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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

No. 3:16-cv-00438-PK

RECEIVER'S MOTION FOR ORDERS: (1)  
SCHEDULING HEARING TO APPROVE  
SALE OF ASSETS; (2) APPROVING

Page 1 - RECEIVER'S MOTION RE ASSET SALE AND  
BIDDING PROCEDURES RE: AEQUITAS SENIOR  
HOUSING

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v.

AEQUITAS MANAGEMENT, LLC;  
 AEQUITAS HOLDINGS, LLC;  
 AEQUITAS COMMERCIAL FINANCE,  
 LLC; AEQUITAS CAPITAL  
 MANAGEMENT, INC.; AEQUITAS  
 INVESTMENT MANAGEMENT, LLC;  
 ROBERT J. JESENIK, BRIAN A. OLIVER;  
 and N. SCOTT GILLIS,

Defendants.

CIVITAS SENIOR HEALTHCARE, LLC AS  
 STALKING HORSE BIDDER; (3)  
 APPROVING BIDDING PROCEDURES;  
 and (4) APPROVING THE SALE OF  
 ASSETS FREE AND CLEAR OF ALL  
 LIENS, CLAIMS, ENCUMBRANCES AND  
 INTERESTS

### LR 7-1 CERTIFICATION

On April 19, 2017, the undersigned circulated to the approximately 71 counsel of record, via email, a form of this Motion<sup>1</sup> and a proposed Bid Procedures Order that are substantially the same as the filed versions. The conferral requested that counsel respond by 12:00 Noon Pacific Time on April 26, 2017, as to whether their clients object or consent to this Motion. As of the date of filing this Motion, the undersigned had received no consents or objections to the relief sought by this Motion, and one party stated that it took no position on the Motion.

### OVERVIEW AND MOTION

Ronald F. Greenspan, the duly appointed Receiver (“Receiver”) on behalf of each of Aequitas Senior Housing, LLC, and Aequitas Senior Housing Operations, LLC (together, the “Seller”), has reached an agreement, subject to approval of this Court, with Civitas Senior Healthcare, LLC, or its permitted assignee (the “Stalking Horse Bidder” or “Buyer”), which provides the terms for sale (“Sale”) of Seller’s interests in certain Loan Documents and Warrant Documents (as those terms are defined in the Letter Agreement dated April 17, 2017, submitted herewith) (the “Letter Agreement”). The Stalking Horse Bidder is prepared to close the Sale on or before May 31, 2017, subject to this Court’s approval of the Letter Agreement and the

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<sup>1</sup> Capitalized terms not otherwise defined in this Motion shall have the meanings ascribed to them in the Final Receivership Order, the Bidding Procedures, or Letter Agreement, as applicable.

## Bidding Procedures.

The Sale is an all cash offer in the amount of \$1,900,000.00, which shall be paid at closing as set forth in the Letter Agreement, a copy of which is attached as Exhibit 1 to the accompanying Declaration of Ronald F. Greenspan (“Greenspan Decl.”).

The Receiver now moves (the “Motion”) the Court for an order 1) approving the Bidding Procedures and the Stalking Horse Bidder, 2) setting a deadline for filing and serving objections to the Sale and other relief requested by this Motion, and 3) setting a Final Hearing for approval of the Sale to the Stalking Horse Bidder or a sale to a Successful Bidder after the conclusion of the Auction, if any (the “Bid Procedures Order”).

At the Final Hearing the Receiver shall request entry of a final order approving the Sale and all associated transactions and agreements (the “Final Sale Order”), after any bidding and auction process has been completed.

### **I. Bid Procedures Order and the Final Sale Order.**

1. The Receiver moves the court for immediate entry of the Bid Procedures Order, which includes the following relief:

- (a) Schedule a final hearing on May 26, 2017, or as soon thereafter as the Court can schedule the hearing to authorize and approve the sale of the Purchased Assets and all other transactions contemplated by the Letter Agreement (the “Final Hearing”);
- (b) Approval of (i) the Bidding Procedures, (ii) Buyer as the “stalking horse bidder,” and (iii) the return of any initial deposit, if at all, on the terms set forth in the Letter Agreement;
- (c) Set a deadline and establish requirements and procedures for competing offerors to submit qualifying alternative bids, as set forth in the Bidding Procedures;

- (d) Provide that if no Qualified Alternative Bids are received by the Bid Deadline, then the Final Hearing may be cancelled by the Receiver, and the Final Sale Order may be submitted for immediate entry by the Court, without further notice or opportunity to be heard; and
- (e) Set deadlines of (i) May 17, 2017, for filing objections (the “Objection Deadline”) to the relief sought by this Motion, including but not limited to objections to entry of the Final Sale Order or the conduct of the Auction, if any, and (ii) the date that is three (3) business days prior to the Final Hearing for filing a reply to any such objection.

2. At the Final Hearing for approval of the Sale, the Receiver will ask the Court for entry of the Final Sale Order, which will authorize:

- (a) the sale of the Purchased Assets under the terms and conditions of an approved Letter Agreement to the Stalking Horse Bidder, or another Successful Bidder, free and clear of all liens, claims, encumbrances and interests (“Liens”); and
- (b) authorize any additional relief consistent with the foregoing and as necessary to allow the approved transaction to be consummated.

3. At the Final Hearing the Receiver will also request that the Court find that:

- (a) the proposed Sale to the Stalking Horse Bidder, or Sale to another Successful Bidder, is in the best interests of the Seller, the Receivership Entity, and its estate and creditors;
- (b) the proposed Sale is being proposed and, if approved, will be consummated pursuant to the terms of the approved Letter Agreement (or substantially similar agreement if the Sale is to another Successful Bidder); and

(c) the Stalking Horse Bidder or the Successful Bidder is not an insider or affiliate of the Receiver or the Receivership Entity.

4. This Motion is based upon the records and files herein and the accompanying Declaration of Ronald F. Greenspan.

## **II. Procedural and Fact Background.**

### **A. Appointment of the Receiver and Description of the Purchased Assets.**

5. On March 16, 2016, pursuant to the Stipulated Interim Order Appointing Receiver, Mr. Greenspan was appointed as Receiver for the five entity defendants and 43 related entities on an interim basis (the “Interim Receivership Order”) [Dkt. 30]. On April 14, 2016, pursuant to the Order Appointing Receiver, Mr. Greenspan was appointed as Receiver of the five entity defendants and 43 related entities on a final basis (the “Final Receivership Order”) [Dkt. 156]. The five entity defendants and the 43 related entities are known as the Receivership Entity.<sup>2</sup> (Greenspan Decl., ¶ 2).

6. The Notes and Warrants. Pursuant to the Interim Receivership Order and the Final Receivership Order the Receiver has, among other things, undertaken to determine the nature, location and value of all Receivership Property. Receivership Property includes the Loan Documents and Warrant Documents described in the Letter Agreement. (Greenspan Decl., ¶ 4, Exhibit 1, at pp. 10-11 (Schedules A and B)).

7. The Buyer is the general partner in the senior housing project in which the Seller is either a warrant holder or a note holder, but otherwise has no relationship to the Receivership Entities.

8. The Purchased Assets consist of promissory notes issued by Ledgestone Holdings, LLC and warrants to purchase membership units in Ledgestone Holdings, LLC and Ledgestone Management, LLC. The notes were purchased by Aequis Senior Housing, LLC

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<sup>2</sup> Final Receivership Order, ¶ 1.

from January 2015 to March 2015 pursuant to a Note Purchase Agreement dated January 9, 2015. The initial aggregate purchase price (and corresponding initial principal balance) was \$2,921,372.64. The notes have five-year terms and carry compounded interest at a rate of 13% per annum for the first six quarters (until October 1, 2016) and then became due and payable on a quarterly basis thereafter. The notes are secured by substantially all the personal property assets of Ledgestone Holdings, LLC. As of March 31, 2017, the notes had an outstanding principal balance of \$3,646,564.50 with accrued and unpaid interest of \$356,910.66. The warrants were issued to Aequis Senior Housing Operations, LLC, an affiliate of Aequis Senior Housing, LLC, as additional consideration for the purchase of the notes and give Aequis Senior Housing Operations, LLC the right to purchase certain membership units of each of Ledgestone Holdings, LLC and Ledgestone Management, LLC.

9. The Letter Agreement is the result of substantial negotiations between the parties and has resulted in an increase in the purchase price by approximately \$400,000. The Receiver evaluated the negotiated price against the expected future cash flow of the project and then discounted that payment stream by a reasonable discount rate reflective of the risk profile of the project. The Receivership will continue marketing the Receivership's interests in the project during the stalking horse period. Although the Receiver has continued his efforts to market the Receivership's interests, the Receiver has been unable to obtain any expressed interest in purchasing the Receivership's minority interest in this project, which is short on funding, operating over budget and behind schedule. The Receiver seeks approval of the competitive bidding and auction procedures described below (the "Bidding Procedures") in order to ensure that the Receivership Entity will obtain the best return possible for the Purchased Assets. The Bidding Procedures are detailed in the proposed Bid Procedures Order submitted herewith. (Greenspan Decl., ¶ 7).

B. Proposed Terms of Sale.

10. Pursuant to the Letter Agreement the material terms of the Sale will include the following:

- (a) Property to be Sold: The Purchased Assets (as defined in the Letter Agreement), including the Loan Documents and Warrant Documents.
- (b) Owners of the Purchased Assets: Aequitas Senior Housing, LLC, and Aequitas Senior Housing Operations, LLC.
- (c) Purchase Price: \$1,900,000.00, in cash at closing, as set forth in the Letter Agreement.
- (d) Principal Conditions to Buyer's Obligation to Close: The conditions to the Buyer's obligation to close the Sale are set forth in Section 9 of the Letter Agreement.
- (e) Buyer: Civitas Senior Healthcare, LLC, or its permitted assignee.
- (f) Buyer's Relation to Receivership Entity or Receiver: None, except as disclosed above.
- (g) Higher and Better Offers. The Letter Agreement will be subject to the submission by third parties of higher or better offers as set forth in the Bid Procedures Order. In order for other bidders to submit a Qualified Alternative Bid, the alternative bid must, among other requirements, be an all cash offer that is not less than \$200,000.00 more than the Stalking Horse Bidder's offer.
- (h) Closing Deadline: May 31, 2017.
- (i) The Stalking Horse Bidder's offer is not subject to any finance or due diligence conditions.
- (j) Limited representations and warranties, with limited covenants, releases,

indemnities and closing conditions for the purchase and assumption of the Purchased Assets.

(Greenspan Decl., ¶ 8).

11. The Purchase Price represents fair value for the Purchased Assets. The proposed Sale delivers substantial value to the Receivership Entity, and its creditors and equity owners, including:

- (a) Estimated recovery of not less than \$1,900,000.00 for the Receivership Entity and its stakeholders; and
- (b) The auction and overbid component of the proposed Sale ensure that the \$1,900,000.00 being obtained at closing for the Purchased Assets is the market rate. If competitive bids are received, the benefit to the Receivership Entity and its creditors and investors will only increase.

(Greenspan Decl., ¶ 9).

12. The negotiations over the terms of the Sale were arm's-length and will be subject to the competitive process outlined above. The Receiver and his representatives participated personally in those negotiations. The Receiver believes that Buyer has at all times acted in good faith in connection with the sales process. The Letter Agreement was proposed and negotiated in good faith after arm's-length bargaining by the parties. The negotiation of the Letter Agreement was extensive and protracted. All of the material terms of the proposed Sale are disclosed. No side agreements exist between or among any party to the transaction, and there is no relationship between the Seller and Buyer, other than as disclosed above. (Greenspan Decl., ¶ 10).

13. If a Qualified Alternative Bid is received, then after the completion of the auction process the Receiver will, in the sole exercise of his business judgment, determine the highest and best bid for the Purchased Assets.



14. The SEC was notified of the intended sale and terms, and to the best of the Receiver's knowledge does not object to the proposed Sale or the Bidding Procedures. (Greenspan Decl., ¶ 11).

C. The Terms of the Bidding Procedures.<sup>3</sup>

19. Buyer will be designated as the "Stalking Horse" bidder for a period not to exceed 14 calendar days after the date of entry of the Bid Procedures Order (the Notice Period, defined below).

20. During the Notice Period, the Letter Agreement is subject to the submission by third parties of higher or better offers as set forth in the Bid Procedures Order. In order for an alternative bid to be a Qualified Alternative Bid, the bid must, among other things: 1) be made not later than 12:00 Noon Pacific Time on the last day of the Notice Period, 2) be in an amount that is not less than \$2,100,000.00, to be paid in cash at closing, 3) provide for the purchase of all of the Purchased Assets on substantially the same or better terms (as determined in the Receiver's sole discretion) as those set forth in the Letter Agreement, and 4) include proof, reasonably satisfactory to the Receiver in his sole discretion, of the bidder's ability to close.

22. In the event a Qualified Alternative Bid is received and such sale closes, the Receivership Entity will still realize approximately \$200,000.00 in additional net sale proceeds for the Receivership Entity.

23. The Receiver shall be entitled to solicit additional offers for the Purchased Assets from prospective bidders (each, an "Alternative Bid") for fourteen (14) calendar days following the date of entry of the Bid Procedures Order (the "Notice Period") and, subject to the receipt from the prospective bidders of appropriate confidentiality agreements, provide necessary and requested due diligence to such prospective bidders. The Receiver proposes the following terms

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<sup>3</sup> If there is any inconsistency or contradiction between the bidding procedures described in this Motion and the Bidding Procedures set forth in the Bid Procedures Order, the terms of the Bid Procedures Order shall control.

and procedures to govern the submission of Alternative Bids for the Purchased Assets:

- (i) Alternative Bid Deadline. Each Alternative Bid must be provided in writing to the Receiver not later than 12:00 Noon Pacific Time on the date that the Notice Period expires (the “Bid Deadline”).
- (ii) Qualified Alternative Bid. The Receiver will consider an Alternative Bid only if the Alternative Bid is a “Qualified Alternative Bid.” Without limiting or altering the terms of the Letter Agreement, to be a Qualified Alternative Bid, an Alternative Bid must:
  - a. identify the proponent of the Alternative Bid and an officer or representative who is duly authorized in all respects to appear, act on behalf of, and legally bind such proponent (an “Authorized Representative”);
  - b. provide for the purchase of all of the Purchased Assets, and shall otherwise be on substantially the same or better terms as those set forth in the Letter Agreement, in the Receiver’s sole discretion; provided, however, that an Alternative Bid shall not provide for the payment of a break-up fee or overbid protections because no bidders will be entitled to receive a break-up fee and/or any reimbursement of expenses or transaction costs;
  - c. be accompanied by an executed agreement in form substantially the same as the Letter Agreement, except that the structure may be changed so long as the value delivered to the Seller is at least \$2,100,000.00, payable in cash at closing;
  - d. be a firm offer and not contain any contingencies other than those contained in the Letter Agreement, to the validity, effectiveness or binding nature of the offer, including without limitation, contingencies for financing, due diligence or inspection;
  - e. be accompanied by financial information for the prospective bidder, including but not limited to financial statements including the prospective bidder’s balance sheet or such other information sufficient to enable the Receiver to determine such bidder’s creditworthiness and ability to pay the purchase price and close a sale; provided, however, determination that the bidder has met this qualification shall be in the sole discretion of the Receiver;
  - f. be accompanied by a deposit of \$250,000 (the “Initial Deposit”).

The Initial Deposit from a Qualified Alternative Bidder that is (i) not designated as the Back-Up Bidder shall be returned within five (5) business days following the Auction or entry of the Final Sale Order, whichever is later, and (ii) the Initial Deposit from a Qualified Alternative Bidder that is designated the Back-Up Bidder shall be returned within five (5) business days after the closing of the Sale to the Successful Bidder or forty-five (45) days after the entry of the Final Sale Order, whichever is later; and

- g. be open and irrevocable through the conclusion of the Final Hearing unless (i) extended by agreement of the parties or the terms of the Bidding Procedures, or (ii) the Qualified Alternative Bid is designated a Back-Up Bid, which shall then remain open until forty-five (45) days following the entry of the Final Sale Order.

24. If the Receiver receives one or more Qualified Alternative Bids, the Receiver shall conduct an auction (the “Auction”) at the offices of Schwabe, Williamson & Wyatt, 1211 SW Fifth Avenue, Suite 1900, Portland, OR 97204 at 10:00 a.m. Pacific Time on the third (3<sup>rd</sup>) business day following the expiration of the Notice Period, or such later time and date and/or such other place as the Receiver shall notify all bidders who have submitted Qualified Alternative Bids (together, “Qualified Alternative Bidders”) and the Stalking Horse Bidder. The following procedures will apply to the Auction:

- (i) Only the following parties and their counsel shall be permitted to attend the Auction: the Stalking Horse Bidder, Qualified Alternative Bidders, and the Receiver. Only the Stalking Horse Bidder and Qualified Alternative Bidders, including through their counsel, shall be permitted to make any additional bids (“Subsequent Bids”) at the Auction.
- (ii) All Qualified Alternative Bidders that desire to participate in the Auction shall have their Authorized Representatives physically present for all bidding, each with the understanding that the true identity of each Qualified Alternative Bidder shall be fully disclosed to all other bidders and that all material terms, including but not limited to the amount of each bid will be fully disclosed to all other bidders throughout the entire Auction.
- (iii) The Receiver will give the Stalking Horse Bidder, all Qualified Alternative Bidders, and their counsel a copy of the highest and best

Qualified Alternative Bid received and copies of all other Qualified Alternative Bids prior to the start of the Auction. In addition, the Receiver will inform the Stalking Horse Bidder and each Qualified Alternative Bidder who has expressed its intent to participate in the Auction of the identity of all Qualified Alternative Bidders that may participate in the Auction.

- (iv) Prior to the start of the Auction the Authorized Representative of (i) the Stalking Horse Bidder and (ii) each Qualified Alternative Bidder shall certify, in writing or on the record, as follows:
  - (a) Each bid it makes at the Auction shall, if accepted by the Receiver, constitute a binding and legally enforceable contract of the bidder to timely close a purchase of the Purchased Assets according to the terms of the bid in the event an order of the Court is entered approving a sale based upon such bid.
  - (b) No bids made by the Stalking Horse Bidder or a Qualified Alternative Bidder, whether before or during the Auction, shall be subject to any conditions or contingencies related to due diligence, financing, or any other further approval other than by the Authorized Representative present at the Auction.
  - (c) The Authorized Representative present for the Stalking Horse Bidder or a Qualified Alternative Bidder at the Auction has the full power and authority to act on behalf of and to legally bind the Stalking Horse Bidder or such Qualified Alternative Bidder for any bids made, and any agreements entered into at or in connection with the Auction.
  - (d) The Stalking Horse Bidder and each Qualified Alternative Bidder that participates in the Auction shall authorize the Receiver to conditionally accept the second-highest bid at the Auction as a back—up to the Successful Bid, and such bidder will be the Back-Up Bidder, and such bid shall become binding upon and enforceable against such bidder in the event that the Successful Bid is approved by the Court, but such Successful Bidder fails or otherwise refuses to close its purchase of the Purchased Assets for any reason other than a material failure of performance by the Seller.
  - (e) That the Stalking Horse Bidder and each Qualified Alternative Bidder has at all times proceeded in good faith in submitting its bids, and has not engaged in any collusion with any other person or

bidder with respect to the Auction and related proceedings.

25. The Receiver shall have reasonable discretion with respect to the conduct of the Auction. Among other things, the Receiver may announce at the Auction additional procedural rules that he determines to be reasonable under the circumstances (e.g. the amount of time allotted to make subsequent alternative bids) for conducting the Auction so long as such additional rules are not materially inconsistent with the Bidding Procedures and the terms, deadlines, and intent of the Letter Agreement.

- (i) At the Auction, bidding shall begin with the highest and best Qualified Alternative Bid (the “Initial Overbidder”). The Receiver will identify the Initial Overbidder at the beginning of the Auction. Any subsequent bids must be at least \$50,000.00 more than the immediately preceding bid and each such increment (together with all bid amounts in excess of the Purchase Price) must be payable in cash.
- (ii) The Auction, at the discretion of the Receiver, shall be recorded by stenographer or other reliable means of preserving the record of the Auction proceedings, and shall continue in one or more rounds of “open cry,” or publicly announced bidding and shall conclude after each participating bidder has had the opportunity, within any time period specified by the Receiver, to submit an additional Subsequent Bid with full knowledge of the then-existing highest bid.
- (iii) For the purpose of evaluating the value of the consideration provided by each Subsequent Bid (including any Subsequent Bid by the Stalking Horse Bidder), the value shall be the net cash consideration payable to the Seller.
- (iv) At the conclusion of the bidding, the Receiver shall announce his determination (pursuant to the following paragraph) as to the bidder (the “Successful Bidder”) submitting the highest and best bid (the “Successful Bid”), which shall be submitted to the Court for approval at the Final Hearing. The Stalking Horse Bidder shall be deemed a party-in-interest with standing to appear and be heard in connection with any motions, objections, hearings, or other proceedings related to this Motion, the Letter Agreement, the Auction, and any Qualified Alternative Bid, Subsequent Bid, or the Successful Bid.

- (v) In determining the Successful Bid to submit to the Court for approval, the Receiver, in his sole discretion and in consultation with his professionals, shall determine whether a Qualified Alternative Bid constitutes a higher and better offer than the bid of the Stalking Horse Bidder. In making that determination, the Receiver may consider any and all factors associated with all Qualified Alternative Bids and Qualified Alternative Bidders, including but not limited to factors such as the likelihood and ability of the proposed buyer(s) to immediately consummate and close the proposed transactions, other timing issues, overall value of the Qualified Alternative Bids, and any other material factors.
- (vi) The Court shall set a deadline in the Bid Procedures Order for filing objections to the Motion or entry of the Final Sale Order (the “Objection Deadline”). Any objections to the Motion or entry of the Final Sale Order that are not filed with the Court by the Objection Deadline shall be deemed irrevocably waived and withdrawn.
- (vii) If the Receiver does not timely receive any Qualified Alternative Bids, the Receiver shall forthwith cancel the Auction and the Final Hearing, and promptly present the Final Sale Order to the Court for immediate entry without further notice or hearing.
- (viii) If, following the entry of the Final Sale Order approving a sale to the Successful Bidder, such Successful Bidder fails or otherwise refuses to consummate such sale, then the next highest or best bid shall be deemed as the back-up bid (the “Back-Up Bid” and, such bidder, the “Back-Up Bidder”) and the Seller will be obligated to effectuate a sale to the Back-Up Bidder subject to the terms of the Back-Up Bid without further order of the Court. The Back-Up Bid shall remain open until forty-five (45) days following the entry of the Final Sale Order. All Qualified Alternative Bids (other than the Successful Bid and the Back-Up Bid) shall be deemed rejected by the Receiver on and as of the date of entry of the Final Sale Order by the Court.

### III. Points and Authorities.

27. Pursuant to the Final Receivership Order, the Receiver may sell assets “outside the ordinary course of business...only with Court approval after reasonable notice under the circumstances and an opportunity for interested parties to be heard.” (Final Receivership Order, ¶ 26). Here, sale of the Purchased Assets is outside of the ordinary course of the Receivership Entity’s business, so this Court’s approval is required.

28. Estate assets such as the Purchased Assets may be sold “free and clear of any liens, claims or encumbrances, with such liens, claims or encumbrances attaching to the proceeds” of sale. (*Id.*). Pursuant to the Final Receivership Order, the Sale of the Purchased Assets shall be free and clear of any and all Liens, if any. In connection with the closing of the Sale and the satisfaction of the conditions contemplated therein, all Liens as of the date of the closing of the Sale shall be released as against the Purchased Assets, and shall attach to the proceeds of Sale to the same extent, validity, and priority as they attached to the Purchased Assets, if any. (Greenspan Decl., ¶ 12).

29. To the best of the Receiver’s knowledge, after diligent investigation, there are no Liens against the Purchased Assets. (Greenspan Decl., ¶ 13).

30. The Receiver’s proposed sale of the Purchased Assets free and clear of Liens is comparable to a bankruptcy trustee’s sale of assets in a bankruptcy proceeding under Section 363 of the Bankruptcy Code. 11 USC § 363. That section authorizes a trustee, “after notice and a hearing, [to] use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 USC § 363(b)(1). This provision generally allows a debtor in possession to sell property of the estate outside the ordinary course of business where the proposed sale is within the sound exercise of the trustee’s business judgment and when the sale is proposed in good faith and for fair value. *See In re Lionel Corp.*, 722 F2d 1063, 1070-71 (2<sup>nd</sup> Cir 1983). When a trustee or debtor articulates a reasonable basis for its business decisions, the “court will generally not entertain objections to the debtor’s conduct.” *In re Johns-Manville Corp.*, 60 BR 612, 616 (Bankr SDNY 1986).

31. The Sale is proposed in good faith. “Typically, the misconduct that would destroy a buyer’s good faith status at a judicial sale involves fraud, collusion between the buyer and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.” *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F2d 143, 147 (3d Cir 1986) (quoting *In re Rock*



*Indus. Mach. Corp.*, 572, F2d 1195, 1198 (7<sup>th</sup> Cir 1978)). Here, the Letter Agreement was proposed and negotiated in good faith after arm's-length bargaining by the parties. The negotiation of the Letter Agreement was extensive and protracted. All of the material terms of the proposed Sale are disclosed. No side agreements exist between or among any party to the transaction, and there is no relationship between the Seller and the Stalking Horse Bidder.

32. The proposed Sale is contractually subject to the Receiver's receipt of higher and better offers through a bidding and auction process. The Receiver seeks authority to implement procedures to ensure that the Receivership Entity will obtain the best return possible.

33. The proposed Bidding Procedures are in the best interest of the Receivership Entity, and its creditors and investors. The Bidding Procedures are designed to strike a balance between inviting competing bids and enabling the Receiver to close a sale with the Stalking Horse Bidder within a reasonable time frame. (Greenspan Decl., ¶ 14).

36. Here, the Bidding Procedures were an integral part of the Stalking Horse Bidder's offer. In fact, the Stalking Horse Bidder's offer to purchase the Purchased Assets was and remains conditioned on the Court's approval of the Bidding Procedures. Accordingly, the Receiver respectfully submits that this Court should authorize and approve the Bidding Procedures. (Greenspan Decl., 14).

37. The Bidding Procedures are fair, reasonable and necessary to promote the highest and best sale price, without imposing undue obstacles to the competitive bid process. Further, a receiver often employs bidding protections in order to encourage the making of an original offer subject to higher and/or better offers and ultimately to increase value. (Greenspan Decl., ¶ 15).

38. Buyer has no known relation to the Receiver or the Receivership Entity, except as disclosed above. (Greenspan Decl., ¶ 16).

39. In short, the Sale is an arm's-length transaction, proposed in the sound exercise of the Receiver's business judgment, in good faith and for fair value. The Sale is in the best



interests of the Receivership Entity, and its creditors and investors.

**IV. Conclusion.**

1. For the foregoing reasons, the Receiver respectfully requests that this Court immediately enter the Bid Procedures Order (substantially in the form submitted herewith):

- (a) Scheduling the Final Hearing on May 26, 2017, or as soon thereafter as the Court can schedule the Final Hearing;
- (b) Approving (i) the Bidding Procedures, (ii) Buyer as the “stalking horse bidder”, and (iii) the return of any initial deposit, if at all, on the terms set forth in the Letter Agreement;
- (c) Setting a deadline and establishing requirements and procedures for competing offerors to submit qualifying alternative bids, as set forth in the Bidding Procedures;
- (d) Provide that if no Qualified Alternative Bids are received by the Bid Deadline, then the Final Hearing may be cancelled by the Receiver, and the Final Sale Order may be submitted for immediate entry by the Court, without further notice or opportunity to be heard; and
- (e) In the event a Qualified Alternative Bid is submitted to the Receiver, set the Objection Deadline to entry of the Final Sale Order or the conduct of the Auction, if any, and (ii) the date that is three (3) business days prior to the Final Hearing for filing a reply to any such objection.

2. The Receiver further requests that the Court, at the Final Hearing, enter the Final Sale Order, which will request the following:

- (a) Authorize and approve the Letter Agreement; and
- (b) Authorize the sale of the Purchased Assets under the terms and conditions of the Letter Agreement to the Stalking Horse Bidder, or another

Successful Bidder free and clear of all Liens, and authorize any additional relief consistent with the foregoing and as necessary to allow the proposed transaction to be consummated.

Dated this 26th day of April, 2017.

Respectfully submitted,

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