

EXHIBIT 1

Strategic Transaction Bidding Procedures

DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017
Telephone: (212) 450-4000
Facsimile: (212) 607-7973
Marshall S. Huebner (admitted *pro hac vice*)
Brian M. Resnick (admitted *pro hac vice*
pending
Michelle M. McGreal (admitted *pro hac vice*)

*Counsel to the Debtors
and Debtors in Possession*

HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200
Facsimile: (804) 788-8218
Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)

*Local Counsel to the Debtors
and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:

JAMES RIVER COAL COMPANY, *et al.*,

Debtors.⁴

Chapter 11

Case No. 14-31848 (KRH)

(Jointly Administered)

STRATEGIC TRANSACTION BIDDING PROCEDURES

These bidding procedures (the “**Strategic Transaction Bidding Procedures**”) shall be employed with respect to the proposed (a) sale (the “**Sale**”) under section 363 of the Bankruptcy Code (as defined below) of all or substantially all of the assets of the Debtors (the “**Auctioned Assets**”) or (b) sponsorship of a plan of reorganization for the Debtors (a “**Sponsored Plan**”) ((a) and (b) each, a “**Restructuring Transaction**”), in each case subject to approval by the United States Bankruptcy Court for the Eastern District of Virginia (the “**Bankruptcy Court**”).

Background

On April 7, 2014, the Debtors filed with the Bankruptcy Court their motion (the “**Motion**”) for entry of orders pursuant to sections 105(a), 363 and 365 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 2002, 6004 and 6006 of the

⁴ The Debtors, along with the last four digits of each Debtor’s federal tax identification number, are listed on Schedule 1 attached to the Motion.

Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 6004-2 of the Local Rules of the United States Bankruptcy Court for the Eastern District of Virginia (the “**Local Bankruptcy Rules**”); (i) approving bidding procedures to be employed with respect to the proposed (a) sale of all or substantially all of the assets of the Debtors free and clear of liens, claims, interests and encumbrances (collectively, the “**Encumbrances**”) or (b) sponsorship of a plan of reorganization; (ii) scheduling submission deadlines for any bids and an auction related thereto, if necessary; (iii) approving the form and manner of notice thereof; and (iv) granting such other and further relief as is just and proper.

On [_____], 2014, the Bankruptcy Court entered an order (the “**Strategic Transaction Bidding Procedures Order**”), which, among other things, approved these Strategic Transaction Bidding Procedures and authorized the Debtors to solicit bids for a Restructuring Transaction.

The Strategic Transaction Bidding Procedures Order set **July 10, 2014 at 1:00 p.m. (prevailing Eastern Time)** as the date the Bankruptcy Court will conduct a hearing (the “**Sale Hearing**”), subject to adjournment as set forth below, to authorize the Debtors to sell the Auctioned Assets to the Successful Bidder.

These Strategic Transaction Bidding Procedures describe, among other things, (a) the Auctioned Assets available for sale, (b) the manner in which bidders and bids become Qualified Bidders and Qualified Bids, respectively (each, as defined herein), (c) the coordination of diligence efforts among bidders, (d) the receipt and negotiation of bids received, (e) the conduct of any subsequent auction (the “**Auction**”), (f) the ultimate selection of the Successful Bidder(s) (as defined herein) and (g) the Bankruptcy Court’s approval thereof.

These Strategic Transaction Bidding Procedures provide for the solicitation by the Debtors of proposals or offers (each, a “**Bid**”) by any potential bidder (each, a “**Bidder**”), pursuant to the following terms and conditions:

Nature of Any Sale

Assets To Be Sold

The Auctioned Assets proposed to be sold are all or substantially all of the Debtors’ assets. The Auctioned Assets may be sold together in a single transaction or separately in more than one transaction, and the Debtors may conduct separate auctions at the Auction for separate portions of the Auctioned Assets.

As Is, Where Is

Any Sale of any of the Auctioned Assets shall be on an “as is, where is” basis and without representations or warranties of any kind, nature, or description by any of the

Debtors, their agents, or their estates except as may be set forth in a definitive agreement executed by the Debtors.

Free of Any and All Encumbrances

Pursuant to any Sale, the Auctioned Assets shall be sold free and clear of all Encumbrances, and any Encumbrances shall attach to the net proceeds of the Sale of the Auctioned Assets.

Participation Requirements

Interested Parties

To ensure that only Bidders with a serious interest in consummating a Restructuring Transaction with the Debtors participate, in order to become a “**Qualified Bidder**” each Bidder must meet certain minimal requirements, which include that the Bidder must provide, in form and substance satisfactory to the Debtors, in consultation with the DIP Agent and the UCC (each, as defined below),⁵ in advance of May 22, 2014 at 5:00 p.m. (prevailing Eastern Time), the following:

- (a) an executed confidentiality agreement in form and substance acceptable to the Debtors;
- (b) current audited financial statements for the Bidder, or, if the Bidder is an entity formed for the purpose of consummating a Restructuring Transaction, current audited financial statements for the equity holders of the Bidder who shall guarantee the obligations of the Bidder, or such other form of financial disclosure and credit-quality support or enhancement acceptable to the Debtors, in consultation with the DIP Agent and the UCC; and
- (c) a (nonbinding) written proposal (a “**Preliminary Indication of Interest**”) that includes
 - i. a preliminary indication of (a) the Auctioned Assets (or any portion thereof) on which the Bidder intends to bid or (b) the terms of the Sponsored Plan;
 - ii. in the case of a Sale the proposed purchase price or price range for such Auctioned Assets or, in the case of a Sponsored Plan, the amount of the investment in the reorganized Debtors;
 - iii. the structure and financing of the Restructuring Transaction, including, but not limited to, the sources of financing of the purchase price or the investment, as applicable, and the requisite deposit;

⁵ In each instance pursuant to these Strategic Transaction Bidding Procedures whereby the Debtors have agreed to consult with the DIP Agent and/or the UCC, the Debtors (i) shall have satisfied such obligation by consulting with any advisors to the DIP Agent or the UCC, as applicable, and (ii) shall have the right, in their reasonable discretion, to provide information or materials to the advisors the DIP Agent and/or the UCC on a confidential and professionals’-eyes-only basis.

- iv. any anticipated regulatory and other approvals required to close the transaction and the anticipated time frame and any anticipated impediments for obtaining such approvals;
- v. the nature and extent of additional due diligence the Bidder wishes to conduct and the date in advance of the Bid Deadline by which such due diligence will be completed; and
- vi. any additional information reasonably requested by the Debtors regarding such Bidder, its proposal and its operational and financial ability to consummate such proposal.

Each Preliminary Indication of Interest shall be submitted via email and actually received by (i) the Debtors, 901 East Byrd Street, Suite 1600, Richmond, Virginia 23219, Attn: Andrew B. Hampton, email: andrew.hampton@jamesrivercoal.com; (ii) counsel to the Debtors, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Marshall S. Huebner and Brian M. Resnick, email: marshall.huebner@davispolk.com, brian.resnick@davispolk.com, jrc.auction@davispolk.com; (iii) local counsel to the Debtors, Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219, Attn: Tyler P. Brown, email: tpbrown@hunton.com; (iv) the Debtors' investment banker and M&A advisor, Deutsche Bank Securities Inc., 60 Wall Street New York, New York 10005, Attn: Dan Chu, email: dan.chu@db.com and Jerrod Freund, email: jerrod.freund@db.com; (v) the Debtors' restructuring financial advisor, Perella Weinberg Partners LP, 767 Fifth Avenue, New York, New York 10153, Attn: Joshua Scherer, email: jscherer@pwpartners.com and Agnes Tang, email: atang@pwpartners.com; (vi) counsel to the administrative agent (the "**DIP Agent**") under the Debtors' approved postpetition debtor in possession financing facility (the "**DIP Facility**"), Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, email: Attn: Andrew N. Rosenberg and Alice Belisle Eaton; email: arosenberg@paulweiss.com and aeaton@paulweiss.com; (vii) the financial advisor to the DIP Agent, Zolfo Cooper, LLC, Grace Building, 1114 Avenue of the Americas, 41st Floor, New York, New York 10036, Attn: Kevin Nystrom, email: knystrom@zolfocooper.com; (viii) counsel to the official committee of unsecured creditors appointed in these cases (the "**UCC**"), Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, New York 10036, Attn: Alexis Freeman and Stephen B. Kuhn, email: jrccommittee@akingump.com; and (ix) the financial advisor to the UCC, The Blackstone Group, 345 Park Avenue, New York, New York 10154, Attn: Michael Genereux and Adam Schlesinger, email: genereux@blackstone.com and adam.schlesinger@blackstone.com.

Due Diligence

Each Bidder (before or after submitting a Preliminary Indication of Interest) shall have an opportunity to participate in the diligence process after executing and delivering a confidentiality agreement. The Debtors, with the assistance of their investment banker and

M&A advisor, Deutsche Bank Securities, Inc. and restructuring financial advisor, Perella Weinberg Partners LP, will coordinate the diligence process and provide due diligence access and information as reasonably requested by any Bidder executing a confidentiality agreement, which shall include access to the Debtors' confidential electronic data room concerning the Debtors and the Auctioned Assets. It is expected that Bidders will complete all due diligence in connection with the Auctioned Assets, a Sponsored Plan and the Auction prior to the Bid Deadline and, in any event, **no Bid may be subject to any closing condition relating to completion or review of additional due diligence.**

Qualified Bids

Bid Deadline

Only Qualified Bidders may submit Bids. Initial Bids shall be due no later than June 30, 2014 at 5:00 p.m. (prevailing Eastern time) (the "**Bid Deadline**"). All Bids must be submitted via email and actually received, on or before the Bid Deadline, by (i) the Debtors, 901 East Byrd Street, Suite 1600, Richmond, Virginia 23219, Attn: Andrew B. Hampton, email: andrew.hampton@jamesrivercoal.com; (ii) counsel to the Debtors, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Marshall S. Huebner and Brian M. Resnick, email: marshall.huebner@davispolk.com, brian.resnick@davispolk.com, jrcc.auction@davispolk.com; (iii) local counsel to the Debtors, Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219, Attn: Tyler P. Brown, email: tpbrown@hunton.com; (iv) the Debtors' investment banker and M&A advisor, Deutsche Bank Securities Inc., 60 Wall Street New York, New York 10005, Attn: Dan Chu, email: dan.chu@db.com and Jerrod Freund, email: jerrod.freund@db.com; (v) the Debtors' restructuring financial advisor, Perella Weinberg Partners LP, 767 Fifth Avenue, New York, New York 10153, Attn: Joshua Scherer, email: jscherer@pwppartners.com and Agnes Tang, email: atang@pwppartners.com; (vi) counsel to the DIP Agent, Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, email: Attn: Andrew N. Rosenberg and Alice Belisle Eaton; email: arosenberg@paulweiss.com and aeaton@paulweiss.com; (vii) the financial advisor to the DIP Agent, Zolfo Cooper, LLC, Grace Building, 1114 Avenue of the Americas, 41st Floor, New York, New York 10036, Attn: Kevin Nystrom, email: knystrom@zolfocooper.com; (viii) counsel to the UCC, Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, New York 10036, Attn: Alexis Freeman and Stephen B. Kuhn, email: jrcccommittee@akingump.com; and (ix) the financial advisor to the UCC, The Blackstone Group, 345 Park Avenue, New York, New York 10154, Attn: Michael Genereux and Adam Schlesinger, email: genereux@blackstone.com and adam.schlesinger@blackstone.com.

Qualified Bid Requirements

All Bids must be in writing acceptable to the Debtors and include the following (such a Bid, a "**Qualified Bid**"):

- (a) a binding, executed, definitive agreement that provides for payment by the Qualified Bidder in cash (or other consideration acceptable to the Debtors, in consultation with the DIP Agent and the UCC), structured as:
 - i. a purchase of the Auctioned Assets (or any portion thereof) under section 363 of the Bankruptcy Code and the assumption of liabilities related to such Auctioned Assets as set forth in such definitive agreement, or
 - ii. sponsorship of a plan of reorganization whereby the Qualified Bidder invests in the reorganized Debtors in exchange for some or all of the debt and/or equity of the reorganized Debtors;
- (b) confirmation that the Qualified Bidder's offer is irrevocable until the Debtors, in consultation with the DIP Agent and the UCC, have selected the Successful Bid(s) (as defined below) or, in the case such Qualified Bid is selected as an Alternate Bid (as defined below), until the consummation of the transactions contemplated by the Successful Bid(s);
- (c) a good faith cash deposit (the "**Good Faith Deposit**") equal to ten percent (10%) of the Bid amount, which shall be submitted no later than the Bid Deadline by wire transfer of immediately available funds to an account or accounts to be maintained by an escrow agent on behalf of the Debtors;
- (d) evidence of a binding commitment for financing, available cash, undrawn lines of credit, or other ability to obtain the funds necessary to consummate the transaction proposed by the Bid, to the satisfaction of the Debtors, including, if the Qualified Bidder is an entity formed for the purpose of consummating a Restructuring Transaction, a guarantee from the equity holders of the Qualified Bidder in writing, in form and substance acceptable to the Debtors, in consultation with the DIP Agent and the UCC, and such funding commitments or other financing shall not be subject to any internal approvals, syndication requirements, diligence or credit committee approvals, and shall have covenants and conditions acceptable to the Debtors (such satisfaction and acceptance by the Debtors to be determined, in each case, in consultation with the DIP Agent and the UCC);
- (e) in the event the Bid contemplates taking transfer of, or obtaining overlapping permits of, any of the Debtors' mining permits, evidence demonstrating that the Qualified Bidder (i) is capable of taking transfer of such permits or obtaining such overlapping permits (including verification that the Qualified Bidder is not "permit blocked" under the federal Surface Mining Control and Reclamation Act by application of the federal Applicant Violator System or will not be "permit blocked" as of the time of transfer or issuance) and (ii) has or will have sufficient financial resources necessary to obtain or replace any financial assurance/reclamation surety bonds that are associated with such permits;

- (f) in the event the Bid is structured as a Sale, evidence of the Qualified Bidder's ability to comply with section 365 of the Bankruptcy Code (to the extent applicable), including providing adequate assurance of such Qualified Bidder's ability to perform in the future the contracts and leases proposed in its Bid to be assumed by the Debtors and assigned to the Qualified Bidder; and
- (g) evidence of authority, including, but not limited to, internal authorization or approval from its board of directors (or comparable governing body), with respect to the submission, execution, delivery, and closing of its Bid and the transactions contemplated thereby.

For purposes hereof, should the DIP Agent submit a credit bid in accordance with the terms of the DIP Credit Agreement (as defined in the final order of the Bankruptcy Court approving the DIP Facility (the "**DIP Order**")), the DIP Agent shall be deemed to be a Qualified Bidder, and any such credit bid shall be considered a Qualified Bid to the extent such bid is received by the Bid Deadline and otherwise complies with the requirements for a Qualified Bid as set forth above, provided, that, (i) the DIP Agent shall have provided the Debtors and the UCC with copies of any direction or other document required by the terms of the DIP Credit Agreement to authorize the submission of such credit bid by the DIP Agent, and (ii) notwithstanding anything to the contrary in these Strategic Transaction Bidding Procedures, from and after the submission of such credit bid the Debtors shall not be required to consult with the DIP Agent in connection with the process contemplated by these Strategic Transaction Bidding Procedures, including the Auction, unless and until such credit bid is withdrawn in writing by the DIP Agent.

A Qualified Bid must not contain any conditions to closing other than Bankruptcy Court approval, any required regulatory approval and, if such Qualified Bid contemplates a Sponsored Plan, confirmation of the Sponsored Plan by the Bankruptcy Court. The Debtors shall have the right, in consultation with the DIP Agent and the UCC, to deem a Bid a Qualified Bid even if such Bid does not conform to one or more of the aforementioned requirements.

Each Qualified Bidder, by submitting a Bid, shall be deemed to acknowledge and agree that it (i) is not relying upon any written or oral statements, representations, promises, warranties or guarantees of any kind whether expressed or implied, by operation of law or otherwise, made by any person or party, including the Debtors and their agents and representatives (other than as may be set forth in a definitive agreement executed by the Debtors), the DIP Agent and the lenders under the DIP Facility (the "**DIP Lenders**") regarding the Debtors, the Auctioned Assets, these Strategic Transaction Bidding Procedures or any information provided in connection therewith and (ii) consents to the jurisdiction of the Bankruptcy Court and waives any right to a jury trial in connection with any disputes relating to the Debtors' qualification of Bids, the Auction, the construction and enforcement of these Strategic Transaction Bidding Procedures or the Auction Procedures, and/or the definitive documents for the Sale or the Sponsored Plan, as applicable.

Stalking Horse Bidder

Designation of Stalking Horse Bidder

The Debtors reserve the right, in consultation with the DIP Agent and the UCC, to agree with any Qualified Bidder that such Qualified Bidder's Qualified Bid shall serve as the minimum bid for the Auctioned Assets or any Auction Lot (as defined below) or a Sponsored Plan (such Qualified Bidder, a "**Stalking Horse Bidder**," and such Qualified Bid, a "**Stalking Horse Bid**"), and that the Debtors will enter into the transaction contemplated in such Qualified Bid (following Bankruptcy Court approval thereof and satisfaction or waiver of any condition precedent to consummation of such transaction) *unless* (a) a higher or better Qualified Bid is submitted with respect to such transaction or (b) the Debtors have received a Qualified Bid that will realize greater value to the Debtors or the Debtors' estates overall, and that would be prevented in whole or in part by the transactions contemplated in the Stalking Horse Bid in each case as determined by the Debtors in consultation with the DIP Agent and the UCC. The Debtors shall file notice of any Stalking Horse Bid and serve it on (i) each Qualified Bidder; (ii) the Office of the United States Trustee for the Eastern District of Virginia, Attn: Robert B. Van Arsdale; (iii) the attorneys for the DIP Agent, Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, email: Attn: Andrew N. Rosenberg and Alice Belisle Eaton; email: arosenberg@paulweiss.com and aeaton@paulweiss.com; and (iv) the attorneys for the UCC, Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, New York 10036, Attn: Michael Stamer, Alexis Freeman and Stephen B. Kuhn, email: jrcccommittee@akingump.com within one (1) business day of the designation of such Stalking Horse Bid.

Bid Protections

In the event the Debtors, in consultation with the DIP Agent and the UCC, select one or more Stalking Horse Bidders in accordance with these Strategic Transaction Bidding Procedures, the Debtors reserve the right to provide, in consultation with the DIP Agent and the UCC, the following bidding protections to such Stalking Horse Bidder(s) if the Debtors consummate a Sale or Sponsored Plan other than the Stalking Horse Bid: (i) payment to the Stalking Horse Bidder of a break-up fee of up to 3% of the purchase price set forth in the Stalking Horse Bid (the "**Break-Up Fee**") and (ii) reimbursement of the reasonable, documented fees and expenses of the Stalking Horse Bidder (the "**Expense Reimbursement**") and together with the Break-Up Fee, the "**Bid Protections**"), *provided*, that the payment of such Break-up Fee and/or Expense Reimbursement shall be subject to the terms and conditions of the definitive agreement(s) executed between the Debtors and such Stalking Horse Bidder(s). The payment of the Bid Protections on the terms agreed to by the Debtors and one or more Stalking Horse Bidders shall be deemed approved pursuant to the Strategic Transaction Bidding Procedures Order, and shall not require any further approval by the Bankruptcy Court; *provided, however*, that, if (a) the Stalking Horse Bid(s) is/are insufficient to pay all claims arising under the DIP Facility in cash in full and the DIP

Agent does not consent to such Bid Protections or (b) the UCC does not consent to such Bid Protections (such consent not to be unreasonably withheld or delayed), then such Bid Protections may be provided only upon a further order of the Court, the motion for which shall be considered on shortened notice (subject to the Court's availability). Until paid, any Break-up Fee and the Expense Reimbursement provided pursuant to the Strategic Transaction Bidding Procedures Order shall constitute allowed superpriority administrative expense claims arising in the Debtors' cases under sections 503(b), 507(a)(2) and 507(b) of the Bankruptcy Code; *provided, however*, that such superpriority claims shall be subject to the Carveout (as defined in the DIP Order), and shall, in no circumstance, be *pari passu* or senior to the claims granted to the DIP Agent, the DIP Lenders, the Prepetition Agent (as defined in the DIP Order) and/or the Prepetition Secured Lenders (as defined in the DIP Order).

The Auction

If no Qualified Bids are submitted by the Bid Deadline, the Debtors may elect, in their reasonable discretion and in consultation with the DIP Agent and the UCC, not to conduct an Auction. If only one Qualified Bid is submitted by the Bid Deadline for all or substantially all of the Auctioned Assets, or one or more Partial Bids (as defined below) are submitted by the Bid Deadline for non-overlapping subsets of the Auctioned Assets, then the Debtors may elect, in their reasonable discretion and in consultation with the DIP Agent and the UCC, to not conduct an Auction and, instead, to promptly seek Bankruptcy Court approval to enter into and consummate such transaction(s).

If two or more Qualified Bids are submitted by the Bid Deadline, the Debtors shall conduct the Auction at **10:00 a.m. (prevailing Eastern time) on July 8, 2014** at the offices of counsel to the Debtors, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017.

Partial Bids and Designation of Auction Lots

If any of the Qualified Bids submitted by the Bid Deadline are structured as a purchase of less than all or substantially all of the Debtors' assets (each such bid, a "**Partial Bid**"), the Debtors may, in consultation with the DIP Agent and the UCC, conduct separate auctions at the Auction for each "lot" of assets (each, an "**Auction Lot**") subject to a Partial Bid (each such separate auction, an "**Auction**"). The Debtors may, in consultation with the DIP Agent and the UCC, designate each Auction Lot at any time prior to the Auction. The Debtors shall not designate more than one Stalking Horse Bid with respect to each Auction Lot.

Auction Procedures

The Auction shall be held in accordance with the following procedures:

- (a) attendance at the Auction will be limited to the Debtors, each Qualified Bidder that has timely submitted a Qualified Bid, the UCC, the DIP Agent, the DIP Lenders, any other party with a security interest in property owned or leased by the Debtors, and the advisors to each of the foregoing, and only Qualified Bidders will be entitled to make any subsequent Qualified Bids at the Auction;
- (b) by 12:00 p.m. (prevailing Eastern time) two days before the Auction, the Debtors will;
 - i. notify each Qualified Bidder that has timely submitted a Qualified Bid that its Bid is a Qualified Bid;
 - ii. notify each Qualified Bidder that has timely submitted a Qualified Bid of any Auction Lot the Debtors have designated to be offered in a separate Auction; and
 - iii. provide such Qualified Bidders with copies of the Qualified Bid that the Debtors, in consultation with the DIP Agent and the UCC, believe is the highest or otherwise best offer for the Auctioned Assets in each designated Auction Lot (if applicable) or a Sponsored Plan (each such bid, a “**Baseline Bid**”);
- (c) all Qualified Bidders that have timely submitted a Qualified Bid will be entitled to be present for all bidding at the Auction,
- (d) bidding at each Auction will begin with the applicable Baseline Bid and each subsequent Bid (an “**Overbid**”) must exceed the Baseline Bid, in the first round of bidding, and the Leading Bid (as defined below), in each subsequent round, by a minimum increment (the “**Minimum Overbid Increment**”) to be determined by the Debtors, in consultation with the DIP Agent and the UCC, prior to the commencement of such Auction, *provided, however*, that if the Debtors, in consultation with the DIP Agent and the UCC, designate a Stalking Horse Bid with respect to any Auction, any Bid at such Auction must exceed the Stalking Horse Bid by at least (i) the Break-Up Fee (if any) and (ii) the anticipated approximate Expense Reimbursement (if any), in addition to meeting any Minimum Overbid Increment;⁶
- (e) with each and every Overbid submitted at the Auction, the party submitting the Bid shall be required to delineate on the record at the Auction, to the satisfaction of the Debtors, in consultation with the DIP Agent and the UCC, the additional consideration being offered, the terms of such Overbid, any changes to such party’s initial Qualified Bid and such party’s basis for calculating the total consideration offered in such Overbid;

⁶ Prior to the commencement of the Auction, the Stalking Horse Bidder (or, if more than one, each such Stalking Horse Bidder) shall provide the Debtors with a written statement of the reasonable and documented fees and expenses incurred by such Stalking Horse Bidder(s) prior to such date together with an estimate of the fees and expenses reasonably anticipated by such Stalking Horse Bidder(s) to be incurred by its participation in the Auction, and the aggregate of such fees and expenses shall be used in such Auction as the approximate Expense Reimbursement.

- (f) except with respect to the Bid Deadline, an Overbid must comply with the conditions for a Qualified Bid set forth herein, and any Overbid shall remain open and binding on the applicable Bidder until and unless (a) the Debtors accept a higher Qualified Bid as an Overbid and (b) such Overbid is not selected as the Alternate Bid;
- (g) after each round of bidding, the Debtors shall announce the Bid or Bids that they believe to be the highest or otherwise best offer or combination of offers (the “**Leading Bid**”);
- (h) bidding shall continue in an additional round of bidding until no further Bids are received, or until the Debtors determine that the Leading Bid submitted in the prior round is superior to all subsequent Bids received; and
- (i) the Debtors shall maintain a transcript of all bids made and announced at the Auction, including the Baseline Bid(s), all Overbids, the Leading Bid(s), the Alternative Bid(s) (as defined below) and the Successful Bid(s) (defined below).

The Debtors shall consult in good faith with the DIP Agent and the UCC throughout the Auction. The Debtors may conduct the Auction, and adopt additional rules with respect thereto, in the manner the Debtors determine in their reasonable discretion, and in consultation with the DIP Agent and the UCC, will result in the highest and best Bids.

Selection of Successful Bid(s) and Alternate Bid(s)

Upon the conclusion of the Auction, the Debtors, in consultation with the DIP Agent and the UCC, shall select the highest or otherwise best Qualified Bid (or combination of Qualified Bids) (each, a “**Successful Bid**” and each such bidder, a “**Successful Bidder**”), and may also select, in consultation with the DIP Agent and the UCC, the second-highest or otherwise best Qualified Bid (or combination of Qualified Bids) (each, an “**Alternate Bid**” and each such Bidder, an “**Alternate Bidder**”), after taking into account such factors as the price of such bids, the form and structure of the bids, associated risks (including closing risks) and any tax considerations.

Promptly following the selection of the Successful Bid(s), the Debtors shall file notice of the Successful Bid(s) with the Court. The Debtors shall promptly seek Bankruptcy Court approval to enter into and consummate the transaction(s) contemplated by the Successful Bid(s). The acceptance by the Debtors of the Successful Bid is conditioned upon approval by the Bankruptcy Court of the Successful Bid and the entry of an order confirming the Sponsored Plan contemplated by the Successful Bid or, if such Successful Bid contemplates a purchase of the Auctioned Assets (or any portion thereof), the entry of an order approving such transaction and the consummation thereof, as applicable. Any such order approving a Successful Bid must be in form and substance reasonably acceptable to the DIP Agent and the UCC. The Alternate Bidder(s) shall be required to keep the Alternate Bid(s) open and irrevocable until the closing of the relevant Successful Bid with the relevant Successful Bidder, and the Good Faith Deposit of an Alternate Bidder shall be held by the Debtors until 24 hours after the closing of the transactions contemplated by the relevant Successful Bid.

Post-Auction Procedures

Assumption and Assignment Notice

In the event that any Successful Bid contemplates a Sale, as soon as practicable after the selection of such Successful Bid, the Debtors will file with the Court a schedule setting forth the contracts and/or leases proposed to be assumed and assigned and serve the Assumption and Assignment Notice, substantially in the form attached as Exhibit 4 to the Strategic Transaction Bidding Procedures Order (the “**Assumption and Assignment Notice**”) by first class mail, postage prepaid, facsimile, electronic transmission, hand delivery or overnight mail on each counterparty (each, a “**Contract Counterparty**”) under each contract or lease proposed intended to be assumed by the Debtors and assigned to the Successful Bidder(s) (each, an “**Assumed and Assigned Contract**”).

The Assumption and Assignment Notice shall set forth: (i) the Successful Bidder(s); (ii) the contract(s) and/or lease(s) that may be assumed by the Debtors and assigned to the Successful Bidder(s); (iii) the name and address of the Contract Counterparty thereto; (iv) the proposed effective date of the assignment (subject to the right of the Debtors and Successful Bidder(s) to withdraw such request for assumption and

assignment prior to the consummation of the Sale or the effectiveness of the Sponsored Plan); (v) a statement as to the Successful Bidder(s)' ability to perform the applicable Debtors' obligations under such contract(s) and/or lease(s); and (vi) the deadline by which any such Contract Counterparty must file an objection to the proposed assumption and assignment; *provided, however*, that the presence of any contract or lease on an Assumption and Assignment Notice does not constitute an admission that such contract or lease is an executory contract or unexpired lease.

If any objection to the proposed assumption and assignment of a contract or lease or related cure amount is timely filed, a hearing with respect to such objection will be held before the United States Bankruptcy Court for the Eastern District of Virginia, Honorable Kevin R. Huennekens, United States Bankruptcy Court for the Eastern District of Virginia, 701 East Broad Street, Richmond, Virginia 23219. A hearing regarding the Cure Amount, if any, may be continued until after the closing of the Sale.

Implementation of the Sale or Sponsored Plan

If the Successful Bid contemplates a Sale, the Debtors seek to have the Sale Hearing on **July 10, 2014 at 1:00 p.m. (prevailing Eastern time)**, or if the Auction has not been held by such date, on the second business day following the Auction or as soon thereafter as the Bankruptcy Court's calendar will permit, before the United States Bankruptcy Court for the Eastern District of Virginia, Honorable Kevin R. Huennekens, United States Bankruptcy Court for the Eastern District of Virginia, 701 East Broad Street, Richmond, Virginia 23219, at which time the Bankruptcy Court shall consider the Motion, the Successful Bid(s) and the Alternate Bid(s) (if any) and confirm the results of the Auction, if any. The Sale Hearing may be adjourned or rescheduled by the Debtors, in consultation with the DIP Agent and the UCC, without notice other than by an announcement of the adjourned date at the Sale Hearing. In the event a Successful Bid contemplates a Sponsored Plan, the Debtors shall move forward with confirmation of the Sponsored Plan as expeditiously as reasonably possible; *provided, however*, that the Alternate Bid(s) shall remain the Alternate Bid(s) pending confirmation of that Sponsored Plan by a Bankruptcy Court order and consummation of the Sponsored Plan.

If the Successful Bidder fails to consummate the Sale (following approval of such Sale by the Bankruptcy Court) or Sponsored Plan (following confirmation of such Sponsored Plan by the Bankruptcy Court) for any reason, then the Alternate Bid(s) will be deemed to be a Successful Bid(s) and the Debtors shall be authorized, but not required, to effectuate the transactions contemplated by the Alternate Bid(s) without further order of the Bankruptcy Court. The Debtors and any other person may pursue any and all remedies available under law against the Successful Bidder in connection with its failure to consummate any Sale or Sponsored Plan.

Return of Good Faith Deposits

The Good Faith Deposit of each Qualified Bidder shall be held in one or more interest-bearing escrow accounts by a third party escrow agent selected by the Debtors and shall be returned (other than with respect to the Successful Bidder and the Alternate Bidder) upon or within two business days after the Auction together with any and all interest (if any) accrued thereon. If the Successful Bidder (or the Alternate Bidder, if applicable) timely closes the transaction contemplated by its Bid, its Good Faith Deposit shall be credited towards the purchase price or investment, as applicable. If a Successful Bidder fails to consummate a proposed transaction because of a breach or failure to perform on the part of such Successful Bidder, in addition to any and all rights, remedies, and/or causes of action that may be available to the Debtors, the defaulting Successful Bidder's Good Faith Deposit shall be forfeited to the Debtors, and such Good Faith Deposit shall irrevocably become property of the Debtors. In addition, the Debtors reserve the right to seek all available damages from the defaulting Successful Bidder.

Reservation of Rights

Notwithstanding anything to the contrary herein, the Debtors reserve the right, in their reasonable judgment, in consultation with the DIP Agent and the UCC, except with respect to any immaterial modifications, to modify these Strategic Transaction Bidding Procedures or adopt additional procedures at any time, with notice to Qualified Bidders, including, without limitation, to (i) to cancel or change the date of the Auction, the Sale Hearing or any of the dates set forth herein one or more times for any reason, (ii) terminate these Strategic Transaction Bidding Procedures at any time to pursue an alternative restructuring strategy that maximizes value for the Debtors' estates, (iii) reject at any time, any bid that is: (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bankruptcy Code or these Strategic Transaction Bidding Procedures, or (c) contrary to the best interests of the Debtors and their estates and creditors, (iv) accept as a Qualified Bidder or Qualified Bid a Bidder or Bid that does not otherwise meet the requirements set forth in these Strategic Transaction Bidding Procedures or (v) agree with any Bidder that it will return such Bidder's Good Faith Deposit if it is the Alternative Bidder and the Successful Bid is for the sponsorship of a plan of reorganization.