

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

VERTEX ENERGY, INC., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 24-90507 (CML)
)
) (Joint Administration Requested)
) (Emergency Hearing Requested)

**DEBTORS' EMERGENCY MOTION FOR ENTRY
OF AN ORDER (I) APPROVING THE BIDDING PROCEDURES AND
AUCTION, (II) SCHEDULING BID DEADLINES, AN AUCTION, OBJECTION
DEADLINES, AND A SALE HEARING, (III) APPROVING THE ASSUMPTION
AND ASSIGNMENT PROCEDURES, (IV) APPROVING THE FORM AND MANNER
OF NOTICE OF A SALE TRANSACTION, THE AUCTION, THE SALE HEARINGS, AND
ASSUMPTION AND ASSIGNMENT PROCEDURES, AND (V) GRANTING RELATED RELIEF**

Emergency relief has been requested. Relief is requested not later than 12:30 p.m. (prevailing Central Time) on September 25, 2024.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on September 25, 2024, at 12:30 p.m. (prevailing Central Time) in Courtroom 401, 4th floor, 515 Rusk Street, Houston, Texas 77002. Participation at the hearing will only be permitted by an audio and video connection.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at (832) 917-1510. Once connected, you will be asked to enter the conference room number. Judge Lopez's conference room number is 590153. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Lopez's homepage. The meeting code is "JudgeLopez". Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the "Electronic Appearance" link on Judge Lopez's homepage. Select the case name, complete the required fields, and click "Submit" to complete your appearance.

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://www.veritaglobal.net/vertex>. The location of Debtor Vertex Energy, Inc.'s corporate headquarters and the Debtors' service address in these chapter 11 cases is 1331 Gemini Street Suite 250, Houston, Texas 77058.



The above-captioned debtors and debtors in possession (collectively, the “Debtors”) state as follows in support of this motion (this “Motion”):²

Preliminary Statement

1. As described in further detail in the First Day Declaration, in the month leading up to commencement of these chapter 11 cases the Debtors, with the assistance of their advisors, launched a competitive marketing process for a potential going-concern transaction of the Debtors’ business, and in parallel, engaged with an ad hoc group of certain holders of first lien term loan claims represented by Sidley Austin LLP, as legal counsel, and Houlihan Lokey, Inc. as investment banker (the “Consenting Term Loan Lenders”) regarding the terms of a comprehensive restructuring transaction. These chapter 11 cases are the continuation of the Debtors’ prepetition strategic marketing process and efforts to implement a transaction that will preserve the Debtors’ operations for the benefit of the Debtors’ estates.

2. On September 24, 2024, the Debtors and the Consenting Term Loan Lenders entered into the restructuring support agreement (the “Restructuring Support Agreement”), which contemplates an expedient process whereby the Debtors will pursue (a) a standalone recapitalization of the Company’s balance sheet (the “Recapitalization Transaction”); or (b) a sale of all, substantially all, or any portion of the Debtors’ assets (the “Assets”) through one or more sales, including through a potential credit bid submitted by the DIP Lenders and/or the Term Loan Lenders.

² A description of the Debtors, their businesses, and the facts and circumstances supporting this Motion and the Debtors’ chapter 11 cases are set forth in greater detail in the *Declaration of R. Seth Bullock, Chief Restructuring Officer of Vertex Energy, Inc., in Support of the Debtors’ Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith and incorporated by reference herein. Capitalized terms used but not otherwise defined in this Motion shall have the meanings ascribed to them in the First Day Declaration, the Bidding Procedures, or the Bidding Procedures Order, as applicable.

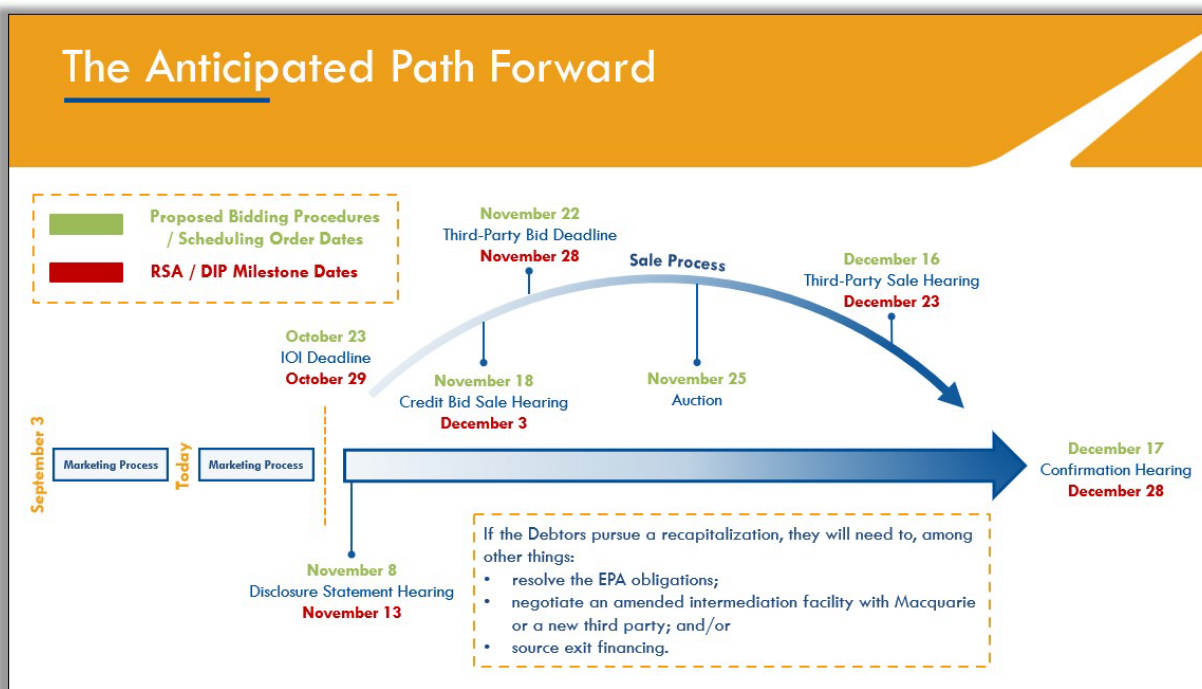
3. On September 3, 2024, the Debtors' commenced the prepetition marketing process of their Assets, and, with the assistance of PWP, prepared a teaser and engaged approximately 53 potentially interested parties (in addition to the 18 financial institutions potentially interested in financing alternatives) to solicit interest in acquiring some or all of the Debtors' Assets. The Debtors' marketing efforts have already yielded third party interest in the Assets and the Debtors are in active discussions with potential bidders.

4. To continue the momentum of the prepetition marketing process and ensure the preservation of the Debtors' estates, including a workforce of more than 480 employees the Debtors have developed bidding and auction procedures to govern the sale of all or substantially all of the Assets, which are attached as Exhibit 1 to the Bidding Procedures Order (the "Bidding Procedures").

5. Pursuant to the Bidding Procedures, parties may submit bids for one or more Assets in any combination. The Bidding Procedures are deliberately flexible, designed to generate the highest or otherwise best offer for a sale of the Assets while adhering to the Debtors' expeditious case timeline pursuant to the milestones set forth in the Restructuring Support Agreement and DIP Facility. Accordingly, the Bidding Procedures establish an Indication of Interest Deadline, whereby potential bidders are required to submit a non-binding written Indications of Interest by no later than October 23, 2024, at 4:00 p.m. prevailing Central Time.

6. The Indications of Interest will provide the Debtors a clear picture of the ultimate shape of these chapter 11 cases. Pursuant to the proposed Bidding Procedures, if the Debtors receive one or more Indications of Interest for an actionable proposal, the Debtors will move swiftly toward an auction. However, if the Debtors do not receive any Acceptable Indications of Interest for any of the Assets prior to the Indication of Interest Deadline, the Debtors may terminate

the marketing process and cancel the Successful Bidder Sale Hearing. Moreover, to the extent the Consenting Term Loan Lenders submit a Credit Bid for all or a portion of the DIP Claims and/or Term Loan Claims (the “Credit Bid Sale”), the Debtors may pursue the accelerated timeline contemplated under the Bidding Procedures.



7. The Bidding Procedures are designed to continue to promote a competitive and robust bidding process, while allowing the Debtors to implement sale transactions on an expedited basis. At the same time, the Bidding Procedures are uniform, providing clarity to the bidding and auction process by establishing dates for submitting bids, conducting an auction, if necessary, and approving one or more transactions (each, a “Sale Transaction”).

8. The Debtors are seeking approval of the following proposed timeline for the sale. A summary of the proposed sale timeline for the Debtors’ assets is outlined below:

Proposed Sale Schedule

Deadline	Date
Indication of Interest Deadline	October 23, 2024 at 12:00 p.m., prevailing Central Time

In the Event there are No Acceptable Bidders and the Credit Bid Sale is Pursued

Deadline	Date
Credit Bid Sale Objection Deadline and Adequate Assurance Objection Deadline	November 11, 2024 at 4:00 p.m., prevailing Central Time
Hearing Approving Credit Bid Sale	November 18, 2024 at 10:00 a.m., prevailing Central Time

In the Event there is at Least One Acceptable Bidder

Deadline	Date
Qualified Bid Deadline	November 22, 2024 at 4:00 p.m., prevailing Central Time
Auction (if any)	November 25, 2024
Successful Bidder Sale Objection Deadline and Adequate Assurance Objection Deadline	December 9, 2024 at 4:00 p.m., prevailing Central Time
Hearing Approving Sale Transaction	December 16, 2024 at 10:00 a.m., prevailing Central Time

9. The proposed sale process is essential for the Debtors' ability to meet the milestones set forth in the Restructuring Support Agreement and conclude these cases in an efficient, value-maximizing manner. Delaying the proposed sale process will compromise the Debtors' ability to successfully effectuate the transactions contemplated by the Restructuring Support Agreement by impinging upon the case milestones.

10. The Debtors are confident that the postpetition marketing process and Bidding Procedures will facilitate the sale of the Assets for the highest or otherwise best bid, preserve as many jobs as possible for the Debtors' dedicated employees, and maximize value for the Debtors' estates on the most efficient timeline available under the circumstances.

Jurisdiction and Venue

11. The United States Bankruptcy Court for the Southern District of Texas (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Order of Reference to Bankruptcy Judges*, dated May 24, 2012, from the United States District Court for the Southern District of Texas. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The Debtors confirm their consent to the Court's entry of a final order in connection with this Motion.

12. Venue is proper pursuant to 28 U.S.C. § 1408.

13. The bases for the relief requested herein are sections 105(a), 363, 365, and 503 of title 11 of the United States Code, 11 U.S.C. §§ 101 – 1532 (the "Bankruptcy Code"), rules 2002, 6004, 6006, 9007, 9008, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), rules 1075-1, 2002-1, and 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the "Bankruptcy Local Rules") and the *Procedures for Complex Cases in the Southern District of Texas* (the "Complex Case Procedures").

Background

14. On the date hereof (the "Petition Date"), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors have filed a motion requesting joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee

or examiner has been made in these chapter 11 cases and no official committees have been appointed or designated.

Relief Requested

15. By this Motion, the Debtors seek entry of:

- (a) An order, substantially in the form attached hereto (the “Bidding Procedures Order”),
 - (i) authorizing and approving the Bidding Procedures attached to the Bidding Procedures Order as Exhibit 1, in connection with a sale of the Assets through one or more Sale Transactions;
 - (ii) scheduling an auction for the sale of the Assets (the “Auction”);
 - (iii) scheduling a Hearing Approving a Credit Bid Sale (the “Hearing Approving Credit Bid Sale”) and/or a Hearing Approving a Sale Transaction with a Successful Bidder (the “Hearing Approving Sale Transaction”), as applicable (each, a “Sale Hearing”) to consider approval of the Sale Transaction(s);
 - (iv) authorizing and approving (1) the form and manner of the notice of Auction, sale of the Assets, and the Sale Hearings, substantially in the form attached to the Bidding Procedures Order as Exhibit 2 (the “Bidding Procedures Notice”) and (2) notice to each non-Debtor counterparty (each, a “Contract Counterparty”) to an executory contract or unexpired lease of non-residential real property of the Debtors (each, a “Contract”) regarding the potential assumption and assignment of such Contracts and the Debtors’ calculations of the amount necessary to cure any monetary defaults under such Contracts (the “Cure Costs”), substantially in the form attached to the Bidding Procedures Order as Exhibit 3 (the “Cure Notice”);
 - (v) authorizing and approving procedures for the assumption and assignment of certain Contracts in connection with the Sale Transactions, as applicable (collectively, the “Assigned Contracts”) and determination of Cure Costs with respect thereto (collectively, the “Assumption and Assignment Procedures”); and
 - (vi) granting related relief;

The Proposed Bidding Procedures and Related Dates and Deadlines

A. Prepetition Marketing Process.

16. On September 3, 2024, the Debtors' proposed investment banker Perella Weinberg Partners LP ("PWP"), acting at the direction of the Debtors, commenced formal market outreach and provided a teaser and confidentiality agreement to potential purchasers and third-party sources of financing. PWP engaged with 53 potentially interested parties (in addition to the 18 financial institutions potentially interested in financing alternatives), which included both strategic and financial buyers, including several parties who previously completed significant diligence in connection with the Debtors' prior capital raise and financing efforts as further described in the First Day Declaration.

17. Following preliminary discussions with PWP and review of certain teaser materials thus far, eight (8) potential bidders, including several of the parties who completed significant diligence in connection with the Debtors' previous capital raise and out-of-court financing efforts, entered into confidentiality agreements with the Debtors. Upon executing a confidentiality agreement with the Debtors, each of such potential bidders received (i) a copy of the Debtors' confidential information memorandum and (ii) access to a virtual data room containing extensive diligence detailing the Debtors' businesses. Many of these parties have already requested additional diligence information and are actively engaging with PWP and management, and the Debtors are cautiously optimistic that the potential bidders will submit Indications of Interest prior to the Indication of Interest Deadline.

18. Accordingly, by this Motion, the Debtors seek to continue the Marketing Process postpetition so that the Debtors can attract as many high-quality Bids as possible. If the Debtors identify a transaction with a third party, whether for the purchase of some or all of the Assets, that

provides stakeholders with greater or otherwise better value than the Recapitalization Transaction, the Debtors can elect to select that path.

19. In connection with the marketing process, the Debtors seek to establish a schedule that provides sufficient time to finalize the Debtors' marketing efforts for a Potential Bidder while balancing the Debtors' desire to minimize administrative expenses and business disruption as they work to emerge from these chapter 11 cases on the fastest timeline possible. Accordingly, the proposed schedule described in greater detail above (the "Sale Schedule") takes into account the prepetition marketing that has already occurred while providing sufficient time postpetition for Potential Bidders to review diligence and submit Bids. The Sale Schedule is also consistent with the case timeline required by the Restructuring Support Agreement and DIP Facility, and allows for consummation of a Sale Transaction by no later than January 17, 2025.

20. The Bidding Procedures proposed herein provide further opportunity to market the Assets, receive and evaluate any Bids, and, if necessary, hold an Auction to determine the highest or otherwise best Bid. The Bidding Procedures also provide the best path to (a) garner additional interest in the Assets, (b) maximize value for the Debtors' estates, and (c) conduct a market check on the value of the proposed recoveries to holders of claims and interests contemplated under the Recapitalization Transaction.

21. Importantly, the Debtors are not, at this time, seeking approval of any particular Sale Transaction, and sale free and clear of liens, or any bidder protections. Any such relief will be requested, as applicable, by separate motion.

22. The Bidding Procedures will allow the Debtors to continue their prepetition Marketing Process and potentiality improve upon the Recapitalization Transaction while ensuring

that the Debtors emerge from these chapter 11 cases as quickly and as smoothly as possible. The Debtors, therefore, request that the Court approve the Bidding Procedures as set forth herein.

Bidding Procedures

A. Overview.

23. The Bidding Procedures are designed to promote a competitive and expedient sale process. The Bidding Procedures describe, among other things, procedures for parties to access due diligence, the manner in which bidders and bids become “qualified,” the receipt and negotiation of bids received, the timing with respect to a credit bid scenario, if applicable, the conduct of an Auction (if necessary), the selection and approval of a Successful Bidder, and the deadlines with respect to the foregoing. If approved, the Bidding Procedures will allow the Debtors to solicit and identify bids from Potential Bidders that constitute the highest or best offer for any of the Assets on a schedule consistent with the Debtors’ chapter 11 strategy.

24. As the Bidding Procedures are attached to the Bidding Procedures Order, they are not herein restated in their entirety. Importantly, however, the Bidding Procedures recognize the Debtors’ fiduciary obligations to maximize value, and, as such, do not impair the Debtors’ ability to consider all Bid proposals, whether for the purchase of some or all of the Assets, and preserve the Debtors’ right to modify the Bidding Procedures as necessary or appropriate to maximize value for their estates. Moreover, the Bidding Procedures promote communication with the Debtors’ key stakeholders—the Debtors will provide information about the ongoing sale process and consult with the Consultation Parties,³ as applicable, to ensure that the Debtors’ stakeholders are apprised of the status and determinations related to a Sale Transaction.

³ The term “Consultation Parties” shall mean the Consenting Term Loan Lenders and the Committee.

B. Key Dates and Deadlines.

25. The Debtors are seeking approval of the Bidding Procedures and the Sale Schedule to establish a clear and open process for the solicitation, receipt, and evaluation of third-party bids on a timeline that complies with the milestones provided in the Restructuring Support Agreement and Facility and allows the Debtors to consummate a Sale Transaction and emerge from these chapter 11 cases in Q1 2025.⁴ Accordingly, the Debtors respectfully request that the Court approve the Sale Schedule.

The Sale Schedule

Deadline	Date
Indication of Interest Deadline	October 23, 2024 at 12:00 p.m., prevailing Central Time

In the Event there are No Acceptable Bidders and the Credit Bid Sale is Pursued

Deadline	Date
Credit Bid Sale Objection Deadline and Adequate Assurance Objection Deadline	November 11, 2024 at 4:00 p.m., prevailing Central Time
Hearing Approving Credit Bid Sale	November 18, 2024 at 10:00 a.m., prevailing Central Time

In the Event there is at Least One Acceptable Bidder

Deadline	Date
Qualified Bid Deadline	November 22, 2024 at 4:00 p.m., prevailing Central Time
Auction (if any)	November 25, 2024

⁴ The Debtors will have the ability to alter the Bidding Procedures based on the exigencies of a given situation if the Debtors determine, in their business judgment, in a manner consistent with their fiduciary duties and applicable law, and in consultation with the Consultation Parties, that it is reasonable to do so.

Deadline	Date
Successful Bidder Sale Objection Deadline and Adequate Assurance Objection Deadline	December 9, 2024 at 4:00 p.m., prevailing Central Time
Hearing Approving Sale Transaction	December 16, 2024 at 10:00 a.m., prevailing Central Time

26. The time periods set forth in the Bidding Procedures are reasonable and essential for the Debtors' swift emergence from chapter 11 and preserving the value of the Debtors' estates. Under the proposed timeline, the Marketing Process would continue for an additional twenty-nine (29) days postpetition, which would extend at least an additional thirty (30) days if the Debtors receive at least one Acceptable Indication of Interest prior to the Indication of Interest Deadline. If the Debtors do not receive any Acceptable Indications of Interest for any of the Assets, the Debtors will either pursue the Recapitalization Transaction or elect to pursue a Credit Bid Sale pursuant to the terms of the Restructuring Support Agreement. If the Debtors pursue a Credit Bid Sale, parties in interest would have approximately forty-eight (48) days from the filing of this Motion to object to the proposed Credit Bid Sale, which is described in greater detail in the Disclosure Statement.

27. The Sale Schedule provides parties with sufficient time to finalize the Debtors' marketing efforts, and for Potential Bidders to conduct ample due diligence, and formulate a value-maximizing bid for the Assets. Accordingly, the Debtors believe the relief requested herein is in the best interest of the Debtors' estates, will provide interested parties with sufficient opportunity to participate, and, therefore, should be approved.

C. Notice Procedures.

28. The Debtors request that the Court approve the form and manner of the Bidding Procedures Notice and the Cure Notice (collectively, the "Notices"), each attached to the proposed

Bidding Procedures Order. The Debtors submit that service of the Bidding Procedures Notice as set forth below (the “Notice Procedures”) is proper and sufficient to provide notice of the Auction, if any, the deadlines to object to each of a Credit Bid Sale and a Sale Transaction with a Successful Bidder, the assumption and assignment of contracts in connection therewith, and the Sale Hearings, as applicable, to all known and unknown parties.

29. The Debtors propose that within three (3) days after entry of the Bidding Procedures Order, the Debtors shall file on the docket and serve the Bidding Procedures Notice, the Bidding Procedures Order, and the Bidding Procedures, by first-class mail, postage prepaid; *provided* that to the extent email addresses are the only available address for any of the foregoing parties, such parties may be served by email, upon the following parties (collectively, the “Bidding Procedures Notice Parties”):

- (a) all entities that have, to the best of the Debtors’ management and advisors’ knowledge, expressed written interest in acquiring any of the Debtors’ Assets;
- (b) all entities known to have asserted any lien, claim, interest, or encumbrance in or upon any of the Debtors’ Assets;
- (c) counsel to any official committee of unsecured creditors appointed in the Debtors’ chapter 11 cases (the “Committee”);
- (d) counsel to the DIP Lenders;
- (e) the Office of the United States Trustee for the Southern District of Texas (the “U.S. Trustee”); and
- (f) any other party receives notice of this Motion.

30. The Debtors shall also, within three (3) days after entry of the Bidding Procedures Order, post the Bidding Procedures Notice on the website of the Debtors’ proposed claims and noticing agent at <https://www.veritaglobal.net/vertex> (the “Case Website”).

31. The Notice Procedures constitute adequate and reasonable notice of the key dates and deadlines for the sale process, including, among other things, the Cure Objection Deadline, the Indication of Interest Deadline, the Credit Bid Sale Objection Deadline and Adequate Assurance Objection Deadline, the Qualified Bid Deadline, the time and location of the Auction (if any), the Successful Bidder Sale Objection Deadline and Adequate Assurance Objection Deadline, and each of the Sale Hearings, as applicable, and are reasonably calculated to provide all interested parties with timely and proper notice of a proposed transaction. Accordingly, the Debtors request that the Court find that the Noticing Procedures are adequate and appropriate under the circumstances and comply with the requirements of Bankruptcy Rule 2002.

Assumption and Assignment Procedures

32. The Assumption and Assignment Procedures set forth in the Bidding Procedures Order will, among other things, govern the Debtors' provision of notice to all Contract Counterparties of Cure Costs in connection with the transfer of Contracts as part of a Sale Transaction. The Debtors will file the Cure Notices with the Court and serve the Cure Notices on the Contract Counterparties, which will be specified in the applicable Cure Notice. The Debtors propose that within fourteen (14) days after entry of the Bidding Procedures Order, the Debtors shall file on the docket and serve the Cure Notice on the Contract Counterparties, and post a copy of the Cure Notice on the Debtors' Case Website.

33. Objections, if any, to any proposed Cure Costs set forth on the Cure Notice (each, a "Cure Objection") or to the provision of adequate assurance of future performance (each, an "Adequate Assurance Objection," and together with the Cure Objections, the "Contract Objections") must: (i) be in writing; (ii) state the name and address of the objecting party and the amount and nature of the claim or interest of such party; (iii) state with particularity the basis and nature of any objection, and provide proposed language that, if accepted and incorporated by

the Debtors, would obviate such objection; (iv) conform to the Bankruptcy Rules and the Bankruptcy Local Rules; and (v) be filed with the Court and served on the Notice Parties.

Credit Bid Adequate Assurance Objection Deadline	November 11, 2024 at 4:00 p.m. prevailing Central Time
Successful Bidder Adequate Assurance Objection Deadline	December 9, 2024 at 4:00 p.m. prevailing Central Time
Additional Adequate Assurance Objection Deadline	10 days after service of each Supplemental Cure Notice
Cure Objection Deadline	10 days after service of the Cure Notice

34. If (a) the Debtors identify (i) additional contracts or leases to be assumed and assigned to a Successful Bidder or (ii) modifications that need to be made to a proposed Cure Cost previously stated in the Cure Notice, or (b) a Successful Bidder designates any additional contracts or leases not previously included on the Cure Notice for assumption and assignment, the Debtors may, after consultation with the Successful Bidder, at any time before the closing of the applicable Sale Transaction, file with the Court and serve by first-class mail on the applicable Contract Counterparty a supplemental Cure Notice (each, a “Supplemental Cure Notice”). As soon as reasonably practicable after filing a Supplemental Cure Notice, the Debtors will post a copy of the Supplemental Cure Notice on the Debtors’ Case Website. Any Cure Objection with respect to Cure Costs set forth in a Supplemental Cure Notice must be filed within ten (10) days of filing of such Supplemental Cure Notice.

35. The Debtors request that any party failing to file a timely Contract Objection be deemed to consent to the treatment of its executory contract and/or unexpired lease under

section 365 of the Bankruptcy Code and be forever barred from asserting any objection with respect to the treatment of such executory contract and/or unexpired lease.

Basis for Relief

A. The Bidding Procedures Are Fair and Reasonable.

36. The Bidding Procedures are reasonable and appropriate and should be approved as proposed. Section 363 of the Bankruptcy Code permits the sale of all or some of a debtor's assets. Moreover, under section 105(a) of the Bankruptcy Code, "[t]he court may issue any order . . . that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). In essence, the Court may enter an order that safeguards the value of the debtor's estate if doing so is consistent with the Bankruptcy Code. *See, e.g., Chinichian v. Campolongo (In re Chinichian)*, 784 F.2d 1440, 1443 (9th Cir. 1986) ("Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code."); *In re Cooper Props. Liquidating Tr., Inc.*, 61 B.R. 531, 537 (Bankr. W.D. Tenn. 1986) (acknowledging that "the [b]ankruptcy [c]ourt is one of equity and as such it has a duty to protect whatever equities a debtor may have in property for the benefit of its creditors as long as that protection is implemented in a manner consistent with the bankruptcy laws").

37. To that end, courts recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate, and, therefore, are appropriate in the context of bankruptcy sales. *See In re ASARCO, L.L.C.*, 650 F.3d 593, 603 (5th Cir. 2011) (affirming the bankruptcy court's approval of bid procedures designed to maximize the value of the debtor's estate); *In re Bigler, LP*, 443 B.R. 101, 115 (Bankr. S.D. Tex. 2010) (providing that the two goals for a sale of the debtors' assets are "maximizing value for the estate and preserving the integrity of the judicial process"); *In re Monitor Dynamics, Inc.*, 2010 Bankr.

LEXIS 4170, at *3 (Bankr. W.D. Tex. Aug. 3, 2010) (approving bid procedures and finding that they “represent the method for maximizing value for the benefit of the Debtor’s estate”).

38. The Bidding Procedures provide for an orderly, uniform, and competitive process through which interested parties may submit offers to purchase all or substantially all of the Debtors’ Assets. The Debtors, with the assistance of their advisors, have structured the Bidding Procedures to promote active bidding by interested parties and to reach the highest or otherwise best offers reasonably available. Additionally, the Bidding Procedures will allow the Debtors to conduct an Auction in a fair and transparent manner that will encourage participation by financially capable bidders with demonstrated ability to timely consummate the Sale Transaction. The Bidding Procedures provide the Debtors with an adequate opportunity to consider competing bids and to select the highest or otherwise best offers for the potential completion of a Sale Transaction.

39. The Debtors submit that the proposed Bidding Procedures will encourage competitive bidding, are appropriate under the relevant standards governing auction proceedings and bidding incentives in bankruptcy proceedings, and are consistent with other procedures previously approved by this Court and courts in other districts. *See e.g., In re Steward Health Care Sys.*, No. 24-90213 (CML) (Bankr. S.D. Tex. Jun. 3, 2024); *In re Robertshaw US Holding Corp.*, No. 24-90052 (CML) (Bankr. S.D. Tex. Mar. 21, 2024); *In re Center for Autism and Related Disorders, LLC*, No. 23-90709 (DRJ) (Bankr. S.D. Tex. Jun. 12, 2024); *In re Nielsen & Bainbridge, LLC*, No. 23-90071 (DRJ) (Bankr. S.D. Tex. Mar. 1, 2024); *In re Bouchard Trans. Co., Inc.*, No. 20-34682 (DRJ) (Bankr. S.D. Tex. Aug. 11, 2021); *In re Westmoreland Coal Co.*, No. 18-35672 (DRJ) (Bankr. S.D. Tex. Nov. 11, 2018).⁵

⁵ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request of the Debtors’ proposed counsel.

B. Assumption and Assignment of the Assigned Contracts Should be Approved.

40. Section 365(a) of the Bankruptcy Code provides that a debtor in possession “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). The Debtors’ decision to assume or reject an executory contract or unexpired lease must only satisfy the “business judgment rule” and will not be subject to review unless such decision is clearly an unreasonable exercise of such judgment. *See, e.g., Richmond Leasing Co. v. Cap. Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985) (applying a business judgment standard to debtor’s determination to assume an unexpired lease); *COR Route 5 Co. v. Penn Traffic Co. (In re Penn Traffic Co.)*, 524 F.3d 373, 383 (2d Cir. 2008) (explaining that the business judgment test “rather obviously presupposes that the estate will assume a contract only where doing so will be to its economic advantage”); *In re Del Grosso*, 115 B.R. 136, 138 (Bankr. N.D. Ill. 1990) (“[T]he standard to be applied for approval of the assumption [of an executory contract] is the business judgment standard. . . .”). Accordingly, any assumption and assignment of executory contracts and unexpired leases (the “Assigned Contracts”) is an exercise of the Debtors’ sound business judgment because the transfer of such contracts or leases is necessary to the Debtors’ ability to obtain the best value for their Assets. Moreover, the Assigned Contracts will be assumed and assigned in accordance with the Assumption and Assignment Procedures approved by the Court pursuant to the Bidding Procedures Order, which will be reviewed by the Debtors’ key stakeholders. Accordingly, the Debtors’ assumption of the Assigned Contracts is an exercise of sound business judgment and should be approved.

41. Further, the consummation of the Sale Transaction, which will involve the assignment of the Assigned Contracts, will be contingent upon the Debtors’ compliance with the applicable requirements of section 365 of the Bankruptcy Code and applicable non-bankruptcy

law. Section 365(b)(1) of the Bankruptcy Code requires that any outstanding defaults under the Assigned Contracts must be cured or that adequate assurance be provided that such defaults will be promptly cured. As set forth above, the Debtors propose to file with the Court and serve on each contract counterparty, the Cure Notice indicating the Debtors' calculation of the Cure Cost for each such contract. The Contract Counterparties will have the opportunity to file objections to the proposed assumption and assignment of the Assigned Contracts to the Successful Bidder, including the proposed Cure Costs.

42. Pursuant to section 365(f)(2) of the Bankruptcy Code, a debtor may assign an executory contract or unexpired lease of nonresidential real property if "adequate assurance of future performance by the assignee of such contract or lease is provided." 11 U.S.C. § 365(f)(2)(B). The meaning of "adequate assurance of future performance" depends on the facts and circumstances of the case. *See In re Bourbon Saloon, Inc.*, 647 Fed. App'x. 342, 346 (5th Cir. 2016) ("A bankruptcy court's determination of adequate assurance of future performance and the ability to cure under § 365 is a fact-specific question." (citing *In re Tex. Health Enters. Inc.*, 72 Fed. App'x 122, 126 (5th Cir. 2003))).

43. As set forth in the Bidding Procedures, for a bid to qualify as a "Qualified Bid," a Potential Bidder must include with its bid Adequate Assurance Information regarding its ability (and the ability of its designated assignee, if applicable) to perform under the Assigned Contracts. The Debtors will provide Adequate Assurance Information for any Successful Bidder to all counterparties to the Assigned Contracts which such bidder seeks to acquire and counterparties will have an opportunity to file a Contract Objection in advance of the applicable Sale Hearing. Based on the foregoing, the Debtors' assumption and assignment of the Assigned Contracts satisfy the requirements under section 365 of the Bankruptcy Code and should be approved.

44. In addition, to facilitate the assumption and assignment of the Assigned Contracts, the Debtors further request that the Court find that all anti-assignment provisions in the Assigned Contracts, whether such provisions expressly prohibit or have the effect of restricting or limiting assignment of such contract or lease, to be unenforceable under section 365(f) of the Bankruptcy Code.⁶

45. The Debtors believe that the Assumption and Assignment Procedures are fair and reasonable, provide sufficient notice, and provide certainty to all parties-in-interest regarding their obligations and rights in respect thereof. Accordingly, the Debtors request that the Court approve the Assumption and Assignment Procedures.

I. Adequate and Reasonable Notice of the Bidding Procedures and Related Dates and Deadlines Will Be Provided.

46. As set forth above, the Bidding Procedures Notice (a) informs interested parties of the deadlines for objecting to the applicable Sale Transaction, and (b) otherwise includes all information relevant to parties interested in, or affected by, the proposed Sale Transactions. Significantly, the form and manner of the Bidding Procedures Notice will have been approved by this Court pursuant to the Bidding Procedures Order, after notice and a hearing, before it is served and, as such, the Debtors are confident that the Bidding Procedures Notice will be properly vetted by the time of service thereof.

⁶ Section 365(f)(1) provides in part that, “notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease[.]” 11 U.S.C. § 365(f)(1). Section 365(f)(3) further provides that, “[n]otwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law that terminates or modifies, or permits a party other than the debtor to terminate or modify, such contract or lease or a right or obligation under such contract or lease on account of an assignment of such contract or lease, such contract, lease, right, or obligation may not be terminated or modified under such provision because of the assumption or assignment of such contract or lease by the trustee.” 11 U.S.C. § 365(f)(3).

Emergency Consideration

47. Pursuant to Bankruptcy Local Rule 9013-1(i), the Debtors request emergency consideration of this Motion pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first twenty-one (21) days after the commencement of a chapter 11 case “to the extent that relief is necessary to avoid immediate and irreparable harm,” and Bankruptcy Local Rule 9013-1(i). This Motion requests relief from procedural rules and requirements that pertain to matters of immediate significance or which involve deadlines sooner than twenty-one (21) days after the commencement of these chapter 11 cases. The relief will save costs and avoid undue administrative burden and confusion only if granted immediately. The Debtors have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 and request that the Court approve the relief requested in this Motion on an emergency basis.

Waiver of Bankruptcy Rules 6004(a) and 6004(h)

48. The Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the fourteen (14) day stay period under Bankruptcy Rule 6004(h).

Reservation of Rights

49. Except as otherwise set forth in the Bidding Procedures, the Debtors shall have the right, in their reasonable discretion and subject to the exercise of their business judgment, after consultation with the Consultation Parties, to modify or terminate the Bidding Procedures; to waive terms and conditions set forth in the Bidding Procedures with respect to all Potential Bidders; accelerate or extend the dates and deadlines set forth in the Bidding Procedures; announce at any Auction modified or additional procedures for conducting the Auctions; alter the assumptions set forth in the Bidding Procedures, provide reasonable accommodations to any Potential Bidder with respect to such terms, conditions, and deadlines of the bidding and Auction

Process to promote bids (including, without limitation, extending deadlines as may be required to comply with any additional filing and review procedures with the applicable regulators in connection with any law or regulation) and/or to terminate discussions with any and all prospective acquirers and investors at any time and without specifying the reasons therefore, in each case to the extent not materially inconsistent with the objectives of the Bidding Procedures and/or the Bidding Procedures Order.

Notice

50. The Debtors will provide notice of this Motion to the following parties or their respective counsel: (a) the U.S. Trustee; (b) the holders of the thirty (30) largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the Consenting Term Loan Lenders; (d) the agent under the Debtors' Term Loan Facility, and counsel thereto; (e) the agent under the Debtors' DIP Facility and counsel thereto; (f) counsel to Macquarie; (g) the United States Attorney's Office for the Southern District of Texas; (h) the Internal Revenue Service; (i) the United States Securities and Exchange Commission; (j) the state attorneys general for states in which the Debtors conduct business; and (k) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, no other or further notice need be given.

The Debtors request that the Court enter the Order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Houston, Texas
September 24, 2024

/s/ Jason G. Cohen

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*Proposed Co-Counsel to the Debtors
and Debtors in Possession*

Certificate of Accuracy

I certify that the foregoing statements are true and accurate to the best of my knowledge.
This statement is being made pursuant to Bankruptcy Local Rule 9013-1(i).

/s/ Jason G. Cohen

Jason G. Cohen

Certificate of Service

I certify that on September 24, 2024, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Jason G. Cohen

Jason G. Cohen

Exhibit 2 (the “Bidding Procedures Notice”) and (4) the notice of each Non-Debtor counterparty to an executory contract or unexpired non-residential real property lease of the Debtors (each, a “Contract”) regarding the potential assumption and assignment of such Contracts and the amount necessary to cure any monetary defaults under such Contracts (the “Cure Costs”) and the applicable proposed assignee, substantially in the form attached hereto as **Exhibit 3** (the “Cure Notice”); (d) approving the procedures for the assumption or assumption and assignment of certain Contracts in connection with the Sale Transaction (collectively, the “Assigned Contracts”) as set forth herein (the “Assumption and Assignment Procedures”), including the procedures for determining Cure Costs with respect thereto; and (e) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over the matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. § 1408; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the “Hearing”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of

the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY FOUND AND DETERMINED THAT:³

A. Statutory and Legal Predicates. The predicates for relief granted herein are sections 105, 363, 365, 503, and 507 of the Bankruptcy Code, Rules 2002, 6004, 6006, 9007, 9008 and 9014 of the Bankruptcy Rules, and Rules 2002-1 and 9013-1 of the Bankruptcy Local Rules.

B. Bidding Procedures. The Debtors have articulated good and sufficient business reasons for the Court to approve the Bidding Procedures. The Bidding Procedures are fair, reasonable, and appropriate under the circumstances. The Bidding Procedures are reasonably designed to promote a competitive and robust bidding process to generate the greatest level of interest in the Debtors' business resulting in the highest or otherwise best offers.

C. Good Faith Negotiations. The Bidding Procedures were negotiated in good faith and at arms' length and are reasonably designed to promote participation and active bidding and ensure that the highest or best value is generated for the Assets.

D. Assumption and Assignment Procedures. The Debtors have articulated good and sufficient business reasons for the Court to approve the Assumption and Assignment Procedures. The Assumption and Assignment Procedures, including the form of Bidding Procedures Notice attached hereto as Exhibit 2 and the form Cure Notice attached hereto as Exhibit 3, are fair, reasonable, and appropriate. The Assumption and Assignment Procedures provide an adequate opportunity for all Contract Counterparties to raise any objections to the proposed assumption and assignment or to the proposed Cure Costs. The Assumption and Assignment Procedures comply with the provisions of section 365 of the Bankruptcy Code and Bankruptcy Rule 6006.

³ The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

E. Cure Notice. The Cure Notice, the form of which is attached hereto as **Exhibit 3**, is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Assumption and Assignment Procedures, as well as any and all objection deadlines related thereto, and no other or further notice shall be required for the Motion and the procedures described therein, except as expressly required herein.

F. Notice. All other notices to be provided pursuant to the procedures set forth in the Motion are good and sufficient notice to all parties in interest of all matters pertinent hereto. No further notice is required.

G. Relief is Warranted. The legal and factual bases set forth in the Motion establish just and sufficient cause to grant the relief requested therein.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. All objections to the relief granted herein that have not been withdrawn with prejudice, waived, or settled, and all reservations of rights included in such objections, are hereby overruled and denied on the merits with prejudice.

2. The Debtors are authorized to implement the Bidding Procedures in accordance with the following Sale Schedule (as may be modified in accordance with the Bidding Procedures):

Proposed Sale Schedule

Deadline	Date
Indication of Interest Deadline	October 23, 2024 at 12:00 p.m., prevailing Central Time

In the Event there are No Acceptable Bidders and the Credit Bid Sale is Pursued

Deadline	Date
Credit Bid Sale Objection Deadline and Adequate Assurance Objection Deadline	November 11, 2024 at 4:00 p.m., prevailing Central Time

Deadline	Date
Hearing Approving Credit Bid Sale	November 18, 2024 at 10:00 a.m., prevailing Central Time

In the Event there is at Least One Acceptable Bidder

Deadline	Date
Qualified Bid Deadline	November 22, 2024 at 4:00 p.m., prevailing Central Time
Auction (if any)	November 25, 2024
Successful Bidder Sale Objection Deadline and Adequate Assurance Objection Deadline	December 9, 2024 at 4:00 p.m., prevailing Central Time
Sale Hearing Date	December 16, 2024 at 10:00 a.m., prevailing Central Time

3. Subject to the terms of this Order and the Bidding Procedures, the dates and deadlines set forth in this Order are subject to modification by the Debtors, after consultation with the Consultation Parties, and upon proper notice to parties in interest, without further order of this Court; *provided* that any such modifications extending the dates shall not be inconsistent with the milestones set forth in the DIP Orders (unless otherwise consented to in writing by the DIP Lenders).

Bidding Procedures

4. The Bidding Procedures, attached hereto as **Exhibit 1**, are hereby approved.

5. The Bidding Procedures are incorporated herein by reference and shall govern the bids and proceedings related to the sale of the Assets, including the Auction. The failure to specifically include or reference any particular provision of the Bidding Procedures in the Motion or this Order shall not diminish or otherwise impair the effectiveness of such procedures, it being the Court's intent that the Bidding Procedures are approved in their entirety, as if fully set forth in

this Order. If there is any conflict between the terms of this Order and the Bidding Procedures, the terms of the Bidding Procedures shall govern. In the event that a Consultation Party submits a Bid in the Auction, such party shall no longer be a Consultation Party with respect to the bidding and auction relating to the assets subject to such Bid until such time as such party withdraws such Bid.

6. The procedures and requirements set forth in the Bidding Procedures, including those associated with submitting an Acceptable Indication of Interest or a Qualified Bid, are fair, reasonable and appropriate, and are designed to maximize recoveries for the benefit of the Debtors' estates, creditors, and all parties in interest.

7. All parties are prohibited from (i) engaging in any collusion with respect to the submission of any bid or the Auction, (ii) coordinating or joining with any other party on a bid or bids (except as permitted by the Debtors), (iii) securing debt financing on an exclusive basis, or (iv) taking any other action intended to prevent a transparent and competitive auction process. Each Qualified Bidder participating in the Auction shall confirm in writing and on the record at the Auction that (i) it has not engaged in any of the foregoing prohibited actions, and (ii) its Qualified Bid is a good faith bona fide offer that it intends to consummate if selected as a Successful Bidder. Notwithstanding the foregoing, certain joint bids may be permitted in accordance with the Bidding Procedures.

8. The Debtors are authorized to take all reasonable actions necessary or appropriate to implement the Bidding Procedures in accordance with the terms of this Order and the Bidding Procedures.

Objections to Sale Transactions

9. The Debtors will file a proposed Sale Order for any applicable Sale Transaction in advance of the hearing to approve such Sale Transaction. Objections to a proposed Sale

Transaction and entry of a Sale Order (each, a “Sale Objection”) shall (a) be in writing; (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Bankruptcy Local Rules; (c) state, with specificity, the legal and factual bases thereof; and (d) be filed with the Court and served on (i) proposed co-counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Brian E. Schartz, P.C., Josephine Fina, and Brian Nakhaimousa, and Kirkland & Ellis LLP, 333 W Wolf Point Plaza, Chicago, IL 60654, Attn: John R. Luze and Rachael M. Bentley; (ii) counsel to any official committee of unsecured creditors appointed in the Debtors’ chapter 11 cases; (iii) counsel to the Consenting Term Loan Lenders, Sidley Austin LLP, 1999 Avenue of the Stars, 17th Floor, Attn: Genevieve G. Weiner, Leslie Plaskon, and Michele Nudelman; and (iv) the U.S. Trustee by no later than the following deadlines:

- (i) In the event there are no Acceptable Bidders and the Credit Bid Sale is pursued, **November 11, 2024 at 4:00 p.m.**, prevailing Central Time (the “Credit Bid Sale Objection Deadline,” and together with the Credit Bid Sale Objection Deadline, the “Sale Objection Deadlines”); or
- (ii) In the event there is a Successful Bidder, **December 9, 2024 at 4:00 p.m.**, prevailing Central Time (the “Successful Bidder Sale Objection Deadline”).⁴

10. An appropriate representative of each Successful Bidder shall appear at the applicable Sale Hearing and be prepared, if necessary, to have such representative(s) testify in support of a Successful Bid and the Successful Bidder’s ability to close in a timely manner and provide adequate assurance of its future performance under any and all executory contracts and unexpired leases to be assumed and assigned to the Successful Bidder as part of the proposed transaction.

⁴ Or such earlier or later date designated by the Debtors after consultation with the Consultation Parties.

Noticing Procedures

11. The Bidding Procedures Notice, substantially in the form annexed hereto as **Exhibit 2**, is approved, and no other or further notice of the sale of the Assets, the Auction, the Sale Hearings, or the Sale Objection Deadlines shall be required if the Debtors serve and post such notice to the Case Website, in the manner provided in the Bidding Procedures and this Order. The Bidding Procedures Notice complies in all respects with applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Bankruptcy Local Rules.

12. Within three (3) days after entry of this Order, the Debtors shall file on the docket and serve the Bidding Procedures Notice, this Order, and the Bidding Procedures, by first-class mail, postage prepaid, on the Bidding Procedures Notice Parties (as defined in the Motion), *provided, however*, that to the extent email addresses are only available for any of the Bidding Procedures Notice Parties, such parties may be served by email.

13. The Bidding Procedures Notice is reasonably calculated to provide interested parties with timely and proper notice of the Auction (if any), including, without limitation: (a) the date, time, and place of the Auction (if any); (b) the Bidding Procedures; (c) reasonably specific identification of the Assets to be sold pursuant to the Bidding Procedures; and (d) a description of a Sale Hearing pursuant to the Bidding Procedures, and no other or further notice of any Auction and/or Sale Hearing shall be required.

14. As soon as reasonably practicable following the passing of the Indication of Interest Deadline, the Debtors shall, in consultation with the Consultation Parties and with the consent of the Consenting Term Loan Lenders, file and serve a notice indicating (i) whether the Debtors have received at least one Acceptable Indication of Interest, and (ii) if the Debtors did not receive any Acceptable Indications of Interest, whether the Debtors (a) are terminating the Marketing Process

and canceling the Successful Bidder Sale Hearing, and (b) intend to transition to a Sale Transaction pursuant to a Credit Bid for all or a portion of the DIP Claims and/or Term Loan Claims.

15. As soon as reasonably practicable following the conclusion of the Auction, the Debtors shall service and post a notice to the Case Website containing the results of the Auction (the “Notice of Auction Results”), which shall (a) identify the applicable Successful Bidder; (b) list all proposed Assigned Contracts to the applicable Successful Bidder; (c) identify any known proposed assignee(s) of proposed Assigned Contracts (if different than the applicable Successful Bidder); (d) list any known Contracts that may later be designated by the applicable Successful Bidder for assumption and assignment in connection with the applicable Sale Transaction; and (e) set forth the deadline and procedures for filing Adequate Assurance Objections (as defined herein) in response to the Notice of Auction Results.

Assumption and Assignment Procedures

16. The following Assumption and Assignment Procedures are reasonable and appropriate under the circumstances, fair to all Contract Counterparties, comply in all respects with the Bankruptcy Code, and are approved.

17. The Cure Notice is reasonable, fair, and appropriate, contains the type of information required under Bankruptcy Rule 2002, and complies in all respects with applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Bankruptcy Local Rules, and is hereby approved.

18. The Cure Notice, including any Supplemental Cure Notice, is reasonably calculated to provide sufficient notice to the Contract Counterparties of the Debtors’ proposed assumption and assignment of the Assigned Contracts in connection with a Sale Transaction and constitutes adequate notice thereof, and no other or further notice of the Debtors’ proposed Cure Costs or the proposed assumption and assignment of the Assigned Contracts shall be required if the Debtors

file and serve such notice in accordance with the Assumption and Assignment Procedures and this Order.

19. By no later than fourteen (14) days after entry of the Bidding Procedure Order, the Debtors shall file the Cure Notice with the Court, serve the Cure Notice on the Contract Counterparties, and post a copy of the Cure Notice on the Debtors' Case Website. Service of the Cure Notice in accordance with this Order on all Contract Counterparties is hereby deemed to be good and sufficient notice of the proposed Cure Costs for, and the proposed assumption and assignment of, the Assigned Contracts.

20. In accordance with the Bidding Procedures, each Bid must contain such financial and other information that allows the Debtors, after consultation with the Consultation Parties, to make a reasonable determination as to the Potential Bidder's financial and other capabilities to consummate a Sale Transaction including, without limitation, such financial and other information setting forth adequate assurance of future performance in satisfaction of the requirements under section 365(f)(2)(B) of the Bankruptcy Code, and the Potential Bidder's willingness to perform under any contracts that are assumed and assigned to such party (such information, "Adequate Assurance Information").

21. The Debtors shall provide, or cause to be provided, to applicable Contract Counterparties' Adequate Assurance Information on a strictly confidential basis once a Qualified Bidder is deemed a Successful Bidder. Contract Counterparties shall not use any Adequate Assurance Information for any purpose other than to (i) evaluate whether the adequate assurance requirements under Bankruptcy Code section 365(f)(2)(B) and, if applicable, Bankruptcy Code section 365(b)(3), have been satisfied, and (ii) support any Adequate Assurance Objection (as defined herein) filed by the Contract Counterparty; *provided, that*, if a Contract Counterparty seeks

to disclose confidential, non-public information included in the Adequate Assurance Information, it shall request Court authority to redact such information, unless disclosure of such confidential, non-public information is authorized by the Debtors, the Successful Bidder, and any known proposed assignee(s) of the relevant Assigned Contracts (if different from the Successful Bidder), or ordered by the Court.

22. Objections, if any, to the proposed assumption, assignment, or assumption and assignment of Assigned Contracts, the subject of which objection is the Successful Bidder's (a) ability to provide adequate assurance of future performance or (b) the proposed form of adequate assurance of future performance with respect to such Assigned Contract (each, an "Adequate Assurance Objection"), must: (i) be in writing; (ii) state the name and address of the objecting party and the amount and nature of the claim or interest of such party; (iii) state with particularity the basis and nature of any objection, and, to the extent applicable, provide proposed language that, if accepted and incorporated by the Debtors, would obviate such objection; (iv) conform to the Bankruptcy Rules and the Bankruptcy Local Rules; and (v) be filed with the Court by the following deadlines:

(i) With respect to the assumption and assignment consummated through a Credit Bid of any proposed Assigned Contract that was identified and noticed pursuant to the Cure Notice, the earlier of (i) 21 days following service of the Credit Bid, and (ii) the Credit Bid Adequate Assurance Objection Deadline (as defined below);

(ii) With respect to the assumption and assignment to a Successful Bidder of any proposed Assigned Contract or Contract that may be designated by a Successful Bidder for assumption and assignment, that was only identified and noticed pursuant to the Notice of Auction Results, the Successful Bidder Adequate Assurance Objection Deadline (as defined below);

(iii) With respect to any proposed Assigned Contract that was only identified in and noticed pursuant to a Supplemental Cure Notice, the Additional Adequate Assurance Objection Deadline (as defined below).

Credit Bid Adequate Assurance Objection Deadline	November 11, 2024 at 4:00 p.m. prevailing Central Time
Successful Bidder Adequate Assurance Objection Deadline	December 9, 2024 at 4:00 p.m. prevailing Central Time
Additional Adequate Assurance Objection Deadline	10 days after service of each Supplemental Cure Notice

23. Objections, if any, to any proposed Cure Costs (each, a “Cure Objection,” and together with the Adequate Assurance Objections, the “Contract Objections”) must: (i) be in writing; (ii) state the name and address of the objecting party and the amount and nature of the claim or interest of such party; (iii) state with particularity the basis and nature of any objection, and, to the extent applicable, provide proposed language that, if accepted and incorporated by the Debtors, would obviate such objection; (iv) conform to the Bankruptcy Rules and the Bankruptcy Local Rules; and (v) be filed with the Court by the following deadlines (each, a “Cure Objection Deadline”):

Cure Objection Deadline	10 days after service of the Cure Notice
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24. If a timely Contract Objection is received and such objection cannot otherwise be resolved by the parties, such objection shall be heard at the applicable Sale Hearing or such other hearing scheduled prior to any scheduled closing of the applicable Sale Transaction.

25. If a Contract Objection cannot otherwise be resolved by the parties, the Debtors may, after consultation with the Successful Bidder(s), assume and assign the Contract(s) pending resolution of the Contract Objection.

26. If (a) the Debtors identify (i) additional contracts or leases to be assumed and assigned to a Successful Bidder or (ii) modifications that need to be made to a proposed Cure Cost previously stated in the Cure Notice, or (b) a Successful Bidder designates any additional contracts

or leases not previously included on the Cure Notice for assumption and assignment, the Debtors may, after consultation with the Successful Bidder, at any time before the closing of the applicable Sale Transaction, file with the Court and serve by first-class mail on the applicable Contract Counterparty a supplemental Cure Notice (each, a “Supplemental Cure Notice,” the form of which shall be substantially similar to the form of Cure Notice attached hereto as Exhibit 3). As soon as reasonably practicable after filing a Supplemental Cure Notice, the Debtors shall post a copy of the Supplemental Cure Notice on the Case Website. Any Cure Objection with respect to Cure Costs set forth in a Supplemental Cure Notice must be filed within ten (10) days of filing of that Supplemental Cure Notice. Notwithstanding anything herein to the contrary, the Debtors shall assume and assign contracts and leases to a Successful Bidder in accordance with the terms and conditions of a Purchase Agreement.

27. If no timely Cure Objection is filed in respect of the Cure Cost identified for an Assigned Contract, the Cure Cost identified on the Cure Notice or a Supplemental Cure Notice, as applicable, will be the only amount necessary under section 365(b) of the Bankruptcy Code to cure all defaults under such Assigned Contract. Any party failing to timely file a Cure Objection shall be forever barred from objecting to the Cure Costs and from asserting any additional cure or other amounts against the Debtors, their estates, and a Successful Bidder.

28. If no timely Adequate Assurance Objection is filed with respect to the provision of adequate assurance of future performance of an Assigned Contract or a Successful Bidder, the Debtors will be deemed to have provided adequate assurance of future performance for such Assigned Contract in accordance with section 365(f)(2)(B) of the Bankruptcy Code and the Contract Counterparty shall forever be barred from asserting against the Debtors, their estates,

and a Successful Bidder, any additional obligation to provide adequate assurance of future performance.

29. Further, if no timely Contract Objection is filed with respect to an Assigned Contract, the relevant Contract Counterparty shall be deemed to have consented to the assumption and assignment of the Assigned Contract to a Successful Bidder.

30. If no Contract Objection is timely received with respect to an Assigned Contract: (i) the Contract Counterparty to such Assigned Contract shall be deemed to have consented to the assumption by the Debtors and assignment to Successful Bidder of the Assigned Contract, and be forever barred from asserting any objection with regard to such assumption and assignment (including, without limitation, with respect to adequate assurance of future performance by the Successful Bidder); (ii) any and all defaults under the Assigned Contract and any and all pecuniary losses related thereto shall be deemed cured and compensated pursuant to Bankruptcy Code section 365(b)(1)(A) and upon payment of the Cure Costs set forth in the Cure Notice for such Assigned Contract; and (iii) the Contract Counterparty shall be forever barred from asserting any other claims related to such Assigned Contract against the Debtors and their estates or the Successful Bidder, or the property of any of them, that existed prior to the entry of the order resolving such Contract Objection and any sale order.

31. Absent entry of an order approving the applicable Sale Transaction, the Assigned Contracts shall not be deemed assumed or assigned, and shall in all respects be subject to further administration under the Bankruptcy Code.

32. The inclusion of a contract, lease, or other agreement on the Cure Notice or any Supplemental Cure Notice shall not constitute or be deemed a determination or admission by the Debtors or any other party in interest that such contract or other document is an executory contract

or unexpired lease within the meaning of the Bankruptcy Code or that the stated Cure Cost is due (all rights with respect thereto being expressly reserved). The Debtors and the applicable counterparties reserve all of their rights, claims, defenses, and causes of action with respect to each contract or other document listed on the Cure Notice or any Supplemental Cure Notice.

Reservation of Rights

33. Except as otherwise set forth in the Bidding Procedures, the Debtors shall have the right, in their reasonable discretion and subject to the exercise of their business judgment, after consultation with the Consultation Parties, to modify or terminate the Bidding Procedures; to waive terms and conditions set forth in the Bidding Procedures with respect to all Potential Bidders; accelerate or extend the dates and deadlines set forth in the Bidding Procedures; announce at any Auction modified or additional procedures for conducting the Auctions; alter the assumptions set forth in the Bidding Procedures, provide reasonable accommodations to any Potential Bidder with respect to such terms, conditions, and deadlines of the bidding and Auction Process to promote bids (including, without limitation, extending deadlines as may be required to comply with any additional filing and review procedures with the applicable regulators in connection with any law or regulation) and/or to terminate discussions with any and all prospective acquirers and investors at any time and without specifying the reasons therefore, in each case to the extent not materially inconsistent with the objectives of the Bidding Procedures and/or the Bidding Procedures Order.

34. Notwithstanding anything to the contrary herein, the Order and the relief granted herein is without prejudice to the rights of any party to object or respond to any proposed Sale Transaction or any other document or instrument contemplated by any of the foregoing, and all such rights are reserved and preserved in all respects.

Fiduciary Out

35. Notwithstanding anything to the contrary in these Bidding Procedures, nothing in these Bidding Procedures or the Bidding Procedures Order shall require a Debtor or the board of directors, board of managers, or such similar governing body of a Debtor to take any action or to refrain from taking any action related to any sale transaction or with respect to these Bidding Procedures to the extent such Debtor, board of directors, board of managers, or such similar governing body reasonably determines in good faith, in consultation with counsel, that taking or failing to take such action, as applicable, would be inconsistent with applicable law or its fiduciary obligations under applicable law.

General Provisions

36. All persons or entities (whether or not Qualified Bidders) that participate in the bidding process shall be deemed to have knowingly and voluntarily (a) consented to the entry of a final order by this Court in connection with the Motion or this Order (including any disputes relating to the bidding process, the Auction and/or any sale transaction) to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution and (b) waived any right to jury trial in connection with any disputes relating to the any of the foregoing matters.

37. The Debtors are authorized to make non-substantive changes to the Bidding Procedures, the Assumption and Assignment Procedures, and any related documents without further order of the Court, including, without limitation, changes to correct typographical and grammatical errors.

38. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 6006(d), 7062, and 9014, or any applicable provisions of the Bankruptcy Local Rules or otherwise, the

terms and conditions of this Order shall be immediately effective and enforceable upon its entry, and no automatic stay of execution shall apply to this Order.

39. The Debtors are authorized to take all reasonable steps necessary or appropriate to carry out the relief granted in this Order.

40. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: _____, 2024

CHRISTOPHER M. LOPEZ
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Bidding Procedures

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

VERTEX ENERGY, INC., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 24-90507 (CML)
)
) (Joint Administration Requested)
)

**BIDDING PROCEDURES FOR
THE SUBMISSION, RECEIPT, AND ANALYSIS OF BIDS IN
CONNECTION WITH THE SALE OF THE DEBTORS' ASSETS**

Overview

On September 24, 2024, Vertex Energy, Inc. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”), filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”). The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.²

The Debtors filed these chapter 11 cases after entering into a restructuring support agreement (the “Restructuring Support Agreement”) with the support of a majority of the Debtors’ term loan lenders (in their capacity as such, the “Prepetition Term Loan Lenders”) whose claims represent 100% of the claims arising on account of obligations under the Loan and Security Agreement (the claims thereunder, the “Term Loan Claims”). The Restructuring Support Agreement contemplates two paths to a value-maximizing transaction: (a) a standalone recapitalization of the Debtors’ balance sheet (the “Recapitalization Transaction”) and (b) the Sale Transaction (as defined herein).

On [●], 2024, the Bankruptcy Court entered an order [Docket No. [●]] (the “Bidding Procedures Order”), which, among other things, approved these procedures (the “Bidding Procedures”) for the consideration of the highest or best offer for a sale or disposition of the Debtors’ assets (the “Assets”). These Bidding Procedures set forth the process by which the Debtors are authorized to solicit bids and conduct an auction (the “Auction”), if held, for the sale

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://www.veritaglobal.net/vertex>. The location of Debtor Vertex Energy, Inc.’s corporate headquarters and the Debtors’ service address in these chapter 11 cases is 1331 Gemini Street Suite 250, Houston, Texas 77058.

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Plan, the Bidding Procedures Order, or the Bidding Procedures Motion, as applicable.

or disposition (each, a “Sale”) of all or substantially all of Debtors’ assets or any portion thereof (collectively, the “Assets”) through one or more transactions (each, a “Sale Transaction”).

These Bidding Procedures describe, among other things: (i) the procedures for Potential Bidders to submit Indications of Interest for one or more Assets; (ii) the manner in which Potential Bidders and Indications of Interest become Acceptable Bidders and Acceptable Indications of Interest; (iii) the manner in which Acceptable Bidders and bids become Qualified Bidders and Qualified Bids; (iv) the negotiation of bids received; (v) the conduct of one or more Auctions; and (vi) the ultimate selection of the Successful Bidder(s) and Court approval thereof (collectively, the “Bidding and Auction Process”).

The Debtors reserve the right to extend any of the bidding deadlines or other dates set forth in these Bidding Procedures, after consultation with the Consultation Parties, without further order of the Bankruptcy Court subject to providing notice as described below; *provided* that such extensions shall not be inconsistent with the milestones set forth in the DIP Orders (unless otherwise consented to by the DIP Lenders in writing).

Reservation of Rights

The Debtors shall have the right, in their reasonable discretion and subject to the exercise of their business judgment, after consultation with the Consultation Parties, to modify or terminate these Bidding Procedures, to waive terms and conditions set forth herein with respect to all Potential Bidders, accelerate or extend the dates and deadlines set forth herein, announce at any Auction modified or additional procedures for conducting the Auction, alter the assumptions set forth herein, provide reasonable accommodations to any Potential Bidder with respect to such terms, conditions, and deadlines of the Bidding and Auction Process to promote bids (including, without limitation, extending deadlines as may be required to comply with any additional filing and review procedures with the applicable regulators in connection with any law or regulation) and/or to terminate discussions with any and all prospective acquirers and investors at any time and without specifying the reasons therefor, in each case to the extent not materially inconsistent with the objectives of these Bidding Procedures and/or the Bidding Procedures Order; *provided* that the Debtors may not modify the consultation or consent rights provided to the Required Lenders (as defined in the DIP Order) in the Bidding Procedures without the written consent of the Required Lenders.

Fiduciary Out

Notwithstanding anything to the contrary in these Bidding Procedures, nothing in these Bidding Procedures or the Bidding Procedures Order shall require a Debtor or the board of directors, board of managers, or such similar governing body of a Debtor to take any action, or to refrain from taking any action, related to any Sale Transaction or with respect to these Bidding Procedures to the extent such Debtor, board of directors, board of managers, or such similar governing body reasonably determines in good faith, in consultation with counsel, that taking or failing to take such action, as applicable, would be inconsistent with applicable law or its fiduciary obligations under applicable law.

Summary of Important Dates

Deadline	Date
Indication of Interest Deadline	October 23, 2024 at 12:00 p.m., prevailing Central Time

In the Event there are No Acceptable Bidders and the Credit Bid Sale is Pursued

Deadline	Date
Credit Bid Sale Objection Deadline and Adequate Assurance Objection Deadline	November 11, 2024 at 4:00 p.m., prevailing Central Time
Hearing Approving Credit Bid Sale	November 18, 2024 at 10:00 a.m., prevailing Central Time

In the Event there is at Least One Acceptable Bidder

Deadline	Date
Qualified Bid Deadline	November 22, 2024 at 4:00 p.m., prevailing Central Time
Auction (if any)	November 25, 2024
Successful Bidder Sale Objection Deadline and Adequate Assurance Objection Deadline	December 9, 2024 at 4:00 p.m., prevailing Central Time
Hearing Approving Sale Transaction	December 16, 2024 at 10:00 a.m., prevailing Central Time

Marketing Process**I. Assets to be Sold**

The Debtors are seeking to sell all or substantially all of their Assets or any portion thereof, which include, but are not limited to, their owned real property, unexpired leases, executory contracts, cash, equipment, supplies, intellectual property, joint venture interest, insurance proceeds, receivables, prepaid expenses and deposits, and books and records, in each case, free and clear of all liens, claims, interests, or other encumbrances.

II. Potential Bidder Requirements

To participate in the bidding process or otherwise be considered for any purpose hereunder, including to receive access to due diligence information with respect to the Assets and be eligible to submit an Indication of Interest, a party must submit, or have previously submitted, to the Debtors or their advisors, the following documentation:

- (A) an executed confidentiality agreement (a “Confidentiality Agreement”) in form and substance satisfactory to the Debtors;
- (B) a statement and other factual support demonstrating, to the Debtors’ satisfaction that the interested party has a bona fide interest in purchasing all or a portion of the Assets;
- (C) a statement of what Assets the Potential Bidder intends to acquire;
- (D) a description of the nature and extent of any due diligence the interested party wishes to conduct and the date in advance of the Qualified Bid Deadline by which such due diligence can be completed; and
- (E) sufficient information, as reasonably determined by the Debtors, to allow the Debtors, after consultation with the Consultation Parties, to reasonably determine that the interested party has, or can obtain, the financial wherewithal and any required internal corporate, legal, or other authorizations to close a Sale Transaction, including, but not limited to, current audited financial statements of the interested party, fully committed debt or equity financing, or such other form of financial disclosure reasonably acceptable to the Debtors in their reasonable discretion.

An interested party shall be a “Potential Bidder” if the Debtors determine in their reasonable discretion that an interested party has satisfied the above requirements. As soon as practicable, the Debtors will deliver to such Potential Bidder (i) an information package containing information and financial data with respect to the Assets in which such Potential Bidder has expressed an interest and (ii) access to the Debtors’ confidential electronic data room (the “Data Room”). For the avoidance of doubt, any party that has executed a Confidentiality Agreement and submitted a non-binding indication of interest prior to the Petition Date, and, in the reasonable judgment of the Debtors, has provided adequate forms of the preliminary documentation requested above, shall be authorized to conduct due diligence and submit a Proposal.

Each Potential Bidder shall comply with all reasonable requests for information and due diligence access by the Debtors or their advisors regarding the ability of such Potential Bidder, as applicable, to consummate a Sale Transaction.

No Potential Bidder may, without the prior written consent of the Debtors (email being sufficient and such consent not to be unreasonably withheld), enter into any agreement, arrangement or understanding with any person (or make any offers or have any discussions which might lead to such agreement, arrangement or understanding) with respect to jointly participating in a potential Sale Transaction. No Potential Bidder shall, without the prior written consent of the

Debtors (email being sufficient and such consent not to be unreasonably withheld), communicate with or share the Debtors' confidential information with any potential bidding partners or financing sources, or enter into any agreement, arrangement or understanding (or have any discussions which might lead to such agreement, arrangement or understanding), whether written or oral, with any actual or potential bidding partners or financing sources that could reasonably be expected to limit, restrict, restrain, or otherwise impair in any manner, directly or indirectly, the ability of such partners or financing sources to bid for the Debtors' assets or provide financing or other assistance to any other person in any other possible transaction involving the Debtors.

III. Due Diligence

Until the Qualified Bid Deadline, the Debtors will provide any Potential Bidder with reasonable access to the Data Room and any other additional information that the Debtors believe to be reasonable and appropriate under the circumstances. The Debtors will work to accommodate all reasonable requests for additional information and due diligence access from Potential Bidders.

Any party interested in submitting a Bid (as defined herein) on any of the Assets should contact the Debtors' investment banker, Perella Weinberg Partners LP and TPH & Co., the energy business of Perella Weinberg Partners (Attn: Doug McGovern (dmcovern@pwppartners.com)); TPH & Co. (Attn: Robert Wheeler (rwheeler@tphco.com)).

Unless otherwise determined by the Debtors in their reasonable discretion and after consultation with the Consultation Parties, the availability of additional due diligence to a Potential Bidder will cease if (i) the Potential Bidder does not become a Qualified Bidder or (ii) the Marketing Process is terminated.

Neither the Debtors nor any of their representatives shall be obligated to furnish any information of any kind whatsoever relating to the Debtors or the Assets (i) to any person or entity who (a) is not a Potential Bidder or a Consultation Party, (b) who does not comply with the participation requirements set forth above, or (c) in the case of competitively sensitive information, is a competitor of the Debtors (except pursuant to "clean team" or other information sharing procedures reasonably satisfactory to the Debtors); *provided* that the Debtors shall give notice to the Consultation Parties of any person that they have designated as a competitor of the Debtors and restricted access to information as a result or (ii) to the extent not permitted by law.

Without the written consent of the Debtors (email being sufficient and such consent not to be unreasonably withheld), no Potential Bidder shall, directly or indirectly, initiate, solicit or maintain contact or otherwise engage in any communication with any director, officer, current or former employee of the Debtors or their affiliates, equityholders, affiliates, creditors, suppliers, distributors, vendors, customers, providers, agents, regulators, landlords or other commercial counterparty of the Debtors regarding the Debtors or their business, financial condition, operations, strategy, prospects, assets or liabilities or concerning any confidential information of the Debtors or any potential Sale Transaction or other transaction involving the Debtors.

IV. Indication of Interest Deadline and Acceptable Bidder Requirements

By no later than **October 23, 2024 at 12:00 p.m.**, prevailing Central Time (the "Indication of Interest Deadline"), Potential Bidders must deliver (unless previously delivered) to each of the

Notice Parties a non-binding written indication of interest (an “Indication of Interest”) containing the material terms of the Potential Bidder’s non-binding proposal, including, but not limited to:

- (A) the identity of the Potential Bidder (including legal name, jurisdiction and form of organization, ownership and capital structure, beneficial owners, ultimate beneficial owners, controlling entities, and the principals and corporate officers) and other authorized representatives authorized to act, with respect to the contemplated transaction, on behalf of the Potential Bidder;
- (B) the Assets of interest proposed to be acquired by the Potential Bidder;
- (C) the transaction structure contemplated by the Potential Bidder, whether a company acquisition or business combination, acquisition or assets, financing transaction, or some combination of the foregoing;
- (D) the proposed purchase price in U.S. Dollars (including cash and non-cash components, if any);
- (E) a statement specifying the Potential Bidder’s intentions with respect to the Debtors’ executory contracts and unexpired leases;
- (F) a statement specifying the Potential Bidder’s intentions with respect to the Debtors’ existing management and employees;
- (G) a statement specifying any key assumptions and any variables to which the Potential Bidder’s valuation is sensitive, as well as any other information the Potential Bidder believes will assist in evaluation of the Indication of Interest;
- (H) a brief assessment of the Potential Bidder’s rationale for the Indication of Interest and the Potential Bidder’s intentions with respect to the Assets. The Proposal should also highlight any former involvement in similar sectors to the Debtors and any other support/relevant facts that support the basis for the Indication of Interest;
- (I) a statement regarding the level of review and, if necessary, approval that the Indication of Interest has received within the Potential Bidder’s organization. The Proposal should also provide a list of any corporate, shareholder, regulatory, or other approvals required to complete the Sale Transaction and the timing to obtain such approvals as well as any other conditions or impediments to the consummation of the Sale Transaction;
- (J) a detailed description of the intended sources of any financing required for the proposed Sale Transaction, as well as an indication of the timing and steps, if any, required to secure such financing, or a statement that the Potential Bidder has available all of the funds necessary to perform all obligations regarding the proposed Sale Transaction;

- (K) a detailed list of due diligence topics, documents required to be reviewed, and other material diligence items, as well as timing in order to finalize a definitive written agreement; and
- (L) a list of the names, and respective functions, of the Potential Bidder's due diligence team and any legal, financial, and other advisors the Potential Bidder has engaged or would plan to engage in connection with the Sale Transaction, including their contact information, and the names, phone numbers, and email addresses of the individuals prepared to answer any questions regarding the Proposal.

The Debtors will deliver, within one (1) business day after receipt thereof, copies of all Indications of Interest to the Consultation Parties. Within two (2) business days after a Potential Bidder delivers the Indication of Interest (unless such time period is extended with the consent of the Required Lenders), the Debtors in their reasonable business judgment will determine, in consultation with the Consultation Parties whether such Potential Bidder has submitted an acceptable Indication of Interest that is an actionable proposal capable of being timely consummated in accordance with the RSA and in the Debtors' reasonable business judgment (any such Potential Bidder, an "Acceptable Bidder", and such bid an "Acceptable Indication of Interest") and will notify each Potential Bidder as to whether their Indication of Interest constitutes an Acceptable Indication of Interest.

If the Debtors receive an Indication of Interest prior to the Indication of Interest Deadline that does not satisfy the requirements of an Acceptable Indication of Interest, the Debtors may provide the Potential Bidder with the opportunity to remedy any deficiencies prior to the Indication of Interest Deadline.

As soon as reasonably practicable upon the passing of the Indication of Interest Deadline, the Debtors shall, in consultation with the Consultation Parties and with the consent of the Required Lenders, file and serve a notice indicating (i) whether the Debtors have received at least one Acceptable Indication of Interest, and (ii) if the Debtors did not receive any Acceptable Indications of Interest, whether the Debtors (a) are terminating the Marketing Process and canceling the Successful Bidder Sale Hearing, and (b) intend to "toggle" from a Recapitalization Transaction to a Sale Transaction pursuant to a Credit Bid for all or a portion of the DIP Claims and/or Term Loan Claims (the "Credit Bid Sale") in accordance with the dates set forth herein.

The Debtors may, after consultation with the Consultation Parties, amend or waive any one or more of the conditions precedent to being an Acceptable Bidder at any time, in their reasonable business judgment, in a manner consistent with their fiduciary duties and applicable law.

V. Right to Credit Bid

Unless the Bankruptcy Court determines otherwise, any Potential Bidder who has a valid, perfected, and unavoidable lien on any of the Debtors' Assets (a "Secured Creditor") shall have the right to credit bid all or a portion of their secured claims for their respective collateral pursuant to section 363(k) of the Bankruptcy Code (each such bid, a "Credit Bid"); *provided* that, for the avoidance of doubt, a Secured Creditor shall have the right to Credit Bid its claim only with respect to the collateral by which such Secured Creditor is secured. The Debtors shall evaluate any such

Credit Bid and may deem such Credit Bid as a Qualified Bid (without any requirement that such Credit Bid comply with Section IV hereof, and without having to submit an Indication of Interest) in their reasonable business judgement in consultation with the Consultation Parties.

Auction Qualification Procedures

VI. Qualified Bid Deadline

An Acceptable Bidder that desires to make a bid shall deliver electronic copies of its bid to the Notice Parties (as defined herein) so as to be received **no later 4:00 p.m. (prevailing Central Time) on November 22, 2024** (the “Qualified Bid Deadline”), *provided* that the Debtors may, after consultation with the Consultation Parties, modify the Qualified Bid Deadline for any reason whatsoever, in their reasonable business judgment, for all or certain Acceptable Bidders, without further order of the Bankruptcy Court, subject to providing notice to all Acceptable Bidders, the Consultation Parties, and the U.S. Trustee.

VII. Communications

There must be no communications between and amongst Acceptable Bidders, Qualified Bidders, and/or the Consultation Parties regarding the Debtors, a Sale Transaction, or these Bid Procedures, unless the Debtors have previously authorized such communication in writing (email being sufficient). The Debtors shall have the right, in their reasonable business judgment and after consultation with the Consultation Parties, to disqualify any Acceptable Bidder(s) or Qualified Bidder(s) that have communications between and amongst themselves or with the Consultation Parties unless the Debtors have previously authorized such communication in writing (email being sufficient).

VIII. Form and Content of Qualified Bids

A “Bid” as used herein is a signed binding document from an Acceptable Bidder received by the Qualified Bid Deadline that identifies the purchaser by its legal name (including any equity holders or other financial backers, if the Acceptable Bidder is an entity formed for the purpose of submitting bids or consummating a Sale Transaction), and any other party that will be participating in connection with the bid or the Sale Transaction, and includes, at a minimum, the following information:

- (A) **Proposed Assets and Assumed Liabilities.** Each Bid must clearly state the following: (a) whether the Acceptable Bidder seeks to purchase some or all of the Assets; and (b) if applicable, the liabilities and obligations to be assumed, including any debt and cure costs to be assumed.
- (B) **Bid Documents.** Each Bid must include duly executed and non-contingent, where applicable, transaction documents necessary to effectuate the transactions contemplated in the Bid (the “Bid Documents”). The Bid Documents shall include, at a minimum: (a) a draft purchase agreement (the “Purchase Agreement”), the form of which will be provided to any Acceptable Bidder prior to the Qualified Bid Deadline, including the exhibits and schedules related thereto and any related material documents integral to such Bid pursuant to which the Acceptable Bidder

proposes to effectuate the Sale, along with copies that are marked to reflect any amendments and modifications from the Purchase Agreement provided by the Debtors and/or their advisors, which amendments and modifications may not be materially more burdensome or otherwise inconsistent with these Bidding Procedures; (b) a schedule of contracts and leases to be rejected to the extent applicable to the Bid, (c) a statement from the Acceptable Bidder specifying what, if any, other materials, conditions, due diligence, documents, exhibits, schedules, and/or ancillary materials are integral to such Bid or the Debtors' consideration thereof, (d) any other material documents integral to such Bid, and (e) an executed statement from the Acceptable Bidder that (i) it is prepared to enter into the Sale Transaction upon conclusion of the Auction (or, if no Auction is held, the Qualified Bid Deadline), (ii) provides for a fully-committed investment of capital, and (iii) the Qualified Bid will be irrevocable (whether or not such Qualified Bid is selected as the Successful Bid or next highest or otherwise best bid (the "Back-Up Bid")) until the consummation of the Sale Transaction.

- (C) **Unconditional Offer; No Financial Contingency.** A statement that the Bid is formal, binding, and unconditional, is not subject to any due diligence or financing contingency, and is irrevocable until the first business day following the closing of the proposed Sale Transaction, except as otherwise provided in these Bidding Procedures. To the extent that a Bid is not (i) accompanied by evidence of the Acceptable Bidder's capacity to consummate the Sale Transaction set forth in its Bid with cash on hand (or other immediately available cash) or (ii) a Credit Bid, each Bid must include committed financing documented to the Debtors' satisfaction, that demonstrates that the Acceptable Bidder has received sufficient debt and/or equity funding commitments to satisfy the Acceptable Bidder's purchase price and other obligations under its Bid.

(D) **Form of Consideration.**

- (i) All-Cash Offer. Unless the Bid includes a Credit Bid (as described below), a statement confirming that the Bid is based on an all-cash offer, and to meet the applicable Minimum Overbid Amount (as defined herein).
- (ii) Credit Bidding. In connection with the sale of all or a portion of the Assets, a person or entity may seek to credit bid all or a portion of their secured claims for their respective collateral (each such bid, a "Credit Bid") pursuant to section 363(k) of the Bankruptcy Code; *provided* that the Credit Bid shall include cash consideration sufficient to pay in full all claims for which there are valid, perfected, and unavoidable liens on any Assets included in such Bid that are senior in priority to those of the party seeking to Credit Bid (unless such senior lien holder consents to alternative treatment) and complies with any orders of the Bankruptcy Court approving debtor-in-possession financing or use of cash collateral (collectively, the "DIP Orders"). A Credit Bid shall not require a Deposit (as defined herein), a commitment for financing, or evidence of financial capabilities to consummate the Sale Transaction.

- (E) **Required Approvals.** A statement or evidence (i) that the Acceptable Bidder has made or will make in a timely manner all necessary filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, if applicable (“HSR Filings”), and any other antitrust law, and pay the fees associated with such filings, (ii) that the Acceptable Bidder has made or will make in a timely manner all necessary filings under any applicable environmental regulatory law, rule, or regulation, and pay the fees associated with such filings, and (iii) of the Acceptable Bidder’s plan and ability to obtain all other governmental and regulatory approvals (or exemptions or waivers thereof) (collectively, the “Regulatory Approvals”) to consummate the Sale Transaction and operate the business and the Assets included in its Bid from and after closing the Sale Transaction (the “Closing”) and the proposed timing for the Acceptable Bidder to undertake the actions required to obtain such Regulatory Approvals. To the extent the Debtors, after consultation with the Consultation Parties, are not satisfied with a Acceptable Bidder’s ability to secure Regulatory Approvals for a Sale Transaction on a timely basis in the context of these chapter 11 cases and the Debtors’ business needs, the Debtors shall have the right, in their reasonable judgment, to disqualify any such Acceptable Bidder(s).
- (F) **No Entitlement to Expense Reimbursement or Other Amounts.** Each Bid must contain (i) an express statement that the Bid does not entitle the Acceptable Bidder to, and the Acceptable Bidder will not seek, any breakup fee, termination fee, expense reimbursement, working fee or similar type of payment or reimbursement and (ii) a waiver of any substantial contribution administrative expense claim under section 503(b) of the Bankruptcy Code or the payment of any broker fees or costs related to a Bid or to the Acceptable Bidder’s participation in the Bidding and Auction Process.
- (G) **Adequate Assurance Information.** Each Bid must contain such financial and other information that allows the Debtors to make a reasonable determination as to the Acceptable Bidder’s financial and other capabilities to consummate the applicable Sale Transaction, including, without limitation, such financial and other information setting forth adequate assurance of future performance under section 365(f)(2)(B) of the Bankruptcy Code, and the Acceptable Bidder’s ability to perform under any contracts that are assumed and assigned to the Acceptable Bidder (the “Adequate Assurance Information”). Adequate Assurance Information may, but shall not be required to, include (i) a corporate organizational chart or similar disclosure identifying ownership and control of the proposed assignee of the applicable contracts and leases; (ii) financial statements, tax returns, and annual reports; (iii) any financial projections, calculations, and/or financial pro-formas prepared in contemplation of purchasing the applicable Assets; (iv) the proposed assignee’s experience in the oil & gas industry and operating a refinery; and (v) a contact person for the proposed assignee.
- (H) **Designation of Contracts and Leases.** Each Bid must identify with particularity each and every executory contract and unexpired lease, the assumption and, as applicable, assignment of which is a condition to Closing.

- (I) **Representations and Warranties.** Each Bid must include the following representations and warranties:
- (i) a statement that the Acceptable Bidder has had an opportunity to conduct any and all due diligence regarding the applicable Assets and Sale Transaction prior to submitting its Bid;
 - (ii) a statement that the Acceptable Bidder has relied solely upon its own independent review, investigation, and/or inspection of any relevant documents and the assets in making its Bid and did not rely on any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express or implied, by operation of law or otherwise, regarding the Assets and Sale Transaction or the completeness of any information provided in connection therewith, except as expressly stated in the representations and warranties contained in the Acceptable Bidder's proposed Purchase Agreement ultimately accepted and executed by the Debtors;
 - (iii) a statement that the Acceptable Bidder agrees to serve as Back-Up Bidder (as defined herein), if its Bid is selected as the next highest or next best bid after the Successful Bid with respect to the applicable Assets, until the Back-Up Bid Termination Date (as defined herein) or as otherwise agreed to by the Debtors after consultation with the Consultation Parties;
 - (iv) a statement that the Acceptable Bidder has not engaged in any collusion and acted in good faith with respect to the submission of its Bid;
 - (v) a statement that all proof of financial ability to consummate a Sale Transaction in a timely manner and all information provided to support adequate assurance of future performance is true and correct; and
 - (vi) a statement that the Acceptable Bidder agrees to be bound by the terms of these Bidding Procedures.
- (J) **Good Faith Deposit.** Each Bid (other than any Credit Bid) must be accompanied with a cash deposit in the amount equal to ten percent (10%) of the aggregate purchase price of the Bid, to be held in an escrow account to be identified and established by the Debtors (the "Good Faith Deposit"). To the extent that a Bid is modified at or prior to the Auction, the applicable Acceptable Bidder must adjust its Good Faith Deposit so that it equals ten percent of the increased aggregate purchase price promptly and in no event later than one (1) business day following the conclusion of the Auction.
- (K) **Contact Information.** Each Bid must be accompanied by the contact information of the specific person(s) whom the Debtors or their advisors should contact in the event that the Debtors have any questions or wish to discuss the Bid submitted by the Acceptable Bidder.

- (L) **Commitment for Financing.** Each Bid must be accompanied with written evidence of available cash, a commitment for financing (not subject to any conditions), and such other evidence of ability to consummate the transaction contemplated by the Purchase Agreement, if applicable, which must be acceptable to the Debtors in their reasonable business judgment, including a description of each investor and any additional party or parties investing in the transaction included in the applicable bid and such party's financial position.
- (M) **Authorization.** Each Bid must be accompanied with a copy of a board resolution or similar document demonstrating the authority of the Acceptable Bidder to make a binding and irrevocable bid on the terms proposed and to consummate the Sale Transaction.
- (N) **Covenant to Cooperate.** Each Bid must be accompanied with a covenant to cooperate with the Debtors to provide pertinent factual information regarding the Acceptable Bidder's operations reasonably required to analyze issues arising with respect to any applicable antitrust laws, and other applicable regulatory requirements.
- (O) **Detailed Bid.** Each such Bid must be accompanied with a detailed analysis of the value of any additional non-cash component of the Bid and back-up documentation to support such value.

The submission of a Bid by the Qualified Bid Deadline shall constitute a binding and irrevocable offer to acquire the Assets reflected in such Bid.

IX. Review of Bids and Designation of Qualified Bidders

The Debtors will deliver, within one (1) business day after receipt thereof, copies of all Bids to the Consultation Parties, including any sealed bids. In advance of the commencement of the Auction, as soon as is reasonably practicable, the Debtors, after consultation with the Consultation Parties, shall determine in their reasonable business judgment which Acceptable Bidders are Qualified Bidders (and such Bids, "Qualified Bids"), and will notify the Acceptable Bidders of whether their respective Bid submitted constitutes a Qualified Bid, which will enable such Qualified Bidder to participate in the Auction. Any Bid that is not deemed a Qualified Bid shall not be considered by the Debtors; *provided* that if the Debtors receive a Bid prior to the Qualified Bid Deadline that does not satisfy the requirements of a Qualified Bid, the Debtors may provide the Acceptable Bidder with the opportunity to remedy any deficiencies prior to the Auction; *provided, further*, that the Debtors may, in consultation with the Consultation Parties, determine that any Potential Bidder that has not submitted an Indication of Interest but has submitted a binding irrevocable Bid that satisfies the requirements of a Qualified Bid is a Qualified Bidder, and such Bid is a Qualified Bid, despite not being deemed an Acceptable Bidder.

The Debtors may, after consultation with the Consultation Parties, amend or waive any one or more of the conditions precedent to being a Qualified Bidder at any time, in their reasonable business judgment, in a manner consistent with their fiduciary duties and applicable law, and may engage in negotiations with Acceptable Bidders who submitted Bids complying with the preceding

section as the Debtors deem appropriate in the reasonable exercise of their business judgment, based upon the Debtors' evaluation of the content of each Bid.

Neither the Debtors nor any of their advisors are making or have at any time made any warranties or representations of any kind or character, express or implied, with respect to the Assets, including, but not limited to, any warranties or representations as to operating history or projections, valuation, governmental approvals, the compliance of the Assets with governmental laws, the truth, accuracy, or completeness of any documents related to the Assets, or any other information provided by or on behalf of the Debtors to a bidder, or any other matter or thing regarding the Assets. All bidders must acknowledge and agree that upon closing the Debtors shall sell and transfer to the Successful Bidder and the Successful Bidder shall accept the Assets, as applicable, except to the extent expressly provided in the Bankruptcy Court's sale order (which may be the Confirmation Order) (the "Sale Order"). Neither the Debtors nor any of their advisors will be liable for or bound by any express or implied warranties, guaranties, statements, representations, or information pertaining to the Assets or relating thereto that the Debtors, any advisor, or agent representing or purporting to represent the Debtors to whomever might have made or furnished, directly or indirectly, orally or in writing, unless (with respect to the Debtors only) specifically set forth in the Sale Order.

The Debtors reserve the right to work with any Bidder in advance of the Auctions to cure any deficiencies in a Bid that is not initially deemed a Qualified Bid. The Debtors may, after consultation with the Consultation Parties, accept a single Bid or multiple Bids for non-overlapping Assets such that, if taken together, would otherwise meet the standards for a single Qualified Bid. If a Bid is received and, in the Debtors' reasonable judgment, after consultation with the Consultation Parties, it is not clear whether the Bid is a Qualified Bid, the Debtors may consult with the Acceptable Bidder and seek additional information in an effort to establish whether or not the Bid is a Qualified Bid, or to cause such Bid to be a Qualified Bid.

X. Failure to Receive a Qualified Bid

If no Qualified Bids for the Assets are received by the Qualified Bid Deadline, the Debtors, in consultation with the Consultation Parties and with the written consent of the Required Lenders, may (i) terminate the Marketing Process, (ii) file and serve a notice indicating that no Qualified Bids were received prior to the Qualified Bid Deadline, and (iii) shall seek approval of other alternatives with respect to the disposition of the Assets, including the Recapitalization Transaction or a Credit Bid Sale.

XI. Auction

Other than as expressly set forth herein, if the Debtors receive more than one Qualified Bid for any particular Asset or portion of the Assets by the Qualified Bid Deadline, the Debtors shall conduct the Auction to determine the Successful Bidder in their reasonable business judgment with respect to such Asset or portion of the Assets. If the Debtors do not receive any Qualified Bids, or receive only one Qualified Bid, the Debtors will not conduct the Auction; *provided, however*, that the Debtors, in consultation with the Consultation Parties, may conduct an Auction in the event any Secured Creditor submits a Credit Bid.

Prior to commencement of the Auction, after consultation with the Consultation Parties, the Debtors shall make a determination regarding the highest or best Qualified Bid (or collection of Qualified Bids) (each, a “Baseline Bid,” and such bidder or group of bidders, a “Baseline Bidder”) to serve as the starting point at the Auction for such Assets. As soon as practicable, but no later than the commencement of the Auction, the Debtors will provide copies of each Baseline Bid to the Consultation Parties and the Qualified Bidders participating in the Auction.

Between the date the Debtors notify an Acceptable Bidder that it is a Qualified Bidder and the Auction, the Debtors may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Without the written consent of the Debtors (email being sufficient and such consent not to be unreasonably withheld), a Qualified Bidder may not modify, amend or withdraw its Qualified Bid, except for proposed amendments to increase the purchase price or otherwise improve the terms of its Qualified Bid, during the period that such Qualified Bid remains binding as specified herein; *provided* that any Qualified Bid may be improved at the Auction as set forth herein.

The Debtors are under no obligation to (i) select any Baseline Bid or (ii) conduct separate Auctions for any Assets, whether before or after selecting a Baseline Bid. Notwithstanding anything to the contrary contained herein, the Debtors may elect, in their reasonable discretion, and after consultation with the Consultation Parties, to adjourn the Auction.

XII. Auction Procedures

The Auction shall be conducted on **November 25, 2024** at (i) the offices of Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, (ii) virtually, pursuant to procedures to be announced to bidders, or (iii) such other time and place as the Debtors, after consultation with the Consultation Parties, may notify Qualified Bidders who have submitted Qualified Bids. Only a Qualified Bidder will be eligible to participate at the Auction, subject to such limitations as the Debtors may impose in good faith, after consultation with the Consultation Parties. Professionals and/or other representatives of the Consultation Parties, and the U.S. Trustee will be permitted to attend and observe the Auction.

At the Auction, Qualified Bidders will be permitted to increase their bids. For each Baseline Bid, bidding will start at the purchase price and terms proposed in the applicable Baseline Bid, and will proceed thereafter in increments to be determined by the Debtors and announced (a “Minimum Overbid Amount”) after consultation with the Consultation Parties. The Debtors reserve the right to and may, after consultation with the Consultation Parties, increase or decrease the Minimum Overbid Amount at any time during the applicable Auction for any assets.

The Debtors may adopt rules, after consultation with the Consultation Parties, for an Auction at any time that the Debtors reasonably determine to be appropriate to promote the goals of the Bidding and Auction Process. At the start of an Auction, the Debtors shall describe the terms of the applicable Baseline Bid. Any rules developed by the Debtors will provide that all bids in the Auction will be made and received in one room (in person or virtually), on an open basis, and all other Qualified Bidders participating in the Auction will be entitled to be present for all bidding with the understanding that the true identity of each Qualified Bidder will be fully disclosed to all other Qualified Bidders participating in the Auction and that all material terms of

each Qualified Bid submitted in response to the Baseline Bid or to any successive bids made at the Auction will be fully disclosed to all other Qualified Bidders throughout the entire Auction. Each Qualified Bidder will be permitted an appropriate amount of time, as reasonably determined by the Debtors in consultation with the Consultation Parties, to respond to the previous bid at the Auction.

The Debtors reserve the right to and may, after consultation with the Consultation Parties, reject at any time before entry of the relevant Sale Order any bid that, in the Debtors' reasonable judgment, is (i) inadequate or insufficient; (ii) not in conformity with the requirements of the Bankruptcy Code, these Bidding Procedures, or the terms and conditions of the applicable Sale Transaction; or (iii) contrary to the best interests of the Debtors and their estates. In doing so, the Debtors may take into account the factors set forth above regarding the form and content of Qualified Bids and the Debtors' review of bids.

Prior to the conclusion of an Auction, the Debtors, after consultation with the Consultation Parties, will (i) review and evaluate each bid made at the Auction on the basis of financial and contractual terms and other factors relevant to the sale process, including those factors affecting the speed and certainty of consummating a Sale Transaction; (ii) determine the highest or best offer or collection of offers for an Asset (as applicable to each Asset, a "Successful Bid"); (iii) determine which Qualified Bid is the next highest or best bid for such Asset (as applicable to each Asset, the "Back-Up Bid"); and (iv) notify all Qualified Bidders participating in an Auction, prior to its conclusion, the successful bidder for such Assets (the "Successful Bidder"), the amount and other material terms of the Successful Bid, and the identity of the party that submitted the Back-Up Bid for such Assets (the "Back-Up Bidder").

Each Qualified Bidder shall be required to confirm, both before and after the Auction, that it has not engaged in any collusion with respect to the submission of any bid, the bidding, or the Auction.

XIII. Post-Auction Process

A Successful Bidder shall, within one (1) business day after the close of the Auction, submit to the Debtors fully executed revised documentation memorializing the terms of the Successful Bid, which shall be in form and substance acceptable to the Debtors, after consultation with the Consultation Parties. Promptly following the submission of such documentation, the Debtors shall file with the Bankruptcy Court notice of the Successful Bid, the Successful Bidder, and, if applicable, the Back-Up Bid and the Back-Up Bidder. The Successful Bid may not be assigned to any party without the written consent of the Debtors (email being sufficient and such consent not to be unreasonably withheld) after consultation with the Consultation Parties.

Except as otherwise agreed to by the Debtors after consultation with the Consultation Parties, the Back-Up Bid shall remain open and irrevocable until the earliest to occur of (i) the consummation of the transaction with the Successful Bidder and (ii) the release of such bid by the Debtors (such date, the "Back-Up Bid Termination Date"). If the transaction with a Successful Bidder is terminated prior to the Back-Up Bid Termination Date, the Back-Up Bidder shall be deemed the Successful Bidder and shall be obligated to consummate the Back-Up Bid as if it were the Successful Bid.

XIV. Notices Regarding Assumption and Assignment

The Debtors shall provide all notices regarding the proposed assumption and assignment of contracts and leases in connection with the Assumption and Assignment Procedures set forth in the Order.

XV. Free and Clear of Any and All Encumbrances

Except as otherwise provided for in a Purchase Agreement, all right, title, and interest in and to the Assets subject thereto shall be sold free and clear of all liens, claims, rights, interests, charges, and encumbrances (collectively, the “Encumbrances”), subject only to the Assumed Liabilities (as defined in a Purchase Agreement), if any, in accordance with Bankruptcy Code section 363(f), with such Encumbrances to attach to the net proceeds (if any) received by the Debtors from the Sale of the Assets in accordance with the Bankruptcy Code, applicable non-bankruptcy law, and any prior orders of the Bankruptcy Court.

XVI. Sale Objections and Sale Hearings

Objections to a proposed Sale Transaction (the “Sale Objections”), including any objection to the sale of any Assets free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code and/or entry of a Sale Order, if applicable, must be (i) filed in accordance with the Bidding Procedures Order (except to the extent set forth by the Debtors in a separate motion seeking approval of a proposed Sale Transaction), (ii) filed with the Bankruptcy Court, and (iii) served on the Notice Parties by no later than the following deadlines (except to the extent set forth by the Debtors in a separate motion seeking approval of a proposed Sale Transaction):

- (i) In the event there are no Acceptable Indications of Interest and the Debtors toggle to pursuing the Credit Bid Sale, **November 11, 2024 at 4:00 p.m.**, prevailing Central Time (the “Credit Bid Sale Objection Deadline”); or
- (ii) In the event there is a Successful Bidder, **December 9, 2024 at 4:00 p.m.**, prevailing Central Time (the “Successful Bidder Sale Objection Deadline” and together with the Credit Bid Sale Objection Deadline, the “Sale Objection Deadlines”).

The Debtors may extend the Sale Objection Deadlines, as the Debtors deem appropriate in the exercise of their reasonable business judgment and after consultation with the Consultation Parties and upon notice to each Successful Bidder(s). If a timely Sale Objection cannot otherwise be resolved by the parties, such objection shall be heard by the Bankruptcy Court at the applicable Sale Hearing.

Any party who fails to timely file with the Bankruptcy Court a Sale Objection will be forever barred from asserting any objection to the applicable sale, or to the consummation and performance of a sale transaction contemplated by a purchase agreement between the Debtors and a Successful Bidder, including the transfer of the Debtors’ business to a Successful Bidder, free and clear of all claims and interests pursuant to section 363(f) of the Bankruptcy Code. Failure to object shall constitute consent for the purposes of section 363(f) of the Bankruptcy Code. Any

objection filed after the applicable Sale Objection Deadline (except to the extent set forth by the Debtors in a separate motion seeking approval of a proposed Sale Transaction) will not be considered by the Bankruptcy Court.

Unless the Debtors file and serve a revised notice, hearings (each, a “Sale Hearing”) to approve the Sale Transaction(s) shall be held on (subject to Court availability):

- (i) In the event there are no Acceptable Bidders and the Credit Bid Sale is pursued, **November 18, 2024 at 10:00 a.m.**, prevailing Central Time (the “Credit Bid Sale Hearing”); or
- (ii) In the event there is a Successful Bidder, **December 16, 2024 at 10:00 a.m.**, prevailing Central Time (the “Successful Bidder Sale Hearing”).

The Sale Hearing, as applicable, will be before the Honorable Christopher M. Lopez, United States Bankruptcy Judge for the Bankruptcy Court for the Southern District of Texas at Courtroom 401, 4th floor, 515 Rusk Street, Houston, Texas 77002. A Sale Hearing may be adjourned or rescheduled as ordered by the Bankruptcy Court, or by the Debtors after consultation with the Consultation Parties, but without further notice to creditors and parties in interest other than by announcement by Debtors of the adjourned date at the Sale Hearing(s).

An appropriate representative of each Successful Bidder shall appear at the applicable Sale Hearing and be prepared, if necessary, to have such representative(s) testify in support of a Successful Bid and the Successful Bidder’s ability to close in a timely manner and provide adequate assurance of its future performance under any and all executory contracts and unexpired leases to be assumed and assigned to the Successful Bidder as part of the proposed transaction.

Treatment and Return of Deposits

XVII. Potential Bidders

Within five (5) business days after the Qualified Bid Deadline, the Escrow Agent shall return to each Acceptable Bidder that was determined not to be a Qualified Bidder, as confirmed by the Debtors, such Acceptable Bidder’s Deposit, plus any interest accrued thereon. Upon the authorized return of such Acceptable Bidder’s Deposit, the bid of such Acceptable Bidder shall be deemed revoked and no longer enforceable.

XVIII. Qualified Bidders

Without limiting the terms of any definitive termination agreement with any Qualified Bidder, the Deposit of a Qualified Bidder will be forfeited to the Debtors if (i) the applicable Qualified Bidder attempts to modify, amend, or withdraw its Qualified Bid, except as permitted by these Bidding Procedures, during the time the Qualified Bid remains binding and irrevocable under these Bidding Procedures, or (ii) the Qualified Bidder is selected as the Successful Bidder and fails to enter into the required definitive documentation or to consummate the transaction in accordance with these Bidding Procedures and the terms of the applicable transaction documents with respect to the Successful Bid. The Escrow Agent shall release the Deposit by wire transfer of immediately available funds to an account designated by the Debtors two (2) business days after

the receipt by the Escrow Agent of a written notice by an authorized officer of the Debtors stating that the Qualified Bidder has breached or failed to satisfy its obligations or undertakings.

With the exception of the Deposit of a Successful Bidder and a Back-Up Bidder, the Escrow Agent shall return to any other Qualified Bidder any Deposit, plus any interest accrued thereon, five (5) business days after the execution by the Successful Bidder and the Debtors of the documentation memorializing the Successful Bid, but in no event later than ten (10) business days after the conclusion of the applicable Sale Hearing.

XIX. Back-Up Bidder

The Escrow Agent shall return a Back-Up Bidder's Deposit, plus any interest accrued thereon, within ten (10) business days after the occurrence of the applicable Back-Up Bid Termination Date.

XX. The Successful Bidder

The Deposit of a Successful Bidder shall be applied against the cash portion of the purchase price of such Successful Bidder upon the consummation of the transaction proposed in the applicable Successful Bid.

XXI. Notice to Escrow Agent

The Debtors and, as applicable, an Acceptable Bidder, Qualified Bidder, and/or Back-Up Bidder agree to execute an appropriate notice to the Escrow Agent for the return of any Deposit to the extent such return is required by these Bidding Procedures. If either party fails to execute such written notice, the Deposit may be released by an order of the Bankruptcy Court.

XXII. Notice and Consultation Parties

Information that must be provided to the "Notice Parties" under these Bidding Procedures must be provided to the following parties:

- (i) The Debtors:

Vertex Energy Inc.
1331 Gemini St., Suite 250
Houston, Texas 77058
Attention: James P. Gregory, Secretary & General Counsel

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Attention: Brian Schartz, P.C.
Josephine Fina
Brian Nakhaimousa
E-mail address: bschartz@kirkland.com
josephine.fina@kirkland.com
brian.nakhaimousa@kirkland.com

Kirkland & Ellis LLP
300 North LaSalle Street
Chicago, IL 60654
Attention: John Luze
Rachael Bentley
E-mail address: john.luze@kirkland.com
rachael.bentley@kirkland.com

(ii) Counsel to the Required Lenders:

Sidley Austin LLP
1999 Avenue of the Stars, 17th Floor
Los Angeles, CA 90067
Attention: Genevieve G. Weiner
Leslie Plaskon
Michele Nudelman
E-mail address: gweiner@sidley.com
lplaskon@sidley.com
mnudelman@sidley.com

(iii) counsel to any official committee of unsecured creditors appointed in the Debtors' chapter 11 cases (the "Committee").

XXIII. **Consultation Parties**

The term "Consultation Parties" as used in these Bidding Procedures shall mean (a) the Required Lenders (as defined in the DIP Orders), and (b) any official committee appointed in these chapter 11 cases (the "Committee").

For the avoidance of doubt, any consultation rights provided to the Consultation Parties by these Bidding Procedures shall not limit the Debtors' discretion in any way and shall not include the right to veto any decision made by the Debtors in the exercise of their reasonable business judgment.

In the event that any Consultation Party or any member of the Committee, or an affiliate of any of the foregoing, submits a bid that is a Qualified Bid, any obligation of the Debtors to consult with (or receive consent from) such bidding party established under these Bidding Procedures will be waived, discharged, and released without further action; *provided* that the

bidding party will have the same rights as any other Qualified Bidder set forth above and will retain any rights it has under the DIP Orders. Notwithstanding the foregoing, the Required Lenders may reasonably request to consult with Jeffrey S. Stein, the Debtors' independent and disinterested director, regarding the status of the Marketing Process.

If a member of the Committee submits an Indication of Interest and/or a Qualified Bid, the Committee will continue to be a Consultation Party; *provided* that the Committee shall exclude such member from any discussions or deliberations regarding the sale of the applicable Assets and shall not provide any confidential information regarding the sale of the applicable Assets to such member.

Consent to Jurisdiction and Authority as Condition to Bidding

All Potential Bidders shall be deemed to have (a) consented to the core jurisdiction of the Bankruptcy Court to enter any order or orders, which shall be binding in all respects, in any way related to the Bidding Procedures, an Auction, or the construction and enforcement of any agreement or any other document relating to the Sale Transaction, (b) waived any right to a jury trial in connection with any disputes relating to the Bidding Procedures, an Auction, or the construction and enforcement of any agreement or any other document relating to the Sale Transaction, and (c) consented to the entry of a final order or judgment in any way related to the Bidding Procedures, an Auction, or the construction and enforcement of any agreement or any other document relating to the Sale Transaction if it is determined that the Bankruptcy Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the parties.

Exhibit 2

Bidding Procedures Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

VERTEX ENERGY, INC., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 24-90507 (CML)
)
) (Joint Administration Requested)
)

NOTICE OF BIDDING PROCEDURES AND RELATED DATES AND DEADLINES

PLEASE TAKE NOTICE that on September [●], 2024, United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”) entered the *Order (I) Approving the Bidding Procedures and Auction, (II) Scheduling Bid Deadlines, an Auction, Objection Deadlines, and a Sale Hearing, (III) Approving The Assumption and Assignment Procedures, (IV) Approving the Form and Manner of Notice of a Sale Transaction, the Auction, the Sale Hearings, and Assumption and Assignment Procedures, and (V) Granting Related Relief* [Docket No. [●]] (the “Bidding Procedures Order”) in the chapter 11 cases of the above-captioned debtors and debtors in possession (collectively, the “Debtors”).²

PLEASE TAKE FURTHER NOTICE that the Debtors are soliciting offers for the purchase of all or substantially all of the Debtors’ assets (the “Assets”) consistent with the Bidding Procedures approved by the Court pursuant to the Bidding Procedures Order. **All interested bidders should carefully read the Bidding Procedures and Bidding Procedures Order.** To the extent that there are any inconsistencies between this notice and the Bidding Procedures or Bidding Procedures Order, the Bidding Procedures or Bidding Procedures Order, as applicable, shall govern in all respects.

Important Dates and Deadlines

PLEASE TAKE FURTHER NOTICE that the deadline by which Potential Bidders (as defined in the Bidding Procedures) must deliver to each of the Notice Parties (as defined in the Bidding Procedures) a non-binding written Acceptable Indication of Interest (as defined in the Bidding Procedures) is **October 23, 2024 at 12:00 p.m. (prevailing Central Time)** (the “Indication of Interest Deadline”).

PLEASE TAKE FURTHER NOTICE that, in the event that at least one Acceptable

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://www.veritaglobal.net/vertex>. The location of Debtor Vertex Energy, Inc.’s corporate headquarters and the Debtors’ service address in these chapter 11 cases is 1331 Gemini Street Suite 250, Houston, Texas 77058.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Bidding Procedures or the Bidding Procedures Order, as applicable.

Bidder has submitted an Acceptable Indication of Interest prior to the Indication of Interest Deadline:³

- i. the deadline by which all binding bids must be actually received pursuant to the Bidding Procedures is **November 22, 2024, at 4:00 p.m. (prevailing Central Time)** (the “Qualified Bid Deadline”);
- ii. if the Debtors receive qualified competing bids within the requirements and time frame specified by the Bidding Procedures, the Debtors will conduct an auction (the “Auction”) of the Assets on **November 25, 2024, at 4:00 p.m. (prevailing Central Time)** (the “Auction Date”) at the offices of co-counsel to the Debtors: Kirkland & Ellis LLP, 601 Lexington Avenue, New York, NY 10022;
- iii. the deadline by which an objection to a proposed Sale Transaction must be filed is **December 9, 2024 at 4:00 p.m. (prevailing Central Time)** (the “Successful Bidder Sale Objection Deadline”); and
- iv. the hearing approving the Sale Transaction will take place on **December 16, 2024 at 10:00 a.m. (prevailing Central Time)** (the “Successful Bidder Sale Hearing”).

PLEASE TAKE FURTHER NOTICE that if the Debtors do not receive any Acceptable Indications of Interest prior to the Indication of Interest Deadline, the Debtors may (a) terminate the Marketing Process and cancel the Successful Bidder Sale Hearing, and (b) elect to pursue a Sale Transaction pursuant to a Credit Bid for all or a portion of the DIP Claims and/or Term Loan Claims (the “Credit Bid Sale”).

PLEASE TAKE FURTHER NOTICE that in the event there are no Acceptable Bidders and the Credit Bid Sale is pursued:

- i. the deadline by which an objection to the Credit Bid Sale must be filed is **November 11, 2024 at 4:00 p.m. (prevailing Central Time)** (the “Credit Bid Sale Objection Deadline”); and
- ii. the hearing approving the Credit Bid Sale will take place on **November 18, 2024 at 10:00 a.m. (prevailing Central Time)** (the “Credit Bid Sale Hearing”).

PLEASE TAKE FURTHER NOTICE that the Sale Hearing, as applicable, will be before the Honorable Christopher M. Lopez, United States Bankruptcy Judge for the Bankruptcy Court for the Southern District of Texas at Courtroom 401, 4th floor, 515 Rusk Street, Houston, Texas 77002. A Sale Hearing may be adjourned or rescheduled as ordered by the Bankruptcy Court, or by the Debtors after consultation with the Consultation Parties, but without further notice to

³ An “Acceptable Bidder” means a Potential Bidder (as defined in the Bidding Procedures) that has delivered an Acceptable Indication of Interest (as defined in the Bidding Procedures) containing the material terms described in the Bidding Procedures to the Notice Parties (as defined in the Bidding Procedures) by no later than October 23, 2024, at 12:00 p.m., prevailing Central Time.

creditors and parties in interest other than by announcement by Debtors of the adjourned date at the Sale Hearing(s).

Notices Regarding Assumption and Assignment

The Debtors shall provide all notices regarding the proposed assumption and assignment of contracts and leases in connection with the Assumption and Assignment Procedures set forth in the Order.

Auction

The Auction (if any) shall be conducted on the Auction Date at (i) the offices of Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, (ii) pursuant to procedures to be announced to Qualified Bidders, or (iii) such other time and place as the Debtors may notify Qualified Bidders who have submitted Qualified Bids. Only a Qualified Bidder will be eligible to participate at an Auction, subject to such limitations as the Debtors may impose in good faith, after consultation with the Consultation Parties. Further, only professionals and/or other representatives of the Consultation Parties, and the U.S. Trustee will be permitted to attend and observe an Auction.

All interested or potentially affected parties should carefully read the Bidding Procedures and the Bidding Procedures Order. Copies of the Bidding Procedures, the Bidding Procedures Order, and any other related documents are available upon request to Verita Global LLC by calling (877) 709-4747 (domestic, toll free) or +1 (424) 236-7228 (international) or visiting the Debtors' restructuring website at <https://www.veritaglobal.net/vertex>.

FAILURE TO ABIDE BY THE BIDDING PROCEDURES, THE BIDDING PROCEDURES ORDER, OR ANY OTHER ORDER OF THE BANKRUPTCY COURT IN THESE CHAPTER 11 CASES MAY RESULT IN THE REJECTION OF YOUR BID.

THE FAILURE OF ANY PERSON OR ENTITY TO FILE AND SERVE AN OBJECTION IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER BY THE SALE OBJECTION DEADLINES SHALL FOREVER BAR SUCH PERSON OR ENTITY FROM ASSERTING ANY OBJECTION TO THE MOTION, THE ORDER APPROVING THE APPLICABLE SALE TRANSACTION, THE PROPOSED SALE TRANSACTION, OR ANY OTHER AGREEMENT EXECUTED BY THE DEBTORS AND A SUCCESSFUL BIDDER AT THE AUCTIONS.

Additional Information

Copies of the Bidding Procedures and the Bidding Procedures Order, and any related documents are available upon request to Verita Global LLC by calling (877) 709-4747 (domestic, toll free) or +1 (424) 236-7228 (international) or visiting the Debtors' restructuring website at <https://www.veritaglobal.net/vertex>.

Houston, Texas
[●], 2024

/s/ *DRAFT*

BRACEWELL LLP

Jason G. Cohen (TX Bar No. 24050435)
Jonathan L. Lozano (TX Bar No. 24121570)
711 Louisiana Street, Suite 2300
Houston, Texas 77002
Telephone: (713) 223-2300
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-and-

Mark E. Dendinger (*pro hac vice* pending)
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*Proposed Co-Counsel to the Debtors
and Debtors in Possession*

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-and-

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rachael.bentley@kirkland.com

*Proposed Co-Counsel to the Debtors
and Debtors in Possession*

Exhibit 3

Cure Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re: VERTEX ENERGY, INC., <i>et al.</i> , ¹ Debtors.)))))))	Chapter 11 Case No. 24-90507 (CML) (Joint Administration Requested) (Emergency Hearing Requested)
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**NOTICE OF CURE COSTS AND POTENTIAL
ASSUMPTION AND ASSIGNMENT OF EXECUTORY
CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH SALE**

PLEASE TAKE NOTICE that on September [●], 2024, United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”) entered the *Order (I) Approving the Bidding Procedures and Auction, (II) Scheduling Bid Deadlines, an Auction, Objection Deadlines, and a Sale Hearing, (III) Approving The Assumption and Assignment Procedures, (IV) Approving the Form and Manner of Notice of a Sale Transaction, the Auction, the Sale Hearings, and Assumption and Assignment Procedures, and (V) Granting Related Relief* [Docket No. [●]] (the “Bidding Procedures Order”) in the chapter 11 cases of the above-captioned debtors and debtors in possession (collectively, the “Debtors”).²

PLEASE TAKE FURTHER NOTICE that the Debtors are soliciting offers for the purchase of all or substantially all of the Debtors’ assets (the “Assets”) consistent with the Bidding Procedures approved by the Court pursuant to the Bidding Procedures Order. **All interested bidders should carefully read the Bidding Procedures and Bidding Procedures Order.** To the extent that there are any inconsistencies between this notice and the Bidding Procedures or Bidding Procedures Order, the Bidding Procedures or Bidding Procedures Order, as applicable, shall govern in all respects.

Cure Costs

In accordance with the Assumption and Assignment Procedures and the Bidding Procedures Order, the Debtors shall, in connection with a Sale Transaction, assume and assign to

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://www.veritaglobal.net/vertex>. The location of Debtor Vertex Energy, Inc.’s corporate headquarters and the Debtors’ service address in these chapter 11 cases is 1331 Gemini Street Suite 250, Houston, Texas 77058.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the the Bidding Procedures, or the Bidding Procedures Order, as applicable.

the Successful Bidder (or its designated assignees, as applicable) certain contracts and leases of the Debtors.

Each of the contracts and leases that may potentially be assumed and assigned in connection with a Sale Transaction and the Debtors' calculation of the Cure Costs with respect thereto are set forth on **Exhibit A** annexed hereto.

The inclusion of any contract or lease on **Exhibit A** does not constitute an admission that a particular contract or lease is an executory contract or unexpired lease within the meaning of the Bankruptcy Code or require or guarantee that such contract or lease ultimately will be assumed or assigned. All rights of the Debtors and the counterparties with respect thereto are reserved.

Notwithstanding the inclusion of any lease or contract on **Exhibit A**, a purchaser of the Debtors' Assets is not bound to accept assignment of such Contract and may amend the schedule of Assigned Contracts to remove any contract or lease to the extent provided in their purchase agreement with the Debtors.

If (a) the Debtor identifies (i) additional contracts or leases to be assumed and assigned to a purchaser or (ii) modifications that need to be made to a proposed Cure Cost previously stated in the Assignment and Cure Notice; or (b) a purchaser designates any additional contracts or leases not previously included on this Assignment and Cure Notice for assumption and assignment, the Debtor shall file with the Court and serve by first class mail on the applicable Contract Counterparty a supplemental Assignment and Cure Notice (a "**Supplemental Cure Notice**"). As soon as reasonably practicable after filing a Supplemental Cure Notice, the Debtors shall post a copy of the Supplemental Cure Notice on the Debtors' restructuring website at <https://www.veritaglobal.net/vertex>.

Cure Objections

Objections, if any, to any proposed Cure Costs (each, a "**Cure Objection**," and together with the Adequate Assurance Objections, the "**Contract Objections**") with respect to the Contracts identified on **Exhibit A** must: (i) be in writing; (ii) state the name and address of the objecting party and the amount and nature of the claim or interest of such party; (iii) state with particularity the basis and nature of any objection, and, to the extent applicable, provide proposed language that, if accepted and incorporated by the Debtors, would obviate such objection; (iv) conform to the Bankruptcy Rules and the Local Rules; and (v) be filed with the Court **ten (10) days after service of the initial Cure Notice** (the "**Cure Objection Deadline**"). Any Cure Objection with respect to Cure Costs set forth in a Supplemental Cure Notice must be filed within **ten (10) days after service of the Supplemental Cure Notice** (the "**Supplemental Cure Objection Deadline**").

Adequate Assurance Objections

Objections, if any, to the proposed assumption and assignment of a Contract identified on **Exhibit A** based on a purchaser of the Debtors' Assets (a) ability to provide adequate assurance of future performance or (b) the proposed form of adequate assurance of future performance with respect to such Assigned Contract (each, an "**Adequate Assurance Objection**"), must: (i) be in writing; (ii) state the name and address of the objecting party and the amount and nature of the claim or interest of such party; (iii) state with particularity the basis and nature of any objection,

and, to the extent applicable, provide proposed language that, if accepted and incorporated by the Debtors, would obviate such objection; (iv) conform to the Bankruptcy Rules and the Bankruptcy Local Rules; and (v) be filed with the Court by the following deadlines (the “Adequate Assurance Objection Deadlines”):

- i. in the event there are no Acceptable Bidders, and the Credit Bid Sale is pursued, the deadline by which an Adequate Assurance Objection must be filed is **November 11, 2024 at 4:00 p.m. (prevailing Central Time)** (the “Adequate Assurance Objection Deadline”); and
- ii. in the event there is at least one Acceptable Bidder, the deadline by which an Adequate Assurance Objection must be filed is **December 9, 2024 at 4:00 p.m. (prevailing Central Time)** (the “Adequate Assurance Objection Deadline”)

IF NO TIMELY CONTRACT OBJECTION IS FILED WITH RESPECT TO AN ASSIGNED CONTRACT OR A PURCHASER OF THE DEBTORS’ ASSETS: (I) THE CONTRACT COUNTERPARTY TO SUCH PROPOSED ASSIGNED CONTRACT SHALL BE DEEMED TO HAVE CONSENTED TO THE ASSUMPTION BY THE DEBTOR AND ASSIGNMENT TO THE PURCHASER, AS APPLICABLE, OF THE ASSIGNED CONTRACT, AND BE FOREVER BARRED FROM ASSERTING ANY OBJECTION WITH REGARD TO SUCH ASSUMPTION AND ASSIGNMENT (INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO ADEQUATE ASSURANCE OF FUTURE PERFORMANCE BY THE PURCHASER OR PURCHASERS); (II) ANY AND ALL DEFAULTS UNDER THE ASSIGNED CONTRACT AND ANY AND ALL PECUNIARY LOSSES RELATED THERETO SHALL BE DEEMED CURED AND COMPENSATED PURSUANT TO BANKRUPTCY CODE SECTION 365(B)(1)(A) AND UPON PAYMENT OF THE CURE COSTS SET FORTH IN THE CURE NOTICE FOR SUCH ASSIGNED CONTRACT; (III) THE DEBTOR WILL BE DEEMED TO HAVE PROVIDED ADEQUATE ASSURANCE OF FUTURE PERFORMANCE FOR SUCH ASSIGNED CONTRACT IN ACCORDANCE WITH SECTION 365(F)(2)(B) OF THE BANKRUPTCY CODE AND THE CONTRACT COUNTERPARTY SHALL FOREVER BE BARRED FROM ASSERTING AGAINST THE DEBTOR, ITS ESTATE, AND A PURCHASER, ANY ADDITIONAL OBLIGATION TO PROVIDE ADEQUATE ASSURANCE OF FUTURE PERFORMANCE; AND (IV) THE CONTRACT COUNTERPARTY SHALL BE FOREVER BARRED FROM ASSERTING ANY OTHER CLAIMS RELATED TO SUCH ASSIGNED CONTRACT AGAINST THE DEBTOR AND ITS ESTATE OR THE PURCHASER, OR ITS PROPERTY, THAT EXISTED PRIOR TO THE ENTRY OF THE ORDER RESOLVING SUCH CONTRACT OBJECTION AND ANY SALE ORDER (AS APPLICABLE).

Additional Information

Copies of the Bidding Procedures and the Bidding Procedures Order, and any related documents are available upon request to Verita Global LLC by calling (877) 709-4747 (domestic, toll free) or +1 (424) 236-7228 (international) or visiting the Debtors’ restructuring website at <https://www.veritaglobal.net/vertex..>

Houston, Texas
[●], 2024

/s/ *DRAFT*

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