

SAMUEL R. MAIZEL (Bar No. 189301)  
samuel.maizel@dentons.com  
TANIA M. MOYRON (Bar No. 235736)  
tania.moyron@dentons.com  
NICHOLAS A. KOFFROTH (Bar No. 287854)  
nicholas.koffroth@dentons.com  
DENTONS US LLP  
601 South Figueroa Street, Suite 2500  
Los Angeles, California 90017-5704  
Tel: (213) 623-9300 / Fax: (213) 623-9924  
Attorneys for the Chapter 11 Debtors and  
Debtors In Possession

**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

In re  
VERITY HEALTH SYSTEM OF  
CALIFORNIA, INC., *et al.*,  
Debtors and Debtors In  
Possession.  
☒ Affects All Debtors  
☐ Affects Verity Health System of  
California, Inc.  
☐ Affects O'Connor Hospital  
☐ Affects Saint Louise Regional Hospital  
☐ Affects St. Francis Medical Center  
☐ Affects St. Vincent Medical Center  
☐ Affects Seton Medical Center  
☐ Affects O'Connor Hospital Foundation  
☐ Affects Saint Louise Regional Hospital  
Foundation  
☐ Affects St. Francis Medical Center of  
Lynwood Foundation  
☐ Affects St. Vincent Foundation  
☐ Affects St. Vincent Dialysis Center, Inc.  
☐ Affects Seton Medical Center Foundation  
☐ Affects Verity Business Services  
☐ Affects Verity Medical Foundation  
☐ Affects Verity Holdings, LLC  
☐ Affects De Paul Ventures, LLC  
☐ Affects De Paul Ventures - San Jose  
Dialysis, LLC  
Debtors and Debtors In  
Possession.

Lead Case No. 2:18-bk-20151-ER

Jointly Administered With:

Case No. 2:18-bk-20162-ER  
Case No. 2:18-bk-20163-ER  
Case No. 2:18-bk-20164-ER  
Case No. 2:18-bk-20165-ER  
Case No. 2:18-bk-20167-ER  
Case No. 2:18-bk-20168-ER  
Case No. 2:18-bk-20169-ER  
Case No. 2:18-bk-20171-ER  
Case No. 2:18-bk-20172-ER  
Case No. 2:18-bk-20173-ER  
Case No. 2:18-bk-20175-ER  
Case No. 2:18-bk-20176-ER  
Case No. 2:18-bk-20178-ER  
Case No. 2:18-bk-20179-ER  
Case No. 2:18-bk-20180-ER  
Case No. 2:18-bk-20181-ER

Hon. Judge Ernest M. Robles

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

Hearing:

Date: [TBD]

Time: [TBD]

Location: Courtroom 1568

255 E. Temple St., Los Angeles, CA

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



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

1           **PLEASE TAKE NOTICE** that Verity Health System of California, Inc., a California  
2 nonprofit public benefit corporation and the Debtor herein (“Verity”), and the above-referenced  
3 affiliated debtors, the debtors and debtors in possession in the above-captioned chapter 11  
4 bankruptcy cases (collectively, the “Debtors”), will move (the “Motion”), pursuant to §§ 105(a),  
5 363, and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.*, Rules 2002, 6004,  
6 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure and Rules 6004-1(b) and  
7 9013-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central  
8 District of California (“LBR”), for the entry of an order: (a) approving a process by which  
9 interested parties may bid (a “Bid”) to purchase St. Francis Medical Center (“St. Francis”) and  
10 related assets (collectively, the “Purchased Assets”), including the assignment and assumption of  
11 Assumed Executory Contracts, together with the payment of Cure Costs (as such terms are  
12 defined in the Motion); (b) approving a process by which, at the Debtors’ election, a stalking-  
13 horse bidder may be selected from among those parties making a Bid, and bidding protections  
14 may be granted to such stalking horse bidder without further order of the Court; (c) setting bid  
15 procedures to establish guidelines for parties interesting in making initial Bids and overbids to  
16 such initial Bids; (d) if multiple Qualified Bids (as defined in the Motion) are received,  
17 scheduling an auction of the Purchased Assets; and (e) scheduling a sale hearing for the Court to  
18 approve the highest and best Qualified Bid.

19           **PLEASE TAKE FURTHER NOTICE** that the Motion is based on this Notice of  
20 Motion and Motion, the Memorandum, the Declaration of Richard G. Adcock and the Declaration  
21 of James Moloney (to be filed prior to the hearing on the Motion), the *Declaration of Richard G.*  
22 *Adcock In Support of Emergency First-Day Motions* [Docket No. 8], supporting statements,  
23 arguments and representations of a counsel who will appear at the hearing on the Motion, the  
24 record in this case, and any other evidence properly brought before the Court in all other matters  
25 of which this Court may properly take judicial notice.

26           **PLEASE TAKE FURTHER NOTICE** that the Debtors have filed an *Application for*  
27 *Order Setting Hearing on Shortened Notice* (the “Application”) concurrently herewith. As set  
28 forth more fully in the Application, the Debtors request that the Court set the hearing and briefing

1 deadlines on the Motion on shortened notice pursuant to LBR 9075-1(b). Any party opposing or  
2 responding to the Motion must file and serve a response (“Response”) as set forth by the Court in  
3 any order granting the Application or any subsequent notice related thereto. A Response must be  
4 a complete written statement of all reasons in opposition thereto or in support, declarations and  
5 copies of all evidence on which the responding party intends to rely, and any responding  
6 memorandum of points and authorities.

7 **PLEASE TAKE FURTHER NOTICE** that, pursuant to LBR 9013-1(h), the failure to  
8 file and serve a timely objection to the Motion may be deemed by the Court to be consent to the  
9 relief requested herein.

10 Dated: February 10, 2020

DENTONS US LLP  
SAMUEL R. MAIZEL  
TANIA M. MOYRON  
NICHOLAS A. KOFFROTH

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

14 Attorneys for the Chapter 11 Debtors and  
15 Debtors In Possession

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

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

## TABLE OF CONTENTS

1			
2	I.	Introduction .....	1
3	II.	Jurisdiction and Venue .....	2
4	III.	Statement of Facts .....	2
5	A.	General Background.....	2
6	B.	Facts Relevant to Motion .....	3
7	IV.	Proposed Sale and Bidding Procedures.....	4
8	A.	Requirements to Participate in the Auction .....	5
9	B.	Prepetition Secured Creditor’s Right to Credit Bid .....	6
10	C.	Discretionary Stalking Horse Designation and Bidding Protections .....	6
11	D.	Auction.....	7
12	E.	Representations and Warranties .....	8
13	F.	Acceptance of the Winning Bid .....	8
14	V.	The Sale Hearing.....	9
15	VI.	Return of Deposits .....	10
16	VII.	Notice Procedures .....	11
17	VIII.	Assumption and Assignment of Executory Contracts and Unexpired Leases and	
18		Procedures Related Thereto .....	12
19	IX.	Argument .....	14
20	A.	Approval of the Bidding Procedures Is Appropriate and in the Best	
21		Interests of the Debtors’ Estates and Stakeholders. ....	14
22	B.	If a Stalking Horse Bidder Is Subsequently Designated, the Break-Up Fee	
23		Has A Sound Business Purposes and Is Necessary to Preserve the Value of	
24		the Debtors’ Estates.....	17
25	C.	The Procedure for Assumption and Assignment of Certain Executory	
26		Contracts and Unexpired Leases Is Appropriate.....	19
27	D.	Approval of the Sale Is Warranted under § 363.....	21
28			

1	1.	The Sale of the Assets is Authorized by § 363 as a Sound Exercise	
2		of the Debtors’ Business Judgment.....	21
3	2.	The Sale of the Debtors’ Assets Free and Clear of Liens and Other	
4		Interests is Authorized by § 363(f).....	23
5	3.	The Winning Bidder Should be Afforded All Protections Under §	
6		363(m) as A Good Faith Purchaser.....	27
7	E.	Relief From the 14-Day Waiting Period under Rules 6004(h) and 6006(d)	
8		Is Appropriate.....	27
9	F.	The Applicable Requirements of LBR 6004-1 Are Satisfied. ....	28
10	X.	Conclusion .....	29

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

# **TABLE OF AUTHORITIES**

**Page(s)**

## **Cases**

<i>In re 995 Fifth Ave. Assocs.,</i> 96 B.R. 24 (Bankr. S.D.N.Y. 1989) .....	17
<i>In re Abbotts Dairies of Pa., Inc.,</i> 788 F.2d 143 (2d Cir. 1986) .....	22
<i>In re America West Airlines, Inc.,</i> 166 B.R. 908 (Bankr. D. Ariz. 1994) .....	17
<i>In re ARSN Liquidating Corp. Inc.,</i> 2017 WL 279472 (Bankr. D.N.H. Jan. 20, 2017) .....	25
<i>In re Atlanta Packaging Prods., Inc.,</i> 99 B.R. 124 (Bankr. N.D. Ga. 1988) .....	15, 16
<i>In re Bon Ton Rest. &amp; Pastry Shop, Inc.,</i> 53 B.R. 789 (Bankr. N.D. Ill. 1985) .....	20
<i>Burtch v. Ganz (In re Mushroom Transp. Co.),</i> 382 F.3d 325 (3d Cir. 2004) .....	16
<i>In re Bygaph, Inc.,</i> 56 B.R. 596 (Bankr. S.D.N.Y. 1986) .....	20, 24
<i>Calpine Corp. v. O'Brien Env'tl. Energy, Inc. (In re O'Brien Env'tl. Energy, Inc.),</i> 181 F.3d 527 (3d Cir. 1999) .....	16, 17
<i>Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.),</i> 103 B.R. 524 (Bankr. D.N.J. 1989) .....	20
<i>In re Case Engineered Lumber, Inc.,</i> No. 09-22499 (Bankr. N.D. Ga. Sept. 1, 2009) .....	18
<i>In re Christ Hospital,</i> 502 B.R. 158 (Bankr. D.N.J. 2013) .....	25
<i>Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.),</i> 722 F.2d 1063 (2d Cir. 1983) .....	22
<i>Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.),</i> 60 B.R. 612 (Bankr. S.D.N.Y. 1986) .....	22
<i>In re CXM, Inc.,</i> 307 B.R. 94 (Bankr. N.D. Ill. 2004) .....	18

1	<i>In re Dan River, Inc.,</i>	
2	No. 04-10990 (Bankr. N.D. Ga. Dec. 17, 2004) .....	18
3	<i>In re Delaware &amp; Hudson Ry. Co.,</i>	
4	124 BR. 169 (D. Del. 1991) .....	22
5	<i>In re Dundee Equity Corp.,</i>	
6	1992 Bankr. LEXIS 436 (Bankr. S.D.N.Y. Mar. 6, 1992) .....	23
7	<i>In re Energytec, Inc.</i>	
8	739 F.3d 215 (5th Cir. 2013) .....	27
9	<i>In re Ewell,</i>	
10	958 F.2d 276 (9th Cir. 1992) .....	27
11	<i>Folger Adam Security v. DeMatteis/MacGregor JV,</i>	
12	209 F.3d 252 (3d Cir. 2000) .....	24, 26
13	<i>Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.),</i>	
14	107 F.3d 558 (8th Cir. 1997) .....	16, 22
15	<i>In re Gardens Regional Hospital and Medical Center, Inc.,</i>	
16	567 B.R. 820 (Bankr. C.D. Cal. 2017) .....	24
17	<i>GBL Holding Co., Inc. v. Blackburn/Travis/Cole, Ltd.,</i>	
18	331 B.R. 251 (N.D. Tex. 2005) .....	22
19	<i>In re Grumman Olson Indus. Inc.,</i>	
20	467 B.R. 694 (S.D.N.Y. 2012) .....	25
21	<i>In re Hupp Indus.,</i>	
22	140 B.R. 191 (Bankr. N.D. Ohio 1997) .....	17
23	<i>In re La Paloma Generating, Co.,</i>	
24	2017 WL 5197116 (Bankr. D. Del. Nov. 9, 2017) .....	24
25	<i>In re Lajijani,</i>	
26	325 B.R. 282 (B.A.P. 9th Cir. 2005) .....	22
27	<i>In re Lake Burton Dev., LLC,</i>	
28	2010 WL 5563622 (Bankr. N.D. Ga. Mar. 18, 2010) .....	18
	<i>MacArthur Company v. Johns-Manville Corp. (In re Johns-Manville Corp.),</i>	
	837 F.2d 89 (2d Cir. 1988) .....	26
	<i>In re Marrose Corp.,</i>	
	1992 WL 33848 (Bankr. S.D.N.Y. 1992) .....	17
	<i>Meyers v. Martin (In re Martin),</i>	
	91 F.3d 389 (3d Cir. 1996) .....	21

1	<i>Michigan Employment Sec. Comm’n v. Wolverine Radio Co. (In re Wolverine</i>	
2	<i>Radio Co.),</i>	
	930 F.2d 1132 (6th Cir. 1991).....	24
3	<i>In re Natco Indus., Inc.,</i>	
4	54 B.R. 436 (Bankr. S.D.N.Y. 1985) .....	20
5	<i>Nostas Assocs. v. Costich (In re Klein Sleep Prods., Inc.),</i>	
6	78 F.3d 18 (2d Cir. 1996).....	19
7	<i>Official Comm. of Subordinated Bondholders v. Integrated Res. Inc. (In re</i>	
8	<i>Integrated Res. Inc.),</i>	
	147 B.R. 650 (S.D.N.Y. 1992).....	16, 17, 18, 22
9	<i>Official Comm. of Unsecured Creditors v. The LTV Corp. (In re Chateaugay</i>	
10	<i>Corp.),</i>	
	973 F.2d 141 (2d Cir. 1992).....	22
11	<i>Onouli-Kona Land Co. v. Estate of Richards (In re Onouli-Kona Land Co.),</i>	
12	846 F.2d 1170 (9th Cir. 1988).....	27
13	<i>Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.),</i>	
14	4 F.3d 1095 (2d Cir. 1993).....	20
15	<i>Paulman v. Gateway Venture Partners III, L.P. (In re Filtercorp, Inc.),</i>	
	163 F.3d 570 (9th Cir. 1998).....	27
16	<i>PBBPC, Inc. v. OPK Biotech, LLC (In re PBBPC, Inc.),</i>	
17	484 B.R. 860 (B.A.P. 1st Cir. 2013) .....	25
18	<i>In re S.N.A. Nut Co.,</i>	
	186 B.R. 98 (Bankr. N.D. Ill. 1995).....	17
19	<i>In re T Asset Acquisition Company, LLC,</i>	
20	No. 09-31853 (Bankr. C.D. Cal. Jan. 28, 2010).....	18
21	<i>In re Tama Beef Packing Inc.,</i>	
22	321 B.R. 469 (B.A.P. 8th Cir. 2005).....	18
23	<i>The Ninth Avenue Remedial Group v. Allis-Chalmers Corp.,</i>	
	195 B.R. 716 (Bankr. N.D. Ind. 1996).....	26
24	<i>In re Titusville Country Club,</i>	
25	128 B.R. 396 (W.D. Pa. 1991) .....	22
26	<i>In re Tougher Indus.,</i>	
27	2013 WL 1276501 (Bankr. N.D.N.Y. Mar. 27, 2013).....	25
28	<i>In re Trans World Airlines, Inc.,</i>	
	322 F.3d 283 (3d Cir. 2001).....	25, 26



1	<i>United Mine Workers of Am. Combined Benefit Fund v. Walter Energy, Inc.,</i>	
2	551 B.R. 631 (N.D. Ala. 2016) .....	25
3	<i>In re Verity Health System of California, Inc.,</i>	
4	No. 18-20151 (Bankr. C.D. Cal. Oct. 30, 2018) .....	1, 18
5	<i>In re Vista Marketing Group Ltd.,</i>	
6	557 B.R. 630 (Bankr. N.D. Ill. 2016) .....	25
7	<i>WBO P'ship v. Va. Dep't of Med. Assistance Servs. (In re WBO P'ship),</i>	
8	189 B.R. 97 (Bankr. E.D. Va. 1995) .....	25
9	<i>In re Women First Healthcare, Inc.,</i>	
10	332 B.R. 115 (Bankr. D. Del. 2005) .....	18
11	<i>In re WPRV-TV, Inc.,</i>	
12	143 B.R. 315 (D.P.R. 1991) .....	22
13	<b>Statutes</b>	
14	11 U.S.C. § 105(a) .....	14, 23
15	11 U.S.C. § 363(b) .....	14, 21, 27
16	11 U.S.C. § 363(f) .....	23, 24, 25, 26
17	11 U.S.C. § 363(m) .....	10, 27
18	11 U.S.C. § 365(a) .....	19
19	11 U.S.C. § 365(f)(2) .....	20
20	28 U.S.C. § 157 .....	2
21	28 U.S.C. § 1334 .....	2
22	28 U.S.C. § 1408 .....	2
23	28 U.S.C. § 1409 .....	2
24	FED. R. BANKR. P. 2002 .....	11, 14
25	FED. R. BANKR. P. 6004 .....	14, 15, 21
26	FED. R. BANKR. P. 6004(f) .....	15
27	FED. R. BANKR. P. 6004(h) .....	27, 28
28	FED. R. BANKR. P. 6006(d) .....	27, 28

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Verity Health System of California, Inc., a California nonprofit public benefit corporation and the Debtor herein (“Verity”), and the above-referenced affiliated debtors, the debtors and debtors in possession in the above-captioned chapter 11 bankruptcy cases (collectively, the “Debtors”), seek entry of an order: (a) approving a process by which interested parties may bid (a “Bid”) to purchase St. Francis Medical Center (“St. Francis”) and related assets (collectively, the “Purchased Assets”), including the assignment and assumption of Assumed Executory Contracts, together with the payment of Cure Costs (as such terms are defined below); (b) approving a process by which, at the Debtors’ election, a stalking-horse bidder may be selected from among those parties making a Bid, and bidding protections may be granted to such stalking horse bidder without further order of the Court; (c) setting bid procedures to establish guidelines for parties interesting in making initial Bids and overbids to such initial Bids; (d) if multiple Qualified Bids (as defined below) are received, scheduling an auction of the Purchased Assets; and (e) scheduling a sale hearing for the Court to approve the highest and best Qualified Bid. The proposed timeline is as follows:

Date	Event
February 26, 2020	Service of approved Bidding Procedures, Auction and Sale Notice
April 3, 2020	Bid Deadline for Qualified Bids
April 7, 2020	Auction
TBD	Deadline to file any objections to Sale
April 9, 2020, at 10:00 a.m.	Sale Hearing

The Debtors have vigorously marketed the Purchased Assets since before the Petition Date and have specifically marketed the Purchased Assets on a going concern basis as stand-alone assets since December 2019. The Debtors have received multiple indications of interest from a number of parties who are currently ready to commence the final due diligence process which may lead to the making of Bids. The Debtors will continue to market the Purchased Assets

1 to any interested party through the Bid Deadline. For the reasons set forth below in greater detail,  
2 and in order to conduct a full and fair bidding process for the purpose of maximizing the  
3 consideration to be received by the Debtors' estate for the Purchased Assets, the Debtors  
4 respectfully request that the Court grant the Motion.

## 5 **II. JURISDICTION AND VENUE**

6 The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This  
7 is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The venue of these Cases is proper  
8 pursuant to 28 U.S.C. §§ 1408 and 1409.

## 9 **III. STATEMENT OF FACTS**

### 10 **A. GENERAL BACKGROUND**

11 On August 31, 2018 ("Petition Date"), the Debtors each filed a voluntary petition for  
12 relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").<sup>1</sup> Since the  
13 commencement of their cases, the Debtors have been operating their businesses as debtors in  
14 possession pursuant to §§ 1107 and 1108.

15 1. Debtor VHS, a California nonprofit public benefit corporation, is the sole  
16 corporate member of five Debtor California nonprofit public benefit corporations that operate six  
17 acute care hospitals, including the Hospitals and other facilities in the state of California. *See*  
18 *Declaration of Richard G. Adcock In Support of Emergency First-Day Motions* [Docket No. 8]  
19 (the "Adcock First-Day Declaration").

20 2. St. Francis operates a 384 licensed bed, general acute care hospital located at 3630  
21 East Imperial Highway in Lynwood, California; (ii) has an emergency department with 46  
22 licensed emergency treatment stations and is designated a Level II Trauma Center; (iii) has nine  
23 surgical operating rooms and three cardiac catheterization labs for inpatient and outpatient cardiac  
24 catheterization services; (iv) offers a comprehensive range of services, including emergency and  
25 trauma care, neonatal intensive, cardiovascular, oncology, pediatrics, behavioral health, and  
26 maternity and child services; and (v) offers various outpatient services, including ambulatory  
27

28 <sup>1</sup> All references to section or chapter herein are to the Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*, as amended. All references to Rules are to the Federal Rules of Bankruptcy Procedure.

1 surgical services, laboratory services, imaging services, infusion therapy, nuclear medicine  
2 services, respiratory therapy, and physical therapy. Other outpatient services are provided at the  
3 following clinics: Orthopedics Clinic, Wound Care Clinic, Industrial Clinic, Lynwood Clinic,  
4 Downey Clinic , and Huntington Park Clinic. St. Francis is accredited by The Joint Commission.  
5 *See* Adcock First-Day Declaration.

6 3. St. Francis owns the real property where its hospital is located, i.e., 3630 E.  
7 Imperial Highway Lynwood, CA 90262, including the patient tower and all of the facilities  
8 thereon. In addition, St Francis owns real property located at: (i) 2700 E. Slauson Ave,  
9 Huntington Park, CA 90255, and the Huntington Park Medical Office Building thereon; and (ii)  
10 5953 S. Atlantic Blvd. 5, Maywood, CA 90270, and the Maywood Medical Office Building  
11 thereon. *See* Adcock First-Day Declaration.

12 4. As of the Petition Date, St. Francis employed approximately 2,017 individuals, of  
13 which 1,583 are full-time, 136 are part time, and 298 are per diem. St. Francis was incorporated  
14 in 1983 and is governed by a Board of Trustees. *See* Adcock First-Day Declaration.

15 **B. FACTS RELEVANT TO MOTION**

16 5. Prior to the Petition Date, the Debtors engaged in substantial efforts to market and  
17 sell substantially all of their assets, including St. Francis and any other Purchased Assets. In June  
18 2018, the Debtors engaged Cain Brothers, a division of KeyBanc Capital Markets (“Cain”), to  
19 identify potential buyers for some or all of the Verity hospitals and related assets, and  
20 commenced discussions with potential buyers.

21 6. Cain prepared a Confidential Investment Memorandum (the “CIM”) and organized  
22 an online data site to share information with potential buyers, and contacted over 110 strategic  
23 and financial buyers beginning in July 2018 to solicit their interest in exploring a transaction  
24 regarding the Debtors.

25 7. By August 2018, as a result of its ongoing and broad marketing process, Cain had  
26 received 11 Indications of Interest (“IOI”) for some or all of the Debtors’ assets and, postpetition,  
27 Cain continued to develop potential sales leads.  
28

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

1           8.       On January 17, 2019, the Debtors filed a motion [Docket No. 1279] to approve the  
2 form of an asset purchase agreement and related “stalking horse” bidding procedures for the sale  
3 of its four remaining hospitals, including St. Francis, to Strategic Global Management (“SGM”),  
4 which the Bankruptcy Court approved on February 19, 2019 [Docket No. 1572]. No other  
5 qualified, competing bid was received by the Debtors in compliance with the approved bidding  
6 procedures; accordingly, no auction was held, and the Debtors declared SGM as the “winning  
7 bidder.” *See* Docket No. 2053. On May 2, 2019, the Bankruptcy Court entered an order  
8 approving the sale [Docket No. 2306] to SGM.

9           9.       Despite several notices and orders, SGM failed to close. *See* Docket No. 3899.  
10 On January 3, 2020, the Debtors filed a notice regarding their termination of the asset purchase  
11 agreement with SGM, effective as of December 27, 2019. *See id.*

12           10.      Cain commenced a new marketing process to identify parties potentially interested  
13 in acquiring St. Francis as a going-concern. In December 2019, Cain began making phone calls  
14 to parties that had previously expressed interest in acquiring St. Francis. On January 3, 2020,  
15 Cain emailed all parties that had executed a nondisclosure agreement (an “NDA”) in connection  
16 with the Debtors’ previous efforts to market St. Francis explaining that the Debtors were initiating  
17 another marketing process. As a result, in January 2020, 53 parties executed an NDA with  
18 respect to the Debtors’ renewed St. Francis marketing efforts and were granted access to a  
19 diligence data site.

20           11.      On January 15, 2020, Cain sent a letter to all interested parties, which highlighted  
21 the proposed sale timeline and requested that parties submit IOIs on or before January 31, 2020.  
22 On January 31, 2020, the Debtors received seven IOIs for the potential acquisition of St. Francis.

23                   **IV. PROPOSED SALE AND BIDDING PROCEDURES**

24           12.      In connection with the proposed sale (the “Sale”) of the Purchased Assets, the  
25 Debtors submit that conducting an Auction in accordance with the bidding procedures among  
26 Qualified Bidders will obtain the highest or otherwise best offer for the Purchased Assets and will  
27 maximize the value of the Debtors’ estates. The proposed bidding procedures (the “Bidding”  
28

Procedures”) are attached hereto as Exhibit 1.<sup>2</sup> A summary of some of the significant provisions of the Bidding Procedures is set forth below. If there exists any omission or discrepancy between the following summary and the actual terms of the Bidding Procedures, the actual terms of the Bidding Procedures shall control.

**A. REQUIREMENTS TO PARTICIPATE IN THE AUCTION**

13. The Bidding Procedures provide that only Qualified Bidders may participate in the Auction. To be a Qualified Bidder, a party wishing to submit a Bid must first become a Potential Bidder, which requires that an interested party execute, or shall be currently subject to an NDA in form and substance satisfactory to the Debtors. Upon qualifying as a Potential Bidder, a party may receive due diligence information from the Debtors, including access to the Debtors’ on-line data room, the CIM and potentially other nonpublic information relating to the Debtors’ assets.

14. The Bidding Procedures also set forth the requirements for a Potential Bidder to become a Qualified Bidder, including (without limitation) that a Potential Bidder: (i) submit a Bid by the Bid Deadline to the Bid Deadline Recipients identified in the Bidding Procedures (including the Debtors, the Prepetition Secured Creditors (as defined in the Bidding Procedures), Cain, and the Unsecured Creditors Committee); (ii) provide a clean and marked-up copy of the proposed asset purchase agreement (which form shall be consistent with the form of the Draft APA posted in the Debtors’ on-line data room); (iii) provide a copy of the draft Sale Order marked to reflect any amendments and modifications compared to the form of the Sale Order posted in the Debtors’ on-line data room; (iv) deliver a Deposit by wire transfer in an amount equal to 10% of the proposed Purchase Price; (v) demonstrate that it has the financial wherewithal and ability to consummate the Sale; and (vi) disclose any connections to the Debtors and affiliated persons. The Bidding Procedures further provide that a Bid shall propose cash consideration, and that Bids shall be evaluated based upon the amount of cash consideration.

---

<sup>2</sup> Unless otherwise defined herein, all capitalized terms have the definitions set forth in the Bidding Procedures. The terms of the Bidding Procedures shall control to the extent the descriptions in this Motion conflict with the terms of the Bidding Procedures.

15. A Bid that satisfies each of the Bid Requirements (including but not limited to those mentioned in the foregoing paragraph), as determined by the Debtors in their reasonable discretion, in consultation with the Prepetition Secured Creditors and the Committee, shall constitute a “Qualified Bid,” and such Potential Bidder submitting such Bid will be deemed a “Qualified Bidder.” Prior to, or immediately before the commencement of any Auction, the Debtors shall file and serve on each Potential Bidder a notice indicating the identity of all Qualified Bidders, and a copy of the Bid which is deemed to be the Opening Bid at the Auction.

**B. PREPETITION SECURED CREDITOR’S RIGHT TO CREDIT BID**

16. Any party with a valid, properly perfected prepetition or post-petition security interest in any of the Purchased Assets may credit bid (any such bid, a “Credit Bid” and any party submitting a Credit Bid, each a “Credit Bidder”) for such Purchased Assets in connection with the Sale in accordance with and pursuant to § 363(k), except as otherwise limited by the Bankruptcy Court for cause; provided, however, that no Credit Bidder may Credit Bid unless (x) all secured creditors with a valid and perfected security interest in the Purchased Assets subject to the Credit Bid that rank equal or senior to the security interest of the Credit Bidder in the Purchased Assets consent in writing to such Credit Bid or (y) the Credit Bid expressly provides for the payment in full in cash at the closing on account of the Purchased Assets subject to valid and perfected security interests in the Purchased Assets that are equal or senior in rank to the security interests of the Credit Bidder. Nothing herein shall limit the rights of any party in interest to seek relief from the Bankruptcy Court related to the right or alleged right of any creditor to exercise a Credit Bid for any of the Purchased Assets.

**C. DISCRETIONARY STALKING HORSE DESIGNATION AND BIDDING PROTECTIONS**

17. To increase the competitive nature of the sale process, the Bidding Procedures provide that the Debtors, in their discretion, after consultation with the Committee and with the prior consent of the Prepetition Secured Creditors, may designate a Qualified Bidder as the “Stalking Horse Bidder” and award it so-called stalking horse protections, including a break-up fee and expense reimbursement in an amount not to exceed in the aggregate 2.5% of the proposed

Purchase Price of such Bid (the “Break-Up Fee”). The Bidding Procedures provide that any Break-Up Fee, to the extent payable, shall only be paid from proceeds received by the Debtors at the closing of a Sale or the transfer of the Purchased Assets to a party other than the Stalking Horse Bidder. The designation of stalking horse status and the award of stalking horse protections may occur without further notice or order of the Court at any time up to and including the commencement of the Auction. The Debtors shall have no obligation to designate any Qualified Bidder as the Stalking Horse Bidder. If such designation is made, the Debtors shall notify all other Potential Bidders and, unless the Debtors receive a higher or better bid prior to the Auction, the Opening Bid at the Auction shall be the Bid of the Qualified Bidder that has been designated as the Stalking Horse Bidder.

**D. AUCTION**

18. If the Debtors receive more than one Qualified Bid, the Debtors will conduct an Auction at the offices of Dentons US LLP, 601 South Figueroa Street, Suite 2500, Los Angeles, California 90017 on April 7, 2020 in accordance with the Bidding Procedures.

19. The Auction shall be governed by the following procedures:

- (a) only Qualified Bidders, in person or through duly-authorized representatives at the Auction may bid at the Auction, and every Qualified Bidder must have at least one (1) such duly-authorized representative with authority to bind the Qualified Bidder at the Auction;
- (b) only such authorized representatives of each of the Qualified Bidders, the Debtors, the Consultation Parties and their respective legal and financial advisors shall be permitted to attend the Auction;
- (c) prior to the commencement of the Auction, representatives of the Debtors, and/or the Consultation Parties may have discussions with each Qualified Bidder with respect to the terms and conditions of such Qualified Bids, and the Debtors will have selected, in consultation with the Consultation Parties, a Qualified Bid to become the opening bid at the Auction (the bid submitted by such Qualified Bidder shall be referred to as the “Opening Bid” and the Qualified Bidder shall be referred to as the “Opening Bidder”);
- (d) bidding shall commence at the amount of the Opening Bid. The Opening Bid shall be announced by the Debtors at or before the commencement of the Auction. Other Qualified Bidders may then submit successive bids in increments of at least \$2,000,000 (plus, with respect to the first successive bid, the amount of the Break-Up Fee, if any) higher than the Opening Bid, and all subsequent bids must be at least

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



\$2,000,000 higher than the previous bid. To the extent a Stalking Horse Bidder submits higher bids, such Stalking Horse Bidder shall have the right (but not the obligation) to increase its Opening Bid by using, as a credit, the amount of the Break-Up Fee when determining whether any Stalking Horse Bidder has topped the previous bid by the required amount;

(e) Qualified Bidders shall have the right to submit additional bids that include modifications to their Qualified APA at the Auction, consistent herewith, provided that any such modifications to the Qualified APA, on an aggregate basis and viewed in whole, shall not be less favorable to the Debtors than any prior bid by such party (as determined by the Debtors, following consultation with the Consultation Parties). The Debtors, in consultation with the Consultation Parties, reserve the right to separately negotiate the terms of any Qualified Bids at the Auction, provided the terms are fully disclosed at the time such Qualified Bid is formally submitted;

(f) the bidding will be transcribed by a certified court reporter employed by the Debtors to ensure an accurate recording of the bidding at the Auction;

(g) each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the proposed Sale and is not in violation of § 363(n); and

(h) absent irregularities in the conduct of the Auction, the Debtors will not consider any Potential Bids made after the Auction is closed.

#### **E. REPRESENTATIONS AND WARRANTIES**

20. Except as explicitly set forth in the Winning Bid APA (as defined below), the Purchased Assets will be transferred on an “as is, where is” basis, with all faults, and without representations or warranties of any kind, nature or description by the Debtors, their agents or estates, whether written, verbal, express, implied, or by operation of law.

#### **F. ACCEPTANCE OF THE WINNING BID**

21. Upon the conclusion of the Auction (if such Auction is conducted), the Debtors, in the exercise of their reasonable, good-faith business judgment and after consultation with the Consultation Parties, shall identify (i) the Winning Bid, which is the highest and best Qualified Bid submitted at the Auction; and (ii) the next highest and best Qualified Bid (the “Back-Up Bid” and the party submitting the Back-Up Bid, the “Back-Up Bidder”). Each of the Winning Bidder and the Back-Up Bidder shall be required to execute a definitive Qualified Bid conformed to the provisions of the Winning Bid and the Back-Up Bid, as applicable, as soon as practicable but, in

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

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

no event, prior to the Sale Hearing. For the purposes of these Bidding Procedures, the definitive agreement executed by the (i) Winning Bidder shall be defined as the “Winning Bid APA” and (ii) Back-Up Bidder shall be defined as the “Back-Up Bid APA”.

22. The Back-Up Bidder must keep the Back-Up Bid open and irrevocable until the earlier of (i) 5:00 p.m. (Pacific Time) on the date which is thirty (30) days after the entry of the Sale Order (the “Outside Back-Up Date”), or (ii) the date of closing of the Sale to the Winning Bidder.

23. Within two business days after the conclusion of the Auction, the Winning Bidder and the Back-Up Bidder shall each deposit with the Debtors an additional amount in cash such that, when combined with their existing Deposit, each such bidder’s aggregate Deposit equals ten percent (10%) of the Purchase Price reflected in the final bid of the Winning Bidder and of the Back-Up Bidder, respectively (such additional amounts shall be included in the definition of the “Deposit”).

24. If an Auction is held, the Debtors shall be deemed to have accepted a Qualified Bid as the winner of the Auction (conditioned upon approval by the Bankruptcy Court) only when (i) such bid is declared the Winning Bid; (ii) definitive documentation has been executed in respect thereof; and (iii) any additional Deposit required as a result of a bid submitted at the Auction (as required by the Bidding Procedures) has been provided to the Debtors. Such acceptance is also conditioned upon approval by the Court of the Winning Bid and (if applicable) the Back-Up Bid

## V. THE SALE HEARING

25. As part of this Motion, the Debtors ask this Court to schedule a sale hearing (the “Sale Hearing”) on April 9, 2020, at 10:00 a.m. (Pacific Time). The Debtors will present the results of the Auction to the Court at the Sale Hearing, at which time certain findings will be sought from the Court regarding the Auction, including, among other things, that: (i) the Auction was properly conducted, and the Winning Bidder and the Back-Up Bidder were properly selected, in accordance with the Bidding Procedures; (ii) the Auction was fair in substance and procedure; (iii) each of the Winning Bid and the Back-Up Bid was a Qualified Bid; (iv) the closing of the

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

1 Sale in accordance with the Winning Bid (or if applicable, the Back-Up Bid) will provide the  
2 highest or otherwise best value for the Purchased Assets and is in the best interests of the Debtors;  
3 and (v) each of the Winning Bidder and the Back-Up Bidder are deemed to be purchasers of the  
4 Purchased Assets in good faith as set forth in § 363(m).

5 26. At the Sale Hearing, the Debtors shall request the Bankruptcy Court to enter an  
6 order approving the Winning Bid and, if applicable, the Back-Up Bid (the “Sale Order”). Except  
7 to the extent revised by the Debtors in their discretion, after consultation with the Consultation  
8 Parties and the Winning Bidder, the proposed Sale Order presented to the Bankruptcy Court at the  
9 Sale Hearing shall be in the form submitted as part of the Winning Bid, and will preserve the  
10 rights of the Prepetition Secured Creditors with respect to any proceeds received from the Sale in  
11 accordance with the “Final DIP Order” [Docket No. 409] and the “Intercreditor Agreement” (as  
12 defined in the Final DIP Order).

13 27. At the Sale Hearing, the Debtors shall also request, as part of the Sale Order,  
14 authorization from the Bankruptcy Court to accept the Back-Up Bid as the Winning Bid, and  
15 consummate such bid, if the Winning Bid is not consummated when and as required by its terms  
16 without further order of the Bankruptcy Court. The Debtors and the Back-Up Bidder shall be  
17 bound to consummate the Back-Up Bid if the Winning Bid terminates, at which time the Back-  
18 Up Bidder shall be deemed the Winning Bidder. The Debtors shall promptly give notice to the  
19 Back-Up Bidder if the Winning Bid is terminated and shall provide the Back-Up Bidder a  
20 reasonable period within which to close as set forth in the Back-Up Bid APA.

## 21 VI. RETURN OF DEPOSITS

22 28. Upon closing of the Sale with the Winning Bidder, the Deposit of the Winning  
23 Bidder shall be credited to the Purchase Price. As shall be set forth in the Winning Bid APA, if  
24 the Winning Bidder fails to close, then the Deposit which is the subject of the Winning Bid shall  
25 be retained by the Debtors or returned to the Winning Bidder as shall be set forth in the Winning  
26 Bid APA or as otherwise ordered by the Bankruptcy Court.

27 29. The Deposits of any Qualified Bidders other than the Winning Bidder and the  
28 Back-Up Bidder will be returned within two (2) business days after the conclusion of the Sale

Hearing; provided, that, the Deposit of the Back-Up Bidder shall be returned to the Back-Up Bidder at the earlier of (i) the closing of the Sale to the Winning Bidder, and (ii) thirty (30) days after entry of the Sale Order.

## VII. NOTICE PROCEDURES

30. The Debtors propose that any objections to the Sale (other than an Assumption Objection (defined herein) which shall be governed by the procedures set forth below) (a “Sale Objection”), must: (i) be in writing; (ii) comply with the Rules and the LBR; (iii) set forth the specific basis for the Sale Objection; (iv) be filed with the Court at 255 East Temple St. (Attn: Judge E. Robles), Los Angeles, CA 90012, together with proof of service, on or before the Sale Objection Deadline set forth in the Bidding Procedures Order; and (v) be served, so as to be actually received on or before the Sale Objection Deadline, upon the Notice Parties. If a Sale Objection is not filed and served on or before the Sale Objection Deadline, the Debtors request that the objecting party be barred from objecting to the Sale and not be heard at the Sale Hearing, and this Court may enter the Sale Order without further notice to such party. The Debtors also request that the Court approve the form of the notice of sale procedures (the “Procedures Notice”) substantially in the form to be filed by the Debtors before the hearing on this Motion. The Debtors will serve a copy of the Procedures Notice on the Notice Parties and all parties which the Debtors are required to serve pursuant to LBR 6004-1(b)(3) and the *Order Granting Emergency Motion of Debtors for Order Limiting Scope of Notice* [Docket No. 132] (the “Procedures Notice Parties”).

31. The Debtors propose to file with the Court and serve the Procedures Notice within one (1) business day following entry of the Bidding Procedures Order, by first-class mail, postage prepaid on the Procedures Notice Parties. The Procedures Notice provides that any party that has not received a copy of the Motion or the Bidding Procedures Order that wishes to obtain a copy of the Motion or the Bidding Procedures Order, including all exhibits thereto, may make such a request in writing to Dentons US LLP, Attn: Tania M. Moyron, 601 S. Figueroa St., Suite 2500, Los Angeles, CA 90017 or by emailing [tania.moyron@dentons.com](mailto:tania.moyron@dentons.com) or calling (213) 623-9300.

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

32. The Debtors submit that the foregoing notices comply fully with Bankruptcy Rule 2002 and are reasonably calculated to provide timely and adequate notice of the Bidding Procedures, Auction and Sale, and Sale Hearing to the Debtors' creditors and other parties in interests as well as to those who have expressed an interest or are likely to express an interest in bidding on the Purchased Assets. Based on the foregoing, the Debtors respectfully request that this Court approve these proposed notice procedures.

**VIII. ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND  
UNEXPIRED LEASES AND PROCEDURES RELATED THERETO**

33. As part of the Sale, the Debtors also seek to assume and assign certain of their executory contracts and unexpired leases (collectively, the "Assumed Executory Contracts") pursuant to § 365.

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

35. The Debtors will file with the Court and serve a cure notice, substantially in the form to be filed with the Court prior to the hearing on this Motion (the "Cure Notice"), (along with a copy of this Motion) upon each counterparty to the Assumed Executory Contracts. The Cure Notice will state the date, time and place of the Sale Hearing as well as the date by which any objection to the assumption and assignment of Assumed Executory Contracts (including the Cure Amount (defined below)) must be filed and served. The Cure Notice also will identify the amounts, if any, that the Debtors believe are owed to each counterparty to an Assumed Executory Contract in order to cure any defaults that exist under such contract (the "Cure Amounts"). To the extent there is a contract subsequently added to the list of contracts to be assumed by the Winning Bidder pursuant to the Winning Bid APA selected at the Auction, this Motion constitutes a separate motion to assume and assign that contract to the Winning Bidder pursuant to § 365; each such contract will be listed in the Winning Bid APA, and will be given a separate

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

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

8 37. If a Contract or Lease is assumed and assigned pursuant to Court Order, then  
9 unless the Assumed Executory Contract counterparty properly files and serves an objection to the  
10 Cure Amount contained in the Cure Notice by the Assumption Objection Deadline (defined  
11 below), the Assumed Executory Contract counterparty will receive at the time of the Closing of  
12 the Sale (or as soon as reasonably practicable thereafter), the Cure Amount as set forth in the  
13 Cure Notice, if any. If an objection is filed by a counterparty to an Assumed Executory Contract,  
14 the Debtors propose that such objection must set forth a specific default in the executory contract  
15 or unexpired lease, claim a specific monetary amount that differs from the amount, if any,  
16 specified by the Debtors in the Cure Notice, and set forth any reason why the counterparty  
17 believes the executory contract or unexpired lease cannot be assumed and assigned to the  
18 Winning Bidder.

19 38. If any counterparty objects for any reason to the assumption and assignment of an  
20 Assumed Executory Contract (including to a Cure Amount) (an “Assumption Objection”), the  
21 Debtors propose that the counterparty must file the objection and serve it so as to be actually  
22 received on or before the Bid Deadline (unless the Cure Notice was served on such counterparty  
23 less than twenty (20) days prior to the Bid Deadline, in which case, any Assumption Objection  
24 must be served no later than twenty (20) days after service of the Cure Notice), provided,  
25 however, any counterparty may raise at the Sale Hearing an objection to the assumption and  
26 assignment of its Assumed Executory Contract solely with respect to the Winning Bidder’s ability  
27 to provide adequate assurance of future performance under such Assumed Executory Contract.  
28 After receipt of an Assumption Objection, the Debtors will attempt to reconcile any differences in

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

1 the Cure Amount or otherwise resolve the objection with the counterparty. In the event that the  
2 Debtors and the counterparty cannot resolve an Assumption Objection, and the Court does not  
3 otherwise make a determination at the Sale Hearing regarding an Assumption Objection related to  
4 a Cure Amount, the Debtors shall segregate from the sale proceeds any disputed Cure Amounts  
5 pending the resolution of any such Cure Amount disputes by the Bankruptcy Court or mutual  
6 agreement of the parties.

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

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

## 20 **IX. ARGUMENT**

### 21 **A. APPROVAL OF THE BIDDING PROCEDURES IS APPROPRIATE AND IN THE** 22 **BEST INTERESTS OF THE DEBTORS' ESTATES AND STAKEHOLDERS.**

23 Section 363(b)(1) provides that "[t]he trustee, after notice and a hearing, may use, sell, or  
24 lease, other than in the ordinary course of business, property of the estate [.]” 11 U.S.C. §  
25 363(b)(1). Section 105(a) provides in pertinent part that “[t]he Court may issue any order, process  
26 or judgment that is necessary and appropriate to carry out the provisions of this title.” 11 U.S.C. §  
27 105(a). Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Rules”) govern  
28

1 the scope of the notice to be provided in the event a debtor elects to sell property of the estate  
2 under § 363.

3 With respect to the procedures to be adopted in conducting a sale outside the ordinary  
4 course of a debtor's business, Rule 6004 provides only that such sale may be by private sale or  
5 public auction, and requires only that the debtor provide an itemized list of the property sold  
6 together with the prices received upon consummation of the sale. Fed. R. Bankr. P. 6004(f). LBR  
7 6004-1 provides, in pertinent part, as follows:

8 **(b) Motion for Order Establishing Procedures for the Sale**  
9 **of Estate Property.**

10 (2) Contents of Notice [of a Sale Procedure Motion]. The notice  
11 must describe the proposed bidding procedures and include a copy  
12 of the proposed purchase agreement. If the purchase agreement is  
13 not available, the moving party must describe the terms of the sale  
14 proposed, when a copy of the actual agreement will be filed with  
the court, and from whom it may be obtained. The notice must  
describe the marketing efforts undertaken and the anticipated  
marketing plan, or explain why no marketing is required. [...]

15 (3) Service of the Notice and Motion. The moving party must serve  
16 the motion and notice of the motion and hearing by personal  
17 delivery, messenger, telephone, fax, or email to the parties to whom  
18 notice of the motion is required to be given by the FRBP or by these  
19 rules, any other party that is likely to be adversely affected by the  
granting of the motion, and the United States trustee. The notice of  
hearing must state that any response in opposition to the motion  
must be filed and served at least 1 day prior to the hearing, unless  
otherwise ordered by the court. [...]

20 (6) Break-Up Fees. If a break-up fee or other form of overbid  
21 protection is requested in the Sale Procedure Motion, the request  
22 must be supported by evidence establishing: (A) That such a fee is  
23 likely to enhance the ultimate sale price; and (B) The  
reasonableness of the fee. [...]

24 LBR 6004-1(b).

25 Neither the Bankruptcy Code nor the Rules contain specific provisions with respect to the  
26 procedures to be employed by a debtor in conducting a public or private sale. Nonetheless, as one  
27 court has stated, “[i]t is a well-established principle of bankruptcy law that the objective of  
28 bankruptcy rules and the [debtors’] duty with respect to such sales is to obtain the highest price or



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

greatest overall benefit possible for the estate.” *In re Atlanta Packaging Prods., Inc.*, 99 B.R. 124, 131 (Bankr. N.D. Ga. 1988). Additionally, courts have long recognized the need for competitive bidding at hearings; “[c]ompetitive bidding yields higher offers and thus benefits the estate. Therefore, the objective is ‘to maximize bidding, not restrict it.’” *Id.*; see also *Burtch v. Ganz (In re Mushroom Transp. Co.)*, 382 F.3d 325, 339 (3d Cir. 2004) (finding that debtor’s fiduciary duties included maximizing and protecting the value of the estate’s assets); *Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 564-65 (8th Cir. 1997) (“[A] primary objective of the [Bankruptcy] Code [is] to enhance the value of the estate at hand.”). Courts uniformly recognize that procedures established for the purpose of enhancing competitive bidding are consistent with the fundamental goal of maximizing the value of a debtor’s estate and, therefore, are appropriate. See *Calpine Corp. v. O’Brien Env’tl. Energy, Inc. (In re O’Brien Env’tl. Energy, Inc.)*, 181 F.3d 527, 536-37 (3d Cir. 1999) (noting that bidding procedures that promote competitive bidding provide benefit to debtor’s estate); *Official Comm. of Subordinated Bondholders v. Integrated Res. Inc. (In re Integrated Res. Inc.)*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (such sale procedures “encourage bidding and to maximize the value of the Assets”).

Here, the Bidding Procedures are designed to promote the paramount goal of any proposed sale of property of the Debtors’ estates: maximizing the value of sale proceeds received by the estates. The Bidding Procedures provide for an orderly and appropriately competitive process through which interested parties may submit offers to purchase the Purchased Assets. Specifically, the Debtors, with the assistance of their advisors, have structured the Bidding Procedures to promote active bidding by interested parties and to confirm the highest or otherwise best offer reasonably available for the Purchased Assets. Additionally, the Bidding Procedures will allow the Debtors to conduct the Auction in a fair and transparent manner that will encourage participation by financially capable bidders with demonstrated ability to consummate a timely Sale. Accordingly, the Bidding Procedures should be approved because, under the circumstances, they are reasonable, appropriate and in the best interests of the Debtors, their estates, creditors, and all parties in interest.

**B. IF A STALKING HORSE BIDDER IS SUBSEQUENTLY DESIGNATED, THE  
BREAK-UP FEE HAS A SOUND BUSINESS PURPOSES AND IS NECESSARY  
TO PRESERVE THE VALUE OF THE DEBTORS' ESTATES.**

The Debtors submit that the potential Break-Up Fee if a Stalking Horse Bidder is subsequently designated is a normal and oftentimes necessary component of sales outside the ordinary course of business under § 363. In particular, such a protection encourages a potential purchaser to invest the requisite time, money, and effort to conduct due diligence and sale negotiations with a debtor despite the inherent risks and uncertainties of the chapter 11 process. *See, e.g., Integrated Resources*, 147 B.R. at 660 (noting that fees may be legitimately necessary to convince a “white knight” to offer an initial bid, for the expenses such bidder incurs and the risks such bidder faces by having its offer held open, subject to higher and better offers); *In re Hupp Indus.*, 140 B.R. 191, 194 (Bankr. N.D. Ohio 1997) (without any reimbursement, “bidders would be reluctant to make an initial bid for fear that their first bid will be shopped around for a higher bid from another bidder who would capitalize on the initial bidder’s . . . due diligence”); *In re Marrose Corp.*, 1992 WL 33848, at \*5 (Bankr. S.D.N.Y. 1992) (stating that “agreements to provide reimbursement of fees and expenses are meant to compensate the potential acquirer who serves as a catalyst or ‘stalking horse’ which attracts more favorable offers”); *In re 995 Fifth Ave. Assocs.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (finding that bidding incentives may be “legitimately necessary to convince a white knight to enter the bidding by providing some form of compensation for the risks it is undertaking”) (citations omitted).

A proposed bidding incentive, such as a Break-Up Fee, should be approved when it is in the best interests of the estate. *See In re S.N.A. Nut Co.*, 186 B.R. 98, 104 (Bankr. N.D. Ill. 1995); *see also In re America West Airlines, Inc.*, 166 B.R. 908 (Bankr. D. Ariz. 1994); *In re Hupp Indus., Inc.*, 140 B.R. 191 (Bankr. N.D. Ohio 1992). Typically, this requires that the bidding incentive provide some benefit to the debtor’s estate. *Calpine Corp. v. O’Brien Envtl. Energy, Inc. (In re O’Brien Envtl. Energy, Inc.)*, 181 F.3d 527, 533 (3d Cir. 1999) (holding even though bidding incentives are measured against a business judgment standard in non-bankruptcy transactions the administrative expense provisions of § 503(b) govern in the bankruptcy context).

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

1 In evaluating the appropriateness of a break-up fee, the appropriate question for the Court  
2 to consider is “whether the break-up fee served any of three possible useful functions: (1) to  
3 attract or retain a potentially successful bid; (2) to establish a bid standard or minimum for other  
4 bidders to follow; or (3) to attract additional bidders.” *In re Integrated Resources, Inc.*, 147 B.R.  
5 at 662 (where the Court heard testimony that the average breakup fee in the industry is 3.3%).  
6 Break-up fees in the same general range as the proposed Break-Up Fee have been routinely  
7 approved in the context of bankruptcy sales. *See In re CXM, Inc.*, 307 B.R. 94, 103–04 (Bankr.  
8 N.D. Ill. 2004) (court approved break-up fee in amount equal to the actual expenses that the  
9 stalking horse incurred in connection with its bid to buy the Sale Assets, subject to a maximum  
10 cap of \$200,000, which equaled 3% of the cash purchase price); *In re Women First Healthcare,*  
11 *Inc.*, 332 B.R. 115, 118 (Bankr. D. Del. 2005) (court approved break-up fee that equaled 4.7%  
12 percent of the purchase price; *In re Dan River, Inc.*, No. 04-10990 (Bankr. N.D. Ga. Dec. 17,  
13 2004) (court approved break-up fee equal to 5.3% of the cash purchase price); *In re Lake Burton*  
14 *Dev., LLC*, 2010 WL 5563622, \*43 (Bankr. N.D. Ga. Mar. 18, 2010) (court approved break-up  
15 fee equal to 4.75% of cash purchase price); *In re Case Engineered Lumber, Inc.*, No. 09–22499  
16 (Bankr. N.D.Ga. Sept. 1, 2009)(J. Brizendine) (approving break-up fee equal to 3.5% of the cash  
17 purchase price); *In re Tama Beef Packing Inc.*, 321 B.R. 469, 498 (8th Cir. BAP 2005) (noting  
18 that the bankruptcy court correctly concluded that break-up fees are “usually limited to one to  
19 four percent of the purchase price”). Notably, this Court has also approved break-up fees within  
20 the range of the proposed Break-Up Fee. *See In re Verity Health System of California, Inc.*, No.  
21 18-20151 (Bankr. C.D. Cal. Oct. 30, 2018) (J. Robles) (approving break-up fee equal to 4% of the  
22 cash purchase price); *In re T Asset Acquisition Company, LLC*, No. 09-31853 (Bankr. C.D. Cal.  
23 Jan. 28, 2010) (J. Robles) (approving break-up fee equal to 3% of the cash purchase price).

24 The Debtors submit that all of the bidding procedures the Debtors are seeking to have the  
25 Bankruptcy Court approve, including the proposed Break-Up Fee to any Stalking Horse Bidder,  
26 satisfies all three of the useful functions set forth above: (1) to attract or retain a potentially  
27 successful bid; (2) to establish a bid standard or minimum for other bidders to follow; and (3) to  
28 attract additional bidders. The proposed break-up fee of up to 2.5% of the purchase price is well

1 within, and below, the percentage parameters that have been approved by many other courts.  
2 Thus, the Debtors believe that the proposed Break-Up Fee if a Stalking Horse Bidder is selected  
3 would fairly and reasonably compensate any Stalking Horse Bidder for taking actions that will  
4 benefit the Debtors' estates. The Break-Up Fee would compensate such a Stalking Horse Bidder  
5 for diligence and professional fees incurred in negotiating the terms of any Stalking Horse APA  
6 on an expedited timeline.

7 Additionally, the Debtors do not believe that the Break-Up Fee will have a chilling effect  
8 on the sale process. Rather, any Stalking Horse Bidder will increase the likelihood that the best  
9 possible price for the Purchased Assets will be received, by permitting other qualified bidders to  
10 rely on the diligence performed by any Stalking Horse Bidder, and moreover, by allowing  
11 qualified bidders to utilize any Stalking Horse APA as a platform for negotiations and  
12 modifications in the context of a competitive bidding process. Any Stalking Horse Bidder would  
13 only be designated with the consent of the Secured Lenders and after consultation with the  
14 Committee.

15 Finally, any Break-Up Fee will be paid only if, among other things, the Debtors enter into  
16 a transaction for the Purchased Assets with a bidder other than any Stalking Horse Bidder.  
17 Accordingly, no Break-Up Fee will be paid unless a higher and better offer is received and  
18 consummated. In sum, the potential Break-Up Fee is reasonable under the circumstances and will  
19 enable the Debtors to maximize the value for the Purchased Assets while limiting any chilling  
20 effect in the sale process.

21 **C. THE PROCEDURE FOR ASSUMPTION AND ASSIGNMENT OF CERTAIN**  
22 **EXECUTORY CONTRACTS AND UNEXPIRED LEASES IS APPROPRIATE.**

23  
24 Section 365(a) provides that, subject to the court's approval, a trustee "may assume or  
25 reject any executory contracts or unexpired leases of the debtor." 11 U.S.C. § 365(a). Upon  
26 finding that a trustee has exercised its sound business judgment in determining to assume an  
27 executory contract or unexpired lease, courts should approve the assumption under § 365(a). *See*  
28 *Nostas Assocs. v. Costich (In re Klein Sleep Prods., Inc.)*, 78 F.3d 18, 25 (2d Cir. 1996); *see also*

1 *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1099  
2 (2d Cir. 1993).

3 Pursuant to § 365(f)(2), a trustee may assign an executory contract or unexpired lease of  
4 nonresidential real property if:

5 (A) the trustee assumes such contract or lease in accordance with  
6 the provisions of this section; and

7 (B) adequate assurance of future performance by the assignee of  
8 such contract or lease is provided, whether or not there has  
9 been a default in such contract or lease.

10 11 U.S.C. § 365(f)(2).

11 The meaning of “adequate assurance of future performance” depends on the facts and  
12 circumstances of each case, and should be given “practical, pragmatic construction.” *See Carlisle*  
13 *Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1989); *see*  
14 *also In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of  
15 future performance does not mean absolute assurance that debtor will thrive and pay rent); *In re*  
16 *Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985) (“Although no single  
17 solution will satisfy every case, the required assurance will fall considerably short of an absolute  
18 guarantee of performance.”).

19 Among other things, adequate assurance may be given by demonstrating the assignee’s  
20 financial health and experience in managing the type of enterprise or property assigned. *In re*  
21 *Bygaph, Inc.*, 56 B.R. 596, 605-6 (Bankr. S.D.N.Y. 1986) (adequate assurance of future  
22 performance is present when prospective assignee of lease has financial resources and expressed  
23 willingness to devote sufficient funding to business to give it strong likelihood of succeeding;  
24 chief determinant of adequate assurance is whether rent will be paid).

25 The Debtors and the Winning Bidder will present evidence at the Sale Hearing to prove  
26 the financial credibility, willingness, and ability of the Winning Bidder to perform under the  
27 contracts or leases. The Court and other interested parties therefore will have the opportunity to  
28 evaluate the ability of any Winning Bidder to provide adequate assurance of future performance  
under the contracts or leases, as required by § 365(b)(1)(C).

1 In addition, the Debtors submit that the cure procedures set forth herein are appropriate,  
2 reasonably calculated to provide notice to any affected party, and afford the affected party to  
3 opportunity to exercise any rights affected by the Motion, and consistent with § 365. To the  
4 extent that any defaults exist under any Assumed Executory Contracts, any such defaults will be  
5 cured pursuant to the Winning Bid APA. Except as otherwise limited by § 365, any provision in  
6 the Assumed Executory Contracts that would restrict, condition, or prohibit an assignment of such  
7 contracts will be deemed unenforceable pursuant to § 365(f)(1).

8 Accordingly, the Debtors submit that the cure procedures for effectuating the assumption  
9 and assignment of the Assumed Executory Contracts as set forth herein are appropriate and  
10 should be approved.

11 **D. APPROVAL OF THE SALE IS WARRANTED UNDER § 363.**

12 As discussed above, § 363(b)(1) provides that a debtor “after notice and a hearing, may  
13 use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C.  
14 § 363(b)(1).

15 **1. The Sale of the Assets is Authorized by § 363 as a Sound Exercise of the**  
16 **Debtors’ Business Judgment.**

17 In accordance with Rule 6004, sales of property rights outside the ordinary course of  
18 business may be by private sale or public auction. The Debtors have determined that the Sale of  
19 the Purchased Assets by public auction will enable it to obtain the highest and best offer for these  
20 assets (thereby maximizing the value of the estate) and is in the best interests of the Debtors’  
21 creditors. The Debtors have determined in their business judgment that a sale of the Purchased  
22 Assets through a competitive, public auction is the best way to maximize the value of those  
23 assets.

24 Sections 363 provides that a trustee, “after notice and a hearing, may use, sell, or lease,  
25 other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b).  
26 Although § 363 does not specify a standard for determining when it is appropriate for a court to  
27 authorize the use, sale or lease of property of the estate, a sale of a debtor’s assets should be  
28 authorized if a sound business purpose exists for doing so. *See, e.g., Meyers v. Martin (In re*

1 *Martin*), 91 F.3d 389, 395 (3d Cir. 1996); *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143 (2d Cir.  
2 1986); *In re Titusville Country Club*, 128 B.R. 396 (W.D. Pa. 1991); *In re Delaware & Hudson*  
3 *Ry. Co.*, 124 BR. 169, 176 (D. Del. 1991); *see also Official Comm. of Unsecured Creditors v. The*  
4 *LTV Corp. (In re Chateaugay Corp.)*, 973 F.2d 141, 143 (2d Cir. 1992); *Committee of Equity Sec.*  
5 *Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *Committee of*  
6 *Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville*  
7 *Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986).

8 The paramount goal in any proposed sale of property of the estate is to maximize the  
9 proceeds received by the estate. *See, e.g., In re Food Barn Stores, Inc.*, 107 F.3d 558, 564-65  
10 (8th Cir. 1997) (in bankruptcy sales, “a primary objective of the Code [is] to enhance the value of  
11 the estate at hand”); *Integrated Resources*, 147 B.R. at 659 (“It is a well-established principle of  
12 bankruptcy law that the . . . [trustee’s] duty with respect to such sales is to obtain the highest price  
13 or greatest overall benefit possible for the estate.”) (*quoting In re Atlanta Packaging Prods., Inc.*,  
14 99 BR. 124, 130 (Bankr. N.D. Ga. 1988)). As long as the sale appears to enhance a debtor’s  
15 estate, court approval of a debtor’s decision to sell should only be withheld if the debtor’s  
16 judgment is clearly erroneous, too speculative, or contrary to the provisions of the Bankruptcy  
17 Code. *GBL Holding Co., Inc. v. Blackburn/Travis/Cole, Ltd.*, 331 B.R. 251, 255 (N.D. Tex.  
18 2005); *In re Lajijani*, 325 B.R. 282, 289 (B.A.P. 9th Cir. 2005); *In re WPRV-TV, Inc.*, 143 B.R.  
19 315, 319 (D.P.R. 1991) (“The trustee has ample discretion to administer the estate, including  
20 authority to conduct public or private sales of estate property. Courts have much discretion on  
21 whether to approve proposed sales, but the trustee’s business judgment is subject to great judicial  
22 deference.”).

23 Applying § 363, the proposed Sale of the Purchased Assets should be approved. As set  
24 forth above, the Debtors have determined that the best method of maximizing the recovery of the  
25 Debtors’ creditors would be through the Sale of the Purchased Assets. As assurance of value,  
26 bids will be tested through the Auction consistent with the requirements of the Bankruptcy Code,  
27 the Bankruptcy Rules, and pursuant to the Bidding Procedures approved by the Court.  
28 Consequently, the fairness and reasonableness of the consideration to be paid by the Winning

Bidder ultimately will be demonstrated by adequate “market exposure” and an open and fair auction process—the best means, under the circumstances, for establishing whether a fair and reasonable price is being paid.

In addition to the Debtors’ prior marketing efforts, the Debtors’ investment banker has been contacting potential interested parties and has assembled a data room which is available upon the execution of an appropriate confidentiality agreement. There is a limited universe of potential acquirers of the Purchased Assets, and the Debtors and their advisors have been in active discussions with many of these potential purchasers.

**2. The Sale of the Debtors’ Assets Free and Clear of Liens and Other Interests is Authorized by § 363(f).**

The Debtors further submit that it is appropriate to sell the Purchased Assets free and clear of liens pursuant to § 363(f), with any such liens attaching to the sale proceeds of the Purchased Assets to the extent applicable. Section 363(f) authorizes a trustee to sell assets free and clear of liens, claims, interests and encumbrances if:

- (1) applicable nonbankruptcy law permits the sale of such property free and clear of such interests;
- (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 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 § 105(a), 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).

Because § 363(f) is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the Debtor’s Assets “free and clear” of liens and interests. *In re Dundee Equity Corp.*, 1992 Bankr. LEXIS 436, at \*12 (Bankr. S.D.N.Y. Mar. 6,



1 1992) (“Section 363(f) is in the disjunctive, such that the sale free of the interest concerned may  
2 occur if any one of the conditions of § 363(f) have been met.”); *In re Bygaph, Inc.*, 56 B.R. 596,  
3 606 n.8 (Bankr. S.D.N.Y. 1986) (same); *Michigan Employment Sec. Comm’n v. Wolverine Radio*  
4 *Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (stating that § 363(f)  
5 is written in the disjunctive; holding that the court may approve the sale “free and clear” provided  
6 at least one of the subsections of § 363(f) is met).

7 At least one of the tests of § 363(f) is satisfied with respect to the transfer of the Purchased  
8 Assets pursuant to the APA. Additionally, at least § 363(f)(2) will be met in connection with the  
9 transactions proposed under the Purchase Agreement because each of the parties holding liens on  
10 the Purchased Assets will consent or, absent any objection to this motion, will be deemed to have  
11 consented to the Sale. Any lienholder also will be adequately protected by having its liens, if any,  
12 in each instance against the Debtors or their estates, attach to the sale proceeds ultimately  
13 attributable to the Purchased Assets in which such creditor alleges an interest, in the same order  
14 of priority, with the same validity, force and effect that such creditor had prior to the Sale, subject  
15 to any claims and defenses the Debtors may possess with respect thereto. Moreover, all rights  
16 under the Final DIP Order and the Intercreditor Agreement are being preserved. Accordingly,  
17 § 363(f) authorizes the transfer and conveyance of the Purchased Assets free and clear of any  
18 such claims, interests, liabilities, or liens.

19 Although § 363(f) provides for the sale of assets “free and clear of any interests,” the term  
20 “any interest” is not defined anywhere in the Bankruptcy Code. *Folger Adam Security v.*  
21 *DeMatteis/MacGregor JV*, 209 F.3d 252, 257 (3d Cir. 2000). Courts have interpreted “any  
22 interest” expansively to include not only in rem interests in property, but also other obligations  
23 that are “connected to or arise from the property being sold” or that could “potentially travel with  
24 the property being sold.” *In re Gardens Regional Hospital and Medical Center, Inc.*, 567 B.R.  
25 820, 825 (Bankr. C.D. Cal. 2017) (California Attorney General imposed conditions are an  
26 “interest in property” that can be stripped off the assets through a sale under § 363); *In re La*  
27 *Paloma Generating, Co.*, 2017 WL 5197116, \*4 (Bankr. D. Del. Nov. 9, 2017) (holding that  
28 emission surrender obligations created by California regulations and statutes and enforced by the

1 California Air Resources Board are an interest in property which can be cut off by a § 363 sale)  
2 *See also In re Trans World Airlines, Inc.*, 322 F.3d 283, 285, 288 (3d Cir. 2001) (holding that  
3 plaintiff's interests in travel vouchers that were issued to settle employment discrimination are an  
4 interest under § 363 because they arise from the property being sold); *PBBPC, Inc. v. OPK*  
5 *Biotech, LLC (In re PBBPC, Inc.)*, 484 B.R. 860, 867-870 (1st Cir. B.A.P. 2013) (holding that  
6 debtor's assets could be sold free and clear of Commonwealth of Massachusetts's right to treat a  
7 purchaser of substantially all of the assets of chapter 11 debtor as a "successor employer" to  
8 which debtor's experience rating could be imputed to determine purchaser's unemployment  
9 insurance contribution); *In re ARSN Liquidating Corp. Inc.*, 2017 WL 279472, \*5 (Bankr. D.N.H.  
10 Jan. 20, 2017) (Nat'l Council on Compensation Ins. violated sale order by imputing debtor's  
11 workers' compensation experience rating to buyer in setting buyer's workers' compensation  
12 experience rating); *In re Vista Marketing Group Ltd.*, 557 B.R. 630, 635-39 (Bankr. N.D. Ill.  
13 2016) (free and clear language in sale order prevented a state sanitary district from asserting claim  
14 against asset purchaser for connection fee surcharge that was calculated based entirely on debtor's  
15 use of the district's sewer facilities); *United Mine Workers of Am. Combined Benefit Fund v.*  
16 *Walter Energy, Inc.*, 551 B.R. 631, 641 (N.D. Ala. 2016) (sale under § 363 cuts off Coal Act  
17 obligations despite language in Act imposing successor liability on buyer); *In re Christ Hospital*,  
18 502 B.R. 158, 76-79 (Bankr. D.N.J. 2013) (section 363 sales cut off tort claims against purchaser  
19 of nonprofit hospital); *In re Tougher Indus.*, 2013 WL 1276501 at \*\*6-9 (Bankr. N.D.N.Y. Mar.  
20 27, 2013) (holding that debtor's assets could be sold free and clear of New York State  
21 Department of Labor's right to use the debtor's experience rating to access the buyer's tax  
22 liability as successor to the debtor); *In re Grumman Olson Indus. Inc.*, 467 B.R. 694, 702-03  
23 (S.D.N.Y. 2012) ("Section 363(f) can be used to sell property free and clear of claims that could  
24 otherwise be assertable against the buyer of the assets under the common law doctrine of  
25 successor liability"); *WBO P'ship v. Va. Dep't of Med. Assistance Servs. (In re WBO P'ship)*, 189  
26 B.R. 97, 104-05 (Bankr. E.D. Va. 1995) (holding that Commonwealth of Virginia's right to  
27 recapture depreciation is an "interest" as that term is used in § 363(f))  
28

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

1 In the case of *In re Trans World Airlines, Inc.*, 322 F.3d 283, 288-89 (3d Cir. 2003), the  
2 Third Circuit specifically addressed the scope of the term “any interest.” The Third Circuit  
3 observed that while some courts have “narrowly interpreted that phrase to mean only in rem  
4 interests in property,” the trend in modern cases is towards “a more expansive reading of  
5 ‘interests in property’ which ‘encompasses other obligations that may flow from ownership of the  
6 property.’” *Id.* at 289 (*citing* 3 Collier on Bankruptcy, ¶ 363.06[1] (L. King, 15th rev. ed. 1988)).  
7 As determined by the Fourth Circuit in *In re Leckie Smokeless Coal Co.*, the scope of § 363(f) is  
8 not limited to *in rem* interests. 99 F.3d 573, 581-582 (4th Cir. 1996) (holding that coal mine  
9 operators could sell their assets free and clear of their obligations to a benefits plan and fund  
10 under the Coal Act). Thus, debtors “could sell their assets under § 363(f) free and clear of  
11 successor liability that otherwise would have arisen under federal statute.” *Folger*, 209 F.3d at  
12 258 (*citing Leckie*, 99 F.3d at 582).

13 Courts have consistently held that a buyer of a debtor’s assets pursuant to a § 363 sale  
14 takes such assets free from successor liability resulting from pre-existing claims. *See The Ninth*  
15 *Avenue Remedial Group v. Allis-Chalmers Corp.*, 195 B.R. 716, 732 (Bankr. N.D. Ind. 1996)  
16 (stating that a bankruptcy court has the power to sell assets free and clear of any interest that  
17 could be brought against the bankruptcy estate during the bankruptcy); *MacArthur Company v.*  
18 *Johns-Manville Corp. (In re Johns-Manville Corp.)*, 837 F.2d 89, 93-94 (2d Cir. 1988)  
19 (channeling of claims to proceeds consistent with intent of sale free and clear under § 363(f)). The  
20 purpose of an order purporting to authorize the transfer of assets free and clear of all “interests”  
21 would be frustrated if claimants could thereafter use the transfer as a basis to assert claims against  
22 the purchaser arising from the Debtors’ pre-sale conduct. Under § 363(f), the purchaser is  
23 entitled to know that the Purchased Assets are not infected with latent claims that will be asserted  
24 against the purchaser after the proposed transaction is completed. Accordingly, consistent with  
25 the above-cited case law, the order approving the Sale should state that the Winning Bidder is not  
26 liable as a successor under any theory of successor liability, for claims that encumber or relate to  
27 the Purchased Assets .  
28

1           **3. The Winning Bidder Should be Afforded All Protections Under § 363(m) as A**  
2           **Good Faith Purchaser.**

3           Section 363(m) protects a good-faith purchaser's interest in property purchased from the  
4 debtor's estate notwithstanding that the sale conducted under § 363(b) is later reversed or  
5 modified on appeal. Specifically, § 363(m) states that:

6           The reversal or modification on appeal of an authorization under  
7 [section 363(b)] . . . does not affect the validity of a sale . . . to an entity  
8 that purchased . . . such property in good faith, whether or not such entity  
9 knew of the pendency of the appeal, unless such authorization and such  
10 sale were stayed pending appeal.

11 U.S.C. § 363(m). Section 363(m) "codifies Congress's strong preference for finality and  
12 efficiency" in bankruptcy proceedings. *In re Energytec, Inc.* 739 F.3d 215, 218-19 (5<sup>th</sup> Cir.  
13 2013). The Ninth Circuit has repeatedly held that, under § 363(m), "[w]hen a sale of assets is  
14 made to a good faith purchaser, it may not be modified or set aside unless the sale was stayed  
15 pending appeal." *Paulman v. Gateway Venture Partners III, L.P. (In re Filtercorp, Inc.)*, 163  
16 F.3d 570, 576 (9<sup>th</sup> Cir. 1998) ; *In re Ewell*, 958 F.2d 276, 282 (9<sup>th</sup> Cir. 1992) ("Because the Buyer  
17 was a good faith purchaser, under 11 U.S.C. § 363(m) the sale may not be modified or set aside  
18 on appeal unless the sale was stayed pending appeal."); *Onouli-Kona Land Co. v. Estate of*  
19 *Richards (In re Onouli-Kona Land Co.)*, 846 F.2d 1170, 1172 (9<sup>th</sup> Cir. 1988) ("Finality in  
20 bankruptcy has become the dominant rationale for our decisions [...]").

21           The selection of the Winning Bidder will be the product of arms' length, good faith  
22 negotiations in an anticipated competitive purchasing process. The Debtors intend to request at  
23 the Sale Hearing a finding that the Winning Bidder is a good faith purchaser entitled to the  
24 protections of § 363(m).

25           **E. RELIEF FROM THE 14-DAY WAITING PERIOD UNDER RULES 6004(H) AND**  
26           **6006(D) IS APPROPRIATE.**

27           Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property . . . is  
28 stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise."  
Similarly, Rule 6006(d) provides that an "order authorizing the trustee to assign an executory  
contract or unexpired lease . . . is stayed until the expiration of 14 days after the entry of the

1 order, unless the court orders otherwise.” The Debtors request that the Order be effective  
2 immediately by providing that the 14-day stays under Rules 6004(h) and 6006(d) are waived.

3 The purpose of Rules 6004(h) and 6006(d) is to provide sufficient time for an objecting  
4 party to appeal before an order can be implemented. *See* Advisory Committee Notes to Fed. R.  
5 Bankr. P. 6004(h) and 6006(d). Although Rules 6004(h) and 6006(d) and the Advisory  
6 Committee Notes are silent as to when a court should “order otherwise” and eliminate or reduce  
7 the 14-day stay period, *Collier* suggests that the 14-day stay period should be eliminated to allow  
8 a sale or other transaction to close immediately “where there has been no objection to the  
9 procedure.” *Collier on Bankruptcy*, ¶ 6004.11 (Alan N. Resnick & Henry J. Sommer eds., 16th  
10 ed.). Furthermore, *Collier* provides that if an objection is filed and overruled, and the objecting  
11 party informs the court of its intent to appeal, the stay may be reduced to the amount of time  
12 actually necessary to file such appeal. *Id.*

13 The Debtors hereby request that the Court waive the 14-day stay periods under Rules  
14 6004(h) and 6006(d) or, in the alternative, if an objection to the Sale is filed, reduce the stay  
15 period to the minimum amount of time needed by the objecting party to file its appeal.

16 **F. THE APPLICABLE REQUIREMENTS OF LBR 6004-1 ARE SATISFIED.**

17 Here all of the applicable requirements of LBR 6004-1(b) pertaining to the Motion and the  
18 request therein to approve the Bidding Procedures have been satisfied. First, as required by LBR  
19 6004-1(b)(2), the Notice of Motion describes the proposed Bidding Procedures and includes a  
20 copy of the Stalking Horse APA. Second, as required by LBR 6004-1(b)(2), the Notice of the  
21 Bid Procedures Motion and this Memorandum describe marketing efforts undertaken and the  
22 anticipated marketing of the Purchased Assets through the deadline for prospective Overbidders  
23 to submit bids for the Auction. Third, the Debtors provided notice of the Notice of Motion,  
24 Motion, and this Memorandum pursuant to LBR 6004-1(b)(3) and the *Order Granting*  
25 *Emergency Motion of Debtors for Order Limiting Scope of Notice* [Docket No. 132]. Therefore,  
26 the Debtors submit that service of the Notice of Motion, Motion, and this Memorandum by such  
27 means was adequate and appropriate.  
28

**X. CONCLUSION**

**WHEREFORE**, the Debtors respectfully request that the Court enter an order:  
(i) granting the relief requested herein; and (ii) granting such other and further relief as the Court  
may deem proper.

Dated: February 10, 2020

DENTONS US LLP  
SAMUEL R. MAIZEL  
TANIA M. MOYRON

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

Attorneys for the Chapter 11 Debtors and  
Debtors In Possession

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

**Exhibit 1**

**The Bidding Procedures**

## **EXHIBIT 1**

### **BIDDING PROCEDURES**

Verity Health System of California, Inc., Verity Holdings, LLC and St. Francis Medical Center (“Debtors”) propose to conduct an auction for the Sale (as defined under Paragraph 1 below) of the Purchased Assets (as defined under Paragraph 2 below) and will proceed in accordance with the following bid procedures (“Bidding Procedures”) which have been approved pursuant to an Order entered by the United States Bankruptcy Court for the Central District of California, Los Angeles Division (“Bankruptcy Court”) on \_\_\_\_\_, 2020 (“Bidding Procedures Order”) in the jointly administered, Chapter 11 cases styled *Verity Health System of California, Inc.*, Lead Case No. 2:18-bk-20151-ER (the “Bankruptcy Cases”).

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

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

---

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



Trustee (“UMB”); Wells Fargo Bank National Association, as bond indenture trustee under the bond indentures relating to the 2005 Bonds (“Wells Fargo”); U.S. Bank National Association, solely in its capacity as the note indenture trustee and as the collateral agent under each of the note indentures relating to the 2015 Working Capital Notes and the 2017 Working Capital Notes (“U.S. Bank”); and Verity MOB Financing, LLC and Verity MOB Financing II, LLC (“MOB Lenders”).<sup>2</sup> UMB, Wells Fargo, U.S. Bank, and the MOB Lenders are collectively referred to herein as the “Prepetition Secured Creditors.”

5. **Potential Bidders / Execution of NDA/ Financial Information.** To participate in the Auction, any party (a “Potential Bidder”) wishing to submit a Bid to purchase the Purchased Assets must execute, or have executed, a nondisclosure agreement (“NDA”) in the form provided by Debtors’ advisors and in form and substance satisfactory to the Debtors before such Potential Bidder may receive due diligence information from the Debtors, including access to the Debtors’ on-line data room or other non-public information relating to the Purchased Assets. In addition, any Potential Bidder must submit financial information to the Debtors to evidence such Potential Bidder’s ability to consummate the Sale, which information must be satisfactory to the Debtors after consultation with the Consultation Parties.
6. **Due Diligence.** After receipt of an executed NDA, the Debtors shall, upon request by the Potential Bidder, provide each Potential Bidder reasonable due diligence information as soon as reasonably practicable after such request, including access to the Debtors’ on-line data room. The Debtors shall not furnish, and shall have no obligation to furnish, any confidential and/or non-public information relating to the Purchased Assets or the Debtors (collectively, “Confidential Information”), or grant access to the Debtors’ on-line data room, to (i) any person that does not qualify as a Potential Bidder, or (ii) to Potential Bidders who, at such time and in the Debtors’ reasonable business judgment, after consultation with the Consultation Parties, have not established, or who have raised doubt, that such Potential Bidder intends in good faith to, or has the capacity to, consummate the Sale.
7. **Representations and Warranties.** The Debtors make no representation or warranty as to the Confidential Information provided through the due diligence process or otherwise, except to the extent set forth in the Draft APA (or as set forth in any Qualified APA (as defined under Paragraph 9 below) entered into between the Debtors and the Winning Bidder (as defined under Paragraph 13

---

<sup>2</sup> Such parties are further described in the *Final Order (I) Authorizing Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief* [Docket No. 409] (the “Final DIP Order”).

below). No party may conduct any additional due diligence after the Bid Deadline (as defined under Paragraph 8 below).

8. **Bid Deadline.** Potential Bidders must submit their Bids so that such Bids are actually received by each of the following parties **no later than 5:00 p.m. (Pacific Time) on April 3, 2020** (the “Bid Deadline”): (i) counsel to the Debtors: Dentons US LLP, 601 S. Figueroa Street, Suite 2500, Los Angeles, CA 90017 (Attn: Tania M. Moyron (tania.moyron@dentons.com)); (ii) the Debtors’ Investment Banker: Cain Brothers, a division of KeyBanc Capital Markets, 1 California Street, Suite 2400, San Francisco, CA 94111 (Attn: James Moloney (jmoloney@cainbrothers.com)); (iii) counsel to the Official Committee: Milbank, Tweed, Hadley & McCloy LLP, 2029 Century Park East, 33rd Floor, Los Angeles, CA 90067 (Attn: Gregory A. Bray (gbray@milbank.com)); (iv) counsel to the Master Trustee and Series 2005 Bond Trustee: Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, MA 02111 (Attn: Daniel S. Bleck and Paul Ricotta (dsbleck@mintz.com, pricotta@mintz.com)); (v) counsel to the Series 2015 Notes Trustee: McDermott Will & Emery LLP, 444 West Lake Street, Suite 4000, Chicago, IL 60606 (Attn: Nathan F. Coco and Megan Preusker (ncoco@mwe.com; mpreusker@mwe.com)); (vi) counsel to the Series 2017 Notes Trustee: Maslon, LLP, 3300 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402 (Attn: Clark Whitmore (clark.whitmore@maslon.com)); and (vii) counsel to the MOB Lenders: Jones Day, 250 Vesey Street, New York, NY 10281 (Attn: Bruce Bennett, Benjamin Rosenblum, and Peter Saba (bbennett@jonesday.com, brosenblum@jonesday.com, psaba@jonesday.com)) (collectively, the “Bid Deadline Recipients”). Potential Bidders may either e-mail their Bids to the e-mail addresses listed above or may deliver hard-copies of their Bids to the physical addresses listed above so that they are actually received by the Bid Deadline. The Debtors shall have no obligation to consider any other delivery format, such as fax, as being acceptable. The Debtors may, in their sole discretion after consultation with the Consultation Parties, extend the Bid Deadline until the commencement of the Auction for one or more Potential Bidders without prior notice to any party, but shall have no obligation to do so under any circumstances.
9. **Qualified Bid.** In order to constitute a “Qualified Bid,” a Bid must satisfy the following requirements (the “Bid Requirements”):
- (a) be submitted (i) in writing and (ii) be received by the Bid Deadline Recipients by the Bid Deadline as set forth in Paragraph 8 of these Bidding Procedures, subject to Paragraph 11 of these Bidding Procedures;
  - (b) constitute a good faith, bona fide offer to purchase the Purchased Assets in accordance with the terms of the Qualified APA (as defined in this Paragraph 9) for a proposed purchase price (“Purchase Price”) identified in such Qualified APA and defined as the “Purchase Price” therein;

- (c) identify the legal name of the Potential Bidder (including any direct or indirect equity holders, if the Potential Bidder is an entity formed for the purpose of consummating the proposed Sale);
- (d) be accompanied by a clean and a duly executed copy of an asset purchase agreement (the “Qualified APA”), the form of which shall be consistent with the Draft APA and which shall not be inconsistent with these Bidding Procedures;
- (e) be accompanied by a copy of the Qualified APA which is marked to reflect the amendments and modifications compared to the Draft APA;
- (f) be accompanied by a copy of the draft Sale Order (as defined under Paragraph 15 below) marked to reflect the amendments and modifications (if any) compared to the form of draft Sale Order posted in the Debtors’ on-line data room;
- (g) be accompanied by a copy of the draft California Attorney General conditions marked to reflect the amendments and modifications (if any) compared to the form of draft California Attorney General conditions posted in the Debtors’ on-line data room;
- (h) unless it is a Credit Bid (as defined below), be accompanied by a deposit by wire transfer in the amount of ten percent (10%) of the aggregate Purchase Price in certified funds or such other amount acceptable to the Debtors, in consultation with the Consultation Parties (“Deposit”), to be held in escrow and treated in accordance with the provisions of Paragraph 16 of these Bidding Procedures;
- (i) provide sufficient and adequate information to demonstrate to the satisfaction of the Debtors, in consultation with the Consultation Parties, that such Potential Bidder has the financial wherewithal and ability to consummate the Sale;
- (j) include a written statement that the Potential Bidder agrees to be bound by the terms of the Bidding Procedures and the Bidding Procedures Order and consents to the jurisdiction of the Bankruptcy Court (including waiving any right to a jury trial) in connection with any disputes related to these Bidding Procedures as well as (*each as defined below*) the Auction, the Sale Hearing, the Sale Order and/or the closing of the Sale;
- (k) include a written statement outlining the absence or presence, and details thereof, of any relationship, affiliation, or connection of any kind between the Potential Bidder, on the one hand, and the Debtors and/or any of their affiliates, current or former officers, directors, and/or investors;

- (l) not be conditioned on any due diligence, financing, or other contingencies other than entry of the Sale Order, and any other contingencies solely to the extent set forth in the Qualified APA;
  - (m) remain irrevocable until forty-eight (48) hours after the conclusion of the Sale Hearing or such longer period of time as set forth below if the Potential Bidder is selected as the Winning Bidder or Back-Up Bidder (as defined below);
  - (n) states that the Potential Bidder is willing to serve as a Back-Up Bidder and that its Qualified Bid (or any Qualified Bid as modified at the Auction) shall constitute the Back-Up Bid if the Debtors determine that it qualifies as the Back-Up Bid in accordance with the provisions of Paragraph 14; and
  - (o) if such Qualified Bid includes a Credit Bid (as defined below), evidence of (a) the basis, amount and priority of the Credit Bidder's (as defined below) security interest in the Purchased Assets that are subject to the Credit Bid and (b) the basis of the Credit Bidder's authority to make such Credit Bid if the Credit Bidder's secured claim is held in a representative capacity. No Bid that includes a Credit Bid made pursuant to § 363(k) shall qualify as a Qualified Bid, whether made at the Auction or before, unless (x) all secured creditors with a valid and perfected security interest in the Purchased Assets subject to the Credit Bid that rank equal or senior to the security interest of the Credit Bidder in such Purchased Assets consent in writing to such Credit Bid or (y) the Credit Bid expressly provides for the payment in full in cash at the closing on account of the Purchased Assets subject to valid and perfected liens that are senior in rank to the security interests of the Credit Bidder.
10. **Discretionary Determination of Stalking Horse Bidder.** The Debtors, in their discretion, after consultation with the Committee, and with the prior consent of the Prepetition Secured Creditors, may agree that a Qualified Bidder shall be afforded stalking horse status and protections (the "Stalking Horse Bidder"), including a break-up fee and expense reimbursement in an amount not to exceed in the aggregate 2.5% of the proposed Purchase Price under such Qualified Bidder's Qualified APA (the "Break-Up Fee"). Any Break-Up Fee, to the extent payable, shall only be paid from proceeds received by the Debtors at the closing of a Sale with a Qualified Bidder other than the Stalking Horse Bidder. The award of stalking horse protection may occur without further notice (other than an announcement to Potential Bidders no later than the commencement of the Auction) or order of the Bankruptcy Court.
11. **Determination of Qualified Bids.** A Bid that satisfies each of the Bid Requirements, as determined by the Debtors in their reasonable discretion, in consultation with the Consultation Parties, constitutes a "Qualified Bid", and such Potential Bidder constitutes a "Qualified Bidder." The Debtors may determine

that a Bid is not a Qualified Bid if the Qualified APA differs in any material respect from the Draft APA. One business day prior to the Auction, the Debtors shall determine, after consultation with the Consultation Parties, whether any submitted bids constitute Qualified Bids. The Debtors shall file and serve on all Potential Bidders that submitted a Bid (regardless of whether such Bid was determined to be a Qualified Bid) a notice (the “Auction Notice”) indicating which Potential Bidders have submitted Qualified Bids. If any Bids are designated as Qualified Bids, the Auction shall be conducted on April 7, 2020 as further described below.

12. **Credit Bid.** Any party with a valid, properly perfected prepetition or post-petition security interest in any of the Purchased Assets may credit bid (any such bid, a “Credit Bid” and any party submitting a Credit Bid, each a “Credit Bidder”) for such Purchased Assets in connection with the Sale in accordance with and pursuant to § 363(k), except as otherwise limited by the Bankruptcy Court for cause; provided, however, that no Credit Bidder may Credit Bid unless (x) all secured creditors with a valid and perfected security interest in the Purchased Assets subject to the Credit Bid that rank equal or senior to the security interest of the Credit Bidder in the Purchased Assets consent in writing to such Credit Bid or (y) the Credit Bid expressly provides for the payment in full in cash at the closing on account of the Purchased Assets subject to valid and perfected security interests in the Purchased Assets that are equal or senior in rank to the security interests of the Credit Bidder. Nothing herein shall limit the rights of any party in interest to seek relief from the Bankruptcy Court related to the right or alleged right of any creditor to exercise a Credit Bid for any of the Purchased Assets.
13. **Auction.** The Debtors shall conduct an auction on April 7, 2020 at the offices of Dentons US LLP, 601 S. Figueroa Street, Suite 2500, Los Angeles, California 90017, commencing at 10:00 a.m. Pacific Time (the “Auction”). The Auction will be conducted to determine the highest and best Qualified Bid (the “Winning Bid,” with such bidder being the “Winning Bidder”). Subject to paragraph 18 below, the Auction will be conducted in accordance with the following procedures (the “Auction Procedures”):
  - (a) only Qualified Bidders, in person or through duly-authorized representatives at the Auction may bid at the Auction, and every Qualified Bidder must have at least one (1) such duly-authorized representative with authority to bind the Qualified Bidder at the Auction;
  - (b) only such authorized representatives of each of the Qualified Bidders, the Debtors, the Consultation Parties and their respective legal and financial advisors shall be permitted to attend the Auction;
  - (c) prior to the commencement of the Auction, representatives of the Debtors, and/or the Consultation Parties may have discussions with each Qualified Bidder with respect to the terms and conditions of such Qualified Bids, and the Debtors will have selected, in consultation with the Consultation

Parties, a Qualified Bid to become the opening bid at the Auction (the bid submitted by such Qualified Bidder shall be referred to as the “Opening Bid” and the Qualified Bidder shall be referred to as the “Opening Bidder”);

- (d) bidding shall commence at the amount of the Opening Bid. The Opening Bid shall be announced by the Debtors at or before the commencement of the Auction. Other Qualified Bidders may then submit successive bids in increments of at least \$2,000,000 (plus, with respect to the first successive bid, the amount of the Break-Up Fee, if any) higher than the Opening Bid, and all subsequent bids must be at least \$2,000,000 higher than the previous bid. To the extent a Stalking Horse Bidder submits higher bids, such Stalking Horse Bidder shall have the right (but not the obligation) to increase its Opening Bid by using, as a credit, the amount of the Break-Up Fee when determining whether any Stalking Horse Bidder has topped the previous bid by the required amount;
- (e) Qualified Bidders shall have the right to submit additional bids that include modifications to their Qualified APA at the Auction, consistent herewith, provided that any such modifications to the Qualified APA, on an aggregate basis and viewed in whole, shall not be less favorable to the Debtors than any prior bid by such party (as determined by the Debtors, following consultation with the Consultation Parties). The Debtors, in consultation with the Consultation Parties, reserve the right to separately negotiate the terms of any Qualified Bids at the Auction, provided the terms are fully disclosed at the time such Qualified Bid is formally submitted;
- (f) the bidding will be transcribed by a certified court reporter employed by the Debtors to ensure an accurate recording of the bidding at the Auction;
- (g) each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the proposed Sale and is not in violation of § 363(n); and
- (h) absent irregularities in the conduct of the Auction, the Debtors will not consider any Potential Bids made after the Auction is closed.

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

- (a) Upon the conclusion of the Auction (if such Auction is conducted), the Debtors, in the exercise of their reasonable, good-faith business judgment and after consultation with the Consultation Parties, shall identify (i) the Winning Bid, which is the highest and best Qualified Bid submitted at the Auction; and (ii) the next highest and best Qualified Bid (the “Back-Up Bid” and the party submitting the Back-Up Bid, the “Back-Up Bidder”). Each of the Winning Bidder and the Back-Up Bidder shall be required to

execute a definitive Qualified Bid conformed to the provisions of the Winning Bid and the Back-Up Bid, as applicable, as soon as practicable but, in no event, prior to the Sale Hearing. For the purposes of these Bidding Procedures, the definitive agreement executed by the (i) Winning Bidder shall be defined as the “Winning Bid APA” and (ii) Back-Up Bidder shall be defined as the “Back-Up Bid APA”. The Back-Up Bidder must keep the Back-Up Bid open and irrevocable until the earlier of (i) 5:00 p.m. (Pacific Time) on the date which is thirty (30) days after the entry of the Sale Order (the “Outside Back-Up Date”), or (ii) the date of closing of the Sale to the Winning Bidder.

- (b) Except as provided in Paragraph 9(h) concerning Credit Bids, within two business days after the conclusion of the Auction, the Winning Bidder and the Back-Up Bidder shall each deposit with the Debtors an additional amount in cash such that, when combined with their existing Deposit, each such bidder’s aggregate Deposit equals ten percent (10%) of the Purchase Price reflected in the final bid of the Winning Bidder and of the Back-Up Bidder, respectively (such additional amounts shall be included in the definition of the “Deposit”).
- (c) If an Auction is held, the Debtors shall be deemed to have accepted a Qualified Bid as the winner of the Auction (conditioned upon approval by the Bankruptcy Court) only when (i) such bid is declared the Winning Bid; (ii) definitive documentation has been executed in respect thereof; and (iii) any additional Deposit required as a result of a bid submitted at the Auction (as required by the Bidding Procedures) has been provided to the Debtors. Such acceptance is also conditioned upon approval by the Court of the Winning Bid and (if applicable) the Back-Up Bid.

15. **Sale Hearing.**

- (a) The sale hearing is presently scheduled to take place **on April 9, 2020 at 10:00 a.m. (Pacific Time)**, or as soon thereafter as counsel may be heard, before the Honorable Ernst M. Robles, Courtroom 1568, 255 E. Temple St., Los Angeles, California (the “Sale Hearing”).
- (b) Within two business days after the conclusion of the Auction (and in advance of the Sale Hearing), the Debtors will file a notice of the Winning Bid and Back-Up Bid, along with copies of the Winning Bid APA, Back-Up Bid APA and the proposed Sale Order (the “Notice of Winning Bid and Back-Up Bid”), redacted as necessary to protect commercially sensitive and/or confidential information. The Sale Order shall be in a form reasonably acceptable to the Prepetition Secured Creditors.
- (c) Any objection to the approval of the Winning Bid and Back-Up Bid shall be filed no later than April [ ], 2020 at **5:00 o’clock p.m. (Pacific Time)**.

- (d) The Debtors will present the results of the Auction to the Bankruptcy Court at the Sale Hearing, at which certain findings will be sought from the Bankruptcy Court regarding the Auction, including, among other things, that (i) the Auction was properly conducted, and the Winning Bidder and the Back-Up Bidder were properly selected, in accordance with these Bidding Procedures, (ii) the Auction was fair in substance and procedure, (iii) each of the Winning Bid and the Back-Up Bid was a Qualified Bid, (iv) closing of the Sale with the Winning Bid (or if applicable, the Back-Up Bid) will provide the highest and best value for the Purchased Assets and is in the best interests of the Debtors and (v) each of the Winning Bidder and the Back-Up Bidder are deemed to be purchasers of the Purchased Assets in good faith as set forth in § 363(m).
- (e) At the Sale Hearing, the Debtors shall request the Bankruptcy Court to enter an order approving the Winning Bid and, if applicable, the Back-Up Bid (the “Sale Order”). Except to the extent revised by the Debtors in their discretion, after consultation with the Consultation Parties and the Winning Bidder, the proposed Sale Order presented to the Bankruptcy Court at the Sale Hearing shall be in the form submitted as part of the Winning Bid, and will preserve the rights of the Prepetition Secured Creditors with respect to any proceeds received from the Sale in accordance with the Final DIP Order and the Intercreditor Agreement (as defined in the Final DIP Order).
- (f) At the Sale Hearing, the Debtors shall also request, as part of the Sale Order, authorization from the Bankruptcy Court to accept the Back-Up Bid as the Winning Bid, and consummate such bid, if the Winning Bid is not consummated when and as required by its terms without further order of the Bankruptcy Court. The Debtors and the Back-Up Bidder shall be bound to consummate the Back-Up Bid if the Winning Bid terminates, at which time the Back-Up Bidder shall be deemed the Winning Bidder. The Debtors shall promptly give notice to the Back-Up Bidder if the Winning Bid is terminated and shall provide the Back-Up Bidder a reasonable period within which to close as set forth in the Back-Up Bid APA.

16. **Treatment Of Deposit.**

- (a) The Deposit of each Potential Bidder shall be held pursuant to an escrow agreement acceptable to the Debtors, subject to the prior consent of the Debtors as to the escrow agent and form of escrow agreement, where such consent is not to be unreasonably withheld.
- (b) Upon closing of the Sale with the Winning Bidder, the Deposit of the Winning Bidder shall be credited to the Purchase Price. As shall be set forth in the Winning Bid APA, if the Winning Bidder fails to close, then the Deposit which is the subject of the Winning Bid shall be retained by



the Debtors or returned to the Winning Bidder as shall be set forth in the Winning Bid APA or as otherwise ordered by the Bankruptcy Court.

- (c) The Deposits of any Qualified Bidders other than the Winning Bidder and the Back-Up Bidder will be returned within two (2) business days after the conclusion of the Sale Hearing; provided, that, the Deposit of the Back-Up Bidder shall be returned to the Back-Up Bidder at the earlier of (i) the closing of the Sale to the Winning Bidder, and (ii) thirty (30) days after entry of the Sale Order.
  - (d) The Deposit of any Potential Bidder who is determined not to be a Qualified Bidder shall be returned to such Potential Bidder within two (2) business days of such determination, pursuant to the terms of the applicable escrow agreement.
17. **Payment of the Break-Up Fee.** If any Stalking Horse Bidder is not the Winning Bidder, the Debtors shall pay the Break-Up Fee to such Stalking Horse Bidder as set forth in the agreement between the Debtors and the Stalking Horse Bidder providing for such Break-Up Fee, but in no event shall payment be any earlier than the time of the consummation of the sale of the Purchased Assets or transfer thereof in the context of an Alternative Transaction, and shall only be paid from the proceeds of such sale or upon the transfer of such Purchased Assets. Notwithstanding the foregoing, a Break-Up Fee will only be payable if the Debtors have previously determined pursuant to Paragraph 10 of these Bidding Procedures that a bid merits stalking horse status and protections.
18. **Reservation of Rights.** THE DEBTORS RESERVE THEIR RIGHTS TO MODIFY THESE BIDDING PROCEDURES IN ANY MANNER IN CONSULTATION WITH THE COMMITTEE AND WITH THE CONSENT OF THE PREPETITION SECURED CREDITORS THAT WILL BEST PROMOTE THE GOALS OF THE BIDDING PROCESS. THE DEBTORS FURTHER RESERVE THEIR RIGHTS TO IMPOSE, AT OR PRIOR TO THE AUCTION, ADDITIONAL TERMS AND CONDITIONS ON THE SALE OF THE PURCHASED ASSETS, INCLUDING, WITHOUT LIMITATION, EXTENDING THE DEADLINES SET FORTH IN THESE BIDDING PROCEDURES, ADJOURNING THE AUCTION AT OR PRIOR TO THE AUCTION AND/OR ADJOURNING THE SALE HEARING PRIOR TO SUCH HEARING OR IN OPEN COURT WITHOUT FURTHER NOTICE, AND REJECTING ANY OR ALL QUALIFIED BIDS IF, IN THE DEBTORS' REASONABLE, GOOD-FAITH BUSINESS JUDGMENT, FOLLOWING CONSULTATION WITH THE CONSULTATION PARTIES, THE DEBTORS DETERMINE THAT SUCH QUALIFIED BID IS (I) INADEQUATE OR INSUFFICIENT, (II) NOT IN CONFORMITY WITH THE REQUIREMENTS OF THE BANKRUPTCY CODE OR ANY RELATED RULES OR THE TERMS SET FORTH HEREIN, OR (III) CONTRARY TO THE BEST INTERESTS OF THE DEBTORS. THE

**DEBTORS RESERVE THE RIGHT, AT ANY TIME, FOR ANY REASON  
AND IN THEIR REASONABLE, BUSINESS JUDGMENT, TO DECLINE  
TO PURSUE THE SALE AND TO WITHDRAW ANY MOTION FILED  
IN THE COURT SEEKING TO APPROVE THE SALE.**