

SCHEDULE 1

BIDDING PROCEDURES

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On November 22, 2013 (the "**Petition Date**"), Fisker Automotive, Inc. and Fisker Automotive Holdings, Inc., sought protection as debtors and debtors in possession (collectively, the "**Debtors**") in the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**"). Pursuant to the motion (the "**Motion**") filed by the Official Committee of Unsecured Creditors appointed in these cases (the "**Creditors' Committee**") at [Docket No. 265], the Bankruptcy Court entered an order (the "**Bidding Procedures Order**") on January __, 2014, authorizing the Debtors to market the Acquired Assets through, among other means, the bidding procedures described below (the "**Bidding Procedures**"). As part of the Bidding Procedures, the Bankruptcy Court has scheduled a hearing to consider approval of the sale of the Acquired Assets to the Successful Bidder (as defined below), to be conducted on February 14, 2014 at 9:30 a.m. (prevailing Eastern Time), at the Bankruptcy Court, before the Honorable Judge Kevin Gross (the "**Sale Hearing**"). Please note that all capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Bidding Procedures Order.

I. Stalking Horse Bids

The Bid Procedures Order authorized the Debtors to enter into (1) that certain Asset Purchase Agreement (the "**Wanxiang Stalking Horse Purchase Agreement**"), by and among each of the Debtors, as Seller, and Wanxiang America Corporation and its specified designees, as Buyer ("**Wanxiang Stalking Horse Bidder**"), in substantially the form filed at [Docket No. 477]; and (2) that certain Asset Purchase Agreement (the "**Hybrid Stalking Horse Purchase Agreement**," and together with the Wanxiang Stalking Horse Purchase Agreement, the "**Stalking Horse Purchase Agreements**"), by and among each of the Debtors, as Seller, and Hybrid Tech Holdings, LLC and its specified designees, as Buyer (together with its affiliates, the "**Hybrid Stalking Horse Bidder**," and together with the Wanxiang Stalking Horse Bidder, the "**Stalking Horse Bidders**"), in substantially the form filed at [Docket No. 433] (*provided that* the Debtors, in consultation with the Committee, shall be authorized to revise the Hybrid Stalking Horse Purchase Agreement to provide the Hybrid Stalking Horse Bidder with an expense reimbursement on terms substantially similar to the Wanxiang Stalking Horse Purchase Agreement, *provided further that* any such revisions shall be reflected in a revised Hybrid Stalking Horse Purchase Agreement filed with the Bankruptcy Court), both of which contemplate transactions (collectively, the "**Sale Transaction**") for the sale of substantially all of the Debtors' assets (the "**Acquired Assets**") as set forth in, and subject to the terms and conditions of, the Stalking Horse Purchase Agreements.

II. Important Dates for Potential Competing Bidders

These Bidding Procedures provide for an opportunity for interested parties to qualify and participate in the Auction (as defined below) and submit competing bids for all of the Acquired Assets. The Debtors, in consultation with the Creditors' Committee, shall:

- (a) accept bids until the Bid Deadline (as defined below); and

(b) assist Potential Bidders (as defined below) in conducting their respective due diligence investigations until the day of the Auction (in the case of Potential Bidders who become Qualified Bidders) or the Bid Deadline (in the case of Potential Bidders who do not become Qualified Bidders) and conduct an auction (the "Auction") among Qualified Bidders on February 12, 2014 to identify the Successful Bid (each as defined below).

III. Assets to Be Sold

The Debtors seek to sell the Acquired Assets, as provided by the Stalking Horse Purchase Agreements, to the maximum extent permitted by section 363 of the Bankruptcy Code, including the Assumed Contracts and Assumed Leases (as such terms are defined in the Bidding Procedures Order) as any Qualified Bidder may seek to purchase at the Auction, free and clear of any and all Claims (as defined below) but subject to certain conditions, including with respect to any permitted liens and permitted encumbrances as provided by applicable agreements.

IV. The Bidding Process

The Debtors, in consultation with the Creditors' Committee, shall coordinate the efforts of Potential Bidders in conducting their respective due diligence investigations regarding the Acquired Assets and administer the Auction; and the Debtors, in consultation with the Creditors' Committee, shall: (a) determine whether any person or entity is a Qualified Bidder; and (b) receive and evaluate bids from Qualified Bidders. The foregoing activities are referred to, collectively, as the "Bidding Process." Neither the Debtors, the Creditors' Committee, nor their respective representatives shall be obligated to furnish information of any kind whatsoever to any person or entity that is not a Potential Bidder (or legal counsel or financial advisor to a Potential Bidder), and the Debtors and their representatives shall use good-faith efforts to provide all Potential Bidders with substantially similar access and information.

Any person or entity who wishes to participate in the Bidding Process must meet the participation requirements for Potential Bidders below and must thereafter timely submit a Qualified Bid in order to become a Qualified Bidder that can participate in the Auction.

V. Participation Requirements

To participate in the Bidding Process, each interested person or entity must deliver the following documents (the "Participation Materials") to the parties set forth below at least five (5) days before the Bid Deadline (or such later date to which the Debtors, in their reasonable business judgment and in consultation with the Creditors' Committee, consent, but under no circumstances later than two (2) days prior to the commencement of the Auction):

(a) an executed confidentiality agreement in form and substance satisfactory to the Debtors that inures to the benefit of the Successful Bidder;

(b) a statement demonstrating to the Debtors' satisfaction a *bona fide* interest in purchasing the Acquired Assets from the Debtors;

(c) current audited financial statements of (i) the Potential Bidder, or (ii) if the Potential Bidder is an entity formed for the purpose of acquiring the Acquired Assets, current audited financial statements of the equity holder(s) of the Potential Bidder who shall either guarantee the obligations of the Potential Bidder or provide such other form of financial disclosure and credit-quality support information or enhancement reasonably acceptable to the Debtors;

(d) written evidence of the Potential Bidder's commitment for debt or equity funding that is needed to close the contemplated transaction acceptable to the Debtors demonstrating that such Potential Bidder has the ability to close the contemplated transaction; *provided that* the Debtors determine, in their discretion and in consultation with their advisors and the Creditors' Committee, whether the written evidence of such financial wherewithal is acceptable; and

(e) information that can be publicly filed and/or disseminated representing that the Potential Bidder has the financial wherewithal to satisfy adequate assurance requirements with respect to the Assumed Contracts and Assumed Leases under the Bankruptcy Code, which information may be required to be supplemented at the request of the Debtors, the Creditors' Committee, or other parties in interest.

The Participation Materials must be transmitted to each of the following parties (collectively, the "**Notice Parties**"): (i) the Debtors, c/o Fisker Automotive, Inc., 3080 Airway Avenue, Costa Mesa, California 93626 (Attn: Marc Beilinson); (ii) co-counsel to the Debtors, (a) Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654 (Attn: Ryan Preston Dahl, Esq.) and (b) Pachulski Stang Ziehl & Jones LLP, 919 Market Street, 17th Floor, PO Box 8705, Wilmington, Delaware 19800 (Attn: James E. O'Neill, Esq.); (iii) co-counsel to the Creditors' Committee, (a) Brown Rudnick LLP, One Financial Center, Boston, Massachusetts 02111 (Attn: William R. Baldiga, Esq.) and (b) Saul Ewing LLP, 222 Delaware Avenue, Suite 1200, Wilmington, Delaware 19801 (Attn: Mark Minuti, Esq.); (iv) co-counsel to the Wanxiang Stalking Horse Bidder, (a) Sidley Austin LLP, One South Dearborn Street, Chicago, Illinois 60603 (Attn: Bojan Guzina, Esq. and Andrew F. O'Neill, Esq.) and (b) Young Conaway Stargatt & Taylor, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Edmon L. Morton, Esq.); and (v) co-counsel to the Hybrid Stalking Horse Bidder, (a) Davis & Gilbert LLP, 1740 Broadway, New York, New York 10019 (Attn: Ralph Norton, Esq.) and (b) Keller & Benvenuti LLP, 650 California Street, Suite 1900, San Francisco, California 94108 (Attn: Peter Benvenuti, Esq.). Neither of the Stalking Horse Bidders shall be required to provide any of the materials referenced in (a) through (e) above.

Any party that delivers the Participation Materials to the Notice Parties shall be a "**Potential Bidder**," and by delivering the Participation Materials, each Potential Bidder acknowledges that its identity will be made public, including in court filings. If the Debtors, in consultation with the Creditors' Committee, determine that a Potential Bidder has a *bona fide* interest in the Acquired Assets, then promptly after such determination, (a) the Debtors will deliver to the Potential Bidder electronic copies of each of the Stalking Horse Purchase Agreements; and (b) the Debtors will provide access information for a confidential electronic data room concerning the Acquired Assets (the "**Data Room**").

No Potential Bidder shall consult with any other Potential Bidder following delivery of the Participation Materials and prior to the conclusion of the Auction, or submit at any time a "joint bid" with any other Potential Bidder, without the express consent of the Debtors, after consultation with the Creditors' Committee.

VI. Due Diligence

Until the day of the Auction, or the Bid Deadline if a Potential Bidder shall not have submitted a Qualified Bid by the Bid Deadline, the Debtors will afford any Potential Bidder such due diligence access or additional information as may be reasonably requested by the Potential Bidder that the Debtors, in consultation with the Creditors' Committee, determine in their reasonable discretion to be reasonable and appropriate under the circumstances. All due diligence requests shall be directed to the Debtors, as indicated above. The Debtors shall coordinate all reasonable requests for additional information and due diligence access from Potential Bidders. If the Debtors determine, in consultation with the Creditors' Committee, that due diligence material requested by a Potential Bidder is reasonable and appropriate under the circumstances, but such material has not previously been provided to any other Potential Bidder or the Stalking Horse Bidders, the Debtors shall post such materials in the Data Room and provide email notice of such posting to all Potential Bidders, as well as to the Notice Parties.

Unless otherwise determined by the Debtors, in consultation with the Creditors' Committee, the availability of additional due diligence to a Qualified Bidder will cease on the Auction date; *provided, however*, that the Successful Bidder and the Back-Up Bidder (as defined below) shall be permitted to continue to conduct due diligence until the closing of the Sale Transaction (subject to the terms of the Stalking Horse Purchase Agreements); *provided further* that a Qualified Bid shall not be subject to any further due diligence contingency after the Bid Deadline. Except as provided herein, none of the Debtors, Creditors' Committee, or their respective representatives will be obligated to furnish any information of any kind whatsoever relating to the Acquired Assets or any other assets of the Debtors to any party.

VII. Bid Deadline

A Potential Bidder that desires to make a bid shall deliver written and electronic copies of its bid to the Notice Parties so as to be *actually received* no later than 5:00 p.m. (prevailing Eastern Time), on February 7, 2014, or such later date to which the Debtors agree (after consultation with the Creditors' Committee and Stalking Horse Bidders), but in no event after the commencement of the Auction (the "**Bid Deadline**").

VIII. Bid Requirements

To participate in the Auction, a Potential Bidder must deliver to the Notice Parties a written offer, which must provide or otherwise comply with the requirements noted below in order to be deemed a "Qualified Bid."

(a) The bid must be a bulk bid to purchase substantially all of the Debtors' assets from the Debtors at the purchase price and upon the terms and conditions set forth in an executed

purchase agreement, a clean copy of which shall be submitted, together with marked copies showing any proposed changes to both of the Stalking Horse Purchase Agreements.

(b) The bid must not be subject to any due diligence or financing contingency, must not be conditioned on bid protections or any expense reimbursement, must not be subject to any corporate (board, shareholder, or similar) consent or approval, or any regulatory contingencies (other than a condition that any applicable waiting period required for any regulatory approval shall have expired or have been terminated and required authorization of any other governmental entity whose approval is identified in the bid as required for the transaction as set forth in such Potential Bidder's bid shall have been obtained). Any required governmental approvals identified in the bid may affect the evaluation of whether the bid is a Qualified Bid and shall be taken into account when determining the highest and best bid.

(c) The purchase price in such bid must be a higher and better offer for the Acquired Assets (as compared to the offers of both of the Stalking Horse Bidders), and such offer shall not be considered a Qualified Bid unless such bid (including any credit bid) provides for consideration to the Debtors' estates of at least \$1,600,000¹ more than that provided under one or more of the Stalking Horse Purchase Agreements.

(d) The bid must be *actually received* by the Debtors by the Bid Deadline;

(e) The bid must not entitle the Potential Bidder to any break-up fee, termination fee, or similar type of payment or reimbursement and, by submitting a bid, the Potential Bidder waives the right to pursue a substantial contribution claim under 11 U.S.C. § 503 related in any way to the submission of its bid or the Bidding Process;

(f) The bid must be accompanied by a cash deposit in the amount of \$5,000,000 (the "**Deposit**");

(g) The bid must include a comprehensive list of all executory contracts and unexpired leases that the Qualified Bidder proposes to assume and the corresponding cure amounts associated with the assumption and assignment of such contracts and leases; and

(h) The bid must demonstrate the Potential Bidder's ability to provide adequate assurance of future performance under any executory contracts or unexpired leases to be assumed and/or assigned pursuant to such bid.

A Potential Bidder shall accompany its bid with: (a) written evidence of available cash, a commitment for financing or ability to obtain a satisfactory commitment if selected as the Successful Bidder, and such other evidence of ability to consummate the Sale Transaction as the Debtors may request; (b) a copy of a board resolution or similar document demonstrating the authority of the Potential Bidder to make a binding and irrevocable bid on the terms proposed; and (c) any pertinent factual information regarding the Potential Bidder's operations that would assist the Debtors and/or the Creditors' Committee in their analysis of issues arising with respect

¹ This amount consists of the expense reimbursements in the amount of up to \$750,000 for each Stalking Horse Bidder (collectively, the "**Expense Reimbursements**"), and an initial bid increment in the amount of \$100,000.

to any applicable antitrust laws, governmental regulatory approvals, national security laws, foreign investment laws, or other aspects of the bid, and with respect to any conditions contained in the bid.

A bid received from a Potential Bidder will be considered only if it meets the above requirements (with such immaterial variations as the Debtors determine to permit in their reasonable discretion, after consultation with the Creditors' Committee and the Stalking Horse Bidders), and shall constitute a "**Qualified Bid**" only if the Debtors believe in their reasonable discretion, after consultation with the Creditors' Committee, that such bid would be consummated if selected as the Successful Bid. Each Potential Bidder that is determined to have submitted a Qualified Bid will be considered a "**Qualified Bidder**." For purposes hereof, both of the Stalking Horse Bidders constitute Qualified Bidders, and the Stalking Horse Purchase Agreements executed by the Stalking Horse Bidders are Qualified Bids. A Qualified Bid will be valued based upon factors such as: (a) the purported amount of the Qualified Bid, including any benefit to the Debtors' bankruptcy estates from any assumption of liabilities of the Debtors; (b) the fair value to be provided to the Debtors under the Qualified Bid; (c) the length of time expected to close the proposed Sale Transaction, including the necessary time to obtain necessary antitrust, governmental, foreign investment, or other regulatory approvals for the proposed transaction; (d) the ability to obtain all necessary antitrust, governmental, foreign investment, or other regulatory approvals for the proposed transaction; and (e) any other factors the Debtors or the Creditors' Committee reasonably may deem relevant (each in their reasonable discretion). Within one (1) day after the determination that a bid is a Qualified Bid, the Debtors shall distribute a copy of such bid to counsel to both of the Stalking Horse Bidders by e-mail, hand delivery, or overnight courier. Any bid may be rejected in accordance with the Bidding Procedures Order and these Bidding Procedures if, among other things, the Debtors determine, after consultation with the Creditors' Committee, that such bid is on terms that are in their totality materially more burdensome or conditional than the terms of the Stalking Horse Purchase Agreements.

Any bid rejected pursuant to this paragraph shall not be a Qualified Bid.

IX. The Auction

The Debtors will hold the Auction on February 12, 2014, commencing at 10:00 a.m. (prevailing Eastern Time) at the offices of Kirkland & Ellis LLP, co-counsel to the Debtors, at 601 Lexington Avenue, New York, New York 10022-4611, for consideration of the Qualified Bids, each as may be increased at such Auction. Bidding will start with the Starting Bid (as defined herein) and will continue with minimum bid increments of \$100,000 subject to the right of both of the Stalking Horse Bidders to credit their respective Expense Reimbursements to any bid they may make at each round of bidding. The Auction shall be conducted in accordance with the following procedures:

(a) Only the Debtors, the Creditors' Committee, the Stalking Horse Bidders, and any other Qualified Bidder that has timely submitted a Qualified Bid, and their respective professionals and representatives, shall attend the Auction in person, and only the Stalking Horse

Bidders and such other Qualified Bidders will be entitled to make any subsequent bids at the Auction.

(b) Each Qualified Bidder shall be required to confirm on the record of the Auction that it has not engaged in any collusion with respect to the bidding or the sale of the Acquired Assets.

(c) 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; *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 date of the selection of the Successful Bidder and the Back-Up Bidder. Prior to the commencement of the Auction, the Debtors will provide notice to the Stalking Horse Bidders and all other Qualified Bidders of the Qualified Bid that the Debtors believe, in their respective business judgment and in consultation with the Creditors' Committee, is the highest or otherwise best offer(s) (the "**Starting Bid(s)**").

(d) All Qualified Bidders who have timely submitted Qualified Bids will be entitled to be present for all Subsequent Bids (as defined below) at the Auction with the understanding that the true identity of each Qualified Bidder at the Auction will be fully disclosed to all other Qualified Bidders at the Auction and that all material terms of each Subsequent Bid will be fully disclosed to all other bidders throughout the entire Auction; *provided that* all Qualified Bidders wishing to attend the Auction must have at least one individual representative with authority to bind such Qualified Bidder attending the Auction in person. All proceedings at the Auction shall be conducted before and transcribed by a court stenographer.²

(e) Subject to the Bidding Procedures Order, the Debtors may, in consultation with the Creditors' Committee and the Stalking Horse Bidders, employ and announce at the Auction additional procedural rules that are reasonable under the circumstances for conducting the Auction, provided that such rules are (i) not inconsistent with these Bidding Procedures, the Bankruptcy Code, any order of the Bankruptcy Court, or any other applicable court order entered in connection herewith, and (ii) disclosed to each Qualified Bidder at the Auction.

(f) Subject to the Bidding Procedures Order, the Debtors reserve their right, in their reasonable business judgment (but after consultation with the Creditors' Committee and the Stalking Horse Bidders), to make one or more adjournments of the Auction to, among other things: (A) facilitate discussions between the Debtors and the Qualified Bidders, (B) allow individual Qualified Bidders to determine how they wish to proceed, (C) consider and determine the current highest and best Subsequent Bid(s) at any given time during the Auction, (D) give Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their business judgment and in consultation with the Creditors' Committee, 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; provided that so long as any appeal with respect to the Bankruptcy Court's determination to cap the Hybrid Stalking Horse Bidder's credit

² The Debtors will make the transcript available to creditors upon reasonable prior written request.

bid rights remains pending, the Debtors and the Creditors' Committee shall jointly determine whether to adjourn or cancel the Auction and/or Sale Hearing (after consultation with the Stalking Horse Bidders), and if the Debtors and the Creditors' Committee cannot agree, such determinations shall be made by the Bankruptcy Court.

(g) No Qualified Bidder shall consult with any other Qualified Bidder prior to the conclusion of the Auction, or submit at any time a "joint bid" with any other Qualified Bidder, without the express consent of the Debtors (after consultation with the Creditors' Committee).

(h) Bidding at the Auction will begin with the Starting Bid and continue, in one or more rounds of bidding, so long as during each round at least one subsequent bid is submitted by a Qualified Bidder that (i) improves upon such Qualified Bidder's immediately prior Qualified Bid (a "**Subsequent Bid**") and (ii) the Debtors determine, upon a joint determination with the Creditors' Committee, that such Subsequent Bid is (A) for the first round, a higher or otherwise better offer than the Starting Bid(s), and (B) for subsequent rounds, a higher or otherwise better offer than the Leading Bid(s) (as defined below). Each Subsequent Bid at the Auction shall provide net value to the estate of at least \$100,000 (which amount cannot be reduced or increased without the consent of the Stalking Horse Bidders) over the Starting Bid(s) or the Leading Bid(s), as the case may be, which net value may be in the form of cash or non-cash consideration (any such non-cash consideration to be valued in the discretion of the Debtors). After the first round of bidding and between each subsequent round of bidding, the Debtors shall announce the bid or bids that they believe to be the highest or otherwise best offer (the "**Leading Bid(s)**"). 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(s). Except as specifically set forth herein, for the purpose of evaluating the value of the consideration provided by Subsequent Bids (including any Subsequent Bid by the Stalking Horse Bidders), the Debtors will, at each round of bidding, give effect to the Expense Reimbursements payable to the Stalking Horse Bidders under the Stalking Horse Purchase Agreements, and take into account any additional liabilities to be assumed by a Qualified Bidder and any additional costs which may be imposed on the Debtors' estates in connection with such Subsequent Bid.

X. Credit Bidding

Only holders of allowed valid secured claims (that are otherwise Qualified Bidders) are permitted to credit bid at the Auction to the extent set forth below. Unless expressly consented to in writing by the Debtors, after consultation with the Creditors' Committee, in advance of the Bid Deadline, no party shall be permitted or entitled to credit bid, or attempt to credit bid, any alleged obligation of the Debtors, or any affiliate or subsidiary of the Debtors, relating to any claim (as that term is defined in the Bankruptcy Code) that the Debtors or the Creditors' Committee assert constitutes, or will constitute at some point, a contingent, unliquidated, or disputed claim against the Debtors or any subsidiaries or affiliates of the Debtors. Notwithstanding anything herein to the contrary (unless otherwise ordered by the Bankruptcy Court or other court of competent jurisdiction), no party shall be permitted to credit bid more than \$25,000,000 of the outstanding obligations under the Loan Arrangement and Reimbursement Agreement dated as of April 22, 2010, by and among the Debtors and the United States Department of Energy (the "Loan Arrangement and Reimbursement Agreement"), for the

Acquired Assets. For the avoidance of doubt, the Hybrid Stalking Horse Bidder may credit bid up to \$25,000,000 on account of obligations arising under the Loan Arrangement and Reimbursement Agreement.

XI. The Successful Bid

Immediately at the conclusion of the Auction, the Debtors and the Creditors' Committee, shall (a) jointly determine, consistent with the Bidding Procedures, which bid constitutes the highest and best bid (such bid, the "**Successful Bid**"); *provided, however*, that if the Debtors and the Creditors' Committee cannot agree, such determination shall be made by the Bankruptcy Court; and (b) communicate to the Stalking Horse Bidders and the other Qualified Bidders the identity of the Successful Bidder and the details of the Successful Bid. At such time, the Debtors and the Creditors' Committee shall also jointly determine which bid constitutes the second highest and best bid, and may, in their discretion, deem such second highest and best bid a Back-Up Bid (such bid, the "**Back-Up Bid**," and the party submitting the Back-Up Bid, the "**Back-Up Bidder**") and communicate to the Stalking Horse Bidders and other Qualified Bidders the identity of the Back-Up Bidder and the details of the Back-Up Bid. In no circumstances shall either Stalking Horse Bidder be required to be a Back-Up Bidder; *provided, however*, that the Debtors and the Creditors' Committee may give weight to or otherwise deem to be value in the commitment of a Qualified Bidder to be a Back-Up Bidder. The Qualified Bidder making the Successful Bid is referred to as the "**Successful Bidder**." The determination of the Successful Bid and the Back-Up Bid by the Debtors and the Creditors' Committee at the conclusion of the Auction shall be final, subject only to approval by the Bankruptcy Court. If the Successful Bid is terminated or fails to close within the time period specified in the Successful Bid, the Debtors shall be authorized, but shall not be required, to consummate the Sale Transaction with the Back-Up Bidder without further order of the Bankruptcy Court. The Back-Up Bid shall remain open until the earlier of (x) the first business day following the consummation of the sale of the Acquired Assets to the Successful Bidder and (y) the thirtieth (30th) day after entry of the Sale Order (as defined below). The Debtors shall be deemed to have accepted a Qualified Bid only when (i) such bid is declared the Successful Bid at the Auction; (ii) definitive documentation has been fully executed in respect thereof; and (iii) the Court has entered an order approving such Successful Bid; *provided that* under no circumstances shall the Debtors consider any bid made after the announced formal conclusion of the Auction.

EACH QUALIFIED BID SUBMITTED (OTHER THAN THE STALKING HORSE PURCHASE AGREEMENTS, WHICH MAY BE TERMINATED BY THE STALKING HORSE BIDDERS IN ACCORDANCE WITH THEIR TERMS BUT OTHERWISE SHALL ALSO BE DEEMED IRREVOCABLE AND BINDING IN ACCORDANCE WITH THEIR TERMS) SHALL CONSTITUTE AN IRREVOCABLE OFFER AND BE BINDING ON THE APPLICABLE QUALIFIED BIDDER FROM THE TIME THE BID IS SUBMITTED UNTIL THE ENTRY OF THE SALE ORDER. THE BACK-UP BID SHALL BE IRREVOCABLE AND BINDING ON THE BIDDER UNTIL THE EARLIER OF ONE (1) BUSINESS DAY AFTER THE CLOSING OF THE SALE OF THE ACQUIRED ASSETS OR THIRTY (30) DAYS AFTER THE SALE ORDER IS ENTERED. ALL QUALIFIED BIDDERS AT THE AUCTION SHALL BE DEEMED TO HAVE CONSENTED TO THE JURISDICTION OF THE BANKRUPTCY COURT FOR PURPOSES OF THE AUCTION AND SALE AND

WAIVED ANY RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY DISPUTES RELATING TO THE AUCTION, AND THE CONSTRUCTION AND ENFORCEMENT OF ANY SALE TRANSACTION DOCUMENTS.

XII. The Sale Hearing

The Successful Bid for the Acquired Assets will be presented to the Bankruptcy Court for approval at the Sale Hearing, and the Debtors will promptly seek entry of an order at the Sale Hearing authorizing and approving the Sale Transaction (the "**Sale Order**"), including the sale of the Acquired Assets to the Successful Bidder, pursuant to the terms and conditions set forth in the Successful Bid.

Unless the Bankruptcy Court orders otherwise, the Sale Hearing shall be an evidentiary hearing on all matters relating to the proposed sale, and parties shall be prepared to present their evidence in support of or in opposition to the proposed sale at the Sale Hearing; *provided, however*, that issues relating to the assumption and assignment of executory contracts and unexpired leases may be addressed at separate hearings before the Bankruptcy Court.

XIII. "As Is Where Is"

The Sale Transaction shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Debtors, the Creditors' Committee, or their respective agents or their estates, except to the extent expressly set forth in the purchase agreement executed in connection with the Successful Bid, as the case may be. Except as otherwise provided in the Successful Bid or such other bid which may ultimately be consummated, all of the Debtors' right, title, and interest in and to the Acquired Assets shall be sold free and clear all liens, claims (as such term is defined by section 101(5) of the Bankruptcy Code), encumbrances, rights, remedies, restrictions, interests, liabilities, leasehold interests, and contractual commitments of any kind or nature whatsoever, whether arising before or after the Petition Date, whether at law or in equity, including all rights or claims based on any successor or transferee liability, all environmental claims, all warranty obligations to customers, all product liability claims, all change in control provisions, all rights to object or consent to the effectiveness of the transfer of the Acquired Assets, all as more specifically set forth and defined in the Motion and Sale Order (the "**Claims**"), and as set forth in the Stalking Horse Purchase Agreements and the Sale Order, with such Claims to attach to the net proceeds of the sale with the same validity and priority as such Claims enjoyed with respect to the Acquired Assets. The Stalking Horse Bidders and each Qualified Bidder shall be deemed to acknowledge and represent that it had an opportunity to conduct any and all due diligence regarding the Acquired Assets prior to making its offer, that it has relied solely on its own independent review, investigation, and/or inspection of any documents and/or the Acquired Assets in making its Qualified Bid, and that it did not rely on any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law or otherwise regarding the Acquired Assets, or the completeness of any information provided in connection therewith or the Auction except as expressly stated in these Bidding Procedures, and (a) as to the Stalking Horse Bidders, the terms of the sale of the "Acquired Assets" set forth in the applicable Stalking Horse

Purchase Agreement, or (b) as to any other Successful Bidder or Back-Up Bidder, the terms of the sale of the assets to be acquired set forth in the applicable purchase agreement.

Notwithstanding the foregoing, the Debtors and the Creditors' Committee each reserve the right to contest the validity, nature, extent, or priority of and/or seek to set aside or avoid any and all Claims under applicable law.

XIV. Return of Deposits

A Deposit submitted by the Back-Up Bidder will be held until forty-eight (48) hours after the Back-Up Bid has been terminated in accordance with the Bidding Procedures. As to all other bidders (except the Successful Bidder), Deposits will be returned promptly after conclusion of the Sale Hearing. Other than with respect to the Deposits of the Stalking Horse Bidders, which shall be governed by the Stalking Horse Purchase Agreements, if the Successful Bidder or the Back-Up Bidder fails to consummate an approved sale because of its own breach or failure to perform, the Debtors shall be entitled to retain the Deposit in partial satisfaction of any damages resulting from the breach or failure to perform by the Successful Bidder or the Back-Up Bidder, as the case may be, without prejudice to any other rights the Debtors may have. The Debtors may credit the Deposit of the Successful Bidder or the Back-Up Bidder towards the purchase price on the closing of the sale of the Acquired Assets to the Successful Bidder or the Back-Up Bidder, as the case may be.

XV. Reservation of Rights

Except as otherwise provided in the Stalking Horse Purchase Agreements, the Bidding Procedures Order, or these Bidding Procedures, the Debtors reserve their rights as they may determine in their business judgment and in consultation with the Creditors' Committee to be in the best interests of the Debtors' estates, to: (a) determine which bidders are Qualified Bidders; (b) determine which bids are Qualified Bids; (c) reject, subject to the immediately subsequent paragraph hereof, any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code, or (iii) contrary to the best interests of the Debtors, their estates, and their creditors; (d) waive terms and conditions set forth herein with respect to all potential bidders (after consultation with the Stalking Horse Bidders); (e) impose additional terms and conditions with respect to all potential bidders (after consultation with the Stalking Horse Bidders); (f) extend the deadlines set forth herein (after consultation with the Stalking Horse Bidders); (g) subject to Paragraph 23 of the Bidding Procedures Order and Article IX(f) hereof, adjourn or cancel the Auction and/or Sale Hearing in open court without further notice (after consultation with the Stalking Horse Bidders); and (h) modify the Bidding Procedures as the Debtors determine to be in the best interest of their estates (after consultation with the Stalking Horse Bidders); *provided that* without the consent of the Stalking Horse Bidders, (1) the Debtors may not remove any of the Acquired Assets from the Auction; (2) neither the Debtors nor the Creditors' Committee (whether jointly or otherwise) may modify the Bidding Procedures requirements (A) that any bid be a bulk bid to purchase all of the Acquired Assets; (B) to change the amount of the Deposit; (C) waive or modify any of the provisions in the Credit Bidding section of these Bidding Procedures (except as otherwise ordered by the Bankruptcy Court or other court of competent jurisdiction); or (D) impair or

modify either Stalking Horse Bidders' rights and obligations under the Bidding Procedures or under the Stalking Horse Purchase Agreements, respectively, including either Stalking Horse Bidders' rights with respect to the timing of the Auction and the Sale Hearing, or either Stalking Horse Bidders' right to credit their respective Expense Reimbursement as part of any Subsequent Bids at the Auction.

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