Debtors, in consultation with the Prepetition Lender, at the conclusion of the Auction shall be final, subject only to approval by the Bankruptcy Court.

16. The Qualified Bidder(s) with the next highest or otherwise best Qualified Bid, as determined by the Debtors, in consultation with the Prepetition Lender, will be required to serve as a back-up bidder (the “Back-Up Bidder”) and keep its bid open and irrevocable until the later to occur of thirty (30) days after the Sale Hearing and closing on the Successful Bid with the Successful Bidder. If the Successful Bidder fails to consummate the Sale, the Back-Up Bidder will be deemed to be the new Successful Bidder, and the Debtors will be authorized and directed to consummate the Sale with the Back-Up Bidder without further order of the Bankruptcy Court.

17. Within two (2) business days after conclusion of the Auction, the Successful Bidder shall complete and execute all agreements, contracts, instruments and other documents necessary to consummate the Successful Bid. Within one (1) business day after conclusion of the Auction, the Debtors shall file a notice with the Bankruptcy Court identifying the Successful Bidder and the Back-Up Bidder.

18. The Debtors will sell the Purchased Assets to the Successful Bidder(s) pursuant to the terms of the Successful Bid(s) upon the approval of such Successful Bid(s) by the Bankruptcy Court at the Sale Hearing.

I. Return of Deposits

19. All Good Faith Deposits shall be returned to each bidder not selected by the Debtors as the Successful Bidder or the Back-Up Bidder (as defined below) no later than five (5) business days following the conclusion of the Auction.

SALE HEARING

20. The Debtors will seek entry of a Sale Order from the Bankruptcy Court at a hearing (the “Sale Hearing”) to begin on **a date to be determined by the Court**, subject to the availability of the Bankruptcy Court, to approve and authorize the Sale to the Successful Bidder on the terms and conditions memorialized in the applicable Asset Purchase Agreement.

RESERVATION OF RIGHTS

21. The Debtors reserve the right, in their reasonable business judgment and after consultation with the Prepetition Lender, to adjourn the Auction, if any, one or more times to, among other things: (i) facilitate discussions between and amongst the Debtors, the Qualified Bidders and the Prepetition Lender, as appropriate; (ii) allow Qualified Bidders to consider how they wish to proceed; and (iii) provide Qualified Bidders the opportunity to provide the Debtors and the Prepetition Lender with such additional evidence as the Debtors, in their reasonable business judgment, after consultation with the Prepetition Lender, 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 Subsequent Bid amount.

22. The Debtors and Prepetition Lender agree that in the event of any dispute regarding the Sale process outlined in these Bidding Procedures: (i) any such party may seek an emergency hearing requesting that the Bankruptcy Court resolve such dispute; and (ii) the other party shall consent to such request for an emergency hearing.