

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' EMERGENCY 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 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 AND DECLARATIONS 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



182015120033000000000011

EMERGENCY MOTION

Verity Health System of California, Inc. (“VHS”) and the above-referenced affiliated debtors, the debtors and debtors in possession (collectively, the “Debtors” or the “Verity Health System”) in the above-captioned chapter 11 bankruptcy cases (the “Cases”), hereby move, on an emergency basis (the “Motion”),¹ pursuant to §§ 105(a), 363, and 365 of title 11 of the United States Code (the “Bankruptcy Code”),² Rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 6004-1(b) and 9013-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California (“LBR”), for the entry of an order: (a) approving a process by which interested parties may bid (a “Bid”) to purchase (the “Sale”) certain assets (the “Purchased Assets”) of Debtors St. Vincent Medical Center (“SVMC”),³ Verity Holdings, LLC (“Holdings”), and VHS (together with SVMC and Holdings, the “Sellers”), including the procedures related to assumption and assignment of Assumed Executory Contracts and the payment of Cure Costs (as such terms are defined in the Motion); (b) approving the Chan Soon-Shiong Family Foundation or its permitted assignee (the “Stalking Horse Bidder” or the “Foundation”) as the stalking-horse bidder and approving the termination payment, expense reimbursement and related bidding protections (the “Stalking Horse Bidder Protections”) set forth in Section 9.3 of its Asset Purchase Agreement attached as Exhibit “A” to the Motion (the “Stalking Horse APA”); (c) approving the form of the Stalking Horse APA; (d) setting bid procedures (the “Bid Procedures”) to establish guidelines for parties interesting in making initial Bids and overbids to such initial Bids; (e) if the Debtors

¹ The Debtors request that the Court hold a hearing on the Motion on an emergency basis on **April 1, 2020, at 10:00 a.m. (Pacific Time)**, to meet the deadlines set forth in the Bid Procedures as outlined on page 2 of the Motion.

² All references to “§” are to sections of the Bankruptcy Code.

³ The Purchased Assets related to SVMC include the hospital facilities formerly known as St. Vincent Medical Center, located at 2131 W. 3rd Street, Los Angeles, CA 90057, including the hospital pharmacy, laboratory and emergency department, as well as the medical office buildings and clinics owned and formerly operated by SVMC (collectively, the “Hospital”) and are defined as the “Assets” under the Stalking Horse APA (as defined below).

1 receive one or more Qualified Bids (as defined in the Motion), in addition to the Stalking Horse
2 Bid, scheduling an auction of the Purchased Assets; (f) scheduling a sale hearing for the Court to
3 approve the highest and best Qualified Bid; and (g) granting such other and further relief as is just
4 and appropriate under the circumstances.

5 The Debtors concluded, in their business judgment, that the Sale on an emergency basis is
6 in the best interests of the Debtors, their estates, and stakeholders, as follows: (i) the Stalking
7 Horse Bidder desires to use the facilities on an expedited basis in order to coordinate with the
8 State of California (the “State”) and the local government to ensure that the facilities are being
9 put to the best use in this critical time and to facilitate critical research related to the COVID-19
10 (as defined below) pandemic; (ii) given this need, the Stalking Horse Bidder desires to purchase
11 facilities to facilitate and implement its plan and may acquire facilities from another seller if the
12 proposed Sale is not approved on an emergency basis; (iii) St. Vincent has been widely and
13 intensely marketed and the value of the proposed Sale is significant, particularly since it will
14 generate at least \$135 million in cash for the estates that continue to incur losses; and (iv) the
15 Debtors seek to avoid the uncertain impact of COVID-19 on capital markets that may affect a sale
16 approved on regular notice, including the potential impact on purchasers’ access to financing and
17 the value of the Purchased Assets. The Stalking Horse Bidder is aware of the lease agreement
18 [Docket No. 4315] between the Debtors and the State of California (the “State”), wherein the
19 State is leasing the primary facility, the Hospital, to provide services related to the SARS-CoV-2
20 virus and the related infectious disease (“COVID-19”) pandemic. The Stalking Horse Bidder
21 intends to cooperate with the State and use the additional buildings that comprise the St. Vincent
22 campus, including three medical office buildings and Seton Hall, to also address COVID-19. The
23 Stalking Horse Bidder’s willingness to take assignment of the Lease will further the Debtors’
24 charitable mission to ensure continued critical health care access to the communities formerly
25 served by the Hospital through continued partnership with the State to address the COVID-19
26 pandemic post-closing.

27 Finally, the Debtors anticipate that the prepetition secured creditors and the Official
28 Committee of Unsecured Creditors will support the proposed Sale and Bidding Procedures.

1 Accordingly, the Debtors respectfully request that the Court grant the Motion for an emergency
2 hearing because the proposed expedited hearing will not prejudice any parties and is in the best
3 interests of the Debtors' estates and creditors.

4 **I.**

5 **BASIS FOR THE REQUESTED RELIEF**

6 The Debtors seek approval of the Bidding Procedures and the Sale as expeditiously as
7 possible for the reasons set forth above. The Motion is based upon §§ 105, 363, and 365,
8 Bankruptcy Rules 2002, 6004, 6006, 9007, and 9014, and LBRs 6004-1(b) and 9013-1, the
9 attached Memorandum of Points and Authorities, the *Declaration of Richard Adcock in Support*
10 *of Emergency First-Day Motions* [Docket No. 8] (the "First-Day Decl."), the *Declaration of*
11 *James M. Moloney in Support of the Debtors' Memorandum in Support of Entry of an Order: (A)*
12 *Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances; (B)*
13 *Authorizing the Assumption and Assignment of Designated Executory Contracts and Unexpired*
14 *Leases; and (C) Granting Related Relief* [Docket No. 2220] (the "Prior Moloney Decl."); the
15 Declarations of Richard G. Adcock (the "Adcock Decl.") and James M. Moloney (the "Moloney
16 Decl.") filed concurrently herewith, the arguments and statements of counsel to be made at the
17 hearing on the Motion, and any other admissible evidence properly brought before the Court. The
18 Debtors request that the Court take judicial notice of the record in the Debtors' Cases and any
19 other judicially noticeable facts in support of the Motion, as appropriate, including all documents
20 filed with the Court in these Cases that relate to the SGM Sale and the prior sale of hospitals to
21 Santa Clara County.

22 **II.**

23 **RESPONSES**

24 Any party opposing or responding to the Motion may present such response (the
25 "Response") at any time before or at the hearing on the Motion. *See* LBR 9075-1(a)(8). A
26 Response must be a complete written or oral statement of all reasons in opposition to the Motion
27 or in support, declarations and copies of all evidence on which the responding party intends to
28 rely, and any responding memorandum of points and authorities. Pursuant to LBR 9013-1(h), the

1 failure to file and serve a timely objection to the Motion may be deemed by the Court to be
2 consent to the relief requested herein.

3 **III.**

4 **SERVICE OF MOTION**

5 Counsel to the Debtors will serve this Motion, the attached Memorandum of Points and
6 Authorities, the Adcock Decl., the Moloney Decl., and any notice required by the Court on: (i) the
7 California Attorney General; (ii) the Official Committee of Unsecured Creditors; (iii) the
8 Debtors' prepetition secured creditors; (iv) the Stalking Horse Bidder; (v) the Office of the United
9 States Trustee; and (vi) any other parties on the Limited Service List set forth in the *Order*
10 *Granting Emergency Motion of Debtors for Order Limiting Scope of Notice* [Docket No. 132].
11 To the extent necessary, the Debtors request that the Court waive compliance with LBR 9075-
12 1(a)(6) and approve service (in addition to the means of service set forth in such LBR) by
13 overnight delivery.

14 **IV.**

15 **RESERVATION OF RIGHTS**

16 Nothing contained herein is intended or shall be construed as: (i) an admission as to the
17 validity of any claim against the Debtors; (ii) a waiver of the Debtors' or any appropriate party in
18 interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors; or
19 (iii) a waiver of any claims or causes of action which may exist against any creditor or interest
20 holder.

21 **V.**

22 **CONCLUSION**

23 For all the foregoing reasons and such additional reasons as may be advanced at or prior
24 to the hearing regarding this Motion, the Debtors respectfully request that the Court hold a
25 hearing on an emergency basis to consider the Debtors request for an order: (a) approving a
26 process by which interested parties may Bid to purchase the Purchased Assets of the Sellers,
27 including procedures related to the assumption and assignment of Assumed Executory Contracts
28 and payment of Cure Costs; (b) approving the Stalking Horse Bidder as the stalking-horse bidder

1 and approving the Stalking Horse Bidder Protections; (c) approving the form of the Stalking
2 Horse APA; (d) approving Bid Procedures; (e) if the Debtors receive one or more Qualified Bids
3 (as defined in the Motion), in addition to the Stalking Horse Bid, scheduling an auction of the
4 Purchased Assets; (f) scheduling a sale hearing for the Court to approve the highest and best
5 Qualified Bid.; and (g) granting such other and further relief as is just and appropriate under the
6 circumstances.

7 Dated: March 30, 2020

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

8
9
10 By /s/ Tania M. Moyron
Tania M. Moyron

11
12 Attorneys for the Chapter 11 Debtors and
Debtors In Possession
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

TABLE OF CONTENTS

Emergency Motion.....	1
I. Basis for the Requested Relief.....	3
II. Responses.....	3
III. Service of Motion.....	4
IV. Reservation of Rights.....	4
V. Conclusion	4
Memorandum of Points and Authorities.....	1
I. Introduction.....	1
II. Jurisdiction and Venue.....	3
III. Statement of Facts.....	3
A. General Background.....	3
B. Facts Relevant to Motion	5
a. Prepetition Sale Efforts	5
b. DIP Facility	5
c. Postpetition Sale Efforts.....	5
d. The First Sale Process	6
e. Closure of the Hospital.....	7
f. Marketing Process 2020.....	7
g. The Stalking Horse Bidder.....	8
IV. Proposed Sale and Bidding Procedures.....	8
A. The Primary Terms of the Stalking Horse APA	9

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

1	B.	Requirements to Participate in the Auction	15
2	C.	Prepetition Secured Creditor’s Right to Credit Bid	16
3	D.	The Stalking Horse Bidder Protections.....	17
4	E.	Auction.....	17
5	F.	Representations and Warranties.....	17
6	G.	Acceptance of the Winning Bid	18
7	H.	The Sale Hearing.....	19
8	I.	Return of Deposits	20
9	J.	Notice Procedures	20
10	K.	Assumption and Assignment of Executory Contracts and Unexpired	
11		Leases and Procedures Related Thereto.....	21
12	V.	Argument	23
13	A.	Approval of the Bidding Procedures Is Appropriate and in the Best	
14		Interests of the Debtors’ Estates and Stakeholders.	23
15	B.	The Stalking Horse Bidder Protections Have A Sound Business Purposes	
16		and Are Necessary to Preserve the Value of the Debtors’ Estates.....	26
17	C.	The Procedure for Assumption and Assignment of Certain Executory	
18		Contracts and Unexpired Leases Is Appropriate.....	29
19	D.	Approval of the Sale Is Warranted under § 363.....	30
20	a.	The Sale of the Assets is Authorized by § 363 as a Sound Exercise	
21		of the Debtors’ Business Judgment.....	30
22	b.	The Sale of the Debtors’ Assets Free and Clear of Liens and Other	
23		Interests is Authorized by § 363(f).....	32
24			
25			
26			
27			
28			

1	c.	The Winning Bidder Should be Afforded All Protections Under §	
2		363(m) as A Good Faith Purchaser.....	34
3	E.	Relief From the 14-Day Waiting Period under Bankruptcy Rules 6004(h)	
4		and 6006(d) Is Appropriate.	34
5	F.	The Applicable Requirements of LBR 6004-1 Are Satisfied.	35
6			
7	VI.	Conclusion	36

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 AUTHORITIES

Page(s)

Cases

<i>In re 995 Fifth Ave. Assocs.,</i> 96 B.R. 24 (Bankr. S.D.N.Y. 1989)	27
<i>In re Abbotts Dairies of Pa., Inc.,</i> 788 F.2d 143 (2d Cir. 1986)	31
<i>In re America West Airlines, Inc.,</i> 166 B.R. 908 (Bankr. D. Ariz. 1994)	27
<i>In re Atlanta Packaging Prods., Inc.,</i> 99 B.R. 124 (Bankr. N.D. Ga. 1988)	25
<i>In re Bon Ton Rest. & Pastry Shop, Inc.,</i> 53 B.R. 789 (Bankr. N.D. Ill. 1985)	29
<i>Burtch v. Ganz (In re Mushroom Transp. Co.),</i> 382 F.3d 325 (3d Cir. 2004)	25
<i>In re Bygaph, Inc.,</i> 56 B.R. 596 (Bankr. S.D.N.Y. 1986)	30, 33
<i>Calpine Corp. v. O'Brien Envtl. Energy, Inc. (In re O'Brien Envtl. Energy, Inc.),</i> 181 F.3d 527 (3d Cir. 1999)	25, 27
<i>Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.),</i> 103 B.R. 524 (Bankr. D.N.J. 1989)	29
<i>In re Case Engineered Lumber, Inc.,</i> No. 09-22499 (Bankr. N.D. Ga. Sept. 1, 2009)	28
<i>Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.),</i> 722 F.2d 1063 (2d Cir. 1983)	31
<i>Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.),</i> 60 B.R. 612 (Bankr. S.D.N.Y. 1986)	31
<i>In re CXM, Inc.,</i> 307 B.R. 94 (Bankr. N.D. Ill. 2004)	27
<i>In re Dan River, Inc.,</i> No. 04-10990 (Banker. N.D. Ga. Dec. 17, 2004)	27
<i>In re Delaware & Hudson Ry. Co.,</i> 124 BR. 169 (D. Del. 1991)	31

1	<i>In re Dundee Equity Corp.</i> ,	
2	1992 Bankr. LEXIS 436 (Bankr. S.D.N.Y. Mar. 6, 1992).....	33
3	<i>In re Energytec, Inc.</i>	
4	739 F.3d 215 (5th Cir. 2013).....	34
5	<i>In re Ewell</i> ,	
6	958 F.2d 276 (9th Cir. 1992).....	34
7	<i>Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)</i> ,	
8	107 F.3d 558 (8th Cir. 1997).....	25, 31
9	<i>GBL Holding Co., Inc. v. Blackburn/Travis/Cole, Ltd.</i> ,	
10	331 B.R. 251 (N.D. Tex. 2005).....	32
11	<i>In re Hupp Indus.</i> ,	
12	140 B.R. 191 (Bankr. N.D. Ohio 1997)	26, 27
13	<i>In re Lajijani</i> ,	
14	325 B.R. 282 (B.A.P. 9th Cir. 2005).....	32
15	<i>In re Lake Burton Dev., LLC</i> ,	
16	2010 WL 5563622 (Bankr. N.D. Ga. Mar. 18, 2010)	27
17	<i>In re Marrose Corp.</i> ,	
18	1992 WL 33848 (Bankr. S.D.N.Y. 1992)	26
19	<i>Meyers v. Martin (In re Martin)</i> ,	
20	91 F.3d 389 (3d Cir. 1996).....	31
21	<i>Michigan Employment Sec. Comm’n v. Wolverine Radio Co. (In re Wolverine</i>	
22	<i>Radio Co.)</i> ,	
23	930 F.2d 1132 (6th Cir. 1991).....	33
24	<i>In re Natco Indus., Inc.</i> ,	
25	54 B.R. 436 (Bankr. S.D.N.Y. 1985)	29
26	<i>Nostas Assocs. v. Costich (In re Klein Sleep Prods., Inc.)</i> ,	
27	78 F.3d 18 (2d Cir. 1996).....	29
28	<i>Official Comm. of Subordinated Bondholders v. Integrated Res. Inc. (In re</i>	
	<i>Integrated Res. Inc.)</i> ,	
	147 B.R. 650 (S.D.N.Y. 1992).....	25, 26, 27, 31
	<i>Official Comm. of Unsecured Creditors v. The LTV Corp. (In re Chateaugay</i>	
	<i>Corp.)</i> ,	
	973 F.2d 141 (2d Cir. 1992).....	31
	<i>Onouli-Kona Land Co. v. Estate of Richards (In re Onouli-Kona Land Co.)</i> ,	
	846 F.2d 1170 (9th Cir. 1988).....	34

1	<i>Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)</i> ,	
2	4 F.3d 1095 (2d Cir. 1993).....	29
3	<i>Paulman v. Gateway Venture Partners III, L.P. (In re Filtercorp, Inc.)</i> ,	
4	163 F.3d 570 (9th Cir. 1998).....	34
5	<i>In re S.N.A. Nut Co.</i> ,	
6	186 B.R. 98 (Bankr. N.D. Ill. 1995).....	27
7	<i>In re T Asset Acquisition Company, LLC</i> ,	
8	No. 09-31853 (Bankr. C.D. Cal. Jan. 28, 2010).....	28
9	<i>In re Tama Beef Packing Inc.</i> ,	
10	321 B.R. 469 (B.A.P. 8th Cir. 2005).....	28
11	<i>In re Titusville Country Club</i> ,	
12	128 B.R. 396 (W.D. Pa. 1991).....	31
13	<i>In re Verity Health System of California, Inc.</i> ,	
14	No. 18-20151 (Bankr. C.D. Cal. Oct. 30, 2018).....	1, 28
15	<i>In re Women First Healthcare, Inc.</i> ,	
16	332 B.R. 115 (Bankr. D. Del. 2005).....	27
17	<i>In re WPRV-TV, Inc.</i> ,	
18	143 B.R. 315 (D.P.R. 1991).....	32
19	Statutes	
20	11 U.S.C. § 105(a)	24, 33
21	11 U.S.C. § 363(b)	31, 34
22	11 U.S.C. § 363(b)(1).....	24, 30
23	11 U.S.C. § 363(f).....	32, 33, 34
24	11 U.S.C. § 363(m)	14, 19, 34
25	11 U.S.C. § 365(a)	29
26	11 U.S.C. § 365(f)(2)	29
27	28 U.S.C. § 157	3
28	28 U.S.C. § 1334.....	3
	28 U.S.C. § 1408	3
	28 U.S.C. § 1409	3

Rules

FED. R. BANKR. P. 2002	21, 24
FED. R. BANKR. P. 6004	24, 31
FED. R. BANKR. P. 6004(h).....	35
FED. R. BANKR. P. 6006(d).....	35
FED. R. BANKR. P. 6004(f)	24
Local Bankruptcy Rule 6004-1(b)	1
Local Bankruptcy Rule 9013-1	1

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

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Verity Health System of California, Inc. (“VHS”) and the above-referenced affiliated debtors, the debtors and debtors in possession (collectively, the “Debtors” or the “Verity Health System”) in the above-captioned chapter 11 bankruptcy cases (the “Cases”), hereby move, on an emergency basis (the “Motion”),⁴ pursuant to §§ 105(a), 363, and 365 of title 11 of the United States Code (the “Bankruptcy Code”),⁵ Rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 6004-1(b) and 9013-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California (“LBR”), for the entry of an order: (a) approving a process by which interested parties may bid (a “Bid”) to purchase (the “Sale”) certain assets (the “Purchased Assets”) of Debtors St. Vincent Medical Center (“SVMC” or “St. Vincent”),⁶ Verity Holdings, LLC (“Holdings”), and VHS (together with SVMC and Holdings, the “Sellers”), including procedures related to the assumption and assignment of Assumed Executory Contracts and payment of Cure Costs (as such terms are defined in the Motion); (b) approving the Chan Soon-Shiong Family Foundation or its permitted assignee (the “Stalking Horse Bidder” or the “Foundation”) as the stalking-horse bidder and approving the termination payment, expense reimbursement and related bidding protections (the “Stalking Horse Bidder Protections”) set forth in Section 9.3 of its Asset Purchase Agreement attached as **Exhibit “A”** hereto (the “Stalking Horse APA”); (c) approving the form of the Stalking Horse APA; (d) setting bid procedures (the “Bid Procedures”) to establish

⁴ The Debtors request that the Court hold a hearing on the Motion on an emergency basis on **April 1, 2020, at 10:00 a.m. (Pacific Time)**, to meet the deadlines set forth in the Bid Procedures as outlined on page 2 hereof.

⁵ All references to “§” are to sections of the Bankruptcy Code.

⁶ The Purchased Assets related to SVMC include the hospital facilities formerly known as St. Vincent Medical Center, located at 2131 W. 3rd Street, Los Angeles, CA 90057, including the hospital pharmacy, laboratory and emergency department as well as the medical office buildings and clinics owned and formerly operated by SVMC (collectively, the “Hospital”) and are defined as the “Assets” under the Stalking Horse APA (as defined below).

guidelines for parties interesting in making initial Bids and overbids to such initial Bids; (e) if the Debtors receive one or more Qualified Bids (as defined in the Motion), in addition to the Stalking Horse Bid, scheduling an auction of the Purchased Assets; (f) scheduling a sale hearing for the Court to approve the highest and best Qualified Bid; and (g) granting such other and further relief as is just and appropriate under the circumstances.

In support of the Motion, the Debtors rely on the *Declaration of Richard Adcock in Support of Emergency First-Day Motions* [Docket No. 8] (the “First-Day Decl.”), the *Declaration of James M. Moloney in Support of the Debtors’ Memorandum in Support of Entry of an Order: (A) Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances; (B) Authorizing the Assumption and Assignment of Designated Executory Contracts and Unexpired Leases; and (C) Granting Related Relief* [Docket No. 2220] (the “Prior Moloney Decl.”); the Declarations of Richard Adcock (the “Adcock Decl.”) and James M. Moloney (the “Moloney Decl.”) filed concurrently herewith, any other admissible evidence properly brought before the Court, and respectfully state as follows:

The Debtors propose the following Sale timeline (all times are Pacific Time):

Date	Event
April 1, 2020	Service of approved Bidding Procedures, Auction and Sale Notice
April 3, 2020, at 5:00 p.m.	Bid Deadline for Qualified Bids
April 6, 2020, at 10:00 a.m.	Auction
April 7, 2020, at 5:00 p.m.	Deadline to file any objections to Sale
April 8, 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 and as stand-alone assets (including as real estate) since the SGM Sale (defined below) did not close. The Debtors have received multiple indications of interest from a number of parties who have submitted bids or expressions of interest and conducted due diligence including in the extensive

1 Virtual Data Room (which includes current title work, surveys, inspections and other recent
2 reports) and site visits.

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

6 **II.**

7 **JURISDICTION AND VENUE**

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

11 **III.**

12 **STATEMENT OF FACTS**

13 **A. GENERAL BACKGROUND**

14 1. On August 31, 2018 (the "Petition Date"), the Debtors each filed a voluntary
15 petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court
16 for the Central District of California, Los Angeles Division (the "Bankruptcy Court"). Since the
17 commencement of their Cases, the Debtors have been operating their businesses as debtors in
18 possession pursuant to §§ 1107 and 1108. On September 14, 2018, the Office of the United
19 States Trustee appointed the Official Committee of Unsecured Creditors [Docket No. 197].

20 2. Debtor VHS, a California nonprofit public benefit corporation, is the sole
21 corporate member of five Debtor California nonprofit public benefit corporations that operated
22 O'Connor Hospital, Saint Louise Regional Hospital, and SVMC, and currently operates St.
23 Francis Medical Center and Seton Medical Center, including its Coastsides campus.

24 3. As of the Petition Date, the Verity Health System operated as a nonprofit
25 healthcare system in the State of California, with approximately 1,680 inpatient beds, six active
26 emergency rooms, a trauma center, eleven medical office buildings, and a host of medical
27 specialties, including tertiary and quaternary care. *See* First-Day Decl. at ¶ 12. The scope of the
28 services provided by the Verity Health System is exemplified by the fact that in 2017, the system

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

1 hospitals provided medical services to over 50,000 inpatients and approximately 480,000
2 outpatients. *Id.* The Verity Health System was originally established by the Daughters of Charity
3 of St. Vincent de Paul, Province of the West, to support the mission of the Catholic Church
4 through a commitment to the sick and poor. *Id.*

5 4. St. Vincent Medical Center was founded as the first hospital in Los Angeles in
6 1856. *Id.* at ¶ 34. In 1971, a new facility was constructed at the Hospital’s current location at
7 2131 West Third Street, Los Angeles, CA 90057. *Id.* Prior to its closure, the hospital had
8 expanded to a 366 licensed bed, regional acute care, tertiary referral facility, specializing in
9 cardiac care, cancer care, total joint and spine care, and multi-organ transplant services. *Id.* The
10 Hospital served both local residents and residents from Los Angeles, San Bernardino, Riverside,
11 and Orange Counties. *Id.* As a provider of healthcare services for a high percentage of elderly
12 patients, many of the Hospital’s services and programs were focused on the treatment of various
13 chronic diseases. *Id.*

14 5. St. Vincent is a jointly “obligated” party with its affiliates on approximately
15 \$461.4 million of outstanding secured debt consisting of: (a) \$259.4 million outstanding tax
16 exempt revenue bonds, Series 2005 A, G and H issued by the California Statewide Communities
17 Development Authority (the “2005 Bonds”), which loaned the bond proceeds to certain Debtors
18 to provide funds for capital improvements and to refinance certain tax exempt bonds previously
19 issued in 2001 by the Daughters of Charity Health System, and (b) \$202.0 million outstanding tax
20 exempt revenue notes, Series 2015 A, B, C, and D and Series 2017 issued by the California
21 Public Finance Authority. *Id.* at ¶ 121.

22 6. In addition, Holdings was created in 2016 to hold and finance Verity’s interests in
23 six medical office buildings whose tenants are primarily physician and other practicing medical
24 groups and certain of the Verity Hospitals. *Id.* at ¶ 123. Holdings is the borrower on
25 approximately of \$66 million on two series of nonrecourse financing secured by separate deeds of
26 trust, revenue and accounts pledges, including lease rents on each medical buildings (collectively
27 “MOB Financing”), certain of which are among the Purchased Assets. *Id.* The secured lenders
28 for the MOB Financings are affiliates of NantWorks, LLC. *Id.*

B. FACTS RELEVANT TO MOTION

a. Prepetition Sale Efforts

7. Prior to the Petition Date, the Debtors engaged in substantial efforts to market and solicit interest in their assets, including the five hospitals and related assets (collectively, the “Assets”). *See* Prior Moloney Decl. at ¶ 4. In June 2018, Debtors engaged Cain Brothers, a division of KeyBanc Capital Markets (“Cain”), to assist in identifying potential buyers of some or all of the Assets and commenced discussions with those potential Buyers. *Id.* Cain prepared a Confidential Investment Memorandum and organized an online data site to share information with potential buyers and contacted strategic and financial buyers beginning in July 2018. *Id.* In this initial marketing process, Cain contacted more than 100 potential partners to evaluate their interest in exploring a transaction involving some or all of the Assets. *Id.* By August 2018, as a result of its ongoing and broad marketing process, Cain had received 11 “Indications of Interest” from potential buyers of some or all of the Assets. *Id.*

b. DIP Facility

8. At the commencement of the Cases, the Debtors obtained court approval for a DIP financing facility with up to \$185 million of availability from Ally Bank subject to a borrowing base (the “DIP Facility”). *See* Docket No. 409. The DIP Facility was secured by substantially all of the Debtors’ assets and also provided for super priority administrative priority status for all obligations under the facility. *Id.* The DIP Facility enabled Debtors to operate the system hospitals while they continued their efforts to find a purchaser for their assets and to reach agreements with key constituents. On September 6, 2019, the Debtors received authority to pay off the DIP Facility and continue funding operations through the consensual use of cash collateral [Docket No. 3022].

c. Postpetition Sale Efforts

9. Postpetition, Cain continued to work with potential buyers for some or all of the Assets. *See* Prior Moloney Decl., at ¶ 5. Based on these discussions, the Debtors determined that seeking a buyer for the Assets in Santa Clara and a separate buyer for the other Assets would most likely yield higher net proceeds for the Debtors’ estates. *Id.* As a result, the sale of the

1 Santa Clara Assets to Santa Clara County was approved by the Court on December 27, 2018
2 [Docket No. 1153].

3 10. Thereafter, Cain focused on marketing the Debtors' remaining Assets, including
4 the Hospital. *See* Prior Moloney Decl., at ¶ 6. As a part of this process, Cain contacted more 189
5 potential parties to evaluate potential stalking-horse bidders for some or all of the Debtors'
6 remaining Assets of which 92 had executed an NDA and 18 submitted written proposals. *Id.*
7 Subsequent to receiving access to the virtual data room and being offered additional information
8 via conference calls and site visits, many of the potential purchasers indicated that they were not
9 interested in being the stalking-horse bidder. *Id.* During November and December 2018, the
10 Debtors and their advisors had substantial discussions with those potential buyers remaining,
11 during which Prime Healthcare and SGM emerged as the leading potential candidates to be
12 selected as the stalking-horse bidder for the Debtors' remaining Assets. *Id.*

13 **d. The First Sale Process**

14 11. After extensive negotiations with both parties and careful review of the proposed
15 transactions by the Debtor and its advisors, the Debtors selected SGM as the stalking-horse bidder
16 for the Debtors' remaining Assets pursuant to that certain asset purchase agreement [Docket No.
17 2305-1] (the "SGM APA"). *Id.* at ¶ 7.

18 12. Cain sent the approved bidding procedures to the 90 parties with whom the Debtor
19 had previously executed NDAs and included the timetable for the sale of the Debtors' remaining
20 Assets. *See* Prior Moloney Decl., at ¶ 8. Cain also requested that each party confirm that each
21 party continued access to the data room and were interested in continuing to evaluate the purchase
22 of some or all of the Debtors' remaining assets. *Id.* Nineteen of those parties confirmed that
23 were still evaluating the transaction and requested continued access to the data room. *Id.*

24 13. Cain facilitated due diligence by potential buyers, including arranging site visits,
25 organizing calls with the Debtors' leadership team and facilitated follow-up from the Debtors and
26 their advisors to address diligence requests. *Id.* at ¶ 9. Of these nineteen interested parties,
27 certain parties evaluated acquiring all the Debtors' remaining Assets, others evaluated acquiring
28

1 individual hospitals, and others were real estate companies that evaluated purchasing Seton to
2 convert its campus to non-hospital uses. *Id.*

3 14. At the end of the marketing period, two parties submitted qualified bids, one for
4 SVMC and one for St. Francis Medical Center, one party submitted a non-qualified Bid for St.
5 Francis Medical Center and one party submitted a non-qualified bid for all of the assets. *Id.* at ¶
6 10. Accordingly, no auction was held and the Debtors declared SGM the “winning bidder” of the
7 hospitals. *See* Docket No. 2503, at 2. On May 2, 2019, the Court approved [Docket No. 2306]
8 the sale (the “SGM Sale”).

9 15. SGM did not close the SGM Sale. [Docket No. 3899].

10 **e. Closure of the Hospital**

11 16. On January 6, 2020, the Debtors filed a motion to close the Hospital based on,
12 among other things, St. Vincent’s continuing economic losses, and (ii) the Debtors’ need to have
13 sufficient cash on hand for the orderly closure of St. Vincent. On January 9, 2020, the Court
14 entered an order granting the motion. *See* Docket No. 3934. Since entry of the order, the Debtors
15 have filed status reports with the Court [Docket Nos. 3982, 4053, 4126, 4219, 4308] and
16 completed the Court-approved closure plan for the Hospital.

17 **f. Marketing Process 2020**

18 17. After the SGM Sale did not close, Cain renewed the marketing process to identify
19 parties interested in acquiring the Purchased Assets. *See* Moloney Decl., at ¶ 5. On January 3,
20 2020, Cain contacted all parties that had previously executed an NDA concerning their continued
21 interest in SVMC. *Id.* In addition, Cain updated the SVMC Confidential Information
22 Memorandum (CIM), which it posted to the data room on December 30, 2019. *Id.* In total, 61
23 parties executed an NDA and were given access to the data site. *Id.* On January 15, 2020, Cain
24 contacted all interested parties and requested that parties submit “indications of interest” (each an
25 “IOI”) on or before February 7, 2020. *Id.* The Debtors received twelve IOIs from parties that had
26 experience in similar investments and a wherewithal to close.

27 18. On February 26, 2020, Cain requested that parties submit proposed asset purchase
28 agreements on or before March 6, 2020. *See* Moloney Decl., at ¶ 6. The Debtors received ten

1 proposed asset purchase agreements from interested bidders. *See id.* On March 16, 2020, the
2 Debtors' representatives received an updated bid from the Stalking Horse Bidder. *See id.*

3 **g. The Stalking Horse Bidder**

4 19. The Foundation was established in 2009 as a non-profit private foundation with
5 core funding from Patrick Soon-Shiong, M.D. and his wife Michele B. Chan.⁷ The mission of the
6 Foundation is to inspire hope and improve lives—to actively support innovations in healthcare
7 with a focus on the poor and the underserved to overcome life threatening conditions. The
8 Foundation encourages collaboration and partnerships with organizations committed to
9 advancements in science and medicine. The Foundation works hand-in-hand with
10 interdisciplinary organizations to help provide the tools, research, and resources to make these
11 innovative visions and quality of life advancements a reality.

12 20. In light of the national crisis of the COVID -19 pandemic there is an emergency
13 need to support facilities to serve patients with infection and to protect the healthcare
14 professionals who risk their lives helping the underserved in the Los Angeles neighborhoods
15 surrounding St. Vincent. The Foundation desires to support the activities at the facilities on an
16 expedited basis in order to coordinate with the State of California (the "State") and the local
17 government to provide the needed support for the facilities to be put to best use in this time of
18 crisis and to help to mitigate the high fatality rate this virus may cause, especially in the homeless
19 population in this underserved area of Los Angeles.

20 **IV.**

21 **PROPOSED SALE AND BIDDING PROCEDURES**

22 21. In connection with the proposed sale (the "Sale") of the Purchased Assets, the
23 Debtors submit that conducting an Auction in accordance with the bidding procedures among
24

25 _____
26 ⁷ The Foundation is an affiliate of NantWorks LLC, a diversified holding company with direct
27 and indirect beneficial interests as a Prepetition Secured Creditor of the Sellers through the MOB
28 Lenders and the 2017 Working Capital Notes. Other affiliates of NantWorks LLC are unsecured
creditors of the Debtors, including but not limited to, as a lessor of certain equipment used by the
Debtors' in their hospitals, including SVMC, and through the Debtors' rejected management
agreement with Integrity Healthcare LLC.

Qualified Bidders will obtain the highest and best offer for the Purchased Assets and will maximize the value of the Debtors' estates. The Debtors respectfully submit an expedited timeline is warranted under the circumstances, as described below. The proposed bidding procedures (the "Bidding Procedures") are attached hereto as **Exhibit "B."**⁸ 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. THE PRIMARY TERMS OF THE STALKING HORSE APA

22. The Stalking Horse APA contemplates the sale of the Purchased Assets to the Stalking Horse Bidder, subject to higher or better bids, on the following material terms:⁹

Stalking Horse APA Provision	Summary Description
APA Parties	St. Vincent Medical Center, Verity Holdings, LLC and Verity Health System of California, Inc. (" <u>Sellers</u> "). The Chan Soon-Shiong Family Foundation, a Delaware nonprofit corporation (" <u>Purchaser</u> ").
Consideration APA § 1.1	Purchase price equal to an aggregate cash payment of One Hundred Thirty-Five Million Dollars (\$135,000,000.00).
Assets to be Purchased APA § 1.7	" <u>Assets</u> " means the following as they exist on the Closing Date, and to the extent not included in the Excluded Assets: (a) all of Sellers' interest in and to the Owned Real Property; (b) all of the tangible personal property owned by Sellers and currently located at the Owned Real Property, including inventories and supplies utilized for the operation and maintenance of the Owned Real Property, equipment, furniture, machinery, and office furnishings, excluding any vehicles or other items excluded from sale pursuant

⁸ 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.

⁹ The summary of the terms contained in this Motion highlights some of the material terms of the Stalking Horse APA. This summary is qualified in its entirety by reference to the provisions of the Stalking Horse APA. In the event of any inconsistencies between the provisions of the Stalking Horse APA and the summary set forth herein, the terms of the Stalking Horse APA shall govern. Unless otherwise defined in the summary set forth in the accompanying text, capitalized terms shall have the meanings ascribed to them in the Stalking Horse APA.

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

Stalking Horse APA Provision	Summary Description
	to Section 1.8(c) and, to the extent assignable or transferrable, all rights in all warranties of any manufacturer or vendor in connection with the Personal Property; (c) all of Sellers' interest in, and all of Sellers' obligations due under, from and after the Effective Time, to the extent assignable or transferable, all contracts and agreements (including, but not limited to, purchase orders) that have been designated by Purchaser as an Assigned Contract, pursuant to Section 1.11 and appearing on <u>Schedule 1.7(c)</u> ; (d) all of Sellers' interest in, and all of Sellers' obligations due under from and after the Effective Time, all Assigned Leases, pursuant to Section 1.11 and appearing on <u>Schedule 2.8</u> ; and (e) other than Utility Deposits, all prepaid rentals, deposits, prepayments and similar amounts relating to the Assigned Contracts and/or the Assigned Leases, which were made with respect to the operation of the Hospital.
Excluded Assets APA § 1.8	"Excluded Assets" are all assets other than the Assets and include cash, cash equivalents and investments; all accounts receivable, QAF payments, trauma payments and disproportionate share payments; all claims, counterclaims and causes of action of Sellers or Sellers' bankruptcy estate; personal property and vehicles listed on <u>Schedule 1.8(c)</u> ; Seller insurance policies; tax refunds; inventory and supplies previously utilized in the Sellers' patient care operations; and Utility Deposits.
Transferred Obligations APA § 1.9	"Transferred Obligations" include all the Assigned Contracts, after Sellers pay the Cure Costs; all liabilities and obligations arising out of or relating to any act, omission, event or occurrence connected with the use, ownership or operation by Purchaser of the Assets on or after the Effective Time; all liabilities and obligations related to the employees of Sellers hired by Purchaser arising on or following the Effective Time; all unpaid non-delinquent real and personal property taxes, if any, that are attributable to the Assets after the Effective Time, subject to the prorations provided in Section 1.6; all liabilities and obligations relating to utilities being furnished to the Assets, subject to the prorations provided in Section 1.6; the Assigned Leases; and any other obligations and liabilities identified in <u>Schedule 1.9(g)</u> .
Excluded Liabilities APA § 1.10	Purchaser shall have those duties, obligations and liabilities set forth in the Stalking Horse APA, the Bill of Sale, the Transfer Agreement and the Real Estate Assignment(s) and shall be responsible for the Transferred Obligations. However, Purchaser is not assuming any liabilities of Sellers related to the Assets or the Hospitals, and to the maximum extent permitted by law shall not

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

Stalking Horse APA Provision	Summary Description
	be deemed a successor to Sellers or their estates by reason of any theory of law or equity with respect to any claims or liens against Sellers or the Assets.
Assumption of Transferred Contracts and Assignment APA § 1.11	Purchaser may review and evaluate for assumption or rejection the contracts and leases listed in <u>Schedule 1.11</u> (collectively, all such contracts and leases, the “ <u>Evaluated Contracts</u> ”), and each Seller will assign to Purchaser the contracts and leases that are selected by Purchaser for assignment and assumption from such Evaluated Contracts in accordance with the terms of Section 1.11. Not later than 4:00 pm Pacific Time on the day immediately preceding the date of the Auction (defined below), or, if no Auction occurs, then not later than 4:00 pm Pacific Time on April 7, 2020, Purchaser shall notify Sellers in writing of which Evaluated Contracts are to be assumed and assigned to the Purchaser (all such Evaluated Contracts assumed and assigned to Purchaser, the “ <u>Assigned Contracts</u> ”). All other Evaluated Contracts that are not Assigned Contracts shall be rejected by Sellers (any such rejected Evaluated Contracts, the “ <u>Rejected Contracts</u> ”). For the avoidance of doubt, Purchaser shall have no obligation or liability as it relates to any Rejected Contract.
Good Faith Deposit APA § 1.2	Purchaser has deposited an amount equal to Eight Million One Hundred Thousand Dollars (\$8,100,000) (the “ <u>Deposit</u> ”) by wire transfer to Chicago Title Insurance Company as Escrow Agent. The Deposit shall be non-refundable in all events, except in the event the Closing does not occur due to Purchaser’s and/or Sellers’ termination of the Agreement pursuant to Sections 9.1 (a), (c), (d), (f), (g), (h), (i), or (j). Upon Closing, the Deposit will be credited against the Purchase Price.
Closing Date APA § 1.3	The Closing Date shall occur within five (5) business days following the receipt of the Bankruptcy Court Approval.
Payment of Cure Costs APA § 4.4	On or about the Closing Date, Sellers shall pay or escrow an amount equal to the Cure Costs to each counter party to an Assigned Contract so that each such Assigned Contract may be assumed by Sellers and assigned to Purchaser in accordance with the provisions of § 365. For purposes of the Stalking Horse APA, “ <u>Cure Costs</u> ” means all amounts that must be paid and all obligations that otherwise must be satisfied, including pursuant to §§ 365(b)(1)(A) and (B) in connection with the assumption and/or assignment of the Assigned Contracts to Purchaser as provided herein. The obligation of Seller to pay the Cure Costs, if not fully paid as of the Closing Date, shall survive the Closing.

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

Stalking Horse APA Provision	Summary Description
<p>Stalking Horse Bidder Protections APA § 9.3</p>	<p>In the event that a Competing Bid is consummated, or the Stalking Horse APA is terminated for any reason after the Bidding Procedure Order approving Section 9.3 has been entered other than a material breach of Purchaser, in consideration for the Purchaser having expended considerable time and expense in connection with the Stalking Horse APA and the negotiation thereof and the identification and quantification of assets of Sellers, and without the requirement of any notice or demand from Purchaser or any other application to or order of the Bankruptcy Court, (i) the Deposit shall be returned to Purchaser in accordance with the Bidding Procedures Order and (ii) Sellers shall jointly and severally, pay (or cause to be paid to) Purchaser, in accordance with the terms hereof, and subject to the entry of and terms of the Bidding Procedures Order, (1) a termination payment solely in the event of a successful competing bid in an amount equal to Three Million Seven Hundred Fifty Thousand Dollars (\$3,750,000) (two and seventy eight one hundredths percent (2.78%) of the cash consideration component of the Purchase Price) (the “<u>Termination Payment</u>”) and (2) all reasonable out-of-pocket and documented fees and expenses (including reasonable attorneys’ fees and expenses) incurred by Purchaser in connection with or related to Purchaser’s evaluation, consideration, analysis, negotiation, and documentation of the Stalking Horse APA and the transactions contemplated thereby, in an amount not to exceed One Million Dollars (\$1,000,000) in the aggregate (the “<u>Expense Reimbursement</u>” and together with the Termination Payment, the “<u>Stalking Horse Bidder Protections</u>”). In the event Sellers become obligated under the Stalking Horse APA to pay any or all of the Stalking House Bidder Protections, Sellers shall pay such Stalking Horse Bidder Protections in immediately available funds to such account or accounts as may be specified in written notice by Purchaser. The Stalking Horse Bidder Protections shall, upon approval of the Bid Procedures Order, (a) constitute an allowed administrative expense claim of Sellers’ estates under §§ 503(b) and 507 and (b) notwithstanding the prior entry of any order of the Bankruptcy Court relating to the use of cash collateral, be paid on the second (2nd) business day following the date of consummation of a Competing Bid or termination of the Stalking Horse APA under Section 9.1(a), (c), (d) (f), (g), (h), (i) or (j) (provided that the Termination Payment shall only be payable from the proceeds of a successful Competing Bid) if no material breach by Purchaser of the Stalking Horse APA has occurred. The Bidding Procedures Order shall provide for payment by Sellers of the Stalking Horse Bidder Protections as and when such amounts are due and payable hereunder. Nothing in Section 9.3(a) shall relieve Purchaser or</p>

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

Stalking Horse APA Provision	Summary Description
	Sellers of any liability for a breach of the Stalking Horse APA prior to the date of termination.
Requested Findings as to Good Faith APA § 6.1	Sellers agree, subject to the exercise of their fiduciary duties, to proceed in good faith to obtain Bankruptcy Court approval of the sale contemplated by the Stalking Horse APA with a determination that Purchaser is a good faith purchaser within the meaning of § 363(m) and in good faith to file such declarations and other evidence as may be required to support a determination.
Buyer's Termination Rights APA § 9.1	<p>The Stalking Horse APA may be terminated by Purchaser if:</p> <p>(A) a material breach has been committed by Sellers, which material breach is materially adverse to Purchaser, and such breach has not been (i) waived in writing by Purchaser or (ii) cured by Sellers to the reasonable satisfaction of Purchaser within fifteen (15) business days after Purchaser provides Sellers of a written notice which describes the nature of such breach; <i>provided, however</i>, Purchaser shall not be permitted to terminate pursuant to this clause if Purchaser is also in material breach of the Stalking Horse APA;</p> <p>(B) satisfaction of any condition in <u>ARTICLE 8</u> is or becomes impossible and Purchaser has not waived such condition in writing (provided that the failure to satisfy the applicable condition or conditions has occurred by reason other than (i) through the failure of Purchaser to comply with its obligations under the Stalking Horse APA or (ii) Sellers' failure to provide their closing deliveries on the Closing Date as a result of Purchaser not being ready, willing and able to close the transaction on the Closing Date);</p> <p>(C) the Bankruptcy Court approves the Bid Procedures and (i) fails to approve the sale of the Assets to Purchaser in an order reasonably acceptable to Purchaser or (ii) enters an order that precludes the consummation of the transactions contemplated by the Stalking Horse APA;</p> <p>(D) Sellers designate an entity other than Purchaser as the Successful Bidder, unless the Purchaser has agreed to act as a Back-up Bidder, in which case, the Stalking Horse APA will terminate automatically upon consummation of such Successful Bidder's Winning Bid;</p> <p>(E) the Closing has not occurred (other than through the failure</p>

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

Stalking Horse APA Provision	Summary Description
	<p>of any Party seeking to terminate the Stalking Horse APA to comply fully with its obligations under the Stalking Horse APA) on or before June 1, 2020;</p> <p>(F) (i) prior to the Closing Date, one or more of the Bankruptcy Cases is converted to cases under chapter 7 of the Bankruptcy Code, one or more of the Bankruptcy Cases is dismissed, or a trustee or an examiner is appointed in the Bankruptcy Cases; (ii) the Bankruptcy Court enters an order pursuant to § 362 lifting the automatic stay with respect to any material Asset; (iii) (1) following entry by the Bankruptcy Court of the Bidding Procedures Order, such order is (A) amended, modified or supplemented in a manner materially adverse to Purchaser without Purchaser's prior written consent or (B) voided, reserved or vacated or is subject to a stay such that the Bidding Procedures Order is not in full force and effect as of April 17, 2020 or (2) following entry of the Sale Order, such order is (A) amended, modified or supplemented in a manner materially adverse to Purchaser without Purchaser's prior written consent or (B) the Sale Order is voided, reversed or vacated or is subject to a stay such that the Sale Order is not in full force and effect as of April 24, 2020; (v) the Bankruptcy Court shall not have entered (1) the Bidding Procedures Order by April 3, 2020 or (2) the Sale Order by April 10, 2020; and (vi) any document, including any amendment, modification or supplement thereto, listed in Section 4.5(e) is not reasonably acceptable to Purchaser; or</p> <p>(G) a "major loss" to the Owned Real Property occurs, meaning: (i) loss or damage to the Owned Real Property or any portion thereof such that the cost of repairing or restoring the premises in question to a condition substantially identical to that of the premises in question prior to the event of damage would be, in the opinion of an architect selected by Sellers and reasonably approved by Purchaser, equal to or greater than Five Million Dollars (\$5,000,000), and (ii) any loss equal to or greater than Five Million Dollars (\$5,000,000) due to a condemnation.</p>
<p>Limitation on Liability APA § 11.1</p>	<p>If Purchaser commits any material default under this Agreement prior to Closing, Sellers shall be entitled to sue for damages or specific performance; provided, that in no event shall Sellers be entitled to damages in excess of the Deposit (and Sellers shall be entitled to retain the Deposit to the extent of such damages).</p>

23. Importantly, the Stalking Horse Bidder is aware of the lease agreement [Docket No. 4315] between the Debtors and the State of California (the "State"), wherein the State is

1 leasing the primary facility, the Hospital, to provide services related to the SARS-CoV-2 virus
2 and the related infectious disease (“COVID-19”) pandemic. The Stalking Horse Bidder intends
3 to cooperate with the State and use the additional buildings that comprise the St. Vincent campus,
4 including three medical office buildings and Seton Hall, to also address COVID-19. The Stalking
5 Horse Bidder’s willingness to take assignment of the Lease will further the Debtors’ charitable
6 mission to ensure continued critical health care access to the communities formerly served by the
7 Hospital through continued partnership with the State to address the COVID-19 pandemic post-
8 closing.

9 **B. REQUIREMENTS TO PARTICIPATE IN THE AUCTION**

10 24. The Bidding Procedures provide that only Qualified Bidders may participate in the
11 Auction. To be a Qualified Bidder, a party wishing to submit a Bid must first become a Potential
12 Bidder, which requires that an interested party execute, or shall be currently subject to, an NDA
13 in form and substance satisfactory to the Debtors. Further, a Potential Bidder must submit
14 financial information to the Debtors to evidence such Potential Bidder’s ability to consummate
15 the Sale, which information must be satisfactory to the Debtors after consultation with the
16 “Consultation Parties” (as that term is defined in the Bidding Procedures). Upon qualifying as a
17 Potential Bidder, a party may receive due diligence information from the Debtors, including
18 access to the Debtors’ on-line data room, the CIM, and potentially other non-public information
19 relating to the Debtors’ assets.

20 25. The Bidding Procedures also set forth the requirements for a Potential Bidder to
21 become a Qualified Bidder, including (without limitation) that a Potential Bidder: (i) submit a Bid
22 by the Bid Deadline to the Bid Deadline Recipients identified in the Bidding Procedures (including
23 the Debtors, certain Prepetition Secured Creditors (as defined in the Bidding Procedures), Cain,
24 and the Unsecured Creditors Committee); (ii) provide a clean and marked-up copy of the proposed
25 asset purchase agreement (which form shall be consistent with the form of the Stalking Horse APA
26 posted in the Debtors’ on-line data room); (iii) provide a copy of the draft Sale Order marked to
27 reflect any amendments and modifications compared to the form of the Sale Order posted in the
28 Debtors’ on-line data room; (iv) unless it is a Credit Bid, deliver to the Debtors a Deposit by wire

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

1 transfer in an amount equal to 10% of the proposed Purchase Price; (v) demonstrate that it has the
2 financial wherewithal and ability to consummate the Sale; and (vi) disclose any connections to the
3 Debtors and affiliated persons. The Bidding Procedures further provide that a Bid shall propose
4 cash consideration, and that Bids shall be evaluated based upon the amount of cash consideration.

5 26. A Bid that satisfies each of the Bid Requirements (including, but not limited to,
6 those mentioned in the foregoing paragraph), as determined by the Debtors in their reasonable
7 discretion, in consultation with the Consultation Parties, shall constitute a “Qualified Bid,” and
8 such Potential Bidder submitting such Bid will be deemed a “Qualified Bidder.” Prior to, or
9 immediately before the commencement of any Auction, the Debtors shall file and serve on each
10 Potential Bidder a notice indicating the identity of all Qualified Bidders, and shall announce the
11 Bid which is deemed to be the Opening Bid at the Auction. The Bidding Procedures further
12 provide that the Stalking Horse Bidder is a Qualified Bidder and that the Stalking Horse Bid is a
13 Qualified Bid.

14 **C. PREPETITION SECURED CREDITOR’S RIGHT TO CREDIT BID**

15 27. Any party with a valid, properly perfected prepetition or postpetition security
16 interest in any of the Purchased Assets may credit bid (any such bid, a “Credit Bid” and any party
17 submitting a Credit Bid, each a “Credit Bidder”) for such Purchased Assets in connection with the
18 Sale in accordance with and pursuant to § 363(k), except as otherwise limited by the Bankruptcy
19 Court for cause; provided, however, that no Credit Bidder may Credit Bid unless (x) all secured
20 creditors with a valid and perfected security interest in the Purchased Assets subject to the Credit
21 Bid that rank equal or senior to the security interest of the Credit Bidder in the Purchased Assets
22 consent in writing to such Credit Bid or (y) the Credit Bid expressly provides for the payment in
23 full in cash at the closing on account of the Purchased Assets subject to valid and perfected
24 security interests in the Purchased Assets that are equal or senior in rank to the security interests
25 of the Credit Bidder. Nothing herein shall limit the rights of any party in interest to seek relief
26 from the Bankruptcy Court related to the right or alleged right of any creditor to exercise a Credit
27 Bid for any of the Purchased Assets.
28

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

D. THE STALKING HORSE BIDDER PROTECTIONS

28. To increase the competitive nature of the sale process, the Debtors have agreed to provide the Stalking Horse Bidder with the following Stalking Horse Bidder Protections: (i) a termination payment in an amount equal to \$3,750,000 (2.78% of the cash consideration portion of the Purchase Price) (the “Termination Payment”) and (ii) payment of all reasonable out-of-pocket and documented fees and expenses (including reasonable attorneys’ fees and expenses) incurred by the Stalking Horse Bidder in connection with or related to the Stalking Horse Bidder’s evaluation, consideration, analysis, negotiation and documentation of the Stalking Horse APA and the transactions contemplated thereunder, in an amount not to exceed \$1,000,000 (the “Expense Reimbursement”). The Stalking Horse APA provides that, upon entry of the Bidding Procedures Order (as defined therein), the Stalking Horse Bidder Protections shall constitute an allowed administrative expense claim of the Sellers’ estates under §§ 503(b) and 507 and notwithstanding the prior entry of any order of the Bankruptcy Court relating to the use of cash collateral, be paid on the second business day following the date of consummation of a Competing Bid (as defined in the Stalking Horse APA) or termination of the Stalking Horse APA, subject to the conditions provided therein, including that the Termination Payment shall only be payable from the proceeds of a Competing Bid. No other bidder is permitted to require any termination payments, expense reimbursement or other bidding protections of any nature.

E. AUCTION

29. If the Debtors receive more than one Qualified Bid, the Debtors will conduct an Auction virtually, by such means as they deem appropriate, on April 6, 2020, at 10:00 a.m. (Pacific Time) in accordance with the Bidding Procedures. Among other things, the Debtors reserve the right to conduct the Auction by phone or to let certain Qualified Bidders or other parties to participate in the Auction by phone. The Auction shall be governed by the procedures set forth in the Bid Procedures.

F. REPRESENTATIONS AND WARRANTIES

30. 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

1 representations or warranties of any kind, nature or description by the Debtors, their agents or
2 estates, whether written, verbal, express, implied, or by operation of law.

3 **G. ACCEPTANCE OF THE WINNING BID**

4 31. Upon the conclusion of the Auction (if such Auction is conducted), the Debtors, in
5 the exercise of their reasonable, good-faith business judgment and after consultation with the
6 Consultation Parties, shall identify (i) the Winning Bid, which is the highest and best Qualified
7 Bid submitted at the Auction; and (ii) the next highest and best Qualified Bid (the “Back-Up Bid”
8 and the party submitting the Back-Up Bid, the “Back-Up Bidder”). Each of the Winning Bidder
9 and the Back-Up Bidder shall be required to execute a definitive Qualified Bid conformed to the
10 provisions of the Winning Bid and the Back-Up Bid, as applicable, as soon as practicable but, in
11 no event, prior to the Sale Hearing. For the purposes of these Bidding Procedures, the definitive
12 agreement executed by the (i) Winning Bidder shall be defined as the “Winning Bid APA” and
13 (ii) Back-Up Bidder shall be defined as the “Back-Up Bid APA”.

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

18 33. Within two (2) business days after the conclusion of the Auction, the Winning
19 Bidder and the Back-Up Bidder shall each deposit with the Debtors an additional amount in cash
20 such that, when combined with their existing Deposit, each such bidder’s aggregate Deposit
21 equals ten percent (10%) of the Purchase Price reflected in the final bid of the Winning Bidder
22 and of the Back-Up Bidder, respectively (such additional amounts shall be included in the
23 definition of the “Deposit”), provided that the Stalking Horse Bidder shall not be required to
24 deposit any additional amount under the Bidding Procedures.

25 34. If an Auction is held, the Debtors shall be deemed to have accepted a Qualified
26 Bid as the winner of the Auction (conditioned upon approval by the Bankruptcy Court) only when
27 (i) such bid is declared the Winning Bid; (ii) definitive documentation has been executed in
28 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

H. THE SALE HEARING

35. As part of this Motion, the Debtors ask this Court to schedule a sale hearing (the “Sale Hearing”) on April 8, 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 Sale in accordance with the Winning Bid (or if applicable, the Back-Up Bid) will provide the highest or otherwise 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).

36. 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” [Docket No. 409] and the “Intercreditor Agreement” (as defined in the Final DIP Order).

37. 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.

I. RETURN OF DEPOSITS

38. 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.

39. 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.

J. NOTICE PROCEDURES

40. 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 attached hereto as **Exhibit “C.”** The Debtors will serve a copy of the Procedures Notice on the Notice Parties and all parties which the Debtors are required to serve

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

1 pursuant to LBR 6004-1(b)(3) and the *Order Granting Emergency Motion of Debtors for Order*
2 *Limiting Scope of Notice* [Docket No. 132] (the “Procedures Notice Parties”).

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

10 42. The Debtors submit that the foregoing notices comply fully with Bankruptcy Rule
11 2002 and are reasonably calculated to provide timely and adequate notice of the Bidding
12 Procedures, Auction and Sale, and Sale Hearing to the Debtors’ creditors and other parties in
13 interests as well as to those who have expressed an interest or are likely to express an interest in
14 bidding on the Purchased Assets. Based on the foregoing, the Debtors respectfully request that
15 this Court approve these proposed notice procedures.

16 **K. ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND**
17 **UNEXPIRED LEASES AND PROCEDURES RELATED THERETO**

18 43. As part of the Sale, the Debtors also seek to assume and assign certain of their
19 executory contracts and unexpired leases (collectively, the “Assumed Executory Contracts”)
20 pursuant to § 365.

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

26 45. The Debtors will file with the Court and serve a cure notice, substantially in the
27 form attached hereto as **Exhibit “D”** (the “Cure Notice”), (along with a copy of this Motion)
28 upon each counterparty to the Assumed Executory Contracts. The Cure Notice will state the date

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

1 by which any objection (an “Assumption Objection”) to the assumption and assignment of
2 Assumed Executory Contracts (including the Cure Amount (defined below)) must be filed and
3 served and the date, time and place of a hearing on such Assumption Objections (the
4 “Assumption Objection Hearing”). The Cure Notice also will identify the amounts, if any, that
5 the Debtors believe are owed to each counterparty to an Assumed Executory Contract in order to
6 cure any defaults that exist under such contract (the “Cure Amounts”). The Debtors respectfully
7 request that the Court set (i) **April 9, 2020**, as the deadline for the Debtors to file and serve the
8 Cure Notice, (ii) **April 16, 2020, at 5:00 p.m. (Pacific Time)**, as the deadline for counterparties
9 to file and serve Assumption Objections (the “Assumption Objection Deadline”), (iii) **April 23,**
10 **2020** as the deadline to file any replies to an Assumption Objection, and (iv) **April 30, 2020, at**
11 **10:00 a.m. (Pacific Time)** as the Assumption Objection Hearing.

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

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

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

48. If any counterparty objects for any reason to the assumption and assignment of an Assumed Executory Contract (including to a Cure Amount), the Debtors propose that the counterparty must file the objection and serve it so as to be actually received on or before the Assumption Objection Deadline. After receipt of an Assumption Objection, the Debtors will attempt to reconcile any differences in the Cure Amount or otherwise resolve the objection with the counterparty.

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

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

V.

ARGUMENT

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

Section 363(b)(1) provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate [.]" 11 U.S.C. § 363(b)(1). Section 105(a) provides in pertinent part that "[t]he Court may issue any order, process or judgment that is necessary and appropriate to carry out the provisions of this title." 11

1 U.S.C. § 105(a). Bankruptcy Rules 2002 and 6004 govern the scope of the notice to be provided
2 in the event a debtor elects to sell property of the estate 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, Bankruptcy Rule 6004 provides only that such sale may be by
5 private sale or public auction, and requires only that the debtor provide an itemized list of the
6 property sold together with the prices received upon consummation of the sale. Fed. R. Bankr. P.
7 6004(f). LBR 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 Bankruptcy Rules contain specific provisions with
26 respect to the procedures to be employed by a debtor in conducting a public or private sale.
27 Nonetheless, as one court has stated, “[i]t is a well-established principle of bankruptcy law that
28 the objective of bankruptcy rules and the [debtors’] duty with respect to such sales is to obtain the

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

1 highest price or greatest overall benefit possible for the estate.” *In re Atlanta Packaging Prods.,*
2 *Inc.*, 99 B.R. 124, 131 (Bankr. N.D. Ga. 1988). Additionally, courts have long recognized the
3 need for competitive bidding at hearings; “[c]ompetitive bidding yields higher offers and thus
4 benefits the estate. Therefore, the objective is ‘to maximize bidding, not restrict it.’” *Id.*; *see also*
5 *Burtch v. Ganz (In re Mushroom Transp. Co.)*, 382 F.3d 325, 339 (3d Cir. 2004) (finding that
6 debtor’s fiduciary duties included maximizing and protecting the value of the estate’s assets);
7 *Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 564-65 (8th
8 Cir. 1997) (“[A] primary objective of the [Bankruptcy] Code [is] to enhance the value of the
9 estate at hand.”). Courts uniformly recognize that procedures established for the purpose of
10 enhancing competitive bidding are consistent with the fundamental goal of maximizing the value
11 of a debtor’s estate and, therefore, are appropriate. *See Calpine Corp. v. O’Brien Env’tl. Energy,*
12 *Inc. (In re O’Brien Env’tl. Energy, Inc.)*, 181 F.3d 527, 536-37 (3d Cir. 1999) (noting that bidding
13 procedures that promote competitive bidding provide benefit to debtor’s estate); *Official Comm.*
14 *of Subordinated Bondholders v. Integrated Res. Inc. (In re Integrated Res. Inc.)*, 147 B.R. 650,
15 659 (S.D.N.Y. 1992) (such sale procedures “encourage bidding and to maximize the value of the
16 Assets”).

17 Here, the Bidding Procedures are designed to promote the paramount goal of any
18 proposed sale of property of the Debtors’ estates: maximizing the value of sale proceeds received
19 by the estates. The Bidding Procedures provide for an orderly and appropriately competitive
20 process through which interested parties may submit offers to purchase the Purchased Assets.
21 Specifically, the Debtors, with the assistance of their advisors, have structured the Bidding
22 Procedures to promote active bidding by interested parties and to confirm the highest or otherwise
23 best offer reasonably available for the Purchased Assets. Additionally, the Bidding Procedures
24 will allow the Debtors to conduct the Auction in a fair and transparent manner that will encourage
25 participation by financially capable bidders with demonstrated ability to consummate a timely
26 Sale. The timing contemplated under the Bidding Procedures is necessary and appropriate given,
27 among other things (i) the fact that St. Vincent has been widely and intensely marketed through
28 multiple sale processes over more than 19 months, and (ii) the uncertain impact of COVID-19 on

capital markets that may affect a sale approved on regular notice, including the potential impact on purchasers' access to financing and the value of the Purchased Assets. 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. THE STALKING HORSE BIDDER PROTECTIONS HAVE A SOUND BUSINESS PURPOSES AND ARE NECESSARY TO PRESERVE THE VALUE OF THE DEBTORS' ESTATES.

The Debtors submit that the proposed Stalking Horse Bidder Protections are normal, and oftentimes necessary, components of sales outside the ordinary course of business under § 363. In particular, such a protection encouraged the Stalking Horse Bidder to invest the requisite time, money, and effort to conduct due diligence and sale negotiations with the Debtors 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 Termination Payment, 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*

1 *Hupp Indus., Inc.*, 140 B.R. 191 (Bankr. N.D. Ohio 1992). Typically, this requires that the
2 bidding incentive provide some benefit to the debtor's estate. *Calpine Corp. v. O'Brien Envtl.*
3 *Energy, Inc. (In re O'Brien Envtl. Energy, Inc.)*, 181 F.3d 527, 533 (3d Cir. 1999) (holding even
4 though bidding incentives are measured against a business judgment standard in non-bankruptcy
5 transactions the administrative expense provisions of § 503(b) govern in the bankruptcy context).

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

1 price); *In re T Asset Acquisition Company, LLC*, No. 09-31853 (Bankr. C.D. Cal. Jan. 28, 2010)
2 (J. Robles) (approving break-up fee equal to 3% of the cash purchase price).

3 The Debtors submit that all of the bidding procedures the Debtors are seeking to have this
4 Court approve, including the proposed Stalking Horse Bidder Protections in favor of the Stalking
5 Horse Bidder, satisfies all three of the useful functions set forth above: (1) to attract or retain a
6 potentially successful bid; (2) to establish a bid standard or minimum for other bidders to follow;
7 and (3) to attract additional bidders. The proposed Termination Payment of 2.78% of the purchase
8 price, plus an Expense Reimbursement of up to \$1,000,000 is well within, and below, the
9 percentage parameters that have been approved by many other courts. Thus, the Debtors believe
10 that the proposed Stalking Horse Bidder Protections fairly and reasonably compensate the
11 Stalking Horse Bidder for taking actions that will benefit the Debtors' estates. More to the point,
12 the Stalking Horse Bidder Protections compensate the Stalking Horse Bidder for diligence and
13 professional fees incurred in negotiating the terms of the Stalking Horse APA on an expedited
14 timeline.

15 Additionally, the Debtors do not believe that the Stalking Horse Bidder Protections will
16 have a chilling effect on the sale process. Rather, the Stalking Horse Bidder has increased the
17 likelihood that the best possible price for the Purchased Assets will be received, by permitting
18 other qualified bidders to rely on the diligence performed by the Stalking Horse Bidder, and
19 moreover, by allowing qualified bidders to utilize the Stalking Horse APA as a platform for
20 negotiations and modifications in the context of a competitive bidding process.

21 Finally, any Termination Payment will be paid only if, among other things, the Debtors
22 enter into a transaction for the Purchased Assets with a bidder other than the Stalking Horse
23 Bidder. Accordingly, no Termination Payment will be paid unless a higher and better offer is
24 received and consummated. In sum, the Stalking Horse Bidder Protections are reasonable under
25 the circumstances and will enable the Debtors to maximize the value for the Purchased Assets
26 while limiting any chilling effect in the sale process.

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

Section 365(a) provides that, subject to the court’s approval, a trustee “may assume or reject any executory contracts or unexpired leases of the debtor.” 11 U.S.C. § 365(a). Upon finding that a trustee has exercised its sound business judgment in determining to assume an executory contract or unexpired lease, courts should approve the assumption under § 365(a). *See Nostas Assocs. v. Costich (In re Klein Sleep Prods., Inc.)*, 78 F.3d 18, 25 (2d Cir. 1996); *see also Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1099 (2d Cir. 1993).

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

- (A) the trustee assumes such contract or lease in accordance with the provisions of this section; and
- (B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. § 365(f)(2).

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

Among other things, adequate assurance may be given by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. *In re Bygaph, Inc.*, 56 B.R. 596, 605-6 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when prospective assignee of lease has financial resources and expressed

1 willingness to devote sufficient funding to business to give it strong likelihood of succeeding;
2 chief determinant of adequate assurance is whether rent will be paid).

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

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

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

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

19 As discussed above, § 363(b)(1) provides that a debtor “after notice and a hearing, may
20 use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C.
21 § 363(b)(1).

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

24 In accordance with Bankruptcy Rule 6004, sales of property rights outside the ordinary
25 course of business may be by private sale or public auction. The Debtors have determined that
26 the Sale of the Purchased Assets by public auction will enable it to obtain the highest and best
27 offer for these assets (thereby maximizing the value of the estate) and is in the best interests of the
28 Debtors’ creditors. The Debtors have determined in their business judgment that a sale of the

Purchased Assets through a competitive, public auction is the best way to maximize the value of those assets.

Sections 363 provides that a trustee, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b). Although § 363 does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, a sale of a debtor’s assets should be authorized if a sound business purpose exists for doing so. *See, e.g., Meyers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996); *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143 (2d Cir. 1986); *In re Titusville Country Club*, 128 B.R. 396 (W.D. Pa. 1991); *In re Delaware & Hudson Ry. Co.*, 124 BR. 169, 176 (D. Del. 1991); *see also Official Comm. of Unsecured Creditors v. The LTV Corp. (In re Chateaugay Corp.)*, 973 F.2d 141, 143 (2d Cir. 1992); *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *Committee of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986).

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

whether to approve proposed sales, but the trustee’s business judgment is subject to great judicial deference.”).

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

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

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

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

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

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

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

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

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

Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Similarly, Bankruptcy 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

1 days after the entry of the order, unless the court orders otherwise.” The Debtors request that the
2 Order be effective immediately by providing that the 14-day stays under Bankruptcy Rules
3 6004(h) and 6006(d) are waived.

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

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

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

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

1 that service of the Notice of Motion, Motion, and this Memorandum by such means was adequate
2 and appropriate.

3 **VI.**

4 **CONCLUSION**

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

8
9 Dated: March 30, 2020

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

10
11
12 By /s/ Tania M. Moyron
13 Tania M. Moyron

14 Attorneys for the Chapter 11 Debtors and
15 Debtors In Possession
16
17
18
19
20
21
22
23
24
25
26
27
28

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

DECLARATION OF RICHARD G. ADCOCK

I, Richard G. Adcock, hereby state and declare as follows:

1. I submit this declaration (the “Declaration”) in support of the *Debtors’ Emergency 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 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 and Assignment 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* (the “Motion”).¹⁰

2. I am the Chief Executive Officer (“CEO”) of Verity Health System of California, Inc. (“VHS”). I became VHS’ CEO effective January 2018. Prior thereto, I served as VHS’ Chief Operating Officer (“COO”) beginning in August 2017. In my roles as COO and CEO at VHS, I have become intimately familiar with all aspects of the Debtors as well as those affiliated entities that are not in bankruptcy.

3. I have worked for more than 25 years in the healthcare arena, with 15 years in not for profit operations. During this period, I have accumulated extensive senior level experience in the areas of not-for-profit healthcare, especially in healthcare delivery, hospital acute care services, health plan management, product management, acquisitions, integrations, population health management, budgeting, disease management and medical devices. I also have meaningful experience in other related areas, including human resources and personnel management.

4. My background and familiarity with the Debtors’ day-to-day operations, business and financial affairs, and the circumstances leading to the commencement of these chapter 11 bankruptcy cases are set forth more fully in my *Declaration filed in Support of Emergency First-*

¹⁰ Unless otherwise defined, capitalized terms used herein shall have the same meaning as in the Motion.

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

1 *Day Motions* [Docket No. 8] filed on the Petition Date, and are incorporated by reference into this
2 Declaration.

3 5. The Debtors concluded, in their business judgment, that the Sale on an emergency
4 basis is in the best interests of the Debtors, their estates, and stakeholders, as follows: (i) the
5 Stalking Horse Bidder desires to use the facilities on an expedited basis in order to coordinate
6 with the State of California (the “State”) and the local government to ensure that the facilities are
7 being put to the best use in this critical time and to facilitate critical research related to the
8 COVID-19 (as defined below) pandemic; (ii) given this need, the Stalking Horse Bidder desires
9 to purchase facilities to facilitate and implement its plan and may acquire facilities from another
10 seller if the proposed Sale is not approved on an emergency basis; (iii) St. Vincent has been
11 widely and intensely marketed and the value of the proposed Sale is significant, particularly since
12 it will generate at least \$135 million in cash for the estates that continue to incur losses; and
13 (iv) the Debtors seek to avoid the uncertain impact of COVID-19 on capital markets that may
14 affect a sale approved on regular notice, including the potential impact on purchasers’ access to
15 financing and the value of the Purchased Assets.

16 6. The Stalking Horse Bidder is aware of the lease agreement [Docket No. 4315]
17 between the Debtors and the State of California (the “State”), wherein the State is leasing the
18 primary facility, the Hospital, to provide services related to the SARS-CoV-2 virus and the
19 related infectious disease (“COVID-19”) pandemic. The Stalking Horse Bidder intends to
20 cooperate with the State and use the additional buildings that comprise the St. Vincent campus,
21 including three medical office buildings and Seton Hall, to also address COVID-19. The Stalking
22 Horse Bidder’s willingness to take assignment of the Lease will further the Debtors’ charitable
23 mission to ensure continued critical health care access to the communities formerly served by the
24 Hospital through continued partnership with the State to address the COVID-19 pandemic post-
25 closing.

26 7. As set forth more fully in the accompanying Moloney Declaration, the Debtors
27 received ten proposed asset purchase agreements from interested bidders as a result of renewed
28 marketing efforts for the Purchased Assets after the SGM Sale did not close. On March 16, 2020,

1 the Debtors' representatives received an updated bid from the Foundation. The Foundation
2 entered into substantive negotiations with the Debtors, which ultimately resulted in the Stalking
3 Horse APA. A true and correct copy of the Stalking Horse APA is attached to the Motion as
4 Exhibit "A."

5 8. The Debtors, the VHS board of directors, and the SVMC board of directors, in
6 consultation with Cain and their other advisors, selected the Foundation offer to serve as the
7 Stalking Horse Bidder to acquire the Purchased Assets. In selecting the Stalking Horse Bidder,
8 the Debtors considered, among other things, the considerations set forth in paragraphs 5 and 6
9 hereof. Further, the Debtors concluded, in their business judgment after consultation with Cain
10 and their other advisors, that conducting the Sale pursuant to the Bid Procedures (attached to the
11 Motion as Exhibit "B") is most likely to result in the highest and best offer for the Purchased
12 Assets and is in the best interests of the Debtors, their estates, creditors, stakeholders, and mission
13 of service to their communities.

14 I declare under penalty of perjury that, to the best of my knowledge and after reasonable
15 inquiry, the foregoing is true and correct.

16 Executed this 30th day of March, 2020, at Los Angeles, California.

17 
18

19 RICHARD G. ADCOCK
20
21
22
23
24
25
26
27
28

DECLARATION OF JAMES M. MOLONEY

I, James M. Moloney, hereby state and declare as follows:

1. I submit this declaration (the “Declaration”) in support of the *Debtors’ Emergency 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 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 and Assignment 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* (the “Motion”).¹¹

2. I am a managing director of Cain Brothers (“Cain”), which is a division of KeyBanc Capital Markets Inc., a wholly-owned broker/dealer subsidiary of KeyCorp and an affiliate of KeyBank National Association. I am located in Cain’s San Francisco office which is located at One California Street, Suite 2400, San Francisco, California. Mr. Carsten Beith and I are the co-heads of Cain’s Health Systems Mergers & Acquisition group. I am over the age of 18 and competent to testify as to the facts set forth herein and will do so if called upon.

3. As set forth in Cain’s previous declarations, beginning in June 2018, Cain began working with the Debtors to collect and review financial, operational and other information about the historic, current and project future operations and financial performance of each of the Debtors. Cain also began searching for a buyer or buyers for the Debtors’ assets and created a potential list of buyers for the Verity Heath System as a whole or in parts. Mr. Beith and I led the marketing and sale efforts on behalf of Verity and advised Verity in connection with Verity’s selection of Strategic Global Management, Inc. (“SGM”) as the stalking horse bidder for the Debtors’ hospitals and related assets (the “SGM Sale”).

¹¹ Unless otherwise defined, capitalized terms used herein shall have the same meaning as in the Motion.

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

1 4. The previous marketing and sale process conducted in 2019 yielded no qualified
2 bid for the Hospital as a stand-alone hospital. The Debtors proceeded toward closing the SGM
3 Sale.

4 5. After the SGM Sale did not close, Cain renewed the marketing process to identify
5 parties interested in acquiring the Purchased Assets. On January 3, 2020, Cain contacted all
6 parties that had previously executed an NDA concerning their continued interest in SVMC. In
7 addition, Cain updated the SVMC Confidential Information Memorandum (CIM), which it posted
8 to the data room on December 30, 2019. In total, 61 parties executed an NDA and were given
9 access to the data site. On January 15, 2020, Cain contacted all interested parties and requested
10 that parties submit “indications of interest” (each an “IOI”) on or before February 7, 2020. The
11 Debtors received twelve IOIs from parties that had experience in similar investments and a
12 wherewithal to close.

13 6. On February 26, 2020, Cain requested that parties submit proposed asset purchase
14 agreements on or before March 6, 2020. The Debtors received ten proposed asset purchase
15 agreements from interested bidders. On March 16, 2020, the Debtors’ representatives received an
16 updated bid from the Stalking Horse Bidder.

17 I declare under penalty of perjury that, to the best of my knowledge and after reasonable
18 inquiry, the foregoing is true and correct.

19 Executed this 30th day of March, 2020, at San Francisco, California.

20 
21

22 JAMES M. MOLONEY
23
24
25
26
27
28

Exhibit A

Stalking Horse APA

ASSET PURCHASE AGREEMENT

By and Among

**ST. VINCENT MEDICAL CENTER, VERITY HOLDINGS, LLC,
and VERITY HEALTH SYSTEM OF CALIFORNIA, INC.**

(as “Sellers”)

and

THE CHAN SOON-SHIONG FAMILY FOUNDATION

(as “Purchaser”)

Dated March 30, 2020

TABLE OF CONTENTS

Page

INDEX OF SCHEDULES & EXHIBITS

Schedules

Schedule 1.4.3	Owned Real Property
Schedule 1.7(c)	Assigned Contracts
Schedule 1.7(I)	State of California Lease
Schedule 1.8(c)	Excluded Personal Property
Schedule 1.8(bb)	Certain Other Excluded Assets
Schedule 1.9(g)	Other Obligations
Schedule 1.11	Evaluated Contracts
Schedule 2.4	Brokers and Finders (Sellers)
Schedule 2.5	Required Consents (Sellers)
Schedule 2.6	Legal Proceedings (Sellers)
Schedule 2.8	Leases
Schedule 3.4	No Violation (Purchaser)
Schedule 3.7	Legal Proceedings (Purchaser)
Schedule 11.3(b)	Tax Allocation Schedule

Exhibits

<i>No.</i>	<i>Description</i>	<i>Status</i>
Exhibit 1.2	Escrow Agreement	to come
Exhibit 1.4.1	Bill of Sale	to come
Exhibit 1.4.2	Real Estate Assignment Agreements	to come
Exhibit 1.4.3	Grant Deeds	to come
Exhibit 1.4.4	Transfer Agreement	to come
Exhibit 8.6	Pro Forma	To come

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the “**Agreement**”) is made and entered into as of March 30, 2020 (the “**Signing Date**”) by and among St. Vincent Medical Center, a California nonprofit public benefit corporation (“**SVMC**”), Verity Holdings, LLC (“**Verity Holdings**”), a California limited liability company and Verity Health System of California, Inc., a California nonprofit public benefit corporation (“**VHS**” and, together with SVMC and Verity Holdings, the “**Sellers**” and each individually a “**Seller**”) and The Chan Soon-Shiong Family Foundation, a Delaware nonprofit corporation (“**Purchaser**”). Each of the Purchaser and each Seller is referred to herein as a “**Party**” and, collectively, the “**Parties**”.

RECITALS

A. SVMC historically operated the hospital known as St. Vincent Medical Center, located at 2131 W 3rd Street, Los Angeles, CA 90057, including the hospital pharmacy, laboratory and emergency department as well as through the medical office buildings and clinics owned or operated by SVMC (collectively, the “**Hospital**”). On January 6, 2020, SVMC announced the closure of its Hospital and has ceased all operations other than those necessary to maintain the Owned Real Property (defined below).

B. VHS is the sole member of SVMC and Verity Holdings. Verity Holdings owns and rents certain properties on or near the Hospital campus.

C. Purchaser desires to purchase from Sellers, and Sellers desire to sell to Purchaser, the assets described in Section 1.7 below for the consideration and upon the terms and conditions contained in this Agreement. Subject to Section 13.2, Purchaser may elect to take title to some or all of the assets through one or more affiliated nominees.

D. On August 28, 2018, Sellers filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”) with the United States Bankruptcy Court for the Central District of California, Los Angeles Division, before the Honorable Ernest M. Robles (the “**Bankruptcy Court**”), which is jointly administered with its affiliates under Case No. 18-20151 (the “**Bankruptcy Cases**”).

E. By March 30, 2020, Sellers will file a motion, seeking approval of, among other things, (1) bidding procedures for conducting a sale and auction of the Assets (as defined below) (the “**Bidding Procedures**”), which Bidding Procedures shall be in form and substance reasonably acceptable to Purchaser, (2) scheduling a hearing before the Bankruptcy Court to approve and authorize the sale of the Assets free and clear of all liens, claims and encumbrances pursuant to the terms of this Agreement and a sale order of the Bankruptcy Court, which sale order shall be in form and substance reasonably acceptable to the Purchaser (the “**Sale Order**”), (3) approving procedures relating to the debtors’ assumption and assignment of executory contracts and unexpired leases to Purchaser as provided in this Agreement, and (4) authorizing Sellers’ performance of their obligations under this Agreement, including but not limited to the Stalking Horse Bidder Protections (as defined below), subject to the terms and conditions of this Agreement, which motion (the “**Bidding Procedures Motion**”) and order (the “**Bidding Procedures Order**”) shall be in form and substance reasonably acceptable to Purchaser.

F. The Parties intend to effectuate the transactions contemplated by this Agreement through a sale of the Assets as approved by the Bankruptcy Court pursuant to Section 363 of the Bankruptcy Code.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and covenants contained in this Agreement, and for their mutual reliance and incorporating into this Agreement the above recitals, the Parties agree as follows:

ARTICLE 1 SALE AND TRANSFER OF ASSETS; CONSIDERATION; CLOSING

1.1 Purchase Price

. Subject to the terms and conditions of this Agreement, the purchase price (“**Purchase Price**”) shall consist of:

(a) An aggregate cash payment of One Hundred Thirty-Five Million Dollars (\$135,000,000.00) for the Owned Real Property and the Personal Property; and

(b) An amount determined in accordance with Section 1.6.

1.2 Deposit

. Purchaser has deposited an amount equal to Eight Million One Hundred Thousand Dollars (\$8,100,000) (the “**Deposit**”) by wire transfer to Chicago Title Insurance Company, 10 South LaSalle St. Suite 3100, Chicago, IL 60603 Attention: Beata Lewis (“**Escrow Agent**”) pursuant to that certain Escrow Agreement attached hereto as Exhibit 1.2. All fees of the Escrow Agent shall be paid by Purchaser. The Deposit shall be non-refundable in all events, except in the event the Closing does not occur due to Purchaser’s and/or Sellers’ termination of the Agreement pursuant to Sections 9.1 (a), (c), (d), (f), (g), (h), (i), or (j) hereof. Upon Closing, the Deposit will be credited against the Purchase Price.

1.3 Closing Date

. The consummation of the transactions contemplated by this Agreement (the “**Closing**”) shall take place at the offices of the Escrow Agent (the day on which Closing actually occurs, the “**Closing Date**”) within five (5) business days following the receipt of the Bankruptcy Court Approval set forth in Sections 7.4 and 8.4 below. The Closing shall be deemed to occur and to be effective as of 12:00 a.m. Pacific time on the day immediately prior to the Closing Date (the “**Effective Time**”).

1.4 Items to be Delivered by Sellers at Closing

. At or before the Closing, Sellers shall deliver, or cause to be delivered, to Escrow Agent the following:

1.4.1 a Bill of Sale substantially in the form of Exhibit 1.4.1 attached hereto (the “Bill of Sale”), duly executed by each Seller;

1.4.2 Real Estate Assignment Agreements (the “**Real Estate Assignments**”) in the form of Exhibit 1.4.2 attached hereto with respect to the leases included in the Assigned Contracts (the “**Assigned Leases**”), each duly executed by the applicable Sellers;

1.4.3 Grant Deeds in the form of Exhibit 1.4.3 attached hereto with respect to the real property listed in Schedule 1.4.3 (the “**Owned Real Property**”) duly executed by SVMC and Verity Holdings as applicable;

1.4.4 an Assigned Contract Transfer Agreement (the “**Transfer Agreement**”) in the form of Exhibit 1.4.4 attached hereto, duly executed by the applicable Sellers;

1.4.5 evidence of payment or escrowing of all Cure Costs;

1.4.6 favorable certificates of good standing, of each Seller, issued by the State of California, dated no earlier than a date which is fifteen (15) calendar days prior to the Closing Date;

1.4.7 a duly executed certificate of an officer of each Seller certifying to Purchaser (i) the incumbency of the officers of such Seller on the Signing Date and on the Closing Date and bearing the authentic signatures of all such officers who shall execute this Agreement and any additional documents contemplated by this Agreement and (ii) the due adoption and text of the resolutions or consents of the Board of Directors of such Seller authorizing the due execution, delivery and performance of this Agreement and all additional documents contemplated by this Agreement, and that such resolutions have not been amended or rescinded and remain in full force and effect on the Closing Date;

1.4.8 a certified copy of the Sale Order;

1.4.9 a duly executed affidavit of each Seller stating that such Seller is not a “foreign person” as defined in the Federal Foreign Investment in Real Property Tax Act of 1980 and the 1984 Tax Reform Act in the form of Exhibit 1.4.9 attached hereto, and a duly executed California Form 593 from each Seller;

1.4.10 to the extent not previously delivered to Purchaser, any contracts and licenses and permits with respect to the Owned Real Property, if any, in the possession of Sellers or Sellers’ agents, together with such property files and records which are material in connection with the operation and maintenance of the Owned Real Property;

1.4.11 a duly executed Owner’s Affidavit in a form approved by the Title Company from each Seller;

1.4.12 Any such other instruments, certificates, consents or other documents which Purchaser and Sellers mutually deem reasonably necessary to carry out the transactions contemplated by this Agreement and to comply with the terms hereof.

1.5 Items to be Delivered by Purchaser at Closing

. At or before the Closing, Purchaser shall deliver or cause to be delivered to Escrow Agent the following:

1.5.1 payment of the Purchase Price;

1.5.2 a duly executed certificate of an officer of Purchaser certifying to Sellers (a) the incumbency of the officers of Purchaser on the Signing Date and on the Closing Date and bearing the authentic signatures of all such officers who shall execute this Agreement and any additional documents contemplated by this Agreement and (b) the due adoption and text of the resolutions with respect to Purchaser authorizing the execution, delivery and performance of this Agreement and all additional documents contemplated by this Agreement, and that such resolutions have not been amended or rescinded and remain in full force and effect on the Closing Date;

1.5.3 favorable certificate of good standing, of Purchaser, issued by the California Secretary of State dated no earlier than a date which is fifteen (15) calendar days prior to the Closing Date;

1.5.4 the Bill of Sale, duly executed by Purchaser;

1.5.5 the Real Estate Assignment(s), duly executed by Purchaser;

1.5.6 Preliminary Change of Ownership Report(s) (BOE-502-A) with respect to the Owned Real Property, duly executed by Purchaser;

1.5.7 the Transfer Agreement, duly executed by Purchaser; and

1.5.8 any such other instruments, certificates, consents or other documents which Purchaser and Sellers mutually deem reasonably necessary to carry out the transactions contemplated by this Agreement and to comply with the terms hereof.

All closing documents shall be on a As Is, Where Is basis with no ongoing recourse to the Seller post-Closing, except for Seller's obligations to pay the Cure Costs, if any, which shall survive the Closing.

1.6 Prorations and Utilities

. All items of income and expense listed below with respect to the Assets shall be prorated in accordance with the principles and the rules for the specific items set forth hereafter:

1.6.1 [Reserved]

1.6.2 Other than the Utility Deposits (defined below), which are governed by Section 1.8(o), and other than with respect to Cure Costs, the following costs and expenses shall, unless paid by the State of California pursuant to the State of California Lease (defined below), be prorated based upon the payment period (*i.e.*, calendar or other tax fiscal year) to which the same

are attributable: (i) all real estate and personal property lease payments, non-delinquent real estate and personal property taxes, real estate assessments and other similar charges against real estate, (ii) power and utility charges, (iii) [reserved] and (iv) other similar costs for items or services which continue past the Effective Time and are expressly assumed by Purchaser (collectively, the “**Prorated Charges**”). Unless paid by the State of California pursuant to the State of California Lease, Sellers shall pay at or prior to the Closing (or Purchaser shall receive credit for) any unpaid Prorated Charges attributable to periods or portions thereof occurring prior to the Effective Time, and Purchaser shall be responsible for or, to the extent previously paid by Sellers, pay to Sellers at the Closing all Prorated Charges attributable to periods or portions thereof occurring from and after the Effective Time. In the event that as of the Closing Date the actual tax bills for the tax year or years in question are not available and the amount of taxes to be prorated as aforesaid cannot be ascertained, then rates, millages and assessed valuation of the previous year, with known changes, shall be used. The Parties agree that if the real estate and personal property tax prorations are made based upon the taxes for the preceding tax period, the prorations shall be re-prorated after the Closing. As to power and utility charges, “final readings” as of the Closing Date shall be ordered from the utilities; the cost of obtaining such “final readings,” if any, shall be paid by Purchaser.

1.6.3 All prorations and payments to be made under the foregoing provisions shall be agreed upon by Purchaser and Sellers prior to the Closing and shall be binding upon the Parties; *provided, however*, in the event any proration, apportionment or computation shall prove to be incorrect for any reason, then either Sellers or Purchaser shall be entitled to an adjustment to correct the same, provided that said Party makes written demand on the Party from whom it is entitled to such adjustment within fifteen (15) calendar days after the erroneous payment or computation was made, or such later time as may be required, in the exercise of due diligence, to obtain the necessary information for proration.

1.6.4 Sellers shall pay (a) the fees of any counsel representing it in connection with this transaction; (b) the fees for recording the deed conveying the Owned Real Property to Purchaser; (c) any transfer tax, documentary stamp tax or similar tax which becomes payable by reason of the transfer of the Owned Real Property; (d) one-half (½) of any escrow fee which may be charged by Escrow Agent, and (e) the CLTA portion of the premium for the Title Policy. Subject to the Expense Reimbursement, Purchaser shall pay (x) the fees of any counsel representing Purchaser in connection with this transaction; (y) premium for the ALTA portion of the Title Policy and the costs of any endorsements thereto; and (z) one-half (½) of any escrow fees charged by Escrow Agent. Except with respect to the Expense Reimbursement, all other costs and expenses incident to this transaction and the closing thereof shall be paid by the Party incurring same.

1.6.5 This Section 1.6 shall survive Closing.

1.7 Transfer of Sellers’ Assets

. On the Closing Date, subject to the terms and conditions of this Agreement, Sellers shall sell, assign, transfer, convey and deliver to Purchaser, free and clear of all liens and encumbrances other than the Permitted Exceptions (defined below), and Purchaser shall acquire, all of Sellers’ right, title and interest in and to only the following assets and properties, as such assets shall exist on the

Closing Date, to the extent not included among the Excluded Assets, such transfer being deemed to be effective at the Effective Time (the “**Assets**”):

- (a) all of Sellers’ interest in and to the Owned Real Property;
- (b) all of the tangible personal property owned by Sellers and currently located at the Owned Real Property, including inventories and supplies utilized for the operation and maintenance of the Owned Real Property, equipment, furniture, machinery, and office furnishings, excluding any vehicles or other items excluded from sale pursuant to Section 1.8(c) (the “**Personal Property**”) and, to the extent assignable or transferrable, all rights in all warranties of any manufacturer or vendor in connection with the Personal Property;
- (c) all of Sellers’ interest in, and all of Sellers’ obligations due under from and after the Effective Time, to the extent assignable or transferable, all contracts and agreements (including, but not limited to, purchase orders) that have been designated by Purchaser as an Assigned Contract, pursuant to Section 1.11 and appearing on Schedule 1.7(c);
- (d) all of Sellers’ interest in, and all of Sellers’ obligations due under from and after the Effective Time, all Assigned Leases, pursuant to Section 1.11 and appearing on Schedule 2.8; and
- (e) other than Utility Deposits, all prepaid rentals, deposits, prepayments and similar amounts relating to the Assigned Contracts and/or the Assigned Leases, which were made with respect to the operation of the Hospital (the “**Prepays**”).

As used herein, the term “**Permitted Exceptions**” means (i) the Transferred Obligations; (ii) liens for taxes not yet due and payable, subject to adjustment as provided in Section 1.6; (iii) zoning ordinances and other similar encumbrances affecting real property; (iv) items appearing of record and identified in the pro forma policy attached hereto as Exhibit 8.6; (v) the lease with the State of California described in Schedule 1.7(I) (the “**State of California Lease**”); and (vi) holdover tenants associated with Assigned Leases. For the avoidance of doubt, Seller, at its sole cost and expense, shall cause to be removed, at or prior to the Closing, any Schedule B exceptions appearing on the Title Commitment, which are not Permitted Exceptions; provided, however, Sellers’ obligations with respect to the foregoing shall be limited to the following: (x) delivery to the Escrow Agent all items set forth in Section 1.4, including, but not limited to, a certified copy of the Sale Order and a duly executed Owner’s Affidavit in a form approved by the Title Company from each Seller; and (y) proration and payment of all real estate taxes and assessments in accordance with Section 1.6.

1.8 Excluded Assets

. Notwithstanding anything to the contrary in Section 1.7, Sellers shall retain all interests, rights and other assets owned directly or indirectly by it (or any of Sellers’ affiliates) which are not among the Assets, including, without limitation, the following interests, rights and other assets of Sellers (collectively, the “**Excluded Assets**”):

- (a) cash, cash equivalents and short-term investments;

(b) all accounts and interest thereupon, notes and interest thereupon and other receivables of Sellers, including, without limitation, accounts, notes or other amounts receivable, and all claims, rights, interests and proceeds related thereto, including all accounts and other receivables, quality assurance fee payments, trauma payments, disproportionate share payments, cost report, claim, EHR or other similar appeals and Seller cost report settlements, in each case arising from the rendering of services or provision of goods, products or supplies to inpatients and outpatients at the Hospital, billed and unbilled, recorded and unrecorded, for services, goods, products and supplies provided by Sellers prior to the Effective Time whether payable by Medicare, Medi-Cal, Medicaid, or any other payor (including an insurance company), or any health care provider or network (such as a health maintenance organization, preferred provider organization or any other managed care program) or any fiscal intermediary of the foregoing, private pay patients, private insurance or by any other source (collectively, “**Accounts Receivable**”) and all licenses, Medicare/Medi-Cal agreements and private payor agreements;

(c) all of the tangible Personal Property owned by Sellers currently located at the Owned Real Property, including any vehicles, and listed on Schedule 1.8(c);

(d) all documents, records, correspondence, work papers and other documents, other than patient records, primarily relating to the Accounts Receivable;

(e) all of Sellers’ intangible personal property, including trademarks, copyrights and ownership interests in or rights to control the activities of any affiliate, subsidiary, or charitable foundation;

(f) all shares, membership interests or other ownership rights or interests in and to any other corporation or entity, including St. Vincent Foundation and St. Vincent Dialysis Center, Inc.;

(g) all benefit plans of Sellers and the assets of all benefit plans of Sellers and any asset that would revert to the employer upon the termination of any benefit plan of Sellers, including, without limitation, any assets representing a surplus or overfunding of any benefit plan of Sellers;

(h) all contracts that are not Assigned Contracts;

(i) all inventory and supplies previously utilized in the Sellers’ patient care operations;

(j) the portions of Prepaids, and other assets disposed of, expended or canceled, as the case may be, by Sellers after the Signing Date and prior to the Effective Time in the ordinary course of business;

(k) assets owned by vendors of services or goods to the Hospital;

(l) all of Sellers’ organizational or corporate record books, minute books and tax records;

(m) all claims, counterclaims and causes of action of Sellers or Sellers' bankruptcy estate (including parties acting for or on behalf of Sellers' bankruptcy estate, including, but not limited to, the official committee of unsecured creditors appointed in the Bankruptcy Cases (the "**Committee**") or any subsequent liquidating trust), including, without limitation, (A) causes of action arising out of any claims and causes of action under chapter 5 of the Bankruptcy Code (such actions, "**Avoidance Actions**"), (B) any claims, counterclaims and causes of action under applicable non-bankruptcy law (including claims, counterclaims and causes of action against any health plan or other third party payors related to services provided prior to the Effective Time), and (C) any rights to challenge liens asserted against property of the Sellers' bankruptcy estate (including, but not limited to, liens attaching to the Purchase Price paid to the Sellers), and the proceeds from any of the foregoing; *provided, however*, that Purchaser shall acquire and be deemed to release and waive as of the Effective Time causes of action under Sections 544, 547, 548 and 550 of the Bankruptcy Code against counterparties to executory contracts and unexpired leases being assumed by Sellers and assigned (solely to the extent Assigned Contracts) to Purchaser pursuant to Section 1.11 hereof;

(n) all insurance policies and contracts and coverages obtained by Sellers or listing Sellers as insured party, a beneficiary or loss payee, including prepaid insurance premiums, and all rights to insurance proceeds under any of the foregoing, and all subrogation proceeds related to any insurance benefits arising from or relating to (i) Assets prior to the Effective Time and/or (ii) Excluded Assets whether prior to or after the Effective Time;

(o) all deposits made with any entity that provides utilities to the Owned Real Property (the "**Utility Deposits**");

(p) all unclaimed personal property of any third party as of the Effective Time, including, without limitation, property which is subject to applicable escheat laws;

(q) all bank accounts of Sellers;

(r) all writings and other items that are protected from discovery by the attorney-client privilege, the attorney work product doctrine or any other cognizable privilege or protection;

(s) the rights of Sellers to receive mail and other communications with respect to Excluded Assets or Excluded Liabilities;

(t) all tax refunds and tax assets of Sellers;

(u) all documents, records, personnel files, operating manuals patient records and film pertaining to the Hospital;

(v) all patient records and medical records which are not part of any electronic medical record software transferred to Purchaser and are not required by law (including Section 351 of the Bankruptcy Code) to be maintained by Purchaser as of the Effective Time;

(w) any rights or documents relating to any Excluded Liability or other Excluded Asset;

(x) all deposits or other prepaid charges and expenses paid in connection with or relating to any other Excluded Assets and/or Excluded Liabilities;

(y) any rights or remedies provided to Sellers under this Agreement and each other document executed in connection with the Closing and the actions necessary to complete the sale of the Assets pursuant to this Agreement;

(z) any rights or remedies, including deposits, against any individual or entity arising pursuant to (including in connection with Sellers' termination of) or relating to that certain Asset Purchase Agreement dated January 8, 2019 between, *inter alia*, Sellers and Strategic Global Management, Inc.;

(aa) any and all rights and entitlements of Sellers in respect of that certain Settlement Agreement, executed as of April 29, 2019, by and between, on the one hand, Premier, Inc., Premier Services, LLC ("**Premier GP**"), Premier Healthcare Alliance, L.P. ("**Premier LP**"), Premier Healthcare Solutions, Inc. ("**PHSI**") and each of Premier, Inc.'s other subsidiaries (collectively and including Premier GP, Premier LP and PHSI, "**Premier**"), and on the other hand, VHS, as approved by the Bankruptcy Court by order entered on May 29, 2019 [Docket No. 2461], including but not limited to the right to convert and exchange partnership interests arising under that certain Amended and Restated Limited Partnership Agreement, effective as of October 1, 2013, as amended, by and among Premier LP, Premier GP and the limited partners of Premier LP party thereto (including VHS);

(bb) any intellectual property, including copyrights and trademarks, and any other any assets identified in Schedule 1.8(bb);

(cc) the Hospital's licenses, including its general acute care license; and

(dd) all Excluded Contracts and Excluded Leases.

For the avoidance of doubt, Purchaser is not acquiring any asset owned by any affiliate of Sellers.

1.9 Transferred Obligations

. Purchaser is not assuming any liabilities of Sellers. Instead, on and after the Closing Date, Purchaser shall be responsible for and agrees to discharge, perform and satisfy fully, on and after the Effective Time, the following liabilities and obligations (collectively, the "**Transferred Obligations**"):

(a) the Assigned Contracts, after Sellers pay the Cure Costs;

(b) all liabilities and obligations arising out of or relating to any act, omission, event or occurrence connected with the use, ownership or operation by Purchaser of the Assets on or after the Effective Time;

(c) all liabilities and obligations related to the employees of Sellers hired by Purchaser arising on or following the Effective Time;

(d) all unpaid non-delinquent real and personal property taxes, if any, that are attributable to the Assets after the Effective Time, subject to the prorations provided in Section 1.6;

(e) all liabilities and obligations relating to utilities being furnished to the Assets, subject to the prorations provided in Section 1.6;

(f) the Assigned Leases;

(g) any other obligations and liabilities identified in Schedule 1.9(g).

1.10 Excluded Liabilities

. Purchaser shall have those duties, obligations and liabilities set forth in this Agreement, the Bill of Sale, the Transfer Agreement and the Real Estate Assignment(s) and shall be responsible for the Transferred Obligations. However, Purchaser is not assuming any liabilities of Sellers related to the Assets or the Hospitals, and to the maximum extent permitted by law shall not be deemed a successor to Sellers or their estates by reason of any theory of law or equity with respect to any claims or liens against Sellers or the Assets (the “**Excluded Liabilities**”).

1.11 Designation of Assigned Contracts and Assigned Leases

. Purchaser may review and evaluate for assumption or rejection the contracts and leases listed in Schedule 1.11 (collectively, all such contracts and leases, the “**Evaluated Contracts**”), and each Seller will assign to Purchaser the contracts and leases that are selected by Purchaser for assignment and assumption from such Evaluated Contracts in accordance with the terms of this Section 1.11. Not later than 4:00 pm Pacific Time on the day immediately preceding the date of the Auction (defined below), or, if no Auction occurs, then not later than 4:00 pm Pacific Time on April 7, 2020, Purchaser shall notify Sellers in writing of which Evaluated Contracts are to be assumed and assigned to the Purchaser (all such Evaluated Contracts assumed and assigned to Purchaser, the “**Assigned Contracts**”). All other Evaluated Contracts that are not Assigned Contracts shall be rejected by Sellers (any such rejected Evaluated Contracts, the “**Rejected Contracts**”). For the avoidance of doubt, Purchaser shall have no obligation or liability as it relates to any Rejected Contract.

1.12 Disclaimer of Warranties; Release

(a) THE ASSETS TRANSFERRED TO PURCHASER WILL BE SOLD BY SELLERS AND PURCHASED BY PURCHASER IN THEIR PHYSICAL CONDITION AT THE EFFECTIVE TIME, “AS IS, WHERE IS AND WITH ALL FAULTS AND NONCOMPLIANCE WITH LAWS” WITH NO WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY, USAGE, WORKMANSHIP, QUALITY, PHYSICAL CONDITION, OR VALUE, AND ANY AND ALL SUCH OTHER REPRESENTATIONS AND WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED, AND WITH RESPECT TO THE OWNED REAL PROPERTY WITH NO WARRANTY OF

HABITABILITY OR FITNESS FOR HABITATION, INCLUDING, WITHOUT LIMITATION, THE LAND, THE BUILDINGS AND THE IMPROVEMENTS. ALL OF THE PROPERTIES, ASSETS, RIGHTS, LICENSES, PERMITS, PRIVILEGES, LIABILITIES, AND OBLIGATIONS OF SELLERS INCLUDED IN THE ASSETS AND THE TRANSFERRED OBLIGATIONS ARE BEING ACQUIRED OR RECEIVED “AS IS, WHERE IS” ON THE CLOSING DATE AND IN THEIR PRESENT CONDITION, WITH ALL FAULTS. ALL OF THE TANGIBLE ASSETS SHALL BE FURTHER SUBJECT TO NORMAL WEAR AND TEAR AND NORMAL AND CUSTOMARY USE OF THE INVENTORY AND SUPPLIES IN THE ORDINARY COURSE OF BUSINESS UP TO THE EFFECTIVE TIME.

(b) Purchaser acknowledges that Purchaser has examined, reviewed and inspected all matters which in Purchaser’s judgment bear upon the Purchase Price, the Assets, the Sellers, the Hospital, the businesses of the Hospital and their value and suitability for Purchaser’s purposes and is relying solely on Purchaser’s own examination, review and inspection of the Assets and Transferred Obligations. Except with respect to any obligations of Seller to pay the Cure Costs, Purchaser hereby releases Sellers and their affiliates from all responsibility and liability regarding the condition, valuation, salability or utility of the businesses of the Hospital or the Assets, or their suitability for any purpose whatsoever. Purchaser further acknowledges that the representations and warranties of Sellers contained in ARTICLE 2 of this Agreement are the sole and exclusive representations and warranties made by Sellers to Purchaser (including with respect to the Hospital, the Assets and the Transferred Obligations) and shall expire, and be of no further force or effect at the Closing.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES OF SELLERS

Each Seller hereby severally and not jointly represent and warrant to Purchaser as to the following matters, as of the Signing Date and as of the Closing Date, except as disclosed in the disclosure schedule as may be amended pursuant to the terms of this Agreement (the “**Disclosure Schedule**”), delivered by Sellers to Purchaser:

2.1 Authorization. Such Seller has all necessary corporate power and authority to enter into this Agreement and, subject to Bankruptcy Court approval, to carry out the transactions contemplated hereby. The person signing this Agreement on behalf of each Seller is authorized to do so.

2.2 Binding Agreement. This Agreement has been duly and validly executed and delivered by Sellers and, assuming due and valid execution by Purchaser, this Agreement constitutes a valid and binding obligation of Sellers enforceable in accordance with its terms subject to (a) applicable bankruptcy, reorganization, insolvency, moratorium and other laws affecting creditors’ rights generally from time to time in effect (including, without limitation approval of the Bankruptcy Court) and (b) limitations on the enforcement of equitable remedies.

2.3 Organization and Good Standing; No Violation.

(a) Each of SVMC and VHS is a non-profit corporation duly organized, validly existing and in good standing under the laws of the State of California. Verity Holdings is a limited

liability company duly organized, validly existing and in good standing under the laws of the State of California. Each Seller has all necessary power and authority to own, operate and lease its properties and to carry on its businesses as now conducted.

(b) Neither the execution and delivery by such Seller of this Agreement nor the consummation of the transactions contemplated hereby by such Seller nor compliance with any of the material provisions hereof by such Seller, will violate, conflict with or result in a breach of any material provision of such Seller's articles of incorporation or bylaws or any other organizational documents of such Seller.

2.4 Brokers and Finders

. Except as set forth on Schedule 2.4, neither such Seller nor any affiliate thereof, nor any officer or director thereof, have engaged or incurred any liability to any finder, broker or agent in connection with the transactions contemplated hereunder. Purchaser shall have no obligation or liability with respect to any finder, broker or agent set forth on Schedule 2.4.

2.5 Required Consents

. Except as set forth in Schedule 2.5 and as otherwise set forth in this Agreement, Sellers are not a party to or bound by, nor are any of the Assets subject to, any mortgage, material lien, deed of trust, material lease, material order, judgment or decree which, after giving effect to the Sale Order (a) will require the consent of any third party to the execution of this Agreement or (b) will require the consent of any third party to consummate the transactions contemplated by this Agreement.

2.6 Legal Proceedings

. Except as described on Schedule 2.6, or as filed in the Bankruptcy Court and available through Sellers' claims and noticing agent's website at <http://www.kcclcc.com/VERITYHEALTH>, there are no claims, proceedings or investigations asserted against Sellers and pending or, to the best knowledge of Sellers, threatened against Sellers before any court or governmental body (whether judicial, executive or administrative) in which an adverse determination would adversely affect Sellers' ability to consummate the transactions contemplated hereby. Sellers are not subject to any judgment, order, decree or other governmental restriction specifically (as distinct from generically) applicable to Sellers which would adversely affect Sellers' ability to consummate the transactions contemplated hereby.

2.7 Title

. Sellers have delivered at their own expense for all Owned Real Property, (i) title commitments (the "**Title Commitments**") with effective dates of June 14, 2019 and February 5, 2020 issued by Chicago Title Insurance Company (the "**Title Company**"), (ii) copies of or access to all material underlying title documents listed on the Title Commitments, and (iii) Preliminary ALTA/NSPS Land Title Surveys based off one of the Title Commitments prepared by Buckley D. Blew, Blew & Associates, P.A. under Job Numbers 19-6306 & 19-6313, and coordinated by AEI Consultants under AEI Job #s 414552 & 414559 (the "**Surveys**").

2.8 Leases

Sellers are the lessor or landlord under the Assigned Leases. There are no leases or occupancy agreements to which any Seller is a party affecting the Owned Real Property other than with respect to those tenants listed on Schedule 2.8 attached hereto. To the best of Sellers' knowledge, there are no uncured defaults under any of the Assigned Leases by either party except set forth on Schedule 2.8. Except as may be set forth on Schedule 2.4, there are no leasing commissions related to any of the Assigned Leases that remain unpaid.

2.9 Condemnation

. No condemnation proceedings relating to the Owned Real Property are pending or, to Sellers' knowledge, threatened and Sellers have not received written notice of any condemnation proceedings related to the Owned Real Property.

2.10 OFAC

. Each Seller represents and warrants that (a) such Seller and, to such Seller's actual knowledge, each person or entity owning an interest in such Seller is (i) not currently identified on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury ("OFAC") and/or on any other similar list maintained by OFAC pursuant to any authorizing statute, executive order or regulation (collectively, the "List"), and (ii) not a person or entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States, and (iii) not an Embargoed Person (as hereinafter defined), (b) to such Seller's actual knowledge, none of the funds or other as-sets of such Seller constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person, and (c) to such Seller's actual knowledge, no Embargoed Person has any interest of any nature whatsoever in such Seller (whether directly or indirectly). The term "Embargoed Person" means any person, entity or government subject to trade restrictions under U.S. law, including but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder.

2.11 Evaluated Contracts

. To the knowledge of Sellers, true and complete copies of the Evaluated Contracts are contained in Phoenix Cain: Folder 4.2.4 of Seller's electronic data room.

2.12 No Violations

Except as set forth on Schedule 2.12, and other than any action or proceeding brought in the Bankruptcy Court and available through Sellers' claims and noticing agent's website at <http://www.kcclcc.com/VERITYHEALTH>, to the knowledge of Sellers, no Seller has received any written notice from a governmental agency of any uncured violations of any federal, state, county or municipal law, ordinance, order, regulation or requirement affecting the Owned Real Property.

2.13 Tax Appeals

. No tax appeals initiated by any Seller are pending or have been filed with respect to any of the Owned Real Property. Sellers have not received from any governmental authority or other entity having authority to impose such assessments, any written notice of actual or threatened special assessments or reassessments of the Owned Real Property.

2.14 Sellers' Knowledge

. References in this Agreement to "Sellers' knowledge" or "the knowledge of Sellers" means the actual knowledge of the Chief Executive Officer or Chief Financial Officer of each of the Sellers, without independent research. No constructive or imputed knowledge shall be attributed to any such individual by virtue of any position held, relationship to any other Person or for any other reason.

**ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF PURCHASER**

As an inducement to Sellers to enter into this Agreement and to consummate the transactions contemplated by this Agreement, Purchaser hereby represents and warrants to Sellers as to the following matters as of the Signing Date and as of the Closing Date:

3.1 Authorization

Purchaser has full power and authority to enter into this Agreement and has full power and authority to perform its obligations hereunder and to carry out the transactions contemplated hereby. The person signing this Agreement on behalf of Purchaser is authorized to do so.

3.2 Binding Agreement

. This Agreement has been duly and validly executed and delivered by Purchaser and, assuming due and valid execution by Sellers, this Agreement constitutes a valid and binding obligation of Purchaser enforceable in accordance with its terms subject to (a) applicable bankruptcy, reorganization, insolvency, moratorium and other laws affecting creditors' rights generally from time to time in effect, and (b) limitations on the enforcement of equitable remedies.

3.3 Organization and Good Standing

. Purchaser is a nonprofit corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and is or will be duly authorized to transact business in the State of California, and has full power and authority to own, operate and lease its properties and to carry on its business as now conducted.

3.4 No Violation

. Except as set forth in Schedule **Error! Reference source not found.**, neither the execution and delivery by Purchaser of this Agreement nor the consummation of the transactions

contemplated hereby nor compliance with any of the material provisions hereof by Purchaser will (a) violate, conflict with or result in a breach of any material provision of the Articles of Incorporation, Bylaws or other organizational documents of Purchaser or any contract, lease or other instrument by which Purchaser is bound; (b) require any approval or consent of, or filing with, any governmental agency or authority; (c) violate any law, rule, regulation or ordinance to which Purchaser is or may be subject; or (d) violate any judgment, order or decree of any court or other governmental agency or authority to which Purchaser is subject.

3.5 Brokers and Finders

. Neither Purchaser nor any affiliate thereof nor any officer or director thereof has engaged any finder or broker in connection with the transactions contemplated hereunder.

3.6 Representations of Sellers

. Purchaser acknowledges that it is purchasing the Assets on an “AS IS, WHERE IS” basis (as more particularly described in Section 1.12), and that other than the representations of Sellers set forth in Article 2 hereof, Purchaser is not relying on any covenant, representation, warranty (expressed or implied, oral or otherwise) made by or on behalf of a Sellers, or any other provision of this Agreement, in entering into and performing under this Agreement. Purchaser further acknowledges that Sellers are not making any covenants, representations or warranties herein relating to the Assets or the operation of the Hospital on or after the Effective Time. In particular, Purchaser has reviewed the Title Commitments and Surveys and is prepared to close at the Purchase Price and other terms herein, subject to the Permitted Exceptions. Purchaser is aware of and acknowledges it is taking the Assets subject to the State of California Lease.

3.7 Legal Proceedings

. Except as described on Schedule **Error! Reference source not found.**, there are no claims, proceedings or investigations pending or, to the best knowledge of Purchaser, threatened relating to or affecting Purchaser or any affiliate of Purchaser before any court or governmental body (whether judicial, executive or administrative) in which an adverse determination would adversely affect Purchaser’s ability to consummate the transactions contemplated hereby. Neither Purchaser nor any affiliate of Purchaser is subject to any judgment, order, decree or other governmental restriction specifically (as distinct from generically) applicable to Purchaser or any affiliate of Purchaser which would adversely affect Purchaser’s ability to consummate the transactions contemplated hereby.

3.8 No Knowledge of Sellers’ Breach

. Neither Purchaser nor any of its affiliates has knowledge of any breach of any covenant, representation or warranty by Sellers or of any condition or circumstance that would give Purchaser a right to terminate this Agreement pursuant to Section 9.1(c). If information comes to Purchaser’s attention on or before the Closing Date (whether through Sellers or otherwise and whether before or after the Signing Date) which indicates that Sellers have breached any of their covenants, representations, warranties or any other provision or condition under this Agreement, then, subject to Section 9.1(c), the effect shall be as if the covenants, representations and warranties or any other provision or condition of this Agreement had been modified in

accordance with the actual state of facts existing prior to the Effective Time; provided, that Purchaser must promptly notify Sellers if any such breach comes to its attention on or before the Closing Date, and Purchaser's failure to so notify Sellers shall constitute a waiver by Purchaser of Sellers' breach, if any, of any covenant, representation or warranty or any other provision of this Agreement or any ancillary agreements entered into pursuant to this Agreement.

3.9 Ability to Perform

. Purchaser has the ability to obtain funds and at the Closing shall have cash in amounts necessary to consummate the transactions contemplated by this Agreement by means of cash, credit facilities or otherwise. Purchaser has provided Sellers with a letter from Merrill Lynch, Pierce, Fenner & Smith Incorporated regarding Purchaser's financial capacity.

3.10 Investigation

. As of the Closing Date, Purchaser has been afforded reasonable access to, and has been provided adequate time to review, the books, records, information, operations, facilities and personnel of Sellers for purposes of conducting a due diligence investigation of Sellers and the Assets. Purchaser has completed all of its due diligence of Sellers and the Assets and this Agreement is not subject to any further due diligence of Sellers and the Hospital by Purchaser.

3.11 OFAC

. Purchaser and, to Purchaser's actual knowledge, each person or entity owning an interest in Purchaser is (i) not currently identified on the Specially Designated Nationals and Blocked Persons List maintained by the OFAC and/or on any other similar List, (ii) not a person or entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States, and (iii) not an "Embargoed Person", to Purchaser's actual knowledge, none of the funds or other assets of Purchaser constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person, and to Purchaser's actual knowledge, no Embargoed Person has any interest of any nature whatsoever in Purchaser (whether directly or indirectly).

3.12 Purchaser Knowledge

. References in this Agreement to "Purchaser's knowledge" or "the knowledge of Purchaser" means the actual knowledge of the Chief Financial Officer of Purchaser, without independent research. No constructive or imputed knowledge shall be attributed to any such individual by virtue of any position held, relationship to any other Person or for any other reason.

ARTICLE 4 COVENANTS OF SELLERS

4.1 Access and Information; Inspections

.

4.1.1 From the Signing Date through the Effective Time, (a) Sellers shall afford to the officers and agents of Purchaser (which shall include accountants, attorneys, bankers and other consultants and authorized agents of Purchaser) reasonable access during normal business hours to one of the Sellers' corporate headquarters in Los Angeles, California to inspect, the books, accounts, records and all other relevant documents and information with respect to the Assets (*provided* that Purchaser acknowledges that site visits to the Hospital may be subject to restrictions under the lease with the State of California) and (b) Sellers shall furnish Purchaser with such additional financial and operating data and other information in Sellers' possession as to the Assets as Purchaser or its representatives may from time to time reasonably request; *provided, however*, that Sellers are not obligated to disclose information which is proprietary to Sellers and would not be essential to the purchase of the Assets by Purchaser; *provided, further*, that all disclosures of information shall be consistent with the confidentiality agreements and any other non-disclosure agreements entered into (or to be entered into) among Purchaser, its representatives and Sellers or their representatives. Purchaser's right of access and inspection shall be exercised in such a manner as not to interfere unreasonably with the operations of Sellers.

4.1.2 Notwithstanding anything contained herein, Sellers shall not be required to provide Purchaser or its representatives or agents access to or disclose information where such access or disclosure would violate the rights of its patients, jeopardize the attorney-client or similar privilege with respect to such information or contravene any law, judgment, fiduciary duty or contract entered into prior to or on the date of this Agreement with respect to such information.

4.2 Consents

. Notwithstanding any provision to the contrary contained in this Agreement, Sellers shall not be obligated to obtain the approval or consent to the assignment, to Purchaser, of any Assigned Contracts from any party to any of the Assigned Contracts if any such contract or lease states that it is not assignable without such party's consent.

4.3 Sellers' Efforts to Close

. Sellers shall use their reasonable commercial efforts to satisfy all of the conditions precedent set forth in ARTICLE 7, ARTICLE 7, and ARTICLE 8 to their or Purchaser's obligations under this Agreement to the extent that Sellers' action or inaction can control or materially influence the satisfaction of such conditions.

4.4 Cure Costs. On or about the Closing Date, Sellers shall pay or escrow an amount equal to the Cure Costs to each counter party to an Assigned Contract so that each such Assigned Contract may be assumed by Sellers and assigned to Purchaser in accordance with the provisions of Section 365 of the Bankruptcy Code. For purposes of this Agreement, "**Cure Costs**", means all amounts that must be paid and all obligations that otherwise must be satisfied, including pursuant to Sections 365(b)(1)(A) and (B) of the Bankruptcy Code in connection with the assumption and/or assignment of the Assigned Contracts to Purchaser as provided herein. The obligation of Seller to pay the Cure Costs, if not fully paid as of the Closing Date, shall survive the Closing.

4.5 Bankruptcy Court Matters

(a) As soon as reasonably practicable following execution of this Agreement, Sellers shall file the Bidding Procedures Motion. In the event that the Bidding Procedures Order is appealed, Sellers shall use commercially reasonable efforts to defend such appeal.

(b) Provided Purchaser is selected as the winning bidder in respect of the Assets at the auction, if any, undertaken in accordance with the Bidding Procedures Order (the “**Auction**”), or if no Competing Bid (as defined below) is submitted with respect to the Assets that constitutes a Qualified Bid (as defined in the Bidding Procedures Order), Sellers shall seek entry of the Sale Order and any other orders to close the sale of the Assets (any such orders, “**Related Orders**”) by the Bankruptcy Court in accordance with the terms and conditions of the Bidding Procedures Order. In the event that the Sale Order or any Related Orders are appealed, Sellers shall use commercially reasonable efforts to defend such appeal.

(c) Provided Purchaser is selected as the winning bidder at the Auction, if any, or if no Competing Bid is submitted with respect to the Assets, Sellers shall file such motions or pleadings as may be appropriate or necessary to assume and assign the Assigned Contracts and to determine the amount of Cure Costs (the “**Contracts Assumption Motion**”), which Contracts Assumption Motion and any form of order approving such Contracts Assumption Motion (which, for the avoidance of doubt, may be the Sale Order), shall be in form and substance reasonably acceptable to Purchaser (the “**Contracts Assumption Order**”).

(d) Sellers agree that the following documents, and any amendments, modifications and/or supplements thereto, shall be in form and substance reasonably acceptable to Purchaser:

- (i) the Bidding Procedures, the Bidding Procedures Motion and the Bidding Procedures Order;
- (ii) the Sale Order and any Related Orders; and
- (iii) the Contracts Assumption Motion and the Contracts Assumption Order.

ARTICLE 5 COVENANTS OF PURCHASER

5.1 Purchaser’s Efforts to Close

Purchaser shall use its reasonable commercial efforts to satisfy all of the conditions precedent set forth in ARTICLE 7 and ARTICLE 8 to its or Sellers’ obligations under this Agreement to the extent that Purchaser’s action or inaction can control or materially influence the satisfaction of such conditions.

5.2 Consents

. Purchaser shall be entitled, but not obligated, to seek to obtain any consents required under the applicable contracts in connection with Sellers' assignment to Purchaser of the Assigned Contracts. Purchaser's failure to obtain any or all of such consents as of the Closing Date shall not be a condition precedent to either Party's obligation to consummate the Closing and perform all transactions contemplated by this Agreement; *provided, however*, in the event such consent is not obtained, such contract shall no longer be an Assigned Contract.

ARTICLE 6 BANKRUPTCY COURT APPROVAL

6.1 Bankruptcy Court Approval

(a) Sellers and Purchaser acknowledge that this Agreement is subject to approval of the Bidding Procedures as set forth in the Bidding Procedures Order, and the consideration by the Sellers, in the exercise of their fiduciary duties, of higher or better competing bids in respect of all or any part of the Assets in accordance with the Bidding Procedures Order (whether individually or in combination with other assets of the debtors or otherwise) (each a, "**Competing Bid**").

(b) Sellers shall, at any hearing to consider approval of this Agreement, whether a hearing to approve the Bidding Procedures or this Agreement as the Winning Bid (any such hearing, a "**Sale Hearing**"), exercise commercially reasonable efforts to obtain, as applicable, the Bidding Procedures Order or the Sale Order approving this Agreement, subject to any Competing Bids in accordance with the Bidding Procedures Order. For purposes of this Agreement, the Sale Order shall authorize the sale of the Assets pursuant to Section 363(b) of the Bankruptcy Code (including the Sellers' assumption and assignment to Purchaser of the Assigned Contracts) on the terms and conditions set forth herein, free and clear of all liens and encumbrances (other than Permitted Exceptions) and Excluded Liabilities.

(c) Sellers agree, subject to the exercise of their fiduciary duties, to proceed in good faith to obtain Bankruptcy Court approval of the sale contemplated by this Agreement with a determination that Purchaser is a good faith purchaser within the meaning of Section 363(m) of the Bankruptcy Code and in good faith to file such declarations and other evidence as may be required to support a determination.

(d) Sellers shall seek an order from the Bankruptcy Court retaining jurisdiction over all matters relating to claims against Sellers, whether or not arising in connection with this Agreement, solely in the Bankruptcy Court.

6.2 Appeal of Sale Order

. In the event an appeal is taken or a stay pending appeal is requested from the Sale Order, Sellers shall immediately notify Purchaser of such appeal or stay request and shall provide to Purchaser promptly a copy of the related notice of appeal or order of stay. Sellers shall also provide Purchaser with written notice of any motion or application filed in connection with any appeal from either of such orders. In the event of an appeal of the Sale Order, Sellers shall, in consultation with the

Purchaser, be primarily responsible for drafting pleadings and attending hearings as necessary to defend against the appeal.

ARTICLE 7

CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLERS

Sellers' obligation to sell the Assets and to close the transactions as contemplated by this Agreement shall be subject to the satisfaction of each of the following conditions on or prior to the Closing Date unless specifically waived in writing by Sellers in whole or in part at or prior to the Closing:

7.1 Signing and Delivery of Instruments

. Purchaser shall have executed and delivered all documents, instruments and certificates required to be executed and delivered pursuant to the provisions of this Agreement.

7.2 No Restraints

. No temporary restraining order, preliminary or permanent injunction or other order preventing the consummation of the transactions contemplated in this Agreement shall have been issued by any court of competent jurisdiction or any other governmental body and remain in effect on the Closing Date.

7.3 Performance of Covenants

. Purchaser shall have in all material respects performed or complied with each and all of its obligations, covenants, agreements and conditions required to be performed or complied with by it on or prior to the Closing Date.

7.4 Bankruptcy Court Approval

. The Bankruptcy Court shall have entered the Sale Order.

7.5 Representations and Warranties

. All of the representations and warranties of Purchaser contained in this Agreement shall be true and correct in all material respects as of the Closing Date (subject to appropriate modifications permitted under this Agreement and except as would not be materially adverse to Seller).

ARTICLE 8

CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER

Purchaser's obligation to purchase the Assets and to close the transactions contemplated by this Agreement shall be subject to the satisfaction of each of the following conditions on or prior to the Closing Date unless specifically waived in writing by Purchaser in whole or in part at or prior to the Closing.

8.1 Signing and Delivery of Instruments

. Sellers shall have executed and delivered all documents, instruments and certificates required to be executed and delivered pursuant to the provisions of this Agreement.

8.2 No Restraints

. No temporary restraining order, preliminary or permanent injunction or other order preventing the consummation of the transactions contemplated in this Agreement shall have been issued by any court of competent jurisdiction or any other governmental body and remain in effect on the Closing Date.

8.3 Performance of Covenants

. Sellers shall have in all material respects performed or complied with each and all of the obligations, covenants, agreements and conditions required to be performed or complied with by Sellers on or prior to the Closing Date; provided, however, that this condition will be deemed to be satisfied unless (a) Sellers were given written notice of such failure to perform or comply and did not or could not cure such failure to perform or comply within fifteen (15) business days after receipt of such notice and (b) the respects in which such obligations, covenants, agreements and conditions have not been performed would be materially adverse to Purchaser.

8.4 Bankruptcy Court Approval

(a) .

(a) (i) The Bankruptcy Court shall have entered the Sale Order, the form and substance of which shall be reasonably acceptable to the Purchaser and made a finding that Purchaser is a “good faith” purchaser and (ii) on the Closing Date, the Sale Order shall (1) be in full force and effect, (2) not have been voided, reserved or vacated or subject to a stay, (3) not have been amended, modified or supplemented in any way without Purchaser’s prior written consent, and (4) be a Final Order, unless otherwise agreed by Purchaser and Sellers as part of an expedited closing. For purposes of this Agreement, a “**Final Order**” means an order of the Bankruptcy Court (A) as to which no appeal, notice of appeal, motion to amend or make additional findings of fact, motion to alter or amend judgment, motion for rehearing or motion for new trial, request for stay, motion or petition for reconsideration, application or request for review, or other similar motion, application, notice or request (each, a “**Pleading Challenge**”) has been timely filed, or, if any of the foregoing has been timely filed, it has been disposed of in a manner that upholds and affirms the subject order in all respects without the possibility for further Pleading Challenge thereon; (B) as to which the time for instituting or filing a Pleading Challenge shall have expired; and (C) as to which no stay is in effect.

(b) On the Closing Date, the Bidding Procedures Order shall (i) be in full force and effect, (ii) not have been voided, reserved or vacated or subject to a stay, (iii) not have been amended, modified or supplemented in any way in a manner materially adverse to Purchaser without Purchaser’s prior written consent, and (iv) be a Final Order, unless otherwise agreed by Purchaser and Sellers as part of an expedited closing.

(c) On the Closing Date, the objection deadline shall have passed for all counterparties to Assigned Contracts to object to the assumption and/or assignment of such

Assigned Contracts, including with respect to the Cure Costs contained in the respective cure notice, unless the deadline is extended as a result of a modification of the scope of Assigned Contracts to be assumed by Purchaser pursuant to the terms of this Agreement or the Bidding Procedures Order.

8.5 Representations and Warranties. All of the representations and warranties of Sellers contained in this Agreement shall be true and correct in all material respects as of the Closing Date (subject to appropriate modifications permitted under this Agreement and except as would not be materially adverse to Purchaser).

8.6 Title Policy. The Title Company shall have committed to issue, as of the Closing, an ALTA owner's policy of title insurance in the form of the pro forma attached hereto as Exhibit 8.6 (the "**Title Policy**"). Purchaser acknowledges that a Title Policy consistent with Section 3.6 hereof shall be satisfactory to it.

ARTICLE 9 TERMINATION

9.1 Termination

. This Agreement may be terminated at any time prior to Closing:

- (a) by the mutual written consent of the Parties;
- (b) by Sellers if a material breach of this Agreement has been committed by Purchaser, which material breach is materially adverse to Seller, and such breach has not been (i) waived in writing by Sellers or (ii) cured by Purchaser to the reasonable satisfaction of Sellers within fifteen (15) business days after Sellers provide Purchaser of a written notice which describes the nature of such breach; *provided, however*, Sellers shall not be permitted to terminate this Agreement pursuant to this Section 9.1(b) if Sellers are also in material breach of this Agreement;
- (c) by Purchaser if a material breach of this Agreement has been committed by Sellers, which material breach is materially adverse to Purchaser, and such breach has not been (i) waived in writing by Purchaser or (ii) cured by Sellers to the reasonable satisfaction of Purchaser within fifteen (15) business days after Purchaser provides Sellers of a written notice which describes the nature of such breach; *provided, however*, Purchaser shall not be permitted to terminate this Agreement pursuant to this Section 9.1(c) if Purchaser is also in material breach of this Agreement;
- (d) by Purchaser if satisfaction of any condition in ARTICLE 8 is or becomes impossible and Purchaser has not waived such condition in writing (provided that the failure to satisfy the applicable condition or conditions has occurred by reason other than (i) through the failure of Purchaser to comply with its obligations under this Agreement or (ii) Sellers' failure to provide their closing deliveries on the Closing Date as a result of Purchaser not being ready, willing and able to close the transaction on the Closing Date);
- (e) by Sellers if satisfaction of any such condition in ARTICLE 7 is or becomes impossible and Sellers have not waived such condition in writing (provided that the failure to

satisfy the applicable condition or conditions has occurred by reason other than (i) through the failure of Sellers to comply with their obligations under this Agreement or (ii) Purchaser's failure to provide its closing deliveries on the Closing Date as a result of Sellers not being ready, willing and able to close the transaction on the Closing Date);

(f) by either Purchaser or Sellers if the Bankruptcy Court approves the Bid Procedures and (i) fails to approve the sale of the Assets to Purchaser in an order reasonably acceptable to Purchaser or (ii) enters an order that precludes the consummation of the transactions contemplated hereunder;

(g) by Sellers or Purchaser if Sellers designate an entity other than Purchaser as the Successful Bidder, unless the Purchaser has agreed to act as a Back-up Bidder, in which case, this Agreement will terminate automatically upon consummation of such Successful Bidder's Winning Bid;

(h) by either Purchaser or Sellers if the Closing has not occurred (other than through the failure of any Party seeking to terminate this Agreement to comply fully with its obligations under this Agreement) on or before June 1, 2020 (the "**Termination Date**");

(i) automatically upon consummation of a Competing Bid; and

(j) by Purchaser if:

(i) prior to the Closing Date, one or more of the Bankruptcy Cases is converted to cases under chapter 7 of the Bankruptcy Code, one or more of the Bankruptcy Cases is dismissed, or a trustee or an examiner is appointed in the Bankruptcy Cases;

(ii) the Bankruptcy Court enters an order pursuant to Section 362 of the Bankruptcy Code lifting the automatic stay with respect to any material Asset;

(iii) (1) following entry by the Bankruptcy Court of the Bidding Procedures Order, such order is (A) amended, modified or supplemented in a manner materially adverse to Purchaser without Purchaser's prior written consent or (B) voided, reserved or vacated or is subject to a stay such that the Bidding Procedures Order is not in full force and effect as of April 17, 2020 or (2) following entry of the Sale Order, such order is (A) amended, modified or supplemented in a manner materially adverse to Purchaser without Purchaser's prior written consent or (B) the Sale Order is voided, reversed or vacated or is subject to a stay such that the Sale Order is not in full force and effect as of April 24, 2020;

(iv) the Bankruptcy Court shall not have entered (1) the Bidding Procedures Order by April 3, 2020 or (2) the Sale Order by April 10, 2020; and

(v) any document, including any amendment, modification or supplement thereto, listed in Section 4.5(e) is not reasonably acceptable to Purchaser.

9.2 Termination Consequences

. If this Agreement is terminated pursuant to Section 9.1, subject to Section 9.3 below: (a) all further obligations of the Parties under this Agreement shall terminate, provided that the provisions of ARTICLE 11 and Section 9.3, shall survive, and (b) except as provided hereunder in connection with the Expense Reimbursement, each Party shall pay the costs and expenses incurred by it in connection with this Agreement; *provided, however*, that in the case of any termination based on Section 9.1(b) or Section 9.1(c), the consequences of such termination shall be determined in accordance with ARTICLE 11 hereof. Each Party acknowledges that the agreements contained in this Section 9.2 are an integral part of the transactions contemplated by this Agreement, that without these agreements such Party would not have entered into this Agreement.

9.3 Termination Payment; Expense Reimbursement

(a) In the event that a Competing Bid is consummated, or this Agreement is terminated for any reason after the Bidding Procedure Order approving this Section 9.3 has been entered other than a material breach of Purchaser, in consideration for the Purchaser having expended considerable time and expense in connection with this Agreement and the negotiation thereof and the identification and quantification of assets of Sellers, and without the requirement of any notice or demand from Purchaser or any other application to or order of the Bankruptcy Court, (i) the Deposit shall be returned to Purchaser in accordance with the Bidding Procedures Order and (ii) Sellers shall jointly and severally, pay (or cause to be paid to) Purchaser, in accordance with the terms hereof, and subject to the entry of and terms of the Bidding Procedures Order, (1) a termination payment solely in the event of a successful competing bid in an amount equal to Three Million Seven Hundred Fifty Thousand Dollars (\$3,750,000) (two and seventy eight one hundredths percent (2.78%) of the cash consideration component of the Purchase Price) (the “**Termination Payment**”) and (2) all reasonable out-of-pocket and documented fees and expenses (including reasonable attorneys’ fees and expenses) incurred by Purchaser in connection with or related to Purchaser’s evaluation, consideration, analysis, negotiation, and documentation of this Agreement and the transactions contemplated hereby, in an amount not to exceed \$1,000,000 in the aggregate (the “**Expense Reimbursement**” and together with the Termination Payment, the “**Stalking Horse Bidder Protections**”). In the event Sellers become obligated under this Agreement to pay any or all of the Stalking House Bidder Protections, Sellers shall pay such Stalking Horse Bidder Protections in immediately available funds to such account or accounts as may be specified in written notice by Purchaser. The Stalking Horse Bidder Protections shall, upon approval of the Bid Procedures Order, (a) constitute an allowed administrative expense claim of Sellers’ estates under sections 503(b) and 507 of the Bankruptcy Code and (b) notwithstanding the prior entry of any order of the Bankruptcy Court relating to the use of cash collateral, be paid on the second (2nd) business day following the date of consummation of a Competing Bid or termination of this Agreement under Section 9.1(a), (c), (d) (f), (g), (h), (i) or (j) (provided that the Termination Payment shall only be payable from the proceeds of a successful Competing Bid) if

no material breach by Purchaser of this Agreement has occurred. The Bidding Procedures Order shall provide for payment by Sellers of the Stalking Horse Bidder Protections as and when such amounts are due and payable hereunder. Nothing in this Section 9.3(a) shall relieve Purchaser or Sellers of any liability for a breach of this Agreement prior to the date of termination.

(b) Each of the Parties acknowledges and agrees that the agreements contained in this Section 9.3 are an integral part of the transactions contemplated by this Agreement and that, without these agreements, the other Parties would not enter into this Agreement. Each of the Parties further acknowledges that the payment by Sellers of the Stalking Horse Bidder Protections is not a penalty, but rather liquidated damages in a reasonable amount that will compensate Purchaser, in the circumstances in which such Stalking Horse Bidder Protection is payable, for the efforts and resources expended and the opportunities foregone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the transactions contemplated by this Agreement, which amount would otherwise be impossible to calculate with precision. The obligation to pay the Stalking Horse Bidder Protections in accordance with the provisions of this Agreement will (1) be binding upon and enforceable jointly and severally against each Seller immediately upon the Bankruptcy Court entering the Bidding Procedures Order and (2) survive the subsequent termination of this Agreement, solely to the extent permitted by applicable law. The obligation to pay the Stalking Horse Bidder Protections as and when required under this Agreement, are intended to be, and upon entry of the Bidding Procedures Order are, binding upon (A) each Seller, (B) any successors or assigns of any Seller and (C) any trustee, examiner or other representative of a Seller's estate (each of (A) through (C), a "**Successor**") as if such Successor were a Seller hereunder.

ARTICLE 10 POST-CLOSING MATTERS

10.1 Excluded Assets

. Subject to Section 10.2 hereof, any Excluded Asset (or proceeds thereof) (a) pursuant to the terms of this Agreement, (b) as otherwise determined by the Parties' mutual written agreement or (c) absent such agreement, as determined by adjudication by the Bankruptcy Court, which comes into the possession, custody or control of Purchaser (or its respective successors-in-interest, assigns or affiliates) shall, within five (5) business days following receipt or such longer period as reasonably necessary, be transferred, assigned or conveyed by Purchaser (and its respective successors-in-interest, assigns and affiliates) to Sellers without imposing any charge to Purchaser for Purchaser's transfer, storage, handling or holding of same on and after the Effective Time. Sellers shall remit to Purchaser any costs incurred by Purchaser in connection with the foregoing promptly upon Purchaser's written request, which shall be accompanied by documentation evidencing such costs. Purchaser shall not have the right to contest its obligation to transfer, assign and convey to Sellers because of, outstanding claims, liabilities or obligations asserted by Purchaser against Sellers. If Purchaser does not remit any monies included in the Excluded Assets (or proceeds thereof) to Sellers in accordance with the first sentence of this Section 10.1, such withheld funds shall bear interest at the Prime Rate in effect on the calendar day upon which such payment was required to be made to Sellers (the "**Excluded Asset Due Date**") plus five percent (5%) (or the maximum rate allowed by law, whichever is less), such interest accruing on each

calendar day after the Excluded Asset Due Date until payment of the Excluded Assets and all interest thereon is made to Sellers.

10.2 Access After the Closing

(a) Provided that Purchaser shall not incur any out of pocket costs and Sellers shall reimburse Purchaser for any employee costs for Purchaser's compliance with the following, Purchaser shall give reasonable cooperation to Sellers, their representatives, any of their affiliates, the Official Committee of the Unsecured Creditors of the Sellers, Sellers' estate representative or any liquidating trustee of the Sellers' bankruptcy estate ("**Seller Parties**") and their insurance carriers in connection with the administration of Sellers' estate, including, without limitation, in connection with all claims, actions, causes of action or audits relating to the Excluded Assets, Excluded Liabilities or pre-Closing operation of the Sellers or the Hospital that any Seller Party may elect to pursue, dispute or defend, in respect of events occurring prior to the Effective Time with respect to the operation of the Hospital. Such cooperation shall include, without limitation, making any employees of Sellers hired by Purchaser available for interviews, depositions, hearings and trials and other assistance in connection with the administration of Sellers' estate and such cooperation shall also include making all of its employees available to assist in the securing and giving of evidence and in obtaining the presence and cooperation of witnesses (all of which shall be done without payment of any fees or expenses to Purchaser or to such employees).

(b) In connection with (i) the transition of the Assets pursuant to the transaction contemplated by this Agreement, (ii) Sellers' rights to the Excluded Assets, (iii) any claim, audit, or proceeding, including, without limitation, any tax claim, audit, or proceeding and (iv) the Sellers' obligations under the Excluded Liabilities, Purchaser shall after the Effective Time give Sellers access during normal business hours and upon reasonable notice to the Owned Real Property and related books, personnel, accounts and records and all other relevant documents and information with respect to the Assets, liabilities and business of the Sellers as representatives of Sellers and Sellers' affiliates may from time to time reasonably request, all in such manner as not to unreasonably interfere with the operations of Purchaser.

(c) To the maximum extent permitted by law, if any Person requests or demands, by subpoena or otherwise, any documents relating to the Excluded Liabilities or Excluded Assets, including without limitation, documents relating to the operations of any of the Hospital or any of the Hospital's committees prior to the Effective Time, prior to any disclosure of such documents, Purchaser shall notify Sellers and shall provide Sellers with the opportunity to object to, and otherwise coordinate with respect to, such request or demand.

10.3 General Cooperation and Turnover Obligations

The Parties shall reasonably cooperate to ensure that any and all payments that constitute "Excluded Assets" shall be paid to and received by Sellers, with any payments that constitute "Assets" transferred to Purchaser pursuant to Section 1.7 or that otherwise arise from services rendered by Purchaser on or after the Effective Time be paid to and received by Purchaser. In this regard, the Parties shall, within five (5) business days or such longer period as reasonably

necessary, of receipt, copy and send to the other Party copies (either in hard copy or via electronic file) of all remittance advices for all deposits to all bank accounts, from whatever payor or source of funds, that are received for services rendered on and after the Effective Time. In the event that payments that constitute a transferred Asset are deposited to a bank account of Sellers which is not automatically swept or transferred to Purchaser, then Sellers, within five (5) business days of notice of the receipt of such payments shall turnover and pay Purchaser said funds. In the event that a deposit representing payment of any Excluded Assets is received by Purchaser, then Purchaser, within five (5) business days of notice of the receipt of funds representing any Excluded Assets, shall turnover and pay Sellers such funds. Each Party shall have the right, once a year, to audit by an independent and competent auditor, at the requesting Party's sole expense, of the bank records and remittance advices of the other Party. Thereafter, upon the findings of the auditor that there has either been an overpayment or an underpayment of funds due, the Party owing funds shall, within five (5) business days, make a payment of such funds to whom they are owed.

ARTICLE 11

DEFAULT AND TAXES

11.1 Purchaser Default

. If Purchaser commits any material default under this Agreement prior to Closing, Sellers shall be entitled to sue for damages or specific performance; provided, that in no event shall Sellers be entitled to damages in excess of the Deposit (and Sellers shall be entitled to retain the Deposit to the extent of such damages).

11.2 Sellers Default

. If Sellers commit any material default under this Agreement prior to Closing, Purchaser shall have the right to demand and receive a refund of the Deposit and payment of the Stalking Horse Bidder Protections, as provided under Section 9.3, and Purchaser may, in addition thereto, sue for damages or specific performance; provided, that in no event shall Purchaser be entitled to damages in excess of Eight Million One Hundred Thousand Dollars (\$8,100,000) and the Stalking Horse Bidder Protections.

11.3 Tax Matters; Allocation of Purchase Price

.
(a) After the Effective Time, the Parties shall cooperate fully with each other and shall make available to each other, as reasonably requested, all information, records or documents relating to tax liabilities or potential tax liabilities attributable to Sellers with respect to the operation of the Assets for all periods prior to the Effective Time and shall preserve all such information, records and documents at least until the expiration of any applicable statute of limitations or extensions thereof. The Parties shall also make available to each other to the extent reasonably required, and at the reasonable cost of the requesting Party (for out-of-pocket costs and expenses only), personnel responsible for preparing or maintaining information, records and documents in connection with tax matters and as Sellers reasonably may request in connection with the completion of any post-Closing audits of the Sellers' businesses.

(b) Solely for purposes of tax reporting, Schedule 11.3 sets forth the allocation of the Purchase Price (including any liabilities that are considered to be an increase to the Purchase Price for United States federal income tax purposes) among the Assets in accordance with Section 1060 of the Code and the Treasury Regulations promulgated thereunder (the “**Allocation Schedule**”). The Allocation Schedule shall be final and binding upon Sellers and Purchaser with respect to matters relating to required tax reporting by each such Party. The Parties shall refrain from taking any position that is inconsistent with the Allocation Schedule with respect to tax reporting.

11.4 Non-Recourse

11.5 . Notwithstanding anything in Sections 11.1 or 11.2 to the contrary, all claims or causes of action (whether in contract or in tort, in law or in equity) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement (including any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), may be made only against the individuals, corporations, limited liability companies, partnerships, associations, trusts or other entities or organizations (each, a “**Person**”) that are expressly identified as Parties. No Person who is not a named Party, including any of the Purchaser Parties or Seller Parties to the extent not a Party, shall have any liability (whether in contract or in tort, in law or in equity, or based upon any theory that seeks to impose liability of an entity Party against its owners or affiliates) for any obligations or liability arising under, in connection with or related to this Agreement or for any claim based on, in respect of, or by reason of this Agreement or its negotiation or execution; and each Party hereto waives and releases all such liabilities, claims and obligations against any such Purchaser Party or Seller Party that is not a Party.

ARTICLE 12 RISK OF LOSS

12.1 Minor Damage. In the event of loss or damage to the Owned Real Property or any portion thereof that is not “major” (as hereinafter defined), this Agreement shall remain in full force and effect provided Sellers perform any necessary repairs or, at Purchaser’s option, assigns to Purchaser all of Sellers’ right, title and interest to any claims and proceeds Sellers may have with respect to any casualty insurance policies or condemnation awards relating to the premises in question. In the event that Sellers elect to perform repairs upon the Owned Real Property, Sellers shall use reasonable efforts to complete such repairs promptly and the date of Closing shall be extended a reasonable time in order to allow for the completion of such repairs. If Sellers elect to assign a casualty claim to Purchaser, the Purchase Price shall be reduced by an amount equal to the deductible amount under Sellers’ insurance policy or uninsured amount. Upon Closing, full risk of loss with respect to the Owned Real Property shall pass to Purchaser.

12.2 Major Damage. In the event of a “major” loss or damage, Purchaser may terminate this Agreement by written notice to Sellers, in which event the Deposit shall be returned to Purchaser. If Purchaser elects to proceed with Closing, Sellers shall assign to Purchaser all of Sellers’ right, title and interest to any claims and proceeds Sellers may have with respect to any casualty insurance policies or condemnation awards relating to the premises in question and the

Purchase Price shall be reduced by an amount equal to the deductible amount under Sellers' insurance policy and any uninsured loss.

12.3 Definition of "Major" Loss or Damage. For purposes of Sections 12.1 and 12.2 hereof, "major" loss or damage refers to the following: (i) loss or damage to the Owned Real Property or any portion thereof such that the cost of repairing or restoring the premises in question to a condition substantially identical to that of the premises in question prior to the event of damage would be, in the opinion of an architect selected by Sellers and reasonably approved by Purchaser, equal to or greater than Five Million and No/100 Dollars (\$5,000,000.00), and (ii) any loss equal to or greater than Five Million and No/100 Dollars (\$5,000,000.00) due to a condemnation. If Purchaser does not give notice to Sellers of Purchaser's reasons for disapproving an architect within five (5) business days after receipt of notice of the proposed architect, Purchaser shall be deemed to have approved the architect selected by Sellers.

ARTICLE 13

MISCELLANEOUS PROVISIONS

13.1 Further Assurances and Cooperation

. Each Party shall execute, acknowledge and deliver to the other Party any and all other assignments, consents, approvals, conveyances, assurances, documents and instruments reasonably requested by such Party at any time and shall take any and all other actions reasonably requested by such Party at any time for the purpose of consummating the transactions hereunder and fulfilling such Party's obligations hereunder. After consummation of the transactions contemplated in this Agreement, the Parties agree to cooperate with each other and take such further actions as may be necessary or appropriate to effectuate, carry out and comply with all of the terms of this Agreement, the documents referred to in this Agreement and the transactions contemplated hereby.

13.2 Successors and Assigns

1.1 . All of the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the respective successors and assigns of the Parties; *provided, however*, that no Party hereto may assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other Parties (except that Purchaser may assign this Agreement to Dr. Patrick Soon-Shiong without the prior written consent of Sellers). Notwithstanding the foregoing, Purchaser may take title to some or all of the Assets through an entity or entities controlling, controlled by or under common control with Purchaser (such entity, a "**Purchaser Assignee**") so long as Purchaser notifies Sellers not less than three (3) business days prior to the Closing Date of such arrangement (including the name and signature block of the proposed transferee); *provided*, that no such arrangement shall relieve Purchaser of its obligations under this Agreement prior to the Closing Date unless expressly agreed in writing by Sellers.

13.3 Governing Law; Venue

. This Agreement shall be construed, performed, and enforced in accordance with, and governed by, the laws of the State of California (without giving effect to the principles of conflicts of laws

thereof), except to the extent that the laws of such State are superseded by the Bankruptcy Code or other applicable federal law. For so long as Sellers are subject to the jurisdiction of the Bankruptcy Court, the Parties irrevocably elect, as the sole forum for the adjudication of any matters arising under or in connection with the Agreement, and consent to the exclusive jurisdiction of, the Bankruptcy Court. The Parties hereby consent to the jurisdiction of such court and waive their right to challenge any proceeding involving or relating to this Agreement on the basis of lack of jurisdiction over the Person or forum non conveniens.

13.4 Amendments

. This Agreement may not be amended other than by written instrument signed by the Parties.

13.5 Exhibits, Schedules and Disclosure Schedule

. The Disclosure Schedule and all exhibits and schedules referred to in this Agreement shall be attached hereto and are incorporated by reference herein. From the Signing Date until the Closing, the Parties agree that Sellers may update the Disclosure Schedule as necessary upon written notice to Purchaser, and the applicable representation and warranty shall thereafter be deemed amended for all purposes by such updated Disclosure Schedule; provided, that the occurrence of a change to Sellers' representations that is materially adverse to Purchaser shall constitute the non-fulfillment of the condition set forth in Section 8.5. Any matter disclosed in this Agreement or in the Disclosure Schedule with reference to any Section of this Agreement shall be deemed a disclosure in respect of all sections to which such disclosure may apply. The headings, if any, of the individual sections of the Disclosure Schedule are provided for convenience only and are not intended to affect the construction or interpretation of this Agreement. The Disclosure Schedule is arranged in sections and paragraphs corresponding to the numbered and lettered sections and paragraphs of this Agreement merely for convenience, and the disclosure of an item in one section of the Disclosure Schedule as an exception to a particular obligation, representation or warranty shall be deemed adequately disclosed as an exception with respect to all other obligations, representations or warranties, notwithstanding the presence or absence of an appropriate section of the Disclosure Schedule with respect to such other obligation, representations or warranties or an appropriate cross reference thereto.

13.6 Notices

. Any notice, demand, letter or other communication required, permitted, or desired to be given hereunder shall be deemed effectively given when either personally delivered, or when received by overnight courier, or five (5) calendar days after being deposited in the United States mail, with postage prepaid thereon, certified or registered mail, return receipt requested, addressed as follows:

If to Sellers: Verity Health System of California, Inc.
601 South Figueroa St., Suite 4050
Los Angeles, CA 90017-5704
Attention: Chief Executive Officer

With a copies to: Dentons US LLP
(which copies shall 601 South Figueroa St., Suite 2500

not constitute notice) Los Angeles, CA 90017-5704
Attention: Tania Moyron, Esq.
Telephone: 213-243-6101

If to Purchaser: The Chan Soon-Shiong Family Foundation
2040 E. Mariposa Avenue
El Segundo, California 90245
Attention: General Counsel

With a copy to: Seyfarth Shaw LLP
(which copies shall 601 South Figueroa St., Suite 3300
not constitute notice) Los Angeles, CA 90017
Attention: Stacy N. Paek, Esq.
Telephone: 213-270-9655

Jones Day
250 Vesey St.
New York, NY 10281
Attention: Bruce Bennett, Esq.
Benjamin Rosenblum, Esq.
Peter Saba, Esq.
Telephone: 212-326-8312

or at such other address as one Party may designate by notice hereunder to the other Parties.

13.7 Headings

. The section and other headings contained in this Agreement and in the Disclosure Schedule, exhibits and schedules to this Agreement are included for the purpose of convenient reference only and shall not restrict, amplify, modify or otherwise affect in any way the meaning or interpretation of this Agreement or the Disclosure Schedule, exhibits and schedules hereto.

13.8 Publicity

. Prior to and following the Closing Date, Sellers and Purchaser shall consult with each other as to the form and substance of any press release or other public disclosure materially related to this Agreement or any other transaction contemplated hereby and each shall have the right to review and comment on the other's press releases at least forty-eight (48) hours prior to issuance; *provided, however*, that nothing in this Section 13.8 shall be deemed to prohibit either Sellers or Purchaser from making any disclosure that its counsel deems necessary or advisable in order to satisfy either Party's disclosure obligations imposed by law subject to reasonable prior notice to the other Party thereof.

13.9 Fair Meaning

. This Agreement shall be construed according to its fair meaning and as if prepared by all Parties.

13.10 Gender and Number; Construction; Affiliates

. All references to the neuter gender shall include the feminine or masculine gender and vice versa, where applicable, and all references to the singular shall include the plural and vice versa, where applicable. Unless otherwise expressly provided, the word “including” followed by a listing does not limit the preceding words or terms and shall mean “including, without limitation.” Any reference in this Agreement to an “affiliate” shall mean any Person directly or indirectly controlling, controlled by or under common control with a second Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. A “Person” shall mean any natural person, partnership, corporation, limited liability company, association, trust or other legal entity.

13.11 Third Party Beneficiary

. None of the provisions contained in this Agreement are intended by the Parties, nor shall they be deemed, to confer any benefit on any person not a party to this Agreement, except for the Parties’ successors and permitted assigns, and except for any liquidating trustee or plan administrator for Sellers’ estate.

13.12 Expenses and Attorneys’ Fees

. Except as otherwise provided in this Agreement with respect to the Expense Reimbursement, each Party shall bear and pay its own costs and expenses relating to the preparation of this Agreement and to the transactions contemplated by, or the performance of or compliance with any condition or covenant set forth in, this Agreement, including without limitation, the disbursements and fees of their respective attorneys, accountants, advisors, agents and other representatives, incidental to the preparation and carrying out of this Agreement, whether or not the transactions contemplated hereby are consummated. The Parties expressly agree that all sales, transfer, documentary transfer and similar taxes, fees, surcharges and the like in connection with the sale of the Assets shall be borne by Sellers. If any action is brought by any Party to enforce any provision of this Agreement, the prevailing Party shall be entitled to recover its court costs and reasonable attorneys’ fees.

13.13 Counterparts

. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement, binding on all of the Parties. The Parties agree that facsimile copies of signatures shall be deemed originals for all purposes hereof and that a Party may produce such copies, without the need to produce original signatures, to prove the existence of this Agreement in any proceeding brought hereunder.

13.14 Entire Agreement

. This Agreement, the Disclosure Schedule, the exhibits and schedules, and the documents referred to in this Agreement contain the entire understanding between the Parties with respect to the transactions contemplated hereby and supersede all prior or contemporaneous agreements,

understandings, representations and statements, oral or written, between the Parties on the subject matter hereof (the “**Superseded Agreements**”), which Superseded Agreements shall be of no further force or effect.

13.15 No Waiver

. Any term, covenant or condition of this Agreement may be waived at any time by the Party which is entitled to the benefit thereof but only by a written notice signed by the Party expressly waiving such term or condition. The subsequent acceptance of performance hereunder by a Party shall not be deemed to be a waiver of any preceding breach by any other Party of any term, covenant or condition of this Agreement, other than the failure of such other Party to perform the particular duties so accepted, regardless of the accepting Party’s knowledge of such preceding breach at the time of acceptance of such performance. The waiver of any term, covenant or condition shall not be construed as a waiver of any other term, covenant or condition of this Agreement.

13.16 Severability

. If any term, provision, condition or covenant of this Agreement or the application thereof to any Party or circumstance shall be held to be invalid or unenforceable to any extent in any jurisdiction, then the remainder of this Agreement and the application of such term, provision, condition or covenant in any other jurisdiction or to persons or circumstances other than those as to whom or which it is held to be invalid or unenforceable, shall not be affected thereby, and each term, provision, condition and covenant of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

13.17 Time is of the Essence

. Time is of the essence for all dates and time periods set forth in this Agreement and each performance called for in this Agreement.

[REMAINDER OF PAGE IS BLANK]

IN WITNESS WHEREOF, this Agreement has been entered into as of the day and year first above written.

PURCHASER:

**The Chan Soon-Shiong Family
Foundation**

Signature: _____
Print Name: _____
Title: _____
Date: _____

SELLERS:

Verity Health System of California, Inc.

Signature: _____
Print Name: _____
Title: _____
Date: _____

Verity Holdings, LLC

Signature: _____
Print Name: _____
Title: _____
Date: _____

St. Vincent Medical Center

Signature: _____
Print Name: _____
Title: _____
Date: _____

Exhibit B

Bid Procedures

EXHIBIT 1

BIDDING PROCEDURES

Verity Health System of California, Inc., Verity Holdings, LLC and St. Vincent Medical Center (collectively, the “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 April __, 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 was submitted by the Stalking Horse Bidder (as defined below), and is attached to the Motion as Exhibit [] (the “Stalking Horse 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 Stalking Horse APA, along with a marked version evidencing any changes to the Stalking Horse 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”),¹ with all such liens, claims and encumbrances attaching to the proceeds of the Sale to the same extent and with the same priority as such liens, claims and encumbrances attached to the Purchased Assets prior to the Sale.
2. **Purchased Assets.** For purposes of a Sale, the “Purchased Assets” shall have the meaning ascribed to the term “Assets” under the Stalking Horse APA.
3. **“As Is, Where Is” Sale.** Except as explicitly set forth in the Stalking Horse 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

¹ 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 the note indentures relating to the 2015 Working Capital Notes only (“U.S. Bank”).² UMB, Wells Fargo and U.S. Bank as to the 2015 Working Capital Notes are collectively referred to herein as the “Prepetition Secured Creditors.” Any party submitting a bid or credit bid of its own shall not be entitled to be consulted regarding late bid determinations under Section 8, qualified deposit size under Section 9(g), qualified closing risk under Section 9(h) or qualified bid determinations under Section 11.

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. For the avoidance of doubt, the Stalking Horse Bidder shall not be subject to the terms of this paragraph 5.
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. For the avoidance of doubt, the Stalking Horse Bidder shall not be subject to the terms of this paragraph 6.
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 Stalking Horse APA (or

² 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”).

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 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 Note 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; and psaba@jonesday.com (collectively, the “**Bid Deadline Recipients**”). Debtors may provide a copy of any bids received to counsel for the Stalking Horse Bidder. Potential Bidders must e-mail their Bids to the e-mail 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 facsimile, 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 Stalking Horse 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 Stalking Horse 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) unless it is a Credit Bid (as defined below), be accompanied by a deposit by wire transfer in the amount of [__ percent (__%)]³ 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;
- (h) 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;
- (i) 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;
- (j) 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;

³ [To match deposit in Stalking Horse APA.]

- (k) 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;
- (l) 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);
- (m) 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
- (n) 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.

For the avoidance of doubt, the Stalking Horse Bid is a Qualified Bid and the Stalking Horse Bidding is a Qualified Bidder.

10. **Stalking Horse Bidder.** As set forth in the Motion, the Chan Soon-Shiong Family Foundation is the "Stalking Horse Bidder" and its bid is the "Stalking Horse Bid". As more fully described in, and subject to the conditions of, section 9.3(a) of the Stalking Horse APA, the Stalking Horse Bidder is entitled to the Stalking Horse Bidder Protections. Consistent with the foregoing, no other bidder may propose or condition its Bid on any break-up fee, expense reimbursement, termination fee or other bidding procedures or protections of any nature.
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 Stalking Horse 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 [6], 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 [6], 2020, virtually by such means as they determine appropriate (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 through principals or through duly-authorized representatives may bid at the Auction, and every Qualified Bidder must have at least one (1) such duly-authorized representative with authority to bind the Qualified Bidder participating in 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 participate in 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 which may be the existing Stalking Horse Bid. 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 Stalking Horse Bidder Protections) higher than the Opening Bid, and all subsequent bids must be at least [\$2,000,000] higher than the previous bid. To the extent the Stalking Horse Bidder submits higher bids, the Stalking Horse Bidder shall have the right (but not the obligation) to increase its Opening Bid by using, as a credit, an amount equal to the Stalking Horse Bidder Protection, and even after use of such credit, the Stalking Horse Bidder shall not be required to exceed any subsequent higher bid by the bid increment when determining whether the 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. For the avoidance of doubt, in the event that no Auction is held, the Stalking Horse Bidder shall be the Winning Bidder, and the Stalking Horse Bid shall be the Winning Bid.

- (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”); provided that, the Stalking Horse Bidder shall not be required to deposit any additional amount under this paragraph 14(b).
- (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) subject to paragraph 14(b), 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 [8], 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 or if permitted by the Court, by telephonic hearing (the “Sale Hearing”).
- (b) By noon (Pacific Time) of the next business day 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 7, 2020 at 5:00 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 Stalking Horse Bidder Protections.** If the Stalking Horse Bidder is not the Winning Bidder, the Debtors shall pay the Termination Payment and the Expense Reimbursement to the Stalking Horse Bidder, in accordance with and as set forth in Section 9.3(a) of the Stalking Horse APA (collectively, the “Stalking Horse Bidder 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 AND THE STALKING HORSE BIDDER 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 (EXCEPT FOR THE STALKING HORSE BID) 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, IN EACH CASE, SUBJECT TO THE STALKING
HORSE APA.**

Exhibit C

Proposed Form of Procedures Notice

**NOTICE OF SALE PROCEDURES,
AUCTION DATE, AND SALE HEARING**

PLEASE TAKE NOTICE that on March __, 2020, the above-captioned debtors and debtors in possession (the “Debtors”), filed the *Debtors’ Emergency 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 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 and Assignment 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* [Docket No. ____] (the “Motion”).⁴ The Debtors seek, among other things, to sell St. Vincent Medical Center and related assets (the “Purchased Assets”) to the winning bidder(s) (the “Winning Bidder”), at an auction free and clear of all liens, claims, encumbrances and other interests pursuant to §§ 363 and 365 of the Bankruptcy Code, 11 U.S.C. § 101, *et seq.*

PLEASE TAKE FURTHER NOTICE that, on [DATE], the Bankruptcy Court entered an order (the “Bidding Procedures Order”) approving the Motion and the bidding procedures (the “Bidding Procedures”), which set the key dates and times related to the Sale of the Purchased Assets. **All interested bidders should carefully read the Bidding Procedures Order and the Bidding Procedures.** To the extent that there are any inconsistencies between the Bidding Procedures Order (including the Bidding Procedures) and the summary description of its terms and conditions contained in this Notice, the terms of the Bidding Procedures Order shall control.

PLEASE TAKE FURTHER NOTICE that only those parties that submit Qualified Bids may participate in the Auction. If you are interested in submitting a Qualified Bid, you must comply with the Bidding Procedures. Any party in interest wishing to receive relevant documents and available marketing materials may do so by contacting the Debtors’ investment banker (the “Investment Banker”), Cain Brothers, a division of KeyBanc Capital Markets, 601 California Street, Suite 1505, San Francisco, CA 94108 (Attn: James Moloney (jmoloney@cainbrothers.com)).

PLEASE TAKE FURTHER NOTICE 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 or calling (213) 623-9300.

PLEASE TAKE FURTHER NOTICE that any party that wishes to take part in the bidding process and submit a Qualified Bid for the Purchased Assets must submit its competing bid **by no later than 5:00 p.m. (prevailing Pacific Time) April 3, 2020** (the “Bid Deadline”) so that such Bids are actually received by the Bid Deadline by all of the following parties: (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,

⁴ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

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 Note 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; and psaba@jonesday.com) (collectively, the “Notice Parties”).

PLEASE TAKE FURTHER NOTICE that Potential Bidders shall e-mail their Bids to the e-mail 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 facsimile, as being acceptable.

PLEASE TAKE FURTHER NOTICE that 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.

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Bidding Procedures, an auction (the “Auction”) to sell the Purchased Assets will be conducted on **April 6, 2020 at 10:00 a.m. (prevailing Pacific Time)** virtually by such means as they determine appropriate which logistics will be communicated to Qualified Bidder and other parties authorized to attend the Auction. In advance of the Sale Hearing and within two business days of the conclusion of the Auction (if such Auction is conducted), the Debtors shall file a notice with the Bankruptcy Court identifying the Winning Bidder.

PLEASE TAKE FURTHER NOTICE that a hearing will be held to approve the sale of the Purchased Assets to the Winning Bidder (the “Sale Hearing”) before the Honorable Ernest Robles, United States Bankruptcy Judge, United States Bankruptcy Court for the Central District of California, 255 E. Temple St., Los Angeles, California 90012, Courtroom 1568, on **April 8, 2020, at 10:00 a.m. (prevailing Pacific Time)**, or at such time thereafter as counsel may be heard or at such other time as the Bankruptcy Court may determine which hearing may be telephonic if the Bankruptcy Court designates it as such. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing. Objections to the Sale shall be filed with the Bankruptcy Court and served **so as to be received no later than April 7, 2020, at 5:00 p.m. (prevailing Pacific Time)** on the Notice Parties.

PLEASE TAKE FURTHER NOTICE that this Notice of the Auction and Sale Hearing is subject to the full terms and conditions of the Motion, Bidding Procedures Order and Bidding Procedures, which Bidding Procedures Order shall control in the event of any conflict, and the Debtors encourage parties in interest to review such documents in their entirety. Any party that has not received a copy of the Motion or the Bidding Procedures Order that wishes to obtain a

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

1 copy of the Motion, the Bidding Procedures Order (including all exhibits thereto) may make such
2 a request in email to Dentons US LLP (Attn: Tania M. Moyron (tania.moyron@dentons.com)).

3 **PLEASE TAKE FURTHER NOTICE** THAT THE DEBTORS RESERVE THEIR
4 RIGHTS TO MODIFY THESE BIDDING PROCEDURES IN ANY MANNER IN
5 CONSULTATION WITH THE COMMITTEE AND WITH THE CONSENT OF THE
6 PREPETITION SECURED CREDITORS THAT WILL BEST PROMOTE THE GOALS OF
7 THE BIDDING PROCESS. THE DEBTORS FURTHER RESERVE THEIR RIGHTS TO
8 IMPOSE, AT OR PRIOR TO THE AUCTION, ADDITIONAL TERMS AND CONDITIONS
9 ON THE SALE OF THE PURCHASED ASSETS, INCLUDING, WITHOUT LIMITATION,
10 EXTENDING THE DEADLINES SET FORTH IN THESE BIDDING PROCEDURES,
11 ADJOURNING THE AUCTION AT OR PRIOR TO THE AUCTION AND/OR ADJOURNING
12 THE SALE HEARING PRIOR TO SUCH HEARING OR IN OPEN COURT WITHOUT
13 FURTHER NOTICE, AND REJECTING ANY OR ALL QUALIFIED BIDS IF, IN THE
14 DEBTORS' REASONABLE, GOOD-FAITH BUSINESS JUDGMENT, FOLLOWING
15 CONSULTATION WITH THE CONSULTATION PARTIES, THE DEBTORS DETERMINE
16 THAT SUCH QUALIFIED BID IS (I) INADEQUATE OR INSUFFICIENT, (II) NOT IN
17 CONFORMITY WITH THE REQUIREMENTS OF THE BANKRUPTCY CODE OR ANY
18 RELATED RULES OR THE TERMS SET FORTH HEREIN, OR (III) CONTRARY TO THE
19 BEST INTERESTS OF THE DEBTORS. THE DEBTORS RESERVE THE RIGHT, AT ANY
20 TIME, FOR ANY REASON AND IN THEIR REASONABLE, BUSINESS JUDGMENT, TO
21 DECLINE TO PURSUE THE SALE AND TO WITHDRAW ANY MOTION FILED IN THE
22 COURT SEEKING TO APPROVE THE SALE.

23 Dated: April __, 2020

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

24 By /DRAFT
25 Tania M. Moyron

26 Attorneys for the Chapter 11 Debtors and
27 Debtors In Possession
28

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

Exhibit D

Proposed Form of Cure Notice

**NOTICE TO COUNTERPARTIES TO EXECUTORY CONTRACTS
AND UNEXPIRED LEASES OF THE DEBTORS
THAT MAY BE ASSUMED AND ASSIGNED**

PLEASE TAKE NOTICE that, on March __, 2020, the above-captioned debtors and debtors in possession (the “Debtors”), filed the *Debtors’ Emergency 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 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 and Assignment 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* [Docket No. ____] (the “Motion”).⁵

PLEASE TAKE FURTHER NOTICE that, on [DATE], the Court entered an Order (the “Bidding Procedures Order”) approving, among other things, the Bidding Procedures requested in the Motion, which Bidding Procedures Order governs (i) the bidding process for the sale of certain assets (the “Purchased Assets”) of the Debtors, and (ii) procedures for the assumption and assignment of certain of the Debtors’ executory contracts and unexpired leases.

PLEASE TAKE FURTHER NOTICE that the Motion also seeks Court approval of the sale (the “Sale”) of the Purchased Assets to the Winning Bidder(s), free and clear of all liens, claims, interests and encumbrances pursuant to § 363 of the Bankruptcy Code, 11 U.S.C. § 101, *et seq.* including the assumption by the Debtors and assignment to the buyer(s) of certain executory contracts and unexpired leases pursuant to § 365 of the Bankruptcy Code (the “Assumed Executory Contracts”), with such liens, claims, interests and encumbrances to attach to the proceeds of the Sale with the same priority, validity and enforceability as they had prior to such Sale. In advance of the Sale Hearing and within two business days of the conclusion of the Auction (if such Auction is conducted), the Debtors shall file a notice with the Bankruptcy Court identifying the Winning Bidder and serve such notice by fax, email or overnight mail to all counterparties whose contracts are to be assumed and assigned.

PLEASE TAKE FURTHER NOTICE that the Court held a hearing (the “Sale Hearing”) on _____, 2020, at 10:00 a.m. (Pacific Time), approving the Sale. The Court set a further hearing to be held on _____, 2020, at 10:00 a.m. (prevailing Pacific Time), before the United States Bankruptcy Court for the Central District of California, 255 E. Temple St., Los Angeles, California 90012, Courtroom 1568 concerning any objections to the assumption and assignment of the Assumed Executory Contracts (the “Assumption Objection Hearing”). The Assumption Objection Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Assumption Objection Hearing.

PLEASE TAKE FURTHER NOTICE that, consistent with the Order, the Debtors may seek to assume an executory contract or unexpired lease to which you may be a party. The Assumed Executory Contract(s) are described on Exhibit A attached to this Notice. The amount

⁵ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

1 shown on Exhibit A hereto as the “Cure Amount” is the amount, if any, which the Debtors assert
2 is owed to cure any defaults existing under the respective Assumed Executory Contract.

3 **PLEASE TAKE FURTHER NOTICE** that, if you (i) disagree with the Cure Amount
4 shown for the Assumed Executory Contract(s) on Exhibit A to which you are a party, and/or
5 (ii) object to the assumption and assignment of the Assumed Executory Contract with respect to
6 Winning Bidder’s ability to provide adequate assurance of future performance under the Assumed
7 Executory Contract, then you must file in writing with the United States Bankruptcy Court for the
8 Central District of California, 255 E. Temple St., Los Angeles, California 90012, an objection on
9 or before **5:00 p.m. (prevailing Pacific Time)** _____, 2020. Any objection must set forth
10 the specific default or defaults alleged and set forth any cure amount as alleged by you. If a
11 contract or lease is assumed and assigned pursuant to a Court order approving same, then unless
12 you properly file and serve an objection to the Cure Amount contained in this Notice, you will
13 receive at the time of the closing of the sale (or as soon as reasonably practicable thereafter), the
14 Cure Amount set forth herein, if any. Any counterparty to an Assumed Executory Contract that
15 fails to timely file and serve an objection to the Cure Amounts shall be forever barred from
16 asserting that a Cure Amount is owed in an amount in excess of the amount, if any, set forth in
17 the attached Exhibit A.

18 **PLEASE TAKE FURTHER NOTICE** that any objection you may file must be served
19 so as to be received by the following parties by the applicable objection deadline date and time:
20 (i) counsel to the Debtors: Dentons US LLP, 601 S. Figueroa Street, Suite 2500, Los Angeles,
21 CA 90017 (Attn: Tania M. Moyron (taniamoyron@dentons.com)); (ii) the Debtors’ Investment
22 Banker: Cain Brothers, a division of KeyBanc Capital Markets, 1 California Street, Suite 2400,
23 San Francisco, CA 94111 (Attn: James Moloney (jmoloney@cainbrothers.com)); (iii) counsel to
24 the Official Committee: Milbank, Tweed, Hadley & McCloy LLP, 2029 Century Park East, 33rd
25 Floor, Los Angeles, CA 90067 (Attn: Gregory A. Bray (gbray@milbank.com)); (iv) counsel to
26 the Master Trustee and Series 2005 Bond Trustee: Mintz, Levin, Cohn, Ferris, Glovsky and
27 Popeo, P.C., One Financial Center, Boston, MA 02111 (Attn: Daniel S. Bleck and Paul Ricotta
28 (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 Note 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; and psaba@jonesday.com)

29 **PLEASE TAKE FURTHER NOTICE** that the Winning Bidder shall be responsible for
30 satisfying any requirements regarding adequate assurance of future performance that may be
31 imposed under 11 U.S.C. §§ 365(b) and (f) in connection with the proposed assignment of any
32 Assumed Executory Contract. The Court shall make its determinations concerning adequate
33 assurance of future performance under the Assumed Executory Contracts pursuant to 11 U.S.C.
34 §§ 365(b) and (f) at the Sale Hearing.

35 **PLEASE TAKE FURTHER NOTICE** that except to the extent otherwise provided in
36 the Winning Bid APA, the Debtors and the Debtors’ estates shall be relieved of all liability

1 accruing or arising after the assumption and assignment of the Assumed Executory Contracts
2 pursuant to 11 U.S.C. § 365(k).

3 **PLEASE TAKE FURTHER NOTICE** that nothing contained herein shall obligate the
4 Debtors to assume any Assumed Executory Contracts or to pay any Cure Amount.⁶

5 **PLEASE TAKE FURTHER NOTICE THAT IF YOU DO NOT TIMELY FILE AND**
6 **SERVE AN OBJECTION AS STATED ABOVE, THE COURT MAY GRANT THE RELIEF**
7 **REQUESTED IN THE MOTION WITH NO FURTHER NOTICE.**

8 **PLEASE TAKE FURTHER NOTICE THAT ANY COUNTERPARTY TO ANY**
9 **ASSUMED EXECUTORY CONTRACT WHO DOES NOT FILE A TIMELY OBJECTION TO**
10 **THE CURE AMOUNT FOR SUCH ASSUMED EXECUTORY CONTRACT IS DEEMED TO**
11 **HAVE CONSENTED TO SUCH CURE AMOUNT.**

12 Dated: April __, 2020

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON

13 By [DRAFT]
14 Tania M. Moyron

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

17
18
19
20
21
22
23
24
25
26 ⁶ “Assumed Executory Contracts” are those contracts and leases that the Debtors believe may be
27 assumed and assigned as part of the orderly transfer of the Purchased Assets; however, the Winning
28 Bidder may choose to exclude certain of the Debtors’ contracts or leases from the list of Assumed
Executory Contracts as part of their Qualifying Bid, causing such contracts and leases not to be
assumed by the Debtors.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit A

(Assumed Executory Contracts)