

CSD 1001A [07/01/18]

Docket #0559 Date Filed: 03/13/2023

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA
325 West F Street, San Diego, California 92101-6991

In Re

BORREGO COMMUNITY HEALTH FOUNDATION
Debtor and Debtor in Possession

Debtor.

BANKRUPTCY NO. 22-02384-11

Date of Hearing: March 1, 2023
Time of Hearing: 10:00 a.m
Name of Judge: Laura S. Taylor

ORDER ON

ORDER (A) AUTHORIZING THE SALE OF PROPERTY TO DESERT AIDS PROJECT d/b/a DAP HEALTH FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF AN UNEXPIRED LEASE RELATED THERETO; AND (C) GRANTING RELATED RELIEF

The court orders as set forth on the continuation pages attached and numbered 2 through 9 with exhibits, if any, for a total of 9 pages. Motion/Application Docket Entry No. 161 .

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DATED: March 13, 2023

Judge, United States Bankruptcy Court



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ORDER ON ORDER (A) AUTHORIZING THE SALE OF PROPERTY TO DESERT AIDS PROJECT d/b/a DAP HEALTH FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF AN UNEXPIRED LEASE RELATED THERETO; AND (C) GRANTING RELATED RELIEF

DEBTOR: BORREGO COMMUNITY HEALTH FOUNDATION

CASE NO: 22-02384-11

Debtor and Debtor in Possession

This matter came before the Court on the *Debtor's Notice of Motion and Motion for the Entry of (I) an Order (1) Approving Form of Asset Purchase Agreement; (2) Approving Auction and Sale Format and Bidding Procedures; (3) Approving Process for Discretionary Selection of Stalking Horse Bidder and Bid Protections; (4) Approving Form of Notice to be Provided to Interested Parties; (5) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest and Best Bidder; and (6) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and (II) An Order Authorizing the Sale of Property Free and Clear of All Claims Liens and Encumbrances* [Docket No. 161] (the "Motion"), filed by Borrego Community Health Foundation, the debtor and debtor in possession in the above-captioned chapter 11 bankruptcy case (the "Debtor"), for the entry of an order, pursuant to §§ 105(a), 363, and 365 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004, 6006, 9007, and 9014, and LBR 6004 and 9013.¹

At the previous hearing on the Motion on December 7, 2022 (the "Bidding Procedures Hearing"), the Court considered various objections (the "Premature Objections") filed by: California Department of Health Care Services and U.S. Department of Health and Human Services ("HHS"). The Court ruled that the Premature Objections were premature and preserved for the Sale Hearing,² as set forth in order granting the Motion [Docket No. 321] (the "Bidding Procedures Order"). Any additional objections that were filed and overruled at the Bidding Procedures Hearing are not listed herein.

The Court, having reviewed the Memorandum [Docket No. 506] and the Declaration of Isaac Lee in support thereof, the *Notice To Counterparties To Executory Contracts And Unexpired Leases Of The Debtor That May Be Assumed And Assigned* [Docket No. 389] and the *Supplement to Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtor that May be Assumed and Assigned* [Docket No. 409] (collectively, the "Cure Notice"), the *Notice of Executory Contracts and Unexpired Leases Designated by Desert AIDS Project d/b/a DAP Health for Assumption and Assignment re Debtor's Bidding Procedures and Sale Motion* [Docket No. 478] (the "Designation Notice"), the *Notice of Qualified Bidders and Stalking Horse Bidder re Debtor's Notice of Motion and Motion for the Entry of (I) an Order (1) Approving Form of Asset Purchase Agreement; (2) Approving Auction Sale Format and Bidding Procedures; (3) Approving Process for Discretionary Selection of Stalking Horse Bidder and Bid Protections; (4) Approving Form of Notice to be Provided to Interested Parties; (5) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest and Best Bidder; and (6) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and (II) an Order Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances* [Docket No. 418] (the "Auction Notice"), the objections filed by various counterparties to certain executory contracts and unexpired leases [Docket Nos. 426, 431, 440, 441, 445, 447, 455, 458, 487] (the "Cure Objections"), the *Premature Objections*, any supplements to the *Premature Objections* [Docket Nos. 270, 489, 491], the objection to the sale filed by Dr. Sarah Rogers [Docket No. 356], and any withdrawals thereof, and the *Debtor's Omnibus Reply to the objections* [Docket No. 507]; the statements, arguments and representations of the parties made at the Sale Hearing; and the entire record of this case; and the Court, having determined that the relief sought in the Motion is in the best interests of the Debtor, its estate, its creditors, and that the legal and factual bases set forth in the Motion and presented at the Sale Hearing establish just cause for the relief granted herein and for the reasons set forth in the Court's tentative ruling [Docket No. 519]; and all objections to the Motion, if any, having been withdrawn, continued or overruled; and after due deliberation and sufficient good cause appearing therefor:

THE COURT HEREBY FINDS AND CONCLUDES THAT:³

A. Jurisdiction and Venue. This Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter relates to the administration of the Debtor's bankruptcy estate and is accordingly a core proceeding pursuant to 28 U.S.C. § 157(b) (2) (A), (M), (N) and (O). Venue of this case is proper in this District and in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

¹ Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all "Rule" references are to the Federal Rules of Bankruptcy Procedure, and all "LBR" references are to the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of California.

² Capitalized terms not otherwise defined herein shall have the meaning afforded in the Motion.

³ The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Rule 7052, made applicable to this proceeding pursuant to Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

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ORDER ON ORDER (A) AUTHORIZING THE SALE OF PROPERTY TO DESERT AIDS PROJECT d/b/a DAP HEALTH FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF AN UNEXPIRED LEASE RELATED THERETO; AND (C) GRANTING RELATED RELIEF

DEBTOR: BORREGO COMMUNITY HEALTH FOUNDATION

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- B. Statutory Predicates. The statutory predicates for the relief requested in the Motion are (i) §§ 105(a), 363(b), (f), (k), (l) and (m), and 365, (ii) Rules 2002(a)(2), 2002(c)(1) and (d), 6004 (a), (b), (c), (e), (f) and (h), 6006(a), (c) and (d), 9006, 9007, 9013 and 9014, and (iii) LBR 6004 and 9013.
- C. Notice. As evidenced by the affidavits of service previously filed with the Court, the Debtor has provided proper, timely, adequate and sufficient notice with respect to the following: (i) the Motion and the relief sought therein, including the entry of this Sale Order and the transfer and sale of the assets (the "Purchased Assets"), as set forth in the Asset Purchase Agreement (the "APA"), a copy of which is attached as Exhibit "B" to the Memorandum; (ii) the Sale Hearing; (iii) the Auction Notice; and (iv) the assumption and assignment of the executory contracts and unexpired leases and proposed cure amounts owing under such executory contracts and unexpired leases (the "Cure Amounts"); and no further notice of the Motion, the relief requested therein or the Sale Hearing is required. The Debtor has also complied with all obligations to provide notice of the Auction, the Sale Hearing, the proposed sale and otherwise, as required by the Bidding Procedures Order. A reasonable opportunity to object and to be heard regarding the relief provided herein has been afforded to parties-in-interest.
- D. Arm's Length Transaction. The APA and other documents and instruments (the "Transaction Documents") related to and connected with this transaction (the "Transaction") and the consummation thereof were negotiated and entered into by the Debtor and Desert AIDS Project d/b/a DAP Health ("DAP"), as Purchaser under the APA without collusion, in good faith and through an arm's length bargaining process. Neither DAP nor any of its affiliates or representatives is an "insider" of the Debtor, as that term is defined in § 101(31). None of the Debtor, DAP, or their respective representatives engaged in any conduct that would cause or permit the APA, any of the other Transaction Documents or the Transaction to be avoided under § 363(n), or have acted in any improper or collusive manner. The terms and conditions of the APA and the other Transaction Documents, including, without limitation, the consideration provided in respect thereof, are fair and reasonable, and are not avoidable and shall not be avoided, and no damages may be assessed against DAP or any other party, as set forth in § 363(n). The consideration provided by DAP is fair, adequate and constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable laws of the United States or any of its jurisdictions or subdivisions, including the State of California.
- E. Good Faith Purchaser. DAP has proceeded in good faith and without collusion in all respects in connection with the sale process, in that: (i) DAP, in proposing and proceeding with the Transaction in accordance with the APA, recognized that the Debtor was free to deal with other interested parties; (ii) DAP agreed to provisions in the APA that would enable the Debtor to accept a higher and better offer; (iii) DAP complied with all of the provisions in the Bidding Procedures Order applicable to DAP; (iv) all payments to be made by DAP and other agreements entered into or to be entered into between DAP and the Debtor in connection with the Transaction have been disclosed; (v) the negotiation and execution of the APA and related Transaction Documents were conducted in good faith and constituted an arm's length transaction; (vi) DAP did not induce or cause the chapter 11 filing by the Debtor; and (vii) the APA was not entered into, and the Transaction being consummated pursuant to and in accordance with the APA is not being consummated, for the purpose of hindering, delaying or defrauding creditors of the Debtor. DAP is therefore entitled to all of the benefits and protections provided to a good-faith purchaser under § 363(m). Accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Transaction shall not affect the validity of the Transaction, any terms or conditions of the Transaction or DAP's status as a "good faith" purchaser.
- F. Justification for Relief. Good and sufficient reasons for approval of the APA and the other Transaction Documents and the Transaction have been articulated to this Court in the Motion and at the Sale Hearing, and the relief requested in the Motion and set forth in this Sale Order is in the best interests of the Debtor, its estate, and its creditors. The Debtor has demonstrated through the Motion and other evidence submitted at the Sale Hearing both (i) good, sufficient and sound business purpose and justification and (ii) compelling circumstances for the transfer and sale of the Purchased Assets as provided in the APA outside the ordinary course of business, and (iii) such transfer and sale is an appropriate exercise of the Debtor's business judgment and in the best interests of the Debtor, its estate, and its creditors.
- G. Free and Clear. In accordance with §§ 363(b) and 363(f), the consummation of the Transaction pursuant to the Transaction Documents shall be a legal, valid, and effective transfer and sale of the Purchased Assets and shall vest in DAP, through the consummation of the Transaction, all of the Debtor's right, title, and interest in and to the Purchased Assets, free and clear of all liens, claims, interests, rights of setoff, recoupment, netting and deductions, rights of first offer, first refusal and any other similar contractual property, legal or equitable rights, and any successor or successor-in-interest liability theories (collectively, the "Encumbrances").

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ORDER ON ORDER (A) AUTHORIZING THE SALE OF PROPERTY TO DESERT AIDS PROJECT d/b/a DAP HEALTH FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF AN UNEXPIRED LEASE RELATED THERETO; AND (C) GRANTING RELATED RELIEF

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The Debtor has demonstrated that one or more of the standards set forth in § 363(f)(1)-(5) have been satisfied. Those holders of Encumbrances who did not object, or who withdrew their objections, to the sale or the Motion are deemed to have consented pursuant to § 363(f)(2). Those holders of Encumbrances who did object fall within one or more of the other subsections of §363(f). All holders of the Encumbrances in the Purchased Assets are adequately protected by having their respective Encumbrances attach to the Debtor's interests in the proceeds of the sale of the Purchased Assets under the APA, and any related documents or instruments delivered in connection therewith, whenever and wherever received (the "Sale Proceeds") to the extent and manner herein provided.

H. Restricted Charitable Assets. For the avoidance of doubt, the Debtor did not have on the date the above-captioned bankruptcy case was commenced, and has not had at any time since that date, any right, title, or interest in or to any restricted charitable assets, and, therefore, the Sale does not include any sale or transfer of restricted charitable assets to the Purchaser.

I. Assumption of Executory Contracts and Unexpired Leases. The Debtor has demonstrated that it is an exercise of its sound business judgment to assume and assign to DAP the "Assumed Contracts" and "Assumed Leases" (as those terms are defined in the APA), subject to DAP's right to designate any Evaluated Contracts (as that term is defined in the APA) as "Rejected Contracts" (as that term is defined in the APA) pursuant to the APA, in connection with the consummation of the Transaction, and the assumption and assignment of the Assumed Contracts and Assumed Leases is in the best interests of the Debtor and its estate.

J. Cure/Adequate Assurance. In connection with the Closing (as defined in the APA), and pursuant to the APA, unless otherwise ordered, any and all defaults existing on or prior to the Closing under any of the Assumed Contracts and Assumed Leases will have been cured, within the meaning of § 365(b)(1)(A), by payment of the amounts (the "Cure Amounts") and in the manner set forth below, unless otherwise agreed by DAP and the counterparty (each a "Counterparty") or as ordered by the Court. DAP has provided or will provide adequate assurance of future performance of and under the Assumed Contracts and Assumed Leases within the meaning of § 365(b)(1)(C) and §365(f)(2)(B), and shall have no further obligation to provide assurance of performance to any Counterparty to an Assumed Contract or an Assumed Lease. Pursuant to § 365(f), the Assumed Contracts and the Assumed Leases to be assumed by the Debtor and assigned to DAP under the APA shall be assigned and transferred to, and remain in full force and effect for the benefit of, DAP, notwithstanding any provision in such Assumed Contracts and Assumed Leases prohibiting their assignment or transfer. The Debtor has demonstrated that no other parties to any of the Assumed Contracts and the Assumed Leases have incurred any actual pecuniary loss resulting from a default on or prior to the Closing under any of the Assumed Contracts and Assumed Leases within the meaning of § 365(b)(1)(B).

K. Highest or Otherwise Best Offer. The Debtor solicited offers and noticed the Auction in accordance with the provisions of the Bidding Procedures Order. The Auction was duly noticed, the sale process was conducted in a non-collusive manner and the Debtor afforded a full, fair and reasonable opportunity for any person or entity to make a higher or otherwise better offer to purchase the Purchased Assets. Other than DAP's Bid, the Debtor received five other Qualified Bids by the Bid Deadline (as such terms are defined by the Bidding Procedures Order). The Debtor properly consulted with the Official Committee of Unsecured Creditors (the "Committee") in selecting the DAP Bid as the highest and best bid (as such terms are defined in the Bidding Procedures Order), as set forth in the Auction Notice. The transfer and sale of the Purchased Assets to DAP on the terms set forth in the APA constitutes the highest and best offer for the Purchased Assets. The Debtor's determination, in consultation with the Committee, that the APA constitutes the highest or best offer for the Purchased Assets constitutes a valid and sound exercise of the Debtor's business judgment.

L. No De Facto or Sub Rosa Plan of Reorganization. The sale of the Purchased Assets does not constitute a *de facto* or *sub rosa* plan of reorganization or liquidation because it does not propose to (i) impair or restructure existing debt of, or equity or membership interests in, the Debtor, (ii) impair or circumvent voting rights with respect to any plan proposed by the Debtor, (iii) circumvent chapter 11 safeguards, including those set forth in §§ 1125 and 1129, or (iv) classify claims or equity or membership interests.

M. Legal and Factual Bases. The legal and factual bases set forth in the Motion and at the Sale Hearing establish just cause for the relief granted herein.

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NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. The relief requested in the Motion is GRANTED and APPROVED in all respects to the extent provided herein.
2. Except as to the objection of the Centers of Medicare & Medicaid Services ("CMS") filed by HHS [Docket No. 206, 458, 491] (the "CMS Objection"), all objections with regard to the relief sought in the Motion that have not been withdrawn, waived, settled, or provided for herein or in the Bidding Procedures Order, including any reservation of rights included in such objections, are overruled on the merits with prejudice. To the extent of any inconsistency between this Sale Order and the Bidding Procedures Order, the terms of this Sale Order shall prevail.
3. The DHCS objection is resolved by the terms of the settlement set forth on the record at the Sale Hearing, approved by a separate 9019 motion and order thereon [Docket Nos. 510, 544].
4. As set forth on the record at the Sale Hearing, the Debtor and HHS are negotiating a resolution to the CMS Objection. Notwithstanding the foregoing and subsequent language in this Order, the CMS Objection remains until resolved by the parties or by the Court. On or before March 20, 2023, the Debtor will provide HHS with its proposed settlement of the CMS Objection. The Court will conduct a status conference on the CMS Objection on March 29, 2023, at 3:00 p.m. Pacific Standard Time (the "CMS Objection Hearing"). At the CMS Objection Hearing, the Debtor and HHS will inform the Court whether the CMS Objection has been resolved. If the Debtor and HHS are unable to resolve the CMS Objection, the Court may schedule further briefing and additional deadlines.
5. Pursuant to §§ 105(a), 363(b), 363(f), and 365, the Transaction, including the transfer and sale of the Purchased Assets to DAP on the terms set forth in the APA, is approved in all respects, and the Debtor is authorized and directed to consummate the Transaction in accordance with the APA, including, without limitation, by executing all of the Transaction Documents (and any ancillary documents or instruments that may be reasonably necessary or desirable to implement the APA or the Transaction) and taking all actions necessary and appropriate to effectuate and consummate the Transaction (including the transfer and sale of the Purchased Assets) in consideration of the Purchase Price (as defined in § 1.1 of the APA) upon the terms set forth in the APA, including, without limitation, assuming and assigning to DAP the Assumed Contracts and Assumed Leases. The Debtor and DAP shall have the right to make any mutually agreeable, non-material changes to the APA, which shall be in writing signed by both parties, without further order of the Court provided, that after not less than five (5) business days' notice, the Committee does not object to such changes. Any timely objection by the Committee to any agreed non-material changes to the APA may be resolved by the Court on shortened notice.
6. As of the Closing, (i) the Transaction set forth in the APA shall effect a legal, valid, enforceable and effective transfer and sale of the Purchased Assets to DAP free and clear of all Encumbrances as further set forth in the APA and this Sale Order; and (ii) the APA, and the other Transaction Documents, and the Transaction, shall be enforceable against and binding upon, and not subject to rejection or avoidance by, the Debtor, any successor thereto including a trustee or estate representative appointed in the Bankruptcy Case, the Debtor's estate, all holders of any Claim(s) (as defined in the Bankruptcy Code) against the Debtor, whether known or unknown, any holders of Encumbrances on all or any portion of the Purchased Assets, all Counterparties to the Assumed Contracts and the Assumed Leases, and all other persons and entities.
7. Encumbrances in and to Purchased Assets shall attach to the Sale Proceeds of such Purchased Assets with each such Encumbrance having the same force, extent, effect, validity and priority as such Encumbrance had on the Purchased Assets giving rise to the Sale Proceeds immediately prior to the Closing.
8. Both the Debtor and DAP agree that the Health Resources and Services Administration ("HRSA") retains an interest in certain assets purchased with HRSA grant funds after the sale. The Debtor agrees that it will create a list of all assets purchased with HRSA grant funds pursuant to 45 C.F.R. § 75.320(d). DAP further agrees that if HRSA approves DAP as a successor in interest, DAP will acquire all of the assets involved in the performance of the Debtor's Health Center Program award. If DAP or the back-up bidder are not approved by HRSA as a successor in interest, the Debtor and DAP agree to dispose of the assets purchased with HRSA grant funds pursuant to 45 C.F.R. § 75.320(e).

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ORDER ON ORDER (A) AUTHORIZING THE SALE OF PROPERTY TO DESERT AIDS PROJECT d/b/a DAP HEALTH FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF AN UNEXPIRED LEASE RELATED THERETO; AND (C) GRANTING RELATED RELIEF

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9. Subject to the fulfillment of the terms and conditions of the APA, this Sale Order shall, as of the Closing, be considered and constitute for all purposes a full and complete general assignment, conveyance, and transfer of the Purchased Assets and/or a bill of sale transferring all of the Debtor's rights, title and interest in and to the Purchased Assets to DAP. Consistent with, but not in limitation of the foregoing, each and every federal, state, and local governmental agency or department, except as stated herein, is hereby authorized and directed to accept all documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA and approved in this Sale Order. A certified copy of this Order may be filed with the appropriate clerk and/or recorded with the appropriate recorder to cancel any Encumbrances of record.

10. Any person or entity that is currently, or on the Closing Date may be, in possession of some or all of the Purchased Assets is hereby directed to surrender possession of such Purchased Assets either to (a) the Debtor before the Closing or (b) to DAP or its designee upon the Closing, and to cooperate with the Debtor and DAP in the Debtor's and DAP's fulfillment of their obligations hereunder and pursuant to the APA.

11. The transfer of the Purchased Assets pursuant to the Transaction Documents shall be a legal, valid, and effective transfer and shall, in accordance with §§ 105(a) and 363(f), and upon consummation of the Transaction, including, without limitation, payment of the Purchase Price to the Debtor, vest DAP with all right, title, and interest in the Purchased Assets, free and clear of all Encumbrances. Upon closing of the Transaction, DAP shall take title to and possession of the Purchased Assets as set forth in the APA. The transfer of the Purchased Assets from the Debtor to DAP constitutes a transfer for reasonable equivalent value and fair consideration under the Bankruptcy Code and the laws of the State of California.

12. Following the Closing, no holder of any Encumbrance against the Debtor or upon the Purchased Assets shall interfere with DAP's respective rights in, title to or use and enjoyment of the Purchased Assets. All persons and entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Debtor to sell and transfer the Purchased Assets to DAP, including the assumption and assignment of the Assumed Contracts and Assumed Leases.

13. DAP shall not be deemed, as a result of any action taken in connection with, or as a result of the Transaction (including the transfer and sale of the Purchased Assets), to: (i) be a successor, continuation or alter ego (or other such similarly situated party) to the Debtor or its estate by reason of any theory of law or equity, including, without limitation, any bulk sales law, doctrine or theory of successor liability, or any theory or basis of liability, regardless of source of origin; or (ii) have, *de facto* or otherwise, merged with or into the Debtor; or (iii) be a mere continuation, *alter ego*, or substantial continuation of the Debtor.

14. This Sale Order (i) shall be effective as a determination that, on Closing, all Encumbrances existing against the Purchased Assets before the Closing have been unconditionally released, discharged and terminated, and that the transfers and conveyances described herein have been effected, and (ii) shall be binding upon and shall govern the acts of all persons and entities. If, following a reasonable written request made by the Debtor, any person or entity that has filed financing statements or other documents or agreements evidencing any Encumbrances against the Purchased Assets shall not have delivered to the Debtor for use at or in connection with Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Encumbrances which the person or entity has with respect to the Purchased Assets, then DAP and/or the Debtor is hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to such Purchased Assets. For the avoidance of doubt, such statements, instruments, releases and other documents shall not impair Encumbrances that attach to the Sale Proceeds or the terms of this Order, including, but not limited to paragraph 7 hereof.

15. In accordance with the APA, concurrently with the Closing, DAP shall pay that portion of the Purchase Price due at Closing, by wire transfer of immediately available funds, to an account designated by the Debtor, subject to the adjustments set forth in the APA. Any direct expenses of the Sale shall be disclosed by Debtor to the Committee in advance of the Closing.

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ORDER ON INTERESTS; (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF AN UNEXPIRED LEASE RELATED THERETO; AND (C) GRANTING RELATED RELIEF

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16. DAP shall hold an allowed administrative expense claim pursuant to section 503(b)(1) of the Bankruptcy Code with priority over every other claim allowable under such section of the Bankruptcy Code in an amount equal to the Pre-Closing Net Operational Cash Flow Losses that are actually funded by DAP pursuant to Section 1.13(c) of the APA (the "Funded Loss Administrative Expense"). For the avoidance of doubt, the Funded Loss Administrative Expense shall be limited to, and shall not exceed, those amounts that are actually funded by DAP in cash to the Debtor pursuant to Section 1.13(c) of the APA. The Funded Loss Administrative Expense shall be treated in only one of the following manners:

- (a) if the Closing under the APA occurs, then (i) that portion of the Funded Loss Administrative Expense up to and including \$6,000,000 shall be satisfied in full by application against the Purchase Price, and (ii) that portion of the Funded Loss Administrative Expense in excess of \$6,000,000, if any, shall be satisfied in full by application against the Cash Consideration;
- (b) if the APA is terminated by the Debtor pursuant to Section 9.1(g) thereof, the Funded Loss Administrative Expense shall be satisfied in full by payment from the proceeds of any alternative transaction that is consummated by the Debtor;
- (c) in the event of a Specified Termination Event (as defined in the APA), the Funded Loss Administrative Expense shall be payable as an administrative expense in the Bankruptcy Case;
- (d) in the event the Bankruptcy Case is dismissed, the Funded Loss Administrative Expense shall be satisfied in full by payment from the Debtor to DAP in an amount equal to the Funded Loss Administrative Expense at the time of such dismissal or as otherwise agreed in writing by the Debtor and DAP; or
- (e) in all other events, whether the APA is terminated or not and regardless of any other act, event or occurrence, the Funded Loss Administrative Expense shall be waived and released by DAP.

17. The Court shall resolve any and all disputes which may arise between the Debtor, DAP, and any applicable Counterparty concerning (i) whether a particular Assumed Contract or Assumed Lease is an executory contract or unexpired lease or (ii) whether a Counterparty to an Assumed Contract or Assumed Lease is entitled to an allowed claim against the Debtor which exceeds the Cure Amount set forth in the Cure Notice (an "Assumption Dispute").

18. In the event the Court determines that a Counterparty has an allowed cure claim against the Debtor which exceeds the Cure Amount set forth in the Cure Notice (the "Excess Cure Amount") with respect to an Assumed Contract or Assumed Lease, the difference will be paid by DAP and shall not be the responsibility of the Debtor as more specifically set forth below; provided, however, that an Assumed Contract or Assumed Lease subject to an Assumption Dispute shall be deemed a "Rejected Contract" within the meaning of § 1.11(a) of the APA if the Assumption Dispute is not resolved by entry of an order on or before thirty (30) days prior to Closing unless the Debtor, DAP, and the applicable Counterparty agree otherwise. To the extent an Assumption Dispute relates solely to the Cure Amount, the Debtor may, with DAP's consent, assume and assign the applicable executory contract or unexpired lease at Closing and prior to the resolution of the Assumption Dispute by the Bankruptcy Court, provided, that the Bankruptcy Court has estimated the maximum cure payment, pursuant to 11 U.S.C. §502(c) and DAP remits such amount to the Debtor to be held by the Debtor pending resolution of such Assumption Dispute. The Debtor shall pay and hereby is authorized to pay disputed Cure Amounts upon entry of a final order by this Court to the extent DAP remitted to the Debtor the amount required by this paragraph of the Order. Nothing in this paragraph shall be construed as HHS' consent to the Bankruptcy Court's jurisdiction to resolve any Cure Amount.

19. Upon the Closing, the Debtor is authorized and directed to assume, assign and/or transfer each of the Assumed Contracts and Assumed Leases to DAP. Notwithstanding anything in this Order to the contrary, and with the exception of Cure Amounts subject to Assumption Disputes on the Closing Date (which shall be paid upon resolution of such Assumption Dispute), DAP shall pay to the Debtor the applicable Cure Amount (including, any Excess Cure Amount) upon the Closing or as soon thereafter as is practicable in the Debtor's discretion. The Debtor shall then remit payment of such Cure Amounts to the Counterparties of Assumed Contracts and Assumed Leases and such payments are deemed the necessary and sufficient amounts to "cure" all "defaults" with respect to all such Assumed Contracts under § 365(b). The foregoing payment shall (i) effect a cure of all defaults existing under all such Assumed Contracts and Assumed Leases, and (ii) compensate all such Counterparties for any actual pecuniary loss resulting from any such default. The Debtor shall then have assumed and assigned to DAP, effective as of the Closing, all of the Assumed Contracts and Assumed Leases, and, pursuant to § 365(f), the assignment by the Debtor of all such Assumed Contracts and Assumed Leases to DAP shall not be a default thereunder. After the payment of the Cure Amounts, neither the Debtor nor DAP shall have any further liabilities to any Counterparties, other than DAP's obligations under the Assumed Contracts and Assumed Leases that accrue and become due and payable after the Closing Date.

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ORDER ON ORDER (A) AUTHORIZING THE SALE OF PROPERTY TO DESERT AIDS PROJECT d/b/a DAP HEALTH FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF AN UNEXPIRED LEASE RELATED THERETO; AND (C) GRANTING RELATED RELIEF

DEBTOR: BORREGO COMMUNITY HEALTH FOUNDATION

CASE NO: 22-02384-11

Debtor and Debtor in Possession

In addition, adequate assurance of future performance has been demonstrated by or on behalf of DAP with respect to all of the Assumed Contracts and Assumed Leases within the meaning of §§ 365(b)(1)(c), 365(b)(3) (to the extent applicable) and 365(f)(2)(B). For the avoidance of doubt, DAP shall not be liable for the payment of any liabilities or obligations arising from or related to any Rejected Contracts, unless expressly assumed and assigned with DAP's consent.

20. All of the Counterparties are forever barred, estopped, and permanently enjoined from (i) raising or asserting against the Debtor or DAP, or any of their property, any assignment fee, acceleration, default, breach, or claim of pecuniary loss, or condition to assignment, arising under or related to the Assumed Contracts and Assumed Leases, existing as of the Closing, or arising by reason of the consummation of the Transaction contemplated by the APA, including, without limitation, the Transaction and the assumption and assignment of the Assumed Contracts and Assumed Leases, including any asserted breach relating to or arising out of the change-in-control provisions in such Assumed Contracts and Assumed Leases, or any purported written or oral modification to the Assumed Contracts and Assumed Leases, and (ii) asserting against DAP any claim, counterclaim, breach, or condition asserted or assertable against the Debtor existing as of the Closing or arising by reason of the transfer of the Purchased Assets.

21. Any provisions in any Assumed Contracts or Assumed Leases that prohibit or condition the assignment of such Assumed Contract or Assumed Lease or allow the Counterparty to such Assumed Contract or Assumed Lease to terminate, recapture, impose any penalty, condition on renewal or extension or modify any term or condition upon the assignment of such Assumed Contract or Assumed Lease constitute unenforceable anti-assignment provisions that are void and of no force and effect with respect to the Debtor's assumption and assignment of such Assumed Contract or Assumed Lease to DAP in accordance with the APA, pursuant to § 363(f).

22. The IEHP Contracts⁴ are executory contracts to the extent such contracts have not been terminated or have not expired by their own terms. Unless terminated or expired, each of the IEHP Contracts are assumed and assigned to DAP as is and where is without any representation, warranty, or commitment from IEHP. Nothing in this Order, in the APA, or in any Transaction Document impairs or prejudices IEHP's rights under the IEHP Contracts, including IEHP's termination rights without cause to the extent of any such termination rights under the IEHP Contracts. All of IEHP's rights are specifically preserved for the benefit of IEHP.

23. The BETARMA Contracts⁵ will not be included in the Assumed Contracts and Assumed Leases to be assumed and assigned in connection with the closing of the Sale.

24. The terms and provisions of this Sale Order, as well as the rights granted under the Transaction Documents, shall continue in full force and effect and are binding upon any successor, reorganized Debtor, or chapter 7 or chapter 11 trustee applicable to the Debtor, notwithstanding any such conversion, dismissal or order entry. Nothing contained in any chapter 11 plan confirmed in the Debtor's case or in any order confirming such a plan, nor any order dismissing the case or converting the case to a case under chapter 7, shall conflict with or derogate from the provisions of the APA, any documents or instruments executed in connection therewith, or the terms of this Sale Order, provided however, that in the event of a conflict between this Sale Order and an express or implied provision of the APA, this Sale Order shall govern. The provisions of this Sale Order and any actions taken pursuant hereto shall survive any conversion or dismissal of the case and the entry of any other order that may be entered in the case, including any order (i) confirming any plan of reorganization; (ii) converting the case from chapter 11 to chapter 7; (iii) appointing a trustee or examiner in the case; or (iv) dismissing the case.

⁴ The "IEHP Contracts" comprise the following: (1) Capitated Primary Care Provider Agreement, entered as of January 1, 2014; (2) Participating Provider Agreement (Specialty Services), entered as of January 1, 2014; (3) Behavioral Health Provider Agreement, dated May 1, 2014; (4) Urgent Care Provider Agreement, entered as of February 1, 2015; (5) Letter of Agreement, entered as of April 28, 2015; and (6) Participating Provider Agreement (Vision Services), entered as of November 1, 2018. Notwithstanding the contents of the Cure Notice and the Designation Notice, there are no other contracts between IEHP and the Debtor.

⁵ The "BETA Contracts" are comprised of the Healthcare Entity Comprehensive Liability Coverage Contract, No. HCL-22-1052, with a termination date of July 1, 2023; the Workers Compensation and Employers Liability Coverage, No. WC-22-1052, with a termination date of July 1, 2023; and the Auto Liability and Physical Damage Coverage Contract No. AL-22-1052, with a termination date of July 1, 2023.

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ORDER ON ORDER (A) AUTHORIZING THE SALE OF PROPERTY TO DESERT AIDS PROJECT d/b/a DAP HEALTH FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF AN UNEXPIRED LEASE RELATED THERETO; AND (C) GRANTING RELATED RELIEF

DEBTOR: BORREGO COMMUNITY HEALTH FOUNDATION

CASE NO: 22-02384-11

Debtor and Debtor in Possession

25. The Transaction contemplated by the APA and other Transaction Documents is undertaken without collusion and in "good faith," as that term is defined in § 363(m) of the Bankruptcy Code. DAP is a good faith purchaser within the meaning of § 363(m) and, as such, is entitled to the full protections of § 363(m). Accordingly, the reversal or modification on appeal of the authorization provided herein by this Sale Order to consummate the Transaction shall not affect the validity of the sale of the Purchased Assets to DAP. The APA and the Transactions contemplated thereby cannot be avoided under § 363(n).

26. The failure to specifically include any particular provision of the APA or the other Transaction Documents in this Sale Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Bankruptcy Court that the Transaction, the APA and the other Transaction Documents be authorized and approved in their entirety. Likewise, all of the provisions of this Sale Order are non-severable and mutually dependent.

27. The automatic stay in effect pursuant to § 362 is hereby lifted with respect to the Debtor to the extent necessary, without further order of this Court, to (i) allow DAP to deliver any notice provided for in the APA and Transaction Documents and (ii) allow DAP to take any and all actions permitted under the APA and Transaction Documents in accordance with the terms and conditions thereof.

28. Unless otherwise provided in this Sale Order, to the extent any inconsistency exists between the provisions of the APA and this Sale Order, the provisions contained in this Sale Order shall govern.

29. This Court shall retain exclusive jurisdiction to interpret, construe, and enforce the provisions of the APA and this Sale Order in all respects, and further, including, without limitation, to (i) hear and determine all disputes between the Debtor and/or DAP, as the case may be, and any other non-Debtor party to, among other things, the Assumed Contracts and Assumed Leases concerning, among other things, assignment thereof by the Debtor to DAP and any dispute between DAP and the Debtor as to its respective obligations with respect to any asset, liability, or claim arising hereunder; (ii) compel delivery of the Purchased Assets to DAP free and clear of Encumbrances; (iii) compel the delivery of the Purchase Price or performance of other obligations owed to the Debtor; (iv) interpret, implement, and enforce the provisions of this Sale Order; and (v) protect DAP against (A) claims made related to any of the Excluded Liabilities (as defined in the APA), (B) any claims of successor or vicarious liability (or similar claims or theories) related to the Purchased Assets, the Assumed Contracts, or the Assumed Leases, or (C) any Encumbrances asserted on or against DAP or the Purchased Assets.

30. Following the date of entry of this Sale Order, the Debtor and DAP are authorized to make changes to the APA and/or execute supplemental agreements implementing the transactions contemplated by the APA without the need for any further order of the Court provided that all such changes have been approved in writing by the Debtor, DAP, and the Committee. Any other proposed changes to the APA or this Sale Order shall require a further order of the Court, after reasonable notice under the circumstances and a hearing.

31. Nothing in this Sale Order constitutes a finding or determination on any Cure Objection. All Cure Objections are preserved until resolved either by agreement between the Debtor and the Counterparty or further order of the Court.

32. The Committee's rights and its ability to participate and be heard at hearings concerning the Sale, are hereby reserved. To the extent that the Committee desires to file pleadings related to such hearings, its times for filing an objection or response shall be the same as granted to the Debtor pursuant to the notice in each such instance.

IT IS SO ORDERED.

Notice Recipients

District/Off: 0974-3

User: Admin.

Date Created: 3/13/2023

Case: 22-02384-LT11

Form ID: pdf01

Total: 3

Recipients of Notice of Electronic Filing:

aty Tania M. Moyron tania.moyron@dentons.com

TOTAL: 1

Recipients submitted to the BNC (Bankruptcy Noticing Center):

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aty Samuel Ruven Maizel Dentons US LLP 601 South Figueroa Street Suite 2500 Los Angeles, CA 90017

TOTAL: 2