

## **BID PROCEDURES**

On November 6, 2015, RAAM Global Energy Company, Century Exploration New Orleans, LLC, Century Exploration Houston, LLC, and Century Exploration Resources, LLC (collectively, the “Debtors”) filed that certain *Motion to Authorize and Approve (a) Stalking Horse Purchase Agreement, (b) Sale of Substantially All Assets Free and Clear of Claims, Liens, Encumbrances and Other Interests, (c) Assumption and Assignment of Executory Contracts and Unexpired Leases, (d) Bidding Procedures, (e) Procedures for Determining Cure Amounts for Executory Contracts and Unexpired Leases, and (f) Related Relief* (the “Motion”). Subject to receipt of a higher or better offer(s) as provided herein, the Debtors propose to effectuate the transactions contemplated by the Asset Purchase Agreement dated as of November 6, 2015 (the “Stalking Horse Purchase Agreement”) among Highbridge Principal Strategies - Specialty Loan Fund III, L.P., Highbridge Specialty Loan Sector A Investment Fund, L.P., Highbridge Specialty Loan Institutional Holdings Limited, Highbridge Principal Strategies - Specialty Loan Institutional Fund III, L.P., Highbridge Principal Strategies - Specialty Loan VG Fund, L.P., Highbridge Principal Strategies - NDT Senior Loan Fund, L.P., Highbridge Principal Strategies - Jade Real Assets Fund, L.P., Highbridge Aiguilles Rouges Sector a Investment Fund, L.P., Lincoln Investment Solutions, Inc., and American United Life Insurance Company (collectively, the “Stalking Horse Bidder”), and the Debtors (the “Transaction”). The Stalking Horse Purchase Agreement provides for the transfer of the Debtors’ right, title, and interest in, to and under those assets more fully described in the Stalking Horse Purchase Agreement. These Bid Procedures<sup>1</sup> have been approved and authorized pursuant to the *Order Authorizing and Approving (a) Stalking Horse Purchase Agreement, (b) Bidding Procedures, (c) Procedures for Determining Cure Amounts for Executory Contracts and Unexpired Leases, and (d) Related Relief* [Docket No. \_\_\_\_] (the “Bid Procedures Order”) entered by the United States Bankruptcy Court for the Southern District of Texas, Houston Division, on [\_\_\_\_\_], 2015.

### **The Bidding Process**

At any time on or before [\_\_\_\_\_, 2015, January 6, 2016], at 4:00 p.m. (prevailing Central Time) (the “Bid Deadline”), the Debtors may, directly or indirectly through their Representatives<sup>2</sup>, (i) engage in discussions and negotiations regarding an Alternative Transaction (as defined in the Stalking Horse Purchase Agreement) with any entity (an “Alternative Bidder”) that the board of directors of the Debtors or any committee of the board of directors of the Debtors acting pursuant to authority of such committee granted by such board of directors (the “Board of Directors”) reasonably believes could lead to a bona fide written offer relating to an Alternative Transaction(s) that would meet the requirements of these Bid Procedures (a “Superior Proposal”), (ii) furnish to such

<sup>1</sup> Except as expressly noted herein, capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Bid Procedures Order or the Motion, as appropriate.

<sup>2</sup> “Representatives” means, with respect to any person, the officers, directors, employees, members, managers, partners, investment bankers, attorneys, accountants, consultants or other advisors, agents or representatives of such person, when acting in such capacity on behalf of such person.

Alternative Bidder and its Representatives, and to any other party that has made a request therefor (together with the Alternative Bidders, the “Potential Bidders”) in connection with its consideration of making an offer or proposal relating to an Alternative Transaction (each, a “Bid”), public and non-public information relating to the Debtors pursuant to a confidentiality agreement with such Potential Bidder (the “Confidentiality Agreement”) containing terms in form and substance acceptable to the Debtors, and afford to any such Potential Bidder who has signed a Confidentiality Agreement reasonable access to any data site, properties, assets, books or records and management of the Debtors or the business of the Debtors. Each Confidentiality Agreement entered into after the date of the entry of the Bid Procedures Order shall recognize that the Debtors are obligated to comply with the terms of these Bid Procedures. Each confidentiality agreement previously entered into between the Debtors and a Potential Bidder in effect on the date of the entry of the Bid Procedures Order shall be deemed to be a Confidentiality Agreement. By participating in the Bidding Process (as defined below), each Potential Bidder shall be deemed to have agreed to any and all modifications to any previously executed confidentiality agreement as necessary to permit the Debtors to comply with the terms of these Bid Procedures.

Any Potential Bidder wishing to conduct due diligence concerning a prospective Alternative Transaction shall be granted access, subject to execution of a Confidentiality Agreement, to all relevant business and financial and other information necessary to enable such Potential Bidder to evaluate the Assets (as defined below) subject to a proposed Alternative Transaction. The Debtors shall make such access available during normal business hours as soon as reasonably practicable. Potential Bidders interested in conducting due diligence should contact ~~Moelis & Company, Attn: Bryan Lastrapes, Three Allen Center, 333 Clay St., Suite 3750,~~Parkman Whaling LLC, Attn: Bruce Campbell & Lars Hollis, 600 Travis, Suite 600, Houston, Texas 77002, ~~bryan.lastrapes@moelis.com and Patrick McGrath, 399 Park Ave., 5<sup>th</sup> Floor, New York, NY 10022, patrick.mcgrath@moelis~~713-333-8400, bcampbell@parkmanwhaling.com, lhollis@parkmanwhaling.com. Notwithstanding the foregoing, the Debtors are not required to provide confidential or proprietary information to any person if the Debtors reasonably believe that such disclosure would be detrimental to the interests and operations of the Debtors.

The Debtors are providing these Bidding Procedures, whereby prospective bidders may qualify for and participate in the Auction, thereby competing to make the highest or otherwise best offer for the purchase of the Assets. The Debtors’ assets (the “Assets”) will be classified for the purposes of the Bid Procedures as Lot 1, Lot 2, Lot 3, Lot 4, Lot 5, Lot 6, Lot 7, Lot 8, and Lot 9 as set forth in the chart below.

<u>Lot</u>	<u>Assets in Lot</u>
1	Substantially all assets of the Debtors.
2	The Debtors onshore assets located in Texas.
3	The Debtors’ offshore assets located in the Gulf of Mexico.

<u>Lot</u>	<u>Assets in Lot</u>
4	The Debtors office building in Houston, Texas.
5	The Debtors' seismic data.
6	The Debtors' assets in Oklahoma.
7	The Debtors' assets in California.
8	The Debtors' leases in Nebraska.
9	The Debtors' assets in New Mexico.

The Transaction with the Stalking Horse Bidder shall be deemed to be in Lot 1. Prior to the selection of the Transaction or any proposed Alternative Transaction(s) as the highest or best offer(s) (the "Successful Bid(s)"), the Debtors may: (a) receive Bids from Potential Bidders, (b) request information from Potential Bidders and engage in discussions with Potential Bidders and take such other actions the Debtors desire to determine whether any Bid or combination of Bids constitutes or could lead to a Superior Proposal, (c) evaluate any Bid made by a Potential Bidder, (d) engage in discussions and negotiations with any Alternative Bidder with respect to any Bid submitted by an Alternative Bidder, and (e) take any other actions contemplated under these Bid Procedures (collectively, the "Bidding Process").

#### **Deliveries by Potential Bidders**

In order to participate in the Bidding Process, each Potential Bidder (but not the Stalking Horse Bidder) must deliver (unless previously delivered in a form acceptable to the Debtors as provided herein to the Debtors prior to the Bid Deadline:

- (a) An executed Confidentiality Agreement acceptable to the Debtors; and
- (b) Financial statements of, or other information relating to, the Potential Bidder or, if the Potential Bidder is an entity formed for the purpose of a proposed Alternative Transaction, financial statements of or other information relating to the equity holder(s) of the Potential Bidder, or such other form of financial disclosure or evidence of financial capability and performance and legal authority acceptable to the Debtors and their advisors as requested by the Debtors (and, if requested by the Debtors, certified to by a duly authorized representative of the Potential Bidder (or equity holders thereof, as applicable)), demonstrating such Potential Bidder's (individually or jointly with other Potential Bidders with whom such Potential Bidder is acting jointly, with the consent of the Debtors and without improper collusion under Bankruptcy Code § 363, in submitting a

Bid) financial capability and legal authority to close the proposed transaction in a timely manner.

A Potential Bidder (or group of Potential Bidders acting jointly with the consent of the Debtors and without improper collusion under the Bankruptcy Code) that delivers the documents described in subparagraphs (a) and (b) above, and that the Debtors determine, in their business judgment and after consultation with the Committee, is financially capable of consummating the Alternative Transaction in a timely manner shall be permitted to further participate in the Bidding Process. The Debtors may require an update of such information and an affirmation of any Potential Bidder's financial capability to bid and consummate any Transaction or Alternative Transaction contemplated hereunder.

### **Submission by Bid Deadline**

A Potential Bidder who desires to make a Bid must deliver a written copy of its Bid on or before the Bid Deadline to counsel for the Debtors at Vinson & Elkins LLP, Attn: Harry Perrin, 1001 Fannin, Suite 2500, Houston, Texas 77002-6760, [hperrin@velaw.com](mailto:hperrin@velaw.com) and Brad Foxman, 2001 Ross Ave., Suite 3700, Dallas, Texas 75201, [bfoxman@velaw.com](mailto:bfoxman@velaw.com), and to the investment bankers for the Debtors at ~~Moelis & Company, Attn: Bryan Lastrapes and William Harrison, Three Allen Center, 333 Clay St., Suite 3750, Parkman Whaling LLC, Attn: Bruce Campbell & Lars Hollis, 600 Travis, Suite 600, Houston, Texas 77002, [bryan.lastrapes@moelis.com](mailto:bryan.lastrapes@moelis.com) and [Will.Harrison@moelis.com](mailto:Will.Harrison@moelis.com), and Patrick McGrath, 399 Park Ave., 5<sup>th</sup> Floor, New York, NY 10022, [patrick.mcgrath@moelis.com](mailto:patrick.mcgrath@moelis.com) 713-333-8400, [bcampbell@parkmanwhaling.com](mailto:bcampbell@parkmanwhaling.com), [lhollis@parkmanwhaling.com](mailto:lhollis@parkmanwhaling.com). Upon receipt of any Bids received by the Debtors by the Bid Deadline, the Debtors shall transmit such Bids to counsel to the Committee.~~

### **Determination of "Qualified Bid" Status**

A Bid received from a Potential Bidder (or group of Potential Bidders) will constitute a "Qualified Bid" only if it includes all of the following documents (the compliance of which shall be determined by the Debtors in their reasonable discretion, after consultation with the Committee and the Stalking Horse Bidder,) and a good faith deposit as described below (collectively, the "Required Bid Documents") and meets all of the Bid Requirements (as defined below):

- (a) A written purchase agreement(s) based on the Stalking Horse Purchase Agreement, duly executed by the Potential Bidder(s), together with a copy of such agreement(s) marked to show the specific changes to the Stalking Horse Purchase Agreement that the Potential Bidder (or group of Potential Bidders) requires (which each marked copy shall be an electronic comparison of the written purchase agreement submitted to the Stalking Horse Purchase Agreement).

- (b) The applicable purchase agreement submitted by a Potential Bidder:
- (i) shall clearly designate whether the Potential Bidder is proposing a transaction in regard to Lot 1, Lot 2, Lot 3, Lot 4, Lot 5, Lot 6, Lot 7, Lot 8, or Lot 9 (or any combination of such lots) as the case may be; *provided, however*, that to constitute a Qualified Bid, either (1) a Potential Bidder shall be required to propose a transaction covering Lot 1 or (2) a group of Potential Bidders shall have proposed a series of transactions for any combination of Lot 2, Lot 3, Lot 4, Lot 5, Lot 6, Lot 7, Lot 8, or Lot 9 that exceeds the Minimum Bid Value;
  - (ii) shall include a complete set of all disclosure schedules and exhibits applicable to the proposed transaction(s) thereto which, to the extent practicable, will be marked to show the specific changes to the disclosure schedules and exhibits to the Stalking Horse Purchase Agreement;
  - (iii) shall not contain any financing or due diligence contingencies to closing on the proposed transaction;
  - (iv) shall not contain any condition to closing of the transaction on the receipt of any third party approvals (excluding required Bankruptcy Court approval); and
  - (v) shall provide that the offer of the Potential Bidder(s) is irrevocable through thirty days after the entry of an Order approving the sale transaction and subject to the backup bidder provisions herein below.
- (c) An executed escrow agreement in substantially the form posted to the Debtors' data site (or as may be modified with the consent of the Debtors) and a good faith deposit (the "Good Faith Deposit") in the form of a certified or bank check (or other form acceptable to the Debtors in their sole and absolute discretion) payable to the order of the Debtors (or such other party as the Debtors may designate) in the amount of ten (10) percent of its designated purchase price.

Each Potential Bidder or group of Potential Bidders that makes a Qualified Bid shall be referred to as a "Qualified Bidder." For the avoidance of doubt, the Debtors may permit one or more Auction Participants to join together as a single Qualified Bidder for the purpose of submitting a joint Qualified Bid to acquire the Assets. Notwithstanding anything to the contrary in these Bid Procedures, the Stalking Horse Bidder shall be deemed to be a Qualified Bidder and the Stalking Horse Purchase Agreement and the Transaction shall be deemed to be a Qualified Bid.

### **Bid Requirements**

All Qualified Bids must also satisfy all of the following requirements, all ~~solely~~ as determined by the Debtors in their reasonable business judgment and after consultation with the Committee (collectively, the “Bid Requirements”):

- (a) The Bid must provide for an aggregate consideration of at least \$1.5 million greater than the Base Consideration (as defined in the Stalking Horse Purchase Agreement) (the “Minimum Bid Value”). In making this determination, the Debtors may consider, among other things, the amount of cash and other consideration to be paid or delivered and the liabilities to be assumed or otherwise satisfied, and the determination by the Debtors (after consultation with the Committee) hereunder shall be final for the purposes of these Bid Procedures.
- (b) The Bid must provide for the payment of the Expense Reimbursement of the Stalking Horse Bidder in full in cash upon closing.
- (c) The Bid must be accompanied by, in the Debtors’ reasonable business judgment, after consultation with the Stalking Horse Bidder, satisfactory evidence of committed financing or other financial ability to consummate the Alternative Transaction in a timely manner.
- (d) The Bid cannot be conditioned upon the Bankruptcy Court’s approval of any bid protections, such as a break-up fee, termination fee, expense reimbursement, working fee or similar type of payment.
- (e) The Bid must expressly acknowledge and represent that the Potential Bidder(s): (i) has had an opportunity to conduct any and all due diligence regarding the assets to be purchased pursuant to the proposed Alternative Transaction prior to making its Bid, (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and the assets of the Debtors in making its Bid, and (iii) 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 business or assets of the Debtors or the Alternative Transaction, or the completeness of any information provided in connection therewith, except as expressly stated in the representations and warranties contained in the purchase agreement ultimately accepted and executed by the Debtors.
- (f) The Bid must identify each and every executory contract and unexpired lease that is to be assumed and assigned to the Potential Bidder pursuant to the proposed Alternative Transaction.
- (g) The Bid must be received by the Bid Deadline.

The Debtors shall notify each Potential Bidder whether its Bid is a Qualified Bid no later than ~~[●], 2015,~~January 7, 2016, at 4:00 p.m., prevailing Central Time.

### **Auction**

As soon as reasonably practicable after the Bid Deadline, the Debtors shall evaluate the Qualified Bids and select the Qualified Bid that the Debtors determine in their business judgment and after consultation with the Committee, to represent the then highest or otherwise best Qualified Bid (the “Initial Highest Bid”). In making this determination, the Debtors may consider, among other things, the amount of cash and other consideration to be paid or delivered and the liabilities to be assumed or otherwise satisfied, and the determination by the Debtors (after consultation with the Committee) hereunder shall be final for the purposes of these Bid Procedures.

If there are no Qualified Bids received prior to the expiration of the Bid Deadline, no Auction (as defined below) shall take place, and the Debtors shall seek prompt Bankruptcy Court approval to consummate the Transaction with the Stalking Horse Bidder, and the Sale Hearing (as defined below) shall take place as soon as reasonably practicable, but in no event later than ~~[ten (10)]~~ business days following the Bid Deadline.

If one or more Qualified Bids are determined by the Debtors in their business judgment and after consultation with the Committee, to be higher or better than the Stalking Horse Bidder’s Qualified Bid, the Debtors will conduct an auction (the “Auction”) with respect to such Qualified Bids in order to determine, in the business judgment of the Debtors, the Successful Bid(s).

The Auction, if required, will commence at 9:30 a.m. (prevailing Central Time) on ~~[\_\_\_\_\_], 2015,~~January 8, 2016, at the offices of Vinson & Elkins, L.L.P., 1001 Fannin Street, Suite 2500, Houston, Texas 77002 or at such later time or other place as determined by the Debtors, with consent of the Stalking Horse Bidder and after consultation with the Committee, or approved by Order of the Bankruptcy Court, and of which the Debtors will notify all Qualified Bidders who have submitted Qualified Bids (collectively, together with the Stalking Horse Bidder, the “Auction Participants”).

Promptly upon determination of the Initial Highest Bid, as the case may be, and in any event, at least one business day prior to the commencement of the Auction, the Debtors will provide to the Auction Participants and the Committee a copy of the Initial Highest Bid. In order to allow the Auction Participants to evaluate the Initial Highest Bid, the Debtors shall use commercially reasonable efforts to disclose the value, if any, that in their business judgment, they place on such Initial Highest Bid and on such Auction Participant’s Qualified Bid.

Only the Debtors, the Auction Participants, potential financing sources of Auction Participants, their respective Representatives, the Committee and the Office of the United States Trustee will be entitled to attend, participate and be heard at the Auction, but only the Auction Participants (including the Stalking Horse Bidder) will be entitled to make any subsequent Qualified Bids at the Auction.

At the commencement of each phase of the Auction, the Debtors shall formally announce the Initial Highest Bid. Each supplemental bid shall be made in minimum increments of at least \$100,000 higher than the previous Qualified Bid.

The Stalking Horse Bidder shall be entitled to include as part of any and all of its supplemental bids a credit bid for the actual amount of the Expense Reimbursement, which amount shall be estimated and provided to the Debtors, the Committee and all Qualified Bidders no later than one (1) business day prior to the Auction.

The Debtors shall have the right to adopt such other rules for the Auction which they believe in their business judgment, after consultation with the Committee and the Stalking Horse Bidder, will promote the goals of the Auction, including without limitation setting the bidding increments at a higher amount.

Each of the Auction Participants shall receive notice of each supplemental bid; *provided, that*, the Debtors shall no longer be required to share any information with a Qualified Bidder (including the Stalking Horse Bidder) once it has ceased bidding in the Auction.

The Stalking Horse Bidder and, by making a Qualified Bid at the Auction, each Auction Participant, shall be deemed to have agreed to keep its final Qualified Bid made at or prior to the Auction open through thirty (30) days after the entry of an Order approving the Transaction or Alternative Transaction(s) (as applicable). Bidding at the Auction will continue until such time as the highest or otherwise best Qualified Bid (as may be modified pursuant to higher supplemental bids on particular Lots made by an Auction Participant) are determined in the reasonable business judgment of the Debtors and after consultation with the Committee. To facilitate a deliberate and orderly consideration of competing Qualified Bids submitted at the Auction, the Debtors, in their reasonable business judgment, may conduct multiple rounds of bidding and, with the consent of the Stalking Horse Bidder and after consultation with the Committee, may adjourn the Auction at any time and from time-to-time. Upon conclusion of the Auction, the Debtors will (a) review each Qualified Bid on the basis of financial and contractual terms and other factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the sale, and (b) determine in their reasonable business judgment, after consultation with the Stalking Horse Bidder and the Committee, the Successful Bid or Successful Bids. In making this determination, the Debtors may consider, among other things, the amount of cash and other consideration to be paid or delivered and the liabilities to be assumed or otherwise satisfied, and the determination by the Debtors hereunder shall be final for the purposes of these Bid Procedures.

Unless otherwise consented to by the Stalking Horse Bidder, the Debtors shall not consider any Bids submitted after the conclusion of the Auction and any and all such Bids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.

The Debtors may require that within two business days after conclusion of the Auction, the Successful Bidders complete and execute all applicable definitive documents, instruments, or other documents evidencing and containing the terms and conditions upon which the Successful Bids were made.



### **Other Auction Procedures**

The rights of any entity to “credit bid” pursuant to section 363(k) of the Bankruptcy Code are preserved and may be exercised in accordance with applicable law. For the avoidance of doubt, pursuant to section 363(k) of the Bankruptcy Code, the Stalking Horse Bidder has the right to “credit bid” in an amount up to the full amount of the First Lien Prepetition Indebtedness (as defined in the Final Cash Collateral Order) *plus* the actual amount of the Expense Reimbursement. All rights of the Stalking Horse Bidder under (i) any order entered authorizing the Debtors to continue to access cash collateral and/or (ii) the Bankruptcy Code are hereby fully reserved and, except as expressly set forth herein, nothing in these Bidding Procedures, nor any consents provided by the Stalking Horse Bidder, shall be deemed to abridge or modify such rights, including the right to object to any sale or chapter 11 plan proposed in these chapter 11 cases.

The Debtors reserve the right to remove any Qualified Bidder from the Auction if, at any point, the Debtors determine in their business judgment, after consultation with the Stalking Horse Bidder and the Committee, that the applicable Qualified Bidder is no longer engaged in active bidding at the Auction (including, without limitation, if such Qualified Bidder has failed to bid in previous rounds of bidding).

All Qualified Bidders at the Auction shall 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 Auction or the construction and enforcement of these Bidding Procedures.

Each Qualified Bidder participating at the Auction will be required to confirm that (i) it has not engaged in any collusion with respect to the bidding and (ii) its Qualified Bid is a good faith, bona fide offer and it intends to consummate the proposed transaction if selected as a Winning Bidder.

### **Sale Hearing**

An evidentiary hearing to consider the sale and related transaction pursuant to the Motion and approval of the Successful Bid(s) (the “Sale Hearing”), will be held on \_\_\_\_\_, ~~2015~~, 2016, at \_\_\_\_\_ .m prevailing Central Time (the “Sale Hearing Date”) in the courtroom of the Honorable Marvin Isgur. The Sale Hearing may be adjourned or rescheduled as ordered by the Bankruptcy Court or by the Debtors, with the approval of the Stalking Horse Bidder and the Successful Bidder(s) and after consultation with the Committee, but without further notice to creditors and parties in interest other than by announcement by the Debtors of the adjourned date at the Sale Hearing.

The Debtors’ presentation to the Bankruptcy Court for approval of a Successful Bid does not constitute the Debtors’ acceptance of the Bid. The Debtors will be deemed to have accepted a Bid only when the Bid has been approved by Order of the Bankruptcy Court.

## Objections

Objections, if any, to the sale and related transactions pursuant to the Motion shall be filed ~~and served~~with the Bankruptcy Court such that each objection is actually received ~~by the following parties~~ on or before 4:00 p.m., prevailing Central time, on ~~\_\_\_\_\_~~, 2015 January 11, 2016 (the “Objection Deadline”): ~~(a) counsel for the Debtors at Vinson & Elkins LLP, Attn: Harry Perrin, 1001 Fannin Street, Suite 2500, Houston, Texas 77002-6760, hperrin@velaw.com, and Brad Foxman, 2001 Ross Avenue, Dallas, Texas 75201-2975, bfoxman@velaw.com; (b) counsel for the Stalking Horse Bidder at [\_\_\_\_\_]; (c) counsel for the Second Lien Lenders at [\_\_\_\_\_]; and (d) the United States Trustee’s Office at Office of the United States Trustee, Attn: Nancy Holly, 315 Rusk Ave., Suite 3516, Houston, TX. 77002, nancy.holley@usdoj.gov.~~

## Back-Up Bidders

If the Auction Participant(s) whose Qualified Bid(s) is a Successful Bid (a “Successful Bidder”) fails to consummate the Transaction or Alternative Transaction (as applicable) because of a breach or failure to perform on the part of such Successful Bidder, the Auction Participant that had submitted the next highest or otherwise best Qualified Bid at the Auction (or in the case of the Stalking Horse Bidder, prior to or at the Auction) (the “Back-Up Bidder”) for each applicable Lot will be deemed to be a Successful Bidder and the Debtors will be authorized to consummate the Transaction or Alternative Transaction (as applicable) with such Auction Participant without further order of the Bankruptcy Court and such Qualified Bid shall thereupon be deemed a Successful Bid; provided that upon being notified that its Qualified Bid has become a Successful Bid, the Auction Participant submitting such Qualified Bid (other than the Stalking Horse Bidder) shall within three business days after such notification provide a Good Faith Deposit (unless such Auction Participant previously shall have provided a Good Faith Deposit that shall not have been returned as described below). Upon providing such Good Faith Deposit, such Auction Participant shall be deemed a Successful Bidder. If any Auction Participant fails to consummate the Transaction or Alternative Transaction (as applicable) because of a breach or failure to perform on the part of such Auction Participant (including without limitation the failure to timely deposit the Good Faith Deposit), the process described above may continue with other Auction Participants in decreasing order of the Qualified Bids as determined by the Debtors until an Auction Participant shall consummate the Transaction or Alternative Transaction (as applicable). Notwithstanding the foregoing, if the Auction Participant that fails to consummate an Alternative Transaction is part of a series of transactions that, collectively, constitutes the Successful Bid, then no such transaction within such series shall proceed to closing, and Debtors shall either consider a Back-Up Bidder with a Qualified Bid covering Lot 1, or consider a Potential Bidder with a bid covering the specified Lot covered by the Alternative Transaction that was not consummated to reconstitute a Qualified Bid. In making any such determination, Debtors shall consult the Stalking Horse Bidder and the Committee.

## Stalking Horse Rights

To provide an incentive and to compensate the Stalking Horse Bidder for performing the substantial due diligence and incurring the expenses necessary and entering into a stalking horse asset purchase agreement with the knowledge and risk that arises from participating in the sale and subsequent bidding process, the Debtors have agreed, under the conditions and in the amount set forth in the Stalking Horse Purchase Agreement and Bidding Procedures Order to reimburse the Stalking Horse Bidder for fees, costs, and expenses associated with its Bid (including the fees, costs, and expenses of its attorneys, accountants, consultants, and other advisors) ~~in an amount up to \$[●]~~ (the “Expense Reimbursement”). The Expense Reimbursement shall be paid in accordance with the Stalking Horse Purchase Agreement and the Bidding Procedures Order.

The Stalking Horse Bidder shall have standing to appear and be heard on all issues related to the Auction, the Transaction, and related matters, including the right to object to any sale of the assets or any portion thereof (including the conduct of the Auction and interpretation of these Bidding Procedures).

### **Return of Good Faith Deposit**

The Good Faith Deposit of all Qualified Bidders (other than the Stalking Horse Bidder and any Successful Bidder(s)) will be returned, without interest (other than any earnings on any such amounts under, and subject to, the terms of the escrow agreement pursuant to which such Good Faith Deposit is held), to each such Qualified Bidder within ten business days after the entry of an Order approving the Sale Motion, subject to the terms of the escrow agreement pursuant to which such Good Faith Deposit is held.

The Good Faith Deposit of the Stalking Horse Bidder and any Successful Bidder will be distributed pursuant to and in accordance with (a) the applicable purchase agreement and (b) the escrow agreement pursuant to which such Good Faith Deposit is held, as applicable.

### **Modifications**

Subject to the consent of the Stalking Horse Bidder and after consultation with the Committee, the Debtors may (a) waive any of the Bid Requirements or the Required Bid Documents; and (b) reject at any time before entry of an Order of the Bankruptcy Court approving the Successful Bid, any bid that, in the discretion of the Debtors is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code or the Bid Procedures, or (iii) contrary to the best interests of the Debtors, their creditors and estates.

### **Fiduciary Out**

Nothing in these Bidding Procedures shall require the board of directors, board of managers, or such similar governing body of a Debtor to take any action, or to refrain from taking any action, to the extent such board of directors, board of managers, or such similar governing body determines, or based on the advice of counsel, that taking such action, or refraining from taking such action, as applicable, is required to comply with applicable law or its fiduciary obligations under applicable law.

