

## **PARADOX RESOURCES, 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 certain tangible and intangible assets (the “Purchased Assets”) of Paradox Resources, LLC, *et al.* (collectively, the “Debtors”) that own the Purchased Assets (in such capacity, the “Sellers”), in connection with the Debtors’ jointly administered chapter 11 cases the (“Chapter 11 Cases”) pending in the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”), lead Case No. 23-90558.

On July 31, 2023, the Bankruptcy Court entered an Order (the “Bidding Procedures Order”) [ECF # 207], 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 or sales of, or acquisition transactions of all or substantially all of, the Debtors’ 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 a Stalking Horse Agreement or 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**

| <b>Date and Time<sup>1</sup></b>                                 | <b>Applicable Deadline</b>                                  |
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| July 28, 2023  | Stalking Horse Designation Deadline <sup>2</sup>            |
| Ten (10) days after service of a Stalking Horse Selection Notice | Stalking Horse Objection Deadline                           |
| August 28, 2023 at 5:00 p.m.                                     | Bid Deadline  |
| August 28, 2023 at 5:00 p.m.                                     | Sale Objection Deadline                                     |
| August 28, 2023 at 5:00 p.m.                                     | Contract Objection Deadline                                 |
| August 30, 2023 at 10:00 a.m.                                    | Qualified Bids Determined                                   |
| August 31, 2023 at 10:00 a.m.                                    | Auction Date  |
| September 4, 2023 at 5:00 p.m.                                   | Auction Objection and Adequate Assurance Objection Deadline |
| September 6, 2023 at 9:00 a.m.                                   | Sale Hearing  |

### **STALKING HORSE PURCHASER AND STALKING HORSE PROTECTIONS**

1. The Debtors have been authorized, but are not obligated, in an exercise of their business judgment and in consultation with the Consultation Parties<sup>3</sup> to: (i) designate one or more

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<sup>1</sup> All times are prevailing Central Time.

<sup>2</sup> The Debtors may extend the Stalking Horse Designation Deadline with the consent of the DIP Lender.

<sup>3</sup> Subject to Paragraph 13, the “Consultation Parties” shall consist of Washington Federal Bank (the “DIP Lender” or “WaFd”), and the Official Committee of Unsecured Creditors (the “Committee”).

bidders to act as qualified stalking horse bidders in connection with the Sale (each, a “Stalking Horse Purchaser,” and the bid of a Stalking Horse Purchaser a “Stalking Horse Bid”), and enter into purchase agreements with respect to a Sale with such Stalking Horse Purchaser(s) (each, a “Stalking Horse Agreement”) and (ii) in connection with any Stalking Horse Agreement with a Stalking Horse Purchaser, (a) provide a breakup fee (the “Breakup Fee”); (b) agree to reimburse reasonable and documented out-of-pocket fees and expenses (the “Expense Reimbursement”); and (c) agree to provide minimum overbid protections as approved by the Bankruptcy Court (together with the Breakup Fee and Expense Reimbursement, the “Stalking Horse Protections”).

2. The Debtors will provide notice of each such Stalking Horse Purchaser, Stalking Horse Protections (including the amount and calculation thereof) and Stalking Horse Agreement as outlined in the Bidding Procedures Order (the “Stalking Horse Selection Notice”). Parties in interest may file an objection (a “Stalking Horse Objection”) to the designation of the Stalking Horse Purchaser or any of the terms of the Stalking Horse Agreement, including to any of the proposed Stalking Horse Protections, within ten (10) days after service of the Stalking Horse Selection Notice (the “Stalking Horse Objection Deadline”). If a timely Stalking Horse Objection is filed and served in accordance with the Bidding Procedures Order, the proposed designation of the Stalking Horse Purchaser and the Stalking Horse Protections under such Stalking Horse Agreement will not be deemed approved, and such Stalking Horse Protections may not be paid pursuant to the Bidding Procedures Order, until either the Stalking Horse Objection is resolved by agreement of the objecting party and the Debtors (in consultation with the Consultation Parties) or by further order of the Bankruptcy Court. If no timely Stalking Horse Objection is filed and served with respect to a Stalking Horse Bid in accordance with these Bidding Procedures and the Bidding Procedures Order, the Stalking Horse Protections contemplated by such Stalking Horse Bid shall be deemed approved without further order of the Bankruptcy Court upon the expiration of the Stalking Horse Objection Deadline.

3. The Debtors have agreed that their obligation to pay the Stalking Horse Protections pursuant to the Stalking Horse Agreement shall survive termination of the Stalking Horse Agreement, and, to the extent owed by the Debtors, constitute an administrative expense claim under sections 503(b) and 507 of the Bankruptcy Code against the Debtors, and payable in accordance with the terms and conditions of the Stalking Horse Agreement and the Bidding Procedures Order.

### **ASSETS TO BE SOLD AND ASSET PURCHASE AGREEMENT**

4. The Debtors seek to consummate a Sale of the Purchased Assets and will consider bids (the “Bids”) to acquire the Purchased Assets as a going-concern to the extent that the consummation of such transaction maximizes value for stakeholders. The Debtors may, in their discretion, choose to accept Bids from Potential Bidders on certain Purchased Assets constituting less than all of the Purchased Assets available for Sale (*i.e.*, a “Lot Bid”) to the extent the Debtors believe one or more of such transactions may maximize value for stakeholders and can be accomplished efficiently; *provided, however*, (i) the Potential Bidder should notify the Debtors’ investment banker of its intent to submit such a Bid prior to the Bid Deadline and identify the specific Purchased Assets to be included in the Lot Bid; (ii) the Potential Bidder understands that, in evaluating and determining Qualified Bids, the Debtors will give more weight to Bids to acquire the Purchased Assets as a going-concern; and (iii) the Lot Bid(s), to the extent they do not provide

for Sale transaction(s) which would collectively result in the disposition of substantially all of the Debtors' Assets, must be sufficient in the aggregate to pay the outstanding indebtedness of WaFd, including the DIP Facility.

5. 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.

### **THE BIDDING PROCEDURES**

#### **A. Provisions Governing Qualifications of Bidders**

6. Unless otherwise ordered by the Bankruptcy Court, in order to participate in the bidding process, prior to the Bid Deadline (defined below), each person, other than a Stalking Horse Purchaser, who wishes to participate in the bidding process (a "Potential Bidder") must deliver the following to the Debtors:

- (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.

7. As promptly as practicable after delivery of all materials required above, the Debtors will determine and will notify such party of their status as a Potential Bidder. The Debtors will regularly notify the DIP Lender and the Committee of the parties designated as Potential Bidders.

8. For the avoidance of doubt, and unless otherwise ordered by the Bankruptcy Court after notice and a hearing in connection with a timely filed Stalking Horse Objection, any Stalking Horse Purchaser designated by the Debtors shall be considered a Qualified Bidder and any Stalking Horse Agreement shall be a Qualified Bid (as defined below).

9. For the avoidance of doubt, and unless otherwise ordered by the Bankruptcy Court after notice and a hearing, the DIP Lender shall be deemed a Qualified Bidder and any such credit Bid submitted by the DIP Lender on account of its secured claims under the DIP Loan Documents and Prepetition Documents (each as defined in the Final DIP Order) (subject to satisfaction of any senior secured claims, to the extent applicable) shall be deemed a Qualified Bid; *provided, however*, that nothing herein or in the Bidding Procedures Order shall be deemed to impair or otherwise limit the Committee's ability to object to any credit bid or assert the "Challenge" rights set forth in the Final DIP Order. As soon as reasonably practicable after a Challenge, if any, is

filed with the Bankruptcy Court, the parties shall each consent to an expedited process and use reasonable efforts to have the Bankruptcy Court resolve the Challenge prior to the Sale Hearing. To the extent a Challenge is pending at the time of the Sale Hearing and the Bankruptcy Court has not ruled on the merits of such Challenge, without prejudice to the pending Challenge, a Qualified Bidder may still credit bid up to the full amount of its contested secured claim.

**B. Due Diligence**

10. 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 including the Auction. Unless otherwise deemed reasonably appropriate by the Debtors after consultation with the Consultation Parties, 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:

**Evercore Group L.L.C.**

Attn: Robert Pacha

Tel: (713) 403-2441

Fax : (713) 403-2444

Email: Pacha@Evercore.com

**C. Bid Deadline**

11. A Potential 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, Attn: Douglas J. Brickley (dbrickley@stout.com) and Todd A. Brooks (toddb@paradoxresources.com); (ii) investment banker to the Debtors, Attn: Robert Pacha (pacha@evercore.com); and (iii) counsel for the Debtors, Attn: Matthew S. Okin (mokin@okinadams.com) and Ryan A. O'Connor (roconnor@okinadams.com).

12. Bids must be actually received by the Bid Notice Parties by a date no later than **5:00 p.m. (prevailing Central Time) on August 28, 2023** (the "Bid Deadline"). The Bid Deadline may be extended by the Debtors in consultation with the Consultation Parties.

**D. Credit Bid Notification**

13. To the extent the DIP Lender desires to submit a competing credit bid for the Purchased Assets, the DIP Lender shall notify the Debtors in writing of its intention to credit bid and the amount of the initial credit bid no later than the Bid Deadline (the "Credit Bid Notification"). If the DIP Lender indicates in a Credit Bid Notification that it intends to credit bid at the Auction, the DIP Lender shall not be considered a Consultation Party and shall not receive the consent/consultation rights with respect to determination of Qualified Bids, Qualified Bidders, the Auction, or the selection of the Successful Bidder or Back-Up Bidder, each as defined and more fully set forth herein. In the event that the DIP Lender subsequently revokes the Credit Bid

Notification in writing and notifies the Debtors that it no longer intends to credit bid then the DIP Lender shall again be afforded the consent rights and consultation rights described in these Bidding Procedures.

**E. Provisions Governing Qualified Bids**

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

- a. it specifies the assets that are included in the Bid and, to the extent a Stalking Horse Purchaser is designated, states that such Qualified Bidder offers to purchase those assets included in the applicable Stalking Horse 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 Stalking Horse Agreement;
- b. it includes a signed writing stating that the Potential Bidder’s offer is binding on such Potential Bidder and irrevocable until the selection of the Successful Bidder, *provided, however*, that if such Potential Bidder is selected as the Successful Bidder or the Back-Up Bidder (each, as defined below) its offer shall remain irrevocable until the earlier 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;
- c. it includes written confirmation that there are no conditions precedent to the Potential 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;
- d. it includes a duly authorized and executed copy of a purchase agreement, based on the Asset Purchase Agreement or the Stalking Horse Agreement (if one exists), including the purchase price for the Purchased Assets expressed in U.S. Dollars (the “Purchase Price”), together with redline copies marked to show any amendments and modifications to the Asset Purchase Agreement or the Stalking Horse Purchase Agreement (if any);
- e. it includes written confirmation that the Bid is not contingent upon such Potential Bidder obtaining financing and includes financial statements or other written evidence, including (if applicable) a firm, irrevocable commitment for financing, proof of funds, and written confirmation establishing the ability and authority of the Potential Bidder to consummate the proposed Sale and pay the Purchase Price in cash, such as will allow the Debtors to make a reasonable determination as to the Potential Bidder’s financial and other capabilities to consummate the transaction contemplated by the Asset Purchase Agreement, including payment of the Purchase Price and providing adequate assurance of future performance under all contracts to be assumed and assigned in the Sale;

- f. it provides for the repayment of all other costs payable by such Potential Bidder, simultaneously with the closing of the Sale, including the Stalking Horse Protections (if any);
- g. in the event that there is a Stalking Horse Purchaser, and the Potential Bidder wishes to bid on the same assets that are included in the Stalking Horse Agreement, it has a value to the Debtors, determined in the Debtors' reasonable business judgment, after consultation with the Consultation Parties, that is greater than or equal to the sum of the value offered under the Stalking Horse Agreement, plus (i) the aggregate amount of the Stalking Horse Protections (if any), plus (ii) \$500,000 (the "Minimum Initial Overbid Amount");
- h. it identifies with particularity which executory contracts and unexpired leases the Potential Bidder wishes to assume and provides details of the Potential Bidder's proposal for the treatment of related Cure Amounts and the provision of adequate assurance of future performance to the counterparties to such Assumed Executory Contracts;
- i. it includes an acknowledgement and representation that the Potential 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; (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; and (iv) with the exception of any Stalking Horse Purchaser, is not entitled to any expense reimbursement, break-up fee, or similar type of payment in connection with its Bid;
- j. it includes evidence, in form and substance reasonably satisfactory to the Debtors of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Asset Purchase Agreement;
- k. 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; *provided that* (i) any Potential Bidder submitting a Bid with a credit bid component pursuant to section 363(k) of the Bankruptcy Code shall not be required to submit a Good Faith Deposit;
- l. it contains full disclosure of the identity of each entity that will be bidding for the Purchased Assets (including any equity holders or other financial backers, if the Potential Bidder and/or other bidding entity is formed for the purpose of

submitting Bids or consummating a Sale transaction) or otherwise participating in connection with such Bid,<sup>4</sup> and the complete terms of any such participation, as well as disclose the proposed senior management, organizational form, and business conducted by each entity;

- m. it contains a reasonable description of how the Potential Bidder intends to treat current employees of the Sellers;
- n. it contains a commitment to close the Sale of the Purchased Assets no later than October 6, 2023;
- o. it contains such other information as may be reasonably requested by the Debtors, in consultation with the Consultation Parties;
- p. it identifies each regulatory and third-party approval required for the Potential Bidder to consummate a proposed Sale transaction, if any, and the time period within which the Potential Bidder expects to receive such regulatory and third-party approvals;
- q. with respect to any proposed assumption, assignment, and/or transfer of any rights and interests in any federal oil and gas leases and/or rights-of-way (the “Federal Leases”) or in any state leases or grants for which regulatory approval is required to transfer (collectively the “Consent Leases”), the Bid must be accompanied by a statement that the Potential Bidder (i) is or has the capacity to become qualified to hold a Consent Lease under 43 CFR Subchapter C for Federal Leases and is otherwise qualified to own Consent Leases under applicable law; (ii) understands that it may be subject to bonding or other financial assurances as required by applicable government regulators; (iii) understands that it will be subject to all applicable monetary and operational regulations pertaining to such Consent Leases, specifically including, but not limited to, all decommissioning obligations pertaining to the interests acquired through the Consent Leases; and (iv) understands that the Consent Leases are otherwise regulated by various Governmental Units and that the Consent Leases may be subject to various permits, authorizations, certifications, or other regulatory filing and approval requirements; and
- r. it is received prior to the Bid Deadline.

15. The Debtors shall have the discretion to determine whether a Bid meets the above requirements and is therefore a Qualified Bid. Upon determining that a Bid constitutes a Qualified Bid, the Debtors shall notify the Stalking Horse Purchaser (if any), and the Consultation Parties, in writing of the fact that the Debtors have made such determination (and shall send a copy of such Qualified Bid to the Consultation Parties), and will notify each Potential Bidder that has submitted a Bid (other than the Stalking Horse Purchaser), whether such Potential Bidder’s Bid constitutes a Qualified Bid promptly after such determination has been made; *provided, however*, that such

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<sup>4</sup> The Debtors may approve joint Bids in their reasonable discretion on a case-by-case basis.

notification shall not be given later than two (2) business days following the expiration of the Bid Deadline. Except as otherwise expressly set forth herein, only those Potential Bidders who have submitted Qualified Bids, as determined by the Debtors, shall be deemed “Qualified Bidders” for purposes of these Bidding Procedures and the Auction.

**F. Evaluation of Competing Bids**

16. 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, (4) the ability of the Qualified Bidder to obtain any applicable regulatory approvals, and (5) any other factors deemed relevant by the Debtors, in consultation with the Consultation Parties. 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. No Qualified Bids**

17. If the Debtors do not receive any Qualified Bids, other than the Stalking Horse Bid (if any), the Debtors will not hold the Auction and the Stalking Horse Purchaser will be named the Successful Bidder upon the expiration of the Bid Deadline.

**H. Auction Process**

18. If the Debtors receive one or more Qualified Bids in addition to a Stalking Horse Bid, the Debtors will conduct an auction of the Purchased Assets (the “Auction”), which shall be on **August 31, 2023 at 10:00 a.m. (prevailing Central Time)**, telephonically or by video conference pursuant to instructions to be provided by the Debtors to parties entitled to attend the Auction at a later date, or such other location or time as shall be timely communicated. Prior to the Auction, the Debtors will provide a copy of the Starting Bid (as defined below) to all Qualified Bidders and Consultation Parties entitled to attend the Auction. At the start of the Auction, the Debtors shall describe the material terms of the Starting Bid for the Purchased Assets on the record, which Starting Bid shall be provided to all Qualified Bidders pursuant to subsection (d), below. The Debtors shall maintain a recording or 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, shall be held in accordance with the following procedures:

- a. only the Stalking Horse Purchaser, if any, and any other Qualified Bidders who have timely submitted Qualified Bids (and their counsel) will be entitled to attend and submit competing Bids at the Auction; *provided, however*, the Consultation Parties will be entitled to attend with no obligation to submit a competing Bid;
- b. the Stalking Horse Purchaser will, notwithstanding the elements of the purchase price set forth in the Stalking Horse Agreement, be entitled to make subsequent



Bids for all or substantially all or any combination of the Purchased Assets comprised of further credit bids, cash, additional or different consideration of any type, or any combination of the foregoing;

- c. each Qualified Bidder participating in the Auction may 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 *bona fide* offer that it intends to consummate if selected as the Successful Bidder or Back-up Bidder, and (c) the Qualified 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;
- d. at least one (1) 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; *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) 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 Consultation Parties, is the highest or otherwise best offer for the Purchased Assets (the "Starting Bid") to all Qualified Bidders;
- e. the actual identity of each Qualified Bidder will be disclosed on the record at the Auction;
- f. 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 \$500,000 above the prior Bid. After the first round of bidding and between each subsequent round of bidding, the Debtors, after consultation with the Consultation Parties, 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");
- g. 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;
- h. except as specifically set forth herein, for the purpose of evaluating the value of the Purchase Price provided by each Subsequent Bid (including any Subsequent Bid by the Stalking Horse Purchaser), the Debtors shall give effect to the Stalking Horse Protections as well as any additional liabilities to be assumed by a Qualified Bidder, and any additional costs which may be imposed on the Debtors;

- i. the Debtors may accept Bids for all or substantially all of the Purchased Assets; and
- j. the Debtors explicitly reserve the right, in their reasonable business judgment and after consultation with the Consultation Parties, 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 Consultation Parties, as applicable.

#### **I. Selection of Successful Bid**

19. Prior to the conclusion of the Auction, the Debtors, in consultation with the Consultation Parties, will review and evaluate each Qualified Bid submitted at the Auction (including by the Stalking Horse Purchaser) in accordance with the procedures set forth herein and determine, in their reasonable business judgment, which offer is the highest or otherwise best offer (one or more such Bids, collectively the “Successful Bid” and the Qualified Bidder(s) making such Bid(s), collectively, the “Successful Bidder”), and communicate to the Auction participants the identity of the Successful Bidder and the details of the Successful Bid. The determination of the Successful Bid by the Debtors at the conclusion of the Auction shall be final, subject only to approval by the Bankruptcy Court.

20. The Qualified Bidder(s) with the next highest or otherwise best Qualified Bid, as determined by the Debtors, in consultation with the Consultation Parties, 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.

21. 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. As soon as practicable after the conclusion of the Auction, the Debtors and Successful Bidder shall complete, execute, and file with the Bankruptcy Court all agreements, pleadings, and other documents necessary to consummate the Successful Bid, subject only to approval by the Bankruptcy Court.

#### **J. Return of Deposits; Stalking Horse Protections**

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

23. The Stalking Horse Protections payable to any Stalking Horse Purchaser shall be paid not later than three (3) business days after the closing of the transaction with the Successful Bidder for the Purchased Assets bid upon by the Stalking Horse Purchaser from the proceeds of such transaction.

### **SALE HEARING**

24. The Debtors will seek entry of a Sale Order from the Bankruptcy Court at a hearing (the “Sale Hearing”) to begin on **September 6, 2023 at 9:00 a.m. (prevailing Central Time)**, 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 and in accordance with the Bidding Procedures Order.

### **RESERVATION OF RIGHTS**

25. The Debtors reserve the right, in their reasonable business judgment to adjourn the Auction, if any, one or more times to, among other things: (i) facilitate discussions between and amongst the Debtors and the Qualified Bidders; (ii) allow Qualified Bidders to consider how they wish to proceed; and (iii) provide Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their reasonable business judgment, may require to support 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.

26. The Debtors, the Committee and the DIP 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 parties shall consent to such request for an emergency hearing.

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