

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION

<b>IN RE:</b>	)	<b>CHAPTER 11</b>
	)	
<b>REGIONAL HOUSING &amp; COMMUNITY SERVICES CORP., et al.,</b>	)	<b>Jointly Administered Under</b>
	)	<b>CASE NO. 21-41034-pwb</b>
	)	
<b>Debtors.</b>	)	
	)	

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**DEBTORS’ FIRST MOTION (A) FOR AUTHORITY TO SELL ASSETS FREE AND CLEAR OF LIENS, CLAIMS, AND ENCUMBRANCES (B) TO ASSUME AND ASSIGN CERTAIN EXECUTORY CONTRACTS, LEASES AND LICENSES AND ESTABLISH CURE COSTS IN CONNECTION THEREWITH; (C) TO ESTABLISH PROCEDURES WITH RESPECT TO SUCH SALE AND THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND LEASES, (D) TO CONSIDER APPROVAL OF BREAKUP FEE, AND (E) TO SHORTEN AND LIMIT NOTICE**

COME NOW the above-captioned debtors and debtors and debtors-in-possession (collectively, the “**Debtors**”)<sup>1</sup> by and through the undersigned counsel and submit this Motion pursuant to Sections 105(a), 363(b), (f) and (m), and 365 of the Bankruptcy Code, and Bankruptcy Rules 6004, 6006, 9006 and 9007 and seek the following relief:

- Entry of an order shortening notice and scheduling a hearing on May 10, 2022 (the “**Procedures Hearing**”) to consider the relief set forth in the proposed Procedures Order (as defined below) and outlined in the following bullet;
- Entry of an order substantially in the form attached hereto as **Exhibit A** at or following the Procedures Hearing, governing the procedures to be utilized for

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1 The Debtors in these Chapter 11 cases include: Regional Housing & Community Services Corporation, RHCSC Columbus AL Holdings LLC, RHCSC Columbus Health Holdings LLC, RHCSC Douglas AL Holdings LLC, RHCSC Douglas Health Holdings LLC, RHCSC Gainesville AL Holdings LLC, RHCSC Gainesville Health Holdings LLC, RHCSC Montgomery I AL Holdings LLC, RHCSC Montgomery I Health Holdings LLC, RHCSC Montgomery II AL Holdings LLC, RHCSC Montgomery II Health Holdings LLC, RHCSC Rome AL Holdings LLC, RHCSC Rome Health Holdings LLC, RHCSC Savannah AL Holdings LLC, RHCSC Savannah Health Holdings LLC, RHCSC Social Circle AL Holdings LLC, and RHCSC Social Circle Health Holdings LLC.



the marketing and sale process of the Debtors' eight (8) assisted living facilities and all personal property and other assets associated therewith as defined more fully below, each a "**Facility**" and collectively the "**Facilities**"), including: (i) approval of the proposed bid procedures attached hereto as **Exhibit B** (the "**Bid Procedures**"), which include, among other things, requirements and deadlines for submitting initial bids and overbids, selection of one or more "stalking horses," scheduling an auction, and identifying potential successful bidders and back-up bidders; (ii) authorization for the Debtors to award certain "stalking horse" protections to one or more "stalking horse" bidders (each, a "**Stalking Horse Bidder**") which protections include a break-up fee not to exceed 3% of a proposed purchase price; (iii) approving certain procedures for the assignment and assumption of the Debtors' executory contracts and unexpired leases, including setting objection deadlines and cure procedures (as defined more fully herein, the "**Assignment Procedures**") and (iv) scheduling a hearing (the "**Sale Hearing**") for the approval of one or more sales of the Debtors' assets to one or more successful bidders; and

- Entry of a sale order (or sale orders) at the Sale Hearing: (i) authorizing and approving the sale of one or more of the Debtors' Facilities to one or more purchasers free and clear of all liens, claims, interests and encumbrances; (ii) approving the asset purchase agreements related to such sale or sales; and (iii) authorizing the Debtors to assume and assign certain identified executory contracts and agreements and unexpired licenses and leases in connection with the sale of the Facilities, including fixing cure costs under 11 U.S.C. § 365(b)(1) in connection therewith, and if requested, (iv) waiving the automatic 14-day stay following entry of such order under Bankruptcy Rules 6004(h) and 6006(d) in order to permit the Debtors to immediately consummate a particular sale or sales.

In support of this Motion, the Debtors respectfully state as follows:

#### **Preliminary Statement**

1. The Bid Procedures and the Assignment Procedures and processes contemplated thereby provide the best opportunity for the Debtors to maximize the value of the estates (the "**Estates**"). The Bid Procedures and the Assignment Procedures have the support of the Debtors and UMB Bank, National Association, as successor bond trustee (the "**Bond Trustee**") and were contemplated as part of the settlement agreement reached earlier in these cases. The Debtors submit

that the Bid Procedures and Assignment Procedures will help move these cases toward final resolution, which is in the interest of all parties. For the reasons that follow, the Debtors respectfully request that the Court approve the Bid Procedures, including the Bid Protections, and the Assignment Procedures. As noted above, the Debtors will then be able to move forward with a sale process, including holding an Auction (as defined below), if necessary. Following the Auction, the Debtors will seek approval from this Court of the sale (or sales) of their Facilities with prospective purchasers at the Sale Hearing. As noted herein, the Debtors are requesting that the Court schedule the Sale Hearing for June 29, 2022.

### **Jurisdiction And Venue**

2. This Court has jurisdiction of this Motion pursuant to 28 U.S.C. Sections 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. Sections 157(b)(2)(A), (N) and (O). Venue of the Debtors' Chapter 11 cases and this Motion in this District is proper pursuant to 28 U.S.C. Sections 1408 and 1409. The statutory predicates for the relief sought herein are Sections 105(a), 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9006 and 9007.

### **General Background Regarding the Chapter 11 Case**

3. On August 26, 2021 (the "**Petition Date**"), the Debtors each filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**") with the United States Bankruptcy Court for the Northern District of Georgia, Rome Division (the "**Court**"). The Debtors are authorized to operate their businesses as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

4. No committee, trustee or examiner has been requested or appointed in these cases.

5. Debtors RHCSC Montgomery I Health Holdings LLC, RHCSC Montgomery II Health Holdings LLC, RHCSC Savannah Health Holdings LLC, RHCSC Douglas Health Holdings LLC, RHCSC Rome Health Holdings LLC, RHCSC Columbus Health Holdings LLC, RHCSC Gainesville Health Holdings LLC, and RHCSC Social Circle Health Holdings LLC (each a “**Property Company**” and collectively, the “**Property Companies**”) each own a senior living facility (each a “**Facility**” collectively, the “**Facilities**”) in Georgia or Alabama.

6. Debtors RHCSC Montgomery I AL Holdings LLC, RHCSC Montgomery II AL Holdings LLC, RHCSC Savannah AL Holdings LLC, RHCSC Douglas AL Holdings LLC, RHCSC Rome AL Holdings LLC, RHCSC Columbus AL Holdings LLC, RHCSC Gainesville AL Holdings LLC, RHCSC Social Circle AL Holdings LLC (each an “**Operating Company**” and collectively the “**Operating Companies**”) each lease a Facility from the Property Companies.

7. The Operating Companies have each entered into a Management Agreement with HMP Senior Solutions, LLC (“**HMP**”) to manage the operations of the Facility that each Operating Company leases from a Property Company. The Facilities, collectively, house approximately 218 senior residents.

8. With respect to each Facility owned by a Property Company and leased and operated by an Operating Company, the Wisconsin Public Finance Authority (the “**Bond Authority**”) issued Series 2018A, Series 2018B, Series 2018C and Series 2018D Revenue Refunding Bonds (the “**Bonds**”). The Operating Company and the Property Company for that Facility entered a Loan Agreement with the Bond Authority. The Bond Authority assigned its rights and interest in the Bonds to Huntington National Bank, as trustee, in contemporaneously executed Trust Indentures (the “**Indentures**”). The Bond Trustee is the successor trustee under each of the Indentures.

9. During the period of time leading up to the Petition Date, the Debtors' financial condition had deteriorated such that they were unable to satisfy all of their financial obligations. Moreover, a lack of liquidity and working capital, which conditions were projected to worsen, limited the Debtors' ability to operate their businesses. After evaluating alternatives and consulting with their advisors and professionals, the Debtors eventually concluded that it was in their best interest, and the interests of their creditors and employees, to seek protection under Chapter 11 of the Bankruptcy Code in order to preserve the going concern value of their businesses.

10. Prior to the Petition Date, in recognition of its need for sound restructuring advice and crisis management services, the Debtors, among other things, sought to retain a firm and a Chief Restructuring Officer ("CRO") with substantial experience in the reorganization and restructuring of companies in financial distress. GGG Partners, LLC ("GGG") and Katie S. Goodman was selected to serve in this role. GGG has assisted the Debtors' management in evaluating and pursuing one or more potential sale transactions. The Debtors have determined, with the guidance and advice of its professional advisors, that the best and most efficient exit strategy for their successful emergence from Chapter 11 would include a sale of some or all of the Facilities to one or more purchasers.

11. Following a dispute regarding the use of cash collateral, and an attempt to prime the Bond Trustee, the Bond Trustee and the Debtors reached a settlement agreement whereby the holders of the Bonds agreed to fund these cases pursuant to an agreed-upon budget. As part of this settlement, the Debtors' current management company was replaced with HMP. Following HMP's initial review of the Debtors' businesses, the Debtors (following consultation with the Bond Trustee) concluded that a sale of the Debtors' Facilities was in the best interest of the Estates.

12. On or about March 18, 2022, the Debtors entered into a Representation Agreement with SLIB II, Inc. d/b/a Senior Living Investment Brokerage (“**SLIB**”) which agreement was approved by the Court, subject to objection, on April 15, 2022 [Dkt. No. 128]. SLIB has commenced a sale process for the Facilities, pursuant to which initial expressions of interest (including if a particular purchaser would like to be considered to be a stalking-horse for one or more of the Facilities) are due on May 17, 2022.

**Proposed Bid Procedures**

13. This section summarizes the key provisions of the Bid Procedures, which balance the need for a robust marketing process with the need to identify a purchaser or purchasers for the Facilities in a timely manner. Capitalized terms used, but not defined in this section, shall have the meanings provided in the Bid Procedures. The descriptions of the Bid Procedures herein are qualified in their entirety by reference to the Bid Procedures attached as Exhibit B.

<p><b>Summary of Important Dates</b></p>	<p>Stalking Horse Submission Deadline – May 17, 2022</p> <p>Cure Objection Deadline – June 22, 2022</p> <p>Qualified Bid Deadline – June 22, 2022</p> <p>Auction (if necessary) – June 28, 2022</p> <p>Sale Objection Deadline - June 22, 2022</p> <p>Sale Hearing – June 29, 2022</p>
<p><b>Due Diligence Participation Requirements</b></p>	<p>Parties interested in conducting due diligence should contact the Debtors’ advisors, GGG Partners, LLC (“<u>GGG</u>”) and Senior Living Investment Brokerage (“<u>SLIB</u>”) as follows:</p> <ul style="list-style-type: none"> <li>• <u>GGG</u>: Katie Goodman at (404) 293-0137 or <a href="mailto:kgoodman@gggmgt.com">kgoodman@gggmgt.com</a>.</li> </ul>

	<ul style="list-style-type: none"> <li>• <u>SLIB</u>: Daniel Geraghty at (847) 525-3025 or <a href="mailto:geraghty@slibinc.com">geraghty@slibinc.com</a>.</li> </ul> <p>Any person desiring to submit a bid for one or more of the Facilities will be required to deliver to the Debtors an executed confidentiality agreement in form and substance satisfactory to the Debtors. The Debtors and their professionals will afford any person who executes a confidentiality agreement (a “<u>Potential Bidder</u>”) such due diligence access or additional information with respect to the Facilities as the Debtors, in their business judgment, determine to be reasonable and appropriate; <i>provided, however</i>, that the same access and information for a particular Facility must also be made available to all Potential Bidders for the same Facility. Notwithstanding the foregoing, the Debtors shall have the right, in their sole discretion or at the request of UMB Bank, N.A. (the “<u>Bond Trustee</u>”), to require satisfactory evidence of any Potential Bidder’s available funds for or firm commitment for financing sufficient to consummate a Sale or Sales, prior to granting said Potential Bidder access to conduct due diligence. Additional due diligence will not be provided after the Bid Deadline (as defined below).</p> <p>Notwithstanding the foregoing, the Debtors or their professionals are not required to provide confidential, business-sensitive, or proprietary information to any Potential Bidder if the Debtors reasonably believe that: (i) such disclosure would be detrimental to the interests of the Debtors’ estates, or (ii) such Potential Bidder does not intend in good faith, or have the capacity, to consummate its bid.</p>
<p><b>Selection of Stalking Horse Bidder(s)</b></p>	<p>Pursuant to the order approving these Bid Procedures (the “<u>Bid Procedures Order</u>”), and as set forth below, the Debtors are authorized, but not obligated, to enter into an asset purchase agreement or asset purchase agreements for the Facilities with any Potential Bidder that desires to serve as a stalking horse bidder for any or all of the Facilities.</p> <p>On or before May 17, 2022 at 4:00 p.m. (prevailing Eastern Time), any Potential Bidder that desires to serve as a stalking horse shall submit a written letter of intent setting forth the terms and conditions of its offer which shall include, but not be limited to:</p> <ol style="list-style-type: none"> <li>1. The Facility or Facilities that are the subject of the Bid;</li> <li>2. Cash purchase price;</li> <li>3. A commitment to make a good-faith deposit in the amount of ten percent (10%) of the cash purchase price, which</li> </ol>

deposit shall be non-refundable upon execution of a Stalking Horse APA unless the Debtors are in breach of the Stalking Horse APA or another party is selected as the Successful Bidder (as defined below) and the Stalking Horse (as defined below) is not in breach of the Stalking Horse APA (the “Stalking Horse Deposit”);

4. Provide information on the financial capabilities of the Potential Bidder to consummate the proposed transaction;
5. The Potential Bidder’s affiliations; and
6. Statement on the Potential Bidder’s intent to continue to operate the Facility or Facilities as they are currently licensed.

The Stalking Horse must also comply with all other applicable Participation Requirements (as defined below).

The Debtors shall provide the Bond Trustee with copies of all letters of intent no later than twenty-four (24) hours after receipt thereof.

At any time prior to completion of the Auction, the Debtors, following consultation with the Bond Trustee, may enter into one or more definitive asset purchase agreements for each of the Facilities (each a “Stalking Horse APA”) with a Potential Bidder (or Potential Bidders) (each a “Stalking Horse”), which Stalking Horse APA shall be subject to the consent of the Bond Trustee.

As a component of each Stalking Horse APA, the Debtors may provide a break-up fee of up to 3% of the cash purchase price set forth in such Stalking Horse APA, plus a minimum bid increment for other bidders to submit competing bids, or other buyer protections (collectively, the “Bid Protections”) requested by the Stalking Horse and agreed-to by the Debtors following consultation with the Bond Trustee.

In the event that the Debtors enter into one or more Stalking Horse APAs, the Debtors shall (i) file a copy of such APA(s) with the Bankruptcy Court, (ii) serve a copy by the Court’s ECF system and (iii) post a copy to the data room maintained for purpose of facilitating due diligence.



<b>Bid Requirements</b>	<p>To be eligible to participate in the Auction (as such term is defined below), each bid and each Potential Bidder submitting such a bid must conform to the following requirements (collectively, the “<u>Participation Requirements</u>”):</p> <ol style="list-style-type: none"><li>1. Indicate the Facility or Facilities that are the subject of the Bid;</li><li>2. offer to consummate the sale on terms no less favorable to the Debtors than those set forth in the applicable Stalking Horse APA, if any (taking into account Bid Protections that must be paid);</li><li>3. include a marked copy of the applicable Stalking Horse APA (if any), or if there is no applicable Stalking Horse APA, the form asset purchase agreement contained in the data room, to show any proposed amendments thereto (the “<u>Modified APA</u>”) and a clean and executed Modified APA;</li><li>4. include a statement that there are no conditions precedent to the Potential Bidder’s ability to enter into a definitive agreement, including that there are no financing contingencies to the bid, and that all necessary internal and shareholder approvals have been obtained prior to the bid;</li><li>5. state that such offer is binding and irrevocable until the approval of the Successful Bid by the Court unless designated as the Back-Up Bid (as defined below) in which case a designated Back-Up Bid shall be binding;</li><li>6. disclose the identity of each entity that will be bidding or otherwise participating in connection with such bid, and the complete terms of any such participation;</li><li>7. disclose the Potential Bidder’s affiliations;</li><li>8. state whether the Potential Bidder intends to continue operating the Facility (or Facilities) as they are currently licensed;</li></ol>
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9. include the names and contact information of members of the Potential Bidder who will be available to answer questions regarding the offer, including advisors and related parties;
10. include a good-faith deposit in immediately available funds in at least the amount of the deposit provided by the Stalking Horse in the Stalking Horse APA (“Earnest Money Deposit”) or if no Stalking Horse APA has been entered into, 10% of the proposed purchase price;
11. provide satisfactory written evidence of available funds or a firm commitment for financing sufficient to consummate the Sale;
12. represent and warrant that the Potential Bidder has had an opportunity to conduct any and all due diligence regarding the Debtors’ business and the Facilities prior to submitting its bid and a statement that the Potential Bidder has relied solely upon its own independent review, investigation, and/or inspection of any relevant documents and the Facilities 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 Debtors’ business or the Facilities or the completeness of any information provided in connection therewith, except as expressly stated in the representations and warranties contained in the Potential Bidder’s Modified APA, ultimately accepted and executed by the Debtors; and
13. acknowledge that the Potential Bidder is not entitled to any of the Bid Protections.

The Debtors, following consultation with the Bond Trustee, shall determine whether bids submitted by Potential Bidders meet the Participation Requirements, including but not limited to any subjective determinations of whether the Participation Requirements have been met

	<p>(for example, whether written evidence of available funds or a firm commitment for financing sufficient to consummate the Sale is satisfactory), and otherwise whether a Potential Bidder is a Qualified Bidder.</p> <p>The Debtors reserve the right to request additional information from a Potential Bidder in connection with its bid. The Debtors shall inform the Bond Trustee of any such request within twenty-four (24) hours of the request.</p>
<p><b>Qualified Bidders</b></p>	<p>Potential Bidders who have satisfied the Participation Requirements will be deemed “Qualified Bidders.” Bids that contain all bid requirements, as determined by the Debtors, in consultation with the Bond Trustee, will be deemed “Qualified Bids.” The Stalking Horse, if any, shall be entitled to credit bid the amount of its break-up fee at the Auction.</p> <p>The Debtors will advise each Potential Bidder whether they are deemed to be a Qualified Bidder and whether their bid is a Qualified Bid before the Auction. The Stalking Horse is deemed a Qualified Bidder and the Stalking Horse Bid is a Qualified Bid in all respects. The Debtors will provide copies of the Qualified Bids to the Bond Trustee. The Stalking Horse will be notified, no later than 24 hours prior to the Auction, if any Qualified Bids have been received.</p> <p>The Debtors, in consultation with the Bond Trustee, reserve the right to waive noncompliance with any one or more of the Participation Requirements to be a Qualified Bid and deem an otherwise not Qualified Bid to be a Qualified Bid if the Debtors reasonably determine, in their business judgment, after consultation with the Bond Trustee, that such waiver is consistent with their fiduciary duties.</p> <p>The Bond Trustee reserves its right to submit a credit bid for any or all of the Debtors’ Assets. The Bond Trustee shall be deemed a Qualified Bidder.</p> <p>A Potential Bidder submitting a bid for consideration as a Qualified Bid shall be deemed to have waived the right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code related in any way to the Chapter 11 Cases, including but not limited to due diligence, the submission of its bid, the Bid Procedures, the Auction, and any Sale.</p>
<p><b>Auction Participation</b></p>	<p>Unless otherwise agreed to by the Debtors, only Qualified Bidders, the Bond Trustee, representatives of holders of the Bonds, and their respective legal or financial professionals are eligible to attend or participate at the Auction. Subject to the other provisions of these Bid</p>

	<p>Procedures, if the Debtors do not receive any Qualified Bids other than Stalking Horse Bid (or Stalking Horse Bids) for a particular Facility or if no Qualified Bidder other than a Stalking Horse has indicated its intent to participate in the Auction for a particular Facility, the Debtors may elect (following consultation with the Bond Trustee) not to hold an Auction for such Facility and the Stalking Horse will be named the Successful Bidder (as defined below) with respect to such Facility.</p>
<p><b>Auction</b></p>	<p>If any Qualified Bid has been received and any Qualified Bidder has indicated its intent to participate in the Auction for a particular Facility, the Debtors will conduct an auction (the “<u>Auction</u>”) for the sale of such Facility. Each Qualified Bidder participating at the Auction will be required to confirm that it has not engaged in any collusion with respect to the bidding as to any Facility being sold pursuant to the Auction.</p> <p>The Auction shall take place at 10:00 a.m. (prevailing Eastern Time) on June 28, 2022 at the offices of Scroggins &amp; Williamson, P.C., 4401 Northside Parkway, Suite 450, Atlanta, GA 30327. At the Auction, only the Stalking Horse, if any, and other Qualified Bidders will be permitted to increase their bids or make any subsequent bids. The Debtors may conduct the Auction in the manner they reasonably determine (including but not limited to structuring the Auction to include a certain Facility or Facilities in lots, with the ability of a particular Facility to be in more than one lot, and having bidders bid on such lots separately or against each other so as to determine the highest value of the Debtors’ assets), in their business judgment, after consultation with the Bond Trustee, will achieve the maximum value for the Facilities. For the avoidance of doubt, the Debtors, with the consent of the Bond Trustee, may move to sealed bid Auction for any or all of the Facilities at any time. The Debtors may withdraw a particular Facility from Auction at any time, provided the Debtors have not entered into a Stalking Horse APA with respect to such Facility.</p>
<p><b>Closing the Auction</b></p>	<p>The Auction shall continue until, with respect to a particular Facility or Facilities, there is only one offer that the Debtors determine, with the consent of the Bond Trustee, subject to Bankruptcy Court approval, is the highest and best offer from among the Qualified Bidders (including any Stalking Horse) submitted at the Auction for each Facility or Facilities (each, a “<u>Successful Bid</u>”). The Qualified Bidder submitting such Successful Bid shall become the “<u>Successful Bidder</u>” for such Facility or Facilities and shall have such rights and responsibilities of a purchaser, as set forth in the Stalking Horse APA or Modified APA, as applicable. Immediately prior to the conclusion of the Auction, after consultation with the Bond Trustee, the Debtors shall (1) review each bid made at the Auction on the basis of financial and contractual terms; (2) identify the Successful Bid or Successful Bids; and (3) notify all Qualified Bidders at</p>

	<p>the Auction, prior to its conclusion, of the name or names of the Successful Bidder or Successful Bidders and the amount and other material terms of the Successful Bid or Successful Bids.</p> <p>The Debtors may also, following consultation with the Bond Trustee, select a back-up bid (the “<u>Back-Up Bid</u>”) for each Facility, which shall remain open and irrevocable until one (1) business day after the closing of the Sale for such Facility with the applicable Successful Bidder. In the event that, for any reason, the Successful Bidder fails to close the transaction contemplated by the Successful Bidder, the Debtors may, with the consent of the Bond Trustee, elect to regard the Back-Up Bid as the highest and best bid for the applicable Facility, and the Debtors will be authorized to consummate the transaction contemplated by the Back-Up Bid without further order of the Bankruptcy Court.</p> <p>The Successful Bidder and the Back-Up Bidder shall be deemed to have waived the right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code related in any way to the Chapter 11 Case, including but not limited to due diligence, the submission of its bid, the Bid Procedures, the Auction, and any Sale.</p>
<p><b>Return of Deposits</b></p>	<p>Within three (3) business days after the close of a Sale, the Debtors shall return by check or wire the full amount of each deposit submitted by a party that is not the party with whom the Sale closes. A defaulting bidder’s deposit shall be forfeited to the Debtors, subject to the terms set forth in the Stalking Horse APA or Modified APA, as applicable.</p>
<p><b>Assumption of Executory Contracts and Unexpired Leases</b></p>	<p>Each Stalking Horse APA and Modified APA must designate which executory contracts and unexpired leases with respect to a particular Facility are to be assumed and assigned (the “<u>Assigned Contracts</u>”). In all circumstances, the Successful Bidder shall be responsible for all cure amounts relating to the Assigned Contracts under section 365 of the Bankruptcy Code. Purchasers may amend the list of Assigned Contracts through the date of closing of any Sale; provided, however, to the extent there are any changes after the Sale Hearing, counter-parties shall receive notice and no fewer than ten (10) days to object to such changes.</p>
<p><b>Free and Clear of Any and All Claims and Interests</b></p>	<p>Except as otherwise provided in the Stalking Horse APA or Modified APA, as applicable, all of the Debtors’ right, title, and interest in and to the purchased assets shall be sold free and clear of all liens, claims, and interests (collectively, the “<u>Encumbrances</u>”) to the maximum extent permitted by section 363 of the Bankruptcy Code (other than permitted liens and assumed liabilities), with such Encumbrances to attach to the</p>

	proceeds of the Sale of the purchased assets with the same validity and priority as such Encumbrances applied against the purchased assets.
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14. The Debtors propose to send by no later than June 1, 2022 a notice (the “**Sale Notice**”), a copy of which is attached to the Bid Procedures Order as Exhibit B, to (i) all parties on the Limited Service Lists as provided in Paragraph D of the Complex Case Procedures, and (ii) all individuals or entities who have expressed in writing to SLIB an interest in acquisition of all or part of the Debtors’ assets.

**Proposed Sale of Assets and Assumption and Assignment of Certain Executory Contracts to Purchaser**

15. The Debtors propose to establish procedures to be employed in connection with the identification, assumption and assignment of the Assigned Contracts (the “**Assignment Procedures**”) in accordance with the purchase agreement (or purchase agreements) for the Facilities. The Debtors will file with the Court a list identifying contracts or leases that a purchaser may wish to assume in connection with a sale, including the amounts necessary to cure defaults thereunder. The Debtor will also serve all counterparties to such contracts or leases with a notice, substantially in the form attached to the Bid Procedures Order as Exhibit C (the “**Cure Notice**”), stating that a purchaser may seek to have such contract assumed and assigned to such purchaser in connection with a sale. The Cure Notice shall provide that the deadline for objecting to the assumption and assignment of a potentially Assigned Contract shall be June 22, 2022.

16. In addition, the Cure Notice shall provide that any counter-party to a contract or lease that may seek to object to the adequate assurance of future performance of a potential purchaser or purchasers must request by no later than June 22, 2022 that it receive notice by email the identify of a purchaser that may seek to assume the contract or lease of such counterparty (a “**Requesting**

**Counterparty**”), and provide the Debtors with an email address. The Cure Notice shall further provide that following the Auction, the Debtors shall provide Requesting Counterparties the identify of a purchaser that seeks, or may seek, to have a contract or lease of a Requesting Counterparty assigned to it. Requesting Counterparties shall have until the time of the Sale Hearing to object to the adequate assurance of future performance of a potential purchaser.

17. Successful bidders shall be responsible for paying all cure amounts required for assumption and assignment of Assigned Contracts, in accordance with section 365 of the Bankruptcy Code.

18. The Debtors and their professionals believe that the Bid Procedures and the Assignment Procedures are fair and reasonable under the circumstances of these Chapter 11 cases.

#### **Basis for Relief**

19. The Debtors believe it is in the best interest of the Estates to commence a process for soliciting potential bidders and to complete a sale of the Debtors’ Facilities as a going concern in the near future. The Bid Procedures were developed to further the Debtors’ dual needs to expedite the sale process and to foster competitive bidding among financially capable bidders who demonstrate the ability to close a transaction. The Bid Protections, including the 3% Breakup Fee (as defined below), will increase the likelihood that the Debtors can find a stalking horse (or stalking horses) and realize the benefits afforded by a stalking horse (or stalking horses). The ability to sell the Facilities free and clear will help to generate interest in and bids for the Facilities, thereby increasing the return to the Estates.

**A. The Bid Procedures are in the Best Interest of the Debtors' Estates.**

20. The Bid Procedures are designed to generate the best and highest bids from the market by eliciting as many bids from as many sufficiently-capitalized parties as possible. *Black v. Shor (In re BNP Petroleum Corp.)*, 642 F. App'x 429, 434 (5th Cir. 2016) (noting the debtor's "duty to entertain all serious offers in light of . . . [the] general obligation to 'demonstrate that the proposed sale price is the highest and best offer'" (quoting *Cadle Co. v. Mims (In re Moore)*, 608 F.3d 253, 263 (5th Cir. 2010)); see also *In re Integrated Res. Inc.*, 147 B.R. 650, 659 (S.D.N.Y. 1992) ("It is a well-established principle of bankruptcy law that the . . . [debtors'] duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.") (quoting *In re Atlanta Packaging Prods., Inc.*, 99 B.R. 124, 130 (Bankr. N.D. Ga. 1988)). The Bid Procedures allow for any party to conduct due diligence upon the execution of a confidentiality agreement. However, the Debtor have, in their sole discretion, the ability to deny any party seeking to conduct due diligence or to require evidence of available financing sufficient to consummate a sale. This provision is designed to both ensure that only serious, good-faith Potential Bidders conduct due diligence and to encourage Potential Bidders to participate by relieving them from the obligation to secure financing until such Potential Bidders are certain that they want to submit a bid. In addition, any Qualified Bid must include information on the operational and financial capabilities of the Potential Bidder sufficient to allow the Debtors to determine such bidder's ability to consummate a sale. This provision ensures that the Debtor will only consider bids that will support the Court's approval of the Sale.

21. In addition, the Bid Procedures are designed to allow the Debtors flexibility in structuring an auction (or auctions) of the Facilities. Because the Debtors have eight different Facilities in two states (including one of which is not currently operating), it is possible that Potential



Bidders will have differing interests as to which Facilities they seek to acquire. For example, one Potential Bidder may seek to acquire all of the Facilities, while another may seek to acquire only the Georgia Facilities, while another may seek to acquire only a single Facility. The Bid Procedures allow the Debtors to structure an auction in such a way as to take account of the interests of different Potential Bidders in order to maximize the value received for the Facilities.

22. The Bid Protections contained within the Bid Procedures will also assist the Debtors in fostering a competitive bidding environment. The Bid Protections are an essential part of the Bid Procedures because the Bid Protections enable the Debtors to negotiate efficiently and effectively with prospective stalking horses. The prospect of Bid Protections should encourage parties to serve as a stalking horse for a Facility or Facilities by providing reimbursement for expenditures during the due diligence process. In turn, the stalking horse sets the minimum price for the auction and provides a basis for comparison for potential bidders. The Debtors anticipate that that any stalking horse bidder that is awarded Bid Protections will have invested substantial time and effort in negotiating the material terms of an asset purchase agreement with the Debtors. Any such bidder shall also have invested time and effort in connection with its investigation of the Debtors and its due diligence review, and will have incurred (and will continue to incur) various legal and other professional costs and expenses in connection with its continuing due diligence investigations.

23. The Debtors propose that they be authorized to provide a stalking horse bidder a Breakup Fee in an amount not to exceed 3% of the proposed cash purchase price. Notwithstanding such authorization, the Debtors shall not be obligated to award stalking horse protections to any Potential Bidder. Moreover, a Breakup Fee shall be payable only as set forth in an asset purchase agreement agreed to between the Debtors and a stalking horse bidder, consented to by the Bond

Trustee, and shall be payable solely from the proceeds of a sale for the same assets as those set forth in the applicable asset purchase agreement in the event a bidder other than the applicable stalking horse bidder is the successful bidder for such assets.

24. Sellers of assets often employ incentives such as the Bid Protections to encourage the making of other purchase offers. These protections are “important tools to encourage bidding and to maximize the value of the Debtors’ assets.” *In re Integrated Resources, Inc.*, 147 B.R. 650, 659 (S.D.N.Y. 1992). Importantly, they set a floor for the purchase of a debtor’s assets, which provides a level of certainty in moving forward with a bankruptcy auction. *See, e.g., Ogle v. Comcast Corp. (In re Hous. Reg’l Sports Network, L.P.)*, 547 B.R. 717, 753 (Bankr. S.D. Tex. 2016) (“The purpose of a stalking horse bid is to set a floor for the value of a debtor’s assets and avoid low bids during the auction process.”); *In re Tex. Rangers Baseball Partners*, 431 B.R. 706, 715 n.28 (Bankr. N.D. Tex. 2010) (noting the benefit of having a stalking horse bidder to guarantee a floor price).

25. The Debtors submit that the proposed 3% Breakup Fee will not hamper or deter competitive bidding for the Facilities. Rather, it will encourage bidders to become active in the sale process in its early stages to procure the advantages of being the named-stalking horse. If the Debtors do not come to terms with a stalking horse bidder for a particular Facility, they will not be obligated to pay any party a Breakup Fee with respect to such Facility.

**B. The Proposed Assignment Procedures and the Assumption of Contracts and Leases are Each in the Best Interest of the Estates.**

**(i) Approval of the Assignment Procedures at the Procedures Hearing is in the Best Interest of the Estates.**

26. Sections 365(a) and (b) authorize a debtor in possession to assume, subject to the court’s approval, executory contracts or unexpired leases of the debtor. *See* 11 U.S.C. § 365(a), (b).

Under section 365(a), a debtor, “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” Section 365(b)(1), in turn, codifies the requirements for assuming an unexpired lease or executory contract:

If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—(A) cures, or provides adequate assurance that the trustee will promptly cure, such default . . . ; (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and (C) provides adequate assurance of future performance under such contract or lease.

27. Once an executory contract has been assumed in accordance with sections 365(a) and (b), the debtor may assign it “only if . . . adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.” 11 U.S.C. § 365(f)(2).

28. The proposed Assignment Procedures provide a fair process for counter-parties to contracts and leases to timely object to the assignment of those contracts and leases, while still allowing potential purchasers the flexibility to choose which contracts and leases they would like to have assigned, and to proceed in a timely manner. Specifically, the proposed Assignment Procedures provide that counter-parties will receive notice no later than June 1, 2022, of the fact that their contracts or leases may be assigned in connection with the sale of the Debtors’ Facilities. The proposed Assignment Procedures further provide counter-parties with the proposed amounts the Debtors believe are necessary to cure any existing defaults. Such counter-parties would then have until June 22, 2022 to raise any objections to the possible assumption and assignment of their contracts and leases, including if they believe they might have an objection on the basis of adequate

assurance of future performance of a particular purchaser. In the event a counter-party believes it might seek to raise an adequate assurance objection, the Assignment Procedures require the counter-party to raise such issue with the Debtors by the June 22, 2022 objection deadline and provide the Debtors with an email address so that the Debtors can provide the counter-party with the identity of a particular purchaser once that identity is determined at the June 28, 2022 Auction. Counter-parties would then have until the Sale Hearing on June 29, 2022 to raise an adequate assurance objection.

**(ii) Approval of Assumption and Assignment of Specific, Identified Contracts and Leases at the Sale Hearing is in the Best Interest of the Estates.**

29. As outlined above, assumption and assignment require the curing of any default under the executory contract and adequate assurances of future performance under the executory contract. The Bid Procedures require each Qualified Bidder to demonstrate the operational and financial capabilities of the proposed bidder sufficient to allow the Debtor and interested parties to determine such bidder's ability to assume those contracts and leases it seeks to have assumed and assigned, subject to approval of the Court. In requiring the Successful Bidder to cure any existing defaults, the Assignment Procedures compel the party that will be benefitting from the value generated by the contracts and leases to invest in such assets.

30. To facilitate the assumption and assignment of executory contracts, the Debtors will be seeking a provision in the order approving the Sale which will provide that any anti-assignment provisions in such executory contracts shall not restrict, limit or prohibit the assumption, assignment and sale of said contracts, and are deemed and found to be unenforceable anti-assignment provisions within the meaning of section 365(f).

**(iii) Modification of Rule 6006 Procedures.**

31. The 2007 amendments to the Federal Rules of Bankruptcy Procedure added certain additional procedural requirements to Bankruptcy Rule 6006 which apply where the debtor seeks to assume and assign a number of executory contracts and unexpired leases in one motion. Subdivision (e) provides, in pertinent part, that the a debtor may not seek to assign multiple executory contracts or unexpired leases in the same motion unless they “are to be assigned to the same assignee,” or “the court otherwise authorizes the motion to be filed.” Subdivision (f), in turn, prescribes specific requirements to be followed when such motions are authorized:

*(f) Omnibus Motions*

*A motion to reject or, if permitted under subdivision (e), a motion to assume or assign multiple executory contracts or unexpired leases that are not between the same parties shall:*

*(1) state in a conspicuous place that parties receiving the omnibus motion should locate their names and their contracts or leases listed in the motion;*

*(2) list parties alphabetically and identify the corresponding contract or lease;*

*(3) specify the terms, including the curing of defaults, for each requested assumption or assignment;*

*(4) specify the terms, including the identity of each assignee and the adequate assurance of future performance by each assignee, for each requested assignment;*

*(5) be numbered consecutively with other omnibus motions to assume, assign, or reject executory contracts or unexpired leases; and*

*(6) be limited to no more than 100 executory contracts or unexpired leases.*

32. Subdivision (f) of Rule 6006 became effective in December 2007. Notwithstanding the mandatory language utilized, the Advisory Committee Report regarding the 2007 amendments to Rule 6006 indicates that bankruptcy court retains flexibility to modify the specific requirements of

Subdivision (f) to meet the needs of a particular case, so long as effective notice is provided to the non-Debtors parties to the contracts or leases to be assigned.

*“An omnibus motion to assume, assign, or reject multiple executory contracts and unexpired leases must comply with the procedural requirements set forth in subdivision (f) of the rule, unless the court orders otherwise. These requirements are intended to ensure that the nondebtor parties to the contracts and leases receive effective notice of the motion. . . .”*

33. In the instant case, the Debtors believe they have complied (or shall comply) substantially with the requirements of Bankruptcy Rule 6006 for the assumption and assignment of multiple contracts and leases, in that the proposed Cure Notice clearly and conspicuously provides notice to counter-parties that a potential purchaser may seek to assume their contract or lease, clearly outlines applicable objection deadlines and the procedure to establish cure amounts, and makes it easy to for each counter-party to a contract or lease to identify their particular contract or lease and the corresponding proposed cure amount. Under the circumstances, the Assignment Procedures, including the proposed Cure Notice, substantially comply with Bankruptcy Rule 6006 and will provide effective notice to non-Debtors parties to the Assigned Contracts. Therefore, the Debtors ask that the Court approve and authorize at the Procedures Hearing the proposed method of proceeding under the Motion with respect to the Assigned Contracts.

**C. The Court Should Approve the Sale of the Debtors’ Facilities as a Going Concern and Related Notices Thereof**

**(i). There is a Sound Business Justification for the Proposed Sale(s)**

34. Ample authority exists for approval of the sale of the Debtors’ Facilities. Section 363, which authorizes a debtor to sell assets of the estate other than in the ordinary course of business, provides, in relevant part that the “[debtor], after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate . . . .” 11 U.S.C. § 363(b)(1).

35. Courts have held that approval of a proposed sale of property pursuant to section 363(b) is appropriate if the transaction represents the reasonable business judgment of the debtor. See *Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983); *Stephens Industries, Inc. v. McClung*, 789 F.2d 386, 389-90 (6th Cir. 1986); *In re Titusville Country Club*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991). Courts typically consider the following factors in determining whether a proposed sale satisfies this standard: (a) whether a sound business justification exists for the sale; (b) whether adequate and reasonable notice of the sale was given to interested parties; (c) whether the sale will produce a fair and reasonable price for the property; and (d) whether the parties have acted in good faith. See, e.g., *In re CHC Grp. Ltd.*, No. 16-31854, 2017 Bankr. LEXIS 1016, at \*74 (Bankr. N.D. Tex. Mar. 3, 2017); *In re T&M Aviation, Inc.*, No. 10-51520, 2010 Bankr. LEXIS 4722, at \*4-5 (Bankr. W.D. La. Dec. 17, 2010).

36. The proposed sale of the Debtors' Facilities satisfies all these factors. There is a sound business justification for the sale of the Debtors' Facilities as a going concern because such a sale is critical to maintaining the value of the Debtors' businesses and maximizing the value of the Estates. In order to conserve value, and based on the Debtor's limited funding and resources, the sale process needs to begin as quickly as possible. The notices that the Debtors plan to serve include all relevant information for any party wishing to participate in or object to any aspect of the sale, in accordance with the Bankruptcy Rules and the Local Rules. As discussed above, the Bid Procedures were drafted in order to foster competitive bidding and to generate the highest price possible for the Debtors' Facilities. The Bid Procedures include terms that surpass the terms of bid procedures that are regularly approved by bankruptcy courts in the Eleventh Circuit and elsewhere. Finally, the Debtors have conducted themselves in good faith in preparing a process for the sale of their

Facilities to achieve the best result possible for the Estates. For the foregoing reasons, the Debtors submit that approval of the sale of their Facilities, subject to further evidence being presented at the Sale Hearing, is appropriate and warranted under section 363.

37. In the interest of obtaining the highest and best offer through the Auction, the Debtors' Facilities should be sold free and clear of any and all liens, claims, interests, and encumbrances, pursuant to section 363(f). A debtor may sell its assets free and clear under section 363(f) if any one of the following requirements is met:

1. applicable non-bankruptcy law permits sale of such property free and clear of such interests;
2. if the interest-holder consents;
3. such interest is a lien and the price at which such property is to be sold is greater than the value of all liens on such property;
4. such interest is in bona fide dispute; or
5. such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f); *see also In re Patriot Place, Ltd.*, 486 B.R. 773, 814-15 (Bankr. W.D. Tex. 2013) (“[I]f a debtor . . . can satisfy one of the five different conditions set forth in the subsections of §363(f), a debtor can sell its property . . . free and clear.”).

38. The Debtors submit that a sale of their Facilities free and clear of the Encumbrances, with any such liens to attach to the proceeds of the sale in the same order of priority as they existed prior to the sale, will satisfy one or more of the requirements under section 363(f). Furthermore, an order from this Court authorizing a sale free and clear of the Encumbrances will give prospective bidders assurance to price the Assets commensurately.



**(ii) Notice of the Sale is Reasonable**

39. The Sale Notice and the Assignment Notice are each reasonably calculated to provide all of the Debtors' known creditors and all other parties in interest with adequate, timely notice of, among other things, the Bid Procedures, the Assignment Procedures, the Auction, and the Sale Hearing.

**Good Faith Purchaser Designation**

40. As part of the relief sought by the Debtors, the Debtors will ask the Court to designate any successful Purchaser as a good faith purchaser, as such term is utilized in Section 363(m) of the Bankruptcy Code. Such designation can be made by a Bankruptcy Court in the context of a sale of assets of a debtor when it has been established that the proposed purchaser is an unrelated third party, not affiliated with or having any insider relationship with the debtor, and when the proposed transaction is for fair value and is the result of arms length negotiations between the parties. See *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3d Cir. 1986).

41. With respect to the proposed transactions, the Debtors anticipate that any Purchaser proposed will meet the qualifications for designation as a good faith purchaser in that: (a) they will not be affiliated in any way with the Debtors, and (b) they and their representatives will have negotiated in good faith and at arm's length with the Debtors' management. It is expected that any Purchaser may make offers of employment to a number of the Debtors' employees, though there is not currently any definitive agreement, written or oral, between any Purchaser and any of the Debtors' employees. Any discussions of the potential employment of employees of the Debtors by a Purchaser shall not, however, negatively affect the Debtors' negotiations or detract from the fairness of any proposed transaction. See *In re Integrated Resources, Inc.*, 147 B.R. 650, 659 (S.D.N.Y.

1992) (employment discussions between Debtors' management and prospective buyer did not taint sale process so as to negate the application of the business judgment rule to the propriety of the sale transaction).

**Notice - Expedited Consideration**

42. The Debtors propose to serve notice of the preliminary Procedures Hearing to consider proposed Bid Procedures and Assignment Procedures on the Office of the United States Trustee, all non-Debtors parties to any contracts and leases, counsel for the Bond Trustee, and all parties identified on the Master Service List maintained in this case.

43. Federal Rule of Bankruptcy Procedure 6004 provides, in pertinent part, as follows:

(a) Notice of Proposed Use, Sale, or Lease of Property. Notice of a proposed use, sale, or lease of property, other than cash collateral, not in the ordinary course of business shall be given pursuant to Rule 2002(a)(2), (c)(1), (i), and (k) . . . .

Fed.R.Bankr.P. 6004.

44. Federal Rule of Bankruptcy Procedure 9007 provides, in pertinent part, as follows:

When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, the entities to whom, and the form and manner in which the notice shall be given.

Fed.R.Bankr.P. 9007.

45. The Debtors contend that the forms of notice set forth above and the period for scheduling the hearing on the sale comport with Bankruptcy Rules 6004, 6006 and 9007, constitute good and sufficient notice of the relief sought herein, and of all hearings and procedures contemplated hereby.

**Potential Waiver of 14-Day Stay on Closing**

46. Bankruptcy Rules 6004(h) and 6006(d) respectively provide that an order authorizing the use, sale, or lease of property and an order authorizing the assumption and assignment of executory contracts or unexpired leases will be stayed for fourteen days after entry of such approval orders unless the court orders otherwise. Because of the need to close the transactions contemplated herein as promptly as possible, the Debtors may, at the Sale Hearing, request that the Court order and direct that the order approving this Motion shall not be automatically stayed for fourteen days.

47. No previous request for the relief sought herein has been made to this or any other Court.

WHEREFORE, the Debtors respectfully requests that the Court grant this Motion and enter one or more orders providing relief as requested herein, and grant such other and further relief as may be just and proper.

This 28th day of April, 2022.

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Respectfully submitted,

SCROGGINS & WILLIAMSON, P.C.

/s/ Ashley R. Ray  
J. ROBERT WILLIAMSON  
Georgia Bar No. 765214  
ASHLEY REYNOLDS RAY  
Georgia Bar No. 601559

*Counsel for the Debtors*

**CERTIFICATE OF SERVICE**

This is to certify that on this date a true and correct copy of the within and foregoing *Debtors' First Motion (A) For Authority To Sell Assets Free And Clear Of Liens, Claims, And Encumbrances (B) To Assume And Assign Certain Executory Contracts, Leases And Licenses And Establish Cure Costs In Connection Therewith; (C) To Establish Procedures With Respect To Such Sale And The Assumption And Assignment Of Executory Contracts And Leases, (D) To Consider Approval Of Breakup Fee, And (E) To Shorten And Limit Notice* was served (i) by the Court's CM/ECF system on all counsel of record registered in this case through CM/ECF, and (ii) by causing same to be deposited in the United States Mail with adequate postage affixed thereon and addressed to the following:

Vanessa A. Leo  
Office of the United States Trustee  
362 Richard Russell Federal Building  
75 Ted Turner Drive, S.W.  
Atlanta, Georgia 30303

Charles W. Azano  
Greenberg Traurig, LLP  
One International Place  
Suite 2000  
Boston, MA 02110

This 28th day of April, 2022.

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/s/ Ashley R. Ray  
J. ROBERT WILLIAMSON  
Georgia Bar No. 765214  
ASHLEY REYNOLDS RAY  
Georgia Bar No. 601559

*Counsel for the Debtors*

**Exhibit A**

**Proposed Procedures Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION**

<b>IN RE:</b>	)	<b>CHAPTER 11</b>
	)	
<b>REGIONAL HOUSING &amp; COMMUNITY SERVICES CORP., et al.,</b>	)	<b>Jointly Administered Under</b>
	)	<b>CASE NO. 21-41034-pwb</b>
<b>Debtors.</b>	)	
	)	
	)	

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**ORDER (A) ESTABLISHING BIDDING AND OTHER PROCEDURES IN CONNECTION WITH THE SALE OF ASSETS OF THE DEBTORS, (B) AUTHORIZING THE DEBTORS TO AWARD STALKING HORSE PROTECTIONS TO POTENTIAL BUYERS AND (C) PROVIDING NOTICE OF HEARING ON MOTION TO (1) APPROVE SALE OF CERTAIN ASSETS OF THE DEBTORS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (2) AUTHORIZE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (3) ESTABLISH CURE AMOUNTS THEREFOR; AND (4) APPROVE OTHER RELATED RELIEF**

THIS MATTER came before the Court to consider the *Debtors' First Motion (A) For Authority To Sell Assets Free And Clear Of Liens, Claims, And Encumbrances; (B) To Assume And Assign Certain Executory Contracts, Leases And Licenses And Establish Cure Costs in Connection Therewith; (C) To Establish Procedures With Respect To Such Sale and the*

*Assumption and Assignment of Executory Contracts and Leases; (D) To Consider Approval of Breakup Fee; and (E) To Shorten and Limit Notice* (the “**Sale Motion**”) filed by the above-captioned debtors and debtors and debtors-in-possession (collectively, the “**Debtors**”)<sup>1</sup> on April 28, 2022. Pursuant to the Sale Motion, the Debtors seek entry of two orders. The first order, which relates to certain procedures that will govern a sale process for the Debtors’ assets, is granted as set forth more fully in this order (the “**Procedures Order**”). The second order will address the sale of the Debtors’ facilities, and will be heard at a sale hearing to be held on June 29, 2022 as set forth more fully below.

Following due and sufficient notice, a hearing was held at 11:00 a.m. on May 10, 2022 (the “**Procedures Hearing**”) with respect to the Debtors’ requests for (i) approval of the proposed bid procedures attached to the Sale Motion as Exhibit B (the “**Proposed Bid Procedures**”), which include, among other things, requirements and deadlines for submitting initial bids and overbids, selection of one or more “stalking horses,” scheduling an auction, and identifying potential successful bidders and back-up bidders; (ii) authorization for the Debtors to award certain “stalking horse” protections to one or more “stalking horse” bidders (each, a “**Stalking Horse Bidder**”) which protections include a break-up fee not to exceed 3% of a proposed purchase price; and (iii) scheduling a hearing (the “**Sale Hearing**”) for the approval of one or more sales of the Debtors’ assets to one or more successful bidders.

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<sup>1</sup> The Debtors in these Chapter 11 cases include: Regional Housing & Community Services Corporation, RHCSC Columbus AL Holdings LLC, RHCSC Columbus Health Holdings LLC, RHCSC Douglas AL Holdings LLC, RHCSC Douglas Health Holdings LLC, RHCSC Gainesville AL Holdings LLC, RHCSC Gainesville Health Holdings LLC, RHCSC Montgomery I AL Holdings LLC, RHCSC Montgomery I Health Holdings LLC, RHCSC Montgomery II AL Holdings LLC, RHCSC Montgomery II Health Holdings LLC, RHCSC Rome AL Holdings LLC, RHCSC Rome Health Holdings LLC, RHCSC Savannah AL Holdings LLC, RHCSC Savannah Health Holdings LLC, RHCSC Social Circle AL Holdings LLC, and RHCSC Social Circle Health Holdings LLC.

The Court having considered the Sale Motion, statements of counsel at the Procedures Hearing, the record, and for cause shown, the Court finds that it is in the best interest of each Debtor's estate and creditors to grant the relief set forth herein.

**THE COURT HEREBY FINDS THAT:<sup>2</sup>**

A. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue is proper in this District and in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. The statutory predicates for the relief requested herein are sections 105(a), 363(b) and (f), 365, 503 and 507 of title 11 of the United States Code (the "**Bankruptcy Code**"); Rules 2002(a)(2), 6003, 6004(a), (b), (c), (e) and (f), 6006(a) and (c), 9007, 9014 and 9019 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") and the Amended and Restated General Order 26-2019, Procedures for Complex Chapter 11 Cases, dated November 4, 2019 ("**Complex Case Procedures**").

C. Notice of the Motion has been given to (i) all parties on the Limited Service List as provided in Paragraph D of the Complex Case Procedures, and (ii) all individuals or entities who have expressed in writing to Senior Living Investment Brokerage, Inc. an interest in acquisition of all or part of the Debtors' assets. Such notice is sufficient in light of the circumstances and the nature of the relief requested in the Sale Motion.

D. Cause exists to allow the Debtors to pursue a sale of their assets and assumption and assignment of their executory leases, contracts, licenses and other agreements, pursuant to the bid procedures set forth as Exhibit A to this Procedures Order (the "**Bid Procedures**").

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<sup>2</sup> 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



E. The relief requested in the Sale Motion complies with applicable Bankruptcy Rules, including Bankruptcy Rules 2002, 6004, 6006, 9006 and 9007.

F. The Debtors have articulated good and sufficient reasons for this Court to grant the relief requested in the Sale Motion regarding the sale process and procedures, including without limitation: (i) approval of the Bid Procedures, which include, among other things, requirements and deadlines for submitting initial bids and overbids, selection of one or more “stalking horses,” scheduling an auction, and identifying potential successful bidders and back-up bidders; (ii) authorization for the Debtors to award certain “stalking horse” protections to one or more “stalking horses,” which protections include a break-up fee not to exceed 3% of a proposed purchase price (each, a “**Breakup Fee**”); and (iii) scheduling Sale Hearing for the approval of a proposed sale of the Debtors’ assets to one or more successful bidders.

G. Any Breakup Fee to be paid to a Stalking Horse Bidder, solely to the extent agreed to by the Debtor and documented in an asset purchase agreement with the consent of the Bond Trustee, is (i) an actual and necessary cost and expense of preserving the Debtors’ estates; (ii) commensurate to the real and substantial benefit conferred upon the Debtors’ estates by such Stalking Horse Bidder, and (iii) reasonable and appropriate, in light of the size and nature of the proposed sale transaction and comparable transactions. Notwithstanding the foregoing, a Breakup Fee shall be payable only as set forth in an asset purchase agreement agreed to between the Debtors and such Stalking Horse Bidder, consented to by the Bond Trustee, and shall be payable solely from the proceeds of a sale for the same assets as those set forth in the applicable asset purchase agreement in the event a bidder other than the applicable Stalking Horse Bidder is the successful bidder for such assets.

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the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the

H. The Sale Notice is reasonably calculated to provide all interested parties with timely and proper notice of the proposed sale of the Debtors' assets, the Sale Hearing and the Auction to be conducted for the purpose of determining the entity or entities submitting the highest and best bid (or bids) for the purchase of the Debtors' assets.

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

1. The Bid Procedures are hereby approved and fully incorporated into this Procedures Order. The Debtors are authorized to undertake any and all actions necessary or appropriate to implement the Bid Procedures.

2. All objections, if any, to the Sale Motion that have not been withdrawn, waived, or settled as announced to the Court at the Procedures Hearing, are overruled.

3. The Breakup Fee, as set forth in the Bid Procedures, is hereby approved. The Debtors are authorized in their discretion, subject to the terms of the Bid Procedures, to award a Stalking Horse Bidder (or Stalking Horse Bidders) a Breakup Fee and other customary bid protections as set forth in the Bid Procedures without further order of this Court.

4. The Notice of Auction and Sale Hearing, substantially in the form attached hereto as **Exhibit B** (the "**Sale Notice**") (a) is hereby approved and (b) shall be served by no later than June 1, 2022, upon (i) all parties on the Limited Service List as provided in Paragraph D of the Complex Case Procedures, and (ii) all individuals or entities who have expressed in writing to SLIB an interest in acquisition of all or part of the Debtors' assets which service is sufficient in light of the circumstances and the nature of the relief requested in the Sale Motion.

5. As further described in the Bid Procedures, in the event that the Debtors timely receive one or more Qualifying Bids, the Debtors shall conduct the Auction on **June 28, 2022** or

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extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

such later date as may be determined by the Debtors in consultation with the Bond Trustee (the “**Auction Date**”). The Debtors shall conduct the Auction at the offices of Scroggins & Williamson, P.C., 4401 Northside Parkway, Suite 450, Atlanta, Georgia 30327, or such other location in Atlanta, Georgia, as shall be selected by the Debtors and communicated to all Qualified Bidders at least one day prior to the Auction.

6. Each bidder participating at the Auction shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the proposed sale of the Debtors’ assets; (b) the Auction shall not be open to the public and only Qualified Bidders, the Debtors, the U.S. Trustee, the Bond Trustee, representatives of the holders of the Bonds, and their respective advisors shall be permitted to attend the Auction; and (c) the Auction will be transcribed or videotaped.

7. The notice to counterparties to the Assigned Contracts, substantially in the form attached hereto as **Exhibit C** (the “**Cure Notice**”) (a) is hereby approved and (b) shall be served upon the counterparties (the “**Counterparties**”) to the Assigned Contracts by no later than June 1, 2022.

8. Objections, if any, to the proposed assumption and assignment of the Assigned Contracts, including, but not limited to, objections relating to the Cure Amount and/or potential objections related to adequate assurances of future performance, must (a) be in writing; (b) state with specificity the nature of such objection and the alleged Cure Amount (with appropriate documentation in support thereof); (c) if the objecting party (a “**Requesting Counterparty**”) wishes to receive information regarding the successful bidder following the Auction in order to potentially raise an objection to adequate assurance of future performance before the Sale Hearing, the Requesting Counterparty shall provide an email address which can be used to

provide such information following the Auction; (d) comply with the Federal Rules of Bankruptcy Procedure the Local Bankruptcy Rules of this Court and the Complex Case Procedures; and (e) be filed with this Court and served upon counsel for the Debtors, Ashley R. Ray, Scroggins & Williamson, P.C., 4401 Northside Parkway, Suite 450, Atlanta, GA 30327 **no later than June 22, 2022** (the “**Objection Deadline**”). Any party failing to timely file an objection to the Cure Amounts set forth in the Sale Motion or the proposed assumption and assignment of the Assigned Contracts by the Objection Deadline shall be forever barred from objecting to the Cure Amounts and from asserting any additional cure or other amounts against the Debtors, their estates, or any Successful Bidder with respect to its executory contract(s) or unexpired lease(s).

9. Following the determination of a Successful Bidder at the Auction, the Debtors shall notify any applicable Requesting Counterparty of the identify of such Successful Bidder at the email address provided by the Requesting Counterparty.

10. Except as may otherwise be agreed to by the parties to an Assigned Contract (with the consent of a successful bidder), on the applicable closing date of an applicable asset purchase agreement, the purchaser under such asset purchase agreement shall cure those defaults under the Assigned Contracts that need to be cured in accordance with section 365(b) of the Bankruptcy Code by (a) payment of the undisputed Cure Amounts, and/or (b) reserving amounts with respect to the disputed Cure Amounts. If no objection is timely received, the Cure Amount set forth in the Cure Notice shall be controlling notwithstanding anything to the contrary in any Assigned Contract or other documents as of the date of the Cure Notice.

11. Other than objections related to adequate assurance of future performance by a Successful Bidder, objection to the relief requested in the Sale Motion as it relates to the sale of

the Debtors' assets must: (a) be in writing and filed with this Court; (b) comply with the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules and the Complex Case Procedures; and (c) be served upon counsel for the Debtors, Ashley R. Ray, Scroggins & Williamson, P.C., 4401 Northside Parkway, Suite 450, Atlanta, GA 30327 on or before June 24, 2022.

12. Objections to the proposed assumption and assignment of the Assigned Contracts that relate to adequate assurance may be filed at any time prior the commencement of the Sale Hearing.

13. Where a party to an Assigned Contract files a timely objection asserting a higher cure amount than the Cure Amount, and the parties are unable to consensually resolve the dispute prior to the Sale Hearing, the amount to be paid under section 365 of the Bankruptcy Code with respect to such objection will be determined at the Sale Hearing or such other date and time as may be fixed by this Court. All other objections to the proposed assumption and assignment of the Assigned Contracts will be heard at the Sale Hearing.

14. The Sale Hearing will be conducted on **June 29, 2022 at 11:00 .m.** The Sale Hearing will be conducted via Zoom using Judge Bonapfel's Virtual Hearing Room. A link to connect to Judge Bonapfel's Virtual Hearing Room is available on his webpage at <https://www.ganb.uscourts.gov/content/honorable-paul-w-bonapfel>. Please join the virtual room 10 minutes prior to the hearing. If you experience difficulty in connection, please contact the law clerk via email at [Beth.Harrill@ganb.uscourts.gov](mailto:Beth.Harrill@ganb.uscourts.gov) or by telephone at (404) 215-1020 The Debtors will seek the entry of one or more orders from this Court at the Sale Hearing approving and authorizing the sale of the Debtors' assets on terms and conditions consistent with asset purchase agreements entered into with the parties that submitted Successful Bids at the Auction.

At the Sale Hearing, the Debtors may also seek approval of one or more Backup Bids which were not designated as Successful Bids.

15. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014 or otherwise or any Local Rules of this Court, the terms and conditions of this Procedures Order shall be immediately effective and enforceable upon its entry.

16. All time periods set forth in this Procedures Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

17. To the extent that this Procedures Order is inconsistent with any prior order or pleading with respect to the Sale Motion in this case, the terms of this Procedures Order shall govern.

18. This Court shall retain jurisdiction to resolve any dispute relating to the interpretation of the terms and conditions of the Sale Motion and this Procedures Order. To the extent any provisions of this Procedures Order shall be inconsistent with the Sale Motion, the terms of this Procedures Order shall control.

**[END OF DOCUMENT]**

Prepared and presented by:

SCROGGINS & WILLIAMSON, P.C.

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J. ROBERT WILLIAMSON  
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ASHLEY REYNOLDS RAY  
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*Counsel for the Debtors*

**Exhibit A**

**Sale Procedures**

**Exhibit B**

**Sale Notice**



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION

<b>IN RE:</b>	)	<b>CHAPTER 11</b>
	)	
<b>REGIONAL HOUSING &amp; COMMUNITY SERVICES CORP., et al.,</b>	)	<b>Jointly Administered Under</b>
	)	<b>CASE NO. 21-41034-pwb</b>
<b>Debtors.</b>	)	
	)	
<hr/>		

**NOTICE OF AUCTION AND SALE HEARING**

PLEASE TAKE NOTICE that on April 28, 2022, above-captioned debtors and debtors and debtors-in-possession (collectively, the “**Debtors**”)<sup>2</sup>, by and through the undersigned counsel, filed with the Bankruptcy Court the *Debtors’ First Motion (A) For Authority To Sell Assets Free And Clear Of Liens, Claims, And Encumbrances; (B) To Assume And Assign Certain Executory Contracts, Leases And Licenses And Establish Cure Costs in Connection Therewith; (C) To Establish Procedures With Respect To Such Sale and the Assumption and Assignment of Executory Contracts and Leases; (D) To Consider Approval of Breakup Fee; and (E) To Shorten and Limit Notice* (the “**Motion**”).<sup>3</sup>

PLEASE TAKE FURTHER NOTICE that, on May [\_\_\_\_], 2022, the Bankruptcy Court entered an order [Docket No. \_\_\_\_] (the “**Procedures Order**”), which, among other things, establishes procedures (the “**Bid Procedures**”) that govern the manner in which the Debtors’ assets are to be sold.

PLEASE TAKE FURTHER NOTICE that a copy of the Sale Motion and the Procedures Order are available upon written request to counsel for the Debtors or may be viewed online at <http://www.kccllc.net/RegionalHousing>.

PLEASE TAKE FURTHER NOTICE that, in accordance with the terms of the Sale Procedures Order, the Debtors may conduct an auction (the “**Auction**”) on **June 28, 2022 at 10:00 a.m.** (the “**Auction Date**”) at Scroggins & Williamson, P.C., 4401 Northside Parkway,

<sup>2</sup> The Debtors in these Chapter 11 cases include: Regional Housing & Community Services Corporation, RHCSC Columbus AL Holdings LLC, RHCSC Columbus Health Holdings LLC, RHCSC Douglas AL Holdings LLC, RHCSC Douglas Health Holdings LLC, RHCSC Gainesville AL Holdings LLC, RHCSC Gainesville Health Holdings LLC, RHCSC Montgomery I AL Holdings LLC, RHCSC Montgomery I Health Holdings LLC, RHCSC Montgomery II AL Holdings LLC, RHCSC Montgomery II Health Holdings LLC, RHCSC Rome AL Holdings LLC, RHCSC Rome Health Holdings LLC, RHCSC Savannah AL Holdings LLC, RHCSC Savannah Health Holdings LLC, RHCSC Social Circle AL Holdings LLC, and RHCSC Social Circle Health Holdings LLC.

<sup>3</sup> Unless otherwise defined herein, capitalized terms shall have the meaning ascribed to them in the Motion, which may be viewed at <http://www.kccllc.net/RegionalHousing>.

Suite 450, Atlanta, Georgia 30327 or such other location as is provided to all Qualified Bidders, counsel for the Bond Trustee and the United States Trustee at least one day prior to the Auction. Only parties that have submitted a Qualifying Bid (as defined in the Sale Procedures Order) as set forth in the Bid Procedures (the “**Bid Deadline**”), or are otherwise permitted to attend the Auction pursuant to the Bid Procedures, will be permitted to participate in and/or make any statements on the record at the Auction.

PLEASE TAKE FURTHER NOTICE that on **June 29, 2022**, at 11:00 a.m. (the “**Sale Hearing**”), the Debtors shall appear before the Bankruptcy Court and seek entry of an order:

- approving one or more asset purchase agreements submitted by the Successful Bidder(s);
- authorizing the sale of the Debtors’ assets to Successful Bidders free and clear of lien, claims and interest, with such liens attaching to the proceeds of the applicable sale in the same order of priority as existed prior to such sale;
- authorizing the assumption and assignment of certain executory contracts and unexpired leases; and
- granting certain related relief.

PLEASE TAKE FURTHER NOTICE that objections to the Sale Motion, if any, must comply with the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court for the Northern District of Georgia, must be set forth in writing describing the basis therefor, and must be filed with the Bankruptcy Court electronically and, be served upon counsel for the Debtors as follows: Ashley R. Ray, Scroggins & Williamson, P.C., 4401 Northside Parkway, Suite 450, Atlanta, Georgia 30327 no later than **June 22, 2022** (the “**Objection Deadline**”).

PLEASE TAKE FURTHER NOTICE that the failure of any person or entity to file an objection before the Objection Deadline shall be deemed a consent to the sale Debtors’ assets as requested in the Sale Motion and the other relief requested therein, and be a bar to the assertion, at the Sale Hearing or thereafter, of any objection to the Sale Motion, the Auction, the sale of the Debtors’ assets, the Debtors’ consummation and performance pursuant to the asset purchase agreement(s) approved at the Sale Hearing (including, without limitation, the sale of the Debtors’ assets free and clear of all liens, claims and interests), and the assumption and assignment of the Assigned Contracts, if authorized by the Bankruptcy Court.

PLEASE TAKE FURTHER NOTICE that this Sale Notice is subject to the full terms and conditions of the Sale Motion and the Procedures Order, which shall control in the event of any conflict, and the Debtors encourage the parties in interest to review such documents in their entirety.

This \_\_\_\_\_ day of April, 2022.

SCROGGINS & WILLIAMSON, P.C.

One Riverside  
4401 Northside Parkway  
Suite 450  
Atlanta, Georgia 30327  
T: (404) 893-3880  
F: (404) 893-3886  
E: rwilliamson@swlawfirm.com  
aray@swlawfirm.com

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J. ROBERT WILLIAMSON  
Georgia Bar No. 765214  
ASHLEY R. RAY  
Georgia Bar No. 601559  
  
*Counsel for the Debtors*

**Exhibit C**

**Cure Notice**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION

<b>IN RE:</b>	)	<b>CHAPTER 11</b>
	)	
<b>REGIONAL HOUSING &amp; COMMUNITY SERVICES CORP., et al.,</b>	)	<b>Jointly Administered Under</b>
	)	<b>CASE NO. 21-41034-pwb</b>
<b>Debtors.</b>	)	
	)	
	)	

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**NOTICE OF DEBTORS’ INTENT TO ASSUME AND ASSIGN CERTAIN UNEXPIRED LEASES AND EXECUTORY CONTRACTS AND SETTING FORTH THE CURE AMOUNTS**

PLEASE TAKE NOTICE that on April 28, 2022, above-captioned debtors and debtors and debtors-in-possession (collectively, the “**Debtors**”)<sup>4</sup>, by and through the undersigned counsel, filed with the Bankruptcy Court the *Debtors’ First Motion (A) For Authority To Sell Assets Free And Clear Of Liens, Claims, And Encumbrances; (B) To Assume And Assign Certain Executory Contracts, Leases And Licenses And Establish Cure Costs in Connection Therewith; (C) To Establish Procedures With Respect To Such Sale and the Assumption and Assignment of Executory Contracts and Leases; (D) To Consider Approval of Breakup Fee; and (E) To Shorten and Limit Notice* (the “**Sale Motion**”).<sup>5</sup>

PLEASE TAKE FURTHER NOTICE that, pursuant to the Sale Motion, the Debtors seek to sell substantially all of their assets to the successful bidder(s) at an Auction.

PLEASE TAKE FURTHER NOTICE that the Debtors are parties to various executory contracts and unexpired leases (collectively, the “**Contracts**”). Any proposed Purchaser may elect to have the Debtors assume and assign some or all of the Contracts as part of the sale transaction (collectively, the “**Assigned Contracts**”).

PLEASE TAKE FURTHER NOTICE that you have been identified as a counterparty to an Assigned Contract. The Assigned Contract with respect to which you have been identified as

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<sup>4</sup> The Debtors in these Chapter 11 cases include: Regional Housing & Community Services Corporation, RHCSC Columbus AL Holdings LLC, RHCSC Columbus Health Holdings LLC, RHCSC Douglas AL Holdings LLC, RHCSC Douglas Health Holdings LLC, RHCSC Gainesville AL Holdings LLC, RHCSC Gainesville Health Holdings LLC, RHCSC Montgomery I AL Holdings LLC, RHCSC Montgomery I Health Holdings LLC, RHCSC Montgomery II AL Holdings LLC, RHCSC Montgomery II Health Holdings LLC, RHCSC Rome AL Holdings LLC, RHCSC Rome Health Holdings LLC, RHCSC Savannah AL Holdings LLC, RHCSC Savannah Health Holdings LLC, RHCSC Social Circle AL Holdings LLC, and RHCSC Social Circle Health Holdings LLC.

<sup>5</sup> Unless otherwise defined herein, capitalized terms shall have the meaning ascribed to them in the Sale Motion, which may be viewed at <http://www.kccllc.net/RegionalHousing>.

a counterparty and the corresponding proposed cure amount (the “**Cure Amount**”) are set forth on Schedule 1 annexed hereto.

PLEASE TAKE FURTHER NOTICE that the Debtors believe that any and all defaults (other than the filing of this chapter 11 case) and actual pecuniary losses under the Assigned Contracts can be cured by the payment of the Cure Amount.

PLEASE TAKE FURTHER NOTICE that the assumption and assignment of any Assigned Contract shall result in the full release and satisfaction of any claims or defaults, whether monetary or non-monetary, which exist as of the time of assumption and assignment.

PLEASE TAKE FURTHER NOTICE that, on May [\_\_\_], 2022, the Bankruptcy Court entered an order [Docket No \_\_\_\_] (the “**Procedures Order**”), which, among other things, establishes procedures relating to the assumption and assignment of Assigned Contracts (as defined in the Motion) of the Debtors.

PLEASE TAKE FURTHER NOTICE that, there will be a hearing (the “**Sale Hearing**”) at **11:00 a.m. on June 29, 2022**, at which the Debtors will seek approval and authorization for the sale of the Debtors’ assets.

PLEASE TAKE FURTHER NOTICE that any objection to the proposed assumption and assignment of any Assigned Contract must (a) be in writing; (b) state with specificity the nature of such objection and the alleged Cure Amount (with appropriate documentation in support thereof); (c) if the objecting party (a “**Requesting Counterparty**”) wishes to receive information regarding adequate assurance of future performance from Successful Bidder that designates the objecting party’s contract or lease for assignment, contain an email address which can be used to contact such Requesting Counterparty after the Auction and before the Sale Hearing; (d) comply with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules of the Bankruptcy Court; and (e) be filed with the Bankruptcy Court and served upon counsel for the Debtors as follows: Ashley R. Ray, Scroggins & Williamson, P.C., 4401 Northside Parkway, Suite 450, Atlanta, Georgia 30327, on or before **June 22, 2022** (the “**Objection Deadline**”). Requesting Counterparties will be provided the identifies of Successful Bidders by email following the Auction on June 28, 2022 and before the Sale Hearing on June 29, 2022. Objections, if any, to adequate assurance of a Successful Bidder may be filed at any time prior the commencement of the Sale Hearing.

PLEASE TAKE FURTHER NOTICE that any counterparty failing to timely file an objection to a Cure Amount or the proposed assumption and assignment of an Assigned Contract shall be forever barred from objecting to the Cure Amount and from asserting any additional cure or other amounts against the Debtors, their estates, or the proposed Purchaser(s) with respect to its Contract.

PLEASE TAKE FURTHER NOTICE that where a counterparty to an Assigned Contract files a timely objection asserting a higher cure amount than the Cure Amount, and the parties are unable to consensually resolve the dispute prior to the Sale Hearing, the amount to be paid under section 365 of the Bankruptcy Code with respect to such objection will be determined at the Sale

Hearing or such other date and time as may be fixed by the Bankruptcy Court. All other objections to the proposed assumption and assignment of the Assigned Contracts will be heard at the Sale Hearing.

PLEASE TAKE FURTHER NOTICE that if no Cure Amount is due under the Assigned Contract, and the counterparty to such agreement does not otherwise object to the assumption and assignment of such agreement, no further action needs to be taken on the part of that counterparty.

PLEASE TAKE FURTHER NOTICE that the Debtors' decision to assume and assign the Assigned Contracts is subject to Bankruptcy Court approval and consummation of the sale of the Debtors' assets. Absent consummation of the sale of the applicable assets related to a particular Debtor, each Assigned Contract shall not be deemed assumed and assigned and shall in all respects be subject to further administration under the Bankruptcy Code. The designation of any agreement as an Assigned Contract shall not constitute or be deemed to be a determination or admission by the Debtors or the proposed purchaser that such document is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code (all rights with respect thereto being expressly reserved).

This \_\_\_\_ day of [\_\_\_\_], 2022.

SCROGGINS & WILLIAMSON, P.C.

One Riverside  
4401 Northside Parkway  
Suite 450  
Atlanta, Georgia 30327  
T: (404) 893-3880  
F: (404) 893-3886  
E: rwilliamson@swlawfirm.com  
aray@swlawfirm.com

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J. ROBERT WILLIAMSON  
Georgia Bar No. 765214  
ASHLEY R. RAY  
Georgia Bar No. 601559  
  
*Counsel for the Debtors*

**Schedule 1**

**Potential Assigned Contracts and Proposed Cure Costs**

<b>Counterparty</b>	<b>Description</b>	<b>Cure Amount</b>



**Exhibit B**

**Proposed Bid Procedures**

**REGIONAL HOUSING & COMMUNITY SERVICES CORPORATION**  
**BID PROCEDURES**

Set forth below are the bid procedures (the “Bid Procedures”)<sup>1</sup> to be employed with respect to the sale (as applicable, the “Sale” or “Sales”) of substantially all of the Debtors’ assets in these chapter 11 cases (the “Chapter 11 Cases”) pending in the United States Bankruptcy Court for the Northern District of Georgia (the “Bankruptcy Court”), Case No. 21-41034-pwb (jointly administered). The Debtors’ assets consist of eight (8) senior housing communities located throughout Georgia and Alabama, and the personal property associated therewith (each a “Facility” and together the “Facilities”). The Sale or Sales are to be based upon a competitive bidding process, as set forth herein, and subject to approval by the Bankruptcy Court pursuant to section 363 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

**Summary of Important Dates**

Milestone	Proposed Date
Stalking Horse Submission Deadline	May 17, 2022
Cure Objection Deadline	June 22, 2022
Qualified Bid Deadline	June 22, 2022
Auction (if necessary)	June 28, 2022
Sale Objection Deadline and Contract Assignment Deadline	June 22 2022
Sale Hearing	June 29, 2022

**Assets to be Sold**

Each of the Debtors seek to sell substantially all of their assets in one or more sale transactions. Each of the Debtors’ businesses is comprised of a senior housing community and related assets. Interested bidders may submit bids for the purchase of any or all of the following in accordance with the terms and conditions set forth herein:

Facility	Address	Number of Units
The Gardens of Savannah	249 Holland Drive Savannah, GA 31419	35
The Gardens of Rome	1168 Chulio Road SE Rome, GA 30161	60

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<sup>1</sup> All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Debtors’ First Motion (A) For Authority To Sell Assets Free And Clear Of Liens, Claims, And Encumbrances; (B) To Assume And Assign Certain Executory Contracts, Leases And Licenses And Establish Cure Costs in Connection Therewith; (C) To Establish Procedures With Respect To Such Sale and the Assumption and Assignment of Executory Contracts and Leases; (D) To Consider Approval of Breakup Fee; and (E) To Shorten and Limit Notice.

The Gardens of Social Circle	621 North Cherokee Road Social Circle, GA 30025	94
The Gardens of Waterville	3920 Antoinette Drive Montgomery, AL 36111	50
The Landings of Columbus	6830 River Road Columbus, GA 31904	60
The Landings of Douglas	1360 West Gordon Street Douglas, GA 31533	58
The Landings of Gainesville	2030 Windward Lane Gainesville, GA 30501	42
The Landings of Montgomery	3300 Lynchburg Drive Montgomery, AL 36116	60

Except as explicitly set forth in the applicable transaction documents, any sale of assets will be on an “as-is, where-is” basis, with all faults, and without representations or warranties of any kind, nature, or description by the Debtors, their agents or estates, whether written, verbal, express, implied, or by operation of law.

### **Due Diligence Participation Requirements**

Parties interested in conducting due diligence should contact the Debtors’ advisors, GGG Partners, LLC (“GGG”) and Senior Living Investment Brokerage (“SLIB”) as follows:

- GGG: Katie Goodman at (404) 293-0137 or [kgoodman@gggmgt.com](mailto:kgoodman@gggmgt.com).
- SLIB: Daniel Geraghty at (847) 525-3025 or [geraghty@slibinc.com](mailto:geraghty@slibinc.com).

Any person desiring to submit a bid for one or more of the Facilities will be required to deliver to the Debtors an executed confidentiality agreement in form and substance satisfactory to the Debtors. The Debtors and their professionals will afford any person who executes a confidentiality agreement (a “Potential Bidder”) such due diligence access or additional information with respect to the Facilities as the Debtors, in their business judgment, determine to be reasonable and appropriate; *provided, however*, that the same access and information for a particular Facility must also be made available to all Potential Bidders for the same Facility. Notwithstanding the foregoing, the Debtors shall have the right, in their sole discretion or at the request of UMB Bank, N.A. (the “Bond Trustee”), to require satisfactory evidence of any Potential Bidder’s available funds for or firm commitment for financing sufficient to consummate a Sale or Sales, prior to granting said Potential Bidder access to conduct due diligence. Additional due diligence will not be provided after the Bid Deadline (as defined below).

Notwithstanding the foregoing, the Debtors or their professionals are not required to provide confidential, business-sensitive, or proprietary information to any Potential Bidder if the Debtors reasonably believe that: (i) such disclosure would be detrimental to the interests of the

Debtors' estates, or (ii) such Potential Bidder does not intend in good faith, or have the capacity, to consummate its bid.

### **Selection of Stalking Horse Bidder(s)**

Pursuant to the order approving these Bid Procedures (the "Bid Procedures Order"), and as set forth below, the Debtors are authorized, but not obligated, to enter into an asset purchase agreement or asset purchase agreements for the Facilities with any Potential Bidder that desires to serve as a stalking horse bidder for any or all of the Facilities.

On or before May 17, 2022 at 4:00 p.m. (prevailing Eastern Time), any Potential Bidder that desires to serve as a stalking horse shall submit a written letter of intent setting forth the terms and conditions of its offer which shall include, but not be limited to:

1. The Facility or Facilities that are the subject of the Bid;
2. Cash purchase price;
3. A commitment to make a good-faith deposit in the amount of ten percent (10%) of the cash purchase price, which deposit shall be non-refundable upon execution of a Stalking Horse APA unless the Debtors are in breach of the Stalking Horse APA or another party is selected as the Successful Bidder (as defined below) and the Stalking Horse (as defined below) is not in breach of the Stalking Horse APA (the "Stalking Horse Deposit");
4. Provide information on the financial capabilities of the Potential Bidder to consummate the proposed transaction;
5. The Potential Bidder's affiliations; and
6. Statement on the Potential Bidder's intent to continue to operate the Facility or Facilities as they are currently licensed.

The Stalking Horse must also comply with all other applicable Participation Requirements (as defined below).

The Debtors shall provide the Bond Trustee with copies of all letters of intent no later than twenty-four (24) hours after receipt thereof.

At any time prior to completion of the Auction, the Debtors, following consultation with the Bond Trustee, may enter into one or more definitive asset purchase agreements for each of the Facilities (each a "Stalking Horse APA") with a Potential Bidder (or Potential Bidders) (each a "Stalking Horse"), which Stalking Horse APA shall be subject to the consent of the Bond Trustee.

As a component of each Stalking Horse APA, the Debtors may provide a break-up fee of up to 3% of the cash purchase price set forth in such Stalking Horse APA, plus a minimum bid increment for other bidders to submit competing bids, or other buyer protections (collectively, the “Bid Protections”) requested by the Stalking Horse and agreed-to by the Debtors following consultation with the Bond Trustee.

In the event that the Debtors enter into one or more Stalking Horse APAs, the Debtors shall (i) file a copy of such APA(s) with the Bankruptcy Court, (ii) serve a copy by the Court’s ECF system and (iii) post a copy to the data room maintained for purpose of facilitating due diligence.

### **Bid Deadline**

The deadline for any Potential Bidders to submit bids intending to compete with the Stalking Horse APA, if any, shall be **June 22, 2022 at 4:00 p.m. (prevailing Eastern Time)** (the “Bid Deadline”). Such bids must be received on or before the Bid Deadline by the following parties (collectively, the “Notice Parties”):

(a) *The Debtors:*

Regional Housing & Community Services Corp.  
Katie S. Goodman  
GGG Partners, LLC  
3155 Roswell Rd NE, Suite 120  
Atlanta, GA 30305  
[kgoodman@gggmgt.com](mailto:kgoodman@gggmgt.com)

(b) *counsel to the Debtors:*

Ashley R. Ray  
Scroggins & Williamson, P.C.  
4401 Northside Parkway  
Suite 450  
Atlanta, GA 30327  
[aray@swlawfirm.com](mailto:aray@swlawfirm.com)

(c) *Senior Living Investment Brokerage*

Daniel Geraghty  
Senior Living Investment Brokerage  
490 Pennsylvania Avenue  
Glen Ellyn, IL 60137  
[geraghty@slibinc.com](mailto:geraghty@slibinc.com)

(d) *counsel to the Bond Trustee:*

Kevin J. Walsh  
Charles W. Azano

Greenberg Traurig, LLP  
One International Place  
Suite 2000  
Boston, MA 02110  
[walshke@gtlaw.com](mailto:walshke@gtlaw.com)  
[azanoach@gtlaw.com](mailto:azanoach@gtlaw.com)

### **Bid Requirements**

To be eligible to participate in the Auction (as such term is defined below), each bid and each Potential Bidder submitting such a bid must conform to the following requirements (collectively, the “Participation Requirements”):

1. Indicate the Facility or Facilities that are the subject of the Bid;
2. offer to consummate the sale on terms no less favorable to the Debtors than those set forth in the applicable Stalking Horse APA, if any (taking into account Bid Protections that must be paid);
3. include a marked copy of the applicable Stalking Horse APA (if any), or if there is no applicable Stalking Horse APA, the form asset purchase agreement contained in the data room, to show any proposed amendments thereto (the “Modified APA”) and a clean and executed Modified APA;
4. include a statement that there are no conditions precedent to the Potential Bidder’s ability to enter into a definitive agreement, including that there are no financing contingencies to the bid, and that all necessary internal and shareholder approvals have been obtained prior to the bid;
5. state that such offer is binding and irrevocable until the approval of the Successful Bid by the Court unless designated as the Back-Up Bid (as defined below) in which case a designated Back-Up Bid shall be binding;
6. disclose the identity of each entity that will be bidding or otherwise participating in connection with such bid, and the complete terms of any such participation;
7. disclose the Potential Bidder’s affiliations;
8. state whether the Potential Bidder intends to continue operating the Facility (or Facilities) as they are currently licensed;
9. include the names and contact information of members of the Potential Bidder who

will be available to answer questions regarding the offer, including advisors and related parties;

10. include a good-faith deposit in immediately available funds in at least the amount of the deposit provided by the Stalking Horse in the Stalking Horse APA (“Earnest Money Deposit”) or if no Stalking Horse APA has been entered into, 10% of the proposed purchase price;
11. provide satisfactory written evidence of available funds or a firm commitment for financing sufficient to consummate the Sale;
12. represent and warrant that the Potential Bidder has had an opportunity to conduct any and all due diligence regarding the Debtors’ business and the Facilities prior to submitting its bid and a statement that the Potential Bidder has relied solely upon its own independent review, investigation, and/or inspection of any relevant documents and the Facilities 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 Debtors’ business or the Facilities or the completeness of any information provided in connection therewith, except as expressly stated in the representations and warranties contained in the Potential Bidder’s Modified APA, ultimately accepted and executed by the Debtors; and
13. acknowledge that the Potential Bidder is not entitled to any of the Bid Protections.

The Debtors, following consultation with the Bond Trustee, shall determine whether bids submitted by Potential Bidders meet the Participation Requirements, including but not limited to any subjective determinations of whether the Participation Requirements have been met (for example, whether written evidence of available funds or a firm commitment for financing sufficient to consummate the Sale is satisfactory), and otherwise whether a Potential Bidder is a Qualified Bidder.

The Debtors reserve the right to request additional information from a Potential Bidder in connection with its bid. The Debtors shall inform the Bond Trustee of any such request within twenty-four (24) hours of the request.

### **Qualified Bidders and Bids**

Potential Bidders who have satisfied the Participation Requirements will be deemed “Qualified Bidders.” Bids that contain all bid requirements, as determined by the Debtors, in consultation with the Bond Trustee, will be deemed “Qualified Bids.” The Stalking Horse, if any, shall be entitled to credit bid the amount of its break-up fee at the Auction.

The Debtors will advise each Potential Bidder whether they are deemed to be a Qualified Bidder and whether their bid is a Qualified Bid before the Auction. The Stalking Horse is deemed a Qualified Bidder and the Stalking Horse Bid is a Qualified Bid in all respects. The Debtors will provide copies of the Qualified Bids to the Bond Trustee. The Stalking Horse will be notified, no later than 24 hours prior to the Auction, if any Qualified Bids have been received.

The Debtors, in consultation with the Bond Trustee, reserve the right to waive noncompliance with any one or more of the Participation Requirements to be a Qualified Bid and deem an otherwise not Qualified Bid to be a Qualified Bid if the Debtors reasonably determine, in their business judgment, after consultation with the Bond Trustee, that such waiver is consistent with their fiduciary duties.

The Bond Trustee reserves its right to submit a credit bid for any or all of the Debtors' Assets. The Bond Trustee shall be deemed a Qualified Bidder.

A Potential Bidder submitting a bid for consideration as a Qualified Bid shall be deemed to have waived the right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code related in any way to the Chapter 11 Cases, including but not limited to due diligence, the submission of its bid, the Bid Procedures, the Auction, and any Sale.

### **Auction Participation**

Unless otherwise agreed to by the Debtors, only Qualified Bidders, the Bond Trustee, representatives of holders of the Bonds, and their respective legal or financial professionals are eligible to attend or participate at the Auction. Subject to the other provisions of these Bid Procedures, if the Debtors do not receive any Qualified Bids other than Stalking Horse Bid (or Stalking Horse Bids) for a particular Facility or if no Qualified Bidder other than a Stalking Horse has indicated its intent to participate in the Auction for a particular Facility, the Debtors may elect (following consultation with the Bond Trustee) not to hold an Auction for such Facility and the Stalking Horse will be named the Successful Bidder (as defined below) with respect to such Facility.

### **Auction**

If any Qualified Bid has been received and any Qualified Bidder has indicated its intent to participate in the Auction for a particular Facility, the Debtors will conduct an auction (the "Auction") for the sale of such Facility. Each Qualified Bidder participating at the Auction will be required to confirm that it has not engaged in any collusion with respect to the bidding as to any Facility being sold pursuant to the Auction.

The Auction shall take place at 10:00 a.m. (prevailing Eastern Time) on June 28, 2022 at the offices of Scroggins & Williamson, P.C., 4401 Northside Parkway, Suite 450, Atlanta, GA 30327. At the Auction, only the Stalking Horse, if any, and other Qualified Bidders will be permitted to increase their bids or make any subsequent bids. The Debtors may conduct the Auction in the manner they reasonably determine (including but not limited to structuring the Auction to include a certain Facility or Facilities in lots, with the ability of a particular Facility to be in more than one lot, and having bidders bid on such lots separately or against each other so as to determine the highest value of the Debtors' assets), in their business judgment, after consultation



with the Bond Trustee, will achieve the maximum value for the Facilities. For the avoidance of doubt, the Debtors, with the consent of the Bond Trustee, may move to sealed bid Auction for any or all of the Facilities at any time. The Debtors may withdraw a particular Facility from Auction at any time, provided the Debtors have not entered into a Stalking Horse APA with respect to such Facility.

### **Closing the Auction**

The Auction shall continue until, with respect to a particular Facility or Facilities, there is only one offer that the Debtors determine, with the consent of the Bond Trustee, subject to Bankruptcy Court approval, is the highest and best offer from among the Qualified Bidders (including any Stalking Horse) submitted at the Auction for each Facility or Facilities (each, a “Successful Bid”). The Qualified Bidder submitting such Successful Bid shall become the “Successful Bidder” for such Facility or Facilities and shall have such rights and responsibilities of a purchaser, as set forth in the Stalking Horse APA or Modified APA, as applicable. Immediately prior to the conclusion of the Auction, after consultation with the Bond Trustee, the Debtors shall (1) review each bid made at the Auction on the basis of financial and contractual terms; (2) identify the Successful Bid or Successful Bids; and (3) notify all Qualified Bidders at the Auction, prior to its conclusion, of the name or names of the Successful Bidder or Successful Bidders and the amount and other material terms of the Successful Bid or Successful Bids.

The Debtors may also, following consultation with the Bond Trustee, select a back-up bid (the “Back-Up Bid”) for each Facility, which shall remain open and irrevocable until one (1) business day after the closing of the Sale for such Facility with the applicable Successful Bidder. In the event that, for any reason, the Successful Bidder fails to close the transaction contemplated by the Successful Bidder, the Debtors may, with the consent of the Bond Trustee, elect to regard the Back-Up Bid as the highest and best bid for the applicable Facility, and the Debtors will be authorized to consummate the transaction contemplated by the Back-Up Bid without further order of the Bankruptcy Court.

The Successful Bidder and the Back-Up Bidder shall be deemed to have waived the right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code related in any way to the Chapter 11 Case, including but not limited to due diligence, the submission of its bid, the Bid Procedures, the Auction, and any Sale.

### **Return of Deposits**

Within three (3) business days after the close of a Sale, the Debtors shall return by check or wire the full amount of each deposit submitted by a party that is not the party with whom the Sale closes. A defaulting bidder’s deposit shall be forfeited to the Debtors, subject to the terms set forth in the Stalking Horse APA or Modified APA, as applicable.

### **Sale Hearing**

A hearing to approve a Sale based on the Successful Bid shall take place at 11:00 a.m. on June 29, 2022. The hearing will be conducted via Zoom using Judge Bonapfel’s Virtual Hearing Room. A link to connect to Judge Bonapfel’s Virtual Hearing Room is available on his webpage

at <https://www.ganb.uscourts.gov/content/honorable-paul-w-bonapfel>. Please join the virtual room 10 minutes prior to the hearing. If you experience difficulty in connection, please contact the law clerk via email at [Beth\\_Harrill@ganb.uscourts.gov](mailto:Beth_Harrill@ganb.uscourts.gov) or by telephone at (404) 215-1020.

**Deadline to Object to the Sale and to Proposed Assumption and Assignment (Including Cure Amounts) of Executory Contracts and Unexpired Leases**

All objections to the Sale(s) and to the proposed assumption and assignment of executory contracts and unexpired leases (other than adequate assurance of future performance) must be filed by June 22, 2022.

**Deadline to Object to Adequate Assurance of Future Performance**

All objections to adequate assurance of future performance of a purchaser with respect to the proposed assumption and assignment of executory contracts and unexpired leases must be filed by no later than the date and time set for the Sale Hearing.

**Assumption of Executory Contracts and Unexpired Leases**

Each Stalking Horse APA and Modified APA must designate which executory contracts and unexpired leases with respect to a particular Facility are to be assumed and assigned (the “Assigned Contracts”). In all circumstances, the Successful Bidder shall be responsible for all cure amounts relating to the Assigned Contracts under section 365 of the Bankruptcy Code. Purchasers may amend the list of Assigned Contracts through the date of closing of any Sale; provided, however, to the extent there are any changes after the Sale Hearing, counter-parties shall receive notice and no fewer than ten (10) days to object to such changes.

**Free and Clear of Any and All Claims and Interests**

Except as otherwise provided in the Stalking Horse APA or Modified APA, as applicable, all of the Debtors’ right, title, and interest in and to the purchased assets shall be sold free and clear of all liens, claims, and interests (collectively, the “Encumbrances”) to the maximum extent permitted by section 363 of the Bankruptcy Code (other than permitted liens and assumed liabilities), with such Encumbrances to attach to the proceeds of the Sale of the purchased assets with the same validity and priority as such Encumbrances applied against the purchased assets.