

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:

WALKER COUNTY HOSPITAL CORPORATION,
d/b/a HUNTSVILLE MEMORIAL HOSPITAL,

Debtor and Debtor in Possession.¹

Chapter 11

Case No. 19-36300

(Emergency Hearing Requested)

DEBTOR'S EMERGENCY MOTION FOR ORDERS: (I)(A) APPROVING BIDDING PROCEDURES AND BID PROTECTIONS, (B) PERMITTING DEBTOR TO DESIGNATE STALKING HORSE PURCHASER(S) AND GRANT BID PROTECTIONS, (C) SCHEDULING A HEARING TO CONSIDER APPROVAL OF THE SALE OF ASSETS, (D) APPROVING FORM AND MANNER OF NOTICE OF SALE, AND (E) GRANTING RELATED RELIEF; AND (II)(A) AUTHORIZING AND APPROVING SALE OF SUBSTANTIALLY ALL ASSETS OF WALKER COUNTY HOSPITAL CORPORATION FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES, (B) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (C) GRANTING RELATED RELIEF

EMERGENCY RELIEF HAS BEEN REQUESTED. A HEARING WILL BE CONDUCTED ON THIS MATTER ON NOVEMBER 12, 2019 AT 2:00 PM IN COURTROOM 400, 4th FLOOR, UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF TEXAS, 515 RUSK STREET, HOUSTON, TEXAS 77002. IF YOU OBJECT TO THE RELIEF REQUESTED OR YOU BELIEVE THAT EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU MUST EITHER APPEAR AT THE HEARING OR FILE A WRITTEN RESPONSE PRIOR TO THE HEARING. OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED. RELIEF IS REQUESTED NOT LATER THAN NOVEMBER 12, 2019.

Walker County Hospital Corporation, d/b/a Huntsville Memorial Hospital (the "**Debtor**"), by and through its undersigned proposed counsel, files this motion, pursuant to sections 105(a), 363, and 365 of title 11 of the United States Code (the "**Bankruptcy Code**"), Rules 2002, 6003, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Local Rules 2002-1 and 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the "**Local Rules**"), seeking entry of orders substantially in the form attached to this motion as

¹ The last four digits of the Debtor's federal tax identification number are: 0960. The location of the Debtor's service address is: P.O. Box 4001, Huntsville, TX 77342-4001, Attn: Steven Smith.

Exhibit A (the “*Bidding Procedures Order*”) by which the Debtor will solicit and select the highest or other best offer for the sale of substantially all or a portion of their assets (the “*Proposed Purchased Assets*”) through one or more sales, including the Debtor’s potential later selection of one or more stalking horse bidders (each a “*Stalking Horse Bidder*”), if any, and the provision of Bid Protections (as defined below) to such Stalking Horse Bidder, if necessary, and, subject to compliance with the Bidding Procedures (as defined below) and conclusion of an Auction (as defined below), **Exhibit B** (the “*Sale Order*”): (a) authorizing and approving the bidding procedures attached to the Bidding Procedures Order as **Exhibit 1** (the “*Bidding Procedures*”), authorizing and approving certain assumption and assignment procedures (the “*Assumption and Assignment Procedures*”), scheduling a hearing (the “*Sale Hearing*”) to consider approval of the sale of the Proposed Purchased Assets, in accordance with and subject to the Bidding Procedures, approving the form and manner of notice of the foregoing (the “*Notice Procedures*”), and granting related relief; and, (b) subject to compliance with the Bidding Procedures, authorizing the sale of the Proposed Purchased Assets free and clear of all liens, claims, interests, and encumbrances, authorizing the assumption and assignment of certain executory contracts and unexpired leases, and granting related relief. In support of this motion, the Debtor relies upon the *Declaration of Steven L. Smith in Support of First Day Motions* (the “*First Day Declaration*”) and *Declaration of Steven L. Smith in Support of Debtor’s Emergency Motion for Orders: (I)(A) Approving Bidding Procedures and Bid Protections, (B) Permitting Debtor to Designate Stalking Horse Purchaser(s) and Grant Bid Protections, (C) Scheduling a Hearing to Consider Approval of the Sale of Assets, (D) Approving Form and Manner of Notice of Sale, and (E) Granting Related Relief; and (II)(A) Authorizing and Approving Sale of Substantially All Assets of Walker County Hospital Corporation Free and Clear of Liens, Claims, Interests, and Encumbrances, (B) Authorizing the*

Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (C) Granting Related Relief (the “**Bidding Procedures Declaration**” and together with the First Day Declaration, the “**Declarations**”) and respectfully states as follows:

OVERVIEW OF RELIEF SOUGHT

1. By this motion, the Debtor seeks authority of this Court to sell the Proposed Purchased Assets free and clear of all liens, claims, encumbrances, and other interests, through the establishment and effectuation of a bidding and auction process.

2. Having undertaken a robust marketing process (and having undertaken prior failed marketing efforts), the Debtor anticipates selling the Proposed Purchased Assets in a single transaction; however, the Debtor has not finalized negotiations or otherwise entered into a stalking horse purchase agreement or other agreement with respect to the Proposed Purchased Assets.

3. Nevertheless, the relief requested in this motion will best position the Debtor to successfully effect one or more sale of the Proposed Purchased Assets for the benefit of the Debtor, the Debtor’s estate, creditors of the Debtor’s estate, and other parties in interest.

4. The Debtor believes a competitive auction process for the sale of the Proposed Purchased Assets provides the Debtor, the Debtor’s estate, creditors of the Debtor’s estate, and other parties in interest with the best prospect to obtain the highest or otherwise best recovery from the Proposed Purchased Assets.

5. The Debtor, in consultation with its advisors, believes that pursuing a sale of the Proposed Purchased Assets in the manner described herein with the opportunity to later identify and designate a Stalking Horse Bidder is the course of action most likely to maximize value and encourage robust bidder participation. To facilitate a competitive, value-maximizing sale transaction, the Debtor is requesting authority, in the exercise of its business judgment and in accordance with the Bidding Procedures, to offer any later identified Stalking Horse Bidder one

or more of: (i) a break-up fee in an amount not to exceed 3% of the Stalking Horse Bidder's initial Purchase Price (the "**Break-up Fee**"); (ii) reimbursement of the Stalking Horse Bidder's reasonable and documented fees and expenses not to exceed \$250,000 (the "**Expense Reimbursement**"); and/or (iii) initial overbid protection (the "**Minimum Overbid Increment**" and, together with the Break-up Fee and the Expense Reimbursement, the "**Bid Protections**").

6. To that end, the Debtor seeks entry of: (a) the Bidding Procedures Order, (i) authorizing and approving the Bidding Procedures attached to the Bidding Procedures Order as **Exhibit 1**, (ii) authorizing and approving the Debtor's template Asset Purchase Agreement attached to the Bidding Procedures Order as **Exhibit 2**, (iii) authorizing and approving the Assumption and Assignment procedures, (iv) scheduling the Sale Hearing to consider approval of the sale of the Proposed Purchased Assets, in accordance with and subject to the Bidding Procedures, (v) approving the Notice Procedures, and (vi) granting related relief; and (b) after conducting the Sale Hearing, entry of the Sale Order, (i) authorizing the sale of the Proposed Purchased Assets free and clear of all liens, claims, interests, and encumbrances, (ii) authorizing the assumption and assignment of certain executory contracts and unexpired leases, and (iii) granting related relief.

7. The Debtor proposes the following timeline for the Sale:²

<u>Date</u>	<u>Event</u>
Two (2) Business Days After Entry of the Bidding Procedures Order	Notice of Auction and Sale Hearing
Five (5) Business Days After Entry of the Bidding Procedures Order	Notice of Potential Assumption and Assignment
Wednesday, December 4, 2019	Deadline to Designate Stalking Horse Bidder
Friday, December 6, 2019	Deadline to Object to Designation of Stalking Horse Bidder

² The Debtor, in the exercise of its business judgment, reserves the right to change these sale-related dates to achieve maximum value for the Assets.

Thursday, December 12, 2019	Assumption and Assignment Objection Deadline
Monday, December 16, 2019	Bid Deadline
Wednesday, December 18, 2019 @ 10:00 a.m. (prevailing Central time)	Auction
Thursday, December 19, 2019, at 12:00 p.m. (noon) (prevailing Central time)	Sale Objection Deadline
Thursday, December 19, 2019 after the Sale Objection Deadline	Sale Hearing
Not later than five (5) calendar days prior to the closing	Notice of Assumption and Assignment

8. For the foregoing reasons and as set forth in greater detail below, the relief sought by this motion should be granted.

JURISDICTION AND VENUE

9. The United States Bankruptcy Court for the Southern District of Texas (the “*Court*”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of Texas*, dated May 24, 2012 (the “*Amended Standing Order*”). This is a core proceeding under 28 U.S.C. § 157(b)(2). The Debtor confirms its consent, pursuant to Bankruptcy Rule 7008 and Local Rule 7008-1 of the of the Bankruptcy Local Rules for the United States Bankruptcy Court for the Southern District of Texas (the “*Local Rules*”), to the entry of a final order by the Court in connection with this Application to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

10. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

11. On November 11, 2019 (the “*Petition Date*”), the Debtor filed a voluntary petition for relief in this Court, pursuant to chapter 11 of the Bankruptcy Code, commencing this case (the “*Chapter 11 Case*”).

12. The Debtor continues to operate its business as a debtor in possession, pursuant to sections 1107(a) and 1008 of the Bankruptcy Code.

13. No request for the appointment of a trustee or examiner has been made in this Chapter 11 Case, nor have any committees been appointed or designated.

14. A description of the Debtor’s business, the reasons for commencing this Chapter 11 Case, the relief sought from this Court, and the facts and circumstances supporting this motion are set forth in the Declarations.

REQUEST FOR EMERGENCY CONSIDERATION

15. Pursuant to Bankruptcy Local Rule 9013-1(i) and Bankruptcy Rule 6003, the Debtor requests emergency consideration of this Motion. Bankruptcy Rule 6003 provides that the relief requested in this Motion may be granted if the “relief is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003. As discussed in detail below and in the Declarations, any delay in granting the relief requested could hinder the Debtor’s operations and cause immediate and irreparable harm. As such, the Debtor believes that emergency consideration is necessary and requests that this Motion be heard at the Debtor’s first day hearings.

OVERVIEW OF THE DEBTOR’S MARKETING EFFORTS TO DATE

16. On or about June 21, 2018, the Debtor engaged Hammond Hanlon Camp, LLC (“*H2C*”) to, among other things: (a) identify opportunities for a transaction; (b) advise the Debtor concerning opportunities for a transaction; and (c) as appropriate, participate on the Debtor’s behalf in negotiations concerning a transaction.

17. Upon its engagement, H2C undertook a robust marketing process to solicit offers for a transaction for the sale of the Proposed Purchased Assets.

18. In consultation with the Debtor and the Debtor's professionals, H2C developed marketing materials generally describing the Proposed Purchased Assets and the Debtor's operations (the "*Offering Memorandum*").

19. Subsequently, the Offering Memorandum was provided to approximately thirty-six (36) entities and persons H2C had identified as entities or persons that may have an interest in purchasing all or some portion of the Proposed Purchased Assets.

20. As a result, twenty (20) interested parties requested confidentiality agreements, with twelve (12) interested parties executing confidentiality and nondisclosure agreements with the Debtor and being given access to extensive diligence information.

21. From July 2018 through the Petition Date, various of the twelve (12) parties in interest that executed confidentiality and nondisclosure agreements conducted diligence regarding the Proposed Purchased Assets and Debtor's operations.

22. As a result, the Debtor received four (4) "expressions of interest" or other similar documents, each containing varying levels of specificity and conveying varying levels of actual interest in pursuing a potential transaction.

NEGOTIATIONS REGARDING THE PROPOSED PURCHASED ASSETS

23. Having received expressions of interest, the Debtor and Debtor's professionals engaged in due diligence and negotiations for the sale or other transaction involving the Proposed Purchased Assets and Debtor's operations.

24. At all times, the Debtor has negotiated at arm's length and in good faith with all parties that submitted an expression of interest, while all parties were represented by competent counsel.

25. At no time has any party sought to take unfair advantage of the Debtor or any other party with which the Debtor has had discussions regarding the potential purchase of the Proposed Purchased Assets.

26. Similarly, at no time has any party engaged in any fraudulent or otherwise improper purpose with respect to the potential purchase of the Proposed Purchased Assets or negotiations regarding the same.

27. At this juncture, despite the best efforts of the Debtor and all parties involved, negotiation and finalizing of an asset purchase agreement for the Proposed Purchased Assets is ongoing.

28. The Debtor and potential purchasers for the Proposed Purchased Assets continue to negotiate, among other things, certain bid protections—including a break-up fee and expense reimbursement—which are necessary to induce a potential purchaser to execute a stalking horse purchase agreement and subject its offer to higher or otherwise better offers—and the scope of assets and liabilities to be purchased and assumed by the potential purchaser.

29. Based upon the extensive negotiations between the Debtor and purchasers interested in some or all of the Proposed Purchased Asset, and considering the Debtor's extensive marketing process, the Debtor, in consultation with its advisors, has determined that the continued marketing of the Proposed Purchased Assets (with the desire to enter into one or more stalking horse purchase agreements for all or a portion of the Proposed Purchased Assets) is the best and most efficient way to maximize the value of the Proposed Purchased Assets for the Debtor, its estate, creditors of the Debtor's estate, and all parties in interest.

30. Given the significant marketing efforts undertaken and significant time spent negotiating with potential purchasers, the Debtor seeks authority to proceed with a bidding and

auction process, in order to potentially enter into one or more stalking horse purchase agreements for all or a portion of the Proposed Purchased Assets, conduct a competitive bidding process for the sale of the Proposed Purchased Assets (which process would also serve to market-test any stalking horse purchase agreement(s) for all or a portion of the Proposed Purchased Assets), and sell, pursuant to and in accordance with the Bidding Procedures, the Proposed Purchased Assets.

31. Based upon the Debtor's reasonable business judgment, after consultation with the Debtor's various advisors, the Debtor believes the proposed process will maximize recoveries from the Proposed Purchased Assets for the Debtor, Debtor's estate, creditors of the Debtor's estate, and all parties in interest.

PROPOSED BIDDING PROCEDURES

32. To run a competitive process for the sale of the Proposed Purchased Assets, market-test any stalking horse purchase agreement, and ensure the Debtor obtains the highest or otherwise best offer for the Proposed Purchased Assets, the Debtor proposes to conduct an auction process and, to the extent one or more stalking horse purchase agreements is entered into, such stalking horse purchase agreement(s) would be subjected to higher or otherwise better offers.

33. If approved, the Bidding Procedures will allow the Debtor to solicit and identify bids from potential buyers that constitute the highest or otherwise best offer for all or a portion of the Proposed Purchased Assets.

34. A copy of the Bidding Procedures as proposed by the Debtor is attached as **Exhibit 1** to the Bidding Procedures Order.

35. A summary of certain pertinent terms of the Bidding Procedures are as follows:

a. Potential Bidders. To participate in the bidding process or otherwise be considered for any purpose under the Bidding Procedures, a person or entity interested in consummating a sale for any portion of the Proposed Purchased Assets (each, a "***Potential Bidder***") must deliver or have previously delivered an executed confidentiality agreement on terms acceptable to the Debtor (a "***Confidentiality Agreement***") and the most current

audited and latest unaudited financial statements (collectively, the “*Financials*”) of the Potential Bidder (or, if the Potential Bidder is an entity formed for the purpose of acquiring the Proposed Purchased Assets, (i) Financials of the equity holder(s) of the Potential Bidder or such other form of financial disclosure as is acceptable to the Debtor and its advisors, (ii) a written commitment acceptable to the Debtor and its advisors of the equity holder(s) of the Potential Bidder to be responsible for the Potential Bidder’s obligations in connection with the applicable sale, and (iii) copies of any documents evidencing any financing commitments necessary to consummate the transaction).

b. Qualified Bidders. A “*Qualified Bidder*” is a Potential Bidder: (i) whose Financials, or the Financials of its equity holder(s), as applicable, demonstrate the financial capability to consummate a sale for the Proposed Purchased Assets, as determined in the Debtor’s reasonable business judgment; and (ii) whose Bid (as defined below) is a Qualified Bid (as defined below). On or before the date that is one (1) Business Day after the Bid Deadline (defined below), the Debtor’s advisors will notify each Potential Bidder in writing whether such Potential Bidder is a Qualified Bidder, and shall provide a copy of each Qualified Bid to: (i) counsel to the Debtor’s senior secured lender and proposed DIP Lender (a) Vedder Price P.C., 222 North LaSalle Street, Chicago, IL 60601, Attn: Michael M. Eidelman (meidelman@vedderprice.com) and David L. Kane (dkane@vedderprice.com) and (b) Porter Hedges, LLP, 1000 Main Street, 36th Floor, Houston, TX 77002, Attn: John F. Higgins (jhiggins@porterhedges.com); (ii) counsel to the unsecured creditors’ committee (if one has been appointed); and (iii) counsel to any Stalking Horse Bidder. Any Stalking Horse Bidder shall be deemed a Qualified Bidder that has submitted a Qualified Bid at all times. For the avoidance of doubt, two or more Potential Bidders may submit a Bid for any or all of the Proposed Purchased Assets, provided that such Bids, when taken as a whole (collectively, a “*Joint Bid*”), are determined by the Debtor, in accordance with the Bidding Procedures, to constitute a Qualified Bid; provided, however, that any Joint Bid must comply with section 363(n) of the Bankruptcy Code and Potential Bidders must first seek the Debtor’s permission before they contact each other. In addition, any Potential Bidder may submit a Bid for any or all of the Proposed Purchased Assets, provided that such Bid is determined by the Debtor, in accordance with the Bidding Procedures, to constitute a Qualified Bid. If any Potential Bidder is determined by the Debtor not to be a Qualified Bidder, the Debtor will refund such Potential Bidder’s Deposit (as defined below) and all accumulated interest thereon, if any, the later of on or within three (3) Business Days after the Bid Deadline and the date the Debtor determines such Potential Bidder not to be a Qualified Bidder.

c. Provisions governing due diligence. Only Potential Bidders that have entered into a Confidentiality Agreement shall be eligible to receive due diligence information and access to the Debtor’s electronic data room and to additional non-public information regarding the Debtor. **No Potential Bidder will be permitted to conduct any due diligence without entering into a Confidentiality Agreement.** The Debtor will provide to each Potential Bidder that has entered into a Confidentiality Agreement reasonable due diligence information, as requested by such Potential Bidder in writing, as soon as reasonably practicable after such request, and the Debtor shall post all written due diligence provided to any Potential Bidder to the Debtor’s electronic data room. For all Potential Bidders (including any Stalking Horse Bidder), the due diligence period will end on the Bid

Deadline and subsequent to the Bid Deadline the Debtor shall have no obligation to furnish any due diligence information. The Debtor shall not furnish any confidential information relating to the Proposed Purchased Assets, the Debtor's liabilities, or the sale of any or all of the Proposed Purchased Assets ("**Confidential Sale Information**") to any person, except to a Potential Bidder that has entered into a Confidentiality Agreement or to such Potential Bidder's duly-authorized representatives, in each case, to the extent provided in the applicable Confidentiality Agreement. The Debtor and its advisors shall coordinate all reasonable requests from Potential Bidders for additional information and due diligence access; provided that the Debtor may decline to provide such information to Potential Bidders who, at such time and in the Debtor's reasonable business judgment 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 of all or a portion of the Proposed Purchased Assets. The Debtor also reserves the right to withhold from Potential Bidders any diligence materials that the Debtor determines are sensitive or otherwise not appropriate for disclosure to a Potential Bidder, who the Debtor determines is a competitor of the Debtor or is affiliated with any competitor of the Debtor. Neither the Debtor nor its representatives shall be obligated to furnish information of any kind whatsoever to any person that is not approved by the Debtor as a Potential Bidder. All due diligence requests shall be directed to Tyler Brasher (tbrasher@hcmpllc.com) and Anthony Jordan (ajordan@hcmpllc.com).

d. Provisions governing Qualified Bids. A proposal, solicitation, or offer (each, a "**Bid**") by a Potential Bidder that is submitted in writing and satisfies each of the following requirements (collectively, the "**Bid Requirements**"), as determined by the Debtor in its reasonable business judgment shall constitute a "**Qualified Bid.**" The Bid Requirements are as follows:

i. **Assets.** Each Bid must provide for the purchase of all or a portion of the Proposed Purchased Assets, and must clearly state (A) which Proposed Purchased Assets the Potential Bidder is offering to purchase and (B) whether the Potential Bidder intends to operate all or a portion of the Debtor's business as a going concern, or to liquidate the business.

ii. **Assumption of liabilities.** Each Bid must expressly identify the liabilities it proposes to (A) assume or (B) satisfy with cash consideration, including Cure Costs.

iii. **Purchase Price.** Each Bid must clearly set forth the purchase price to be paid (the "**Purchase Price**"). The Bid must propose a Purchase Price for all or a portion of the Proposed Purchased Assets, including any assumption of liabilities, that has a value that equals or exceeds the sum of the following (a "**Minimum Bid**"): (i) the net value to the Debtor's estate provided by any applicable stalking horse purchase agreement; (ii) the amount of any applicable Bid Protections; and (iii) \$100,000; provided, however, in the event that a Bid is for a combination of Proposed Purchased Assets different from those set forth in any applicable stalking horse purchase agreement, such consideration shall reasonably represent a premium, as determined by the Debtor, to an approximate allocation of the applicable stalking horse purchase agreement; provided, further, that in

determining the value of any such Bid, the Debtor will not be limited to evaluating the dollar value of the consideration but may also consider other factors, including, without limitation, the speed, certainty, and value of the proposed transaction. Subject to the immediately preceding sentence, the Purchase Price contained in a Bid may be structured in whatever form the Potential Bidder desires (e.g., a Potential Bidder may propose an all cash Bid).

iv. **Deposit.** With a Bid, a Potential Bidder must submit by wire transfer of immediately available funds, a cash deposit in the amount equal to Two Hundred Thousand Dollars (\$200,000), to be held in a noninterest-bearing escrow account to be identified and established by the Debtor (the “*Deposit*”).

v. **Same or better terms.** Each Bid must be on terms that are not more burdensome to the Debtor than the terms of any applicable stalking horse purchase agreement, as determined by the Debtor in its business judgment. Each Bid must include duly executed, non-contingent transaction documents necessary to effectuate the sale contemplated by the Bid and shall include a schedule of executory contracts and unexpired leases proposed to be assumed by the Debtor and assigned and sold to the Potential Bidder (“*Assumed Contracts*”), and a copy of the purchase agreement representing the Bid clearly marked to show all changes requested by the Potential Bidder, including those related to the respective Purchase Price and assets to be acquired by such Potential Bidder, as well as all other material documents integral to such bid and a written commitment demonstrating to the satisfaction of the Debtor that the Potential Bidder will be able to close the transaction proposed in its Bid on the terms and conditions set forth therein (the “*Qualified Bid Documents*”).

vi. **Contingencies; No financing or diligence outs.** A Bid shall not be conditioned on (A) obtaining financing, (B) shareholder, board of directors, or other internal approval, or (C) the outcome or completion of a due diligence review by the Potential Bidder. Notwithstanding the foregoing, a Bid may be subject to (Y) the accuracy at the closing of the sale of specified representations and warranties or (Z) the satisfaction at the closing of the sale of specified conditions, which shall not be more burdensome to the Debtor, as determined by the Debtor, than those set forth in the stalking horse purchase agreement.

vii. **Identity.** Each Bid must fully disclose the identity of each entity that will be bidding or otherwise participating in connection with such Bid (including each equity holder or other financial backer of the Potential Bidder if such Potential Bidder is an entity formed for the purpose of consummating a sale of the Proposed Purchased Assets), and the complete terms of any such participation. Under no circumstances shall any undisclosed principals, equity holders, or financial backers be associated with any Bid. Each Bid must also include contact information for the specific persons and counsel whom the Debtor and its advisors should contact regarding such Bid. Each Bid must also disclose any past or present connections or agreements with the Debtor, any Stalking Horse Bidder, any other Potential Bidder

or Qualified Bidder and its affiliates, and/or any officer or director of the foregoing (including any current officer or director of the Debtor).

viii. **Demonstrated financial capacity.** A Potential Bidder must have, in the Debtor's reasonable business judgment, the necessary financial capacity to consummate the proposed transactions required by its Bid and provide adequate assurance of future performance under all Assumed Contracts to be assumed by such Bid. Each Bid must be accompanied by reasonable evidence of the Potential Bidder's ability to operate the business related to the applicable Proposed Purchased Assets and include a packet of information, including financial information that will be provided to the Contract Counterparties sufficient to demonstrate adequate assurance of future performance.

ix. **Committed financing.** To the extent that a Bid is not accompanied by evidence of the Potential Bidder's capacity to consummate the sale set forth in its Bid with cash on hand, each Bid must include executed unconditional committed financing from a qualified source documented to the satisfaction of the Debtor, which demonstrates that the Potential Bidder has received sufficient debt and/or equity funding commitments to satisfy the Potential Bidder's Purchase Price and other obligations under its Bid. Such funding commitments or other financing must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions acceptable to the Debtor.

x. **Binding and irrevocable.** A Potential Bid must include a signed writing stating that: (A) the Potential Bid is irrevocable until two (2) Business Days after the closing of the sale to a person or entity other than the Potential Bidder; and (B) the Potential Bidder agrees to serve as a Backup Bidder upon the terms and conditions set forth in the Bidding Procedures, if such Potential Bidder is not a Successful Bidder.

xi. **Expenses; Disclaimer of fees.** Each Potential Bid (other than any stalking horse purchase agreement) must disclaim any right to receive a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation or bid protection. For the avoidance of doubt, no Potential Bidder (other than any Stalking Horse Bidder) will be permitted to request, or be granted by the Debtor, at any time, whether as part of the Auction or otherwise, a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation or bid protection, and by submitting its Bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis, including under section 503(b) of the Bankruptcy Code.

xii. **Authorization.** Each Bid must contain evidence that the Potential Bidder has obtained authorization or approval from its board of directors (or a comparable governing body acceptable to the Debtor) with respect to the submission of its Bid and the consummation of the transactions contemplated in such Bid.

xiii. **As-Is, Where-Is.** Each Bid must include a written acknowledgement and representation that the Potential Bidder: (A) has had an opportunity to conduct any and all due diligence regarding the Proposed Purchased Assets prior to submitting the Bid; (B) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Proposed Purchased Assets in making its Bid; and (C) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, regarding the Proposed Purchased Assets or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Bid.

xiv. **Adherence to Bidding Procedures.** By submitting its Bid, each Potential Bidder is agreeing to abide by and honor the terms of the Bidding Procedures and agrees not to submit a Bid or seek to reopen the Auction after conclusion of the Auction. Each Bid must expressly state that the Potential Bidder agrees to serve as a Backup Bidder (as defined below) if such bidder's Qualified Bid is selected as the next highest or otherwise next best bid after the Successful Bid.

xv. **Regulatory Approvals and Covenants.** A Bid must set forth each regulatory and third-party approval needed to consummate the transaction contemplated by such Bid and the time period within which the Potential Bidder expects to receive such regulatory and third-party approvals (and in the case that receipt of any such regulatory or third-party approval is expected to take more than thirty (30) days following the Bid Deadline, those actions the Potential Bidder will take to ensure receipt of such approvals as promptly as possible). A Bid must also state that all necessary filings under applicable regulatory, antitrust, and other laws will be made and that payment of the fees associated therewith shall be made by the Potential Bidder.

xvi. **Consent to Jurisdiction.** Each Potential Bidder must submit to the jurisdiction of this Court and waive any right to a jury trial in connection with any disputes relating to Debtor's qualification of Bids, the Auction, the construction and enforcement of the Bidding Procedures, the sale documents, and the closing of the sale, as applicable.

xvii. **Bid Deadline.** Each Bid must be transmitted via email (in .pdf or similar format) so as to be **actually received** on or before **4:00 p.m. (prevailing Central Time) on December 16, 2019** (the "***Bid Deadline***") by the Bid Notice Parties.

- e. **Credit Bidding.** Notwithstanding anything else contained in the Bidding Procedures, the DIP Lender shall have the right, subject in all respects to the Bankruptcy Code and other applicable law, to credit bid all or any portion of their allowed secured claims at the Auction pursuant to Bankruptcy Code section 363(k) or other applicable law, in accordance with the applicable provisions of the documents governing such debt obligations; provided that such Bid otherwise complies with these Bidding Procedures, the Bankruptcy Code and

such credit bidding rights shall be subject to entry of a final postpetition financing order and any challenge rights preserved therein.

f. Option to Select Stalking Horse with Bid Protections. Subject to the provisions set forth in the Bidding Procedures, the Debtor, in consultation with any statutory committee and DIP Lender (together, the “*Consultation Parties*”), is authorized to designate one or more Stalking Horse Bidders and provide Bid Protections, subject to and in accordance with the Stalking Horse Objection Process (as defined below). If the Debtor designates one or more Stalking Horse Bidders, it must do so before December 4, 2019 (the “*Deadline to Designate Stalking Horse Bidder*”). Absent further order of the Court, the Stalking Horse Agreement shall limit the Break-up Fees to an amount no greater than 3% of the Stalking Horse Bidder’s initial Purchase Price and expense reimbursement in an amount not to exceed \$250,000 (together with the Minimum Overbid Increment, the “*Bid Protections*”). In the event that the Debtors determine that the Bid Protections must exceed the amounts set forth herein, the Debtors shall request that the Court hold a hearing on the approval of any such greater Bid Protections on an expedited basis. In the event that the Debtor selects one or more parties to serve as a Stalking Horse Bidder, upon such selection, the Debtor shall provide, to all parties on the Rule 2002 List, all parties expressing an interest in the Proposed Purchased Assets and all parties holding liens on such Proposed Purchased Assets, two (2) business days’ notice of and an opportunity to object to the designation of such Stalking Horse Bidder and disclosure of the Bid Protections set forth in the Stalking Horse Agreement (the “*Stalking Horse Objection Period*”), and absent objection, the Debtor shall be authorized to enter into the asset purchase agreement with the applicable Stalking Horse Bidder and grant any of the Bid Protections included in such Stalking Horse Bidder’s asset purchase agreement without further order of the Court. To the extent necessary, the Debtor’s right to seek the Court’s approval of one or more Stalking Horse Bidders, with notice and a hearing, are preserved by the Bidding Procedures. Any Stalking Horse Agreement executed by the Debtor and the transactions contemplated thereby will be deemed a Qualified Bid for all purposes, and any party to a Stalking Horse Agreement executed by the Debtor will be deemed to be Qualified Bidder. If an objection is filed during the Stalking Horse Objection Period, Court approval will be necessary to provide Bid Protections to the Stalking Horse Bidder, which approval may be sought prior to the Auction or at the Sale Hearing (collectively, the “*Stalking Horse Objection Process*”).

g. Minimum Bid Increments. During the Auction, the minimum bid increments shall be One Hundred Thousand Dollars (\$100,000). When bidding, any Stalking Horse Bidder shall be entitled to a credit in an amount equal to any applicable Bid Protections.

h. Modification of the Bidding Procedures. Without prejudice to the rights of any Stalking Horse Bidder under the terms of any applicable stalking horse purchase agreement, the Debtor reserves its rights to modify the Bidding Procedures in its reasonable business judgment in any manner that will best promote the goals of the bidding process, or impose, at or prior to the Auction, additional customary terms and conditions on the sale of the Proposed Purchased Assets, including, without limitation: (i) extending the deadlines set forth in the Bidding Procedures; (ii) adjourning the Auction at the Auction and/or adjourning the Sale Hearing in open court without further notice; (iii) adding procedural rules that are reasonably necessary or advisable under the circumstances for conducting the

Auction (including, without limitation, time limits for the submission of bids or changing the floor of bids); (iv) canceling the Auction; and (v) rejecting any and all Bids.

i. Provisions governing closing with a Backup Bidder. Notwithstanding anything in the Bidding Procedures to the contrary, if an Auction is conducted, the Qualified Bidder with the next-highest or otherwise second-best Bid at the Auction for any portion of or all of the Proposed Purchased Assets, as determined by the Debtor in its discretion (the “**Backup Bid**”), shall be required to serve as a backup bidder (the “**Backup Bidder**”), and each Qualified Bidder shall agree and be deemed to agree to be the Backup Bidder if so designated by the Debtor. The identity of the Backup Bidder(s) and the amount and material terms of the Backup Bid(s) shall be the highest or otherwise best bid submitted by the Backup Bidder and announced by the Debtor at the conclusion of the Auction at the same time the Debtor announces the identity of the Successful Bidder(s). A Backup Bidder shall be required to keep its Bid (or if the Backup Bidder submits one or more Overbids at the Auction, its final Overbid) open and irrevocable, until the closing of the sale of the applicable Proposed Purchased Assets with the Successful Bidder(s) for such Proposed Purchased Assets. A Backup Bidder’s Deposit shall be held in escrow until the closing of such transaction with the Successful Bidder(s) and shall thereafter be returned within five (5) Business Days. If a Successful Bidder fails to consummate the approved transactions contemplated by its Successful Bid, the Debtor may select the applicable Backup Bidder as the Successful Bidder, and such Backup Bidder shall be deemed a Successful Bidder for all purposes. The Debtor will be authorized, but not required, to consummate all transactions contemplated by the Backup Bid without further order of the Court or notice to any party (Contract Counterparties shall receive notice of the closing with the Backup Bidder). In such case, the defaulting Successful Bidder’s Deposit shall be forfeited to the Debtor. The Debtor specifically reserves the right to seek all available remedies against any defaulting Successful Bidder, including with respect to specific performance.

j. Provisions governing the Auction. If the Debtor receives one or more Qualified Bids, the Debtor will conduct an auction (the “**Auction**”) on **December 18, 2019 commencing at 10:00 a.m. (prevailing Central time)** at a location within ten (10) miles of this Court or the Debtor’s principal place of business as designated by the Debtor upon written notice to all parties entitled to participate in the auction under the Bidding Procedures). Prior to and during the Auction, each Qualified Bidder participating at the Auction will be required to confirm that it has not engaged in any collusion with respect to the bidding or otherwise in connection with the sale of the Proposed Purchased Assets. The Auction will be conducted openly and all creditors will be permitted to attend. Each round of bidding at the Auction will be transcribed.

36. In lieu of a Stalking Horse Agreement at this time, the Debtor has prepared a template Asset Purchase Agreement (with certain ancillary agreements thereto) for parties interested in acquiring the Proposed Purchased Assets. The template Asset Purchase Agreement is attached as **Exhibit 2** to the Bidding Procedures Order. The Debtor intends to provide copies of

the template Asset Purchase Agreement to parties interested in acquiring the Proposed Purchased Assets and designate their interest in submitting a Bid. As set forth in the Bidding Procedures, each Bid must be based on the template Asset Purchase Agreement and must include a markup showing any changes to the template Asset Purchase Agreement.

37. As proposed, the Bidding Procedures are designed to permit a fair, efficient, competitive, and value-maximizing auction process for the Proposed Purchased Assets, in order to confirm that any Successful Bid is the highest or otherwise best offer for the Proposed Purchased Assets.

38. The Bidding Procedures are intended to provide potential bidders with ample notice and time to conduct due diligence to submit binding bids in advance of the Sale Hearing.

39. By undertaking the marketing and auction process contemplated by the Bidding Procedures, the Debtor is seeking to balance the Debtor's ability to further market the Proposed Purchased Assets and market-test any stalking horse purchase agreement to the market, the Debtor's interests in obtaining the highest or otherwise best price in connection with a sale of the Proposed Purchased Assets, any Stalking Horse Bidder's willingness to provide a floor price for the Proposed Purchased Assets, and any purchaser's or Stalking Horse Bidder's desire to consummate a sale of the Proposed Purchased Assets.

40. The Bidding Procedures were designed in recognition of and in order to comply with the Debtor's fiduciary obligations to maximize the value of the Proposed Purchased Assets and, accordingly, do not in any way impair the Debtor's ability to consider all offers to purchase all or a portion of the Proposed Purchased Assets.

41. Moreover, the Bidding Procedures and schedule proposed in the Bidding Procedures are designed to establish a clear and transparent process for the solicitation, receipt,

and evaluation of bids on a timeline that permits the Debtor to timely consummate a sale of the Proposed Purchased Assets.

PROPOSED FORM AND MANNER OF AUCTION AND SALE HEARING NOTICE

42. Not later than two (2) business days after entry of the Bidding Procedures Order, the Debtor will cause the Notice of Auction and Sale Hearing (the “*Notice of Auction and Sale Hearing*”), substantially in the form attached to the Bidding Procedures Order as **Exhibit 3**, to be posted on the case website maintained by the Debtor’s claims and noticing agent, Epiq Corporate Restructuring, LLC (“*Epiq*”) and served on the following parties or their respective counsel, if known (the “*Notice Parties*”): (a) the Office of the United States Trustee for the Southern District of Texas; (b) the holders of the twenty (20) largest unsecured claims against the Debtor; (c) the Debtor’s secured creditors; (d) counsel to any statutory committee appointed in this case; (e) the Office of the United States Attorney’s Office for the Southern District of Texas; (f) the Internal Revenue Service; (g) the Office of the Attorney General for the State of Texas; (h) counsel to any Stalking Horse Bidder; (i) all parties who have expressed a written interest in some or all of the Debtor’s assets; (j) all known holders of liens, encumbrances, and other claims secured by the Debtor’s assets; (k) each governmental agency that is an interested party with respect to the proposed sale of the Debtor’s assets; (l) all known creditors of the Debtor; and (m) all parties that have requested or that are required to receive notice under Rule 2002 of the Bankruptcy Rules.

43. In addition, as soon as practicable after entry of the Bidding Procedures Order, the Debtor will publish the Notice of Auction and Sale Hearing, with any modifications necessary for ease of publication, once in each of the *Houston Chronicle* and *The Huntsville Item*, to provide notice to any other potential interested parties.

44. The Debtor submits that the Notice of Auction and Sale Hearing is reasonably calculated to provide all interested parties with timely and proper notice of the proposed sale,

including the date, time, and place of the Auction (if one is held), the Bidding Procedures, and the dates and deadlines set forth in the Bidding Procedures.

45. Accordingly, the Debtor requests that the form and manner of the Notice of Auction and Sale Hearing be approved and that this Court determine that no other or further notice of the Auction or other actions under the Bidding Procedures is necessary or required.

PROPOSED ASSUMPTION AND ASSIGNMENT PROCEDURES

46. In connection with the Bidding Procedures and proposed sale of substantially all assets of the Debtor's estate, the Debtor anticipates it will assume and sell and assign to one or more Successful Bidders certain of the Debtor's executory contracts or unexpired leases.

47. To effect the assumption and assignment of executory contracts and unexpired leases in connection with the Bidding Procedures, the Debtor proposes the Assumption and Assignment Procedures notifying Contract Counterparties (as defined below) of proposed cure amounts, in the event the Debtor decides to assume and assign executory contracts or unexpired leases.

I. Notice of Potential Assumption and Assignment.

48. Not later than five (5) business days after entry of the Bidding Procedures Order (such date, the "*Assumption and Assignment Service Date*"), the Debtor shall file with this Court and serve by United States mail, postage prepaid, electronic mail, or overnight delivery the notice attached to the Bidding Procedures Order as **Exhibit 4** (the "*Notice of Potential Assumption*") on the Notice Parties and all non-debtor parties to executory contracts and unexpired leases (such parties, the "*Contract Counterparties*"), which Notice of Potential Assumption shall include a schedule specifying: (a) each of the Debtor's executory contracts and unexpired leases that may be assumed and assigned in connection with the sale process; (b) the name of the Contract Counterparty for each contract or lease; (c) the proposed amount necessary, if any, to cure all

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monetary defaults under each contract or lease (the “*Cure Costs*”); and (d) the deadline by which the Contract Counterparties must file an objection to the Cure Costs or otherwise with respect to any issue respecting the assumption and assignment of the applicable executory contract or unexpired lease (such objection, an “*Assumption and Assignment Objection*”).

49. All Assumption and Assignment Objections must: (a) be in writing; (b) comply with the applicable provisions of the Bankruptcy Rules, Local Rules, and any order governing the administration of this Chapter 11 Case; (c) state with specificity the nature of the objection and, if the objection is with respect to the Cure Costs, identify the cure amount alleged to be owed, together with any applicable and appropriate documentation; and (d) be filed with this Court and served so as to be **actually received** no later than **December 12, 2019 at 4:00 p.m. (prevailing Central time)** (the “*Assumption and Assignment Objection Deadline*”).

50. If a Contract Counterparty files an Assumption and Assignment Objection, such Assumption and Assignment Objection shall be resolved at the final hearing to approve the sale of substantially all assets of the Debtor’s estate.

II. Supplemental Notice Procedures.

51. In the event the Debtor discovers contracts inadvertently omitted from the initial schedule of executory contracts and unexpired leases potentially to be assumed and assigned, or if a Successful Bidder identifies other or additional executory contracts or unexpired leases such Successful Bidder desires to have assumed and assigned, the Debtor may, at any time after the Assumption and Assignment Service Date but before closing of a sale or sales of substantially all of the Debtor’s assets, supplement the initial schedule to add executory contracts or unexpired leases.

52. Any supplement to the Notice of Potential Assumption shall provide for an Assumption and Assignment Objection Deadline providing an objection period at least equal in

duration to the objection period provided by the original Notice of Potential Assumption, solely with respect to any executory contract or unexpired lease added to the supplemental Notice of Potential Assumption.

III. Notice of Actual Assumption and Assignment.

53. If a Contract Counterparty does not file and serve an Assumption and Assignment Objection in a manner consistent with the above requirements, and absent a subsequent order of this Court establishing an alternative Cure Cost, (a) the Cure Costs, if any, set forth in the Notice of Potential Assumption (or any supplement to the Notice of Potential Assumption) shall be controlling, notwithstanding anything to the contrary in any executory contract or unexpired lease, and (b) the Contract Counterparty shall be deemed to have consented to the assumption and assignment of the applicable executory contract or unexpired lease and the Cure Costs, if any, and forever shall be barred from objecting to the assumption and assignment of the applicable executory contract or unexpired lease and the applicable rights under such executory contract or unexpired lease.

54. No later than five (5) calendar days prior to the closing of a sale of any or all of the Proposed Purchased Assets, the Debtor shall serve a notice, substantially in the form attached to the Bidding Procedures Order as **Exhibit 5** (the “*Notice of Assumption and Assignment*”), identifying the executory contracts and unexpired leases that will be assumed and assigned to the Successful Bidder upon closing; provided, however, to the extent a counterparty to an executory contract or unexpired lease has filed an Assumption and Assignment Objection and such Assumption and Assignment Objection is not resolved at or before the Sale Hearing, the Debtor shall be permitted to serve a Notice of Assumption and Assignment with respect to such executory contracts or unexpired leases at such time as the Assumption and Assignment Objection is resolved.

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55. A Successful Bidder may determine to exclude any executory contract or unexpired lease at any time prior to the closing of a sale of substantially all assets of the Debtor's estate, notwithstanding such executory contract or unexpired leasing having been identified in a Notice of Potential Assumption.

56. As soon as practicable after any determination to exclude an executory contract or unexpired lease, the Debtor will notify the applicable Contract Counterparty, which notification may occur after the Sale Hearing or closing of the sale of substantially all assets of the Debtor's estate.

IV. Request for a Sale Hearing.

57. The Debtor requests that this Court schedule a hearing to approve the sale of the Proposed Purchased Assets pursuant to and in accordance with the Bidding Procedures (the "***Sale Hearing***").

58. The Debtor currently proposes December 19, 2019 for the Sale Hearing.

V. Proposed Objection Procedures.

59. Regardless of whether the Debtor conducts an auction, within one (1) business day of determining the Successful Bid(s) and Successful Bidder(s), the Debtor shall file on this Court's docket a notice setting forth the Successful Bidder(s), Backup Bidder(s), Successful Bid(s), and Backup Bid(s).

60. The Debtor requests this Court require all objections to the results of the sale process (a) be in writing, (b) be signed by counsel or *pro se* party, (c) conform to the requirements of the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (d) state with particularity the legal and factual basis for the objection, (e) be filed with this Court by no later than **12:00 p.m. (prevailing Central time) on December 19, 2019** (the "***Sale Objection Deadline***"), and (e) be served in accordance with the Local Rules **so as to be actually received** on or before the Sale

Objection Deadline by: (i) counsel to the Debtor: Waller Lansden Dortch & Davis, LLP, 511 Union Street, Suite 2700, Nashville, TN 37219, Attn: Blake D. Roth (blake.roth@wallerlaw.com); (ii) counsel to any Stalking Horse Bidder; (iii) counsel to Debtor's senior secured lender and proposed DIP Lender: (a) Vedder Price P.C., 222 North LaSalle Street, Chicago, IL 60601, Attn: Michael M. Eidelman (meidelman@vedderprice.com) and David L. Kane (dkane@vedderprice.com) and (b) Porter Hedges, LLP, 1000 Main Street, 36th Floor, Houston, TX 77002, Attn: John F. Higgins (jhiggins@porterhedges.com); (iv) counsel to any statutory committee; (v) the Office of the United States Trustee for the Southern District of Texas; and (vi) counsel to any Successful Bidder(s) and Backup Bidder(s) as identified in accordance with the Bidding Procedures (collectively, the "***Objection Notice Parties***").

61. The failure of any objecting person or entity to file an objection by the Sale Objection Deadline and in accordance with the procedures above should act as a bar to the assertion of any objection to the sale of the Proposed Purchased Assets and should be deemed to constitute consent to entry of an order approving the sale of the Proposed Purchased Assets and consummation of such sale, pursuant to section 363 of the Bankruptcy Code, and assumption, sale, and assignment of all executory contracts and unexpired leases, pursuant to sections 363 and 365 of the Bankruptcy Code.

BASIS FOR RELIEF

I. The proposed sale of the Proposed Purchased Assets is warranted under section 363 of the Bankruptcy Code.

62. When a sound business justification exists for a proposed transaction, authorization of a sale under section 363 of the Bankruptcy Code is appropriate. *See Institutional Creditors of Cont'l Air Lines, Inc. v. Cont'l Air Lines, Inc. (In re Cont'l Air Lines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986) ("[T]o satisfy its fiduciary duty to the debtor, creditors and equity holders, there

must be some articulated business justification for using, selling or leasing the property outside the ordinary course of business”); *In re 9 Houston LLC*, 578 B.R. 600, 610 (Bankr. S.D. Tex. 2017) (“[T]he debtor must articulate a sound business reason for the proposed sale and prove that the sale is in the best interest of the estate”) (citing *Cont’l Air Lines*, 780 F.2d at 1226).

63. Once a sound business justification is demonstrated, a presumption arises that the debtor acted on an informed basis, in good faith, and with an honest belief that the proposed transaction is in the best interests of the debtor and parties in interest. *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1990).

64. Similarly, upon articulating a valid business justification for a proposed transaction, courts should “give great deference to the substance of the directors’ decision and will not invalidate the decision, will not examine its reasonableness, and will not substitute its views for those of the board if the latter’s decision can be attributed to any rational business purpose.” *In re Global Crossing Ltd.*, 295 B.R. 726, 744 (Bankr. S.D.N.Y. 2003); *see also Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1990); *In re Johns Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (“Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.”); *In re Idearc Inc.*, 423 B.R. 138, 162 (Bankr. N.D. Tex. 2009) (“In the absence of a showing of bad faith or an abuse of business discretion,” a court will not alter a debtor’s business judgment, while analyzing a debtor’s decision to assume/reject contracts).

65. Here, the debtor has sound business justifications for the proposed sale of the Proposed Purchased Assets.

66. First, as set forth in the Declarations, the Debtor is insolvent and on an unsustainable financial path, and as a result commenced this case to facilitate the orderly sale of substantially all of its assets as a going concern.

67. Second, the proposed sale of the Proposed Purchased Assets pursuant to and in accordance with the Bidding Procedures will provide the best opportunity to maximize the value of the Debtor's assets for the benefit of all parties in interest, while simultaneously preserving the jobs of those employed by the Debtor and preserving an important health care asset for the city of Huntsville and Walker County.

68. Third, the Proposed Purchased Assets have been subjected to an extended and extensive marketing process prior to the filing of this motion and, pursuant to the Bidding Procedures, will be subjected to further marketing efforts, which provides the highest likelihood of culminating in the arm's length transaction for the sale of the Proposed Purchased Assets.

69. Accordingly, the Debtor submits that the proposed sale of the Proposed Purchased Assets pursuant to and in accordance with the Bidding Procedures represents the Debtor's sound exercise of its business judgment and should be approved.

II. Approval of the proposed sale is supported by additional factors.

70. Within this Circuit, when determining whether an adequate business justification supports a proposed sale of substantially all assets of a debtor, bankruptcy courts "should consider all salient factors pertaining to the proceeding," including: (a) the proportionate value of the assets to the estate as a whole; (b) the time elapsed since filing; (c) the likelihood a plan of reorganization will be proposed and confirmed in the near future; (d) the effect of the proposed transaction on future plans of reorganization; (e) the value to be obtained from the disposition of the assets proposed to sold; (f) which of the alternatives of use, sale, or lease is proposed by the debtor; and (g) whether the assets are increasing or decreasing in value. *Cont'l Air Lines*, 780 F.2d at 1226
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(citing *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2s 1063, 1071 (2d Cir. 1983)).

71. In addition to the foregoing factors, this Court has set forth the following additional factors a bankruptcy court may consider in connection with a proposed sale under section 363 of the Bankruptcy Code prior to confirmation of a plan of reorganization: (a) whether evidence exists supporting a need for speed; (b) whether the proceeding is sufficiently mature to assure due process; (c) whether the stalking horse asset purchase agreement is sufficiently straightforward to facilitate competitive bidding; (d) whether the proposed stalking horse purchaser is the only potential interested party; (e) whether the assets proposed to be sold have been aggressively marketed in an active market; (f) whether the fiduciaries in control of the debtor are truly disinterested; (g) whether the proposed sale includes substantially all assets of the debtor or is simply picking off the debtor's "crown jewel"; (h) whether the proposed stalking horse purchaser is demanding extraordinary protections; (i) how burdensome it would be to propose the sale as part of confirmation of a plan of reorganization; (j) who will benefit from the sale; (k) whether special adequate protection measures are necessary and possible; and (l) whether the hearing was a true adversary presentation and whether the integrity of the bankruptcy process is protected. *In re Gulf Coast Oil Corp.*, 404 B.R. 407, 422 (Bankr. S.D. Tex. 2009).

72. Finally, this Court recently revisited the factors articulated in *Continental Air Lines* and *Gulf Coast Oil*, articulated four additional factors: (a) whether the debtor has disclosed all terms of the proposed transaction; (b) if there is an objection, whether the objecting party can defeat any plan of reorganization proposed by the debtor that would contain the proposed transaction; (c) whether the debtor and proposed stalking horse purchaser negotiated at arm's

length; and (d) whether the proposed stalking horse purchaser has proceeded in good faith.” *In re 9 Houston LLC*, 578 B.R. 600, 616–18 (Bankr. S.D. Tex. 2017).

73. In this case, application of the foregoing factors weighs in favor of approving the proposed sale.

74. First, as set forth above and in the Declarations, the Debtor has extensively marketed the assets subject to the proposed transaction.

75. Second, as set forth above and in the Declarations, the Debtor is operating at a loss and will, in a relatively short time, exhaust the Debtor’s cash reserves and ability to borrow funds to support ongoing operations. If the Debtor does not proceed to a transaction with speed, the Debtor’s ability to maintain ongoing operations and sell its assets as a going concern diminish; and, if the Debtor’s assets are not sold at a going concern, the value of those assets is significantly decreased to the detriment of the Debtor, the Debtor’s estate, creditors, and other parties in interest.

76. Third, the Debtor’s process is sufficiently mature to assure that all constituents have been provided notice and provided due process. At all times relevant to the Debtor’s marketing and sale process, the District (the Debtor’s landlord) and the Debtor’s secured lender have been apprised of the Debtor’s attempts to find a strategic transaction to preserve an operating hospital in Huntsville, Texas. Moreover, the Debtor’s efforts at finding a strategic partner for a transaction like that proposed by this motion have been covered extensively by the press in Huntsville, Texas. Further, as set forth above, the Debtor and Debtor’s professionals have reached out to all parties identified as potentially interested purchasers of substantially all assets of the Debtor. Accordingly, all constituents have had ample notice of the Debtor’s process and intentions and, therefore, have had ample opportunity to participate.

77. Fourth, the proposed process will maximize value for the benefit of the Debtor's estate, creditors, and other parties in interest. While maximizing the value of the Debtor's assets by selling them as a going concern, a successful sale of the Proposed Purchased Assets will also serve to preserve jobs in the community and maintain an important health care asset for Huntsville, Texas.

78. Fifth, the parties in control of the Debtor are truly disinterested. In particular, no member of the Debtor's board has any economic or other interest in the completion of the transaction. Rather, each member of the Debtor's board is solely interested in achieving a result that is in the best interest of the Debtor's estate, its creditors, and other parties in interest.

79. In addition to the foregoing: (a) the proposed Bidding Procedures include substantially all assets of the Debtor and are not aimed at resulting in a transaction designed to purchase only the Debtor's "crown jewel," thereby leaving the Debtor burdened with underperforming or otherwise undesirable assets; (b) the Bidding Procedures are sufficiently straightforward to facilitate competitive bids by potentially interested parties; (c) the Bidding Procedures do not contemplate extraordinary protections, but rather request the ability to provide standard bid protections such as minimum bid requirements and a breakup fee; (d) the Debtor has disclosed all terms of the Bidding Procedures and will disclose all material terms of any proposed transaction; (e) the Debtor has at all times negotiated at arm's length with interested parties while each was represented by competent counsel and will continue to do so; and (f) all potentially interested purchasers have conducted themselves in good faith at all times during the course of the Debtor's marketing process.

80. As set forth above, the factors this Court and other courts within this circuit consider demonstrate a sound business justification exists for approval of the sale of substantially all assets of the Debtor.

III. The Bidding Procedures are fair, designed to maximize the value received for the Proposed Purchased Assets and are consistent with the debtor's reasonable business judgment.

81. The Bidding Procedures are consistent with the Debtors' reasonable business judgment and should be approved. Courts have made clear that a debtor's business judgment is entitled to substantial deference. *See, e.g., Stanizale v. Nachtoml (In re Tower Air, Inc.)*, 416 F.3d 229, 234 (3d Cir. 2005) (indicating the "business judgment rule creates a presumption that directors making a business decision, not involving self-interest, act on an informed basis, in good faith and in the honest belief that their actions are in the corporation's best interest" (quotations omitted)); *In re TM Vill., Ltd.*, No. 18-32770-BJH, 2019 Bankr. LEXIS 651 (Bankr. N.D. Tex. Feb. 28, 2019) ("Great judicial deference is given to the debtor's exercise of business judgment.") (citing *In re Gulf States Steel*, 285 B.R. 497, 516 (Bankr. N.D. Ala. 2002) (citing *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998)). To that end, courts recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and therefore are appropriate in the context of bankruptcy sales. *See, e.g., Official Comm. Of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 659 (S.D.N.Y. 1992), appeal dismissed, 3 F.3d 49 (2d Cir. 1993) (noting that such procedures "encourage bidding and to maximize the value of the debtor's assets"); *see also In re Tridimension Energy, L.P.*, No. 10-33565-SGJ, 2010 Bankr. LEXIS 4763 (N.D. Tex. Oct. 28, 2010) (where the court entered a bid procedures order stating that: "The bid procedures . . . are designed to maximize the value of the Debtors' estates.").

82. The Debtor believes that the Bidding Procedures are appropriate under Bankruptcy Code sections 105 and 363, to ensure that the bidding process is fair and reasonable and will yield the maximum value for the estate and creditors. The currently proposed Bidding Procedures will establish parameters pursuant to which the value of the Proposed Purchased Assets may be fully tested at the Auction and ensuing Sale Hearing. Such procedures will increase the likelihood that the Debtor receives the greatest possible consideration for the Proposed Purchased Assets because they will encourage participation by financially capable bidders who demonstrate the ability to close a transaction. The Bidding Procedures also provide potential bidders with sufficient notice and an opportunity to acquire information necessary to submit a timely and informed bid. Further, the Debtor has instituted mechanisms to ensure an open and robust bidding process at the Auction.

83. Accordingly, for all of the foregoing reasons, the Debtor believes that the Bidding Procedures (i) will encourage robust bidding for the Proposed Purchased Assets, (ii) are consistent with other procedures previously approved by courts in this District, and (iii) are appropriate under the relevant standards governing auction proceedings and bidding incentives in bankruptcy proceedings and should be approved.

IV. The Bidding Procedures are fair, designed to maximize the value received for the Proposed Purchased Assets and are consistent with the debtor's reasonable business judgment.

84. By this Motion, the Debtor reserves the right to enter into a Stalking Horse Agreement, as an exercise of its business judgment and in accordance with the Bidding Procedures, and to offer Bid Protections in connection therewith. Specifically, the Debtor requests authority to offer any Stalking Horse Bidder some or all of the following Bid Protections: (i) a break-up fee; (ii) an expense reimbursement; and/or (iii) a minimum overbid increment. The Debtor respectfully reserves the right to seek approval of a break-up fee and expense reimbursement in excess of the Bid Protections on an expedited basis.

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85. Approval of these forms of Bid Protections in connection with the sale of significant assets pursuant to Bankruptcy Code section 363 has become established practice in chapter 11 cases. *See, e.g., Calpine Corp. v. O'Brien Envtl. Energy, Inc. (In re O'Brien Envtl. Energy, Inc.)*, 181 F.3d 527 (3d Cir. 1999); *Integrated Res., Inc.*, 147 B.R. at 656–57 (noting that overbid procedures and break-up fee arrangements that have been negotiated by a debtor are to be reviewed according to the deferential “business judgment” standard, under which such procedures and arrangements are “presumptively valid”); *In re 995 Fifth Ave. Assocs., L.P.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (holding that the business judgment standard protects breakup fees and other contractual provisions negotiated in good faith).

86. The Debtor believes that the Bid Protections increase the likelihood of a sale to a contractually committed bidder at a price the Debtor believes is fair, while providing the Debtor with an opportunity to enhance the value to its estate through an auction process. Without the Bid Protections, a Stalking Horse Bidder may not be willing to enter into a Purchase Agreement. The amount of the Bid Protections are reasonable and appropriate in light of the size and nature of the sale transaction and the efforts that likely will be expended by a Stalking Horse Bidder. Payment of the Bid Protections also will not diminish the value of Debtor’s estate, as the Debtor does not intend to terminate the Purchase Agreement and pay the Bid Protections, unless doing so would permit the Debtor to accept a better Bid.

V. The Proposed Purchased Assets may be sold free and clear.

87. Pursuant to section 363(f) of the Bankruptcy Code, a debtor may sell property of the estate free and clear of any interest in such property of an entity other than the estate, if: (a) applicable nonbankruptcy law permits sale of such property free and clear of such interest; (b) such entity consents; (c) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; (d) such interest is in bona fide

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dispute; or (e) 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).

88. In addition, pursuant to section 105(a) of the Bankruptcy Code, this 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).

89. In this case, the Debtor submits that the proposed sale of the Proposed Purchased Assets satisfies one or more of the requirements of section 363(f) of the Bankruptcy Code.

90. With respect to the Debtor's accounts receivable, the proceeds of the proposed sale will pay in full all amounts due and owing to the lender secured by the Debtor's accounts receivable.

91. With respect to the Debtor's remaining assets, the Debtor believes that any interest in the Debtor's personal property is subject to a bona fide dispute or that such party could otherwise be compelled to accept a monetary satisfaction of its claims.

92. Further, the Debtor will have provided notice to any and all persons who may hold an interest in the Proposed Purchased Assets, such persons will have had an opportunity to object to the relief sought in this motion, and, in the absence of an objection, each such person will be deemed to have consented to the relief sought in this motion.

93. As a result, the Debtor submits that section 363(f) of the Bankruptcy Code is (or will be) satisfied and this Court may approve the sale of the Proposed Purchased Assets free and clear of all liens, claims, interests, and encumbrances.

VI. The proposed sale of the Proposed Purchased Assets has been proposed in good faith and without collusion.

94. Section 363(m) of the Bankruptcy Code provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does

not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m).

95. Thus, if a buyer purchases assets in good faith, section 363(m) of the Bankruptcy Code protects the buyer from the risk that it will lose its interest in the purchased assets if the order approving the sale is reversed on appeal. *Newco Energy v Energytec, Inc. (In re Energytec, Inc.)*, 739 F.3d 215, 219 (5th Cir. 2013) (explaining section 363(m) permits a buyer to offer fair value for estate property, by providing good faith buyers a final order and thereby removing the risks of delay caused by litigation); *Gilchrist v. Westcott (In re Gilchrist)*, 891 F.2d 559, 560 (5th Cir. 1990) (stating where purchaser acts in good faith, section 363(m) protects an authorized sale from later modification on appeal).

96. While “good faith” is not defined, courts within this Circuit have explained that good faith is demonstrated through the integrity of the purchaser’s conduct during the course of the sale proceedings and, where such integrity is lacking, a purchaser may not receive a good faith finding. *In re TMT Procurement Corp.*, 764 F.3d 512, 521 (5th Cir. 2014) (explaining a good faith purchaser is one who purchases for value, in good faith, and without notice of adverse claims and noting that misconduct that destroys good faith involves fraud, collusion between purchaser and other parties, or an attempt to take unfair advantage of other bidders); *see also In re Hereford Biofuels, L.P.*, 466 B.R. 841, 860 (Bankr. N.D. Tex. 2012) (same); *In re Camp Arrowhead, Ltd.*, 429 B.R. 546, 550 (W.D. Tex. 2010) (same).

97. In this case, the parties expressing an interest in all or a portion of the Proposed Purchased Assets have at all times negotiated with the Debtor in good faith and at arm’s length, any purchase agreement will be the result of good faith, arm’s length negotiations during which

the Debtor and any purchaser were represented by competent counsel, the consideration being provided for the Proposed Purchased Assets will be subjected to higher or otherwise better offers, and there is no indication of any fraud, collusion, or other inappropriate conduct by the Debtor and any potential purchasers (whether involving other parties, bidders, or otherwise).

98. As a result, the Debtor believes any Successful Bidder(s) will be entitled to the protections set forth in section 363(m) of the Bankruptcy Code.

VII. Assumption and assignment of executory contracts and unexpired leases is justified.

99. Pursuant to section 365(a) of the Bankruptcy Code, subject to Court approval, a debtor may assume or reject any executory contract or unexpired lease of the debtor. 11 U.S.C. § 365(a).

100. When considering whether to approve assumption or rejection under section 365(a) of the Bankruptcy Code, the question is whether the assumption or rejection enhances the debtor's estate and the debtor's reasonable business judgment supports assumption or rejection. *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985) (stating when assumption appears to enhance the debtor's estate, approval should only be withheld if the debtor's judgment is clearly erroneous, too speculative, or contrary to the provisions of the Bankruptcy Code).

101. And, upon determining a debtor has exercised good business judgment in determining to assume an executory contract or unexpired lease, under section 365(b) of the Bankruptcy Code, the debtor or intended assignee must (a) cure, or provide adequate assurance of promptly curing, prepetition defaults under the executory contract or unexpired lease, (b) compensate parties for pecuniary losses arising from any prepetition defaults, and (c) provide adequate assurance of future performance under the executory contract or unexpired lease. 11 U.S.C. §§ 365(b), 365(f).

102. And, notwithstanding any provisions that prohibit, restrict, or condition the assignment of an executory contract or unexpired lease, once an executory contract or unexpired lease is assumed in accordance with section 365 of the Bankruptcy Code, if the debtor can provide adequate assurance of future performance by the proposed assignee, the debtor may assign an assumed contract to the proposed assignee. 11 U.S.C. 365(f).

103. Here, the assumption and assignment of certain executory contracts and unexpired leases is integral to the consummation of a sale of the Proposed Purchased Assets, because those executory contracts and unexpired leases are integral to operating the Proposed Purchased Assets.

104. For example, the unexpired leases include equipment and other items necessary to continue providing health care operations—*e.g.*, interventional x-ray systems, immunoassay analyzer system, and fluorescent imaging surgical systems.

105. Similarly, the unexpired contracts are with persons and entities necessary to maintain hospital operations—*e.g.*, anesthesiology professionals, emergency room physicians, and certain payor contracts.

106. In addition, the notice provisions relating to the assumption and assignment of the executory contracts and unexpired leases are adequate to protect the rights of Contract Counterparties, because the Contract Counterparties will: (a) receive notice of the proposed assumption and assignment of the executory contracts and unexpired leases along with the related cure amounts; (b) have ample opportunity to object to the assumption and assignment of the executory contracts and unexpired leases (including the amount of any Cure Costs); and (c) be provided a procedure for resolving any such objections.

107. Further, upon resolving any objections by Contract Counterparties, any Successful Bidder(s) will provide for the payment of the applicable Cure Costs and be able to provide adequate

assurance of future performance under each of the executory contracts and unexpired leases to be assumed and assigned.

108. To the extent any Assumption and Assignment Objections are not resolved prior to the closing of the sale of the Proposed Purchased Assets to any Successful Bidder(s), any executory contract or unexpired lease subject to such an Assumption and Assignment Objection will be conditionally assumed and assigned, pending resolution of the objection after notice and a hearing.

109. If an Assumption and Assignment Objection is unable to be resolved, any Successful Bidder(s) will be entitled to determine that the executory contract or unexpired lease subject to such Assumption and Assignment Objection should be rejected and not assigned, in which case the applicable Successful Bidder(s) will not be responsible for any Cure Costs with respect to such executory contract or unexpired lease.

110. Therefore, the Debtor submits that the statutory requirements of sections 365(a), 365(b), and 365(f) of the Bankruptcy Code will be satisfied and the assumption and assignment of executory contracts and unexpired leases to any Successful Bidder(s) should be approved.

WAIVER OF RULES 6004(h) AND 6006(d) OF THE BANKRUPTCY RULES

111. The Debtor requests that the Court waive the fourteen (14) day stay period under Rules 6004(h) and 6006(d) of the Bankruptcy Rules.

112. Timely consummation of the sale of the Proposed Purchased Assets is of critical importance to the Debtor's efforts to maximize the value of the Debtor's estate.

113. Each day the Debtor continues operations, the Debtor incurs additional costs and expenses, including fees payable to the United States Trustee.

114. Accordingly, to avoid or otherwise minimize the incurrence of additional costs and expenses, the Debtor requests the Court waive the fourteen (14) day stays imposed under Rules 6004(h) and 6006(d) of the Bankruptcy Rules.

RESERVATION OF RIGHTS

115. Nothing contained in this motion is intended or should be construed as an admission as to the validity of any claim against the Debtor, a waiver of the Debtor's rights to dispute any claim, or an approval or assumption of any agreement, contract, or lease under section 365 of the Bankruptcy Code.

116. Similarly, if this Court grants the relief sought in this motion, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtor's rights to dispute such claim subsequently.

NOTICE

117. The Debtor has provided notice of this motion by electronic mail, facsimile, or overnight mail to the Notice Parties.

118. Given the nature of the relief requested in this motion, the Debtor submits that no other or further notice is necessary or required.

NO PRIOR REQUEST

119. The Debtor has not made a prior request to this Court or any other court for the relief sought in this motion.

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WHEREFORE, the Debtor respectfully requests that this Court (i) authorize the Debtor to enter into and perform under the stalking horse purchase agreement; (ii) approve the Bidding Procedures for the Auction and sale of substantially all of the Debtor's assets; (iii) approve the Assumption and Assignment Procedures; (iv) schedule the Bid Deadline, the Auction, and a Sale Hearing; and (v) grant related relief.

DATED: November 11, 2019

Respectfully submitted,
WALLER LANSDEN DORTCH & DAVIS, LLP

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Proposed Counsel for the Debtor and Debtor in Possession

Certificate of Service

I certify that on [November 11], 2019, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Blake D. Roth
Blake D. Roth

EXHIBIT A
PROPOSED BIDDING PROCEDURES ORDER

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:

WALKER COUNTY HOSPITAL CORPORATION,
d/b/a HUNTSVILLE MEMORIAL HOSPITAL,

Debtor and Debtor in Possession.¹

Chapter 11

Case No. 19-36300

Re: Docket No. []

ORDER: (I)(A) APPROVING BIDDING PROCEDURES AND BID PROTECTIONS, (B) PERMITTING DEBTOR TO DESIGNATE STALKING HORSE PURCHASER(S) AND GRANT BID PROTECTIONS, (C) SCHEDULING A HEARING TO CONSIDER APPROVAL OF THE SALE OF ASSETS, (D) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES, (E) APPROVING FORM AND MANNER OF NOTICE OF SALE, AND (F) GRANTING RELATED RELIEF; AND (II)(A) AUTHORIZING AND APPROVING THE SALE OF SUBSTANTIALLY ALL ASSETS OF THE DEBTOR FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES, (B) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (C) GRANTING RELATED RELIEF

Upon consideration of the *Debtor's Emergency Motion for Orders: (I)(A) Approving Bidding Procedures and Bid Protections, (B) Permitting Debtor to Designate Stalking Horse Purchaser(s) and Grant Bid Protections, (C) Scheduling a Hearing to Consider Approval of the Sale of Assets, (D) Approving Form and Manner of Notice of Sale, and (E) Granting Related Relief; and (II)(A) Authorizing and Approving Sale of Substantially All Assets of Walker County Hospital Corporation Free and Clear of Liens, Claims, Interests, and Encumbrances, (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (C) Granting Related Relief* (Dkt. No. []) (the "**Motion**"); and this Court having considered the Motion, the Declarations, the arguments of counsel and the evidence presented at the hearing to consider the Motion, and the entire record; and due and sufficient notice of the

¹ The last four digits of the Debtor's federal tax identification number are: 0960. The location of the Debtor's service address is: P.O. Box 4001, Huntsville, TX 77342-4001, Attn: Steven Smith.

Motion, hearing to consider the Motion, and the relief sought in the Motion having been given under the particular circumstances; and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion and all objections to the Motion (the “*Objections*”); and it appearing that the relief requested in the Motion is in the best interest of the Debtors, their estate, their creditors and other parties in interest; and after due deliberation and good and sufficient cause appearing for the relief sought, it is hereby

FOUND AND DETERMINED THAT:

I. Determination with Respect to the Findings of Fact and Conclusions of Law.

A. The findings of fact and conclusions of law set forth in this order constitute the Court’s findings of fact and conclusions of law pursuant to Rule 7052 of the Bankruptcy Rules, made applicable to this case pursuant to Rule 9014 of the Bankruptcy Rules. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such. Any findings of fact or conclusions of law stated by the Court on the record at the hearing to consider the Motion are incorporated in this order, to the extent they are not inconsistent with this order.

II. Jurisdiction, Final Order, and Statutory Predicates.

B. This Court has jurisdiction to hear and determine the Motion and over the Debtor, its estate, and the Debtor’s assets that are the subject of the relief sought in the Motion. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this case and the Motion in the Southern District of Texas is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. The statutory and legal predicates for the relief requested in the Motion are sections 105(a), 363(b), (f), and (m), 365, 503, and 507 of the Bankruptcy Code, Rules 2002, 6004, 6006, 9008, and 9014 of the Bankruptcy Rules, and Local Rules 2002-1 and 9013-1.

D. This order constitutes a final and appealable order, within the meaning of 28 U.S.C. § 158(a). Notwithstanding Rules 6004(h) and 6006(d) of the Bankruptcy Rules, and to any extent necessary under Rule 9014 of the Bankruptcy Rules and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Rule 7054 of the Bankruptcy Rules, the Court expressly finds that there is no just reason for delay in the implementation of this order, and expressly directs entry of judgment as set forth in this order.

III. Notice of Proposed Bidding Procedures, Assumption Procedures, and Sale of Proposed Purchased Assets.

E. Actual written notice of the Motion and a reasonable opportunity to object or be heard with respect to the Motion and the relief granted in this order have been afforded to all known interested persons and entities, including, but not limited to, the Notice Parties.

F. As evidenced by the affidavits of service previously filed with the Court, proper, timely, adequate and sufficient notice of the Motion, Bidding Procedures, and Assumption Procedures has been provided in accordance with sections 102(1), 363, and 365 of the Bankruptcy Code, Rules 2002, 6004, 6006, and 9014 of the Bankruptcy Rules, and Local Rules 2002-1 and 9013-1. The notice provided was adequate, sufficient, and appropriate under the circumstances, and no other or further notice of the Motion, Bidding Procedures, or Assumption Procedures is necessary or required, other than as set forth in this order.

G. The Notice of Auction and Sale Hearing and Notice of Potential Assumption are reasonably calculated to provide all interested parties with timely and proper notice of the proposed sale of the Proposed Purchased Assets, including, without limitation: (i) the date, time, and place of the Auction, if any; (ii) the Bidding Procedures governing participation in the Auction; (iii) the deadline for filing objections to the sale of the Proposed Purchased Assets; (iv) the date, time, and place of the hearing to consider the sale of the Proposed Purchased Assets; (v) instructions for

obtaining copies of any stalking horse purchase agreement; (vi) clearly identifying the sale of the Proposed Purchased Assets is free and clear of any and all liens, claims, interest, and other encumbrances, other than as set forth in any stalking horse purchase agreement; and (v) the proposed assumption and assignment of certain contracts and leases, and the procedures and deadlines for objecting to any assumption and assignment.

H. The Assumption and Assignment Procedures will provide any Qualified Bidder and each counterparty to a potentially assumed executory contract or unexpired lease with proper notice of the potential assumption and assignment of any executory contract or unexpired lease and any Cure Costs to be paid, and the procedures set forth with regard to any such Cure Costs satisfy section 365 of the Bankruptcy Code and Rule 6006 of the Bankruptcy Rules.

I. The disclosures made by the Debtor concerning the Motion, Bidding Procedures and Assumption Procedures were good, complete, and adequate.

J. Notice of the Motion, Bidding Procedures, and Assumption Procedures was adequate, fair, and equitable under the circumstances, and complied in all respects with section 102(1) of the Bankruptcy Code, Rules 2002, 6004, and 6006 of the Bankruptcy Rules, and Local Rules 2002-1 and 9013-1.

IV. The Bidding Procedures and Bid Protections.

K. The terms of the Bidding Procedures and Bid Protections are reasonably calculated to induce a Potential Bidder to seek Stalking Horse Bidder status and are within the market standards.

L. The Bidding Procedures are reasonably designed to maximize the value to be achieved for the Proposed Purchased Assets.

M. The Debtor has demonstrated that, subject to the terms of this Order, the Bid Protections in the form of (i) a break-up fee in the amount of up to Three Percent (3%) of the

Stalking Horse Bidder's initial Purchase Price; (ii) expense reimbursement not to exceed \$250,000; and (iii) an initial overbid at least greater than \$100,000 higher than the sum of the Purchase Price plus break-up fee plus expense reimbursement (collectively, the "***Bid Protections***"), are actual and necessary costs and expenses of preserving the Debtor's estate, within the meaning of sections 503(b) and 507(a) of the Bankruptcy Code, and are of substantial benefit to the Debtor's estate by inducing any Stalking Horse Bidder to enter into an asset purchase agreement and subject its offer to higher and better bids, thereby ensuring the Debtor receives the highest or otherwise best possible bid for the Proposed Purchased Assets.

N. Good and sufficient business reasons exist for this Court to: (i) approve the Bidding Procedures, in the form attached to this order as **Exhibit 1**; (ii) approve the amounts of the Bid Protections, subject to the terms of this order and as set forth in any applicable asset purchase agreement and the Bidding Procedures; (iii) schedule the auction and hearing to consider the results of the auction and sale of the Proposed Purchased Assets; and (iv) establish the Assumption and Assignment Procedures, to fix cure amounts to be paid pursuant to section 365 of the Bankruptcy Code, in connection with the assumption and assignment of executory contracts and unexpired leases.

O. The Debtor has articulated good and sufficient reasons for this Court to approve the Bidding Procedures and Assumption and Assignment Procedures.

P. The entry of this order is in the best interests of the Debtor, its estate, creditors of the Debtor's estate, and other parties in interest.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. All objections to the relief granted in this order that have not been withdrawn, waived, or settled as announced to the Court at the hearing to consider the Motion or by stipulation

filed with the Court, and all reservations of rights, are hereby overruled on the merits or otherwise have been satisfied or adequately provided for pursuant to this order.

2. The Debtor, in consultation with any statutory committee and DIP Lender (together, the “*Consultation Parties*”), is authorized to designate one or more Stalking Horse Bidders and provide Bid Protections, subject to and in accordance with the Stalking Horse Objection Process (as defined below). If the Debtor designates one or more Stalking Horse Bidders, it must do so before December 4, 2019 (the “*Deadline to Designate Stalking Horse Bidder*”). To the extent the Debtor designates a Potential Bidder as a Stalking Horse Bidder, the Debtor shall file on the docket a notice: (a) identifying the Stalking Horse Bidder; (b) identifying the Proposed Purchased Assets that are subject to such Stalking Horse Bidder’s asset purchase agreement; (c) attaching a copy of such Stalking Horse Bidder’s asset purchase agreement; and (d) describing the key terms of the asset purchase agreement, including the Bid Protections provided to such Stalking Horse Bidder, if any (the “*Stalking Horse Notice*”). Notwithstanding anything in this order or the Bidding Procedures to the contrary, all parties in interest (including the Consultation Parties) shall have two (2) business days to object to the Stalking Horse Notice (the “*Stalking Horse Objection Period*”). If no objections are filed prior to the expiration of the Stalking Horse Objection Period, the Debtor shall be authorized to enter into the asset purchase agreement with the applicable Stalking Horse Bidder and grant any of the Bid Protections included in such Stalking Horse Bidder’s asset purchase agreement without further order of this Court. If an objection is filed during the Stalking Horse Objection Period, Court approval will be necessary to provide Bid Protections to the Stalking Horse Bidder, which approval may be sought prior to the Auction or at the Sale Hearing (collectively, the “*Stalking Horse Objection Process*”).

3. The Debtors' template Asset Purchase Agreement, substantially in the form attached to this Order as **Exhibit 2**, is approved.

4. Any Stalking Horse Bidder approved pursuant to and in accordance with the Stalking Horse Objection Process shall constitute a Qualified Bidder for all purposes and in all respects under the Bidding Procedures.

5. The Bidding Procedures, substantially in the form attached to this order as **Exhibit 2**, are approved in their entirety and are incorporated in this order as if fully set forth at length in this paragraph; and, the Debtor is authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures.

6. As set forth in the Bidding Procedures, the deadline for submitting bids for the Proposed Purchased Assets is [[_____] [____], 2019 at 4:00 p.m. (prevailing Central time)] (the "**Bid Deadline**"); provided, however, no bid shall be deemed a Qualified Bid until such time as the Debtor determines, in its reasonable business judgment, that such bid meets the requirements set forth in the Bidding Procedures.

7. If the Debtor timely receives one or more Qualified Bids, the Debtor shall conduct an auction (the "**Auction**") on [[_____] [____], 2019 at 10:00 a.m. (prevailing Central time)] at [_____] (or at such other location as the Debtor may designate upon written notice to all parties entitled to participate in the auction under the Bidding Procedures); provided, however, if more than one Qualified Bid is not received by the Bid Deadline, then the Debtor shall not be required to conduct an auction and may promptly seek this Court's approval of the sale of the Proposed Purchased Assets.

8. Each Qualified Bidder participating in the Auction shall be required to certify it has not engaged in any collusion with respect to the potential purchase of the Proposed Purchased Assets.

9. At such time as the Debtor determines the Successful Bid(s) in accordance with the Bidding Procedures, the Debtor shall file on this Court's docket in this Chapter 11 Case a notice disclosing the identity of the Successful Bidder(s) and, if the Debtor deems there to be one, the identity of the Back-up Bidder(s) (the "***Successful Bidder Notice***").

10. The hearing to consider approval of the sale of the Proposed Purchased Assets (the "***Sale Hearing***") shall be conducted on [] [], 2019 at [] (prevailing Central time) before the Honorable [], United States Bankruptcy Judge for the Southern District of Texas, Bob Casey United States Courthouse, 515 Rusk Avenue, Courtroom [], Houston, Texas 77002; provided, that, the Sale Hearing may be adjourned by this Court or by the Debtor from time to time without further notice other than by announcement in open court or through the filing of a notice on this Court's docket.

11. The deadline to object to the remaining relief requested in the Motion, including entry of the Sale Order, is [] [], 2019 at 4:00 p.m. (prevailing Central time) (the "***Sale Objection Deadline***").

12. Any party opposing the remaining relief sought in the Motion must file an objection prior to the Sale Objection Deadline, and such objection must: (i) be in writing; (ii) conform to the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules; (iii) state with particularity the legal and factual basis for the objection and the specific grounds for objecting; and (iv) filed with this Court and served **so as to be actually received** no later than the Sale Objection Deadline by the Objection Notice Parties.

13. Not later than two (2) business days after entry of this order, the Debtor shall cause: (a) notice substantially in the form attached to this order as **Exhibit 3** (the “*Notice of Auction and Sale Hearing*”) and a copy of this order to be sent by first-class mail, postage prepaid, to the Notice Parties; and (b) the Notice of Auction and Sale Hearing to be posted on the case website maintained by the Debtor’s claims and noticing agent, Epiq Corporate Restructuring, LLC (“*Epiq*”).

14. Not later than five (5) business days after entry of this order, the Debtor shall serve by first-class mail, postage prepaid, a notice of potential assumption, assignment, and/or transfer of executory contracts and unexpired leases to which the Debtor is party, substantially in the form attached to this order as **Exhibit 4** (the “*Notice of Potential Assumption*”) on all non-Debtor parties to the executory contracts and unexpired leases.

15. Upon filing the Successful Bidder Notice with this Court, the Debtor shall serve the Successful Bidder Notice on all parties that received service of the Notice of Potential Assumption.

16. Unless the non-Debtor party to an executory contract or unexpired lease files an objection to (a) its cure amount or (b) the proposed assumption, assignment, and/or transfer of such executory contract or unexpired lease to the Stalking Horse Bidder or to any Successful Bidder by [] [], 2019 at 4:00 p.m. (prevailing Central time) (the “*Assumption and Assignment Objection Deadline*”) and serves such objection **so as to be actually received** by the Objection Notice Parties by no later than the Assumption and Assignment Objection Deadline, such non-Debtor party shall be (x) forever barred from objecting to the cure amount and from asserting against the Debtor, any Stalking Horse Bidder, or any Successful Bidder any additional cure or other amounts with respect to such executory contract or unexpired lease, and any Stalking Horse Bidder and any Successful Bidder shall be entitled to rely upon such cure amounts and (y)

deemed to have consented to the assumption, assignment, and/or transfer of such executory contract or unexpired lease to any Stalking Horse Bidder or Successful Bidder and shall be forever barred and estopped from asserting or claiming against any party that any additional amounts are due, defaults exist, conditions to assumption, assignment, and/or transfer must be satisfied, or that any right or benefit under such executory contract or unexpired lease cannot or will not be available to any Stalking Horse Bidder or Successful Bidder.

17. If a contract counterparty files an Assumption and Assignment Objection in a manner consistent with the Assumption and Assignment Procedures, and the Debtor and the contract counterparty, in consultation with any Stalking Horse Bidder or Successful Bidder, are unable to consensually resolve the dispute prior to the Sale Hearing, the amount to be paid or reserved with respect to such objection will be determined at the Sale Hearing, such later hearing date that the Debtor determines in its discretion, in consultation with the Successful Bidder(s), or such other date determined by this Court. With respect to any Assumption and Assignment Objection that remains outstanding as of the Closing, the maximum claimed cure amount will be deposited into escrow to support the payment of the final cure amount at such time as the Assumption and Assignment Objection is resolved.

18. No later than five (5) calendar days prior to the closing of the transaction(s) for the sale of the Proposed Purchased Assets, the Debtor shall serve the Notice of Assumption and Assignment, substantially in the form attached to this order as **Exhibit 5**, identifying the executory contracts and unexpired leases that will be assumed and assigned to the Successful Bidder(s).

19. The Successful Bidder(s) may determine to exclude any executory contract or unexpired lease from the list of Proposed Purchased Assets, in accordance with the applicable asset purchase agreement; provided, that, if any executory contracts or unexpired leases are excluded

from the applicable list of Proposed Purchased Assets, the Debtor shall notify the non-Debtor party or parties to any such executory contracts or unexpired leases of such exclusion, by written notice as soon as practicable after such determination, which may be after the Sale Hearing.

20. The notices attached to this Order as Exhibit 3, Exhibit 4, and Exhibit 5 are approved in their entirety.

21. The Bid Protections, as set forth in the Bidding Procedures, are expressly approved, and the Debtor is authorized and directed to promptly pay, as they become due, any amounts owed to any Stalking Horse Bidder on account of such Bid Protections, in accordance with the Bidding Procedures.

22. The obligation of the Debtor to pay the Bid Protections shall: (a) constitute administrative expense claims against the Debtor's estate; (b) be entitled to administrative expense priority status under sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code; (c) survive the termination of any Stalking Horse Bidder's asset purchase agreement; and (d) be paid by the Debtor to the Stalking Horse Bidder in cash, on the terms of and in accordance with the Stalking Horse Bidder's asset purchase agreement.

23. No Qualified Bidder, other than a Stalking Horse Bidder, will be entitled to, whether as part of the Auction or otherwise, a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation, and by submitting its Bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis, including under section 503(b) of the Bankruptcy Code.

24. **Failure to timely file an objection in accordance with this order shall forever bar the assertion of any objection to the Motion, entry of the Sale Order, or consummation of the sale of the Proposed Purchased Assets, and such failure shall be deemed to constitute**

consent to entry of the Sale Order and consummation of the sale of the Proposed Purchased Assets.

25. The stays provided by Rules 6004(h) and 6006(d) of the Bankruptcy Rules are waived, and this order shall be effective immediately upon its entry.

26. This Court retains jurisdiction over any and all matters related to or arising from the interpretation or implementation of this order.

Dated: _____, 2019

United States Bankruptcy Judge

EXHIBIT 1 TO BIDDING PROCEDURES ORDER
BIDDING PROCEDURES

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

WALKER COUNTY HOSPITAL CORPORATION,
d/b/a HUNTSVILLE MEMORIAL HOSPITAL,

Debtor and Debtor in Possession.¹

Chapter 11

Case No. 19-36300

Re: Docket No. []

**BIDDING PROCEDURES FOR THE SALE OF SUBSTANTIALLY ALL
ASSETS OF WALKER COUNTY HOSPITAL CORPORATION**

The above-captioned debtor and debtor in possession (the “**Debtor**”) has filed a chapter 11 case pending in the United States Bankruptcy Court for the Southern District of Texas (the “**Bankruptcy Court**”), which is administered as case number 19-36300.

On November [], 2019, the Bankruptcy Court entered the *Order: (I)(A) Approving Bidding Procedures and Bid Protection, (B) Permitting Debtor to Designate Stalking Horse Purchaser(s) and Grant Bid Protections, (C) Scheduling a Hearing to Consider Approval of the Sale of Assets, (D) Approving Assumption and Assignment Procedures, (E) Approving Form and Manner of Notice of Sale, and (F) Granting Related Relief; and (II)(A) Authorizing and Approving the Sale of Substantially All Assets of the Debtor Free and Clear of Liens, Claims, Interests, and Encumbrances, (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (C) Granting Related Relief* (Dkt. No. []) (the “**Bidding Procedures Order**”),² pursuant to which the Bankruptcy Court approved the following procedures (the “**Bidding Procedures**”) relating to the sale of the Proposed Purchased Assets. These Bidding

¹ The last four digits of the Debtor’s federal tax identification number are: 0960. The location of the Debtor’s service address is: P.O. Box 4001, Huntsville, TX 77342-4001, Attn: Steven Smith.

² Capitalized terms used in these Bidding Procedures but not otherwise defined shall have the meanings ascribed to them in the Bidding Procedures Order.

Procedures set forth the process by which the Debtor is authorized to conduct an auction (the “**Auction**”) for one or more sales of the Proposed Purchased Assets, in accordance with and as described in these Bidding Procedures.

I. Submissions to the Debtor.

All submissions to the Debtor required to be made under these Bidding Procedures must be directed to each of the following persons, unless otherwise provided (collectively, the “**Bid Notice Parties**”):

- a. **The Debtor.** Steven Smith, P.O. Box 4001, Huntsville, TX 77342-4001, steven.l.smith@huntsvillememorial.com.
- b. **The Debtor’s Counsel.** Ryan K. Cochran, Blake D. Roth & Courtney K. Stone, Waller Lansden Dortch & Davis, LLP, 511 Union Street, Suite 2700, Nashville, Tennessee 37219, ryan.cochran@wallerlaw.com, blake.roth@wallerlaw.com, courtney.stone@wallerlaw.com.
- c. **The Debtor’s Financial Advisor.** Healthcare Management Partners, LLC, 1033 Demonbreun Street, Suite 300, Nashville, Tennessee 37203, Attn: Tyler Brasher (tbrasher@hcmpllc.com) and Anthony Jordan (ajordan@hcmpllc.com).
- d. **Counsel to the Debtor’s Senior Secured Lender.** (a) Vedder Price P.C., 222 North LaSalle Street, Chicago, IL 60601, Attn: Michael M. Eidelman (meidelman@vedderprice.com) and David L. Kane (dkane@vedderprice.com) and (b) Porter Hedges, LLP, 1000 Main Street, 36th Floor, Houston, TX 77002, Attn: John F. Higgins (jhiggins@porterhedges.com).

II. Potential Bidders.

The Debtor and its advisors have identified, and may in the future identify, parties they believe potentially may be interested in consummating (and potentially may have the financial resources necessary to consummate) a competing transaction. To participate in the bidding process or otherwise be considered for any purpose under these Bidding Procedures, a person or entity interested in consummating a sale for any or all of the Proposed Purchased Assets (each, a “**Potential Bidder**”) must deliver or have previously delivered:

- a. an executed confidentiality agreement on terms acceptable to the Debtor (a “**Confidentiality Agreement**”); and
- b. the most current audited and latest unaudited financial statements (collectively, the “**Financials**”) of the Potential Bidder (or, if the Potential Bidder is an entity formed for the purpose of acquiring the Proposed Purchased Assets, (i) Financials of the equity holder(s) of the Potential Bidder or such other form of financial disclosure as is acceptable to the Debtor and its advisors, (ii) a written commitment acceptable to the Debtor and its advisors of the equity holder(s) of the Potential Bidder to be responsible for the Potential Bidder’s obligations in connection with the proposed transaction, and (iii) copies of any documents evidencing any financing commitments necessary to consummate the transaction.

III. **Qualified Bidders.**

- a. A “**Qualified Bidder**” is a Potential Bidder: (i) whose Financials, or the Financials of its equity holder(s), as applicable, demonstrate the financial capability to consummate a sale for any portion of the Proposed Purchased Assets, as determined in the Debtor’s reasonable business judgment; and (ii) whose Bid (as defined below) is a Qualified Bid (as defined below). On or before the date that is one (1) Business Day after the Bid Deadline (defined below), the Debtor’s advisors will notify each Potential Bidder in writing whether such Potential Bidder is a Qualified Bidder, and shall provide a copy of each Qualified Bid to counsel to MidCap and counsel to any Stalking Horse Bidder. Any Stalking Horse Bidder shall be deemed a Qualified Bidder that has submitted a Qualified Bid at all times.
- b. For the avoidance of doubt, two or more Potential Bidders may submit a Bid for any or all of the Proposed Purchased Assets, provided that such Bid(s), when taken as a whole (collectively, a “**Joint Bid**”), is determined by the Debtor, in accordance with Section III(a) of these Bidding Procedures, to constitute a Qualified Bid; provided, however, that any Joint Bid must comply with section 363(n) of the Bankruptcy Code and Potential Bidders must first seek the Debtor’s permission before they contact each other. In addition, any Potential Bidder may submit a Bid for any or all of the Proposed Purchased Assets, provided that such Bid is determined by the Debtor, in accordance with Section III(a) of these Bidding Procedures, to constitute a Qualified Bid.
- c. If any Potential Bidder is determined by the Debtor not to be a Qualified Bidder, the Debtor will refund such Potential Bidder’s Deposit (as defined below) and all accumulated interest thereon on or within three (3) Business Days after the Bid Deadline.
- d. Between the date the Debtor notifies a Potential Bidder that it is a Qualified Bidder and the Auction, the Debtor may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Except as otherwise set forth in any stalking horse purchase agreement, without the written consent of the Debtor, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed

amendments to increase the consideration contemplated by, or otherwise improve the terms of, the Qualified Bid, during the period that such Qualified Bid remains binding as specified in these Bidding Procedures; provided that any Qualified Bid may be improved at the Auction as set forth in these Bidding Procedures. Any improved Qualified Bid must continue to comply with the requirements for Qualified Bids set forth in these Bidding Procedures. Bids must remain open offers capable of being accepted until entry of the Sale Order or, in the case of a Backup Bid, until the Successful Bidder or Backup Bidder closes on a sale of the applicable Proposed Purchased Assets.

- e. Any disputes related to these Bidding Procedures shall be resolved by the Bankruptcy Court.

IV. **Due Diligence.**

a. **Diligence Provided to Potential Bidders.**

Only Potential Bidders that have entered into a Confidentiality Agreement shall be eligible to receive due diligence information and access to the Debtor's electronic data room and to additional non-public information regarding the Proposed Purchased Assets. **No Potential Bidder will be permitted to conduct any due diligence without entering into a Confidentiality Agreement.** The Debtor will provide to each Potential Bidder that has entered into a Confidentiality Agreement reasonable due diligence information, as requested by such Potential Bidder in writing, as soon as reasonably practicable after such request, and the Debtor shall post all written due diligence provided to any Potential Bidder to the Debtor's electronic data room. For all Potential Bidders, the due diligence period will end on the Bid Deadline and subsequent to the Bid Deadline the Debtor shall have no obligation to furnish any due diligence information.

The Debtor shall not furnish any confidential information relating to the Proposed Purchased Assets, the Debtor's liabilities, or the sale of any or all of the Proposed Purchased Assets ("**Confidential Sale Information**") to any person, except to a Potential Bidder that has entered into a Confidentiality Agreement or to such Potential Bidder's duly-authorized representatives, in each case, to the extent provided in the applicable Confidentiality Agreement. The Debtor and its

advisors shall coordinate all reasonable requests from Potential Bidders for additional information and due diligence access; provided that the Debtor may decline to provide such information to Potential Bidders who, at such time and in the Debtor's reasonable business judgment 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 of all or a portion of the Proposed Purchased Assets.

The Debtor also reserves the right to withhold from Potential Bidders any diligence materials that the Debtor determines are sensitive or otherwise not appropriate for disclosure to a Potential Bidder who the Debtor determines is a competitor of the Debtor or is affiliated with any competitor of the Debtor. Neither the Debtor nor its representatives shall be obligated to furnish information of any kind whatsoever to any person that is not approved by the Debtor as a Potential Bidder.

All due diligence requests must be directed to Tyler Brasher (tbrasher@hcmpllc.com) and Anthony Jordan (ajordan@hcmpllc.com).

b. Diligence Provided by Potential Bidders.

Each Potential Bidder shall comply with all reasonable requests for additional information and due diligence access requested by the Debtor or its advisors regarding the ability of the Potential Bidder to consummate a transaction for all or a portion of the Proposed Purchased Assets. Failure by a Potential Bidder to comply with such reasonable requests for additional information and due diligence access may be a basis for the Debtor to determine that such Potential Bidder is not a Qualified Bidder or that a bid made by such Potential Bidder is not a Qualified Bid.

The Debtor and its advisors and representatives shall be obligated to maintain in confidence any confidential information in accordance with any applicable confidentiality agreement, except as otherwise set forth in these Bidding Procedures. Each recipient of confidential information

agrees to use, and to instruct their advisors and representatives to use, such confidential information only in connection with the evaluation of Bids during the bidding process or otherwise in connection with the Chapter 11 Case or in accordance with the terms of any applicable confidentiality agreement.

Notwithstanding the foregoing and the provisions contained in any applicable Confidentiality Agreement, the Debtor and the Debtor's advisors may disclose confidential information (a) with the prior written consent of such bidder and the Debtor or (b) as otherwise required or allowed by any applicable confidentiality agreement with respect to a particular Potential Bidder or other agreement, law, court or other governmental order, or regulation, including, as appropriate, to regulatory agencies.

V. Bid Requirements.

A proposal, solicitation, or offer (each, a "***Bid***") by a Potential Bidder that is submitted in writing and satisfies each of the following requirements (collectively, the "***Bid Requirements***"), as determined by the Debtor in its reasonable business judgment shall constitute a "***Qualified Bid.***" For the avoidance of doubt, notwithstanding the following, any stalking horse purchase agreement will be deemed a Qualified Bid for all purposes and at all times. The form of a Bid must include a proposed asset purchase agreement (a "***Bid Purchase Agreement***") duly executed by the Potential Bidder and must also include a redline comparing the Bid Purchase Agreement to the template asset purchase agreement attached to the Bidding Procedures Order or applicable stalking horse purchase agreement. The Bid Requirements are as follows:

- a. **Assets.** Each Bid must provide for the purchase of all or a portion of the Proposed Purchased Assets, and must clearly state (i) which Proposed Purchased Assets the Potential Bidder is agreeing to purchase and (ii) whether the Potential Bidder intends to operate all or a portion of the Debtor's business as a going concern, or to liquidate the business.

- b. **Assumption of liabilities.** Each Bid must expressly identify the liabilities it proposes to (i) assume or (ii) satisfy with cash consideration.
- c. **Purchase Price.** Each Bid must clearly set forth the purchase price to be paid (the “*Purchase Price*”). The Bid must propose a Purchase Price for all or a portion of the Proposed Purchased Assets, including any assumption of liabilities, that has a value that equals or exceeds the sum of the following (a “*Minimum Bid*”): (i) the net value to the Debtor’s estate provided by any applicable stalking horse purchase agreement; (ii) the amount of any applicable Bid Protections; and (iii) \$100,000, subject to the adjustments set forth in the Bid Purchase Agreement; provided, however, in the event that a Bid is for a combination of Proposed Purchased Assets different from those set forth in any stalking horse purchase agreement, such consideration shall reasonably represent a premium, as determined by the Debtor, to an approximate allocation of the applicable stalking horse purchase agreement; provided, further, that in determining the value of any such Bid, the Debtor will not be limited to evaluating the dollar value of the consideration but may also consider other factors, including the speed, certainty, and value of the proposed transaction. Subject to the immediately preceding sentence, the Purchase Price contained in a Bid may be structured in whatever form the Potential Bidder desires (*e.g.*, a Potential Bidder may propose an all cash Bid).
- d. **Deposit.** With a Bid, a Potential Bidder must submit by wire transfer of immediately available funds, a cash deposit in the amount equal to Two Hundred Thousand Dollars (\$200,000), to be held in an interest-bearing escrow account to be identified and established by the Debtor (the “*Deposit*”).
- e. **Same or better terms.** Each Bid must be on terms that are not more burdensome to the Debtor than the terms of the template asset purchase agreement attached to the Bidding Procedures Order or any applicable stalking horse purchase agreement, as determined by the Debtor. Each Bid must include duly executed, non-contingent transaction documents necessary to effectuate the sale contemplated by the Bid and shall include a schedule of executory contracts and unexpired leases proposed to be assumed by the Debtor and assigned to the Potential Bidder (“*Assumed Contracts*”), and a copy of the Bid Purchase Agreement clearly marked against the template asset purchase agreement attached to the Bidding Procedures Order or any applicable stalking horse purchase agreement to show all changes requested by the Potential Bidder, including those related to the respective Purchase Price and assets to be acquired by such Potential Bidder, as well as all other material documents integral to such bid and a written commitment demonstrating to the satisfaction of the Debtor that the Potential Bidder will be able to close the transaction proposed in its Bid on the terms and conditions set forth therein (the “*Qualified Bid Documents*”).
- f. **Contingencies; No financing or diligence outs.** A Bid shall not be conditioned on (i) obtaining financing, (ii) shareholder, board of directors, or other internal approval, or (iii) the outcome or completion of a due diligence review by the Potential Bidder. Notwithstanding the foregoing, a Bid may be subject to (i) the

accuracy at the closing of the sale of specified representations and warranties or (ii) the satisfaction at the closing of the sale of specified conditions, which shall not be more burdensome to the Debtor, as determined by the Debtor, than those set forth in the template asset purchase agreement attached to the Bidding Procedures Order or any applicable stalking horse purchase agreement.

- g. **Identity.** Each Bid must fully disclose the identity of each entity that will be bidding or otherwise participating in connection with such Bid (including each equity holder or other financial backer of the Potential Bidder if such Potential Bidder is an entity formed for the purpose of consummating a sale of the Proposed Purchased Assets), and the complete terms of any such participation. Under no circumstances shall any undisclosed principals, equity holders, or financial backers be associated with any Bid. Each Bid must also include contact information for the specific persons and counsel whom the Debtor and its advisors should contact regarding such Bid. Each Bid must also disclose any past or present connections or agreements with the Debtor, any Stalking Horse Bidder, any other Potential Bidder or Qualified Bidder and its affiliates, and/or any officer or director of the foregoing (including any current officer or director of the Debtor).
- h. **Demonstrated financial capacity.** A Potential Bidder must have, in the Debtor's reasonable business judgment, the necessary financial capacity to consummate the proposed transactions required by its Bid and provide adequate assurance of future performance under all contracts proposed to be assumed by such Bid. Each Bid must be accompanied by reasonable evidence of the Potential Bidder's ability to operate the business related to the applicable Proposed Purchased Assets and include a packet of information, including financial information that will be provided to the non-Debtor counterparties to Assumed Contracts sufficient to demonstrate adequate assurance of future performance.
- i. **Committed financing.** To the extent that a Bid is not accompanied by evidence of the Potential Bidder's capacity to consummate the sale set forth in its Bid with cash on hand, each Bid must include executed unconditional committed financing from a qualified source documented to the satisfaction of the Debtor, which demonstrates that the Potential Bidder has received sufficient debt and/or equity funding commitments to satisfy the Potential Bidder's Purchase Price and other obligations under its Bid. Such funding commitments or other financing must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions acceptable to the Debtor.
- j. **Binding and irrevocable.** A Qualified Bid must include a signed writing stating that: (i) the Qualified Bid is irrevocable until the later of (a) two (2) Business Days after the closing of the sale to a person or entity other than the Potential Bidder and (b) thirty (30) days after the conclusion of the Sale Hearing (as defined below); and (ii) the Qualified Bidder agrees to serve as a Backup Bidder upon the terms and conditions set forth in these Bidding Procedures, if such Qualified Bidder is not a Successful Bidder.

- k. **Expenses; Disclaimer of fees.** Except with respect to any Stalking Horse Bidder, each Bid (other than any stalking horse purchase agreement) must disclaim any right to receive a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation. For the avoidance of doubt, no Potential Bidder (other than a Stalking Horse Bidder) will be permitted to request at any time, whether as part of the Auction or otherwise, a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation, and by submitting its Bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis, including under section 503(b) of the Bankruptcy Code.
- l. **Authorization.** Each Bid must contain evidence that the Potential Bidder has obtained authorization or approval from its board of directors (or a comparable governing body acceptable to the Debtor) with respect to the submission of its Bid and the consummation of the transactions contemplated in such Bid.
- m. **As-Is, Where-Is.** Each Bid must include a written acknowledgement and representation that the Potential Bidder: (i) has had an opportunity to conduct any and all due diligence regarding the Proposed Purchased Assets prior to submitting the Bid; (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Proposed Purchased Assets in making its Bid; and (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, regarding the Proposed Purchased Assets or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Bid.
- n. **Adherence to Bidding Procedures.** By submitting its Bid, each Potential Bidder is agreeing to abide by and honor the terms of these Bidding Procedures and agrees not to submit a Bid or seek to reopen the Auction after conclusion of the Auction. Each Bid must expressly state that the Potential Bidder agrees to serve as a Backup Bidder (as defined below) if such bidder's Qualified Bid is selected as the next highest or otherwise next best bid after the Successful Bid.
- o. **Regulatory Approvals and Covenants.** A Bid must set forth each regulatory and third-party approval needed to consummate the transaction contemplated by such Bid and the time period within which the Potential Bidder expects to receive such regulatory and third-party approvals (and in the case that receipt of any such regulatory or third-party approval is expected to take more than thirty (30) days following execution and delivery of the asset purchase agreement, those actions the Potential Bidder will take to ensure receipt of such approvals as promptly as possible). A Bid must also state that all necessary filings under applicable regulatory, antitrust, and other laws will be made and that payment of the fees associated therewith shall be made by the Potential Bidder.
- p. **Consent to Jurisdiction.** Each Potential Bidder must submit to the jurisdiction of the Bankruptcy Court and waive any right to a jury trial in connection with any

disputes relating to Debtor's qualification of Bids, the Auction, the construction and enforcement of these Bidding Procedures, any sale documents, and the closing of any sale of any or all of the Proposed Purchased Assets, as applicable.

- q. **Bid Deadline.** Each Bid must be transmitted via email (in .pdf or similar format) so as to be **actually received** on or before **[4:00 p.m. (prevailing Central Time) on [] [], 2019]** (the "***Bid Deadline***") by the Bid Notice Parties.
- r. **Credit Bidding.** Notwithstanding anything else contained in the Bidding Procedures, the DIP Lender shall have the right, subject in all respects to the Bankruptcy Code and other applicable law, to credit bid all or any portion of their allowed secured claims at the Auction pursuant to Bankruptcy Code section 363(k) or other applicable law, in accordance with the applicable provisions of the documents governing such debt obligations; provided that such Bid otherwise complies with these Bidding Procedures, the Bankruptcy Code and such credit bidding rights shall be subject to entry of a final postpetition financing order and any challenge rights preserved therein.
- s. **Option to Select Stalking Horse with Bid Protections.** Subject to the provisions set forth in the Bidding Procedures, the Debtor, in consultation with any statutory committee and DIP Lender (together, the "***Consultation Parties***"), is authorized to designate one or more Stalking Horse Bidders and provide Bid Protections, subject to and in accordance with the Stalking Horse Objection Process (as defined below). If the Debtor designates one or more Stalking Horse Bidders, it must do so before [December] [4], 2019 (the "***Deadline to Designate Stalking Horse Bidder***"). Absent further order of the Court, the Stalking Horse Agreement shall limit the break-up fees to an amount no greater than 3% of the Stalking Horse Bidder's initial Purchase Price and expense reimbursement in an amount not to exceed \$250,000 (together with the Minimum Overbid Increment, the "Bid Protections"). In the event that the Debtors determine that the Bid Protections must exceed the amounts set forth herein, the Debtors shall request that the Court hold a hearing on the approval of any such greater Bid Protections on an expedited basis. In the event that the Debtor selects one or more parties to serve as a Stalking Horse Bidder, upon such selection, the Debtor shall provide, to all parties on the Rule 2002 List, all parties expressing an interest in the Proposed Purchased Assets and all parties holding liens on such Proposed Purchased Assets, two (2) business days' notice of and an opportunity to object to the designation of such Stalking Horse Bidder and disclosure of the Bid Protections set forth in the Stalking Horse Agreement (the "***Stalking Horse Objection Period***"), and absent objection, the Debtor shall be authorized to enter into the asset purchase agreement with the applicable Stalking Horse Bidder and grant any of the Bid Protections included in such Stalking Horse Bidder's asset purchase agreement without further order of the Court. To the extent necessary, the Debtor's right to seek the Court's approval of one or more Stalking Horse Bidders, with notice and a hearing, are preserved by the Bidding Procedures. Any Stalking Horse Agreement executed by the Debtor and the transactions contemplated thereby will be deemed a Qualified Bid for all purposes, and any party to a Stalking Horse Agreement executed by the Debtor will

be deemed to be Qualified Bidder. If an objection is filed during the Stalking Horse Objection Period, Court approval will be necessary to provide Bid Protections to the Stalking Horse Bidder, which approval may be sought prior to the Auction or at the Sale Hearing (collectively, the “*Stalking Horse Objection Process*”).

The Debtor reserves the right to work with any Potential Bidder in advance of the Auction to cure any deficiencies in a Bid that is not initially deemed to be a Qualified Bid. The Debtor may accept a single Qualified Bid or multiple Bids for non-overlapping material portions of the Proposed Purchased Assets that, if taken together in the aggregate, would otherwise meet the standards for a single Qualified Bid. The Debtor may also permit otherwise Qualified Bidders who submitted Bids by the Bid Deadline for a material portion of the Proposed Purchased Assets but who are not identified as a component of a single Qualified Bid consisting of multiple Bids, to participate in the Auction and to submit higher and/or otherwise better Bids that in subsequent rounds of bidding may be considered, together with other Bids for non-overlapping portions of the Debtor’s assets, as part of such a single Qualified Bid.

VI. Auction.

If the Debtor receives more than one Qualified Bid, the Debtor will conduct an Auction to determine the Successful Bidder(s) for the Proposed Purchased Assets. The Debtor shall notify any Stalking Horse Bidder if one or more Qualified Bids are received and provide the identity of the Qualified Bidders making any such Qualified Bids. (To the extent that a Stalking Horse Bidder has not previously received a copy of any Qualified Bid, the Debtor shall provide a copy thereof, or copies thereof, as the case may be, to the Stalking Horse Bidder prior to the commencement of the Auction.) If the Debtor does not receive more than one Qualified Bid, the Debtor will not conduct an Auction and shall designate the sole Qualified Bid as the Successful Bid for the Proposed Purchased Assets.

If the Debtor has received more than one Qualified Bid, prior to the commencement of the Auction, the Debtor will notify each Qualified Bidder of the highest or otherwise best Qualified Bid, as determined in the Debtor's sole business judgment (the "**Baseline Bid**") for the Proposed Purchased Assets and provide copies of the applicable Qualified Bid Documents supporting the Baseline Bid to each Qualified Bidder. The determination of which Qualified Bid constitutes the Baseline Bid and which Qualified Bid constitutes the Successful Bid shall take into account any factors the Debtor reasonably deems relevant to the value of the Qualified Bid to the Debtor's estate, which may include, among other things: (a) the number, type, and nature of any changes to the template asset purchase agreement, any stalking horse purchase agreement or Bid Purchase Agreement, if any, requested by the Qualified Bidder, including the type and amount of Proposed Purchased Assets sought to be acquired and obligations sought to be assumed in the Qualified Bid; (b) the amount and nature of the total consideration; (c) the likelihood of the Qualified Bidder's ability to close the applicable purchase of the Proposed Purchased Assets and the timing of such transaction; (d) the net economic effect of any changes to the value to be received by the Debtor's estate from the transaction contemplated by the Qualified Bid Documents; and (e) the tax consequences of such Qualified Bid (collectively, the "**Bid Assessment Criteria**"). Only Qualified Bidders will be entitled to make any subsequent bids at the Auction. At least one (1) Business Day prior to the Auction, each Qualified Bidder who has timely submitted a Qualified Bid must inform the Debtor whether it intends to attend the Auction and all Qualified Bidders wishing to attend the Auction must have at least one individual representative with authority to bind such Qualified Bidder in attendance at the Auction in person.

The Auction, if necessary, will be conducted on [] [], 2019 at 10:00 a.m.] (**prevailing Central time**) at [], or at such other time and location as designated by the

Debtor. The Auction, if necessary, shall be conducted in a timely fashion according to the following procedures:

a. The Debtor shall conduct the Auction.

The Debtor and its professionals shall direct and preside over the Auction. At the start of the Auction, the Debtor shall describe the terms of any Baseline Bid. All subsequent incremental Bids made shall be Overbids (defined below) and shall be made and received on an open basis, and all material terms of each Overbid shall be fully disclosed to all other Qualified Bidders who submitted Qualified Bids. The Debtor shall maintain a written transcript of all Bids made and announced at the Auction, including the Baseline Bid, all applicable Overbids, the Successful Bid(s), and Backup Bid(s).

The Auction will be conducted openly and all creditors will be permitted to attend. The Qualified Bidders may appear at the Auction in person or through duly authorized representatives.

b. Terms of Overbids.

“*Overbid*” means any bid made at the Auction by a Qualified Bidder³ subsequent to the Debtor’s announcement of the Baseline Bid. Each Overbid must comply with the following conditions:

- (i). **Minimum Overbid Increment**. The initial Overbid, if any, shall provide for total consideration to the Debtor with a value that exceeds the value of the consideration under the applicable Baseline Bid by an incremental amount that is not less than the \$100,000 (a “*Minimum Overbid Increment*”). All subsequent Overbids, if any, shall provide for total consideration to the Debtor with a value that exceeds the value of the consideration under the Prevailing Highest Bid (as defined below) in the given round by an incremental amount that is not less than the Minimum Overbid Increment.
- (ii). **Conclusion of Each Overbid Round**. Upon the solicitation of each round of applicable Overbids, the Debtor may announce a deadline (as the Debtor may, in its reasonable business judgment, extend from time to time, the

³ Or Qualified Bidders, in the event of a Joint Bid.
4814-5586-8587.5

“**Overbid Round Deadline**”) by which time any Overbids must be submitted to the Debtor.

- (iii). **Overbid Alterations.** An applicable Overbid may contain alterations, modifications, additions, or deletions of any terms of the Bid no less favorable to the Debtor’s estate than any prior applicable Bid or Overbid, as determined in the Debtor’s reasonable business judgment, but shall otherwise comply with the terms of these Bidding Procedures. Any Overbid must comply with the conditions for a Qualified Bid.
- (iv). **Announcing Highest Bid.** Subsequent to each Overbid Round Deadline, the Debtor shall announce whether the Debtor has identified in the initial applicable Overbid round, an Overbid or Overbids as being higher or otherwise better than the applicable Baseline Bid(s) for the Proposed Purchased Assets, or in subsequent rounds, the Overbid(s) previously designated by the Debtor as the prevailing highest or otherwise best Bid for the Proposed Purchased Assets (the “**Prevailing Highest Bid**”). The Debtor shall describe to all Qualified Bidders the material terms of any new Overbid designated by the Debtor as the Prevailing Highest Bid(s) as well as the value attributable by the Debtor to such Prevailing Highest Bid(s).

c. Consideration of Overbids.

The Debtor reserves the right, in its discretion, to adjourn the Auction one or more times to, among other things: (i) facilitate discussions among the Debtor and any Qualified Bidders; (ii) allow Qualified Bidders to consider how they wish to proceed; (iii) provide Qualified Bidders the opportunity to provide the Debtor with such additional evidence as the Debtor, in its reasonable business judgment, may require, including that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate the proposed transaction at the prevailing Overbid amount; and (iv) to provide the Debtor with an opportunity to consider how to value each Overbid. The full amount of the Bid Protections shall be included as value of any bid made by any Stalking Horse Bidder in each round of bidding at the Auction, including for purposes of comparing the value of a Qualified Bidder’s Overbid to the bid of a Stalking Horse Bidder in any round of bidding.

d. Closing the Auction.

- (i). The Auction shall continue until there is only one Bid or Joint Bid, as applicable, that the Debtor determines, in its reasonable business judgment, is the highest or otherwise best Bid for the Proposed Purchased Assets. Such Bid or Joint Bid, as applicable, shall be declared the “**Successful Bid**,” and such Qualified Bidder (or Qualified Bidders, in the event of a Joint Bid) the “**Successful Bidder(s)**,” at which point the Auction will be closed. The Debtor shall notify the Qualified Bidders of the Successful Bid within one Business Day following such selection. The Auction shall not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an Overbid at the Auction to the then Prevailing Highest Bid. Such acceptance by the Debtor of the Successful Bid is conditioned upon approval by the Bankruptcy Court of the Successful Bid.
- (ii). The Debtor shall not consider any Bids or Overbids submitted after the conclusion of the Auction, and any such Bids or Overbids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.
- (iii). As soon as reasonably practicable after closing the Auction, the Debtor shall file on the docket, but not serve, a notice with the Court identifying the Successful Bidder(s) and Backup Bidder(s).

e. No Collusion; Good-Faith Offer.

Each Qualified Bidder participating at the Auction will be required to confirm on the record at the Auction that: (i) it has not engaged in any collusion with respect to the bidding; and (ii) its Bid is a good-faith offer and it intends to consummate the transaction contemplated by such Bid if selected as the Successful Bidder(s). All Potential Bidders and all Qualified Bidders will immediately disclose to the Debtor and the United States Trustee any discussions regarding employment of or offers to retain or employ any officer or insider of the Debtor.

VII. Backup Bidder(s).

- a. Notwithstanding anything in these Bidding Procedures to the contrary, if an Auction is conducted, the Qualified Bidder with the next-highest or otherwise second-best Bid for all or a portion of the Proposed Purchased Assets at the Auction, as determined by the Debtor in its discretion (the “**Backup Bid**”), shall be required to serve as a backup bidder (the “**Backup Bidder**”), and each Qualified Bidder shall agree and be deemed to agree to be the Backup Bidder if so designated by the Debtor.
- b. The identity of the Backup Bidder(s) and the amount and material terms of the Backup Bid(s) shall be announced by the Debtor at the conclusion of the Auction

at the same time the Debtor announces the identity of the Successful Bidder(s). The Backup Bidder(s) shall be required to keep the Backup Bid(s) open and irrevocable, until the closing of the sale with the Successful Bidder(s). Each Backup Bidder's Deposit shall be held in escrow until the closing of the transaction with the Successful Bidder(s) and shall thereafter be returned within five (5) Business Days.

- c. If a Successful Bidder fails to consummate the approved transactions contemplated by its Successful Bid, the Debtor may select the applicable Backup Bidder as the Successful Bidder, and such Backup Bidder shall be deemed a Successful Bidder for all purposes. The Debtor will be authorized, but not required, to consummate all transactions contemplated by the Backup Bid without further order of the Bankruptcy Court or notice to any party. In such case, the defaulting Successful Bidder's Deposit shall be forfeited to the Debtor. The Debtor specifically reserves the right to seek all available remedies against any defaulting Successful Bidder(s), including with respect to specific performance.
- d. Notwithstanding anything to the contrary in this section or the Bidding Procedures Order, if a Stalking Horse Bidder is required to serve as Backup Bidder, the terms and conditions of such service shall be governed by the applicable stalking horse purchase agreement.

VIII. Reservation of Rights.

Without prejudice to the rights of any Stalking Horse Bidder under the terms their stalking horse purchase agreement, the Debtor reserves its rights to modify these Bidding Procedures in the Debtor's reasonable business judgment in any manner that will best promote the goals of the bidding process, or impose, at or prior to the Auction, additional customary terms and conditions on the sale of the Proposed Purchased Assets, including, without limitation: (a) extending the deadlines set forth in these Bidding Procedures; (b) adjourning the Auction at the Auction and/or adjourning the Sale Hearing in open court without further notice; (c) adding procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction; (d) canceling the Auction; and (e) rejecting any and all bids or Bids.

IX. Sale Hearing.

A hearing to consider approval of the Sale of the Proposed Assets to the Successful Bidder(s) (the "*Sale Hearing*") is currently scheduled to take place at [] (prevailing Central

time) on [_____] [____], 2019, before the Honorable [_____] at the Bankruptcy Court, Bob Casey United States Courthouse, 515 Rusk Avenue, Courtroom [____], Houston, Texas 77002.

Subject to the rights and remedies of any Stalking Horse Bidder as set forth in their applicable stalking horse purchase agreement, the Sale Hearing may be continued or adjourned to a later date by the Debtor without further notice other than an announcement at, the Sale Hearing or through the filing of a notice on the Court's docket. No further notice of any such continuance or adjournment will be required to be provided to any party (including any Stalking Horse Bidder).

At the Sale Hearing, the Debtor shall present the Successful Bid(s) to the Bankruptcy Court for approval.

X. Bid Protections.

To provide an incentive and to compensate any Stalking Horse Bidder for performing the substantial due diligence and incurring the expenses necessary and entering into a corresponding asset purchase agreement, with the knowledge and risk that arises from participating in the sale and subsequent bidding process, the Debtor has agreed to pay any Stalking Horse Bidder, under the conditions and in the amount set forth in the Bidding Procedures Order:

Bid Protections. Pursuant to the terms of the Bidding Procedures Order and these Bidding Procedures, and in accordance with the Stalking Horse Objection Process, in the event any Stalking Horse Bidder is not the Successful Bidder for the subject Proposed Purchased Assets (or otherwise does not purchase the subject Proposed Purchased Assets as a Backup Bidder) and is not in default under the applicable asset purchase agreement, the Stalking Horse Bidder is to be provided an expense reimbursement for its actual, reasonable and documented expenses not to exceed \$250,000 and a break-up fee in an amount not to exceed 3% of the Stalking Horse Bidder's initial Purchase Price.

Subject to the Bidding Procedures Order and the Stalking Horse Objection Process, the Debtor has agreed that its obligations to pay the Bid Protections from the consideration received

from the consummation of a transaction with a Successful Bidder that is not a Stalking Horse Bidder, shall survive termination of any Stalking Horse Bidder's asset purchase agreement, and shall be payable under the terms of such asset purchase agreement and the Bidding Procedures Order.

Any Stalking Horse Bidder shall have standing to appear and be heard on all issues related to the Auction, including the right to object to the conduct of the Auction and interpretation of these Bidding Procedures.

XI. Return of Deposit.

The Deposit of the Successful Bidder(s) shall be applied to the Purchase Price of the transaction at closing. The Deposits for each Qualified Bidder shall be held in one or more interest-bearing escrow accounts on terms acceptable to the Debtor in its reasonable business judgment and shall be returned (other than with respect to the Successful Bidder(s) and the Backup Bidder) on or within five (5) Business Days after the Auction.

If any Successful Bidder fails to consummate the sale because of a breach by such Successful Bidder, the Debtor will not have any obligation to return the applicable Deposit deposited by the Successful Bidder (except as otherwise set forth in any Stalking Horse Bidder's asset purchase agreement, as to any Stalking Horse Bidder), which may be retained by the Debtor as liquidated damages, in addition to any and all rights, remedies, or causes of action that may be available to the Debtor (and subject to any Stalking Horse Bidder's asset purchase agreement, as to any Stalking Horse Bidder), and the Debtor shall be free to consummate the sale with the applicable Backup Bidder without the need for an additional hearing or order of the Bankruptcy Court, in which case the Backup Bidder's Deposit shall be applied to the Purchase Price.

XII. Fiduciary Out.

Nothing in these Bidding Procedures shall require the Debtor's boards of directors to take any action, or to refrain from taking any action, with respect to these Bidding Procedures, to the extent the Debtor's boards of directors determine, based on the advice of counsel, that taking such action, or refraining from taking such action, as applicable, is required to comply with applicable law or their fiduciary obligations under applicable law; provided that in the event of any such action, all rights and remedies of any Stalking Horse Bidder in these Bidding Procedures, any Stalking Horse Bidder's asset purchase agreement, and/or applicable law shall be reserved and preserved.

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EXHIBIT 2 TO BIDDING PROCEDURES ORDER
TEMPLATE ASSET PURCHASE AGREEMENT

PURCHASE AGREEMENT
AND
MEMBER SUBSTITUTION AGREEMENT
BY AND AMONG

_____,

,

AND

_____, 2019

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Exhibits

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PURCHASE AGREEMENT AND MEMBER SUBSTITUTION AGREEMENT

This Purchase Agreement and Member Substitution Agreement is entered into as of _____, 2019 (the "**Effective Date**"), by and among _____, a _____ ("**Seller**") and _____, a _____ ("**Buyer**"). Seller and Buyer are collectively referred to as the "**Parties**" and each individually as a "**Party**."

BACKGROUND

WHEREAS, Seller owns and operates that certain long-term acute care hospital identified on Exhibit 1 known as "Huntsville Memorial Hospital" (the "**Seller Facility**") and the other businesses and assets incident thereto;

WHEREAS, on or about _____, Seller filed a voluntary petition (collectively, the "**Bankruptcy Case**") pursuant to chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Texas (the "**Bankruptcy Court**");

WHEREAS, the Parties intend that the Buyer be designated as the initial bidder for the Seller Facility and the Purchased Assets; and

WHEREAS, Seller desires to sell and assign to Buyer, and Buyer desires to purchase from Seller, all of the Purchased Assets relating to the Seller Facility on the terms and conditions set forth herein, free and clear of all encumbrances (other than Permitted Encumbrances) in accordance with Sections 105, 363 and 365 and other applicable provisions of the Bankruptcy Code and the Bankruptcy Rules.

NOW, THEREFORE, in consideration of the promises, covenants, representations and warranties hereinafter set forth, the Parties agree as follows:

ARTICLE I - DEFINITIONS

1.1 Definitions. As used in this Agreement, the following terms have the following meanings (unless otherwise expressly provided herein):

"**Accounts Receivable**" means all accounts, notes, interest and other receivables of Seller, and all claims, rights, interests and proceeds related thereto, arising from the rendering of services to patients at the Seller Facility, billed and unbilled, recorded and unrecorded (including any accounts previously written off or charged off as bad debts), for services provided at or by Seller Facility whether payable by private pay patients or Third Party Payors, or by any other source, including the right to receive an amount equal to the value of all accounts receivable arising from the rendering of services and provision of medicine, drugs and supplies to patients at the Seller Facility relating to Medicare, Medicaid, TRICARE and other third party patient claims of Seller due from beneficiaries or governmental Third Party Payors.

"**Accrued PTO**" means the dollar amount of all accrued but unused paid time off for vacation and sick time for each Transferred Employee (including employer FICA and any other estimated employer Taxes thereon) recorded by a Seller as of immediately prior to the Closing pursuant to the Seller's standard policies and as set forth on a schedule delivered to Buyer at least two (2) Business Days prior to the Closing.

"**Actions**" means any claim, cause of action, litigation, action, suit, arbitration, proceeding, hearing, audit or right in action.

“**Affiliate**” means, with respect to a Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person. The term “**control**” used in the preceding sentence means the possession, directly or indirectly, of the power to either (a) direct or cause the direction of the management and policies of a Person whether through ownership of equity interests, by contract or otherwise or (b) vote 10% or more of the securities having ordinary voting power for the election of directors of a Person.

“**Agreement**” means this Asset Purchase Agreement, as from time to time amended, modified or supplemented in accordance with its terms, including the Exhibits and Schedules attached hereto.

“**Ancillary Agreements**” means, with respect to any Party, all agreements to which such Party is or will become a party pursuant to this Agreement.

“**Assumed Cure Amounts**” means those Cure Amounts set forth on Schedule 2.3(b) (as updated in accordance with Section 2.3(b)) solely with respect to any Proposed Assigned Contract that becomes an Assigned Contract, but excluding any Disputed Cure Amounts.

“**Bankruptcy Code**” means Title 11 of the United States Code, Sections 101 et seq.

“**Bankruptcy Rules**” means the Federal Rules of Bankruptcy Procedures.

“**Business Day**” means any day other than a Saturday, Sunday or day on which banks are authorized or required to be closed in Huntsville, Texas.

“**CMS**” means the Centers for Medicare and Medicaid Services.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Contract**” means any written agreement, license, lease, contract, arrangement, understanding or commitment to which a Person or its assets is legally bound.

“**Cost Reports**” means all cost and other reports filed pursuant to the requirements of Government Reimbursement Programs, and similar or successor programs with or for the benefit of Governmental Authorities for payment or reimbursement of amounts due from them.

“**Cure Amounts**” means the amounts, if any, determined by the Bankruptcy Court to be necessary to cure all defaults and to pay all actual losses that have resulted from defaults by the applicable Seller pursuant to the Proposed Assigned Contracts (including any amounts delivered into escrow accounts to pay any claim for Cure Amounts that remain disputed as of the Closing).

“**Disputed Cure Amounts**” means the potential maximum Cure Amounts that could be payable with respect to any Disputed Contract based on objections received from non-debtor counterparties to such Disputed Contract in accordance with Section 5.6(b), in each case for which the dispute has not been fully resolved as of the Closing.

“**Encumbrances**” means any and all mortgages, liens, pledges, security interests, leases, subleases, licenses, rights of way, easements, rights of first refusal, options, restrictions, covenants, reservations or similar matters, whether or not of record, or encroachments of any nature whatsoever, or any conditional sale contracts, title retention contracts or other agreements or arrangements to give or to refrain from giving any of the foregoing, whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or

unscheduled, noticed or unnoticed, contingent or non-contingent, material or non-material, known or unknown.

“Environmental Laws” means all applicable foreign, federal, state or local Laws, governing pollution, protection of human health from exposure to Hazardous Materials or protection of the environment or natural resources, including, without limitation, any of the foregoing relating to the use, generation, transport, treatment, storage, Release or disposal of Hazardous Materials.

“Environmental Liabilities” means any obligation, expense, or liabilities arising out of or related to (a) environmental conditions, including without limitation, (i) the presence, Release, or threat of Release of, or exposure to, Hazardous Materials first occurring, or as a result of facts, circumstances or events first existing or occurring, prior to the Closing at, on, in or under or migrating from the Seller Facility, whether into the air, soil, soil gas, ground or surface waters on-site or off-site, or (ii) arising from the off-site or on-site transportation, storage, treatment, recycling or disposal of Hazardous Materials managed or Released by or on behalf of Seller in connection with the Seller Facility or the Healthcare Business; or (b) any violation of any Environmental Law by Seller with respect to the Seller Facility prior to the Closing.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” means each trade or business (whether or not incorporated) which is treated as a single employer with Seller under Section 414 of the Code or Section 4001(b) of ERISA.

“Excluded Cure Amounts” means those Cure Amounts with respect to any Contract that does not become an Assigned Contract.

“Facility Employees” means the employees of Seller and any Affiliate of Seller that perform substantially all of their services at one or more of the Seller Facility, including any such employees who are on a leave of absence.

“Facility IP” means all of the Intellectual Property exclusively used in the operation of the Seller Facility, including Intellectual Property owned by the Seller and Intellectual Property which is exclusively used by the Seller in the operation of the Seller Facility but owned by a third party.

“Final Order” means an Order of the Bankruptcy Court (or any other court of competent jurisdiction) which has not been modified, amended, reversed, vacated or stayed and as to which (i) the time to appeal, petition for certiorari, or move for a new trial, stay, reargument or rehearing has expired and as to which no appeal, petition for certiorari or motion for new trial, stay, reargument or rehearing shall then be pending or (ii) if an appeal, writ of certiorari, new trial, stay, reargument or rehearing thereof has been sought, such Order of the Bankruptcy Court (or other court of competent jurisdiction) shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied, or a new trial, stay, reargument or rehearing shall have expired, as a result of which such action or Order shall have become final in accordance with Bankruptcy Rule 8002; provided that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed relating to such Order, shall not cause an Order not to be a Final Order.

“Fundamental Representations” means Section 3.1(a), Section 3.2, the first sentence of Section 3.3(a), the last sentence of Section 3.9(a), and Section 3.20.

“GAAP” means generally accepted accounting principles in the United States, consistently applied.

“**Governing Documents**” means, for the Person in question, that Person’s Articles of Incorporation, Certificate of Formation, Certificate of Limited Partnership, Bylaws, Partnership Agreement, Limited Liability Company Agreement or other similar documents relating to the formation and/or governance of the business and affairs of such Person.

“**Government Reimbursement Programs**” means any programs funded or administered by a Governmental Authority, or contractor(s) thereof, for the purposes of paying for health care services. Such programs include Medicare, each state Medicaid program, TRICARE, each other federal health care program (as defined in 42 U.S.C. § 1320a-7b(f)), and all similar or successor programs with or for the benefit of designated federal or state residents.

“**Governmental Authority**” means any federal, state, local or municipal government, including any subdivision, court, commission or regulatory agency; any governmental or quasi-governmental authority; and any Person exercising or entitled to exercise any administrative, executive, judicial, legislative, regulatory or taxing authority.

“**Hazardous Materials**” means any petroleum or petroleum products, radioactive materials or wastes, friable asbestos, medical, pathological, infectious or biological wastes, polychlorinated biphenyls, and any pollutant, contaminant, or other chemical, material, substance or waste that is prohibited, limited or regulated under any Environmental Law due to its hazardous or toxic nature.

“**Healthcare Business**” means, collectively, the businesses operated by the Seller, including Seller’s ownership and operation of the Seller Facility.

“**Healthcare Laws**” means, collectively, any and all Laws governing the licensure or regulation of healthcare providers, professionals, or facilities, or payors or otherwise governing or regulating the provision of, or payment for, healthcare services, the sale of controlled substances or other pharmaceuticals, medical devices or supplies and the like. Without limiting the generality of the foregoing, Healthcare Laws include Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395hhh (the Medicare statute), including specifically, the Ethics in Patient Referrals Act, as amended, 42 U.S.C. § 1395nn; Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v (the Medicaid statute); the Federal Health Care Program Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b); the False Claims Act, 31 U.S.C. §§ 3729-3733 (as amended); the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the Anti-Kickback Act of 1986, 41 U.S.C. §§ 8701–8707; the Civil Monetary Penalties Law, 42 U.S.C. §§ 1320a-7a and 1320a-7b; the Exclusion Laws, 42 U.S.C. § 1320a-7; the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §§ 1320d-1329d-8, as amended by the Health Information Technology for Economic and Clinical Health Act, enacted as Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (“**HIPAA**”); the Patient Protection and Affordable Care Act; the Health Care Fraud Enforcement Act of 2009; the Federal Controlled Substances Act, 21 U.S.C. §§ 801 et seq.; the Federal Food, Drug and Cosmetic Act, 21 U.S.C. §§ 301 et seq.; any state or local statutes or regulations concerning the dispensing and sale of controlled substances; all Laws relating to the provision of, or billing or payment for health care items or services, or relating to health care information and all applicable amendments, implementing regulations, rules, ordinances, judgments, and orders; and any similar state and local statutes, regulations, rules, ordinances, judgments, and orders; and all applicable federal, state, and local licensing, certificate of need, regulatory and reimbursement statutes, corporate practice of medicine and physician fee splitting regulations, rules, ordinances, orders, and judgments applicable to healthcare service providers.

“**HHS**” means the U.S. Department of Health and Human Services.

“**HMHPO**” means HMH Physician Organization, a Texas nonprofit health organization.

“Intellectual Property” means all of the following in any jurisdiction throughout the world (i) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications, and patent disclosures, together with all reissues, divisions, continuations, continuations-in-part, renewals, extensions, and foreign counterparts and equivalents thereof, (ii) all trademarks, service marks, logos, trade names, corporate names, and other source identifiers whether registered or unregistered (as the case may be), as well as all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith, (iii) registrations for internet domain names, (iv) all rights protected by copyright law, including rights in registered and unregistered works of authorship, all rights to copy, distribute, modify, publicly perform, and publicly display such works, and all applications, registrations, and renewals in connection therewith, and (v) trade secrets, technologies, databases, software, and other proprietary information.

“Inventory” means all inventories of supplies, drugs, food, janitorial and office supplies and other disposables and consumables located at the Seller Facility or used in connection with the operation of the Seller Facility.

“IRS” means the Internal Revenue Service.

“Knowledge of Seller” (and any similar expression, including the expression **“Seller’s Knowledge”**) means, as to a particular matter, the actual knowledge of any officer of Seller or the Seller Facility in each case after reasonable inquiry of the applicable personnel at the Seller Facility.

“Law” means any federal, state, local or other statute, law, ordinance, regulation, rule, code, decree, Order or similar requirements of any Governmental Authority.

“Material Adverse Effect” means a change, event, development or occurrence that, individually or in the aggregate, (a) would or would reasonably be expected to prevent or materially delay consummation of the transactions contemplated by this Agreement or (b) has or would reasonably be expected to have a material adverse effect on the financial condition, properties, assets, liabilities, business, or results of operations of the Purchased Assets, taken as a whole. Notwithstanding the foregoing, none of the following changes, events, developments or occurrences shall be deemed to constitute or be taken into account in determining whether there has been or may be a Material Adverse Effect under clause (b): (i) any actual or proposed change in Law or accounting standards or the interpretation or implementation thereof; (ii) any change that is generally applicable to the healthcare industry in the Applicable State; (iii) the entry into this Agreement or the announcement, commencement, pendency or consummation of the transactions contemplated hereby, (iv) any action taken by Seller or its Affiliates that is required to be taken by this Agreement; (v) any omission to act or action taken with the prior written consent of Buyer; (vi) any change in general business, economic, geopolitical or financial market conditions; (vii) any national or international political event or occurrence, including acts of war or terrorism; (viii) any natural disaster or calamity; (ix) the filing or prosecution of the Bankruptcy Case; (x) failure of the Seller to meet financial projections (provided that the exception in this clause (x) shall not prevent or otherwise affect a determination that any change, event, development or occurrence underlying or relating to such failure has resulted in or contributed to a Material Adverse Effect); and (xi) any seasonal fluctuations in the operations of the Seller Facility consistent in all material respects with prior fiscal years, except, in the case of clauses (i), (ii), (vi), (vii) and (viii) to the extent such changes, events, occurrences or developments have a disproportionate effect on the Seller Facility and the Purchased Assets, taken as a whole, relative to other Persons owning and/or operating long-term acute care hospitals in the United States or any Applicable State.

“Order” means any award, writ, injunction, judgment, order, ruling, decision, decree, directive, or similar determination entered, issued, made or rendered by any Governmental Authority (whether judicial, administrative or arbitral).

“**Outside Date**” means the date that is the one hundred and twentieth (120th) day following the Effective Date; provided, however, that if as of such one hundred and twentieth (120th) day (a) the Post-Order Period is ongoing and (b) all of the conditions to Closing set forth in ARTICLE VI and ARTICLE VII (other than those conditions which are to be satisfied at Closing, but subject to such conditions being satisfied at the Closing) are satisfied or waived, then the Outside Date shall be the date that is three (3) Business Days following the final day of the Post-Order Period.

“**Permits**” means all licenses, permits, franchises, privileges, certificates, rights, registrations, approvals, authorizations, consents, provider numbers, waivers, exemptions, releases, variances, certificates of authority, accreditations, or Orders issued by any Governmental Authority.

“**Permitted Encumbrances**” means (i) statutory liens that relate to Taxes, assessments and charges or levies imposed by a Governmental Authority that are not yet due or payable or that are being contested in good faith and for which appropriate reserves have been established in accordance with GAAP; (ii) leasehold interests of the owners of Leased Real Property, (iii) zoning regulations and other Laws affecting the Real Property which are not violated by the current use and occupancy of such Real Property; (iv) easements, covenants, conditions, restrictions and other similar matters of record on real property or leasehold estates that do not in any material respect detract from the value thereof and do not interfere with the operation of the Seller Facility or impair the usefulness thereof; (v) liens arising as a result of the acts of Buyer or its Affiliates; (vi) other than monetary liens, any matter disclosed in the Title Commitments or Surveys; and (vii) those Encumbrances listed on Schedule 1.1(b), in each case other than any liens existing as of the Closing with respect to the Owned Real Property that relate to Taxes, assessments, charges or levies imposed by a Governmental Authority.

“**Person**” means an individual, corporation, partnership, limited liability company, limited liability partnership, trust, association, or organization, including any Governmental Authority.

“**Post-Order Period**” means the period beginning on the date of the final entry of the Sale Order and ending on the thirtieth (30th) day thereafter.

“**Prepaid Assets**” means all advance payments, prepayments, prepaid expenses and deposits which were made by or on behalf of Seller with respect to the operation of the Seller Facility.

“**Purchase Price**” means an amount equal to _____ Dollars (\$ _____).

“**Release**” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, depositing, disposing, dispersing, or migrating of Hazardous Materials into or through the environment or within any building, structure, facility or fixture (including the abandonment or discarding of any barrels, containers or other closed receptacles containing any Hazardous Material).

“**Representatives**” means, with respect to any Person, the officers, directors, principals, employees, agents, auditors, advisors and bankers of such Person.

“**Sale Order**” means a Final Order of the Bankruptcy Court approving, *inter alia*, (i) the sale of the Purchased Assets to the applicable Buyer free and clear of any Encumbrances (other than Permitted Encumbrances), and (ii) the assumption and assignment of the Assigned Contracts to the applicable Buyer, in the form of Sale Order attached as Exhibit 2 hereto or otherwise in form and substance satisfactory to each of Buyer and Seller.

“**Sale Procedures Order**” means a Final Order of the Bankruptcy Court approving the procedures for the sale of the Purchased Assets, in the form of the Sale Procedures Order attached as Exhibit 3 hereto or otherwise in form and substance satisfactory to each of Buyer and Seller.

“**Seller’s Transfer Taxes**” means fifty percent (50%) of Transfer Taxes.

“**Tax Returns**” means all reports, returns, declarations, statements or other information returns or statements filed or required to be filed with any Governmental Authority in connection with Taxes (including any attachments thereto or amendments thereof).

“**Taxes**” means (i) all taxes, charges, fees, levies, duties, or other similar assessments or liabilities in the nature of a tax, including income, gross receipts, net proceeds, alternative or add-on minimum, ad valorem, value-added, excise, stamp, lease, real property, personal property (tangible or intangible), sales, use, service, transfer, excess profits, withholding (including employee’s income withholding), unemployment or other social security, occupational, employment, disability, payroll, registration, environmental, capital stock, capital gains, franchise, and escheat or unclaimed property taxes, in each case imposed by any Governmental Authority; (ii) any interest, fines, penalties, assessments or additions to tax resulting from, attributable to or incurred in connection with any tax described in clause (i) or any contest or dispute thereof; and (iii) any liability for the payment of amounts described in clauses (i) or (ii) as a result of any tax sharing, tax indemnity or tax allocation agreement or any agreement to pay or indemnify any other Person for such matters.

“**Third Party Payor**” means any Person (other than the beneficiary) that pays for or reimburses at least a portion of the health care expenses of its beneficiaries including each Government Reimbursement Program, any entity authorized to provide health insurance (or property, casualty, or life insurance covering health benefits), any health maintenance organization, preferred provider organization, or other managed care program, and any employer authorized in accordance with applicable Law to self-insure its workers’ compensation risk.

“**Title Company**” means _____.

“**Transfer Taxes**” means any sales, use, transfer, excise, stamp, conveyance, mortgage, intangible, documentary recording, license and registration, and value added Taxes imposed by any Governmental Authority upon the Purchased Assets.

ARTICLE II – TRANSACTIONS AT THE CLOSING

2.1 Purchase and Sale. Subject to the terms and conditions of this Agreement, at the Closing and effective as of the Effective Time, Seller shall sell, convey, assign, transfer and deliver to the applicable Buyer, and the applicable Buyer shall acquire, all of the following assets owned, exclusively used or held for use by Seller in connection with the operation of the Seller Facility, other than the Excluded Assets (all such assets other than the Excluded Assets, the “**Purchased Assets**”), free and clear of all Encumbrances other than the Permitted Encumbrances:

(a) all Accounts Receivable as of the Closing Date;

(b) all interests of Seller in the real property owned by Seller that is described in Schedule 2.1(a) (the “**Owned Real Property**”), including all rights of Seller in the land, buildings, fixtures, parking lots, construction in progress, and other improvements located thereon as to each parcel of real property included in such Owned Real Property;

(c) subject to Section 2.3(b), all leasehold interests (together with any amendments, renewals, guaranties or other agreements with respect thereto, the “**Proposed Tenant Leases**”) of Seller used exclusively in connection with the operation of the Healthcare Business in and to the real property (the real property that is subject to the Proposed Tenant Leases being referred to as the “**Leased Real Property**”), (the term “**Real Property**” means collectively the Owned Real Property and the Leased Real Property) that are described in Schedule 2.1(c);

(d) all interests of Seller in and to all real property leases, subleases, licenses, use and other occupancy agreements relating exclusively to the operation of the Seller Facility or the Healthcare Business described in Schedule 2.1(d) (each, a “**Proposed Lessor Lease**”);

(e) all equipment, furniture, furnishings, machinery, tools, supplies, telephones, office equipment, leasehold improvements and other tangible personal property used by Seller in connection with the operations of the Seller Facility;

(f) all Inventory owned by Seller and exclusively used in connection with the operation of the Seller Facility (other than the portions of Inventory disposed of, or expended, as the case may be, by Seller after the Effective Date and prior to the Closing in the ordinary course of business);

(g) the member interest in HMHPO that is owned or controlled by Seller pursuant to the Member Interest Assignment attached hereto as Exhibit 10;

(h) all Prepaid Assets related to the Healthcare Business other than any Prepaid Assets exclusively relating to any of the Excluded Assets;

(i) all intangible personal property owned by Seller and exclusively used in connection with the operation of the Seller Facility, including all right, title and interest in and to all Facility IP, including the names set forth on Schedule 2.1(i), but excluding (A) the right to use any names, trade names, trademarks and service marks including the name “Huntsville Memorial Hospital” and (B) all proprietary software, data processing programs, or source codes used by Seller;

(j) all financial, medical staff and personnel records (including those related to the preparation of Cost Reports) owned by Seller and used in connection with the operation of the Seller Facility or the Purchased Assets (including all equipment records, construction plans and specifications, medical and administrative libraries, documents, catalogs, books, records, files, operating manuals and current personnel records) and all patient and medical records (subject to a mutually agreeable medical records custodianship agreement) used in connection with the operation of the Purchased Assets (provided that personnel records not relating to the Transferred Employees shall not be treated as Purchased Assets);

(k) subject to Section 2.11, all of a Seller’s rights to receive insurance proceeds relating to the physical condition of the Seller Facility and the Purchased Assets, to the extent not expended on the repair or restoration of the Purchased Assets prior to the Closing;

(l) subject to Sections 2.3(b) and 5.6(b), the Contracts of Seller (i) designated in Schedule 2.1(l) as Material Contracts to be assumed by Buyer or (ii) which exclusively relate to the operation of the Seller Facility but are not required to be listed in Schedule 3.8, and in any event including the Medicare and Medicaid provider agreements for the Seller Facility ((i) and (ii), collectively the “**Proposed Assumed Contracts**”);

(m) to the extent assignable, all Permits held by Seller relating exclusively to the ownership, development and operation of the Seller Facility and the Purchased Assets;

(n) all claims or causes of action relating to or arising from the Healthcare Business other than claims that arise under Chapter 5 of Title 11 of the United States Code;

(o) subject to Section 2.3(a)(iv), except for any positive amounts with respect to Medicare reimbursement for bad debts of the Seller Facility under 42 C.F.R. § 413.89 associated with services furnished prior to the Effective Time, which shall be governed pursuant to Section 8.11 of this Agreement, rights to positive cost report settlements and retroactive adjustments on Seller Cost Reports in respect of time periods prior to the Closing (“*Seller Agency Settlements*”);

(p) subject to Section 2.3(a)(iv), except for any positive amounts with respect to Medicare reimbursement for bad debts of the Seller Facility under 42 C.F.R. § 413.89 relating to services furnished prior to the Closing, which shall be governed pursuant to Section 8.11 of this Agreement, any amounts receivable and any amounts received on or after the Closing Date with respect to any extraordinary payments and payment adjustments from any Third Party Payor, including payments and payment adjustments: (i) relating to outlier reconciliation, supplemental, disproportionate share or waiver payments, or Medicaid GME funding with respect to time periods prior to the Effective Time; (ii) relating to the Seller Cost Reports or Seller Agency Settlements (whether resulting from an appeal of a disallowance or otherwise) and other risk settlements with respect to time periods prior to the Effective Time; (iii) which result any appeals pertaining to Medicare, Medicaid (including disproportionate share hospital program payments), TRICARE or other Third Party Payors for services furnished during periods prior to the Effective Time; (iv) relating to participation in any group purchasing organization (including any rebates or fee sharebacks for purchases made and paid for prior to the Effective Time) with respect to periods prior to the Effective Time; or (v) arising from Meaningful Use attestations with respect to time periods prior to the Effective Time;

(q) the goodwill generated by or associated with Seller and the Seller Facility;

(r) all intercompany receivables between Seller and HMHPO;

(s) all telephone and facsimile numbers, post office boxes and directory listings used exclusively in connection with the Seller’s operation of the Healthcare Business; and

(t) any other tangible asset located within the Seller Facility as of (x) the Effective Date or (y) the Closing Date, in each case not otherwise articulated in the foregoing (a) through (o) and not otherwise an Excluded Asset.

2.2 Excluded Assets. The following assets of Seller shall not be conveyed to Buyer (collectively, the “*Excluded Assets*”):

(a) all intercompany receivables between Seller and any of its respective Affiliates, excluding any intercompany receivables between Seller and HMHPO;

(b) all cash and cash equivalents, securities, investments, endorsements, bond funds and other funds created by bond indentures (but not including any Prepaid Assets that are related to the Healthcare Business);

(c) assets and liabilities under medical malpractice risk pools and workers compensation and employee retirement programs;

(d) all of Seller's or any of its Affiliates' proprietary manuals, marketing materials, policy and procedure manuals, standard operating procedures and marketing brochures, data and studies or analyses not used exclusively at the Seller Facility;

(e) the Contracts of Seller that (i) relate exclusively to the Excluded Liabilities or the Excluded Assets, (ii) do not relate to either the Purchased Assets or the Seller Facility, (iii) are not Assigned Contracts or (iv) are listed on Schedule 2.2(e) (the "**Excluded Contracts**");

(f) all Employee Benefit Plans maintained by, sponsored in whole or in part by, contributed to by, or required to be contributed to by, Seller or any of its Affiliates (including, without limitation, each Facility Employee Benefit Plan) or with respect to which Seller or any of its Affiliates has any actual or contingent liability (each such Employee Benefit Plan described in this Section 2.2(f), a "**Seller Plan**") and all Contracts, assets and insurance policies relating to any Seller Plan;

(g) all minute books and organizational records relating to Seller and its Affiliates and all other books and records that a Seller is required by Law to retain in its possession (provided that Seller shall provide Buyer copies of such books and records that a Seller is required by Law to retain in its possession);

(h) except as set forth in Section 2.1(k), all insurance policies and rights thereunder;

(i) those pharmaceuticals that cannot by Law be sold by Seller to Buyer;

(j) all claims, rights, interests and proceeds with respect to federal, state or local Tax payments, refunds and credits (including property Tax refunds) to the extent such amounts relate to Taxes that are Excluded Liabilities;

(k) all claims, causes of action, choses in action, rights of recovery, rights of set off and rights of recoupment of Seller and its Affiliates with respect to periods prior to the Effective Time, and any payments, awards or other proceeds resulting therefrom;

(l) all claims, causes of action, choses in action, rights of recovery of Seller and its Affiliates that arise under Chapter 5 of Title 11 of the United States Code;

(m) peer review materials and any writings, documents 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, in each case, except to the extent related to the Assumed Liabilities;

(n) Seller's National Provider Identifier;

(o) any assets or businesses used exclusively in the operations of any hospitals or facilities owned or operated by Seller or its subsidiaries other than the Seller Facility;

(p) the rights of Seller and its Affiliates under this Agreement;

(q) all other assets of Seller that are not Purchased Assets, including those set forth in Schedule 2.2(q).

2.3 Assumed Liabilities.

(a) In connection with the sale of the Purchased Assets to Buyer at the Closing and effective as of the Effective Time, Buyer shall assume and be responsible only for Accrued PTO and the following

liabilities, obligations and duties of Seller to the extent (x) relating to operation of the Seller Facility (and not to the extent arising from or related to any Excluded Asset, Excluded Liability or any breach, violation or infringement of Contract, tort or Law) and (y) arising on or after the Closing Date (all such liabilities other than the Excluded Liabilities, collectively, the “**Assumed Liabilities**”):

(i) subject to Section 2.3(b), liabilities, obligations and duties of Seller under the Assigned Contracts as and to the extent any such liability, obligation or duty arises on or after the Closing Date;

(ii) all liabilities and obligations to the extent arising out of the operation of the Owned Real Property and Leased Real Property on or after the Closing Date;

(iii) capital lease obligations of Seller under the Assumed Contracts set forth on Schedule 2.3(a)(iii);

(iv) claims, recoupments, set-offs, adjustments and other liabilities relating to the Medicare and Medicaid provider agreements of the Seller Facility;

(v) the Assumed Cure Amounts; and

(vi) other specifically assumed liabilities set forth in Schedule 2.3(a)(vi).

(b) Schedule 2.3(b) attached hereto sets forth Seller’s good faith estimate as of the Effective Date (the “**Effective Date Cure Amount Schedule**”) of the Cure Amount for each Proposed Assumed Contract, Proposed Tenant Lease and Proposed Lessor Lease (collectively, the “**Proposed Assigned Contracts**”). With respect to any Proposed Assigned Contract, Buyer shall have the right to designate any such Contract as an Excluded Contract that shall thereafter cease to be a Proposed Assigned Contract and be deemed to be listed on Schedule 2.2(e) and any Cure Amount in respect thereof shall be deemed an Excluded Cure Amount. Following the Bid Deadline, Buyer may not designate any Excluded Contract as a Proposed Assigned Contract. Without limiting the obligations of Seller pursuant to Section 5.6(b), prior to any bid deadline (“**Bid Deadline**”) set by the Bankruptcy Court to approve a sale pursuant to this Agreement (the “**Sale Hearing**”), Seller shall commence appropriate proceedings before the Bankruptcy Court and otherwise take all reasonably necessary actions requested by Buyer to determine the actual amount of the Cure Amounts, including resolving any disputes as to Cure Amounts prior to or at the Sale Hearing, such that all Proposed Assigned Contracts may be assumed by the applicable Seller and assigned to the applicable Buyer in accordance with Section 365 of the Bankruptcy Code (each such Contract, an “**Assigned Contract**”). Seller shall deliver an updated version of Schedule 2.3(b) (i) prior to the Bid Deadline reflecting any increase in the Cure Amounts set forth on the Effective Date Cure Amount Schedule resulting from any filed objections (the updated version of Schedule 2.3(b) delivered in accordance with this clause (i), the “**Bid Deadline Cure Amount Schedule**”) and (ii) at least two (2) Business Days prior to the Closing setting forth the Assumed Cure Amount for each Proposed Assigned Contract determined in accordance with the Sale Order and the maximum claimed amount of any Disputed Cure Amount with respect to each Disputed Contract that is not resolved prior to the Sale Hearing (the updated version of Schedule 2.3(b) delivered in accordance with this clause (ii), the “**Final Cure Amount Schedule**”); provided that the Cure Amounts set forth on the Final Cure Amount Schedule shall not exceed the corresponding amount set forth on the Bid Deadline Cure Amount Schedule and Buyer shall be solely responsible for the payment of any Assumed Cure Amount in respect of an Assigned Contract. Seller shall facilitate Buyer’s negotiation of any Cure Amounts with the applicable third parties.

(c) Nothing in this Agreement shall be construed as an attempt to assign, and Buyer shall not assume any liabilities or obligations with respect to, any Contract, lease, agreement or Permit intended to

be included in the Purchased Assets that by applicable Law is non-assignable, or that by its terms is non-assignable without the consent of the other party or parties thereto to the extent such party or parties assert in writing that such assignment is a breach of such Contract, lease or agreement or Permit as to which all the remedies for the enforcement thereof enjoyed by Seller would not, as a matter of Law, pass to the applicable Buyer as an incident of the assignments provided for by this Agreement unless the Bankruptcy Court shall have determined that such Contract, lease, agreement or Permit may be assigned notwithstanding the claim or objection of the counterparty that the Contract or Permit may not be assigned without its consent or approval. Seller shall, at the request and under the direction of Buyer, take all reasonable actions (including, without limitation, the appointment of Buyer as attorney-in-fact for Seller) and do or cause to be done all such things as shall in the reasonable judgment of Buyer be necessary or proper (i) to assure that the rights and benefits of Seller under such Contracts or Permits shall be preserved for the benefit of the applicable Buyer, and (ii) to facilitate receipt of the consideration to be received by the Seller in and under every such Contract or Permit, which consideration shall be held for the benefit of, and shall be delivered to, the applicable Buyer.

2.4 Excluded Liabilities. Buyer shall not assume, and under no circumstances shall Buyer be obligated to pay, discharge, perform or assume any debt, obligation, expense or liability of Seller or any Affiliates thereof that is not an Assumed Liability (collectively, the “*Excluded Liabilities*”), including the following:

- (a) any liabilities owed by a Seller to an Affiliate of Seller;
- (b) all trade payables, accounts payable and other current liabilities of Seller or relating to the Seller Facility, including without limitation any patient credit balances;
- (c) all liabilities and obligations to the extent not arising out of the operation of the Seller Facility;
- (d) all liabilities and obligations relating to or arising from any Excluded Asset;
- (e) all liabilities arising out of or relating to any Seller Plan;
- (f) all liabilities, other than Accrued PTO and the liabilities specifically set forth on Schedule 2.3(a)(vi), with respect to employment, termination of employment, compensation, severance and employee benefits of any nature owed to any Facility Employee or any other current or former officer, manager, director, member, employee or independent contractor (or any of their respective dependents or beneficiaries) of Seller or any of its Affiliates relating to or arising out of such individual’s employment or service (or the termination of employment or service) with such Seller or any of its Affiliates or any of their respective predecessors, whether or not such individual becomes a Transferred Employee, including, without limitation, any obligation to pay or provide any Facility Employee or other current or former officer, manager, director, member, employee or independent contractor (or any of his or her respective dependents or beneficiaries) of Seller or any of its Affiliates any severance or change in control payments, transaction bonuses, retiree benefits, salary, wages or commissions;
- (g) any and all (i) Taxes of Seller or any of its respective Affiliates and any Tax related to the operations of the Seller Facility or the Purchased Assets and (ii) Seller’s Transfer Taxes;
- (h) any Environmental Liabilities;
- (i) any Excluded Cure Amounts;

(j) any and all fees, costs and expenses (including legal fees and accounting fees) that have been incurred or that are incurred by Seller in connection with the transactions contemplated by this Agreement or any prior attempted sale transaction or the Bankruptcy Case, including all fees, costs and expenses incurred in connection with or by virtue of the negotiation, preparation and review of this Agreement and all Ancillary Agreements and the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements; provided however this provision shall not prohibit any fees, costs or expenses from being paid from the proceeds received by or on behalf of the Seller at Closing; and

(k) any liabilities or other obligations set forth on Schedule 2.4(k).

2.5 Purchase Price and Cure Amounts.

(a) Buyer shall deposit \$ _____ within two (2) Business Days following the Effective Date (the “**Deposit**”) into an escrow account established pursuant to that certain Escrow Agreement of even date herewith among _____ (the “**Escrow Agent**”), Seller and Buyer (the “**Escrow Agreement**”). At the Closing, the Deposit shall be credited towards payment of the Purchase Price and released to Seller. If the Closing does not occur and this Agreement is terminated, the Deposit shall be released as provided in Section 8.1(c).

(b) At the Closing, Buyer shall pay all Assumed Cure Amounts for Assigned Contracts in accordance with the Sale Order and any Disputed Cure Amounts shall be paid when resolved (if not at Closing) subject to Section 5.6(b). Buyer will have no responsibility for the Excluded Cure Amounts.

(c) At the Closing, Seller will assign and transfer the Purchased Assets to Buyer, and Buyer (on behalf of Buyer) will pay, or shall cause to be paid, by wire transfer of immediately available funds, (x) an amount of cash equal to (i) the Purchase Price (as may be reduced in respect of any Non-Compliant Facility pursuant to Section 2.6(b)) less (ii) the amount of the Deposit and (iii) less the aggregate amount of the Disputed Cure Amounts (the “**Aggregate Disputed Amount**”) to Seller (on behalf of Seller) to the account set forth in wiring instructions provided by Seller at least three (3) Business Days prior to the Closing and (y) an amount of cash equal to the Aggregate Disputed Amount into an escrow account established pursuant to the Escrow Agreement (the “**Cure Amount Escrow Account**”).

(d) Seller and Buyer shall agree upon an allocation of the Purchase Price among the Purchased Assets for tax reporting and other purposes consistent with the allocation methods and principles required by the Code. Buyer and Seller shall report, act and file all tax returns, including IRS Form 8594, with their respective federal income tax returns for the tax year in which the Closing Date occurs consistent with such agreed upon allocation.

(e) Buyer shall be entitled to deduct and withhold from any payment under this Agreement any Taxes required to be deducted and withheld by Buyer under applicable Law, and Buyer shall pay such amounts to the appropriate Governmental Authority.

(f) Seller shall pay Seller’s Transfer Taxes incurred in connection with the purchase and sale of the Purchased Assets and Buyer shall pay the remainder of the Transfer Taxes. The Parties hereto will cooperate in all reasonable respects in timely making all filings, returns, reports and forms as may be required to comply with the provisions of applicable Law relating to any such Transfer Taxes, fees or charges and in executing and delivering certificates that accurately set forth relevant facts to entitle the Parties hereto to exemptions from the payment of such Transfer Taxes, fees or charges (if applicable).

2.6 Prorations. To the extent not an Assumed Liability or not otherwise prorated pursuant to this Agreement, Seller and Buyer shall prorate (as of the Effective Time), if applicable, real estate and personal

property taxes, assessments, rents, costs of utilities, other similar charges against real and personal property, insurance premiums for employee benefits, and other prepaid expenses for the Seller Facility for the month during which the Closing occurs. Not later than thirty (30) days after the Closing Date, Seller and Buyers shall reconcile all expenses to be prorated and pay each other the applicable prorated amounts.

2.7 Closing. Subject to the terms and conditions of this Agreement, the consummation of the transactions contemplated pursuant to this Agreement (the “**Closing**”) shall take place electronically no later than on the third (3rd) Business Day immediately following the day on which the last of the conditions to Closing set forth in ARTICLE VI and ARTICLE VII (other than those conditions which are to be satisfied at Closing, but subject to such conditions being satisfied at the Closing) are satisfied or waived; provided, however, that, notwithstanding the satisfaction or waiver of the conditions set forth in ARTICLE VI and ARTICLE VII (other than those conditions which are to be satisfied at Closing, but subject to such conditions being satisfied at the Closing), if the Post-Order Period has not ended at least three (3) Business Days prior to such time, then Buyer shall not be required to effect the Closing until the earliest of (subject to the continued satisfaction or waiver of the conditions set forth in ARTICLE VI at such time), (i) any Business Day during the Post-Order Period as may be specified by Buyer on no less than three (3) Business Days’ prior written notice to Seller, (ii) the third (3rd) Business Day after the final day of the Post-Order Period or (iii) such other date as the Seller and Buyer may mutually agree upon (the day the Closing actually occurs, the “**Closing Date**”). The Closing shall be deemed to have occurred and to be effective as between the parties as of 12:01 a.m. (determined by reference to the local time zone in which the applicable Seller Facility is located) on the date after the Closing Date (the “**Effective Time**”). Except as otherwise may be required by the Title Company or as agreed by Buyer and Seller, the Closing will take place remotely by electronic mail or other electronic exchange of documents, among and between the parties and/or their respective counsel.

2.8 Actions of Seller at Closing. At Closing or within such other timeframes as specified below and unless otherwise waived in writing by Buyer, Seller shall deliver or cause to be delivered to Buyer the following:

(a) A Bill of Sale and Assignment in the form attached as Exhibit 4 (each, a “**Bill of Sale**”) executed by each applicable Seller in favor of each applicable Buyer;

(b) An Assignment and Assumption Agreement in the form attached as Exhibit 5 (each, an “**Assignment and Assumption**”) executed by each applicable Seller in favor of each applicable Buyer;

(c) An Assignment and Assumption of Lease for Real Property which is leased by, or to, the applicable Seller in the form attached as Exhibit 6 (each, an “**Assignment and Assumption of Lease**”) executed by each applicable Seller in favor of each applicable Buyer;

(d) The Drug Enforcement Administration (DEA) Power of Attorney in the form attached hereto as Exhibit 7 and executed by or on behalf of each applicable Seller in favor of each applicable Buyer;

(e) Certificates of existence and good standing of Seller from the state of its incorporation or formation, each dated the most recent practicable date prior to the Closing Date;

(f) A Special Warranty Deed in the form attached as Exhibit 8 (each, a “**Special Warranty Deed**”) with respect to each parcel of Owned Real Property executed by each applicable Seller in favor of each applicable Buyer;

(g) A non-foreign affidavit of the applicable Seller, dated as of the Closing Date, in form and substance consistent with the Treasury Regulations issued pursuant to Section 1445 of the Code stating that such Seller is not a “foreign person” as defined in Section 1445 of the Code;

(h) a duly executed affidavit and other documents reasonably required by the Title Company to issue the applicable Title Policy, subject only to the Permitted Encumbrances;

(i) Certificates of title with respect to any vehicles included in the Purchased Assets duly executed by the applicable Seller;

(j) The certificate contemplated by Section 6.6; and

(k) A certified copy of the Sale Order.

2.9 Actions of Buyer at Closing. At the Closing and unless otherwise waived in writing by Seller, Buyer shall deliver or cause to be delivered to Seller the following:

(a) The Purchase Price by wire transfer of immediately available funds to an account designated in writing by Seller;

(b) A Bill of Sale executed by each applicable Buyer;

(c) An Assignment and Assumption executed by each applicable Buyer;

(d) An Assignment and Assumption of Lease executed by each applicable Buyer;

(e) Certificates of existence and good standing of Buyer from the state of its incorporation or formation, each dated the most recent practicable date prior to the Closing Date; and

(f) The certificate contemplated by Section 7.4.

2.10 Real Estate Closing Matters. Seller has not made available to Buyers any Title Commitments or Surveys for the real estate reflected on Schedule 2.1(b). Buyers shall obtain their own Title Commitments and Surveys for any real property that is a Purchased Asset

2.11 Risk of Loss.

(a) The risk of loss or damage to any of the Purchased Assets, including the Owned Real Property or any personal property used in connection with the Healthcare Business by the Seller, shall remain with the Seller until the Effective Time and Seller shall maintain their respective insurance policies covering such property through the Effective Time.

(b) With respect to the Owned Real Property, if prior to the Closing, all or any part of such Owned Real Property is destroyed or damaged by fire or the elements or by any other cause, the applicable Seller shall assign, transfer and set over to the applicable Buyer all of the Seller’s right, title and interest in and to any insurance proceeds on account of such damage or destruction and, if such insurance policy proceeds are insufficient to repair, restore and/or replace the Owned Real Property, the Purchase Price shall be reduced by the amount equal to the difference between the cost to repair, restore and/or replace and the amount of such proceeds.

(c) If prior to the Closing, all or any part of a parcel of the Real Property is made subject to an eminent domain or condemnation proceeding which would in Buyer’s commercially reasonable judgment

materially adversely impair access to the Real Property or be materially adverse to the operations of the Real Property, notwithstanding anything to the contrary in this Agreement, Buyer may elect to (i) purchase the applicable Seller Facility and the Closing with respect to the applicable Seller Facility shall proceed as scheduled (provided, however, at the Closing Seller shall assign, transfer and set over to the applicable Buyer all of the applicable Seller's right, title and interest in and to any award in such eminent domain or condemnation proceeding) or (ii) not purchase the applicable Seller Facility (and Purchased Assets solely related thereto) and, in such event, the Purchase Price shall be reduced by an amount equal to the Allocated Portion applicable to such Seller Facility.

(d) With respect to any Purchased Assets other than Owned Real Property which is destroyed or damaged by fire or the elements prior to the Closing, Seller shall assign, transfer and set over to Buyer all of Seller's right, title and interest to any insurance proceeds on account of such damage or destruction and shall reimburse Buyer for any deductible a Buyer is required to pay in connection with the receipt of such insurance proceeds.

(e) Solely for the purposes set forth in this Section 2.10 and Section 2.6(b), the Purchase Price allocated to Seller Facility and its related Purchased Assets are set forth on Schedule 2.10(e) (each such amount, the "*Allocated Portion*").

ARTICLE III - REPRESENTATIONS AND WARRANTIES OF SELLER

Except to the extent a representation or warranty speaks as of another date, as of the Effective Date and as of the Closing Date, when read in light of any corresponding sections of the Schedules to this ARTICLE III ("*Article III Schedules*") as may be updated prior to Closing in accordance with Section 5.2, Seller represents and warrants to Buyer the following:

3.1 Corporate Capacity, Authority and Governmental Consents.

(a) Seller is duly organized and validly existing in good standing under the Laws of the state of their formation or incorporation with the requisite organizational power and authority to enter into this Agreement, to perform its respective obligations hereunder and to conduct its business as now being conducted. Seller is duly licensed or qualified to do business and is in good standing in the jurisdictions where the nature of the property owned or leased by it or the nature of the business conducted makes such qualification necessary, except where failure to so qualify would not have a Material Adverse Effect. Copies of the Governing Documents of Seller, each as in effect as of the date of this Agreement, have been made available to Buyer. Subject to the entry of the Sales Procedure Order and Sale Order, the execution, delivery and performance of this Agreement and all Ancillary Agreements to which Seller are or will become a party and the actions to be taken by Seller in connection with the consummation of the transactions contemplated hereby and thereby, and the consummation of the transactions contemplated hereby and thereby:

(i) are within the organizational powers of Seller, are not in contravention of applicable Law or the terms of the applicable Governing Documents;

(ii) have been duly authorized by all actions and proceedings on behalf of Seller, and no other actions or proceedings on the part of Seller, its respective board of directors (or similar governing body) or equity holders are necessary;

(iii) except as otherwise expressly herein provided or as set forth in Schedule 3.1(a)(iii) do not require any approval or consent of, or filing with, any Governmental Authority; and

(iv) will not violate any Law to which Seller is subject.

(b) Subject to the entry of the Sales Procedure Order and Sale Order, the execution, delivery and performance by Seller of this Agreement and all Ancillary Agreements to which any of Seller is or will become a party, consummation of the transactions contemplated by this Agreement or such Ancillary Agreements and compliance with the terms of this Agreement or such Ancillary Agreements will not result in the creation of, or require the creation of, any Encumbrance upon any properties or assets of Seller or conflict with, constitute or result in any violation or default (with or without notice or passage of time, or both) under, require the consent of any Person under, or give rise to a right of termination, modification, cancellation or acceleration of any obligation under any Permits or any Contract to which Seller is a party (including any Proposed Assumed Contracts) or any Permit.

3.2 Binding Agreement. Subject to the entry of the Sales Procedure Order and Sale Order, this Agreement and all Ancillary Agreements to which Seller is or will become a party are and will constitute the valid and legally binding obligations of Seller, and are and will be enforceable against Seller in accordance with the respective terms hereof or thereof, except as enforceability may be restricted, limited or delayed by applicable bankruptcy or other Laws affecting creditors' rights generally and except as enforceability may be subject to general principles of equity.

3.3 Assets.

(a) Seller owns valid title to, or possesses valid leasehold interests in, all of the Purchased Assets. Seller has sole custody and control of all of the Purchased Assets, except with respect to any Permitted Encumbrances or as otherwise set forth on Schedule 3.3(a)(i). Schedule 3.3(a)(ii) identifies all Purchased Assets that are subject to a lease or not otherwise owned by Seller.

(b) Subject to the entry of the Sale Order, the Purchased Assets are free and clear of all Encumbrances except Permitted Encumbrances and, subject to the entry of the Sale Procedure Order or any Sale Order, Seller has the power and the right to sell, assign and transfer the Purchased Assets, free and clear of all Encumbrances except Permitted Encumbrances.

(c) Except as set forth on Schedule 3.3(c), there are no tangible or intangible assets used in the operation of the Seller Facility and owned by any Person other than Seller that are not currently leased or licensed to Seller pursuant to a Contract.

(d) Except as set forth on Schedule 3.3(d), no portion of the operations of the Seller Facility is conducted through any partnership in any joint venture or similar arrangement.

3.4 Financial Statements. Attached as Schedule 3.4 are copies of the consolidated unaudited balance sheets and statements of income of Seller with respect to the operation of the Seller Facility for the years ended _____ and _____ statements of income of Seller with respect to the operation of the Seller Facility for the period ended _____ and the unaudited balance sheet of the Seller as of _____ (the "***Balance Sheet Date***") (collectively, the "***Financial Statements***"). Except as set forth on Schedule 3.4, the Financial Statements present fairly in all material respects the financial condition and results of operations of Seller and the Seller Facility as of the dates and for the periods indicated therein in accordance with GAAP consistently applied throughout the periods indicated, except that the Financial Statements (i) that are not for a fiscal year-end do not reflect normal recurring year-end adjustments (that would not, individually or in the aggregate, be material in amount), (ii) do not contain footnotes that may be required by GAAP, (iii) were prepared without physical inventories, (iv) do not contain a statement of cash flow, (v) are not restated for subsequent events, (vi) may not reflect any adjustments for impairment of long-lived assets, or restructuring charges or the

reclassification of assets held for sale on the applicable balance sheet, and (vii) that are balance sheets reflect the following liabilities in intercompany liabilities: (A) accruals in respect of Seller's self-insured employee health benefits, (B) liabilities payable in connection with workers' compensation claims, (C) liabilities payable pursuant to any employee welfare benefit plan (within the meaning of Section 3(1) of ERISA) maintained by Seller or any Affiliate of Seller on account of any of the Facility Employees, and (D) payroll and bonuses payable and vacation, holiday and similar accruals with respect to some but not all Facility Employees. The Financial Statements were prepared based on the historical accounting records of Seller. Federal, state and local income or franchise taxes accruals are not reflected on the balance sheets or income statements. Except as set forth on Schedule 3.4, there are no material obligations or liabilities, whether absolute, accrued, contingent or otherwise, of Seller that would be required to be set forth on a balance sheet in accordance with GAAP except for obligations or liabilities (a) reflected or disclosed in the Financial Statements and (b) incurred in the ordinary course of business since the Balance Sheet Date.

3.5 Licenses and Accreditations. Seller holds all Permits required to be held by them to own, occupy and operate the Healthcare Business, as they are currently being operated. Schedule 3.5 sets forth a list of all such Permits that are material to the operation of the Healthcare Business, true and complete copies of which have been made available to Buyer, and all of which are valid and in full force and effect. All of such Permits are valid, binding and in full force and effect and Seller is not in breach in any material respect of any of the Permits set forth on Schedule 3.5, and no Action is pending, or to the Knowledge of Seller threatened, to revoke or limit any of the Permits set forth on Schedule 3.5. Seller has made available to Buyer complete and accurate copies of (a) the most recent accreditation survey reports for the Seller Facility; (b) the most recent Statement and Deficiencies and Plan of Correction on Form CMS-2567 issued by CMS or the state survey agency on behalf of CMS for the Seller Facility; (c) the most recent state licensing report and list of deficiencies relating to any of the Permits for the Seller Facility; and (d) the most recent fire marshal's survey and deficiency list for the Seller Facility, and (e) all material plans of correction relating to each of the foregoing.

3.6 Regulatory Compliance.

(a) Except as set forth on Schedule 3.6(a), (i) Seller is, and during the six (6) years preceding the date hereof, has been in compliance in all material respects with all applicable Laws including the Healthcare Laws and (ii) Seller has received during the last six (6) years any written notice from any Governmental Authority regarding any actual or alleged violation of, or failure to comply with, any Laws including the Healthcare Laws.

(b) Except as otherwise set forth on Schedule 3.6(b), during the preceding six (6) years, neither Seller nor, to the Knowledge of Seller, any of its respective Affiliates, officers, directors, agents, or employees have been convicted of or charged with, or, to the Knowledge of Seller, investigated by any Governmental Authority with respect to any alleged violation of any Law including the Healthcare Laws, or with respect to any activities that are cause for criminal or civil penalties or mandatory or permissive exclusion from Medicare or Medicaid.

(c) Without limiting the generality of the foregoing, neither Seller nor, to the Knowledge of Seller, any of their respective officers, directors, agents, or employees has, directly or indirectly (i) offered, paid or received, or made arrangements to offer, pay or receive, any remuneration, in cash or in kind, to any past, present or potential customers, past or present suppliers, patients, medical staff members, contractors or Third Party Payors of the Seller Facility in order to obtain business, referrals or payments from such Persons in violation of any Healthcare Laws, (ii) established or maintained any unrecorded fund or asset for any improper purpose or made any misleading, false, or artificial entries on any of its books or records for any reason; or (iii) made any payment for or agreed to make any payment for any goods, services, or property in excess of fair market value in violation of any Healthcare Laws. All of the Seller's

contracts with physicians, healthcare facilities, and other persons or entities in a position to make or influence referrals to or generate business for the Seller Facility are in writing, provide for fair market value compensation and comply in all material respects with all Laws. With respect to the Seller Facility, none of the officers, directors, agents, managing employees (as such term is defined in 42 U.S.C. §1320a-5(b)), employees, contractors, or members of the medical staff of Seller Facility (w) has been excluded or suspended from participation in any federal health care program (as defined in 42 U.S.C. § 1320a-7b(f)) or been disbarred, suspended or otherwise determined ineligible to participate in federal programs, nor to the Knowledge of Seller is any such exclusion threatened in writing; (x) has had a civil monetary penalty assessed against it under Section 1128A of the Social Security Act or any regulations promulgated thereunder; or (y) has been convicted of, charged with, or indicted for a federal health care program related offense, or convicted of, charged with, or indicted for a violation of federal or state law relating to fraud, theft, embezzlement, breach of fiduciary responsibility, financial misconduct, obstruction of an investigation or controlled substances.

(d) With respect to the Seller Facility, there are no pending or, to the Knowledge of Seller, threatened disciplinary or corrective actions or appeals involving physician applicants, medical staff members or affiliated health professionals under the medical staff bylaws at the Seller Facility. Seller has made available to Buyer copies of the bylaws, rules and regulations of the medical staff and its medical executive committee at the Seller Facility, as well as a list of all current members of the medical staff of the Seller Facility.

(e) With respect to the Seller Facility, Seller has not, during the preceding six (6) years, made and are not in the process of making a voluntary self-disclosure under the Self-Referral Disclosure Protocol established by the Secretary of HHS pursuant to Section 6409 of the Patient Protection and Affordable Care Act, or under the self-disclosure protocol established and maintained by the HHS Office of the Inspector General, or to any United States Attorney or other Governmental Authority.

3.7 Compliance Program.

(a) Except as set forth on Schedule 3.7, during the preceding six (6) years, with respect to the operations of the Seller Facility, no Seller (i) has been a party to a Corporate Integrity Agreement, Certification of Compliance Agreement or similar government-mandated compliance program or obligations; (ii) has had reporting obligations pursuant to any settlement agreement entered into with any Governmental Authority; (iii) has been served with or received any search warrant, subpoena, civil investigation demand, or contact letter from any Governmental Authority; or (iv) to the Knowledge of Seller, has been a defendant in any qui tam/False Claims Act litigation.

(b) The Seller has adopted and maintained a compliance program that is in all material respects consistent with the OIG's compliance program guidance for hospitals, and includes: (i) appointing a dedicated compliance officer; (ii) developing policies and procedures designed to ensure any referral source arrangement complies with applicable Healthcare Laws; (iii) conducting training sessions for employees and contractors with respect to the Compliance Program; and (iv) establishing a process to allow for anonymous reporting of compliance concerns (altogether, the "***Compliance Program***").

3.8 Material Contracts.

(a) Schedule 3.8 sets forth a list of the following Contracts of Seller, in each case relating to the Seller Facility or the Purchased Assets: (a) Contracts involving the lease of equipment or personal property that require payments by a Seller of greater than \$50,000 during the remaining term or on an annual basis; (b) leases or subleases with respect to the Owned Real Property; (c) employment contracts; (d) Contracts with respect to patents, trademarks, trade names or service names; (e) collective bargaining

agreements; (f) partnership or joint venture agreements and Contracts involving the sharing of profits, losses, costs or liability with any other Person; (g) Contracts limiting the freedom of the Seller to engage in any line of business, acquire any entity or compete with any Person or in any market or geographical area, including any non-competition, non-solicit or other restrictive covenant agreement; (h) Contracts with any hospitals, ambulatory surgery centers or other healthcare facilities; (i) Contracts with any physicians or other providers of healthcare services; (j) Contracts with recipients of referrals from the Seller Facility and Contracts with sources of referrals to the Seller Facility; (k) Contracts (A) providing for exclusivity, preferred treatment or any similar requirement, (B) containing a “requirements” obligation requiring Seller to purchase a designated portion of any type of material, product or other supplies, (C) with a “most favored nations” clause or other similar provision or (D) with take-or-pay obligations; (l) Contracts with Governmental Authorities; (m) Contracts with any Material Suppliers and any Material Payors; (n) Contracts relating to capital expenditures that involves total remaining payments of more than \$50,000; and (o) any other Contracts that involve payments, performance of services or provision of items in an amount exceeding \$50,000 or that cannot be canceled by the applicable Seller, without penalty on 90 days’ notice or less (collectively, the “**Material Contracts**”). Seller has made available to Buyer true and complete copies of all of the Material Contracts (and all amendments or other modifications thereto) and a complete summary of all material terms of each oral Material Contract is set forth on Schedule 3.8.

(b) The Seller, in each case relating to the Seller Facility or the Purchased Assets, is not party to any oral agreement, license, lease, contract, arrangement, obligation, undertaking, indenture or commitment to which such Seller or its assets is bound, except as designated as an oral contract and summarized on Schedule 3.8.

3.9 Real Property. (a) The Owned Real Property constitutes all real property owned by Seller that is primarily used in connection with the operation of the Seller Facility. There are no tenants or other Persons occupying any space in the Owned Real Property, other than pursuant to leases or subleases to third party tenants under any Proposed Lessor Lease listed on Schedule 2.1(c). The applicable Seller has good, valid and marketable title to such Owned Real Property, free and clear of all Encumbrances except Permitted Encumbrances.

(b) Except as otherwise set forth on Schedule 3.9(b), Schedule 2.1(c) contains a list of all Proposed Tenant Leases. Seller has made available to Buyer true and complete copies of all of such Proposed Tenant Leases. With respect to each Proposed Tenant Lease, (i) to the Knowledge of Seller, no such Proposed Tenant Lease has been breached or canceled by the other parties thereto, (ii) except for defaults that will be cured through payment of the Cure Amounts, no Seller is in default or breach under the terms of any Proposed Tenant Lease, and (iii) no Seller has assigned, subleased or otherwise transferred to any Person any of its rights, title or interest under any Proposed Tenant Lease (other than subleases).

(c) With respect to each parcel of Real Property, except as disclosed on Schedule 3.9(c): (i) Seller has not received written notice of any pending or, to the Knowledge of Seller, threatened expropriation, condemnation or eminent domain proceedings or their local equivalent affecting or relating to such Real Property; (ii) to the Knowledge of Seller, such Real Property, and its continued use, occupancy and operation as currently used, occupied and operated, does not constitute a nonconforming use under all applicable Laws; (iii) Seller has not received written notice from any Governmental Authority or other Person that the use and occupancy of such Real Property, as currently used and occupied, and the conduct of the business thereon, as currently conducted, violates in any material respect any applicable Law; and (iv) the applicable Seller (or landlord) holds current and valid certificates of occupancy for the Seller Facility located on such Real Property.

(d) To the Knowledge of Seller, each parcel of Real Property is adequately served by proper utilities and other building services as necessary for its current use by the applicable Seller and, to the

Knowledge of Seller and except as set forth in the PCRs, all of the buildings and structures located at each Real Property are structurally sound with no material defects that are not being addressed in the ordinary course of business and are otherwise in operating condition in all material respects, ordinary wear and tear excepted.

3.10 Insurance. Attached as Schedule 3.10 is a list and description of all insurance policies, including all self-funded plans or trusts, maintained by or for the benefit of the Seller Facility or the Purchased Assets (including coverage amounts and expiration dates). All of such policies and plans or trusts are in full force and effect with no premium or contribution arrearage, and Seller has not received any written notice of cancellation, termination or non-renewal of any such insurance policy.

3.11 Employee Benefit Plans.

(a) Schedule 3.11(a) sets forth a list of each Employee Benefit Plan maintained by, sponsored in whole or in part by, contributed to by, or required to be contributed to by, Seller or any of its Affiliates for the benefit of any Facility Employee or any of their respective dependents, spouses, or other beneficiaries (each, a “**Facility Employee Benefit Plan**”). The term “**Employee Benefit Plan**” means (i) each “employee benefit plan” as defined in Section 3(3) of ERISA (whether or not subject to ERISA), and (ii) each other retirement, pension, stock option or equity-based compensation, employee stock ownership, deferred compensation, severance pay, change in control, retention, transaction bonus, time off, bonus, commission or other incentive, health, life, disability, group insurance or other welfare or fringe benefit agreement, arrangement, plan, contract or policy.

(b) As applicable to each Facility Employee Benefit Plan, Seller has made available to Buyer copies of (i) the complete plan document (and all amendments thereto) or in the case of an unwritten Facility Employee Benefit Plan, a written description thereof, (ii) the current summary plan description, and (iii) the most recent IRS determination, advisory or opinion letter.

(c) Except as set forth on Schedule 3.11(c), no Seller nor any ERISA Affiliate has any actual or contingent liability with respect to (i) a “multiemployer plan” (as defined in Section 4001(a)(3) or 3(37) of ERISA), (ii) an employee pension benefit plan subject to Title IV of ERISA or the minimum funding requirements of Section 412 or 430 of the Code or Section 302 of ERISA, (iii) a “multiple employer welfare arrangement” (as defined in Section 3(40) of ERISA) or (iv) a “multiple employer plan” (as defined in Section 413(c) of the Code).

(d) Each Facility Employee Benefit Plan has been maintained, operated and administered in all material respects in compliance with its terms and all applicable Laws, including the applicable provisions of ERISA and the Code.

(e) Each Facility Employee Benefit Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination, opinion or advisory letter from the IRS on which it may currently rely and nothing has occurred that would be reasonably expected to materially adversely affect the qualification of such plan.

(f) No Facility Employee Benefit Plan is subject to any audit, investigation or examination by any Governmental Authority and there are no pending or, to the Knowledge of Seller, threatened claims (except for individual claims for benefits in the normal operation of the Employee Benefit Plans) suits or proceedings involving any Facility Employee Benefit Plan that are material to the business or operations of the Seller.

(g) Neither the execution of, nor the consummation of the transactions contemplated by, this Agreement will, either alone or in connection with any other event, (i) result in any payment becoming due to any Facility Employee, (ii) increase any amount of compensation or benefits otherwise payable to any Facility Employee or (iii) result in the acceleration of the time of payment, funding or vesting of any benefits owed to any Facility Employee.

(h) Neither the execution of, nor the consummation of the transactions contemplated by this Agreement, either alone or in connection with any other event (including without limitation, a termination of employment) will result in the receipt or retention by any person who is a “disqualified individual” (within the meaning of Section 280G of the Code) of any payment or benefit that is or could be characterized as a “parachute payment” (within the meaning of Section 280G of the Code), determined without regard to the application of Section 280G(b)(5) of the Code.

(i) No Facility Employee Benefit Plan provides death, medical, dental, vision, life insurance or other welfare benefits beyond termination of service or retirement other than coverage mandated by Law and Seller nor its ERISA Affiliates have made a written or oral representation promising the same.

3.12 Employee Relations.

(a) Schedule 3.12(a) contains: a complete and accurate list of all Facility Employees as of the date of this Agreement, which list includes each such employee’s job title, job location, base salary or wage rate, bonus or other incentive compensation, date of hire, status as full-time or part-time, status as exempt or non-exempt for purposes of the Fair Labor Standards Act and similar state and local laws. No later than the Closing Date, Seller shall provide Buyer with a list of all Facility Employees who have experienced an employment loss within the meaning of the Worker Adjustment and Retraining Notification Act or similar state or local laws within ninety (90) days prior to the Closing Date.

(b) There is no pending or, to the Knowledge of Seller, threatened employee strike, lockout, work stoppage or other labor dispute concerning the Facility Employees. Except as set forth on Schedule 3.12(b), (i) no collective bargaining agreement exists or is currently being negotiated in respect of the Facility Employees; (ii) no written demand has been made in the preceding four (4) years for recognition by a labor organization by or with respect to any Facility Employees; (iii) no union organizing activities by or with respect to any Facility Employees are taking place or, to the Knowledge of Seller, have taken place during the preceding four (4) years; (iv) none of the Facility Employees is represented by any labor union or organization; and (v) no unfair labor practice charge or complaint is pending or, to the Knowledge of Seller, threatened by or on behalf of any Facility Employees.

(c) With respect to the operation of the Seller Facility and the Facility Employees, Seller is at all, and at all time during the past three (3) years have been, in compliance in all material respects with all Laws respecting labor employment and employment practices, including all applicable Laws relating to terms and conditions of employment, wages and hours, unemployment insurance, workers’ compensation, equal employment opportunity, fair employment practices, employment discrimination, retaliation, misclassification of employees and independent contractors, plant closure and mass layoff issues, collective bargaining, leaves of absence, occupational safety and health and immigration control.

(d) Except as disclosed on Schedule 3.12(d), there are no outstanding claims, suits, charges, complaints or other Actions against Seller asserted by, on behalf of, or with respect to any present or former Facility Employees or any applicant for employment at the Seller Facility pending or, to the Knowledge of Seller, threatened in writing.

(e) Except as disclosed on Schedule 3.12(e), as of the date hereof, no management or supervisory employee at any of the Seller Facility has submitted his or her resignation or, to the Knowledge of Seller, intends to resign.

3.13 Litigation and Proceedings. Except as set forth on Schedule 3.13, there are no, and in the past four (4) years there have been no, (a) Actions pending or, to the Knowledge of Seller, threatened or (b) to the Knowledge of Seller, examinations or investigations pending or threatened in writing, in each case, against Seller or involving the Seller Facility, at law or in equity, before or by any Governmental Authority. No Seller is as of the date hereof subject to any Order other than Orders of the Bankruptcy Court. There is no Action pending or, to the Knowledge of Seller, threatened against Seller or its Affiliates which seeks to prevent or delay consummation of the transactions contemplated herein, seeks damages in connection with transactions contemplated herein or would impair the ability of Seller to perform its obligations under this Agreement.

3.14 Third Party Reimbursement.

(a) The Seller Facility is certified to participate in the Medicare, Medicaid and TRICARE programs with valid and current provider or supplier agreements under such programs. Except as set forth on Schedule 3.14(a) or as would not result in a Material Adverse Effect, the Seller Facility are in compliance with the terms and conditions of participation in the Medicare, Medicaid and TRICARE programs and are not subject to any pending or, to Seller's Knowledge, threatened Actions with respect to participation in such programs, other than routine audits and investigations conducted through the Medicare Recovery Audit Contractor programs.

(b) For the six (6) years preceding the Effective Date, Seller and its Affiliates have timely filed all Cost Reports in respect of the Seller Facility; such reports accurately reflect, in all material respects, the information required to be included thereon and have been prepared and filed in all material respects in compliance with applicable Laws; and all amounts shown on such cost reports as owed by the Seller Facility have been timely paid. Except as set forth on Schedule 3.14(b), there are no pending Actions, adjustments or audits relating to such Cost Reports. To the Knowledge of Seller, Seller is not subject to any pending but unassessed Medicare or Medicaid claim payment adjustments arising from the Seller Facility, except (i) to the extent Seller has established reserves for such adjustments in accordance with Seller's accounting policy for establishing any such reserves and that are reflected on the Financial Statements and (ii) such claims that have arisen in the ordinary course of business.

(c) Schedule 3.14(c) sets forth is a list of all National Provider Identifiers and all provider numbers of the Seller Facility under the Government Reimbursement Programs (including the Medicare CMS Certification Number (CCN)) and other Third Party Payor programs, all of which are in full force and effect.

(d) All billing by or on behalf of the Seller to Third Party Payors has been conducted, and all claims submitted in connection with such billing have been made, in compliance in all material respects with all applicable Laws and billing guidelines of such Third Party Payors. Except as set forth on Schedule 3.14(d), other than incidental and routine overpayments that may occur in the ordinary course of the operations of the Seller Facility, the Seller has not billed or received any payment or reimbursement in excess of amounts allowed by Laws or the billing guidelines of any Third Party Payor. Except as set forth on Schedule 3.14(d), other than random post-payment audits conducted in the normal course by a Third Party Payors, there is no proceeding, audit review, investigation, survey, or other action pending, or, to the Seller's Knowledge, threatened, involving any Third Party Payor programs, including the participation in and the reimbursement received by the Seller from any such Third Party Payor program. Seller has not

committed a material violation of any Laws relating to payments and reimbursements under any Third Party Payor program, including the Medicare and Medicaid fraud and abuse provisions.

(e) Except as listed on Schedule 3.14(e), the Seller Facility satisfies in all material respects and has satisfied in all material respects the requirements for exclusion from the Medicare hospital inpatient prospective payment system specified in 42 C.F.R. § 412.1(a)(1) by complying with the requirements set forth at 42 C.F.R. §412.23(e), including the requirements concerning the average length of stay at the Seller Facility set forth at 42 C.F.R. §412.23(e)(2). The Seller Facility is not a “hospital-within-hospital” as described at 42 C.F.R. § 412.22(e) nor a “satellite facility” as described at 42 C.F.R. § 412.22(h). The Seller Facility does not operate any satellite facilities, off-campus provider-based locations or other remote locations. Seller Facility meets the conditions for payment under the Medicare prospective payment system for long-term care hospitals at 42 C.F.R. §§ 412.500 et seq. in all material respects.

3.15 Tax Liabilities.

(a) Seller and its subsidiaries have timely filed, or will timely file, all Tax Returns, including in respect of the Purchased Assets and the operations of the Seller Facility, and each Tax Return is true, correct, and complete in all material respects.

(b) Except as set forth on Schedule 3.15(b), all Taxes shown as due on any Tax Return, and any assessments in respect of Tax Returns have been timely paid, there is no pending Tax examination or audit of, nor any action, investigation or claim asserted against Seller by any Governmental Authority in respect of the Seller.

(c) Seller has not requested or obtained any extension of time within which to file any Tax Return in respect of the Purchased Assets and the operations of the Seller Facility or in which any Tax may be assessed or collected by any Governmental Authority (other than any extension which is no longer in effect).

(d) The Seller has withheld and collected all material Taxes, including any sales, use, and similar Taxes, that they were required by applicable Law to withhold and collect in respect of the Purchased Assets and the operations of the Seller Facility, and all such Taxes have been paid over to the proper Governmental Authority or, if not yet due, are being held by the Seller for payment.

(e) Except as set forth on Schedule 3.15(e), there are no Encumbrances with respect to Taxes upon any of the Purchased Assets or related to the operations of the Seller Facility, other than Permitted Encumbrances.

3.16 Absence of Changes. Except as expressly required by this Agreement or as set forth on Schedule 3.16 or as required in connection with the Bankruptcy Case, no Seller has, since the Balance Sheet Date, (a) written off as uncollectible, or established any extraordinary reserve with respect to, any material account receivable or other material indebtedness of such Seller; (b) amended or restated, or approved the amendment or restatement of, the Governing Documents of such Seller; (c) made or changed any material tax election, entered into any settlement or compromise of any material Tax liability or surrendered any right to claim a material Tax refund; (d) settled or compromised any pending or threatened Action; (e) sold, transferred, leased, optioned or otherwise disposed of any material assets except in the ordinary course of business consistent with past practice; (f) granted or incurred any obligation for any increase in the compensation or benefits of any of the Facility Employees except in the ordinary course of business consistent with past practice; (g) received any written notice from any Governmental Authority of any material liability, potentially material liability or claimed material liability based on any violation of Law by a Seller; (h) instituted any material change in a Seller’s accounting practices or methods; (i) established,

adopted, terminated or materially amended any Facility Employee Benefit Plan; (j) hired or terminated, or given a notice of termination to or received a notice of termination from, any Facility Employee that receives annual base compensation in excess of \$100,000, or (k) agreed or committed to take any of the foregoing actions.

3.17 Intellectual Property. Except as set forth on Schedule 3.17, with respect to the Seller Facility: (a) the conduct of the Healthcare Business does not and has not infringed, misappropriated or otherwise violated any Intellectual Property of any Person; (b) Seller has not received any written notice that they are infringing on or has misappropriated or otherwise violated the Intellectual Property rights of any Person; and (c) to Seller's Knowledge, there is no infringement or misappropriation, or other violation by any Person of the Facility IP. The Seller owns or holds a valid license to use all Facility IP free and clear of all Encumbrances other than Permitted Encumbrances and, excluding (A) the right to use any names, trade names, trademarks and service marks including the name "Huntsville Memorial Hospital" and (B) all proprietary software, data processing programs, or source codes used by Seller or its Affiliate, Facility IP constitutes all Intellectual Property currently used in the operation of the Healthcare Business in the ordinary course of business. The Seller maintains commercially reasonable confidentiality, security, disaster recovery and business continuity plans, procedures and facilities with respect to the operation of the Healthcare Business (including in respect of any data stored or contained in connection with the operation of the Healthcare Business) and in the last three (3) years there have been no material failures or unauthorized access of the information technology systems used in the operation of the Healthcare Business, including any data stored or transmitted therein.

3.18 Environmental Matters. Except as otherwise set forth in any Phase I: (a) the Seller Facility and the Healthcare Business and operations conducted thereon are and for the past four (4) years have been in compliance in all material respects with all applicable Environmental Laws, except for such noncompliance that has been fully and finally resolved; (b) with respect to the Seller Facility and the Healthcare Business, the Seller has obtained and possesses all Permits required by applicable Environmental Laws (collectively referred to as "***Environmental Permits***"); (c) all such Environmental Permits are valid and in full force and Seller are and for the past four (4) years have been in compliance in all material respects with the terms and conditions of such Environmental Permits; (d) Seller has not received written notice of any Action or written notice of potential responsibility alleging material liability under any Environmental Law, except for such notices or Actions that have been fully and finally resolved; and (e) there has been no Release of or exposure to Hazardous Materials on, in, at, under or migrating from the Seller Facility by the Seller or, to Seller's Knowledge, any other Person, in material violation of applicable Environmental Laws or that would reasonably be expected to result in any material liability or obligation pursuant to Environmental Law. To the Knowledge of Seller, the Seller has made available to Buyer true and complete copies of all material environmental reports of investigations, audits, site assessments, risk assessments and sampling reports in its possession.

3.19 Material Suppliers and Material Payers.

(a) Schedule 3.19(a) sets forth (i) the top ten (10) suppliers of the Seller Facility based on the total paid consideration to each such supplier for goods or services rendered for each of the year ended December 31, 2017 and the period beginning January 1, 2018 and ended December 12, 2018 (collectively, the "***Material Suppliers***") and the corresponding amount of such total paid consideration. All Material Suppliers continue to be suppliers of the applicable Seller Facility.

(b) Schedule 3.19(b) sets forth (i) the top ten (10) Third Party Payers of the Seller Facility based on the total paid consideration by each such Third Party Payor in respect of services provided at the Seller Facility during each of the year ended December 31, 2017 and the period beginning January 1, 2018

and ended December 12, 2018 (collectively, the “*Material Payors*”) and the corresponding amount of such total paid consideration.

3.20 Brokers. Except as disclosed on Schedule 3.20, Seller nor or any of its respective Affiliates has employed or retained any broker, finder or agent to act on its behalf in connection with this Agreement or the transactions contemplated hereby, or incurred any liability to any broker, finder or agent for any brokerage fees, finder’s fees, commissions or other amounts with respect to this Agreement or the transactions contemplated hereby.

3.21 Affiliate Transactions. Schedule 3.21 sets forth all Contracts between Seller or any of its Affiliates or Representatives, on the one hand, and Seller, on the other hand, with respect to the Seller Facility or the Purchased Assets.

3.22 Privacy and Security. Seller Facility has complied in all material respects with the administrative simplification provisions required under HIPAA, including the electronic data interchange regulations and the health care privacy regulations, as of the applicable effective dates for such requirements. No Seller has agreed or committed to pay or otherwise provide all or any portion of any meaningful use payments to any physician or other individual employed in connection with, providing services to or otherwise associated with the applicable Seller Facility.

3.23 Disclaimer of Warranties. Notwithstanding anything in this Agreement to the contrary, and except as expressly set forth in ARTICLE III hereof, the Article III Schedules or in any Ancillary Agreement to which Seller is a party, the Purchased Assets will be sold by Seller and purchased by Buyer “AS IS, WHERE IS AND WITH ALL FAULTS AND NONCOMPLIANCE WITH LAWS” WITH NO WARRANTY OF HABITABILITY OR FITNESS FOR HABITATION, with respect to the Owned Real Property or Leased Real Property, and WITH NO WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, with respect to the physical condition of the personal property and Inventory, any and all of which warranties (both express and implied) Seller hereby disclaims. Buyer acknowledges that Buyer has examined, reviewed and inspected all matters which in Buyer’s judgment bears upon the Purchased Assets and their value and suitability for Buyer’s purposes and, except as affirmatively represented and warranted by Seller, is relying solely on its own examination, review and inspection of the Purchased Assets.

ARTICLE IV - REPRESENTATIONS AND WARRANTIES OF BUYER

Except to the extent a representation or warranty speaks as of another date, as of the Effective Date and as of the Closing Date, when read in light of any corresponding sections of the Schedules to this ARTICLE IV, Buyer represents and warrants to Seller the following:

4.1 Capacity, Authority and Consents. Buyer is duly organized and validly existing in good standing under the Laws of the state of its incorporation or formation with the requisite power and authority to enter into this Agreement, to perform its respective obligations hereunder and to conduct its business as now being conducted. The execution, delivery and performance of this Agreement and all Ancillary Agreements to which Buyer is or will become a party and the actions to be taken by Buyer in connection with the consummation of the transactions contemplated herein:

(a) are within the powers of Buyer, are not in contravention of applicable Law or the terms of the Governing Documents of Buyer and have been duly authorized by all appropriate action;

(b) have been duly authorized by all actions and proceedings on behalf of Buyer, and no other actions or proceedings on the part of Buyer, its respective boards of directors (or similar governing body) or equity holders are necessary

(c) except as otherwise expressly herein provided or as set forth on Schedule 4.1(c) and subject to the entry of the Sale Procedure Order or any Sale Order, do not require any approval or consent of, or filing with, any third party or any Governmental Authority;

(d) except as otherwise expressly provided herein, will not result in any material breach or contravention of, nor permit the acceleration of the maturity of or termination of or constitute a default under, the terms of any material indenture, mortgage, contract, agreement or other instrument to which Buyer is a party or otherwise bound that, in each case, could be reasonably expected to materially impair Buyer's ability to fulfill its obligations under this Agreement; and

(e) will not violate any Law to which Buyer is subject.

4.2 Binding Agreement. This Agreement and all Ancillary Agreements to which a Buyer is or will become a party are and will constitute the valid and legally binding obligations of Buyer, and are and will be enforceable against Buyer in accordance with the respective terms hereof or thereof, except as enforceability may be restricted, limited or delayed by applicable bankruptcy or other Laws affecting creditors' rights generally and except as enforceability may be subject to general principles of equity.

4.3 Litigation and Proceedings. There are no Actions pending or, to Buyer's knowledge, threatened against Buyer, or any governing Persons thereof, at Law or in equity, or before or by any Governmental Authority, that if adversely determined could be reasonably expected to materially impair Buyer's ability to fulfill its obligations under this Agreement.

4.4 Availability of Funds. Buyer has the ability to obtain funds in cash in amounts equal to the Purchase Price by means of credit facilities or otherwise and will at the Closing have immediately available funds in cash which are sufficient to pay the Purchase Price in accordance with Section 2.5(b) and to pay any other amounts payable pursuant to this Agreement and to consummate the transactions contemplated by this Agreement.

4.5 Representations of Seller. Except as expressly set forth in ARTICLE III of this Agreement or the Article III Schedules or provided by Seller in any Ancillary Agreement, Buyer acknowledges that it is purchasing the Purchased Assets on an "AS IS, WHERE IS" basis (as more particularly described in Section 3.23), and that Buyer is not relying on any representation or warranty (expressed or implied, oral or otherwise) made on behalf of Seller other than as expressly set forth in this Agreement.

ARTICLE V- COVENANTS OF THE PARTIES PRIOR TO CLOSING

5.1 Access.

(a) From and after the Effective Date until the Closing or the earlier termination of this Agreement (the "*Interim Period*"), Seller shall (i) provide Buyer and its Representatives reasonable access to and, as applicable, the right to inspect, the plants, properties, assets, Contracts, data, books and records of or relating to the Seller Facility and the Purchased Assets, (ii) the personnel of Seller involved in the operation or management of the Seller Facility and the Purchased Assets, and (iii) furnish Buyer with such additional financial and operating data and other information as to the business and properties of or relating to the Seller Facility and the Purchased Assets as reasonably requested, including copies of the updated Financial Statements following each calendar month during the Interim Period; provided however that such

access shall be coordinated through such persons as may be designated in writing by Seller. Furthermore, during the Interim Period, Buyer, as coordinated by Seller and subject to Seller's reasonable input, may communicate with the Transferred Employees concerning the terms of employment for such Transferred Employees following the Closing; provided that, until the entry of the Sale Order, Buyer may only have such communications with the Transferred Employees set forth on Schedule 5.1(a); provided, further, that the failure of such persons to agree upon the terms and conditions of such employment shall not be a condition to the obligations of Buyer to consummate the transactions contemplated hereby and shall not constitute a Material Adverse Effect. Notwithstanding the foregoing, all disclosures of information shall be consistent with all joint defense agreements and any other nondisclosure agreements entered into between the Parties.

(b) Buyer's right of access and inspection shall be exercised during normal business hours and in such a manner as not to interfere unreasonably with the operations of the Seller Facility. Notwithstanding the foregoing, Buyer understands that (i) with respect to documents and information deemed by Seller in good faith to be market sensitive or competitive in nature, Seller shall provide Buyer with access to such information, and Buyer shall use such information solely, in accordance with that certain Confidentiality Agreement, dated _____, by and between Seller and Buyer, (ii) litigation and other materials (including internal/external legal audit letters or reviews, PRO information, National Data Bank reports, quality review information and other physician specific confidential information) that are deemed privileged or confidential by Seller will not be made available to Buyer, and (iii) Seller shall not be obligated to generate or produce information in any prescribed format not customarily produced by Seller.

5.2 Update of Schedules. After the Effective Date, and no later than five (5) Business Days prior to the Closing Date, Seller may deliver to Buyer a written notice with respect to any matter first arising or occurring after the Effective Date that, if existing as of the Effective Date, would have been required to be set forth or described in the Article III Schedules (a "***Schedule Supplement***"). Any Schedule Supplement shall set forth in reasonable detail the nature and circumstances of the matter being disclosed. If Seller provides Buyer with a Schedule Supplement relating to an event or circumstance that first occurred or arose following the Effective Date and prior to the Closing Date, such Schedule Supplement shall be deemed to have amended the Article III Schedules and to have qualified the particular representations and warranties contained in ARTICLE III that relate to such event or circumstance and are specifically referenced in the Schedule Supplement; provided, however, that any Schedule Supplement setting forth an event or circumstance that (a) has had, and would reasonably be expected to have, individually or in the aggregate with all other breaches of this Agreement, a Material Adverse Effect, (b) relates to a breach of any of the Fundamental Representations or any Healthcare Laws or (c) involves a crime punishable as a felony (such circumstances identified in clauses (a), (b) or (c), "***Excluded Occurrences***") shall not be deemed to have amended the Article III Schedules or to have qualified any representations and warranties contained in ARTICLE III, including for purposes of Section 6.1. If the events or circumstances included in such Schedule Supplement constitute an Excluded Occurrence, Buyer has the unqualified right to terminate this Agreement pursuant to ARTICLE VIII hereof; provided that, in order to exercise such termination right, Buyer shall be required to deliver such notice within five (5) Business Days after receipt of such Schedule Supplement setting forth an Excluded Occurrence.

5.3 Consents and Approvals.

(a) Seller shall use commercially reasonable efforts (i) at its sole cost and expense, to obtain all consents and approvals listed on Schedule 5.3 and any other consents and approvals necessary to consummate the transactions contemplated hereby, (ii) to make, as reasonably requested by Buyer, all filings, applications, statements and reports to all Governmental Authorities that are required to be made prior to the Closing Date by or on behalf of Seller or any of its Affiliates pursuant to any applicable Laws in connection with this Agreement and the transactions contemplated hereby, and (iii) to obtain, as

reasonably requested by Buyer, all required consents and approvals (if any) necessary to assign and transfer Seller's Permits to Buyer at Closing and, to the extent that one or more of Seller's Permits (including all Environmental Permits) are not transferable, to reasonably assist Buyer in obtaining replacements therefor.

(b) Each of the parties shall file or cause to be filed any notifications required to be filed with, and use commercially reasonable efforts to obtain any other authorizations, consents and approvals of, any Governmental Authority in connection with the matters contemplated by this Agreement.

(c) Seller and Buyer shall each keep the other fully advised with respect to any requests from or communications with any Governmental Authority in connection with the matters contemplated by this Agreement and shall consult with the other with respect to all filings and responses thereto.

5.4 Operating Covenants. During the Interim Period, except with the prior written consent of Buyer or as required by this Agreement or a Bankruptcy Court Order, Seller shall:

(a) carry on its businesses in respect of the Seller Facility and the Purchased Assets in the ordinary course of business consistent with past practice;

(b) perform its obligations relating to or affecting the Seller Facility and the Purchased Assets in the ordinary course of business consistent with past practice;

(c) keep in full force and effect current insurance policies, self-funded plans or trusts or other comparable insurance relating to or affecting the Seller Facility and the Purchased Assets;

(d) comply in all material respects with all Laws applicable to the Seller Facility and the Purchased Assets; and

(e) use its commercially reasonable efforts to: (i) maintain the Purchased Assets in the ordinary course of business consistent with past practice and not remove any such Purchased Assets from the Seller Facility outside the ordinary course of business; (ii) keep in force all Permits necessary for the operation of the Seller Facility and the Purchased Assets; (iii) maintain and preserve its business organizations intact and retain the current Facility Employees; and (iv) maintain the goodwill of the business of the Seller Facility and preserve its relationships with physicians, suppliers, customers and others having business relations with the Seller Facility.

5.5 Negative Covenants. During the Interim Period, except as required by Law or as ordered by the Bankruptcy Court, and without limiting the generality of Section 5.4, except as set forth on Schedule 5.5, Seller shall not, with respect to the Seller Facility or the Purchased Assets, without the prior written consent of Buyer (which shall not be unreasonably withheld, conditioned or delayed):

(a) amend, modify, reject or terminate (other than at its stated expiration date) any of its Contracts, or enter into any Contract or commitment, other than any such Contract or commitment that (i) is entered into in the ordinary course of business, (ii) would not have been a Material Contract if it were entered into on or prior to the Effective Date and (iii) over the term of such Contract or commitment involves less than \$100,000 or can be terminated without cause by a Seller on 90 days' notice or less without penalty;

(b) acquire (including by merger, consolidation, acquisition of stock or equity), or by purchasing a substantial portion of the assets of, any Person, or business or division thereof;

(c) make any change in accounting methods, principles or practices or change any of the assumptions underlying, or methods of calculating, any bad debt, contingency or other reserve;

(d) enter into any lease that would be categorized as a capital lease under GAAP, other than in the ordinary course of business consistent with past practice;

(e) license, sell, transfer, acquire, abandon or permit to lapse any material Intellectual Property;

(f) waive or cancel any material claim or right, account receivable or trade account outside of the ordinary course of business in excess of \$50,000 in the aggregate;

(g) enter into any commitment for capital expenditures;

(h) make any loan, advance or capital contribution to, or investment in any Person;

(i) (i) make, modify or revoke any Tax election, (ii) change its method of Tax accounting, (iii) amend any Tax Return, (iv) settle or compromise any Tax liability, claim or dispute, (v) enter into any Tax sharing agreement, (vi) surrender any right to claim a refund of Taxes or (vii) consent to any extension or waiver of the statute of limitations applicable to any Tax claim or assessment;

(j) settle any Action, or threatened Action, that (i) imposes any limitation on the conduct of the Seller Facility or the Purchased Assets or (ii) affects or would reasonably be expected to affect the transactions contemplated by this Agreement;

(k) fail to use commercially reasonable efforts to cause its current insurance policies (other than directors' and officer's policies) or any of the coverage thereunder not to lapse, unless simultaneously with such termination, cancellation or lapse, replacement policies underwritten by insurance companies of nationally recognized standing providing coverage equal to or greater than the coverage under the cancelled, terminated or lapsed policies for substantially similar premiums are in full force and effect;

(l) (i) increase the salary, wages, bonus opportunity, benefits, commission or other compensation of any Facility Employee other than increases in base salaries or hourly wage rates in the ordinary course of business consistent with past practice for any Facility Employee that earns less than \$100,000 in annual compensation that do not exceed 3% per employee and which increases are not material in the aggregate, (ii) establish, adopt, terminate or materially amend any Employee Benefit Plan; (iii) hire any Facility Employee that receives (or is expected to receive) aggregate annual compensation in excess of \$100,000; or (iv) terminate or give notice of termination to any Facility Employee (other than for cause) that receives (or is expected to receive) aggregate annual compensation in excess of \$100,000.

(m) sell, assign, lease, convey, mortgage, license, encumber or otherwise transfer or dispose of any Purchased Assets, property, plant or equipment used in connection with the operation of the Seller Facility except in the ordinary course of business;

(n) transfer or otherwise relocate any of the Purchased Assets as located in the Seller Facility on the Effective Date, whether to other locations owned, directly or indirectly, by Seller, or to locations owned by third parties other than in the ordinary course of business;

(o) seek the return of any amount deposited under any real property lease unless Seller obtain a written agreement from the applicable landlord in form and substance acceptable to Buyer specifying that

Buyer will not be required to deliver a deposit in connection with the assignment of the lease or any pre-Closing defaults under the lease; or

- (p) authorize, agree, resolve or consent to any of the foregoing.

5.6 Bankruptcy Court Approval; Executory Contracts; Sale Procedures; and Stalking Horse Provisions.

- (a) Reserved.

(b) Within three (3) Business Days after the execution of this Agreement, Seller shall file and serve a motion (together with supporting papers and with proper notice thereof on interested parties as required by the Bankruptcy Code and the Bankruptcy Rules) seeking approval by the Bankruptcy Court of the purchase and sale of the Purchased Assets and the assumption and assignment of all Proposed Assumed Contracts contemplated hereby to the extent required by Sections 363 and 365 and all other applicable provisions of the Bankruptcy Code within the terms of the Sale Procedures Order and Sale Order (collectively, the “**Sale Motion**”). Seller shall serve on all non-Seller counterparties to all of the Proposed Assumed Contracts a notice specifically stating that a Seller may be seeking the assumption and assignment of such Proposed Assumed Contracts and shall notify such non-Seller counterparties of the deadline for objecting to the proposed Cure Amounts stated in such notices, if any, which deadline shall not be less than five (5) Business Days prior to the Sale Hearing (such deadline, the “**Objection Deadline**”). Upon objection by any non-debtor counterparty to the Cure Amounts asserted by Seller with respect to any Proposed Assumed Contract (such contract, a “**Disputed Contract**”), Seller, in cooperation with Buyer will either settle the objection of such party or will litigate such objection under procedures approved and proscribed by the Bankruptcy Court. In no event will Seller settle such an objection with regard to any Proposed Assumed Contract without the express written consent of Buyer (with an email consent being sufficient). Upon entry of an Order determining any Cure Amount regarding any Disputed Contract after the Closing (the “**Disputed Contract Order**”), Buyer will have the option, no later than five (5) Business Days after the entry of the Disputed Contract Order, to designate the Disputed Contract as an Excluded Asset (and, for the avoidance of doubt, Buyer will not assume the Disputed Contract and will not be responsible for the associated Cure Amount (if any) or liabilities with respect to such Disputed Contract). If Buyer elects to assume a Disputed Contract, Seller and Buyer shall promptly thereafter deliver written instructions directing the Escrow Agent to release an amount in cash from the Cure Amount Escrow Account to the Person set forth in such notice in an amount equal to the final Cure Amount in respect of such Disputed Contract. In the event that, following the Closing, Buyer elects not to assume a Disputed Contract, Buyer and Seller shall promptly deliver written instructions directing the Escrow Agent to disburse an amount in cash from the funds available in the Cure Amount Escrow Account equal to the Disputed Cure Amount allocated to such Disputed Contract; provided that the parties shall discuss every two (2) weeks, commencing as of the Sale Hearing and ending as of the first date following the Closing on which there are no longer funds in the Cure Amount Escrow Account, the status of Buyer’s decisions with respect thereto. Once the Buyer has assumed or rejected all Disputed Contracts in accordance with this Section 5.6(b) and all Cure Amounts in respect of any Disputed Contracts assumed by Buyer have been paid, Seller and Buyer shall promptly thereafter deliver written instructions directing the Escrow Agent to release all amounts (if any) remaining in the Cure Amount Escrow Account to Seller.

(c) Subject to section 363(n) of the Bankruptcy Code and any order of the Bankruptcy Court, between the time the Sale Motion is filed and the Auction is held, the Seller may contact, through whatever means are reasonable, other potential buyers for the Purchased Assets and engage in discussions with such potential buyers that would be higher and better than reflected in this Agreement.

(d) The Sale Motion shall seek approval of the transactions contemplated by this Agreement and entry of the Sale Order and the Sale Procedures Order, substantially in the form set forth on Exhibits 2 and 3. As promptly as practicable after the filing of the Sale Motion, Seller and Buyer shall use reasonable efforts to obtain the entry of the Sale Procedures Order and the Sale Order. Seller shall promptly provide Buyer with copies of any objections to the Sale Motion. Buyer shall take such actions as are reasonably requested by Seller to assist Seller in obtaining a finding by the Bankruptcy Court that Buyer is deemed to have purchased the Seller Facility and the Purchased Assets in good faith pursuant to Section 363(m) of the Bankruptcy Code. The purchase and sale of the Purchased Assets will be in accordance with (and only in accordance with) the Sale Procedures Order. Seller, nor any of its respective Affiliates shall change or modify, or request that the Bankruptcy Court change or modify, any of the dates or procedures set forth in this Agreement or the Sale Procedures Order without the prior written consent of Buyer.

(e) In the event an appeal is taken, or a stay pending appeal is requested or reconsideration is sought, from the Sale Order, and Buyer has not also been served with papers related to such appeal, stay or reconsideration, Seller shall promptly notify Buyer of such appeal or stay request and shall provide to Buyer within one (1) Business Day a copy of the related notice of appeal or order of stay or application for reconsideration. Seller shall also provide Buyer with written notice (and copies) of, any other or further notice of appeal, motion or application filed in connection with any appeal from or application for reconsideration of, either of such orders and any related briefs if Buyer is not also included on such additional documents and communications.

(f) Counsel for Seller shall promptly notify counsel for Buyer in writing and, as is required by the Bankruptcy Code, all parties entitled to notice pursuant to the Bankruptcy Code, the Bankruptcy Rules and orders of the Bankruptcy Court, of all motions, notices and orders required to consummate the transactions contemplated by this Agreement, including the Sale Order, as modified by orders in respect of notice which may be issued at any time and from time to time by the Bankruptcy Court. At least three (3) Business Days prior to filing any papers or pleadings in the Bankruptcy Case that relate primarily to this Agreement or Buyer, Seller shall provide Buyer with a copy of such papers or pleadings for review and comment. Seller shall consider such changes thereto as reasonably requested by Buyer or its Representatives.

(g) If Buyer are the highest and best bidder as reasonably determined by Seller along with such other parties as may be given the right to have input pursuant to the Sales Procedures Order at the auction which the Bankruptcy Court shall schedule pursuant to the Sales Procedures Order (the "**Auction**"), Seller shall not, directly or indirectly, take any action which is intended to, or fail to take any action the intent of such failure to act is to, result in the reversal, voiding, modification or staying of the Sale Order or this Agreement.

(h) This Agreement is subject to approval by the Bankruptcy Court. Following completion of the Auction, in the event that the Buyer is designated as the highest and best bidder, Seller shall not initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, any Person in connection with any sale or other disposition of the Seller Facility or the Purchased Assets. In the event that the Buyer are designated as the highest and best bidder unless otherwise directed by the Bankruptcy Court, Seller shall not, after completion of the Auction, respond to or pursue any other proposed material transaction, including a refinancing or reorganization, involving the Seller Facility or all or any material portion of the Purchased Assets (each an "**Alternative Transaction**") or perform any other acts related thereto.

(i) Seller shall not use commercially reasonable efforts to ensure that the Sale Procedures Order shall provide, inter alia, that in the event (i) the Bankruptcy Court approves a sale of all or some of the Seller Facility or the Purchased Assets to a buyer other than the Buyer or (ii) Seller enters into a

definitive agreement for an Alternative Transaction, Seller shall be required to (x) pay Buyer a fee not to exceed three percent (3%) of the Purchase Price (the “*Break-Up Fee*”), (y) reimburse Buyer in cash an amount up to [\$ _____] reasonable and actual out-of-pocket and third-party costs and expenses (including expenses of counsel and other outside consultants) incurred and documented by Buyer (and each of its designated Affiliate(s)) in connection with Buyer’s due diligence investigation of Seller, the Seller Facility and the Purchased Assets and the negotiation, execution and delivery of this Agreement and the transactions contemplated by this Agreement (the “*Expense Reimbursement*”), and (z) the Parties shall promptly take any and all actions pursuant to the Escrow Agreement or otherwise to release to Buyer the Deposit and any interest accrued thereon. The Break-Up Fee and Expense Reimbursement are an integral part of the transactions contemplated by this Agreement and is not a penalty but rather is a reasonable amount that will compensate Buyer for the efforts and resources expended and opportunities foregone while negotiating this Agreement. The Break-Up Fee and Expense Reimbursement shall be allowed administrative expense claims of Seller pursuant to Section 364(c)(1) of the Bankruptcy Code with priority over any and all administrative expenses of any kind, including those specified in Sections 503(b) or 507(b) of the Bankruptcy Code, and, if such amounts are to be paid pursuant to this Section 5.6(i), the Expense Reimbursement and the Break-Up Fee shall be paid at the closing of an Alternative Transaction including the sale of the Seller Facility to another buyer; provided that, if earlier, the Expense Reimbursement shall be paid to Buyer upon Seller directly or indirectly receiving proceeds from the sale of any of its or its subsidiaries’ assets following the Effective Date.

5.7 Confidentiality. Following the Closing, Seller shall, and shall cause its subsidiaries to, keep confidential and not disclose to any other Person or use for its own benefit or the benefit of any other Person any confidential information, proprietary information, technology, know-how, trade secrets (including all results of research and development), industrial designs, customer lists, franchises, inventions or other intellectual property regarding Buyer, the Seller Facility, the Purchased Assets or the operation thereof (“*Buyer Confidential Information*”) in its possession or control. The obligations of Seller under this Section 5.7 shall not apply to Buyer Confidential Information which (a) is or becomes generally available to the public without breach of the commitment provided for in this Section 5.7; (b) is required to be disclosed by Law; provided, however, that, in any such case, Seller shall notify Buyer (to the extent permitted by Law) prior to disclosure and agrees that Buyer may take appropriate measures to preserve the confidentiality of such Buyer Confidential Information; (c) is received by Seller on a non-confidential basis from a source other than Buyer or its respective subsidiaries or Representatives not in violation of a confidentiality obligation to Buyer or its respective subsidiaries; (d) is independently developed by Seller, or its respective Affiliates or Representatives without reference to or use of any Buyer Confidential Information; or (e) is or was disclosed in connection with the Bankruptcy Case.

5.8 Public Announcements. Prior to the Closing, no Party shall issue or release or make any news release, public statement or other similar public announcement, written or oral, whether relating to this Agreement or any of the other Ancillary Agreements or the existence of any arrangement between the Parties, without the prior written consent of the other Party whether or not named in such news release, public statement or other similar public announcement, except (x) the Parties shall no later than the submission of this Agreement to the Bankruptcy Court issue a joint press release, together with a communication to the Facility Employees in connection with the execution and delivery of this Agreement in form and substance agreed by the Parties prior to the Effective Date, and (y) any Party may issue or release or make any such news release, public statement or other similar public announcement (including a copy of this Agreement and any Ancillary Agreement) as may be required by Law, by the rules or regulations of any stock exchange or in connection with the Bankruptcy Case. Notwithstanding the foregoing, in no event shall the foregoing be construed to restrict or prevent any Party or its Affiliates from making any internal announcements (including announcements to financing sources) regarding the transactions contemplated by this Agreement. Any subsequent release, public statement or other similar public announcement by a Party that solely contains information included in a prior release, public

statement or other similar public announcement made by such Party in accordance with this Section 5.8 shall be deemed consented to by the other Parties.

ARTICLE VI - CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER

Notwithstanding anything herein to the contrary, the obligations of Buyer to consummate the transactions described herein are subject to the fulfillment, as of the Closing, of the following conditions precedent unless (but only to the extent) waived in writing by Buyer on or prior to the Closing:

6.1 Representations and Warranties; Covenants.

(a) The Fundamental Representations shall be true and correct in all respects as of the Effective Date and the Closing Date, as though made as of the Closing Date (except for representations and warranties which address matters only as of a specific date, which representations and warranties shall continue as of the Closing Date to be true and correct as of such specific date). The representations of the Seller contained in ARTICLE III hereof (other than the Fundamental Representations), shall be true and correct (without giving effect to any “materiality,” “in all material respects,” “Material Adverse Effect” or similar qualifiers) as of the Effective Date and the Closing Date when read in light of any Article III Schedules that are updated prior to the Closing Date in accordance with Section 5.2, as though made on the Closing Date (except for representations and warranties which address matters only as of a specific date, which representations and warranties shall continue as of the Closing Date to be true and correct as of such specific dates), except to the extent that the failure to be so true and correct has not had, and would not reasonably be expected to have, a Material Adverse Effect.

(b) All of the covenants, agreements and other obligations in this Agreement to be complied with or performed by Seller on or before the Closing Date pursuant to the terms hereof shall have been duly complied with and performed in all material respects (without giving effect to any “materiality,” “in all material respects,” “Material Adverse Effect” or similar qualifiers).

6.2 Required Governmental Approvals and Consents. Buyer shall have obtained documentation or other evidence reasonably satisfactory to Buyer that the Parties have obtained from applicable Governmental Authorities the approvals and consents set forth on Schedule 6.2 to effect the transactions set forth in this Agreement and to enable Buyer to operate the Seller Facility and Purchased Assets (the “*Required Governmental Approvals*”).

6.3 Title and Survey. The Title Company shall be irrevocably committed to issue both the Title Policy insuring the applicable Buyer’s valid and enforceable leasehold title in and to the Leased Real Property and good and marketable fee simple title to the Owned Real Property, subject to no Encumbrances other than the Permitted Encumbrances, together with such endorsements to such Title Policy as the applicable Buyer deems necessary in its reasonable discretion. Further, the Surveys shall not reflect any Encumbrance other than Permitted Encumbrances and shall otherwise be acceptable to the Title Company for purposes of providing “survey coverage” in the Title Policy.

6.4 Actions and Proceedings. No Governmental Authority shall have issued any Order or enacted any Law that is then in effect and that enjoins, restrains, makes illegal or otherwise prohibits the consummation of the transactions contemplated by this Agreement, and no Action, claim or investigation seeking to enjoin, restrain or prohibit the consummation of the transactions contemplated by this Agreement shall be pending.

6.5 Material Adverse Effect. There shall not have been any Material Adverse Effect since the Balance Sheet Date.

6.6 Closing Certificate. Seller shall have delivered to Buyer a certificate dated as of the Closing Date and executed by an authorized officer of each of Seller to the effect that each of the conditions specified in Section 6.1, Section 6.5 and Section Error! Reference source not found. are satisfied in all respects.

6.7 Bankruptcy Court Approval. The Sale Order shall have been entered by the Bankruptcy Court.

6.8 Closing Deliveries. Seller shall have executed and delivered, or caused to have been executed and delivered, to Buyer the documents and items described in Section 2.8.

6.9 Objection Deadline. The Objection Deadline shall have passed and Seller shall have delivered to Buyer the Final Cure Amount Schedule.

ARTICLE VII- CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLER

Notwithstanding anything herein to the contrary, the obligations of Seller to consummate the transactions described herein are subject to the fulfillment, as of the Closing, of the following conditions precedent unless (but only to the extent) waived in writing by Seller on or prior to the Closing:

7.1 Representations and Warranties; Covenants.

(a) The representations and warranties of Buyer contained in this Agreement shall be true and correct in all respects (without giving effect to any “materiality,” “in all material respects,” “material adverse effect” or similar qualifiers) as of the Effective Date and as of the Closing Date (except for representations and warranties which address matters only as of a specific date, which representations and warranties shall continue as of the Closing Date to be true and correct as of such specific date), except to the extent the failure of such representations and warranties to be true and correct would not materially and adversely affect Buyer’s ability to consummate the transactions contemplated by this Agreement.

(b) All of the covenants, agreements and other obligations in this Agreement to be complied with or performed by Buyer on or before the Closing pursuant to the terms hereof shall have been duly complied with and performed in all material respects (without giving effect to any “materiality,” “in all material respects,” “material adverse effect” or similar qualifiers).

7.2 Pre-Closing Confirmations. Seller shall have obtained documentation or other evidence reasonably satisfactory to Seller that the Parties have obtained the Required Governmental Approvals.

7.3 Actions and Proceedings. No Governmental Authority shall have issued any Order or enacted any Law that is then in effect and that enjoins, restrains, makes illegal or otherwise prohibits the consummation of the transactions contemplated by this Agreement, and no Action, claim or investigation seeking to enjoin, restrain or prohibit the consummation of the transactions contemplated by this Agreement shall be pending.

7.4 Closing Certificate. Buyer shall have delivered to Seller a certificate dated as of the Closing Date and executed by an authorized officer of each of Buyer to the effect that each of the conditions specified in Section 7.1 is satisfied in all respects.

7.5 Closing Deliveries. Buyer shall have executed and delivered, or caused to have been executed and delivered, to Seller the documents and items described in Section 2.9.

7.6 **Cure Amounts**. Any and all Assumed Cure Amounts shall have been paid by or on behalf of Buyer, except for (i) those Assumed Cure Amounts that are to be paid in full at the Closing (and subject to the payment of such Assumed Cure Amounts at the Closing) and (ii) any Disputed Cure Amounts.

ARTICLE VIII- ADDITIONAL AGREEMENTS

8.1 **Termination Prior to Closing**.

(a) Notwithstanding anything herein to the contrary, this Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time prior to the Closing:

(i) by the mutual written consent of Seller and Buyer;

(ii) by Buyer, if a Seller breaches or fail to perform in any respect any of its representations, warranties, agreements, covenants or other obligations contained in this Agreement and such breach or failure to perform would, if the Closing otherwise were to occur on the date of written notice of such breach or failure to perform, give rise to the failure of a condition set forth in Section 6.1 that is incapable of being cured by the Outside Date;

(iii) by Seller, if Buyer breaches or fails to perform in any respect any of its representations, warranties, agreements, covenants or other obligations contained in this Agreement and such breach or failure to perform would, if the Closing otherwise were to occur on the date of written notice of such breach or failure to perform, give rise to the failure of a condition set forth in Section 7.1 that is incapable of being cured by the Outside Date;

(iv) by Seller or Buyer after the Outside Date, provided that the right to terminate this Agreement under this Section 8.1(a)(iv) shall not be available to a Party if the breach of or inaccuracy in any representation or warranty or breach of or failure to perform any covenant, agreement or other obligation of such Party set forth in this Agreement has been the primary cause of or resulted in the failure of the Closing to occur on or prior to such date;

(v) by Seller in the event the Bankruptcy Court approves an Alternative Transaction and Seller is not deemed the Backup Bidder in accordance with any bidding and auction procedures approved by the Bankruptcy Court; and

(vi) by Buyer pursuant to Section 5.2 hereof.

The Party seeking to terminate this Agreement pursuant to this Section 8.1(a) (other than Section 8.1(a)(i)) shall give prompt written notice of such termination to the other Parties.

(b) In the event of any termination of this Agreement by either Buyer or Seller as provided in Section 8.1(a), this Agreement shall forthwith become void, and there shall be no liability on the part of any Party or any of its Affiliates to any other Person resulting from, arising out of, relating to, or in connection with this Agreement or any other document related to the transactions contemplated herein, except that (i) ARTICLE IX (Miscellaneous), Section 5.6 and this Section 8.1 shall survive any termination of this Agreement and each Party shall be entitled to all remedies available at Law or in equity in connection with any breach of any such provision and (ii) Seller's obligations to pay Buyer the Break-Up Fee, if earned, in accordance with Section 5.6 shall survive any termination of this Agreement.

(c) If this Agreement is terminated by Seller pursuant to Section 8.1(a)(iii) at such time when Buyer is not otherwise entitled to terminate this Agreement pursuant to Section 8.1(a) (a "***Qualifying***

Termination”), the Parties shall promptly take any and all actions pursuant to the Escrow Agreement or otherwise to release to Seller the Deposit and any interest accrued thereon as a reverse termination fee (the “**Reverse Termination Fee**”). If this Agreement is terminated and such termination is not a Qualifying Termination, then Seller will not be entitled to the Reverse Termination Fee and the Parties shall promptly take any and all actions pursuant to the Escrow Agreement or otherwise to release to Buyer the Deposit and any interest accrued thereon.

(d) Notwithstanding anything in this Agreement to the contrary, (i) in no event shall Buyer be required to pay or cause to be paid the Reverse Termination Fee on more than one occasion and (ii) in no event shall Seller be entitled to both (x) receive the Reverse Termination Fee and (y) specific performance of Buyer’s obligation to pay the Purchase Price and effect the Closing.

(e) Notwithstanding anything in this Agreement to the contrary, (i) in the event that Buyer fail to effect the Closing for any reason or no reason or otherwise breach this Agreement (or any representation, warranty, covenant or agreement herein) prior to the Closing or otherwise fail to perform hereunder prior to the Closing (whether willfully, intentionally, unintentionally or otherwise), then Seller’s right (subject to the terms, conditions and limitations hereof) to terminate this Agreement pursuant to Sections 8.1(a)(iii), 8.1(a)(iv) or 8.1(a)(v) and, solely in the case of a Qualifying Termination, receive the Reverse Termination Fee pursuant to Section 8.1(c) shall be the sole and exclusive right and remedy (whether at law, in equity, in contract, in tort or otherwise) of Seller, its respective successors and permitted assigns, and any Person claiming by, through or on behalf of any of them (it being expressly agreed that no other Person shall have any right or remedy in such circumstances) against any Person, arising out of or relating to (A) this Agreement, (B) any breach by Buyer of any representation, warranty, covenant, obligation or agreement in this Agreement or Buyer’s failure to perform under this Agreement, (C) the failure of Buyer to consummate the Closing, or (D) the transactions contemplated by this Agreement and (ii) upon payment of the Reverse Termination Fee, Seller, nor its respective successors and permitted assigns, or any Person claiming by, through or on behalf of any of them (it being expressly agreed that no other Person shall have any right or remedy in such circumstances) shall have any right or remedy (whether at law, in equity, in contract, in tort or otherwise) with respect to any of the matters described in clauses (A) through (D) of the immediately preceding subsection (i).

(f) Notwithstanding anything to the contrary in this Agreement, in the event that Seller is paid the Reverse Termination Fee, the receipt of the Reverse Termination Fee by Seller shall not be deemed a penalty, but shall be deemed to be liquidated damages for any and all losses or damages suffered or incurred by Seller, and any other Person with respect to the matters described in clauses (A) through (D) of Section 8.1(e), and Seller nor any other Person shall have any other right or remedy (whether at law, in equity, in contract, in tort or otherwise) against Buyer or any other Person (it being expressly agreed that no other Person shall have any right or remedy in such circumstances).

(g) The provisions of Sections 8.1(b) through 8.1(f) and this Section 8.1(g) are intended to be for the benefit of, and shall be enforceable by, Buyer and any other Person against whom any right or remedy is sought. The Parties agree that the agreements contained in this Section 8.1 are an integral part of this Agreement and the transactions contemplated hereby and, without these agreements, the parties would not enter into this Agreement. In light of the difficulty of accurately determining actual damages with respect to the foregoing matters, the Reverse Termination Fee constitutes a reasonable estimate of the losses that will be suffered if this Agreement is terminated or the transactions contemplated by this Agreement are otherwise abandoned or not consummated and constitutes liquidated damages (and not a penalty).

8.2 Post-Closing Filings and Access to Information.

(a) After the Closing, each Party shall promptly deliver to any other Party, upon reasonable request of such other Party, copies of any post-Closing filings, financial statements or reports regarding the Seller Facility, the Purchased Assets, the Assumed Liabilities, the Excluded Assets or the Excluded Liabilities that may be reasonably necessary for such other Party to prepare and deliver any filings or reports required to be delivered to any Governmental Authority as a result of the consummation of the transactions described herein, in each case at the sole cost and expense of the requesting Party.

(b) The Parties acknowledge that, subsequent to the Closing, Seller may need access to information or documents in the control or possession of Buyer for the purposes of concluding the transactions herein contemplated, audits, compliance with Laws, and the prosecution or defense of third party claims. Accordingly, for a period of three (3) years following the Closing, Buyer shall make reasonably available to Seller and its respective Representatives, upon written request, during normal business hours, without undue interruption of the operations of Buyer or its Affiliates, and at the expense of Seller, such documents and information as may be available relating to the Seller Facility for periods prior to the Closing Date to the extent necessary to facilitate concluding the transactions herein contemplated, audits, compliance with Laws and the prosecution or defense of claims (except where such access jeopardizes attorney-client privileged communications or is prohibited by applicable Law and other than in connection with a dispute, claim or Action between Buyer, on the one hand, and Seller, on the other hand, or any of its respective Affiliates). Seller agrees to reimburse Buyer for reasonable expenses incurred in connection with providing such access.

(c) The Parties acknowledge that, subsequent to the Closing, Buyer may need access to information or documents in the control or possession of Seller for the purposes of concluding the transactions herein contemplated, audits, compliance with Laws, and the prosecution or defense of third party claims. Accordingly, for a period of three (3) years following the Closing, Seller shall make reasonably available to Buyer and its Representatives, upon written request, during normal business hours, without undue interruption of the operations of Seller or its Affiliates and at the expense of Buyer, such documents and information as may be available relating to the Seller Facility to the extent necessary to facilitate concluding the transactions herein contemplated, audits, compliance with Laws and the prosecution or defense of claims (except where such access jeopardizes attorney-client privileged communications or is prohibited by applicable Law and other than in connection with a dispute, claim or Action between Buyer, on the one hand, and Seller, on the other hand, or any of its respective Affiliates); provided that nothing herein shall require the Seller to continue the Bankruptcy Case or restrict the dissolution of Seller. Buyer agrees to reimburse Seller for reasonable expenses incurred in connection with providing such access.

8.3 Employee Matters.

(a) Upon the Closing Date, Seller shall terminate the employment of each Facility Employee and all such Facility Employees shall cease to participate in or accrue benefits under any Facility Employee Benefit Plan (except as required by Law or by the terms of such Facility Employee Benefit Plan). Subject to satisfactory results from background screening conducted pursuant to Buyer's personnel policies, one or more Buyer shall make offers of employment, effective as of the Closing, to each Facility Employee. Each Facility Employee that accepts such an offer of employment shall be referred to as a "***Transferred Employee.***" With respect to each Transferred Employee, Buyer shall assume Seller's or its Affiliates' liability to each Transferred Employee for such Transferred Employee's Accrued PTO. Such Accrued PTO assumed by Buyer will be credited to the Transferred Employees and administered and used by the Transferred Employee in accordance with Buyer's employee policies and procedures.

(b) For purposes of vesting, eligibility to participate, and solely with respect to severance and paid time off plans, level of benefits under the employee benefit plans of the Buyer or its Affiliates providing benefits to any Transferred Employee after the Closing (the “**Buyer Benefit Plans**”), each Transferred Employee shall be credited with his or her years of service with Seller and its respective predecessors to the same extent as such Transferred Employee received credit for such service under any similar Facility Employee Benefit Plan in which such Transferred Employee participated, or was eligible to participate, immediately prior to the Closing; provided that the foregoing shall not apply to the extent it would result in a duplication of benefits. With respect to each Buyer Benefit Plan in which any Transferred Employee becomes eligible to participate following the closing that provides medical, dental, vision or prescription drug coverage, Buyer shall, or shall cause its Affiliates to, use commercially reasonable efforts to waive all limitations as to pre-existing conditions and waiting periods (to the extent waived or satisfied under a comparable Facility Employee Benefit Plan immediately prior to Closing) with respect to participation and coverage requirements for any Transferred Employees and their eligible dependents.

(c) Following the Closing, Buyer or one of its Affiliates will permit each Transferred Employee to participate in a defined contribution Buyer Benefit Plan that is qualified under Section 401(a) of the Code (“**Buyer Savings Plan**”), subject to satisfying such plan’s eligibility requirements (it being acknowledged that the first payroll period for which deferral elections will be processed may not be for several weeks after the Closing Date). Following the Closing Date, to the extent permitted by applicable Law, Buyer and its Affiliates will allow the Buyer Savings Plan, to the extent so elected by a Transferred Employee within 60 days after the Closing Date, to accept “eligible rollover distributions” (within the meaning of Section 401(a)(31) of the Code) from any Facility Employee Benefit Plan that is qualified under Section 401(a) of the Code (each, a “**Seller Savings Plan**”). For purposes of this Section 8.3(c), the term “eligible rollover distribution” will also include the balance of any Transferred Employee’s outstanding participant loan under any Seller Savings Plan. Prior to the Closing, the Seller Savings Plan shall be amended to the extent necessary to allow any such rollover.

(d) Seller will, and will cause its respective Affiliates to, waive any non-competition, non-solicitation, confidentiality and other restrictive covenant that exists for the benefit of Seller or its respective Affiliates, to which any Transferred Employee is subject that would prevent such Transferred Employee from being employed by Buyer or any of its respective Affiliates or that otherwise would restrict any Transferred Employee from performing his or her duties or responsibilities for Buyer or any of its respective Affiliates.

(e) Buyer will be solely responsible and liable for providing all coverage required by the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, to all current and former employees of Seller or any ERISA Affiliate (and their dependents) with respect to any “qualifying event” (as defined in Treasury Regulation Section 54.4980B-4) occurring on or prior to the Closing Date under any Seller Plan but only to the extent such is required by applicable Law and nothing herein shall obligate Seller to maintain any health or other Seller Plan following the Closing.

(f) The Seller and the Buyer agree to use the “Alternate Procedure” as described in IRS Revenue Procedure 2004-53, I.R.B. 2004-34, with respect to the Transferred Employees.

(g) Except for the Accrued PTO assumed by Buyer pursuant to this Agreement, Buyer shall not assume any obligations of Seller or any of its respective Affiliates related to any Employee Benefit Plan.

(h) This Section 8.3 shall be binding upon and inure solely to the benefit of each of the Parties to this Agreement, and nothing in this Section 8.3 or this Agreement, express or implied, shall confer upon any Transferred Employee or any other Person any rights or remedies of any nature whatsoever under this

Section 8.3. Nothing contained herein, express or implied, shall be construed to establish, amend or modify any benefit plan, program, agreement or arrangement, nor shall this Section 8.3 be deemed to limit the right of Buyer or any of its Affiliates from modifying, terminating or amending any Buyer Benefit Plan. The Parties acknowledge and agree that no provision of this Agreement shall create any right in any employee, any Transferred Employee or any other Person to any continued employment or compensation or benefits of any nature or kind whatsoever, or otherwise interfere with the right of Buyer or any of its respective Affiliates to terminate the employment of any Person at any time and for any reason. Seller and Buyer, and its respective Affiliates, shall cooperate to effect the foregoing provisions of this Section 8.3.

8.4 Medical Staff. To ensure continuity of care in the applicable community, Buyer agree that the medical staff members of the Seller Facility who are in good standing as of the Closing Date shall maintain medical staff privileges at the Seller Facility as of the Closing. After the Closing, the medical staff will be subject to the Medical Staff Bylaws of the Seller Facility then in effect, as amended from time to time.

8.5 Refunds and Remittances. After the Closing: (a) if Seller or any of its Affiliates receive any refund or other amount that is a Purchased Asset or is otherwise properly due and owing to Buyer in accordance with the terms of this Agreement, Seller promptly shall remit, or shall cause to be remitted, such amount to Buyer; and (b) if Buyer or any of its Affiliates receive any refund or other amount that is an Excluded Asset or is otherwise properly due and owing to Seller or any of its Affiliates in accordance with the terms of this Agreement, Buyer promptly shall remit, or shall cause to be remitted, such amount to Seller.

8.6 Insurance. Seller (at its sole cost and expense) shall (a) maintain its directors' and officers' liability insurance policies providing for terms and conditions that are not less advantageous to the directors, managers and officers (as applicable) of Seller than those set forth in the directors' and officers' insurance policies in effect as of the date of this Agreement until such time that Seller dissolves and (b) if Seller obtains a "tail" insurance policy applicable to any period following the Closing Date and covering Transferred Employees, Seller shall make such policy available to such Transferred Employees (to the extent applicable) with respect to claims arising out of or relating to events which occurred on or prior to the Closing Date (including in connection with the transactions contemplated by this Agreement).

8.7 Assurances.

(a) Subject to Section 2.3(c), at any time or from time to time following the Closing Date, if (a) any of the Parties or its respective Affiliates becomes aware that any of the Purchased Assets has not been transferred to the applicable Buyer or that any of the Excluded Assets has been transferred to a Buyer, or (b) Seller or any of its respective Affiliates receives or otherwise possesses any asset (including cash, accounts and notes receivable) that should have been transferred to a Buyer under this Agreement, such Person shall promptly notify the other and the Parties shall, as soon as reasonably practicable, ensure that such property is transferred with any necessary prior third-party consent or approval, to:

(i) the applicable Buyer, in the case of any Purchased Asset which was not transferred at the Closing or otherwise as set forth above, at the sole cost and expense of the Seller; or

(ii) the applicable Seller, in the case of any Excluded Asset which was transferred at the Closing, at the sole cost and expenses of the Seller.

Prior to any such transfer, the Person in receipt of or then possessing such asset shall hold such asset in trust for such other Person, shall exercise, enforce and exploit, only at the direction of and for the benefit of such other Person, any and all claims, rights and benefits arising in connection with such asset, shall promptly pay, assign and remit to such other Person when received all monies and other consideration relating to

such asset in the period after the Closing Date, and, to the extent applicable, provide the Person that should possess such asset pursuant to the terms of this Agreement a royalty-free license to use or shall otherwise be able to obtain the benefits from the asset and shall hold such asset in trust for such other Person.

8.8 Terminating Cost Reports.

(a) Buyer, at Buyer's expense, shall prepare and timely file all Cost Reports and related filings (including requests to reopen any such Cost Reports) relating to the periods ending on or prior to the Closing Date or required as a result of the consummation of the transactions contemplated herein (the "***Seller Cost Reports***"). To the extent relating to Seller's Bad Debts, Buyer shall provide Seller at least five (5) Business Days to review such Seller Cost Reports before they are filed and forward to Seller any and all correspondence relating to such Seller Cost Reports and the Seller Agency Settlements within five (5) Business Days after receipt by Buyer. Subsequent to the Closing Date, Buyer shall not reply to any such correspondence to the extent relating to Seller's Bad Debts without Seller's written approval (which approval shall not be unreasonably withheld, conditioned or delayed). Except as contemplated by Section 8.11, Buyer shall hold all rights relating to the Seller Cost Reports and Seller Agency Settlements, including the right to appeal, reopen or otherwise challenge any Medicare determinations relating to the Seller Agency Settlements and the Seller Cost Reports. Buyer shall possess the originals of the Seller Cost Reports, correspondence, work papers and other documents relating to the Seller Cost Reports and the Seller Agency Settlements, and furnish copies of such documents to Seller upon reasonable request.

(b) Seller, upon reasonable notice, during normal business hours and at the sole cost and expense of Buyer, shall cooperate with Buyer in regard to the preparation, filing, handling and appeals of the Seller Cost Reports. Such cooperation shall include the coordination with Buyer pursuant to adequate notice of Medicare and Medicaid exit conference or meetings.

8.9 Waiver of Bulk Sales Law Compliance. Buyer hereby waives compliance by Seller with the requirements, if any, of Article VI of the Uniform Commercial Code as in force in any state in which the Purchased Assets are located and all other similar laws applicable to bulk sales and transfers.

8.10 Closing Of Financials. Buyer shall use commercially reasonable efforts to cause the individual(s) acting as the chief financial officer of the Seller Facility after the Effective Time or such other person(s) as may be responsible for financial closings and reconciliations (the "***Finance Team***") to complete (or take such action as shall be necessary for Buyer or Seller to complete) the standardized closing of Seller's financial records for the Seller Facility through the Closing Date including, without limitation, the closing of general ledger account reconciliations (collectively, the "***Closing of Financials***"). Buyer shall use commercially reasonable efforts to cause the Finance Team to use its good faith efforts to complete the Closing of Financials by no later than the date which is thirty (30) days after the Closing Date. The Finance Team and other appropriate personnel shall be reasonably available to Seller for the period ending sixty (60) days after the Closing Date as reasonably requested during normal business hours by Seller.

8.11 Medicare Bad Debts. Seller shall be entitled to receive Medicare reimbursement for bad debts of the Seller Facility under 42 C.F.R. § 413.89 associated with services furnished prior to the Effective Time ("***Seller's Bad Debts***"). Seller shall have the right, in its sole discretion, to require that Buyer submit a claim for reimbursement to the CMS for a Seller's Bad Debts on Buyer's cost report(s) for the period in which Seller's Bad Debt becomes uncollectible by Seller; provided, however, that the Buyer shall not be required to submit any such claim to the extent that the Buyer reasonably determine that such claim is not a supportable, valid and permissible claim under applicable Medicare regulations and payment policies. If and to the extent that Buyer receive payment for Seller's Bad Debts, Buyer shall remit such receipts to Seller within ten (10) Business Days of receipt. The Buyer shall have the right to offset any such payments

by any reduction in Buyer's Medicare reimbursement attributable to the collection of amounts claimed as Seller's Bad Debts on prior Cost Reports.

ARTICLE IX - GENERAL PROVISIONS

9.1 Survival. The representations and warranties of the Parties set forth herein shall not survive the Closing.

9.2 Additional Assurances. The provisions of this Agreement shall be self-operative and shall not require further agreement by the Parties except as may be herein specifically provided to the contrary; provided, however, at the request and expense of a Party, the other Party or Parties shall execute such additional instruments and take such additional action as the requesting Party may reasonably deem necessary to effectuate this Agreement. In addition and from time to time after the Closing Date, Seller and Buyer shall each execute and deliver such other instruments of conveyance and transfer, and take such other actions as any Party may reasonably request, to more effectively convey and transfer full right, title and interest to, vest in, and place Buyer in legal and actual possession of the Purchased Assets.

9.3 [RESERVED]

9.4 [RESERVED]

9.5 Choice of Law; Venue.

(a) This Agreement and all disputes or controversies arising out of or relating to this Agreement or the transactions contemplated hereby (in contract or tort) shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflicts of law principles.

(b) WITHOUT LIMITING ANY PARTY'S RIGHT TO APPEAL ANY ORDER OF THE BANKRUPTCY COURT, THE PARTIES HEREBY AGREE THAT ANY AND ALL CLAIMS, ACTIONS, CAUSES OF ACTION, SUITS, AND PROCEEDINGS RELATING TO THE TRANSACTION DOCUMENTS SHALL BE FILED AND MAINTAINED ONLY IN THE BANKRUPTCY COURT, AND THE PARTIES HEREBY CONSENT TO THE JURISDICTION OF SUCH COURT; provided, however, that if the Bankruptcy Case has closed or the Bankruptcy Court lacks jurisdiction for whatever reason, the Parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the state or federal courts situated in Huntsville, Texas and any appellate court from any decision thereof, for the resolution of any such claim or dispute. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may have now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each Party agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment.

(c) Each Party hereby consents to process being served by any party to this Agreement in any legal proceeding by delivery of a copy thereof in accordance with the provisions of Section 9.9.

(d) EACH PARTY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, MATTER OR PROCEEDING REGARDING THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY OR ANY PROVISION HEREOF.

9.6 Benefit, Assignment and Third Party Beneficiaries. Subject to provisions herein to the contrary, this Agreement shall inure to the benefit of and be binding upon the Parties and its respective legal representatives, successors and assigns; provided, however, that no Party may assign this Agreement

without the prior written consent of the other Party except that (a) Buyer may assign this Agreement and/or any of its rights hereunder to a wholly owned (directly or indirectly) subsidiary of Buyer or any purchaser of substantially all of Buyer's business and (b) Buyer may collaterally assign its rights, but not its obligations, under this Agreement to any party that provides funding for the transactions hereunder as additional security for Buyer's obligations to such party without the prior written consent of Seller. The Parties acknowledge that Buyer may assign ownership and title to certain of the Purchased Assets to certain designees of Buyer, such that more than one entity may own the Purchased Assets at Closing. This Agreement is intended solely for the benefit of the Parties and is not intended to, and shall not, create any enforceable third party beneficiary rights except as expressly provided herein.

9.7 Cost of Transaction. Except as may be provided to the contrary elsewhere herein: (a) Buyer shall pay the fees, expenses and disbursements incurred by Buyer and its Representatives in connection with the subject matter hereof and any amendments hereto; (b) Seller shall pay the fees, expenses and disbursements incurred by Seller and its Representatives in connection with the subject matter hereof and any amendments hereto; and (c) Buyer shall pay the costs of any Title Commitments, Title Policy, surveys and environmental site assessments, and any amounts due to a Governmental Authority to effect the change of ownership of the Seller Facility contemplated hereby.

9.8 Waiver of Breach. The waiver by any Party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to constitute, a waiver of any subsequent breach of the same or any other provision hereof. Any agreement on the part of either Party to any such waiver shall be valid only if set forth in a written instrument executed and delivered by a duly authorized officer on behalf of such Party.

9.9 Notice. Any notice, demand or communication required, permitted or desired to be given hereunder shall be in writing and deemed effectively given or made (a) when personally delivered, (b) on the date sent when delivered by facsimile or other electronic means (so long as written notice of such transmission is sent within two (2) Business Days thereafter by another delivery method hereunder) (unless not delivered on a Business Day or delivered after 5:00 p.m. Eastern Time on a Business Day, in which case such delivery shall be deemed effective on the next succeeding Business Day), (c) one (1) Business Day following the date sent if sent by overnight courier with signed receipt, or (d) when delivered by registered United States mail, with postage prepaid and return receipt requested, addressed to the addresses below or to such other address as any Party may designate, with copies thereof to the respective counsel thereof as notified by such Party.

Buyer: _____

With a copy to: _____

Seller: _____

With Copies to: Waller Lansden Dortch & Davis, LLP
Nashville City Center
511 Union Street, Suite 2700
Nashville, TN 37219
Attention: Blake Roth and Andrea Cunha
Facsimile No.: (615) 244-6804
Email: blake.roth@wallerlaw.com and andrea.cunha@wallerlaw.com

9.10 Severability. In the event any provision of this Agreement is held to be invalid, illegal or unenforceable for any reason and in any respect, such invalidity, illegality, or unenforceability shall in no event affect, prejudice or disturb the validity of the remainder of this Agreement, which shall be and remain in full force and effect, enforceable in accordance with its terms.

9.11 Interpretation. In the interpretation of this Agreement, except where the context otherwise requires, (a) “including” or “include” does not denote or imply any limitation and shall mean “including, without limitation,” whether or not so specified, (b) “or” has the inclusive meaning “and/or”, (c) “and/or” means “or” and is used for emphasis only, (d) “\$” refers to United States dollars, (e) the singular includes the plural, and vice versa, and each gender includes each other gender, (f) captions or headings are only for reference and are not to be considered in interpreting this Agreement, (g) “**Section**” refers to a section of this Agreement, unless otherwise stated in this Agreement, (h) “**Exhibit**” refers to an exhibit to this Agreement (which is incorporated herein by reference), unless otherwise stated in this Agreement, (i) “**Schedule**” refers to a schedule to this Agreement and incorporates any attachments thereto (which are incorporated herein by reference), unless otherwise stated in this Agreement, (j) all references to times are times in Boca Raton, Florida, (k) “day” refers to a calendar day unless expressly identified as a Business Day, (l) the word “extent” in the phrase “to the extent” shall mean the degree to which a subject or other theory extends and such phrase shall not mean “if,” (m) references to agreements and other documents shall be deemed to include all subsequent amendments and other modifications thereto, (n) references to statutes shall include all regulations promulgated thereunder and references to statutes or regulations shall be construed as including all statutory and regulatory provisions consolidating, amending or replacing the statute or regulation, (o) capitalized terms shall have the meaning assigned to them herein, and (p) “made available to Buyer” or similar phrases means information included in a virtual data room maintained by _____ to which Buyer and its Representatives have had access as of five (5) Business Days prior to the Effective Date. If any period under this Agreement expires on a day which is not a Business Day or any action is required by the terms of this Agreement to be taken on a day which is not a Business Day, such period shall expire on or such action may be deferred until, as the case may be, the next succeeding Business Day.

9.12 Entire Agreement, Amendments and Counterparts. This Agreement supersedes all previous contracts, agreements and understandings between the Parties regarding the subject matter hereof and, together with the Ancillary Agreements and the Exhibits and Schedules hereto, constitutes the entire agreement existing between or among the Parties respecting the subject matter hereof and no Party shall be entitled to benefits other than those specified herein. As between or among the Parties, no oral statements or prior written material not specifically incorporated herein shall be of any force and effect, and neither Party is relying on any such oral statements or prior written material. All prior representations or agreements, whether written or oral, not expressly incorporated herein are superseded and no changes in or additions to this Agreement shall be recognized unless and until made in writing and signed by all Parties. This Agreement may be executed in counterparts, each and all of which shall be deemed an original and all of which together shall constitute but one and the same instrument. Signatures received via facsimile or other electronic transmission shall be accepted as originals. Notwithstanding any oral agreement or course of conduct of the Parties or its Representatives to the contrary, no Party shall be under any legal obligation

to enter into or complete the transactions contemplated hereby unless and until this Agreement shall have been executed and delivered by each Party.

9.13 Disclosure Generally. Notwithstanding anything to the contrary contained in the Article III Schedules or in this Agreement, the information and disclosures contained in any Article III Schedule shall be deemed to be disclosed and incorporated by reference in any other Schedule as though fully set forth in such Article III Schedule for which applicability of such information and disclosure is reasonably apparent on its face. The fact that any item of information is disclosed in any Article III Schedule shall not be construed to mean that such information is required to be disclosed by this Agreement. Such information and the dollar thresholds set forth therein shall not be used as a basis for interpreting the terms “material” or “Material Adverse Effect” or similar terms in this Agreement.

9.14 Time of Essence. Time is of the essence with regard to all dates and time periods set forth in this Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties have caused this Asset Purchase Agreement to be executed by their authorized officers as of the Effective Date.

SELLER:

_____, a _____
corporation/limited liability company

By: _____
Name: _____
Title: _____

BUYER:

_____, a _____
corporation/limited liability company

By: _____
Name: _____
Title: _____

Exhibit 1

Seller	Applicable Seller Facility	Applicable State

Exhibit 2

Sale Order

[See attached]

Exhibit 3

Sale Procedures Order

[See attached]

Exhibit 4

Bill of Sale

[See attached]

Exhibit 5

Assignment and Assumption Agreement

[See attached]

Exhibit 6

Assignment and Assumption of Lease for Real Property

[See attached]

Exhibit 7

Drug Enforcement Administration (DEA) Power of Attorney

[See attached]

Exhibit 8

Special Warranty Deed

[See attached]

Exhibit 9

Assignment of Member Interest of HMMPO

EXHIBIT 3 TO BIDDING PROCEDURES ORDER
NOTICE OF AUCTION AND SALE HEARING

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

WALKER COUNTY HOSPITAL CORPORATION,
d/b/a HUNTSVILLE MEMORIAL HOSPITAL,

Debtor and Debtor in Possession.¹

Chapter 11

Case No. 19-36300

Re: Docket No. []

NOTICE OF AUCTION AND SALE HEARING

PLEASE TAKE NOTICE that the above-captioned debtor and debtor in possession (the “*Debtor*”) sought relief from the United States Bankruptcy Court for the Southern District of Texas (the “*Bankruptcy Court*”) to effectuate one or more sales for the sale of substantially all of the Debtor’s assets.

PLEASE TAKE FURTHER NOTICE that on [] [], 2019, the Bankruptcy Court entered the *Order: (I)(A) Approving Bidding Procedures and Bid Protection, (B) Permitting Debtor to Designate Stalking Horse Purchaser(s) and Grant Bid Protections, (C) Scheduling a Hearing to Consider Approval of the Sale of Assets, (D) Approving Assumption and Assignment Procedures, (E) Approving Form and Manner of Notice of Sale, and (F) Granting Related Relief; and (II)(A) Authorizing and Approving the Sale of Substantially All Assets of the Debtor Free and Clear of Liens, Claims, Interests, and Encumbrances, (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (C) Granting Related Relief* (Dkt. No. []) (the “*Bidding Procedures Order*”),² pursuant to which the Bankruptcy Court approved Bidding Procedures and established key dates and times related to the Debtor’s efforts to sell substantially all assets of the Debtor’s estate.

PLEASE TAKE FURTHER NOTICE that the summary of the Bidding Procedures contained in this notice is provided for convenience only, and all interested bidders should carefully read the Bidding Procedures Order and Bidding Procedures in their entirety.³

PLEASE TAKE FURTHER NOTICE that the deadline by which all Qualified Bids must be **actually received** by the parties specified in the Bidding Procedures is **[] [], 2019 at 4:00 p.m. (prevailing Central time)**].

PLEASE TAKE FURTHER NOTICE that copies of the Bidding Procedures Order, Bidding Procedures, all related exhibits, and any other filings related to the foregoing are available

¹ The last four digits of the Debtor’s federal tax identification number are: 0960. The location of the Debtor’s service address is: P.O. Box 4001, Huntsville, TX 77342-4001, Attn: Steven Smith.

² Capitalized terms used in these Bidding Procedures but not otherwise defined shall have the meanings ascribed to them in the Bidding Procedures Order.

³ To the extent of any inconsistencies between this notice and the Bidding Procedures Order or Bidding Procedures, the terms of the Bidding Procedures Order and Bidding Procedures shall control.

for free on the website of the court-appointed claims and noticing agent in this case, Epiq Corporate Restructuring, LLC, at [____], or can be requested by calling [_____].

PLEASE TAKE FURTHER NOTICE that, if the Debtor timely receives one or more Qualified Bids, the Debtor will conduct the Auction on [____] [____], 2019 at 10:00 a.m. (prevailing Central time) at [____] or at such other location as the Debtor may later designate, to determine the highest or otherwise best Bid(s) for the Proposed Purchased Assets.

PLEASE TAKE FURTHER NOTICE that, if the Debtor does not timely receive more than one Qualified Bid, the Debtor will not conduct the Auction and, instead, will (a) file a notice with the Bankruptcy Court identifying the Successful Bidder for the Proposed Purchased Assets and (b) promptly seek the Bankruptcy Court's approval of the sale of the Proposed Purchased Assets.

PLEASE TAKE FURTHER NOTICE that the Debtor will seek approval of the sale of the Proposed Purchased Assets before the Honorable [____], United States Bankruptcy Judge for the Southern District of Texas, 515 Rusk Avenue, Courtroom [____], Houston, Texas 77002, on [____] [____], 2019 at [____] (prevailing Central time).

PLEASE TAKE FURTHER NOTICE that objections, if any, must (i) be in writing, (ii) conform to the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (iii) state with particularity the legal and factual basis for the objection and the specific grounds for such objection, and (iv) be filed with the Bankruptcy Court and served so as to be **actually received** no later than [____] [____], 2019 at 4:00 p.m. (prevailing Central time) by the following parties: (i) counsel to the Debtor; (ii) counsel to any Stalking Horse Bidder; (iii) counsel to MidCap, [____]; (iv) counsel to any statutory committee; (v) the Office of the United States Trustee for the Southern District of Texas, [____]; and (vi) counsel to any Successful Bidder and Backup Bidder as identified in accordance with the Bidding Procedures.

PLEASE TAKE FURTHER NOTICE THAT ANY PARTY OR ENTITY WHO FAILS TO TIMELY FILE AND SERVE AN OBJECTION TO THE SALE ON OR BEFORE THE OBJECTION DEADLINE IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION TO THE SALE(S), INCLUDING WITH RESPECT TO THE TRANSFER OF THE PROPOSED PURCHASED ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS.

PLEASE TAKE FURTHER NOTICE THAT THE PROPOSED SALE ORDER PROVIDES THAT A PURCHASER OF THE PROPOSED PURCHASED ASSETS WILL HAVE NO RESPONSIBILITY FOR, AND THE PROPOSED PURCHASED ASSETS WILL BE SOLD FREE AND CLEAR OF, ANY SUCCESSOR LIABILITY, INCLUDING THE FOLLOWING:

- a. To the greatest extent allowable by applicable law, any Successful Bidder shall not be deemed, as a result of any action taken in connection with any asset purchase agreement, the consummation of a sale of the Proposed Purchased Assets contemplated by the Bidding Procedures and any purchase agreement, or the transfer or operation of any part of the Proposed Purchased Assets, to: (i) be a legal successor, or otherwise be deemed a successor to the Debtor (other than, for any Successful Bidder, with respect to any obligations

as an assignee under the executory contracts or unexpired leases assumed and assigned pursuant to 11 U.S.C. § 365 arising after the applicable closing); (ii) have, *de facto* or otherwise, merged with or into the Debtor; or (iii) be an alter ego or mere continuation or substantial continuation of the Debtor, including, without limitation, within the meaning of any foreign, federal, state or local revenue law, pension law, the Employee Retirement Income Security Act, the Consolidated Omnibus Budget Reconciliation Act, the WARN Act (29 U.S.C. §§ 2101, et seq.), the Comprehensive Environmental Response Compensation and Liability Act (“*CERCLA*”), the Fair Labor Standard Act, Title VII of the Civil Rights Act of 1964 (as amended), the Age Discrimination and Employment Act of 1967 (as amended), the Federal Rehabilitation Act of 1973 (as amended), the National Labor Relations Act (29 U.S.C. § 151, et seq.), environmental liabilities, debts, claims or obligations arising from conditions first existing on or prior to the applicable closing (including, without limitation, the presence of hazardous, toxic, polluting, or contaminating substances or wastes), which may be asserted on any basis, including, without limitation, under CERCLA, any liabilities, debts or obligations of or required to be paid by the Debtor for any taxes of any kind for any period, labor, employment, or other law, rule or regulation (including without limitation filing requirements under any such laws, rules or regulations), or under any products liability law or doctrine with respect to the Debtor’s liability under such law, rule or regulation or doctrine.

b. All rights of any party to set off any claims, debts, or obligations owed by or to a Successful Bidder in connection with the Proposed Purchased Assets shall be extinguished on the applicable closing date pursuant to the proposed Sale Order, with such rights attaching to the proceeds of the applicable sale. Other than as expressly set forth in any asset purchase agreement with respect to assumed liabilities, a Successful Bidder shall not have any responsibility for (i) any liability or other obligation of the Debtor or related to the Proposed Purchased Assets or (ii) any claims (as such term is defined in section 101(5) of the Bankruptcy Code) against the Debtor or any of its predecessors or affiliates.

c. To the greatest extent allowed by applicable law, a Successful Bidder shall have no liability whatsoever with respect to the Debtor’s (or its predecessor’s or affiliate’s) respective businesses or operations or any of the Debtor’s (or its predecessor’s or affiliate’s) obligations based, in whole or in part, directly or indirectly, on any theory of successor or vicarious liability of any kind or character, or based upon any theory of antitrust, environmental, successor or transferee liability, *de facto* merger or substantial continuity, labor and employment or products liability, whether known or unknown as of the applicable closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated, including liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Proposed Purchased Assets prior to the applicable closing.

[Remainder of Page Intentionally Left Blank]

DATED: [November ____], 2019

Respectfully submitted,
WALLER LANSDEN DORTCH & DAVIS, LLP
/s/

Ryan K. Cochran (Federal ID No. 3438844)
Blake D. Roth (Federal ID No. 2666808)
Tyler N. Layne (Federal ID No. 2639086)
Courtney K. Stone (Texas Bar No. 24093208)
511 Union Street, Suite 2700
Nashville, TN 37219
Telephone: (615) 244-6380
Facsimile: (615) 244-6804
Email: Ryan.Cochran@wallerlaw.com
Blake.Roth@wallerlaw.com
Tyler.Layne@wallerlaw.com
Courtney.Stone@wallerlaw.com

-

and-

Andrea R. Cunha (Texas Bar No. 20497072)
Evan J. Atkinson (Texas Bar No. 24091844)
100 Congress Avenue, Suite 1800
Austin, TX 78701
Telephone: (512) 685-6400
Facsimile: (512) 685-6417
Email: Andrea.Cunha@wallerlaw.com
Evan.Atkinson@wallerlaw.com

Proposed Counsel for the Debtor and Debtor in Possession

EXHIBIT 4 TO BIDDING PROCEDURES ORDER
NOTICE OF POTENTIAL ASSUMPTION

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:

WALKER COUNTY HOSPITAL CORPORATION,
d/b/a HUNTSVILLE MEMORIAL HOSPITAL,

Debtor and Debtor in Possession.¹

Chapter 11

Case No. 19-36300

Re: Docket No. ____

**NOTICE OF (I) CURE AMOUNTS WITH RESPECT TO
EXECUTORY CONTRACTS AND UNEXPIRED LEASES TO POTENTIALLY BE
ASSUMED AND ASSIGNED AND (II) POTENTIAL ASSUMPTION AND
ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

PLEASE TAKE NOTICE that, pursuant to the *Order: (I)(A) Approving Bidding Procedures and Bid Protection, (B) Permitting Debtor to Designate Stalking Horse Purchaser(s) and Grant Bid Protections, (C) Scheduling a Hearing to Consider Approval of the Sale of Assets, (D) Approving Assumption and Assignment Procedures, (E) Approving Form and Manner of Notice of Sale, and (F) Granting Related Relief; and (II)(A) Authorizing and Approving the Sale of Substantially All Assets of the Debtor Free and Clear of Liens, Claims, Interests, and Encumbrances, (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (C) Granting Related Relief* (Dkt. No. [____]) (the “**Bidding Procedures Order**”)² entered by the United States Bankruptcy Court for the Southern District of Texas (the “**Bankruptcy Court**”), the above-captioned debtor and debtor in possession (the “**Debtor**”) provides this notice that you and the Debtor are party to one or more of the various executory contracts and unexpired leases set forth on **Exhibit 1** to this notice (the “**Executory Contracts**” and “**Unexpired Leases**,” as applicable), which Executory Contracts and Unexpired Leases may be assumed and assigned to a Successful Bidder in connection with the proposed sale of the Proposed Purchased Assets.

PLEASE TAKE FURTHER NOTICE that set forth on **Exhibit 1** is the amount the Debtor’s records reflect is owing to cure any and all defaults under each Executory Contract and Unexpired Lease (each amount, a “**Cure Amount**”) to permit the assumption and assignment of each Executory Contract and Unexpired Lease pursuant to section 365 of the Bankruptcy Code.

PLEASE TAKE FURTHER NOTICE that the Debtor’s books and records reflect that all postpetition amounts owing under each Executory Contract and Unexpired Lease have been paid and will continue to be paid and no other defaults exist under any of the Executory Contracts

¹ The last four digits of the Debtor’s federal tax identification number are: 0960. The location of the Debtor’s service address is: P.O. Box 4001, Huntsville, TX 77342-4001, Attn: Steven Smith.

² Capitalized terms used in these Bidding Procedures but not otherwise defined shall have the meanings ascribed to them in the Bidding Procedures Order.

or Unexpired Leases and, therefore, amounts due and owing since the Petition Date are not included in the Cure Amount for any Executory Contract or Unexpired Lease.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the Cure Amounts set forth on **Exhibit 1** or to the possible assumption and assignment of any Executory Contract or Unexpired Lease to a Successful Bidder, as applicable, must be filed with the Bankruptcy Court and served so as to be **actually received** on or before **[] [], 2019 at 4:00 p.m. (prevailing Central time)** (the "**Objection Deadline**"). Service of any objections should be made to: (i) counsel to the Debtor; (ii) counsel to any Stalking Horse Bidder; (iii) counsel to MidCap, []; (iv) counsel to any statutory committee; (v) the Office of the United States Trustee for the Southern District of Texas, []; and (vi) counsel to any Successful Bidder and Backup Bidder as identified in accordance with the Bidding Procedures.

PLEASE TAKE FURTHER NOTICE that all objections to the Cure Amount or possible assumption and assignment of any Executory Contract or Unexpired Lease must (a) be in writing, (b) conform to the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (c) state with particularity the legal and factual basis for the objection and the specific grounds for such objection, and (d) if challenging the Cure Amount, set forth the prepetition cure amount being claimed with appropriate documentation in support of such amount.

PLEASE TAKE FURTHER NOTICE that any timely filed objections that cannot be resolved will be heard at a hearing to be held before the Honorable [], United States Bankruptcy Judge for the Southern District of Texas, 515 Rusk Avenue, Courtroom [], Houston, Texas 77002, on **[] [], 2019 at [] (prevailing Central time)**, unless otherwise agreed by the Debtor and any Successful Bidder or otherwise ordered by the Bankruptcy Court.

PLEASE TAKE FURTHER NOTICE that the failure to timely file an objection on or before the Objection Deadline shall (a) forever bar any objections to the Cure Amount or the assertion that any additional or other amounts are due and owing, (b) be deemed as consent to the assumption, assignment, and/or transfer of each Executory Contract and Unexpired Lease to the applicable Successful Bidder(s), and (c) forever bar and estop any assertion or claim against the Debtor or any Successful Bidder(s) that any additional amounts are due or defaults exist, or conditions to assumption, assignment, and/or transfer must be satisfied, or that any right or benefit under each Executory Contract or Unexpired Lease cannot or will not be available to any Successful Bidder(s).

PLEASE TAKE FURTHER NOTICE that the Debtor shall present evidence necessary to demonstrate adequate assurance of future performance by any Successful Bidder(s).

PLEASE TAKE FURTHER NOTICE that the presence of an Executory Contract or Unexpired Lease on **Exhibit 1** to this notice does not constitute an admission that such contract, lease, or other agreement is an executory contract or unexpired lease or that such contract, lease, or other agreement will be assumed by the Debtor and assigned to any Successful Bidder(s).

PLEASE TAKE FURTHER NOTICE that, if an Executory Contract or Unexpired Lease is finally determined to be assumed and assigned to any Successful Bidder(s), a separate notice of such assumption and assignment will be provided to you.

PLEASE TAKE FURTHER NOTICE that all documents filed with the Bankruptcy Court in connection with the above-captioned case are available for free on the website of the court-appointed claims and noticing agent in this case, Epiq Corporate Restructuring, LLC at [_____].

DATED: [November 11], 2019

Respectfully submitted,
WALLER LANSDEN DORTCH & DAVIS, LLP

/s/ _____
Ryan K. Cochran (Federal ID No. 3438844)
Blake D. Roth (Federal ID No. 2666808)
Tyler N. Layne (Federal ID No. 2639086)
Courtney K. Stone (Texas Bar No. 24093208)
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Email: Ryan.Cochran@wallerlaw.com
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-and-

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Evan.Atkinson@wallerlaw.com

Proposed Counsel for the Debtor and Debtor in Possession

EXHIBIT 5 TO BIDDING PROCEDURES ORDER
NOTICE OF ASSUMPTION AND ASSIGNMENT

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

WALKER COUNTY HOSPITAL CORPORATION,
d/b/a HUNTSVILLE MEMORIAL HOSPITAL,

Debtor and Debtor in Possession.¹

Chapter 11

Case No. 19-36300

Re: Docket No. ____

**NOTICE OF ASSUMPTION AND ASSIGNMENT
OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

PLEASE TAKE NOTICE that on [_____] [____], 2019, the United States Bankruptcy Court for the Southern District of Texas (the “**Bankruptcy Court**”) entered the *Order: (I)(A) Approving Bidding Procedures and Bid Protection, (B) Permitting Debtor to Designate Stalking Horse Purchaser(s) and Grant Bid Protections, (C) Scheduling a Hearing to Consider Approval of the Sale of Assets, (D) Approving Assumption and Assignment Procedures, (E) Approving Form and Manner of Notice of Sale, and (F) Granting Related Relief; and (II)(A) Authorizing and Approving the Sale of Substantially All Assets of the Debtor Free and Clear of Liens, Claims, Interests, and Encumbrances, (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (C) Granting Related Relief* (Dkt. No. [____]) (the “**Bidding Procedures Order**”).²

PLEASE TAKE FURTHER NOTICE that on [_____] [____], 2019, the Bankruptcy Court entered the *Order: (I) Approving Sale of Substantially All Assets of the Debtor Free and Clear of All Liens, Claims, Encumbrances, and Interests; (II) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (III) Granting Related Relief* (Dkt. No. [____]) (the “**Sale Order**”).

PLEASE TAKE FURTHER NOTICE that, in accordance with the Bidding Procedures Order, Bidding Procedures, and Sale Order, the Debtor has identified [_____] as the Successful Bidder.

PLEASE TAKE FURTHER NOTICE that attached to this notice as **Exhibit 1** is a schedule of executory contracts and unexpired leases the Debtor will assume and assign to the Successful Bidder, in accordance with and subject to the Bidding Procedures Order, Bidding Procedures, and Sale Order.

PLEASE TAKE FURTHER NOTICE that all documents filed with the Bankruptcy Court in connection with the above-captioned case are available for free on the website of the

¹ The last four digits of the Debtor’s federal tax identification number are: 0960. The location of the Debtor’s service address is: P.O. Box 4001, Huntsville, TX 77342-4001, Attn: Steven Smith.

² Capitalized terms used in this notice and not otherwise defined shall have the meanings ascribed to them in the Bidding Procedures Order and Bidding Procedures, as applicable.

court-appointed claims and noticing agent in this case, Epiq Corporate Restructuring, LLC at [_____].

DATED: [November 11], 2019

Respectfully submitted,
WALLER LANSDEN DORTCH & DAVIS, LLP

/s/

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Proposed Counsel for the Debtor and Debtor in Possession

EXHIBIT B
PROPOSED SALE ORDER

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:

WALKER COUNTY HOSPITAL CORPORATION,
d/b/a HUNTSVILLE MEMORIAL HOSPITAL,

Debtor and Debtor in Possession.¹

Chapter 11

Case No. 19-36300

Re: Docket No. ____

ORDER: (I) APPROVING SALE OF SUBSTANTIALLY ALL ASSETS OF THE DEBTOR FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS; (II) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (III) GRANTING RELATED RELIEF

Upon consideration of *Debtor's Emergency Motion for Orders: (I)(A) Authorizing Entry Into Stalking Horse Purchase Agreement for the Sale of Substantially All Assets of Walker County Hospital Corporation, (B) Approving Bidding Procedures and Bid Protections, (C) Scheduling a Hearing to Consider Approval of the Sale of Assets, (D) Approving Form and Manner of Notice of Sale, and (E) Granting Related Relief; and (II)(A) Authorizing and Approving Sale of Substantially All Assets of Walker County Hospital Corporation Free and Clear of Liens, Claims, Interests, and Encumbrances, (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (C) Granting Related Relief* (Dkt. No. [____]) (the "**Motion**"); and upon consideration of the arguments of counsel and the evidence presented at the hearing on the Motion (the "**Sale Hearing**"), and the entire record; and due and sufficient notice of the Motion and Sale Hearing and the relief sought in the Motion having been given under the particular circumstances; and it appearing no other or further notice need be provided; and the Court having reviewed the Motion, the filings in support of the Motion, and all objections to the

¹ The last four digits of the Debtor's federal tax identification number are: 0960. The location of the Debtor's service address is: P.O. Box 4001, Huntsville, TX 77342-4001, Attn: Steven Smith.

relief sought in the Motion (the “*Objections*”); and it appearing the relief requested in the Motion is in the best interest of the Debtor, its estate, its creditors, and other parties in interest; and after due deliberation and good and sufficient cause appearing for the relief sought in the Motion, it is hereby,

FOUND AND DETERMINED THAT:

I. Determination with respect to findings of fact and conclusions of law.

A. The findings of fact and conclusions of law set forth in this order constitute the Court’s findings of fact and conclusions of law pursuant to Rule 7052 of the Bankruptcy Rules, made applicable to this case pursuant to Rule 9014 of the Bankruptcy Rules. To the extent any of the following findings of fact constitute conclusions of law, they are hereby adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are hereby adopted as such. Any findings of fact or conclusions of law stated by the Court on the record at the Sale Hearing are hereby incorporated, to the extent they are not inconsistent with this order.

II. Successful Bidder; Successful Bid.

B. [In accordance with the Bidding Procedures, on [_____] [____], 2019, the Debtor filed a notice with this Court, identifying the [_____] with a Successful Bid in the amount of \$[_____] (as provided in the Successful Bidder’s Asset Purchase Agreement) as the successful bidder (the “*Successful Bidder*”) for the Proposed Purchased Assets and the Successful Bidder’s Asset Purchase Agreement as the highest or otherwise best bid for the Proposed Purchased Assets (the “*Successful Bid*”).]

III. Jurisdiction, final order, and statutory predicates.

C. This Court has jurisdiction over the Debtor, the Debtor’s estate, and the Proposed Purchased Assets and to hear and determine the Motion. This is a core proceeding pursuant to 28

U.S.C. § 157(b). Venue of this case and this Motion in the Southern District of Texas is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

D. The statutory and legal predicates for the relief requested in this Motion are sections 105(a), 363(b), 363(f), 363(m), 365, 503, and 507 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Local Rules 2002-1 and 9013-1.

E. This order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Rules 6004(h) and 6006(d) of the Bankruptcy Rules, and to any extent necessary under Rule 9014 of the Bankruptcy Rules and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Rule 7054 of the Bankruptcy Rules, the Court expressly finds that there is no just reason for delay in the implementation of this order, and expressly directs entry of judgment as set forth in this order.

F. On [_____] [____], 2019, this Court entered the *Order: (I)(A) Approving Bidding Procedures and Bid Protection, (B) Permitting Debtor to Designate Stalking Horse Purchaser(s) and Grant Bid Protections, (C) Scheduling a Hearing to Consider Approval of the Sale of Assets, (D) Approving Assumption and Assignment Procedures, (E) Approving Form and Manner of Notice of Sale, and (F) Granting Related Relief; and (II)(A) Authorizing and Approving the Sale of Substantially All Assets of the Debtor Free and Clear of Liens, Claims, Interests, and Encumbrances, (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (C) Granting Related Relief* (Dkt. No. [____]) (the “**Bidding Procedures Order**”).

G. The Proposed Purchased Assets constitute property of the Debtor's estate and title to the Proposed Purchased Assets is vested in the Debtor's estate, within the meaning of section 541(a) of the Bankruptcy Code.

H. The Successful Bidder is a good faith purchaser under section 363(m) of the Bankruptcy Code and, accordingly, in the absence of a stay pending appeal, may close the transaction contemplated by the Successful Bidder's purchase agreement at any time on or after entry of this order, and cause has been shown as to why this order should not be subject to the stay provided by Rules 6004(h) and 6006(d) of the Bankruptcy Rules.

IV. Notice of the sale, Sale Hearing, and Cure Amounts.

I. Actual written notice of the Motion and a reasonable opportunity to object or be heard with respect to the Motion and the relief requested in the Motion have been afforded to all known interested person and entities, including, but not limited to, the following parties: (i) all entities known to have expressed an interest in a transaction with respect to some or all of the Proposed Purchased Assets; (ii) all entities known to have asserted any interest in or upon any of the Proposed Purchased Assets; (iii) all federal, state, and local regulatory or taxing authorities or recording offices which have a reasonably known interest in the relief requested by the Motion; (iv) known counterparties to any unexpired leases or executory contracts that could potentially be assumed and assigned to a Successful Bidder; (v) the Office of the United States Trustee for the Southern District of Texas; (vi) counsel to any statutory committees; (vii) counsel to [MidCap]; (viii) the Office of the United States Attorney General for the Southern District of Texas; (ix) the Internal Revenue Service; (x) the United States Department of Justice; (xi) the office of the attorney general for the state of Texas; (xii) all of the Debtor's insurers; (xiii) all parties entitled to notice pursuant to Rule 2002 of the Bankruptcy Rules or Local Rule 2002-1; (xiv) to the extent not already included above, all parties in interest listed on the Debtor's creditor matrix; and

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(xv) other persons or entities reasonably requested by a potential purchaser of the Proposed Purchased Assets (collectively, the “*Notice Parties*”).

J. In accordance with the provisions of the Bidding Procedures Order, the Debtor served the *Notice of Auction and Sale Hearing*, substantially in the form attached as **Exhibit 3** to the Bidding Procedures Order (the “*Notice of Auction and Sale Hearing*”), on the Notice Parties, posted the Notice of Auction and Sale Hearing on the case website maintained by the Debtor’s claims and noticing agent, Epiq Corporate Restructuring, LLC (“*Epiq*”), and published the Notice of Auction and Sale Hearing once in each of the *Houston Chronicle* and *The Huntsville Item*. The Notice of Auction and Sale Hearing provided all interested parties with timely and proper notice of the proposed sale of the Proposed Purchased Assets, Bidding Procedures, Bid Deadline, Auction, Sale Objection Deadline, and Sale Hearing.

K. In accordance with the Bidding Procedures Order, the Debtor served the *Notice of (I) Cure Amounts With Respect to Executory Contracts and Unexpired Leases to Potentially Be Assumed and Assigned and (II) Potential Assumption and Assignment of Executory Contracts and Unexpired Leases*, substantially in the form attached as **Exhibit 4** to the Bidding Procedures Order (the “*Notice of Potential Assumption*”), on all counterparties to executory contracts and unexpired leases that potentially would be assumed and assigned in connection with a sale of the Proposed Purchased Assets. The Notice of Potential Assumption specified: (i) each of the Debtor’s executory contracts and unexpired leases that may be assumed and assigned in connection with a sale of the Proposed Purchased Assets (the “*Proposed Assumed Contracts*”), including the name of each non-Debtor counterparty to such Proposed Assumed Contracts (each, a “*Proposed Assumed Contract Counterparty*”); (b) the proposed amount necessary, if any, to cure all monetary defaults, if any, under the Proposed Assumed Contracts (the “*Cure Costs*”); and (iii) the

deadline by which a Proposed Assumed Contracts Counterparty shall have filed an objection to the Cure Costs or to assumption and assignment of the applicable Proposed Assumed Contract. Pursuant to Rule 6006(c) of the Bankruptcy Rules, the Court finds that the service of the Notice of Potential Assumption was adequate, sufficient, and appropriate under the circumstances and in compliance with the Bidding Procedures Order, and no further or other notice need be given in respect of establishing the Cure Costs. The Proposed Assumed Contract Counterparties have had an opportunity to object to the Cure Costs or to the assumption and assignment of the applicable Proposed Assumed Contract set forth in the Notice of Potential Assumption.

L. As evidenced by the affidavits of service previously filed with the Court, proper, timely, adequate, and sufficient notice of the Motion, stalking horse purchase agreement, Bidding Procedures, Auction, Sale Hearing, and sale of the Proposed Purchased Assets has been provide in accordance with sections 102(1), 363, 364, and 365 of the Bankruptcy Code, Rules 2002, 4001, 6004, 6006, and 9014 of the Bankruptcy Rules, and Local Rules 2002-1 and 9013-1. The Debtor has also complied with all obligations to provide notice of the Auction, the Sale Hearing, the stalking horse purchase agreement, and the sale of the Proposed Purchased Assets as required by the Bidding Procedures Order.

M. The notices described in paragraphs I through L of this order were adequate, sufficient, and appropriate under the circumstances, and no other or further notice of the Motion, Sale Hearing, sale of the Proposed Purchased Assets, or assumption and assignment of the Proposed Assumed Contracts is necessary or required.

N. The Notice of Potential Assumption provided the Successful Bidder and each Proposed Assumed Contract Counterparty with proper notice of the potential assumption and assignment of the Proposed Assumed Contracts and any Cure Costs, and the procedures

established by this Court and undertaken by the Debtor with regard to any Cure Costs satisfy section 365 of the Bankruptcy Code and Rule 6006 of the Bankruptcy Rules.

O. The Debtor has articulated good and sufficient reasons for this Court to grant the relief requested in the Motion.

P. The disclosures made by the Debtor concerning the Motion, the sale of the Proposed Purchased Assets, the stalking horse purchase agreement, and the Sale Hearing were good, complete, and adequate.

V. Good Faith of Successful Bidder.

Q. The Successful Bidder is purchasing the Proposed Purchased Assets in good faith and is a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code and is, therefore, entitled to the full protection of that provision, and otherwise has proceeded in good faith in all respects in connection with this proceeding in that, among other things: (i) the Successful Bidder recognized that the Debtor was free to deal with any other party interested in acquiring all or a portion of the Proposed Purchased Assets; (ii) the Successful Bidder complied with the provisions in the Bidding Procedures Order and Bidding Procedures; (iii) the Successful Bidder agreed to subject its bid to the competitive bidding procedures set forth in the Bidding Procedures Order; (iv) no Successful Bidder induced or caused the chapter 11 filing by the Debtor; (v) all payments to be made by the Successful Bidder and other agreements or arrangements entered into by the Successful Bidder in connection with the sale of the Proposed Purchased Assets have been disclosed; (vi) no Successful Bidder has violated section 363(n) of the Bankruptcy Code by any action or inaction; and (vii) the negotiation and execution the Successful Bidder's purchase agreement, and any other agreements or instruments related thereto were at arms' length and in good faith.

VI. Highest or otherwise best offer.

R. 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 all or a portion of the Proposed Purchased Assets.

S. The Successful Bid constitutes the highest or otherwise best offer for the Proposed Purchased Assets and will provide a greater recovery for the Debtor's estate than would be provided by any other available alternative. The Debtor's determination that the Successful Bid constitutes the highest or best offer for the Proposed Purchased Assets constitutes a valid and sound exercise of the Debtor's business judgment.

T. The Successful Bid represents a fair and reasonable offer to purchase the Proposed Purchased Assets, including the Proposed Assumed Contracts, under the circumstances of this Chapter 11 Case. No other person or entity or group of entities has offered to purchase the Proposed Purchased Assets for greater economic value to the Debtor's estate than the Successful Bidder.

U. Approval of the Motion and the Successful Bid (and the coinciding purchase agreement) and the consummation of the transaction contemplated thereby are in the best interests of the Debtor, its estate, creditors of the Debtor's estate, and other parties in interest.

V. The Debtor has demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the sale of the Proposed Purchased Assets outside of a plan of reorganization.

VII. No fraudulent transfer.

W. The consideration provided by the Successful Bidder pursuant to the Successful Bid (and coinciding purchase agreement) is fair and adequate and constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, and the District of Columbia. No Successful Bid was made or coinciding purchase agreement was entered into or will be consummated for the purpose of hindering, delaying or defrauding creditors of the Debtor, and neither the Debtor nor any Successful Bidder have or has entered into any purchase agreement or is or are consummating the transactions contemplated thereby with any fraudulent or otherwise improper purpose.

VIII. Validity of transfers.

X. The Debtor has full corporate power and authority to execute and deliver the purchase agreement associated with the Successful Bid and all other documents contemplated thereby, and no further consents or approvals are required for the Debtor to consummate the transactions contemplated by such purchase agreement, except as otherwise set forth in any of such purchase agreement.

Y. The transfer of the Proposed Purchased Assets, including the Proposed Assumed Contracts, to the Successful Bidder, as of the applicable closing date, will be a legal, valid, and effective transfer of such assets and will vest the Successful Bidder with all right, title, and interest of the Debtor to the Proposed Purchased Assets free and clear of all liens, claims, encumbrances, and other interests accruing, arising, or relating to any time prior to the applicable closing date, except as otherwise set forth in any applicable purchase agreement.

IX. Section 363(f) of the Bankruptcy Code is satisfied.

Z. The Successful Bidder would not have submitted the Successful Bid or entered into the coinciding purchase agreement and would not consummate the transaction contemplated

thereby, if the sale of the Proposed Purchased Assets to the Successful Bidder, and the sale and assumption and assignment of the Proposed Assumed Contracts to the Successful Bidder, was not, except as otherwise provided in the applicable purchase agreement, free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever, or if the Successful Bidder would, or in the future could, be liable for any of such liens, claims, encumbrances, and other interests.

AA. The Successful Bidder (i) is not, and shall not be considered, a successor to the applicable Debtor, (ii) has not, *de facto* or otherwise, merged with or into the Debtor, (iii) is not a continuation or substantial continuation, and is not holding itself out as a mere continuation, of the Debtor or its estate, businesses, or operations, or any enterprise of the Debtor, and (iv) does not have a common identity of incorporators, directors, or equity holders with the Debtor. The Successful Bidder shall have no, and shall not be deemed to have or to have assumed or become obligated by operation of law or in equity for, any liability or liens, claims, encumbrances, or other interests, except as expressly assumed by a Successful Bidder under the Successful Bidder's purchase agreement.

BB. The Debtor may sell the Proposed Purchased Assets, including the Proposed Assumed Contracts, free and clear of all liens, claims, encumbrances, and other interests, because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of liens, claims, encumbrances, and other interests who did not object, or who withdrew their objections, to the sales of the Proposed Purchased Assets or the Motion are deemed to have consented, pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of the liens, claims, encumbrances, and other interests who did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are adequately

protected by having their liens, claims, encumbrances, and other interests, if any, attach to the cash proceeds of the sales attributable to the Proposed Purchased Assets in which such holder alleges liens, claims, encumbrances, and other interests, in the same order of priority, with the same validity, force and effect that such liens, claims, encumbrances, and other interests had prior to the applicable sale, subject to any claims and defenses the Debtor and its estate may possess with respect thereto.

X. Assumption and assignment of executory contracts and unexpired leases.

CC. The sale and assumption and assignment of the Proposed Assumed Contracts pursuant to the terms of this order is integral to the Successful Bidder's purchase agreement, is in the best interests of the Debtor and its estate, creditors, and other parties in interest, and represents the reasonable exercise of sound and prudent business judgment by the Debtor.

DD. Pursuant to the terms of the Successful Bidder's purchase agreement, at the applicable closing, the Debtor shall assume and assign to the Successful Bidder each of the Proposed Assumed Contracts identified by such Successful Bidder in its purchase agreement that are capable of being assumed and assigned. The Successful Bidder shall be solely responsible for the payment of any Cure Amount (or shall deliver into escrow amounts sufficient to pay any claim for Cure Amounts that remain disputed as of the applicable closing), except to the extent otherwise provided in the Successful Bidder's purchase agreement. The Successful Bidder shall assume and perform and discharge the applicable Assumed Liabilities, if any, under the Successful Bidder's Proposed Assumed Contracts, including pursuant to any contract or lease assignment agreements, as applicable, provided that no Successful Bidder shall be liable for any amounts owed prior to the applicable closing under any Proposed Assumed Contract in excess of the Cure Amount for each Proposed Assumed Contract. The Successful Bidder has provided adequate assurance of its future performance under the applicable Proposed Assumed Contracts within the meaning of sections 4814-5586-8587.5

365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code to any counterparty to a Proposed Assumed Contract that requested such assurance and shall have no further obligation to provide assurance of performance to any counterparty, except to the extent of timely-filed objections to such adequate assurance information.

XI. Compelling circumstances exist for immediate sale.

EE. To enhance the Debtor's level of liquidity, to preserve the value of the Debtor's estate, and reduce the amount of postpetition expenses borne by the Debtor, and to maximize the amount of funding available to provide for a timely exit from this Chapter 11 Cases, it is essential that the sales of the Proposed Purchased Assets occur within the time constraints set forth in the Successful Bidder's purchase agreement. Time is of the essence in consummating the sales of the Proposed Purchased Assets.

FF. Given all of the circumstances of this Chapter 11 Case and the adequacy and fair value of the Successful Bid, the proposed sales of the Proposed Purchased Assets to the Successful Bidder constitutes a reasonable and sound exercise of the Debtor's business judgment and should be approved.

GG. The sale of the Proposed Purchased Assets does not constitute a *de facto* or *sub rosa* plan of reorganization or liquidation because the Debtor does not propose to (i) impair or restructure existing debt of, or equity 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 sections 1125 and 1129 of the Bankruptcy Code, or (iv) classify claims or equity interests.

HH. The consummation of the sale of the Proposed Purchased Assets is legal, valid, and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, sections 105(a), 363(b), 363(f), 363(m), 364, 365(b) and 365(f), and all of the applicable

requirements of such sections have been complied with in respect of the sale of the Proposed Purchased Assets.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

I. General Provisions.

1. This Court's findings of fact and conclusions of law set forth in the Bidding Procedures Order and above are fully incorporated into this order by reference.

2. Notice of the Motion, the Sale Hearing, and the sale of the Proposed Purchased Assets was adequate, fair, and equitable under the circumstances and complied in all respects with section 102(1) of the Bankruptcy Code, Rules 2002, 4001, 6004, and 6006 of the Bankruptcy Rules, and Local Rules 2002-1 and 9013-1. All objections to the Motion or the relief requested in the Motion that have not been withdrawn, waived or settled as announced to the Court at the Sale Hearing or by stipulation filed with the Court, and all reservations of rights included therein, are hereby overruled on the merits or have been otherwise satisfied or adequately provided for pursuant to this order.

II. Approval of the Successful Bid.

3. The Successful Bidder's purchase agreement (the "*Purchase Agreement*") and the terms and conditions thereof are hereby APPROVED, and the Debtor is authorized and directed to enter into all related agreements and such other ancillary documents consistent with the terms hereof and in furtherance thereof.

4. Pursuant to section 363(b) of the Bankruptcy Code, the Debtor is authorized and directed to take any and all actions necessary or appropriate to (a) consummate the sale of the Proposed Purchased Assets to the Successful Bidder pursuant to and in accordance with the terms and conditions of the Purchase Agreement, (b) close the sale of the Proposed Purchased Assets as contemplated in the Purchase Agreement and this order, and (c) execute and deliver, close, perform

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under, consummate, and implement each Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement and the sale of the Proposed Purchased Assets or as may be reasonably necessary or appropriate to the performance of the obligations as contemplated by the Purchase Agreement and such ancillary documents.

5. This order shall be binding in all respects upon the Debtor, its estate, all holders of equity interests in the Debtor, all holders of any Claim(s) (as defined in the Bankruptcy Code) against the Debtor, whether known or unknown, any holders of liens, claims, encumbrances, and other interests on all or any portion of the Proposed Purchased Assets, all Proposed Assumed Contract Counterparties, the Successful Bidder, all successors and assigns of the Successful Bidder, any other bidders for the Proposed Purchased Assets, any trustees, if any, subsequently appointed in this Chapter 11 Case or upon a conversion to chapter 7 under the Bankruptcy Code of the Debtor's case, and all employee benefit plans in which the Debtor participated. This order and the Purchase Agreement shall inure to the benefit of the Debtor, its estate, its creditors, the Successful Bidder, and each of its successors and assigns. Nothing contained in any plan of reorganization or liquidation or order of any type or kind entered in this Chapter 11 Case or any subsequent chapter 7 or chapter 11 case for the Debtor or any related proceedings subsequent to the entry of this order shall directly conflict with or derogate from the provisions of the Purchase Agreement or the terms of this order.

III. Transfer of Proposed Purchased Assets.

6. Pursuant to sections 105(a), 363(b), 363(f), 365(b), and 365(f) of the Bankruptcy Code, the Debtor is authorized and directed to transfer the Proposed Purchased Assets on the applicable closing date. The Proposed Purchased Assets (including the Proposed Assumed Contracts) shall be transferred to the Successful Bidder upon and as of the closing date, and such

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transfer shall constitute a legal, valid, binding and effective transfer of the Proposed Purchased Assets and, upon the Debtor's receipt of the Purchase Price (as defined in the Purchase Agreement), shall be free and clear of all Encumbrances (as defined in the Purchase Agreement), and except for the Permitted Encumbrances and Assumed Liabilities under the Purchase Agreement. Upon the closing, the Successful Bidder shall take title to and possession of the Proposed Purchased Assets subject only to the Assumed Liabilities (as set forth in the Purchase Agreement). All Encumbrances (other than the Permitted Encumbrances) shall attach to the proceeds of the sale of Proposed Purchased Assets with the same validity, priority, force, and effect that they now have as against the Proposed Purchased Assets, subject to any claims and defenses the Debtor and its estate may possess with respect thereto.

7. The sales of the Proposed Purchased Assets to the Successful Bidder and the sale and assumption and assignment of the Proposed Assumed Contracts to the Successful Bidder, shall be, except as otherwise provided in the Purchase Agreement and this order, free and clear of all liens, claims, encumbrances, and other interests. The Proposed Purchased Assets shall not be subject to any claims or interests allowed in the Chapter 11 Case, including, without limitation, any claims allowed under sections 361, 362, 363, 364, 365, 502, 503, 506, or 507 of the Bankruptcy Code, nor shall the Proposed Purchased Assets be subject to a surcharge or "carve out" that is otherwise agreed to or approved in the Chapter 11 Case.

8. Except as expressly provided by the Purchase Agreement, all persons and entities holding Encumbrances (other than the Permitted Encumbrances) on all or any portion of the Proposed Purchased Assets are forever barred, estopped, and permanently enjoined from asserting against the Successful Bidder or its successors or assigns, their property, or the Proposed Purchased Assets, such Encumbrances (other than the Permitted Encumbrances) and all claims

and rights relating thereto. On the applicable closing date, each holder of an Encumbrances (other than the Permitted Encumbrances) is authorized and directed to execute such documents and take all other actions as may be deemed by the Successful Bidder to be necessary or desirable to release its Encumbrances on the Proposed Purchased Assets, as provided for in this order, as such Encumbrances may have been recorded or may otherwise exist.

9. 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 Proposed Purchased Assets to the Successful Bidder, including the sale, assumption and assignment of the Proposed Assumed Contracts to the Successful Bidder in accordance with the terms of the Purchase Agreement and this order.

10. All persons and entities that are in possession of some or all of the Proposed Purchased Assets on the applicable closing dates are directed to surrender possession of such Proposed Purchased Assets to the Successful Bidder or its assignee at the closing.

11. A certified copy of this order may be filed with the appropriate clerk and/or recorded with the appropriate recorder to cancel any Encumbrances (other than the Permitted Encumbrances).

12. If any person or entity that has filed statements or other documents or agreements evidencing Encumbrances on all or any portion of the Proposed Purchased Assets shall not have delivered to the Successful Bidder prior to the applicable closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of Encumbrances and any other documents necessary or desirable to the Successful Bidder for the purpose of documenting the release of all Encumbrances, which the person or entity has or may assert with respect to all or any portion of the Proposed Purchased Assets, the Debtor is hereby

authorized and directed, and the Successful Bidder is hereby authorized, to execute and file such statements, instruments, releases and other documents on behalf of such person or entity with respect to the Proposed Purchased Assets.

13. This order shall govern the acts of all persons and entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials and all other persons and entities who may be required by operation of law, the duties of their office or contract to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing persons and entities is hereby authorized and directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

IV. Executory contracts and unexpired leases.

14. The Debtor is authorized and directed to assume and sell and assign the Proposed Assumed Contracts to the Successful Bidder free and clear of all Encumbrances (other than the Permitted Encumbrances). With respect to each Proposed Assumed Contract, the payment of the applicable Cure Cost (if any) by the Successful Bidder shall (a) effect a cure of all monetary defaults existing thereunder as of the applicable closing date, (b) compensate the applicable Proposed Assumed Contract Counterparty for any actual pecuniary loss resulting from such default, and (c) together with the assumption of the Proposed Assumed Contracts by the Successful Bidder, constitute adequate assurance of future performance thereof. The Successful Bidder shall not be liable for any amounts owed prior to their applicable closing date under any Proposed Assumed Contract in excess of the Cure Amount for each Proposed Assumed Contract. As of the

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applicable closing date, the Successful Bidder shall be deemed to have acquired and assumed the Proposed Assumed Contracts pursuant to sections 363 and 365(f) of the Bankruptcy Code. The assignment by the Debtor of such Proposed Assumed Contracts shall not be a default thereunder, and the Successful Bidder is entitled to the protections afforded under section 363(m) of the Bankruptcy Code with respect thereto.

15. The Successful Bidder shall be liable for the payment of all Cure Costs with respect to the Proposed Assumed Contracts, except as otherwise provided in the Purchase Agreement. With respect to any Assumption and Assignment Objection that remains outstanding as of the Closing, the maximum claimed Cure Cost will be deposited into escrow to support the payment of the final Cure Cost at such time as the Assumption and Assignment Objection is resolved.

16. Any provision in or effect of any Proposed Assumed Contract that prohibits or conditions the assignment of such Proposed Assumed Contract or allows the party to such Proposed Assumed Contract to terminate, recapture, impose any penalty, condition on renewal or extension or modify any term or condition upon the assignment of such Proposed Assumed Contract constitutes an unenforceable anti-assignment provision that is void and of no force and effect pursuant to section 365(f) of the Bankruptcy Code. All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtor and assignment to the Successful Bidder of the Proposed Assumed Contracts have been satisfied, and such assumption and assignment shall not constitute a default thereunder. Upon each applicable closing and the payment of the required Cure Costs by the Successful Bidder, in accordance with sections 363 and 365 of the Bankruptcy Code, the Successful Bidder shall be fully and irrevocably vested with all right, title and interest of the Debtor under each Proposed Assumed Contract.

17. Upon the closing and the payment of the Cure Costs applicable to any Proposed Assumed Contract, the Successful Bidder shall be deemed to be substituted for the Debtor as a party to such Proposed Assumed Contract, and the Debtor shall be relieved, pursuant to section 365(k) of the Bankruptcy Code, from any further liability to the Proposed Assumed Contract Counterparties under such Proposed Assumed Contracts.

18. Upon each applicable closing and the payment of the applicable Cure Costs, if any, the Proposed Assumed Contracts shall remain in full force and effect, and no default shall exist thereunder nor shall there exist any event or condition which, with the passage of time or giving of notice, or both, would constitute such a default.

19. There shall be no rent accelerations or increases, assignment fees, deposits, increases or any other fees charged to the Successful Bidder or the Debtor as a result of the assumption and assignment (including any change in control) of the Proposed Assumed Contracts.

20. Pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code, all Proposed Assumed Contract Counterparties are forever barred and permanently enjoined from raising or asserting against the Debtor, its estate, the Successful Bidder, or any of their respective successors and assigns any increased rent or fees, assignment fee, default, breach or claim or pecuniary loss or condition to assignment, arising under or related to the Proposed Assumed Contracts existing as of each applicable closing date or arising by reason of the Chapter 11 Case or applicable closing.

V. Miscellaneous.

21. Effective upon the closing date, all persons and entities are forever prohibited and permanently enjoined from commencing or continuing in any manner any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral or other proceeding against the Successful Bidder and Proposed Purchased Assets, including, without limitation the Proposed Assumed Contracts, with respect to (a) any Encumbrance (other than the Permitted

Encumbrances) arising prior to the applicable closing date or (b) any theory of claim or remedy sounding in successor liability.

22. Except as otherwise provided in this order and to the maximum extent available under applicable law and to the extent provided for under the Purchase Agreement, the Successful Bidder shall be authorized, as of the applicable closing date, to operate under any license, permit, registration and governmental authorization or approval of the Debtor with respect to the Proposed Purchased Assets, including the Proposed Assumed Contracts and, to the maximum extent available under applicable law and to the extent provided for under the Purchase Agreement, all such licenses, permits, registrations and governmental authorizations and approvals are deemed to have been transferred to the Successful Bidder as of the closing date. All existing licenses or permits applicable to the Proposed Purchased Assets shall remain in place for the Successful Bidder's benefit until either new licenses and permits are obtained or existing licenses and permits are transferred in accordance with applicable administrative procedures. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any grant, permit, or license relating to the operation of the Proposed Purchased Assets sold, transferred or conveyed to the Successful Bidder on account of the filing or pendency of this Chapter 11 Case or the consummation of the sale of the Proposed Purchased Assets.

23. Except for the Permitted Encumbrances and Assumed Liabilities with respect to the Successful Bidder, the Successful Bidder shall have no liability for any obligation of the Debtor arising under or related to any of the Proposed Purchased Assets, including the Proposed Assumed Contracts. Without limiting the generality of the foregoing, the Successful Bidder shall not be liable for any Claims against the Debtor or any of its predecessors or affiliates. By virtue of the sales of Proposed Purchased Assets, the Successful Bidder, and its respective affiliates, successors

and assigns shall not be deemed or considered to (a) be a legal successor or otherwise be deemed a successor to any of the Debtor, (b) have, de facto or otherwise, merged with or into the Debtor or (c) be a continuation or substantial continuation, or be holding itself out as a mere continuation, of the Debtor or its estate, businesses or operations, or any enterprise of the Debtor, in each case by any law or equity, and the Successful Bidder has not assumed nor is it in any way responsible for any liability or obligation of the Debtor or the Debtor's estate, except with respect to the Assumed Liabilities with regard to the Successful Bidder. The Successful Bidder shall have no successor or vicarious liabilities of any kind or character, including, but not limited to, any theory of antitrust, environmental, successor or transferee liability, labor law, *de facto* merger or substantial continuity, whether known or unknown as of the closing date, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtor or any obligations of the Debtor arising prior to the closing date, including, but not limited to, liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of any of the Proposed Purchased Assets prior to the closing.

24. The transactions contemplated by and consummated under the Purchase Agreement are undertaken by the Successful Bidder, without collusion and in good faith, as that term is defined in sections 363(m) and 364(e) of the Bankruptcy Code, as applicable, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the sale of the Proposed Purchased Assets shall not affect the validity of such sale (including the assumption and assignment of the Proposed Assumed Contracts), unless such authorization and such sale are duly stayed pending such appeal. The Successful Bidder is a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of section 363(m) of the Bankruptcy Code. The Purchase Agreement and the transactions contemplated

thereby cannot be avoided under section 363(n) of the Bankruptcy Code. The Debtor and the Successful Bidder have not engaged in any conduct that would cause or permit the Purchase Agreement or the consummation of the transactions contemplated thereby to be avoided, or costs or damages to be imposed, under section 363(n) of the Bankruptcy Code.

25. Pursuant to Rules 4001, 6004(h), 6006(d), 7062, and 9014 of the Bankruptcy Rules, this order shall be effective immediately upon its entry, and the Debtor and the Successful Bidder are authorized to close the sale of Proposed Purchased Assets immediately.

26. No bulk sales law or any similar law of any state or other jurisdiction applies in any way to the sales of Proposed Purchased Assets.

27. The failure specifically to include any particular provision of the Purchase Agreement in this order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase Agreement be authorized and approved in its entirety.

28. The Purchase Agreement and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment, or supplement does not have a material adverse effect on the Debtor's estate or on the interests of the Successful Bidder.

29. All time periods set forth in this order shall be calculated in accordance with Rule 9006(a) of the Bankruptcy Rules.

30. To the extent that this order is inconsistent with any prior order or pleading with respect to the Motion filed in this Chapter 11 Case, the terms of this order shall govern.

31. The Court shall retain jurisdiction to, among other things, interpret, implement and enforce the terms and provisions of this order, the Purchase Agreement, and all amendments

thereto and any releases, waivers, and consents hereunder and thereunder, and each of the agreements executed in connection therewith to which the Debtor is party or which has been assigned by the Debtor to the Successful Bidder, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to any of the foregoing. So long as the this Chapter 11 Case is not closed (or, if closed but then reopened), the Court shall retain jurisdiction to enforce the injunctions and other rights of the Successful Bidder described in this order, in the event that after the closing date any third parties attempt to or actually interfere with such rights of any Successful Bidder, even if the Debtor is not directly involved or named in any such actions or disputes between the Successful Bidder and such third parties.

Dated: _____, 2019

United States Bankruptcy Judge