

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re

SC HEALTHCARE HOLDING, LLC *et al.*,

Debtors.¹

Chapter 11

Case No. 24-10443 (TMH)

Jointly Administered

Objection Deadline: May 15, 2024 at 4:00 p.m. (ET)

Hearing Date: May 22, 2024 at 10:00 a.m. (ET)

**DEBTORS' MOTION FOR ENTRY OF (A) AN ORDER (I) SCHEDULING
A HEARING ON THE APPROVAL OF THE SALE OF ALL OR
SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR
OF ALL ENCUMBRANCES OTHER THAN ASSUMED LIABILITIES AND
PERMITTED ENCUMBRANCES, AND THE ASSUMPTION AND ASSIGNMENT OF
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (II) APPROVING
CERTAIN BIDDING PROCEDURES AND ASSUMPTION AND ASSIGNMENT
PROCEDURES, AND THE FORM AND MANNER OF NOTICE THEREOF,
(III) AUTHORIZING THE DEBTORS TO ENTER INTO THE STALKING HORSE
PURCHASE AGREEMENT, AND (IV) GRANTING RELATED RELIEF; AND (B) AN
ORDER (I) APPROVING ASSET PURCHASE AGREEMENT, (II) AUTHORIZING
THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE
AND CLEAR OF ALL ENCUMBRANCES OTHER THAN ASSUMED LIABILITIES
AND PERMITTED ENCUMBRANCES, (III) AUTHORIZING THE ASSUMPTION AND
ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED
LEASES, AND (IV) GRANTING RELATED RELIEF**

The above captioned debtors and debtors in possession (each, a "Debtor" and, collectively, the "Debtors") hereby submit this motion (this "Motion"), pursuant to sections 105, 363, and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), for the entry of: (a) an order, substantially in the form attached hereto as Exhibit A (the "Bid Procedures Order"), (i) scheduling a hearing (the "Sale Hearing") on approval of the

¹ The last four digits of SC Healthcare Holding, LLC's tax identification number are 2584. The mailing address for SC Healthcare Holding, LLC is c/o Petersen Health Care Management, LLC 830 West Trailcreek Dr., Peoria, IL 61614. Due to the large number of debtors in these Chapter 11 Cases, whose cases are being jointly administered, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information is available on a website of the Debtors' claims and noticing agent at www.kccllc.net/Petersen.



proposed sale or sales (the “Sale” or the “Sale Transactions”) of all or substantially all of the Debtors’ assets (the “Assets”), free and clear of all encumbrances other than designated assumed liabilities and permitted encumbrances, to the Successful Bidder (defined below), and authorizing the assumption and assignment of certain executory contracts and unexpired leases in connection therewith; (ii) authorizing and approving certain bidding procedures to be implemented in connection with the Sale Transactions (collectively, the “Bidding Procedures,”² a copy of which is attached as Exhibit 1 to the Bid Procedures Order) and certain procedures for the assumption and assignment of the executory contracts and unexpired leases (collectively, and as more specifically set forth in the Bid Procedures Order, the “Assumption and Assignment Procedures”), and the form and manner of notice thereof; (iii) authorizing and approving the Debtors’ entry into an Asset Purchase Agreement (the “Stalking Horse Purchase Agreement”) with one or more potential forthcoming stalking horse bidders (each, a “Stalking Horse Bidder”) for the Assets or any subset thereof; and (iv) granting related relief; and (b) an order (the “Sale Order”) (i) authorizing and approving the Sale on the terms contemplated in the Stalking Horse Purchase Agreement (if applicable) or, in the event that the Stalking Horse Bidder is not the Successful Bidder, then an alternative asset purchase agreement (“Alternative APA”) with the Successful Bidder, and the Sale Order; (ii) authorizing and approving the assumption and assignment of certain executory contracts and unexpired leases in connection therewith (the “Assigned Contracts”); and (iii) granting related relief. In support of this Motion, the Debtors respectfully state as follows:

² Capitalized terms used but not otherwise defined in this Motion have the meaning given to such terms in the Bidding Procedures.

PRELIMINARY STATEMENT³

1. By this Motion, the Debtors seek approval of the Bidding Procedures and related relief to facilitate the sale of all or substantially all of the Assets, including the Debtors' assisted living, nursing home, and senior healthcare facilities. Since the fall of 2023, the Debtors have worked with their advisors—including a leading investment sales broker in the healthcare industry—to evaluate various strategic and disposition alternatives that would maximize value for all interested parties. As a result of this collaborative effort, the Debtors determined that the Sale Process, implemented under the supervision of the Court and with the protections afforded by the Bankruptcy Code, will generate the highest or otherwise best bid for the subject Assets. Accordingly, the Debtors have initiated and continue to implement a marketing and sale process that will maximize the participation of potential purchasers while also maintaining optionality for the Debtors and their stakeholders.

2. The Bidding Procedures contemplate a process that (i) is open to all potential bidders; (ii) allows potential bidders to bid on some or all of the Assets; (iii) protects the best interests of the Debtors' estates and stakeholders; and (iv) preserves the Debtors' rights to exercise their fiduciary duties in connection with the Sale Process. The approach embodied in the Bidding Procedures reflects the Debtors' belief that conducting a fair and robust auction at this time is the most viable alternative to maximize the value of their Assets. For the foregoing reasons, as well as those discussed herein, the Debtors believe that continuing the marketing and sale process pursuant to the Bidding Procedures is a valid exercise of their business judgment, is in the best interests of their estates and creditors, and should be approved on the terms set forth in the

³ Capitalized terms used but not otherwise defined in this Preliminary Statement have the meaning given to such terms below.

Bid Procedures Order. The Debtors intend to work cooperatively with the Committee (as defined below) and their various secured lenders to ensure that the Sale Process generates the highest or otherwise best bid for the Assets.

JURISDICTION AND VENUE

3. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. The Debtors confirm their consent, pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

4. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The statutory and legal predicates for the relief sought herein are sections 105, 363, and 365 of the Bankruptcy Code, Rules 2002, 6004, 6006, and 9007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rules 2002-1 and 6004-1.

BACKGROUND

6. On March 20, 2024 (the “Petition Date”), the Debtors each commenced with the Court a voluntary case (these “Chapter 11 Cases”) under the Bankruptcy Code. The Debtors, with the exception of some inactive entities, are authorized to operate their businesses and manage their properties as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

7. On April 9, 2024, the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed the official committee of unsecured creditors (the “Committee”). On April 16, 2024, the U.S. Trustee appointed a patient care ombudsman (the “Patient Care Ombudsman”) in these Chapter 11 Case [Docket No. 160]. No trustee or examiner has been appointed in these Chapter 11 Cases.

8. The factual background regarding the Debtors, including their business operations, capital and debt structure, and the events leading to the filing of these Chapter 11 Cases, is set forth in more detail in the *Declaration of David R. Campbell in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings* [Docket No. 44].

THE SALE PROCESS

15. The Debtors’ strategy has been clear since the outset of these proceedings: implement an orderly, efficient and value-maximizing marketing and sale process for the Assets (the “Sale Process”), under the guidance of an industry-leading broker, that will encourage widespread participation among all interested buyers. The Assets are well-known in the market, and the Debtors’ advisors are confident that the sale timeline contemplated hereby will allow all parties to conclude their due diligence on the Debtors’ operations and facilities and put forward competitive bids for the Assets in whole or, more likely, in parts. In short, the Assets will be the subject of an accurate and informed market test, and it is the Debtors’ expectation that the market will yield significant bids for the Assets and that the Debtors’ estates will fully maximize the value of the Assets through the Sale Process.

I. The Debtors’ Prepetition Marketing and Sale Efforts

16. On August 8, 2023, the Debtors engaged Walker & Dunlop, Investment Sales, LLC (“W&D”), an experienced investment sales broker in the healthcare industry with acute

knowledge of the Midwestern marketplace in particular, to serve as the Debtors' industry broker-partner to canvass the market for interested buyers for the Assets. Through its experience, W&D has been involved in more than 900 healthcare and senior housing transactions, which have yielded approximately \$12.5 billion in total property sales. Mark L. Myers, who is leading the engagement for W&D, has over thirty (30) years of experience with in-and out-of-court investment sales of senior housing and long-term care facilities and, as set forth in the *Declaration of Mark L. Myers in Support of Debtors' (X) Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Granting Security Interests and Superpriority Administrative Expense Status, (III) Granting Adequate Protection to Certain Prepetition Secured Credit Parties, (IV) Modifying the Automatic Stay, (V) Authorizing the Debtors to Enter Into Agreements with JMB Capital Partners Lending, LLC, (VI) Authorizing Non-Consensual Use of Cash Collateral, (VII) Scheduling a Final Hearing, and (VIII) Granting Related Relief; and (Y) Omnibus Objection to (A) the Emergency Motion for an Order (I) Dismissing the Subject Chapter 11 Cases, (II) for Abstention, or (III) Appointment of Receiver as the Chapter 11 Trustee and (B) the Emergency Motion to Excuse Receiver's Compliance with 11 U.S.C. § 543(A) & (B)* [Docket No. 2558], Mr. Myers has been personally involved in several large sales of nursing homes, assisted living facilities, and active adult communities. Moreover, Mr. Myers has been generally involved with the Debtors for the past twenty (20) years and is a prominent healthcare industry investment sales broker in Illinois, where the majority of the Debtors' facilities are located.

17. Since its engagement, W&D has become intimately familiar with the Assets and the current market interested in such Assets, thereby enabling W&D to quickly connect with the most likely purchasers for the Assets once the Court enters the Bid Procedures Order. Indeed,

W&D has already received significant interested in the Assets and, as discussed below, the Debtors anticipate entering into Stalking Horse Purchase Agreements with Stalking Horse Bidders for some or all of the Assets by the Stalking Horse Deadline (as defined below).

II. The Debtors' Postpetition Sale Process

18. Since commencing these Chapter 11 Cases, the Debtors and their advisors have continued to negotiate potential stalking horse agreements with various interested parties. Although the Debtors have not finalized any stalking horse agreements as of the date hereof, the Debtors intend to do so for various Assets on the timeline described herein, and, as applicable, will seek authority to enter into such stalking horse agreements at a hearing to consider the proposed Bidding Procedures or such other hearing as the process may dictate. In furtherance thereof, the Debtors, with the assistance of W&D and their other advisors, have collected twenty (20) bids to date, two (2) of which are for larger portfolios of the Assets and the remaining bids for a handful of facilities that are also subsumed within the larger aforementioned bids. Notably, the Debtors received a bid from one buyer which includes forty-one (41) facilities and another bid which includes virtually all of their facilities, the latter of which is still being analyzed. The Debtors anticipate that they may receive additional indications of interest from potential Stalking Horse Bidders or purchasers as the Sale Process and negotiations continue to progress. Indeed, certain parties have already indicated their willingness to act as a Stalking Horse Bidder for certain of the Assets. The Debtors, with the assistance of their advisors, are working to accommodate diligence requests received from potential purchasers by, among other things, scheduling meetings, participating in diligence calls, and providing access to diligence, subject to the execution of a non-disclosure agreement.

19. The Debtors will seek approval of the Bidding Procedures at hearing scheduled for May 22, 2024, consistent with the proposed timeline (the “Transaction Timeline”) summarized below:

Summary of Important Dates⁴

Key Event	Deadline
Entry of an Order Approving Bidding Procedures	On or About May 22, 2024
Deadline to Serve and Publish Sale Notice	Within one (1) day after entry of Bid Procedures Order or as soon as practicable thereafter
Deadline to File and Serve the Cure Notice on the Contract Counterparties	May 31, 2024 at 6:00 p.m. (ET)/5:00 p.m. (CT)
Deadline to File Contract Objections	June 14, 2024 at 6:00 p.m. (ET)/5:00 p.m. (CT)
Deadline to Submit Bids	June 18, 2024 at 6:00 p.m. (ET)/5:00 p.m. (CT)
Deadline to File Objections to the Sale Transactions (the “ <u>Sale Objection Deadline</u> ”)	June 18, 2024 at 6:00 p.m. (ET)/5:00 p.m. (CT)
Auction (if necessary)	June 20, 2024 at 10:00 a.m. (ET)/9:00 a.m. (CT) at the offices of Winston & Strawn, LLP, 35 W Wacker Drive, Chicago, IL
Deadline to File Notice of (a) Successful Bid(s) and Back-Up Bid(s) and (b) Identity of Successful Bidder(s) and Back-Up Bidder(s)	Within one (1) day after conclusion of Auction or as soon as possible thereafter
Deadline to Object to Conduct at Auction	June 24, 2024 at 6:00 p.m. (ET)/5:00 p.m. (CT)
Sale Hearing	June 27, 2024 at 10:00 a.m. (ET)
Sale Closing	No later than July 31, 2024

⁴ The Debtors, in the exercise of their business judgment and upon consultation with the Consultation parties, reserve the right to change the Transaction Timeline to achieve the maximum value for the Assets.

STALKING HORSE PURCHASE AGREEMENT

20. Through this Motion, the Debtors seek authority to enter into one or more Stalking Horse Purchase Agreements with one or more Stalking Horse Bidders. The Debtors anticipate negotiating a form of Stalking Horse Purchase Agreement for some or all of the Assets with potential purchasers to serve as a Stalking Horse Bidder for subsets of the Assets. The Debtors seek Court authority to enter into, finalize and file applicable Stalking Horse Purchase Agreements with the Court no later than June 7, 2024 (the “Stalking Horse Deadline”), eleven days prior to the proposed Bid Deadline, which will give parties ample opportunity to review applicable Stalking Horse Purchase Agreements in advance of the Bid Deadline and Auction, craft competing bids with the Stalking Horse Purchase Agreement in mind, and, as applicable, file any objections thereto in advance of the Sale Hearing. To the extent that the Debtors file such Stalking Horse Purchase Agreements no later than the Stalking Horse Deadline, the Debtors request authority to file a motion seeking authority to enter into the Stalking Horse Purchase Agreement and, in connection therewith, offer applicable Bid Protections (as defined below) at such time, together with a motion to shorten requesting that the Bid Protections be considered by the Court on not less than three (3) business days’ notice, subject to the Court’s availability. The Debtors believe that the flexibility to enter into one or more Stalking Horse Purchase Agreements or higher or otherwise better bids will maximize value for the Debtors’ estates, allow the Debtors to maintain business relationships with their vendors, provide for the continuation of the jobs of the Debtors’ employees, and, most importantly, afford the Debtors the best possible opportunity to continue to provide care and safety for their residents.

21. The Bidding Procedures also provide that any Stalking Horse Bidder shall be considered a Qualified Bidder (defined below) and any Stalking Horse Bid shall be considered

a Qualified Bid. Moreover, in the event that a Stalking Horse Bid is the only Qualified Bid received by the Debtors by the Bid Deadline (as defined below) for certain Assets, such Stalking Horse Bidder shall be deemed a Successful Bidder (as defined below).

22. Upon executing any Stalking Horse Purchase Agreement, the Debtors will file a notice or motion on the docket in these Chapter 11 Cases designating the Stalking Horse Bidder and, therein, the Debtors will provide a summary chart in accordance with Local Rule 6004-1(b)(iv) highlighting the material terms of the Stalking Horse Purchase Agreement(s).

BIDDING PROCEDURES⁵

23. The Debtors are in the process of soliciting bids for all of the Assets, or any number or combination thereof, in accordance with the Bidding Procedures. The Bidding Procedures describe, among other things: (i) the procedures for bidders to submit bids for the acquisition of the Assets; (ii) the manner in which bidders and bids become Qualified Bidders and Qualified Bids (as defined below); (iii) the process for negotiating the bids received; (iv) the conduct of the Auction if the Debtors receive Qualified Bids; (v) the procedure for the ultimate selection of any Successful Bidder and any Back-Up Bidder (as defined below); and (vi) the process for approval of the Sale at the applicable Sale Hearing. The Bidding Procedures reflect the Debtors' objective of conducting the Sale Process in an orderly, fair and open manner, while ensuring that the highest or best bid is generated for the Assets.

⁵ Any summary of the Bidding Procedures contained herein is qualified in its entirety by the actual terms and conditions of the Bidding Procedures as provided for in the Bid Procedures Order. To the extent that there is any conflict between any summary contained herein and the actual terms and conditions of the Bidding Procedures as provided for in the Bid Procedures Order, the actual terms and conditions of the Bidding Procedures as provided for in the Bid Procedures Order shall control.

24. Certain of the key terms of the Bidding Procedures, which shall apply to Potential Bidders, Qualified Bidders, the submission, receipt, and analysis of all bids relating to the Sale, and the conduct of the Sale and the Auction, are included below:

- (a) Participation Requirements. To receive due diligence information, including full access to the Debtors' confidential electronic data room (the "Data Room") and to additional non public information regarding the Debtors, a potential bidder must have delivered to each of: (i) counsel to the Debtors: (a) Winston & Strawn LLP, 25 W. Wacker Drive, Chicago, IL 60601 (Attn: Daniel J. McGuire (dmcguire@winston.com) and Gregory M. Gartland (ggartland@winston.com), and (b) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Andrew L. Magaziner (amagaziner@ycst.com) and Shella Borovinskaya (sborovinskaya@ycst.com)); and (ii) proposed investment sales broker to the Debtors: Walker & Dunlop Investment Sales, LLC (Attn: Mark Myers (mmyers@walkerdunlop.com)), the following documents (the "Preliminary Bid Documents"):
- (i) an executed confidentiality agreement in a form and substance that is satisfactory to the Debtors (unless such party is already a party to an existing customary confidentiality agreement with the Debtors that is acceptable to the Debtors for this due diligence process, in which case such agreement shall govern);
 - (ii) documentation identifying the interested party, its principals, and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction;
 - (iii) sufficient information, as reasonably determined by the Debtors, to allow the Debtors to determine, in their reasonable business judgment, whether the interested party: (i) has the financial wherewithal to consummate the Sale; and (ii) intends to access the Data Room for a bona fide purpose consistent with the Bidding Procedures.

Each Potential Bidder shall comply with all reasonable requests for information and due diligence by the Debtors or their advisors regarding the ability of such Potential Bidder to consummate its contemplated transaction.

For the avoidance of doubt, any Stalking Horse Bidder will be deemed to be a Qualified Bidder (as defined below) and is not required to provide any of the foregoing Preliminary Bid Documents.

- (b) Bid Deadline. A Potential Bidder that desires to make a proposal, solicitation, or offer for the Assets (each, a "Bid") shall transmit electronic copies of its Bid so as

to be actually received on or before **June 18, 2024 at 5:00 p.m. (prevailing Central Time)** by the Debtors' representatives at the email addresses listed below.

(i) the Debtors: (Attn: David R. Campbell, Chief Restructuring Officer (dcampbell@getzlerhenrich.com));

(ii) counsel to the Debtors: (a) Winston & Strawn LLP, 25 W. Wacker Drive, Chicago, IL 60601 (Attn: Daniel J. McGuire (dmcguire@winston.com) and Gregory M. Gartland (ggartland@winston.com)), and (b) Young Conaway Stargatt & Taylor, LLP, 1000 N. King Street, Wilmington, DE 19801 (Attn: Andrew L. Magaziner (amagaziner@ycst.com) and Shella Borovinskaya (sborovinskaya@ycst.com));

(iii) proposed investment sales broker to the Debtors: Walker & Dunlop Investment Sales, LLC (Attn: Mark Myers (mmyers@walkerdunlop.com)).

(c) **Bid Requirements**. Each Bid by a Potential Bidder (a "**Bidder**") must be submitted in writing and satisfy the following requirements (collectively, the "**Bid Requirements**").

(i) **Proposed Agreement**. Each Bid must include an executed agreement (the "**Proposed Agreement**") for the acquisition of all or some of the Assets, with a redline to any applicable Stalking Horse Agreement or, if there is no applicable Stalking Horse Agreement, a form of asset purchase agreement. The Proposed Agreement shall:

- (a) include a complete set of all disclosure schedules and exhibits thereto marked to show the specific changes to the disclosure schedules and exhibits to the applicable Stalking Horse Agreement (if any) distributed by the Debtors to Potential Bidders; and
- (b) not condition the closing of the proposed Sale on the receipt of any third party approvals (excluding such approvals required by the Court or governmental and/or regulatory approvals).

(ii) **Purchase Price; Form of Consideration; Cash Requirements; Assets; Assumed Liabilities; Credit Bid**. Each Bid must clearly set forth, as applicable:

- (a) **Purchase Price**. Each Bid must clearly identify the purchase price to be paid (the "**Purchase Price**") and specify the aggregate amount of cash and other consideration being offered.
- (b) **Cash Requirements**. Each Bid, including any Credit Bid (as defined below), must provide cash consideration sufficient to satisfy the payment of any applicable Bid Protections in cash in full (the "**Cash Consideration Amount**") and, with respect to any Credit Bid, must

also pay all obligations secured by senior liens on the applicable assets.

- (c) Assets Purchased: Each Bid must, in the Proposed Agreement, clearly identify the particular Assets the Potential Bidder seeks to acquire from the Debtors. The Bid must clearly state the allocation of Purchase Price among particular Assets, as applicable. For the avoidance of doubt, any such allocation of the Purchase Price among Assets shall not be binding on the Debtors or any third-party and shall remain subject to determination by the Court.
 - (d) Assumed Liabilities: Each Bid must clearly identify, in writing and as applicable, the particular liabilities, if any, the Bidder seeks to assume.
 - (e) Credit Bid: Persons or entities holding a valid and perfected security interest in the Assets may submit a credit bid (a "Credit Bid") on such assets, to the extent permitted by applicable law or any Court order, and the documentation governing the Debtors' secured credit facilities.
- (iii) Unconditional Offer/Contingencies. A statement that the Bid is formal, binding, and unconditional, is not subject to any further due diligence or financing contingency, and is irrevocable until the Debtors notify the Potential Bidder that such Bid is not a Successful Bid or a Back-Up Bid, or with respect to a Back-Up Bid until the earlier of (a) the first business day after the close of the Sale Transaction with the Successful Bidder for the Assets bid upon by such Back-up Bidder or (b) 60 days after entry of an order approving the Sale Transaction with the Successful Bidder for the Assets bid upon by such Back-Up Bidder; *provided that*, for the avoidance of doubt, for any Stalking Horse Bidder, the Stalking Horse Bid shall be irrevocable as set forth in the Stalking Horse Purchase Agreement
 - (iv) Timeline to Close. The Bid must provide a commitment to close no later than July 31, 2024.
 - (v) Proof of Financial Ability to Perform. Each Bid must contain such financial and other information that allows the Debtors, in consultation with the Consultation Parties, to make a reasonable determination, in their reasonable business judgment as to the Potential Bidder's financial and other capabilities to consummate the Sale Transactions including, without limitation, ability to post replacement letters of credit, as applicable, and such financial and other information setting forth adequate assurance of future performance in satisfaction of the requirements under section 365(f)(2)(B) of the Bankruptcy Code, and the Potential Bidder's willingness to perform under any contracts that are assumed and assigned to such party. Without limiting the foregoing, such information must include current

financial statements or similar financial information certified to be true and correct as of the date thereof, proof of financing commitments if needed to consummate the transaction (not subject to, in the Debtors' reasonable business judgment, any unreasonable conditions), contact information for verification of such information, including any financing sources, and any other information reasonably requested by the Debtors or the Consultation Parties necessary to demonstrate adequate assurance of future performance and to demonstrate that such Potential Bidder has the ability to consummate the Sale Transactions in a timely manner.

- (vi) Designation of Contracts and Leases. Each Bid must identify with particularity (i) each and every executory contract and unexpired lease that the Potential Bidder seeks to assume and receive an assignment of; and (ii) each and every other contract and lease of the Debtors that the Potential Bidder seeks to assume and receive an assignment of.
- (vii) Required Approvals. A statement or evidence (i) that the Potential Bidder has not conditioned their Bid on (a) obtaining financing, (b) any internal approval, (c) the outcome or review of unperformed due diligence, or (d) regulatory contingencies (except as otherwise provided in this section);(ii) that the Potential Bidder has made or will make in a timely manner all necessary filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, or other antitrust laws, as applicable, and pay the fees associated with such filings; (iii) identifying each governmental and regulatory third-party approvals required for the Potential Bidder to consummate the applicable Sales Transaction, if any, and the Potential Bidder's plan and ability to obtain all requisite governmental, regulatory, or other third-party approvals and the proposed timing for the Potential Bidder to undertake the actions required to obtain such approvals; and (iv) that the Bid is reasonably likely (based on antitrust or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Successful Bid or as the Back-Up Bid, within a time frame acceptable to the Debtors. A Potential Bidder further agrees that its legal counsel will coordinate in good faith with the Debtors' legal counsel to discuss and explain such Potential Bidder's regulatory analysis, strategy, and timeline for securing all such approvals as soon as reasonably practicable.
- (viii) Disclosure of Identity and Corporate Authorization. Each Bid must (i) fully disclose the identity of the Potential Bidder of each entity that will be bidding or otherwise participating in such Bid (including any equity owners or sponsors, if the Potential Bidder is an entity formed for the purpose of consummating the Sale Transactions), and the complete terms of any such participation, and (ii) include evidence of corporate authorization and approval from the Potential Bidder's board of directors (or comparable governing body) with respect to the submission, execution, and delivery of

a Bid, participation in the Auction, and closing of the transactions contemplated by the Potential Bidder's Proposed Agreement in accordance with the terms of the Bid and the Bidding Procedures.

- (ix) Bid Protections. The Debtors may offer each Stalking Horse Bidder a break-up fee and reimbursement of reasonable and documented expenses (the "Bid Protections"); *provided, that*, (i) any break-up fee shall not exceed three percent (3%) of the Purchase Price, and (ii) all Bid Protections must be negotiated by the Debtors, in consultation with the Consultation Parties, subject to notice and an opportunity for parties in interest to object solely with respect to Bid Protections offered by a Debtor; and (iii) such Bid Protections shall not be offered after the Stalking Horse Deadline. The amount and calculation of such Bid Protections shall be described in the notice designating any Stalking Horse Bidder; *provided further, that*, any Bid Protections shall not be inconsistent with the Bid Procedures Order or the Bidding Procedures. For the avoidance of doubt, to the extent the Debtors offer Bid Protections to a Stalking Horse Bidder, which shall be done no later than the Stalking Horse Deadline, the Debtors shall seek approval of the Bid Protections on not less than three (3) business days' notice.
- (x) No Entitlement to Expense Reimbursement or Other Amounts. With the exception of any Stalking Horse Bid, expressly state that the Bid does not entitle the Potential Bidder to any break-up fee, termination fee, expense reimbursement or similar type of payment or reimbursement, and a waiver of any substantial contribution administrative expense claims under section 503(b) of the Bankruptcy Code related to the bidding process.
- (xi) Disclosure of Connections. Each Bid must fully disclose any connections or agreements with the Debtors, the Debtors' prepetition secured creditors, the DIP Lender, other potential bidders, and/or any officer or director of the Debtors.
- (xii) Joint Bids. The Debtors may, in consultation with the Consultation Parties, approve joint Bids in their sole and reasonable business judgment on a case-by-case basis
- (xiii) Representations and Warranties. Each Bid must include the following representations and warranties:
 - (a) a statement that the Potential Bidder has had an opportunity to conduct, and has completed, any and all due diligence regarding the applicable asset prior to submitting its Bid;
 - (b) a statement that the Potential Bidder has relied solely upon its own independent review, investigation, and/or inspection of any relevant documents and the assets in making its Bid and did not rely on any

written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express or implied, by operation of law or otherwise, regarding the assets or the completeness of any information provided in connection therewith, except as expressly stated in the representations and warranties contained in the Potential Bidder's Proposed Agreement ultimately accepted and executed by the Debtors;

- (c) a statement that the Potential Bidder agrees to serve as the Back-Up Bidder if its Bid is selected as the next highest or next best bid (or any combination of Partial Bids comprising one Qualified Bid) after the Successful Bid with respect to the applicable Asset;
 - (d) a statement that the Potential Bidder has not (i) engaged in any collusion with respect to the submission of any bid or the Auction, (ii) coordinated or joined with any other party on a bid or bids, or (iii) took any other action to prevent a transparent and competitive auction process; *provided, that*, certain joint bids may be permitted as set forth herein;
 - (e) a statement that all proof of financial ability to consummate the Sale Transaction in a timely manner and all information provided to support adequate assurance of future performance is true and correct; and
 - (f) a statement that the Potential Bidder agrees to be bound by the terms of the Bidding Procedures.
- (xiv) Good Faith Deposit. Each Bid must be accompanied by a cash deposit in the amount equal to 10% of the proposed purchase price (a "Good Faith Deposit"), unless otherwise agreed to by the Debtors, in consultation with the Consultation Parties and a Potential Bidder; *provided that* a Potential Bidder submitting a Credit Bid will not be required to accompany its Bid with a Good Faith Deposit for any portion of the Purchase Price that is a Credit Bid.
- (d) Designation of Qualified Bidders. A qualified bidder ("Qualified Bidder") is a Bidder that, in the Debtors' reasonable determination in consultation with the Consultation Parties, (i) has timely submitted a Bid that satisfies each of the Bid Requirements above and (ii) is able to consummate the proposed Sale Transaction within the required timeframe if selected as the Successful Bidder (such Bid submitted by a Qualified Bidder, a "Qualified Bid").

By no later than **one (1) business day prior to the Auction** (the "Qualified Bid Deadline"), the Debtors shall determine, in their reasonable business judgment, and in consultation with the Consultation Parties, which of the Bids received by the Bid Deadline qualifies as a Qualified Bid. The Debtors shall notify each Bidder who

submits a Qualified Bid of its status as a Qualified Bidder by the Qualified Bid Deadline.

In evaluating the Bids, the Debtors may take into consideration the following non-exhaustive factors:

- (i) the amount of the Purchase Price and Credit Bid, as applicable, set forth in the Bid (*provided, that*, for purposes of evaluating competing bids, and except with respect to the requirement that each Bid must provide the Cash Consideration Amount, every dollar of a Credit Bid shall be treated the same as a dollar from a cash or other non-cash Bid, and a Credit Bid shall not be considered inferior to a comparable cash or other non-cash Bid because it is a Credit Bid);
- (ii) the assets and liabilities excluded from the Bid and any executory contracts or leases or other liabilities proposed to be assumed;
- (iii) the value to be provided to the Debtors under the Bid, including the net economic effect upon the Debtors' estates, taking into account any Stalking Horse Bidder's rights to the Bid Protections;
- (iv) any benefit to the Debtors' estates from any assumption of liabilities or waiver of liabilities, including replacement letters of credit;
- (v) the transaction structure and execution risk, including conditions to, timing of, and certainty of closing; termination provisions; availability of financing and financial wherewithal to meet all commitments; tax leakage; and required governmental or other approvals;
- (vi) the impact on employees and employee claims against the Debtors;
- (vii) the impact on trade creditors; and
- (viii) any other factors the Debtors may deem relevant, consistent with their fiduciary duties.

Without the written consent of the Debtors, in consultation with the Consultation Parties, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase the Purchase Price or otherwise improve the terms of the Qualified Bid for the Debtors during the period that such Qualified Bid remains binding as specified herein; provided, that, any Qualified Bid may be improved at the Auction as set forth in the Bidding Procedures. For the avoidance of doubt, any amendment to any Stalking Horse Agreement, shall be shared with the Consultation Parties' respective counsel as promptly as possible and filed with the Bankruptcy Court within one (1) business day of such amendment, or as soon as reasonably practicable thereafter, and the Debtors will take into account all such amendments or modifications at the Auction.

Subject to the terms of the Bid Procedures Order and the Bidding Procedures, any Qualified

Bidder who has a valid and perfected lien on any of the Assets and the right under applicable law to credit bid claims secured by such liens, including, for the avoidance of doubt, the DIP Lender, shall have the right to credit bid all or a portion of the value of such Qualified Bidder's claims pursuant to section 363(k) of the Bankruptcy Code with respect to the collateral by which such Qualified Bidder's claim is secured. For the avoidance of doubt, any Credit Bid for the Assets shall be subject to any lien challenge rights of the Committee set forth in any Court order. Any Qualified Bidder intending to credit bid all or a portion of the value of such Qualified Bidder's claim shall provide notice thereof to the Debtors and any Stalking Horse Bidders by the Bid Deadline. For the avoidance of doubt, such Qualified Bidder that provides notice of intent to submit a Credit Bid will no longer be a Consultation Party with respect to the bidding and auction relating to the Assets subject to such Bid until such time as such party withdraws such Bid.

- (e) **Auction.** If the Debtors receive two or more Qualified Bids with respect to the applicable Assets, the Debtors will conduct the Auction to determine the highest or otherwise best bid with respect to the Assets. The Auction will commence on **June 20, 2024 beginning at 10:00 a.m. (prevailing Central Time) at (i) the offices of Winston & Strawn LLP, 25 W. Wacker Drive, Chicago, IL 60601 or (ii) virtually, pursuant to procedures to be announced to bidders, or such other later date as may be determined by the Debtors in consultation with the Consultation Parties and upon notice to all parties in interest.**

Before commencement of the Auction, the Debtors will (i) notify all Qualified Bidders, the Stalking Horse Bidder, and the Notice Parties, in writing of the highest or otherwise best Qualified Bid, as determined in the Debtors' business judgment, in consultation with the Consultation Parties (the "**Baseline Bid**"), and (ii) provide copies (to the extent not previously provided) of the documents supporting the Baseline Bid to all Qualified Bidders and Notice Parties. The determination of which Qualified Bid constitutes the Baseline Bid, and which Qualified Bid constitutes the highest or otherwise best bid such that it is the Successful Bid (as defined below), may take into account, among other things: (a) the type and amount of Assets sought to be purchased in the Bid; (b) the amount and nature of the total consideration; (c) the likelihood of the Bidder's ability to close a transaction and the timing thereof; and (d) the net economic effect of any changes to the value to be received by the Debtors' estates from the transaction contemplated by the Qualified Bid.

If there is an Auction, it will be conducted in accordance with the following procedures:

- (i) At least one (1) business day prior to the Auction, each Qualified Bidder who has timely submitted a Qualified Bid must inform the Debtors whether it intends to attend the Auction and all Qualified Bidders wishing to attend the Auction must have at least one individual representative with authority to bind such Qualified Bidder in attendance at the Auction in person; *provided that* in the event a Qualified Bidder elects not to attend the Auction, such Qualified Bidder's Qualified Bid shall nevertheless remain fully enforceable against such Qualified Bidder. All other creditors of the

Debtors who desire to attend the Auction (including their counsel) and provide no less than three (3) business days advance written notice of their intent to attend the Auction no later than 5:00 p.m. (ET) to Debbie Laskin at Young Conaway Stargatt & Taylor, LLP at dlaskin@ycst.com, will be permitted to attend the Auction.

(ii) All bids in the Auction will be made and received on an open basis, and all other Qualified Bidders participating in the Auction will be entitled to be present for all bidding with the understanding that the true identity of each Qualified Bidder placing a bid at the Auction will be fully disclosed to all other bidders participating in the Auction and that all material terms of a bid submitted in response to any successive bids made at the Auction (each, an “Overbid”) will be disclosed to all other Qualified Bidders participating in the Auction. Each Qualified Bidder will be permitted what the Debtors reasonably determine, in consultation with the Consultation Parties, to be an appropriate amount of time to respond to the previous bid at the Auction. The Auction will be conducted openly and shall be transcribed or recorded. The starting bid (the “Starting Bid”) shall be the highest or best Qualified Bid, as determined by the Debtors in consultation with the Consultation Parties. If a Stalking Horse Bid is selected as the Starting Bid, any Overbid shall include the amount provided for in the Stalking Horse Bid(s), *plus* the Bid Protections, plus a minimum overbid increment of \$1,000,000 or a lesser amount to be determined by the Debtors in their business judgment, in consultation with the Consultation Parties.

(iii) Any Overbid made from time to time by a Qualified Bidder must remain open and binding on the Qualified Bidder until and unless (i) the Debtors accept a Bid submitted by another Qualified Bidder during the Auction as an Overbid and (ii) such prior Overbid is not selected as the Back-Up Bid. To the extent not previously provided (which will be determined by the Debtors in consultation with the Consultation Parties), a Qualified Bidder submitting an Overbid must submit, at the Debtors’ request (in consultation with the Consultation Parties), as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors in consultation with the Consultation Parties) demonstrating such Qualified Bidder’s ability to close the transaction at the purchase price contemplated by such Overbid.

(iv) Bidders and their representatives may not communicate with one another, collude, or otherwise coordinate for purposes of participating in the Auction. All parties are prohibited from (i) engaging in any collusion with respect to the submission of any bid or the Auction, (ii) coordinating or joining with any other party on a bid or bids, or (iii) taking any other action to prevent a transparent and competitive auction process; *provided, that*, certain joint bids may be permitted as set forth herein. Each Qualified Bidder participating in the Auction shall confirm in writing and on the

record at the Auction that (i) it has not engaged in any of the foregoing prohibited actions and (ii) its Qualified Bid is a good faith bona fide offer that it intends to consummate if selected as a Successful Bidder.

(v) All parties attending the Auction must keep the proceedings and results of the Auction confidential until the Debtors have closed the Auction; *provided, that*, parties may speak with clients or parties necessary to place their bid or to increase it, so long as such individuals are advised of the confidentiality restrictions provided by the Bidding Procedures.

(vi) The Debtors shall conduct an Auction for the Assets on a consolidated or semi-consolidated basis pursuant to the rules governing the Auction set forth herein. To the extent that the Debtors conduct multiple Auctions for different subgroupings of the Assets (each, a “Sub-Auction”) at any Auction and a Qualified Bidder declines to participate in any specific Sub-Auction or Sub-Auctions, or any round of bidding for such specific Sub-Auctions, such Qualified Bidder shall still be permitted to offer a Bid in subsequent Sub-Auctions, including bids that include assets subject to a prior Sub-Auction, which includes the right to bid on groupings of assets that may include specific assets which were the subject of an earlier Sub-Auction. The Debtors may, in the exercise of their reasonable business judgment and in consultation with the other Consultation Parties, identify the highest or otherwise best Qualified Bid as the reserve bid for each Sub-Auction (each, a “Reserve Sub-Auction Bid” and the bidder submitting such bid, a “Reserve Sub-Auction Bidder”). The Debtors may also identify, in consultation with the Consultation Parties, a Qualified Bidder that submitted the next highest or otherwise best Qualified Bid in each Sub-Auction as a back-up bid (each, a “Back-Up Sub-Auction Bid” and the bidder submitting such bid, a “Back-Up Sub-Auction Bidder”). The Debtors, upon consultation with the Consultation Parties, shall have the right to establish different Overbids with respect to any Sub-Auction.

(vii) If the Debtors, in the exercise of their reasonable business judgment and in consultation with the Consultation Parties, determine that pursuing a Sale Transaction pursuant to the Reserve Sub-Auctions Bid(s) will result in a higher or otherwise better value of the Assets than pursuing a Sale Transaction pursuant to the highest or otherwise best Bid received in the Auction of the Debtors’ Assets on a consolidated or semi-consolidated basis, then the Debtors may declare the Reserve Sub-Auction Bid(s) as Successful Bid(s) (and the Reserve Sub-Auction Bidder(s) as Successful Bidders) and the Back-Up Sub-Auction Bid(s) as the Back-Up Bid(s) (and the Back-up Sub-Auction Bidder(s) as Back-Up Bidder(s)).

- (f) Post-Auction Process: Within one (1) business day after the conclusion of the Auction, or as soon as reasonably practicable thereafter, the Debtors shall file with the Court a notice of the Successful Bid(s), Successful Bidder(s), Back-Up Bid(s), and Back-Up Bidder(s).

The Deposits for each Qualified Bidder (other than the Successful Bidder and the Back- Up Bidder) shall be returned on the date that is five (5) business days after the Auction, or as soon as is reasonably practicable thereafter. The Debtors shall return the Deposit of the Back-Up Bidder by the earlier of (i) thirty (30) days after the conclusion of the Auction and (ii) five (5) business days after the consummation of the Successful Bid, unless by such date the Debtors have selected the Back-Up Bidder as the new Successful Bidder.

Each Successful Bidder's Good Faith Deposit shall be applied against the cash portion of the purchase price of such bidder's Successful Bid upon the consummation of the Sale Transactions. Notwithstanding the foregoing, if a Successful Bidder fails to consummate a proposed transaction because of a breach by such Successful Bidder, the Debtors will not have any obligation to return the Deposit deposited by such Successful Bidder, which may be retained by the Debtors as damages, in addition to any and all other rights, remedies, or causes of action that may be available to the Debtors, and the Debtors shall be free to consummate the proposed transaction with the applicable Back-Up Bidder subject to Court approval, which may be sought on an expedited basis.

Notwithstanding the foregoing, the Good Faith Deposit, including the amount thereof, and any remedies against a Stalking Horse Bidder shall be governed by the applicable Stalking Horse Agreement, if any.

- (g) Selection of Successful Bid. The Debtors may, in the exercise of their business judgment and in consultation with the Consultation Parties, identify the highest or otherwise best Qualified Bid (or any combination of Partial Bids comprising one Qualified Bid, as specified above) as the successful bid for the respective Assets to be acquired (each, a "Successful Bid" and the bidder submitting such bid, a "Successful Bidder"). The Debtors may also identify a Qualified Bidder, in consultation with the Consultation Parties, that submitted the next highest or otherwise best Qualified Bid (or any combination of Partial Bids comprising one Qualified Bid, as specified above) as a back-up bid (a "Back- Up Bid" and the bidder submitting such bid, a "Back-Up Bidder"). Within one (1) business day after the Auction, or as soon as reasonably practicable thereafter, each Successful Bidder shall (i) submit to the Debtors fully executed documentation memorializing the terms of the Successful Bid such Successful Bidder submitted and (ii) unless otherwise agreed in the purchase agreement between the Debtors and a Successful Bidder, submit by transfer of immediately available funds to an account identified by the Debtors any amount required to increase the Successful Bidder's Good Faith Deposit to an amount equal to ten percent (10%) of the Purchase Price contained in the Successful Bid, if the amount of the Good Faith Deposit previously delivered by the Successful Bidder is less than such amount. For the avoidance of doubt, and notwithstanding anything to the contrary in the Bidding Procedures or any Court order to the contrary, any such increase to the Good Faith Deposit by any Stalking Horse Bidders or other Qualified Bidders to such designated account shall only be for purposes of this process. No party, including any lender, have or shall have any lien, claim, or right with respect to such funds which shall not be available for

distribution to the Debtors' creditors, unless and until such funds become property of the Debtors' estates in accordance with the terms of the Bidding Procedures. A Successful Bid may not be assigned to any party without the consent of the Debtors, in consultation with the Consultation Parties.

At any time before the designation of a Successful Bid and Back-Up Bid, if any, the Debtors, in consultation with the Consultation Parties, reserve the right to and may reject such Qualified Bid(s) (other than any Stalking Horse Bids) if such Qualified Bid(s), in the Debtors' reasonable business judgment, in consultation with the Consultation Parties, is/are: (i) inadequate or insufficient; (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of the applicable Sale Transaction; or (iii) contrary to the best interests of the Debtors and their estates.

As set forth above, the Debtors reserve the right, in their reasonable business judgment and in consultation with the Consultation Parties, to announce at the Auction modified or additional procedures for conducting the Auction.

The Debtors (in consultation with the Consultation Parties) reserve the right to make one or more adjournments in the Auction to, among other things (i) facilitate private discussions with individual Qualified Bidders and negotiate the terms of their Overbids, (ii) allow individual Qualified Bidders to consider how they wish to proceed, and (iii) give Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors may require in their reasonable discretion (and in consultation with the Consultation Parties) to determine that the Qualified Bidder has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount.

- (h) Sale Hearing. The Sale Hearing to consider approval of the sale of Assets will be held before the Court on **June 27, 2024 at 10:00 a.m. (ET)** and otherwise in accordance with any scheduling order entered by the Court; provided that if no Auction is held, the Debtors may schedule the Sale Hearing before such time and as expeditiously as possible, subject to Court approval. Prior to the Sale Hearing, the Successful Bidder (unless the Successful Bidder is the Stalking Horse Bidder) shall complete and execute all documents evidencing and containing the terms and conditions upon which the Successful Bid was made.

The Sale Hearing may be adjourned or rescheduled by the Debtors upon consultation with the Consultation Parties and the Stalking Horse Bidder to a time and date consistent with the Court's calendar, as set forth in a notice on the docket of these Chapter 11 Cases, a notice of agenda, or stated orally at the Hearing.

- (i) Consultation Parties/Expedited Relief. The term "Consultation Parties" shall mean (i) the Prepetition Secured Parties and their respective counsel, (ii) the DIP Lender and its counsel; and (iii) advisors to the Committee. Any failure to specifically identify consultation rights in any section of the Bidding Procedures shall not limit or otherwise impair the rights of the Consultation Parties to consult with the Debtors.

- (j) Consent to Jurisdiction. All Potential Bidders (including any Stalking Horse Bidders) that participate in the bidding process with respect to the Assets shall be deemed to have (i) consented to the core jurisdiction of the Court to enter any order or orders, which shall be binding in all respects, in any way related to the Bidding Procedures, the bid process, the Auction, the applicable Sale Hearing, or the construction and enforcement of any agreement or any other document relating to the Sale Transactions; (ii) waived any right to a jury trial in connection with any disputes relating to the Bidding Procedures, the bid process, the Auction, the applicable Sale Hearing, or the construction and enforcement of any agreement or any other document relating to the Sale Transactions; and (iii) consented to the entry of a final order or judgment in any way related to the Bidding Procedures, the bid process, the Auction, the applicable Sale Hearing, or the construction and enforcement of any agreement or any other document relating to the Sale Transactions if it is determined that the Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the parties

25. The following is a summary of certain proposed key dates the Debtors seek

to establish through the Bidding Procedures and the Assumption and Assignment Procedures:

<u>Event</u>	<u>Due Date</u>
Entry of an Order Approving the Bidding Procedures	On or About May 22, 2024
Service and Publication of Sale Notice	One (1) business day after entry of Bid Procedures Order or as soon as practicable thereafter
Deadline to File and Serve Cure Schedule	May 31, 2024 at 6:00 p.m. (ET)/5:00 p.m. (CT)
Stalking Horse Deadline	June 7, 2024 at 11:59 p.m. (ET)/10:59 p.m. (CT)
Deadline to Object to Cure Costs in Connection With Assumption/Assignment	June 14, 2024 at 6:00 p.m. (ET)/5:00 p.m. (CT)
Deadline for Submitting Qualified Bids	June 18, 2024 at 6:00 p.m. (ET)/5:00 p.m. (CT)
Deadline to Object to Sale	June 18, 2024 at 6:00 p.m. (ET)/5:00 p.m. (CT)
Commencement of an Auction (if necessary)	June 20, 2024 at 10:00 a.m. (ET)/9:00 a.m. (CT)
Deadline to Object to Conduct at Auction	June 24, 2024 at 6:00 p.m. (ET)/5:00 p.m. (CT)
Sale Hearing	June 27, 2024 at 10:00 a.m. (ET)
Consummation of the Sale	No later than July 31, 2024

26. For the reasons outlined herein, the Debtors respectfully submit that the timeline set forth in the Bidding Procedures is reasonable, necessary and the best available alternative under the circumstances of the Chapter 11 Cases. Such timeline provides W&D with

sufficient time to conclude the marketing process for the Assets and parties in interest sufficient time to formulate actionable bids for the Assets. Moreover, relevant information regarding the Debtors' business is available in the Data Room, allowing potential bidders (subject to the execution of an NDA) to immediately conduct diligence on the Assets.

**NOTICE PROCEDURES FOR THE SALE,
BIDDING PROCEDURES, AUCTION, AND SALE HEARING**

27. The Debtors also request approval of the sale notice (the "Sale Notice"), substantially in the form attached to the proposed Bid Procedures Order as Exhibit 2.

28. Upon entry of the Bid Procedures Order, the Debtors will serve the Sale Notice by regular mail on: (a) the U.S. Trustee; (b) counsel to the Committee; (c) counsel to the DIP Lender; (d) counsel to the Prepetition Secured Parties; (e) counsel to any Stalking Horse Bidder; (f) the United States Attorney's Office for the District of Delaware; (g) the state attorneys general for all states in which the Debtors conduct business; (h) all counterparties (the "Contract Counterparties") to Potential Assigned Contracts (defined below); (i) all parties who have expressed to the Debtors or their professionals in writing an interest in acquiring some or all of the Assets; (j) all known holders of liens, encumbrances, and other claims secured by any of the Assets; (k) the Internal Revenue Service; (l) all applicable state and local taxing authorities; (m) each governmental agency that is an interested party with respect to the Sale and transactions proposed thereunder; (n) all of the Debtors' other known creditors and equity security holders; (o) counsel to the Patient Care Ombudsman; and (p) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002.

29. The Debtors also propose publishing the Sale Notice once in the national edition of *USA Today*, or another nationally circulated newspaper, with any modifications

necessary for ease of publication, and post the Sale Notice and the Bid Procedures Order in a clear and conspicuous manner on the website of the Debtors' claims and noticing agent.

ASSUMPTION AND ASSIGNMENT PROCEDURES⁶

30. To facilitate the Sale, the Debtors seek authority to assume and assign to a Stalking Horse Bidder or, in the event the Stalking Horse Bidder is not the Successful Bidder, then to the Successful Bidder, a number of executory contracts and unexpired leases in accordance with the Assumption and Assignment Procedures.

31. The Assumption and Assignment Procedures are as follows:

- (a) **Notice of Assumption, Assignment and Sale.** By **May 31, 2024 at 4:00 p.m. (ET)** (the "Assumption, Assignment and Sale Service Deadline"), the Debtors shall file on the docket and serve a notice of potential contract assumption, in substantially the form attached to the Bid Procedures Order as Exhibit 3, (the "Notice of Assumption, Assignment and Sale") via first class mail on all counterparties to all executory contracts and unexpired leases of the Debtors (collectively, the "Potential Assigned Contracts") and provide a copy of the same to any Stalking Horse Bidder. The Notice of Assumption, Assignment and Sale shall inform each recipient of (i) the timing and procedures relating to such potential assumption, assignment and sale, (ii) the title of the Potential Assigned Contract, (iii) the name of the counterparty to the Potential Assigned Contract, (iv) Debtors' good faith estimates of the Cure Costs (if any) required in connection with the Potential Assigned Contract, (v) the identity of any Stalking Horse Bidder, and (vi) the Cure Objection Deadline (as defined below); *provided, however*, that service of a Notice of Assumption, Assignment and Sale does not constitute an admission that such Potential Assigned Contract is an executory contract or unexpired lease or that such stated Cure Cost constitutes a claim against the Debtors or a right against the Stalking Horse Bidder (or other Successful Bidder) and all rights with respect thereto shall be expressly reserved. Further, the inclusion of a Potential Assigned Contract on the Notice of Assumption, Assignment and Sale is not a guarantee that such Potential Assigned Contract will ultimately be assumed, assigned and sold.
- (b) **Objections.** Any counterparty to a Potential Assigned Contract shall file and serve on the Notice Parties (as defined in the Bid Procedures Order) any objections to (a) the proposed assumption and assignment of its Potential Assigned Contract to the

⁶ Any summary of the Assumption and Assignment Procedures contained herein is qualified in its entirety by the actual terms of the Bid Procedures Order. To the extent that there is any conflict between any summary contained herein and the actual terms of the Bid Procedures Order, the actual terms of the Bid Procedures Order shall control.

Successful Bidder, (b) if applicable, the proposed Cure Cost for its Potential Assigned Contract (and must state in its objection, with specificity, what Cure Cost is required with appropriate documentation in support thereof) and (c) the provision of adequate assurance of future performance by any Stalking Horse Bidder, **no later than fourteen (14) days after such Notice of Assumption, Assignment and Sale is file and served** (the “Cure Objection Deadline”). If no objection is timely filed and served, (x) the counterparty to the Potential Assigned Contract shall be deemed to have consented to the assumption, assignment and sale of the Contract to the Successful Bidder pursuant to sections 363 and 365 of the Bankruptcy Code if such Potential Assigned Contract is designated by the Successful Bidder as an Assigned Contract, and shall be forever barred from asserting any objection with regard to such assumption, assignment and sale, except with respect to the adequate assurance of future performance by a Successful Bidder **other than** any Stalking Horse Bidder, and (y) the Cure Cost set forth in the Notice of Assumption, Assignment and Sale shall be controlling pursuant to section 365 of the Bankruptcy Code, notwithstanding anything to the contrary in any Potential Assigned Contract, or any other document, and the counterparty to the Potential Assigned Contract shall be deemed to have consented to the Cure Cost pursuant to section 365 of the Bankruptcy Code, and shall be forever barred from asserting any other claims related to such Potential Assigned Contract against the Debtors or the Successful Bidder, or the property of either of them.

- (c) **Supplemental Contract Assumption Notice.** To the extent that the Debtors, at any time after the Assumption, Assignment and Sale Service Deadline (i) identify additional Potential Assigned Contracts, (ii) remove Potential Assigned Contracts from the list of executory contracts and unexpired leases ultimately selected as Assigned Contracts that the Successful Bidder proposes be assumed, assigned and sold to it in connection with a Sale, and/or (iii) modify the previously stated Cure Cost associated with any Potential Assigned Contracts, the Debtors will promptly file with the Court and serve by first class mail a supplemental notice of contract assumption (a “Supplemental Assumption Notice”) on each of the counterparties to the affected Potential Assigned Contracts and their counsel of record, if any. Each Supplemental Assumption Notice will include the same information with respect to listed Potential Assigned Contracts as was included in the Notice of Assumption, Assignment and Sale. Each Supplemental Assumption Notice that identifies a Potential Assigned Contract that was not previously designated to be assumed, assigned and sold or that reduces the Debtors’ calculation of the Cure Cost shall provide a deadline of not less than fourteen (14) days from the date of service of such Supplemental Assumption Notice by which the counterparty to any such Potential Assigned Contract may object **only** to (a) its listing as a Potential Assigned Contract (if it was not previously designated to be assigned), and (b) the Debtors’ calculation of the Cure Cost for such Potential Assigned Contract (if such Cure Cost is lower than a previously listed Cure Cost for such Potential Assigned Contract or the amount asserted by such counterparty by the Cure Objection Deadline); *provided* that, if the Sale Objection Deadline (as defined in the Proposed Order) is less than fourteen (14) days after the Supplemental Assumption Notice is

filed, the objection deadline with respect to the Supplemental Assumption Notice shall be the Sale Objection Deadline, in which case the Supplemental Assumption Notice will be served by overnight delivery.

- (d) **Supplemental Adequate Assurance Objection Deadline.** Following the Bid Deadline, in the event that the Debtors receive one or more Qualified Bids, upon request by any counterparty to a Potential Assigned Contract, the Debtors will send such party evidence that any Qualified Bidder that included such Potential Assigned Contract in its Bid has the ability to perform thereunder and otherwise complies with the requirements of adequate assurance of future performance under section 365(b)(1) of the Bankruptcy Code on a confidential basis for all nonpublic information.
- (e) **Dispute Resolution.** If the Debtors (subject to the consent of the Successful Bidder) and the non-debtor counterparty to a Potential Assigned Contract cannot resolve an objection to the Cure Cost for such Potential Assigned Contract, such objection may be adjourned and the Potential Assigned Contract may be (but is not required to be) assumed by the Debtors and assigned and sold to any Stalking Horse Bidder or Successful Bidder, as applicable, provided that the Cure Cost that the counterparty asserts is required to be paid shall be segregated pending the parties' consensual resolution of the objection to the Cure Cost or the Court's adjudication of such payment. Any objection to the proposed assumption, assignment and sale of a Potential Assigned Contract or to the related Cure Cost that remains unresolved as of the Sale Hearing shall, in the Debtors' discretion (subject to the consent of the Successful Bidder), be heard at the Sale Hearing or adjourned to a date and at a time determined by the Debtors (or otherwise scheduled by the Court). Pending the parties' consensual resolution of any Cure Cost objections or the Court's adjudication of such payments, the Successful Bidder may elect to re-designate the related Assigned Contracts to not be an Assigned Contract. Upon any Cure Cost amount that was subject to an objection becoming fixed, the Successful Bidder may elect to re-designate the related Assigned Contract to not be an Assigned Contract.
- (f) **Contract Assumption.** No Assigned Contract shall be deemed assumed, assigned and sold pursuant to sections 365 and 363 of the Bankruptcy Code until the later of (i) the date the Court has entered an order assuming, assigning and selling such Assigned Contracts or (ii) the date the Sale has closed.

32. The inclusion of a Potential Assigned Contract on the Notice of Assumption, Assignment and Sale or any Supplemental Assumption Notice shall not: (a) obligate the Debtors to assume, assign or sell any executory contracts or unexpired leases listed thereon, (b) obligate any Qualified Bidder or the Successful Bidder to designate such Potential Assigned Contract as an Assigned Contract or refrain from redesignating it to not be an Assigned Contract,

or (c) constitute any admission or agreement of the Debtors that such Potential Assigned Contract is an executory contract or such lease is unexpired, as applicable. Only those Potential Assigned Contracts that are included on a schedule of Assigned Contracts (for which the Stalking Horse Bidder's or other Successful Bidder's, as applicable, designation rights with respect thereto have expired) attached to a final asset purchase agreement approved by the Court will be assumed, assigned and sold.

RELIEF REQUESTED

33. By this Motion, the Debtors seek entry of: (a) the Bid Procedures Order, (i) scheduling a date for the Sale Hearing, (ii) authorizing and approving the Bidding Procedures and the Assumption and Assignment Procedures, and the form and manner of notice thereof, (iii) authorizing the Debtors' entry into the Stalking Horse Purchase Agreement and grant Bid Protections, subject to the procedures described herein, and (iv) granting related relief; and (b) the Sale Order, a proposed form of which shall be filed no later than fourteen (14) days before the Sale Hearing, (i) authorizing and approving the Sale, free and clear of all encumbrances other than assumed liabilities and permitted encumbrances on the terms contemplated in the Stalking Horse Purchase Agreement or, in the event that the Stalking Horse Bidder is not the Successful Bidder, then an Alternative APA, (ii) authorizing and approving the assumption and assignment of executory contracts and unexpired leases to the Stalking Horse Bidder or, in the event that the Stalking Horse Bidder is not the Successful Bidder, then to the Successful Bidder; and (iii) granting related relief.

BASIS FOR RELIEF

A. Sufficient Business Justification Exists for Consummation of the Sale Transactions under Sections 105(a) and 363(b) of the Bankruptcy Code

34. Pursuant to section 105(a) of the Bankruptcy Code, a “[c]ourt may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Section 363(b) of the Bankruptcy Code provides that a debtor, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b). Although section 363(b) does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, courts have required that such use, sale or lease be based upon the sound business judgment of the debtor. *See, e.g., Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (internal citation omitted); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070–71 (2d Cir. 1983); *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143, 147–48 (3d Cir. 1986) (implicitly adopting the “sound business judgment” test of *In re Lionel Corp.*); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 175–76 (D. Del. 1991) (holding that the Third Circuit adopted the “sound business judgment” test in *Abbotts Dairies*); *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (same).

35. The demonstration of a valid business justification by the debtor leads to a strong presumption “that in making [the] business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)).

36. The Debtors submit that their decision to pursue and, ultimately, consummate the Sale Transactions contemplated herein represents a reasonable exercise of the Debtors' business judgment and, accordingly, the Sale Transactions should be approved under sections 105(a) and 363(b) of the Bankruptcy Code. The Debtors will continue to conduct an extensive and fulsome process to market the Assets. The Debtors believe that the open and fair auction and sale process contemplated by the Bidding Procedures will adequately allow the Debtors to test the market for the Assets, and will provide a greater recovery than would be provided by any other available alternative. Furthermore, compliance with the Bidding Procedures will ensure the fairness and reasonableness of the consideration to be paid by a Stalking Horse Bidder or, in the event that the Stalking Horse Bidder is not the Successful Bidder, then the Successful Bidder, and establish that the Debtors and such bidder have proceeded in good faith.

37. Additionally, the Debtors believe that the notice procedures described above are reasonable and adequate under the circumstances. Bankruptcy Rules 2002(a) and (c) require the Debtors to notify creditors of the Sale, the terms and conditions of the Sale, the time and place of the Auction, and the deadline for filing any objections. The Debtors believe that the proposed notice procedures fully comply with Bankruptcy Rule 2002, and are reasonably calculated to provide timely and adequate notice of any Stalking Horse Purchase Agreement, the Bidding Procedures, the Auction, the Sale Hearing, and the Sale to the Debtors' creditors and all other parties in interest that are entitled to notice, as well as those parties that have expressed a *bona fide* interest in acquiring the Assets.

38. The Sale Transactions, conducted in accordance with the Bidding Procedures, will generate significant value for the Debtors' estates, and represents the best path for maximizing recoveries for all stakeholders in connection with the Chapter 11 Cases. The Debtors submit that

ample business justification exists for the consummation of the Sale Transactions and, therefore, request that the Court approve such Sale Transactions.

B. The Sale of the Assets Free and Clear of All Encumbrances Is Authorized Under Section 363(f) of the Bankruptcy Code

39. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of liens, claims, interests and encumbrances if:

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

11 U.S.C. § 363(f). This provision is supplemented by section 105(a) of the Bankruptcy Code, which provides that “[t]he court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a).

40. Because section 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the Assets “free and clear” of liens and interests. *See Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (noting that because section 363(f) is written in the disjunctive, a court may approve a sale free and clear if any one subsection is met); *see also Mich. Emp’t Sec. Comm’n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (same); *In re Bygaph, Inc.*, 56 B.R. 596, 606 n.8 (Bankr. S.D.N.Y. 1986) (same). Furthermore, a debtor possesses broad authority to sell assets free and clear of liens. *See In re Trans World Airlines, Inc.*, 322 F.3d 283, 289 (3d Cir. 2003).

41. The Debtors submit that, in the interest of attracting the best offers, it is appropriate to sell the Assets on a final “as is” basis, free and clear of any and all encumbrances other than assumed liabilities and permitted encumbrances (and except as otherwise expressly set forth in the

Sale Order), in accordance with section 363(f) of the Bankruptcy Code because one or more of the tests of section 363(f) are satisfied with respect to such Sale.

42. Moreover, with respect to any other party asserting a lien, claim, encumbrance or the like against the Assets, the Debtors anticipate that they will be able to satisfy one or more of the conditions set forth in section 363(f) of the Bankruptcy Code. In particular, known lienholders will receive notice and will be given sufficient opportunity to object to the relief requested. Such lienholders that do not object to the Sale should be deemed to have consented. *See FutureSource LLC v. Reuters Ltd.*, 312 F.3d 281, 285-86 (7th Cir. 2002) (“[L]ack of objection (provided of course there is notice) counts as consent. It could not be otherwise; transaction costs would be prohibitive if everyone who might have an interest in the bankrupt’s assets had to execute a formal consent before they could be sold.”) (internal citations omitted); *Hargrave v. Twp. of Pemberton (In re Tabone, Inc.)*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (holding that creditor’s failure to object to sale free and clear of liens, claims and encumbrances satisfies section 363(f)(2)); *In re Elliot*, 94 B.R. at 345 (same). Consistent with the foregoing, the Bid Procedures Order provides that the absence of a timely objection to the sale of the Assets in accordance therewith shall be “consent” to such sale within the meaning of section 363(f)(2) of the Bankruptcy Code.

43. Furthermore, the Debtors propose that any encumbrances asserted against the Assets be transferred to, and attach to, the proceeds of the Sale, and application of the proceeds generated by the Sale will be subject to any applicable provisions of any order granting debtor-in-possession financing.

C. The Sale Transactions Should Be Subject to the Protections of Section 363(m) of the Bankruptcy Code

44. Section 363(m) of the Bankruptcy Code provides, in part, that the reversal or modification on appeal of an authorization of a sale pursuant to section 363(b) or section 363(c)

of the Bankruptcy Code does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal. *See* 11 U.S.C. § 363(m). In approving the Sale Transactions free and clear of encumbrances other than assumed liabilities and permitted encumbrances, the Debtors request that the Court find and hold that all purchasers of Assets purchased in accordance with the Bidding Procedures, including, without limitation, any Stalking Horse Bidder, are entitled to the protections afforded by section 363(m) of the Bankruptcy Code. Such relief is appropriate in that selection of the Successful Bidder will be the result of a competitive bidding process and arms'-length, good-faith negotiations, and parties in interest will have the opportunity to review and object to a proposed transaction. *See Esposito v. Title Ins. Co. of Pa. (In re Fernwood Mkts.)*, 73 B.R. 616, 620 (Bankr. E.D. Pa. 1987) (good faith purchasers are protected under section 363(m) where notice is provided to lienholders).

D. The Court Should Approve the Bidding Procedures

45. The key objective in any sale of property of a debtor's estate is to maximize the value received by the estate. *See In re Mushroom Transp. Co.*, 382 F.3d 325, 339 (3d Cir. 2004) (finding that debtor "had a fiduciary duty to protect and maximize the estate's assets"); *Official Comm. of Unsecured Creditors of Cybergenics, Corp v. Chinery*, 330 F.3d 548, 573 (3d Cir. 2003) (same). Procedures used to enhance competitive bidding support this objective and, therefore, are appropriate in the context of bankruptcy sales. *See In re O'Brien Envtl. Energy, Inc.*, 181 F.3d 527, 537 (3d Cir. 1999); *see also Integrated Res. Inc.*, 147 B.R. at 659 (stating that bidding procedures "encourage bidding and . . . maximize the value of the debtor's assets").

46. The Debtors and their professional advisors, including W&D, have designed the Bidding Procedures to promote a competitive and fair bidding process and, thus, to maximize value

for the Debtors' estates and creditors. The Bidding Procedures will allow the Debtors to conduct the Auction in an orderly, fair and open fashion, which will encourage participation by financially capable bidders, thereby increasing the likelihood that the Debtors will receive the highest or best possible consideration for the Assets. Furthermore, the Bidding Procedures provide an appropriate framework for the Debtors and their professional advisors to review, analyze and compare any bids received to determine which bids are in the best interests of the Debtors' estates and their creditors. Moreover, W&D has been intimately involved with the Debtors since 2023, is familiar with the Assets and the universe of potential purchasers, and helped develop the Bidding Procedures and the timeline for the Sale Process. The Debtors submit that the timeline as set forth herein and proposed by the Bidding Procedures is designed to maximize value under the circumstances of these cases by affording parties in interest sufficient time to diligence the Assets in order to determine whether to make a bid while balancing the Debtors' liquidity needs and limited funding commitments..

E. The Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with the Sale Transactions Satisfies Section 365 of the Bankruptcy Code

47. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). The Second Circuit has stated that "[t]he purpose behind allowing the assumption or rejection of executory contracts is to permit the trustee or debtor-in-possession to use valuable property of the estate and to 'renounce title to and abandon burdensome property.'" *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1098 (2d Cir. 1993) (quoting 2 COLLIER ON BANKRUPTCY ¶ 365.01[1] (15th ed. 1993)).

48. The standard applied to determine whether the assumption of a contract or an unexpired lease should be authorized is the “business judgment” standard. *See In re AbitibiBowater Inc.*, 418 B.R. 815, 831 (Bankr. D. Del. 2009) (finding that a debtor’s decision to assume or reject an executory contract will stand so long as “a reasonable business person would make a similar decision under similar circumstances.”); *In re HQ Glob. Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003) (stating a debtor’s decision to reject an executory contract is governed by the business judgment standard and can only be overturned if the decision was the product of bad faith, whim, or caprice). As described above, “[t]he business judgment rule ‘is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interest of the company.’” *Integrated Res., Inc.*, 147 B.R. at 656 (quoting *Smith v. Van Gorkom*, 488 A.2d at 872). Indeed, “the sole issue is whether the rejection benefits the estate.” *In re HQ Glob.* 290 B.R. at 511.

49. The business judgment rule is crucial in chapter 11 cases and shields a debtor’s management from judicial second-guessing. *See id.*; *see also Comm. of Asbestos Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) (“[T]he Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor’s management decisions.”). Generally, courts defer to a debtor in possession’s business judgment to assume or reject an executory contract or lease. *See Wheeling-Pittsburgh Steel Corp. v. West Penn Power Co., (In re Wheeling-Pittsburgh Steel Corp.)*, 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987) (stating that the business judgment test “requires only that the trustee [or debtor in possession] demonstrate that [assumption or] rejection of the executory contract will benefit the estate.”); *see also N.L.R.B. v. Bildisco & Bildisco*, 465

U.S. 513, 523 (1984); *Control Data Corp. v. Zelman (In re Minges)*, 602 F.2d 38, 42-43 (2d Cir. 1979); *In re Riodizio, Inc.*, 204 B.R. 417, 424-25 (Bankr. S.D.N.Y. 1997); *In re G Survivor Corp.*, 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994).

50. Here, the Debtors have exercised their sound business judgment in determining that assumption and assignment of the Assigned Contracts is in the best interests of the Debtors and their estates and, accordingly, the Debtors submit that the Court should approve the proposed assumption under section 365(a) of the Bankruptcy Code. *See, e.g., In re Philadelphia Newspapers, LLC*, 424 B.R. 178, 182-83 (Bankr. E.D. Pa. 2010) (stating that if a debtor's business judgment has been reasonably exercised, a court should approve the assumption or rejection of an executory contract or unexpired lease); *Westbury Real Estate Ventures, Inc. v. Bradlees, Inc. (In re Bradlees Stores, Inc.)*, 194 B.R. 555, 558 n.1 (Bankr. S.D.N.Y. 1996); *Summit Land Co. v. Allen (In re Summit Land Co.)*, 13 B.R. 310, 315 (Bankr. D. Utah 1981) (holding that, absent extraordinary circumstances, court approval of a debtor's decision to assume or reject an executory contract "should be granted as a matter of course").

51. The assumption, assignment and sale of the Potential Assigned Contracts is necessary for the Debtors to obtain the benefits of the Stalking Horse Purchase Agreement or an Alternative APA, as applicable. In addition, under section 365(k) of the Bankruptcy Code, the assignment by a debtor to an entity of a contract or lease "relieves the trustee and the estate from any liability for any breach of such contract or lease occurring after such assignment." 11 U.S.C. § 365(k). Thus, following an assignment to the Successful Bidder of any Potential Assigned Contract, the Debtors will be relieved from any liability for any subsequent breach associated therewith.

52. Furthermore, section 365(b)(1) of the Bankruptcy Code requires that any outstanding defaults under the Potential Assigned Contracts must be cured or that adequate assurance be provided that such defaults will be promptly cured. 11 U.S.C. § 365(b)(1). The Debtors propose to file with the Court, and serve on each counterparty to a Potential Assigned Contract, a Notice of Assumption, Assignment and Sale that indicates the proposed Cure Cost for each such contract. As such, each counterparty will have the opportunity to object to the proposed assumption and assignment to the Successful Bidder and to the proposed Cure Cost, if applicable. Moreover, the payment or reserve of the applicable Cure Cost, as provided for in the Bidding Procedures, will be a condition to the Debtors' assumption and assignment of any Potential Assigned Contract.

53. Relatedly, section 365(f)(2) of the Bankruptcy Code provides that a debtor may assign an executory contract or unexpired lease of nonresidential real property if “adequate assurance of future performance by the assignee of such contract or lease is provided.” 11 U.S.C. § 365(f)(2). The words “adequate assurance of future performance” must be given a “practical, pragmatic construction” in light of the facts and circumstances of the proposed assumption. *See In re Fleming Cos., Inc.*, 499 F.3d 300, 307 (3d Cir. 2007) (internal citation omitted); *Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1988) (same); *see also In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (finding that adequate assurance of future performance does not mean absolute assurance that debtor will thrive and profit); *In re Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985) (“Although no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance.”).

54. Specifically, adequate assurance may be given by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. *See In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (holding that adequate assurance of future performance is given where the assignee of lease has financial resources and expressed a willingness to devote sufficient funding to the business to ensure its success, and that in the leasing context, the chief determinant of adequate assurance is whether rent will be paid).

55. Here, the Successful Bidder will have provided adequate assurance of future performance with respect to any Potential Assigned Contract. For its bid to be deemed a Qualified Bid, each Qualified Bidder will be required to provide evidence supporting its ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) and, if applicable, section 365(b)(3) of the Bankruptcy Code (the "Adequate Assurance Information"), including: (a) the bidder's financial wherewithal and willingness to perform under any contracts that are assumed and assigned to such potential bidder; and (b) a contact person for the proposed assignee that the counterparty may directly contact in connection with the adequate assurance of future performance. To the extent that the Qualified Bidder is a newly formed acquisition entity or the like, the Debtors anticipate that the financial and other information supporting the Qualified Bidder's financial wherewithal will include financial and other information supporting the financial wherewithal of the Qualified Bidder's parent company or sponsor. Furthermore, given that the Debtors will submit evidence that all requirements for the assumption and assignment of such contracts have been met at the Sale Hearing, the Court and other interested parties will have the opportunity to evaluate the ability of each Successful Bidder to provide adequate assurance of future performance.

56. Additionally, to assist in the assumption, assignment, and sale of the Potential Assigned Contracts, the Debtors request, to the fullest extent permitted by law, that the Sale Order approving the Sale of the Assets provide that anti-assignment provisions in the Potential Assigned Contracts shall not restrict, limit, or prohibit the assumption, assignment, and sale of the Potential Assigned Contracts and are deemed and found to be unenforceable anti-assignment provisions within the meaning of section 365(f)(1) of the Bankruptcy Code.

57. By operation of law, section 365(f)(1) invalidates provisions that prohibit, restrict, or condition assignment of an executory contract or unexpired lease.⁷ *See e.g., Coleman Oil Co., Inc., v. The Circle K Corp. (In re the Circle K Corp.)*, 127 F.3d 904, 910-11 (9th Cir. 1997) (“no principle of bankruptcy or contract law precludes us from permitting the Debtors here to extend their leases in a manner contrary to the leases’ terms, when to do so will effectuate the purposes of section 365”), *cert. denied*, 522 U.S. 1149 (1998). Section 365(f)(3) goes beyond the scope of section 365(f)(1) by prohibiting enforcement of any clause creating a right to modify or terminate the contract or lease upon a proposed assumption or assignment thereof. *See e.g., In re Jamesway Corp.*, 201 B.R. 73 (Bankr. S.D.N.Y. 1996) (section 365(f)(3) prohibits enforcement of any lease clause creating right to terminate lease because it is being assumed or assigned, thereby indirectly barring assignment by the debtor; all lease provisions, not merely those entitled anti-assignment clauses, are subject to court’s scrutiny regarding anti-assignment effect).

⁷ Section 365(f)(1) provides that “notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease...” 11 U.S.C. § 365(f)(1). Section 365(f)(3) further provides that “notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law that terminates or modifies, or permits a party other than the debtor to terminate or modify, such contract or lease or a right or obligation under such contract or lease on account of an assignment of such contract or lease, such contract, lease, right, or obligation may not be terminated or modified under such provision because of the assumption or assignment of such contract or lease by the trustee.” 11 U.S.C. § 365(f)(3).

58. Therefore, the Debtors respectfully request the Court to (a) approve the proposed assumption and assignment of the Potential Assigned Contracts, and (b) find that all anti-assignment provisions of such contracts to be unenforceable under section 365(f) of the Bankruptcy Code.

F. Bid Protections May Be Necessary to Preserve the Value of the Debtors' Estates

59. By this Motion, the Debtors seek authority to enter into a Stalking Horse Agreement, in an exercise of their business judgment and in accordance with the Bidding Procedures, and to offer the Bid Protections in connection therewith subject to the procedures described herein. Specifically, the Debtors seek authority to offer any Stalking Horse Bidder: (i) a break-up fee; and (ii) reimbursement of reasonable and documented expenses; *provided that* any break-up fee shall not exceed three percent (3%) of the Purchase Price and all Bid Protections must be negotiated by the Debtors, in consultation with the Consultation Parties, subject to notice and an opportunity for parties in interest to object solely with respect to the Bid Protections. As noted above, to the extent that the Debtors offer Bid Protections to a Stalking Horse Bidder by the Stalking Horse Deadline, the Debtors will seek approval of the Bid Protections on not less than three business days' notice.

60. Approval of the Debtors' proposed Bid Protections in connection with the Sale Transactions are consistent with established practice in this District and in large chapter 11 cases. *See e.g., Calpine Corp. v. O'Brien Env'tl. Energy, Inc. (In re O'Brien Env'tl. Energy, Inc.)*, 181 F.3d 527 (3d Cir 1999); *Integrated Res., Inc.*, 147 B.R. at 656-57 (noting that overbid procedures and break-up fee arrangements that have been negotiated by a debtor are to be reviewed according to the deferential "business judgment" standard, under which such procedures and arrangements are "presumptively valid"); *In re 995 Fifth Ave. Assocs., L.P.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (holding that the business judgment standard protects break-up fees and other contractual

provisions negotiated in good faith). The United States Court of Appeals for the Third Circuit has approved bidding incentives in the bankruptcy context. *See In re O'Brien*, 181 F.3d 527; *see also Reliant Energy Channelview LP v. Kelson Channelview LLC (In re Reliant Energy Channelview LP)*, 594 F.3d 200, 206-08 (3d Cir. 2010). The *O'Brien* court held that even though bidding incentives are measured against a business judgment standard in non-bankruptcy transactions, the administrative expense provisions of section 503(b) of the Bankruptcy Code govern in the bankruptcy context. Accordingly, to be approved, bidding incentives must provide some post-petition benefit to a debtor's estate. *See In re O'Brien*, 188 F.3d at 533. In the event that the Debtors seek Court authority for the Bid Protections, the Debtors will file supplemental documents satisfying their burden with respect thereto.

G. The Prepetition Secured Parties and the DIP Lender Should Be Authorized to Credit Bid on the Applicable Assets under Section 363(k) of the Bankruptcy Code

61. Section 363(k) of the Bankruptcy Code provides that, unless the court for cause orders otherwise, the holder of a claim secured by property that is the subject of a sale “may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property.” 11 U.S.C. § 363(k). Even if a secured creditor is undersecured as determined in accordance with section 506(a) of the Bankruptcy Code, section 363(k) allows such secured creditor to bid the full face value of its claim and does not limit the credit bid to the claim's economic value. *See Cohen v. KB Mezzanine Fund II, LP (In re Submicron Sys. Corp.)*, 432 F.3d 448, 459-60 (3d Cir. 2006).

62. To the extent that the DIP Lender or any of the Prepetition Secured Parties submit Stalking Horse Bids or Qualified Bids, such parties hold claims against the Debtors that are secured by valid, binding, enforceable, non-avoidable and perfected liens on and security interests in substantially all of the Assets (or certain silos of the Assets), as provided for in the *Amended*

Interim Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Granting Security Interests and Superpriority Administrative Expense Status, (III) Granting Adequate Protection to Certain Prepetition Secured Parties, (IV) Modifying the Automatic Stay; (V) Authorizing the Debtors to Enter Into Agreements With JMB Capital Partners Lending, LLC, (VI) Authorizing Non-Consensual Use of Cash Collateral, (VII) Scheduling a Final Hearing; and (VIII) Granting Related Relief [Docket No. 97] (the “Interim DIP Order”) and the loan documents between the various Debtors and the Prepetition Secured Parties, and should be entitled to credit bid all or a portion of the amounts then outstanding on account of the obligations owed to them, or any part thereof, under section 363(k) of the Bankruptcy Code and as provided for in the Interim DIP Order and the Bidding Procedures.

WAIVER OF STAY UNDER BANKRUPTCY RULE 6004(h) AND 6006(d)

63. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). Furthermore, Bankruptcy Rule 6006(d) provides that an “order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6006(d). For reasons described herein, any delay in the Debtors’ ability to consummate the Sale Transactions on the timeline contemplated by the Bidding Procedures would be detrimental to the Debtors, their creditors and estates.

64. For this reason and those set forth above, the Debtors submit that ample cause exists to justify a waiver of the fourteen day stay imposed by Bankruptcy Rule 6004(h) and 6006(d), to the extent applicable.

NOTICE

65. Notice of this Motion will be provided to: (i) the U.S. Trustee; (ii) counsel to the Committee; (iii) counsel to the DIP Lender; (iv) counsel to the Prepetition Secured Parties; (v) the United States Attorney's Office for the District of Delaware; (vi) the Internal Revenue Service; (vii) the state attorneys general for all states in which the Debtors conduct business; (viii) all parties who have expressed a written interest in some or all of the Assets; (ix) all known holders of liens, encumbrances, and other claims secured by the Assets; (x) all parties to Potential Assigned Contracts; (xi) counsel to the Patient Care Ombudsman; and (xii) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

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WHEREFORE, the Debtors request entry of the Bid Procedures Order, granting the relief requested herein and such other and further relief as is just and proper.

Dated: May 1, 2024
Wilmington, Delaware

Respectfully submitted,

**YOUNG CONAWAY STARGATT &
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*Counsel for the Debtors and Debtors in
Possession*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

SC HEALTHCARE HOLDING, LLC *et al.*

Debtors.¹

Chapter 11

Case No. 24-10443 (TMH)

Jointly Administered

Objection Deadline: May 15, 2024 at 4:00 p.m. (ET)

Hearing Date: May 22, 2024 at 10:00 a.m. (ET)

NOTICE OF MOTION

PLEASE TAKE NOTICE that, on May 1, 2024, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Debtors’ Motion for Entry of (A) an Order (I) Scheduling a Hearing on the Approval of the Sale of All or Substantially All of the Debtors’ Assets Free and Clear of All Encumbrances Other than Assumed Liabilities and Permitted Encumbrances, and the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (II) Approving Certain Bidding Procedures and Assumption and Assignment Procedures, and the Form and Manner of Notice Thereof, (III) Authorizing the Debtors to Enter Into the Stalking Horse Purchase Agreement, and (IV) Granting Related Relief; and (B) an Order (I) Approving Asset Purchase Agreement, (II) Authorizing the Sale of all or Substantially All of the Debtors’ Assets Free and Clear of all Encumbrances Other than Assumed Liabilities and Permitted Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Court”).

PLEASE TAKE FURTHER NOTICE that any objections to the Motion must be filed on or before **May 15, 2024 at 4:00 p.m. (ET)** (the “Objection Deadline”) with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801. At the same time, you must serve a copy of the objection upon the undersigned counsel to the Debtors so as to be received on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE MOTION WILL BE HELD ON MAY 22, 2024 AT 10:00 A.M. (ET) BEFORE THE HONORABLE THOMAS M. HORAN, UNITED STATES BANKRUPTCY COURT JUDGE

¹ The last four digits of SC Healthcare Holding, LLC’s tax identification number are 2584. The mailing address for SC Healthcare Holding, LLC is c/o Petersen Health Care Management, LLC 830 West Trailcreek Dr., Peoria, IL 61614. Due to the large number of debtors in these Chapter 11 Cases, whose cases are being jointly administered, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information is available on a website of the Debtors’ claims and noticing agent at www.kccllc.net/Petersen.

FOR THE DISTRICT OF DELAWARE, 824 N. MARKET STREET, 3rd FLOOR,
COURTROOM NO. 7, WILMINGTON, DELAWARE 19801.

**PLEASE TAKE FURTHER NOTICE THAT, IF YOU FAIL TO RESPOND IN
ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF
REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR A HEARING.**

[Remainder of Page Intentionally Left Blank]

Dated: May 1, 2024
Wilmington, Delaware

Respectfully submitted,

**YOUNG CONAWAY STARGATT &
TAYLOR, LLP**

/s/ Shella Borovinskaya

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*Counsel for the Debtors and Debtors in
Possession*

EXHIBIT A

Proposed Bid Procedures Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re

SC HEALTHCARE HOLDING, LLC *et al.*,
Debtors.¹

Chapter 11

Case No. 24-10443 (TMH)

Jointly Administered

Ref. Docket No. _____

**ORDER (I) APPROVING (A) BIDDING PROCEDURES AND (B) ASSUMPTION AND
ASSIGNMENT PROCEDURES AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Bid Procedures Order”) (i)(a) approving the Bidding Procedures, substantially in the form attached hereto as **Exhibit 1**; (b) authorizing the Debtors to designate one or more stalking horse bidders (the “Stalking Horse Bidders,” and such bidders’ bids, the “Stalking Horse Bids”) by the Stalking Horse Deadline and offer such Stalking Horse Bidders certain bid protections (the “Stalking Horse Bid Protections”); (c) setting the deadline for potential bidders to submit a proposal to purchase some or all of the Debtors’ Assets (the “Bid Deadline”), authorizing and scheduling an auction (the “Auction”), authorizing and scheduling a hearing with respect to the approval of a proposed sale transaction (the “Sale Hearing”); (d) authorizing and approving the form and manner of the Sale Notice; (e) authorizing and approving the Cure Notice to Contract Counterparties regarding the Debtors’ potential

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

assumption and assignment of the Assigned Contracts and of the Debtors' calculation of the amount necessary to cure any defaults thereunder (the "Cure Costs"); (f) authorizing and approving procedures for the assumption and assignment of the Assigned Contracts and the determination of Cure Costs with respect thereto (collectively, the "Assumption and Assignment Procedures"); (ii) authorizing the sale of the Assets free and clear of all liens, claims, encumbrances, and other interests pursuant to section 363(f) of the Bankruptcy Code (collectively, the "Sale Transactions"); and (iii) granting related relief, all as more fully set forth in the Motion; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and this Court having reviewed the Motion; and this Court having held a hearing to consider the relief requested in the Motion, as applicable; and all objections, if any, to the Motion having been withdrawn, resolved, or overruled; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before this Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:³

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

B. Bidding Procedures. The Debtors have articulated good and sufficient business reasons for the Court to (i) approve the Bidding Procedures and (ii) schedule the Auction and Sale Hearing and approve the manner of notice of the Auction, Sale, and Sale Hearing. The Bidding Procedures are fair, reasonable, and appropriate. The Bidding Procedures are reasonably designed to promote a competitive and robust bidding process to generate the greatest level of interest in the Assets resulting in the highest or otherwise best offers.

C. Designation of Stalking Horse Bidders. The Debtors have articulated good and sufficient business reasons for this Court to approve the procedures for the potential designation of one or more Stalking Horse Bidders, as set forth herein. There is a compelling and sound business justification for the Debtors to designate potential purchasers as Stalking Horse Bidders for the Assets, or subsets thereof, and to enter into applicable Stalking Horse Purchase Agreements, subject to further approval by this Court.

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

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

E. Assumption and Assignment Procedures. The Debtors have articulated good and sufficient business reasons for this Court to approve the Assumption and Assignment Procedures. The Assumption and Assignment Procedures, including the form of Sale Notice attached hereto as **Exhibit 2** and the form of Cure Notice attached hereto as **Exhibit 3**, are fair, reasonable, and appropriate and are reasonably calculated to provide interested parties with timely and proper notice of the Sale and the Assumption and Assignment Procedures. The Assumption and Assignment Procedures provide an adequate opportunity for all Contract Counterparties to raise any objections to the proposed assumption and assignment or to the proposed Cure costs. The Assumption and Assignment Procedures comply with the provisions of section 365 of the Bankruptcy Code and Bankruptcy Rule 6006.

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

G. Notice. Good and sufficient notice of the relief sought in the Motion has been given under the circumstances, and no further notice is required except as set forth herein with respect to the Auction and the Sale Hearing. Subject to the immediately preceding sentence, a reasonable opportunity to object or to be heard regarding the relief requested in the Motion was afforded to all interested persons and entities. All other notices to be provided pursuant to the Bidding Procedures and procedures set forth in the Motion, including the Sale Notice, constitute good and sufficient notice to all parties in interest of all matters pertinent hereto. No further notice is required.

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is granted as provided herein.
2. All objections to the relief granted herein that have not been withdrawn with prejudice, waived, or settled, and all reservations of rights included in such objections, are hereby overruled and denied on the merits with prejudice.
3. The Debtors are authorized to implement the Bidding Procedures in accordance with the following timeline (as may be modified in accordance with the Bidding Procedures):

Key Event	Deadline
Deadline to Serve and Publish Sale Notice	Within one (1) business day after entry of this Bidding Procedures Order or as soon as practicable thereafter
Deadline to file the Cure Notice with the Court and serve the Cure Notice on the Contract Counterparties	May 31, 2024 at 6:00 p.m. (ET)/5:00 p.m. (CT)
Deadline by which Stalking Horse Bidders are Designated	June 7, 2024 at 11:59 p.m. (ET)/10:59 p.m. (CT)
Deadline to File Contract Objections (the “ <u>Contract Objection Deadline</u> ”)	June 14, 2024 at 6:00 p.m. (ET)/5:00 p.m. (CT)
Bid Deadline	June 18, 2024 at 6:00 p.m. (ET)/5:00 p.m. (CT)
Deadline to File Objections to the Sale Transactions (the “ <u>Sale Objection Deadline</u> ”)	June 18, 2024 at 6:00 p.m. (ET)/5:00 p.m. (CT)
Auction (if necessary)	June 20, 2024 at 10:00 a.m.(ET)/9:00 a.m. (CT)
Deadline to File Notice of (a) Successful Bid(s) and Back-Up Bid(s) and (b) Identity of Successful Bidder(s) and Back-Up Bidder(s)	Within one (1) day after conclusion of the Auction or as soon as reasonably practicable thereafter
Deadline to Object to Conduct at Auction	June 24, 2024 at 6:00 p.m. (ET)/5:00 p.m. (CT)

Key Event	Deadline
Sale Hearing	June 27, 2024 at 10:00 a.m. (ET)
Sale Closing	No later than July 31, 2024

4. The dates and deadlines set forth in this Bid Procedures Order are subject to modification by the Debtors, in consultation with the Consultation Parties, without further order of this Court.

Designation of Stalking Horse Bidders

5. The Debtors are authorized, in the exercise of their reasonable business judgment, and in consultation with the Consultation Parties, to designate one or more Stalking Horse Bidders for some or all of the Assets, and enter into purchase agreements with other Stalking Horse Bidders (each such agreement, a “Stalking Horse Agreement”), for the sale of such Assets, in each case, in accordance with the terms of this Bid Procedures Order and the Bidding Procedures. For the avoidance of doubt, any such Stalking Horse Bidders and their Stalking Horse Bids shall be designated no later than June 7, 2024 at 11:59 p.m. (ET) (the “Stalking Horse Deadline”), and such Stalking Horse Agreements shall be filed on the docket.

6. To the extent that the Debtors designate potential purchasers as Stalking Horse Bidders, the Debtors are authorized to offer each Stalking Horse Bidder additional protections, including a reasonable break-up fee and expense reimbursement (the “Bid Protections”), and shall file a motion seeking Court approval of any Bid Protections offered to any Stalking Horse Bidder, which motion (the “Bid Protections Motion”) shall not be heard on less than three (3) business days’ notice, subject to Court availability and the Debtors’ submission of a motion seeking to shorten notice with respect to the Bid Protections Motion. The Bid Protections Motion shall be served on all parties which received the Motion. The rights of all parties to object to the sale to

the Stalking Horse Bidder on any basis are fully preserved, including without limitation with respect to the form of consideration and the inclusion of assets not subject to liens, if any. Nothing in this Bid Procedures Order or the Bidding Procedures shall limit any party from submitting a bid for any portion of the Assets.

7. Except as specifically authorized in paragraph 6 hereof, absent further order of this Court, no person or entity shall be entitled to any Bid Protections, expense reimbursement or break-up fee, “topping,” termination, or other similar fee or payment by the Debtors for submitting a bid for the Assets, or in any way participating in the Auction or the Debtors’ sale process.

Bidding Procedures

8. The Bidding Procedures, attached hereto as **Exhibit 1**, are hereby approved in their entirety.

9. The Bidding Procedures are incorporated herein by reference, and shall govern the bids and proceedings related to the sale of the Assets. The failure to specifically include or reference any particular provision of the Bidding Procedures in the Motion or this Bid Procedures Order shall not diminish or otherwise impair the effectiveness of such procedures, it being the Court’s intent that the Bidding Procedures are approved in their entirety, as if fully set forth in this Bid Procedures Order. If there is a conflict between the terms of this Bid Procedures Order and the Bidding Procedures, the terms of this Bid Procedures Order shall govern.

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

11. The designation of a bid as a Stalking Horse Bid qualifies as a Qualified Bid in accordance with the Bidding Procedures.

12. If the Debtors receive two or more Qualified Bids from Qualified Bidders, then the Debtors shall conduct the Auction in accordance with the Bidding Procedures.

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

Objections to Sale Transactions

14. The Sale Objection Deadline is **June 18, 2024 at 6:00 p.m. (ET)/5:00 p.m. (CT)**.

15. Objections to the Sale Transactions (each, a "Sale Objection"), must: (i) be in writing; (ii) state the name and address of the objecting party and the amount and nature of the claim or interest of such party; (iii) state with particularity the basis and nature of any objection, and provide proposed language that, if accepted and incorporated by the Debtors, would obviate such objection; and (iv) conform to the Bankruptcy Rules and the Local Rules. In addition, subject to the terms of this Bid Procedures Order and the Bidding Procedures, the Debtors may extend any objection date specified in the applicable notice, as the Debtors deem appropriate in the exercise of their reasonable business judgment. If a timely Sale Objection cannot otherwise be resolved by the parties, such objection shall be heard by the Court at the applicable Sale Hearing or at a date and time to be determined by the Debtors and the objecting party, subject to this Court's availability.

16. An appropriate representative of each Successful Bidder shall appear at the applicable Sale Hearing and be prepared, if necessary, to have such representative(s) testify in support of a Successful Bid and the Successful Bidder's ability to close in a timely manner and

provide adequate assurance of its future performance under any and all executory contracts and unexpired leases to be assumed and assigned to the Successful Bidder as part of the proposed transaction, or otherwise submit such testimony in writing in the form of a sworn declaration to be filed with the Court in advance of the Sale Hearing and appear at the Sale Hearing, all in accordance with and consistent with the rules of Chambers for the Honorable Thomas M. Horan.

17. Any party who fails to timely file with the Court a Sale Objection will be forever barred from asserting any objection to the Motion, entry of the Sale Order, or consummation and performance of a sale transaction contemplated by a purchase agreement between the Debtors and a Successful Bidder, including the transfer of the Assets to a Successful Bidder, free and clear of all claims and interests pursuant to section 363(f) or 1141 of the Bankruptcy Code. Failure to object shall constitute consent for the purposes of section 363(f) of the Bankruptcy Code and, if applicable, section 1141(c) of the Bankruptcy Code.

Sale Notice

18. The Sale Notice, substantially in the form attached hereto as **Exhibit 2**, is approved. Within one (1) day after the entry of this Bid Procedures Order, or as soon as reasonably practicable thereafter, the Debtors will cause the Sale Notice to be served on the following parties without limitation or their respective counsel, if known (collectively, the “Notice Parties”): (i) the U.S. Trustee; (ii) counsel to the Committee; (iii) counsel to the DIP Lender; (iv) counsel to the Prepetition Secured Parties; (v) the United States Attorney’s Office for the District of Delaware; (vi) the Internal Revenue Service; (vii) the state attorneys general for states in which the Debtors conduct business; (viii) all parties who have expressed a written interest in some or all of the Assets; (ix) all known holders of liens, encumbrances, and other claims secured by the Assets; (x) all Contract Counterparties to Potential Assigned Contracts; (xi) counsel to the Patient Care

Ombudsman; and (xii) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the “Notice Parties”). The Debtors shall also serve the Sale Notice on all known creditors in these Chapter 11 Cases.

19. The Sale Notice contains the type of information required under Bankruptcy Rule 2002 and complies in all respects with applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules.

20. The following notice of the Sale Objection Deadline and the Contract Objection Deadline, as applicable, to holders of Consent Rights (as defined below) and Preferential Purchase Rights (as defined below) is reasonable and appropriate under the circumstances, fair to all Contract Counterparties, and complies in all respects with the Bankruptcy Code, and are approved.

21. The Debtors may assign to a Successful Bidder, pursuant to an asset purchase agreement and the Sale Order, certain contracts, agreements, leases and other Assets, including Assets constituting real property interests, free and clear of all liens, claims, interests, and encumbrances. Subject to approval by this Court, if any party objects to such assignment, including any objection based on any alleged approval or consent right or anti-assignment provision contained in or applicable to any contract, lease, or other agreement (a “Consent Right”), then such party must file with the Court an objection identifying (i) the contract(s), lease(s), or other agreement(s), (ii) the basis for objecting to the assignment of such contract(s), lease(s), or other agreement(s), and (iii) all supporting documentation (each, an “Assignment Objection”), no later than the Sale Objection Deadline or the Contract Objection Deadline, as applicable.

22. Any person failing to timely file an Assignment Objection, as applicable, will be (i) forever barred from objecting to the transfer, sale, assumption, and/or assignment of the Debtors’ right, title, and interest in, to and under the Assets to be sold, assumed, and/or assigned

in connection with a Sale Transaction, free and clear of all liens, claims, interests, and encumbrances, including Consent Rights and Preferential Purchase Rights, and from asserting any alleged Preferential Purchase Rights with respect to a Sale Transaction, and (ii) deemed to consent to and approve the transfer, sale, and assumption and/or assignment of the Debtors' right, title, and interest in, to and under such Assets free and clear of all liens, claims, interests, and encumbrances, including Consent Rights and Preferential Purchase Rights, regardless of whether such consent must be in writing pursuant to the terms of any contract, lease, or other agreement.

23. If any person files an Assignment Objection in accordance herewith, the Debtors and other parties in interest will have the opportunity to object to any alleged rights asserted by such person by filing a response to the Assignment Objection or Rights Objection, as applicable (and serving such response on the objecting party). Upon the filing of such response to such objection, any rights asserted will be deemed to be disputed and the Debtors will be entitled to assert that a bona fide dispute exists as to such rights asserted. Nothing herein will be deemed a waiver of any rights of the Debtors or any other parties in interest to contest any rights asserted by any person in such objections, and all such rights of the Debtors are expressly preserved.

Assumption and Assignment Procedures

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

- (a) **Notice of Assumption, Assignment and Sale.** By **May 31, 2024 at 4:00 p.m. (ET)** (the "**Assumption, Assignment and Sale Service Deadline**"), the Debtors shall file on the docket and serve a notice of potential contract assumption, in substantially the form attached to this Bid Procedures Order as **Exhibit 3**, (the "**Notice of Assumption, Assignment and Sale**") via first class mail on all Contract Counterparties to all executory contracts and unexpired leases of the Debtors (collectively, the "**Potential Assigned Contracts**") and provide a copy of the same to any Stalking Horse Bidder. The Notice of Assumption, Assignment and Sale

shall inform each recipient of (i) the timing and procedures relating to such potential assumption, assignment and sale, (ii) the title of the Potential Assigned Contract, (iii) the name of the Contract Counterparty to the Potential Assigned Contract, (iv) Debtors' good faith estimates of the Cure Costs (if any) required in connection with the Potential Assigned Contract, (v) the identity of any Stalking Horse Bidder, and (vi) the Cure Objection Deadline; *provided, however*, that service of a Notice of Assumption, Assignment and Sale does not constitute an admission that such Potential Assigned Contract is an executory contract or unexpired lease or that such stated Cure Cost constitutes a claim against the Debtors or a right against the Stalking Horse Bidder (or other Successful Bidder) and all rights with respect thereto shall be expressly reserved. Further, the inclusion of a Potential Assigned Contract on the Notice of Assumption, Assignment and Sale is not a guarantee that such Potential Assigned Contract will ultimately be assumed, assigned and sold.

- (b) **Objections.** Any Contract Counterparty to a Potential Assigned Contract shall file and serve on the Notice Parties any objections to (i) the proposed assumption and assignment of its Potential Assigned Contract to the Successful Bidder, (ii) if applicable, the proposed Cure Cost for its Potential Assigned Contract (and must state in its objection, with specificity, what Cure Cost is required with appropriate documentation in support thereof) and (iii) the provision of adequate assurance of future performance by any Stalking Horse Bidder, **no later than the Cure Objection Deadline, which is fourteen (14) days after such Notice of Assumption, Assignment and Sale is file and served.** If no objection is timely filed and served, (i) the Contract Counterparty to the Potential Assigned Contract shall be deemed to have consented to the assumption, assignment and sale of the Contract to the Successful Bidder pursuant to sections 363 and 365 of the Bankruptcy Code if such Potential Assigned Contract is designated by the Successful Bidder as an Assigned Contract, and shall be forever barred from asserting any objection with regard to such assumption, assignment and sale, except with respect to the adequate assurance of future performance by a Successful Bidder **other than** any Stalking Horse Bidder, and (ii) the Cure Cost set forth in the Notice of Assumption, Assignment and Sale shall be controlling pursuant to section 365 of the Bankruptcy Code, notwithstanding anything to the contrary in any Potential Assigned Contract, or any other document, and the counterparty to the Potential Assigned Contract shall be deemed to have consented to the Cure Cost pursuant to section 365 of the Bankruptcy Code, and shall be forever barred from asserting any other claims related to such Potential Assigned Contract against the Debtors or the Successful Bidder, or the property of either of them.
- (c) **Supplemental Contract Assumption Notice.** To the extent that the Debtors, at any time after the Assumption, Assignment and Sale Service Deadline (i) identify additional Potential Assigned Contracts, (ii) remove Potential Assigned Contracts from the list of executory contracts and unexpired leases ultimately selected as Assigned Contracts that the Successful Bidder proposes be assumed, assigned and sold to it in connection with a Sale, and/or (iii) modify the previously stated Cure Cost associated with any Potential Assigned Contracts, the Debtors will promptly

file with the Court and serve by first class mail a supplemental notice of contract assumption (a “Supplemental Assumption Notice”) on each of the counterparties to the affected Potential Assigned Contracts and their counsel of record, if any. Each Supplemental Assumption Notice will include the same information with respect to listed Potential Assigned Contracts as was included in the Notice of Assumption, Assignment and Sale. Each Supplemental Assumption Notice that identifies a Potential Assigned Contract that was not previously designated to be assumed, assigned and sold or that reduces the Debtors’ calculation of the Cure Cost shall provide a deadline of not less than fourteen (14) days from the date of service of such Supplemental Assumption Notice by which the counterparty to any such Potential Assigned Contract may object **only** to (a) its listing as a Potential Assigned Contract (if it was not previously designated to be assigned), and (b) the Debtors’ calculation of the Cure Cost for such Potential Assigned Contract (if such Cure Cost is lower than a previously listed Cure Cost for such Potential Assigned Contract or the amount asserted by such counterparty by the Cure Objection Deadline); *provided* that, if the Sale Objection Deadline (as defined in the Proposed Order) is less than fourteen (14) days after the Supplemental Assumption Notice is filed, the objection deadline with respect to the Supplemental Assumption Notice shall be the Sale Objection Deadline, in which case the Supplemental Assumption Notice will be served by overnight delivery.

- (d) **Supplemental Adequate Assurance Objection Deadline.** Following the Bid Deadline, in the event that the Debtors receive one or more Qualified Bids, upon request by any counterparty to a Potential Assigned Contract, the Debtors will send such party evidence that any Qualified Bidder that included such Potential Assigned Contract in its Bid has the ability to perform thereunder and otherwise complies with the requirements of adequate assurance of future performance under section 365(b)(1) of the Bankruptcy Code on a confidential basis for all nonpublic information.
- (e) **Dispute Resolution.** If the Debtors (subject to the consent of the Successful Bidder) and the non-debtor counterparty to a Potential Assigned Contract cannot resolve an objection to the Cure Cost for such Potential Assigned Contract, such objection may be adjourned and the Potential Assigned Contract may be (but is not required to be) assumed by the Debtors and assigned and sold to any Stalking Horse Bidder or Successful Bidder, as applicable, provided that the Cure Cost that the counterparty asserts is required to be paid shall be segregated pending the parties’ consensual resolution of the objection to the Cure Cost or the Court’s adjudication of such payment. Any objection to the proposed assumption, assignment and sale of a Potential Assigned Contract or to the related Cure Cost that remains unresolved as of the Sale Hearing shall, in the Debtors’ discretion (subject to the consent of the Successful Bidder), be heard at the Sale Hearing or adjourned to a date and at a time determined by the Debtors (or otherwise scheduled by the Court). Pending the parties’ consensual resolution of any Cure Cost objections or the Court’s adjudication of such payments, the Successful Bidder may elect to re-designate the related Assigned Contracts to not be an Assigned Contract. Upon any Cure Cost

amount that was subject to an objection becoming fixed, the Successful Bidder may elect to re-designate the related Assigned Contract to not be an Assigned Contract.

- (f) **Contract Assumption**. No Assigned Contract shall be deemed assumed, assigned and sold pursuant to sections 365 and 363 of the Bankruptcy Code until the later of (i) the date the Court has entered an order assuming, assigning and selling such Assigned Contracts or (ii) the date the Sale has closed.

25. The Cure Notice, substantially in the form attached hereto as **Exhibit 3**, is reasonable, fair, and appropriate, contains the type of information required under Bankruptcy Rule 2002, and complies in all respects with applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules, and is hereby approved.

26. The Cure Notice, including any Supplemental Assumption Notice, is reasonably calculated to provide sufficient notice to the Contract Counterparties of the Debtors' proposed assumption and assignment of the Assigned Contracts in connection with the Sale Transactions and constitutes adequate notice thereof, and no other or further notice of the Debtors' proposed Cure Costs or the proposed assumption and assignment of the Assigned Contracts shall be required if the Debtors file and serve such notice in accordance with the Assumption and Assignment Procedures and this Bid Procedures Order.

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

28. The Debtors shall provide, or cause to be provided, to applicable Contract Counterparties Adequate Assurance Information on a strictly confidential basis once a Qualified Bidder is deemed a Successful Bidder. Contract Counterparties shall not use any Adequate Assurance Information for any purpose other than to (i) evaluate whether the adequate assurance requirements under Bankruptcy Code section 365(f)(2)(B) and, if applicable, Bankruptcy Code section 365(b)(3), have been satisfied, and (ii) support any objection regarding adequate assurance of future performance filed by the Contract Counterparty; *provided, that*, if a Contract Counterparty seeks to disclose confidential, non-public information included in the Adequate Assurance Information, it shall request Court authority to redact such information, unless disclosure of such confidential, non-public information is authorized by the Debtors, the Successful Bidder, and any known proposed assignee(s) of the relevant Assigned Contracts (if different from the Successful Bidder), or ordered by the Court.

29. Objections, if any, to any proposed assumption or assignment of an Assigned Contract, including but not limited to any objection to the proposed Cure Cost, the provision of adequate assurance of future performance, an Assignment Objection, or a Rights Objection (collectively, the “Contract Objections”) must: (i) be in writing; (ii) state the name and address of the objecting party and the amount and nature of the claim or interest of such party; (iii) state with particularity the basis and nature of any objection, and provide proposed language that, if accepted and incorporated by the Debtors, would obviate such objection; (iv) conform to the Bankruptcy Rules and the Local Rules; and (v) be filed with this Court.

30. Any Contract Objection in respect of an Assigned Contract must be filed and served by the Contract Objection Deadline. If a timely Contract Objection is received and such objection cannot otherwise be resolved by the parties, such objection shall be heard at the applicable Sale

Hearing or such other hearing scheduled prior to any scheduled closing of the applicable Sale Transaction.

31. If a Contract Objection cannot otherwise be resolved by the parties, the Debtors may assume and assign the Contract(s) or Lease(s) pending resolution of the Contract Objection.

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

33. The inclusion of a contract, lease, or other agreement on the Cure Notice or any Supplemental Assumption Notice shall not constitute or be deemed a determination or admission by the Debtors or any other party in interest that such contract or other document is an executory contract or unexpired lease within the meaning of the Bankruptcy Code or that the stated Cure Cost is due (all rights with respect thereto being expressly reserved). The Debtors reserve all of their rights, claims, defenses, and causes of action with respect to each contract or other document listed on the Cure Notice or any Supplemental Cure Notice.

34. Notwithstanding anything in this Bid Procedures Order or the Bidding Procedures to the contrary, any party that reserves its right to object to a potential assignee (if other than the Stalking Horse Bidder) in an initial objection will be deemed to have preserved its right to object at the Sale Hearing to any potential assignee, without a further objection being necessary upon receipt of a subsequent notice of assignee.

General Provisions

35. All persons or entities (whether or not Qualified Bidders) that participate in the bidding process for the Assets shall be deemed to have knowingly and voluntarily (a) consented to the entry of a final order by this Court in connection with the Motion or this Bid Procedures Order (including any disputes relating to the bidding process, the Auction, and/or any sale

transaction) to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution and (b) waived any right to jury trial in connection with any disputes relating to the any of the foregoing matters.

36. The Debtors are authorized, in consultation with the Consultation Parties, to make non-substantive changes to the Bidding Procedures, the Assumption and Assignment Procedures, and any related documents without further order of the Court, including, without limitation, changes to correct typographical and grammatical errors, in accordance with the terms of the Bidding Procedures.

37. The Debtors may, in consultation with the Consultation Parties, cancel the Bidding Procedures and the Auction with respect to any of the Assets if the Debtors determine, in their reasonable business judgment, in a manner consistent with their fiduciary duties to proceed with a private sale of such Assets in accordance with the terms of the Bidding Procedures.

38. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 6006(d), 7062, and 9014, or any applicable provisions of the Local Rules or otherwise, the terms and conditions of this Bid Procedures Order shall be immediately effective and enforceable upon its entry, and no automatic stay of execution shall apply to this Bid Procedures Order.

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

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

Exhibit 1

Bidding Procedures

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

SC HEALTHCARE HOLDING, LLC *et al.*,

Debtors.¹

Chapter 11

Case No. 24-10443 (TMH)

Jointly Administered

BIDDING PROCEDURES

Overview

On March 20, 2024, the above-captioned debtors and debtors in possession (collectively, the “Debtors”), filed voluntary petitions for relief (the “Chapter 11 Cases”) under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Court”). These Chapter 11 Cases have been consolidated for procedural purposes under the lead case: *In re SC Healthcare Holding, LLC*, Case No. 24-10443 (TMH).

On [], 2024, the Bankruptcy Court entered an order [Docket No. ●] (the “Bid Procedures Order”), which, among other things, authorized the Debtors to solicit bids and approved these procedures (the “Bidding Procedures”) for the consideration of the highest or otherwise best bids or any combination of Partial Bids (as defined below) comprising one Qualified Bid (as defined below) for all or substantially all of the Debtors’ assets (the “Assets”) on the terms and conditions set forth herein.²

The Debtors, in consultation with the Consultation Parties (as defined below), may designate one or more stalking horse bidders (the “Stalking Horse Bidders”) and enter into separate stalking horse agreements (the “Stalking Horse Purchase Agreements”) for the purchase of any of the Assets, or subsets thereof, with such bid protections to be determined by the Debtors, in consultation with the Consultation Parties, in accordance with the Bid Procedures Order, and subject to further Court approval.

For all purposes under these Bidding Procedures, any Stalking Horse Bidder approved as such pursuant to the Bid Procedures Order shall be considered a Qualified Bidder (as defined

¹ The last four digits of SC Healthcare Holding, LLC’s tax identification number are 2584. The mailing address for SC Healthcare Holding, LLC is c/o Petersen Health Care Management, LLC 830 West Trailcreek Dr., Peoria, IL 61614. Due to the large number of debtors in these Chapter 11 Cases, whose cases are being jointly administered, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information is available on a website of the Debtors’ claims and noticing agent at www.kccllc.net/Petersen.

² Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Bid Procedures Order.

below), and any Stalking Horse Bid shall be considered a Qualified Bid. Subject to the other provisions of these Bidding Procedures, in the event that a Stalking Horse Bid is the only Qualified Bid received by the Debtors by the Bid Deadline (as defined below), such Stalking Horse Bidder shall be deemed a Successful Bidder (as defined below).

The Bidding Procedures describe, among other things: (i) the procedures for bidders to submit bids for the acquisition of the Assets, subject to an order of the Court approving such potential sale transactions; (ii) the manner in which bidders and bids become Qualified Bidders and Qualified Bids; (iii) the process for negotiating the bids received; (iv) the conduct of the Auction if the Debtors receive Qualified Bids; (v) the procedure for the ultimate selection of any Successful Bidder and any Back-Up Bidder (as defined below); and (vi) the process for approval of the Sale Transactions at the applicable Sale Hearing.

Reservation of Rights

Except as otherwise set forth herein, the Debtors reserve the right, in their reasonable business judgment, in a manner consistent with their fiduciary duties and applicable law, and in consultation with the Consultation Parties, to: (i) modify these Bidding Procedures; (ii) waive terms and conditions set forth herein with respect to all Potential Bidders (as defined below); (iii) extend the deadlines set forth herein; (iv) announce at the Auction modified or additional procedures for conducting the Auction; or (v) alter the assumptions set forth herein; *provided, that*, the Debtors shall not be authorized to make material modifications to these Bidding Procedures without further order of the Court. The Debtors may, in consultation with the Consultation Parties, provide reasonable accommodations to any Potential Bidder(s) with respect to such terms, conditions, and deadlines of the bidding and Auction process to promote further bids on the Assets, in each case, to the extent not materially inconsistent with these Bidding Procedures and the Bid Procedures Order, as applicable. All parties reserve their rights to seek relief from the Court regarding the Auction, these Bidding Procedures, and any related items (including, if necessary, to seek an extension of the Bid Deadline).

In addition, the Debtors reserve their right, in consultation with the Consultation Parties, to cancel the Bidding Procedures and the Auction with respect to any of the Assets if the Debtors determine, in their reasonable business judgment, in a manner consistent with their fiduciary duties and in consultation with the Consultation Parties, to proceed with a private sale of such Assets. If the Debtors receive a bid for a private sale of Assets and intend to cancel the Bidding Procedures and the Auction with respect to such Assets, the Debtors shall first notify and consult with the advisors to the Creditors' Committee (as defined below) and then notify and consult with the Debtors' prepetition secured lenders (the "Prepetition Secured Parties**") and their respective counsel and JMB Capital Partners Lending, LLC (the "**DIP Lender**") and its counsel, Norton Rose Fulbright US LLP ("**Norton Rose Fulbright**").**

Fiduciary Out

Nothing in these Bidding Procedures will require the board of directors, board of managers, or such similar governing body of any Debtor to take any action, or to refrain from taking any action, with respect to these Bidding Procedures, to the extent such board of directors, board of

managers, or such similar governing body reasonably determines in good faith, in consultation with outside counsel, that taking such action, or refraining from taking such action, as applicable, is required to comply with applicable law or its fiduciary obligations under applicable law.

Summary of Important Dates

Key Event	Deadline
Deadline to file the Cure Notice with the Court and serve the Cure Notice on the Contract Counterparties	May 31, 2024 at 6:00 p.m. (ET)/5:00 p.m. (CT)
Deadline to File Contract Objections	June 14, 2024 at 6:00 p.m. (ET)/5:00 p.m. (CT)
Bid Deadline	June 18, 2024 at 6:00 p.m. (ET)/5:00 p.m. (CT)
Deadline to File Objections to the Sale Transactions (the “ <u>Sale Objection Deadline</u> ”)	June 18, 2024 at 6:00 p.m. (ET)/5:00 p.m. (CT)
Auction (if necessary)	June 20, 2024 at 10:00 a.m. (ET)/9:00 a.m. (CT)
Deadline to File Notice of (a) Successful Bid(s) and Back-Up Bid(s) and (b) Identity of Successful Bidder(s) and Back-Up Bidder(s)	As soon as possible following conclusion of Auction
Sale Hearing	June 27, 2024 at 10:00 a.m. (ET)
Sale Closing	No later than July 31, 2024

Designation of Stalking Horse Bidders

The Debtors shall promptly provide copies of any Stalking Horse Bids received by the Debtors to the Consultation Parties. The Debtors, in the exercise of their reasonable business judgment and in consultation with the Consultation Parties, may designate one or more Stalking Horse Bidders, for some or all of the Assets, or subsets thereof, and enter into purchase agreements with Stalking Horse Bidders, for the sale of such Assets, in each case, in accordance with the terms of the Bid Procedures Order and these Bidding Procedures, as applicable. The Debtors will designate Stalking Horse Bidders, if any, by June 7, 2024 (the “Stalking Horse Deadline”). If the Debtors, in consultation with the Consultation Parties, designate a Stalking Horse Bidder, the Debtors shall file with the Court and serve on the parties that received the Motion, (a) a notice setting forth the identity of the Stalking Horse Bidder and the material terms of such Stalking Horse Purchase Agreement, including the terms of the applicable Bid Protections, as required by Local Rule 6004-1 (each, a “Notice of Additional Stalking Horse”), (b) a copy of the Stalking Horse Purchase Agreement, and (c) a motion (the “Stalking Horse Motion”) seeking authority to enter into the Stalking Horse Purchase Agreement and to offer applicable Bid Protections, with a

motion to shorten notice, which shall be considered by the Court on not less than three (3) business days' notice, subject to the Court's availability.

Bid Protections. The Debtors may offer each Stalking Horse Bidder a break-up fee and reimbursement of reasonable and documented expenses (the "**Bid Protections**"); *provided, that*, (i) any break-up fee shall not exceed three percent (3%) of the Purchase Price, and (ii) all Bid Protections must be negotiated by the Debtors, in consultation with the Consultation Parties, subject to notice and an opportunity for parties in interest to object solely with respect to Bid Protections offered by a Debtor; and (iii) such Bid Protections shall not be offered after the Stalking Horse Deadline. The amount and calculation of such Bid Protections shall be described in the notice designating any Stalking Horse Bidder; *provided further, that*, any Bid Protections shall not be inconsistent with the Bid Procedures Order or the Bidding Procedures. For the avoidance of doubt, to the extent the Debtors offer Bid Protections to a Stalking Horse Bidder, which shall be done no later than the Stalking Horse Deadline, the Debtors shall seek approval of the Bid Protections on not less than three (3) business days' notice.

Objections to and Approval of Designation of Stalking Horse Bidder. Any objections (each, a "**Stalking Horse Objection**") to the designation of a Stalking Horse Bidder must (a) be in writing; (b) comply with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules; (c) state, with specificity, the legal and factual bases thereof; and (d) be filed with the Court within three (3) calendar days after service of the applicable Notice of Stalking Horse. For the avoidance of doubt, any objections to the Debtors' entry into a Stalking Horse Purchase Agreement and to offer Bid Protections in connection therewith will be governed by the Stalking Horse Motion and will be resolved at a hearing scheduled to consider the Stalking Horse Motion.

If a timely Stalking Horse Objection is filed and served in accordance with the preceding paragraph, the proposed designation of a Stalking Horse Bidder will not be approved until either the Stalking Horse Objection is resolved by agreement of the objecting party and the Debtors or by order of the Court.

Due Diligence

The Debtors have posted copies of all material documents related to the Assets to the Debtors' confidential electronic data room (the "**Data Room**"). To access the Data Room, a party, other than the Consultation Parties or any Stalking Horse Bidder has been deemed to be a Qualified Bidder (as defined below), must submit to the Debtors' advisors the following documents:

- (A) an executed confidentiality agreement in a form and substance that is satisfactory to the Debtors (unless such party is already a party to an existing customary confidentiality agreement with the Debtors that is acceptable to the Debtors for this due diligence process, in which case such agreement shall govern);
- (B) documentation identifying the interested party, its principals, and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction;
- (C) sufficient information, as reasonably determined by the Debtors, to allow the

Debtors to determine, in their reasonable business judgment whether the interested party (i) has the financial wherewithal to consummate the Sale Transactions, and (ii) intends to access the Data Room for a bona fide purpose consistent with these Bidding Procedures.

An interested party that meets the aforementioned requirements to the reasonable satisfaction of the Debtors shall be a “Potential Bidder” and such Bid (as defined below) shall be a “Potential Bid”. As soon as practicable, the Debtors will provide such Potential Bidder access to the Data Room; *provided, that*, such access may be terminated by the Debtors in their reasonable discretion and in consultation with the Consultation Parties at any time for any reason whatsoever, including that a Potential Bidder does not become a Qualified Bidder, these Bidding Procedures are terminated, the Potential Bidder breaches any obligations under its confidentiality agreement, or the Debtors become aware that information submitted by the Potential Bidder for requesting access to the Data Room is inaccurate or misleading. The Debtors shall provide prompt notice to counsel to the Consultation Parties if access to the Data Room is terminated for any Qualified Bidder as set forth herein. The Debtors may restrict or limit access of a Potential Bidder to the Data Room if the Debtors determine, based on their reasonable business judgment and in consultation with the Consultation Parties that certain information in the Data Room is sensitive, proprietary, or otherwise not appropriate for disclosure to such Potential Bidder.

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

Until the Bid Deadline, and except as otherwise provided herein, the Debtors will provide any Potential Bidder with reasonable access to the Data Room and any additional information requested by Potential Bidders (subject to any restrictions pursuant to applicable law or these Bidding Procedures) that the Debtors believe in their reasonable business judgment to be reasonable and appropriate under the circumstances. All additional due diligence requests shall be directed to the Debtors’ proposed investment banker, Walker & Dunlop Investment Sales, LLC (Attn: Mark Myers (mmyers@walkerdunlop.com)). In the event that any such additional information is in written form and provided to a Potential Bidder, the Debtors shall simultaneously provide such additional information to all other Potential Bidders by posting it in the Data Room. Unless prohibited by law or otherwise determined by the Debtors, in consultation with the Consultation Parties, the availability of additional due diligence to a Potential Bidder may be terminated, with prompt notice to the Consultation Parties’ counsel, if (i) the Potential Bidder does not become a Qualified Bidder, (ii) these Bidding Procedures are terminated, (iii) the Potential Bidder breaches any obligations under its confidentiality agreement, or (iv) the Debtors become aware that information submitted by the Potential Bidder for requesting access to the Data Room is inaccurate or misleading.

Neither the Debtors nor any of their representatives shall be obligated to furnish any information of any kind whatsoever relating to the Assets to any person or entity, other than the Consultation Parties, who: (i) is not a Potential Bidder, (ii) does not comply with the participation requirements set forth herein, or (iii) in the case of competitively sensitive information, is a competitor of the Debtors, in the reasonable business judgment of the Debtors.

Each Qualified Bidder shall be deemed to acknowledge and represent (i) that it has had an opportunity to (x) conduct any and all due diligence regarding the applicable assets prior to making a bid and (y) investigate and/or inspect any documents and the applicable assets in making its bid; (ii) that it has relied solely upon its own independent review in making its bid; and (iii) that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise regarding the applicable assets, or the completeness of any information provided in connection therewith, except as expressly stated in these Bidding Procedures. The Debtors and their respective estates are not responsible for, and will have no liability with respect to, any information obtained by, or provided to, any Potential Bidders in connection with these Bidding Procedures and the Sale Transactions.

Bid Deadline

A Potential Bidder that desires to make a bid shall deliver electronic copies of its bid so as to be received no later than **June 18, 2024 at 6:00 p.m. (ET)/5:00 p.m. (CT)** (the “**Bid Deadline**”); *provided, that*, the Debtors may, in consultation with the Consultation Parties, extend the Bid Deadline without further order of the Court subject to providing notice to all Potential Bidders and any Stalking Horse Bidders. **The submission of a bid by the Bid Deadline shall constitute a binding and irrevocable offer to acquire the Assets specified in such bid.** Any party that does not submit a bid by the Bid Deadline will not be allowed to (i) submit any offer after the Bid Deadline or (ii) participate in any Auction.

Bids should be submitted by email to the following Debtor representatives:

Winston & Strawn LLP
Gregory M. Gartland: ggartland@winston.com
Daniel J. McGuire: dmcguire@winston.com

Walker & Dunlop Investment Sales, LLC
Mark Myers : mmyers@walkerdunlop.com

Consultation Parties

Throughout the bidding process, the Debtors and their advisors will regularly and timely consult with (i) the Prepetition Secured Parties and their respective counsel, (ii) the DIP Lender and Norton Rose Fulbright, and (iii) the advisors to the official committee of unsecured creditors (the “**Creditors’ Committee**”) (each, a “**Consultation Party**,” and collectively, the “**Consultation Parties**”); *provided, that*, the Debtors shall not provide a Consultation Party copies of any term sheets or documentation relating to a Potential Bid, or information regarding the amount of any Potential Bids or the financial terms of any Potential Bids during the bidding process unless and until such Consultation Party confirms in writing that it will not bid or withdraws any Bid that it has submitted. In the event that a Consultation Party submits a Bid in the Auction, such party shall not be a Consultation Party with respect to the bidding and any Auction relating to the Assets subject to such Bid until such time as such party withdraws such Bid.

The Debtors shall promptly provide copies of all Bids (as defined below) received by the Debtors to the Consultation Parties, but in no event later than the next business day after such Bid is received; *provided, that*, the Consultation Parties must treat such Bids and any related information as confidential and shall not publicly disclose such information without the written consent of the Debtors and the applicable Bidder. For the avoidance of doubt, if Consultation

Party submits a Bid or Credit Bid on or prior to the Bid Deadline, the Debtors shall not provide copies of the Bids to such Consultation Party.

For the avoidance of doubt, any consultation rights afforded to the Consultation Parties by these Bidding Procedures shall not limit the Debtors' discretion in any way and shall not include the right to veto any decision made by the Debtors in the exercise of their reasonable business judgment. Further, for the avoidance of doubt, any rights that the Consultation Parties may have pursuant to the terms of other agreements, any orders of the Court, or the Bankruptcy Code are hereby reserved and shall not be affected by these Bidding Procedures or the Bid Procedures Order. All rights of the Consultation Parties with respect to the proposed Sale Transactions are fully reserved.

In the event that any Consultation Party or an affiliate of the foregoing submits a bid that is a Qualified Bid, any obligation of the Debtors to consult with the bidding party or its affiliates established under these Bidding Procedures will be waived, discharged, and released without further action; *provided, that*, the bidding party will have the same rights as any other Qualified Bidder set forth in the Bidding Procedures and *provided further, that* the obligation of the Debtors to consult with the relevant Consultation Party shall be restored should the Bid or Qualified Bid of such Consultation Party be withdrawn or terminated.

Notwithstanding anything to the contrary herein, the Consultation Parties shall not share any inside information received from the Debtors related to these Bidding Procedures with any of their respective members unless and until such member (a) affirmatively declares to the Debtors in writing via email that it will not submit a Bid, (b) does not submit a Bid by the Bid Deadline, or (c) affirmatively withdraws its Bid (collectively, the "Bid Declaration Date"); *provided, that*, prior to the applicable Bid Declaration Date, the Debtors may provide information to the Consultation Parties in accordance with these Bidding Procedures on a professional eyes' only basis.

Form and Content of Qualified Bid

A bid is a signed document from a Potential Bidder received by the Bid Deadline that identifies the purchaser by its legal name and any other party that will be participating in connection with the bid (a "Bid"). To constitute a "Qualified Bid" a Bid must include, at a minimum, the following:³

- i. Proposed Agreement. Each Bid must include an executed agreement (the "Proposed Agreement") for the acquisition of all or some of the assets of the Debtors, together with a redline comparing the Proposed Agreement to any applicable Stalking Horse Purchase Agreement or, if there is no applicable Stalking Horse Purchase Agreement, a form of asset purchase agreement, in each case distributed by the Debtors to Potential Bidders. The Proposed Agreement shall:
 - (a) include a complete set of all disclosure schedules and exhibits

³ The Debtors may, in consultation with the Consultation Parties, waive any of the following requirements for a Bid to constitute a Qualified Bid to the extent reasonably necessary to promote bids and a robust auction so long as any such waiver is not materially inconsistent with these Bidding Procedures.

thereto marked to show the specific changes to the disclosure schedules and exhibits to the applicable Stalking Horse Purchase Agreement (if any) distributed by the Debtors to Potential Bidders; and

- (b) not condition the closing of the proposed Sale Transaction on the receipt of any third party approvals (excluding such approvals required by the Court or governmental and/or regulatory approvals).
- ii. Purchase Price; Form of Consideration; Cash Requirements; Assets; Assumed Liabilities; Credit Bid. Each Bid must clearly set forth, as applicable:
- (a) Purchase Price. Each Bid must clearly identify the purchase price to be paid (the “Purchase Price”) and specify the aggregate amount of cash and other consideration being offered.
 - (b) Cash Requirements. Each Bid, including any Credit Bid (as defined below), must provide cash consideration sufficient to satisfy the payment of any applicable Bid Protections in cash in full (the “Cash Consideration Amount”) and, with respect to any Credit Bid, must also pay all obligations secured by senior liens on the applicable assets.
 - (c) Assets Purchased: Each Bid must, in the Proposed Agreement, clearly identify the particular Assets the Potential Bidder seeks to acquire from the Debtors. The Bid must clearly state the allocation of Purchase Price among particular Assets, as applicable. For the avoidance of doubt, any such allocation of the Purchase Price among Assets shall not be binding on the Debtors or any third-party and shall remain subject to determination by the Court.
 - (d) Assumed Liabilities: Each Bid must clearly identify, in writing and as applicable, the particular liabilities, if any, the Bidder seeks to assume.
 - (e) Credit Bid: Persons or entities holding a valid and perfected security interest in the Assets may submit a credit bid (a “Credit Bid”) on such assets, to the extent permitted by applicable law or any Court order, and the documentation governing the Debtors’ secured credit facilities.
- iii. Unconditional Offer / Contingencies. A statement that the Bid is formal, binding, and unconditional, is not subject to any further due diligence or financing contingency, and is irrevocable until the Debtors notify the Potential Bidder that such Bid is not a Successful Bid or a Back-Up Bid, or with respect to a Back-Up Bid until the earlier of (a) the first business day after the close of the Sale Transaction with the Successful Bidder for the

Assets bid upon by such Back-up Bidder or (b) 60 days after entry of an order approving the Sale Transaction with the Successful Bidder for the Assets bid upon by such Back-up Bidder; *provided that* for the avoidance of doubt, for any Stalking Horse Bidder, the Stalking Horse Bid shall be irrevocable as set forth in the Stalking Horse Purchase Agreement.

- iv. Timeline to Close. The Bid must provide a commitment to close no later than the deadline for the Stalking Horse Bidder to close in the Stalking Horse Purchase Agreement.
- v. Proof of Financial Ability to Perform. Each Bid must contain such financial and other information that allows the Debtors, in consultation with the Consultation Parties, to make a reasonable determination, in their reasonable business judgment as to the Potential Bidder's financial and other capabilities to consummate the Sale Transactions including, without limitation, ability to post replacement letters of credit, as applicable, and such financial and other information setting forth adequate assurance of future performance in satisfaction of the requirements under section 365(f)(2)(B) of the Bankruptcy Code, and the Potential Bidder's willingness to perform under any contracts that are assumed and assigned to such party. Without limiting the foregoing, such information must include current financial statements or similar financial information certified to be true and correct as of the date thereof, proof of financing commitments if needed to consummate the transaction (not subject to, in the Debtors' reasonable business judgment, any unreasonable conditions), contact information for verification of such information, including any financing sources, and any other information reasonably requested by the Debtors or the Consultation Parties necessary to demonstrate adequate assurance of future performance and to demonstrate that such Potential Bidder has the ability to consummate the Sale Transactions in a timely manner.
- v. Designation of Contracts and Leases. Each Bid must identify with particularity (i) each and every executory contract and unexpired lease that the Potential Bidder seeks to assume and receive an assignment of; and (ii) each and every other contract and lease of the Debtors that the Potential Bidder seeks to assume and receive an assignment of.
- vi. Required Approvals. A statement or evidence (i) that the Potential Bidder has not conditioned their Bid on (a) obtaining financing, (b) any internal approval, (c) the outcome or review of unperformed due diligence, or (d) regulatory contingencies (except as otherwise provided in this section, (ii) that the Potential Bidder has made or will make in a timely manner all necessary filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, or other antitrust laws, as applicable, and pay the fees associated with such filings; (iii) identifying each governmental and regulatory third-party approvals required for the Potential Bidder to consummate the applicable Sales Transaction, if any, and the Potential

Bidder's plan and ability to obtain all requisite governmental, regulatory, or other third-party approvals and the proposed timing for the Potential Bidder to undertake the actions required to obtain such approvals; and (iv) that the Bid is reasonably likely (based on antitrust or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Successful Bid or as the Back-Up Bid, within a time frame acceptable to the Debtors. A Potential Bidder further agrees that its legal counsel will coordinate in good faith with the Debtors' legal counsel to discuss and explain such Potential Bidder's regulatory analysis, strategy, and timeline for securing all such approvals as soon as reasonably practicable.

- vii. Disclosure of Identity and Corporate Authorization. Each Bid must (i) fully disclose the identity of the Potential Bidder of each entity that will be bidding or otherwise participating in such Bid (including any equity owners or sponsors, if the Potential Bidder is an entity formed for the purpose of consummating the Sale Transactions), and the complete terms of any such participation, and (ii) include evidence of corporate authorization and approval from the Potential Bidder's board of directors (or comparable governing body) with respect to the submission, execution, and delivery of a Bid, participation in the Auction, and closing of the transactions contemplated by the Potential Bidder's Proposed Agreement in accordance with the terms of the Bid and these Bidding Procedures.
- viii. No Entitlement to Expense Reimbursement or Other Amounts. With the exception of any Stalking Horse Bid, expressly state that the Bid does not entitle the Potential Bidder to any break-up fee, termination fee, expense reimbursement or similar type of payment or reimbursement, and a waiver of any substantial contribution administrative expense claims under section 503(b) of the Bankruptcy Code related to the bidding process.
- ix. Disclosure of Connections. Each Bid must fully disclose any connections or agreements with the Debtors, the Debtors' prepetition secured creditors, DIP lender, other known Potential Bidders, and/or any officer or director of the Debtors.
- x. Joint Bids. The Debtors may, in consultation with the Consultation Parties, approve joint Bids in their sole and reasonable business judgment on a case-by-case basis.
- xi. Representations and Warranties. Each Bid must include the following representations and warranties.
 - a. a statement that the Potential Bidder has had an opportunity to conduct, and has completed, any and all due diligence regarding the applicable asset prior to submitting its Bid;
 - b. a statement that the Potential Bidder has relied solely upon its own

independent review, investigation, and/or inspection of any relevant documents and the assets in making its Bid and did not rely on any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express or implied, by operation of law or otherwise, regarding the assets or the completeness of any information provided in connection therewith, except as expressly stated in the representations and warranties contained in the Potential Bidder's Proposed Agreement ultimately accepted and executed by the Debtors;

- c. a statement that the Potential Bidder agrees to serve as Back-Up Bidder, if its Bid is selected as the next highest or next best bid (or any combination of Partial Bids comprising one Qualified Bid) after the Successful Bid with respect to the applicable asset;
- d. a statement that the Potential Bidder has not (i) engaged in any collusion with respect to the submission of any bid or the Auction, (ii) coordinated or joined with any other party on a bid or bids, or (iii) took any other action to prevent a transparent and competitive auction process; *provided, that*, certain joint bids may be permitted as set forth herein;
- e. a statement that all proof of financial ability to consummate the Sale Transaction in a timely manner and all information provided to support adequate assurance of future performance is true and correct; and
- f. a statement that the Potential Bidder agrees to be bound by the terms of the Bidding Procedures.

A Potential Bidder must also accompany its Bid with:

- xii. a cash deposit in the amount of 10% of the proposed purchase price (a "Good Faith Deposit"), unless otherwise agreed to by the Debtors, in consultation with the Consultation Parties, and a Potential Bidder; *provided, that*, a Potential Bidder submitting a Credit Bid will not be required to accompany its Bid with a Good Faith Deposit for any portion of the Purchase Price that is a Credit Bid;
- xiii. the contact information of the specific person(s) whom the Debtors or their advisors should contact in the event that the Debtors have any questions or wish to discuss the Bid submitted by the Potential Bidder; and
- xiv. a covenant to cooperate with the Debtors and the Consultation Parties to provide pertinent factual information regarding the Potential Bidder's operations reasonably required to analyze issues arising with respect to any applicable antitrust laws and other applicable regulatory requirements.

For the avoidance of doubt, (i) the Stalking Horse Bidder is a Qualified Bidder, (ii) the Stalking Horse Purchase Agreement is a Qualified Bid, and (iii) the Stalking Horse Bidder is authorized to submit any Overbids (as defined below), including in the form of a credit bid, during the Auction, in each instance without further qualification required of the Stalking Horse Bidder.

Credit Bids for Unencumbered Assets of the Debtors

If any Potential Bidder (i) seeks to acquire (a) any causes of action arising under sections 544, 545, 547, 548, 549 and 550 of the Bankruptcy Code or any other state or federal law or (b) any other assets of the Debtors that are unencumbered by liens (collectively, “Unencumbered Assets”); (ii) is named a Successful Bidder in accordance with these Bidding Procedures; and (iii) any portion of such Successful Bid is a credit bid (a “Credit Bid”), then the Court shall determine the value of any such Unencumbered Assets at the Sale Hearing and such Successful Bidder may be required to provide additional cash consideration to the Debtors equal to the value of such Unencumbered Assets as determined by the Court.

Good Faith Deposit

A Good Faith Deposit must be deposited, prior to the Bid Deadline, with an escrow agent selected by the Debtors (the “Escrow Agent”) pursuant to a customary and reasonable escrow agreement to be provided by the Debtors. To the extent a Qualified Bid is modified before, during, or after the Auction, the Debtors reserve the right to require that such Qualified Bidder increase its Good Faith Deposit so that it equals ten percent (10%) of the Purchase Price. If a Qualified Bidder is required to increase its Good Faith Deposit, its status as a Qualified Bidder shall be suspended pending satisfaction of such adjustment. For the avoidance of doubt, and notwithstanding anything to the contrary in these Bidding Procedures or any Court order to the contrary, any Good Faith Deposit by any Stalking Horse Bidders or other Qualified Bidders shall only be for purposes of this process. No party, including any lenders, shall have any lien, claim, or right with respect to the Good Faith Deposit, and such funds shall not be available for distribution to the Debtors’ creditors, unless and until such funds become property of the Debtors’ estates in accordance with the terms of these Bidding Procedures.

Review of Bids; Designation of Qualified Bids

The Debtors, in consultation with the Consultation Parties, will evaluate Bids that are timely submitted and may engage in negotiations with Potential Bidders who submitted Bids as the Debtors deem appropriate in the exercise of their reasonable business judgment, based upon the Debtors’ evaluation of the content of each Bid.

A Bid that is reasonably determined by the Debtors, in consultation with the Consultation Parties, to meet the requirements set forth herein will be considered a “Qualified Bid” and any bidder that submits a Qualified Bid (including any Stalking Horse Bids) will be considered a “Qualified Bidder.”

By no later than **one (1) business day prior to the Auction** (the “Qualified Bid Deadline”), the Debtors shall determine, in their reasonable business judgment, and in consultation with the Consultation Parties, which of the Bids received by the Bid Deadline qualifies as a Qualified Bid.

The Debtors shall notify each Bidder who submits a Qualified Bid of its status as a Qualified Bidder by the Qualified Bid Deadline.

In evaluating the Bids, the Debtors may take into consideration the following non-exhaustive factors:

1. the amount of the purchase price and Credit Bid, as applicable, set forth in the Bid (*provided, that*, for purposes of evaluating competing bids, and except with respect to the requirement that each Bid must provide the Cash Consideration Amount, every dollar of a Credit Bid shall be treated the same as a dollar from a cash or other non-cash Bid, and a Credit Bid shall not be considered inferior to a comparable cash or other non-cash Bid because it is a Credit Bid);
2. the assets and liabilities excluded from the Bid and any executory contracts or leases or other liabilities proposed to be assumed;
3. the value to be provided to the Debtors under the Bid, including the net economic effect upon the Debtors' estates, taking into account any Stalking Horse Bidder's rights to any Bid Protections;
4. any benefit to the Debtors' estates from any assumption of liabilities or waiver of liabilities, including replacement letters of credit;
5. the transaction structure and execution risk, including conditions to, timing of, and certainty of closing; termination provisions; availability of financing and financial wherewithal to meet all commitments; tax leakage; and required governmental or other approvals;
6. the impact on employees and employee claims against the Debtors;
7. the impact on trade creditors; and
8. any other factors the Debtors may deem relevant, consistent with their fiduciary duties.

A Bid that contemplates the liquidation of some or all the Assets shall not be disqualified from being a Qualified Bid solely for that reason. The Debtors reserve the right, in consultation with the Consultation Parties, to work with any Potential Bidder in advance of the Auction to cure any deficiencies in a Bid that is not initially deemed a Qualified Bid.

Without the written consent of the Debtors, in consultation with the Consultation Parties, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase the Purchase Price or otherwise improve the terms of the Qualified Bid for the Debtors during the period that such Qualified Bid remains binding as specified herein; *provided, that*, any Qualified Bid may be improved at the Auction as set forth in these Bidding Procedures. For the avoidance of doubt, any amendment to any Stalking Horse Purchase Agreement, shall be shared with the Consultation Parties' respective counsel as promptly as possible and filed with the Bankruptcy Court within one (1) business day of such amendment, or

as soon as reasonably practicable thereafter, and the Debtors will take into account all such amendments or modifications at the Auction.

Subject to the terms of the Bid Procedures Order and these Bidding Procedures, any Qualified Bidder who has a valid and perfected lien on any of the Assets and the right under applicable law to credit bid claims secured by such liens, including, for the avoidance of doubt, the DIP Lender, shall have the right to submit a Credit Bid all or a portion of the value of such Qualified Bidder's claims pursuant to section 363(k) of the Bankruptcy Code with respect to the collateral by which such Qualified Bidder's claim is secured. For the avoidance of doubt, any Credit Bid for the Assets shall be subject to any lien challenge rights of the Creditors' Committee set forth in any Court order. Any Qualified Bidder intending to submit a Credit Bid all or a portion of the value of such Qualified Bidder's claim shall provide notice thereof to the Debtors and any Stalking Horse Bidders by the Bid Deadline. For the avoidance of doubt, such Qualified Bidder that provides notice of intent to submit a Credit Bid will no longer be a Consultation Party with respect to the bidding and auction relating to the assets subject to such Bid until such time as such party withdraws such Bid.

Selection of Successful Bid

The Back-Up Bid, if any, will remain open and binding on the Back-Up Bidder until consummation of the Successful Bid with the Successful Bidder. If the Successful Bidder fails to consummate the Successful Bid within the time set forth therein, the Debtors will be authorized, but not required, in consultation with the Consultation Parties, to select the Back-Up Bidder, if any, as the new Successful Bidder, in which case the Debtors shall proceed to consummate the Successful Bid of the new Successful Bidder.

Within one (1) business day after conclusion of the Auction, the Debtors shall file a notice with the Court identifying the Successful Bidder and the Back-Up Bidder, if any.

Failure to Receive Qualified Bids Other Than Stalking Horse Bid

If no Qualified Bid (other than a Stalking Horse Bid) is received by the Qualified Bid Deadline, the Debtors will not conduct the Auction with respect to the Assets subject to such Stalking Horse Bid, and shall file a notice with the Court indicating that no Auction will be held and the Stalking Horse Bidder will be named the Successful Bidder.

Auction Procedures

If the Debtors receive two or more Qualified Bids with respect to the applicable assets, the Debtors shall conduct the Auction on **June 20, 2024 beginning at 10:00 a.m. (prevailing Central Time) at (i) the offices of Winston & Strawn LLP, 25 W. Wacker Drive, Chicago, IL 60601 or (ii) virtually, pursuant to procedures to be announced to bidders, or such other later date as may be determined by the Debtors in consultation with the Consultation Parties and upon notice to all parties in interest.** Only Qualified Bidders will be eligible to participate at the Auction, subject to such limitations as the Debtors may impose in good faith and in consultation with the Consultation Parties. In addition, only the professionals and/or other representatives of the Qualified Bidders, the Debtors, and the Consultation Parties shall be permitted to attend and observe the Auction.

Before commencement of the Auction, the Debtors will notify all Qualified Bidders, the Stalking Horse Bidder, and the Notice Parties (as defined below) in writing of the highest or otherwise best Qualified Bid, as determined in the Debtors' business judgment, in consultation with the Consultation Parties (the "Baseline Bid"), and (ii) provide copies (to the extent not previously provided) of the documents supporting the Baseline Bid to all Qualified Bidders and Notice Parties. The determination of which Qualified Bid constitutes the Baseline Bid, and which Qualified Bid constitutes the highest or otherwise best bid such that it is the Successful Bid (as defined below), may take into account, among other things: (a) the type and amount of Assets sought to be purchased in the Bid; (b) the amount and nature of the total consideration; (c) the likelihood of the Bidder's ability to close a transaction and the timing thereof; and (d) the net economic effect of any changes to the value to be received by the Debtors' estates from the transaction contemplated by the Qualified Bid.

The following auction rules shall apply to the Auction to promote a spirited and robust auction (the "Auction Rules").

- (a) At least one (1) business day prior to the Auction, each Qualified Bidder who has timely submitted a Qualified Bid must inform the Debtors whether it intends to attend the Auction and all Qualified Bidders wishing to attend the Auction must have at least one individual representative with authority to bind such Qualified Bidder in attendance at the Auction in person; *provided that*, in the event a Qualified Bidder elects not to attend the Auction, such Qualified Bidder's Qualified Bid shall nevertheless remain fully enforceable against such Qualified Bidder. All other creditors of the Debtors who desire to attend the Auction (including their counsel) and provide no less than three (3) business days advance written notice of their intent to attend the Auction no later than 5:00 p.m. (ET) to Debbie Laskin at Young Conaway Stargatt & Taylor, LLP at dlaskin@ycst.com, will be permitted to attend the Auction.
- (b) All bids in the Auction will be made and received on an open basis, and all other Qualified Bidders participating in the Auction will be entitled to be present for all bidding with the understanding that the true identity of each Qualified Bidder placing a bid at the Auction will be fully disclosed to all other bidders participating in the Auction and that all material terms of a bid submitted in response to any successive bids made at the Auction (each, an "Overbid") will be disclosed to all other Qualified Bidders participating in the Auction. Each Qualified Bidder will be permitted what the Debtors reasonably determine, in consultation with the Consultation Parties, to be an appropriate amount of time to respond to the previous bid at the Auction. The Auction will be conducted openly and shall be transcribed or recorded. The starting bid (the "Starting Bid") shall be the highest or best Qualified Bid, as determined by the Debtors in consultation with the Consultation Parties. If a Stalking Horse Bid is selected as the Starting Bid, any Overbid shall include the amount provided for in the Stalking Horse Bid(s), *plus* the Bid Protections, plus a minimum overbid increment of \$1,000,000 or a lesser amount to be determined by the Debtors in their business judgment, in consultation with the Consultation Parties.

- (c) Any Overbid made from time to time by a Qualified Bidder must remain open and binding on the Qualified Bidder until and unless (i) the Debtors accept a Bid submitted by another Qualified Bidder during the Auction as an Overbid and (ii) such prior Overbid is not selected as the Back-Up Bid. To the extent not previously provided (which will be determined by the Debtors in consultation with the Consultation Parties), a Qualified Bidder submitting an Overbid must submit at the Debtors' request (in consultation with the Consultation Parties), as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors in consultation with the Consultation Parties) demonstrating such Qualified Bidder's ability to close the transaction at the purchase price contemplated by such Overbid.
- (d) Bidders and their representatives may not communicate with one another, collude, or otherwise coordinate for purposes of participating in the Auction. All parties are prohibited from (i) engaging in any collusion with respect to the submission of any bid or the Auction, (ii) coordinating or joining with any other party on a bid or bids, or (iii) taking any other action to prevent a transparent and competitive auction process; *provided, that*, certain joint bids may be permitted as set forth herein. Each Qualified Bidder participating in the Auction shall confirm in writing and on the record at the Auction that (i) it has not engaged in any of the foregoing prohibited actions and (ii) its Qualified Bid is a good faith bona fide offer that it intends to consummate if selected as a Successful Bidder.

All parties attending the Auction must keep the proceedings and results of the Auction confidential until the Debtors have closed the Auction; *provided, that*, parties may speak with clients or parties necessary to place their bid or increase it so long as such individuals are advised of the confidentiality restriction.

The Debtors shall conduct an Auction for the Assets on a consolidated or semi-consolidated basis pursuant to the Auction Rules. To the extent the Debtors conduct multiple auctions for different subgroupings of the Assets (each, a "Sub-Auction") at any Auction and a Qualified Bidder declines to participate in any specific Sub-Auction or Sub-Auctions, or any round of bidding for such specific Sub-Auctions, such Qualified Bidder shall still be permitted to offer a Bid in subsequent Sub-Auctions, including bids that include assets subject to a prior Sub-Auction, which includes the right to bid on groupings of assets that may include specific assets which were the subject of an earlier Sub-Auction. The Debtors may, in the exercise of their reasonable business judgment and in consultation with the other Consultation Parties, identify the highest or otherwise best Qualified Bid as the reserve bid for each Sub-Auction (each, a "Reserve Sub-Auction Bid") and the bidder submitting such bid, a "Reserve Sub-Auction Bidder"). The Debtors may also identify, in consultation with the Consultation Parties, a Qualified Bidder that submitted the next highest or otherwise best Qualified Bid in each Sub-Auction as a back-up bid (each, a "Back-Up Sub-Auction Bid") and the bidder submitting such bid, a "Back-Up Sub-Auction Bidder"). The Debtors, upon consultation with the Consultation Parties, shall have the right to establish different Overbids with respect to any Sub-Auction.

If the Debtors, in the exercise of their reasonable business judgment and in consultation with the Consultation Parties, determine that pursuing a Sale Transaction pursuant to the Reserve

Sub-Auctions Bid(s) will result in a higher or otherwise better value of the Assets than pursuing a Sale Transaction pursuant to the highest or otherwise best Bid received in the Auction of the Assets on a consolidated or semi-consolidated basis, then the Debtors may declare the Reserve Sub-Auction Bid(s) as Successful Bid(s) (and the Reserve Sub-Auction Bidder(s) as Successful Bidders) and the Back-Up Sub-Auction Bid(s) as the Back-Up Bid(s) (and the Back-up Sub-Auction Bidder(s) as Back-Up Bidder(s)).

The Debtors may, in the exercise of their business judgment and in consultation with the Consultation Parties, identify the highest or otherwise best Qualified Bid (or any combination of Partial Bids comprising one Qualified Bid, as specified above) as the successful bid for the respective Assets to be acquired (each, a “Successful Bid” and the bidder submitting such bid, a “Successful Bidder”). The Debtors may also identify a Qualified Bidder, in consultation with the Consultation Parties, that submitted the next highest or otherwise best Qualified Bid (or any combination of Partial Bids comprising one Qualified Bid, as specified above) as a back-up bid (a “Back-Up Bid” and the bidder submitting such bid, a “Back-Up Bidder”).

Within one (1) business day after the Auction, or as soon as reasonably practicable thereafter, each Successful Bidder shall (i) submit to the Debtors fully executed documentation memorializing the terms of the Successful Bid such Successful Bidder submitted and (ii) unless otherwise agreed in the purchase agreement between the Debtors and a Successful Bidder, submit by transfer of immediately available funds to an account identified by the Debtors any amount required to increase the Successful Bidder’s Good Faith Deposit to an amount equal to ten percent (10%) of the Purchase Price contained in the Successful Bid, if the amount of the Good Faith Deposit previously delivered by the Successful Bidder is less than such amount. For the avoidance of doubt, and notwithstanding anything to the contrary in these Bidding Procedures or any Court order to the contrary, any such increase to the Good Faith Deposit by any Stalking Horse Bidders or other Qualified Bidders to such designated account shall only be for purposes of this process. No party, including any of the Debtors’ lenders, have or shall have any lien, claim, or right with respect to such funds which shall not be available for distribution to the Debtors’ creditors, unless and until such funds become property of the Debtors’ estates in accordance with the terms of these Bidding Procedures. A Successful Bid may not be assigned to any party without the consent of the Debtors, in consultation with the Consultation Parties.

At any time before the designation of a Successful Bid and Back-Up Bid, if any, the Debtors, in consultation with the Consultation Parties, reserve the right to and may reject such Qualified Bid(s) (other than any Stalking Horse Bids) if such Qualified Bid(s), in the Debtors’ reasonable business judgment, in consultation with the Consultation Parties, is/are: (i) inadequate or insufficient; (ii) not in conformity with the requirements of the Bankruptcy Code, these Bidding Procedures, or the terms and conditions of the applicable Sale Transaction; or (iii) contrary to the best interests of the Debtors and their estates.

As set forth above, the Debtors reserve their right, in their reasonable business judgment and in consultation with the Consultation Parties, to announce at the Auction modified or additional procedures for conducting the Auction.

The Debtors (in consultation with the Consultation Parties) reserve the right to make one or more adjournments in the Auction to, among other things (i) facilitate private discussions with

individual Qualified Bidders and negotiate the terms of their Overbids, (ii) allow individual Qualified Bidders to consider how they wish to proceed, and (iii) give Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors may require in their reasonable discretion (and in consultation with the Consultation Parties) to determine that the Qualified Bidder has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount.

Post-Auction Process

Within one (1) business day after the conclusion of the Auction, or as soon as reasonably practicable thereafter, the Debtors shall file with the Court a notice of the Successful Bid(s), Successful Bidder(s), Back-Up Bid(s), and Back-Up Bidder(s).

The Good Faith Deposits for each Qualified Bidder (other than the Successful Bidder and the Back-Up Bidder) shall be returned on the date that is five (5) business days after the Auction, or as soon as is reasonably practicable thereafter. The Debtors shall return the Good Faith Deposit of the Back-Up Bidder by the earlier of (i) thirty (30) days after the conclusion of the Auction and (ii) five (5) business days after the consummation of the Successful Bid, unless by such date the Debtors have selected the Back-Up Bidder as the new Successful Bidder.

Each Successful Bidder's Good Faith Deposit shall be applied against the cash portion of the purchase price of such bidder's Successful Bid upon the consummation of the Sale Transactions. Notwithstanding the foregoing, if a Successful Bidder fails to consummate a proposed transaction because of a breach by such Successful Bidder, the Debtors will not have any obligation to return the Deposit deposited by such Successful Bidder, which may be retained by the Debtors as damages, in addition to any and all other rights, remedies, or causes of action that may be available to the Debtors, and the Debtors shall be free to consummate the proposed transaction with the applicable Back-Up Bidder subject to Court approval, which may be sought on an expedited basis.

Notwithstanding the foregoing, the Good Faith Deposit, including the amount thereof, and any remedies against a Stalking Horse Bidder shall be governed by the applicable Stalking Horse Purchase Agreement, if any.

Notices Regarding Assumption and Assignment

The Debtors shall provide all notices regarding the proposed assumption and assignment of contracts and leases of the Debtors in accordance with the Assumption and Assignment Procedures included in the Bid Procedures Order.

Sale Objections and Hearing

The hearing (the "Sale Hearing") to consider approval of the sale of Assets will be held before the Court on **June 27, 2024 at 10:00 a.m.** and otherwise in accordance with any scheduling order entered by the Court; *provided* that if no Auction is held, the Debtors shall schedule the Sale Hearing before such time and as expeditiously as possible, subject to Court approval. Prior to the Sale Hearing, the Successful Bidder (unless the Successful Bidder is the Stalking Horse Bidder)

shall complete and execute all documents evidencing and containing the terms and conditions upon which the Successful Bid was made.

Objections to the Sale Transactions (each, a “Sale Objection”), shall: (i) be in writing; (ii) state the name and address of the objecting party and the amount and nature of the claim or interest of such party; (iii) state with particularity the basis and nature of any objection, and if applicable, provide proposed language that, if accepted and incorporated by the Debtors, would obviate such objection; (iv) conform to the Bankruptcy Rules and the Local Rules; (v) be filed with the Court; and (vi) be served upon (a) the Debtors, Winston & Strawn LLP, 35 West Wacker Drive, Chicago, IL 60601 (Attn.: Greg Gartland, Dan McGuire and Joel Mudd) and 200 Park Avenue, New York, New York 10166 (Attn.: Carrie Hardman) and Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 (Attn.: Andrew L. Magaziner, Shella Borovinskaya, and Carol E. Cox); (b) the Office of the United States Trustee for the District of Delaware (Attn: Linda Richenderfer and Jon Lipshie); (c) proposed counsel to the Creditors’ Committee, Greenberg Traurig, LLP, 222 Delaware Avenue, Suite 1600, Wilmington, Delaware 19801 (Attn: Anthony W. Clark and Dennis A. Meloro) and 77 West Wacker Drive, Suite 3100, Chicago, IL 60601 (Attn: Nancy A. Peterman and Danny Duerdoth); (d) counsel for the DIP Lender, Norton Rose Fulbright US LLP, 1301 Avenue of the Americas, New York, NY 10019 (Attn: Robert Hirsh and Francisco Vazquez) and Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, DE 19801 (Attn: Eric J. Monzo); (e) counsel for Column Financial, Inc., Holland & Knight, LLP, 511 Union Street, Ste. 2700, Nashville, Tennessee 37219 (Attn: Tyler Layne) and Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, P.O. Box 2087, Wilmington, DE 19899 (Attn: Adam Landis and Rick Cobb); and (f) counsel for all other Prepetition Secured Parties (collectively, the “Notice Parties”), *provided, that*, the Debtors may extend the Sale Objection Deadline as the Debtors deem appropriate in the exercise of their reasonable business judgment. If a timely Sale Objection cannot otherwise be resolved by the parties, such objection shall be heard by the Court at the applicable Sale Hearing.

An appropriate representative of each Successful Bidder shall appear at the applicable Sale Hearing and be prepared, if necessary, to have such representative(s) testify in support of a Successful Bid and the Successful Bidder’s ability to close in a timely manner and provide adequate assurance of its future performance under any and all executory contracts and unexpired leases to be assumed and assigned to the Successful Bidder as part of the proposed transaction, or otherwise submit such testimony in writing in the form of a sworn declaration to be filed with the Court in advance of the Sale Hearing and appear at the Sale Hearing, all in accordance with and consistent with the rules of Chambers for the Honorable Thomas M. Horan.

Any party who fails to timely file with the Court a Sale Objection will be forever barred from asserting any objection to the applicable sale of the Assets, or to the consummation and performance of a sale transaction contemplated by a purchase agreement with a Debtor and a Successful Bidder, including the transfer of the Assets to a Successful Bidder, free and clear of all claims and interests pursuant to section 363(f) of the Bankruptcy Code. Failure to object shall constitute consent for the purposes of section 363(f) of the Bankruptcy Code. Any objection filed after the Sale Objection Deadline will not be considered by the Court.

The Sale Hearing may be adjourned or rescheduled by the Debtors upon consultation with

the Consultation Parties and any Stalking Horse Bidder to a time and date consistent with the Court's calendar, as set forth in a notice on the docket of these Chapter 11 Cases, a notice of agenda, or stated orally at the Hearing.

Consent to Jurisdiction and Authority as Condition to Bidding

All Potential Bidders (including any Stalking Horse Bidders) that participate in the bidding process with respect to the Assets shall be deemed to have (i) consented to the core jurisdiction of the Court to enter any order or orders, which shall be binding in all respects, in any way related to these Bidding Procedures, the bid process, the Auction, the applicable Sale Hearing, or the construction and enforcement of any agreement or any other document relating to the Sale Transactions; (ii) waived any right to a jury trial in connection with any disputes relating to these Bidding Procedures, the bid process, the Auction, the applicable Sale Hearing, or the construction and enforcement of any agreement or any other document relating to the Sale Transactions; and (iii) consented to the entry of a final order or judgment in any way related to these Bidding Procedures, the bid process, the Auction, the applicable Sale Hearing, or the construction and enforcement of any agreement or any other document relating to the Sale Transactions if it is determined that the Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the parties.

Exhibit 2
Sale Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

**SC HEALTHCARE HOLDING, LLC *et al.*,
Debtors.¹**

Chapter 11

Case No. 24-10443 (TMH)

Jointly Administered

Ref. Docket No. _____

NOTICE OF SALE, BIDDING PROCEDURES, AUCTION, AND SALE HEARING

PLEASE TAKE NOTICE that, on May 1, 2024, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) in these chapter 11 cases, filed with the United States Bankruptcy Court for the District of Delaware (the “Court”) a motion [Docket No. [___]] (the “Motion”) for the entry of an order (the “Bid Procedures Order”)² (i) approving (a) the Bidding Procedures, substantially in the form attached to the Bidding Procedures Order as Exhibit 1; (b) authorizing the Debtors to designate one or more stalking horse bidders (the “Stalking Horse Bidders”); (c) setting the deadline for potential bidders to submit a proposal to purchase the Assets (the “Bid Deadline”), authorizing and scheduling an auction (the “Auction”), and authorizing and scheduling hearings with respect to the approval of a proposed sale transaction (the applicable “Sale Hearing”); (d) authorizing and approving the form and manner of the Sale Notice; (e) authorizing and approving the Cure Notice to Contract Counterparties regarding the Debtors’ potential assumption and assignment of the Assigned Contracts and of the Debtors’ calculation of the amount necessary to cure any defaults thereunder (the “Cure Costs”); and (f) authorizing and approving procedures for the assumption and assignment of the Assigned Contracts and the determination of Cure Costs with respect thereto (collectively, the “Assumption and Assignment Procedures”); (ii) authorizing the sale of all or substantially all of the Debtors’ assets (the “Assets”), free and clear of all liens, claims, encumbrances, and other interests pursuant to section 363(f) of the Bankruptcy Code (collectively, the “Sale Transactions”); and (iii) granting related relief.

PLEASE TAKE FURTHER NOTICE that, on [____], 2024 the Court entered the Bid Procedures Order authorizing the Debtors to solicit bids for the purchase of the Assets and, if one

¹ The last four digits of SC Healthcare Holding, LLC’s tax identification number are 2584. The mailing address for SC Healthcare Holding, LLC is c/o Petersen Health Care Management, LLC 830 West Trailcreek Dr., Peoria, IL 61614. Due to the large number of debtors in these Chapter 11 Cases, whose cases are being jointly administered, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information is available on a website of the Debtors’ claims and noticing agent at www.kccllc.net/Petersen.

² Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Motion, Bid Procedures Order, and the Bidding Procedures, as applicable. Any summary of the Bid Procedures Order or the Bidding Procedures contained herein is qualified in its entirety by the actual terms and conditions thereof. To the extent that there is any conflict between any such summary and such actual terms and conditions, the actual terms and conditions shall control.

or more Qualified Bids are received within the requirements and timeframe specified by the Bidding Procedures, conduct the Auction to select the Successful Bidder. If held, the Auction will be governed by the Bidding Procedures approved pursuant to the Bid Procedures Order.

PLEASE TAKE FURTHER NOTICE of the following important dates and deadlines in connection with the Sale Process:

- **Stalking Horse Deadline**: Any party or entity wishing to serve as a Stalking Horse Bidder for the Assets or any subset thereof must be designated as a Stalking Horse Bidder no later than the Stalking Horse Deadline, June 7, 2024 at 11:59 p.m. (ET)/10:59 p.m. (CT).
- **Bid Deadline**. Any person or entity interested in participating in the Auction must submit a Qualified Bid on or before June 18, 2024 at 6:00 p.m. (ET)/5:00 p.m. (CT) (the “Bid Deadline”).
- **Auction**. An Auction, if necessary, has been scheduled for June 20, 2024 at 10:00 a.m. (ET)/9:00 a.m. (CT) to be held at the offices of Winston & Strawn LLP, 25 W. Wacker Drive, Chicago, IL 60601 or via zoom.
- **Sale Objection Deadline**. Objections to the Sale Transactions, including any objection to the sale of the Assets free and clear of all claims and interests must be (i) filed in accordance with the Bidding Procedures and (ii) filed with the Court by no later than June 18, 2024 at 6:00 p.m. (ET)/5:00 p.m. (CT) (the “Sale Objection Deadline”).
- **Contract Objection Deadline**. Objections to any proposed assumption or assignment of an Assigned Contract must be (i) filed in accordance with the Bidding Procedures and (ii) filed with the Court by no later than June 14, 2024 at 6:00 p.m. (ET)/5:00 p.m. (CT) (the “Contract Objection Deadline”).
- **Sale Hearing**. A hearing to approve the Sale Transactions shall be held before the Court before the Honorable Thomas M. Horan on June 27, 2024 at 10:00 a.m. (ET) (the “Sale Hearing”).

PLEASE TAKE FURTHER NOTICE that the Debtors may assign to a Successful Bidder, pursuant to an asset purchase agreement, certain contracts, agreements, leases and other assets, including assets constituting real property interests (including all fee surface interests in land, surface leases, easements, rights of way, servitudes, licenses, franchises, road, railroad, and other surface use permits or agreements), free and clear of all **liens, claims, interests, and encumbrances** (other than certain permitted post-closing liabilities, liens, or as otherwise provided in the applicable purchase agreement). Subject to approval by the Court, if any party objects to such assignment, including any objection based on any alleged approval or consent right or anti-assignment provision contained in or applicable to any contract, lease, or other agreement (a “Consent Right”), then such party must file with the Court an objection identifying (i) the contract(s), lease(s), or other agreement(s), (ii) the basis for objecting to the assignment of such

contract(s), lease(s), or other agreement(s), and (iii) all supporting documentation (each, an “Assignment Objection”), no later than the Sale Objection Deadline or the Contract Objection Deadline, as applicable.

PLEASE TAKE FURTHER NOTICE THAT IF A PARTY FILES AN ASSIGNMENT OBJECTION IN A MANNER THAT IS CONSISTENT WITH THE REQUIREMENTS SET FORTH ABOVE, AND THE PARTIES ARE UNABLE TO CONSENSUALLY RESOLVE THE DISPUTE PRIOR TO THE SALE HEARING, SUCH OBJECTION WILL BE HEARD BY THE COURT AT THE SALE HEARING OR AT A TIME TO BE DETERMINED BY THE DEBTORS AND THE OBJECTING PARTY.

PLEASE TAKE FURTHER NOTICE THAT any person failing to timely file an Assignment Objection will be (i) forever barred from objecting to the transfer, sale, assumption, and/or assignment of the Debtors’ right, title, and interest in, to and under the assets to be sold, assumed, and/or assigned in connection with a Sale Transaction, free and clear of all liens, claims, interests, and encumbrances, including Consent Rights (other than certain permitted liens), and (ii) deemed to consent to and approve the transfer, sale, and assumption and/or assignment of the Debtors’ right, title, and interest in, to and under such assets free and clear of all liens, claims, interests, and encumbrances, including Consent Rights (other than certain permitted liens), regardless of whether such consent must be in writing pursuant to the terms of any contract, lease, or other agreement.

PLEASE TAKE FURTHER NOTICE that if any person files an Assignment Objection in accordance herewith, the Debtors and other parties in interest will have the opportunity to object to any alleged rights asserted by such person by filing a response to the Assignment Objection (and serving such response on the objecting party) at any time prior to the Sale Hearing. Upon the filing of such response to such objection, any rights asserted will be deemed to be disputed and the Debtors will be entitled to assert that a bona fide dispute exists as to such rights asserted. Nothing herein will be deemed a waiver of any rights of the Debtors or any other parties in interest to contest any rights asserted by any person in such objections, and all such rights of the Debtors are expressly preserved.

PLEASE TAKE FURTHER NOTICE that any party interested in submitting a bid should contact the Debtors’ proposed investment banker, Walker & Dunlop Investment Sales, LLC (Attn: Mark Myers (mmyers@walkerdunlop.com)). Copies of the Motion, the Bid Procedures Order, and the Bidding Procedures may be obtained free of charge at the website dedicated to the Debtors’ chapter 11 cases maintained by their claims and noticing agent and administrative advisor, Kurtzman Carson Consultants LLC, located at www.kccllc.net/Petersen.

PLEASE TAKE FURTHER NOTICE that, except as otherwise set forth in the Bidding Procedures, the Debtors reserve the right, in their reasonable business judgment, in a manner consistent with their fiduciary duties and applicable law to modify the Bidding Procedures; waive terms and conditions set forth herein with respect to all Potential Bidders (as defined below); extend the deadlines set forth herein; announce at the Auction modified or additional procedures for conducting the Auction; alter the assumptions set forth herein; provided, that, the Debtors shall not be authorized to make material modifications to the Bidding Procedures with respect to the

Assets without further order of the Court. The Debtors may provide reasonable accommodations to any Potential Bidder(s) with respect to such terms, conditions, and deadlines of the bidding and Auction process to promote further bids on the Debtors' assets, in each case, to the extent not materially inconsistent with the Bidding Procedures and the Bid Procedures Order, as applicable. All parties reserve their rights to seek Court relief with regard to the Auction, the Bidding Procedures, and any related items (including, if necessary, to seek an extension of the Bid Deadline). In addition, the Debtors reserve their right to cancel the Bidding Procedures and the Auction with respect to any of the Assets if the Debtors determine, in their reasonable business judgment, in a manner consistent with their fiduciary duties, and in consultation with the Consultation Parties, to proceed with a private sale of such assets.

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

PLEASE TAKE FURTHER NOTICE THAT THE FAILURE OF ANY PERSON OR ENTITY TO FILE AN OBJECTION IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER BY THE SALE OBJECTION DEADLINE SHALL FOREVER BAR SUCH PERSON OR ENTITY FROM ASSERTING ANY OBJECTION TO THE MOTION, THE ORDER APPROVING THE SALE TRANSACTIONS, THE PROPOSED SALE TRANSACTIONS, OR ANY OTHER AGREEMENT EXECUTED BY THE DEBTORS AND A SUCCESSFUL BIDDER AT THE AUCTION.

[Signature Page Follows]

Dated: _____, 2024
Wilmington, Delaware

Respectfully submitted,

**YOUNG CONAWAY STARGATT &
TAYLOR, LLP**

/s/

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*Counsel for the Debtors and Debtors in
Possession*

Exhibit 3

Cure Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

**SC HEALTHCARE HOLDING, LLC *et al.*,
Debtors.¹**

Chapter 11

Case No. 24-10443 (TMH)

Jointly Administered

Ref. Docket No. _____

**NOTICE OF CURE COSTS AND POTENTIAL ASSUMPTION AND
ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN
CONNECTION WITH SALE**

PLEASE TAKE NOTICE that, on May 1, 2024, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) in these chapter 11 cases, filed with the United States Bankruptcy Court for the District of Delaware (the “Court”) a motion [Docket No. [___]] (the “Motion”) for the entry of an order (the “Bid Procedures Order”)² (i) approving (a) the Bidding Procedures, substantially in the form attached to the Bid Procedures Order as Exhibit 1; (b) authorizing the Debtors to designate one or more stalking horse bidders (the “Stalking Horse Bidders”); (c) setting the deadline for potential bidders to submit a proposal to purchase the Assets (the “Bid Deadline”), authorizing and scheduling an auction (the “Auction”), and authorizing and scheduling hearings with respect to the approval of a proposed sale transaction (the applicable “Sale Hearing”); (d) authorizing and approving the form and manner of the Sale Notice; (e) authorizing and approving the Cure Notice to Contract Counterparties regarding the Debtors’ potential assumption and assignment of the Assigned Contracts and of the Debtors’ calculation of the amount necessary to cure any defaults thereunder (the “Cure Costs”); and (f) authorizing and approving procedures for the assumption and assignment of the Assigned Contracts and the determination of Cure Costs with respect thereto (collectively, the “Assumption and Assignment Procedures”); (ii) authorizing the sale of certain of the Debtors’ assets, free and clear of all liens, claims, encumbrances, and other interests pursuant to section 363(f) of the Bankruptcy Code (collectively, the “Sale Transactions”); and (iii) granting related relief.

PLEASE TAKE FURTHER NOTICE that, on [____], 2024 the Court entered the Bid

¹ The last four digits of SC Healthcare Holding, LLC’s tax identification number are 2584. The mailing address for SC Healthcare Holding, LLC is c/o Petersen Health Care Management, LLC 830 West Trailcreek Dr., Peoria, IL 61614. Due to the large number of debtors in these Chapter 11 Cases, whose cases are being jointly administered, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information is available on a website of the Debtors’ claims and noticing agent at www.kccllc.net/Petersen.

² Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Motion, Bid Procedures Order, and the Bidding Procedures, as applicable. Any summary of the Bid Procedures Order or the Bidding Procedures contained herein is qualified in its entirety by the actual terms and conditions thereof. To the extent that there is any conflict between any such summary and such actual terms and conditions, the actual terms and conditions shall control.

Procedures Order authorizing the Debtors to solicit bids for the purchase of the Assets and, if one or more Qualified Bids are received within the requirements and timeframe specified by the Bidding Procedures, conduct the Auction to select the Successful Bidder. If held, the Auction will be governed by the Bidding Procedures approved pursuant to the Bid Procedures Order.

PLEASE TAKE FURTHER NOTICE that each of the Assigned Contracts that may be assumed and assigned in connection with the Sale Transactions with a Successful Bidder and the Debtors' calculation of the Cure Costs with respect thereto are set forth on **Exhibit A** and **Exhibit B** hereto. The Cure Costs are the only amounts proposed to be paid upon the assumption and assignment of the Assigned Contracts.

PLEASE TAKE FURTHER NOTICE that the inclusion of any contract or lease on **Exhibit A** or **Exhibit B** shall not constitute or be deemed a determination or admission by the Debtors that such contract or other document is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code (all rights with respect thereto being expressly reserved).

PLEASE TAKE FURTHER NOTICE that, notwithstanding the inclusion of any lease or contract on **Exhibit A** or **Exhibit B**, a Successful Bidder is not bound to accept assignment of any Assigned Contract, and may amend the schedule of Assigned Contracts to remove any contract or lease.

PLEASE TAKE FURTHER NOTICE that if (a) the Debtors identify (i) additional contracts or leases to be assumed and assigned to a Successful Bidder or (ii) modifications that need to be made to a proposed Cure Cost previously stated in the Cure Notice, or (b) a Successful Bidder designates any additional contracts or leases not previously included on this Cure Notice for assumption and assignment, the Debtors shall promptly file with the Court and serve by first class mail on the applicable Contract Counterparty a Supplemental Cure Notice in accordance with the Bid Procedures Order.

PLEASE TAKE FURTHER NOTICE that any objection to the proposed assumption or assignment of an Assigned Contract identified on **Exhibit A** or **Exhibit B**, including any objection to the proposed Cure Cost, the provision of adequate assurance of future performance, an Assignment Objection (as defined in the Bid Procedures Order), or a Rights Objection (as defined in the Bid Procedures Order) must: (a) be in writing; (b) state the name and address of the objecting party and the amount and nature of the claim or interest of such party; (c) state, with particularity, the basis and nature of any objection, and provide proposed language that, if accepted and incorporated by the Debtors, would obviate such objection; (d) conform to the Bankruptcy Rules and the Local Rules; and (e) be filed with the Court no later than **June 14, 2024 at 6:00 p.m. (ET)/5:00 p.m. (CT)**.

PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTION IS TIMELY RECEIVED WITH RESPECT TO AN ASSIGNED CONTRACT (THE "CONTRACT OBJECTION"): (I) **THE CONTRACT COUNTERPARTY TO SUCH ASSIGNED CONTRACT SHALL BE DEEMED TO HAVE CONSENTED TO THE ASSUMPTION BY THE DEBTORS AND ASSIGNMENT TO SUCCESSFUL BIDDER OF THE ASSIGNED**

CONTRACT, AND BE FOREVER BARRED FROM ASSERTING ANY OBJECTION WITH REGARD TO SUCH ASSUMPTION AND ASSIGNMENT (INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO ADEQUATE ASSURANCE OF FUTURE PERFORMANCE BY THE SUCCESSFUL BIDDER); (II) ANY AND ALL DEFAULTS UNDER THE ASSIGNED CONTRACT AND ANY AND ALL PECUNIARY LOSSES RELATED THERETO SHALL BE DEEMED CURED AND COMPENSATED PURSUANT TO BANKRUPTCY CODE SECTION 365(B)(1)(A) AND UPON PAYMENT OF THE CURE COSTS SET FORTH IN THE CURE NOTICE FOR SUCH ASSIGNED CONTRACT; AND (III) THE CONTRACT COUNTERPARTY SHALL BE FOREVER BARRED FROM ASSERTING ANY OTHER CLAIMS RELATED TO SUCH ASSIGNED CONTRACT AGAINST THE DEBTORS AND THEIR ESTATES OR THE SUCCESSFUL BIDDER, OR THE PROPERTY OF ANY OF THE THEM, THAT EXISTED PRIOR TO THE ENTRY OF THE ORDER RESOLVING SUCH CONTRACT OBJECTION AND ANY SALE ORDER.

PLEASE TAKE FURTHER NOTICE that the Debtors will seek to assume and assign the Assigned Contracts at the applicable hearing to approve the Sale Transactions (the applicable “Sale Hearing”) that is scheduled to commence on **June 27, 2024 at 10:00 a.m. (prevailing Eastern Time)** before the Honorable Thomas M. Horan, United States Bankruptcy Judge, at the Bankruptcy Court, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801. Objections, if any, that cannot otherwise be resolved by the parties, will be heard at a hearing scheduled prior to any scheduled closing of the Sale Transactions, as determined by the Debtors in accordance with the Bid Procedures Order.

PLEASE TAKE FURTHER NOTICE that copies of the Motion, the Bid Procedures Order, and the Bidding Procedures may be obtained free of charge at the website dedicated to the Debtors’ Chapter 11 Cases maintained by their claims and noticing agent and administrative advisor, Kurtzman Carson Consultants LLC, located at www.kccllc.net/Petersen.

[Signature Page Follows]

Dated: _____, 2024
Wilmington, Delaware

Respectfully submitted,

**YOUNG CONAWAY STARGATT &
TAYLOR, LLP**

/s/

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