

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

	)	
In re:	)	Chapter 11
	)	
FISKER AUTOMOTIVE HOLDINGS, INC., <u>et al.</u> , <sup>1</sup>	)	Case No. 13-13087 (KG)
	)	
Debtors.	)	Jointly Administered
	)	
	)	Re: Docket Nos. 13, 264, 265, 292

**ORDER (I) APPROVING BID PROCEDURES IN CONNECTION WITH THE SALE OF CERTAIN ASSETS OF THE DEBTORS; (II) SCHEDULING HEARING TO CONSIDER APPROVAL OF THE SALE OF ASSETS; (III) APPROVING FORM AND MANNER OF NOTICE THEREOF; (IV) AUTHORIZING THE DEBTORS TO ENTER INTO STALKING HORSE PURCHASE AGREEMENTS; (V) APPROVING EXPENSE REIMBURSEMENT; AND (VI) GRANTING RELATED RELIEF**

Upon consideration of the motion (the "**Motion**")<sup>2</sup> filed by the Official Committee of Unsecured Creditors appointed in these cases (the "**Creditors' Committee**") at [Docket No. 265] in the above-captioned cases, pursuant to sections 105(a), 363, 365, 503, and 507 of title 11 of the United States Code (the "**Bankruptcy Code**"), as supplemented by Rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), for entry of orders approving, among other things, the sale (the "**Sale**") of certain assets of the above-captioned debtors and debtors in possession (the "**Debtors**"), related bidding procedures, and certain protections for potential purchasers of such assets; and the Court having determined that the relief provided herein is in the best interest of the Debtors, their estates, their

<sup>1</sup> The Debtors, together with the last four digits of each Debtor's federal tax identification number, are: Fisker Automotive Holdings, Inc. (9678); and Fisker Automotive, Inc. (9075). For the purpose of these chapter 11 cases, the service address for the Debtors is: 3080 Airway Avenue, Costa Mesa, California 92626.

<sup>2</sup> Capitalized terms used and not otherwise defined herein shall have the meanings assigned to such terms in the Motion or the bidding procedures set forth in Schedule 1 hereto (the "**Bidding Procedures**").

creditors, and other parties in interest; and due and adequate notice of the Motion having been given under the circumstances; and upon the record of the hearing on the Motion, and the full record of these cases; and after due deliberation thereon; the Court having reviewed, among other things, the Motion, the Debtors' sale motion (the "Debtors' Sale Motion") [Docket No. 13], and the responses of the parties filed at [Docket Nos. 264, 292]; the Court having conducted a hearing on the Debtors' Sale Motion, the Motion, and related matters on January 10, 2014 (the "Hearing"); the Court having heard the stipulations of the Debtors and the Creditors' Committee incorporated into the record of the Hearing; and good and sufficient cause appearing therefor, it is hereby

**FOUND AND DETERMINED THAT:**

A. Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when applicable. See Bankruptcy Rule 7052.

B. This Court has jurisdiction over the Motion and the transactions contemplated by the Stalking Horse Purchase Agreements (as defined below) pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M), and (O). Venue in this district is proper under 28 U.S.C. §§ 1408 and 1409.

C. Good and sufficient notice of the Motion and the relief sought therein has been given under the circumstances, and no other or further notice is required except as set forth herein with respect to the Auction and the Sale Hearing. Subject to the immediately preceding sentence, a reasonable opportunity to object or be heard regarding the relief provided herein has been afforded to all parties in interest in these chapter 11 cases.

D. The notice procedures set forth herein are appropriate and reasonably calculated to provide all interested parties with timely and proper notice of (i) the sale of substantially all of the Debtors' assets (the "Acquired Assets") pursuant to the Stalking Horse Purchase

Agreements, (ii) the Bidding Procedures to be employed in connection with the Auction, (iii) the Auction, and (iv) the Sale Hearing.

E. Good and sufficient business reasons exist for this Court to authorize the Debtors to enter into (i) 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 (ii) 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 Bidder, provided further that any such revisions shall be reflected in a revised Hybrid Stalking Horse Purchase Agreement filed with the Bankruptcy Court).

F. Good and sufficient business reasons exist for this Court to approve the Bidding Procedures substantially in the form attached hereto as Schedule 1, including: (i) the payment to the Stalking Horse Bidders of the Expense Reimbursements (each as defined in the Stalking Horse Purchase Agreements), in accordance with the terms of the Stalking Horse Purchase Agreements; (ii) the scheduling of the Bid Deadline, the Auction, and the Sale Hearing with respect to the proposed Sale of the Acquired Assets; and (iii) the establishment of procedures to

fix cure amounts to be paid pursuant to section 365 of the Bankruptcy Code in connection with the assumption, assignment, and/or transfer of the Assumed Contracts and Assumed Leases (as defined below).

G. The Stalking Horse Purchase Agreements and their terms, and the Bidding Procedures were negotiated in good faith and at arm's length.

H. The Bidding Procedures are reasonably designed to maximize the value to be achieved for the Acquired Assets.

I. The Expense Reimbursements are actual and necessary costs and expenses of preserving the Debtors' estates, within the meaning of section 503(b) of the Bankruptcy Code, and of substantial benefit to the Debtors' estates by inducing both Stalking Horse Bidders' bids pursuant to the Stalking Horse Purchase Agreements (the "Stalking Horse Bids"), which collectively have established a bid standard or minimum for other bidders for the Acquired Assets, thereby ensuring that during the Auction, the Debtors receive the highest and best possible bid for the Acquired Assets. For the avoidance of doubt, the Debtors and the Creditors' Committee have made no decision at this time as to which Stalking Horse Bid is the higher or better bid.

J. The Notice of Auction and Sale Hearing is reasonably calculated to provide all interested parties with timely and proper notice of the proposed Sale, including, without limitation: (i) the date, time, and place of the Auction; (ii) the Bidding Procedures and the dates and deadlines related thereto; (iii) the objection deadline for the Sale and the date, time, and place of the Sale Hearing; (iv) reasonably specific identification of the Acquired Assets; (v) instructions for promptly obtaining a copy of the Stalking Horse Purchase Agreements; (vi) representations describing the Sale as being free and clear of all liens, claims, interests, and

other encumbrances, with all such liens, claims, interests, and other encumbrances attaching with the same validity and priority to the sale proceeds; (vii) the potential commitment by the Stalking Horse Bidders to assume certain liabilities of the Debtors; and (viii) notice of the proposed assumption and assignment of certain contracts and leases to the Stalking Horse Bidders pursuant to the Stalking Horse Purchase Agreements (or to another Successful Bidder at the conclusion of the Auction, if any), the proposed Cure Amounts (as defined below) relating thereto and the procedures and deadlines for objecting thereto, and no other or further notice of the Sale shall be required.

K. The entry of this Bidding Procedures Order is in the best interests of the Debtors, their estates, their creditors, and other parties in interest.

**NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is granted as set forth herein for the reasons set forth at the Hearing.
2. All objections to approval of the Motion or the relief provided herein that have not been withdrawn, waived, or settled are hereby overruled and denied on the merits. For the avoidance of doubt, the objections of the Debtors (as to the Committee's requested credit bid limitations) and Hybrid are overruled and denied.
3. The Debtors are authorized to enter into the Stalking Horse Purchase Agreements.
4. The Bidding Procedures, in substantially the form attached hereto as Schedule I, are incorporated herein and approved in all respects, and shall apply with respect to the Sale of the Acquired Assets. The Debtors are authorized to take all actions that may be necessary or appropriate to implement the Bidding Procedures.
5. Based on the Court's consideration of the record presented at the Hearing and the particular facts and circumstances of these chapter 11 cases, there is "cause" (as that term is used by section 363(k) of the Bankruptcy Code) to cap the Hybrid Stalking Horse Bidder's credit bid

rights with respect to the Debtors' sale of the Acquired Assets as provided by the Bid Procedures to \$25,000,000.00, pursuant to this Court's Order [Docket No. 484], entered January 17, 2014.

**I. Important Dates and Deadlines**

6. **Bid Deadline.** As further described in the Bidding Procedures, the deadline for submitting Qualified Bids for the Acquired Assets (the "**Bid Deadline**") is February 7, 2014 at 5:00 p.m. (prevailing Eastern Time). Except as expressly provided herein, no bid shall be deemed to be a Qualified Bid unless such bid meets the requirements set forth in the Bidding Procedures. Each Stalking Horse Bid shall be deemed to constitute a Qualified Bid for all purposes under the Bidding Procedures.

7. **Auction.** The Auction shall take place on February 12, 2014 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. Each Qualified Bidder participating at the Auction 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.

8. **Sale Hearing.** The Sale Hearing shall be held before this Court on February 14, 2014 at 9:30 a.m. (prevailing Eastern Time) before the Honorable Judge Kevin Gross, United States Bankruptcy Judge for the Bankruptcy Court for the District of Delaware, at 824 North Market Street, 6th Floor, Wilmington, Delaware 19801. At the Sale Hearing, the Debtors shall seek the entry of an order of this Court approving and authorizing the Sale to the Successful Bidder. Any obligations of the Debtors set forth in the Stalking Horse Purchase Agreements that are intended to be performed prior to the Sale Hearing and/or entry of the Sale Order pursuant to the Stalking Horse Purchase Agreements are authorized as set forth herein and shall be fully enforceable as of the date of entry of this Bidding Procedures Order. **Please take**

**notice that:** subject to Paragraph 23 hereof, the Sale Hearing (or any portion thereof) may be adjourned by this Court or by the Debtors (after consultation with the Stalking Horse Bidders) from time to time without further notice other than by announcement in open court or through the filing of a notice on this Court's docket.

9. **Sale Objection Deadline.** The deadline to object to the remaining relief requested in the Motion, including entry of the proposed Sale Order, is February 12, 2014 at 4:00 p.m. (prevailing Eastern Time) (the "**Sale Objection Deadline**"). Objections, if any, **must:** (i) be in writing; (ii) conform to the applicable provisions of the Bankruptcy Rules and the Local Rules; (iii) state with particularity the legal and factual basis for the objection and the specific grounds therefor; and (iv) be filed with this Court and served so as to be **actually received** no later than the Sale Objection Deadline by the following parties (the "**Notice Parties**"): (a) co-counsel to the Debtors, (1) Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654 (Attn: Ryan Preston Dahl, Esq.) and (2) Pachulski Stang Ziehl & Jones LLP, 919 Market Street, 17th Floor, PO Box 8705, Wilmington, Delaware 19800 (Attn: James E. O'Neill, Esq.); (b) co-counsel to the Creditors' Committee, (1) Brown Rudnick LLP, One Financial Center, Boston, Massachusetts 02111 (Attn: William R. Baldiga, Esq.) and (2) Saul Ewing LLP, 222 Delaware Avenue, Suite 1200, Wilmington, Delaware 19801 (Attn: Mark Minuti, Esq.); (c) co-counsel to the Wanxiang Stalking Horse Bidder, (1) Sidley Austin LLP, One South Dearborn Street, Chicago, Illinois 60603 (Attn: Bojan Guzina, Esq. and Andrew F. O'Neill, Esq.) and (2) Young Conaway Stargatt & Taylor, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Edmon L. Morton, Esq.); and (d) co-counsel to the Hybrid Stalking Horse Bidder, (1) Davis & Gilbert LLP, 1740 Broadway, New York, New York

10019 (Attn: Ralph Norton, Esq.) and (2) Keller & Benvenuti LLP, 650 California Street, Suite 1900, San Francisco, California 94108 (Attn: Peter Benvenuti, Esq.).

10. No later than three (3) business days after entry of this Bidding Procedures Order, the Debtors will cause the notice substantially in the form attached hereto as Schedule 2 (the "**Notice of Auction and Sale Hearing**") and the Bidding Procedures Order to be sent by first-class mail postage prepaid, to the following: (a) the U.S. Trustee; (b) counsel for the Creditors' Committee; (c) all taxing authorities having jurisdiction over any of the Acquired Assets, including the Internal Revenue Service; (d) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002; (e) all persons known or reasonably believed to have asserted an interest in any of the Acquired Assets; (f) all non-Debtor parties to the Executory Contracts and Unexpired Leases (as defined below); (g) all persons known or reasonably believed to have expressed an interest in acquiring all or a substantial portion of the Acquired Assets or making an equity investment in the Debtors within the twelve (12) months prior to the Petition Date; (h) the Attorneys General in the State(s) where the Acquired Assets are located; (i) the Environmental Protection Agency; (j) all state and local environmental agencies in any jurisdiction where the Debtors own or have owned or used real property; (k) the United States Department of Energy; (l) the United States Department of Justice; (m) all current and former customers, dealers and sales representatives of the Debtors; (n) all current employees of the Debtors and all former employees of the Debtors employed within six (6) months of the Petition Date; (o) counsel to the Wanxiang Stalking Horse Bidder; and (p) counsel to the Hybrid Stalking Horse Bidder.<sup>3</sup> In addition to the foregoing, (i) electronic

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<sup>3</sup> The Notice of Auction and Sale Hearing will direct parties to contact the Debtors for more information and will provide that any party in interest that wishes to obtain a copy of any related document (including the Stalking Horse Purchase Agreements), subject to any necessary confidentiality agreement, may make a request in writing as specified in the Notice of Auction and Sale Hearing.



notification of this Motion, the Bidding Procedures Order, and the Notice of Auction and Sale Hearing also will be posted by the Debtors on: (A) the Court's website, [www.deb.uscourts.gov](http://www.deb.uscourts.gov); and (B) the case website maintained by the Debtors' claims and noticing agent, Rust Consulting/Omni Bankruptcy; and (ii) no later than three (3) business days after entry of the Bidding Procedures Order, the Debtors will: (A) serve the Notice of Auction and Sale Hearing on all known creditors of the Debtors; and (B) subject to applicable submission deadlines, publish the Notice of Auction and Sale Hearing once in one national publication the Debtors deem appropriate. **Failure to timely file an objection in accordance with this Bidding Procedures Order shall forever bar the assertion of any objection to the Motion, entry of the Sale Order, and/or consummation of the Sale, and shall be deemed to constitute consent to entry of the Sale Order and consummation of the Sale and all transactions related thereto.**

11. No later than three (3) business days after the entry of the Bidding Procedures Order (the "**Initial Cure Notice Deadline**"), the Debtors shall serve by first-class mail or hand delivery, a notice of potential assumption, assignment, and/or transfer of the executory contracts and unexpired leases to which any Debtor is a party (the "**Executory Contracts and Unexpired Leases**"), substantially in the form attached hereto as Schedule 3 (the "**Notice of Potential Assumption and Assignment**"), on all non-debtor parties to the Executory Contracts and Unexpired Leases. The Notice of Potential Assumption and Assignment shall include the calculation of the cure amounts (the "**Cure Amounts**") that the Debtors believe must be paid to cure all defaults outstanding under the Executory Contracts and Unexpired Leases as of such date. In addition, if the Debtors identify additional Executory Contracts or Unexpired Leases that are not set forth in the original Notice of Potential Assumption and Assignment, the Debtors

shall promptly send a supplemental notice (a "**Supplemental Notice of Potential Assumption and Assignment**") to the applicable counterparties to such additional Executory Contracts or Unexpired Leases.

12. Unless the non-debtor party to an Executory Contract or Unexpired Lease files an objection (the "**Cure Amount/Assignment Objection**") to (a) its Cure Amount, and/or (b) the proposed assumption, assignment, and/or transfer of such Executory Contract or Unexpired Lease (including the transfer of any related rights or benefits thereunder) to either of the Stalking Horse Bidders or to any other Successful Bidder, as applicable, by the later of (i) 5:00 p.m. (prevailing Eastern Time) on January 30, 2014, and (ii) ten (10) days after service of the Supplemental Notice of Potential Assumption and Assignment, if applicable (collectively, the "**Cure/Assignment Objection Deadline**") and serves a copy of the Cure Amount/Assignment Objection so as to be received by the Notice Parties no later than the Cure/Assignment Objection Deadline, such non-debtor party will (i) be forever barred from objecting to the Cure Amount and from asserting against the Debtors or either Stalking Horse Bidder (or any other Successful Bidder, as applicable) any additional cure or other amounts with respect to such Executory Contract or Unexpired Lease in the event it is assumed and/or assigned by the Debtors, and the Debtors and the Stalking Horse Bidders (or any other Successful Bidder, as applicable) shall be entitled to rely solely upon the Cure Amount, and (ii) be deemed to have consented to the assumption, assignment and/or transfer of such Executory Contract or Unexpired Lease (including the transfer of any related rights and benefits thereunder) to either of the Stalking Horse Bidders, any other Successful Bidder or any other assignee of the relevant Executory Contract or Unexpired Lease and shall be forever barred and estopped from asserting or claiming against the Debtors, the Stalking Horse Bidders, any other Successful Bidder, or any

other assignee of the relevant Executory Contract or Unexpired Lease that any additional amounts are due or defaults exist, or conditions to assumption, assignment, and/or transfer must be satisfied under such Executory Contract or Unexpired Lease, or that any related right or benefit under such Executory Contract or Unexpired Lease cannot or will not be available to either of the Stalking Horse Bidders, any other Successful Bidder, or any other assignee of the relevant Executory Contract or Unexpired Lease. Cure Amount/Assignment Objections with respect to any Notice of Potential Assumption and Assignment that is served on or before the Initial Cure Notice Deadline, shall be heard at the Sale Hearing, unless the Debtors, in consultation with the Creditors' Committee, and the Stalking Horse Bidders agree otherwise, or the Court orders otherwise. With respect to any party who has timely filed a Cure Amount/Assignment Objection in accordance with this Order, nothing in this Order and/or any applicable Notice of Potential Assumption and Assignment shall (i) operate to waive or impair any rights, claims, or defenses of any and all non-debtor counterparties to any Executory Contract or Unexpired Lease, or (ii) shall be deemed to be a determination, finding or adjudication that any Executory Contract or Unexpired Lease, or any rights or benefits thereunder, are or may be assumed, assigned, transferred, delegated, or otherwise made available for the benefit of any entity, pursuant to section 365 of the Bankruptcy Code or otherwise, without the consent of the non-debtor counterparty to such Executory Contract or Unexpired Lease.

13. No later than seven (7) days prior to the consummation of the Sale (the "**Closing**"), the Debtors shall serve a notice, substantially in the form attached hereto as **Schedule 4** (the "**Assumption Notice Deadline**"), identifying the Successful Bidder and stating which Executory Contracts and Unexpired Leases will be assumed and assigned (the "**Assumed**

Contracts and Assumed Leases”) to the Successful Bidder as of the Closing (the “Assumption Notice”). Notwithstanding anything to the contrary in the Stalking Horse Purchase Agreements, the Successful Bidder shall not have the right, after the Assumption Notice Deadline, to designate additional Executory Contracts and Unexpired Leases as Assumed Contracts and Assumed Leases to be assumed and assigned effective at Closing; provided, however, that the Successful Bidder may, after the date of Closing, designate additional Executory Contracts and Unexpired Leases as Assumed Contracts and Assumed Leases to be assumed and assigned following a seven (7) day period from the date of service of a subsequent Assumption Notice relating to such additional Executory Contracts and Unexpired Leases.

14. Upon a determination by the Debtors made in accordance with the applicable Stalking Horse Purchase Agreement that an Executory Contract or Unexpired Lease should be rejected, the Debtors shall serve by first-class mail or hand delivery, a notice, substantially in the form attached hereto as Schedule 5 (the “Notice of Rejection”), of rejection of such Executory Contract or Unexpired Lease on all non-debtor parties to such Executory Contract or Unexpired Lease, and such Executory Contract or Unexpired Lease shall be deemed to have been rejected ten (10) days from the date of service of such Notice of Rejection.

15. The Successful Bidder may determine to exclude any Executory Contract or Unexpired Lease (an “Excluded Contract”) from the list of Acquired Assets at any time prior to the Closing. The non-debtor party or parties to any such Excluded Contract will be notified of such exclusion by written notice as soon as practicable after such determination, which may be after the Sale Hearing.

16. Within one (1) business day after the conclusion of the Auction, the Debtors will file a notice identifying the Successful Bidder and will serve such notice on all parties that received service of the Notice of Potential Assumption and Assignment.

17. The Notice of Auction and Sale Hearing, the Notice of Assumption and Assignment, the Assumption Notice and the Notice of Rejection to be issued in connection with the proposed sale of the Acquired Assets, substantially in the forms annexed hereto as Schedule 2, Schedule 3, Schedule 4, and Schedule 5, respectively, are hereby approved.

18. The Sale Hearing may be adjourned, from time to time, in accordance with the Bidding Procedures without further notice to creditors or other parties-in-interest other than by announcement of said adjournment before this Court or on this Court's calendar on the date scheduled for said hearing.

19. The Expense Reimbursements, as set forth in the Stalking Horse Purchase Agreements, are hereby approved, and the Debtors are authorized and directed to promptly pay, as they become due, any amounts owed to the Stalking Horse Bidders on account of such Expense Reimbursements in accordance with the Stalking Horse Purchase Agreements. The obligations of the Debtors to pay the Expense Reimbursements: (i) shall be entitled to administrative expense claim status under sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code; (ii) shall not be subordinate to any other administrative expense claim against the Debtors other than allowed claims entitled to priority under section 507(b) of the Bankruptcy Code or obligations arising pursuant to the *Fourth Interim Order (I) Authorizing Postpetition Financing, (II) Granting Liens and Providing Superpriority Administrative Expense Priority, (III) Authorizing Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, and (VI) Scheduling a Final Hearing Pursuant to Sections 105, 361, 362, 363*

and 364 of the Bankruptcy Code and Bankruptcy Rules 2002, 4001, and 9014 (the “Interim DIP Order”) (including the Carve-Out (as defined in the Interim DIP Order)) and any obligations arising pursuant to the Final Order (as defined in the Interim DIP Order); (iii) shall survive the termination of the Stalking Horse Purchase Agreements; and (iv) shall be immediately payable by the Debtors to the Stalking Horse Bidders in cash (A) upon the Court’s approval and closing of a sale of the Acquired Assets to any Successful Bidder other than the respective Stalking Horse Bidder, or (B) as otherwise set forth in the Stalking Horse Purchase Agreements.

20. If the Successful Bidder is not the Wanxiang Stalking Horse Bidder, the Expense Reimbursement set forth in the Wanxiang Stalking Horse Purchase Agreement shall be paid pursuant to the terms of the Wanxiang Stalking Horse Purchase Agreement, and no subsequent order of the Court can modify the requirement that this Expense Reimbursement be paid pursuant to the terms of this Order. If the Successful Bidder is not the Hybrid Stalking Horse Bidder, the Expense Reimbursement set forth in the Hybrid Stalking Horse Purchase Agreement shall be paid pursuant to the terms of the Hybrid Stalking Horse Purchase Agreement, and no subsequent order of the Court can modify the requirement that this Expense Reimbursement be paid pursuant to the terms of this Order.

21. Except as otherwise provided herein and in the Bidding Procedures, Local Rule 6004-1(c)(ii) is waived.

22. Except as otherwise provided in the Stalking Horse Purchase Agreements, the Bidding Procedures, or this Bidding Procedures Order, the Debtors, in their respective business judgment and in consultation with the Creditors’ Committee, shall: (a) determine which bidders are Qualified Bidders; (b) determine which bids are Qualified Bids; (c) reject, subject to paragraph 23 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 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 the Bidding Procedures; 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 Bidder's rights with respect to the timing of the Auction and the Sale Hearing, or either Stalking Horse Bidder's right to credit their respective Expense Reimbursement as part of any Subsequent Bids at the Auction.

23. The Debtors and the Creditors' Committee shall jointly determine, consistent with the Bidding Procedures, (a) which bid constitutes the highest and best bid and which bidder constitutes the Successful Bidder, and (b) so long as any appeal with respect to the Court's determination to cap the Hybrid Stalking Horse Bidder's credit bid rights remains pending,

whether to adjourn or cancel the Auction and/or Sale Hearing (after consultation with the Stalking Horse Bidders); provided, however, that if the Debtors and the Creditors' Committee cannot agree, such determinations shall be made by the Bankruptcy Court.

**II. Hybrid Stalking Horse Bid**

24. For the avoidance of doubt, the conditions set forth in section 2.1 of the Hybrid Stalking Horse Purchase Agreement were not satisfied and that if the Hybrid Stalking Horse Bidder becomes the Successful Bidder, the Hybrid Stalking Horse Bidder will not be obliged under section 2.1 of the Hybrid Stalking Horse Purchase Agreement to pay a minimum of \$5,500,000 of the Purchase Price in cash for the benefit of unsecured creditors other than the Hybrid Stalking Horse Bidder or any of its Related Persons (as defined in the Hybrid Stalking Horse Purchase Agreement).

**III. Credit Bidding**

25. Only holders of allowed valid secured claims are permitted to credit bid at the Auction to the extent set forth in this paragraph 25; provided that such bids must include an additional cash component in amounts sufficient to allow the Debtors to pay any applicable Expense Reimbursement in full. Unless expressly consented to in writing by the Debtors, with the Creditors' Committee's consent, 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 that the Debtors or 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 to the contrary in this Order or the Bidding Procedures, but subject to the succeeding sentence, the rights of the Debtors or the Creditors' Committee to contest the propriety of any credit bid pursuant to



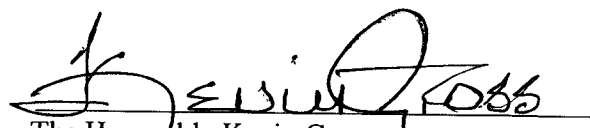
sections 363(k) of the Bankruptcy Code are expressly reserved; provided that the Hybrid Stalking Horse Bidder shall be permitted to credit bid up to \$25,000,000 of the outstanding obligations arising under the Loan Arrangement and Reimbursement Agreement dated as of April 22, 2010, by and among the Debtors and the United States Department of Energy (the "Loan Arrangement and Reimbursement Agreement") for the Acquired Assets without prejudice to (x) any subsequent allocation of cash and non-cash consideration provided pursuant any sale of the Acquired Assets or (y) any party's right to contest the allowance, priority, or perfection of any claim or to seek the equitable subordination or disallowance of such claim.

26. The stays provided for in Bankruptcy Rules 6004(h) and 6006(d) are waived, and this Bidding Procedures Order shall be effective immediately upon its entry.

27. This Court shall retain jurisdiction over any matters related to or arising from the implementation of this Order.

Dated: Wilmington, Delaware

January 23, 2014

  
The Honorable Kevin Gross  
Chief United States Bankruptcy Judge