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Counsel for Inland Empire Health Plan

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

-----	x	Case No. 22-02384-11
In re	:	
	:	Chapter 11 Case
BORREGO COMMUNITY HEALTH	:	
FOUNDATION,	:	Judge: Honorable Laura S. Taylor
	:	
Debtor and Debtor In Possession.	:	INLAND EMPIRE HEALTH
	:	PLAN'S LIMITED OBJECTION
	:	TO DEBTOR'S PROPOSED
	:	ORDER REGARDING
	:	BIDDING PROCEDURES
-----	x	

Inland Empire Health Plan ("IEHP") files this limited Objection to Borrego Community Health Foundation's (the "Debtor") recently-lodged form of Order regarding the bidding procedures.¹

As the Court will recall from IEHP's papers previously filed and the hearing last week, IEHP is concerned with the extremely limited amount of time IEHP has to

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.



1 vet and analyze potential bidding parties. Indeed, IEHP's normal vetting process can
2 take over 90 days, and the time period between now and the Debtor's proposed
3 objection period applicable to IEHP (February 13), is much shorter than that.²

4 It is against this backdrop that IEHP files this limited Objection concerning
5 two provisions contained in the form of Order and the bidding procedures exhibit.
6 Attached as Exhibits 1 and 2 are redline versions illustrating the changes IEHP
7 requests and further describes below.

8 **Objection to Form of Order**

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10 IEHP submits that Paragraph 11 of the Order should require that the Debtor
11 keep IEHP apprised of the identity of the potential bidding parties during the process,
12 and to further provide IEHP with the parties' contact information for vetting
13 purposes. From IEHP's perspective, there is not much utility in having a list of names
14 if IEHP cannot contact and access such parties for vetting purposes. As the Debtor
15 represented during the hearing, IEHP is presumably going to be familiar with the list.
16 If that is true, then there should be no problem providing contact information and
17 access to the potential bidders.

18 Importantly, if IEHP is not provided access to potential bidders, then it will be
19 difficult for IEHP to protect the rights of its Members for purposes of analyzing a
20 potential bidder's adequate assurance of future performance. While the
21 assumption/assignment procedures allow information requests to be submitted
22 through Debtor's counsel, such a burden is inefficient and insufficient for IEHP under
23 the circumstances. Requiring the Debtor to be the proverbial middleman places
24 unnecessary administrative burden and cost on IEHP. It also places an unnecessary
25 cost on the estate, especially where the Debtor's assumption/assignment procedures

26 ² Despite repeated requests since December 3, 2022, for a form confidentiality
27 agreement to learn the identity of the upwards of 20 potential bidders currently
28 conducting due diligence, IEHP just recently received a form agreement on
December 13. IEHP will quickly turn comments on that form.

1 specifically place the responsibility of satisfying adequate assurance of future
2 performance on the winning bidder. [Assumption Procedures, Paragraph 7]. This is
3 not just a simple financial issue; it also involves what is best for IEHP's Members.
4 Under these circumstances, IEHP should have access to potential bidders for vetting
5 purposes and such access should be directly with the bidders.
6

7 **Objection to Bidding Procedures Exhibit**

8 IEHP submits that the Court should strike the end of Paragraph 5 of the bidding
9 procedures exhibit that pertains to the failure to submit an Indication of Interest.
10 Based on comments made during the hearing (from Your Honor and IEHP counsel),
11 the deadline to submit an Indication of Interest was specifically discussed and moved
12 up in part because it would benefit IEHP to know what parties remain interested in
13 the Debtor's assets. Indeed, that deadline may reduce the universe of parties that are
14 interested in the assets, and thus may reduce unnecessary vetting on the part of IEHP.
15 The Debtor's language at the end of Paragraph 5, however, makes that deadline
16 meaningless.

17 IEHP understands why the Debtor may not want to exclude bidders based on
18 this deadline, and IEHP acknowledges that new bidders may show up relatively late
19 in the process. However, the requirements for the Indication of Interest are fairly
20 nominal and they are not burdensome on potential bidders. Even if a bidder shows
21 up late in the process, it should nevertheless be able to comply with these simple
22 requirements quickly. As Paragraph 5 makes clear, the Indication of Interest does not
23 bind a party to submit any bid or even bind it with respect to the form of a bid. IEHP's
24 request in this regard is not prejudicial to any potential bidder. On the other hand, the
25 importance of IEHP being able to narrow its focus to the actual playing field is
26 extremely important given the time constraints placed on IEHP in this process.
27
28

1 As such, IEHP submits that the clause after the semi-colon in Paragraph 5
2 should be removed, and it should be clear that submission of the Indication of Interest
3 is a Qualified Bid requirement.

4 There is another alternative. The Debtor represented in its declaration last
5 week that over 20 potential bidders have executed a confidentiality agreement and
6 obtained access to the data room. [Lee Declaration, Docket 260-2, Paragraph 7].
7 Accordingly, there are a number of potential bidders who are aware of that January 5
8 deadline right now. Such bidders have more than enough time to submit an Indication
9 of Interest on or before that date. IEHP submits that the January 5 date should apply
10 to interested bidders that currently have access to the data room. Bidders that show
11 up late in the process can nonetheless be accommodated under the circumstances
12 with a later date (for example, January 12). IEHP thus alternatively proposes that the
13 Court remove entirely the clause following the semi-colon at the end of Paragraph 5
14 and insert the following:

15 “A Potential Bidder’s failure to submit an Indication of Interest on or
16 before **January 5, 2023**, shall disqualify such Potential Bidder from
17 further participation in the Sale process if such Potential Bidder has
18 executed a confidentiality agreement as of the date of the Order
19 approving these procedures or otherwise has access to the data room. To
20 the extent a Potential Bidder has not executed a confidentiality
21 agreement or otherwise does not have access to the data room as of the
22 date of such Order, then the deadline for such Potential Bidder to submit
an Indication of Interest (and not be disqualified from the Sale process)
shall be **January 12, 2023**.”

23 Wherefore, IEHP respectfully requests that the Court (i) reject the form of
24 Order and bidding procedures lodged by the Debtor, (ii) accept IEHP’s changes
25 discussed in this Objection, and (iii) grant such further relief the Court deems
26 appropriate.

1
2 DATED: December 15, 2022

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11 *Counsel for Inland Empire Health Plan*

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3 **CERTIFICATE OF SERVICE**

4 I certify that, on December 15, 2022, I caused to be electronically filed the
5 foregoing Statement and served electronically via this Court's CM/ECF case
6 management system upon all parties registered for such service as identified on the
7 service list obtained from this Court on the Electronic Mail Notice List.

8 /s/ Helen Yang

9 Helen Yang
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EXHIBIT 1

Redline of Order

This matter coming before the Court on the motion [Docket No. 161] (the “Motion”)¹ of the above-captioned debtor and debtor in possession (the “Debtor”) for the entry of the Order, as applicable, pursuant to §§ 105(a), 363, and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”),² Rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure and Rule 9013 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Southern District of California (“LBR”): (a) approving a process by which interested parties may bid (a “Bid”) to purchase substantially all of the Debtor’s assets (collectively, the “Purchased Assets”), including the assignment and assumption of Assumed Executory Contracts, together with the payment of Cure Costs (as such terms are defined in the Motion); (b) approving a process by which, at the Debtor’s election, a stalking-horse bidder may be selected from among those parties making a Bid, and bidding protections may be granted to such stalking horse bidder without further order of the Court; (c) setting bid procedures to establish guidelines for parties interesting in making initial Bids and overbids to such initial Bids; (d) if multiple Qualified Bids (as defined in the Motion) are received, scheduling an auction of the Purchased Assets; and (e) scheduling a sale hearing for the Court to approve the highest and best Qualified Bid. The Court, having found that (i) the Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, (ii) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b), and (iv) notice of the Motion was sufficient under the circumstances and properly given; and it appearing that no other or further notice need be provided; and having considered the

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

² All references to “§” or “section” herein are to the Bankruptcy Code. All references to “Rules” are to the Federal Rules of Bankruptcy Procedure.

objection [Docket No. 187] filed by the California Department of Health Care Services (“DHCS”), the limited objection [Docket No. 199] filed by AB Staffing Solutions, LLC (“AB Staffing”), the objection [Docket No. 201] filed by Inland Empire Health Plan (“IEHP”), the objection [Docket No. 206] filed by the U.S. Department of Health and Human Services (“HHS”), the Debtor’s replies [Docket Nos. 260, 261] (collectively, the “Reply”) thereto, and any other argument or evidence properly before the Court; and a hearing on the proposed Bidding Procedures as detailed in the Motion having been held (the “Hearing”); and after due deliberation the Court having determined that the relief requested in the Motion with respect to the proposed Bidding Procedures is in the best interests of the Debtor, its estate, and its creditors; and for the reasons set forth in the Court’s tentative ruling [Docket No. 272], which the Court adopts as its final ruling and which is incorporated herein by reference (the “Ruling”); and good and sufficient cause having been shown:

AND IT IS FURTHER FOUND AND DETERMINED THAT:³

A. The statutory and legal predicates for the relief requested in the Motion and provided for herein are §§ 105(a), 363, and 365, Rules 2002, 6004, 6006, 9007, and 9014, and LBR 9013.

B. In the Motion, the Reply, and at the Hearing, the Debtor demonstrated that good and sufficient notice of the relief granted by this Order has been given and no further notice is required. A reasonable opportunity to object or be heard regarding the relief granted by this Order has been afforded to those parties entitled to notice pursuant to Bankruptcy Rule 2002 and all other interested parties.

C. The Debtor’s proposed Procedures Notice, Cure Notice, the Auction, the Auction Procedures, and the hearing to approve the sale of the Purchased Assets (the “Sale Hearing”) are

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

appropriate and reasonably calculated to provide all interested parties with timely and proper notice, and no other or further notice is required.

D. The Bidding Procedures substantially in the form attached hereto as **Exhibit “1”** are fair, reasonable, and appropriate and are designed to maximize the recovery from the Sale of the Purchased Assets.

E. The Break-Up Fee is reasonably calculated to: (1) attract or retain a potentially successful bid; (2) establish a bid standard or minimum for other bidders to follow; and (3) attract additional bidders. Accordingly, in light of the foregoing, the size and nature of the Sale, and the efforts that would be expended by a Stalking Horse Purchaser, the Break-Up Fee is reasonable and appropriate.

F. The procedures for assumption and assignment of Assumed Executory Contracts (the “Assumption and Assignment Procedures”) attached hereto as **Exhibit “2”** and the Cure Notice are reasonable and appropriate and consistent with the provisions of § 365 and Rule 6006. The Assumption and Assignment Procedures and the Cure Notice have been narrowly tailored to provide an adequate opportunity for all non-debtor counterparties to the Assumed Executory Contracts to assert any Assumption Objection.

G. Entry of this Order at this time is in the best interests of the Debtor, its estate and creditors, and all other parties in interest.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED** as set forth herein.
2. The AB Staffing and IEHP objections to the relief requested in the Motion, insofar as it related to this Order, that have not been resolved herein, withdrawn, waived or settled are overruled.
3. The DHCS and HHS objections to the relief requested in the Motion, are continued

to the Sale Hearing.

4. The Bidding Procedures attached hereto as **Exhibit “1”** are **APPROVED**.

5. The Assumption and Assignment Procedures attached hereto as **Exhibit “2”** are **APPROVED**.

6. The following dates and deadlines concerning the Sale are **APPROVED**:

Date	Event
January 5, 2023	Deadline to Submit Indications of Interest
January 17, 2023	Deadline to serve Cure Notice
January 23, 2023, at 5:00 p.m.	Bid Deadline for Qualified Bids
February 6, 2023, at 10:00 a.m.	Auction (if necessary)
February 13, 2023, at 5:00 p.m.	Deadline to file any objections to Sale
February 16, 2023	Deadline to file any replies to objections to Sale
February 22, 2023, at 1:00 p.m.	Sale Hearing

7. The Debtor, in its discretion, after consultation with the Committee, is authorized to designate a Qualified Bidder as the “Stalking Horse Bidder” and award stalking horse protections, 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”). The Debtor shall have no obligation to designate any Qualified Bidder as the Stalking Horse Bidder. The award of stalking horse protection may occur without further notice or order of the Court 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. If such designation 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.

8. The Break-Up Fee is **APPROVED**. Any Break-Up Fee, to the extent payable, shall only be paid from the cash proceeds received by the Debtor at the closing of a Sale or the transfer of the Purchased Assets to a party other than the Stalking Horse Bidder.

9. The Bid Deadline shall be **January 23, 2023 at 5:00 p.m. (prevailing Pacific Time)**.

10. The Debtor, after consultation with the Committee, shall determine, in its reasonable discretion, whether a Bid has satisfied each of the Bid Requirements. 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 indicating which Potential Bidders have submitted Qualified Bids.

11. Following execution of a mutually-agreeable nondisclosure agreement, the Debtor shall provide IEHP, Blue Shield of California and Blue Shield of California Promise Health Plan (collectively, the “Special Notice Parties”) a list of all interested parties that have received due diligence from the Debtor for purposes of the Sale. The Debtor shall also provide the Special Notice Parties a list of Potential Bidders which submitted Indications of Interest and a list of any Potential Bidders which submitted a Bid for the Purchased Assets promptly after receiving such Indications of Interest(s) and Bid(s), as applicable. Lists provided to the Special Notice Parties shall be updated as appropriate (*e.g.*, if a new potential bidding party appears after the Debtor provides a list, then the Debtor shall promptly update the applicable list with the identity of such party). IEHP shall be kept apprised of the identity of potential bidding parties promptly during the entire bidding and Sale process. The Debtor shall further provide IEHP with the contact information of the potential bidding parties, so that IEHP can access such parties for vetting purposes.

12. If any Bids are designated as Qualified Bids, the Auction shall be held on **February**

6, 2023, at 10:00 a.m. (prevailing Pacific Time) at the offices of Dentons US LLP, 601 South Figueroa Street, Suite 2500, Los Angeles, CA 90017, or at such other location as shall be identified in a notice filed with the Bankruptcy Court at least twenty-four (24) hours before the Auction. Authorized representatives of the Special Notice Parties, as well as their legal and financial advisors, shall be among the parties permitted to attend the Auction.

13. At the Auction, each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the sale, and the Auction shall be conducted openly and transcribed (with Qualified Bidders, the Debtor, the Committee (including its members), and their respective legal and financial advisors, permitted to attend). 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. Each of the Winning Bidder and the Back-Up Bidder shall 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 later than prior to the Sale Hearing.

14. The Sale Hearing shall be held on **February 22, 2023, at 1:00 p.m. (prevailing Pacific Time)** before this Court, the U.S. Bankruptcy Court for the Southern District of California, 325 West F Street, San Diego, California. Any objections to the Sale (other than an Assumption Objection (defined herein) which shall be governed by the procedures set forth below) (a “Sale Objection”), must: (i) be in writing; (ii) comply with the Rules and the LBRs; (iii) set forth the

specific basis for the Sale Objection; (iv) be filed with the Court, 325 West F Street, San Diego, California, together with proof of service, **February 13, 2023, at 5:00 p.m. (prevailing Pacific Time)** (the “**Sale Objection Deadline**”); and (v) be served, so as to be actually received on or before the Sale Objection Deadline, upon (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 “**Notice Parties**”). If a Sale Objection is not filed and served on or before the Sale Objection Deadline, the objecting party may be barred from objecting to the Sale and may not be heard at the Sale Hearing, and this Court may enter an order approving the Sale without further notice to such party. Replies to any Sale Objections must be filed on or before **February 16, 2023**.

15. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing, and the Debtor shall have the exclusive right, in the exercise of its fiduciary obligations and business judgment, and after consultation with the Committee, to cancel the Sale at any time subject to, and in accordance with, the terms of this Order.

16. The following forms of notice are approved: (a) the Procedures Notice, in the form substantially similar to that attached hereto as **Exhibit “3”** and (b) the Cure Notice, in the form substantially similar to that attached hereto as **Exhibit “4.”**

17. The Debtor shall file with the Court and serve a copy of this Order and the Procedures Notice by first class mail, postage prepaid, on the Notice Parties and all parties which have requested to receive notice under Rule 2002 within one (1) business day following entry of this Order.

18. The Debtor shall file with the Court and serve the Cure Notice (along with a copy of this Order) upon each counterparty to the Assumed Executory Contracts by no later than **January 17, 2023**. The Cure Notice shall state (i) the date, time, and place of the Sale Hearing, and (ii) the date by which any objection to the assumption and assignment of Assumed Executory Contracts (including the Cure Amount) (an “Assumption Objection”) 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”).

19. To the extent the provisions of this Order are inconsistent with the provisions of any Exhibit referenced herein or with the Motion, the provisions of this Order shall control.

20. The Court shall retain exclusive jurisdiction over all matters arising from or related to the interpretation and implementation of this Order.

21. Notwithstanding the possible applicability of Bankruptcy Rules 6004, 6006, 7062, 9014, or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable.

###

Exhibit 1

Bidding Procedures

Exhibit 2

Assumption and Assignment Procedures

Exhibit 3

Form of Procedures Notice

Exhibit 4

Form of Cure Notice

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EXHIBIT 2

Redline of Bidding Procedures

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 (“Bankruptcy Court”) on December [], 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, subject to the objections of the California Department of Health Care Services and United States Department of Health and Human Services to be heard at the Sale Hearing.
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 **January 5, 2023**, 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~~ A Potential Bidder’s failure to submit an Indication of Interest on or before **January 5, 2023**, 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 January 23, 2023** (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”). The Debtor shall provide Inland Empire Health Plan, Blue Shield of California and Blue Shield of California Promise Health Plan (collectively, the “Special Notice Parties”) the identity of Potential Bidders promptly upon receipt of their Bid. 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 (with the exception of the Special Notice Parties, who shall be notified promptly), 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; provided, however, that the Special Notice Parties shall be promptly notified of the identity of such Stalking Horse Bidder if and when designated. 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, and shall further promptly notify the

Special Notice Parties if any Bid is or is not a Qualified Bid. 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 February 6, 2023, as further described below. If the Debtor only receives one Qualified Bid, then the Auction Notice shall provide that the Debtor will not proceed with an Auction.

12. **Auction**. The Debtor shall conduct an auction on **February 6, 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 the Special Notice Parties, 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 February 22, 2023 at 1:00 p.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 **February 13, 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, UNLESS OTHERWISE ORDERED BY THE COURT, 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.