

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:

MIDWEST CHRISTIAN VILLAGES, INC.
et al,

Debtors.

Chapter 11

Case No. 24-42473-659
Jointly Administered

Related Docket Nos. 13 and 102

**FINAL ORDER GRANTING MOTION FOR THE ENTRY OF: (A) AN ORDER:
(1) APPROVING AUCTION SALE FORMAT AND BIDDING PROCEDURES; (2)
APPROVING PROCESS FOR DISCRETIONARY SELECTION OF STALKING
HORSE BIDDER AND BID PROTECTIONS; (3) APPROVING NOTICES TO BE
PROVIDED TO INTERESTED PARTIES; (4) SCHEDULING A COURT HEARING TO
CONSIDER APPROVAL OF THE SALE TO THE HIGHEST AND BEST BIDDER; AND
(5) APPROVING PROCEDURES RELATED TO THE ASSUMPTION OF CERTAIN
EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (B) AN ORDER
AUTHORIZING THE SALE OF PROPERTY FREE AND CLEAR OF ALL
CLAIMS, LIENS AND ENCUMBRANCES**

On August 14, 2024, the Court heard the Debtors’ Motion for entry of: (A) a final order that: (1) approves a process by which interested parties may bid (a “**Bid**”) to purchase substantially all, or a portion of, the Debtors’ assets (collectively, the “**Assets**”), including the assignment and assumption of Assumed Executory Contracts, together with the payment of Cure Costs (as such terms are defined below); (2) approves a process by which, at the Debtors’ 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; (3) sets notice and bid procedures to establish guidelines for parties interested in making initial Bids and overbids to such initial Bids; (4) if multiple Qualified Bids (as defined below) are received, schedules an auction of the Purchased Assets and a Court hearing on the same; (5) sets various notice procedures about



each of the items above and regarding assumption and assignment of executory contracts and unexpired contracts and (6) schedules a sale hearing for the Court to approve the highest and best Qualified Bid (the “**Bid and Sale Procedures Order**”) and (B) upon final hearing of the motion at that sale hearing, a final order that approves one or more sale(s) to the winning bidder(s), free and clear of all liens, claims, and encumbrances (the “**Sale Order**”), the Motion being referred to collectively herein as the “**Sale Motion**.”¹ The Court having entered the *Interim Order Granting Motion for the Entry of: (A) An Order: (1) Approving auction Sale Format and Bidding Procedures; (2) Approving Process for Discretionary Selection of Stalking Horse Bidder and Bid Protections; (3) Approving Notices to be Provided to Interested Parties; (4) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest and Best Bidder; and (5) Approving Procedures Related to the Assumption of Certain Executory Contracts and Expired Leases; and (B) An Order Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances* [Docket No. 102], and based upon a consideration of the record as a whole,

IT IS ORDERED THAT

1. The Sale Motion is **GRANTED on a final basis** for the purposes of establishing the “**Bid and Sale Procedures**” that are more specifically set forth in **Exhibit A**, attached hereto. The Court approves all of the terms and conditions contained in the Bid and Sale Procedures as being in the best interests of these estates, including, without limitation, the procedures for evaluating and bidding on the Purchased Assets, the treatment of assumption of Leases and Executory Contracts, the terms and conditions of a possible auction with regard to the sale of the

¹ Terms not defined herein shall have the meaning ascribed to them in the Bid and Sale Procedures attached as Exhibit A or the Sale Motion [Docket No. 13].

Purchased Assets, the possible designation of a Stalking Horse Bid, the proposed Break Up Fee and the process for the approval of the sale of the Purchased Assets.

2. The final sale hearing on the Sale Motion is set for **November 15, 2024 at 2:00 p.m. (prevailing Central Time)** in the United States Bankruptcy Court, Courtroom 7 North, Eagleton Courthouse, 111 South Tenth Street, St. Louis, Missouri 63102.

3. Any objections to the Sale (other than an Assumption Objection, defined in the Bid and Sale Procedures) must be filed with the Court on or before **November 13, 2024 by 3:00 p.m. (prevailing Central Time)** (the “**Sale Objection Deadline**”) and served on those listed on the most currently filed Master Service List.²

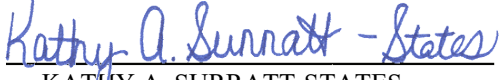
4. On or before two business days after its entry, the Debtors shall serve a copy of this Order on the then most currently filed Master Service List and the Master Notice List, any additional party-in-interest requesting notice under Rule 2002 of the Federal Rules of Bankruptcy Procedure, and any party who expresses an interest in becoming a Potential or Qualified Bidder either prior to or subsequent to the entry of this Order. Moreover, after the Initial Cure Notice is filed in accordance with the Bid and Sale Procedures, the Debtors shall serve a copy of this Order upon each of the counterparties identified in the Initial Cure Notice or any subsequently filed Cure Notices. Any party that has not received a copy of the Sale Motion or this Order that wishes to

² For the avoidance of all doubt, Lument Real Estate Capital, LLC (“**Lument**”), f/k/a Lancaster Pollard Mortgage Company and the United States Department of Housing and Development (including the U.S. Department of Justice in its capacity as counsel) (“**HUD**” and together with Lument, the “**HUD Related Parties**”) reserve all rights to object to the Sale Motion (as it relates to any relief contemplated by the Sale Order but not with respect to this Bid and Sale Procedures Order) at any point prior to the Sale Objection Deadline and their failure to object to entry of the Bid and Sale Procedures Order shall in no way be deemed consent to the proposed sale of any Assets subject to a lien or security interest in favor of the HUD Related Parties (the “**HUD Facilities**”). Any proposed assumption of the Debtors’ obligations to the HUD Related Parties under any loan document or applicable regulatory agreement shall not be subject to the Cure Notice, the Cure Amounts, or the Assumption Objection Deadline, but rather shall be subject to the Sale Objection Deadline.

obtain a copy of the Sale Motion or this Order, including all exhibits thereto, may make such a request in writing to Dentons US LLP, Attn: Samantha Ruben, 233 S. Wacker Drive, Suite 5900, Chicago, IL 60606 (312.876.2502) (samantha.ruben@dentons.com).

5. All deadlines contained in this Order and its Exhibit A may be modified or extended by the Court.

6. Not later than two (2) business days after the date of this Order, the Debtors shall serve a copy of this Order and shall file a certificate of service no later than twenty-four (24) hours after service.


KATHY A. SURRATT-STATES
U.S. Bankruptcy Judge

DATED: August 16, 2024
St. Louis, Missouri
jjh

Proposed Order submitted by:

Stephen O'Brien
(MoBar # 43977)
DENTONS US LLP
211 N Broadway Ste 3000
St. Louis, MO 63102
Telephone: (314) 241-1800
stephen.obrien@dentons.com

Robert E. Richards (*pro hac vice*)
Samantha Ruben (*pro hac vice*)
Elysa Chew (*pro hac vice*)
DENTONS US LLP
233 S. Wacker Drive, Suite 5900
Chicago, Illinois 60606-6404
Telephone: (312) 876-8000
robert.richards@dentons.com
samantha.ruben@dentons.com
elysa.chew@dentons.com

– and –

David A. Sosne
(MoBar # 28365)
SUMMERS COMPTON WELLS LLC
903 South Lindbergh Blvd., Suite 200
St. Louis, Missouri 63131
Telephone: (314) 991-4999
dsosne@scw.law

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

**Exhibit A: Bid and Sale Procedures Regarding Sale of All or a Portion of the Assets
of Midwest Christian Villages and its related Debtors³**

Pursuant to these Bid and Sale Procedures, the Debtors are offering interested parties the opportunity to pursue an acquisition of some or all of the Debtors’ assets (the “**Assets**”) pursuant to a sale process conducted under and in accordance with Section 363 of the Bankruptcy Code. The Debtors’ advisors shall oversee the marketing, bidding and transaction process, in consultation with the Consultation Parties (as defined below).

In order to obtain the highest and best offer(s), the Debtors have designed a process by which (i) bidders may submit bids for consideration to be designated as the Stalking Horse Bidder (as defined below); and (ii) after the Stalking Horse Bid Deadline (as defined below), (x) if a Stalking Horse Bidder is designated, then bidders may submit bids that are higher and better than the Stalking Horse Bid (as defined below) and thereafter participate at an Auction (as defined below) or (y) if no Stalking Horse Bidder is designated, then Bidders may submit bids and thereafter participate at an Auction.

The following schedule and procedures shall apply to the marketing and sale of some or all of the Assets. The rights of potentially interested buyers, creditors, counterparties to executory contracts and unexpired leases and others parties-in-interest could be affected by the procedures adopted herein and each party should read these carefully.

Relevant Dates and Deadlines:⁴

Date	Event
July 26, 2024	Date by which the Debtors shall serve the interim Bid and Sale Procedure Order and Exhibit A thereto and Data Room made available to Potential Bidders
September 15, 2024	Debtors to File Initial Cure Notice regarding Leases and Executory Contracts
September 19, 2024	Deadline to submit bids for consideration to be designated as Stalking Horse Bidder (the “ Stalking Horse Bid Deadline ”).

³ The address of the Debtors headquarters is 2 Cityplace Dr, Suite 200, Saint Louis, MO 63141-7390. The last four digits of the Debtors’ federal tax identification numbers are: (i) Midwest Christian Villages, Inc. [5009], (ii) Hickory Point Christian Village, Inc. [7659], (iii) Lewis Memorial Christian Village [3104], (iv) Senior Care Pharmacy Services, LLC [1176], (v) New Horizons PACE MO, LLC [4745], (vi) Risen Son Christian Village [9738], (vii) Spring River Christian Village, Inc. [1462], (viii) Christian Homes, Inc. [1562], (ix) Crown Point Christian Village, Inc. [4614], (x) Hoosier Christian Village, Inc. [3749], (xi) Johnson Christian Village Care Center, LLC [8262], (xii) River Birch Christian Village, LLC [7232], (xiii) Washington Village Estates, LLC [9088], (xiv) Christian Horizons Living, LLC [4871], (xv) Wabash Christian Therapy and Medical Clinic, LLC [2894], (xvi) Wabash Christian Village Apartments, LLC [8352], (xvii) Wabash Estates, LLC [8743], (xviii) Safe Haven Hospice, LLC [6886], (xix) Heartland Christian Village, LLC [0196], (xx) Midwest Senior Ministries, Inc. [3401] and (xxi) Shawnee Christian Nursing Center, LLC [0068].

⁴ The deadlines contained throughout these Bid and Sale Procedures, not just in this chart, are each equally enforceable in these cases. This chart is provided for the convenience of the parties.

September 23, 2024	Designation of Stalking Horse Bidder, if any
October 15, 2024	Deadline to Object to Initial Cure Notice regarding Assumption of Lease and Executory Contracts
November 7, 2024	Bid Deadline for Qualified Bids (the “ Overbid Deadline ”).
November 12, 2024	Auction
November 13, 2024	Debtors File Announcement of Winning Bidder
November 14, 2024	Deadline to file any Objections to Sale
November 15, 2024	Sale Hearing

Participation Requirements and Initial Due Diligence

To receive due diligence information, including access to the Debtors’ electronic data room (the “**Data Room**”) and to additional non-public-information regarding the Debtors and the Assets, a potential bidder must deliver the following documents (collectively, the “**Preliminary Bid Documents**”) by email to the Debtors:

1. Execute a confidentiality agreement in form and substance satisfactory to the Debtors (to the extent not already executed); and
2. Provide the Debtors the following information:
 - a. The identity of the potential bidder and a list of contacts for such potential bidder; and
 - b. Description of the due diligence information and/or investigation the potential bidder may require to submit a Bid.

Upon submission of the Preliminary Bid Documents, the party shall hereinafter be defined as a “**Potential Bidder**.” Upon qualifying as a Potential Bidder, a party may receive due diligence information from the Debtors, including access to the Data Room and potentially other nonpublic information relating to the Debtor’s assets.

For potential Stalking Horse Bidders, the due diligence period will end on the Stalking Horse Bid Deadline. For all other bidders, the due diligence period will end on the Overbid Deadline.

Each Potential Bidder shall comply with all reasonable requests for additional information and due diligence access by the Debtors or its advisors regarding such Potential Bidder and its contemplated transaction.

Designation of Stalking Horse Bidder

No later than September 19, 2024 at 4:00 p.m. (prevailing Central Time) (the “**Stalking Horse Bid Deadline**”), each bidder that is interested in serving as a stalking horse bidder (each, a “**Potential Stalking Horse Bidder**”) must (i) submit to the Debtors (x) a cover letter, including the information set forth below, and (y) an executed asset purchase agreement and a ‘redline’ mark-up of the same against the form of asset purchase agreement available in the Data Room (the “**Baseline APA**”) (together with the cover letter, the “**Stalking Horse Submission**”) and (ii)

complete all of the other Bid Requirements set forth below, unless waived by the Debtors following consultation with the Consultation Parties.

Each Potential Stalking Horse Bidder's cover letter must include:

- a. The identity of the Potential Stalking Horse Bidder;
- b. A statement identifying which of the Assets is the subject of this particular bid;
- c. Proposed structure of the transaction, including purchase price and any other material terms;
- d. Proposed break-up fee and expense reimbursement (to the extent different than the Bid Protections, as defined below); and
- e. Identification of each regulatory and third-party approval required for Potential Stalking Horse Bidder to consummate the proposed transaction, and the timetable within which the Potential Stalking Horse Bidder expects to receive such regulatory and third-party approvals.

By its submission of the Stalking Horse Submission, each Potential Stalking Horse Bidder agrees to refrain from and expressly waives any assertion or request for reimbursement on any basis, including pursuant to Section 503(b) of the Bankruptcy Code, except as expressly set forth within its Stalking Horse Submission.

The Debtors, in consultation with UMB Bank, N.A., in its capacity as bond trustee (the "**Bond Trustee**"), the HUD Related Parties (with respect to the properties on which they have a lien), and the official committee of general unsecured creditors in the Bankruptcy Cases (the "**Committee**," and together with the Bond Trustee and the HUD Related Parties, the "**Consultation Parties**"), will coordinate and negotiate with each Potential Stalking Horse Bidder regarding any potential issues regarding its Stalking Horse Submission or the terms set forth therein.

Subject to the procedures set forth herein and in the Bid and Sale Procedures Order, the Debtors are authorized, but not obligated, in exercise of their business judgment, following consultation with the Committee and with the consent of the Bond Trustee, to (i) select one or more Potential Stalking Horse Bidder(s) to act as a stalking horse bidder in connection with the sale of the Assets (such selected bidder(s), the "**Stalking Horse Bidder**"), and (ii) upon execution of an asset purchase agreement with such Stalking Horse Bidder (the "**Stalking Horse APA**"), provide (a) a break-up fee in an amount equal to no more than two and a half percent (2.5%) of the proposed cash purchase price (the "**Break-Up Fee**") and (b) an expense reimbursement in an amount equal to no more than one percent (1%) of the proposed cash purchase price (the "**Expense Reimbursement**," and together with the Break-Up Fee, the "**Bid Protections**").

In addition, the Debtors may, in their discretion, but only with the consent of the Bond Trustee, reimburse up to \$100,000 to any one or more Potential Stalking Horse Bidders, and no more than \$300,000 in the aggregate, for actual expenses incurred in connection with diligence conducted in consideration of submitting a Stalking Horse Submission (the "**Diligence Incentive**") in order to incentivize such Potential Stalking Horse Bidders to complete their due diligence and submit complete Stalking Horse Submissions by the Stalking Horse Bid Deadline. Any agreement

to grant the Diligence Incentive to a party must be in writing to be enforceable. Any party designated as the Stalking Horse Bidder will receive the Bid Protections in lieu of the Diligence Incentive.

As soon as practicable following the Stalking Horse Bid Deadline and only if a Stalking Horse Bidder is designated, but no later than **September 23, 2024**, the Debtors shall file a notice with the Bankruptcy Court of the Debtors' selection of a Stalking Horse Bidder, which notice shall include a copy of the executed and binding Stalking Horse APA.

Overbid Deadline

The deadline for any bidders (other than the Bond Trustee or the HUD Related Parties (together, and if submitting a credit bid, the "**Credit Bid Parties**" or each individually, a "**Credit Bid Party**") (with respect to the properties on which they have a lien) with respect to any credit bids that may be submitted at any time prior to the commencement of the Auction) to submit bids, other than Potential Stalking Horse Bidder bids, shall be **November 7, 2024 at 4:00 p.m.** (prevailing Central Time) (the "**Overbid Deadline**"). Bids must be received by the Debtors on or before the Overbid Deadline. Within one day of receipt, the Debtors will provide copies of any such bids received to counsel to each of the Consultation Parties.

Bid Requirements

To be eligible to participate in the Auction, each bid (other than a Credit Bid Party) and each bidder submitting a bid must conform to the following requirements (collectively, the "**Participation Requirements**"):

1. If a Stalking Horse Bidder is designated, a bid shall propose a cash purchase price that is greater than or equal to (a) the cash purchase price under the Stalking Horse Agreement, plus (b) at least (i) the amount of the Bid Protections and (ii) \$100,000 (the "**Minimum Qualified Bid**");⁵
2. Provide a clean copy of the proposed asset purchase agreement, together with a 'redline' mark-up of the same against the Stalking Horse APA or, if no Stalking Horse is Designated, against the Baseline APA (the "**Modified APA**");
3. Include a written statement that (i) there are no conditions precedent to the bidder's ability to entered into the Modified APA or other definitive documents, including an express statement that there are no financing or diligence contingencies to the bid, and that all necessary approvals have been obtained prior to submission of the bid, and (ii) the bid constitutes a binding and irrevocable offer, and shall remain binding and irrevocable until the approval of a Successful Bid by the Court; provided that if such bid is designated as the Successful Bid or the Back-Up Bid (each as defined below), then the bid shall remain

⁵ For the avoidance of doubt, this requirement may be waived or adjusted by the Debtors, in consultation with the Consultation Parties, to the extent a bid contemplates the acquisition of an asset package (i.e., properties) that differ from the Stalking Horse Bid(s).

a binding and irrevocable offer for a period of thirty (30) days following entry of an order approving the Successful Bid;

4. Provide a copy of the draft Sale Order included in the Data Room (the “**Draft Sale Order**”) marked to reflect any amendments and modifications;
5. Disclose the identity of each entity that will be bidding or otherwise participating in connection with such bid, and the complete terms of any such participation;
6. Disclose the bidder’s affiliations (including, without limitation, any known connections between the bidders, bid participants and affiliates, on the one hand, and the Debtors and its affiliates, on the other hand);
7. Provide the name and contact information of members of the bidder who will be available to answer any questions regarding the bid, including the names of and contact information for such bidder’s advisors and related parties;
8. Deliver a good-faith deposit by wire transfer of immediately available funds in an amount equal to the greater of \$250,000 or five percent (5%) of the proposed purchase price (a “**Deposit**”);
9. Provide satisfactory written evidence of available funds or a firm commitment for financing sufficient to consummate the transaction;
10. Identify each regulatory and third-party approval required for the bidder to consummate the transaction, and the time period within which the bidder expects to receive such regulatory and third-party approvals;
11. Represent and warrant that the bidder has had an opportunity to conduct any and all due diligence regarding the Debtors’ businesses and the Assets prior to submitting its bid and a statement that the bidder has relied solely upon its own independent review, investigation and/or inspection of the Assets and of any relevant documentation in making its bid, and did not rely on any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied, by operation of law or otherwise, regarding the Debtors’ businesses or the Assets, or the completeness of any information provided in connection therewith, except as expressly stated in the representations and warranties contained in such bidder’s Modified APA, as and when ultimately accepted and executed by the Debtors;
12. Submit to the jurisdiction of the Bankruptcy Court to enter an order or orders, which shall be binding in all respects, in any way related to the Debtors, these Bid and Sale Procedures or the Auction; and
13. Disclaim any right to receive a break-up fee, expense reimbursement, termination fee or any other similar form of compensation (other than any Diligence Incentive agreed to in

writing as set forth above). For the avoidance of doubt, no Qualified Bidder (other than the Stalking Horse Bidder) will be permitted to request, nor will the Debtors be permitted to grant, at any time, whether as part of the Auction or otherwise, a break-up fee, expense reimbursement, termination fee or any other similar form of compensation (other than any Diligence Incentive agreed to in writing). By submitting its bid, each bidder (other than the Stalking Horse Bidder) agrees to refrain from and expressly waives any assertion or request for reimbursement on any basis, including pursuant to Section 503(b) of the Bankruptcy Code.

The Debtors, following consultation with the Consultation Parties, shall determine whether bids meet the Participation Requirements set forth above. The Debtors reserve the right to request additional information from any bidder in connection with its bid.

Qualified Bids and Bidders

A bid that satisfies each of the Participation Requirements noted above, as determined by the Debtors in their reasonable discretion and in consultation with the Consultation Parties, shall constitute a “**Qualified Bid**,” and the bidder submitting such Bid will be deemed a “**Qualified Bidder**,” and the asset purchase agreement that each Qualified Bidder submits shall be termed a “**Qualified APA**.” The Stalking Horse Bidder, if any, shall be deemed a Qualified Bidder and its bid a Qualified Bid.

Notwithstanding the foregoing, the Debtors reserve the right to, following consultation with the Consultation Parties, waive non-compliance with any one or more of the Participation Requirements and to deem an otherwise non-Qualified Bid to be a Qualified Bid if the Debtors determine, in their business judgment, that such waiver is consistent with their fiduciary duties.

Prior to, or immediately before the commencement of any Auction, the Debtors shall file and serve on each Potential Bidder a notice indicating the identity of all Qualified Bidders, and a copy of the Bid which is deemed to be the Opening Bid (as defined below) at the Auction. If only one Qualified Bid is received, the Debtors, at their discretion following consultation with the Consultation Parties and with the approval of the Bond Trustee, may declare that party submitting such Qualified Bid as the Winning Bidder (as defined below) and proceed to the Sale Hearing without conducting an Auction.

All Qualified Bidders, other than the Stalking Horse Bidder, shall be deemed to have waived any right to assert, pursue or receive a fee analogous to a break-up fee, expense reimbursement, termination fee or any other similar form of compensation, including, without limitation, a substantial contribution claim under Section 503 of the Bankruptcy Code, related in any way to its due diligence, submission of its bid, the Bid and Sale Procedures, the Auction or any transaction (other than any Diligence Incentive agreed to in writing as set forth above).

Bids shall primarily be evaluated based upon the amount of consideration but with due deference being given to other factors, including, without limitation, a bidder’s ability to close the transaction and a bidder’s ability to demonstrate a commitment to resident care. All bids shall provide for cash consideration in an amount at least equal to the Minimum Qualified Bid.

Auction Participation and Procedures

If the Debtors receive more than one Qualified Bid (including the Stalking Horse Bid, if any), the Debtors will conduct an auction (the “**Auction**”) at Dentons US LLP, 101 S. Hanley, Suite 600, St. Louis, MO 63105 on **November 12, 2024 at 10:00 a.m.** (prevailing Central Time). The Auction shall be governed by the following procedures:

1. Only Qualified Bidders, in person or through duly-authorized representatives, 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.
2. Unless otherwise agreed by the Debtors, following consultation with the Consultation Parties, only Qualified Bidders, the Debtors, the Committee (including its members), the Bond Trustee, the HUD Related Parties, those bondholders of the Debtors who are restricted from trading their bonds, and each of their respective legal and financial advisors shall be permitted to attend the Auction.
3. Prior to the commencement of the Auction, representatives of the Debtors and/or the Consultation Parties may have discussions with each Qualified Bidder with respect to the terms and conditions of its Qualified Bid, and the Debtors, following consultation with the Committee and with the consent of the Bond Trustee, will have selected a Qualified Bid (or Qualified Bids) to become the opening bid(s) at the Auction (one or more such bids, the “**Opening Bid**,” and such bidder(s), the “**Opening Bidder**”); provided that, for the avoidance of doubt, the cash purchase price represented by the Opening Bid shall be at least equal to the Minimum Qualified Bid.
4. Bidding shall commence at the amount of the Opening Bid. The Opening Bid shall be announced by the Debtors at or before the commencement of the Auction. Other Qualified Bidders may then submit successive bids in increments of at least \$500,000 higher than the Opening Bid, and all subsequent bids must be at least \$500,000 higher than the previous bid.⁶ 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 bid by credit bidding the amount of the Bid Protections.
5. 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 Debtors than any prior bid by such party (as determined by the Debtors, following consultation with the Consultation Parties). The Debtors, in consultation with the Consultation Parties, reserve 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.

⁶ For the avoidance of doubt, these amounts may be modified depending on the assets and bids being considered.

6. Bidding will be transcribed by a certified court reporter employed by the Debtors to ensure an accurate recording of the bidding at the Auction.
7. 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 Section 363(n) of the Bankruptcy Code.
8. Absent irregularities in the conduct of the Auction, the Debtors will not consider any Potential Bids made after the Auction is closed.
9. Upon the conclusion of the Auction (if such Auction is conducted), the Debtors, in the exercise of their reasonable, good-faith business judgment and following consultation with the Consultation Parties, shall identify:
 - a. the highest and best Qualified Bid(s) submitted at the Auction (one more such bids, the "**Winning Bid**," and the party or parties that submitted such Winning Bid, the "**Winning Bidder**"); and
 - b. the next highest and best Qualified Bid(s) (one or more such bids, the "**Back-Up Bid**" and the party or parties submitting the Back-Up Bid, the "**Back-Up Bidder**").
10. In evaluating Qualified Bids, if some Qualified Bidder is bidding on less than all of the Debtors' assets, the Debtors may designate in its discretion, following consultation with the Consultation Parties, numerous Winning Bids and Back-Up Bids in order to maximize the overall return to the estate and may negotiate the addition of or removal of certain assets from bid packages to be able to both maximize the return to the estate but also be able to conduct an "apples-to-apples" bid comparison.
11. Each of the Winning Bidder and the Back-Up Bidder are 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. 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**."
12. The Back-Up Bidder must keep the Back-Up Bid open and irrevocable until the earlier of (i) 5:00 p.m. (Central 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.
13. Within two business days after the conclusion of the Auction, the Winning Bidder and the Back-Up Bidder shall each deposit with the Debtors an additional amount in cash such that, when combined with their existing Deposit, each such bidder's aggregate Deposit equals the greater of five-hundred thousand dollars (\$500,000) 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 such parties' Deposit).

14. Debtors shall file a Notice Identifying the Winning Bid and Back-Up Bid at the Auction on or before November 13, 2024 at 12:00 p.m. (prevailing Central Time).
15. If an Auction is held, the Debtors 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 has been provided to the Debtors. Such acceptance is also conditioned upon approval by the Court of the Winning Bid and (if applicable) the Back-Up Bid.
16. 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.

Credit Bidding by Credit Bid Parties

Each Credit Bid Party reserves its right to submit a credit bid for the Assets (and with respect to the HUD Related Parties, only those Assets in which the HUD Related Parties have a lien or security interest) pursuant to Section 363(k) of the Bankruptcy Code at any time prior to or during the Auction. If and when a Credit Bid Party submits a credit bid, such Credit Bid Party shall be deemed a Qualified Bidder and its credit bid will be deemed a Qualified Bid in all respects. In the event that a Credit Bid Party submits a credit bid, it shall immediately no longer have any consultation or related information rights otherwise set forth herein and shall no longer be a “Consultation Party” as defined herein.

Assumption and Assignment of Executory Contracts and Unexpired Leases:

1. The Debtors will file with the Court and serve a “**Cure Notice**” (along with a copy of this Motion) via mail upon each counterparty to potentially Assumed Executory Contracts on or before **September 15, 2024** (the “**Initial Cure Notice**”). Any party identified as a counterparty to a potentially Assumed Executory Contract that is identified after the Initial Cure Notice will receive a subsequent Cure Notice filed and served as contemplated herein.
2. The Cure Notice will 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.
3. The deadline to object to the **Initial Cure Notice** by any counter-party who believes the information related to their assumed contracts is incorrect, not-assignable or the cure amount is incorrect or is incorrect in any other respect is: (a) **October 15, 2024**; or (b) if the Cure Notice is filed subsequent to the Initial Cure Notice, then October 15, 2024, or two weeks following filing and service of the subsequent Cure Notice upon the counter-party, whichever is later. Any subsequently filed Cure Notice after the Initial Cure Notice shall be filed and served both via overnight mail and to any e-mail address of any party

known to represent then party or the business e-mail address for the counter-party (if known).

4. The Cure Notice will identify the counter-party(ies) to the contract, the date of the contract (if known), the title of the contract (if known) and the amounts, if any, that the Debtors believe are owed to each counterparty to an Assumed Executory Contract in order to cure any defaults that exist under such contract (the “**Cure Amount**”).
5. To the extent there is a contract subsequently added to the list of contracts to be assumed by the Winning Bidder pursuant to the Winning Bid APA selected at the Auction, each such contract will be listed in the Winning Bid APA, and the Debtors shall file 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.
6. 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 Debtors and their estates 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.
7. 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 (an “**Assumption Objection**”), 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, 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 Debtors 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.
8. 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. After receipt of an Assumption Objection, the Debtors will attempt to reconcile any differences in the Cure Amount or otherwise resolve the objection with the counterparty. In the event that the Debtors and the counterparty cannot resolve an Assumption Objection or if the deadline for the counterparty to respond has not yet passed, and the Court does not otherwise make a determination at the Sale Hearing regarding an Assumption Objection related to a Cure Amount, the Debtors 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.

9. 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. 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.

10. Except to the extent otherwise provided in the Winning Bid APA, the Debtors and the Debtors' estates shall be relieved of all liability accruing or arising after the assumption and assignment of the Assumed Executory Contracts pursuant to § 365(k).

Reservation of Rights

The Debtors, in consultation with the Consultation Parties, reserve their rights to: (i) modify these Bid and Sale Procedures in any manner that will best promote the goals of the bidding process and to impose, at or prior to the Auction, additional or different customary terms and conditions, including, without limitation, (x) modifying the requirements for a Qualified Bid (except as to matters relating to the Bid Protections as set forth herein) or (y) concluding the Auction with a final, sealed bid among Qualified Bidders; (ii) extend the deadlines set forth in these Bid and Sale Procedures; (iii) adjourn the Auction at or prior to the Auction and/or adjourn any related hearing prior to such hearing or in open court without further notice; and (iv) reject any or all Qualified Bids if the Debtors determine, in their reasonable, good-faith, business judgment, that such Qualified Bid is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bankruptcy Code or any related rules or the terms set forth herein, or (c) contrary to the best interests of the Debtors.

The Debtors reserve the right, at any time, for any reason and their reasonable, good-faith, business judgment, in consultation with the Consultation Parties, to decline to pursue the transaction contemplated herein and to withdraw any motion filed in the Bankruptcy Court seeking to approve such a transaction.

Notwithstanding the foregoing, the Debtors may not (i) modify the consultation or consent rights of the Committee, HUD Related Parties or the Bond Trustee or (ii) abridge the rights of the Credit Bid Parties to credit bid.