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6 Attorneys for the Chapter 11 Debtor and Debtor In
Possession

8 **UNITED STATES BANKRUPTCY COURT**
SOUTHERN DISTRICT OF CALIFORNIA

9 In re

10 BORREGO COMMUNITY HEALTH
11 FOUNDATION,

12 Debtor and Debtor In
Possession.

Case No. 22-02384-11

Chapter 11 Case

Judge: Honorable Laura S. Taylor

**SUPPLEMENT TO NOTICE OF MOTION
AND MOTION FOR THE ENTRY OF (I) AN
ORDER (1) APPROVING FORM OF ASSET
PURCHASE AGREEMENT; (2) APPROVING
AUCTION SALE FORMAT AND BIDDING
PROCEDURES; (3) APPROVING PROCESS
FOR DISCRETIONARY SELECTION OF
STALKING HORSE BIDDER AND BID
PROTECTIONS; (4) APPROVING FORM OF
NOTICE TO BE PROVIDED TO
INTERESTED PARTIES; (5) SCHEDULING A
COURT HEARING TO CONSIDER
APPROVAL OF THE SALE TO THE
HIGHEST AND BEST BIDDER; AND (6)
APPROVING PROCEDURES RELATED TO
THE ASSUMPTION OF CERTAIN
EXECUTORY CONTRACTS AND
UNEXPIRED LEASES; AND (II) AN ORDER
AUTHORIZING THE SALE OF PROPERTY
FREE AND CLEAR OF ALL CLAIMS, LIENS
AND ENCUMBRANCES; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
THEREOF**

Hearing:

Date: December 7, 2022

Time: 2:00 p.m.

Location: Jacob Weinberger United States
Courthouse

325 West F. Street, San Diego, California 92101

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1 On November 10, 2022, the above-captioned debtor and debtor in possession (the “Debtor”)
2 filed *Debtor’s Motion for the Entry of (I) An Order Approving Form of Asset Purchase Agreement;*
3 *(2) Approving Auction Sale Format and Bidding Procedures;* *(3) Approving Process for*
4 *Discretionary Selection of Stalking Horse Bidder and Bid Protections;* *(4) Approving Form of*
5 *Notice to Be Provided to Interested Parties;* *(5) Scheduling a Court Hearing to Consider Approval*
6 *of the Sale to the Highest and Best Bidder; And (6) Approving Procedures Related to the*
7 *Assumption of Certain Executory Contracts and Unexpired Leases; and (II) An Order Authorizing*
8 *the Sale of Property Free and Clear of All Claims, Liens and Encumbrances* (the “Motion”)
9 [Docket No. 161].

11 The Debtor hereby supplements the Motion and attaches hereto (i) as **Exhibit “A”** the
12 revised Assumption and Assignment of Executory Contracts and Unexpired Leases and Procedures
13 Related Thereto (the “Assumption Procedures”); (ii) as **Exhibit “B”** is a redline reflecting the
14 changes to the previous Assumption Procedures as included in the Motion in Section VIII; (iii) as
15 **Exhibit “C”** is the revised Bidding Procedures; and (iv) as **Exhibit “D”** is a redline reflecting the
16 changes to the previously filed Bidding Procedures, which were attached to the Motion as Exhibit
17 1.

19 Dated: December 5, 2022

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON

By /s/ Tania M. Moyron
Tania M. Moyron

Attorneys for the Chapter 11 Debtor and
Debtor In Possession

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Exhibit A
(Revised Version of the Assumption Procedures)

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1. As part of the Sale, the Debtor also seeks to assume and assign certain of their executory contracts and unexpired leases (collectively, the “Assumed Executory Contracts”) pursuant to § 365.

2. The Assumed Executory Contracts will be those contracts and leases that the Debtor believes may be assumed and assigned as part of the orderly transfer of the Purchased Assets; provided, that, the Winning Bidder may choose to exclude (or to add) contracts or leases to the list of Assumed Executory Contracts, subject to notice to the counter-parties to any Assumed Executory Contracts which are added.

3. The Debtor will file with the Court and serve a cure notice, substantially in the form to be filed with the Court prior to the hearing on this Motion (the “Cure Notice”), (along with a copy of this Motion) upon each counterparty to the Assumed Executory Contracts. The Cure Notice will be filed on or before December 14, 2022, and shall state the date, time and place of the Sale Hearing as well as the date by which any objection to the assumption and assignment of Assumed Executory Contracts (including the Cure Amount (defined below)) must be filed and served. The Cure Notice also will identify the amounts, if any, that the Debtor believes are owed to each counterparty to an Assumed Executory Contract in order to cure any defaults that exist under such contract (the “Cure Amounts”). To the extent there is a contract subsequently added to the list of Assumed Executory Contracts to be assumed by the Winning Bidder pursuant to the Winning Bid APA selected at the Auction that are not listed on the Cure Notice (or any subsequent Cure Notice filed by the Debtor), this Motion constitutes a separate motion to assume and assign that contract to the Winning Bidder pursuant to § 365; each such contract will be listed in the Winning Bid APA, and will be given a separate Cure Notice filed and served by overnight delivery

within five (5) business days of the conclusion of the Auction and announcement of the Winning Bidder.

4. The inclusion of a contract, lease, or other agreement on the Cure Notice shall not constitute or be deemed a determination or admission by the Debtor and its estate or any other party in interest that such contract, lease, or other agreement is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code, and any and all rights with respect thereto shall be reserved.

5. If any counterparty objects for any reason to the assumption and assignment of an Assumed Executory Contract (including to a Cure Amount) (an “Assumption Objection”), the Debtor proposes that the counterparty must file the objection and serve it so as to be actually received on or before (i) January 3, 2023, (ii) such date otherwise specified in the Cure Notice, or (iii) solely with respect to those counterparties to Assumed Executory Contracts who are not initially served with a Cure Notice, seven (7) days after service by overnight mail of such Cure Notice (the “Assumption Objection Deadline”); *provided, however*, that any counterparty may raise an objection to the assumption and assignment of its Assumed Executory Contract solely with respect to the Winning Bidder’s ability to provide adequate assurance of future performance under such Assumed Executory Contract by filing and serving an objection not later than 24 hours prior to the start of the Sale Hearing; ***provided further, however that any counterparty may request information related to a Winning Bidder’s adequate assurance of future performance by e-mailing the Debtor’s counsel at tania.moyron@dentons.com.*** Any Assumption Objection must set forth a specific default in the executory contract or unexpired lease, claim a specific monetary amount that differs from the amount, if any, specified by the Debtor in the Cure Notice, and set forth any reason why the counterparty believes the executory contract or

unexpired lease cannot be assumed and assigned to the Winning Bidder. After receipt of an Assumption Objection, the Debtor will attempt to reconcile any differences in the Cure Amount or otherwise resolve the objection with the counterparty. In the event that the Debtor and the counterparty cannot resolve an Assumption Objection, and the Court does not otherwise make a determination at the Sale Hearing regarding an Assumption Objection related to a Cure Amount, the Debtor shall segregate from the sale proceeds a portion of the disputed Cure Amount, in an amount set by the Court or otherwise agreed by the parties, pending the resolution of any such Cure Amount disputes by the Bankruptcy Court or mutual agreement of the parties.

6. Except to the extent that the counterparty to an Assumed Executory Contract properly files and serves an Assumption Objection, (a) such Assumed Executory Contract shall be assumed by the Debtor and assigned to the Winning Bidder pursuant to section 365 of the Bankruptcy Code upon and effective as of the Closing of the Sale; and (b) the Assumed Executory Contract counterparty will receive the Cure Amount as set forth in the Cure Notice, if any, at the time of the Closing of the Sale (or as soon as reasonably practicable thereafter). To the extent a counterparty timely files and serves an Assumption Objection, any Assumed Executory Contract subject to such Assumption Objection shall not be assumed by the Debtor and/or assigned to the Winning Bidder until such time as either (a) the parties consensually resolve the Assumption Objection or (b) the Court, after notice and a hearing, overrules such Assumption Objection.

7. The Winning Bidder shall be responsible for satisfying any requirements regarding adequate assurance of future performance that may be imposed under §365(b) in connection with the proposed assignment of any Assumed Executory Contract, and the failure to provide adequate assurance of future performance to any counterparty to any Assumed Executory Contract shall not excuse the Winning Bidder from performance of any and all of its obligations pursuant to the

Winning Bid APA. The Debtor proposes that the Bankruptcy Court make its determinations concerning adequate assurance of future performance under the Assumed Executory Contracts pursuant to § 365(b) at the Sale Hearing. Cure Amounts disputed by any counterparty will be resolved by the Bankruptcy Court at the Sale Hearing or such later date as may be agreed to or ordered by the Bankruptcy Court.

8. Except to the extent otherwise provided in the Winning Bid APA, upon the Closing of the Sale, the Debtor and the Debtor's estate shall be relieved of all liability accruing or arising after the assumption and assignment of the Assumed Executory Contracts pursuant to § 365(k).

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Exhibit B

(Redline Version of the previously filed Assumption Procedures)

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1. As part of the Sale, the Debtor also seeks to assume and assign certain of their executory contracts and unexpired leases (collectively, the “Assumed Executory Contracts”) pursuant to § 365.

2. The Assumed Executory Contracts will be those contracts and leases that the Debtor believes may be assumed and assigned as part of the orderly transfer of the Purchased Assets; provided, that, the Winning Bidder may choose to exclude (or to add) contracts or leases to the list of Assumed Executory Contracts, subject to notice to the counter-parties to any Assumed Executory Contracts which are added.

3. The Debtor will file with the Court and serve a cure notice, substantially in the form to be filed with the Court prior to the hearing on this Motion (the “Cure Notice”), (along with a copy of this Motion) upon each counterparty to the Assumed Executory Contracts. The Cure Notice will be filed on or before December 14, 2022, and shall state the date, time and place of the Sale Hearing as well as the date by which any objection to the assumption and assignment of Assumed Executory Contracts (including the Cure Amount (defined below)) must be filed and served. The Cure Notice also will identify the amounts, if any, that the Debtor believes are owed to each counterparty to an Assumed Executory Contract in order to cure any defaults that exist under such contract (the “Cure Amounts”). To the extent there is a contract subsequently added to the list of ~~contracts~~ Assumed Executory Contracts to be assumed by the Winning Bidder pursuant to the Winning Bid APA selected at the Auction that are not listed on the Cure Notice (or any subsequent Cure Notice filed by the Debtor), this Motion constitutes a separate motion to assume and assign that contract to the Winning Bidder pursuant to § 365; each such contract will be listed in the Winning Bid APA, and will be given a separate Cure

Notice filed and served by overnight delivery within five (5) business days of the conclusion of the Auction and announcement of the Winning Bidder.

4. The inclusion of a contract, lease, or other agreement on the Cure Notice shall not constitute or be deemed a determination or admission by the Debtor and its estate or any other party in interest that such contract, lease, or other agreement is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code, and any and all rights with respect thereto shall be reserved.

~~5. If a Contract or Lease is assumed and assigned pursuant to Court order, then unless the Assumed Executory Contract counterparty properly files and serves an objection to the Cure Amount contained in the Cure Notice by the Assumption Objection Deadline (defined below), the Assumed Executory Contract counterparty will receive at the time of the Closing of the Sale (or as soon as reasonably practicable thereafter), the Cure Amount as set forth in the Cure Notice, if any. If an objection is filed by a counterparty to an Assumed Executory Contract, the Debtor proposes that such objection must set forth a specific default in the executory contract or unexpired lease, claim a specific monetary amount that differs from the amount, if any, specified by the Debtor in the Cure Notice, and set forth any reason why the counterparty believes the executory contract or unexpired lease cannot be assumed and assigned to the Winning Bidder.~~

5. ~~6.~~ If any counterparty objects for any reason to the assumption and assignment of an Assumed Executory Contract (including to a Cure Amount) (an “Assumption Objection”), the Debtor proposes that the counterparty must file the objection and serve it so as to be actually received on or before ~~the Bid Deadline (unless the Cure Notice was served on such counterparty less than twenty (20) days prior to the Bid Deadline, in which case, any Assumption Objection~~

~~must be served no later than twenty~~(i) January 3, 2023, (ii) such date otherwise specified in the Cure Notice, or (iii) solely with respect to those counterparties to Assumed Executory Contracts who are not initially served with a Cure Notice, seven (207) days after service by overnight mail of ~~the~~such Cure Notice) (the “Assumption Objection Deadline”); *provided, however, that* any counterparty may raise ~~at the Sale Hearing~~ an objection to the assumption and assignment of its Assumed Executory Contract solely with respect to the Winning Bidder’s ability to provide adequate assurance of future performance under such Assumed Executory Contract by filing and serving an objection not later than 24 hours prior to the start of the Sale Hearing; *provided further, however that any counterparty may request information related to a Winning Bidder’s adequate assurance of future performance by e-mailing the Debtor’s counsel at tania.moyron@dentons.com. Any Assumption Objection must set forth a specific default in the executory contract or unexpired lease, claim a specific monetary amount that differs from the amount, if any, specified by the Debtor in the Cure Notice, and set forth any reason why the counterparty believes the executory contract or unexpired lease cannot be assumed and assigned to the Winning Bidder.* After receipt of an Assumption Objection, the Debtor will attempt to reconcile any differences in the Cure Amount or otherwise resolve the objection with the counterparty. In the event that the Debtor and the counterparty cannot resolve an Assumption Objection, and the Court does not otherwise make a determination at the Sale Hearing regarding an Assumption Objection related to a Cure Amount, the Debtor shall segregate from the sale proceeds a portion of the disputed Cure Amount, in an amount set by the Court or otherwise agreed by the parties, pending the resolution of any such Cure Amount disputes by the Bankruptcy Court or mutual agreement of the parties.

6. Except to the extent that the counterparty to an Assumed Executory Contract properly files and serves an Assumption Objection, (a) such Assumed Executory Contract shall be assumed by the Debtor and assigned to the Winning Bidder pursuant to section 365 of the Bankruptcy Code upon and effective as of the Closing of the Sale; and (b) the Assumed Executory Contract counterparty will receive the Cure Amount as set forth in the Cure Notice, if any, at the time of the Closing of the Sale (or as soon as reasonably practicable thereafter). To the extent a counterparty timely files and serves an Assumption Objection, any Assumed Executory Contract subject to such Assumption Objection shall not be assumed by the Debtor and/or assigned to the Winning Bidder until such time as either (a) the parties consensually resolve the Assumption Objection or (b) the Court, after notice and a hearing, overrules such Assumption Objection.

7. The Winning Bidder shall be responsible for satisfying any requirements regarding adequate assurance of future performance that may be imposed under §365(b) in connection with the proposed assignment of any Assumed Executory Contract, and the failure to provide adequate assurance of future performance to any counterparty to any Assumed Executory Contract shall not excuse the Winning Bidder from performance of any and all of its obligations pursuant to the Winning Bid APA. The Debtor proposes that the Bankruptcy Court make its determinations concerning adequate assurance of future performance under the Assumed Executory Contracts pursuant to § 365(b) at the Sale Hearing. Cure Amounts disputed by any counterparty will be resolved by the Bankruptcy Court at the Sale Hearing or such later date as may be agreed to or ordered by the Bankruptcy Court.

8. Except to the extent otherwise provided in the Winning Bid APA, upon the Closing of the Sale, the Debtor and the Debtor's estate shall be relieved of all liability accruing

or arising after the assumption and assignment of the Assumed Executory Contracts pursuant to § 365(k).

Document comparison by Workshare 10.0 on Saturday, December 03, 2022 2:57:38 PM

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Exhibit C
(Revised Version of the Bidding Procedures)

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EXHIBIT C

BIDDING PROCEDURES

Borrego Community Health Foundation (the “Debtor”) proposes to conduct an auction for the Sale (as defined under Paragraph 1 below) of the Purchased Assets (as defined under Paragraph 2 below) and will proceed in accordance with the following bid procedures (“Bidding Procedures”) which have been approved pursuant to an Order entered by the United States Bankruptcy Court for the Southern District of California, Los Angeles Division (“Bankruptcy Court”) on December 7, 2022 (“Bidding Procedures Order”) in the Chapter 11 case styled *Borrego Community Health Foundation*, Case No. 22-02384-11 (the “Bankruptcy Case”).

The form of asset purchase agreement for the Sale is posted in the Debtor’s on-line data room (the “Draft APA”). As provided for below, the Debtor is soliciting bids (“Bids”) for the proposed acquisition of the Purchased Assets, in accordance with the procedures below, which require, among other requirements, that prospective bidders submit an executed asset purchase agreement, in the form of the Draft APA, along with a marked version evidencing any changes to the Draft APA. The Debtor will consider all Bids which comply with the terms of these Bidding Procedures; provided, that, Bids will be evaluated based upon the cash consideration provided by such offer.

1. **Sale Proposal**¶ These Bidding Procedures set forth the terms by which prospective bidders may qualify for and participate in the Auction (as defined under Paragraph 13 below), thereby competing to make the highest and best offer for the Purchased Assets. The sale of the Purchased Assets (a “Sale”) shall be free and clear of any and all claims, liens, and other encumbrances, pursuant to § 363 of title 11 of the United States Code (the “Bankruptcy Code”),¹ with all such liens, claims and encumbrances attaching to the proceeds of the Sale to the same extent and with the same priority as such liens, claims and encumbrances attached to the Purchased Assets prior to the Sale.
2. **Purchased Assets**¶ For purposes of a Sale, the “Purchased Assets” consist of any or all tangible and intangible real and personal property assets of the Debtor as defined and set forth in the Draft APA.
3. **“As Is, Where Is” Sale**¶ Except as explicitly set forth in the Draft APA, any Sale of the Purchased Assets will be transferred on an “as is, where is” basis, with all faults, and without representations or warranties of any kind, nature or description by the Debtor, its agents or estates, whether written, verbal, express, implied, or by operation of law.
4. **Committee**¶ “Committee” means, collectively, the Official Committee of Unsecured Creditors.

¹ Unless specified otherwise, all “§” or “Section” references are to the Bankruptcy Code.

5. **Potential Bidders / Execution of NDA/ Financial Information**¶ To participate in the Auction, any party (a “Potential Bidder”) wishing to submit a Bid to purchase the Purchased Assets must execute, or have executed, a nondisclosure agreement (“NDA”) in the form provided by Debtor’s advisors and in form and substance satisfactory to the Debtor before such Potential Bidder may receive due diligence information from the Debtor, including access to the Debtor’s on-line data room or other non-public information relating to the Purchased Assets. In addition, any Potential Bidder must submit financial information to the Debtor, who shall provide such financial information to the Committee’s professionals upon request, to evidence such Potential Bidder’s ability to consummate the Sale, which information must be satisfactory to the Debtor after consultation with the Committee.² Further, on or before **December 12, 2022**, any Potential Bidder must submit an Indication of Interest to purchase the Purchased Assets to the Debtor and the Committee, which includes (1) the proposed structure of the transaction, purchase price and any material terms; (2) a description of the acquiring entity and relevant experience; (3) proposed plans for the assets following consummation of the sale transaction; (4) evidence of financial capacity to complete the transaction; (5) authority and approval to complete the transaction; (6) a detailed description of the due diligence information and / or investigation you may require to submit a Bid; (7) a proposed timetable for consummating the transaction; and (8) contact information for the Potential Bidder; *provided, however*, that a Potential Bidder’s failure to submit an Indication of Interest on or before December 12, 2022 shall not be a basis to disqualify such Potential Bidder from further participation in the Sale process.
6. **Due Diligence**¶ After receipt of an executed NDA, the Debtor shall, upon request by the Potential Bidder, provide each Potential Bidder reasonable due diligence information as soon as reasonably practicable after such request, including access to the Debtor’s on-line data room. The Debtor shall not furnish, and shall have no obligation to furnish, any confidential and/or non-public information relating to the Purchased Assets or the Debtor (collectively, “Confidential Information”), or grant access to the Debtor’s on-line data room, to (i) any person that does not qualify as a Potential Bidder, or (ii) to Potential Bidders who, at such time and in the Debtor’s reasonable business judgment, after consultation with the Committee, have not established, or who have raised doubt, that such Potential Bidder intends in good faith to, or has the capacity to, consummate the Sale; *provided, however*, that the Debtor is required to provide access to the on-line data room, and the Confidential Information contained within, to the Committee.
7. **Representations and Warranties**¶ The Debtor makes no representation or warranty as to the Confidential Information provided through the due diligence process or otherwise, except to the extent set forth in the Draft APA (or as set forth in any Qualified APA (as defined under Paragraph 9 below) entered into

² As used herein, “in consultation with the Committee” means prior consultation and discussion with the Committee.

between the Debtor and the Winning Bidder (as defined under Paragraph 13 below). No party may conduct any additional due diligence after the Bid Deadline (as defined under Paragraph 8 below).

8. **Bid Deadline**¶ Potential Bidders must submit their Bids so that such Bids are actually received by each of the following parties **no later than 5:00 p.m. (Pacific Time) on December 22, 2022** (the “**Bid Deadline**”): (i) counsel to the Debtor: Dentons US LLP, 601 S. Figueroa Street, Suite 2500, Los Angeles, CA 90017 (Attn: Samuel R. Maizel (samuel.maizel@dentons.com) and Tania M. Moyron (tania.moyron@dentons.com)); (ii) financial advisor to the Debtor: Ankura, 2021 McKinney Avenue, Suite 340, Dallas, TX 75201 (Attn: CJ Pease (charles.pease@ankura.com)); (iii) the Office of the United States Trustee (the “U.S. Trustee”): 880 Front Street, Room 3230, San Diego, CA 92101 (Attn: David Ortiz (david.a.ortiz@usdoj.gov)); (iv) counsel to the Committee: Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles, CA 90067 (Attn: Jeffrey N. Pomerantz (jpomerantz@pszjlaw.com) and Steven W. Golden (sgolden@pszjlaw.com)); and (v) financial advisor to the Committee: FTI, 350 S. Grand Avenue, Suite 3000, Los Angeles, CA 90071 (Attn: Cynthia Nelson (cynthia.nelson@fticonsulting.com) and Marc Bilbao (marc.bilbao@fticonsulting.com)) (collectively, the “**Bid Deadline Recipients**”). Potential Bidders may either e-mail their Bids to the e-mail addresses listed above or may deliver hard-copies of their Bids to the physical addresses listed above so that they are actually received by the Bid Deadline. The Debtor shall have no obligation to consider any other delivery format, such as fax, as being acceptable. The Debtor may, after consultation with the Committee, extend the Bid Deadline until the commencement of the Auction for one or more Potential Bidders without prior notice to any party, but shall have no obligation to do so under any circumstances. For the avoidance of doubt, the Debtor and/or the Committee may seek authority from the Court, including on an expedited basis, to extend the Bid Deadline for cause.
9. **Qualified Bid**¶ In order to constitute a “**Qualified Bid**,” a Bid must satisfy the following requirements (the “**Bid Requirements**”):
 - (a) be submitted (i) in writing and (ii) be received by the Bid Deadline Recipients by the Bid Deadline as set forth in Paragraph 8 of these Bidding Procedures, subject to Paragraph 11 of these Bidding Procedures;
 - (b) constitute a good faith, bona fide offer to purchase the Purchased Assets in accordance with the terms of the Qualified APA (as defined in this Paragraph 9) for a proposed purchase price (“**Purchase Price**”) identified in such Qualified APA and defined as the “**Purchase Price**” therein;
 - (c) identify the legal name of the Potential Bidder (including any direct or indirect equity holders, if the Potential Bidder is an entity formed for the purpose of consummating the proposed Sale);

- (d) be accompanied by a clean and a duly executed copy of an asset purchase agreement (the "Qualified APA"), the form of which shall be consistent with the Draft APA and which shall not be inconsistent with these Bidding Procedures;
- (e) be accompanied by a copy of the Qualified APA which is marked to reflect the amendments and modifications compared to the Draft APA;
- (f) be accompanied by a copy of the draft Sale Order (as defined under Paragraph 15 below) marked to reflect the amendments and modifications (if any) compared to the form of draft Sale Order posted in the Debtor's on-line data room;
- (g) be accompanied by a deposit by wire transfer in an amount equal to the greater of \$200,000 or ten percent (10%) of the aggregate Purchase Price in certified funds or such other amount acceptable to the Debtor, in consultation with the Committee ("Deposit"), to be held in escrow and treated in accordance with the provisions of Paragraph 16 of these Bidding Procedures;
- (h) provide sufficient and adequate information to demonstrate to the satisfaction of the Debtor, in consultation with the Committee, that such Potential Bidder has the financial wherewithal and ability to consummate the Sale;
- (i) contain sufficient explanation to permit the Debtor and the Committee to determine whether such Potential Bidder demonstrates a commitment to operating Debtor's clinics as a Federally Qualified Health Center ("FQHC") providing continuity of culturally competent care to its patients;
- (j) include a written statement that the Potential Bidder agrees to be bound by the terms of the Bidding Procedures and the Bidding Procedures Order and consents to the jurisdiction of the Bankruptcy Court (including waiving any right to a jury trial) in connection with any disputes related to these Bidding Procedures as well as (*each as defined below*) the Auction, the Sale Hearing, the Sale Order and/or the closing of the Sale;
- (k) include a written statement outlining the absence or presence, and details thereof, of any relationship, affiliation, or connection of any kind between the Potential Bidder, on the one hand, and the Debtor and/or any of its affiliates, current or former officers, directors, and/or investors;
- (l) not be conditioned on any due diligence, financing, or other contingencies other than entry of the Sale Order, and any other contingencies solely to the extent set forth in the Qualified APA;

- (m) remain irrevocable until forty-eight (48) hours after the conclusion of the Sale Hearing or such longer period of time as set forth below if the Potential Bidder is selected as the Winning Bidder or Back-Up Bidder (as defined below);
- (n) states whether the Potential Bidder is willing to serve as a stalking horse bidder and specify any requested bidding protections, including a break-up fee and/or expense reimbursement in an amount not to exceed in the aggregate 2.5% of the proposed Purchase Price of such Bid; and
- (o) states that the Potential Bidder is willing to serve as a Back-Up Bidder and that its Qualified Bid (or any Qualified Bid as modified at the Auction) shall constitute the Back-Up Bid if the Debtor determines that it qualifies as the Back-Up Bid in accordance with the provisions of Paragraph 14.

10. **Discretionary Determination of Stalking Horse Bidder**¶ The Debtor, in its discretion, after consultation with the Committee, may agree that a Qualified Bidder which indicated a willingness to serve as a stalking horse bidder shall be afforded stalking horse status and protections (the “Stalking Horse Bidder”), including a break-up fee and expense reimbursement in an amount not to exceed in the aggregate 2.5% of the proposed Purchase Price under such Qualified Bidder’s Qualified APA (the “Break-Up Fee”). Any Break-Up Fee, to the extent payable, shall only be paid from proceeds received by the Debtor at the closing of a Sale with a Qualified Bidder other than the Stalking Horse Bidder. The award of stalking horse protection may occur without further notice (other than the filing of a notice on the Bankruptcy Court docket no later than twenty-four (24) hours prior to the commencement of the Auction) or order of the Bankruptcy Court. If such designation of the Stalking Horse Bidder is made, the Debtor shall notify all other Potential Bidders and, unless the Debtor receives a higher or better bid (as determined by the Debtor after consultation with the Committee) prior to the Auction, the Opening Bid at the Auction shall be the Bid of the Qualified Bidder that has been designated as the Stalking Horse Bidder.

11. **Determination of Qualified Bids**¶ A Bid that satisfies each of the Bid Requirements, as determined by the Debtor in its reasonable discretion, in consultation with the Committee, constitutes a “Qualified Bid”, and such Potential Bidder constitutes a “Qualified Bidder.” The Debtor may determine, in consultation with the Committee, that a Bid is not a Qualified Bid if the Qualified APA differs in any material respect from the Draft APA. Prior to the Auction, the Debtor shall determine, after consultation with the Committee, whether any submitted bids constitute Qualified Bids. No later than one business day prior to the Auction, the Debtor shall file and serve on all Potential Bidders that submitted a Bid (regardless of whether such Bid was determined to be a Qualified Bid) a notice (the “Auction Notice”) indicating which Potential Bidders have submitted Qualified Bids. If any Bids are designated as Qualified Bids, the Auction shall be conducted on January 13, 2023, as further described below.

12. **Auction**¶ The Debtor shall conduct an auction on **January 13, 2023**, at the offices of Dentons US LLP, 601 S. Figueroa Street, Suite 2500, Los Angeles, California 90017, commencing at 10:00 a.m. Pacific Time (the "**Auction**"). The Auction will be conducted to determine the highest and best Qualified Bid (the "**Winning Bid**," with such bidder being the "**Winning Bidder**"). Subject to paragraph 18 below, the Auction will be conducted in accordance with the following procedures (the "**Auction Procedures**"):
- (a) only Qualified Bidders, in person or through duly-authorized representatives at the Auction may bid at the Auction, and every Qualified Bidder must have at least one (1) such duly-authorized representative with authority to bind the Qualified Bidder at the Auction;
 - (b) only such authorized representatives of each of the Qualified Bidders, the Debtor, the Committee (including its members), and their respective legal and financial advisors shall be permitted to attend the Auction;
 - (c) prior to the commencement of the Auction, representatives of the Debtor, and/or the Committee may have discussions with each Qualified Bidder with respect to the terms and conditions of such Qualified Bids, and the Debtor will have selected, in consultation with the Committee, a Qualified Bid to become the opening bid at the Auction (the bid submitted by such Qualified Bidder shall be referred to as the "**Opening Bid**" and the Qualified Bidder shall be referred to as the "**Opening Bidder**");
 - (d) bidding shall commence at the amount of the Opening Bid. The Opening Bid shall be announced by the Debtor at or before the commencement of the Auction. Other Qualified Bidders may then submit successive bids in increments of at least \$500,000 (plus, with respect to the first successive bid, the amount of the Break-Up Fee, if any) higher than the Opening Bid, and all subsequent bids must be at least \$500,000 higher than the previous bid. To the extent a Stalking Horse Bidder submits higher bids, such Stalking Horse Bidder shall have the right (but not the obligation) to increase its Opening Bid by using, as a credit, the amount of the Break-Up Fee when determining whether any Stalking Horse Bidder has topped the previous bid by the required amount;
 - (e) Qualified Bidders shall have the right to submit additional bids that include modifications to their Qualified APA at the Auction, consistent herewith, provided that any such modifications to the Qualified APA, on an aggregate basis and viewed in whole, shall not be less favorable to the Debtor than any prior bid by such party (as determined by the Debtor, following consultation with the Committee). The Debtor, in consultation with the Committee, reserves the right to separately negotiate the terms of any Qualified Bids at the Auction, provided the terms are fully disclosed at the time such Qualified Bid is formally submitted;

- (f) the bidding will be transcribed by a certified court reporter employed by the Debtor to ensure an accurate recording of the bidding at the Auction;
- (g) each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the proposed Sale and is not in violation of § 363(n); and
- (h) absent irregularities in the conduct of the Auction, the Debtor will not consider any Potential Bids made after the Auction is closed.

13. **Acceptance of the Winning Bid and Designation of the Back-Up Bid**

- (a) Upon the conclusion of the Auction (if such Auction is conducted), the Debtor, in the exercise of its reasonable, good-faith business judgment and after consultation with the Committee, shall identify (i) the Winning Bid, which is the highest and best Qualified Bid submitted at the Auction; and (ii) the next highest and best Qualified Bid (the “Back-Up Bid” and the party submitting the Back-Up Bid, the “Back-Up Bidder”). In evaluating Qualified Bids, the Debtor may consider whether the Qualified Bidder demonstrates a commitment to operating Debtor's clinics as a FQHC providing continuity of culturally competent care to its patients.
- (b) Each of the Winning Bidder and the Back-Up Bidder shall be required to execute a definitive Qualified Bid conformed to the provisions of the Winning Bid and the Back-Up Bid, as applicable, as soon as practicable but, in no event, prior to the Sale Hearing. For the purposes of these Bidding Procedures, the definitive agreement executed by the (i) Winning Bidder shall be defined as the “Winning Bid APA” and (ii) Back-Up Bidder shall be defined as the “Back-Up Bid APA.” The Back-Up Bidder must keep the Back-Up Bid open and irrevocable until the earlier of (i) 5:00 p.m. (Pacific Time) on the date which is thirty (30) days after the entry of the Sale Order (the “Outside Back-Up Date”), or (ii) the date of closing of the Sale to the Winning Bidder.
- (c) Within two business days after the conclusion of the Auction, the Winning Bidder and the Back-Up Bidder shall each deposit with the Debtor an additional amount in cash such that, when combined with their existing Deposit, each such bidder's aggregate Deposit equals the greater of \$200,000 or ten percent (10%) of the Purchase Price reflected in the final bid of the Winning Bidder and of the Back-Up Bidder, respectively (such additional amounts shall be included in the definition of the “Deposit”).
- (d) If an Auction is held, the Debtor shall be deemed to have accepted a Qualified Bid as the winner of the Auction (conditioned upon approval by the Bankruptcy Court) only when (i) such bid is declared the Winning Bid; (ii) definitive documentation has been executed in respect thereof; and (iii) any additional Deposit required as a result of a bid submitted at the

Auction (as required by the Bidding Procedures) has been provided to the Debtor. Such acceptance is also conditioned upon approval by the Court of the Winning Bid and (if applicable) the Back-Up Bid.

14. **Sale Hearing**

- (a) The sale hearing is presently scheduled to take place **on January 19, 2023 at 10:00 a.m. (Pacific Time)**, or as soon thereafter as counsel may be heard, before the Honorable Laura S. Taylor, Dept. 3 – Courtroom 129, 325 West F Street, San Diego, California (the “Sale Hearing”).
- (b) Within two business days after the conclusion of the Auction (and in advance of the Sale Hearing), the Debtor will file a notice of the Winning Bid and Back-Up Bid, along with copies of the Winning Bid APA, Back-Up Bid APA and the proposed Sale Order (the “Notice of Winning Bid and Back-Up Bid”), redacted as necessary to protect commercially sensitive and/or confidential information.
- (c) Any objection to the approval of the Winning Bid and Back-Up Bid shall be filed no later than **January 18, 2023, at 5:00 o’clock p.m. (Pacific Time)** (the “Sale Objection Deadline”).
- (d) The Debtor will present the results of the Auction to the Bankruptcy Court at the Sale Hearing, at which certain findings will be sought from the Bankruptcy Court regarding the Auction, including, among other things, that (i) the Auction was properly conducted, and the Winning Bidder and the Back-Up Bidder were properly selected, in accordance with these Bidding Procedures, (ii) the Auction was fair in substance and procedure, (iii) each of the Winning Bid and the Back-Up Bid was a Qualified Bid, (iv) closing of the Sale with the Winning Bid (or if applicable, the Back-Up Bid) will provide the highest and best value for the Purchased Assets and is in the best interests of the Debtor and (v) each of the Winning Bidder and the Back-Up Bidder are deemed to be purchasers of the Purchased Assets in good faith as set forth in § 363(m).
- (e) At the Sale Hearing, the Debtor shall request the Bankruptcy Court to enter an order approving the Winning Bid and, if applicable, the Back-Up Bid (the “Sale Order”). Except to the extent revised by the Debtor in its discretion, after consultation with the Committee and the Winning Bidder, the proposed Sale Order presented to the Bankruptcy Court at the Sale Hearing shall be in the form submitted as part of the Winning Bid.
- (f) At the Sale Hearing, the Debtor shall also request, as part of the Sale Order, authorization from the Bankruptcy Court to accept the Back-Up Bid as the Winning Bid, and consummate such bid, if the Winning Bid is not consummated when and as required by its terms without further order of the Bankruptcy Court. The Debtor and the Back-Up Bidder shall be bound to consummate the Back-Up Bid if the Winning Bid terminates, at

which time the Back-Up Bidder shall be deemed the Winning Bidder. The Debtor shall promptly give notice to the Back-Up Bidder if the Winning Bid is terminated and shall provide the Back-Up Bidder a reasonable period within which to close as set forth in the Back-Up Bid APA.

- (g) After approval of the Sale and entry of the Sale Order, the Debtor shall request the Health Resources & Services Administration (“HRSA”) approve the Winning Bidder as a federally qualified health center and the transfer of certain federal grants and state payments to the Winning Bidder. It may take up to six months for the HRSA to complete this approval process.

15. **Treatment of Deposit**

- (a) The Deposit of each Potential Bidder shall be held pursuant to an escrow agreement acceptable to the Debtor, subject to the prior consent of the Debtor as to the escrow agent and form of escrow agreement, where such consent is not to be unreasonably withheld.
- (b) Upon closing of the Sale with the Winning Bidder (or Back-Up Bidder, if applicable), the Deposit of the Winning Bidder or Back-Up Bidder shall be credited to the Purchase Price. The Deposit of the Winning Bidder or Back-Up Bidder will be forfeited to the Debtor if the Winning Bidder or Back-Up Bidder fails to enter into the required definitive documentation or to consummate the applicable sale transaction in accordance with these Bidding Procedures and the terms of the applicable transaction documents with respect to the Winning Bid and Back-up Bid as shall be set forth in the Winning Bid APA and Back-Up Bid APA or as otherwise ordered by the Bankruptcy Court.
- (c) The Deposits of any Qualified Bidders other than the Winning Bidder and the Back-Up Bidder will be returned within two (2) business days after the conclusion of the Sale Hearing; provided, that, the Deposit of the Back-Up Bidder shall be returned to the Back-Up Bidder at the earlier of (i) the closing of the Sale to the Winning Bidder, and (ii) thirty (30) days after entry of the Sale Order.
- (d) The Deposit of any Potential Bidder who is determined not to be a Qualified Bidder shall be returned to such Potential Bidder within two (2) business days of such determination, pursuant to the terms of the applicable escrow agreement.

16. **Payment of the Break-Up Fee.** If any Stalking Horse Bidder is not the Winning Bidder, the Debtor shall pay the Break-Up Fee to such Stalking Horse Bidder as set forth in the agreement between the Debtor and the Stalking Horse Bidder providing for such Break-Up Fee, but in no event shall payment be any earlier than the time of the consummation of the sale of the Purchased Assets or transfer

thereof in the context of an Alternative Transaction, and shall only be paid from the proceeds of such sale or upon the transfer of such Purchased Assets. Notwithstanding the foregoing, a Break-Up Fee will only be payable if the Debtor has previously determined pursuant to Paragraph 10 of these Bidding Procedures that a bid merits stalking horse status and protections.

17. **Reservation of Rights** ¶ THE DEBTOR RESERVES ITS RIGHTS TO MODIFY THESE BIDDING PROCEDURES IN ANY MANNER IN CONSULTATION WITH THE COMMITTEE THAT WILL BEST PROMOTE THE GOALS OF THE BIDDING PROCESS. THE DEBTOR FURTHER RESERVES ITS RIGHTS TO IMPOSE, IN CONSULTATION WITH THE COMMITTEE, AT OR PRIOR TO THE AUCTION, ADDITIONAL TERMS AND CONDITIONS ON THE SALE OF THE PURCHASED ASSETS, INCLUDING, WITHOUT LIMITATION, EXTENDING THE DEADLINES SET FORTH IN THESE BIDDING PROCEDURES, ADJOURNING THE AUCTION AT OR PRIOR TO THE AUCTION AND/OR ADJOURNING THE SALE HEARING PRIOR TO SUCH HEARING OR IN OPEN COURT WITHOUT FURTHER NOTICE, AND REJECTING ANY OR ALL QUALIFIED BIDS IF, IN THE DEBTOR'S REASONABLE, GOOD-FAITH BUSINESS JUDGMENT, FOLLOWING CONSULTATION WITH THE COMMITTEE, THE DEBTOR DETERMINES THAT SUCH QUALIFIED BID IS (I) INADEQUATE OR INSUFFICIENT, (II) NOT IN CONFORMITY WITH THE REQUIREMENTS OF THE BANKRUPTCY CODE OR ANY RELATED RULES OR THE TERMS SET FORTH HEREIN, OR (III) CONTRARY TO THE BEST INTERESTS OF THE DEBTOR. THE DEBTOR RESERVES THE RIGHT, AT ANY TIME, AND IN CONSULTATION WITH THE COMMITTEE, FOR ANY REASON AND IN ITS REASONABLE, BUSINESS JUDGMENT, TO DECLINE TO PURSUE THE SALE AND TO WITHDRAW ANY MOTION FILED IN THE COURT SEEKING TO APPROVE THE SALE.

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Exhibit D

(Redline Version of the previously filed Bidding Procedures)

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

EXHIBIT 1C

BIDDING PROCEDURES

Borrego Community Health Foundation (the “Debtor”) proposes to conduct an auction for the Sale (as defined under Paragraph 1 below) of the Purchased Assets (as defined under Paragraph 2 below) and will proceed in accordance with the following bid procedures (“Bidding Procedures”) which have been approved pursuant to an Order entered by the United States Bankruptcy Court for the Southern District of California, Los Angeles Division (“Bankruptcy Court”) on ~~November 28~~December 7, 2022 (“Bidding Procedures Order”) in the Chapter 11 case styled *Borrego Community Health Foundation*, Case No. 22-02384-11 (the “Bankruptcy Case”).

The form of asset purchase agreement for the Sale is posted in the Debtor’s on-line data room (the “Draft APA”). As provided for below, the Debtor is soliciting bids (“Bids”) for the proposed acquisition of the Purchased Assets, in accordance with the procedures below, which require, among other requirements, that prospective bidders submit an executed asset purchase agreement, in the form of the Draft APA, along with a marked version evidencing any changes to the Draft APA. The Debtor will consider all Bids which comply with the terms of these Bidding Procedures; provided, that, Bids will be evaluated based upon the cash consideration provided by such offer.

1. **Sale Proposal.** These Bidding Procedures set forth the terms by which prospective bidders may qualify for and participate in the Auction (as defined under Paragraph 13 below), thereby competing to make the highest and best offer for the Purchased Assets. The sale of the Purchased Assets (a “Sale”) shall be free and clear of any and all claims, liens, and other encumbrances, pursuant to § 363 of title 11 of the United States Code (the “Bankruptcy Code”),¹ with all such liens, claims and encumbrances attaching to the proceeds of the Sale to the same extent and with the same priority as such liens, claims and encumbrances attached to the Purchased Assets prior to the Sale.
2. **Purchased Assets.** For purposes of a Sale, the “Purchased Assets” consist of any or all tangible and intangible real and personal property assets of the Debtor as defined and set forth in the Draft APA.
3. **“As Is, Where Is” Sale.** Except as explicitly set forth in the Draft APA, any Sale of the Purchased Assets will be transferred on an “as is, where is” basis, with all faults, and without representations or warranties of any kind, nature or description by the Debtor, its agents or estates, whether written, verbal, express, implied, or by operation of law.

¹ Unless specified otherwise, all “§” or “Section” references are to the Bankruptcy Code.

4. **Committee.** “Committee” means, collectively, the Official Committee of Unsecured Creditors.
5. **Potential Bidders / Execution of NDA/ Financial Information.** To participate in the Auction, any party (a “Potential Bidder”) wishing to submit a Bid to purchase the Purchased Assets must execute, or have executed, a nondisclosure agreement (“NDA”) in the form provided by Debtor’s advisors and in form and substance satisfactory to the Debtor before such Potential Bidder may receive due diligence information from the Debtor, including access to the Debtor’s on-line data room or other non-public information relating to the Purchased Assets. In addition, any Potential Bidder must submit financial information to the Debtor, who shall provide such financial information to the Committee’s professionals upon request, to evidence such Potential Bidder’s ability to consummate the Sale, which information must be satisfactory to the Debtor after consultation with the Committee.² Further, on or before **December 12, 2022**, any Potential Bidder must submit an Indication of Interest to purchase the Purchased Assets to the Debtor and the Committee, which includes (1) the proposed structure of the transaction, purchase price and any material terms; (2) a description of the acquiring entity and relevant experience; (3) proposed plans for the assets following consummation of the sale transaction; (4) evidence of financial capacity to complete the transaction; (5) authority and approval to complete the transaction; (6) a detailed description of the due diligence information and / or investigation you may require to submit a Bid; (7) a proposed timetable for consummating the transaction; and (8) contact information for the Potential Bidder; *provided, however*, that a Potential Bidder’s failure to submit an Indication of Interest on or before December 12, 2022 shall not be a basis to disqualify such Potential Bidder from further participation in the Sale process.
6. **Due Diligence.** After receipt of an executed NDA, the Debtor shall, upon request by the Potential Bidder, provide each Potential Bidder reasonable due diligence information as soon as reasonably practicable after such request, including access to the Debtor’s on-line data room. The Debtor shall not furnish, and shall have no obligation to furnish, any confidential and/or non-public information relating to the Purchased Assets or the Debtor (collectively, “Confidential Information”), or grant access to the Debtor’s on-line data room, to (i) any person that does not qualify as a Potential Bidder, or (ii) to Potential Bidders who, at such time and in the Debtor’s reasonable business judgment, after consultation with the Committee, have not established, or who have raised doubt, that such Potential Bidder intends in good faith to, or has the capacity to, consummate the Sale; *provided, however*, that the Debtor is

² As used herein, “in consultation with the Committee” means prior consultation and discussion with the Committee.

required to provide access to the on-line data room, and the Confidential Information contained within, to the Committee.

7. **Representations and Warranties**. The Debtor makes no representation or warranty as to the Confidential Information provided through the due diligence process or otherwise, except to the extent set forth in the Draft APA (or as set forth in any Qualified APA (as defined under Paragraph 9 below) entered into between the Debtor and the Winning Bidder (as defined under Paragraph 13 below). No party may conduct any additional due diligence after the Bid Deadline (as defined under Paragraph 8 below).
8. **Bid Deadline**. Potential Bidders must submit their Bids so that such Bids are actually received by each of the following parties **no later than 5:00 p.m. (Pacific Time) on December 22, 2022** (the “Bid Deadline”): (i) counsel to the Debtor: Dentons US LLP, 601 S. Figueroa Street, Suite 2500, Los Angeles, CA 90017 (Attn: Samuel R. Maizel (samuel.maizel@dentons.com) and Tania M. Moyron (tania.moyron@dentons.com)); (ii) financial advisor to the Debtor: Ankura, 2021 McKinney Avenue, Suite 340, Dallas, TX 75201 (Attn: CJ Pease (charles.pease@ankura.com)); (iii) the Office of the United States Trustee (the “U.S. Trustee”): 880 Front Street, Room 3230, San Diego, CA 92101 (Attn: David Ortiz (david.a.ortiz@usdoj.gov)); (iv) counsel to the Committee: Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles, CA 90067 (Attn: Jeffrey N. Pomerantz (jpomerantz@pszjlaw.com) and Steven W. Golden (sgolden@pszjlaw.com)); and (v) financial advisor to the Committee: FTI, 350 S. Grand Avenue, Suite 3000, Los Angeles, CA 90071 (Attn: Cynthia Nelson (cynthia.nelson@fticonsulting.com) and Marc Bilbao (marc.bilbao@fticonsulting.com)) (collectively, the “Bid Deadline Recipients”). Potential Bidders may either e-mail their Bids to the e-mail addresses listed above or may deliver hard-copies of their Bids to the physical addresses listed above so that they are actually received by the Bid Deadline. The Debtor shall have no obligation to consider any other delivery format, such as fax, as being acceptable. The Debtor may, after consultation with the Committee, extend the Bid Deadline until the commencement of the Auction for one or more Potential Bidders without prior notice to any party, but shall have no obligation to do so under any circumstances. For the avoidance of doubt, the Debtor and/or the Committee may seek authority from the Court, including on an expedited basis, to extend the Bid Deadline for cause.
9. **Qualified Bid**. In order to constitute a “Qualified Bid,” a Bid must satisfy the following requirements (the “Bid Requirements”):
 - (a) be submitted (i) in writing and (ii) be received by the Bid Deadline Recipients by the Bid Deadline as set forth in Paragraph 8 of these Bidding Procedures, subject to Paragraph 11 of these Bidding Procedures;

- (b) constitute a good faith, bona fide offer to purchase the Purchased Assets in accordance with the terms of the Qualified APA (as defined in this Paragraph 9) for a proposed purchase price (“Purchase Price”) identified in such Qualified APA and defined as the “Purchase Price” therein;
- (c) identify the legal name of the Potential Bidder (including any direct or indirect equity holders, if the Potential Bidder is an entity formed for the purpose of consummating the proposed Sale);
- (d) be accompanied by a clean and a duly executed copy of an asset purchase agreement (the “Qualified APA”), the form of which shall be consistent with the Draft APA and which shall not be inconsistent with these Bidding Procedures;
- (e) be accompanied by a copy of the Qualified APA which is marked to reflect the amendments and modifications compared to the Draft APA;
- (f) be accompanied by a copy of the draft Sale Order (as defined under Paragraph 15 below) marked to reflect the amendments and modifications (if any) compared to the form of draft Sale Order posted in the Debtor’s on-line data room;
- (g) be accompanied by a deposit by wire transfer in an amount equal to the greater of \$200,000 or ten percent (10%) of the aggregate Purchase Price in certified funds or such other amount acceptable to the Debtor, in consultation with the Committee (“Deposit”), to be held in escrow and treated in accordance with the provisions of Paragraph 16 of these Bidding Procedures;
- (h) provide sufficient and adequate information to demonstrate to the satisfaction of the Debtor, in consultation with the Committee, that such Potential Bidder has the financial wherewithal and ability to consummate the Sale;
- (i) ~~demonstrate~~ contain sufficient explanation to permit the Debtor and the Committee to determine whether such Potential Bidder demonstrates a commitment to operating Debtor's clinics as a Federally Qualified Health Center (“FQHC”) providing continuity of culturally competent care to its patients;
- (j) include a written statement that the Potential Bidder agrees to be bound by the terms of the Bidding Procedures and the Bidding Procedures Order and consents to the jurisdiction of the Bankruptcy Court (including waiving any right to a jury trial) in connection with any disputes related to these Bidding Procedures as well as (*each as defined below*) the Auction, the Sale Hearing, the Sale Order and/or the closing of the Sale;

- (k) include a written statement outlining the absence or presence, and details thereof, of any relationship, affiliation, or connection of any kind between the Potential Bidder, on the one hand, and the Debtor and/or any of its affiliates, current or former officers, directors, and/or investors;
- (l) not be conditioned on any due diligence, financing, or other contingencies other than entry of the Sale Order, and any other contingencies solely to the extent set forth in the Qualified APA;
- (m) remain irrevocable until forty-eight (48) hours after the conclusion of the Sale Hearing or such longer period of time as set forth below if the Potential Bidder is selected as the Winning Bidder or Back-Up Bidder (as defined below);
- (n) states whether the Potential Bidder is willing to serve as a stalking horse bidder and specify any requested bidding protections, including a break-up fee and/or expense reimbursement in an amount not to exceed in the aggregate 2.5% of the proposed Purchase Price of such Bid; and
- (o) states that the Potential Bidder is willing to serve as a Back-Up Bidder and that its Qualified Bid (or any Qualified Bid as modified at the Auction) shall constitute the Back-Up Bid if the Debtor determines that it qualifies as the Back-Up Bid in accordance with the provisions of Paragraph 14.

10. **Discretionary Determination of Stalking Horse Bidder.** The Debtor, in its discretion, after consultation with the Committee, may agree that a Qualified Bidder which indicated a willingness to serve as a stalking horse bidder shall be afforded stalking horse status and protections (the “Stalking Horse Bidder”), including a break-up fee and expense reimbursement in an amount not to exceed in the aggregate 2.5% of the proposed Purchase Price under such Qualified Bidder’s Qualified APA (the “Break-Up Fee”). Any Break-Up Fee, to the extent payable, shall only be paid from proceeds received by the Debtor at the closing of a Sale with a Qualified Bidder other than the Stalking Horse Bidder. The award of stalking horse protection may occur without further notice (other than the filing of a notice on the Bankruptcy Court docket no later than twenty-four (24) hours prior to the commencement of the Auction) or order of the Bankruptcy Court. If such designation of the Stalking Horse Bidder is made, the Debtor shall notify all other Potential Bidders and, unless the Debtor receives a higher or better bid (as determined by the Debtor after consultation with the Committee) prior to the Auction, the Opening Bid at the Auction shall be the Bid of the Qualified Bidder that has been designated as the Stalking Horse Bidder.

11. **Determination of Qualified Bids.** A Bid that satisfies each of the Bid Requirements, as determined by the Debtor in its reasonable discretion, in consultation with the Committee, constitutes a “Qualified Bid”, and such

Potential Bidder constitutes a “Qualified Bidder.” The Debtor may determine, in consultation with the Committee, that a Bid is not a Qualified Bid if the Qualified APA differs in any material respect from the Draft APA. Prior to the Auction, the Debtor shall determine, after consultation with the Committee, whether any submitted bids constitute Qualified Bids. No later than one business day prior to the Auction, the Debtor shall file and serve on all Potential Bidders that submitted a Bid (regardless of whether such Bid was determined to be a Qualified Bid) a notice (the “Auction Notice”) indicating which Potential Bidders have submitted Qualified Bids. If any Bids are designated as Qualified Bids, the Auction shall be conducted on January 13, 2023, as further described below.

12. **Auction**. The Debtor shall conduct an auction on **January 13, 2023**, at the offices of Dentons US LLP, 601 S. Figueroa Street, Suite 2500, Los Angeles, California 90017, commencing at 10:00 a.m. Pacific Time (the “Auction”). The Auction will be conducted to determine the highest and best Qualified Bid (the “Winning Bid,” with such bidder being the “Winning Bidder”). Subject to paragraph 18 below, the Auction will be conducted in accordance with the following procedures (the “Auction Procedures”):
 - (a) only Qualified Bidders, in person or through duly-authorized representatives at the Auction may bid at the Auction, and every Qualified Bidder must have at least one (1) such duly-authorized representative with authority to bind the Qualified Bidder at the Auction;
 - (b) only such authorized representatives of each of the Qualified Bidders, the Debtor, the Committee (including its members), and their respective legal and financial advisors shall be permitted to attend the Auction;
 - (c) prior to the commencement of the Auction, representatives of the Debtor, and/or the Committee may have discussions with each Qualified Bidder with respect to the terms and conditions of such Qualified Bids, and the Debtor will have selected, in consultation with the Committee, a Qualified Bid to become the opening bid at the Auction (the bid submitted by such Qualified Bidder shall be referred to as the “Opening Bid” and the Qualified Bidder shall be referred to as the “Opening Bidder”);
 - (d) bidding shall commence at the amount of the Opening Bid. The Opening Bid shall be announced by the Debtor at or before the commencement of the Auction. Other Qualified Bidders may then submit successive bids in increments of at least \$500,000 (plus, with respect to the first successive bid, the amount of the Break-Up Fee, if any) higher than the Opening Bid, and all subsequent bids must be at least \$500,000 higher than the previous bid. To the extent a Stalking Horse Bidder submits higher bids, such Stalking Horse Bidder shall have the right (but not the obligation) to increase its Opening Bid by using, as a credit, the amount

of the Break-Up Fee when determining whether any Stalking Horse Bidder has topped the previous bid by the required amount;

- (e) Qualified Bidders shall have the right to submit additional bids that include modifications to their Qualified APA at the Auction, consistent herewith, provided that any such modifications to the Qualified APA, on an aggregate basis and viewed in whole, shall not be less favorable to the Debtor than any prior bid by such party (as determined by the Debtor, following consultation with the Committee). The Debtor, in consultation with the Committee, reserves the right to separately negotiate the terms of any Qualified Bids at the Auction, provided the terms are fully disclosed at the time such Qualified Bid is formally submitted;
- (f) the bidding will be transcribed by a certified court reporter employed by the Debtor to ensure an accurate recording of the bidding at the Auction;
- (g) each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the proposed Sale and is not in violation of § 363(n); and
- (h) absent irregularities in the conduct of the Auction, the Debtor will not consider any Potential Bids made after the Auction is closed.

13. **Acceptance of the Winning Bid and Designation of the Back-Up Bid.**

- (a) Upon the conclusion of the Auction (if such Auction is conducted), the Debtor, in the exercise of its reasonable, good-faith business judgment and after consultation with the Committee, shall identify (i) the Winning Bid, which is the highest and best Qualified Bid submitted at the Auction; and (ii) the next highest and best Qualified Bid (the “Back-Up Bid” and the party submitting the Back-Up Bid, the “Back-Up Bidder”). In evaluating Qualified Bids, the Debtor ~~shall give preference to may consider whether the~~ Qualified ~~Bidders which demonstrate~~Bidder demonstrates a commitment to operating Debtor's clinics as a FQHC providing continuity of culturally competent care to its patients.
- (b) Each of the Winning Bidder and the Back-Up Bidder shall be required to execute a definitive Qualified Bid conformed to the provisions of the Winning Bid and the Back-Up Bid, as applicable, as soon as practicable but, in no event, prior to the Sale Hearing. For the purposes of these Bidding Procedures, the definitive agreement executed by the (i) Winning Bidder shall be defined as the “Winning Bid APA” and (ii) Back-Up Bidder shall be defined as the “Back-Up Bid APA.” The Back-Up Bidder must keep the Back-Up Bid open and irrevocable until the earlier of (i) 5:00 p.m. (Pacific Time) on the date which is thirty (30) days after the entry of the Sale Order (the “Outside Back-Up Date”), or (ii) the date of closing of the Sale to the Winning Bidder.

- (c) Within two business days after the conclusion of the Auction, the Winning Bidder and the Back-Up Bidder shall each deposit with the Debtor an additional amount in cash such that, when combined with their existing Deposit, each such bidder's aggregate Deposit equals the greater of \$200,000 or ten percent (10%) of the Purchase Price reflected in the final bid of the Winning Bidder and of the Back-Up Bidder, respectively (such additional amounts shall be included in the definition of the "Deposit").
- (d) If an Auction is held, the Debtor shall be deemed to have accepted a Qualified Bid as the winner of the Auction (conditioned upon approval by the Bankruptcy Court) only when (i) such bid is declared the Winning Bid; (ii) definitive documentation has been executed in respect thereof; and (iii) any additional Deposit required as a result of a bid submitted at the Auction (as required by the Bidding Procedures) has been provided to the Debtor. Such acceptance is also conditioned upon approval by the Court of the Winning Bid and (if applicable) the Back-Up Bid.

14. **Sale Hearing.**

- (a) The sale hearing is presently scheduled to take place **on January 19, 2023 at 10:00 a.m. (Pacific Time)**, or as soon thereafter as counsel may be heard, before the Honorable Laura S. Taylor, Dept. 3 – Courtroom 129, 325 West F Street, San Diego, California (the "Sale Hearing").
- (b) Within two business days after the conclusion of the Auction (and in advance of the Sale Hearing), the Debtor will file a notice of the Winning Bid and Back-Up Bid, along with copies of the Winning Bid APA, Back-Up Bid APA and the proposed Sale Order (the "Notice of Winning Bid and Back-Up Bid"), redacted as necessary to protect commercially sensitive and/or confidential information.
- (c) Any objection to the approval of the Winning Bid and Back-Up Bid shall be filed no later than **~~TBD~~ January 18, 2023, at 5:00 o'clock p.m. (Pacific Time)** (the "Sale Objection Deadline").
- (d) The Debtor will present the results of the Auction to the Bankruptcy Court at the Sale Hearing, at which certain findings will be sought from the Bankruptcy Court regarding the Auction, including, among other things, that (i) the Auction was properly conducted, and the Winning Bidder and the Back-Up Bidder were properly selected, in accordance with these Bidding Procedures, (ii) the Auction was fair in substance and procedure, (iii) each of the Winning Bid and the Back-Up Bid was a Qualified Bid, (iv) closing of the Sale with the Winning Bid (or if applicable, the Back-Up Bid) will provide the highest and best value for the Purchased Assets and is in the best interests of the Debtor and (v)

each of the Winning Bidder and the Back-Up Bidder are deemed to be purchasers of the Purchased Assets in good faith as set forth in § 363(m).

- (e) At the Sale Hearing, the Debtor shall request the Bankruptcy Court to enter an order approving the Winning Bid and, if applicable, the Back-Up Bid (the “Sale Order”). Except to the extent revised by the Debtor in its discretion, after consultation with the Committee and the Winning Bidder, the proposed Sale Order presented to the Bankruptcy Court at the Sale Hearing shall be in the form submitted as part of the Winning Bid.
- (f) At the Sale Hearing, the Debtor shall also request, as part of the Sale Order, authorization from the Bankruptcy Court to accept the Back-Up Bid as the Winning Bid, and consummate such bid, if the Winning Bid is not consummated when and as required by its terms without further order of the Bankruptcy Court. The Debtor and the Back-Up Bidder shall be bound to consummate the Back-Up Bid if the Winning Bid terminates, at which time the Back-Up Bidder shall be deemed the Winning Bidder. The Debtor shall promptly give notice to the Back-Up Bidder if the Winning Bid is terminated and shall provide the Back-Up Bidder a reasonable period within which to close as set forth in the Back-Up Bid APA.
- (g) After approval of the Sale and entry of the Sale Order, the Debtor shall request the Health Resources & Services Administration (“HRSA”) approve the Winning Bidder as a federally qualified health center and the transfer of certain federal grants and state payments to the Winning Bidder. It may take up to six months for the HRSA to complete this approval process.

15. **Treatment of Deposit.**

- (a) The Deposit of each Potential Bidder shall be held pursuant to an escrow agreement acceptable to the Debtor, subject to the prior consent of the Debtor as to the escrow agent and form of escrow agreement, where such consent is not to be unreasonably withheld.
- (b) Upon closing of the Sale with the Winning Bidder (or Back-Up Bidder, if applicable), the Deposit of the Winning Bidder or Back-Up Bidder shall be credited to the Purchase Price. The Deposit of the Winning Bidder or Back-Up Bidder will be forfeited to the Debtor if the Winning Bidder or Back-Up Bidder fails to enter into the required definitive documentation or to consummate the applicable sale transaction in accordance with these Bidding Procedures and the terms of the applicable transaction documents with respect to the Winning Bid and

Back-up Bid as shall be set forth in the Winning Bid APA and Back-Up Bid APA or as otherwise ordered by the Bankruptcy Court.

- (c) The Deposits of any Qualified Bidders other than the Winning Bidder and the Back-Up Bidder will be returned within two (2) business days after the conclusion of the Sale Hearing; provided, that, the Deposit of the Back-Up Bidder shall be returned to the Back-Up Bidder at the earlier of (i) the closing of the Sale to the Winning Bidder, and (ii) thirty (30) days after entry of the Sale Order.
- (d) The Deposit of any Potential Bidder who is determined not to be a Qualified Bidder shall be returned to such Potential Bidder within two (2) business days of such determination, pursuant to the terms of the applicable escrow agreement.

16. **Payment of the Break-Up Fee.** If any Stalking Horse Bidder is not the Winning Bidder, the Debtor shall pay the Break-Up Fee to such Stalking Horse Bidder as set forth in the agreement between the Debtor and the Stalking Horse Bidder providing for such Break-Up Fee, but in no event shall payment be any earlier than the time of the consummation of the sale of the Purchased Assets or transfer thereof in the context of an Alternative Transaction, and shall only be paid from the proceeds of such sale or upon the transfer of such Purchased Assets. Notwithstanding the foregoing, a Break-Up Fee will only be payable if the Debtor has previously determined pursuant to Paragraph 10 of these Bidding Procedures that a bid merits stalking horse status and protections.

17. **Reservation of Rights.** THE DEBTOR RESERVES ITS RIGHTS TO MODIFY THESE BIDDING PROCEDURES IN ANY MANNER IN CONSULTATION WITH THE COMMITTEE THAT WILL BEST PROMOTE THE GOALS OF THE BIDDING PROCESS. THE DEBTOR FURTHER RESERVES ITS RIGHTS TO IMPOSE, IN CONSULTATION WITH THE COMMITTEE, AT OR PRIOR TO THE AUCTION, ADDITIONAL TERMS AND CONDITIONS ON THE SALE OF THE PURCHASED ASSETS, INCLUDING, WITHOUT LIMITATION, EXTENDING THE DEADLINES SET FORTH IN THESE BIDDING PROCEDURES, ADJOURNING THE AUCTION AT OR PRIOR TO THE AUCTION AND/OR ADJOURNING THE SALE HEARING PRIOR TO SUCH HEARING OR IN OPEN COURT WITHOUT FURTHER NOTICE, AND REJECTING ANY OR ALL QUALIFIED BIDS IF, IN THE DEBTOR'S REASONABLE, GOOD-FAITH BUSINESS JUDGMENT, FOLLOWING CONSULTATION WITH THE COMMITTEE, THE DEBTOR DETERMINES THAT SUCH QUALIFIED BID IS (I) INADEQUATE OR INSUFFICIENT, (II) NOT IN CONFORMITY WITH THE REQUIREMENTS OF THE BANKRUPTCY CODE OR ANY RELATED RULES OR THE TERMS SET FORTH HEREIN, OR (III) CONTRARY TO THE BEST INTERESTS OF THE DEBTOR. THE DEBTOR RESERVES THE RIGHT, AT ANY TIME,

AND IN CONSULTATION WITH THE COMMITTEE, FOR ANY REASON AND IN ITS REASONABLE, BUSINESS JUDGMENT, TO DECLINE TO PURSUE THE SALE AND TO WITHDRAW ANY MOTION FILED IN THE COURT SEEKING TO APPROVE THE SALE.

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